

## Gifted Tracking as a Racist Vestige of Eugenic Thought

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*“[A]s I said so often before, history has proven that social systems have a great last minute breathing power and the guardians of the status quo are always on hand with their oxygen tents to keep the old order alive.”*

- Dr. Martin Luther King, Jr., 1956<sup>1</sup>

### INTRODUCTION

In 1954, in the landmark decision of *Brown v. Board of Education*, the Supreme Court stated in no uncertain terms that “separate educational facilities are *inherently* unequal.”<sup>2</sup> The Court reached this decision without reaching the issue of disparate academic outcomes correlative with racially segregated schools.<sup>3</sup> Still, data reveals that segregated schools often *do* result in disparate outcomes for students; minority students who attend majority-minority schools tend not to perform as well as their White<sup>4</sup> counterparts at majority White schools.<sup>5</sup>

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1. Martin Luther King, Jr., *Desegregation and the Future*, Address Delivered at the Annual Luncheon of the National Committee for Rural Schools (Dec. 15, 1956), *available online at* MARTIN LUTHER KING, JR. RSCH. & EDUC. INST., <https://kinginstitute.stanford.edu/king-papers/documents/desegregation-and-future-address-delivered-annual-luncheon-national-committee>.

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

3. *Id.*

4. The Author intentionally capitalizes “White” throughout the text; as The Center for Social Policy, who also adopts the use of a capital “W” explains, “We believe that it is important to call attention to White as a race as a way to understand and give voice to how Whiteness functions in our social and political institutions and our communities.” Ann Thuy Nguyen & Maya Pendleton, *Recognizing Race in Language: Why We Capitalize “Black” and “White”*, CTR. FOR STUDY SOC. POL’Y (March 23, 2020), <https://cssp.org/2020/03/recognizing-race-in-language-why-we-capitalize-black-and-white/>. *Contra* John Daniszewski, *Why We Will Lowercase White*, ASSOCIATED PRESS (July 20, 2020), <https://blog.ap.org/announcements/why-we-will-lowercase-white>.

5. See Gary Orfield & Chungmei Lee, *Racial Transformation and the Changing Nature of Segregation*, CIV. RTS. PROJECT HARV. 22–23 (Jan. 2006),

Today, these inequities are more often than not the result of de facto segregation rather than de jure segregation.<sup>6</sup> Regardless, the injuries remain the same, whether created de jure or perpetuated by a facially neutral policy.<sup>7</sup>

While the kind of facially discriminatory de jure segregation prohibited by the Court in *Brown* and *Green v. County School Board of New Kent* no longer remains in force, there are myriad education policies that effectively create dual systems of education for American students.<sup>8</sup> Much of the contemporary debate surrounding inequities in schools have focused on the use of vouchers and charter schools as tools that perpetuate injustice in the education system.<sup>9</sup> In the midst of these conversations about racial inequities and unjust distribution of educational resources, there is a notable absence of the inequities perpetuated by gifted education. This silence is likely due to the perception of gifted education, or more specifically, gifted tracking through homogeneous grouping, as a merit-based system that places students into programs where they “belong,” which has exempted gifted tracking from conversations on vouchers and charter schools.<sup>10</sup> Despite

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<https://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/racial-transformation-and-the-changing-nature-of-segregation/orfield-racial-transformation-2006.pdf>.

6. *Id.*

7. See William A. Darity, Jr. & Alicia Jolla, *Desegregated Schools with Segregated Education*, in INTEGRATION DEBATE: COMPETING FUTURES FOR AMERICA’S CITIES 99 (Chester Harman & Gregory Squires eds. 2009); Roby Chatterji et al., *Closing Advanced Coursework Equity Gaps for All Students*, CTR. FOR AM. PROGRESS (Jun. 30, 2021), <https://www.americanprogress.org/article/closing-advanced-coursework-equity-gaps-students/>; Josie Foehrenbach Brown, *Escaping the Circle by Confronting Classroom Stereotyping: A Step Toward Equality in the Daily Educational Experience of Children of Color*, 6 AFR.-AM. L. & POL’Y REP. 134, 139 (2004); Annegret Staiger, *Whiteness as Giftedness: Racial Formation at an Urban High School*, 51 SOC. PROBS. 161, 162 (2004); Lauren Stark, *Naming Giftedness: Whiteness and Ability Discourse in US Schools*, 24 INT’L STUD. SOCIO. EDUC. 394 (2014); JEANNIE OAKES, KEEPING TRACK: HOW SCHOOLS STRUCTURE INEQUALITY (1st ed. 1985) (ebook); Jeannie Oakes et al., *Detracking: The Social Construction of Ability, Cultural Politics, and Resistance to Reform*, 98 TCHRS. COLL. REC. 482, 486 (1997).

8. See Darity & Jolla, *supra* note 7; Chatterji et al., *supra* note 7; Brown, *supra* note 7; Staiger, *supra* note 7; Stark, *supra* note 7; OAKES, *supra* note 7; Oakes et al., *supra* note 7, at 386.

9. E.g., Osamudia R. James, *Opt-Out Education: School Choice as Racial Subordination*, 99 IOWA L. REV. 1083 (2014).

10. See Stark, *supra* note 7, at 395, 491 (explaining that “[w]hile segregation was legitimized on theories of racial difference in the years leading up to *Brown v. Board*, in the past 50 years, it has been legitimized through a concept that has grown synonymous with race in

the perception of gifted tracking as an objective system of sorting students on an educational track according to their needs, there is sufficient evidence to show that tracking is heavily influenced by subjective factors derived from racist ideas, largely stemming from its eugenicist origins.<sup>11</sup>

Rather than merely providing students properly identified as “gifted” with an education appropriate specific to their population, the lingering influence of the eugenicists has resulted in the use of racially and ethnically biased methods of gifted identification, meaning that many Black, Latinx, and Indigenous students are underidentified, while White students are disproportionately overrepresented in gifted programming.<sup>12</sup> Consequently, just as the eugenicists intended, gifted tracking results in dual systems of segregated education, often within the same school building.<sup>13</sup>

In fact, through disparate identification, gifted tracking repeats and recreates the very same harms that the Supreme Court condemned in the landmark cases of *Brown* and *Green*. Tracking inflicts socio-emotional harm and creates a sense of inferiority in many Black, Latinx, and Indigenous students, the harm decried in *Brown*.<sup>14</sup> Simultaneously, educational resources and benefits are disproportionately conferred upon White students in gifted tracks, the very harm condemned in *Green*.<sup>15</sup>

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American education discourse: *ability*.”); Staiger, *supra* note 7, at 169 (“Through the tools of desegregation, it had effectively organized the meritocratic label ‘gifted’ to coincide with the racial label white.”); Oakes et al., *supra* note 7, at 486.

11. Stark, *supra* note 7, at 396–400; *see also* Darity & Jolla, *supra* note 7, at 114; OAKES, *supra* note 7, at 36; Brown, *supra* note 7, at 143; Oakes et al., *supra* note 7, at 386.

12. Chatterji et al., *supra* note 7; OAKES, *supra* note 7; Stark, *supra* note 7; Donna Y. Ford et al., *Culturally and Linguistically Diverse Students in Gifted Education: Recruitment and Retention Issues*, 74 *EXCEPTIONAL CHILD* 289 (2008).

13. Ann Gibson Winfield, *Eugenics and Education: Implications of Ideology, Memory, and History for Education in the United States* (April 8, 2004) (Ph.D. dissertation, North Carolina State University) (ProQuest); Stark, *supra* note 7, at 395; Chatterji et al., *supra* note 7; Orfield & Lee, *supra* note 5; Ford et al., *supra* note 12, at 292 (“Intentionally or unintentionally, gifted education and AP classes remain culturally, linguistically, and economically segregated, still largely populated by White students in general and White middle-class students in particular” (internal citations omitted)).

14. *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954); Staiger *supra* note 7, at 161–62.

15. *Green v. Cty. Sch. Bd.*, 391 U.S. 430, 435 (1968); Stark, *supra* note 7, at 403; JASON A. GRISSOM & CHRISTOPHER REDDING, *DISCRETION AND DISPROPORTIONALITY: EXPLAINING THE*

The great tragedy of the harms of homogenous grouping is that the practice is not necessary or even particularly effective.<sup>16</sup> Homogenous grouping is justified on the notion of fixed intelligence, a theory largely repudiated by contemporary understandings of intelligence that acknowledge neuroplasticity and *every* student's potential for growth.<sup>17</sup>

While academics and educators have long acknowledged the racial and ethnic inequities related to gifted tracking, the most commonly proposed solution has been to expand access to the gifted track while maintaining the legitimacy of homogeneous grouping and separate educational spaces for gifted students.<sup>18</sup> However, despite the perception of gifted tracking as a legitimate educational policy borne out of sound pedagogical principles, its legitimacy is not so clear.<sup>19</sup> Borne out of the Social Darwinist and eugenics movements in the late nineteenth and early twentieth centuries, the benefits of homogenous grouping on the basis of giftedness or lack thereof cannot be substantiated.<sup>20</sup> Policies that group students according to giftedness or lack thereof continue to use racist tools to racist ends.<sup>21</sup> Therefore, to dismantle the dual system of education perpetuated by gifted tracking, detracking paired with

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UNDERREPRESENTATION OF HIGH-ACHIEVING STUDENTS OF COLOR IN GIFTED PROGRAMS, 2 AERA OPEN 1, 4 (2016).

16. OAKES, *supra* note 7, at 7; Ning Rui, *Four Decades of Research on the Effects of Detracking Reform: Where Do We Stand?—A Systematic Review of the Evidence*, 2 J. EVIDENCE-BASED MED. 164, 168-69 (2009).

17. Darity & Jolla, *supra* note 7, at 108; Philip Adey, *From Fixed IQ to Multiple Intelligences*, in BAD EDUCATION: DEBUNKING MYTHS IN EDUCATION 199 (Philip Adey & Justin Dillon eds., 2012); *see generally*, CAROL S. DWECK, MINDSET: THE NEW PSYCHOLOGY OF SUCCESS (1st ed. 2006).

18. Scott J. Peters et al., *Rethinking How We Identify “Gifted” Students*, PHI DELTA KAPPAN (Nov. 23, 2020), <https://kappanonline.org/rethinking-how-we-identify-gifted-students-peters-carter-plucker/>; Jonathan Wai & Frank C. Worrell, *How Talented Low-Income Kids Are Left Behind*, PHI DELTA KAPPAN (Nov. 23, 2020), <https://kappanonline.org/how-talented-low-income-kids-are-left-behind-wai-worrell/>. *See generally* Ford et al., *supra* note 12, at 289 (discussing research that dates back to 1936 that found “despite high intelligence test scores African American students were not formally identified as gifted”).

19. Allison Roda, *A Commentary on the December/January Issue: The Real Problem Is the Very Idea of “Giftedness”*, PHI DELTA KAPPAN (Dec. 22, 2020), <https://kappanonline.org/problem-giftedness-roda/> [hereinafter *Commentary*]; Allison Roda, *Tracking by Another Name*, PHI DELTA KAPPAN (Jan. 19, 2021), <https://kappanonline.org/thematic-article/tracking-by-another-name/> [hereinafter *Tracking*].

20. Alan Stoskopf, *Echoes of a Forgotten Past: Eugenics, Testing, and Education Reform*, 66 EDUC. F. 126 (2002) [hereinafter *Echoes*]; FACING HISTORY AND OURSELVES, RACE AND MEMBERSHIP IN AMERICAN HISTORY: THE EUGENICS MOVEMENT 62–89 (2002) [hereinafter *FACING HIST.*]; OAKES, *supra* note 7, at 7; Rui, *supra* note 16, at 168.

21. *See* OAKES, *supra* note 7, at 485.

heterogenous grouping should be implemented to desegregate classrooms and school systems.<sup>22</sup>

This Note will begin by providing an overview of the present data on the disparate identification of students in gifted programming by race and ethnicity. It will then turn to the eugenicist origins of gifted tracking and intelligence testing and how those eugenicist influences remain pervasive in the present causes of the underidentification of Black, Latinx, and Indigenous students and the comparative overrepresentation of White students in gifted programming. This Note will then examine how the disparate identification by race and ethnicity inflicts upon Black, Latinx, and Indigenous students the very harms that the holdings of *Brown* and *Green* aimed to eliminate. Part III will discuss the lack of justification for homogenous grouping and debunk the myth of fixed intelligence. Finally, Part IV will provide a recommendation to schools, suggesting that because tracking is unjustifiable, schools should detrack students and provide rigorous, engaging coursework to all students.

