

The Dignitary Harms of Racism in Public Education: Expanding the Lens of *Brown* Beyond Segregation

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ABSTRACT

Reflecting on the 70th anniversary of *Brown v. Board of Education*, we reconsider the landmark ruling's conception of dignitary harm in public education. In its argument against the separate-but-equal standard that undergirded segregated schools in the South, the Supreme Court focused on the psychological harm that segregation imposed on Black children. Building on past critiques, we argue that the Court's analysis was too narrow: the psychological harm it identified is only one of many forms of dignitary harm that racially marginalized students can face in schools. Importantly, dignitary harms can persist even in integrated schools and classrooms, through practices such as disciplinary disparities, tracking, and white-centric curricular content. Focusing on the example of curricular content, we detail how white-centric curricula can impose dignitary harms, and draw on historical examples and social science research to show how inclusive curricula can foster dignity and empowerment for racially marginalized students. We close with a call for scholars to more expansively envision the dignitary harms of racism in public education and accordingly advance a more robust interpretation of the demands of equal protection.

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I. INTRODUCTION

Seventy years after *Brown v. Board of Education*,¹ the Supreme Court’s landmark decision still looms large in debates over the proper remedies for historical and ongoing racial inequality in schools. The unanimous Court in *Brown* ruled that the Constitution’s equal protection clause prohibited racial segregation in schools.² As a basis for this interpretation, the Court famously cited social science research to claim that segregation caused psychological harm for Black students, generating “a feeling of inferiority as to their status in the community.”³

In this article, we argue that the Court’s diagnosis of psychological harm and its prescription of integration were narrow and insufficient. We begin by noting that the claim of psychological harm can be understood as one type of dignitary harm, i.e., actions that undermine an individual’s sense of worth or status by causing emotional or psychological distress.⁴ We argue that the Court ignored various other kinds of dignitary harms that racially marginalized students face. Importantly, dignitary harms can persist in integrated schools.⁵ As such, integration alone is an insufficient solution to guarantee equal protection and dignity for all students.

The promise of equal protection for public education, we argue, must go beyond integration and address ongoing dignitary harms faced by racially marginalized students. For example, civics and social studies courses generally use white-centric curricula that signal lower social status and worth for racially marginalized groups.⁶ Such curricula can cause dignitary harm in both segregated and integrated classrooms. Redressing this harm requires other kinds of interventions, such as inclusive curricula that center the experiences and contributions of racially marginalized groups.

The article proceeds as follows. In Part II, we summarize *Brown*’s claim about psychological harm and review arguments from some of its critics. We situate this claim in the broader concept of dignitary harms, and argue that *Brown* elided other dignitary harms in schools. In Part III, we discuss examples of how dignitary harms

¹ 347 U.S. 483 (1954).

² *Brown*, 347 U.S. at 495.

³ *Id.* at 494.

⁴ See *infra* part II.

⁵ See *infra* part III.

⁶ See *infra* part III.

can persist in integrated classrooms. In Part IV, we focus on one example—curricular content—and detail how dignitary harm in this area can be redressed. We draw on the historical example of ethnic studies and social science research on curricular interventions to show how inclusive curricula can foster dignity and empowerment for racially marginalized students. Part V concludes the article with a call for scholars to more expansively envision the dignitary harms of racism in public education and accordingly advance a more robust interpretation of the demands of equal protection.

II. BROWN’S VISION OF PSYCHOLOGICAL AND DIGNITARY HARMS

The unanimous decision in *Brown v. Board of Education* was the result of careful work by Justices who initially favored finding school segregation unconstitutional to win over recalcitrant colleagues.⁷ They sought to find an argument that would reverse the holding in *Plessy v. Ferguson* without having to determine the original understanding of the Fourteenth Amendment or require an analysis of unequal “tangible factors” across schools.⁸ The final decision found that segregated schools were unconstitutional under the equal protection clause of the Fourteenth Amendment, even if “the physical facilities and other ‘tangible’ factors may be equal” across schools.⁹ It rested this conclusion on a rationale that segregation caused psychological harm to Black schoolchildren, arguing that separating schoolchildren “from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely to ever be undone.”¹⁰ To support the claim that segregation caused psychological harm to Black students, the ruling famously cited several social science studies.¹¹

This rationale that segregation caused psychological harm was only one of many available arguments the Court could have used to reach the conclusion that segregated schools were unconstitutional. During the Court’s deliberations, for example, some Justices proposed other rationales. Some suggested a rationale based on an interpretation of the Reconstruction Amendments’ purpose: Justice Black argued that segregation laws violated the Fourteenth Amendment’s “basic purpose”: “protection of the negro against discrimination.”¹² On the other hand, Chief Justice Warren argued that the separate-but-equal doctrine’s reliance on the “basic premise that the Negro race is inferior” could not be reconciled with the Reconstruction Amendments because

⁷ See JAMES T. PATTERSON, *BROWN V. BOARD OF EDUCATION: A CIVIL RIGHTS MILESTONE AND ITS TROUBLED LEGACY* 7 (2001).

