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REFORM OR RETRENCHMENT: SINGLE SEX
EDUCATION AND THE CONSTRUCTION OF
RACE AND GENDER

Verna L. Williams

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Reform or Retrenchment: Single Sex Education and the Construction of Race and Gender

Verna L. Williams*

Introduction

Desperate over the wasted lives of its young men, Detroit is about to open the nation's first public schools for inner-city boys . . . [T]he plan is seen not as a fashionable education theory to be tested, but as an experiment with lives at stake, a last chance to save families and, ultimately, the city itself . . . Opponents call the schools a discriminatory throwback. Race is not the issue, because 90 percent of Detroit's public school students are black.¹

“Desperate.” “Wasted.” “Last chance.” These are words signifying crisis. And, without question, the condition of urban school districts across the nation is dire.² With so few resources, so many challenges, and so few prospects for meaningful reform, it is hardly surprising that parents are quick to grasp at anything that remotely promises to lead their children to college and careers, rather than to the streets, prison, or the cemetery. Hardly

* Assistant Professor, University of Cincinnati College of Law. B.S., Georgetown University; J.D., Harvard Law School. I am grateful to Deborah Brake, Paul Butler, Martha Chamallas, Maurice Dyson, Rafael Gely, Joanna Grossman, Emily Houh, Deseriee Kennedy, Donna Nagy, and Wendy Parker for their helpful comments and support. I also thank the participants at faculty workshops at the University of Cincinnati College of Law and at the Northeast People of Color Conference in April 2003, where I presented earlier versions of this paper. I am especially thankful for the excellent research assistance I received from the University of Cincinnati College of Law library staff and from my research assistants, James Fantetti, Heather Gomes, and Sayyid Majied-Muhammed. Thanks also go to Carolyn Murry for administrative support. Any omissions or errors are entirely my own. This piece is dedicated to the memory of my father, Sherman S. Williams.

¹ Isabel Wilkerson, *Detroit's Boys-Only Schools Facing Bias Lawsuit*, THE NEW YORK TIMES, August 14, 1991, A1.

² For example, the New York Court of Appeals recently found that the state had failed to provide New York City students (84% of whom are racial minorities) with a “sound basic education” as required under the state constitution. The court found that significant disparities in per-pupil expenditures had resulted in “tens of thousands of students [being] placed in overcrowded classrooms, taught by unqualified teachers and provided with inadequate facilities and equipment. The number of children in these straits is large enough to represent a systemic failure.” *Campaign for Fiscal Equity v. State of New York*, 2003 NY LEXIS 1678, *25 (N.Y. App. 2003); *see also* Jonathan Kozol, SAVAGE INEQUALITIES: CHILDREN IN AMERICA'S SCHOOLS (1991)(discussing similar conditions in urban school districts throughout the nation).

surprising that single sex³ education, which conjures up images of elite institutions such as Wellesley College and the success sure to follow such an educational experience, would seem to be a godsend. Why *not* try single sex schools?

*It's not about sex, it is about black men and black people [and] their right to self-determination.*⁴

Taking matters into their own hands, the Detroit Board of Education, supported by many of the school district's parents, decided to do just that: establish single sex schools, with the hope that they would be the balm for high drop out rates, low achievement, and hopelessness confronting their community.⁵ They created three all-male academies serving students in grades six through eight.⁶

Shawn Garrett, a Detroit mother, had a question, though. What about her daughter, Crystal? She, too, was part of a class that was more likely to quit school than graduate, more and more likely to be incarcerated or murdered.⁷ Ms. Garrett wanted the Board to help her daughter, too. But these schools were only for boys. For female students, three schools for pregnant girls were the only single sex option.⁸ Joined by

³ In this Article, "sex" refers to the biological categories of male and female; "gender" refers to the social construction of masculinity and femininity. See, e.g., Katharine Franke, *The Central Mistake of Sex Discrimination Law: The Disaggregation of Sex From Gender*, 144 U. PA. L. REV. 1 (1995)(explaining that the term "gender" refers to the identity that culture and society assign an individual; "sex" refers to "a product of nature").

⁴ Kwame Kenyatta, *Nightline* (ABS News broadcast, August 15, 1991) (transcript on file with author).

⁵ See *All Girl Schools: Detroit Counters Lawsuit*, DAILY REPORT CARD, August 8, 1991.

⁶ *Garrett v. Board of Education*, 775 F.Supp. 1004, 1006 (E.D. Mich. 1991).

⁷ See, e.g., Joseph R. Biden, Jr., *What About the Girls? The Role of the Federal Government in Addressing the Rise in Female Juvenile Offenders*, 14 STAN. L. & POL'Y REV. 29, 32, 34 (2003)(noting that female "juvenile delinquency rose 83% between 1989 and 1998"; that the arrest rate for female juveniles increased 55% between 1989 and 1993, compared to only 33% for for males during that period; and that "between 1988 and 1997, the number of cases [in the juvenile justice system] increased 106% for African-American girls"); Ossai Miazid, *The Gender Gap: Treatment of Girls in the United States Juvenile Justice System*, 10 HUM. RTS. BR. 10 (2002)("[b]etween 1988 and 1997, girls' rate of detention increased more than twice that of boys"); Paula C. Johnson, *INNER LIVES: VOICES OF AFRICAN AMERICAN WOMEN IN PRISON*, 34 (2003)(noting that overall "women are the fastest-growing segment of the prison population . . . African American women are the largest percentage of incarcerated women").

⁸ Laurel Shaper Walters, *The Plight of Black Male Schools*, THE CHRISTIAN SCIENCE MONITOR, Sept. 9, 1991, 8.

another parent of a girl and the NOW Legal Defense and Education Fund (NOW LDF), and represented by the American Civil Liberties Union (ACLU), Ms. Garrett sued the school board, to make this opportunity available to her daughter and other girls like her. These plaintiffs sought to block the all-male academies from opening.

However, by the time the district court heard arguments on the motion for preliminary injunction, Ms. Garrett no longer was a party to the action.⁹ Her decision to challenge the single-sex academies with two predominately white legal advocacy organizations¹⁰ was met with hostility and suspicion from their community.¹¹ After being the target of harassing and threatening phone calls, Ms. Garrett bowed out, leaving behind Nancy Doe, an anonymous plaintiff, to proceed alone.¹²

The district court granted the motion, ruling that the academies violated the Constitution's guarantee of equal protection¹³ and Title IX,¹⁴ the federal law prohibiting sex discrimination in education.¹⁵ The plan, according to this court was well-intentioned, but seriously flawed: while the Board created the academies to respond to "the crisis facing African-American males manifested by high homicide, unemployment, and drop-out rates, [these justifications and the supporting data] fall short of demonstrating that

⁹ *Garrett*, 775 F. Supp. at 1005, n.1. In fact, Ms. Garrett dropped out thirty minutes before the hearing began. *U.S. Judge Blocks Plan for All-Male Public Schools in Detroit*, THE NEW YORK TIMES, August 10, 1991, A10.

¹⁰ While not a party to the litigation, the NAACP Legal Defense and Educational Fund made its voice heard on the issue, concluding that the Detroit plan represented "a threat to an integrated society . . . posed a real danger of racial resegregation . . . [and] undermined efforts to eliminate the pervasive isolation of black males." Rosemary Salomone, SAME DIFFERENT, EQUAL: RETHINKING SINGLE-SEX SCHOOLING, 130-131, citing NAACP Legal Defense and Educational Fund, *Reflections on Proposals for Separate Schools for African-American Males*, 9 (1990).

¹¹ *Id.* at 134.

¹² *Garrett*, 775 F.Supp. at 1005, nn. 1-2.

¹³ *Id.* at 1008.

¹⁴ 20 U.S.C. A. §§ 1681 – 1688 (2000).

¹⁵ *Garrett*, 775 F.Supp. at 1009.

excluding girls is substantially related to the achievement of the Board’s objectives.”¹⁶

The court noted that, in creating the all-male academies, the Board “ignor[ed] the plight of urban females[,] institutionalize[d] inequality and perpetuate[d] the myth that females are doing well under the current system.”¹⁷ The Board ultimately opened the academies to female students, who enrolled over community objection and a boycott.¹⁸ Only a few girls signed up initially, but in the years that followed, many more became students of these schools.¹⁹

This case served as a cautionary tale, chilling the creation of new single sex public schools until 1998,²⁰ when the New York City Schools opened the Young Women’s Leadership School (TYWLS) in East Harlem,²¹ the legal status of which appears to be in limbo, with an administrative complaint pending at the Department of Education’s Office for Civil Rights.²² The Bush Administration, seeking to “lift the cloud”²³ surrounding single sex education, has signaled its intention to give TYWLS the green light and allow New York City and other school districts the flexibility to create

¹⁶ *Id.* at 1007.

¹⁷ *Id.*

¹⁸ *See* Salomone *supra* n.9 at 135.

¹⁹ *Id.* (noting that equal numbers of boys and girls now are enrolled in these academies).

²⁰ *See id.* at 131.

²¹ Ann Rubenstein Tisch, a white philanthropist and former broadcaster, put this effort in motion, working with Seymour Fleigel, who is a senior fellow at the Manhattan Institute, a conservative think tank. Somini Sengupta, *East Harlem District is Considering an All-Boys Public School*, THE NEW YORK TIMES, December 12, 1996, B9.

²² Like the Detroit schools, TYWLS also faced a legal challenge: this time by the New York Civil Liberties Union (NYCLU) and the National Organization for Women (NOW). But instead of filing suit in federal district court, these litigants went to the Department of Education’s Office for Civil Rights, which has the authority to enforce Title IX and other civil rights laws. The NYCLU and NOW argued that TYWLS violated Title IX. *See* Administrative Complaint, National Organization for Women v. New York City Board of Education, August 22, 1996 (on file with author). At this writing, the complaint is still pending.

²³ *See* Diana Jean Schemo, *White House Proposes New View of Education Law to Encourage Single Sex Schools*, THE NEW YORK TIMES, May 9, 2002, A26 (quoting Tom Carroll, president of the Brighter Choice Foundation, which supports sex-segregated schools, praising the Bush proposal as representing the “first time we see the legal cloud lifted from single-sex schools”).

single sex schools.²⁴ For many educators and parents in urban schools, this news was like a tall glass of ice water after traversing the desert -- a promise that, at long last, “no child will be left behind.”²⁵ But that optimism is premature.

The fact that so much of the discourse surrounding single sex education is about Black children in troubled urban school districts is cause for concern.²⁶ Put another way, there generally is no concomitant rush to segregate public school children based on sex in predominately white Grosse Pointe, Michigan, a suburb of Detroit, or Nebraska, for example.²⁷ If sex segregation were the magic bullet its proponents suggest,²⁸ one might expect more school districts across the board to jump on the bandwagon. But, that is not the case. Sex segregation appears to be the remedy for what ails public schools peopled for the most part by poor students of color.²⁹

²⁴ See *infra* at nn.82 - 92 and accompanying text.

²⁵ The Bush effort comes on the heels of the enactment of a provision in the No Child Left Behind Act that allows schools districts to use certain federal monies to create single sex schools. See *infra* nn. 58 -59 and accompanying text.

²⁶ It should be noted that some research suggests that single sex education benefits students of color. See, e.g., Cornelius Riordan, *What Do We Know About the Effects of Single-Sex Schools in the Private Sector?: Implications for Public Schools*, in GENDER IN POLICY AND PRACTICE: PERSPECTIVES ON SINGLE-SEX AND COEDUCATIONAL SCHOOLING, 10, 13, 19 (Amanda Datnow & Lea Hubbard, eds.) (2002) (arguing that “the research is exceedingly persuasive in demonstrating that single-sex schools are effective in terms of providing both greater equality and greater achievement, especially for low-income and working-class students, most particularly for African-American and Hispanic-American boys and girls”). However, even Riordan acknowledges that factors beyond the mere separation by sex account for the effectiveness of single-sex schooling, e.g., smaller school size, an emphasis on academic subjects and achievement, and, significantly, the fact that parents and students alike choose such schooling because they want an enhanced educational experience. *Id.* at 19. For purposes of this Article, however, I will focus on the rhetoric concerning African American students and the attendant legal and social implications, recognizing, of course, that the issues and challenges identified may not apply wholesale to other students of color in urban schools.

²⁷ See, e.g., Judith Nygren, *Same-Sex Public School? Not Here*, OMAHA WORLD-HERALD, May 10, 2002, 1A (“single-gender schools have been, and are expected to remain, the domain of private education in Nebraska”). Notably, however, in the metropolitan Omaha area, single sex schools have been proposed for African-American boys “because that is what people in the community said was most needed.” *Id.*

²⁸ See, e.g., Karen Stabiner, ALL GIRLS: SINGLE-SEX EDUCATION AND WHY IT MATTERS, 315 (2002) (“Single-sex schools got results, while cries for a general overhaul went begging”).

²⁹ At this writing, there are 24 public single schools in the nation, including seven schools that have yet to open. See National Association for Single Sex Public Education, <http://www.singlesexschools.org/schools.html> (last visited Aug. 1, 2003) (on file with author). A few, such as Baltimore’s Western High School, have long histories of being single sex institutions and only recently

Sex segregation has been deemed particularly necessary for African American males because they are an “endangered species . . . they have been target[ed] by this system for destruction and extermination.”³⁰ In this connection, arguments for single sex education focus on the myriad issues confronting Black male students, such as the high rates of incarceration and homicide.³¹ The rhetoric suggests that sex segregation addresses these problems because it compensates for the primary deficiency of many Black males: the fact that they are being raised in female-headed households. According to this argument, surrounded by women, Black males lack appropriate role models³² who

have become predominately minority. However, most of the schools on this list were created within the last few years as part of the school reform movement. The vast majority of these schools primarily serve students of color:

School and Location	Percentage Minority Students
Charter School of San Diego; San Diego, CA	60%
Forty-Niner Academy; Palo Alto, CA	87%
Fox Middle School; Hartford, CT	90%
Girls’ High School; Philadelphia, PA	77%
Jefferson Leadership Academies; Long Beach, CA	91%
Lincoln Elementary School; Toledo, OH	98%
Mitchell Elementary School; Denver, CO	98%
Moten Elementary School; Washington, DC	100%
Paducah Middle School; Paducah, KY	53%
Pepper George Middle School; Philadelphia, PA	95%
Rhodes E. Washington Middle School; Phila., PA	99%
Southern Middle School; Louisville, KY	55%
Stewart Elementary School; Toledo, OH	99%
Thurgood Marshall Elementary; Seattle, WA	94%
Western High School; Baltimore, MD	82%
Withrow High School; Cincinnati, OH	91%
Young Women’s Leadership Charter School; Chicago, IL	87%
Young Women’s Leadership High School; New York, NY	92%

Source: National Center for Education Statistics, http://nces.ed.gov/schoolsearch/school_detail.asp? (last visited Aug. 1, 2003)(on file with author).

³⁰ Kwame Kenyatta, *supra* n. 3; see also Pamela J. Smith, Comment, *All-Male Black Schools and the Equal Protection Clause: A Step Forward Toward Education*, 66 TUL. L. REV. 2003, 2004 (1992)(observing that African American males are endangered because of “gang fights, vendettas, drug battles, accidents, drive-by shootings, malnutrition, poor education, drug or alcohol addition, the collapse of families, and series of medical problems linked to poverty, lifestyle, and heredity”)(quotation omitted).

³¹ See *supra* n. 1.

³² See, e.g., Smith, *supra* n.30 at 2031(arguing that because “many African-American [single]mothers fail to develop their boys into men” boys need male role models); Richard Rothstein, *Single-Sex Schools: Why Ruin Good Experiments with Politics?*, THE LOS ANGELES TIMES, January 21, 1996, 6 (suggesting that

“exemplify[] the value of education,”³³ or who simply can teach them how to be men – that is, providers and husbands.³⁴ Providing these role models thus becomes an imperative, a way of “saving lives” and communities,³⁵ which places Black males at the center of the struggle for equal rights in education,³⁶ and makes Black mothers the locus of the many problems afflicting urban African American communities. This rhetoric echoes conclusions of long-discredited social science theories³⁷ propounded by Daniel Moynihan in *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION*,³⁸ which attributed

“elementary-school boys from low-income, single-parent homes in African American communities with few successful male role models require tough male-authority figures as teachers”); Wilkerson, *supra* n. 1 (“Often, having no fathers at home and seeing that the only men with any money in the neighborhood are drug dealers, the boys hunger for male direction”); Dennis Kelly, *Detroit Academies Develop Black Males*, USA TODAY, January 15, 1992, 7A (quoting a Detroit fifth-grade teacher, who notes that “[m]any of the boys don’t have a father at home”).

³³ Judith Nygren, *supra* n.27.

³⁴ Patrice M. Jones, *A Place All Their Own: Detroit Uses Special Academies to Help Black Boys Overcome Challenges*, THE PLAIN DEALER, April 23, 1996, 1A (quoting a parent who believes “[t]his school will make my son into a provider, a responsible man”); Clifford Watson, *Nightline*, *supra* n.3 (stating that the male academies mean that his “daughters will be able to have some positive African-American males to chose from when they get married”).

³⁵ See *supra* n.1.

³⁶ See Devon Carbado, *Men in Black*, 3 J. GENDER RACE & JUST. 427, 434 (2000)(noting that “[t]he social meaning of [Black male schools] is that, whatever the status of Black girls, it is Black boys, members of the first sex, who have the potential to become Black men, the potential to save themselves and thus the Black community”).

³⁷ See, e.g., William Ryan, *Savage Discovery: The Moynihan Report*, in THE MOYNIHAN REPORT AND THE POLITICS OF CONTROVERSY, 457, 458 (Lee Rainwater, William L. Yancey, eds.) (1967) (criticizing the Report because “it draws dangerously inexact conclusions from weak and insufficient data; encourages (no doubt unintentionally) a new form of subtle racism that might be termed ‘Savage Discovery,’ and seduces the reader into believing that it is not racism and discrimination but the weaknesses and defects of the Negro himself that account for the present status of inequality between Negro and white”).

³⁸ (Greenwood Press 1981) (1965). The Moynihan Report sought to highlight the problems confronting African Americans in order to support strong enforcement of the Civil Rights Act of 1964. The Report attempted to understand the issues and challenges confronting African Americans by examining their history. In this regard, the Report identified several “pathologies” common among poor African American families: first, and foremost among them was “matriarchy.”

The Negro community has been forced into a matriarchal structure which, because it is so out of line with the rest of the American society, seriously retards the progress of the group as a whole, and imposes a crushing burden on the Negro male and, in consequence, on a great many Negro women as well . . . There is, presumably, no special reason why a society in which males are dominant in family relationships is to be preferred to a matriarchal arrangement. However, it is clearly a disadvantage for a minority group to be operating on one principle, while the great majority of the population, and the one with the most advantages to begin with, is operating on another.

much of the “pathologies” affecting Black Americans to the shortcomings of the Black family, particularly the preponderance of female-headed households. Similarly, the overarching theme of today’s discourse is that single sex education is necessary to build Black men.