## I. METHODS OF GIFTED TRACKING: RACIST TOOLS TO RACIST ENDS

While many Americans conceive of racial segregation in schools as a relic of the United States' history, it is, instead, an issue that remains not only unresolved but also pervasive throughout the country's schools.<sup>23</sup> Despite *Brown*'s proclamation that segregated schooling is per se unequal, students are increasingly racially isolated.<sup>24</sup> A portion of this isolation may be attributed to factors outside of schools' direct control,<sup>25</sup> but the use of gifted tracking to sort students into different educational tracks and, consequently, classrooms remains a means of segregation that is squarely *within* states' control. While disparate rates of identification along racial and ethnic lines may appear to be a flaw or unfortunate side effect in a legitimate pedagogical practice, these disparities are vestiges of the original design of social Darwinists and

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22. Haley Potter & Michelle Burris, *Should Gifted Students Be in Separate Classrooms?*, CENTURY FOUND. (Dec. 12, 2019), <https://tcf.org/content/commentary/gifted-students-separate-classrooms/?agreed=1>; *Commentary*, *supra* note 19; *Tracking*, *supra* note 19.

23. Orfield & Lee, *supra* note 5, at 4.

24. *Id.*

25. *Id.*

eugenicist educational psychologists, perpetuated through the lingering racial bias that pervades present identification methods.<sup>26</sup> Consequently, under many states' current education policies, Black, Latinx, and Indigenous students remain disproportionately underidentified and underenrolled in gifted programming, while White students are disproportionately overidentified and overenrolled.<sup>27</sup> By tracking students into largely racially and ethnically segregated classrooms, schools continue to inflict the very harms that *Brown* and *Green* sought to resolve.<sup>28</sup>

### A. The Data: Disparities in Access and Identification

A review of the data on enrollment of students in gifted programming and advanced coursework reveals a disconcerting trend whereby Black, Latinx, and Indigenous students are enrolled in these programs at a much lower rate than their White counterparts.<sup>29</sup> At the outset, Black students are less likely to attend schools that offer gifted programs in the first place.<sup>30</sup> According to the Early Childhood Longitudinal Study, "90% of White, 93% of Hispanic, and 91% of Asian elementary students attend a school with a gifted program, compared to only 83% of African-American students."<sup>31</sup> Yet even where schools offer gifted programming, students of color who meet the criteria for enrollment are less likely than their White counterparts to actually be *enrolled* in gifted programming.<sup>32</sup>

According to the most recent data available from the National Center for Education Statistics, there were 3,329,544 public school students enrolled in gifted and talented programs in 2013–2014.<sup>33</sup> Of those students, 58.2% were White, despite constituting only 50.3% of

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26. See *Echoes*, *supra* note 20; Stark, *supra* note 7, at 398.

27. Ford et al., *supra* note 12, at 289; Stark, *supra* note 7, at 402.

28. *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954); *Green v. Cty. Sch. Bd.*, 391 U.S. 430, 435 (1968); see Darity & Jolla, *supra* note 7; Stark, *supra* note 7.

29. Stark, *supra* note 7, at 395; Chatterji et al., *supra* note 7; Ford et al., *supra* note 12.

30. GRISSOM & REDDING, *supra* note 15, at 1.

31. *Id.*

32. *Id.*

33. Table 204.80: *Number of Public School Students Enrolled in Gifted and Talented Programs, by sex, race/ethnicity, and state: Selected years, 2004 through 2013-14*, NAT'L CTR. FOR EDUC. STATS. (June 2018) [https://nces.ed.gov/programs/digest/d20/tables/dt20\\_204.80.asp](https://nces.ed.gov/programs/digest/d20/tables/dt20_204.80.asp) [hereinafter *Table 204.80*].

students overall.<sup>34</sup> By contrast, Black students made up 15.6% of the overall population but only 9.9% of the students enrolled in gifted programs; Hispanic students constituted 24.9% of the overall population but only 18.0% of gifted enrollment; and American Indian and Native Hawaiian or Pacific Islander (“Indigenous”) comprised 1.4% of students but only 0.9% of gifted students overall.<sup>35</sup> Because gifted students are often in separate classrooms from their general education peers, the disparate enrollment rates identified above lead to racial segregation within schools and districts.<sup>36</sup>

<b>Race/Ethnicity</b>	<b>Percent of Overall Enrollment<sup>37</sup></b>	<b>Percent of Gifted Enrollment<sup>38</sup></b>
<b>White</b>	50.3%	58.2%
<b>Black</b>	15.6%	9.9%
<b>Hispanic</b>	24.9 %	18.0%
<b>American Indian, Native Hawaiian, or Pacific Islander</b>	1.4%	0.9%

A particularly apt illustration of how these disparate enrollment rates play out in gifted programming is the example of Advanced Placement (AP) programming. The larger trends noted above are reflected in the rates of enrollment of Black, Latinx, and American

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34. *Table 203.60: Enrollment and Percentage Distribution of Enrollment in Public Elementary and Secondary Schools, by Race/Ethnicity and Level of Education: Fall 1999 through Fall 2029*, NAT’L CTR. FOR EDUC. STATS. (June 2018) [https://nces.ed.gov/programs/digest/d20/tables/dt20\\_203.60.asp](https://nces.ed.gov/programs/digest/d20/tables/dt20_203.60.asp) [hereinafter *Table 203.60*]; *Table 204.90: Number of Public School Students Enrolled in Gifted and Talented Programs, by sex, race/ethnicity, and state: Selected years, 2004 through 2013-14*, NAT’L CTR. FOR EDUC. STATS. (June 2018) [https://nces.ed.gov/programs/digest/d20/tables/dt20\\_204.90.asp](https://nces.ed.gov/programs/digest/d20/tables/dt20_204.90.asp) [hereinafter *Table 204.90*].

35. *Id.*

36. GRISSOM & REDDING, *supra* note 15, at 1; Stark, *supra* note 7, at 408; Chatterji et. al., *supra* note 7; Staiger, *supra* note 7, at 161.

37. *Table 203.60*, *supra* note 34.

38. *Table 204.90*, *supra* note 34.

Indian students in AP courses, which are “the main venue for gifted education at the high school level.”<sup>39</sup> The Center for American Progress has carefully examined availability and enrollment rates of these students in AP coursework, finding that Black and Indigenous students experience an opportunity gap and have “significantly less access to AP coursework than their peers.”<sup>40</sup> However, in schools where AP courses are offered, “there [are] significant gaps in the rates at which Black, Latinx, and Indigenous students were enrolled in AP courses, [take] AP tests, and receive[] passing scores on the exams compared with students overall and their [W]hite and Asian peers.”<sup>41</sup> Even more alarming, the Center found that “the gaps in AP course enrollment for Black, Latinx, and Indigenous students get progressively larger in the high schools offering the highest number of AP courses.”<sup>42</sup> For schools offering four to ten AP courses, the gap between all students and Black students was 3.8 percentage points, but the number went up to 11.6 percentage points for schools offering eighteen to thirty-seven AP courses.<sup>43</sup> For Latinx students, there was a “minimal gap” in AP course enrollment between all students and Latinx students in schools that offered four to ten courses, but the gap rose to 6.8 percentage points in schools offering eighteen to thirty-seven courses.<sup>44</sup>

While schools, policy makers, and courts may be willing to accept “lower rates of achievement” and “poverty” as satisfactory justifications for these disparate rates of enrollment,<sup>45</sup> an examination of the historical origins of gifted tracking and their influence on contemporary tracking methods reveal a eugenicist past that maintains a stronghold on the present.

## B. A Racist Tool...

Though its origins are typically glossed over, the present state of gifted education remains the eugenicist design of its original creators, educational psychologists such as Henry Goddard, Lewis Terman, and

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39. Ford et al., *supra* note 12, at 290; *see also* Darity & Jolla, *supra* note 7, at 106.

40. Chatterji et. al. *supra* note 7.

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *See* GRISSOM & REDDING, *supra* note 15, at 1; *Holton v. City of Thomasville Sch. Dist.*, 490 F.3d 1257, 1263 (11th Cir. 2007).



Edward Thorndike.<sup>46</sup> Through their combined efforts, their vision to utilize norm-based testing to create a dual system of education to separate students according to their value as humans, based largely on White supremacist ideas of intelligence, continues to shape contemporary gifted education.<sup>47</sup> The eugenicists sought to use their “scientific” method of identification of those who were most deserving of meaningful education, thus creating the appearance of legitimacy through what appeared to be objective data.<sup>48</sup> Consequently, the origins of their methodologies, and intelligence testing specifically, were developed in an attempt to “prove” the superiority of White intelligence that was innate and fixed.<sup>49</sup> However, despite the perception that intelligence testing can be used to accurately ascertain the intellectual skill of an individual, researchers have demonstrated that intelligence is not fixed or immutable, and an intelligence test cannot show a student’s potential for learning.<sup>50</sup>

Despite the lack of a legitimate pedagogical basis for tracking students, gifted tracking persists as a commonplace means of determining which students “deserve” which kind of educational resources and benefits.<sup>51</sup> These methodologies continue to reflect the same biases that were present in the eugenicists’ initial design of gifted programming.<sup>52</sup> As a result, these biases borne out of the myth of White supremacy continue to work against the identification and enrollment of Black, Latinx, and Indigenous students in the form of inequitable use of IQ and achievement tests and teacher bias, while they work towards the disproportionate identification and enrollment of White students through bias in these same mechanisms *as well as* through White students’ access to social, cultural, and financial capital.<sup>53</sup>

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46. *Echoes*, *supra* note 20, at 126.

47. *Id.* at 126–27.

48. *Id.* at 127.

49. *Id.*

50. *Echoes*, *supra* note 20, at 127; Oakes et al., *supra* note 7, at 492; Adey, *supra* note 17.

51. Stark, *supra* note 7, at 402; Oakes et al., *supra* note 7, at 499.

52. *See Echoes*, *supra* note 20, at 126; Stark, *supra* note 7, at 396–400.

53. GRISSOM & REDDING, *supra* note 15, at 1; Stark, *supra* note 7, at 402.

### C. The Eugenicist Origins of Ability Tracking

While its influence is largely taken for granted, eugenicists ushered in many of the modern practices in education.<sup>54</sup> Because of the strength of this influence, gifted tracking cannot be disentangled from its eugenicist, racist origins and the efforts of its creators to justify separating students according to their racial inferiority or superiority. One of the most important legacies that influential eugenicists, also leaders in the field of educational psychology, left in the present U.S. education system is their theory of intelligence and giftedness, which they embedded into the system through the use of standardized testing and ability tracking.<sup>55</sup> Eugenicists “convinced many educators, religious leaders, politicians, and ordinary citizens that intelligence testing could not only improve education but also end poverty, prevent crime, and wipe out disease by identifying the individuals responsible for these problems,”<sup>56</sup> those individuals being the “feebleminded,” immigrants, Indigenous, and Black people.<sup>57</sup>

Prior to the 1890s, there was no means of grouping or tracking by ability in schools.<sup>58</sup> Free public education became available throughout the nation after the Civil War, and, once implemented, the aim was to “provide universal education that would increase opportunity, teach morality and citizenship, encourage leadership, maintain social mobility, and promote responsiveness to social progress.”<sup>59</sup> In its initial form, the purpose of schooling was to inculcate morality, leadership, and good citizenship; education was valuable beyond its utility to set a student on a specific career track.<sup>60</sup> Still, these schools were initially largely attended by middle and upper-middle class White students.<sup>61</sup> However, in the late 1890s, the demographic makeup of the U.S. and, consequently, public schools, changed dramatically.<sup>62</sup> Immigrants rapidly poured into the nation, and they were largely “poor, uneducated,

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54. *Echoes*, *supra* note 20, at 126; Winfield, *supra* note 13, at 93.

55. *See generally Echoes*, *supra* note 20.

56. *FACING HIST.*, *supra* note 20, at 140.

57. *Id.* at 147; *Echoes*, *supra* note 20, at 127.

58. *OAKES*, *supra* note 7, at 17.

59. *Id.*

60. *Id.* at 16, 19, 24.

61. *Id.* at 17.

62. *Id.*

and unskilled.”<sup>63</sup> Primarily from southern and eastern Europe, they arrived looking for prosperity; what they found, however, was largely destitution.<sup>64</sup> As a result of the population explosion, public school attendance flourished, and “[b]etween 1880 and 1918 student enrollment across the nation increased over 700 percent from about 200,000 to over 1.5 million. By 1920, more than 60 percent of America’s fourteen- to seventeen-year-olds were enrolled.”<sup>65</sup>

In response to the influx of immigrants, social Darwinists, predecessors of the eugenicists, proposed the strategy of tracking and differentiation.<sup>66</sup> Differentiation was a means of scientifically and efficiently managing schools’ resources, providing challenging, academic instruction to students with academic potential, and limiting students who lacked this potential to be prepared as workers.<sup>67</sup> Social Darwinists believed that White, Anglo-Saxon students should receive college-preparatory education, while immigrants and the poor should largely receive vocational training.<sup>68</sup> The superintendent of Cleveland schools echoed the social Darwinists’ ideas, writing:

It is obvious that the educational needs of children in a district where the streets are well-paved and clean, where the homes are spacious and surrounded by lawns and trees, where the language of the child’s play fellows is pure, and where life in general is permeated with the spirit and ideals of America—it is obvious that the educational needs of such a child are radically different from those of the child who lives in a foreign and tenement section.<sup>69</sup>

As a result of social Darwinists’ influence, “students were openly classified into various programs by their ethnic, racial, and economic

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63. *Id.* at 19.

