
ESSAY

THE RADICAL–INCREMENTAL CHANGE DEBATE, RACIAL JUSTICE, AND THE POLITICAL ECONOMY OF TEACHERS’ CHOICE

AARON TANG†

INTRODUCTION..... 186

I. TEACHERS, SCHOOLS, AND (SUBURBAN) PARENTS 193

 A. *Teachers*..... 193

 B. *Schools* 195

 1. Integration 195

 2. School Choice..... 197

 C. *Suburban Parents*..... 198

II. THE POLITICAL ECONOMY OF TEACHERS’ CHOICE 200

 A. *Teachers’ Choice*..... 201

 B. *The Political Economy of Teachers’ Choice*..... 205

 C. *The Political Economy of Teachers’ Unions*..... 207

CONCLUSION 209

INTRODUCTION

Radical or incremental change? In this profound moment of racial reckoning, that is the fundamental question that divides those within the

† Professor of Law, University of California, Davis. I’m grateful to Guy-Uriel Charles, Lisa Fairfax, Luis Fuentes-Rohwer, Bertrall Ross, Joshua Sellers, and Jamillah Williams for feedback and suggestions that helped shape this piece. I also thank the editors of the *University of Pennsylvania Law Review* for tremendous assistance.

growing movement for racial justice.¹ It is also a question at the crux of several essays in this important trans-journal symposium.

Consider demands to “Defund The Police.” Should proponents of this slogan settle for nothing less than the abolition of police departments, or should they be satisfied with the shifting of resources from police departments to Black communities?² Or take recent calls to increase legal accountability for police wrongdoing. Should reformers aim for deep, structural changes, or more incremental reforms such as the modification of qualified immunity doctrine?³ These debates extend beyond the police context, too. For instance, when institutions of higher education consider their role in racial inequality, should they dismantle long-held norms—such as the belief that the top students belong at the top schools⁴—or is it sufficient to embrace diversity in more limited ways?

These examples illustrate the basic tradeoff between the pursuit of radical and incremental change.⁵ Given the deep, structural problems that undergird racial injustice in America, radical change will often be preferable as a first-best solution. But calls for radical change also provoke the strongest political opposition; incremental change is thus typically more achievable.⁶ So which path should we pursue? In this critical moment of public concern for the lives

¹ See, e.g., Caleb Ecarma, “We Tried Band-Aiding the Problem”: Black Lives Matter Activists Split on How Radical Change Should Be, VANITY FAIR: HIVE (June 18, 2020), <https://www.vanityfair.com/news/2020/06/black-lives-matter-protests-split-police-brutality-solutions> [<https://perma.cc/N7DE-LKCG>] (noting that the recent surge in support for the Black Lives Matter movement has also “led to schisms: differing viewpoints about both tactics and desired solutions to the racist policing practices keeping protesters in the street”); Nate Cohn & Kevin Quealy, *How Public Opinion Has Moved on Black Lives Matter*, N.Y. TIMES: UPSHOT (June 10, 2020), <https://www.nytimes.com/interactive/2020/06/10/upshot/black-lives-matter-attitudes.html> [<https://perma.cc/AS44-XQSA>] (noting that public support for the Black Lives Matter movement exploded in the summer of 2020 but that “[s]ome of the policies under discussion, like defunding the police, may hold more limited support than police reforms”).

² See generally Jessica M. Eaglin, *To “Defund” the Police*, 73 STAN. L. REV. ONLINE 120 (forthcoming 2021) (describing the multiple plausible meanings of calls to “defund the police”).

³ See generally Fred O. Smith, Jr., *Beyond Qualified Immunity*, 119 MICH. L. REV. ONLINE 121 (forthcoming 2021) (arguing that reforming qualified immunity is too incremental a change to produce real accountability for police violence and advocating additional, deeper reforms to additional doctrines such as municipal liability).

⁴ See generally R. Richard Banks, *The New Racial Segregation in Education*, 95 N.Y.U. L. REV. ONLINE (forthcoming 2021) (arguing that using academic achievement as the primary school admissions criterion perpetuates racial inequity in education).

⁵ By “radical” and “incremental” change, I refer to a spectrum of interventions where the former is characterized by a greater departure from the status quo.

⁶ The debate among progressives between Medicare For All and a “public option” is one prominent illustration of this tradeoff. See Abby Goodnough & Trip Gabriel, *Medicare for All vs. Public Option: The 2020 Field Is Split, Our Survey Shows*, N.Y. TIMES (June 23, 2019), <https://www.nytimes.com/2019/06/23/us/politics/2020-democrats-medicare-for-all-public-option.html> [<https://perma.cc/SQ3H-S9ST>] (reporting on disagreement among 2020 candidates for the Democratic presidential nomination regarding the appropriate goal for health care reform).

of Black Americans, should we settle for less on the belief that something is better than nothing?

This Essay has two principal aims. Although the debate over radical and incremental change is susceptible to no single or simple answer, the Essay's first objective is to shed a bit of light on the debate through the lens of America's tragic legacy of racial inequality in K–12 public education. In doing so, the dominant theme that will emerge is that whether reformers should settle for something less than their full-on, radical demands turns less on some idealized vision of what successful change looks like,⁷ and more on a close analysis of *what the something less is*. To this point—and this is the second aim of the Essay—I hope to make the case for a particular kind of “something less” in the field of educational inequality: a policy intervention I'll describe below as “teachers' choice.”

As an initial matter, America's legacy of racial injustice in K–12 education is, of course, depressingly familiar: a pernicious academic achievement gap divides our children along racial lines and sows the seeds for lasting political, economic, and social inequality.⁸ Our nation's short-lived experiment with radical change in public education is familiar, too. Court-ordered school integration commenced nominally after *Brown v. Board of Education*,⁹ but truly hit its stride in the early 1970s.¹⁰ And once in force, it worked: integration narrowed the achievement gap by nearly half.¹¹

⁷ Cf. Bernie Sanders (@BernieSanders), TWITTER (Dec. 11, 2019, 7:01 PM) <https://twitter.com/BernieSanders/status/1204898908016541696> [<https://perma.cc/W77R-FAPB>] (“Incremental change is not enough.”).

⁸ See *Racial and Ethnic Achievement Gaps*, STAN. CTR. FOR EDUC. POL'Y ANALYSIS, <https://cepa.stanford.edu/educational-opportunity-monitoring-project/achievement-gaps/race> [<https://perma.cc/5EFC-W4FH>] (showing persistent gaps between white students and Black and Latinx students “ranging from 0.5 to 0.9 standard deviations”); THOMAS SHAPIRO, TATJANA MESCHÉDE & SAM OSORO, INST. ON ASSETS & SOC. POL'Y, THE ROOTS OF THE WIDENING RACIAL WEALTH GAP: EXPLAINING THE BLACK-WHITE ECONOMIC DIVIDE 6 (2013), <https://heller.brandeis.edu/iere/pdfs/racial-wealth-equity/racial-wealth-gap/roots-widening-racial-wealth-gap.pdf> [<https://perma.cc/UJU3-MESF>] (“It is clear that differential educational opportunities and rewards are further widening the racial wealth gap.”). A similar gap divides children along socioeconomic lines, which correlates with race. See *Racial and Ethnic Achievement Gaps*, *supra*. (“[R]acial achievement gaps are strongly correlated with . . . racial socioeconomic disparities.”).

