

# **The Path to Quality Education: Segregation and School Reform in the United States and Hungary**

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## **Abstract**

Access to quality education largely remains a privilege of the socio-economically advantaged and frequently excludes the children of marginalized racial groups. Such is the experience of millions African-Americans, Latinos, and other minorities in the United States, as well as countless Roma schoolchildren in Hungary. Contrary to what was once believed, segregation is not the root of all ills; the culprit is poverty and racial discrimination. These two factors, exacerbated by de facto residential segregation, perpetuate the cycles of exclusion and educational inequality. No longer is the U.S. intent on desegregating schools as a means of closing the achievement gap; the cutting edge of U.S reform efforts is now focused on equalizing education by improving the quality of education received by the disadvantaged students who attend de facto segregated schools. Rather than advocating that Hungary pour its resources into the inorganic integration of its schools, I will argue that importing charter schools and investing in teacher training would better serve Roma schoolchildren in the long run. Integration is still an important and laudable long-term goal, but focusing resources on what currently remains an aspirational and possibly barren enterprise undermines the separate and more pressing purpose of improving educational prospects for Roma. Segregated education, while undeniably pernicious, is not in itself the largest or most immediate barrier before the right to quality education.

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## INTRODUCTION

Over the last half-century, governments and organizations around the globe have struggled to expand educational opportunities to traditionally disadvantaged segments of the population. Despite these efforts, access to quality education largely remains a privilege of the socio-economically advantaged and frequently excludes the children of marginalized racial groups. Such is the experience of millions African-Americans, Latinos, and other minorities in the United States, as well as countless Roma schoolchildren in Hungary.<sup>1</sup>

A quality education is paramount to a child's development and ultimately paves the way for their participation in society, empowering them with the skills necessary to claim other rights and realize their human potential. As Hungarian human rights advocates embark upon a crusade to expand access to education and eliminate educational segregation of the Roma minority, they follow in the footsteps of the great strategic litigation campaigns that emerged in the United States during the Civil Rights Movement. However, even as Hungary begins to pursue social change through legal channels, advocates in United States have largely abandoned desegregation litigation as a strategy for reform. Legal solutions to the problem of unequal access to education have fallen out of favor, with many American reformers looking for ways to improve the

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<sup>1</sup> Unicef, Childinfo.org. "Childinfo.org: Statistics by Area - Education - Children out of school." Jan. 2009. 29 Nov. 2010

<[http://www.childinfo.org/education\\_outofschool.php](http://www.childinfo.org/education_outofschool.php)>.

According to the UNESCO Institute for Statistics (UIS) Data Centre (May 2008), 47,000 children of primary school age in Hungary and 2,070,000 children in the United States were out of school.

quality of existing schools that are inherently racially imbalanced due to patterns of residential segregation.

This is the lesson that the United States has learned after six decades of grueling desegregation litigation. Contrary to what was once believed, segregation is not the root of all ills; the culprit is poverty and racial discrimination. These two factors, exacerbated by de facto residential segregation, perpetuate the cycles of exclusion and educational inequality. No longer is the U.S. intent on desegregating schools as a means of closing the achievement gap; the cutting edge of U.S. reform efforts is now focused on equalizing education by improving the quality of education received by the disadvantaged students who attend de facto segregated schools. Rather than advocating that Hungary pour its resources into the inorganic integration of its schools, I will argue that importing charter schools and investing in teacher training would better serve Roma schoolchildren in the long run. Integration is still an important and laudable long-term goal, but focusing resources on what currently remains an aspirational and possibly barren enterprise undermines the separate and more pressing purpose of improving educational prospects for Roma. Segregated education, while undeniably pernicious, is not in itself the largest or most immediate barrier before the right to quality education.

Chapter 1 will discuss patterns of segregation that currently exist in Hungary and their analogues in the United States prior to the Supreme Court's ruling in *Brown v. Board of Education*. Chapter 2 chronicles the trials and tribulations of the United States' hard-fought desegregation campaign in the half-century following *Brown*, as well as the changing tides of the modern education reform movement. Chapter three analyses Hungary's desegregation experience, noting the influence of international legal

obligations governing access to education and the prohibition on racial discrimination that affect Hungary's domestic legislation. The final chapter will review current strategies employed by the United States and offer recommendations as to how Hungary should approach improving the educational prospects of its Roma minority.

## CHAPTER 1: PATTERNS OF RACIAL SEGREGATION IN EDUCATION

### *1.1 Segregation Trends in Hungary*

Statistics from a 2001 national census paint a bleak picture for Roma education. Hungarian Roma are estimated to number 520,000-650,000, constituting roughly 5.3-5.8% of the national population. The national average of 3-5 year-old children who attend kindergarten is approximately 88%, whereas the corresponding percentage for Roma children is a mere 42%. As it is, only 5% of Roma between the ages of 20-24 completed secondary education due to high dropout rates. Even more appalling is the paltry number of Roma between the ages of 20-24 who have attended institutions of higher education, a figure not exceeding 1.2%.<sup>2</sup> Racial discrimination is primarily to blame for this dire situation, which is clearly visible in Hungary's highly segregated, dual system of education.

This chapter will focus on involuntary racial segregation in education, which may be defined as the physical separation of Roma students from the mainstream student population without parental consent.<sup>3</sup> It is important to distinguish between the practice of invidious, involuntary segregation and self-segregation resulting from the deliberate choices of Roma parents. Involuntary racial segregation is characterized not only by a

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<sup>2</sup> "Decade of Roma Inclusion 2005-2015 - Decade Action Plans." Decade of Roma Inclusion 2005-2015 - Home. 2007. Annex to Resolution no. 68/2007 (VI. 28.). Section I, 1.1. 29 Nov. 2010 <[http://www.romadecade.org/decade\\_action\\_plans](http://www.romadecade.org/decade_action_plans)>.

<sup>3</sup> Consent in this context assumes that parents are fully informed before deciding where to send their children to school. In many instances parents are not properly apprised of the nature and substandard quality of education of the school, and are persuaded to enroll their children when offered fringe benefits such as free food, textbooks, and accommodation. Stigmata: Segregated Schooling of Roma in Central and Eastern Europe. Publication. Budapest: European Roma Rights Center, 2004. P. 47.

lack of power in the choice of schools, but also by the fact that segregated facilities are often dramatically inferior in quality, reflecting deeply-rooted racism and hostility toward the Roma minority.<sup>4</sup> This form of segregation remains a prevalent feature of Hungary's educational system, despite the fact that it is prohibited both under international law as well as under Hungary's own domestic legal system.<sup>5</sup> The predominant manifestations of involuntary segregation in the Hungarian education system include special schools, catch-up and remedial classes within mainstream schools, and ghetto schools.

### 1.1.1 Special Schools

Special schools exist as a parallel system of remedial schooling for children deemed to have developmental disabilities and mental retardation. Students at these schools are provided with an inferior curriculum, which is often presented by insufficiently trained teachers with low expectations for their pupils. As a result, Roma students assigned to these schools typically fall further and further behind. In a 1998 survey, the Parliamentary Ombudsman for Ethnic and Minority Rights concluded that special schools purposefully exclude Roma children from mainstream public education, and confirmed in a subsequent press conference that segregation does exist within the Hungarian education system.<sup>6</sup>

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<sup>4</sup> Petrova, Dimitrina. "From Segregated to Integrated Education of the Roma in Europe." Separate and Unequal: Combating Discrimination Against Roma in Education. Budapest: Public Interest Law Initiative/Columbia University Kht., 2004. 23-24.

<sup>5</sup> Unless otherwise noted, the term "segregation" in this paper will refer to the discriminatory practice of involuntary racial segregation.

<sup>6</sup> Roma Press Center. "Parliamentary Ombudsman For Minority Rights Declares Hungarian Education System Discriminatory." Press release. 7 July 2004. 29 November 2010. 29 Nov. 2010 <<http://errc.org/cikk.php?cikk=1153>>.

More recently, a 1993 survey by the Ministry of Education estimated that nearly half of the students placed in special schools were Roma<sup>7</sup>, a staggering statistic in a country where Roma constitute less than 2% of the general population.<sup>8</sup> Other studies support this conclusion, finding that 25,140 Roma attended special schools in 1990 and 25,368 in 1999.<sup>9</sup> Current research has confirmed this trend of Roma overrepresentation in special schools. A 1997 survey of 309 schools approximated the percentage of Roma students to be 40%<sup>10</sup>, while a 1998 survey, conducted in Borsod County, determined that over 90% of students attending special schools were Roma.<sup>11</sup> A study by *Havas-Kemény-Liskó* in 2002 found that every fifth Roma child is deemed mentally disabled.<sup>12</sup> Such blatantly disproportional representation has not slipped by unnoticed: In its 2002 Concluding Observations, the Committee on the Elimination of Racial Discrimination (CERD) condemned these discriminatory practices and “strongly [recommended] that

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<sup>7</sup> Id., *Stigmata* at P. 21: Comprehensive data containing accurate statistics about the number of Roma in Hungarian schools does not exist because of 1993 data protection law prohibiting the collection of ethnically disaggregated information. Thus, the most recent data collected by the Ministry of Education dates back to the 1992-1993 school year. Consequently, where statistics concerning Roma education exist, the numbers consistently underestimate the actual amount of Roma.

<sup>8</sup> Id., P. 25.

<sup>9</sup> Németh, Szilvia, Attila Papp, Julianna Boros, and Zsófia Kardos. "Basic Education Indicators: Special Schools [In Hungary]." *Equal Access to Quality Education for Roma*. By Lilla Farkas. Vol. 1. Budapest: Open Society Institute, 2007. 215-19. citing Havas, Kemény, and Liskó, 2002.

<sup>10</sup> Hermann, Zoltán, Dániel Horn, András Kádár, Attila Papp, and Ágnes Székly. "Guidelines For Abolishing Segregated Education For Roma Pupils." *Chance For Integration*. By Szilvia Németh. Budapest: Országos Közoktatási Intézet, 2004. 173. citing (Radó 1997).

<sup>11</sup> Id., p. 173 (citing Loss, 2001).

<sup>12</sup> Id., (citing *Havas-Kemény-Liskó*, 2002).

[Hungary] reconsider its policy of assigning Roma children to schools and classes for the mentally disabled.”<sup>13</sup>

Students are assigned to special schools by an “expert panel” at the recommendation of a kindergarten teacher if they have reason to believe that the child has a physical or mental disability that would prevent them from attending a regular school.<sup>14</sup> The expert panel determines whether or not s/he will be assigned to a special school based on an examination of the child and results from an intelligence test. This form of evaluation has been highly criticized as being racially biased; according to a report by the European Roma Rights Center,<sup>15</sup> the tests do not take into account the linguistic and cultural differences of Roma children, and thus do not accurately reflect their true level of intelligence and academic preparedness.<sup>16</sup> This failure consequently leads to countless misplacements of Roma children into special remedial schools when they should be attending regular schools.<sup>17</sup>

Furthermore, Roma children are disproportionately represented at both the evaluation and decision-making stages of the placement process. The European Commission Against Racism and Intolerance has found that, “such channeling, which in principle is carried out by an independent board, is often quasi-automatic in the case of

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<sup>13</sup> Committee on the Elimination of Racial Discrimination. Concluding Observations: Hungary. 11/01/2002, A/57/18, Para. 382.

<sup>14</sup> MKM Decree 14/1994. Article 12(3). According to Article 22(4), if the child did not attend kindergarten, the decision is made by an educational advice center.

<sup>15</sup> Danova, Savelina. "The Nature of Educational Segregation." Separate and Unequal: Combating Discrimination Against Roma in Education. Budapest: Public Interest Law Initiative/Columbia University Kht., 2004. P. 6.

<sup>16</sup> Id., Stigmata at P. 49-50.

<sup>17</sup> Id., Danova, Separate and Unequal at P. 6.

Roma children.”<sup>18</sup> Indeed, anecdotal evidence suggests that many Roma children are automatically slotted into special schools, whereas their non-Roma counterparts are placed in special schools only after failing their second or third year in a regular primary school.<sup>19</sup>

Students in special schools are, in theory, reevaluated a year after their initial diagnosis and every two years following, with the idea that they may reenter mainstream schools once they have proven themselves mentally capable of handling the academic rigors of a regular school.<sup>20</sup> Critics of this bureaucratic procedure point to the fact that special schools are given no incentive to promote the reintegration of students into mainstream schools. On the contrary, special schools are often motivated to retain high numbers of pupils in order to be eligible for additional per capita funding. Indeed, studies show that once a student has been selected to attend a special school, the odds that they will reenter a regular school is virtually zero.<sup>21</sup> Once started on a remedial path, opportunities for continuing education in secondary and vocational schools vanish. Special schools are not designed to set students up for later academic success. Instead, they pave the way for academic dereliction and social exclusion as a corollary of not having obtained a quality education.

