

Cambridge University Press

0521845645 - Jim Crow Moves North: The Battle over Northern School Segregation, 1865-1954

Davison M. Douglas

Excerpt

[More information](#)

1

Introduction

Power concedes nothing without a demand. It never did and it never will.

– Frederick Douglass, 1857¹

For most of our history, African Americans have viewed education as essential to their quest for equality. Although many blacks have expressed frustration at the inability of education to move them into the political and economic mainstream, faith in the potential of education has remained strong. As historian Kevin Gaines has noted, “African Americans have, with an almost religious fervor, regarded education as the key to liberation.”²

Indeed, education has been linked to notions of equality and uplift by both blacks and whites for almost two centuries. Horace Eaton, the first state superintendent of education in Vermont, commented during the antebellum era: “Let every child in the land enjoy the advantages of a competent education at his outset in life – and it will do more to secure a general equality of condition than any guarantee of equal rights and privileges which constitution or laws can give.” Ohio Governor Thomas Corwin claimed in 1843 that “by educating the poor children . . . we place them, to some extent, at least, upon a footing of equality with the fortunate inheritors of rich estates. It is of all agencies yet discovered the most efficient in producing that perfect and just equality among men which brings harmony into the social system and gives permanency to free government.” A Massachusetts legislative committee stated in 1855: “One of the great merits of our system of public instruction is the fusion of all classes which it produces. From a childhood which shares the same bench and sports there can hardly arise a manhood of aristocratic prejudice or separate castes and classes.

¹ Douglass, “The Significance of Emancipation in the West Indies: An Address Delivered in Canandaigua, New York, on 3 August 1857,” in Blassingame, 3 *The Frederick Douglass Papers*, p. 204.

² Gaines, *Uplifting the Race*, p. 1.

Cambridge University Press

0521845645 - Jim Crow Moves North: The Battle over Northern School Segregation, 1865-1954

Davison M. Douglas

Excerpt

[More information](#)

Jim Crow Moves North

Our common-school system . . . promotes . . . the habits of republican equality.”³

Almost a century later, writing in 1944, Gunnar Myrdal identified education as central to the American ethos: “Education has always been the great hope for both individual and society. In the American Creed it has been the main ground upon which ‘equality of opportunity for the individual’ and ‘free outlet for ability’ could be based.” When the National Association for the Advancement of Colored People (NAACP) began its assault on segregation in earnest during the 1930s, it focused in significant measure on schools, in part because of the perceived importance of education to the quest for racial equality. President Lyndon Johnson declared during the 1960s that proper education could prevent poverty and backed up that claim with a dramatic increase in federal funding for public schools. In recent years, many scholars of education have disputed this optimistic assessment of education, arguing that schools have done less than promised for America’s poor and racial minorities, but the embrace of education as fundamental to equality and uplift remains deep within the American psyche.⁴

Yet education has not come easily for African Americans in much of our nation’s history. During the antebellum era, many southern states prohibited the education of free blacks and made it a crime to teach a slave to read and write. Although southern states established public schools for blacks during Reconstruction, those schools would remain separate and grossly unequal until the second half of the twentieth century.

The story of black education in the North is far more complicated. During the antebellum era, northern school authorities frequently excluded black children from the newly established common schools. Those black children who did attend school before the Civil War tended to do so on a separate and unequal basis. After the war, blacks gained access to public schools in those parts of the North where they had been excluded, but were frequently assigned to racially separate and inferior schools.

Confronted with both exclusion from public schools and then relegation to racially separate schools, northern blacks fought back,

³ For the Eaton quote, see Perkinson, *The Imperfect Panacea*, p. 12; for the Corwin quote, see B. W. Arnett, “The Black Laws!” p. 13 (1886), in Daniel A. P. Murray Collection, Ohio Historical Society; for the Massachusetts committee quote, see “Equal School Rights,” *Frederick Douglass’ Paper*, Apr. 13, 1855.

