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American Public Schools Fifty Years After Brown: A Separate and Unequal Reality

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ESSAY

American Public Schools Fifty Years After Brown: A Separate and Unequal Reality

SHERYLL D. CASHIN*

We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal.

—Brown v. Board of Education¹

Public schools became more segregated in the 1990s. More so than our neighborhoods, our schools are bastions of race and class privilege on the one hand, and race and class disadvantage on the other. Black and Latino schoolchildren are bearing the heaviest costs of this separation. They tend to be relegated to high-poverty; overwhelmingly minority schools that are characterized by poorer test scores, less experienced teachers, and fewer resources than the type of public schools most white children attend. This Essay argues that public schooling has become the "great equalizer" in America because it tends to place white children in predominantly white middle class schools and black and Latino children in predominantly minority, heavily poor schools.

* Professor of Law, Georgetown University Law Center. I would like to thank my Research Assistant, Kim Murakawa, for her invaluable assistance. This Essay covers many of the arguments that I make in my book, THE FAILURES OF INTEGRATION: HOW RACE AND CLASS ARE UNDERMINING THE AMERICAN DREAM (forthcoming 2004). This Essay is not intended as a traditional piece of legal scholarship. Many of the comments I make about Justice Marshall's personal feelings and views are based upon direct conversations I had with the Justice in his chambers during the October 1990 term.

We have come full circle since the momentous decision of *Brown v. Board of Education*. Issued on May 17, 1954, it has entered the psyche and lexicon of average Americans everywhere. *Brown* is the one Supreme Court decision that most school children can easily identify. The other might be *Roe v. Wade*, or, more ignominiously, *Dred Scott v. Sandford*. As I write this Essay, a national commission created by the Bush Administration is planning a series of events to celebrate the decision's semi-centennial anniversary. Everyone, with the exception of certain radical political factions or fringe elements of American society, now venerates, or at least pretends to venerate, the opinion which repudiated the principle of "separate but equal." In four short pages, the Supreme Court unanimously overturned a nearly sixty-year old standard, announced in *Plessy v. Ferguson*, that "separate but equal" would do for black people under the United States Constitution's Equal Protection Clause. *Plessy*'s insidious edict ultimately legitimated Jim Crow segregation in all manners of human discourse, from the "Whites-only" train coaches at issue in *Plessy*, to other public accommodations, including housing, voting, and of course, public education.

The *Brown* Court stopped short of saying that separate but equal was illegitimate in all spheres. It would take another decade-plus of civil rights struggle and federal legislation to embed that idea into our national way of being on "the Negro problem." *Brown* did, however, ignite a spark that enabled civil rights revolutionaries to envision and fight for a different America. The nine justices, or maybe Chief Justice Warren, the opinion's author, seemed most concerned with the effect of state-mandated segregation on the psyches of "Negro" children. It did not matter that their schools' physical facilities and other "tangible" factors such as school transportation or teacher qualifications might, at least in theory, be made equal. "To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." So in public education, according to the *Brown* Court, "separate educational facilities are inherently unequal" because of the

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3. 60 U.S. (19 How.) 393 (1856).
4. 163 U.S. 537 (1896).
5. See *id.* at 544.
feelings of inferiority they engender. The Court seemed swayed by the social science research of Dr. Kenneth Clark and others in demonstrating that such feelings of inferiority were in fact being cultivated in black children.

Implicitly, the Court was saying that state-sanctioned separation, even into ostensibly equal facilities, is what sends a message of inferiority to black children. This seems to be a point of general agreement in American society and the reason the decision is afforded near-sacred status in the annals of Supreme Court jurisprudence. It is now accepted common wisdom that state-sanctioned racial apartheid of school children or adults is both morally repugnant and inconsistent with the equality principles embodied in our Constitution's Equal Protection Clause. *Brown* is a decision which should make us proud of ourselves because it represents an idea that is fundamental to our democratic values. It recaptured or re-imagined the idea that there should be at least one institution in American society that provides a common experience of citizenship and equal opportunity, regardless of the lottery of birth. And yet, the idea and vision animating *Brown* could not be farther from the reality that is American public education today. Indeed, we are not even living up to the repugnant principle announced in *Plessy v. Ferguson*. Our schools are separate, but hardly equal.

