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An Essay on the Iconic Status of the Civil Rights Movement and its Unintended Consequences.

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AN ESSAY ON THE ICONIC STATUS OF THE CIVIL RIGHTS MOVEMENT AND ITS UNINTENDED CONSEQUENCES

Juan F. Perea*

CONTENTS

Introduction	44
I. Understanding the Iconic Status of the Civil Rights Movement	45
II. The Unintended Consequences of Iconic Status	48
A. Temporal Problems: The Unintended Consequences of Defining the Proper Period of the Civil Rights Movement	49
B. Other Problems of Invisibility: How the Stature of the Civil Rights Movement May Impair Recognition of Other Civil Rights Struggles.....	51
1. Chicanos	52
2. Indigenous Peoples: American Indians and Native Hawaiians ..	54
III. Conclusion	57

INTRODUCTION

By general scholarly and societal agreement, the Civil Rights Movement was a powerful, African-American social movement that began in the mid-to-late 1950s or early 1960s and ended sometime in the late 1960s. It was an important, transformational, widespread, grassroots movement aimed at ending segregation and the most obvious and ugly manifestations of white racism. This movement is almost certainly the most important, widespread, and dramatic social movement to have occurred within or at least within reach of our lifetimes. Its name suggests uniqueness and exclusivity. Why do we define one movement exclusively as *the* Civil Rights Movement and by implication exclude others not so defined? Are there, or have there been, other civil rights struggles that merit our attention?

This Essay explores the iconic status of the Civil Rights Movement and some of the unintended consequences of that status. The Civil Rights Movement did not begin as an icon. It began with a more-or-less organized campaign of civil disobedience aimed at desegregating businesses and public facilities in the deep South. So how, and why, has it reached iconic proportions? In the first part of this Essay, I will describe some of the elements that I believe contributed to the movement's iconic status.

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In the second part of the Essay, I will describe unintended consequences of the iconic status of the Civil Rights Movement. These consequences include the relative neglect of important history of African-American struggle against white racism. In addition, the stature of the Civil Rights Movement may also contribute to the relative invisibility of other civil rights struggles, including Chicano struggles for civil rights and the American Indian movement, both of which occurred during roughly the same time period as the African-American movement.¹ The relative invisibility of these movements may result, in part, because the content of civil rights for different groups may differ from the content of civil rights for African Americans.

I. UNDERSTANDING THE ICONIC STATUS OF THE CIVIL RIGHTS MOVEMENT

If I am correct that the Civil Rights Movement has taken on an iconic² character, it is interesting to inquire into the elements that contributed to the relative salience of this civil rights movement. While I can offer only tentative thoughts, and not definite answers, below are some of the possible factors.

First, this movement aimed to eliminate the continuing vestiges of one of the United States' most profound and recognized moral sins: federal- and state-sponsored slavery. Anti-slavery, and its successor, anti-racism, is one of the great moral struggles in U.S. history.³ At this point, there can be little doubt about the morality of the goals of the Civil Rights Movement – equality and racial justice. Similar moral goals have

¹ While it is beyond the scope of this brief essay to be fully comprehensive, I do not want to contribute to the invisibility of other struggles for civil rights, such as the struggles of Chinese and Japanese Americans. On early Chinese struggles for civil rights, see CHARLES J. MCCLAIN, *IN SEARCH OF EQUALITY: THE CHINESE STRUGGLE AGAINST DISCRIMINATION IN NINETEENTH-CENTURY AMERICA* (1994). On Japanese American struggles for civil rights, see, for example, ERIC K. YAMAMOTO, *RACE, RIGHTS AND REPARATIONS: LAW AND JAPANESE AMERICAN INTERNMENT* (Eric K. Yamamoto, Margaret Chon, Carol I. Izumi & Frank H. Wu eds., 2001). See also JUAN F. PEREA ET AL., *RACE & RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA* 397–428 (2d ed. 2007) [hereinafter *RACE & RACES*].

² WEBSTER'S NEW COLLEGIATE DICTIONARY 574 (10th ed. 1993) defines "icon" as "an object of uncritical devotion". My use of the word is similar to this definition. The term "Civil Rights Movement" has become practically a term of art, referring only to the African-American movement of the mid-twentieth century.

