REPARATIONS FOR INCULCATION:

Deconstructing the Supreme Court's Tacit Endorsement of White Hegemony in Schools and Reparations as a Path Forward

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Abstract

This comment argues that the law constructs the education system as a hegemonic device for the inculcation of ideologies that reproduce generational inequality and white supremacy. The Supreme Court created a values paradox wherein education is revered as the most important medium to prepare students for intelligent participation in the democratic process; yet in practice, it actively subverts all students—especially ethnic and racial minorities—from ever actually or intelligently participating in the democratic process. The consequence of this inculcation produces conditions that suppress dissent, exact curriculum violence on racial and ethnic minorities, and reproduce generational insubordination. Adequate remediation of the impacts of this inculcation requires a reparations framework, to achieve the promise of education as an incubator for an intelligent, multi–racial democracy and equitable socioeconomic outcomes. Reparations repair the harms of the education system for everyone, but targeting these reparations is essential to ensuring that groups most impacted by the inequities of the education system can reach parity with others and live more fulfilling, healthy lives as a result.

About the Author

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I. Introduction

The United States public education system has long been subject to political influence on how and what students learn in the classroom. Recent political discourse has centered around the validity of diversity, equity, and inclusion (DEI) practices in K–12 education, with the second Trump Administration ardently opposing the advancement of DEI in favor of exclusionary,

anti-intellectual pedagogy, and the destruction of the public school system.[1] However, the backdrop of these longstanding debates between the political parties and elected branches is the Supreme Court's understated, yet insidious role in its construction. Notwithstanding the current conservative Court's recent agenda, the history of the Supreme Court has cemented the institution's role as a steward for elite interests and solidified the education system as a hegemonic device under the guise of stewarding "democratic ideals." In practice, the Court's apparent overarching goal is to set the legal foundations for the education system to assimilate and inculcate every American child into a standard of whiteness and false narratives of exceptionalism.

This comment argues that the law constructs the education system as a hegemonic device for the inculcation of ideologies that reproduce generational inequality and white supremacy. The Supreme Court created a values paradox wherein education is revered as the most important medium to prepare students for intelligent participation in the democratic process; yet in practice, it actively subverts all students—especially ethnic and racial minority students—from ever *actually* or intelligently participating in the democratic process. Because of this system, students ultimately grow into adults who are largely incapable of critically exercising their judgment to achieve egalitarian objectives of an equal, multi-racial democracy. The consequences of this dynamic include the suppression of dissent, the subjugation of ethnic and racial minorities to curriculum violence, and the reinforcement of cycles of generational insubordination. Adequate remediation of the impacts of this inculcation requires a reparations framework, to achieve the promise of education as an incubator for an intelligent, multi-racial democracy and equitable socioeconomic outcomes. Reparations repair the harms of the education system for everyone, but targeting these reparations is essential to ensuring that groups most impacted by the inequities of the education system can reach parity with others and live more fulfilling, healthy lives as a result.

Part I discusses the legal construction of inculcation, beginning with a historical examination of the Court's ongoing stewardship of elite interests. In doing so, Part I seeks to highlight the ways in which the Supreme Court constructs the role of the education system in a recently integrated, modern world and its tacit endorsement of the dissemination of white hegemony. Part II explores the impacts of this inculcation and focuses on its impacts on ethnic

[1] *Press Release, U.S. Department of Education Takes Action to Eliminate DEI*, U.S. Dep't of Educ. (Jan. 23, 2025), https://www.ed.gov/about/news/press-release/us-department-of-education-takes-action-eliminate-dei [https://perma.cc/K7LZ-PRE3].

and racial minorities including curriculum violence, suppression of dissent, and disparate educational outcomes as a feature of curriculum and school control. Part II also illuminates the Court's intentional foreclosure of remediation of the systemic harms suffered by communities of color. Finally, Part III looks to a reparations framework by exploring various policies that seek to remedy the harms caused.

II. The Legal Construction of Inculcation

A. What is Inculcation and Hegemony?

Before discussing the legal construction and purpose of inculcation and hegemony, it is important to precisely define what those terms mean. Inculcation is the process of teaching and influencing knowledge or values to implant certain values, beliefs, or behaviors in students.[2] Naturally, the public education system is an efficient vehicle for inculcation, as children are required to attend school for much of their childhood under the threat of incarceration and/or other criminal sanctions. Because of this, the education system is viewed as having an important role—second to parents—as a system for socializing children into the expectations and structure of society.[3] These expectations are not only formally communicated through curriculum and direct control of student behavior, but also implicitly enforced through a "hidden curriculum."[4] The hidden curriculum encompasses implicit academic, social, and cultural messages, norms, rules, and values.[5] These are reinforced through teachers, the curriculum, and classmates.[6] These implicit assumptions and expectations stipulate the "correct" ways to think, speak, look, and behave in schools and, by extension, in society writ large.[7]

Schools are consequently seen as mediums of "assimilation," where students from diverse backgrounds learn from a standardized curriculum and context to eventually be transformed into a collective culture.[8] Students are also provided with a baseline framework to understand and conceptualize their role

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[2] *Inculcation*, VOCABULARY.COM, https://www.vocabulary.com/dictionary/inculcation (last visited Mar. 23, 2025).

[3] Boston University Teaching Writing, *Teaching the Hidden Curriculum,* Boston University, https://www.bu.edu/teaching-writing/resources/teaching-the-hidden-curriculum/ (last visited Mar. 23, 2025).

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] Ambach v. Norwick, 441 U.S. 68, 77 (1979); William Little & Ron McGivern, *Education*, *in* Introduction to Sociology – 1st Canadian Edition, https://opentextbc.ca/introductiontosociology/chapter/chapter16-education/ (last visited Dec. 20, 2024).

in society, where they are eventually sorted into various trajectories depending on their position within the school system.[9] Those that perform well within the standards of curriculum or enter into it with informal status are set on trajectories to high status and positions of power, while the rest are gradually confined to subordinate, lower status roles in society.[10] This dynamic naturally reproduces itself as the next generation occupies the very same classroom seats and replicates the trajectories of their parents and other predecessors.

The role of education illuminates that inculcation is an important tool for upholding hegemony. Hegemony is a system of attitudes and beliefs that permeate the popular consciousness and the ideology of elites, that then reinforce existing social arrangements and convinces the dominated classes that the arrangement is inevitable.[11] There are two approaches to enforcing hegemony: coercive and discursive. The coercive approach is achieved when the state exercises its police powers via policing, the military, or the law/courts to maintain dominant rule.[12] In contrast, the discursive approach focuses on extracting consent to domination, by shaping dominant societal values and cultivating the support of these values by the dominated classes through civil society i.e. schools, churches, news, etc.[13]

At the granular level, schools can uniquely occupy both categories when upholding hegemony.[14] Schools are coercive through means of compulsory education, their ability to administer a curriculum, and their ability to exact discipline, while also discursive through aspects such as the hidden curriculum.[15] In the context of American, but mostly white, hegemony, the Supreme Court has played a vital role in the flourishment of white hegemony across civil society, but especially in education.

B. The Supreme Court's Anti-Democratic Origins and Incentives

Before discussing the Supreme Court's role in constructing the public education system, it is important to contextualize the Court's origins and institutional role to illustrate its potential motivations. Although this paper discusses

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[9] Little & McGivern, *supra* note 8.

[10] *Id.*

[11] Kimberlé Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 Harv. L. Rev. 1331, 1350 (1988); James Martin, *Antonio Gramsci*, Stanford Encyclopedia of Philosophy (Edward N. Zalta & Uri Nodelman eds., Spring 2023), https://plato.stanford.edu/entries/gramsci/#Hege [https://perma.cc/P8HV-7YWW].

[12] Martin, *supra* note 11.

[13] *Id.*

[14] Barry Burke, *Antonio Gramsci, Schooling and Education*, Encyclopedia of Pedagogy and Informal Education, http://www.infed.org/thinkers/et-gram.htm (last updated 2005).

