IDEOLOGY VS. REALITY: THE MYTH OF EQUAL OPPORTUNITY IN A COLOR BLIND SOCIETY

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“What Every Teacher and Judge Should Know About Reconstruction”

I. INTRODUCTION

The purpose of this discussion is to emphasize that the general assumptions of integration, equal opportunity, and racial neutrality in contemporary America are false and dichotomous assumptions, which prevent us from achieving the goal of true equality. While race is a difficult and painful subject to discuss in America, it is equally clear that without dialogue, we will not achieve the democratic values and principles we hold so dear and that drive our way of life.

The topic “What Every Teacher and Judge Should Know About Reconstruction,” provides an opportunity to open dialogue and to think critically about our values, ideals, and behaviors. The emphasis is placed on ideology as juxtaposed with reality. Our beliefs are manifested through our individual and collective public policies, laws, statutes, public sentiment, and actions.

The foci of this discussion will be that: race still matters in America; equal opportunity has not been achieved, even with the unprecedented achievements of the second half of the twentieth century; American society, past and present, is not a color blind society; the ideologies of White supremacy and White privilege continue to conspire

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and deny equal opportunities for African Americans; and the assumption of the achievement of equal opportunity has prevented America from solving its race conscious dilemma.

The phrase in the Declaration of Independence, written by Thomas Jefferson, that “We hold these truths to be self-evident that all men are created equal,”¹ should be irrefutable and constant. In this context, equality and humanity are attributed to all men who, “are endowed by their Creator with certain inalienable rights.” The ideology of “all men are created equal” as a constant and qualitative truth was not matched in reality by what the Founding Fathers or society in general, at that time, did or believed to be true. All too often in our society, the truth which we rhetorically espouse is sacrificed for what we believe to be true or what suits us in a given circumstance. Oftentimes, truth is based on our perceived reality; what we know, think, see, or how we interpret ideas or concepts in our daily lives or circumstances. The interpretations of concepts are fraught with or contaminated by our human frailties, and fall short of objective reality. Interpretations are colored by our perceptions, experiences, stereotypes, biases, and assumptions. The “truth” should be factual, consistent and reality based, not contradictory. The truth that we seek in a democratic America should be in conformity with the principles of equality, freedom, and social justice for all Americans.

The experiences of African Americans, past and present, in the United States, can best be described as ambivalent on the question of whether “all men are created equal,”² as an absolute truth, is believed by “all men.” The Declaration of Independence states that “all men are created equal,” and that equality is a God endowed truth. However, what is true in America has been predicated on the social attitudes of the times – the “social milieu,” rather than an unchanging or God endowed “truth.” What is true in a given circumstance or social context does not stand up to the truth as constant and unchanging reality. If what is true is fluid and changeable from one era to another, given public sentiment, then objectivity is compromised and we become victims of subjectivity and human frailty. Truth should not be fluid nor changeable with every new wind or doctrine. Every doctrine or philosophy needs a firm and consistent foundation. A democracy with an egalitarian philosophy should honor its ideals of equality and justice for all citizens at all times and should stand the test of time and not fluctuate.

¹ The Declaration of Independence para. 2 (U.S. 1776).
² Id.
The rhetoric of our democratic principles and the actions of people are often dichotomous. The sometimes neglected, misrepresented, and outright distorted historical facts masks the vivid reality that America has not lived up to its democratic ideals and has not supported simple justice. If the truth is not told, then all of us as citizens of this great nation are deceived. Our ability to understand and live up to the moral, ethical, social, political, economic, and educational values we hold so dear is compromised and prevents us from achieving the expressed democratic goal of equality.

The view of equal opportunity as a cornerstone of our democracy and the pillar of a just community are the values by which we attempt to live our lives everyday. However, our actions, laws, policies, and decisions do not always follow those principles. The nation’s values were set in the eighteenth century with the Declaration of Independence and the U.S. Constitution, but were never intended to include Africans in America.

The Fourteenth Amendment to the Constitution amended the exclusion of Africans in American society by making Africans (both enslaved and free) citizens of the United States. The unfortunate circumstance even today is that African Americans are still struggling with issues of social equality, integration, full citizenship, due process, the historical precedence of White supremacy and Black inferiority, and the varying interpretations and meanings of the Fourteenth Amendment.

Lady Justice is portrayed as being blind, with the scales of justice as equally balanced for everyone. In reality, however, those who create, enact, and administer justice are not blind. Justice John Harlan, in his dissenting opinion in *Plessy v. Ferguson*, based his minority opinion on the concept of a “color blind society.” Justice Harlan, probably aware that a color blind society did not exist, rationalized that it was a laudable and hoped for goal. While the law is presumed to be objective and in fact blind, and in the case of this discussion, “color blind,” those who create, enact, or adjudicate the law have subjective realities that govern their reasonings, interpretations and decisions. There are commonly held values, stereotypes, biases, personal experiences, misinformation, assumptions, and misinterpretations, which govern the way people think and act. There is evidence throughout history, that court cases and decisions rendered have been based on social attitude and subjectivity rather than objective criteria.