³ Cf. JAMES W. LOEWEN, *LIES MY TEACHER TOLD ME* 198–99 (1995) (describing anti-racism as one of the United States' great gifts to the world).

animated some of the great human rights movements of the twentieth century.⁴

The Civil Rights Movement had great, courageous leaders and participants who risked, and in some cases lost, their lives for the sake of equality and racial justice. Leaders such as Dr. Martin Luther King, Dorothy Height, Congressman John Lewis, and Diane Nash, to name only a few, courageously planned and led a campaign in pursuit of liberty and equality.⁵

The scope of the movement was certainly another factor in its salience. Thousands of relatively anonymous, courageous boycotters and protesters participated in a coordinated campaign seeking to end racial apartheid in the United States. The widespread nature of the campaign, involving many thousands of protesters, commanded the attention of the national leadership and media. It was very important, too, that the campaign was non-violent. While protesters on the front lines of the movement engaged in peaceful resistance and civil disobedience, their non-violent methods exposed the ugly and extreme violence used by whites to maintain their unjust, unearned racial privilege.

Technology played a key role too, by making the struggles of protesters highly visible. The development of television, along with pre-existing radio and other mass communications, enabled national and international transmission of the awful images and news emerging chiefly from the Southern United States. Every night, viewers around the world could see innocent, nonviolent African-American men, women and children being violently attacked by white policemen using police dogs and water cannons to overcome, temporarily, the righteous wish for justice embodied by the protesters. The Southern states, ostensibly existing to protect their citizens, instead used brutal and decisive force to protect white supremacy. Much of the nation, and the world, could not help but recognize the righteousness of the protesters' cause and the evil, violent repression necessary to subdue the wish for justice. Widely disseminated images of the repression and violence faced chiefly by African Americans helped cultivate support for the protesters throughout the United States and the world.⁶

Another important part of the Civil Rights Movement's iconic status lies in the fact that it was successful, at least by some measures. The

⁴ Obvious examples include the movements led by Ghandi in India and Nelson Mandela in South Africa.

⁵ I thank Dorothy Brown for bringing to my attention Diane Nash and her leading roles in the Student Nonviolent Coordinating Committee and non-violent protest in the South.

⁶ *Cf.* MARY DUDZIAK, *COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY 79-90* (2000).

movement's influence over the political process generated important legislative results, including the Civil Rights Act of 1964⁷ and the Voting Rights Act of 1965.⁸ Both statutes promised enforcement of greater racial equality in workplaces and elections, and both delivered some measure of greater racial justice. Americans of all colors have benefitted from the existence and enforcement of these statutes.

The movement was also successful as inspiration. It invoked and embodied high moral ideals of racial equality and justice, and it persuaded Americans to enact legislation to secure some greater measure of those ideals. The success of the movement is inspiring in itself, and has also served to inspire other human rights movements.⁹

The Civil Rights Movement would likely not have reached iconic status without the tacit agreement and support of a majority of Americans and American elites. Americans generally agree on the movement's importance and good results. There is a kind of interest convergence in recognizing the importance of the Civil Rights Movement.¹⁰ Blacks appropriately identify with the courageous, and ultimately successful, struggle to overturn the overtly racist structures of U.S. society and to guarantee greater access to opportunities for people of color. The principled, courageous and communal sacrifice of the Black community over many generations made the United States' society better and fairer. Whites, too, can claim a positive role with respect to the Civil Rights Movement. Whites who supported the struggle can feel morally justified in their support. Even whites who did

⁷ Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 42 U.S.C.).

⁸ Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (current version at 42 U.S.C. §§ 1971, 1973–1973gg-8 (1988 & Supp. V 1993)).

⁹ The African-American Civil Rights movement, for example, influenced the American-Indian movement. *See infra* p. 90 and note 32.

¹⁰ On interest convergence generally, *see* Derrick A. Bell Jr., *Diversity's Distractions*, 103 COLUM. L. REV. 1622, 1624 (2003); *see also* Derrick A. Bell Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980) (postulating that Blacks make progress in civil rights only when such progress serves white interests). Most Blacks, whites and others agree on the importance of the civil rights movement, and that agreement, in part, produces its importance. In this regard, it is interesting to compare the stature of the Civil Rights Movement with the relative oblivion into which the Reconstruction Era has been cast until fairly recently. *See* ERIC FONER, *RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION 1863-1877*, at xix-xxvii (1988) (describing the overturning of the traditional interpretation of Reconstruction).

not support the struggle would probably concede that our society is better off after the enactment of anti-discrimination legislation.¹¹

So far I have sought to identify, at least tentatively, some of the factors that contributed to the iconic status of the Civil Rights Movement. That iconic status allows us to commemorate and revere the Civil Rights Movement, its participants and its achievements.