Any sincere fifty-year celebration of *Brown v. Board of Education* could not occur without a deep ambivalence and a mourning of our collective failure to live up to the promise and vision that animated the decision. No one, in my view, felt that ambivalence more than Justice Thurgood Marshall, the chief oral advocate for *Brown*. I had the great privilege and honor to work as a law clerk for Justice Marshall in his last year as an active member of the Supreme Court. My year at the Court was bounded by the bookends of two liberal giants. My first week on the job, in July of 1990, Justice Brennan stepped down. My last week on the job, a year later, Justice Marshall announced his retirement. In the interim year, I witnessed Justice Marshall’s personal devastation at the erosion of the fundamental protections he had dedicated his life to creating and upholding. He was at the end of a nearly sixty-year career that had been devoted to legal justice for all Americans. Justice Marshall was probably the

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7. See id. at 495.
8. This vision of common schooling was embraced and advanced by a broad coalition of late eighteenth century reformers, including Thomas Jefferson.
only Supreme Court Justice whose accomplishments before reaching the high court equaled or maybe even exceeded what he accomplished on the bench. Before becoming a Justice he had argued thirty-two cases before the Supreme Court—and won twenty-nine of them. Known as “Mr. Civil Rights,” most of these victories were won while he was the lead lawyer for the NAACP Legal Defense and Education Fund. In a series of cases leading up to Brown, Justice Marshall made the best of the separate but equal doctrine. At that time, it was a core constitutional commitment of American apartheid so he, working under the tutelage of Charles Hamilton Houston, the dean of the Howard University School of Law and the father of the civil rights bar, turned it on its head.

Houston and Marshall first exploited the “equality” principle of Plessy in a case against the University of Maryland School of Law.9 Together they argued that the University’s policy of offering Donald Murray, a black man who had been denied admission, a scholarship to attend an out of state school did not offer him an “equal” education. This was poetic justice for Marshall since he had been denied admission to the same law school five years earlier. Knowing that states could not completely replicate their premier graduate schools, Marshall went on to drive this strategy into the heart of segregated higher education. In 1950, the Supreme Court agreed with Marshall’s assertion that the reputation of the University of Texas Law School could not be duplicated in a basement law school hastily created by the state for Heman Sweatt, a thirty-three year old African American who had attended medical school for two semesters at the University of Michigan before later seeking to become a lawyer.10 The Court also agreed with Marshall that the State of Oklahoma was not providing an “equal” education to George McLaurin in a Doctorate in Education program where he was consigned to a desk in an anteroom to the classroom, assigned to separate reading rooms in the library, and forced to eat in the school cafeteria at a different time from other students.11

These cases laid the groundwork for the more difficult psychological and social battleground of primary and secondary public schools.

They planted the seeds for the Supreme Court's acceptance of the idea that only an "integrated" education would meet the vision and requirements of the Equal Protection Clause. The education cases were but one strand of Marshall's legacy in making the Constitution truly meaningful, or effective, particularly for black people. In the political arena, the State of Texas limited its Democratic primary elections to whites at a time when the Republican Party was a mere shadow of its current self. Marshall put a stop to that by winning over the Court in *Smith v. Allwright*, which he often said was his proudest victory. He had several more civil rights victories, making inroads in housing, public transportation, and other realms. All of these cases were premised on the same integrationist, open-society vision that animated *Brown*. Marshall went on to bring that vision to bear as a Supreme Court Justice. A case involving the mentally retarded is indicative of his integrationist worldview. In *City of Cleburne v. Cleburne Living Center*, Justice Marshall analogized a municipal ordinance which effectively excluded group homes for the mentally retarded from certain neighborhoods, to racial and sexual segregation. In this case, he concluded that all segregation is the product of "irrational fears or ignorance." Exclusion of the mentally retarded, he argued, "deprives the retarded of much of what makes for human freedom and fulfillment—the ability to form bonds and take part in the life of a community."

Yet, there we sat, in his chambers in late 1990, anticipating the final erasure of his vision. The one case I can remember vividly from my year working for the Justice is *Board of Education of Oklahoma City v. Dowell*. That case mirrored the tortured history of the post-*Brown* struggle to make integrated public education a reality in the United States. In the words of Justice Marshall:

> Oklahoma gained statehood in 1907. For the next 65 years, the Oklahoma City School Board (Board) maintained segregated

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15. See id. at 467.
16. Id.
17. Id. at 461-62.
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schools—initially relying on laws requiring dual school systems; thereafter, by exploiting residential segregation that had been created by legally enforced restrictive covenants. In 1972—18 years after this Court [in Brown] first found segregated schools unconstitutional—a federal court finally interrupted this cycle, enjoining the Board to implement a specific plan for achieving actual desegregation of its schools. The practical question now before us is whether, 13 years after that injunction was imposed, the same Board should have been allowed to return many of its elementary schools to their former one-race status. The majority today seems to suggest that 13 years of desegregation was enough.\(^\text{19}\)

In short, although a federal court-ordered desegregation plan did in fact produce integration in Oklahoma City schools, after the federal court retreated from supervising desegregation, local autonomy resulted in a neighborhood school plan for elementary students that re-created ten black and five white racially identifiable elementary schools.

