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LEGAL STRATEGIES AND GLOBAL SYNERGIES: EXPANDING THE LEGACY OF BROWN V. BOARD FOR EDUCATIONAL EQUITY

Bojan Perovic

ABSTRACT

This article examines the enduring legacy of *Brown v. Board of Education* within a global framework, emphasizing its profound role in advancing racial justice and educational equity. By juxtaposing the struggles of African Americans in the United States and the Roma in Europe, the article highlights the necessity of an integrated approach that combines legal advocacy, grassroots activism, and international cooperation. It explores the transnational migration of legal norms and strategies, uncovering the dynamics of adaptation and contestation across different socio-legal landscapes. Furthermore, the article addresses the challenges of transforming legal victories into substantive social change, demonstrating the complex relationships between legal systems, societal norms, and political dynamics. Recognizing the persistent educational disparities faced by marginalized communities worldwide, it advocates for a holistic approach that merges legal reform, policy innovation, and community mobilization to advance racial justice and educational equity globally. By advocating for a nuanced understanding of legal activism within a broader strategy for social transformation, the article highlights the essential role of a comprehensive approach in promoting racial justice and educational equity worldwide.

For much of their histories, the Roma in Eastern Europe and African Americans traversed similar paths. Both endured centuries of slavery and were emancipated, almost simultaneously, during the mid-nineteenth century. Both continued to suffer years of discrimination, poverty, inferior housing, deficient health, and segregated education . . . Roma education, essential for climbing out of that abyss, has remained segregated and inferior. Because I was one of the lawyers who argued Brown v. Board of Education and, as head

of the NAACP Legal Defense Fund, litigated many school desegregation cases, in 2003 Roma leaders, beginning their own legal campaign to desegregate schools, invited me to Eastern Europe. Since then, I have worked to uncover the reality of school segregation in the region.

Jack Greenberg¹

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CONCLUSION: TOWARDS A UNIFIED APPROACH FOR RACIAL JUSTICE AND EDUCATIONAL EQUITY 157

1. Jack Greenberg, *Report on Roma Education Today: From Slavery to Segregation and Beyond*, 110 COLUM. L. REV. 919 (2010).

INTRODUCTION

Brown v. Board of Education of Topeka stands as a seminal decision in American jurisprudence, marking a decisive shift in the civil rights landscape and setting a precedent for the international struggle against racial segregation in education. This landmark Supreme Court decision transcended national boundaries, influencing racial justice movements and legal reforms worldwide. The ruling's global resonance, particularly its impact on similar campaigns for educational equity for marginalized groups, such as the Roma in Europe, emphasizes the interconnectedness of legal norms and the transnational dissemination of civil rights advocacy. This article argues that *Brown's* legacy extends far beyond the United States, serving as a cornerstone for global efforts to dismantle educational segregation and discrimination. It proposes that the persistent educational inequities faced by marginalized communities worldwide necessitate innovative strategies that transcend traditional legal remedies.

Part 1 introduces the Transnational Racial Justice Framework, examining the influence of *Brown v. Board of Education* on global racial justice movements and the need for a unified strategy to address educational disparities. Part 2 examines the historical context and global impact of *Brown v. Board of Education*, assessing how the ruling has inspired international efforts to combat racial segregation, particularly in Europe, and evaluates the adoption of *Brown's* legal principles in different jurisdictions. Part 3 provides a comparative analysis of the educational inequities faced by African Americans and the Roma, highlighting how *Brown's* legacy has influenced legal and advocacy efforts in Europe to combat discrimination against the Roma and explores the systemic barriers faced by both groups. Part 4 evaluates the successes and limitations of *Brown's* transnational impact, addressing the challenges in implementing educational reforms, and proposes the development of platforms for exchanging legal strategies, comprehensive data analysis, and leveraging technology to enhance advocacy.

I. SETTING THE STAGE FOR TRANSNATIONAL LEGAL ADVOCACY

A. Charting the Transnational Legal Landscape and Educational Equity

In today's rapidly evolving world, shaped by movements for social justice, the migratory nature of the law across borders is more evident

than ever.² The principles of justice, equality, and human rights, long championed in landmark legal decisions, have transcended their original contexts to inspire and inform a worldwide struggle against systemic injustices. From the strides towards gender equality ignited by the #MeToo movement to the international solidarity of #BlackLivesMatter, these movements demonstrate the dynamic interaction between law and societal transformation,³ illustrating how important legal decisions become catalysts for change far beyond their initial jurisdictions.⁴ In the sphere of human rights, there are several noteworthy examples of migratory transnational norms, movements, decisions, and principles that originated in one country and spread to others, influencing legal systems, policies, and societal attitudes globally. These instances highlight how domestic human rights advancements can have wide-reaching impacts, setting precedents and inspiring similar reforms worldwide. From the European Union's General Data Protection Regulation (GDPR)⁵ setting precedents for privacy laws worldwide⁶, to the domino effect of marriage equality originating from the Netherlands⁷, and the

2. On some manifestations of this phenomenon, see Anne-Marie Slaughter, *A Global Community of Courts*, 44 HARV. INT'L L. J. 191 (2003); see also Harold Hongju Koh, *The 1994 Roscoe Pound Lecture: Transnational Legal Process*, 75 NEBRASKA L. REV. 181 (1996).

3. Scott L. Cummings, *The Social Movement Turn in Law*, 43 LAW & SOCIAL INQUIRY 360 (2018); SARAH J. JACKSON ET AL., #HASHTAGACTIVISM: NETWORKS OF RACE AND GENDER JUSTICE (2020); MARGARET E. KECK & KATHRYN A. SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* (1998).

4. Carol T. Li, Matthew E.K. Hall & Veronica Root Martinez, *#MeToo & The Courts: The Impact of Social Movements on Federal Judicial Decisionmaking*, 81 WASH. & LEE L. REV. ONLINE, 79 (2023).

5. The European Union's General Data Protection Regulation (GDPR) represents a significant legal norm originating in Europe that has had a global impact on privacy and data protection. Since its implementation in 2018, the GDPR has inspired similar legislation in countries outside of the EU. These laws reflect the GDPR's core principles, including the right to data privacy, consent, and the right to be forgotten. See Meg Leta Jones & Margot E. Kaminski, *An American's Guide to the GDPR*, 98 DENV. L. REV. 93 (2020); Manuel Klar, *Binding Effects of the European General Data Protection Regulation (GDPR) on U.S. Companies*, 11 HASTINGS SCI. & TECH. L. J. 101 (2020); W. Gregory Voss & Kimberly A. Houser, *Personal Data and the GDPR: Providing a Competitive Advantage for U.S. Companies*, 56 AM. BUS. L. J. 287 (2019). See generally Ryan Goodman and Derek Jinks, *Incomplete Internalization and Compliance with Human Rights Law*, 19 *European Journal of International Law* 725 (2008).

6. The "Brussels Effect," a concept articulated by Anu Bradford, illustrates how the European Union, through regulations like the GDPR, exercises a de facto regulatory influence on a global scale. See Anu Bradford, *The Brussels Effect*, 107 NW. UNIV. L. REV. 1 (2012). This phenomenon is evident in the GDPR's ripple effects in the United States, where, in the absence of a federal data privacy law comparable to the GDPR, major US-based multinational companies and emerging state-level data privacy laws, such as the CCPA, have gravitated towards GDPR-compliant standards. This transnational regulatory influence is instrumental in elevating data protection standards globally. See generally ANU BRADFORD, *THE BRUSSELS EFFECT: HOW THE EUROPEAN UNION RULES THE WORLD* (2020).

7. See Kees Waaldijk, *Others May Follow: The Introduction of Marriage, Quasi-Marriage,*

pioneering litigation for environmental justice⁸, these developments reflect a global interconnectedness and the transformative role the law can play.

At the nexus of this global dialogue on rights and equality stands the U.S. Supreme Court's decision in *Brown v. Board of Education of Topeka* (1954). *Brown's* ripple effect through time and space highlights the profound capacity of legal rulings to reshape societal norms and values worldwide. This article will explore the essence of *Brown v. Board of Education*, unpacking its historical significance and its far-reaching impact on similar global struggles for justice and equality. By drawing a parallel with the challenges faced by the Roma communities in Europe and African Americans in the United States, we aim to show the transnational influence of *Brown's* core principles, emphasizing the universal battle against educational segregation and systemic discrimination.

B. Theoretical Framework: Defining the Transnational Racial Justice Framework

Across the globe, the principles of justice, equality, and human rights have expanded their original contexts, inspiring and informing global movements against systemic injustices. The Transnational Racial Justice Framework (TRJF) emerges as a critical tool for understanding and addressing the global dimensions of racial discrimination, particularly in education. This section outlines the TRJF, highlighting its unique features, how it differs from other frameworks, and why it is particularly suited for this analysis.

The Transnational Racial Justice Framework is a comprehensive analytical tool designed to examine and address racial injustices that transcend local and national boundaries. Unlike traditional frameworks that often focus on domestic issues within a single legal or social system, the Transnational Racial Justice Framework emphasizes the interconnectedness of racial justice struggles across different socio-legal landscapes. It integrates comparative legal analysis, historical context, and sociopolitical factors to understand and challenge educational segregation and discrimination on a global scale.⁹

and Semi-Marriage for Same-Sex Couples in European Countries, 38 NEW ENG. L. REV. 569 (2003).

8. Jacqueline Peel & Hari M. Osofsky, *Climate Change Litigation*, 16 ANN. REV. OF L. AND SOC. SCI. 21 (2020).

9. Kimberlé Crenshaw's work on intersectionality highlights how different systems of oppression interconnect, making it essential to consider multiple dimensions when addressing racial justice. This theoretical foundation is crucial for the TRJF's emphasis on interconnectedness and

This framework is built on several key components. First, it recognizes racism as a pervasive global phenomenon, not confined to any single nation or culture.¹⁰ Second, it highlights the importance of solidarity and collaboration among racial justice movements worldwide.¹¹ Third, it utilizes international legal norms and human rights frameworks to address racial discrimination.¹² Finally, it combines historical, legal, sociological, and political analyses to offer a comprehensive understanding of racial inequalities.

The Transnational Racial Justice Framework differs from other frameworks in several significant ways. Unlike national or regional frameworks, it operates on a global scale, acknowledging the transnational flow of legal norms, strategies, and advocacy efforts. Additionally, it specifically compares racial justice issues across different regions and legal systems, highlighting both commonalities and unique challenges.

This framework is particularly useful for this analysis because it allows for a deeper understanding of how legal victories in one country can inspire and shape racial justice movements in other regions. It facilitates a comparative analysis of the educational inequities faced by African Americans in the United States¹³ and the Roma in Europe,¹⁴ focusing on how different legal and social contexts influence the struggle for educational equity. The framework's multidisciplinary nature enables a thorough exploration of the legal, social, and political factors that contribute to educational segregation and discrimination globally.¹⁵ Moreover, by advocating for transnational solidarity and

its multidisciplinary approach. See Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

10. See generally CRITICAL RACE THEORY: AN INTRODUCTION (Richard Delgado & Jean Stefancic eds., 4th ed. 2023). Their work on Critical Race Theory emphasizes that racism is systemic and pervasive, which supports the TRJF's view that racism is a global phenomenon.

11. Keck and Sikkink's analysis of transnational advocacy networks illustrates the power of international solidarity and collaboration in effecting change, aligning with the TRJF's emphasis on global cooperation. See MARGARET E. KECK & KATHRYN A. SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* (1998).

12. Merry's work on translating international human rights into local contexts highlights the importance of using international legal norms to address racial discrimination, a key component of the TRJF. See SALLY ENGLE MERRY, *HUMAN RIGHTS & GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE* (2006).

13. *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

14. *D.H. and Others v. the Czech Republic*, App. No. 57325/00, (13/11/2007), <https://hudoc.echr.coe.int/eng?i=001-83256>.

15. The empirical evidence presented by Kende et al. bolsters the argument for a Transnational Racial Justice Framework. Their analysis of anti-Roma attitudes as a socially approved norm in (Eastern) Europe serves as a reminder of the global nature of racial discrimination, mirroring the challenges faced by African Americans. This parallel not only

the exchange of legal strategies, the framework provides a basis for developing innovative and effective approaches to address educational disparities worldwide.

Methodologically, the Transnational Racial Justice Framework relies on a combination of comparative legal analysis, historical comparative methods, and qualitative research into the racialized experiences within education and other societal spheres. This methodological diversity enables a deep exploration of the structural inequalities that marginalize communities across the globe, providing a detailed and comprehensive perspective.¹⁶

To showcase the practical utility of the Transnational Racial Justice Framework, this piece explores several case studies, including the impact of *Brown v. Board of Education* on desegregation efforts in Europe, particularly the case of *D.H. and Others v. the Czech Republic* before the European Court of Human Rights, and the legal battles faced by the Roma in other European countries.¹⁷

II. THE TRANSNATIONAL ECHO OF BROWN V. BOARD OF EDUCATION

A. Historical Context and Impact of Brown v. Board of Education

The victory of *Brown v. Board of Education*, emerging post-World War II, was not an isolated triumph but the culmination of strategic

underscores the pervasive influence of racism across different societies but also reinforces the argument for a unified approach to addressing educational inequities. See Anna Kende, Márton Hadarics & Barbara Lášticová, *Anti-Roma attitudes as expressions of dominant social norms in Eastern Europe*, 60 INT'L J. OF INTERCULTURAL RELS. 12 (2017).

16. Recent events following Russian invasion of Ukraine have demonstrated the persistent and pervasive nature of anti-gypsyism, particularly highlighted in the context of the Ukrainian crisis where Roma refugees faced exacerbated discrimination. The terminology itself—ranging from ‘antigypsyism’ to ‘Romaphobia’—encapsulates a long history of marginalization and prejudice against the Roma, Europe’s most persecuted minority. This discrimination has manifested in various forms, from systemic oppression in healthcare, housing, education, and employment, to overt acts of violence and social exclusion. The escalation of such intolerance is not isolated but indicative of broader transnational patterns of racism, evidenced by the rise of right-wing populism across Europe. The situation of Roma refugees from Ukraine provides an example of how deeply ingrained stereotypes and prejudices can influence the treatment of marginalized communities even in times of war and crisis. These instances not only highlight the need for a comprehensive understanding and addressing of anti-gypsyism but also call for a transnational racial justice framework that recognizes and combats the global nature of racial discrimination and systemic oppression faced by marginalized groups, including both the Roma and African Americans. See Elżbieta Mirga-Wójtowicz & Kamila Fiałkowska, “Be careful out there, in that Gypsy district” – anti-gypsyism in a war situation, HEINRICH-BÖLL-STIFTUNG (May 24, 2022), <https://pl.boell.org/en/2022/05/16/uwazajcie-tam-w-tej-cyganskiej-dzielnicy-antycyganizm-w-warunkach-wojny>.

17. Iulius Rostas’ analysis of Roma policies in Europe offers interesting insights into the specific challenges and strategies in combating educational segregation for the Roma. See generally IULIUS ROSTAS, A TASK FOR SISYPHUS: WHY EUROPE’S ROMA POLICIES FAIL (2019).

legal endeavors aimed at dismantling racial segregation in the United States.¹⁸ The National Association for the Advancement of Colored People's (NAACP) central role¹⁹ reveals a deliberate campaign against institutionalized barriers to educational equity,²⁰ setting a legal precedent that resonated beyond American borders.

Key precedents instrumental in setting the stage for *Brown*, like *Murray v. Pearson*,²¹ *Missouri ex rel. Gaines v. Canada*, *McLaurin v. Oklahoma State Regents*, and *Sweatt v. Painter*, highlight the incremental assault on the "separate but equal" doctrine.²² Yet, *Brown's* significance goes beyond its immediate legal impact, invoking a broader dialogue on racial discrimination that reverberates across continents. The strategic naming of Oliver Brown²³ as the lead plaintiff indicates the NAACP's careful navigation through a racially charged legal and societal climate, aiming to humanize the fight against segregation.