II. THE UNINTENDED CONSEQUENCES OF ICONIC STATUS

The iconic status of the Civil Rights Movement also has unintended consequences. Certain constraints in meaning and perception may result from our reverence for the Civil Rights Movement. In this part of the Essay, I identify and discuss some of these unintended consequences.

First, the temporal definition of the Civil Rights Movement seems to lead to excessive foreshortening of the centuries-long African-American struggle for equality. By defining the movement as a discrete period in time, historians necessarily leave out many important antecedents to the Civil Rights Movement.¹² It is important to appreciate the continuity, over centuries, of the African-American struggle against white racism in all its forms.

Another unintended consequence of the iconic stature of the African-American Civil Rights Movement may be the relative invisibility of other important civil rights struggles. There seem to be two aspects to this invisibility. First is the relative lack of recognition of civil rights struggles that resemble the content of the African-American struggle. For example, the Chicano struggle against segregation, ranging roughly from the 1940s through the 1950s, directly resembles the content of the African-American struggle yet remains relatively invisible.

¹¹ Ironically, however, some of the sense of society being better off as a result of anti-discrimination legislation probably has to do with whites becoming increasing beneficiaries of such legislation and increasingly conservative Supreme Court interpretations of anti-discrimination legislation. *See, e.g.*, *Ricci v. DeStefano* 129 U.S. 2658 (2009) (holding that white firefighters cannot be denied promotions because of anticipation of disparate impact liability); *Taxman v. Bd. of Educ. of Twp. of Piscataway*, 91 F.3d 1547 (3d Cir. 1996) (holding that a white teacher cannot be chosen for layoff in order to preserve diversity of faculty); *cf. Adarand Constructors v. Pena*, 515 U.S. 200 (1995) (holding that affirmative action in allocation of federal construction contracts is prohibited unless there is a substantial basis in evidence of actual past discrimination); *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989) (same, except with city contracts).

¹² Indeed, labeling earlier efforts as “antecedents” implies a lesser value to earlier efforts that I do not wish to embrace.

Second, there are other civil rights struggles whose relative invisibility may result from the fact that the content of the civil rights sought is different from the content of civil rights sought by African Americans. While African Americans sought equality, other groups sought different goals. For instance, Mexican Americans sought to defend their lands against seizure by the United States in nineteenth century land grant litigations. The American Indian movement, as another example, may escape recognition as a civil rights struggle because Indians fight for sovereignty and self-determination rather than equality. I believe we should recognize struggles for civil rights even if their content varies from the content of the African-American struggle. The meaning of civil rights for different racial groups is uniquely a function of their history and of the means and goals of white racism with respect to each group.

*A. TEMPORAL PROBLEMS: THE UNINTENDED CONSEQUENCES OF
DEFINING THE PROPER PERIOD OF THE CIVIL RIGHTS MOVEMENT*

Historians define the time period of the Civil Rights Movement in different ways. As we will see, the period chosen to define the movement affects what is relevant to consider as part of the movement. Many historians place the beginning of the movement in the mid-to-late 1950s or early 1960s.¹³ One typical starting point begins the movement with the Greensboro student sit-ins of 1960.¹⁴ Another starting point for the Civil Rights Movement might be 1954, with the United States Supreme Court's decision in *Brown v. Board of Education*.¹⁵ While *Brown* could be considered distinct from the Civil Rights Movement since it was a Supreme Court decision, the Court's decision rejecting the separate-but-equal doctrine was an influential step in the downfall of state-sponsored apartheid. The *Brown* decision resulted from a lengthy litigation campaign by Thurgood Marshall and the NAACP.¹⁶

A historian's choice of 1954 or 1960 as the beginning date for the Civil Rights Movement may, therefore, have significant consequences with respect to the narrative told about the movement. Beginning the

¹³ For accounts of the Civil Rights Movement beginning in the 1960s, *see, e.g.*, JOHN HOPE FRANKLIN & ALFRED A. MOSS, JR., *FROM SLAVERY TO FREEDOM: A HISTORY OF AFRICAN AMERICANS* 523–61 (8th ed. 2000); CLAYBORNE CARSON, *IN STRUGGLE: SNCC AND THE BLACK AWAKENING OF THE 1960S* (1981). For an account of the Civil Rights Movement beginning in 1954, *see* JUAN WILLIAMS, *EYES ON THE PRIZE: AMERICA'S CIVIL RIGHTS YEARS, 1954–1965*, at xiii–xv (1987).

¹⁴ FRANKLIN, *supra* note 13, at 526; CARSON, *supra* note 13, at 9; WILLIAMS, *supra* note 13, at xii.