⁸ LUCAS A. POWE, *THE WARREN COURT AND AMERICAN POLITICS* 29–30 (2000); see also PATTERSON, *supra* note 7, at 64–66; MICHAEL J. KLARMAN, *UNFINISHED BUSINESS: RACIAL EQUALITY IN AMERICAN HISTORY* 152 (2007).

⁹ *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

¹⁰ *Id.* at 494.

¹¹ *Id.*

¹² MICHAEL J. KLARMAN, *FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY* 294 (2006) (quoting Conference notes of Justices Burton, Clark, Douglas, and Jackson).

they “were intended to make equal those who once were slaves.”¹³ Justice Douglas argued simply that any classification on the basis of race violated the Fourteenth Amendment’s equal protection clause and the Fifth Amendment’s Due Process Clause.¹⁴ Instead of applying these arguments, the initial majority opted to rest its decision on the rationale of psychological harm, a decision which may have enabled them to win over colleagues and secure the unanimous ruling they desired.¹⁵ The social science studies that the Court cited also offered an imprimatur of legitimacy for Justices anxious about the reception of a highly controversial and consequential decision.¹⁶

Although *Brown* does not explicitly use the language of “dignity,”¹⁷ we argue that it is useful to think about the Court’s discussion of psychological harm as a type of dignitary harm. By dignitary harm, we refer to actions that undermine an individual’s sense of worth or status by causing emotional or psychological distress.¹⁸ The Court’s invocation of the psychological harms of school segregation on Black children refers to this type of dignitary harm, albeit one that is narrowly conceived and only briefly discussed. As Christopher Bracey has documented, the Court’s post-*Brown* civil rights jurisprudence has periodically invoked dignitary harms in cases concerning racial and gender discrimination in public accommodations, voting rights, and criminal justice.¹⁹ Following *Brown*’s invocation that the “feelings of inferiority” imposed by

¹³ *Id.* at 302.

¹⁴ *Id.* at 296. As Daryl Michael Scott writes, such a rationale could have also been rooted in evidence from contemporary social science: “Since *Plessy* social scientists concerned with race had returned major findings about race, racial discrimination, and personality. Warren made no reference to the social science consensus that there were no significant differences between the races and that, in many quarters, race itself was not considered a valid scientific category. Such evidence would have been particularly relevant because in *Plessy* the Court had argued that racial antagonism was innate rather than social. In ignoring the findings of the social scientists on race, Warren elected not to overrule the separate-but-equal doctrine as a violation of the equal protection clause on the grounds that race represented an arbitrary classification. Put another way, he elected not to make the overturning of segregation a triumph for the idea of a color-blind society or of the equality of the races.” DARYL MICHAEL SCOTT, *CONTEMPT AND PITY: SOCIAL POLICY AND THE IMAGE OF THE DAMAGED BLACK PSYCHE, 1880-1996*, at 134 (1997).

¹⁵ SCOTT, *supra* note 14, at 133–34.

¹⁶ Sanjay Mody, *Brown Footnote Eleven in Historical Context: Social Science and the Supreme Court’s Quest for Legitimacy*, 54 STAN. L. REV. 793, 794 (2002).

¹⁷ See generally *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

¹⁸ This conception draws on Sugarman and Boucher’s helpful description of various torts as “emotional harms arising from . . . wrongful affronts to human dignity.” Stephen D. Sugarman & Caitlin Boucher, *Re-Imagining the Dignitary Torts*, 14 J. TORT L. 101 (2021). “Human dignity” is a concept with a long lineage in philosophy and law, and generally denotes “a kind of basic worth or status that purportedly belongs to all persons equally, and which grounds fundamental moral or political duties or rights.” REMY DEBES, *Dignity*, in THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta & Uri Nodelman eds., Spring 2023), <https://plato.stanford.edu/archives/spr2023/entries/dignity/>.

¹⁹ Christopher A. Bracey, *Dignity in Race Jurisprudence*, 7 U. PA. J. CONST. L. 669, 669–97, 705 (2005).

segregation constituted an equal protection violation, later Justices wrote that discriminatory laws and policies were harmful because they caused “humiliation, frustration, and embarrassment”²⁰ or “denigrate[d] the dignity” of excluded persons.²¹ The Court’s twenty-first century rulings on LGBT rights have even more explicitly invoked the idea that harms to dignity violate the equal protection clause and require redress.²²

In the decades since *Brown*, many scholars have critiqued its rationale of psychological harm as flawed and narrow. For example, Daryl Michael Scott has shown limitations and flaws in the social science evidence cited by the Court and has critiqued the role of *Brown* in reinforcing the idea that Black people are psychologically damaged.²³ Lani Guinier has criticized the ruling for ignoring the social and economic harms of segregation, and argued that its narrow view of segregation’s evils facilitated later jurisprudence finding formal colorblindness, or the lack of intentional prejudice, as a sufficient remedy for racial inequality.²⁴ Guinier and others have also criticized the Court’s discussion of psychological harm for focusing solely on effects on Black children and ignoring segregation’s psychological effects on white society, such as the cultivation of social status and intra-racial solidarity.²⁵

In this article, we argue that the Court’s rationale in *Brown* was limited in another way: it focused narrowly on one type of psychological harm at the expense of other dignitary harms experienced by racially marginalized students. The elision of these other dignitary harms enables an incomplete analysis that integration by itself can redress these harms. Recall that the psychological harm to Black students identified in *Brown* is that “a feeling of inferiority as to their status in the community” arises from “[the separation of students] from others of similar age and qualifications solely

²⁰ Goldberg, J., concurring, in *Heart of Atlanta Motel v. United States*, 379 U.S. 292 (1964).