18. See generally MARK V. TUSHNET, *THE NAACP'S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION, 1925–1950* (1987); JACK GREENBERG, *CRUSADERS IN THE COURTS: HOW A DEDICATED BAND OF LAWYERS FOUGHT FOR THE CIVIL RIGHTS REVOLUTION* (1994); JAMES T. PATTERSON, *BROWN V. BOARD OF EDUCATION: A CIVIL RIGHTS MILESTONE AND ITS TROUBLED LEGACY* (2001); DERRICK BELL, *SILENT COVENANTS: BROWN V. BOARD OF EDUCATION AND THE UNFULFILLED HOPES FOR RACIAL REFORM* (2004); ROBERT J. COTTROL, RAYMOND T. DIAMOND & LELAND B. WARE, *BROWN V. BOARD OF EDUCATION: CASTE, CULTURE, AND THE CONSTITUTION* (2003); CHARLES J. OGLETREE, JR., *ALL DELIBERATE SPEED: REFLECTIONS ON THE FIRST HALF-CENTURY OF BROWN V. BOARD OF EDUCATION* (2004);

19. Richard Kluger provides a comprehensive history of the litigation efforts spearheaded by the NAACP and also situates the *Brown* decision within the broader struggle against the United States' entrenched system of racial segregation. See generally RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY* (2011).

20. In the 1930s, African American lawyers strategically employed the legal system to challenge segregation in the US, with institutions like Howard University School of Law and the NAACP leading the charge. LAWRENCE GOLDSTONE, *SEPARATE NO MORE: THE LONG ROAD TO BROWN V. BOARD OF EDUCATION* (2021).

21. In *Murray v. Pearson*, Donald Murray had been rejected from the University of Maryland Law School based on his race. The victory in *Murray v. Pearson* in 1936, where Charles Hamilton Houston and Thurgood Marshall challenged Maryland's segregation policies, was significant in demonstrating that separate was not equal, particularly for law students in Maryland. It's noteworthy that the decision was upheld by the Maryland Court of Appeals and did not proceed to the United States Supreme Court, as Maryland accepted the ruling without further appeal. *Pearson v. Murray*, 169 Md. 478 (1936).

22. Despite discouraging attitudes among Supreme Court Justices, momentum was growing, with a rising number of brilliant young Black lawyers like William Hastie and Robert L. Carter, as well as young white lawyers such as Jack Greenberg. See generally PATTERSON, *supra* note 18.

23. Oliver Brown, the father of 8-year-old Linda Brown, whose admission had been declined, was known for his calm demeanor and his role as an assistant pastor. For NAACP leaders, he seemed like a perfect choice, as segregationists could not depict him as a 'dangerous radical.' *Id.* at 32–34.

The Supreme Court's unanimous decision in *Brown* was profound, affirming that segregating children in public schools based on race, even with equal facilities, deprived them of equal educational opportunities. This ruling²⁴ significantly impacted the legal system, challenging the "separate but equal" doctrine.²⁵

Brown II's²⁶ mandate for desegregation "with all deliberate speed" conveys a cautious optimism hindered by the realities of deep-seated racial biases, illustrating the complexities of translating legal directives into tangible social change. The reluctance of the Supreme Court to impose immediate desegregation²⁷, influenced by a mix of empathy

24. The issues leading to the *Brown v. Board of Education* decision remain pertinent today. Many authors note that the unanimity in *Brown* masks the initial deep conflicts among the justices, as confirmed by notes from Justices Burton and Jackson. Burton and Minton were prepared to declare segregated schools unconstitutional. Douglas and Black, despite fears of white backlash, supported a liberal interpretation of equal protection. Yet, Supreme Court observers in 1952 recognized the Court's reluctance to rule against segregation. Strong opposition was anticipated from Stanley Reed, and Fred Vinson shared similar views at the time. However, Vinson's passing led to Earl Warren's appointment. Justices Jackson and Frankfurter also harbored conflicted feelings, primarily concerning the methods of directing desegregation. 'Why—why, this means that a nigra can walk into the restaurant at the *Mayflower* and sit down to eat at the table right next to Mrs. Reed.' PATTERSON, *supra* note 18, at 55.

25. "We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does." *Brown v. Board of Education*, 347 U.S. 483, 493 (1954). "To 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.* at 494.

We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal." Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. This disposition makes unnecessary any discussion whether such segregation also violates the Due Process Clause of the Fourteenth Amendment.

Id. at 495.

26. The NAACP pushed for clear desegregation timelines, whereas the Justice Department suggested a 90-day window for school boards to devise integration plans but steered clear of setting firm deadlines. The Supreme Court ultimately eschewed any specific timeline, embedding the process of desegregation within nebulous terms such as "all deliberate speed," "good faith," and "as soon as possible." This outcome begs the question of the real victors of *Brown II*. Evidently, the interests of white Southerners were largely accommodated through the gradualist approach, absence of strict timelines, and broad, non-specific directives, a stark contrast to the decisive overturning hoped for in *Brown I*. The subsequent relief voiced by lawmakers in states like Florida, Louisiana, and Mississippi, juxtaposed with the NAACP's palpable dismay, highlights the disproportionate benefit to Southern white interests facilitated by the decision's ambiguities. MICHAEL J. KLARMAN, FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY 313, 316–19 (2004).

27. This view is exemplified by Jackson's perspective on the immediate enforcement of

towards white Southern resistance²⁸ and pragmatic concerns about enforceability, exposed the limitations of judicial remedies in addressing systemic racial injustices.²⁹

Brown v. Board of Education's legacy shows a clear gap between its theoretical triumphs and its practical failures. Despite being celebrated as a watershed moment for desegregation, the aftermath was characterized by profound inertia and resistance, particularly in the South.³⁰ The negligible integration of Black students into predominantly white schools—exemplified by the minuscule numbers in Arkansas, North Carolina, Tennessee, and Virginia—makes clear the widespread defiance against the ruling.³¹ This resistance was not passive; it involved active measures of intimidation and terror against those pushing for desegregation, alongside a judicial reluctance to enforce the Supreme Court's mandate, a clear testament to the entrenched racial prejudices influencing community and judicial attitudes alike.³²

Moreover, the decision's impact must be contextualized within the era's broader socio-political dynamics, notably the Cold War³³ and the

Blacks' constitutional rights as "needlessly ruthless." MICHAEL J. KLARMAN, *BROWN V. BOARD OF EDUCATION AND THE CIVIL RIGHTS MOVEMENT: ABRIDGED EDITION OF FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY* 316 (2004). Gradualism "would indicate to the South that the Court understands and is sympathetic to the problems which the decision raises in their states" and that it was "not trying to jam a new social order down their throats." *Id.* at 315.

28. The aftermath of *Brown II* offers an insight into the judicial branch's attitude towards racial integration in that era. It underscores the slow pace of desegregation suggested by Southern lawmakers, foreseeing its feasibility only decades later, thus underlining the decision's constrained influence. *Id.* at 98–105. Moreover, President Eisenhower's ambivalence towards the *Brown* decision and his equivocal stance on civil rights leadership, paralleled by Congress's hesitance to assertively back *Brown*, reflect a broader governmental lukewarm response to desegregation. The incremental and delayed impact of *Brown*, alongside the eventual recognition of busing as a desegregation tool in *Swann v. Charlotte-Mecklenburg Board of Education* (1971), nearly two decades later, exemplifies the protracted journey toward racial integration in American schools.

29. KLARMAN, *supra* note 27, at 55–105. See also Harry T. Edwards, *The Journey from Brown v. Board of Education to Grutter v. Bollinger: From Racial Assimilation to Diversity*, 102 Mich. L. Rev. 944, 952 (2003).

30. KLARMAN, *supra* note 27, at 196.

31. KLARMAN, *supra* note 27, at 130.

32. KLARMAN, *supra* note 27, at 122–124.

33. During the Cold War era, Roma people in Central and Eastern Europe (CEE) suffered significant hardships. However, these nations were not part of the European Union (EU) then, and consequently, Roma issues were not on the EU's agenda. The landscape began to shift with the fall of communism and the disintegration of Yugoslavia, ushering in a new era of EU expansion towards CEE. The EU's interest in enlarging into CEE was driven by the potential economic and political contributions these nations could offer for the region's stability and security. Yet, these countries also carried the 'baggage' of potential Roma migration, a prospect that the EU was keen to avoid exacerbating. The EU's sudden interest in protecting the Roma minority emerged only during the negotiation process with CEE countries, reflecting a strategic rather than a humanitarian approach. FELIX B. CHANG & SUNNIE T. RUCKER-CHANG, *ROMA RIGHTS AND CIVIL RIGHTS: A TRANSATLANTIC COMPARISON* 52–54, 65 (2020).

decolonization movement. The strategic imperative to counter Soviet propaganda and win allies in the newly independent states of Africa and Asia necessitated a formal commitment to racial equality in the United States, though this commitment was often more cosmetic than substantive.³⁴ The decision's significance, thus, lay less in its immediate effect on educational desegregation and more in its indirect contributions to catalyzing public debate on racial equality, energizing the civil rights movement, and elevating race issues in national discourse.³⁵

The parallels between the African American and Roma experiences, particularly in the face of violence and educational segregation against Roma in contemporary Europe, reflect a shared struggle for recognition and equality. This juxtaposition demands a re-evaluation of *Brown* within a transnational framework, recognizing the global dimensions of racial injustice and the necessity for a more comprehensive approach to dismantling racial barriers.

B. Parallel Struggles: African Americans and the Roma

The African American and Roma communities, despite their distinct historical and cultural contexts, share strikingly similar experiences of racial discrimination and educational segregation. Both groups have endured systemic marginalization and exclusion from mainstream educational opportunities, albeit in different regions and under different conditions.³⁶

In terms of similarities, both African Americans and the Roma have a long history of systemic oppression, characterized by slavery, segregation, and marginalization. Both groups have been denied access to quality education through segregated schooling systems.³⁷ Economic disenfranchisement has further perpetuated educational inequities for both groups. High levels of poverty have compounded their struggles within the educational system, limiting access to educational opportunities and reinforcing cycles of poverty and marginalization.³⁸

The Roma in Europe, burdened by a history of discrimination both racial and societal, encounter formidable barriers to accessing

34. See generally Mary L. Dudziak, *Desegregation as a Cold War Imperative*, 41 STANFORD L. REV. 61 (1988).

35. PATTERSON, *supra* note 18, at 117; KLARMAN, *supra* note 27, at 142.

36. See generally CHANG & RUCKER-CHANG, *supra* note 33 (comparing the racialization, marginalization, and civil rights struggles of Roma in Europe and African Americans in the U.S. through legal and cultural lenses).

37. *Id.*

38. Their similarities can be categorized into historical and systemic discrimination, educational segregation, legal and social struggles, and economic disadvantages.

quality education.³⁹ This plight mirrors the adversities faced by African Americans in the United States, painting a picture of a global epidemic of educational disparities fueled by entrenched structural inequalities.⁴⁰

The Roma's educational crisis in Europe is characterized by misplacement into special education, social discrimination, and institutional barriers that collectively hamper their academic and socio-economic advancement.⁴¹ Such systemic obstacles are not dissimilar to those faced by African Americans, who have historically been marginalized within the educational system due to racial segregation policies and socio-economic discrimination.⁴² Both groups' struggles showcase the role of government policies, societal biases, and historical legacies in perpetuating educational inequalities.⁴³

The segregation of African Americans and the Roma occurred in distinct contexts. In the United States, segregation was legally enforced by state laws and upheld by societal norms.⁴⁴ Conversely, the segregation of the Roma in Europe often resulted from a combination of explicit policies and implicit social practices, contributing to their marginalization across various European countries.⁴⁵ The legal frameworks and remedies available to each group also differ significantly. The U.S. civil rights movement benefited from a relatively strong judicial system. In

39. See generally EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, SECOND EUROPEAN UNION MINORITIES AND DISCRIMINATION SURVEY ROMA—SELECTED FINDINGS, (2018).

40. See generally Erica Frankenberg et al., *Harming our common future: America's segregated schools 65 years after Brown*, UCLA CIVIL RIGHTS PROJECT, (2019).

41. See generally Maria Roth and Lorena Văetiși, *Roma in Special Education: Discriminating, Segregating, and Limiting Opportunities to Roma Students by Placing Them in Special Schools*, 9 SOCIAL CHANGE REVIEW 175 (2011); GERISON LANSDOWN ET AL., UNICEF, THE RIGHT OF ROMA CHILDREN TO EDUCATION: POSITION PAPER (2011), <https://www.unicef.org/eca/media/1566/file/Roma%20education%20position%20paper.pdf>

42. See generally JUONTEL WHITE & DIANA CORDOVA-COBO, THE UNCOVERING INEQUALITY PROJECT, IRA A. LIPMAN CENTER FOR JOURNALISM AND CIVIL AND HUMAN RIGHTS, RACIAL INEQUALITY IN THE U.S. EDUCATION SYSTEM POST-BROWN: AN INTRODUCTION TO THE HISTORY AND POLICIES THAT SHAPE OUR CONTEMPORARY CONTEXT (2022), <https://journalism.columbia.edu/sites/default/files/content/Careers/Lipman/Lipman%20Education%20Report.docx.pdf>; Emma Garcia, *Schools Are Still Segregated, and Black Children Are Paying a Price*, ECONOMIC POLICY INSTITUTE (Feb. 12 2020), <https://www.epi.org/publication/schools-are-still-segregated-and-black-children-are-paying-a-price/>.

43. While both communities are diverse, the Roma experience an extreme level of heterogeneity due to geographical dispersion, varied cultural practices, and languages across Europe. This diversity complicates the formation of a unified political identity or strategy for addressing their issues more so than in the African American community, which, despite its internal diversity, shares a more unified history of racial segregation and civil rights struggles within a single nation.

44. See generally *Segregation in the United States*, HISTORY, <https://www.history.com/topics/black-history/segregation-united-states> (Jan. 12, 2023).

45. See generally *Roma: What Discrimination Do They Face and What Does the EU Do?*, EUROPEAN PARLIAMENT, <https://www.europarl.europa.eu/topics/en/article/20200918STO87401/roma-what-discrimination-do-they-face-and-what-does-eu-do> (Oct. 12, 2022, 4:05 PM).

contrast, the Roma face a fragmented European legal landscape, where the enforcement of anti-discrimination laws varies across individual countries, relying on international human rights norms and regional legal instruments like the European Convention on Human Rights.

Finally, racial discrimination against African Americans has been a prominent and highly visible issue in U.S. national discourse.⁴⁶ Meanwhile, the Roma face unique cultural stereotypes and prejudices in Europe, leading to their exclusion from mainstream society and less visibility in public discussions on racial discrimination.⁴⁷ These differences indicate the varied experiences and challenges each group faces in their respective struggles for educational equity and social justice.⁴⁸

However, the context-specific nuances between the Roma and African Americans' experiences offer insightful contrasts. For the Roma, factors such as migratory traditions, early marriage customs, and neighborhood segregation distinctly influence their educational trajectories.⁴⁹ On the other hand, African Americans' educational disparities have been shaped by different but equally complicated factors, including racial segregation laws, economic disenfranchisement, and political exclusion.⁵⁰ Although both the Roma in Europe and African Americans face systemic barriers, the influence of societal representations and lack of political agency distinctly shape their struggles for educational equity. Both communities encounter the dual challenges of navigating mis-

46. See generally CENTER FOR AMERICAN PROGRESS, SYSTEMATIC INEQUALITY (Feb. 21, 2018), <https://www.americanprogress.org/article/systematic-inequality/>

47. See generally Anna Kende et al., *The last acceptable prejudice in Europe? Anti-Gypsyism as the obstacle to Roma inclusion*, 24 GROUP PROCESSES & INTERGROUP RELS. 388 (2021); Pavel Ciaian & D'Artis Kancs, *Marginalisation of Roma: root causes and possible policy actions*, 27 European Review 115 (2019).

48. Their differences can be categorized into context of segregation, legal frameworks and remedies, socio-political contexts, community characteristics, and cultural perceptions.

49. Morgan Selander & Emily Walter, *Lack of Educational Opportunities for the Roma People in Eastern Europe*, BALLARD BRIEF 1, 2 (2020), <https://scholarsarchive.byu.edu/ballardbrief/vol2020/iss3/2/>.