⁹ 347 U.S. 483, 493 (1954) (holding that school segregation violates the Fourteenth Amendment's Equal Protection Clause).

¹⁰ Although *Brown* announced the *right* to attend integrated schools, integration did not begin in earnest until the Court's unanimous decision in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), which embraced remedial options such as rezoning and bussing children to eliminate racially identifiable schools. *Id.* at 27–31.

¹¹ See Eric A. Hanushek, Paul E. Peterson, Laura M. Talpey & Ludger Woessmann, *The Achievement Gap Fails to Close*, EDUC. NEXT, <https://www.educationnext.org/achievement-gap-fails-close-half-century-testing-shows-persistent-divide> [<https://perma.cc/MXA9-C2XA>] (Mar. 19, 2019) (recognizing the “sizable shrinking of the racial gap” from the 1950s–80s “but little change across” the 1990s and 2000s).

But almost as soon integration began to bear fruit, political reality caught up with it—the quintessential challenge for efforts to implement radical change. Professors Jim Ryan and Michael Heise offered a powerful explanation in their seminal article, *The Political Economy of School Choice*.¹² Desegregation’s downfall, they observed, was attributable to a simple political constituency: “suburbanites, especially suburban parents.”¹³ For as Ryan and Heise put it, “[w]hen suburbanites perceive a threat to their schools, they fight back, and they usually win.”¹⁴ Consider the response to desegregation even in ostensibly liberal cities like Boston, “where riots broke out and black children who were being bused by federal court orders into white schools were pelted with rocks.”¹⁵ It is suburban opposition, in other words, that explains the Supreme Court’s fateful decision in *Milliken v. Bradley*, which held that suburban schools may not be compelled to participate in cross-district bussing orders to alleviate segregation in urban schools.¹⁶

Ever since the fall of court-ordered school integration, educational equity advocates have labored to find worthwhile interventions to pursue in its place. Although several contenders have emerged,¹⁷ perhaps the response that has most captivated public attention has been school choice, by which I mean policies that provide children of color the ability to transfer out of low-performing public schools, whether to a different public school, a charter school, or a private school via a publicly funded voucher.¹⁸ But it turns out

¹² James E. Ryan & Michael Heise, *The Political Economy of School Choice*, 111 YALE L.J. 2043 (2002).

¹³ *Id.* at 2045.

¹⁴ *Id.* at 2046.

¹⁵ Nikole Hannah-Jones, *It Was Never About Busing*, N.Y. TIMES (July 12, 2019), <https://www.nytimes.com/2019/07/12/opinion/sunday/it-was-never-about-busing.html> [<https://perma.cc/4SHJ-LKVD>].

¹⁶ 418 U.S. 717, 721-22, 752 (1974); see also *Gallup Finds Few Favor Busing for Integration*, N.Y. TIMES (Sept. 9, 1973), <https://www.nytimes.com/1973/09/09/archives/gallup-finds-few-favor-busing-for-integration.html> [<https://perma.cc/5BMZ-ZX8R>] (finding just five percent of respondents “chose busing children from one[] district to another” as a preferred method of integration).

¹⁷ Alternative proposals to address the racial achievement gap are too many to list, but prominent examples include efforts to provide universal access to pre-K, reforms aimed at increasing equitable access to post-secondary education, and class size reduction. The track record of these reforms, including even pre-K, is mixed. See, e.g., GROVER J. WHITEHURST, *THE BROOKINGS INST., EVIDENCE SPEAKS REPS. VOL. 2 NO. 59, DOES STATE PRE-K IMPROVE CHILDREN’S ACHIEVEMENT?* (2018) (finding that the evidence in favor of universal pre-K positively impacting children’s academic success is “weak”); see also *infra* notes 35 & 67 (discussing the lack of evidence supporting class size reduction).

¹⁸ Unlike integration, of course, school choice has never been pitched *exclusively* as a response to racial disparities in education. But racial justice has been a constant part of school choice’s purported appeal. See, e.g., James Forman, Jr. *The Rise and Fall of School Vouchers: A Story of Religion, Race, and Politics*, 54 UCLA L. REV. 547, 566-73 (2007) (describing the use of a racial justice frame in defense of school voucher policies). Significantly, in recognizing the need to provide children of color better educational opportunities, both integration and school choice reveal the implicit recognition of an important fact: the very use of the term “achievement gap” is something of a misnomer. Yes, white students on average outperform their Black and Latinx peers, but the *reason* is

school choice itself has been beset by the same tension between radical and incremental change. Radical school choice—by which I mean a policy that would permit students of color to enroll in *any* public school, regardless of district boundaries—would have sweeping egalitarian potential.¹⁹ Yet the same suburban voters who fought against cross-district bussing orders have also blocked genuine public school choice.²⁰ Policymakers today argue over the merits of allowing children of color to choose charter schools, private schools, or other public schools *within* their districts, but no real consideration is given to letting them attend high-performing public schools just minutes away in the suburbs for fear of the political backlash it would produce.²¹

America's experiences with integration and school choice thus reveal that efforts to radically restructure the way America educates our children of color face the stiff obstacle of suburban political opposition.²² So should we give up those aims in favor of more incremental changes? The answer depends on the efficacy and attainability of those incremental alternatives. And to that point, this Essay suggests a modest intervention that may mitigate the problematic political economy Ryan and Heise identified so perceptively years ago.

Doing so requires first saying a word about what exactly it is that drives educational success in K–12 schools. Research shows that when it comes to improving educational outcomes, the most significant in-school factor is access to great teachers.²³ One oft-cited study found, for example, that providing Black students with access to “a top-quartile teacher rather than a bottom-quartile teacher four years in a row would be enough to close the

what matters: we, as a society, have systematically failed to provide children of color with the same high quality educational opportunities—opportunities they both need and deserve. So when we speak of the achievement gap problem, what we are really talking about is an *opportunity* gap. See Alfinio Flores, *Examining Disparities in Mathematics Education: Achievement Gap or Opportunity Gap?*, 91 HIGH SCH. J. 29, 37 (2007) (“[T]he achievement gap is better understood as a manifestation of an underlying cause—the opportunity gap.”).

¹⁹ See generally Aaron Y. Tang, *Privileges and Immunities, Public Education, and the Case for Public School Choice*, 79 GEO. WASH. L. REV. 1103 (2011).

