

“Trashing” Whiteness: Race Consciousness and the Failed Promise of Merit

Lihl Yona* & Tammy Harel Ben-Shahar**

This Article revisits the convention that equality demands race neutrality from one unexpected perspective: the experiences of poor white students from rural Appalachia, often derogatorily referred to as “poor white trash” (“PWT”). The recent Students for Fair Admissions v. Harvard case, where race-based admissions were struck down by the Supreme Court, brought the intersection of race and education back into the spotlight. The Court’s decision and Justice Thomas’s concurring opinion both hailed the ideal of meritocracy and “objective grading scales” as “the great equalizer.” Marginalized white students’ exclusion from higher education was rhetorically recruited to argue in favor of race-neutral admissions.

This Article challenges the notion that race-neutral decision-making in education benefits marginalized whites. By examining historical accounts of PWT and their stigmatization as intellectually inferior, the Article reveals how racist ideologies, including white supremacy, have perpetuated this group’s exclusion and segregation within the education system, precisely through “objective grading scales.” Centering the voices of self-identified PWT, as well as school ethnographies from recent years, this Article uncovers two mechanisms that perpetuate educational injustice of poor white students today: (1) the formation of ability-based groups; and (2) the classification of PWT students as having cognitive and behavioral disabilities. Together, this elementary-to-high-school segregative dynamic rigidifies path dependencies that inevitably influence college admission decisions.

PWT educational segregation rests on allegedly neutral logic. It is based on educational ability, a seemingly relevant criterion for separation, and it

* Associate Professor at the University of Haifa Faculty of Law and School of Criminology.

** Associate Professor at the University of Haifa Faculty of Law. Academic Director of the University of Haifa Legal Clinics.

The authors wish to thank Yaron Covo, Gali Racabi, Roni Masel, Mati Milstein for helpful comments and suggestions. We also thank Amitay Wagner for his research assistance. This study was supported by the Israel Science Foundation (“ISF”) research grant no. 848/19.

segregates poor whites, who are not typically viewed as a distinct social group. Therefore, it generally evades accusations of bias or discrimination. Developing a novel methodological PWT lens—comprised of class, race, disability, and gender—this Article is the first to both expose and lift the veil of neutrality from the current practice of PWT educational segregation and to place it in line with other forms of discrimination.

Moving beyond the descriptive, this Article develops a normative case against PWT educational segregation, arguing against the bias embedded in the initial classification of “abilities” and the social ramifications of such classifications. The argument raises doubts concerning seemingly merit-based classifications more generally. Finally, building on Justice Ginsburg’s groundbreaking strategy of promoting gender equality by centering male plaintiffs, this Article proposes recognizing PWT ability-based segregation as discrimination.

Societal unawareness of PWT ability segregation, this Article argues, is the crack through which white supremacy, sexism, ableism, and classism sneak into the U.S. educational system, shaping its core logics around superiority and exclusion. Developing new approaches to combat PWT ability-based segregation could open avenues for advancing racial justice and dismantling other forms of discrimination in schools and in higher education.

INTRODUCTION.....	1077
I. THE MAKING OF “POOR WHITE TRASH” AS INTELLECTUALLY INFERIOR.....	1081
II. ABILITY SEGREGATION OF “POOR WHITE TRASH”	1089
A. <i>Ability Grouping</i>	1092
B. <i>Special Education</i>	1099
III. THE NORMATIVE CASE AGAINST ABILITY SEGREGATION	1112
A. <i>Ability Measurement Is Unreliable</i>	1113
B. <i>PWT Segregation Harms PWT Students in Low-Ability Tracks</i>	1116
C. <i>PWT Segregation Undermines Community</i>	1119
D. <i>PWT Segregation Rigidifies PWT Identity</i>	1120
E. <i>PWT Segregation Bolsters White Supremacy</i>	1123
IV. LEGAL RAMIFICATIONS: ARGUING FROM A PWT POSITION.....	1125
V. CONCLUSION.....	1130

INTRODUCTION

The legal treatment of educational inequality is at an impasse. The recent *Students for Fair Admissions v. President and Fellows of Harvard College* case (“*SFFA v. Harvard*”), in which the Supreme Court struck down race-based admissions to higher education, brought the link between race and education back to the forefront.¹ In his concurring opinion, Justice Thomas described merit-based “objective grading scales” as the “great equalizer.”² Under this paradigm, Justice Thomas reasoned that rejecting race-conscious decisions would generate more diverse institutions, ensuring inclusion of, amongst others, white students “from rural Appalachia.”³

It is precisely the perspective of those poor, rural whites—often derogatorily referred to as “poor white trash” (“PWT”)⁴—that is the focus of this Article. Examining this group’s place within the U.S. educational system, this Article demonstrates how “objective grading scales” have failed PWT, and how racism—and more specifically, white supremacy—has operated to perpetuate their marginality. Accordingly, this Article shows that race-neutral decision-making in education does not necessarily hold a promise for poor white Appalachian students, nor for any other racial minorities. Seeing how both the concept of merit (or, alternatively, educational ability) and white supremacy have jointly led to PWT exclusion and segregation is a first

1. See 600 U.S. 181 (2023).

2. *Id.* at 284–85.

3. *Id.* at 254.

4. The choice to use the term “trash” when discussing the group at the center of this Article is made for several reasons. First, employing this term aligns with the logics of exclusion as perceived by those who stigmatize this particular social group. Using alternative phrases like “poor whites” may not adequately capture the nuances and historical context of the group being discussed. Second, the term “white trash” has been embraced by many critical writers to analyze and assess societal stigmatization against this marginalized group. See, e.g., MATT WRAY, NOT QUITE WHITE: WHITE TRASH AND THE BOUNDARIES OF WHITENESS 94–95 (2006); NANCY ISENBERG, WHITE TRASH: THE 400-YEAR UNTOLD HISTORY OF CLASS IN AMERICA (2016); Lisa R. Pruitt, *Welfare Queens and White Trash*, 25 S. CAL. INTERDISC. L.J. 289, 292–95 (2016). Its usage in critical discourse serves as a tool to deconstruct and challenge the negative stereotypes and biases associated with it. See, e.g., WRAY, *supra*, at 21–47. Finally, the incorporation of personal narratives from self-identified poor white “trash” individuals who reclaim and redefine this terminology in a critical manner provides an additional reason to join them in critically working through this terminology. See, e.g., Pruitt, *supra*, at 292–96. Their perspectives and experiences offer valuable insights into the impact of such stigmatizing language and its potential for empowerment through reclamation. See, e.g., Cynthia I. Gerstl-Pepin, *Identity, Difference, and Scholarly Narrative: Redefining a Poor, White Trash Childhood*, 17 EDUC. FOUNDS. 7 (2003); TASHA R. DUNN, TALKING WHITE TRASH: MEDIATED REPRESENTATIONS AND LIVED EXPERIENCES OF WHITE WORKING-CLASS PEOPLE 126–45 (2018); Patrick J. Rader, *Journey to the Scars: A White Trash Epic* (2007) (B.A. thesis, University of Central Florida).

step towards educational equity, for Black, Indigenous, other students of color (“BIPOC”), and white students alike.

Unveiling this oft-hidden dynamic, this Article thus brings to attention an extremely understudied phenomenon: educational segregation among whites. While segregation between whites may not seem like a racial issue, this Article argues that it is racial at its core. Drawing from historical accounts of PWT, Part I demonstrates how this group came to be known in the U.S. public imagination as a group failing to meet the standards of whiteness and, accordingly, as intellectually inferior. From the eighteenth century onwards, journalists, scientists, doctors, and politicians began casting poor whites living in specific areas of the U.S. as inferior to those deemed “appropriate whites,” and as lazy, dirty, feebleminded—as “trash.”⁵ This depiction followed the core tenets of white supremacy, establishing PWT as a threat to whiteness’s purity and superiority. The rise of the infamous eugenics movement in the nineteenth century brought to center stage ideas like selective breeding, presented as a way to improve the genetic traits of “superior races.”⁶ As a result, race-purifying policies were set in place aimed at protecting the white race from denigration by tracing and defining good and bad “breed.”⁷ PWT were at the center of these policies, as they were considered the highest threat to the white race.⁸ Separated institutions were created to house and treat PWT whose close association with white elites was deemed dangerous.⁹

Against this backdrop, the science behind intelligence testing was developed, aspiring to present objective scales of cognitive and educational abilities that would prove the basic racist hypotheses of eugenics.¹⁰ These tests provided policymakers with further justification to segregate those diagnosed as “morons” by the state.¹¹ The offshoots of these segregationist inclinations, we argue, are still evident in today’s educational system.

Moving from history to the present, Part II demonstrates the way historic stigma regarding PWT haunts the current U.S. educational system, and the systemic legal dynamics that maintain it. We uncover two mechanisms tracking PWT students to segregated educational settings, both of which revolve around their assumed (lack of) educational abilities: (1) the formation

5. See *infra* Part I.

6. See *infra* Part I.

7. See *infra* note 43 and accompanying text.

8. See *infra* Part I.

9. See *infra* Part I.

10. See *infra* note 69.

11. See *infra* notes 67–75 and accompanying text.

of ability-based groups of “strong” and “weak” students, in ways that often echo societal distinctions between “appropriate” whites and PWT;¹² and (2) classifying PWT students as having cognitive and behavioral disabilities.¹³ The problematic structure of the Individuals with Disabilities Education Act (“IDEA”) further pushes PWT students to segregated education.¹⁴ IDEA’s private enforcement mechanism places the responsibility to secure inclusion for disabled students mainly on families and parents.¹⁵ This structure works against marginalized communities who often lack the means to secure this right.¹⁶ The access gap between PWT- and IDEA-guaranteed rights further facilitates PWT educational segregation, lifting systemic barriers that bolster anti-PWT stigma.¹⁷

To show the reality of PWT students on the ground, we center the voices of self-identified PWT students by narrating their experiences within the educational system; long-term ethnographic studies conducted in schools in recent years similarly highlight how dynamics of exclusion and segregation look in action and the intricate, often subtle ways they take form. Notably, students’ “objective” measures of merit in higher education admissions decisions are heavily dictated by mechanisms like ability segregation. These mechanisms start shaping their educational paths as early as elementary school and continue to impact them throughout high school.

Examining these practices and their effects on PWT students reveals intricate dynamics of race, disability, class, and gender relations. To comprehensively assess this multifaceted dynamic, this Article adopts a “PWT lens,” offering an intersectional analysis that considers these key elements. The unique positionality of PWT, at the intersection of race, class, gender, and disability, allows for a nuanced understanding of how these systems of subordination can work in tandem to form social categories and design segregated educational landscapes. Moreover, their experiences reveal the inadequacy of race neutrality in addressing the challenges faced by marginalized white students. Addressing their educational exclusion necessitates a heightened awareness of race’s role in the educational system rather than dismissing its impact.

This Article goes beyond the descriptive. After presenting the two techniques for segregating PWT through ability-focused mechanisms, Part III

12. See *infra* Section II.A.

13. See *infra* Section II.B.

14. See *infra* notes 154–59 and accompanying text.

15. See *infra* notes 170–77 and accompanying text.

16. See *infra* notes 178–83 and accompanying text.

17. See *infra* Section II.B.

moves on to describe the normative case against strictly merit-based systems, exemplified through ability segregation.¹⁸ This Article details the ethical considerations against educational selection systems that rest on “objective” considerations, like ability to designate students to specific classes or schools, the bias embedded in the initial classification of “abilities,” and the normative challenges that arise even when the classification itself is justified, both for PWT students and for the community as a whole. The specific practice of PWT ability-based segregation has two additional costs. First, the separation of whites into the “right kind” of whites and those seen as “trash” constructs this latter identity as such. The educational system, under this paradigm, not only responds to an existing social category but plays a key role in *forming* the category of PWT, through techniques of hierarchical segregation: spatial, symbolic, and material.¹⁹ Second, the eugenic framing of PWT as feebleminded established concrete guidelines for “proper” whiteness and delineated those who deserve it.²⁰ Educational segregation of PWT thus reinforces white supremacy’s notions of whiteness in ways that harm both PWT and other racial minorities. Further, as seen in *SFFA v. Harvard*, the social marginality of white Appalachian students, itself the result of white supremacy, is often recruited—rhetorically—by the white elite agenda, to further cement its privileges.

Considering race’s place in education, this Article thus argues that it is not a matter of white (or Asian) versus Black. White supremacy is embedded in the educational systems’ key logics, to the detriment of all students. To fix it, we must first grapple with the most hidden places in which it takes root. Part IV provides a consideration of how this may look. Following the descriptive and normative analyses, Part IV sketches the legal and theoretical ramifications of recognizing PWT ability-based segregation as discrimination.²¹ Building on Justice Ginsburg’s strategy of advancing gender equality by centering men who are victims of the patriarchy, we offer a way to advance racial equality by highlighting instances where white people are victims of white supremacy.²² Until now, educational disadvantage of poor whites was discussed primarily through the lens of poverty, a classification that was not effective enough in addressing educational injustices. The Supreme Court, as well as many state courts, have explicitly

18. *See infra* Part III.

19. *See infra* Section III.D.

20. *See infra* Section III.E.

21. *See infra* Part IV.

22. *See infra* notes 264–72.

rejected the possibility that poverty is a suspect classification, restricting challenges rising from economic inequality.²³ Litigation relying on state constitutions’ Education Clauses—arguing that states failed to supply students in poor districts adequate education—proved helpful in some cases, but it focused solely on issues of funding.²⁴ Notably, while ability-based segregation that creates racial discrimination is actionable, this legal tool is not available for PWT. Developing a new wrong of PWT ability-based segregation thus removes barriers for PWT to argue against their exclusion. Doing so has important positive externalities for advancing racial justice beyond PWT, as well as for imagining admissions beyond merit.

As traditional tools for addressing racial injustice in education become unavailable or are proven ineffective, this mission of paving new ways to tackle educational disparities in schools becomes more crucial than ever.

I. THE MAKING OF “POOR WHITE TRASH” AS INTELLECTUALLY INFERIOR

The history of poor whites has marked them as “others” in the American sociocultural landscape.²⁵ Their othering involved different aspects²⁶ but revolved, to a large extent, around their characterization as cognitively impaired and intellectually inferior.²⁷

Earliest accounts of U.S. poor whites trace their origins to British America in the late 1600s.²⁸ Part of the British colonial strategy of cultivating America was uprooting people from England to “unload” the country from expendable

23. See *infra* note 273 and accompanying text.

24. Randal S. Jeffrey, *Equal Protection in State Courts: The New Economic Equality Rights*, 17 *LAW & INEQ.* 239, 356 (1999) (arguing that “recognition by state courts of economic equality rights in school financing and abortion funding cases can potentially expand into other substantive areas of economic equality rights,” including areas “in which the federal Supreme Court has declined to guarantee equality, including welfare, housing, and employment”); see also William S. Koski & Rob Reich, *When “Adequate” Isn’t: The Retreat from Equality in Educational Law and Policy and Why It Matters*, 56 *EMORY L.J.* 545, 589–92 (2007) (criticizing the turn to adequacy-based claims because of the inequality they allow).

25. See ISENBERG, *supra* note 4, at 270.

26. See generally *id.*; WRAY, *supra* note 4.

27. See WRAY, *supra* note 4, at 19, 87.

28. ISENBERG, *supra* note 4, at 20.

people²⁹ and move them to what was thought of as a “giant rubbish heap.”³⁰ These “waste people”—mostly poor and homeless people—arrived in America during the sixteenth and seventeenth centuries.³¹ Many arrived as indentured servants, offsetting the debt they accumulated from their journey through unpaid labor and even passing this debt on to their children, who were deemed “a collateral asset.”³²

Around the eighteenth and nineteenth centuries, poor whites—who by then were described by white elites as “lubbers,” “crackers,” and “poor white trash”³³—could already be found in specific geographical regions.³⁴ Those regions were often deemed less lucrative to the planter class elites, extending north to Virginia and down across the breadth of the American South.³⁵ Many lived in swamps and other harsh terrains,³⁶ or were pushed to the mountains of western Appalachia.³⁷ Lacking suitable land to cultivate or the economic resources to acquire necessary means of production, they lived in severe poverty.³⁸

Commentators argued over the reasons for this group’s poor conditions in a debate that interestingly mirrored the clash over slavery.³⁹ Antislavery abolitionists highlighted the effects slavery had on poor whites, who, as

29. *Id.* at 21–22 (“The English had waged a war against the poor, especially vagrants and vagabonds, for generations. . . . By the sixteenth century, harsh laws and punishments were fixed in place. Public stocks were built in towns for runaway servants, along with whipping posts and cages variously placed around London.”).

30. *Id.* at 2. Simultaneously, this transfer provided the necessary workforce needed to develop the new land. *See id.* at 20.

31. *See id.* at 20–42.

32. *See id.* at 27. A series of eighteenth-century laws in the colony of Caroline ruled that for every six slaves a slaveowner purchased, they had to acquire one additional white servant. *See id.* at 46–47. Poor whites were also marked, so they would be easily distinguishable from other whites, as Isenberg writes: “Hot branding irons and ear boring identified his underclass and set them apart as a criminal contingent.” *Id.* at 22.

33. *See WRAY, supra* note 4, at 22.

34. ISENBERG, *supra* note 4, at 43–56.

35. *See id.* at 47.

36. *See id.* at 48.

37. WRAY, *supra* note 4, at 34.

38. Many struggled to find work in a market living off free slave labor. *Id.* at 28. As one commentator stated: “Surely there is no place in the World where the Inhabitants live with less Labour than in N[orth] Carolina. It approaches nearer to the Description of Lubberland than any other, by the great felicity of the Climate, the easiness of raising Provisions, and the Slothfulness of the People.” ISENBERG, *supra* note 4, at 43 (quoting WILLIAM BYRD II, HISTORY OF THE DIVIDING LINE (1728)).

