Introduction

In the late 1960s, teenagers rebelled in public schools across the United States. From the Mississippi Delta to East Los Angeles and Columbus, Ohio, young people spoke out against injustices they witnessed at school and in American society. This was also the moment in which school districts around the nation began implementing desegregation plans to comply at long last with the Supreme Court’s 1954 *Brown v. Board of Education* decision, which declared laws requiring the segregation of students by race unconstitutional. Amid this ferment of social protest and educational reform, black and Latino students seized the moment to speak out against other forms of racial discrimination at school and advocate for practices and policies that would make education more equitable for students of all races and ethnicities.¹ Students sometimes conducted peaceful, silent protests and, at other times, disrupted classes with walkouts, picket lines, sit-ins, marches, and rebel assemblies. Predictably, school administrators often punished them in response.²

High school students, however, had no right to protest at school. Until the mid-1960s, elementary and secondary students were generally not considered to be protected by the Constitution, including the First Amendment right to free expression. The constitutional claims a young person could make in a public park were entirely different from those that could be made in a public school classroom just across the street. Merely wearing a button or a T-shirt with an unpopular message could be enough to warrant suspension or expulsion in the eyes of disapproving adults. Principals suspended or expelled students for their words and actions, and state laws generally deferred to the authority of school officials to punish students at will.³ And students and their families had no constitutional recourse to challenge administrators or teachers who disciplined them, including cases involving the suppression of free speech.

Undeterred by suspensions and expulsions and assisted by sympathetic lawyers, the parents and guardians of some of these teenaged pro-
testers sued their schools and claimed for all public school students the protections of the federal Constitution. In doing so, they asked federal courts to tread on new legal ground and recognize that certain constitutional rights should protect young people in public schools. In this respect, students’ rights litigation was a great success. Between 1969 and 1985, the Supreme Court issued a series of rulings that defined and limited the constitutional rights of students in public elementary and secondary schools, beginning with the 1969 landmark *Tinker v. Des Moines* decision, in which the Court declared that students and teachers do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

*Tinker*’s broad language about students and the Constitution opened the floodgates for lawsuits concerning the constitutional rights of students. In the following decade and a half, the nation’s high court similarly established students’ rights to due process of law and privacy and considered cases involving a range of other rights.

Many historians and legal scholars have written extensively on *Tinker* and its progeny of free speech cases, noting how the Supreme Court has since narrowed the scope of students’ rights to free expression. At the same time, other scholars have offered detailed histories of the path that led to *Brown v. Board of Education* and the consequences of the decision’s later implementation, while others have debated the merits of the focus on dismantling school segregation through the courts. Justin Driver, in his book, *The Schoolhouse Gate: Public Education, the Supreme Court, and the Battle for the American Mind*, argues that schools have been central battlegrounds in conflicts over the meaning of the American Constitution. At the same time, Driver demonstrates how, through school cases, the Court has shaped American society. This book, in contrast, provides a new history of the development of students’ constitutional rights, focusing on lawsuits that emerged out of the efforts of students to secure racial justice at school. By foregrounding students’ concerns and reading the history of students’ rights through the lens of race, this book reveals the wider stakes of implementing racial reform in public schools. Students do not understand their rights in the narrow way that lawyers or judges approach legal doctrine. Instead, young people often view their legal claims to free expression and fair disciplinary practices as interlocking parts of a broader struggle against racial discrimination and segregation in American public education. Yet this book also demonstrates how,
even as students secured certain constitutional rights, this litigation often did little to strengthen the ability of young people to challenge persistent racial discrimination at school through the courts.

