Black Children and the American Dilemma: The Invisible Tears of Invisible Children

David Hall
Northeastern University School of Law, d.hall@neu.edu

Follow this and additional works at: http://lawdigitalcommons.bc.edu/twlj
Part of the Civil Rights and Discrimination Commons

Recommended Citation
David Hall, Black Children and the American Dilemma: The Invisible Tears of Invisible Children, 26 B.C. Third World L.J. 9 (2006), http://lawdigitalcommons.bc.edu/twlj/vol26/iss1/3
BLACK CHILDREN AND THE AMERICAN DILEMMA: THE INVISIBLE TEARS OF INVISIBLE CHILDREN

DAVID HALL*

Abstract: This article invokes the theme of invisibility as a metaphorical way of demonstrating the conditions of Black children in America. The theme of invisibility is examined during the period of slavery, and in the context of various social issues and movements such as school desegregation, the civil rights movement and transracial adoption. In each instance the true needs of Black children are sacrificed in exchange for other social goals that adults deemed more important. Though the needs of Black children were offered as the reason for policy changes, the children were never the beneficiaries of the change. The article argues for a new social policy that will make the needs of children of color and poor children a national priority. Unless this occurs, the dreams of Black children will continue to be deferred, and the nightmares that have governed their lives will continue to haunt them and this nation.

Despite the enormous scholarly energy that has been devoted to the phenomenon of racism in American society, there still exist various groups of individuals who suffer from the past and present consequences of this dreaded social disease. One of the subtle consequences of racism is its ability to render individuals and groups invisible.¹ This status of invisibility can operate on a physical dimen-

---

* Professor of Law, Northeastern University School of Law. I would like to thank my excellent research assistant, Corey Himrod, for his dedicated work on this project. Shawanda Baker also contributed to the footnotes in this article.

¹ Ralph Ellison sets out his notion of invisibility at the very beginning of his landmark work, Invisible Man, when the novel’s hero states:

I am an invisible man. No, I am not a spook like those who haunted Edgar Allan Poe; nor am I one of your Hollywood-movie ectoplasms. I am a man of substance, of flesh and bone, fiber and liquids—and I might even be said to possess a mind. I am invisible, understand, simply because people refuse to see me. Like the bodiless heads you sometimes see in circus sideshows, it is as though I have been surrounded by mirrors of hard, distorting glass. When they approach me they see only my surroundings, themselves, or fragments of their imagination—indeed, everything and anything except me.

Ralph Ellison, Invisible Man 3 (1952); see also Kerry McSweeney, Invisible Man: Race and Identity 16–18 (1988). In McSweeney’s critique of Ellison’s Invisible Man, she recounts
sion when public policies, laws and customs separate or remove individuals from the mainstream of society. The long history of segregation in this country, and the nineteenth century governmental policy of “Indian Removal” are classic examples of how racism fostered this physical invisibility. Yet, the greatest tragedy of racism in American life is the psychological and spiritual invisibility that it has created and nurtured among certain groups of individuals. When the mind relegates people to a lower status in the hierarchy of value, it becomes very easy to stop physically seeing them, and further, to psychologically minimize or dismiss them. If they are seen, it is not as whole, authentic human beings, but as shaded artifacts, constructed to fit some socially predetermined mold. W. E. B. DuBois was one of the earliest social scientists to use this term as it relates to the experiences of African-Americans in this country. In his classic text, *The Soul of Black Folks*, he introduced the metaphor of the “veil” as a way to strongly suggest that the conditions, culture and humanity of Black people were nearly invisible to whites. In the introduction to the book, Donald B. Gibson reminds us that there is a distinction between being veiled and being made invisible, commenting that “an entity may be veiled but not invisible, invisible but not veiled. Blacks are both: invisible to those who need them to be invisible, veiled to those who need them to be veiled.”

Regardless of the degree, invisibility creates a social reality where we can touch people but not feel their pain. We can listen to their cries for help, but not really hear in a way that would lead us to act, empathize and transform the underlying conditions. Their legal rights are considered and defended but never fully enforced or realized. Veiled or invisible, the pattern of social and emotional minimiza-

---

the critical response the book illicited upon its release. *Id.* Reviews ran the spectrum from scathing to lavishing praise, and Saul Bellow commended Ellison’s taking as his subject “this enormously complex and difficult experience of ours [for which] very few people are willing to make themselves morally or intellectually responsible.” *Id.* at 16–17 (internal quotations omitted). Richard Chase wrote that the real weight of meaning in the novel was carried by “the profound underlying metaphor of ‘invisibility,’” which contained metaphysical, psychological, and moral dimensions. *Id.* at 17–18 (internal quotations omitted).

