

## Book Reviews

### The Failings of Education Reform and the Promise of Integration

FIVE MILES AWAY, A WORLD APART: ONE CITY, TWO SCHOOLS, AND THE STORY OF EDUCATIONAL OPPORTUNITY IN MODERN AMERICA. By James E. Ryan. New York, New York: Oxford University Press, 2010. 384 pages. \$29.95.

Reviewed by Wendy Parker\*

#### Introduction

In *Five Miles Away, A World Apart*, Professor James E. Ryan issues a wake-up call on school segregation. He blames the persistence of segregation on our allowing white and middle-class parents to self-segregate in suburban school districts. Past and recent reform efforts—school desegregation, school finance, school choice, and even No Child Left Behind (NCLB)<sup>1</sup>—in the end have all protected the ability of middle-class whites to escape to largely autonomous suburban schools with little connection to urban schools.<sup>2</sup> Meanwhile, urban schools—close in physical proximity, but distinct in their inequality—are “a world apart.”

Ryan’s alarm bell to that wake-up call is as old as *Brown v. Board of Education*<sup>3</sup> (*Brown I*): “Separate [schools] are inherently unequal.”<sup>4</sup> Since the early 1970s, our country has tried to avoid the inequality of that separation by spending more money. Ryan first associates this approach with President Richard Nixon,<sup>5</sup> but it is equally applicable to President Barack Obama.<sup>6</sup> Money will not solve the problem of failing schools, Ryan contends.<sup>7</sup> Only by putting all schoolchildren together in the same school—

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1. No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (2002) (codified as amended at 20 U.S.C. §§ 6301–8962 (2006)).

2. See *infra* subpart I(A).

3. 347 U.S. 483 (1954).

4. *Id.* at 495.

5. JAMES E. RYAN, FIVE MILES AWAY, A WORLD APART: ONE CITY, TWO SCHOOLS, AND THE STORY OF EDUCATIONAL OPPORTUNITY IN MODERN AMERICA 4–6 (2010).

6. See *infra* notes 10–12 and accompanying text.

7. RYAN, *supra* note 5, at 170.

thereby tying their fates together, Ryan argues—will our country be able to improve educational outcomes and educational equality for all children.<sup>8</sup>

This is an important lesson for those interested in improving educational outcomes. To date, nearly all education reform efforts have excused the involvement of suburban schools in addressing the inequities suffered by urban schools. In this sense, Ryan's argument mirrors (from the white perspective) Professor Derrick Bell's interest-convergence theory that "[t]he interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites."<sup>9</sup> If racial progress for blacks occurs only when their interests align with whites, Ryan documents the rarity of that alignment. White and middle-class parents generally want separate, autonomous schools, and they have largely succeeded in preserving that condition. Ryan is also right that the inequality of school separation cannot be cured with more money. Part I of this Review considers this portion of Ryan's book, first by examining the past forty years of education and reform, and second by demonstrating the connection between excellence and integration.

The next questions for Ryan are important and difficult: Who is to heed the wake-up call on the continued problem of segregation, and how should they respond? As a candidate, President Obama recognized the inherent inequality of separation.<sup>10</sup> As President, however, he has been fairly silent on the need for integration, and his Department of Education has had little to say or do in promoting diversity.<sup>11</sup> Instead, his Race to the Top program promises more money for other reforms, none of which concern increasing integration.<sup>12</sup> Ryan's wake-up call is issued partly to policy makers

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8. See *id.* at 272 ("If poor and minority students remain separated from middle-income white students, there is every reason to believe that the former will continue to be shortchanged in countless ways, large and small, direct and indirect.").

9. Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980); see *infra* section I(A)(5).

10. Barack Obama, Democratic Presidential Candidate, Speech at the Constitution Center, Phila., Pa.: A More Perfect Union (Mar. 18, 2008), available at <http://www.npr.org/templates/story/story.php?storyId=88478467>.

11. See Erica Frankenberg & Genevieve Siegel-Hawley, *Choosing Diversity: School Choice and Racial Integration in the Age of Obama*, 6 STAN. J. C.R. & C.L. 219, 247 (2010) ("Little has been done to promote other forms of school choice like magnets, voluntary integration plans, and inter-district transfers, which help enhance diversity.").

12. See Press Release, U.S. Dep't of Educ., President Obama, U.S. Secretary of Education Duncan Announce National Competition to Advance School Reform (July 24, 2009), available at <http://www.ed.gov/news/pressreleases/2009/07/07242009.html> (announcing Race to the Top, a \$4.35 billion competitive grant rewarding effective reforms in the areas of standardized assessment, teacher development, student performance metrics, and the improvement of low-performing schools). See generally American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, §§ 14005–14006, 123 Stat. 115, 282–84 (authorizing the disbursement of grants on the basis of the Race to the Top criteria, and making no mention of integration as a goal of Race to the Top). Indeed, Race to the Top's promotion of charter schools likely runs counter to integration. See Olatunde C.A. Johnson, Essay, *Stimulus and Civil Rights*, 111 COLUM. L. REV. 154, 179 (2011) (noting that Race to the Top encourages charter schools but does not restrict enrollment

(although not to anyone by name) to recognize why reform should no longer perpetuate the inherent inequality of separation.

Ryan's wake-up call, however, is primarily issued to white and middle-class parents to value and accept integration in making their educational choices. To encourage this practice, Ryan makes two points. Ryan first argues that integration of schools, including integration by economic status, will not harm middle-class students' academic achievement and could actually benefit them socially.<sup>13</sup> The benefit for poor children in attending middle-class schools is well documented in the social science research, Ryan demonstrates, and that benefit cannot be replicated by other reforms, including additional money.<sup>14</sup> Yet, the same research also amply demonstrates that middle-class students do not (to use Stephen Colbert's phrase) "get poor all over them."<sup>15</sup> Their academic success continues so long as the school retains its overall middle-class status. In this respect, Ryan is asking middle-class parents to value diversity in education for their children while revealing that their choice to do so comes with possible social benefits and no academic harm.

Second, Ryan advocates giving parents more choice to achieve the needed integration—the "carrot" side of his proposal. Quite ambitiously, he proposes that any resident of an urban or poor suburban school district be able to choose any school within the school district—private or public.<sup>16</sup> He is asking us to rethink how we envision parents choosing schools. No longer will school choice be a function of purchasing a house or paying private-school tuition—the primary means of school choice for the affluent. Given the current fascination with choice by parents and policy makers, including the Obama Administration,<sup>17</sup> Ryan's call for increased choice has political legs. It cannot be dismissed out of hand despite its radical restructuring of student assignment.

While I agree with Ryan's first point that economic integration in principle is a win-win for all students and our society, Part II of this Review

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demographics). President Obama's blueprint for the 2011 reauthorization of NCLB mentions the value of diversity in eradicating the persistent racial achievement gap, but only in passing. See U.S. DEP'T OF EDUC., A BLUEPRINT FOR REFORM: THE REAUTHORIZATION OF THE ELEMENTARY AND SECONDARY EDUCATION ACT 38 (2010), available at <http://www2.ed.gov/policy/elsec/leg/blueprint/blueprint.pdf> ("Priority [for grants] will also be given to programs that increase diversity in the schools served by the program.").

13. RYAN, *supra* note 5, at 164–69, 279, 294–95.

14. *Id.* at 169–70.

15. *The Colbert Report: The Word—Disintegration* (Comedy Central television broadcast Jan. 11, 2011), available at <http://www.colbertnation.com/the-colbert-report-videos/371414/january-18-2011/the-word--disintegration>.

16. RYAN, *supra* note 5, at 286–91; see also *infra* section II(A)(1).

17. See Laura Meckler & Stephanie Banchemo, *Obama Unveils Education Plan*, WSJ.COM (Sept. 23, 2011), <http://online.wsj.com/article/SB10001424053111903703604576588762965545284.html> (discussing Obama's plan for reforming No Child Left Behind and indicating that, "among other things" the reforms would "ma[k]e it easier for charter schools to open").

questions Ryan's reliance on parental choice to achieve integration. For example, Ryan promotes vouchers (in various amounts) for private schools for all city residents, in part to increase affluent parental involvement in public schools.<sup>18</sup> Unlike Ryan, I believe that vouchers would not promote more parental engagement with public schools for the benefit of public schools.<sup>19</sup> Instead, parents receiving the vouchers would be invested in the public school system only to the extent necessary to protect their vouchers and their private schools.

More fundamentally, I disagree with Ryan's contention that we can expect many parents to make the necessary choices to achieve integration.<sup>20</sup> Some parents certainly will make that choice. Yet, the whole point of Ryan's treatment of past reform efforts is to emphasize the commitment of white and middle-class parents to suburban autonomy and separation. Ryan documents past examples of parents making choices for integration, and he contends more parents can and will make similar choices in the near future.<sup>21</sup> Ryan argues that white and middle-class parents will face increasing difficulty in choosing segregation because of current demographic changes that are making our cities slightly more white and wealthy and making our suburbs more economically and racially diverse.<sup>22</sup> He also believes that as values shift toward integration, future parents will be more willing to choose integration than were their parents.<sup>23</sup>

Our increasingly pluralistic society will certainly make self-segregation of white and middle-class parents more challenging. Yet, these demographic trends in population and housing patterns are far from new, and the evidence today overwhelmingly indicates that our schools are becoming more segregated, not less.<sup>24</sup> School integration peaked in 1988 and has consistently declined ever since,<sup>25</sup> despite demographic trends that should point us toward more school integration.<sup>26</sup> While suburban school *districts* are becoming more diverse, their individual *schools* remain highly segregated.<sup>27</sup> White and minority students continue to be highly segregated.<sup>28</sup>

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18. RYAN, *supra* note 5, at 288–89.

19. *See infra* subpart II(C).

20. *See infra* subparts II(B)–(C).

21. RYAN, *supra* note 5, at 293–95.

22. *Id.* at 281–85.

23. *Id.* at 292–93.

