September 2011

Racial Complexity and the Elementary and Secondary Education Act

Craig Livermore

Follow this and additional works at: http://scholarship.law.stjohns.edu/jcred

Recommended Citation
Available at: http://scholarship.law.stjohns.edu/jcred/vol26/iss1/5

This Article is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in Journal of Civil Rights and Economic Development by an authorized administrator of St. John's Law Scholarship Repository. For more information, please contact cerjanm@stjohns.edu.
RACIAL COMPLEXITY AND THE ELEMENTARY
AND SECONDARY EDUCATION ACT

CRAIG LIVERMORE

The fact is that the comments that have been made and the issues that have surfaced over the last few weeks reflect the complexities of race in this country that we’ve never really worked through—a part of our union that we have yet to perfect. And if we walk away now, if we simply retreat into our respective corners, we will never be able to come together and solve challenges like health care, or education, or the need to find good jobs for every American.1


INTRODUCTION

As with most, if not all, major political arenas addressed in Barack Obama’s presidency to date, education reform has been both bolstered and challenged by his philosophical complexity. President Obama has trumpeted both the greater flexibility in accountability standards and increased federal funding supported by traditional progressives, teachers’ unions, and civil rights organizations, and the teacher and school accountability, competition and choice favored by neo-progressive educational reformers and many conservatives.2


2 See, e.g., Andy Smarick, Diplomatic Mission, EDUCATION NEXT, Winter 2011, at 56. Smarick describes the balancing act walked by President Obama and his Secretary of Education Arne Duncan between traditional progressive groups such as teachers’ unions, and neo-progressive democratic reformers on the issue of teacher performance-based evaluation. Smarick explains that the Obama administration has consistently advocated increased teacher quality via more objective evaluation measures, while simultaneously stating that evaluations of student performance must be more flexible than the current standardized test measures, and that organized labor must be part of the process in determining teacher evaluation standards. Smarick explains that this approach can potentially be described as a pragmatic compromise forged to gain support from two different camps within the democratic party, but that it may also be explained as a more holistic and comprehensive approach to teacher performance improvement which gleans insights from both camps. An example of a neo-progressive educational reform organization is Democrats for Education Reform. Id.
also both benefited from, and faced obstacles because of, its own complexity.\(^3\) As the son of an African man and Caucasian woman, President Obama has progressed through an identity formation process which has led him to firmly self-identify as an African American male.\(^4\) It can be argued that his situation as a bi-racial African American male has allowed him to see the world with nuance and continuum, with a discomfort for solidified categories and dichotomy.\(^5\) He has thus been able to gain understanding from the traditions of black conservatism, black nationalism, and black progressive universalism.\(^6\)

It is precisely President Obama’s complex racial performance identity journey which has informed his approach to educational reform. He advocates a systematic structure to raise academic achievement and reduce the educational gaps of disempowered minority groups, which simultaneously proclaims the need for greater federal funding and support, understands the need for educators to raise their own standards for professional achievement, and proclaims the necessity for minority communities to empower themselves through internal renewal outside of government influence. He thus embodies the black progressive’s vision of centralized governmental support as the hope for equitable empowerment, the black conservative’s understanding of the need for competitive individualism to challenge all to new heights of achievement, and the black nationalist’s skepticism that any solution proposed outside of the community to empower the community without the community challenging itself, is doomed to the failure of all paternalistic approaches. This complexly understood holistic educational reform vision is the best hope for unleashing all the forces necessary to

---

\(^3\) The concept of racial identity performance emanates from Critical Race Theory’s description of race as a socially constructed moniker of meaning situating the individual in relation to group identification. See, e.g., Frank Rudy Cooper, *Our First Unisex President?: Black Masculinity and Obama’s Feminine Side*, 86 DENV. U. L. REV. 633, 643 (2009). Rudy describes the concept of identity performance and situating President Obama’s racial identity performance in cross-pollinating context with his gender identity performance. *Id.* Central to this idea is that race is not ontological—there is no essentialist understanding of what it means to belong to a certain ethnicity. See also Ron Walter, *Barack Obama and the Politics of Blackness*, 38 J. BLACK STUD. 7 (2007), available at http://jbs.sagepub.com/cgi/content/abstract/38/1/7. Here it is argued that President Obama’s self-identification is grounded in blackness, but that his particular manifestation of such blackness, and its universalist understandings, is based upon a pragmatic politician’s approach. *Id.* In other words, Walters believes Obama’s racial complexity is grounded in pragmatic considerations. *Id.* This article will argue, however, that President Obama’s racial complexity is consistent with a deontological existential understanding, and that it produces a consistent and principled political and educational philosophy.


achieve greater educational equity in the United States.

The Obama administration has focused upon two major legislative programs that seek to stimulate educational reform. The Obama educational initiative that has had the greatest concrete effect is The Race to the Top (RTT) state educational competitive grant program, which is funded under the American Recovery and Reinvestment Act (ARRA). Under the ARRA federal stimulus program, $4.35 billion was allocated to the United States Department of Education to stimulate educational reform measures through state application for grant money under a 500 point-based review system. Under RTT, grants were awarded to states who scored the highest on their application by showing proactive reform initiatives in four categories: data use, standards and assessment, failing schools, and teaching quality. Fundamental to the philosophical force behind RTT is the belief of the Obama administration that the competition by the states for such large grant monies will not only engender positive educational steps for the states winning the grants, but that all states will move toward more constructive educational approaches as stimulated by the energy of grant competition. In other words, it is not the money by itself that will produce effective educational reform, but the innovative abilities unleashed by competition. But such obvious market influence in education has caused considerable discomfort among both traditional progressive interests and influential civil rights groups. Progressive groups such as teachers' unions have voiced discomfort over marrying teacher evaluation, promotion, and compensation to student performance as determined by standardized testing. Civil rights groups have remained in a rights paradigm, in which the idea of competition seems to contradict the idea of education as a universal right, which must be protected and enforced over against the power structures which have not yet recognized and vindicated equitable education as a right for all. Thus, the tensions between President Obama and traditional progressive voices are less a matter of seeking different ends than they are a result of varying

---


8 Smarick, supra note 2, at 60.

9 Id.
theoretical foundations, and unexplored and overly reified categories of identity performance and concomitant identity protection. That is to say, unions and civil rights groups project their own solidified identity performance onto educational reform in a manner which both consciously and subconsciously seeks to protect their identity interests more than it does issue toward greater educational equity.

The Obama administration has also proposed significant reform to the No Child Left Behind Act (NCLBA), which is the currently enforced iteration of the major federal education legislation, the Elementary and Secondary Education Act (ESEA). The United States Department of Education outlines the Obama administration’s suggested reforms to the ESEA in *A Blueprint for Reform: The Reauthorization of the Elementary and Secondary Education Act.* The *Blueprint for Reform* outlines four areas of reform to the No Child Left Behind Act, which are in close alignment with the ideals and reforms sought under the Race to the Top program: improving teacher and principal effectiveness, providing adequate information and data to families and educators, implementing standards and assessments to ensure all high school graduates are college and career ready, and improving student performance in the nation’s lowest performing schools. President Obama’s proposed reforms to the ESEA continue the No Child Left Behind Act’s focus on assessment, standards, and performance-based accountability, but champion a move toward holistic assessment beyond standardized testing, encourage states to recognize growth in assessment standards by schools rather than declaring an absolute assessment benchmark, and offer greater levels of funding for school performance. Thus, the traditional market language in the NCLBA of accountability and assessment is wedded in *Blueprint for Reform* with greater flexibility for educators and greater levels of funding for reform. These reforms thus carry forth the neo-progressive and conservative belief that accountability and incentive will create optimal educational outcomes, with the traditional progressive ideal that additional funding is necessary for educational outcomes to be improved. However, in *Blueprint for Reform* much of the additional funding remains in competitive programs, and thus civil rights groups and

---

13 *Id.* at 3.
traditional progressive blocks maintain considerable unease.

One of the great insights of critical theory is a descriptive analysis of human interpretation and belief as based upon often unexplored heuristics which pre-determine, or at least pre-influence, interpretative outcomes.\(^1\) Thus, in a society in which matters of race remain a deep and often painful influence on our individual and collective identity formation, the lack of an honest exploration of racial identity formation and identity performance will lead to the support of policies which have less to do with producing optimal outcomes than they do with protecting the identity performance of those who support such policies. This is especially so in the realm of education reform, which is permeated with racialized understandings which are not often explicitly stated and discussed. Much of contemporary education reform discussion is based implicitly upon the continuing underperformance of African Americans and Latinos, and this fact complicates the psychological projections of those involved in the discourse on all sides of the spectrum. However, it is precisely the existential courage to explicitly understand the racial complexity that he embodies, which is a particular manifestation of the racial complexity of the American society, that determine Barack Obama to be a significant hope for the production of educa-

\(^{14}\) Law, whether it is jurisprudential or legislative, is created and interpreted through a complex and contingent array of cultural forces and psycho-collective experiences. See Alan Hunt, EXPLORATIONS IN LAW AND SOCIETY: TOWARD A CONSTITUTIVE THEORY OF LAW 143 (1993), which explains critical legal studies, a theoretical perspective that emphasizes the interrelated nature of law and culture, as follows:

The core of this critique is the contention that the claim made by liberalism to resolve the persistent and systematic conflict between individual and societal interests through the mechanisms of objective rules within a framework of procedural justice is inherently flawed. Mediation between conflicting interests at best offers only a pragmatic response to the social conflict that can achieve nothing other than a set of results that reflects the unequal distribution of power and resources while claiming to act in the name of a set of universal social values. Critical legal theory thus grounds itself on the critique of the historical project of the Enlightenment, which is perceived as offering a rationalist and consensual solution to the problem of social order.

