



Race, Disability and Education: Law's Uphill Battle? Professor Leslie Thomas KC

23 May 2024

"Learning became a priority because I was dyslexic and made educationally subnormal. Therefore, I needed time to learn; time I could have spent working; paying for private lessons for my children; and travelling the world with them. If only I hadn't been a product of an evil kind of racism very similar to slavery, where enslaved Africans remained at the very bottom of society and weren't allowed to read; in fact, it could be fatal for an enslaved African to be caught reading a book."¹

This is my final lecture as Gresham Professor of Law. I'm going to talk about education, race, and disability in the English state education system. Out of necessity, my focus is going to be on England. Obviously, Scotland and Northern Ireland have separate education systems with distinct histories, and under devolution there has also been increasing divergence between the English and Welsh education systems. Unfortunately, time doesn't permit me to talk about the Scottish, Welsh, or Northern Irish experience.

It shouldn't be controversial to say that all children and young people deserve a high-quality education, which will maximise their potential, and give them the opportunity to succeed and thrive. The introduction of universal, free state education was an enormous step forward for society. Unfortunately, however, the English state education system has often delivered grossly unequal outcomes, with Black children and disabled children being systemically disadvantaged.

In the first part of the lecture, I will trace the historical development of state education in England, with a particular focus on the experiences of Black children and disabled children. In the second part, I will look at how racist and eugenicist ideas have influenced educational discourse and will debunk the false claims of the "hereditarian" movement who argue that there are genetic differences in intelligence between races. I'll wrap up with some suggestions for how we can improve things.

A content warning: in this lecture, when quoting historical laws and policies, I will often have to quote offensive and stigmatizing language about disability. I apologise for this, but it is necessary to present an unvarnished picture of how policymakers of the time viewed disabled people.

State education in England: a historical perspective

We're going to start our story in the late nineteenth century. Before 1870, elementary education for working-class children in England was provided mainly by two voluntary religious bodies: the National Society, which was Anglican, and the British and Foreign School Society, which was Nonconformist.²

¹ "The Windrush Generation" – Subnormal : How I was failed by the British Education System and A Colonial Family by Maisie Barrett

² Derek Gillard, "Education in the UK: a history," May 2018, Chapter 6 <https://www.education-uk.org/history/chapter06.html>

The Education Act 1870, known as the Forster Education Act, was the genesis of the state education system. It established elected school boards which were responsible for providing state-run elementary schools, complementing the existing system of voluntary schools. The Elementary Education Act 1880 made elementary education compulsory, and the Elementary Education Act 1891 made it free.³

Education for disabled children followed not long afterwards. Following the 1889 report of the Royal Commission on the Blind and Deaf, Parliament passed the Elementary Education (Blind and Deaf Children) Act of 1893. These Acts required school authorities to make provision for the education of blind and deaf children.⁴

In 1896 the Committee on Defective and Epileptic Children was established, which reported in 1898. Following its report, the Elementary Education (Defective and Epileptic Children) Act 1899 gave school authorities a power, but not a duty, to provide for the education of severely epileptic children, and of children whom the Act defined as “defective”.⁵ A “defective” child was defined as a child who “*by reason of mental or physical defect*” was incapable of receiving proper benefit “*from the instruction in the ordinary public elementary schools,*” but was not incapable of receiving benefit from instruction in special classes or schools.

The education system was reorganised by the Education Act 1902, which abolished the school boards and replaced them with a two-tier system of local education authorities.⁶ However, secondary education was still not free for most pupils, and many working-class children still lacked access to secondary education.⁷

At this time in history, a new scientific idea was gaining popularity on both sides of the Atlantic. That idea was eugenics. The term “eugenics” was coined in 1883 by Francis Galton. Eugenics believed in improving the quality of the human race through selective breeding, including by forced sterilization or forced segregation of those who were deemed hereditarily defective. Eugenics was closely linked with scientific racism, the idea that some races were genetically superior to others.⁸

A key tenet of the eugenic movement was the importance of intelligence testing. The forerunner of the modern IQ test was developed by the French psychologist Alfred Binet, for the purpose of identifying children who would need extra help in school. However, contrary to Binet’s own intentions, his work was adopted by eugenicists. As Ajitha Reddy writes, “*Binet explicitly warned against dangerous and unupportable extrapolation of his work, such as using his tests to peg normal children and adults on a single, linear scale of immutable intelligence. Notable American eugenicist, Henry H. Goddard, eager to catalog Americans along just such a scale, promptly ignored Binet’s warnings, translated the tests into English, and pushed for their widespread use.*”⁹ Goddard developed a system of classification of those he characterised as “feeble-minded”, dividing them into “idiots”, “imbeciles” and “morons”. As Reddy writes:

“For Goddard, morons, or those with mental ages of eight through twelve, posed the gravest eugenic threat because of the ease with which they could pass for normal and reproduce. Goddard found morons wherever he looked: criminals, alcoholics, prostitutes, and anyone

³ Ibid.

⁴ Report of the Committee of Enquiry into the Education of Handicapped Children and Young People (The Warnock Report), 1978 at 2.14 <https://education-uk.org/documents/warnock/warnock1978.html>

⁵ Ibid. at 2.24

⁶ Ibid. at 2.25

⁷ See generally Gillard, op. cit., Chapter 7 <https://www.education-uk.org/history/chapter07.html>

⁸ See generally National Human Genome Research Institute, “Eugenics and Scientific Racism” <https://www.genome.gov/about-genomics/fact-sheets/Eugenics-and-Scientific-Racism>

⁹ Ajitha Reddy, “The Eugenic Origins of IQ Testing: Implications for Post-Atkins Litigation,” 57 DePaul L. Rev. 667 (2008) <https://via.library.depaul.edu/cgi/viewcontent.cgi?article=1270&context=law-review>

*"incapable of adapting themselves to their environment and living up to the conventions of society or acting sensibly." Most immigrants also fit this classification. Goddard tested immigrants arriving at Ellis Island and found that "[t]he intelligence of the average third-class immigrant is low, perhaps of moron grade. Goddard concluded that "immigration of recent years is of a decidedly different character from the early immigration We are getting the poorest of each race."*¹⁰

Pausing there, you might see echoes of this rhetoric in the modern-day views of Donald Trump, who has bemoaned the lack of immigrants from "nice countries" like Denmark or Switzerland,¹¹ has complained that "when Mexico sends its people, they're not sending their best,"¹² and has accused immigrants of "poisoning the blood of our country".¹³ Unfortunately, eugenic thinking is still with us today.