In helping Justice Marshall craft his dissent for this case, I read every school desegregation case the Court had ever decided. The Justice and I spent a good deal of time talking about this history and its ironies: the Gong Lum case,\(^\text{20}\) where a Chinese father accepted Mississippi’s racial caste system to have his daughter classified as white so that she could attend white schools;\(^\text{21}\) the decades-long struggle of the federal courts to make the vision of Brown a reality in public school districts across the country; and, of course, the death knell first sounded in 1974 in Milliken v. Bradley.\(^\text{22}\) In Milliken, the Court decided that suburban school districts surrounding Detroit could not be included in desegregation plans for the city absent a showing that such predominately white school districts had engaged in discriminatory practices.\(^\text{23}\) In that case, Justice Marshall vigorously dissented and chastised his colleagues for mischaracterizing the holding of the district court, in order to discount it. The district court found that because the State of Michigan engaged in widespread purposeful acts of racial segregation in the Detroit school district, it had the affirmative duty to remedy that condition of segregation.\(^\text{24}\) This, however, did not

\(^{19}\) Id. at 251.
\(^{20}\) Gong Lum v. Rice, 275 U.S. 78 (1927).
\(^{21}\) Id.
\(^{23}\) See id. at 756.
\(^{24}\) See id. at 784-86.
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seem to matter to the majority. A larger principle of defensive localism may have been at stake.

The significance of *Milliken* in undermining the long-term possibilities for racial integration of public schools cannot be gainsaid. The decision essentially insulated predominately white suburban school districts from the constitutional imperatives of *Brown*; gave suburban citizens more incentive to create their own separate school districts; and offered white parents in urban districts, fearful of school desegregation, havens of predominately white public schools to which they could flee. It is not surprising then, that Detroit is surrounded by some 116 suburban school districts or that the city's school system has gone from a black to white ratio of 58/41 in 1967 to 91/4 in 2000.

The Court did not help with the equality battle between urban and suburban school districts when it declared in 1973 that education was not a fundamental right under the United States Constitution and therefore the State of Texas was not required to provide equal funding to all school districts. Justice Marshall also dissented in that case. The battle for equal or adequate funding in public education would be left to a later generation of civil rights lawyers and it would be fought in state courts based upon state constitutions. To date, litigation has been brought in forty-five states and about twenty state supreme courts have ordered funding equalization remedies based upon a state constitutional requirement of an adequate education. But this battle has focused almost exclusively on closing the disparities in financing between poor and wealthy school districts. Like the pre-*Brown* cases, fighting for "equal" or enhanced resources has proved easier than fighting for integration. Even so, there is little evidence that such litigation has improved outcomes for either minority children or poor children, or both, and the record in actually equalizing funding is mixed. Moreover, it has been argued that urban school districts re-

28. Id. at 70-110.
quire not only equal funding, but also greater amounts to meet the significant challenges of educating large numbers of poor students.\textsuperscript{32}

The civil rights bar ultimately fought a losing battle for the soul of \textit{Brown} in public schools. Justice Marshall was aware of this and it pained him deeply. He struggled to find the words and the arguments to persuade his colleagues not to use the \textit{Dowel} case to mark the end of federal court intervention on behalf of integrated public schooling. It did not matter to him that racial segregation in schools now mirrored racial segregation in neighborhoods. In his dissent he argued, "I believe a desegregation decree cannot be lifted so long as conditions likely to inflict the stigmatic injury condemned in \textit{Brown I} persist and there remain feasible methods of eliminating such conditions."\textsuperscript{33} For Justice Marshall, no condition perpetuated stigmatic injury more than racially identifiable schools. He knew all too well that "all-Afro-American schools"—he had made the transition from "Negro" but not to "black" or "African American"—risked "the relative indifference of school boards."\textsuperscript{34} He cited empirical evidence revealing that, many black schools "suffer from high student-faculty ratios, lower quality teachers, inferior facilities and physical conditions, and lower quality course offerings and extracurricular programs."\textsuperscript{35} He noted that, "[r]acially identifiable schools are one of the primary vestiges of state-imposed segregation,"\textsuperscript{36} reiterating the Supreme Court's prior edict that the central goal of desegregation was "to ensure that it is no longer possible to identify a 'white school' or a 'Negro school.'"\textsuperscript{37}

