BY THE SAME AUTHOR

Bourgeois Radicals: The NAACP and the Struggle for Colonial Liberation, 1941–1960

Eyes off the Prize: The United Nations and the African American Struggle for Human Rights, 1944–1955

WHITE RAGE

The Unspoken Truth of Our Racial Divide

Carol Anderson

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To Those Who Aspired and Paid the Price

Four

Rolling Back Civil Rights

The Civil Rights Movement was so much more than Rosa Parks refusing to give up her bus seat in Montgomery, Alabama, or Martin Luther King Jr.'s iconic "I Have a Dream" speech on the National Mall before 250,000 people. The movement was a series of hard-fought, locally organized campaigns, supported at times by national organizations such as King's Southern Christian Leadership Conference (SCLC), shining the klieg lights of the press on gross inequities in employment, accommodations, and the right to vote. Adopting the strategy of nonviolence, African Americans skillfully used the media to expose the horrors of Jim Crow to the world—from snarling dogs lunging at unarmed demonstrators in Birmingham, to schoolteachers yanked onto the concrete for trying to register to vote in Selma, to four little girls in Birmingham dynamited in church right after a Sunday-school lesson on "A Love That Forgives."[1]

This was a battle, as the SCLC noted, "to redeem the soul of America."[2] It was obvious that a series of congressionally neutered Civil Rights Acts, one in 1957 and another in 1960, was so ineffectual that the conditions of mass disfranchisement and overt discrimination remained virtually untouched. African Americans and their white allies would, therefore, put their bodies on the line to shake the American public and the U.S. government out of a fog of moral and legal lethargy. Thus, a triple murder of civil rights workers in Mississippi led eventually to the Civil Rights Act in 1964, and the

killings in Selma and the horrific spectacle of Bloody Sunday—where nonviolent protesters were tear-gassed, whipped, and trampled by horse-bound troopers—resulted in the Voting Rights Act (VRA) in 1965.

The impact of this civil rights struggle had been slow but significant. Inequality had begun to lessen. Incomes had started to rise. Job and educational opportunities had expanded.[3] And just as with Reconstruction, the Great Migration, and the *Brown* decision, this latest round of African American advances set the gears of white opposition in motion. Once again, the United States moved from the threshold of democracy to the betrayal of it, within two decades having locked up a greater percentage of its black males than did apartheid South Africa.[4] Given the power of this iconic movement, the descent into "the new Jim Crow" should have been virtually impossible. But by the 1968 presidential election, white opposition had once more coalesced into an effective force. And in the years that followed, its response was carefully implemented.

Both the Nixon and Reagan administrations, with the support of the Burger and Rehnquist Supreme Courts, executed two significant tasks to crush the promise embedded in the Civil Rights Act of 1964 and the Voting Rights Act of 1965. The first was to redefine what the movement was really "about," with centuries of oppression and brutality suddenly reduced to the harmless symbolism of a bus seat and a water fountain. Thus, when the COLORED ONLY signs went down, inequality had supposedly disappeared.[5] By 1965, Richard Nixon asserted, "almost every legislative roadblock to equality of opportunity for education, jobs, and voting had been removed."[6] Also magically removed, by this interpretation, were up to twenty-four trillion dollars in multigenerational devastation that African Americans had suffered in lost wages, stolen land, educational impoverishment, and housing inequalities. All of that vanished, as if it had never happened.[7] Or, as Patrick Buchanan, adviser to Richard Nixon and presidential candidate himself would

explain decades later: "America has been the best country on earth for black folks. It was here that 600,000 black people, brought from Africa in slave ships, grew into a community of 40 million, were introduced to Christian salvation, and reached the greatest levels of freedom and prosperity blacks have ever known."[8] Similarly, chattel slavery, which built the United States' inordinate wealth, molted into an institution in which few if any whites had ever benefited because their "families never owned slaves."[9] Once the need for the Civil Rights Movement was minimized and history rewritten, initiatives like President Lyndon Johnson's Great Society and affirmative action, which were developed to ameliorate hundreds of years of violent and corrosive repression, were easily characterized as reverse discrimination against hardworking whites and a "government handout that lazy black people 'choose' to take rather than work."[10]

The second key maneuver, which flowed naturally from the first, was to redefine racism itself. Confronted with civil rights headlines depicting unflattering portrayals of KKK rallies and jackbooted sheriffs, white authority transformed those damning images of white supremacy into the sole definition of racism. This simple but wickedly brilliant conceptual and linguistic shift served multiple purposes. First and foremost, it was conscience soothing. The whittling down of racism to sheet-wearing goons allowed a cloud of racial innocence to cover many whites who, although "resentful of black progress" and determined to ensure that racial inequality remained untouched, could see and project themselves as the "kind of upstanding white citizen[s]" who were "positively outraged at the tactics of the Ku Klux Klan."[11] The focus on the Klan also helped to designate racism as an individual aberration rather than something systemic, institutional, and pervasive.[12] Moreover, isolating racism to only its most virulent and visible form allowed respectable politicians and judges to push for policies that ostensibly met the standard of America's new civil rights norms while at the same time crafting the implementation of policies to undermine

and destabilize these norms, all too often leaving black communities ravaged.

The objective was to contain and neutralize the victories of the Civil Rights Movement by painting a picture of a "colorblind," equal opportunity society whose doors were now wide open, if only African Americans would take initiative and walk on through.[13] Ronald Reagan breezily shared anecdotes about how Lyndon Johnson's Great Society handed over hard-earned taxpayer dollars to a "slum dweller" to live in posh government-subsidized housing and provided food stamps for one "strapping young buck" to buy steak, while another used the change he received from purchasing an orange to pay for a bottle of vodka. He ridiculed Medicaid recipients as "a faceless mass, waiting for handouts." The imagery was, by design, galling, and although the stories were far from the truth, they succeeded in tapping into a river of widespread resentment.[14] Second- and third-generation Polish Americans, Italian Americans, and other white ethnics seethed that, whereas their own immigrant fathers and grandfathers had had to work their way out of the ghetto, blacks were getting a government-sponsored free ride to the good life on the backs of honest, hardworking white Americans.[15] Some Northern whites began to complain that civil rights apparently only applied to African Americans. One U.S. senator, who asked to remain anonymous, confided, "I'm getting mail from white people saying 'Wait a minute, we've got some rights too.'"[16]

During his 1968 presidential bid, Alabama governor George Wallace understood this resentment. He had experienced a startling epiphany just a few years earlier after trying to block the enrollment of an African American student in the state's flagship university at Tuscaloosa. For that act of defiance, the governor received more than one hundred thousand congratulatory telegrams, half of which came from north of the Mason Dixon Line. Right then he had a revelation: "They all hate black people, all of them. They're all afraid, all of them. Great God! That's it! They're all Southern! The

whole United States is Southern!"[17] But even then, he recognized, it couldn't be business as usual. The Civil Rights Movement meant that "the days of respectable racism were over."[18] And so in his bid for the presidency, Wallace mastered the use of race-neutral language to explain what was at stake for disgruntled working-class whites, particularly those whose neighborhoods butted right up against black enclaves. To the thousands, sometimes tens of thousands, who came to his campaign rallies in Detroit, Boston, San Francisco, New York, Chicago, and San Diego, he played on the ever-present fear that blacks were breaking out of crime-filled ghettos and moving "into *our* streets, *our* schools, *our* neighborhoods," signaling in unmistakable but still-unspoken code that "a nigger's trying to get your job, trying to move into your neighborhood."[19] For working-class whites whose hold on some semblance of the American dream was becoming increasingly tenuous as the economy buckled under pressure from financing both the Great Society and the Vietnam War (on a tax cut), this was naturally upsetting.[20] Black gains, it was assumed, could come only at the expense of whites.[21] Not surprisingly, polls showed that as African Americans achieved greater access to their citizenship rights, white discomfort and unease mounted. By 1966, 85 percent of whites were certain that "the pace of civil rights progress was too fast."[22]

Despite Wallace's premise that "Negroes never had it so good," by the mid-1960s African Americans' median family income was only 55 percent that of whites, while the black unemployment rate was nearly twice as high.[23] By 1965, just 27 percent of African American adults had completed four years of high school; whereas more than half of whites twenty-five years and over had achieved that basic threshold of education.[24]