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<sup>18</sup> European Commission Against Racism and Intolerance (ECRI 2000/5, Para. 31).

<sup>19</sup> Id., Stigmata at P. 40. (citing ERRC interview with Ms. Csilla Gintli, a special remedial school teacher, 18 November 2002).

<sup>20</sup> Id., MKM Decree 14/1994.

<sup>21</sup> Id., Stigmata at P. 11.

### 1.1.2 Separate Classes within Mainstream Schools

Segregation also exists within mainstream schools, in the form of remedial classes for children diagnosed with developmental disabilities<sup>22</sup> and “catch-up” classes.<sup>23</sup> These so-called catch-up classes were initially endorsed by a 1997 decree by the Ministry of Education,<sup>24</sup> which established education programs for Roma that were distinct from other minority education programs. These subjects were intended to place special emphases on enhancing communication skills and promoting social integration with the majority Hungarian culture. In practice, however, the Decree resulted in a proliferation of homogenous Roma-only classes throughout Hungary.<sup>25</sup> As in the case of special schools, Roma who are streamed into catch-up classes are rarely reintegrated into regular classes, and often drop out as early as the fifth grade.<sup>26</sup>

A 2004 study by Havas and Liskó found that remedial and catch up classes are currently the most pervasive form of segregation in Hungarian education. Approximately 71.2% of students in remedial classes and 78.1% of students in catch up classes have been identified as Roma, with approximately 53.6% of all Roma students placed into homogenous Roma classes.<sup>27</sup> Furthermore, the researchers noted that schools with lower proportions of Roma tended to employ harsher and more uncompromising means of

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<sup>22</sup> Id., Stigmata at P. 55. See also Danova at P. 8.

<sup>23</sup> Equal Access to Quality Education for Roma at P. 214.

<sup>24</sup> Decree 32/1997 [XI.5 MKM] of the Ministry of Education Decree on the Education of National and Ethnic Minorities.

<sup>25</sup> Id., Stigmata at P. 63.

<sup>26</sup> Id., Stigmata at P. 11-12.

<sup>27</sup> Id., Equal Access to Quality Education for Roma at P. 215. (citing Havas and Liskó, 2004).

segregation than schools with higher Roma populations.<sup>28</sup> Their survey found 799 homogenous Roma remedial classes across Hungary, up from 770 classes in 2000.<sup>29</sup> Additionally, the study demonstrated that a higher proportion of Roma students in a non-remedial class increased the likelihood of the teacher employing a remedial curriculum, further exacerbating existing educational disadvantages. These studies all agree that subjecting Roma children to separate classrooms with substandard curriculums perpetuates social and economic inequalities by obstructing access to a quality education.

#### 1.1.2.1 Jászladány school case

One particularly illuminating example of segregation within mainstream schools is the 2002 Jászladány school case. The local government of Jászladány assented to lease its best-conditioned school building to a foundation that endeavored to open a private school on the grounds. In fact, the foundation's intent was to create a separate school for non-Roma families, many of which had previously removed their children from the public school due to the high percentage of Roma students in attendance. Because Roma families could not afford the private tuition, their children would be effectively excluded from receiving a quality education with the non-Roma children at the private school. It was later revealed that the local government was covertly funding the private school's operations by financing the school's overhead costs in return for the rent.

The minority self-government appealed to the Ombudsman of Minorities, who initially succeeded in suspending the operation. However, following local elections the

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<sup>28</sup> Equal Access to Quality Education for Roma at P. 218. (citing Havas and Liskó, 2004). Their survey reveals that approximately 71.2% of students in remedial classes are Roma.

<sup>29</sup> Id., Equal Access to Quality Education for Roma at P. 216-217 (citing Havas and Liskó, 2004).

composition of the minority self-government changed to include four non-Roma and only one Roma representative. Rules prohibiting racial identification in minority elections allowed the town mayor's ethnically Hungarian wife to accede to the presidency. Despite a proclamation by the Ombudsman that the students' rights had been violated, a court found that the students had no legal recourse; the court had no power to intervene and desegregate a private school. To add insult to injury, when a charitable foundation in Budapest came forward, offering to subsidize the private tuition for Roma students, the students were flatly denied admission to the private school.<sup>30</sup>

#### 1.1.2.2 "White Flight"

A significant part of the political and administrative policy behind separate Roma classes is driven by external pressure from non-Roma parents, who insist that their children be taught separately from Roma and threaten to remove their children from public schooling if their demands are not met. For example, a petition by non-Roma parents in the village of Sződ made an unsuccessful attempt to coerce the Roma student community into relocating to a different school in the neighboring town of Vác, citing "the poor condition of the school and traffic issues" as the primary motivation for the transfer."<sup>31</sup> Similarly, parents in the town of Hajdúhadház demanded that a "Gypsy class" be deposed in order to accommodate the expansion of a high school.<sup>32</sup>

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<sup>30</sup> Molnar, Emilia, and Csaba Dupcsik. Country Report on Education: Hungary. EDUMIGROM Background Papers. Budapest: Central European University, Center for Policy Studies, 2008. P. 22.

<sup>31</sup> European Roma Rights Center. "Petition to Segregate Romani Schoolchildren." Press Release. 21 July 2005. 29 Nov. 2010 <<http://errc.org/cikk.php?cikk=2321>>.

<sup>32</sup> Id., Chance For Integration at P. 215.

In a 2002 report, the Ombudsman for Ethnic and Minority Rights acknowledged that “local governments and the schools often give in to the pressure coming from the local non-Roma population and play an active role in creating such situations.”<sup>33</sup> Under community pressure, school administrators often resort to segregating Roma and non-Roma, using what appear to be facially neutral academic distinctions as conduits for racial segregation.<sup>34</sup> In fact, these class divisions have nothing to do with a child’s objectively measured intellectual competencies; class composition is entirely based on racial prejudice.<sup>35</sup>

### 1.1.3 Private Student Status

Another vehicle for institutionalized segregation in Hungarian education is the bureaucratic loophole known as “private student status.” According to the Act on Public Education,<sup>36</sup> a student may be designated as a private student if they are diagnosed as having a developmental and/or learning disability, behavioral problems, or difficulty integrating into the class. The Act exempts these students from compulsory attendance requirements even as the school retains overall legal responsibility for the student’s education. In theory, the institution is required to provide additional tutoring, allowing the student to pass required graduation exams. In practice, schools often pressure Roma

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<sup>33</sup> Parliamentary Ombudsman for Ethnic and Minority Rights. Report on the Enforcement of Minority Rights Based on Experiences With the Operation of Minority Self-Governments in 2002. 29 Nov. 2010. <<http://www.kisebbsegiombudsman.hu/hir-267-annual-report-of-the-parliamentary.html>>.

<sup>34</sup> *Id.*, *Stigmata* at P. 57.

<sup>35</sup> *Id.*, *Stigmata* at P. 60.

<sup>36</sup> Act LXXIX on Public Education, 1993.

parents into enrolling their children as private students, and then completely neglect the child's education.<sup>37</sup>

Roma are grossly overrepresented among private student status pupils. Studies indicate that higher proportions of Roma students in a school correspond to an increased likelihood that any individual Roma be enrolled as a private student. A survey of Hungarian primary schools found that in schools where Roma account for over 25% of the student body, private student status might apply to up to 80% of the Roma student population.<sup>38</sup> In 2000, the ERRC publicized its finding that every private student in the town of Berettyóújfalu was Roma, a situation compounded by the fact that nearly all of them were consistently failing their exams.<sup>39</sup> In effect, private student status allows the local school administration to opt out of educating Roma, thrusting these neglected students out of the system altogether.

#### 1.1.4 Ghetto Schools

A final form of institutionalized segregation may be found in the so-called “ghetto school” system. While these schools are formally and legally equivalent to mainstream schools, the former are characterized by a nearly homogenous Roma student body and an appallingly inferior quality of education. Often colloquially referred to as “Gypsy schools,” they are inferior in every respect to normal schools, lacking the most basic of amenities. Buildings are often dilapidated, up-to-date textbooks are nonexistent, and

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<sup>37</sup> Id., *Stigmata* at P. 80-81.

<sup>38</sup> Id., *Stigmata* at P. 81 (citing Babusik, Ferenc. “*Survey of Elementary Schools Educating Romani Children*,” Delphoi Consulting, Budapest, 2000, P. 28).

<sup>39</sup> Id., *Stigmata* at P. 81.

qualified teachers are nowhere to be found. Children who attend ghetto schools are robbed of any opportunity to obtain a quality education.<sup>40</sup>

Residential segregation frequently accompanies patterns of racial discrimination and has been a strong contributing factor to the abundance of ghetto schools in Hungary. These schools are typically located near dilapidated Roma settlements on the periphery of cities, villages, and small towns.<sup>41</sup> An example of a ghetto school may be found 2 kilometers outside of Roma settlement in Szentes, Csongrád County.<sup>42</sup> Although the Szentes school is one of eight in the region, it serves over of 50% of the primary school age Roma children in the district. Only one other school serves any considerable proportion of Roma children, at 24%. The remaining six schools serve fewer than 5% of the Roma population. The composition of the ghetto school is about 90% Roma.<sup>43</sup> Although ghetto schools are generally separate educational institutions, the ERRC has documented several cases where ghetto schools coexist within mainstream schools. In the town of Hajdúhadház, Roma students were relegated to an annexed school building located on an entirely different street. Here they were subjected to inferior catch-up curriculum or placed in special remedial classes for the mentally disabled.<sup>44</sup>

The deeply entrenched practice of relegating Roma children to inferior educational institutions and facilities is a long-standing problem within modern-day Hungary. Generations of Roma have been barred from receiving a quality education,

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<sup>40</sup> Id., Danova at P. 8; See also Stigmata at P. 67.

<sup>41</sup> Id., Stigmata at P. 68.

<sup>42</sup> Editorial Team European Roma Rights Center. Introduction Summary of ERRC Research Findings, The Nature and Structure of This Study. Rep. Vol. 13. European Roma Rights Center Country Reports Series. Budapest: European Roma Rights Center, 2003. P. 14. <www.ceeol.com>.

<sup>43</sup> Id., Stigmata at P. 68-69.

<sup>44</sup> Id., Stigmata at P. 74.

effectively eliminating an important avenue for their inclusion in mainstream society and the realization of their full potential as citizens. The United Nations Committee on Economic, Social, and Cultural Rights voiced such a concern in their 2007 Concluding Observations:

“The Committee is deeply concerned about the high number of Roma children segregated in separate schools, such as special remedial schools for children with mental disabilities, or in separate substandard "catch-up" classes within schools, and that mainstream schools frequently put pressure on Roma parents to apply for private student status for their children. It is also concerned about the high dropout rate among Roma students at the secondary level and about their low enrollment in higher education.”<sup>45</sup>

Although the issue has gained international attention, the systemic practice of involuntarily segregating Roma continues to be pervasive within Hungary’s educational system.

### ***1.2 Analogues in the U.S. Pre Brown v. Board of Education***

Prior to 1930, courts within the United States spent little time addressing segregation in education.<sup>46</sup> The legal paradigm prior to *Brown v. Board of Education*<sup>47</sup>

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<sup>45</sup> Committee on Economic, Social, and Cultural Rights. Concluding Observations: Hungary. E/C.12/HUN/CO/3. 18 May 2007. Para. 27.

<sup>46</sup> *Roberts v. Boston* [59 Mass. (5 Cush.) 198 (1850)].

permitted the segregation of blacks and whites according to the “separate but equal” doctrine, established by the Supreme Court in their 1896 *Plessy v. Ferguson* ruling.<sup>48</sup> This infamous decision sharply outlined the distinction between political and social equality; blacks were legally entitled to the former, but not the latter. When drafting the majority opinion, Justice Brown looked to the common wisdom of his day: “[if] one race be inferior to the other socially, the Constitution of the United States cannot put them on the same plane.”<sup>49</sup> The *Plessy* doctrine enabled state and local governments to instate racist policies in all social realms, including education.<sup>50</sup> As a result, at the time of the *Brown* decision, 17 states plus the District of Columbia segregated public schools in accordance with local law.<sup>51</sup>

It was not until the 1930s that the National Association for the Advancement of Colored People (NAACP) formulated a comprehensive litigation strategy aiming to mitigate the educational inequities historically endured by African Americans. The decades leading up to *Brown* witnessed an unprecedented legal offensive against the institution of segregated education, targeting graduate schools barring admission to African Americans. The initial litigation strategy of the National Association for the Advancement of Colored People (NAACP), and later, their Legal Defense Fund, was to bring forth cases highlighting graduate institutions’ non-compliance with the separate-but

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<sup>47</sup> *Brown v. Board of Education of Topeka* [347 U.S. 483 (1954)].