24. GARY ORFIELD & CHUNGMEI LEE, BROWN AT 50: KING'S DREAM OR PLESSY'S NIGHTMARE? 2–4, 16–21 (2004), available at <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/brown-at-50-king2019s-dream-or-plessy2019s-nightmare/orfield-brown-50-2004.pdf>.

25. *Id.* at 19.

26. *Id.* at 4.

27. *Id.* at 34.

28. *Id.* at 16–17.

Most troubling, today's resegregation is also due in part to choice. As courts have released school districts from mandatory school-desegregation orders, school districts, reacting in large part to pressure from parents, have instituted new plans with more choice.<sup>29</sup> In response, most white and middle-class parents choose their nearby white and middle-class schools.<sup>30</sup> Even the district Ryan promotes as a model of white parents buying in to the value of integration, Charlotte-Mecklenburg County, has become increasingly segregated as the school district, released from court order, has offered parents more choice.<sup>31</sup> White parents have had a lot of experience with school integration (more than Ryan recognizes), and their commitment to integration is, at best, weak. Tomorrow's parents may be more open to valuing integration, but that has generally been true since *Brown I*. Yet, the trend is in the opposite direction of what Ryan predicts. Schools are becoming more segregated, not less. Tomorrow's parents would need to be profoundly different from today's parents to overcome the current trend of resegregation and instead produce significant integration.

Ryan would respond that more choice is needed to produce the desired integration, but I am doubtful. Parents today do what parents have always done. When they choose a school for their child, they are making an individual choice about what is best for their child, not about what is best for society. The choice is too personal for most persons to think about the needs of society at large, even the most pressing needs of high-poverty schools that Ryan so aptly documents. Further, the evidence strongly suggests that most parents today give more personal importance to values other than integration.<sup>32</sup> Few parents associate academic excellence with the presence (even if minimal) of poor children. Instead, they equate academic excellence with where their friends send their children and where the students largely mirror their own children.

In the end, Ryan shifts too much responsibility onto parents to effectuate integration when he assumes they will value the common good (the need to integrate schools) in making individual choices (where their children attend school). Integration is good, but choice, unfortunately, will not get us there—at least not yet. Maybe Ryan is foreseeing a future I cannot imagine today, but one just around the corner. I hope he is right. His ideas deserve not only to be right but to be realized for the good of all children.

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29. GARY ORFIELD & CHUNGMEI LEE, RACIAL TRANSFORMATION AND THE CHANGING NATURE OF SEGREGATION 31–36 (2006), available at <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/racial-transformation-and-the-changing-nature-of-segregation/orfield-racial-transformation-2006.pdf>.

30. See *infra* subpart II(C).

31. See ORFIELD & LEE, *supra* note 29, at 33–36; *infra* notes 174–87 and accompanying text.

32. See *infra* subparts II(B)–(C).

## I. The Pattern of Inequality

Ryan begins his book at two high schools in Richmond, Virginia. His choice of schools is important. Ryan is not comparing two extremes; he is not documenting the very worst or the very best schools.<sup>33</sup> Instead he is choosing two fairly typical schools that most of us can easily imagine existing throughout the United States.

The schools are separated by a mere ten-minute drive but also by the all-important school-district boundary line. One school is suburban, primarily white, and middle-class; most students attend college upon graduation from high school.<sup>34</sup> Its average SAT score is 1656.<sup>35</sup> Each student is given a laptop computer.<sup>36</sup> The other school, situated in the heart of Richmond, is predominately minority and poor,<sup>37</sup> and the college attendance rate is lower.<sup>38</sup> Its average SAT score is 1306.<sup>39</sup> The students start their day with metal detectors.<sup>40</sup>

With close examination, Ryan reveals that the schools are both similar and different in ways that are not readily apparent. Both schools have similar graduation rates, committed teachers and principals, and perform fairly well on Virginia's reading and math tests.<sup>41</sup> The differences are, however, more significant than the similarities. While the city school spends more of its energy and time preparing for end-of-year tests,<sup>42</sup> the suburban school is the school with higher scores.<sup>43</sup> Critically, the city school actually receives *more* funding than the suburban school—\$4,000 more per pupil, 57% more than the suburban school.<sup>44</sup>

Ryan returns to these two schools throughout his book to illustrate the reality of the past forty years of educational reform: Educational reformers

33. Ryan specifically distinguishes his work from that of Jonathan Kozol, which is important for its focus on extremely poor schools. RYAN, *supra* note 5, at 4. See generally JONATHAN KOZOL, *SAVAGE INEQUALITIES: CHILDREN IN AMERICA'S SCHOOLS* (1991) (documenting stark disparities between urban and suburban schools).

34. RYAN, *supra* note 5, at 1–2. The school has some aspects of diversity; it is 73% white, 13% African-American, 7% Latino, and 6% Asian. *Id.* at 1.

35. *Id.* at 255. This is above the statewide average. *Id.*

36. *Id.* at 163.

37. *Id.* at 2. Specifically, the school is 82% African-American, 16% white, and 2% Asian or Latino. *Id.*

38. *Id.* at 256.

39. *Id.* at 255. This is below the statewide average. *Id.*

40. *Id.* at 2.

41. *Id.* at 254–55.

42. *Id.* at 239–40.

43. *Id.* at 254–55; see also Charles R. Lawrence III, *Who Is the Child Left Behind?: The Racial Meaning of the New School Reform*, 39 *SUFFOLK U. L. REV.* 699, 712–13 (2006) (“Not only do we teach children in different schools, . . . we also *teach* them differently. . . . We have different expectations, aspirations, and goals.”).

44. See RYAN, *supra* note 5, at 160 (explaining that Richmond spends roughly \$11,000 per student, and Henrico spends roughly \$7,000).

have tried to save city schools with reforms guaranteed to fail because each reform attempt has accepted and validated the separation and autonomy of suburban school districts.<sup>45</sup> In sparing the suburbs, past educational reforms have guaranteed failure. From this past, Ryan argues persuasively that more money or tests will not equalize opportunity or help most failing schools. Instead, integration is a necessary predicate for educational equality and success. The remainder of this part details and critiques this portion of Ryan's book.

A. "Sav[ing] the Cities, [but] Spar[ing] the Suburbs"<sup>46</sup>

One theme running throughout the book is that educational reform aims to "save the cities"—mainly through additional funding, but also through choice, testing, and accountability—but spares the suburbs from the effects of reform. Ryan identifies this as beginning with President Richard Nixon in a televised speech in March 1972.<sup>47</sup> Nixon proposed that city schools be improved with an infusion of extra funding but with a promise that parents everywhere could send their children to neighborhood schools with no busing or school consolidation.<sup>48</sup> The cities would be saved with more money, but suburbanites would be spared any involvement in saving the cities.

Ryan argues that this compromise has continued for forty years, to the harm of city students. Specifically, in *Milliken v. Bradley (Milliken I)*<sup>49</sup> the Supreme Court spared suburban schools from desegregation;<sup>50</sup> school finance never ended the property-tax system that allows suburban schools to keep their tax dollars; the quest for vouchers, charter schools, and other choice mechanisms was all largely confined to cities; and the standards-and-accountability movement set low goals that had little effect on already-successful suburban schools. Ryan's treatment of these four reform approaches is discussed below.

1. *School Desegregation.*—Ryan starts with school desegregation and focuses on the "fault line of public education"—the school-district line between urban and suburban school districts.<sup>51</sup> The Supreme Court in *Milliken I*, almost twenty years to the day after *Brown I*,<sup>52</sup> ruled that school-district lines deserve protection unless drawn with discriminatory intent,<sup>53</sup>

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45. *Id.* at 5.

46. *Id.* at 119.

47. *Id.* at 4–5.

48. Richard Nixon, President of the U.S., Statement on School Busing (Mar. 16, 1972), *in* N.Y. TIMES, Mar. 17, 1972, at 22.

49. 418 U.S. 717 (1974).

50. *Id.* at 744–45.

51. RYAN, *supra* note 5, at 3.

52. *Id.* at 103.

53. *Milliken I*, 418 U.S. at 744–45.

which the Court made difficult to prove.<sup>54</sup> Ryan argues that the Supreme Court in *Milliken I* gave suburban school districts “a pass from busing plans.”<sup>55</sup> That is, suburban school districts could largely remain separate from their nearby city school districts, and this separation would doom racial integration in cities and their surrounding suburbs. Parents with the financial means could choose to relocate to suburban areas and thereby escape any responsibility for the education of those remaining in the cities.

By the time of *Milliken I*, many whites had already fled urban areas,<sup>56</sup> and without whites from suburbs, the predominately minority urban schools could not achieve racial integration. Ryan also makes the important connection that the separation was not merely racial but economic as well.<sup>57</sup> The separation allowed suburban school districts to keep their autonomy, tax dollars, and hyperinvolved parents.

The Supreme Court, like President Nixon, tried to “save the cities” with the promise of additional money. Two years after *Milliken I*, the Supreme Court held in the second *Milliken v. Bradley (Milliken II)*<sup>58</sup> that the state and school district should be financially responsible for compensatory educational programs in the Detroit school district.<sup>59</sup> This shifted the focus in some school-desegregation litigation to pursuing more money instead of more integration, and, Ryan argues, doomed school desegregation to failure.<sup>60</sup>

2. *School Finance*.—Ryan next turns to school-finance litigation and its difficulties—the problems of demonstrating that money matters, defining equal funding, and actualizing that equal funding. School-finance litigation challenges the way school districts are funded under state constitutions. While one can tally how many state supreme courts have found unconstitutionality (seventeen) versus constitutionality (nineteen),<sup>61</sup> the litigation efforts “defy neat categorization.”<sup>62</sup> Some cases could be defined as “equity”

54. *Id.* at 745. (“[I]t must be shown that racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of interdistrict segregation.”).

55. RYAN, *supra* note 5, at 105.

56. *Id.* at 58–59.

57. *Id.* at 104.

58. 433 U.S. 267 (1977).

59. *See id.* at 282–87 (approving an order to require a state and its school district to fund compensatory education programs for a predominately minority school district); RYAN, *supra* note 5, at 104.

