REVIEW: WILLIAM L. TAYLOR, THE PASSION OF MY TIMES: AN ADVOCATE'S FIFTY-YEAR JOURNEY IN THE CIVIL RIGHTS MOVEMENT

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Defining justice has always been a problem for philosophers. In the eighteenth century, Adam Smith argued that one's sense of justice depends upon:

> reason, principle, conscience, the inhabitant of the breast, the man within, the great judge and arbiter of our conduct. . . . [H]e, who, whenever we are about to act so as to affect the happiness of others, calls to us with a voice capable of astonishing the most presumptuous of our passions, that we are but one of the multitude, in no respect better than any other in it . . . .[1]

Smith saw that "for one man to deprive another unjustly of any thing, or unjustly to promote his own advantage by the loss or disadvantage of another, is more contrary to nature, than death, than poverty, than pain, than all the misfortunes which can affect him . . . ."[2] Martha Nussbaum refers to the "ancient pity tradition" among early societies, in which each person knew that he or she was part of a social community in which any offense or transgression against another, if not corrected, could return against oneself.[3]

Edmond Cahn, the great philosopher, teacher, author, and lawyer, defined justice in the opposite way. He was not concerned with what created a feeling of fairness and equity among humans. Rather, he looked at what actions or events created a sense of injustice among civilized human beings. "Justice," he wrote, "means the active process of remedying or preventing what would arouse the sense of injustice."[4] He assumed that most of us find it easier to recognize what is evil or unfair in society and

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1. ADAM SMITH, THE THEORY OF MORAL SENTIMENTS 216 (Philadelphia, Anthony Finley 1817) (1759).

2. *Id*. at 218.

3. MARTHA C. NUSSBAUM, POETIC JUSTICE 65–67 (1995). *See generally* Marcus Dirk Dubbler, *Making Sense of the Sense of Justice*, 53 BUFF. L. REV. 815 (2005) (attempting to define the "sense of justice" as it appears in literature and theory). Among the more successful attempts at defining this idea is JOHN RAWLS, A THEORY OF JUSTICE 12 (1971), in which the author postulates that the fairest and most just society would evolve from persons selecting governing rules from behind a "veil of ignorance." They would not know which group they belonged to and thus would not establish rules that favored that group over others.

4. EDMOND N. CAHN, THE SENSE OF INJUSTICE 13–14 (1949) (emphasis omitted) (internal quotation marks omitted).

react against it rather than develop an abstract sense of what is morally correct or just.[5]

The great injustice in our society in the twentieth century has been inflicted against our minority populations. William Taylor's *The Passion of My Times: An Advocate's Fifty-Year Journey in the Civil Rights Movement* provides an intimate look into many of the legal battles that brought about significant improvements in the area of civil rights in this country over during the last half-century.[6] However, the injustices continue to this day. In one of the great debates over affirmative action in the Supreme Court, Justices Ginsburg, Souter, and Breyer recently pointed out the continued disadvantages faced by our minority population:

> In the wake "of a system of racial caste only recently ended," large disparities endure. Unemployment, poverty, and access to health care vary disproportionately by race. Neighborhoods and schools remain racially divided. African-American and Hispanic children are all too often educated in poverty-stricken and underperforming institutions. Adult African-Americans and Hispanics generally earn less than whites with equivalent levels of education. Equally credentialed job applicants receive different receptions depending on their race. Irrational prejudice is still encountered in real estate markets and consumer transactions.[7]

Fifty years ago, the problems were worse. Not only were African-Americans at the bottom of the health, education, and income scales, but they suffered serious legal disabilities as well. Laws in the southern states provided for separate parks, libraries, transportations facilities, theaters, and even courtrooms.[8] Blacks were deprived of the right to vote through numerous legal tricks: limited registration periods, biased registrars, literacy

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5. *Id.* at 13.

6. WILLIAM L. TAYLOR, THE PASSION OF MY TIMES: AN ADVOCATE'S FIFTY-YEAR JOURNEY IN THE CIVIL RIGHTS MOVEMENT (2004) [hereinafter cited by page number only].

7. Gratz v. Bollinger, 539 U.S. 244, 299–300 (2003) (Ginsburg, J., dissenting) (internal footnotes and citations omitted) (quoting Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 273 (1995) (Ginsburg, J., dissenting)). In her dissent, Justice Ginsburg cites figures showing that the poverty rate among African-Americans was twice to three times that of the white community. *Id.* at 299 n.2. Blacks also have a life expectancy that is between six and eight years less than that of the majority, in part the result of greater difficulty in obtaining health insurance. *See* Maryann Cusimano Love, *Race in America*, AMERICA, Feb. 12, 2007 (recounting the current life expectancy and poverty rates among African-Americans), *available at* http://lifecycle.cua.edu/InTheMedia.