50. See Katherine Michelmore & Peter Rich, *Contextual origins of Black-White educational disparities in the 21st century: Evaluating long-term disadvantage across three domains*, 101 SOCIAL FORCES 1918, 1918–1947 (2023); Danyelle Solomon et al., *Systemic inequality: displacement, exclusion, and segregation*, CENTER FOR AMERICAN PROGRESS (2020), <https://www.americanprogress.org/article/systemic-inequality-displacement-exclusion-segregation/>; James Dean, *Income, Segregated Schools Drive Black-White Education Gaps*, CORNELL CHRON. (Oct. 11, 2022), <https://news.cornell.edu/stories/2022/10/income-segregated-schools-drive-black-white-education-gaps> [<https://perma.cc/BD4H-PA78>]; RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA, (2017); Linda Darling-Hammond, *Unequal opportunity: Race and education*, 16 THE BROOKINGS REVIEW 28 (1998); CEDRIC MERLIN POWELL, POST-RACIAL CONSTITUTIONALISM AND THE ROBERTS COURT: RHETORICAL NEUTRALITY AND THE PERPETUATION OF INEQUALITY (2022).

representations and advocating for effective political representation in spaces that historically marginalize their voices. The Roma's challenge is further complicated by their heterogeneity, affecting the formation of a unified political identity and strategy for addressing issues.⁵¹ This comparative analysis demonstrates the necessity of adopting a TRJF, which acknowledges the global nature of structural inequalities while recognizing the specific historical and cultural contexts that shape each community's experience.

C. Parallel Histories of Marginalization: African Americans and Roma

Historically, African Americans have been the largest minority group in the United States. Similarly, the Roma, often referred to as the “Blacks of Europe,”⁵² represent Europe's largest minority.⁵³ These groups have consistently been perceived as “Others” within their respective societies. Despite the distinctiveness between the two groups, and the diversity within each group itself, a common thread emerges: the impact of race on their societal positioning.

Contemporary examples of these systemic barriers include disparities in access to quality education, healthcare, and housing. For African Americans, this is evident in the ongoing segregation and underfunding of public schools predominantly serving Black communities, perpetuating educational inequity.⁵⁴ In housing, discriminatory

51. See generally Aidan McGarry, *Roma as a political identity: Exploring representations of Roma in Europe*, 14 ETHNICITIES 756 (2014).

52. Gail Kligman, *On the Social Construction of “Otherness”: Identifying “The Roma” in Post-Socialist Communities*, 7 REV. OF SOCIOLOGY 61, 62 (2001). See also Mihaela Mudure, *Blackening Gypsy Slavery: The Romanian Case*, in BLACKENING EUROPE: THE AFRICAN AMERICAN PRESENCE 285–306 (Heike Raphael-Hernandez ed., 2012); see also Alaina Lemon, *What Are They Writing About Us Blacks? Roma and ‘Race’ in Russia*, 33 ANTHROPOLOGY OF EAST EUROPE REVIEW 34 (1995); Oscar Prieto-Flores, *Does the Canonical Theory of Assimilation Explain the Roma Case? Some Evidence from Central and Eastern Europe*, 32 ETHNIC & RACIAL STUDIES 1387 (2009).

53. Racism toward Roma, known by terms like “antigypsyism,” “antiziganism,” anti-Roma racism, or “Romaphobia,” reflects a longstanding European issue. The Roma, Europe's poorest and most marginalized community, numbering 10–12 million, have faced historical atrocities such as slavery, the Holocaust, and continued systemic oppression in healthcare, education, and employment. Presently, they endure camp evictions, unemployment, health disparities, hate speech, racial profiling, and police brutality—collective manifestations of entrenched Romaphobia. See generally Petre Breazu & Aidan McGarry, *Romaphobia in the UK Right-Wing Press: racist and populist discourse during the Brexit referendum*, 34 SOCIAL SEMIOTICS 1 (2023).

54. See also Stephen M. Quintana & Lana Mahgoub, *Ethnic and racial disparities in education: Psychology's role in understanding and reducing disparities*, 55 THEORY INTO PRACTICE 94 (2016); Ivy Morgan, *Equal Is Not Good Enough*, THE EDUCATION TRUST (Nov. 30, 2022), <https://edtrust.org/resource/equal-is-not-good-enough/> [<https://perma.cc/62CA-PDZ9>]; Linda Darling-Hammond, *Unequal Opportunity: Race and Education*, BROOKINGS (Mar. 1, 1998), <https://www.brookings.edu/research/unequal-opportunity-race-and-education/>.

practices like redlining and unequal lending policies continue to affect African American communities, hindering their economic progress.⁵⁵

Similarly, the Roma face systemic barriers in many European countries. In education, Roma children are often segregated into special schools or classes, receiving an inferior quality of education.⁵⁶ This segregation not only limits their educational opportunities but also reinforces social stigmatization.⁵⁷

The challenges faced by both African Americans and the Roma, historically and in contemporary society, reflect the broader global issue of racial inequality. Addressing these barriers to education, housing,

brookings.edu/articles/unequal-opportunity-race-and-education/ [<https://perma.cc/XA2E-S4DR>]; *Closing America's Education Funding Gaps*, THE CENTURY FOUNDATION (Jul. 2020), <https://tcf.org/content/report/closing-americas-education-funding/>; Emma García, *Schools are still segregated, and black children are paying a price*, ECONOMIC POLICY INSTITUTE (Feb. 12, 2020), <https://www.epi.org/publication/schools-are-still-segregated-and-black-children-are-paying-a-price/> [<https://perma.cc/8CU2-Z67V>]; STEPHEN CALIENDO, *INEQUALITY IN AMERICA: RACE, POVERTY, AND FULFILLING DEMOCRACY'S PROMISE 93–99* (2021); Victoria E. Sosina & Ericka S. Weathers, *Pathways to inequality: Between-district segregation and racial disparities in school district expenditures*, 5 AERA 1 (2019);

55. See HELEN MEIER & BRUCE MITCHELL, NATIONAL COMMUNITY REINVESTMENT COALITION, *TRACING THE LEGACY OF REDLINING: A NEW METHOD FOR TRACKING THE ORIGINS OF HOUSING SEGREGATION* (2022), https://ncrc.org/wp-content/uploads/dlm_uploads/2022/02/Tracing-the-Legacy-of-Redlining-FINAL-d.pdf. See also BRUCE MITCHELL & JUAN FRANCO, NATIONAL COMMUNITY REINVESTMENT COALITION, *HOLC "REDLINING" MAPS: THE PERSISTENT STRUCTURE OF SEGREGATION AND ECONOMIC INEQUALITY* (2018), https://ncrc.org/wp-content/uploads/dlm_uploads/2018/02/NCRC-Research-HOLC-10.pdf.

56. See *Assessment report of the Member States' national Roma strategic frameworks*, COM (2023) 7 final (Jan. 9 2023), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023DC0007> (critical of the insufficient measures to address segregation and vague budget allocations for Roma education, highlighting the lack of comprehensive strategies for educational advancement and digital inclusion). For example, based on this report, the European Commission decided to refer Slovakia to the Court of Justice of the European Union for failing to effectively tackle the issue of segregation of Roma children in education. See also European Commission Press Release IP/23/2249, *The European Commission Decides to Refer Slovakia to the Court of Justice of the European Union for Not Sufficiently Addressing Discrimination Against Roma Children at School* (Apr. 19 2023), https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2249 [<https://perma.cc/XT8W-YTUQ>]; Selander, *supra* note 49; Council of Europe Commissioner for Human Rights, *Fighting School Segregation in Europe Through Inclusive Education: A Position Paper by the Council of Europe Commissioner for Human Rights* (Sep. 2017), <https://rm.coe.int/fighting-school-segregation-in-europe-through-inclusive-education-a-posi/168073fb65> [<https://perma.cc/5PQK-H6PR>]; Bernard Rorke, *#BetterTogether: Europe Must Finally Call Time on School Segregation*, EUROPEAN ROMA RIGHTS CENTRE (Nov. 15, 2017), <https://www.errc.org/news/bettertogether-europe-must-finally-call-time-on-school-segregation> [<https://perma.cc/L3P8-CTTX>].

57. EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, *EDUCATION: THE SITUATION OF ROMA IN 11 EU MEMBER STATES* (2011), https://fra.europa.eu/sites/default/files/fra_uploads/fra-2014-roma-survey-dif-education-1_en.pdf. See also Alexandre Rutigliano, *Inclusion of Roma Students in Europe: A Literature Review and Examples of Policy Initiatives* (OECD Education Working Papers, No. 228, 2020), https://www.oecd-ilibrary.org/education/inclusion-of-roma-students-in-europe_8ce7d6eb-en; Selander, *supra* note 49.

and economic advancement requires a sustained and systematic effort toward achieving racial justice.

D. Revisiting the Shadows of Slavery: A Transnational Racial Justice Perspective

The legacy of slavery continues to shape contemporary societal structures, demanding a deeper analysis that surpasses traditional historical narratives. The Middle Passage, emblematic of systemic brutality, is embedded into the very fabric of societal and legal structures, profoundly shaping racial discourse and policies in the United States.⁵⁸ This narrative aligns with the parallel histories of enslavement and marginalization experienced by the Roma in Europe. The TRJF prompts a critical examination of these intertwined legacies, not as isolated phenomena, but as interconnected strands in a global network of racial oppression.⁵⁹

The experiences of the Roma in Europe, though lesser known, present a narrative parallel to the African American experience, revealing a common architecture of racial oppression.⁶⁰ As detailed by scholars like Greenberg, the enslavement of the Roma upon their arrival in Europe, driven by racial and ethnic prejudices, mirrors the African American experience. Yet, the egregious treatment of Roma slaves in Europe, comparable in inhumanity to that of African American slaves,⁶¹ remind us of the universal nature of racial injustice. In parts of Europe where the Roma were not enslaved, they faced brutal oppression and increased restrictions on their activities; for instance, they were often confined to living on the outskirts of towns and villages.⁶² This form of slavery, as studies suggest, is closely tied to the modern marginalization of the Roma community.⁶³

58. See generally Renita Seabrook & Heather Wyatt-Nichol, *The ugly side of America: Institutional oppression and race*, 23 J. OF PUBLIC MANAGEMENT & SOCIAL POLICY 3 (2016).

59. See MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2012).

60. IAN F. HANCOCK, *WE ARE THE ROMANI PEOPLE* 2–6 (2002).

61. VIREL ACHIM, *THE ROMA IN ROMANIAN HISTORY* 27–28 (2004). Roma migration from Northern India to Central and Eastern Europe around the eleventh century led to their enslavement upon arrival. Notably, it was their distinct racial and ethnic characteristics that differentiated them from the dominant European populations, leading to their enslavement in regions such as Wallachia, Moldavia, and Transylvania (modern-day Romania). In these areas, the Roma were enslaved from the earliest times of their recorded presence. This enslavement, deeply rooted in racial and ethnic prejudice, mirrored the oppressive experiences faced by African Americans.

62. David M. Crowe, *The History of the Roma in Eastern Europe and Russia Since 1994*, in *A HISTORY OF THE GYPSIES OF EASTERN EUROPE AND RUSSIA* 235, 235–292 (2007).

63. See, e.g., DENA RINGOLD, MITCHELL A. ORENSTEIN & ERIKA WILKENS, *ROMA IN AN EXPANDING EUROPE: BREAKING THE POVERTY CYCLE* (World Bank Publications ed., 2005); MIHAI

While the historical contexts of African American slavery and the Roma's marginalization in Europe are distinct, they share systemic mechanisms that perpetuate racial injustice today. The racial formation of African Americans and Roma has gone beyond mere discriminatory laws to embed itself in the fabric of societal norms, reinforcing stereotypes that justify ongoing subjugation. This critical framework emphasizes the multidimensional nature of racial formation, challenging us to confront the deeply ingrained stereotypes that continue to marginalize these communities in both the U.S. and Europe.⁶⁴

1. Roads to Liberation: Comparative Emancipations of Roma and African Americans

Roma emancipation coincided with the abolition of slavery in America. In the United States, the transformation of slavery status involved constitutional changes, such as Lincoln's Emancipation Proclamation in 1863 and the subsequent Reconstruction Amendments.⁶⁵ However, the emancipation of the Roma community followed a less uniform path. It commenced in 1783 under the reign of Hapsburg Emperor Joseph II, who abolished slavery in the western regions of the Austro-Hungarian Empire.⁶⁶ The complete abolition of slavery across Europe occurred around 1864, approximately the same time as in the United States.⁶⁷ Yet, the pursuit of freedom evolved similarly in both cases: it spanned decades, marked by persistent efforts to amend laws, the balancing of diverse interests and authorities (including states, federal governments, provinces, and empires), and the interplay between abolitionist movements and the broader goal of national unification.

The journey of emancipation for both African Americans and the Roma demonstrates that legal freedom was merely the beginning of a

SURDU, *THOSE WHO COUNT: EXPERT PRACTICES OF ROMA CLASSIFICATION* (2016).

64. Racial formation extends beyond skin color: it is a multidimensional process that systematically relegates certain groups to second-class status. African Americans endured centuries of being framed with derogatory stereotypes, depicting them as lazy, predatory, impulsive, and savage, among other derogatory labels. Coincidentally, Roma were similarly depicted, and these markers of differentiation were used to distinguish them from dominant white populations, relegating them to the lowest rungs of social structures. See IAN HANEY LOPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE 3–7* (2nd ed. 2006); ANGUS M. FRASER, *GYPSIES (THE PEOPLES OF EUROPE)* 230 (1992).

65. For more on this debate, see CAROL ANDERSON, *WHITE RAGE: THE UNSPOKEN TRUTH OF OUR RACIAL DIVIDE* (2016); DOUGLAS R. EGERTON, *THE WARS OF RECONSTRUCTION: THE BRIEF, VIOLENT HISTORY OF AMERICA'S MOST PROGRESSIVE ERA* (2014); MEGAN MING FRANCIS, *CIVIL RIGHTS AND THE MAKING OF THE MODERN AMERICAN STATE* (2014).

66. CHANG & RUCKER-CHANG, *supra* note 33, at 28.

67. See EGERTON, *supra* note 64; FRANCIS, *supra* note 64.

protracted struggle for equality. The aftermath of emancipation, characterized by continued forms of oppression, highlights the necessity of ongoing efforts to address racial injustice.

2. The Illusion of Emancipation in a Segregated World

Formal emancipation purportedly granted freedom to African Americans and Roma, yet the aftermath exposed a different reality. In the United States, the insidious legacy of Jim Crow laws⁶⁸ solidified racial segregation, cementing African Americans' inferior societal status. The doctrine of "separate but equal," as sanctioned by *Plessy v. Ferguson*,⁶⁹ institutionalized segregation, perpetuating inequalities that echo into the present day.⁷⁰ Violence served as a supplementary mechanism with the Ku Klux Klan exemplifying terror's role in maintaining racial hierarchies.⁷¹

Concurrently, the Roma's "freedom" in Europe was marred by policies that enforced higher taxes,⁷² language assimilation, and social ostracization, all part of a systemic effort to erase Roma identity and maintain their marginalization.⁷³ This oppression was magnified under Nazi Germany's regime,⁷⁴ which sought to exterminate the

68. For more on the topic of Jim Crow, see JERROLD M. PACKARD, *AMERICAN NIGHTMARE: THE HISTORY OF JIM CROW* (2003) and LESLIE BROWN & ANNE VALK, *LIVING WITH JIM CROW: AFRICAN AMERICAN WOMEN AND MEMORIES OF THE SEGREGATED SOUTH* (2010).

69. For more on the topic, see STEVE LUXENBERG, *SEPARATE: THE STORY OF PLESSY V. FERGUSON, AND AMERICA'S JOURNEY FROM SLAVERY TO SEGREGATION* (2019); WILLIAMS HOFFER, *PLESSY V. FERGUSON: RACE AND INEQUALITY IN JIM CROW AMERICA* (2012); Mark Golub, *Plessy as 'Passing': Judicial Responses to Ambiguously Raced Bodies in Plessy v. Ferguson*, 39 L. & SOC'Y REV. 563 (2005); TIM McNEESE, *PLESSY V. FERGUSON: SEPARATE BUT EQUAL* (2007); John Minor Wisdom, *Plessy v. Ferguson—100 Years Later*, 53 WASH. & LEE L. REV. 9 (1996).

70. See generally JAMES LOEWEN, *SUNDOWN TOWNS: A HIDDEN DIMENSION OF AMERICAN RACISM* (2005). Loewen documented the history (and persistence) of 'sundown towns' across the United States, which excluded African Americans.