²¹ *J. E. B. v. Alabama ex rel. T. B.*, 511 U.S. 142 (1994).

²² See Laurence H. Tribe, *Equal Dignity: Speaking Its Name*, 129 HARV. L. REV. F. 16, 17 (2015); Laurence H. Tribe, *Lawrence v. Texas: The Fundamental Right That Dare Not Speak Its Name*, 117 HARV. L. REV. 1893, 1194 (2003); Michelle Freeman, *The Right to Dignity in the United States*, 68 HASTINGS L.J. 1135, 1141 (2016).

²³ See generally SCOTT, *supra* note 14, at 119–60; see also Lani Guinier, *From Racial Liberalism to Racial Literacy: Brown v. Board of Education and the Interest-Divergence Dilemma*, 91 J. AM. HIST. 92, 109–13 (2004).

²⁴ Guinier, *supra* note 23, at 95–97. The focus on the psychological harms of segregation also advanced a desegregation approach that did not examine holistic impacts on the social and economic harms faced by Black communities as a result of school segregation. Guinier notes some examples of these other impacts: “For example, desegregation meant that some black teachers, the backbone of the black middle class at the time, lost their jobs. . . . Within integrated schools, the interaction with white students was often limited literally and figuratively by tracking, skepticism about blacks’ intellectual ability by their teachers and white classmates, and the loss not only of black mentors but also of a sense of community in which the adults were invested in the students’ achievement.” *Id.* at 111–12.

²⁵ *Id.* at 102–09; see also Angela Onwuachi-Willig, *Reconceptualizing the Harms of Discrimination: How Brown v. Board of Education Helped to Further White Supremacy*, 105 VA. L. REV. 343, 348, 355, 361–62 (2019).

because of their race.”²⁶ As we discuss in the next section, racial inequality in education takes many forms beyond such feelings of inferior social status. For example, dignitary harm for Black and other racially marginalized students may arise from unequal disciplinary policies or disparaging material in curricular content.²⁷ Integration of students in the same schools is insufficient to redress these other types of dignitary harms—and indeed, integration without additional remedies can exacerbate these harms.

III. BEYOND SEGREGATION: RACISM AND DIGNITARY HARMS IN SCHOOLS

Schools serve as important sites of socialization, providing opportunities for students to learn how to navigate societal norms throughout their lives.²⁸ *Brown*’s argument about the psychological harms of segregation recognized the socializing role that schools play in students’ lives.²⁹ Of course, there are multiple mechanisms of socialization at play within schools: students receive both direct instruction across subject areas and indirect exposure to hidden curricula such as lessons that instill expectations about societal norms (e.g., punctuality and obedience).³⁰ Decades of social science research has demonstrated that school policies and practices differentially impact and socialize students across racial and socio-economic groups.³¹ In other words, even within integrated schools, school policies and practices can produce dignitary harms for marginalized students. To illustrate this point, this section examines three mechanisms of socialization at schools: disciplinary policies, academic tracking, and curricular content.

First, consider the disproportionate application of disciplinary policies to racially marginalized students. Extensive social science research shows that Black, LGBTQ+, Latine, Indigenous, and other marginalized students are more likely to be exposed to punitive disciplinary policies at school, including suspensions and expulsions.³² Such policies are linked to a number of negative health outcomes, including depression and suicide.³³ Recent work also suggests that the effects of these policies also spill over

²⁶ *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954).

²⁷ See *infra* part III.

²⁸ See Virginia Sapiro, *Not Your Parents’ Political Socialization: Introduction for a New Generation*, 7 ANN. REV. POL. SCI. 1, 14–15 (2004).

²⁹ *Brown*, 347 U.S. at 494 (citing *Belton v. Gebhart*, 32 Del. Ch. 343, 349 (Del. Ch. 1952)).

³⁰ Henry A. Giroux & Anthony N. Penna, *Social Education in the Classroom: The Dynamics of the Hidden Curriculum*, 7 THEORY RSCH. SOC. EDUC. 21, 22 (1979).

³¹ See Rita Kohli, Marcos Pizarro & Arturo Nevárez, *The “New Racism” of K–12 Schools: Centering Critical Research on Racism*, 41 REV. RES. ED. 182 (2017); Catherine dP. Duarte et. al., *Punitive School Discipline as a Mechanism of Structural Marginalization with Implications for Health Inequity: A Systematic Review of Quantitative Studies in the Health and Social Sciences Literature*, 1519 ANN. N.Y. ACAD. SCI. 129 (2023).