⁴ For Myrdal quote, see Myrdal, *An American Dilemma*, p. 882; for discussion of Johnson, see Tyack and Cuban, *Tinkering Toward Utopia*, p. 27; for recent critiques of education, see, e.g., Bowles and Gintis, *Schooling in Capitalist America*; Katznelson and Weir, *Schooling for All*; Feinberg, *Reason and Rhetoric*.

Cambridge University Press

0521845645 - Jim Crow Moves North: The Battle over Northern School Segregation, 1865-1954

Davison M. Douglas

Excerpt

[More information](#)

Introduction

3

insisting on their right to attend school on a nondiscriminatory basis. By 1870, those northern states that had excluded blacks from public schools had reversed course. Moreover, during the quarter century following the end of the Civil War, most northern states enacted legislation that prohibited racial segregation in public education. Most northern courts, when called upon to enforce this newly enacted antisegregation legislation, did so, ordering the admission of black children into white schools.

Notwithstanding a legal regime clearly aligned against the continuation of racial segregation in public education, school segregation persisted in some northern communities in open defiance of law during the late nineteenth century. Moreover, with the migration of hundreds of thousands of southern blacks into northern communities during the first half of the twentieth century, northern school segregation dramatically increased. Indeed, by 1940, northern school segregation was more extensive than it had been at any time since Reconstruction.

Northern school districts segregated black and white schoolchildren through a variety of devices. Some northern school segregation, later denominated “de facto” segregation, was due to residential segregation. Indeed, as northern ghettos grew in size over the course of the twentieth century, most urban school segregation could be attributed to residential segregation.

But much northern school segregation during the late nineteenth and early twentieth centuries was far more deliberate, in clear violation of state law prohibiting racial separation. School administrators in dozens of northern school districts assigned black children to separate “colored schools” irrespective of geographic location in a manner typical of southern states. Other school administrators assigned black and white children to separate classrooms within the same school building or placed black children in an annex adjacent to the main school building reserved for white children. Some fenced off racially separate playgrounds and flew separate American flags. In many communities, racially gerrymandered school district lines or racially conscious transfer policies ensured the racial homogeneity of northern schools.

The extent of this deliberate, or “de jure,” school segregation in northern states has been misunderstood by many government officials, courts, and scholars who have assumed that explicit school segregation in this country was essentially a southern phenomenon and that racial isolation in northern schools has largely been a function of residential segregation. In 1953, attorneys representing the defendant school boards in the *Brown v. Board of Education* litigation before the United States Supreme Court conducted an extensive survey of education officials throughout the United States, seeking to establish which states had operated racially segregated schools at *any* point in their history.

Cambridge University Press

0521845645 - Jim Crow Moves North: The Battle over Northern School Segregation, 1865-1954

Davison M. Douglas

Excerpt

[More information](#)

4

Jim Crow Moves North

Most northern states that had in fact engaged in school segregation at some point so acknowledged. But officials in several northern states inexplicably denied that there had ever been any school segregation in their state.

Connecticut denied any history of school segregation despite racially explicit school assignments in Hartford until the late 1860s. Iowa ignored an 1858 statute that permitted school segregation throughout the state and the entrenchment of school segregation in several communities such as Keokuk and Dubuque until the mid-1870s. Massachusetts denied a history of school segregation despite explicit segregation in the Boston schools until the state legislature ended the practice in 1855. New Jersey falsely reported that “[a]t no time has segregation by race been established by law in the public schools of New Jersey,” ignoring state legislation in 1844 and 1850 that expressly granted local communities the right to establish segregated schools, a right that many local communities exercised and would continue to exercise until the early 1950s in violation of an 1881 statute that forbade such segregation.⁵

Since 1954, other northern school officials have continued to maintain the fiction that they never operated segregated schools. In 1959, the Dayton, Ohio, school superintendent wrote that “to the best of my knowledge Dayton has never maintained legally segregated schools,” even though his city maintained explicitly and notoriously segregated schools from the 1920s until the early 1950s in open disregard of a 1926 decision of the Ohio Supreme Court ordering an end to school segregation in that city. During the 1970s and early 1980s, the Ohio State Board of Education denied knowledge of school segregation in Ohio schools at any point during the twentieth century, even though its predecessor State Department of Education had, until 1955, required local school districts to submit regular reports setting forth the number of children attending “separate schools for colored children.”⁶ Explicit, government-directed school segregation persisted in many Ohio communities until after the 1954 *Brown* decision.

