HOW *SHEFF* REVIVES *BROWN*: RECONSIDERING DESEGREGATION'S ROLE IN CREATING EQUAL EDUCATIONAL OPPORTUNITY

MARY JANE LEE*

Like many impoverished American cities surrounded by affluent suburbs, Hartford, Connecticut, long has struggled to buoy a school system marked not only by an alarming deterioration over the decades,[1] but also by the severe racial and ethnic isolation of its student population.[2] In 1998, black and Latino students represented ninety-four percent of the students in Hartford's public schools.[3] Students from these demographic groups historically have comprised less than five percent of the enrollments in most of Connecticut's suburban school districts.[4] Compared to neighboring suburban schools, Hart-

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1 Longstanding problems in Hartford's schools include buildings and facilities in need of repair, crowded classes, a dearth of textbooks and classroom supplies for students, and course-scheduling problems. See Rick Green & Anne M. Hamilton, A Sobering Report Card: Long-Term Problems in City's Schools, Hartford Courant, Nov. 6, 1997, at A3. Chronic problems such as "excessive promotion of students in elementary and middle schools when they are failing; pervasive below-grade-level reading scores; few alternative programs for disruptive students; poor parent participation; inadequate school security; [and] alarmingly high dropout rates" persist as well. Id. See generally Jonathan Kozol, Savage Inequalities (1991) (surveying distressing conditions of inner-city schools).

2 In 1993, for example, black students in Connecticut accounted for only 12.1% of the school aged population, but 60.3% of these students attended segregated schools located in inner cities, schools which are in many cases poorly equipped and maintained. See Bernard James & Julie M. Hoffman, *Brown* in State Hands: State Policymaking and Educational Equality After *Freeman v. Pitts*, 20 Hastings Const. L.Q. 521, 575 n.256 (1993) (summarizing school share and segregation statistics of black students in 32 states); see also Rick Green, Approval Seems Likely On Sheff Plan, Hartford Courant, June 4, 1997, at A1 ("In the Hartford area, the divisions between the city and the suburbs are dramatic, from racial isolation to poverty to student performance.... Schools in Hartford are 95 percent minority, compared to largely white and wealthier populations in the suburbs around the city.").

3 See Robert A. Frahm, Witness in Sheff Case Faults State for Lack of Desegregation Goals, Hartford Courant, Sept. 10, 1998, at A5.

4 See Committee on Racial Equity, Conn. Dep't of Educ., A Report on Racial/Ethnic Equity and Desegregation in Connecticut's Public Schools 13-17 (1987) [hereinafter Re-

ford city schools have consistently reported dramatic shortcomings in the overall academic performances of their students.[5]

In 1989, eighteen students challenged the disparities between Hartford's schools and those of nearby suburbs,[6] claiming that the state's failure to correct conditions in the Hartford school system constituted a violation of their rights under the state constitution.[7] Seven years later, the Connecticut Supreme Court held in *Sheff v. O'Neill*[8] that the state constitution guaranteed citizens the right to a substantially equal educational opportunity and that the de facto racial and ethnic segregation[9] of the Hartford public school students deprived them of this opportunity.[10] The court then directed the state legisla-

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port on Racial Equity]. The report also noted that minority students comprised 21% of the state's schoolchildren, but less than 5% of the enrollments in nearly 120 of the state's school districts. See id. at 1. The report is now over ten years old, but the racial imbalance it depicts remains relevant since school segregation continues to be a problem across Connecticut. See, e.g., Editorial, Racial Separation Remains the Rule, Hartford Courant, May 18, 1994, at B12 [hereinafter Editorial] (noting that Connecticut is among ten states with "highest percentage of students attending segregated schools").

5 See Tom Condon, Integration Still Eludes State Schools, Hartford Courant, June 9, 1991, at D1 (reporting that 70% of fourth graders in Hartford failed Connecticut Mastery Test in reading in 1990); Robert A. Frahm, City Students Trail Suburban Peers, Hartford Courant, Oct. 17, 1992, at A1 (summarizing results of state education report and noting that urban students "take easier courses, score worse on academic tests and have less well-trained teachers"); Robert A. Frahm & Rick Green, State Releases New Test Scores, Hartford Courant, Nov. 5, 1998, at A3 (reporting that Hartford students had lowest scores on Connecticut Academic Performance Test and that only 5% of Hartford students met state goal in science test scores).

Dropout rates in Hartford are also a concern. See, e.g., Robert A. Frahm, Hartford's Dropout Rate Highest in State, Study Says, Hartford Courant, Nov. 3, 1993, at D1 (reporting on Connecticut Department of Education's findings that Hartford's dropout rate of 17% was highest in state). The city's high dropout rate may be contrasted with the low dropout rates in wealthy and predominantly white communities. See, e.g., Rick Green, Dropping Out Not an Option, Hartford Courant, Dec. 29, 1998, at A1 (comparing dropout rate of zero at New Canaan High School with rate of 13.4% at Hartford Public High School). In New Canaan, where students achieve "high board scores" and have "educated and upper-class parents," approximately 2% come from non-English speaking homes, and only 5% are members of minority groups. See id.

6 See Sheff v. O'Neill, 678 A.2d 1267, 1271 (Conn. 1996). The plaintiffs included 10 black and Latino students residing in Hartford; four white students residing in Hartford; two Latino students residing in Glastonbury, Connecticut, a suburb of Hartford; and two white students residing in West Hartford, Connecticut, another Hartford suburb. See id. at 1271 n.3.

7 See id. at 1271-72.

8 678 A.2d 1267 (Conn. 1996).

9 De facto segregation occurs inadvertently, "without assistance of school authorities," and results "not [from] state action, but rather [from] social, economic, and other determinates." Black's Law Dictionary 416 (6th ed. 1990). De facto segregation is often distinguished from de jure segregation, which is "directly intended or mandated by law or otherwise [issues] from an official racial classification or . . . which has or had the sanction of the law." Id. at 425.

10 See *Sheff*, 678 A.2d at 1280.

ture to take appropriate actions to alleviate the racial and ethnic isolation in Hartford's school system.[11] The holding in *Sheff* responded to the plaintiffs' demand that Hartford's educational crisis—long a part of the state's landscape—finally be confronted seriously and effectively.[12]

The issues litigated in *Sheff* not only related to Hartford's crisis but were part of the long history of racial separation in the United States.[13] In 1954, public school segregation captured the nation's attention when the Supreme Court held in *Brown v. Board of Education*[14] that separate educational facilities for black and white children were inherently unequal.[15] *Brown* seized upon desegregation as a strategy for realizing equal educational opportunity for black students.[16] Over forty years after *Brown*, however, racial segregation and disparate educational outcomes for students of different races

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11 See id. at 1290-91.

12 *Sheff*-initiated legislation is not the first attempt to deal with Hartford's crisis. In 1967, in response to the racial, ethnic, and economic isolation in Hartford, educators in Connecticut created an interdistrict program called "Project Concern," which sent Hartford children to suburban schools. See Racially Isolated Schools? Connecticut Has Grappled with the Issue of Segregation for Three Decades, Hartford Courant, Sept. 9, 1998, at A6 [hereinafter Racially Isolated Schools?]. In the mid-1980s, Connecticut's Department of Education again recognized racial and ethnic isolation, as well as disparities in educational opportunities, in the state's urban public schools, issuing a major report on the subject. See Report on Racial Equity, supra note 4. In 1985, the state started the Interdistrict Cooperative Grant Program, a vehicle for funding magnet and interdistrict schools. See Connecticut Dep't of Educ., Enhancing Educational Opportunities and Achievement 3 (1999) [hereinafter Enhancing Education]. In 1993, pending the conclusion of the *Sheff* litigation, all school districts collaborated to develop 11 regional plans for reducing racial isolation, three of which were adopted. See id. On the general ineffectiveness of measures taken by the state over the decades to assist Hartford's declining public schools, see infra note 75.

In 1996, the State Department of Education began yet another extensive review of Hartford's schools, including curricula and management procedures. See Robert A. Frahm, 'Dramatic' Bills Dealing with Sheff Before Legislature, Hartford Courant, Mar. 4, 1997, at A1. The resulting state legislation, mandated by the *Sheff* decision, is described in Part I.B and critiqued in Part II.C.

For an overview of the history of racial segregation in Connecticut, focusing on the roots of educational inequality in Hartford, see Mike Swift, A Long, Steady Trend in State Toward Separation of Races, Hartford Courant, July 10, 1996, at A10.

13 For a thorough examination of the history and persistence of racial isolation, as well as the effect of segregation on black people, see Douglas S. Massey & Nancy A. Denton, American Apartheid (1993); see also W.E.B. DuBois, The Souls of Black Folk (Vintage Books 1990) (1903) (reflecting on race and narrating stories that illustrate impact of racial prejudice and oppression on black people).

14 347 U.S. 483 (1954).

15 See id. at 495.

16 See, e.g., Robert L. Carter, A Reassessment of *Brown v. Board*, in Shades of *Brown*: New Perspectives on School Desegregation 20, 28 (Derrick Bell ed., 1980) [hereinafter Shades of *Brown*] (referring to "constitutional guarantee of equal educational opportunity" announced by *Brown*).

persist.[17] This is particularly true in the Northeast, where troubled inner-city schools continue to be attended predominantly by minority students.[18] Consequently, some proponents of equal educational opportunity are questioning the value of desegregation[19] and are seeking alternative means for improving the educational experiences of minority students.[20]

This Note examines *Sheff* and its implications for *Brown*'s desegregation strategy. It contends that efforts to dismantle school segregation can indeed coexist with the aim of improving educational quality. An analysis of *Sheff*, the leading state case in this area, reveals two reasons why desegregating schools remains an important goal. First, desegregation is needed because racial isolation makes possible the institutionalization and entrenchment of ongoing racial discrimination. In the context of public education, this discrimination manifests itself through the stigmatization of students attending predominantly minority schools and through the devaluation of minority children and the lack of priority given to their life opportunities. Second, school districts should desegregate because race intersects with poverty such that the burdens of second-class school systems fall disproportionately on minority students. Accordingly, the problems of segregated

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[17] See infra note 40 and accompanying text.

[18] A recent Harvard study showed that 66% of the black students in the United States attended predominantly minority schools, the highest rate since 1968, with the highest rates in the Northeast. See Robert A. Frahm, Segregation in U.S. Schools Growing Worse, Study Finds, Hartford Courant, Dec. 14, 1993, at A1.

[19] Long met with hostility and resistance by opponents of racial integration, desegregation is now often rejected within the civil rights agenda as well. See infra notes 110-11 and accompanying text.

[20] For the purposes of this Note, the phrase "equal educational opportunity" signifies educations of equivalent quality. This should be distinguished from "educational adequacy" and "educational equity," concepts used in the literature addressing school financing. See infra note 50. More concretely, equal educational opportunity contemplates "the abandonment of all state educational policies and practices that result in a disparate allocation of public educational resources between blacks and whites." Carter, supra note 16, at 26. At a minimum, this should apply to "per capita expenditures, curriculum, remediation, quality of instruction, and intensity of academic pressures" because segregation has had a severe impact on black students in these areas. Id. Yet parity of resources will not necessarily produce equal education for minority students. See infra Part II.A.

The Connecticut State Board of Education apparently conceptualizes equal educational opportunity in terms of resource allocation, defining such opportunity as "student access to a level and quality of programs and experiences which provide each child with the means to achieve a commonly defined standard of an educated citizen." Memorandum from Gerald N. Tirozzi, Commissioner of Education, to Connecticut State Board of Education app. at 42 (1987) (setting forth board's policy statement on equal educational opportunity) (on file with the *New York University Law Review*). The board finds that evidence of equal educational opportunity is reflected in "the achievement by each of the state's student subpopulations (as defined by such factors as wealth, race, sex or residence) of educational outcomes at least equal to that of the state's student population as a whole." Id.

schools require legislative action that will reduce racial isolation and counteract the extensive correlation between race and poverty. The state can accomplish this goal by initiating structural changes across the dividing line between Hartford and its suburbs.

Part I begins with a brief review of the Supreme Court's holding in *Brown* and its original mandate to desegregate. It then traces the contraction of that mandate over the years and the shift in desegregation litigation away from reliance on the Federal Constitution to reliance on state constitutions, as exemplified by the *Sheff* litigation and subsequent state legislation.

Part II considers the ways in which principles implicit in *Sheff* relate to those expressed in *Brown*, and asserts that those principles provide viable reasons for encouraging racial diversity in public schools. Guided by this analysis of *Sheff*'s message, Part II then critiques the Connecticut legislature's response to the *Sheff* court's mandate to desegregate. This Part argues that a legislative remedy to the problems identified by *Sheff* requires an explicit consideration of race and that remedial measures must be extensive and powerful enough to overcome the racialized poverty maintained by traditional school districting schemes.

I

FROM *BROWN* TO *SHEFF*: FINDING STATE CONSTITUTIONAL GROUNDS FOR DESEGREGATION

The history of the Supreme Court's school desegregation jurisprudence has been recounted extensively, particularly around each decennial anniversary of *Brown* and with each major desegregation case decided by the Court.[21] Nevertheless, an account of *Brown* and its progeny warrants a brief review in order to better compare the federal court holdings to the decision in *Sheff*.

In *Brown*, the Supreme Court abolished state-mandated racial segregation in public education and expressly rejected the notion that separate school systems could be equal ones.[22] The Court's holding that public school segregation violated the Equal Protection Clause rested less on the text of the Fourteenth Amendment than on the

[21] See, e.g., Deborah E. Beck, *Jenkins v. Missouri*: School Choice as a Method for Desegregating an Inner-City School District, 81 Cal. L. Rev. 1029, 1038-46 (1993) (recounting federal desegregation efforts); Neal Devins, School Desegregation Law in the 1980's: The Courts' Abandonment of *Brown v. Board of Education*, 26 Wm. & Mary L. Rev. 7, 13-25 (1984) (same); Steven I. Locke, Comment, *Board of Education v. Dowell*: A Look at the New Phase in Desegregation Law, 21 Hofstra L. Rev. 537, 540-48 (1992) (reviewing recent Supreme Court decisions seeking to lift desegregation orders).

[22] See Brown v. Board of Educ., 347 U.S. 483, 495 (1954).

Court's perception of the role of public schools in modern society, where education had become "perhaps the most important function of state and local governments."[23] The Court's holding also relied on social science evidence that state-mandated segregation stigmatized black students, delivering a message of racial inferiority and impairing the students' ability to learn by injuring their self-esteem.[24]

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[23] Id. at 493. The Court asserted:

> Today [education] is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.

Id. For further discussion about the *Brown* Court's views on the fundamental importance of education, see Angelia Dickens, Note, Revisiting *Brown v. Board of Education*: How Tracking Has Resegregated America's Public Schools, 29 Colum. J.L. & Soc. Probs. 469, 482-88 (1996).

[24] See *Brown*, 347 U.S. at 494. Citing district court findings, the Court concluded that "[t]o separate [black children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." Id. The Court explained how this separation detrimentally affected the educational opportunities of black students:

> A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system.

Id. Social scientists of *Brown*'s time supported this hypothesis. See id. at 494 n.11 (citing social science support for *Brown* findings, including Kenneth Clark study); Bernard R. Boxill, Blacks and Social Justice 89-90 (1984) (describing Clark's "dolls" experiment, cited as evidence in *Brown* that segregated schools resulted in minority children's negative self-images); Roy L. Brooks, Integration or Separation? 15 (1996) (noting findings of *Brown*-era psychologists and sociologists regarding negative impact of segregation). For commentary on the social science evidence relied on by *Brown*, see id. at 13-15, 18-21 (detailing and critiquing study suggesting negative impact of segregation on black children); Sara Lawrence Lightfoot, Families as Educators: The Forgotten People of *Brown*, in Shades of *Brown*, supra note 16, at 2, 5 (criticizing social science testimony cited in *Brown* for oversimplifying children's perceptions of complex interactions in classrooms); Diane Ravitch, Desegregation: Varieties of Meaning, in Shades of *Brown*, supra note 16, at 30, 42-43 (describing legacy of label of "inferiority" flowing from 1960s sociological studies analyzing black culture). This Note argues that, regardless of the strength or weakness of the data relied upon by the *Brown* court, segregation is undoubtedly a cause of unequal educational opportunity for minority students today, and that the *Sheff* court was, therefore, correct in reaching this conclusion. See infra Part II.A.

The implication of inferiority was one that civil rights activists in the 1950s sought to dispel through desegregation lawsuits. One National Association for the Advancement of Colored People (NAACP) lawyer who worked for the *Brown* plaintiffs recalls:

> One of the primary reasons we insisted . . . that the NAACP only sponsor cases attacking segregation head-on, and not cases seeking only equalization of school facilities, was our belief that integration was crucial to combatting the generally accepted American mainstream notion that black people are educationally inferior to white people.