[15] *Id.*

individual eras of the Court (e.g. the Marshall Court, the Warren Court, etc.) to illustrate its doctrinal evolution, it is important to view the Court through a lens of continuity and as an institution. Because Supreme Court Justices are inherently social and economic elites, regardless of how their careers began, the Court is, more often than not, influenced by the views of other elites as a matter of personal stake.[16] Accordingly, this paper seeks to contextualize the Court's role in education and society writ large, as a reflection of its elite status and influences. I argue that this positionality has allowed the Court to largely maintain its institutional role throughout history notwithstanding any outlier landmark progressive wins.

Since its establishment in Article III of the U.S. Constitution, the Court was created as a stark institutional opposition to the two elected branches.[17] In the years leading up to the 1789 constitutional convention, the working class led insurrections against heavy taxation, land and currency speculators, and merchant bankers.[18] In doing so, they threatened to displace elites not only from positions of power, but also from entitlement to their private property.[19] Local legislatures were privy to capture by the working class who effectively canceled debt, stopped evictions, and ousted elites from positions of power.[20] James Madison saw the Court as a protection against "factitious and passionate majorities," justifying the justices' lifetime, unelected appointments to insulate them from the "passionate majorities" and secure their impartiality.[21]

Not long after its founding, the Court quickly established an enduring reputation of conservatism and stewardship of elite interests.[22] In the 1800s, the Marshall Court fundamentally defined the powers and duties of the Supreme Court as the institution of the colonizer and enslaver; notably it conferred the power of the judiciary to uphold the federal government's right to "kill people and destroy what they are and call it legal and fair play."[23] In 1823, the Marshall Court embodied this notion when it produced a unanimous opinion in *Johnson & Grahams Lessee v. M'Intosh*. The Court held that Native Americans "are to be considered merely as occupants" on their own land and have no actual right

[16] Lawrence Baum & Neal Devins, *Why the Supreme Court Cares About Elites, Not the American People*, 98 Geo. L. J., 1515–37 (2010).

[17] Steve Fraser, *The Supreme Court's Long History of Conservatism*, THE NATION (Sept. 9, 2022), https://www.thenation.com/article/politics/supreme-court-conservative-history/.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] Matthew L. Fletcher, *Listen*, 3 Mich. J. Race & L. 523, 527, 530 (1998).

to claim title to this land or confer title upon others.[24] Relying upon the archaic "doctrine of discovery" and the dehumanization of Native Americans as "fierce savages," the Court affirmed that "title by conquest is acquired and maintained by force" and "[c]onquest gives a title [to the conquering power to] which the Courts of the conqueror cannot deny."[25] To the Court, "it was only the tribes' disorderly resistance and unwillingness to assimilate that resulted in the extinguishment of their limited right of occupancy."[26] As such, *M'Intosh* cosigned violent colonization as a matter of right—irrespective of principles of natural law or the human rights of Indigenous persons. In 1857, the Court further extended the government's, and by extension the elite's, right to exploitation in *Dred Scott v. Sandford*. The Court declared enslaved persons as property under the Fifth Amendment and sided with the propriety interests of enslavers rather than the liberty interests and human rights of enslaved people.[27] Today, both cases are viewed as the most infamous cases and are largely framed in law schools and public discourse as condemned outliers. Yet, the Court has continuously upheld the core principles of exploitation and domination upon which those cases rely—just not as explicitly and barbarically.[28]

Post-Civil War and during Reconstruction, the Court aggressively defended the interests of the elite, launching into an era that ushered in Jim Crow policies by striking down the Civil Rights Act of 1875 in the *Civil Rights Cases* and reinforcing elite white rule through the legitimation of segregation in *Plessy v. Ferguson*.[29] In the same time period, the Court ushered in the *Lochner* era and struck down almost 200 social welfare laws to deregulate worker and consumer protections, and declared corporations as "people" entitled to protection under the Fourteenth Amendment.[30] The right to contract reigned supreme and the Court squelched all labor-organizing efforts, further enriching the pockets of the owners of capital.[31]

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[24] Johnson v. M'Intosh, 21 U.S. 543, 591 (1823).

[25] *Id.* at 584, 588–90.

[26] Andrew Little, *Order, Economy, and Legality:* Johnson v. M'Intosh *After Two Hundred Years*, Canopy Forum (Mar. 11, 2023), https://canopyforum.org/2023/03/11/order-economy-and-legality-johnson-v-mintosh-after-two-hundred-years/.

[27] Fraser, *supra* note 17.

[28] It is important to note that *M'Intosh* has never been overruled, unlike *Dred Scott*. *M'Intosh* continues to define the practice of Native American law and continues to undermine Native American sovereignty today. *See* Little, *supra* note 26.

[29] Fraser, *supra* note 17.

[30] *Id;* Lauren K. Saunders, *Janice Rogers Brown and the "Revolution of 1937"*, American Constitution Society (Jun. 6, 2005), https://www.acslaw.org/expertforum/guest-blogger-janice-rogers-brown-and-the-revolution-of-1937/.

[31] Fraser, *supra* note 17*; see* Lochner v. New York, 198 U.S. 45 (1905) (striking a New York

After 1937, the Court seemed to reverse course on its extreme enrichment of the capitalist class, allowing for decisions that were much more worker and consumer friendly.[32] However, the doctrine virtually relied on *Lochner*-esque premises that wrongly assumed equal bargaining power between workers and employers, giving glaring loopholes to uphold the same system of power while also lessening some elements of exploitation.[33] The Court also ignored the rights of non-white persons, effectively excluding non-white persons from the progressive wins of the New Deal Era and post-World War II boom.[34] That began to change in the short 16-year period between 1953 to 1969, where the Warren Court became a liberal outlier compared to the staunch conservatism that defined the Court for more than a century.[35] The Warren Court dramatically expanded civil rights and liberties, producing landmark opinions that ended segregation, legalized interracial marriage, secured the right to counsel, established a right to privacy, among many other rights that are taken for granted today.[36] The Warren Court's legacy undoubtedly defined substantive due process rights and dramatically expanded the constitution's equal protection of all people under the law.[37] However, as will be discussed later, the Warren Court still fell victim to white hegemony and did not necessarily dismantle harmful structures of power that created the conditions of insubordination in the first place.

Nevertheless, this shift was short-lived, and the Court began a conservative retreat, as it slowly undid the Warren Court's progress and staunchly realigned itself as a steward for elite interests against the "passionate majorities."[38] Today, with a conservative super majority, the Court embodies that notion as it

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law limiting the amount of hours a baker could work, as it interfered with an individual's Fourteenth Amendment right to freely contract).

[32] Fraser, *supra* note 17.

[33] Samuel Bagenstos, *Lochner Lives On: Lochner Presumption of Equal Power Lives in Labor Law and Undermines Constitutional, Statutory, and Common Law Workplace Protections*, Econ. Pol'y Inst. (Oct. 7, 2020), https://www.epi.org/unequalpower/publications/lochner-undermines-constitution-law-workplace-protections/.

[34] *The African American Odyssey: A Quest for Full Citizenship*, Library of Congress, https://www.loc.gov/exhibits/african-american-odyssey/depression-new-deal-and-world-war-ii.html [https://perma.cc/3574-D54T].

[35] Fraser, *supra* note 17.

[36] *Earl Warren Court,* Justia, https://www.justia.com (choose "Laws: Cases & Codes"; then choose "U.S. Case Law"; then choose "U.S. Supreme Court (1759 – present)"; then choose "Supreme Court History"; then click Earl Warren Court (1953–1969)") (last visited Mar. 23, 2025).

[37] *Id.*

[38] Fraser, *supra* note 17.

continues to roll back critical civil rights protections and erode the foundations of effective democratic participation.[39]

With the origins of the Court unpacked, the following section will discuss cases that speak to the Court's underlying goal to uphold the status quo of white hegemony within the education system. The first part will acknowledge the Court's musings of the school's inculcative function and what the systematic inculcation standard ought to be. This section will examine the Court's explicit musings in *Brown v. Board* and *Ambach v. Norwick* as quintessential representations of an implicit goal to uphold white hegemony as the standard to be inculcated in a newly integrated society. Finally, I will examine the Supreme Court's broad license to school administrators to inculcate values by highlighting *Hazelwood v. Kuhlmeier* and *Board of Education, Island Trees Union Free School District No. 26 v. Pico*. These cases illuminate the Court's aim to provide states and schools the broad license to inculcate values that preserve the image of schools as "politically neutral" and laboratories of democracy while simultaneously allowing them to control speech and curriculum in a manner that is inherently undemocratic and centers whiteness.