39. *See, e.g., WRAY, supra* note 4, at 18.

mentioned, were often left with no means of economic viability in the slavery-ridden South.⁴⁰

Proslavery secessionists offered an alternative explanation, seeing the root of PWT’s impoverishment in these people’s physical and moral laziness, which they understood as biological.⁴¹

This turn to biology—which set PWT apart as a group—culminated with the rise of eugenics as a mainstream scientific approach geared towards the betterment of the human race.⁴² This pseudoscience, which initially gained popularity in the U.S. during the early 1900s, drew much of its appeal from the need to promote “race-purifying” policies aimed at protecting those who were “well-born” (read: white) from genetic degradation.⁴³ At the top of the genetic scale were upper-class whites of Nordic descent,⁴⁴ who were

40. *Id.* As Wray explains: “Abolitionists argued, moreover, that southern poor whites [in their support of slavery] had been fooled into helping perpetuate the very system that denied them any chance to be truly free—freedom, in this instance, understood in an economic sense as the ability to sell one’s labor to the highest bidder.” *Id.* at 48. Evidence of this harsh reality, as well as its relationship to the institution of slavery may be found in a series of eighteenth-century laws in the colony of Caroline ruling that for every six slaves a slaveowner purchased, they had to acquire one additional white servant. ISENBERG, *supra* note 4, at 46–47. While these laws were put in place to secure work for white laborers, they also reveal the reality of PWT (who did not own slaves or land to cultivate) who had to find work in a market where much of the labor force consisted of unpaid slaves. *See WRAY, supra* note 4, at 28. What is discernable from these laws is that it was simply not economically beneficial for slaveowners to hire white laborers, to the extent that it required designated regulation to force them to do so.

41. PWT were described as having “a *natural* stupidity or dullness of intellect.” *See* D. R. HUNDLEY, *SOCIAL RELATIONS IN OUR SOUTHERN STATES* 264 (1860). Hundley was a Harvard-graduate lawyer from Alabama, who served as a captain in the Confederate Army during the Civil War. *See* Benjamin Buford Williams, *Daniel Hundley*, *ENCYC. ALA.* (Mar. 2, 2010), <http://encyclopediaofalabama.org/Article/h-2549> [<https://perma.cc/BC22-26V4>].

42. WRAY, *supra* note 4, at 73. Following the Civil War, the idea of the “survival of the fittest” and the need to improve the human race captivated scientists, politicians, and journalists who advocated against “unnatural breeding.” ISENBERG, *supra* note 4, at 176. During Reconstruction, Republicans sought to rebuild the South “in the image of the North,” while Democrats sought to “restore elite white rule.” *Id.* Both nevertheless saw the national reunion as symbolizing evolutionary progression. *See id.* Within that context, Darwinian ideas of “survival of the fittest” and evolutionary progression were centered. *See id.*

43. Ajitha Reddy, *The Eugenic Origins of IQ Testing: Implications for Post-Atkins Litigation*, 57 *DEPAUL L. REV.* 667, 667 (2008) (“In the United States especially, a massive flood of new immigrants prompted calls for ‘race-purifying’ policies—such as marriage restrictions and forced sterilization—to protect the ‘well-born’ from genetic degradation.”).

44. People of Nordic decent were considered by scientists as the supreme racial group among white Europeans, “a race of soldiers, sailors, adventurers, and explorers, but above all, of rulers, organizers, and aristocrats.” MADISON GRANT, *THE PASSING OF THE GREAT RACE: OR, THE RACIAL BASIS OF EUROPEAN HISTORY* 228 (4th ed. 1921).

generally contrasted with “four groups of lower human forms,”⁴⁵ including nonwhite races, women,⁴⁶ southern Europeans, and the lower classes of superior races.⁴⁷ Health experts of the time advised against breeding with the “ill-born”⁴⁸—those who were seen as “dirty,” “lazy”⁴⁹—who would, therefore, produce only “poor and feeble stock.”⁵⁰

PWT, considered a prime example of “feeble stock,”⁵¹ were at the center of eugenicists’ attention. The goal of eugenic studies was the betterment of the white race, and thus the focus was placed on those who were at the highest chance of its degeneration.⁵² As Khiara Bridges points out, precisely *because* poor whites were *white* they were subjected to eugenics and to “quality control” that identified the “feebleminded” and separated them from “quality,” affluent whites.⁵³ Matt Wray also explains that because non-white races were easier to discern—and therefore prevent contact with—than “defective” whites, “empirical eugenic research that focused on immigrants, blacks, Indians, Asians, and ethnoracial minorities was almost nonexistent compared to the number of studies of poor rural whites.”⁵⁴

While Bridges accurately points out that some of the treatment poor whites experienced was due to their whiteness, importantly, the biological language used to describe their moral and physical ‘deficiencies’ nevertheless framed this group as biologically distinct from other whites.⁵⁵ PWT were,

45. HENRY FRIEDLANDER, *THE ORIGINS OF NAZI GENOCIDE: FROM EUTHANASIA TO THE FINAL SOLUTION 2* (1997).

46. Obviously, the dictates against breeding were not applied to women as a category. *See id.*

47. *See id.*; *see also* STEPHEN JAY GOULD, *THE MISMEASURE OF MAN* 144 (1996).

48. ISENBERG, *supra* note 4, at 139.

49. WRAY, *supra* note 4, at 95 (explaining that the eugenic movement “incorporated and expanded upon the shared perceptions of southern poor whites as immoral, lazy, dirty, criminal, filthy, and perverse and offered an explanation that could be generalized to the entire group”).

50. ISENBERG, *supra* note 4, at 139.

51. *Id.* at 194. Davenport, a leading eugenicist, warned that without laws limiting interstate immigration, “New York would turn into Mississippi.” *Id.*

52. *See id.*

53. Khiara M. Bridges, *White Privilege and White Disadvantage*, 105 VA. L. REV. 449, 468 (2019).

54. WRAY, *supra* note 4, at 73.

55. Notably, stereotypes associated with poor whites were thus created to distance them from the core of whiteness, not from affluency. *See id.* at 139 (“[W]hite trash have been excluded from belonging in the category *white*.”). As whiteness scholars have long stressed, the true meaning of whiteness cannot be reduced to skin color alone. *See id.* The way one acts, dresses, behaves, etc. has been linked, historically, to the question of whether or not they are *considered* white by others. *See id.* The works of Ian Haney López, Ariela Gross, and others have clearly

accordingly, seen by white elites as a social group comprised of those who were “less than white”⁵⁶ and who threatened the “contamination” of the white race.⁵⁷ As Isenberg writes, “[w]hite trash southerners were classified as a ‘race’ that passed on horrific traits, eliminating any possibility of improvement or social mobility.”⁵⁸ According to this racial characterization of PWT as “semi” white, many observers made an effort to emphasize their skin color, seeing it as more of a sallow or “yellowish white” or as one of “unnatural complexions.”⁵⁹ PWT’s “off-white” complexion was explained both through the depiction of them as “clay eaters”⁶⁰ as well as through interracial sex leaving traces of “Negro blood.”⁶¹

This observation regarding PWT’s different skin color was, of course, imagined or exaggerated.⁶² The way in which white supremacy produced imaginary imagery of PWT’s off-white skin color is telling. Katherine Franke, in her work on sex differences, demonstrates how our belief in the existence of clear and rigid differences between the sexes affects our perception of the physical reality around us.⁶³ Preconceptions and beliefs that inform our gaze play a part in what we eventually *see* as actual physical occurrences.⁶⁴ Accordingly, the ability of so many observers to actually see

demonstrated that the answer to the question of whether one is white or not is contingent on multiple factors, including *who* is asking, *who* is answering, *when* we are asking, *where* the person in question is, *what* they are doing, etc. See IAN HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE*, at xxi (rev. ed. 2006); Ariela J. Gross, *Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South*, 108 *YALE L.J.* 109, 141–47 (1998).

56. ISENBERG, *supra* note 4, at xv.

57. *Id.* at 140.

58. *Id.* at 136.

59. *Id.* at 151. Popular nineteenth-century comic portrayals of PWT also depicted them as “tallow-colored.” WRAY, *supra* note 4, at 40.

60. ISENBERG, *supra* note 4, at 151.

61. WRAY, *supra* note 4, at 40, 77.

62. See *id.* at 40 (discussing exaggerated portrayals of PWT in which skin color was used to differentiate PWT from non-PWT). Malnutrition and other health problems may have been responsible for some variations in skin complexion. See generally Saulo Nani Leite et al., *Experimental Models of Malnutrition and Its Effect on Skin Trophism*, 86 *ANAIS BRASILEIROS DE DERMATOLOGIA* 681 (2011) (concluding that malnourishment often resulted in a lower percentage of collagen). However, commentators produced explanations for PWT’s complexion that went beyond nutrition and health and charged this physical difference with racial meaning. See WRAY, *supra* note 4 at 40.

63. Katherine M. Franke, *Putting Sex to Work*, 75 *DENV. U. L. REV.* 1139 (1997).

64. See *id.* at 1139. Specifically, Franke opens her article *Putting Sex to Work* by describing how an alleged miracle happened during her years in New Haven. *Id.* “A crucifix had been found to appear in the body of an oak tree in the middle of Worcester Square.” *Id.* At first, she says, “I couldn’t see anything but the usual trunk and limbs of a tree. Yet a believer took the time to show

PWT as having a different skin color is important, as it illuminates the commonly held beliefs regarding this group, which was seen as racially distinct from upper-class whites.⁶⁵

In their attempts to biologically define good versus bad “breed[s]”⁶⁶ to prove the eugenic hypotheses, scientists during the early 1900s tried various approaches, including “measuring the crania of school children, analyzing the facial asymmetry of criminals, and sketching the toes of prostitutes.”⁶⁷ However, the method that proved most successful in substantiating the advantage of the Nordic genome was intelligence testing.⁶⁸ The development of intelligence testing at the turn of the century was an essential tool for the eugenics pseudoscientific efforts to diagnose and differentiate between individuals worthy of breeding from individuals who were not, according to their cognitive capacities.⁶⁹ One of the developers of intelligence testing, Henry Goddard, ranked those he considered “feebleminded” into three main categories: idiots, imbeciles, and morons.⁷⁰ Idiots were preverbal, meaning without the ability to develop full speech, and characterized as having the mental age of under three years of age;⁷¹ imbeciles were illiterates, whose mental age was deemed as ranging from three to seven years old;⁷² and morons were characterized as “high-grade defectives”—those who “established a bridge between pathology and normality.”⁷³ Given the concern with quality breeding, morons were considered the most problematic due to their ability to “pass as normal.”⁷⁴ Specifically, the fear of poor moron women entering “polite homes,” seducing the boys, and procreating created a need for segregation, orchestrated through the creation of asylums and institutions for feebleminded white women.⁷⁵ This “eugenics mania” resulted in several laws aimed at promoting eugenic goals, from marriage restrictions to the

me what was *really* there, something that my untrained eye could not at first see: the cross upon which Jesus Christ had been crucified.” *Id.*

65. We elaborate on the racial aspects of PWT othering later in this Article. *See infra* Section III.E.

66. WRAY, *supra* note 4, at 54 (explaining that some eugenicists saw the decline of the human species as a result of “poor breeding practices”).

67. Reddy, *supra* note 43, at 668.

68. *Id.*

69. *See generally* Beit-Hallahmi, *Science, Ideology, and Ideals: The Social History of IQ Testing*, 38 CENTENNIAL REV. 341 (1994) (describing the development of IQ testing).

70. *See* Reddy, *supra* note 43, at 670.

71. GOULD, *supra* note 47, at 188.

72. *Id.*

73. *Id.*

74. ISENBERG, *supra* note 4, at 197.

75. *Id.*

sexual segregation of defectives, to state-enforced sterilization of the “unfit.”⁷⁶

The forced sterilization of PWT who were deemed cognitively impaired took center stage with the infamous case *Buck v. Bell*, where the Supreme Court upheld a Virginia law that allowed for the involuntary sterilization of the “feeble-minded.”⁷⁷ The plaintiff in the case, Carrie Buck, was a poor white woman described by the Court as an “imbecile.”⁷⁸ While the ruling in this case is generally known, the facts are perhaps less familiar. Subsequent to her mother’s institutionalization in the Virginia’s State Colony for Epileptics and Feeble-minded, Carrie Buck was sent to work and reside with a middle-class couple who offered her a home.⁷⁹ After working at the couple’s residence for several years, Buck became pregnant following what she argued was her rape by the couple’s nephew.⁸⁰ When the couple found out about her pregnancy, they petitioned that Buck would be sent to an institution herself.⁸¹ The reason, they argued, was that she, too, was feeble-minded, as evident from her engagement in premarital sex.⁸² An IQ test administered to Buck by the

76. *Id.* at 193–94. Theodore Roosevelt, for instance, who was a big supporter of eugenics, wrote already in 1913 to leading eugenicist Charles Davenport that degenerates should not be allowed to reproduce. *Id.* at 193. By the beginning of the 1930s, involuntary sterilizations were routinely performed. WRAY, *supra* note 4, at 67. In the *Journal of the Medical Association of Georgia*, one doctor wrote in 1937:

The South’s “poor white trash,” so aptly named by the Negro, is no doubt the product of the physical and mental unfit, left in the wake of the War Between the States. Let us take stock of this rubbish. . . . Sterilize all individuals who are not physically, mentally, or emotionally capable of reproducing normal offspring.

Id. at 65. It is estimated that at least 7,450 “unfit” people were sterilized in Virginia alone between 1927 and 1979. See ADAM COHEN, *IMBECILES: THE SUPREME COURT, AMERICAN EUGENICS, AND THE STERILIZATION OF CARRIE BUCK* 1 (2016). Shockingly, American eugenics later played an influential role in the formation of Nazi laws and policies in Germany. See STEFAN KUHL, *THE NAZI CONNECTION: EUGENICS, AMERICAN RACISM, AND GERMAN NATIONAL SOCIALISM* 27–53 (2002). These Nazi policies resulted “in the systematic murder of almost 250,000 disabled people during the period of National Socialism in Germany.” Nancy E. Hansen et al., *21st Century Eugenics?*, 372 *LANCET* S104, S105 (2008).

77. 274 U.S. 200 (1927).

78. COHEN, *supra* note 76, at 270. As the Court noted, Buck was also “the daughter of a feeble-minded mother in the same institution[] and the mother of an illegitimate feeble-minded child.” *Buck*, 274 U.S. at 205.

79. COHEN, *supra* note 76, at 15.

80. *Id.* at 24–25.

81. *Id.* at 25.

82. *Id.* at 27.

institution labeled her a “[m]oron.”⁸³ Prior to the litigation, her daughter was tested, and, despite being only six months old when the test was administered, she too was labeled mentally defective.⁸⁴ Given these facts, Justice Holmes, writing for the majority, famously ruled in favor of Virginia’s forced sterilization legislation, noting that “three generations of imbeciles are enough.”⁸⁵

It is worthwhile to state, as commentators on the case have done, that it is unlikely that Carrie Buck had any sort of intellectual disability, given that she had received passing grades throughout her years of formal schooling with none of her educators mentioning any possible intelligence issues.⁸⁶

The story of *Buck v. Bell* is emblematic of the larger story of the making of PWT in the U.S. as a class of intellectually inferior people. It illustrates how PWT, initially characterized along class lines, came to be constituted as a distinct group through the heavily racialized and ableist eugenics discourse. This dynamic was also gendered through the charge of sexual promiscuity. PWT characterization as feeble-minded was thus one primary method through which they were cast as “others.” This characterization, this Article argues, did not stay confined to history books. Luckily, the horrors of eugenics are no longer practiced. But the ghosts of the feeble-minded discourse are present today, shaping the current educational system in their image. Mark Rapley describes the “historical continuity” in the way intellectual disability is understood: “what is termed intellectual disability or mental retardation today is the same thing as was, previously, described as say, ‘imbecility,’ ‘garden variety’ or ‘subtrainable.’”⁸⁷ Indeed, standardized tests used to this day bear certain similarities to the IQ tests invented at the height of the eugenics movements.⁸⁸ While these tests have “been adjusted to ensure very few people” are characterized as having extremely low (or high) intelligence,⁸⁹ today, as in the past, poor and marginalized communities continue to score lower on such tests. The data collected by these standardized tests, in turn,

83. *Id.* at 30.

84. *Id.* at 181.

85. *Buck v. Bell*, 274 U.S. 200, 207 (1927).

86. COHEN, *supra* note 76, at 21. We elaborate later in this Article on the accuracy of IQ tests as a tool to measure intelligence and intellectual ability. *See infra* Section III.A.

87. MARK RAPLEY, *THE SOCIAL CONSTRUCTION OF INTELLECTUAL DISABILITY* 35–36 (2004). As Hansen et al. state, “There are disturbing similarities between Nazi arguments concerning ‘quality of life,’ ‘useless eaters,’ or ‘lives less worthy’ and discussions of disability currently taking place among ‘mainstream’ geneticists and bioethicists advocating a value scale of humanness.” Hansen et al., *supra* note 76, at S105.

88. Reddy, *supra* note 43, at 673.

89. *Id.*

provides justification and proof for their social othering and lower social and economic status.⁹⁰

The present-day manifestation of this historic dynamic, this Article argues, is the tracking of PWT students to segregated educational settings by labeling them as having lower academic abilities. Presenting this understudied phenomenon, and the mechanisms that enable it, will be the focus of the following section.

II. ABILITY SEGREGATION OF “POOR WHITE TRASH”

Educational segregation in the United States is usually associated with anti-Black racism in the educational system, and rightly so. Data shows that students of color, and Black students in particular, encounter racism in stark measures.⁹¹ Decades after *Brown v. Board of Education*,⁹² which prohibited racial segregation in public schools,⁹³ racial segregation in education is as strong as ever.⁹⁴ Black students are educated in segregated settings in numbers that surpass those reported in the years before *Brown*,⁹⁵ and they

90. *Id.*

Moreover, Yerkes’s team of eugenicists laid the groundwork for certain assumptions that are made today about intelligence and intelligence tests: (1) intelligence is static; (2) it can be precisely measured; (3) it is possible to design a testing instrument capable of peeling back layers of political and socioeconomic shrouding to reveal a true essence of intelligence; (4) this essential intelligence can be expressed with a single number or with several numbers; and (5) the purpose of unmasking this essential intelligence is to allow society to identify and promote the best and brightest among us.