African Americans simply refused to accept those disparities as natural. Refused to concede that a reality of just a quarter of black adults holding a high school diploma was as good as it was ever going to get. Refused to believe that double-digit unemployment rates were just fine for people who actually wanted to work. Refused to tolerate a practice where their labor was worth only 55 percent of that of whites doing the same job. Instead, blacks insisted that inequality was the result of a series of public policies that must be changed. Therefore, they continued to file a series of lawsuits to equalize education.[25] They used the courts to pry open closed labor unions.[26] They elected black political leadership in numbers that hadn't been seen since Reconstruction.[27]

Their resolve to dismantle racial inequality led one white woman in Dayton, Ohio, to assert, "Oh, they are so forward. If you give them your finger, they'll take your hand." The growing consensus was that blacks wanted too much too fast.[28] White angst rose further with the more overtly militant shift in the Civil Rights Movement. More than a decade of being beaten, jailed, and sometimes killed while using methods of nonviolent protest had begun to wear thin, especially on the youth involved in the demonstrations. Nor had the initial Southern focus of the movement addressed the discrimination that millions of African Americans faced in the urban North, Midwest, and West. Thus, nonviolence gave way to an ethos of self-defense, best articulated by the Black Panther Party, a group founded in 1966 which openly brandished guns and challenged the police. The goal of integration, so fundamental to the SCLC and the NAACP, was now forced to openly compete with the more sharply articulated demands of Black Nationalism and Black Power. Soon, in response to police brutality, rioting consumed wide swaths of Newark, Detroit, Los Angeles, and Cleveland, and this served only to intensify the white backlash that had begun with the second wave of the Great Migration during World War II, while also providing whites exasperated by what they perceived as threats to the status quo with the cover of "reasonableness" and "moderation."[29]

Like Wallace, Richard Nixon tapped into this general resentment. The "Southern Strategy," as his campaign handlers called it, was

designed to pull into the GOP not only white Democratic voters from below the Mason-Dixon Line but also those aggrieved whites who lived in northern working-class neighborhoods. Using strategic dog-whistle appeals—crime, welfare, neighborhood schools—to trigger Pavlovian anti-black responses, Nixon succeeded in defining and maligning the Democrats as the party of African Americans, without once having to actually say the words. That would be the "elephant in the room."[30] In fact, as H. R. Haldeman, one of the Republican candidate's most trusted aides, later recalled, "He [Nixon] emphasized that you have to face the fact that the whole problem is really the blacks. The key is to devise a system that recognizes this while not appearing to."[31]

Nixon, therefore, framed America's issues as "excesses caused by . . . bleeding heart liberalism." The Civil Rights Act and the Voting Rights Act, he asserted, had removed the legal barriers to equality; they had also, he continued, raised unrealistic expectations in the black community. When equality didn't immediately emerge, he explained, lawlessness and rioting soon followed. On the presidential campaign trail, Nixon's basic mantra was that "it was both wrong and dangerous to make promises that cannot be fulfilled, or to raise hopes that come to nothing." The point, therefore, was to puncture blacks' expectations.[32]

That downward thrust would come through the iron fist of law and order.[33] Crime and blackness soon became synonymous in a carefully constructed way that played to the barely subliminal fears of darkened, frightening images flashing across the television screen.[34] One of Nixon's campaign ads, for example, carefully avoided using pictures of African Americans while at the same time showing cities burning, grainy images of protesters out in the streets, blood flowing, chaos shaking the very foundation of society, and then silence, as the screen faded to black, emblazoned with white lettering: THIS TIME VOTE LIKE YOUR WHOLE WORLD DEPENDED ON IT: NIXON.[35] The point, longtime aide John Ehrlichman explained, was to present a position on crime, education, or public housing in such a way that a voter could "avoid admitting to himself that he was attracted by a racist appeal."[36] Nixon, after screening the ad, enthusiastically told his staff that the commercial "hits it right on the nose . . . It's all about law and order and the damn Negro–Puerto Rican groups out there."[37] Yet, in the ad he didn't have to say so explicitly. It was clear who was the threat, just as it was clear whose world depended on Nixon for salvation.[38]

In the 1968 election against Vice President Hubert Humphrey, Nixon, in addition to playing on the growing disenchantment with the Vietnam War, won by making the unworthiness of blacks the subtext for his campaign. Following his inauguration, the president targeted "two of the civil rights movement's greatest victories, *Brown* and the Voting Rights Act of 1965."[39] This was more than a cynical political ploy to curry favor with a particular constituency.[40] The Civil Rights Movement had raised the ante, because now, as in the years of Reconstruction, there appeared to be a strong Constitutional basis, in the newly invigorated Fourteenth and Fifteenth Amendments, for African Americans' claim to citizenship rights.

Given the landmines in the new post-civil-rights political terrain, outright opposition to the new statutes would have backfired. Thus, Nixon's strategy—one that would play out well into the twenty-first century—was to "weaken the enforcement of civil rights laws."[41] The Voting Rights Act in particular was the bête noire of the Republican Party's new Southern wing, empowering African Americans as it did through the ballot box. The VRA, which was able to muster only enough votes for initial passage by carrying the unprecedented provision requiring renewal within five years, was set for what its opponents hoped would be its death knell in 1970.

As the renewal hearings started, the Republican co-chair of the House Judiciary Committee, William McCulloch of Ohio, a fiscal conservative and civil rights advocate, explained that he had hoped

the basic foundation of democracy, the vote, would now be accepted and honored. But "resistance to the program has been more subtle and more effective than I thought possible," he said. "A whole arsenal of racist weapons has been perfected." Instead of outright denial of access to the ballot, the South had begun to use dilution of black electoral strength through rigging precinct boundaries and requiring at-large elections. Mississippi, for example had passed a series of laws that turned the elected position of school superintendent into a political appointee and changed the selection of county supervisor from district-based to at-large elections. And Virginia, which prior to the VRA had assigned election officials to help the illiterate vote, in 1966 mandated that ballots had to be handwritten. The states argued that Section 5 of the VRA, which requires that the U.S. Department of Justice or the district court in Washington preapprove changes to election requirements, pertained only to mechanisms that directly affected access to the ballot box, such as the poll tax. In *Allen v. State Board of Elections* (1969), Chief Justice Earl Warren stopped Mississippi and Virginia in their tracks as he laid out that the VRA was "aimed at the subtle, as well as the obvious, state regulations which have the effect of denying citizens their right to vote because of their race." Representative McCulloch, therefore, noted, in his support for renewal of the act that it was painfully obvious that "350 years of oppression cannot be eradicated in 5 years."[42]

While McCulloch saw the need to protect the ballot box, Attorney General John Mitchell announced that the Department of Justice, which he viewed as "an institution for law enforcement, not social improvement," opposed the renewal of the Voting Rights Act because it targeted, and therefore discriminated against, the South.[43] This upside-down framing of the VRA (and the sense that it was somehow not about the law but social engineering) purposely whitewashed the brutal electoral history of Jim Crow, somehow transforming ruthless perpetrators into innocent victims.

Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia, and thirty-nine counties in North Carolina were singled out in the Voting Rights Act because they had mocked the Fifteenth Amendment and then contemptuously toyed with electoral discrimination lawsuits brought under the anemic Civil Rights Act of 1957. In addition, many of these states had also sanctioned or even fomented widespread terrorism against voting rights activists. The bullet-riddled corpses of James Chaney, Andrew Goodman, and Michael Schwerner, unearthed after months spent beneath tons of dirt in Neshoba County, Mississippi, served as a warning that those advocating the right to vote were, as one local woman scoffed, "just looking for trouble."[44] The televised fury unleashed on peaceful demonstrators in Selma, Alabama, as they tried to symbolically carry to the state capital of Montgomery the casket of slain voting rights activist Jimmie Lee Jackson, who had been killed by law enforcement, was only larger in scale than the day-to-day brutality that led to less than 1 percent of blacks in Selma being registered to vote. The horror on the Edmund Pettus Bridge was punctuated shortly thereafter by the bludgeoning death of Reverend James Reeb, who had come to Selma in support of voting rights.[45] The ambush and execution of Herbert Lee, who was helping to register blacks to vote, by a Mississippi legislator, followed soon after by a shotgun blast that blew off Louis Allen's face, sent a signal that the death sentence awaited those who believed that the Fifteenth Amendment applied to African Americans too.[46]

Despite Mitchell's insinuation, the Voting Rights Act was neither capricious nor punitive. It was, as the Department of Justice noted, "targeted at those areas of the country where Congress believed the potential for discrimination to be the greatest."[47] In 1966, in *South Carolina v. Katzenbach*, the Supreme Court, in an 8–1 decision, affirmed the need for federal oversight, ruling that:

> *Congress had found that case-by-case litigation [based on the 1957 Civil Rights Act] was inadequate to combat wide-spread and*

persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits. After enduring nearly a century of systematic resistance to the Fifteenth Amendment, Congress might well decide to shift the advantage of time and inertia from the perpetrators of the evil to its victims.[48]

Indeed, the impact of the Voting Rights Act was profound. Just prior to its passage, only 6.7 percent of black adults were registered to vote in Mississippi. Three years later, with federal oversight and Section 5 preclearance that required the Department of Justice or district court in Washington, D.C., to approve any changes to the state's election laws, the number of black registered voters had skyrocketed to 59.4 percent.[49]

Because the Voting Rights Act was clearly working, the first civil rights legislation Nixon sent to Congress proposed eliminating Section 5 and stretching the VRA's scope to the entire country.[50] Far from trying to disfranchise black voters, Nixon disingenuously explained, the amended legislation sought simply to address an imbalance that, when other areas of the nation also discriminated against segments of their citizenry, left the South unfairly singled out.[51] What eventually became clear during the congressional hearings, however, was that Nixon's new "civil rights legislation" would create a wholly uncivil America. "With the entire nation covered," the attorney general admitted, "it would be impossible for the Civil Rights Division of the Department of Justice to screen every voting change in every county in the nation." And thus, his staff would be unable to enforce the Voting Rights Act at all. Those who believed their rights had been violated at the ballot box, Mitchell continued, just needed to go through the courts. In essence, Nixon's plan was to hurl African Americans and the nation back to the slow, litigious route carved out in the long-since-discredited Civil Rights Act of 1957.[52]

During the VRA's extension hearings, South Carolina senator Strom Thurmond embraced the Nixon administration's idea as he floated a narrative of racial innocence that minimized the terror and walled off the brutal history of disfranchisement. Thurmond was emphatic that it was just wrong "to continually charge a state and a people with any alleged injustice that occurred many years ago." The NAACP's Clarence Mitchell looked Thurmond in the eye and countered that the injustices were hardly "alleged" but, in fact, well documented. "We could fill this room with the record of discrimination in the state of South Carolina," Mitchell informed the senator. Nor was Thurmond's "many years ago" accurate. At every turn in the civil rights struggle, the NAACP's representative asserted, "South Carolina has fought us all the way." Indeed, in 1966, one year after the VRA had passed, the state went before the U.S. Supreme Court, arguing that the Voting Rights Act infringed on states' rights, had illegally inserted federal registrars in counties that had literacy tests (which had been outlawed by the VRA), and presumed the state's guilt simply because far into the twentieth century, only 0.8 percent of South Carolina's voting-age black population was registered to vote. As Mitchell well knew, the court's *South Carolina v. Katzenbach* decision dismantled every one of the state's arguments and found the VRA constitutional. "Now that it appears we have won," Mitchell observed, "we don't want to have a situation develop where the White House gives back to South Carolina all the rights to discriminate that we have succeeded in wresting from them."[53]

The House and Senate agreed, refused to scuttle "the single most effective piece of civil rights legislation ever passed by Congress," and instead renewed the Voting Rights Act for another five years.[54] Still, the attorney general's initial thrust had made it all too clear how vulnerable the VRA was now, with its very strength—the increase in black voting—exposing its political jugular. Under the right circumstances and in the right venue, the vaunted Voting Rights Act could be taken down.

The Nixon administration turned its sights as well on *Brown*, which was already weakened by Massive Resistance and the subsequent tactic of stall and undermine. Almost fifteen years after the landmark Supreme Court decision, Mississippi, ever recalcitrant, had yet to desegregate its public school system. When, on July 3, 1969, the federal court ordered the state to implement *Brown* by that fall, Nixon's attorney general, as well as his secretary of Health, Education, and Welfare, convinced the judges to reverse the decision because "time was too short and the administrative problems too difficult to accomplish . . . before the beginning of the 1969–1970 school year."[55] In other words, by rejecting the *Cooper v. Aaron* decision about the unacceptability of kowtowing to state-sponsored obstruction, the Department of Justice, in league with HEW, ignored that Mississippi had already had more than a decade to develop a plan.

Nixon's four new appointments to the Supreme Court would follow through by eviscerating the constitutional right of black children to an education and then some. As vacancies opened on the bench, the president was drawn to the "law and order" writings of Warren Burger, who would replace Earl Warren as chief justice. Nixon also approved of the "strict constructionists" decisions and southern roots of Virginian Lewis Powell, and remained impressed by the "moderately conservative philosophy" and relative youth (at forty-seven years old) of William Rehnquist. The most contentious battles came over two of Nixon's Southern nominees, Clement Haynsworth, a "laundered segregationist," in the opinion of Joseph Rauh, counsel to the Leadership Conference on Civil Rights; and G. Harrold Carswell, who had ruled that "segregation of the races is proper and the only practical and correct way of life in our states." After a bruising series of confirmation hearings, the Senate rejected both. Nixon then turned to his default choice, a Northerner, Harry Blackmun. Admiring his handiwork years later, the president reflected, "I consider my four appointments to the Supreme Court

to have been among the most constructive and far-reaching actions of my presidency . . . The men I appointed shared my conservative judicial philosophy and significantly affected the balances of power that had developed in the Warren Court."[56] This was an understatement, even for Richard Nixon. The court's subsequent decisions shut down access to quality education while allowing blatant racial discrimination to run rampant in criminal procedures.

Two important 5–4 Supreme Court decisions in which Nixon's appointees were in the slim but decisive majority undercut the possibility that *Brown* would ever fully be implemented. The first was the 1973 *San Antonio Independent School District v. Rodriguez* case. Parents from an impoverished, overwhelmingly minority neighborhood took Texas to court because the school funding mechanism, which relied on property taxes, created such disparate revenues as to make equal educational opportunity impossible. Of course, the value of property, on which school funding was heavily based, derived from government enforcement of residential segregation and discriminatory housing laws, as well as a series of public policy and zoning decisions such as where to put landfills, erect sewage treatment plants, allow liquor stores, and approve industrial plants.[57] Zoning had had a particularly deleterious effect on the Edgewood neighborhood of San Antonio, which was 96 percent Mexican American and black. That section had the lowest property value in the city, as well as the lowest median income.[58]

So committed were the parents to their children's education, however, that they voted for school levies that taxed their property at the highest rate in the area, which, even then, generated only $21 per student per academic year. Whereas the affluent, predominately white San Antonio neighborhood of Alamo Heights, whose property tax rate was significantly lower than Edgewood's, still produced enough revenue to expend $307 per pupil. Or, to put it another way, Alamo Heights secured nearly 1,500 percent more in funding with a significantly lower tax rate.[59]

Seeing the inequity, the parents in Edgewood screamed foul and sued. The U.S. district court, using *Brown* as the template, agreed. In a survey of 110 school districts throughout the state, the judges found that while the wealthiest districts in Texas taxed their property at 31 cents per $100, the poorest were "burdened" with a rate of 70 cents. Nevertheless, the district court continued, even with their low tax rate, the rich districts netted $525 more per pupil than the poor districts did. Clearly, the judges concluded, Texas's funding scheme "makes education a function of the local property tax base." The district court, therefore, ruled that "education is a fundamental right," that the state's use of "wealth" was a synonym for race and thus subject to judicial "strict scrutiny," and that Texas's funding scheme was irrational and violated the equal protection clause of the Fourteenth Amendment.[60] As the case moved up to the U.S. Supreme Court, Texas pleaded racial innocence and claimed not only that it was meeting the bare minimum requirements for access to education but also that it could not and should not be held responsible for the differences between what poor districts and wealthy ones amassed.