In its assessment of the quality of education being provided to black children, the Court refused to compare only the physical facilities and other characteristics of the black and white schools before it. Instead, the Court chose to base its decision on "the effect of segregation itself on public education."[25] Notwithstanding the fact that "the Negro and white schools involved have been equalized, or are being equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other 'tangible' factors,"[26] the Court maintained that separate facilities are unconstitutional because "segregation of children in public schools solely on the basis of race . . . deprive[s] the children of the minority group of equal educational opportunities."[27] Thus, *Brown* deemed racial isolation and its negative effect upon the quality of black children's educational experiences to be the chief problem with schools separated by race.

The initial *Brown* decision did not address the question of appropriate relief, and the Court's later order to desegregate the nation's public schools "with all deliberate speed"[28] was met with vigorous resistance by local school officials in the South, who quickly devised an array of tactics to frustrate integration efforts.[29] Among these tactics were plans allowing parents to choose which schools their children would attend.[30] In *Green v. County School Board*,[31] for example, the

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Robert L. Carter, Public School Desegregation: A Contemporary Analysis, 37 St. Louis U. L.J. 885, 889 (1993).

[25] *Brown*, 347 U.S. at 492.

[26] Id. This may have been wishful thinking; litigants in pre-*Brown* school desegregation suits documented "[g]ross inequality in facilities and per pupil spending for African American and white schools." Brooks, supra note 24, at 9 (summarizing evidence of "substantial racial inequality as it was manifested in school buildings, per pupil expenditures for textbooks and equipment, and teacher salaries").

[27] *Brown*, 347 U.S. at 493.

[28] Brown v. Board of Educ., 349 U.S. 294, 301 (1955).

[29] See, e.g., Green v. County Sch. Bd., 391 U.S. 430, 440-41 (1968) (holding county board's "freedom of choice" plan insufficient to desegregate schools); Goss v. Board of Educ., 373 U.S. 683, 689 (1963) (holding unconstitutional transfer provisions of school board's desegregation plan that allowed black students to return to segregated schools); Cooper v. Aaron, 358 U.S. 1, 16 (1958) (rejecting local school authorities' request for postponement of desegregation plans). These Supreme Court decisions responded only to the most egregious attempts to perpetuate segregation. As a result of this limited response, almost 20 years after *Brown*, 53.7% of black students in 11 southern states continued to attend segregated schools. See U.S. Comm'n on Civil Rights, Twenty Years After Brown 48 (1977). Judge Carter has asserted that "[t]he attitude of the Supreme Court toward desegregation has much to do with the deplorable condition of public schools today." Carter, supra note 24, at 889. In particular, he criticizes the Court for failing to order immediate vindication in *Brown* and then "allow[ing] school boards to dawdle in fashioning meaningful desegregation remedies." Id. at 890.

[30] Following *Brown*, state legislatures in the South disposed of the education clauses in their constitutions and statutes, replacing them with "freedom of choice student assignment plans." Eileen M. Fava, Note, Desegregation and Parental Choice in Public School-

Court rejected a "freedom of choice" plan, demanding that desegregation be implemented "with a plan that promises realistically to work . . . *now*,"[32] and imposing an affirmative duty on school boards "to take whatever action may be necessary to create a 'unitary, nonracial system.'"[33] While the Court encouraged school boards to devise creative remedies,[34] it attempted to ensure compliance with *Green* by conferring on district courts the authority to order the boards to adopt particular measures to effect desegregation.[35]

Like the story of *Brown*'s desegregation mandate, the history of the Burger and Rehnquist Courts' contraction of federal court involvement with school desegregation has also been well docu-

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ing: A Legal Analysis of Controlled Student Assignment Plans, 11 B.C. Third World L.J. 83, 83 (1991). Although freedom of choice plans purported to comply with the *Brown* ruling, they actually "frustrated *Brown*'s goal of racial desegregation because few African-Americans chose to risk violence and ostracism by attending the former Caucasian schools, and virtually no Caucasians chose to attend former African-American schools." Id.; see also James S. Liebman, Desegregating Politics: "All-Out" School Desegregation Explained, 90 Colum. L. Rev. 1463, 1589 n.525 (1990) (stating that, under "freedom of choice" plans, "the first few African-American children to exercise the option to transfer to previously all-white schools were met with more or less officially sanctioned retaliation and violence, and no whites invoked the option to transfer to previously all-black schools").

31 391 U.S. 430 (1968).

32 Id. at 439 (emphasis in original); accord Monroe v. Board of Comm'rs, 391 U.S. 450, 457 (1968) (holding "free transfer" desegregation plan inadequate where racial compositions of formerly all-white and all-black schools had barely changed); Raney v. Board of Educ., 391 U.S. 443, 446 (1968) (holding freedom of choice desegregation plan inadequate where, after three years, no white children had enrolled in all-black school, which over 85% of black children continued to attend).

33 *Green*, 391 U.S. at 440 (quoting Bowman v. County Sch. Bd., 382 F.2d 326, 333 (4th Cir. 1967) (Sobeloff, J., concurring)). The Supreme Court held that the freedom of choice plan at issue in *Green* was unconstitutional, see id. at 441-42, but it did not hold that all such plans are unconstitutional. See id. at 440. Nevertheless, in response to the failure of many freedom of choice plans to produce desegregation, federal courts began forcing school boards to implement mandatory student assignment plans. See Fava, supra note 30, at 84.

34 See United States v. Montgomery County Bd. of Educ., 395 U.S. 225, 235 (1969) (stating that, in eliminating segregation, "the way must always be left open for experimentation"). In this case, the Court upheld a district court order requiring schools to hire certain numbers of nonwhite teachers according to fixed mathematical ratios, concluding that these measures represented a reasonable step towards eliminating segregation. See id.

35 See, e.g., Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 25, 28, 30 (1971) (holding that "limited use . . . of mathematical ratios" of white to black students, "pairing and grouping of noncontiguous school zones," and busing were all tools of school desegregation within district court's equitable remedial discretion). At one point, over 500 school districts across the country were under some form of federal court supervision. See Kevin Brown, The Implications of the Equal Protection Clause for the Mandatory Integration of Public School Students, 29 Conn. L. Rev. 999, 999 (1997). *Swann* marked the apotheosis of the Court's expansive approach to creating desegregative remedies for correcting educational inequality.

mented.[36] Those Courts held that the desegregative remedies approved earlier did not apply to school districts suffering from de facto segregation,[37] and that federal courts could not impose an interdistrict desegregation plan absent a finding that surrounding suburban districts had intentionally contributed to or exacerbated segregation in an inner-city district.[38] More recently, the Court allowed lower federal courts to end supervision of desegregation litigation, even where this withdrawal enabled schools that had been

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[36] See, e.g., Rachel F. Moran, Milo's Miracle, 29 Conn. L. Rev. 1079, 1085-90 (1997) (discussing Burger and Rehnquist Courts' curtailment of busing, limiting of desegregation to city cores, and approval of federal court withdrawal from oversight). See generally Gary Orfield et al., Dismantling Desegregation: The Quiet Reversal of *Brown v. Board of Education* (1996) (collecting articles criticizing diminishing federal commitment to desegregation); Chris Hansen, Are the Courts Giving Up? Current Issues in School Desegregation, 42 Emory L.J. 863, 869 (1993) (attributing courts' unsympathetic attitudes toward desegregation cases to frustration over inability of judiciary to end segregation).

[37] In Keyes v. School Dist. No. 1, 413 U.S. 189 (1973), the Court limited the desegregation remedies that it had previously approved in *Swann* to de jure segregated school districts, holding that these remedies might be applied to districts that had never been segregated by state statutes, but only if officials in those districts had pursued deliberately segregative policies. See id. at 212-13. It is extremely difficult to prove a constitutional violation based on discriminatory intent. See, e.g., Roy L. Brooks, Rethinking the American Race Problem 104 (1990) (stating that segregative intent test "places a near-impossible burden on African Americans" and is partly responsible for present "lack of cultural diversity and adequate educational resources"); Eric S. Stein, Attacking School Segregation Root and Branch, 99 Yale L.J. 2003, 2004 (1990) (arguing that "proving discriminatory intent . . . has become increasingly difficult as school boards today are far more likely to mask discriminatory motives than in the past").

[38] See Milliken v. Bradley, 418 U.S. 717, 744-45 (1974) (focusing not on current segregated conditions but on past discriminatory practices, and requiring showing that "racially discriminatory acts of the state or local school districts . . . have been a substantial cause of interdistrict segregation"). The Court's decision to limit the scope of the desegregation remedy to the core city school district that had purposely discriminated made it largely impossible to desegregate major metropolitan school districts even if intentional wrongdoing by core districts could be established. See Moran, supra note 36, at 1087 (affirming difficulty and noting near impossibility of proving discriminatory intent by suburban districts). The *Milliken* decision has had a far reaching impact:

> [B]ecause of the Court's refusal to countenance a metropolitan-wide remedy in Detroit, all cases following *Milliken* have restricted the remedy to the cities themselves, where most of the minorities affected by the vestiges of segregation still reside. This has made actual desegregation virtually impossible to achieve and has hastened the flight of urban, White families to the contiguous suburbs where school districts have been effectively insulated by *Milliken* from any unwanted incursions by minorities.

Gayl Shaw Westerman, The Promise of State Constitutionalism: Can It Be Fulfilled in *Sheff v. O'Neill*?, 23 Hastings Const. L.Q. 351, 371 (1996); see also Joseph A. Sullivan, Equal Protection in the Post-*Milliken* Era: The Future of Interdistrict Remedies in Desegregating Public Schools, 18 Colum. Hum. Rts. L. Rev. 137, 137 (1986) (stating that application of *Milliken* decision has "effectively denied [schoolchildren] meaningful interdistrict relief").

integrated to return to segregated conditions.[39] The resulting failure of many urban schools either to desegregate or meaningfully improve educational conditions[40] has caused civil rights plaintiffs to seek other strategies for reforming schools, including legal claims based on state constitutions.[41]

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[39] See Board of Educ. v. Dowell, 498 U.S. 237, 249-50 (1991) (declaring that desegregation decree may be lifted once school board complies in good faith with decree and eliminates vestiges of past discrimination to extent practicable). On remand, the district court reaffirmed its previous finding that the board had complied with the initial desegregation decree. See Dowell v. Board of Educ., 778 F. Supp. 1144, 1160 (W.D. Okla. 1991). The Tenth Circuit affirmed, though it acknowledged that the schools in Oklahoma City had resegregated under the school board's residentially based student reassignment plan. See Dowell v. Board of Educ., 8 F.3d 1501, 1514 n.11 (10th Cir. 1993). *Dowell* was followed by two other opinions, Freeman v. Pitts, 503 U.S. 467 (1992), and Missouri v. Jenkins, 515 U.S. 70 (1995), pursuant to which federal courts increasingly reduced their involvement in public school desegregation.

[40] See, e.g., Gary Orfield, Separate Societies: Have the Kerner Warnings Come True?, in Quiet Riots: Race and Poverty in the United States 100, 116 (Fred R. Harris & Roger W. Wilkins eds., 1988) [hereinafter Quiet Riots] (noting lack of progress in federal school desegregation following *Milliken* decision). Meaningful progress in school desegregation has not occurred since the early 1970s, when many court-ordered plans were implemented in the South. See James & Hoffman, supra note 2, at 573. For a description of outcomes in several districts that were successfully desegregated, see Westerman, supra note 38, at 398-405.

Decades after *Brown*, over 60% of black public school students nationwide attend schools where a majority of the students are black. See Kevin Brown, After the Desegregation Era: The Legal Dilemma Posed by Race and Education, 37 St. Louis U. L.J. 897, 898 (1993) (citing Professor Orfield's 1982 study claiming that 63% of black students attend majority black schools). "[I]n twenty-five of the nation's largest inner-city school districts, more racially segregated schools exist today than in 1954." Westerman, supra note 38, at 365; see also Carter, supra note 16, at 25 (stating that "more blacks attend[ ] all or predominantly black schools than . . . in 1954"). In fact, in this decade, racial segregation in American schools has reached the highest levels since 1968. See William Celis 3d, Study Finds Rising Concentration of Black and Hispanic Students, N.Y. Times, Dec. 14, 1993, at A1. Nationally, 32% of African Americans attend schools that are at least 90% black; in the Northeast, nearly 50% of all blacks attend such schools. See Brown, supra, at 898. In contrast, only 3.3% of white public school students attend schools in central city school districts. See id. at 898 n.5.

Furthermore, there has been only moderate improvement in the quality of educational opportunities for blacks relative to whites. See Robin D. Barnes, Black America and School Choice: Charting a New Course, 106 Yale L.J. 2375, 2376 (1997) (stating that "[b]lack children [today] have less access than white students to the limited number of quality public education programs, and they are significantly overrepresented in the worst").

[41] See Adam Schwartz, Note, *Sheff v. O'Neill*: Will the "Constitution State" Desegregate?, 38 How. L.J. 693, 702 (1995) (describing "devolution of civil rights law from the federal courts into the state courts").

A. *Revisiting the* Sheff *Litigation and Decision*

Sheff v. O'Neill[42] was the first school desegregation case to challenge the doctrine and rationale of its federal predecessors solely on the basis of state constitutional provisions.[43] Considered by many to be a landmark case in the canon of school desegregation litigation,[44] *Sheff* serves as an important reminder of the extent to which federal case law has strayed from *Brown*. Like its Supreme Court predecessor, *Sheff* focused its attention on the problems attendant to segregation. At the heart of the decision was the court's recognition that the students in Hartford's beleaguered schools suffered from racial and ethnic isolation.[45]

The story of *Sheff* begins with earlier judicial efforts to improve Connecticut's schools. In *Horton v. Meskill*,[46] students from the town of Canton brought a challenge under Connecticut's constitution to the state's system of financing public elementary and secondary education.[47] At the time, public education in Connecticut was funded by local property taxes without regard to towns' varying abilities to finance educational programs and without significant state support to equalize such disparities.[48] The *Horton* court held the state's financing scheme unconstitutional, even though it was nondiscriminatory on its face and the resulting disparities had not been intended by the legislature.[49] The court thus responded to one of the factors believed to

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42 678 A.2d 1267 (Conn. 1996).

43 See Westerman, supra note 38, at 352 (discussing history of *Sheff* litigation). Other states have since done the same. See, e.g., Opinion of the Justices No. 338, 624 So. 2d 107, 165 (Ala. 1993) (affirming lower court order in desegregation case that state constitution guarantees school age children "equitable and adequate educational opportunities"). These suits represent new forms of desegregation litigation with "the potential for refocusing efforts on providing every child a quality education." Hansen, supra note 36, at 873.

44 *Sheff* is widely viewed as a case that will be influential in states other than Connecticut. See, e.g., John C. Brittain, Why *Sheff v. O'Neill* is a Landmark Decision, 30 Conn. L. Rev. 211, 214 (1997) (stating that *Sheff* is "not only precedential in Connecticut, but among all fifty states"); Duchesne Paul Drew & Rob Hotakalnen, Activists Hail Desegregation Ruling: Connecticut Case Called 'Road Map' for Suit against Minnesota, Star Trib. (Minneapolis-St. Paul), July 11, 1996, at B1 (noting that Minnesota constitution does not contain provision regarding segregation, but reporting predictions that *Sheff* could influence similar lawsuit pending in Minnesota); George Judson, Civil Rights Lawyers Hope to Use Hartford Schools Case as a Model, N.Y. Times, Aug. 15, 1996, at B1 (discussing implications of *Sheff* decision for lawsuit in Minnesota, as well as litigation in New York and New Jersey).

45 See infra note 67.

46 376 A.2d 359 (Conn. 1977).

47 See id. at 361.

48 See id. at 365-66.

49 See id. at 374. The *Horton* court stayed judicial intervention, affording the state legislature an opportunity to remedy the inequitable situation. See id. at 375. In 1979, the state enacted a new system of educational financing designed to achieve statewide equity.

contribute to the substandard education provided to students in Hartford and other poor districts.[50]

Although *Horton* represented an advance toward improving the schools of urban and poor districts, the financing decision did not result in equal educational opportunities for students in these schools.[51] As a result of *Horton*, Hartford's school systems, for example, now receive the most state funding among all school districts in the state, yet its schools still lag behind suburban schools.[52]

The constitutionality of this system was upheld in Horton v. Meskill, 486 A.2d 1099, 1107 (Conn. 1985).