C. Public Education as Hegemony: The Role of School, the Standardization of White Inculcation, and the Faces of Power in Brown v. Board and Ambach v. Norwick

In *Brown v. Board of Education*, arguably the most famous education case, the Supreme Court acknowledges the inculcation of American values as an explicit aim of the education system and implicitly reinforces white-centered and status quo inculcation as the baseline. The famous 8–0 decision rested on the narrow grounds that "separate but equal" had "no place" in public education and violated the 14th Amendment's Equal Protection Clause.[40] In doing so, the Court found that "education is perhaps the most important function of state and local governments . . . . [Education] . . . . is the very foundation of good citizenship . . . [and] it is a principal instrument in awakening the child to cultural values."[41] The Court reasoned that school segregation inherently created feel-

[39] The Roberts Court has significantly curtailed civil rights protections including the elimination of a federal right to abortion, the elimination of affirmative action, the decimation of the Voting Rights Act, and the legalization of unfettered corporate influence on elections. *See generally* Dobbs v. Jackson Women's Health Org., 597 U.S. 215 (2022); Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, 600 U.S. 181 (2023); Shelby Cnty. v. Holder, 570 U.S. 529 (2013); Citizens United v. FEC, 558 U.S. 310 (2010).

[40] Brown v. Bd. of Educ. of Topeka, 347 U.S. 483, 495 (1954), *supplemented sub nom.* Brown v. Bd. of Educ. of Topeka, Kan., 349 U.S. 294 (1955).

[41] *Id.* at 493.

ings of inferiority for Black children, affecting their "hearts and minds in a way unlikely to ever be undone."[42] The effects of a segregated school system subsequently deprived Black children of the benefits of a racially integrated school system and diminished their educational and mental development.[43]

On its face, the *Brown* decision was a staunch rejection of the status quo and white hegemony. In some ways, it was. It undoubtedly played a significant role in upstarting the Civil Rights Movement and ushered in positive, symbolic, and material reforms towards equality. As *Brown* elucidates, desegregation was and is an important step towards equality. Yet, the Court never explicitly repudiated the structures of power underpinning segregation's aims of creating inferiority. The Court neither repudiated the explicit aims of the education system to inculcate certain problematic values nor even provided Black children with a guarantee of an adequate education.[44] Rather, the Court implicitly reinforced white hegemony, because it situated racial integration and justice around equality to whiteness rather than liberation and reparations from harmful structures of power that created the false dichotomy in the first place.

This is evidenced by the historical context in which *Brown* is situated. As noted by scholars Derrick A. Bell Jr. and Mary Dudziak, the U.S. government had a vested interest in desegregation as a tool to legitimize the exceptionalism of American democracy and discredit Communism.[45] At the time, Soviet sentiments and propaganda identified racism and Jim Crow in the U.S. as the most egregiously horrific aspect of capitalism and represented the U.S. as the most racist country in the world.[46] This was a valid criticism as Black people in the U.S. enjoyed almost no protection under the law, with the U.S. refusing to take any action to stop lynching or other acts of racial terrorism.[47] Proponents of the "Cold War Imperative" theory thereby suggest that the Cold War helped spark the need " 'to make credible the government's argument about race and democracy' in the largely nonwhite [Global South]" as the two regions battled for global hegemony.[48]

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[42] *Id.* at 494.

[43] *Id.*

[44] Ralph R. Banks, *Brown v. Board: Success or Failure?*, Stan. L. Mag.: Online Features (May 7, 2024), https://law.stanford.edu/stanford-lawyer/articles/brown-v-board-success-or-failure/.

[45] *See generally* Derrick A. Bell Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 Harv. L. Rev. 518 (1980); Mary L. Dudziak, *Brown as a Cold War Case*, 91 J. Am. Hist. 32 (2004).

[46] Meredith L. Roman, Opposing Jim Crow 2 (Jeremy I. Levitt & Matthew C. Whitaker eds., University of Nebraska Press, 2012).

[47] *Id.*

[48] Gregory Briker & Justin Driver, *Brown and Red: Defending Jim Crow in Cold War*

Brown also came shortly after the Court upheld the government's coercive powers to punish Communist sympathizers.[49] The Court allowed for the prosecution of Communist party members based on evidence that they read and discussed Communist writings and the deportation of immigrants with past Communist party ties.[50] Accordingly, the projection of an image of racial equality was of paramount importance to anticommunism efforts due to this increasing international criticism of Jim Crow.[51] Nevertheless, achieving racial equality could not come at the expense of the white and capitalistic values upon which America's position in the Cold War rested—as doing so would undermine the entire American exceptionalism project.

Brown is therefore more concerned with facial, material equality to that of white schools and situates the education of white children as the foundation for a "proper education" and subsequently "proper socialization" of cultural values in the education system. This is further evidenced by the Court's decision in *Brown II*, as integration was met with intense resistance and pressured the Court to confer most of the responsibility on local courts and school boards to fully comply with "all due deliberate speed."[52] As a result, school boards and courts were able to delay desegregation and passively allow segregation to continue—undercutting the promises of *Brown I*.[53] For schools that were integrated, white values ultimately became the standard for inculcation. School boards demolished the pipeline of Black educators by dismissing, demoting, and forcing the resignation of tens of thousands of highly experienced and credentialed Black educators.[54] White superintendents replaced Black educators with less qualified, more apathetic white educators, while states barred access to up-and-coming Black educators and other educators of color with new, manipulated licensure exams.[55]

The harms that manifested for integrated Black students, as noted in Karida Brown's work on the "hidden injuries" of desegregation, included some form of injury, a loss of community, and a loss of Black identity.[56] Instead of an

America, 74 Stan. L. Rev. 447, 461–62 (2022).

[49] Dudziak, *supra* note 45, at 32–34.

[50] *Id.*

[51] *Id.*

[52] *Brown v. Bd. of Educ. of Topeka II*, 349 U.S. 301 (1955).

[53] Briker & Driver, *supra* note 48, at 484.

[54] Madeline Will, '*Brown v. Board' Decimated the Black Educator Pipeline. A Scholar Explains How*, Education Week (May 16, 2022), https://www.edweek.org/teaching-learning/brown-v-board-decimated-the-black-educator-pipeline-a-scholar-explains-how/2022/05.

[55] *Id.*

[56] Stephanie P. Jones, *Curriculum Violence and Text Selection*, 45 English Leadership Quarterly 2, 3 (2022).

additive and aspirational mode of curriculum that empowered Black students with better physical school conditions and the advocacy of Black educators, they both "discovered that they were the victims of an exchange model through which they traded aspiration and advocacy for access to the resources white schools had."[57] As a result, *Brown I & II* did not revolutionize education as a means of true justice and social mobility. Rather, *Brown's* lukewarm doctrine and the Court's placation to the resistance illustrates the Court's explicit commitment to preserve the education system as an assimilative force at its best, instead of a tool of emancipation and acceleration—breaking down some norms of explicit white supremacy but not letting the white norm itself disappear with it.[58]

Like *Brown*, *Ambach v. Norwick* further explicates the Court's interpretation of the education system as a medium for inculcating assimilative values and white hegemony by focusing on the state's ability to hire teachers that it deems reflect these values. In *Ambach*, the Court addressed an equal protection challenge to a New York law barring non-citizens, with no intent to become naturalized citizens, from obtaining certification as public school teachers.[59] The plaintiffs were foreign nationals married to U.S. citizens and resided in the U.S. for many years, but did not have plans to pursue citizenship.[60] In a 5–4 opinion, the Court found that states are permitted to bar non-citizens from positions in government, including public school teaching positions.[61] The Court claimed that public education, like the police function, "fulfills a most fundamental obligation of government to its constituency."[62] *Ambach* proudly proclaims that the importance of public schools emerges from their role in "the preparation of individuals for participation as citizens and in the preservation of the values on which our society rests."[63] Supporting its position, the Court cites social science authorities that confirm the observation that public schools inculcate "fundamental values necessary to the maintenance of a democratic political system" and act as an " 'assimilative force' by which diverse and conflicting elements in our society are brought together on a broad but common ground."[64]

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[57] Cindy Long, *A Hidden History of Integration and the Shortage of Teachers of Color*, NEA Today (Mar. 11, 2020), https://www.nea.org/nea-today/all-news-articles/hidden-history-integration-and-shortage-teachers-color.