2 W.E.B. DuBois, *The Souls of Black Folks*, at xiv (Penguin Books 1996). Though the word “Black” is not always capitalized in various written text, I have chosen to do so in this article because not to do so would feed into the very invisibility that this article attempts to correct. “Black” is more than a physical description of a person’s skin color, it is a racial designation that embodies the culture, history, philosophy and ethos of a group of people.

3 *Id.*
tion leaves an indelible mark upon those who are trapped in this one-
way mirror.

Invisibility is not just a consequence of racism; it can be born through any systemic act of neglect, fear, indifference and denial. In this society, gender, poverty, disabilities, sexuality, geography and language have all served as sources for making others invisible. Therefore, all of us are subject both to being made invisible and to being the force that makes others invisible. Yet certain forms of invisibility have been more dominant, systematic and ingrained than others.

This country’s inability to reconcile its values of equality and liberty with its past practice of slavery and its historical and contemporary practices of racism and discrimination, has affected numerous groups of individuals. Though there is a danger in comparing forms

---

4 See Gunnar Myrdal, An American Dilemma: The Negro Problem and Modern Democracy 167 (1962). Myrdal documented the conditions under which Americans of African descent lived during the first half of the twentieth century, and came to the conclusion that

[t]here is no doubt that the overwhelming majority of white Americans desire that there be as few Negroes as possible in America. If the Negroes could be eliminated from America or greatly decreased in numbers, this would meet the whites’ approval—provided that it could be accomplished by means which are also approved.

Id. This notion of an American dilemma regarding the treatment of Blacks by whites was not necessarily a new idea when Myrdal wrote his work. Id. The Constitution itself states that African-Americans are only to be counted as three fifths of a person for purposes of determining representation. U.S. Const. art. I, § 3. The three fifths clause remained an operative part of the Constitution until passage of the Fourteenth Amendment in 1868. U.S. Const. amend. xiv, § 2. Also, in 1850, Congress passed the Fugitive Slave Act, which imposed a duty on federal marshals and officials to arrest anyone suspected of being a runaway slave, and made even moderate abolitionists face the choice of defying what they believed to be an unjust law or breaking with their own conscience. See Fugitive Slave Act, ch. 60, 9 Stat. 462 (1850); see also Dred Scott v. Sandford, 60 U.S. 393, 452 (1856) (holding that no slave or descendant of a slave could ever be a U.S. citizen, and finding that the Missouri Compromise of 1820, which disallowed slavery in the newly emerging territories, unconstitutionally violated the due process clause of the Fifth Amendment); Wikipedia The Free Encyclopedia, Fugitive Slave Law of 1850, http://en.wikipedia.org/wiki/Fugitive_Slave_Law_of_1850 (last visited Nov. 28, 2005).

5 The Equal Employment Opportunity Commission receives approximately 30,000 charges per year filed under Title VII alleging race-based discrimination in the workplace. U.S. Equal Employment Opportunity Comm’n, Race-Based Charges FY 1992–FY 2004, available at http://www.eeoc.gov/stats/race.html. Also, incidents of real or perceived police abuse based on racism have created a lingering distrust between racial minority communities and the police. See Nat’l Advisory Comm’n on Civil Disorders, The 1968 Report of the Nat’l Advisory Comm’n on Civil Disorders 93 (1968). This viewpoint was first expressed in the 1968 Kerner Report: “The atmosphere of hostility and cynicism is reinforced by a widespread perception among Negroes of the existence of police brutality and corruption, and of a ‘double standard’ of justice and protection – one for Negroes and one for whites.” Id. Thirty years later, similar perceptions of police misconduct were
of oppression, I argue in this article that none of those groups have suffered more from this dilemma than African-American children. What makes this situation even more compelling and nuanced is that both advocates for racial equality and opponents to this ideal have rendered Black children invisible in order to achieve their respective goals. Therefore, Black children have been the most consistent invisible players in the American dilemma, and they are only made visible when it serves some compelling social goal or strategy. Professor Derrick Bell has long echoed the sentiment that racial progress in this country is greatly influenced by the self-interested agenda of white Americans. Further, the advancement of rights and human recognition for Black children only occurs when the self-interest of white or Black adults are served. Because of this long history of denial, degradation and invisibility, there are frozen tear tracks that are imprinted upon the faces of many of these children. Yet, the concept of invisibility is so omnipresent that even the tears of these children are invisible. The dramatic suffering of Black children has not penetrated the soul of this country to the point where we have developed a comprehensive and viable strategy to address and reverse these devastating consequences.


See Derrick Bell, Race, Racism and American Law 35 (3d ed. 1992). Bell suggests that, “[i]n the resolution of racial issues in America, black interests are often sacrificed so that identifiable different groups of whites may settle a dispute and establish or reestablish their relationship.” Id.