<sup>48</sup> *Plessy v. Ferguson* [163 U.S. 537 (1896)].

<sup>49</sup> *Id.*, *Plessy v. Ferguson*.

<sup>50</sup> Three years after *Plessy*, the Court was faced with its first decision pertaining to racial discrimination in education. Disregarding the “separate but equal” doctrine established by *Plessy*, the Court affirmed de jure segregation, placing public school education under the regulation of state, and not federal, governments. [*Cumming v. Richmond County Board Of Education* [175 U.S. 528 (1899)]]].

<sup>51</sup> Orfield, Gary, and John T. Yun. Resegregation in American Schools. The Civil Rights Project, Harvard University. June 1999. P. 12.

equal doctrine, framing implementation issues as a violation of the 14 Amendment's Equal Protection Clause. Their first test case was successful in 1936: the Maryland Court of Appeals held the University of Maryland Law School to be in violation of the Equal Protection Clause for refusing a black applicant admission on account of his race, and ordered the school to admit him at once.<sup>52</sup> Although this early decision was limited to the courts of Maryland, the doctrine was soon given national scope by the U.S. Supreme Court in the 1938 case of *Missouri ex rel Gaines v. Canada*.<sup>53</sup>

*Gaines* began a decades-long trend toward court-enforced integration as the NAACP was able to show time and time again that schools were violating the separate but equal doctrine by failing to provide adequate facilities for African-American students. One notable such state decision was handed down in *Mendez v. Westminster School District*, in which the Court of Appeals for the Ninth Circuit ruled that California's program of segregated schooling for Mexican American Children was unconstitutional, citing an absence of legislation authorizing separate schools.<sup>54</sup> The fallout from this case resulted in the dismantling of laws segregating Native American and Asian American students, and set the stage for the Supreme Court in one of the NAACP's major pre-brown victories: *McLaurin v. Oklahoma State Regents*.<sup>55</sup>

*McLaurin* was brought on the behalf of George McLaurin, a black graduate student at the University of Oklahoma. In a shift from earlier cases, the NAACP did not focus heavily on the substantive inequality of McLaurin's treatment; indeed, the University had gone out of its way to provide him with equal access to educational

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<sup>52</sup> *Murray v. Pearson* [182 A. 590 (1936); 169 Md. 478 (1936)].

<sup>53</sup> *Missouri ex rel Gaines v. Canada* [305 U.S. 337 (1938)].

<sup>54</sup> *Westminster School District* [64 F. Supp. 544 (1946), 161F. 2d 744 (1947)].

<sup>55</sup> *McLaurin v. Oklahoma State Regents for Higher Education* [339 U.S. 637 (1950)].

facilities within the school. The NAACP instead focused on the presence of physical separation itself: at the time, Oklahoma law prohibited the coeducation of white and blacks. McLaurin was assigned a separate desk in the Library, and was forced to sit just outside the door of the classroom when attending lectures. *McLaurin* thus represented the first case in which the issue of segregation was wholly distinguished from the issue of equal entitlement. In reversing the lower court's decision, the Supreme Court concluded that differential treatment on the basis of race in a public institution of higher learning provided an inherently unequal educational experience, and therefore was a per se violation of the Equal Protection Clause. This was reinforced in *Sweatt v. Painter*<sup>56</sup>, decided on the same day as *McLaurin*, in which the NAACP successfully challenged the separate-but-equal doctrine in legal education. Again, the court found segregation on the basis of race to be unequal and unlawful in and of itself. The path to *Brown* was clear: If it were unlawful to segregate within a public graduate school, the overall legality of the separate-but-equal doctrine would soon crumble.<sup>57</sup>

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<sup>56</sup> *Sweatt v. Painter* [339 U.S. 629 (1950)].

<sup>57</sup> Kluger, Richard. Simple justice: the history of Brown v. Board of Education and Black America's struggle for equality. New York: Vintage Books, 2004. P. 400-401.

## CHAPTER 2: THE U.S. EXPERIENCE OF DESEGREGATION

### 2.1 *Brown v. Board of Education and its Aftermath [1954-1964]*

In 1954, after decades of aggressive litigation challenging the equitable application of the separate-but-equal doctrine in public schools and universities, the time was finally ripe to force the issue as to whether race-based segregation in schools could ever be constitutional. In *Brown v. Board of Education (Brown I)*, the Supreme Court unanimously held that separate educational facilities for students were inherently unequal. Building off of existing case law, the Court found that the denial of access to desegregated public education violated the students' Equal Protection rights. Their conclusion, that "in the field of public education the doctrine of 'separate but equal has no place'," <sup>58</sup> had the effect of overruling the *Plessy* doctrine and broadly rendered institutional segregation in the realm of public education illegal. The decision did not, however, abolish segregation in other spheres of public life, nor did the ruling provide a timeline for desegregation.

Although *Brown I* expressed the principles governing the dismantling of segregation in public school, it was *Brown II* where the Supreme Court first articulated the question of relief and enforcement. Taking into account the unique local conditions from which the four cases comprising *Brown I* stemmed, the Court ordered that the cases be remanded back to the respective District Courts from which they came. In effect, the responsibility to implement desegregation was left to local courts and school boards, and the only guidance the Supreme Court offered was that their assessments be "guided by

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<sup>58</sup> Id., *Brown v. Board of Education of Topeka*

equitable principles...as are necessary and proper to admit the parties to these cases to public schools on a racially nondiscriminatory basis” and that desegregation proceed “*with all deliberate speed*. [Emphasis added]”<sup>59</sup>

Reactions to the *Brown* decision varied greatly, highlighting the deep divisions embedded in America’s social fabric at the time. Reverend Martin Luther King Jr., one of the most prominent and vocal leaders of the Civil Rights Movement, summed up the spirit of vindication and jubilation among much of the black community: “For all men of good will May 17, 1954, came as a joyous daybreak to end the long night of enforced segregation...It served to transform the fatigue of despair into the buoyancy of hope.”<sup>60</sup> On the other end of the spectrum, the reaction in the South, where the vast majority of African Americans were concentrated, was one of vehement opposition to desegregation. To be sure, the heart of the struggle for civil rights was to take place in these 17 states where Jim Crow laws still prevailed.<sup>61</sup>

### 2.1.1 “Massive Resistance”

From the moment the judgment was made public, *Brown* elicited fierce hostility from Southern politicians. A group of incensed Senators staunchly opposed to racial integration responded by initiating a firestorm campaign of “massive resistance”<sup>62</sup> to the

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<sup>59</sup> *Brown v. Board of Education (II)* [349 U.S. 924 (1955)].

<sup>60</sup> King, Martin Luther Jr. “The Rising Tide of Racial Consciousness.” 1960 Address at the Golden Anniversary Conference of the National Urban League. Community Church of New York. 6 September 1960.

<sup>61</sup> *Id.*, Orfield at P. 12.

<sup>62</sup> Greenberg, Jack. “Report on Roma Education Today: From Slavery to Segregation and Beyond.” *Columbia Law Review* Vol. 110, No. 4. May 2010. P. 893.

Supreme Court's ruling. Their Southern Manifesto<sup>63</sup> denounced *Brown v. Board* and its related judgments as a "clear abuse of judicial power" that "[encroached] upon the reserved rights of the States and the people." Perhaps the most poignant framing of the issue was the Manifesto's assertion that the rulings "planted hatred and suspicion where there has been heretofore friendship and understanding."<sup>64</sup> In congress, a group of representatives proposed a bill that would strip the Supreme Court of its jurisdiction, eventually failing by the slim margin of a single vote. Additional proposals included the establishment of state sovereignty commissions and calls to invoke the doctrine of nullification and interposition.<sup>65</sup>

One particularly infamous attempt to defy integration orders was taken in Little Rock, Arkansas. The so-called Little Rock Crisis proved to be a defining moment of the Civil Rights Movement, and highlighted the charged atmosphere that was pervasive in the aftermath of *Brown*. Following the ruling, the Little Rock School Board had initiated a plan to gradually integrate Little Rock High School. After a thorough vetting process, nine black students were registered to attend classes during the coming year. In response to this plan, Arkansas Governor Orval Faubus deployed the Arkansas National Guard to

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<sup>63</sup> 84th Congress Second Session. "The Southern Manifesto." Vol. 102, part 4. Washington D.C.: Governmental Printing Office. 12 Mar. 1956. 29 Nov. 2010 <<http://www.strom.clemson.edu/strom/manifesto.html>>. (signed by 101 politicians: 99 Democrats and 2 Republicans from Southern states): "We pledge ourselves to use all lawful means to bring about a reversal of this decision which is contrary to the Constitution and to prevent the use of force in its implementation...This unwarranted exercise of power by the Court...is destroying the amicable relations between the white and Negro races that have been created through 90 years of patient effort by the good people of both races. It has planted hatred and suspicion where there has been heretofore friendship and understanding."

<sup>64</sup> Id.

<sup>65</sup> Greenberg, Jack. Crusaders In The Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution. New York, NY: Basic Books, 1994. P. 390.

block the entrance to the school in order to prevent the students from attending. The situation quickly escalated with the intervention of President Dwight D. Eisenhower, who federalized the state National Guard and ordered them to carry out the Supreme Court's ruling. In response to the Little Rock Crisis, the Supreme Court reaffirmed the principles of *Brown* in *Cooper v. Aaron*<sup>66</sup>. They once again stated their commitment to desegregation, emphasizing that state legislatures were bound to its decisions and not competent to abrogate judgments of the Court.

Despite the Court's firm resolution, renegade politicians continued to undermine judicial efforts through lackluster enforcement and public resistance demonstrations. Once again the National Guard had to be mobilized, this time in Alabama, when Governor George Wallace, famed for decrying, "segregation today, segregation tomorrow, segregation forever!"<sup>67</sup>, was confronted by the Alabama National Guard during a stand-in to block the enrollment of black students at the University of Alabama in 1963. For the moment, segregation was won at the point of a gun.

## **2.2 Desegregation Jumpstarted after *Brown* [1964-1974]**

A decade after *Brown*, a staggering 98% of black children in the South continued to attend segregated schools.<sup>68</sup> Tides only began to shift with the advent of the 1964 Civil Rights Act, which was further reinforced by a slew of Supreme Court rulings tightening desegregation requirements. In response to delaying tactics and general

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<sup>66</sup> *Cooper v. Aaron* [358 U.S. 1 (1958)]

<sup>67</sup> Wallace, George. "Inaugural Address." Montgomery, Alabama. 14 January 1963. <[http://www.archives.state.al.us/govs\\_list/inauguralspeech.html](http://www.archives.state.al.us/govs_list/inauguralspeech.html)>. Accessed on 29 November 2010.

<sup>68</sup> *Id.*, Orfield at P. 12.

political opposition to desegregation in the south, the Supreme Court had began to take on a more active role in managing the dismantling of institutional segregation. Their decisions grew increasingly pointed and far-reaching, reflecting the Court's increasing intolerance for delays. The Court begin to approve of specific policy measures, such as busing schemes to facilitate desegregation plans.

### **2.2.1 Civil Rights Acts**

Striking features of the U.S.'s campaign to desegregate schools were the battles were fought outside of the courtrooms. Under the leadership of President Johnson, the executive and legislative branches of the federal government proved an active ally of the Court, supporting the judiciary by enforcing desegregation orders and empowering blacks with new rights. The 1960s saw the passages of the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Civil Rights Act of 1968. These acts had the combined effect of eradicating *de jure* segregation in all aspects of public life, including accommodation, travel, employment, and housing.