¹⁵ *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

¹⁶ *See, e.g.*, MARK V. TUSHNET, *MAKING CIVIL RIGHTS LAW: THURGOOD MARSHALL AND THE SUPREME COURT, 1936–1961*, at 116, 151–52 (1994).

narrative in 1954 makes the *Brown* decision, and the NAACP's litigation strategy leading to the decision, relevant and important in the movement's story.

On the other hand, if we begin the story in 1960, the story of the *Brown* decision has much less relevance to the Civil Rights Movement.¹⁷ The Civil Rights Movement that begins in Greensboro was a grassroots, nonviolent movement consisting of widespread civil disobedience and peaceful resistance to white oppression. The story of the grassroots movement depends neither on *Brown* nor on the litigation strategy of the NAACP. Rather it depends on the training, organization and courage of thousands of nonviolent protesters who confronted hostile white authorities directly.

Historians' choices about when to begin the narrative of the movement have significant implications regarding the subject of the narrative and the relevance and importance of the historical evidence presented. Begin in 1954, and *Brown* and the NAACP figure importantly in the narrative. Begin in 1956, with the Montgomery bus boycotts, and *Brown* and the NAACP have only a minor role.¹⁸ Begin in 1960, and *Brown* and the NAACP still have only a minor role.

Even if one were to begin in 1954, and so include *Brown* and the NAACP's litigation strategy, one would still leave out many earlier struggles for African-American civil rights.¹⁹ For example, during the 1930s, the NAACP campaigned against the exclusion of most Blacks from significant New Deal era statutes, such as the Social Security Act, the National Labor Relations Act, and the Fair Labor Standards Act.²⁰ Earlier still, during the 1920s and 1930s, the NAACP campaigned against the lynching of Blacks throughout the South.²¹ Though both of

¹⁷ I do not mean to suggest that *Brown* was not important in helping to fuel the subsequent grassroots civil rights movement. *Brown*'s holding signaled the beginning of the end of American apartheid. Once *Brown* was decided, protesters could believe that the Supreme Court and the law were on their side. Consequently, they became frustrated with the slow pace of change after *Brown* and took matters into their own hands. I thank Taunya Banks for this helpful insight.

¹⁸ See FRANKLIN & MOSS, *supra* note 13, at 452–53, 511–14, 523–59.

¹⁹ For example, for an excellent history of Thirteenth Amendment-focused civil rights litigation that has been obscured by the focus on *Brown* and the NAACP's litigation strategy, see RISA L. GOLUBOFF, *THE LOST PROMISE OF CIVIL RIGHTS* 12 (2007).

²⁰ See *id.* at 51–80; see also Juan F. Perea, *Destined for Servitude*, 44 U.S.F. L. REV. 245, 247–50 (2009) (describing intentional exclusion of Blacks from benefits created in major New Deal era legislation).

²¹ See generally ROBERT L. ZANGRANDO, *THE NAACP CRUSADE AGAINST LYNCHING, 1909–1950* (1980).

these were important campaigns for African-American civil rights, they are not routinely deemed part of the Civil Rights Movement.

Thus locating the beginning of the Civil Rights Movement in 1954 or 1960 leaves out much important resistance to white oppression. This temporal definition also excludes many key figures in African-American struggles for equality, justice, and freedom from white oppression. In considering the Civil Rights Movement, for example, we do not usually think of A. Philip Randolph, whose threat to conduct a massive protest march in Washington, D.C., forced President Franklin D. Roosevelt to end race discrimination in wartime industries. Roosevelt's executive action became a key precedent for the eventual prohibition of employment discrimination because of race in the Civil Rights Act of 1964.²² Nor do we consider Charles Hamilton Houston, whose tireless campaign documenting the manifest inequality of separate and unequal schools inspired and supported the NAACP's litigation campaign against segregated schools.²³ Nor do we consider Ida B. Wells, who campaigned valiantly against the horrors of the lynching of Blacks in the South.²⁴

And we could reach back even further, and consider the evidence of slave revolts so well documented by Herbert Aptheker.²⁵ It seems correct to conclude that African Americans in the United States have resisted their oppression by white Americans in visible, powerful ways ever since the beginnings of that oppression, usually traced to the rise of slavery in the early seventeenth century.

One of the problems resulting from an exclusive focus on the Civil Rights Movement, then, is the excessive foreshortening of the centuries-long African-American struggle for equality and the omission of important leaders and acts of struggle that almost certainly contributed to the eventual success of the Civil Rights Movement.