There are multiple views and perspectives on issues of race in

3. 163 U.S. 537 (1896).
America. The views and perspectives of persons of color may differ dramatically from the views and interpretations of White Americans. What has been taught in our schools on the Reconstruction Era has left much to be desired. The historical interpretations of this time period can be characterized as a blight on our governmental process and have been distorted and misinterpreted by scholars, teachers, lawyers, judges, and politicians. The so-called scholarly interpretations regarding this period have denigrated the role of African Americans and have marginalized the important contributions and promises of equality of this important era. What America must recognize is that Americans interpret ideas, concepts and realities differently based on differing experiences, what has been taught, or how we have been socialized. Unfortunately, subjectivity rather than objectivity determines how decisions are made and worldviews are interpreted.

Today, in the post-

Brown
era, some believe the problems of race and racism have been solved. There is a belief that because laws have been changed and equal access has been legally granted, segregation no longer exists in America, overt and blatant racism is no longer practiced, discrimination no longer occurs, and all Americans, Black and White, are on a level playing field. Those who hold these views are either naïve or uninformed.

Professor Kimberle Crenshaw, in “Race, Reform, and Retrenchment: Transformation and Legitimization in Anti-Discrimination Law,” discusses the difference between an expanded definition of equal opportunity (results oriented) and a restrictive view of equal opportunity which treats equal opportunity as a process with no view of whether the process yields a desired outcome. From the outset, because America had no definable goals or objectives for equal opportunity, the process of creating laws simply opened access, but did not create action steps to actualize any goals or to assess progress. The only program that attempted to set goals and to assess results was affirmative action, which has come under severe attack in recent years. While there are some problems with affirmative action in its administration and not in its concept, there is still a need for such a program. Additionally, affirmative action, equal opportunity, integration and diversity are strategies, which do not address the fundamental problem in America of White superiority and perceived Black

inferiority.

To understand racism and its deep-seated roots in American society, one must have a knowledge and understanding of history. George Santany once wrote, “Those who cannot remember the past are condemned to repeat it.” An understanding of the past is critical in interpreting the present, with the hope of resolving problems in the future. There is a legacy in America of anti-Black sentiment, White superiority and Black inferiority. There is a stigma of racism and a failure to learn from the past, which prevents the achievement of true equality. If we as a nation are going to live up to our values of freedom, equality, and social justice, then we must open our minds and our hearts to accept the truth of our convictions and be true to our values and ideals.

II. HISTORICAL ANTECEDENCE

In 1903, W.E.B. Du Bois published his now seminal book, The Souls of Black Folk. This publication is a must read for anyone interested in understanding the relationship of African Americans to America, past and present.

There are two well-publicized quotations from the Souls of Black Folk, which delineate the conditions and circumstances that impact African American existence in America. The first is the prophetic words which open Chapter Two, titled “Of the Dawn of Freedom,” in which Dr. Du Bois stated, “[t]he problem of the twentieth century is the problem of the color line – the relation of the darker to the lighter races of men in Asia and Africa, in America and the islands of the sea.” The second famous quote from Souls of Black Folk is found in the First Chapter, titled “Of Our Spiritual Strivings,” in which Dr. Du Bois stated:

[T]he Negro is a sort of seventh son, born with a veil, and gifted with second-sight in this American world, – a world which yields him no true self-consciousness, but only lets him see himself through the revelation of the other world. It is a peculiar sensation, this double-consciousness, this sense of always looking at one’s self through the eyes of others, of measuring one’s soul by the tape of a world that looks on in amused contempt and pity. One ever feels his two-ness, – an American, a Negro; two souls, two thoughts, two unreconciled strivings; two warring ideals in one dark body, whose dogged strength

6. Id.
alone keeps it from being torn asunder.\textsuperscript{7}

For African Americans of the past and the present, the burden of being Black in America has been the single most challenging phenomenon throughout their history in the United States. The prophetic words of Dr. Du Bois still ring true today as we enter the dawning of a new millennium, “The problem of the twenty-first century is still the problem of the color line.”\textsuperscript{8}

There is no doubt, and the record bears witness to the fact, that the second half of the twentieth century has witnessed unprecedented achievement in attempting to honor the legacy of the Fourteenth Amendment to the Constitution and the period of the First Reconstruction in America. The period of the First Reconstruction and the Civil War Amendments offered the first real attempt to include Africans (enslaved and free) in the body politic as free and equal citizens in our democratic form of government. The Declaration of Independence and the U.S. Constitution are the foundational documents of our democratic form of government. They espouse the values and virtues of equality and freedom for all men. However, the framers did not include Africans in their quest for freedom and independence from Great Britain in the eighteenth century. In fact, at the time the ideas and ideals were penned in the Declaration of Independence, the Founders argued for their freedom from the tyranny of Great Britain; while at the same time denying the same freedoms, enslaving some Africans, and denying human and civil rights to free Africans in America. Furthermore, in the last paragraph of the Declaration of Independence, the Founders blamed the “Christian king” for slavery, but gave no ownership for their own duplicity in enslaving Africans in America. The document states, “We hold these truths to be self-evident that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness.”\textsuperscript{9} The question to be raised is what “truths” should be self-evident? The truth is that God created all men as equals, but through civil authority (government) man has decided who should be categorized as men and then accordingly treated some men as equals. Those not considered as men are treated as unequal or unworthy of the status of manhood. Throughout the Declaration of Independence the writers refer

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\textsuperscript{7} Id. at 8-9. \\
\textsuperscript{8} JOHN HOPE FRANKLIN, THE COLOR LINE: LEGACY FOR THE TWENTY-FIRST CENTURY 1 (University of Missouri Press 1993). \\
\textsuperscript{9} THE DECLARATION OF INDEPENDENCE para. 2.
\end{flushleft}
to God and human and natural rights, but in the next instance deny social
equality to Africans in America. John Hope Franklin, in “Racial
Equality in America” states:

[I]t seems unfortunate that the Declaration of Independence, in its final
form, said nothing at all about the widespread practice of trading in
human flesh and holding human beings in perpetual bondage. . . . The
unwillingness of the Revolutionary leaders to regard human freedom
as having some palpable connection with their own fight for political
freedom stems from . . . the marginal consideration given to Negro
slavery by a people who thought of little else, publicly, but the political
slavery that threatened to engulf them.10

This is a critically important theme, which spans the landscape of
American history even to the present day. This anti-Black sentiment,
based on historical memory, stereotypes and blatant racism, continues to
plague our society and prevents us from honestly and openly dealing
with race in America today.

Those who have seriously, critically, and objectively attempted to
study history know that the U.S. Constitution was at best a compromised
document, and in reality race conscious. The Founding Fathers, in all
their rhetorical splendor and high mindedness, failed to live up to the
moral and ethical responsibility of equality. The preamble to the
Constitution states:

We the people of the United States, in order to form a more perfect
union, establish justice, insure domestic tranquility, provide for the
common defense, promote the general welfare, and secure the
blessings of liberty to ourselves and our posterity do ordain and
establish this Constitution for the United States of America.11

Thomas Jefferson is considered one of the major framers of the
Declaration of Independence and the Constitution, and was a
slaveholder. Jefferson insisted that he was strongly anti-slavery, but
continued to enslave Africans for economic reasons. The contradictions
in Jefferson’s rhetoric and actions are evident in his writings. It was
Jefferson’s view that:

Deep-rooted prejudice entertained by the whites; ten thousand
recollections by the blacks, of the injuries they have sustained; new
provocations; the real distinctions which nature has made; and many

10. JOHN HOPE FRANKLIN, RACIAL EQUALITY IN AMERICA 14-15 (The University of Chicago
other circumstances will divide us into parties and produce convulsions, which will probably never end but in the extermination of one or the other race.\textsuperscript{12}

Jefferson further wrote, “I tremble for my country when I reflect that God is just; that his justice cannot sleep forever.”\textsuperscript{13}

The view of Thomas Jefferson and many of his contemporaries was that Africans in America were inferior to Whites. This fact did not only relate to slaves but also to free Blacks. As a result, free Blacks were denied equality and were considered inferior to Whites. In essence, it was not just the stigma of slavery, but rather a disdain and disregard for Blacks in general as being unequal to Whites. The concept of White superiority and Black inferiority throughout America’s history was enforced through laws and customs designed to deny civil rights to all Africans in America. It was not just enslavement or the notion that slaves were inferior in the minds of whites in the eighteenth century, but rather that all Africans in America were inferior to Whites.

The rhetoric and ideology of the Declaration of Independence and the U.S. Constitution were not translated into reality or action for African Americans. The U.S. Constitution as part of its original language allowed for the importation of slaves to continue in America until 1808, and in fact, slavery continued until 1860.

The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.\textsuperscript{14}

Also, Article I, Section two, the infamous Three-fifths Clause counted slaves as less than full human beings.

The \textit{Dred Scott} decision of 1857\textsuperscript{15} legally sanctioned this anti-Black sentiment, which was the prevalent public sentiment of the time. Chief Justice Roger B. Taney clearly stated in the 1857 decision that Africans were not and could not be citizens, and that they were clearly not equals to Whites in America. While the actions, reactions, and underlying sentiments during this period were anti-Black, the highest court of the land clearly articulated this sentiment through Chief Justice Roger B.

\textsuperscript{12} Molefi Kete Asante, \textit{African American History: A Journey of Liberation} 151-52 (The Peoples Publishing Group, Inc. 2002).
\textsuperscript{13} Id. at 152.
\textsuperscript{14} U.S. Const. art. I, § 9, cl. 1.
\textsuperscript{15} Dred Scott v. Sandford, 60 U.S. 393 (1857).
Taney, sanctioning the attitude of White superiority. In the now infamous court decision, Chief Justice Taney raised the question:

Can a negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guaranteed by that instrument to the citizen?16

Taney further stated that:

The African race in the United States even when free, are everywhere a degraded class, and exercise no political influence. The privileges they are allowed to enjoy, are accorded to them as a matter of kindness and benevolence rather than right. . . . They are not looked upon as a citizen by the contracting parties who formed the Constitution. They were evidently not suppose to be included by the term citizens.17

Blacks were evidently not supposed to be included in the term “citizen.” These statements made by Chief Justice Taney publicly and legally stated the already established custom and principle of White supremacy and Black inferiority in which he proclaims that:

On the contrary, they [Blacks] were at that time [1787] considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them.18

The language of this decision clearly excluded African Americans as part of “we the people” in the U.S. Constitution and supported a race conscious public policy in America. The social attitude of the times advocated a race conscious rather than a race neutral or color blind society.