Many school finance reform cases have demonstrated that state courts sometimes are willing to pursue educational remedies that the United States Supreme Court has rejected. Declining to follow the Supreme Court's holding that equal access to education is not a fundamental right under the Fourteenth Amendment, see San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 35 (1973), the *Horton* court interpreted the education and equal protection clauses of Connecticut's constitution as together creating a fundamental right to an equal educational opportunity. See *Horton*, 376 A.2d at 373-75.

[50] By ordering the restructuring of finances, the court recognized the need for educational equity among the school districts. "Educational equity" refers to issues of funding parity and is distinct from the concept of equal educational opportunity. See William H. Clune, Educational Adequacy: A Theory and Its Remedies, 28 U. Mich. J.L. Reform 481, 481 (1995) (defining "equity" in school finance as "equal resources across a state," i.e., equal spending per student or equal taxable resources). "Educational adequacy" is another theory upon which school finance litigation is often based. See id. (defining "adequacy" as "resources that are sufficient (or adequate) to achieve some educational result, such as a minimum passing grade on a state achievement test"). Though theoretically distinct, "equity" and "adequacy" are not always clearly distinguishable in practice. See id.

Litigation seeking equal funding may be more limited than litigation seeking desegregation, however: "The argument for equal funding tolerates racial separation . . . so long as the money is there . . . ." Brooks, supra note 24, at 10 (recalling Thurgood Marshall's change of legal strategy midway through *Brown* litigation from equal funding to racial integration).

[51] In 1998, a group of parents and students from urban and suburban school districts across Connecticut announced their plan to sue the state because the funding inequalities among school districts had worsened since *Horton*'s ruling 20 years ago. See Rick Green, State Faces Lawsuit over School Funding, Hartford Courant, Jan. 21, 1998, at A1. The group specifically criticized the local property tax, which remains the primary source for public school funding, and the state's methods for distributing additional funds for education. See id. This suit, which focuses on the issue of school finance, is distinct from a suit that the *Sheff* plaintiffs commenced in 1998 on the theory that the state had failed to fulfill its obligations under the 1996 *Sheff* decision. See infra note 199.

[52] Hartford is one of the top Connecticut school districts in per pupil spending. See Anne M. Hamilton, Numbers Shape School Profiles, Hartford Courant, Dec. 1, 1997, at B1. During the 1996-1997 school year, Hartford spent $7,582 on each elementary and middle school student and $8,964 on each high school student, while the statewide average was $6,920 and $7,943, respectively. See id.; see also Rick Green, City Schools Could Get Budget Boost, Hartford Courant, Jan. 7, 1999, at A3 (reporting that 75% of Hartford public schools' $185 million budget is state-funded and that Hartford spends over $10,000 per student, more than almost any other Connecticut school district). Despite these spending figures, the percentage of Hartford students who meet basic achievement levels is one of the lowest in the nation. See Editorial, Home, Money and Schools, Providence J.-Bull., Jan. 16, 1998, at B6.

In 1989, the *Sheff* plaintiffs filed a lawsuit seeking a declaratory judgment against the state and injunctive relief to remedy alleged educational inequities in the Hartford public schools.[53] They sought relief solely under the state constitution, which had been amended in 1965 to provide a right to a free public elementary and secondary education,[54] as well as a right to protection from segregation.[55] The plaintiffs alleged that they were burdened by "severe educational disadvantages arising out of their racial and ethnic isolation and their

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53 See *Sheff*, 678 A.2d at 1271.

54 See Conn. Const. art. XIII, § 1 ("There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation."). The constitutions of all 50 states guarantee a right to a free public education. See Hansen, supra note 36, at 873 (discussing various litigations based on state constitutions); see also Allen W. Hubsch, The Emerging Right to Education Under State Constitutional Law, 65 Temp. L. Rev. 1325, 1343-48 (1992) (compiling all state education clauses); Phil Weiser, What's Quality Got to Do with It?: Constitutional Theory, Politics, and Education Reform, 21 N.Y.U. Rev. L. & Soc. Change 745, 752-57 (1995) (discussing scholarly approaches to interpreting education clauses in state constitutions). The states' education clauses all impose an express duty on the state to provide for a system of public education. See, e.g., Peter Enrich, Leaving Equality Behind: New Directions in School Finance Reform, 48 Vand. L. Rev. 101, 105 n.18 (1995) (distinguishing state constitutional education provisions by intensity of language choices but noting common duty imposed on state to provide public education system); Gershon M. Ratner, A New Legal Duty for Urban Public Schools: Effective Education in Basic Skills, 63 Tex. L. Rev. 777, 814-16 (1985) (noting duty in all 50 state constitutions).

55 See Conn. Const. art. I, § 20 ("No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil or political rights because of religion, race, color, ancestry, national origin, sex or physical or mental disability."). Hawaii's and New Jersey's state constitutions also contain express prohibitions of some forms of racial and ethnic segregation. See Haw. Const. art. I, § 9 ("No citizen shall be denied enlistment in any military organization of this state nor be segregated therein because of race, religious principles, or ancestry."); N.J. Const. art. I, § 5 ("No person shall be denied enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, nor be segregated in the military or in the public schools, because of religious principles, race, color, ancestry or national origin.").

Presumably, in states without antisegregation provisions in their constitutions, it would be more difficult for courts to support a holding like that in *Sheff*. Yet other state courts could rely on their constitutions' equal protection clauses for support. In California, for example, the state supreme court held that de facto school segregation in Los Angeles violated the state constitution's equal protection guarantee. See Crawford v. Board of Educ., 551 P.2d 28, 39 (Cal. 1976). In a later ballot initiative, however, California voters amended the state constitution to require proof of intent in order to establish an equal protection violation. The amendment, which was upheld by the United States Supreme Court in Crawford v. Board of Educ., 458 U.S. 527, 545 (1982), nullified the state court's holding. Some commentators also argue that a constitutional right to educational equality may be premised on an education clause alone. See, e.g., Tom Beimers, Note, A Wrong Still in Search of a Remedy: Educational Adequacy After *Sheff v. O'Neill*, 82 Minn. L. Rev. 565, 567 (1997) (contending that state constitutions' education clauses "independently mandate educational adequacy, and by extension, integration, thus necessitating wide-ranging remedial action").

socioeconomic deprivation"[56] and that the state had failed to fulfill its obligation under the Connecticut Constitution to alleviate this burden.[57] Reading the constitutional provisions in tandem, the Connecticut Supreme Court agreed with the plaintiffs, identifying "a deep and abiding constitutional commitment to a public school system that, in fact and in law, provides Connecticut schoolchildren with a substantially equal educational opportunity."[58] While the court did not explicitly define the parameters of this right, it did find "access to a public school education that is not substantially impaired by racial and ethnic isolation" to be a significant component of an equal educational opportunity.[59]

The *Sheff* plaintiffs maintained that the state courts should impose a remedy for the Hartford region's school segregation, regardless of whether state action infused with discriminatory intent had caused the segregative conditions.[60] Signaling a departure from federal equal protection analysis, the court responded favorably, rejecting the state's contention that relief was barred because the plaintiffs had not alleged that their educational impairment resulted from intentional state conduct.[61] The court invoked the state constitution's education clause, which contains not only a fundamental right to education but also an affirmative state obligation to implement and maintain that right.[62] It also cited the antisegregation clause, noting that the term "segregation" was neutral about segregative intent and that the manner by which unconstitutional segregation based on race, color, or an-

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[56] *Sheff*, 678 A.2d at 1271. The court found that the students in Hartford's public schools performed at a significantly lower level on standardized tests than did students in neighboring school districts. See id. at 1273. At the same time, the distance between the socioeconomic status of the students in Hartford—the majority of whom are economically disadvantaged—and that of suburban students was growing steadily. See id.; see also Kirk Johnson, Two Schools, Separated by Poverty, N.Y. Times, Apr. 29, 1989, at 29 (discussing "invisible barrier marking the end of one world and the beginning of another" between Hartford and suburban West Hartford).

[57] See *Sheff*, 678 A.2d at 1288. The trial court had rejected the plaintiffs' claim. See Sheff v. O'Neill, No. CV89-0360977S, 1995 WL 230992, at *29 (Conn. Super. Ct. Apr. 12, 1995), rev'd, 678 A.2d 1267 (Conn. 1996). In a decision heavily influenced by principles of federal constitutional law, the superior court concluded that the plaintiffs had failed to prove that state action was the cause of the circumstances set forth in their complaint, a nexus the court believed was necessary in order for the plaintiffs to prevail on an equal protection claim. See *Sheff*, 678 A.2d at 1272. For a history of the lawsuit, including a discussion of the trial court's decision, see Schwartz, supra note 41, at 707-16.

[58] *Sheff*, 678 A.2d at 1280.

[59] Id.

[60] See *Sheff*, 1995 WL 230992, at *8.

[61] Under federal school desegregation case law, the failure to identify intentional segregation would have effectively foreclosed the plaintiffs' arguments for relief. See supra notes 37-38 and accompanying text.

[62] See *Sheff*, 678 A.2d at 1279.

other such factor must be established was not specified.[63] The court held that in the context of public education—in which the state has an affirmative duty to monitor and equalize educational opportunity—the state has a responsibility to remedy "segregation . . . because of race [or] . . . ancestry"[64] when it is aware of the severe racial and ethnic isolation existing in its school systems.[65] Thus, the court concluded that the text of the education clause, as informed by the clause prohibiting segregation, requires a remedy for the effects of segregation in the public schools, regardless of whether that segregation is de jure or de facto.[66] The court then held that the dramatic disparities between the public schools in Hartford and those in its nearby suburbs constituted de facto segregation, which jeopardized the plaintiffs' fundamental right to education and required a remedy.[67]

Of special significance to the court's reasoning was its identification of Connecticut's statutory districting scheme as the source of the de facto segregation in the Hartford metropolitan area.[68] For decades, the General Assembly has controlled public elementary and secondary education in Connecticut.[69] Except for a brief period in 1868, the state has never intentionally segregated students in different

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63 See id. at 1282.

64 Conn. Const. art. I, § 20.

65 See *Sheff*, 678 A.2d at 1282-83.

66 See id. at 1283. The court viewed the provision requiring a substantially equal educational opportunity as "mandat[ing] that the state act affirmatively to promote equality, rather than simply refrain from engaging in unequal treatment. Similarly, the prohibition on segregation does more than merely forbid discrimination; it treats segregation as a harm in itself." Moran, supra note 36, at 1081.

67 See *Sheff*, 678 A.2d at 1288. The supreme court looked to the trial court's factual findings to support its holding. In the 1991-1992 school year, minority students represented 25.7% of the public school students in Connecticut, but in Hartford's public schools, 92.4% of the students were minorities—predominantly black or Latino—and more than half of the city's elementary schools had a white student enrollment of less than 2%. See id. at 1272-73. Between 1980 and 1992, the enrollment of black students increased by over 60% in the suburbs of Hartford, but by 1992, only seven of the 21 school districts in these suburbs enrolled students of color in excess of 10%. See id. at 1273.

In determining whether the Connecticut Constitution triggered any state obligation, the court declined to decide at what point the disparate socioeconomic levels and educational resources of different racial groups become sufficiently unequal to require the state to intervene and equalize educational opportunities. See id. at 1281. Instead, it reiterated its earlier holding in *Horton* that "the state has an affirmative constitutional obligation to provide all public schoolchildren with a substantially equal educational opportunity," id. at 1280-81, and stated that remedies for this constitutional right were not limited to the arena of school financing, see id. at 1281.

68 See id. at 1274.

69 See id. at 1273. In addition to directing aspects of local school programs such as curricula and standardized testing, the General Assembly approves school districting, and provides monetary support to finance public school operations in towns across the state. See id. It distributes the most financial aid to the neediest school districts, including Hartford. See id.

school districts on the basis of race or ethnicity.[70] Nevertheless, it played a significant legislative role in creating the current conditions in the Hartford public schools. Since 1941, the public school district boundaries in Hartford have, by state statutory mandate, converged with the city's boundaries,[71] and since 1909 schoolchildren have been assigned to the public school district in which they reside.[72] Although the enactment of this districting scheme apparently was not motivated by racial or ethnic animus,[73] the scheme's establishment of town boundaries as the dividing line between school districts has been the single most important factor contributing to the dense concentration of racial and ethnic minority students in Hartford's schools.[74] Propelled by this finding, as well as by its notice of legislative failures to address unconstitutional inequities flowing from the districting scheme,[75] the *Sheff* court concluded that the legislature had violated

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[70] See id. at 1274. In 1868, Hartford's city council enacted an ordinance that assigned black students to a separate public school. See id. at 1274 n.11. In response, the Connecticut General Assembly enacted legislation that mandated open enrollment in all public schools without regard to race. See id. This historical moment illustrates the "long history of racial separation in Connecticut schools, and it shows that the state, not local government, always controlled public education." Swift, supra note 12, at A10.

[71] See Conn. Gen. Stat. Ann. § 10-240 (West 1998) (making each town into school district for purpose of controlling public schools within its boundaries).

[72] See id. § 10-184 (requiring parents to send children to public school within district).

[73] See *Sheff*, 678 A.2d at 1278. Nevertheless, it is likely that the local officials responsible for the districting scheme's enactment understood that the scheme would increase racial separation. See Swift, supra note 12, at A10 (relating comments of professor of land-use controls at University of Connecticut Law School).

[74] See *Sheff*, 678 A.2d at 1278; see also Swift, supra note 12, at A10 (reporting that state legislative reforms aligned school districts with town boundaries, and explaining how this alignment combined with "social, economic and political forces" to form "root of [state's] education inequities").

[75] The court gave considerable weight to the fact that the legislature had taken no effective measures to ameliorate conditions in Hartford's schools and contrasted this inaction with the legislature's otherwise comprehensive assumption of responsibility for the education of Connecticut's schoolchildren. See id. at 1285. The court felt that this failure "adequately to address the racial and ethnic disparities that exist among the state's public school districts" was akin to the legislative failure to address adequately the "'great disparity in the ability of local communities to finance local education,'" which had rendered the statutory scheme in *Horton* unconstitutional in its application. Id. at 1278 (quoting Horton v. Meskill, 376 A.2d 359, 374 (Conn. 1977)).

Although segregation has existed in Connecticut for decades, the state has had difficulty devising concrete measures to address the issue. See Racially Isolated Schools?, supra note 12, at A6 (charting timeline of major events relating to school segregation). The General Assembly, long aware of the extremely disparate resources and outcomes in Connecticut's schools, has failed to devise and implement workable solutions to the problem. See Schwartz, supra note 41, at 720 (noting legislature's approval of zoning, regional planning, public housing, and school construction exacerbating segregation while issuing reports critiquing segregation). For an overview of the "constructive, but ultimately inadequate" measures taken by the General Assembly from the 1960s through the 1990s to

the plaintiffs' right to a substantially equal educational opportunity, and that it was the legislature's responsibility to correct that harm.[76]

To bolster its conclusion that the Connecticut Constitution prohibits not only de jure segregation but also de facto segregation, the *Sheff* court also relied on public policy considerations. The court explicitly noted the trial court's findings that racial and ethnic segregation are harmful and that integration would likely have positive benefits for all children and for society as a whole.[77] Additionally, the court cited the role played by schools as socializing institutions that serve to "'inculcat[e] . . . fundamental values necessary to the maintenance of a democratic political system.'"[78] Based on this view of the significant role played by schools, the *Sheff* court reasoned that "shared values . . . [of] understanding and respect" are jeopardized when children attend schools that are racially and ethnically isolated.[79]

Stating that "the constitutional imperative of separation of powers persuades us to afford the legislature, with the assistance of the executive branch, the opportunity, in the first instance, to fashion the remedy that will most appropriately respond to the constitutional violations that we have identified,"[80] *Sheff* closed with a call for further remedial efforts on the part of the state.[81]

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mitigate the educational inequalities between schoolchildren in the Hartford public school system and those attending suburban public schools, see id. at 699-702.

In 1997, following the revocation of Hartford Public High School's accreditation, the state legislature enacted a law abolishing Hartford's locally elected school board and empowering the governor to appoint a new board. See John Ritter, States Stepping in at Urban Schools in Crisis, USA Today, June 10, 1997, at 8A. The new board has made "incremental progress," yet "grim statistics about test scores, bloated budgets, intense poverty and management problems" continue to be compiled. Green & Hamilton, supra note 1, at A3 (reporting on progress of state takeover of Hartford's schools).

76 See *Sheff*, 678 A.2d at 1289-90.

77 See id. at 1273, 1287. The court was also influenced by the litigants' stipulations that the racial and ethnic isolation of children in Hartford's schools would worsen in the future and that "[b]ecause of the negative consequences of racial and ethnic isolation, a more integrated public school system would likely be beneficial to all schoolchildren." Id. at 1273. For an examination of the harms of racial and ethnic segregation and a consideration of how such harms support the court's call for desegregation, see infra Part II.A.