It is true that the traditional critical theory attack is upon jurisprudence, as it is much more readily accepted that policy is dictated by a war of competing interests. While traditional liberal liberalism relies upon an ideal of an objective and rational heuristic, democratic policy determination has much less relied upon such an ideal. But critical theory is descriptively valuable in the realm of policy as well, as it can offer a critique of the manner in which interests claim support for a policy is based upon a more desired optimal outcome for all, when in fact it may issue form from a subjectively and often unconsciously determined desire to protect the identity formation by which one has chosen to find life meaning. Critical theory can thus offer the possibility of greater authenticity in political discourse. Such critical theoretical application to policy discourse may be curiously bolstered by the modern field of behavioral economics, which similarly questions the ubiquity of rational decision making in favor of a theory of human choice which is based upon pre-rational schemas which simplify the decision making process. See generally HEURISTICS AND BIASES: THE PSYCHOLOGY OF INTUITIVE (Thomas Gilovich, Dale Griffin & Daniel Kahneman eds., 2002), which discusses the field of heuristics and biases. Thus, if we fail to fully examine our racial identity formation, and our deep beliefs surrounding race, we may support policies that have more to do with the protection of our own racial identity formation, than they do with greater educational outcomes for minority students or for students as a whole.
tional policy, which can have a practical and equitable effect in the educational landscape. It is by an authentic exploration of inner racial tensions and an understanding of various streams of racial and political identity performance, that Barack Obama is able to articulate an educational policy vision which is comprehensive, complex, consistent, and able to leash the power of government for reform, while also understanding the absolute necessity for societal reform and the flourishing of human potential outside of governmental influence.

This article will thus both explore issues of racial complexity and relate such issues to President Obama’s educational policy reform agenda. Part II of this article will explore the complexity of President Obama’s racial identity performance. Part III will present an overview of the ideals and approach of the No Child Left Behind Act. Part IV will outline the principles and effect to date of the Race to the Top program, and relate them to the racial complexity of President Obama. Part V will then outline the Obama administration’s proposed reforms for the Elementary and Secondary Education Act, and relate them to the discussion of philosophical ideals born of complexly determined racial identity performance. Part VI will discuss the discomfort of traditional civil rights organizations in relation to Obama’s educational agenda, and argue that such discomfort is born of uneasiness with ideas of racial complexity. Finally, in Part VII, the Conclusion, the article will make the claim that in such inherently racialized issues as educational reform, it is only an approach open to the complexities of identity performance which will allow a relatively non-heuristic approach to policy formation, and which will thus maintain a focus on reality and result, rather than the projection of identity protection.

I. THE RACIAL COMPLEXITY OF BARACK OBAMA

Critical Race Theory offers the insight that racial identity, and all identity in fact, is socially constructed and materially consequential. Thus, mainstream critical legal theory proposes that racial identity is not ontological—that it is not based on a non-contingent essence. Such insights re-
Regarding racial identity can be bolstered by cross-fertilization from Judith Butler’s Performativity Theory regarding gender identity performance. Butler posits that identity is only performed, and that there is no natural idea of gender, for example, outside of its contextual performance. Performance, in other words, is identity. But the claim that racial, or gender, identity possesses no essence need not be determined in order to gain perspicacity from the Critical Race Theory and Performativity Theory principle that identity is formed and performed under the influence of myriad and intricately interwoven cultural and sub-cultural expectations, values, and definitions. Perfomative Theory’s key insight is the descriptive offering that identity performance is determined through agency, which is bound by existing implications of identity and cultural expectations. As legal scholar Frank Rudy Cooper explains:

The choice of how to perform one’s identity is constrained by the intelligibility or unintelligibility of particular performances to the audience and influenced by incentives or disincentives a cultural context attaches to particular performances. Given that identity performances are not made in a vacuum, individuals can only signal their identity in terms that will be recognized by their audiences.

Although identity performance is subject to the incentives and disincentives of cultural context, and the existent cues and symbols of such context, the existence of agency in context allows for continued fecund possibility. Further, if one acknowledges a multitudinous array of incentives, dis-

---

17 See generally, Judith Butler, Gender Trouble: Feminism and the Subversion of Identity 33 (Routledge 1990); Frank Rudy Cooper, Surveillance and Identity Performance: Some Thoughts Inspired by Martin Luther King, 32 N.Y.U. REV. L. & SOC. CHANGE 517 (2008); Cooper, supra note 3, at 639-40.

18 For an explanation of a distinction between an ontological and existential understanding of racial construction, see Craig Livermore & Michael Lewchuk, Centralized Standards and Decentralized Competition: Suggested Revisions For No Child Left Behind to Create Greater Educational Responsiveness Toward Disempowered Minority Groups, 33 SETON HALL LEGIS. J. 433, 451 n.41 (2009).

19 Cooper, supra note 3, at 640.

20 Id.

21 An important philosophical question which exists in tension with performative theory regards the source of agency within culturally determined performance. Performative theory posits performance as identity without a natural, essential, or ontological identity existing before performance. But with no
incentives, and meanings, then the agency of identity performance is open to exponential permutations which can not only capture existing possibility, but by new combinatory creation open greater possibility into the future. Identity performance is based upon complexity.

However, in order to actualize the greatest possibilities of agency it seems necessary to possess an inordinate amount of self-awareness and existential courage. Contingency is not easy. Indeed, it could be argued, the human proclivity is to trend away from contingency and complexity toward simplified and ossified identity formations and performance. This may be particularly true in matters of race, in which the deep psychological pain that continues to plague American society is difficult to explore. Simplified identities give a momentary reprieve to such deep pain, but also block the full potential that a more openly complex identity performance process may offer. Thus, particularly in the United States, there is a strong tendency to opt away from contingency and complexity toward safer, but flatter, binaries. In the American consciousness, there is either progressive or conservative and racially white or racially black. Our nation understands, of course, that in some sense other possibilities exist. However, such binary understanding is so deeply engrained that we can only make sense by attempting to understand challenging identity performance by interpretation through a bipolar lens. Thus, a range of possibilities is inevitably simplified and distorted as square pegs are forced to fit into round holes.

Barack Obama, however, has seemingly manifest identity performance agency to an unusual extent. Of course, in his autobiographical writings, he has also left us an unusually open and public record of his identity formation process. Obama's heritage as the son of a black African man and a white American woman, his sojourn as a boy in Indonesia, and his rearing by a white mother and grandparents undoubtedly exist as important causation for his introspective identity formation journey. However, given his ultimate self-identification as a black man, they must not be seen as determinative of his performance outcomes. Yet the complexity of his back-

---

ground must be seen in determining how he performs his blackness and, perhaps more importantly, how tightly he holds on to any particular ideal of what it means to be black in America.

In a 2008 Fox News broadcast, Reverend Jesse Jackson, in a moment he believed to be off-camera, stated that he felt Barack Obama was “talking down to black people.”23 Reverend Jackson was responding to Barack Obama’s consistent practice of challenging blacks to rebuild community and return to values such as responsibility, commitment, education and family, and to not rely upon government for solutions to their obstacles. In making such a comment Jackson revealed the under-currents in a generational divide among black leaders. However, he was also revealing the difference of political vision between traditional progressives like himself and neo-progressives such as Obama. In this sense the issue touched upon tensions among progressive voices of all races. However, the specific context of the difference of approach and tone between Jackson and traditional civil rights leaders on one hand, and Barack Obama on the other, are firmly interdependent with racial identity performance. Jackson’s supposedly furtive reference was to the fact that there has rarely been an occasion in which Obama has spoken to a majority black audience, or addressed the issue of race, in which he has not emphasized the importance of responsibility, renewal, self-reliance, and other values that Obama has himself termed “conservative.” From his speech, “A More Perfect Union,”24 made in 2008 during the presidential campaign in which he addressed the controversy regarding Reverend Jeremiah Wright, to his address at the NAACP centennial celebration in 2009,25 to his commencement address at Hampton University in May 2010,26 to his remarks at the National Urban League Cen-

---

23 Jesse Jackson: Obama “Talking Down” to Blacks, REUTERS (Jul. 10, 2008, 10:45 a.m.), available at http://www.reuters.com/article/2008/07/10/us-usa-politics-obama-jackson-idUSN0918037220080710. Jackson explained his comment on CNN three days later: I said it can come off as speaking down to black people. The moral message must be a much broader message. What we need really is racial justice and urban policy and jobs and health care. There is a range of issues on the menu . . . I was in a conversation with a fellow guest at Fox on Sunday. He asked about Barack’s speeches lately at the black churches. I said it can come off as speaking down to black people . . . . And then I said something I felt regret for -- it was crude. It was very private, and very much a sound bite -- and a live mike. I find no comfort in it, I find no joy in it. Id.


tennial Conference in the summer of 2010, Obama has consistently fo-
cused upon 1) personal responsibility, 2) communal and individual strength
and self-reliance, 3) the dangers and distractions of recreational technology
and 4) the need for stronger family structures. As Obama proclaimed in his
speech to the NAACP:

We need a new mindset, a new set of attitudes... Yes, if you live in
a poor neighborhood, you will face the challenges that someone in a
wealthy suburb does not. But that's not a reason to get bad
grades... No one has written your destiny for you. Your destiny is
in your hands... To parents, we can't tell our kids to do well in
school and fail to support them when they get home. For our kids to
capitalize, we must accept our own responsibilities. That means putting
away the Xbox and putting our kids to bed at a reasonable hour.

Moreover, in seeming to respond to the comments of Jackson and atti-
tudes of many traditional civil rights leaders, Obama also declared in his
NAACP speech, “Now, I know there’s some who’ve been saying I’ve been
too tough, talking about responsibility. But here at the NAACP, I’m here to
report, I’m not going to stop talking about it.”

This gospel proclaimed by Barack Obama of self-reliance and personal
responsibility has a deeply engrained history among black conservatives
from Booker T. Washington to Clarence Thomas, and black nationalists
such as Malcolm X and Marcus Garvey. Of course, Obama is not a tradi-
tional black conservative or a black nationalist. It is interesting to consider
the extent to which these currents of black thought have influenced his ra-
cial identity formation and performance. From the influence of black con-
servatism, it can be argued, Obama has embodied and proclaimed the need
for individual meritocratic excellence as a means for racial empowerment,
and the necessity for human innovation to solve the greatest human chal-
lenges, including the continuing skills and academic performance gap in
the United States. From black nationalism, it can be written, Obama has
learned the necessity for disempowered communities to reform their cultu-
ral patterns and empower themselves stemming from a mistrust that the
larger community will ever have the best interests of racially disempo-

27 Barack Obama, Remarks by the President on Education Reform at the National Urban League
28 Obama, supra note 25.
29 Obama’s Focus is Responsibility in NAACP Speech, CNN POLITICS (July 14, 2008), available at
http://articles.cnn.com/2008-07-14/politics/obama.naacp_1_obama-naacp-civil-
rights?_s=PM:POLITICS.
wered communities in mind.