60. RYAN, *supra* note 5, at 108, 121–43. For a thorough analysis and critique of such educational compensatory programs as a school-desegregation remedy, see generally JOSEPH FELDMAN ET AL., *STILL SEPARATE, STILL UNEQUAL: THE LIMITS OF MILLIKEN II'S EDUCATIONAL COMPENSATION REMEDIES* (1994). The authors of *Still Separate, Still Unequal* summarized their findings: “This report shows . . . that the problems were not solved and that the apparent conflict was lessened only by trading away the right of intentionally segregated urban children in exchange for a temporary increase in funding for the school district.” *Id.* at 3.

61. RYAN, *supra* note 5, at 145.

62. *Id.* at 149.

cases in their pursuit of equal funding per student, while others could be defined as “adequacy” cases in their search for funding sufficient for an adequate education. The cases more often, however, have elements of both and ultimately “converge around the goal of rough comparability.”<sup>63</sup>

Legislators have generally responded to judicial findings of inequality by increasing funding to property-poor districts, while limiting the amounts that property-rich districts can raise.<sup>64</sup> Disparities in funding have decreased, but some certainly still exist. Ryan summarizes: “The end result is that school funding systems in just about every state continue to be unequal and strongly influenced by differing levels of property wealth. Whether the funding is adequate, either before or after a suit, is really anyone’s guess.”<sup>65</sup> Property-rich districts still retain access to their collected property taxes with, at most, a limit on how much they can spend.

Ryan’s largest contribution in his analysis of school-finance litigation is his examination of whether money matters. Here, he notes that urban, high-poverty schools still fail academic achievement measures, even though the schools spend *more* than the state average.<sup>66</sup> Some justify the increased expenditures by pointing to the greater educational needs of urban students.<sup>67</sup> Ryan takes a different approach. He argues that increased funding has generally not led to improved performance because school districts do not spend the money efficiently.<sup>68</sup> Ryan faults high-poverty schools and districts for employing too many administrators and choosing poor teachers<sup>69</sup> and for not spending money on maintaining and improving urban school facilities.<sup>70</sup> He argues that the physical state of facilities is important in showing students the value of their education to the community, and the poor state of many urban schools tells students that their education is of little importance.<sup>71</sup>

In addition, Ryan argues that even more money, better spent, will not ensure academic success for high-poverty schools.<sup>72</sup> Money cannot buy what

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63. *Id.* at 150.

64. *Id.* at 153.

65. *Id.*

66. *Id.* at 159.

67. See John Dayton & Anne Dupre, *School Funding Litigation: Who’s Winning the War?*, 57 VAND. L. REV. 2351, 2373–74 (2004) (discussing *Abbott v. Burke*, 575 A.2d 359 (N.J. 1990), where the court found that poorer urban students with the greatest educational needs were getting the least education, thus justifying increased expenditures).

68. RYAN, *supra* note 5 at 158–61.

69. *Id.* at 161–63.

70. *Id.* at 163.

71. *Id.* at 164 (“[T]he shoddy facilities in many urban schools send an implicit but strong message about the value placed on the enterprise of urban education and those who participate in it.”).

72. *Id.* at 164–65. While some high-poverty schools do enjoy a measure of success, it is far from clear that such success is attainable on a large scale. See *id.* at 224 (noting that it is unclear whether the Knowledge is Power Program (KIPP) has the capacity to reach many high-poverty, high-minority schools).

a middle-class enrollment brings to the schoolhouse. It cannot buy a school culture defined by high peer expectations, which have a profound impact on school climate and, thus, on learning.<sup>73</sup> Studies consistently demonstrate a benefit to all students attending a middle-class school and that the presence of poor children does not negatively affect their higher income peers.<sup>74</sup> In addition, middle-class parents typically have the time and skills to be very involved in their children's schooling. Involved parents bring their volunteer time, financial resources, high expectations, and oversight of school personnel.<sup>75</sup> Qualified and experienced teachers are also more likely to teach at low-poverty schools.<sup>76</sup>

Yet, part of Ryan's argument suggests that more money, better spent, would prove useful, but that the amount necessary is not politically feasible. For example, Ryan notes that the amount of additional pay necessary to attract qualified and experienced teachers to poor schools is not politically feasible.<sup>77</sup> He also recognizes the success of the Knowledge Is Power Program (KIPP)<sup>78</sup> charter schools but argues that their success is not replicable on a large scale, partly because of a lack of financial resources.<sup>79</sup>

Ultimately, Ryan faults school-finance-reform advocates for assuming that money can solve the problems associated with high-poverty schools and for accepting the "continued isolation by class and concentrated poverty in urban schools and urban neighborhoods."<sup>80</sup> School finance does nothing to directly address the continued presence of high-poverty schools. Both school desegregation and school-finance litigation did little, in Ryan's view, to alleviate the separation that guarantees inequality.<sup>81</sup>

3. *Choice*.—After school desegregation and school finance, many turned to school choice as the solution. Giving parents the choice of school for their child is not new. Part of "massive resistance" involved giving parents a choice to maintain segregated schools.<sup>82</sup> Choice, by definition,

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73. *Id.* at 165.

74. *See id.* at 165 ("Study after study confirms that the social composition of the student body is more highly related to achievement, independent of a student's own social background, than is any other school factor.").

75. *Id.* at 169–70.

76. *Id.* at 173.

77. *Id.* at 173–74 ("Once we posit that teachers would have to be paid significantly more to teach in urban schools, we bump up against the political reality of funding.").

78. KNOWLEDGE IS POWER PROGRAM, <http://www.kipp.org>.

79. *Id.* at 224–25.

80. *Id.* at 178.

81. *Id.*

82. *See* Davison M. Douglas, *The Rhetoric of Moderation: Desegregating the South During the Decade After Brown*, 89 NW. U. L. REV. 92, 92–93 & n.6 (1994) (describing massive resistance as the denial of the legitimacy of *Brown I* by resisting its implementation); Matthew D. Lassiter & Andrew B. Lewis, *Massive Resistance Revisited: Virginia's White Moderates and the Byrd Organization*, in *THE MODERATES' DILEMMA: MASSIVE RESISTANCE TO SCHOOL DESEGREGATION IN VIRGINIA* 1, 1 (Matthew D. Lassiter & Andrew B. Lewis eds., 1998) (describing massive

however, can promote desegregation. For example, transfer policies and magnet schools have facilitated desegregation.<sup>83</sup>

Ryan makes two important points about choice. First, choice is typically confined within school-district boundary lines, but a true believer in choice would not limit choice so arbitrarily.<sup>84</sup> As a result, city residents have few, if any, choices for a suburban school. A true believer in choice, however, would not limit choice by district lines, an irrelevant matter of geography for choice advocates.

Second, choice has little impact in suburban school districts, where parents are generally satisfied with their schools.<sup>85</sup> That is, most suburban school districts have few magnet or charter schools.<sup>86</sup> As a method of reform, choice has had the largest influence in city and urban school districts, where the satisfaction is lower.<sup>87</sup> Magnet schools, charter schools, and transfer policies are the most common choice mechanisms in cities, with few places offering vouchers.<sup>88</sup> Consequently, choice is an educational-reform movement for the cities with little involvement of the suburbs.

Once again, Ryan argues that education reformers—this time through choice confined to urban school districts—have tried to save the cities. Suburban school districts, however, have been spared because they rarely pursue choice-based reforms for their students or allow city students to choose to attend suburban schools. That separation has limited the impact of choice. Most significantly, suburban school districts have often refused to participate in interdistrict transfer plans.<sup>89</sup> More subtly, Ryan argues that vouchers have failed to gain much traction, not because of teachers' unions, but instead because suburban parents feared vouchers would decrease funding to their already-successful suburban schools.<sup>90</sup> As analyzed below, Ryan returns to choice as the centerpiece of his policy recommendations to promote integration.<sup>91</sup>

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resistance as the white southerners' response to the federal courts after *Brown I*, which was best "embodied in the 1956 Southern Manifesto signed by a majority of the southern representatives in the U.S. Congress"). For an interesting look at the role of choice in the twentieth century, both for and against integration, see Martha Minow, *Confronting the Seduction of Choice: Law, Education, and American Pluralism*, 120 *YALE L.J.* 814, 821–29 (2011).

83. Minow, *supra* note 82, at 824–29.

84. RYAN, *supra* note 5, at 183.

85. *Id.* at 184.

86. *Id.* at 201.

87. *Id.* at 181–84 (contrasting the school-choice debate in Richmond with the silence on the issue in Henrico County and suggesting that the discrepancy in parental satisfaction with schools is the reason for the contrast).

88. *Id.* at 185.

89. *Id.* at 194–96.

90. *Id.* at 206.

91. *See infra* Part II.

4. *Testing and Accountability*.—Ryan turns last to the most recent educational-reform movement—testing and accountability—and focuses on NCLB. Ryan rightly applauds the idea of NCLB: ensuring that all students are exposed to high expectations and given the skills and knowledge to attain those high expectations.<sup>92</sup> But setting those challenging standards has proven to be politically and financially impossible.<sup>93</sup> The states have not set standards so high that suburban schools, or many city schools, have been deemed inadequate.<sup>94</sup> NCLB actually encourages states to set standards fairly low, Ryan argues, to avoid its drastic sanctions.<sup>95</sup> As a result, NCLB tests only cover the basics and tell us little about high academic achievement.<sup>96</sup>

The result is another educational reform movement that drives urban and suburban school districts apart without giving much benefit to high-poverty schools. Urban schools spend an overwhelming amount of energy on reaching the proficient stage on standardized tests, while suburban schools reach the advanced stage with little effort.<sup>97</sup> This narrows the reach of the urban school curriculum to mastering a test to the exclusion of other important educational goals. Suburban schools, on the other hand, suffer no similar limits. In essence, Ryan argues that NCLB has “defined away the problem by implying, not just with rhetoric but with accountability systems, that passing basic tests is proof of a quality education.”<sup>98</sup>

5. *Interest-Convergence Theory*.—Throughout his analysis of recent educational reforms, Ryan is essentially arguing that suburban parents have gotten what they wanted. Professor Derrick Bell has made a similar argument in the context of school desegregation: school desegregation has advanced the interests of African-Americans only when those interests sufficiently aligned with whites’ interests.<sup>99</sup> For example, Bell argues that whites in 1954 generally supported the outcome in *Brown I*.<sup>100</sup> In 1974, when the Supreme Court decided *Milliken I*, whites had withdrawn their support for school desegregation, largely because of busing.<sup>101</sup>

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92. RYAN, *supra* note 5, at 240.