Some courts have also misconstrued the history of northern school segregation. In 1965, the New Jersey Supreme Court made the extraordinary claim that New Jersey’s “policy against racial discrimination and segregation in the public schools has been long standing and vigorous” since the enactment of the 1881 statute that prohibited school segregation, notwithstanding the fact that New Jersey had a long history of explicit racial separation in many of its public schools,

⁵ Reams and Wilson, *Segregation and the Fourteenth Amendment*, pp. 60, 177, 277, 398–9.

⁶ For the quote from the Dayton school superintendent, see Watras, *Politics, Race, and Schools*, p. 89; for the State Department of Education requirement, see *Penick v. Columbus Board of Education*, 663 F.2d 24, 27–8 (6th Cir. 1981).

Cambridge University Press

0521845645 - Jim Crow Moves North: The Battle over Northern School Segregation, 1865-1954

Davison M. Douglas

Excerpt

[More information](#)

Introduction

5

particularly in the state's southern counties, until the middle of the twentieth century.⁷

Distinguished scholars have also misperceived the extent of northern school segregation. In his magisterial 1944 study of race in America, *An American Dilemma*, Gunnar Myrdal, whose consideration of black education focused primarily on the South, erroneously concluded that in northern states, "Negroes have practically the entire educational system flung open to them without much discrimination. . . . It is unnecessary to take up the Negro school in the North since it hardly exists as a separate entity." A leading historian of the Civil War and Reconstruction eras wrote in 1965 that "[p]ublic schools in many parts of New York, New Jersey, Pennsylvania, Ohio, Illinois, and Indiana – where the large majority of northern Negroes lived – remained segregated until the last two decades of the nineteenth century. . . ." In fact, many schools in each of those states remained rigidly segregated until the middle of the twentieth century; indeed, school segregation was particularly widespread in Indiana, which expressly permitted school segregation by state law until 1949. In 1995, a distinguished scholar of contemporary school desegregation efforts explained the dearth of northern school desegregation litigation during the 1950s and 1960s as due to the fact that litigation during those years was limited to states that "had at some time operated a dual school system,"⁸ ignoring the fact that many local school districts in the North operated a dual school system until the 1950s in defiance of state law.

Not surprisingly, the struggle to end school segregation in the North has received far less scholarly attention than has the more dramatic campaign to desegregate southern schools. Moreover, while many scholars have skillfully chronicled the NAACP's campaign against southern school segregation that culminated in the United States Supreme Court's decision in *Brown v. Board of Education*, few have paid attention to the NAACP's simultaneous campaign against northern school segregation.⁹

⁷ *Booker v. Board of Education*, 45 N.J. 161, 173–4 (1965).

⁸ For the Myrdal quote, see Myrdal, *An American Dilemma*, pp. 879, 945; for the Civil War historian quote, see McPherson, "Abolitionists and the Civil Rights Act," p. 495; for the quote from the desegregation scholar, see Rossell, "The Convergence of Black and White Attitudes on School Desegregation Issues," p. 617.

⁹ Both Mark Tushnet's and Richard Kluger's excellent accounts of the NAACP's campaign against segregated education focus exclusively on the organization's activities in southern states. Neither addresses the NAACP's simultaneous campaign against segregated schools in northern states. Tushnet, *The NAACP's Legal Strategy against Segregated Education*; Kluger, *Simple Justice*. Similarly, neither Greenberg, *Crusaders in the Courts*, nor Tushnet, *Making Civil Rights Law*, discusses the northern campaign against segregated education.