But returning to the early twentieth century, we can see that intelligence testing was closely interrelated with eugenics, racism and classism. It wasn't just in the US that eugenic ideas were influential. In the UK, Parliament passed the Mental Deficiency Act 1913, which was strongly influenced by eugenic ideology. It provided for the detention of "defectives", who were classified in four groups. I'm going to read out the definitions from section 1 of the Act, because they reveal so much about how policymakers thought about disability in 1913:

"(a) Idiots; that is to say, persons so deeply defective in mind from birth or from an early age as to be unable to guard themselves against common physical dangers;

(b) Imbeciles; that is to say, persons in whose case there exists from birth or from an early age mental defectiveness not amounting to idiocy, yet so pronounced that they are incapable of managing themselves or their affairs, or, in the case of children, of being taught to do so;

(c) Feeble-minded persons; that is to say, persons in whose case there exists from birth or from an early age mental defectiveness not amounting to imbecility, yet so pronounced that they require care, supervision, and control for their own protection or for the protection of others, or, in the case of children, that they by reason of such defectiveness appear to be permanently incapable of receiving proper benefit from the instruction in ordinary schools;

(d) Moral imbeciles; that is to say, persons who from an early age display some permanent mental defect coupled with strong vicious or criminal propensities on which punishment has had little or no deterrent effect."

Local education authorities were required to ascertain which children in their area were "defective children" and were "incapable by reason of mental defect of receiving benefit or further benefit from instruction in special schools or classes".

We can see, therefore, that children with mental and intellectual disabilities were labelled "defective", and stigmatized with terms like "idiot", "imbecile" and "feeble-minded", which were written into law as

¹⁰ Ibid.

¹¹ The Guardian, "Trump bemoans lack of immigrants from majority-white countries to the US," 8 April 2024 <https://www.theguardian.com/us-news/2024/apr/08/trump-immigration-north-europe>

¹² ABC News, "What Donald Trump Has Said About Mexico and Vice Versa," 31 August 2016 <https://abcnews.go.com/Politics/donald-trump-mexico-vice-versa/story?id=41767704>

¹³ NBC News, "Trump says immigrants are 'poisoning the blood of our country,'" 17 December 2023 <https://www.nbcnews.com/politics/2024-election/trump-says-immigrants-are-poisoning-blood-country-biden-campaign-liken-rcna130141>

statutory classifications. They were divided into two broad categories: those who were deemed able to benefit from special educational provision, and those who were not. The former could be educated by local education authorities, and the Elementary Education (Defective and Epileptic) Act 1914 converted the power to educate them into a duty. The latter, by contrast, were denied education and could be confined to institutions under the Mental Deficiency Act. The legislation governing special educational provision, for blind, deaf, epileptic, and so-called “defective” children, was later consolidated in Part V of the Education Act 1921.

The Education Act 1944, known as the Butler Education Act, revolutionised the education system in England and Wales, making secondary education free and accessible to working-class people. The school leaving age was raised to 15. Controversially, however, a tripartite system of secondary education was adopted. There were grammar schools, technical schools, and secondary modern schools, in descending order of prestige, with pupils’ school placement being dependent on how well they did on the “11-plus” test.¹⁴

The legacy of the tripartite system continues to be a highly controversial issue in British politics. On the one hand, it gave new opportunities to some academically able working-class children, who became the first in their families to attend grammar school and university. On the other hand, those children who were placed in secondary modern schools did not fare so well. Paul Dash, who came to the UK from Barbados at the age of 11 and attended a secondary modern school in Oxford, called it *“one of the foulest, most soul-destroying experiences of my life”* and added *“Though just 11 years of age, I quickly became aware that the quality of teaching and learning in the school, were substandard. The curriculum, teacher expectations and quality of teaching were simply awful.”*¹⁵

It was often pointed out at the time that the selective education system incorporated a class bias. As Derek Gillard writes, in the 1950s *“it was becoming clear that intelligence quotients could be affected by coaching and were related to previous social and educational experience”*. He highlights that *“In Intelligence Testing and the Comprehensive School (1953), Brian Simon argued that the intelligence tests used in the selection system were flawed because the questions favoured the middle-class child, and so defined the kind of ‘intelligence’ being measured”*. He also describes a 1953 study by AH Halsey and L Gardner which found that *“The secondary modern schools cater very largely for the sons of manual workers... very few middle-class children were found in secondary modern schools... a boy has a greater chance of entering a grammar school if he comes from a middle-class rather than a working-class home”*.¹⁶

In the 1960s there was a movement towards comprehensive education, in which children would attend the same secondary schools (“comprehensive schools”) regardless of academic ability. Under Labour Education Secretary Anthony Crosland, Circular 10/65 was issued in July 1965, requiring local education authorities to submit plans to reorganize their education systems along comprehensive lines. When the Conservatives came to power in 1970, they replaced this with Circular 10/70, which allowed local authorities to decide their own policy.¹⁷ However, according to Anne West, comprehensive education was *“almost universal”* by the early 1980s.¹⁸ Today there are still some grammar schools in England, but most children attend comprehensive schools.