³² See Duarte et. al., *supra* note 31.

³³ *Id.*

into civic life.³⁴ Utilizing the National Longitudinal Study of Adolescent to Adult Health (Add Health), Sarah Bruch and Joe Soss find that 83 percent of Black students “spend their adolescent years in schools with ‘tougher than average’ disciplinary regimes”, rates that significantly outpace those of white students (35 percent), a finding particularly pronounced among Black girls.³⁵ Black students also experienced suspensions and expulsions at twice the rate of white students (46 percent compared to 23 percent) and were significantly more likely to report that teachers treated them unfairly.³⁶ Strikingly, exposure to these policies is shown to decrease the estimated odds of voting by 14 percent and trust in government by 28 percent.³⁷ In contrast, students enrolled in schools defined by a strong civic ethos are more likely to participate in politics later in life.³⁸ The unequal application of punitive disciplinary policies is an example of dignitary harm that can persist in integrated schools: such policies cause emotional and psychological distress, and result in outcomes that suggest students experience a lower sense of status or self-worth.

Second, consider academic tracking, the process through which students are separated by academic ability into groups for all subjects or certain classes and curriculum within the same school.³⁹ Tracking is grounded in a belief that schools should play a role in preparing students for different careers within the labor market based on academic ability.⁴⁰ However, tracking has worked to racially segregate students *within* integrated schools.⁴¹ As an example, Evanston, Illinois—a racially diverse Chicago suburb—has a high school with an incredibly diverse student population. The school established forms of academic tracking in the 1930s, and over time this practice funneled white students into more advanced classes at higher rates than Black students.⁴² A local newspaper described the situation in the suburb’s high school in 1992 as follows:

³⁴ See Sarah K. Bruch & Joe Soss, *Schooling as a Formative Political Experience: Authority Relations and the Education of Citizens*, 16 PERSP. ON POL. 36 (2018); Sally A. Nuamah & Quinn Mulroy, “I Am a Child!”: *Public Perceptions of Black Girls and Their Punitive Consequences*, 8 J. RACE ETHNICITY POL. 182 (2023).

³⁵ Bruch & Soss, *supra* note 34, at 43.

³⁶ Bruch & Soss, *supra* note 34, at 43–44.

³⁷ *Id.* at 48.

³⁸ See DAVID E. CAMPBELL, *WHY WE VOTE: HOW SCHOOLS AND COMMUNITIES SHAPE OUR CIVIC LIFE* (2006).

³⁹ See Jeannie Oakes, *Two Cities’ Tracking and Within-School Segregation*, 96 TCHRS. COLL. REC. 1 (1995).

⁴⁰ See SAMUEL BOWLES & HERBERT GINTIS, *SCHOOLING IN CAPITALIST AMERICA: EDUCATIONAL REFORM AND THE CONTRADICTIONS OF ECONOMIC LIFE* (Illustrated ed. 2011).

⁴¹ See Oakes, *supra* note 39.

⁴² See Clara Gustafson et. al., *Evanstonians, ETHS Community Members Reflect on Opportunity Gap, Efforts to Detrack at ETHS*, EVANSTONIAN (Jan. 28, 2022), <https://www.evanstonian.net/feature/2022/01/28/evanstonians-eths-community-members-reflect-on-opportunity-gap-efforts-to-detrack-at-eths/>.

[Evanston Township High School] classes were generally split into three levels in order of rigor: Level 1, Regular and Honors. Data about the racial makeup reveals a pattern. Regular algebra, for example, had a total enrollment of 98 Black students and 17 white students. Its honors level counterpart, on the other hand, included 12 Black students and 148 white students. English and U.S. history exhibited the same trend: Level 1 English had a 30:1 ratio of Black and white students, while honors had a 37:148 ratio. Level 1 U.S. history had a 61:3 ratio while honors had a 28:88 ratio.⁴³

Evanston is not exceptional: decades of social science research suggests that tracking contributes to within-school segregation at every level of education—elementary, middle, and high school—and across socio-economic contexts.⁴⁴ Evanston began “detracking” in 2010, but many other school districts continue to use the practice.⁴⁵ While some argue that tracking is necessary in order to ensure academic efficiency, a recent meta-analysis of 53 tracking studies demonstrates that tracking has a null effect on efficiency, while significantly increasing inequality.⁴⁶ In addition to enabling inequality in academic and career outcomes, tracking also communicates differential social status to students. Summarizing extensive social science research, Jeannie Oakes writes that tracking “foster[ed] lower self-esteem” among students in low-track classes and that “a good portion of the negative attitudes displayed by low-track students is attributable to the track placement itself.”⁴⁷

Third, consider the very substance of schooling: curricular content. Social science research has found that social studies curricula often prioritize the experiences of white Americans and can inflict harm on racially marginalized students.⁴⁸ As Meira Levinson documents, these curricula tend to focus on formal political institutions and predominantly white national heroes, diminishing the role of people of color in the country’s social and political history.⁴⁹ Even when efforts are made to incorporate more people of color into curricula (e.g., Martin Luther King Jr. and Rosa Parks), they are often portrayed as so “godlike” that students feel that it is impossible to emulate

43 *Id.*

44 Oakes, *supra* note 39; JEANNIE OAKES, KEEPING TRACK: HOW SCHOOLS STRUCTURE INEQUALITY 12–13 (2005) [hereinafter KEEPING TRACK].