[58] Crenshaw, *supra* note 11, at 1379.

[59] *Ambach*, 441 U.S. at 69–72.

[60] *Id.*

[61] Jan C. Holloway, Ambach v. Norwick*: A Further Retreat from Graham*, 40 La. L. Rev. 997, 998 (1980).

[62] *Ambach*, 441 U.S. at 76.

[63] *Id.*

[64] *Id.* at 77 (citing J. Dewey, Democracy and Education 26 (1929); Newton Edwards & Herman G. Richey, The School in the American Social Order 623–24 (2d ed. 1963)).

The *Ambach* Court's juxtaposition of education to the state's police power is a glaring representation of the Court's view of the education system as not only a creature of the state, but an arm of the state to control the constituency at its most malleable: childhood. *Ambach* is concerned with the state's use of education to "preserve the basic conception of a political community."[65] As part of this mission, the Court recognized public school teachers as a critical component of this dynamic. In the Court's eye, teachers have wide discretion over curriculum presentation and shape student experiences both as role models and sources of knowledge.[66] By virtue of their existence and role in the school system, teachers must, therefore, help fulfill the broader function of the public school system and influence students' attitudes toward government, the political process, and a citizen's social responsibility.[67] This influence, according to the Court, is "crucial to the continued good health of a democracy."[68]

Consequently, *Ambach* concludes that "public school teachers may be regarded as performing a task 'that go[es] to the heart of representative government.' "[69] As a result, the New York statute barring non-citizens from assuming this role bears a rational relation to the State's interest in "furthering its educational goals" and preserving a teacher's obligation "to promote civic virtues" regardless of the subject taught.[70] Therefore, the only teachers that students are to be exposed to are those that ideologically and phenotypically reflect assimilative values and implicitly reinforce students' perceptions as to the face of power and authority. Accordingly, *Brown*'s decimation of a minority-educator pipeline, the ascension of a predominantly white school administration system, and *Ambach's* endorsement of teaching as an inherently political—and white—function amounts to an explicit endorsement of discursive white hegemony in a newly integrated school system.

D. The Broad License to Inculcate White Hegemony: Pico and Hazelwood

1. Discretion to Exclude: The Hidden Hand of White Hegemony in Pico

Through *Brown* and *Ambach*, the Supreme Court laid the groundwork for an education system designed to assimilate rather than liberate. The next step for reinforcement was the establishment of mechanisms for active inculcation of white hegemonic values, while also maintaining a façade of democracy and

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[65] *Id.* at 74.
[66] *Id.* at 78–79.
[67] *Id.* at 78–79, 79–80.
[68] *Id.* at 79.
[69] *Id.* at 75–76.
[70] *Id* at 69.

equality. Beyond asserting the general role of education and its aims to inculcate assimilative values, the Court granted state governments and local school boards the broad discretion to choose curriculum and control student speech and behavior.

In *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, the Court considered the First Amendment implications of a school board's choice to remove books from elementary and secondary libraries based on its perception that the ideas in the books were morally objectionable.[71] Some of the books included were Kurt Vonnegut's "Slaughterhouse-Five," Richard Wright's "Black Boy" and Eldridge Cleaver's "Soul on Ice."[72] Two board members also expressed that another book in the library was "anti-American" because it portrayed George Washington as a slaveholder.[73] Ultimately, the plurality opinion held that schools and school boards cannot categorically remove books already provided to students in libraries based on mere dislike of the ideas in the books and seeking to "prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion."[74]

However, the plurality opinion was careful to emphasize that it was only addressing the narrow question of whether the books could be removed and declined to limit the school board's discretion to add books or to determine the content of school libraries.[75] It also acknowledged that local school boards must be permitted "to establish and apply their curriculum in such a way as to transmit community values," and that "there is a legitimate and substantial community interest in promoting respect for authority and traditional values be they social, moral, or political."[76] The Court determined that the Constitution does not permit the "official" suppression of ideas.[77] Nevertheless, the plurality implies that schools can suppress content so long as they were not made available in the first place or if the school engages in established, regular, and *facially* unbiased review procedures to determine whether controversial materials are "educationally suitable," reflect "good taste," are "relevant," and "appropriate to age and grade level."[78]

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[71] Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico, 457 U.S. 853, 857 (1982).

[72] Tony Mauro, *How a 40-Year-Old Supreme Court Ruling May Quash the Book Banning Wave*, Freedom Forum (May 11, 2022), https://www.freedomforum.org/how-a-40-year-old-supreme-court-ruling-may-quash-the-book-banning-wave/.

[73] *Pico,* 457 U.S. at 873 n. 25.

[74] *Id.* at 872.

[75] *Id.* at 870–72.

[76] *Id.* at 864.

[77] *Id.* at 871.

[78] *Id.* at 871, 874.

Despite its narrow limitations, *Pico* reinforces the long-established principle that school boards retain wide discretion to control the information students receive through curriculum and within its walls. The plurality opinion's reasoning broadly excuses the unofficial suppression of ideas. The Court centers the concern around developing students' respect for authority and traditional values rather than ensuring *meaningful* access to materials beyond the confines of students' individual experiences and the white-centered ideals of the mandatory curriculum. Justice Blackmun's concurrence highlights this underlying principle, when he stated that "[i]t does not seem radical to suggest that state action calculated to suppress novel ideas or concepts is fundamentally antithetical to the values of the First Amendment" and acknowledged that "[t]he school is designed to, and inevitably will, inculcate ways of thought and outlooks."[79] Hence, the Court ultimately views public education as an instrument of politically neutral instruction where education is not "partisan or enemy of any class, creed, party, or faction."[80] However, that political neutrality is implied to be the original values the school ought to inculcate, which are largely white and Eurocentric. Therefore, *Pico* tacitly authorizes school boards to engage in practices of discursive hegemony under the guise of "neutrality" while quietly allowing schools to continue determining which books fit within the proscribed curriculum and whether books that deviate from this curriculum are fit to exist in their libraries.

A consequence of *Pico's* continuation of discursive white hegemony is the manifestation of curriculum violence against minority students. Curriculum violence is defined as the manipulation of academic programming that compromises the intellectual or psychological well-being of learners.[81] Although not a physical form of harm, it is a type of emotional destruction that is legitimized through pedagogy.[82] Curriculum violence can occur with or without intention, but usually manifests through the omission of marginalized narratives or histories or their irresponsible teaching.[83] It can be something as egregious as having students re-enact slavery or Indigenous genocide, or it can be passive through a culture of silence about the historical truths of marginalization or the minimization of different ways of thought and worldviews.[84] Marginalized students'

[79] *Id.* at 879–80.

[80] *Id.* at 877 (quoting 319 U.S. at 637).

[81] Stephanie P. Jones, *Ending Curriculum Violence*, Southern Poverty Law Center Learning for Justice (2020), https://www.learningforjustice.org/magazine/spring-2020/ending-curriculum-violence.