Id.

91. See, e.g., EVE L. EWING, GHOSTS IN THE SCHOOLYARD: RACISM AND SCHOOL CLOSINGS ON CHICAGO’S SOUTH SIDE 123 (2020) (discussing a “history of explicit racism and a failure to critically examine the extension of that history into the present”); CATHERINE Y. KIM ET AL., THE SCHOOL-TO-PRISON PIPELINE: STRUCTURING LEGAL REFORM 2 (2010) (presenting data regarding racial disparities in suspension and policing of students in U.S. schools); Joe R. Feagin & Bernice McNair Barnett, *Success and Failure: How Systemic Racism Trumped the Brown v. Board of Education Decision*, 2004 U. ILL. L. REV. 1099, 1100 (“When it comes to schools, African American children and many other children of color historically have rarely gotten justice.”).

92. 347 U.S. 483 (1954).

93. *Id.* at 493.

94. See Feagin & Barnett, *supra* note 91, at 1101.

95. Eesha Pendharkar, *An Expansive Look at School Segregation Shows It’s Getting Worse*, EDUC. WEEK (June 3, 2022), <https://www.edweek.org/leadership/an-expansive-look-at-school-segregation-shows-its-getting-worse/2022/06> [https://perma.cc/4KCK-UAQH] (“White-Black segregation presented the starkest contrast, and it increased by 35 percent from 1991 to 2020 in

hold the lowest educational attainment compared to any other student group.⁹⁶ However, the color line's dominance in shaping the U.S. educational system has blurred another crucial dynamic of discriminatory educational segregation, a dynamic that is racialized at its core: ability-based segregation between white elites and PWT.

The practice of differentiating students according to their abilities is so deeply embedded in our educational practices that it seems completely inescapable.⁹⁷ Schools' role in imparting knowledge and skills to students paints ability as a relevant basis (perhaps *the* relevant basis) for differential treatment, such as offering extra help to students who need it or assigning advanced tasks to advanced students.⁹⁸ Under this paradigm, creating homogeneous classes in which students' abilities are similar contributes to effective learning, since the teachers can tailor their teaching to the specific needs of the students.⁹⁹

the 100 largest districts.”); Laura R. McNeal, *The Re-Segregation of Public Education Now and After the End of Brown v. Board of Education*, 41 EDUC. & URB. SOC'Y 562, 564 (2009) (“The harsh reality is that more than 250 school districts still operate dual school systems, which are not only separate but inherently unequal as well. The rapid growth of segregated minority schools is most evident in urban settings, which are characterized by high-poverty, high-minority student populations.”); see also ERICA FRANKENBERG ET AL., HARMING OUR COMMON FUTURE: AMERICA'S SEGREGATED SCHOOLS 65 YEARS AFTER *BROWN* 10–13 (2019) (offering geographic, demographic, and legal explanations for this trend, including the retreat from court involvement in desegregation efforts).

96. Dennis J. Condrón et al., *Racial Segregation and the Black/White Achievement Gap, 1992 to 2009*, 54 SOCIO. Q. 130, 149 (“[I]ncreases in black-white dissimilarity and black isolation both contribute to increases in black/white achievement gaps in math and reading, while increases in exposure of black students to white students lead to reductions in the achievement gaps.”); NAT'L CTR. FOR EDUC. STAT., SCHOOL COMPOSITION AND THE BLACK-WHITE ACHIEVEMENT GAP 1 (2015), https://nces.ed.gov/nationsreportcard/subject/studies/pdf/school_composition_and_the_bw_achievement_gap_2015.pdf [<https://perma.cc/2SRG-3ZM6>] (explaining that after controlling for socioeconomic status and other characteristics, the Black-White achievement gap was larger in segregated schools, and for Black male students achievements were lower in segregated schools).

97. It is practiced, in one way or another, in all school systems. See Janet Ward Schofield, *International Evidence on Ability Grouping with Curriculum Differentiation and the Achievement Gap in Secondary Schools*, 112 TCHRS. COLL. REC. 1492, 1497–99 (2010) (describing several different structures of ability grouping in developed countries, such as the hierarchical three-tiered system in Germany and comprehensive schools with ability-based classes in Britain and the United States).

98. NAT'L EDUC. ASS'N, ACADEMIC TRACKING: REPORT OF THE NEA EXECUTIVE COMMITTEE/SUBCOMMITTEE ON ACADEMIC TRACKING 3 (1990); MARA SAPON-SHEVIN, PLAYING FAVORITES: GIFTED EDUCATION AND THE DISRUPTION OF COMMUNITY 13 (1994).

99. See TOM LOVELESS, THE TRACKING WARS: STATE REFORM MEETS SCHOOL POLICY 1 (1999) (defining ability tracking); JUDITH IRESON & SUSAN HALLAM, ABILITY GROUPING IN

This Part will show that the way this system currently evaluates educational ability is tightly linked to eugenic ideologies, and contributes to a segregated reality among whites, which sets PWT towards separate tracks, programs, and schools. Additionally, and beyond mere anti-PWT animosity, we show how structural elements of education law further this dynamic of segregation.

This Article recognizes two main institutional mechanisms that join in creating an inferior and disabling educational landscape for PWT: (1) ability grouping and (2) segregated special education. Both bear clear links to the historical othering of PWT through their categorization as lacking cognitive abilities.

Before we begin, we wish to make one methodological remark. Demonstrating how ability grouping and special education classification uniquely impact PWT is fraught with methodological challenges. For example, PWT students are, by definition, white, so statistical data do not reveal any racial imbalances. The contours of this group are also quite equivocal. Moreover, indicators such as eligibility for free lunch are also insufficient in capturing the exact contours of this group, since class alone does not exhaust its characteristics, nor the mechanisms by which it is marginalized. Finally, and more specifically regarding ability grouping, dividing students according to their ability is often conducted through informal channels with a lack of clear and transparent criteria for placement. Accordingly, the practice can often go under the radar of more mainstream empirical research tools and data collection mechanisms.

To contend with these methodological issues, we utilize first-person accounts and narratives of former students, detailing their experiences through the educational system, along with ethnographic studies conducted in schools.¹⁰⁰ This approach helps us in two meaningful ways. First, it overcomes the identification challenge, as it favors accounts by self-identified PWT, as well as ethnographic accounts by researchers who were

EDUCATION 1 (2001); Garry Hornby et al., *Policies and Practices of Ability Grouping in New Zealand Intermediate Schools*, 26 SUPPORT FOR LEARNING 92, 92 (2011); NAT’L EDUC. ASS’N, *supra* note 98, at 4.

100. While data and statistics can provide valuable information about trends and patterns, personal narratives can help to shed light on the individual experiences and contexts that contribute to these trends and patterns. First-person narratives, as scholars have previously noted, have the power to bridge “the gap between daily social interaction and large-scale social structures.” Patricia Ewick & Susan Silbey, *Narrating Social Structure: Stories of Resistance to Legal Authority*, 108 AM. J. SOCIO. 1328, 1341 (2003). As such, personal narratives also help in revealing, as well as problematizing “that which is taken for granted and unnoticed.” *Id.* at 1329.

able to identify students referred to by school administration as such via on-the-ground observations.¹⁰¹ Second, it overcomes the documentation challenge as personal narratives and ethnographic research are known for their ability to shed light on dynamics that quantitative empirical methods often overlook. We analyze these personal and ethnographic sources utilizing insights from the historical othering of PWT outlined in the previous chapter. When aggregated, the accounts we bring forth underline the oft-hidden practice of PWT ability-based educational segregation.

A. Ability Grouping

Ability grouping, otherwise known as tracking, involves dividing students into separate classes according to their perceived level of ability.¹⁰² There are numerous forms of ability grouping based on the age in which separation occurs, the extent of separation, and the rigidity of the sorting.¹⁰³ Some cases of ability grouping involve complete separation into different schools,¹⁰⁴ while others involve separation into different classes and tracks within the same school for specific academic subjects (typically English, mathematics, and science).¹⁰⁵ In some instances the separation is relatively rigid, with little possibility of moving between tracks.¹⁰⁶ This is often the case when ability

101. We also included accounts that discussed “hillbillies” or “rednecks.” For a more in-depth consideration of our usage of terminology in this paper, see *supra* note 4.

102. LAURA SUKHNANDAN & BARBARA LEE, STREAMING, SETTING AND GROUPING BY ABILITY: A REVIEW OF THE LITERATURE 1 (1998).

103. *Id.* at 2; see also ORG. FOR ECON. COOP. & DEV., PISA 2018 RESULTS (VOLUME V): EFFECTIVE POLICIES, SUCCESSFUL SCHOOLS 71–72, 78 (2020) (detailing the different ages of selection and the different types of sorting, both within schools and between schools).

104. For example, some of the most selective high schools in the US fit this description. See CHESTER E. FINN, JR. & JESSICA A. HOCKETT, EXAM SCHOOLS: INSIDE AMERICA’S MOST SELECTIVE PUBLIC HIGH SCHOOLS 57–167 (2012) (describing the admission criteria, the educational opportunities, and the alumni of these schools).

105. See ORG. FOR ECON. COOP. & DEV., *supra* note 103, at 75 (noting that ability grouping within classes was the most prevalent practice of stratification in OECD countries, with about 54% of students studying in schools that divided students according to their abilities in at least some subjects); Susan Hallam et al., *Ability Grouping Practices in the Primary School: A Survey*, 29 EDUC. STUD. 69, 71 (2003) (showing that schools predominantly adopted within-class ability grouping, and was most common in mathematics, followed by English and science).

106. Germany, for example, uses an extremely rigid system of early tracking: after fourth grade, students are sorted into three different types of school that embody different curricula, and therefore there is little mobility between them. Michael Becker et al., *Recent Developments in School Tracking Practices in Germany: An Overview and Outlook on Future Trends*, 10 ORBIS SCHOLAE 9, 9 (2016). Other countries that classify students relatively early to separate tracks are Switzerland and the Czech Republic. See ORG. FOR ECON. COOP. & DEV., *supra* note 103, at 71.

grouping involves also laying out different curricular paths for students. Ability grouping can happen at different ages; however, in the U.S. it is especially common in high schools, where students are assigned to one or another curriculum track that lays out sequences of courses for college-preparatory, vocational, or general track students.¹⁰⁷

Mary Elizabeth Kelly shares her experience as a poor white girl growing up in Appalachia in a predominantly white community.¹⁰⁸ Given that free education begins at the age of six, only families who were better off could afford private kindergarten before that age, creating significant gaps in preparedness for first grade.¹⁰⁹ As she describes, despite not attending kindergarten, she was fortunate to receive her education at home from her “Big Mama” and her “Pa.”¹¹⁰ However, she recalls, “[o]nly on entrance into public school did I learn that the school considered my environment ‘culturally deprived.’”¹¹¹ Kelly shares her experience from her first day of school:

It was a shock when my teacher did not seem thrilled to see me, and it did not make sense because there seemed to be students in the class that she was glad to see. She greeted these students with a warm “hello” and welcome. In contrast, there were students, myself included, that she spoke to only when giving directions. We were the students who were dressed in simple clothes; some of the boys wore overalls and farm boots. Most of these students, like me, had never seen a dentist, and our baby teeth were decayed.¹¹²

As she further details, this cultural and class-based difference between students’ backgrounds later translated to a relevant criterion for ability grouping:

107. See Grace Fleming, *The 5 Major High School Diploma Types*, THOUGHTCO. (Jan. 27, 2019), <https://www.thoughtco.com/high-school-diplomas-1857196> [<https://perma.cc/WZ77-DPN2>]. However, ability grouping is increasingly practiced in elementary schools too. See LOVELESS, *supra* note 99, at 15; BROWN CTR. ON EDUC. POL’Y, BROOKINGS INST., *THE 2013 BROWN CENTER REPORT ON AMERICAN EDUCATION: HOW WELL ARE AMERICAN STUDENTS LEARNING?* 16 tbl.2-1 (2013) (stating that the frequency of using ability grouping in fourth grade reading instruction increased from 28% in 1998 to 71% in 2009).

108. Mary Elizabeth Kelly, *White and Socially Disadvantaged: A Personal Chronicle of the Education of Poor Whites in America and Why We as Educators Must Do Better*, 21 *FIELD EXPERIENCE J.* 17, 24–25 (2018).

109. *Id.* at 26.

110. *Id.*

111. *Id.* at 27.

112. *Id.* at 28.

I was placed in the reading group for the students who did not attend kindergarten. I promptly protested to my teacher explaining that I already knew my numbers to 25 and my ABC's. She let me know that she was the teacher, and I was going to the reading and math group for students who had not attended kindergarten!¹¹³

Kelly astutely recognizes the elusive nature of ability groupings, and the way in which structural disadvantages are joined by cultural bias to leave kids like her behind.¹¹⁴ She describes a pattern of soft tracking that persists from elementary school up until high school.¹¹⁵ For instance, she chronicles how a high school counselor encouraged her to take lower-level track courses.¹¹⁶ Even the existence of teachers who saw her potential and expressed their faith in her academic success, she adds, was not enough to overcome the tracking system—which “was never openly identified as such”—but nevertheless dictated the course of her student life.¹¹⁷

Like Kelly, Cynthia Gerstl-Pepin describes being stereotypically conceived by her teachers as having lower educational abilities due to her background as poor and “white trash.”¹¹⁸ She writes:

My next most memorable experience with “difference” occurred later, in the fourth grade. At the time my mother worked late at night as a waitress and had trouble getting me to school on time. I was constantly late and my teacher got angrier with me each passing day. Other than my lateness, I am not sure why the teacher did not like me. Perhaps it was my clothes which were often mismatched. Perhaps it was my hair which often needed brushing. Perhaps it was my cleanliness since I did not take regular baths. Perhaps it was that I was quiet and introverted. Perhaps it was merely that I did not fit the norms of what she expected from her successful students—mostly two parent families who lived in the right neighborhood and were involved in school.¹¹⁹

For both Gerstl-Pepin and Kelly, the fact that they were perceived as PWT led to racialized, ableist, and classist attitudes from teachers and counselors. While a primary aspect of whiteness studies focused on whiteness' invisibility, their accounts highlight a personal experience of being anything

113. *Id.*

114. *See id.* at 29.

115. *See id.*

116. *Id.*

117. *Id.*

118. *See Gerstl-Pepin, supra* note 4, at 7–11.

119. *Id.* at 10.

but invisible. Their perceived identity as PWT labeled them as permanently intellectually inferior—even in the face of contradictory evidence—which directly affected their success in school.

These personal accounts of disdainful attitudes and low expectations from teachers are corroborated by a two-year ethnographical study conducted in a low-income school in Texas. Examining how teachers perceive their varying white students, Edward Morris found that teachers regularly conflated academic ability with social class, classifying students’ backgrounds on the range from middle class to “trailer trash.”¹²⁰ When describing good students, they would point to their middle-class background, while using the term poor “trailer trash” to indicate that a student is facing more academic challenges.¹²¹

Echoing the fears Gerstl-Pepin expressed, Morris also found that “students who wore neat and clean clothing gained more positive reactions from the teachers and less disciplinary action.”¹²² Morris concluded his study with the observation that “[h]airstyles, methods of speech and interaction, and especially living in a predominately minority and low-income area seemed to *shade the whiteness* of many of these students for the white teachers.”¹²³

We should note, at this point, that students who live in conditions of poverty indeed suffer from educational deprivation that affects their academic performance.¹²⁴ Accordingly, teachers are not entirely unjustified in expecting that poor children demonstrate inferior skills and abilities. In fact, since recognizing that students lack certain skills or are unprepared for

120. Edward W. Morris, *From “Middle Class” to “Trailer Trash:” Teachers’ Perceptions of White Students in a Predominately Minority School*, 78 SOCIO. EDUC. 99, 99 (2005); *see also id.* at 106 (“The teachers used the term *middle class* to imply that a student was a good student.”).

121. *See id.* at 108.

122. *Id.* at 107. Morris further mentions how teachers would intertwine dress and income with being a good student, to a degree that one implied the others: “For example, Mr. Simms a white teacher, stated that one of his students was wealthy, explaining that ‘he wears nice clothes and is a good student.’” *Id.*

123. *Id.* at 114 (emphasis added).

124. *See* Andrew Mason, *Fair Equality of Opportunity and Selective Secondary Schools*, 14 THEORY & RSCH. EDUC. 295, 298 (2016) (describing how growing up in well-off families might advantage children); ANNETTE LAREAU, *UNEQUAL CHILDHOODS: CLASS, RACE, AND FAMILY LIFE* 263–312 (2d ed. 2011) (comparing the parenting patterns of working-class families with those of middle class families); John Ermisch et al., *Advantage in Comparative Perspective*, in *FROM PARENTS TO CHILDREN: THE INTERGENERATIONAL TRANSMISSION OF ADVANTAGE* 7–8 (John Ermisch et al. eds., 2012) (data from ten countries demonstrate that parents’ socioeconomic status affects children’s educational abilities); Emily R. Murphy, *Brains Without Money: Poverty as Disabling*, 54 CONN. L. REV. 699, 701–06 (2022) (offering disability as a conceptual framework through which to analyze poverty in light of new developments in brain and behavioral science research).

a particular class is a precondition for helping them, we can hardly reproach teachers for taking note of students' backgrounds and reacting accordingly. The problem is not, therefore, rooted in the fact that teachers acknowledge the environmental disadvantage that poor students endure, but rather that they assume that their inferior abilities are innate and fixed rather than caused by their circumstances and therefore wholly mutable. These testimonies demonstrate this attitude clearly, showing how teachers' prejudices persist even when faced with contradictory facts. Thus, Kelly was placed in the low track despite her insistence that she "already knew [her] numbers to 25 and [her] ABC's."¹²⁵ This attitude of animosity and prejudice toward people belonging to a salient social group emanates from the personal accounts of PWT students.