This anti-Black sentiment in America can be traced through public documents, articles, newspaper editorials, and speeches. Stephen Douglas and Abraham Lincoln, in the Lincoln-Douglas debates, stated their opposition to “social equality” of Africans in America. Examples of attitudes regarding the social status of Blacks include the assertion by Stephen Douglas in 1858:

16. Id. at 403.
17. PAUL FINKELMAN, DRED SCOTT V. SANFORD: A BRIEF HISTORY WITH DOCUMENTS 56 (Bedford Books 1997).
18. Dred Scott, 60 U.S. at 404-05.
I am opposed to negro equality. I repeat that this nation is a white people—a people composed of European descendants—a people that have established this government for themselves and their posterity, and I am in favor of preserving not only the purity of the blood, but the purity of the government from any mixture or amalgamation with inferior races.19

While Abraham Lincoln may have opposed slavery and in fact emancipated the slaves, he still held firmly to the rejection of social equality for Blacks:

I am not, nor have ever been in favor of bringing about in any way the social and political equality of the white and black races— that I am not nor ever have been in favor of making voters or jurors of negroes, nor of qualifying them to hold office, nor to intermarry with white people . . . and inasmuch as they cannot so live, while they do remain together, there must be the position of superior and inferior, and I as much as any man am in favor of having the superior position assigned to the white race.20

The Thirteenth, Fourteenth, and Fifteenth Amendments to the U.S. Constitution are clearly race conscious statutes, which granted freedom, citizenship and voting rights to African Americans. The Civil War Amendments, the Civil Rights Act of 1866 and 1875, and the First Reconstruction Era, were attempts at social engineering, which failed miserably, due primarily to the anti-Black sentiment and the rejection by White America of social equality with African Americans. The Compromise of 1877 ended the reconstruction agenda and led to the “Jim Crow,” “separate but equal” policies, and the Plessy v. Ferguson decision of 1896.

The Plessy v. Ferguson decision is important to this discussion in that it continued the race conscious attitude in its majority opinion, but also espoused the concept of a color blind society in its dissenting opinion. This latter opinion is important to the current debate of affirmative action, in that opponents used colorblindness as a rationale for ending affirmative action. Chief Justice Henry Billings Brown rendered the majority opinion and reinforced the ruling in the Dred Scott decision of racial separation and White superiority. Additionally, the decision in Plessy was in line with the social milieu of the times. The backlash of the First Reconstruction Era, and anti-black sentiment was

19. FINKELMAN, supra note 17, at 49.
further institutionalized and made a part of the public policy in America by the *Plessy* decision. The decision reinforced the public policy of “separate but equal.” There is nothing surprising in the majority opinion, which took race into consideration in rendering its decision. Chief Justice Brown asserted:

The object of the [Fourteenth Amendment] was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either.  

The ruling relied on racial distinction and color consciousness as a principle. The distinction between political versus social equality was articulated, as was the notion that the nature of things was the separation of the races:

When the government, therefore, has secured to each of its citizens equal rights before the law and equal opportunities for improvement and progress, it has accomplished the end for which it was organized and performed all of the functions respecting social advantages with which it is endowed. Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races were equal, one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them in the same plane. 

The *Plessy v. Ferguson* decision is important to the discussion of contemporary America, in that the dissenting opinion conveyed the concept of a “color blind” society. Justice Harlan’s famous quote:

Our Constitution is color blind and neither knows nor tolerates classes among citizens. With respect to civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved. It is, therefore, to be regretted that this high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that is competent for a State to regulate the enjoyment by citizens of their civil rights solely upon the basis of

22. *Id.* at 551-52.
A very telling statement in the majority opinion speaks to the sentiment or attitude of the social environment of the times, in which the affirming opinion continues the *Dred Scott* rationale of an express race conscious sentiment.

The very heart of the 1950s and 1960s civil rights initiatives and the concepts of integration, equal opportunity, and equity are premised on the concept of a color blind society. This idea of a color blind society attempted to negate more than two centuries of anti-Black sentiment, racial hatred, and the subordination of African Americans without recognizing that those atrocities occurred. In the minds of some, those atrocities still occur today in the land of the free and home of the brave. While laws have changed the legal access to opportunity, the anti-Black sentiment and the uneven interpretations and implementation of the law continues to leave the treatment of African Americans at the whim of changing public opinion of White America.

The First Reconstruction failed to achieve the hoped for inclusion of African Americans as full citizens. Someone once said, “History repeats itself every one hundred years.” The 1950s can be characterized as the Second Reconstruction, America’s second attempt at resolving its racial problems and living up to its democratic principles.

III. POST *BROWN* AND THE MYTH OF INTEGRATION, EQUAL OPPORTUNITY, AND COLOR BLIND SOCIETY

The contemporary strategies of integration and equal opportunity are rooted in the fallacious concept of a color blind society. While the Declaration of Independence and the U.S. Constitution suggests that “all men are created equal” and that race and color should have no impact on how individuals are treated, the reality is that race and color have always been major factors governing how America, past and present, treats African Americans. In an ideal society, race and color should not matter, but in truth, the history of America has been dominated and grounded in its inability to solve the racial dilemma.

The major Supreme Court decisions directly effecting African Americans (*Dred Scott*, *Plessy v. Ferguson*, *Brown*), have all been grounded in a race conscious foundation. The Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution, and indeed the original U.S. Constitution, were race conscious documents. The *Brown v.*

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23. Id. at 559.
The Topeka, Kansas, Board of Education decision was grounded in the Fourteenth Amendment to the Constitution and the presumption that laws can transcend how people feel in their hearts. The historical legal precedence and the actual customs and practices, which transcend rhetorical pronouncements and ideologies, govern how certain segments of our population are treated. While “all men are created equal,” “all men are not treated as equals” in America. This is the dichotomous nature of theory versus reality.