Slowly, blacks were beginning to gain equal treatment in the eyes of the law. Instrumental in combating continuing segregation in public schools was Title IV of the Civil Rights Act, which directed the Department of Health, Education, and Welfare (HEW) to divest schools of federal funding where they were found to have discriminatory policies. The result was an unprecedented sure in the percentage of black students attending previously segregated white schools. Even Jack Greenberg, a leading figure with the NAACP Legal Defense Fund, conceded that, "HEW got more blacks into school with whites than our retail lawsuits." Indeed, the success of the HEW built off of

and expanded upon the NAACP's legal strategy, which for its own part "set standards that kept HEW honest and helped resist political pressure to do less, especially after 1969, when Richard Nixon, with his Southern strategy, came to the scene."<sup>69</sup>

The ascent of Richard Nixon to the presidency in 1969 marked a dramatic shift in executive support for desegregation. Nixon was a politician renowned for his conservative view, and in particular for his lack of sympathy toward blacks in their pursuit of civil rights and liberties. The most generous description of his attitude toward blacks was summed up by White House aid Patrick Monihan as one of "benign neglect."<sup>70</sup> A 1974 report by the U.S. Civil Rights Commission charged with monitoring compliance with the Fair Housing Act concluded, "Present programs are often administered so as to continue rather than reduce racial segregation."<sup>71</sup>

Despite Nixon's efforts, however, the late 1960s and early 1970s proved to be a golden era for desegregation litigation. Faced with deliberate obstruction of existing school choice plans, the Supreme Court elevated the stakes, insisting that the vestiges of state-sponsored segregation be eliminated "root and branch."<sup>72</sup> In *Alexander v. Holmes County Board of Education*, the Court went one step further and proclaimed that the "all deliberate speed" standard established in *Brown II*<sup>73</sup> was no longer constitutionally permissible. The strongly worded judgment asserted, "the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only

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<sup>69</sup> Id., Greenberg, *Crusaders In The Courts* at P. 380-381.

<sup>70</sup> Id., Kluger at P. 761.

<sup>71</sup> Id., Kluger at P. 761.

<sup>72</sup> *Green v. County School Board of New Kent County (VA)* [391 U.S. 430 (1968)] at 437-38.

<sup>73</sup> Id., *Brown II* at 300-01.

unitary schools...schools in which no person is to be effectively excluded...because of race or color.”<sup>74</sup>

Desegregation programs were being put to the test in highly populated urban areas where residential patterns were largely based upon socio-economic conditions. Tension came to a head in Charlotte, the largest city in North Carolina, when black parents sued the school district because of ongoing segregation. African-Americans comprised nearly 30% of the school district, yet two-thirds of the students continued to attend all-black schools. In response, the District Court mandated a comprehensive desegregation program that came to be known as the Charlotte Plan. According to this proposal, substantial gerrymandering of districts would take place to balance out the racial composition of its schools. Such a sweeping rearrangement necessitated extensive bussing, which the U.S. Supreme Court endorsed in *Swann*,<sup>75</sup> adding that desegregation was of paramount importance and trumped the preservation of community schooling for the realization of unitary school systems. The result was overwhelmingly positive: Between 1968-1972 Southern schools witnessed a drop of 53% in the number of black students attending schools where blacks made up 90% of the student body.<sup>76</sup>

The Court next turned its attention away from the South and toward other regions where all-black schools existed as the consequence of inequities in socio-economic status. These schools were largely the product de facto segregation due to residential separation, as opposed to the de jure segregation with foundations in law. In their 1973

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<sup>74</sup> *Alexander v. Holmes County Board of Education* [396 U.S. 19 (1969)] at 20.

<sup>75</sup> *Swann v. Charlotte-Mecklenburg Board of Education* [402 U.S. 1 (1971)].

<sup>76</sup> *Id.*, "Report on Roma Education Today: From Slavery to Segregation and Beyond." at P. 984.

decision *Keyes*<sup>77</sup>, the Court ruled that where segregation was found to be deliberate within a portion of a school system, any other findings of segregation would automatically create a presumption of liability.

Although the *Swann* and *Keyes* decisions provided necessary guidance for local and federal officials implementing desegregationist policies, the limits of the Court's power soon became evident. Poverty and other external factors impacted access to education far beyond the legal mandates of *Brown*. While courts embraced intricate bussing plans and creative gerrymandering to promote integration within school districts, it began to become apparent that school districts alone could not be held responsible for the underlying external factors limiting access to education. The Supreme Court's fateful ruling in *San Antonio v. Rodriguez*<sup>78</sup> was one of the first indications that the judiciary had limitations in its ability to compensate for socio-economic disparities.

The circumstances of the case focused on the substantial discrepancy in the amount of federal and state funding allocated per pupil in San Antonio, Texas. Students who resided in the poorer neighborhood of Eastwood, where Mexican Americans and African Americans comprised 96% of the population, received \$356 in per-pupil outlay, whereas schools in more affluent communities received \$594 per student. The issue facing the Court was whether the disproportionate funding of schools violated equal protection. A narrow majority ruled that the Constitution does not require an equal distribution of state funding across district lines. Even more significantly, the Court determined that education is not a fundamental right under the federal Constitution.

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<sup>77</sup> *Keyes v. Denver School District No. 1* [413 U.S. 921 (1973)].

<sup>78</sup> *San Antonio Independent School District v. Rodriguez* [411 U.S. 1 (1973)].

*Rodriguez* marked a turning point in desegregation litigation, reinforced by the 1974 case *Milliken v. Bradley*.<sup>79</sup> In parting with the spirit of *Swann*<sup>80</sup>, the *Milliken* court delivered a sharply divided ruling, declaring that a broad proposal to integrate inner-city and suburban schools in Detroit, Michigan was not justified by patterns of residential segregation. It was here that Nixon's impact on the school segregation movement became most apparent, with the four Supreme Court appointments he had made during his presidency. The addition of Justices Burger, Blackman, Powell, and Rehnquist dramatically changed the composition of the Court. The conservative members of the court now outnumbered the remaining vestiges of the liberal Warren Court that had decided *Brown* two decades earlier. The judiciary, which had embodied the movement's strongest ally, had turned its back on desegregation.

### ***2.3 Termination of Desegregation Litigation and Resegregation [1990-2006]***

Following a period of relative inactivity during the 1980s, a trifecta of cases arrived at the Supreme Court in the early 1990s that ultimately reversed the desegregation gains made since *Brown*: *Dowell*,<sup>81</sup> (1990) *Freeman*,<sup>82</sup> (1991) and *Jenkins*<sup>83</sup> (1995) signaled the Supreme Court's unwillingness to continue supervising desegregation in public education.<sup>84</sup> *Dowell* was a case brought by the Board of Education of Oklahoma City, which sought to terminate a federal district court desegregation decree from 1972.

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<sup>79</sup> *Milliken v. Bradley* [418 U.S. 717 (1974)].

<sup>80</sup> *Swann v. Charlotte-Mecklenburg Board of Education* [402 U.S. 1 (1971)].

<sup>81</sup> *Board of Education of Oklahoma City v. Dowell* [498 U.S. 237 (1991)].

<sup>82</sup> *Freeman v. Pitts* [503 U.S. 467 (1992)].

<sup>83</sup> *Missouri v. Jenkins* [515 U.S. 70 (1995)].

<sup>84</sup> *Id.*, Kruger at P. 836; See also Holley, Danielle R. "Is Brown Dying? Exploring the Resegregation Trend in Our Public Schools." New York Law School Law Review Vol. 49. 2004. P. 1090.

Five years after its implementation, the district court ruled that the school district had sufficiently accomplished the “unitary status” mandated in *Swann*<sup>85</sup> and withdrew its enforcement of the decree, arguing that the district’s unitary status would not be compromised in the process. A subsequent decision in 1984 by the school board to cease busing and launch a new Student Reassignment Plan ignited resentment from African American parents, who protested by resuming desegregation litigation. The district court ruled that the original decree was still effective; however, the Supreme Court reversed and remanded the decision. The Court declared that a federal court could permanently dissolve its own desegregation orders and provided guidelines for determining whether a school system had achieved unitary status, stating that lower courts must consider whether the district “had complied in good faith with the desegregation decree since it was entered, and whether the vestiges of past discrimination had been eliminated to the extent practicable.”<sup>86</sup> *Dowell* clearly offered no recourse for the inevitable resegregation that was bound to occur with the lifting of court orders and made it difficult to challenge any subsequent school board policies that were likely to have adverse affects on integration plans.

In *Freeman v. Pitts*, the Supreme Court was once again confronted with the suspension of judicial oversight. The Court reversed a district court ruling claiming that the Dekalb County School District was still subject to the court’s desegregation mandate because teacher placements and resource allocation indicated that the system was not entirely unitary. The Supreme Court determined that where a school board has

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<sup>85</sup> *Id.*, *Swann v. Charlotte-Mecklenburg Board of Education*.

<sup>86</sup> *Board of Education of Oklahoma City v. Dowell* [498 U.S. 237 (1991)] at Para 249-250.

demonstrated a good faith commitment to comply with its desegregation order, a lower court might incrementally relinquish control.<sup>87</sup> The step toward the gradual withdrawal of judicial supervision provided further ammunition for school boards to abandon desegregation initiatives and resume the resegregation of its districts.

This trend continued in *Missouri v. Jenkins*, where the Supreme Court reversed a district court ruling against Missouri. The lower court required the state to fight de facto racial segregation by funding salary increases in the Kansas City school district as well as remedial education programs. The Supreme Court deemed that the lower court had exceeded its competency when it ordered the additional funding and educational programs to attract white students to urban schools, for the court lacked the authority to design an interdistrict remedy for what had been an intradistrict violation.<sup>88</sup> Finally, the Court held that student achievement scores were not sufficient indicators to determine whether the district had fulfilled its mandate to dismantle dual school systems.

These three cases exhibit underlying patterns that characterize the judicial entrenchment and resegregation that took hold in the 1990s. First, they demonstrate that court desegregation orders had barely begun to take shape before school hastily attempted to declare that they had achieved unitary status. Second, where many district courts attempted to hold school systems accountable, the Supreme Court was willing to accept “good faith” compliance with minimal scrutiny and dissolve court orders where partial progress had been made. Most importantly, the arguments posed by the school boards—that resegregation is unavoidable because of substantial demographic changes and

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<sup>87</sup> *Id.*, *Freeman v. Pitts* at Para. 489.

<sup>88</sup> *Id.*, *Holley* at P. 1095.

underlying socio-economic factors<sup>89</sup>—demonstrate how the quest for the equal education of African Americans was distorted and sidetracked. Consequently, the current debate about access to education for disadvantaged minorities is free of segregation considerations altogether.

The final nail in the coffin for desegregation litigation was delivered in the 2007 judgment *Parents Involved in Community Schools v. Seattle School District No. 1*,<sup>90</sup> which effectively brought an end to voluntary integration plans. The case involved the controversial use of a “tiebreaker,” to be implemented in the event that the number of applicants to a popular high school exceeded its available spots. In order to maintain a racial balance of 40% white and 60% non-white student, the tiebreaker factored in applicants’ race to determine which students would be admitted. While the Court conceded that the consideration of race had been previously deemed a “compelling interest,” in university admissions,<sup>91</sup> a distinction must be made between racial diversity in public high schools and the importance of diversity in higher education. Ultimately, the Court rejected the notion that a desire for racial diversity did not constitute a compelling interest, nor did it justify the consideration of race in public school admissions, thereby violating the Equal Protection Clause. And so it was happened that the Supreme Court severed the remnants of integration programs and brought a halt to desegregation litigation.

Fifty years after the Supreme Court outlawed de jure racial segregation in public schools, the U.S. is experiencing the rapid resegregation of African American and Latino

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<sup>89</sup> Id., Holley at P. 1096.

<sup>90</sup> *Parents Involved in Community Schools v. Seattle School District No. 1* [551 U.S. 701 (2007)].

<sup>91</sup> *Grutter v. Bollinger* [539 U.S. 306 (2003)].

schoolchildren across all regions of the country.<sup>92</sup> Where the courts made headway in the immediate decades following *Brown*, the cessation of court-ordered desegregation resulted in the resegregation of communities. Indeed, there has been a conspicuous lack of policy initiatives addressing desegregation in the last three decades. A 2004 report by the Harvard Civil Rights Project attributes this change of heart to a naive assumption that “the forces that produced segregation had been cured.”<sup>93</sup> Ironically, it was this retreat of judicial oversight that helped illuminate that the root causes of segregation were socio-economic in nature. Indeed, 88% of acutely segregated minority schools<sup>94</sup> are attended by poverty-stricken Latino and African American students, over half of whom are eligible for free lunch programs.<sup>95</sup> Such a degree of concentrated poverty, the report determined, is “powerfully related to unequal educational opportunity.”<sup>96</sup> In summing up the hallowed by hollow legacy of *Brown*, the Harvard Civil Rights Project grimly concluded, “We are celebrating a victory over segregation at a time when schools across the nation are becoming increasingly segregated.”<sup>97</sup> Hungary would be wise to note the United States’ findings that incidences of poverty strongly correlate to educational inequities. This closely mirrors that of what Roma experience, which cannot be resolved in the courts. Even a powerful judiciary such as the United States Supreme Court was unable to rectify unequal education because of the problem’s socio-economic roots, which were beyond the reach of the Court.