[82] *Id.*

[83] *Id.*

[84] *Id.*; Mark K. Smith, *Informal and Non-Formal Education, Colonialism and Development*,

repeated exposure to curriculum violence harms how they learn and how they see themselves in what they learn, all contributing to a larger traumatic experience and "a deep, false discord between the accurate historical narratives of groups of people and how their histories [or collective experiences] are being taught and absorbed in school."[85]

The law created unimpeded conditions for this curriculum violence to take place. Because most school boards are white and rarely represent the racial and ethnic makeup of the schools they serve, the U.S. school curriculum is largely dominated by the white western ideal.[86] Even systems of knowledge acquisition are taught through a white colonial lens.[87] This lens emphasizes the acquisition of binary theoretical knowledge and competency associated with individual knowledge.[88] The education system largely fails to include aspects of other knowledge systems, including indigenous knowledge that emphasizes practical knowledge, community knowledge, the relationship to humans and the environment, and the pursuit of understanding connections rather than the divides.[89] Furthermore, the history curriculum centers the portrayal of the U.S. as "the protector of freedom and democracy, rescuing other peoples from imperialist nations, restrictions on freedom, and communism," while also portraying historical events through themes like Manifest Destiny where "discoveries" by "explorers" like Christopher Columbus are portrayed as great feats of western science and thought, while largely silencing the dispossession of Native lands and history of enslavement.[90] The celebrations of these "feats" "silences narratives of Indigenous dispossession and ultimately serve as a reflection of the U.S. as a whole—forever synonymous with 'empire.' "[91]

The Encyclopedia of Pedagogy and Informal Education (2001), http://infed.org/biblio/colonialism.htm.

[85] Jones, *supra* note 81.

[86] Vladimir Kogan et al., *Who Governs Our Public Schools?,* Brookings (Feb. 17, 2021), https://www.brookings.edu/articles/who-governs-our-public-schools/; Christina A. Samuels, *Why School Board Diversity Matters*, Education Week (Nov. 17, 2020), https://www.edweek.org/leadership/why-school-board-diversity-matters/2020/11; Frederick M. Hess & Olivia Meeks, School Boards Circa 2010: Governance in the Accountability Era (Nat'l School Bd. Ass'n. 2010).

[87] Leah Huff, *Through a White Colonial Lens: A Look into the US Education System*, Currents (Feb. 28, 2022), https://smea.uw.edu/currents/through-a-white-colonial-lens-a-look-into-the-us-education-system/.

[88] *Id.*

[89] *Id.*

[90] *Id.*

[91] *Id.*

Even California, considered to be a liberal bastion, largely replicates this curriculum model. Although California's curriculum has moved in a positive direction with the mandate of ethnic studies and queer history curriculum, it still broadly categorizes marginalized experiences as related to the American project and their relationship to white and Eurocentric history. Kindergarteners are expected to "[l]earn examples of honesty, courage, determination, individual responsibility, and patriotism in American and world history" and "[k]now the triumphs in American legends and historical accounts through the stories of such people as Pocahontas, George Washington, Booker T. Washington, Daniel Boone, and Benjamin Franklin."[92] By third grade, California requires the discussion of "the relationship of students' 'work' in school and their personal human capital," all while reinforcing messages of white hegemony through the idealization of white experience and historical figures while silencing or minimizing others.[93]

The real consequences of this mode of curriculum are the intellectual, social, and psychological harm to members of historically oppressed and marginalized groups, as well as an exacerbation of historical and contemporary trauma.[94] It leaves "an indelible mark on students and compromises their emotional and intellectual safety in the school setting."[95] As will be discussed more in depth in Part III, this preservation of discursive hegemony not only paved the way for harmful curriculum, but also foreclosed any potential statutory or common law remedies for the very real harms suffered by students exposed to curriculum violence.

2. Curriculum Discretion as Suppression: Hazelwood v. Kuhlmeier and Coercive Hegemony

Once a school board or state/local government actor has carefully tailored the curriculum to reflect values of whiteness, the final limitation upon prescribing said values is student dissent. Recognizing this, the Court utilizes the curriculum-based framework to allow schools to constitutionally suppress controversial student expression without running afoul of the 1st Amendment. *Hazelwood v. Kuhlmeier* effectively bifurcated the regulation of student speech by setting more extensive limitations on student expression within the curriculum context. In *Hazelwood*, a student-run newspaper—under the purview of a

[92] *History-Social Science Content Standards*, California Dep't. of Educ., https://www.cde.ca.gov/be/st/ss/ (last visited Dec. 20, 2024).

[93] *Id.* at 11.

[94] *How to Address Trauma Related to Curriculum Violence*, Teach.com, https://teach.com/resources/addressing-student-trauma-curriculum-violence/ (last visited Mar. 23, 2025).

[95] Jones, *supra* note 81.

journalism class—submitted proofs of two stories to the school's principal.[96] The stories described three students' experiences with pregnancy and the impact of divorce on students.[97] The principal was concerned with the article's potential to expose the identities of the pregnant students, as well as the references to sexual activity and birth control being inappropriate for the younger students at the school.[98] On the divorce piece, the principal "believed that the student's parents should have been given an opportunity to respond to these remarks or to consent to their publication."[99] The principal ultimately decided to withhold the publication of the pieces.[100] The students on the editorial board of the newspaper ultimately filed suit on the grounds that this decision was a violation of their First Amendment rights.[101]

The Court began by reaffirming its precedent that students' First Amendment rights "are not automatically coextensive with the rights of adults in other settings," and must be "applied in light of the special characteristics of the school environment."[102] The Court also firmly acknowledged the right of the school to dissociate from speech that is inconsistent with the "fundamental values of public school education," and reaffirmed that the determination of what speech is appropriate is within the school board's discretion.[103] At the outset, the Court determined that school officials were entitled to regulate the contents of the school newspaper in any reasonable manner.[104] School officials were permitted to do so because the speech existed within the context of a class curriculum and is, therefore, not a public forum open to indiscriminate speech. [105]

In doing so, the Court circumvented the standard in *Tinker v. Des Moines*[106] and found that student speech "that is disseminated under [the school's] auspices" is subjected to a higher degree of censorship than what is afforded

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[96] Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 263 (1988).
[97] *Id.*
[98] *Id.*
[99] *Id.*
[100] *Id.* at 264.
[101] *Id.*
[102] *Id.* at 266
[103] *Id.* at 266–67.
[104] *Id.* at 265–70.
[105] *Id.*
[106] *See* Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 511 (1969) ("[S]tate-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved.").

to publications in the real world.[107] Preventing schools from doing so would unduly constrain the school from fulling its role as "a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment."[108] Schools, therefore, may censor student expression which might reasonably be perceived to advocate conduct inconsistent with "shared values of civilized social order," or that associates a school with any position other than neutrality on matters of political controversy.[109]

Rather than getting to the heart of the First Amendment interests at stake, *Hazelwood* prioritized the school's institutional authority and perpetuated the idea that student expression, dissent, and concerns are secondary to the educational goals espoused by those in power. *Hazelwood's* reasoning also suggests that the speech and image of institutional authority is inherently more valuable than that of individual people—suppressing the very "free marketplace of ideas" in schools that the Court so ardently claims to protect. *Hazelwood*'s implicit notion lies in Justice Black's dissent in *Tinker*, where he proudly proclaims that "children are to be seen and not heard" and that "[u]ncontrolled and uncontrollable liberty is an enemy to domestic peace."[110] *Hazelwood* aligns with Black's principles and parts with the core values of *Tinker*'s majority to hold that educators can exercise "editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns."[111] Curriculum can therefore be legally weaponized against student speech, as it frequently is, allowing school administrators and educators to censor "politically controversial" matters including discussions of race, ethnicity, gender, and sexuality, while curating and perpetuating white hegemony under the guise of "neutrality." *Hazelwood* effectively endorses a coercive approach to white hegemony by allowing the school to exact prior restraint and discipline of student expression that goes beyond the school's prescribed notions of what it absolutely deems appropriate for dissemination and discussion.

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[107] *Hazelwood*, 484 U.S. at 271–72.

[108] *Id.*

[109] *Id.* at 272.

[110] Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 522–24 (1969) (Black, J. dissenting).

[111] *Hazelwood*, 484 U.S. at 272–73.