Cambridge University Press

0521845645 - Jim Crow Moves North: The Battle over Northern School Segregation, 1865-1954

Davison M. Douglas

Excerpt

[More information](#)

6

Jim Crow Moves North

The relative lack of scholarly attention to northern school segregation during the pre-*Brown* era is unfortunate, because the struggle against northern school segregation took place in a very different legal context than its southern counterpart. Whereas in the South, school desegregation efforts – particularly those of the NAACP – focused on securing incremental judicial precedents as part of a gradual attack on the constitutionality of state segregation statutes that culminated in the *Brown* decision, in the North, the greatest barrier to integrated schools was not legal – in a constitutional or statutory sense – but rather political and cultural. Most northern states prohibited school segregation by statute during the nineteenth century, and most northern courts enforced those statutes when asked to do so. Nevertheless, many local school boards continued to separate schoolchildren by race in defiance of state law and many northern blacks acquiesced in this separation, believing that their children would fare better in black schools with black teachers.

This book's focus on African Americans is not meant to suggest that they were the only racial or ethnic group subjected to school segregation. Various states, particularly in the West, also segregated other groups of schoolchildren during the nineteenth and twentieth centuries, including children of Chinese, Mongolian, Japanese, and Korean ethnicity, as well as Native Americans and, later, children of Hispanic ethnicity. Each of these groups also engaged in efforts to challenge school segregation, but those efforts are beyond the scope of this book. Moreover, although this book focuses on school desegregation battles in northern states – with primary emphasis on New England, the mid-Atlantic, and the Midwest – occasional reference will also be made to western states, as they confronted similar desegregation issues.

The history of northern school desegregation inevitably draws us into two important political and intellectual debates: the importance of racial mixing for African-American uplift and the role of law in accomplishing racial change.

The issue of school integration has been enormously controversial in the black community since the antebellum era. African-American challenges to northern school segregation during both the nineteenth and twentieth centuries have consistently raised one critical issue: How important is it for a black child to attend a racially mixed school?

Since the antebellum era, many northern blacks have displayed ambivalence concerning the importance of racially mixed schools. Though African Americans have consistently embraced the importance of education, the issue of racially mixed schools has been far more complex. Many African Americans have opposed school

Cambridge University Press

0521845645 - Jim Crow Moves North: The Battle over Northern School Segregation, 1865-1954

Davison M. Douglas

Excerpt

[More information](#)

Introduction

7

integration, fearing, with good reason, the loss of jobs for black teachers, mistreatment of black students, and the end of black-controlled educational institutions. Others have viewed the elimination of school segregation as essential to black efforts to achieve social and political equality, construing state-mandated racial separation as contributing to a racial caste system with devastating consequences for assimilation.

In literally dozens of northern school districts, the African-American community bitterly divided over the issue of school segregation, especially during the first half of the twentieth century. In many instances, some blacks opposed efforts by other blacks to challenge school segregation. NAACP leaders expressed frustration over the lack of commitment to integrated schools among many northern blacks. Such division made desegregation campaigns far more difficult to conduct. This division within the black community over the importance of racial mixing continues today. Although the integrationist vision of the Supreme Court's *Brown* decision has dominated this country's intellectual discourse about race for the past half century, a substantial dissenting tradition, represented by individuals such as Malcolm X and organizations such as the Congress of Racial Equality, has persisted until the present.¹⁰ Much of the contemporary debate concerning the importance of racially mixed schools has intellectual antecedents in the northern black community of the nineteenth and early twentieth centuries.

A second central issue that emerges from the history of northern school desegregation is the role of law in accomplishing racial change. Educational conflicts in this country have generally been defined and debated in the context of legal rights, either through litigation or legislation. As legal scholar Patricia Williams has noted, blacks in particular have "believed in [rights] so much and so hard that we gave them life where there was none before; we held onto them, put the hope of them into our wombs, mothered them. . . ."¹¹ Not surprisingly, northern blacks desirous of challenging school segregation used both lawsuits and legislative lobbying to pursue their goals. But many northern blacks also used extralegal means, such as school boycotts, to pursue similar ends. This book examines each of these strategies, seeking to understand both their efficacy and their interplay.