With respect to African American girls, the rhetoric focuses on preventing pregnancy. Specifically, advocates have argued that girls in a sex-segregated environment will be less distracted by boys and feel “less pressure to become sexually active.”³⁹ One commentator praised TYWLS as a place where girls “could be free from the social distractions and sexual pressures that too often reach *dangerous* proportions in urban public schools.”⁴⁰ In fact, one of the touted virtues of TYWLS is that “pregnancy [among its students] is the stark exception.”⁴¹ In the same breath, this commentator observed that the benefit of a private, predominately white girls’ school was that the

Id. at 29 – 30. Thus, according to the Report, “Negro husbands have unusually low power,” unlike the majority of white families, which, the Report claimed “are equalitarian.” *Id.* at 30.

Dominance of the wife in Black marriages was one of the fruits of slavery, when slaves were prohibited from marrying. *Id.* at 16. The Report further argued that this pattern became entrenched during the post-Reconstruction era:

When Jim Crow made its appearance towards the end of the 19th century, it may be speculated that it was the Negro male who was most humiliated thereby; the male was more likely to use public facilities, which rapidly became segregated once the process began, and just as important, segregation, and the submissiveness it exacts, is surely more destructive to the male than to the female personality. Keeping the Negro ‘in his place’ can be translated as keeping the Negro male in his place: the female was not a threat to anyone . . . Unquestionably, these events worked against the emergence of a strong father figure.

Id. In this respect, the Report argued, slavery and the Jim Crow era enabled, indeed required, African American women to take the lead in family affairs. By modern times, Black women were the customary heads of households, with their husbands playing a subservient role. The Report suggested that this pattern of female dominance in the home has perpetuated itself because of the tendency of African American females to attain higher levels of education than their male counterparts, *id.* at 31, which, in turn helped to perpetuate the low achievement levels and high rates of delinquency and crime among Black youth, particularly the males. *See id.* at 36 – 38.

³⁹ Nygren, *supra* n.27.

⁴⁰ Salomone, *supra* n.9 at 18 (emphasis added).

⁴¹ Karen Stabiner, *Boys Here, Girls There: Sure, If Equality is the Goal*, THE WASHINGTON POST, May 12, 2002, B1; *see also* Selenia Cheverrey, *Harlem All-Girls School Scrutinized after VMI Ruling*, MORNING EDITION (NPR Broadcast) August 21, 1996 (“These girls are moving on with their lives, they’re taking charge of their lives – and it’s not about having babies, it’s not about getting stuck”).

“girls perceive themselves as more competent, more willing to pursue advanced work in fields such as math and science.”⁴² So much of the concern for Black girls in education is about their sexuality,⁴³ suggesting that by just sitting in the same classroom with male students, there is a risk of pregnancy, invoking, yet again, concerns about single motherhood, which, as discussed above, has been blamed for poverty, juvenile delinquency, among other problems.⁴⁴ Such rationales reflect the devaluation of Black motherhood,⁴⁵ as well as “a deep suspicion of black women’s sexuality and an intense desire to control their excessive promiscuity and fecundity.”⁴⁶ While it is certainly true that premature motherhood has severe implications for an uneducated teenager and her child, it is true for white teenagers as well as Black⁴⁷; yet such concerns typically have

⁴² *Id.*

⁴³ It should be noted, of course, that arguments suggesting that, by removing the other sex from the classroom, that sexual “distractions” also will be removed are heterosexist in that they presume that there are no gay, lesbian, or bisexual students who would still be subject to being so distracted, even without the other sex in the classroom.

⁴⁴ *Supra* nn.32 – 38 and accompanying text. See also, Martha Fineman, *Images of Mothers in Poverty Discourses*, 1991 DUKE L. J. 274, 275 (1991). In this regard, the desire to promote single sex schools might be seen as a way of reestablishing patriarchy for several reasons. It asserts the primacy of the traditional family, thus refusing to recognize that a father may indeed be present even if he is not married to the mother. Conversely, it presumes that married fathers are present in meaningful ways, which is not always the case. By recognizing only the traditional nuclear family, single sex education policies promote this construct by seeking to reinsert fathers into the family equation, under the guise of providing young Black males with role models. Fineman argues that policymakers are drawn to this kind of policy because single motherhood is an “act of resistance to patriarchal ideology, particularly because it represents a ‘deliberate choice’ in a world of birth control and abortion; [therefore, it] threatens the hold of the dominant [patriarchal] ideology.” See *id.* at 290.

⁴⁵ See Dorothy Roberts, *Racism and Patriarchy in the Meaning of Motherhood*, 1 AM. U. J. GENDER & L. 1, 10 - 11 (1993). Roberts argues that patriarchy requires and rewards white motherhood, “but it denies to Black women even this modicum of value. Black women are deemed not even worthy of the dignity of childbearing.” *Id.*

⁴⁶ See Regina Austin, *Sapphire Bound*, 1989 WIS. L. REV. 539, 555 (1989). Austin criticizes the Eighth Circuit’s decision in *Chambers v. Omaha Girls Club*, 834 F.2d 697 (8th Cir. 1987), which affirmed the Girls Club’s dismissal of an instructor because she was pregnant, unmarried, and therefore a negative role model for Black teenage girls: “[t]he Club and the courts conceivably subscribe to a theory of reproduction, that can only be termed ‘primitive,’ which posits that simply seeing an unmarried pregnant woman can have such a powerful impact on adolescent females that they will be moved to imitate her by becoming pregnant themselves.” Similarly, advocates for single sex schooling suggest that merely removing males from females in classes will prove to be an effective strategy against teenage pregnancy.

⁴⁷ The United States has the highest rate of teen pregnancy in the industrialized world. See Annie E. Casey Foundation, *When Kids Have Sex: Issues and Trends* (available at <http://www.aecf.org/kidscount/teen/overview.htm>) (last visited Aug.13, 2003)(on file with author). It

not arisen as justifications for all-female schools for white girls. The disparity suggests that underlying this concern is the desire to control Black female reproduction, which Dorothy Roberts has described as “a means of subordinating the entire race.”⁴⁸

Finally, the rhetoric regarding single sex for Black girls is unique in its emphasis on providing safety. For example, the principal of Philadelphia High School for Girls, which is almost 80% students of color,⁴⁹ has praised the school because there is “less sexual harassment” and more “safety in an urban environment.”⁵⁰ Similar comments have been made about other all-female schools in inner cities.⁵¹ This rhetoric suggests that merely by removing Black males from the environment, these schools become safer even though they remain in urban settings where security is an issue for students and non-students alike.

The foregoing suggests that this effort is very much about race. But race is invisible when the players – students, parents, educators -- are people of color, which is the case here: that is, the primary focus is sex in the commentary, in the reportage, and in policy discussions.⁵² Additionally, the “new” single sex school movement wraps itself in

should be noted, however, that the rates of teenage pregnancy in this nation have been on the decline for both white and Black females, with rates for Black teens diminishing at a greater rate than that of white females. See Jacqueline E. Darroch, Susheela Singh, Why is Teenage Pregnancy Declining? The Roles of Abstinence, Sexual Activity, and Contraceptive use, 7 (Alan Guttmacher Institute)(1999)(available at http://www.guttmacher.org/pubs/or_teen_preg_decline.pdf(last visited Aug. 13, 2003)(on file with author).

⁴⁸ Roberts, *supra* n. 45 at 11.

⁴⁹ See *supra* n. 29.

⁵⁰ Ingrid Shaffer, *Single-sex Schools are Proving Their Worth*, THE PATRIOT LEDGER, June 5, 2002, 11.

⁵¹ For example, Baltimore’s Western High School is known “not only for its academic reputation but also for its physically safe environment.” Rosemary Salomone *supra* n. 9 at 32. Salomone also has described TYWLS as a “physically and emotionally safe haven for girls.” *Id.* at 18.

⁵² See, e.g., Nancy Levit, *Separating Equals: Educational Research and the Long-Term Consequences of Sex Segregation*, 67 GEO. WASH. L. REV. 451, 454 (1999) (examining the “empirical evidence about single-sex schools in the larger context of sociological evidence regarding the construction of gender roles”); Denise C. Morgan, *Anti-Subordination Analysis after United States v. Virginia: Evaluating the Constitutionality of K-12 Public Schools*, 1999 U. CHI. LEGAL F. 381, 384 (1999)(identifying the “circumstances [under which single-sex public schools can] survive an anti-subordination challenge”); Carolyn B. Ramsey, *Subtracting Sexism from the Classroom: Law and Policy in the Debate Over All-Female Math and Science Classes in Public Schools*, 8 TEX. J. WOMEN & L. 1(1998) (arguing that all-

the supposedly benign history of sex segregation in education,⁵³ in the territory of intermediate scrutiny, which does not automatically trigger red flags and alarms. After all, “race” and “segregation” in the same breath is a combustible mix that evokes much higher scrutiny and greater skepticism. However, this single axis analysis that focuses on sex alone is incomplete.

Because much of the effort to implement single sex schooling centers on the nation’s inner city school systems, it has the potential to affect students of color greatly.⁵⁴ In light of that fact and given the nation’s sad history with respect to educating students of color, particularly Black students, any analysis of sex segregation must consider not only sex, but also, at the very least, race,⁵⁵ to determine whether this reform strategy will liberate or subordinate Black children. Accordingly, this Article argues that an

female math and science classes do not presumptively violate the equal protection clause); Amy H. Nemko, *Single-Sex Public Education After VMI: The Case for Women’s Schools*, 21 HARV. WOMEN’S L. J. 19 (1998)(same); Valerie K. Vojdik, *Girls’ Schools After VMI: Do They Make the Grade?* 4 DUKE J. GENDER L. & POL’Y 69 (1997)(arguing that all-girls schools are unconstitutional); William Henry Hurd, *Gone with the Wind? VMI’s Loss and the Future of Single-Sex Public Education*, 4 DUKE J. GENDER L. & POL’Y 27 (1997)(arguing that the VMI decision should not necessarily foreclose creation of single sex schools); Jennifer R. Cowan, *Distinguishing Private Women’s Colleges from the VMI Decision*, 30 COLUM. J. L. & SOC. PROBS. 137, 138 (1997) (providing a “blueprint for defending [women’s] colleges against [legal] challenges”); Kristin S. Caplice, *The Case for Public Single-Sex Education*, 18 HARV. J. L. & PUB. POL’Y 227, 229 (1994 – 1995)(“advocat[ing] public sing-sex education as an alternative to coeducation”); Walteen Grady Truely & Martha F. Davis, *Public Education Programs for African-American Males: A Gender Equity Perspective*, 21 N.Y.U. REV. L & SOC. CHANGE 725, 728 (1993 – 1995)(examining the Black all-male academies “from a women’s educational equity perspective”). *But see* Jill Elaine Hasday, *The Principle and Practice of Women’s “Full Citizenship”: A Case Study of Sex-Segregated Public Education*, 101 MICH. L. REV. 755, 758 (2002) (arguing that “sex role confinement” can occur in single sex or coeducational schooling to perpetuate inequities based on sex, race, and class); Smith, *supra* n . 30 (arguing that sex segregation in predominantly Black schools should be subject to intermediate scrutiny).

⁵³ See, e.g., Tom Carroll, *Talk of the Nation: Single Sex Schools* (NPR radio broadcast, May 13, 2002) (transcript on file with author)(“A lot of the single-sex schools we’re talking about now . . . are ones that clearly don’t have their history in any kind of discriminatory path”).

⁵⁴ This Article takes no position on the efficacy of single sex education for improving educational outcomes for students.

⁵⁵ See Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. L. FORUM 139, 145 (1989)(stating that the failure to analyze such issues using a multiple axis “defeats efforts to restructure the distribution of opportunity and limits remedial relief to minor adjustments within an established hierarchy”); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990)(criticizing feminist legal scholars for failing to consider race).

intersectional analysis⁵⁶ is essential to ensuring that current efforts to segregate students by sex actually effect reform and not retrenchment.

Part I of this Article examines the legal doctrine applicable to single sex education and the Bush proposal to modify it to ease legal scrutiny of single sex programming. Part II explores the overlapping histories of racial and sex-based segregation in education and the legal regime supporting it, as well as the concomitant raced and gendered hierarchy this system of education helped create. As a result, Part III concludes that any new effort to create single sex schools or classes necessarily must be informed by an intersectional analysis and applies such a framework to the *Garrett* case.

I. “Legally Cloudy” or Clear? The Law Regarding Single Sex Education and the Bush Proposal to Modify It

In the wake of *Garrett* and the ambiguous status of TYWLS, interest has grown in making single sex education an option for school districts, as has anxiety about the attendant risk of legal exposure. In this connection, the Bush Administration is poised to regulate, which means a critical examination of sex segregation, with an eye toward the students most likely to be affected, is warranted. A good starting place is the current state of the law and the direction the Bush Administration may take to modify it.

By signing into law the No Child Left Behind Act of 2001(NCLBA),⁵⁷ President Bush triggered a little known provision⁵⁸ that could lead to the proliferation of single sex

⁵⁶ See, e.g., Dwight McBride, *Can the Queen Speak?: Racial Essentialism, Sexuality, and the Problem of Authority*, in BLACK MEN ON RACE, GENDER, SEXUALITY: A CRITICAL READER, 253, 272 (Devon Carbado, ed.)(1999)(noting that “if I am thinking about race, I should already be thinking about gender, class, and sexuality”); Darren Lenard Hutchinson, *Identity Crisis: ‘Intersectionality,’ ‘Multidimensionality,’ and the Development of an Adequate Theory of Subordination*, 6 MICH. J. RACE & L. 285, 297 (2001)(advocating an examination of the interactions between the myriad forms of oppression).

⁵⁷ 20 U.S.C.A. §§ 6301 *et seq.* (2003)(authorizing funding programs for schools serving low-income children and enacting provisions designed to hold schools accountable for student outcomes).

⁵⁸ 20 U.S.C.A. §7215(a)(23), which makes available federal funds for “innovative assistance programs, including those that would provide “same-gender schools and classrooms.” Texas Senator Kay Bailey

education throughout the nation’s public schools. Namely, under the NCLBA, local education agencies may dedicate certain funds to create single sex schools and classes, provided that they do so “consistent with applicable law.”⁵⁹ “Applicable law” in this area refers primarily to Title IX⁶⁰ and the Fourteenth Amendment of the Constitution.⁶¹

Hutchison (R-TX) sponsored the measure, joined by Senators Hillary Rodham Clinton (D-NY) and Ted Kennedy (D-MA), among others.

Enactment of this provision culminated an effort started by former Senator John Danforth (R-MO) in 1993. Senator Danforth proposed a measure that would have waived Title IX liability for a limited number of school districts to allow them to experiment with sex segregation without the threat of litigation. Such waivers were essential, according to Senator Danforth, to provide school districts with the flexibility to innovate in this area:

In school districts in Milwaukee and Detroit and Miami and Baltimore and Philadelphia, there have been at least some schools in those districts that have come to the conclusion that, for a least on a trial basis, they should have the opportunity, they should make the attempt to find out if for some of those kids, single-sex education works. However, the bad news is that they have been under the cloud of lawsuits when they have made that decision. They have been threatened and, in some cases, they have been sued . . . In the inner cities in particular, there have been attempts at same gender schooling in the form of classes to address the poor academic performance of the kids in those schools. However, legal opposition, particularly legal opposition that has been precipitated by the American Civil Liberties Union and by the National Organization of Women, have [sic] chilled those decisions.

140 CONG. REC. S10,164 (August 1, 1994).

While Senator Danforth saw the proposed exemptions to Title IX as lifting a cloud, others viewed his proposal as signaling a retrenchment in civil rights and a return to exclusionary educational policies. Senator Ted Kennedy (D-MA) opposed the measure because he was concerned about the precedent of waiving civil rights laws. He also noted that the history of sex segregation was not entirely benign, which had troubling implications for the future: “[W]e have seen in this country, when . . . boys are in one area and the girls are in another, history had demonstrated time in and time out that [the girls] are the ones that have been left out and left behind.” *Id.* at S10,169. The vast majority of senators disagreed, approving the measure by a strong margin of 66 – 33. When members of the Senate and the House of Representatives met to consider their respective versions of the Improving America’s Schools Act (“IASA”), however, several members of the conference committee objected to the amendment because of “concerns about waiving civil rights laws to carry out pilot programs.” *See Conferees Inch Forward on Education Reauthorization Bill*, NATIONAL JOURNAL’S CONGRESS DAILY, September 22, 1994. The provision ultimately was dropped from the final iteration of the IASA. *See HR CONF. REPT.* 103-761 at 649 –650 (1994).

⁵⁹20 U.S.C.A. §7215(a)(23)(2000).

⁶⁰ 20 U.S.C.A. §§ 1681 – 1688 (2000).

⁶¹ The Equal Educational Opportunities Act of 1974, 20 U.S.C.A. §1701 *et seq.* (2002) (EEOA), and Title VI of the Civil Rights Act, 42 U.S.C.A. §2000d (2000), may have some applicability here, as well. The EEOA requires states to “remove the vestiges of a dual school system.” 20 U.S.C.A. §1703(b). It also outlaws assigning students to schools based on sex, among other categories, “if the assignment results in a greater degree of segregation . . . than would result if such student were assigned to the school closest to his or her place of residence.” 20 U.S.C.A. §1703(c). Title VI, for its part, provides:

Title IX broadly prohibits sex discrimination in any federally funded education program or activity,⁶² but importantly, it does not proscribe single sex education outright.⁶³ For example, Title IX does not apply to admissions in “non-vocational

No person in the United States shall, on the ground of race, color, or national origin, be excluded from, denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

42 U.S.C.A. §2000d (2000). This Article focuses primarily on the equal protection clause of the Fourteenth Amendment and Title IX, which are most commonly at issue with respect to single sex schools.

⁶² Title IX states in relevant part:

No person in the United States, shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

20 U.S.C. A. § 1681(a)(2000).

⁶³ Congress never intended to outlaw single sex education with the passage of Title IX. In fact, early versions of the statute explicitly exempted single sex institutions, in part because they were not deemed to be discriminatory. *See* 117 CONG. REC. 39,252 (November 4, 1971). Other Members sought to exclude single sex college and universities so they would not be “unduly burden[ed] by integrating on the basis of sex. 117 CONG. REC. 39,251 (November 3, 1971). Just as today, supporters of single sex education cited diversity of educational offerings as a rationale for exempting such institutions from Title IX’s coverage. *Id.* at 39,253. There also was considerable debate about whether single sex education really was pedagogically sound. For example, in debates about the House version, lawmakers discussed the fact that single sex colleges were on the decline and that there was a “legitimate controversy over the merits of single sex versus coeducational institutions.” *Id.* at 39,255. Ultimately, the version that passed in the House did not exempt “substantially single sex institutions, and instead exempt[ed] undergraduate admissions altogether.” *Id.* at 39,364.