For Justice Marshall there was no basis for his conservative colleagues' apparent suggestion that the result should be different if residential segregation is now perpetuated by "private decisionmaking."\textsuperscript{38} Justice Marshall was well aware that the all-black racial identity of the northeast quadrant of Oklahoma City did not subsist solely because of personal private preferences. The school district had been instrumen-

\begin{itemize}
\item \textsuperscript{32} See, e.g., Ryan, supra note 30, at 285-86 & n.89 ("Greater needs require greater resources: Disadvantaged students simply cost more to educate, requiring additional educational programs and non-academic services such as health care and counseling. . . . A number of state school finance systems recognize this fact and provide additional funding to high poverty schools.").
\item \textsuperscript{34} See id. at 260.
\item \textsuperscript{35} Id.
\item \textsuperscript{36} Id. 262.
\item \textsuperscript{37} Id. at 262-63 (citing Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 18 (1971)).
\item \textsuperscript{38} See id. at 264.
\end{itemize}
tal in shaping those preferences. Its prior manipulations of school locations had been designed to create all-black schools "clouded by the stigma of segregation—schools to which white parents would not opt to send their children."39 "That such negative 'personal preferences' exist should not absolve a school district that played a role in creating such 'preferences' from its obligation to desegregate the schools to the maximum extent possible."40

These arguments did not persuade his colleagues. They would amount to yet another powerfully argued dissent that the Justice had grown used to writing. In his chambers he worried aloud about what he would say to a poor black child about his life chances given the schools and neighborhoods to which such children were relegated. His pain was evident; his devastation palpable. It was my saddest day on the job. This normally jovial man, so full of joy, despite his finely-honed gruff exterior, was at a loss as to how to stop the inevitable. He was, however, partially effective. Justice Marshall's colleagues waited until after he died to strike a clear blow to the imperative of Brown. In Dowell, the Court merely hinted at what would be necessary to declare a final retreat:

[A] finding by the District Court that the Oklahoma City School District was being operated in compliance with the commands of the Equal Protection Clause of the Fourteenth Amendment, and that it was unlikely that the school Board would return to its former ways, would be a finding that the purposes of the desegregation litigation had been fully achieved.41

Before Dowell, the Supreme Court's position had been that school districts with a history of discrimination were in violation of the Constitution if they took actions that would foreseeably recreate segregated schools.42 The Dowell case signaled that lower courts engaged in overseeing school desegregation would now enjoy more discretion. In my view, his colleagues could not go any further with Justice Marshall sitting in the room. Although many of his colleagues were ideologically opposed to him, they revered and had great affection for him.

39. Id. at 265.
40. Id.
41. Id. at 247.
42. See, e.g., Green v. County Sch. Bd., 391 U.S. 430, 441-42 (1968) (holding that the school district's 'freedom of choice' plan did not constitute adequate compliance with its responsibility to achieve a district wide admissions system on a nonracial basis, where in three years, not a single white child had chosen to attend a former all-black public school and where 85% of the black children still attended that school, and thus the school board had to formulate a new plan).
Although the retreat started with the Dowell decision, our schools became even more separate and unequal after Justice Marshall stepped down from the bench. In 1992, in a case arising from DeKalb, Georgia, the Court painstakingly laid out the demographic changes in DeKalb and the good faith efforts by the school district to address the demographic effects on the racial mix of its schools.\textsuperscript{43} The Court ultimately held that the lower courts could find that a school district has complied with the Constitution where racial imbalance is not traceable to constitutional violations, but to demographic changes. By 1995, in a case involving the Kansas City School District, \textit{Missouri v. Jenkins},\textsuperscript{44} the Supreme Court essentially decided that it was time for federal courts to retreat altogether from the business of policing school desegregation orders.\textsuperscript{45}

In a world where black and brown children were largely separated into their own neighborhoods and tolerance for busing among parents of all races had run its course, magnet schools were seen as the answer by the district court in \textit{Jenkins}. The Court's desegregation plan required every high school, every middle school, and half of the elementary schools in the school system to become magnet schools. The cost of making schools attractive enough to retain white students had exceeded $200 million annually and the state legislature that had been ordered to pay the bill was crying out for relief. The Court emphasized that for the district courts, the goal is to remedy desegregation to the "extent practicable" and to restore local authority over the school system. The Court signaled to lower courts that their primary role was to apply a remedy that decreased the effects of \textit{de jure} segregation to the extent practicable, not to ensure meaningful integration, and certainly not to spend millions to increase the "desegregative attractiveness" of urban schools to their suburban neighbors.

After the Court's decision in \textit{Jenkins}, school districts everywhere clearly understood the Court's meaning. \textit{Jenkins} suggested that eliminating the vestiges of \textit{de jure} segregation was either too difficult, too expensive or both, and it was time to let school districts off the hook. Within a year of the \textit{Jenkins} decision, school districts across the nation were scrambling to get the benefit of the case's relaxed standard; it was now easier for school districts to get out from under desegregation orders and limit their responsibilities to foster integration.