93. *Id.* at 241.

94. *Id.*

95. See James E. Ryan, *The Perverse Incentives of the No Child Left Behind Act*, 79 N.Y.U. L. REV. 932, 934, 949 (2004) (arguing that NCLB creates a “race to the bottom,” encourages segregation of students, and facilitates the unequal distribution of good teachers).

96. RYAN, *supra* note 5, at 256.

97. *Id.* at 239–40; see also Lawrence, *supra* note 43, at 711–16 (describing how NCLB causes differences in curriculum and teaching between high- and low-poverty schools).

98. RYAN, *supra* note 5, at 267.

99. Bell, *supra* note 9, at 523 (“The interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites.”).

100. See *id.* at 524 (arguing that *Brown I* “cannot be understood without some consideration of the decision’s value to whites”).

101. See *id.* at 526–27 (noting that judicial resistance to integration plans that depended heavily on busing is evident in the higher standard of proof of invidious discrimination introduced in

Ryan expands Bell's argument to contexts outside of school desegregation. He also examines exactly what white parents want. Middle-class and white parents, Ryan documents, primarily desire their own schools.<sup>102</sup> Bell's takeaway from the limited success of implementing *Brown I* is that it would have been more productive for the Supreme Court to have reaffirmed *Plessy v. Ferguson*<sup>103</sup> in *Brown I*, and to have required meaningful, precise, and enforceable measures of the "equal" side of *Plessy*.<sup>104</sup> As discussed in the next subpart, Ryan takes a completely different approach, arguing that only through integration can we achieve the equity and quality promised by *Brown I*.

### B. *The Value of Integration*

Ryan's first contribution is his argument that educational reform for the past forty years has tried to save the cities—with more money, more school choice, more tests, and more accountability—and to spare the suburbs from the consequences of that reform. His second, and related, contribution is his promotion of an idea he declares old-fashioned: integration.<sup>105</sup> Only with integration, Ryan argues, can we achieve equality and excellence. Separation almost always guarantees inequity and failure.

Few people today would fault integration by its terms; that is, few would publicly claim that integration, racial or economic, is itself wrong. In that sense, we have come a long way since *Brown I*.<sup>106</sup> Instead, the argu-

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*Milliken I*). Professor Justin Driver offers a persuasive critique of the interest-convergence theory, partly on the ground that there is no monolithic "black interest" or "white interest." Justin Driver, *Rethinking the Interest-Convergence Thesis*, 105 NW. U. L. REV. 149, 165–71 (2011). He also argues persuasively that the Supreme Court is not merely implementing public opinion, but taking leadership on important constitutional questions as well. See Justin Driver, *The Consensus Constitution*, 89 TEXAS L. REV. 755, 801 (2011) [hereinafter Driver, *Consensus Constitution*] (arguing that "the meaning of the Constitution usually emerges not from consensus but from contestation—an ideological conflict that has occurred throughout American history regarding what the nation's foundational document permits and requires"). He has also examined in detail the mixed opinions of whites and blacks at the time of *Brown I*. *Id.* at 802 ("*Brown*, far from articulating a consensus viewpoint or even the view of an emerging consensus, was decided in a context where apathy characterized the racial attitudes of the overwhelming majority of citizens.>").

102. See RYAN, *supra* note 5, at 272 ("Middle-income and more affluent families, mostly white, have largely walled themselves off in separate school districts, leaving to others the task of educating low-income students, most of whom are African-American or Hispanic.>").

103. 163 U.S. 537 (1896).

104. DERRICK BELL, *SILENT COVENANTS: BROWN V. BOARD OF EDUCATION AND THE UNFULFILLED HOPES FOR RACIAL REFORM* 20–28 (2004) (rewriting the *Brown I* opinion with specific requirements on defining equality in school resources and outcomes and on requiring representation of minorities on school boards); see also Bell, *supra* note 9, at 532 ("A preferable method is to focus on obtaining real educational effectiveness which may entail the improvement of presently desegregated schools as well as the creation or preservation of model black schools.>").

105. See RYAN, *supra* note 5, at 273 ("To talk about integration is to talk about a relic from the past or a distracting frill—something that might be nice, but certainly is not necessary.>").

106. For opinion polls on public reaction to school integration in the immediate aftermath of *Brown I*, see Driver, *Consensus Constitution*, *supra* note 101, at 805–07. For opinion polls on the value of school integration more recently, see Erica Frankenberg & Rebecca Jacobsen, *The Polls—*

ments about integration typically take one of two forms: whether integration is feasible (and hence should be rejected in favor of something more practicable) or whether integration is relevant to achieving educational excellence (and hence is not necessary for educational success). Ryan argues that integration is feasible through choice, and that integration, equity, and excellence are all inextricably linked. This subpart takes up that second argument, while Part II addresses the feasibility of choice.

Ryan is promoting the adoption and implementation of both race-based and class-based school integration, but he recognizes defensible reasons to focus on class-based integration.<sup>107</sup> Here, Ryan is supporting a cause most closely associated with Richard Kahlenberg.<sup>108</sup> The research demonstrates a stronger connection between class-based integration and achievement than between race-based integration and achievement.<sup>109</sup> The Supreme Court has not placed any special burdens on the constitutionality of class-based integration like those it placed on race-based, voluntary integration efforts.<sup>110</sup> Lastly, the public today seems more willing to support class-based integration than race-based integration.<sup>111</sup>

The benefits of integration are the benefits from any middle-class school: “good teachers, strong principals, reasonable class sizes, parental involvement, decent facilities, high expectations and real accountability.”<sup>112</sup>

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*Trends: School Integration Polls*, PUB. OPINION Q. (forthcoming 2011) (manuscript at 3), available at <http://poq.oxfordjournals.org/content/early/2011/09/05/poq.nfr016.full.pdf+html>.

107. RYAN, *supra* note 5, at 273.

108. See generally RICHARD D. KAHLENBERG, *ALL TOGETHER NOW: CREATING MIDDLE-CLASS SCHOOLS THROUGH PUBLIC SCHOOL CHOICE* (2001) (advancing the idea of giving every American child the right to attend a school in which the majority of students come from middle-class homes).

109. RYAN, *supra* note 5, at 273; see also Brief of 553 Social Scientists as Amici Curiae Supporting Respondents at 7–8, *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 127 S. Ct. 2738 (2007) (noting studies that find some academic-achievement benefit from desegregation for African-American and Latino students, with “little or no measurable negative impact on the test scores of white students”). According to studies that investigate teacher turnover in segregated minority schools, race is the driving factor in predicting teacher mobility, more so than working conditions or student poverty. See Wendy Parker, *Desegregating Teachers*, 86 WASH. U. L. REV. 1, 34–37 (2008) (discussing evidence demonstrating that white teachers who decide to leave minority-majority schools are reacting to race, not poverty or achievement). Some characterize the research on the link between racial integration and achievement as mixed. See CHARLES T. CLOTFELTER, *AFTER BROWN: THE RISE AND RETREAT OF SCHOOL DESEGREGATION* 187 (2004) (“Studies that have sought to determine the effect of desegregation on the achievement of blacks have come up with a decidedly mixed set of results.”).

110. See, e.g., *Parents Involved*, 127 S. Ct. at 2775 (Thomas, J., concurring) (maintaining that government race-based decision making must be held up to strict scrutiny). Ryan remains committed to the constitutionality of some measures to achieve racial integration. RYAN, *supra* note 5, at 273–74; James E. Ryan, *The Supreme Court and Voluntary Integration*, 121 HARV. L. REV. 131, 138–39 (2007). He also values racial integration. RYAN, *supra* note 5, at 274. He does so for its “socializing aspects” and with the recognition that “race still matters.” *Id.*

111. RYAN, *supra* note 5, at 273.

112. *Id.* at 15; see also HEATHER SCHWARTZ, CENTURY FOUND., *HOUSING POLICY IS SCHOOL POLICY: ECONOMICALLY INTEGRATIVE HOUSING PROMOTES ACADEMIC SUCCESS IN MONTGOMERY COUNTY, MARYLAND* 5, 9 (2010), available at <http://tcf.org/publications/pdfs/>

These attributes are the key to any child's academic success. Separate, high-poverty schools will almost always lack these fundamental resources, according to Ryan.<sup>113</sup> Integration, in other words, is a way to rid ourselves of high-poverty, low-performing schools and their attendant low-performance outcomes.

The educational research on the connection between student achievement and a school's economic status is fairly strong and dates to James Coleman's 1966 report, *Equality of Educational Opportunity*.<sup>114</sup> Almost all students perform better in a middle-class school.<sup>115</sup> That is, middle-class students do worse in high-poverty schools than they do in middle-class schools. The same is also true for poor students—they perform better in middle-class schools than in high-poverty schools. Further, the presence of poor students in a middle-class school does not erase that school's middle-class status or negatively affect the achievement of middle-class students.

A study published after Ryan's book demonstrates a strong benefit for 850 poor children attending middle-class elementary schools in Montgomery County, Maryland.<sup>116</sup> This study is particularly instructive because of the lack of self-selection.<sup>117</sup> The children all came from families seeking public housing.<sup>118</sup> Some public applicants were randomly assigned to public housing in middle-class neighborhoods.<sup>119</sup> Others were instead assigned to public housing in high-poverty areas, thereby providing a similarly situated control group.<sup>120</sup> Those attending the middle-class schools performed better

housing-policy-is-school-policy-pdf/Schwartz.pdf (noting that low-poverty neighborhoods decrease stress levels in children through "less exposure to crime, gang activity, housing mobility, unemployment, weakened family structure, and through better access to services and resources such as libraries and health clinics").