III. No Justice, No Recourse: The Damage of Prescribed White Hegemony

Reading *Brown*, *Ambach*, *Pico*, and *Hazelwood* reveals a legally constructed public education system that protects state-sanctioned white hegemony, while also paving the way for states and local school boards to inflict structural violence against marginalized students. The glaring consequences include an education system that punishes Black students, and other students of color, at much higher rates than white students;[112] largely segregated school districts;[113] 80% of all teachers in the U.S. identifying as non-Hispanic white;[114] and lower overall educational achievement and attainment for marginalized students.[115] However, this structural violence is not only devastating to marginalized students, but it also actively worsens educational quality for everyone. Today, an average American reads at a 7th/8th grade level and over half of American adults read at or below a 6th grade reading level.[116] Because history and social studies education faces highly politicized debates over content and instruction—i.e. the prioritization of white hegemony—there is also a declining understanding of history and basic civics with only 22% of eighth graders testing at proficient levels in basic U.S. history knowledge.[117] The prioritization of white hegemony has consequently created an electorate that is cognitively

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[112] Sean Darling-Hammond & Eric Ho, *No Matter How You Slice It, Black Students Are Punished More: The Persistence and Pervasiveness of Discipline Disparities,* 10 AERA Open (November 20, 2024); *Study Furthers Understanding of Disparities in School Discipline,* National Institute of Mental Health (Jun.14, 2022), https://www.nimh.nih.gov/news/science-updates/2022/study-furthers-understanding-of-disparities-in-school-discipline.

[113] Sequoia Carrillo & Pooja Salhotra, *The U.S. student population is more diverse, but schools are still highly segregated*, NPR (Jul. 14, 2022), https://www.npr.org/2022/07/14/1111060299/school-segregation-report.

[114] Katherine Schaeffer, *Key Facts About Public School Teachers in the U.S.*, Pew Research Center (Sept. 24, 2024), https://www.pewresearch.org (click "Research Topics" then choose "Full Topic List" from the dropdown menu; then scroll to the bottom of the page and choose "Education" under "Other Topics"; then click "Select Authors" under "Authors" on the right side tool bar; then choose "Katherine Schaeffer").

[115] Lauren Bushnell, *Educational Disparities Among Racial and Ethnic Minority Youth in the United States*, Ballard Brief, https://ballardbrief.byu.edu/issue-briefs/educational-disparities-among-racial-and-ethnic-minority-youth-in-the-united-states (last visited Mar. 23, 2025).

[116] *U.S. Literacy Statistics and Average Reading Level*, Sparx, https://www.sparxservices.org/blog/us-literacy-statistics-literacy-rate-average-reading-level (last visited Mar. 23, 2025).

[117] John Festerwald, *Latest National Test Results Underscore Declining Knowledge of U.S. History and Civics,* EdSource (May 3, 2023), https://edsource.org/#0 (click the search icon and type "May 3, 2023"; then search; then scroll and choose "Latest national test results underscore declining knowledge of U.S. . . . ").

incapable of exercising critical judgments or even recognizing structural inequity and oppression to vote accordingly. As revealed above, this is by design.

For marginalized communities in particular—the groups most likely to be harmed by this dynamic—they are left with virtually no statutory, constitutional, or common law remedy for the harms suffered under the education system. The Supreme Court, and the court system by extension, has ultimately foreclosed any remedies by exercising its deep-seated institutional objective to prioritize the status quo and resist meaningful change at all costs. In its effect, the Court articulates rules of law that are rendered meaningless without an adequate vehicle for enforcement and remediation. This dynamic is best elucidated in the Court's decision-making in *San Antonio Independent School District v. Rodriguez* and *Pico's* Ninth Circuit progeny *Monteiro v. Tempe Union High School District*.

In *San Antonio Independent School District v. Rodriguez*, the Court addressed an Equal Protection class action brought by Mexican-Americans who were low income and resided in a school district with a low property tax base.[118] The class action challenged Texas' dual school funding scheme where schools would rely onlocal property tax revenues for funding.[119] Naturally, this funding scheme resulted in severe inter-district disparities in per-pupil expenditures that led to disparate funding for predominantly low-income communities of color—in this case, a community where 90% of the student population was Mexican.[120] The lower courts affirmed a fundamental right to education.[121] Despite acknowledging education's important role, the reasoning of *Brown*, and incontestable assertions that education is fundamentally intertwined with other fundamental rights, the Supreme Court—with little to no basis—found that education is not among the rights afforded explicit or implicit protection under the Constitution.[122] The Court claimed that the Constitution "does not provide judicial remedies for every social and economic ill"[123] and the Constitution does not require "absolute equality or precisely equal advantages."[124] In doing so, the Court confirmed that Brown was merely a facial promise of equality and foreclosed constitutional remedies for *de facto* segregation and inequality arising from unequal educational funding—condemning marginalized communities to generational cycles of poverty and insubordination.[125]

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[118] San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 4–5 (1973).
[119] *Id.* at 9–11.
[120] *Id.* at 12.
[121] *Id.* at 18.
[122] *Id.* at 35.
[123] *Id.* at 32.
[124] *Id.* at 24.
[125] Martha Minow, San Antonio Independent School District v. Rodriguez *at Fifty:*

Moreover, as previously discussed in Part II, the legal construction of white hegemony as education allows for curriculum violence. However, this harm has largely become irremediable because the standard in *Pico* paved the way for the Ninth Circuit's decision in *Monteiro v. Tempe Union High School District*, which largely sanctions discursive white hegemony as a matter of right. In doing so, it demands that marginalized students adopt the most passive response to curricular discrimination, curriculum violence, and white inculcation under the notion that schools have the right to platform this information, and the students least likely to be harmed by it have a right to receive it.[126]

In *Monteiro*, the parent of a Black high school student sued her child's school district for failing to remedy the psychological harms associated with the required reading of *The Adventures of Huckleberry Finn* by Mark Twain and *A Rose for Emily* by William Faulkner. Both works contained repeated use of the profane, insulting, and racially derogatory N-word.[127] The plaintiffs also asserted that the assignment of these works created and contributed to a racially hostile school environment, including increased racial harassment from other students.[128] The plaintiffs contended that the school district's failure to remedy this situation, including failure to remove the works from the curriculum, amounted to intentional discrimination under Title VI and the Equal Protection Clause of the 14th Amendment.[129] Rather than addressing the core factual merits of the claim at the complaint stage, the court weighed whether curriculum could even serve as a basis for intentional discrimination and whether the "school board's interest in exercising its broad discretion in assigning the literary works . . . [and the students'] First Amendment interest in reading those works are collectively outweighed by the constitutional and statutory interests of students who assert that they are injured by the mandatory assignments."[130]

Monteiro ultimately foreclosed all lawsuits that base claims of intentional discrimination on the assignment of literary works and found that "when a school board identifies information that it believes to be a useful part of a student's education, that student has the right to receive the information."[131] In its reasoning, the court uses a slippery slope argument by citing false equivalencies such as white plaintiffs offended by the works of prominent Black authors

Contingencies, Consequences, and Calls to Action, 55 Loy. U. Chi. L.J. 363, 373 (2023).

[126] Smith, *supra* note 84.

[127] Monteiro v. Tempe Union High Sch. Dist., 158 F.3d 1022, 1024 (9th Cir. 1998).

[128] *Id.*

[129] *Id.*

[130] *Id.* at 1028.

[131] *Id.*

like Maya Angelou or Toni Morrison, arguing that their works portray white people in a derogatory fashion or male plaintiffs seeking to remove books by feminist authors like Margaret Atwood.[132] The Ninth Circuit contended that "permitting lawsuits against school districts on the basis of the content of literary works to proceed past the complaint stage could have a significant chilling effect on a school district's willingness to assign books . . . that might offend the sensibilities of any number of persons or groups."[133] Accordingly, the courts have constructed the law to not only foster this kind of violence by hegemony, but foreclosed any potential remedies for it..

