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Education and the Law
Toward Conquest or Social Justice

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Introduction

...the state tends to create and maintain a certain type of civilization and of citizen (and hence of collective life and individual relations), and to eliminate certain customs and attitudes and to disseminate others...the Law will be its instrument for this purpose (together with the school system, and other institutions and activities). (Gramsci, 1971, p. 246)

Public education is under siege, and the hard-won gains of past generations are being eroded by judicial decisions and neoliberal government policies. For the past 150 years, social movements and the cumulative efforts of individuals, within and across African-American, Latino, Native-American, and selective White communities, have been instrumental in struggling for/attaining the legal, social, and economic rights to insure equality in education at all levels. These historic gains—from the establishment of Freedmen’s Bureau Schools and universal public education in the late 1800s, and mandated desegregation of public schools via Brown vs. Board of Education in 1954, to the Civil Rights movement of the 1960s, including the enactment of the Bilingual Education Act in 1968 and implementation of affirmative action policies throughout the 1970s—are systematically being rescinded in courts of law, and this is being justified by retrograde market-driven, color-blind ideology. Current legislation is undermining past legal mandates: No Child Left Behind Act (NCLB, 2001) privatizes public education, Proposition 209 in California in 1996, the Hopwood Decision in Texas (1996), Regents of the University of California v. Bakke (1978), Grutter v. Bollinger (2003) in Michigan, and other cases bolster the elimination of affirmative action. Proposition 227 and local mandates require English-only instruction, dismantle bilingual education, or delegitimate languages other than English. The most recent judicial assault on democratic efforts to attain equal, desegregated education was the Supreme Court decision on June 28th, 2007. This ruling limits, prohibits, and revokes the right to use race or ethnicity to implement voluntary integration plans in educational institutions, and will have devastating consequences on the long-term amelioration of racial inequality.

The temporary provision and strategic rollback of social policy, however, is not new. It is endemic to the history of the United States that the scions of wealth have benefited from their use of the law—both legal and extralegal forms—to provide, extend, withhold, and rescind public education and other social goods, and their use of public education as a means to secure, indoctrinate, and divide the labor force, to discard a reserve army of the unemployed, and to insure the expansion of capital at all costs, on both domestic and global fronts. Though education is revered as the great leveler and the law is revered as a guarantor of equality, the history of the federal and state use of public education and the law reveal that both have served to build and maintain a stratified society (Brown et al.,
This history has implications for current efforts toward social justice in education, and the strategic use of education and the law to realize equality.

This chapter chronicles how the state’s strategic use of education and sanctions of the law has complemented force in the historic conquest of Native Americans, subjugation of Mexican Americans, and enslavement of African Americans, to create and sustain a racialized, class stratified society. It addresses the legalized racial segregation and exploitation of conquered peoples that enabled colonization, westward expansion, and industrialization, and chronicles the acquisition of land and labor that relied on education, religious conversion, and a “commonsense” racial ideology to “naturalize” the consolidation of economic and political power. This chapter draws on the work of Antonio Gramsci and Cheryl Harris. Gramsci posits that education and the law, are the respective dimensions of twin arms of the state, civil society and political society, which “exercise hegemony” in the dominant culture through consent and force. Cheryl Harris’s critical analysis of the law posits that the social meanings constructed by and embodied in the law institutionalize racial and economic hierarchies of power and structures of domination in society. This chapter argues that legal mandates and protection by law are necessary, but not sufficient means to attain or insure equality in education, and that social justice efforts must be directed toward and challenge the societal structures and dominant ideologies that constitute the systemic roots of race–class hierarchy in the United States.

The first section of the chapter examines the gains and losses for African Americans, Native Americans, and Latinos in the wake of Brown v. Board of Education and related civil rights legislation. The next section, Foundations of Power: Land, Labor and Racial Ideology, provides a historical overview of legal mandates and education/religious conversion efforts from 16th-18th century that fostered racial subjugation and building American capitalism—the seizure of Native American and Mexican land, creation of a labor force based on African enslavement, and construction of an accompanying racial ideology embedded in the nation’s Constitution. The third section, Sources of Power: U.S. Expansionism and Social Resistance, addresses the politics of westward expansion, including the annexation of Mexico, and growing resistance to slavery and racial oppression. Section Four, Consolidation of Power: The Ascendance of Industrial Capitalism, discusses the exercise of force and consent through war and other means that ended slavery and reinstated white supremacy, secured the conquest of Native Americans, and instituted a public education system consonant with industrial capitalism. The chapter concludes with a discussion of the implications that this legacy has for current social justice efforts in the context of neoliberal educational reform and anti-affirmative action legislation, and posits the liberatory possibilities of public education as a democratic right and as a source of opposition to social inequality.

I. Brown vs. Board of Education—Two Steps Forward, Two Steps Back and Counting

The law masks as natural what is chosen; it obscures the consequences of social selection as inevitable. The result is that the distortions in social relations are immunized from truly effective intervention, because the existing inequities are obscured and rendered nearly invisible. The existing state of affairs is considered neutral and fair, however unequal and unjust it is in substance. (Harris, 1995, p. 287)

The Supreme Court 5-4 decision on June 28, 2007, set the clock back to the pre-Brown vs. Board of Education years of legalized segregated, unequal education. As Cheryl
Harris suggests in the above quote, the ruling denies the inherent structural inequalities in society, by mandating “color-blindness,” thereby legitimating the pervasive resegregation of schools that was catalyzed by NCLB. This decision equates discussions of race with promoting discrimination, as captured in the statement by Chief Justice Roberts, one of the majority opponents of voluntary integration: “The way to stop discrimination on the basis of race is to stop discriminating on the basis of race” (New York Times, June 29, 2007, p. 1). Roberts’s view undergirds the court ruling and the increasingly popular notion that racial equality has been attained and that the Civil Rights Act of 1964 ended racism and discrimination—at least for the few who are worthy. From this perspective, there is no need to redress social inequality through race-conscious measures such as integration, affirmative action, bilingual education, or to provide social support services for the poor and people of color. Nothing could be farther from the truth.

Legislation that grew out of the Civil Rights Movement did make a difference, temporarily. It came on the heels of World War II and the emergence of the United States as a strong capitalist nation advocating democracy, but the victory was short-lived (Anderson, 2004, 2007; Brown, 2005; Clofelter, 2004). On the one hand, the movement proffered significant changes in school desegregation, dropout/graduation rates, bilingual education, and college attendance by race between 1970 and 1991. African-American attendance at desegregated schools rose dramatically from 1% to 44% in the South, after the Civil Rights Act of 1964 enforced Brown v. Board of Education (Orfield, 2006, p. 13; Langemann, 1996). Bilingual education made considerable gains after the Bilingual Education Act of 1968 and Lau v. Nichols case in 1974 required affirmative action in accord with the 1964 Civil Rights Act (Darder, 1997; Ruiz, 1997). School dropout rates declined between 1972 and 1998, from: 30% to 20% for African Americans; 30% to 28% for Latinos and sharply increase to 40% in 1979; and Native Americans sustained the highest dropout rate at 36% in 1991 (Whites 17–11%) (Hauser, Simmons, & Pager, 2004; Reyhner & Eder, 2004). Affirmative action prompted a marked increase in the admittance and attendance of students of color at colleges and universities from the late 1960s to late 1970s, before the Bakke case. On the other hand, Brown v. Board of Education catalyzed massive closings of African-American schools and job loss for thousands of African-American teachers and principals in the South (Anderson, 2005; Russell & Hawley, 1983). Desegregation for Latinos was tepidly enforced, and their attendance at segregated schools increased from 42% to 80% in the West from 1969 to 2001. For Native-American students, there was little change in their segregated status on reservations and attendance at indigenous schools.

The legislation had a profound impact on students of color in schools. By 2001, almost 50 years after Brown, African-American students attending multiracial schools fell precipitously from 44% to 30%, 65% of Black and Latino students were in Black and Latino schools, and 79% of White students were in White schools (Orfield & Lee, 2004, p. 16), and those in multiracial schools were: Whites, 12%; Asians, 42%; Latinos, 27%; African Americans, 23%; Native Americans, 20% (Orfield, 2006). Structured English immersion, the “sink-or-swim approach” mandated by NCLB, reduced enrollments in bilingual education from 29.1% to 5.5% in California between 1998 and 2007, and contributed to the increasing dropout rate across the country (Crawford, 2007; Gonzalez, 1997; Yzquiirre & Kamasaki, 1997). High school graduation rates in 2001 were: African American, 50.2%; Native American, 51.1%; Latino, 53.2%; Asian, 76.8%; White, 74.9%, with a 22% to 25% gap between Whites and students of color. Fewer male students of color graduated: African American (43%), Native American (47%), Latino (48%) (Orfield, 2004, p. 17). Many students drop out/are being pushed out by school exclusion policies and high stakes testing and discouraged by grade retention and the poor quality of education (Darling-Hammond, 2005, 2007; McNeil, 2000; Mishel & Roy, 2006). They end up in the military or school-to-prison pipeline, given the newly approved military recruitment of school dropouts, cash bonuses, and 600% increase in criminal justice spending versus 25% real dollar increase in public education spending (Alvarez, 2007; Darling-Hammond, 2005; Philpott, 2006; Silent Epidemic, 2007). College entrance for African-American students declined steadily throughout the mid-1980s and 1990s, due to drastic tuition increases and financial aid cuts (Dobbs, 2004; Moore, 2005; Orfield & Miller, 1998). This trend was exacerbated by the split Supreme Court decision in June 2003 on college admissions at the University of Michigan, which precipitated a 26% to 32% decline in African-American student admissions to public and private universities and colleges, while White student admissions from alumni families rose; for example, affirmative action at prestigious universities (Katznelson, 2005).