The Senate took a different approach. When Senator Birch Bayh (D-Indiana) introduced his version of the Title IX in August 1971, it provided a phase-in period for single sex institutions. 117 CONG. REG. 30,399 (August 5, 1971). Under Senator Bayh’s amendment, VMI and Citadel would have to integrate based on sex, as would women’s colleges. *Id.* at 30,412. Other lawmakers who believed that colleges and universities should be free to determine the composition of their student body opposed this amendment. As one explained, “[s]ome institutions may feel that their own university. . . would provide better educational opportunities . . . if it kept that ratio [60% men and 40% women] than if it had a different mix.” *Id.* at 30,406. This view carried the day and ultimately Senator Bayh’s amendment failed.

The next year, Senator Bayh offered a new version of his anti-discrimination measure, which exempted undergraduate admissions, as well as military academies from coverage. 118 CONG. REC. at 5803 (February 22, 1972). Senator Bayh justified these exceptions by asserting that coverage would “disrupt the academic program in terms of psychological and financial alumni support.” *Id.* at 5807. As for the military exception, Senator Bayh explained candidly that it was intended to increase the odds of passage, stating that “there are a few isolated instances where a girl might want to get into a military school.” *Id.* at 5813. The amendment also exempted admissions at the elementary and secondary school level. *Id.* at 5812. But it would apply to admissions in vocational education, professional education, graduate education, and public undergraduate institutions. *Id.* at 5803.

Not satisfied with the balance Senator Bayh tried to strike, Senator Lloyd Bentsen (D-TX) offered an amendment that excluded historically single sex colleges and universities from coverage under the bill.

elementary and secondary schools,”⁶⁴ the very schools that are at issue. In addition, the statute does not apply to certain sex-segregated activities, such as “any Boys State conference, Boys Nation conference, Girls State conference or Girls Nation conference.”⁶⁵ It does not apply to “father-son or mother-daughter activities at an educational institution.”⁶⁶ Each of these activities may be sex segregated as long as “reasonably comparable” activities are provided for the excluded sex.⁶⁷ Title IX’s implementing regulations make clear that single sex classes also are permissible in physical education classes “involving bodily contact” or in other classes dealing with “human sexuality.”⁶⁸ Additionally, the regulations allow school districts to create single sex classes for “remedial or affirmative action” purposes.⁶⁹

Four such institutions existed at the time, one of which was Texas Women’s University (TWU). Senator Bentsen argued students should have the choice to attend a sex-segregated institution. *Id.* at 5814. Senator John Tower (R - TX) supported this amendment, arguing that coeducational institutions were not preparing women adequately, unlike TWU, which he claimed “remed[ie]d this oversight.” *Id.* at 5814. Senator Bayh agreed to this amendment based on his belief that women’s institutions did not contribute to discrimination against women in education. *Id.* at 5815.

Senator Bayh’s measure passed as amended. *Id.* at 6277. When members of the Senate and House convened to reconcile their respective bills, House sponsor, Representative Edith Green (D-OR) stated that she supported an exemption for single-sex schools because she feared that proponents of such schools would torpedo the bill without one. As for her own personal viewpoint on single sex schools, she said she had not “resolved this in [her] own mind. But in those schools that do admit both men and women . . . I think there ought to be an end to discrimination.” 118 CONG. REC. at 18,438 (May 23, 1972). Then, in explaining the importance of focusing on sex discrimination, Representative Green says “in many places women are required to have a higher grade point average and greater ability, but in terms of minority groups we lower admission standards in order to have more numerically. *Id.* at 18,437. That statement suggests somehow that women are more deserving of assistance – or less deserving of discrimination – than minorities. She expressed this sentiment again, arguing for passage of what would become Title IX: “I just do not understand how the Congress, which has been concerned about minority groups not being in the apprenticeship program, can let year after year go by with only token participation by girls.” *Id.* at 18,438. Rep. Green, by inserting race in this manner, suggest that deserving white females had not been adequately protected under the then-existing regime of civil rights laws.

⁶⁴ 20 U.S.C.A. § 1681(a)(1)(2000). *But see Garrett*, 775 F.Supp. at 1009 (holding that the exemption for elementary and secondary school admissions applies only to “historically pre-existing single sex schools; it is not viewed as authorization to establish new single sex schools”). To date, this is the only decision so interpreting Title IX’s regulations.

⁶⁵ 20 U.S.C.A. § 1681(a)(7)(B)(2000).

⁶⁶ 20 U.S.C.A. § 1681(a)(8)(2000).

⁶⁷ *Id.*

⁶⁸ 34 C.F.R. §§ 106.34(c), 106.34 (e)(2002).

⁶⁹ 34 C.F.R. § 106.32(2002).

The Constitution also allows for sex segregation in education under limited circumstances. Any effort to separate students based on sex would be subjected to heightened scrutiny, which places the burden on the state to provide “an exceedingly persuasive justification”⁷⁰ for classifying students based on sex. In *Mississippi University for Women v. Hogan*,⁷¹ the Supreme Court explained that this “burden is met only by showing at least that the classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.”⁷² In other words, the stated rationale supporting sex based admissions policies must be grounded in reality and not on

fixed notions concerning the roles and abilities of males and females. Care must be taken in ascertaining whether the statutory objective itself reflects archaic and stereotypic notions. Thus, if the statutory objective is to exclude or protect members of one gender because they are presumed to suffer from an inherent handicap or to be innately inferior, the objective itself is illegitimate.⁷³

The Court applied this test to the all-female admissions policy at the Mississippi University for Women School of Nursing, which had rejected the plaintiff’s application because of his sex. According to the state, the admissions policy was necessary to “compensate[] for discrimination against women;” therefore, it was a form of “educational affirmative action.”⁷⁴ The Court rejected this justification out of hand because the state had failed to adduce evidence of historical barriers to nursing for women.⁷⁵ In so doing, the Court explained that a state may “evoke a compensatory

⁷⁰ *Mississippi University for Women v. Hogan*, 458 U.S. 718, 723 (1982), citing *Kirchberg v. Feenstra*, 450 U.S. 455, 461 (1981); *Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256, 273 (1979).

⁷¹ 458 U.S. 718 (1982).

⁷² *Id.*(quotations omitted).

⁷³ *Id.* at 725.

⁷⁴ *Id.* at 727.

⁷⁵ *Id.* at 729. However, it must be noted that the field of nursing has a raced and gendered hierarchy that has excluded women and men of color. See Evelyn Nakano Glenn, *From Servitude to Service Work: Historical Continuities in the Racial Division of Paid Reproductive Labor*, 18 SIGNS: JOURNAL OF WOMEN

purpose to justify an otherwise discriminatory classification only if members of the gender benefited by the classification actually suffer a disadvantage related to the classification.”⁷⁶

The Court further explicated the standard for sex-segregated education in *United States v. Virginia*.⁷⁷ In this case, the Court characterized the level of scrutiny to be applied as “skeptical,”⁷⁸ noting that the analysis is the necessary “respon[se] to volumes

IN CULTURE AND SOCIETY, 1, 23 (1992). Registered nurses (RNs) are at the top of this hierarchy. They “perform[] medical tasks and patient care as delegated by physicians and enforc[e] hospital rules . . . [they] are overwhelming female and disproportionately white.” *Id.* At the next level are licensed practical nurses (LPNs), whom the RNs supervise: they are “female but disproportionately women of color.” *Id.* Further down the ladder are the “nurse’s aides, predominantly women of color . . . and orderlies, . . . primarily men of color.” *Id.* Access to the top positions means a higher salary, greater career options, and, as a result, potentially better quality of life:

Unlike the lower ranks, registered nursing offers a career ladder. Starting as a staff nurse, a hospital RN can rise to head nurse, nursing supervisor, and finally, director of nursing. In 1980 [two years before the Court decided *Hogan*], whites were 86.7 percent of RNs, even though they were only 76.7 percent of the population . . . Racial-ethnic workers constituted 23.4 percent of LPNs, with Blacks, who were 11.7 percent of the population, making up fully 17.9 percent . . . Among nurse’s aides, 34.6 percent were minorities, with Blacks making up 27.0 percent of all aides.

Id. at 24. The under-representation of Blacks in nursing is directly related to discrimination. Specifically, “nursing schools in the South excluded Blacks altogether, while northern schools maintained strict quotas.” *Id.* at 25. The few Blacks who were able to get training to become a nurse were restricted to racially segregated courses that allowed them to treat only Black patients, even in the racially integrated Northern hospitals. *Id.* at 25 – 26. The social construction of Black women as immoral justified excluding them from this career path:

[An administrator from Grady Hospital in Atlanta] declared that Negro women under her supervision had no morals: ‘They are such liars . . . They shift responsibility whenever they can . . . They quarrel constantly among themselves and will cut up each other’s clothes for spite . . . Unless they are constantly watched, they will steal anything in sight.’”

Id. at 26. Presented with a one-dimensional view of nursing, the Court limited its analysis to the single axis of sex. However, had it been presented with an intersectional rendering of the justification for the admissions policy, assuming, of course, that the State actually was trying to remedy the historical exclusion of women and men of color, a different outcome might have resulted.

⁷⁶ 458 U.S. at 728.

⁷⁷ 518 U.S. 515 (1996).

⁷⁸ *Id.* at 531. By invoking “skeptical scrutiny” and the phrase “exceedingly persuasive justification,” the Court prompted speculation as to whether it had increased the level of scrutiny afforded to sex-based classifications to something akin to strict scrutiny. *See, e.g., id.* at 574 (Scalia, J., dissenting)(asserting that the Court had “*de facto* abandon[ed] the intermediate scrutiny that has been our standard for sex-based classifications for some two decades”); *see also* Denise C. Morgan, *Anti-Subordination Analysis after*

of history”⁷⁹ of discrimination against women. Notwithstanding its skepticism respecting sex-based classifications, however, the Court also reiterated that Equal Protection does not forbid all such classifications:

Inherent differences between men and women, we have come to appreciate, remain cause for celebration, but not for denigration of the members of either sex or for artificial constraints on an individual’s opportunity. Sex classifications may be used to compensate women for particular economic disability they have suffered . . . to promote equal employment opportunity . . . to advance full development of the talent and capacities of our Nation’s people. But such classifications may not be used as they once were, . . . to create or perpetuate the legal, social, and economic inferiority of women.⁸⁰

Thus, the Court held that single sex education does not offend equal protection if it compensates for past discrimination and provides opportunities to overcome systemic subordination.

Although Title IX and the Constitution already permit sex segregation, the Bush Administration is planning to modify Title IX’s implementing regulations to create additional latitude for school districts to create such programming, according to a recently published Notice of Intent to Regulate (hereinafter “Notice”).⁸¹ With this Notice, the Department has set in motion a process⁸² that could result in a significant change in its policy on single sex education and in Title IX’s implementing regulations, which were promulgated almost thirty years ago.⁸³ In launching this initiative, the Department has emphasized improving educational outcomes and providing parents with

United States v. Virginia: Evaluating the Constitutionality of K-12 Public Schools, 1999 U. Chi. Legal F. 381, 382, n. 7 (1999) (noting that the Court had not, in fact, increased the level of scrutiny).

⁷⁹ *Id.*

⁸⁰ *Id.* at 533-534 (citations and quotations omitted).

⁸¹ Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance; Proposed Rule, 67 FED. REG. 31,098 (May 8, 2002).

⁸² The Notice is “intended to begin the process of public input on [this] issue,” prior to the Department’s issuance of modified regulations. *Id.* at 31,098.

⁸³ See 67 FED. REG. 31,098 n.1 (observing that the existing regulations were issued after the Department received and reviewed almost 10,000 comments from the public).

diverse educational options as its primary objectives, supported secondarily by assuring the “appropriate safeguards against discrimination,”⁸⁴ to justify revising the Title IX regulations. Additionally, the Notice suggests that the Department has endorsed single sex education as a legitimate pedagogical tool, despite the long-standing and ongoing controversy regarding the merits or disadvantages of sex segregation.⁸⁵

The use of single-sex classes and schools can reflect important and legitimate efforts to improve educational outcomes for all students. Rather than being motivated by outdated notions regarding the limitations or limited goals of members of one sex, some of these efforts aim to provide new and better ways to help all students learn and meet high standards.⁸⁶

In this regard, the Department has presumed that current efforts at sex segregation will not reflect outmoded stereotypes such that this strategy that should be replicated with ease throughout the nation’s public schools. For example, the Notice invited public comment on whether “a school district [should] have to explain the benefits of single-sex classes for its students,”⁸⁷ suggesting that a school district’s decision to create such programming should be considered presumptively valid. Additionally, the Notice has asked for public comments on whether “a school district that establishes single sex classes or schools for one sex [should] be required to establish schools or classes for the other sex that are ‘comparable,’⁸⁸ in light of the VMI case, or [whether] some other

⁸⁴ *Id.* at 31,098.

⁸⁵ *See, e.g.,* Nancy Levit, *Separating Equals: Educational Research and the Long-Term Consequences of Sex Segregation*, 67 GEO. WASH. L. REV. 451 (1999) (examining the conflicting empirical evidence regarding single sex education); *see also* Patricia B. Campbell and Joe Sanders, *Challenging the System: Assumptions and Data Behind the Push for Single-Sex Schooling in*, GENDER IN POLICY AND PRACTICE: PERSPECTIVES ON SINGLE-SEX AND COEDUCATIONAL SCHOOLING, 31, 32 (Amanda Datnow, Lea Hubbard, eds.) (2002)(noting that “[t]here has been no national comprehensive controlled study of academic performance for U.S. students in public and private K-12 single-sex and coed schooling”).

⁸⁶ Notice, 67 FED. REG. at 31,098 n.1.

⁸⁷ *Id.* at 31,099.

⁸⁸ An examination of *Vorchheimer v. Philadelphia*, 400 F.Supp. 326 (E.D.Pa. 1975), demonstrates the inadequacy of “comparable” as a measure of equality. In resolving the issue of whether all-male Central High School violated the equal protection clause, the district court concluded that the school was “comparable” to its all-female counterpart, Girls High. *Id.* at 329. But, the facts suggested otherwise.

standard appl[ies].”⁸⁹ Since the Court in VMI struck down the all-female alternative school because it did not provide a “substantially equal” alternative to the men’s institution, this passage and the others like it suggest that the Department is seeking to lower its standards for determining Title IX compliance for single sex schools or classes in public education, which as a legal matter, it simply cannot do.⁹⁰

Central, founded in 1836 as the first public high school in Philadelphia, boasted of illustrious alumni and prodigious resources. Its graduates included “many men who are currently prominent in the professional, political, and cultural life of [the] city and state . . . Central has a deserved reputation for training men who will become local and national leaders in all fields of endeavor.” *Id.* at 328. The success of its graduates further was reflected in alumni contributions – tangible and intangible – that equaled those of college alumni. *Id.* at 329. Additionally, because of Central’s history and tradition of excellence the school “attracted the attention of national leaders throughout [its] history,” *id.* at 329, among them: Presidents Polk and Theodore Roosevelt, former Attorney General Robert Kennedy, and former Vice President Hubert Humphrey. *Id.* at 328- 329. “The visits of the latter two . . . were arranged through the auspices of the Barnwell Foundation, which was established by a Central alumnus.” *Id.* at 329. Central had a “substantial private endowment,” the only city high school to be so fortunate. *Id.*

In contrast, Girls High was founded in 1848 to train teachers -- male and female alike -- for the city’s public schools. *Id.* at 328. The leaders among Girls High alumnae were neither as numerous nor as accomplished as were Central graduates: “[a]mong the current community leaders who have graduated from Girls are three judges of the Court of Common Pleas of Philadelphia and the first vice-president of the American Medical Association.”⁸⁸ *Id.* at 329. Similarly, Girls High alumnae apparently had not demonstrated the same “dedication and loyalty” to their alma mater in terms of financial contributions, since no mention is made of such. Notwithstanding the reputation of the school, there apparently was no record of former presidents or cabinet members visiting the campus to address students. However, despite all these disparities, the only difference the court observed between the two institutions was that “the scientific facilities” at Central were “superior.” *Id.* at 329.

Vorchheimer thus demonstrates that that the “comparability” standard allows gendered – and raced—presumptions about equality to dominate the analysis of separate programming. Accordingly, the fact that male students had access to greater resources, greater prestige, and greater opportunities to learn science was of no moment to the court because those were the students best able to make use of the social and economic advantages bound to follow from these experiences when they graduated. In other words, the disparity between Central and Girls High reflected the disparate roles that male and female students would play upon reaching adulthood. Accordingly, the disparities did not signal inequality, rather they were a true reflection of reality. *See infra* nn.166-179 and accompanying text.

While the Third Circuit upheld the district court’s decision, 532 F.2d 880 (3d Cir. 1976), as did an “equally divided” United States Supreme Court, 430 U.S. 703 (1977), a state court ultimately struck down the all-male policy as violative of state constitution. *See Newberg v. Board of Public Education*, 26 Pa. D & C 682, 1983 Phila. Cty. Rptr. LEXIS 94 (Common Pleas Ct. 1983).

⁸⁹ *Id.*

⁹⁰ *Cf. Hogan*, 458 U.S. at 732. In that case, the State argued that Congress, in enacting Title IX, specifically intended to allow MUW to remain open to women only, as evidenced by the exemption for institutions that historically were single sex in nature. *Id.* The Court rejected that argument out of hand, stating that, while Congress has authority under Section 5 of the Fourteenth Amendment to enforce the guarantee of equal protection, it has “no power to restrict, abrogate, or dilute these guarantees.” *Id.* at 732. If “neither Congress nor a State can validate a law that denies the rights guaranteed by the Fourteenth Amendment,” *id.*, the Department most certainly cannot authorize States to create single-sex schools and classes in a manner that conflicts with equal protection.

The foregoing suggests that the Department is gearing up to give school districts free reign to establish single sex schools and classes, determined to remove all perceived barriers to single sex education – even Constitutional ones – for the sake of “flexibility”⁹¹ for school districts. This proposal flies in the face of long-established law and has significant implications for the ability of the children who supposedly will benefit from this approach, who primarily are students of color.⁹²

The overarching assumption of the Bush administration is that single sex education is benign because it carries none of the baggage of race segregation in schooling. But that is a myth.⁹³ As the next section will demonstrate, segregated education – race-based and sex-based – has played a major role in the subordination of white women and people of color, in different but overlapping ways. Examining this history is absolutely essential to understanding sex segregation in education and determining whether it holds any real promise for reforming the nation’s public schools. Here, it makes sense to examine the history of educating Blacks and white men and white women in the United States.