As we enter the dawning of a new millennium, the prophetic words of Dr. W.E.B. Du Bois in 1903, “the problem of the twentieth century is the problem of the color line,”24 still haunts us. Today, in contemporary America, there are some who believe that “the problem of the twenty-first century is still the problem of the color line.” America has had a long history of racism, discrimination, and anti-Black sentiment toward African Americans. This history is firmly rooted in the legacies of slavery, Jim Crowism, “separate but equal,” and segregation. The problem plaguing America today is that it has not dealt with the deep-seated and fundamental attitudes of White superiority and Black inferiority and the presumption of a race neutral and a color blind society.

The dominant ideologies in the Post-Brown era are integration, equality of opportunity, and now diversity. Each of these strategies assumes the possibility of a color blind and race neutral social environment. While the goals of equality, freedom, and social justice are laudable, the reality is that the strategies of integration, equal opportunity, and diversity have not changed the basic core of American democracy and the treatment of African Americans as second-class citizens. The basic flaw in American democracy is the reliance on a race neutral and color blind philosophy, which has never existed in America, past or present. Because America has not dealt with its true past, it is unable to resolve its current problems. Strategies such as integration, equal opportunity and diversity only provide temporary relief of the symptoms, but do not respond to the deep-seated problem of White superiority and Black inferiority which has been the dominant underlying cause of racism, inequality, and discrimination in America.

The importance of the 1954 Brown decision and the unprecedented achievements of the second half of the twentieth century cannot be overstated. The significance of the Brown decision can arguably be

considered one of the most important decisions in the history of the African American struggle for liberation, equality, and social justice. While the *Brown* decision of 1954 overturned the infamous *Plessy v. Ferguson* decision of 1896, and made integration the law of the land, integration or desegregation did not occur in the South until well into the 1960s.

Today, in contemporary America, the ideologies of integration, equal opportunity, affirmative action and diversity are the strategies espoused to ameliorate racism and form the basis of our thinking on race and equality. The atrocities of the past, the blatant racism and the anti-Black attitudes are, for the most part, “out of sight and out of mind” for many Americans today. For many, the historical memories and experiences do not include the stark realities of segregation and denial of social equality for African Americans. The expressions of racial hatred prior to the *Brown* decision and during the Civil Rights Movement are examples of the overt and direct denigration of a segment of our society who constitutionally and legally were citizens, but in reality were treated with disdain, contempt and injustice. Additionally, historical records and formal educational systems have excluded, misinterpreted or distorted the knowledge base necessary to understand the legacy of anti-Black sentiment and its concomitant ideological companion, racism.

This “here and now” attitude, displayed by some today, is what directs or misdirects thinking, actions and decisions about race. If one assumes, as many do, that race no longer matters and that true integration and equality of opportunity have been achieved in America, then there is no need for “special treatment” of African Americans. John Hope Franklin states:

> [T]oo many Americans equated equal protection with equal jeopardy. Thus, they reasoned, now that African Americans enjoyed equal protection of the laws, they needed no special protection of the laws. . . . The consequences of such a position were dire indeed, for the view was vigorously advanced that it was even improper to offer protection to those entering a period of transition leading to genuine equality.25

Those who hold this view believe that the problems of the past are not their responsibility nor should they be blamed for the past. There exists a belief that African Americans have received enough “special treatment.” A similar sentiment was expressed in the *Civil Rights Cases* of 1883, which nullified the provision of the 1875 Civil Rights Act. In

25. *Franklin, supra* note 8, at 43 (emphasis in the original).
the Civil Rights Cases, Supreme Court Justice Bradley posited that:

> When a man has emerged from slavery, and by the aid of beneficient legislation has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be a special favorite of the laws, and when his rights as a citizen, or a man, are to be protected in the ordinary modes by which other men’s rights are protected.\(^{26}\)

Today, the presumption that African Americans have achieved equality and equal opportunity forms the basis for eliminating affirmative action and other “special remedies” for African Americans. It is assumed that integration has been achieved and that all Americans are on a level playing field.

The basic premise of this discussion is that America has not achieved its espoused ideology of equality. Even with the advances during the second half of the twentieth century, we are still not a color blind society, integration has not been achieved, and the “dream” of Dr. King has not been realized. Equal opportunity and race neutral concepts have not been achieved because many refuse to recognize the past, and assume that simply declaring equality, integration and a color blind society will magically make it happen.

The strategy of integration forms the basis of our contemporary view of race relations in America. Many Americans assume that integration has been achieved and that African Americans have been assimilated into the mainstream of American life. The problem with a term such as integration is that there is no consensus on its definition. There are varying definitions of integration that point out the complexities of determining if integration has occurred in American society. The old fear of social integration and interracial marriage is one form of integration. The concept of amalgamation—the blending of different races, in the case of Blacks with Whites—is one aspect of integration. This has been one of the taboos in our society and is still looked upon with a jaundiced eye. White supremacist groups such as the KKK and others have condemned this type of integration as “mongrelization.” It is interesting to point out that interracial marriages were prohibited in some states until as late as 1967 (well after the 1954 Brown decision), when the Supreme Court ruled in Loving v. Virginia\(^{27}\) that states could no longer prohibit interracial marriages.

