

## Closing the Gates To Racial Parity: Venture Philanthropy's Perpetuation of Racial Disparities in the Educational Sphere

Lauren Silk

*Duke University, University of Miami School of Law*

Follow this and additional works at: <https://repository.law.miami.edu/umrsjlr>



Part of the [Law and Race Commons](#), and the [Law and Society Commons](#)

---

### Recommended Citation

Lauren Silk, *Closing the Gates To Racial Parity: Venture Philanthropy's Perpetuation of Racial Disparities in the Educational Sphere*, 12 U. MIA Race & Soc. Just. L. Rev. 197 ()

Available at: <https://repository.law.miami.edu/umrsjlr/vol12/iss2/3>

This Article is brought to you for free and open access by the Journals at University of Miami School of Law Institutional Repository. It has been accepted for inclusion in University of Miami Race & Social Justice Law Review by an authorized editor of University of Miami School of Law Institutional Repository. For more information, please contact [library@law.miami.edu](mailto:library@law.miami.edu).

# Closing the Gates To Racial Parity: Venture Philanthropy’s Perpetuation of Racial Disparities in the Educational Sphere

Lauren Silk\*

*In the decades-long rise of neoliberalism, venture philanthropy has emerged as a respected solution towards addressing reforms to public education. Private foundations such as the Bill and Melinda Gates Foundation have led the charge for education development in the United States. However, the infusion of private donations and adoption of business models to a public good have not improved educational outcomes. This article addresses the role of venture philanthropy in reinforcing racial and economic disparities in educational resources and attainment through the lens of Gates Foundation initiatives. Specifically, the article dissects the role of neoliberalism in crafting education policies through private funding and discusses how the Foundation’s failed ventures—such as the small school initiative, charter school expansion, and teacher evaluations based on student performance on standardized testing—have served to reinforce a status quo of “winners and losers.” The article concludes with suggested democratic solutions to achieve equitable educational reform.*

---

\* Lauren Silk received her B.A. in Political Science from Duke University in 2016 and graduated cum laude from the University of Miami School of Law in 2021. In between degrees, Lauren served as an AmeriCorps Member with City Year Miami at Madison Middle School. She currently works as an associate in general liability and insurance coverage at Lewis Brisbois Bisgaard & Smith, LLP. She would like to dedicate this Article to her family for their continuous love, guidance, and support. She would also like to extend her gratitude to Professor Fenton and Dean Dawson for creating a pilot course entitled Race and Economic Justice which provided the opportunity to explore and research this topic.

TABLE OF CONTENTS

I.	INTRODUCTION .....	199
II.	THE RULE-MAKERS AND THEIR RULES: THE ORIGINS AND LEGACY OF NEOLIBERALIST REFORM .....	200
III.	ENTER GATES: WINNERS AND LOSERS FROM GATES FOUNDATION CONTRIBUTIONS.....	204
	<i>A. The Small School Initiative</i> .....	206
	<i>B. Charter School Expansion</i> .....	210
	<i>C. Teacher Evaluations and Overreliance on Standardized         Testing</i> .....	215
IV.	CONSENT TO PLAY: HOW THE SYSTEM IS NORMALIZED.....	220
V.	PLAYER OVERRIDE: DECOMMISSIONING THE GAME FOR DEMOCRATIC OUTCOMES.....	222
VI.	CONCLUSION.....	227

## I. INTRODUCTION

Now there is another myth that still gets around: it is a kind of over reliance on the bootstrap philosophy. There are those who still feel that if the N\*gro is to rise out of poverty, if the N\*gro is to rise out of the slum conditions, if he is to rise out of discrimination and segregation, he must do it all by himself. And so they say the N\*gro must lift himself by his own bootstraps. . . . It's all right to tell a man to lift himself by his own bootstraps, *but it is a cruel jest to say to a bootless man that he ought to lift himself by his own bootstraps.*<sup>1</sup>

This cruel jest, the oft-espoused American Dream, translates into the myth of meritocracy—the idea that hard work, talent, and individual merit are always rewarded.<sup>2</sup> And in the education sphere, the public school system has come to represent the bootless man. Enter venture philanthropists. Operating within the framework of philanthropic enterprise under a neoliberalist ideology, billionaire philanthropists like Bill and Melinda Gates of the Gates Foundation seemingly offer the resources needed to excel and bridge any attainability gaps. By flooding the industry with funds, these foundations encourage innovative reform in under-resourced schools through competitive grant-making, school choice, and norms-based evaluations.

In itself, philanthropy is not a bad venture. But in a dual age of neoliberalism and “post-racialism,”<sup>3</sup> disparities in economic and educational attainment become cloaked by the rhetoric of individual liberty, free market choice, and competition for optimal outcomes. Consequently, venture philanthropists contribute to system justification, simultaneously obscuring and expounding upon a legacy of racial exclusion and subjugation.<sup>4</sup> The neoliberalist movement in philanthropy is rooted in market outcomes, a system that itself preordains a structure of

---

<sup>1</sup> Martin Luther King Jr. - Topic, *Remaining Awake Through a Great Revolution*, YOUTUBE (Mar. 31, 1968), <https://www.youtube.com/watch?v=SLsXZXJAURk> (emphasis added).

<sup>2</sup> See Melinda D. Anderson, *Why the Myth of Meritocracy Hurts Kids of Color*, THE ATLANTIC (July 27, 2017), <https://www.theatlantic.com/education/archive/2017/07/internalizing-the-myth-of-meritocracy/535035/>.

<sup>3</sup> Post-racialism first emerged in the 1970s, but grew in popularity following President Obama's election; it perpetuates the fallacy that racial discrimination is from a bygone era and equal opportunity exists without racial barriers. See generally Michael C. Dawson & Lawrence D. Bobo, *One Year Later and the Myth of a Post-Racial Society*, 6 DU BOIS R. 247 (2009).

<sup>4</sup> See Anderson, *supra* note 2.

winners and losers under the guise of competition and free exchange of ideas. As purported agents of change, the Gates family is at the forefront of educational philanthropy and operates within the discourse and agenda of neoliberalist reform.

Philanthropy adhering to the paradigm of neoliberalism inherently supports a system of marginalization. And in a country with a history of racially stratified groups of “winners and losers,” what other outcome than further entrenchment? This paper analyzes the contributions of venture philanthropists in perpetuating the racial divide in the educational sphere, primarily through the lens of the Gates Foundation—the largest private donor in the field.<sup>5</sup> Borrowing from Lani Guinier and Gerald Torres’ framework of understanding power and powerlessness, the foci of this paper lay in three questions: (1) “who made the rules?”; (2) “who is winning and who is losing?”; and (3) “what is the story we tell the losers to get them to want to continue playing?”<sup>6</sup> In answering these questions, the paper concludes with a dissection of the “game” and alternative democratic solutions to achieve education reform. As it becomes clear, articulating a desire for social justice reform within the confines of a neoliberalist capitalist structure becomes a matter subject to cooptation and distortion. The philanthropist may offer the boots, but what happens when they do not fit?

## II. THE RULE-MAKERS AND THEIR RULES: THE ORIGINS AND LEGACY OF NEOLIBERALIST REFORM

The question of “who made the rules?” in the education context refers to the tandem actions of government entities, corporations, and venture philanthropists to produce an education policy reflective of neoliberalist ideals and a desired labor force.<sup>7</sup> Such an inquiry exposes how “power differences and inequity do not stem from one group overpowering but also from one group defining or indirectly manipulating the very rules of

---

<sup>5</sup> MEGAN E. TOMPKINS-STANGE, POLICY PATRONS: PHILANTHROPY, EDUCATION REFORM, AND THE POLITICS OF INFLUENCE 20 (2016) (listing the Gates Foundation endowment of \$41.2 billion in 2016 and deeming it the largest actor in the field of education philanthropy).

<sup>6</sup> KEVIN K. KUMASHIRO, BAD TEACHER!: HOW BLAMING TEACHERS DISTORTS THE BIGGER PICTURE 3-5 (2012) (citing LANI GUINIER & GERALD TORRES, THE MINER’S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY (2003)).

<sup>7</sup> See *id.*; see also Kenneth J. Saltman, *From Carnegie to Gates: The Bill and Melinda Gates Foundation and the Venture Philanthropy Agenda for Public Education*, in THE GATES FOUNDATION AND THE FUTURE OF US PUBLIC SCHOOLS 1 (Philip E. Kovacs, ed., 2011) (expounding on “venture philanthropy as an expression of neoliberal ideology, applied to education and the shift in the logic of educational philanthropy accompanying the shift from an industrial economy to one that is service oriented.”).

the competition that favor them.”<sup>8</sup> And in a system of tandem action and shared incentives, the response also reflects how perceived liberal philanthropists, like the Gates, contribute to an educational system that functionally maintains the racial status quo.

In the early years of the 20th century, philanthropic endeavors were characterized by donor sentiments of public obligation—money was given, and control of its use was ceded to the grantees.<sup>9</sup> As white businessmen creating the education of students of color, these early philanthropists were generally viewed as liberal and unselfish, often shedding light to existing educational disparities.<sup>10</sup> However, barring appearances of liberal reformist intent, these early philanthropic ventures represented an unwillingness to disrupt the racial status quo. The Rosenwald Fund is one such example. Noted for its large contributions toward the construction of schools for Black students in the rural South,<sup>11</sup> Rosenwald instituted schools “organized around specific notions of what African Americans’ social status should be, emphasizing industrial education and training for manual labor.”<sup>12</sup> Not only operating within the context of segregated and restricted education for Black students, the Rosenwald Fund imposed an additional economic burden on Black communities: the requirement to partially subsidize school construction in addition to the taxes they already paid (which primarily subsidized exclusively white schools).<sup>13</sup>

In the latter half of the century, what was known as scientific philanthropy began to transition into venture philanthropy—a model of giving which coincided with the emerging ideals of neoliberal reform.<sup>14</sup> Neoliberalism—an espousal of privatization, marketization, and consumer choice—gained prominence in the 1980s era of Reaganomics, a trickle-down or “free-market” economics solution to address national struggles like poverty and failing schools.<sup>15</sup> However, Reaganomics became

---

<sup>8</sup> KUMASHIRO, *supra* note 6, at 5.

<sup>9</sup> Saltman, *supra* note 7, at 2.

<sup>10</sup> Kevin K. Kumashiro, *When Billionaires Become Educational Experts*, AM. ASS’N OF U. PROFESSORS (May-June 2012), <https://www.aaup.org/article/when-billionaires-become-educational-experts#.YCrPIOhKg2w>.