78 Id. at 1285 (quoting Ambach v. Norwick, 441 U.S. 68, 77 (1979)).

79 Id.

80 Id. at 1271.

81 See id. at 1281. The court emphasized the need to find an immediate remedy for Hartford's students:

> In staying our hand, we do not wish to be misunderstood about the urgency of finding an appropriate remedy for the plight of Hartford's public schoolchildren. Every passing day denies these children their constitutional right to a substantially equal educational opportunity. Every passing day shortchanges these children in their ability to learn to contribute to their own well-being and to that of this state and nation.

B. *The Legislative Response to* Sheff

In response to *Sheff*'s mandate, the General Assembly in 1997 enacted a bill entitled "An Act Enhancing Educational Choices and Opportunities."[82] This legislation aimed to increase cross-district enrollments[83] and, prior to passage, was commonly called the education choice bill.[84] The law's major provisions encourage the creation of an array of interdistrict programs.[85] The centerpiece of the new law is its

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Id. at 1290. The court also reiterated that the state's affirmative obligation to respond to and correct the crisis in public education in Hartford arose from the fact that it had contributed, albeit unintentionally, to the schools' racial and ethnic segregation. See id.

Some commentaries on the *Sheff* decision have criticized it for stopping short of devising a remedy. See, e.g., Christine H. Rossell, An Analysis of the Court Decisions in *Sheff v. O'Neill* and Possible Remedies for Racial Isolation, 29 Conn. L. Rev. 1187, 1188 (1997) ("The Court left it to the state legislature to devise a remedy, thereby ensuring that its radical decision would not have a radical remedy."). For an argument that a workable remedial approach to *Sheff* must involve the guidance and oversight of an active judiciary, see Michael A. Rebell & Robert L. Hughes, Efficacy and Engagement: The Remedies Problem Posed by *Sheff v. O'Neill*—and a Proposed Solution, 29 Conn. L. Rev. 1115, 1119-20 (1997):

> Without judicial guidance and oversight, the legislative and executive branches cannot realistically be expected to solve these confrontational problems—which come to the courts' attention in the first place largely because the other branches fail to deal with them .... In order to deal successfully with highly controversial political issues that intersect with core democratic values, as in *Sheff* ... the courts need to create new mechanisms to involve the public-at-large in confronting the critical values at stake.

Id. at 1119. Note, in contrast, Connecticut Chief Justice Ellen Peters's view of the *Sheff* court's directive to the legislature: "Controversial as [the] conclusion [in *Sheff*] was, the court was able, in substantial part, to defuse resistance by expressly deferring to political decisionmaking for the negotiation and prescription of a remedial implementation plan." Ellen A. Peters, Getting Away from the Federal Paradigm: Separation of Powers in State Courts, 81 Minn. L. Rev. 1543, 1559 (1997).

[82] 1997 Conn. Acts 290 (Reg. Sess.) (codified as amended in scattered sections of Conn. Gen. Stat. Ann. tit. 10 (West Supp. 1998)).

[83] The bill announced the following goals:

> (1) each child shall have ... equal opportunity to receive a suitable program of educational experiences; (2) each school district shall finance at a reasonable level at least equal to the minimum expenditure requirement ... an educational program designed to achieve this end; (3) in order to reduce racial, ethnic and economic isolation, each school district shall provide educational opportunities for its students to interact with students and teachers from other racial, ethnic, and economic backgrounds and may provide such opportunities with students from other communities; and (4) the mandates in the general statutes pertaining to education within the jurisdiction of the State Board of Education be implemented.

Conn. Gen. Stat. Ann. § 10-4a (West Supp. 1998).

[84] See, e.g., Anne M. Hamilton, Sheff Plaintiffs to Take State Back to Court, Hartford Courant, June 18, 1997, at A1 (explaining *Sheff* plaintiffs' criticism of choice bill).

[85] The amended statute states that local or regional boards of education may offer any of the following: interdistrict magnet schools; charter schools; interdistrict after-school, Saturday, and summer programs, and sister school projects; intradistrict and interdistrict public school choice programs; interdistrict school building projects; interdistrict program

establishment, within available appropriations, of a statewide interdistrict public school attendance program.[86] The law does not compel student attendance in this program, but rather provides that "[s]tudents who reside in Hartford, New Haven or Bridgeport *may* attend school in another school district in the region and students who reside in such other school districts *may* attend school in [these cities]."[87]

The choice law also provides for the development and operation of charter schools[88] and magnet schools.[89] By establishing or increas-

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collaborations for students and staff; minority staff recruitment; technologically-enabled distance learning; and "any other experience that increases awareness of the diversity of individuals and cultures." 1997 Conn. Acts 290, § 2 (Reg. Sess.).

[86] See id. § 3(b). The program's stated purpose is to improve academic achievement; reduce racial, ethnic, and economic isolation or preserve racial and ethnic balance; and provide a choice of educational programs for students. See id. Transportation and other costs of the program are to be supported by grants from the State Department of Education. See id. §§ 3(d), 3(e). The program phased in its operation in Hartford, New Haven, and Bridgeport in 1998. See id. § 3(c).

This interdistrict initiative expands upon "Project Concern," a busing program that has existed in Connecticut since 1966. See supra note 12. In 1998, the state increased from 400 to 800 the number of Hartford students enrolled in that "city-to-suburbs school busing program" in Hartford, New Haven, and Bridgeport. Steve Grant, Parents Want Choice, but Better City Schools, Too, Hartford Courant, Dec. 6, 1998, at B1. Although further expansion is planned for the program this year, critics believe the program is too modest. See id. Gordon A. Bruno, executive director of the Connecticut Center for School Change, views the program as an "underfunded interdistrict choice option that has allowed a small number of Hartford students to leave city schools if they can find seats in the limited number of suburbs that decide they have room." Id. For a closer look at the limitations of the state's school choice program, see infra note 92.

[87] Id. § 3(c) (emphasis added). Beginning with the 1999 school year, the program is to be in operation in every school district in the state, with students permitted to attend school in any district. See id.

[88] See Conn. Gen. Stat. Ann. §§ 10-66bb(c) to (d), 10-66cc(b), 10-66ee (West Supp. 1998). Charter school legislation permits designated agencies to distribute public funds to private entities that apply for charters to establish and operate primary and secondary schools independent of state statutes and regulations. See Karla A. Turekian, Note, Traversing the Minefields of Education Reform: The Legality of Charter Schools, 29 Conn. L. Rev. 1365, 1369 (1997) (examining legality of charter schools legislation). In return for authorization to operate a charter school, the school trustees contract to educate the limited numbers of students who may enroll in the school. See id. Since charter schools are established and operated by outside entities, whether they are genuine "public" schools is debatable. See id. One criterion to be used by the Connecticut State Department of Education in reviewing charter school applications is "the effect of the proposed charter school on the reduction of racial, ethnic and economic isolation in the region in which it is to be located." Conn. Gen. Stat. Ann. § 10-66bb(c) (West Supp. 1998).

[89] See Conn. Gen. Stat. Ann. §§ 10-264h(a) to (b), 10-264l(a) to (b) (West Supp. 1998). Magnet schools are "public schools of voluntary enrollment designed to promote integration by drawing students away from their neighborhoods and private schools through distinctive curricula and high quality." Missouri v. Jenkins, 495 U.S. 33, 40 n.6 (1990); see also Rick Green et al., Word of Court's Decision 'Moved Like Lightning' Through Community, Hartford Courant, July 10, 1996, at A13 (stating that magnet schools are "designed around a special theme, such as the performing arts, science or foreign studies" and can incorpo-

ing funding for such schools, the amended statutes encourage local and regional boards of education to create these types of institutions. The statutes also create grant programs to support the establishment and operation of interdistrict cooperative programs[90] and lighthouse schools.[91] The law treats charter schools, magnet schools, and these other programs as it does the proposed interdistrict public school attendance program: By offering state financial support, it provides incentives for school districts to create these innovative types of schools, but participation by districts is voluntary.[92]

Finally, the amended statutes require the State Department of Education to devise a five-year plan to assess and eliminate the inequalities between school districts.[93] The plan must set forth "appro-

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rate special teaching approaches or social themes). The amended statute defines an interdistrict magnet school program as one that "supports racial, ethnic, and economic diversity, offers a special and high quality curriculum, and requires students who are enrolled to attend at least half-time." See Conn. Gen. Stat. Ann. §§ 10-264l(a) to (b) (West Supp. 1998).

90 See Conn. Gen. Stat. Ann. § 10-74d (West Supp. 1998). In general, the term "interdistrict" refers to the sharing of schools by two or more neighboring districts. See Green et al., supra note 89, at A13. For the purposes of the choice law, interdistrict cooperative programs include programs establishing full-time resident summer programs at colleges and universities to provide academically challenging courses for students from different backgrounds and communities. 1997 Conn. Acts 290, § 13 (Reg. Sess.).

91 See 1997 Conn. Acts 290, § 18 (Reg. Sess.). Traditionally, lighthouse schools have been defined as local public schools with "exemplary programs and high student achievement." Enhancing Education, supra note 12, at 49. The choice bill defines a "lighthouse school" as "an existing public school or a public school planned prior to July 1, 1997, in a priority school district that (1) has a specialized curriculum, and (2) is designed to promote intradistrict and interdistrict public school choice." See 1997 Conn. Acts 290, § 18 (Reg. Sess.). The statute also provides that the Connecticut Department of Education shall award a $100,000 grant to the Hartford school district to assist in the development of a curriculum and the training of staff for a lighthouse school. See id.

92 Furthermore, the creation of these programs does not necessarily mean that Hartford students who wish to enroll will be able to do so. For example, the public school choice program created under the choice law has already rejected hundreds of applicants due to lack of space in suburban schools. See Robert A. Frahm, Critics: Choice Plan is Failing, Hartford Courant, Sept. 9, 1998, at A1. Mary Carroll, director of the new program, believes that it affects "only a token number of Hartford's 24,000 students." Id. Compare the present status of "Project Concern," the program that has bused Hartford students to suburban public schools for decades. The state has dramatically increased funding for the project so that suburban schools will continue to accept Hartford students. See Michael Greenwood, Town to Get More from State for Teaching Hartford Pupils, Hartford Courant, Jan. 21, 1998, at B1. However, the number of students participating in Project Concern has been dropping steadily, largely because suburban school districts have scaled back their involvement due to space shortages. See id. Last year, only 469 Hartford students were enrolled. See id. Yet State Commissioner of Education Theodore S. Sergi is proposing the busing of 2000 children from Hartford, Bridgeport, and New Haven to suburban schools next fall. See Robert A. Frahm, School Choice Hinges on Demand, Hartford Courant, Jan. 9, 1999, at B1.

93 See 1997 Conn. Acts 290, § 4(a) (Reg. Sess.).

priate goals and strategies to achieve resource equity and equality of opportunity, increase student achievement, reduce racial, ethnic and economic isolation, improve effective instruction and encourage greater parental and community involvement in all public schools of the state."[94] The first part of this plan, which was released in February 1998, recommended directing more money to the neediest school districts and targeted the following as its immediate goals: "reducing class size, increasing instructional time for students, fixing school buildings and purchasing more computers and books."[95] In January 1999, the State Board of Education approved the second part of the plan, emphasizing the theme of "continuous improvements in student achievement."[96] On the issue of reducing students' racial isolation, the plan continues to support voluntary school choice initiatives.[97] The plan recognizes the need to encourage more suburban students to attend city schools[98] and, towards that end, seeks to improve urban schools,[99] but its methods for doing so do not extend beyond the various forms of school choice the Board has already embraced.[100]

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[94] Id. More specifically, the plan is to

> (1) [i]nclude methods for significantly reducing . . . any disparities among school districts in terms of resources, staff, programs and curriculum, student achievement and community involvement that negatively impact student learning, (2) provide for monitoring by the Department of Education of the progress made in reducing such disparities, and (3) include proposals for minority staff recruitment . . . .

Id.

[95] Rick Green, New Sheff Plan Angers Plaintiffs, The Hartford Courant, Feb. 3, 1998, at A1. The plan did not address the issue of reducing racial isolation, which Commissioner Sergi said would be postponed until January 1999. See id.; see also Editorial, Slow Going on Sheff Ruling, Hartford Courant, Mar. 26, 1998, at A18 (noting that reforms do not address segregation).

[96] Memorandum from Theodore S. Sergi, Commissioner of Education, to Connecticut State Board of Education 3 (Jan. 6, 1999) (on file with the *New York University Law Review*). The plan primarily expands upon the programs initiated in 1998, but it also makes recommendations regarding the following "themes": reducing racial, ethnic, and economic isolation, achieving resource equity and economic isolation, increasing student achievement and improving instruction, and encouraging greater parental and community involvement in schools. See Enhancing Education, supra note 12, at 46-47. The third part of the board's plan is due on January 1, 2001. See id. at 46.

[97] See Letter from Theodore S. Sergi, Commissioner of Education, to Connecticut State Board of Education 1 (Jan. 6, 1999) (on file with the *New York University Law Review*).

[98] See id.

[99] See id.

[100] The second installment of the plan pumps millions of dollars into Hartford's schools to pay for teacher training, summer school programs, special education, reading and foreign language instruction, and the hiring of minority teachers. See Rick Green, Progress Seen in Desegregating Schools, Hartford Courant, Jan. 6, 1999, at A1. Nevertheless, the state's progress in improving Hartford's schools has been at best incremental. As examples of initiatives it has taken to reduce racial and ethnic isolation, the State Board of Educa-

The effectiveness of the legislation passed in response to *Sheff* has been hotly contested since its passage.[101] At issue are whether the bill's substantive provisions can fulfill the *Sheff* court's mandate and whether the bill sets forth reforms that are viable and will indeed improve Hartford's schools.[102]

II
TOWARDS EQUAL EDUCATIONAL OPPORTUNITY: *SHEFF* AND THE MODERN RELEVANCE OF DESEGREGATION

Brown called for the dismantling of segregated school systems because, in its time, the goals of desegregation and educational opportunity were virtually synonymous.[103] In 1954, the Supreme Court

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tion cites a six-day "cultural diversity" summer camp in Cromwell, Connecticut, and a "townwide fifth grade field day" in West Hartford, Connecticut. Id. (citing Board of Education's five-year plan); see also Lisa Chedekel, City Educators Distressed by Judge's Decision, Hartford Courant, Mar. 4, 1999, at A4 (examining limited nature of city schools' partnerships with "sister" suburban schools, which typically bring students together for a few days each year, and reporting belief of Hartford educators and parents that state's characterization of such partnerships as models of voluntary integration "distort[s] the truth"). Interdistrict schools—which the state is relying on to bring together students with different racial and socioeconomic backgrounds—serve less than one percent of the school population across the state, and most students attending "regional school programs" are enrolled in vocational schools. See id. Furthermore, charter and magnet schools that serve Hartford's students are attended primarily by minority students, and some are as racially segregated as Hartford's public schools. See The Path to Integration, Hartford Courant, Mar. 5, 1999, at A17.

101 See infra note 174 and accompanying text.

102 See infra Part II.C.

103 Desegregation provided opportunities for black advancement: "White schools were almost invariably better than those for blacks, and they had a greater orientation to higher education. Given the importance of the schools in preparing students for upper-level occupations, opening the schools to blacks was central to their hopes for social mobility." Jack M. Bloom, Class, Race, and the Civil Rights Movement 171 (1987); see also Orlando Patterson, The Paradox of Integration, in Color Class Identity: The New Politics of Race 65, 69 (John Arthur & Amy Shapiro eds., 1996) ("Desegregation meant partial access to the far superior facilities and opportunities open previously only to whites.").

Furthermore, although *Brown* purported to limit its holding to the context of public schools, civil rights activists believed that desegregating schools was actually an important first step in the strategy to desegregate other aspects of American society as well:

> [T]he success of *Brown* cannot be measured by reference to desegregation statistics alone, or even by looking only at how the schools are doing by our children. Even the immediate impact of *Brown* extended far beyond the schoolhouse. . . . *Brown* fathered a social upheaval . . . . [It] was the spark that ignited the spontaneous combustion of boycotts, sit-ins, voter-registration, marches, and political organizations that resulted in much significant change for blacks.