²⁰ See Ryan & Heise, *supra* note 12, at 2086 (“[W]hile advocates and commentators rarely discuss the radically equalizing potential of school choice, suburbanites intuitively recognize this potential and the threat it poses to their interests.”).

²¹ *Id.* at 2087 (“[S]uburbanites strongly support local control over student attendance, as demonstrated by their intense resistance to interdistrict desegregation . . .”).

²² A third radical proposal—substantially increasing spending in schools serving disadvantaged children by redistributing tax burdens to fall more heavily on suburban taxpayers—runs into the same political economy barriers from wealthy suburbanites. See *id.* at 2060 (describing such “‘Robin Hood’ schemes” as “politically infeasible” proposals that “have provoked continued and intense political squabbling, public protests, and litigation”).

²³ See *infra* Section I.A. This is certainly not to say that other factors (whether in-school or out-of-school) play no meaningful role in educational success. It is simply to say that teacher quality is the “most important school-related factor influencing student achievement.” JENNIFER KING RICE, *TEACHER QUALITY*, at v (2003).

black–white test score gap.”²⁴ Sadly, students of color are disproportionately likely to be taught by our lowest-performing teachers.²⁵

Once great teachers are understood as the fulcrum of our in-school efforts to address the educational opportunity gap, we can start thinking about politically achievable ways to reduce that gap. And on this point, the first thing to notice about our prior responses to the achievement gap—integration and school choice—is that they have involved efforts to move massive numbers of children to schools with better teachers. It is that movement of students, however, that “threatens” the demographic preferences of suburbanites. So why not invert the movement in the other direction through a policy that creates incentives for those same great teachers to transfer to schools predominantly serving children of color?

Perhaps unexpectedly, there is already strong evidence that this kind of intervention—which I call “teachers’ choice” because its use of fiscal incentives (rather than a government mandate) leaves the ultimate choice over where great teachers choose to teach in the hands of the educators themselves—is both achievable and effective. A randomized study involving ten large school districts found that offering top-quintile teachers a \$20,000 bonus (paid over two years) to transfer from high-performing to low-performing schools with higher concentrations of minority and low-income students produced between a four and ten percentile point annual learning gain for elementary school students at the receiving schools.²⁶ This is a staggering difference: the entire black–white achievement gap is roughly twenty-nine points.²⁷ Yet, by and large, districts and states have failed to employ this intervention in aid of their most needy students.²⁸

But even more critical than its efficacy is the different political economy teachers’ choice would generate. For a number of surprising reasons—including the seemingly trivial fact that public school teacher assignments are

24 ROBERT GORDON, THOMAS J. KANE & DOUGLAS O. STAIGER, THE BROOKINGS INST., DISCUSSION PAPER 2006-01, IDENTIFYING EFFECTIVE TEACHERS USING PERFORMANCE ON THE JOB 8 (2006).

25 Dan Goldhaber, Vanessa Quince & Roddy Theobald, *Teacher Quality Gaps in U.S. Public Schools: Trends, Sources, and Implications*, PHI DELTA KAPPAN (Apr. 29, 2019), <https://kappanonline.org/teacher-quality-gaps-us-public-schools-trends-sources-implications-goldhaber-quince-theobald> [<https://perma.cc/PS7Z-QPKM>] (“[D]isadvantaged students . . . [are] more likely to have low-quality teachers in every year of available data and under every definition of student disadvantage and teacher quality.”).

26 NAT’L CTR. FOR EDUC. EVALUATION & REG’L ASSISTANCE & U.S. DEP’T OF EDUC., TRANSFER INCENTIVES FOR HIGH-PERFORMING TEACHERS: FINAL RESULTS FROM A MULTISITE RANDOMIZED EXPERIMENT, at xxv (2013) [hereinafter TRANSFER INCENTIVES].

27 RICHARD ROTHSTEIN, REBECCA JACOBSEN & TAMARA WILDER, THE CAMPAIGN FOR EDUC. EQUITY, REASSESSING THE ACHIEVEMENT GAP: FULLY MEASURING WHAT STUDENTS SHOULD BE TAUGHT IN SCHOOL 11 (2008), <https://files.eric.ed.gov/fulltext/ED524000.pdf> [<https://perma.cc/HS3R-SDYJ>].

28 See *infra* notes 91–94 and accompanying text.

usually made via lottery just weeks or even days before the start of the school year—suburban parents typically lack settled expectations regarding the specific teachers who will teach their children in the future. The result is that teachers' choice would trigger significantly less of the dual psychological biases that generate intense suburban opposition to integration and genuine public school choice: loss aversion and status quo bias. Teachers' choice is more winnable because it is less threatening to what suburban parents hold sacred about their local schools.

In explaining why I believe teachers' choice is an attainable intervention, one aim of this Essay is to spur equity advocates and policymakers to consider it as an incremental strategy for dismantling America's tragic legacy of unequal educational opportunity. I aim to write objectively, but I should be up front in admitting my own biases. As a former teacher in inner-city St. Louis, I came face-to-face with the staggering challenges that Black and Brown children confront on a daily basis, including hunger, lack of access to medical care, and physical violence. Through it all, however, I was amazed by the warmth, intellectual curiosity, and resilience that my students showed. If there is one constituency who is unquestionably *not* to blame for the achievement gap, it is students of color themselves. Nor did I find, much in contrast with a popular critique, that their parents were the ones at fault.²⁹ What I saw instead was powerful on the ground evidence that confirms what the data tell us: to know how much children will learn in any given year, we need look no further to the quality of the educator at the front of their classroom. Yet, in the urban school where I taught (and countless others just like it), great teachers are far too scarce—a fact that is not true of suburban public schools just across district boundaries.

This Essay unfolds in two parts. Part I describes the growing body of evidence confirming the vital importance of teacher quality in education outcomes. It then suggests that teacher quality accounts for a significant part of the success achieved by integration and school choice. Sadly, as Part I also shows, using integration and school choice as the mechanism to improve equitable access to great teachers is perceived as too radical an intervention for the political constituency identified by Ryan and Heise: suburban parents. Part II introduces a more direct, yet less radical intervention—teachers' choice—and explains why it faces a more favorable political economy than integration and genuine public school choice. I conclude with a few thoughts on lessons the teachers' choice debate may reveal for the radical–incremental change debate.

²⁹ See, e.g., Andre M. Perry, *Stop Blaming Black Parents for Underachieving Kids*, WASH. POST (July 30, 2014, 9:00 AM), <https://www.washingtonpost.com/posteverything/wp/2014/07/30/stop-blaming-black-parents-for-underachieving-kids> [<https://perma.cc/52B3-3GL7>] (describing the societal tendency to understate the emphasis that Black parents place on the importance of education).