Nixon's four appointees to the court, as well as Potter Stewart, who had been tapped by Eisenhower, agreed. In a March 1973 ruling that pulled the rug out from under *Brown*, they found that "there is no fundamental right to education in the Constitution." The justices concluded, too, that the state's funding scheme "did not systematically discriminate against all poor people in Texas," and, because reliance on property taxes to fund schools was used across the country, the method was not "so irrational as to be invidiously discriminatory." For the court, then, the funding scheme, in which, for example, Chicago allocated $5,265 for African American pupils while the adjacent suburban school district of Niles appropriated $9,371 per student, was perfectly constitutional. Thus, despite the same kinds of rampant funding disparities that had led to *Brown*, Justice Lewis Powell declared that he saw no discriminatory public policy at all. With residential segregation no longer enforced by the government, whites and minorities alike, he felt, were free to move wherever they wanted in search of better schools. The fact that most minorities—after centuries of government-enforced racism in education and employment—simply did not have the economic wherewithal to move was overlooked.

And so, even in the waning days of the Civil Rights Movement, entrenched, constitutionally unequal education was once again an important part of the nation's way of life. "The Equal Protection Clause does not require absolute equality," Powell declared in a powerfully worded edict, "or precisely equal advantages."[61] What was at work here was class, not race; and class, unlike race, was not a "suspect category" that required "strict scrutiny." If Texas had a rational basis for its property tax system, the justices concluded, then the mechanism met judicial standards, despite producing a 975 percent disparity in school funding between white and minority children in Texas.

Fully recognizing the implications of *Rodriguez*, Justice Thurgood Marshall was apoplectic. More than 40 percent of black children fourteen and under lived with families below the poverty line, as compared with about 10 percent of white children.[62] Under those circumstances, Marshall feared, African American children wouldn't stand a chance. The decision, he wrote in his dissent, could "only be seen as a retreat" from a "commitment to equality of educational opportunity" as well as an "unsupportable" capitulation to "a system which deprives children ... of the chance to reach their full potential as citizens." He was simply dumbfounded that the majority would acknowledge the existence of widely disparate funding for schools across Texas but then, instead of focusing on the cause of that disparity, clumsily pirouette to all of the state's supposed efforts to close the gaps. "The issue," Marshall explained, "is not whether Texas is doing its best to ameliorate the worst features of a discriminatory scheme but, rather, whether the scheme itself is in fact unconstitutionally discriminatory."[63]

Moreover, he found it the height of "absurdity" that Texas could actually argue there was no correlation between funding and school quality and then, from that faulty premise, deduce that there were "no discriminatory consequences for the children of the disadvantaged districts." Given the slew of amicus curiae briefs flooding the court supporting Texas's school funding scheme against the poor's challenge, Marshall wryly observed that if "financing variations are so insignificant to educational quality it is difficult to understand why a number of our country's wealthiest school districts . . . have nevertheless zealously pursued its cause before this Court." He was equally unimpressed with Texas' tendency to parade before the justices stories of children who had excelled despite living in under-resourced districts as some sort of proof that funding was irrelevant. That a child could excel even when "forced to attend an underfunded school with poorer physical facilities, less experienced teachers, larger classes," and a number of other deficits compared with "a school with substantially more funds," Marshall barked, "is to the credit of the child not the State."[64] *Rodriguez* placed the onus solely on the backs of the most vulnerable, while walling off access to the necessary resources for quality education, and played beautifully into the "colorblind," post-civil-rights language of substituting economics for race, yet achieving a similar result. The simple truth was that, by virtue of the sheer demographics of poverty. *Rodriguez* would have not only a disparate impact on African American children but also a disastrous one.

The next year, Nixon's Supreme Court appointees landed yet another powerful blow to *Brown*. This time the case emerged out of the North, in Detroit, which, by the early 1970s, was a predominately black city surrounded by overwhelmingly white suburbs. The K–12 system mirrored the racial geography, with virtually all the schools in the city more than 90 percent African American. Those schools were overcrowded, sometimes with classrooms holding as many as fifty students, and buildings so decayed and unsafe that classes were taught in trailers parked on the school grounds. Vera Bradley, a black mother of two sons, Richard and Ronald, wanted more for her children and turned to the NAACP for help. On August 18, 1970, Association general counsel Nathaniel Jones filed suit in the federal district court on Bradley's behalf against a number of officials including Governor William Milliken because, Jones noted, "these children were kept in schools that the Supreme Court said . . . were unconstitutional." City leaders, hoping to have the case withdrawn, devised a number of plans to integrate the K–12 system, but, as the district court noted, each scheme left the schools overwhelmingly identifiable racially and Detroit even blacker than before. The judge therefore ordered a metropolitan Detroit desegregation plan that spread beyond the city's borders. The suburbs immediately protested.[65]

The U.S. Supreme Court, however, calmed their fears. Just as *Rodriguez* ensured that funding in overwhelmingly white suburbs would never leak into the city schools, *Milliken v. Bradley* (1974) ensured that whites would not have to attend schools with African Americans. To accomplish this feat, the court had to ignore the role the law had played—in residential segregation; white flight; discriminatory public policy that financed, subsidized, and maintained white suburbs; and legislation that drew and redrew boundaries and curtailed transportation options—in keeping black children trapped in impoverished cities and subpar schools. Five justices held there was no evidence whatsoever that the outlying school districts had discriminated against blacks or been responsible for the racially distinct condition of inner-city Detroit. And if the suburbs were not part of the problem, the court reasoned, they could not be part of the solution. Then, as if to underscore the full retreat from *Brown*, the justices emphasized the importance of "local control" of schools and chastised the district court for overstepping its bounds. In a final coup de grâce, they added that *Brown* did not require "any particular racial balance in each school, grade, or classroom."[66]

Thurgood Marshall's dissent was a roaring eulogy to a once-promising landmark decision. He was astounded at the majority's "superficial" reasoning that had now resulted in the "emasculation of our constitutional guarantee of equal protection." Marshall balked at the notion of suburban innocence and scoffed at the contention that the Detroit public schools were locally controlled. The state of Michigan, he laid out, devised, tweaked, contorted, and, in fact, ran the K–12 system. Michigan, then, had the power to consolidate school districts and chose time and time again to keep white suburban ones separate and distinct from those in the city. Moreover, Marshall pointed out, when the city tried to exert some authority to implement *Brown*, the state legislature crushed Detroit's efforts. And while Michigan provided funding for buses in suburban schools, the same law actually banned the use of state transportation funds for students in the city of Detroit. This, Marshall noted, led to the "construction of small walk-in neighborhood schools, . . . which reflected, to the greatest extent feasible, extensive residential segregation." How the justices, given this firmly documented track record of discrimination, could absolve the state from responsibility for the racially divided metropolitan school system it created, Marshall had no idea: It "simply flies in the face of reality." For Marshall, the court's decision had less to do with "the neutral principle of law" than it did with public sentiment that "we have gone far enough in enforcing the Constitution's guarantee of equal justice." The consequences of this kind of cowardice for the United States, he warned, are "a course . . . our people will ultimately regret."[67]

As black access to quality public schools drifted further and further away, entrance into colleges and universities, increasingly essential in America's postindustrial economy, became even more difficult as well—thanks in no small part to the Supreme Court's 1978 *Bakke* decision. Allan Bakke, a white male, had applied to the University of California, Davis, medical school and was turned

down twice. Bakke sued, arguing that the university's quota system allowed the admission of blacks and Latinos who had lower MCAT scores than his. There were, of course, whites who had also gained entry into the medical school program with scores lower than Bakke's, but their entrance was not the focus of his suit. Nor was the medical dean's tendency to guarantee admission to a number of his friends' and politicians' children (despite their lack of qualifications). Admissions based on alumni connections and high-level friendships, while generally dovetailing with whiteness, were not explicitly based on race and therefore not subject to "strict scrutiny." Instead, the university's policy to admit sixteen blacks and Latinos in a class of one hundred, Bakke charged, had denied him equal protection under the law.[68]

