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From Integration to Multiculturalism: Dr. King's Dream Fifty Years Later

Al Sturgeon*

"With this faith we will be able to transform the jangling discords of our nation into a beautiful symphony of brotherhood." – Dr. Martin Luther King, Jr. (August 28, 1963)¹

I. INTRODUCTION

Following President Barack Obama's victory speech on Election Day 2012, as the Obama family and the Biden family hugged on stage among the falling confetti, it was irrefutable that some measure of progress had been made in race relations during the half century following Dr. King's "I Have a Dream" speech. However, as I logged on to my Facebook account the following morning, the rhetoric sounded much more like "jangling discords" than a "beautiful symphony of brotherhood."²

Integration was the watchword when Dr. King described his dream in the summer of 1963.³ Integration asked whether all races should be allowed in the same place at the same time. Tolerance became a popular term following the victories achieved in the Civil Rights Era,⁴ asking whether those adamantly opposed to forced integration could learn to accept—or,

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1. A CALL TO CONSCIENCE: THE LANDMARK SPEECHES OF DR. MARTIN LUTHER KING, JR. 86 (Clayborne Carson & Kris Shepard eds., 2001) [hereinafter CALL TO CONSCIENCE].

2. *Id.* One older "friend" posted on his Facebook wall: "The socialists, the lazy bums, the takers, the welfare mamas, the freeloaders, the queers, the Godless, the drugies [sic], the dropouts, etc. HAVE WON. There is no more hope. It's now every man/woman for him/her self. Today I have declared war on the above mentioned groups since they have been in a state of war on me for many years."

3. See generally Davison M. Douglas, *The Rhetoric of Moderation: Desegregating the South During the Decade After Brown*, 89 Nw. U. L. REV. 92, 95 (1994) ("These [more moderate] states thereby successfully avoided judicially compelled integration throughout the 1950s and retained almost totally segregated school systems until the mid-1960s.").

4. See CHARLES TAYLOR, *MULTICULTURALISM: EXAMINING THE POLITICS OF RECOGNITION* 22 (Amy Gutmann ed., Princeton University Press 1994).

tolerate—those that had been integrated. Eventually, even tolerance became an intolerable term. The new watchword is multiculturalism, which asks whether those forced to be in the same place at the same time could move beyond toleration to actual recognition.⁵

It is not difficult to follow the progression in the shifting watchwords. In a sense, they signify a transformation from “jangling discords . . . into a beautiful symphony of brotherhood.”⁶ However, it is more painful to ask whether the changes in American society over the past fifty years constitute actual transformation or if the progression in terminology is merely semantic.

I do not propose to answer such a hefty question in a short essay. Instead, I intend to accomplish four specific tasks: (i) provide a broad overview of the popular shift in terminology from integration to multiculturalism in the fifty years since Dr. King’s speech;⁷ (ii) identify a unique perspective to characterize the dream;⁸ (iii) raise three challenges that make the realization of Dr. King’s dream persistently difficult to achieve;⁹ and (iv) suggest a perspective from the world of Alternative Dispute Resolution (“ADR”) moving forward.¹⁰

II. PERSONAL BACKGROUND

I was born in 1970 in a small, racially-homogeneous town in northeast Arkansas.¹¹ With time, I learned that my hometown had a reputation as a “sundown town.”¹² As a small child, although I learned that the “n-word”

5. *See id.* at 3; ARTHUR M. SCHLESINGER, JR., *THE DISUNITING OF AMERICA* 74 (1992); Michael A. Helfand, *Religious Arbitration and the New Multiculturalism: Negotiating Conflicting Legal Orders*, 86 N.Y.U. L. REV. 1231, 1233–34 (2011); Michael W. McConnell, *Multiculturalism, Majoritarianism, and Educational Choice: What Does Our Constitutional Tradition Have to Say?*, 1991 U. CHI. LEGAL F. 123, 123 (1991); Jeanne Maddox Toungara, *Multiculturalism and the Demise of the African-American in the Body Politic*, 8 HOW. SCROLL SOC. JUST. L. REV. 56, 65 (2006).

6. CALL TO CONSCIENCE, *supra* note 1, at 86.

7. *See infra* Part III.A.

8. *See infra* Part III.B.

9. *See infra* Part III.C.

10. *See infra* Part III.D.

11. The 1970 United States Census reported the population of Paragould, Arkansas, at 10,639, and the racial background as 10,611 white, 14 Negro, 9 Indian, 4 Japanese, and 1 “other.” United States Census Bureau, *Census of Population and Housing: 1970 Census*, available at <http://www.census.gov/prod/www/abs/decennial/1970cenpopv1.html> (last visited Feb. 24, 2013).