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<sup>92</sup> *Id.*, Orfield at P. 2.

<sup>93</sup> Orfield, Gary, and Chungmei Lee. *Brown At 50: King’s Dream or Plessy’s Nightmare?*. The Civil Rights Project, Harvard University. January 1994. P. 2.

<sup>94</sup> The measure of this extreme segregation is that fewer than 10% of its students were white.

<sup>95</sup> *Id.*, at P. 21.

<sup>96</sup> *Id.*, at P. 2.

<sup>97</sup> *Id.*, at P. 12.

## ***2.4 Alternatives to Desegregation: Teach For America and Charter Schools***

With the recognition that access to education is often constrained by underlying socio-economic factors far beyond the reach of direct legal reform, the education movement within the United States has largely abandoned the pursuit of institutional desegregation as a viable solution to inequities in educational opportunity. Instead, critics and reformers have been searching for ways to improve student achievement in poorly performing schools, dubbed the “education gap,” where standardized tests have come to symbolize the yardstick of academic success. While racial considerations continue to be central to this debate, litigation is no longer the prescribed remedy to alleviate these inequalities. Ironically, current federal education initiatives to boost test scores are proving to be as ineffective as earlier efforts in desegregation, insofar as the formula for success depends on a skewed incentive structure that similarly fails to address the fundamental socio-economic aspects of the issue. As the need for alternative solutions to improving the education of students became more pressing, innovative reformers have begun exploring new possibilities for improving access to education, the most promising systemic approaches being the Teach For America program and charter schools.

### **2.4.1 Teach For America**

Teach For America (TFA) is a service program that places new college graduates into poorly performing schools. Wendy Kopp, the founder of Teach For America, envisioned the program when composing her undergraduate thesis at Princeton

University. She proposed TFA as a solution to increase access to education for students residing in impoverished communities.<sup>98</sup> Within a year she managed to obtain funding and recruit 500 teachers, assigning them to six regions across the country. In the fifteen years since the programs inception, over 4,000 more teachers have joined the ranks of Teach For America. The program now serves approximately 100 urban and rural school districts.<sup>99</sup>

A testament to TFA's success as a vehicle for social change is the ever-increasing number of applicants vying for teaching positions with the organization. This year alone there were over 46,000 applicants. Aside from the practical implications of sending teachers to improve failing schools, one of TFA's most significant contributions to education has been to produce a new generation of teachers dedicated to eliminating educational inequities in America. There is no doubt that Hungary would benefit from a similar program placing eager young activists into classrooms. Not only would an incentivized service-learning program provide invaluable teacher training skills, particularly with respect to multicultural education, such cross-community interactions would have the potential to change the attitude of future generations toward Hungary's most rapidly growing minority.

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<sup>98</sup> Kopp, Wendy. One Day, All Children: The Unlikely Triumph of Teach For America and What I Learned Along the Way. New York: Public Affairs, 2001.

<sup>99</sup> Riley, Naomi Schaefer. "What They're Doing after Harvard." Wall Street Journal 10 July 2010. 29 Nov. 2010  
<<http://online.wsj.com/article/SB10001424052748704198004575311052522926796.html>>.

### 2.4.2 Charter Schools

The charter school movement surfaced in the early 1990s, coinciding with the demise of litigation-based strategies in educational reform. With judicial avenues for change largely exhausted, activists sought to improve the education of disadvantaged youth by providing them with a better education within their mostly de facto segregated neighborhoods. Charter schools are typically alternative public facilities run by non-profit organizations and supported by public funding to cover tuition costs. These schools are generally independent of the existing public education infrastructure, and are not accountable to local school boards.<sup>100</sup> This increased autonomy is predicated on an expectation that charter schools will produce strong academic results. Because these schools are subject to fewer bureaucratic and pedagogical restrictions, they often serve as laboratories of educational experimentation, and are arguably better positioned to serve underprivileged schoolchildren. Among the most successful charters are the KIPP schools and the Harlem Children's Zone, both of which have been prominently featured in countless newspapers, education journals, and documentaries. A recent study reveals that students attending charter schools in New York City, which hosts the largest school district in the country, outperformed their counterparts in regular public schools by nearly 30% in tests of reading aptitude, with an even greater improvement in math. Many hail these results as beacons of hope for millions of impoverished children in America.<sup>101</sup>

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<sup>100</sup> Tough, Paul. Whatever It Takes: Geoffrey Canada's Quest To Change Harlem and America. Boston: Houghton Mifflin Co., 2008. P. 7.

<sup>101</sup> "Promises and Facts on Charter Schools." Editorial. New York Times. 11 Jan. 2010. 29 Nov. 2010 <<http://www.nytimes.com/2010/01/11/opinion/11mon3.html>>.

### 2.4.3 Knowledge Is Power Program (KIPP)

The Knowledge Is Power Program (KIPP) is a free college-preparatory charter school that recruits schoolchildren from disadvantaged communities, 90% of whom are African-American and Latino. Founded in 1994, KIPP started out with two pilot schools and has grown into a network of 99 schools across the United States. The organization's primary objective is to take high-risk children, who are often far behind their grade-level in many basic subjects, and get them into college. Since its establishment, 95% of KIPP alumni graduated from high school, with nearly 88% going on to matriculate into universities, as compared to the national average of 40%. In the younger grades, the results are equally impressive: Most students enter KIPP in 5<sup>th</sup> grade testing into the 33<sup>rd</sup> and 45<sup>th</sup> national percentiles in reading and math. After three years of instruction, the average test score jumps to 57% and 80%, respectively. A 2007 study by Mathematica Policy Research Inc. observed:

“Students entering these 22 KIPP schools typically had prior achievement levels that were lower than average achievement in their local school districts. For the vast majority of KIPP schools studied, impacts on students' state assessment scores in mathematics and reading are positive, statistically significant, and educationally substantial. Estimated impacts are frequently large enough to substantially reduce race- and income-based achievement gaps within three years of entering KIPP.”<sup>102</sup>

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<sup>102</sup> Tuttle, Christina Clarke, Bing-ru Teh, and Ira Nichols-Barrer. Student Characteristics and Achievement in 22 KIPP Middle Schools. Mathematica Policy Research. Rep. June 2010. 29 Nov. 2010 <[http://www.mathematica-mpr.com/publications/redirect\\_PubsDB.asp?strSite=PDFs/education/KIPP\\_fnlrpt.pdf](http://www.mathematica-mpr.com/publications/redirect_PubsDB.asp?strSite=PDFs/education/KIPP_fnlrpt.pdf)>.

KIPP's model for success is predicated on longer school days and more days and weeks of instruction in a single school year. Another critical difference from a regular public school is KIPP's emphasis on placing highly qualified teachers in its classrooms. As such, the organization focuses a great deal on the ongoing professional development of its faculty, 40% of whom are African-American and Latino.<sup>103</sup> In order to attract excellent teachers, KIPP offers teachers higher salaries than public schools, with the understanding that they will be working 9-hour days, plus Saturdays, and be accessible outside of school to assist students with homework over the phone.

Amidst the rapid proliferation of charter schools, KIPP's resounding success has not gone unnoticed. The U.S. Secretary of Education Arne Duncan's remarked, "No system of schools testifies to [beating the odds of educational challenges] more powerfully than KIPP's 82 schools and 21,000 students...Five years from now, KIPP aims to reach more than 60,000 students nationwide. That is a lot of students—more than in the DC or Atlanta public school systems."<sup>104</sup>

#### **2.4.4 Harlem Children's Zone**

Geoffrey Canada started the Harlem Children's Zone (HCZ) with a vision to empower inner city youth by providing them with a high quality education and the requisite social assistance needed to attend college. In this regard, his mission is similar to that of KIPP schools. The distinction between the HCZ and KIPP lies in Canada's

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<sup>103</sup> KIPP: Knowledge Is Power Program. "KIPP FAQ." 30 Nov. 2010. <<http://www.kipp.org/about-kipp/faq>>.

<sup>104</sup> Duncan, Arne, U.S. Secretary of Education. KIPP Annual Dinner. 30 April 2010. 26 November 2010. <<http://ed.gov/news/speeches/2010/04/04302010.html>>.

pedagogical approach. His ultimate goal was to create a sustainable model of education that would educate a substantial portion of Harlem's children. According to Canada, the education of the broader community will create a tipping point that will transform the entire neighborhood.<sup>105</sup> The HCZ model is a comprehensive "Pipeline" that supports children from infancy through college. Canada bases his model on the latest research in child development, and argues that the cycle of poverty and underachievement requires intervention at the earliest possible juncture in a child's life. The HCZ offers so the HCZ's "Baby College" was born. The program is a nine-week parenting workshop offered to expectant parents and those raising infants and toddlers. The course content covers areas such as medical advice concerning immunizations, safe yet effective forms of discipline, and information about how to foster children's social and intellectual development. If a child is fortunate enough to be accepted by lottery into the Harlem Gems pre-kindergarten program, they are positioned to ascend the Pipeline, which includes the K-12 Promise Academy. Furthermore, the support network continues throughout students' undergraduate careers with the College Success Office.

Another striking feature of the Harlem Children's Zone is the fact that every single administrator, instructor, and childcare worker is African-American or Hispanic<sup>106</sup>, underscoring the conviction that integration is not factored into this blueprint for success, nor is it considered to be a necessary condition for improving the quality of education for disadvantaged children. Indeed, the largely African American demographic of Promise Academy students performs as highly as white students on standardized math tests.

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<sup>105</sup> Id., Tough at P. 4.

<sup>106</sup> Id., Tough at P. 95.

Harlem is a neighborhood notorious for its high dropout rates, and yet nearly 550 HCZ alumni were enrolled in college in the fall of 2009.<sup>107</sup>

The crusade to increase access to quality education in the United States has evolved through many different phases since the first cases were brought forth challenging the separate but equal doctrine. Initially, the quest for equality took the shape of hard-fought court battles to end the segregation of blacks in inferior schools. The revered *Brown v. Board* decision marked the turning point as the Supreme Court deemed this type of discrimination unconstitutional; however, another half-century of court proceedings ensued, proving the Court's desegregation mandate difficult to enforce. Coinciding with the termination of desegregation litigation, alternative ideas education reform, so as to benefit disadvantaged children, began to emerge in the form of Teach For America and charter schools. Improving the education of America's most at-risk children no longer focused on integration plans; rather, the priority of reformers shifted to importing quality teachers and schools to impoverished neighborhoods.

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<sup>107</sup> Shulman, Robin. "Harlem Program Singled Out as Model; Obama Administration to Replicate Plan in Other Cities to Boost Poor Children." Washington Post. 2 Aug. 2009. 29 Nov. 2010 <[http://www.washingtonpost.com/wp-dyn/content/article/2009/08/01/AR2009080102297\\_2.html?sid=ST2009080102632](http://www.washingtonpost.com/wp-dyn/content/article/2009/08/01/AR2009080102297_2.html?sid=ST2009080102632)>.

## CHAPTER 3: HUNGARY'S EXPERIENCE OF DESEGREGATION

### 3.1 *International Law*

At the international level, Hungary is a party to a plethora of binding instruments that speak to the problem of substandard education affecting Roma, most notably treaties prohibiting racial discrimination and enshrining the right to education.

#### 3.1.1 Anti-Discrimination

International law incontrovertibly prohibits racial discrimination in education, specifically singling out racial segregation as an extreme form of discrimination. The International Convention on the Elimination of All Forms of Racial Discrimination (CERD)<sup>108</sup> defines racial discrimination<sup>109</sup> and stipulates that state parties “particularly condemn racial segregation and apartheid and undertake to prevent, prohibit, and eradicate all practices of this nature in territories under their jurisdiction.”<sup>110</sup> In its General Recommendation XIX, the Committee on the Elimination of Racial Discrimination stated, “[the] obligation to eradicate all practices of this nature includes

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<sup>108</sup> International Convention on the Elimination of All Forms of Racial Discrimination (CERD). 21 December 1965. (ratified by Hungary 4 May 1967; entry into force 4 January 1969). 29 November 2010, <<http://www2.ohchr.org/english/law/cerd.htm>>.

<sup>109</sup> CERD, Article 1(1) defines “racial discrimination as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life.”