See Jay P. Greene, Public School Graduation Rates in the United States, Civic Report Manhattan Institute for Policy Research Center for Civic Innovation, Nov. 2002, at 1, 3, available at http://www.manhattaninstitute.org/pdf/cr_31.pdf. Greene’s report showed that the national graduation rate for children graduating from public school in the year 2000 was 69%. Id. Broken down by race, however, the study revealed that while high school graduation rates for white students rose to 76%, the rate for African-American students was over twenty points behind that of the white students at 55%. Id. In addition, the study found that several states with high overall graduation rates fared poorly at graduating minority students; Nebraska had a graduation rate of 84% but graduated only 53% of its African-American students, and Iowa had a graduation rate of 85% but graduated only 58% of African-American students. Id.
scores, infant mortality rates, incidences of certain diseases and the quality of the schools attended. In those social categories where we would want Black children to lag behind, such as incarceration rates, drop-out rates, drug use, teenage pregnancy and living in...

8 College Board, 2004 College-Bound Seniors: A Profile of Scholastic Aptitude Test (SAT) Program Test-Takers 6, available at http://www.collegeboard.com/prod_downloads/about/news_info/cbsenior/yr2004/2004_CBSNR_totalgroup.pdf. The average SAT scores in 2004 for white students preparing to enter college were 528 in the verbal section and 551 in the math section, for a combined score of 1059. Id. African-American students averaged 430 in the verbal section and 427 in the math section, for a combined score of 857. Id. The Council of Great City Schools conducted a study that found that while American College Test (ACT) composite scores increased among both white and African-American students in the 1990s, white students in 1999 were still scoring significantly higher, averaging 22.5 in the reading section and 21.5 in math section, while African-American students averaged 16.8 in the reading section and 16.6 in the math section. See Council of The Great City Schools and ACT, A Decade of ACT Results in the Nation’s Urban Schools 1990–1999: A Report on Urban Student Achievement & Course Taking 27, 28 (2001), available at http://www.cgcs.org/pdfs/act_2000.pdf.


11 Anne Kleiner & Laurie Lewis, U.S. Dep’t of Educ., Nat’l Ctr. for Educ. Statistics, Internet Access in U.S. Public Schools and Classrooms: 1994–2002, at 4-7 (Oct. 2003). Public schools in the inner city had, on average, fewer instructional computers per school, a lower percentage of computers with access to the internet, fewer instructional rooms with internet access, and a higher number of public school students per instructional computer with internet access. Id.

12 See Paige M. Harrison & Allen J. Beck, Prisoners in 2002, Bureau of Justice Statistics Bulletin, July 2003, at 1, 10, available at http://www.ojp.usdoj.gov/bjs/pub/bpdf/p02.pdf. Of the 246,100 state prison inmates serving time for drug offense in 2001, 139,700 (56.7%) were Black, 47,000 (19%) were Hispanic, and 57,300 (23.2%) were white. The study states that when total incarceration rates are estimated separately by age group, black males in their twenties and thirties are found to have high rates relative to other groups. Among the more than 2 million offenders incarcerated on June 30, 2002, an estimated 596,400 were black males between ages 20 and 39 (table 13). Among males age 25 to 29, 12.9% of blacks were in prison or jail, compared to 4.3% of Hispanics and about 1.6% of whites (table 14).
single parent homes, they stand at the front of the line. Though there has been progress in erasing some of these differences, these trends have existed over an extended span of time. The origin of these problems can be traced to the American dilemma, and to the inability of Black families to develop viable solutions and take responsibility for their implementation. The fact that these indicators of success and failure continue to persist in this society is overwhelming evidence of the invisibility of Black children.

I will examine this invisibility thesis and metaphor as it relates to Black children in four historical periods. First, I will examine the ex-


\[\text{14 Allen J. Beck & Christopher J. Mumola, Bureau of Justice Statistics, Prisoners in 1998, at 10 (Aug. 1999), available at http://www.ojp.usdoj.gov/bjs/pub/pdf/p98.pdf; Bureau of Justice Statistics, U.S. Dept't of Justice, Sourcebook of Criminal Justice Statistics 1998, at 244, 435, 505 (1999); Office of Applied Studies, Substance Abuse & Mental Health Services Admin., Summary of Findings from the 1998 Nat'l Household Survey on Drug Abuse 3 (Aug. 1999) [hereinafter Nat'l Household Survey]. According to the federal Household Survey, “most current illicit drug users are white. There were an estimated 9.9 million whites (72 percent of all users), 2.0 million Blacks (15 percent), and 1.4 million Hispanics (10 percent) who were current illicit drug users in 1998.” Id. at 13. And yet, Blacks constitute 36.8% of those arrested for drug violations, over 42% of those in federal prisons for drug violations. Id. African-Americans comprise 56.1% of those in state prisons for drug felonies; Hispanics account for 20.7%. Id.}\]