Charles Lawrence, One More River to Cross—Recognizing the Real Injury in *Brown*: A Prerequisite to Shaping New Remedies, in Shades of *Brown*, supra note 16, at 48, 48-49; see also Carter, supra note 16, at 21 (explaining how *Brown* "effect[ed] a radical social transformation in this country" that reached beyond its impact on education).

could not contemplate improving the quality of education for black children without attacking segregation.[104] Yet decades after the movement to desegregate began, a disproportionate number of minority students continue to receive inferior educational experiences in schools that remain overwhelmingly segregated.[105]

At the same time, disappointing results in the classroom have fueled debate regarding whether desegregation is a viable strategy for educational improvement. Proponents of school desegregation argue that state efforts to desegregate further the values of racial and ethnic diversity[106] and that the improved academic performance of minority students correlates with diversity in educational settings.[107] More gen-

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104 Having determined that racial isolation and its attendant stigma were at the heart of the wrong inflicted on black children attending segregated schools, see *Brown*, 347 U.S. at 494, the Court believed that desegregation was the means by which a better educational experience for black children could be achieved. See supra notes 25-27 and accompanying text.

105 See supra note 40 and accompanying text. This state of affairs falls far short of the desegregation project envisioned by *Brown*. See Joel B. Teitelbaum, Comment, Issues in School Desegregation: The Dissolution of a Well-Intentioned Mandate, 79 Marq. L. Rev. 347, 348, 368-72 (1995) (berating failure of integration and arguing that "the desegregation efforts of the past forty years . . . [have] failed to bring about the results expected of integration and desired by its proponents: better educational opportunities for black youths and the economic and employment benefits that should accrue as a result of those opportunities"). But see Hansen, supra note 36, at 869-72 (discussing areas in which desegregation litigation has been successful and finding it "too soon to judge" effectiveness of desegregation litigation on attempts to increase quality of education).

106 See, e.g., Westerman, supra note 38, at 402 (asserting that black and white students who attend desegregated schools from early childhood are more comfortable in racially integrated settings when they reach adulthood); Editorial, supra note 4, at B12 ("Students who play and study, laugh and cry together and experience successes and frustrations will grow up to be less ignorant and fearful and more tolerant of one another."). Some theorists further claim that racial integration undermines "the denial of the black person's humanity" which results from racism. Patterson, supra note 103, at 71 (explaining how, "[b]y dis-alienating the Other, the members of each [racial] group came, however reluctantly, to accept each other's humanness").

107 See, e.g., Robert L. Crain & Rita E. Mahard, How Desegregation Orders May Improve Minority Academic Achievement, 16 Harv. C.R.-C.L. L. Rev. 693, 696 (1982) (discussing studies showing that minority students' academic achievement improved following desegregation); Willis D. Hawley & Mark A. Smylie, The Contribution of School Desegregation to Academic Achievement and Racial Integration, in Eliminating Racism 281, 284-85 (Phyllis A. Katz & Dalmas A. Taylor eds., 1988) (offering reasons why desegregating schools results in increased academic performance); Westerman, supra note 38, at 400 (noting extensive research showing improved educational performance, including performance on standardized achievement tests, of minority students in desegregated settings). Researchers have also documented the expansion of career opportunities for students of color attending desegregated schools. See id. at 400-01. In *Sheff*, the plaintiffs' expert witnesses testified that desegregation makes a measurable difference in academic outcomes. See James Traub, Can Separate Be Equal?, Harper's Mag., June 1994, at 36, 41. For example, Dr. Robert Crain of Columbia University Teachers College has stated that school desegregation "correlate[s] with later involvement in integrated colleges, neighborhoods, and workplaces." Id.

erally, they believe that desegregation increases the amount and quality of educational resources available to minority students.[108] The inability to dismantle racially segregated schools[109] in order to achieve these benefits, however, has frustrated many former proponents of desegregation, producing changes in philosophy and strategy.[110] Confronted with what appears to be a choice between implementing desegregation and improving the quality of education, some representatives of racial minority groups are opting to jettison the former.[111] Accordingly, the key contemporary question is whether desegregation still advances equal educational opportunity, as the *Brown* Court insisted.

This Part discusses two major rationales, implicit in the *Sheff* court's reasoning, for retaining desegregation as the chief means of achieving such opportunity for students in Hartford. *Sheff* concluded that the disadvantaged educational status of these students resulted directly from their racial isolation, thereby inviting consideration of why and how the effects of segregation are detrimental. First, minority students residing in urban centers are harmed by segregation, even when it is not imposed de jure, because the educational disadvantages

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108 See Orfield, supra note 40, at 112-21 (surveying positive effects of school integration, including increased resources); Brooks, supra note 37, at 20 (describing educational remedies, including "more resources for academic programs, racial mixing at both student and staff levels, [and] African American awareness programs," that result from desegregation). It should be remembered, however, that *Sheff* did not involve a situation where urban schools serving minority students received fewer financial resources. Indeed, the *Sheff* plaintiffs argued that segregated schools harmed students without regard to resource inequities. See *Sheff*, 678 A.2d at 1281.

109 See supra note 40 and accompanying text.

110 See, e.g., Derrick Bell, Race, Racism and American Law 579 (3d ed. 1992) ("The limited erosion of racial isolation in the nation's schools and our failure to cure the obvious educational ills of black students have caused us to reexamine our commitment to mandatory desegregation as the focus, or even an element, of a national educational and racial strategy.").

111 See, e.g., Marilyn V. Yarbrough, Still Separate and Still Unequal, 36 Wm. & Mary L. Rev. 685, 686 (1995) ("With increasing frequency, African American advocates and parents have indicated a willingness to forego racial balance in favor of effective education when the two seem incompatible."); see also Robert Anthony Watts, Shattered Dreams and Nagging Doubts: The Declining Support Among Black Parents for School Desegregation, 42 Emory L.J. 891, 895 (1993) (discussing suit filed by black parents in Dekalb County, Georgia, in which quality of education was stressed over desegregation).

Commentators note that, even among those parents and advocates who would choose effective education for students of color over racial balance, there remains an uneasy, "lingering and countervailing concern . . . [that] . . . separate is inherently unequal." Yarbrough, supra, at 686; see also Traub, supra note 107, at 38, 39 (noting that "[t]he declining prestige of integrationism among blacks . . . [has] a good deal to do with the growing acceptance of a new separate-but-equal model" but concluding that while "[s]eparate but equal may offer a salve to black pride and a comfort to white suburbanites . . . there's not much proof that it works"). Nevertheless, this "inherent" inequality has been difficult to quantify and continues to be controversial. See infra text accompanying notes 125-26.

they suffer are systemic. Their inferior educational experiences stem not only from past acts motivated by discriminatory intent but from ongoing, institutionalized discrimination against racial minorities.[112] Second, *Sheff* supports the proposition that racial isolation denies equality because many racial minorities are trapped in a socioeconomic underclass, alienated from education and other resources. Racial segregation correlates with poverty lines to such an extent that the injury to educational opportunity flowing from poor socioeconomic conditions falls overwhelmingly on minority students. Once these principles are extracted from *Sheff*, the flaws in Connecticut's legislative response become clear.

A. The Significance of Racial Isolation: Sheff*'s Version of the* Brown *Paradigm*

The courts in both *Brown* and *Sheff* found that segregation denied minority students an equal educational opportunity without regard to whether institutional resources were equalized and that racial isolation in and of itself was problematic.[113] *Brown* asserted that black students' educational experiences were severely undermined by the stigma that attached to students forced to attend segregated schools.[114] Similarly, *Sheff* recognized the psychological harm resulting from school segregation and affecting minority students as individuals.[115] Yet the stigma identified in *Brown* had been imposed by state action, while arguably no such explicit message of inferiority was conveyed by the de facto segregative conditions in Hartford. The *Sheff* court could have denied the plaintiffs' request for relief by rejecting the contention that students in Hartford's public schools were harmed by de facto racial isolation. But it refused to take this path, reaching

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112 Although this argument does not rely on *Brown*'s theory of individual psychic harm or stigma, see supra note 24 and accompanying text, it contemplates that one way in which harm to minority students occurs is through their systemic stigmatization.

113 See supra notes 26-27 and accompanying text; see also infra text accompanying note 115.

114 See *Brown*, 347 U.S. at 494. The harms resulting from segregation were believed to include the psychological harm to black children, who feel insult and stigma whether their schools have been de jure or de facto segregated; the academic and intellectual harms resulting from inferior school plants, educational materials, teachers, and curricula; and the perpetuation of social barriers which results when minority children are deprived of the further opportunity to "develop relationships with . . . members of the dominant class." Owen M. Fiss, Racial Imbalance in the Public Schools: The Constitutional Concepts, 78 Harv. L. Rev. 564, 568-70 (1965).

115 See *Sheff*, 678 A.2d at 1293. Presenting a story of exclusion and self-alienation, the *Sheff* plaintiffs argued that segregation "injures minority students by stigmatizing them, failing to prepare them for [life in] a nation that has a white majority, and excluding them from employment networks." Schwartz, supra note 41, at 697.

precisely the opposite conclusion and finding the detrimental effects of segregation manifested even where segregation is not an explicit state policy.[116] In this way, *Sheff* asserted that these effects derive from racial separation itself.

By focusing its analysis on the nature of de facto segregation, *Sheff* suggested that the educational disadvantages minority students face are systemic. While de jure segregation inflicts harm on minority students on an individual level by stigmatizing them and creating in them a sense of inferiority,[117] the harm of de facto segregation operates on a broader basis. Rather than being limited to "the narrow objective of compensating the victims of past de jure segregation,"[118] the desegregation remedy contemplated in *Sheff* presses for the elimination of systemic racial disadvantage in public education.

Segregated education cannot be analyzed fully without an appreciation for its connection to issues of racial equality in general. The very purpose of racial segregation in this country has been to label minorities as inferior,[119] reflecting the effects of white prejudice[120] and "facilitat[ing] discrimination."[121] Today, such discrimination occurs

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116 See *Sheff*, 678 A.2d at 1294.

117 For discussion of this theory employed by the *Brown* Court, see supra note 24 and accompanying text.

118 Bradley W. Joondeph, Skepticism and School Desegregation, 76 Wash. U. L.Q. 161, 169 (1998). The Supreme Court's school desegregation cases rely on a doctrine modeled on the private law of torts: "[T]he actionable wrong is the discrete act of de jure segregation by the school district, and the remedy must aim only to return the school system and its students to the positions they would have occupied had the district never discriminated." Id. This judicial compression of the broad social problems raised by school segregation into narrow conceptual models has produced a cramped and "wholly inadequate" understanding of the problem of racial inequality in the country's public schools. Id.

Moreover, for the purposes of assessing harm to minority students, courts may have distinguished artificially between de jure and de facto segregation, since "[p]ast unjust de jure segregation is one of the causes of present de facto segregation." Boxill, supra note 24, at 76.

119 See Lawrence, supra note 103, at 50 (contending that "segregation's *only* purpose is to label or define blacks as inferior and thus exclude them from full and equal participation in society"). Segregation has "a symbolic aspect which expresses contempt for black people." Boxill, supra note 24, at 139. When segregation occurs de jure, this contempt is expressed explicitly; it also inheres in the context of de facto segregation, despite ostensibly "color-blind" statutes and policies. See id. at 140.

120 See Massey & Denton, supra note 13, at 10-11 (concluding that segregation results from white prejudice rather than socioeconomic differences); Carter, supra note 24, at 885 (describing "the intransigence of racism which has isolated poor African-American children in decaying cities and in substandard schools" and identifying this racism as obstacle which has hindered black students' vindication of their right to educational quality).

121 Carter, supra note 16, at 28; see also Brooks, supra note 37, at 19 (drawing connection between racial isolation and racial discrimination, and noting that racial subordination includes discrimination, de jure and de facto segregation, and other forms of intraclass racial disparity). Judge Carter urges that "[i]ntegrated education . . . not be lost as the ultimate solution" to this problem. See Carter, supra note 16, at 28.

when segregation permits and perpetuates the relegation of racial minorities to inadequate inner-city schools, where they are denied access to a quality education and to the tools needed to ensure future success.[122] This systemic segregation, which long has gone undisturbed, represents society's devaluation of these children and their futures. It reflects a statement about whose lives are valued and supported,[123] as demonstrated by society's selective investment of its resources in some children and not others.[124]

The notion of systemic educational disadvantage supported by *Sheff* does not reject the "stigma" theory relied upon by *Brown* but suggests that the stigmatization of minority children may also operate on a groupwide basis. Whether racial isolation in fact hurts minority students by stigmatizing them in the manner asserted in *Brown*, and whether desegregation improves the educational experiences of minority students by removing such effects, is controversial.[125] Since *Brown*'s time, the connection between individual psychological harm and racial separation has been closely scrutinized.[126] In particular, some commentators have taken issue with the contention that minority students cannot thrive in racially isolated environments.[127] Indeed,

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[122] For discussion of the state of Hartford's schools and the academic performance of their students, see supra notes 1 and 5.

[123] See, e.g., Dorothy E. Roberts, The Value of Black Mothers' Work, 26 Conn. L. Rev. 871, 876-78 (1994) (denouncing society's devaluation of black children and arguing that "America's legacy of racial separation" prevents white Americans from feeling empathy for black children).

[124] See Carter, supra note 16, at 27 ("In the belief that Negroes, particularly poor Negroes, were destined for the most menial occupations in the society, they were given limited and restricted educational opportunities and were not exposed to the more rigorous academic training available to the white middle class.").

[125] See Boxill, supra note 24, at 89 (noting that psychologist Kenneth Clark's experiments, which were relied upon in *Brown*, "[made] him the center of a violent controversy"). Clark asserted that segregated schools harmed black children by "giving them a negative image of themselves." Id. at 90. Some critics worried, however, "about what happens to a black child in an integrated school when he attempts to be 'a carbon copy of the culture and ethos of another racial and ethnic group.'" Id. at 94 (quoting Charles V. Hamilton, Race and Education: A Search for Legitimacy, 38 Harv. Educ. Rev. 669, 670 (1968)). See generally id. at 89-106 (examining various views on desegregation's benefits and harms). These diverse positions are shaped to a great extent by questions of morality, not science; they also depend on widely divergent conceptions of harm. See id. at 90-91.

[126] See id. at 89-95 (considering social science critiques of Clark's experiments and conclusions about harms flowing from segregation); see also supra note 24.

[127] See, e.g., Theodore M. Shaw, Equality and Educational Excellence: Legal Challenges in the 1990s, 80 Minn. L. Rev. 901, 905 (1996) (decrying belief that efforts to desegregate imply problems with all-black institutions). Reportedly, the "sociological and social-psychological studies that have . . . sought to document and analyze the effects of desegregation on the . . . self-images of black and white children have not revealed convincing evidence, but rather confused and contradictory findings." Lightfoot, supra note 24, at 6. But see Bloom, supra note 103, at 171 (claiming that "[d]esegregating education

some posit that the means by which desegregation was attempted following *Brown* might have injured black students' self-esteem and that *Brown* itself made them feel inferior by thrusting them into hostile, albeit integrated, environments.[128]

Sheff validated *Brown*'s stigma theory in the context of de facto segregation, thus urging reconsideration of this theory. *Sheff* suggests that racial isolation harms minority students,[129] independent of

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generally affirmed black dignity"); Boxill, supra note 24, at 89-95 (setting forth Kenneth Clark's findings regarding harms of segregation).

128 For example, "one-way" desegregation plans have transported minority students to largely white schools, where they may be subjected to racial discrimination:

> Many integration policies focus on black access to predominantly white schools in predominantly white suburbs. Yet shipping black children to predominantly white environments has often proven detrimental to their well-being. Race-related incidents have ranged from the inadvertent humiliation of young children barely old enough to understand racial difference to targeted vilification of particular black students.

Barnes, supra note 40, at 2389. The concern is, then, that minority students may be hurt on an individual level because, in integrated schools, they may no longer be separate, but they are "hardly treated as equals." See id. at 2397; see also Derrick Bell, Faces at the Bottom of the Well 18-19 (1992) (asserting that school officials of 1960s complied with desegregation court orders by "creating separate educational programs for black children within schools that were integrated in name only" and noting that black students were resegregated by "ability groups" and "generally made to feel like aliens"). Such treatment has prevented minority students from experiencing the benefits of integration.

More generally, desegregation plans that force minority students to travel to predominantly white schools are a source of concern because they emulate the long tradition of placing the "burden of racial and ethnic change" on minority groups. Patterson, supra note 103, at 72 (observing that, "[a]lthough both whites and blacks have strong mutual interests in solving their racial problem," black people are forced to carry burden of achieving this goal "not only because they have more to gain from it but also because whites have far less to lose from doing nothing").