<sup>11</sup> See SARAH RECKHOW, FOLLOW THE MONEY: HOW FOUNDATION DOLLARS CHANGE PUBLIC SCHOOL POLITICS 26 (2013) (marking the extent of his impact with the fact that by 1932, “as many as 40 percent of all [B]lack children enrolled in school that year attended Rosenwald schools.”).

<sup>12</sup> *Id.* (internal quotations omitted).

<sup>13</sup> *Id.*

<sup>14</sup> See Saltman, *supra* note 7, at 2.

<sup>15</sup> Sunni Ali, *A Second-Class Workforce: How Neoliberal Policies and Reforms Undermined the Educational Profession*, 8 J. OF CURRICULUM & TEACHING 102, 105 (2019).

associated with the underdevelopment and economic genocide of communities of color as financial incentives were directed toward the wealthy in lieu of government-funded welfare for marginalized and working-class populations.<sup>16</sup>

Ripe within this economic framework was a push to characterize public schools as failures.<sup>17</sup> Correspondingly, public school failure became a self-fulfilling prophecy due to cities' decreased school budgets and lowered taxes levied against corporations and the wealthy.<sup>18</sup> Calls for privatization of public schools "informed the creation of alternatives to desegregation and the Republican narrative on the failure of public schools,"<sup>19</sup> with "private" and "public" becoming racialized metaphors for "good" and "[W]hite" and "bad" and "[B]lack," respectively.<sup>20</sup> Entwined with white supremacist discourse, the neoliberal framework deemed public schools as dysfunctional while viewing private management as a success in entrepreneurship, competition, and choice.<sup>21</sup> Despite societal fault, messaging focused simultaneously on the promise of individual attainment and personal responsibility for one's failures, disproportionately affecting minorities hit hardest by public school failure rhetoric.<sup>22</sup>

With the door open to privatization of public education, venture philanthropists entered the realm of giving with new goals of directing policy.<sup>23</sup> Following the model of privatization and deregulation, venture philanthropists view donations to public education as a social investment akin to venture capital: a business plan is needed, efficacy must be measured quantitatively, projects must be scalable, and public spending must match private investments.<sup>24</sup> Amid the repeated assertions that public

---

<sup>16</sup> *Id.* (citing MANNING MARABLE, *HOW CAPITALISM UNDERDEVELOPED BLACK AMERICA: PROBLEMS IN RACE, POLITICAL ECONOMY, AND SOCIETY* (1983)).

<sup>17</sup> Kumashiro, *supra* note 10 (noting the Reagan administration's 1983 report entitled *A Nation at Risk* "claimed not only that public schools were failing but also, more significantly, that their failure was a primary cause of the nation's economic recession at that time.").

<sup>18</sup> *Id.*

<sup>19</sup> Jon N. Hale, *The African American Roots of Betsey DeVos's Education Platform*, *THE ATLANTIC* (Jan. 18, 2017), <https://www.theatlantic.com/education/archive/2017/01/black-roots-school-choice/513569/>.

<sup>20</sup> Pauline Lipman, *Making Sense of Renaissance 2010 School Policy in Chicago: Race, Class, and the Cultural Politics of Neoliberal Urban Restructuring*, *GREAT CITIES INST., U. OF IL AT CHICAGO* 22 (Jan. 2009).

<sup>21</sup> *Id.*

<sup>22</sup> See Kenneth J. Saltman, *The Austerity School: Grit, Character, and the Privatization of Public Education*, 22 *SYMPLOKE* 41, 42-43 (2014), <https://muse.jhu.edu/article/566832>; see also Anderson, *supra* note 2.

<sup>23</sup> See Saltman, *supra* note 7, at 2.

<sup>24</sup> *Id.*

schools were failures, business leaders have supplanted educators in the reform movement, championing a new accountability and markets standard.<sup>25</sup> Unfortunately, minority communities in primarily urban areas have become the foreground for neoliberalist experimentation in education policy.<sup>26</sup> Consequently, use of these new standards has increased school failure and the racial achievement gap, designating students attending these schools as “unprepared to economically exist in a global market.”<sup>27</sup>

Venture philanthropists expect a return on their investment; but with unsuccessful outcomes,<sup>28</sup> the issue must be raised as to what their desired returns are. Where educators categorize venture philanthropists as taking “an ‘almost monopolistic approach to education reform,’”<sup>29</sup> the philanthropists themselves—often billionaires—characterize the public education system as “‘a closed market[,] a monopoly, a dead end’” that will fail without the innovative efforts brought by private intervention.<sup>30</sup> And yet, the primary consideration in evaluating whether or not to marketize the public school system is that markets always produce winners and losers.<sup>31</sup> Where competition can lead to optimal outcomes in the private sector, it also leads to what economist Joseph Schumpeter termed,

---

<sup>25</sup> RECKHOW, *supra* note 11, at 2; *see also* Marion Brady, *Why Current Education Reform Efforts Will Fail*, in *THE GATES FOUNDATION AND THE FUTURE OF US PUBLIC SCHOOLS 204-05* (Philip E. Kovacs, ed., 2011) (“[T]he new leaders assumed the two problems had easy solutions. If teachers didn’t know what to teach, then detailed ‘standards’ would tell them. And if they weren’t trying hard enough, then market forces—competition, merit pay, choice, vouchers, charters, publicity, fear of job loss, labeling and grading of schools, and so on—would pressure them to shape up. Competition, of course, required precise scorekeeping, hence the need for constant testing.”)

<sup>26</sup> *See* Lipman, *supra* note 20, at 7.

<sup>27</sup> Ali, *supra* note 15, at 106.

<sup>28</sup> *See* Joanne Barkan, *Got Dough? How Billionaires Rule Our Schools*, *DISSENT MAG.* (Winter 2011), <https://www.dissentmagazine.org/article/got-dough-how-billionaires-rule-our-schools> (“Meanwhile, evidence is mounting that the reforms are not working. Stanford University’s 2009 study of charter schools—the most comprehensive ever done—concluded that 83 percent of them perform either worse or no better than traditional public schools; a 2010 Vanderbilt University study showed definitively that merit pay for teachers does not produce higher test scores for students; a National Research Council report confirmed multiple studies that show standardized test scores do not measure student learning adequately.”)

<sup>29</sup> Natasha Singer, *The Silicon Valley Billionaires Remaking America’s Schools*, *N.Y. TIMES* (June 6, 2017), <https://www.nytimes.com/2017/06/06/technology/tech-billionaires-education-zuckerberg-facebook-hastings.html?auth=login-email&login=email> (quoting Larry Cuban, an emeritus professor of education at Stanford).

<sup>30</sup> Jason Blakely, *How School Choice Turns Education into a Commodity*, *THE ATLANTIC* (Apr. 17, 2017), <https://www.theatlantic.com/education/archive/2017/04/is-school-choice-really-a-form-of-freedom/523089/> (quoting billionaire “philanthropist” and former Department of Education Secretary Betsey DeVos).

<sup>31</sup> *Id.*

“creative destruction.”<sup>32</sup> In the private sphere, losses and costs are affordable without significant public damage; but with education, such losses and costs associated with market innovation are detrimental—they cannot be compensated.<sup>33</sup> More pessimistically, it has been suggested that such an outcome is purposeful, a means of creating a labor force that is disciplined, docile, and submissive to authority through implementation of the corporate school vision.<sup>34</sup>

### III. ENTER GATES: WINNERS AND LOSERS FROM GATES FOUNDATION CONTRIBUTIONS

The next question that arises is “who is winning and who is losing?”—a question intended for understanding how the “victors” repress while offering solutions by helping the “losers” to become better competitors.<sup>35</sup> This faulty premise of improving losers’ performance presents the downfall of reformists.<sup>36</sup> Enter Bill and Melinda Gates. In a generous characterization, the Gates are often labelled as the “good” billionaires, intending to invest in programs to improve underperforming schools and consequently falling victim to the narrative that losers need only be better competitors.<sup>37</sup> As the largest funders in education philanthropy,<sup>38</sup> though, this articulation of the Gates as mere passive participants to the marketization reform movement reads disingenuous.<sup>39</sup> In fact, the Gates

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* (“What happens to a community when its public schools are defunded or closed because they could not “compete” in a marketized environment?”).

<sup>34</sup> Saltman, *supra* note 7, at 6 (“[T]he education venture philanthropists envision is for an educated workforce wherein workers would compete in the global economy as a universally valuable vision rather than a class-specific one that benefits most those who own and control capital. Venture philanthropists openly talk about U.S. students ideally becoming workers who will compete for scarce jobs against workers from poorer nations.”); *see also* Ali, *supra* note 15, at 106.

<sup>35</sup> KUMASHIRO, *supra* note 6, at 5.

<sup>36</sup> Because, if the market system produces winners and losers, how can reform succeed where certain students are intended to lose?

<sup>37</sup> *See generally* Paul Hill, *A Foundation Goes to School*, 6 *EDU. NEXT*, <https://www.educationnext.org/afoundationgoestoschool/> (last updated Oct. 28, 2009) (defending Gates as continuing a family commitment to advancing opportunities for minority and poor students and simultaneously admitting he is a Gates Foundation grantee and supporter of school choice).

<sup>38</sup> TOMPKINS-STANGE, *supra* note 5 at 20.

<sup>39</sup> *See* Valerie Strauss, *Bill and Melinda Gates Have Spent Billions to Shape Education Policy. Now, They Say, They’re ‘Skeptical’ of ‘Billionaires’ Trying to Do Just That*, *WASH. POST* (Feb. 10, 2020, 9:59 PM), <https://www.washingtonpost.com/education/2020/02/10/bill-melinda-gates-have-spent-billions-dollars-shape-education-policy-now-they-say-theyre-skeptical-billionaires-trying-do-just-that/> (“The couple’s investments in public projects are so huge that public

are arguably more neoliberalist than progressive: expressing a belief that “America’s high schools are obsolete”;<sup>40</sup> faulting U.S. public schools for not producing enough competent engineers and scientists and instead desiring “a fluid supply of foreign technical labor to be brought into the U.S. to work for companies like Microsoft”;<sup>41</sup> and endorsing increased reliance on standardized testing or “metrics.”<sup>42</sup>

Gates Foundation policies articulate a neoliberalist agenda—notably through investments in the small school initiative, charter school expansion, and teacher evaluations based on student performance on standardized examinations.<sup>43</sup> Accompanying the neoliberalist speech and actions is a corporate model for their foundation. With an endowment of \$49.9 billion,<sup>44</sup> the Gates have formed their own bureaucracy of 700 staffers, deferring all major management decisions to themselves and a small team of close advisors; markedly, all members of their management team are from the corporate world—none are educators.<sup>45</sup> With the \$31 billion gift from Warren Buffet, the Gates Foundation quickly adopted a scheme of aggressive timelines, mandated annual payouts, and an increase

---

money invariably follows, and, thus, their pet projects get implemented.”); *see also* Valerie Strauss, *Um, Who are Melinda and Bill Gates Trying to Kid?*, WASH. POST (Apr. 16, 2019, 2:47 PM), <https://www.washingtonpost.com/education/2019/04/16/um-who-are-melinda-bill-gates-trying-kid/> (“Melinda and Bill Gates had ideas they believed would help improve public schools and leveraged their own money to bring in public dollars to fund their projects. They had enough clout to work with state governments and the federal government. It didn’t matter what experts said.”).