II. Looking Backward to Look Ahead: Race and Sex-Based Segregation in Education

Without question, educational institutions inform the social roles that young people will assume as adults.⁹⁴ In this connection, separating students based on sex takes on great importance as a means of constructing masculinity and femininity in this

⁹¹Notice, 67 Fed. Reg. at 31,098 (“The Secretary [of Education] intends to propose amendments to the regulations implementing Title IX . . . to provide more flexibility for educators to establish single-sex classes and schools”).

⁹² See *supra* n.29

⁹³ See *infra* Section II.

⁹⁴Among the lessons that children learn in school is about their proper place in society. Cynthia Hudley, *Schools as Contexts for Socialization*, in RACE AND EDUCATION: THE ROLES OF HISTORY AND SOCIETY IN EDUCATING AFRICAN AMERICAN STUDENTS (William Watkins, James H. Lewis & Victoria Chou, eds.) 226–227 (2001)

society.⁹⁵ When further examined within the context of state sanctioned, state enforced racial segregation, separating the sexes for educational purposes takes on additional significance as a means of constructing the social meaning of race. History suggests that sex segregation has promoted a raced and gendered hierarchy that identifies white males and white females as the prototypes of masculinity and femininity and relegates Black men and women to a subordinated position because they fail to conform to those norms.⁹⁶ As a result, sex segregation historically has been a key element of the “hidden curriculum,”⁹⁷ which reinforces gendered and raced expectations for students, and thus limits their educational opportunities, and ultimately constrains their life opportunities. While the past does not necessarily predict the future, examining the history of sex segregation with respect to sex and race, provides a strong foundation for understanding current efforts to resuscitate single sex schooling. As Reva Siegel has observed, examining the past demonstrates how the legal system has supported racial and gender-based hierarchies.⁹⁸ With this understanding, we can also determine whether reforms in the law actually dismantle such subordination or whether they merely allow it to take

⁹⁵ An examination of women’s colleges might suggest otherwise; however, a full examination of those institutions is beyond the scope of this paper.

⁹⁶ See, e.g., Crenshaw, *supra* n.55 at 156 n.49 (observing that “women, who often fail to conform to appropriate sex roles, have been pictured as, and made to feel, inadequate – even though as women, they possess traits recognized as positive when held by men in wider society. Such women are stigmatized because their lack of adherence to expected gender roles is seen as a threat to the value system”)(quotations and citations omitted).

⁹⁷ See, e.g., Cynthia Hudley, *Schools as Contexts for Socialization*, in RACE AND EDUCATION: THE ROLES OF HISTORY AND SOCIETY IN EDUCATING AFRICAN AMERICAN STUDENTS (William Watkins, James H. Lewis, and Victoria Chou, eds.) 226 –227 (2001) [hereinafter RACE AND EDUCATION].

⁹⁸ See Reva Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action*, 49 STAN. L. REV. 1111, 1116, 1119 (1997)(concluding that “[i]n gender, race, and class relationships, the legal system continued to allocate privileges and entitlements in a manner that perpetuated former systems of express hierarchy . . . [in this respect] the process of dismantling an entrenched system of status relations may well transform the regime without abolishing it.” Siegel terms this “reform dynamic . . . ‘preservation-through-transformation’”).

another form.⁹⁹ In this context, then, one must ask the following: acknowledging that the rationales justifying sex segregation may have evolved over the past 100 years or so, will single-sex schooling, in its “new” form deliver the promised reforms so necessary for students of color, or will it merely perpetuate racial and gender-based subordination?¹⁰⁰ With this inquiry in mind, the next section examines sex segregation within the context of the nation’s history of racial segregation.¹⁰¹

A. The History of Educating African Americans: Segregation Constructing Race and Gender

As the nation’s system of educating its young was developing, one segment generally was excluded – African Americans. Because of slavery, questions persisted regarding the propriety and wisdom of educating Blacks. Prior to 1835, ad hoc efforts to educate Blacks existed, promoted by “masters who desired to increase the economic efficiency of their labor supply; . . . sympathetic persons who wished to help the oppressed; and . . . zealous missionaries, who believing that the message of divine love came equally to all, [who] taught slaves the English language that they might learn the principles of the Christian religion.”¹⁰² As slavery became the engine propelling the nation’s economy, however, opposition to educating Blacks grew, particularly in the South. Historian Carter G. Woodson explains that this hostility was rooted in the desire to increase that region’s ability to compete in

⁹⁹ *Id.*

¹⁰⁰ *Id.*; see also Jill Elaine Hasday, *The Principle and Practice of Women’s “Full Citizenship”*: A Case Study of Sex-Segregated Public Education, 101 MICH. L. REV. 755, 779 (2002)(positing that “even a brief review of the historical record of sex-segregated public education demonstrates that a practice’s role in promoting unequal citizenship and legalized inferiority can evolve and shift”).

¹⁰¹ The history that follows is abbreviated because a full exploration of the history of racial and sex-based segregation clearly is beyond the scope of this paper.

¹⁰² Carter G. Woodson, *The Education of the Negro*, in FOUNDATIONS OF AFRICAN-AMERICAN EDUCATION, 5 (Eleazu Obinna, ed.)(1998).

the world-wide industrial movement. It so revolutionized spinning and weaving that the resulting increased demand for cotton fiber gave rise to the plantation system of the South, which required a larger number of slaves. Becoming too numerous to be considered as included in the body politic, . . . the slaves were generally doomed to live without any enlightenment whatever. Thereafter rich planters not only thought it unwise to educate men thus destined to live on a plane with beasts, but considered it more profitable to work a slave to death during seven years and buy another in his stead, than to teach and humanize him with a view to increasing his efficiency.¹⁰³

Accordingly, states passed laws prohibiting the education of slaves as early as 1740; the majority of such laws appeared, however, in the first half of the nineteenth century.¹⁰⁴

Woodson reports that, in a few instances slave masters ignored these laws because they had valuable slaves capable of “bookkeeping [and] printing.” However,

the majority of the people in the South [believed] that, as intellectual elevation unfits men for servitude and renders it impossible to retain them in this condition, it should be interdicted. In other words, the more you cultivate the minds of slaves, the more unserviceable you make them; you give them a higher relish for those privileges which they cannot attain and turn what you intend for a blessing into a curse. If they are to remain in slavery they should be kept in the lowest state of ignorance and degradation, and the nearer you bring them to the condition of brutes the better chance they have to retain their apathy.¹⁰⁵

A literate slave thus was dangerous to the institution of slavery. Recognizing the important role schooling could play in their lives, however, some slaves risked being sold away from their families or worse to learn to read and write.¹⁰⁶

¹⁰³ *Id.* at 6-7.

¹⁰⁴ *Id.* at 7.

¹⁰⁵ *Id.*

¹⁰⁶ Historians estimate that about five percent of the slave populations surreptitiously learned to read before the end of the Civil War. See Ira Berlin, Marc Favreau, and Steven F. Miller, eds., *REMEMBERING SLAVERY: AFRICAN AMERICANS TALK ABOUT THEIR PERSONAL EXPERIENCES OF SLAVERY AND EMANCIPATION*, 206 (1998). For example, Mandy Jones, who was a slave in Mississippi, explained how slaves received a rudimentary education in “pit schools” from other slaves who had been taught secretly by white children:

Slaves would slip out o’ de Quarters at night, an go to dese pits [holes dug in the ground by other slaves], an some niggah dat had some learnin’ would have a school. De way de cullud folks would learn to read was from de white chillen . . . [who would] slip off somewhere an’ learns de cullud chilluns . . . what deir teacher has jes’ learned dem.

Id.

With the approach of the Civil War, more northerners took up the cause of education for African Americans as a way of dismantling the Confederacy:¹⁰⁷

The logic was simple: an educated ex-slave would be forever ‘ruined’ for any future slavocracy usage. To facilitate this ruination, the government of Abraham Lincoln immediately arranged to transport hundreds of abolitionist educators, both black and white, from the north to these areas for the purpose of setting up and staffing . . . schools [for Blacks].¹⁰⁸

After the Civil War and the abolition of slavery, doors to educational opportunities slowly began to open for Blacks. The Freedmen’s Bureau, which Congress established in 1866 to help the newly freed slaves,¹⁰⁹ provided the first public schooling for Blacks, as well as for whites in the South.¹¹⁰ However, a serious question arose as to what sort of education was most appropriate for the newly freed slaves, given the “political realities of peonage and oppression”¹¹¹: classical or industrial education.

On one side were W. E. B. DuBois, Anna Julia Cooper,¹¹² missionary philanthropists, among others,¹¹³ who advocated educating Blacks to develop their

¹⁰⁷ See Darryle J. Gatlin, *The Education of African Americans Since 1861*, in FOUNDATIONS OF AFRICAN-AMERICAN EDUCATION, 15 (1998).

¹⁰⁸ *Id.*

¹⁰⁹ With passage of the Civil Rights Act of 1866, 42 U.S.C.A. §. 1981, Congress created the Freedmen’s Bureau, granting it the authority, albeit without any appropriations, to establish public schools for the newly freed slaves, among other things. See, e.g., W. E. B. DuBois, *The Freedman’s Bureau*, in DUBOIS ON EDUCATION, 102 (Eugene F. Provenzo, Jr., ed.) (2002)

¹¹⁰ See *id.* at 105; see also Beverly Guy-Sheftall, DAUGHTERS OF SORROW: ATTITUDES TOWARD BLACK WOMEN, 1880-1920, 94 (1990). The Freedmen’s Bureau’s educational efforts added to existing schools created by missionaries, churches, and other private parties. See William H. Watkins, *Blacks and the Curriculum: From Accommodation to Contestation and Beyond*, in RACE AND EDUCATION *supra* n. 97 at 41.

¹¹¹ *Id.* at 42.

¹¹² Cooper has been called “a foundational figure among black feminists in America.” Charles Lemert, *Anna Julia Cooper: The Colored Woman’s Office*, in THE VOICE OF ANNA JULIA COOPER, 1 (Charles Lemert and Esme Bhan, eds.) (1998). She believed strongly in DuBois’ notions of the “talented tenth” and as principal of the all-black M Street High School in Washington, D.C. from 1901 to 1906, she put those ideas to work, “strengthen[ing] its curriculum in classical subjects [so much] that a markedly greater number of its graduates were accepted to elite colleges like Harvard.” *Id.* at 9. Her loyalty to DuBois ultimately cost her that position; the school board fired her after she completed her fifth year of service. “[Booker T.] Washington’s Tuskegee Machine, as it was known by opponents, worked hard to exercise its control where ever in the nation the industrial education strategy was opposed . . . Cooper was a prime target of . . . Tuskegee’s hostility, notwithstanding her strong commitments to the industrial education

agency and facilitate their struggle for equal rights.¹¹⁴ For example, DuBois argued that, in order for African Americans to progress, a “talented tenth” of the Black population should receive higher education to “rise[] and pull[] all that are worth the saving up to their vantage ground.”¹¹⁵ DuBois urged that this “best and most capable [group should] be schooled in the colleges and universities of this land,” so they, in turn, might teach other Blacks, formally, in the classroom, and informally as role models in their communities.¹¹⁶ Similarly, “missionary philanthropists, basically egalitarian in their views of civil rights and race relations [considered and supported] black higher education as a means to produce a college-bred black leadership that would lead the black masses in

program at M Street, because she was herself so obviously well educated and so effective a model to her pupils.” *Id.* at 10.

¹¹³ Southern Black leaders and educators associated attainment of quality education with progress for African Americans after the Civil War: “The quest for self-determination demanded knowledge of society, citizenship and vocation. The cultivation of teachers, leaders, ministers, managers, and skilled tradesmen were objectives of early black education. Many black educators were attracted to the New England styled classical liberal curriculum, as it promised participation in the social life of the new America.” Watkins, *supra* n.110 at 41.

¹¹⁴ Gatlin, *supra* n.107 at 21.

¹¹⁵ W. E. B. Dubois, *The Talented Tenth*, in DUBOIS ON EDUCATION, 80 (Eugene F. Provenzo, Jr., ed.)(2002). It should be noted, however that DuBois’ vision was gender-specific:

The Negro race, like all races, is going to be saved by its exceptional men . . . Men we shall have only as we make manhood the object of the work of the schools – intelligence, broad sympathy, knowledge of the world that was and is, and of the relation of men to it – this is the curriculum of that Higher Education which must underlie true life.

Id. at 76. DuBois also recognized that Black women played an important role in the African American struggle for equality and argued specifically for their liberation from certain constraining stereotypes:

The future woman must have a life work and economic independence. She must have knowledge. She must have the right of motherhood at her own discretion . . . To no modern race does its women mean so much as to the Negro nor come so near to the fulfillment of its meaning . . . As I look about me today in this veiled world of mine, despite the noisier and more spectacular advance of my brothers, I instinctively feel and know that it is the five million women of my race who really count.

W. E. B. DuBois, *The Damnation of Women*, in DARKWATER: VOICES FROM WITHIN THE VEIL, 164, 173, 179 (1920).

¹¹⁶ *Id.* at 80, 86.

their struggle for equal rights.”¹¹⁷ Under this view, higher education was key to Black liberation after the Civil War.

In contrast, northern industrial philanthropists believed that Blacks should be educated in a manner consistent with “the existing racial and social class structure of the South . . . The tasks of the northern hegemonists and their southern supporters were to reconcile the growing black demand for education with the political realities of peonage and oppression.”¹¹⁸ This group was willing to accommodate Blacks’ interest in education, but only to the extent that it did not create a large educated elite class that might foment rebellion. “Containment and subjugation became the objective of imposed Negro education.”¹¹⁹

One of the proponents of industrial education, which was consistent with the “containment” strategy was Booker T. Washington, a former slave and a chief architect of Tuskegee Institute’s industrial education program. Washington believed that the true ticket to emancipation and white acceptance for African Americans lay in developing practical skills:

Some time ago, when we decided to make tailoring a part of our training at the Tuskegee Institute, I was amazed to find that it was almost impossible to find in the whole country an educated coloured man who could teach the making of clothing. We could find them by the score who could teach astronomy, theology, grammar, or Latin, but almost none who could instruct in the making of clothing, something that has to be used by every one of us every day in the year . . . It is time to make up, as soon as possible, for this mistake – time for both races to acknowledge it and go forth on the course that, it seems to me, all must now see to be the right one -- industrial education.¹²⁰

¹¹⁷ Watkins, *supra* n.110at 42 (citation omitted).

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 43.

¹²⁰ Booker T. Washington, THE FUTURE OF THE AMERICAN NEGRO, 50 – 57 (1899).

In Washington's view, industrial education would impart practical skills that were sorely needed among Blacks. In this connection, African Americans thus would prove they could contribute to society, which, in turn, would reduce the racial animosity that existed between Blacks and whites. He posited that

[t]he history of the world proves that trade, commerce, is the forerunner of peace and civilisation as between races and nations. The Jew, who was once in about the same position that the Negro is to-day, has now recognition, because he has entwined himself about America in a business and industrial sense. Say or think what we will, it is the tangible or visible element that is going to tell largely during the next twenty years in the solution of the race problem."¹²¹

Thus, according to Washington, industrial education would enable Blacks to obtain the few opportunities available to them within the racist infrastructure, while simultaneously casting doubt on the racist ideology that constrained African Americans.

Others argued that limited educational opportunities for Blacks simply made sense because of their purportedly limited capacity to learn. At this time, the popular and scientific discourse concerning African Americans was decidedly negative. For example, Columbia University published a report that provided ample "evidence" of the intellectual deficiencies of Blacks:

In both boys and girls among the Negroes the highest brightness seems to be thirteen years; the highest ability for boys was found to be eight years and for the girls nine years. With white children ability increases and brightness decreases with age. As a rule, after Negro children become older than ten or twelve years, their development is physical rather than mental.¹²²

In addition, this report claimed that Blacks were morally deficient and weak of character:

The Negro has few ideals and perhaps no lasting adherence to an aspiration toward real worth. He has little conception of the meaning of virtue, truth, honor, manhood, integrity. He is shiftless, untidy, and indolent. . . The Negro shirks

¹²¹ *Id.* at 65 – 66.

¹²² Howard W. Odum, *SOCIAL AND MENTAL TRAITS OF THE NEGRO: RESEARCH INTO THE CONDITIONS OF THE NEGRO RACE IN SOUTHERN TOWNS: A STUDY IN RACE TRAITS, TENDENCIES AND PROSPECTS*, 38 (1910)

details and difficult tasks . . . The Negro is improvident and extravagant; lazy rather than industrious . . .¹²³

These failings of intellect and character further combined to limit African Americans' ability to succeed educationally; therefore, this report recommended that schooling for Blacks be focused in "agricultural and mechanical schools," military schools, and other settings that facilitate "manual dexterity as early as possible."¹²⁴ Any additional schooling was not only unnecessary, but ill-advised as a policy matter:

[I]t seems that the whole current of mental improvement has reached unhappy results. The young educated Negroes are not a force for good in the community but for evil. The Negro quickly outgrows the influence and control of his instructors . . . These young Negroes are not in sympathy with their parents; they appear to neglect them more than those who are not 'educated.' They feel that manual labor is beneath their dignity; they are fitted to do no other. They sneer at the idea of work, and they thus spread dissatisfaction among the members of their race.¹²⁵

These notions of intellectual and moral inferiority, and the desire to keep Blacks satisfied with their subordinate status informed the public debate concerning education for African Americans. For example, Samuel Armstrong, founder of Hampton University, the model for Tuskegee Institute, believed that "the Negro could acquire knowledge but not digest it;" therefore, "the Negro could best be morally and socially uplifted through labor and character training."¹²⁶ Armed with this racist assessment of Black Americans, Armstrong met with other prominent white educators of the time at the Lake Mohonk Conferences in the Negro Question in Lake Mohonk, NY in 1890 –1891, to carve out a "suitable" educational strategy for Blacks. A majority agreed that industrial education was the best course of action for Black men *and* Black women alike because "Blacks were genetically

¹²³ *Id.* at 39.

¹²⁴ *Id.* at 44.

¹²⁵ *Id.* at 41.

¹²⁶ Watkins, *supra* n.110 at 43.

inferior, capable of rudimentary vocational training, and urgently in need of ‘character building.’”¹²⁷ There was little discussion or debate about whether to educate Black women or whether Black men and women should be trained separately because the debated focused generally on what Blacks, as a whole, could learn.¹²⁸

When considered in light of the nation’s recent experience with slavery, the lack of concern regarding Black males and females learning together in the post-Reconstruction era is not surprising. During slavery, Black women and men routinely worked side by side, performing tasks that ordinarily would be considered “man’s work.” Jacqueline Jones explains that males and females shared many of the same difficult jobs:

Together with their fathers, husbands, brothers, and sons, black women spent up to fourteen hours a day toiling out of doors, often under a blazing sun. In the Cotton Belt they plowed fields; dropped seed; and hoed, picked, ginned, sorted, and moted cotton. On farms in Virginia, North Carolina, Kentucky, and Tennessee, women hoed tobacco; laid worm fences; and threshed, raked and bound wheat . . . Stated simply, most women spent a good deal of their lives plowing, hoeing, and picking cotton. In the fields the notion of a distinctive ‘women’s work’ vanished as slaveholders realized that ‘women can do plowing very well and full well with the hoes and [are] equal to men at picking.’¹²⁹

In plantation life, Black women, unlike white women, were not presumed to be fragile creatures deserving of protection.¹³⁰ The absence of gendered roles was apparent even among Black slave children, who dressed alike in “split-tail shirt[s], . . . knee-length

¹²⁷ *Id.* at 44.