¹⁴ See generally Gillard, op. cit., chapters 9-11

¹⁵ Paul Dash, “Secondary Modern School Education: An Essay in Subjugation and Repression.” FORUM: for promoting 3-19 comprehensive education. Vol. 54. No. 1. Symposium Books. PO Box 204, Didcot, Oxford, OX11 9ZQ, UK, 2012. <https://journals.lwbooks.co.uk/forum/vol-54-issue-1/article-4953/>

¹⁶ Gillard, op. cit, Chapter 11 <https://www.education-uk.org/history/chapter11.html>

¹⁷ See generally Gillard, op. cit, Chapters 12-13

¹⁸ Anne West, “A (short) history of comprehensive education in England” (2016) https://eprints.lse.ac.uk/89495/1/West_history-of-comprehensive-education.pdf

What about disabled children? In performing their general duty to provide sufficient schools, local education authorities were required by section 8(2)(c) of the 1944 Act to have regard *“to the need for securing that provision is made for pupils who suffer from any disability of mind or body by providing, either in special schools or otherwise, special educational treatment, that is to say, education by special methods appropriate for persons suffering from that disability”*. The Handicapped Pupils and School Health Service Regulations 1945 defined various groups of pupils who were deemed to require special educational treatment. One of these groups was:

“Educationally sub-normal pupils, that is to say pupils who, by reason of limited ability or other conditions resulting in educational retardation, require some specialised form of education wholly or partly in substitution for the education normally given in ordinary schools.”

The term “educationally sub-normal,” or “ESN,” thus passed into common parlance in the system created by the 1944 Act.

Under section 57 of the 1944 Act, it remained the case that those disabled children with particularly serious disabilities, who were deemed by the local education authority to be *“incapable of receiving education at school”*, were excluded from the education system and instead dealt with under the Mental Deficiency Act, which in 1944 was still in force. The Mental Deficiency Act was later repealed and replaced by the Mental Health Act 1959, but it remained the case that supposedly ineducable children could be excluded from the state education system. Finally, the Education (Handicapped Children) Act 1970 abolished this distinction and required local education authorities to provide education for all disabled children. A new distinction was developed between “moderate” and “severe” educationally sub-normal children, or “ESN(M)” and “ESN(S)”.

This ideology was clearly reflected in the writings at the time. One example is *The Backward Child* by Cash¹⁹. She describes backward children as follows: -

“...range from the boys to play truant to hopeless, mental defectives, unaware of the surroundings, and leading a helpless, vegetative existence in institutions.”

As to the cause of backwardness Cash enlightens us:

“The basic, fundamental and direct cause is nearly always an arrest in the development of the intelligence, and not a disease process. About 3/4 of the total number of backward children fall into educationally, subnormal category, and the majority of these suffer from simple familial deficiency of a mild degree.”

Meanwhile, during this period, concern started to grow about Black Caribbean children being classified as “educationally sub-normal” at higher rates than other races. In 1967, the Inner London Education Authority noted that 28% of children in ESN schools were “immigrant”.²⁰ Professor Bernard Coard, who taught in an ESN school in the 1960s, published his landmark book *“How the West Indian Child is Made Educationally sub-normal in the British School system”* in 1971.

And how to seek out and find these children Cash says:

“The method of estimating the degree of backwardness, and the intellectual ability of the

¹⁹ *The Backward Child* M.Joan Cash – The Journal of the Royal Institute of Public Health and Hygiene Vol. 23, No. 10 (October, 1960), pp. 241 - 255

²⁰ Sally Tomlinson, “Disgraceful Labelling: Race, Special Education and Exclusion,” Excluded Lives, 14 July 2021 <https://excludedlives.education.ox.ac.uk/disgraceful-labelling-race-special-education-and-exclusion/>

child is not really in the realm of paediatrics and is carried out by specially trained medical officers or educational psychologist.

...While every other condition aspect of the case may be taken into account, there is the IQ before us in black-and-white, a number associated with the child.

...While it is most important to form an accurate diagnosis and treat, organic causes were possible, the main object of the treatment is the educate, the child, according to his ability, so that he may eventually become useful, happy citizen with as much independence as possible.

...Understanding and vigilant school teachers may help by spotting cases early and preventing them from languishing on the back row of the classroom."

However, this system of categorizing and selecting the 'subnormal' was deeply flawed, marred by racism, classism, and discrimination, all underpinned by dubious scientific principles.

There is no doubt that the system was institutionally racist. Professor Sally Tomlinson writes:

"During the 1970s I studied a group of children being referred and moved into ESN schools, the Black children being moved more speedily out of mainstream schools than white or South Asian children. The head teachers of referring schools were in no doubt that ESN (M) schools were for children who were slow learners, backward and badly behaved, and that Black Caribbean children fitted the criteria. They commented that West Indian children were likely to be slow at learning, had poor concentration, spoke Creole dialect, were volatile, boisterous, extrovert and troublesome, and had family problems and working mothers! The assumptions were that these were 'natural' qualities and several mentioned genetic inheritance, a racist claim being pushed by some academics in the 1970s and currently. Some head teachers were patronisingly sympathetic, "It's such a transition for kids, one minute they are sitting under a banyan tree waiting for breakfast to fall on their heads, the next they are in a cold wet place." Most were concerned about disruption in class. "West Indian children are boisterous and less keen on education than Asians". "They are violent – a lot of you whites aren't going to tell me what to do" and some expressed fear of a Black Power movement, "The Black Power people destroy kids, especially the less able". There was no evidence for this last, and I did talk to one boy labelled as violent, which I found difficult as he was almost totally deaf, something the school had not noticed."²¹

This system had a devastating impact on many of the Black children who were subject to it. In a recent BBC documentary, Noel Gordon, a child sent to a boarding school for ESN children at the age of six, said *"That school was hell... I spent 10 years there, and when I left at 16, I couldn't even get a job because I couldn't spell or fill out a job application."*²² The BBC describes vividly how Noel ended up in that school:

"About a year before joining the ESN school, Noel had been admitted to hospital to have a tooth removed. He was given an anaesthetic, but it transpired that Noel had undiagnosed sickle cell anaemia, and the anaesthetic triggered a serious reaction.

