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Forum

**In Pursuit of a Dream Deferred: Linking Housing and Education****\*749 LIVING AND LEARNING: LINKING HOUSING AND EDUCATION**[John A. Powell \[FN1\]](#)

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As courts struggle with how to remedy racial segregation in America's public schools, confusion persists over who bears ultimate responsibility for the harm of segregation, or even what constitutes harm in the context of segregation. Justice Thurgood Marshall, in his dissent from the Supreme Court's decision in *Milliken v. Bradley*, [\[FN1\]](#) broadly envisioned the harm produced by racially segregated education. He stated, "[o]ur Nation, I fear, will be ill served by the Court's refusal to remedy separate and unequal education, for unless our children begin to learn together, there is little hope that our people will ever learn to live together." [\[FN2\]](#) Twenty years later, in his concurrence in *Missouri v. Jenkins*, [\[FN3\]](#) Justice Clarence Thomas made a much narrower observation. He noted that "[i]t never ceases to amaze me that the courts are so willing to assume that anything that is predominantly black must be inferior." [\[FN4\]](#) Years of inadequate and uncommitted attempts at integrating our schools through busing separate these two divergent opinions. Although our concept of how to achieve integration certainly should have been changed by this experience, it seems odd that our view of the harm of a segregated society should have been so completely lost over time.

The Court has also debated how broadly to interpret responsibility for segregated education. Writing for the majority in *Milliken*, Chief Justice Warren Burger narrowly defined the \*750 state's responsibility for segregation in education, concluding that an education desegregation remedy is warranted only in conjunction with a finding of de jure segregation. Burger limited the scope of responsibility, moreover, by holding that a remedy may only be implemented within the bounds of the school district where segregation exists. [\[FN5\]](#)

In contrast, Justice William O. Douglas, in his dissent, asserted that "there is so far as the school cases go no constitutional difference between de facto and de jure segregation." [\[FN6\]](#) To Justice Douglas, the distinctions the majority drew separating school districts, effectively separating city from suburb, were arbitrary and unreal. [\[FN7\]](#) He pointed out that segregation in one school district is affected by activities in another by describing the myriad ways that segregation of the Detroit public school system implicated state action. [\[FN8\]](#) Specifically, Douglas described the actions of suburban school boards, state-enforced restrictive covenants in housing, and state school department determinations as to where to build schools. [\[FN9\]](#)

The Court's 5-4 split in *Milliken* left it deeply divided on how to fix responsibility, and thus how to determine the scope of remedies, in school desegregation cases. In fact, a consensus on the issue of who is responsible for segregation has eluded the Court since its unanimous decision in *Brown v. Board of Education*. [\[FN10\]](#)

When the Supreme Court ruled last summer in *Missouri v. Jenkins* [\[FN11\]](#) that an interdistrict plan was not an appropriate means of desegregating the Kansas City public school system, it severely limited the remedies available for children trapped in \*751 segregated education systems, [\[FN12\]](#) and it signaled its unwillingness to follow substance instead of form in an effort to help poor, minority children. *Jenkins* follows the trend of a more conservative majority to reject state responsibility for

segregative conditions in schools and communities. [FN13] This trend places blame for the deterioration and segregation of city schools on "normal pattern [[s] of human migration." [FN14] Writing for the majority, Chief Justice Rehnquist denied the existence of a causal link between de jure segregation and white flight, attributing the phenomenon to demographic changes outside the scope of government control (and hence outside a court's remedial reach). [FN15] While the members of the Court and the parties agreed that the Kansas City schools and neighborhoods are segregated, the majority of the Court refused to examine seriously the causes of the city's severe segregation. The majority opinion never discussed the history of housing discrimination, lending bias, public housing construction, federal home mortgage loan programs, or other contributors to racial segregation. These problems all helped create segregation in Kansas City, just as they have in most other major American metropolitan communities. [FN16]

**\*752** This type of narrow analysis ignores reality and sets a dangerous precedent. Unfortunately, this disturbing reaction is not limited to the Court and its opinions; rather, it is a mood that has come over much of the nation as we reexamine the attempts at official integration through the desegregation of schools.

More than forty years ago, the Court, in *Brown v. Board of Education*, [FN17] recognized the unique harm experienced by black students forced to attend racially segregated schools. The Court declared this circumstance unacceptable. [FN18]

Today, after a half-hearted effort at best, most urban schools remain segregated. While the explicitly segregationist policies of the *Brown* era seldom exist today, a more subtle network of social and institutional barriers persists, working to maintain segregation in our schools and communities. The *Brown* Court's observation that separate can never be equal still rings true. [FN19] Yet somehow we have failed to challenge seriously the educational and housing segregation by race that persists in this country. This failure is not due simply to a lack of commitment **\*753** to integration or to the creation of opportunities for people of color. Rather, this failure in part is attributable to the movements we have been seeing over the last fifteen years embracing racial segregation as a necessary and worthy policy goal. [FN20] Worse yet, this type of thinking has brought with it an attempt to minimize and fictionalize the negative effect of segregation on all of society, including schoolchildren. [FN21]

Why have we seemingly given up on integration? In all likelihood, these policy surrenders are partially a response to the hopelessness and frustration experienced when we realize the persistence of segregation. Integration can be a tough concept to embrace when one considers that it cannot claim many examples. One obstacle, especially for those who would otherwise support the idea of integration, is the association of integration with assimilation. The implications of assimilation have appropriately been criticized by a number of scholars. [FN22] Integration and assimilation, however, have been confused, and for many, have been merged into one idea. Because of this confusion some have gone so far as to suggest that the *Brown* observation was wrong, and that separation of the races may be the only means of creating educational opportunities for poor, minority children. [FN23]

But reality is not so easily moved by rhetoric. An exploration **\*754** of the very real education conditions for many children reveals that segregated schools and neighborhoods do not serve the needs of students and the larger society. [FN24] Instead, segregation perpetuates a legacy of both racial hierarchy and dominance. [FN25] If we are to achieve a racial democracy, we must renew and deepen our commitment to achieving true integration, not just in our schools, but also in the communities where we live and work. [FN26] It is not enough to recognize, theoretically, the value of living in an integrated society. We must transform our theory into practice. [FN27] The failure to act perpetuates the injury of apartheid in education, housing, and, indeed, in our very psyche. If we are to avoid a fractured society, forever at war with itself, we must make it possible for everyone to participate equally in our communities. We must challenge the racial hierarchy implicit in segregation and remove the barriers to discovering our common humanity, filtered through our differences.

Segregation persists on several levels. We will therefore need to develop multiple approaches to breaking down segregation in our society. These approaches must be organized around the principles of participation and democracy. Focusing on desegregating schools alone cannot produce lasting results and ultimately does not integrate society or increase and enhance participation in our democracy. That was what we tried with busing. The answer, it appears, is in linking educational integration policies to housing. Linking policies designed to integrate schools with housing provides a path to building integrated communities. This approach, however, requires both a theoretical and practical commitment to abolishing racial exclusion and hierarchy, as well as to promoting participation and democracy.

Part I of this Article defines what it means, in both a policy \*755 and a legal sense, to link housing and education and why this connection is crucial for creating a permanently integrated society. Part II critiques some of the approaches courts have taken to examining segregation, and it suggests a more comprehensive and searching legal analysis. Part III examines the need to continue pursuing integration. Finally, Part IV considers the positive quantitative and qualitative effects of integration, including the overarching goal of building a true democracy. I conclude by calling for an inclusive effort to racially transform our society. Anything short of a real change damages not only our children but also our entire society. The ultimate goal is daunting, but necessary -- we must make our society one in which we all participate as equal citizens, sharing both our problems and solutions in constantly pursuing a deeper manifestation of our democratic vision. [FN28]

## I. HOUSING AND EDUCATION: THE EXISTING RELATIONSHIP BETWEEN LIVING AND LEARNING

### A. What It Means to Link Housing and Education from a Policy Perspective

Twenty-five years ago, the Supreme Court recognized that the quality of schools has a profound impact on housing choices. [FN29] More recently, the Court not only has ignored this relationship, but has been hostile to this observation. Instead of recognizing the relationship between housing and schooling, the Court has created myriad legal fictions under the rubrics of state action and causation. [FN30]

Housing and schools have been central factors in creating our segregated society. [FN31] The relationship between where we \*756 live and where we go to school (or choose to send our children) is clear to most people. One of the most important factors behind a parent's choice of neighborhood is the quality of the local public school. More often than not, the public schools considered the best are in middle-class and upper middle-class neighborhoods. This link between housing and schools can also maintain segregation. For example, the return to neighborhood schools, for which many policy makers are now calling, may, in fact, maintain or increase the racial segregation of communities that are segregated and isolated by race and class.

Despite the clear relationship between housing and schools, policy makers have neither linked these policies to, nor designed them around, this reality. A generous reading of this failure is that policy makers, isolated within their areas of expertise, are not sufficiently aware of the relationship between housing and education. Instead of recognizing this connection, policy makers often operate in a vacuum of either housing or education policy, oblivious to the consequences of one for the other. This failure to connect the two policy objectives has resulted in inadequate or short-lived solutions to problems in either area.

The efforts of federal courts to treat housing and school segregation as independent are counterfactual. State courts and policy makers, however, are not bound by the federal approach to segregated schools and housing. Policy makers have it within their power to identify consciously and to consider carefully the scope and nature of the interrelationship between housing and education, and between the policies they implement to address the two. Confronting these issues in broader terms is a more realistic approach to addressing effectively housing, education, and other community concerns. In addition, by more fully understanding the connection between housing and education, and the implications for other policy concerns and society at large, policy makers can better tackle some of the most troubling challenges facing the nation, not the least of

which is an increasing polarization along racial and economic lines.

As our society continues to move toward greater racial and economic segregation, there is an urgent need to re-examine how \*757 we think about segregation and its appropriate remedies. This re-examination requires a deeper understanding of the harms caused by segregation as well as the number of ways segregation is maintained. Part of the difficulty in adequately understanding segregation in our society is that our language and our national consciousness about segregation have been shaped by the federal courts. Even non-lawyers often use legalistic language when they think about and discuss these issues. This narrow and formal view of segregation is not limited to the question of whether a legal remedy is available, but is closely associated to the public understanding of segregation.

Despite the power of federal jurisprudential language, there remains a deep knowledge that we are indeed separated by race and class. This knowledge constantly threatens to destabilize the official narrative on these issues. Our choices of schools, neighborhoods, and cities are very sensitive to racial and socioeconomic make-up. The language of federal courts, then, is in dissonance with this lived private reality. The language suggests that there is no real harm and that much of our segregation is a natural consequence of legitimate social choice. Notwithstanding its power, this legal narrative is never quite convincing. The anxiety, and even violence, around issues of segregation do not sit easily with the claims of natural choice.

The legal narrative that federal courts construct tells us that the primary harm, if not the only harm, that results from racial segregation is stigma. This racial stigma comes from the narrow understanding of legal segregation. Legal segregation, which is frequently viewed as synonymous with all wrongful segregation, is caused by intentional state endorsement of the segregation of disfavored minorities. Socioeconomic segregation does not play a part in this narrative. In fact, socioeconomic segregation is only used to explain the benign or natural segregation that the government will not remedy. If intent or any of the elements that are required for legal segregation under the federally constructed narrative are missing, there is a strong reluctance to recognize harm and an even stronger reluctance to move toward a remedy. The goal of federal analysis, then, is not to end segregation but only to address legally imposed segregation as defined by the federal courts. Even if the narrow harm of stigma is present in a segregated school or neighborhood, federal courts still will find no reason to act, unless there is proof that the state intentionally caused the segregation.

This legal narrative has limited severely our discourse \*758 about, and understanding of, the evil of segregation. To reconstruct this discourse, we must recognize that the harm of segregation occurs across racial and socioeconomic lines. When poor whites, as well as poor blacks, are segregated and isolated from the middle-class, their life opportunities are diminished. [FN32] The intense segregation in urban areas, however, is almost always a function of both race and socioeconomic status. Race and class work together to create unprecedented segregation that cannot be explained by either race or socioeconomic status alone. The injuries caused by segregation are multiple and not limited to stigma. Nor are isolated and concentrated communities merely isolated from people of a different race and class. They also are isolated from the opportunity structure, including education, health care, and jobs, all of which are necessary to succeed in our society. [FN33] These social [FN34] and economic [FN35] harms become clear when we consider both the immediate and cumulative effects of prolonged isolation and concentration of communities by race and class. These harms will occur when there is high concentration and isolation based on race and poverty regardless of what caused the concentration. An adequate understanding of these harms should support, if not compel, action by policy makers. Agreement on the causes of segregation should not be necessary when the harms are so great.