With the legislative rollback, savage inequalities in current school funding, quality of education, teacher preparation, and pedagogical and capital resources have persisted and are worsening (Darling-Hammond, 1998; Darling-Hammond & Berry, 1999; Street, 2005; Wise, 2005). Per pupil funding disparities rose 50% in select cities to a 2:1 ratio from 1989 to 2002; for example, $17,291:$8,482 (2002) in Chicago between wealthy White suburbs and poor urban areas with majority Black and Latino students (Kozol, 1991, 2005), and continue to be exacerbated by NCLB’s charter schools, test score sanctions, and inadequate funding. College preparatory magnet schools in cities freed from consent decrees and federal desegregation mandates, have been placed disproportionately in White communities, thereby creating increasingly segregated schools (Allensworth & Rosenkrantz, 2000). The new, least educated teachers from abbreviated alternative certification programs tend to be sent to low income schools of color, teach outside of their area of expertise, and have the lowest retention rates after three years (Darling-Hammond & Berry, 1999). Despite these glaring disparities, Secretary of Education, Margaret Spellings’s online videos and Fact Sheets, How No Child Left Behind Benefits African Americans, Hispanic Americans, American Indians, perpetuate the illusion that all is well. All is not well. As James Anderson states, in A Tale of Two Browns, the 1954 ruling constitutes “a heritage of constitutional equality and...[a] legacy of unequal public schooling...” (2005, p. 16).

These data are indicative of the quick reversion to legalized inequality, possible because Brown v. Board of Education, civil rights legislation, and other rulings did not/could not rectify or overhaul the foundational structures of inequality in society at large. Despite the hopeful promise of educational equality for people of color, these measures were
subject to mercurial renunciation, when they were deemed no longer relevant, necessary, or desirable. They were not intended to upend the race–class hierarchy as a system of rule in this country, which was/is in place and maintained in education through segregated housing, property tax-based school funding, White flight, school choice, location of magnet schools, and an underlying commitment to racial inequality. Their benefits to the poor and people of color are often the temporary byproducts of measures that maintain basic structures of inequality. In addition, the strategic rollback of social policy and exacerbation of social inequality is grounded in a national history of legislative mandates and educational policies and practices that have been used by those in power to acquire land/natural resources, to maintain a labor force, and to accumulate capital, under the banners of “manifest destiny,” “civilizing the heathens,” or “democracy for all” (Takaki, 1993; Woodson, 2004; Zinn, 1980). Though this history is obscured and systematically denied by Roberts and other proponents of color-blind legislation in the name of equality, there are threads of continuity between the past and present uses of the law, education, and racial ideologies, which reveal shifting, often deceptive efforts to preserve inequality, towards which our social justice efforts must be directed. Persistent patterns emerge in 21st century forms of race and class oppression that are anchored in, or are reversions to, this country’s early years of conquest, accumulation, and consolidation of capital. The following sections in this chapter provide a historical overview of the ways in which the subjugation of Native Americans, African Americans, and Latinos was aided and abetted by the passage of certain laws and provision or prohibition of education, and their exploitation was instrumental in acquiring the land, cultivating the work force, and promoting the lubricant of racial ideology to create and maintain the machinery of American capitalism.

Foundations of Power: Land, Labor, and Racial Ideology

Early Conquest: Stakes in Native American Land and Racialization

The “normal” exercise of hegemony on the now classical terrain of the parliamentary regime is characterized by the combination of force and consent, which balance each other reciprocally, without force predominating excessively over consent. (Gramsci, 1971, p. 80)

The acquisition of land as a source of capital, the creation of a labor force, and the infusion of racial ideology characterized the beginnings of European colonial rule and established the roots of social and economic inequality in the Americas. Prior to 1492, the indigenous people of the Caribbean had free access to their land, and had established communal ways of life, education, religion, and systems of social law that sustained and promoted their survival. Columbus’ arrival from Spain, bearing disease and visions of colonization, disrupted the Arawak economic, political, and cultural life, marking the advent of the genocidal plunder, enslavement, and conquest of Native Americans’ land, lives, and labor in the Western Hemisphere. In 1521, the Spaniards colonized indigenous people in Mexico and imported African slaves in 1527 to work the cocoa plantations and silver mines, and build the colony they ruled for 300 years (Churchill, 1997; Menchaca, 2001). Though free Afro-Phoenician navigators reached the Atlantic coast of North America prior to Europeans in about 750 BC, Spaniards were the first Europeans to bring Africans as slaves in 1526 to South Carolina to supplement the forced labor of enslaved Native Americans (Loewen, 1995; Van Sertima, 1976). African slaves revolted along with the indigenous population, forcing the Spanish to abandon their settlement efforts, until
they wrested St. Augustine, Florida from the Native Americans and French Protestants in 1565, and extended their mission to the Southwest into present-day New Mexico in 1598. The Spaniards initiated European colonization in the “New World,” using instruments of rule that would endure long after their departure.

The racialized acculturation and religious conversion of the Native American and Mexican peoples to Catholicism were central to Spanish colonization (Churchill, 1997; Menchaca, 2001; Reyhner & Eder, 2004; Samora & Simon, 2007; Spring, 1994). Education and the law became pivotal tools of consent and force in this process. The Law of Burgos (1512) legislated the Hispanicization of indigenous peoples in Mexico, requiring owners of over 50 enslaved Indians on encomiendas, their land grants from the king, to provide for the “salvation of Indian souls and conservation of their lives” (quoted in Reyhner & Eder, 2004). Toward this end, schools and missions were established by Jesuits and other Catholic orders, under various forms of “ecclesiastical slave” conditions for the indigenous people. Complementarily, the colonists instituted a rigid and elaborate hierarchical caste system of “race”—class assignment from Spaniards to mixed Africans—Peninsulares/Criollos, Mestizos, Indians, Afromestizos, and in 1575 added antimiscegenation laws. Grounded in an emergent system of social and economic privilege, Mexicans, Africans, and Indians became a source of free labor in agriculture, deemed “necessary resources” for the colonists’ survival. The incipient racialization of the conquered laborers by the Spaniards presaged that of the English colonists who arrived a century later. The English would ultimately triumph over the French, Spanish, and Portuguese in their ruthless seizure of land from the indigenous peoples in Mexico and North America, and would give new meanings to physical differences, that is, race, that became foundational in the “permanence” of their acquisition of land and labor.

The foundation for the American capitalist labor system began to take shape in the 17th century, after Protestant missionaries established the first permanent English colonies in Jamestown, Virginia (1607) and Plymouth, Massachusetts (1620). Acquiring land through relationships with the indigenous peoples was the priority, and as James Loewen (1995) suggests, syncretism and cultural imperialism framed the hierarchical relations that emerged between the colonists and Native Americans. Initially, White colonists coexisted, traded, and intermingled with indigenous people, dependent on their guidance in adjusting to the new land. Once acclimated, the colonists pursued their aggressive plan of land acquisition, and gained military and cultural ascendance over the indigenous people. Within two years, the first Anglo-Powhatan War’s (1609–1613) steady encroachment precipitated a successful counteroffensive by the Wahunsonacock Nation. The second Anglo-Powhatan War resulted in the forced submission of the Wahunsonacock Nation to colonists’ rule. Anticipating Native-American resistance to “foreign” invasion, from earlier failed colonial efforts, the English used open combat and covert operations as means of conquest; for example, firearms, destruction of farms, incineration of cornfields, slaughter of whole villages, starvation, marauding pillage, torture, leveling of towns, and diseased “trade blankets,” poison, deception, and duplicitous treaties. The press for and resistance to land acquisition continued in a new form. The New England Confederation (1643) united northeastern colonies against “Indian attacks” by using education and religious conversion as alternative strategies of conquest.

By the mid-1600s, colonists were establishing schools in Protestant “Praying Towns” to isolate, contain, educate, and “civilize” the Indians apart from the “pagan others”; that is, to “change their whole Habit of thinking and acting...raise them...into...civil industrious and polish’d People...[in]still Vertue and Piety...and introduce the English Language among them instead of their own imperfect and barbarous Dialect” (quoted from Reyhner & Eder, 2004, p. 29), as part of their continuing aggressive campaign
of conquest. Amidst profound resistance to forced conversion efforts, the colonists threatened annually to execute Native Americans who failed to comply and demonized long hair and other Native-American cultural norms (Spring, 1994). Conversion efforts included the establishment of Harvard’s Indian College (1636), which provided printings of the Bible in Algonquian language, and William and Mary College (1693) (Reyhner & Eder, 2004). Colonists’ efforts to pacify and indoctrinate indigenous people through education and religious conversion accompanied the continuous wars over the land, despite the opposition of Quakers and others to the colonists’ pillage. Armed with entitlement and belief that “God was on their side,” the seeds of “Manifest Destiny” and White supremacy were being sown as the colonists sought to dispossess and systematically dislocate Native Americans, that is, to “…destroy them...[and] enjoy their cultivated places... [to] be inhabited by us” (quote in W. Churchill, 1997, p. 147). Savage wars, religious conversion, and deceptive treaties were resisted, as for example, the annihilation of the Pequot Nation and its dissolution in the 1636 Treaty of Hartford prompted the retaliatory destruction of the “praying towns” by the Narragansett and Wampanoag Nations in the 1676 “King Philip’s War” (Loewen, 1995; Reyhner & Eder, 2004). While the 17th century was characterized by colonists’ engagement in military and ideological warfare, that is, education and religion, against Native Americans to set stakes upon their land, it was also characterized by their efforts to secure a labor force.

Slavery: Free Labor, the Law, and White Supremacy

It was the interaction between conceptions of race and property which played a critical role in establishing and maintaining racial and economic subordination.... Through slavery, race and economic domination were fused.... Slavery produced a peculiar, mixed category of property and humanity—a hybrid with inherent instabilities that were reflected in its treatment and ratification by the law. (Harris, 1995, pp. 277–278)

Initially, the colonists used the “unending supply” of enslaved Native Americans and the influx of European indentured servants in 1616 to produce the labor-intensive and lucrative cash crop, tobacco. The European laborers were impoverished, unemployed workers and former convicts, who became the bonded property of the master/employer in payment for their transatlantic voyage, food, clothing, and shelter. Initially, these English, German, and Scottish servants worked alongside of Native American and African slaves, and indentured servants, experienced branding, public flogging, and other cruel punishments, and revolted together against the punitive and harsh working and living conditions of the four to seven plus years of bonded labor (Article, 1640). If they survived, the servants, some of whom were apprenticed, were “free” to build a life in the colony after indenture. Native Americans, otherwise healthy, had no immunities to European-borne disease, and were decimated by both the onslaught of smallpox and other European epidemics from livestock and from the effects of forced labor (Loewen, 1995). Though the press for labor created an immigrant population comprised of 80% to 85/90% White indentures, the short-term status and declining life expectancy of Native Americans and European servants was not cost effective. Africans were imported to sustain the labor supply. Increasingly, Black slaves were replacing White indentured servants, with numbers increasing from 150 to 3,000 slaves from 1640 to 1680, as those for Whites decreased. Gradually, distinctions were made between European and African indentured servants, on the basis of religion. Though conversion to Christianity was an explicit goal of and justification for English colonization, the initial religious discrimination of non-Christian
African servants, was gradually supplanted by discrimination on the basis of “racial” or physical differences, resulting in the extension of servitude, differential punishments, and the forced conversion of Africans from temporary servant to lifelong slave. The permanent enslavement of Africans was passed on to or inherited by their children, providing an unending, far more productive and profitable source of labor.