\textsuperscript{43} Freeman v. Pitts, 503 U.S. 467 (1992).
\textsuperscript{44} 515 U.S. 70 (1995).
\textsuperscript{45} See id.
Denver, a federal judge found its schools "sufficiently desegregated and released them from Federal supervision." In Arizona, the Republican governor launched a campaign to release all the state's school districts from federal court orders. In Pittsburgh, the mayor lobbied the school board for an end to court-ordered busing and two state lawmakers introduced a bill to stop state officials from requiring busing to achieve desegregation. "In Seattle, several school board members [pushed for a] return to neighborhood schools." In Indianapolis, the school board . . . voted to spend $40,000 to assess citizens' view[s] of the schools in anticipation of seeking [an] end [to] a 14-year-old busing order." Empirical research concluded that the nation's schools were "resegregat[ing] at the fastest rate since 1954." Researchers found that as the federal courts eased oversight of school desegregation programs in the early 1990s, "the percentage of minority students in schools with a substantial white enrollment fell appreciably."

In Charlotte-Mecklenburg, for example, by the early 1980s, the school district came close to fulfilling a court order to eliminate its system of dual education, with, at the time, only a handful of schools that were racially identifiable as minority or white. "By the late 1980s, with [very small increases] in the proportion of black . . . students [in the system], the number of racially identifiable schools began to grow [and then accelerate in the early 1990s]." "By 1999, [the school system] was rapidly resegregating . . . even though the district's demographics were relatively stable." "The Charlotte-Mecklenburg area was still majority-white . . . and Mecklenburg County, as a whole, was more residentially integrated than it was thirty years before." While roughly 19% of black students attended racially identifiable, black schools in 1991, by 1996, the count rose to 23%; by 2000, 29%;

47. Id.
48. Id.
49. Id.
50. Id. (quoting a report by GARY ORFIELD, THE CIVIL RIGHTS PROJECT, HARVARD UNIV., DEEPENING SEGREGATION IN AMERICAN PUBLIC Schools (1997), regarding the resegregation changes between 1991 and 1994).
51. Id.
53. Id.
54. Id.
by 2001, the number jumped to 37%.55 In the 2002-2003 school year, fully 48% of the black students in the Charlotte-Mecklenberg school system attended racially identifiable, black schools.56

A similar fate befell many, if not most, school districts throughout the country that housed significant numbers of minority children. Black and Latino public school students are now more separated into racially identifiable schools than at any time in the last thirty years. Nowhere were the effects of this retreat more palpable than in the South. Court-ordered desegregation of black students in the late 1960s and 1970s resulted in the South becoming our nation's most integrated region. By 1988, the South reached a high point of 43.5% of black students attending majority-white schools, up from a mere 0.001% in 1954.57 But by 2000, marking a twelve-year and continuing process of resegregation, only 31% of black students in the South attended majority white schools.58 Although the South remains our nation's most integrated region in terms of public schooling, it is also undergoing resegregation at the fastest rate. The rest of the country, however, is following suit. Overall, the trend of increasing integration of black students between the 1950s and the late 1980s has been reversed and we are slowly marching backward towards greater segregation of black children. The situation is equally as bad for Latino children. Latinos, who were rarely the direct focus of federal school desegregation orders, have been on a continual trajectory of increasing segregation in United States public schools since the 1960s.

As a result of these trends, by 2000, seven out of ten black and Latino students attended predominately minority schools.59 Indeed, Latinos were more segregated than blacks: as of 2000, 76% of Latino public school students were in predominately minority schools compared to 72% of black students.60 At the same time, the percentage of black and Latino students in intensely segregated schools—ones where 90% or more of the children are minority—is growing apace. By 2000, nearly 40% of black and Latino students faced this degree of intense racial isolation.61 White students, on the other hand, are the most racially segregated group in public schools. On average, a white

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55. Id. at 1557-58.
56. See id. at 1556-58.
57. Frankenberg et al., supra note 26, at 38 fig.10.
58. Id. at 37 tbl.10.
59. Id. at 31 fig.6, 34 fig.8.
60. Id. at 33.
61. Id. at 31 fig.6, 34 fig.8.
student attends a school that is approximately 80% white.\textsuperscript{62} Asian public school students enjoy the most integrated existence.\textsuperscript{63} They come closest to living Dr. King's multi-cultural dream and realizing the ideals of \textit{Brown}. The average Asian student attends a school that is approximately 46% white, 12% black, 19% Latino, 22% Asian, and 1% Native American.\textsuperscript{64} Asian students' diverse experiences are due in part to their low numbers; as of 2000, Asians were only 4% of the student population, although their numbers are rapidly increasing.\textsuperscript{65}