113. Ryan does recognize the success of some high-poverty schools, especially charter schools run by the Knowledge is Power Program. See RYAN, *supra* note 5, at 223–25 (noting that the results seem to support the program's claim that "demography does not define destiny"). But he believes that such schools are not possible on a large scale. *Id.* at 225.

114. JAMES S. COLEMAN, *EQUALITY OF EDUCATIONAL OPPORTUNITY* (1967); see also CLOTFELTER, *supra* note 109, at 30 (noting that the achievement of students appears to be influenced by the social or economic background of his or her fellow students, which ultimately suggests that "desegregation might lead to higher academic achievement of low-income minority students"); RYAN, *supra* note 5, at 165 (noting that Coleman's report is best remembered for asserting that "school funding exerts little influence on student achievement; instead, an individual student's socioeconomic status is the best predictor of academic success").

115. RYAN, *supra* note 5, at 273; see also KAHLENBERG, *supra* note 108, at 48–76 (noting that a child's learning is a function more of the characteristics of her classmates than those of the teacher).

116. SCHWARTZ, *supra* note 112, at 6 ("After five to seven years, students in public housing who were randomly assigned to low-poverty elementary schools significantly outperformed their peers in public housing who attended moderate-poverty schools in both math and reading.").

117. *Id.* at 5.

118. *Id.*

119. *Id.*

120. *Id.*

on math and reading tests than their counterparts in high-poverty schools.<sup>121</sup> Significantly, the benefits of attending a middle-class school occurred despite the extra money Montgomery County spent on higher poverty schools.<sup>122</sup>

Ryan recognizes more than the academic benefits of an integrated school. While recent reforms have narrowed the goal of public schools to academic performance, Ryan argues that schools should have a socializing aspect as well.<sup>123</sup> That is, schools should prepare students to be good citizens who appreciate and befriend students of different races. While he recognizes that integration in and of itself will not produce these social benefits—e.g., the segregated lunchroom table continues—Ryan argues that the alternative of separate schools is worse from a socialization standpoint.<sup>124</sup>

I wholeheartedly agree with Ryan's choice to connect integration with equity and excellence. Yet, integration is not a quick fix, or a complete fix, to the problems facing our schools. It cannot be the only game plan for improving educational outcomes.<sup>125</sup> Successful integration takes more than the simple physical presence of children in the school building. Crafting in-school policies and practices to promote meaningful integration, academic success, and responsible citizenship is not easy.<sup>126</sup>

Economic integration does not erase the achievement gap between poor and middle-class children.<sup>127</sup> Poor children attending middle-class schools still perform, on average, at lower academic levels than their middle-class peers. The achievement gap remains, presumably, in large part because of the benefit of living in a middle-class neighborhood with middle-class parents.

Economic integration does not appear to erase the racial achievement gap either. This is perhaps most notably demonstrated by Shaker Heights, a middle-class school district in the suburbs of Cleveland, Ohio.<sup>128</sup> Although

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121. *Id.* at 5–6, 30.

122. *Id.* at 13, 17. Yet, some evidence indicates some benefit from the additional spending. *Id.* at 25–28.

123. RYAN, *supra* note 5, at 274. Ryan particularly faults school-finance litigation and the standards-and-accountability movement for this narrowing of focus. *Id.*

124. *Id.* at 279 (“Even if they present challenges, attending diverse schools can better prepare students for their future lives as citizens and workers than can racially and economically homogenous schools.”).

125. Ryan rightly recognizes that integration is not “a panacea.” *Id.* at 14; *see also id.* at 279.

126. For a good start to that discussion, see Michelle Adams, *Radical Integration*, 94 CALIF. L. REV. 261, 267 (2006). Adams defines radical integration as a method that tries to harness the benefits of integration while maintaining the identity of minority groups. *Id.*

127. SCHWARTZ, *supra* note 112, at 18 (documenting a continuing, class-based achievement gap in Montgomery County, Maryland).

128. RONALD F. FERGUSON, *TOWARD EXCELLENCE WITH EQUITY: AN EMERGING VISION FOR CLOSING THE ACHIEVEMENT GAP* 149 (2007); JOHN U. OGBU, *BLACK AMERICAN STUDENTS IN AN AFFLUENT SUBURB: A STUDY OF ACADEMIC DISENGAGEMENT* xii (2003).

the schools and their students are predominantly middle-class, a racial gap in achievement persists.<sup>129</sup>

While these limitations on the value of integrated schooling are significant and deserve attention, I do not think that they mean that integration itself should be disconnected from equity and excellence. I agree with Ryan that integration is a necessary condition for effective reform in other areas. *Brown I* was right: “Separate educational facilities are inherently unequal.”<sup>130</sup> Nixon’s compromise of more money got us off track—where we remain today. The question becomes how to achieve that integration, which is the topic of the next part.

## II. Choice

Ryan’s third contribution—choice as a mechanism to achieve integration—is his most controversial.<sup>131</sup> He is disconnecting choice from its economic roots of creating a competitive marketplace to improve schools and educational offerings.<sup>132</sup> He is also disconnecting choice from its historical roots in the mid-twentieth century as a way to avoid integration through freedom-of-choice student enrollment plans and private, segregated academies.<sup>133</sup> Instead, he is promoting choice as a way to achieve the alluring, but elusive, goal of integration. Choice is no stranger to integration; many school desegregation plans utilized choice as a way to promote desegregation.<sup>134</sup> Ryan’s proposal, however, would not involve mandates from courts or government agencies; his choice proposal is entirely voluntary. He rightly rejects mandatory integration approaches as ineffective and unrealistic in the current political and judicial climate.<sup>135</sup>

This part begins with Ryan’s proposal and why he is optimistic that his plan can produce integration. I then analyze whether his reliance on choice is likely to erase high-poverty schools and increase middle-class involvement in city schools, and find little hope.

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129. FERGUSON, *supra* note 128, at 173 (finding a 1.13 GPA gap between white and African-American males and a 0.93 GPA gap between white and African-American females).

130. *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954).

131. For an earlier endorsement of choice to achieve economic integration, see KAHLENBERG, *supra* note 108, at 115–30, 135–62.

132. See MARTHA MINOW, IN BROWN’S WAKE: LEGACIES OF AMERICA’S EDUCATIONAL LANDMARK 116–17 (2010) (suggesting that basic microeconomics was the foundation of free-market economist Milton Friedman’s proposal of publicly funded school choice in 1955).

133. See *id.* at 117–18 (noting that “‘freedom-of-choice’ plans in education became a euphemism for resurgent racial segregation”).

134. Minow, *supra* note 82, at 824–28.

135. RYAN, *supra* note 5, at 14.

A. “*Universal Choice in Cities and Poor Suburbs*”

1. *The Proposal.*—Ryan advocates what he calls “universal choice in cities and poor suburbs.”<sup>136</sup> He would offer the most expansive (and expensive) choice feasible within school-district lines: “[A]ll students [should have] the right to attend their neighborhood school along with the option of attending any other school—public, charter, or private—within the jurisdiction.”<sup>137</sup> Private-school choice would be facilitated by vouchers, but Ryan is not mandating that private schools accept the vouchers. He would presumably prefer to make choice available across school-district lines, but he recognizes that “forcing residents of one district to open their borders or share their resources is exceptionally difficult.”<sup>138</sup> He believes existing interdistrict transfer programs have worked well for the students and should be expanded.<sup>139</sup> But his proposal focuses instead on a method he believes to be more feasible: intradistrict choice.

Ryan rightly recognizes that the choice program would have to be designed specifically to foster integration.<sup>140</sup> To that end, he supports setting aside at participating charter and private schools “at least 20–40 percent of their seats for students eligible for free or reduced-price lunch.”<sup>141</sup> Yet, his plan is not confined to poor children; all children—even those currently in private schools—would be eligible for his universal choice program and its vouchers. He also supports “transportation, at least where necessary and feasible,” and voucher amounts “high enough to provide real choices for students.”<sup>142</sup> Lastly, Ryan recognizes that not enough good public schools

136. *Id.* at 286.

137. *Id.* at 287.

138. *Id.* Earlier, Ryan had advocated ways to enhance interdistrict-transfer options instead of intradistrict-choice options. See James E. Ryan & Michael Heise, *The Political Economy of School Choice*, 111 *YALE L.J.* 2043, 2096 (2002) (“In order to reduce significantly the isolation by race, ethnicity, and poverty, integration must occur between rather than within districts.”).

139. One study strongly questions whether more interdistrict-transfer plans would benefit the students most in need. See ERIN DILLON, EDUC. SECTOR, PLOTTING SCHOOL CHOICE: THE CHALLENGES OF CROSSING DISTRICT LINES 1 (2008), available at <http://www.educationsector.org/publications/plotting-school-choice> (concluding after a study of California, Florida, and Texas that “[t]he majority of students—80 percent to 90 percent—will remain in the same low-performing schools” because of the scarcity of open seats within a reasonable distance).

140. See Minow, *supra* note 82, at 817 (recognizing that choice “can easily undermine integration along lines of race, class, gender, and disability—unless the school choice arrangement includes deliberate integration dimensions”).

141. RYAN, *supra* note 5, at 288. The guideline would also apply to public schools that participate and have space. *Id.* Ryan is not, however, advocating any “perfect balance [that] might drive a significant number of families away.” *Id.* at 296. The recent Montgomery County study suggests that 40% may be too high of a percentage to capture the positive effects of attending a low-poverty school. See SCHWARTZ, *supra* note 112, at 6 (finding a benefit for poor children to attend a school with 20% of the students eligible for free or reduced-price meals, but no benefit when the figure rose to 35%, compared to outcomes in schools where up to 85% of students were eligible for free or reduced-price meals).

142. RYAN, *supra* note 5, at 288–89.

currently exist, and he strongly supports the addition of charter and magnet schools.<sup>143</sup>

2. *Why Now.*—Ryan suggests that the time is right for integration through private choice for two main reasons. First, our suburbs, and to a lesser extent, our cities, are becoming more diverse.<sup>144</sup> More minorities are moving to the suburbs, and more whites are returning to the cities.<sup>145</sup> The class divide between cities and suburbs is lessening as well.<sup>146</sup> Because school and housing segregation are closely linked, any decrease in housing segregation should have a corresponding effect on school segregation. These demographic changes make integration easier to achieve and segregation harder to maintain.