64. *Id.*

65. *Id.*

66. OAKES, *supra* note 7 at 35–36.

67. *Id.*; *Echoes*, *supra* note 20, at 128.

68. OAKES, *supra* note 7, at 35–36.

69. *Id.*

backgrounds.”<sup>70</sup> However, after World War I, the explicit classism of social Darwinism was challenged, and society no longer embraced the overt use of these classifications for tracking purposes.<sup>71</sup> The eugenicists, motivated by similar conceptions of race and class, soon would find an effective means to conceal the bare animus of separation of students by race, ethnicity, and class.

More generally, eugenicists advocated for the replication of the “best” humans, and its founder Sir Francis Galton, cousin of Charles Darwin, coined the term in 1883, explaining, “Eugenics is the science which deals with all influences that improve the inborn qualities of a race; also with those that develop them to the utmost advantage.”<sup>72</sup> Eugenicists believed that the worth of a human depended on their race and class and that a human’s value could be organized hierarchically according to these traits.<sup>73</sup> Furthermore, eugenicists focused on the heredity of traits and breeding, and in particular, they believed that intelligence was inherited.<sup>74</sup> Concerned by a perceived “decline of genius,” they believed that through appropriate breeding practices they could assure the continued power of the White race.<sup>75</sup>

Threatened by social change ushered in by the influx of immigrants, the movement of Black people from the Jim Crow South to the North, and the Industrial Revolution, eugenicists feared that “the human gene pool was in danger of being weakened in terms of intelligence, strength and ability, through miscegenation and wanton breeding by inferior peoples.”<sup>76</sup> Ellwood Cubberly, Dean of the College of Education at Stanford, wrote that the new influx of immigrants were “wholly without Anglo-Saxon conceptions of righteousness, liberty, law, order, public decency, and government.”<sup>77</sup> For the eugenicists, the failings of these groups did not result from external factors, but instead were a consequence of the biological inferiority of immigrants and groups

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70. OAKES, *supra* note 7, at 36.

71. *Id.*

72. Winfield, *supra* note 13, at 86, 2 (citing FRANCIS GALTON, HEREDITARY GENIUS: AN INQUIRY INTO ITS LAWS AND CONSEQUENCES 35 (1914)).

73. Winfield, *supra* note 13, at 2–3.

74. *Id.* at 94.

75. FACING HIST., *supra* note 20, at 68; *see* Winfield, *supra* note 13, at 94, 103.

76. *Echoes*, *supra* note 20, at 126; Winfield, *supra* note 13, at 4–5.

77. Winfield, *supra* note 13, at 3 (citing ELLWOOD P. CUBBERLY, PUBLIC EDUCATION IN THE UNITED STATES: A STUDY AND INTERPRETATION OF AMERICAN EDUCATIONAL HISTORY (1934)).

“such as Southern Europeans, Jews, Africans, and Latinos.”<sup>78</sup> To preserve the social status and political power of White Anglo-Saxons, eugenicists believed that they must take efforts to preserve the White race from dilution and loss of power.<sup>79</sup> Eugenicists such as John Franklin Bobbit, “author of *The Curriculum*” and “hailed as a ‘Father of Education,’ believed that prosperity and progress were possible only if strict and unrelenting care was taking to control the spread of ‘inferior blood’ and ‘worm eaten stock.’”<sup>80</sup>

One of the most successful efforts of eugenicists to perpetuate their ideas was to “infuse eugenics into educational theory and practice.”<sup>81</sup> Eugenicists found fertile ground for their theories in White Americans whose social status was threatened by quickly changing demographics,<sup>82</sup> and the advent of intelligence testing was used to legitimize eugenic theories.<sup>83</sup> Eugenicists “defin[ed] the ability to learn as a function of heredity, [which] successfully ensured that only those segments of society who approached their clearly defined ‘superior’ standards would receive the kind of education that allowed for independent thought.”<sup>84</sup> Prior to the use of intelligence testing, eugenicists turned to grouping by language ability to separate students “along the lines of race, class, language and citizenship status,” giving an appearance of meritocratic sorting of students.<sup>85</sup> In the early 1900s, eugenicists found an even more effective tool that gave the appearance of an objective, scientific tool to measure intelligence and justify their racist theories: norm-referenced tests.<sup>86</sup>

Eugenicists believed that biology determined intellectual and moral superiority, but they lacked a means of quantifying these traits.<sup>87</sup>

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78. *Echoes*, *supra* note 20, at 127.

79. *See* Winfield, *supra* note 13, at 1–5.

80. Winfield, *supra* note 13, at 5 (citing JOHN F. BOBBITT, *HOW TO MAKE A CURRICULUM* (1924)).

81. *Echoes*, *supra* note 20, at 127.

82. *Id.* at 126.

83. Stark, *supra* note 7, at 397; *Echoes*, *supra* note 20, at 127.

84. Winfield, *supra* note 13, at 150.

85. Stark, *supra* note 7, at 397.

86. *See Echoes*, *supra* note 20, at 127, 130.

87. *Id.*

Educational psychologist Henry Goddard<sup>88</sup> was actively seeking “an accurate device to identify the feebleminded.”<sup>89</sup> Goddard discovered the work of French psychologist Alfred Binet, who had “developed a series of protocols to assist teachers in identifying students who were not performing to grade level.”<sup>90</sup> Thinking the test would be “a perfect tool for measuring the eugenic worth of an individual,” Goddard retooled Binet’s test to fit his needs.<sup>91</sup> However, in doing so, he defied Binet’s vision for the test’s use *and* his express warning against using it in such a manner.<sup>92</sup> Binet did not adhere to the notion that intelligence was a “fixed trait.”<sup>93</sup> Instead, he held a more flexible understanding of intelligence and was “much too uncertain about what intelligence was and believed that a person could adapt and intellectually grow over time.”<sup>94</sup> Binet’s test was intended to identify which students may benefit from more support in school and to give an indication of how a student was performing at that particular moment.<sup>95</sup> He strongly cautioned against eugenicists’ derivation of larger meaning about intelligence from his test, writing:

Some recent thinkers seem to have given their moral support to these deplorable verdicts by affirming that an individual’s intelligence is a fixed quantity, a quantity that cannot be increased. We must protest and react against this brutal pessimism: we must try to demonstrate that it is founded upon nothing.<sup>96</sup>

Nonetheless, Goddard dismissed Binet’s understanding of intelligence and transformed Binet’s IQ test for his own purposes.<sup>97</sup> Goddard initially investigated the use of the IQ test with prisoners, but

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88. Winfield, *supra* note 13, at 176 (noting that Goddard was the superintendent of the Vineland, New Jersey training school where Carrie Buck of *Buck v. Bell* was forcibly sterilized along with her mother and sister).

89. *Echoes*, *supra* note 20, at 127.

90. *Id.*

91. *See id.*

92. *Id.*; FACING HIST., *supra* note 20, at 151.

93. Stark, *supra* note 7, at 397–98.

94. *Echoes*, *supra* note 20, at 127.

95. FACING HIST., *supra* note 20, at 140, 151.

96. *Id.* at 151.

97. *Echoes*, *supra* note 20, at 127.

he sought to expand its application.<sup>98</sup> He collaborated with the Public Health Service and administered the test to immigrants, finding that “83% of the Jews, 80% of the Hungarians, 87% of the Russians, and 79% of the Italians tested below the 12 year old limit and were therefore feebleminded.”<sup>99</sup> Goddard felt that the test was “representative of these ethnic groups,” supporting his theory of the biological and intellectual inferiority of immigrants.<sup>100</sup> He did not institute the use of IQ tests *in spite* of their racial biases: he implemented them to *further* his hypothesis that Anglo-Americans were intellectually superior to feebleminded non-Whites.<sup>101</sup> After further development, Goddard advocated for the use of IQ tests to determine “which students belonged in special classes and which students should be sent to separate schools.”<sup>102</sup> He brought his test into New York City public schools, working as an educational consultant to assist with their implementation of ability tracking.<sup>103</sup> Through his teacher training programs, Goddard instructed teachers to distinguish between “morons and defective learners[s]” and “normal” learners, giving eugenic theory a foothold in U.S. educational institutions.<sup>104</sup>

Colleague and contemporary of Goddard, Lewis Terman, helped expand the reach of IQ tests and the development of gifted education.<sup>105</sup> A professor at the College of Education at Stanford University from 1910–1922 and Chair of the Psychology Department from 1922–1942, Terman worked alongside Goddard and Robert Yerkes to nationalize the use of IQ tests, “catapult[ing] testing into the forefront of educational reform in U.S. schools.”<sup>106</sup> Terman created his National Intelligence Test in 1919, which was soon implemented throughout the nation’s schools.<sup>107</sup> The test became a foundation for ability tracking, and alongside Leta Hollingsworth, Terman’s scholarship became the

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98. *Id.* at 127–28.

99. *Echoes*, *supra* note 20, at 128 (citing Henry H. Goddard, *Mental Tests and the Immigrant*, 2 J. DELINQUENCY 243, 252 (1917)).

100. *Id.* at 128.

101. *Echoes*, *supra* note 20, at 127–28.

102. *Id.* at 128.

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. Stark, *supra* note 7, at 398.

cornerstone for gifted education in the U.S., work underpinned by “discourse on ethnoracial hierarchies.”<sup>108</sup> These eugenicist educational psychologists argued that “African-American descent was directly correlated to low intelligence, with Terman arguing that ‘their dullness seems to be racial.’”<sup>109</sup> The earliest conceptions of giftedness in the U.S. imagined giftedness “in hierarchical terms, establishing a dichotomy between ‘dullness’ and ‘giftedness’ that mirrored the construction of concepts of blackness and whiteness in eugenicist thought.”<sup>110</sup> Consequently, schools were able to implement the label gifted to give the appearance of a legitimate, meritocratic label to what was ultimately always White supremacy.<sup>111</sup>

Moreover, Terman was able to capitalize on the popular criticism of schools’ inefficiency “compared to modern businesses.”<sup>112</sup> Terman presented the “scientific-management model,” which offered to streamline education by focusing resources where they would be most productive.<sup>113</sup> He “saw a natural fit between an industrial model and his eugenic-inspired work with testing.”<sup>114</sup> Ellwood Cubberly, Dean of the College of Education at Stanford, shared Terman’s vision, and he advocated for a model of school as “factories in which the raw products [students] are to be shaped and fashioned into finished goods.”<sup>115</sup> Accordingly, Terman revised his scoring scale for schools, basing the scale off of “982 native-born children from European-American, middle-class, Protestant Homes in the Palo Alto area,” which became the basis of the Stanford-Binet intelligence test.<sup>116</sup> Plainly stated, the test was “fundamentally eugenic” in nature.<sup>117</sup> Despite the racial, ethnic, and socioeconomic biases of the scoring scales, Terman saw the results of the application of his test to diverse populations as proof of his theories of the inferior intelligence levels of Black, Latinx, and Indigenous populations: referring to “Indians, Mexicans, and negroes,” Terman wrote that “[a]s far as intelligence is concerned, the tests have told the

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108. *Id.*

109. *Id.*

110. *Id.*

111. Staiger, *supra* note 7, at 169; Stark, *supra* note 7, at 398–99.

112. *Echoes*, *supra* note 20, at 128.

113. *Id.*

114. *Id.*

115. *Id.* at 128–29.

116. *Id.* at 129.

117. *Id.*



truth. . . . No amount of school instruction will ever make them intelligent voters or capable citizens in the true sense of the word.”<sup>118</sup> Because of their “mental deficiencies,” Terman suggested:

Children of this group should be segregated in special classes and be given instruction, which is concrete and practical. They cannot master abstractions, but they can often be made efficient workers, able to look out for themselves. There is no possibility at present of convincing society that they should not be allowed to reproduce, although from a eugenic point of view they constitute a grave problem because of their prolific breeding.<sup>119</sup>

Terman’s model of funneling educational resources where they would have the most return, that is, in classrooms that separated students by “intelligence,” became ubiquitous in schools across the United States.<sup>120</sup> As Stoskopf writes, “By 1925, a survey of 215 cities found that nearly 65 percent of districts used standardized IQ tests to classify students into tracked classes.”<sup>121</sup> Consequently, “[d]isproportionate numbers of African-American, Latin, and immigrant children from Southern and Eastern Europe were put in non-academic tracks because of test scores, especially in urban school districts.”<sup>122</sup> These tests, based in pseudoscience rather than any credible or reliable theory of intelligence, sealed the educational fate of American students, relegating many Black, Latinx, and Indigenous students to a more “efficient,” lower quality of education than their gifted peers.<sup>123</sup>

Another educational psychologist and eugenicist, Edward Thorndike, furthered the use of intelligence and norm-referenced tests in education.<sup>124</sup> Also a professor of educational psychology at Teachers College at Columbia University, Thorndike had worked with Terman

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118. *Echoes*, *supra* note 20, at 129.