The causes of segregation, like the harms that result, are multiple. Policy makers, and to a lesser extent courts at the state level, are not limited by causation in their ability to respond to segregation. Under state law, for example, there are \*759 strong arguments that state courts may compel the state to act under a no-fault or strict liability theory that does not rely on

whether the state intentionally or unintentionally produced the injury. [FN36] Important legal and nonlegal reasons remain, however, for better understanding causation. As a matter of policy it is important to understand causation to fashion an effective remedy. This empirical causation, made up of facts on income, wealth, school achievement, and other access to opportunities, may or may not support a legal challenge. Empirical causation is much closer to our lay sense of causation. The concern is not whether actual intent exists. Rather, the assumption is that a high correlation between two events, such as where we live and the kind of education we have, at least suggests causation. [FN37] Using this standard, it is clear that a school that serves an area with a high non-white population and afflicted by poverty will itself be segregated. Once we reveal the weakness of the current approach for looking at housing and schools, the strong relationship becomes readily apparent. One can even make a plausible claim that the causation is strong enough to satisfy legal analysis.

If a strong empirical relationship between housing and education exists, then it is important to address the two together. When schools are segregated, creating integrated neighborhoods is nearly impossible. Neighborhood segregation, in turn, undermines efforts to desegregate schools.

When segregation is along municipal boundaries, this interrelationship between housing and schools becomes even stronger. [FN38] Metropolitan-wide school integration strategies, across municipal lines, have been more successful at promoting and maintaining a greater level of integration than city-wide \*760 approaches. [FN39] Metropolitan-wide programs are comparatively more successful in part because they indirectly address the issue of white flight by making it difficult for white families to escape attempts to integrate schools. These programs reduce the link between segregated housing and schools by creating one school district in which everyone belongs, regardless of where one lives. [FN40] Successful metropolitan school plans also have increased integrated housing. The successes of even these plans, however, are difficult to sustain over the long term without actively addressing the fundamental issues that arise from the connection between housing and education.

Despite the attention school desegregation has received in the federal courts, we have never come close to de-establishing the effects of centuries of legal separation along racial lines. [FN41] If we continue to accept the premise that integration is a desirable goal, [FN42] then an effective strategy requires addressing housing and school issues with a comprehensive and coordinated plan. The socially desirable [FN43] and publicly supported [FN44] objective \*761 of integration should be pursued affirmatively by connecting the policy approaches to housing with those to education. The presumption is that segregation is otherwise acceptable. Failing to link the two policy objectives will allow segregation to continue. In other words, failing to link housing and education implicitly accepts segregation as a policy matter.

#### B. Creating a Legal Analysis that Links Housing and Education

State and federal jurisprudence for housing and school desegregation differs in several respects. The most widely known developments in school desegregation have been in federal courts. Recently, however, states have made a number of important and innovative developments, especially in education. Although education is not a fundamental right under federal law, [FN45] a number of state courts recently have found that education is a fundamental right under their state constitutions. [FN46] Almost all states ensure the provision of both \*762 adequate housing [FN47] and adequate schooling under their constitutions. [FN48] Given these guarantees, it ultimately does not matter whether housing patterns cause segregation in the schools or vice-versa. States should be, and, in fact, have been held liable for the segregative and inadequate conditions in housing and schools. [FN49]

The focus in federal courts has shifted from segregation and the harm of separate schooling to causation and the need to fix intentional blame on a particular, discrete governmental entity. [FN50] These legal fictions obscure the relationship between racially segregated housing and racially segregated schools by mandating that a state's racist housing policies cannot be blamed for its segregated schools, despite the fact that housing policies caused the residential segregation that, in turn, causes

segregated schools. The fact that a school board, a part of the same governmental unit as the housing agency, failed to intervene to ameliorate neighborhood segregation remains a non-issue. Courts view the activities of each governmental agency as separate and distinct for the purposes of establishing liability.

The nature of housing and education litigation, especially at \*763 the federal level, requires that we consider causation in terms of the multiple and dynamic sources of segregation instead of adopting a simple, reductionist approach. In reality, the racial and economic segregation of schools often stems from the policies and actions of housing and planning authorities, as well as those of education officials. [FN51] Likewise, housing segregation often results from the measures implemented by school officials in addition to those enacted by land-use authorities. Because of the way federal courts fracture the responsibility for segregation among government agencies, litigators often fail to join all the necessary parties. [FN52] Failure to include non-school officials and agencies in the school litigation process or school officials in the housing litigation process consequently means that school and housing integration cannot be substantially, much less fully, realized, even if the court finds liability. By including all culpable actors and thus addressing the link between housing and education, however, lawyers will make more complete relief possible for aggrieved parties.

It is difficult to join or even to identify all the possible governmental parties that have contributed to housing and school segregation. Suing a state-level entity, rather than attempting to identify individual, lower-level government actors and entities, is an alternative legal approach. [FN53] The state often is ultimately responsible for the agencies that implement both housing and school policies. Although it is certainly proper for the state to delegate its duties to various agencies, the state cannot delegate its responsibility.

Linking housing and education is important in helping to address issues of causation and culpability. [FN54] Demonstrating \*764 the connection between schools and housing has even more implications under state law, where showing both causation and culpability is easier. [FN55] Under state action doctrine, one does not necessarily have to demonstrate culpability to obtain relief. [FN56] This is especially true if one makes a claim under a state constitution's guarantee of an adequate education. [FN57] Plaintiffs have powerful grounds for arguing that the state constitution's entitlement to adequate education is undermined by the injury of segregation. The state has an affirmative obligation to remedy this injury, even if the state did not directly cause segregation. When housing and education are considered together, moreover, it becomes increasingly possible for plaintiffs to show that state policies do, in fact, contribute to segregation.

Courts have been willing to interpret state general welfare clauses broadly, with housing considered one component. [FN58] \*765 Plaintiffs can argue that the state's general welfare clause does not allow the passive acceptance of housing practices that cause injury through segregation. If a state has been found liable for housing segregation, plaintiffs then can draw the link between housing and school segregation in court. For example, plaintiffs can demonstrate that implementing a neighborhood schools program in a community with segregated housing will knowingly or intentionally segregate schools, and is legally impermissible under state and federal law. [FN59]

Even with state general welfare clauses, however, proving state culpability in segregating housing can be difficult. The state does not have the same degree of control in housing as it does in education. The federal government, not to mention banks and the private market, plays a larger role in establishing housing policy. Despite control by other entities in some areas, however, the state's role is nearly exclusive in the area of zoning, both causally and remedially. In the Mount Laurel, New Jersey court decisions, [FN60] the New Jersey Supreme Court recognized this state power, considering it one of the state's police powers exercised for the general welfare. [FN61] The court compelled New Jersey to remedy segregative housing conditions based on the state's responsibility for zoning policies. [FN62]

Unlike the Mount Laurel courts, federal courts acknowledging that housing segregation may cause school segregation usually have denied liability, asserting that the causes of housing segregation are unknown, [FN63] that housing patterns \*766 result from the natural forces of the market rather than state action, [FN64] or that the board of education is responsible for schools, but not for housing. [FN65] At the extreme, courts and commentators have suggested that efforts to integrate schools have caused housing segregation, with busing precipitating white flight to the suburbs. [FN66] In only a few cases have courts recognized that school segregation can create and reinforce housing segregation and that housing segregation can have the same effect on schools. [FN67] Rarely have federal courts recognized that this is not a relationship of simple causation, but rather that it reflects the many interrelated actions and policies that contribute to segregative conditions. [FN68]

If a state entitlement to general welfare or education exists, as in Mount Laurel, the plaintiffs may be able to avoid intent and causation difficulties faced in federal court. When the state grants an entitlement in school or housing there are two ways it legally can be compelled to act. One is by demonstrating that the state was responsible for creating segregated schools or communities. The other is by showing how the state could take reasonable action to remedy the harm, even if it did not cause the harm. Illustrating the link between housing and education is always crucial, both in demonstrating responsibility and in constructing a remedy.

\*767 There are a number of reasons why it is important to examine more carefully the relationship between housing and school segregation. Understanding the interrelationship gives a more complete and accurate picture of the way segregation operates in society. It also helps explain causation and how the state contributes to segregation through numerous policy decisions. Finally, the interrelationship suggests that if we are to address the injury adequately, we must focus on broader, more complete remedies.

## II. THE FAILURE OF CURRENT LEGAL ANALYSIS TO TAKE INTEGRATION SERIOUSLY

Formal approaches to school segregation cases have narrowed the broad language of the Court in *Brown v. Board of Education*. [FN69] As a result, courts and policy makers, especially at the federal level, have not embraced the *Brown* opinion as a cornerstone of real social change in our urban and suburban communities.

In reviewing school segregation claims, federal courts have developed legal doctrines sheltering state officials from liability for continued segregation. In particular, the intent standard and unitary status legal doctrines mask the reality of the continued involvement of state government and policies in segregation. The direct consequences of these policies, however, even though diluted across a number of state actors, contradict the principle of *Brown* that governments may not intentionally segregate black students from the rest of the community.

The formal approach of much current legal analysis in federal courts makes clear the problem of failing to recognize the link between housing and education. Failing to see the link between housing and education policies prevents courts from seeing how pervasive segregation is in society and how government policies are maintaining segregation. Carefully examining current federal jurisprudence helps to expose the limitations of federal analysis of segregation, and should inform states in developing their own approach to these issues.

### \*768 A. The Intent Standard: Turning the Tables on the Victims of Segregated Education

Federal courts have applied an intent standard to school desegregation cases [FN70] that requires plaintiffs harmed by segregated schools to show school officials intentionally acted to create and maintain racial segregation. [FN71] The intent standard has the effect of protecting segregation in our society [FN72] by reducing segregation and racial discrimination to an individual tort, rather than recognizing it as a social practice. Under such an approach, only the most extreme and explicit

forms of discriminatory practices are actionable. This focus fails to appreciate the \*769 very real, but sometimes obscured, dynamic that comprises state action. This is not state action as defined by the Supreme Court, but state action as it is understood by policy makers and lay people. Current formalist legal analysis fails to recognize state action as the culmination and combination of the policies and actions of school, housing, and other city and state officials taken together. This combination causes racial and economic segregation in America's schools and communities. Moreover, the current focus is unable to see inaction as state action. This reflects the Court's conception of state action as a tort, requiring an actor to have a duty to be subject to liability.

The Supreme Court has placed further limits on challenging segregated school systems by elevating the autonomy of local school officials to make policy decisions. The decision in *Milliken v. Bradley* [FN73] made clear that local control over education was to be taken literally -- that independent local school districts would not be held responsible for the problems of neighboring school districts, much less the conditions of schools across the state. In emphasizing local autonomy, the *Milliken* Court absolved numerous government actors of their affirmative responsibility to integrate schools, implicitly approved of school officials' failure to act affirmatively, and curtailed desegregation efforts. Ironically, this analysis limited the ability of policy makers at the regional and county levels to devise solutions to local problems. The Court's approach confuses the issue and shifts the inquiry to actions of local agents and away from those of the state. Unfortunately, emphasizing local autonomy in education decisions also means that neither state governments nor the courts are left to take responsibility for making integrated education a reality.

Requiring plaintiffs to establish liability by showing an affirmative intent by state actors to segregate moves the inquiry away from the harm caused by segregation. At the time of the *Brown* decision, segregated education was clearly the result of the intentional segregation of black children by state officials. [FN74] The harm was clear and was manifested in schools that were \*770 vastly unequal in terms of structure, resources, and quality. Although the same kind of blatant and invidious discrimination seldom exists, our schools remain both largely segregated by race and socioeconomic status and vastly unequal. However, we have been unwilling to address this continuing harm, which was the central focus in *Brown*.

Justice Douglas recognized this failure in his concurring opinion in *Keyes v. School District No. 1*. [FN75] In response to the Court's conclusion that intentional segregation in one area is relevant to determining the school board's intent in other school decisions, [FN76] Douglas urged the Court to go further and not differentiate between de facto and de jure segregation. [FN77] State action is implicated in both cases, he argued, pointing to judicial enforcement of restrictive covenants and uneven dispersion of public housing as examples of policies that create segregation in neighborhoods, thus creating segregation and inequality in schools. [FN78] The Court has not adopted Justice Douglas's views, however, and has used the heightened requirements of intentional segregation to avoid recognizing the harm of our current segregated school system. Instead, courts have created formal barriers preventing them and other policy makers from either recognizing the need for or applying broader remedies. [FN79]

\*771 Nothing in the Constitution requires the Court to place the burden of proof on those suffering from segregated schools. Given our country's history of discrimination, as Justice Douglas recognized, is counterintuitive. Placing the burden of showing intentional segregation on those harmed by segregated education creates a presumption either that only intentionally segregated education is harmful or that the state is relieved of recognizing, and thus addressing or alleviating, the harm of de facto segregation. This formalistic presumption ignores the experiences of children of color who attend schools with predominantly minority students who generally live in poor urban areas. In addition to disregarding reality, this presumption makes it more difficult for families in poor, segregated neighborhoods and schools to tell their stories and to right the wrong of segregation. [FN80] This limiting legal approach absolves government officials of accountability for their policies and concomitantly silences those whom segregation harms most by making the federal courts largely inaccessible on the issue of

educating poor, minority children.