Second, Ryan argues that tomorrow's parents will be more interested in integration than their parents. Relying on polling data, Ryan notes the strong support of those under age thirty for interracial marriages and racially diverse neighborhoods, particularly when compared to older adults.<sup>147</sup> From this, Ryan believes that younger parents will value and choose diversity, and integration will increase if better choices are available.<sup>148</sup>

3. *The Proposal's Objectives.*—Through choice, Ryan seeks two objectives: improving educational opportunities for poor children and promoting middle-class involvement in urban and poor-suburban school districts. To the extent poor children get the opportunity to attend a middle-class school, I think Ryan's proposal is solid. The frequency of that desired outcome, however, is far from certain. Promoting middle-class involvement in ways that benefit all students will also prove difficult. I discuss each of Ryan's objectives below.

#### *B. Improving Educational Opportunities for Poor Children*

Ryan seeks to improve educational opportunities for poor children by enrolling them in low-poverty schools. That outcome primarily depends on two factors: low-income parents willing and able to make such a choice and the capacity and willingness of the schools to accept the children. Neither is likely to occur in significant numbers because of practical impediments.

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143. *Id.* at 286–87, 290.

144. *Id.* at 281–85.

145. *Id.* at 282–83.

146. *Id.* at 284.

147. *Id.* at 292–93.

148. *Id.*

1. *Different Choices for Different Parents.*—Choice is not easy to implement in a neutral way.<sup>149</sup> The middle-class advantage in the educational system extends to choice plans because middle-class parents typically have greater access to information and other resources.<sup>150</sup>

Even putting aside this disparity, what remains is the very real possibility that low-income parents may not choose a middle-class school, particularly given the scarcity of such schools in their neighborhoods. Fairly recent studies indicate that most African-American parents prefer to send their children to nearby schools<sup>151</sup> where their child's race is in the majority,<sup>152</sup> even if the school is defined as “failing.”<sup>153</sup> Low-income parents

149. Minow, *supra* note 82, at 833 (“[N]ot all families are informed and equipped to navigate the increasingly complex process of selecting among educational options, and some of the most disadvantaged students will lose out as a result.”); Jim Ryan, *School Choice and the Suburbs*, 14 J.L. & POL. 459, 464 (1998) (“The details of how choice plans will be implemented thus will determine whether the plans serve to preserve or diminish racial and class segregation . . .”); Justine S. Hastings et al., *Preferences, Information, and Parental Choice Behavior in Public School Choice 27* (Nat’l Bureau of Econ. Research, Working Paper No. 12995, 2007) [hereinafter Hastings et al., *Parental Choice Behavior*], available at [http://poverty-action.org/sites/default/files/HastingsVanWeeldenWeinstein\\_Info&Choice.pdf](http://poverty-action.org/sites/default/files/HastingsVanWeeldenWeinstein_Info&Choice.pdf) (“We find evidence that simplified information has significant impacts on parents’ choices and implied preferences for school test scores, and that this impact seems to be primarily generated by lowering parents’ information and decision-making costs.”).

150. See Courtney A. Bell, *All Choices Created Equal? The Role of Choice Sets in the Selection of Schools*, 84 PEABODY J. EDUC. 191, 193 (2009) (“Parents do not have equal access to transportation, information, time for school visits, money for tuition, or English language skills. Resources, both material and immaterial, are not distributed evenly among parents of differing social class backgrounds.”); Frankenberg & Siegel-Hawley, *supra* note 11, at 229–30 (“Research suggests that families’ access to the educational marketplace is unevenly constrained by certain factors, including contact with advantaged social networks through which information regarding school quality is exchanged, language barriers, socioeconomic status, and the ability of parents to provide transportation for their schoolchildren.”).

151. Courtney A. Bell, *Space and Place: Urban Parents’ Geographical Preferences for Schools*, 39 URB. REV. 375, 402 (2007) (“[P]arents perceive significant psychological costs—loss of identity, connection to family, sense of safety and control, etc.—associated with school location.”); Justine S. Hastings et al., *Parental Preferences and School Competition: Evidence from a Public School Choice Program 24* (Yale Econ. Applications & Policy Discussion Paper No. 10, 2005) [hereinafter Hastings et al., *Parental Preferences*], available at [http://papers.ssrn.com/abstract\\_id=885537](http://papers.ssrn.com/abstract_id=885537) (“[I]t is clear that proximity is an important determinant of school choice for the average student.”); *id.* at 4 (“Our results also indicate that parents value proximity highly and that the value of proximity is strongly negatively correlated with the preference for test scores.”).

152. Hastings et al., *Parental Preferences*, *supra* note 151, at 28 (“[T]he average preferred school for each racial group [African-American and white] was one in which 70% of the school was their own race.”); Justine S. Hastings et al., *Heterogeneous Preferences and the Efficacy of Public School Choice 23* (May 2009) (unpublished manuscript) [hereinafter Hastings et al., *Heterogeneous Preferences*], available at [http://www.brokenboxdesign.com/hastings/papers/HKS\\_Combined\\_200806.pdf](http://www.brokenboxdesign.com/hastings/papers/HKS_Combined_200806.pdf) (examining choices made by Charlotte-Mecklenburg Public School District parents in 2002 and finding that “the average African American parent prefers majority black schools”); see also Bell, *supra* note 150, at 199 (finding that in Midwestern cities and suburbs, “[m]any parents said they wanted more diverse schools, but the lack of variation in the racial composition of choice set schools and the cities in which parents reside suggest race issues played out in more subtle ways”).

153. Hastings et al., *Heterogeneous Preferences*, *supra* note 152, at 33–34 (concluding that an important goal of school choice is increasing academic performance for disadvantaged students by

are also less likely to devalue proximity in favor of a school with high academic achievement,<sup>154</sup> which is not typically true for higher income parents.<sup>155</sup> What troubles me the most about using choice to produce integration is that it assumes parents of different races and income levels will be attracted to the same schools in sufficient numbers to create integrated schools. Evidence indicates, however, that parents differ in their choices in ways that foster segregation.<sup>156</sup> Low-income parents choosing a middle-class school are taking a remarkable risk in going outside of their known neighborhood, and those parents may not, in fact, prefer that school.

I do not mean to suggest, however, that no parents will make choices that further integration. Interdistrict transfer plans typically have long waiting lists, suggesting that at least some city parents can and will execute their choices in ways that promote economic integration.<sup>157</sup> Some unmet demand certainly exists. Yet, I am unconvinced that enough unmet demand exists to produce integrated schools through universal choice.

2. *Willingness of Middle-Class Schools to Enroll Low-Income Students.*—Perhaps even more unclear is how open public schools (with their pressures to perform under NCLB) and private schools will be to enrolling low-income students. This may be especially problematic for private schools with stable enrollments of children paying full tuition. Similarly, public schools meeting their NCLB annual goals—like their suburban counterparts—will surely be hesitant about seeking low-income students who

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creating pressure on failing schools through the threat of losing students, but finding that school choice led to worse outcomes for many disadvantaged children whose families traded the academic strength of a school for the opportunity to attend a predominantly black school). For a thorough summary of the research on parental choices related to racial composition, see Susan L. DeJarnatt, *School Choice and the (Ir)rational Parent*, 15 GEO. J. ON POVERTY L. & POL'Y 1, 17–18, 20–26, 31–37 (2008).

154. See Hastings et al., *Parental Preferences*, *supra* note 151, at 4 (“[T]he preference attached to a school’s mean test score is substantially lower for low-income students . . . . Moreover, the preference for a school with high test scores is increasing in the student’s baseline academic ability and neighborhood income level.”). For example, in the study of preferences for parents in Charlotte-Mecklenburg in 2002, the study found that “approximately 20 percent of parents chose schools that had lower test scores than the school they had guaranteed admission to, suggesting that school characteristics that were potentially negatively correlated with average test scores were the strongest determinants of choice for some families.” Hastings et al., *Heterogeneous Preferences*, *supra* note 152, at 8. Another study found that low-income parents were more likely to choose failing schools than successful schools. Bell, *supra* note 150, at 201, 206 (concluding that poor and working-class parents were more likely to choose failing schools than middle-class parents). The difference in preferences for high-scoring schools and school proximity could lead to differences in schools. Hastings, *Parental Preferences*, *supra* note 151, at 2 (“[I]f parents have very heterogeneous preferences for school quality, ‘vertical separation’ may occur.”).

155. Hastings, *Parental Preferences*, *supra* note 151, at 25 (“Higher neighborhood income was strongly associated with higher mean preference for school scores, with a similar effect for both whites and non-whites.”).

156. For a look at how white parents have recently exercised their choice options in ways that facilitate increased segregation, see *infra* notes 178–80 and accompanying text.

157. RYAN, *supra* note 5, at 195; Frankenberg & Siegel-Hawley, *supra* note 11, at 238.

historically have lower NCLB scores. At best, these schools will select the most promising minority or low-income children.<sup>158</sup>

3. *The Children Left Behind*.—Not all low-income parents will be willing and able to choose a middle-class school for their child. Ryan's proposal is surprisingly silent about the children left behind in the underperforming high-poverty schools.<sup>159</sup> This is particularly disturbing if the choice mechanism reduces the resources afforded to these schools. He seems to ignore the often articulated argument that choice skims the best students to separate schools, leaving their peers in a worse position. Interestingly, Ryan does not argue that the low-income schools will improve to retain their students.<sup>160</sup> This is particularly problematic for children with special educational needs; their choices may be more limited as schools are less open to their enrollment. I thus wonder whether the children left behind will more often be those learning English or receiving special education.