\[\text{16 Steven Ruggles, The Origins of African-American Family Structure, 59 Am. Soc. Rev. 141 (1994). Ruggles’ study compared census data over a 130 year period and showed that from 1880–1960, the proportion of Black children living with a single parent held steady at around 30%, while the percentage of white children living with a single parent remained at around 10%. Id. Those figures began to rise after 1960, and by the 1990s had climbed to 19% for white children and 63% for Black children. Id.}\]

\[\text{17 For example, the high school dropout rates from 1970 through 2001 show that the dropout rates of both white and Black children have been cut in half. Digest of Education Statistics, supra note 13, at 139. In 1970, the dropout rate was 27.95% for Black students compared to 13.2% for white students. Id. In 1980, those numbers fell to 19.1% and 11.4% respectively. Id. In 1990, they fell to 13.2% and 9.0%. Id. Despite the falling numbers, in 2000 a Black student (13.1%) was still nearly twice as likely to dropout of high school than a white student (6.9%). Id.}\]
perience, conditions and consequences of African-American children during the period of slavery in America. Second, I will examine the legal strategy and controversy surrounding the desegregation of public education during the 1950s and beyond, especially in the south. Third, the article will explore the role that children played in the civil rights movement of the 1960s. Finally, I will discuss how the movements to halt and promote transracial adoptions are classic examples of the invisibility of Black children and their tears. This article is not intended as an exhaustive analysis of each of these historical periods. The primarily goal is to demonstrate the consistency of the invisibility phenomenon in the lives of Black children, and to create a framework for more specific and detailed discussions of these controversies that are contained in the other articles within this volume.

I. CHILDREN IN SLAVERY

The invisibility drama of Black children began with slavery. Though the form of denial and marginalization during that period was different from those experienced in more contemporary settings, it put in place a pattern of exploitation and manipulation that still exists today.

Much has been written about the conditions of Black people during the period of American slavery, and yet very little has focused on the status and conditions of Black children. It has been eloquently argued and documented that these children had no childhood because work, punishment and the overall cruelty of the slavery “made them grow old before their time.” The invisibility of Black children was dominant in this period because they were not viewed as children. Instead, they were a commodity to be produced. Women and men

---

18 See generally Lerone Bennett Jr., The Shaping of Black America (1975); John W. Blasingame, The Slave Community: Plantation Life in the Antebellum South (1979); John Hope Franklin & Alfred A. Moss, Jr., From Slavery to Freedom: A History of Negro Americans (1988); Upon These Shores: Themes in the African-American Experience 1600 to the Present (William R. Scott & William G. Shade eds., 2000); Wilma King, Stolen Childhood: Slave Youth in Nineteenth-Century America, at xviii (1995) (acknowledging that despite a vast array of resources regarding the lives of enslaved children, “few historians have stressed this aspect of slavery . . . [primarily] because they, more than other enslaved persons, were ‘silent and invisible.’” (quoting Willie Lee Rose, Slavery and Freedom 39 (1982))); Arwin D. Smallwood, The Atlas of African-American History and Politics: From the Slave Trade to Modern Times (1998). Despite their large numbers, children did not write or speak for themselves and were often ignored by others. See King, supra, at xviii; see also Marie Jenkins Schwartz, Born in Bondage: Growing up Enslaved in the Antebellum South (2000).

19 See King, supra note 18, at xx.
were forced to procreate not for the joy of creating new life, but because plantation owners wanted more property.

The commoditization of human life has unique consequences and ramifications for those who are dependent upon adults to help them make sense of reality. Black children, especially female Black children, experienced dual and triple levels of vulnerability due to their age, sex and race. Nonetheless, it is clear that the consequences of this systematic marginalization and dehumanization not only affected the children as they moved into adulthood, but had permanent ramifications for their descendants.\(^\text{20}\) Though the physical brutality to Black children during slavery was not as great as that inflicted upon adults, the psychological impact was much greater. The first wave of Africans who came to this country was psychologically abused, but they had another internal reality of their culture and values that could balance and reinterpret this dehumanization. Children born into slavery, however, had no internal competing reality to fight the devastating affects of this horrendous system. Certainly, their parents attempted to instill positive values of survival, but there were enormous limitations on what the parents could do, since their entire lives were orchestrated by oppression.\(^\text{21}\)

The legacy of this psychological damage on Black children was the creation of a “slave mentality” that is laced with notions of inferiority, low self-esteem and limited vision. The seeds of inferiority are much more detrimental when they are planted during the formative years of life. Psychologists have long demonstrated the general affects of early childhood development and how parental abuse and neglect during this period becomes long lasting, if not permanent, marks on the individual’s psyche.\(^\text{22}\) Imagine the impact on a child’s develop-

\(^{20}\) See id. at 98.