I. TEACHERS, SCHOOLS, AND (SUBURBAN) PARENTS

One way to tell the (abridged) story of America’s achievement gap is to describe the parts played by three major stakeholders and institutions in K–12 education: teachers, schools, and suburban parents. Section I.A focuses on teachers, presenting evidence of their paramount role in educational outcomes and the inequitable way in which great teachers are distributed along racial lines. Section I.B argues that while schools have been the dominant target of reform efforts,³⁰ particularly via integration and school choice, those interventions function largely as an indirect strategy for improving equitable access to great teachers. Section I.C recounts the insight revealed by Professors Ryan and Heise. Moving substantial numbers of children of color to schools with better teachers works. But such radical change comes at too high a cost from the vantage of the average suburban parents.

A. Teachers

If there is widespread consensus among education researchers on anything, it is this: when it comes to explaining differences in educational achievement among students, “teacher quality is the most important schooling variable.”³¹ Ample support for this proposition exists due to recent advances in educational data—in particular, the rise of annual measures of student achievement that enable researchers to identify the educational “value-added,” or student growth,

³⁰ My focus on K–12 school-based reform strategies like integration and school choice leaves out other important interventions in at least two notable ways. First, my discussion misses the importance of efforts to provide universal access to high quality pre-K and to ensure equitable post-secondary access. I set aside these interventions not because they are unimportant, but rather that any effort to bridge the achievement gap can neither stop at age five nor begin at age eighteen. Second, space constraints preclude me from discussing other significant policy interventions even at the K–12 level, such as school finance reform. I note briefly, however, that the notion of substantially increasing spending in schools serving disadvantaged children—and redistributing tax burdens to fall more heavily on suburban taxpayers—runs into the same political economy barriers as integration and choice. See Ryan & Heise, *supra* note 12, at 2063 (“The dynamics of school finance reform and the politics of desegregation . . . suggest that local districts will rarely be forced to . . . divert local revenues to private schools or schools outside of their districts.”).

³¹ Dan Goldhaber, *In Schools, Teacher Quality Matters Most*, EDUC. NEXT, <https://www.educationnext.org/in-schools-teacher-quality-matters-most-coleman> [<https://perma.cc/5FJR-P63B>] (Feb. 3, 2016). Of course, numerous critical non-school variables exist, too, many of which owe to an ongoing history of racial discrimination in areas such as housing, criminal justice, health care, employment, and the environment, to name a few. See, e.g., Valerie Strauss, *No, Great Schools Can’t Close Achievement Gaps All by Themselves*, WASH. POST (Mar. 21, 2016, 2:05 PM), <https://www.washingtonpost.com/news/answer-sheet/wp/2016/03/21/no-great-schools-cant-close-achievement-gaps-all-by-themselves> [<https://perma.cc/82ZU-8W3U>] (listing various non-school variables). However, just as school reform alone cannot eradicate the achievement gap without interventions in these other fields, neither can the other interventions eliminate the gap if schools serving children of color continue to lack equitable access to outstanding teachers. See *infra* notes 40–42 and accompanying text (describing inequitable distribution of teacher quality).

attributable to individual teachers.³² Thus, for example, researchers have found that a one standard deviation increase in teacher quality is associated with a difference in annual student gains of 0.11 standard deviations in reading and 0.15 standard deviations in math.³³ To put that in perspective, “the math results imply that having a teacher at the twenty-fifth percentile as compared to the seventy-fifth percentile” for just one year “would move a student at the middle of the achievement distribution to the fifty-eighth percentile.”³⁴

This is, to put it mildly, a big deal. In a field where the ability to claim even bare statistical significance on student learning is celebrated as a victory,³⁵ teacher quality impacts stand out for their size and durability. Framed in the context of the racial achievement gap, the difference between four straight years of exposure to a seventy-fifth percentile teacher rather than a twenty-fifth percentile teacher would be enough to eliminate the gap altogether.³⁶

Nor are these benefits limited to test scores. Using a longitudinal data set that linked more than one million students’ annual test scores to subsequent U.S. tax records, researchers found that a single standard deviation improvement in teacher quality “in a single grade raises the probability of college attendance” by nearly a full percentage point, and raises future yearly earnings by 1.3%.³⁷ In other words, a student’s access to just a *single higher-quality teacher* for just a *single year* is associated with a projected cumulative lifetime income gain of \$39,000.³⁸

³² For a thorough analysis based on over one million student records showing that “value-added models which control for a student’s prior test scores provide unbiased forecasts of teachers’ casual impacts on student achievement,” see Raj Chetty, John N. Friedman & Jonah E. Rockoff, *Measuring the Impacts of Teachers I: Evaluating Bias in Teacher Value-Added Estimates*, 104 AM. ECON. REV. 2593, 2630 (2014).

³³ Eric A. Hanushek & Steven G. Rivkin, *Generalizations About Using Value-Added Measures of Teacher Quality*, 100 AM. ECON. REV.: PAPERS & PROC. 267, 267 (2010).

³⁴ *Id.* at 268.

³⁵ Consider, by way of example, the raging debate over universal pre-K and whether the gains that participants experience fade out over time. See, e.g., Drew Bailey, Greg Duncan & Candice Odgers, *Preschool Can Provide a Boost, but the Gains Can Fade Surprisingly Fast*, WASH. POST (Feb. 17, 2017, 3:34 PM), <https://www.washingtonpost.com/posteverything/wp/2017/02/17/preschool-can-provide-a-boost-but-the-gains-can-fade-surprisingly-fast> [<https://perma.cc/D5F8-NYS2>] (“Unfortunately, our investments in many early-childhood programs may be based on an inflated sense of their promise. Even our best efforts often produce only ephemeral gains.”). Or consider evidence that class size reduction generates no student learning benefit. See Caroline M. Hoxby, *The Effects of Class Size on Student Achievement: New Evidence from Population Variation*, 115 Q.J. ECON. 1239, 1239 (2000) (reporting no benefit).

³⁶ See *supra* text accompanying note 24; see also Hanushek & Rivkin, *supra* note 33 at 268 (noting that the black–white achievement gap is roughly 0.7–1.0 standard deviations, and observing that exposure to a twenty-fifth rather than seventy-fifth percentile teacher for a single year would increase student learning by 0.2 standard deviations).

³⁷ Raj Chetty, John N. Friedman & Jonah E. Rockoff, *Measuring the Impacts of Teachers II: Teacher Value-Added and Student Outcomes in Adulthood*, 104 AM. ECON. REV. 2633, 2634 (2014).

³⁸ *Id.*

The bottom line is simple. Everyone who cares about educational equity agrees that we must increase access for children of color to great schools. But what we really mean is that we need to increase these students' access to *great teachers*.³⁹ And yet, the cruel irony is that children of color are disproportionately likely to be taught by less effective teachers.⁴⁰ As one recent study characterizes it, students of color are “more likely to have low-quality teachers in every year of available data and under every definition of . . . teacher quality.”⁴¹ In the Los Angeles Unified School District, for example, Latino and African-American students are “68 percent and 43 percent [respectively] more likely than white students to be taught by a teacher in the lowest 5 percent for effectiveness.”⁴² This, of course, is exactly the opposite of what is needed. To break down the achievement gap and offer children of color a fair opportunity at educational, professional, and civic success in the face of rampant poverty and structural racism, these children deserve better than *average*. They deserve the best teachers America has to offer.