Student protesters of the 1960s and early 1970s followed in the footsteps of previous generations of young people who participated in acts of protest against racial inequities in American public education. Even the *Brown* decision had roots in the political activity of young people at school. A 1951 student strike at Robert Russa Moton High School in Farmville, Virginia, which targeted the shabby conditions at the school, set off a chain of events that would end with the filing of *Davis v. County School Board of Prince Edward County*, one of the three cases that were combined with *Brown* by the Supreme Court. And in the years following the *Brown* decision, young people put their bodies on the line across the South from Little Rock to Atlanta as they became the first students to desegregate previously all-white schools in the 1950s. Offered as symbols of racial injustice while also serving as actors in the challenge to white supremacy, the involvement of students in the struggle for racial justice reflected a broader increase in political participation by young people that peaked in the 1960s. High school and college-aged students staged sit-ins at lunch counters, marched with Martin Luther King, Jr., in Birmingham, and rode across state lines during the Freedom Rides. They often worked side by side with white activists, cross-pollinating ideas about participatory democracy, individual rights, and grassroots organizing among New Left organizations in the early 1960s. Students at high schools and colleges often faced discipline from administrators, and these shared concerns were perhaps best exemplified by the clashes between students and administrators that sparked the 1964 Berkeley Free Speech Movement. The rise of youth protest during the 1960s also marked an important turning point in Mexican American history, as self-identified Chicanos claimed a “brown” racial identity. The emergence of a robust Chicano movement during the latter part of the decade and its central focus on schools as sites of protest against discrimination and exclusion brought parallel yet distinct challenges to the inequities in American education. Indeed, it was the East Los Angeles “blowouts”—a string of walkouts, boycotts, and protests that took place in the city’s public schools in March 1968—that first garnered national attention and introduced Americans to the nascent Chicano Movement.
Despite—or perhaps because of—the increased involvement of young people in social movements in the 1960s, students frequently faced resistance to the idea that their protest activity was legitimate. Condemnation came from everyone from President Nixon to legislators, mayors, school board members, teachers, parents, and other students. Many judges and some Supreme Court justices were similarly skeptical of their political activity. Nonetheless, they continued to organize and air grievances that ranged from curricula to disciplinary policies to the hiring of teachers of color. That high school students had the right to be heard was patently absurd to many and deeply disturbing to others who worried that the disruptions of the era jeopardized the ability of schools to carry out their mission to educate all young people. Their claims were frivolous, their methods crude, and their efforts the result of youthful immaturity. Why should anyone care what teenagers think?

This disregard for the political beliefs and actions of young people is rooted in a linked set of beliefs and assumptions, all of which were contested during this historical moment. The first assumption is that the ability to participate in the political sphere rests upon a person reaching the age of majority, a moment that is often accompanied by the extension of political privileges such as voting and obligations like military service. But American history is peopled with actors who participated in political activism even as they were members of groups who were denied formal participation in the political sphere, including those who were excluded owing to their status as enslaved persons, women, or immigrants. The second assumption, which distinguishes the young from other historically marginalized groups, is that young people cannot or do not have the competence to form their own political beliefs. The age of majority, which is set by state law, determines a distinct range of competencies and associated ages that reflect the judgment of legislators about when individuals are old enough to shoulder certain kinds of rights and responsibilities. The age of consent for sex or marriage, for example, often differs from the age at which a person can vote, which is distinct from the age at which a person can legally purchase alcohol. Laws determining the age of majority demonstrate, therefore, significant differences in community beliefs about when and why age discrimination is reasonable or unreasonable. Conceptions about children and childhood itself have been made and remade throughout American his-
tory, and the creation of a separate category of “adolescents”—distinct from “children”—is a recent phenomenon that reflects discomfort with a bright line between childhood and adulthood. Rather, as teenagers approach the threshold of adulthood, so, too, do they gain the competency that leads to independence and justifies political participation.

The third assumption, and the one with which this book primarily engages, is the idea that young people in school should be primarily passive actors whose role is to receive the accumulated wisdom of educators. Until the 1960s, the law largely conformed to this view of the relationship between students and teachers, analogizing it to the relationship between parents and their children. But this idea was historically a contested one, as education experts argued for the radical reform of pedagogy in the 1960s. The condition of being a student insulated young people from rights protections they had outside the schoolhouse gate and justified the authority that teachers and school administrators had to discipline students who were seen as unruly. This is a belief that many Americans still hold, and it is the one that high school students most visibly rebelled against during the 1960s and 1970s. It has also been the expressed belief of several Supreme Court justices, one of whom—as of the writing of this book—remains on the Court. As recently as 2007, Justice Clarence Thomas argued in a concurring Supreme Court opinion that high school students have no rights that the law is bound to respect.