As we will describe in detail in the next part, multiple studies have shown how teachers' perceptions of students are self-realizing prophecies. Therefore, when teachers expect little of their students, this influences students' test scores, grades, and ability-group placement.¹²⁶ Teachers who believe in their students' ability to overcome the skill gap with appropriate support may convey an expectation of success to their students. As long as segregation continues to be the norm, the systemic decision to separate according to ability pushes teachers to make these assumptions.

In *Talking White Trash*, Tasha Rose Dunn offers firsthand accounts of white working-class families as well as her own personal narrative of growing up "white trash."¹²⁷ She describes the connection between growing up PWT and education as the primary obstacle she and the people she interviews are facing when trying to escape the cycle of poverty.¹²⁸ Her conversation with Jackie, a promising young PWT, and her mother Paula reveals the subtle ways in which ability grouping and tracking works for many PWT students:

125. Kelly, *supra* note 108, at 28.

126. See Ray C. Rist, *Student Social Class and Teacher Expectations: The Self-Fulfilling Prophecy in Ghetto Education*, 40 HARV. EDUC. REV. 411, 442–45 (1970); Karl L. Alexander et al., *School Performance, Status Relations, and the Structure of Sentiment: Bringing the Teacher Back In*, 52 AM. SOCIO. REV. 665, 665 (1987); Chandra Muller et al., *Investing in Teaching and Learning: Dynamics of the Teacher-Student Relationship from Each Actor's Perspective*, 34 URB. EDUC. 292, 297 (1999); Jeannie Oakes, *Keeping Track, Part 1: The Policy and Practice of Curriculum Inequality*, EISENHOWER NAT'L CLEARINGHOUSE, <https://academic.sun.ac.za/mathed/174/Oakes.pdf> [<https://perma.cc/URZ9-3Z9W>]; Gary L. St. C. Oates, *Teacher-Student Racial Congruence, Teacher Perceptions, and Test Performance*, 84 SOC. SCI. Q. 508, 516–20 (2003).

127. See DUNN, *supra* note 4, at 13–18.

128. *Id.* at 85.

“You could just look at my school for example,” Jackie says to me after I ask about their class status and whether or not it impacts them.

“Yes, that’s an issue I have right now in society, the STEM program,” adds Paula, “science, technology, engineering, and mathematics.”

“Are the STEM kids like wealthy or something?” I ask.

“Yeah,” answers Jackie.

Intrigued, I continue the line of questioning. “So do they separate the STEM students from other students?”

“From my understanding, yes,” Paula says.¹²⁹

Crucially, Dunn points out that the dynamics she describes should not be understood merely via a class paradigm.¹³⁰ As she writes, “class cannot be solely tied to one’s economic or cultural resources; it is also a performance, meaning that it is relational, learned, and enacted.”¹³¹ Quoting Donna Langston’s definition of class, Dunn states: “Class is your understanding of the world and where you fit in; it’s composed of ideas, behaviors, attitudes, values, and language; class is how you think, feel, act, look, dress, talk, move, and walk.”¹³² Dunn takes this description to mean that class can be performed apart from one’s economic resources.¹³³ Furthermore, Jackie’s experience of being denied acceptance to her school’s STEM program demonstrates the additional layer of stigma on PWT women, who may be seen as less suitable for subjects like science and math.¹³⁴

Another ethnographic study conducted by a group of researchers in a North Carolina school similarly witnessed a tracking system that divided middle-class whites from PWTs and other racial minorities:

129. *Id.*

130. *Id.* at 92–93.

131. *Id.* at 93.

132. *Id.* at 9 (quoting Donna Langston, *Tired of Playing Monopoly?*, in *RACE, CLASS, & GENDER: AN ANTHOLOGY* 112 (Margaret L. Andersen & Patricia Hill Collins eds., 1992)).

133. *Id.*

134. There is ample data regarding gender bias around STEM programs. See generally Corinne A. Moss-Racusin et al., *Gender Bias Produces Gender Gaps in STEM Engagement*, 79 *SEX ROLES* 651 (2018); Rachael D. Robnett, *Gender Bias in STEM Fields: Variation in Prevalence and Links to STEM Self-Concept*, 40 *PSYCH. WOMEN Q.* 65 (2016); Clara Wajngurt & Pessy J. Sloan, *Overcoming Gender Bias in STEM: The Effect of Adding the Arts (STEAM)*, 14 *INSIGHT: J. SCHOLARLY TEACHING* 13 (2019).

Academically advanced classes appeared to comprise primarily middle-class white students, while minorities and perceived rednecks composed a large proportion of lower-track classrooms. Students who wore traditionally redneck clothing or who were identified by teachers as member of this group were observed only in vocational programs, general education classes, and classes for academically struggling students.¹³⁵

Another interesting narrative comes from the point of view of Peggy Larrick, an educator working with children in rural Appalachia.¹³⁶ Larrick recalls a home visit she performed for one of her students, Dakota.¹³⁷ After traveling along dirt roads, Larrick describes arriving at a pair of “dingy-white mobile homes, both with broken windows, loose aluminum siding, and surrounded by several chained-up dogs.”¹³⁸ When Dakota’s mother confides in Larrick that Dakota dreams of being a doctor, Larrick is pained by the barriers facing Dakota:

As I drove away from their home, I reflected on . . . the obstacles that children like him would face in an educational system that prioritized early identification, and intervention raced through my mind. I was confident he would immediately be labeled as in need of intensive intervention, as while I was visiting with him it became clear that he could not write his name, let alone recognize or say the letters in it. I knew the current mandated tests well; he would surely fall into the intensive intervention range, despite the fact that he could communicate clearly, was eager to learn, had a caring heart, and was inspired by lofty dreams—to be a doctor.¹³⁹

Larrick, a seasoned educator, knows all too well that despite having potential, Dakota would be immediately directed to “intensive intervention” tracks. What is especially telling, however, is that these resource-intensive programs, aimed at helping children with educational disadvantage, are described by Larrick as “obstacles” and “roadblocks” that are exceedingly difficult to overcome.¹⁴⁰ The mandated tests she refers to provide a perfect

135. Jessica Halliday Hardie & Karolyn Tyson, *Other People’s Racism: Race, Rednecks, and Riots in a Southern High School*, 86 SOCIO. EDUC. 83, 90–91 (2013).

136. Peggy S. Larrick, *My Currere Journey Toward a Critical Rural Pedagogy*, 1 CURRERE EXCH. J. 67 (2017).

137. *Id.* at 68–69.

138. *Id.* at 68.

139. *Id.*

140. *Id.*

example of the “objective grading scales” hailed by the Court in *SFFA v. Harvard*.¹⁴¹

The narratives and ethnographic accounts shared above express the lived experiences of PWT students in public schools. As such, they do not purport to represent all schools and educational systems and the way they treat PWT. They can, however, shed light on the processes and practices that structure PWT positionality within the U.S. educational system. Given the lack of scholarly and public attention to intra-white dynamics, this segregated educational dynamic often stays hidden from sight, explained as a natural reaction to students’ diverging abilities.

B. Special Education

Alongside ability grouping, the other legal-educational mechanism contributing to PWT’s segregation is their classification as students with cognitive and behavioral disabilities. While being classified as disabled does not, in and of itself, entail assigning these students to segregated or separated programs, the structure of the legislation regulating special education, when intersected with PWT positionality often leads to this exact result.

The Individuals with Disabilities Act (“IDEA”)¹⁴² is the federal legislation aimed at ensuring children with disabilities are provided with a free appropriate public education (“FAPE”).¹⁴³ Accordingly, every child diagnosed as having a disability is designed an individualized education program (“IEP”).¹⁴⁴ A core principle embedded in IDEA is that children with disabilities should be educated in “the least restrictive environment” possible.¹⁴⁵ This principle guides educators and education administrators to

141. 600 U.S. 181, 284–85 (2023) (Thomas, J., concurring).

142. Individuals with Disabilities Education Act, Pub. L. No. 101-476, 104 Stat. 1103 (1990) (codified as amended at 20 U.S.C. §§ 1400–1482).

143. 20 U.S.C. § 1400(d)(1)(A).

144. *Id.* § 1412(a)(4).

145. § 1412(a)(5); Donald H. Stone, *The Least Restrictive Environment for Providing Education, Treatment, and Community Services for Persons with Disabilities: Treatment, and Community Services for Persons with Disabilities: Rethinking the Concept*, 35 *TOURO L. REV.* 523, 524 (2019). The origins of the least restrictive environment principle in special education are found in the Education for All Handicapped Children Act, Pub. L. No. 94-142, 89 Stat. 773 (1975) (codified as amended at 20 U.S.C. §§ 1400–1411), which in 1990 was renamed the Individuals with Disability Education Act (“IDEA”).

assign students to the “most integrated setting appropriate,”¹⁴⁶ manifesting the principle of inclusion championed by disability activists and theorists.¹⁴⁷ IDEA describes this principle accordingly:

[T]o the maximum extent appropriate, children with disabilities . . . are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily.¹⁴⁸

A recent U.S. Supreme Court decision reinforced the obligation to provide children with disabilities adequate education. In *Endrew F. v. Douglas County School District RE-1*,¹⁴⁹ the Supreme Court redefined what is considered “substantive adequacy of education” for students with disabilities, holding that schools ought to provide these students with educational programs “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”¹⁵⁰ Accordingly, the Court further ruled that “every child should have the chance to meet challenging objectives.”¹⁵¹

A child’s classification as having a disability, therefore, is simultaneously an advantage and a disadvantage. On the one hand, the student may be entitled to special programs and designated resources.¹⁵² On the other hand, such classification often comes with placement in separate programs or classrooms, lower chances of securing high-quality education, and being

146. Stone, *supra* note 145, at 523. The principle of “the most integrated setting appropriate” is derived from regulations relating to the Americans with Disabilities Act (“ADA”). See 28 C.F.R. § 36.203(a) (2018).

147. See U.N. Convention on the Rights of Persons with Disabilities art. 3, Dec. 13, 2006, 2515 U.N.T.S. 3; see also G.A. Res. 70/1, Transforming Our World: The 2030 Agenda for Sustainable Development, at 14 (Sept. 25, 2015) (especially goals 4, 8, 10, 11, 16).

148. § 1412(a)(5)(A).

149. 580 U.S. 386 (2017).

150. *Id.* at 399.

151. *Id.* at 402.

152. For a critical analysis of this dynamic, see generally Mark Kelman & Gillian Lester, *Ideology and Entitlement*, in *LEFT LEGALISM/LEFT CRITIQUE* 134 (Wendy Brown & Janet Halley eds., 2002).

labeled as disabled, which unfortunately still carries considerable social stigma.¹⁵³

A significant concern voiced regarding IDEA (and subsequent legislation) is racial and ethnic disproportionality in special education.¹⁵⁴ Studies show that children who are racial minorities are more likely to be diagnosed as disabled than non-minority children.¹⁵⁵ This overclassification is especially prevalent in “high incidence” disabilities, which are diagnosed predominantly based on teachers’ judgment rather by more objective criteria.¹⁵⁶ Minorities are not overrepresented in disabilities that are “observable outside the school context,”¹⁵⁷ such as hearing impairment, but they are overrepresented in cases where disability is first identified in school and the diagnosis is given without confirmation of an organic cause.¹⁵⁸ For

153. See Brenda M. Morton, *Barriers to Academic Achievement for Foster Youth: The Story Behind the Statistics*, 29 J. RSCH. CHILDHOOD EDUC. 476, 478 (2015) (finding that children who are in foster care and receive special education services are at a higher risk of failing academically).

154. See generally Todd Grindal et al., *Racial Differences in Special Education Identification and Placement: Evidence Across Three States*, 89 HARV. EDUC. REV. 525 (2019); NAT’L CTR. FOR LEARNING DISABILITIES, SIGNIFICANT DISPROPORTIONALITY IN SPECIAL EDUCATION: CURRENT TRENDS AND ACTIONS FOR IMPACT (2020).

155. NAT’L CTR. FOR LEARNING DISABILITIES, *supra* note 154, at 2.

156. Robert A. Garda, Jr., *The New IDEA: Shifting Educational Paradigms To Achieve Racial Equality in Special Education*, 56 ALA. L. REV. 1071, 1078 (2005). Moreover, some of these students are “educational casualties” who the system “fails to teach . . . fundamental skills like reading, then inappropriately identifies some of them as having disabilities.” *Id.* at 1073 (quoting H.R. REP. NO. 108-79, at 7 (2003) (remarks of former Secretary of Education Rod Paige)).

157. Garda, *supra* note 156, at 1078.

158. *Id.* Disproportionality in special education also manifests in a different way, namely when students from affluent backgrounds are over-diagnosed and students from low-income families and racial minorities are under-diagnosed. Some cases show that racial and ethnic minorities as well as children from low-income families are underrepresented in special education. For some learning disabilities such as ADHD, students diagnosed with it receive beneficial accommodations—primarily time extensions on exams. More importantly, instead of denoting low intelligence, ADHD provides a non-stigmatic explanation of underachievement and does not entail separation from non-disabled peers. This outlier demonstrates the complicated web of privilege and disability diagnosis. Diagnosis can be either an advantage or a disadvantage; strong students and families manage to navigate this contradiction to their benefit, while marginalized students and families often cannot. See Dana Goldstein & Jugal K. Patel, *Need Extra Time on Tests? It Helps To Have Cash*, N.Y. TIMES (July 30, 2019), <https://www.nytimes.com/2019/07/30/us/extra-time-504-sat-act.html> (explaining that, in affluent areas across the United States, the share of high school students entitled to accommodations in education is double the national average of 2.7%, with some communities as high as 18%, which is almost seven times the rate nationwide). For a depiction of the inverse phenomenon, namely

example, black students are twice as likely to be diagnosed with intellectual disabilities or emotional disturbances than their white counterparts from the same socioeconomic background.¹⁵⁹

While almost no current empirical data exists with regard to overclassification of PWT in special education programs, studies have found that children from low income families, more generally, are more likely to be placed in special education courses.¹⁶⁰ Other studies widen the class lens to examine both social and economic status.¹⁶¹ Studies that include white students with low social economic status similarly report teachers' bias towards low social economic status students that often manifests in higher rates of referrals to special education.¹⁶²

the underdiagnosis of ADHD of Black students, see Myles Moody, *From Under-Diagnoses to Over-Representation: Black Children, ADHD, and the School-to-Prison Pipeline*, 20 J. AFR. AM. STUD. 152, 152 (2016) (discussing how “institutional racism and flawed behavioral ascriptions lead to the under-diagnosis of [ADHD] in Black children and how that may also contribute to their over-representation in the ‘school-to-prison pipeline’”).

159. See Grindal et al, *supra* note 154, at 537; NAT’L CTR. FOR LEARNING DISABILITIES, *supra* note 154, at 3. Earlier studies found that Black students constitute 33% of “mental retardation” enrollment, although they are only about 15% of the population. Garda, *supra* note 156, at 1079. They are 1.56 times more likely to be identified as suffering from “severe emotional disturbance” and constitute 27% of those diagnosed with that disability. *Id.* at 1079–80. High incidence disabilities such as “mental retardation” and “severe emotional disturbance” are responsible for the lion’s share of special education placement: 88% of special education placements were attributable to high incidence disabilities in the 2000–2001 school year. *Id.* at 1077–78.

160. Laura A. Schifter et al., *Students from Low-Income Families and Special Education*, CENTURY FOUND. (Jan. 17, 2019), <https://tcf.org/content/report/students-low-income-families-special-education/> [<https://perma.cc/ZYE8-FZWT>].

161. Social class is defined in one article as

a stratification system that ranks people by their differential access to material, social, and cultural resources, which shapes their lives in important ways. As Lott noted, “social class ‘matters’ and, as a social construction, can be described in terms of what persons *do*”: their jobs, habits, hobbies, lifestyles, but also in terms of what other people expect from them, their personality traits, life choices, aspirations, motivations. These oversimplified characterizations (i.e., stereotypes) entail descriptions and prescriptions that impact individuals’ achievements, self-evaluations, and well-being.

Federica Durante & Susan T. Fiske, *How Social-Class Stereotypes Maintain Inequality*, 18 CURRENT OP. PSYCH. 43, 43 (2017).

162. One such study found that “children described as low SES were five times as likely . . . to be recommended for a more restrictive placement.” Andy Frey, *Predictors of Placement Recommendations for Children with Behavioral or Emotional Disorders*, 27 BEHAV. DISORDERS 126, 133 (2002).

This research, supplemented by testimonial history like Carrie Buck’s, demonstrates how PWT are often falsely classified as having cognitive disabilities. Given the lack of quantitative data focused specifically on PWT, personal accounts and autoethnographies of those who passed through the educational system being perceived as PWT are key to illustrating the persistence of this practice.

Gerstl-Pepin, whose narrative was shared earlier in this Article, details how, following negative attitude from her teacher, she ended up in the special education classroom in her school. As she writes:

One day I was told that I was going to be going to another class. At the time I suspected that my teacher was happy to see me go. The class I went to was filled with kids in different grade-levels from all over the school. I now know that it was a special education classroom.¹⁶³

Like her, J. Patrick Rader shares his upbringing as self-identified white trash in his *Journey to the Scars: A White Trash Epic* and describes how his teachers suspected he had a learning disability:

Soon after I had started the second grade, Umatilla Elementary officials called [my mother] to the school to discuss my recent testing for a learning disability. Apparently, I was “unruly” in class and my teachers thought it might [be] because I could not comprehend the material. They couldn’t have been more wrong When I tested at astonishing levels, surprised school officials called [my mother] to re-evaluate their plan of action. She removed me from public school at the end of that school year. Testing revealed to my teachers that I possessed an above average intellect that they were ill-prepared to encourage.¹⁶⁴

While Rader’s “above-average” scores “saved” him being misclassified as having a learning disability, his story nevertheless reveals the role teachers’ biases play in directing PWT into special education. Being “unruly,” a quality stereotypically associated with PWT (who were deemed uncivilized and

163. Gerstl-Pepin, *supra* note 4, at 10–11. While we interpret this narrative as stemming from Gerstl-Pepin’s (mis)classification as having a disability, it could be that what she describes is actually a case of reverse mainstreaming, i.e., placing non-disabled students in disabled students’ classrooms. See Yaron Covo, *Reversing Reverse Mainstreaming*, 75 STAN. L. REV. 601, 604 (2023).