8. Leon Friedman, *Preface* to *BROWN V. BOARD*: THE LANDMARK ORAL ARGUMENT BEFORE THE SUPREME COURT, at viii (Leon Friedman ed., 2004).

tests, and the like.[9] Laws in seventeen states and Washington, D.C. provided for segregated schools.[10] Indeed the landmark case, *Brown v. Board of Education*, involved consolidated cases from Kansas, Delaware, Virginia, and South Carolina.[11]

Beyond the actual legal disabilities, there was the application of what Professor Peter R. Teachout has called "underlaw": "local white custom translated into effective law, usually without the help of articulated state legislation."[12] Professor Teachout further defined the term as "the systematic exploitation of areas of discretion in the legal process in order to perpetuate a system of white supremacy."[13] This definition is particularly relevant to an examination of William Taylor's memoirs because enormous discretion exists at every stage of the legal system—who to arrest, and who not to arrest, who to charge with what offense, and who to sentence for what term of imprisonment. If southern sheriffs refuse to arrest killers of civil rights activists and arrest those who try to register black voters, we have a different system of law than that existing in the statute books.

There were few lawyers around in the 1950s and 1960s who confronted this injustice and were prepared to fight against it. William Taylor is among them. Taylor, a 1950 graduate of Brooklyn College, was one of the few white lawyers of the time whose sense of injustice led him to devote his entire legal career to fight for the legal rights of our minority citizens.[14]

The NAACP had financed a series of cases from the 1930s to the early 1950s attacking states that did not provide equal graduate facilities for their black students.[15] Charles H. Houston of Howard Law School plotted the strategy and handled the cases with one of his prize students, Thurgood Marshall. Marshall later developed a separate legal arm called the NAACP

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9. *E.g.* MICHAEL J. KLARMAN, FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY 52–55 (2004).

10. GARY ORFIELD & JOHN T. YUN, THE CIVIL RIGHTS PROJECT, HARVARD UNIV., RESEGREGATION IN AMERICAN SCHOOLS 12 (1999).

11. Brown v. Bd. of Educ. (*Brown I*), 347 U.S. 483, 486 (1954).

12. Peter R. Teachout, *Louisiana Underlaw*, *in* SOUTHERN JUSTICE 57, 59–60 (Leon Friedman ed., 1965).

13. *Id.*

14. Taylor had a confrontation with the President of Brooklyn College, Harry D. Gideonse, because of Taylor's activities on the college newspaper. Taylor clearly delights in relating the story, which he does several times in his memoirs. Pp. 1–2, 80, 101.

15. *See* Sweatt v. Painter, 339 U.S. 629, 633–36 (1950) (holding that the law school created by Texas for African-American students consisted of unequal facilities, violating petitioner's Fourteenth Amendment rights); McLaurin v. Okla. State Regents for Higher Educ., 339 U.S. 637, 641–42 (1950) (asserting that Oklahoma is required to provide equal graduate educational facilities for all students); Missouri *ex rel.* Gaines v. Canada, 305 U.S. 337, 351 (1938) (requiring Missouri to provide equal facilities for law students, regardless of race, and regardless of the number of students that seek such an education).

Legal Defense Fund, Inc. (LDF), which handled the cases that led to *Brown v. Board of Education*. When William Taylor joined LDF, Marshall had the assistance of a group of brilliant lawyers in both Washington, D.C. and across the country: Robert L. Carter, who later became a senior federal district court judge in New York; Constance Baker Mottley, who eventually joined Carter as a federal district judge in New York; Spottswood Robinson, who later sat on the Court of Appeals in the District of Columbia; James Nabrit, Jr., who later became dean of Howard Law School; Elwood Chrisholm, a former professor at Howard Law School; Louis Redding, who in 1929 became the first black attorney admitted to practice law in Delaware; as well as a few white lawyers such as Jack Greenberg, now a professor at Columbia Law School.[16] These lawyers proved to be some of the most influential legal minds in the country, and Taylor credits them with shaping the initial arc of his career.[17]

Even after *Brown* was won, there was much to do. The principle of *Brown*—that legal separation of the races violated the equal protection clause[18]—required a new round of legal challenges to the structure of white supremacy.[19] Taylor arrived at LDF shortly after *Brown I* in 1954 and promptly set to work under Robert Carter on legal initiatives aimed at expanding the scope of the decision.[20] Initially, LDF lawyers had to file new briefs on the topic of what remedy federal courts should require to ensure that segregation in all schools would be eliminated. As part of this effort, Taylor worked with Robert Carter, who ran the New York office of LDF, and others on *Brown II*. In 1955, in its infamous *Brown II* decision, the Supreme Court delayed school desegregation by requiring states to comply with the mandate "with all deliberate speed."[21]