The legal scholar Barbara Bennett Woodhouse describes this kind of rejection of children’s rights as a result of a “lack of imagination.” Thinking of the extension of the rights of young people as inherently restrictive of the rights of adults assumes that all such litigation is a zero-sum game, with adults suffering losses as young people gain rights protections. It also positions the struggle for students’ rights as one founded in a desire to rebel rather than in meaningful grievances. In *Hidden in Plain Sight: The Tragedy of Children’s Rights from Ben Franklin to Lionel Tate*, Woodhouse emphasizes how it is necessary to study the subject of children’s rights from the perspective of young people. In taking this approach to the student protests of the late 1960s and early 1970s, we can see that this litigation arose from arguments that protecting the rights of students would improve education for all. Young people were not merely rebelling against principals and teachers; instead, they claimed to be resisting a system of education that perpetuated racial discrimination.
Why did young people mobilize so forcefully around concerns about racial discrimination in education in the late 1960s and early 1970s? A confluence of outside factors contributed to the rise in student protest and the resulting wave of litigation that transformed the landscape of students’ rights. The first decades of the twentieth century witnessed the rise and bureaucratization of public education in Northern cities, making high school attendance and completion a new expectation for young people. But was not until the 1940s and 1950s that Southern states—which, historically, lagged behind other regions in the schooling of its children, both white and black—began making sincere efforts to equalize education for black children and teenagers, in large part owing to pressure from lawyers with the National Association for the Advancement of Colored People (NAACP) Legal Defense Fund (LDF). In contrast, Mexican American children in the Southwest were far less likely to attend and complete high school than their peers elsewhere, creating a legacy of exclusion that carried through the generations. But by the 1960s, American secondary education was more universal than ever before, drawing in the most diverse swath of students in history just as movements for racial equality swelled at the grassroots.

As high school education became expected and protest movements emerged, the presence of politically conscious young people in American public schools increased. Certainly not all young people who attended high schools in the late 1960s were involved with protest at school or even aware of the wider political currents in which they lived. But many did become politically engaged and, in doing so, clashed with school rules, cultural expectations, and a legal tradition that marked them as apolitical children rather than as persons who could or should express political beliefs. Furthermore, schools became focal points of the struggle for racial justice in the public eye through the implementation of Brown v. Board of Education and the 1964 Civil Rights Act. As Ansley Erickson’s study of Nashville demonstrates, even in the midst of desegregation officials made and remade schools and their curricula to perpetuate the inequities that the policy was supposedly intended to ameliorate, which often generated further conflict in the schools.

Developments in law and lawyering also played important roles in the establishment and development of students’ constitutional rights. As students expressed dissent at school, advocates for young people mo-
bilized on their behalf. Lawyers sent to the South by the LDF took up students’ cases as part and parcel of their work defending civil rights activists in state and federal court. The establishment of the Mexican American Legal Defense Fund in 1968 and the Puerto Rican Legal Defense Fund in 1972 brought funds and attention to student rebellions over English-only policies, bilingual education, and school desegregation. The Children’s Defense Fund’s creation in 1973 brought attention and resources to issues that primarily affected young people—especially racial disparities in schooling. At the same time, much of the litigation brought on behalf of students originated with local lawyers whom parents and guardians persuaded to join the cause of advancing students’ rights. Although national organizations did work on the cause of students’ rights during the 1960s and 1970s, local activists and lawyers often made crucial contributions to this litigation.

Lawsuits challenging the constitutional rights of students were part of a historical moment in which American courts reconsidered the rights of children more broadly. Juvenile courts, which arose in the early twentieth century, treated young offenders in a separate system that ostensibly sought to reform young people through legal paternalism. This mission justified insulating young people from constitutional rights, giving judges virtually unlimited authority that was often abused. But in 1967, in its decision in In re Gault, the U.S. Supreme Court ruled that young people in juvenile courts do have some constitutional protections, thereby breaching the wall that historically separated young people from the Constitution. In re Gault represented a crucial moment of transition in which changing conceptions of children and childhood justified the extension of limited rights. The cases studied in this book are part of this constitutional moment in which courts reconsidered and redefined long-standing legal doctrines that governed the relationship between young people and the state.

The students’ rights revolution began with the cases that preceded Tinker v. Des Moines and was hastened in the courts by litigation that challenged the authority of school administrators. It was dominated not by the Warren Court—often identified as the catalyst of the twentieth-century rights revolution—but instead by the years in which Warren Burger served as Chief Justice of the U.S. Supreme Court. Beginning in the late 1960s and concluding by the mid-1980s, the justices of the
Burger Court identified and defined the most important constitutional rights that extended to students. Students successfully claimed rights to free speech, due process in suspensions and expulsions, and privacy in relation to searches of their belongings. Yet when it came to many of the constitutional rights that were most relevant to the racial justice claims of black, Chicano, and other minority student activists—the rights to substantially equal educational opportunities, to bilingual education, to not be corporally punished, and to education itself—the courts hedged and deferred to the authority of legislatures. This pattern of extending some rights while limiting those that were essential to making substantive rights claims in the face of racial discrimination led, ultimately, to a student rights’ regime that privileged orderly schools over ones that demanded equal educational opportunities to all. In this sense, the success of the student rights revolution ultimately enshrined in law many of the inequities that student activists challenged in the first place.