¹²⁸ Some efforts at sex segregation emerged later. See *infra* at nn.138 – 164 and accompanying text.

¹²⁹ Jacqueline Jones, *LABOR OF LOVE, LABOR OF SORROW: BLACK WOMEN, WORK, AND THE FAMILY FROM SLAVERY TO THE PRESENT*, 15 – 16 (1985). It is important to note, however, that female slaves differed from their male counterparts in one very significant aspect: the ability to procreate. As a result, female slaves were valued not only for their ability to work in the fields, but also for their reproductive capacity, which would increase the slave population and thus, enhance their master’s wealth. Significantly, however, this distinction did not exempt Black women from plantation work. Pregnant women still were expected to pick cotton, albeit a reduced amount. Upon giving birth, nursing mothers carried their babies to work with them, as described by this former slave: “When [the baby] got hungry, she just slip it around in front and feed it and go right on picking and hoeing.” *Id.* at 14. See also Deborah Gray White, *AR’N’T I A WOMAN? FEMALE SLAVES IN THE PLANTATION SOUTH*, 67 –69 (1999).

¹³⁰ See *infra* at nn.166 – 196 and accompanying text.

smock[s] slit up the sides,” handled similar chores on the plantation,¹³¹ and played in non-gender specific ways.¹³² Black females essentially were not – and could not aspire to become -- “true women.”¹³³ Similarly, Black males were not true men.¹³⁴

Still, even without being considered “true women,” Black women confronted gendered and raced expectations about their role in society as females, which, in turn, informed the educational opportunities available to them. For example, with the success of the Freedmen’s Bureau in providing educational opportunities in the post-Reconstruction period came a growing demand for schooling. And, with this demand for schooling, came a growing need for teachers to provide the most basic level of education to illiterate former slaves. Black women, by virtue of their sex, were deemed the likeliest of candidates to do the teaching,¹³⁵ in light of the fact that they held significant child care responsibilities for their masters’ and their own families. Gendered stereotypes, therefore, played a role in informing the educational opportunities available to Black

¹³¹ See Jones, *supra* n.129 at 23 (noting that “[o]n smaller holdings especially, the demands of housework, like cotton cultivation, admitted no finely honed division of labor”).

¹³² White, *supra* n.129 at 92 – 93.

¹³³ The term “true women” refers to the prototype of white femininity that emerged during the industrial revolution. Specifically, the “true” woman’s place was in the home and on a pedestal:

The attributes of True Womanhood, by which a woman judged herself and was judged by her husband, her neighbors, and society, could be divided into four cardinal virtues – piety, purity, submissiveness and domesticity. Put them all together and they spelled mother, daughter, sister, wife – woman. Without them, no matter whether there was fame, achievement or wealth, all was ashes. With them she was promised happiness and power.

Barbara Welter, *DIMITY CONVICTIONS: THE AMERICAN WOMAN IN THE NINETEENTH CENTURY*, 21 (1976). *But see* Crenshaw, *supra* n.56 at 139, 156 (observing that “true womanhood” was not available to Black women).

¹³⁴ See, e.g. Derrick Bell, *The Sexual Diversion: The Black Man/Black Woman Debate in Context*, in *BLACK MEN ON RACE, GENDER, AND SEXUALITY: A CRITICAL READER*, 239- 240 (Devon Carbado, ed.)(1999)(Arguing that slavery controlled and humiliated Black men by limiting access to their wives and “forc[ing] them to stand by powerless and unable to protect black women from sexual access by white men,” among other things).

¹³⁵ *Id.* at 94.

women, however, race added an entirely different dimension to the applicable expectations.

The confluence of raced and gendered stereotypes about Black women resulted in the creation of educational opportunities that addressed their perceived intellectual and moral shortcomings. For instance, because many southerners thought African American women were unintelligent, they argued that education should be limited to teaching Black women to serve white people.¹³⁶ Northerners, on the other hand, believed that Black women were educable, but that, because they were so lacking in morality and virtues, their schooling should emphasize character development.¹³⁷ Beverly Guy-Sheftall presents a compelling example of how white stereotypes of Black women informed their educational opportunities in her description of the founding of Spelman College.¹³⁸

Sophia Packard and Harriet Giles, two white female missionaries from New England, ventured south upon learning that Dr. Henry Morehouse, a field secretary of the American Baptist Home Missionary Society, had planned to establish a coeducational institution for Blacks in Atlanta in 1883. Not unlike many educators of the time, Giles and Packard believed in separate schooling for women; they were unique in their desire to educate Black women this way. Accordingly, Giles and Packard approached Morehouse and the Missionary Society, urging that some property in Atlanta be set aside to establish an institution dedicated to educating Black women and preparing them to assume their appropriate role in the post-Reconstruction society.¹³⁹ Giles and Packard were

¹³⁶ Guy-Sheftall, *supra* n.110 at 130.

¹³⁷ *Id.* at 131.

¹³⁸ *Id.* at 132 – 144.

¹³⁹ *Id.* at 133.

preoccup[ied] with industrial and practical education . . . set[ting Spelman] apart from the white female seminary tradition that concentrated, for the most part, on academic subjects . . . Ever mindful of the peculiar history of black women in American and the realities of their everyday lives, Packard and Giles’ primary aim was to provide training for teachers, nurses, missionaries, and church workers – areas of employment open to black women.¹⁴⁰

Giles and Packard believed in the Cult of True Womanhood and part of their mission was to inculcate Black women with it – but in a modified form. They recognized that the traditional “separate spheres”¹⁴¹ ideology informing the “classical” education that white women received¹⁴² did not apply to Black women. Accordingly, Giles and Packard fashioned a curriculum that would prepare Black women to work outside their own homes and support their families by “impart[ing] practical skills that would make black women good homemakers and mothers” and provide them with the training to go into domestic service.¹⁴³ In addition, because Giles and Packard were not immune to the stereotypes regarding Black women, particularly their purported lack of morals, a key part of Spelman’s training included “molding of Christian character and the eradication of those traits that were a carry-over from slavery – dishonesty, tardiness, drunkenness, idleness, immorality, and irresponsibility.”¹⁴⁴ Thus, Giles and Packard sought to provide Black women with a unique learning opportunity, informed by the intersection of racial and gender stereotypes.

Other efforts to educate Black women according to their particular needs, as perceived at the time, were grounded in the notion that Black women should be trained consistent with the opportunities available to them in society, in accordance with the

¹⁴⁰ *Id.*

¹⁴¹ *See infra* at nn.166 – 170 and accompanying text.

¹⁴² *See infra* at nn.187 – 197 and accompanying text.

¹⁴³ Guy-Sheftall, *supra* n.110 at 134.

¹⁴⁴ *Id.* at 136.

philosophy of Booker T. Washington, for example.¹⁴⁵ For example, educator Mary McCleod Bethune believed that industrial training was necessary to assist African American efforts to become fully integrated into the nation's fabric. Bethune focused her initial efforts on young women in founding the Daytona Literary and Industrial Training School for Negro Girls (Daytona School) in 1904.¹⁴⁶ The Daytona School provided students with a mix of academic and vocational coursework to “develop Christian character, to send forth women who [would] be rounded homemakers and Christian leaders . . . a trained mind, heart and hand being [Bethune's and her supporters'] idea of a complete education.”¹⁴⁷ Separate education for Black girls was necessary because of

the unique responsibility of this girl in the world today. The challenge to the Negro home is one which dares the Negro to develop the initiative to solve his own problems, to work out his own problems, to work out his difficulties in a superior fashion, and to finally come into his right as an American Citizen because he is tolerated. This is the moral responsibility of the education of the Negro girl; It must become a part of her thinking; her activities must lead her into such endeavors early in her educational life; this training must be inculcated into the school curricula so that the result may be a natural expression born into her children. Such is the natural endowment when her education must make it possible for her to bequeath to the future of the Negro race.¹⁴⁸

Bethune's educational mission was to prepare Black women to participate in the larger effort to uplift her race. In this connection, because Black women were to be the primary caregivers of children, they, in turn, would be responsible for passing down to the next generation the tools necessary to realize the promise of national citizenship implicit in emancipation. Bethune eventually expanded her efforts to include Black males in 1924 when, in her words, “the circumstances of growth and maintenance within the prevalent

¹⁴⁵ See *supra* n.120 - 121 and accompanying text.

¹⁴⁶ Audrey Thomas McCluskey and Elaine M. Smith, eds. *MARY MCLEOD BETHUNE: BUILDING A BETTER WORLD*, 67 (1999).

¹⁴⁷ *Id.* at 77 – 78. (quoting *Sixth Annual Catalogue of the Daytona Educational and Industrial Training School for Negro Girls* (1910-1911)).

¹⁴⁸ *Id.* at 85.

pattern of our young Negro institutions dictated union with Cookman Institute.”¹⁴⁹ Thus, all-female Daytona School evolved into coeducational Bethune-Cookman College,¹⁵⁰ which remains in existence today.

Another leading educator who focused on educating young African American women to fulfill their particular roles in a constrained society was Nannie Helen Burroughs, founder of the National Training School for Women and Girls (“NTS”) in 1909. NTS’s mission was

1. To train women for missionary work in this and other lands,
2. To prepare women as teachers of the Word of God in our Sunday Schools,
3. To train women to become better homemakers and
4. To train women to give better domestic service.¹⁵¹

Nicknamed the “School of the Three Bs,” for its emphasis on Bible, bathtub, and broom,¹⁵² NTS sought to assure its students of a firm moral foundation, along with the skills necessary to maintain a household, just as was true for Spelman and the Daytona School:

The aim of the School is to give a training of head, hand, and heart and develop a definite and active social interest in the spiritual and moral forces that make for human welfare. To accomplish this purpose we have: An atmosphere that is Christian; a spirit that is aggressive, unostentatious but happy; surroundings that are clean; personal ideals that are simple; academic and trade courses that are of high standards.¹⁵³

Students at the NTS also received training in academic subjects – such as Latin and English literature, domestic matters – such as dressmaking and housekeeping. In

¹⁴⁹ *Id.* at 118.

¹⁵⁰ It should be noted, however, that even with this development, Bethune apparently continued to believe that single sex education for Black girls was important to fill their particular educational needs – that is, educating them to fill their particular role in society in promoting the advancement of Black families. Additionally, sex segregation, in Bethune’s view, also allowed for “the development of a morale and fellow-feeling among those students unconfused by the disturbances of adolescence.” *Id.* at 120.

¹⁵¹ Opal V. Easter, NANNIE HELEN BURROUGHS, 58 (1995)(quoting E.A. Wilson, HISTORY OF THE WOMAN’S CONVENTION 1900-1955 (1955)).

¹⁵² *Id.* at 63.

¹⁵³ *Id.* at 64 (quoting School Brochure for the 1928-1929 School Year at 4).

addition, NTS provided training in various trades – such as typesetting and salvaging.¹⁵⁴ Burroughs believed that the trades were of especial importance to Black women – even those with a college education – to enable them to find employment in the likely event of discrimination. As an NTS brochure explained: “Not many of the colored graduates from normal schools or colleges are accepted in the public school system, as teachers, in the North . . . A Trade School will open new avenues of employment to girls who are shut out of teaching in public schools because they live in sections where colored teacher[s] are not generally employed.”¹⁵⁵

Educating women to enter the trades made the NTS unique by providing its students training that most assuredly was non-traditional for females, deviating far from the “true woman” construct, which proved to be very risky. Specifically, prominent members of the National Baptist Convention (NBC), a primarily male organization that supported NTS economically “were concerned that the women and girls enrolled in the trades were being trained as ‘breadwinners.’ For these reasons, the men of the NBC neglected to support the School”¹⁵⁶ and successfully persuaded the organization to withdraw its financial support.¹⁵⁷ The controversy sparked by the addition of the trades to the curriculum at the NTS suggests that sex segregation for Black women was acceptable as long as it conformed with the program to reconstruct Black femininity and Black masculinity in line with prevailing societal norms. By replicating white patriarchy, African Americans arguably could overcome the legacy of slavery that had rendered them less than true men and true women, and stigmatized them as inadequate. In this

¹⁵⁴ *See id.* at 64 – 66.

¹⁵⁵ *Id.* at 66(quoting 1928 –1929 School Brochure at 6).

¹⁵⁶ *Id.* at 68.

¹⁵⁷ *Id.* at 68 – 69.

regard, providing Black female students with the opportunity to enter professions that would enable them to support their future families, even without a mate, the NTS subverted efforts to construct the Black family as patriarchal. As a result, NTS, its students, and Burroughs were punished for it.

Examination of other efforts to educate Black women further demonstrates how sex segregation helped to perpetuate gendered and raced norms. For example, Samuel Harris,¹⁵⁸ principal of the Athens Colored High School in Georgia and advocate for industrial education, believed that increasing training in domestic services was particularly important for Black female students.¹⁵⁹ As a result, working in concert with other Black men in his community, Harris established an evening industrial school that “would train young blacks in domestic skills and moral attitudes that were generally associated with ‘old black mammy’ in the South.”¹⁶⁰ Harris justified his school by asserting that there was a need for a new generation of Blacks who represented, in his view, the exemplary characteristics of the Black mammy: “unselfishness, honesty, personal affection, industrial stability, and skills.”¹⁶¹ Harris and his supporters decided to work with whites to “establish the Black Mammy Memorial Institute,” of which Harris became the principal.¹⁶² Through this Institute Harris reportedly was seeking to capitalize on white nostalgia for the Black mammy, represented by growing efforts to create memorials to the “old black mammy,” and advance his own agenda to create additional opportunities for Black students to obtain industrial training.¹⁶³ In this regard,

¹⁵⁸ June O. Patton, *Moonlight and Magnolias in Southern Education: The Black Mammy Memorial Institute*, 65 JOURNAL OF NEGRO HISTORY, 149-150 (Spring 1980).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 154, n.7.

¹⁶² *Id.* at 150.

¹⁶³ *Id.*

educational opportunities designed for Black women were part of an effort to reestablish the social hierarchy that pre-dated the Civil War. Rather than expand the horizons of African American women and provide them with the resources to exercise their own agency, the Black Mammy Memorial Institute sought to put Black women in their rightful places, that is, in the service of white families, and, thus, heightening the comfort level for whites who longed for the old days.

Booker T. Washington made similar arguments in support of Tuskegee's efforts to train Black women for domestic service. Washington asserted that creation of a skilled cadre of domestic workers was essential for improving race relations and thus to society:

In the average white family of the South . . . the white child spends a large proportion of his life in the arms . . . of a Negro woman . . . It is mighty important . . . for the civilization, for the happiness, for the health of the Southern white people that the colored nurse shall be intelligent, that she shall be clean, that she shall be morally fit to come in contact with that pure and innocent child.¹⁶⁴

With this appeal to whites to support Tuskegee Institute, Washington appeared to suggest that well-trained domestic servants might help improve relationships between African Americans and whites. He also justified this course of study by pointing to Black women's natural affinity for such work, a rationale that also supported other types of industrial training for Black women. Thus, through its program of "Industries for Girls," coeducational Tuskegee trained women in "dress making, millinery, horticulture, broom making, mattress making, upholstery, cooking (required) and basketry. Like girls at Spelman, they were taught housekeeping and other aspects of domestic science, such as shopping and the planning of meals."¹⁶⁵ Acquiring these skills would enable African

¹⁶⁴ Guy-Sheftall, *supra* n.110 at 147(citing E. Davidson Washington, ed., *SELECTED SPEECHES OF BOOKER T. WASHINGTON*, 174 (1932)).

¹⁶⁵ *Id.* at 148.

American women to help support their families and demonstrate their usefulness to society, which, in turn, also would reduce racial animosity, according to Washington.

B. Sex Segregation and White Students: Preparing for Different Life Paths

Just as African American women, white women were subjected to limited educational opportunities under the guise of preparing for them to enter their separate sphere in society.¹⁶⁶ Sex segregation was one way of readying white females for that path, which, as will be discussed in this section, stood in stark contrast to the world that would await Black women. In this connection, white femininity was constructed through the separate spheres ideology, separate schooling for females, and the separate world that was carved out for these students on account of their race and sex.

Industrialization propelled the notion that there were two spheres to which white men and women belonged: the cold, hard workplace was for men, while the warmth of home and hearth was for women.¹⁶⁷ The expectation that “a woman’s place is in the home” was so ingrained that even the United States Supreme Court took judicial notice of

¹⁶⁶ See, e.g. *Bradwell v. State*, 83 U.S. 130, 141 (1872)(upholding denial of a license to practice law for a female applicant. Justice Bradley, in a concurring opinion, explained that part of the justification of keeping women out of the legal profession was based on the notion that “[t]he constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood”).

¹⁶⁷ Barbara Welter vividly describes the concept of separate spheres based on materials in popular culture during the early nineteenth century:

The nineteenth century American man was a busy builder of bridges and railroads, at work long hours in a materialistic society. The religious values of his forebears were neglected in practice if not in intent, and he occasionally felt some guilt that he had turned his new land, this temple of the chosen people into one vast countinghouse. But he could salve his conscience by reflecting that he had left behind a hostage, not only to fortune, but to all the values, which he held so dear and treated so lightly. Woman, in the cult of True Womanhood . . . was the hostage in the home . . . If anyone, male or female, dared to tamper with the complex virtues which made up True Womanhood, he was damned immediately as an enemy of God, of civilization and of the Republic. It was a fearful obligation, a solemn responsibility, the nineteenth century American woman had – *to uphold the pillars of the temple with her frail white hand.*

Welter, *supra* n.133 at 21(emphasis added).

that “fact.” For example, in *Mueller v. State*,¹⁶⁸ the Court upheld an Oregon statute that prohibited women from working more than ten hours in a day.¹⁶⁹ Starting from the premise that the differences between the sexes could support distinctions in labor laws, the Court cited approvingly to other state statutes that had similar proscriptions, as well as cases upholding such legislation.¹⁷⁰ In this connection, the Court noted that these authorities were “significant of a widespread belief that woman’s physical structure, and the functions she performs in consequence thereof, justify special legislation restricting or qualifying the conditions under which she should be permitted to toil.”¹⁷¹ The Court detailed those characteristics of women, which it deemed “obvious,” that made protective legislation a matter of common sense, a legitimate exercise of police power, and thus constitutional:

By abundant testimony of the medical fraternity continuance for a long period of time on her feet at work, repeating this from day to day, tends to injurious effects upon the body, and as healthy mothers are essential to vigorous offspring, the physical well-being of woman becomes an object of public interest and care in order to preserve the strength and vigor of the race.¹⁷²

As a consequence, protecting women was a paramount concern to society and to “the race,” likely a deliberate word choice in light of fact that this law and others like it typically excluded work performed primarily by women of color, such as domestic service.¹⁷³

¹⁶⁸ 208 U.S. 412 (1908).