119. *Id.*

120. *Echoes*, *supra* note 20, at 129; Winfield, *supra* note 13, at 157.

121. *Echoes*, *supra* note 20, at 129.

122. *Id.*

123. *Id.*

124. *Id.* at 130.

on the National Intelligence Tests.<sup>125</sup> For Thorndike, schools should ensure that students were tracked appropriately according to race and class to meet their inherent potentials.<sup>126</sup> He believed that standardized tests reflected students' value as humans and that using them to sort students and educate them accordingly would help fulfill his eugenicist vision of the future.<sup>127</sup> He wrote:

By selective breeding supported by a suitable environment we can have a world in which all men will equal the top ten percent of present men. One sure service of the able and good is to beget and rear offspring. One sure service (almost the only one) which the inferior and vicious can perform is to prevent their genes from survival.<sup>128</sup>

Schooling, therefore, should assist "superior" students fulfill their destiny to become leaders of the human race while guiding the "lower classes and races" to accept their "inferior" status in society's hierarchy.<sup>129</sup> Through their use of testing, eugenicists were able to "justify" the bifurcation of educational resources according to inferior dark or superior light-skinned races, thereby preserving power for the White race.<sup>130</sup>

While eugenic thought had been widespread, it fell out of favor in the 1930s alongside the rise of Nazi Germany.<sup>131</sup> Still, the foundation of gifted education was built upon these eugenicist educational psychologists' framework, and while the language of eugenics may no longer be used to defend policy, the very same underlying attitudes about race, ethnicity, and class shape the present state of gifted education.<sup>132</sup>

Policy implemented in the Cold War helped to invigorate the notion that gifted students were "a national resource to be protected" and later focus on "excellence" in education arose after the publication of A

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125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. Winfield, *supra* note 13, at 12.

131. *Echoes*, *supra* note 20, at 131.

132. *See infra* notes 141–49 and accompanying text.

*Nation at Risk* allowed for the continued justification of gifted-specific programming.<sup>133</sup> Roughly one hundred years after the initial efforts of the social Darwinists and eugenicists, the popularity of *The Bell Curve: Intelligence and Class Structure in American Life* helped to galvanize the argument that intelligence is a “stable, innate trait that can be reliably isolated through IQ tests and used to predict social outcomes.”<sup>134</sup> Charles Murray and Richard Herrnstein, authors of *The Bell Curve*, maintained that race is determinative of IQ, and as a result, can predict “educational, economic, and social, outcomes.”<sup>135</sup> Despite being lambasted as pseudoscientific, Murray and Herrnstein’s book has seen recent popular resurgence.<sup>136</sup>

Even as the theories on which giftedness are predicated have been repeatedly revealed to be pseudoscientific and based on social constructions of race and intelligence, gifted programs maintain an “appearance of fairness and meritocracy.”<sup>137</sup> This label is in turn used to justify distribution of educational resources according to students’ “inherent” potential.<sup>138</sup> As a result of the institutionalization of eugenic theories of intelligence, American schools are not “institutions of learning,” as was their initial design, but instead serve to determine who may “achieve the American dream,” and who should be “rendered incapable and undeserving of such a dream.”<sup>139</sup> Despite the pervasive inequalities and its origin in racist, eugenicist theories, tracking has become so normalized as to appear legitimate.<sup>140</sup> Despite the appearance

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133. Stark, *supra* note 7, at 399–400.

134. *Id.*

135. *Id.* at 400; see Charles Murray & Richard J. Herrnstein, *Race, Genes, and I.Q. – An Apologia: The Case for a Conservative Multiculturalism*, 211 *NEW REPUBLIC* 27 (1994).

136. Oakes et al., *supra* note 7, at 487–88; Eric Siegel, *The Real Problem with Charles Murray and “The Bell Curve”*, *SCI. AM.* (April 12, 2017) <https://blogs.scientificamerican.com/voices/the-real-problem-with-charles-murray-and-the-bell-curve/>.

137. Stark, *supra* note 7, at 400–02.

138. *Id.* at 402 (citing JEANNIE OAKES et al., *BECOMING GOOD AMERICAN SCHOOLS: THE STRUGGLE FOR CIVIC VIRTUE IN EDUCATION REFORM* (2000)).

139. Ruth Jones, *Eugenics in Education Policy and the Impact on African American Students* 16 (May 16, 2019) (M.A. thesis, University of San Francisco) (on file with Gleeson Library at University of San Francisco).

140. Stark, *supra* note 7, at 402; Michael J. Kohlman, *Evangelizing Eugenics: A Brief Historiography of Popular and Formal American Eugenics Education (1908-1948)*, 58 *ALTA J. EDUC. RSCH.* 657, 683 (2013) (“The banal institutionalized educational enculturation of

of legitimacy, the forces that continue to create the inequities in gifted education are easily identified as vestiges of eugenic thought and White supremacy.

### **D. The Persistence of Eugenic Influence in Tracking**

While the eugenicist theories fell out of popularity in the 1930s, the attitudes and fundamental conceptions of intelligence have been imbued into the structures of American schooling, particularly with respect to notions of giftedness. By institutionalizing the connection between whiteness and giftedness through tracking and its selection mechanisms, the eugenicists left a legacy that pervades the tracking process in contemporary schools. Presently, eugenic influence in gifted tracking is apparent in two major aspects of the identification process: the continued biases in IQ and achievement testing and the influence of teacher and school personnel bias on the identification of students for gifted and advanced tracks.<sup>141</sup> These biases work against Black, Latinx, and Indigenous students, leading to their underidentification, while the biases favor the identification of White students, leading to their overenrollment compared to the population.

#### *1. The Underidentification of Black, Latinx, and Indigenous Students in Gifted Programming*

Schools typically rely on a combination of testing and teacher recommendation to sort students into tracks, both of which disproportionately disadvantage Black, Latinx, and Indigenous students.<sup>142</sup> Teachers and school personnel, whether they are aware or not, tend to approach Black, Latinx, and Indigenous students with an assumption of inferiority, maintaining similar attitudes about these students' potential as the eugenicists, and IQ and achievement tests remain saturated with cultural bias, just as at their inception.<sup>143</sup>

First, most states rely on teachers for referrals to gifted programs or advanced coursework, placing teachers in a "gatekeeper" position.<sup>144</sup>

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eugenics along with curricular and methodological remnants persist even when divorced from their scientific racism and eugenical origins.”).

141. Ford et al., *supra* note 12, at 291; Brown, *supra* note 7, at 143.

142. Ford et al., *supra* note 12, at 294.

143. *Id.* at 295; OAKES, *supra* note 7, at 11–12.

144. Ford et al., *supra* note 12, at 295; Brown, *supra* note 7, at 143.

Regardless of intent, educators “systematically under-refer [Black, Latinx, and Indigenous]<sup>145</sup> students for gifted services.”<sup>146</sup> Behind teachers’ underidentification are biases that lead to deficit thinking and a failure to recognize giftedness cross-culturally.<sup>147</sup> Ford, Grantham, and Whiting define deficit thinking as “negative, stereotypical, and prejudicial beliefs about [Black, Latinx, and Indigenous] groups that result in discriminatory policies and behaviors or actions.”<sup>148</sup> In other words, teachers and school personnel continue to operate under the premise that Black, Latinx, and Indigenous students are cognitively inferior to White students.<sup>149</sup> Effectively, these are the contemporary iterations of the assumptions that eugenicists held about these same groups, such as the belief that students of certain racial and ethnic backgrounds, typically students of color, have “internal deficiencies, such as cognitive and/or motivational limitations, or shortcomings socially linked to the youngster—such as familial deficits and dysfunction.”<sup>150</sup> Because of the teacher or school personnel’s assumption that these students start at a deficit, they have “low expectations for them, feeling little to know obligation to assist them, and feeling superior to them.”<sup>151</sup> As Darity and Jolla write, “a presumption of black cognitive inferiority was [] embedded into the operations of the school system from the point when black children first began school.”<sup>152</sup> These biases remain commonplace in contemporary schooling, and a 2005 study by Elhoweris, Mutua, Alsheikh, and Holloway is illustrative of the issue.<sup>153</sup> There, teachers were given three vignettes of gifted students.<sup>154</sup> The only aspect that changed in the

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145. Ford et al., *supra* note 12, at 289 (Ford, Grantham, and Whiting use the term “Culturally and Linguistically Diverse” or “CLD” when speaking about “African American, Hispanic/Latino, and American Indian” students in gifted programs).

146. *Id.* at 295.

147. Ford et al., *supra* note 12, at 292; Darity & Jolla, *supra* note 7, at 103; GRISSOM & REDDING, *supra* note 15, at 3.

148. Ford et al., *supra* note 12, at 292.

149. *Id.*; Darity & Jolla, *supra* note 7, at 103.

150. Ford et al., *supra* note 12, at 292–93 (R. R. VALENCIA, *THE EVOLUTION OF DEFICIT THINKING: EDUCATIONAL THOUGHT AND PRACTICE* xi (1997)).

151. Ford et al., *supra* note 12, at 293.

152. Darity & Jolla, *supra* note 7, at 103.

153. Ford et al., *supra* note 12, at 296.

154. *Id.*

vignettes was the race of the student.<sup>155</sup> The researchers found that “elementary school teachers treated identical information contained in the vignettes differently and made different recommendations despite the fact that the student information was identical in all ways *except* for ethnicity.”<sup>156</sup> When teachers and school personnel rely on stereotypes and assumptions about Black, Latinx, and Indigenous students’ capabilities, they are less likely to be able to “see” or recognize those students’ potential, and thus, fail to recommend them for gifted programming.<sup>157</sup>

Furthermore, this effect may be exacerbated where teachers are not the same race or ethnicity as students.<sup>158</sup> The makeup of the public school system makes this even more likely: while 43% of public-school students are non-White, White teachers make up 83% of the teaching workforce.<sup>159</sup> Teachers may not recognize giftedness in students that are of a different race, conflating certain behaviors with an absence of giftedness and therefore overlooking gifted students because of cultural differences in behavior.<sup>160</sup> For example, a White teacher may assume a Black or Hispanic student is being disruptive without accounting for cultural differences, while similar behavior in a White student may be considered “precocity.”<sup>161</sup> As Oakes et al. observed, “Many explanations of intelligence grounded in culture or social deportment inevitable break down along racial lines to the point that African-American, Latino, and Native-American students must literally ‘act [W]hite’ in order to be perceived as intelligent by many of their teachers.”<sup>162</sup>

Secondly, the reliance on IQ and achievement testing disadvantages Black, Latinx, and Indigenous students and contributes to their underidentification in gifted programming.<sup>163</sup> While these tests have shown to be effective in identifying White middle-class students for gifted programming, they are less effective at identifying Black, Latinx,

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155. *Id.*

156. Ford et al., *supra* note 12, at 296 (citing H. Elhoweris et al., *The Effects of Children’s Ethnicity on Teachers’ Referral and Recommendation Decisions in Gifted and Talented Programs*, 26 REMEDIAL & SPECIAL EDUC. 25, 29 (2005)) (emphasis added).

157. See Brown, *supra* note 7, at 148; GRISSOM & REDDING, *supra* note 15, at 1–2.

158. GRISSOM & REDDING, *supra* note 15, at 2.

159. *Id.* at 15.

160. *Id.* at 3, 14.

161. *Id.* at 3.

162. Oakes et al., *supra* note 7, at 490–91.

163. Ford et al., *supra* note 12, at 294; OAKES, *supra* note 7, at 11–12.

and Indigenous students for these programs, *even* those students who have higher levels of socioeconomic status.<sup>164</sup> Minority students and impoverished students “consistently score lower than do [W]hites” on achievement and IQ tests.<sup>165</sup> This is particularly disconcerting considering the fact that these tests purport to measure “innate” abilities, yet there is *no* evidence that race actually is determinative of IQ.<sup>166</sup> The problem, then, arises from the biases of the tests.<sup>167</sup> Jeannie Oakes explains:

The substance of most standardized tests and procedures used to standardize and administer them are culturally biased. That is, [W]hite middle-class children are most likely to do well on them because of the compatibility of their language and experiences with the language and content of test questions, with the group against which the tests were normed, with testing procedures, with most of the adults doing the testing. Lower-class and minority youngsters are less likely to do well because of their language and experience differences.<sup>168</sup>

In other words, tests are “normed” to the experiences of White, middle-class students. The tests become “self-fulfilling prophecies,” appearing to “prove” the higher achievement and cognitive potential of White students while looking over that of non-White students, effectively because they do not share the experience of the “normed” culture.<sup>169</sup> While those administering the tests are no longer actively seeking to prove the intellectual inferiority of Black, Latinx, and Indigenous students, they continue to use the tools of those who *did*, and in utilizing their flawed methodologies, they continue to reproduce their biased results all while blind to the eugenicist architects’ original intents.<sup>170</sup>

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164. Ford et al., *supra* note 12, at 294.