71. See generally KU KLUX KLAN: A HISTORY OF RACISM AND VIOLENCE (Richard E. Baudouin ed., 6th ed. 2011); WYN CRAIG WADE, *THE FIERY CROSS: THE KU KLUX KLAN IN AMERICA* (1998).

72. Ginio, Eyal, *Neither Muslims nor Zimmis: The Gypsies (Roma) in the Ottoman State*, 5 ROMANI STUD. 117 (2004).

73. The introduced legislative and policy measures mandated that the Roma pay higher taxes, adopt the dominant language to erase their identity, settle on the outskirts of villages (due to villagers' dissatisfaction with having them in the same neighbourhoods, perceiving them as criminals and thieves), and face prohibitions on inter-marriage. They also lived under the constant threat of re-enslavement. ACHIM, *supra* note 60, at 132–137.

74. Hitler's Germany implemented a *Final Solution for Gypsies*, a supplementary decree to the Nuremberg Laws classifying the Romani as "enemies of the race-based state." *Antisemitism in Nazi Germany*, LUMENLEARNING, <https://courses.lumenlearning.com/suny-hccc-worldhistory2/chapter/antisemitism-in-nazi-germany/>. See also United States Holocaust Memorial Museum, *Genocide of European Roma (Gypsies), 1939–1945*, HOLOCAUST ENCYCLOPEDIA, <https://encyclopedia.ushmm.org/content/en/article/genocide-of-european-roma-gypsies-1939-1945> [<https://perma.cc/B6NJ-HGJJ>]. Hancock further highlights that the persecution of Roma was

Roma under racial purity laws inspired, ironically, by American racial legislation.⁷⁵

The aftermath of World War II did little to ameliorate the injustices faced by African American soldiers⁷⁶ and the Roma,⁷⁷ with both groups returning to societies that continued to devalue and discriminate against them.

III. TRANSNATIONAL ACTIVISM AND LEGAL STRATEGIES

A. Beyond Borders: The Global Influence of *Brown v. Board*

The global impact of *Brown v. Board of Education*, while celebrated for its strike against the doctrine of “separate but equal,” requires a critical reassessment from the perspective of a Transnational Racial Justice Framework. This decision’s reverberations extended beyond the United States, positioning it as a symbol in the fight against segregation and discrimination globally.⁷⁸ However, the adoption of *Brown’s* legal principles in various international contexts, including Europe’s

also based on nexus between race and criminality, criminality was a “genetically transmitted and incurable disease,” meaning that it was ideologically racial. Ian Hancock, *Romanies and the Holocaust: A Re-evaluation and Overview*, in *THE HISTORIOGRAPHY OF THE HOLOCAUST*, 383 (Dan Stone ed., 2004).

75. See generally JAMES Q. WHITMAN, *HITLER’S AMERICAN MODEL* (2017). See also James Q. Whitman, *When the Nazis wrote the Nuremberg laws, they looked to racist American statutes*, L.A. TIMES (Feb. 22, 2017), <https://www.latimes.com/opinion/op-ed/la-oe-whitman-hitler-american-race-laws-20170222-story.html> [<https://perma.cc/XS7S-DBHJ>]. James Whitman, a professor at Yale Law School, wrote a seminal book arguing that long before World War II, the German elite drew inspiration from American race laws, including not only anti-miscegenation Jim Crow laws but also American immigration and naturalization laws. The Nuremberg Laws were modeled after American race laws, and Professor Whitman highlights the irony that European racists would sometimes reject parts of American law, finding it too harsh.

76. During WWII, 1.2 million African American soldiers fought for democracy abroad yet remained second-class citizens at home, often relegated to non-combat roles due to racial biases. Upon returning, their service was met not with honor, but hostility, reinforcing the Jim Crow status quo. Alexis Clark, *Black Americans who Served in WWII Faced Segregation Abroad and at Home*, HISTORY (Aug. 5, 2020), <https://www.history.com/news/black-soldiers-world-war-ii-discrimination> [<https://perma.cc/22GY-DXD2>]. For more on the topic, see CHRISTOPHER PAUL MOORE, *FIGHTING FOR AMERICA: BLACK SOLDIERS-THE UNSUNG HEROES OF WORLD WAR II* (2007); ALEXIS CLARK, *ENEMIES IN LOVE: A GERMAN POW, A BLACK NURSE, AND AN UNLIKELY ROMANCE* (2018).

77. The Holocaust of Roma, claiming approximately 1.5 million lives, severely impacted Europe’s Roma population, yet it remains underacknowledged. Ian Hancock, *Downplaying the Porrajmos: The Trend to Minimize the Romani Holocaust*, 3 J. OF GENOCIDE RSCH. 79 (2001).

Despite the severe persecutions in Nazi camps, the Roma’s suffering was overlooked during the Nuremberg Trials. (No Roma person testified at the Nuremberg Trials, and no war crimes reparations have ever been paid). Presently, the Roma face neo-Nazi violence and systemic discrimination, including educational segregation and labor market exclusion, impeding their progress towards equality. Hancock, *supra* note 73, at 383.

78. See generally Richard J. Goldstone and Brian Ray, *The International Legacy of Brown v. Board of Education*, 35 MCGEORGE L. REV. 105 (2004).

battle against Roma segregation, demands a sharper critique of its effectiveness and the motivations underlying its global application.

The acclaim surrounding *Brown's* ideological export reveals a troubling duality. The strategic use of civil rights victories, epitomized by *Brown*, in the United States' ideological arsenal against communism, reflects a calculated approach to racial equality. This maneuver was less about genuine commitment to combating racism than an effort to enhance America's global image as a beacon of democracy and freedom.⁷⁹

Further examination of the European Roma Rights Centre's litigation efforts, inspired by the NAACP's strategies, exposes the complexities and limitations of transplanting *Brown's* legal doctrine across diverse socio-political landscapes.⁸⁰ The European Court of Human Rights' engagement with issues of Roma segregation, years after late Justice Ginsburg's acknowledgment of *Brown's* influence, illustrates a protracted and fraught journey towards justice, often hindered by local resistances and a lack of substantive enforcement mechanisms within the European Union's legal framework. Justice Ginsburg noted *Brown's* role as an inspiration for addressing segregation in European schools:

Brown's example or inspiration on the tight tie between education and democracy, and on the role courts can play in advancing change in longstanding societal structures, is evident in a current controversy concerning the schooling of Romani children in Central and Eastern Europe. An organization called the European Roma Rights Center, one of many abroad influenced by the pathmarking work of the NAACP, charged in testing litigation, that, in the Czech Republic city Ostrava, Romani children are tracked into schools for children with developmental disabilities.⁸¹

This issue emerged years before reaching the European Court of Human Rights. Bob Hepple has argued that *Brown* was a significant legal impetus for anti-discrimination law initiatives within the European Union,⁸² while Martha Minow conducted a comprehen-

79. See generally Mary L. Dudziak, *Brown as a Cold War Case*, 91 J. OF AM. HIST. 32 (2004).

80. Bill Taylor, a former staff attorney for Thurgood Marshall at the NAACP, highlighted in his writing for the European Roma Rights Centre that school segregation is not unique to America but also affects Roma in Europe, Blacks in South Africa, indigenous people in South America, and others. Bill Taylor, *Fifty Years after Brown v. Board of Education*, EUROPEAN ROMA RIGHTS CENTRE (Nov. 7, 2002), <http://www.errc.org/cikk.php?cikk=1607> [<https://perma.cc/G7D6-9SPX>].

81. Ruth Bader Ginsburg, *Brown v. Board of Education in International Context*, *Speech at the Columbia University School of Law on October 21, 2004*, 36 COLUM. HUM. RTS. L. REV. 493 (2005).

82. Bob Hepple, *The European Legacy of Brown v. Board of Education*, 2006 U. ILL. L. REV. 605 (2006).

sive global survey of *Brown's* influence including its impact on the European Roma, highlighting the challenges and lessons learned in applying *Brown's* principles across different contexts. Minow emphasized that while *Brown v. Board of Education* has had a significant symbolic impact globally, the practical application of its principles requires continuous and localized efforts to address deeply ingrained social inequalities. This global perspective highlights the importance of contextualizing civil rights strategies to address specific regional and cultural dynamics.⁸³

B. Transnational Influence of Legal Norms: The Legacy of *Brown v. Board of Education* in Promoting Global Equality

The transnational migration of legal norms, epitomized by the landmark *Brown v. Board of Education* ruling, illustrates a potent but complex facet of legal activism on a global scale. This ruling not only dismantled the “separate but equal” doctrine within the United States, but also set a precedent that resonated across international borders, challenging entrenched systems of discrimination and promoting principles of equality and inclusivity. However, the path from domestic legal victory to global influence is fraught with challenges.

Whitman outlines the dark potential for the migration of legal norms, showing how the United States’ Jim Crow laws inspired the Nuremberg Laws of Nazi Germany. This historical comparison serves as a warning about the ethical and moral implications of legal norm transmission across borders. Conversely, the aftermath of *Brown* reveals the potential for positive legal norm migration, where strategic litigation and policy reform efforts aimed at combating systemic discrimination draw inspiration from a domestic legal milestone.⁸⁴

The efforts to leverage *Brown's* principles in Europe, particularly in advancing the rights of the Roma community, reveal the adaptive potential of legal norms when confronted with the realities of differing legal systems and societal attitudes.⁸⁵ This adaptation involved close collaboration among transnational networks, non-governmental organizations, and legal scholars, who collectively engaged in a strategic effort to translate the moral and legal authority of *Brown* into actionable strategies capable of addressing the complex European legal and societal challenges.

83. Martha Minow, *Brown v. Board in the World: How the Global Turn Matters for School Reform, Human Rights, and Legal Knowledge*, 50 SAN DIEGO L. REV. 1 (2013).

84. See generally WHITMAN, *supra* note 74.

85. See generally Hepple, *supra* note 81.

C. The Journey to the European Court's Landmark Ruling

Integrating the critical historical developments leading up to the European Court of Human Rights' (ECtHR) landmark 2007 ruling into the broader narrative of this work necessitates examining these events within the TRJF. This important decision, which represents the ECHR's first stance against racial segregation in education by condemning the segregation of Roma students, is more than just a single victory. It serves as a key moment in the transatlantic struggle for racial equality, echoing the transformative legal precedents set by *Brown v. Board of Education* in the United States. However, to fully appreciate the gravity of this ruling, one must consider the systemic challenges and historical injustices faced by the Roma in Central and Eastern Europe (CEE), set against the wider context of the civil rights movement.⁸⁶

The era preceding this decision discloses a story of systemic oppression, where Roma communities were marginalized under the guise of communist egalitarianism.⁸⁷ Despite mandatory primary education policies that claimed to integrate Roma children into the education systems of CEE, these measures were superficial at best.⁸⁸ The failure to constitutionally recognize the Roma's status until the early 21st century points to a profound societal and legal invisibility, perpetuating their exclusion from political and socioeconomic representation.⁸⁹

The appalling treatment of the Roma, exemplified by egregious policies such as the non-consensual sterilization of Roma women⁹⁰ and

86. See generally BETWEEN PAST AND FUTURE: THE ROMA OF CENTRAL AND EASTERN EUROPE (Will Guy ed., 2001).

87. Zoltan Barany, *Politics and the Roma in state-socialist Eastern Europe*, 33 COMMUNIST AND POST-COMMUNIST STUDIES 421 (2000). See also Julija Sardelić, *Romani Minorities on the Margins of Post-Yugoslav Citizenship Regimes* (CITSEE Working Paper Series No. 31, 2013).

88. While primary school attendance is compulsory in all Member States (European Union), surveys suggest that in some Member States, only a limited number of Roma children complete primary school. *An EU Framework for National Roma Integration Strategies up to 2020*, COM (2011) 173 final (April 5, 2011), <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0173:FIN:EN:PDF>. Specifically for CEE states, see UNICEF, THE RIGHT OF ROMA CHILDREN TO EDUCATION: POSITION PAPER (2012) <https://www.unicef.org/eca/media/1566/file/Roma%20education%20position%20paper.pdf>.

89. See generally PETER VERMEERSCH, THE ROMANI MOVEMENT: MINORITY POLITICS AND ETHNIC MOBILIZATION IN CONTEMPORARY CENTRAL EUROPE (2006); Aidan McGarry, *The Roma Voice in the European Union: Between National Belonging and Transnational Identity*, 10 SOC. MOVEMENT STUD. 283 (2011).

90. PAUL HOCKENOS, FREE TO HATE: THE RISE OF THE RIGHT IN POST-COMMUNIST EASTERN EUROPE 220 (1993). A practice condemned in several ECHR judgments. Only in 2017 (although Human Rights Watch's 1992 groundbreaking report on forced sterilization) did the Czech Republic enact a law to compensate thousands of Roma women sterilized illegally between 1966 and 2012. Gwendolyn Albert & Marek Szilvasi, *Intersectional Discrimination of Romani Women Forcibly Sterilized in the Former Czechoslovakia and Czech Republic*, 19 HEALTH & HUM. RTS. 23 (2017).

the suppression of Romani culture and language,⁹¹ exposes the pervasive discrimination embedded within CEE societies.⁹² These injustices, while condemned in several ECtHR judgments, highlight the systemic nature of the discrimination faced by the Roma, akin to the racial injustices challenged by the civil rights movement in the United States.

The rise of Roma civil society in the late 1990s,⁹³ supported by international backing and inspired by the U.S. civil rights movement, signifies a step forward in legal mobilization for racial equality. The creation of the European Roma Rights Centre, fueled by funding from United States public and private foundations,⁹⁴ marks the transnational influence of civil rights legal strategies. This mobilization embodies a broader pattern of legal norm migration, where the principles and tactics of the civil rights movement were adapted to address the specific challenges encountered by the Roma in Europe.

D. Transatlantic Strategies for Justice: The NAACP's Legacy in Europe

The establishment of the European Roma Rights Centre (ERRC) and the subsequent mobilization of a cadre of human/Roma rights lawyers trained in the U.S.⁹⁵ is a significant step in the transnational fight for racial equality.

See also EUROPEAN ROMA RIGHTS CENTRE, COERCIVE AND CRUEL: STERILISATION AND ITS CONSEQUENCES FOR ROMANI WOMEN IN THE CZECH REPUBLIC 12–16, 19–20 (2016),

<http://www.errc.org/article/coercive-and-cruel-sterilisation-and-its-consequences-for-romani-women-in-the-czechrepublic-1966-2016/4536>; Press Release, Center for Civil and Human Rights, *The Slovak Court awards compensation to another forcibly sterilized Roma woman*, (May 26, 2017) <https://poradna-prava.sk/wp-content/uploads/2021/11/press-release-the-slovak-court-awards-compensation-to-another-forcibly-sterilised-roma-woman.pdf>.

91. Examples of suppression include the banning of Roma newspapers, and the penalization of children for speaking Romani at school, even during breaks. Barany, *supra* note 86, at 424–425.

92. DENA RINGOLD, MITCHELL A. ORENSTEIN & ERIKA WILKENS, *ROMA IN AN EXPANDING EUROPE: BREAKING THE POVERTY CYCLE* (2005).

93. Andrew Ryder, Marius Taba & Nidhi Trehan, *The Roma Movement at a Crossroads: Competing Visions of Roma Civil Society and their implications for Sustainable Community Organizing* (ELTE POL-IR Working Paper Series, Working Paper No. 2, 2022); *See also* Andrzej Mirga, *Roma Policy in Europe: Results and Challenges*, in *REALIZING ROMA RIGHTS* 115 (Jacqueline Bhabha, Andrzej Mirga & Margareta Matache eds., 2017); Andrea Krizsán & Violetta Zentai, *From civil society development to policy research: The transformation of the Soros Foundations Network and its Roma policies*, in *GLOBAL KNOWLEDGE NETWORKS AND INTERNATIONAL DEVELOPMENT* 168 (Simon Maxwell & Diane L. Stone, eds., 2004); Ourania Roditi-Rowlands, *Romani civil society in central-Eastern Europe: Historical perspectives and contemporary issues*, 13 *HELSINKI MONITOR* 247 (2002).