4. *Lack of Capacity*.—Even putting all of this aside, giving low-income parents the choice to send their children to other schools in their district may not further integration for the simple reason that few middle-class schools, private or public, with extra capacity exist within urban school districts. For example, student enrollment in Richmond City School District is becoming slightly more white, but it is still overwhelmingly minority and poor.<sup>161</sup> The school district would have to attract many more white and middle-class families to provide much in the way of integrated schools. In a sense, Ryan's proposal is operating at the margins in districts like Richmond—it offers more choice, but choice that in actuality can only be exercised to produce integration in very small amounts given the number of existing successful schools willing and able to enroll more low-income students—even if parents would make the requisite choices.

Creating more meaningful choice for low-poverty schools will depend in large part on the city's ability to attract and retain middle-class families.

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158. Even that, however, could be prohibitively expensive to cash-strapped districts. For the plan to produce actual integration, transportation would have to be guaranteed, not optional, as Ryan allows, for students crossing the district in a multitude of patterns—a very costly endeavor.

159. Hamilton Lankford & James Wyckoff, *Why Are Schools Racially Segregated? Implications for School Choice Policies*, in *SCHOOL CHOICE AND DIVERSITY: WHAT THE EVIDENCE SAYS* 9, 25 (Janelle T. Scott ed., 2005) (“Many choice plans effectively reduce the resources that are available to urban public schools.”).

160. See, e.g., Roslyn Arlin Mickelson, *Are Choice, Diversity, Equity, and Excellence Possible?*, in *SCHOOL CHOICE AND DIVERSITY: WHAT THE EVIDENCE SAYS*, *supra* note 159, at 129, 135 (noting that school officials were aware that school choice would “re-segregate [a] district by race, socioeconomic status, and performance,” and that concentrating at-risk students into schools makes teaching them more expensive and difficult); Lankford & Wyckoff, *supra* note 159, at 25 (stating that many school-choice plans result in a reduction of resources available to urban public schools).

161. RYAN, *supra* note 5, at 284.

The difficulty here will be the nature of their choices, as discussed in the next subpart.

### C. *Garnering the Support of Middle-Class Parents*

The other question is whether middle-class parents will forge closer ties to urban and poor suburban school districts through Ryan's plan. Ryan does not envision the improbable—that middle-class parents will choose high-poverty schools. Even middle-class parents living in integrated neighborhoods often do not choose nearby predominately minority schools. Professor Charles R. Lawrence III recounts a compelling story of his experience with his integrated, upper-middle-class Georgetown neighborhood. He was unsuccessful in persuading his neighbors (both African-American and white) to enroll their children in the overwhelmingly African-American *neighborhood* elementary school.<sup>162</sup>

Instead, Ryan seeks middle-class parents moving or staying in the city, in part, to take advantage of the enhanced school choices. Here the problem is both with the nature of choice and its implementation. Middle-class parents like choice. But their use of choice is for the benefit of their child, not the benefit of the community—hence, the “stratifying effects” of choice.<sup>163</sup> Choice obviously allows segregation.<sup>164</sup> It also encourages middle-class parents to do what they already do successfully: think exclusively about what is best for their children and effectuate that choice. Professor Martha Minow puts it well: “[School choice] converts schooling to private desires. It obscures continuing inequalities in access and need; it invites self-separation unless collectively controlled. It treats the aggregation of separate decisions as free when the result so often impedes freedom and equality.”<sup>165</sup>

For example, giving middle-class parents access to vouchers will not facilitate their commitment to public schools in the way Ryan desires.<sup>166</sup> As Ryan recognizes, parents will be most interested in the amount of the voucher.<sup>167</sup> But their interest in other aspects of public schools will also be

162. Charles R. Lawrence III, *Forbidden Conversations: On Race, Privacy, and Community (A Continuing Conversation with John Ely on Racism and Democracy)*, 114 *YALE L.J.* 1353, 1355 (2005); see also DeJarnatt, *supra* note 153, at 30 (recounting a similar story in her “politically liberal neighborhood that prides itself on its history of racial diversity”).

163. Frankenberg & Siegel-Hawley, *supra* note 11, at 230.

164. Minow, *supra* note 82, at 834 (“[T]he ideal of integration—across racial differences, religious differences, and other kinds of demographic differences—grows more elusive as school choice enables new forms of student separation based on identities and aspirations.”).

165. *Id.* at 848; see also *id.* at 845 (“School choice implies market mechanisms and consumer sovereignty—rather than public debate and explicit priorities over the big questions about the purposes and design of schooling.”).

166. For a summary of the traditional criticism of vouchers, see *id.* at 832.

167. RYAN, *supra* note 5, at 289.

confined to this single marker.<sup>168</sup> I fail to see how vouchers for middle-class families “would also make private schools more public by tying those schools, and the families who use vouchers to attend them, to the public system.”<sup>169</sup> Their interest will be confined solely to protecting and promoting their own private school and their own voucher amount, not the increased enrollment of more poor children in their private schools. They will support administrators who support their vision of what is best for their child. I am not persuaded that they would do otherwise.

Recent experience with choice strongly suggests that middle-class parents use choice to create more segregation, not less, even in school districts with a history of *commitment* to integration. For example, after the Supreme Court outlawed its voluntary student-assignment plan,<sup>170</sup> Louisville (a countywide school district where integration is demographically possible) allowed more choice, along with some capacity and demographic controls.<sup>171</sup> In 2009–2010, “just under half of schools in the district complied with the fifteen to fifty percent [of students from disadvantaged neighborhoods] goal.”<sup>172</sup> Cambridge, Massachusetts, operates a long-standing controlled choice plan. In 2006–2007, however, nearly 40% of its schools failed to meet the socioeconomic enrollment guidelines.<sup>173</sup>

Charlotte-Mecklenburg is often cited as a successful school desegregation story.<sup>174</sup> Yet, its choice plan has resulted in more segregation, not less, along racial and economic lines.<sup>175</sup> The school district achieved the highest degree of integration through its mandatory busing plan.<sup>176</sup> When it started a voluntary magnet plan, segregation increased.<sup>177</sup> More recently, the school district allowed more choice, but that further segregated the school district along race and class lines.<sup>178</sup> The exception is perhaps Berkeley, California, which has had some success with choice producing integration.<sup>179</sup>

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168. *But see id.* (“[Parents] would also care about the rules and regulations of the voucher program, which means that they would care about those making the rules—mayors, school boards, and superintendents.”).

169. *Id.*

170. *See* *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 127 S. Ct. 2738, 2746–47 (2007) (holding that assigning students to public schools to achieve racial integration was prohibited and declining to recognize racial balancing as a compelling state interest).

171. Frankenberg & Siegel-Hawley, *supra* note 11, at 235.

172. *Id.*

173. *Id.* at 236.

174. RYAN, *supra* note 5, at 105.

175. Mickelson, *supra* note 160, at 138.

176. RYAN, *supra* note 5, at 112–14.

177. *Id.* at 113–14.

178. The percentage of schools with at least a 90% minority population increased from just over 9% under the voluntary magnet-school plan to more than 20% under the choice plan. CLOTFELTER, *supra* note 109, at 198; *see also id.* (detailing segregative results in Winston-Salem–Forsyth County, North Carolina, when it went from busing to choice).

179. Berkeley Unified is a small school district with a controlled-choice plan that has produced strong racial and ethnic integration but less economic integration. LISA CHAVEZ & ERICA

Nor is it clear that tomorrow's parents will make significantly different choices, as Ryan suggests they will.<sup>180</sup> The demographic changes noted by Ryan are not new. Support for the benefits of desegregation in polling data is also fairly long-standing. For example, in a 2004 poll, 83% of respondents said they would prefer "a school where the students are 'mostly mixed.'"<sup>181</sup> As early as 1994, "a sizeable majority of respondents (64% of whites and 78% of blacks) believed that integration ha[d] improved race relations and ha[d] been good for the country."<sup>182</sup> Most, however, were not willing to bus students to achieve that outcome.<sup>183</sup> A generational divide has existed for some time as well, with younger people supporting integration more than older people.<sup>184</sup> Increased integration in housing patterns is not new either.<sup>185</sup>

If demographic and attitudinal changes are to increase integration, one would expect evidence of that trend to be at least *beginning* in our "post-racial" society. The one trend toward less segregation is perhaps surprising—the increased diversity in predominately white schools in suburban school districts. Student enrollment in suburban school districts is

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FRANKENBERG, INTEGRATION DEFENDED: BERKELEY UNIFIED'S STRATEGY TO MAINTAIN SCHOOL DIVERSITY, at vi (2009), *available at* <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/integration-defended-berkeley-unified2019s-strategy-to-maintain-school-diversity>. Even here, however, one must recognize that white parents are more likely to opt out of the public school system in favor of private schools. *See id.* at 12–13 ("In particular, 62% of non-Hispanic white students attended public schools while more than 80% of Latino and more than 90% of black students did so.")

180. White and middle-class parents can now use the pretext of NCLB scores and rankings to mask their aversion to both minority and high-poverty schools. *See* Kathryn A. McDermott et al., Diversity, Race-Neutrality, and Austerity: The Changing Politics of Urban Education 6 (Aug. 2010) (unpublished manuscript), *available at* [http://papers.ssrn.com/abstract\\_id=1664683](http://papers.ssrn.com/abstract_id=1664683) ("[W]hite and/or middle-class parents who want to avoid particular schools can frame their avoidance in entirely race-neutral terms because of their low performance levels.")

181. Frankenberg & Jacobsen, *supra* note 106 (manuscript at 9).

182. *Id.* at 13.

183. *Id.* at 11.

184. *See* Gary Orfield, *Public Opinion and School Desegregation*, 96 TCHRS. C. REC. 654, 658 (1995) (noting that a 1994 poll found that younger African-Americans supported the statement that integration was necessary for equal education at 60%, compared to 40% for older African-Americans, and that the numbers for younger and older whites were 37% and 22%, respectively); *id.* at 665 (reporting that the 1994 report found greater support for busing among recent high school graduates than among older adults).