Another problem is the confusion of the terms integration and

\(^{26}\) The Civil Rights Cases, 109 U.S. 3, 25 (1883).

\(^{27}\) 388 U.S. 1 (1967).
desegregation. At best, America is a desegregated society. Dr. Martin Luther King, Jr., in his concept of the “beloved community” defines integration as the creation of communal love for our fellow man. According to Dr. King, desegregation:

[I]s eliminative and negative for it simply removes . . . legal and social prohibitions. Integration is creative, and is therefore more profound and far reaching . . . Integration is the positive acceptance of desegregation and the welcomed participation of Negroes into the total range of human activities. Integration is genuine intergroup, interpersonal doing . . . We do not have to look very far to see the pernicious effects of a desegregated society that is not integrated. It leads to physical proximity without spiritual affinity . . . elbows are together and hearts are apart . . . Integration . . . means bringing together hearts and minds on the basis of human bonds much more profound than feelings of racial kinship.28

Clearly, desegregation is not integration. The status of integration today in America is ambivalent. Like most things involving race, integration is complex and ambiguous. Because there were no goals, and because there are multiple meanings, it is impossible to measure its results. The relationships between races today is not what it was prior to 1954, and clearly not what it ought to be today, but there have been some positive gains over the past forty-eight years.

One of the problems in our society is the rush to judgment. We declare that we are an integrated society, the law tells us we are integrated, and we accept that blessing without qualitatively or quantitatively analyzing the situation to determine if we have, in fact, achieved an integrated or a desegregated society. If we were to pause and look at our school systems, our neighborhoods, our churches, our social clubs and social activities, we would see that America is desegregated at best, and probably more segregated than we would like to admit. “In American Apartheid: Segregation and the Making of the Underclass,”29 Massey and Denton state:

Most Americans vaguely realize that urban America is still a residentially segregated society, but few appreciate the depth of black segregation or the degree to which it is maintained by ongoing arrangements and contemporary individual actions. They view

segregation as an unfortunate holdover from a racist past, one that is fading progressively over time.\textsuperscript{30}

Segregation is still a major factor in our society. Why we remain segregated has as much to do with perception and attitude as with legal policies and public sentiments:

For the past twenty years, this fundamental fact has been swept under the rug by policymakers, scholars, and theorists of the urban underclass. Segregation is the missing link in prior attempts to understand the plight of the urban poor. As long as blacks continue to be segregated in American cities, the United States cannot be called a race-blind society.\textsuperscript{31}

America is still not an integrated society and has not succeeded in achieving integration as directed by the \textit{Brown} decision of 1954. While \textit{de jure} segregation has been achieved, \textit{de facto} segregation still exists in America.

The concept of equal opportunity, like integration, is equally troubling and difficult to grasp. There were no goals or definable outcomes. There were no agreed upon mission, goals, objectives, strategies, timelines or desired outcomes. Like all other concepts, there are platitudes and grand pronouncements but little attention paid to developing a program to make the “dream” become a reality.

There are conflicting views on equal opportunity, and the strategies needed to move the agenda forward. There are some who believe that equal opportunity has already been achieved and therefore, there is no further need for special treatment or special programs. There are others in our society who argue that true equality has not been achieved and still needs to be addressed. Professor Kimberle Williams Crenshaw refers to two rhetorical visions of equal opportunity as the restrictive versus the expansive interpretation of equal opportunity. The restrictive view:

\textit{[T]reats equality as a process, downplaying the significance of actual outcomes. The primary objective of antidiscrimination law, according to this vision, is to prevent future wrongdoing rather than to redress present manifestations of past injustice. “Wrongdoing,” moreover, is seen primarily as isolated actions against individuals rather than as a social policy against an entire group. Nor does the restrictive view contemplate the courts’ playing a role in redressing harms from}

\textsuperscript{30} Id.
\textsuperscript{31} Id. at 3.
America’s racist past as opposed to merely policing society to eliminate a narrow set of proscribed discrimination practices. Moreover, even when injustice is found, efforts to redress it must be balanced against and limited by competing interests of white workers—even when those interests were actually created by the subordination of blacks. The innocence of whites weighs more heavily than do the past wrongs committed upon blacks and the benefits that whites derived from those wrongs. In sum, the restrictive view seeks to proscribe only certain kinds of subordinating acts, and then only when other interests are not overly burdened.32

The expansive interpretation of equal opportunity:

[S]tresses equality as a result, and it looks to real consequences of African Americans. It interprets the objective of antidiscrimination law as the eradication of the substantive conditions of black subordination, and it attempts to enlist the institutional power of the courts to further the national goal of eradicating the effects of racial oppression.33

These varying interpretations make it difficult to accurately define or to determine if we have succeeded in realizing the goal of equal opportunity. The worldview of the interpreter determines the degree to which the concept or ideal has been achieved. From the perspective of African Americans, equal opportunity should translate into equal outcomes. The desired outcome is the elimination of discrimination based on past discrimination, and the desire to be treated equally. While the goal of racial equality is a laudable goal, it will not be achieved simply by changing laws. Hearts and minds must begin to change.

Race and racism have played a significant role in the underdevelopment of America. America is race conscious and not a race neutral society. Failure to understand the historical underpinning, causes misinterpretation of current circumstances that may lead to false assumptions. Supreme Court Justice Blackmun in his opinion in the Bakke decision in 1976 stated, “In order to get beyond racism, we must first take account of race. There is no other way... In order to treat persons, equally, we must treat them differently.”34 While there has been a decline in blatant racism, there is a continuing subtle, and to some extent unconscious, biased and anti-Black sentiment that persists with grave consequence for interpretation of intragroup relations.