In *Dreams From My Father*, Obama describes his consideration of black nationalism through the figure of Malcolm X, and through his friendships with a black nationalist named Rafiq. Obama recognizes the empowering message of black nationalism regarding ideals such as solidarity, self-reliance, discipline and communal responsibility, while simultaneously confronting existential discomfort regarding the bipolar worldview of black nationalism in its blanket condemnation of whites and the white community.\(^{30}\) In struggling deeply to consider and discern the authenticity and efficacy of black nationalism, Obama presciently foresaw the hairy challenges he would face as a presidential candidate, and as president, in challenging blacks to communal renewal. He understood how any call for black renewal could easily be interpreted as the traditional white racist explanation for black inequality. It is accordingly that he recognized the power and utility of black nationalism; its condemnation of white society allowed it to challenge the black community to renewal without any charge of moral compromise or cooption.\(^{31}\)

Obama relates how black nationalism directly confronted the universalistic individualism taught to him by his white mother.\(^{32}\) And yet, in the context of his work as an organizer in black Chicago, he seemed willing to give the ideology credence if it could with efficacy build community renewal and empowerment.\(^{33}\) He relates: “If nationalism could create a strong and effective insularity, deliver on its promise of self-respect, then the hurt it might cause well-meaning whites, or the inner turmoil it caused people like me, would be of little consequence.”\(^{34}\) This is a remarkable statement of courageous identity formation and performance. Even granting the possibility of the overly-heroic self-stylings of autobiography, if even a whiff of this statement rings authentic, then Obama displays a remarkable ability to accept existential angst born of identity flexibility for the sake of the efficacious empowerment of the community he serves.

Yet, ultimately, Obama concludes that black nationalism lacks the efficaciousness he is seeking. He explains that a segregated and chauvinistic nationalism can never fully confront the hegemonic forces of the market and white power. Black nationalism possesses important insights, yet remains an isolated ideology without the capability to engage and alter hu-

\(^{30}\) Obama, *supra* note 22, at 197-98.
\(^{31}\) *Id.* at 198.
\(^{32}\) *Id.* at 199.
\(^{33}\) *Id.* at 200.
\(^{34}\) *Id.*
man situation.

Questions of competition, decisions forced by a market economy and majoritarian rule; issues of power. It was this unyielding reality—that whites were not simply phantoms to be expunged from our dreams but were an active and varied fact of our everyday lives—that finally explained how nationalism could thrive as an emotion and flounder as a program . . . . It was the distance between our talk and our action, the effect it was having on us as individuals and as a people. That gap corrupted both language and thought; it made us forgetful and encouraged fabrication; it eventually eroded our ability to hold either ourselves or each other accountable.

Obama maintained sympathy for the black nationalist call for internal community renewal, but he recognized the need to wed the call for internal renewal with universalist forces that challenge disempowered communities to achieve greater levels of personal excellence. Such forces of competition, individualism and excellence as the means of empowerment are the province of the black conservative.

Yet, even the black conservative stream of African American thought and culture is perhaps not given the credit it deserves as being grounded in empowerment ideology and a skeptical view of the white power structures. Both black and white progressives are all too often willing to engage in subtle or overt Uncle Tom mudslinging. Consider, for example, well known black conservative Supreme Court Justice Clarence Thomas, and his antipathy toward affirmative action policies in education, and toward any idea of racial preference. Of course, as a conservative, his Equal Protection Clause jurisprudence is based upon an understanding of the necessity of color blind legal principles, and the justice of individual meritocratic advancement. Yet Justice Thomas’ conservatism remains decidedly black. His suspicion of affirmative action policies is grounded in the suspicion of the benevolence of majority culture, and his belief that true racial empowerment can only be achieved by individual effort and excellence.

Justice Thomas’ opinions in two relatively recent affirmative action cases are a telling indicator of the underlying philosophy that drives his jurisprudence. In *Grutter v. Bollinger*, the Supreme Court held that an affirmative action admissions plan used by the University of Michigan Law School did not violate the Equal Protection clause of the Fourteenth

---

35 Id. at 202-03.
Amendment of the United States Constitution. The Court based its ruling upon the fact that the admissions policy considered race among many other criteria of the diversity sought in the student body, used race in admissions in a flexible manner, and did not seek a specific racial proportionality in admissions. Justice Thomas filed an opinion in which he concurred in part with the majority's opinion, but dissented from the majority's holding that the Michigan Law School's admissions plan was constitutional. In delineating his case against the use of racial classifications in admissions policies, Justice Thomas strongly critiques the assumptions of progressivism that governmental forces can proactively produce racial empowerment: "I believe what lies beneath the Court's decision today are the benighted notions that one can tell when racial discrimination benefits (rather than hurts) minority groups." It is also quite revealing that Justice Thomas begins his opinion by quoting Frederick Douglass' exhortation against the dangers of white benevolence.

[...]In regard to the colored people, there is always more that is benevolent, I perceive, than just, manifested toward us. What I ask for the negro is not benevolence, not pity, not sympathy, but simply justice. The American people have always been anxious to know what they shall do with us. . . I have had but one answer from the beginning. Do nothing with us! Your doing with us has already played the mischief with us. Do nothing with us! If the apples will not remain on the tree of their own strength, if they are worm-eaten at the core, if they are early ripe and disposed to fall, let them fall! . . And if the negro cannot stand on his own legs, let him fall also. All I ask is, give him a chance to stand on his own legs! Let him

37 See generally id. (discussing the admissions process for the student body).
38 Id. at 349 (Thomas, J., concurring in part and dissenting in the judgment, dissenting from the Court's opinion because "I believe that the Law School's current use of race violates the Equal Protection Clause").
39 Id. at 371 (Thomas, J., concurring in part and dissenting in the judgment). Thomas outlines in his opinion the black conservative critique of racial preference policies. He describes his belief that such policies admit students who are not able to compete, which removes the incentives for individual and communal striving for excellence. He also outlines the argument that preferential policies further contribute to societal stigmatization of minorities, as those who do have the ability to achieve excellence are forever labeled as inferior beneficiaries of racial preferences. He goes on to state:

This problem of stigma does not depend on determinacy as to whether those stigmatized are actually the "beneficiaries" of racial discrimination. When blacks take positions in the highest places of government, industry, or academia, it is an open question today whether their skin color played a part in their advancement. The question itself is the stigma because either racial discrimination did play a role, in which case the person may be deemed "otherwise unqualified," or it did not, in which case asking the question itself unfairly marks those blacks who would succeed without discrimination. Id. at 373.
alone!... [Y]our interference is doing him positive injury.\textsuperscript{40}

Justice Thomas' conservatism is one that is fully racialized, possesses a strong belief in the abilities of disempowered minorities and proclaims that true empowerment can only come from within the individual, and from within the community.

Justice Thomas further elucidates his skepticism toward governmental solutions in his opinion in Parents Involved in Community Schools v. Seattle School District.\textsuperscript{41} In Parents, the Supreme Court considered primary and secondary public school assignment plans which considered race when assigning students in the Jefferson County, Kentucky and Seattle school districts. The Court found the assignment plans violated the Equal Protection clause of the Fourteenth Amendment of the United States Constitution.\textsuperscript{42} The Court found that, unlike the admissions plan involved in Grutter, the school assignment plans at issue were not flexible, used race in a determinative fashion, and were promulgated toward a goal of achieving a specific racial proportionality.\textsuperscript{43} Justice Thomas filed an opinion concurring with the holding of the Court.\textsuperscript{44} In his opinion, Justice Thomas challenges the government's ability to remedy de facto segregation, which he describes as the result of private choices outside of the government's purview.\textsuperscript{45} With fascinating philosophical flourish, however, Justice Thomas goes on to question the entire project of integration itself, no matter the source. Thomas outlines an argument that counters claims that integrative educational settings produce positive educational outcomes, and cites research that shows positive educational outcomes in racially isolated environments.\textsuperscript{46} Read together with his opinion in Grutter, Thomas' objection to racial school assignment is not just a traditional conservative objection to governmental overreaching into the private sphere, but is based on a suspicion of a disempowering agenda by the establishment claiming that blacks need whites to learn. For Thomas, as for black conservatism, and in direct contradiction to progressive assumptions, there is a consummate disempo-

\textsuperscript{40} Id. at 349 (citing Frederick Douglas, What the Black Man Wants: An Address Delivered in Boston, Massachusetts (Jan. 23, 1865), reprinted in 4 THE FREDERICK DOUGLASS PAPERS 59, 68 (J. Blasingame & J. McKivigan eds. 1991) (emphasis in original)).
\textsuperscript{42} Id. at 747-48.
\textsuperscript{43} Id. at 723, 726.
\textsuperscript{44} Id. at 748.
\textsuperscript{45} Id. at 756-57.
\textsuperscript{46} Id. at 761-64 (citing, e.g., THOMAS SOWELL, EDUCATION: ASSUMPTIONS VERSUS HISTORY 7-38 (1986); ABIGAIL THERNSTROM & STEPHAN THERSTROM, NO EXCUSES: CLOSING THE RACIAL GAP IN LEARNING (2003)).
wering danger in governmental (namely white governmental) attempts to create greater racial equity. Racial empowerment can only come from within the community.