It also became clear to Southern landowners that the creation of a material and psychological wedge between White and Black laborers would establish a hierarchy pivotal to the maintenance of slavery as a source of wealth. White servants outnumbered Black slaves by more than five to one in 1668, and joined forces with them in their opposition to landowners’ exploitation in the Bacon Rebellion of 1676. This show of class unity between Black and White laborers and the threat of further uprisings hastened the transition to slavery and contributed to the drastic inversion in Black slave–White indentured servant ratio of five to one by 1700. As the transatlantic slave trade rose, European immigration levels declined until their rise again in the late 18th and 19th centuries. Since African slaves were geographically isolated from their homeland, estranged from Europeans by language, easily distinguished physically, and highly productive laborers—they were a profitable human investment, rivaled only by the dividends from the transatlantic slave trade itself. The slave trade created burgeoning lucrative business in the regional economies of the North, such as the shipping industry, raw material production, foreign rum trade, artisans’ and craftsmen’s work, textile industries, emergent insurance companies, and legal and bookkeeping enterprises, which were as essential to the profits of slavery as the daily exploitation of the free labor of Africans (Murphy, 2005).

With the securing of land and labor well underway, the passage of laws was an indispensable instrument for the institution of a racialized hierarchy amidst the laboring masses/classes. Those laws were the Slave Codes passed from 1660 to 1705, which gradually codified racialized distinctions between servitude and slavery (Franklin, 1994; Higginbotham, 1978). These legal mandates institutionalized the subjugated status of slaves, through harsh controls; for example, slave passes curtailed movement, the forbiddance of groups of four slaves curtailed freedom to congregate, prohibition of slave testimonies in court or right to trade rescinded civilian status and economic independence. In 1661, Virginia recognized slavery with the passage of a fugitive slave law and a year later, mandated distinctions between slaves and indentured servants, based on length of servitude and children’s heritability of slavery vs. freedom. By 1670, laws across various states ruled that Christian conversion did not alter one’s slave status, that slaves were subject to corporal punishment and unprotected by law, and that free Blacks and Native Americans could not own Christians, that is, White indentured servants or enter free Whites’ homes “unaccompanied.” Slave owners fear of and retribution for slave resistance and revolts prompted the anti-insurrection laws of 1680 and 1682, which prohibited slaves from bearing arms or traveling without a certificate or owner (1687) and stipulated the requisite punishment. In 1691, antirunaway laws were enacted with the creation of “informal” slave patrols of poor slaveless Whites and others, which targeted “Negroes, mulattoes, and other slaves,” and initiated the use of race in the law. Also, interracial marriages were banned, sanctions were levied against White women with mixed-race children, Black women’s mixed race children were relegated to slavery, and strict conditions were established for the manumission of slaves. Decisive, however, were the Slave Codes of 1705 passed by the Virginia General Assembly, which institutionalized slavery and sealed the status and classification of Africans as property and Whites as human:

All servants imported and brought into the country...who were not Christians in their native country...shall be accounted and be slaves. All Negro, mulatto and
Indian slaves within this domain...shall be held to be real estate. If any slave resist his master... correcting such slave, and shall happen to be killed in such correction... the master shall be free of all punishment...as if such accident never happened. (Hening, 1809, p. 447)

Thus, at the advent of the 18th century, chattel slavery was instantiated by law and woven into the social and economic fabric of the colonies—reifying the commonsense notion of the inferiority of African slaves. The harshness and subhuman atrocities of enslavement are well documented; that is, subhuman living conditions, whipping, branding, torturous work, rupture of families, slave auctions, slave breeding, the rape of African women. Africans tried to run away in search of their families, despite the consequences, and as chattel, they were treated as thieves who had stolen their master’s property. Slavery in the North was no less brutal or morally depraved, but neither climate nor economic conditions allowed for the development of large-scale agrarian plantations, and the Puritans in Massachusetts had a somewhat mollifying effect on its expansion. The slave resistance, such as work stoppage, property damage, assault, escape, and slave rebellions persisted as a continual threat (intense circle of violence) and an increasing reality for slave owners and northern colonists (e.g., the Revolt in Virginia in 1663, New York Revolt of 1712) (Aptheker, 1983; Doak, 2006). As stated by John Hope Franklin, “Perhaps the greatest impact runaways had on the peculiar institution, was in their defiance of the system. Masters and slaves knew that there were blacks who were willing to do almost anything to extricate themselves from bondage” (Franklin & Schweninger, 2000, p. 293). The slave owners responded with increased repression, violence, and the formation of paid slave patrols from 1704 to 1754. The Stono Rebellion of 1739 in South Carolina prompted the decisive passage of the Comprehensive Slave Act in 1740, which forbade slaves to learn to read or learn English and mandated penalties for violators of the law.

The Comprehensive Slave Act was the first in a series of comparable state laws (until 1819) that was decisive in structuring slavery by forbidding the education of Africans. The denial of education to slaves in the South was considered a deterrent to slaves’ “uppity ideas about freedom and equality” that would incite slave revolts (e.g., Gabriel Prosser in 1800, Denmark Vesey in 1820), and it amplified the social distance between former indentured servants, who were now split into free White laborers and chattel slaves of White landowners. In addition, Christianity was viewed as a means to increase the morality, reduce the resistance, and gain better control of those in slavery. Thus, “education without letters,” listening to but not reading the Bible, was embraced by slave owners to inculcate religion without literacy. Despite the laws and sanctions, African slaves clandestinely educated themselves, were educated by free Blacks and Whites and by some landowners who wanted to enhance work efficiency. Religion was also used by enslaved Africans as a source of personal refuge and social resistance to slavery.

While the provision of education was initially deemed the civilizing handmaiden of Native American conquest, it was denied to African Americans to create a schism between poor Blacks, Whites, and Native Americans, who had already risen up against a common oppressor, and to forestall the insurrectionary yearnings of Africans for freedom. This bifurcation would settle into a racialized hierarchy, moored by material and ideological White-skinned privilege, which would bolster the economic and political power/hegemony of the slave owning oligarchy and the imminent industrial capital. As such, the Black Codes and other mandates restricting the education of African slaves created fertile ground for the entrenchment of slavery, marked by the invention of the cotton gin in 1793. The cotton gin rapidly increased cotton production by 50-fold for export,
increased the demand for and price of slaves, intensified the slave trade and related textile and shipping industries, and was accompanied by the introduction of the first federal Fugitive Slave Law and insurance on slaves to protect Northern and Southern financial investments. The cotton gin further entrenched the institution of slavery and the degradation of African Americans, as their families were ripped asunder with the dissemination of “surplus” slave men and women to neighboring states, leaving their children behind. While the free labor of slaves was instituted as a prime source of profit for the North and South, and as the foundation for a racially stratified working class, the quest for land as a source of capital continued. Both land and labor were fundamental to the private accumulation of wealth and the development of the propertied versus the laboring class.

**A New Democracy: Constitution and Legal Foundations for Inequality**

The assumption of American law as it related to Native Americans was that conquest did give rise to sovereignty. Indians experienced the property laws of the colonizers and the emergent American nation as acts of violence perpetuated by the exercise of power and ratified through the rule of law. At the same time, these laws were perceived as custom and “common sense” by the colonizers. (Harris, 1995, p. 280)

The dual and contradictory character of slaves as property and persons was exemplified in the Representation Clause of the Constitution. (Harris, 1995, p. 278)

Throughout the late 17th and 18th centuries, the struggle over possession of the land intensified and expanded for Native Americans, as the institution of slavery settled in as a way of life. Native American tribes and nations often joined forces to resist English and other European encroachments on their land; for example, the Peach Tree War in New York (1655), Esopus War against the Dutch in New Jersey (1663), Yamasee War in South Carolina (1715), Dummer’s War in Vermont (1723–1727), despite English colonists’ passage and renewal of the Scalp Act (1722, 1747–1880), which made bounty hunting a lucrative business (Churchill, 1997). Intermittently, they allied with the French and English during the four Intercolonial or “French and Indian Wars” between 1689 and 1763 (Churchill, 1997), which culminated in the English colonists ousting the French. Native Americans retaliated in the Pontiac’s Rebellion (1763–1766) against English colonists’ unbridled rule after their defeat of the French, which was a successful campaign until they received blankets infected with smallpox. War expense and England’s focus on seaboard mercantilism prompted the Royal Proclamation (1763), forbidding colonists to settle west of the Appalachian Mountains or to purchase land independent of the Crown. It incurred the vengeful slaughter of Native Americans by the “Paxton Boys” and colonists who had already taken land out west, and the revolt against England in the ensuing Revolutionary War (Reyhner & Eder, 2004).

The War of Independence in 1776 temporarily shifted the colonists’ attention from appropriating land from the indigenous people to defeating England, and induced the cry for freedom, equality, and inalienable rights. Toward this end, the colonists solicited support from Native Americans and African slaves to fight the English, but received disparate responses from them, given the history of mistreatment and broken agreements they had experienced at the hands of the colonists. Though many Native Americans eschewed participation in yet another European conflict, the promise of manumission and the opportunity to weaken the enslavers drew some to fight for the British. Though some African slaves and indigenous people fought for the colonists, voluntarily and by force, their lot after the war worsened and their resistance heightened. The final campaign to
extinguish Native Americans was launched with increased fervor, and the grip of chattel slavery intensified with the cotton gin’s invention 17 years later in 1792. However, this occurred amidst the new national discourse of “democracy for all” which emerged after the colonies’ independence from England.