<sup>40</sup> Bill Gates, Remarks at 2005 National Education Summit (Feb. 26, 2005) (available at <https://www.gatesfoundation.org/ideas/speeches/2005/02/bill-gates-2005-national-education-summit>); *see also* Michael Klonsky, *Power Philanthropy: Taking the Public Out of Public Education*, in THE GATES FOUNDATION AND THE FUTURE OF US PUBLIC SCHOOLS 31 (Philip E. Kovacs, ed., 2011) (“A NCRP study found that each of the foundations had its own reasons for supporting privatization . . . . But most had expressed frustration with what they believe to be the “failure of public schools” and pushed the concept of free-market competition as a way to leverage better outcomes.”).

<sup>41</sup> Klonsky, *supra* note 40, at 31.

<sup>42</sup> *Id.*

<sup>43</sup> Kumashiro, *supra* note 10 (“Overwhelmingly, by number of initiatives and amount of funding, the leading venture philanthropies are emphasizing the privatization and marketization of public education with such initiatives as . . . incentive pay for teachers; alternative routes to certification for teachers and school leaders; and school-choice and charter- school initiatives.”).

<sup>44</sup> *Foundation Fact Sheet*, BILL & MELINDA GATES FOUNDATION, <https://www.gatesfoundation.org/Who-We-Are/General-Information/Foundation-Factsheet> (last visited Mar. 6, 2021).

<sup>45</sup> Klonsky, *supra* note 40, at 36 (“*Financial Times* writer Andrew Jack recalls how Bill Gates bristled at critics’ suggestions that the foundation should broaden the number and diversity of those who set strategy. ‘Corporations have a CEO. We have a CEO. Corporations have a board. We have a board,’ he says. ‘It’s not a gigantic board . . . It doesn’t avoid mistakes, but I think we’ve really made our best effort on those things.’”).

in staffing—but no solid theory of action.<sup>46</sup> In other words, with no plan and money to spend, the Gates Foundation was inclined to invest in an existing education reform system coincidentally predisposed toward racial subordination. Thus, Gates funding initiatives followed the neoliberalist legacy: “[t]he convergence of hundreds of millions in private dollars, an accountability system that emphasizes the failures of the current system of public schools, and the school choice movement [acting in concert] to exercise substantial influence within urban school districts.”<sup>47</sup>

#### A. *The Small School Initiative*

The Gates’ earliest foray into education reform came through their espousal of small schools. Beginning in 2000, the Gates Foundation invested heavily into splitting large public high schools with low test scores and graduation rates into smaller schools.<sup>48</sup> The structural change was based in an assumption that greater individual attention in closer “learning communities” would in itself increase student achievement and decrease dropout rates.<sup>49</sup> However, there was little scientific basis for this rationale, the Foundation acting absent any studies evidencing a causal relationship between school size and student performance.<sup>50</sup> A decade later, Wharton School statistician Howard Wainer proposed that the Gates likely “misread the numbers” and simply “seized on data showing small schools are overrepresented among the country’s highest achievers . . . .”<sup>51</sup> Over an eight-year span, the Foundation invested \$2 billion to create 2,602 schools in 45 states and the District of Columbia, directly impacting approximately 781,000 students.<sup>52</sup>

Despite the heavy investments, the Gates themselves dropped the initiative in 2009, announcing that it had not performed according to

---

<sup>46</sup> TOMPKINS-STANGE, *supra* note 5, at 21-22 (The Gates Foundation grew exponentially with the added donation of \$31 billion by Warren Buffet in 2006; yearly grants went from \$1.5 billion to \$3 billion by 2008, with the stipulation by his new investor that staffing and spending must increase. One source described the foundation as “choking” over the money and the doubled workload, resulting in a state of constant turmoil as people’s jobs were redefined.).

<sup>47</sup> RECKHOW, *supra* note 11, at 10.

<sup>48</sup> Barkan, *supra* note 28.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* But see Klonskey, *supra* note 40, at 26 (sharing that Tom Vander Ark, head of the Gates Foundation’s education program at the time, relied upon research from the University of Washington’s study of the Chicago’s small schools movement suggesting that students thrive in smaller academic settings).

<sup>51</sup> Barkan, *supra* note 28 (quoting an interview with Howard Wainer from Bloomberg Businessweek).

<sup>52</sup> *Id.*

expectations.<sup>53</sup> At the close of 2008, the Gates hosted one hundred prominent figures in education at their home outside Seattle to share that the small schools initiative did not produce strong outcomes.<sup>54</sup> What they failed to publicize was that, instead, it had “produced many gut-wrenching sagas of school disruption, conflict, students and teachers jumping ship en masse, and plummeting attendance, test scores, and graduation rates.”<sup>55</sup>

Why such a widespread rippling effect? The issue stemmed from coercive buy-in, or as some have termed, the “Gates effect.”<sup>56</sup> Foundation funding was substantial, especially at a time when President Bush’s Secretary of Education Rod Paige was pushing to defund the federal Smaller Learning Communities program and reappropriate that \$240 million from public school restructuring toward private and parochial schools.<sup>57</sup> The Gates grants offered schools an alternative funding source, albeit with strict demands. Money was given with the aim of reconfiguring existing schools into smaller learning environments, improving instruction, and increasing community investment; however, the desire for smaller academic settings was not shared by all grant recipients.<sup>58</sup> Districts were given arbitrary goals and timelines, sometimes lacking the means for implementation and at times leading to resistance from local reformers and educators.<sup>59</sup>

The Manual Project in Denver is just one such case study of the initiative’s failure.<sup>60</sup> Manual High School had been a respected institution, exhibiting strong test scores and an array of extracurriculars until forced busing ended in 1996; afterwards, the school ranked last on state exams and reported a drop-out rate of about 50%.<sup>61</sup> The Gates’ \$1 million

---

<sup>53</sup> Strauss, *supra* note 39.

<sup>54</sup> Barkan, *supra* note 28.

<sup>55</sup> *Id.*

<sup>56</sup> *See id.* (“Michael Klonsky, professor at DePaul University and national director of the Small Schools Workshop, describes the Gates effect this way: Gates funding was so large and so widespread, it seemed for a time as if every initiative in the small-schools and charter world was being underwritten by the foundation. If you wanted to start a school, hold a meeting, organize a conference, or write an article in an education journal, you first had to consider Gates.”).

<sup>57</sup> Klonsky, *supra* note 40, at 25.

<sup>58</sup> *Id.* at 26.

<sup>59</sup> *Id.*

<sup>60</sup> *See id.* at 28; *see also* TOMPKINS-STANGE, *supra* note 5, at 22 (“In 2005 and 2006, indicators emerged that the initiative was not meeting benchmarks of progress, including a high-profile failure of Manual High School in Denver, Colorado, where Gates had donated \$1 million.”).

<sup>61</sup> Jay Greene & William C. Symonds, *Bill Gates Gets Schooled*, BLOOMBERG BUSINESSWEEK (June 25, 2006), <https://www.bloomberg.com/news/articles/2006-06-25/bill-gates-gets-schooled> (Racial and socioeconomic diversity declined after middle-class white students were no longer bused in; the school thereafter was 90% minority students of a lower socioeconomic status.)

solution<sup>62</sup> was to divide the 1,100 students of Manual High among three smaller schools to create more intimate learning environments and incentivize staying in school.<sup>63</sup> However, the breakup was too abrupt. The schools were split into themes of leadership, art, and culture, but beyond that, little guidance was offered.<sup>64</sup> Two of the schools were helmed by novice principals,<sup>65</sup> and each school was too small to offer electives, resulting in the elimination of French class and the reduction of Advanced Placement offerings.<sup>66</sup> Small student bodies made fielding sports teams a struggle, the famed choir program was restricted to one school, and soon, the band, theater, and choir programs all disappeared.<sup>67</sup>

In actuality, the small school model was never achieved.<sup>68</sup> Instead, the three schools became three amorphous programs, with teachers and students shuffling between schools to access the courses they needed.<sup>69</sup> Once word of this shuffling got out, the schools were advised to become autonomous and stop sharing classes; course offerings dwindled further, and students organized under the group “Students 4 Justice” to advocate for more resources.<sup>70</sup> The paradox was that despite the want for resources, there was no shortage of money.<sup>71</sup> Nevertheless, aided by Colorado’s open-choice rules, students and teachers alike began leaving the Manual Schools in favor of other Denver schools that had greater offerings for athletes, musicians, and college-bound students.<sup>72</sup> Ultimately, with a student body of 580 students, Denver closed the Manual Project schools.<sup>73</sup>

With funding stripped, students were sent to different schools throughout Denver, teachers lost employment, and the community was left

---

<sup>62</sup> Notably, the \$1 million investment went towards teacher and principal training and technical support. Meanwhile, Manual High School had rusted water in its drinking fountains and housed some of its students in the basement. Allison Sherry, *Manual’s Slow Death*, DENVER POST, <https://www.denverpost.com/2006/05/05/manuals-slow-death/> (last updated May 8, 2016, 4:31 AM).

<sup>63</sup> Greene & Symonds, *supra* note 61.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*; see also Sherry, *supra* note 62 (remarking that the “three feuding principals hoarded textbooks and called police on each other’s students.”).

<sup>66</sup> Greene & Symonds, *supra* note 61.

<sup>67</sup> *Id.* (“When the famed choir was limited to one school, the popular director left, and that program withered, along with band and theater.”).

<sup>68</sup> See Sherry, *supra* note 62 (noting that the three schools were actually all housed in a single building).

<sup>69</sup> Klonskey, *supra* note 40, at 28.

<sup>70</sup> Sherry, *supra* note 62 (detailing how the Colorado Children’s Campaign—the group charged with administering Gates grants—organized a transition team that criticized the schools for allowing students to move from floor to floor, i.e. from school to school).

<sup>71</sup> See *id.* (“Manual has received more private money – roughly \$1.2 million – than any other Denver high school in the past 10 years.”).