32. Crenshaw, supra note 4, at 105.
33. Id.
In America today, a large segment of society assumes that the “dream” which Dr. Martin Luther King, Jr. envisioned and the ideology of equality have been achieved. This assumption ignores the stark reality that racism, discrimination, color consciousness, and inequality still exists and continues to divide this nation.

The public sentiment that engrossed our society during the civil rights and equal opportunity eras has been replaced by a more cynical neoconservative view that assumes that integration, equal opportunity and a level playing field have been achieved for African Americans. From this, there is no further need for “special treatment” or for affirmative action. The current movement to eliminate affirmative action initiatives in California, Florida, and the state of Washington, and the court decisions in Maryland, Texas, Michigan, Georgia, are examples of the changing moods, and the presumption of equality. The sad truth, however, is that the color line is still prevalent in America, segregation continues to be a way of life, and race still matters in America. Cornel West, in “Race Matters”, states:

To engage in a serious discussion of race in America, we must begin not with the problems of black people, but with the flaws of American society--flaws rooted in historic inequalities and longstanding cultural stereotypes. How we set up the terms for discussing racial issues shapes our perception and response to these issues. As long as black people are viewed as a “them,” the burden falls on blacks to do all the “cultural” and “moral” work necessary for healthy race relations. The implication is that only certain Americans can define what it means to be American--and the rest must simply “fit in.”

Fitting in, or assimilation, is problematic in America in that African Americans cannot simply fit in due to the visible color of their skin. The problem of color and race still dominates the psyche of White America.

The neoconservative view of the civil rights movement, and the policies and programs launched as part of the “Great Society” programs of Lyndon Johnson, is that equal opportunity and a color blind society have accomplished the goals of eradicating racism, segregation and discrimination. In contemporary America, the color line and its insidiousness have been blurred into nonexistence, creating the imagined and hoped for color neutral society. The rationale to ending affirmative action, and other programs to benefit African Americans and society as a whole, are not overt and blatant expressions of anti-Black sentiment and White supremacy. However, the impact of these actions are devastating

35. CORNEL WEST, RACE MATTERS 3 (Beacon Press 1993).
to the pursuit of equality, full citizenship and social justice, and mirror the attitudes which ended the First Reconstruction.

The noted historian John Hope Franklin, in “The Color Line: Legacy for the Twenty-First Century,” states:

I venture to state categorically that the problem of the twenty-first century will be the problem of the color line. This conclusion arises from the fact that by any standard of measurement or evaluation the problem has not been solved in the twentieth century, and this becomes a part of the legacy and burden of the next century.36

There is a general attitude in America, founded on lack of knowledge and rooted in assumptions and racism, that laws and policies have opened access and opportunity, that barriers have been removed, and that the only reason Blacks are not achieving is due to their own lack of motivation and initiative.

Dr. Franklin points out that the general public policy of equality of opportunity promoted a favorable sense of racial justice and equality climate in the mid to late 1960s. This came about as a result of the civil rights movement, the visual depiction of man’s inequality to man displayed on the expanded medium of television, and the sympathetic attitude display following the assassination of Martin Luther King, Jr. The concept of equal opportunity became so prominent, and the social attitude for some was so positive, that America began to think that the racial problems had been solved without attention to detail. Dr. Franklin said:

Indeed, some argued, the surest way to become a color blind society was to assume that we were already in one. Unfortunately, the litigation, legislation, and executive implementation, however effective some of it was, did not wipe away three centuries of slavery, degradation, segregation, and discrimination. Nothing that had happened in the past forty or fifty years had created a society in which the factor of color was not a major consideration in virtually everything Americans thought, said, or did. The decision in Brown waved no magic wand, although many of its opponents as well as its supporters believed it to be the supreme law of the land which must be obeyed.37

This concept of a color blind society further reasoned that full citizenship and due process for all Americans had been achieved and

36. FRANKLIN, supra note 8, at 5.
37. Id. at 42.
there was no need for special programs or special protection of the law. In fact, the Equal Protection Clause was now being used to suggest that the special programs violated the due process of White Americans. Dr. Franklin stated:

What these public policies and actions did do among other things, was to persuade untold numbers of Americans that it was somehow inappropriate for them to crusade for race equality that presumably had been achieved in the newly recognized color blind society. . . . But too many Americans equated equal protection with equal jeopardy. Thus, they reasoned, now that African Americans enjoyed equal protection of the laws, they need no special protection of the laws. . . . The consequences of such a position were dire indeed, for the view as vigorously advanced that it was even improper to offer protection to those entering a period of transition leading to genuine equality. The reasoning behind the opposition to any specific programs . . . was that such measures were unnecessary . . . not only was implementation unnecessary, it was undesirable because it conferred special favors on one group, thus discriminating against other groups.38

IV. CONCLUSION

As we enter the Twenty-first Century, the assumption that America is a color blind society is an oxymoron. The social construction of American society from its inception to the present day is predicated on a race conscious reality. In the Eighteenth Century, the Declaration of Independence and the U.S. Constitution, while espousing the concepts of equality and colorblindness, in reality practiced color conscious behavior. Given the obvious history of America’s past, it is evident that race and color have played a dominant role in determining how some in our society are treated. The historical record is clear both in laws and customs (de jure and de facto) that America has functioned in reality as a color conscious society and has placed Whites in dominant roles, and placed underrepresented groups, specifically African Americans, in subordinate roles.