12. JAMES LOEWEN, *SUNDOWN TOWNS: A HIDDEN DIMENSION OF AMERICAN RACISM* 242 (2006). “A sundown town is any organized jurisdiction that for decades kept African Americans or other groups from living in it and was thus ‘all-white’ on purpose.” *Id.* at 4. The name came from signs that often stood on the corporate limits warning African Americans not to be in the town after sundown. *Id.* at 3.

was not a nice thing to say, it was in regular use, and I heard an entire library of jokes that emphasized the word on the elementary school playground. In short, when my history teachers covered the Civil Rights Movement, the word segregation seemed less like American history and more like a current event.

I first met a black person on a high school basketball court. It may seem strange to say that I felt no racial prejudice at the time. Instead, my complete lack of racial interaction as a child made the encounter more intriguing than threatening. Years later, I now know that many layers of racial prejudice needed chipping away, but as a practical matter, my conscious self knew no predisposition for hatred of another based on race. For the next ten years or so, still living in my hometown, I had very few opportunities to even explore the concept.

In the late 1990s, I moved to the Mississippi Gulf Coast where I first lived, worked, and worshiped with individuals with different racial backgrounds than my own. Ironically, it was in Mississippi that I became more culturally aware.¹³ In 2008, I moved to Los Angeles County, one of the most diverse counties in the United States,¹⁴ which has extended my personal evolution.

I am haunted by my personal heritage. The history of the Civil Rights Movement fascinates, appalls, and challenges me on a level that implicates my upbringing, my family, my faith, and, to risk sounding overly dramatic, my soul. I am personally invested in the pursuit of Dr. King's famous dream. In many respects, I now adopt it as my own.

13. Mississippi's reputation for racism is evident in Dr. King's "I Have a Dream" speech: "I have a dream that one day even the state of Mississippi, a state sweltering with the heat of injustice . . . , sweltering with the heat of oppression, will be transformed into an oasis of freedom and justice." CALL TO CONSCIENCE, *supra* note 1, at 85.

14. See BARRETT A. LEE ET AL., RACIAL AND ETHNIC DIVERSITY GOES LOCAL: CHARTING CHANGE IN AMERICAN COMMUNITIES OVER THREE DECADES 13 (Sept. 2012), available at <http://www.s4.brown.edu/us2010/Data/Report/report08292012.pdf>. Los Angeles County is the most linguistically diverse county in the United States with 135 languages spoken. U.S. English Foundation, Inc., *Many Languages, One America: Most Linguistically Diverse Counties*, <http://www.usefoundation.org/view/55> (last visited Mar. 1, 2013).

III. ANALYSIS

A. *Shift in Terminology*

The stark choice between segregation and integration was a familiar topic in the speeches of the Civil Rights Era.¹⁵ The “whites only” designation on lunch counters, bathrooms, drinking fountains, schools, and bus seating areas became an enduring image of life in the Deep South,¹⁶ and civil rights activists engaged in acts of civil disobedience that eventually led to dramatic action from all three branches of the federal government that signified a resounding victory for integration.¹⁷

No reasonable person believed that the apparently government-sanctioned reality of integration equaled the fulfillment of Dr. King’s dream.¹⁸ There was little chance of an immediate manifestation of “a beautiful symphony of brotherhood.”¹⁹ The significant work ahead required finding a way to get people that had formerly refused to even be in the same room to peacefully coexist. Tolerance was a natural term of art in facing this challenge.²⁰

15. See CALL TO CONSCIENCE, *supra* note 1, at 196 (“Let us be dissatisfied until the dark yesterdays of segregated schools will be transformed into bright tomorrows of quality integrated education.”); Governor George C. Wallace, Governor of Alabama, Inaugural Address (Jan. 14, 1963), in Ala. Dept. of Archives & History, 2010, at 2, available at http://www.archives.state.al.us/govs_list/inauguralspeech.html (“In the name of the greatest people that have ever trod this earth, I draw the line in the dust and toss the gauntlet before the feet of tyranny . . . and I say . . . segregation today . . . segregation tomorrow . . . segregation forever.”).

16. See *Jim Crow Laws*, PBS, <http://www.pbs.org/wgbh/americanexperience/freedomriders/issues/jim-crow-laws> (last visited Mar. 1, 2013).