45 See, for example, Demetra Kalogrides & Susanna Loeb, *Different Teachers, Different Peers: The Magnitude of Student Sorting Within Schools*, 42 EDUC. RES. 304 (2013); see also Gustafson et. al., *supra* note 42, for Evanston’s adoption of “detracking.”

46 Éder Terrin & Moris Triventi, *The Effect of School Tracking on Student Achievement and Inequality: A Meta-Analysis*, 93 REV. EDUC. RES. 236 (2022).

47 KEEPING TRACK, *supra* note 44, at 8.

48 See MEIRA LEVINSON, NO CITIZEN LEFT BEHIND (2012); Matthew D. Nelsen, *Teaching Citizenship: Race and the Behavioral Effects of American Civic Education*, 6 J. RACE ETHNICITY POL. 157 (2021).

49 LEVINSON, *supra* note 48.

their actions.⁵⁰ It is not surprising then, that Black students tend to distrust the narratives they receive in their high school civics and American history classes, as Terrie Epstein's study finds.⁵¹ This kind of course content can lead to sharply different consequences for students across racial groups. For example, Matthew Nelsen finds in survey-based research that having taken civic education courses is associated with higher rates of external efficacy and civic engagement among white students but not Black students. In other words, these courses empower white youth while disempowering Black youth.⁵² In later interview-based research, Nelsen shows how traditional civic education curricula communicate social standing.⁵³ Consider these illustrative quotes from students referring to excerpts from "The American Pageant," a staple textbook in Advanced Placement U.S. History courses:

The [traditional textbook] has this heading that talks about resistance, but the resistance, like I stated on my paper, is weak. It's like, **"Oh, we are helpless. Like, we need somebody to come save us."**

-Devon (17-years-old, Black)⁵⁴

All right. I'm going to be honest with you. **This textbook was kind of like an insult.** . . . I mean, this is just my personal opinion because I'm a Latino, and, you know, I need to say something about it. **All it talks about is Mexican food and then all of sudden it's like, "Oh and, by the way, Latinos don't vote."** It was just a lot. . . . So I don't know what the purpose of it is. . . . but it's like **"Why would I want to vote after reading this?"**

-Marcos (16 years old, Mexican American)⁵⁵

As Marcos states explicitly, the white-centric content of these curricula can serve as an insult to racially marginalized students.⁵⁶ In other words, this type of curricular content imposes dignitary harm on students of color by signaling lower social status to them and disempowering them. The potential for curricular content to cause harm in this way underscores the limits of integration alone in redressing dignitary harms. While the two previous examples involve policies or practices that are unequally

⁵⁰ *Id.* at 147; *see also* BRUCE PEABODY & KRISTA JENKINS, WHERE HAVE ALL THE HEROES GONE?: THE CHANGING NATURE OF AMERICAN VALOR 167 (2017).

⁵¹ TERRIE EPSTEIN, INTERPRETING NATIONAL HISTORY, at xvi (1st ed. 2008).

⁵² Nelsen, *supra* note 48, at 15. In a later experimental study, Nelsen shows a causal relationship between curricular material of this kind and disempowering effects among students of color; *see* Matthew D. Nelsen, *Cultivating Youth Engagement: Race & the Behavioral Effects of Critical Pedagogy*, 43 POL. BEHAV. 751 (2021).

⁵³ *See generally* MATTHEW D. NELSEN, THE COLOR OF CIVICS: CIVIC EDUCATION FOR A MULTIRACIAL DEMOCRACY (2023).

⁵⁴ *Id.* at 102. All the names of quoted students have been changed to preserve their anonymity.

⁵⁵ *Id.* at 52.

⁵⁶ *Id.*

applied to students within schools, this example shows that even curricular content that is provided to all students within a classroom can cause dignitary harm in a racially discriminatory manner.

The examples of unequally applied disciplinary policies, re-segregating academic tracking, and white-centric curricular content show how the dignitary harms of racism can persist even if *Brown's* promise of integrated schools were achieved. Indeed, writing in 1935 when segregated schools were commonplace, W. E. B. Du Bois anticipated the limits of desegregation:

[T]here is no magic, either in mixed schools or in segregated schools. A mixed school with poor and unsympathetic teachers, with hostile public opinion, and no teaching of truth concerning black folk, is bad. A segregated school with ignorant placeholders, inadequate equipment, poor salaries, and wretched housing, is equally bad. Other things being equal, the mixed school is the broader, more natural basis for the education of all youth. It gives wider contacts; it inspires greater self-confidence; and suppresses the inferiority complex. But other things seldom are equal, and in that case, Sympathy, Knowledge, and the Truth, outweigh all that the mixed school can offer.⁵⁷

Today's context is much different than the one in which Du Bois was writing, and we certainly do not mean to compare flawed integration and segregation as the only two options available. Rather, we argue that a more capacious view of the racist harms that harm students of color should push us to envision an equal protection law that requires far more than integration. The next section provides one example of what this additional redress may look like.