#### B. Unitary Status: Cutting Off the Possibility for True Integration

Another barrier to integration is the legal concept of unitary status. Courts and school officials have used unitary status as a formal definition, signifying that the stigma of official segregation in a school system has ended. [FN81] A finding of unitary \*772 status does not mean that actual equality or integration in education exists, but only that a local school district is not officially condoning segregation and that it is doing everything in its power to eliminate actual segregation within its district boundaries. [FN82] This presents a number of problems. Local school districts have little influence over housing, which plays a major role in the segregation of schools. The concept of unitary status, moreover, defines responsibility too narrowly. Saying an individual school district has done all it can does not mean the state has made its best efforts to remedy the problem. A school board is only one of several instruments of the state. This again speaks to the need for a broader definition of state action and responsibility. Unitary status reflects an unrealistic insistence on defining community at such a microscopic level that policy makers' hands are tied when attempting to formulate a remedy for segregation.

Two problems arise when a court grants a school district the label of unitary status. The first is that unitary status focuses on an individual school system's ability to integrate its schools without consideration of the broader causes of segregation, including housing policies. In granting unitary status, courts only require narrow and limited approaches, requiring too little by looking only at how a school district has tried to remedy segregation. Courts pay no attention to how neighboring school districts, housing officials, other policy makers, or the state as a whole are implicated. The second problem is that the unitary status label creates a presumption that a school district is integrated, even if its students are all poor and minority. [FN83] A \*773 grant of unitary status cuts short the inquiry into the reality of continued segregation and possible broader remedies. Once a court finds that schools are not intentionally operating two separate school systems, one for white students and one for black students, they have a powerful tool for obtaining an end to court-ordered desegregation although they have not achieved desegregation. [FN84] Frequently, school districts given unitary status are virtually all black. School districts argue that there is nothing they can do to alter the district's population. Courts typically respond favorably to school districts' motions, following a grant of unitary status, to have desegregation orders lifted, relying upon the finding of unitary status as evidence that a district has met all its requirements.

This was the case in *Freeman v. Pitts*, [FN85] where the Supreme Court virtually absolved federal courts of responsibility for segregated schools by holding that courts may relinquish control over desegregation once districts have obtained unitary status. [FN86] Eager to encourage local autonomy in public education, the *Freeman* Court refused to consider de facto segregation or the cumulative effect of state action on housing and education. [FN87] Unfortunately, using unitary status as the standard not only yields an over-simplified legal analysis, but it also represents a dramatic departure from the goals of integration. Even when desegregation efforts have been successful, resulting in higher test scores and greater neighborhood integration, [FN88] an \*774 early end to an enforced plan under the theory of unitary status has resulted in rapid resegregation. [FN89]

State courts are developing a different jurisprudence in analyzing education and housing issues. As discussed in greater detail in Part I, state courts' recognition of an entitlement to adequate education and housing creates the possibility of developing a more expansive legal inquiry into the harm of segregation. An approach that honestly evaluates the reality of segregation has the potential for effective remedies.

### III. THE NEED TO LINK HOUSING AND EDUCATION: A CRUCIAL STEP TOWARD ACHIEVING INTEGRATION AND EQUALITY

In addition to linking housing and education to achieve a pragmatic legal analysis, good policy reasons exist for linking the

two to achieve integration. Recognizing the relationship raises the possibility of transformative effects in our communities that will not only change how we perceive the value of integration, but also improve the economic and social conditions of many people. [FN90] For this transformation to take place, we must move away from conceptions of assimilation, while avoiding formal notions of desegregation. Examining the limitations of former understandings of integration and the possibility for a more comprehensive approach through linking housing and education, we see that integration remains a worthy and necessary goal.

#### A. The Problem of Understanding Integration as Assimilation

Integration policies often have resulted in a push for assimilation of minority populations into the majority culture, rather than an attempt to achieve a shared understanding among different groups within a community. The belief that assimilation is necessary for minority groups to live successfully in American society stems from the historical experiences of the European ethnic groups who immigrated to this country. [FN91] The \*775 idea of a common American culture emerged, designed to embrace the experiences of white European immigrants who brought with them different languages, religions, and customs. These immigrants identified and distinguished themselves from each other according to ethnic group. [FN92]

This ethnic identity paradigm, however, did not fit so smoothly into the experiences of different racial groups. The widely accepted idea of integrating the many European ethnic groups into American society started with the assumption of a shared white racial identity. Thus, despite having different ethnic backgrounds, Americans are assumed to be of the white race. [FN93] Applying this idea of ethnic integration to the experiences of different racial groups requires African-Americans, Asian-Americans, Latinos, and Native Americans to assimilate into a white culture rather than to become part of an integrated society. [FN94]

School integration policies have accepted the assimilation model, too often focusing on "fixing" or assimilating black children into white culture. Because of the assumption that only blacks gain from integration, black children have been bused to white schools, while white children are often not bused to black schools. [FN95] The misconception is that students of color must become like white, middle-class students for their educational experience to improve. This paradigm is destructive to people of color, and particularly to blacks.

It has been suggested that there is something wrong or deficient with black children that would be alleviated by placing them in the company of white children. [FN96] The assumption has \*776 been that the "race problem" would be resolved when all blacks assimilated into whiteness or colorlessness, which is a proxy for whiteness. [FN97] In one sense, this assumption results from the view that urban schools provide a less than satisfactory education because the students are black, while suburban schools, because the students are white, provide greater opportunities. This assumption skips over the reality of socioeconomic status in urban and suburban society, and that racialized space maintains this reality. The problem of racism in a racialized societal structure is confused with race. The goal becomes removing the blackness from black students. To do this, black students must assimilate into white, middle-class culture if they are to thrive, or even survive, in American society. [FN98]

The assimilation model, then, is one of racial supremacy. It assumes that only the dominant race or culture is valid. Acceptance into the community requires everyone to accept the experiences of the dominant race as their own. Despite this country's long history as a multicultural and multiracial society, relationships between different racial and cultural groups continually suffer from assertions of dominance and power.

Assimilation ignores the problems of both racial hierarchy and class. It assumes that blacks are poor because of their failures, not as a result of how benefits and opportunities have been racialized by the dominant society. It assumes that black schools are poor because they are black, not because they lack economic and community resources. The contradiction, of \*777

course, is that blacks are expected to be like whites in a society rooted in white supremacy.

The language of assimilation is slippery. Although policy makers and judges may not intend to exclude groups of people in creating desegregation policies, their positions as leaders in the dominant community become intertwined in their decisions. [FN99] The result may be a failure to see the harm of assimilation. Policies such as one-way busing subtly create a perception of which is the better and more valued community. Both children who are bused out of their communities and those in suburban schools experience the harm of assimilation. The students bused from urban areas come to see their communities and experiences as inferior. [FN100] Suburban students, meanwhile, develop a narrow view of the world, preventing them from understanding an experience other than their own. [FN101]

Rather than recognize that "African-American" is both an ethnic and a racial group with a distinct history and experience, the ideal of a colorblind society treats blackness as irrelevant, at best. As black intellectuals begin to expose the racism of assimilation, however, many are rejecting integration and arguing instead for segregation. This, too, is a flawed conclusion. \*778 Integration is not the problem. Both segregation and assimilation are elusive concepts that support the status quo. Integration, however, when properly conceived, is inclusive and transformative.

A true integration model would challenge racial hierarchy and the need to be colorless or white. Such a model would entail a redistribution of resources and opportunities, as well as a shift in ideology. Black children have certainly been harmed by growing up in a racialized society. The real problem with the idea of assimilation is the assumption that whites have not been harmed. Although whites may be injured differently by assimilation, we all have been harmed by this model. An inclusive approach cannot simply fit individuals into already existing norms and structures -- it must transform those structures to fit all individuals and groups.

#### B. Why Linking Housing and Education Can Effectively Integrate Communities

Despite recent criticism and confusion, there is still wide-spread support for integration. [FN102] A lack of long-term, practice-oriented commitment to the ideal of integration, however, has resulted in a series of false starts in achieving integrated schools. Moreover, moving toward lasting integration requires efforts beyond sporadic, narrowly defined education goals. As John Dewey taught, education comprises far more than formal schooling. [FN103] Although integration may improve test scores and graduation rates for low-income minority students, an equally important and related benefit is the more complete democracy that Dewey envisioned. In educating, we strive to create good citizens and active participants in our communities. Integration policies should reflect and further this higher goal.

Policy makers and courts, however, are guilty of short-sightedness in failing to look beyond immediate reactions to the actions necessary to achieve integration. [FN104] A frequently \*779 expressed fear is that integration will weaken communities and create "white flight." For example, mandatory busing is perceived as the antithesis of strengthening communities, rather than as an effective step toward achieving integration, resulting in the drive for many school districts to return to neighborhood schools. [FN105] What policy makers fail to notice is that indications of lasting integration have surfaced in communities implementing aggressive plans, even when the policies were short-lived. [FN106] Our imperative today is to take the ideological commitment and the potential for long-term change seriously and to focus on creating and implementing lasting integration plans.

Recharging the public's commitment to the goal of integration requires an approach that recognizes the importance of integration at all levels. We must build our own communities and simultaneously support a much larger community. Looking beyond our blocks, neighborhoods, or towns, the world appears much more diverse. A broader, more expansive view of our \*780 world, and our relationships to each other, forces us to understand our shared needs, as well as our differences. With this new

understanding we must realize that we cannot build a democratic nation by preserving some communities and abandoning others. [\[FN107\]](#)

Breaking down barriers to adequate and affordable housing in all parts of a community must be a central goal in a broad integration policy. There are both blatant and subtle barriers to acquiring housing in middle-class suburban neighborhoods for many minority families. Aside from the lack of affordable housing, discrimination in the real estate market and in lending policies prevents minority families from moving to these communities, even when their economic status would allow such a move. [\[FN108\]](#)

Integrating schools while simultaneously creating greater housing opportunities makes true integration the goal, while it recognizes the social and economic barriers to integration. Building more integrated communities seems possible and desirable when people of different racial and economic groups begin to recognize that, without ignoring their differences, they share many goals and concerns. [\[FN109\]](#) Integrated schools are just \*781 one part of a broad policy of integration. Because of the far-reaching effects of integrated education, from providing greater educational opportunity [\[FN110\]](#) to challenging racial hierarchy, [\[FN111\]](#) desegregating schools must remain a central part of an integration policy.

Negative perceptions about urban schools contribute to the unwillingness of white families to move to urban neighborhoods. Part of the reason urban schools have a poor reputation is, of course, because they are segregated by race and class. The concentration of poverty in urban schools is indeed a problem, and affects the resources available in those schools. By definition, an overwhelmingly poor community has access to few resources, despite its greater needs. [\[FN112\]](#) When communities \*782 achieve broad and lasting integration, neighborhood schools become integrated schools. Moreover, when the housing and school policies work together, integrated communities maintain stable, yet diverse, populations. [\[FN113\]](#)

This kind of combined approach makes clear that busing students to schools outside their neighborhoods is, at best, a weak tool for achieving integration. Until policy makers address the issue of housing segregation, however, busing students remains both an appropriate and a necessary way to achieve integration. Although perhaps not comforting to those who oppose the immediate consequences of busing, including distance from home and long bus rides, viewing busing as a necessary tool is an important step toward broad, long-term integration. [\[FN114\]](#) Combining mandatory and voluntary incentive-based approaches to desegregation recognizes the value of integration and the importance of achieving some form of integration immediately, as well as the need to build lasting integrated communities.

### C. Desegregation or Integration? Striving for a More Inclusive Community

One step in moving beyond the idea of assimilation is to distinguish desegregation from integration. [\[FN115\]](#) Desegregation has traditionally meant either, in the narrow sense, removing \*783 formal legal barriers, or simply placing students in physical proximity to one another. Both interpretations are too narrow and have limited effectiveness. Segregation is not just the exclusion of people, but also the limitation of their opportunities and economic resources. It creates and maintains a culture of racial hierarchy and subordination. Integration, as a solution to segregation, has a broader meaning; it refers to community-wide efforts to create a more inclusive society, where individuals and groups have opportunities to participate equally in their communities. Inclusion gives us the tools to build democratic communities, with the ability to approach complex issues from a multitude of perspectives.