The Constitution of 1787 embodied the rhetorical call for democracy, ironically, drawn from Native Americans’ democratic principles of governance, as a basis for the formation of the nation. In the context of slavery, as a national institution and investment, the Constitution’s single reference to equality was intended for White men and for the equal representation of all states in the legislature (Anderson, 2005, 2006). However, the letter of the law established to govern the United States, “equality for all,” converged with the genuine democratic strivings of the free and the enslaved, and incurred a dramatic increase in runaway slaves, the economic- and morality-induced stirrings of abolitionism, and Mum Bett’s successful lawsuit for freedom from slavery in New York in 1781. In addition, the Constitution’s “Three-Fifths Clause” reduced each African-American slave to the equivalent of “3/5 of a man,” which served the propertied interests of the Southern slave owners, limited the power of the Southern vote in Congress and increased its taxes, and along with the Fugitive Slave Clause, instantiated the notion of African Americans as property and as less than human in social life and in the American psyche. In 1788, a Fugitive Slave Clause was added to the Constitution. The incongruity within the Constitution and national ambivalence, about whether equality should be for all or for some, were also manifested by seven Northern states that officially ended slavery—by law—from 1777 to 1804, but took a quarter to a half century to end slavery in practice. Concerns about “assimilating” former slaves into society, fear of a massive influx of African American fugitive slaves from the South, resentments against African Americans “taking” the jobs of poor White laborers, and an ingrained commitment to maintain a segregated Black population not only deterred the actual end of Northern slavery, but incurred Northern violence against African Americans and the passage of numerous laws to exclude these free men and women from economic, political, and social spheres of life in the newly-formed U.S. These racial concerns extended to limitations placed on immigrants, with the passage of the Naturalization Act of 1790, which reserved the right of U.S. citizenship to “free White persons” of “good moral character.” The hierarchical relations that were being forged amongst White colonists, Native Americans, and African Americans, and eventually Mexican Americans along class lines were being codified in the first laws of this new nation.

Independent of England and with Constitution in hand, the former colonists were unfettered by British rule, free to pursue the further conquest of the Native American land and people. However, the toll that the War exacted on the colonies led the U.S. government to pursue less taxing, nonmilitary strategies of coercion and isolation to extract more land from the indigenous people. This took the form of an acculturation–acquisition plan for the peaceful negotiation of land through treaties and civilization/education programs. “Binding” treaties, laws, and other strategies became essential tools to secure previous gains made and to establish policy that would facilitate the procurement of new land, without the expense of war (Avalon Project, 2007). From 1778 to 1889, over 400 treaties were signed with the Native Americans, constituting “diplomatic” efforts to coexist, take the land, and confine the indigenous people to reservations. Treaties were often used as “gradual steps” in the land acquisition process, from the designation of “Indian land,” to confinement on reservations, to outright appropriation or encroachment. Treaties often deceptively turned the land over to the “settlers,” or more often, the agreements establishing terms of exchange or protection for Native Americans’ rights were disregarded, ignored, or broken by the government. A case in point is the Northwest
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Ordinance (1787), which illegally created slave-free territory from Native American land “won from England,” eventually becoming Ohio, Indiana, Illinois, Michigan, Wisconsin, and Minnesota. The Ordinance promised Native Americans “good faith” in honoring their “property, rights, and liberty,” one of many promises broken with indifference. In peace talks, the Shawnee rejected the U.S. definition of them as “a conquered people” allied with the British and their offers of payment for the land. They formed a confederation to stop the acquisition of ceded lands and U.S. military advancement, waging devastating battles against the army. With a vengeance, the army retaliated and won at Fallen Timbers, followed by the signing of the Greenville Treaty in 1795, which ceded the land. Though Native Americans resisted at every turn, often refusing the ultimate compromise of land-for-education exchanges proposed in the treaties, duplicitous agreements ceded almost a billion acres of their land to the United States in exchange for education and other “goods” (Spring, 1994).

During this postwar period, education and other persuasive strategies were central to the U.S. acculturation-acquisition plan. The government established “trading houses,” or “factories,” as convenient places for Native Americans to sell their land for cash from White settlers. Through this factory system, they hoped to lure the indigenous people to the marvels of money and consumption of goods, to inculcate their desire for wealth accumulation, and to persuade them to value the “superiority” of private property, over their customary practice of sharing resources. In addition, government agents were sent as emissaries to “Indian land” to set up schools for Native Americans to educate and convince them to abandon their hunting practices for husbandry, agriculture, and “domesticity.” Their goal was to reduce indigenous people’s “need” for hunting land, so that Whites could take over the huge tracts of “unused territory.” The government’s plan to convert Native Americans to European Americans’ economic, political, and social ways of life in order to take their land with the least resistance, was no “easy sell” (Spring, 1994). Native Americans valued their own way of life and disdained the “White man’s” destructive ways of being. Their distrust of White Americans had been well earned over the past 200 years, having experienced settlers’ intentions rarely matching the implementation of their avowed plans or treaties. A classic example is that of Rev. Samson Occom, a Native American Christian convert, who raised funds in England for Indian education. The money was used by missionaries to found Dartmouth College in 1769, which since its inception has served primarily White students, as have many schools set up for Native Americans; for example, Harvard College and William and Mary College (Reyhner & Eder, 2004; Spring, 1994).

U.S. “Indian” policy in the late 18th century, consisting of treaties, trading houses, and strategies of persuasive education, backed by war, was framed by a U.S. Constitution that espoused democracy in the nation, but institutionalized inequality by law. This provided the context for the government’s dismissive negotiations with Native Americans and seizure of their land. Though the Constitution’s 3/5 Clause explicitly “excluded Indians,” it set the precedent for relegating a people to subhuman status, justifying their mistreatment, and positioning them “outside of the law of moral obligation.” The government’s temporary shift to diplomacy after the War of Independence did not belie its intractable, unrelenting campaign to acquire land, to decimate the indigenous people, and to accumulate capital. By 1800, the population of over five million Native Americans was reduced by 95% to 600,000 (Churchill, 2004) and encroachment on their land progressed. Important inventions in the 18th century catalyzed the production of goods, including the move from water to steam power (1780s), cotton industry-spinning in textile mills (1783), iron smelting replacing coal, potting and stamping (1786), and steam power locomotive (1804). The decimation of the Native Americans, the massive profits
accrued from slavery, and the emergent mechanization paved the way for eventual emergence of large scale industrial production.

**Sources of Power: U.S. Expansionism and Social Resistance**

*The Politics of Westward Expansion: Education and the Law*

...Educative pressure [is] applied to single individuals so as to obtain their consent and their collaboration, turning necessity and coercion into “freedom”...Classified as “legally neutral”,...civil society...operates without “sanctions” or compulsory “obligations”,...exerts a collective pressure and obtains objective results in the form of an evolution of customs, ways of thinking and acting, morality, etc.... The Law is the repressive and negative aspect of the entire positive, civilizing activity undertaken by the State.... (Gramsci, 1971, pp. 242, 247)

The inherent contradiction between the bondage of blacks and republican rhetoric that championed the freedom of “all” men was resolved by positing that blacks were different. (Harris, 1995 p. 286)

Because the law recognized and protected expectations grounded in white privilege... the dominant and subordinate positions within the racial hierarchy were reified in law...Whiteness as racialized privilege was then legitimated by science and was embraced in legal doctrine as “objective fact.” (Harris, 1995, pp. 281, 283)

The first half of the 19th century was marked by important social and political developments toward consolidating land, labor, and racial ideology—the building blocks for an emergent U.S. industrial capitalist democracy. They included: (1) an acculturation-acquisition process embodied in the passage of the Civilization Fund Act (1819), the Indian Removal Acts (1830) following the Gold Rush, and federal compromises on slavery (1820–1850); (2) the emergence of scientific racism and mounting resistance to conquest and slavery by Native Americans, African Americans, and White abolitionists (1829–1853); and (3) Mexico’s independence from Spain, the Mexican-American War, and culminating Treaty of Guadalupe Hidalgo (1821–1848). Education and the law played a key role in forging U.S. expansionism in the North American continent and creating a workforce free to sell its labor.

Armed with the taste of freedom, the entitlement of “Manifest Destiny,” and unquenchable thirst for wealth and power, the government spurred new laws and it was federal policy to “civilize” the remaining Native Americans through education, clear them from desired land, and enact their removal to the west. Education was deemed an important palliative for the Native Americans and a primary source of the ideological indoctrination needed to secure the U.S. government’s land “investments” and the position of Native Americans within the nation’s social hierarchy. The Civilization Fund Act (1819) provided financial support for religious groups and others to educate Native Americans, convince them of the benevolence and wisdom of U.S. government policy, teach English to them, and convert them to Christianity. As declared by a House Committee, “In the present state of our country, one of two things seems to be necessary: either that these sons of the forest should be moralized or exterminated” (from Reyhner & Eder, 2004). Since the “Indian problem” was an official priority for the U.S. government, the Office of Indian Affairs was created in 1824 and was placed within the War Department to manage war, schools, and trade, and to oversee treaties and funding for Native Americans
(Churchill, 2002; Travel and History, 2007, www.u-shistory.com/pages/h3577.html). Its strategic placement in the War Department positioned Native Americans as potential “enemies of the state,” upon whom war or requisite military action could be unleashed at any time.