B. OTHER PROBLEMS OF INVISIBILITY: HOW THE STATURE OF THE CIVIL RIGHTS MOVEMENT MAY IMPAIR RECOGNITION OF OTHER CIVIL RIGHTS STRUGGLES

The naming of the Civil Rights Movement acknowledges the importance and success of that movement in our history and collective memory. Reference to *the* Civil Rights Movement, however, suggests that the African-American Civil Rights Movement is the only civil rights

²² HERBERT GARFINKEL, *WHEN NEGROES MARCH* 53–61 (1959).

²³ See GENNA RAE MCNEIL, *GROUNDWORK: CHARLES HAMILTON HOUSTON AND THE STRUGGLE FOR CIVIL RIGHTS* 132–35 (1983).

²⁴ See JACQUELINE JONES ROYSTER, *SOUTHERN HORRORS AND OTHER WRITINGS, THE ANTI-LYNCHING CAMPAIGN OF IDA B. WELLS, 1892–1900* (1997).

²⁵ HERBERT APTHEKER, *AMERICAN NEGRO SLAVE REVOLTS* (6th ed. 1993).

movement, or the only important civil rights struggle. Some quick reflection on American history demonstrates that such a view cannot be accurate. For example, as I described above, African Americans struggled mightily for justice before the Civil Rights Movement. And there are other examples: during roughly the same period as the Civil Rights Movement, Chicanos struggled for equal education and desegregation and the American Indian movement sought greater sovereignty for Indian nations.²⁶

I offer in the following sections a few examples of civil rights struggles that, in my view, have not adequately been recognized as such. I discuss the Chicano struggle for civil rights and the American Indian movement as examples of struggles roughly contemporaneous with the African-American Civil Rights Movement. I also discuss the current struggle of Native Hawaiians for federal protection and sovereignty. I give only a few examples of the many struggles for civil rights, past and present; I am sure that I leave out more than I include. I offer these examples to encourage the identification and recognition of other struggles for civil rights, including those I do not mention.

1. Chicanos

Roughly contemporaneous with the African-American Civil Rights Movement, Mexican Americans, or Chicanos, struggled against segregated education and white oppression in the Southwest and the West during the 1940s and 1950s. Both individual plaintiffs and Latino advocacy organizations like League of United Latin American Citizens and Mexican American Legal Defense and Education Fund litigated in California, Texas, and Colorado to desegregate schools that Mexican Americans were not allowed to attend.²⁷ Indeed, one of the key predecessor cases for *Brown v. Board of Education* was *Mendez v. Westminster School District*,²⁸ a case brought by Mexican-American parents to challenge the segregated schools in Westminster, California.

²⁶ See *infra* notes 32–37 and accompanying text.

²⁷ See generally RUBEN DONATO, *THE OTHER STRUGGLE FOR EQUAL SCHOOLS: MEXICAN AMERICANS DURING THE CIVIL RIGHTS ERA* (1997); Gilbert G. Gonzalez, *Segregation and the Education of Mexican Children, 1900–1940, in THE ELUSIVE QUEST FOR EQUALITY: 150 YEARS OF CHICANO/CHICANA EDUCATION* 53, 71–73 (Jose F. Moreno ed., 1999).

²⁸ 64 F. Supp. 544 (S.D. Cal. 1946), *aff'd*, 161 F.2d 774 (9th Cir. 1947). *Mendez* was the first lower-court decision in the United States to reverse the premises of *Plessy v. Ferguson*, 163 U.S. 537 (1896), and the decision rejected *Plessy* with reasoning remarkably similar to the reasoning of *Brown v. Board of Education*. The connections between *Mendez* and *Brown* also include important links with Chief Justice Earl Warren, the eventual author of *Brown*. See Juan F. Perea, *The Black/White Binary Paradigm of Race: The “Normal Science” of American Racial Thought*, 85 CAL. L. REV. 1213, 1242–51 (1997) [hereinafter *Black/White Binary*].