<sup>110</sup> Id., CERD at Article 3.

the obligation to eradicate the consequences of such practices undertaken or tolerated by previous Governments in the State.”<sup>111</sup>

Another recommendation from 2009 approaches access to education in a fashion similar to the United States, emphasizing the importance of pre-school education and increasing parent awareness and involvement in children’s education.<sup>112</sup> These guiding principles do not focus attention on the segregation issue, but instead underscore the importance of “[securing] access to school for Roma/Gypsy children” by developing comprehensive pre-school education schemes.<sup>113</sup> The language of “[closing] the gap” also echoes the language of recent U.S. education reforms.

### 3.1.1.1 Racial Equality Directive

Hungary’s membership in the Council of Europe and the European Union provides an additional layer of regional accountability in the prohibition of racial discrimination. The Council of the European Union’s Race Equality Directive<sup>114</sup> is a binding regional instrument purposed with “[laying] down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect

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<sup>111</sup> CERD Committee, 47<sup>th</sup> Session, 1995: General Recommendation No. 19: Racial segregation and apartheid (Art. 3) 18 August 1995. Accessed on 29 November 2010. <<http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/18c91e92601301fbc12563ee004c45b6?Opendocument>>.

<sup>112</sup> Committee of Ministers. Recommendation CM/Rec (2009) 9 of the Committee of Ministers to member states on the education of Roma and Travellers in Europe. 17 June 2009 at the 1061<sup>st</sup> meeting of the Ministers' Deputies.

<sup>113</sup> Committee of Ministers. Appendix to Recommendation No R (2000) 4 of the Committee of Ministers to member states on the education of Roma/Gypsy children in Europe. 3 February 2000 at the 696<sup>th</sup> meeting of the Ministers’ Deputies. [I. Structures (4)].

<sup>114</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. (Race Equality Directive).

...the principle of equal treatment<sup>115</sup> ...in relation to education.”<sup>116</sup> The Directive was transposed into Hungary’s domestic legal system with the passage of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities,<sup>117</sup> an anti-discrimination law that will be detailed in the next section on Hungary’s domestic legal obligations.

Some advocates have voiced disappointment in the ability of the Directive to ameliorate racial discrimination in education. These critics focus on the systemic nature of segregation endured by Roma, and point out that the Directive is geared toward combating specific instances of discrimination. Even so, the Directive is a testament to the European Union’s commitment to eradicating discrimination and demonstrates the EU’s political leverage in terms of influencing Hungary’s domestic legislation.

### 3.1.2 The Right to Education

The right to education was first codified in the aspirational 1948 Universal Declaration of Human Rights (UDHR). In the words of the UDHR, “[everyone] has the right to education...Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nationals, racial, or religious groups.”<sup>118</sup> While not a legally binding document, the UDHR marked the first time in which the international community proclaimed their commitment to the

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<sup>115</sup> Id., at Article 1.

<sup>116</sup> Id., at Article 3 (1(g)).

<sup>117</sup> Act CXXV on Equal Treatment and the Promotion of Equal Opportunities in Hungary (Equal Treatment Act). 2003.

<sup>118</sup> Universal Declaration of Human Rights. 10 December 1948. Article 26(1).

right to education and served as the departure point for subsequent human rights treaties specifically enumerating this right.

Drafted twelve years later, the 1960 UN Convention against Discrimination in Education (CDE) is the most comprehensive treaty concerning the right to education.<sup>119</sup> Recalling in its Preamble the 1948 UDHR's assertion of the "principle of non-discrimination and [proclamation] that every person has the right to education," the Convention defined discrimination in education, proscribing in particular the deprivation of access to education, the limiting of any person or group of persons to education of an inferior standard, and the establishment or maintenance of separate educational systems or institutions.<sup>120</sup> The Convention further requires equal treatment in the admission of students to educational institutions<sup>121</sup> and asks that state parties provide primary education free and compulsory and secondary education readily available and accessible to all.<sup>122</sup> In reference to the issue of segregated schooling, the Convention calls for equalizing the quality of education in all public institutions<sup>123</sup> while recognizing the unique needs of national minorities in accessing quality education.<sup>124</sup>

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<sup>119</sup> Convention against Discrimination in Education. 14 December 1960 (ratified by Hungary 16 January 1964; entry into force 22 May 1962).

<sup>120</sup> CDE Article 1 defines discrimination as "any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education." See also CDE Article 1(a), 1(b), and 1(c).

<sup>121</sup> *Id.*, CDE, Article 3(b).

<sup>122</sup> *Id.*, CDE, Article 4(a).

<sup>123</sup> *Id.*, CDE, Article 4(b).

<sup>124</sup> *Id.*, CDE, Article 5(c) "[recognizes] the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and...the teaching of their own language." Article 5 goes on to require that the right is not exercised so as to prevent minorities from participating in the culture and language of the

The subsequent International Covenant on Economic, Social, and Cultural Rights (ICESCR)<sup>125</sup> and Convention on the Rights of the Child<sup>126</sup> both reiterate the right to education, stipulating that state parties have a duty to provide free and compulsory education for all in order to achieve this right.<sup>127</sup> Additionally, the CRC calls on states to encourage regular school attendance and reduce dropout rates.<sup>128</sup>

### 3.1.3 ECHR Litigation on Segregation in Education

Another major instrument enshrining the right to education is the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), to which Hungary is a party. Article 2 of the Optional Protocol provides that “No person shall be denied the right to education.”<sup>129</sup> This provision has been invoked in conjunction with Article 14 of the ECHR (prohibition of discrimination) in three noteworthy cases brought by Roma plaintiffs with the ECHR tribunal body, the European Court of Human Rights (ECtHR).

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communities (i); the standard of education is not of a lower quality than mainstream standards (ii); and that attendance at such schools is optional (iii).

<sup>125</sup> International Covenant on Economic, Social, and Cultural Rights (ICESCR). 16 December 1966. (ratified by Hungary 17 January 1974; entry into force 3 January 1976), Article 13.

<sup>126</sup> Convention on the Rights of the Child (CRC). 20 November 1989. (ratified by Hungary 7 October 1991; entry into force 2 September 1990).

<sup>127</sup> *Id.*, ICESCR at Article 13(2(a)); CRC Article 28(a).

<sup>128</sup> *Id.*, CRC at Article 28 1(e).

<sup>129</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Article 2 of the Optional Protocol stipulates, “No person shall be denied the right to education.”

In *D.H. and Others v. the Czech Republic*,<sup>130</sup> *Sampanis and Others v. Greece*,<sup>131</sup> and *Oršuš and Others v. Croatia*,<sup>132</sup> the ECtHR found instances of unlawful segregation in the Czech Republic, Greece, and Croatia respectively. All three judgments illustrate the prevalence of this systemic problem throughout Central and Eastern Europe. While the judgments are symbolic of changing attitudes toward Roma rights in education, the decisions thus far have had minimal impact on the dire situation in the region, even in those states singled out as the perpetrators of racial segregation.

### 3.1.3.1 D.H. and Others v. the Czech Republic

*D.H. and Others v. the Czech Republic*<sup>133</sup> is widely referred to as Europe's very own *Brown v. Board of Education*.<sup>134</sup> In *D.H. and Others*, the ECtHR found the Czech Republic to be in violation of Article 14 (prohibition of discrimination) in conjunction with Article 2 of Protocol No. 1 (right to education) of the European Convention on Human Rights (ECHR) for streaming Roma children into schools for the mentally disabled. The Court determined that a disproportionately high numbers of Roma students

<sup>130</sup> *D.H. and Others v. the Czech Republic*, Application No. 57325/00, Judgment of 13 November 2007.

<sup>131</sup> *Sampanis and Others v. Greece*, Application No. 32526/05, Judgment of 5 June 2008, available in French only.

<sup>132</sup> *Oršuš and Others v. Croatia*, Application no. 15766/03, Judgment of 16 March 2010. Para. 155.

<sup>133</sup> *Id.*, *D.H. and Others v. the Czech Republic*.

<sup>134</sup> Goldhaber, Michael D. "Desegregating Europe: In a Much-Anticipated Decision, the European Court of Human Rights Produces Its Own Version of *Brown v. Board of Education*. (*D.H. v. Czech Republic*).<sup>134</sup> *American Lawyer* Vol. 30 No. 2. Feb 2008. P. 772.; See also Morag, Goodwin, "*D.H. and Others v. Czech Republic*: A Major Set-Back For the Development of Non-discrimination Norms in Europe." *German Law Journal* Vol. 07 No. 04. 2006. P. 8.

in special schools “[gave] rise to a strong presumption of indirect discrimination,”<sup>135</sup> and as a result, “they received an education which compounded their difficulties and compromised their subsequent person development.”<sup>136</sup>

Although sweeping in scope, the landmark victory was nearly a decade in the making. The 18 Roma plaintiffs who had been assigned to special schools initially attempted to bring their case to Czech courts, but failed because of a lack of domestic anti-discrimination legislation at the time. After exhausting all domestic legal remedies, they filed their case in 2000 with the ECtHR, alleging violations of Article 3 (prohibition against degrading treatment, Article 6 (right to a fair trial), and the aforementioned Article 2 of Protocol No. 1 taken in conjunction with Article 14 of the Convention. Segregation in special schools, it was claimed, had caused them educational, psychological, and social harm.<sup>137</sup> After a lower chamber found no violation of Article 14 in 2006, the case ascended to the upper chambers of the ECtHR, where history was made a year later in the Grand Chamber. In considering patterns of discrimination, the Court recognized for the first time the principle of indirect discrimination. The Court held that in cases concerning education it is not necessary to prove discriminatory intent where a policy has a discriminatory impact,<sup>138</sup> noting that “well-intentioned actors often engaged in discriminatory practices through ignorance, neglect or inertia.”<sup>139</sup>

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<sup>135</sup> *Id.*, *D.H. and Others v. the Czech Republic* at Para. 195.

<sup>136</sup> *Id.*, *D.H. and Others v. the Czech Republic* at Para. 207.

<sup>137</sup> Goldston, James A. "Ending Racial Segregation in Schools: The Promise of D. H." *Roma Rights Journal* No. 1. 2008. P. 3.

<sup>138</sup> *Id.*, *D.H. and Others v. the Czech Republic* at Para. 194.

<sup>139</sup> *Id.*, *D.H. and Others v. the Czech Republic* at Para. 129.

The plaintiffs were awarded 4,000 Euros each,<sup>140</sup> which was criticized as insufficient compensation for it hardly remedied the unfair treatment they endured.<sup>141</sup> However, the judgment itself marked a symbolic step toward recognition that the underlying problem could no longer go unaddressed. In addition to damages, the Court ordered the Czech Republic “to put an end to the violation found by the Court and to redress so far as possible the effects.”<sup>142</sup>

Left to its own discretion in deciding how to fulfill its legal obligation, the Czech Republic has done little to ameliorate the underlying situation. Formal steps have been taken to abolish the institution of special schools, however reality paints a much different picture. The discriminatory system of remedial education continues to thrive as a system of “practical schools” aiming to promote “practical skills.” Like the special schools before them, these “practical schools” are still administered by local self-governing authorities, as opposed to regular elementary schools operated by municipalities.<sup>143</sup>

### 3.1.3.2 Sampanis and Others v. Greece

The next pivotal ruling by the ECtHR on the illegal segregation of Roma in education was *Sampanis and Others v. Greece*.<sup>144</sup> The *Sampanis* court found Greece to have breached the same Convention provisions as the Czech Republic the previous year in *D.H. and Others*. The 11 Roma applicants were Greek nationals in Psari, Aspropyrgos, and three additional communities, who had been refused enrollment to a

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<sup>140</sup> *Id.*, *D.H. and Others v. the Czech Republic* at Para. 217.

<sup>141</sup> *Id.*, Goldston at P. 4.

<sup>142</sup> *Id.*, *D.H. and Others v. the Czech Republic* at Para. 216.

<sup>143</sup> Gall, Lydia, and Robert Kushen. "What Happened to the Promise of D.H.?" *Roma Rights Journal* No. 1. 2008. P. 40.