17. The judicial branch (i.e., the Supreme Court) overturned school segregation in 1954. *Brown v. Bd. of Ed.*, 347 U.S. 483 (1954). The executive branch (i.e., President Eisenhower) enforced the Court’s ruling in dramatic fashion during the 1957 crisis at Little Rock Central High School. National Park Service, *The 1957 Crisis at Central High*, NATIONAL PARK SERVICE available at <http://www.nps.gov/chsc/planyourvisit/upload/SitebulletinCrisis.pdf> (last visited Mar. 1, 2013). The legislative branch (i.e., Congress) made official segregation illegal through the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241 (effective July 2, 1964).

18. In fact, some of the landmark actions, e.g., *Brown v. Board of Education* and the Little Rock Central crisis, preceded the speech.

19. CALL TO CONSCIENCE, *supra* note 1, at 86.

20. The Southern Poverty Law Center (“SPLC”) was founded in 1971 to “ensure that the promises of the civil rights movement became a reality for all.” *Who We Are*, SOUTHERN POVERTY LAW CENTER, <http://www.splcenter.org/who-we-are> (last visited Mar. 1 2013). In 1991, the SPLC started a program called Teaching Tolerance “to promote tolerance and respect in our nation’s schools.” *About Us*, Teaching Tolerance, available at <http://www.tolerance.org/about> (last visited Mar. 1, 2013).

But tolerance proved an interesting word choice. Definitions of the word include the “capacity to endure pain or hardship”²¹ and “sympathy or indulgence for beliefs or practices differing from or conflicting with one’s own.”²² By definition, to tolerate another person or group of persons is to painfully endure the social interaction, or possibly, to feel sorry for or indulge the other person or group.²³ It is true that this was a necessary step on the road to Dr. King’s dream given the emotions inherent in the integration process, but it was not the destination.²⁴ This did not go unnoticed.²⁵

Eventually, the term multiculturalism became en vogue.²⁶ Defying easy definition,²⁷ multiculturalism generally celebrates the value of multiple cultures to a given society.²⁸ More specifically, proponents of multiculturalism in the United States worked to change the reality for minority groups from a state of marginalization to a state of recognition.²⁹ In light of Dr. King’s dream, to be recognized is a significant upgrade from toleration.³⁰

The multicultural construct is not unfamiliar to a nation that offers a “melting pot” metaphor as self-description, but multiculturalism is

21. MERRIAM-WEBSTER, *Tolerance*, <http://www.merriam-webster.com/dictionary/tolerance> (last visited Mar. 1, 2013).

22. *Id.*

23. *Id.*

24. See Gutmann, *supra* note 4, at 22 (“Everything is left to say, however, if we can distinguish between tolerating and respecting differences. Toleration extends to the widest range of views, so long as they stop short of threats and other direct and discernible harms to individuals. Respect is far more discriminating.”).

25. See Linda C. McClain, *Toleration, Autonomy, and Governmental Promotion of Good Lives: Beyond “Empty” Toleration to Toleration as Respect*, 59 OHIO ST. L.J. 19, 22 (1998) (“Toleration is too empty, some critics charge, because it requires only that government leave persons alone with respect to certain beliefs or conduct, not that other citizens respect or appreciate those persons, their beliefs, or their conduct.”).

26. See *Multiculturalism*, MARTINFROST, http://www.martinfrost.ws/htmlfiles/multi_culture2.html (last visited Mar. 1, 2013) (“Multiculturalism became incorporated into official policies in several nations in the 1970s for reasons that varied from country to country.”).

27. See Helfand, *supra* note 5, at 1269 (“The term ‘multiculturalism’ encompasses a wide range of philosophical theories, political policies, and contemporary perspectives, all of which emphasize the importance of culture to both individual identity and political society.”).

28. *Id.* See also SCHLESINGER, *supra* note 5, at 74 (stating that multiculturalism is “a reaction against Anglo- or Eurocentrism” and “has come to refer only to non-Western, nonwhite cultures”).

29. See Helfand, *supra* note 5, at 1269–70.

30. See Gutmann, *supra* note 4, at 22.

characterized more as a “salad bowl” than a melting pot.³¹ In 1915, philosopher Horace Kallen described America “as a federation or commonwealth of national cultures . . . a democracy of nationalities, cooperating voluntarily and autonomously through common institutions . . . a multiplicity in a unity, an orchestration of mankind.”³² Kallen eventually called his vision of America “cultural pluralism.”³³

His vision was not without criticism; including the warning “that cultural pluralism would ‘result in the Balkanization of these United States.’”³⁴ Kallen’s cultural pluralism construct (and its critics) carry on today under the auspices of the debate over multiculturalism.³⁵ Historian Arthur M. Schlesinger, Jr. takes issue with the “many-ness” of multiculturalism and argues for a “one-ness” in American society.³⁶ He writes:

If the republic now turns away from Washington’s old goal of “one people,” what is its future?—disintegration of the national community, apartheid, Balkanization, tribalization? “The one absolutely certain way of bringing this nation to ruin, of preventing all possibility of its continuing to be a nation at all,” said Theodore Roosevelt, “would be to permit it to become a tangle of squabbling nationalities, an intricate knot of German-Americans, Irish-Americans, English-Americans, French-Americans, Scandinavian-Americans, or Italian-Americans, each preserving its separate nationality.”³⁷

Schlesinger concludes: “The genius of America lies in its capacity to forge a single nation from peoples of remarkably diverse racial, religious, and ethnic origins.”³⁸

31. See *Multiculturalism*, *supra* note 26.

32. SCHLESINGER, *supra* note 5, at 36.

33. *Id.*

34. *Id.* at 37.

35. Professor Helfand argues that a “new multiculturalism” exists that “focuses not simply on principles of recognition and inclusion, but on broader principles of group autonomy and self-governance.” Helfand, *supra* note 5, at 1232. This furthers Schlesinger’s concerns.

36. See SCHLESINGER, *supra* note 5, at 15–16.

A cult of ethnicity has arisen both among non-Anglo whites and among nonwhite minorities to denounce the idea of a melting pot, to challenge the concept of ‘one people,’ and to protect, promote, and perpetuate separate ethnic and racial communities.

The eruption of ethnicity had many good consequences. . . .

But, pressed too far, the cult of ethnicity has had bad consequences, too. The new ethnic gospel rejects the unifying vision of individuals from all nations melted into a new race. Its underlying philosophy is that America is not a nation of individuals at all but a nation of groups, that ethnicity is the defining experience for most Americans, that ethnic ties are permanent and indelible, and that division into ethnic communities establishes the basic structure of American society and the basic meaning of American history.

37. *Id.* at 118.

38. *Id.* at 134.

Both sides in the multiculturalism debate can claim Dr. King's dream of a "beautiful symphony of brotherhood" as its own (neither longs for "jangling discords").³⁹ A symphony, like a set of brothers, consists of discrete units that comprise a unity that transcends the individual units. There is divergence in the vision of that transcendent unity.

Fifty years of American history and the accompanying transformation of terminology from integration to multiculturalism shows that we as a society have generally come to agree on what Dr. King's dream does not look like—neither segregation, nor an unpleasant toleration of one another. The debate continues as to what it would resemble—a strong "one-ness" or a strong "many-ness." However, it is possible that this distinction is a false dichotomy and that a unique perspective is needed to properly characterize the dream.

B. A Unique Perspective

Will D. Campbell, a major leader in the Civil Rights Movement, writes in his memoir:

"The civil rights gains we have made are largely cosmetic," my old friend, Kelly Miller Smith, told me just before he died. One would have expected to hear those words in earlier times, when the gains of black people had been more modest than it seemed to me they had been during his lifetime and mine. He had been a pivotal figure in it all. Buses and taxicabs, schools, restaurants, theaters, parks, swimming pools, as well as participation in the political process had all been desegregated since he and I had come to Tennessee from Mississippi in the rigidly, segregated decade of the fifties. He from a black church in Vicksburg, I from a white university in Oxford. His little daughter had been one of the nine brave children who faced the violent mobs to begin the slow and painful process of integrated education. The church he pastored for thirty-four years was headquarters for the massive sit-in movement. Quietly or obstreperously, whatever the situation indicated, he negotiated with mayors, governors, merchants, and owners such issues as employment, housing, fairness, and decency in general.

All that he had been party to and more. Yet here he lay, a few weeks from death, saying that all his efforts had produced no more than a cosmetic coating over an inveterate malignancy as socially lethal as the one claiming his life. I protested with a roll call of the improvements he had presided over. He listened in his usual smiling, affable manner as I listed them one by one, beginning with public transportation in 1956 and concluding with his being a dean and teacher in one of the most prestigious universities in the South where he could not have been more than janitor not many years earlier.

39. CALL TO CONSCIENCE, *supra* note 1, at 86.

“But they still don’t respect us,” he said sadly. After a long pause for needed oxygen, he continued. “Look at the television shows. Listen to the rhetoric on the streets. They still don’t respect us.”