At the time, most Mexican-American children were excluded from white schools by common practice, and California statutes authorized school segregation.²⁹ Chicano and Puerto Rican litigants also challenged successfully California's segregated parks and swimming pools, which prohibited use by Mexican-American children.³⁰ A Latina plaintiff challenged successfully California's anti-miscegenation statute.³¹ Perhaps the most visible Chicano rights struggle to date has been the farm worker movement spearheaded by Cesar Chavez to protect the rights of exploited and brutalized Mexican-American and Filipino farm workers in California.³²

Earlier Chicano struggles for civil rights, corresponding to the unique history of Mexican Americans in the United States, occurred in land grant litigations beginning in the mid-nineteenth century and continuing into the present.³³ The land seized by the United States during its conquest of Mexico was owned by Mexicans under Spanish colonial land grants.³⁴ The United States Senate facilitated the conversion of Mexicans' lands to ownership by white Americans by modifying the Treaty of Guadalupe Hidalgo and by creating three federal tribunals whose purpose was to decide the validity of Mexican land grants under the adverse standards of U.S. law.³⁵ The federal tribunals provided a veneer of due process covering a procedure designed to deprive Mexicans of their lands. The legal struggles of Mexicans to preserve their land ownership under hostile U.S. occupation, under a foreign and hostile legal system, and against the power and resources of the U.S. government should be understood as struggles for civil rights.

Efforts to enforce Mexican-conferred land grant rights continue today. In 2002 the Colorado Supreme Court relied, in part, on the meaning of pre-conquest Mexican land grant law to enforce community rights to graze, gather firewood, and gather timber against a land owner's attempt to exclude community members from his privately owned property.³⁶ In 2004 the General Accounting Office issued a report

²⁹ See *Mendez*, 64 F. Supp. at 548 & n.5 (reproducing California's segregation statute).

³⁰ See *Lopez v. Seccombe*, 71 F. Supp. 769 (S.D. Cal. 1944).

³¹ See *Perez v. Sharp*, 198 P.2d 17 (Cal. 1948).

³² See RODOLFO ACUNA, *OCCUPIED AMERICA: A HISTORY OF CHICANOS* 324–27 (3d ed. 1988).

³³ See Guadalupe Luna, *Chicana/Chicano Land Tenure in the Agrarian Domain: On the Edge of a "Naked Knife,"* 4 MICH. J. RACE & L. 39 (1998). See generally PEREA, RACE & RACES, *supra* note 1, at 288–323.

³⁴ See PEREA, RACE & RACES, *supra* note 1, at 296–99.

³⁵ See *id.* at 303–08.

³⁶ See *Lobato v. Taylor*, 71 P.3d 938 (Colo. 2002) (en banc), *cert. denied*, 540 U.S. 1073 (2003).

describing options for resolving continuing disputes over land grants in New Mexico.³⁷

Chicano struggles against segregation should be recognized and considered relevant as an important struggle for civil rights that occurred in tandem, and occasionally intersected, with the African-American Civil Rights Movement.³⁸ In addition, Mexican-American struggles to defend their lands in land grant litigations of the nineteenth century and after should also be understood as civil rights struggles. These land grant litigations were attempts to resist an outright military conquest motivated solely by a desire to seize Mexicans' desirable lands. Failure to recognize this form of resistance by Mexican Americans risks an enormous misunderstanding of the significance of the land grant litigations and of the conquest of Mexico itself.

2. Indigenous Peoples: American Indians and Native Hawaiians

The indigenous people of the United States have also long struggled for civil rights. During the 1960s, inspired by the African-American movement for civil rights, young Indian intellectuals and activists asserted themselves boldly and launched a Red Power movement.³⁹ This American-Indian movement intended to restore sovereignty to American-Indian nations, a sovereignty that had been under direct attack since around 1945. The movement claimed success when President Richard Nixon delivered his message on Indian affairs to Congress on July 8, 1970.⁴⁰ In his message, Nixon forcefully repudiated prior federal policies calling for termination of Indian tribes and for paternalistic federal supervision of Indian affairs. Nixon also voiced important

³⁷ See U.S. GOV'T ACCOUNTABILITY OFFICE, TREATY OF GUADALUPE HIDALGO: FINDINGS AND POSSIBLE OPTIONS REGARDING LONGSTANDING COMMUNITY LAND GRANT CLAIMS IN NEW MEXICO (2004).

³⁸ The Chicano and African-American struggles against segregation intersected when Thurgood Marshall, Robert Carter, and Loren Miller of the NAACP recognized the importance of the *Mendez v. Westminster* decision and filed an amicus brief on behalf of the NAACP in the appellate case. See Perea, *Black/White Binary*, *supra* note 28, at 1246; see also *Keyes v. Sch. Dist. No. 1*, 413 U.S. 189 (1974) (featuring both Black and Latino plaintiffs litigating against school segregation).