There is, of course, no claim being made that President Obama reads the opinions of Justice Thomas before creating a policy agenda. In addition, it is clear that President Obama is supportive of policies utilizing racial preferences, and has voiced distaste for Justice Thomas' jurisprudence. The point is that the black conservativism embodied by Justice Thomas is interwoven into aspects of the black identity narrative in a compelling manner. Interestingly, James Chen, the Dean of the University of Louisville Brandeis School of Law, who has worked for both Barack Obama and Clarence Thomas, has claimed there to be an uncanny similarity between the two men. According to Chen, the religious faith of both men is the defining characteristic of their life. It is, perhaps, the belief in an inner and transcendent power that offers consistent possibility beyond what the temporal order describes which is the conservative existential tie between the two, and which is a foundational current in the American black tradition. Although traditional civil rights groups and leaders continue to see centralized governmental intervention as the exogenous force necessary for racial equity, one steeped in complexly determined identity performance can understand the governmental intervention of the progressive as a necessary evil, while listening intently to the trepidation of the black conservative concerning the disempowering aspects of such programs' beneficence. So after considering black nationalist and black conservative identity currents, President Obama could potentially respond to Jesse Jackson: "I am not talking down to black people. I am encouraging them to realize that, even if governmental solutions may be necessary, if you do not find the power within

---


49 Id. The article relates: "Chen said, however, 'that both of them are vastly more complex than their political caricatures would suggest.' The defining trait for both would not be race, but religion. Chen said he does not know two more 'profoundly religious people' than Barack Obama, a Protestant, and Clarence Thomas, a Catholic.

50 In this sense too, the civil rights movement possessed what could be called a "conservative" foundation in its belief in a transformational power. However, it can be argued, in the generation since the movement of the 1950's and 1960's the progeny of the civil rights movement have lost this foundation in personal transformation, and have continued the civil rights agenda as a purely political program. Thus, it could be argued that Barack Obama is a more genuine heir to the civil rights movement than contemporary civil rights groups and civil rights leaders.
yourselves to grasp responsibility for your own destiny, you will be doomed to continual servitude. You may need the help, but if you rely on that help, you will always need that help.”

President Obama is also, partly, the political and identity performance progeny of the civil rights movement and continues to be influenced as well by a traditional progressive vision. Before entering into the sermonic flourish on personal responsibility in the NAACP speech outlined above, Obama proclaimed, “[g]overnment programs alone won’t get our children to the promised land.”

However, government programs will, for Obama, play an essential role in achieving greater equality. Because of the history of racial subjugation, and because of the lowered standards and failure of those serving minority communities in education, the federal government, for Obama, is a force necessary to stimulate the competitive and innovative powers latent in individuals and in the community to create greater educational equity. Obama therefore possesses conservative existential, political, and racial currents while he maintains an articulation of a communal polity optimism of the progressive universalist. In his “A More Perfect Union” speech, given in response to the Jeremiah Wright controversy, Obama urges blacks to understand that the path to equality “means binding our particular grievances—for better health care, and better schools, and better jobs—to the larger aspirations of all Americans.”

Obama’s speech is fecund with universalist declarations. Indeed, while showing empathy for Reverend Wright’s racial frustration, Obama describes Wright’s shortcoming as the lack of sufficient optimism and hope regarding how far American society has progressed in racial matters, and how much it has the potential to progress further in the future.

Because of the complexity of President Obama’s racial identity performance, he has been able to articulate a consistent vision of the interdependence of cultural empowerment and structural change through governmental intervention. Sociologist and political theorist William Julius Wilson, in a move away from his original thesis based upon the necessity of structural reform alone to create greater equity, lauds the Obaman vision as the most practical manner to frame issues of inequality in order to gain political support.

I see the most compelling reason for combining cultural arguments with structural arguments. Integration of the two could be used to construct a truly comprehensive explanation of the

51 Obama, supra note 25.
52 Obama, supra note 24.
social and economic outcomes of poor people of color and provide more compelling arguments for those policy makers truly committed to eradicating racial inequality in our society.53

Yet, without completely countering the framing of the Obaman vision as based upon the pragmatism for which he is famous, the exploration of various streams of influence indicate that President Obama’s vision is also deontological. Softening the psychological grasp around his own identity performance allows Obama to assimilate the most promising aspects of varying identities with a constant eye toward the most effective solutions. President Obama does not just manifest racial and political complexity as a politically pragmatic and potentially mercurial tactic to gain support. Political and racial complexity is who he is. Effective and empowering solutions are more important to him than is the justification of any particular performance of identity.

As we will see, President Obama can articulate a vision of educational reform for more equitable outcomes, and for greater outcomes in general, in which he heads the traditional progressive’s call of the need for greater funding and resources to tackle the seemingly insoluble challenges of educational performance gaps among minority communities. Yet, such support of greater funding is often tied to competitive contingency in order to stimulate greater levels of human excellence. There is no progressive belief in the inevitable success of good intentions. Human beings respond to incentives, and this is particularly true, perhaps, when addressing challenges deeply steeped in the racial pathologies of our nation. As a consequence President Obama’s educational reform agenda embodies the call of traditional progressives and civil rights leaders to provide greater funding, support, and flexibility for educators working in communities that have traditionally lacked such resources. However, the Obaman educational vision views the role of federal government not primarily as a re-distributor of resources, but as a powerful engine to unleash the inner human resources and excellence through competition as heralded by the black conservative and, perhaps essentially, his communion with minority communities emphasizes the belief of the black nationalist that no governmental solution can save them. Ultimately, empowerment only comes from within. Government can create the incentives for renewal, but renewal can only be fully manifest as

emanating from within the community.

II. THE NO CHILD LEFT BEHIND ACT AND ITS PHILOSOPHICAL IDEALS

Before beginning a more in-depth exploration of President Obama’s educational reform agenda, it is necessary to briefly outline the main legislative tenets of the No Child Left Behind Act (“NCLBA”) that the Obama administration is seeking to reform in its suggested revisions to the Elementary and Secondary Education Act, and which ideals the administration is seeking to counter with its Race to the Top program.

The No Child Left Behind educational reform effort is an amended version of the Elementary and Secondary Education Act of 1965.54 Its purpose is “to ensure that all children have a fair, equal and significant opportunity to obtain a high-quality education and reach... proficiency on... academic achievement standards.”55 Additionally, it was created to meet the “educational needs of low-achieving children in our Nation’s highest-poverty schools,” and is dedicated to, “closing the achievement gap between high- and low-performing children, especially... gaps between minority and non minority students.”56

The NCLBA incorporates, albeit in a relatively weak form born of political compromise, market-based economic ideals to education reform by treating schools as providers of a service to customers.57 Through measures of assessment of student progress, accountability for the lack of progress, and student and family choice if schools fail to make progress, the NCLBA legislative superstructure attempts to create incentives for more optimal educational performance by schools, and for more equitable skill-based results between races. On the supply side of the market-informed ideals, the NCLBA holds schools accountable for performance and creates pressures for institutional reform in order to create a more effective supply of educational services. The creation of these pressures is an attempt to challenge the entrenched bureaucracy of our current educational systems. On the demand side of the market-informed ideals, the NCLBA creates options for parents and students to demand more from schools by requiring that schools inform parents if they are failing NCLBA standards, by allowing students to transfer out of failing schools, and by allowing parents to

55 Id.
56 Id.
57 See Livermore & Lewchuk, supra note 18, at 434.
choose tutoring services (supplemental education services) at the school to be paid for by monies previously allocated to the school.

To hold schools accountable, the NCLBA relies on states to measure school performance, known as adequate yearly progress (AYP), based on annual standardized tests.\textsuperscript{58} AYP is based upon the percentage of students at a school scoring proficient on such specified content exams, as well as the percentage of students scoring proficient on exams of delineated subgroups such as special education students, English-language learner students, and students from major ethnic and class sub-groupings.\textsuperscript{59} The AYP benchmark, which is the percentage of students required to score proficient in each content area, is set by each state. However, the state must set the yearly AYP benchmark under the NCLBA such that all students at all schools are proficient in each testing content area by 2014.\textsuperscript{60} If a school fails the state AYP standard for a certain number of consecutive years, the NCLBA requires that the school conform to its phases of accountability.\textsuperscript{61}

The first phase of accountability is the “school improvement”\textsuperscript{62} phase. If a school fails to make AYP for two consecutive years, it is required to create a development plan, spend 10% of its Title I funds on professional development, allow parents to transfer their children intra-district, and notify parents of their options.\textsuperscript{63} If a school fails to make AYP the third year, it

\textsuperscript{58} 20 U.S.C. § 6311(b)(2)(B).

\textsuperscript{59} § 6311(b)(2)(C). The NCLBA requires testing each year in reading and math for grades three through eight, and testing at least one year in reading and math in grades ten through twelve. §6311(b)(3)(C)(v)(I). In addition, as of 2007-08, students must be tested in the science content area at least once in grades three through twelve. § 6311(b)(3)(C)(v)(II).

\textsuperscript{60} § 6311(b)(2)(F) (“Each State shall establish a timeline for adequate yearly progress. The timeline shall ensure that not later than 12 years after the end of the 2001-2002 school year, all students in each group described in subparagraph (C)(v) will meet or exceed the State’s proficient level of academic achievement on the State assessments under paragraph (3).”).

\textsuperscript{61} See Livermore & Lewchuk, supra note 18, at 458.


\textsuperscript{63} § 6316(b)(6). Title I funds are supplemental federal monies that have been allocated to schools serving low socio-economic status students since the passing of the original Elementary and Secondary Education Act in 1965. See 20 U.S.C. § 6302 (2002); see also NORA GORDON, Challenges in Redistributing Resources Across Local School Districts, Evidence from Title I and State School, Finance Equalizations, in TO EDUCATE A NATION, FEDERAL AND NATIONAL STRATEGIES OF SCHOOL REFORM 95, 95-97 (Carl Kaestle & Alyssa Lodewick eds., 2007). NCLBA requires that states set aside at least 4% of the total Title I appropriation to assist districts and schools with improvements (which include restructuring schools). See 20 U.S.C. § 6332 (2002). A continuing critique of NCLBA is that it is based upon “unfunded mandates.” That is to say, costly accountability measures such a supplemental educational services, professional development, and school restructuring must be implemented with no additional Title I federal funds allocated. This produces, according to this argument, an even greater strain of resources on the very chronically under-performing schools that will most likely be subject to the NCLBA accountability measures. See generally, e.g., LINDA DARLING-HAMMOND, From “Separate but Equal” to “No Child Left Behind”: The Collision of New Standards and Old Inequalities, in MANY CHILDREN LEFT BEHIND: HOW THE NO CHILD LEFT BEHIND ACT IS DAMAGING OUR CHILDREN AND SCHOOLS 3 (Deborah Meier & George Wood eds., 2004).
must implement the development plan and provide supplemental educational services for students. After four consecutive years of failing to make AYP, a school enters the “corrective action” phase of accountability. In this phase, the school must take at least one corrective action, and may choose to replace staff, implement a new curriculum, extend the school day or year, appoint an outside expert for advisement, or restructure the school’s internal organization. A school enters the “restructuring” phase of accountability after five consecutive years failing to make AYP. Upon entering this phase, the school must create a restructuring plan to be implemented the following year. When carried out, the restructuring plan must implement an available alternate governance arrangement. The school may choose to reopen as a charter school, replace relevant school staff, privately contract management, facilitate a state takeover of the school, or use “any other” restructuring option that makes fundamental reforms.