His words were a startling awakening. How far I had missed the point of it all. How dissimilar the promised lands two Mississippi men had envisioned. To grant the truth of his words would be to acknowledge that the years of both of us had been wasted. He spoke with approval and gratefulness for the things I recited, but as he did it became clear to me that the one thing which was behind all else was never his. Respect. *Freedom is respect.*⁴⁰

Has there been progress on Dr. King’s dream in the half century following his unforgettable speech? The answer depends on properly identifying the dream rather than shifting popular terminology. Campbell’s memoir argues that the dream was for respect.⁴¹ If this is true, it is less important to decide whether a melting pot or a salad bowl society is preferable; instead, evaluating progress will depend on a true assessment of the level of respect we have for one another across the various lines that still divide us.⁴² It is likely that an effective measurement of such a standard would reveal that we still have a very long way to go.

C. Three Challenges

Three challenges make the realization of Dr. King’s dream in American society persistently difficult to achieve:

1. Polarization in a Competition-Based Society

The first challenge is that a society based on competition creates an environment where respect for the “other” is inherently difficult. The American legal system is designed to operate as an adversarial system—justice is achieved through the attempts of two opposing sides to discredit one another.⁴³ The American economic system is designed to operate with a “survival of the fittest” mentality—the law of supply and demand works when business entities seek to show themselves as better than their

40. WILL D. CAMPBELL, *FORTY ACRES AND A GOAT* 269–70 (2002).

41. *See id.*

42. *See* Gutmann, *supra* note 4, at 22 (“Everything is left to say, however, if we can distinguish between tolerating and respecting differences. Toleration extends to the widest range of views, so long as they stop short of threats and other direct and discernible harms to individuals. Respect is far more discriminating.”).

43. *See* Monroe H. Freedman, *Our Constitutionalized Adversary System*, 1 *CHAP. L. REV.* 57 (1998).

competitors.⁴⁴ The American entertainment industry feeds on competition—popular sporting events and reality shows reflect a society that likes to declare winners and losers.⁴⁵

In a society that trains its citizenry to strive to outdo others, mutual respect is simply an unnatural outcome.

Nowhere is this challenge more apparent than in the system by which American citizens choose their leaders. The American political system, with its accompanying “attack ads” and “dirty” campaigns, has been described as warfare.⁴⁶ Professor Richard H. Pildes claims, “We have not seen the intensity of political conflict and the radical separation between the two major political parties that characterizes our age since the late nineteenth century.”⁴⁷ He argues that the American political system has “one defining attribute: the rise of extreme partisan polarization”⁴⁸ and terms it a “hyperpolarized democracy . . . [that] is likely to be enduring.”⁴⁹ If Pildes is correct in his assessment, hope for a “beautiful symphony of brotherhood”⁵⁰ is hard to hold.

2. The Technological Revolution and Selective Segregation

The second challenge stems from the astounding technological revolution.⁵¹ The interconnectedness made possible by technology in the year 2013 would have been difficult to imagine in 1963.⁵² Likewise, the

44. See Deborah A. Ballam, *The Evolution of the Government-Business Relationship in the United States: Colonial Times to Present*, 31 AM. BUS. L.J. 553, 573–74 (1994).

45. See FRANCESCO DUINA, WINNING: REFLECTIONS ON AN AMERICAN OBSESSION 4 (2011) (“Without a doubt, most of us in the United States are . . . told to feel special and strive for new heights. Being smarter, better, and more knowledgeable than others are virtues, not faults.”).

46. Richard H. Pildes, *Why the Center Does Not Hold: The Causes of Hyperpolarized Democracy in America*, 99 CAL. L. REV. 273, 277 (2011).

47. *Id.* at 276.

48. *Id.* at 275.

49. *Id.* at 276.

50. CALL TO CONSCIENCE, *supra* note 1, at 86.

51. See Daniel Alpert & Robert F. Rich, *The Information Revolution: Implications for Higher Education Policy*, U. ILL. J.L. TECH. & POL’Y, Fall 2001, at 291, 292 (“We as a nation and as participants in a global economy are experiencing a technological revolution of unprecedented impact.”).

52. 1963 was the year AT&T introduced touch tone phones and Philips introduced compact audio cassettes. SIXTIES PIZZAZZ, <http://sixties60s.com/1963gadgets.htm> (last visited on Mar. 1, 2013).

financial power accumulated by the technology industry⁵³ and the corresponding control technology holds over the lives of American citizens⁵⁴ would have been nearly impossible to forecast.

The democratic effect of such a revolution is profound if information really is power.⁵⁵ A half century ago, the battle over integration presupposed the importance of equal access; therefore, a new world order where everyone has access to both information and one another, regardless of race or ethnicity, should theoretically stand as an ally in achieving Dr. King's dream. In a phrase, increased access should serve as a unifying force. But maybe not.