³⁹ See VINE DELORIA, JR. & CLIFFORD M. LYTLE, THE NATIONS WITHIN: THE PAST AND FUTURE OF AMERICAN INDIAN SOVEREIGNTY 232-43 (1984) (describing emergence of Indian nationalism). See generally ALVIN M. JOSEPHY, JR., RED POWER: THE AMERICAN INDIANS' FIGHT FOR FREEDOM (1971).

⁴⁰ JOSEPHY, *supra* note 39, at 213; PEREA, RACE & RACES, *supra* note 1, at 227-28. See generally VINE DELORIA, JR., CUSTER DIED FOR YOUR SINS VIII (University of Oklahoma Press 1988) (1969) ("The biggest policy change in these intervening years, contained in President Richard M. Nixon's July, 1970 Message to Congress, was the official disavowal of termination as a formal goal of the federal government.").

support, later buttressed by legislation, for Indian self-determination and sovereignty.⁴¹

Indian resistance to white oppression has a long history prior to the 1960s. Through violence, negotiated treaties, and litigation, Indians attempted to resist the invasion, occupation, and usurpation of their lands and the usurpation of their sovereignty. In the early nineteenth century, the Cherokee engaged in successful federal litigation to resist Georgia's attempts to impose state law upon the supposedly sovereign Cherokee nation. In an important opinion by Chief Justice Marshall vindicating Cherokee sovereignty, the Cherokee won the right to be free of state regulation.⁴² But because the Supreme Court was unable to enforce its decision, and apparently President Andrew Jackson refused to enforce it, Georgia simply ignored the decision for years.⁴³ Other litigations throughout the nineteenth century also sought to challenge encroachments upon Indian sovereignty.⁴⁴

Echoing the earlier struggle of the Indian nations, today Native Hawaiians, the indigenous people of Hawaii, are engaged in a struggle for federal recognition and enhanced sovereignty. Despite their indigenous status, Native Hawaiians have never been recognized as a tribe or nation by Congress.⁴⁵ Accordingly, they lack the protections for their lands and resources that are enjoyed by federally recognized tribes. And they have suffered as a result. Native Hawaiians have languished at the bottom of the economic, educational, and social status ladders in Hawaii. They are an impoverished and largely invisible people.⁴⁶ In recent years, the Supreme Court has made their condition more precarious by not recognizing their indigenous status and disallowing legal structures intended to protect their native status and resources.⁴⁷

⁴¹ JOSEPHY, *supra* note 39, at 213; PEREA, RACE & RACES, *supra* note 1, at 227–28.

⁴² *Worcester v. Georgia*, 31 U.S. 515 (1832).

⁴³ PEREA, RACE & RACES, *supra* note 1, at 213–14.

⁴⁴ *See generally* PEREA, RACE & RACES, *supra* note 1, at 214–21.

⁴⁵ *See* Le'a Malia Kanehe, *The Akaka Bill: The Native Hawaiians' Race for Federal Recognition*, 23 U. HAW. L. REV. 857, 860 (2001).

⁴⁶ *See* Kathryn Nalani Setsuko Hong, *Understanding Native Hawaiian Rights: Mistakes and Consequences of Rice v. Cayetano*, 15 ASIAN AM. L.J. 9, 16–19 (2008); HAUNANI-KAY TRASK, *FROM A NATIVE DAUGHTER: COLONIALISM AND SOVEREIGNTY IN HAWAI'I* (1999) (presenting an informative discussion of Native Hawaiians and ways in which they are oppressed by colonial occupation).

⁴⁷ *Hawaii v. Office of Hawaiian Affairs*, 129 S. Ct. 1436 (2009); *Rice v. Cayetano*, 528 U.S. 495 (2000). The *Rice* decision has been forcefully and appropriately criticized. *See* Hong, *supra* note 46, at 29; Chris K. Iijima, *Race over Rice: Binary Analytical Boxes and a Twenty-First Century Endorsement of*

For example, in *Rice v. Cayetano*,⁴⁸ the Court found that non-Hawaiians could not be prohibited from voting in elections to determine the trustees of the Office of Hawaiian Affairs, an office empowered to administer trust assets and otherwise act for the benefit of Native Hawaiians. In so doing, the Court failed to recognize the indigenous status of Native Hawaiians and failed to treat them in the same manner as federally recognized tribes. In response to the *Rice* decision, in 2001 Senator Akaka introduced federal legislation to codify the “special political and legal relationship” between the United States and Native Hawaiians.⁴⁹ In its most recent version, the legislation recognizes “the right of the Native Hawaiian people to reorganize the single Native Hawaiian governing entity to provide for their common welfare”⁵⁰ The current legislation also reaffirms the “special political and legal relationship between the United States and the Native Hawaiian governing entity.”⁵¹ The legislation attempts to give Native Hawaiians status and protections similar to those enjoyed by federally recognized Indian tribes.⁵² Despite passage by the House in 2010, and on prior occasions, the bill has yet to be enacted.⁵³

The struggle of Native Hawaiians for federally protected status and sovereignty is a struggle for their survival as a people. In common with the American-Indian movement of the 1960s and the Cherokee litigation of the early nineteenth centuries, the struggles of native peoples for sovereignty are their struggles for civil rights.