<sup>72</sup> Greene & Symonds, *supra* note 61.

<sup>73</sup> *Id.*

with the shell of a once-shining school for its children.<sup>74</sup> The year after closure, graduation rates for former Manual students dropped from 68% to 52%, and dropout rates increased from 6% to 17%.<sup>75</sup> Moreover, test scores among displaced Manual students decreased between 3 to 38 points in reading, writing, and math, whereas in prior years, Manual students had generally gained between 8 to 19 points annually in those subjects.<sup>76</sup>

The failure of the small school initiative lay not in the idea itself, but in the Foundation's inexperience and fickleness.<sup>77</sup> Once the program did not work according to expectations, it was dropped without further self-assessment, but some experts note that fundamental pieces of the project were ignored.<sup>78</sup> The Foundation funded an idea, but provided no guidance for its mandate and underestimated the amount of cooperation needed from school districts and the state.<sup>79</sup> Instead, it required compliance with a completely arbitrary timeline for change, "propelled in part by its need to quickly identify a national, replicable model for the Foundation's new high school initiative."<sup>80</sup> In response, teachers resisted, feeling excluded from the decision-making process, and students, parents, and community organizations grew angry by the imposition of top-down school reform measures.<sup>81</sup> These creative experiments proved unscalable and demonstrated the Gates Foundation's naivete when confronting many of the intractable issues faced by underperforming schools.<sup>82</sup>

In the midst of the program's disappointing outcomes, Tom Vander Ark, then-Executive Director of the Gates Foundation's education initiatives, concluded: "We need to close a thousand schools."<sup>83</sup> Rather than blame the Foundation's reform model, Vander Ark proffered that failure stemmed from something inherent in schools like Manual, surmising that about 1,000 of the country's 20,000 neighborhood high schools would need to be closed.<sup>84</sup> Foundation supporters responded in

---

<sup>74</sup> Klonskey, *supra* note 40, at 28-29 (Independent researchers at the University of Colorado found that "558 students had been forced to relocate to new schools, which destabilized their lives as well as the Manual school community. Relationships [between students and teachers] were torn apart. Nearly a third of those students [were] classified by the district as withdrawn [either dropouts, moved out of state, or whereabouts unknown].").

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *See id.* at 27; *see also* Strauss, *supra* note 39.

<sup>78</sup> *See* Strauss, *supra* note 39.

<sup>79</sup> Greene & Symonds, *supra* note 61.

<sup>80</sup> Klonskey, *supra* note 40, at 28.

<sup>81</sup> *Id.*

<sup>82</sup> Greene & Symonds, *supra* note 61.

<sup>83</sup> Klonskey, *supra* note 40, at 27.

<sup>84</sup> *Id.* at 29; *see also* Sherry, *supra* note 62 ("In hindsight, Tom Vander Ark said that Manual was among the 1,000 or so high schools nationwide with enough problems that they should have been shut down to begin with.").

kind with critical assessments of the schools, attributing the initiative's failure to superintendent turnover and resistance from school boards and unions.<sup>85</sup>

The irony in Vander Ark's admission that small schools were no panacea was that most small-school activists, teachers, and researchers were already aware that it was no cure-all and understood that restructuring was an arduous process.<sup>86</sup> Their exclusion from decision-making exhibited the Foundation's unfamiliarity with a decade's worth of work towards school restructuring in many cities.<sup>87</sup> Rather than reflect inwardly or look outwardly at existing research, however, the Foundation adopted a new strategy beyond mere structural reform towards more substantive policy change.<sup>88</sup> As for the legacy of the small schools initiative, the strategy of school closures persists, best exhibited by the call to close at least 5,000 more high schools from President Obama's Education Secretary, Arne Duncan.<sup>89</sup>

### B. *Charter School Expansion*

The Gates Foundation's next significant contribution to education reform was its investment in the charter school movement.<sup>90</sup> Dollar for dollar, the charter school movement in Washington state has seen no bigger champion than Bill Gates, who has contributed millions to lobbying efforts and the Washington State Charter Schools Association, a creation of his foundation.<sup>91</sup> Charter schools are a neoliberal intervention subjecting public schools to competition with privately managed, but

---

<sup>85</sup> See Hill, *supra* note 37. *But see* Greene & Symonds, *supra* note 61 (“We viewed the decision to move Manual students to other schools as an admission of complete failure,” Denver Public School superintendent Michael F. Bennet wrote in April to two former Denver mayors who had been involved with the school. Concedes Van Schoales, president of the nonprofit that manage[d] Gates grants in Colorado: “We were trying to build a plane as we were taking off, and we crashed.”).

<sup>86</sup> Klonskey, *supra* note 40, at 27.

<sup>87</sup> *Id.*

<sup>88</sup> TOMPKINS-STANGE, *supra* note 5, at 22-23 (“After a 2006 evaluation indicated that the small schools portfolio was not achieving the results the foundation desired, Gates decided to change course, shifting its resources to a new strategy that emphasized systemic reform at the district, state, and national levels.”).

<sup>89</sup> Klonskey, *supra* note 40, at 29.

<sup>90</sup> *Id.* at 30.

<sup>91</sup> Sally Ho, *AP Exclusive: Billionaires Fuel US Charter Schools Movement*, AP (July 16, 2018), <https://apnews.com/article/92dc914dd97c487a9b9aa4b006909a8c> (“All told, the Bill and Melinda Gates Foundation has given about \$25 million to the charter group that is credited with keeping the charter schools open after the state struck down the law, and then lobbying legislators to revive the privately run, publicly funded schools.”).

publicly funded schools under the guise of consumer choice.<sup>92</sup> Charters do not follow the same rules or standards governing traditional public schools but have been adopted by Gates and other philanthropists as novel and improved vehicles for instruction for those who struggle in traditional school systems—principally children in poor, urban areas.<sup>93</sup> Although presented as a positive site for educational innovation,<sup>94</sup> charter schools are yet another “arena of capital accumulation enabled by the sequence of disinvestment, devaluation, and reinvestment in urban areas and public institutions.”<sup>95</sup>

For students of color, the charter system seemingly offers access to resources and an avenue for political and cultural self-determination; for teachers of color, the appeal is agency—the opportunity for professional autonomy, flexibility, and critical practice in the face of coercive and reductionist policies.<sup>96</sup> And for parents, it reframes self-determination as individual choice and responsibility, requiring the parent to be an informed education consumer to determine if the neighborhood public school is a viable option given the severely under-financed public system.<sup>97</sup> While some individual charter schools have excelled in closing the racial achievement gap,<sup>98</sup> their results are not scalable to serve the millions of low-income, minority students. Moreover, in a system where financing is tied to outcomes, those charter schools dependent upon foundation funding have the prerogative to expel or reject low-performing students, reinforcing the neoliberalist agenda of failing public schools and its attendees.<sup>99</sup>

With an annual grant budget of \$3 billion, the Gates Foundation has had a heavy hand in investing in this school choice model.<sup>100</sup> But where

---

<sup>92</sup> Lipman, *supra* note 20, at 24; *see also* Strauss, *supra* note 39 (indicating that charters who received Gates Foundation grants were required to use public funds too, thus reducing funding for the public school system).

<sup>93</sup> Ho, *supra* note 91.

<sup>94</sup> Blakely, *supra* note 30.

<sup>95</sup> Lipman, *supra* note 20, at 24.

<sup>96</sup> *Id.* at 24-25; (Public school administration has been restrained by the institution of common standards initiatives and federal funding schemes like No Child Left Behind, Race to the Top, and Common Core, though further discussion of government policy is beyond the scope of this paper.).

<sup>97</sup> *Id.*

<sup>98</sup> Eve L. Ewing, *Can We Stop Fighting About Charter Schools?*, N.Y. Times (Feb. 22, 2021),

<https://www.nytimes.com/2021/02/22/opinion/charter-schools-democrats.html> (citing 19% of charter schools as outperforming the public schools in math and reading, creating potentially life-changing effects for those students).

<sup>99</sup> *See* Barkan, *supra* note 28.

<sup>100</sup> *See* Hill, *supra* note 37 (“The idea [for the Gates Foundation] is to create new schools to serve the most disadvantaged students, via mixtures of chartering, contracting-out, and

questions of charter success can best be answered by “[i]t depends,”<sup>101</sup> data provides unquestionable evidence of charter schools continuing a legacy of segregated learning.<sup>102</sup> In an era of white flight and protests to integration, private choice models provided a de facto arrangement for the continuation of segregated schooling; and while similar homegrown efforts emerged among the Black community, the movement toward charter programs was a response to the underfunded public options—an intended byproduct of syphoned public funds being redirected to charters.<sup>103</sup>

Despite studies showing that “schools serving mostly poor children of color have fewer resources, more inexperienced teachers, and limited access to rigorous coursework,” charter schools are even more segregated than their noncharter counterparts and may actually contribute to racial divides in public school education.<sup>104</sup> In fact, the expansion of the charter school system has coincided with a shift towards increased segregation and inequality of education for students of color in schools with lower performance and graduation rates.<sup>105</sup> Where charter systems concentrated in hyper-segregated metropolitan areas like Chicago cater predominantly to Black students,<sup>106</sup> charter schools in rural areas in the South and Southwest are disproportionately white.<sup>107</sup> Worrisome too is the pattern of exclusion or underrepresentation of Latinx students in charter schools in the Southwest—a region triply segregating on the basis of race, poverty, and language.<sup>108</sup>

---

internal district reform. Some grants are very large: \$82 million to support New York City chancellor Joel Klein’s new schools-redevelopment effort . . . \$13 million to support Chicago mayor Richard Daley’s Renaissance 2010 new schools initiative . . . \$14 million to support a total overhaul of Oakland’s city schools . . . .”)

<sup>101</sup> Ewing, *supra* note 98 (noting research on both sides of the “pro-charter” or “anti-charter” lines can lead to opposite conclusions.)

<sup>102</sup> See generally ERIKA FRANKENBERG ET AL., CHOICE WITHOUT EQUITY: CHARTER SCHOOL SEGREGATION AND THE NEED FOR CIVIL RIGHTS STANDARDS (2010), <https://escholarship.org/uc/item/4r07q8kg>.

<sup>103</sup> See Ewing, *supra* note 98; see also Hale, *supra* note 19.