165. OAKES, *supra* note 7, at 11.

166. *Id.*

167. *Id.*

168. *Id.*

169. *See id.*

170. *See id.*

## 2. The Comparative Overenrollment of White Students in Gifted Programming

At the same time that eugenicists' influence contributes to the underidentification of Black, Latinx, and Indigenous students, it also protects and privileges White students' access to gifted and advanced coursework. As previously mentioned, White students consistently outperform Black, Latinx, and Indigenous students on biased achievement and IQ tests.<sup>171</sup> This is unsurprising, considering that the impetus behind Goddard's creation of the IQ test was to create a tool to prove the biological and intellectual superiority of White people.<sup>172</sup> Accordingly, Goddard's and subsequent IQ tests have been normed to whiteness, increasing the likelihood that White students will be identified as gifted.<sup>173</sup> Additionally, at the same time that Black, Latinx, and Indigenous students are disadvantaged by stereotype and assumptions based on race and ethnicity, White students benefit from the more positive assumptions that associate whiteness with giftedness.<sup>174</sup> Even beyond these advantages, White students *also* benefit from social, cultural, and financial capital that facilitates their identification and enrollment in gifted programming.<sup>175</sup>

First, White parents can use their cultural and social capital to navigate the relationships with those who are responsible for gifted identification and enrollment.<sup>176</sup> Through these connections, White parents can glean information about requisite procedures for gifted education and enrollment, navigate the school system, and better direct their students' educational outcomes.<sup>177</sup> Darity and Jolla explain that "[a]ffluent [W]hite parents, in an act of blatant racial tribalism, are protecting turf for their own children . . . . Educators and teachers frequently can act as their de facto agents."<sup>178</sup> Rather than passively standing aside and allowing the schools to identify (or fail to identify) their students, White parents are more likely to take an active role,

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171. OAKES, *supra* note 7, at 11.

172. *See Echoes*, *supra* note 20, at 127.

173. *Id.* at 129; OAKES, *supra* note 7, at 11.

174. OAKES, *supra* note 7, at 11; Ford et al., *supra* note 12, at 295–96; *see Stark*, *supra* note 7; Staiger, *supra* note 7.

175. GRISSOM & REDDING, *supra* note 15, at 4.

176. *Id.*

177. GRISSOM & REDDING, *supra* note 15, at 4; Darity & Jolla, *supra* note 7, at 114.

178. Darity & Jolla, *supra* note 7, at 114.



coming alongside school personnel to ensure that their students are ultimately identified for gifted programming.<sup>179</sup>

Secondly, even beyond navigating the identification process itself, privileged White parents can access opportunities that ensure the likelihood of gifted enrollment.<sup>180</sup> Stark explains that privileged White parents are:

[A]ble to increase their child's intelligence in the early years through access to enrichment opportunities, learning materials, high-quality preschools and superior private or public schooling ... to be able to guarantee that their children will obtain the "gifted" label in order to access enrichment experiences and accompanying social and cultural capital unavailable to most students.<sup>181</sup>

Ironically, White parents' access to these enrichment opportunities that ensures students are identified only further disproves the idea that innate intelligence begets achievement; instead, White students are more likely to be identified because they have *already* been exposed to challenging, enriching academic experiences.<sup>182</sup>

Even in a system that already privileges the identification of White students as gifted, their parents are more likely to take an active role in the selection of their children for these programs.<sup>183</sup> Behind this "turf protection" is not only a pursuit of ensuring a label of giftedness but also the resources and privileges that come alongside the label.<sup>184</sup>

## E. ...To Racist Ends

Identifying students as gifted was not the ends but a means for the eugenicists; a larger goal was to allocate educational resources according to students' perceived abilities.<sup>185</sup> In the face of an influx of

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179. GRISSOM & REDDING, *supra* note 15, at 1, 4; Darity & Jolla, *supra* note 7, at 114.

180. Stark, *supra* note 7, at 402; *see* GRISSOM & REDDING *supra* note 15, at 1.

181. Stark, *supra* note 7, at 402.

182. *See* Stark, *supra* note 7, at 402; *see* GRISSOM & REDDING, *supra* note 15, at 1.

183. Stark, *supra* note 7, at 402–05.

184. *Id.* at 403, 405.

185. *See Echoes*, *supra* note 20, at 128.

non-White students into the public school system, White parents sought to preserve resources for their own children.<sup>186</sup> By maintaining the tracking practices implemented by the eugenicists, separating students according to “giftedness,” schools isolate students disproportionately along racial, ethnic, and class lines, and they continue to allocate resources accordingly.<sup>187</sup> As a result of this segregation and disparate resource distribution, schools continue to inflict upon students the very harms cautioned against in the landmark desegregation decisions of *Brown* and *Green*: *Brown* sought to end the inherent inequality and notions of inferiority denoted by racially segregated schools, while *Green* specifically cautioned against the maintenance of dual systems through the unequal allocation of resources within a district.<sup>188</sup> The practice of gifted tracking fails the mandate of *Brown* by inflicting socio-emotional harm upon and connoting the inferiority of Black, Latinx, and Indigenous students through segregative practice while also defying *Green*’s directive to uniformly allocated resources by disproportionately providing superior resources to gifted students while denying them to non-White pupils.<sup>189</sup>

### 1. Tracking as a Failure under *Brown*

Despite the absence of any express intent by contemporary schools to inflict harm on Black, Latinx, and Indigenous students, racial segregation through gifted tracking continues to inflict socio-emotional harms on these groups.<sup>190</sup> Having been built upon the premise of the superiority of White Anglo-Americans and the inferiority of virtually all others, it is no surprise that the contemporary system of gifted tracking continues to perpetuate these racist ideas and the resulting harms.<sup>191</sup> In doing so, tracking practices inflict the very socio-emotional

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186. *Id.* at 126.

187. Stark, *supra* note 7, at 403; OAKES, *supra* note 7, at 6.

188. *Brown v. Board of Educ.*, 347 U.S. 483, 494 (1954); *Green v. Cty. Sch. Bd.*, 391 U.S. 430, 435 (1968).

189. Staiger, *supra* note 7, at 161–62; Stark, *supra* note 7, at 403.

190. Darity & Jolla, *supra* note 7, at 108–09; Staiger, *supra* note 7, at 162.

191. See Winfield, *supra* note 13, at 3 (citing ELLWOOD P. CUBBERLY, PUBLIC EDUCATION IN THE UNITED STATES: A STUDY AND INTERPRETATION OF AMERICAN EDUCATIONAL HISTORY (1934)); Darity & Jolla, *supra* note 7, at 108–09; Staiger, *supra* note 7, at 161–62.

harms that *Brown* declared unjust and unacceptable in the nation's schools.<sup>192</sup>

The *Brown* Court insisted that “where the state has undertaken to provide [education], it is a right which must be made available to all on equal terms.”<sup>193</sup> The segregation of students by race, even *absent* inequality of “tangible” factors “deprive[s] the children of the minority group of equal educational opportunities.”<sup>194</sup> Separating students by 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.”<sup>195</sup> The Court adopted the explanation of the Kansas district judge, explaining:

Segregation denot[es] the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system.<sup>196</sup>

Supporting their decision on the basis of contemporary psychological findings of the negative socio-emotional impacts of segregating schools, the Court held that “in the field of public education the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.”<sup>197</sup> Setting aside the merits of *Brown*'s psychological underpinnings, the *Brown* Court justified its holding of the inherent inequality of separate education based on the implicit messages that segregated spaces convey to students about the inferiority and superiority of certain races.<sup>198</sup> The disproportionate identification of students for gifted programming along racial and ethnic lines creates

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192. *Brown*, 347 U.S. at 494; Staiger, *supra* note 7, at 161–62.

193. *Brown*, 347 U.S. at 493.

194. *Id.*

195. *Id.* at 494.

196. *Id.*

197. *Id.* at 494–95.

198. *Id.* at 494.

segregated spaces that continue to convey the messages that *Brown* held to be so unjust and harmful to students.<sup>199</sup>

While the origin of ability tracking arose out of virtually the same attitudes of White superiority that led to de jure segregation prohibited in *Brown*, gifted tracking has maintained its legitimacy as a practice by employing the race-neutral language of giftedness.<sup>200</sup> Despite employing race-neutral language, present-day tracking continues to convey the very messages about race that *Brown* sought to disrupt.<sup>201</sup> The disproportionate underidentification of Black, Latinx, and Indigenous students serves to reinforce the “past ideologies of imposed superiority,” which then continues to perpetuate and reinforce stereotypes of those groups.<sup>202</sup> Students are often cognizant of the racial and ethnic isolation tracking creates, and they internalize the implied messages of racial inferiority (for Black, Latinx, and Indigenous students) and superiority (for White students) that correspond with their exclusion.<sup>203</sup> Oakes describes the messaging that bifurcation conveys as a binary—gifted students are seen as “bright, smart, quick, and in the eyes of many, good,” while those not identified as gifted “come to be called slow, below average, and—often when people are being less careful—dummies, swathogs, or yahoos.”<sup>204</sup> Research has established that “students in schools with a ‘bifurcated curriculum’ internalize the ‘hierarchical labels’ that are placed on them,” which impacts students’ motivation.<sup>205</sup> In these bifurcated schools, those who are not identified as gifted have expressed a “sense of exclusion, unfairness, and implied inferiority.”<sup>206</sup>

Darity and Jolla describe this phenomenon with respect to Black students, writing, the exclusion of Black students from G&T curricula “reinforces deeply held beliefs about [B]lack cognitive and cultural inferiority. It gives aid and comfort and seemingly conforming evidence to those who believe that racial academic disparities can be explained by [B]lack genetic endowments or by [B]lack collective cultural

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199. Darity & Jolla, *supra* note 7, at 108–09; Staiger, *supra* note 7, at 161–62.

200. *See* Staiger, *supra* note 7, at 174.

201. *See* Darity & Jolla, *supra* note 7, at 108–09; *See* Staiger, *supra* note 7, at 161–62.

202. Brown, *supra* note 7, at 139.

203. Darity & Jolla, *supra* note 7, at 108; Staiger, *supra* note 7, at 163.

204. OAKES, *supra* note 7, at 3.

205. Staiger, *supra* note 7, at 162.

206. *Id.* at 179.

dysfunctionality.”<sup>207</sup> Furthermore, “[t]he exclusion of [B]lack students from G&T curricula makes race-thinking become racist-thinking. The pattern of classroom assignment itself can construct an equation between being [B]lack and being an inferior student, particularly in [W]hite students’ minds.”<sup>208</sup>

To further illustrate the issue, Annegret Staiger conducted a study to examine the attitudes on race and giftedness in a gifted magnet program within a larger school.<sup>209</sup> There, the magnet program was almost exclusively White, while the regular program consisted of predominantly Asian-Americans, Latinx, and Black students.<sup>210</sup> Staiger’s findings supported prior researcher’s conclusions that “schools-within-schools are . . . likely to intensify the psychological damage that segregated schools had on minority children and that *Brown v. Board of Education* was supposed to overcome.”<sup>211</sup> Staiger found that the “racial stratification between [the] GT magnet program and the regular high school” created “feelings of superiority and inferiority related to which program they were placed in, and since the GT program was mostly [W]hite, school staff equated giftedness with whiteness.”<sup>212</sup> She noted that the school-within-a-school phenomenon “may have exacerbated the ‘badge of inferiority’ that was the mark of segregation.”<sup>213</sup> Teachers also used coded language that conveyed not only the inferiority of non-gifted students but also a sense of threat from them.<sup>214</sup> Staiger noted a pattern of teachers and guidance counselors who would speak of the need for “protection” of gifted students from the “danger” non-gifted students, denoting “a colorblind codework that cloaked whiteness/giftedness in victim status, but not without being transparent to students.”<sup>215</sup>

The detrimental impacts on Black, Latinx, and Indigenous students’ psyches are not limited to students who are excluded from

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207. Darity & Jolla, *supra* note 7, at 108.

208. *Id.* at 109; Brown, *supra* note 7 (discussing this “pernicious status-perpetuating practice”).

209. Staiger, *supra* note 7.

210. *Id.*

211. *Id.* at 161–62.

212. *Commentary*, *supra* note 19.

213. Staiger, *supra* note 7, at 180.

214. *Id.* at 170, 179.