The 1928 Georgia Gold Rush heightened the drive for the accumulation of land and wealth, and catalyzed The Indian Removal Act (1830). President Jackson’s view was, “Build a fire under them. When it gets hot enough, they’ll move” (quoted in Heidler & Heidler, 2007). This decisive Act mandated the forced relocation of the Cherokee Nation from the state of Georgia to west of the Mississippi River, and guards were placed at the gold mines for protection from the inhabitants of the land. This dispossession—relocation process was further supported in the final version of the Indian Trade and Intercourse Act (1790, 1802, 1834), which identified “Indian land” and restricted trade with and travel by Native Americans on this land, and terminated federal support for mission education east of the Mississippi. The government appointed leaders for land negotiations, who “voluntarily ceded” territory, and effectively reduced Native Americans to protectorates without rights. As stated in the Supreme Court ruling of 1831, the indigenous people are “dependent nations...in a state of pupilage...resemble...a ward to his guardian” (Reyhner & Eder, 2004; Spring, 1994). In response, Native Americans fought numerous battles to protect their homes, amidst the invaders’ incessant decimating ravage of communities, corn, hunting grounds, and lives (Churchill, 1997). They resisted valiantly in the Black Hawk Wars of 1832 and in the Seminole Wars (1832, 1835–1842), where Black Seminoles and African slaves joined on the heels of their largest slave rebellion in the United States (1835–1838) (Aphekner, 1983; Bird 2005). The onslaught of the militia caused some Native Americans to accept small tracts of land in exchange for millions of ceded acres, while other Africans and Seminoles emigrated to slave-free Mexico. The tragic removal process began with deceptive, violated treaties between President Jackson and the Cherokee Nation, and culminated with the stockade housing of 18,000 Cherokees and their deadly “Long Walk” under the force of 7,000 military troops on the “Trail of Tears” in 1838, and their forced dislocation from Georgia to Oklahoma.

After the Removal, Cherokees established a national school system in the 1840s with funds from ceded land, as did Cheeks and Choctaws with eastern missionaries. However, many rejected Christianity, governmental indoctrination, and the promotion of White supremacy by school officials, because they sought education and literacy for their own survival and well-being (Reyhner & Eder, 2004; Spring, 1994). Their relative peace was short-lived as expansionist settlers sought new territory, as seekers of gold in the Rushes of 1848 and 1859 pursued wealth, as a burgeoning new wave of European immigrants sought land in the 1820s, and as the Irish fled poverty and death from the English-induced Potato Famine (1846–1850). In 1849, the Office of Indian Affairs was renamed the Bureau of Indian Affairs with its transfer from the War Department to the Department of the Interior, signaling the shift in policy to “civilize” the Indians through the reservation system. The Fort Laramie Treaties of 1851/1868 promised Native Americans exclusive rights to the Great Plains and Black Hills (Sioux, Blackfoot, Assinaboin, Crow Nations, and the Gros Ventre, Cheyennes, and Arapahoes), provided “mission” education for the children, sought “peace” between Whites and indigenous people, exchanged prospectors’ safe road passage to gold mines and the West in exchange for 50-year annuities and reparations. What ensued, however, were brutal attacks by the flood of Whites to this territory and land gained in the illegal Louisiana Purchase (1803) from the French.

As the influx of White settlers grew in the western territories and new states were being formed, the issue of slavery came to the fore. By 1804, though slavery was officially abolished in seven Northern states, and the slave trade to the United States was ended in
1808, slavery and the slave trade continued in the South. North and South were monitoring the number of slave versus free states admitted to the union, to maintain a relative regional balance of power in Congress. Thus, three compromises and a court decision were reached, not on the basis of the morality of slavery, but in the interest of equalizing/gaining state representation and “preserving the Union.” The Missouri Compromise (1820) admitted Maine as a free state and slavery was illegal in the Louisiana territory, except for Missouri. In the Compromise of 1850, California was admitted as a free state, while Utah and New Mexico could determine their status. The Dred Scott Decision of 1854 denied citizenship and the right to sue to Blacks, and reversed the restrictions on slave territories in the Missouri Compromise. These rulings were indicative of mounting economic and political tensions between the North and South over slavery.

Scientific Racism and Social Resistance

Growing resistance to slavery and rising tensions over the morality of slavery had begun to surface in the late 1820s. The seeds of scientific racism were sewn in fertile ground to justify slavery. The early theories of Carolus Linnaeus, a botanical taxonomist, classified and hypothesized the differing mental, moral, and physical capabilities of “the races,” Black, White, Yellow, and Red people in 1763. Edward Long also created a simple classification of race in 1774, and his monogenism thesis attributed all mankind to the same origin, while others believed in polygenism, positing that the “races” had different origins. Finally, Arthur de Gobineau, from France published his famous work, *The Inequality of Human Races*, in 1853, hierarchically ranking the “races” and advocating the maintenance of racial integrity/purity and preservation of the social order. These theories of racial inferiority-superiority reaffirmed the subhuman treatment of Africans and Native Americans and justified racial discrimination. They bolstered craniometry and other efforts to document the existence of and inherent differences between “races.” Scientific racism reinforced the American Colonization Society’s (1817) belief in the providential inferiority of Africans, underlying the formation of Liberia (1822) and their efforts to assist African-American emigration to Africa. As an ideological weapon, scientific racism laid the foundation for the eugenics movement and undergirded the institutionalization of racism as a cornerstone of American industrial capitalism. While it strove to naturalize racial inequality, it also fueled heightened resistance and revolts against slavery.

Resistance to slavery was manifest in the mid-1800s with a marked rise in slave rebellions, runaways, and full-scale collaborative revolts between African Americans and Native Americans (Aptheker, 1983; Doak, 2006; Franklin & Schweninger, 2000). David Walker, a free Black man, led the resistance with his famous *Appeal*, published in 1829. He called for the armed rebellion of slaves against their slave owners, arguing that, “America is more our country than it is the Whites—we have enriched it with our blood and tears... will they drive us from our property and homes, which we have earned with our blood?” He spoke to Whites’ fear, not only of educating Blacks, noting: “The Whites... know that they have done us so much injury, they are afraid that we, being men, and not brutes, will retaliate, and woe will be to them” (1829). Two years later, in 1831, Nat Turner, a slave, led 40 other slaves in a highly organized revolt in Southampton, Virginia, killing over 50 slave owners. As a result, slave codes were severely tightened, and the abolitionist movement took off. Henry Highland Garnet, a prominent ex-slave, escaped slavery with his family, eventually attended Oneida Theological Institute, and delivered the famous, “A Call to Rebellion” in 1843. He was known for his rousing oration, staunch political activism, and radical organizing, juxtaposed against William Lloyd Garrison, the leading White abolitionist who formed the Anti-Slavery Society in 1831, was editor of the
Liberator, and favored moral suasion. Abolitionists became more visible in their advocacy and effected the rescue of runaway slaves by means of courtroom trials. In the spirit of the slave uprisings of Gabriel Prosser and Denmark Vesey, slave rebellions spread throughout the South. In the Seminole Slave Rebellion of 1835 to 1838 in Florida, John Horse led hundreds of slaves in their flight from the plantations to the Seminoles, their allies against the colonists in 1776. After the Seminoles and African slaves swiftly destroyed 21 of the most developed plantations, some plantations surrendered and some slaves moved west to freedom. This was the largest, most prolonged, and successful slave revolt—typically left out of historical accounts. Two outstanding revolts also occurred on slave ships. In 1839, slaves on the Spanish slave trader ship *Amistad* mutinied under the leadership of Cinque. The ship was steered to the United States where the slaves were tried, rigorously supported by abolitionists, and granted freedom by the U.S. Supreme Court in 1841. After the *Amistad* mutiny, slaves aboard the *Creole*, en route from Hampton, Virginia to New Orleans, Louisiana, took over the ship and sailed to freedom in the Bahamas. The mounting thirst for freedom was embodied in the voice of Sojourner Truth, an avid Black female abolitionist, who suffered unspeakable cruelty as a domestic slave in New York. She escaped slavery with one of her children, was eventually “called by the Spirit” to fight, began to lecture around the country in 1842, and sought free land from the government for former slaves out west. She is known for her rousing speech, “Ain’t I a Woman,” delivered at the Ohio Women’s Rights Convention in 1851. Harriet Tubman, renowned ex-slave, and courageous “conductor” of the Underground Railroad, freed her family in 1850 and escorted hundreds of slaves to the North and Canada until slavery ended. Supported by many White abolitionists with “stops on the line,” she was close to John Brown, who led the famous attack on Harpers Ferry in 1859. However, scientific racism and resistance to slavery fueled a backlash: the Dred Scott decision (1857) reaffirmed that Blacks, as property, could not be citizens or sue in court and rescinded the Missouri Compromise restrictions on slave territories; the harsh retrenchment and expansion of the slave codes occurred; and a wave of White violence was unleashed in cities; for example, the police-sanctioned burning and terrorizing rampage of Black neighborhoods in Philadelphia in 1838. The fight for freedom continued until the abolition of slavery in 1865.

The Annexation of Mexico and Racialized Displacement

These strivings for freedom in the United States were paralleled by Mexico’s independence from Spain in 1821. The Mexican provisional government immediately dismantled Spain’s racial order, gradually closed the missions, and established economic policies to address the 300-year impact of the *casta* system. The *Plana de Iguala* was instituted making it illegal to bar Indians, Mestizos and free Afromestizos from the citizenship rights enjoyed by Whites. Acculturation through education, religion, and language exchanges became strategies employed to “win” over the subjugated populations. Though ostensibly, Mexico was moving towards slave-free status, the enslavement of indigenous people—Mayans/Pueblo Indians/Native Americans—still existed. In 1824, the new Constitution prohibited the slave trade and declared free any enslaved U.S. émigrés to Mexico (Menchaca, 2001), and The General Law of Colonization reorganized the land to rectify the *casta* system’s positioning of Native Americans.