IV. REDRESSING DIGNITARY HARMS IN THE CLASSROOM

If educational policies and practices can cause psychological and dignitary harms even within integrated schools, then *Brown's* solution of integration is insufficient to redress such harms. The promise of equal protection must additionally require proactively addressing the sources of dignitary harm in schools and classrooms.⁵⁸ To illustrate possible forms of redress, we focus on one of the sources of dignitary harm discussed above: curricular content. Drawing on the historical example of ethnic studies and research on culturally responsive pedagogy and inclusive content,⁵⁹ we show how alternate curricular content and pedagogical practices can redress this form of dignitary harm in the classroom.

Ethnic studies courses and programs center “the knowledge and perspectives of an ethnic or racial group, reflecting narratives and points of view rooted in that group’s

⁵⁷ W. E. B. Du Bois, *Does the Negro Need Separate Schools?*, 4 J. NEGRO EDUC. 328, 335 (1935).

⁵⁸ We stress that it does not only require these additional steps. As we have alluded to above, there are various harms caused by racial inequality in schools that can persist in integrated schools. See *supra* part II.

⁵⁹ See Gloria Ladson-Billings, *Toward a Theory of Culturally Relevant Pedagogy*, 32 AM. EDUC. RES. J. 465, 467 (1995); Nelsen, *supra* note 52.

lived experiences and intellectual scholarship.”⁶⁰ These courses grew out of the civil rights movement when groups such as the Student Nonviolent Coordinating Committee (SNCC) sought to foster political empowerment to fuel the movement by offering civic learning experiences that focused on the culture, history, and political contributions of African Americans.⁶¹ By the 1970s, ethnic studies courses focusing on the experiences of Asian, Black, Latine, and Native Americans spread on college campuses as a counterpoint to predominantly Eurocentric curricula.⁶² Over time, ethnic studies courses became more commonplace in K-12 classrooms as well.⁶³

While ethnic studies courses have often sparked controversy among conservatives,⁶⁴ decades of research has demonstrated that they are associated with favorable academic and civic outcomes among students across racial groups.⁶⁵ From an academic standpoint, ethnic studies courses are shown to have favorable effects on school attendance, grades, and credits earned.⁶⁶ For example, in one study, eighth graders assigned to an ethnic studies course saw school attendance increase by 21 percent in ninth grade.⁶⁷ Moreover, students enrolled in this course saw, on average, GPAs increase by 1.3 points and credits earned increase by 23 (approximately four classes) in the following academic year.⁶⁸ Another study assessing the long-term effects of a 9th grade ethnic studies course within the San Francisco Unified School

60 Christine Sleeter, *The Academic and Social Value of Ethnic Studies: A Research Review*, NAT. EDUC. ASS'N (2011), <https://vtechworks.lib.vt.edu/handle/10919/84024> (last visited Nov. 10, 2024); see also Paulo Freire, *PEDAGOGY OF THE OPPRESSED* (50th Anniversary ed. 2018); Paula Groves Price & Paul D Mencke, *Critical Pedagogy and Praxis with Native American Youth: Cultivating Change through Participatory Action Research*, 27 EDUC. FOUNDS. 85, 100 (2013).

61 George W. Chilcoat & Jerry A. Ligon, “We Talk Here. This Is a School for Talking.” *Participatory Democracy from the Classroom out into the Community: How Discussion Was Used in the Mississippi Freedom Schools*, 28 CURRICULUM INQUIRY 165, 169 (1998).

62 Sleeter, *supra* note 60; JOSEPH MOREAU, *SCHOOLBOOK NATION: CONFLICTS OVER AMERICAN HISTORY TEXTBOOKS FROM THE CIVIL WAR TO THE PRESENT* 310 (2004).

63 DONNA JEAN MURCH, *LIVING FOR THE CITY: MIGRATION, EDUCATION, AND THE RISE OF THE BLACK PANTHER PARTY IN OAKLAND, CALIFORNIA* 113 (2010). A similar path occurred for women’s studies courses as well. See Alice Kessler-Harris, *Do We Still Need Women’s History?*, CHRON. HIGHER EDUC. (Dec. 7, 2007), <https://www.chronicle.com/article/do-we-still-need-womens-history/>.

64 See Lynn Cheney, *The End of History*, WALL ST. J., Oct. 20, 1994, <http://online.wsj.com/media/EndofHistory.pdf>; see also James W. Loewen, *LIES MY TEACHER TOLD ME: EVERYTHING YOUR AMERICAN HISTORY TEXTBOOK GOT WRONG* 251–52 (1996); Moreau, *supra* note 62, at 307; Frances FitzGerald, *AMERICA REVISED: HISTORY SCHOOLBOOKS IN THE TWENTIETH CENTURY* 73, 102–03 (1980).