Integration, then, transforms racial hierarchy. Rather than creating a benefactor-beneficiary distinction along lines of race and class, true integration makes it possible for all groups to benefit from each others' resources. [\[FN116\]](#) Poor minorities, in particular, have increased access to social, cultural, economic, and educational resources in integrated communities. The spatial isolation these groups now experience both prevents the flow of resources to these communities and creates greater poverty

and isolation. [\[FN117\]](#)

The desegregation policy this country adopted did not and could not produce integration. Our history of discrimination made sure of this. Given this, desegregation policies can be seen as an accommodation of continued segregation and discrimination. The history of desegregation policies focuses on desegregation as a right of African-American children, who had been denied the quality of education received by white students. Integration goes further, recognizing desegregation as a benefit to the entire community, rather than as the right of a few. The recognition in *Brown v. Board of Education* of the harm \*784 experienced by segregated schoolchildren was, and remains, necessary. Our responses to that harm must change, however, as time has clarified the severity of the damage to our children caused by segregated communities. Efforts at desegregating schools have simultaneously demonstrated the possible benefits of integration and proved that desegregation alone is not enough. What began as a discussion of individual rights has moved into a deeper analysis of how to better our communities, benefiting us all.

This is the kind of approach taken by feminist legal scholars like Elizabeth Schneider in analyzing legal problems. [\[FN118\]](#) Schneider's articulation of the dialectic of rights and politics has informed our way of thinking about rights-based remedies to inequality. Rights are useful and necessary to achieve some version of equality. Black schoolchildren intentionally placed in segregated, unequipped schools needed courts to recognize their right to something better. Despite this necessity, a rights-based discussion can also be limiting. Focusing only on individual rights leads to the kind of legal fictions created by the concept of unitary status. Rather than examining the reality of inequality in housing and education, for example, rights-based analysis focuses narrowly on such issues as equalized funding or classroom size. Although these single issues are important in striving to achieve adequate education for all children, they do not capture the larger, more pervasive problems of segregation and isolation of schools and communities by race and class. A narrow rights-based analysis thus cannot adequately remedy what truly troubles our communities.

Our discussion of integration, as opposed to desegregation, grows out of the dialectic between the two. The practice of living together in society and having to get along despite our differences both informs and is informed by the right to equal treatment. Desegregationist policies, which stem from a rights focus, are a weak attempt to remedy the inequalities that exist in our communities. At the same time, we have become increasingly aware of the diversity of our fast-changing world, and the need to both understand and accept each others' differences. Integrationist policies are a response to the rights expressed through desegregation and these social realities. \*785 Integration, rather than simply representing a remedy for existing harms, affirmatively moves our communities toward a goal that is good in itself.

If we are successful at integration, we move much closer to the ideal David Theo Goldberg articulates. What we should seek, Goldberg argues, is incorporation. [\[FN119\]](#) Incorporation allows the views and experiences of both the dominant group and minority groups to meet, informing and transforming each other. No experience becomes the exclusive one through incorporation. In this respect, incorporation clearly differs from the assimilation and desegregation models. The ultimate goal of integration is the transformative incorporation Goldberg describes. Keeping this goal of transformative incorporation in mind helps inform the continuing dialectic between rights and politics. As the right to desegregated schools becomes the broader and necessary goal of integration, our communities are transformed in a way that embraces all of our differences.

#### D. Opposition to Integrationist Policies: The Diversion of Resources Argument

Opposition to integrationist policies often takes the form of an argument that resources should be expended to make poor, urban schools more educationally effective. The critics of integrationist policies focus on using tangible, quantitative improvements in education to bring about social and economic change in poor, largely minority communities. [\[FN120\]](#) Building on this argument, others claim that resources spent on school integration could be better channeled toward improving con-

ditions in urban schools and neighborhoods. [\[FN121\]](#)

Some scholars suggest that some minority groups choose to remain segregated from white communities, and that to disregard this choice is paternalistic and racist. [\[FN122\]](#) Although this claim is often an apology for segregated communities and \*786 schools, some suggest that as communities become more viable, they will naturally integrate. These critics also argue that the push for integration ignores the real needs of poor urban neighborhoods. They view integration as a middle-class aspiration that will only allow those with the economic resources to participate fully in an integrated society. [\[FN123\]](#) Many of the proponents of this position argue that blacks and other minorities would more likely choose to live in their respective communities if adequate resources were available to these communities.

Arguments in support of self-imposed segregation have a number of flaws. The reality is that segregation of poor minorities is not self-generated; rather, it is imposed by the dominant society. [\[FN124\]](#) One of the major tenets of racism in the United States has been the right to exclude the disfavored race. The economic, social, and cultural impact of this belief is both profound and destructive for poor minority communities and for society as a whole. Officially enforced segregation is now often attributed to the natural "choice" of excluded groups. Segregation, however, is neither natural nor a choice. [\[FN125\]](#) While it is true that the middle class is likely to see the benefits of a more integrated society first, this does not suggest that poor people of color would choose to remain in a segregated environment. [\[FN126\]](#)

\*787 Most middle-class blacks who may have the choice do not choose to live in segregated poor communities or send their children to predominantly black schools. Black neighborhoods have, on average, a smaller percentage of middle-class residents than white neighborhoods. [\[FN127\]](#) Thus, in thinking about preferences, we should remember that some apparent choices are not voluntary at all, but result from societal restrictions that limit options to some people. [\[FN128\]](#) Moreover, choices are easily distorted and manipulated by lack of, or inaccurate, information.

In the 1920s and 1930s, many blacks chose to live in the black community because of the constant threat of violence by whites. The threat of racial harassment continues today, distorting the choices many blacks make. Despite this threat, the majority of blacks continue to favor living in an integrated community. Achieving that goal requires breaking down widespread, subtle, and institutionally entrenched discrimination in all parts of society. Building up urban communities through economic development, improved education, and quality housing contributes to dismantling discrimination in significant ways. [\[FN129\]](#)

Affirmative integration policies also contribute to this project. Integration helps to achieve the sought-after improvements in urban communities by attracting resources and renewed political commitment to cities. This kind of shared commitment to improving urban centers can only come from the interaction that integration promotes. When poor and middle-class minorities and whites live in the same communities, they \*788 develop a shared need to care about the problems tearing away at the nation's cities -- from poor academic achievement, to unemployment, to crime. No longer are these issues someone else's concerns; they belong to us all. Increasing resources in urban communities are crucial in addressing issues of urban decay, as critics of integration policies argue. Integration, however, remains necessary for effective and long-lasting change.

#### IV. THE EFFECT OF INTEGRATION: MEETING AND MOVING BEYOND OUR EXPECTATIONS

Compelling reasons for pursuing integration in schools and housing exist, stemming from multiple sources and experiences. Studies persuasively illustrate the devastating effects of segregated schools and communities, and indicate just as powerfully the benefits of integration to all members of society. Similarly compelling are the social reasons for seriously pursuing integration, originating from our ideas of a just and participatory society. Thus, arguments for fully integrating our schools and neighborhoods are grounded in reasons extending beyond the constitutional claim to equal protection.

#### A. Quantitative Consequences of Integration Efforts

The immediate and easily identifiable results of integrated education contribute significantly to understanding the necessity of broad and comprehensive integration policies. When communities attempt to integrate schools, even if the communities themselves do not become integrated, the overwhelming result is improvement in academic achievement. The improvements are especially pronounced for minority students bused to integrated schools. [FN130] In cities across the country [FN131] the achievement gap between black students and white students \*789 narrowed considerably with the implementation of school integration plans. [FN132] The results of improved learning extend well beyond the high school classroom, with students of color educated in integrated schools more likely to obtain full-time employment [FN133] or to attend college. [FN134] The costs of school integration to white students, in academic terms, are nonexistent. Indeed, white students in integrated schools experience stable or improved academic achievement. [FN135]

All students, minority and white, learn more than reading and math in integrated educational settings. [FN136] The beneficial effects of social integration run deep and continue to influence the lives of students in integrated schools long after their formal education. Students taught in an integrated environment are better able to adapt to the rapidly changing world once they leave school. These students are also more likely to choose to \*790 live in an integrated community as adults. [FN137]

The trend in many communities to abandon integration efforts, often because of demands to focus on improving achievement rather than integrating schools, ironically has resulted in lower academic achievement among both white and minority students. [FN138] Even when school districts commit significantly greater funding and other resources to segregated neighborhood schools, academic achievement has declined. [FN139] Resegregation of schools results in both racial and economic segregation of students, [FN140] and has a devastating effect on poor, minority students, creating an environment of diminished community resources and lower expectations. Expectations of teachers and classmates, combined with the bleakness of their surroundings, communicate to students in both subtle and explicit ways the lower standards in their schools. [FN141] The demoralization experienced in \*791 urban, segregated schools is difficult to overcome, and more computers and books alone do not break down this feeling of abandonment. [FN142]

#### B. The Effect of Integration on Our Communities: Building a Participatory Democracy

The most persuasive reasons for continuing the pursuit of integrated education, and an integrated society, are social and policy norms, rather than quantitative or even legal arguments. Statistics and test scores illustrate the inequalities in education and housing, but the effects of racial segregation are better understood by seeing the depressed conditions in which segregated communities live. [FN143] Similarly, the value of integration becomes evident when we consider the effects of integration both on minority groups and entire communities. The normative value of integration demands the broad-based approach outlined above. Linking housing and education policies, rather than focusing solely on integrating schools, directs attention to the importance and benefits of racial integration in multiple settings. By contrast, the approach of desegregating schools in isolation from other important institutions disregards the significance of building and strengthening communities. A qualitative analysis of the social effects of integration makes clear that achieving broad integration remains a central goal in, and a necessary step toward, making a fully participatory \*792 democracy a reality.

The social value of integration implicates the founding ideals of this country. Making it possible for everyone to participate actively in our democracy should be a goal woven into integration policies. Active participants in the community, of course, require resources and tools, such as housing, income, and education. [FN144] Integration makes it more likely that these resources are available to those who have been excluded from fully participating in our democracy.

Another necessary element of participation is for members to feel connected to the community as valued members of the

polity. [\[FN145\]](#) Segregated society has continued to exclude community members, even when formal rights to participate exist. Long-term isolation from the institutions and networks that make a community function is difficult to remedy, even with substantial formal rights. [\[FN146\]](#)

Integration makes it possible for those historically excluded from participating in society to be a part of a larger community, while necessarily transforming that community. Dewey made us aware that deliberate and formal schooling is just part of the educative experience. [\[FN147\]](#) Association provides another avenue for learning. Through association we learn to consider the effect of our actions upon others. [\[FN148\]](#) We no longer can act in isolation once we know each other. Conversely, any one or anything we do not associate with appears suspect from an isolated perspective. [\[FN149\]](#)

Dewey also saw education, in his broad understanding of the term, as a means of continuous renewal. [\[FN150\]](#) Through education, we constantly work to equip our children with the tools to live. The formal learning environment provided in schools is one place where children of different backgrounds and experiences \*793 come together. [\[FN151\]](#) The school setting provides both academic and social tools for participating in society. The less formal environment of our neighborhoods and social circles provides equally important tools of everyday life. Integration of both schools and housing demonstrates for all of us how the practice of living and learning together can inform our understanding of the world. A truly participatory democracy results from an informed and active citizenry. Integration promotes this vision of participation by educating citizens in a broad sense, both formally and informally.

#### CONCLUSION

America, black or white, [\[FN152\]](#) cannot afford to maintain two societies, separated by race, class, and space. Nor can we afford to waste the potential of any of our children, simply because they live in the forgotten parts of our urban centers. None of us can afford to turn our backs on the imperative of *Brown v. Board of Education*. We must now understand *Brown* to require integrating two societies into one, not by assimilating one into the other, but by breaking down the barriers that prevent the two from enriching one another. Linking housing and education has proven the most effective way to ensure the continuing integration of both. Attorneys, judges, and policy makers should adopt this strategy as the next step in implementing the *Brown* imperative and breaking the cycle of hopelessness caused by the intersections of isolation, racism, and poverty.

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[\[FN1\]](#). [418 U.S. 717 \(1974\)](#).

[\[FN2\]](#). [Id. at 783](#) (Marshall, J., dissenting) (emphasis added).

[\[FN3\]](#). [115 S. Ct. 2038 \(1995\)](#).