Because this book takes seriously students’ rights claims while also considering the legal doctrines developed by lawyers and judges, the first three chapters begin with grassroots efforts of students to create change at school before pivoting to examine how those rights claims fared in federal court. The book therefore employs social history methodology to recover the roots of student discontent as well as an examination of the legal doctrine of students’ rights as it was created and employed on behalf of students in courtrooms across the country, including at the U.S. Supreme Court.

This story is both national and intensely local. The first three chapters are composed of case studies that are geographically diverse and cover distinct sets of rights claims made on behalf of students in court to free speech, equal protection, and due process, respectively. The geographic range covered by the book accounts for important regional differences while revealing foundational similarities in the complaints at the heart of students’ protest activity. While no single story can accurately portray all facets of student protests for racial justice, these case studies demonstrate shared concerns about school discipline, leadership, and curricula despite stark differences in place and circumstance. The first chapter begins at the height of the Black Freedom Struggle in Mississippi in 1964, revealing how free speech concerns were central to civil rights activism in the state’s segregated black schools. The second chapter travels west
to Denver, where the Chicano Movement rose in the midst of school desegregation litigation, and focuses on equal protection as a distinct right that all students could claim. The third and final case study examines black student protest and disciplinary authority in Columbus, Ohio, through a Supreme Court case that laid the foundation for students’ constitutional rights in the realm of school discipline.

The book’s final two chapters take a national view, examining how the court decisions of the late 1960s and early 1970s shaped efforts to secure students’ rights in relation to equal opportunity and school discipline, which I argue had important consequences for the ability of students to make headway through the courts against persistent racial discrimination at school. The fourth chapter focuses on the concept of equal protection, exploring how minority groups sought to leverage the Fourteenth Amendment to make claims for more equal schooling. Finally, the fifth chapter looks at students’ rights in regard to school discipline, particularly in relation to conflict over the use of corporal punishment in schools and students’ rights to privacy. These chapters bring together related cases that reveal how the extension of certain rights to students both expanded and constricted the kinds of constitutional claims that young people could make at school. By the early 1980s, the formative period of students’ constitutional rights came to a close. Later courts would narrow and refine the extent of students’ rights, but they did not fundamentally alter the terms that dictated why and when students in public schools received constitutional protections. The modern legal terrain therefore remains largely reflective of the cases that shaped students’ constitutional rights between the 1960s and the early 1980s.

While the first three chapters of the book foreground student movements and the last two chapters focus more on national developments and the way lawyers and judges talked about students’ rights, read together they reveal a perpetual conflict at the heart of these cases. Those who looked to litigation over students’ rights often did so out of a conviction that public schooling perpetuated racial discrimination. Yet the ways in which the courts eventually articulated students’ rights worked to reinforce rather than unmake that phenomenon. This is not to say that the goals of maintaining order and enforcing robust civil rights reforms are antithetical. Instead, this book identifies how the narrowed conceptions of other rights—in particular, the right to equal protection
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of the law and the right to education—constrained the means by which those who challenged racial discrimination in education could do so through constitutional law.

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Given the attention paid to the social history of the rights movements of the twentieth century, it should come as no surprise to us that students in public secondary schools offered and acted on their own criticisms of educational institutions. As the historian and sociologist Charles Payne explains, histories of local people generate “a faith that ordinary people who learn to believe in themselves are capable of extraordinary acts, or better, of acts that seem extraordinary to us precisely because we have such an impoverished sense of the capabilities of ordinary peo-

ple.”

29 Looking to the teenaged protestors produces a new narrative on the way students’ rights were articulated by courts in the last third of the twentieth century and the meanings of those decisions. The legal legacy produced by the student protests of the late 1960s and early 1970s transformed the relationship between public school students and the Constitution. Even as activists did not achieve all of their desired aims, they left their imprint on American public education, and their stories serve as continual reminders that young people can and do shape the course of history.