<sup>104</sup> Mandy McLaren, *New Charter Schools Debate: Are They Widening Racial Divides in Public Education?*, WASH. POST (May 16, 2017), [https://www.washingtonpost.com/local/education/new-charter-schools-debate-are-they-widening-racial-divides-in-public-education/2017/05/16/2f324676-0d78-11e7-9d5a-a83e627dc120\\_story.html](https://www.washingtonpost.com/local/education/new-charter-schools-debate-are-they-widening-racial-divides-in-public-education/2017/05/16/2f324676-0d78-11e7-9d5a-a83e627dc120_story.html).

<sup>105</sup> FRANKENBERG ET AL., *supra* note 102, at 1.

<sup>106</sup> *Id.* (“Almost a third end up in apartheid schools with zero to one percent white classmates . . . . At the national level, seventy percent of black charter school students attend intensely segregated minority charter schools . . . .”).

<sup>107</sup> *Id.* at 2.

<sup>108</sup> *Id.* at 2, 4 (“Half of Latino charter school students, for example, attended racial isolated minority schools.”).

The concern goes beyond the psychological and social impacts of having students learn in racially segregated environments.<sup>109</sup> History attests and modern-day data confirm the economic harms associated with separate but unequal funding models.<sup>110</sup> Notably, these harms to low income communities of color come not just from white flight, but from gentrification.<sup>111</sup> In cities like Chicago, efforts to redevelop coincided with investments in elite charter and magnet schools targeting white middle-class families in the newly gentrified communities—all at the expense of existing neighborhood schools serving working class students of color.<sup>112</sup>

Under Renaissance 2010 in Chicago—a Gates Foundation funded-program<sup>113</sup>—school closures in predominantly low income communities of color served to displace students and destabilize their performance.<sup>114</sup> Ren2010, as it became known, was a public adoption of the school choice model purporting to increase school performance.<sup>115</sup> Its mission, according to its website, was “to increase the number of high quality educational options in communities across Chicago by 2010. . . [by] creat[ing] [new

---

<sup>109</sup> *See id.* at 7 (“[S]egregation remains durably linked to limited opportunities and a lack of preparation for students of all races to live and work in a diverse society. Minority segregated schools are persistently linked to a wide array of educational and life disadvantages . . . . Students in segregated schools, charter or otherwise, are likely to have limited contact with more advantaged social networks (often linked to information about jobs and higher education) and fewer opportunities to prepare for living and working in a diverse society.”).

<sup>110</sup> *See id.* at 2 (noting that charter schools have neglected to collect basic data such as free lunch recipients, drawing concern that charter schools are subsidizing white flight with the very public funds needed by the students left behind in the now increasingly segregated public school system).

<sup>111</sup> In efforts to remain solvent amid cuts in federal funding, cities—relying increasingly on property tax revenues—became hotspots for public-private partnerships, often at the expense of its poorer residents. Public grants of land and subsidies funneled public tax dollars to developers, whose speculative building raised property values and property taxes alike, pushing out low-income and working-class renters and homeowners. *See* Lipman, *supra* note 20, at 7.

<sup>112</sup> *Id.* at 12; *see also* Ali, *supra* note 15, at 103-04 (“The city’s outgoing mayor, Rahm Emmanuel, . . . advanced a three-tiered model and arrangement of schools earmarked as privileged, stable and quality, and subpar. . . . The elite models were designed to mostly service white-middle income family populations. Families that cannot send their children to a top tier school or a quality charter end up leaving the city for greener educational pastures. . . . Hence, this explains why the enrollment in so many of the community schools is low and leads to more school closings. . . . Many of the buildings or campuses are underused, and taxpayers are responsible for footing the bill to pay for gas, water, electricity, internet, and security monitoring systems for empty warehouses.”).

<sup>113</sup> The Gates Foundation’s initial contribution to Ren2010 amounted to more than \$11 million. *See Daley Seeks Broad Strategy to Create “High Schools of Tomorrow,”* BILL & MELINDA GATES FOUND. (May 2005), <https://www.gatesfoundation.org/Ideas/Media-Center/Press-Releases/2005/05/Chicagos-High-Schools-of-Tomorrow>.

<sup>114</sup> Lipman, *supra* note 20, at 9, 12.

<sup>115</sup> *Id.* at 9.

schools] through a competitive, community-based selection process which establishes a set of high standards to which every new school will be held accountable.”<sup>116</sup> This amounted to closing public schools to create one hundred new charter schools by 2010.<sup>117</sup> Ren2010 followed the discourses of efficiency and accountability, where the calculus for school closures was reduced to a cost-benefit analysis.<sup>118</sup> In other words, it relied on test scores and the ratio of students to cubic feet of capacity to determine school closures—actual performance notwithstanding.<sup>119</sup> The introduction of new schools was intended to rebrand the area.<sup>120</sup> However, the initiative’s folly was in whose benefits were being more heavily weighed and which schools were being closed.<sup>121</sup>

Ostensibly enacted to help low-income communities, the subtext was race; Ren2010 ultimately served as a vehicle for displacement and gentrification, targeting students of color “and their supposed behavioral and attitudinal characteristics [which] resonate with current iterations of racial cultural deficit theories.”<sup>122</sup> Disinvestment was the tool for closing schools, accountability the means of identifying such schools; in tandem, both enabled “a racialized discourse of failure, probation, and lack of effort . . . [that] constructs African American and Latino schools and communities as deficient.”<sup>123</sup> The program intended to provide mixed-income schools with a majority of middle-class students, the implication being that these students could model proper behavior and work ethic to lower-income students of color.<sup>124</sup> And yet the proliferation of these new Chicago schools—such as University of Chicago charter schools, Montessori schools, and magnet schools—came at the expense of working class neighborhood schools whose doors were permanently closed.<sup>125</sup> While these new schools often targeted and benefited white middle class students,<sup>126</sup> lower income students of color lost stability and community, some going to as many as four different schools in three years.<sup>127</sup>

---

<sup>116</sup> *Chicago Public Schools: Renaissance 2010*, CHI. PUB. SCHS., [http://ren2010.cps.k12.il.us/\[https://web.archive.org/web/20090509200756/http://ren2010.cps.k12.il.us/\]](http://ren2010.cps.k12.il.us/[https://web.archive.org/web/20090509200756/http://ren2010.cps.k12.il.us/]) (last updated Aug. 13, 2008).

<sup>117</sup> *See id.*

<sup>118</sup> Lipman, *supra* note 20, at 8-9.

<sup>119</sup> *Id.* at 9.

<sup>120</sup> *Id.* at 13.

<sup>121</sup> *Id.* at 12-13 (“[T]he latest round of school closings led to the replacement of several neighbourhood schools serving working class students of color with selective enrollment, high-status magnet schools.”).

<sup>122</sup> *Id.* at 22 (citing EDUARDO BONILLA-SILVA, *RACISM WITHOUT RACISTS* (2003)).

<sup>123</sup> *Id.* at 8-9.

<sup>124</sup> Lipman, *supra* note 20, at 23.

<sup>125</sup> *Id.* at 12.

<sup>126</sup> *See cases cited supra* note 112.

<sup>127</sup> Lipman, *supra* note 20, at 13.

Four years into the program, fifty-one schools were closed or consolidated, with fifty-six of the eight-two schools reopened being charters.<sup>128</sup> Often times, minority students who were relocated returned to schools academically and demographically resembling those they had just left.<sup>129</sup> Many Black teachers became displaced and experienced pay cuts at their new jobs.<sup>130</sup> And families and community members lost their voice—the elimination of Local School Councils removing their only avenue for democratically elected decisionmaking power.<sup>131</sup>

### C. *Teacher Evaluations and Overreliance on Standardized Testing*

Discussion of school closures and student performance translates to another Gates-funded initiative in teacher evaluations. Premised on the concept that failed schools are the province of bad teachers, teacher evaluations were proposed as another means of improving student performance.<sup>132</sup> The Gates Foundation heavily invested about \$215 million in three public school systems and four charter management organizations to incorporate teacher assessment systems based on student standardized test scores.<sup>133</sup> In response, educators and assessment experts alike sounded the alarm, claiming use of standardized test performance would be unfair and statistically invalid; some even remarked that better alternatives existed and were being used for measuring teacher

---

<sup>128</sup> *Id.* at 4.

<sup>129</sup> *Id.* at 19 (sharing that of the displaced public housing students, 84% attended schools with below the average district test scores and 44% were in schools on probation).

<sup>130</sup> Ali, *supra* note 15, at 103.

<sup>131</sup> Lipman, *supra* note 20, at 9 (“Ren2010 eliminates democratically elected Local School Councils (LSCs) comprised primarily of parents and community members. Their significance extends beyond schools because LSCs are really the only grass roots, democratically elected body with decision making power in public institutions in the city. LSC members are the largest body of elected people of color in the US.”).

<sup>132</sup> See Marlene Sokol, *Sticker Shock: How Hillsborough County’s Gates Grant Became a Budget Buster*, TAMPA BAY TIMES (Dec. 15, 2015), <https://www.tampabay.com/news/education/k12/sticker-shock-how-hillsborough-countys-gates-grant-became-a-budget-buster/2250988/> (“[Gates] could not comprehend why teachers were not rewarded for exceptional results. And as for those whose students continually fell behind, he said, ‘they’re in the wrong line of work, and they need to find another job.’”).

<sup>133</sup> Strauss, *supra* note 39; Valerie Strauss, *Bill Gates Spent Hundreds of Millions of Dollars to Improve Teaching. New Report Says It Was a Bust.*, WASH. POST (June 29, 2018, 10:05 AM), [https://www.washingtonpost.com/news/answer-sheet/wp/2018/06/29/bill-gates-spent-hundreds-of-millions-of-dollars-to-improve-teaching-new-report-says-it-was-a-bust/?itid=lk\\_inline\\_manual\\_22](https://www.washingtonpost.com/news/answer-sheet/wp/2018/06/29/bill-gates-spent-hundreds-of-millions-of-dollars-to-improve-teaching-new-report-says-it-was-a-bust/?itid=lk_inline_manual_22) (noting schools invested an additional \$350 million of their own money).

competency without reliance on student test scores.<sup>134</sup> Nevertheless, the Gates Foundation persisted, and a majority of states later adopted the teacher evaluation system based on standardized test scores.<sup>135</sup>

The Intensive Partnerships for Effective Teaching (IP) initiative, as it was officially named, marked a shift in Gates Foundation strategy towards comprehensive systemic standards-based school reform efforts cohesive with state and federal education policy.<sup>136</sup> After Gates-funded research determined that the biggest variable for student outcomes was effective teaching, the next step was to scale.<sup>137</sup> The research was seemingly conclusive: with a highly effective teacher, student performance improved.<sup>138</sup> What remained unknown, however, was what made a teacher effective.<sup>139</sup>

The experiment began in 2009 in Hillsborough County in Florida with a seven-year grant of \$100 million.<sup>140</sup> Under Empowering Effective Teachers, the goal was to identify which teachers should be counseled out of the profession while bolstering the remaining new teachers with mentor support.<sup>141</sup> Teacher pay was based largely on students' standardized test scores coupled with observations from peer evaluators and principals.<sup>142</sup> With Gates funding, the schools were expected to pay bonuses to high-performing teachers, institute a teacher evaluation program, and fire "[a]t least 5 percent of tenured teachers . . . for under-performance annually."<sup>143</sup> In exchange, the district agreed to match the funds.<sup>144</sup> Initially, support was high among the union and administration.<sup>145</sup>

---

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> TOMPKINS-STANGE, *supra* note 5, at 23.