[\[FN4\]](#). [Id. at 2061](#) (Thomas, J., concurring).

[\[FN5\]](#). [Milliken, 418 U.S. at 745](#). The Chief Justice limited the possible remedy for the admittedly de jure segregation in Detroit:

[T]he remedy is necessarily designed, as all remedies are, to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct. Disparate treatment of white and Negro students occurred within the Detroit school system, and not elsewhere, and on this record the remedy must be limited to that system.

Id. at 746.

[FN6]. Id. at 761 (Douglas, J., dissenting).

[FN7]. Id.

[FN8]. Id.

[FN9]. Id.

[FN10]. [347 U.S. 483, 485 \(1954\)](#).

[FN11]. [115 S. Ct. 2038, 2056 \(1995\)](#).

[FN12]. Among other conclusions, the Court held that considering the academic test scores of students in a district is not an appropriate method of determining whether schools had achieved the goals of desegregation. [Id. at 2055](#). The Court's conclusion ignores the inadequacy of the education received by segregated and poor minority students.

[FN13]. [Id. at 2047-56](#). The Court reaffirmed its opinion in [Milliken v. Bradley, 418 U.S. 717 \(1974\)](#), that an interdistrict remedy to segregation is appropriate only when an interdistrict violation has caused segregation. This narrow approach disregards the interrelated causes of segregation in housing and education. See *infra* note 31 and accompanying text.

[FN14]. [Pasadena City Bd. of Educ. v. Spangle, 427 U.S. 424, 436 \(1976\)](#).

[FN15]. [Jenkins, 115 S. Ct. at 2052-53](#). The Court explicitly absolved itself and other state actors of responsibility for continued segregation:

Just as demographic changes independent of de jure segregation will affect the racial composition of student assignments, so too will numerous external factors beyond the control of the [Kansas City, Missouri, School District] and the State affect minority student achievement. So long as these external factors are not the result of segregation, they do not figure in the remedial calculus. Insistence upon academic goals unrelated to the effects of legal segregation unwarrantably postpones the day when the [School District] will be able to operate on its own.

Id. at 2055-56 (citations omitted).

[FN16]. See generally Douglas S. Massey & Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (1993) (discussing how ongoing institutional arrangements and contemporary individual actions have perpetuated racial segregation in urban America).

[FN17]. [347 U.S. 483, 494 \(1954\)](#).

[FN18]. "[I]n the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." [Id. at 495](#). The Brown Court did not explore the harm of segregation to white students. More recently, however, jurists, theorists, and social scientists have begun to recognize and explore the harm experienced by all students in segregated schools. See, e.g., [Sheff v. O'Neill, 609 A.2d 1072, 1075 \(Conn. Super. Ct. 1992\)](#) (recognizing the right of white students to a determination of whether the Constitution requires a particularly substantive level of education in their school districts); David R. Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class* 167-81 (1991) (discussing the reaction of "white workerism" to black emancipation following the Civil War); Gary Orfield, [Metropolitan School Desegregation: Impacts on Metropolitan Society, 80 Minn. L. Rev. 825, 846-48 \(1996\)](#) (discussing isolationist effects

on white children caused by segregation).

[FN19]. While some experts have questioned the validity of the stigma theory defined in *Brown*, most still acknowledge that segregated schools do not provide an equal education. Those who favor segregated schools often argue that, with enough resources these schools could provide an education equal to that of majority white schools. This claim ignores the fact that schools segregated by class also are segregated by race. The concentration of poor minority students makes equality even more elusive. The focus then shifts to class and to the assertion that states cannot address class because class is not a constitutional issue. The inextricable link between race and class, and the resulting isolation and concentration of the two, undermine these claims. Recent approaches to the problem of segregation, including adequacy of education suits under state constitutional provisions, raise the issue of the link between class and race.

[FN20]. Given that desegregation has not produced the predicted leaps forward in black educational achievement, there is no reason to think that black students cannot learn as well when surrounded by members of their own race as when they are in an integrated environment.... [B]lack schools can function as the center and symbol of black communities, and provide examples of independent black leadership, success, and achievement.

[Missouri v. Jenkins, 115 S. Ct. 2038, 2065 \(1995\)](#) (Thomas, J., concurring); see generally David Armor, *Forced Justice: School Desegregation and the Law* (1995) (discussing the recent trend toward "resegregation" within the school choice movement).

[FN21]. For a discussion of some of the negative effects of segregation, see George C. Galster, *A Cumulative Causation Model of the Underclass: Implications for Urban Economic Development Policy*, in *The Metropolis in Black and White: Place, Power and Polarization* 190, 194-200 (George C. Galster & Edward W. Hill eds., 1992).

[FN22]. See *infra* text accompanying notes 92-101 for a discussion of assimilation.

[FN23]. "The ideal of integration can only be achieved by respecting this unique [African-American] culture through the maintenance and operation of separate institutions...." [Alex M. Johnson, Jr., \*Bid Whist, Tonk, and United States v. Fordice: Why Integration Fails African Americans Again\*, 81 Cal. L. Rev. 1401, 1403 \(1993\)](#).

[FN24]. See Jonathan Kozol, *Savage Inequalities: Children in America's Schools* 112-24 (1991).

[FN25]. See David Theo Goldberg, *Racist Culture: Philosophy and the Politics of Meaning* 187-90 (1993). Although some blacks have advocated the benefits of segregation, this too perpetuates the concept of a dominant race.

[FN26]. See generally Massey & Denton, *supra* note 16 (discussing the negative impact of segregation on the African-American community); Howard Winant, *Racial Condition: Politics, Theory, Comparisons* (1994) (comparing the liberation of racial identity in the United States and Brazil).

[FN27]. Even the Supreme Court has recognized this. For example, the Court has declared that the deprivation of an integrated living environment is a cognizable harm extending standing to both white and minority plaintiffs. See [Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205, 212 \(1972\)](#).

[FN28]. See Kenneth L. Karst, *Belonging to America: Equal Citizenship and the Constitution* 28 (1989) (discussing equality and inclusion as foundational theories of the American civic culture).

[FN29]. [Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 20-21 \(1971\)](#).

[FN30]. For a more detailed discussion of the legal analysis of state action, causation, and linking education and housing, see *infra* notes 45-68 and accompanying text. See also Alan Freeman & Elizabeth Mensch, *The Public-Private Distinction in American Law and Life*, 36 *Buff. L. Rev.* 237, 238-42 (1987) (analyzing liberal legalism based on the premise that the public-private distinction is an artificial construct).

[FN31]. Jim Crow laws formally segregated American society, and despite their explicit abolishment, we continue to live in a world where space and opportunity are racialized. See Goldberg, *supra* note 25, at 187-96; Massey & Denton, *supra* note 16, at 17; John O. Calmore, [Spatial Equality and the Kerner Commission Report: A Back-to-the-Future Essay](#), 71 *N.C. L. Rev.* 1487, 1492-1501 (1993); Galster, *supra* note 21, at 194-200. Indeed, with the demise of formal segregation, space has become one of the primary ways of racially distributing inequality. See Goldberg, *supra* note 25, at 185-87.

[FN32]. See Robert B. Reich, *The Work of Nations* 203-04 (1991) (discussing how segregation along economic lines is harmful to lower middle-class whites).

[FN33]. See George C. Galster & Edward W. Hill, *Place, Power and Polarization*, in *The Metropolis in Black and White*, *supra* note 21, at 1, 1-7 (discussing how segregation operates as a web-like system with cumulative effects).

[FN34]. See Massey & Denton, *supra* note 16, at 140 (discussing how segregation concentrates factors associated with poverty, including welfare receipt, unwed childbearing, and marital disruption). The isolation affects language and communication, aspirations, and the opportunity for social and economic advancement. *Id.* at 162.

[FN35]. *Id.* at 118 (describing causes and effects of concentrated poverty). Segregated minority communities, especially black communities, have higher rates of poverty and unemployment. *Id.* In addition, these communities lack serious capital. Black wealth, in terms of assets and property, is nonexistent. See Melvin Oliver & Thomas Shapiro, *Black Wealth/White Wealth: A New Perspective on Racial Inequality* 100-08 (1995) (contrasting resource distribution among racial groups).

[FN36]. This is the basis of an adequacy suit. The liability arises when the state creates an entitlement to an adequate education, but then allows conditions to develop that undermine the entitlement.

[FN37]. Of course, correlation is not the same as causation. With correlation, multiple factors may exist that together show a relationship. Our history of explicit segregation in both housing and education, and the continued segregated conditions in both areas, even without explicit policies, provide a strong argument that the two continue to be related.

[FN38]. This was the very situation that the Court refused to acknowledge in [Milliken v. Bradley](#), 418 U.S. 717 (1974). The Milliken Court held a multi-district, area-wide remedy inappropriate in the absence of violations by any one district. [Id. at 744-45.](#)

[FN39]. Compare, for example, integration levels and school performance figures for students and schools in the cities of Indianapolis and St. Louis with students and schools in the city of Detroit. *Id.*

[FN40]. Because of the size of some metropolitan areas, there may be transportation problems in a metropolitan-wide desegregation plan.

[FN41]. See Florence Wagman Roisman, [Intentional Racial Discrimination and Segregation by the Federal Government as a Principal Cause of Concentrated Poverty: A Response to Schill and Wachter](#), 143 *U. Pa. L. Rev.* 1351, 1351-52 (1995) (arguing that federally sanctioned racial discrimination and segregation continues to pervade society, especially in the area of

federal housing programs).

[FN42]. For a discussion of the positive effects of integration, see *infra* notes 130-137 and accompanying text.

[FN43]. Studies show that confining children to racially and economically segregated schools hampers academic achievement and thus impairs future life-chances and choices. See Gary Orfield, *Segregated Housing, Educational Inequality, and the Possibility of Urban Integration*, 1988 Urban Institute Symposium on Residential Mobility and Minority Incomes 29; see also Massey & Denton, *supra* note 16, at 141-42 (describing a simulation which predicts school environments emerging from areas of concentrated poverty); William Julius Wilson, *The Truly Disadvantaged* 57-58 (1987) (describing the concentration effects of life in low-income inner-city areas); R.W. Rumberger & J. Douglas Willms, *The Impact of Racial and Ethnic Segregation on the Achievement Gap in California High Schools*, 14 *Educ. Evaluation & Pol'y Anal.* 377, 380 (1992) (describing the methods and reasons underlying a study of segregation in California high schools).

A body of literature also reveals racially and economically segregated housing produces synergistic stresses that are inadequately understood, much less addressed. The dynamic interaction between racism and economic deprivation has contributed significantly to central city decline and, ultimately, to regional decline. See Massey & Denton, *supra* note 16, at 55; see also David Rusk, *Cities Without Suburbs* 55-60 (1993) (documenting decline in major metropolitan inner-city areas); Galster, *supra* note 21, at 191 (describing a cumulative causation model for the "underclass phenomenon"). Racial and economic integration reduces the isolation underlying these destructive dynamics and therefore minimizes the difficulties created in schools and neighborhoods where race and poverty intersect.

[FN44]. Eighty-one percent of non-white Minnesotans (African-Americans, Asian-Americans, Native Americans, and Latinos) and 82% of white Minnesotans prefer integrated schools for their children. Choice in Education Foundation, *Project Listen: What Ordinary Minnesotans Think About Education Reform* 7 (1995).

Several national surveys indicate that the pro-integration sentiment in Minnesota mirrors the strong support for school integration nationwide, even if it requires busing. Seventy-nine percent of African-Americans, 48% of whites, and 82% of Latinos favor busing if it is the only way to achieve school integration. Larry Tye, *Poll Shows Wide Support Across U.S. for Integration*, *Boston Globe*, Jan. 5, 1992, at 15. In addition, The American Council on Education's Annual College Freshman Survey, the National Opinion Research Corporation's General Social Survey, and the Harris Survey of parents whose children were bused all revealed substantial support for integration and a growing support for busing. See Council of Urban Bds. of Educ., *Status of School Desegregation: The Next Generation* vi (1992).

[FN45]. [San Antonio Indep. Sch. Dist. v. Rodriguez](#), 411 U.S. 1, 33-39 (1973) (refusing to equate "fundamental" with the term "fundamentally important").

[FN46]. See, e.g., [Alabama Coalition for Equity, Inc. v. Hunt](#), Nos. CIV.A.CV-90-883-R, CV-91-0117-R, 1993 WL 204083, at \*56-57 (Ala. Civ. App. Apr. 1, 1993) (noting that education plays an essential role in advancing societal interests); [McDuffy v. Secretary of Educ.](#), 615 N.E.2d 516, 517-28 (Mass. 1993) (interpreting Mass. Const. pt. II, ch. 5). Contra [Idaho Sch. for Equal Educ. Opportunity v. Evans](#), 850 P.2d 724, 732-34 (Idaho 1993) (holding that the Idaho Constitution does not establish education as a fundamental right).