Noel says the resulting health issues led to him being perceived as having learning disabilities

²¹ Ibid.

²² Ashley John-Baptiste, "The black children wrongly sent to 'special' schools in the 1970s," BBC, 20 May 2021 <https://www.bbc.co.uk/news/uk-57099654>

*and being recommended for a "special school". Yet no evidence or explanation of his disability was ever given to him or his parents."*²³

As Professor Gus John said, *"That label made children feel inferior... Students from ESN schools wouldn't go on to college or university. If they were lucky, they'd become a labourer. The term was paralysing and killed any sense of self-confidence and ambition."*²⁴

Educational psychologist Waveney Bushell, quoted in the documentary, highlighted the cultural bias in IQ tests at the time. Tre Ventour-Griffiths summarises the point: *"For example, one question asked, what the word "tap" meant. In the UK, the word means an instrument that releases running water or gas from a pipe. Yet, in the Caribbean a tap is known on many islands as a pipe. Black Caribbean children understood what tap meant in concept, but not the terminology. They were made to feel inferior when many of the questions asked of them reflected a specific Englishness which they had no frame of reference for."*²⁵ Gus John highlighted the relevance of language. He said *"A key element was language... If you grew up in a Jamaican household, you'd use Jamaican English - patois or creole. The problem most Caribbean students had was that because it was a derivative of standard English, nobody believed that black students needed language support."*²⁶

Let me be clear on why the system of categorising and selecting the 'subnormal' was deeply flawed, highlighting the various aspects of racism, classism, and discrimination inherent in its implementation.

Racist

Racism: The disproportionate representation of Black Caribbean children in the category of "educationally sub-normal" points to systemic racism within the education system. This classification overlooked cultural differences and language barriers, unfairly labeling these children as inferior based on their ethnicity rather than assessing their true potential.

Classist

Classism: Children from lower socio-economic backgrounds were often unfairly targeted by this system. Socio-economic status heavily influenced access to quality education, resources, and opportunities for enrichment. Consequently, children from disadvantaged backgrounds were more likely to be labelled as 'subnormal' due to the systemic barriers they faced.

Discriminatory Practices: The criteria used for identifying 'subnormal' children were often discriminatory and subjective. Standardised testing, such as IQ assessments, were culturally biased and failed to account for diverse learning styles and abilities. Furthermore, the decision-making process was often influenced by preconceived notions and stereotypes about race, class, and ethnicity.

Dubious Scientific Principles: The reliance on IQ scores as a primary determinant of a child's abilities was flawed and oversimplified. Intelligence is a complex and multifaceted construct that cannot be accurately captured by a single numerical value. Moreover, the belief that intelligence is fixed and immutable disregards the potential for growth and development in every child. I shall return to this later.

²³ Ibid.

²⁴ Ibid.

²⁵ Tre Ventour-Griffiths, "'Subnormal': How a British Postwar Education Scandal Gives a Human Context for 'Neurodivergence while Black'," 26 September 2022 <https://neuroclastic.com/subnormal-how-a-british-postwar-education-scandal-gives-a-human-context-for-neurodivergence-while-black/>

²⁶ John-Baptiste, op. cit.

Long-Term Consequences: Labeling children as 'subnormal' had profound and detrimental effects on their educational trajectories and life opportunities. It perpetuated low expectations and limited aspirations, contributing to a self-fulfilling prophecy where children internalised the belief that they were incapable of academic success.

“ if a child is sent to a special school for children who cannot learn, how is this going to help a child who can learn..... “instead of teaching us to read and write, we were taught to wash ourselves. I was taught to wash the children who had severe learning difficulties. ...The teacher sat with us at the dinner table to teach us how to eat with a knife fork and spoon.... When I left school I could eat like the Queen of England but I couldn’t read and write or talk like her....”²⁷

The Warnock Report

The system of special educational provision was reviewed by the 1978 Report of the Committee of Enquiry into the Education of Handicapped Children and Young People, known as the Warnock Report, after the Committee’s chair Mary Warnock. That report called for the abolition of the existing statutory categorization of different types of “handicapped” children. It argued that *“The term ‘children with learning difficulties’ should be used in future to describe both those children who are currently categorised as educationally sub-normal and those with educational difficulties who are often at present the concern of remedial services”*.²⁸

The Warnock Report acknowledged in one paragraph that there had *“been concern in recent years that a disproportionate number of children from West Indian families has been placed in special schools or classes,”*²⁹ but it didn’t devote much attention to race.

The Warnock report led to the enactment of the Education Act 1981. In the new system created by the 1981 Act, the term “educationally sub-normal” was abandoned. Instead, the terminology used was “special educational needs”. For children who needed special educational provision, the local education authority was to draw up a “statement” of their special educational needs. The local education authority was responsible for providing the special educational provision set out in the statement. There was a presumption in favour of educating children with special educational needs in mainstream schools. There was a *“considerable decline”* in the number of children in special schools during the 1980s and 1990s, but a *“gradual increase”* in the proportion of children identified as having special educational needs and given statements.³⁰ The provisions of the 1981 Act were later consolidated in the Education Act 1996.

Meanwhile, the education system in England has gone through several more phases of reform. The Education Reform Act 1988 delegated management powers from local education authorities to individual schools and introduced a National Curriculum.

More recently, there has been a march towards privatisation of state education in England. The New Labour government introduced “academies”, state-funded private schools that were independent of local authority control.

After the change of government in 2010, Education Secretary Michael Gove pushed through the controversial Academies Act, which, as Gillard explains, *“removed local authorities’ power to veto a school becoming an academy, dispensed with parents’ and teachers’ legal right to oppose such plans, and allowed*

²⁷ “The Windrush Generation” – Subnormal : How I was failed by the British Education System and A Colonial Family by Maisie Barrett

²⁸ Warnock Report, op. cit.