However, shortly after independence, the Mexican government sought help in “managing” the resistance of the non-Christian Native Americans, by liberalizing the immigration policies and welcoming a flood of European American settlers. These settlers became the real beneficiaries of land reorganization, and though illegal, brought slaves
to the present-day Southwest in Texas. When Mexico’s President Vicente Guerrero issued the Emancipation Proclamation, declaring all former slaves free Mexican citizens, the settlers rebelled. Having grown to a majority in Texas, they ignored the Proclamation, demanded as much land as Mexican citizens, and eventually began separatist movements. The settlers waged war against Mexico, seceded Texas in 1836, and sought annexation to the United States in 1837. Following deliberations about slavery in Texas and potential war with Mexico, the United States annexed Texas as a slave state in 1845. Disputes that emerged between Mexico and the United States over Texas’ boundaries, led to the Mexican-American War of 1846. The War ended with a U.S. victory and the Treaty of Guadalupe Hidalgo in 1848, promising to protect the rights of the conquered population. The ensuing Gadsen Treaty’s (1854) land purchase shifted the U.S. boundaries south, providing ample land for the eventual building of the transcontinental railroad in the mid-1860s, and significantly reduced the U.S. debt to Mexico, undermining Mexico’s financial viability. By 1854, the United States had acquired present-day California, Arizona, New Mexico, Texas, and parts of Nevada, Utah, Colorado, Oklahoma, Kansas, and Wyoming from Mexico through “annexation, conquest, and purchase” (Menchaca, 2001, p. 216), which intensified the power struggle between the North and South over the creation of free or slaves states. The acquisition of Mexico reinforced the Monroe Doctrine’s “benevolent” pledge in 1824, to protect newly independent Latin American republics from European colonization, and fulfilled U.S. claims to the “manifest destiny” of U.S. dominance both within and outside its expanding borders. For the indigenous population, the acquisition of Mexico had serious implications.

Though all inhabitants of Mexico were assured their rights as full citizens and protection under the Monroe Doctrine, the U.S. government violated the agreements within a year of signing. The United States reinstituted a racialization system, comparable to that created by the Spanish, and confiscated Mexicans’ property. Since Mexicans were “White,” they were entitled to full rights, while the blood quantum of Mestizos, Native Americans, Afromestizos, and Blacks determined that they were not. Since U.S. legislators of the ceded territories had the right to determine eligibility for citizenship, Native Americans were excluded and restrictions were placed on the rights of Mexicans. The California Gold Rush of 1848 intensified the drive to stake claims on the land and precipitated the massive influx of White prospectors to the West, barring indigenous people from their camps, and invoking illegal rules to pursue the invaders’ right to get rich. The California Land Act of 1851 established a Board of Commissions to review land claims and exorbitant taxes were levied against Mexicans in order to expropriate their land and property, and the Anti-Vagrancy Act of 1855 deemed Mexicans to be “aliens,” in order to prohibit them from owning land or silver and gold mines. Another Act in 1855 negated the state’s constitutional requirement for laws to be printed in Spanish. These Acts were enforced by numerous lynchings of Mexicans between from 1848 and 1928, which violently pushed them off the land and revoked their citizenship rights. Starvation and minimal existence resulted. Evicted from their homes and dispossessed of their land, Mexicans were forced to be low-paid workers on the land, in mines, railroads, canneries, and in service positions, and were pushed onto the fast track of economic decline that continues to be sustained to this day. In this familiar saga of U.S. exploits, Mexico’s independence from Spain made it a prime target for the unbridled expansionism that completed the U.S. occupation of the North American continent.

Simultaneously, freed Blacks and Native Americans in the West were being evicted, dispossessed of their land, and subjected to forced labor through various Acts. Provisions from the Indian Intercourse Act of 1834 confined Native Americans on reservations with the threat of death for fleeing, and the Northwest Ordinance was invoked to
deny Native Americans property rights to their own land. The Preemptive Act of 1853 declared all “Indian lands” public domain, open for squatting, and the Homestead Act of 1862 allowed citizens, that is, White settlers, to claim the newly designated “public land,” which dispossessed Native Americans in the West and Mexicans, barring them from land grant allotments. The Kansas-Nebraska Act of 1854 revoked the Missouri Compromise and allowed states to determine their slave/free status, forcing Blacks to emigrate from their homes or be enslaved. The passage of the Indentured Act of 1860 in California allowed Whites to make Native Americans indentured servants in the West, and allowed a Native American to be placed in bondage or sold at an auction, if a White person filed a complaint against him or her for unacceptable public behavior (Menchaca, 2001). Claiming to have “stabilized” California, White settlers demanded and received privileges in land allotments, while Mexicans, Native Americans, and African Americans were being converted from “small farmers into landless wage workers” (Menchaca, 2001).

“Manifest Destiny” was well under way as the size of the United States doubled through westward expansion, the acquisition of Oregon Territory from Britain (1846), and annexation of the entire northern half of Mexico. On the one hand, education, the law, and scientific racism facilitated and justified the U.S. appropriation of land and the forced relegation of subjugated people to the laboring class. On the other, the democratic ideals embraced by the peoples of the land and the burgeoning needs of an emergent industrial capitalism forged mounting resistance to slavery, racial oppression, and inequality. The stage set by the early 19th century fight for domination versus equality framed the consolidation of power and ascendance of American capitalism in the second half of the century.

Consolidation of Power: The Ascendance of Industrial Capitalism

The last half of the 19th century was marked by the politics of war that resulted in the end of slavery and retrenchment of White supremacy, the final acquisition of Native American land and former Spanish colonies, and the institutionalization of a public education system consonant with industrial capitalism.

The Great Rollback: End of Slavery and Reconstruction

The military battles fought during this time—the Civil War, Wounded Knee, and the Spanish American War—accomplished the initial victories of land acquisition and the creation of a “free” racialized labor force. These military gains were solidified with the passage of laws and creation of educational institutions, which instantiated forms of racial discrimination that would remain virtually unchanged until the mid-20th century Civil Rights movement. The first major battle was the Civil War.

Tensions between the North and the South exploded around the issue of the expansion of slavery when Lincoln was elected President in 1860. Following his election, the South seceded from the Union, formed the Confederacy in 1861, and created a constitution endorsing slavery. Though the issue of slavery was a moral rallying point, the Civil War (1861–1865) was fought to preserve the Union. Lincoln was skillful in his strategic issuance of the 1863 Emancipation Proclamation before the war was over, because it drew international support for the North, but did not free the slaves. In the meantime, the Fugitive Slave Act was upheld and reinforced, as were states’ rights to abolish or sustain slavery. Though the Union would not fight to abolish slavery in its own right, it galvanized the energies of the democratic-minded to put an end to slavery. In 1865, the South’s surrender ended the Civil War, slavery was officially abolished by the 13th
Amendment, and Reconstruction began with the Bureau of Refugees, Freedmen, and Abandoned Lands. The Freedmen’s Bureau, though underfunded, was created to provide food, clothing, housing, assistance with property, and to administer justice and establish schools for ex-slaves.

African Americans were jubilant, though ex-slaves were sobered by the challenges of finding their families, setting up their lives, and facing the beginnings of the horrific White backlash, marked by Mississippi’s enactment of the Black Codes in 1865 and the founding of the Ku Klux Klan in 1865–1866, and designed to violently resist the abolition of slavery and to terrorize African Americans. On the one hand, Reconstruction brought many advances for Blacks, though terribly short-lived, from the election of first Black senator, Hiram R. Revels (one year)/Blanche Kelso Bruce (full 6 year term), and other public officials, the ascendance of educational opportunities to the passage of significant legal mandates. The 14th Amendment guaranteed citizenship and equal protection under the law, overturning the Dred Scott decision; the Civil Rights Bill of 1866 gave full citizenship rights to African Americans (excluding Native Americans). Reconstruction Acts were passed in 1867 with conditions for the South’s readmission to the Union, including the enfranchisement of ex-slaves. The 15th Amendment secured the right to vote in 1870, the Civil Rights Act of 1871, aka Ku Klux Klan Act, was passed to enforce the 14th Amendment and provide civil remedy against the abuses against Blacks in the South. The Civil Rights Act of 1875 guaranteed equal rights to African Americans in public accommodations and jury duty. Some Northerners went South to support the Freedmen’s Bureau’s efforts toward racial equality during Reconstruction, while others sought to enrich themselves through corruption and opportunistic land grabbing (Stampp, 1967). Many of the historically Black colleges and universities (HBCUs) were established for the industrial education of African Americans, including Howard University (1867), Hampton Institute (1868), Florida Agricultural and Mechanical University (1873), and Tuskegee Institute (1881). As W.E.B. DuBois stated, “The greatest success of the Freedmen’s Bureau [and Reconstruction] lay in the planting of the free school among Negroes, and the idea of free elementary education among all classes in the South” (DuBois & Lewis, 1935/1998).

On the other hand, Reconstruction brought the passage of the Black Codes, which effectively overrode the 13th Amendment, reaffirmed White supremacy in the South, and restricted African Americans’ civil and legal rights, such as the right to marry, own/rent/lease property, work independently, raise crops, and reside in towns. They were established to control Blacks, to secure them as agricultural workers, and were brutally reinforced from 1865 until the end of Reconstruction in 1877, by the illegal hand of force and terror. Poll taxes, literacy tests, and property requirements were instituted to disenfranchise Blacks. Sundown towns quickly populated the North and South (many of which exist to this day), forcing Blacks to leave town before sundown, under threat of violence (Loewen, 2006). Vigilante violence escalated along with a rage of White race riots and savage mob assaults on whole Black communities, including the Memphis Massacre, police massacres in New Orleans, the founding of the KKK, the Opelousas Massacre in Louisiana, the Clinton Massacre in Mississippi, and a series of ravaging attacks in South Carolina, ended only by the federal troops. Ultimately, the illegal hand of force was officially sanctioned by the state with the abolition of the Freedmen’s Bureau and passage of the Amnesty Act (restoring full rights to confederate states) in 1872, and the withdrawal of troops from the South in 1877, ending Reconstruction. The ultimate Compromise of 1877 was made with the South: Rutherford B. Hayes (Republican) became President in exchange for the withdrawal of federal troops from the South.