The NCLBA also seeks to improve teacher quality as a means of improving educational outcomes. The Act requires that schools receiving Title I funds hire only “highly qualified” teachers, and that teachers already hired at the time of the commencement of the legislative requirements show that they are “highly qualified” by 2005-06. Teachers are considered highly qualified if they have demonstrated competency in their subject matter. The requisite competency can be proven if the teacher majored in his/her subject matter in college, by passing a state teaching exam, or by otherwise convincing state evaluators that they are content matter ex-

64 § 6316(c).
65 See § 6316(b)(7)(B) (legislating that each local educational agency must implement a system of corrective action for the benefit of the students served by the statute).
66 § 6316(b)(7)(C).
67 See § 6316(b)(8) (identifying that when a school fails to make adequate yearly progress it must enter the restructuring phase).
68 See § 6316(b)(8)(A) (directing that if after one year of corrective action the school still fails to make adequate yearly progress, then certain procedures must be carried out within one year).
69 See § 6316(b)(8)(B) (stating that the restructuring phase must include the implementation of one of several possible alternative governance arrangements for the school).
70 See 20 U.S.C. § 6319(a)(2) (2011) (dictating that all State education agencies receiving assistance under the statute must ensure that the core academic subjects are staffed with teachers that are highly qualified by the end of the 2005-2006 academic year).
71 See § 6319(a)(3) (mandating that local educational agencies receiving funds under the statute “shall develop a plan to ensure that all teachers teaching within the school district served by the local educational agency are highly qualified” by the end of the 2005-2006 academic year).
The Obama administration has heeded the call of the many progressive voices who have criticized the No Child Left Behind Act, even as it has reaffirmed the Act’s foundational values of competition and accountability. Ultimately, for President Obama, this is not about a political compromise; it is about seeking a more comprehensive, complex and consistent structural approach to education reform. For example, the title of Obama’s most influential education reform program to date, Race to the Top, is a direct counter-response to what is seen as a race to the bottom in academic standards produced by the NCLBA regulatory scheme. By requiring strict accountability measures while mandating penalties for schools not meeting required standards, but allowing each state to determine its own AYP benchmark, it is argued that the legislation creates incentives for states to lower their standards so as to lower the number of schools in their jurisdictions which fail to reach AYP, and therefore are subject to sanction. In addition, the Obama administration has called for “growth” assessment standards instead of “status” assessment standards. Under the NLCBA status AYP model, both traditionally underperforming schools, often serving students with greater disadvantage, and traditionally over-performing schools, have to achieve the same yearly benchmark. Such an assessment system, critics argue, dooms challenged schools to the inevitable stigma of being labeled a failing school. A growth model assessment would reward schools for growth in the percentage of student reaching AYP, and so, theoretically, would offer schools serving disadvantaged students a greater opportunity to reach AYP.

Moreover, the Obama administration has also focused on teacher improvement, but has questioned the ability to measure teacher quality exclusively through teacher certification and college field of study, and has doubted the ability to produce the human capital necessary for greater teacher output without more comprehensive interventions. President Obama’s educational reforms have thus attempted to provide incentives for states to develop greater teacher and educational leadership development systems and have sought to tie the evaluation of teacher success to student success on assessment exams. It is not enough to hold a degree or certifi-

73 § 9101(23); 34 C.F.R. § 200.56.
75 Id. at 958. See also Sarah D. Sparks, Tests’ Rigor Varies Plenty State to State, EDUCATION WEEK, Nov. 3, 2010, at 12-13 (describing a study by the American Institute of Research that found the difference in the rigor of assessment standards was so great between some states that the score required for proficiency for some grade levels amounted to two grades levels of difference in academic ability).
cate; teachers will be held accountable for the success of the students they teach.76

Finally, the Obama administration has thought it too great a burden to ask schools serving disadvantaged students to achieve greater levels, and offer a greater number of services without additional funding. As a result, President Obama has dramatically increased the amount of federal spending for education and proposes to offer even more funding under a reformed NCLBA. However, such federal spending for Obama is mostly delivered in a fashion to unleash competitive forces and human innovation. It is not the traditional progressive redistributive model that sees those with fewer resources, and those serving those with fewer resources, as performing at a more optimal level when they receive greater support and greater levels of funding. President Obama’s anthropology is not so sanguine. He believes in the human ability to overcome great obstacles, but he believes humans will only tap into that ability when properly incentivized. He has combined the progressive call for greater funding and governmental intervention with the conservative belief in the power of competition and accountability to produce human excellence. He has created a new and consistent neo-progressive vision. This vision espouses the belief that educational equity will be achieved when disempowered minority communities accept responsibility for communal renewal, when the resources are available for structural reform so support such renewal, and when incentives are created to unleash the human capacity to work interdependently for greater achievement. This vision believes that when the individual and communal, the public and the private, work together toward higher standards then educational reform will move along an inevitable trajectory towards a race to the top.

III. THE RACE TO THE TOP PROGRAM: OVERVIEW AND PHILOSOPHICAL IDEALS

Although it does not in itself address the reform of the No Child Left Behind Act as the current version of the Elementary and Secondary Education Act, the Race to the Top federal competitive educational reform grant program embodies in its ideas the limitations of the NCLBA. The funda-

76 But see Smarick, supra note 2, at 61 (pointing out that under the Race to the Top grant application criteria, tying teacher pay to performance is worth only 2 out of 500 possible points on the grant application). Smarick explains this low priority for performance-based pay, however, by claiming that the Obama teacher improvement plan is much more comprehensive and systematic than simple performance-based pay, as it includes annual teacher evaluations tied to student growth which should inform many personnel decisions, such as compensation, termination and tenure. Id.
mental philosophical premise of RTT is that educational reform and productive innovation will issue forth from the appropriate positive incentives, which is contrary to the negative consequences approach of NCLBA. Excellence is determined more by the carrot than the stick. As such, the RTT draws upon $4.35 billion allocated to it under the American Recovery and Reinvestment Act. Under the RTT, states are able to apply to earn educational reform grants by offering plans to create the "conditions for education innovation and reform; [achieve] significant improvement in student outcomes, including making substantial gains in student achievement, closing achievement gaps, improving high school graduation rates, and ensuring student preparation for success in college and careers; and [implement] ambitious plans in four core education reform areas." The four educational reform areas states are asked to address in their grant applications include: 1) adopting standards and assessments that prepare students to be ready to compete in college and the workplace; 2) improving instructional data systems and providing such data in an efficient manner to teachers and principals in order to improve instruction; 3) creating a human capital pipeline to develop effective teachers, especially in the most challenging school environment, and developing systems of incentive and development to support and encourage such effective teachers; and 4) finding effective mechanisms and approaches to turn around chronically low-achieving schools. State grant applications are judged on a 500 point scoring system with the following maximum points allowed for each of six selection criteria: State Success Factors (125 points); Standards and Assessments (70 points); Data Systems to Support Instruction (47 points); Developing Great Teachers and Leaders (138 points); Turning Around the Lowest-Achieving Schools (50 points); and General Selection Criteria such demonstrating conducive reform conditions and create an atmosphere friendly to the creation and expansion of charter schools and success reform models (55 points).

79 Id.
80 Id. at 3. In such State Success Factors, the RTT places a premium upon the state securing cooperation from local educational authorities (LEAs), such as local school districts, as well as state teachers union, building capacity to scale up and sustain effective reform models, and exhibiting the ability to reduce achievement gaps among racial groups.
81 Id.
The first point to consider in evaluating Race to the Top as a response to No Child Left Behind is President Obama’s belief that, because government can potentially have a disempowering effect when policy is improperly implemented, the most effective educational reform will be based on governmental intervention to create the systems and incentives to unleash the capabilities of state and local governments, and private actors. As he declared in his Race to the Top apologetic presented at the Urban League Centennial in the summer of 2010:

So here’s what Race to the Top says: Instead of Washington imposing standards from the top down, let’s challenge states to adopt common standards voluntarily, from the bottom up. That doesn’t mean more standards; it means higher standards, better standards, standards that clarify what are teachers are expected to teach and what our children are expected to learn—so high school graduates are actually prepared for college and a career.\(^{82}\)

Thus, if one disallows the reactionary twinge one’s gut when one hears highly charged code words and catch phrases, one can sense a whiff of the black conservative and black nationalist insight that government proclamations, rules, and even financial support will ring hollow or, worse, create counter-incentives. Obama continues: “This isn’t about—unlike No Child Left Behind, this isn’t about labeling a troubled school a failure and then just throwing up your hands and saying, well, we’re giving up on you. It’s about investing in that school’s future, and recruiting the whole community to turn it around.”\(^{83}\)

Obama sees government as a force to stimulate the energies of the community. Yet, as his words to the Urban League point out, he declares the necessity advocated by progressives from days of yore that when states and local communities form community to creative innovative solutions to seemingly intractable problems, additional resources are required. This is the second major ideological point of divergence between RTT and the NCLBA. The NCLBA attempts to raise standards through accountability and student choice, whereas RTT seeks to raise achievement thought accountability and competition wedded to greater levels of support and positive incentive. If the NCLBA created an educational culture of compliance, RTT attempts to create an educational culture where human action is optimized, not by the fear of retribution, but by the desire for reward and sup-

\(^{82}\) Obama, supra note 27.