Nineteenth Century Imperialism in Rice v. Cayetano, 53 RUTGERS L. REV. 91 (2000).

⁴⁸ 528 U.S. 495, 499 (2000).

⁴⁹ See Kanehe, *supra* note 45, at 859.

⁵⁰ See CRS summary, Native Hawaiian Government Reorganization Act of 2009, S. 1011, 111th Cong. (2010), available at <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:S.1011/> (follow “CRS Summary” hyperlink).

⁵¹ *Id.*

⁵² See S. REP. NO. 111-162, at 1 (Mar. 11, 2010), available at <http://thomas.loc.gov> (click “Bill Number” radio button; then search “Bill Summary & Status” for “s. 1011”; then follow “Senate Reports: 111-162” hyperlink) (“S. 1011 is the most recent Senate bill establishing a process for reorganizing and recognizing a Native Hawaiian governing entity. Similar bills have been introduced since 1999. These bills are the result of long-standing efforts to address the consequences of the 1893 overthrow of the Kingdom of Hawaii, an event that officers of the United States participated in and encouraged, and to provide a process by which to organize a federally recognized native group.”).

⁵³ At this writing, the House of Representatives passed the legislation in February 2010, and the Senate has placed it on the legislative calendar but has not yet voted on it. See Bill Status, Native Hawaiian Government Reorganization Act of 2009 S.1011, available at <http://thomas.loc.gov> (click “Bill Number” radio button; then search “Bill Summary & Status” for “s. 1011”).

III. CONCLUSION

There are important reasons to recognize the Chicano, American-Indian, and Native Hawaiian struggles for civil rights. With respect to the Chicano and American-Indian struggles, it is important to counter the belief, demonstrably untrue, that groups other than African Americans are latecomers to civil rights struggle. To the extent that the legitimacy of civil rights claims rests on a history of struggle—and the African-American Civil Rights Movement suggests that this is true to a large extent—then the legitimacy of Latino and American-Indian claims for civil rights depends on acknowledgement and recognition of their histories of struggle.⁵⁴

It is also important to recognize that the substantive content of civil rights for groups other than African Americans may be different than the civil rights demanded by African Americans. To illustrate, the African-American struggle has focused on equality and full inclusion in American society. Equality and inclusion are remedies for centuries of servitude and forced exclusion. American-Indian and Native Hawaiian struggles for civil rights, on the other hand, focus on the attainment and enhancement of sovereignty. Greater sovereignty for American Indians and Native Hawaiians is the remedy for the denial of sovereign status historically characteristic of relations between the federal and state governments and Indian nations.

Civil rights in the form of enhanced sovereignty for indigenous peoples, although different than the civil rights sought by African Americans, remain civil rights. Civil rights are, in important part, remedies for particular forms of oppression experienced by some peoples. As advocates for civil and human rights generally, we do not want to fail to recognize a struggle for civil rights merely because it differs from the African-American struggle.

Lastly, recognizing a fuller scope of civil rights struggles is important in helping us understand the full measure of unremedied past injustice. If we take no account of denials of civil rights to Mexican Americans, American Indians, and Native Hawaiians, among other groups, then we underestimate dramatically the scope of white racism.

Every struggle against racism and oppression deserves recognition. The iconic status of the African-American Civil Rights Movement is a testament to the power of righteous struggle. While it certainly deserves its hallowed place in our history and our hearts, we should be careful that

⁵⁴ The legitimacy lent by historical struggle for civil rights helps explain the often hollow quality of claims of “reverse discrimination.” In the United States, whites are the most privileged racial group. As a race, whites have not had to struggle in the same way as members of other racial groups for basic rights.

its long shadow not obscure the importance of other righteous struggles. If we care about justice, we should always be attuned to struggles for greater justice, whether or not they resemble the African-American struggle for civil rights. As inspiring as the African-American struggle has been, we may find additional inspiration, and more possibilities for justice, if we cast our gaze beyond the African-American Civil Rights Movement, gazing further back, further forward, and to the side.