While at LDF Taylor also worked on other areas of civil rights law, including workplace discrimination against blacks in the oil industry in Arkansas, Texas, and Louisiana, as well as the battle against segregation in interstate facilities—primarily bus and train terminals and the restaurants within those terminals.[22] While canvassing his career at LDF, Taylor spends considerable time describing the small group of lawyers who worked on the desegregation cases. Taylor paints a vivid picture of William Coleman, one of the few black members of the *Harvard Law Review*, a clerk for Supreme Court Justice Felix Frankfurter, and later

16. Pp. 14–15.
17. Pp. 18–21.
18. Brown v. Bd. of Educ. (*Brown I*), 347 U.S. 483, 495 (1954).
19. P. 20.
20. Pp. 15–18.
21. Brown v. Bd. of Educ. (*Brown II*), 349 U.S. 294, 301 (1955).
22. Pp. 14–15.

Secretary of Transportation in President Ford's administration.[23]

Taylor was drafted in 1956 and returned to LDF after a brief stint with the Army.[24] He then worked on the next great crisis in the civil rights struggle, the integration of Little Rock Central High School. Taylor calls this work the high point of his career at LDF and describes the situation with great verve.[25] Federal courts had ordered desegregation of that school commencing in the fall term of 1957. Governor Orval Faubus, catering to the white supremacists in his state, called out the Arkansas National Guard to block the integration order. That forced President Dwight Eisenhower to uphold the court orders. He did so by federalizing the National Guard and requiring them to protect, rather than block, the black students who had been admitted. Litigation followed, leading to the Supreme Court's special term in August 1958, in which Thurgood Marshall argued for the students in *Cooper v. Aaron*.[26] The Court, in a joint opinion composed by all nine Justices, laid out the basic principle that court orders must be obeyed:

> [*Marbury v. Madison*] declared the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of our constitutional system. It follows that the interpretation of the Fourteenth Amendment enunciated by this Court in the Brown case is the supreme law of the land, and Art. VI of the Constitution makes it of binding effect on the States "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."[27]

At that early point in his career, Taylor believed that working on individual litigation was too quiet for him. "[B]y the end of 1958 I was ready to strike out on a new path, one where I might see more of the world than the inside of a book-lined law office."[28] He then moved to the center of civil rights politics, working as a lobbyist for Americans for Democratic Action (ADA), led by Joseph Rauh, a leading Washington, D.C., civil rights lawyer. The ADA was one of the leading progressive organizations of the time, working on civil rights and welfare legislation. Taylor prepared

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23. Pp. 18–20. Taylor's treatment of Coleman is one of the many instances in which Taylor enriches his memoirs by indulging the reader with amusing stories of effective advocacy by significant figures in the civil rights movement.

24. P. 25.

25. Pp. 25–27.

26. Cooper v. Aaron, 358 U.S. 1, 3 (1958).

27. *Id.* at 18.

28. P. 29.

testimony, secured expert witnesses, and testified himself on many occasions, working on legislation that eventually became the basis for Medicare and the seminal civil rights acts of the 1960s. He also worked on rear-guard measures, fighting against McCarthy-era laws that would restrict civil liberties.[29]

After John F. Kennedy was elected President in 1960, he set up an interdepartmental committee to press for additional legal measures to advance equal rights. Taylor joined the government and worked on the Sub-cabinet Committee on Civil Rights, which drafted measures within each governmental department to eliminate racially offensive activities. The subcommittee took on such issues as ending the segregation of restaurants in federal buildings and forbidding government meetings in hotels that were segregated. The Kennedy Administration went further and issued an executive order prohibiting government agencies from entering into contracts with companies that discriminated in employment.[30] Taylor worked on a proposed executive order that would require all federal agencies that guaranteed loans for financial institutions to insure that no loans would be used to further segregated housing. Work on the order took more than a year with many agencies objecting. It was only after the Kennedy Administration was able to appoint new members to various federal agencies that such an order was issued, and the administration waited until after the 1962 congressional elections to act.