With the loss of racial integration in schools, we are also creating economic homogeneity, which in turn is creating separate educational tracks that vary greatly in quality. The overlay of race and class for our children can be seen in the following national statistics for elementary school children in the 1999-2000 school year.\textsuperscript{66} Nationally, white elementary school students are in schools that are 30% poor. Asians children are in schools that are 43% poor. By contrast, black and Latino elementary children are in schools where two-thirds of their classmates are poor (65% for blacks, 66% for Latinos).\textsuperscript{67} Older students have similar experiences. Overall, the average black or Latino student attends classes where almost half of their peers receive free or reduced-price lunch. The average white student, on the other hand, attends schools where less than one in five of their peers are classified as poor.\textsuperscript{68}

The urban-suburban divide explains much of this class dichotomy. Primarily, black and Latino students attend urban schools. The middle classes of all races have been moving to suburbs, leaving behind large numbers of minority poor students, especially in the school districts of America's largest cities, and in older, distressed suburbs. The numbers in the nation's largest urban school districts are staggering. As of 2000, between 85-90% of the students in New York, Los Angeles, Chicago, Miami-Dade, and Houston—the five largest school central city districts—were minorities. Additionally, 96% of the stu-

\textsuperscript{62} Id. at 27 tbl.4.
\textsuperscript{63} Id. at 4.
\textsuperscript{64} Id. at 27 tbl.4.
\textsuperscript{65} Id. at 27-29.
\textsuperscript{66} The figures listed in the following sentences are based on the numbers of students who receive free or reduced-price lunch.
\textsuperscript{68} Frankenberg et al., supra note 26, at 35.
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dents were minorities in Detroit, New Orleans and Santa Ana, as were 95% in Washington, DC, 92% in Dallas, and 88% in Baltimore. Overall, the twenty-seven largest school districts, which serve almost one-quarter of black and Latino public school students, have lost the vast majority of their white enrollment. Not surprisingly, a large percentage of the students remaining in urban school systems were poor. For example, in the five largest urban school systems, typically more than 70% of the students are eligible to receive free or reduced price lunch.

In sum, the average experience for white public school students is a middle-class experience while the average experience for black and Latino students is one of high or concentrated poverty. How we will live up to the equality premise, if not the integrationist premise of Brown, given our separated living patterns, is America’s unique conundrum. The costs to black and Latino children of this separatist system are palpable. When you place most black and Latino children in majority minority and heavily poor schools, as American society has done, there are two main consequences, both of which contribute to an achievement gap that we all pay for in ways we may not recognize. As one scholar of the problem of majority minority and majority poor schools has argued:

[T]he first cost is purely financial: Because poor students typically have greater needs, schools composed of poor students are costlier to run than schools composed of middle- and upper-income students. The second cost arises from peer influence: A growing body of research confirms that peers generally exert a strong influence on student performance and that students from lower socioeconomic backgrounds in particular suffer from being surrounded solely or primarily by students of similarly impoverished backgrounds.

It should not be surprising that there are large achievement gaps between black and Latino students and their white and Asian counterparts, given that black and Latino children tend to be in schools where large numbers, if not a majority, of their peers come from low and

69. Id. at 5, 57 tbl.21. These figures were computed based upon the numbers of white, non-Latino students in these school systems as of 2000.


71. See Ryan, supra note 30, at 256-57.

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moderate income backgrounds. This became evident when James Coleman issued his seminal report in 1966 that, among other things, identified an individual student’s socioeconomic background as the greatest determinant of his likely success in school.\textsuperscript{72} Importantly, Coleman found that when a student body is comprised of large numbers of poor students, this has a significant negative influence on student achievement, especially for students from disadvantaged backgrounds.\textsuperscript{73} Numerous studies have since supported these claims.

It should be readily apparent to anyone who has the opportunity to observe a school with large numbers of poor children. Majority minority schools do not have a wealth of activist parents who know how to work the educational system, and succeed in it. Students in high-poverty schools do not have a host of models for success. On the contrary, in high-poverty environments, students risk falling prey to an oppositional culture that often denigrates learning. We may not like to acknowledge it, but social scientists have documented that this oppositional culture does in fact exist.\textsuperscript{74} In my view, it is the worst consequence of concentrated poverty. And it is not limited to poor black students, many of who perceive pursuit of academic excellence as “acting white.” On average, poor whites also denigrate achievement; they just happen to have the advantage of being more likely to live and be schooled in middle class environments than in predominately poor ones. Overall, researchers have demonstrated that “factors that make for a difficult learning environment—peers who are disruptive, who cut class, watch excessive TV, and drop out of high school; parents who are inactive in the school—all track much more by class than race.”\textsuperscript{75}

On the other hand, white students who by and large attend school in predominately middle-class environments, experience a very different culture—one oriented toward achievement. Indeed, a rat race of competitiveness is more likely to endure in the bastions of suburban whiteness or affluence, or both. In this environment, students are more apt to be propelled toward college attendance. A host of institu-