164. J. Patrick Rader, *Journey to the Scars: A White Trash Epic* 34–35 (2007) (M.F.A. Thesis, University of Central Florida), <https://stars.library.ucf.edu/etd/3307/> [<https://perma.cc/4TXV-WZBQ>].

unrefined),¹⁶⁵ led his teachers to assume Rader had a cognitive disability that prevented him from understanding the material.

Importantly, even when a student might be appropriately classified as having a disability, IDEA's enforcement structure often leads to de facto segregation of PWT students. Accordingly, systemic aspects of IDEA's enforcement mechanism join anti-PWT animosity to cement PWT ability-based segregation.

As mentioned, the classification of one as a student with disabilities under IDEA comes with both costs and benefits. On the one hand, eligibility under IDEA guarantees additional resources for disabled students that would enable their inclusion in mainstream education. Being classified as having a disability opens the door to these resources. On the other hand, inclusion is costly and difficult. Many schools, therefore, resort to a cheaper option, namely placing all disabled students in a separate classroom.¹⁶⁶ In Georgia, for instance, students identified as having emotional and behavioral disorders were disapprovingly described as being "warehoused" in separate facilities under Georgia's Network for Educational and Therapeutic Support, a system that de facto replicated Jim Crow school segregation by "filtering out" black students and transferring them to special education educational facilities.¹⁶⁷

IDEA, in anticipation of these difficulties, has several procedural protections aimed at helping parents enforce their children's right to study in the "least restrictive environment."¹⁶⁸ However, as critics have highlighted throughout the years, the institutional design of this legislation's enforcement mechanisms prevents many families (mainly low-income) from enjoying the

165. See, e.g., JOHN HARTIGAN, JR., ODD TRIBES: TOWARD A CULTURAL ANALYSIS OF WHITE PEOPLE 121–22, 137 (2005).

166. Lydia Turnage, Note, *Out of Sight, Out of Mind: Rural Special Education and the Limitations of the IDEA*, 54 COLUM. J.L. & SOC. PROBS. 1, 29 (2020) ("[Students] once identified for special education, are often misclassified or placed in unnecessarily restrictive settings away from the general education classroom.").

167. See Rachel Aviv, *Georgia's Separate and Unequal Special-Education System*, NEW YORKER (Sept. 24, 2018), <https://www.newyorker.com/magazine/2018/10/01/georgias-separate-and-unequal-special-education-system> [<https://perma.cc/2B9K-5KYR>]; Timothy Pratt, *The Separate, Unequal Education of Students with Special Needs*, ATLANTIC (Mar. 21, 2017), <https://www.theatlantic.com/education/archive/2017/03/the-separate-unequal-education-of-students-with-special-needs/520140/> [<https://perma.cc/S62Y-EK5P>]; Turnage, *supra* note 166, at 29 n.178.

168. 20 U.S.C. § 1412(a)(5).

benefits their children are entitled to, resulting in their de facto educational segregation.¹⁶⁹

Notably, the legal structure designed to guarantee schools’ and districts’ compliance with the rights afforded under IDEA is private enforcement. Simply put, this means that while IDEA guarantees certain rights to students with disabilities, the way these rights are enforced is through private actors (mainly parents and families).¹⁷⁰ The main argument in favor of private enforcement is efficiency, as it provides private actors who have a direct interest in laws being enforced the necessary tools for doing so.¹⁷¹ In our context, this means that it is up to parents to make sure that their children are designed an IEP in accordance with the “least restrictive environment” principle, and that it is enforced and followed by the school.

But as research in IDEA enforcement has found, low-income families are often less likely to make sure their children receive the full scope of benefits they are entitled to.¹⁷² According to IDEA, parents who want to challenge their children’s IEP can request a due process hearing in front of a hearing officer.¹⁷³ The officer’s decision can then be appealed to a state or federal court.¹⁷⁴ In the first ten years, around 3,000–7,000 such challenges were brought each year, out of which around 300–400 reached courts.¹⁷⁵ In that time period, however, a number of studies showed that upper-class families were the primary instigators of these proceedings.¹⁷⁶ As a response, two additional routes were designed to allow families to challenge their children’s

169. Steven S. Goldberg, *The Failure of Legalization in Education: Alternative Dispute Resolution and the Education for All Handicapped Children Act of 1975*, 18 J.L. & EDUC. 441, 444–45 (1989) (“[I]f parents are unable to use the hearing process to their advantage (perhaps through an inability to afford counsel, poor advocacy skills, or lack of financial support), due process might not promote objective justice.”). Regarding de facto segregation, see Garda, *supra* note 156, at 1085 (“African-American children are more likely than their white counterparts to be placed in restrictive, segregated settings.”).

170. See 20 U.S.C. § 1415. The Department of Education Website provides detailed information for parents. See 34 C.F.R. § 300.511 (2017), <https://sites.ed.gov/idea/regs/b/e/300.511> [<https://perma.cc/JW7M-J5XK>].

171. See Mark A. Cohen & Paul H. Rubin, *Private Enforcement of Public Policy*, 3 YALE J. ON REGUL. 167, 169 (1985) (“[P]rivate enforcement agents, unlike government regulators, will possess ongoing economic interests directly related to the costs and benefits of public policy implementation.”).

172. Eloise Pasachoff, *Special Education, Poverty, and the Limits of Private Enforcement*, 86 NOTRE DAME L. REV. 1413, 1426 (2011) (“[T]he available evidence suggests that wealthier parents continue to come out ahead in the enforcement game.”).

173. *Id.* at 1423.

174. *Id.*

175. *Id.*

176. *Id.* at 1424.

IEP: families could (1) file a request for a mediation due to disputes with the school district; or (2) file a complaint with the state education agency, which the agency is obligated to investigate and resolve.¹⁷⁷

However, despite these additional routes, difficulties continue to mount for low-income families seeking to guarantee adequate education for their children. For instance, in *Schaffer v. Weast*¹⁷⁸ the U.S. Supreme Court determined that the burden of proof to demonstrate that a child's IEP does not suffice to meet the standard of FAPE is on the party filing the claim, which in the overwhelming majority of the cases means the parents.¹⁷⁹ Low-income parents may not be able to afford the meaningful efforts required to meet this burden of proof. One year later, in *Arlington Central School District Board of Education v. Murphy*,¹⁸⁰ the Court ruled that parents who engage in IDEA litigation would not receive reimbursement for court expenses such as hiring expert witnesses to make their case.¹⁸¹ The Court further clarified that this applies even when parents cannot otherwise afford expert witnesses, and even if their petition prevails.¹⁸² As Lydia Turnage states, for struggling parents who cannot afford the costs of enforcing their child's rights, "the effect of these decisions is not only lacking, but actively harmful."¹⁸³

As Turnage further points out, the procedural barriers to IDEA enforcement are intensified when social class intersects with rurality.¹⁸⁴ Geographic isolation of families often prevents information networks from forming, which means parents are not always aware of their children's

177. See 20 U.S.C. § 1415(e) (describing the mediation process); 34 C.F.R. §§ 300.151–153 (2017) (providing rules on how to file a complaint with the state education agency); see also Pasachoff, *supra* note 172, at 1423.

178. 546 U.S. 49 (2005).

179. *Id.* at 51. In some rare cases school districts are the ones filing the complaint. *Id.* at 53–54.

180. 548 U.S. 291 (2006).

181. *Id.* at 293–94.

182. *Id.* at 303–04.

183. Turnage, *supra* note 166, at 19.

184. *Id.* Notably, PWT are not the only group located at the intersection of poverty and rurality. They are clearly not the only group that suffers from the discrimination and exclusion exacerbated by rural poverty. Rural areas are also populated with Black communities and other communities of color, that are often excluded in greater numbers from quality education. See generally Elise J. Cain, *African American Rural Students: Exploring the Intersection of Place and Race*, 7 AFR. AM. RURAL EDUC. 1 (2020). With that in mind, rural poverty is still a highly relevant aspect of PWT experience. Accordingly, the negative affect that rural poverty has upon the IDEA enforcement thus deepens dynamics of PWT educational segregation.

rights.¹⁸⁵ In addition, in small rural areas, where everybody knows everybody, parents might feel ashamed to go against the school or demand their child receive additional funds.¹⁸⁶

Another possible barrier related to private enforcement is that stereotypes against PWT students—those that might lead to their unjustified assignment to special education—likely also hinder their parents’ ability to effectively intervene on their behalf. Parents stigmatized as PWT are disadvantaged from the outset when approaching education administrators on behalf of their children.¹⁸⁷ Social perceptions of PWT as less cognitively able, together with the belief that intelligence is largely hereditary, could mean that when PWT parents approach the system to challenge decisions concerning their children, they are likely to face an unfavorable environment. Having likely experienced similar hostility in their own educational experience, the fear of making a bad impression could have a chilling effect on parents in charge of enforcing their children’s rights.

The result of all of the above is evident in recent data regarding families’ access to IDEA enforcement procedures. A federally funded national study into the various enforcement routes found that in 1998–1999, only 4% of lower-income districts had due process hearings, compared with 10% in middle-income districts and 52% in the highest-income districts.¹⁸⁸ Similarly staggering gaps were found regarding IDEA mediation processes: while only 9% of the lowest-income districts held mediations, mediations were conducted in 43% of the highest-income districts.¹⁸⁹ These differences in the utilization of enforcement routes were also found between states. States with the highest number of private enforcement actions were in the northeast and California, while the lowest number was found in the Midwest, the West, and the South of the U.S.¹⁹⁰

This data paints a clear picture. Children whose parents cannot afford IDEA procedures are at risk of not being able to obtain the best education

185. Turnage, *supra* note 166, at 32 (“In some instances, school districts have intentionally capitalized on parents’ lack of institutional knowledge . . .”).

186. *Id.* at 34.

187. See Danieli Evans Peterman, *Socioeconomic Status Discrimination*, 104 VA. L. REV. 1283, 1313 (2018) (discussing bias against students and parents, also in the context of PWT families).

188. JAY G. CHAMBERS ET AL., CTR. FOR SPECIAL EDUC. FINANCE, WHAT ARE WE SPENDING ON PROCEDURAL SAFEGUARDS IN SPECIAL EDUCATION, 1999–2000? 14 (2003), <http://www.csefair.org/publications/seep/national/Procedural%20Safeguards.PDF> [https://perma.cc/GZ4Y-85GL].

189. *Id.*

190. See Pasachoff, *supra* note 172, at 142.

possible. Specifically, they are more likely to learn in more restrictive, segregated environments.¹⁹¹ PWT, as mentioned above, are a difficult category to monitor and document. However, there is no doubt that the intersection of both rurality and class makes PWT more likely to be failed by the structure of IDEA.

To conclude, sociohistorical stigma shapes PWT's treatment within the educational system, their assumed inferior intellectual competence, and accordingly their overclassification as having educational disabilities. Simultaneously, the contemporary legal-procedural context, manifested through the primary law regulating PWT treatment once they are classified as disabled students, de facto erodes the least restrictive environment principle, pushing many PWT to segregated educational settings.¹⁹²

* * *

The above discussion highlighted two key mechanisms through which poor white "trash" students find themselves in segregated educational settings. Traditional accounts that acknowledge the educational inequality suffered by PWT have usually analyzed them as stemming from these students' economic class. These accounts are indeed fair. Class was the initial criterion differentiating PWT from other whites, a distinction upon which other logics of exclusion were built. In addition, class is a key component of the dynamic of ability-based segregation of PWT. Class differences shape educational spaces.¹⁹³ Further, while class segregation might seem to be an unfortunate but unintended *side effect* of economic inequality, a critical class lens helps us uncover intentional actions/inactions designed to differentiate between poor and wealthy students. To echo a more popular saying,

191. Notably, as mentioned earlier, the research shows that in addition to being overrepresented in special education, racial minorities are also more likely to learn in more segregated environments than their white counterparts. See Garda, *supra* note 156, at 1085.

192. Importantly, we do not argue that IDEA was structured as such *in order* to promote segregated educational systems for PWT and other racial minorities. The argument this Section wishes to make is that the structure of IDEA is a mechanism that contributes to PWT educational segregation, regardless of the framers' intent. Put differently, the material reality created through IDEA is not necessarily an intentional one. Indeed, as Janet Halley once argued, the costs of various policies sometimes go to places "where no current subordination theory can find them." See JANET E. HALLEY, *SPLIT DECISIONS: HOW AND WHY TO TAKE A BREAK FROM FEMINISM* 177 (2006). As we later argue in this Article, IDEA and the material-spatial reality it creates is part of a larger social apparatus that constitutes PWT as a distinct group, via the cyclical dynamic of symbolic and material racialization. See *infra* Section III.D.

193. See generally JONATHAN KOZOL, *SAVAGE INEQUALITIES: CHILDREN IN AMERICA'S SCHOOLS* (1991).

educational segregation, under a critical class paradigm, can be seen as a system’s feature rather than a bug.

However, through a more intricate understanding of PWT, this Article adopts what we call “a PWT lens,” which highlights how class alone is insufficient in capturing the myriad facets of the formation of PWT marginalization. Three further aspects—race, disability, and gender—work together to shape the educational landscape for PWT students.

The racial language used to describe poor whites as “not quite white” prompts us to recognize patterns of racialization even outside our common understanding of race and racial categories. While seeing white subjects as racialized may seem at odds with Critical Race Theory, it is in line with one of its basic tenets: the understanding that race is a social construct.¹⁹⁴ It recognizes racism not as an identity-based theory, i.e., something that “happens” to Black people, but as an ideology with a firm grip on society in ways that affect all its members.¹⁹⁵ Notably, rather than being obvious, the question of who was historically considered fully “white” was a question scientists, social theorists, and jurists wrestled with for decades. The answer proved unstable and often changed according to social norms and orthodoxies.¹⁹⁶ This framing allows us to acknowledge patterns of PWT racialization, even without ignoring their whiteness. The racial perspective is essential for analyzing PWT educational segregation. The classroom, history tells us, has long been a racialized locus, and its design (i.e., who gets to sit

194. Race, according to critical race scholars, is not the origin or natural-biological fact from which racism emerges, but vice versa. Racism, through acts of racialization, forms racial lines and categories that then seem natural and biological. Race, under this paradigm is a verb, not a noun. See Kendall Thomas, *The Eclipse of Reason: A Rhetorical Reading of Bowers v. Hardwick*, 79 VA. L. REV. 1805, 1806–07 (1993) (“[W]e are ‘raced’ through a constellation of practices that construct and control racial subjectivities.”). See generally LÓPEZ, *supra* note 55; JOHN A. POWELL, RACING TO JUSTICE: TRANSFORMING OUR CONCEPTIONS OF SELF AND OTHER TO BUILD AN INCLUSIVE SOCIETY (2012).

195. For a similar discussion in sex discrimination cases, see Katherine M. Franke, *What’s Wrong with Sexual Harassment?*, 49 STAN. L. REV. 691, 691 (1997). Franke argues we should understand sexual harassment not as “something men do to women,” *id.* at 760, but rather as “a technology of sexism . . . a disciplinary practice that inscribes, enforces, and polices the identities of both harasser and victim according to a system of gender norms that envisions women as feminine, (hetero)sexual objects, and men as masculine, (hetero)sexual subjects.” *Id.* at 693. Accordingly, she theorizes instances where men are sexually harassed as stemming from their failure—or refusal—to adhere to societal gender norms. *Id.* at 728. We theorize PWT in similar ways, seeing them as a group that fails or refuses to adhere to the norms associated with whiteness.

196. LÓPEZ, *supra* note 55, at 75 (“There are only popular conceptions—in the language of the prerequisite cases, a ‘common knowledge’—of Whiteness. And this common knowledge, like all social beliefs, is unstable, highly contextual, and subject to change.”).

in which class and next to whom) is a racial practice. As the above discussion illustrated, the racial practice of exclusion and segregation is not limited to BIPOC students. What a PWT lens allows us to recognize is that educational segregation of PWT students is not a divergence from the role race plays in the making of the educational landscape; it is, in fact, its logical extension. Going back to the Supreme Court's faulty logic in *SFFA v. Harvard*, the PWT lens highlights the idea that merit and standardized testing is the manifestation of racial discrimination, not its aberration.

The site through which both class and race have intersected to portray poor whites as “not fully white” is disability. Notably, disability, like race, is not solely inherent to the body but rather created via the confluence between the individual and society.¹⁹⁷ Incorporating the disability framework enables us to recognize the process of categorizing PWT as intellectually inferior not merely as a scientific process of “discovery” but rather as one of creation.¹⁹⁸ Moreover, it allows us to critically assess one of the primary mechanisms for justifying PWT segregation: their casting as low-ability students who *need* segregated settings in order to succeed.

Finally, both the historical and present-day dynamics presented above highlight the hidden ways gender has shaped realities for PWT students. While current day educational segregation does not carry overt gender ramifications, the history of PWT highlights how one of the major catalysts for PWT segregation was the fear of poor white women “seducing” well-born white men and reproducing with them.¹⁹⁹ The story of Carrie Buck likewise demonstrates how a strong connection was assumed between a moralistic judgment of a person's behavior and their classification/diagnosis as a person

197. Sagit Mor, *With Access and Justice for All*, 39 CARDOZO L. REV. 611, 623 (2017) (“The social construction approach rejects the view of disability as an inherent difference, but rather views disability as a contextual and relational phenomenon resulting from the interaction between the person and the environment.”); *see also* RAPLEY, *supra* note 87, at 2 (“[W]hat has come to be a taken-for-granted social, administrative/bureaucratic and professionalised category of personhood can, rather, [can] be understood not as some fixed object in an unchanging social world (or one of the ‘static features of a pre-defined macro-sociological landscape’), but instead as a status of being-in-the-world which is actively negotiated—if not always from positions of equality.” (citations omitted)).