Beginning in 1963, the Kennedy Administration began its effort to pass a comprehensive civil rights law, covering only public accommodations and the effort to end school segregation. Taylor worked on additional proposals that would permit the granting of federal funds only to entities that would eliminate discrimination. This proposal eventually became part of Title VI to the 1964 Civil Rights Act.[31] Republicans generally opposed the proposals, as did southern Democrats. Nothing came of the initial efforts until Kennedy was assassinated in November 1963, and President Lyndon Johnson put the entire weight of the Administration behind the proposals. The growing civil rights drive in the South led by Martin Luther King, Jr., the brutal suppression of the protests in Birmingham in April 1963, and King's famous *I Have a Dream* speech in August 1963 inspired growing political support for the civil rights law. It finally passed in June 1964, adding the bedrock provisions of our current law to fight discrimination—Title I (prohibiting discrimination in places of public accommodation), Title VI (forbidding discrimination in all federally funded programs), and Title

29. P. 31.
30. P. 41.
31. Pp. 44–48.

VII (prohibiting employment discrimination by reason of race, color, national origin, or gender).[32]

In the meantime, Taylor moved to yet another civil rights position, this time as general counsel to the United States Commission on Civil Rights, an independent agency that investigated civil rights abuses, particularly in the South.[33] Taylor led an inquiry into the efforts of Mississippi state officials to restrict the voting rights of minority citizens. Despite a strong effort by the Johnson Administration to sidetrack the hearings (its excuse was that hearings would somehow impede prosecution of the killers of the civil rights workers—James Cheney, Andrew Goodman, and Michael Schwerner—who had been killed in Mississippi the previous year), the Commission held a series of hearings in January 1965.[34] Sheriffs, voter registrars, and black citizens who had been denied the vote testified to the sorry record of state authorities in restricting the right to vote. The combination of the Civil Rights Act, the Commission hearings, and the wide support for voting rights elsewhere in the country led to a significant increase in registration that year.

Taylor then became staff director of the Civil Rights Commission, continuing its work over the next three years of looking into and exposing the long-established (and quite obvious) legal restrictions on equal rights. Following the passage of the Voting Rights Act in 1964, every southern county became subject to the law, requiring changes in voting laws and the dispatch of federal examiners to ensure fair administration of the law. Taylor notes, "[i]t was also a period when public attention as never before was focused on civil rights."[35]

The Commission also issued a report on the extent of school desegregation under the freedom-of-choice plans that local school authorities had imposed to meet the *Brown II* implementation decision. Needless to say, the Commission found that freedom of choice did not have any significant effect on reducing the segregated pattern of southern schools.[36] The Commission's report was vindicated by the Supreme Court in its 1968 decision, *Green v. School Board of New Kent County*.[37] In *Green*, the Court found that the freedom-of-choice plan put in place by the school board failed to create a single school system.[38] After three years of the plan's operation, 85% of African-American children in the school

32. Pp. 47–53.
33. Pp. 57, 62.
34. Pp. 67–69.
35. P. 79.
36. Pp. 84–86.
37. Green v. County Sch. Bd., 391 U.S. 430, 441–42 (1968).
38. *Id.* at 441.

system still attended the Watkins School, which remained all-black.[39] The Court noted that the dual system was still in place, with the plan's only accomplishment being a burden on children and their parents—a burden that *Brown II* placed on the school board.[40] Effective change finally occurred only after the Supreme Court gave district courts the broadest power to establish effective desegregation plans in *Swann v. Charlotte-Mecklenburg Board of Education*,[41] and federal education agencies refused to continue financing any school that refused to follow an effective desegregation plan. Taylor points out that between 1970 and 1980 "black children made substantial achievement gains in reading and closed the existing gap with whites significantly."[42]

Of course, the gains of the 1970s and 1980s have not stayed with us, largely because of white flight and the large percentage of white students who attend private school.[43] In addition, a series of cases decided by the Burger and Rehnquist Courts limited the desegregation remedies available to a federal court.[44] The final decision in *Freeman v. Pitts* requires "good-faith compliance" with a previously imposed desegregation decree "over a reasonable period of time."[45] If those requirements are met, it creates a presumption that "the vestiges of past discrimination ha[ve] been eliminated to the extent practicable."[46] The Court now has before it an important case that addresses plans to deal with the continued problem of segregated schools.[47]

In her concurrence in the 2003 Michigan Law School case, Justice

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39. *Id.* at 441.

40. *Id.* at 441–42.

41. Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 18 (1971).

42. P. 86.

43. For comprehensive discussion of the problem of white flight, see for example CHARLES T. CLOTFELTER, AFTER *BROWN*: THE RISE AND RETREAT OF SCHOOL DESEGREGATION 81–91 (2004).