\textsuperscript{72} Id. at 287 n.165 (citing JAMES S. COLEMAN, CTR. FOR SOC. ORG. OF SCHS., EQUALITY OF EDUCATIONAL OPPORTUNITY (1966)).
\textsuperscript{73} Id.
\textsuperscript{74} Id. at 280-88 (summarizing the conflicting debate but a confluence of empirical research suggesting that such an oppositional culture develops in high poverty schools).
tional support and expectations point in that direction, starting very early in life. Enrichment classes, career counselors, PSAT and SAT prep courses—these are the stuff of white middle-and upper-class anxiety and standard expectation. However, black and Latino students who are given the same expectations and support as their white middle-class counterparts can perform competitively. When low-income black students from the worst projects of Chicago were taken out of these environments and placed in middle-income suburban schools with small student-teacher ratios and high expectations, within a few years of the move they were performing at levels commensurate with their peers.76

As the Gautreaux experiment shows, students of any race or class can learn when they are in an environment of high expectations, and teacher ratios and the quality of teachers are such that students can receive individualized support.77 Trying to create such learning environments in a context of high poverty, however, is a Herculean task. In lieu of integration, the two main approaches to bringing about greater equality in education that have been pursued of late have been raising academic standards and reducing class size. It is all well and good to raise standards and require accountability for meeting those standards through testing, or to attempt to reduce class size, which has been shown in some studies to raise student achievement. But both of these approaches require large numbers of strong teachers—the kind that are least likely to find their way into high-poverty school districts or high-poverty schools.

In the context of a national teacher shortage, why would a strong teacher opt to teach in a challenging, sometimes dangerous work environment, often for less pay than in more advantaged school districts? In most cases they do not. "Teachers in high-poverty schools are on average less qualified, and four times as likely to teach out of their field of expertise as teachers in middle-class schools."78 Assuming extra resources are made available to high-poverty school districts to add teachers and address the unique challenges that come with poverty (such as malnutrition, poor health care, lack of parental involvement, frequent changes of residence, and exposure to violence and

77. See id. at 1522-28 (discussing the Gautreaux program).
drug use), this also assumes, that the entrenched bureaucracies that typify large, urban schools systems will effectively allocate new resources to the strategies that can make a difference. In the best of circumstances, that may happen, but if the historical results of the Title I, federal compensatory education funding for low-income schools is any guide, these funds have not produced the kind of achievement gains one would hope for. Indeed, in my own research, I could not find a single example of a school district with large numbers of poor children that has closed the achievement gap between high-poverty schools and their middle-class suburban counterparts. Instead, there are unfortunately all too rare examples of select individual schools performing miracles against the odds in high poverty environments.

Despite over three decades of federal Title I compensatory spending, an equity financing movement that has increased the resources available to many poor school districts and decades of school reform efforts, at least as of the late 1990s, it still was the case that in a school where a majority of the students are poor, two-thirds of those students did not perform at even the basic level on national tests. The Bush Administration's No Child Left Behind Act responds to this dilemma in part by requiring standardized testing and mandating penalties for "failing" schools. But overcoming the effect of concentrated poverty and the oppositional culture that tends to permeate such environments cannot be done with mere dollars, even assuming that all of the extra dollars needed to deal with concentrated poverty

79. See id. (providing a more detailed overview of these arguments); see also Ryan, supra note 30, at 284-96. Ryan notes that although racial composition is a significant factor for education reformers, more significant is the low socioeconomic status of students. Even when large expenditures are given to schools, empirical evidence has shown that student achievement is advanced neither at the state, nor national level. Ryan contends that, to the extent that race is related to poverty, funds such as Title I would be better utilized in programs that have some hope of improving race relations, rather than avoiding the issue.


81. See Ryan, supra note 30, at 274.


The No Child Left Behind Act requires states to administer standardized reading and math tests to students each year in grades 3 through 8. Schools must make steady progress toward raising achievement levels on the exams, with all students required to reach state-defined proficiency levels by 2014. Schools deemed failing for two consecutive years must begin student transfers to better schools—even to those filled to capacity—and use public money to hire private firms to tutor students. If a school continues to be designated as failing, it must replace its principal and teachers or reopen as a charter school.

Id.
were forthcoming. Despite grand promises, the No Child Left Behind Act is heavier on mandates for testing than it is with additional resources for the most challenged schools to meet these demands. In fact, the Bush Administration has reneged on its promise to seek an additional $5.8 billion in funding for the poorest schools to meet the Act's tough performance requirements.83 Rhetoric and mandates are easy. Transforming urban education in school districts saddled with concentrated poverty and fewer resources is not.