Accordingly, some members of minority groups are contemplating a return to racially separate but truly equal schools with the hope that such schools will be beneficial rather than detrimental to minority students' well-being. See Teitelbaum, supra note 105, at 370-71 (noting that many black people prefer race-separate schools to integration). This response on the part of minority communities is unsurprising: "[S]entiments for racial separation and racial solidarity tend to emerge when minority race members perceive the struggle against racial inequality as hopeless or when they experience intense disillusionment and frustration." William Julius Wilson, The Truly Disadvantaged 127 (1987); see also Orfield, supra note 40, at 105 (stating that "when the possibilities shrink, political goals become more narrow"). Whether racial separation undertaken voluntarily by minority groups can be empowering for them is also a topic of debate. Compare Teitelbaum, supra note 105, at 372-73 (arguing that state-enforced segregation and segregation based on personal choice are distinct processes and advocating for self-imposed "educational separateness" in light of unremarkable results of integration efforts) with Sharon Elizabeth Rush, The Heart of Equal Protection: Education and Race, 23 N.Y.U. Rev. L. & Soc. Change 1, 6 n.25 (1997) (noting argument that "segregation . . . cannot be truly voluntary, given the social, economic, and political forces that promote White hegemony").

129 Some commentators object to the use of "damage imagery" in attacking segregation and racial discrimination. See generally Daryl Michael Scott, Contempt and Pity: Social Policy and the Image of the Damaged Black Psyche, 1880-1996 (1997). Professor Scott

whether they individually internalize the message of inferiority conveyed by segregation.[130] *Sheff*'s conception of stigma focuses less on the psychological effect on individual students and more on the effect of segregation on minority *groups*. The racial isolation of minority students has an important structural effect that concentrates educational disadvantage: "The organization of public schools around geographical . . . areas . . . reinforces and exacerbates the social isolation that segregation creates in neighborhoods. By concentrating low-achieving students in certain schools, segregation creates a social context within which poor performance is standard and low expectations predominate."[131] These lowered expectations create a self-fulfilling

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argues that emphasizing the harm done to black people has "made black rights contingent upon white sympathy and superiority rather than black equality and citizenship," and fears that such an emphasis is as likely to inspire contempt as it is to inspire sympathy. Id. at 184. Moreover, "[a]s long as African Americans are conceived of as 'damaged,' or a 'problem people,' they will inevitably remain mired in negative stereotypes and will seek to define themselves against a white norm." Davison M. Douglas, Book Review, Justifying Racial Reform, 76 Tex. L. Rev. 1163, 1164 (1998) (reviewing Scott's book). Yet it is difficult to "justify remedial racial policies without resorting to notions of harm." Id. at 1165-66; see also DuBois, supra note 13, at 12-14 (describing psychological damage inflicted upon black people by oppression and seeking support for their plight from middle class white people). Additionally, arguments based upon notions of harm help to capture political support. See Douglas, supra, at 1177-79; see also Derrick A. Bell, Jr., *Brown v. Board of Education* and the Interest-Convergence Dilemma, 93 Harv. L. Rev. 518, 523 (1980) (describing convergence of desegregation efforts with white political and economic interests).

130 Advocates of Afrocentric schools also express concern about the effect of feelings of inferiority on young black children. See, e.g., Roberta L. Steele, Note, All Things Not Being Equal: The Case for Race Separate Schools, 43 Case W. Res. L. Rev. 591, 605 (1993) (explaining that African American Immersion School (AAIS) responds to existence of such feelings by "inculcat[ing] in each child a positive, cultural self-image while meeting all academic requirements"). School boards in Detroit and Milwaukee have proposed remedying these ills by creating academies for black students only. See id. at 594 (supporting adoption of AAIS on trial basis); see also Brooks, supra note 24, at 221-22 (envisioning "African American Public Schools" that are "separate and equal"). Black academies provide their students with cultural role models, an Afrocentric curriculum, mentoring programs, strict discipline, and academic instruction tailored to the students' cultural learning biases. See Steele, supra, at 594. See generally Richard M. Merelman, Representing Black Culture (1995) (arguing broadly for need to develop black culture). They also address the specific problem of educational inequality. See Steele, supra, at 594. As an alternative program "designed to supplement, not supplant, desegregation efforts," however, the AAIS does not challenge the theoretical model of integration. Id. at 596; see also Brooks, supra note 24, at 202-03 (making case for "limited separation" and adding that this approach furthers goal of racial integration by enabling black people to "gain strength and hence the respect of other groups with which they must deal").

131 Massey & Denton, supra note 13, at 141. Predominantly minority schools also fare poorly in part because the families in their communities are largely powerless to command educational quality: "As long as power relationships between minority communities and white middle-class schools remain asymmetric, teachers and principles [sic] will not feel accountable to parents and children, and parents will feel helpless and threatened by the overwhelming dominance of the school." Lightfoot, supra note 24, at 16. Contrast subur-

prophecy of inferiority and underachievement affecting school districts serving predominantly minority students.[132] Educators widely assert that "high expectations" are key to enabling students to perform well academically.[133] Yet, in racially isolated schools, educators often fail to challenge students and to attend to their educational needs.[134] By almost all accounts, the schools in Hartford reflect inferiority, most noticeably in the area of academic achievement.[135] Correspondingly, in Hartford, students' academic aspirations are low, their outlooks marked by despair and self-rejection.[136]

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ban schools, which are successful not only due to their citizens' "relative affluence and abundant resources" but, more importantly, due to "the balance of power between families and schools, the sense of responsibility and accountability teachers feel for the educational success of children, and the parents' sense of entitlement in demanding results from schools." Id. Thus, merely targeting curricula, teaching style, and staffing patterns in minority schools will not improve education because such remedies will not change the larger structure of powerlessness in the community.

132 For example, black parents often recount frustrating experiences with their children's teachers. See, e.g., Eric Rich, An Undercurrent of Racial Bias in the Schools?, Hartford Courant (Middletown Extra), Sept. 16, 1998, at 1 (quoting one parent: "Some teachers will look at kids of color and assume they're not capable."). Some minority parents therefore suspect that there is a racial bias among educators in city schools that steers minority students away from challenging courses. See id.

133 Green, supra note 5, at A1 ("'Kids live up to expectations .... A lot of it is just the message, hammering it on a daily basis, that you are worth something, you are intelligent, you have something to give.'" (quoting Alma L. Maya, executive director of Bridgeport organization working to prevent students from dropping out)). Similarly, a Connecticut school superintendent asserts that the key to delivering the high quality education present in Hartford-area suburbs like Avon and Simsbury is not "strictly money." Angie Chuang et al., 1997-98 School Profiles Released, Hartford Courant, Nov. 9, 1998, at B1. Rather, the success lies in teachers who believe in their students and challenge them to "do more." Id.

134 See Carter, supra note 16, at 27 (discussing "callous indifference of public school administrators to the educational needs of the black poor").

135 See supra note 5 and accompanying text.

136 Cf. Bell, supra note 128, at 4 (describing how people who are "despised because of their race . . . seek refuge in self-rejection" and referring to "manifestations of a despair that feeds on self"); Boxill, supra note 24, at 11-12 (describing effect of racial discrimination on self-respect and self-esteem as "peculiar harmfulness" that occurs because "racial discrimination makes some black people hate their color, and succeeds in doing so because color cannot be changed").

Frustration surrounding students' weak academic performance permeates the entire community. For example, the Connecticut Academic Performance Test—a test which examines high school sophomores for mastery of basic subjects and is considered one of the toughest of its kind in the nation—is used by suburban communities as either "a driving force for improvement" or a proud example of their students' ability to do well on achievement tests, while Hartford schools officials view the test dourly as "a harsh reminder of persistent failure." Rick Green, Overall, Students' State Test Scores Up, Hartford Courant, Oct. 21, 1997, at A1 ("Already the lowest in the state, the percentage of students reaching the state goal went down in three of four categories in Hartford.").

Schools' heavy reliance on standardized testing has come under fire as a means of continuing institutionalized disadvantages. See, e.g., Lisa Kelly, Yearning For Lake Wobegon: The Quest for the Best Test at the Expense of the Best Education, 7 S. Cal.

If the segregation of minority communities relegates minority students to inferior schools where educational disadvantage is concentrated, then desegregation can improve their educational chances by altering the character of racial communities.[137] Presently, "white communities are defined . . . by their position of privilege while minority communities are defined . . . by their subordination and isolation."[138] Racial isolation is thus a physical reflection of racial inequality.[139] By fracturing the lines between these communities, desegregation disturbs the entrenched positions of advantage and disadvantage these lines demarcate.[140] Thus, desegregation is motivated

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Interdisc. L.J. 41, 42 (1998) (exposing "dangers of testing, particularly in the early grades"). Professor Kelly challenges the use of testing to push children to be "above average" and argues that such pressure does not "comport with sound educational theory." Id. at 42. Rather, standardized testing in early education fosters "educational inequity through tracking, retention, and the early creation of a racial and class caste system." Id. at 43.

Poor children and minority children generally experience the negative consequences of standardized testing most keenly. See id. at 75. For example, they must "deal with the stigmatizing effects of tests that are culturally biased." Id.

137 See Richard Thompson Ford, The Boundaries of Race: Political Geography in Legal Analysis, 107 Harv. L. Rev. 1841, 1917 (1994) (discussing impact of opposing conceptions of "political space" on race relations in America and suggesting how resolution of tension between these conceptions might facilitate attainment of ideal of racially desegregated society).

138 Id. Many black people have ties to local, "[g]eographical communities of color" whose grave political needs are "deepened by a history of political abuse and neglect . . . [arising] . . . from the community's status as the permanent minority." Lisa A. Kelly, Race and Place: Geographic and Transcendent Community in the Post-*Shaw* Era, 49 Vand. L. Rev. 227, 234 (1996) (arguing that "race and place have been and continue to be inextricably intertwined" due to "perpetuation of historical racial segregation").

Economic factors, compounded by discriminatory policies, have led to inferior schools for racial minorities:

> With the neighborhood school system, segregated housing meant segregated schools, and segregated schools generally meant inferior education. In part, that was because white school districts had more money to spend. But it was also a result of more deliberate policies. [For example,] [w]ithin city districts, less experienced teachers were assigned to black schools, as was inferior equipment.

Bloom, supra note 103, at 189-90.

139 Such inequality is central to the concerns of those anxious to improve the educational experiences of minority children. See supra notes 131-37 and accompanying text.

140 One commentator has noted the upheaval desegregation will likely precipitate. See Patterson, supra note 103, at 72 (positing that white people have largely opposed efforts to integrate because they anticipate that increasing integration exposes them to racial conflicts). Another anticipates that, following a period of uncertainty and change, desegregation will move communities towards "cultural association and pluralism." Ford, supra note 137, at 1918. He explains:

> Some groups may experience dispersal and disintegration . . . . [Others] may grow stronger and more cohesive as their members gain greater resources and feel less economic pressure to leave racially identified neighborhoods and cities, while those who do leave will be able to experience group solidarity that does not depend on geographic proximity. New but distinct cultural communi-

not by the belief that students in predominantly minority environments cannot learn,[141] but by the realization that discrimination produces "structural realities that . . . exist within the society and within the schools . . . mak[ing] learning next to impossible."[142]

By supporting a more comprehensive understanding of racial isolation and its effects on minority students and by finding that detrimental effects flow from segregation, whether it is imposed de jure or follows from de facto conditions, *Sheff* recognized that race is indeed a signifier of educational quality and inequality.[143] Thus, like *Brown* before it, *Sheff* determined that, so long as racial separation remains ensconced in inner-city schools, students in those schools will continue to suffer educational disadvantages.

B. Sheff*'s Sensitivity to the Intersection of Race and Poverty*

Sheff did not treat problems of race and class as if they were "neatly severable."[144] The court commented at length on the racial and ethnic isolation in Hartford and on the poverty of many Hartford families.[145] The special attention paid to both of these circumstances reflected the court's recognition of the fact that the race and the socioeconomic status of Hartford's students are not analytically distinct.[146] Critics of the *Sheff* decision have accused the court of mentioning poverty in order to bolster the legitimacy of its opinion, which was premised primarily on the unacceptability of racial and ethnic isolation.[147]

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ties may form as permeable political borders allow social, political, artistic, and educational alliances between previously isolated communities to develop.

Id. at 1917-18.

141 See Shaw, supra note 127, at 906 ("There is *nothing* inherently wrong with an all-black institution. There *is* something inherently wrong with all-black institutions that are created and maintained by a predominately white power structure and that do not have the resources because the resources are withdrawn as white folks flee."); cf. Hansen, supra note 36, at 871 ("While an African-American child does not get smarter just because he or she is sitting next to a white child . . . it is . . . still true that segregation leads, perhaps inexorably, to inequality of educational resources.").

142 Shaw, supra note 127, at 905.

143 For a review of these findings, see supra note 67.

144 Moran, supra note 36, at 1107.

145 See *Sheff*, 678 A.2d at 1273.

146 Cf. Massey & Denton, supra note 13, at 220 ("The issue is not whether race *or* class perpetuates the urban underclass, but how race *and* class *interact* to undermine the social and economic well-being of black Americans.").

147 The *Sheff* court stated that "[t]he public elementary and high school students in Hartford suffer daily from the devastating effects that racial and ethnic isolation, as well as poverty, have had on their education," *Sheff*, 678 A.2d at 1270. David Armor argues that "the phrase about poverty was probably added to make the statement sound more reasonable." David J. Armor, Facts and Fictions About Education in the *Sheff* Decision, 29 Conn. L. Rev. 981, 981 (1997) (critiquing court's conflation of effects of race and poverty); cf. *Sheff*, 678 A.2d at 1298 (Borden, J., dissenting) ("[A]ll of the adverse effects on the

Those commentators sharing this view tend to see race and poverty as unrelated.[148] While accepting the premise that the socioeconomic status of students in Hartford plays a significant role in their educational experiences, the critics fail to recognize the extent to which socioeconomic status is tied to race.[149] They argue that factors like poverty and class can be divorced from race in a meaningful way—when in fact they are intertwined[150]—and that efforts to improve education should be focused exclusively on alleviating poverty.[151]

Yet students in urban schools are predominantly both members of low-income households and members of racial minority groups.[152] One-third of the black population in this country—approximately ten

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education of the plaintiffs result, not from their racial or ethnic isolation—either in whole or in part—but from their poverty."). Professor Armor asserts that social science evidence does not support "the extreme view that *de facto* racial isolation by itself, apart from socioeconomic conditions, has 'devastating' effects on education," and argues that integration as a desirable policy goal cannot justify the remedy imposed by *Sheff*. Armor, supra, at 982.

148 See, e.g., Andrew J. Gold, In the Aftermath of *Sheff*—Considerations for a Remedy, 29 Conn. L. Rev. 1043, 1045 (1997) (arguing that "race is not as important as social class" and that socioeconomic status is key in influencing educational outcomes).

149 The fact that class indeed matters does not erase the significance of race: "[Even] [i]f class does matter and students from lower socio-economic backgrounds suffer more educational disadvantage than their middle and upper class peers, to the extent that so many more minority students than non-minority students are poor, minority students suffer disproportionately." Yarbrough, supra note 111, at 693. Additionally, there is a widespread reluctance to recognize the consequences of America's "institutionalized system of racial separation." Massey & Denton, supra note 13, at 16; see also Jennifer M. Russell, The Race/Class Conundrum and the Pursuit of Individualism in the Making of Social Policy, 46 Hastings L.J. 1353, 1356-57 (1995) (referring to "white backlash that opposes race-conscious social policies and advocates for class-conscious social policies").

150 See, e.g., 1988 Comm'n on the Cities, Race and Poverty in the United States—and What Should Be Done [hereinafter 1988 Comm'n Report], in Quiet Riots, supra note 40, at 172, 181 (identifying concentrated poverty as legacy of race and class oppression); Massey & Denton, supra note 13, at 140 ("[S]egregation concentrates any factor associated with poverty and focuses it upon segregated black neighborhoods."); Merelman, supra note 130, at 3 ("Race divides Americans into groups of sharply unequal economic status and degrees of authority in social and political institutions."). For an in-depth examination of the related effects that race and poverty have on educational outcomes in one American metropolis, see john powell, Segregation and Educational Inadequacy in Twin Cities Public Schools, 17 Hamline J. Pub. L. & Pol'y 337, 344-47 (1996).