198. Rather, it reflects “social values, tradition, intended and unintended prejudice and derogation—all reflecting the dominant characteristics of our society and its history.” SEYMOUR B. SARASON & JOHN DORIS, *EDUCATIONAL HANDICAP, PUBLIC POLICY, AND SOCIAL HISTORY: A BROADENED PERSPECTIVE ON MENTAL RETARDATION*, at ix (1979).

199. *See supra* Part I.

with cognitive disabilities.²⁰⁰ Adopting a gender perspective into our analysis allows us to analyze the threat of integrated education as one that (also) revolves around the fear of students from different backgrounds meeting and socializing.²⁰¹ Gender analysis thus illuminated the potential and the danger that the integrated classroom poses. Finally, it further allows us to assess present-day narratives of PWT students who are women, fully appreciating the gendered aspects of their experiences in the educational system, rooted, amongst other reasons, in gendered bias regarding their prospect of educational success.

To conclude this part, we have shown thus far how the category of PWT, and the construction of this group as cognitively deprived under the language of eugenics, complexifies and defies traditional separations between class, race, gender, and disability. A specific language of disability was invented to justify segregation and protect whiteness and white supremacy, along with classist and gendered social norms. The ability to mesh together class, race, gender, and disability through eugenics and later through IQ testing portrayed PWT segregation as a neutral and natural response to biological differences.²⁰² Adopting a PWT lens uncovers these dynamics as problematically informed by logics of superiority and exclusion. While much has been written about the exclusion of racial minorities and lower classes from quality education, the intersectional positionality of PWT adds

200. Mark Rapley describes the “formerly widespread practices of ascribing ‘imbecility’ solely on the grounds of unwanted moral (frequently sexual) conduct *whether or not* the persons so diagnosed displayed any difficulties with everyday living or showed any signs of being ‘mentally deficient’ in the sense of poor IQ test performance.” RAPLEY, *supra* note 87, at 34–35. Wray notes in that context that “the fascination with and compulsion to report upon the sexual reputations of poor rural whites was a consistent and primary feature of eugenics research.” WRAY, *supra* note 4, at 164.

201. For a discussion on the potential for romance and friendships to emerge by creating integrated spaces see Elizabeth F. Emens, *Intimate Discrimination: The State’s Role in the Accidents of Sex and Love*, 122 HARV. L. REV. 1307, 1308–09 (2009). For an additional discussion in the context of race, see LÓPEZ, *supra* note 55, at 82. For a discussion in the context of disability, see Covo, *supra* note 163, at 604–13.

202. Camille Gear Rich shows how discrimination against “marginal whites” can mask discrimination against racial minorities as race-neutral. Camille Gear Rich, *Marginal Whiteness*, 98 CALIF. L. REV. 1497, 1576–77 (2010). We elaborate more on this point later in this Article. See *infra* Section III.E. For a different way in which racially othering PWT provides relief for charges of racism, see Hardie & Tyson, *supra* note 135, at 84 (mentioning how the ability to associate racism only with so-called rednecks allowed one school in North Carolina to disassociate itself from racist behavior and racism, by casting the redneck population of students “as the only culprit of racism at the school”).

complexity and nuance to our understanding of the exclusionary forces shaping the U.S. educational system.

Looking through the PWT lens at our educational system, and specifically at the current debate on affirmative action, challenges narratives glorifying “objective grading scales” as “the great equalizer.” It further helps us acknowledge the systemic *a priori* ways white supremacy has set poor white Appalachian students behind, and how the way to provide them with educational equity is to be *more* race conscious, not less.

III. THE NORMATIVE CASE AGAINST ABILITY SEGREGATION

While the wrong of educational segregation may seem evident, it is nevertheless crucial to detail its various aspects. This is important as proponents of ability segregation often argue that unlike other types of segregation, ability-based classifications are based on a relevant and rational criterion and are practiced for legitimate ends. This line of reasoning has received further support in the recent case of *SFFA v. Harvard*, where the Supreme Court held that race-based admissions violate the Equal Protection Clause and focused, instead, on merit, i.e., students’ abilities.²⁰³ As we have previously argued, students reach admission decisions in higher education with “objective” measures of merit dictated—perhaps primarily—through mechanisms like ability segregation.

In order to present a comprehensive critique of PWT ability segregation, we wish to answer those who justify this practice through the benefits associated with ability segregation.

Supporters of ability segregation offer several justifications for the practice. First, it is argued, as mentioned above, that education tailored according to students’ differing needs benefits high and low ability students alike.²⁰⁴ In a mixed-ability classroom, so it is argued, high ability children might be held back, waste their time, and ultimately get bored and disassociate themselves from learning.²⁰⁵ Those with low ability, on the other

203. Citing to *Rice v. Cayetano*, 528 U.S. 495 (2000), the Court in *SFFA v. Harvard* states: “One of the principal reasons race is treated as a forbidden classification is that it demeans the dignity and worth of a person to be judged by ancestry instead of by his or her own merit and essential qualities.” 600 U.S. 181, 220 (2023). Similarly, in his concurring opinion Justice Thomas writes that “meritocratic systems have long refuted bigoted misperceptions of what black students can accomplish.” *Id.* at 284.

204. See LOVELESS, *supra* note 99, at 72–73; Hornby et al., *supra* note 99; NAT’L EDUC. ASS’N, *supra* note 98, at 1–3.

205. See SAPON-SHEVIN, *supra* note 98, at 204.

hand, may not receive the support they need, fall behind, and fail to obtain the knowledge and skills taught in class. Further, advocates of ability grouping argue that some educational resources like classes and courses are wasted on students who do not have the sufficient ability to take advantage of them.²⁰⁶ As a result, teaming students with peers who are like them, and teaching them according to their ability, seems like a rational and desirable educational practice.

In this chapter we address these justifications, and present five concerns that arise from PWT ability-based educational segregation. First, we argue that existing methods of measuring ability are unreliable and vulnerable to bias and therefore cannot justify separation.²⁰⁷ Second, the practice negatively impacts the education of students who are directed to low-ability tracks.²⁰⁸ Third, ability segregation undermines the creation of a community of learners who can relate to one another as equals, and instead fosters competitiveness and hierarchical relations.²⁰⁹ Fourth, ability segregation of PWT is one of the main practices that construct the social group of PWT, loading it with negative social value.²¹⁰ Fifth and relatedly, by contrasting PWT with non-PWT whiteness, segregation constitutes whiteness according to white supremacy ideals, thus bolstering them, to the detriment of all students.²¹¹

A. Ability Measurement Is Unreliable

As we already allude to in the previous chapters, the primary mechanisms used to evaluate ability are unreliable and inaccurate. The inaccuracy of these methods, in turn, leads to the overrepresentation of PWT (as well as other marginalized students)²¹² in low ability groups and in special education.

206. *See id.* at 188–90 (discussing the “cost-effectiveness argument for education: let’s not ‘waste’ special attention or education on those children who may not turn out to be gifted after all”).

207. *See infra* Section III.A.

208. *See infra* Section III.B.

209. *See infra* Section III.C.

210. *See infra* Section III.D.

211. *See infra* Section III.E.

212. Studies show that children of color as well as children who live in poverty are subject to implicit biases that are partly responsible for their inferior educational trajectories. *See* Yoni Har Carmel & Tammy Harel Ben-Shahar, *Reshaping Ability Grouping Through Big Data*, 20 VAND. J. ENT. & TECH. L. 87, 101 (2017). Thus, teachers are more likely to under-evaluate the academic abilities of minority children, more likely to react negatively to their misbehavior, and less likely to interact positively with them. *See id.* at 100–01 (“[T]eachers . . . tend to judge equally

Notably, the problem with current methods of measuring ability stretches beyond the bias against PWT and other marginalized students. Ability, more broadly, is an elusive quality to try and measure, and most ways utilized for this assignment fail to successfully distinguish between children on this basis. Several arguments substantiate this claim. First, students within an age cohort differ significantly from one another in age and developmental pace.²¹³ Since developmental pace and academic ability are two separate parameters, and one does not necessarily predict the other, measuring ability across an age cohort is likely to distort evaluation of ability. Measuring ability of young children is especially problematic since developmental differences between the youngest and oldest children in a year group can be quite decisive.²¹⁴

qualified students from racial minorities as less academically and socially competent than nonminority students, thus underestimating the students' actual academic abilities.”); Russell J. Skiba et al., *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, 34 URB. REV. 317, 332–34 (2002) (revealing disparity in discipline between Black and white students, which could not be explained by higher rates of African American misbehavior); Garda, *supra* note 156, at 1078–82 (discussing high rates of misidentification of Black students as requiring special education when diagnosis requires subjective teacher evaluation). Exams are also often culturally and racially biased, both in form and in content, and tend to expose members of stereotyped minorities to stereotype threat that further hinders their performance. See Michael S. Merry, *Educational Justice and the Gifted*, 6 THEORY & RSCH. EDUC. 47, 52 (2008) (“[T]ests used to measure intelligence are able to tell us little about how the mind works or what a child’s aptitude or learning potential actually is.”). Furthermore, ability segregation is sometimes deliberately fashioned to create racial separation, in a pattern that echoes an ethnographic study in the town of Newton. See Whitney Gecker, *Diversity and Privilege in Newton, Massachusetts: How Young People Make Sense of Their Suburban Community* (2020) (Ph.D. dissertation, Boston University) (ProQuest). In an attempt to avoid desegregation in the aftermath of *Brown v. Board of Education*, some schools instated ability grouping. See, e.g., *Hobson v. Hansen*, 269 F. Supp. 401, 443 (D.D.C. 1967). In *Hobson v. Hansen*, a federal court struck down ability grouping instated by the District of Columbia immediately after desegregation of public schools. *Id.* at 514, 517. Noting the stark inequality resulting from ability segregation, the court stressed that the tests violated the Due Process Clause of the Fifth Amendment of the U.S. Constitution because they did not reflect children’s actual ability. *Id.* at 511; see also *Moses v. Wash. Parish Sch. Bd.*, 330 F. Supp. 1340, 1340–41 (E.D. La. 1971), *aff’d*, 456 F.2d 1285 (5th Cir. 1972).

213. See Mason, *supra* note 124, at 310; see also David F. Lohman, *An Aptitude Perspective on Talent: Implications for Identification of Academically Gifted Minority Students*, 28 J. FOR EDUC. GIFTED 333, 335–36 (2005).

214. See Elizabeth Dhuey & Stephen Lipscomb, *Disabled or Young? Relative Age and Special Education Diagnoses in Schools*, 29 ECON. EDUC. REV. 857, 857, 863 (2010) (finding that relative age effects are strong for learning disabilities and that each additional month of relative age decreases the likelihood of receiving special education services by 2%–5%). Relative age effects persist even in older children. See Stephen Cobley et al., *How Pervasive Are Relative Age Effects in Secondary School Education?*, 101 J. EDUC. PSYCH. 520, 520 (2009) (finding pervasive and systematic relative age effects, advantaging relatively older students among 657 students aged eleven to fourteen who participated in the study).

Furthermore, ability is not a fixed trait; it is flexible, and it changes throughout our lives.²¹⁵ Therefore, measuring it at a specific point of time, and determining a child’s educational trajectory based on that evaluation is arbitrary. Instead of giving an important indication of a student’s potential, it places people into unnecessarily fixed roles.²¹⁶ Additionally, the setting in which tests, and especially high-stakes tests, are administered can significantly affect the results, thereby decreasing their predictiveness. Performing tests in an unfamiliar place, for example, or conducting an oral interview by an unfamiliar adult, advantages children who possess personality traits such as self-confidence and ease, giving them a leg up compared to equally able children who are shy or nervous around strangers. High-stakes examinations are especially problematic in terms of predictiveness because they rely on a sole measurement that might be skewed as a result of stress, illness, or simply bad luck.²¹⁷

The problem of accuracy is compounded by the fact that ability segregation is typically quite rigid, meaning that once placed on a certain track, students are rarely able to move to a different one.²¹⁸ Transferring to different schools can be complicated, and given the differentiated curricula that tracking entails, transferring to a higher track is unlikely. Therefore, even if ability segregation could have positive educational outcomes for students, it is doubtful whether we are currently capable of measuring ability adequately.

In the context of PWT students (as well as other marginalized students), several additional variables skew mechanisms of evaluation against them. Acknowledging the class aspect of their positionality, research shows that children from low-income families tend to underperform in ability measuring exams.²¹⁹ They often lack stimulating educational experiences that children from higher-income families are exposed to, such as visits to museums or

215. ISRAEL SCHEFFLER, *OF HUMAN POTENTIAL: AN ESSAY IN THE PHILOSOPHY OF EDUCATION* 11 (Routledge 2010) (1985) (“*The idea of fixed potentials is a myth.* It is only if the fact of change is ignored and the student’s assessed potentials indeed taken as fixed and durable traits that his evident lacks may be routinely mistaken for permanent educational deficiencies.”).

216. See Tammy Harel Ben Shahr, *Ability and Ability Grouping*, in *HANDBOOK OF PHILOSOPHY OF EDUCATION* 401, 402–08 (Randal Curren ed., 2022).

217. Mason, *supra* note 124, at 299–300.

218. See Adam Gamoran, *The Variable Effects of High School Tracking*, 57 *AM. SOCIO. REV.* 812, 823 (1992) (explaining that rigid tracking systems are more likely to cause inequality).

219. See *supra* note 212.

traveling abroad.²²⁰ In addition, when taking high-stakes exams, children from privileged backgrounds are more likely to be intentionally prepped in a booming market for test-preparation courses.²²¹ Incorporating additional lenses, like that of race, allows us to see how institutional racism and classism further hinder PWT students' abilities to be properly measured. Unfortunately, it is often the case that educational services and facilities are distributed unequally along racial and class lines. Since schools' funding depends largely on local resources, spatial segregation and general social inequality both feed educational inequality. Because PWT children are more likely to study in failing elementary schools, they are less academically prepared for the challenging educational tracks in high school.

B. PWT Segregation Harms PWT Students in Low-Ability Tracks

A student's placement in low ability tracks or special education classes has a clear negative effect on children's educational trajectories.²²² As consistent research has found, and the narratives brought in Part II similarly show, there is a clear link between lower ability tracks and lower educational attainments that goes beyond what could be attributed to children's ability.²²³ The negative effects can shape children's futures, dictating whether they are accepted into higher education, what types of careers are open to them, and the income level they will acquire.²²⁴

The harm for PWT children who are misclassified as having low ability involves losing educational opportunities and being exposed to education that does not sufficiently challenge them. We further argue that PWT ability

220. LAREAU, *supra* note 124, at 2 (“By making certain their children have these and other experiences, middle-class parents engage in a process of *concerted cultivation*. From this, a robust sense of entitlement takes root in the children. This sense of entitlement plays an especially important role in institutional settings, where middle-class children learn to question adults and address them as relative equals.”).

221. See, e.g., KAREN QUINN, TESTING FOR KINDERGARTEN: SIMPLE STRATEGIES TO HELP YOUR CHILD ACE THE TESTS FOR PUBLIC SCHOOL PLACEMENT, PRIVATE SCHOOL ADMISSIONS, GIFTED PROGRAM QUALIFICATION (2010); *Gifted Children Test Prep*, TEST PREP ONLINE, <https://www.testprep-online.com/gifted-children-tests> [https://perma.cc/E4RQ-75ZE] (“TestPrep–Online is here to help your child prepare for gifted and talented tests. With our help, your child will go into the test feeling confident and ready.”).

222. See Jacob Werblow et al., *On the Wrong Track: How Tracking Is Associated with Dropping Out of High School*, 46 EQUITY & EXCELLENCE EDUC. 270, 272 (2013).

223. See *id.* at 272 (demonstrating that tracking students increases the likelihood that those placed in lower tracks drop out of high school).

224. See Kamilah Legette, *A Social-Cognitive Perspective of the Consequences of Curricular Tracking on Youth Outcomes*, 32 EDUC. PSYCH. REV. 885, 888 (2020).

segregation also harms PWT students in low ability tracks even when they are “suitably” assigned to them.

As mentioned above, proponents of ability grouping insist that the practice is beneficial for all children. Teachers, it is argued, can better adapt their instruction to children’s needs in a homogeneous classroom.²²⁵ Surprisingly perhaps, educational research does not lend much support to that claim. The data is inconclusive regarding the benefit of separation for children with high abilities,²²⁶ and for children with low abilities, it has been substantiated that learning in a separated setting results in lower achievement compared to learning in a mixed-ability classroom.²²⁷ Tracking, and especially early tracking, has been found to reinforce the effect of family background on educational outcome, meaning that children from disadvantaged backgrounds are less likely to succeed and to overcome the educational deficits that result from environmental deprivation.²²⁸

There are several possible reasons that might explain the inferior educational outcomes that children in low ability tracks obtain in segregated settings. First, it is often the case that low ability tracks are allocated less resources²²⁹ and are taught by teachers of lesser training and lower quality, who teach less demanding curricula.²³⁰

225. See Robert E. Slavin, *Achievement Effects of Ability Grouping in Secondary Schools: A Best-Evidence Synthesis*, 60 REV. EDUC. RSCH. 471, 473 (1990).