¹⁶⁹ The statute applied to women working in “any mechanical establishment, or factory, or laundry” in Oregon. *Id.* at 416.

¹⁷⁰ *Id.* at 419 n.1, 420 (citing brief filed by Justice Brandeis).

¹⁷¹ *Id.* at 420.

¹⁷² *Id.* at 421. *See also Bradwell v. State*, 83 U.S. 130, 141 (1872)(noting that the “natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life”)(Justice Bradley concurring).

¹⁷³ *See generally*, Peggie R. Smith, *Regulating Paid Household Work: Class, Gender, Race and Agendas of Reform*, 48 AM. U.L. REV. 851 (1999); *see also Ritchie v. People*, 40 N.E. 454, 457 (Ill. 1895)(excluding domestic work from protectionist legislation).

Domestic work generally was considered to be the preserve of Black women: “domestic service bore an indelible badge of racial inferiority. It was stigmatized as ‘nigger’s work,’ a form of voluntary slavery or wage slavery that was incompatible with the values of democracy.”¹⁷⁴ The white women who were domestic servants typically were newly arrived immigrants who worked until they could secure jobs in the developing industrial arena, positions that were off-limits to Blacks.¹⁷⁵ Unlike the women working in the Oregon laundries at issue in *Mueller*, and other similar locales,¹⁷⁶ domestic workers were on the job typically thirteen hours a day, and upwards of 72 hours a week.¹⁷⁷ Effort to reduce hours for these workers only commenced out of a concern that the pool of white workers was diminishing, not to protect the health and well-being of the workers or their offspring.¹⁷⁸ Black women, who historically had proven to be sufficiently sturdy to take on tasks normally deemed as men’s work,¹⁷⁹ were not in need of protectionist laws, were not the subject of them, and were expected to work in conditions that otherwise would be considered risky for white women. Not surprisingly, educational institutions reflected these norms through the manner in which they trained students. Accordingly, white female students received training to prepare them to take

¹⁷⁴ Smith, *supra* n.172 at 877.

¹⁷⁵ *Id.* at 864.

¹⁷⁶ See *Mueller*, 208 U.S. at 419, n.1, 420 (citing similar statutes and opinions challenging such legislation unsuccessfully, for the most part).

¹⁷⁷ Smith, *supra* n. 172 at 869.

¹⁷⁸ *Id.* at 881 (noting that “resolution of the servant problem depended upon the transformation of the relationship between maid and mistress from ‘a position of status to one of contract.’ . . . For reformers, such a shift was about restructuring domestic service in explicitly economic terms that conformed with modern industry, thus enabling middle-class households to compete successfully for workers”).

¹⁷⁹ *Supra* at nn.129 – 133 and accompanying text.

their rightful places as “lady of the house.” Sex segregation was one of the tools used to construct this gendered and raced identity.¹⁸⁰

In fact, proponents of sex segregation frequently argued that separating the sexes was necessary to preserve the differences between males and females, and in so doing ensure the perpetuation of “the race.” Coeducation was problematic because it would “in some way destroy feminine sensibility,” more specifically, the feminine ability to reproduce. For example, Thomas Woody, in his extensive history of educating women, cites an 1885 publication, warning that “the greatest evil in the [coeducational] high school was the risk of injury to the health of girls.”¹⁸¹ Other experts opined that

[c]oeducation in the middle teens tends to sexual precocity. This is very bad; in fact, it is one of the subtlest dangers that can befall civilization. There are momentous changes in boys at the age of fourteen. Adolescence is a crisis in their lives. The first danger to a woman is over-brainwork. It affects that part of her organism which is sacred to heredity. This danger is seen in the diminishing number of marriage. The postponement of marriage is very unfortunate in its influence upon civilization.¹⁸²

Thus, by exposing young women to adolescent males and, at the same time, to the rigors of intellectual pursuits best suited to males,¹⁸³ coeducation would impede women’s ability to procreate, and in so doing, destabilize the institution of marriage. Dr. E.H.

¹⁸⁰ See generally, Hasday, *supra* n.100 at 779-780 (arguing that sex segregation in schools and courses played a significant role in subordinating women). Schools long have been in the business of enforcing gender and racial stratification in society by constructing maleness and femaleness. For example, athletics appeared in public schools “out of a desire to inculcate masculinity in males. Schools created athletic programs in response to concerns that boys were becoming ‘feminized’ by the increasing absence of fathers from the home during the industrial revolution.” Deborah Brake, *The Struggle for Sex Equality in Sport and the Theory Behind Title IX*, 34 U. MICH. J. L. REFORM 13, 92 (2001).

¹⁸¹ Thomas Woody, *A HISTORY OF WOMEN’S EDUCATION IN THE UNITED STATES*, 273 (1929).

¹⁸² *Id.* at 274 (quotation omitted).

¹⁸³ A related argument against coeducation or otherwise limiting women’s educational opportunities was that the presence of women would lower the intellectual quality of the institutions “since woman was the ‘weaker vessel.’” *Id.* at 271.

Clarke, a former professor at Harvard University, further elaborated on the physical harms of coeducation to women in *Sex in Education*:

Identical education, or identical co-education, of the sexes defrauds one sex or the other, or perhaps both . . . A combination of the two methods of education, a compromise between them, would probably yield an average result, excluding the best of both. It would give a fair chance neither to a boy nor a girl. Of all compromises, such a physiological one is the worst. It cultivates mediocrity, and cheats the future of its rightly legacy of lofty manhood and womanhood. It emasculates boys, stunts girls . . .¹⁸⁴

Other scientists asserted that women who pursued education would not be able to nurse their children, or would develop “a nervous temperament.” In fact, some argued, that the push to educate women left them “physically unfit for her duties as woman. . . . She is not fairly up to what Nature asks from her as a wife and mother.”¹⁸⁵

There was no similar concern for Black women’s fertility, rooted in stereotypes about their fecundity and lack of morality. Scholars such as Kimberle Crenshaw have noted “there has been absolutely no institutional effort to regulate Black female chastity.”¹⁸⁶ This failure has manifested itself in myriad ways, as in the failure of the legal system to recognize the rape of female slaves, for example.¹⁸⁷ Similarly, Black motherhood has not been revered, but rather condemned as evidence of Black women’s uncontrollable sexuality or irresponsibility.¹⁸⁸ Dorothy Roberts explains that “[o]ur society views childbearing by white women as desirable . . . Procreation by Black mothers, on the other hand, is devalued and discouraged,”¹⁸⁹ as evidenced by the “welfare

¹⁸⁴ *Id.* at 276 (citing E. H. Clarke, *SEX IN EDUCATION*, 127 – 9 (1874)).

¹⁸⁵ *Id.* at 278 (quotation omitted).

¹⁸⁶ Crenshaw *supra* n. 56 at 157.

¹⁸⁷ *Id.* at 158 n. 49.

¹⁸⁸ Roberts, *supra* n. 45 at 11.

¹⁸⁹ *Id.*

system's disproportionate denial of Black mother's parental rights,"¹⁹⁰ among other things. This disparity in the imagery of Black and white women was reflected in the distinctions in the educational opportunities available.

The protectionist ideology underlying support for sex segregation not only justified limiting white female students' access to education, it also supported steering them to sex-segregated courses that would prepare them for the separate sphere of the home, even in coeducational settings.¹⁹¹ For example, girls from working class families who were expected to work before marriage attended schools that prepared them for female-dominated occupations such as

“public school teaching . . . lunch-room management, catering. Sometimes, moreover, women's public school just trained women for marriage itself. [For example,] Louisville's Female High School . . . did not offer the college preparatory classes available to the city's white male high school students. But it did supplement its class in vocational cooking with courses in household cooking, drawing, sewing, and millinery.”¹⁹²

Several states established institutions to provide white females with this type of training.¹⁹³

¹⁹⁰ *Id.* at 12.

¹⁹¹ Hasday, *supra* n.110 at 804 (noting that “coeducational public schools formally segregated a portion of their classes or programs along sex lines as a way of directing students to life paths associated with their sex (or their sex and race)”).

¹⁹² *Id.* at 796-797.

¹⁹³ *See, e.g.*, 1893 Ala. Acts 1002, 1004 (establishing “an industrial school for the education of white girls in Alabama” to provide training in “kindergarten instruction and music; also a knowledge of telegraphy, stenography, photography and phonography, type-writing . . . drawing, sewing, dress-making, millinery, cooking, laundry, house, sign and fresco painting . . .); 1889 Ga. Laws 10, 10, 13 (“An Act to establish a Normal and Industrial College as a branch of the State University, for the education of white girls”; the training included courses in “domestic economy, cutting and making dresses, printing, industrial and decorative art in its practical application, and such other practical industries as may tend to fit and prepare girls for occupations which are consistent with feminine refinement and modesty”); 1891 N.C. Session Laws 126, 126–127 (“An act to establish a normal and industrial school for white girls” that would “fit them for teaching. . . instruct[] young women in drawing, telegraphy, type-writing, stenography, and such other industrial arts as may be suitable to their sex and conducive to their support and usefulness”); 1884 Miss. Laws 50, 52 (creating the “Mississippi Industrial Institute and College for the Education of White girls of the State of Mississippi in the Arts and Sciences,” which would train students in telegraphy, stenography, and photography; also a knowledge of drawing, painting, designing and engraving in their industrial application; also a knowledge of fancy, practical and general needle-work”).

Courts typically upheld admissions policies at such institutions because the coursework they provided was deemed appropriate for white women and presumed to fulfill their educational needs and desires. Thus, for example, a court asked to strike down the admissions policy at the all-male Agricultural and Mechanical College of Texas¹⁹⁴ refused to do so, in part because it doubted that any women in the entire state, absent the plaintiffs, would have a sincere interest in the college's curriculum, which included such subjects as history, government, and architecture.¹⁹⁵ The court noted that "there is no proof that any other woman in Texas, save and except [plaintiff], desires a degree at the College in floriculture[, another course available at the institution.]"¹⁹⁶ Similarly, an appeals court upheld the single sex policy at all-female Winthrop College in South Carolina in *Williams v. McNair*.¹⁹⁷ Several male students had sued the state of South Carolina to enjoin enforcement of the statute barring their admission to Winthrop, which, according to the court, was the all-female counterpart to the Citadel, the military college.¹⁹⁸ With respect to these institutions, according to the court, sex segregation was based on historical reasons: by designating the Citadel as a military school, "apparently, the Legislature deemed it appropriate for that reason to provide for an all-male student body."¹⁹⁹ On the other hand, the legislature established Winthrop expressly as a school for white young ladies. The statute authorizing the college's founding read as follows calls for "[t]he establishment, conduct and maintenance of a first-class institution for the thorough education of the white girls of this State."²⁰⁰ As such, Winthrop offered a

¹⁹⁴ *Allred v. Heaton*, 336 S.W. 2d 251 (Tex. App. 1960).

¹⁹⁵ *See id.* at 253, 258, 260.

¹⁹⁶ *Id.* at 253.

¹⁹⁷ 316 F. Supp. 134 (D. S.C. 1970).

¹⁹⁸ *Id.* at 136.

¹⁹⁹ *Id.*

²⁰⁰ *Id.* at n.3.

liberal arts program, in contrast to the Citadel, which also offered engineering. Winthrop also specialized in courses that would be “specially helpful to female students,”²⁰¹ such as “teaching . . . stenography, typing, telegraphy, bookkeeping, drawing, designing, engraving, sewing, dressmaking, millinery, art, needlework, cooking, housekeeping, and such other industrial arts as may be suitable to their sex and conducive to their support and usefulness.”²⁰² With this circular reasoning, the court concluded that excluding males from Winthrop was permissible because the institution was established for women and women only, due to the fact that it was preparing them for their particular sphere in life. The United States Supreme Court affirmed this ruling without an opinion.²⁰³

Sex segregation also “protected” white femininity during the struggle to desegregate Southern schools²⁰⁴ in the wake of the Supreme Court’s decision in *Brown v. Board of Education*, which declared racial segregation in public schools to be unconstitutional.²⁰⁵ To remedy the violation, the Court remanded the underlying cases to district courts, ordering them to “require that the defendants make a prompt and reasonable start toward full compliance”²⁰⁶ with the original *Brown* ruling, allowing them to proceed “will all deliberate speed”²⁰⁷ to integrate their school districts. Fifteen years later, after steadfast resistance on the part of defendant school districts to

²⁰¹ *Id.*

²⁰² *Id.* at n.3

²⁰³ 401 U.S. 951 (1971). Justice Harlan would have vacated the opinion below.

²⁰⁴ *See, e.g.,* Gunnar Myrdal, AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY, 586 (Harper & Row 1962)(1942)(observing that segregation in education, as well in other areas, supported the notion of “no social equality,” which embodied a concern for “preserv[ing] the purity of the white race”) Myrdal notes that the effort to preserve white purity “is focused on white women, as represented by the the response of the typical “Southern white man . . . to any plea for social equality: ‘Would you like to have your daughter marry a Negro?’” *Id.* Thus, as Myrdal describes it, protection of white women is a cover for preserving white supremacy. *Id.*

²⁰⁵ 347 U.S. 483 (1954).

²⁰⁶ *Brown v. Board of Education*, 349 U.S. 294, 300 (1955).

²⁰⁷ *Id.* at 757.

dismantling dual educational systems,²⁰⁸ the Court concluded that the “standard of ‘all deliberate speed’ for desegregation is no longer constitutionally permissible . . . [T]he obligation of every school district is to terminate dual school systems *at once* and to operate *now and hereafter* only unitary schools.”²⁰⁹ To comply with this mandate, several southern school districts turned to sex segregation as a way of easing into racial desegregation.

Leading the way in this effort was the state of Tennessee, which, in 1957, enacted legislation²¹⁰ that allowed for separating the sexes to “dull the edge”²¹¹ of the Court’s ruling in 1954. Mississippi enacted a similar law seven years later, which authorized the trustees of the state’s school boards to separate students on the basis of sex in schools or classes, “when such board, in its discretion, determines such separation will promote or preserve the public peace, order, or tranquility of the school district, or the health morals or education of the students.”²¹² Pupil assignment laws, which were designed to slow down the pace of desegregation,²¹³ also allowed school districts to take sex into consideration when determining whether a student, usually African American, could transfer to a white school. Under these laws, rather than assigning students to school

²⁰⁸ See, e.g., *Griffin v. County School Bd. of Prince Edward Co.*, 377 U.S. 218 (1964) (holding that shutting down public school system rather than integrating the schools violated the Equal Protection Clause).

²⁰⁹ *Alexander v. Holmes County Bd. of Ed.*, 396 U.S. 19, 20 (1969)(emphasis added).

²¹⁰ 1957 Tenn. Pub. Acts Chapter 98, Sec. 1, 323. This measure authorized

school boards of the counties, municipalities and special school districts of the State . . . to provide separate schools for persons of the male sex and persons of the female sex; the determination of the necessity for such separate schools is hereby vested in the exclusive discretion of the school board of each county, municipality and special school district.

Id. This law remains on the books as Tenn. Code Ann. Sec. 49-2-108 (2002).

²¹¹ Patrick E. McCauley, *The Legislative Record: “Be it Enacted,”* in WITH ALL DELIBERATE SPEED: SEGREGATION – DESEGREGATION IN SOUTHERN SCHOOLS, 141 (Don Shoemaker, ed.) (1957).

²¹² 1964 Miss. Laws 57, Chapter 25, Section 1.

²¹³ McCauley, *supra* n. – at 132 (noting that three years after the Court decided *Brown*, at least eight states had enacted pupil enrollment laws to “control, if not to restrain, desegregation”).

districts based on their residence, which had been the custom even under a dual system (under which there were two sets of zoning laws),²¹⁴ school officials had the discretion to examine a variety of factors before deciding whether the transfer should take place.

Thus, a student seeking a transfer would petition the local school board, which could consider such factors as

the sociological psychological and like intangible social scientific factors as will prevent, as nearly as possible, a condition of socio-economic class consciousness among the pupils. . . the sex, morals, conduct, health and personal standards of the pupil; . . . together with any and all other factors which the board may consider pertinent.²¹⁵

Sex was a factor to be considered in the pupil assignment laws for Alabama, Louisiana, Tennessee, and Texas.²¹⁶ Thus, by allowing school boards to decide the mix of Black and white males and females, among other things, pupil enrollment laws succeeded in delaying the integration of Southern schools: some eight years after *Brown*, “only 7.6% of the Negro pupils in 17 Southern and Border states and the District of Columbia were attending desegregated schools,”²¹⁷ the majority of whom were located in states that did not have pupil enrollment laws.²¹⁸

Still other school districts used sex segregation as part of their efforts to comply “with all deliberate speed,”²¹⁹ even without their legislature’s assistance. For example, the Amite County School District in Mississippi included separate boys’ and girls’ schools as part of its desegregation plan created in response to court order in 1969.²²⁰

The court approved this aspect of the plan, understanding it to be an “interim emergency

²¹⁴ *Id.*

²¹⁵ McCauley, *supra* n. – at 137 (quoting Tennessee’s pupil assignment law).

²¹⁶ See Note, *The Federal Courts and Integration of Southern School: Troubled Status of the Pupil Placement Acts*, 62 COLUM. L. REV. 1448, 1478 (1962).

²¹⁷ *Id.* at 1453 n.28.

²¹⁸ *Id.*

²¹⁹ See *supra* at n.206 and accompanying text.

²²⁰ See *United States v. Hinds County School Board*, 560 F.2d 619, 621 (5th Cir. 1977).

measure to stabilize the education process,”²²¹ suggesting that separating the sexes was imperative to helping alleviate the district’s students and parents discomfort with integration. The next year, the district sought to continue with the sex-segregated aspect of the plan, which the court approved, “concluding that the separation by sex plan stems from sound educational purposes as distinguished from racially discriminatory purposes.”²²² Black parents in the district opposed the plan, unsuccessfully seeking review by the Fifth Circuit Court of Appeals.²²³ Four years later, when the “temporary” sex separation plan was still in force, the United States challenged this plan under the then-newly passed Equal Educational Opportunities Act of 1974,²²⁴ (EEOA) which seeks to ensure that children are able to attend schools in their own neighborhoods.²²⁵ By the time the court addressed this issue, Black parents had boycotted the Amite schools to protest sex segregation because, in the words of the only Black member of the school board at that time, “[the Board] never had any idea of changing the [sex separation plan]. The idea is to keep the black boys from having any contact with the white girls – pure and simple.”²²⁶ In fact, the board itself admitted as much, arguing in defense of sex segregation that “whites will leave the public school system if sex-desegregation is implemented.”²²⁷ The president of the board stated that before 1969, when the district finally desegregated the schools “[b]oys and girls could attend school together . . . ‘because we had one school for whites and another school for coloreds.’”²²⁸ The court

²²¹ *Id.*

²²² *Id.* (quotation omitted).