Central to the examination of black efforts to desegregate northern schools is this question: why did the legislation enacted by most

¹⁰ See, e.g., Malcolm X, *The Autobiography of Malcolm X*, pp. 300–7; Congress of Racial Equality, "A True Alternative to Segregation: A Proposal for Community School Districts," February 1970, in "Brief for CORE as Amicus Curiae," *Swann v. Charlotte-Mecklenburg Board of Education*, in Douglas, *The Development of School Busing*, p. 259.

¹¹ Williams, *The Alchemy of Race and Rights*, p. 163.

Cambridge University Press

0521845645 - Jim Crow Moves North: The Battle over Northern School Segregation, 1865-1954

Davison M. Douglas

Excerpt

[More information](#)

8

Jim Crow Moves North

northern states during the post-Civil War era banning school segregation and the numerous court decisions enforcing that legislation fail to eliminate school segregation? As noted, the overwhelming majority of northern state legislatures prohibited school segregation by statute during the quarter century following the conclusion of the Civil War, and the vast majority of state courts, when called upon, enforced those statutes. With this type of legal support for racial mixing, one might expect to find thoroughly desegregated northern school systems. Yet despite this legal prohibition on school segregation, government-sponsored school segregation – such as the assignment of black children to separate colored schools or classrooms – persisted in open defiance of state law in many northern communities until the late 1940s and early 1950s. This book explores the reasons for this dissonance between legal rule and educational reality and seeks to provide insight into the broader question of how legal rules affect racial change. Scholars have urged consideration of these questions for some time. As historian Robert Cottrol has noted: “Legal historians need to probe beyond the egalitarianism of northern law. Race-neutral legal doctrines must be measured against the way law was actually applied.”¹²

During the past forty years, courts have been widely celebrated as important agents of racial change, with *Brown v. Board of Education* as the paradigmatic example of the ability of the judiciary to foster racial progress in the face of significant cultural and political opposition. Yet in recent years, numerous scholars have questioned the ability of courts to function as a significant force for racial progress without broad political and cultural support. Some of these scholars have concluded that the traditional emphasis on the role of the courts – especially the *Brown* Court – in securing racial gains is overstated and that certain aspects of racial reform, such as southern school desegregation, did not take place in this country until the elective branches of government embraced the desegregation agenda in the mid-1960s. These scholars suggest that courts, even the United States Supreme Court, are considerably more limited in their ability to effect social reform in the absence of significant legislative and executive support than was previously imagined. Other scholars, associated with the critical race theory movement, go even further and conclude that the inherent conservatism of courts inhibits their willingness to produce meaningful change on behalf of racial minorities. Both groups of scholars suggest that courts alone are unable to bring about significant racial change absent broader political and cultural support.

¹² Cottrol, “Law, Politics and Race,” p. 534.

Cambridge University Press

0521845645 - Jim Crow Moves North: The Battle over Northern School Segregation, 1865-1954

Davison M. Douglas

Excerpt

[More information](#)

Introduction

9

The history of northern school desegregation litigation supports the notion that courts are constrained by larger cultural and political dynamics.¹³

While the issue of the ability of courts to effectuate racial change has received considerable scholarly attention in recent years, less attention has been paid to the ability of law more broadly defined – as manifest in legislative and executive actions as well as court decisions – to secure social reform. This book seeks to broaden the conversation about law and racial change by examining the interplay between legal rules – manifest in both court decisions *and* legislation – and racial progress in the context of the campaign against school segregation in northern states prior to the Supreme Court's 1954 decision in *Brown v. Board of Education*.¹⁴

The capacity of statutory law to promote social change appears obvious, because statutes presumably reflect the majoritarian support that makes legislative change possible. But on occasion, legislative enactments do not reflect majoritarian values. Some statutes are enacted to satisfy a narrow constituency, but without the strong support of the majority necessary for meaningful enforcement. Statutes that seek to reverse longstanding and embedded cultural understandings – particularly those associated with race and ethnicity – may prove especially difficult to enforce. Moreover, cultural attitudes may shift over time; temporary imperatives that helped fuel support