226. See *id.* at 474; Stephen Gorard & Nadia Siddiqui, *Grammar Schools in England: A New Analysis of Social Segregation and Academic Outcomes*, 39 BRIT. J. SOCIO. EDUC. 909, 921 (2018); Liora Linchevski & Bilha Kutscher, *Tell Me with Whom You’re Learning, and I’ll Tell You How Much You’ve Learned: Mixed-Ability Versus Same-Ability Grouping in Mathematics*, 29 J. RSCH. MATHEMATICS EDUC. 533, 534 (1998). It should be noted that the argument that high achievers are disadvantaged in mixed ability groups lacks strong proof. See Carol C. Burris et al., *Accelerating Mathematics Achievement Using Heterogeneous Grouping*, 43 AM. EDUC. RSCH. J. 105, 108 (2006). Some studies find small improvement in outcome for high achievers. See Yechezkel Dar & Nura Resh, *Separating and Mixing Students for Learning: Concepts and Research*, in ENHANCING EDUCATION IN HETEROGENEOUS SCHOOLS: THEORY AND APPLICATION 191 (1997).

227. See Werblow et al., *supra* note 222, at 272.

228. Andrés Strello et al., *Early Tracking and Different Types of Inequalities in Achievement: Difference-in-Differences Evidence from 20 Years of Large-Scale Assessments*, 33 EDUC. ASSESSMENT, EVALUATION & ACCOUNTABILITY 139, 140–42 (2021).

229. See *id.* at 142.

230. See Werblow et al., *supra* note 222, at 271. It should be noted that it is not a coincidence that these tracks are shortchanged in terms of resources since they serve predominantly children from disadvantaged groups whose parents are less likely to be able to ensure they receive sufficient resources. See Nancy E. Hill & Lorraine C. Taylor, *Parental School Involvement and Children’s Academic Achievement: Pragmatics and Issues*, 13 CURRENT DIRECTIONS PSYCH. SCI.

However, ability segregation is detrimental for students not only because of the lack of resources. Separation by ability involves labeling students as possessing low innate ability. Studies show that teachers whose students are classified as possessing low ability have lesser expectations of their students and, moreover, do not individuate their expectations of specific students.²³¹ Low expectations are self-fulfilling prophecies: students internalize them and lose self-esteem and confidence.²³² In order to cope with their looming failure, they may become emotionally detached from learning, have negative attitudes toward school, experience a decline in motivation, and ultimately find a sense of meaning and worth elsewhere and shape their plans and aspirations accordingly.²³³ Unsurprisingly, their achievements drop.²³⁴

Another negative consequence of ability segregation for PWT children assigned to low ability tracks is the loss of positive peer effects. Learning is a communicative activity; students learn through interacting with their peers and their teachers, even when they are passive onlookers. Therefore, the quality of that interaction, influenced by student composition, affects educational performance.²³⁵ Ability segregation confines low ability students

161, 161–64 (2004) (describing how parental involvement in schools affect achievement and stating that patterns of involvement vary across cultural, economic, and communal aspects).

231. See Özge Aydın & Ahmet Ok, *A Systematic Review on Teacher's Expectations and Classroom Behaviors*, 12 INT'L J. CURRICULUM & INSTRUCTIONAL STUD. 247, 248, 262–64 (2022); cf. Aaron M. Pallas et al., *Ability Group-Effects: Instructional, Social, or Institutional?*, 67 SOCIO. EDUC. 27, 27–28 (1994) (arguing that the differences in reading ability following first grade ability grouping were related to instructional differences between the tracks rather than to social or institutional effects, namely the children's expectations and perceptions of themselves and the expectations and perceptions of significant others such as teachers and parents).

232. See, e.g., Rist, *supra* note 126, at 167–70 (demonstrating that a field study showed the way the teacher behaved toward children from different social classes had an important influence on their achievement); cf. Lee Jussim & Kent D. Harber, *Teacher Expectations and Self-Fulfilling Prophecies: Knowns and Unknowns, Resolved and Unresolved Controversies*, 9 PERSONALITY & SOC. PSYCH. REV. 131, 131 (2005) (concluding that self-fulfilling prophecies in classrooms do occur, but the effects are typically small, and that teacher expectations predict student outcome because they are accurate rather than because they are self-fulfilling).

233. See JOHN ABRAHAM, *DIVIDE AND SCHOOL: GENDER AND CLASS DYNAMICS IN COMPREHENSIVE EDUCATION* 12 (1995); DAVID H. HARGREAVES, *SOCIAL RELATIONS IN A SECONDARY SCHOOL* (1967); STEPHEN J. BALL, *BEACHSIDE COMPREHENSIVE: A CASE-STUDY OF SECONDARY SCHOOLING* 53–108 (1981).

234. See ABRAHAM, *supra* note 233, at 12.

235. See Ron W. Zimmer & Eugenia F. Toma, *Peer Effects in Private and Public Schools Across Countries*, 19 J. POL'Y ANALYSIS & MGMT. 75, 88–89 (2000) (examining a large dataset from public and private schools in five countries and finding that peer effects are significant determinants of achievement, especially for low-ability students); KIRK A. JOHNSON, *THE PEER EFFECT ON ACADEMIC ACHIEVEMENT AMONG PUBLIC ELEMENTARY SCHOOL STUDENTS* 4 (2000)

to classes in which their peers have limited ability to contribute to the educational discussion through their questions, examples, and observations.²³⁶

C. PWT Segregation Undermines Community

An additional moral concern regarding PWT ability segregation is that it undermines the democratic mission of public education. According to a democratic approach to public education, schools model society at large and provide the opportunity to rehearse the kinds of relationships and virtues we would like to see exercised by future citizens.²³⁷ Ensuring equal standing, mutual respect, and solidarity among all students is pivotal for realizing schools’ mission.

Rather than cooperation, ability-based tracks foster social divisiveness and competitiveness.²³⁸ It disrupts the creation of a community of learners who can relate to one another as equals and instead generates well-defined hierarchies between students.²³⁹ Despite institutional efforts to obfuscate

(studying data concerning fourth, eighth, and twelfth graders reveals that peer effect is a strong influence on academic achievement, particularly in the fourth grade).

236. Volker Meier & Gabriela Schütz, *The Economics of Tracking and Non-Tracking* 16–17 (Inst. Econ. Rsch., Working Paper No. 50, 2007).

237. See STEPHEN MACEDO, DIVERSITY AND DISTRUST: CIVIC EDUCATION IN A MULTICULTURAL DEMOCRACY 231–32 (2000) (detailing the role of education in instilling democratic values).

238. CHARLES BAILEY & DAVID BRIDGES, MIXED ABILITY GROUPING: A PHILOSOPHICAL PERSPECTIVE 43 (1983) (“[E]ducational arrangements of a selective kind would tend to misdirect or wrongly focus fraternal feelings upon particular attributes [A]lthough people might be valued *instrumentally* for particular purposes . . . they should only be valued *intrinsically* as persons—purposive agents—and grouping should basically be mixed ability to make this equal valuing demonstrable.”); ADAM SWIFT, HOW NOT TO BE A HYPOCRITE: SCHOOL CHOICE FOR THE MORALLY PERPLEXED PARENT 36 (2003) (“[S]election is socially divisive, channeling children of differing abilities into different schools where they lose contact with one another, learn different things in different ways, and come out different kinds of people with little or nothing in common. The kind of face-to-face contact that is needed for the development of mutual respect, the common learning experience that forms the basis for shared understanding, is lacking.”). See generally ELIZABETH ANDERSON, THE IMPERATIVE OF INTEGRATION (2013) (arguing that lack of integration results in relations of domination and subordination that are inimical to democratic equality).

239. SAPON-SHEVIN, *supra* note 98, at 3–11. As she writes: “One of the most important characteristics of a classroom community is its *inclusiveness*.” *Id.* at 3. “Removing students because of a label . . . reifies the belief that community membership is only available to children who are ‘average’ or ‘typical.’” *Id.* at 6. This undermines the safety children derive from knowing their membership in the community is secured regardless of differences that may be discovered. See *id.* at 8.

these hierarchies, they are crystal clear among the students themselves, even at very young ages, as the personal narratives shared above illustrate.

In his recent critique of meritocracy, Michael Sandel describes, in a similar context, how the reliance on merit drives what he calls “the politics of humiliation,” in which people of low status are made to recognize that their inferior status is not due to the fact that they were denied opportunity but because they are inherently inferior.²⁴⁰ Conversely, their successful counterparts enjoy the smug conviction that they deserve their fate.²⁴¹ These attitudes leave little room for solidarity with people who do not share our talents and fortunes.²⁴² Within existing social structures, ability segregation results in racial, ethnic, and class segregation; such segregation fosters social alienation, which is especially problematic and creates subordination inimical to democratic equality.²⁴³

D. PWT Segregation Rigidifies PWT Identity

The case against ability segregation we have laid forth in this Part has focused, up until now, on how educational practices marginalize PWT. The arguments in Sections III.A–C assume that groups—and PWT in particular—are predetermined entities and aim to examine institutional responses to these groups. The fourth and fifth arguments, in this Section and Section III.E, focus instead on the way educational segregation itself shapes disadvantaged identities. While the idea of identity construction may sound vague at first, the various ways in which societal forces—including the practice of educational segregation—form identities are in fact quite concrete.

First and foremost, identities form through societal narratives. Thus, social perceptions of students are shaped by students’ prior schools, background, dress, appearance, and dialect. These characteristics are charged with meaning—lower educational potential, i.e., “this is just how *they* are” or “this track is where *they* belong.” Recall Morris’s ethnography that found that teachers in a Texas school linked students’ class or their clean clothes with

240. MICHAEL J. SANDEL, *THE TYRANNY OF MERIT: WHAT’S BECOME OF THE COMMON GOOD?* 29–31 (2021); *see also* SAPON-SHEVIN, *supra* note 98, at 29, 118–19.

241. *See* SAPON-SHEVIN, *supra* note 98, at 118.

242. *Id.* at 25–29, 119; *see also* DANIEL MARKOVITS, *THE MERITOCRACY TRAP: HOW AMERICA’S FOUNDATIONAL MYTH FEEDS INEQUALITY, DISMANTLES THE MIDDLE CLASS, AND DEVOURS THE ELITE* 14–15 (2019).

243. *See* SWIFT, *supra* note 238, at 36. *See generally* ANDERSON, *supra* note 238.

academic abilities,²⁴⁴ an association that was echoed in Cynthia Gerstl-Pepin’s narrative of her own school experiences.²⁴⁵

Narratives regarding educational abilities produce identities in three ways. First, they reaffirm the outside stigma associated with the group in the eyes of principals, teachers, and classmates whose views are influenced by stereotypes. Second, outside stigma is a powerful catalyst for creating self-identity and group identity.²⁴⁶ When someone identifies you as *x*, *x* often becomes the way you identify—either with shame or pride.²⁴⁷ Educational segregation, in this context, becomes the tool through which group identification is expressed, discussed, and ratified. Third, and perhaps most importantly, these narratives transform the actual, material reality of PWT. This dimension of group formation is evident in educational segregation, even when it is unintentional or rooted in implicit bias. Narratives regarding educational abilities can even form physical, spatial distinctions between PWT and non-PWT whites, as students from these groups are segregated into different schools and different educational tracks.

244. Morris, *supra* note 120, at 107 (“[S]tudents who wore neat and clean clothing gained more positive reactions from the teachers and less disciplinary action.”).

245. Gerstl-Pepin, *supra* note 4, at 10 (“I am not sure why the teacher did not like me. Perhaps it was my clothes which were often mismatched. Perhaps it was my hair which often needed brushing. Perhaps it was my cleanliness since I did not take regular baths.”).

246. Richard Jenkins famously discusses

two different types of collectivity, and hence two different modes of collective identification. In the first, the members of a collectivity can identify themselves as such: they know who (and what) they are. In the second, members may be ignorant of their membership or even of the collectivity’s existence. The first exists inasmuch as it is recognized by its members; the second is constituted in its recognition by observers.

RICHARD JENKINS, *SOCIAL IDENTITY* 106 (4th ed. 2014). Foucault similarly demonstrated the way in which homosexual identity was *constructed* through outside, medical stigma. MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY* 51–74 (Robert Hurley trans., Pantheon Books 1978) (1976). For similar accounts about transgender identity, bisexual identity, and asexual identity, see SUSAN STRYKER, *TRANSGENDER HISTORY: THE ROOTS OF TODAY’S REVOLUTION* (2d ed. 2017); Kenji Yoshino, *The Epistemic Contract of Bisexual Erasure*, 52 *STAN. L. REV.* 353, 423–29 (2000); and Elizabeth F. Emens, *Compulsory Sexuality*, 66 *STAN. L. REV.* 303, 309–12 (2014).

247. Notably, there are people who reject outside identification or challenge it. See Andreas Wimmer, *The Making and Unmaking of Ethnic Boundaries: A Multilevel Process Theory*, 113 *AM. J. SOCIO.* 970, 986–89 (2008) (discussing various strategies of groups making ethnic boundaries, including expansion, boundary shifting, inversion, repositioning, and the blurring of boundaries).

The material consequences of segregated education go beyond the mere formation of distinct spaces; as separate is indeed never equal.²⁴⁸ Placement in lower educational tracks or special education classrooms has direct implications on educational attainments. Accordingly, educational segregation has the power to shape *who students are going to be*. When they follow—and sketch—group lines, these material differences make the group discernable to both outsiders and members themselves.

Finally, the material reality formed by educational segregation provides justification for the narratives that created it.²⁴⁹ PWT students' lower educational levels—themselves the *product* of racism, ableism, classism, and sexism—are also used as *proof* of racist, ableist, classist, and sexist narratives.²⁵⁰

To conclude, educational segregation is not merely a response to a group perceived as “other.” The practice of segregation produces and maintains a category characterized by social exclusion, discrimination, and stigma. It reaffirms the PWT category, charging it with meaning, legitimacy, and assumed neutrality. Under this framework, Justice Thomas's hypothetical white student from Appalachia is the *product* of white supremacy. Ignoring race and racism's role in shaping the educational system does not help PWTs. Instead, it casts them as solely responsible for their shortcomings.

248. *Brown v. Bd. of Educ.*, 347 U.S. 483, 495–96 (1954).

249. Critical Race Theory scholars have stressed how humans have become raced through societal legitimacy, which makes race seem like a natural phenomenon. *See supra* note 194. This lends legitimacy to racism through the process of racialization. John Powell provides further explanation: “Failure to recognize that race is a function, that ‘racing’ is something we do to one another, strengthens uninformed popular racial discourses by causing them to seem natural or accurate.” POWELL, *supra* note 194, at 52.

250. *Cf., e.g.*, Christian A. Ruzzier & Marcelo D. Woo, *Discrimination with Inaccurate Beliefs and Confirmation Bias*, 210 J. ECON. BEHAV. & ORG. 379, 380 (2023) (discussing how confirmation bias affects employers' behavior in employment decisions for employees in different social circles). This dynamic is often referred to as the “symbiotic relationship” between symbolic racialization and material racialization. Narratives dictate material reality, which provides proof that the narratives were ‘right all along; they are indeed capable of less.’ Aziza Khazzoom refers to this dynamic as the symbiotic, “mutually constitutive” relationship between representational dichotomization and resource dichotomization. AZIZA KHAZZOOM, *SHIFTING ETHNIC BOUNDARIES AND INEQUALITY IN ISRAEL: OR, HOW THE POLISH PEDDLER BECAME A GERMAN INTELLECTUAL* 50–51 (2008). Representational dichotomization provides justification and neutrality to resource allocation inequality by arguing some people need or deserve “less.” *Id.* This different allocation of resources in turn constitutes a material reality which provides legitimacy and justification to representational dichotomization and racist narratives. *See id.*

E. PWT Segregation Bolsters White Supremacy

Designating one group as PWT inherently gives rise to a contrasting counterpart in non-PWT whites. As Richard Jenkins writes, both logically and inherently, any act of “inclusion entails exclusion, if only by default. To define the criteria for membership of any set of objects is, at the same time, also to create a boundary, everything beyond which does not belong.”²⁵¹ Like Jenkins, Ian Haney López also highlights how “[t]he construction of race becomes diacritical . . . [t]he identity of Whites is dependent on and at the same time helps to define the identity of non-Whites.”²⁵² This argument works in both ways, as exclusion logically entails defining who gets to be included, and for what reasons. Therefore, the construction of the category of PWT automatically tells us something important about whiteness, the ideal from which PWT are excluded.

From the plethora of stereotypes associated with PWT, we can discern the specific content with which whiteness is conversely charged. Stereotypes of PWT as unclean, immoral, dumb, or lazy are predominant in the historical scientific discussion around PWT,²⁵³ and are still present today in popular cultural depictions of this group.²⁵⁴

The mirror image of this depiction is white elites. John Hartigan shows how cultural portrayals of poor whites have helped maintain a mirror image of non-PWT whites as moral, pure, and refined.²⁵⁵ He argues that “the white trash figure allows an insidious belief to stand: that it is only *those people* who are racist, only *those women* who are so licentious that they would engage in miscegenation, only *those men* are so cruel and desperately violent

251. JENKINS, *supra* note 246, at 104.

252. LÓPEZ, *supra* note 55, at 116. “However, this dualistic structure makes race completely unstable.” *Id.* But, López adds, it is *real*, as it lives in the minds of so many people and thus shapes social geography. *Id.* at 118–19.

253. *See supra* Part I.

254. *See, e.g.*, May Friedman, *Here Comes a Lot of Judgment: Honey Boo Boo as a Site of Reclamation and Resistance*, 2 J. POPULAR TELEVISION 77 (2014).

255. HARTIGAN, *supra* note 165, at 117.

in maintaining the color line.”²⁵⁶ The existence of PWT, under this paradigm, operates as a mechanism that camouflages white racism.²⁵⁷

Following this logic, the construction of PWT through educational segregation and the existence of PWT as a discernable social category inherently conform with and promote white supremacist ideology.