94. These foundations include: USAID, the Ford Foundation, the MOTT Foundation, the German Marshall Fund, and George Soros' Open Society Foundations (then known as the Open Society Institute, OSF). Lilla Farkas, *Mobilising for Racial Equality in Europe: Roma Rights and Transnational Justice* 106, 106–107, 129 (Ph.D. dissertation, Europ. Univ. Inst. 2020).

95. Prominent figures in the Roma civil rights movement, including Barbora Bukovska

The infusion of NAACP's legal expertise into the ERRC's mission through the Public Interest Law Initiative (PILI) at Columbia Law School showcases a strategic effort to leverage American civil rights litigation tactics to address the deep-rooted segregation and systemic discrimination faced by the Roma in Central and Eastern Europe. This transatlantic legal exchange, facilitated by figures such as James Goldston and Barbora Bukovska, exemplifies the ambition to apply the lessons of *Brown v. Board of Education* to dismantle the structures of Roma segregation in European educational systems.⁹⁶ Yet, the application of these strategies in CEE has encountered distinct challenges, highlighting the differences between the legal and societal landscapes of the United States and Europe. The strategic decision to prioritize school desegregation, mirroring the NAACP's focus in *Brown*, confronts a European context lacking a unified "separate but equal" doctrine to challenge.

James Goldston, an American, served as the ERRC's first legal director. The inaugural workshop titled "*Legal Defense of the Roma (Gypsies) in Central and Eastern Europe*" held at Columbia Law School in 1997, featured leading NAACP lawyers and an introduction by Professor Jack Greenberg. This event made clear the strong connection between the NAACP's strategies and the ERRC's mission.⁹⁷ The ERRC's mission⁹⁸ focused on two primary objectives: defending the human rights of Roma and advocating for equal access to government services, education, employment, health care, housing, voting rights, and public services. The team, made up of international experts from the NAACP and internationally trained local lawyers, centered their efforts on school desegregation and discriminatory sentencing. While both education and housing were initially primary concerns, the decision to prioritize school desegregation over housing was made for

(Czech Republic), Fitsum Achemyeleh Alemu (Hungary), Romanita Iordache (Romania), Ivan Ivanov, and Daniela Mihaylova (Bulgaria), were all Columbia Law School fellows (supported by the Ford Foundation and OSF). They gained experience interning with U.S. civil rights organizations, with Bukovska training at the NAACP Legal Defense and Educational Fund (LDF). Jack Greenberg, *Brown v. Board of Education: An Axe in the Frozen Sea of Racism*, 48 ST. LOUIS U. L. J. 869 (2003).

96. COLUMBIA UNIVERSITY BUDAPEST LAW CENTER, SEPARATE AND UNEQUAL 115–132 (2004), <https://www.corteidh.or.cr/tablas/24594.pdf>.

97. PUBLIC INTEREST LAW INITIATIVE, EUROPEAN ROMA RIGHTS CENTRE & OPEN SOCIETY INSTITUTE, COLUMBIA LAW SCHOOL WORKSHOP REPORT: LEGAL DEFENSE OF THE ROMA (GYPSIES) IN CENTRAL AND EASTERN EUROPE (1997), <https://www.pilnet.org/wp-content/uploads/2020/04/Legal-Defense-of-the-Roma-in-CEE.pdf>.

98. *Mission Statement*, EUROPEAN ROMA RIGHTS CENTRE, <http://www.eric.org/cikk.php?cikk=1485>.

strategic reasons. Theodor M. Shaw of the NAACP Legal Defense Fund initially had reservations about the applicability of desegregation litigation and discriminatory sentencing strategies in the CEE context.⁹⁹

The ERRC's focus on strategic litigation against segregation in special schools, rather than addressing more overt forms of segregation, reflects a pragmatic adaptation of NAACP's strategies to the European legal terrain. This approach, while drawing inspiration from *Brown*'s precedent, operates within a vastly different legal ecosystem. Europe's fragmented legal environment, characterized by diverse legal systems and varying degrees of commitment to Roma rights, presents a formidable challenge to the straightforward application of American civil rights litigation strategies.¹⁰⁰

The strategic approach used in *Brown* and the methods used in European cases for Roma rights present a study in contrasts. The *Brown* decision strategically targeted the legal foundation of segregation in the United States, aiming to dismantle the "separate but equal" doctrine through the judicial system. This strategy was grounded in the United States constitutional framework and a judicial system amenable to civil rights litigation. By contrast, the fight for Roma rights in Europe had to navigate a more complex political and legal sphere.

In sum, the NAACP's influence on advancing Roma rights in Europe through the ERRC captures the transformative potential of transnational legal activism. However, it also brings into focus the challenges of navigating the relationship of legal, cultural, and political factors in the global struggle for racial justice. The difficulties of adapting American civil rights strategies to the European context become particularly clear when examining landmark cases such as *D.H. and Others v. the Czech Republic*.

99. Theodore Shaw served as the fifth Director-Counsel and President of the NAACP Legal Defense and Educational Fund (LDF), holding various positions there over twenty-six years. From 1990 to 1993, he taught at the University of Michigan Law School and played a pivotal role in initiating a review of the law school's admissions practices.

100. James Goldston explained the strategic choice of the Czech Republic as a primary focus for litigation, citing several factors: the country's status as one of the most progressive and affluent in the region, the pseudoscientific basis for student placements in Czech schools being vulnerable to legal challenges, and the pre-existing discussions around Roma education in the Czech Republic, particularly in Ostrava, with its significant Romani population and numerous community organizations. James A. Goldston, *Ending Racial Segregation in Schools: The Promise of DH*, 1 ROMA RTS. Q. 1, 1–5 (2008).

E. European Brown: The Ostrava Case Before the European Court of Human Rights

The “European Brown,” officially known as *D.H. and Others v. the Czech Republic*,¹⁰¹ stands as a crucial moment in the European struggle against educational segregation, paralleling the transformative legal battles fought in the United States. This case, challenging the segregation of Roma children in “special schools” within the Czech Republic, has become a litmus test for Europe’s commitment to the principles of equality and non-discrimination enshrined in the European Convention on Human Rights.¹⁰²

The case’s context in the Czech Republic, where a staggering disparity was uncovered in regard to the placement of Roma versus non-Roma children in special education settings, exposes not only blatant discrimination but also the nature of racism embedded within educational policies. This disproportionality, indicative of a modern-day “separate but equal” doctrine, laid bare the Czech Republic’s failure to fulfil its commitments to racial equality and education rights.¹⁰³

This ruling’s significance, however, extends beyond the courtroom, challenging European societies and legal systems to address and rectify the structural inequalities that marginalize Roma communities. By invoking the principle of indirect discrimination and shifting the burden of proof to the state, the European Court of Human Rights has not only broadened the scope of accountability for racial discrimination but also aligned its jurisprudence with international human rights standards. This approach affirms the importance of examining the actual effects of ostensibly neutral policies on minority groups, stressing the role of empirical evidence and statistical analysis in identifying and

101. The case examined whether the Czech authorities’ practices resulting in *de facto* segregation were compatible with the prohibition of racial discrimination and the right to education as stipulated by the European Convention of Human Rights and its protocols. Case of D.H. and Others v. the Czech Republic, App. No. 57325/00, ¶ 15 (Nov. 13, 2007) <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22002-2439%22%5D%7D>.

102. Article 35 of the European Convention on Human Rights establishes as a precondition on referral to the European Court of Human Rights, the exhaustion of domestic remedies. This condition is the consequence of the subsidiary jurisdiction of the supranational court, which monitors the application of the convention and seeks to eradicate human rights violations. The applicant must establish the inability of the national courts to remedy the breaches, by exercising the appropriate remedies effective and adequate, and in substance alleging a violation of the Convention. *Convention for the Protection of Human Rights and Fundamental Freedoms*, Eur. Ct. H.R., Council of Eur. Treaty Ser. No. 5. (1950), https://www.echr.coe.int/documents/convention_eng.pdf.

103. Roberta Medda-Windischer, *Dismantling Segregating Education and the European Court of Human Rights. DH and Others vs. Czech Republic: Towards an Inclusive Education?*, 7 EUR. Y.B. MINORITY ISSUES 19 (2007).

uncovering systemic discrimination. Despite the government's defence of these practices, the Grand Chamber of the European Court of Human Rights' decision to overturn previous judgments signalled an important acknowledgment of systemic injustice, demanding proactive measures to dismantle racial discrimination. The Czech Republic defended the segregation,¹⁰⁴ claiming these special schools catered to children with mental or social disabilities.¹⁰⁵ However, research from the European Roma Rights Centre identified alarming disparities: while only 1.8 percent of non-Roma pupils in Ostrava were placed in these schools, the figure for Roma pupils was a staggering 50.3 percent.¹⁰⁶ This

104. The application was lodged with the European Court of Human Rights in 2000 following an unsuccessful challenge before the Czech Constitutional Court in 1999. The Second Chamber of the European Court of Human Rights (lower Chamber) initially rejected the claim, leading to an appeal before the Grand Chamber. Represented by the European Roma Rights Center, the applicants contended that the statistical findings, as outlined above, lacked any 'reasonable and objective' justification. This indicated the absence of a racially neutral explanation for the statistical disparity in treatment between Roma and non-Roma children.

The plaintiffs further argued that even if the Czech government had a legitimate aim for its practices, the racial disparity in outcomes could not be considered proportionate. This was especially evident as children from other groups did not experience the same disparity in placement, suggesting no racially neutral explanation for the treatment differences between Romani and non-Romani children. In response, the Czech government refrained from explaining the disparity. Instead, it argued that the existence of special schools served a legitimate aim. The government maintained that placing a child in a special school was in the child's best interest, followed proper procedures, involved educational professionals, and was conducted with parental consent. The second chamber of the court, by a 6–1 majority, ruled in favor of the government. The Court acknowledged the government's position that the special schooling system, not aimed specifically at Romani children, sought to enable children with learning difficulties from all racial backgrounds to obtain basic education. In addressing the significant statistical evidence demonstrating a disproportionate effect on Romani children, the Court adhered to its previous case law, effectively sidelining the argument of indirect or disparate impact discrimination.

Regarding potential prejudice in treatment differences, the Court examined the nature of the psychological tests used. It accepted that these tests were administered by professional educational psychologists and declined to investigate whether the psychologists' decisions were influenced by discriminatory attitudes towards Roma. The Court also noted that the applicants did not successfully challenge the accuracy of these tests or prove that the children did not have learning disabilities, despite the Czech government's own acknowledgment in a report that the tests often misclassified Romani children of above-average intelligence as needing special schooling due to their culturally specific nature.

This reasoning led the Chamber to conclude that the placement of the applicants in special schools was not a result of racial prejudice. Consequently, this judgment effectively dismissed the existence of indirect racial discrimination. This stance put the Strasbourg Court at odds with global norms against discrimination, as outlined in UN Conventions, and crucially, with European Union obligations, particularly Directive 2000/43 EC. Moreover, the majority of the bench attributed any harm suffered by the children to the parents, thereby overlooking the impact of systemic discrimination. Morag Goodwin, *Taking on Racial Segregation: The European Court of Human Rights at a Brown V. Board of Education Moment?*, RECHTSGELEERD MAGAZIJN THEMIS 13 (2010).

105. Case of D.H. and Others v. the Czech Republic, App. No. 57325/00, ¶ 15 (Nov. 13, 2007), <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%222002-2439%22%5D>}.

106. *Id.* at ¶ 18.

meant a Roma child was 27 times more likely to be placed in a special school than a non-Roma child. This disproportionality was further evidenced by data from the European Monitoring Centre for Racism and Xenophobia (now the European Union Agency for Fundamental Rights), which stressed that more than half of Roma children in the Czech Republic attend special schools.¹⁰⁷

The Grand Chamber (composed of 17 judges)¹⁰⁸ overturned the initial decision in a surprising reversal. The Czech Republic's defence centered on three arguments: the supposed mental impairment of Roma students, parental consent, and flawed statistical analysis. However, the Grand Chamber rejected all these arguments, asserting the duty for authorities to combat racial discrimination proactively and vigilantly: "Racial discrimination is a particularly invidious kind of discrimination and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of enrichment."¹⁰⁹

The Court shifted the burden of proof to the respondent government, requiring justification once the applicant had shown differential treatment.¹¹⁰ Additionally, the argument of parental consent was invalidated as the Czech authorities failed to provide comprehensive information to Roma parents, preventing them from making informed decisions. The Czech authorities acknowledged that the consent of the parents was obtained through a signature on a pre-completed form, which did not include information about alternatives to special schools or the differences between the curricula of special schools and regular schools.¹¹¹ Furthermore, the authorities did not take any additional steps to ensure that Roma parents were fully informed and understood the implications of their consent for their children's future education.¹¹² The Court overturned the lower chamber's decision, which had faulted the parents for not fulfilling their parental duties, maintaining that the right to be free from discrimination cannot be waived.¹¹³

107. *Id.*

108. The Grand Chamber hears a small, select number of cases that have been either referred to it (on appeal from a Chamber decision) or relinquished by a Chamber, usually when the case involves an important or novel question.

109. *Id.* at ¶ 176.

110. *Id.* at ¶ 177.

111. *Id.* at ¶ 142.

112. *Id.* at ¶ 203.

113. *Id.* at ¶ 204.

The Grand Chamber emphasized the difficult choice faced by Roma parents: either enrolling their children in ordinary schools that were ill-equipped to address their social and cultural needs, risking isolation and ostracism, or choosing special schools predominantly attended by Roma students.¹¹⁴

A key aspect of the case was the application of indirect discrimination theory and the use of statistics, focusing on the real-world impacts of policies rather than the intention to discriminate. The Court acknowledged that once a prima facie case of discrimination is established, the burden shifts to the State. It also revised its position on the use of statistics as evidence of discrimination.¹¹⁵

In a significant ruling, the Court identified structural and systematic racial discrimination in public primary schools, stressing the systemic disadvantage placed upon a specific racial group. The Court adopted a broad interpretation of the indirect discrimination but essentially pointed out: “As to proof of indirect discrimination, it was widely accepted in Europe and internationally and also by the Court that the burden of proof had to shift once a prima facie case of discrimination had been established. In cases of indirect discrimination, where the applicant had demonstrated that significantly more people of a particular category were placed at a disadvantage by a given policy or practice, a presumption of discrimination arose. The burden then shifted to the State to reject the basis for the prima facie case, or to provide a justification for it.”¹¹⁶

In assessing the role of statistics as evidence, the European Court of Human Rights departed from its earlier stance that statistics alone could not establish discriminatory practices. The Court noted that the statistics, extending beyond just the Ostrava region and thus offering a broader view, indicated a disproportionate representation of Roma children in special schools. Although the relevant laws were written in neutral terms, their application had a far greater impact on Roma children than on their non-Roma peers, resulting in a statistically

114. *Id.* at ¶ 203.

115. David Strupe, *Before and After the Ostrava Case: Lessons for Anti-Discrimination Law and Litigation in the Czech Republic*, 1 *ROMA RTS. Q.* 41 (2008). Some contend that the case involving the placement of Romani children in special schools should have been framed as an instance of direct, rather than indirect, racial discrimination. This perspective stems from the observation that the tests and screening methods used disproportionately disadvantaged Romani children compared to children from the majority population. Critics of these methods argue that they failed to accommodate the unique needs of the Romani minority and did not properly assess their intellectual capabilities, thereby treating them less favorably on the basis of race.

116. *Case of D.H. and Others v. the Czech Republic*, App. No. 57325/00, ¶ 163 (Nov. 13, 2007) <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22002-2439%22%5D>. (citation omitted).

disproportionate number of Roma students being placed in special schools.¹¹⁷

The significance of the ECtHR's opinion in *D.H. and Others v. the Czech Republic* reaches beyond the immediate context of Roma education in Europe, marking a crucial moment in the Court's handling of indirect discrimination. This acknowledgment is critical, as it aligns the Court's approach with broader international human rights standards, recognizing that discrimination often operates through neutral practices that disproportionately harm specific groups. Indirect discrimination shifts the focus from individual instances of prejudice to systemic patterns of inequality, accepting that discriminatory impacts can stem from policies and practices that, at first glance, appear unbiased. This perspective is necessary for addressing complex forms of discrimination that are embedded within institutional structures and societal norms, particularly in the domain of education.