65 For a literature review, see Sleeter, *supra* note 60.

66 Sleeter, *supra* note 60, at 8–16; see also Thomas S. Dee & Emily K. Penner, *The Causal Effects of Cultural Relevance: Evidence From an Ethnic Studies Curriculum*, 54 AM. EDUC. RES. J. 127 (2017).

67 Dee & Penner, *supra* note 66.

68 *Id.* at 145.

District found that academically lower-performing students enrolled in the course were significantly more likely to graduate high school and had higher attendance, higher enrollment, and greater credits earned.⁶⁹ Strikingly, the study also found that the course may also have increased college attendance.⁷⁰

By incorporating the experiences and voices of racially marginalized groups into school curricula, ethnic studies courses can redress the dignitary harms of the traditional white-centric curricula described in the previous section. Several studies have found that students from racially marginalized groups who are exposed to such courses report stronger connections to their community and greater feelings of empowerment and internal efficacy, relative to those exposed to more traditional and less inclusive curricula.⁷¹

In a recent study, Matthew Nelsen used survey experiments, interviews, and focus groups in Chicago area schools to assess the impact of changing from traditional, white-centric curricula in history and civic courses to inclusive curricula more akin to ethnic studies.⁷² He finds that exposure to inclusive curricular content increases feelings of empowerment among Asian, Black, and Latine students and rates of intended political participation among Black and Latine students.⁷³ Excerpts from student interviews help illustrate how changes in curricular content can redress the type of dignitary harm documented above:

The [critical textbook's] passage about abolition, also talked a lot about Black women. They didn't just talk about [William] Lloyd Garrison and Frederick Douglass. They also talked about Sojourner Truth. She stood up and was like dropping truths at the National Woman's Rights Convention. She called it like it is. So, I thought that was cool that they included her.

⁶⁹ Sade Bonilla, Thomas S. Dee & Emily K. Penner, *Ethnic Studies Increases Longer-Run Academic Engagement and Attainment*, 118 PROC. NAT'L. ACAD. SCI. 37, 1 (2021).

⁷⁰ *Id.* at 8.

⁷¹ Kelly M. Lewis, Cris M. Sullivan & Deborah Bybee, *An Experimental Evaluation of a School-Based Emancipatory Intervention to Promote African American Well-Being and Youth Leadership*, 32 J. BLACK PSYCH. 3, at 12, 15 (2006). Regarding African Americans, see Collette Chapman-Hilliard & Valerie Adams-Bass, *A Conceptual Framework for Utilizing Black History Knowledge as a Path to Psychological Liberation for Black Youth*, 42 J. BLACK PSYCH. 479, 500 (2016). Regarding Latines, see Jessica M. Vasquez, *Ethnic Identity and Chicano Literature: How Ethnicity Affects Reading and Reading Affects Ethnic Consciousness*, 28 ETHNIC RACIAL STUD. 903 (2005); LISA GARCIA GARCIA-BEDOLLA, *FLUID BORDERS: LATINO POWER, IDENTITY AND POLITICS IN LOS ANGELES*, 185 (2005). Regarding Asian Americans, see Patricia Espiritu Halagao, *Holding Up the Mirror: The Complexity of Seeing Your Ethnic Self in History*, 32 THEORY RES. SOC. EDUC. 459, 472 (2004); Patricia Espiritu Halagao, *Liberating Filipino Americans through Decolonizing Curriculum*, 13 RACE ETHNIC AND EDUC. 495, 496 (2010).

⁷² NELSEN, *supra* note 53, at 81.

⁷³ *Id.* at 53.

-Jasmine (16-years-old, Black)⁷⁴

The [the critical textbook] stuck out to me. There was a whole paragraph dedicated to Mexican women. And the strike they did in California . . . I was just like “wow, you’re actually acknowledging women and their history. . . . **[The critical textbook] made me want to get more involved. They included several [labor] unions that have gotten political.** Then even paragraph three mentions the [activism] of janitors. So even acknowledging them was like “wow.” **Even these people who are often unheard in their career are getting involved . . . it made me realize that you can do anything.” It was something I’ve never been taught before.**

-Serena (16-years-old, Mexican American)⁷⁵

Reforming civics and social studies curricula to replace traditional, white-centric, heroes-focused content to more inclusive content that centers the experiences and contributions of racially marginalized groups can redress dignitary harm in two ways. First, as the above-cited research shows, it can reduce the various negative emotional, attitudinal, and academic outcomes associated with traditional curricula for racially marginalized students. Second, as the reflections from Jasmine and Serena quoted above underscore, it can provide students from these groups with a sense of collective dignity and empowerment.⁷⁶

Of course, content alone is insufficient to address dignitary harm within classrooms. Proponents of ethnic studies have combined their approach to curricular content in the classroom with participatory-action projects where they sought to use insights from history to address local, community-specific challenges.⁷⁷ Such pedagogical initiatives can have long-lasting impacts on students’ sense of agency and political efficacy. For example, one study of a network of schools with a predominantly Black and Latine student body found that exposure to participatory

⁷⁴ *Id.* at 96–97.