Given the reality that contemporary strategies such as integration, equal opportunity, and diversity are built on false and dichotomous assumptions; they are inadequate in solving the racial dilemma facing this nation. A critical assessment of where we are today with respect to integration, desegregation and equal opportunity would show that America has not achieved its professed goals of equality. Some would

38. Id. at 43-44 (emphasis in the original).
argue that we have not reached our goals, but we are still striving for the ideal. The notion of gradualism, the slow and steady progress toward a goal, suggests that the progress made during the second half of the twentieth century is evidence that we are moving closer to solving the racial divide.

The questions which need to be answered now and in the future are: how long do African Americans have to wait for freedom and equality; is White America truly interested in social equality and social integration (colorblindness); and will America live up to its pronounced values? African Americans have been waiting for their freedom since 1619 when the first slaves landed at Jamestown, Virginia. During the Reconstruction Era and for a short period that ended with the Hayes Tilden Compromise of 1877, African Americans enjoyed some semblance of freedom and equality. This was quickly dashed with the Plessy v. Ferguson decision of 1896. The second hope for freedom and equality came with the Brown decision of 1954 and integration. Still today, there are legal and socio-political debates over how to treat African Americans. The question of social integration and social intimacy is still a problem as we look at our neighborhoods, schools, and social engagements/social clubs. While class is a determinant in some cases, race still plays a major role in the continued separation by race.

The neoconservative assertions that equal opportunity has been achieved through the civil rights movement and that a level playing field exists for all Americans, is an illusion borne in hope and has no basis in reality. America is at best a desegregated society. The laws (de jure) provide open access, but the custom or practice (de facto) does not match the rhetoric. The degree of social integration within society can be viewed through our churches, schools, social clubs, and neighborhoods. Cornel West states in “Race Matters,” that “today, eighty-six percent of white suburban Americans live in neighborhoods that are less than 1 percent black.”39 Sunday morning between 9:00 a.m. and 2:00 p.m. is considered the most segregated time in America. The population in our urban schools versus suburban schools shows patterns of segregation or resegregation. Racial prejudice, paranoia, and hysteria has caused “white flight” to the suburbs to avoid living among the poor and mostly Black and Hispanic communities. The neoconservatives and the “silent majority” ignore these facts and turn the truth in folly with no validity. The lack of consistency in defining integration, equal opportunity and equality, and the assumption of racial neutrality or

colorblindness, causes us not to deal with the root of the problem. If one would imagine a society where true integration and equality had been achieved and then look at the present condition or circumstances in society; then one would clearly see the gulf between the idea of integration and the reality of continued segregation, racism and injustice. According to Cornel West, “whites have often failed to acknowledge the widespread mistreatment of black people.

In “By the Color of Our Skin,” Steinhorn and Diggs-Brown raise the question, “What is racial Integration.” Their response is:

It is about the realm of life governed by behavior and choice, not by statutes and institutions. It should not be confused with desegregation, which means the elimination of discriminatory laws and barriers to full participation in American life. Although desegregation is a necessary pre-condition for integration, it is entirely possible to desegregate without integrating—for blacks and whites to attend the same schools without ever learning much about each other or becoming friends, or for blacks and whites to work for the same employer without mixing much on or off the job. Desegregation may unlock doors, but integration is suppose to open minds.

The sad reality in America is that if integration is going to occur, it must be done intentionally by social engineering. In describing the successes of integration, in Shaker Heights, Ohio, Steinhorn and Diggs-Brown state:

Integration in Shaker Heights did not just come about. It is the result of a conscious and intentional policy to integrate—a policy that costs money, provides incentives, and asks some to sacrifice a little personal choice for the greater good of the community.

Most Americans do not want to be viewed as racist or anti-Black. However, many “are not much closer to living together, learning together, relaxing together, praying together, and playing together than they were a generation ago.” The racial dynamics in America today are focused on a rhetorical integration that lack truth, objectivity and moral fiber. A close look at how we interact and behave reveals that “most white Americans do not want real integration, that they do not want blacks living in their neighborhoods or going to school with their

40. Id.
42. Id. at 218.
43. Id. at 16.
Lack of honesty and fear of being branded as racist has caused America to create symbols and images that support a mythical ideology that is not supported in fact. America is well known for its symbols and myths to perpetuate an ideal, which has not been attained. America has moved from a racial horror story to a fictional racial comity, which assumes equality, freedom and social justice. In creating this fictional illusion, society relieves itself of the burden of race, and assumes that integration has been achieved:

Unless there is a profound and remarkable transformation in this country, however, unless the peculiar nature of race relations undergoes fundamental change, let us not have any illusions that the vast majority of Americans will ever become truly color blind. The sooner we acknowledge the permanence of the color line . . . the sooner we will strip away the fictional integration.45

This is the environment and social context in which we live. Assumptions that are not reality based cause us to make decisions that are not reality based. If America is truly interested in equality, there must be true dialogue. At present, we are a long way from a color blind society and even further from equality, fair play and the hoped for vision of integration and equal opportunity.

44. Id. at 198.
45. Id. at 16.