In the highly contentious and fractious 4–1–4 decision, a plurality of judges agreed, demanding concrete evidence that black students who had been admitted had personally been discriminated against by the university. The five justices further asserted that they would only countenance the use of race in admissions for well-defined diversity purposes, while preferring the broader, more multicultural scope of "disadvantaged," which would, for example, recognize what a "farm boy from Idaho" could bring to Harvard. Finally, they focused the court's concern on the "reverse discrimination" heaped on whites applying to colleges and universities who, like Bakke, "bore no responsibility for any wrongs suffered by minorities." As for admissions policies designed to atone for past discrimination against minorities, Justice Byron White was unequivocal: "I do not accept that position."[69]

Attempting to observe the law while also living up to an ethos they had now taken to heart, universities frantically turned to vaguer notions of "diversity," but the definition of that word soon became so expansive that by the twenty-first century white males would actually be the primary beneficiaries of affirmative action in college admissions.[70]

Even as the court rejected history, Thurgood Marshall's dissent in *Bakke* recounted 350 years of "the most pervasive and ingenious forms of racial discrimination" against African Americans. He then expressed disbelief that the court would deny California the right to apply a remedy in the face of that kind of sordid history.[71] Astounded as Marshall may have been, though, the decision, viewed through the opposite lens, made calculated sense. African Americans had rushed right through the barely opened door of opportunity pushed ajar by the Civil Rights Movement: From 1970 to 1978, the number of blacks enrolled in college had literally doubled. And in just a little more than a decade, the percentage of African Americans who had a college degree climbed to 6 percent from 4 percent.[72] A combination of their own determination and aspiration—coupled with the protections of affirmative action, which actively sought black students rather than shutting them out, and federal student financial aid, which helped defray tuition costs for a people overwhelmingly impoverished—had significantly changed the game.[73] Nixon's policies and the Supreme Court choices had set the stage to reverse those gains. Much of this reversal, though, would not be carried out until the Reagan administration.

Hailed as one of the most popular and even greatest presidents, Ronald Reagan oversaw the rollback of many of the gains African Americans had achieved through the Civil Rights Movement. Between 1981 and 1988, conditions regressed to levels reminiscent of the early 1960s.[74]

Journalist Hodding Carter described Reagan as "part Wallace and part Nixon and a more effective southern strategist than both put together."[75] Reagan's aura of sincerity and "aw shucks" geniality lent a welcoming, friendly facade to any harshness of the Southern Strategy—something that neither Nixon's brooding nor Wallace's angry countenance had ever been able to convey. Reagan, therefore,

positively oozed racial innocence in his declaration of fealty to states' rights at the all-white 1980 Neshoba County Fair in Mississippi, site of the triple murder of civil rights workers.[76] In a 1981 interview, GOP consultant Lee Atwater explained the inner logic of, as one commentator noted, "racism with plausible deniability."[77] "You start out in 1954," Atwater laid out, "by saying, 'nigger, nigger, nigger.' By 1968, you can't say 'nigger'—that hurts you. Backfires. So you say stuff like forced busing, states' rights and all that stuff. You're getting so abstract now you're talking about cutting taxes, and all these things you're talking about are totally economic things and a byproduct of them is blacks get hurt worse than whites. And subconsciously maybe that is part of it. *I'm* not saying that," he then deflected.[78]

It was a role tailor-made for the former Hollywood actor. Reagan cast himself as a traditional conservative, but his disdain for supposed big government was geared not so much toward New Deal programs that had provided paid employment to millions of out-of-work Americans like his father; or social security, which had overwhelmingly benefited whites during the Great Depression. What President Reagan loathed was the Great Society that, despite its dispersal of benefits to middle-class whites and its measurable effectiveness in lifting the elderly out of poverty, he succeeded in coding as a giveaway program for blacks.[79] His budget priorities reflected that contempt, as he ordered a scorched-earth policy through the Great Society from education, to housing, to employment.

Despite his profession of, and supposed obsession with, a "color-blind" society where, as he said, "nothing is done to, or for, anyone because of race," Reagan's budget proposals targeted very specifically those programs in which blacks were overrepresented even as he protected the other portions of the "social safety net," such as social security, where African Americans were but a small fraction of the recipients.[80] For example, almost five times as many black college-bound high school seniors as white came from families with

incomes below twelve thousand dollars. The administration reconfigured various grants and loan packages so that "the needier the student, the harder he or she would be hit by Reagan's student-aid cuts." Not surprisingly, nationwide black enrollment in college plummeted from 34 percent to 26 percent. Thus, just at the moment when the postindustrial economy made an undergraduate degree more important than ever, fifteen thousand fewer African Americans were in college during the early 1980s than had been enrolled in the mid-1970s (although the high school graduation numbers were by now significantly higher). Nor had the fallout happened only at the baccalaureate level; the plunge in undergraduate enrollment—which no other racial or ethnic group suffered during this time—cascaded into a substantial decline in the number of African Americans in graduate programs as well.[81]

While access to higher education was crumbling, the Reagan administration also established enormous roadblocks to quality K–12 public schools for African American children. The president cavalierly stated that he was "under the impression that the problem of segregated schools has been settled."[82] The assistant attorney general for civil rights, William Bradford Reynolds, agreed, and when he learned of an effort in South Carolina to dismantle what amounted to Jim Crow education, he was determined that black parents, whom he referred to as "those bastards," would have to "jump through every hoop" to file a lawsuit to desegregate the public schools in Charleston. "We are not going to compel children who don't choose to have an integrated education to have one," Reynolds insisted.[83] Under Reynolds and Attorney General Edwin Meese, the Department of Justice used virtually every legal strategy to dismantle, obstruct, and undermine the only remaining alternative to integrate schools—busing—including torpedoing a plan to finally desegregate a school district in Louisiana that had openly fought *Brown* since 1956.[84]

Already hampered by the Scylla and Charybdis of *Milliken* and *Rodriguez*, black children's passage through the education system

became even more difficult during the Reagan years. The Detroit decision meant that children were, for the most part, locked inside their cities and their neighborhoods, while *Rodriguez* meant that those city and neighborhood schools would remain or become even more impoverished. And now the Department of Justice seemed determined to advocate segregated schools as a "remedy," putting its considerable weight on the side of the status quo of inequality.[85] Moreover, the Reagan administration exacerbated that inequality even further as it shredded the safety net.[86] Not even school lunch programs, geared toward those in greatest economic need, were sacred, the *Christian Science Monitor* reported, as they came under attack when "President Reagan trimmed $1.46 billion from $5.66 billion earmarked for child nutrition programs."[87] He also leveled a double-digit cut for a program designed to provide educational support for poor children in the classroom at the very moment when the share of black youth living below the poverty line had increased to almost 43 percent.[88]

The 1980s revealed just how fragile the economic recovery of African Americans was in the wake of 350 years of slavery and Jim Crow. From the 1960s to the 1970s, the black unemployment rate had declined, and the gap between black and white unemployment rates had actually narrowed. By the time Reagan's policies had taken effect, however, not only had the black unemployment rate increased, but also the unemployment gap between blacks and whites had widened to unprecedented levels.[89] During the early 1980s, the overall black unemployment rate stood at 15.5 percent—"an all time high" since the Great Depression—while unemployment among African American youth was a staggering 45.7 percent. At this point Reagan chose to slash the training, employment, and labor services budget by 70 percent—a cut of $3.805 billion.[90] The only "'urban' program that survived the cuts was federal aid for highways—which primarily benefited suburbs, not cities." In keeping with Lee Atwater's mantra that "blacks get hurt worse than

whites," Reagan gutted aid to cities so extensively that federal dollars were reduced from 22 percent of a city's budget to 6 percent. Cities responded with sharp austerity measures that shut down libraries, closed municipal hospitals, and cut back on garbage pickup. Some cities even dismantled their police and fire departments.[91]

Reagan further destabilized the economic foundation for African Americans by ordering massive layoffs in federal jobs while deliberately weakening the enforcement of civil rights laws in the workplace. Blacks are disproportionately employed by the government, not least because the public sector suffers demonstrably less discrimination in hiring and compensation than private industry.[92] More than 50 percent of the growth in employment for black workers in the United States between 1960 to 1976, in fact, was in the public sector. But that avenue into economic stability, even for the college educated, was now threatened by two key developments: First, the federal government's layoffs were concentrated in the social service agencies, where many African Americans worked. Reagan had exempted the Department of Defense, for example, while making it clear that "other divisions of Government would be hit especially hard by the employment reductions." When one agency was abolished in 1981, jobs for nine hundred workers, 60 percent of them black, were wiped out. Then, the Department of Health and Human Services, a major agency for black employment, absorbed about half of the six thousand layoffs scheduled for 1982.[93]

The second development assaulting the job security of black civil servants was the administration's decision to put the Equal Employment Opportunity Commission (EEOC), which was the federal watchdog for employment discrimination, "on ice" by making the agency utterly ineffective.[94] Reagan appointed inadequate and often incompetent leadership. He was especially keen to select African Americans, such as future Supreme Court justice Clarence Thomas, who believed there was no group discrimination

against minorities or women, certainly nothing that would warrant class-action lawsuits.[95] Under this new management, the agency slowed down to a crawl its investigation and processing of complaints. The result was a growing backlog whose legal shelf life expired before the EEOC even got around to investigating.[96] The watchdog had been effectively muzzled.