B. Schools

Two of America's dominant educational equity interventions leverage the importance of great teachers, but they do so indirectly. That is, efforts to desegregate American public schools and to offer disadvantaged children school choice each target *schools* as the unit of intervention, with the indirect benefit of increasing access to great teachers.

1. Integration

Perhaps few American legal stories are as celebrated as the Supreme Court's unanimous rejection of segregated public schooling in *Brown v. Board of Education*.⁴³ There is far too much to this story to be recounted fully here, but I want to make two limited points.

³⁹ This is not to say that teacher quality is a completely exogenous variable from school quality; teachers routinely report that job conditions affect their satisfaction and ability to teach. *See, e.g.*, SE. CTR. FOR TEACHING QUALITY FOR GOVERNOR MIKE EASLEY, GOVERNOR EASLEY'S TEACHER WORKING CONDITIONS INITIATIVE SUMMARY OF FINDINGS 1-2, <https://nepc.colorado.edu/sites/default/files/EPRU-0504-114-OWL.pdf> [<https://perma.cc/C93T-SK9Y>] (showing teachers and students perform better with superior teacher working conditions). Still, as I explain below, research shows that high-performing teachers continue to achieve significantly greater student learning gains even after transferring to a lower-performing school. *See infra* note 77 and accompanying text.

⁴⁰ This is true across a range of studies that measure teacher quality based on value-added as well as teacher qualifications. *See* Goldhaber et al., *supra* note 25 (reporting that disadvantaged students tend to have less qualified and less effective teachers).

⁴¹ *Id.*

⁴² Vergara v. State, 209 Cal. Rptr. 3d 532, 545 (Cal. Ct. App. 2016).

⁴³ 347 U.S. 483 (1954).

The first is to recognize that integration's purpose—and its benefits—have never been limited to the academic sphere. To be sure, a desire for academic fairness is one vital reason America has devoted substantial resources to integrating public schools,⁴⁴ but so too are the aims of “setting right” the wrongs of segregation and teaching our children social tolerance—the ability to “engage in the kind of cooperation among Americans of all races that is necessary to make a land of 300 million people one Nation.”⁴⁵ Alas, in *Parents Involved in Community Schools v. Seattle School District No. 1*, the Supreme Court held that these reasons do not justify a school district's voluntary integration policy.⁴⁶

The second is that, to the extent equity advocates seek to continue pursuing the academic fairness objective through means other than integration, there are some lessons to be learned from integration's successes.⁴⁷ As noted above, integration reduced the academic achievement gap by roughly half.⁴⁸ The key question is *why*. As recent research from Stanford sociologist Sean Reardon reveals, “the mechanisms through which segregation is related to achievement gaps are related to differences in students' exposure to *poor schoolmates*.”⁴⁹ From an academic achievement perspective, in other words, the problem with racially segregated schools is that they are also disproportionately likely to be schools serving high numbers of poor children. And high-poverty schools are more likely to have “fewer resources,” including especially “a harder time attracting and retaining skilled teachers.”⁵⁰

⁴⁴ See, e.g., *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 839 (2007) (Breyer, J., dissenting) (describing integration's compelling interest in overcoming the negative educational implications that stem from school segregation).

⁴⁵ *Id.* at 838, 840.

⁴⁶ See *id.* at 720, 722 (majority opinion) (recognizing only two compelling state interests that may justify race-conscious school assignment plans: “remediating the effects of past intentional discrimination” and “diversity in higher education”); *id.* at 725-26 (plurality opinion) (rejecting school districts' attempt to justify voluntary integration based on the social benefits that arise from diverse learning environments).

⁴⁷ This is not to malign the other objectives behind integration. For instance, I consider it vitally important that we work to foster a sense of social inclusion along racial lines. Racial integration was the obvious, most direct route to that valuable aim; in the wake of *Parents Involved*, we are left with less ideal interventions (that encounter similar political economy challenges), such as integrating public schools by socioeconomic status. See generally Richard D. Kahlenberg, *From All Walks of Life: New Hope for School Integration*, AM. EDUCATOR, Winter 2012-13, <https://www.aft.org/sites/default/files/periodicals/Kahlenberg.pdf> [<https://perma.cc/4NC3-ZLYB>] (outlining the political and logistical obstacles associated with socioeconomic school integration). Still, given the evidence that academic achievement matters immensely to breaking down economic inequality, the achievement gap remains independently worth of our attention. See *supra* note 37 and accompanying text.

⁴⁸ See *supra* text accompanying note 11.

⁴⁹ Sean F. Reardon, *School Segregation and Racial Academic Achievement Gaps*, RUSSELL SAGE FOUND. J. SOC. SCIS., Sept. 2016, at 34, 49 (emphasis added).

⁵⁰ *Id.*; see also GROVER J. “RUSS” WHITEHURST, RICHARD V. REEVES & EDWARD RODRIGUE, THE BROOKINGS INST., SEGREGATION, RACE, AND CHARTER SCHOOLS: WHAT DO WE KNOW? 45 (2016), https://www.brookings.edu/wp-content/uploads/2016/10/ccf_20161021segregation_version-

Integration thus reduced the achievement gap largely by cutting through this causal mechanism: when Black children were bussed to racially integrated schools, they often wound up in schools serving middle-class white students—middle-class schools that had greater resources and that were thus far more likely to employ high-quality teachers.

2. School Choice

In part because the Supreme Court has taken voluntary racial integration off the table, equity advocates have shifted gears. One response has been school choice, in particular through the use of charter schools, or publicly funded schools that are operated outside the traditional public school system. Although not all advocates of educational equity support charter schools, many do—including President Obama and a coalition of Black leaders and other prominent advocates.⁵¹ School choice also encompasses other kinds of policies, including private school vouchers and intra-district and inter-district public school choice.⁵² In a political vacuum, inter-district choice plans would be especially attractive in their ability to provide children of color who attend low-performing urban schools access to high-performing public schools in nearby suburban districts.⁵³

For present purposes, the key point is to identify *how* school choice succeeds in reducing the achievement gap, to the extent it succeeds at all. As noted earlier, there is as yet no broad consensus as to whether school choice does, in fact, ameliorate the achievement gap. What is clear, however, is that *some* charter schools serving high numbers of children of color and poor

10_211.pdf [https://perma.cc/GG7L-5UVE] (“[T]he socioeconomic background of the student body . . . is a very strong predictor of achievement test scores and upward mobility, drowning out the possible influence of the racial composition of the student body . . . [And] school quality, a strong correlate of school-level poverty, emerges as a possible mediator of achievement outcomes.”).