\(^{21}\) See Blassingame, supra note 18, at 256–57; see also Jermain Wesley Loguen, The Rev. J. W. Loguen, as a Slave and as a Freedman (Syracuse 1859). A slave holder consistently worked to ensure that slaves remained submissive and deferential, by making “the slave bow upon meeting him, stand in his presence, and accept floggings from his young children.” Blassingame, supra note 18, at 256. Whippings were given for fighting with young whites or disputing a white man’s word. Id. The Black man was required to conform to the white man’s wish, and the penalties for non-conformity were severe. Id. at 256–57. These lessons uniformly pointed to one idea: the slave was a thing to be used by the “superior” race. See id.

\(^{22}\) See Social Costs: the Effects of Child Maltreatment, Child Abuse Prevention Resource Sheet No. 9 (Austl. Inst. of Family Stud. Nat’l Child Prot. Clearinghouse, Melbourne, Vic.), Mar. 2005. Maltreated children have been shown to have low self-esteem, increased fear, guilt and self-blame; child maltreatment is also associated with intellectual deficits and other academic problems such as delay in acquiring language and problems in
ment when the child is born and raised in a culture that consistently sends messages of abuse, neglect and self degradation. Though some Africans who were enslaved overthrew these feelings by the time they reached adulthood, most could not make that transition due to the high cost and severe penalties imposed upon those who resisted. As a result, they brought into adulthood and instilled within their children these psychologically debilitating themes of inferiority and invisibility.

These psychological injuries are intensified when the entire culture within which the child is born and raised consistently sends messages of abuse, neglect and self degradation. This point is critical because as Wilma King indicates, “the majority of those in bondage in the United States by the Civil War were born in North America rather than in Africa.” Therefore, the Black adults who stepped into freedom brought with them a mentality, social structure and way of life that had been nurtured through one of the most brutal systems this country has ever employed. To make matters worst, the “incidents and badges” of slavery continue to be imposed upon Black people to this day through customs, laws and new social patterns of invisibility. Thus during slavery and for subsequent generations, the humanity of Black children was drained from them by this societal mapping, and the negative consequences of this social injustice remain with us today.

23 See King, supra note 18, at xvii.

24 It is indicative that, in general, children of color tend to be held at intake, detained prior to adjudication, have petitions filed, be adjudicated delinquent, and held in secure confinement facilities more frequently than their white counterparts. See Leadership Conference on Civil Rights, Justice on Trial: Racial Disparities in the American Criminal Justice System 38 (2000), available at http://www.civilrights.org/publications/reports/cj/. In 1995, 15% of cases nationwide involving white juveniles resulted in detention, while 27% involving Black juveniles resulted in detention, even though whites comprised 52% and Blacks only 45% of the entire juvenile caseload. See Andrew Blum, Jail Time by the Book: Black Youths More Likely to Get Tough Sentences than Whites, Study Shows, 85 A.B.A. J. 18, 18 (1999). Minority youths are also more likely to be killed due to gang-related violence. See Cal. Dep’t of Justice, Bureau of Criminal Info. & Analysis, Homicide in Cal. 2003, at 22 (2003). In California in 2003, studies showed that of the 572 homicides committed against Black victims, 255 or 44.6% were gang-related, compared to 14 or 3.7% of 382 known homicides where the victim was white. Id. Further, despite comprising a minority of the total population, of the estimated 542,000 children in foster care as of September 30, 2001, 38% of those children were Black, compared to 37% white. See Foster Care National Statistics, Nat’l Clearinghouse on Child Abuse & Neglect Info., June 2003, at 1, 5.
II. BLACK CHILDREN AND SCHOOL DESEGREGATION

*Brown v. Board of Education* rested in part on the negative psychological effects that the system of segregation produced in regard to the development of Black children.\(^\text{25}\) Black children were the primary intended beneficiaries of this landmark case, yet due to their historical state of invisibility they ended up being mere pawns in a larger social chess game. Certainly, none of the children who were plaintiffs in *Brown* benefited from this change in the law. Though future generations of children were allowed to attend integrated educational institutions, there is still much debate about whether this strategy truly enhanced the educational attainment of this invisible class of citizens.\(^\text{26}\)

Professor Derrick Bell in his recent book *Silent Covenants: Brown v. Board of Education and the Unfulfilled Hopes for Racial Reform*, argues that the integration model has failed as an educational strategy, and that a focus on improving the quality of education in Black schools would have been a more appropriate approach.\(^\text{27}\) This strategy was

\(^{25}\) See *Brown v. Bd. of Educ.*, 347 U.S. 483, 494, 495 n.11 (1954) (stating that “the impact [of segregation] is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn.” (referring to the doll studies of Kenneth and Mamie Clark (Clark and Clark (1939)) that found that Blacks in the segregated South tended to identify with white dolls and not Black dolls)).