Moreover, the ECHR's handling of evidence in cases of indirect discrimination, particularly in *D.H. and Others*, clarifies that intent to discriminate is not required to establish a violation. This principle, rooted in the Court's earlier decision in *Nachova*,¹¹⁸ signals a departure from traditional understandings of discrimination that required proof of prejudicial intent. Instead, the emphasis is on the outcomes of policies, with statistical evidence serving as a tool for shifting the burden of proof to the state.

An innovative aspect of the judgment emerged in its concluding sections, where the European Court of Human Rights identified, for the first time, a case of structural and systematic racial discrimination, not merely indirect discrimination. The Court recognized a pattern of racial discrimination in public primary schools, signifying that systemic discrimination results from a specific racial group being consistently placed in a disadvantaged position across various aspects of social life.¹¹⁹ Ultimately, the Czech Republic's failure to integrate Roma children into public school systems is not unique. Other European countries observe similar practices, a fact acknowledged by

117. *Id.* at ¶ 193.

118. *Nachova and Others v. Bulgaria*, App. Nos. 43577/98 and 43579/98, Eur. Ct. H.R. (Feb. 26, 2004), <https://www.refworld.org/caselaw/echr/2004/en/19674> (accessed Feb. 7, 2024).

119. *Case of D.H. and Others v. the Czech Republic*, App. No. 57325/00, ¶ 209 (Nov. 13, 2007) [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22002-2439%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-2439%22]}); (“[S]ince it has been established that the relevant legislation as applied in practice at the material time had a disproportionately prejudicial effect on the Roma community, the Court considers that the applicants as members of that community necessarily suffered the same discriminatory treatment”).

the Court in its judgment.¹²⁰ This judgment had far-reaching implications, influencing subsequent cases across Europe, including *Sampanis and Others v. Greece*,¹²¹ and confirming the widespread segregation of Roma children in public schools.

The Ostrava case, lauded as *Brown's* European equivalent¹²² in human rights circles, has set a precedent for future cases concerning racial segregation in education. This judgment unequivocally outlaws racial segregation in education across the 47 member states of the Council of Europe, including all 27 EU countries. Despite these significant achievements, the “European Brown” fell short in effecting structural changes. This shortfall is partly attributed to the Court’s reluctance to mandate specific reforms, resulting in continued widespread segregation of Roma students.¹²³

As of 2024, the implementation of this judgment remains unresolved.¹²⁴ The Committee of Ministers of the Council of Europe, responsible for monitoring the execution of the European Court’s judgments, reported that the Ostrava case is still pending resolution by the Czech authorities. This status is not unique to the Ostrava case but is also true for other similar cases.¹²⁵

120. *Id.* at ¶ 205.

121. *See Sampanis v. Greece*, App. No. 32526/05, Eur. Ct. H.R. (June 5, 2008). The *Sampanis* case draws attention and reinforces the position stemming from *Ostrava* case, namely that the segregation of Romani children in inferior schools and classes is illegal and that European governments must take responsibility for this. *Sampanis and Others v. Greece* case, while paralleling the *Ostrava* case in its core issues, diverged in legal arguments and outcomes, underscoring the challenges in implementing anti-segregation policies amidst deep-rooted societal prejudices. *See also Oršuš v. Croatia*, App. No. 15766/03, Eur. Ct. H.R. (July 17, 2008). The European Court of Human Rights addressed the issue of Roma-only classes in several Croatian elementary schools.

122. Jack Greenberg, *Report on Roma Education Today: From Slavery to Segregation and Beyond*, 110 COLUM. L. REV. 919, 940 (2010).

123. Martha Minow, *Brown v. Board in the World: How the Global Turn Matters for School Reform, Human Rights, and Legal Knowledge*, 50 SAN DIEGO L. REV. 1, 17 (2013).

124. *D.H. and Others v. the Czech Republic*, App No. 57325/00, Eur. Ct. H.R. (Nov. 13, 2007), <https://hudoc.exec.coe.int/eng?i=004-31>

125. *See Sandor Szemesi, From Hajduhadhaz to Strasbourg: Article 14 of the European Convention on Human Rights in the Jurisprudence of the European Court of Human Rights, with Special Regard to Roma Educational Cases*, 5 MISKOLC J. INT’L L. 64 (2008); Lucie Cviklova, *Direct and indirect racial discrimination of Roma people in Bulgaria, the Czech Republic and the Russian Federation*, 38 ETHNIC & RACIAL STUD. 2140 (2015); Iryna Ulasiuk, *To Segregate or not to Segregate? Educational Rights of the Roma Children in the Case Law of the European Court of Human Rights*, (Robert Schuman Center for Advanced Studies, EUI Working Paper RSCAS 2014/29, 2014); Emanuela Ignăţoiu-Sora, *The discrimination discourse in relation to the Roma: its limits and benefits*. 34 ETHNIC & RACIAL STUD. 1697 (2011).

The Ostrava case indeed prompted the European Union to reevaluate its approach to Roma integration and minority rights.¹²⁶ However, this re-evaluation has been met with challenges and criticisms. Despite the ECHR's decisive stance, the transformation within educational systems remains elusive.

Reflecting on the legacy of *D.H. and Others v. the Czech Republic* within the broader Transnational Racial Justice Framework, it becomes evident that the struggle for racial equality in education is not confined to national boundaries or legal systems. Instead, it is a global challenge that requires sustained effort, innovative legal strategies, and unwavering commitment to dismantling the institutional barriers that perpetuate racial disparities. While this case stands as a milestone in the fight against educational segregation, it also highlights the enduring presence of racism and the need for advocacy, research, and policy reform to achieve genuine racial justice and equity in education.

126. On October 20, 2010, the Council of Europe convened a High-Level Meeting on Roma, culminating in the "Strasbourg Declaration on Roma." This declaration urges member states to integrate the relevant judgments of the European Court of Human Rights into their Roma policy development. Council of Europe, *The Strasbourg Declaration on Roma* (Oct. 20, 2010), https://childhub.org/sites/default/files/library/attachments/1133_2010_cm_roma_final_en_original.pdf; CAHROM, THEMATIC REPORT BY THE CAHROM THEMATIC GROUP OF EXPERTS ON INCLUSIVE EDUCATION FOR ROMA CHILDREN AS OPPOSED TO SPECIAL SCHOOLS (FOLLOWING THE CAHROM THEMATIC VISIT TO THE CZECH REPUBLIC AND SLOVAKIA ON 1–5 OCTOBER 2012) (2012) (highlighting the increasing concern over the segregation of Roma children in schools, particularly after the European Court of Human Rights (ECtHR) judgment in the *D.H. and Others v. The Czech Republic* case); HARVARD FXB CENTER FOR HEALTH AND HUMAN RIGHTS, STRATEGIES AND TACTICS TO COMBAT SEGREGATION OF ROMA CHILDREN IN SCHOOLS: CASE STUDIES FROM ROMANIA, CROATIA, HUNGARY, CZECH REPUBLIC, BULGARIA, AND GREECE (2015). Despite some cosmetic efforts in the Czech Republic, there were significant challenges and resistance to fully implementing the necessary reforms, as indicated by the political pressure and subsequent policy developments. EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, SELECTION OF RELEVANT AND RECENT PASSAGES FROM PUBLISHED REPORTS RELATED TO CZECH REPUBLIC (Mar. 23, 2017), <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=4197&file=EnglishTranslation>.

The European Commission initiated infringement proceedings against the Czech Republic for discriminating against Roma children by placing them disproportionately into special schools. This action was influenced by the findings of the Ostrava case (*D.H. and Others v. the Czech Republic*), which led to legislative changes in the Czech Education Act to improve Roma children's education. See Bernard Rorke, *Beyond First Steps: What Next for the EU Framework for Roma Integration?*, ROMA INITIATIVES OFF., OPEN SOC'Y INSTITUTE (2013); (discussing the shifts in EU policy towards Roma integration, highlighting the evolving commitment to addressing systemic discrimination and improving the lives of Roma communities across Europe).

IV. BEYOND BROWN: CHALLENGES AND PERSPECTIVES IN ACHIEVING EDUCATIONAL EQUITY

A. Unpacking Browns: A Critical Analysis of Segregation's Impact on Education

In critically examining the “Brown” decisions and their implementation across the United States and Europe, the analysis uncovers a longstanding systemic failure: the promise of educational equity remains largely unfulfilled. This analysis, examined from multiple perspectives, reveals the profound challenge segregation inflicts on education. It exposes the sociological (segregated schools often perpetuate social stratification)¹²⁷, psychological (students in segregated schools suffer from stigma and reduced self-esteem, which can have long-term effects on mental health and social integration)¹²⁸, and economic (segregation perpetuates cycles of poverty, as these schools typically lack the resources and opportunities available in more affluent institutions)¹²⁹ dimensions of this issue.

The European Court of Human Rights' decision reflects a broader narrative of resistance against inequality, mirroring the ongoing struggles in the United States following the *Brown* decisions. The critical Achilles' heel unveiled is the issue of implementation—a shared dilemma that spans continents. While these decisions have had undeniable impacts in the US and Europe, they represent an “unfulfilled promise of educational opportunity,” as described by Goldston.¹³⁰

Sixty years later, the full effects of *Brown* are still unfolding. Martha Minow, in her analysis of *Brown's* educational legacy, argues its broader influence extends beyond the immediate context of schooling and racial integration, impacting legal paradigms in areas not directly related to race or education: “*Brown v. Board of Education* may have more influence on racial justice outside the context of schooling, more influence on schooling outside the context of racial integration,

127. See generally Richard Rothstein, *The Racial Achievement Gap, Segregated Schools, and Segregated Neighborhoods – A Constitutional Insult*, ECONOMIC POLICY INSTITUTE (NOV, 12, 2014), <https://www.epi.org/publication/the-racial-achievement-gap-segregated-schools-and-segregated-neighborhoods-a-constitutional-insult/>.

128. See generally Guangyi Wang et al., *School racial segregation and the health of Black children*, 149 PEDIATRICS 24 (2022).

129. See generally Ulrich Boser & Perpetual Baffour, *Isolated and Segregated: A New Look at the Income Divide in Our Nation's Schooling System*, CENTER FOR AMERICAN PROGRESS (MAY 31, 2017), <https://www.americanprogress.org/article/isolated-and-segregated/>

130. James Goldston, *The Unfulfilled Promise of Educational Opportunity in the United States and Europe: From Brown v. Board to DH and Beyond*, in REALIZING ROMA RIGHTS 163–184 (Jacqueline Bhabha, Andrzej Mirga & Margareta Matache eds., 2017).

and more significance to law outside of both race and schooling.”¹³¹ The pace of change and implementation of reforms Minow discusses appears excessively slow. This lag in progress raises questions about the effectiveness and reach of such landmark decisions in bringing about tangible, rapid change in the domain of educational equality.

The profound impact of housing segregation on educational equity further complicates this, with policies such as redlining in the United States¹³² and equivalent practices in Europe¹³³ ensuring that marginalized

131. MARTHA MINOW, IN *BROWN'S WAKE: LEGACIES OF AMERICA'S EDUCATIONAL LANDMARK* (2010).

132. See DOUGLAS MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* (1993); TAYLOR KEEANGA-YAMAHTTA, *RACE FOR PROFIT: HOW BANKS AND THE REAL ESTATE INDUSTRY UNDERMINED BLACK HOMEOWNERSHIP* (2019); PATRICK SHARKEY, *STUCK IN PLACE: URBAN NEIGHBOURHOODS AND THE END OF PROGRESS TOWARD RACIAL EQUALITY* (2013).

Despite increasing neighbourhood diversity, African Americans continue to face systemic discrimination that hinders their ability to build equity and wealth, fueling racial inequality. The increasing diversity in American neighbourhoods over recent decades is not predominantly a result of significant demographic shifts between Black and white populations. Rather, it's largely attributable to the growth of Latino and Asian American communities. Factors like zoning, transportation, 'steering,' and credit disparities contribute to ongoing segregation, with homes in predominantly Black neighbourhoods valued significantly lower than those in white neighbourhoods. The link between housing policies and school segregation is complex and deeply rooted. Residential segregation, driven by historic and ongoing discriminatory housing practices, directly influences the socio-economic and racial makeup of schools. See RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* 178 (2017); Dayna Bowen Matthew, Edward Rodrigue & Richard V. Reeves, *Time for justice: Tackling race inequalities in health and housing*, BROOKINGS (Oct. 19, 2016) <https://www.brookings.edu/research/time-for-justice-tackling-race-inequalities-in-health-and-housing/#footref-3>; JULIAN ZELZER, *THE KERNER REPORT: THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS* (2016).

133. In Hungary, segregation profoundly affects the Roma community: 72% of Roma families live in segregated conditions, with 42% residing on the outskirts of towns and 22% in inner-city Roma-only neighbourhoods. European Union Agency for Fundamental Rights, *Combating Roma residential segregation: Hungary* (2009).

In Serbia, over 70% of Roma are confined to Roma-only settlements marked by both spatial and social segregation; 67% of these households lack access to sewage systems. CIVIL RIGHTS DEFENDERS, *THE WALL OF ANTI-GYPSYISM: ROMA IN THE REPUBLIC OF SERBIA* (Nov. 2017), <https://crd.org/wp-content/uploads/2018/03/The-Wall-of-Anti-Gypsyism-Roma-in-Serbia.pdf>. See also Lara Lebedinski, *The Effect of Residential Segregation on Formal and Informal Employment of Roma in Serbia*, 58 E. EUR. ECON. 108–36 (2020).

Denmark, often regarded as one of the world's most progressive countries, has recently enacted 'ghetto' laws under the "One Denmark without Parallel Societies—No Ghettos in 2030" initiative. This legislation, specifically targeting 'non-Westerners' and particularly Roma, comprises over 20 statutes allowing for the designation of neighbourhoods as 'ghettos' or 'tough ghettos.' Such laws empower authorities to evict residents and demolish buildings, thus altering neighbourhood demographics based on racial origins. *Ethnic Engineering: Denmark's Ghetto Policy*, INTERNATIONAL POLICY DIGEST (2021), <https://intpolicydigest.org/ethnicengineering-denmark-s-ghetto-policy/>. *UN human rights experts urge Denmark to halt contentious sale of "ghetto" buildings* UN HUMAN RIGHTS, OFFICE OF THE HIGH COMMISSIONER (2020), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26414&LangID=E>

The existence of walls segregating Roma ghettos from predominantly white neighbourhoods

communities remain trapped in cycles of poverty and educational deprivation.¹³⁴ This spatial aspect of segregation, effectively determining educational opportunities based on residential patterns, demands policy reforms to address these patterns of inequality.¹³⁵ This context is essential to understanding the educational disparities faced by Black¹³⁶ and Roma students.¹³⁷ From the onset of their education, they are placed in disadvantaged positions, often attending racially segregated schools.

in various European cities, including in the Czech Republic, Romania, and Slovakia, is a stark reminder of ongoing segregation. These walls, a physical manifestation of exclusion, fence off Roma settlements, rendering them invisible to the public eye. The European Commissioner for Education and Culture had sharply criticised the authorities in the Slovak city of Košice for constructing a wall to segregate the city's Roma community. The paradox is that Košice is the biggest city in Eastern Slovakia and was the 2017 European Capital of Culture together with the French city of Marseille. Dan Bilefsky, *Walls, Real and Imagined, Surround the Roma*, N.Y. TIMES, (Apr. 3, 2010) <https://www.nytimes.com/2010/04/03/world/europe/03roma.html>; Baia Mare, *The art of exclusion*, ECONOMIST (Feb. 20, 2015), <https://www.economist.com/europe/2015/02/20/the-art-of-exclusion>; *Slovakia told to tear down Roma segregation wall*, EURACTIV (2013), <https://www.euractiv.com/section/languagesculture/news/slovakia-told-to-tear-down-roma-segregation-wall/>; Hilary Silver & Lauren Danielowski, *Fighting Housing Discrimination in Europe*, 29 HOUSING POL'Y DEBATE 714 (2019).

134. Jack Greenberg, *Report on Roma Education Today: From Slavery to Segregation and Beyond*, 110 COLUM. L. REV. 919, 932 (2010).