Notably, the image of whites as moral, clean, and hardworking was a part of what constituted the racial lines between whites and Blacks in the U.S., and accordingly, was the core around which whiteness—as it was understood by white supremacists—was conceptualized.²⁵⁸ This is interesting, as the PWT/white contrast thus manages to both maintain racial hierarchies (distancing white elites from Black people and PWT), and to place the blame for maintaining those hierarchies away from white elites (by portraying PWT as the ‘true’ racists).²⁵⁹ Furthermore, ability segregation of PWT also

256. *Id.* Joel Williamson has coined this dynamic as the “grits thesis”: the idea that racial animus in the South is to be found only within the “ignorant white mass,” the “grits.” JOEL WILLIAMSON, *THE CRUCIBLE OF RACE: BLACK-WHITE RELATIONS IN THE AMERICAN SOUTH SINCE EMANCIPATION* 292 (1984). Under this thesis, politicians, journalists and others joined in establishing the myth “that the lower classes were racial extremists while the upper classes were not.” *Id.* As Williamson stresses,

the significant difference between the upper and lower elements is the style in which these are manifested in action. Lower-class prejudice toward blacks . . . is often translated into overt physical violence that compels attention and easily gets it. It is highly newsworthy. Upper-class racial prejudice, on the other hand, is often manifested in more subtle forms of economic, social, psychological, *educational* and judicial manipulation. Yet ownership of the land, control of money and credit, *of schools* and courts, and domination of the marketplace can be just as violent, if not, indeed, more violent than guns, whips, and bombs.

Id. at 294 (emphasis added).

257. See HARTIGAN, *supra* note 165, at 118. As Williamson adds, “[t]he whole idea of a specially vicious attitude towards blacks prevalent among lower-class whites is an upper-class myth. It was primarily a technique that the elite used to . . . take the lead in peacefully putting things in a lasting order with itself at the top.” WILLIAMSON, *supra* note 256, at 295; see also DAVID T. WELLMAN, *PORTRAITS OF WHITE RACISM* (2d ed.1993).

258. Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1370–76 (1988). Another interesting stereotype that conversely shapes PWT and non-PWT whites is that of purity. HARTIGAN, *supra* note 165, at 104. While purity was a key factor in the construction of whiteness, one of the discursive mechanisms used to distance PWTs from non-PWT whites was the historical discussion regarding their skin complexion. See *id.* at 98. Skin color “was the subject of intense scrutiny—not to discern and ferret out instances of miscegenation, but to locate and eliminate internal signs of racial deterioration and pollution.” *Id.*; see *supra* discussion accompanying notes 55–65.

259. HARTIGAN, *supra* note 165, at 117.

camouflages the racism of white elites because it hinders racial minorities’ ability to prove discrimination.²⁶⁰ As Camile Gear Rich shows, often, when a segregated group is compiled from both (PWT) whites and Blacks, the discrimination claim is undermined, and the act of separation is deemed racially neutral.²⁶¹ Likewise, as seen in the recent *SFFA v. Harvard* case, the exclusion of white Appalachian students is also used as a rhetorical means to secure more privileges for white elites, at the expense of students of color.²⁶² Rather than explaining PWT access gap by intra-white dynamics of discrimination, it is explained via an interracial language that absolves white elites from responsibility.²⁶³

PWT identity therefore constructs whiteness as superior, a culmination of positive and desirable qualities and characteristics that are understood as rooted *in* whiteness. Moreover, the cultural, symbolic existence of PWT helps distance whiteness from racism, violence, and elitism.

IV. LEGAL RAMIFICATIONS: ARGUING FROM A PWT POSITION

The argument advanced in this paper thus far seeks to name and critique the phenomenon of PWT ability segregation as discrimination. The recognition that PWT suffer from a newly theorized kind of educational discrimination can potentially have far reaching legal ramifications. While a full account of this argument’s intervention in legal theory and praxis is beyond the scope of this Article, it is worth it to briefly discuss its primary implications.

First and foremost, thinking about race’s place in education from a PWT position opens new and fruitful avenues through which to tackle white supremacy’s grip on our educational institutions. This strategy has proven successful in sex discrimination cases.²⁶⁴ Justice Ginsburg, in her role as the head of the ACLU Women’s Right Project (“WRP”), famously devised a strategy to promote gender justice through the courts by centering male plaintiffs who suffered from sex discrimination.²⁶⁵ Male plaintiffs “enabled Ginsburg and her colleagues at the WRP to address ‘what was primarily a

260. Rich, *supra* note 202, at 1576.

261. *Id.*

262. 600 U.S. 181, 254 (2023) (Thomas, J., concurring).

263. *See id.*

264. Cary Franklin, *The Anti-Stereotyping Principle in Constitutional Sex Discrimination Law*, 85 N.Y.U. L. REV. 83, 84–85 (2010).

265. *Id.* at 84.

women’s issue’ by focusing on small but concrete harms to men.”²⁶⁶ As Cary Franklin writes, this strategy was more than a reflection of trust in formal equality or the belief the male Justices would be more favorable to claims brought by men.²⁶⁷ Rather, she argues, centering male plaintiffs allowed Justice Ginsburg to promote an expansive anti-stereotyping approach, one which focused on discrimination encountered when people “deviate from ‘assigned roles.’”²⁶⁸ Indeed, the plaintiffs the WRP centered were men who failed to meet or plainly rejected the standards of stereotypical masculinity, including stay at home fathers or men who were not the primary breadwinners in their household.²⁶⁹ Focusing on these men and the harms they endure under the patriarchy allowed the WRP to develop an original way to tackle sex-based discrimination, while simultaneously promoting a rich vision of gender justice that stretched to both men and women, and later, to transgender people.²⁷⁰

This strategy has yet to be sufficiently attempted in the context of race.²⁷¹ By shedding light on the plight of white students who fail or refuse to meet the standards of whiteness set by white supremacy, we hope to similarly pave

266. *Id.* (quoting David Cole, *Strategies of Difference: Litigating for Women’s Rights in a Man’s World*, 2 LAW & INEQ. 33, 55 (1984)).

267. *Id.* at 84, 88.

268. *Id.* at 87 (quoting KENNETH M. DAVIDSON ET AL., TEXT, CASES AND MATERIALS ON SEX-BASED DISCRIMINATION, at xii (1974)).

269. *Id.*

270. Notably, the Stereotype Doctrine was a fruitful site for transgender Title VII litigation for year prior to *Bostock v. Clayton County*, 590 U.S. 644 (2020). See generally Ilona M. Turner, *Sex Stereotyping Per Se: Transgender Employees and Title VII*, 95 CALIF. L. REV. 561 (2007) (exploring how the Stereotype Doctrine influenced the history of transgender litigation); Stephanie Bornstein, *Unifying Antidiscrimination Law Through Stereotype Theory*, 20 LEWIS & CLARK L. REV. 919, 950–51 (2016) (making the connection between male caregiver discrimination and transgender discrimination, as different types of “non-conformers”).

271. One outlier is the Interracial Solidarity Doctrine, which attempts to tackle race discrimination by centering the harm caused to white plaintiffs from anti-Black racism. See Rich, *supra* note 202, at 1497 n.1, 1499 (defining “interracial solidarity claims” as “constructed causes of action under Title VII that allow white employees to bring claims based on discrimination directed at their racial and ethnic minority coworkers” and arguing against the limited scope of this doctrine); Jessica A. Clarke, *Protected Class Gatekeeping*, 92 N.Y.U. L. REV. 101, 129–32 (2017) (criticizing courts’ narrow understanding of injuries caused by racially discriminatory workplaces). Attempts to theorize intra-white workplace discrimination as race discrimination could provide a novel path through which to address white supremacy at work. Lihi Yona, *Whiteness at Work*, 24 MICH. J. RACE & L. 111, 135–41 (2018).

novel ways to combat racism in the educational system, especially at this moment of legal roadblock.²⁷²

Adopting a framework of PWT ability segregation as discrimination opens the possibility for PWT students to bring claims based on the injuries they suffer from the legacy of white supremacy. Until now, the educational disadvantage of poor whites was discussed primarily through the lens of poverty, a classification that was not effective enough in addressing educational injustices. The Supreme Court, as well as many state courts, explicitly rejected the possibility that poverty is a suspect classification, thus hindering challenges rising from economic inequality.²⁷³ Litigation relying on state constitutions’ education clauses to argue that states failed to supply students in poor districts with adequate education proved successful in some cases, but it focused solely on issues of funding.²⁷⁴ At the same time, arguments against educational segregation have focused almost exclusively on segregation of BIPOC students. Under this paradigmatic divide, instances of PWT segregation have fallen between the cracks.

The PWT lens provides a more nuanced way to analyze educational practices that affect PWT students. This, in turn, may open new avenues for litigation, and provide PWT with a legal ground from which to argue against their educational marginalization. The unique, intersectional positionality of PWT can allow them to draw legal arguments and claims that up until now have been limited to racial minorities. Notably, as we show throughout the Article, the segregation of PWT ought to be understood as a continuation of racial segregation practices, and therefore may be contested on similar grounds.

272. Gender and race are undoubtedly different, and drawing from one context to the other is not free from challenges. However, there is much to gain from learning the lessons offered by sex discrimination when dealing with the challenges of race discrimination. Yona, *supra* note 271, at 131–35. Thinking about race discrimination from the perspective of PWT helps illuminate the racial discrimination challenges they face.

273. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973). *But see* Henry Rose, *The Poor as a Suspect Class Under the Equal Protection Clause: An Open Constitutional Question*, 34 NOVA L. REV. 407 (2009) (arguing that the Supreme Court’s holding in *Rodriguez* did not explicitly foreclose on poverty as a suspect classification).

274. Jeffrey, *supra* note 24, at 356 (“[R]ecognition by state courts of economic equality rights in school financing and abortion funding cases can potentially expand into other substantive areas of economic equality rights. Such areas include those in which the federal Supreme Court has declined to guarantee equality, including welfare, housing, and employment.”); *see also* William S. Koski & Rob Reich, *When “Adequate” Isn’t: The Retreat from Equality in Educational Law and Policy and Why It Matters*, 56 EMORY L.J. 545, 604–07 (2007) (criticizing the turn to adequacy based claims, based on the inequality they allow).

Admittedly, race-based arguments have recently suffered another blow delivered by the Supreme Court. However, the neglect of PWT segregation is so complete that even the limited protection available on the basis of race would be an improvement. In addition, the PWT lens may offer a new way by which to combat white supremacy in education, that would ideally benefit BIPOC students as well. PWT analysis stresses the fact that merely showing that lower educational tracks are racially diverse does not rule out the possibility that they contribute to racial oppression.

A second important contribution of the PWT analysis is that it presents a novel ground from which to question the relevance of “ability” as a legitimate and rational criterion in education decision-making. The unique history of PWT’s construction as intellectually inferior, and the way in which logics of classism, sexism, racism, and ableism culminated in their classification as feebleminded, provides a theoretical infrastructure from which to challenge the legal justification for ability segregation practices. The PWT lens highlights the rocky scientific grounds upon which educational ability is decided, and the discriminatory aspects of this classification. These insights prove relevant for larger discussions on ability segregation even outside the scope of PWT. Further, this Article’s critique on ability may prove relevant beyond the school context, impacting current discussions around higher education admissions. Notably, many of the problems rooted in measuring ability in schools, as detailed in the previous section, exist in the context of higher education.

Some writers have indeed suggested that we free admission decisions from the shackles of merit.²⁷⁵ One potential suggestion argues that admission decisions ought to focus not only on one’s potential for success as predicted by their GPAs, but also on their potential to contribute to society upon graduation.²⁷⁶ Another proposal involves implementing a threshold for university admission that focuses on the minimum level of ability required to succeed in university, following which a lottery system would be employed among all those who meet it.²⁷⁷ This proposal uses merit as a “threshold qualification, not an ideal to be maximized.”²⁷⁸ Sandel argues that this model would not only promote fairness, but also “deflate meritocratic hubris”

275. See, e.g., ANNA MOUNTFORD ZIMDARS, MERITOCRACY AND THE UNIVERSITY: SELECTIVE ADMISSION IN ENGLAND AND THE UNITED STATES 29–30 (2017) (describing alternative admissions schemes not based on merit).

276. *Id.* at 30 (emphasizing universities’ declared mission of having their graduates “solve the world’s problems,” and produce the future leaders of the world).

277. SANDEL, *supra* note 240, at 184–88.

278. *Id.* at 185.

among those admitted, as it would be evident that no one made it “on their own,” highlighting the role of luck in people’s trajectories.²⁷⁹ Finally, some writers delve into more radical reforms to higher education. A significant and recent contribution to this discussion comes from Christopher Martin, who advocates for the universal right to higher education, which rests on higher education’s potential to enhance autonomy and its intrinsic value for individuals.²⁸⁰ Under this conceptualization, Martin urges us to stop thinking about higher education as a “just and fair . . . system designed specifically for the ‘best’ of us,” developing instead “a vision of higher education for the rest of us.”²⁸¹ The PWT perspective can illuminate hidden costs of merit-based admission, to the benefit of students from all races.

Third, this Article discusses how structural and procedural protections in the IDEA fail PWT, due to their reliance on private action. While the research does generally address the challenges that private enforcement mechanisms create for marginalized groups, the discussion of these specific enforcement mechanisms in the context of PWT and the unique stigma they (both students and their families) face²⁸² provides an animated portrayal of the multifaceted challenges that disadvantaged people may face when attempting to utilize these mechanisms. These barriers are likely to apply in various other contexts, so exposing and analyzing them in the educational sphere can be beneficial to promoting justice for PWT and other marginalized individuals in education and beyond.

Finally, this Article turns the PWT lens specifically at educational segregation. However, recognizing systemic anti-PWT discrimination opens new terrains for legal research—in workplace discrimination, criminal justice, and more.²⁸³

279. *Id.* at 186.

280. CHRISTOPHER MARTIN, *THE RIGHT TO HIGHER EDUCATION: A POLITICAL THEORY* 1 (2021).

281. *Id.* at 4.

282. *See supra* Section II.B.

283. Some work has been done on these issues, but it is limited in scope and quantity. *See, e.g.,* Rich, *supra* note 202 (reviewing Title VII cases to highlight injuries suffered by “marginal” whites by white elites); Pruitt, *supra* note 4 (examining the invisibility of and lack of empathy to white poverty due to the cultural trope of “white trash”); Peterman, *supra* note 187 (discussing discrimination on the basis of socioeconomic status, and specifically discrimination against “white trash” poor people in education, housing, voting, costumer discrimination, and employment); Yona, *supra* note 271 (analyzing race-based Title VII claims between whites, to argue that “white trash” plaintiffs suffer discrimination for failing to perform their whiteness according to racial expectations); Lihi Yona, *Identity at Work*, 43 *BERKELEY J. EMP. & LAB. L.* 139 (2022) (analyzing “white trash” as a group at the margins of social and legal recognition).

V. CONCLUSION

In the aftermath of *SFFA v. Harvard*, in which affirmative action plans were declared unconstitutional, the landscape of race and education remains at a critical juncture. This Article seeks to revisit and revitalize discussions on race's place in education from a perspective often ignored in scholarly writing: that of poor white students, stigmatized as "white trash." In the rare instances in which this group is mentioned in debates around affirmative action, it is often as victims of race-conscious decision-making, portrayed as the students left behind due to the system's over-fixation with race. Against this backdrop, this Article demonstrates how this group is instead left behind by allegedly race-neutral, objective mechanisms to assess merit and educational abilities. White supremacy's influence on societal perceptions of PWT as intellectually inferior has shaped a segregative dynamic that rigidifies path dependencies from elementary to high school, inevitably influencing college admission decisions. The fact that this dynamic was never acknowledged as influenced by racial ideologies like white supremacy granted it a pretense of objectivity, neutrality, and legitimacy.

Through a novel methodological lens that encompasses class, race, disability, and gender, we explored both the history and the present of PWT education. The historical stigma of PWT as intellectually inferior, and the way this categorization has translated to segregation in the nineteenth and beginning of the twentieth centuries, has contributed to an educational apparatus that pushes PWT students today to segregated groups, classes, and schools. This injustice is especially difficult to expose as it is cloaked in what could be considered as a fundamental, neutral, and scientific organizing principle of education: namely, students' ability. Armed with the guise of educational expertise, measuring students' abilities and treating them differently easily passes as benign and beneficial. Current legal and social trends, exemplified by *SFFA v. Harvard*, entrench this belief, valorizing objective "merit" and treating it as a given, innate trait that should be identified and rewarded rather than developed.

Against these beliefs, this Article attempts to lift the veil of neutrality from PWT educational segregation and expose the justification mechanisms of separation as inadequate. Ability segregation does not live up to its scientific reputation, nor can it be justified through its alleged benefits. Further, we argue, PWT ability segregation comes with a set of costs that warrants unique attention. It does not help PWT students, and it undermines all students' sense of community. Additionally, we highlight the dynamic between educational ability segregation and PWT identity. Educational ability segregation not only constructs the PWT identity, as distinct from white identity, but also

bolsters white supremacy in the educational system to the detriment of PWT and racial minorities.

If there is a silver lining to the setback posed by *SFFA v. Harvard*, it is that it forces us to revisit the idea of merit. The experiences of PWT students challenge the idea that merit can be separated from notions of hierarchy and supremacy. The PWT lens allows us to recognize how these logics of superiority and exclusion are rooted so deeply into our systems, that their effects travel beyond the “usual suspects” of subordination, harming both white and non-white students in intricate, nuanced ways.

The argument laid out in this Article paves a way towards legal recognition of PWT ability segregation as discrimination, providing new avenues through which to tackle white supremacy’s grip on our educational system. Undermining the legitimacy of PWT ability segregation casts doubt on the very foundations of the meritocratic project that shapes schools, higher education, and our market. Societal unawareness and legitimacy for PWT ability segregation, this Article has shown, is the crack through which white supremacy, sexism, ableism, and classism sneak into U.S. educational system and shape its core logics.

The fight against racism in education demands innovative approaches. By centering the experiences of the unexpected victims of white supremacy, we may forge new paths forward in the pursuit of racial equality.