The worst irony in the trend toward resegregation of public schools is that the student population, like American society, is becoming more multi-cultural, albeit more nonwhite. As with the general trends in population growth, the numbers of Latino and Asian students are increasing dramatically in public schools. Minority students now make up about 40% of enrollment; in the West and South, almost half of public school students are nonwhite.84 The Latino student population will soon exceed the numbers of black students.85 Yet, this explosion of color is being greeted with more separation, not less. Like the rainbow itself, we are breaking up our rays of light into separate streams of color and separated realities. America is not seeing how beautiful these children are. We do not see them as an asset. We see them as a problem. Many of us are afraid of black and brown children, especially if they are poor. But children of color are our fastest growing resource. We are not prepared for the multi-cultural, multi-ethnic society we are becoming. Black, yellow, and red children of today will be the backbone of multi-cultural, majority-minority America after a mid-century, yet we relegate most of these children to separate schools with high numbers of poor children.

If the answer to the problem of concentrated poverty schools is breaking up those concentrations and sending more inner-city children to suburban schools or attracting more middle-class children through magnet programs, it is not clear that the 70% of voters who now live in suburbs will support this. One way to build support for

83. Editorial, Many Children Left Behind, S.F. CHRON., Sept. 18, 2002, at A22. A key to getting the legislation out of Congress was [D-Calif. Rep. George] Miller's insistence that schools serving poor students get the resources they need to succeed. After months of negotiations, Congress authorized $5.8 billion in additional Title I spending, the federal education program for poor children. But in his budget, Bush has only proposed $1 billion in additional Title I funding—and those funds came from eliminating or downscaling 60 other programs. Overall, Bush's education budget represents the smallest increase in seven years.

Id.

84. FRANKENBERG ET AL., supra note 26, at 4.

85. See id. at 26.
more innovative responses to race and class separation in schooling is to educate the vast majority about the costs to this system for everyone. Black and Latino children and families bear the brunt of race and class separation in schools, but white children and families also pay a price in this separatist system. Middle-income whites who cannot afford private school tuition also suffer in this system.

In a public school system that is increasingly premised upon the notion that some children will fail, middle-class parents must be ever vigilant to make sure that their children get in the right classes with the best teachers. In a system that is committed to bringing every child of whatever background along, parents would not have to fight so hard to ensure that their child is not one of the children who fall through the cracks. There would be less anxiety for everyone, particularly the white, middle-income parent who may be more aware than most of what their child is missing, compared to the experience of children in more affluent enclaves or in private school. White, middle-class anxiety will only increase as public school systems become more and more populated with minority children. Those who cannot escape to private school or "safe" havens of white affluence, will pay a price, similar to minority children who are enrolled in school systems that have failed to figure out how to educate all children.

In a well-integrated school system, one where every school has a majority middle-class population and no school is overwhelmed by poverty, parents of all races would not have to worry so much about the quality of education their child is receiving. In an economically integrated system, white parents would have much less to fear (real or imagined) than they do today about the risks of public schools. They might be more willing to live in multi-cultural settings or send their children to public schools. In the din of debate about what can work to ensure a quality educational experience for all children, a small movement for socioeconomic integration has been emerging. The school systems in "Cambridge, [Massachusetts] . . . Wake County and Charlotte-Mecklenburg, [North Carolina]; South Orange-Maplewood, [New Jersey]; Manchester, [Connecticut], St. Lucie County [Florida], and San Francisco have all adopted economic integration plans in recent years."86 I think this is the right focus of the debate, although I am aware that these strategies swim against a tide of parental skepti-

Parents of all racial and socioeconomic backgrounds would like to believe in neighborhood schools; they are not very interested in integration, rather they are interested in quality. But the growing public support for vouchers, particularly among black parents, is an implicit nod to the concern that existing public school systems are not delivering for minority children.

There is one glimmer of hope in demographic trends in public schooling. In the 1990s, there was a rapid rise in the number of multiracial schools where at least one-tenth of the students were from three different racial groups. Of course, as with our neighborhoods, few whites experience this multiracial milieu. While only 14% of whites attended multiracial schools as of 2000, about 25% of Native Americans, 30% of blacks, 40% of Latinos and 75% of Asians did. From the standpoint of the civil rights lawyers who tried the Brown case, and the Warren Court that decided it, the only students who now come close to approximating the vision of that decision are Asian students. They are most apt to experience racial diversity and middle-class norms in public school. Unless and until we can approximate this experience for black, Latino, and Native American children, I do not believe we will successfully close gaps of inequality in education in any systemic way. Herein lies the rub. Unless more middle-class students, including white students, enter into this multi-cultural fray, we are doomed to a status quo of increasing segregation, of separation, and inequality.

87. See Frankenberg et al., supra note 26, at 5, 28-29.