215. *Id.*

programming.<sup>216</sup> Even where these students are identified for gifted programming, they often experience “feelings of isolation from educators and/or classmates, the majority of whom are likely to be White.”<sup>217</sup> This may lead Black, Latinx, and Indigenous students to leave gifted programming or to avoid matriculation in the first place.<sup>218</sup> Darity and Jolla speak to this phenomenon of self-defeating behavior on the part of Black students; these students are “bedeviled by a culturally based ‘burden of acting [W]hite.’”<sup>219</sup> When Black students *are* enrolled in gifted or advanced coursework within largely segregated programs, they “may be subjected to the charge by their [B]lack peers that they are trying to be [W]hite.”<sup>220</sup> These students experience dual alienation, as they are subject to ridicule by their Black peers for their proximity to whiteness in gifted education while they are simultaneously isolated from their white peers within their program.<sup>221</sup> Notably, where there is a “critical mass of [B]lack students in the high-level curriculum,” this burden and ridicule is absent.<sup>222</sup>

Thus, biased methods of gifted identification create a self-perpetuating cycle that assumes the inferiority of Black, Latinx, and Indigenous students, segregates them by race and ethnicity, and then impliedly reinforces that message of inferiority to students and schools when it becomes apparent that the gifted track is largely populated by White students.<sup>223</sup> This message of inferiority is harmful not only to Black, Latinx, and Indigenous students, but it also foments prejudicial attitudes among White students towards their peers.<sup>224</sup> By perpetuating these myths of innate inferiority and superiority, tracking continues to fulfill its eugenic design to maintain White supremacy and continues to inflict the very harms *Brown* sought to eliminate in schools.

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216. Darity & Jolla, *supra* note 7, at 108; Ford et al., *supra* note 12, at 291–92.

217. Ford et al., *supra* note 12, at 292.

218. *Id.* at 291; *see* Darity & Jolla, *supra* note 7, at 109–10; *see also* Jacquelyn Ortner, *The Underrepresentation of Black Males in Advanced Courses* 81–88 (forthcoming 2022) (Ed.D. dissertation, University of South Carolina) (on file with author) (finding that, in a case study of Black males at an urban high school, “Most of the participants were acutely aware that they were in a disproportionately small minority in their advanced coursework. They recounted several ways that their experiences made them feel like the odd ones out.” *Id.* at 81).

219. Darity & Jolla, *supra* note 7, at 108.

220. *Id.* at 109.

221. Ford et al., *supra* note 12, at 291–92.

222. Darity & Jolla, *supra* note 7, at 110.

223. *Id.* at 108; Staiger, *supra* note 7, at 163; Ford et al., *supra* note 12, at 291.

224. Darity & Jolla, *supra* note 7, at 109.

## 2. *Tracking as a Failure under Green*

While the *Brown* opinion focused on the inherent inequalities of separation according to race, *Green* placed an affirmative burden on districts to create uniform schools that did not allocate resources disproportionately on the basis of race.<sup>225</sup> There, the Court clarified that *Brown II* “call[ed] for the dismantling of well-entrenched dual systems,” and that “state-compelled dual systems were nevertheless clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch.”<sup>226</sup> To evaluate the extent to which a system had become unitary, a court should evaluate what became known as the *Green* factors, and look “not just to the composition of student bodies at the two schools but to every facet of school operations—faculty, staff, transportation, extracurricular activities and facilities.”<sup>227</sup> The Court thus reasserted concern not only about the inherent inequality in the segregation of students by race but also about the apportionment of resources in a way that created dual systems of schools.<sup>228</sup>

By design, gifted tracking creates the very kind of dual system of education prohibited by *Green*. Just as the eugenicists intended, the quality of education students receive is dependent on the track they are on, with more rigorous, engaging education provided to students identified as gifted and less stimulating education provided to non-gifted students.<sup>229</sup> A student’s education track is a determinant of the quality of education students receive, impacting aspects from curricula, quality of teachers, classroom environment, to funding.<sup>230</sup> The difference is not merely the presence of a “certain kind” of education or instructional strategy necessary for gifted students; students who are not enrolled in gifted or advanced coursework receive inferior education

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225. *Green v. Cty. Sch. Bd.*, 391 U.S. 430, 437–38 (1968) (“School boards such as the respondent then operating state compelled dual systems were nevertheless clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch.”).

226. *Id.* at 437–38.

227. *Id.* at 435.

228. *Id.*

229. Stark, *supra* note 7, at 403; GRISSOM & REDDING, *supra* note 15, at 3.

230. OAKES, *supra* note 7, at xi, 78; Chatterji et. al., *supra* note 7.

and resources compared with their peers on gifted tracks.<sup>231</sup> Students on non-gifted tracks have larger class sizes, less rigorous curricula, and lower teacher expectations.<sup>232</sup> Concerningly, they are also provided “fewer and lower-quality books, curriculum materials, laboratories and computers; [and] less qualified and experienced teachers.”<sup>233</sup> Additionally, their teachers spend more time on discipline and less time on instruction.<sup>234</sup> Curiously, while many parents may assume that behavior problems are innate to the lower-tracked students, research shows that tracking can *contribute* to behavior and discipline issues.<sup>235</sup> By contrast, students on the gifted tracks have “access to high-status knowledge, engaging lessons and positive classroom climates and relationships.”<sup>236</sup>

Furthermore, the denial of access to advanced curriculum can impact students’ future success in college and even their financial burdens in higher education.<sup>237</sup> Students in AP classes have “higher standardized test scores, higher college attendance rates, higher college grades, reduction in college dropout rates, . . . and higher college graduation rates.”<sup>238</sup> Students who take AP English in high school demonstrate stronger writing skills in college.<sup>239</sup> Importantly, students from underrepresented groups, perform better in higher education if they have participated in AP coursework.<sup>240</sup> Research has shown that access to AP credits can decrease the amount of time that students take to earn their college degree and can reduce the amount of debt they leave college with: students who start college with “approximately 10 hours of AP credit had \$1000 less debt on average.”<sup>241</sup> This is particularly important for Black, Latinx, and Indigenous students, who are more

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231. See Darity & Jolla, *supra* note 7, 103–08; OAKES, *supra* note 7, at xi; Chatterji et al., *supra* note 7; Stark, *supra* note 7, at 403.

232. Stark, *supra* note 7, at 403; Staiger, *supra* note 7, at 169.

233. Stark, *supra* note 7, at 403 (citing Lo. Darling-Hammond & L. Post, *Inequality in Teaching and Schooling: Supporting High-Quality Teaching in Low Income Schools*, in *A NATION AT RISK: PRESERVING PUBLIC EDUCATION AS AN ENGINE FOR SOCIAL MOBILITY* 127 (2000)).

234. Stark, *supra* note 7, at 403.

235. OAKES, *supra* note 7, at 9.

236. Stark, *supra* note 7, at 403.

237. Chatterji et al., *supra* note 7.

238. *Id.*

239. *Id.*

240. Darity & Jolla, *supra* note 7, at 106.

241. Chatterji et al., *supra* note 7.



likely to be burdened by student loans.<sup>242</sup> Furthermore, students who have access to *any* kind of advanced coursework, including AP, International Baccalaureate, or dual enrollment classes, fare better in their post-secondary education.<sup>243</sup>

Effectively, the track a student is on is determinative of their future. Not only is a student who is not identified as gifted less likely to have high-quality teachers, updated classroom technology, or stimulating enrichment, but they are also less likely to be able to move up in social status *or* coursework level after their initial track has been set. In fact, Darity and Jolla identify this denial of opportunity to advance as “programmed retardation,” which is “that nexus of educational ‘policies, programs and instructional practices designed to guarantee educational failure.’”<sup>244</sup> Racialized tracking thus leads to a “closed system,” which itself contributes to the racial achievement gap.<sup>245</sup> Most students are identified and tracked at an early age, and this identification determines their educational trajectory far beyond elementary school.<sup>246</sup> Access to more rigorous coursework subsequently *improves* outcomes on achievement tests.<sup>247</sup> Thus, by denying students on lower tracks the opportunity to take more rigorous coursework, and doing so early on in their education, students are less likely to be able to ever move up to higher level coursework.<sup>248</sup>

In sum, this achievement gap is, of course, by *design*. The eugenicist vision for schools was one where students would receive only the amount of education necessary according to a eugenicist, racialized perception of intelligence.<sup>249</sup> Goddard, Terman, and Thorndike intentionally created a dual educational system that would provide White, Anglo-Saxon students with more “academic,” rigorous coursework so that they could reach their potential as leaders while providing non-White students with only the limited education necessary

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242. *Id.*

243. *Id.*

244. Darity & Jolla, *supra* note 7, at 108 (citing Floyd Hayes, *Programmed Retardation*, in INT’L ENCYCLOPEDIA SOC. SCI. 525 (William Darity, Jr. ed., 6<sup>th</sup> ed. 2008).

245. Darity & Jolla, *supra* note 7, at 110.

246. *Id.* at 107.

247. *Id.* at 106.

248. Stark, *supra* note 7, at 403.

249. *Echoes*, *supra* note 20.

to become semi-skilled or unskilled workers.<sup>250</sup> By institutionalizing their vision through the widespread use of IQ testing and tracking, the eugenicists have created a long-standing dual-system of education that continues to defy the mandate of *Green* long after the Court tasked schools with ensuring equity in “every facet of . . . operations.”<sup>251</sup>

## II. THE TRAGEDY OF TRACKING: UNNECESSARY AND UNSCIENTIFIC

Regardless of the harms that gifted tracking inflicts upon Black, Latinx, and Indigenous students, the practice remains widely accepted as a legitimate pedagogical method. However, despite the common conception that gifted students should be separated from their “non-gifted” peers and taught separately, there is virtually no benefit to separating high-achieving students from their peers or the practice of homogeneous grouping, more generally.<sup>252</sup> Furthermore, tracking operates under the presumption that how a student performs or acts at one point in time is determinative of their future performance and that students who perform higher at a specific point in time deserve more rich and rigorous curricula than students who did not perform as well at that time.<sup>253</sup> This presumption, grounded in eugenic thought, enables affluent White parents to maintain their privileges through the guise of meritocracy.<sup>254</sup> However, this assumption depends on a notion of fixed intelligence, and the entire process becomes a self-fulfilling prophecy.<sup>255</sup> Contemporary research on intelligence does not support the idea that intelligence is stable and fixed, but rather “developmental” and fluid in nature. Accordingly, students who are exposed to a rich, engaging curriculum have better educational outcomes as a result.<sup>256</sup> By only providing this more rigorous curricula to students who are already performing well, schools are cutting off the potential for growth that

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250. OAKES, *supra* note 7, at 33–37.

251. *Green v. Cty. Sch. Bd.*, 391 U.S. 430, 435 (1968).

252. OAKES, *supra* note 7, at 7, 9; Rui, *supra* note 16, at 168; Potter & Burris, *supra* note 22.

253. Oakes et al., *supra* note 7, at 485–86, 492.

254. *Id.* at 485, 498.

255. See Adey, *supra* note 17, at 202; Oakes et al., *supra* note 7, at 492.

256. Darity & Jolla, *supra* note 7 at 106, 108; Oakes et al., *supra* note 7, at 493; Adey, *supra* note 17, at 202.

students who did not initially meet criteria for the gifted track, thereby *exacerbating* gaps in achievement.<sup>257</sup>

### A. Absence of Data to Support Tracking as a Pedagogical Tool

A foundational concept of gifted education and tracking is the idea that gifted students have “exceptional or special needs” beyond those of the general population of students, and the best method of addressing these needs is to teach students identified as gifted in a setting where they are homogeneously grouped.<sup>258</sup> These assumptions echo the eugenicist vision of schools that would limit resources by providing gifted students with more enriching education for their futures as skilled workers and leaders and limit the education of inferior classes and races to only that necessary for their lives as laborers.<sup>259</sup> Justifications for homogeneous grouping include the idea that students learn better with those who are similar to them, that those who are “bright” or “advanced” will be delayed if they are in heterogenous groups, and that those who learn more slowly will get lost and not be able to keep up with other students if they are not taught in isolation.<sup>260</sup> However, research shows that these assumptions, though “almost universally held, [are] simply not true.”<sup>261</sup>

Despite being in place for over one hundred years, there is still no evidence that homogenous grouping is advantageous to high-achieving students. In fact, “virtually mountains of research indicat[e] that homogeneous grouping doesn’t consistently help *anyone* learn better.”<sup>262</sup> In a meta-analysis of fifteen studies conducted from 1976 to 2006, Ning Rui found that for average and high-achieving students, detracking from homogeneous to heterogeneous grouping had “no appreciable effects on achievement, on average.”<sup>263</sup> Despite hundreds of studies over the years, there is simply no evidence to support the practice

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257. Oakes et al., *supra* note 7, at 492; Darity & Jolla, *supra* note 7, at 108; Adey, *supra* note 17, at 202.

258. Ford et al., *supra* note 12, at 290.

259. *Echoes*, *supra* note 20, at 128.

260. OAKES, *supra* note 7, at 6–7.

261. *Id.* at 7.

262. *Id.* at 7.