44. *See* Missouri v. Jenkins (*Jenkins III*), 515 U.S. 70, 97 (1995) (striking down an interdistrict remedy where there was only an intradistrict violation); Freeman v. Pitts, 503 U.S. 467, 494–95 (1992) (emphasizing that the Court's obligation extends only to remedy initial *de jure* segregation); Bd. of Educ. v. Dowell, 498 U.S. 237, 248 (1991) (requiring dissolution of desegregation decrees once school systems reached compliance); Pasadena Bd. of Educ. v. Spangler, 427 U.S. 424, 435 (1976) (determining that the District Court's order of readjustment of attendance areas on an annual basis was an inappropriate remedy that went beyond the court's authority).

45. *Freeman*, 503 U.S. at 498 (1992) (citing *Dowell*, 498 U.S. at 249–50).

46. *Id.* (quoting *Dowell*, 498 U.S. at 249–50). For a detailed discussion of *Missouri v. Jenkins*, see generally Patricia A. Brannan, Missouri v. Jenkins*: The Supreme Court Reconsiders School Desegregation in Kansas City, Criteria for Unitary Status, and Remedies Reaching Beyond School District Lines*, 39 HOW. L.J. 781 (1996). Patricia Brannan's firm represented the school district before the Supreme Court in this case, so her analysis is particularly insightful and well-informed. *Id.* at 781 n.*.

47. Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 426 F.3d 1162 (9th Cir. 2005), *cert. granted*, 126 S. Ct. 2351 (June 5, 2006) (No. 05-908).

Ginsburg points out that the pattern of desegregating public schools has not continued. She describes the situation as follows:

> As to public education, data for the years 2000-2001 show that 71.6% of African-American children and 76.3% of Hispanic children attended a school in which minorities made up a majority of the student body. And schools in predominantly minority communities lag far behind others measured by the educational resources available to them.[48]

Taylor continued to focus on civil rights violations for the Commission until 1968. During that time the Commission investigated not only housing discrimination but also the deplorable conditions that minorities faced in public housing developments in Chicago, Cleveland, San Francisco, and Rochester, New York. It also exposed discrimination in employment opportunities in the building industries.

After seven years in government service, Taylor looked for new horizons. He acknowledged the limited role that lawyers can make in correcting long-term injustices. "I had come to understand that lawyers like me could not create the climate that makes major change possible, we could only use our skills to maximize the benefits of a favorable environment."[49] He then spent a year at Yale teaching and writing a book based on his experiences, *Hanging Together: Equality in an Urban Nation*.[50] After that, Taylor decided that one way to push for further progress in the civil rights field was "to mount a real effort for administrative enforcement of civil rights laws."[51] He put together a proposal to the Ford Foundation to set up a separate organization to accomplish that goal. Catholic University Law School, led by Clinton Bamberger, agreed to sponsor that program and to house the new organization.

The Center for National Policy Review was set up in 1970 at Catholic University. It immediately investigated the regressive policies of the Federal National Mortgage Association (Fanny Mae).[52] Among the regressive policies exposed was that Fanny Mae would only consider a husband's income in deciding whether to guarantee a loan. Additionally, it would not make loans in low-income areas unless there were secure and permanent houses in the immediate areas as well. As a result of the

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48. Grutter v. Bollinger, 539 U.S. 306, 345 (2003) (Ginsburg, J. concurring) (internal citation omitted).

49. P. 97.

50. WILLIAM L. TAYLOR, HANGING TOGETHER: EQUALITY IN AN URBAN NATION (1971).

51. P. 102.

52. P. 105.

Center's report, Fanny Mae changed its regulations.[53] The Center also instigated a lawsuit against the Federal Home Loan Bank, which also refused to assist low-income people despite the requirements of the Emergency Home Finance Act of 1970. It also testified against other federal lending agencies that refused to adopt pro-civil-rights agendas or regulations. Reflecting on these events, Taylor acknowledges the difficulty of ascribing civil rights successes to any single factor, but notes the lasting impact of the Center's efforts: "I do think that significant change has taken place . . . . [A]ll of this has resulted in easier access to credit for middle-class people of color and in the revival of some neighborhoods."[54]

The Center also joined the Leadership Conference on Civil Rights (LCCR), an umbrella organization that combined many active civil rights organizations engaging in political agitation. Among those in the LCCR were significant organizations such as the Urban League and the NAACP. In addition to pursuing litigation, the LCCR pressed for further legislation that would benefit its constituents. Among the actions taken by the LCCR was an attack on discriminatory general revenue sharing, aimed at ensuring that states receiving federal funds would not use the money to perpetuate discriminatory programs. LCCR filed suit against the City of Chicago to block any use of revenue-sharing funds to the police unless and until it eliminated job discrimination in the department.[55]

As Taylor focused on housing issues, the problem of school desegregation continued to fester. The Supreme Court held in a series of cases that federal courts could order broad remedies against school boards that had discriminated in the past. In *Swann v. Charlotte-Mecklenburg Board of Education*, the Supreme Court upheld a federal court's use of quotas to achieve racial balance within a school district and further supported a mandatory bussing plan to meet the quotas.[56] However, judicial control of school board plans was only constitutional when the district itself engaged in racially discriminatory activity—an unfortunately common example of which was the setting of school boundary lines according to racially segregated housing patterns. In 1973, the Supreme Court made further strides in the arena of school desegregation with its decision in *Keyes v. School District Number 1*.[57] *Keyes* marked the first time the Supreme Court upheld a court-ordered desegregation plan in a

53. P. 105–06.

54. P. 108.

55. P. 112.

56. Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 25, 30 (1971).