With the rollback now in full force, the "civil rights gains of the past," as National Urban League president Vernon Jordan remarked, were "now under attack and in danger."[97] The median family income for African Americans had been higher in the 1970s than it was under Reagan, even as the white median income, despite the economic downturn, continued to grow. As a result, the actual spending power of blacks decreased while that of whites rose, increasing the gap by 12 percent. "In virtually every area of life that counts," wrote David Swinton, future president of the United Negro College Fund, "black people made strong progress in the 1960s, peaked in the 70s, and have been sliding back ever since." The Reagan administration's "deplorable" policies and efforts "to turn back the clock" ensured it. Indeed, by 1990, blacks in the bottom 20 percent were poorer in relation to whites than at any time since the 1950s. Not surprisingly, the National Urban League labeled the president's policies "a failure" that has "usher[ed] in a new era of stagnation and decline" for the "vast majority of average black Americans."[98] Reagan's job cuts, retooling of student financial aid to eliminate those most in need, and decimation of antipoverty and social welfare programs "virtually ensured that the goal of the African American community for economic stability and progress would crumble and fade."[99]

In March 1981, Reagan assured reporters that "he would offer a national drug-abuse program that would put its main effort into warning young people about the dangers of drug use rather than

into attacks on narcotics smuggling."[100] But by October 1982, the president had obviously changed his mind. In a gripping address, he explained that a scourge had invaded the nation's borders, taken hold of American families and children, and was laying siege to cities across the land. Hardest hit, the president conveyed, was the "garden spot" of South Florida, which had "turned into a battlefield for competing drug pushers who were terrorizing Florida's citizens." The president then laid out a potent multi-agency strategy using military intelligence and radar that could hone in on drug traffickers and execute brilliant interdiction strikes "to cut off drugs before they left other countries' borders."[101]

There was just one problem. There *was* no drug crisis in 1982. Marijuana use was down; heroin and hallucinogens use had leveled off, even first-time cocaine use was bottoming out.[102]

But, as Reagan well knew, such a crisis was certainly coming, for it had been manufactured and facilitated by his staff on the National Security Council (NSC) along with the Central Intelligence Agency (CIA). In these last throes of the Cold War, Nicaragua was the target. But the collateral damage would spray South Central Los Angeles and then radiate out to black communities all across the United States.

In 1979, after a coalition of moderate and Marxist Nicaraguans overthrew longtime U.S. ally and ruthless dictator Anastasio Somoza, communist Sandinistas came to power in Managua. Reagan did not see this as a homegrown revolution borne out of intolerable conditions of greed, torture, and human rights violations. Instead, he was sure that the Sandinistas were no more than Soviet stooges ensconced by Moscow to foment revolution in America's backyard.[103] The president was, therefore, obsessed with eliminating the Sandinistas.[104]

Shortly after taking office, Reagan ordered CIA director William Casey to do whatever was necessary to support a small band of anti-Sandinista guerrillas, known as the Contras, most of whom were strays from Somoza's feared and hated National Guard. Reagan

followed up on November 23, 1981, with a directive to funnel $19.3 million through the CIA to the Contras. But that was not enough, argued Enrique Bermúdez, the founder of the guerrilla group. They needed much more.[105] Then, in December 1981, "Reagan signed a secret order authorizing Contra aid for the purpose of deposing the Sandinistas." The only question was where to get those funds; there was simply a limit to the depths that the CIA and National Security Council budgets could tap into to finance the Contras.[106] Congress, meanwhile, already stung by the debacle in Vietnam, was not about to loosen the purse strings.[107]

And so, at a December 1981 meeting, Contra leaders, whom Reagan referred to as the "moral equivalent of the Founding Fathers," floated the idea that trafficking cocaine into California would provide enough profits to arm and train the anti-Sandinista guerrillas.[108] With most of the network already established, the plan was rather straightforward: There were the Medellín and Cali cartels in Colombia; the airports and money laundering in Panama run by President Manuel Noriega; the well-known lack of radar detection that made landing strips in Costa Rica prime transport depots; and weapons and drug warehouses at Ilopango air base outside San Salvador. The problem had been U.S. law enforcement guarding key entry points into a lucrative market. But with the CIA and the National Security Council now ready to run interference and keep the FBI, the U.S. Customs Service, and the Drug Enforcement Administration (DEA) in check, the once formidable line of defense had dwindled to a porous nuisance. Reagan's "moral equivalent of the Founding Fathers" was now ready to saturate the United States with cocaine.

Initially, Nicaraguan exiles Oscar Danilo Blandón and Norwin Meneses, whose nickname was El Rey de las Drogas (the King of Drugs), set up their wholesale operations in San Francisco. But although they had the product, they didn't yet have the distribution network to move the initial shipment of cocaine into the retail

markets. That came only when they managed to link up with Rick Ross, an illiterate yet entrepreneurial black man who became the conduit between the Contra drug runners and the Crips and Bloods gangs in L.A.[109]

The result was nothing less than explosive. From the Contra wholesalers, top-quality cocaine was then packaged and sold in little rocks of crack that reaped more than $230,000 per kilo in retail profit. Now, drug money, and all its attendant violence, pounded on a population with double-digit unemployment and declining real wages. The logistical strength of the Bloods and Crips, with an estimated fifty thousand gang members, spread the pain as they set up drug franchises throughout the United States to sell crack like it was on the dollar menu.[110] Soon crack was everywhere, kicking the legs out from under black neighborhoods.[111]

While the new self-created drug crisis threatened the security of millions of African Americans, the administration focused its efforts on facilitating greater access to weapons for the rebels purchased with off-the-books money. In 1982, Vice President George H. W. Bush (the former director of the CIA) and his national security adviser, Donald Gregg (a former CIA agent), worked with William Casey to run a program named Black Eagle, which was designed to circumvent Congress and funnel weapons to the Contras. As the logistical pipelines solidified, it became clear that Manuel Noriega would be essential to this operation. Through a series of top-secret negotiations, U.S. officials worked out landing rights at Panamanian airfields for the Black Eagle planes to transport weapons to the Contras and the use of Panamanian companies to launder money.[112]

Noriega, who was already in a four-hundred-million-dollar partnership with the Medellín cartel, seized on the profitability of this deal with the White House and began to divert Black Eagle planes and pilots for drug-running flights to the southern United States. The Reagan administration's response to what should have been seen as a diplomatic affront—especially since the president had

tapped George H. W. Bush to lead the drug interdiction activities in South Florida—was telling and disturbing. The administration simply required the Panamanian president to use a percentage of his drug profits to buy additional weapons for the Contras.[113]

Thus, although Reagan bragged to the American public about using U.S. military resources "to cut off drugs before they left other countries' borders," his staff's shielding of Noriega and the Colombian traffickers in fact actively allowed cocaine imports to the United States to skyrocket by 50 percent within three years. The Medellín cartel's cut alone was ten billion dollars a year in sales.[114] The Reagan administration's protection of drug traffickers escalated further when the CIA received approval from the Department of Justice in 1982 to remain silent about any key agency "assets" that were involved in the manufacturing, transportation, or sale of narcotics.[115]

This network of White House protection for major drug traffickers swung into full gear once Congress, through a series of amendments in 1982 and 1984, shut off all funds to the Contras and banned U.S. material and financial support for the overthrow of the government in Nicaragua.[116] Undeterred by the law, the Reagan administration simply ramped up the alternate and illegal streams of revenue it had already devised: drug profits and arms sales to Iran.[117] At this point Lieutenant Colonel Oliver North, deputy director of the National Security Council, stepped in to create the larger, more dynamic operation that would soon replace Bush's Black Eagle.