The reign of terror and vigilante justice moved into full gear as an auxiliary arm of the state, with massive police-sanctioned lynchings, documented from 1882 through the
mid-20th century. Intimidation, fraud, and violence enabled plantation owners to restore themselves to power, and expressed the rage of many poor Whites over their own tentative economic status and resentment toward Blacks for ostensibly “taking their jobs.” Lynching targeting African Americans reached epidemic proportions, and abolitionists, Mexicans in the newly formed Southwest, Native Americans in the West, Chinese, and some other immigrants were also killed at random in these “spectacle” events of “entertainment.” Land redistribution was nullified with the rejection of Sumner’s proposed “40 acres and a mule law,” and “possessory titles” to abandoned land in the South given to former slaves during the war were summarily revoked to preserve the sanctity of private property. Dispossessed of their land, African Americans were forced to work for former slave owners, become sharecroppers or wage earners. While free labor was necessary for industrial capitalism to advance, at least temporarily, both the South and the North wanted Blacks in the cotton fields to sustain the export of cotton. With disenfranchisement, social, educational, and employment discrimination, and the peonage system instituted against Blacks, the retrenchment of White supremacy and a laboring class was being secured. The Black Codes and reign of terror paved the way for the Jim Crow era, which began officially when the Supreme Court decision in 1883 overturned the Civil Rights Act of 1875 and rendered it constitutional to discriminate in public places. It institutionalized “separate but equal” status for African Americans. In 1896, Plessy v. Ferguson upheld the constitutionality of racial discrimination, based on the doctrine of “separate but equal,” asserting that the 14th Amendment forbade states, not citizens from discriminating. Further, the Cumming v. County Board of Education case in 1899 stipulated that separate schools were allowed, even if comparable facilities across race were not available. Second-class citizenship was institutionalized for African Americans.

Final Conquest of Native American Land

Throughout the Civil War, the smoldering battle for Native American land continued, escalating with the passage of the Homestead Act of 1862. It facilitated the final acquisition of Native American land, by unleashing a flood of settlers to each claim of 160 acres on Native American land. The intensified quest for land fueled brutal onslaughts throughout the Civil War, such as the execution of Sioux men after the Sioux Uprising in Minnesota (Santee War) (1862), and the dispersal of mercenaries to eradicate Native Americans who were in the way; for example, Sand Creek (1864) and Washita (1868), massacres of peaceful men, women, and children, which ceded the Colorado Territory. In 1866, the post-Civil War 9th and 10th Calvary Regiments, better known as the African American Buffalo Soldiers, were formed as “peacetime” units. Despite opposition to the mistreatment of Native Americans by Black Senator Blanche Kelso Bruce, the Buffalo Soldiers were used as accessories to the U.S. government’s expansionist displacement of indigenous people in the West. Revered for their discipline, leadership, and bravery, the Buffalo Soldiers were pitted in classic fashion against the Native American peoples—their allies against a common oppressor. In 1862, Congress passed a bill authorizing the building of a transcontinental railroad to promote western settlement. The Gadsen Treaty’s renegotiation of the Mexican border enabled this project to take place. As many White workers abandoned railroad construction to pursue gold in the West, the Irish potato famine, Chinese immigration during the Gold Rush, the imminent end of slavery, and the land-dispossessed Mexican people provided available sources of labor for this massive project. In 1865, Union and Central Pacific Railroad Companies began construction with the labor of the Irish, Chinese, Mexicans, African Americans, and other European immigrants. Railroad construction was a disaster for Native Americans, resulting in the
loss of territory, massive killing of buffalo to feed the railroad workers, removal of cattle from the land, and the incursion of troops to “protect” the railroad from the indigenous people (Reyhner & Eder, 2004; Takaki, 1993). By 1867, most Native Americans from the east were in “Indian Territory” and those from the west were confined to reservations. The U.S. government sought the respite of “relative peace” with Native Americans during this early post-Civil War period, though Massacre on the Marias (1870) and other retaliatory slaughters continued to occur.

The Peace Commission was established in 1867 to settle treaties and to quell Native Americans’ growing “hostility” and resistance to “settlers’” violence, rapid encroachment, wanton slaughter of over 40 million buffalo, and to the intrusion of the railroads. Coinciding with the aims of Reconstruction’s Freedmen’s Bureau for former slaves, the Commission’s goal was to expedite Native Americans’ acculturation so that they could eventually assimilate into society. Even if desired, this was an impossible feat without equality. Foremost amongst their strategies was the provision of education in English to replace the indigenous languages. In addition, the Peace Commission proposed that the destruction of Native American culture and allegiance to the U.S. government would help resolve the hostilities between Whites and Native Americans and facilitate acculturation (Spring, 1994). The government set aside funds in 1870 to support industrial and other schools on reservations. The repeal of the Civilization Fund Act in 1873 and increased federal funding reflected a policy shift from private missionary-based education to centralized federally funded education for Native Americans through the Office of Indian Affairs. The centralization of education coincided with the decision in 1871 that independent indigenous Nations were no longer recognized and that all treaties required the approval of both Houses of Congress (Churchill, 2004). This marked shift in policy—from the relocation of Native Americans as independent nations (epitomized by the Trail of Tears), to their confinement on reservations as government wards—lasted until 1953.

The government’s “relative peace” and disregard for Native Americans, sequestered on the “barren” western plains, shifted dramatically with the discovery of gold in 1874 on Paha Sapa, sacred Native American land in California’s Black Hills. Hordes of miners were unleashed to invade and illegally ravage the land for gold, with no “courtesy” notification given to the indigenous people. Though the U. S. government had signed the second Treaty of Laramie in 1868, promising this land to the Sioux, the discovery of gold precipitated their violation of the Treaty and efforts to remove the Cheyenne and Sioux Nations from their land, as they had done to the Cherokees in Georgia. Their offers to buy the land were refused in 1875, so the government exerted pressure by cutting funds allocated to the region, and in 1876 issued the ultimatum that Sioux who were not on their reservation would be considered hostile. George Custer’s military detachment to the area was annihilated in 1876 by Sitting Bull and the Sioux Nation in the Battle of Little Big Horn. Subsequent defeats ended the Great Sioux Wars, though battles continued to rage for the next 14 years, well after the Paha Saba was confiscated in 1877. Political maneuvers by the government repositioned and discredited Native Americans; for example, the Manypenny Agreement in 1877 confiscated Paha Sapa, over 900,000 acres, and confined the Nations to reservations, and a Commission Report’s official discreditation of the Office of Indian Affairs led to its reorganization. In addition, the first police force of Native Americans was established in 1878 to supplement “domestic enforcement” by the military on reservations.

The passage of the Dawes Severalty Act of 1887, or General Allotment Act, was the political coup de grace. It reduced the landholdings of Native Americans by allotting 160 acres to heads of Indian families and 80 acres to individuals, and racialized the land ownership process by basing allotments on Native Americans’ “blood quantum”
level. Under the guise of acculturating Native Americans to the merits of private property ownership, the Dawes Act relegated them to bounded acreage, while the remaining “surplus lands” were open to settlement by Whites who were moving west. Over 4.5 million Whites moved to the west from 1877 to 1887, creating a 1:40 ratio of Native Americans to Whites. In 1889, 2 million acres was opened to over 100,000 settlers in the Oklahoma District, statehood was granted to Montana, North and South Dakota, and Washington, and, in 1890, Idaho and Wyoming were awarded statehood. Though Native American battles of resistance to the intrusion continued throughout the 1890s, the U.S. military assault at Wounded Knee 1890 was decisive in “settling” the West. Under the guise of routing the Ghost Dance religion of the Sioux Nation, the 9th Calvary massacred over 250 men, women, children at Pine Ridge, and confiscated the Dakota Territory (Spring, 1994; Churchill, 1997). In 1898, the Curtis Act “officially abolished” the Native American courts and governments in the Oklahoma Territory, subjected the Five Tribes to the Dawes Act’s land allotment process from which they had been exempt, and laid the groundwork for Oklahoma to attain statehood in 1907, officially ending the existence of Indian Territory. U.S. expansionism of the 19th century peaked with the acquisition of Puerto Rico, Guam, and Philippines after the Spanish-American War of 1898.

Universal Education: Towards Acculturation, Stratification, and/or Social Mobility

The last half of the 19th century was marked by the introduction of a racialized education system for African Americans, Native Americans, and Mexicans, instituted as the U.S. government consolidated its continental acquisition of land and labor, and prepared for the ascendancy of industrialization. Launched in the 1830s, the Common School Movement focused on Whites and pushed forward the development of public education in an effort to “civilize” the growing number of Irish immigrants, over 2 million by 1854, and other European immigrants in the mid- to late-1800s. Prior to any federal commitment to the education of African Americans, slaves and free Blacks had operated schools clandestinely during slavery, like the school run by Deveaux, a Black female teacher in Savannah, Georgia from 1833 to 1865, and they established schools at their own expense before the establishment of the Freedmen’s Bureau during Reconstruction. Mary Peake was one of the first teachers to set up a Black school in 1861 in Fortress Monroe, Virginia. These early efforts to educate African Americans expanded after the war. W.E.B. DuBois stated: “Public education for all at public expense was in the South, a Negro idea” (Quoted in James Anderson, 1988, p. 6). Ex-slaves were the first “native” Southerners to struggle for universal, state-supported public education in the classical liberal tradition, in defense of emancipation and against the planters’ regime.

However, in the late 1860s, “White architects of Black education,” a contingent of Northern and Southern White entrepreneurs, social scientists, and philanthropists, crafted a special form of industrial education for Blacks to substitute older, cruder methods of socialization, coercion, and control, and to support the demand for an efficient, organized agricultural sector to supplement the emergent industrial nation’s trade with England (Watkins, 2001). The “architects’” advocacy and financial support for an industrial education for Blacks and classical liberal education for Whites afforded marginal material and psychological privilege to White workers; that is, racial privilege would compensate for their social class disadvantage. This stratified public education would address the educational and ideological needs of a growing industrial society, while subjugating Black and White laborers in relation to the owners of wealth. The statements of William Baldwin, Northern philanthropist and universal public education advocate, capture the sentiment guiding the formation of schools for African Americans:
The potential economic value of the Negro population properly educated is infinite and incalculable.... Time has proven that he is best fitted to perform the heavy labor.... This will permit the southern white laborer to perform the more expert labor, and to leave the fields, the mines, and the simpler trades for the Negro. (quoted in Anderson, 1988, p. 82)

The union of white labor, well organized, will raise the wages beyond a reasonable point, and then the battle will be fought, and the Negro will be put in at a less wage, and the labor union will either have to come down in wages, or Negro labor will be employed. (quoted in Anderson, 1988, p. 91)

Except in the rarest of instances, I am bitterly opposed to the so-called higher education of Negroes. (quoted in Anderson, 1988, p. 247)

Baldwin's and other advocates' financial support for public education was contingent on a brand of industrial education for Blacks, the Hampton-Tuskegee Idea, which was not equivalent to higher education for Whites, and would divide the working poor in the interests of the burgeoning industrial capitalists. This brand of education was embodied in the formation of Hampton (1868) and Tuskegee (1881) Institutes, and other schools for Blacks created during this era. Despite their differences, the economic motives of the "White architects of Black education" dovetailed with those of Southern White planters who opposed public education, fearing that education would fuel workers' economic and political aspirations. Both agreed on Black disfranchisement, segregation, and economic subordination. As the "architects" instituted a brand of universal public education integral to the development of a capitalist democracy, they also “ignored” their opponents' funding of widespread vigilante violence by the Ku Klux Klan and other terrorist groups, which forced freedmen and freedwomen back to slave status, secured a wedge between them and poor Whites, and reestablished the rule of a White slave owning oligarchy (Zinn, 1980). The architects and their opponents protected the economic interests of the wealthy in the North and South, through both legal and extralegal forms of coercion. In concert, the industrial education “for” and the reign of terror against Blacks served to maintain the social and economic order, reinforced by legal segregation mandated by Plessy v. Ferguson in 1896. Public education that would undergird the creation of a stratified working class and would promote the acculturation of subjugated peoples was the order of the day.