185. JOHN ICELAND ET AL., U.S. CENSUS BUREAU, RACIAL AND ETHNIC RESIDENTIAL SEGREGATION IN THE UNITED STATES: 1980–2000, at 59 (2002), *available at* <http://www.census.gov/hhes/www/housing/resseseg/pdf/censr-3.pdf> (documenting a reduction of African-American housing segregation beginning in 1980); *id.* at 77 (reflecting decreased segregation for Latinos in the South but not in the West); ADAI TEFERA ET AL., INTEGRATING SUBURBAN SCHOOLS: HOW TO BENEFIT FROM GROWING DIVERSITY AND AVOID SEGREGATION 3 (2011), *available at* <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/integrating-suburban-schools-how-to-benefit-from-growing-diversity-and-avoid-segregation/tefera-suburban-manual-2011.pdf> (noting the increased African-American and Latino middle-class populations in the suburbs beginning in the 1970s); John Iceland, *Beyond Black and White: Metropolitan Residential Segregation in Multi-Ethnic America*, U.S. CENSUS BUREAU, 1 (Aug. 16, 2002), [http://www.census.gov/hhes/www/housing/resseseg/pdf/beyond\\_black\\_and\\_white.pdf](http://www.census.gov/hhes/www/housing/resseseg/pdf/beyond_black_and_white.pdf) (finding a decrease in housing segregation between 1980 and 2000 for African-Americans and whites).

becoming less white, and individual schools are becoming less white as well.<sup>186</sup>

That does not necessarily mean, however, that high-poverty or racially segregated schools are decreasing. Schools today are becoming more segregated, not less. For example, in 1991, 66% of African-American students were in nonwhite-majority schools.<sup>187</sup> By 2003, that number had increased to 73%.<sup>188</sup> Latinos, too, have recently become more segregated. In 1991, 73% of Latino students were in majority-nonwhite schools; by 2003, the number had increased to 77%.<sup>189</sup>

The suburban school district that Ryan studies at length, Henrico County, Virginia, demonstrates that pattern by both class and race. In 2002, 26% of the student population was eligible for free or reduced-price meals.<sup>190</sup> Thirteen schools exceeded that percentage by more than 20%, indicating a substantially greater percentage of poor children.<sup>191</sup> By 2011, the overall percentage of children eligible for free or reduced-price meals increased to 37%,<sup>192</sup> and the number of schools exceeding that amount by at least 20% almost *doubled* to twenty-one.<sup>193</sup>

Turning to racial stratification, in 2002, the Henrico County school district had seven elementary schools with over 90% minority enrollment.<sup>194</sup>

186. RYAN, *supra* note 5, at 282–83.

187. ORFIELD & LEE, *supra* note 29, at 10 tbl.3.

188. *Id.*

189. *Id.* at 11 tbl.4.

190. These numbers come from fall enrollment reports maintained online by Virginia's Department of Education. Va. Dep't of Educ., *SY 2002–2003 Free and Reduced Price Lunch Program Eligibility Report by School Division* (Oct. 31, 2002), [http://www.doe.virginia.gov/support/nutrition/statistics/free\\_reduced\\_eligibility/2002-2003/divisions/2002-2003.pdf](http://www.doe.virginia.gov/support/nutrition/statistics/free_reduced_eligibility/2002-2003/divisions/2002-2003.pdf).

191. The schools were Adams, Chamberlayne, Crestview, Fair Oaks, Fairfield, Glen Lea, Highland Springs, Holladay, L. Douglas Wilder, Laburnum, Mt. Vernon, New Bridge, and Ratcliffe. Va. Dep't of Educ., *SY 2002–2003 Free and Reduced Price Lunch Program Eligibility Report by School* (Oct. 31, 2002), [http://www.doe.virginia.gov/support/nutrition/statistics/free\\_reduced\\_eligibility/2002-2003/schools/2002-2003.pdf](http://www.doe.virginia.gov/support/nutrition/statistics/free_reduced_eligibility/2002-2003/schools/2002-2003.pdf).

192. Va. Dep't of Educ., *School Year 2010–2011 National School Lunch Program (NSLP) Free and Reduced Price Eligibility Report by School Division* (June 2, 2011), [http://www.doe.virginia.gov/support/nutrition/statistics/free\\_reduced\\_eligibility/2010-2011/divisions/2010-2011.pdf](http://www.doe.virginia.gov/support/nutrition/statistics/free_reduced_eligibility/2010-2011/divisions/2010-2011.pdf).

193. The schools included Adams, Arthur Ashe, Baker, Brookland, Donahoe, Dumbarton, Fair Oaks, Fairfield, Glen Lea, Harvie, Highland Springs Elementary, Highland Springs High, Holladay, Johnson, L. Douglas Wilder, Laburnum, Lakeside, Montrose, Ratcliffe, Ridge, and Sandston. Va. Dep't of Educ., *School Year 2010–2011 National School Lunch Program (NSLP) Free and Reduced Price Eligibility Report by School* (Aug. 24, 2011), [http://www.doe.virginia.gov/support/nutrition/statistics/free\\_reduced\\_eligibility/2010-2011/schools/2010-2011.pdf](http://www.doe.virginia.gov/support/nutrition/statistics/free_reduced_eligibility/2010-2011/schools/2010-2011.pdf).

194. By comparison, the white enrollment in the district overall was 57%. The seven elementary schools were Adams, Arthur Ashe, Baker, Glen Lea, Laburnum, New Bridge, and Ratcliffe. Va. Dep't of Educ., *SY 2002–2003 Fall Membership Reports: School Summaries by Ethnicity, Grade, and Gender* (Aug. 1, 2006), [http://www.doe.virginia.gov/statistics\\_reports/enrollment/fall\\_membership/2002\\_2003/school\\_summaries\\_ethnicity.xls](http://www.doe.virginia.gov/statistics_reports/enrollment/fall_membership/2002_2003/school_summaries_ethnicity.xls).

In 2011, that number increased to nine.<sup>195</sup> In addition, the percentage and absolute number of whites in the school district declined by about 10%.<sup>196</sup> While the predominantly white schools are becoming less white, this has not decreased the most troubling pattern of concentrating minority children in high-poverty schools.

### Conclusion

I admire Ryan's ambition. He does a great job telling "the story of how law and politics have structured educational opportunity in this country for the last half century."<sup>197</sup> In that respect, Ryan has succeeded. He presents a balanced, thorough examination of recent attempts at promoting equal educational opportunity: school desegregation, school finance, school choice, and the accountability-and-standards movement. This is an enormous undertaking, but it is important in situating the current failures of our educational system in the lessons of the past. Ryan argues persuasively that all reform efforts have failed because they have spared the involvement of the suburban school districts without providing needed integration to the city schools. Through all of these reform efforts, segregation remains entrenched.

He also presents a compelling case for why integration deserves a return to the forefront of educational policy. Ryan labels integration as "unfashionable."<sup>198</sup> I wonder not if the idea is out of fashion, but instead whether we are "morally exhausted" with racial integration.<sup>199</sup>

If we are to be as serious about integration as Ryan thinks we should be, federal government, state government, or both will have to repeat the federal government's performance of the early to mid-1960s and promote integration through its distribution of education dollars. At present, school districts face too many pressures foreclosing the dramatic change necessary to overcome segregation. Few parents today are mounting campaigns for increased

195. The white enrollment in Henrico County overall in 2011 was 46%. The additional three schools were Chamberlayne, which was 13% white in 2002; Harvie Elementary, a new school; and Highland Springs, which was 19% white in 2002. One school that had less than 10% white enrollment in 2002, New Bridge, was no longer a school in 2011. Va. Dep't of Educ., *SY 2010–2011 Fall Membership Reports: School Summaries by Ethnicity, Grade, and Gender* (Mar. 2, 2011), [http://www.doe.virginia.gov/statistics\\_reports/enrollment/fall\\_membership/2010-2011/school\\_summaries\\_ethnicity\\_2011.xls](http://www.doe.virginia.gov/statistics_reports/enrollment/fall_membership/2010-2011/school_summaries_ethnicity_2011.xls).

196. The white enrollment in 2002 was 25,010, which was 57% of the student population. Va. Dep't of Educ., *SY 2002–2003 Fall Membership Reports: Division Summaries by Ethnicity*, *supra* note 194. By 2011, the number dropped to 22,593, which was 46% of the student population. Va. Dep't of Educ., *SY 2010–2011 Fall Membership Reports: Division Summaries by Ethnicity*, *supra* note 195.

197. RYAN, *supra* note 5, at 1.

198. *Id.* at 14, 273. Ryan names Horace Mann's Common School movement as one of the first supports for integration. Horace Mann similarly "understood the importance of linking the fates of poor children with those from more affluent families, and the costs of failing to create those links." *Id.* at 271.

199. Lia Epperson, *Equality Dissonance: Jurisprudential Limitations and Legislative Opportunities*, 7 STAN. J. C.R. & C.L. 213, 214 n.9 (2011) (internal quotation marks omitted).

integration. Few school districts have adopted economic integration plans—and even those have varying success rates—despite the overwhelming and long-standing evidence of their value.<sup>200</sup> We are instead moving toward school resegregation—not more integration—despite increases in housing integration and greater public acceptance of the value of integration.

Most troubling, perhaps, is the increasing concentration of poor and minority schoolchildren in suburban school districts even as the predominantly white schools have decreased their own stark segregation. As these school districts become more diverse, they appear to be repeating the pattern of high-poverty, racially isolated schools.

Relying on parental choice is expensive and unlikely to succeed without someone other than parents taking the lead in establishing the community value in integrated schooling. Otherwise, we will likely continue to have too many high-poverty schools, predominantly filled with minority schoolchildren.

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200. Perhaps the financial cost of eradicating high-poverty schools is one substantial reason so few school districts today pursue economic integration, despite the long-standing and overwhelming evidence favoring economic integration. Today, eighty, at most, school districts (out of a total of about 1,500) consider economic status in their student-assignment policies. Bob Herbert, Op-Ed., *Separate and Unequal*, N.Y. TIMES, Mar. 21, 2011, available at <http://www.nytimes.com/2011/03/22/opinion/22herbert.html> (relying on the research of Richard Kahlenberg); see also RYAN, *supra* note 5, at 297 (putting the number at around forty).