57. *See* Keyes v. Sch. Dist. No. 1, Denver, Co. 413 U.S. 189, 201–02 (1973) (recognizing that the practice of constructing a school, knowing it would lead to a segregated school, amounts to creating a dual school system).

northern city.[58] In doing so, the court distinguished between de jure segregation that resulted from deliberate state laws and policies, and de facto segregation that resulted not from laws, but from the aggregate choices of individuals.[59] The next significant hurdle involved the constitutionally allowable remedies when a central-city school district engaged in discrimination, but the surrounding suburban school districts did nothing wrong. Could a federal judge enlist the "innocent" suburban school district to remedy the unconstitutional acts of an inner-city school district? This problem arose in Detroit, in a case called *Milliken v. Bradley*.[60] The Supreme Court found the district court's multidistrict remedy improper because "without an interdistrict violation and interdistrict effect, there is no constitutional wrong calling for an interdistrict remedy."[61]

The *Milliken* decision greatly limited the remedies available for civil rights lawyers. As indicated in the recent Seattle school district case, the fact that so many white parents send their children to private schools greatly alters the racial composition of city school districts.[62] In Seattle, the total population of the city is 70% white and 30% black.[63] But the school population is the reverse—40% white and 60% black.[64] In order to arrange for greater diversity in the schools, some race-conscious remedies are permissible, as the Supreme Court finally held in *Grutter v. Bollinger*.[65] But the law in effect in the 1970s and 1980s greatly limited the power of federal judges to use such remedies.

As with many of the significant legal battles in the civil rights movement, Taylor became deeply involved. Taylor found that the solution to the problem of constitutional limits on court-ordered desegregation plans was to negotiate better remedies with school districts than the courts were likely to award. That is precisely what Taylor and the Leadership Conference sought to accomplish. Taylor describes negotiations in St. Louis when a resourceful federal judge, William L. Hungate, ordered the parties to try to work out an interdistrict solution that would reduce the racial disparity in the inner-city schools. Although legal remedies were

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58. For a detailed examination of school desegregation cases, including *Keyes*, see KEVIN BROWN, RACE, LAW AND EDUCATION IN THE POST-DESEGREGATION ERA 209 (2005).

59. *Keyes*, 413 U.S. at 200.

60. Milliken v. Bradley, 418 U.S. 717, 745 (1974).

61. *Id.*

62. *See* Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 426 F.3d 1162, 1221 (9th Cir. 2005) (dissenting opinion) (noting that parents in the affluent northern part of Seattle can afford to send their children to private school, resulting in "a decreased tax base and public support for District schools").

63. *Id.* at 1166 (majority opinion).

64. *Id*.

65. Grutter v. Bollinger, 539 U.S. 306, 343 (2003).

limited after *Milliken*, Taylor worked with the NAACP and a mediator appointed by the judge to work out an acceptable plan.[66] "The results" of these efforts, Taylor writes, "have been very positive, with black children, the great majority poor, finishing high school and going on to college at rates that are two and three times as great as those who remain in racially and socioeconomically isolated central city schools."[67]

The issue of voting rights came to the fore after the Supreme Court's decision in *City of Mobile v. Bolden*.[68] In that case, the Court gave a very narrow reading to minority voting rights under the Fifteenth Amendment, holding that there is no violation of the Amendment unless plaintiffs can show an intent to restrict their voting rights.[69] Thus, where the city of Mobile had established an at-large election system in 1911 for choosing its commissioners—which greatly limited the ability of minority voters to elect minority representatives—there was no showing of any racially discriminatory intent.[70] The case was limited by a later decision, *Rogers v. Lodge*, where the Court held that failure to correct a racially discriminatory voting scheme supplied the necessary intent.[71]

Rather than try to litigate the issue, Taylor thought the solution was to convince Congress to pass new legislation that would overrule the *City of Mobile* decision. The landmark Voting Rights Act was up for renewal, and the Leadership Conference tried to include new language that would eliminate the intent requirement. Taylor describes the difficult negotiations with Republican lawmakers such as Bob Dole, Henry Hyde, and Hamilton Fish who were amenable to this change.[72]