⁷⁵ *Id.* at 96, 100.

⁷⁶ *See id.* at 106–10. (The aforementioned critics of ethnic studies might respond with concern that such reforms would disadvantage white students. But Nelsen’s research shows that we need not view such curricular changes in this zero-sum manner. Indeed, he finds that white students exposed to ethnic studies narratives express greater appreciation for the political contributions of other racial and ethnic groups. In other words, addressing the dignitary harms faced by racially marginalized students through curricular reforms need not mean that white students “lose” something as a result. For prior research with similar findings, *see also* Lori J. Carrell, *Diversity in the Communication Curriculum: Impact on Student Empathy*, 46 COMM’N. EDUC. 234, 241 (1997); Julie M. Hughes, Rebecca S. Bigler & Sheri R. Levy, *Consequences of Learning About Historical Racism Among European American and African American Children*, 78 CHILD DEV. 1689, 1702 (2007); Janine de Novais & George Spencer, *Learning Race to Unlearn Racism: The Effects of Ethnic Studies Course-Taking*, 90 J. HIGHER EDUC. 860, 879 (2019)).

⁷⁷ *See, e.g.*, Bonilla et al., *supra* note 69, at 2.

action programs ranging from get-out-the-vote initiatives to “change the world” senior projects increased students’ likelihood to vote after graduation.⁷⁸

Others find that ethnic studies courses and related curricular reforms can inform more meaningful, historically grounded conversations about politics.⁷⁹ Such conversations foster empowerment, allowing students to understand their own social position and agency, rather than passively communicating their social status to them through curricular content.⁸⁰ Conversations of this kind are shown to increase feelings of political empowerment and willingness to participate in politics among Asian, Black, Latine, and White youth, and is associated with validated voter turnout among Black youth and validated voter registration among Latine youth.⁸¹ Extensive research by scholars from multiple academic disciplines demonstrates that when students are given greater control over classroom conversations, including politically contentious ones, they become more engaged in politics.⁸² In sum, fostering conversation rich and civically engaged learning environments can work to combat the multifaceted manifestations of dignitary harm experienced by young people of color in the classroom.

V. CONCLUSION

Seventy years ago, the unanimous Court in *Brown v. Board of Education* justified its ruling on the grounds that segregation caused psychological harm to Black students.⁸³ As many scholars have detailed in the decades since, the Court’s view of the harms caused by racism in public education was deeply narrow. In this article, we have stressed that the Court’s narrow view incorrectly excluded other dignitary harms racially marginalized students face. Importantly, *Brown*’s arguments about psychological harm posited segregation as the cause and integration of pupils as a sufficient solution.

As we have argued, dignitary harms can persist in integrated schools. Various policies and practices—including disciplinary policies, academic tracking, and curricular content—can cause emotional and psychological distress to racially marginalized students and undermine their sense of worth or status. We have argued that such dignitary harm can and should be redressed. Focusing on the case of

⁷⁸ Brian Gill et al., *Can Charter Schools Boost Civic Participation? The Impact of Democracy Prep Public Schools on Voting Behavior*, 114 AM. POLIT. SCI. REV. 1386, 1386–87 (2020).

⁷⁹ Matthew D. Nelsen, *Lessons in Empowerment: The Civic Potential of Historically Grounded Conversations among Racially Marginalized Youth*, 705 ANN. AM. ACAD. POL. SOC. SCI. 174, 181 (2023).

⁸⁰ *Id.* at 180.

⁸¹ *Id.* at 174.

⁸² David E. Campbell, *Voice in the Classroom: How an Open Classroom Climate Fosters Political Engagement Among Adolescents*, 30 POL. BEHAV. 437, 444 (2008); DIANA E. HESS, *CONTROVERSY IN THE CLASSROOM: THE DEMOCRATIC POWER OF DISCUSSION*, 27–29 (2009); DIANA E. HESS & PAULA MCAVOY, *THE POLITICAL CLASSROOM: EVIDENCE AND ETHICS IN DEMOCRATIC EDUCATION*, at 77, 79 (2014).

⁸³ *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954).

curricular content, we have provided examples of alternative approaches that can redress the harms that racially marginalized students continue to face in both segregated and integrated classrooms.⁸⁴

To put it simply, the demands of equal protection do not stop at school integration. Even within the integrated school and the integrated classroom, more must be done to affirm the equal dignity of all students.

We make this point not to offer a readily applicable legal remedy for courts to apply. Rather, our intention is to invite other scholars and advocates to imagine dignitary harm in public education and its possible remedies more expansively. Where the Court in *Brown* cited social science research to make a narrow claim about psychological harm, we urge scholars today to offer a more expansive view of dignitary harms in education by drawing on extensive social science research. And where the Court advanced an interpretation of the constitutional guarantee of equal protection as requiring integration, we invite scholars to advance a more robust interpretation of the Constitution as requiring much *more* than integration.

⁸⁴ See generally Lewis et al., *supra* note 71; Bonilla et al., *supra* note 69; NELSEN, *supra* note 53.