²⁹ Ibid. at 4.51

³⁰ House of Commons, Select Committee on Education and Skills, Third Report 2005-06 at 12

<https://publications.parliament.uk/pa/cm200506/cmselect/cmmeduski/478/47805.htm>

'outstanding' schools to 'fast-track' the process of becoming academies."³¹ Gove also introduced "free schools", another type of state-funded private school that was independent of local authority control. As of January 2023, more than 80% of secondary schools in England are academies or free schools, as are more than 40% of primary schools.³²

Academisation is extremely controversial. As the National Education Union states, "*Academisation is driving down staff pay, terms and conditions, alienating communities and has caused the fragmentation of the education system.*"³³ Instead of state schools being run by democratically accountable local authorities, many are now run by private bodies called "multi-academy trusts". This was part of a raft of ideologically motivated reforms spearheaded by Gove, including wide-ranging changes to the curriculum. Time doesn't permit me to get into the details of this, which could be an entire lecture series in itself, and would perhaps be better delivered by a teacher than a barrister.

The system of special educational provision was comprehensively reformed by the Children and Families Act 2014, which replaced statements of special educational needs with "education, health and care plans" or "EHC plans". The 2014 Act looks very progressive on its face. But due to decades of swingeing cuts to local government funding, local authorities often lack the resources to fulfil their statutory obligations to disabled children. Many disabled children are denied adequate education and care. This has led to a proliferation of litigation by parents against local authorities, and in some cases the High Court has had to make a mandatory order requiring a local authority to perform its legal duties.³⁴

The sustained overrepresentation of black children in the public test system and black people subject to compulsory admissions to psychiatric unit. Black men make up 12% of the UK prison population, yet they are less than 1% of the population (Home Office, 2000). This pattern of overrepresentation is not evident in the data reporting on permanent exclusion of black boys from school. The Times Educational Supplement reported in 1998, that black boys were 15 times more likely to be excluded from school.³⁵

Meanwhile, racial inequality in education continues to persist, although the picture is complicated. In particular, Black Caribbean children and Roma and Traveller children are more likely than other groups to be excluded from school. A September 2006 Priority Review by the Department for Education and Skills highlighted large disparities in the rate of school exclusion. The average for all pupils was 5.02%, but for Black Caribbean pupils it was 9.61%, for Irish Traveller pupils it was 11.59%, and for Roma pupils 11.92%. Interestingly, the rate was much lower for Black African pupils, only 4.43%.³⁶ 15 years later, an analysis by the Guardian in March 2021 found that in some parts of England the exclusion rate for Black Caribbean pupils was five times higher than their white peers. Again, similar trends were seen in respect of Roma children. In Sheffield the exclusion rate for Roma pupils was nine times higher than for white pupils, while in Haringey and Bristol, Roma pupils were more than 10 times more likely to be excluded.³⁷

³¹ Gillard, op. cit., Chapter 19 <https://www.education-uk.org/history/chapter19.html>

³² GOV.UK, Schools, pupils and their characteristics, Academic year 2022/23 <https://explore-education-statistics.service.gov.uk/find-statistics/school-pupils-and-their-characteristics>

³³ National Education Union, "The NEU case against academisation" <https://neu.org.uk/advice/your-rights-work/academisation/neu-case-against-academisation#:~:text=Academisation%20is%20driving%20down%20staff,of%20joining%20one%20by%202030>.

³⁴ See for example R (LB (A Child)) v Surrey County Council [2022] EWHC 772 (Admin).

³⁵ "THE SILENT CATASTROPHE" institutional racism in the British educational system, and the underachievement of black boys, by Graham and Robinson 2004

³⁶ Department for Education and Skills, Priority Review: Exclusion of Black Pupils (September 2006) <https://dera.ioe.ac.uk/id/eprint/8656/1/exclusion%20of%20black%20pupils%20priority%20review%20getting%20it%20getting%20it%20right.pdf>

³⁷ Niamh McIntyre et al, "Exclusion rates five times higher for black Caribbean pupils in parts of England," 24 March 2021 <https://www.theguardian.com/education/2021/mar/24/exclusion-rates-black-caribbean-pupils-england#:~:text=Exclusion%20rates%20for%20black%20Caribbean,schoolchildren%20from%20minority%20ethnic%>

Schools are also racialised ice places were deeply held beliefs and expectations and integral part of the school process and practices.

Connolly's (1998) research study, provides a cogent example of the ways in which some teachers over discipline Blackboys to avoid any perceived threat to school authority and classroom management.³⁸

"There were many examples going from observations throughout the school year, we are black boys would be sent to stand outside the classroom, told to stand up or move in assemblies, and be singled out and instructed to stand by the wall or outside the staffroom during play time. While black boys were not the only ones to be disciplined in this way, they were significantly overrepresented in these processes."

Notably, some school disciplinary policies overtly discriminate against students of colour. For example, despite its obviously being racially discriminatory, some schools ban Black hairstyles such as braids and canerow/cornrows.³⁹ And in a disgraceful dereliction of duty, Mr Justice Linden recently upheld the legality of Michaela Community School's discriminatory policy of banning Muslim prayer.⁴⁰

Children with special educational needs are also significantly more likely than non-disabled children to face school exclusion.⁴¹ A 2022 study explored the disproportionate exclusion of autistic children, who are three times more likely to be excluded from school than children who do not have special educational needs. One driver of exclusion highlighted in the report was *"the marketisation of the English education system as well as governmental pressure in terms of performance league tables,"* with parents noting that schools focused on children who did well academically. Other points highlighted in the report included *"a lack of [special educational needs and disability] expertise and knowledge on second-stage independent review panels and inaccessible guidance to parents, families and pupils on exclusion and review processes,"* and the fact that *"[r]educed budgets for training and pastoral care mean that schools are working with limited resources to support autistic pupils, which puts those pupils at greater risk of exclusion"*. It was also highlighted that *"the rise in so called 'zero-tolerance' behaviour policies is creating school environments where pupils are punished and ultimately excluded for incidents that could and should be managed within the mainstream school environment"*.⁴²

In short, the English state education system, with its focus on league tables and exam results, its chronic under-resourcing, and its obsession with discipline and conformity, is still failing disabled children. This needs to change.