IV. Beyond the Bench: Reparations as a Path to Dismantling White Hegemony in Public Education

Contextualizing the consequences of this hegemony as monetary, dignitary, and intellectual harms requires a reparations framework to forge a new path to healing and reconciliation to reshape public education systematically. Reparations are a framework for transitional justice to redress harms of human rights violations.[134] Reparations serve two purposes: (1) acknowledging the scope and depth of the harm inflicted and (2) creating conditions to cease harm and make victims whole.[135] Reparations should be proportional to the gravity of the violations and the harm suffered.[136]

Reparations can come in many forms including restitution, compensation, rehabilitation, and satisfaction.[137] Restitution restores the victim to their original position before the violation occurred, including but not limited to, restoration of liberty, reinstatement of employment, returning property, or returning one to one's place of residence.[138] Compensation is monetary damages for any economically assessable damage, while rehabilitation includes providing medical and psychological care, as well as legal and social services.[139] Finally, satisfaction remedies are more symbolic and justice-oriented, including the cessation of violations, public apologies, truth-seeking, recovery, judicial and administrative

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[132] *Id.* at 1030.

[133] *Id.*

[134] *Reparations*, United Nations Office of the High Commissioner for Human Rights, https://www.ohchr.org/en/transitional-justice/reparations (last visited Dec. 20, 2024).

[135] Bettina L. Love, *American Education Hurt Black Students. We Deserve Reparations*, Education Week (Sept. 5, 2023), https://www.edweek.org/leadership/opinion-american-education-hurt-black-students-we-deserve-reparations/2023/09.

[136] United Nations Office of the High Commissioner for Human Rights, *supra* note 134.

[137] *Id.*

[138] *Id.*

[139] *Id.*

sanctions, commemorations, reburial of remains, and memorials.[140] These types of reparations are not a one-size-fits all approach, but rather serve as a foundation for repairing harms.

Reparations are to be paid by the violators to the victims. Therefore, reparations for inculcation should be provided by state governments (the inculcators). Given the scope of the harm, however, the federal government is best positioned for large cash reparations and can also be seen as a violator because federal law constructed the role of the inculcators. Past instances of reparations in the United States have primarily focused on providing compensatory damages to victims of human rights violations, with varying degrees of success.[141] More often than not, compensation was poorly executed, with victims seeing little benefit, if any compensation, for violations they suffered.[142]

In the modern era and educational context, most reparations discussions and policies border on satisfaction remedies, but generally lack any tangible benefits.[143] Beyond a formal apology from Loudoun County, Virginia and a modest $2 million scholarship for county residents and descendants affected by the five-year school closure during the Massive Resistance in Prince Edward County, Virginia, true reparations in the educational context are non-existent.[144] Some school districts and state and local governments have only merely commissioned studies to study potential reparations and the impacts of segregation—a far cry from what is truly necessary to remedy the harms of the education system.[145] Accordingly, careful formulation and targeting are essential to ensure all forms of reparations reach their intended recipients and repair the harms inflicted by centuries of insubordination.

That said, the reparations discussed here—primarily reparations for Black Americans—can be broadly applied to any group that has experienced the harmful effects of the education system. For the purposes of brevity and scope, these formulations will not go into granular detail about how much is owed to various groups and what kind of reparations are best for particular groups. Rather, this paper seeks to identify spaces where reparations can be targeted, and future research and discourse can inform how these policies should

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[140] *Id.*

[141] Adeel Hassan & Jack Healy, *America has Tried Reparations Before. Here is How it Went.*, N.Y. Times (June 19, 2019), https://www.nytimes.com/2019/06/19/us/reparations-slavery.html.

[142] *Id.*

[143] Mark Lieberman, *Reparations for Black Americans: How K-12 Schools Fit In*, Education Week (Apr. 13, 2023), https://www.edweek.org/leadership/reparations-for-black-americans-how-k-12-schools-fit-in/2023/04

[144] *Id.*

[145] *Id.*

be correctly applied. Reparations are a space for creative problem-solving while also centering the experience and trauma of victims to begin and sustain healing. This paper will explore a wide variety of types of reparations. Although modern discourse surrounding reparations is centered around monetary harms paid out to affected individuals, the harm here inflicts psychological and intellectual harms that also need to be repaired and remedied for future generations. This section, therefore, focuses on potential policy reforms to remedy the harms of curricular and systematic violence in schools, as well as compensatory damages for harm already suffered.

A. Systemic Satisfaction Remedies

1. Mandated Ethnic Studies and K-12 Black Studies Curriculum

Reparations for the inculcation of white hegemony—and the curriculum violence and subordination that it creates—require a categorical rejection of whitewashed and color-blind curriculum. Ethnic studies and K-12 Black Studies curriculums create that pathway. Both types of curriculums can be important tools for reparations as they allow for an honest acknowledgement of the scope and depth of the harm inflicted by white inculcation. The implementation of these curriculums also creates conditions to cease further harm to students and provides current, older students the ability to recontextualize the inculcation of their formative years.

A leader in this space is California. California was the first state in the country to mandate an ethnic studies curriculum, requiring high schools to begin teaching it as soon as the 2025–2026 school year and then requiring it as a graduation requirement by the 2029–2030 school year.[146] Every state should follow suit. Ethnic studies is an anti-racist, decolonial project that seeks to rehumanize education for students from marginalized backgrounds, "center subjugated knowledge narratives and ancestral knowledge, and build solidarity across racial and ethnic differences for the purpose of working toward social justice."[147] Contrary to the Supreme Court's unfounded apprehension, well-designed and taught ethnic studies curricula that "teach directly about racism produce higher levels of critical thinking and have a positive impact on 'democracy outcomes,'

[146] California Reparations Task Force, *Chapter 23: Policies Addressing Separate and Unequal Education*, The Cal. Reparations Rep. 691, 697–98 (2023), https://oag.ca.gov/system/files/media/ch23-ca-reparations.pdf. [hereinafter Cal. Reparations Rep.].

[147] Christine E. Sleeter & Miguel Zalva, *What the Research Says About Ethnic Studies*, *in* Transformative Ethnic Studies in Schools: Curriculum, Pedagogy, and Research 20 (2020).

particularly when they include cross-group interaction and especially on White students."[148]

Ethnic studies allow all students to critically engage with the social, political, economic, and historical perspectives of diverse racial and ethnic groups.[149] As a result, ethnic studies curricula positively impact students' sense of identity, which translates into better educational outcomes, including improved attendance rates, test scores, GPAs, and matriculation to college.[150] In one study, the course produced "compelling and causally credible evidence" of the power to "change learning trajectories" for students who had below average grades in the 8th grade.[151] Studies have confirmed that ethnic studies curriculums benefit both students of color and white students by fostering cross-cultural understanding and aiding students in "valuing their own cultural identity while appreciating the differences around them."[152] One study also provides "compelling and causally credible evidence" of the power of ethnic studies to "change learning trajectories" for students who had below average grades in the 8th grade.[153]

In the same vein, adopting a K–12 Black Studies curriculum can also play an instrumental role in repairing the harms of white centered inculcation.[154] The California Reparations Task Force identifies a K–12 Black Studies Curriculum as a curriculum that teaches "about humanity's origins in Africa thousands of years before either Arabs or Europeans encountered people of West and Central African ancestry" and that "African Americans' stories did not begin with enslavement."[155] This curriculum includes classes about African history, culture, and geographies; African diasporic studies; African American history and phases of African American resistance; and classic and modern African, African American, and diasporic literature.[156] The Task Force also suggests modeling this curriculum similar to San Francisco Unified School District's approach where students are introduced to concepts of race, racial, identity, African and African American history, equity, and systemic racism during pre-K through 8th grade.[157] The Task Force finds that the implementation of this curriculum is crucial to

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[148] *Id.*

[149] *Id.*

[150] *Id;* Danielle Dreilinger, *Ninth-Grade Ethnic Studies Helped Students for Years, Stanford Researchers Find,* Stanford Report (Sept. 6, 2021), https://news.stanford.edu/stories/2021/09/research-finds-sustained-impact-ethnic-studies-class.

[151] Cal. Reparations Rep., *supra* note 146.