[FN47]. E.g., [N.J. Const. art. I, para. 1](#); [N.J. Const. art. IV, s VI, para. 2](#).

[FN48]. See, e.g., [Ala. Const. art. XIV, s 256](#) (requiring the state legislature to establish and maintain public schools); [Mass. Const. pt. II, ch. 5, s 2](#) (establishing a duty to provide education); [N.H. Const. pt. 2, art. 83](#) (imposing a duty on the state to provide adequate education); [N.J. Const. art. 8, s 4, para. 1](#) (providing for "free public schools"); [N.D. Const. Art. VII, ss 1-2](#) (establishing state schools); [Tenn. Const. art. XI, s 12](#) (providing for free public schools).

[FN49]. See [United States v. Yonkers](#), 837 F.2d 1181, 1226 (2d Cir. 1987) (holding both the school board and the city liable for school segregation), cert. denied, 486 U.S. 1055 (1988); [Liddell v. Board of Educ.](#), 667 F.2d 643, 653-55 (8th Cir.) (affirming a court-ordered desegregation plan which required the state of Missouri to pay one-half of its cost), cert. denied, 454 U.S. 1081 (1981); [United States v. Board of Sch. Comm'rs](#), 637 F.2d 1101, 1107 (7th Cir.) (finding discriminatory intent in state legislation), cert. denied, 449 U.S. 838 (1980); [Evans v. Buchanan](#), 582 F.2d 750, 766 (3rd Cir. 1978) (holding states, rather than the federal government, responsible for operating a nondiscriminatory school system); [Newburg Area Council v. Board of Educ.](#), 489 F.2d 925, 932 (6th Cir. 1973) (imposing a duty on the school board to eliminate all vestiges of state-enforced discrimination).

[FN50]. See [Milliken v. Bradley](#), 418 U.S. 717, 744-45 (1974) (holding no remedy appropriate unless plaintiffs proved a violation in terms of a discriminatory act substantially causing interdistrict segregation). For a further discussion of this shift in focus, see supra Part I.A. (discussing the link between housing and education).

[FN51]. See [Yonkers](#), 837 F.2d at 1219-20 (affirming a district court finding that the city's policy of constructing low-income housing only in minority areas led to increased segregation); [Liddell](#), 667 F.2d at 652-53 (noting that the Board of Education is ultimately responsible for desegregation); [Newburg Area Council](#), 489 F.2d at 931 (holding that neutral geographic zoning assignments cannot be upheld if they fail to eliminate segregation within a district under a court-imposed mandate to do so).

[FN52]. See [Milliken](#), 418 U.S. at 728-30 & nn.8-9 (noting the effects of a failure to join 85 independent school districts as defendants); see also [Missouri v. Jenkins](#), 115 S. Ct. 2038 (1995).

[FN53]. See [Michael H. Sussman, Discrimination: A Unitary Concept](#), 80 Minn. L. Rev. 875, 877 (1996).

[FN54]. [Yonkers](#) is one of the few federal decisions to consider the role of the state in both housing and education, thus avoiding the problem of identifying the fault of each governmental party. For a further discussion of the [Yonkers](#) case, see [id.](#) at 877-79.

[FN55]. See, e.g., [Alabama Coalition for Equity, Inc. v. Hunt](#), Nos. CIV.A.CV-90-883-R, CV-91-0117-R, 1993 WL 204083, at \*3-6 (Ala. Civ. App. Apr. 1, 1993) (finding widespread and systematic disparities in Alabama's public school funding system); [Idaho Sch. for Equal Educ. Opportunity v. Evans](#), 850 P.2d 724, 734 (Idaho 1993) (applying a rational basis review to a challenge of school funding policy because no fundamental right was at stake); [McDuffy v. Secretary of Educ.](#), 615 N.E.2d 516, 552 (Mass. 1993) (finding that state financing failed to meet its constitutional mandate where children in less affluent communities received less educational opportunity); [Claremont Sch. Dist. v. Governor](#), 635 A.2d 1375, 1381 (N.H. 1993) (holding that the duty to support public schools lies with the State); [Bismarck Pub. Sch. Dist. v. North Dakota](#), 511 N.W.2d 247, 259 (N.D. 1994) (settling on intermediate scrutiny of the constitutionality of legislative determinations about school financing); [Tennessee Small Sch. Sys. v. McWherter](#), 851 S.W.2d 139, 144, 156 (Tenn. 1993) (finding that reliance mainly on local governments to fund education resulted in disparities and that the funding system could not be justified even under rational basis review).

[FN56]. See [Alabama Coalition for Equity](#), 1993 WL 204083, at \*43 (holding "the duty [to establish an adequate public school system] is a state rather than a local duty, rendering [Alabama's] argument that localities are responsible for inadequate or inequitable educational opportunities untenable") (citations omitted).

[FN57]. [Id.](#) at \*34 (holding, in a challenge to the constitutionality of a state-wide school system, that "if inadequate educational opportunities exist in some systems, then the system as a whole must be deemed inadequate"); [id.](#) at \*53 (examining Alabama's constitutional guarantee of an adequate education and concluding that the state failed to provide an adequate edu-

cation to some of its citizens).

[FN58]. See [Southern Burlington County NAACP v. Township of Mount Laurel, 456 A.2d 390, 422-35 \(N.J. 1983\)](#) [hereinafter Mount Laurel II] (holding that the state constitution's "general welfare" clause requires all municipalities to provide affirmatively their fair share of the regional need for affordable housing); [Surrick v. Zoning Hearing Bd., 382 A.2d 105, 106 \(Pa. 1977\)](#) (holding that a municipal ordinance that artificially limited the opportunity to provide affordable housing violated the state constitution).

[FN59]. This is the case in Minneapolis, where a settlement in the Hollman v. Cisneros lawsuit has resulted in admission of the intentional segregation of public housing residents. The city's mayor and school board have considered a move to neighborhood schools. Doug Grow, The Mayor Stands Strong, Even if the Time Has Come to Clash with an Old Mentor, Star Trib. (Minneapolis), July 2, 1995, at 3B.

[FN60]. [Southern Burlington County NAACP v. Township of Mount Laurel, 336 A.2d 713 \(N. J. 1975\)](#) [hereinafter Mount Laurel I]; [Mount Laurel II, 456 A.2d 390](#). The court relied upon the general welfare clause of the state constitution. [Mount Laurel I, 336 A.2d at 725 & n.11 \(citing N.J. Const. art. I, para. 1\)](#); [Mount Laurel II, 456 A.2d at 490](#).

[FN61]. [Mount Laurel I, 336 A.2d at 725](#).

[FN62]. [Mount Laurel II, 456 A.2d at 490](#).

[FN63]. See [Milliken v. Bradley, 418 U.S. 717, 745 \(1974\)](#) (denying a metropolitan area remedy for interdistrict segregation in Detroit-area schools because the respondents did not show that the racially discriminatory acts of one or more school districts caused the segregation).

[FN64]. See [Freeman v. Pitts, 112 S. Ct. 1430, 1447-48 \(1992\)](#) (discussing the notion that residential segregation patterns are not a result of state action, but rather of private choice); [Board of Educ. v. Dowell, 111 S. Ct. 630, 634-35 \(1991\)](#) (discussing the district court finding that residential segregation resulted from private choices and economics rather than from school segregation).

[FN65]. [Missouri v. Jenkins, 115 S. Ct. 2038, 2055-56 \(1995\)](#) (noting that demographic changes that are independent of de jure segregation, along with many other factors, will affect the racial composition of students at schools and that these demographic changes do not "figure in the remedial calculus").

[FN66]. [Id. at 2052-53](#).

[FN67]. See [United States v. Yonkers, 837 F.2d 1181, 1233-35 \(2d Cir. 1987\)](#) (discussing the relationship between school segregation and housing segregation), cert. denied, [486 U.S. 1055 \(1988\)](#). I do not know of any case where courts have looked at housing segregation by first looking at the schools. This may be because our development of school segregation analysis is older and more developed than housing segregation. It also may reflect the belief that the state has less control over housing. Even after *Brown v. Board of Education*, fourteen years transpired before federal fair housing legislation was passed. See Title VIII of the Civil Rights Act of 1968, [42 U.S.C. ss 3601-3619 \(1988 & Supp. V 1993\)](#) (establishing a federal policy of fair housing in the United States).

[FN68]. [Yonkers, 837 F.2d at 1236-38](#).

[FN69]. [347 U.S. 483 \(1954\)](#).

[FN70]. See, e.g., [Washington v. Davis, 426 U.S. 229, 239-42 \(1976\)](#) (discussing the necessity of proving intent to succeed in an action for racial discrimination under Title VIII); [Keyes v. School Dist. No. 1, 413 U.S. 189, 208-09 \(1973\)](#) (noting that intent to segregate is necessary to establish that school authorities have segregated schools or school systems); [Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 32 \(1971\)](#) (holding a district court need not intervene if there is no evidence school authorities or other state agents intentionally have segregated schools).

[FN71]. See [Freeman v. Pitts, 112 S. Ct. 1430, 1447 \(1992\)](#) (requiring a remedy for racial imbalance in a school only if a de jure policy of segregation caused the imbalance); [Board of Educ. v. Dowell, 111 S. Ct. 630, 638 \(1991\)](#) (holding that a desegregation decree should be dissolved if a school board no longer intentionally discriminates and has complied in good faith to eliminate the "vestiges of de jure segregation ... as far as practical"); [Milliken v. Bradley, 418 U.S. 717, 745 \(1974\)](#) (noting that, to obtain an interdistrict remedy, a plaintiff must show that racially discriminatory acts of the state or local school districts were a substantial cause of such segregation); [Keyes, 413 U.S. at 207](#) (agreeing with the lower court's finding that a plaintiff must prove a racially discriminatory purpose to prove intentional school segregation).

[FN72]. See [Kimberle W. Crenshaw, Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law, 101 Harv. L. Rev. 1331, 1384 \(1988\)](#) (arguing that "the belief that racial exclusion is illegitimate only where the 'White Only' signs are explicit" and that "strong assumptions about equal opportunity" make it difficult to address underlying racism because society is satisfied with "neutral norms and formal inclusion"); Alan Freeman, Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine, 62 Minn. L. Rev. 1049, 1054-55 (1978) (arguing that, if only intentional discrimination violates the antidiscrimination principle, a person can escape responsibility for conduct which may have been discriminatory merely by "showing that the action was taken for a good reason, or for no reason at all"); Neil Gotanda, [A Critique of "Our Constitution is Color-Blind," 44 Stan. L. Rev. 1, 44-45 \(1991\)](#) (criticizing the Supreme Court's use of "formal-race unconnectedness" as a standard that covers up racism and allows it to continue); see generally [Charles R. Lawrence III, The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism, 39 Stan. L. Rev. 317 \(1987\)](#) (positing that the intent requirement protects racism because discrimination often is unintentional).

[FN73]. [418 U.S. 717 \(1974\)](#).

[FN74]. The Court implied that only intentional segregation is harmful. See [Brown v. Board of Educ., 347 U.S. 483, 493-94 \(1954\)](#) (addressing the issue of segregation "solely on the basis of race"). Although the injury caused by intentional segregation may be greater, there is little doubt that actual segregation also is harmful.

[FN75]. [413 U.S. 189, 216-17 \(1973\)](#) (Douglas, J., concurring) (noting that there is no constitutional difference between de jure and de facto segregation and that the state should be barred from creating both types of segregation).

[FN76]. [Id. at 207](#).

[FN77]. [Id. at 214-17](#).

[FN78]. "When a State forces, aids, or abets, or helps create a racial 'neighborhood,' it is a travesty of justice to treat that neighborhood as sacrosanct in the sense that its creation is free from the taint of state action." [Id. at 216](#). Justice Douglas expressed the same views in his dissent to the Supreme Court's decision in [Spencer v. Kugler, 404 U.S. 1027 \(1972\)](#). In Spencer, the Court allowed the state of New Jersey to maintain school district boundaries that had a segregative effect. [Id. at 1028](#) (Douglas, J., dissenting). Douglas viewed redistricting as the solution, drawing an analogy to voting redistricting to achieve diverse voting districts. [Id.](#) He added that housing segregation was a result of state action and led, undeniably, to segregated

schools. *Id.* at 1029 n.1 (citations omitted).