The next major civil rights fight Taylor covers involved the nomination of Robert Bork as a Supreme Court Justice to replace the moderate Lewis Powell, who resigned in 1987.[73] Following the resignation of Warren Burger in 1986, the elevation of Rehnquist to be Chief Justice, and the selection of Antonin Scalia to fill Rehnquist's seat, Taylor worried that many of the hard-fought precedents of the Warren Court would be threatened. When Bork was nominated by President Reagan in 1987, the entire civil rights–civil liberties movement rose up to block it. Bork was a recognized scholar, an able court of appeals judge—he had been rated "exceptionally well-qualified" by the American Bar Association before his

66. P. 127–29. Taylor details the St. Louis desegregation case in a later chapter. Pp. 170–93.
67. P. 129.
68. City of Mobile v. Bolden, 446 U.S. 55, 58 (1980).
69. *Id.* at 62.
70. *Id.* at 59–60, 71.
71. Rogers v. Lodge, 458 U.S. 613, 627 (1982).
72. Pp. 138–41.
73. Pp. 147–172.

nomination—and an idol of conservative lawyers throughout the country.[74] An elaborate campaign was put together by women's groups, who opposed his anti-abortion stance, as well as the members of the Leadership Conference and good government organizations such as People for the American Way. Taylor took on the assignment of going through all of Bork's writings to show how out of tune he was with prevailing legal thought. He also organized constitutional law professors from around the country to oppose the nomination. Bork behaved in an arrogant manner as a witness—he claimed that he wanted to become a Supreme Court Justice because "it would be an intellectual feast."[75] In the end, the Senate defeated his nomination by a vote of 58 to 42.[76]

Taylor writes about other legislative fights in the 1980s.[77] The Supreme Court had given a narrow reading to Title IX in *Grove City v. Bell*, holding that only the specific college program that received federal funds was subject to the anti-discriminatory provisions of the law.[78] Congress eventually passed the Civil Rights Restoration Act to reverse that decision.[79] In the notorious 1988–1989 Term, the Supreme Court handed down a series of decisions that undermined and gutted the 1964 Civil Rights Act.[80] Once again, civil rights groups came to Congress to correct

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74. P. 153.

75. JONATHON O'NEILL, ORIGINALISM IN AMERICAN LAW AND POLITICS: A CONSTITUTIONAL HISTORY 185 (2005).

76. P. 147.

77. Pp. 166–69.

78. Grove City v. Bell, 465 U.S. 555, 573–74 (1984), *superseded by statute*, Civil Rights Restoration Act of 1987 § 3(a), Pub. L. No. 100-259, 102 Stat. 28, 28–29 (1988) (codified at 20 U.S.C. § 1687 (2000)).

79. Pub. L. No. 100-259, § 3(a), 102 Stat. 28 (1987) (codified as amended at 20 U.S.C. § 1687 (2000)) (defining "program or activity" more broadly to include "all of the operations of . . . a college, university, or other postsecondary institution, or a public system of higher education . . . any part of which is extended Federal financial assistance").

80. *See* Lorance v. AT&T Techs., Inc., 490 U.S. 900, 911–12 (1989) (limiting challenges to facially neutral seniority practices under the 1964 Civil Rights Act), *superseded by statute*, Civil Rights Act of 1991 § 112, Pub. L. No. 102-166, 105 Stat. 1078 (codified at 42 U.S.C. § 2000e-5 (2000)), *as recognized in* Landgraf v. USI Film Prods., 511 U.S. 244, 251 (1994); Martin v. Wilks, 490 U.S. 755, 769 (1989) (permitting a reverse discrimination challenge of consent decrees entered under the 1964 Civil Rights Act), *superseded by statute*, Civil Rights Act of 1991 § 108, Pub. L. No. 102-166, 105 Stat. 1076 (codified at 42 U.S.C. § 2000e-2 (2000)), *as recognized in Landgraf*, 511 U.S. at 251; Patterson v. McLean Credit Union, 491 U.S. 164, 171 (1989) (holding that harassment based on race in an employment context did not warrant a § 1981 action because it did not occur prior to the contract formation), *superseded by statute*; Civil Rights Act of 1991 § 101, Pub. L. No. 102-166, 105 Stat. 1071 (codified at 42 U.S.C. § 1981 (2000)), *as recognized in Landgraf*, 511 U.S. at 251; Price Waterhouse v. Hopkins, 490 U.S. 228, 242 (1989) (concluding that an employer shall not be liable for taking gender into account if it can prove the same decision would have been reached even if gender were not considered), *superseded by statute*, Civil Rights Act of 1991 § 107, Pub. L. No. 102-166, 105 Stat. 1075 (codified at 42 U.S.C. § 2000e-2, -5 (2000)), *as recognized in Landgraf*, 511 U.S. at 251; Wards Cove

those decisions, and once again Taylor played a significant role in restoring the law to what Congress intended.