²²³ *Id.*

²²⁴ 20 U.S.C.A. § 1701 *et seq.* (2000); *see also supra* n.62 (explaining the Act’s purpose and relevant provisions).

²²⁵ *Id.* at 623.

²²⁶ NEWSWEEK, Sept. 19, 1977, at 97.

²²⁷ *Hinds County*, 560 F.2d at 625.

²²⁸ Newsweek, *supra* n.221.

rejected this rationale as “impermissible”²²⁹ and agreed with the United States that it violated the Equal Educational Opportunities Act as a practice the Act specifically proscribed.²³⁰ In so holding, the court noted that the EEOA “goes beyond the rights guaranteed to school children under the Fourteenth Amendment prior to the EEOA’s adoption and incorporates a judgment that a sex-segregated school district is a dual rather than a unitary school system and results in a similar if not equivalent injury to school children as would occur if a racially segregated school system were imposed.”²³¹

Other school districts were not as transparent regarding their decisions to segregate students based on sex. Faced with the order to integrate, these districts typically argued that separate schooling based on sex was best as a pedagogical matter, without accounting for the fact that sex segregation had not been among the educational options available in the public school system prior to the Supreme Court’s mandate that they

²²⁹ *Amite County*, 560 F.2d at 624.

²³⁰ *Id.* at 624 (noting that “[b]y Congressional definition ‘segregation’ means ‘the operation of a school system in which students are wholly or substantially separated among schools . . . on the basis of race, color, sex, or national origin.’”).

²³¹ *Id.* at 623. The court came to this conclusion because, among the findings of the EEOA is the statement that “the ‘maintenance of dual school systems in which students are assigned to schools solely on the basis of race, color, sex or national origin denies to those students the equal protection of the laws guaranteed by the fourteenth amendment.’” *Id.* Recent Supreme Court decisions suggest that this court’s assessment of the reach of the EEOA may be erroneous. *See City of Boerne v. Flores*, 518 U.S. 507, 519 (1997)(invalidating the Religious Freedom Restoration Act of 1993, 42 U.S.C. §2000bb *et seq.*, which prohibited “government from substantially burdening a person’s exercise of religion even if the burden results from a rule of general applicability.” *Id.* at 515 (quotations omitted)). The Court held that Congress exceeded its authority under §5 of the Fourteenth Amendment in passing RFRA because the Act substantively redefined the scope of protection afforded by the Amendment:

Congress’ power under § 5 . . . extends only to enforcing the provisions of the Fourteenth Amendment . . . Legislation which alters the meaning of the Free Exercise Clause cannot be said to be enforcing the Clause. Congress does not enforce a constitutional right by changing what the right is. It has been given the power to enforce, not the power to determine what constitutes a constitutional violation.

Id. at 519 (quotations omitted). This reasoning suggests that the Fifth Circuit’s holding likely is erroneous, since Congress does not have the power to declare all sex-based classifications in education unconstitutional. *See United States v. Virginia*, 518 U.S. 515, 533-534 (1996)(noting that “sex-based classifications may be used to compensate women for particular economic disability they have suffered . . . to promote equal employment opportunity . . .to advance full development of the talent and capacities of our Nation’s people”).

desegregate immediately. For example, Concordia Parish in Louisiana proposed separate schools for boys and girls apparently under court-ordered pressure to desegregate.²³²

During a hearing on the plan, the superintendent of schools testified “that the coeducational system in effect in Concordia was educationally sound as long as the schools are racially segregated,” but sex segregation is “most educationally sound” under an integrated system,²³³ providing a more politic – but remarkably similar – explanation than that of the Amite Superintendent of Schools. Similarly, Ascension Parish school officials turned to separate schools based on sex under orders to dismantle its racially segregated school system.²³⁴ In support of this plan, the school board submitted an article by the superintendent of St. Bernard parish, which had adopted single sex schools: “It would be less than honest not to add that . . . we felt that certain problems which might arise in newly integrated schools would be lessened if the sexes were separated.”²³⁵

Similarly, the school board in Lincoln County, Georgia,²³⁶ argued that sex segregation was necessary to avoid disciplinary problems:

It is common knowledge that disciplinary problems ordinarily increase in the racially integrated school. Many black citizens question the ability of any white teacher to relate to, discipline, or properly teach black children who are the product [sic] of black rather than white middle class culture. Is it not reasonable to assume that local school officials, faced with massive racial integration, desiring that it work and that meaningful public education be maintained, seize

²³² See *Smith v. Concordia Parish Sch. Bd.*, 417 F.2d 1211 (5th Cir. 1969).

²³³ Brief for Appellants at 9, *Smith v. Concordia Parish School Board*, 419 F.2d 1211 (5th Cir. 1969)(No. 28342)(on file with author). For its part, the school board argued that considering sex segregation for the first time made sense because under “forced integration” the district was going to make many changes to all the schools. Brief for Appellees at 6-7, *Smith v. Concordia Parish School Board*, 419 F.2d 1211 (5th Cir. 1969)(No. 28342)(on file with author). The court did not decide whether the sex segregation aspect of the plan violated the Constitution because the plan as a whole failed to create a unitary system. See *Smith v. Concordia Parish*, 419 F.2d 1211, 1220 (5th Cir. 1969).

²³⁴ See *Charles v. Ascension Parish Sch. Bd.*, 421 F.2d 656(5th Cir. 1969).

²³⁵ Appendix at 105, *Charles v. Ascension Parish School Board*, 421 F.2d 656 (5th Cir. 1969)(No. 28573)(on file with author). Here, again, the court did not rule on the constitutionality of sex segregation, since the rest of the plan failed to create a unitary school district. *Charles v. Ascension Parish School Board*, 421 F.2d 656, 657 (5th Cir. 1969).

²³⁶ See *United States v. Georgia*, 466 F.2d 197(5th Cir. 1972).

upon the device of separation by sex as a means of reducing disciplinary problems?²³⁷

In this respect, the state admitted that race played a part in its decision to segregate based on sex, responding to such charges leveled by the United States with a terse “so what!”²³⁸ For its part, the United States argued that sex segregation merely perpetuated racial segregation:

Despite this conversion to sex-separation in the schools, Taylor County continues to racially segregate students on buses with white boys and girls being transported by white drivers and black boys and girls being transported by black drivers . . . In some instances, black girls were assigned to separate seats within a bus by the white drivers.²³⁹

Confronted with this aspect of the county’s plan, which the district court had approved without even holding hearings concerning its validity, the Fifth Circuit reversed the ruling below and ordered the district court to hold a full hearing to determine whether the planned sex segregation was, in fact, racially motivated.²⁴⁰

As the foregoing demonstrates, the confluence of sex and racial segregation supported racial and gender hierarchies and the attendant subordination of African Americans and white women. By separating students based on sex and race, the nation’s educational system constructed a gendered and raced hierarchy that privileged white masculinity and white femininity. To the extent that sex segregation was deemed appropriate and necessary for Black students, it was for purposes of replicating and thus reinforcing white patriarchy, thereby ensuring that Black Americans would remain at the bottom rungs of the social strata. Needless to say, these hierarchies persist in our society;

²³⁷ Brief for the State of Georgia, *et al.* at 17, *United States v. Georgia*, 466 F.2d 197 (5th Cir. 1972)(No. 71-2563)(emphasis in original).

²³⁸ *See id.*

²³⁹ Brief for the United States at 18, *United States v. Georgia*, 466 F.2d 197 (5th Cir. 1972)(No. 71-2563).

²⁴⁰ *United States v. Georgia*, 466 F.2d 197, 200 (5th Cir. 1972)

accordingly, the question for today's versions of single sex education is whether they will provide the needed reforms to begin dismantling ingrained patterns of discrimination that limit opportunities for inner city children or merely provide cover for continued subjugation of these students. The next section demonstrates how an intersectional analysis can assist in that inquiry.

III. What the Past Means for Today's Single Sex Schools

For much of its history, single sex schooling has occurred within a larger context of racial segregation in the schools, working to reinforce the racial and gender hierarchies that permitted and, indeed sanctioned continued subordination of African Americans.²⁴¹ Today's versions of sex segregation similarly occur against a backdrop of racially segregated schools – albeit *de facto*, rather than *de jure*.²⁴² As a result, and given the nation's history, any analysis of proposed single sex education must consider, at the bare minimum, the interaction of race and gender. Under such an intersectional analysis, we can determine whether new efforts will in fact provide for new and expanded life paths for Black students, or whether these new schools merely will support the retrenchment of racist and sexist norms.

A. Through an Intersectional Looking Glass: Raced and Gendered Social Roles

Examining single sex education relationally – that is, as it relates to racial segregation – demonstrates how integral sex segregation has been to racializing gender roles and sexualizing race.²⁴³ The first step necessary to understanding current single sex schooling proposals' potential for perpetuating gender and racial stratification is to

²⁴¹ See *supra* Section II.

²⁴² See Gary Orfield, Schools More Separate: Consequences of a Decade of Resegregation (Harvard Civil Rights Project July, 1991) (available at <http://www.law.harvard.edu/civilrights>) (on file with author).

²⁴³ *Supra* Section II.

explain how sex segregation's past supported racism and patriarchy to comprehend fully its potential for reinforcing ongoing social stratification.

Under a single-sex schooling regime, white females learned that they were destined to become “true women,” the keeper of home, hearth, and the holder of the future for the “race.” Schools for “white girls”²⁴⁴ protected their charges’ weak constitutions and trained them to take their “rightful” places in their husband’s castles, through acquiring such “useful” skills as cooking, sewing, and millinery.²⁴⁵ White males, on the other hand, expected to become providers for their families, obtained the rigorous education necessary to prepare them for this role and thus had access to a wide range of educational opportunities.²⁴⁶ This framework stood in stark contrast to the education provided to African Americans.

The education system prepared Blacks – male and female alike -- to work, consistent with the almost gender-less manner in which slavery constructed African Americans – from dressing boys and girls alike, to requiring men and women to perform virtually identical physical labor.²⁴⁷ Still, some gendered distinctions were apparent, illustrating how the aggregation of race and gender operated to constrain African Americans. Thus, for example, the educational system ensured that Black women could take care of white families, rather than, or at the expense of, their own,²⁴⁸ and provided them with training to compensate for their perceived moral failings.²⁴⁹ The primary mission of separate education was to prepare Black females them to take their “rightful”

²⁴⁴ See *supra* n.165 – 172 and accompanying text.

²⁴⁵ See *supra* nn.173 – 184 and accompanying text.

²⁴⁶ See *supra* n.188 and accompanying text.

²⁴⁷ See *supra* n.130 - 133 and accompanying text.

²⁴⁸ See *supra* nn.139 - 143 and accompanying text.

²⁴⁹ See *supra* n.144 – and accompanying text.

positions in the workplace, often in the homes of white people, or in other low-paying occupations,²⁵⁰ which, in turn, constructed Black women as “true workers.” In so doing, the educational system also supported the construction of Black men as “true laborers.” As a result, rather than provide and preside over the household as “true men,” Black men were expected to need help supporting their families financially, largely because they were denied access to the educational opportunities that would guarantee economic independence.²⁵¹ In this sense, sex segregation among whites contributed to consigning Black males and females raced and gendered roles that diverged from those of the majority, which in turn were held up as proof of Black inferiority.

African American efforts at self-help sought to combat these images and constraints, with the hope of demonstrating that Blacks deserved equal rights in society. However, the manner in which some of these efforts were carried out relied overtly on patriarchy, in order to privilege Black males, holding them out to be the hope for racial equality. Thus, for example, W. E. B. DuBois’ vision of a “talented tenth” would have constructed a class of classically educated elite African American men. These men, through their superior education, would uplift the entire Black race, facilitating their agency and liberation from discrimination.²⁵² Black women, in DuBois’ view, while hugely important to the Black race, they did not have the central role with respect to this plan. Therefore, he advocated “knowledge” for African American women, but did not count them as making up a large percentage of the talented tenth.²⁵³ Booker T. Washington, for his part, used the Tuskegee Machine to replicate traditional gender roles,

²⁵⁰ See *supra* n. 145 and accompanying text.

²⁵¹ See *supra* n.120 and accompanying text.

²⁵² See *supra* nn.113 - 117 and accompanying text

²⁵³ See *supra* n.115 and accompanying text.

providing a separate Institute for Girls, to assure white society that African Americans were capable of assimilation.²⁵⁴ Thus, even according to the leading schools of thought regarding Black education, allegiance to patriarchy played a role in strategies for improving the lot of Black people.

As a result, when Nannie Helen Burroughs provided her female students with training in the trades, non-traditional work for women, she met with great opposition.²⁵⁵ The specter of young women attaining the skills that would enable them, *alone*, to provide for their families threatened the notion of the Black male as provider that Washington and others were trying so carefully to construct.²⁵⁶ Burroughs was forced to abandon that program for lack of financial and political support.²⁵⁷ Thus, even in the context of Black-provided education, the construction of a gendered hierarchy that identified Black males as protectors for the race emerged as a key strategy.

In today's world, the discourse around single sex focuses once again on making sure Black males learn "how to be men,"²⁵⁸ and, in a less direct way, to ensure that Black females grow into "real women" who support their men.²⁵⁹ The goal essentially is to replicate the roles exemplified by whites and, in so doing, establish the "proper patriarchal balance"²⁶⁰ between Black women and Black men, without determining whether that goal is workable or desirable for African Americans.²⁶¹

²⁵⁴ See *supra* nn.163-164 and accompanying text.

²⁵⁵ See *supra* nn.154 -157 and accompanying text.

²⁵⁶ See *supra* n.156 and accompanying text.

²⁵⁷ See *supra* n.157 and accompanying text.

²⁵⁸ See *supra* nn.33-34 and accompanying text.

²⁵⁹ See *supra* n.39 and accompanying text.

²⁶⁰ Paulette Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, 1991 DUKE L. J. 365, 396 (1991).

²⁶¹ Cf. bell hooks, *Reconstructing Black Masculinity in BLACK LOOKS: RACE AND REPRESENTATION*, 113 (1992) (urging Black men and women to "break the life-threatening choke-hold patriarchal masculinity

Thus, in the rhetoric Black females continue to stand apart from their white counterparts. For example, single sex education helps white females become more confident and empowered, more likely to engage in the fields of science and mathematics.²⁶² For Black girls, on the other hand, single sex education means they are less likely to get pregnant or to engage in sexual activity at “dangerous proportions.”²⁶³ White femininity remains prized for its virtue and its delicacy; single sex education is a means of empowering their flagging confidence. Black femininity, on the other hand, its marked by hyper-sexuality and fecundity.

The deviance of Black femininity is further underscored in the larger debates regarding the justifications for sex segregation in the nation’s inner cities. Specifically, by suggesting that single sex education will compensate for the proliferation of female-headed households among Black families, current single sex efforts support the construction of Black motherhood as abnormal and blameworthy for social problems as broad and divergent as juvenile delinquency and poverty.²⁶⁴

These depictions of Black femininity also have implications for the construction of Black masculinity. Here again, Black males are posited as irresponsible and undependable – i.e, if they were “true men” they would take care of their own families and not expect the government to do so. Similarly, the trope of the oversexed Black male, which supported racially segregated schools,²⁶⁵ persists. In this connection, single sex education will help stop Black males from impregnating so many females. The discourse

imposes on black men and create life sustaining visions of a reconstructed black masculinity that can provide black men ways to save their lives and the lives of their brothers and sisters in struggle”).

²⁶² See *supra* nn.41-43 and accompanying text.

²⁶³ See *supra* n.40 and accompanying text (quoting Salomone n.9 at 18.)

²⁶⁴ See *supra* n.32 and accompanying text.

²⁶⁵ See *supra* nn.198 –231 and accompanying text.

further posits Black males as dangerous and threatening, just as was true in the post-*Brown* era, when proponents for single sex education argued that just having African American males in the classroom would disrupt the goings-on and make desegregation less likely to work.²⁶⁶ In the present day, the absence of Black males is enough to proclaim a school a safe haven for girls.²⁶⁷

A brief examination of California's recent experiment in single sex education²⁶⁸ is illustrative. In 1997 California provided funding to create single gender academies for boys and girls, with an eye toward, in the words of former governor Pete Wilson, helping "at-risk boys" -- that is, low-income, African American and Latino boys.²⁶⁹ With this goal in mind, six districts, four of which were predominately minority, established single-sex academies that were either schools on their own, or single sex schools within a coed school.²⁷⁰ Researchers studied these academies, in part to determine whether they would provide some insight into the potential for sex segregation to reform public education, particularly in light of the lack of "systematic research" in this area.²⁷¹ Among the many findings, the researchers noted that because the state had established the schools with an emphasis on helping "at-risk" boys, there was a concomitant emphasis on gender, which manifested itself in preconceived notions regarding what type of curriculum was most

²⁶⁶ See *supra* n.291 and accompanying text.

²⁶⁷ See *supra* nn.49 -51 and accompanying text

²⁶⁸ See Amanda Datnow, Lea Hubbard and Elisabeth Woody, *Is Single Gender Schooling Viable in the Public Sector? Lessons from California's Pilot Program (2001)*(unpublished final report) (on file with author). *Id.* at 5.

²⁶⁹ "It was no coincidence that the 'at-risk- boys targeted for the academies were primarily lower-class African-American and Latin-American students. . . . [T]he modal category for African American boys is 'at-risk' The concept of 'at-riskness' is central to a discourse about the contemporary crisis in urban schools in America that explains children's failure as largely the consequence of their attitudes and behaviors." Elisabeth L. Woody, *Constructions of Masculinity in California's Single-Gender Academies*, in *GENDER IN POLICY AND PRACTICE*, *supra* n.86 at 286 (quotation omitted).

²⁷⁰ Datnow, *supra* n. 267 at 20.