Although the technological revolution must have been difficult to imagine in 1963, in 1954 a French sociologist named Jacques Ellul forecast the monolithic nature of technology in contemporary society.⁵⁶ Ellul insisted on the word "technique" instead of technology, but regardless of the terminology, he did not intend to confine the term to equipment; instead, he sought to examine "any complex of standardized means for attaining a predetermined result."⁵⁷ In a word, Ellul warned of the danger in devotion to *efficiency*—specifically, "a civilization committed to the quest for continually improved means to carelessly examined ends."⁵⁸

The genius of Ellul's work can be displayed in a one-word question posed in response to the technological revolution's ever-increasing claim that we can do things bigger, faster, and stronger: Why? We can instantly communicate with millions: Why? We can reconnect with friends across the globe: Why? Ellul's critique was that "the quest for continually improved means to carelessly examined ends"⁵⁹ looks like progress, but such progress

53. See Stephen Marche, *Is Facebook Making Us Lonely?*, THE ATLANTIC MAGAZINE, May 2012, available at <http://www.theatlantic.com/magazine/archive/2012/05/is-facebook-making-us-lonely/308930> (reporting Facebook's 2011 revenue at \$3.7 billion and estimating its "potential value at \$100 billion, which would make it larger than the global coffee industry").

54. *Id.* (reporting that Facebook has "845 million users" and that during "the last three months of 2011, users generated an average of 2.7 billion 'likes' and comments every day").

55. Activist Robin Morgan said, "Knowledge is power. Information is power. The secreting or hoarding of knowledge or information may be an act of tyranny camouflaged as humility." BRAINY QUOTE, <http://www.brainyquote.com/quotes/quotes/r/robinmorga271953.html> (last visited Mar. 1, 2013).

56. See JACQUES ELLUL, THE TECHNOLOGICAL SOCIETY 428 (1954) ("We have completed our examination of the monolithic technical world that is coming to be. It is vanity to pretend it can be checked or guided. Indeed, the human race is beginning confusedly to understand at last that it is living in a new and unfamiliar universe.").

57. Robert K. Merton, *Foreword* to JACQUES ELLUL, THE TECHNOLOGICAL SOCIETY v, vi (1954).

58. *Id.*

59. *Id.*

“consists in progressive de-humanization—a busy, pointless, and, in the end, suicidal submission to technique.”⁶⁰

Ellul’s warning seems especially applicable to Dr. King’s dream. Although we hear that society is more connected than ever, we also hear that it is increasingly disconnected.⁶¹ Technology allows a new form of segregation to take shape, a selective form where we choose our connections. The means are impressive, but as Ellul feared, the end product is not.

3. The Inability of Law to Reach the Heart

A third challenge involves the limitations of law. The importance of the rule of law should not be underestimated.⁶² Landmark legislation such as the Civil Rights Act of 1964⁶³ and the Voting Rights Act of 1965⁶⁴ came as a result of blood, sweat, and tears and should not be disrespected. However, as Kelly Miller Smith told Will Campbell on his deathbed, legislative success cannot produce respect.⁶⁵

There has been much legislation in the half century following Dr. King’s speech in an effort to bring about his dream.⁶⁶ Still, although the advocacy for law, the ensuing debate, and the reaction to the passage or denial may very well change perspectives and therefore change society, the law itself is unable to reach the heart. More than the passage of legislation is required to realize Dr. King’s dream.

To summarize, in a society founded on institutional structures that naturally produce polarization, and in a time when a technological revolution has allowed for a kind of selective segregation to re-emerge, it will take

60. *Id.* at viii.

61. See Marche, *supra* note 53 (“We live in an accelerating contradiction: the more connected we become, the lonelier we are.”).

62. See Erwin Chemerinsky, *Toward A Practical Definition of the Rule of Law*, 46 No. 4 JUDGES’ J., at 4–5 (2007).

63. Civil Rights Act of 1964, Pub. L. No. 88-352, July 2, 1964.

64. Voting Rights Act of 1965, Pub. L. No. 89-110, August 6, 1965.

65. See *infra* Part III.B.

66. “It was Congress, and not the Court, that took a leadership role in protecting rights of belonging in the quarter century following the 1964 Civil Rights Act.” Rebecca E. Zietlow, *To Secure These Rights: Congress, Courts and the 1964 Civil Rights Act*, 57 RUTGERS L. REV. 945, 991 (2005).

more than legislation “to transform the jangling discords of our nation into a beautiful symphony of brotherhood.”⁶⁷

D. A Suggested Perspective

The evolution of the field of Alternative Dispute Resolution (“ADR”)⁶⁸ suggests a perspective that may prove helpful to those convinced that Dr. King’s dream is not yet realized.