263. Rui, *supra* note 16, at 168.

as being advantageous.<sup>264</sup> It follows that tracking is by no means necessary for higher achieving students to realize successful educational outcomes, and it does not appear to even be particularly beneficial.<sup>265</sup> Thus, the idea that advanced students will be delayed if they are taught in heterogenous groups is simply unsupported.

Furthermore, some proponents of homogenous grouping argue that non-gifted or “slower” learners will feel negatively about themselves and be more likely to fall behind when they are taught alongside their more advanced peers.<sup>266</sup> However, Rui’s meta-analysis found that de-tracking had *positive* effects on low-achieving students.<sup>267</sup> Additionally, instead of creating a more supportive environment for lower tracked students, homogenous grouping has the opposite effect on students in lower tracks.<sup>268</sup> As previously discussed, Black, Latinx, and Indigenous students experience socio-emotional harm as a result of their isolation through tracking, but, even more broadly, students feel lower self-esteem as a result of enrollment on the lower track.<sup>269</sup> They also tend to have “lower aspirations and more often . . . have their plans for the future frustrated.”<sup>270</sup>

Considering the absence of any meaningful impact on achievement for high tracked students and the harm that the practice does to lower-tracked ones, it is virtually indefensible to maintain that gifted students *must* be segregated and taught in isolation while their non-gifted peers bear the harms that result from tracking.

## B. The Myth of Fixed Intelligence

At the heart of gifted tracking is the idea that there exist certain students who are innately gifted, and this exceptionality is so fixed that there are reliable methods of detecting its presence in some students and its absence in others.<sup>271</sup> This idea of detectability of an innate giftedness is dependent on a notion of fixed intelligence based on biological

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264. OAKES, *supra* note 7, at 7.

265. See Rui, *supra* note 16, at 169.

266. OAKES, *supra* note 7, at 7–9.

267. *Id.*

268. See *supra* notes 186–251 and accompanying text; OAKES, *supra* note 7, at 8.

269. OAKES, *supra* note 7, at 8.

270. *Id.*

271. See OAKES, *supra* note 7, at 8–10; Oakes et al., *supra* note 7, at 485, 489, 492; Adey, *supra* note 17, at 205–12.

determinism: students have a “pre-determined capacity” for learning, and that ability or lack thereof is “inborn, stable, and unlikely to be altered by school.”<sup>272</sup> In doing so, White parents are able to maintain the appearance that their students *deserve* to be placed in programming particular to their needs.<sup>273</sup> However, this flawed conception of intelligence does not fit with contemporary understandings of intelligence or neuroplasticity and unjustifiably excludes students from beneficial resources and instructional strategies.<sup>274</sup> Thus, even where states adopt a definition of giftedness that identifies students with the “potential” for advanced achievement, they necessarily exclude other students, sending the message that only *some* students even have the *potential* to reach advanced levels of achievement.<sup>275</sup> In doing so, schools unjustly withhold meaningful instruction from students under the assumption that because they had not, at a given point in time, reached a given level of achievement, they do not deserve complex curricula.<sup>276</sup> This withholding is particularly unjust because there is evidence that when schools *do* seek to expand access to enriching and rigorous curricula, students see improved educational outcomes.<sup>277</sup>

Jeannie Oakes, a long-time advocate for detracking, and her colleagues explain that the biological determinist view of fixed intelligence overlooks the social constructedness of intelligence.<sup>278</sup> Hereditary traits do not determine intelligence, as the eugenicists held, but rather, “the process of knowledge construction proceeds from and is fundamentally shaped by the cultural and political context in which that process takes place.”<sup>279</sup> The concept of intelligence arose not out of “the tradition of scientific inquiry (as we often believe), but in the formation of this ideology of biological determination, which guarantees the creation of a stratified society (haves and have-nots) and the

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272. Oakes et al., *supra* note 7, at 488, 492; Adey, *supra* note 17, at 199.

273. Oakes et al., *supra* note 7, at 486.

274. Darity & Jolla, *supra* note 7, at 108; Judy Willis, *Building a Bridge from Neuroscience to the Classroom*, 89 PHI DELTA KAPPAN 424, 426 (2008); Oakes et al., *supra* note 7, at 492.

275. See STATE BD. OF EDUC., *Gifted and Talented Education Overview*, S.C. DEP'T. OF EDUC. (June 1, 2017); Adey, *supra* note 17, at 202; Oakes et al., *supra* note 7, at 492.

276. Adey, *supra* note 17, at 202.

277. Darity & Jolla, *supra* note 7, at 108; see also Oakes et al., *supra* note 7, at 492.

278. Oakes et al., *supra* note 7, at 483–84.

279. *Id.*

legitimation of that stratification process.”<sup>280</sup> The processes by which intelligence has been legitimized, and intelligence testing, in particular, have given the *appearance* of scientific legitimacy to the biological determinist view of fixed intelligence, but this concept has always been a socially constructed means of ensuring those in power appear to “deserve” it.<sup>281</sup> Relying on a social system based in meritocracy—the idea that people have what they earn and deserve—those in power can maintain the fairness of receiving the unique resources allocated to gifted students is “fair” because of their innate and fixed intelligence.<sup>282</sup> As Oakes et al. explains:

[T]he ideology of intelligence is enlisted to make the particular cultural capital (or ways of knowing) of the [W]hite and wealthy seem not only more valuable than others, but also the marker of biologically determined ability. This definition of intelligence is reified in the form of standardized tests that measure students’ acquisition of this particular cultural capital. This measurement of ‘ability’ provides students from [W]hite and wealthy families with considerable advantage, but under the guise of their ‘natural’ abilities, not as a function of their social location.<sup>283</sup>

In other words, the eugenicists’ scheme to maintain the power and status of [W]hite students and families through the use of gifted tracking has continued to work exactly as they intended.<sup>284</sup>

However, despite the long-standing acceptance of fixed intelligence as a legitimate and scientific explanation of human ability, contemporary research has revealed a new understanding that belies the myth of fixed intelligence.<sup>285</sup> Out of these findings has emerged a picture of intelligence that is flexible and “developmental.”<sup>286</sup> Human intelligence is not innate, but rather “acquired as a product of

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280. *Id.* at 486.

281. Oakes et al., *supra* note 7, at 485–86; OAKES, *supra* note 7, at 9; see Stark, *supra* note 7, at 398, 408.

282. Oakes et al., *supra* note 7, 485.

283. *Id.* at 486.

284. FACING HIST., *supra* note 20, at 68; see Winfield, *supra* note 13, at 94, 103.

285. Oakes et al., *supra* note 7, at 488, 493.

286. *Id.* at 492; Darity & Jolla, *supra* note 7, at 108.

experiences and social interactions over time, and *alterable* in social institutions such as school.”<sup>287</sup>

Carol Dweck has become an authoritative voice on the plasticity of students’ potential for learning.<sup>288</sup> Dweck has revealed, through her research, that while students’ potential for learning is not inherently fixed, the *perception* that it is can preclude academic growth.<sup>289</sup> When students believe that their ability is fixed, that “there is not much they can do to become smarter, that there is little point in working harder or making any effort to improve their thinking abilities,” then they see little growth.<sup>290</sup> Conversely, students who believe that “by making an effort and meeting challenges head-on” they will see success are more likely to grow and improve.<sup>291</sup> As Philip Adey writes, “if both the teacher and the child believe that intelligence is more or less fixed, then fixed it will be.”<sup>292</sup> Thus, by *operating* under the assumption that students’ mindsets are fixed, schools are likely precluding students’ growth. As Adey laments,

One of the dangers, even subconsciously, the belief that there is not much we can do about a child’s fundamental ability is that it becomes self-fulfilling. If we assume that the bottom set can not cope with difficult ideas, and keep everything simple for them to manage with little effort, we are robbing them of the opportunity to grow intellectually.<sup>293</sup>

What may be even more dangerous and unjust, at that, is the assumption that achievement is a prerequisite for access to rigorous, complex material, while the inverse is true. Research shows that access to rigorous, complex material *facilitates* achievement.<sup>294</sup> Darity and

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287. OAKES, *supra* note 7, at 492.

288. Adey, *supra* note 17, at 202; *see generally* DWECK, *supra* note 17.

289. Adey, *supra* note 17, at 202.

290. *See id.* at 202; Christine Gross-Loh, *How Praise Became a Consolation Prize*, ATLANTIC (Dec. 16, 2016), <https://www.theatlantic.com/education/archive/2016/12/how-praise-became-a-consolation-prize/510845/>.

291. *See* Adey, *supra* note 17, at 202; Gross-Loh, *supra* note 290.

292. Adey, *supra* note 17, at 202.

293. *Id.*

294. Darity & Jolla, *supra* note 7, at 108.

Jolla call this the enrichment effect: the “intellectual gain from exposure to more challenging and interesting content and the development of critical thinking skills.”<sup>295</sup> In other words, schools are likely rewarding students who already had access to challenging learning and advanced curricula with more advanced curricula, assuming that it was the students’ innate ability rather than their training or access to resources that produced the achievement. Other students who simply did not have access or opportunity for more complex instruction are thus doubly excluded from the potential for growth.

Darity and Jolla’s enrichment effect is illustrated by the example of a program implemented at Southwest Elementary school in Durham, North Carolina.<sup>296</sup> Head principal David Snead, a [W]hite male, observed a “disproportionally and absolutely small number of [B]lack students” in the school’s gifted program.<sup>297</sup> In 1997–1998, prior to Snead’s arrival as principal, “98% of the [W]hite students in the school had been G&T identified, while only 7% of the [B]lack students had been. The school’s overall student body was about 30% [W]hite and 70% [B]lack.”<sup>298</sup> Snead identified this issue as “indirect segregation,” recognized that teachers were often the gatekeepers to students’ identification and success, and sought out to remedy the inequity.<sup>299</sup> He instituted a program based on “nurturing giftedness,” “based upon the idea that exposure to rigorous academic courses will lift student expectations and improve student performance, thus increasing test scores.”<sup>300</sup> The school offered an “exploratory guest program,” which allowed students who were not quite eligible to be identified as gifted to enroll in the gifted courses, and the coursework was not modified in any way.<sup>301</sup> These students were disproportionately Black.<sup>302</sup> Snead also insisted on lifting the “expectancy level” of teachers and argued that “all students can succeed regardless of socioeconomic or racial/ethnic background.”<sup>303</sup> He trained teachers in diversity and created an environment where every student was guaranteed “100% of the staff’s

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295. *Id.*

296. *Id.* at 110–12.

297. *Id.*

298. *Id.*

299. *Id.*

300. *Id.* at 111.

301. *Id.*

302. *Id.*

303. *Id.*



efforts.” Finally, he also brought in a tutor for first-grade reading and math and modified class schedules to allow for End of Grade mock exams.<sup>304</sup> The fruits of his efforts were remarkable:

In 1999–2000, 41% of Southwest’s fifth-grade [B]lack student did not pass the state’s reading test, in comparison with 12% of the [W]hite students, and 23% of the [B]lack students did not pass the state’s mathematics test in comparison with 9% of the [W]hite students. By 2002–2003, only 10% of both the [B]lack and [W]hite students did not pass the reading test and less than 3% of both [B]lack and [W]hite students did not pass the mathematics test. Southwest Elementary had virtually eliminated the racial achievement gap by eliminating the racial instructional gap.<sup>305</sup>

By increasing the expectations of *all* students and by working to adjust the biased expectations along racial lines, Snead was able to transform the educational outcomes for his students.

While there is no data to support homogenous grouping, there *is* evidence that students have flexible minds that can respond to challenging, engaging material in a way that improves their academic outcomes. Furthermore, while there is no evidence that homogeneous grouping benefits students, there *is* evidence that the practice isolates students, resegregates them by race and ethnicity, inflicts socio-emotional harm on them, and denies students who could otherwise see potential the opportunity to enroll in classes with more stimulating curricula. It is time, then, to consider the end of tracking.

### III. RECOMMENDATION: DETRACK AND EXPAND ACCESS TO ENRICHING CURRICULA

Plainly stated, gifted tracking was intentionally designed to ensure that White students received the highest quality of public education and

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304. *Id.* at 111–12.

305. *Id.* at 112.

deliver superior instruction segregated from non-White students.<sup>306</sup> Faced with an influx of diverse students in public schools, educational psychologists were able to institutionalize their eugenicist goals by implementing IQ testing, normed to White culture, to give legitimacy to separating those who they deemed gifted and withhold more complex, enriching education from the “morons” and feebleminded, those who were *not* White Anglo-Saxons.<sup>307</sup> While the *overt* racism of the eugenicists’ original language regarding giftedness remains largely a relic of history, the harms that gifted tracking inflicts upon Black, Latinx, and Indigenous students remain racist and inequitable by the nature of the practice.<sup>308</sup> Despite these harms, tracking maintains an appearance of a legitimate pedagogical tool, all while it is unnecessary and based in a flawed understanding of intelligence.<sup>309</sup> While many advocates for gifted children, acknowledging its inequities, argue that there are means of preserving the practice of tracking while widening the gates to expand access to gifted programming, the practice is simply unjustifiable.<sup>310</sup> Instead of tracking students according to biased, unreliable, and pseudoscientific methods, schools should adopt policies that embrace heterogenous grouping and expand gifted education to all students.<sup>311</sup>

Education scholars are no strangers to the issue of comparative underenrollment of students of color and impoverished students in gifted education and advanced coursework.<sup>312</sup> The suggested remedies to inequity in gifted tracking primarily have focused on expanding the identification of gifted persons,<sup>313</sup> either by implementing universal screening and thereby eliminating more subjective aspects of

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306. OAKES, *supra* note 7, at 16–20; FACING HIST., *supra* note 20, at 68; *see* Winfield, *supra* note 13, at 94, 103.