\(^{26}\) See Mark Kozlowski, *Second-Guessing the Supreme Court*, LEGAL TIMES, Oct. 8, 2001. Kozlowski cites the Harvard Civil Rights Project study which revealed that in 1998, 70% of African-American students attended predominantly minority schools, up from 63% in 1980. *Id.* The study also revealed that those minority schools were more likely to provide substandard facilities. Bowman accumulated survey data that showed that only 50% of respondents felt it important that people of different races and ethnic groups live, go to school, and work closely with one another, 78% said that letting students go to schools in their own communities would be better even if it meant that most of the students would be of the same race. And 82% said that educational priorities should be geared toward raising academic standards and achievement, compared to 8% favoring achieving greater diversity and integration. See also Missouri v. Jenkins, 515 U.S. 70, 70, 114, 121–22 (1995) (Thomas, J., dissenting). Justice Clarence Thomas complained that “[i]t never ceases to amaze me that the courts are so willing to assume that anything predominantly black must be inferior.” *Id.* at 114. Thomas criticized the *Brown* decision, stating that “mere *de facto* segregation (unaccompanied by discriminatory inequalities in educational resources) does not constitute a continuing harm after the end of *de jure* segregation. ‘Racial isolation’ itself is not a harm; only state-enforced segregation is.” *Id.* at 122. Thomas further commented that “[g]iven that desegregation has not produced the predicted leaps forward in black educational achievement, there is no reason to think that black students cannot learn as well when surrounded by members of their own race as when they are in an integrated environment.” *Id.* at 121–22.

never seriously adopted because the children were invisible and so were their needs. The social vision of adults was driving the strategy that was adopted, and the true social and educational needs of Black children were basically ignored. If Black children had been systematically asked what they needed and desired to enhance their education, very few would have said they wanted to attend integrated educational institutions. They certainly would not have said they wanted white teachers, coaches or principals. Instead, they might have argued for better schools and more resources. This policy of integration was not rooted in what was best for Black children, but was based on what some believed was best for the society. Segregation had inflicted so much harm upon Black people and the society that it was easy to assume that integration was the appropriate antidote.

Adults, primarily civil rights lawyers, sincerely believed they knew what was best for the children. Though Black children’s suffering was portrayed as the reason for the change, their educational needs were lost in the larger social struggle around the meaning of equality. I would argue that some civil rights attorneys held on to the integration approach, and resisted any attempt for one race schools, because they had a social agenda to destroy all walls of segregation in the society. Though this was a laudable agenda, Black children played an enormous price for its creation, and gained little in return.

III. BLACK CHILDREN AND THE CIVIL RIGHTS MOVEMENT

When social activists are attempting to appeal to the deep sympathies of a nation, it is natural to have a poster child that represents the suffering of the group. Black children were brought into the civil

28 See generally Jonathan Kozol, Savage Inequalities: Children in America’s Schools (1992); Genna Rae McNeil, Groundwork: Charles Hamilton Houston And the Supreme Court, 1936-1961 (1994); Charles Ogletree, All Deliberate Speed: Reflections on the First Half-Century of Brown 4 (2004) (citing Jack Greenberg, Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution (1994)); James T. Patterson, Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy (2001). The NAACP, the Legal Defense Fund, and Thurgood Marshall realized by 1950 that forcing the mandate of equality on a case-by-case basis would take years and massive funding. They took note of Gunnar Myrdal’s An American Dilemma and the results of work done by social scientists Kenneth and Mamie Clark pinpointing the nature and development of the damage caused by racism, and decided to make a direct attack on Plessy v. Ferguson and segregation itself. Id; see also Richard Kluger, Simple Justice 395 (1977). In a memo from Robert Carter to Thurgood Marshall on his estimate of Brown, Carter wrote: “The more I think about this case, the more importance I think it will have on our main objective of securing legal support for our attack on segregation.” Id.
rights movement, in part, because of their poster child appeal. Activists believed that if the northern white community saw policemen beating, hosing and stomping innocent Black children then they would be moved to change existing social practices and policies.