151 See supra notes 147-48.

152 Black children are most likely to attend deteriorating inner-city schools. See Jeffrey M. Berry et al., The Political Behavior of Poor People, in The Urban Underclass 357, 364 (Christopher Jencks & Paul E. Peterson eds., 1991) (insisting that "[t]he debate about the underclass is a debate about poor urban blacks" and noting that "[o]nly a small proportion of poor whites live in neighborhoods of extreme poverty"); Carter, supra note 24, at 887 (stating that black children are most likely to attend urban schools). For empirical evidence that minorities are disproportionately poor, see Peter B. Edelman, Toward a Comprehensive Antipoverty Strategy: Getting Beyond the Silver Bullet, 81 Geo. L.J. 1697, 1698 n.5 (1993) (citing census data placing poverty rate among blacks at 32.7% and rate among Latinos at 28.7%, while rate for whites was 11.3%).

million people—lives in "dire poverty."[153] Children disproportionately carry the burden of this impoverishment; in 1994, forty-six percent of all black children lived in poverty, nearly three times the percentage of white children. These statistics support the claim that race and poverty are characteristics that frequently correlate with each other, "interconnect[ing] in ways that create cumulative harms."[154] Researchers attempting to explain the convergence of poverty and discrimination on racial minorities[155] have debated whether this phenomenon should be addressed by antipoverty measures or antidiscrimination legislation.[156] While they may disagree as to how to "sort out the respective weights of the effects of race and class in perpetuating the . . . underclass,"[157] it is indisputable that race and class interact.[158]

So long as racial segregation plays a crucial role in producing and maintaining poverty,[159] race must be injected into discussions about

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153 Patterson, supra note 103, at 68. Judge Carter has collected other data suggesting the convergence of minority racial status and impoverishment. In 1989, 40% of black children under age five lived in poverty, as compared to 13.8% of white children, and 80% of black children received welfare benefits before the age of 18. See Carter, supra note 24, at 887. In 1990, 32% of blacks lived below the poverty level; the percentage for whites was 10%. See id. at 887 n.5. Seventy-one percent of poor blacks live in urban high-poverty areas, while 40% of poor whites live in these areas. See id. at 887. Additionally, in 1992, 13.7% of blacks were unemployed, as compared to 6.2% of whites and 7.1% of Americans overall. See id. at 886 n.4.

Although some minorities have made economic progress and increased their political power, their advances should not obscure the problems of those persons still caught in the persistent cycle of poverty. See Introduction, in Quiet Riots, supra note 40, at i, x (discussing continuing failure of American society to address ills highlighted in Kerner Report 20 years earlier).

154 Moran, supra note 36, at 1109; see also Brooks, supra note 37, at 19 (explaining how "working-class African Americans are caught in the pinch of both class subordination and racial subordination"); Edelman, supra note 152, at 1742-44 (arguing that poverty cannot be considered in race-neutral manner because poverty is function of both race and class).

155 For a general history of the convergence of race and poverty, particularly for black people, see Helene Slessarev, The Betrayal of the Urban Poor 7-12 (1997).

156 See Wilson, supra note 128, at 130. Professor Wilson himself advocates analyzing "increasing black joblessness," for example, as a problem of economic organization. Id.

157 Berry et al., supra note 152, at 364; compare Massey & Denton, supra note 13, at 85 (emphasizing dominance of race over class) with Wilson, supra note 128, at 130 (emphasizing effects of economic factors over race).

158 See Brooks, supra note 37, at 106-28 (discussing "[t]he African American Poverty Class" as subclass of poverty in America); Massey & Denton, supra note 13, at 220 (explaining that segregation "exacerbated and magnified" negative consequences of black poverty and income inequality).

159 Residential, not just educational, segregation is significant in this respect, for it perpetuates socioeconomic deprivation by preserving significant levels of "spatial isolation" which in turns leads to "social isolation." Massey & Denton, supra note 13, at 161. For a more detailed explanation of "how segregation concentrates poverty," see id. at 118-25. See generally Bloom, supra note 103 (examining roots of racial and class oppression).

the socioeconomic inequality experienced by minorities.[160] Additionally, since "racial segregation—and its characteristic institutional form, the black ghetto—are the key structural factors responsible for the perpetuation of black poverty in the United States,"[161] the extensive interaction between race and poverty cannot be dismantled without introducing a level of structural change[162] that desegregation can begin.[163] In the past, however, desegregation has proved politically unpopular and therefore difficult to implement.[164] Policymakers

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160 See 1988 Comm'n Report, supra note 150, at 184 (urging that "problems of race, unemployment, and poverty [be brought] back into the public consciousness"); Brooks, supra note 37, at xii-xiii (seeking to articulate "systemic nexus between the interpretation and application of civil rights laws and policies and specific socioeconomic problems unique to African Americans"). Including race in the dialogue is particularly important because "[one] aspect of the disproportionate poverty of [minority groups] is the continuing, pervasive racial discrimination in America." Edelman, supra note 152, at 1743. Racial discrimination links class isolation to race:

> The hypothesis [is] that class isolation is a major cause, particularly for children, of a lack of peer models and role models and a consequent lack of expectations. But the isolation is surely connected to race as well. One reason why dispersal solutions are bitterly opposed is not so much the opposition to having low-income people in a predominantly middle-income area, but to having low-income black people. Breaking down the isolation of the black lower class means, in part, combatting discrimination against lower-income black people . . . .

Id. at 1742-43; see also Bell, supra note 128, at 3 (asserting that "no African Americans are insulated from incidents of racial discrimination" and that "the plight of our . . . brethren who struggle for existence in . . . the 'underclass'" detrimentally affects all black people).

161 Massey & Denton, supra note 13, at 9.

162 "[P]roblems unique to the black urban experience" arose from "the position of most blacks on the bottom of the class structure of modern America—their class position was exacerbated by their racial status." Bloom, supra note 103, at 217. Thus, "[b]lack efforts to alter this position demanded changes in the class system; these were structural changes." Id.; see also Massey & Denton, supra note 13, at 1 ("Most Americans vaguely realize that urban America is still a residentially segregated society, but few appreciate the depth of black segregation or the degree to which it is maintained by *ongoing institutional arrangements* and contemporary individual actions.") (emphasis added); Traub, supra note 107, at 44 ("If it's true that what makes contemporary urban poverty so intractable is . . . 'the self-perpetuating cycle of racial isolation,' then the larger design must involve breaking that cycle.") (quoting Professor Orfield).

163 Accepting the finding that racial isolation, poverty, and academic underachievement are inseparable leads to the conclusion that "although desegregation is only a partial solution, separate but equal is no solution at all." Traub, supra note 107, at 45. Desegregation traditionally has embodied more than the goal of providing students of color the opportunity to attend integrated schools: "[I]t was hoped that wide-scale integration would improve the quality of life for blacks generally by improving the *quality* of the education to be received, which in turn would reduce unemployment and poverty rates." Teitelbaum, supra note 105, at 370. These broad goals support viewing desegregation as a vehicle for structural change.

164 Due to the middle class departure from cities, what remains is "not only racial segregation but also concentrated poverty, a confluence of conditions that significantly hampers the chances for successful educational reform." Moran, supra note 36, at 1107. In particular, segregation has "profound political consequences for blacks, because it so isolates

therefore proceed "as if the drastic problems of minority communities and institutions could be fixed without confronting their racial dimensions, or without forcing any basic changes in white institutions."[165]

The *Sheff* court provided the state with a rationale for instituting such major changes by announcing that an effective legislative response to the problems of Hartford's schools must directly address issues of both race and poverty.[166] The trial court's extensive findings about the adverse impact of socioeconomic conditions on students in Hartford's public schools demonstrated that "Hartford's schoolchildren labor under a dual burden: their poverty *and* their racial and ethnic isolation."[167] Since it is the combination of poverty and racial isolation that denies equal educational opportunity to the students in Hartford, effective remedial measures must be directed at both of these factors. Addressing one without the other, as do most initiatives only addressing issues of school financing, is an incomplete approach to the problem.

C. *A Critique of the Legislative Response to* Sheff

To date, the legislative response to *Sheff* has not laid the groundwork for the equal educational opportunity required by the Connecticut Constitution. To the contrary, the choice law exemplifies the state's failure to act in accordance with the principles developed in

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them geographically that they are the only ones who benefit from public expenditures [allocated to] their neighborhoods." Massey & Denton, supra note 13, at 13-14. This makes it "difficult for them to find partners for political coalitions." Id.; see also Slessarev, supra note 155, at 7 ("The extent to which Americans have instinctively come to associate urban poverty with people of color has greatly increased the resistance to solutions that would target significant resources to inner-city neighborhoods."). The recognition that drastic change is politically difficult to obtain does not mean such change is entirely unfeasible, however, and, more importantly, it does not diminish the conclusion that such change is needed.

165 Orfield, supra note 40, at 104. Bureaucrats are sometimes supported in this position by members of the public. Discussion groups interviewed by University of Connecticut researchers showed that quality of education—not racial imbalance—was the primary concern which participating parents, teachers, and students believed should be addressed in legislation targeting the crisis in Hartford's schools. See Robert A. Frahm, Sheff Panel Appears to Favor Letting Parents Choose Schools, Hartford Courant, Nov. 14, 1996, at A1. Despite the findings in *Sheff*, participants in the discussion groups believed that improving schools—without reducing racial isolation—was the proper way to comply with *Sheff*'s mandate. See id. These beliefs may be the result of dissatisfaction with past efforts to correct racial isolation, however. See supra note 128. The interviews were conducted at the request of the Education Improvement Panel, a state panel created in July 1996 by Governor John G. Rowland after the announcement of the *Sheff* decision. Panel members have also been "divided over whether their chief focus should be to desegregate Hartford's schools or [to] find ways to improve them." Frahm, supra, at A1.

166 See *Sheff*, 678 A.2d at 1273.

167 Id. at 1287.

Sheff. The legislation does not comport with *Sheff*'s emphasis on the significance of racial isolation, nor does it take into account the connection between race and socioeconomic status. It makes the creation of more interdistrict programs possible,[168] thus increasing the number of choices available to students wishing to attend schools outside of their own districts. These voluntary efforts alone, however, will not reduce the racial isolation in inner cities[169] which the *Sheff* court identified as the source of the state's constitutional violation.[170] Additionally, it is doubtful that the choice approach is rigorous enough to stimulate the dramatic restructuring of schools necessary to change significantly the composition of Connecticut's school districts.[171] In short, despite the initiatives it advances for improving education generally, the choice bill does not respond to *Sheff* because it fails to take concrete steps towards desegregating Hartford's schools. Identifying the shortcomings of the actions taken thus far by the state illustrates first, that the state's efforts must be more aggressively attuned to decreasing racial isolation and second, that school choice is unlikely to remedy problems resulting from racialized poverty.

The choice bill is not designed to reduce racial segregation in Hartford-area schools.[172] Rather, the bill's extensive efforts to increase cross-district enrollments demonstrate that it is "'directed primarily to suburban integration, not reduction of racial isolation in schools.'"[173] The legislature's primary approach for addressing racial separation has consisted of "'improv[ing] the quality of all schools so there isn't a wide disparity between urban and suburban districts.'"[174]

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168 See supra notes 85-87 and accompanying text (describing various interdistrict programs).

169 Although the state legislature has approved millions of dollars in support of the choice law and the magnet schools, charter schools, and other programs it establishes, none of these voluntary programs includes the deadlines or specific racial goals needed to meet the *Sheff* court's mandate. See Frahm, supra note 92, at A1; see also infra notes 172-78 and accompanying text.

170 See *Sheff*, 678 A.2d at 1287-88.

171 The choice approach does not require students to leave the school systems they currently attend. It therefore does not require school districts to make changes in the student compositions of urban and suburban schools, much less perform any restructuring or redistricting of schools. See infra notes 180-83 and accompanying text.

172 See supra note 83 (listing bill's stated goals).

173 Hamilton, supra note 84, at A1 (quoting Philip Tegeler of Connecticut Civil Liberties Union Foundation).

174 Rick Green, Sheff Case Goes Back to Court, Hartford Courant, Mar. 6, 1998, at A3 [hereinafter Green, Back to Court] (quoting Dean Pagani, spokesperson for Governor John G. Rowland). Under this approach, the state will take the time to improve neighborhood schools generally before moving students around to address racial balance. See id. State Representative Cameron C. Staples argues that "the new law's focus on increasing early childhood education, making school facilities equal in quality, decreasing class size, and improving the level of technology would help make Hartford schools more racially

Consistent with this approach, the bill emphasizes benign programs preparing children to learn[175] and makes exhortative statements about policies regarding textbooks, homework, attendance, and controlled substances.[176] Such policies are relevant to improving schools generally but will not appreciably advance the bill's purpose of reducing racial and ethnic isolation.[177] In fact, the bill arguably delays substantive action by setting no specific goals for reducing racial isolation, providing no means to reach the general goals it does announce, and directing little additional aid toward helping urban schools.[178] The legislature must make reducing racial isolation a real priority as it devises a remedy for the crisis.[179]

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integrated," by improving the quality of city schools and attracting the middle class. Hamilton, supra note 84, at A1. More precisely, Representative Robert M. Ward asserted that "[g]iving parents more choice . . . will force school administrators and faculties to improve the quality of education to continue attracting students to their schools." Robert A. Frahm, Sheff Panel Has Answers—Cost Remains a Question, Hartford Courant, Jan. 23, 1997, at A1. Yet it is questionable whether measures that include no consideration of the effects of racial isolation will be able to improve Hartford's schools enough to allow for a two-way transfer program capable of attracting suburban students into the city. See Frahm, supra note 12, at A1 (reporting doubts regarding impact of benign measures such as adding more preschool classes to Hartford's schools); see also infra note 183 (considering limits of school choice approach) Compare the developments in St. Louis, where a desegregation settlement gave inner-city students the right to attend suburban schools. See Susan Chira, Segregation Issue Still Divides U.S., Star-Trib. (Minneapolis-St. Paul), Feb. 15, 1993, at 4A. The plan was accepted "[b]ecause white parents did not have to bus their children into the inner city," but one "trade-off" was that "[b]lack parents had to choose to send their children into a largely alien world." Id. Parents of Hartford students have urged the state to focus less on busing their children outside of their neighborhoods and more on improving local schools. See Rick Green, City May See Wider School Choice, Hartford Courant, Nov. 7, 1998, at A1.

175 See Green, supra note 2, at A1 (explaining legislation responding to *Sheff*).

176 See Conn. Gen. Stat. Ann. § 10-221 (West Supp. 1998). For example, this section of the bill provides that local boards of education shall prescribe rules and implement policies and procedures regarding textbooks; school library media centers; homework and attendance; sanctions against students who damage or fail to return textbooks, library materials, or other educational materials; alcohol or controlled drugs; and youth suicide prevention. See id.

177 In 1998, Governor John G. Rowland introduced a $500 million aid-to-education package that would offer local school districts more teachers, computers, books, and money to repair and build schools. See Rick Green, A $500 Million Plan for Schools, Hartford Courant, Jan. 8, 1998, at A1. Many of the governor's proposals were "aimed at school systems ranked as the most needy, based on fiscal health, poverty and student needs"; Hartford ranked as the most needy school system. See id. The education package was directed at improving public education in Connecticut generally, however, and was not tailored in response to *Sheff*. See id.

178 See Green, supra note 2, at A1 (explaining *Sheff* plaintiffs' reaction to bill).

179 Since race continues to be an important signifier as to educational opportunity, purportedly race-blind educational policies offer little aid to minority students. See Steele, supra note 130, at 601 ("Racial parity cannot be achieved through the application of color-blind principles in an atmosphere of racism."); Yarbrough, supra note 111, at 686 ("[R]acial imbalance causes minority or other disadvantaged youngsters to be shortchanged educa-

Additionally, the state legislature should make the educational needs *of the students in Hartford* its primary concern. To date, insulating suburban schools from more diverse student populations has been a guiding principle in its enactments. For example, the state has long supported and encouraged voluntary plans as a means of increasing interdistrict diversity.[180] The principal theory underlying such plans is school choice, which allows parents to choose the schools their children attend, including schools outside of their hometowns.[181] Given the voluntary and thus politically less costly nature of these programs, legislators are likely to continue focusing on devising ways to increase opportunities for public school choice.[182] Yet the funding of more interdistrict schools and other such remedies formulated under the rubric of school choice will do little to affect the educational experiences of students attending Hartford's public schools, which remain racially isolated.[183]

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tionally . . . . 'School choice' schemes that ignore these concerns do so at the expense of the undereducated minority children . . . ."). "Principles of color blindness are only effective when society operates on a racially neutral basis," Steele, supra note 130, at 599, and the very existence of segregation undermines the notion that American society is race-blind. See Massey & Denton, supra note 13, at 3.