Race and intelligence

Now that we've looked at the history and the present of the English state education system, I want to say a little more about the subject of race and intelligence. For as long as Black children have faced worse educational outcomes, there have been supposed experts who have tried to justify it by asserting that Black children are simply less intelligent. It's time to engage with and debunk that claim.

[20backgrounds.](#)

³⁸ Racism, gender, identities, and young children, Connolly, 1998

³⁹ Adina Campbell, "Afro hair: School bans probably illegal, says watchdog," BBC News, 27 October 2022 <https://www.bbc.co.uk/news/education-63402905>

⁴⁰ R (TTT) v Michaela Community Schools Trust [2024] EWHC 843 (Admin)

⁴¹ GOV.UK, Suspensions and permanent exclusions in England, Spring term 2022/23 <https://explore-education-statistics.service.gov.uk/find-statistics/suspensions-and-permanent-exclusions-in-england>

⁴² Karen Goldberg et al, "Investigation of the causes and implications of exclusion for autistic children and young people." (2021). <https://www.birmingham.ac.uk/documents/college-social-sciences/education/reports/causes-and-implications-of-exclusion-for-autistic-children-and-young-people.pdf>

Graham and Robinson in 2004 in their work *The Silent Catastrophe* noted:

*“There is a commonplace, racist understanding that surrounds the concept of ability, which is based on historical and social construction of black intellectual inferiority. This is located in the unspoken discourses that permeate educational institutions and continue to inform popular beliefs and professional understandings”.*⁴³

Further they note:

“The legacy of enslavement, colonialism, and ideological constructions of race, are entered, social, political, and academic institutions during the 18th century, continue to shape the long-standing histories of racism in British society. Black communities speak about these powerful societal hierarchies within the notion of “know your place,” which refers to the way in which racialised structures, deny opportunities, and resources in every sphere of contemporary life. Black children are often working against teacher expectations that perceive them as having lesser ability and expectations of bad behaviour.”

In Akala’s *Natives Race and Class in the Ruins of Empire* (2018). He states that: -

“Both black and white children generally understand very early that blackness is a synonym for bad and that whiteness is synonymous with wealth, power and beauty...”

... For black children in Britain, our bodies commit the sin of reminding people racialized as white of an uncomfortable truth about part of how this nation became wealthy, and that the good old days when white power could road the earth unchallenged are over. They now have to contend with one of their empire’s many legacies; a multi-ethnic mother country.”

As I mentioned earlier, in the early twentieth century eugenics was an extremely popular idea on both sides of the Atlantic, and one that had a significant influence on education. Eugenics was deeply intertwined with pseudoscientific racism. In short, eugenicists believed that some races were genetically less intelligent than others. Eugenics fell somewhat out of favour after the Second World War, due to its association with Hitler and the Nazis. However, the debate about race and intelligence did not end.

The context of the debate is the historical difference in IQ scores across different racial groups, with Asians and White people on average scoring more highly than Black people. The actual size of this difference has changed over time and is contested, as we will see. For decades, a minority of academics, known as “hereditarians”, have argued that these racial differences in IQ test performance are primarily genetic in origin. To put it in plain and simple terms, they think that Black people are genetically less intelligent than White people. The academics most strongly associated with hereditarianism include Arthur Jensen, J. Philippe Rushton, Linda Gottfredson and Richard Lynn.

This debate came to wider public attention with the publication of the controversial 1994 book *“The Bell Curve: Intelligence and Class Structure in American Life”*, by Richard J Herrnstein and Charles Murray. The basic thesis of *The Bell Curve* was that IQ tests accurately measure general intelligence, and that general intelligence is a stronger predictor of success in life than parental socio-economic status. Herrnstein and Murray argued that society was becoming stratified along cognitive lines, with the emergence of a “cognitive elite”. They also argued that existing welfare programmes had a “dysgenic” effect by encouraging low-IQ

⁴³ THE SILENT CATASTROPHE” institutional racism in the British educational system, and the underachievement of black boys, by Graham and Robinson 2004

women to have more children, reviving a common argument of early twentieth-century eugenicists. They argued for a series of conservative policies, including abolishing affirmative action, limiting immigration and cutting welfare. And one of the most controversial aspects of the book was the authors' claim that there are differences in intelligence between racial groups, drawing heavily on the work of Richard Lynn, which I will come back to.

The Bell Curve has been widely criticised since its publication, both by scholars in the field and by lay people. Bob Herbert of the New York Times famously called it a "*scabrous piece of racial pornography masquerading as serious scholarship*" and a "*genteel way of calling someone*" the N-word.⁴⁴ There's an excellent YouTube video by Shaun which debunks The Bell Curve in detail, criticizing the shoddy science that underlies the book and its reliance on racist sources.⁴⁵ That video is two and a half hours long, so unsurprisingly I don't have time to recap it in this lecture. I can only recommend that you watch it for yourself.

I just want to highlight what I see as some of the most glaring problems with the hereditarian thesis.

First, it can't be said with any confidence that IQ tests actually measure innate intelligence. As we have already seen, intelligence tests are often culturally biased. Indeed, some scholars argue that a "culture-free" intelligence test is impossible.⁴⁶ Performance on intelligence tests can also be affected by the extent and quality of an individual's education. In fact The Bell Curve suffers from even deeper problems in this regard, because the main dataset that Herrnstein and Murray used to measure intelligence wasn't even an IQ test. It was the Armed Forces Qualification Test, taken by those surveyed in the National Longitudinal Survey of Youth. As academic critics pointed out at the time, that test includes subjects like trigonometry: so, test scores are obviously affected by the prior schooling an individual had.⁴⁷

Second, there are plenty of environmental factors that can affect performance on IQ tests, and that are not evenly distributed between races. For example, we might expect children growing up in poor families to be more likely to face childhood lead exposure, or inadequate childhood nutrition.⁴⁸ Obviously, in our racially unequal society, Black children are more likely to grow up poor.