¹³ For scholars emphasizing the crucial importance of the *Brown* decision, see, e.g., Neier, *Only Judgment*, p. 9 (“Since the early 1950s, the courts have been the most accessible and, often, the most effective instrument of government for bringing about the changes in public policy sought by social protest movements.”); Wilkinson, *From Brown to Bakke*, pp. 3, 6 (describing *Brown* as “the most important political, social, and legal event” of the twentieth century and emphasizing the necessity of the Supreme Court for effectuating social change); Cover, “The Origins of Judicial Activism,” p. 1316 (describing *Brown* as a “paradigmatic event”). For recent scholarship questioning the impact of *Brown*, see, e.g., Rosenberg, *The Hollow Hope*; Klarman, *From Jim Crow to Civil Rights*; Klarman, “*Brown*, Racial Change, and the Civil Rights Movement.” For a sampling of critical race theory scholars, see Bell, *And We Are Not Saved*; Delgado and Stefancic, *Failed Revolutions: Social Reform and the Limits of Legal Imagination*; Spann, *Race Against the Court*. See generally Scheingold, “Constitutional Rights and Social Change: Civil Rights in Perspective,” pp. 74–5 (describing the “democratic” perspective on law and racial change, which celebrates the role of the courts in black liberation, and the “hegemonic” perspective, which concludes that courts have not only failed to liberate blacks, they have contributed to black oppression).

¹⁴ A few scholars – on both the left and the right – have argued that the Civil Rights Act of 1964 failed to achieve workplace equality, thereby implicitly critiquing the ability of at least this one important statute to accomplish racial change. See, e.g., Bell, *Race, Racism and American Law*, pp. 831–906; Epstein, *Forbidden Grounds: The Case against Employment Discrimination Laws*.

Cambridge University Press

0521845645 - Jim Crow Moves North: The Battle over Northern School Segregation, 1865-1954

Davison M. Douglas

Excerpt

[More information](#)

for new legislation may fade in the face of changed realities. In short, although statutes may reflect the values of dominant political coalitions at a particular moment in time, they do not necessarily evidence broad and sustained cultural support for the regulated matter.

Each of these factors operated to undermine vigorous enforcement of the nineteenth-century antisegregation legislation. The nineteenth-century antisegregation statutes did not necessarily reflect a broad commitment to school integration. Rather, they reflected a combination of Reconstruction-era racial idealism among some white northerners, a desire to capture black votes in closely contested elections, and the high cost of dual schools. Moreover, all of these statutes were enacted at a time when the northern black population was a tiny fraction of the total population. This commitment to pupil mixing eroded in the wake of the migration of hundreds of thousands of southern blacks into northern communities during the first half of the twentieth century and as a result, noncompliance with the antisegregation legislation sharply increased.

Eventually, the political and cultural environment in the North changed, creating support for integration. By the 1940s, northern black political power had dramatically increased as a result of several decades of black migration. Moreover, encouraged by the NAACP, increasing numbers of African Americans demanded integrated schools. Anxious to capture black electoral support, to serve certain wartime and Cold War objectives, and to defuse racial tensions in several northern cities, white politicians took various actions during the late 1940s favorable to desegregation efforts, including the threat of withholding educational monies from recalcitrant school districts. As a result, by the time of the *Brown* decision, only a handful of northern school districts maintained explicit, officially sanctioned school segregation in defiance of state law. Yet at the same time, these desegregation initiatives left untouched the increasingly prevalent urban school segregation caused not by explicit racial separation but rather by residential segregation. Thus, northern white politicians of the late 1940s and early 1950s could capture black political support by championing school desegregation initiatives that eliminated the most blatant instances of school segregation, primarily in low-population rural school districts, but that left untouched the burgeoning racial separation of schoolchildren in large cities. Since the early 1950s, the requisite political and cultural support for racial mixing has not developed in most northern cities to overcome patterns of residential segregation; as a result, most urban school districts are still beset with significant racial isolation.

The campaign to desegregate northern schools thus exposes the difficulties of using law to force racial change. Just as the *Brown* decision failed to desegregate southern schools during the 1950s and