\(^{83}\) Id.
The third major ideological point of divergence between RTT and the NCLBA is based in President Obama’s anthropology, previously referenced. For President Obama, teachers are the key to greater educational outcomes. But unlike the NCLBA, the RTT recognizes: 1) gaining a one-time credential does not imply continual excellence, or even one time excellence; 2) creating better teaching involves a deeply systematic understanding of the challenges of human capital development; and 3) teachers will not excel simply by the fact that they have decided to be teachers. Teachers will excel within a culture, and within legally determined structures, that reward excellence and support growth. Obama’s belief in excellence within service eschews a traditional progressive ideal that human beings will work together to progressively achieve greater societal outcomes by virtue of the desire for such outcomes. President Obama’s anthropology presents the paradox of transcendent possibility within human brokenness which is inextricably woven into foundations of the American fabric by its unique combination of Christian ideals and capitalistic structures. The profession of the educator is increasingly challenging as schools are continually seen as the antidote to the lack of skills, habits and values which have traditionally been understood to be the province of the family unit. Such professional education is that much more herculean in the context of schools serving high proportions of low-income and minority students, who exhibit great needs beyond the classroom, but who bring those needs into the classroom. President Obama recognizes that an idealized understanding of teacher excellence within such a context possesses limitations. The weight of low standards and societal challenges is too great for good intentions to overcome. Human potential must be stimulated by incentive and the expectations of culture.

Consequently, the teacher improvement plans which states are incentivized to develop under RTT are a comprehensive and systematic approach to developing human talent in the education profession, supporting the development of such talent, holding such talent accountable for student results, and incentivizing superior performance. As President Obama at-

84 See generally Smarick, supra note 2. Many states posses legislative embodiment of tenure protection for teachers, and for advancement, pay raise, and professional preference based upon seniority. Such legislative protections have often been won on the state level by strong teacher union lobbying and political influence. The preference for seniority in pay, advancement, and layoffs is also bolstered by many collective bargaining agreements between unions and school districts. Given the strength of union input on the matter, the United States Department of Education’s facilitation of the RTT grant application process has shown a strong preference for state applications which have gained the support of teacher unions in the states for the educational reforms proposed. See Michele McNeil, Race to Top
tempts to persuade the Urban League Centennial conference:

The whole premise of Race to the Top is that teachers are the single most important factor in a child’s education from the moment they step into the classroom. . . . So I want teachers to have higher salaries. I want them to have more support. I want them to be trained like the professionals they are . . . . I want to give them a career ladder so they’ve opportunities to advance, and earn real financial security . . . . So I am 110 percent behind our teachers. But all I’m asking in return . . . is some measure of accountability. So even as we applaud teachers for their hard work, we’ve got to make sure we’re seeing results in the classroom. If we’re not seeing results in the classroom, then let’s work with teachers to help them become more effective. If that doesn’t work, let’s find the right teacher for that classroom.85

This systematic approach of support, development, and accountability is written into the subsections of the Great Teachers and Leaders selection criteria which states are encouraged to adhere to in grant applications. Under this sub-section, states earn application points if they develop a plan to: 1) provide high-quality pathways for potential teachers and principals (human capital development); 2) improve teacher and principal effectiveness as measured by performance; 3) ensure that high quality teachers and principals are working in the highest needs schools and districts, and not only in the more affluent districts; 4) improve teacher and principal training programs (human capital development); and 5) provide necessary support to teachers and principals.86

It is telling that in the Great Teachers and Leaders portion of the RTT selection criteria, 93 out of a possible 138 points are available for the three subsections dealing with the development of professional excellence, while only 20 possible points are available for teacher and leader support, and 25 points are available for ensuring that high quality teachers are working in low-performing and high-needs schools and districts.87 The Obama administration maintains the black conservative belief that human striving for excellence, if the necessary structures are in place to develop and incentivize such striving, is the most effective means to achieving greater racial equity. And this idea of human excellence intertwines with the fourth point of

85 Obama, supra note 27.
86 U.S. DEPARTMENT OF EDUCATION, supra note 78, at 3.
87 Id.
principled divergence between RTT and the NCLBA: Human excellence is not achieved through accountability per se, but is stimulated and released through competition itself. A fundamental premise of RTT is that the competition for lucrative grant awards will not only produce positive educational reform by the winners of grant monies, but will create a Race to the Top for higher standards of educational outcomes through reform in all states. As President Obama states to the Urban League in 2010:

And so far, the results have been promising and they have been powerful. In an effort to compete for this extra money, 32 states reformed their education laws before we even spent a dime. The competition leveraged change at the state level . . . . So understand what’s happened. In each successive round, we’ve leveraged change across the country. And even students in those districts that haven’t gotten a grant, they’ve still benefited from the reforms that were initiated. And this process has sown the seeds of achievement. It’s forced teachers and principals and officials and parents to forge agreements on tough, and often uncomfortable issues—to raise their sights and embrace education.88

Iron sharpens iron, and there is a belief that human greatness has the ability to respond to the greatest challenges. This is no less true, for Obama, for disempowered minority communities themselves as it is for educa-

88 Obama, supra note 27. Forty-seven states and the District of Columbia applied for RTT grants in the first two rounds of the grant competition. There were two grants awarded in the first round of the competition—Delaware ($119 million) and Tennessee ($500.5 million). There were ten grants awarded (from $75 million to $700 million) in the second round—the District of Columbia, Florida, Georgia, Hawaii, Maryland, Massachusetts, New York, North Carolina, Ohio, and Rhode Island. Sean Cavanaugh, Race to Top Now Faces Acid Test, EDUCATION WEEK, Sept. 1, 2010 at 1, 16-17. Although it is too soon to judge whether RTT will achieve the student learning outcomes it seeks to achieve, President Obama’s claim that competition stimulates reform appears to bear some weight. As of September 2010, 36 states and the District of Columbia adopted the Common Core State Standards in mathematics and English language arts promulgated by the National Governor’s Association and the Chief State School Officers. See Catherine Gewertz & Erik W. Robel-son, U.S. Tests Awaiting Big Shifts, EDUCATION WEEK, Sept. 15, 2010 at 1, 18; National Governors Association and State Education Chiefs Launch Common State Academic Standards, COMMON CORE STATE STANDARD INITIATIVE, http://www.corestandards.org/articles/8-national-governors-association-and-state-education-chiefs-launch-common-state-academic-standards (last visited February 1, 2011). Common academic standards indicate subject matter content areas that students are expected to master in various grade levels. To view the Common Core State Standards, visit http://corestandards.org/the-standards. In a separate competitive grant allocation under RTT, $330 million was awarded by the United States Department of Education to two consortia of states (including 44 states and the District of Columbia) to develop Common Core Assessments to measure the level of student mastery in the Common Core Standards. The Common Core Assessments are scheduled to become available for adoption by states in 2014-2015. Gewertz & Robelson, supra note 88, at 1. Thus, through the RTT program, the Obama administration has been able to balance federalism concerns given the American tradition of educational matters being decided at the state and local level, and to embody its belief that excellence is manifest with federal competitive engagement, to counter the race to the bottom in state standards and assessment under the NCLBA regulatory superstructure.
tors and leadership. It is this focus upon competition which makes traditional progressives and civil rights organizations the more uncomfortable than all other Obaman education principles. The traditional progressive vision views education as a right to be protected and vindicated by centralized governmental force specifically targeted at helping disempowered minority populations. However, for Obama, the competitive philosophy does constantly turn and eye toward minority communities. President Obama believes minority communities will be empowered not by help, but by human innovative excellence, and by a return to the values of self-reliance. This worldview of RTT, moreover, with its emphasis on competition, accountability, and support, is the same worldview which creates and dictates President Obama’s suggested reforms to the NCLBA.

IV. PRESIDENT OBAMA’S BLUEPRINT FOR REFORM OF THE ELEMENTARY AND SECONDARY EDUCATION ACT

The No Child Left Behind Act is the currently enforced version of the Elementary and Secondary Education Act. The NCLBA has few supporters at any location along the political spectrum, and President Obama has repeatedly called for reform of the Act to create a more flexible version of the ESEA which incorporates many of the principles of the Race to the Top

89 Obama proclaims in his speech to the Urban League:

First, I know there’s a concern that Race to the Top doesn’t do enough for minority kids, because the argument is, well, if there’s a competition, then somehow some states or some school districts will get more help than others. Let me tell you, what’s not working for black kids and Hispanic kids and Native American kids across this country is the status quo. That’s what’s not working. What’s not working is what we have been doing for decades now. Obama, supra note 27.

It can be inferred that President Obama is not just condemning a status quo of failing schools, discrimination and poverty. But he is also condemning an ossified progressive educational vision which has seen the interests of teachers unions as a proxy for student and family interest, has viewed continually more funding as the answer for greater educational achievement, and has accepted school districts run by local patronage instead of supporting measures to stimulate excellence within the community. And Obama finishes his Urban League speech by returning to his continual call for communal renewal, self-reliance and responsibility as absolutely necessary for any chance of educational improvements and for the narrowing of performance gaps among the races.

It will take both more focus from our parents, and better schooling. It will take both more money, and more reform. It will take both a collective commitment, and a personal commitment . . . . It’s not just parents. It’s the children, too. Our kids need to understand nobody is going to hand them a future. An education is not something you just tip your head and they pour it in your ear. You’ve got to want it. You’ve got to reach out and claim that future for yourself. And you can’t make excuses. Id.


The United States Department of Education issued *A Blueprint for Reform: The Reauthorization of the Elementary and Secondary Education Act* (Blueprint for Reform) in March 2010 as a call to embody the educational vision of President Obama in legislative reform. The *Blueprint for Reform* seeks to redefine the federal role in education by legislatively focusing on five priority areas: 1) preparing all high school graduates to be ready to compete in college or the workplace, 2) producing and supporting effective teachers and principals in every school, 3) creating greater equity in educational outcomes, with a special focus on improving the lowest performing schools, 4) raising the standards of educational achievement and the performance of educators, and supporting educational choice and the expansion of effective educational models, and 5) stimulating innovation and promoting improvement and achievement.