Pursuant to this theory, numerous children were encouraged to join the movement and risked their lives in the desegregation of lunch counters, schools, libraries and other segregated institutions in the south. There was an implicit promise made to them that their courage and sacrifice would create a society in which Black children and people would be free of the badges of slavery and the stamps of second class citizenship. Though their courageous acts benefited the

29 See generally The Oxford Companion to African American Literature (1997). The Southern Christian Leadership Conference (SCLC) and Martin Luther King, Jr., sought to create a political morality play compelling enough to force the federal government and the Kennedy administration to intervene, but the movement initially found it hard to recruit supporters. The breakthrough came when SCLC’s James Bevel organized thousands of Black school children to march in Birmingham. Birmingham Public Safety Commissioner Eugene Connor’s tactics of using vicious dogs, firehoses, and police brutality against children were splashed on front pages and television screens around the world.

30 To try to avoid the poster child effect, many newspapers placed stories regarding the civil rights struggle on back pages. An editorial writer at the Lexington Herald in 1968 stated that “[i]t was a standing order that an effort at a dining room or restaurant or march would not get Page One coverage, that it would go inside. . . . [T]he management’s view was that the less publicity it got, the quicker the problem would go away.” See Linda Blackford & Linda Minch, Front-page News, Back-page Coverage: The Struggle for Civil Rights in Lexington, LEXINGTON HERALD-LEADER, July 4, 2004, at A1; see also CongressLink, A Case History: The 1964 Civil Rights Act, http://www.congresslink.org/print_basics_histmats_civilrights64text.htm. The nation’s media, however, covered in depth the protests and sit-ins in Birmingham, Alabama and across the country, the murders of civil rights workers Medgar Evers and William L. Moore, and the bombing of the 16th Street Baptist Church in Birmingham which killed four young children. The escalating violence and extensive coverage led President Kennedy to go on-air and declare,

We are confronted primarily with a moral issue. It is as old as the scriptures and is as clear as the American Constitution. The heart of the question is whether all Americans are to be afforded equal rights and equal opportunities, whether we are going to treat our fellow Americans as we want to be treated. If an American, because his skin is dark, cannot eat lunch in a restaurant open to the public, if he cannot send his children to the best public school available, if he cannot vote for the public officials who represent him, if, in short, he cannot enjoy the full and free life which all of us want, then who among us would be content to have the color of his skin changed and stand in his place? Who among us would then be content with the counsels of patience and delay?

John F. Kennedy, Radio and Television Report to the American People on Civil Rights, (June 11, 1963) (transcript available in John F. Kennedy Library and Museum); see also Arthur Schlesinger, A THOUSAND DAYS: JOHN F. KENNEDY IN THE WHITE HOUSE 966 (1965) (acknowledging that the work of the SCLC and the Birmingham campaign had given President Kennedy the “nation’s ear”).
civil rights movement in that many of the segregated facilities and policies of this nation were transformed, the underlying social challenges of poverty, inequality and despair remained.

Black children were not forced to enter the movement. They cared deeply about the injustices they experienced and observed, as did their parents. They sought visibility because they too believed that their presence would make a difference. Yet, their visibility became a temporary mirage. It drew the attention of the nation for a brief time, but that attention was not serious enough to address the depth of the problems. As a result, these invisible people were made visible again because it served the needs of some dominant adult group. Black children gained enormous insight about their courage, fortitude and determination by participating in these struggles. Yet for many, their lives did not materially change, and more importantly, nor did the lives of the class that they represented. If the use of Black children in the movement was truly successful, then the disparities cited earlier would not still be with us today.

IV. Transracial Adoption and the Visible and Invisible Syndrome

Finally, the fight over transracial adoption is another example that eloquently demonstrates how visibility surfaces when it meets the needs of dominant adults. White families who are infertile, or otherwise unable to give birth, have discovered children of color. They have been frustrated in their attempts to adopt Black children because various social service agencies have adopted policies that gave a preference to same race adoptions. Because life in this country is ordered along racial lines, many of these families generally were not living in Black communities, not members of predominantly Black institutions, or were not engaged in campaigns to “save the Black child” before their infertility or inability became an issue. Many did not engage in these activities afterward either, although there are examples

31 Elizabeth Bartholet has argued that public policy encourages the creation of same-race families through a multitude of laws and practices. See Elizabeth Bartholet, Private Race Preferences in Family Formation, 107 YALE L.J. 2351, 2352 (1998). Regarding adoption in general, our society discourages adoption through restrictive regulation, which makes adoption expensive, fails to provide the financial subsidies that we grant procreation, and stigmatizes adoption as a second-class form of parenting. See id. Further, discouraging adoption discourages transracial families, because the children in need of adoptive homes in the United States and abroad are, overwhelmingly, non-Caucasian, and the adults seeking to become adoptive parents are, overwhelmingly, Caucasian. See id.
of white couples who have altered their cultural and social lives in order to authentically respond to the needs of the children they adopted. Nonetheless, many people see their children as a way to satisfy their own desires and to bring their children into the white world instead of living in both worlds. Again, the visibility of Black children grew out of a selfish adult need, and not out of an unselfish desire to address and change the historical and contemporary suffering and invisibility of Black children.