[152] *Id.*

[153] *Id.*

[154] *Id.*

[155] *Id.*

[156] *Id.*

[157] *Id.*

accurately depict "historic racial inequities and systemic racism, honors Black lives, fully represents contributions of Black people in society, advances the ideology of Black liberation, and highlights the particular contributions of those who are descendants of individuals who were enslaved in the United States."[158]

Despite the compelling benefits and rehabilitative effects, curriculum shifts alone do not necessarily remedy the harms done to communities that have exited the school system. Victims are, therefore, not made whole, and curriculum cannot be the complete solution. Nevertheless, shifts in curriculum are an important satisfaction remedy with positive impacts on student wellbeing that can be readily implemented. The mandate of ethnic studies and K-12 Black Studies curriculum are also unlikely to be challenged in the courts given the broad discretion given to states and schools to engage in matters of establishing curriculum. States and local school boards must therefore move to mandate a comprehensive ethnic studies and Black studies curriculum to center and integrate the literatures, histories, and leaders from communities of color.[159]

2. Eliminating Barriers to Teaching

Reparations through ethnic studies and a K-12 Black Studies curriculum cannot be accomplished, however, if there is minimal support and training for teachers in this type of work—especially teachers of color. Therefore, reparations policies should also be targeted towards eliminating barriers to teaching to diversify the teaching profession. States can make a significant difference by categorically raising the starting wages of teachers to reflect the cost of living and level of education they achieve—preferably a starting salary in the six figures. Inequitable pay and student debt are significant barriers to teacher matriculation and retention.[160]Black and Latine teachers in particular are "more likely to rely on student loans for their graduate and undergraduate education compared with white teachers."[161] Because of this, teachers of color leave the profession at much higher rates in search of higher paying opportunities, contributing to the massive racial gap where 80% of the teacher workforce in public schools are white.[162] Accordingly, increasing pay will attract more teachers of color and diversify the teaching profession.

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[158] *Id.*

[159] Lange Luntao & Michelle W. Anderson, *Ethnic Studies as Anti-Segregation Work: Lessons from Stockton*, 123 Columb. L. Rev. 1507, 1531 (2023).

[160] Trevor Smith, *Racial Wealth Gaps in Teaching Won't Close Without Bold Economic Policies*, Prism Reports (Sept. 27, 2021), https://prismreports.org/2021/09/27/racial-wealth-gaps-in-teaching-wont-close-without-bold-economic-policies/.

[161] *Id.*

[162] *Id.*

However, because 80% of the current teacher workforce is white, increasing teacher salaries is an indirect form of reparations that requires further targeting through policies that eliminate barriers to high-quality teacher training programs for aspiring teachers of color. States should, therefore, aim to fully subsidize teacher training programs, including living expenses, tuition, and other related costs. However, given the recent decision in *Students for Fair Admission v. Harvard*, it is highly unlikely that any program directly tying these incentives to race would pass constitutional muster. Therefore, states should focus on creating grant programs that provide teachers with a fully subsidized education or favorable loan forgiveness incentives.[163]

3. Emancipatory Pedagogy

Finally, an important systemic satisfaction remedy would be to abolish banking education models that allows systems of white inculcation to flourish and negatively impact students of color. These systems of banking create conditions wherein teachers are active depositors of knowledge upon students that are presupposed to be empty vessels.[164] Students are, therefore, passive in their educational journeys and spend more time storing and regurgitating the deposited information. They are thus less likely to develop critical consciousness and more likely to accept the passive roles imposed on them and adapt to the world as it is, rather than strive to transform it in the way it ought to be.[165] States should therefore move away from positioning students within this dynamic. The curriculum should be deconstructed to allow for a more dynamic relationship between students and teachers—one that treats student knowledge and experience as equally valuable.

Furthermore, states should also move away from a curriculum that inculcates students into a "direct desire for inequitable outcomes" by moving away from the overemphasis on individual student excellence, quantitative grades, and test scores.[166] A system foundationally dependent on rewards for individually competent students create incentives for unethical behavior; this system also replicates the cycles of insubordination where students are guided to becoming like their oppressors because of a deep seated need for equality to the

[163] *See generally* Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, 600 U.S. 181 (2023).

[164] *See* Paulo Freire, *The "Banking" Concept of Education* at 1, http://puente2014.pbworks.com/w/file/fetch/87465079/freire_banking_concept.pdf (last visited Dec. 20, 2024).

[165] *Id.* at 2.

[166] John C. Hayvon, *Education as Oppression*, 52 J. of Prevention & Intervention in the Cmty. 226, 230 (2024).

oppressor.[167] Even if they are not guided to be like their oppressors, students are nevertheless pushed to attain privilege for the self in the form of well-paying jobs and influential social positions for the sake of validation and material stability.[168] This leads to a never ending competition for these positions where "excellence in education defined in terms of outstanding performance must push some oppressed students further away from these opportunities."[169] Accordingly, education should be tailored to promote collective excellence while pushing students to create opportunity rather than subject themselves to an oppressive path. Of course, this solution also requires policies such as increased minimum wage and other movements towards improving welfare programs to deemphasize education as the primary means for social mobility, as the incentives to perform will still exist if students are expected to use their education to attain lucrative economic opportunities.[170] Nevertheless, reforming the curriculum in this manner can deconstruct the foundations upon which harmful white hegemonic inculcation flourishes and repair the harms associated with violence in the curriculum and the hidden curriculum.

B. Monetary Reparations

As expressed above, systemic and satisfaction remedies are important. However, they do little to address past harm on students who have exited the school system. Accordingly, monetary reparations fill this gap. For example, it is estimated that Black people in the U.S. are owed $2 trillion for the harmful effects of education discrimination in the past 40 years.[171] Although there seems to be no direct research supporting a monetary figure for other racial groups, direct monetary figures can potentially be studied and drawn up as well. Potential vehicles for paying out these monetary reparations can be accomplished through coordination between affected communities, states, and the federal government to provide direct cash payments to affected groups.

Monetary reparations can also be distributed through school financing schemes and property tax rebates to not only make victims whole but also ensure that future harm cannot be repeated.[172] The National African American

[167] *Id.* at 231.

[168] *Id.*

[169] *Id.*

[170] Fanna Gamal, *The Miseducation of Carceral Reform*, 69 UCLA L. Rev. 928, 933 (2022).

[171] Maya Pottiger, *Centering Education in the Reparations Conversation*, Word in Black (June 16, 2023), https://wordinblack.com/2023/06/centering-education-in-the-reparations-conversation/.

[172] National African American Reparations Commission, *4 Ways Reparations Can Address Racial Inequality in Education*, NAARC (Mar. 10, 2023), https://reparationscomm.org/reparations-news/4-ways-reparations-can-address-racial-inequality-in-education/.

Reparations Commission recommends direct rebates to Black homeowners in segregated communities in an amount calculated to offset the higher property tax rates adopted by localities to increase revenue and compensate for the lower values of Black homes.[173] The Commission also recommends ensuring equity in school funding for school district revenues and factoring race and racism into school finance formulas to ensure better funding and equitable outcomes.[174] In conjunction with the federal government, states should work together to ensure that monetary reparations reach targeted communities. Because the federal government has not had issues setting up reparations commissions and paying out reparations in the past, it's not certain that the court system would strike down such a program. Still, a proper and well-articulated statutory scheme is required to allow these reparations to take place.

V. Conclusion

This paper argues that the law constructs the education system as a hegemonic device for the inculcation of ideologies that reproduce generational inequality and white supremacy. The Supreme Court created a values paradox wherein education is revered as the most important medium to prepare students for intelligent participation in the democratic process; yet in practice, it actively subverts all students—especially ethnic and racial minority students—from ever *actually* or intelligently participating in the democratic process. The consequences of this inculcation produce conditions to suppress dissent, exact curriculum violence on racial and ethnic minorities, and reproduce generational insubordination. This cycle is endemic to the U.S. public education system, and we cannot expect to move forward without wholeheartedly acknowledging and repairing the harm that has been inflicted. A reparations framework is of paramount importance. It is necessary to achieve the promise of education as the incubator of an intelligent, multi-racial democracy. Reparations repair the education system for everyone, but targeting these reparations is essential to ensuring that groups most impacted by it can reach parity with others and live more fulfilling, healthy lives as a result.

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[173] *Id.*
[174] *Id.*