[FN79]. See [Freeman v. Pitts](#), 112 S. Ct. 1430, 1436 (1992) (holding that a district court need not continue to supervise all aspects of school administration until a school district has complied with every category of a court-ordered desegregation plan); [Board of Educ. v. Dowell](#), 111 S. Ct. 630, 636-37 (1991) (holding if a school district shows that it operates in compliance with the Equal Protection Clause and the school would not likely return to its former ways, the desegregation litigation will have achieved its purpose and the school board need not provide an "additional showing of 'grievous wrong evoked by new and unforeseen conditions'"); [Milliken v. Bradley](#), 418 U.S. 717, 745 (1974) (holding an interdistrict remedy for school segregation appropriate only when racially discriminatory acts of the state, local, or individual district substantially caused interdistrict segregation).

[FN80]. See [Alan Freeman, Antidiscrimination Law: The View from 1989](#), 64 Tul. L. Rev. 1407, 1409-23 (1990) for a discussion of the victim perspective versus the perpetrator perspective. The victim, according to Freeman, focuses on the injury while the perpetrator focuses on fault. *Id.* at 1411-13. Freeman notes that the courts have adopted the perpetrator perspective. *Id.* at 1413. Given the injury and our history, what presumption should apply? One approach is for courts to place the burden on the state to show that it had not caused segregation. This is the approach in employment law and Title VIII cases. See [United States v. Black Jack](#), 508 F.2d 1179, 1185 (1974) (holding that once a plaintiff establishes a prima facie case under Title VIII by showing discriminatory effect, the burden shifts to the government to show that its allegedly discriminatory actions were necessary to promote a compelling governmental interest).

[FN81]. See [Missouri v. Jenkins](#), 115 S. Ct. 2038, 2048-56 (1995) (discussing "desegregative attractiveness" and partial unitary status); [Freeman](#), 112 S. Ct. 1430, 1436 (1992) (holding that district courts "need not retain active control over every aspect of school administration until a school district has demonstrated unitary status in all facets of its system"); [Dowell](#), 111 S. Ct. at 635-36 (discussing courts' inconsistent use of the term "unitary"); [Pasadena City Bd. of Educ. v. Spangler](#), 427 U.S. 424, 435 (1976) (holding that a district court exceeded its power by requiring a school district to readjust its attendance zones annually so there would not be "a majority of any minority" in any public school in the district). But see generally Sussman, *supra* note 53 (positing that discrimination is a unitary concept that should be addressed by conflating housing and education policies).

[FN82]. See [Jenkins](#), 115 S. Ct. at 2050 (noting that "[t]he proper response to an intradistrict violation is an intradistrict remedy ... that serves to eliminate the racial identity of the schools within the effected school district by eliminating, as far as practicable, the vestiges of de jure segregation in all facets of their operations.").

[FN83]. When the Detroit school district became virtually all poor and minority, it was still deemed to be in unitary status. See [Milliken](#), 418 U.S. at 739-41. Thus, a district can be unitary despite being 100% poor and minority and surrounded by middle-class school districts.

[FN84]. For instance, in Norfolk, Virginia, a federal court found that the city's school district achieved unitary status merely three years after federal courts ordered desegregation. Christina Meldrum & Susan E. Eaton, *Resegregation in Norfolk, Virginia: Does Restoring Neighborhood Schools Work?* 3 (Harvard Project on School Desegregation ed., 1994). The school district used this finding to disregard and, effectively, to obliterate Norfolk's past history of segregation. *Id.*

[FN85]. 112 S. Ct. 1430 (1992).

[FN86]. *Id.* at 1444-45.

[FN87]. The Court found no de jure segregation and attributed racial imbalances to demographic forces, for which the school district and other state actors had no responsibility. [Id. at 1447](#). "Where resegregation is a product not of state action but of private choices, it does not have constitutional implications." [Id. at 1448](#).

[FN88]. Jefferson County, Kentucky provides a good example of this result. See generally Kentucky Comm'n on Human Rights, *School and Housing Desegregation Are Working Together in Louisville and Jefferson County* (1983) (discussing the narrowed education gap between blacks and whites when black families move to suburban communities as part of housing and education desegregation programs) [[[hereinafter Kentucky Comm'n Study ]].

[FN89]. See *id.* at 1-3 (noting that Louisville, which had implemented a voluntary desegregation plan in 1956, had a segregated school system again by 1972).

[FN90]. For further discussion of the transformation that results in true integration of society, see *infra* notes 129-136 and accompanying text.

[FN91]. See generally Michael Omi & Howard Winant, *Racial Formation in the United States from the 1960s to the 1990s* (2d ed. 1994) (discussing the concepts of race in American society).

[FN92]. See *id.* at 14-23.

[FN93]. The simplicity of this view is unfortunate in that the search for a definition of our American community is more complicated. According to Kenneth Karst:

The question, Who belongs? turns out to be a question about the meanings of America. To speak of self-definition, of the sense of community, and of the community-defining functions of law is not to identify different parts of a machine but to view a complex social process from several different angles.

Karst, *supra* note 28, at 13.

[FN94]. *Id.*

[FN95]. See, e.g., [Freeman v. Pitts](#), 112 S. Ct. 1430, 1439 (1992); [Board of Educ. v. Dowell](#), 111 S. Ct. 630, 634 (1991).

[FN96]. See Omi & Winant, *supra* note 91, at 17 (referring to the work of Gunnar Myrdal, and in particular his 1944 study *An American Dilemma*, funded by the Carnegie Commission).

[FN97]. See generally Arthur M. Schlesinger, Jr., *The Disuniting of America* (1992) (noting that integration emphasizes the need to assimilate into white culture).

[FN98]. Criticizing the focus among some educators on teaching about separate cultural heritages, Schlesinger asks:

But would it not be more appropriate for students to be 'continually' encouraged to understand the American culture in which they are growing up and to prepare for an active role in shaping that culture? Should public education strengthen and perpetuate separate ethnic and racial subcultures? Or should it not seek to make our young boys and girls contributors to a common American culture?

*Id.* at 90. Schlesinger fails to address the possibility that the "common American culture" is not made up of multiple perspectives and experiences, but rather consists of the dominant perspectives in society--those of middle-class, white individuals who never experience the stigma of being "different" or outside the majority. If this is true, then education already perpetuates a separate culture, one that is "ethnic and racial" to everyone who is not a part of this cultural experience.

[FN99]. Karst sees the failure of policy makers and judges to recognize the different experiences of the members of a multi-cultural society not as callousness or lack of sympathy on the part of these individuals, but as part of a "deep-seated problem that begins in the acquisition of cultural identity and gender identity, a problem that is especially acute in a multicultural society." Karst, *supra* note 28, at 11. A person from a white, middle-class, Protestant background acquires a "community of meaning." *Id.* For this person, poor people and black people and non-Protestants are apt to be seen as Others, whose differences define boundaries between communities--boundaries policed by ignorance and fear. Such a boundary is not inevitably a barrier preventing a legislator or a judge from imagining the experience of people on the other side, but surely the boundary complicates that process. *Id.*

[FN100]. See, e.g., Jonathan Kozol, *Savage Inequalities: Children in America's Schools* 152-53 (1991) (noting students' perceptions of conditions in integrated schools as superior to their perceptions of conditions in nonintegrated schools).

[FN101]. By contrast, white students who attend integrated schools are more likely to be socially integrated as well. Jomills Henry Braddock II & James M. McPartland, *The Social and Academic Consequences of School Desegregation, Equity and Choice*, Feb. 1988, at 5, 63-64. Dewey remarked that an isolated community "makes for rigidity and formal institutionalizing of life, for static and selfish ideals within the group." John Dewey, *Democracy and Education* 99 (1916).

[FN102]. Massey & Denton, *supra* note 16, at 92; see also *supra* note 44 (discussing the preferences of Minnesotans).

[FN103]. See Dewey, *supra* note 101, at 1-22.

[FN104]. Achieving any further integration, in fact, may require a broader approach. Using data from the Department of Justice's Office of Civil Rights, Steven Rivkin found that isolated school districts had integrated to the best of their ability by 1988. Steven G. Rivkin, *Residential Segregation and School Integration*, 67 *Soc. of Educ.* 279, 285 (1994). Changes in urban populations have resulted in the majority of poor, minority families living in urban centers, and white, middle-income families moving to suburban school districts. *Id.* As a result, district-focused attempts at racial and class integration cannot be completely successful. Rivkin concludes that "[o]nly the movement of students across district boundaries, either through interdistrict integration programs or changes in housing patterns, can significantly reduce the racial isolation of Black students in any of the four [Midwest, Northeast, South, and West] regions." *Id.*

[FN105]. Gary Orfield, Foreword to Meldrum & Eaton, *supra* note 84, at i.

[FN106]. Kentucky's county-wide desegregation plan, implemented in Jefferson County, resulted in some black families moving to predominantly white suburbs even after only four years. Kentucky Comm'n Study, *supra* note 88, at 1. Between 1975-1976 and 1981-1982, the use of buses for desegregation purposes decreased and the average time students spent riding buses decreased. *Id.* at 16. These cuts resulted from the numbers of black families moving out of the cities to the suburbs. *Id.* Civil rights groups promoting fair housing and provisions in the desegregation order prompted these moves. *Id.* The key desegregation order provisions provided for exemptions from busing for integrated neighborhoods. *Id.* In 1975, many schools had no black students; by 1980 almost every school had students from black families living in the neighborhood. *Id.* The Jefferson County desegregation plan ended after four years when, in 1980, a federal district court declared Jefferson County Public Schools desegregated, moving the case to inactive status. See Kentucky Comm'n on Human Rights, *New Elementary and Middle School Assignment Plans Creating Dual School System*, 1985-86, at 50 (1986). In that year, student assignment was the most desegregated it had ever been. *Id.* That success was undone by school board decisions to exempt a white suburban school from busing and to reduce desegregation busing of black elementary students without concurrently increasing busing of white students. The result was a quick increase in resegregation. *Id.* at 50-51.

[FN107]. It is this conceptual inability to look beyond constructed political boundaries that has led to disconcerted, ineffective efforts at urban revitalization and the consequent reinforcement of the isolation and disempowerment of central city residents.

[FN108]. See, e.g., Reynolds Farley, *Neighborhood Preferences and Aspirations Among Blacks and Whites*, in *Housing Markets and Residential Mobility* 161, 183-85 (G. Thomas Kingsley & Margery Austin Turner eds., 1993); Martha R. Mahoney, [Segregation, Whiteness, and Transformation](#), 143 *U. Penn. L. Rev.* 1659, 1669-75 (1995); Margery Austin Turner, *Limits on Neighborhood Choice: Evidence of Racial and Ethnic Steering in Urban Housing Markets*, in *Clear and Convincing Evidence: Measurement of Discrimination in America* 125, 125-40 (Michael Fix & Raymond Struyk eds., 1993). The lack of mobility is especially true for blacks. Massey & Denton, *supra* note 16, at 85.

[FN109]. In Jefferson County, stereotypes and misconceptions began to break down with the very beginning of county-wide desegregation and mandatory busing, thus paving the way to building a stronger community:

[I]t is essential to remember that the exaggerated emotionalism which accompanied implementation of the transportation aspect of desegregation rapidly began to die away after classes began. By the end of the first year of desegregation, the tension and upset which spilled into the hallways and classrooms from the initial turbulence on the streets had largely given way to relaxed acceptance. Inside the schools, if not in all parts of the community, old misconceptions and misapprehensions receded into the past.

Kentucky Comm'n Study, *supra* note 88, at 3; see also generally Donald L. DeMarco & George Galster, *Prointegrative Policy: Theory and Practice*, 15 *J. Urban Aff.* 141 (1993).

[FN110]. In Norfolk, Virginia, schools abandoned a desegregation plan and returned to neighborhood schools. This move resulted in ten nearly all-black schools which were "target" schools that would receive additional funds to improve education opportunities. The Harvard Project on School Desegregation found that:

[d]espite the implementation of this plan and despite the fact that target schools receive more money per student, have more library books, smaller classes, and better educated teachers, test scores for students in the target schools have remained low. The achievement gap between the races and between students who attend target schools and non-target schools has increased significantly since 1990. Scores in target schools, meanwhile, are decreasing overall, according to the most recent data available.

Meldrum & Eaton, *supra* note 84, at 42. Racial segregation, not differences in race alone, plays a significant role in widening the education gap between white and minority students: "In 1991, black third-graders in integrated schools scored on average 16 percentage points below their white counterparts. But black third-graders in segregated target schools scored even worse than the black third-graders in non-target schools ... and an average of 21 points lower than white third-graders." *Id.* at 48.