135. Cittadini's thorough examination of all EU Roma housing policy documents reveals two disturbing trends: the portrayal of Roma as the quintessential 'Other' and the infantilization of Roma individuals, which has led to paternalistic policy approaches. This research highlights the severe housing segregation faced by Roma across Europe, where many live in neighborhoods lacking basic amenities like electricity and running water. Silvia Cittadini, *Roma, Adequate Housing, and the Home: Construction and Impact of a Narrative in EU Policy Documents*, 1 CRIT. ROMANI STUD. 40 (2018).

136. In the U.S., predominantly white school districts receive \$23 billion more annually than non-white districts. Ailsa Chang & Jonaki Mehta, *Why U.S. Schools Are Still Segregated—And One Idea To Help Change That*, NPR, (Jul. 7, 2020), <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/07/07/888469809/how-funding-modelpreserves-racial-segregation-in-public-schools>.

137. 'Special schools' are schools for children with developmental disabilities, but Roma students are significantly over-represented, making up 80–90% of the student body in some cases. See ARLAN FULLER, MARGARETA MATACHE, SARAH DOUGHERTY, KRISTA OEHLKE, HARVARD FXB CENTER FOR HEALTH AND HUMAN RIGHTS, STRATEGIES AND TACTICS TO COMBAT SEGREGATION OF ROMA CHILDREN IN SCHOOLS: CASE STUDIES FROM ROMANIA, CROATIA, HUNGARY, CZECH REPUBLIC, BULGARIA, AND GREECE (2015), <https://content.sph.harvard.edu/wwwhsph/sites/2464/2020/01/Roma-Segregation-full-final.pdf>; AMNESTY INTERNATIONAL AND EUROPEAN ROMA RIGHTS CENTRE, A LESSON IN DISCRIMINATION. SEGREGATION OF ROMANI CHILDREN IN PRIMARY EDUCATION IN SLOVAKIA (2017), http://www.errc.org/uploads/upload_en/file/report-lesson-in-discrimination-english.pdf; CIVIL RIGHTS DEFENDERS, THE WALL OF ANTI-GYPSYISM (2017), <https://crd.org/wp-content/uploads/2018/03/The-Wall-of-Anti-Gypsyism-Roma-in-Kosovo.pdf>; ROMA EDUCATION FUND, WRONGFUL PLACEMENT OF ROMANI CHILDREN IN SPECIAL SCHOOLS OF EUROPE MUST COME TO AN END (2013), <https://www.romaeducationfund.org/wrongful-placement-of-romani-children-in-special-schools-of-europe-must-come-to-an-end/>; Eva Cossé, *Europe: Time to Drop the Roma Myths*, HUMAN RIGHTS WATCH (Nov. 4, 2013, 1:33PM), <https://www.hrw.org/news/2013/11/04/europe-time-drop-roma-myths>; Kalina Arabadjieva, *Challenging the School Segregation of Roma Children in Central and Eastern Europe*, 20 INT'L J. HUM. RTS. 33 (2016); DENA RINGOLD,

Despite the landmark nature of the “European Brown,” the pervasive segregation of Roma students persists,¹³⁸ echoing the unfulfilled promises of the *Brown* decisions in the United States.¹³⁹ This parallel narrative exposes the persistent nature of educational segregation as a global issue, challenging us to reconsider the effectiveness and reach of legal rulings in driving meaningful change.¹⁴⁰

MITCHELL A. ORENSTEIN, & ERIKA WILKENS, ROMA IN AN EXPANDING EUROPE: BREAKING THE POVERTY CYCLE (2005); UNDP, ROMA EDUCATION IN COMPARATIVE PERSPECTIVE (2012), <https://www.undp.org/sites/g/files/zskgke326/files/migration/eurasia/Roma-education-in-comparative-perspective.pdf>; Helen O’Nions, *Divide and teach: Educational inequality and the Roma*, 14 INT’L J. HUM. RTS. 464 (2010); Vera Messing, *Differentiation in the making: Consequences of school segregation of Roma in the Czech Republic, Hungary, and Slovakia*, 49 EUR. EDUC. 89 (2017).

138. Disparities in education are strong: UNICEF reports that only 20% of Roma children complete primary education, and even fewer, 15%, are girls. The situation doesn’t improve much at higher education levels, with only 18% enrolling in secondary school and less than 1% reaching university. These figures are not isolated to CEE; in Western Europe, only 15% of Roma children complete upper-secondary education or vocational training.

UNICEF, *supra* note 41; *Roma remain one of most vulnerable groups, continue to face difficult living conditions and discrimination in access to social protection, health, employment and adequate housing, as stated in reports by independent bodies*, ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE (2016), <https://www.osce.org/serbia/231936>; EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, EDUCATION: THE SITUATION OF ROMA IN 11 EU MEMBER STATES (2011), https://fra.europa.eu/sites/default/files/fra_uploads/fra-2014-roma-survey-dif-education-1_en.pdf.

The Harvard University and Serbian Center for Interactive Pedagogy’s ‘One in One Hundred’ project, focusing on the mere 1% of Roma who manage to attend university, further stresses these educational disparities. Although this study is based in Serbia, its findings are indicative of a broader European trend. JACQUELINE BHABHA ET AL., HARVARD FXB CENTER, ONE IN ONE HUNDRED: DRIVERS OF SUCCESS AND RESILIENCE AMONG COLLEGE-EDUCATED ROMANI ADOLESCENTS IN SERBIA (2018), <https://www.reyn.eu/wp-content/uploads/2019/03/OneinOneHundred.pdf>.

139. UCLA’s recent report “Harming Our Common Future: America’s Segregated Schools 65 Years after Brown” indicates that segregation in American schools is intensifying, jeopardizing the promise of Brown and negatively impacting Black students’ achievement and future prospects. See ERICA FRANKENBERG, JONGYEON Ee, JENNIFER B. AYSUCE & GARY ORFIELD, HARMING OUR COMMON FUTURE: AMERICA’S SEGREGATED SCHOOLS 65 YEARS AFTER BROWN (2019), <https://escholarship.org/uc/item/23j1b9nv>. See also Sean F. Reardon & Ann Owens, *60 years after Brown: Trends and consequences of school segregation*, 40 ANNU. REV. SOCIO. 199 (2014).

140. In recent findings, widespread unfavorable views towards the Roma in Central and Eastern Europe highlight the persistent discrimination and social biases these communities face. Notably, countries like Italy exhibit pronounced anti-Roma sentiments, with over 80% of respondents expressing unfavorable views. See Richard Wike et al., *European Public Opinion Three Decades After the Fall of Communism*, PEW RESEARCH CENTER (Oct. 14, 2019), <https://www.pewresearch.org/global/2019/10/14/minority-groups/>.

Even studies in the most progressive European countries, such as Norway, find significant discrimination against Roma, especially in housing and policy support contexts, compared to other groups. See Runa Falck, *Discrimination against Roma: Evidence from two survey experiments in Norway*, 9 MIGRATION STUD. 360 (2021).

See also Sam Nariman, Hadi, et al., *Anti-Roma bias (Stereotypes, Prejudice, Behavioral Tendencies): A Network Approach Toward Attitude Strength*, 11 FRONTIERS IN PSYCHOL. 2071 (2020); Anna Kende et al., *The Last Acceptable Prejudice in Europe? Anti-Gypsyism as the Obstacle to Roma Inclusion*, 24 GROUP PROCESSES & INTERGROUP RELATIONS 388 (2021).

The examination of the “Brown” decisions and their aftermath in both the United States and Europe reinforces the necessity for a reassessment of strategies to combat educational segregation.

B. Future Directions: Addressing School Segregation

As we face the persistent challenge of school segregation, a closer look reveals that despite decades of formal recognition and attempts at resolution, the problem endures with alarming resilience. This stubborn continuity suggests that existing strategies, while well-intentioned, have often fallen short of addressing the systemic roots of segregation. The European Union’s efforts, alongside various initiatives in the United States, though progressive, demonstrate the difficulty of implementing solutions that effectively bridge the gap between policy and practice.¹⁴¹

The rise of right-wing populism across Europe has intensified racial and ethnic discrimination, further marginalizing groups such as the Roma.¹⁴² In the United States, the rollback of affirmative action policies and increasing racial tensions continue to pose significant barriers to achieving true educational equity for African Americans and other marginalized groups.¹⁴³ The interconnected nature of global

141. Will McGrew from Princeton especially favours the idea of polices targeted to residential segregation. Will McGrew, *U.S. School Segregation in the 21st Century Causes, Consequences, and Solutions*, WASHINGTON CENTER FOR EQUITABLE GROWTH (Oct. 15, 2019), <https://equitablegrowth.org/research-paper/u-s-school-segregation-in-the-21st-century/?longform=true>. See also Kimberly C. West, *A Desegregation Tool that Backfired: Magnet Schools and Classroom Segregation*, 103 YALE L. J. 2567 (1993); Christine Rossell, *The Desegregation Efficiency of Magnet Schools*, 38 URBAN AFFS. REV. 697 (2003); Claire Smrekar & Ngaire Honey, *The Desegregation Aims and Demographic Contexts of Magnet Schools: How Parents Choose and Why Siting Policies Matter*, 90 PEABODY J. EDUC. 128 (2015); Ellen Goldring & Claire Smrekar, *Magnet schools and the pursuit of racial balance*, 33 EDUC. & URBAN SOC’Y 17 (2000); Bush V, Lawson, Hansel Burley & Tonia Causey-Bush, *Magnet Schools: Desegregation or Resegregation? Students’ Voices from Inside the Walls*, 33 AM. SEC. EDUC. 33, 50 (2001); ANSLEY T. ERICKSON, *THE RHETORIC OF CHOICE: SEGREGATION, DESEGREGATION, AND CHARTER SCHOOLS* 122–130 (2013); Wendy Parker, *The Color of Choice: Race and Charter Schools*, 75 TUL. L. REV. 563 (2000); Kelly E. Rapp, *Dispelling the Myth of “White Flight”: An Examination of Minority Enrollment in Charter Schools*, 21 EDUC. POL’Y 615 (2007).

142. See ELIZABETH FEKETE, *EUROPE’S FAULT LINES: RACISM AND THE RISE OF THE RIGHT* (2018); Menno Fenger, *The social policy agendas of populist radical right parties in comparative perspective*, 34 J. INT’L & COMP. SOC. POL’Y 188, 188–209 (2018).

143. See Robert Barnes, Ann E. Marimow & Nick Anderson, *Supreme Court Seems Open to Ending Affirmative Action in College Admissions*, WASH. POST (Oct. 31, 2022), <https://www.washingtonpost.com/politics/2022/10/31/supreme-court-race-college-admissions-harvard-unc/>; Liliana M. Garces, *Understanding the Impact of Affirmative Action Bans in Different Graduate Fields of Study*, 50 AM. EDUC. RES. J. 251, 284 (2013); EDUCATION TRUST, *SEGREGATION FOREVER?: THE CONTINUED UNDERREPRESENTATION OF BLACK AND LATINO UNDERGRADUATES AT THE NATION’S 101 MOST SELECTIVE PUBLIC COLLEGES AND UNIVERSITIES* (2020), <https://edtrust.org/wp-content/uploads/2014/09/Segregation-Forever-The-Continued-Underrepresentation-of-Black-and-Latino-Undergraduates-at-the-Nations-101-Most-Selective-Public-Colleges-and-Universities-July-21-2020.pdf>.

racial injustices necessitates coordinated, international responses that are adaptable to changing socio-political dynamics.

In the pursuit of educational equity, it is crucial to acknowledge and build upon the diverse range of existing efforts and strategies that have been deployed globally. Organizations such as UNESCO¹⁴⁴ with its Global Education Monitoring Report¹⁴⁵ and UNICEF¹⁴⁶ through its education programs¹⁴⁷ have been at the forefront of advocating for inclusive educational environments. Similarly, global movements like the Global Campaign for Education¹⁴⁸ and NGOs including Human Rights Watch¹⁴⁹ and Save the Children¹⁵⁰ have been important in pushing for policy changes and raising awareness about the essential priority for educational equity.

While these efforts have made significant progress, the persistence of inequities and the nature of discrimination suggest that current strategies, though impactful, are not sufficient on their own. This gap mandate for innovative approaches that build on the foundations laid by these organizations while introducing fresh strategies and frameworks for creating lasting change.

Against this backdrop, this article proposes the introduction of comprehensive, scalable solutions designed to leverage the cumulative insights and achievements of past and present efforts. The following proposals aim to catalyse a synergistic approach, combining legal advocacy, grassroots mobilization, international cooperation, policy

144. *Global Education Monitoring Reports*, UNESCO, <https://www.unesco.org/gem-report/en/publications>. UNESCO regularly publishes the Global Education Monitoring Report, which assesses progress towards the education targets in the UN's Sustainable Development Goals (SDGs). This report often highlights issues related to discrimination in education and provides recommendations for achieving educational equity.

145. See *Global Education Monitoring Reports, Publications*, UNESCO, <https://www.unesco.org/gem-report/en/publications>.

146. UNICEF's initiatives focus on reducing disparities and combating discrimination by supporting policies and programs that prioritize the needs of the most marginalized and disadvantaged children.

147. See *Education Programmes*, UNICEF, <https://www.unicef.org/education/programmes>.

148. Global Campaign for Education mobilizes civil society organizations around the world to advocate for the right to education, emphasizing the importance of local engagement and international solidarity. See GLOBAL CAMPAIGN FOR EDUCATION, <https://campaignforeducation.org/en>.

149. HRW conducts research and advocacy on human rights, including issues related to discrimination in education. HRW reports often highlight instances of educational discrimination and make policy recommendations to governments and international bodies. See *Children's Rights, Education*, HUMAN RIGHTS WATCH <https://www.hrw.org/topic/childrens-rights/education>.

150. Save the Children runs programs worldwide to ensure that every child receives a quality education. Their initiatives include efforts to reduce discrimination and exclusion in education, focusing on girls, refugee children, and other marginalized groups. See *Education*, SAVE THE CHILDREN, <https://www.savethechildren.org/us/what-we-do/education>.

innovation, and technological advancement. Inspired by the key role of lawyers in landmark desegregation cases and their impact on litigation strategies for Roma rights in Europe, establishing International Legal Fellowship Programs would mark a strategic shift in global legal advocacy. These programs would facilitate the exchange of legal strategies, insights, and advocacy techniques between racial justice movements worldwide, fostering collaboration among legal professionals, scholars, and activists from diverse jurisdictions. Such programs could significantly enhance the capacity of lawyers from marginalized communities to effectively challenge discriminatory policies and practices, drawing on the rich legacy of legal activism exemplified by the NAACP Legal Defense Fund's contributions to civil rights litigation.

Additionally, in response to the need for comprehensive data and analysis to inform policy and advocacy, the creation of a Transnational Educational Equity Observatory would represent a crucial advance. This observatory would leverage cutting-edge data analytics and research methodologies to monitor, analyze, and report on the state of educational equity across countries. By identifying patterns of segregation, discrimination, and inequity, the observatory would provide an invaluable resource for policymakers, educators, and activists, offering evidence-based strategies and documenting successful interventions. Moreover, this platform could facilitate the sharing of best practices and innovative solutions, effectively serving as a global hub for knowledge exchange on educational equity.¹⁵¹

C. Exploring Technological and Collaborative Strategies to Combat Educational Discrimination

Future research should explore how technological advancements can be further utilized to fight discrimination in education.¹⁵² By inte-

151. Recognizing UNESCO's Global Education Observatory (GEO) is important as it exemplifies the effective use of data and technology in advancing educational equity. The GEO serves as a crucial resource for stakeholders worldwide, offering access to comprehensive education-related data to inform decision-making and track progress towards Sustainable Development Goal 4 (SDG4) – quality education for all. This acknowledgment of the GEO's work sets a foundational context for further initiatives aimed at tackling educational discrimination. It highlights the potential of leveraging data integration and technology to enhance policy-making and advocacy efforts specifically targeted at overcoming educational inequities. By drawing inspiration from the GEO's methodology and collaborative approach, proposed initiatives can adopt similar strategies to address the complexities of educational discrimination and segregation, thereby complementing and extending the global efforts towards achieving educational equity. See *Global Education Observatory*, UNESCO, <https://geo.uis.unesco.org/>.