<sup>144</sup> *Id.*, *Sampanis and Others v. Greece*.

primary school on account of their lacking the required documents to register. As a result, the children missed an entire year of schooling. The following year they were admitted, however demonstrations by non-Roma parents resulted in their relocation to segregated, special preparatory classes in an annex located five kilometers away from the main campus.<sup>145</sup>

The failure of the Greek government to facilitate the enrollment of Roma children in schools for a whole school year, compounded by the subsequent placement of the children into segregated facilities, was found to be discriminatory and a violation of Article 14 of the Convention in conjunction with the Article 2 right to education. It was revealed that local authorities had neglected to administer proper testing measures and devised separate classes only when the need of schooling for Roma arose. The judgment emphasized the need to provide vulnerable groups with special allowances and treat them differently to compensate for existing inequalities. Additionally, the Court found a violation of Article 13 (lack of an effective remedy). Each plaintiff was compensated 6,000 Euros in non-pecuniary damages.<sup>146</sup>

Insofar as *Sampanis and Others v. Greece* was the second occasion in which the Court had found Roma to be victims of discrimination in education, the Court remained relatively cautious when doling out a remedy. The increase in monetary damages from *D.H. and others* might arguably be perceived as symbolic of a firmer stance in the court's

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<sup>145</sup> Because the ECtHR judgment is available in French only, the case brief has been obtained from the Open Society Justice Initiative, available at: <http://www.soros.org/initiatives/justice/litigation/czechrepublic/briefing-paper-sampanis-20101008.pdf>, accessed 29 November 2010.

<sup>146</sup> The decision of the Court was found at the ECHR Blog, available at: <http://echrblog.blogspot.com/2008/06/violation-of-roma-right-to-education.html>, accessed 29 November 2010.

treatment of racial discrimination in education; however, this ultimately guarded approach has not appeared to have a profound effect on the dire situation of Roma children in these countries.

In the months following the Strasbourg's ruling, a delegation from the European Commission against Racism (ECRI) and the UN Independent Expert on Minority Issues met with officials from the Ministry of Education to discuss the implementation of *Sampanis and Others v. Greece*. Greek officials conceded that little had changed since the ruling and blamed resistance from the community and its local authorities for the lack of progress. The Ministry agreed to integrate the Roma annex by October of 2008, but again failed to deliver, blaming fierce opposition from the Mayor of Aspropyrgos and the school's Parent Association. As of the 2009-2010 school year, the segregation of Roma schools continues in Psari, Aspropyrgos, and other communities around Greece, despite the Court's 2008 ruling.<sup>147</sup>

As in the case of *D.H. and Others*, the aftermath of *Sampanis and Others v. Greece* is testament to the fact that legal victories in Europe's highest court are often incapable of reversing the trend of discriminatory treatment toward Roma in education. A court's order is only as strong as its enforcement mechanism, and absent external coercion, such as President Eisenhower's mobilization of the National Guard, unpopular decisions are unlikely to be vigorously implemented by recalcitrant governments.

### 3.1.3.3 Oršuš and Others v. Croatia

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<sup>147</sup> Dimitras, Panayote. "Greece's Non-Implementation of International (Quasi-) Judicial Decisions." Roma Rights Journal No.1. 2010.

The most recent ECtHR case dealing with differential treatment toward Roma in education was *Oršuš and Others v. Croatia*, decided on 16 March 2010.<sup>148</sup> *Oršuš and Others* was brought on the behalf of fourteen Roma applicants from villages in Croatia. The plaintiffs claimed that they had been relegated to separate and inferior classes because of purported language difficulties. Despite the fact that Roma children constituted 18% of Croatia's primary school students at the time, nearly 60% were placed in Roma-only classes across the country. In some regions, the percentage reached an astounding 88.49%.<sup>149</sup>

The applicants maintained that the curriculum in the Roma-only classes was inferior to that of regular classes, resulting in a lower standard of education. Furthermore, they alleged that their placement into separate classes was purely motivated by racial biases that reflected anti-Roma sentiment among non-Roma members of the community. A subsequent psychological report determined that the segregation inflicted lasting emotional and psychological harm on the children.

Reversing a unanimous Chamber judgment, the ECtHR's Grand Chamber ruled in favor of the Roma applicants, finding that their placement into segregated classes prefaced on language disparities constituted a violation of Article 14's prohibition of discrimination because this practice disproportionately affected members of a specific ethnic group. In their analysis, the Court stressed the need to afford special protection to

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<sup>148</sup> *Id.*, *Oršuš and Others v. Croatia*.

<sup>149</sup> Memedov, Idaver. "European Court Denounces Segregated Education Again: *Oršuš and Others v. Croatia*." Roma Rights Journal No. 1. 2010. P. 76.

Roma, who constitute a particularly vulnerable section of society, and especially in the case of minors, “for whom the right to education [is] of paramount importance.”<sup>150</sup>

Much like the NAACP in the lead up to *Brown*, the European Roma Rights Center and other Roma advocacy organizations are seeking to eradicate discrimination in education through litigation. On the one hand, the recent political and judicial attention to this critical issue is a positive sign, demonstrating that addressing racially discriminatory policies in education is high on the agenda of the international community. On the other hand, it appears that Europe has not learned from the United States’ lesson in desegregation. Even with the backing of the federal government, who forcefully intervened in state and local affairs in order to execute the Supreme Court’s direct orders to desegregate schools, efforts to eliminate segregation ultimately failed. Faced with far weaker enforcement mechanisms, European states will likely continue to deprive Roma children access to quality education.

### ***3.2 Domestic Law and Policies***

Hungary’s domestic law reflects international legal norms in many respects. The right to receive an education is prominently enshrined in the Constitution, and the Race Equality Directive effectively transposed anti-discrimination provisions into law via the Equal Treatment Act, which prohibits direct and indirect discrimination in education.

#### **3.2.1 The Right to Education**

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<sup>150</sup> Id., *Oršuš and Others v. Croatia* at Para. 155.

Unlike the United States, the right to education is explicitly enumerated in the Hungarian Constitution.<sup>151</sup> Article 16's guarantee to "protects the interests of youth" via "education and training" complements Article 67, in which the state claims responsibility for children's "physical, mental, and moral development." Furthermore, this provision stipulates that parents have "the right to choose the form of education given to their children."<sup>152</sup> With particular regard to minorities, the Constitution links the right to culture with the right to education "through free and compulsory eighth-grade education...moreover through financial assistance for those in school"<sup>153</sup> as well as the right to "receive school instruction in their mother tongue."<sup>154</sup> These substantive rights are comprehensively guaranteed without discrimination on any grounds,<sup>155</sup> and are to be implemented "through measures that create fair opportunities for all."<sup>156</sup>

### 3.2.1.1 Public Education Act

The Hungarian Act LXXIX of 1993 on Public Education is one such measure. Enacted by Parliament "for the purpose of providing the opportunity to exercise the right for education based on equal opportunities,"<sup>157</sup> this Act extends to those educational institutions that fall under the scope of compulsory-aged education.<sup>158</sup> Included in the

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<sup>151</sup> Article 16 of Act XX of 1949 on the Constitution of the Republic of Hungary entails the state's guarantee to "pay special attention to the secure existence, education and training of young people and protects the interests of youth."

<sup>152</sup> *Id.*, at Article 67(2).

<sup>153</sup> *Id.*, at Article 70/F(2).

<sup>154</sup> *Id.*, at Article 68(2).

<sup>155</sup> *Id.*, at Article 70/A(1).

<sup>156</sup> *Id.*, at Article 70/A(3).

<sup>157</sup> Act. No. LXXIX of 1993 on Public Education.

<sup>158</sup> An amendment to the Public Education Act in 1996 extended the compulsory education in Hungary from 16 (Art. 6(6)) to age 18.

Basic Principles of the text are guarantees that “everyone may receive education and teaching at the institutions of public education”<sup>159</sup> and that this responsibility falls to the state.<sup>160</sup>

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<sup>159</sup> Id., Act on Public Education at Article 2(2).

<sup>160</sup> Id., Article 2(3).

### 3.2.1.2 Equal Treatment Act

Drafted in accordance with the European Union's 2000 Race Equality Directive, Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (Equal Treatment Act) contains amendments to the Act on Public Education and incorporates anti-discrimination provisions. The Equal Treatment Act includes provisions on school segregation, stating that a violation of equal treatment has occurred if children are unlawfully segregated in an educational institution or within a class as a separate division.

The Act also provides for the creation of an Equal Treatment Authority, a supervisory body vested with the power to investigate instances of discrimination in a variety of circumstances, including education. Claims of discrimination may be invoked under a broad spectrum of grounds, racial and ethnic origin among them. While the Authority's competencies include imposition of sanctions upon those found guilty of discrimination<sup>161</sup>, the Concluding Observations of the Universal Periodic Review (UPR)<sup>162</sup> voiced concern over the inadequate allocation of funds and human resources to effectively carry out their mandate.<sup>163</sup> Furthermore, a subsequently enacted Decree<sup>164</sup>

<sup>161</sup> Id., Chance for Integration, P. 208-209

<sup>162</sup> The UPR is a peer review mechanism established by the United Nations Human Rights Council by resolution 60/251, whereby a randomly selected troika evaluates member states. Additionally, civil society representatives may contribute submissions to the Human Rights Council for consideration in the UPR review.

<sup>162</sup> Submission to the UN Universal Periodic Review, 11<sup>th</sup> session of the UPR Working Group of the Human Rights Council. Section 2.3. November 2010. Contributions by: Chance for Children Foundation, European Roma Rights Center, Hungarian Civil Liberties Union, Hungarian Helsinki Committee, et al. 29 November, 2010. <<http://www.errc.org/cikk.php?cikk=3791>>.

<sup>163</sup> Human Rights Committee Concluding Observations from the 100<sup>th</sup> Session. 25 October 2010. Section C(8). 29 November 2010. <<http://www2.ohchr.org/english/bodies/hrc/hrcs100.htm>>.

permits the Prime Minister to discharge the President of the Equal Treatment Authority of his duties and position without justification.<sup>165</sup> The Human Rights Council responded that this potential for arbitrary dismissal should be replaced by a tenure guarantee so as to ensure the independence of the President.

Leading up to Hungary's appraisal by the UPR, a cohort of NGOs provided a comprehensive assessment of Hungary's human rights record with accompanying recommendations. With regards to equality and non-discrimination provisions in Hungary's domestic law, their submission highlighted an absence of legislation requiring inclusive education. They continue by voicing concern over "the lack of special training for teachers and the low level of social awareness [that] hinder the spread of inclusive education,"<sup>166</sup> which in practice counterbalances the strides made by the Equal Treatment Act and Public Education Act in banning segregation. To compensate for what they perceived to be inadequate legal safeguards, the cohort recommended "the enactment in national legislation of an enforceable statutory duty to desegregate education requiring public authorities to take action to eliminate segregated education within a fixed period of time."<sup>167</sup>

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<sup>164</sup> Government Decree No. 362/2004 on the Equal Treatment Authority and the Rules of its Procedure. (XII.26).

<sup>165</sup> Id., Equal Treatment Act.

<sup>166</sup> Id., Submission to the UN Universal Periodic Review.

<sup>167</sup> Id., UPR Submission at Annex 1. Pg. 11.

### 3.2.2 Decade of Roma Inclusion

In 2003 the regional conference “Roma People in an Enlarging Europe: Challenges of the Future” was held in Budapest with the hopes of increasing Roma participation in formulating Roma policies throughout Central and Eastern Europe. Sponsored by the Open Society Institute, the European Union, and the World Bank, the conference brought together Roma community leaders, civil society organizations, and high-level government officials from the region to discuss discrimination, education, employment, housing, and health.<sup>168</sup> What resulted was an unparalleled commitment by twelve governments<sup>169</sup> to promote the successful social integration of into mainstream society, an initiative known as the Decade of Roma Inclusion. Each participating country has established its own National Action Plan to meet the objectives of the Decade, which spans from 2005-2015.

Hungary’s Strategic Plan “aims at creating proper conditions for the social and economic integration of the Roma population, improving their living conditions, bettering the access of Roma people to public services, as well as closing up – and on the long run eliminating – the gap that has opened between the living conditions of Roma and non-Roma people.”<sup>170</sup> With respect to access to education, desegregating public educational institutions, expanding the scope of integrated education, and increasing the qualification

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<sup>168</sup> Open Society Foundations. "Governments Endorse “Decade of Roma Inclusion”." Press release. 8 July 2003. 29 Nov. 2010  
<[http://www.soros.org/initiatives/roma/news/decade\\_20030708](http://www.soros.org/initiatives/roma/news/decade_20030708)>.

<sup>169</sup> The twelve governments participating include: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Hungary, Macedonia, Montenegro, Romania, Serbia, Slovakia, and Spain.

<sup>170</sup> Hungary’s Decade of Roma Inclusion Action Plan. Parliamentary Resolution 68/2007 (VI.28.). 29 November 2010. Available in English at  
<[http://www.romadecade.org/decade\\_action\\_plans](http://www.romadecade.org/decade_action_plans)>.

level of Roma are targeted as priority areas. More specifically, preventing and dismantling existing segregation in education would require integration preparation programs, disseminating information on integrated pedagogic culture, offering learning materials on minority culture in public schools, and reviewing the efficacy of “ghetto schools.”<sup>171</sup>

Hungary’s Strategic Plan clearly states that reducing racial segregation in schools, with the aim of completely eradicating the practice altogether in the long run, is the country’s foremost priority, and yet the Decade is already half over and precious little has changed in schools across Hungary. Some small strides have been made where private organizations have successfully brought cases to Hungarian courts; however, these legal victories have typically resulted in the provision of limited monetary damages to the plaintiffs, and done little to effect change on the ground.