[FN111]. See *supra* note 19. Some of the consequences of integrated and segregated schools may take a generation or more to develop. For example, research indicates that children who attend integrated schools are more likely to live in integrated communities as adults. Gary Orfield, *Segregated Housing, Educational Inequality, and the Possibility of Urban Integration*, in *Urban Institute Symposium on Residential Mobility and Minority Incomes* 1, 28 (1988).

[FN112]. As the Kansas City school system demonstrates, simply pumping in more resources is not an adequate solution. See [Missouri v. Jenkins](#), 115 *S. Ct.* 2038, 2054-56 (1995) (explaining that many factors beyond funding affect minority student achievement). "In-place" strategies are not sufficient precisely because they do not address effectively the lack of access to critical institutions and resources that increasingly are located outside of low-income neighborhoods. See, e.g., Helen F. Ladd, *Spatially Targeted Economic Development Strategies: Do They Work?* 1 *Cityscape: J. Pol'y Dev. & Res.* 193, 208 (1994) (discussing the inadequacy of place-based enterprise zones); see also generally Justin D. Cummins, *Recasting Fair*

Share: Toward Effective Housing Law and Principled Social Policy, 14 Law & Inequality (forthcoming June 1996) (arguing that every community in a region needs to provide its proportional share of low-income housing).

[FN113]. One way to create stability is to exempt families living in integrated neighborhoods from mandatory busing to preserve the community-wide integration achieved in these neighborhoods. See Kentucky Comm'n Study, *supra* note 88, at 16 (discussing the Jefferson County desegregation plan).

[FN114]. See generally Meldrum & Eaton, *supra* note 84, at 9-10 (arguing that Norfolk's decision to end busing produced "racial isolation, and, consequently, concentrated poverty" in the city's schools).

[FN115]. David Goldberg distinguishes between integration and incorporation. See Goldberg, *supra* note 25. His discussion of integration mirrors my analysis of desegregation here. *Id.* at 219. Incorporation, Goldberg writes, is a transformative process whereby both those formerly excluded and those in the dominant society actually change, or transform, through their interaction. *Id.* at 219-20. Incorporation thus involves a shifting and altering of perspectives for everyone. *Id.* at 220. I see integration as approaching this transformative process, and as a distinct move away from the more limited desegregation model.

[FN116]. Dewey defines democracy in a way that takes the benefit of true integration into account:

A democracy is more than a form of government; it is primarily a mode of associated living, of conjoint communicated experience. The extension in space of the number of individuals who participate in an interest so that each has to refer his own action to that of others, and to consider the action of others to give point and direction to his own, is equivalent to the breaking down of those barriers of class, race, and national territory which kept men from perceiving the full import of their activity.

Dewey, *supra* note 101, at 101.

[FN117]. See generally Galster, *supra* note 21 (arguing for a stable, integrative process to reduce interracial disparities).

[FN118]. See generally [Elizabeth M. Schneider, \*The Dialectic of Rights and Politics\*, 61 N.Y.U. L. Rev. 589 \(1986\)](#).

[FN119]. Goldberg, *supra* note 25, at 220. "Incorporation, then, does not involve extension of established values and protections over the formerly excluded group... [T]he body politic becomes a medium for transformative incorporation, a political arena of contestation, rather than a base from which exclusions can be more or less silently extended, managed, and manipulated." *Id.*

[FN120]. Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 Yale L.J. 470, 479 (1976).

[FN121]. Calmore, *supra* note 31, at 1494-95, 1517.

[FN122]. See, e.g., David J. Armor, *Forced Justice: School Desegregation and the Law* 198 (1995).

[FN123]. See Calmore, *supra* note 31, at 1498.

[FN124]. This is especially true when we consider that segregation divides by race and class. Although some middle-class minorities may choose, and have the means to choose, to attend certain schools or community events, such choices are not available for poor minorities.

[FN125]. Only 12% of African-Americans prefer to live in all-black neighborhoods, while 31% are unwilling to move into such a neighborhood, given a choice. Massey & Denton, *supra* note 16, at 89-90. Although a majority of blacks consider a 50-50 ratio ideal, 95% would willingly live in a neighborhood which is merely 15% black. *Id.* For discussions of choice in education, see generally [Wendy R. Brown, \*The Convergence of Neutrality and Choice: The Limits of the State's Affirmative Duty to Provide Equal Educational Opportunity\*, 60 \*Tenn. L. Rev.\* 63 \(1992\)](#); Paul Gewirtz, [Choice in the Transition: School Desegregation and the Corrective Ideal](#), 86 *Colum. L. Rev.* 728 (1986).

[FN126]. It is natural for those who can try to integrate into the larger society to do so. This historically has been done by other groups. What is distinct about the issues today, especially as they affect blacks, is that their efforts to move into the larger society have been resisted, sometimes violently, by the dominant society. See, e.g., Massey & Denton, *supra* note 16, at 33-34 (stating that whites used violent methods to construct and maintain ghettos in the early 1900s). It might be that, given the effective segregation of the black community, it is necessary to develop strategies that work both for integration opportunities and for community building. In the final analysis this is what some of the critics of integration call for. See Calmore, *supra* note 31, at 1488 (noting that the Kerner Commission Report advocated enrichment programs designed to improve the black community and to promote integration).

[FN127]. Even blacks who achieve a middle-class income often live in segregated communities with poor and nearly poor families. Discrimination in housing markets is so entrenched that even having some economic power fails to provide true choices. Massey & Denton, *supra* note 16, at 144, 152-53. A black family with a middle-class income of \$32,000 (1980 dollars) "can expect to live in a neighborhood where 17% of all births are to unwed mothers, home values are barely over \$30,000, and where a fifth of high school students score below the 15th percentile." *Id.*

[FN128]. See *supra* note 108 and accompanying text (discussing the effects of discrimination in the real estate market and in lending policies). See also Amy Stuart Wells & Robert L. Crain, *Perpetuation Theory and the Long-Term Effects of School Desegregation*, 64 *Rev. Educ. Res.* 531, 536-41 (1994) (noting that segregation tends to limit the fulfillment of black students' occupational aspirations).

[FN129]. Calmore, *supra* note 31, at 1492-96, 1501-07.

[FN130]. Students of color bused to desegregated suburban schools experienced greater reading improvement with an eight-point range. Voluntary Interdistrict Coordinating Council for the Settlement Agreement, Complete Eleventh Report to the United States District Court, Eastern District of Missouri 25 (1995). These students also experienced improvements in mathematics scores that were far superior to those of minority students in segregated schools. *Id.*

[FN131]. The Rand Corporation finds the trend in improved academic achievement for minority students in desegregated schools to apply across the nation. Rand Corp., *Student Achievement and the Changing American Family* 107 (1994).

[FN132]. Between 1980 and 1989, the achievement gap between African-American and white students in Dallas narrowed from 35 percentage points to 16 percentage points following the implementation of an integration plan. Marvin E. Edwards, *Equity and Choice: Issues and Answers in the Dallas Schools*, Address Before the National Committee for School Desegregation 17 (Mar. 1990) (transcript on file at the Institute on Race and Poverty, University of Minnesota Law School). Similar gap reductions occurred in language ability and reading. *Id.* The achievement gap between African-American and white students in Louisville elementary schools narrowed by as much as seven percentage points since the implementation of the integration plan in 1975. Although white students experienced higher academic performance, African-American students experienced an even greater percentage improvement in performance. See Kentucky Comm'n Study, *supra* note 88, at 6-8.

[FN133]. Seventy-five percent of minority suburban school attendees obtain full-time employment if they do not attend college while 41% of urban school attendees obtain full-time employment if they do not attend college. James Rosenbaum et al., [Can the Kerner Commission's Housing Strategy Improve Employment, Education, and Social Integration for Low-Income Blacks?](#), 71 N.C. L. Rev. 1519, 1533 (1993).

[FN134]. Fifty-four percent of suburban school attendees go on to college while 21% of city school attendees go on to college; 95% of suburban school attendees graduate from high school while 80% of urban school attendees graduate. [Id. at 1532-33.](#)

[FN135]. See Meldrum & Eaton, *supra* note 84, at 48 (stating that integration policies in Virginia did not damage educational achievement).

[FN136]. Minority students in integrated suburban schools felt as socially accepted and integrated as minority students in segregated urban schools. Rosenbaum et al., *supra* note 133, at 1536-37. These students had almost as many African-American friends and three times as many white friends as city schools attendees. *Id.* The Supreme Court recognized the value of a multiracial education for all children, not just black children, in [Brown v. Board of Education](#), 347 U.S. 483 (1954). See Braddock & McPartland, *supra* note 101, at 63 (noting that school desegregation changes white attitudes and behaviors).

[FN137]. Wells & Crain, *supra* note 128, at 551 (noting that there is "a consistent positive effect on high school racial composition on the racial composition of the neighborhood the respondent lives in as an adult").

[FN138]. Black students' academic achievement has declined since the return to a segregated neighborhood school system in Norfolk, Virginia, and the achievement gap between black and white students has increased. See Meldrum & Eaton, *supra* note 84, at 61. When Norfolk ceased mandated busing, African-American elementary school students' achievement scores dropped from a mean of 52.57 to 47.15. See Vivian W. Ikpa, *The Effects of Changes in School Characteristics Resulting from the Elimination of the Policy of Mandated Busing for Integration upon the Academic Achievement of African-American Students*, 17 Educ. Res. Q. 1, 23-24 (1993). White students' mean test scores decreased by 2.921 points when Norfolk ceased to enforce the desegregation plan. *Id.*

[FN139]. See Meldrum & Eaton, *supra* note 84, at 5.

[FN140]. The higher the socioeconomic status of other students, the higher any given student's achievement. See Carla J. Stevens & Micah Dial, *Comparison of Student Academic Performance at Multi-Ethnic Schools versus Single-Ethnic Schools*, Paper Presented at the Annual Meeting of the American Educational Research Association 4-5 (April 1993) (copy on file at the Institute on Race and Poverty, University of Minnesota Law School).

The high correlation between race and poverty means that confining students of color to racially segregated schools also confines them to economically segregated schools. Racial and economic segregation combine to harm academic achievement. See Massey & Denton, *supra* note 16, at 141-42; Gary Orfield, *The Growth of Segregation in American Schools: Changing Patterns of Separation and Poverty Since 1968*, at 22 (1993).

[FN141]. Social scientists studied the results of telling schoolteachers that certain students were about to come into their own as high achievers academically. Even though these children had been chosen at random, they still made above-average gains on achievement tests. Somehow the teachers' expectations were communicated to and felt by the students. See Robert Rosenthal & Lenore Jacobson, *Pygmalion in the Classroom: Teacher Expectations and Pupils' Intellectual Development* 57-59 (1968). The effect of not having expectations and of not seeing any positive influences likely affect students in racially and economically segregated schools in the same way. But the lack of expectations is what is communicated everyday.

[FN142]. Jonathan Kozol has observed that the "ugliness of racial segregation adds its special injuries" to poor, urban schools. Kozol, *supra* note 24, at 74.

It is this killing combination, I believe, that renders life within these urban schools not merely grim but also desperate and often pathological. The fact of destitution is compounded by the sense of being viewed as, somehow, morally infected. The poorest rural schools I've visited feel, simply, bleak. The segregated urban schools feel more like lazarettos.  
Id.

[FN143]. Jonathan Kozol's books provide a good illustration of this approach, as they discuss the problems that poor and segregated communities face. See generally *Amazing Grace: The Lives of Children and the Conscience of a Nation* (1995); *Savage Inequalities: Children in America's Schools* (1991); *Rachel and Her Children: Homeless Families in America* (1988); *Death at an Early Age: The Destruction of the Hearts and Minds of Negro Children in the Boston Public Schools* (1967).

[FN144]. See Calmore, *supra* note 31, at 1495.

[FN145]. See Karst, *supra* note 28, at 14 (noting the connection between citizenship and belonging).

[FN146]. Formal rights, alone, are not enough. See Schneider, *supra* note 118, at 650-51 (arguing that formal right claims have affirmed a collective identity among women, but these rights have not affected social change).

[FN147]. See Dewey, *supra* note 101, at 15 (noting that human actions are modified by the social medium that nurtures immature members).

[FN148]. *Id.* at 20.

[FN149]. See *id.* ("What is strange or foreign (that is to say outside the activities of the groups) tends to be morally forbidden and intellectually suspect.").

[FN150]. *Id.* at 3.

[FN151]. See *id.* at 25 ("The intermingling in the school of youth of different races, differing religions, and unlike customs creates for all a new and broader environment.").

[FN152]. I am aware that America is and always has been more than black and white. This black-white paradigm is not descriptive of people who make up this country, but of the racial order that is still largely defined in terms of black and white. While a refined racial paradigm may be in order, the black-white paradigm persists.

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