Correspondingly, *Blueprint for Reform* promotes programs and principles in direct alignment with Race to the Top. It proposes reforms to the NCLBA will increase the level of human capital in the education profession, raise the academic standards in the educational culture, unleash the potentiality of human innovation, achievement and excellence, and reduce the skills achievement gaps between students of different race and class. In focusing on reforms in these areas, the *Blueprint for Reform* seeks to carry forth the NCLBA focus upon school accountability and assessment, while adding greater flexibility to such assessment, and providing greater support for schools and teachers working in the most challenging circumstances. For example, with the new assessment standard of college and career ready, the *Blueprint for Reform* like the NCLBA creates a benchmark (2020) for 100% proficiency, and requires that proficiency and benchmarking be measured for all sub-groups. However, the *Blueprint for Reform* would amend the ESEA to require states to measure assessment through a growth model, instead of the status model previously described. In addition, the

---


93 U.S. DEPARTMENT OF EDUCATION, supra note 12.

94 Id. at 3.

95 Id. at 4.

96 Id. at 5.

97 Id. at 6.

98 Id.

99 Id. at 9.

100 Id. In addition, the *Blueprint* would add graduation rates as a factor in performance account-
Blueprint for Reform would require states to provide rewards, financial and otherwise, for the achievement of assessment growth benchmarks, instead of penalties for schools that do not achieve such benchmarks.101

Similarly, the Blueprint for Reform would continue the NCLBA regimen of requiring significant reform in low-performing schools, but would offer grant money to support and assist such challenging reformation projects.102 Under the revised ESEA, states would be required to identify two classes of challenge schools among schools consistently failing to meet growth benchmarks. The first category of challenge schools would be the lowest-performing five percent of schools in each state. States would need to require such schools to implement one of four turnaround models: 1) a transformation model, which would replace the principal, implement new governance and flexibility, provide extended learning time, and implement research-based instruction;103 2) a turnaround model, which would mirror the transformation model but would replace up to 50 percent of the school staff;104 3) a restart model, which would place operation and governance of the school in the hands of an effective charter school leader, charter management organization, or educational management organization;105 and 4) a school closure model, which would close the school and enroll the students of the school in a higher performing school in the district.106 Like the
NCLBA, the *Blueprint for Reform* revisions of the ESEA would include a menu of options for improvement of low-performing schools. However, the reformed ESEA approach would be more effective in stimulating school reform for two reasons. First, the turnaround models under the reformed ESEA are defined with much greater specificity and, in particular, they do not include anything analogous to the vague and weak "any other" reform option of the NCLBA which the vast majority of schools subject to restructuring under the current Act have chosen.\(^{107}\) Second, under the reformed ESEA schools would not be forced to undertake such challenging school turnaround with previously allocated Title I funds. They would, however receive three year grant awards to "fully and effectively" implement the turnaround model chosen, and would be eligible for an additional two years of funding if the school is showing progress.\(^{108}\) This means schools and districts would not only receive the financial support necessary for costly reforms, but the incentives created by the grant monies would stimulate more schools to undertake meaningful reform, and would entice successful educational management teams into taking over the difficult task of managing another low-performing school and transforming it into more academically prosperous one.

As with many provisions, the *Blueprint for Reform* proposes to maintain the NCLBA sections related to "Highly Qualified Teachers," but with characteristic added flexibility.\(^{109}\) Under the proposed reforms to the ESEA, the highly qualified moniker will be bestowed not by obtaining a one-time credential, but by continual evaluation regarding the outcomes of students being taught by a teacher, as well as other evaluative measures developed in collaboration between teachers, principals, and stakeholders.\(^{110}\) The proposed reforms to the ESEA would also, like RTT, but unlike the NCLBA, contain competitive grant programs for states to development and sustain effective human capital develop systems for more effective teachers and principals.\(^{111}\)

Thus, although President Obama's proposed reforms to the NCLBA manifest the black conservative belief in the power of competition and accountability to produce excellence, they also are deeply influenced by the
progressive call to create greater flexibility beyond just standardized tests in student and teacher assessment and accountability, and are strongly influenced by the progressive idea that substantial centralized governmental financial support is needed to obtain greater and more equitable educational outcomes. Moreover, the Blueprint for Reform funding schema is based upon a mixture of competitive grants and formula grants.112 While the formula grant structure reflects the progressive approach, and the traditional approach under federal Title I financial support for schools serving low-income students, the competitive grant approach reflects the conservative belief in the stimulation of excellence and innovation. However, interestingly, the Blueprint for Reform also contains the civil rights ideal of school finance equalization as a means to educational equity. This input measure of educational equity is far afield from the focus on educational outputs of both the NCLBA and the Race to the Top program. However, the language of the Blueprint for Reform would only ask that districts and states "[move] toward comparability in resources,"113 and would only require intra-district finance comparability, and would not mandate anything close to inter-district finance equality.114 Thus, the weakness of the school finance equalization and its confinement in two small sections, indicate that competition, accountability, and innovation remain the philosophical cornerstones of President Obama’s proposals for renewal and reform of the Elementary and Secondary Education Act.

V. UNCOMFORTABLE WITH COMPLEXITY: THE RESPONSE OF CIVIL RIGHTS ORGANIZATIONS TO PRESIDENT OBAMA’S EDUCATIONAL REFORM AGENDA

The response of the National Urban League audience in the summer of 2010 when President Obama outlined his philosophical justification for his education reforms was tepid.115 Three days before the President’s speech at
the National Urban League Conference, the National Urban League had joined with several other prominent civil rights organizations, including the NAACP, to release proposed reforms to the current Elementary and Secondary Education Act. The document issued, called Framework for Providing All Students an Opportunity to Learn through Reauthorization of the Elementary and Secondary Education Act\(^1\) (Framework), was released as an alternative to the reforms proposed by the Blueprint for Reform. The reform proposals outlined in the Framework reflected the tepidity toward President Obama of the National Urban League audience. Neither was overtly hostile toward the President and his reform agenda, but both revealed some discomfort and ambiguity toward the directions President Obama was attempting to lead the nation in the very racialized arena of education. For example, Jesse Jackson, the Founder and President of the Rainbow PUSH Coalition, one of the document’s sponsors, stated of the Framework: “‘It was designed to be a sharing moment, not a challenging moment.’”\(^2\) Yet, it is clear that, although seeking similar goals, the Framework contains certain fundamental philosophical differences of agreement with the President’s Blueprint for Reform.

In its preamble, the Framework uses rights language that President Obama never uses in reference to educational reform: “we believe that access to a high-quality education is a fundamental civil right. The federal gov-

\(^1\) Convention, YOUTUBE (Jul. 16, 2009), http://www.youtube.com/watch?v=Zv6EAaoFNno. This video shows an audience that was excited and rousing participation in response to Obama’s speech. Id. It may be that the difference in emotional response between President Obama’s 2009 NAACP speech and his 2010 National Urban League speech was due to: 1) The fact that the NAACP speech was in the middle of President Obama’s first year in office. It can be argued that supporters of Obama in the Presidential campaign envisioned an identity performance by their leader that was less complex, and more symbolic, than has been Obama’s manifestation as President. In the middle of his first year, as opposed to the middle of his second year in office, the glow of the symbolism of Obama as opposed to the reality of Obama perhaps had not yet worn off. 2) In 2009 President Obama had not yet outlined the specifics of an education reform proposal. It may have been the specifics of his reform proposals in 2010 towards which the National Urban League audience experienced ambiguity. Id.

\(^2\) The Lawyers Committee For Civil Rights Under the Law et al., Framework for Providing All Students an Opportunity to Learn through Reauthorization of the Elementary and Secondary Education Act (Jul. 2010), available at http://naacpldf.org/files/case_issue/Framework%20for%20Providing%20All%20Students%20an%20Opportunity%20to%20Learn%202.pdf. The groups signing the Framework were: The Lawyers Committee for Civil Rights Under the Law; National Action Network; National Association for the Advancement of Colored People (NAACP); NAACP Legal Defense and Education Fund, Inc.; National Council for Educating Black Children; National Urban League; Rainbow Push Coalition; and Schott Foundation for Public Education. Id. at 1.

\(^1\) Alyson Klein & Michelle McNeil, Obama Stands Firm On Education Agenda Amid Qualms From Lawmakers, Advocates, EDUCATION WEEK, Aug. 11, 2010, at 26. The article describes Obama’s uncomfortable relationship with the left wing of all racial groups regarding education law and policy. Id. The Framework similarly contains some conciliatory language, but couches it in terms of the need for reconsideration of some of the policies promulgated by the Blueprint for Reform. “[w]ile there are numerous positive aspects of the Administration’s education agenda, more comprehensive reforms are necessary to build a future where equitable educational opportunity is the rule, not the exception.” Framework, supra note 116, at 1.
Government's role is to protect and promote that civil right by creating and supporting a fair and substantive opportunity to learn for all students, regardless of where and to whom they were born. The Obama administration has stated a firm commitment to educational civil rights, and the Department of Education's Office of Civil Rights has committed to delving into civil rights issues in schools. However, issues of overt discrimination and bias in education, although taken seriously, are not the same issue as the racial achievement gap for the complex philosophy of Barack Obama. The issues of racial injustice that inhere in the achievement gap are much more subtle and nuanced than the injustice of racial discrimination. Racial injustice in the achievement gap involves not only the legacy of slavery and discrimination, but internalized and externalized stigma, doubt, hopelessness, and institutional dysfunction. The federal government, in the vision of Obama, has no ability to protect anyone from internal demons, even if those demons have originated in external white hegemony. Like all hegemony, as defined as the classical socialist concept, the hegemony of racial hierarchy perpetuates itself by becoming a poisonous gas inhaled and assimilated by all to which it is breathed. It is precisely the insidiousness of hegemony that hierarchy and the idea that there are human limitations in some out-groups become internalized by all, no matter where on the hierarchy continuum one is situated. This means that for Obama the role of the federal government is not that of paternalistic protector, but that of the centralized force with the power to stimulate the internal greatness of human beings to break the chains of hegemony. There is an ontological sphere which can never been stained by the injustice of racial hierarchy, and this internal sphere has to the power to transform its internal and external reality. For Obama, in terms of education law, policy, and achievement, it is not about rights—it is about human capability.