180 See *Sheff*, 678 A.2d at 1274; see also Conn. Gen. Stat. Ann. §§ 10-226a to 10-226e (West 1998) (requiring public schools within districts to be racially balanced); id. §§ 10-264a to 10-264e (promoting educational diversity through voluntary development and implementation of interdistrict educational programs). In addition, the state has provided financial support and technical assistance to voluntary interdistrict transfer programs and technical assistance to intradistrict magnet schools. See *Sheff*, 678 A.2d at 1280 n.28. It has also authorized special bond funding for the construction and renovation of interdistrict magnet schools. See id. Assistant Attorney General Ralph Urban has emphasized that the state opposes mandatory student transfers and has urged that voluntary measures be given time to work. See Robert A. Frahm, Final Arguments Heard in Sheff Case, Hartford Courant, Dec. 8, 1998, at A3.

181 See Frahm, supra note 165, at A1. For a critique of school choice plans, see Yarbrough, supra note 111, at 689-92. But see Barnes, supra note 40, at 2380 (arguing in support of choice plans).

182 See Matthew Daly, Rowland Calls Sheff Ruling "Easy Way Out," Hartford Courant, July 11, 1996, at A1 (describing Governor Rowland's preference for choice programs over mandatory busing).

183 See Green, supra note 2, at A1; see also Carter, supra note 24, at 896 (criticizing choice programs for abandoning public schools); Kimberly C. West, Note, A Desegregation Tool That Backfired: Magnet Schools and Classroom Segregation, 103 Yale L.J. 2567, 2568-79 (1994) (chronicling continued racial segregation within magnet schools).

Initiatives focusing on school choice "'will not reduce racial isolation . . . to a level that's going to make any difference.'" Frahm, supra note 165, at A1 (quoting Ben F. Andrews, Jr., member of Educational Improvement Panel and president of Connecticut's NAACP chapter). Advocates of school choice state clearly that racial integration is not one of their primary objectives. See Barnes, supra note 40, at 2379 (noting that "school choice advocates have not identified racial integration as a primary objective of their initiatives"). They prefer "race-neutral policies that focus on the quality of education" because "choice and quality are thought to be linked." Id. In fact, there may be a structural conflict between desegregation and school reform efforts such as school choice. See

The main attraction of the choice approach is that it allows city parents to enroll their children in suburban schools.[184] In reality, however, it allows parents to flee Hartford and other struggling city school systems.[185] Moreover, practical limitations on this approach are already presenting themselves as suburban schools face physical restrictions on the number of city students they may safely enroll.[186] While the choice bill deploys considerable resources toward the creation of new schools in the suburbs,[187] this initiative avoids focusing

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Teitelbaum, supra note 105, at 367 (explaining that while desegregation tends to centralize school systems, school reform involving choice usually decentralizes school districts). As a result of this tension, school reform efforts including choice plans "have made the courts' unenviable job of desegregating (unwilling) school districts that much more difficult." Id. at 368.

> More alarmingly, school choice may cause some city schools to decline in quality: [While] school choice reforms may stimulate innovation and improve the average quality of schools, they also risk creating pockets of failure—public schools in economically depressed areas that retain only the most disadvantaged students, that have difficulty attracting qualified teachers, that lack adequate funding, and that serve a body of uninvolved parents and guardians.

Note, The Limits of Choice: School Choice Reform and State Constitutional Guarantees of Educational Quality, 109 Harv. L. Rev. 2002, 2002-03 (1996) (advocating use of state constitutional education clauses to guard against potential school failures resulting from school choice). School choice policies can cause deterioration in some schools in two primary ways: by causing those schools to "lose[ ] a disproportionate share of funding relative to the number of students that it loses to other schools" and by causing a disproportionate number of the schools' "best" students to transfer to other schools. Id. at 2004-05.

184 See Frahm, supra note 174, at A1.

185 See Robert A. Frahm, In Sheff, It's Details that Matter, Hartford Courant, Jan. 24, 1997, at A1. Prior to the enactment of the choice law, the Education Improvement Panel, see supra note 165, discussed the viability of the school choice approach. State Senate President Kevin B. Sullivan, a member of the panel, believed that the plan to pursue school choice would leave many children behind in neighborhood schools. See Frahm, supra note 174, at A1. In 1998, hundreds of parents pulled their children out of Hartford's public schools; the number of students in the district dropped below 24,000 for the first time in a decade. See Lisa Chedekel & Rick Green, Hartford's Schools Lose More than 500 Students, Hartford Courant, Oct. 6, 1998, at A1. Hartford lost 549 students, or 2.3% of its school population; the city's three high schools lost 8% of their students. See id. At the same time, suburban districts around Hartford grew by the hundreds. See id. Educators attribute the phenomenon to "an exodus of families into suburbs . . . combined with more Hartford students enrolling in charter and interdistrict schools." Id. The loss of 549 students will significantly affect Hartford's school budget, which is primarily comprised of state money: Since each student is worth approximately $6,400 in state aid, Hartford stands to lose more than $3.5 million. See id.

186 Suburban school districts in the Hartford area have been "unable to accept many additional students under a state-sponsored school choice initiative, saying they lack space." Rick Green, Sheff Plaintiffs Question School Construction, Hartford Courant, Nov. 12, 1998, at A1; see also Enhancing Education, supra note 12, at 23 (noting that plan's proposals do not address "issue of needed facility space," which "remains a problem in many communities").

187 In November 1998, the State Board of Education announced that it was considering a dramatic expansion of school choice policy, under which suburban schools would be encouraged to "create space for Hartford students," making it possible for "[a]ny Hartford

efforts on reducing racial isolation in inner-city schools.[188] Although many state residents favor measures involving "choice,"[189] these approaches cannot be relied upon to desegregate Connecticut's schools.[190]

An essential feature of successful desegregation programs is that they be powerful enough to engender structural change, which is needed to respond effectively to the institutional connection between race and poverty.[191] The continuing preeminence of the neighborhood school model of public education, coupled with increasingly segregated neighborhood patterns, severely limits the potential for integration of inner-city schools.[192] Consequently, if the General Assembly truly intends to fulfill *Sheff*'s mandate by taking responsibility for Hartford's educational crisis, it must enact legislation that will do more than merely suggest to the suburbs that they involve themselves in solving the problems of Hartford's schools.[193] Any legislation must

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student who wanted to attend school in the suburbs [to] do so." Green, supra note 2, at A1. This could result in further impoverishing the Hartford school system; should large numbers of students leave Hartford for the suburbs, the city would continue to lose significant amounts of state aid. See id.; see also supra note 185.

188 See Hamilton, supra note 84, at A1; see also Massey & Denton, supra note 13, at 14 ("Despite the obvious deleterious consequences of black spatial isolation, policymakers have not paid much attention to segregation as a contributing cause of urban poverty and have not taken effective steps to dismantle the ghetto."); Orfield, supra note 40, at 104 ("Many liberals today underestimate the importance of the ghetto system and tend to see the urban race problem simply as an issue of class inequality that can be solved by nonracial social and economic policy.").

189 See supra note 165. Most Hartford residents who testified at the first public hearings convened by the Education Improvement Panel insisted on desegregation as the remedy of choice, however. See Rick Green, Over 100 Come with Their Ideas, Hartford Courant, Sept. 19, 1996, at A3.

190 This stance is at the heart of the *Sheff* plaintiffs' new lawsuit against the state. See infra note 199. Consider also the failure of choice plans evaluated by federal courts. See supra notes 30-33 and accompanying text. But see Paul Gewirtz, Choice in the Transition: School Desegregation and the Corrective Ideal, 86 Colum. L. Rev. 728, 745 (1986) (conceding that choice plans did not work in mid-1960s but arguing that choice plans can be effective desegregation devices, assuming that discrimination and its effects can be eliminated in near term). Yet racial discrimination has proven to be pervasive and difficult to eradicate. See Bell, supra note 128, at 13 (asserting that "racism is a permanent component of American life"). For a comment on the significance of discrimination and its role in the desegregation debate, see supra note 128.

191 The problem of racial separation is institutional, see Massey & Denton, supra note 13, at 16, which leads to the conclusion that its remedy must be forceful and comprehensive in order to be effective.

192 See Nancy A. Denton, The Persistence of Segregation: Links Between Residential Segregation and School Segregation, 80 Minn. L. Rev. 795, 801 n.27 (1996) (explaining that "[i]n many cities, the school desegregation potential is severely limited by the few whites remaining in the school system").

193 One obstacle to the implementation of educational reforms is the fact that the choice law allows efforts to diversify public schools to be dependent on the whims of local superintendents. See Janice D'Arcy, Who's Keeping Track of School Diversity Law?, Hartford

actively encourage, or even command, the suburbs to participate in structural changes in the state's school systems.[194] This means that the state must at least be willing to consider disturbing and revising the neighborhood model of school districting.[195] To meet *Sheff*'s goals, these efforts may ultimately entail metropolitan (city-suburban) desegregation.[196] The state will also need to consider the viability of mandatory, as well as voluntary, measures.[197] The state government must be creative in developing reforms, and it must be willing to take

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Courant, Feb. 1, 1999, at A1 (reporting local superintendent's public derision of diversity and refusal to recruit minority faculty). The state's monitoring of school districts' compliance with the new law depends on "self-reporting and vague documentation, without set timelines or requirements." Id.

194 Such measures have been suggested before in Connecticut. For example, in 1993, then-Governor Lowell Weicker proposed a desegregation plan that would create six educational regions across the state, achieving integration by crossing town lines. See Michele Jacklin & Mark Pazniokas, School Regions Sought to End Racial Imbalance, Hartford Courant, Jan. 7, 1993, at A1. The plan envisioned that "[l]ocal school officials and municipal leaders in the . . . regions would be responsible for drawing up a plan that would address racial and economic imbalance." Kirk Johnson, Schools Need Race Balance, Weicker Says, N.Y. Times, Jan. 7, 1993, at B1.

195 Given the de facto nature of school segregation in the North, it cannot be eliminated without taking a "revolutionary approach to school organization" that has thus far been fiercely resisted. Carter, supra note 16, at 24-25 (criticizing "neighborhood school policy, superimposed on wide-scale residential segregation, plus the concept of local control and districting," and arguing that "statewide responsibility" is needed to alter results of these phenomena).

196 Such plans would require careful planning and a fair allocation of the attendant burdens. See Brooks, supra note 37, at 104 ("The educational needs of African American children are often slighted in court-ordered integration plans—these children may bear the brunt of integrative techniques or may face various forms of resegregation and discrimination in 'integrated' schools."). Still, city-suburban desegregation plans can "radically lower[ ] segregation" and produce a higher level of integration than those limited to central cities. See Orfield, supra note 40, at 116. Professor Orfield explores "the broad impacts of metropolitan desegregation" and argues for "desegregation plans that give an entire metropolitan community an interest in solving racial tensions by maintaining the quality of schools in all parts of the metropolitan area, city and suburbs alike." Gary Orfield, Metropolitan School Desegregation: Impacts on Metropolitan Society, 80 Minn. L. Rev. 825, 828 (1996) (exploring use of metropolitan school desegregation to develop effective local schools).

197 Proponents of school choice argue that desegregation should be voluntary because "court-ordered integration . . . [has] failed to integrate most urban schools or significantly increase access to quality educational programs." Barnes, supra note 40, at 2379. A further concern is that "[w]here integration has occurred, it has often resulted in heightened racial tension." Id. Contrast this fear of racial tension with the belief that desegregation ultimately will bring different racial communities together. See supra note 140.

Opposing research maintains that "substantial progress has been achieved in school districts with court- or administratively-ordered desegregation plans, whereas little or no progress has been noted in the eighty-five percent of school districts without such plans." Westerman, supra note 38, at 399 (explaining further that "the highest level of progress has been achieved in areas in which the desegregation plan was mandatory rather than voluntary [and] where desegregation occurred at all grade levels from the plan's inception"). For an empirical view of the value of successfully desegregated schools, see id. at 398-405

the necessary steps to achieve *Sheff*'s vision, despite political pressure to place the educational needs of inner-city students once again on the backburner.[198]

The *Sheff* court set the General Assembly to the task of formulating a program to bring about equal opportunity in Hartford's schools in light of the court's conclusions about the deleterious effects of racial and ethnic isolation. Throughout the process of devising a remedy, then, the state should be mindful of the court's order and its findings; it must search for remedies that are responsive to what the *Sheff* court identified as wrongs.[199]

CONCLUSION

Rather than being viewed as competing social aims, the principles of desegregation and educational equality are both embraced in

(reviewing results of empirical research studies that affirm value of racially balanced schools to both minority and white students, as well as to society at large).

198 See Rebell & Hughes, supra note 81, at 1116 (recognizing formidable remedial challenges facing *Sheff* court in its attempts to solve deep-rooted problems of urban education but praising *Sheff* ruling for "[taking] the position that . . . the stakes for the plaintiffs and for the future functioning of our democratic system are simply too great to ignore the continuing plight of the urban minorities"); see also Massey & Denton, supra note 13, at 15 (arguing that "ending the long reign of racial segregation will require more than specific bureaucratic reforms; it requires a moral commitment that white America has historically lacked"). However, the temptation to characterize *Sheff* as a moral call to arms should be resisted. Such a characterization would obscure the fact that the *Sheff* decision is at bottom a judicial decree and that its holding recognized a constitutional violation. As a consequence of being viewed as merely a moral statement, *Brown*'s effectiveness as an enforcement tool was diluted. See Bell, supra note 128, at 51.

199 Moreover, if the General Assembly is unresponsive to *Sheff*, it is likely to doom the state to repeat the cycle of judicial involvement with attempts at desegregative remedies that occurred post-*Brown*. See supra notes 29-40. In March 1998, the *Sheff* plaintiffs returned to state court, complaining that Connecticut had not responded adequately to the state supreme court's mandate. See Green, Back to Court, supra note 174, at A3. The court "ordered the state . . . to prove it is acting to reduce the racial segregation that divides Hartford schools and their suburban neighbors." Id. Hearings on the issue began on September 8, 1998. See Frahm, supra note 3, at A5. On March 3, 1999, Superior Court Judge Julia L. Aurigemma ruled that the state is meeting its obligations under *Sheff*'s mandate. See Sheff v. O'Neill, No. CV89-0492119S, 1999 WL 162993, at *20 (Conn. Super. Mar. 3, 1999). The court recognized that segregation in Hartford has not decreased in the years following the *Sheff* ruling in 1996. See id. at *14; see also Rick Green & Robert A. Frahm, Brakes Put On Sheff Plaintiffs, Hartford Courant, Mar. 4, 1999, at A1 (noting that Hartford's enrollment of minority students rose to 96% this year). However, it cited with approval the state's interdistrict programs, see *Sheff*, 1999 WL 162993, at *3-*10, vigorously endorsed the use of voluntary measures for desegregating Hartford's schools, see id. at *19, and concluded that the state "has acted expeditiously and in good faith." Id. at *20. The court also declared that the Connecticut Supreme Court's call for action in *Sheff*—in particular, its emphasis on the urgency of finding a remedy for Hartford's students—"cannot reasonably be construed to require instantaneous action." Id. at *16. The *Sheff* plaintiffs have "vow[ed] to go back to court again and again until the schools are equal and integrated." Green & Frahm, supra, at A1 (quoting John C. Brittain, lawyer for plaintiffs).

Sheff's formulation of the right to equal educational opportunity. By affirming the importance of desegregation and giving priority to the goal of dismantling racial and ethnic isolation, *Sheff* revived the spirit of *Brown*'s mandate. As a state court interpreting state constitutional law, the *Sheff* court was able to consider the problem of segregation anew, unconstrained by the limits of school desegregation doctrine developed under federal case law.

Previous attempts to desegregate have produced only uncertain gains, and, in many cases, desegregation plans across the country simply have failed. Efforts to desegregate under *Sheff* need not have the same results, however, since the *Sheff* decision allows for significant departures from traditional paths towards desegregation. By recognizing that harm occurs under de facto, as well as de jure, segregated conditions, *Sheff*'s theoretical underpinnings permit a broader remedial response than did those of *Brown* and its progeny. Additionally, by placing the responsibility for crafting a remedy in the hands of the state legislature, *Sheff* makes possible a plan that is the product of legislative action, one better situated to garner political support and, therefore, more likely to succeed.

In designing this plan, the legislature should be guided by the *Sheff* court's conclusion that race continues to be a meaningful signifier as to the educational experiences of minority students. Implicit in *Sheff* are the messages that the educational disadvantages suffered by minority students are systemic, and that race and poverty are interacting factors. Thus, the dismantling of segregation will also require Connecticut to make structural changes directed at minimizing racial isolation and the harms associated with the confluence of race and poverty. *Sheff* demonstrated that these principles—which were central to *Brown*—remain relevant to creating equal educational opportunity for racial minorities. More concretely, by calling for desegregation, *Sheff* opened up possibilities for reform through state constitutions and began forging the way for renewed—and more promising—efforts to desegregate.