307. *See supra* notes 55–140 and accompanying text.

308. *See supra* notes 186–256 and accompanying text.

309. *See* discussion *supra* Part III.

310. *See Commentary, supra* note 19; *Tracking, supra* note 19; Stark, *supra* note 7, at 409; Rui, *supra* note 16, at 165.

311. *Commentary, supra* note 19; *Tracking, supra* note 19; Stark, *supra* note 7, at 406; Oakes et al., *supra* note 7, at 505.

312. Peters et al., *supra* note 18; Rui, *supra* note 16, at 165 (noting that Jeannie Oakes’s publication *Keeping Track: How Schools Structure Inequality* addressed the inequities along racial and social lines in 1985).

313. Ford et al., *supra* note 12, at 292; Peters et al., *supra* note 18, at 3.

identification such as teacher-led identification<sup>314</sup> or by reconsidering what giftedness means.<sup>315</sup> Advocates for expanding identification emphasize the need to “find and support greater numbers of high-performing students,” emphasizing their perception that inequities lie with the failure to identify students who already have some innate talent that is yet to be discovered.<sup>316</sup> They argue that failure to identify gifted students has resulted in “withholding much-needed support from young people who might have made important contributions to our economy, culture, and society at large.”<sup>317</sup> Lamentably, these advocates for expanding gifted identification establish the problem as a failure to mine students for the potential resources they would offer to the workforce, rather than identifying the issue as a failure to provide an equitable education *to* students. These arguments echo the eugenicist vision of “children . . . as the raw material of a new State; the schools as the nursery of the nation.”<sup>318</sup> Advocates of gifted tracking maintain that separating students from the general education classroom is a system worth preserving, assuming that expanding access will resolve the present harms.<sup>319</sup> However, as Stark explains, “[T]he move toward a more equitable, culturally relevant and holistic definition of gifted education does not guarantee that these models will change in practice. Instead, pluralistic and multicultural models of gifted education risk reproducing the earlier, racialized discourse on the nature of giftedness.”<sup>320</sup> The suggestion of expanding access to gifted tracks fails to acknowledge that there is simply no *need* to isolate students by gifted or non-gifted status, and there are effective pedagogical practices that will provide *all* students with access to education that will support their achievement.

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314. Wai & Worrell, *supra* note 18; Potter & Burris, *supra* note 22; Dante D. Dixon et al., *A Call to Reframe Gifted Education as Maximizing Learning*, PHI DELTA KAPPAN (Nov. 23, 2020), <https://kappanonline.org/call-reframe-gifted-education-maximizing-learning-dixon-peters-makel/>.

315. Dixon et al., *supra* note 314; Peters et al., *supra* note 18, at 3–6.

316. Wai & Worrell, *supra* note 18.

317. *Id.*

318. *Echoes*, *supra* note 20, at 126.

319. *See Commentary*, *supra* note 19 (Scholars “do not suggest changing the practice of sorting students into gifted and non-gifted categories in the first place.”).

320. Stark, *supra* note 7, at 407.

Rather than preserve a fundamentally flawed system, schools should eliminate tracking entirely and implement heterogenous grouping, providing a substantive curriculum to *all* students. Provided the appropriate resources, heterogenous grouping is an effective and appropriate means of ensuring student success.<sup>321</sup> While advocates for gifted tracking have argued that gifted students need unique instructional strategies, the methodologies adopted in gifted education are, in fact, advantageous for all students.<sup>322</sup> By exposing *all* students to an “engaging and substantive” curriculum, students are more likely to “master complex material later in school.”<sup>323</sup> Research further supports this approach. Studies have shown that de-tracking math courses leads to improved test scores *and* the likelihood that students will take advanced coursework later, and a 2016 study found that “when students labeled non-gifted were placed in gifted classes their math and English language arts achievement scores increased by 0.5 standard deviations.”<sup>324</sup>

Still, beyond simply eliminating tracking, educators need a framework for addressing the diversity of abilities and experiences in heterogeneously grouped classrooms. To this end, sociologist Allison Roda suggests that the complex instruction strategy of instruction is a particularly effective strategy for detracked classrooms.<sup>325</sup> Complex instruction is “a teaching strategy that relies on cooperative group work in diverse classrooms.”<sup>326</sup> Students work on a central concept but have options among a variety of tasks that may be assigned based on that concept.<sup>327</sup> While resisting labeling or sorting, the teacher sets “high expectations for learning an academic engagement, creating an environment where students draw on each other’s unique strengths and abilities through student dialogue and problem-solving.”<sup>328</sup>

This kind of collaborative approach that embraces opportunities for dialogue and partnership between students of diverse abilities and experiences is reflective of the reality of today’s world. The simple truth is that the ability to collaborate and work with people of different

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321. *Commentary, supra* note 19; Rui, *supra* note 16, at 165.

322. Stark, *supra* note 7, at 403; *Commentary, supra* note 19.

323. Darity & Jolla, *supra* note 7, at 108.

324. *Commentary, supra* note 19.

325. *Id.*

326. *Id.*

327. *Id.*

328. *Id.* (internal citation omitted).

backgrounds and skills is a fundamental skill for a globalized society.<sup>329</sup> While many teachers feel intimidated by the prospect of teaching to heterogeneously grouped classrooms, those who have embraced collaborative problem-solving and discussion have seen encouraging outcomes.<sup>330</sup> In their study of teacher attitudes on detracking, Oakes et al. spoke with Olivia Jeffers, a teacher at a high school in the American South.<sup>331</sup> Jeffers's English class is comprised of students of diverse races and abilities, and she implements an approach similar to Roda's suggested complex instruction.<sup>332</sup> Students are offered a choice in their reading assignments and allowed to complete research projects on individual schedules, which means that students who crave more challenging, complex work may do so at their discretion.<sup>333</sup> While students complete reading and research projects according to their own skills and interests, they can benefit from collaborative whole-group discussions.<sup>334</sup> Jeffers speaks about the experience of an affluent, White student in discussions with her peers:

In class, when I have a discussion, and she makes a statement, everybody else hears it, and we talk about it. She gets to pontificate, she gets to make a statement about something very important. She always gets insight from somebody who hasn't had her experience, or doesn't own a horse, or a place out in the country. A kid who gets on the bus everyday, and lives in two rooms. So when she defines self-reliance [the topic of recent class discussion on Emerson] . . . it's from the perspective of a kid who has it—who has a family that

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329. ALEXIS WIGGINS, *THE BEST CLASS YOU NEVER TAUGHT: HOW SPIDER WEB DISCUSSION CAN TURN STUDENTS INTO LEARNING LEADERS 10–12* (2017) (“[W]e need to design our schools backward from the goal of creating students well versed in collaboration, listening, problem-solving, and empathy.”); see also Jeremy Rifkin, *Empathetic Education: The Transformation of Learning in an Interconnected World*, CHRON. HIGHER EDUC. (May 10, 2010), [https://www.chronicle.com/article/empathetic-education-the-transformation-of-learning-in-an-interconnected-world/?cid=gen\\_sign\\_in](https://www.chronicle.com/article/empathetic-education-the-transformation-of-learning-in-an-interconnected-world/?cid=gen_sign_in).

330. Oakes et al., *supra* note 7, at 506.

331. *Id.* at 505.

332. *Id.*

333. *Id.*

334. *Id.*

has given it to her and the financial security to maintain it. But she's got to hear from a kid who's had to struggle his little buns or her little buns to get it. Now if that is not a learning experience, I don't know what is.<sup>335</sup>

For Jeffers, heterogeneous grouping is not just beneficial but "essential to the learning process."<sup>336</sup> Rather than detracting from each other's potential for learning, students in collaborative classrooms help facilitate each other's growth, creating empathy for diverse persons along the way.

While the example of Jeffers's classroom speaks more to students' soft skills, Dr. Carl Wieman has found improved testing outcomes as a result of discussion among heterogeneous learners.<sup>337</sup> In his study, Wieman gave his students physics questions to answer individually, and then they would discuss the problem with a peer.<sup>338</sup> Afterwards, the students would respond to a question that tested the same concept but in a different way.<sup>339</sup> After discussion with their peers, not *only* did weaker students improve on the second set of questions, but *also* students who had already performed well in the course.<sup>340</sup>

Another physics professor, Eric Mazur, utilized a similar approach to Wieman, and, similarly, he found that discussion between students of varying strengths improved outcomes for *both* types of students.<sup>341</sup> Mazur found that stronger students would provide more effective explanations to their weaker peers than he could

because the professor learned physics so long ago and the understanding was so deeply ingrained in his psyche [] he can no longer see or understand the difficulty that John has, but Mary can. Mary can call upon the assumptions and errors in thinking that she recently struggled through in order to achieve deep

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335. *Id.*

336. *Id.*

337. WIGGINS, *supra* note 329, at 50–52.

338. *Id.*

339. *Id.*

340. *Id.*

341. *Id.* at 52–54.

understanding, and so she can explain the hows and whys to John in a much clearer way.<sup>342</sup>

Again, rather than impeding each other's learning, students of mixed abilities learning alongside each other *support* each other's growth.

The suggestion that students be detracked has been met with resistance by parents, educators, and policymakers.<sup>343</sup> For example, in 2017 New York City undertook a study to evaluate issues of equity related to gifted education in its public schools.<sup>344</sup> The study found that New York City's current model of tracking is "unfair, unjust, and not necessarily research based. As a result, these programs segregate students by race, class, abilities and language and perpetuate stereotypes about student potential and achievement,"<sup>345</sup> and New York City Mayor Bill DeBlasio proposed the elimination of all gifted tracking as a result.<sup>346</sup> The proposal was met with varied responses, including some parents who described the elimination of gifted tracking as "leaving a pile of 'bloody broken bone fragments,'" while others welcomed the change, concerned by the lack of equity in resource distribution to students in regular classes.<sup>347</sup>

The responses of these New York City parents are somewhat predictable; it is understandable that proposal of detracking will be met with resistance. After all, as Oakes et al. explain, "At risk for the parents of high-track and gifted-labeled students is the entire system of meritocracy on which their privileged positions in society are based."<sup>348</sup> Parents are likely fearful that their students will lose the advantages they

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342. *Id.* at 52–53.

343. Rui, *supra* note 16, at 165; Eliza Shapiro, *De Blasio to Phase Out N.Y.C. Gifted and Talented Program*, N.Y. TIMES (Oct. 15, 2021), <https://www.nytimes.com/2021/10/08/nyregion/gifted-talented-nyc-schools.html>; Max Eden, *Killing Gifted & Talented Programs Is de Blasio's Next Step in War on Excellence in Education*, N.Y. POST (Aug. 28, 2019), [https://nypost.com/2019/08/28/killing-gifted-talented-programs-is-de-blasios-next-step-in-war-on-excellence-in-education/?utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=cb\\_bureau\\_ny](https://nypost.com/2019/08/28/killing-gifted-talented-programs-is-de-blasios-next-step-in-war-on-excellence-in-education/?utm_source=newsletter&utm_medium=email&utm_campaign=cb_bureau_ny).

344. *Making the Grade: New Programs for Better Schools*, SCH. DIVERSITY ADVISORY GRP. (Aug. 2019) 15 [https://f00ae132-1cda-462f-b304-5bed04e722c7.filesusr.com/ugd/1c478c\\_067f0c0a893c45a38620735f1e1dd43.pdf#page=32](https://f00ae132-1cda-462f-b304-5bed04e722c7.filesusr.com/ugd/1c478c_067f0c0a893c45a38620735f1e1dd43.pdf#page=32).

345. *Id.* at 7.

346. Shapiro, *supra* note 343.

347. *Id.*

348. Oakes et al., *supra* note 7, at 498.

perceive to result from homogenous grouping and tracking. However, in a just society, one that seeks to provide education on “equal terms” to all students and to ensure equity in “every facet of operations,” gifted tracking cannot be separated from its eugenicist past, especially as it continues to maintain the inferiority of Black, Latinx, and Indigenous students and precludes a fair opportunity for every student to experience meaningful growth. Consequently, the practice is unequivocally unjust and indefensible. It is now time to de-track students and allow them to enjoy the benefits that arise from sharing each other’s diverse strengths and experiences.