<sup>137</sup> *Id.* at 23-24 (referring to the study conducted by Harvard professor Tom Kane under the Measures of Effective Teaching Project funded by Gates).

<sup>138</sup> *Id.* at 24.

<sup>139</sup> *Id.* (quoting a Gates staff member on the unknown measure for teacher effectiveness).

<sup>140</sup> Times Editorial Board, *Gates Foundation Failures Show Philanthropists Shouldn't Be Setting America's Public School Agenda*, L.A. TIMES (June 1, 2016, 5:22 PM), <https://www.latimes.com/opinion/editorials/la-ed-gates-education-20160601-snap-story.html>.

<sup>141</sup> Sokol, *supra* note 132.

<sup>142</sup> Student performance on standardized exams accounted for 40% of teachers' evaluations. The rest was split between peer evaluators' submitted rubrics—based on teachers' knowledge and class behavior—and principals' evaluations. See Valarie Strauss, *Bill Gates Spent a Fortune to Build It. Now a Florida School System Is Getting Rid of It*, WASH. POST (Nov. 3, 2015, 4:00 AM), <https://www.washingtonpost.com/news/answer-sheet/wp/2015/11/03/bill-gates-spent-a-fortune-to-build-it-now-a-florida-school-system-is-getting-rid-of-it/>; see also Sokol, *supra* note 132.

<sup>143</sup> Times Editorial Board, *supra* note 140; Sokol, *supra* note 132.

<sup>144</sup> Times Editorial Board, *supra* note 140.

<sup>145</sup> Strauss, *supra* note 142.

However, by 2015, costs had ballooned from implementing a new bureaucratic system of mentors and peer evaluators that did not actually engage with students.<sup>146</sup> Raises under the new system added \$65 million annually to district expenses,<sup>147</sup> and to cover the new staff<sup>148</sup> and salary schedule, the district dipped into over half of its \$360 million reserve fund.<sup>149</sup> In all, the program's total cost rose from \$202 million to \$271 million—the district's share totaling \$124 million.<sup>150</sup> Adding insult to financial injury, the Gates Foundation withheld the last \$20 million owed “after deciding it [did] not, after all, favor the idea of teacher performance bonuses — a major change in philosophy.”<sup>151</sup>

Doubt of the IP initiative's success spread among educators and administrators alike. Though the mass firings never occurred, fear of dismissal resulted in teachers leaving at twice the designated rate, with non-retirement departures—mostly resignations—almost tripling.<sup>152</sup> And while almost 3,000 employees received raises of over \$8,000 in a single year, a majority of these large raises went to veteran teachers in stable suburban schools.<sup>153</sup> This was contrary to the initiative's stated goal of “channeling better and better-paid teachers into high-needs schools.”<sup>154</sup> Consequently, the students suffered too: Hillsborough's graduation rate fell to tenth out of Florida's twelve largest school districts; racial and economic achievement gaps remained pronounced, with Black students registering proficiency rates as low as 33 percent on the 2014 Florida Comprehensive Assessment Test; and under-resourced schools continued to be disproportionately staffed by the least experienced teachers.<sup>155</sup> Despite efforts to “spread top teachers around,” a student attending a high-poverty high school in Hillsborough was twice as likely as a suburban student to have a teacher under the age of 25 or new to the district.<sup>156</sup>

---

<sup>146</sup> Sokol, *supra* note 132.

<sup>147</sup> Performance bonuses added an additional \$12.7 million in annual expenses. *Id.*

<sup>148</sup> Evaluators and mentors amounted to at least 265 new hires—a staff that did not exist before 2010 and that was eligible for bonuses. *Id.*

<sup>149</sup> Strauss, *supra* note 142.

<sup>150</sup> Sokol, *supra* note 132 (adding that almost \$50 million of the \$271 million was paid to consultants).

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> Sokol, *supra* note 132.

Ultimately, the teachers were right in their critiques.<sup>157</sup> Irrespective of the plethora of societal factors that contribute to educational outcomes,<sup>158</sup> standardized testing itself has proven a poor indicator of performance.<sup>159</sup> It is a purposeful distortion. Contributing to the system of preordained winners and losers, “[s]tandardized, norm-referenced tests show where any given student ranks in comparison to other students who took the same test—that is, how they compare or refer to the majority or norm[,] [meaning] that there will always be some students scoring low, some scoring high, and many scoring in the middle.”<sup>160</sup> Rather than objective, the test is comprised of biases in the questions included or tossed to ensure a distribution of scores that reflects the current distribution.<sup>161</sup> In other words, it reinforces the status quo through stagnation and limited mobility.

In practice, its use gives credence to claims that the test accurately measures student learning, learning means high test performance, and teaching means increasing test scores.<sup>162</sup> If testing for information retention, standardized exams provide “accurate, satisfying answers, answers often drilled and drilled into kids’ heads until they produce near-automatic responses.”<sup>163</sup> In this vein, teaching has come to resemble “telling” and learning “remembering”—both absent any critical thinking.<sup>164</sup> Individualized learning is not rewarded, but rather is replaced by a narrowed uniform curriculum that favors test preparation over creative lesson plans.<sup>165</sup> So as students struggle, teachers lose flexibility in diversifying curriculum—a consequence which only widens the schism between schools for the “elite” and schools for everyone else.<sup>166</sup>

But if learning is to mean understanding, then the standardized testing model falls short. For Socrates, the measure was whether the student was

---

<sup>157</sup> Strauss, *supra* note 133 (“[A] 2018 report concluded that the teacher evaluation project had failed to achieve its goal of improving student achievement in any significant way.”).

<sup>158</sup> See Peter Kotecki, *A \$1 Billion Gates Foundation-Backed Education Initiative Failed to Help Students – Here’s How the Foundation’s Next \$450 Million Project Will Look*, BUSINESS INSIDER (Oct. 8, 2018, 10:53 AM), <https://www.businessinsider.com/gates-foundation-education-initiative-2018-9> (“[T]eachers only account for a relatively small percentage of how students perform. Most of the variance in test scores can be attributed to students’ prior performance in a given subject area and their background, such as socioeconomic status. . . .”).

<sup>159</sup> See KUMASHIRO, *supra* note 6, at 5-7.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.* at 7.

<sup>163</sup> Brady, *supra* note 25, at 212.

<sup>164</sup> *Id.*

<sup>165</sup> Ali, *supra* note 15, at 106; see also KUMASHIRO, *supra* note 6, at 9.

<sup>166</sup> KUMASHIRO, *supra* note 6, at 9.

making sense of the information.<sup>167</sup> Often, this took the form of cooperative debate and questioning to guide the learner towards logical conclusions.<sup>168</sup> However, no standardized, machine-scored test can replicate the assessment of a teacher who has spent the year in direct dialogue with students.<sup>169</sup> Rather than promote inquisitive, creative thinkers, this model serves to mechanize learning; and for the pessimistic minded, this sort of reward system for rote memorization over understanding produces the disciplined, docile, and submissive labor force valued in a capitalist neoliberal market.<sup>170</sup>

As for the teachers, their moral victory is no consolation. Gates-backed reform may have failed in increasing student performance, but it succeeded in decreasing retention of Black teachers in the profession, limiting their employability, suppressing their wages, and assisting in the de-unionization of their industry.<sup>171</sup> School failure became the teacher's failure.<sup>172</sup> Disproportionately brandished with a Scarlet A, Black educators fired from failing or closed schools have been dismissed as unqualified candidates in a job market increasingly catering to charter schools in the wake of public school closures.<sup>173</sup> Unfortunately, such displacement proved unnecessary, a byproduct of a failed system, as later studies of the IP initiative showed no improvement “in the effectiveness of newly hired teachers relative to experienced teachers [and] very few instances of improvement in the effectiveness of the teaching force overall.”<sup>174</sup>

---

<sup>167</sup> Brady, *supra* note 25, at 212.

<sup>168</sup> See *The Socratic Method: What It Is and How It Is Used in the Classroom*, STANFORD UNIV.: TOMORROW'S PROFESSOR POSTINGS, <https://tomprof.stanford.edu/posting/810> (last visited April 21, 2021).

<sup>169</sup> Brady, *supra* note 25, at 212.

<sup>170</sup> *Id.*; see also Saltman, *supra* note 7, at 6.

<sup>171</sup> See Ali, *supra* note 15, at 106-07 (providing data on Black educator exodus from the profession—a decline from roughly 40% to 22% over a 5-year period in Ren2010 schools and an approximate 13% decrease nationally); see also *id.* at 107 (“Overall, charter school teachers earn about 10 to 15 percent less than they would at a traditional public school, no matter what their experience . . . [N]eoliberal policies sanctioned a “low-ball” salary to educators for teaching a mostly black and brown population of learners who too often were forced to transition from closed schools into charter models.”); *id.* (“Since neoliberal policy planners during the Bush-Obama eras accused the unions of protecting poor educators who undermined the profession and sanctioned failing as a viable option, charter school spaces would occupy non-unionized professionals who worked more hours at a less pay-rate than their district level peers.”).

<sup>172</sup> *Id.* at 108.

<sup>173</sup> *Id.* at 103, 106; see *id.* at 108 (“When charter-and-contract schools declare they cannot find any quality black teaching candidates in their application pool, what they are saying is: ‘We cannot hire recently fired teachers who happen to be black from failing schools.’”).