Thus, the Framework of the civil rights organizations overlaps with the Blueprint for Reform in important areas such as the need for school accountability and high outcomes for all students, but it places much more of an emphasis on the need for government to provide support and resources for greater equitable achievement, and it voices strong concern for the ideal of competition when inequitable outcomes and resources are involved. The Framework focuses upon six principles in which the federal government

---

118 Framework, supra note 116, at 1.
119 Mara Gay, Obama Education Department Focuses on Civil Rights in Schools, AOL NEWS (Mar. 8, 2010), http://www.aolnews.com/2010/03/08/obama-education-dept-focuses-on-civil-rights-in-schools/ (stating that the Education Department’s Office for Civil Rights is putting the teeth back into civil rights enforcement in schools).
Racial Complexity

should provide support through reform of the ESEA: 1) equitable opportunities for all; 2) utilization of systemically proven and effective education methods; 3) public and community engagement in education reforms; 4) safe and educationally sound learning environments; 5) diverse learning environments; 6) comprehensive and substantive accountability systems to ensure equitable outcomes. In its more specific delineation of approaches within each of these principles, the Framework maintains a constant commitment to advocating for sufficient support and resources for disempowered minority communities and those that serve such communities. For example, the Framework endorses the Blueprint for Reform's call for college and career ready standards, but cautions that such standards cannot be met without sufficient resource allocation. Moreover, to complement the common academic content standards, the Framework proposes “Common Resource Opportunity Standards,” which would hold schools and states accountable for equitable student inputs as well as student outputs. Although the Framework maintains a belief in the achievement of equitable outputs, equitable inputs, as a reflection of the dignity owed citizens by society, remain foundational.

The Framework, however, is overtly critical of the competitive ideals which are foundational to the educational reform policies of President Obama. It not only voices concern that competitive grant programs will create even greater resource inequities, but it characterizes the innovation stimulated by such competition as potential experimentation in communities whose existing instability is too great to bear experimentation. The Framework therefore advocates conditional incentives, analogous to formula grants, for which all states are eligible when fair conditions are met, rather than the competitive grant structure of Race to the Top and much of the of Blueprint for Reform suggested amendments to the ESEA. Thus, if

120 Framework, supra note 116, at 1.
121 Id. at 2 (“We are therefore cautiously optimistic about the Administration’s call for the adoption of common college- and career-ready standards . . . yet we have withheld our full endorsement of these measures because the federal government has not yet committed to delivering the resource platform to support all states and communities to meet high outcome standards.”).
122 Id. at 2-3. Such a call for Common Resource Opportunity Standards is very consistent with the deontological nature of rights discourse. Indeed, there is an element of rights protection by the government which can be justified by a utilitarian belief that the most optimal societal outcomes will be achieved when rights are protected. But there is also a strong current of rights discourse which advocates for the implementation and protection of rights, regardless of the outcomes. The protection of rights, under this philosophical line, is as much about what is owed an individual or community by society, than it is about what ends are achieved when rights are protected. The protection of rights can thus be seen to confer an ontological legitimacy, which is fundamental to full participation and dignity in a democratic society.
123 Id. at 2.
the educational reform philosophy of Barack Obama is based upon the liberation of human capacity through incentives, accountability, and standards of excellence, the civil rights educational reform philosophy as outlined in the Framework is founded upon the need for the government to provide equitable resources and protect and vindicate the rights of those who are disempowered. Although the two visions overlap at points, they are built upon worldviews in tension.

We then circle back to identity performance theory. It can be argued that the differences in approach between Barack Obama and traditional civil rights leaders is not just about political and/or generational differences, but results from divergent black identity performance, and contrary approaches to the importance of protecting identity performance. Educational commentator, Zeus Leonardo, has made the argument that, within the context of white hegemony and educational policies, whiteness is a "racialized social system that upholds, reifies and reinforces the superiority of whites." Drawing from Critical Race Theory and Performative Theory, Zeus declares that whiteness is a social construction created and propagated to maintain racial hierarchy. He thus declares the NCLBA is an act of whiteness. According to Leonardo, the standards, accountability, and judgments of the NCLBA are determined by a white referent, and those deemed to fall short of delineated standards are stigmatized as racially inferior. He thus argues: "The whiteness of the NCLB is the hidden referent of the federal act. It is the guiding ideology that frames how school failure will be explained and how it should be remedied." He concludes, the hidden white referent will guarantee that disempowered minorities will be blamed for falling short of standards, even when the government should be addressing the underlying structural inequities which are the actual cause of inequitable achievement.

To be sure, as previously related, President Obama has had to negotiate constant tension with traditional progressive interests of all racial composition. For example, the relationship between the Obama administration and the two largest national teachers' unions, the American Federation of Teachers, and the National Education Association, has been equally ambiguous. See Stephen Sawchuk, NEA, AFT Choose Divergent Paths on Obama Goals, EDUCATION WEEK, Aug. 25, 2010, at 1, 18-19. This article describes the NEA vote of "no confidence" for the Race to the Top Program in contrast to the more conciliatory approach of the AFT, which has attempted to support its own version, for example, of reformed teacher evaluations. Id. Teachers' unions obviously are motivated by the traditional interests they have bargained for of protecting the job security of their membership. However, as with all interests, there are undoubtedly identity performance issues in the union approach as well, which ultimately possess racial sub-currents. A full scale investigation of identity performance, unions, and education reform, however, is beyond the scope of this paper.

Leonardo, supra note 101, at 261.
Leonardo, supra note 101, at 262.
Id. at 264.
Id. at 267.
Although the members and leaders of the civil rights organizations will most likely not utilize the language of a far left academic, it may be the case that their worldview is consciously and/or subconsciously influenced by perceptual schemas related to those of Leonardo. It indeed may be that in their racial performance identity, the realm of standards, competition and accountability still maintain a tinge of whiteness, in that they seem poised to point out the laziness, shiftiness, disorganization, and intellectual inferiority which have always be proffered as justification for black inequality by white racism. For black progressives, their legacy is one of the need to prove their own worth and dignity against the existential annihilation that was offered them, to fight for rights that were promised upon the nation’s founding, but have yet to be fully given them, and, since the time of Lincoln, to attempt to persuade the federal government to affirm their dignity against the violent subjugation of local interests and power. The role of the federal government in education should then be to provide the support which has yet to be provided, which if it was only provided, would allow equity to be achieved. For the black progressive, this narrative has a strong influence on racial identity performance.

Yet, when a federal leader speaks of competition, it may be that scabs are pulled from deep and painful crooked scars born of centuries of losing a competition which was never fair. And so, although black progressives, as all blacks, continue to support President Obama, the twinge of uneasiness exists. It is, perhaps, the uneasiness of the desire to be led, but with an anxious quiver that the leader is the light-skinned house slave that will sell you out and lay claim to a relative, and only relative, insider’s status that you cannot claim. However, the anxious quiver is undoubtedly encased in love and community. This is the nature of the discomfort.

The most salient point is the outstanding fact that Barack Obama has not felt the need to react to this anxious quiver to prove his authenticity within one theory of blackness. For it would be all too easy for him to lay claim only to a focused legacy of integration and school finance equalization in education reform to prove that he has not been co-opted—that he is not Uncle Tomin’ to success. However, Obama’s identity performance has withstood the pain of complexity. He has incorporated the belief in human capacity, and the belief in black capacity, in the face of competition, standards and accountability as an authentic insight of the black conservative, because he has recognized that it jives with the perspicacious suspicion of white beneficence offered by the black nationalist, all the while maintaining the hope of the progressive universalist. Such comfortableness with existential complexity offers insights for leadership well beyond the black
narrative, and hints at the possibility of policy and law directed toward greater outcomes for those one serves, instead of toward the protection of one’s own identity interests.

CONCLUSION: THE MERITS OF COMPLEXITY THEORY

Empiricism is essential. Statistical evidence, logical analysis, and research based upon the scientific method should all exert a strong influence on law and policy regarding education. Indeed, reforms leading toward data-driven instruction and performance evaluation for teachers, schools, principles, and students are highly valued by President Obama as seen in their prevalence in both Race to the Top and the Blueprint for Reform of the ESEA. This article, in exploring the complexity of identity performance in relation to the genesis and promulgation of law and educational reform, does not limit reality to the interpretive lens of the identity performer, even if such subjective relativism is implied in some critical theory. There is elsewhere appropriate space to analytically investigate research and logistical analysis whether accountability, assessment, competition or increased funding will raise overall academic achievement or reduce the achievement gap among the races. There is also an important dialogue to maintain as to whether the particular formulations of Race to the Top, the Blueprint for Reform, or the Framework will produce positive educational outcomes or substantially create a more fully achieved sense of justice.

This article’s claim, however, is that, when it comes to matters as deeply painful as race and education, the most systematic solutions may be obtainable only when we acknowledge and allow complexity in identity performance. For if we make any claim that the interests to be served by enacted policy and interpreted law lie outside of ourselves, then we must soften our hold on any specific identity performance in order to truly integrate the complexities of reality. The empirical as object, although it may not require the subject to exist, is subject to interpretation by the subject. In seeking solutions to society’s most challenging issues, an identity performance reality that is too constricted will interpret reality in a manner most likely to protect its identity. In Barack Obama’s philosophy of educational reform, we may have a model of this idea of complexity leadership. In embodying the ability to perform identity of myriad influence, President Obama has been able to integrate the black progressive’s vision of centralized governmental support as the hope for equitable empowerment, the black conservative’s understanding of the need for competitive individualism to challenge all to new heights of achievement, and the black nationalist’s skepticism that any
solution proposed outside of the community to empower the community without the community challenging itself, is doomed to the failure of all paternalistic approaches. Thus, the Obama education reforms in the Race to the Top program, and his suggested revisions to the Elementary and Secondary Education Act, have been grounded in the importance of human capital development, accountability, and competition, alongside greater financial and cultural support for educators and students. There is much to be seen and argued regarding whether this approach will engender long term educational success—but its synthesis of varying insights offers, perhaps, the best hope we have.