⁵¹ See, e.g., Claudio Sanchez & Cory Turner, *Obama’s Impact on America’s Schools*, NPR: NPRED (Jan. 13, 2017, 6:38 AM), https://www.npr.org/sections/ed/2017/01/13/500421608/obamas-impact-on-americas-schools [https://perma.cc/9GSH-EPRF] (describing President Obama’s support for charter schools); Kristina Rizga & Edwin Rios, *Here’s Why Some Black Leaders Are Fighting the NAACP over Charter Schools*, MOTHER JONES (Sept. 28, 2016), https://www.motherjones.com/politics/2016/09/charter-schools-naacp-black-students [https://perma.cc/GJ5H-TARM] (describing the pushback by Black leaders against the NAACP’s call for a national moratorium on charter schools).

⁵² See Tang, *supra* note 19, at 1108–21 (describing school choice variants).

⁵³ See ERIN DILLON, EDUC. SECTOR REPS., PLOTTING SCHOOL CHOICE: THE CHALLENGES OF CROSSING DISTRICT LINES 21 (2008) (finding that inter-district choice would allow up to twenty percent of students in the nation’s lowest performing schools to transfer across district lines to higher-performing schools); see also Forman, *supra* note 18, at 550 (describing racial justice appeal of school vouchers).

children have achieved great results.⁵⁴ What explains these results? Put simply, “[t]eachers working in above-average poverty charter schools have significantly higher value-added scores compared to [traditional public school] teachers working in similar settings.”⁵⁵ Teacher quality likely plays a meaningful explanatory role to the extent students may be able to transfer to higher performing traditional public or private schools, too.⁵⁶ Just as with integration, in other words, school choice functions through a particular mechanism: moving children of color to different schools works to the extent it brings them into classrooms taught by higher quality teachers.

* * *

In arguing that integration and school choice play significantly on the critical variable of teacher quality, my point is not to criticize either intervention. When it comes to reducing the achievement gap, after all, we care ultimately about *results*, not mechanisms. But as the next part shows, mechanisms can sometimes get in the way of results. This is especially true if, as is the case for integration and meaningful public school choice, a policy intervention is perceived as such a radical departure from the status quo that it generates substantial political resistance.

C. Suburban Parents

What Professors Ryan and Heise observed nearly twenty years ago remains true today: “the key to understanding the current and future prospects of school choice,” as well as the historic downfall of integration, is to understand the “incentives and political power of suburbanites.”⁵⁷ For the common thread through both policy narratives is that suburban parents fight vehemently for—and win—the ability to “send their kids to suburban public schools, to spend locally raised revenues primarily if not exclusively on local

⁵⁴ See CTR. FOR RSCH. ON EDUC. OUTCOMES, STANFORD UNIV., URBAN CHARTER SCHOOL STUDY REPORT ON 41 REGIONS, at v (2015), <https://urbancharters.stanford.edu/download/Urban%20Charter%20School%20Study%20Report%20on%2041%20Regions.pdf> [<https://perma.cc/P6F7-Y2ZQ>] (“[U]rban charter schools in the aggregate provide significantly higher levels of annual growth in both math and reading compared to [traditional public schools,] . . . [And l]earning gains for charter school students are larger by significant amounts for Black, Hispanic, low-income, and special education students in both math and reading.”).

⁵⁵ Umut Ozek, Celeste Carruthers & Kristian Holden, *Teacher Value-Added in Charter Schools and Traditional Public Schools* 18 (Nat’l Ctr. for Analysis of Longitudinal Data in Educ. Rsch., Working Paper No. 183, 2018).

⁵⁶ See Aaron Tang, *School Vouchers, Special Education, and the Supreme Court*, 167 U. PA. L. REV. 337, 387-89 (2019) (describing conflicting evidence regarding voucher impacts).

⁵⁷ Ryan & Heise, *supra* note 12, at 2047.

kids, and to shield their kids from having to attend schools with more than a relative handful of ‘outsiders.’”⁵⁸

Suburban opposition, in other words, explains why the Supreme Court aggressively supported broad remedial measures that re-zoned and bussed Black students to different public schools *within the urban district where they resided*,⁵⁹ but slammed the door shut once desegregation advocates proposed the more far-reaching measure of including *suburban* school districts in their re-zoning and bussing plans.⁶⁰ And the same opposition explains why public school choice laws never require suburban districts to accept transfer requests from students who reside across district lines.⁶¹

Two concepts from the behavioral psychology literature help to explain why suburban parents show such reflexive distaste for integration and genuine public school choice. One is status quo bias, or the disproportionate preference human beings have for sticking with the current state of affairs.⁶² For suburbanites, the relevant status quo is the expectation that their children will attend local public schools that look roughly the same way they have always looked, demographically speaking. This state of affairs, of course, would be radically threatened (or at least perceived as such) by integration and genuine inter-district school choice.⁶³

The second, related bias is loss aversion, or the concept that people experience losses as more harmful than corresponding gains.⁶⁴ In the context of integration and inter-district public school choice, suburban parents perceive a significant loss in the disruption of the status quo—that is, in the threatened change to the makeup of their neighborhood schools. But the felt loss is often even greater than this, because many suburban parents make home purchases and employment decisions on the basis of public school quality—decisions whose value will be undercut (or at least perceived as such) should the school’s composition be radically altered. Few political forces are as powerful as an angry

⁵⁸ *Id.* at 2087.

⁵⁹ See *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 28–31 (1971) (upholding use of zoning and bussing to integrate schools within the Charlotte-Mecklenburg school district).

⁶⁰ See *Milliken v. Bradley*, 418 U.S. 717, 718 (1974) (holding that federal courts were not authorized to implement a desegregation plan which included Detroit and fifty-three separate suburban school districts).

⁶¹ See Tang, *supra* note 19, at 1113–21 (describing the limits on these plans).

⁶² William Samuelson & Richard Zeckhauser, *Status Quo Bias in Decision Making*, 1 J. RISK & UNCERTAINTY 7, 7–8 (1988).

⁶³ See Hannah-Jones, *supra* note 15 (describing intense opposition among suburban whites to integration); CHARLES T. CLOTFELTER, *AFTER BROWN: THE RISE AND RETREAT OF SCHOOL DESEGREGATION* 81–86 (2004) (canvassing considerable evidence of white flight to suburbs in direct response to school desegregation).

⁶⁴ See Daniel Kahneman & Amos Tversky, *Prospect Theory: An Analysis of Decision Under Risk*, 47 *ECONOMETRICA* 263, 279 (1979) (“[L]osses loom larger than gains.”).

block of motivated suburban voters; integration and genuine public school choice founder because that is the very force they are likely to produce.

II. THE POLITICAL ECONOMY OF TEACHERS' CHOICE

In view of the political resistance generated by efforts to move substantial numbers of disadvantaged children into suburban public schools, should reformers be willing to accept more incremental policy reforms? It is tempting to think the answer should be determined by one's prior views on what successful political change looks like. Consider, for instance, the disjuncture between Senator Bernie Sanders's calls for nothing less than a "political revolution" and President Joe Biden's across-the-board preference for moderation.⁶⁵ But there is another obvious approach that turns more on factual nuance than absolutist ideology: whether one should settle for an incremental reform depends on its efficacy and attainability.