<sup>174</sup> Brian M. Stecher, et al., *Improving Teaching Effectiveness: Final Report: The Intensive Partnerships for Effective Teaching through 2015-2016*, RAND CORP. 488 (2018), [https://www.rand.org/content/dam/rand/pubs/research\\_reports/RR2200/RR2242/RAND\\_](https://www.rand.org/content/dam/rand/pubs/research_reports/RR2200/RR2242/RAND_)

## IV. CONSENT TO PLAY: HOW THE SYSTEM IS NORMALIZED

The final question is that least analyzed—“what is the story we tell the losers to get them to want to continue playing?”<sup>175</sup> Given the Gates Foundation’s limited success in improving student achievement since its founding in 2000,<sup>176</sup> one must ask how narratives of its work can entrap the unwitting and persuade the less powerful to cooperate.<sup>177</sup> One Gates official answered concisely:

For organizations with our size and with our resources, you can make grants to lots of organizations to promote a certain message not just with government but also with business and with the public, and anybody who cares to look would find very quickly that all of these organizations suddenly singing from the same hymn books are all getting money from the same organization. We fund almost everyone who does advocacy. We have this enormous power to sway the public conversations about things . . . .<sup>178</sup>

In other words, with everyone on payroll, there is little incentive for public scrutiny or oversight. It follows then that Gates media coverage has been fairly positive.<sup>179</sup> A climate of underfunded public systems and increased public-private ventures has reimagined philanthropists as knights in shining armor for otherwise would-be critics in need of resources and financing. As a consequence, venture philanthropists buy institutional compliance through what educator Michael Klonskey describes as a Faustian deal—public autonomy and decisionmaking in exchange for survival (and much-needed funding).<sup>180</sup>

However, this survival comes at a cost for individuals—in particular, people of color. Tacit acceptance of privatization and marketization

---

RR2242.pdf (a 526-page report analyzing the effectiveness of the Gates Foundation’s Intensive Partnerships for Effective Teacher program).

<sup>175</sup> KUMASHIRO, *supra* note 6, at 5.

<sup>176</sup> See Barkan, *supra* note 28 (detailing failed school reform initiatives); Strauss, *supra* note 133 (Gates’ admission to failures).

<sup>177</sup> See TOMPKINS-STANGE, *supra* note 5, at 6-7 (recording one Gates’ staffer as saying, “there’s a reverence and a belief that the foundation just knew so much more than anyone else, and a bowing of power.”).

<sup>178</sup> *Id.* at 116-17 (internal quotations omitted); see also Sally Ho, *AP Analysis Shows How Bill Gates Influences Education Policy*, AP (May 16, 2018), <https://apnews.com/article/a4042e82ffaa4a34b50ceac464761957> (explaining how the Gates Foundation funding model is to finance policy work, research, national advocacy groups, community leaders, unions, and the media—mainstream and niche).

<sup>179</sup> RECKHOW, *supra* note 11, at 4.

<sup>180</sup> Klonskey, *supra* note 40, at 32.

redirects public policy from structural reform (like economic redistribution) to behavior modification, shifting blame for the root causes of poverty, racism, housing insecurity, and school failure from the state onto the people.<sup>181</sup> For minority and lower-income communities, this neoliberalist discourse diminishes experiences of racism, poverty, and inequality as nonsystemic or attributable to personal fault.<sup>182</sup>

When “grit”<sup>183</sup> is sold in the educational context, the fabled tale of overcoming the trauma of poverty “through learned self-control and submission to authority within the school” becomes normalized.<sup>184</sup> The danger lies in the promise of subjective control and agency: the idea that “cultural pathologies” can be cured by extraordinarily good behavior.<sup>185</sup> Where race has been systemically linked to poverty<sup>186</sup> and poverty to worsened student performance,<sup>187</sup> any suggestion that success may be attained by individual merit alone falls flat.<sup>188</sup> But the current system regurgitates the myth and “function[s] primarily to undermine the ability of individuals to think critically, imagine the unimaginable, and engage in thoughtful and critical dialogue [or] [p]ut simply, to become critically informed citizens of the world.”<sup>189</sup> Repeated enough, the paradigm of deserving and undeserving people becomes internalized.

Ultimately, the increasing acceptance of venture philanthropists and their neoliberalist logic leads to anti-democratic outcomes. Gates Foundation grants seemingly support a system of choice through charters

---

<sup>181</sup> See Lipman, *supra* note 20, at 23.

<sup>182</sup> See *id.*

<sup>183</sup> Saltman, *supra* note 22, at 43 (“‘Grit’ is a pedagogy of control that is predicated upon a promise made to poor children that if they learn the tools of self-control and learn to endure drudgery, they can compete with rich children for scarce economic resources.”).

<sup>184</sup> *Id.*

<sup>185</sup> *Id.* at 44; see also Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/>.

<sup>186</sup> See *id.* (“Instead, the concentration of poverty has been paired with a concentration of melanin.”); see also *The Economic State of Black America in 2020*, U.S. SENATE JOINT ECON. COMMITTEE 18 (2020), [https://www.jec.senate.gov/public/\\_cache/files/ccf4dbe2-810a-44f8-b3e7-14f7e5143ba6/economic-state-of-black-america-2020.pdf](https://www.jec.senate.gov/public/_cache/files/ccf4dbe2-810a-44f8-b3e7-14f7e5143ba6/economic-state-of-black-america-2020.pdf) (“Race is highly linked to income and wealth, and therefore many poor neighborhoods are also Black neighborhoods. The most impoverished families most often live in the poorest neighborhoods with the worst schools . . . .”) [hereinafter *The Economic State*].

<sup>187</sup> *The Economic State*, *supra* note 186, at 18 (“Concentrated poverty leads to weak student performance.”).

<sup>188</sup> *Id.* at 19 (“As a result of segregation, many Black Americans are held back by wide differences in school quality. This is a powerful determinant of economic outcomes, undermining the notion that every American has roughly the same chance of achieving economic success.”).

<sup>189</sup> Saltman, *supra* note 22, at 44 (citing Henry A. Giroux, *The Disimagination Machine and the Pathologies of Power*, 21 SYMPLOKE 257, 263 (2013)) (internal quotations omitted).

and teacher ratings. The introduction of choice in education “facilitate[s] a shift from collectivism to individualism, from a view that a common school is desirable to one that encourages parents/consumers to shop around and maximize their children’s opportunities of enjoying an ‘uncommon’ education.”<sup>190</sup> However, contextualizing education as a commodity—as opposed to the public good it is—results in democratic participation being supplanted by “market freedom.”<sup>191</sup> Rather than provide critical deliberation and debate among community members, marketization of Gates-funded initiatives has limited options through selective school closures and school openings.<sup>192</sup> Public school systems have funds syphoned, are labelled as failing, and present a continued legacy of racialized educational disparities.

The freedom of choice is thus illusory—students and parents may “choose,” but they are not meant to choose strong collective institutions.<sup>193</sup> As it stands, taxpayers contributing to 99% of the K-12 education budget are beholden to a narrative of choice—or “false advertising for a faulty product”—from unelected philanthropists.<sup>194</sup> And the philanthropists? In discovering a tax haven for wealth accumulation in the guise of charitable contributions,<sup>195</sup> they have “cement[ed] hegemony by producing consent for conservative economic arrangements and educating citizens to comprehend civil society in ways compatible with ruling-class interests.”<sup>196</sup>

## V. PLAYER OVERRIDE: DECOMMISSIONING THE GAME FOR DEMOCRATIC OUTCOMES

To dismantle the fallacy, one must start by questioning the logic of philanthrocapitalism in the education system. Foundations adopt the role of the “honest broker,” trading on output legitimacy—“the extent to which they produce impactful, efficient, and effective policy change”—rather

---

<sup>190</sup> Lipman, *supra* note 20, at 30 (quoting Roger Dale, *The Thatcherite Project in Education: The Case of the City Technology Colleges*, 9 CRITICAL SOC. POL’Y 12-13 (1989)).

<sup>191</sup> Blakely, *supra* note 30.

<sup>192</sup> *See id.*

<sup>193</sup> *Id.*

<sup>194</sup> *See* Barkan, *supra* note 28.

<sup>195</sup> *See* Charles Piller et al., *Dark Cloud over Good Works of Gates Foundation*, L.A. TIMES (Jan. 7, 2007 12:00 AM), <https://www.latimes.com/archives/la-xpm-2007-jan-07-na-gatesx07-story.html> (noting the Gates Foundation grants at least 5% of its worth annually to avoid paying most taxes); *see also* Saltman, *supra* note 7, at 8 (“For every ten dollars givens by the Gates Foundation, four dollars is lost from the public wealth in taxes.”).

<sup>196</sup> Saltman, *supra* note 7, at 7.

than input legitimacy—“the extent to which they reflect the representative or authentic views of the public.”<sup>197</sup> The problem is that education reform is neither a neglected nor tractable cause.<sup>198</sup> Government expenditures alone in K-12 public schools amounted to \$739 billion (or \$14,439 per pupil) in 2016-2017, a 20% increase from 2000-2001.<sup>199</sup> From an investment standpoint, adding private financing to an unneglected cause proves illogical; the funding is duplicative and results in diminished marginal returns.<sup>200</sup> And despite the substantial investments, there is no expert consensus on what works.<sup>201</sup> Consequently, the spending is not additive; it is discordant.<sup>202</sup> Billions are spent, policies are hotly contested, and the status quo remains to be changed.<sup>203</sup>

What then is the return sought from philanthropic investments in education? Examining the motivation of elite concern provides three alternative avenues.<sup>204</sup> One is that those in power are making the best use of their fortunes within the confines of structural inequities outside of their control; the world is what it is, but they are helping.<sup>205</sup> This explanation, however, is far too charitable in characterizing elites as passive actors.

The second avenue is less fatalistic, critiquing elites as “shirking the duty of more meaningful reform”; their reform is well-intentioned, but focuses on the symptoms of inequity rather than the root causes.<sup>206</sup> Investments in smaller schools, charter schools, and teacher evaluations seem to corroborate this view: smaller schools, intended to provide more intimate learning environments, did not address the poverty of students who slept in Manual High School’s basement;<sup>207</sup> charter schools, meant to foster educational innovation, did not offer job and housing security to residents of Chicago’s increasingly segregated and gentrified neighborhoods;<sup>208</sup> and the teacher evaluation system, envisioned as the answer to student achievement gaps, did not resolve the economic

---

<sup>197</sup> TOMPKINS-STANGE, *supra* note 5, at 6-7.

<sup>198</sup> Dylan Matthews, *Billionaires are Spending their Fortunes Reshaping America’s Schools. It Isn’t Working.*, VOX (Oct. 30, 2018, 9:30 AM), <https://www.vox.com/future-perfect/2018/10/30/17862050/education-policy-charity>.

<sup>199</sup> U.S. Department of Education, *The Condition of Education 2020*, NAT’L CTR. FOR EDUC. STAT., [https://nces.ed.gov/programs/coe/indicator\\_cmb.asp](https://nces.ed.gov/programs/coe/indicator_cmb.asp) (last updated April 2020).

<sup>200</sup> Matthews, *supra* note 198.