Even those who argued against transracial adoption played upon invisibility of black children. Though many opponents of transracial adoption are educators and social workers who have spent their entire careers caring for Black children, they too are sometimes blinded by their political or cultural positions, and fail to take into account the true needs of the children caught in the middle of storms of neglect. Although race matching has its cultural and social benefits, it can minimize the basic needs of children and overlook how couples can address the cultural and political deficiencies of transracial adoption. Thus, both sides of this debate make Black children visible only when it meets their needs, and allow them to return to their invisible state through the failure to develop and implement a social policy that would meaningfully assist Black children and reverse the untenable position in which most of these children find themselves. Further, there is enormous evidence of the large number of Black children who are waiting to be adopted, and yet there is no massive campaign on the part of Black adults to end this situation. Nor is there a campaign on the part of the government or white society to halt the eco-

32 See Nat’l Ass’n of Black Social Workers, Position Statement on Trans-Racial Adoption, in Children and Youth In America, 777–80, 1933–75 (Robert H. Bremner ed., 1974) (attachment to letter from Mrs. Audrey T. Russell to Robert H. Bremner, Sept. 25, 1972). The National Association of Black Social Workers was founded in 1972 by opponents of transracial adoption whose goal was to locate Black homes for Black children. The stance taken by the National Association of Black Social Workers was as follows:

The National Association of Black Social Workers has taken a vehement stand against the placement of black children in white homes for any reason. We affirm the inviolable position of black children in black families where they belong physically, psychologically and culturally in order that they receive the total sense of themselves and develop a sound projection of their future. . . . [W]e fully recognize the phenomenon of transracial adoption as an expedient for white folk, not as an altruistic humane concern for black children. The supply of white children for adoption has all but vanished and adoption agencies, having always catered to middle class whites developed an answer to their desire for parenthood by motivating them to consider black children.

Id. at 777–79.
nomic, educational and social forces that keep creating the problem. Both sides lament the condition, but our adult interests supercede our passion, and these children, as a collective, remain invisible.

**Black Children: Surviving the American Nightmare or Living a Dream Deferred**

When we examine the social conditions that so many Black children find themselves in, it is clear that we have a crisis on our hands. Yet, it is a silent crisis that does not rise to the top of the national agenda as do wars for democracy abroad. The irony is that the suffering of Black children is a direct outgrowth of this country’s long history of ignoring democratic principles and the social policies that created a “third class” of citizens who have never come close to the American ideals of equality and liberty.

If we truly want to make Black children visible, we must develop an educational policy that ensures that the poorest children receive the best education. If we want them to be visible, then we need an economic revitalization policy that does not just drop crumbs into communities of color, but invests in communities’ revitalization in a direct way so that the parents of these children can provide for them. If we really want to make these children visible, health coverage must no longer be an option, it must become a mandatory right of being born. Otherwise Black children will never survive the American nightmare, and their dreams will continue to be deferred.

The reality we face today is that many Black children have stopped dreaming because they do not believe that they will ever wake up from the nightmare. If we continue along the present course, we will continue to make our children invisible as we continue to satisfy our adult theories and needs. Hopefully, the articles from this symposium on the Black Family will send a clarion call to the nation that there are children who had no choice about their color, status or rights. Yet, they were used by this society to attempt to fulfill its unfulfilled mandate of racial equality. Now in these silent times, when race has slipped off the American agenda, these children still languish in the midst of a nightmare of deferred dreams. If we truly want to create a nation that can lead the world into a better place, then let us first lead ourselves to the mirror so that we can see ourselves, and standing in the shadow we will see our children. Once the children become permanently visible to our eyes, hopefully they will become permanently visible to our hearts. Then, and only then, will
we usher into existence the type of country and world that is worthy of the children it produces.

In this period when people are interjecting religion into our political life, it is very easy for certain individuals to use the Bible to argue against issues such as gay marriage. But when will they use it to remind us that we will be ultimately judged by how we treat the “least of these.” Poor Black children, poor children of color, and poor children in general are certainly the “least of these” in this society and around the world.

We must develop a social policy that addresses the needs of the “least of these.” Our task is to make the invisible visible – that is our charge. In the process we will end their nightmares and stop deferring their dreams. We do this with law but also with the spirit that is placed inside people and in society. It is through this process that we bring justice and prosperity to our children and create the foundation for a new world order.

Matthe 25:40.