North brought to the work both a military efficiency and a truly amoral focus. Years later, even when under congressional klieg lights, he seemed to imply that the breaking of laws was appropriate.[118] "I remain convinced that what we tried to accomplish was worth the risk," he said.[119] North understood that his role, working with his CIA counterpart Duane Clarridge, was to ensure that the Contras had weapons. Congress had cut off all funding, so profits from cocaine would have to become an alternate source. That warped

framing of the Contras' needs led North to facilitate the trafficking of cocaine into the United States, which included working with the CIA to transport 1,500 kilos of Bolivian paste; diverting hundreds of thousands of dollars in "humanitarian aid" to indicted narcotics traffickers; and refusing to pass the names of known drug runners on to the appropriate authorities.[120] He also saw to it that the millions of dollars in profits from the sale of narcotics were then funneled safely out of the U.S. and that those funds went to arms dealers, especially in El Salvador and Honduras, who could equip the Contras with everything from boots to grenades.[121] The FBI learned that North's NSC, brandishing the pretext of "the interest of national security," routinely intimidated Customs and DEA officials to back off from making good narcotics cases. Moreover, Blandón and Meneses, who trafficked at least five tons of cocaine, or the equivalent of 16.2 million rocks of crack, into California, "led a charmed life" as the NSC and CIA blocked police, sheriffs, and the DEA from stopping the flow of drugs and money.[122] Similarly, in the summer of 1986 North was Manuel Noriega's champion in the halls of power. The *New York Times* had run a series of articles citing well-placed sources and a Defense Intelligence Agency report that the Panamanian president had "tight control of drug and money-laundering activities" in and out of the country and, therefore, although making only $1,200 a month, had a personal fortune of several hundred million dollars. It was too much even for Senator Jesse Helms (R-NC), an ultra-right-wing senior member of the Foreign Relations Committee, who then went on *Meet the Press* and branded Noriega "head of the biggest drug trafficking operation in the Western Hemisphere." The barrage hit too close to the truth and North's attempt at damage control swung into action. He confided to his boss, National Security Advisor John Poindexter, "You will recall that over the years Manuel Noriega in Panama and I have developed a fairly good relationship" and now, given the media onslaught, the dictator needed the Reagan administration's help in cleaning up his

image. North was eager but, he continued, it was going to cost. The dictator's terms were simple. In exchange for one million dollars and a PR blitz from the White House, Noriega offered to destabilize the Sandinista government. At first, Poindexter wobbled. Was this a setup "so that he can blackmail us to lay off?" Reagan's National Security Advisor, however, quickly set aside those initial qualms and authorized North to open negotiations with Noriega noting "I have nothing against him other than his illegal activities." Secretary of State George P. Schultz was on board, as well. The CIA, this time, refused to play along. The agency "didn't want to do it . . . just didn't want to touch that one." But North was adamant. Noriega, who was instrumental in flooding the United States with cocaine, was a valued asset. North even swooped in to rescue a major Contra ally who was arrested by the FBI with 345 kilos of cocaine. The lieutenant colonel, using the full authority and aura of the NSC, weighed in on the court and had the drug kingpin's sentence reduced by 75 percent (down to five years) and the locale of incarceration changed from a maximum- to a minimum-security ("Club Fed") facility.[123]

While there was inordinate concern about avoiding prison sentences and the legal consequences for those who poured tons of cocaine into the United States, there was an equal determination to lock up and imprison the communities bearing the brunt of the White House's narco-funding scheme.[124] Unlike in 1981, when Reagan had indicated that treatment for addicts was the route he would take, his speeches and policies now became focused on enforcement, criminals, and harsh, no-mercy punishment.[125] With the onset of the epidemic of crack, a drug that had become thoroughly associated with African Americans, notions of treatment went out the window, despite numerous studies proving that treatment was not only more effective but also more fiscally sound and prudent. And, as one DEA agent remarked, "no one has yet demonstrated that

enforcement will ever win the war on drugs."[126] Nonetheless, Reagan dragged America down the road of mass incarceration.

Each of the Reagan administration's decisions undercut the supposed stated goals of protecting American families, preventing the flow of drugs from washing onto the nation's shores, or bringing democracy to a war-torn society. The decision to fund the Contras with profits from the sale of cocaine, for example, came at a time when the economic downturn had created high unemployment, increasing homelessness, the depletion of savings, and other major stressors, which only heightened the possibility of creating a drug-addicted society at the very moment when narcotics use had actually stabilized or decreased.[127]

As the horrific toll crack cocaine caused in the inner city became more and more obvious, the administration's response was not to fund a series of treatment facilities but to demonize and criminalize blacks and provide the federal resources to make incarceration, rather than education, normative. "Drugs are menacing our society," the president told the nation in a September 1986 speech delivered from the White House. "They're threatening our values and undercutting our institutions. They're killing our children." The United States, he conveyed, was a nation under attack.[128]

"Despite our best efforts," Reagan added with a hint of shock and dismay, "illegal cocaine is coming into our country at alarming levels." At that point, in what looked like the nadir of surrender, Reagan identified public enemy number one: "crack." And then, just to reaffirm the heroes and villains in this set piece, the president sent out a clarion call, proclaiming, "Drug abuse is a repudiation of everything America is." He positively vibrated with a sense of righteous, patriotic indignation. No one, he intoned, has the right to destroy the dreams and shatter the lives of the "freest society mankind has ever known."[129] In this important speech, the president not only laid out an epic tale of good, freedom-loving Americans locked in a mortal battle for the nation's soul against crack addicts and drug dealers, but in doing so, he also defined the racial contours of this war.

Media fanned the flames, and then some. With little to no evidence, news outlets warned that crack, reputedly the most addictive drug known to mankind, was galloping out of the crime-filled inner cities and, as *Newsweek* claimed, "rapidly spreading into the suburbs." The *New York Times* echoed the refrain identifying "epidemic" crack use from Long Island to "the wealthiest suburbs of Westchester County."[130] The media's overwhelming tendency to blacken crack only added to this national panic. Between 1986 and 1987, 76 percent of the articles in the *New York Times*, the *Chicago Tribune*, the *Washington Post*, and the *Los Angeles Times* dealing with crack referenced African Americans either directly or through code words—*urban*, *inner city*, etc. Whites were mentioned only one third of the time.[131] The message was clear: the black "plague" was coming.[132]

The crack plague had already swept through African American neighborhoods around the country with absolutely no warning. There had been minor use of crack in the 1970s, but it began to visibly show up in 1984 and exploded in 1985 and 1986—just as Congress cut off funding to the Contras, leaving the administration desperate to finance the war against the Sandinistas.[133] As battles over lucrative drug turf escalated, black communities were besieged with rampant gang violence. Most had no idea how this crack scourge had arisen or how those who had once toted simple handguns now carried AK-47s and other automatic, military-grade weapons. It was clear immediately that something had gone horribly wrong.[134] A National Urban League report declared that the "gains made over the past 25 years, many the result of the Civil Rights Movement in the 1960s, will . . . unravel unless steps are taken to arrest the pervasive problem of crime in the black community."[135]

A research team from Harvard and the University of Chicago explained, "Between 1984 and 1994, the homicide rate for Black males aged 14–17 more than doubled and homicide rates for Black

males aged 18–24 increased almost as much."[136] The magnitude of the firepower and the sheer number of killings were, in fact, critical factors that led African American life expectancy rates to actually decline—something that not even slavery or Jim Crow had been able to accomplish.[137] Moreover, many other sectors of the black community were also horribly affected by murders and crack—fetal death rates, low-birth-weight babies, and children now in foster care. The researchers concluded that the perilous decline of African Americans on so many quality-of-life indicators "represents a break from decades of convergence between Blacks and Whites on many of these measures."[138]