The last two adventures described in the book involve the Clarence Thomas nomination to the Supreme Court in 1991 to replace Thurgood Marshall and Taylor's efforts to save desegregation in the St. Louis schools.[81] The Thomas nomination split the civil rights coalition. Unlike the Bork situation, the NAACP delayed taking a position on the nomination—Thomas after all was African-American. Thomas portrayed himself as a Horatio Alger hero who rose from poverty in Pin Point, Georgia, to the highest levels of government. His sparse written record, unlike Bork's, provided minimal ammunition for his opponents.[82] The vote was close, but Thomas won conformation from the Senate.

Taylor's final major account deals with the desegregation of the St. Louis schools.[83] The school situation in St. Louis had improved since 1983. More inner-city black students went to suburban schools. The Supreme Court had cut back on the ability of federal courts to finance desegregation remedies in *Missouri v. Jenkins* (*Jenkins II*), dealing with schools in Kansas City, Missouri.[84] Based on that precedent, the State returned to federal court claiming that it had fulfilled all its obligations under the original agreement and should not be obliged to pay more.[85] Taylor led the effort to work out an amicable solution, requiring the State to finance an interdistrict program (involving both city and suburbs) and to provide additional money to improve the inner-city schools. However, the measure required that voters first approve a higher sales tax.[86] The business community put its full weight behind the solution, and the referendum passed.[87]

There were other below-the-radar fights that Taylor describes in his book. Title I of the 1965 Elementary and Secondary Education Act had provided federal funds for inner-city schools. The law came up for renewal in the 1990s. Along with Ted Kennedy and other supporters, Taylor worked with the Leadership Conference to insert new standards that states

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Packing Co. v. Atonio, 490 U.S. 642, 658 (1989) (increasing the plaintiff's burden in a disparate-impact claim under the 1964 Civil Rights Act), *superseded by statute*, Civil Rights Act of 1991 § 2, Pub. L. No. 102-166, 105 Stat. 1071 (codified at 42 U.S.C. § 1981 (2000)), *as recognized in* Smith v. City of Jackson, 544 U.S. 228, 240 (2005).

81. Taylor addresses these issues in successive chapters. Pp. 172–207.

82. P. 175.

83. Pp. 179–207.

84. Missouri v. Jenkins (*Jenkins II*), 495 U.S. 33, 44 (1990).

85. Missouri v. Jenkins (*Jenkins III*), 515 U.S. 70, 80 (1995).

86. P. 190.

87. P. 191.

must apply to insure that funds were properly allocated.[88] He also spent considerable time opposing the nomination of John Ashcroft as Attorney General in 2001. Taylor had first-hand knowledge of Ashcroft because of the latter's involvement in the St. Louis school desegregation battle.[89] Taylor was not successful in this last effort.

Looking back over Taylor's career, there was hardly any significant civil rights encounter that he did not participate in—*Brown v. Board of Education*, Little Rock Central High School, the legislative fight for the 1964 Civil Rights Act and the 1965 Voting Rights Act, the fight over school desegregation in inner city schools, the Bork and Thomas nominations to the Supreme Court, and the many legislative fights to overturn restrictive Supreme Court decisions.

Although he often acted as litigator, Taylor concludes that active political agitation is a more effective way to achieve equality. "I suspect," he notes, "that progress will come by different means in the future. We may rely less on the courts and more on community organization and action."[90] Courts do not lead revolutions—except for the brief period when Chief Justice Earl Warren led the Court. Without the approval of the political arms of government and the participation of significant activists who can help shape public opinion, it is virtually impossible to move the country in a new direction to correct the inequities of the past.

The issue of race will not go away. As noted above, the Supreme Court has before it this year the question of whether the Seattle school district can use race as a limited tie-breaker in deciding to what schools high school students should be assigned. Yet Taylor ends his memoirs on a note of optimism: "It seems to me," he concludes, "that many people underestimate their own capacity to effect change. . . . I know that there's a good fight to go to [and] . . . [l]acking any talent for retirement, I hope to stay in the fray as long as I can."[91] Race is still the great dividing line in American society. And few have endeavored to erase the effects of that line as often and as devotedly as William Taylor.

88. Pp. 195–203.
89. Pp. 215–18.
90. P. 228.
91. Pp. 228–29.