Third, when describing the Black-White IQ gap, hereditarians rely on bad science. Hereditarians often argue, citing Jensen and Rushton, that the average gap between Black and White IQs is 15 points, or one standard deviation.⁴⁹ However, that claim was criticised at the time in the same journal by Richard Nisbett, who argued that Jensen and Rushton "*ride roughshod over the evidence*".⁵⁰ Other studies suggest that the gap between Black and White IQs has in fact narrowed considerably. In 2018 Jinkinson Smith carried out a literature review of 13 studies, and concluded that the Black-White IQ gap had decreased in recent decades in the United States. Smith highlighted that the three studies reaching the opposite conclusion, by Murray,

⁴⁴ Bob Herbert, "In America; Throwing a Curve," The New York Times, 26 October 1994

<https://www.nytimes.com/1994/10/26/opinion/in-america-throwing-a-curve.html>

⁴⁵ <https://www.youtube.com/watch?v=UBc7qBS1Ujo>

⁴⁶ Michael Cole, "The illusion of culture-free intelligence testing" (2009) <https://lchcautobio.ucsd.edu/wp-content/uploads/2015/10/Cole-2008-The-Illusion-of-Culture-free-Intelligence-Testing.pdf>

⁴⁷ Nicholas Lemann, "The Bell Curve Flattened," Slate, 18 January 1997 <https://slate.com/news-and-politics/1997/01/the-bell-curve-flattened.html>

⁴⁸ For the effect of lead exposure on IQ, see for example Serve Heidari et al, "The effect of lead exposure on IQ test scores in children under 12 years: a systematic review and meta-analysis of case-control studies." Systematic reviews 11.1 (2022): 106. <https://systematicreviewsjournal.biomedcentral.com/articles/10.1186/s13643-022-01963-y#citeas>

⁴⁹ J. Philippe Rushton and Arthur Jensen, "Thirty years of research on race differences in cognitive ability." Psychology, public policy, and law 11.2 (2005): 235.

<https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=66ebc29e694c279146b403a89b39c64f58e4c8f7>

⁵⁰ Richard Nisbett, "Hereditarianism, environment, and race differences in IQ: A commentary on Rushton and Jensen" Psychology, public policy, and law 11.2 (2005): 302–310 <https://www1.udel.edu/educ/gottfredson/30years/Nisbett-commentary-on-30years.pdf>

Gottfredson and Rushton respectively, were seriously flawed.⁵¹ That's obviously important, because if the Black-White IQ gap is narrowing over time as the environment changes, then it's clearly unlikely to be primarily genetic.

Similarly, in his video, Shaun criticises Herrnstein and Murray's reliance on a 1991 meta-analysis of 11 studies by leading hereditarian Richard Lynn, which estimated the median Black African IQ to be 75.⁵² Herrnstein and Murray use this study to argue that the Black-White IQ gap also applies to Black people from Africa, and therefore cannot be attributed to American racism. However, Shaun dismantles Lynn's paper in forensic detail. To mention just a few of the several problems: the majority of Lynn's data came from South Africa under apartheid, in which Black children were consigned to segregated schools and had a substantially lower quality of education. This data therefore doesn't support Murray's point. Lynn also cherry-picked his data: among the South African data, he ignored a test carried out in a high school in Soweto in which the Black pupils achieved results slightly above the White norm. Shaun also points out glaring errors in Lynn's analysis of a Nigerian study. Shaun states that that study administered the Raven's Progressive Matrices test and did not report an IQ score, but Lynn asserts that it reported an IQ score of 86, which Shaun notes appears to be a typographical error, as there were 86 test subjects in the study. Nor was that study a representative sample of Nigerians; it was a small sample of Nigerian factory workers. Shaun goes on to make several other criticisms of Lynn in similar vein, which time does not permit me to summarise here.⁵³ The point is that Lynn's work is sloppy science which misrepresents the data. Notably, Lynn's study also refers to different racial groups as "Caucasoid," "Mongoloid" and "Negroid", which in 1991 was already considered offensive language.

Another key point is that many of the hereditarian scholars had or have close links to a non-profit foundation called the Pioneer Fund, which was originally established in 1937 to promote eugenics, which continues to defend eugenics, and which is classified as a hate group by the Southern Poverty Law Center.⁵⁴ Indeed, between 1937 and 1938 the Pioneer Fund funded the distribution in the United States of the Nazi propaganda film *Erbkrank*, which promoted Nazi eugenic policy.⁵⁵ According to the Southern Poverty Law Centre, the Pioneer Fund later funded Roger Pearson, an open anti-Semite, and more recently has funded Jared Taylor, a prominent white nationalist and editor of the far-right publication *American Renaissance*.⁵⁶

One of the most prominent hereditarians and former head of the Pioneer Fund, the late J Philippe Rushton, can only be described as a crank. He believed that intelligence was inversely correlated with genital size and attracted controversy for some bizarre behaviour. As Salon reported:

"While simultaneously defending his academic freedom, University of Western Ontario officials twice reprimanded Rushton for conducting research on human subjects in 1988 without required prior approval, according to a Southern Poverty Law Center profile of Rushton. In the first incident, Rushton surveyed first-year psychology students, asking