The divergence, however, was about to get exponentially worse. In 1986, Congress passed the Anti-Drug Abuse Act, which stipulated mandatory sentencing, emphasized punishment over treatment, and created the 100-to-1 disparity in sentencing between crack and cocaine based on the myth that the cheap narcotic rock was more addictive than its powder form. As the NAACP explained the law's 100-to-1 formulation, "a person must possess 500 grams of powder cocaine before they are subject to the same mandatory prison sentence (5 years) as an individual who is convicted of possessing just 5 grams of crack cocaine (despite the fact that pharmacologically, these two drugs are identical)."[139] The National Urban League was convinced that tougher sentencing policies were not the answer. The incarceration rate would be so high, it warned, that society would not be able to bear the costs.[140] Congress, nonetheless, followed up in 1988 with an even harsher version of the Anti-Drug Abuse Act that instituted mandatory sentencing for even a first-time offense, added the death penalty for certain crimes where drugs were an aggravating factor, and denied housing and other human rights to those whose greatest crime was having a friend or a family member in the drug trade even visit.[141]

The Supreme Court had played a critical role in tightening the noose. A series of cases, beginning in 1968 but escalating dramatically in the Burger and Rehnquist eras, legalized racial discrimination in the criminal justice system.[142] The Court

- affirmed that police, even though their overall racial bias is well documented, can stop anyone based on something far below the understood threshold of probable cause;[143]
- approved racial profiling;[144]
- upheld harsh mandatory sentencing for drug offenses;[145]
- tossed out irrefutable evidence of racial bias in sentencing because of its implications for the entire criminal justice system and required, instead, proof of overt, visible discrimination against the individual defendant to support a claim of violation of equal protection under the law;[146]
- approved, as the justices openly admitted, "ridiculous" peremptory strikes to eliminate blacks from a jury so long as the prosecutor's stated rationale was not based on race;[147]
- shielded district attorneys from disclosing the role the defendant's race played in prosecutorial discretion;[148]
- ruled that police could use their discretion instead of probable cause to search motorists for drugs;[149]
- determined that Title VI of the Civil Rights Act cannot be used by private individuals to sue entities, such as prosecutors or police, in the criminal justice system on grounds of racial bias; and[150]
- found that pretext traffic stops—for example, having a busted taillight or not using a turn signal—are a legal and permissible ruse for police to hunt for drugs.[151]

Taken together, those rulings allowed, indeed encouraged, the criminal justice system to run racially amok. And that's exactly what happened on July 23, 1999, in Tulia, Texas. In the dead of night, local police launched a massive raid and busted a major cocaine trafficking ring. At least that's how it was billed by the local

media, which, after having been tipped off, lined up to get the best, most humiliating photographs of forty-six of the town's five thousand residents, handcuffed, in pajamas, underwear, and uncombed bed hair, being paraded into the jail for booking. The local newspaper, the *Tulia Sentinel*, ran the headline TULIA'S STREETS CLEARED OF GARBAGE. The editorial praised law enforcement for ridding Tulia of "drug-dealing scumbags."[152]

The raid was the result of an eighteen-month investigation by a man who would be named by Texas's attorney general as "Outstanding Lawman of the Year." Attached to the federally funded Panhandle Regional Narcotics Task Force, based in Amarillo, about fifty miles away from Tulia, Tom Coleman didn't lead a team of investigators; instead, he singlehandedly identified each member of this massive cocaine operation and made more than one hundred undercover drug purchases. He was hailed as a hero, and his testimony immediately led to thirty-eight of the forty-six being convicted, with the other cases just waiting to get into the clogged court system. Joe Moore, a pig farmer, was sentenced to 99 years for selling two hundred dollars' worth of cocaine to the undercover narcotics agent. Kizzie White received twenty-five years, while her husband, William "Cash" Love, landed 434 years for possessing an ounce of cocaine.[153]

The case began to unravel, however, when Kizzie's sister, Tonya, went to trial. Coleman swore that she had sold him drugs. Tonya, however, had video proof that she was at a bank in Oklahoma City, three hundred miles away, cashing a check at the very moment he claimed to have bought cocaine from her. Then another defendant, Billy Don Wafer, had timesheets and his boss's eyewitness testimony that Wafer was at work and not out selling drugs to Coleman. And when the Outstanding Lawman of the Year swore under oath that he had purchased cocaine from Yul Bryant, a tall bushy-haired man, only to have Bryant—bald and five feet six—appear in court, it finally became very clear that something was awry.[154]

Coleman, in fact, had no proof whatsoever that any of the alleged drug deals had taken place. There were no audiotapes. No photographs. No witnesses. No other police officers present. No fingerprints but his on the bags of drugs. No records. Over the span of an eighteen-month investigation, he never wore a wire. He claimed to have written each drug transaction on his leg but to have washed away the evidence accidentally when he showered. Additional investigation led to no corroborating proof of his allegations, and when the police arrested those forty-six people and vigorously searched their homes and possessions, no drugs were found, nor were weapons, money, paraphernalia, or any other indications at all that the housewife, pig farmer, or anyone else arrested were actually drug kingpins.[155]

What was discovered, however, was judicial misconduct running rampant in the war on drugs in Tulia, Texas, with a clear racial bias. Coleman perjured himself on the stand when he claimed to be an upstanding, law-abiding citizen. In fact, he was under indictment for theft in his previous position as a deputy sheriff in another county. The prosecutor, Terry McEachern, knew about this but failed to disclose it to the defense attorneys. The district attorney also ensured that there were no African Americans on the jury in each trial. Moreover, Judge Edward Self, who presided over the lion's share of the trials, publically expressed his support for the prosecutors and sealed Coleman's employment records, including the charge of embezzlement as a deputy sheriff.[156]

The judicial malfeasance immediately took on racial undertones. Coleman, a white man who routinely referred to African Americans as "niggers," had accused 10 percent of Tulia's black population of dealing in cocaine.[157] Based on his word alone, 50 percent of all the black men in the town were indicted, convicted, and sentenced to prison. Of the six whites and Latinos who were arrested in the raid, all had relations—familial or friendly—with Tulia's black community.[158] Although the white community consistently denied that race

played any role in this, the speed and efficiency in which the criminal justice system worked to sentence black defendants and their white and Latino friends to decades in prison, based solely on the unsubstantiated testimony of a man under indictment, suggests otherwise.[159] Randy Credico of the William Moses Kunstler Fund for Racial Justice, called Tulia "a mass lynching . . . Taking down 50 percent of the male black adult population like that, it's outrageous. It's like being accused of raping someone in Indiana in the 1930s. You didn't do it, but it doesn't matter because a bunch of Klansmen on the jury are going to string you up anyway."[160]

But this wasn't 1930. It was the beginning of the twenty-first century, and a powerful Civil Rights Movement had bridged those two eras. Yet now, felony convictions, chiefly via the war on drugs, replaced the explicit use of race as the mechanism to deny black Americans their rights as citizens. Disfranchisement, permanent bans on jury service, and legal discrimination in employment, housing, and education—despite the civil rights legislation of the 1960s—are now all burdens carried by those who have been incarcerated. That burden has been disproportionately shouldered by the black community, which, although only 13 percent of the nation's population, makes up 45 percent of those incarcerated.[161]

Even more disconcertingly, these felony convictions have had little to do with ensuring the safety and security of the nation and in most cases target the wrong culprits.[162] Logically, given the poor state of the schools, crushing poverty, and the lack of viable living-wage options for large swaths of the black population, African Americans' drug use should mirror their staggering incarceration rates. According to Human Rights Watch, "the proportion of blacks in prison populations exceeds the proportion among state residents in every single state." In Missouri, for example, African Americans make up 11.2 percent of the state's residents but 41.2 percent of those incarcerated. In fact, "in twenty states, the percent[age] of blacks incarcerated is at least five times greater than their share of resident population."[163] But, there is no direct correlation between drug use and incarceration.

Despite all the economic and social pressures they confront, blacks have shown an amazing resilience in the face of drugs; indeed, they are among the least likely drug users of all racial and ethnic groups in the United States.[164] And despite all the stereotypes, they are among the least likely to sell drugs too. As a major study out of the University of Washington revealed, even when confronted with irrefutable evidence of whites' engagement with the illegal-drug trade, law enforcement has continued to focus its efforts on the black population.[165]

Thus, after the Civil Rights Movement, when African Americans were making incredible strides in education, voting, and employment, those gains were a threat to the status quo of inequality. Thus, the "United States did not face a crime problem that was racialized; it faced a race problem that was criminalized."[166]