In the context of educational equity, the stagnant racial achievement gap since integration's demise suggests that the incremental reforms adopted in its place to date have failed to yield the desired results.⁶⁶ Commonly-mentioned proposals, such as class size reduction and increased access to pre-K, have produced mixed evidentiary records at best.⁶⁷ Put simply, white students continue to score "an average of 1.5 to 2 grade levels higher than black students in the average district, county and metropolitan area."⁶⁸

If these proposals were the best alternatives to more radical calls for integration or inter-district school choice, reformers would do better to hold out for more. But are they? This part examines a potentially more promising intervention that I call teachers' choice, by which I mean a policy that provides high-performing teachers financial incentives to transfer to schools serving large numbers of students of color. Section II.A presents research evidence supporting this intervention's efficacy; Section II.B explains how teachers' choice can mitigate the problematic political economy that plagues integration

⁶⁵ See, e.g., Michelle Cottle, *Democrats Aren't in the Mood for Your Revolution*, N.Y. TIMES (Mar. 11, 2020), <https://www.nytimes.com/2020/03/11/opinion/biden-sanders-primary-results.html> [<https://perma.cc/B5GX-QXL8>] (contrasting the "Bernie Sanders Revolution" with Joe Biden's message of "moderation").

⁶⁶ See *supra* note 8 (describing the persistence of racial disparities in educational outcomes); Hanushek et al., *supra* note 11 ("[T]he gap between the haves and have-nots has persisted.").

⁶⁷ See *supra* notes 17 & 35; see also SPYROS KONSTANTOPOULOS, INST. FOR THE STUDY OF LABOR (IZA), DISCUSSION PAPER NO. 2904, DO SMALL CLASSES REDUCE THE ACHIEVEMENT GAP BETWEEN LOW AND HIGH ACHIEVERS? EVIDENCE FROM PROJECT STAR 31 (2007), <http://ftp.iza.org/dp2904.pdf> [<https://perma.cc/WA5D-NQSD>] (arguing that there is "no evidence that manipulating class size can reduce the achievement gap between lower- and higher achieving students").

⁶⁸ Sean F. Reardon, Ericka S. Weathers, Erin M. Fahle, Heewon Jang & Demetra Kalogrides, *Is Separate Still Unequal? New Evidence on School Segregation and Racial Academic Achievement Gaps* 23 (Stanford Ctr. for Educ. Pol'y Analysis, Working Paper No. 19-06, 2019).

and school choice. Section II.C responds briefly to a likely objection—that teachers unions will oppose teachers’ choice even if suburban parents do not.

A. Teachers’ Choice

An emerging body of research evidence demonstrates that the existing inequitable distribution of great teachers is not a fixed constant. In particular, great teachers are responsive to financial incentives through policies that I refer to as “teachers’ choice,” insofar as they nudge—but do not compel—outstanding educators to choose voluntarily to teach in hard-to-staff schools serving high concentrations of low-income and minority children.

The most important study documenting the efficacy of teachers’ choice is the Talent Transfer Initiative, a randomized controlled experiment that examined the effects of \$20,000 bonuses paid over two years to high-performing teachers who transferred to low-performing schools.⁶⁹ Researchers began by identifying high-performing teachers in ten participating large school districts, defined as teachers who produced annual student learning gains in the top quintile for their districts.⁷⁰ They then identified “receiving” and “sending” schools within each district, with “receiving” schools defined as the lowest-performing schools according to student achievement and “sending” schools defined as the remaining schools in the district.⁷¹ Although both sending and receiving schools in these large districts had student populations that were (on average) majority-minority and majority free/reduced lunch eligible, the low-performing receiving schools had student bodies with significantly higher proportions of poor and minority children.⁷² Next, the researchers identified teacher vacancies in the participating districts. Half of the vacancies were randomly assigned to a treatment group—which is to say, the schools were able to offer the job to a high-performing teacher from another school within the district using the powerful incentive of a \$20,000 bonus paid out in installments over two years.⁷³ The other half were randomly assigned to a control group in which

⁶⁹ TRANSFER INCENTIVES, *supra* note 26, at xxv.

⁷⁰ *Id.* at xxvii.

⁷¹ *Id.*

⁷² *Id.* at 23 tbl.II.1 (noting, for example, that sending elementary schools had 55% free or reduced lunch eligible students and 34% white students, while receiving elementary schools had 80% free or reduced lunch eligible students and 10% white students).

⁷³ *Id.* at xxvii.

the vacancy was filled using the schools' ordinary hiring processes.⁷⁴ All told, 155 teachers and roughly 16,000 students participated in the experiment.⁷⁵

There are a number of important takeaways from the study, but two are especially critical. First, a meaningful number of high-performing teachers were willing to leave their schools and transfer to a lower-performing school serving higher concentrations of poor and minority children: 32% of all teachers that placed within the highest quintile in terms of student learning gains attended an information session, and 22% completed an application to transfer.⁷⁶ Second, the high-performing transfer teachers produced significant benefits in their new schools. In each of the two years after the transfer, elementary students in the treatment group experienced learning gains “between 0.10 and 0.25 standard deviations” greater than state norms—the “equivalent to moving up each student by 4 to 10 percentile points relative to all students in their state.”⁷⁷ Interestingly, these results obtained only in the elementary school sample; no statistically significant impacts were observed in the middle school sample.⁷⁸ Still, the elementary impacts were substantial—large enough to eliminate the black–white achievement gap with four consecutive years of exposure to a high-performing transfer teacher.⁷⁹ And these impacts have been replicated: a second study that evaluated the effects of similar bonuses to *retain* high performing teachers in high-poverty schools showed even greater effects on student learning.⁸⁰

One immediate response to this evidence is to point out how costly the intervention might be. Paying annual bonuses to high-performing teachers who teach in high-poverty, high-minority schools will require additional resources, to be sure. But annual increases in school spending (even after adjusting for inflation) are actually a relative constant in the American K–12 education landscape.⁸¹ The bigger challenge has been how to use this

⁷⁴ *Id.* at xxviii.

⁷⁵ *See id.* at 21 fig.II.5 (showing seventy-five teachers in the treatment group and eighty teachers in the control group); *id.* at 28 tbls.II.3 & II.4 (listing the sample sizes for elementary and middle school treatment and control groups).

⁷⁶ *Id.* at xxxii. In absolute terms, 333 of 1,514 eligible teachers filled out an application to transfer. *Id.*

⁷⁷ *Id.* at xxv.