⁵¹ Jinkinson Smith, "Has the Black-White IQ Gap in the United States Narrowed? A Literature Review" (2018) https://www.researchgate.net/profile/Jinkinson-Smith/publication/324074343_Has_the_Black-White_IQ_Gap_in_the_United_States_Narrowed_A_Literature_Review/links/5af9112b0f7e9b026bf6d6f8/Has-the-Black-White-IQ-Gap-in-the-United-States-Narrowed-A-Literature-Review.pdf

⁵² Richard Lynn, "Race differences in intelligence: A global perspective." *Mankind quarterly* 31.3 (1991): 255. https://www.researchgate.net/profile/Richard-Lynn/publication/247325974_Race_differences_in_intelligence_A_global_perspective/links/56efdb1308ae3c6534365525/Race-differences-in-intelligence-A-global-perspective.pdf

⁵³ <https://www.youtube.com/watch?v=UBc7qBS1Ujo>

⁵⁴ Southern Poverty Law Center, "Pioneer Fund" <https://www.splcenter.org/fighting-hate/extremist-files/group/pioneer-fund>

⁵⁵ Reply by Charles Lane to Harry F Weyher, "'The Bell Curve' and its Sources," *The New York Review*, 2 February 1995 <https://www.nybooks.com/articles/1995/02/02/the-bell-curve-and-its-sources-1/>

⁵⁶ Southern Poverty Law Center, op. cit.

questions about penis length, distance of ejaculation and number of sex partners. In the second, he surveyed customers at a Toronto shopping mall, paying 50 white people, 50 black people and 50 Asians five dollars apiece to answer questions about their sexual habits.”⁵⁷

Obviously, I don’t want to engage in an *ad hominem* argument. But the fact that hereditarians are disproportionately funded by an organisation with racist ties, and that hereditarian scholarship relies heavily on the work of a crank known for his obsession with genitals, should at the very least give us cause for concern.

You might think that I’m giving too much airtime to a relatively fringe group of academics. But hereditarians have been in the news again recently, when Nathan Cofnas, a fellow in philosophy at the University of Cambridge and a hereditarian, attracted widespread controversy for a blog post in which he argued vociferously in favour of “*race realism*”, and stated baldly that “*In a meritocracy, Harvard faculty would be recruited from the best of the best students, which means the number of black professors would approach 0%. Blacks would disappear from almost all high-profile positions outside of sports and entertainment.*”⁵⁸ The controversy around this blog post led to his college cutting ties with him.⁵⁹ But Cofnas had expressed similar views in earlier writings,⁶⁰ and this did not prevent his having a successful academic career until the press started to notice.

Why have I gone on this lengthy tangent about race and intelligence? Really, for two reasons. First, and most obviously, I want to head off any suggestion that the unequal outcomes experienced by Black people in the education system are attributable to different innate abilities. As we have seen, the evidence doesn’t support that. Rather, the evidence suggests that the gap in test results is environmental in origin, and is narrowing over time as the environment changes. One key factor in that environment is the deeply embedded legacy of racial discrimination in our profoundly racist society.

Second, I want to make the point that intelligence testing itself is an intensely controversial enterprise. There are massive uncertainties about what intelligence is, how we measure it, and how intelligence tests correspond to innate ability. I referred earlier to how culturally biased intelligence tests were used in the post-war decades to misclassify Black children as “educationally sub-normal”. While that particular classification is no longer in use, the problems with intelligence testing remain. This matters, because education systems around the world still use intelligence tests to classify children. For example, earlier I mentioned the 11-plus, still used in some parts of England to select children for grammar schools. It should be obvious from what I have already said that segregating children on the basis of intelligence test results is a highly questionable idea.

Conclusion

Now it’s time to wrap up the lecture. We’ve learned that the English education system has long been profoundly discriminatory on the basis of race and disability. While there has been much institutional change, a number of problems remain.

How should we change things?

⁵⁷ Don Terry, “Leading race ‘scientist’ dies in Canada,” Salon, 6 October 2012

https://www.salon.com/2012/10/06/leading_race_scientist_dies_in_canada/

⁵⁸ Nathan Cofnas, “A Guide for the Hereditarian Revolution,” 5 February 2024 <https://ncofnas.com/p/a-guide-for-the-hereditarian-revolution>

⁵⁹ Tommy Castellani, “Emmanuel College cuts ties with ‘race-realist’ fellow,” Varsity, 19 April 2024

<https://www.varsity.co.uk/news/27420>

⁶⁰ See for instance Nathan Cofnas, “How to Take Back Academia,” 10 April 2023 <https://hxstem.substack.com/p/how-to-take-back-academia>

First, we should end the marketisation of education, abolish school league tables, and stop measuring school performance by exam results. We should end the toxic culture of competition between schools. Second, we should reverse academisation and return all state schools to local authority control. Third, we should fund schools and local authorities properly, so that they can provide disabled children with the support they need to thrive in school and perform the statutory duties that they already have under existing law. Fourth, “zero-tolerance” school disciplinary policies should be abolished. We should expect schools to cope with managing difficult behaviours, rather than excluding disabled children for the sake of an easier life. Fifth, all forms of academic selection in schools should be abolished. These measures would not magically fix all the problems. But they would go some way towards establishing an education system in which Black and disabled children have fair opportunities.

But we cannot ignore the elephant in the room. Mark, a 14 year old talking about his school and life experiences, stated:

“We can’t change it. When you get a cab they ask you for the money first. When you walk past a white person in a car, they lock the doors. I hate it when you walk past a white lady on the street and she starts clutching her bag. Go into shops, and they follow you. They think bad about us because they think we black people have no brains – they think all black people are the same – they think every black person is a criminal.”

The thing that has to be confronted is staring us in the face. As Graham and Robinson put it.

“The denial of racism, racism in social policy formation, processes, particularly within educational authorities, has created a schism between institutions and community generated concerns. This means the education authorities have failed to engage black communities and students in developing strategies, and finding community focused solutions to be engage young black people, educators must listen to young black people and their experiences in school as a first step in tackling institutional racism in schooling.”

We need to be brave and embrace the truth.

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