152. See generally Andre M. Perry & Nicol Turner Lee, *AI is Coming to Schools, and If We're Not Careful, So Will Its Biases*, BROOKINGS (Sept. 26, 2019), <https://www.brookings.edu/articles/ai-is-coming-to-schools-and-if-were-not-careful-so-will-its-biases/>.

grating tools such as artificial intelligence (AI) and blockchain into policy and legal strategies, there is potential to develop comprehensive approaches to addressing educational discrimination globally.¹⁵³ It is essential that these technologies be implemented ethically, ensuring transparency and accountability to avoid potential misuse of the communities they aim to serve.¹⁵⁴

AI algorithms can process vast amounts of data quickly and accurately, identifying patterns and trends that might be overlooked by human analysts. This capability is particularly useful in the context of educational equity, where large datasets on student demographics, academic performance, and segregation patterns are often available.¹⁵⁵ As a decentralized and secure digital ledger, blockchain records transactions and data in a transparent and tamper-proof manner. Operating without intermediaries, it ensures that data remains immutable and trusted. While often associated with cryptocurrencies, blockchain's potential extends far beyond, including applications in education.¹⁵⁶ In addressing injustices, for example, blockchain has been used in transitional justice contexts, showcasing its capacity to enhance transparency and fairness. This demonstrates blockchain's broader potential to support equity and accountability across various social justice frameworks.¹⁵⁷

153. See generally Carrie Spector, *How Technology is Reinventing Education*, THE STANFORD REPORT (Feb. 14, 2024), <https://news.stanford.edu/stories/2024/02/technology-in-education>

154. See generally Hoang Pham, Tanvi Kohli, Emily Olick Llano, Imani Nokuri & Anya Weinstock, *How Will AI Impact Racial Disparities in Education?*, SLS BLOGS: STANFORD CENTER FOR RACIAL JUSTICE (Jun. 29, 2024), <https://law.stanford.edu/2024/06/29/how-will-ai-impact-racial-disparities-in-education/>.

155. See generally *The Potential Impact of Artificial Intelligence on Equity and Inclusion in Education* (OECD Artificial Intelligence Papers, Working Paper No. 23, 2024), https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/08/the-potential-impact-of-artificial-intelligence-on-equity-and-inclusion-in-education_0d7e9e00/15df715b-en.pdf

156. See Amr El Koshiry, Entesar Eliwa, Tarek Abd El-Hafeez & Mahmoud Y. Shams, *Unlocking the Power of Blockchain in Education: An Overview of Innovations and Outcomes*, 4 BLOCKCHAIN: RSCH. & APPLICATIONS 100165 (2023); Prity Rani, Rohit Kumar Sachan & Sonal Kukreja, *A Systematic Study on Blockchain Technology in Education: Initiatives, Products, Applications, Benefits, Challenges and Research Direction*, 106 COMPUTING 405 (2024).

157. See Renato Gomide M. de Almeida, *What Are the Limits of Blockchain? Considerations on the Use of Blockchain in Transitional Justice Processes*, in BLOCKCHAIN AND THE LAW: DOGMATICS AND DYNAMICS 29, 39–42, 46–48 (Francisco Pereira Coutinho et al. eds., 2023); Bojan Perovic, *Transitional Justice in International Law: Comparative Insights from the Yugoslav Wars and Adaptations for the Russia-Ukraine Conflict*, 76 RUTGERS U. L. REV. (forthcoming 2024); Noam Unger et al., *Analyzing the Role of Blockchain Technology in Strengthening Democracies*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES (Oct. 25, 2023), <https://www.csis.org/analysis/analyzing-role-blockchain-technology-strengthening-democracies>; William Crumpler, *The Human Rights Risks and Opportunities in Blockchain*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES (Dec. 14, 2021), <https://www.csis.org/analysis/human-rights-risks-and-opportunities-blockchain>; Vera Bergengruen, *How Ukraine Is Crowdsourcing Digital Evidence of War Crimes*, TIME (Apr. 18, 2022, 6:00 AM), <https://time.com/6166781/ukraine-crowdsourcing-war-crimes>; Al Davidson,

Blockchain technology ensures transparency and accountability in resource distribution, holding significant promise for enhancing educational quality, accessibility, social inclusion, and equality.¹⁵⁸ It can address disadvantages that hinder access to education, especially for marginalized groups.¹⁵⁹

Similarly, civil society organizations and the private sector play crucial roles in supporting educational equity initiatives.¹⁶⁰ These entities bring unique resources, expertise, and perspectives that complement governmental efforts and drive sustainable change.¹⁶¹ The private sector can play a more prominent role in advancing educational equity through corporate social responsibility (CSR) initiatives, funding, and expertise.¹⁶² We should explore the best ways to drive sustainable change

Increasing Trust in Criminal Evidence with Blockchains, JUSTICE DIGITAL (Nov. 2, 2017), <https://mojdigital.blog.gov.uk/2017/11/02/increasing-trust-in-criminal-evidence-with-blockchains/>.

158. Andrew O. J. Kwok & Horst Treiblmaier, *No one left behind in education: blockchain-based transformation and its potential for social inclusion*, 23 ASIA PAC. EDUC. REV. 445, 445–455 (2022) (exploring blockchain's role in enhancing access to education, social inclusion, and equality, emphasizing its potential to address barriers for marginalized students and improve educational outcomes).

159. Tamara Savelyeva & Jae Park, *Blockchain technology for sustainable education* 53 BRIT. J. EDUC. TECH. 1591 (2022). The authors discuss the potential of blockchain to foster sustainable education by promoting social inclusion and equitable access to quality education for marginalized communities.

160. LEARNING, MARGINALIZATION, AND IMPROVING THE QUALITY OF EDUCATION IN LOW-INCOME COUNTRIES (Daniel A. Wagner, Nathan M. Castillo & Suzanne Grant Lewis eds., 2022); Mark Ginsburg, *Public-private partnerships and the global reform of education in less wealthy countries—A moderated discussion*, 56 COMP. EDUC. REV. 155 (2012).

161. See generally PUBLIC PRIVATE PARTNERSHIPS IN EDUCATION: NEW ACTORS AND MODES OF GOVERNANCE IN A GLOBALIZING WORLD (Susan Robertson, Karen Mundy, and Antoni Verger, eds., 2012), https://genbase.iiep.unesco.org/applis/epidoc/fchiers/EPIDOC/39239_G039239.pdf#page=233.

The Global Partnership for Education (GPE) is a multi-stakeholder partnership that aims to strengthen global education by providing funding and support to developing countries. A partnership of donor and developing country governments, multilateral organizations, civil society, private companies, and foundations, GPE is dedicated to increasing access to quality education worldwide. Its collaborative model and emphasis on inclusive education can serve as an example of transnational efforts that could be leveraged to combat discrimination and racism in education. GLOBAL PARTNERSHIP FOR EDUCATION, <https://www.globalpartnership.org/>.

162. For a critical perspective on the role of the private sector in education see Zahra Bhanji, *Transnational corporations in education: filling the governance gap through new social norms and market multilateralism?*, 6.1 GLOBALISATION, SOCIETIES AND EDUCATION 55 (2008); ANTONI VERGER, CHRISTOPHER LUBIENSKI, & GITA STEINER-KHAMSI, WORLD YEARBOOK OF EDUCATION 2016: THE GLOBAL EDUCATION INDUSTRY (2016).

in educational equity and how policymakers should establish effective models for public-private partnerships.¹⁶³

Another area to research is impact investment in education, particularly the possibility of leveraging impact investment funds and similar initiatives aimed at combating discrimination and promoting equity. These funds pool resources from private investors, philanthropic organizations,¹⁶⁴ and governments to support educational initiatives that demonstrate measurable social impact.¹⁶⁵

Finally, the deployment of global advocacy and awareness campaigns has long been a staple in the fight for educational equity, drawing

163. Pauline Rose, *Achieving Education for All through Public-Private Partnerships?*, 20 DEV. PRAC. 473 (2010); Donald Baum et al., *What matters most for engaging the private sector in education: A framework paper* (World Bank Group, SABER Working Paper Series No. 8, 95570, 2014).

164. One of the Lumina Foundation's stated goals is to end structural racism by eliminating systemic barriers affecting Black, Hispanic, and Native American students. *Racial Justice Journeys*, LUMINA FOUNDATION, <https://www.luminafoundation.org/racial-justice-journeys/>. The Schott Foundation for Public Education funds grassroots organizations working to address racial disparities in education and its focus includes advocating for policy changes to dismantle systemic racism in education. SCHOTT FOUNDATION FOR PUBLIC EDUCATION, <https://schottfoundation.org/>. The W.K. Kellogg Foundation actively works to fight racism in education through various initiatives and programs. *Priorities*, W.K. KELLOGG FOUNDATION, <https://www.wkcf.org/priorities/>.

New Profit, RSF Social Finance, Acumen, Impact America Fund, Reach Capital, Bridgespan Group, Calvert Impact Capital, Roma Education Fund (REF), and European Structural and Investment Funds (ESIF) are, according to their websites, committed to addressing educational inequities and promoting racial justice within educational systems through strategic investments and support for innovative solutions. See NEW PROFIT, <https://newprofit.org/> (last visited Feb. 3, 2025); *About Us*, RSF SOCIAL FINANCE, <https://rsfsocialfinance.org/about-us/> (last visited Feb. 19, 2025); *Education*, ACUMEN, <https://acumen.org/problems/education/> (last visited Feb. 19, 2025); *Portfolio*, IMPACT AMERICA FUND, <https://impactamericafund.com/portfolio> (last visited Feb. 19, 2025); *How Diversity Drives Impact, Returns, Reflection, and Improvement*, REACH CAPITAL, <https://www.reachcapital.com/2021/12/15/how-diversity-drives-impact-returns-reflection-and-improvement/> (last visited Feb. 19, 2025); *Stories of Impact*, BRIDGESPAN GROUP, <https://www.bridgespan.org/stories-of-impact> (last visited Feb. 19, 2025); *Education*, CALVERT IMPACT CAPITAL, <https://calvertimpact.org/resources/category/education> (last visited Feb. 19, 2025); *About Us*, ROMA EDUCATION FUND, <https://www.romaeducationfund.org/about-us/> (last visited Feb. 19, 2025); Press Release, European Commission, EU Cohesion Policy: European Structural and Investment Funds supported SMEs, employment of millions of people and clean energy production (Jan. 30, 2023), https://ec.europa.eu/commission/presscorner/detail/en/ip_23_389.

165. See Open Society Foundations, *Impact Investing in Education: An Overview of the Current Landscape*, No. 59 (2013); MIGUEL MADURO, GIULIO PASI, AND GIANLUCA MISURACA, *SOCIAL IMPACT INVESTMENT IN THE EU: FINANCING STRATEGIES AND OUTCOMES ORIENTED APPROACHES FOR SOCIAL IMPACT POLICY INNOVATION: NARRATIVES, EXPERIENCES, AND RECOMMENDATIONS* (2018); Raimonda Mackevičiūtė et al., *Social Impact Investment: Best Practices and Recommendations for the Next Generation*, Policy Department for Economic, Scientific and Quality of Life Policies, Directorate-General for Internal Policies, European Parliament, PE 658.185 (Nov. 2020); GEMMA ROCYN JONES, JOHN LODER & WILL NORMAN, THE YOUNG FOUNDATION, *SOCIAL INVESTMENT IN EDUCATION*, (2013), <https://youngfoundation.b-cdn.net/wp-content/uploads/2013/07/Social-investment-in-education-FINAL-updated-with-new-PEF-logo-1.pdf?x83233>.

attention to the issues of educational segregation and its impacts.¹⁶⁶ Emphasizing the importance of these campaigns does not negate the reality that leveraging technology, while beneficial, is not a panacea for the deep-rooted problems of discrimination and inequality in education. However, it does provide an additional avenue to target and address these concerns more directly and with potentially greater impact.

In conclusion, the effort to address school segregation requires a hard look at both the strategies employed and the foundational issues at stake. Segregation is not merely an educational issue but a reflection of broader societal injustices.¹⁶⁷

CONCLUSION: TOWARDS A UNIFIED APPROACH FOR RACIAL JUSTICE AND EDUCATIONAL EQUITY

The power of transnational solidarity in shaping legal norms and policies cannot be overstated.¹⁶⁸ Historical movements, such as the global anti-apartheid campaign, epitomize the capacity of international coalitions to influence domestic policies and encourage systemic change. The widespread mobilization for #BlackLivesMatter across the globe underscores the potential of social media to transcend borders, catalysing global support for domestic racial justice issues.

Central to this struggle are the marginalized communities themselves, whose resilience and strategic activism are indispensable in advancing their rights. Landmark legal victories, such as those secured by the NAACP with *Brown v. Board of Education*, highlight the essential role of legal strategies in challenging systemic barriers. However, it is the grassroots initiatives and community-led solutions that provide

166. Sarah Diem, Anjalé D. Welton & Jeffrey S. Brooks, *Antiracism education activism: A theoretical framework for understanding and promoting racial equity*, 8 AERA OPEN 1, (2022).

167. Critical Race Theory (CRT) and Critical Romani Studies are both subject to ongoing scrutiny and criticism. Despite their significance in addressing race and ethnicity issues, Critical Romani Studies have only managed to establish a presence at two universities: Central European University and Södertörns University in Sweden as of 2024. Lilla Farkas, *Mobilising for racial equality in Europe: Roma rights and transnational justice* 281 (PhD dissertation, Eur. Univ. Inst., 2020). See also *Critical Romani Studies Program*, CENTRAL EUROPEAN UNIVERSITY, <https://romanistudies.ceu.edu/node/112>; *Romani Studies*, SÖDERTÖRNS UNIVERSITY, <https://www.sh.se/english/sodertorn-university/research/ourresearch/romani-studies>. On the transplantation of CRT to Europe, see generally MATHIAS MÖSCHEL, *LAW, LAWYERS AND RACE: CRITICAL RACE THEORY FROM THE US TO EUROPE* (2014).

168. The discussion initiated by the François-Xavier Bagnoud Center for Health and Human Rights at Harvard University highlights the interconnectedness of Roma and African American struggles and the role of solidarity in combating institutional racism. *Roma Program for Health and Human Rights*, FRANÇOIS-XAVIER BAGNOUD CENTER FOR HEALTH AND HUMAN RIGHTS AT HARVARD UNIVERSITY, <https://fxb.harvard.edu/the-roma-program/>. Harvard University, *Alone Together: Strength and Solidarity between the Roma and African American Communities* (2018), <https://www.youtube.com/watch?v=dK4nciWreTM>.

the foundation for sustainable change, addressing immediate needs while challenging broader structures of inequality.

The Roma community in Europe, much like African Americans in the United States, has faced persistent educational segregation and systemic discrimination. The efforts of Roma advocates, inspired by the legal strategies of the NAACP and supported by organizations like the European Roma Rights Centre (ERRC), demonstrate the transnational influence of civil rights activism.

The *D.H. and Others v. the Czech Republic* case before the European Court of Human Rights exemplifies the impact of these efforts. Despite notable legal victories, the continued segregation of Roma students emphasizes the need for persistent advocacy and innovative solutions.

Roma advocates, often operating in challenging political and social environments, demonstrate the resilience and determination required to advance educational equity. Their efforts to leverage international legal norms, engage in strategic litigation, and mobilize community support are crucial in the fight against systemic discrimination. The establishment of organizations like the ERRC and the ongoing legal battles they engage in are direct reflections of the strategies employed by the NAACP and other civil rights organizations. The strategic use of international forums to amplify voices and hold governments accountable demonstrates the synergy between global advocacy and localized action. This dual approach, blending international solidarity with grassroots activism, offers a comprehensive strategy for achieving substantive equality. Recent events, such as the COVID-19 pandemic and the rise of global movements for racial justice, have highlighted educational disparities and the need for innovative solutions. These developments underscore the relevance of the TRJF in addressing interconnected issues of racial injustice and educational inequity on a global scale.

The struggle for educational equity, whether for African Americans in the United States or Roma in Europe, reflects the deep-rooted nature of racial and ethnic discrimination. By recognizing and supporting the work of advocates within these communities, we can develop more effective strategies to combat educational segregation and promote lasting social change. This commitment to a unified, transnational approach to racial justice and educational equity will ensure that the legacies of *Brown v. Board of Education* and the tireless work of Roma advocates continue to inspire and drive progress worldwide.