²⁷¹ *Id.* at 5 (noting that "little is known about [the schools'] motivations, design, or outcomes with respect to students, teachers, and school systems").

appropriate, among other things. Thus, the schooling that resulted emphasized “discipline for boys and curriculum opportunities for girls.”²⁷² For instance, at one academy, researchers “found that the boys’ classes were in a ‘lock down’ status and no one was allowed to enter or leave the classroom.”²⁷³ The terminology used suggests a penal institution, rather than an educational one. Indeed, some educators believed that the academies could not provide the “at-risk” boys with enough discipline,²⁷⁴

“express[ing] the belief that their at-risk population of boys were difficult and would have in retrospect benefited more from an ‘academic boot camp,’ which would ideally be taught by male teachers . . . The tone and approach of discipline for boys was often quite harsh and usually meant that their classes were ‘very regimented.’”²⁷⁵

Girls, in contrast, were not subject to the same level or degree of discipline as were the boys, prompting students to “talk[] about discipline as a gendered practice . . . boys felt they were singled out and presumed to behave poorly.”²⁷⁶

Girls had their own curricular choices that were deemed suitable. For example, in [one district’s] girls’ academy, the students chose to read *Pride and Prejudice*. In the boys’ academy, the students chose to read *All Quiet on the Western Front*. One teacher explained: ‘[t]he girls tend to choose the romantic spiel . . . and the guys tend to go for the action.’

When students in [another] district’s academies were studying the early history of the United States and the migration of settlers to the West, boys took a survival skills class from a young male teacher and the girls studied quilting and sewing, taught by middle-aged women teachers . . . At another school, a male teacher said he used sports to clarify or simplify ideas for his male students because ‘guys can kind of relate to that.’ . . . In sum it appears that when teachers geared the curriculum to respond to students’ interest, they perhaps unintentionally reinforced traditional gender roles. Significantly, in most cases, teachers did little

²⁷² *Id.*

²⁷³ *Id.* at 42.

²⁷⁴ *Id.* Significantly, however, the researchers noted that as the level of discipline increased, so too did the problems: for example, by the last time they visited one of the schools, “police were on campus because students had written gang graffiti on the walls.” *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.* at 43.

to change student choices by suggesting alternative book choices or topics that might potentially challenge gendered dispositions.²⁷⁷

Researchers found that, even with a stated concern for “neutrality,”²⁷⁸ teachers approached students with gendered expectations and gendered curricula resulted, even when students were allowed to “choose”²⁷⁹ for themselves.

The overt and covert curricula in California’s experiment reinforced existing social constructions of femininity and masculinity, based on race, sex, and class. For girls of color, that meant focusing on romance and developing practical skills for the home, rather than on building capacity in academic subjects. Similarly, for males, the academies reinforced a vision of masculinity that focused on disruptive behavior, athleticism, and being “bad,” such that when confronted with disciplinary action, the boys would proclaim, “Ooh, I’m the man.”²⁸⁰

Significantly, while these raced and gendered lessons were occurring, there was much less emphasis on the preparation that would truly advance life opportunities for these students. For example, none of the single sex academies offered students Advanced Placement courses,²⁸¹ which suggested that, for all the talk about reform and increasing educational opportunity for “at-risk” students, these schools were not deemed college

²⁷⁷ *Id.* at 40.

²⁷⁸ *See id.* at 39 (noting that the teachers “attempted to make the curriculum ‘gender neutral.’ In practice, this sometimes meant that the curriculum was oriented toward the males as teachers were very concerned about maintaining order in the all boys classes”). *Cf.* Catharine A. MacKinnon, TOWARD A FEMINIST THEORY OF THE STATE, 163 (1989)(observing that the “foundation for [the law’s] neutrality is the pervasive assumption that conditions that pertain among men on the basis of gender apply to women as well”). If, as MacKinnon argues, neutrality assumes masculinity as the norm, it is hardly surprising, then, that with an unexamined emphasis on “gender neutrality,” the California educators unwittingly took a gendered approach to learning that posited male preferences as the “standard.”

²⁷⁹ *Cf.* Vicki Shultz, *Telling Stories About Women and Work: Judicial Interpretations of Sex Segregation in the Workplace in Title VII Cases Raising the Lack of Interest Argument*, 103 HARV. L. REV. 1749, 1756 (1990)(arguing that women’s choices in employment are shaped, in large part by employers’ cultural expectations, among other things).

²⁸⁰ Elisabeth Woody, *supra* n.268 at 290.

²⁸¹ Datnow, *et al.*, *supra* n. 267 at 67.

preparatory in function. In fact, the researchers concluded, based on California's experience, that single sex schooling has great potential to create a new low educational track for students labeled as "at-risk," thus perpetuating on-going disparities.²⁸²

In addition, by supporting traditional gender roles, with all the concomitant racial implications, the academies fostered an environment that reinforced existing limiting conceptions of gender roles for students. Thus, for example, in some instances, the academies fostered a hyper-masculinized environment that led

[g]irls [at one academy where discipline of males was particularly harsh] . . . to express fears and frustration about persistent sexual harassment from their male peers. Likewise, as researchers, we experienced discomfort and disrespect, including foul language and sexual innuendos, in interviews with boys at this school that were never experienced anywhere else throughout the project. If anything, strict discipline at this school instilled a strong sense of male privilege and authority. Men were either positioned as the protector and provider or as the predator, and women were either in need of assistance or in a position of sexual objectification.²⁸³

Researchers also found that, while there was some flexibility for the girls to go beyond traditional gender roles notwithstanding the other messages they received,²⁸⁴ there was little if any flexibility concerning what it means to be "male."²⁸⁵ The researchers found that, as a result, the boys enforced the gender code in a variety of ways, including through the use of insults:

Boys set the rules of masculinity through the uses of insults such as 'sissy' or 'fag' to describe peers who did not fit their norm of boyhood. Crossing the lines of gender, as in 'acting like a girl,' or sexuality were considered suspect. Students used homophobic teasing as a means to enforce the rules of masculinity and femininity.²⁸⁶

²⁸² *Id.* at 73 (cautioning that single sex schooling could become "a new form of tracking or resegregation").

²⁸³ Elisabeth Woody, *supra* n.268 at 288.

²⁸⁴ *Id.* at 295 (observing that "girls were well-versed in the notion that they could 'do anything'").

²⁸⁵ *Id.* ("boys expressed stricter expectations to be strong and support a family, upheld in part by institutional messages that boys should be more disciplined").

²⁸⁶ *Id.* at 296.

In this connection, the intersection of race, gender, and class thus combined to reinforce a construct of femininity and masculinity that was limiting for students and perpetuated subordination based on those characteristics. California's experience is likely to be replicated under the current Bush proposal, which would establish few constraints on the creation of single sex schools and classes.²⁸⁷

Just as in California, the Bush effort is not motivated by or rooted in a desire to promote gender equality,²⁸⁸ which, necessarily would entail questioning and challenging traditional gendered and raced norms. Instead, as articulated in the Notice, the proposal is intended to enhance public education agencies' flexibility²⁸⁹ to experiment in this way, based on the misinformed assumption that single sex education is benign.²⁹⁰ Moreover, the Notice indicates that no consideration will be given to the fact that students of color will be most affected, should the Title IX regulations be modified to permit the spread of sex segregation. Lacking even the basic understanding of the gender, much less the racial implications of the proposed policy, the Department thus fails to conduct the searching inquiry necessary to ensure that single sex education really improves educational outcomes for students of color. The next section will demonstrate how an intersectional approach might be used in cases to make that determination.

B. Intersectionality Applied

*Garrett v. Detroit Board of Education*²⁹¹ illustrates the importance of considering sex and race. In this case, the court assumed erroneously that race was not an issue

²⁸⁷ See *supra* nn. 87-92 and accompanying text.

²⁸⁸ Datnow, *supra* n.267 at 6 ("Instead of seeing the single gender academies as primarily an opportunity to address gender inequities for girls and boys (as one might predict) most educators saw the \$500,000 grant as a way to help address the more pressing educational and social problems of low achieving students").

²⁸⁹ See *supra* n.92 and accompanying text.

²⁹⁰ See *supra* Section II.

²⁹¹ 775 F.Supp. 1004 (E.D. Mich. 1991).

because all the students involved were Black, as were the parents and the School Board that ultimately decided to create the all-male academies.²⁹² However, as this subpart demonstrates, consideration of race is essential to determining the plan's validity, as a legal matter, and advisability, as a matter of public policy.

Garrett became emblematic of certain aspects of school reform in the inner cities, characterized by parents who were fed up with the failure of public schools to educate their children, sympathetic educators willing to experiment in order to find something that works, and civil rights advocates who were fearful of losing the little ground that has been attained post-*Brown*. These conflicting interests came to a head before a federal judge, who, at the urging of advocates seen as interlopers,²⁹³ invalidated the academies.²⁹⁴ The decision itself, which was not a final determination on the merits after a trial,²⁹⁵ became the authoritative word on the impermissibility of single sex education in the public schools,²⁹⁶ sparking a series of national efforts to “fix” the situation.²⁹⁷ Now, the legal landscape apparently is about to shift²⁹⁸ to provide school districts such as Detroit greater flexibility²⁹⁹ to segregate students based on sex, if the Bush Administration has its way. But, as the foregoing demonstrates, the history of sex segregation demands more questions, not fewer, and greater protections, not less, to ensure that the new single sex schools and classes do not create yet another dead-end academic track for Black children.³⁰⁰

²⁹² Kenyatta, *supra* n. 2.

²⁹³ See *supra* n.11 and accompanying text.

²⁹⁴ *Garrett* 775 F.Supp. at 1008, 1010.

²⁹⁵ The matter came before the court on a motion for a preliminary injunction. *Id.* at 1006.

²⁹⁶ Salomone, *supra* n.9 at 135.

²⁹⁷ See *supra* n.20.

²⁹⁸ See *supra* n.92 and accompanying text.

²⁹⁹ *Id.*

³⁰⁰ See *supra* n.282 and accompanying text.

The plaintiff in *Garrett*, Jane Doe, challenged her daughter’s exclusion from three planned all-male academies, alleging that the admissions policy violated the Federal Constitution, Title IX, and other laws.³⁰¹ The Detroit Board of Education created these academies to address the needs of Black males, who, in the Board’s estimation, were in need of particular assistance because of their high rates of dropping out, involvement in the drug trade, and incarceration.³⁰² In this regard, the academies were to offer special programs designed to meet these boys’ needs: including “rites of passage,” preparation for 21st century careers, mentors, “male responsibility,” among other things.³⁰³ The Board also recognized that Black females faced a crisis of their own, which the Board argued it already was addressing through pregnancy-related programs.³⁰⁴

Assuming that the case presented only the issue of sex-based exclusion, the court applied heightened scrutiny,³⁰⁵ concluding that while the stated purpose of assisting troubled African American males was an important governmental purpose, the means proposed were not closely enough related to that purpose.³⁰⁶ Specifically, the court found that “there [was] no showing that it [was] the co-educational factor that result[ed] in failure” of the schools to serve Black males appropriately.³⁰⁷ The court also suggested that had the Board established a similar program for Black females, the academies might have survived,³⁰⁸ suggesting that a formal equality approach might have remedied the violations of equal protection and Title IX. But this reasoning is inadequate.

³⁰¹ *Garrett*, 775 F.Supp. at 1005.

³⁰² *Id.* at 1009.

³⁰³ *Id.* at 1006.

³⁰⁴ *Id.* at 1007.

³⁰⁵ See *Mississippi University for Women v. Hogan*, 458 U.S. 718, 723 (1982).

³⁰⁶ *Garrett*, 775 F.Supp. at 1008.

³⁰⁷ *Id.*

³⁰⁸ See *id.* at 1009 (noting that the “plaintiffs’ claims . . . do not rest solely on the denial of admission, [they also seek to vindicate] their right to the same benefits and services”); *id.* at 1006 n.4 (noting that the court

The question for courts, as well as policymakers for that matter, is whether sex-segregation will perpetuate race- *and* gender-based subordination of African American students, irrespective of whether “equal” resources are available. While advocating for an anti-subordination inquiry is not a new approach,³⁰⁹ this Article suggests that the inquiry should focus not only on the students who would benefit from sex segregation; but also on the students who are excluded. Thus, in this connection, *Garrett* raises the issue of whether the proposed academies would subordinate the Black boys who attend them, as well as the Black girls who cannot. Specifically, based on the potential for single sex education to perpetuate racism and patriarchy, the following questions, at a minimum, should be addressed: Do the academies perpetuate racialized gender roles? Do they contribute to sexualizing race? When applied to *Garrett*, the inquiry demonstrates that, rather than representing a progressive reform strategy, the proposed academies actually supported retrenchment of the very subordination that its proponents wanted to attack.

1. Perpetuating Racialized Gender Roles

As proposed, the academies at issue in *Garrett* would have constructed masculinity in a traditional manner and thus supported white patriarchy.³¹⁰ Consider the rhetoric justifying their creation. Namely, the academies were going to help Black males overcome the handicap of being raised in female-headed households by providing them with role models.³¹¹ While it is well documented that households that are headed by

was “not presented with the question of whether the Board can provide separate but equal” public institutions).

³⁰⁹ See Morgan, *supra* n.53.

³¹⁰ See *supra* nn.282–286 and accompanying text.

³¹¹ See *supra* n. 32 and sources cited therein.

single women, including single Black women, are more likely to poor,³¹² it is doubtful that providing “masculine” role models for boys that this trend will reverse this situation. In fact, by suggesting that the problems of African Americans can be solved by teaching Black boys to be men is precisely the same racist and sexist rhetoric that has cast Black women as deviant and Black families as matriarchal and therefore pathological.³¹³

In addition, in proposing to emphasize traditional male behavior and coping strategies,³¹⁴ the academies would have reinforced a construct of “hegemonic masculinity”³¹⁵ that is both limiting to the boys who seek to replicate it, and threatening to the students who fail to conform to its standards.³¹⁶ As the California example illustrated, the emphasis on traditional “male” behavior, particularly in the context of educating “at-risk” boys, resulted in the belief that strict discipline was necessary, which in turn resulted in the boys acting out with overly aggressive, or “typically male” behavior.³¹⁷ In addition, this vision of maleness excludes and alienates students who do not conform to the traditional gender stereotype,³¹⁸ which typically leads to physical and

³¹² Bernadette Proctor & Joseph Dalaker, *Poverty in the United States: 2001*, 14 (U.S. Census Bureau, Current Population Reports P60-219)(2002)(noting that the poverty rate for female-headed households is 28.6%).

³¹³ See Moynihan, *supra* n. 38.

³¹⁴ *Garrett*, 775 F.Supp. at 1006(outlining proposed programs, including that would help boys control their emotions).

³¹⁵ See *supra* nn.268- 285 and accompanying text.

³¹⁶ *Id.*

³¹⁷ See *supra* n.267-274 and accompanying text.

³¹⁸ See Deborah Brake, *The Cruellest of the Gender Police: Student-to-Student Sexual Harassment and Anti-Gay Peer Harassment under Title IX*, 1 Geo. J. Gender & L. 37, 92(1999)(“Students can be the cruelest gender police. Gender role conformity is particularly important as a source of security and confidence in childhood and adolescence”). In light of Black Americans’ perceived failure to conform to traditional gender norms, the pressure for young African Americans’ to do so may be particularly intense. Cf. Benoit Denizet-Lewis, *Double Lives on the Down Low*, The New York Times Magazine, Aug.3, 2003, 28, 31 (Describing cultural strictures that discourage Black gay men from being open about their sexuality. One interview subject noted

[i]f you’re white, you can come out as an openly gay skier or actor or whatever. It might hurt you some, but it’s not like if you’re black and gay, because then it’s like you’ve let down the whole black community, black women, black history, black pride.

psychic violence intended to force the boys to become “men,” for example.³¹⁹ In this connection, the emphasis on the traditional gender roles has the potential to subordinate students who identify themselves as gay, lesbian bisexual, transgendered, or undecided.

Additionally, the Detroit Board of Education’s emphasis on saving boys in this context privileged Black males as the racial victims,³²⁰ which is a limiting strategy upon which to build a liberation movement.³²¹ As the court correctly notes, the focus on Black boys rendered the problems affecting Black females invisible and perpetuated the myth that females are doing just fine,³²² without addressing their problems meaningfully. Indeed, any student of color who did not match the profile of Black males was excluded from this effort, which sent the message that those students were not worth saving.

2. Sexualizing Race

Similarly, the plan in *Garrett* was flawed because it contributed to sexualizing Black Americans. Specifically, when confronted with their failure to provide any special programming for Black girls, the Board responded that such programming was available in the form of pregnancy-related courses.³²³ While there is no doubt that the rate of teen pregnancy for Black girls is too high,³²⁴ the Board’s strategy fed into the construction of Black females as overly fecund, and hypersexual, by suggesting that the only program they needed was one focusing on child-bearing, not on math or science, for example, which have been characterized as fostering a sense of competence, at least with respect to

Id. at 31.

³¹⁹ See Brake *supra* n. 317 at 92 (noting that sexual harassment frequently is the means used “to punish gender out-liers . . . and to reinforce boundaries of gender by bolstering the sex stereotypes associated with maleness and femaleness”).

³²⁰ Carbado, *supra* n. 36 at 434.

³²¹ *Id.*

³²² *Garrett*, 775 F.Supp. at 1007.

³²³ *Garrett*, 775 F.Supp. at 1007-1008.

³²⁴ *Supra* n.47.

middle-income white females.³²⁵ In this context, emphasizing the development of essential academic skills likely would prove more effective at discouraging teen pregnancy by providing the tools for higher education or meaningful employment, true disincentives for premature child-bearing;³²⁶ such an alternative was unavailable and not even under consideration.

Thus, by according primacy to Black males and reinforcing the construction of traditional masculinity with the end of replicating patriarchy, the Board's plan in *Garrett* was, in fact, regressive – the effect of the plan would be to support the very systems that have subordinated Black Americans since the nation's founding.

Conclusion

Single sex education as presently articulated is not likely to result in true systematic reform of the nation's inner city schools. In order to effect real change in the system of public education, we must first acknowledge the interrelationship between racism and patriarchy in this context, and then commit to dismantling its legacy of subordination manifested in the system's preparing legions of students to take their places in society's raced and gendered hierarchy. As a practical matter, however, for those parents whose children presently attend failing schools, advocating for widespread school reform in these terms likely will not address the very real educational crisis affecting their children. For this reason, this Article has not declared single sex schooling presumptively invalid. Rather, single sex education may be a viable means of true reform in the inner city, but

³²⁵ Stabiner *supra* n.41 (contrasting white females at a suburban private single sex institution with Black females attending New York's TYWLS).

³²⁶ See Austin, *supra* n.46 at 558 (arguing that “[b]lame for black teenage pregnancy must be shared by an educational system that fails to provide black youngsters with either the desire or the chance to attend college”).

only if such schools and classes are established with an emphasis on equality of opportunity, taking into consideration, the effects and implications of these policies based on race and sex, at the very least. In this regard, sex segregated schooling may provide a unique opportunity for students to explore the meanings of gender and race in their world: that is, how these social constructs manifest themselves in our society, what they mean to students individually and for their future as adults, among other issues. If students attending sex segregated schools can engage in this type of inquiry (which of course, need not nor should not be limited to such schools), then single sex education really can assist in reforming, not only education, but also society.