Generally, the popularity of ADR processes arose as an alternative to judicial trials.⁶⁹ ADR’s growth in the United States in the half century following Dr. King’s 1963 speech is remarkable.⁷⁰ In fact, frustration with litigation and the rising popularity of ADR mechanisms has led current scholars to wonder if ADR mechanisms might effectively displace litigation.⁷¹ Interestingly, as ADR mechanisms become more mainstream, frustrations similar to those that led to their popularity have emerged.⁷²

This intractable problem may be unavoidable.⁷³ Consider the evolution: (i) the ADR Movement proposed alternatives in response to deep-seated problems in the American system of dispute resolution;⁷⁴ (ii) today, the effort is generally considered triumphant;⁷⁵ (iii) however, the institutionalization of the “alternative” processes is criticized for similar frustrations that led to ADR’s original popularity.⁷⁶

Likewise, (i) the Civil Rights Movement proposed alternatives in response to deep-seated problems in American society;⁷⁷ (ii) such efforts

67. CALL TO CONSCIENCE, *supra* note 1, at 86.

68. See Jethro K. Lieberman & James F. Henry, *Lessons from the Alternative Dispute Resolution Movement*, 53 U. CHI. L. REV. 424, 424 (1986) (“The ADR roster includes such well-known processes as arbitration, mediation, conciliation, and, perhaps, negotiation.”).

69. See E. WENDY TRACHTE-HUBER & STEPHEN K. HUBER, *MEDIATION AND NEGOTIATION: REACHING AGREEMENT IN LAW AND BUSINESS* 3 (2nd ed. 2007).

70. See William Twining, *Alternatives to What? Theories of Litigation, Procedure and Dispute Settlement in Anglo-American Jurisprudence: Some Neglected Classics*, 56 MOD. L. REV. 380, 380 (1993) (stating that “the rapid growth in lawyers’ interest in ‘alternative dispute resolution’ (ADR) is widely perceived to have gathered momentum in the late 1960s in the United States” and that in subsequent years “there has indeed been a remarkable growth in the ‘ADR industry’”).

71. See Thomas J. Stipanowich, *Arbitration: The New Litigation*, 2010 U. ILL. L. REV. 1, 4 (2010) (citing “concerns about the high costs and delays associated with full blown litigation”).

72. See *id.* at 5 (“There are . . . frequent complaints regarding delay and high cost”).

73. See Judith Resnik, *Many Doors? Closing Doors? Alternative Dispute Resolution and Adjudication*, 10 OHIO ST. J. ON DISP. RESOL. 211, 262 (1995) (concluding that institutionalization “may well undermine the very attributes of ADR that prompted its praise”).

74. See TRACHTE-HUBER & HUBER, *supra* note 69, at 3.

75. See Resnik, *supra* note 73, at 262.

76. See Stipanowich, *supra* note 71, at 4–5.

77. See *Jim Crow Laws*, *supra* note 16.

popularly triumphed;⁷⁸ and (iii) the institutionalization of the Movement has not ushered in the realization of its descriptive dream—“a beautiful symphony of brotherhood”⁷⁹—but instead has resulted in simply a different flavor of segregation.⁸⁰

What can proponents of Dr. King’s dream learn from the ongoing evolution of ADR? In 1995, Professor Judith Resnik warned that “those who envisioned ADR as the blossoming of something different and generative . . . [should be concerned] about its institutionalization and its transformation into the very adversarial processes that they had hoped to avoid.”⁸¹ In short, the “A” (“alternative”) in ADR—going against the grain—is necessary for something unique to emerge.

Dr. King’s vision called for something never before seen in American society—in fact, in any society. To say the least, a dream for a society where mutual respect exists across dividing lines is lofty, but in a society based on competition, it is inherently more difficult to achieve. Hard-fought legislation alone will not do the trick. Those interested in carrying on the dream must go against the grain and employ alternative methods.⁸² The

78. *See supra* note 17.

79. CALL TO CONSCIENCE, *supra* note 1, at 86.

80. *See infra* Part III.B.

81. Resnik, *supra* note 73, at 262.

82. This point was well made by William Stringfellow in 1966 in regard to Christianity. Remembering that Dr. King was a Christian pastor makes Stringfellow’s point all the more fascinating:

[T]he posture of Christianity is inherently and consistently radical. . . . Christians are perpetually in the position of complaining against the status quo, whatever it happens to be. . . . They are always, in any society, in protest. Even when a cause that they have themselves supported prevails, they will not be content but will be the first to complain against the “new” status quo. For example, many Christians at the present time in the United States are deeply and actively involved in the struggle to achieve integration in American public life. Christians in that struggle, however, will characteristically be the first to recognize that integration of American society, as much as it is absolutely essential to the survival of this nation, is in no way to be confused with or identified with the Kingdom of God. Integration, from a Christian point of view, must be counted as a modest, conservative, attainable, and necessary social and political objective in this nation at this time. It is by no means the measure of reconciliation among human beings in this world.