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> ANAND GIRIDHARADAS, WINNERS TAKE ALL: THE ELITE CHARADE OF CHANGING THE WORLD 7-8 (2018).

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> See Sherry, *supra* note 62; see generally *supra* Part A.

<sup>208</sup> See generally *supra* Part B.

disparities between urban and suburban communities in Hillsborough County.<sup>209</sup>

However, this approach wholly ignores elites' contributions to the root causes. Following President Reagan's decree that "the government is not the solution to our problem; government is the problem,"<sup>210</sup> elite philanthropists have stoked public distrust of public institutions.<sup>211</sup> Their push for public school closures has exacerbated existing economic inequalities through the resulting job losses, educational disruptions, and community displacement; the irony is that this predominantly harmed poorer minority communities—their intended beneficiaries.<sup>212</sup> Worse yet, in the case of the Gates Foundation, grant money has been generated from "holdings in many companies that have failed tests of social responsibility because of environmental lapses, employment discrimination, disregard for worker rights, or unethical practices."<sup>213</sup> If profits are derived from investing in societal harms, the assumption of good intent begins to flounder.

The third view provides perhaps the best conception of elite concern: by appointing themselves as leaders of social change, elites avoid disrupting a status quo that serves them.<sup>214</sup> In this manner, public solutions are often set aside and replaced by private and voluntary half-measures.<sup>215</sup> The resort to school reform measures that merely address the symptoms of inequity demonstrate as much. Poverty is one of the biggest contributors to the racial achievement gap in schools,<sup>216</sup> and studies have shown that "the gap in cognitive, physical, and social development between children in poverty and middle-class children is set by age three."<sup>217</sup> Educational

---

<sup>209</sup> See generally *supra* Part C; see also WILLIAM AYERS & THERESE QUINN, *Foreword in BAD TEACHER!: HOW BLAMING TEACHERS DISTORTS THE BIGGER PICTURE* xii (2012) ("Let's say we did fire all the bad teachers, however defined or described. What then? Did classes suddenly become smaller, schools better resourced? Is outdoor playtime in place and obesity a thing of the past? Are kids now focused and engaged? Is poverty eliminated and health insurance available to them? Are guns and drugs out of their communities, and their local libraries open every day?").

<sup>210</sup> GIRIDHARADAS, *supra* note 204, at 18.

<sup>211</sup> *Id.* at 6.

<sup>212</sup> See generally *supra* Part III.

<sup>213</sup> Piller, *supra* note 195 (noting that 95% of the Gates Foundation's worth is invested in a highly diversified portfolio—including known polluters such as Mondri, BP, and Royal Dutch Shell—with the aim of providing a self-sustaining fund for its grant-making).

<sup>214</sup> GIRIDHARADAS, *supra* note 204, at 7.

<sup>215</sup> *Id.*

<sup>216</sup> See *The Economic State*, *supra* note 186, at 18 ("Segregated districts have large achievement gaps, not solely due to the racial composition of the student body, but because poverty makes it difficult for students to excel at school . . . .The children at these [high-poverty] schools come from high-stress environments, surrounded by more crime and violence than affluent White children, adding extra barriers to achievement.").

<sup>217</sup> Barkan, *supra* note 28.

attainment is not merely determined by what students confront at the schoolhouse door, but by a plethora of other societal factors including “poor physical conditioning[,] teenage work and family demands[,] population mobility[,] hunger[,] [and] social class differences.”<sup>218</sup> Yet, reform movements have turned their eyes to the “ills” of public schools, a move that has proven to be premised in a lie.<sup>219</sup>

Educational philanthropy truly intending to effect change would make steps toward eradicating poverty. But in a system that has rewarded the elites, it is not in their best interest to adopt such a policy:

Because they are in charge of these attempts at social change, the attempts naturally reflect their biases. The initiatives mostly aren’t democratic, nor do they reflect collective problem-solving solutions. Rather, they favor the use of the private sector and its charitable spoils, the market way of looking at things, and the bypassing of government. They reflect a highly influential view that the winners of an unjust status quo—and the tools and mentalities and values that helped them win—are the secret to redressing the injustices.<sup>220</sup>

Consequently, we cannot task the victors with reforming a system from which they benefit. But if philanthrocapitalism is not the answer, what is?

---

<sup>218</sup> Brady, *supra* note 25, at 208-09; *see also* Toluse Olorunnipa & Griff Witte, *George Floyd’s America: Born with Two Strikes: How Systemic Racism Shaped Floyd’s Life and Hobbled his Ambition*, WASH. POST, <https://www.washingtonpost.com/graphics/2020/national/george-floyd-america/systemic-racism/> (last updated Oct. 8, 2020, 7:47 AM) (“Yet, Black families also have just over one-tenth the wealth of the typical White household, a gap that has persisted for decades. The Black unemployment rate has consistently been double that of Whites, putting African Americans in recessionary territory even when other Americans are experiencing a boom. And the gap in homeownership is wider than it was a half-century ago. In recent years, unequal treatment in the criminal justice system has stirred the most passion. Black citizens are incarcerated at six times the rate of Whites. They are also more than twice as likely to be killed during interactions with police . . .”).

<sup>219</sup> Barkan, *supra* note 28 (“Two of the three major international tests—the Progress in International Reading Literacy Study and the Trends in International Math and Science Study—break down student scores according to the poverty rate in each school. The tests are given every five years. The most recent results (2006) showed the following: students in U.S. schools where the poverty rate was less than 10 percent ranked first in reading, first in science, and third in math. When the poverty rate was 10 percent to 25 percent, U.S. students still ranked first in reading and science. But as the poverty rate rose still higher, students ranked lower and lower.”).

<sup>220</sup> GIRIDHARADAS, *supra* note 204, at 5.

The solution lies in the “problem” neoliberalist thinking sought to alleviate: public institutions. Preoccupation with school readiness has reframed the state’s role from providing for children’s welfare, upbringing, and living conditions to setting academic standards and curriculum.<sup>221</sup> However, empirical comparisons propose that, as between offering free preschool and subsidizing family income, the latter is a more cost-effective investment towards improving student performance.<sup>222</sup> The idea is not to favor financing family support over school readiness,<sup>223</sup> rather, it is to recognize the state’s unique role in being able to alleviate the burdens of poverty, hunger, and neglect in tandem with its curriculum setting.<sup>224</sup> With robust regulatory and taxing powers, the state is best situated to scale relief to the masses—such as through tax credits,<sup>225</sup> financial subsidies, and safety regulations over housing, food, and childcare services.<sup>226</sup>

Restoration of faith in public institutions is but one step in the process of deconstructing the current system. The other is the reintroduction of democratic participation. Where market freedom conflicts with democratic involvement, the formation of shared collective action through government bodies or unions has been stymied.<sup>227</sup> Consequently, for government reform to succeed, control over the use of educational spending should be completely ceded to the public.<sup>228</sup> This amounts to “end[ing] tax breaks for foundations[,] erecting a wall between giving and the use of money for education as part of a larger movement against business driven, antipublic educational reform[,] [and] stop[ping] the application of economism to educational reform.”<sup>229</sup> By allowing the

---

<sup>221</sup> See Grover J. “Russ” Whitehurst, *Family Support or School Readiness? Contrasting Models of Public Spending on Children’s Early Care and Learning*, BROOKINGS (Apr. 28, 2016), <https://www.brookings.edu/research/family-support-or-school-readiness-contrasting-models-of-public-spending-on-childrens-early-care-and-learning/>.

<sup>222</sup> *Id.*

<sup>223</sup> *Id.* at 3 (“[The framing of family support vs. school readiness] is a matter of emphasis rather than mutual exclusivity. In other words, expenditures that have a primary goal of strengthening and supporting families in carrying out their responsibilities as parents need not and should not ignore children’s development, including children’s cognitive and social-emotional readiness for school. But in a family support model school readiness is one branch on the tree, not the trunk.”).

<sup>224</sup> *See id.*

<sup>225</sup> *Id.* (for example, the Earned Income Tax Credit which boosts the income of low-income parents of young children).

<sup>226</sup> *See id.*

<sup>227</sup> Blakely, *supra* note 30.

<sup>228</sup> Saltman, *supra* note 7, at 17-18.

<sup>229</sup> *Id.*

public to participate in policymaking and supervise spending,<sup>230</sup> the harms of philanthropies' outsized influence can be mitigated.

## VI. CONCLUSION

When asked in an interview about a recent epiphany she has had regarding her privilege, Melinda Gates replied:

[I]t's not enough to read about it. You have to be in the community with people who don't look like you . . . Every single person who walks through our door should feel comfortable in our house, despite how large it is and that it has nice art. And, believe me, there are people who show up at my front door who are not that comfortable. So sometimes that means sitting down inside the front door with our dog—and I'm in my yoga pants, no makeup on—and petting the dog until they're comfortable being there. And only if we've made them comfortable can we be in real community.<sup>231</sup>

Nothing best exemplifies the logic of venture philanthropy than this quote. Neoliberalist logic asks us to accept the status quo of economic stratification. To ignore the vestiges of segregation and discrimination. To be comfortable with a system of winners and losers. In the education sphere, the privatization and marketization of a public good has served to further entrench racial disparities in the name of choice, competition, and free market optimization. Nevertheless, as Gates-funded projects have proven, choice-based initiatives like charter school programs and norms-based evaluations have preordained certain schools, students, and teachers to fail. In a purportedly “post-racial” society where racial discrimination and its vestiges have been made invisible, failure attributable to systemic racism is internalized and individualized. Consent is forged, and democratic participation meant to support collectivism is stifled.

---

<sup>230</sup> For example, this could include returning to a system of elected school boards in minority and lower socioeconomic status communities, which are much more likely to have mayoral control of schools and appointed school boards. See KUMASHIRO, *supra* note 6, at 10.

<sup>231</sup> David Marchese, *Melinda Gates on Tech, Innovation, Global Health and Her Own Privilege*, N.Y. TIMES (Apr. 5, 2019), <https://www.nytimes.com/interactive/2019/04/15/magazine/melinda-gates-foundation-interview.html> (emphasis added).

Thus, just as Melinda Gates invites us to be at ease while entering her space,<sup>232</sup> venture philanthropy offers to placate the blow of persistent educational and economic disparity through funding schemes that reinforce stratification—namely, on a class and race basis. Anti-democratic outcomes can only be resolved through democratic solutions. By exiting the paradigm of failed public institutions and successful private ventures, the process of securing legitimate equality in educational achievement can begin.

---

<sup>232</sup> Understandably, people would feel unease entering her home—valued at \$100 million. *See id.*