### ***3.3 Domestic Litigation***

Litigation challenging the unequal treatment of Roma in education has been a recent phenomenon pioneered by a select few non-profit organizations in Hungary. Only in 2004 did a Hungarian court declare, for the first time, that school segregation is unlawful. The case was brought by the Legal Defense Bureau for National and Ethnic Minorities (NEKI) and the European Roma Rights Center as part of a greater strategic litigation campaign aiming to dismantle segregated schooling in Hungary.

The ruling of the Budapest Metropolitan City Court of Appeals upheld a first instance court judgment concluding that local authorities at a primary school in

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<sup>171</sup> Id., Decade Action Plan at P. 5.

Tiszatarján had violated the Public Education Act by placing nine Roma students into a segregated class with an inferior curriculum, absent any expert evaluation deeming them mentally disabled. The school psychologist had made the decision to place them into a special remedial class, which was taught by an unqualified teacher. In assessing the harm done to the plaintiffs, the Court emphasized that undermining their education stunted their development by inflicting psychological harm and depriving them of future employment opportunities. Further, the Court singled out the school supervisors in Tiszatarján and Hejőkürt as being guilty of major negligence for failing to operate the school in accordance with the law. As a penalty, the Court ordered the primary school and both local governments to pay the nine families a total of 3,650,000 HUF.

The decision *Chance For Children Fund v. Town of Hajdúhadház*<sup>172</sup> was filed by the Chance for Children Foundation (CFCF) and litigated with the legal counsel of the Public Interest Law Institute's (PILI). This case is noteworthy in that it marked the first time that a Hungarian court compensated victims of racial segregation. In June of 2010, the Supreme Court awarded damages in the amount of 100,000 HUF (approximately \$450 USD) to five Roma children who had been placed in segregated classes in a Miskolc primary school. According to the PILI, their strategy was to build upon a previous decision of the Appeals Court of Debrecen,<sup>173</sup> which declared that the city violated the Equal Treatment Act's<sup>174</sup> provisions concerning segregated education.<sup>175</sup>

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<sup>172</sup> *Chance for Children Fund v. Town of Hajdúhadház*, Legfelsőbb Bírószág (Supreme Court) [Pvf.IV. 20. 936/2008/4 (Hungary 2008)].

<sup>173</sup> See also: European Roma Rights Center. "Legal Victory in Hungary Roma School Segregation Case." Press release. 18 May 2007. 29 Nov. 2010 <<http://www.errc.org/cikk.php?cikk=2777>>.

<sup>174</sup> Id., Equal Treatment Act.

Negotiations concerning the design and execution of a desegregation plan ensued following the Court decision, with CFCF taking an active role in seeking funding to implement the proposal. Speaking to the potential for change in Hajdúhadház, András Ujlaky, President of CFCF, openly acknowledged, “[We] agreed...to prepare a long term desegregation and school improvement plan for the town and applied for funds... Hajdúhadház, of course, will never have the funds to fulfill the plan, but we would undertake to help them fundraise from other sources subject they cooperate <sic> in planning.”<sup>176</sup>

In a manner reminiscent of the NAACP litigation strategies of the 1940s and 1950s, non-profit organizations in Hungary have been increasingly turning to the courts to fight the battle for quality education for Roma. Hungarian courts have admonished school boards for violating the equality guarantees in the Public Education and Equal Treatment Acts and awarded compensation to victims of segregation. As groundbreaking as these decisions have, the overall effect has been limited; no Hungarian court has yet gone so far as to order the immediate desegregation of schools, nor provide a timetable for integration. Hungary still lacks a *Brown v. Board*, much to the vexation of human rights groups.

Indeed, even if a Hungarian high court were to order the integration of Roma schools, Hungary does not appear willing or ready to enforce a comprehensive and expeditious desegregation order: such an order is likely to be detrimental to the cause.

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<sup>175</sup> Public Interest Law Institute. "Supreme Court Victory for Segregated Roma Children in Miskolc, Hungary." Press release. 22 June 2010. 29 Nov. 2010  
<[http://www.pili.org/index.php?option=com\\_content&task=view&id=40306&Itemid=93](http://www.pili.org/index.php?option=com_content&task=view&id=40306&Itemid=93)>.

<sup>176</sup> Id., "Report on Roma Education Today: From Slavery to Segregation and Beyond" at P. 957.

Hungarian society has not demonstrated an inclination to integrate schools. On the contrary, orders by the Ombudsman and other courts have been met with resistance virtually every step of the way.<sup>177</sup> Lack of enforcement could result in serious setbacks for reform minded activists: the moment local actors realize that they may violate desegregation orders without facing serious repercussions, existing law is rendered meaningless.

Further, holding desegregation synonymous with access to education conflates two related, but ultimately separate issues. Even in “successful” circumstances like the Szeged desegregation initiative, the resulting measures have had minimal overall impact due to the extremely low number of Roma being integrated.<sup>178</sup> Indeed, just as notions of what suffices as desegregation proved a major hindrance to desegregation efforts in the United States; definitional uncertainties will likely increase as more litigation pours into Hungarian courts.

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<sup>177</sup> Molnar, Emilia, and Csaba Dupcsik. Country Report on Education: Hungary. EDUMIGROM Background Papers. Budapest: Central European University, Center for Policy Studies, 2008. P. 22.

<sup>178</sup> Id., "Report on Roma Education Today: From Slavery to Segregation and Beyond" at P. 957. The desegregation that began in 2007 with the assistance of the Roma Education Fund remains capped at two Roma per class.

## CHAPTER 4: STRATEGIES AND RECOMMENDATIONS FOR INCREASING ACCESS TO QUALITY EDUCATION

Access to education for Hungarian Roma is a hot topic among human rights activists and continues to grow in prominence internationally. The segregation of Roma is pervasive throughout Central and Eastern Europe, to the extent that the issue is beginning to surface with increasing frequency on the agendas of the European Union, Council of Europe, and United Nations, among others. Much like the *de jure* segregation that existed in the United States prior to the landmark *Brown v. Board of Education* decision, involuntary racial segregation is vilified by Roma Rights activists, NGOs, and other members of the international community, whose sentiment is most adequately reflected in a statement by the European Parliament calling on Member States to “move forward with desegregation programs within a predetermined period of time...thus ensuring free access to quality education for Roma children.”<sup>179</sup>

Prior to *Brown v. Board of Education*, the prevailing attitude of Civil Rights leaders and organizations in the United States was that the only way to achieve equality in education and bridge the achievement gap between African Americans and whites was to dismantle segregation and integrate schools, rejecting the long-standing legal principle that separate schooling could be equal. Similarly, the push in Hungary for integrating Roma into mainstream schools is supported by research demonstrating that Roma schoolchildren accumulate advantages when placed in an integrated classroom

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<sup>179</sup> European Parliament Resolution on the Situation of the Roma in the European Union. Section 15. 28 April 2005. 29 November 2010. <<http://www.romadecade.org/5091>>.

environment.<sup>180</sup> This finding lies in stark contrast to the limited opportunities of their peers who are made to suffer from the inferior standards of Roma-only schools.<sup>181</sup>

It is clear that just as integrated education came to be conflated with the desire for increased access to quality education in the United States, so has it been transformed into a panacea for all of Europe's ills in the area of educational access. The general consensus among activists and monitoring bodies is that the best way to remedy the educational inequities is by dismantling dual systems of education that relegate Roma students to inferior classes, curriculums, and instruction.<sup>182</sup> However, considering the multitudinous ways in which this discrimination is manifested, eliminating segregation seems a nearly impossible feat.

While segregation of Roma in Hungary and the de jure segregation that existed in the United States prior to the *Brown* decision are rooted in different historical circumstance and manifest differently in practice, the goal of activists are essentially the same. Both are committed to the realization of social equality through improved access to equal educational opportunities. Furthermore, both groups of advocates faced deeply

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<sup>180</sup> Kertesi, Gábor, and Gábor Kézdi. "Segregation in the Primary School System in Hungary: Causes and Consequences." *Közgazdasági Szemle* Vol. 52 No. 4 and 5. 2005. P. 1-4.

<sup>181</sup> Id., Equal Access to Quality Education for Roma at P. 210.

<sup>182</sup> Id., Equal Access to Quality Education for Roma at P. 190-193; See also: The mission of the Roma Education Fund "is to contribute to closing the gap in educational outcomes between Roma and non-Roma, including through desegregation of educational systems in Central and Eastern Europe and the countries that have formally joined the Decade for Roma Inclusion." 29 November 2010. <  
[http://romaeducationfund.hu/index.php?RomaEduF\\_=a3c37545bec8478c3d31650887051c09&menu\\_grp=1&id=4](http://romaeducationfund.hu/index.php?RomaEduF_=a3c37545bec8478c3d31650887051c09&menu_grp=1&id=4)>; Equal Treatment Act at Para. 50, stating its objectives: "to ensure that segregated pupils are mainstreamed without delay...to provide effective incentives for integrated education...to enforce the prohibition of segregation."

entrenched systems of involuntary segregation, where the disadvantaged minority group was physically separated into substandard educational facilities.

This, however, is where the United States and Hungary's path diverge. With the holding in *Brown v. Board*, de jure segregation was deemed immediately and incontrovertibly unconstitutional, triggering a secondary campaign of litigation to enforce and interpret the courts edict. What followed were decades of lawsuits in the pursuit of integration. This drawn out process of reform and litigation probed at the underlying nature of segregation as well as the extent of local actors' duties. Ironically, the result of a half-century of near constant litigation was the resegregation of schools across America, condoned by the courts through apparent indifference.

Consequently, the public debate in the U.S. has since shifted to what commentators have coined "the achievement gap," the broad range of standardized test scores that reflect disparities in the educational achievement between African Americans and Latinos on the one hand, and whites on the other.<sup>183</sup> It is no coincidence that achievement gaps follow racial lines and socio-economic patterns. Rather than fixating on the segregation component, however, American education reformers are striving to bring quality education to low-income neighborhoods by increasing the quality of teaching and experimenting in curriculum and school structure. In doing so, the United States is witnessing a successful, sustainable model of education reform that is not predicated on integrating schools. All children are entitled to receive a quality education, and limiting ourselves by demanding reform that can only be achieved through

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<sup>183</sup> See e.g. Meier, Deborah. In Schools We Trust: Creating Communities of Learning in an Era of Testing and Standardization. Boston: Beacon P, 2002.

desegregation is likely to hamper our efforts and distract us from the actual goal of providing each and every child with a quality education.

Throughout Hungary, pervasive involuntary racial segregation is a manifestation of deeply entrenched issues of racial discrimination, poverty, and social exclusion. If educational reformers in Hungary are to effect positive change by providing Roma children with access to quality education, they would be wise to learn from the United States' costly lesson in desegregation. In the end, it was not the racial composition of a classroom that guaranteed or denied students a quality education, but providing high-caliber learning opportunities to poor children, regardless of its racial composition.

Increasing access to quality education for Roma cannot occur in the courtroom, or through aspirational policy proclamations that do little to enforce integration. Access to quality education will only happen through academic environment conducive to nurturing every student's potential, whether that environment is segregated or not.

## CONCLUSION

The American conscience, which was once narrowly focused on eliminating de jure segregation, has shifted its attention to the educational inequalities stemming from de facto segregation and broader issues of concentrated poverty. Desegregation has faded from the public eye, and is no longer part of the United States' agenda for educational reform. As the U.S. abandons integration for a more practical and efficacious strategy, advocates for Roma rights and increased educational access within Hungary are in danger of missing the hard-won lessons of fifty years of American struggle and flux. Integration is a vital part of a long-term strategy for Hungarian reform, but a single-minded focus on what currently remains an unlikely enterprise undermines the separate and more pressing goal of improving Roma access to quality education.

Rather than focusing efforts on the treacherous and ultimately unfruitful goal of legal integration, Roma advocates would be better served by a more immediate and practical approach to reform. Meeting the challenge of improving access to quality education requires realigning our strategy from legal advocacy to innovative education reform, ensuring that children from low-income neighborhoods and marginalized racial groups are able to attend excellent schools and receive instruction from highly qualified teachers regardless of the composition of their classroom.

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