A KEEPER OF THE WORD: SELECTED WRITINGS OF WILLIAM STRINGFELLOW 323 (Bill Wylie Kellermann ed., 1994).

creativity of the methods employed in the Civil Rights Movement is undeniable;⁸³ such creative thinking is necessary to carry on the dream.

IV. CONCLUSION

When seeking to characterize Dr. King's famous dream in a single word, the familiar choices have been freedom,⁸⁴ equality,⁸⁵ or justice:⁸⁶ words that carry a distinct legal flavor. However, a close reading of Dr. King's speech generates a far more expansive term to characterize his dream—brotherhood.⁸⁷ Freedom, equality, and justice can be won under the law, but brotherhood calls for a far deeper sense of interconnectedness.

This article proposes that much work remains before such a deep sense of interconnectedness among the various groupings of American society is realized. The shift in terminology from a call for integration to the multiculturalism movement underlies an attempt to move beyond legal recognition to an appreciation of differences.⁸⁸ However, given the polarization inherent in a competition-based society,⁸⁹ the availability of selective segregation in a technical world,⁹⁰ and the impotency of law to create genuine brotherhood,⁹¹ it is apparent that the dream of brotherhood

83. The intentional choice of nonviolent resistance is the most vivid example. See *Victory for Nonviolence*, <http://www.pbs.org/wgbh/americanexperience/freedomriders/issues/victory-for-nonviolence> (last visited Mar. 1, 2013).

84. See *CALL TO CONSCIENCE*, *supra* note 1, at 87 (“From every mountainside, let freedom ring.”).

85. See *id.* at 83 (“This sweltering summer of the Negro’s legitimate discontent will not pass until there is an invigorating autumn of freedom and equality.”).

86. See *id.* at 84 (“No, no, we are not satisfied and we will not be satisfied until justice rolls down like waters . . .”).

87. See *id.* at 82 (“Now is the time to lift our nation from the quicksands of racial injustice to the solid rock of brotherhood.”); *id.* at 83 (“The marvelous new militancy . . . must not lead us to a distrust of all white people, for many of our white brothers . . . have come to realize that their destiny is tied up with our destiny. And they have come to realize that their freedom is inextricably bound to our freedom. We cannot walk alone.”); *id.* at 85 (“I have a dream that . . . the sons of former slaves and the sons of former slave owners will be able to sit down together at the table of brotherhood.”); *id.* (“I have a dream that one day . . . little black boys and black girls will be able to join hands with little white boys and white girls as sisters and brothers.”); *id.* at 87 (“This is our hope. This is the faith I go back to the South with. . . . With this faith we will be able to transform the jangling discords of our nation into a beautiful symphony of brotherhood.”); *id.* (“And when . . . we allow freedom ring . . . we will be able to speed up that day when all of God’s children, black men and white men, Jews and Gentiles, Protestants and Catholics, will be able to join hands and sing in the words of the old Negro spiritual: Free at last! Free at last! Thank God Almighty, we are free at last!”).

88. See *infra* Part III.A.

89. See *infra* Part III.C.1.

90. See *infra* Part III.C.2.

91. See *infra* Part III.C.3.

will always be an uphill struggle. Further, as the evolution of the ADR movement displays, the institutionalization of Dr. King's dream is likely to cause it to lose its unique character.⁹²

Instead, those committed to keeping the dream alive must realize that the dream of universal brotherhood and mutual respect is persistently an uphill struggle that requires methods alternative to the mainstream. This could be a depressing realization. Then again, as Dr. King himself taught us, only seeing the dream's ultimate fruition from an adjoining mountaintop is no reason to lose hope.⁹³

92. See *infra* Part III.D.

93. See *CALL TO CONSCIENCE*, *supra* note 1, at 223 (“Well, I don’t know what will happen now; we’ve got some difficult days ahead. But it really doesn’t matter with me now, because I’ve been to the mountaintop. And I don’t mind. Like anybody, I would like to live a long life—longevity has its place. But I’m not concerned about that now. I just want to do God’s will. And He’s allowed me to go up to the mountain. And I’ve looked over, and I’ve seen the Promised Land. I may not get there with you. But I want you to know tonight, that we, as a people, will get to the Promised Land. And so I’m happy tonight; I’m not worried about anything; I’m not fearing any man. Mine eyes have seen the glory of the coming of the Lord.”).