Choctaw, Cherokee, and other indigenous Nations maintained their own schools prior to European invasion and strove to preserve their culture and language in schools after confinement on reservations. The U.S. government had other educational aims—the Americanization, acculturation, and assimilation of Native Americans into Western culture through the suppression of their religion, language, and way of life. Towards this end, government day schools, contract mission schools, and industrial (trade) boarding schools were established with rigid disciplinary practices. In 1878, Native American students were sent under federal contract to Hampton Institute with African Americans, until the funding was stopped in 1923. They were not permitted to receive books until they spoke English, and academic study was minimized to prevent their being “distracted from Christianity and hard work.” In 1879, Carlisle Indian Industrial School (1879–1918) was established as the first government-run boarding school for the acculturation of Native American children, set up by Lt. Pratt in an old army barracks in Pennsylvania. Carlisle’s philosophy of cultural genocide was: “Kill the Indian, Save the Man,” a supposed advancement over the adage: “The only good Indian is a dead Indian.” Initially,
some parents wanted their children to learn English to better negotiate with Whites, and sent them “voluntarily.” Increasingly, however, Indian police and U.S. troops used night raids and other means to force children to go to boarding school with “the foreigners.” The promise of education was far from the reality. Under harsh and abusive conditions, children were “reclothed, regroomed, and renamed,” forced to abandon their language, values, dress, names, beliefs, and ways of life for those of “the White man” (Reyhner & Eder, 2004). Students were limited to vocational training, often in obsolete trades like tinsmithing, harness making, or blacksmithing that were being replaced by mass production in factories. Children were subjected to severe discipline, hard labor, difficult lessons, and Outing—the placement of students with White families as cheap servants. Both the lives and the spirits of children were lost at Carlisle. They were force-fed Christianity and English to, as Pratt stated: “Civilize the Indian, get him into civilization. To keep him civilized, let him stay” (Reyhner & Eder, 2004). Upon the children’s return home, they were alienated from their families, their Nations, and from themselves. The horrors of this school and others led parents to endure prison sentences rather than subject their children to life at the boarding schools. St. Labre (1884), Holy Rosary (1888) on Pine Ridge Reservation, and other Indian mission schools followed similar models. The government’s three-pronged approach to the “Indian problem” was to offer education and Christianity, confine Native Americans on reservations and land allotments, and use military force to secure their goals. During The Indian Removal, compulsory education at nonreservation schools was not mandatory. After Wounded Knee, however, and the creation of six states in the West, compulsory education was instituted as national policy for Native American children and was enforced by truant officers from 1892 to 1897.

Conclusions: The Significance of History and Social Justice

By the 20th century, the former land of indigenous populations constituted the United States of America, a labor force had been created, and the racial ideology of White supremacy was codified under the aegis of the U.S. government. The decimated Native American population was securely sequestered away on reservations, elevated from “ward status,” and incorporated into the fold of American citizenry in 1924. With the annexation of Northern Mexico, Mexicans were forced to be low-wage workers for Whites in commercial agriculture and industry in the North and West, but the Deportation Act (1929) initiated their repositioning as “illegal aliens” on their own land; Enslaved African Americans moved from chattel slavery to free labor and migrated North to populate the burgeoning factories, along with the continuous influx of European immigrants, Mexican Americans, Native Americans, and other people of color. To maintain their forceful acquisition of land and labor, European settlers and the U.S. government relied on education, the law, and the infusion of racial ideology.

Colonialists strategically offered or withheld education to manufacture hegemonic consent to domination through acculturation or appeasement amongst Native Americans or through stratified division of African and White laborers. As industrialization emerged, the U.S. government instituted compulsory education to Americanize the multiracial/ethnic workforce being forged in large scale, assembly line production of auto, steel, and coal. The two separate and racially stratified systems, industrial and classical liberal education, would sustain the racial divide that was established in the labor force during slavery, and continues in the current form of privatized charter versus magnet schools for the racialized poor and wealthy. The Civil Rights Act and Brown vs. Board of Education temporarily ended separate unequal education, but this legislation could not dismantle society’s long-standing economic and political commitment to a racially class
stratified society—the source of glaring disparities in education. The founding laws of this country, backed by federal and state force protect the economic imperative to sustain social inequality.

The guise of true democracy has been an inherent contradiction since the “founding” of this country (Foner, 1998). On the one hand, the law—in the form of treaties, Slave/Black Codes, and a plethora of Acts, mandates, and legislative rulings—was indispensable in annexing land, in educational and religious conversion, and in the physical, social, and ideological subjugation of designated populations. The law facilitated the economic and political power that grew out of U.S. colonization, westward expansion, and industrialization. As Cheryl Harris stated: “...dominant and subordinant positions within the racial hierarchy [are]...reified in law (1995, p. 283). On the other hand, the fledging United States passed democratic laws that supported entrepreneurs’ competition in commerce and political participation in civic life, were embraced by the general populace. While the U.S. Constitutional government advocated democracy for all, that is, White men, it legislated racial inequality and violated numerous treaties for land acquisition, annexation, and westward expansion to land and labor for economic gain. Similarly, though the 13th, 14th, and 15th Amendments ended slavery, guaranteed citizenship across race, and the right to vote, these mandates were violently rolled backed with the termination of Reconstruction. These democratic rights were sacrificed in the service of the developing industrial economy and “preservation of the nation.” Ultimately, the rule of force secured the de facto law of inequality. Historically, the State has fought to preserve or rescind democratic rights based on their ability to protect the economic and political interests of the ruling elite and to thwart/appease/buy off the resistance of the working masses. Thus, for example, the democratic legislation that grew out Reconstruction and out of the social uprisings and political activities of the Civil Rights Movement were swiftly followed by violent retrenchment—Klan violence, law and order, and a return to de facto segregation and social inequality buoyed by White supremacist ideology.

Historically, the ideological and material division along racial/ethnic lines has secured the position of the workforce as a laboring class, by thwarting its movement toward united opposition against corporate industrialists (Roediger, 2005). The “commonsense” ideology of White supremacy justified racial segregation in education, housing, and societal institutions (Fredrickson, 1971; Oliver & Shapiro, 2006). It bolstered the sentiments of Irish and other European immigrants who were “becoming White” and resented African-American and other workers of color, who took “their jobs” and dreamed of equality after serving in World War I. The resentment and imperative to sustain the racial hierarchy through terror culminated in the Red Summer of 1919. This rampage of urban lynchings (e.g., the worst was in Chicago in 1919), mirrored attacks that occurred after northern Mexico was annexed, after Reconstruction, and throughout the confiscation of Native American land. Racial scapegoating and the entitlement backlash are powerful hegemonic tools, rendering the reversion to inequality as a “common sense” return to the “natural order.”

This history has implications for current social justice efforts in education. The state has used education, the law, and racial ideology simultaneously to manufacture consent and to exercise force in the divisive oppression of subjugated peoples and to serve the democratic-minded interests of an American capitalist republic. The dual use and function of these dimensions of the state apparatus also provide possibilities and limitations for their use in the struggle for equality in education and the broader society. The law has recognized, protected, and reified the dominant interests of the ruling elite in society, and has provided important, though potentially transient democratic rights that are worth fighting for and preserving. It is important to consider that such democratic legislation is
vitally necessary in daily life, but not sufficient to secure true democracy, a level of equality that is divergent with the interests of the ruling elite. Thus, affirmative action efforts are worthy of struggle in order to preserve a modicum of hope and possibility for poor children to access the opportunity structure in the United States. Also worthy of struggle are legal efforts to preserve public education, to provide equal funding and human resources for all children, and to insure that students receive health and nutritional supports for learning. Simultaneously, we must distinguish between the emancipatory possibilities of public education and enslaving function of race-class stratified education.

It is paramount for our social action, curricular, and theoretical efforts to protect the democratic goal of education—to think critically, challenge assumptions, and create possibilities for the poor and subjugated populations. We should examine, question, and expose dominant ideologies that bolster the systemic roots of race–class hierarchy in the United States; for example, color-blind ideology, White supremacy, meritocracy, diminution of the private over public resources, reverence of individual versus the social good. In other words, we should fight to preserve our civil rights and liberties, to protect those genuine efforts within a capitalist democracy that may level the playing field temporarily, and to provide an alternative worldview to destructive “commonsense” notions that prevail. However, we must not lose sight of the other side of the equation—that legislation, education, and opposition to racial ideology within the system cannot alone attain broad based social mobility, achieve true equality, or undo the history of subjugation. Social action and social movements have a cherished place in the historical struggle for democracy. As current neoliberal policies dismantle public education, replace social services with the privacy of individual choice, ignore past/present social inequalities, propagate color-blindness to deny the social significance of race, we must remember that, “…[the] State tends to create and maintain a certain type of civilization and of citizen…the Law will be its instrument for this purpose…with the school system…(Gramsci, 1971, p. 246). Thus, we must create new possibilities, strategies, and structures to attain true democracy, while carefully analyzing and utilizing the current legal, educational, and ideological resources bequeathed to us.

References


Cumming v. Richmond County Board of Education, 175 U.S. 528.