⁷⁸ *Id.*

⁷⁹ *See id.* at xxv (stating that the impact of the teacher transfers was “equivalent to moving up each student by 4 to 10 percentile points”); ROTHSTEIN ET AL., *supra* note 27, at 4-14 (discussing the black–white academic performance gap, which “is about 29 percentile points”).

⁸⁰ Walker A. Swain, Luis A. Rodriguez & Matthew G. Springer, *Selective Retention Bonuses for Highly Effective Teachers in High Poverty Schools: Evidence from Tennessee*, 68 ECON. EDUC. REV. 148, 149 (2019) (finding a net “increase in teacher effectiveness of 1.7 standard deviations” when high performing teachers accept bonuses to remain in their high-poverty schools).

⁸¹ *See, e.g., Expenditures*, INST. OF EDUC. SCIS.: NAT'L CTR. FOR EDUC. STAT., <https://nces.ed.gov/fastfacts/display.asp?id=66> [<https://perma.cc/HAF5-LGM2>] (showing twenty percent growth in per student spending between 2000 and 2018, even in constant 2018 dollars).

additional money *wisely*, in a manner that will reduce the educational opportunity gap facing children of color. And on this front, teachers' choice would be vastly more cost-effective than commonly discussed alternatives such as class size reduction.⁸²

That said, a few issues warrant discussion with respect to program design. First, in light of the Supreme Court's ruling in *Parents Involved*,⁸³ any teachers' choice plan would have to identify receiving schools—that is, schools eligible to use bonuses to attract high-performing teachers—based on socioeconomic status or student achievement rather than race directly. Both of these factors correlate strongly with race, of course, so a teachers' choice plan based on either would still make considerable strides in reducing the racial achievement gap.

Second, to ensure maximum success, a teachers' choice policy would need to operate on a statewide or federal, rather than intra-district, basis. On such an approach, bonuses would be paid to high performing teachers who teach in high-need schools regardless of what school district they are transferring from. This is notably different than the program design used in the Talent Transfer Initiative study, which offered bonuses to high-performing teachers who left a high-performing school for a low-performing one *within the same district*.⁸⁴ That intervention was meaningful in the large, diverse districts in the study sample, which comprised a mix of more and less affluent neighborhoods. But it would be ineffectual in a number of urban districts that suffer district-wide shortages of high quality teachers—districts like Detroit Public Schools, where 86% of students are eligible for free or reduced price lunches,⁸⁵ and 98% of students are nonwhite.⁸⁶ What is needed, then, is a teacher transfer incentive that crosses district or even state lines to compensate high-performing teachers who are willing to leave their current schools to teach in higher-need environments.⁸⁷

⁸² See TRANSFER INCENTIVES, *supra* note 26, at xxxviii (finding teachers' choice to be cheaper than class size reduction in producing student learning gains by somewhere between \$13,154 and \$40,043 on an annual per-grade basis for elementary schools).

⁸³ *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007); *see also supra* note 46.

⁸⁴ TRANSFER INCENTIVES, *supra* note 26, at xxvii.

⁸⁵ John Wisely, *Detroit Schools Begin Distributing Almost 100,000 Grab-and-Go Meals a Day*, DETROIT FREE PRESS (Mar. 30, 2020, 11:29 AM), <https://www.freep.com/story/news/education/2020/03/18/detroit-schools-distributing-free-meals-michigan-coronavirus/2865327001> [<https://perma.cc/FAN5-ZWNH>].

⁸⁶ EDBUILD, DISMISSED: AMERICA'S MOST DIVISIVE SCHOOL DISTRICT BORDERS 1 (2019), <https://edbuild.org/content/dismisssed/edbuild-dismisssed-full-report-2019.pdf> [<https://perma.cc/ZZR5-HMK3>].

⁸⁷ One might argue that high-performing teachers will be less likely to accept the bonus if doing so requires crossing school district borders. But that argument misses the key takeaway from the Talent Transfer Initiative: high-performing teachers were willing to leave their well-off, high-performing public schools to teach in low-performing ones. What matters, in other words, is that great teachers are

One promising possibility would be for the federal government to provide matching grants to states, akin to Medicaid.⁸⁸ Such a program would reward states that adopt teachers' choice policies that identify schools across the state with the greatest instructional needs (whether measured by school poverty or performance) and then provide bonuses to any high-performing teacher anywhere in the state (measured by student value-added, as in the Talent Transfer Initiative⁸⁹) who agrees to transfer to one of these schools.⁹⁰ This approach would expand the size of the eligible pool of high-performing teachers who could benefit from the financial incentive—and who could help break down the achievement gap in turn.

Such a policy would represent a substantial improvement over current state and federal law. With respect to state law, eighteen states currently offer some form of stipend or bonus to teachers in high-need schools; five provide loan forgiveness or mortgage assistance.⁹¹ Unfortunately, the vast majority of these benefits are *across-the-board*, granting additional compensation to low- and high-performing teachers alike.⁹² Because these bonuses must be paid to *all* teachers in high-need schools, they are also far smaller than the annual \$10,000 bonus used in the Talent Transfer Initiative study—typically ranging

willing to leave public schools that are perceived as “nicer” in exchange for a bonus; whether their former schools were technically within the same district as their new ones seems immaterial.

⁸⁸ See Laura Snyder & Robin Rudowitz, *Medicaid Financing: How Does it Work and What Are the Implications?*, KAISERFAM. FOUND. (May 20, 2015), <https://www.kff.org/medicaid/issue-brief/medicaid-financing-how-does-it-work-and-what-are-the-implications> [<https://perma.cc/EVV3-HECZ>] (describing how Medicaid is funded through federal matching grants to states).

⁸⁹ See TRANSFER INCENTIVES, *supra* note 26, at xxv (describing how high-performing teachers are identified as those who generate student learning gains in the highest quintile).

⁹⁰ A similar bonus should be paid to high-performing teachers who agree to remain in an eligible school. *See id.* at 5 (noting that similar retention bonuses were offered in the Talent Transfer Initiative); Swain et al., *supra* note 80, at 149 (showing the efficacy of retention bonuses).

⁹¹ Nicole Gerber, *How Are Districts and States Using Pay to Staff High-Need Schools and Subjects?*, NAT'L COUNCIL ON TCHR. QUALITY (May 24, 2018), <https://www.nctq.org/blog/How-are-districts-and-states-using-pay-to-staff-high-need-schools-and-subjects> [<https://perma.cc/CT92-FDRB>].

⁹² See NAT'L COUNCIL ON TCHR. QUALITY, DATABURST: STRATEGIC TEACHER COMPENSATION 2-3 (2018), https://www.nctq.org/dmsView/Strategic_Compensation_Databurst [<https://perma.cc/MH9X-L9HR>] (describing state differential pay policies for high-need schools and listing only New York and Utah as providing additional pay to high-performing teachers, identified as those who rate as “effective” under value-added measures). Note that several states provide a bonus to teachers with National Board Certification. *See id.* at 2-3. Such policies are marginally better than across-the-board bonuses, insofar as there is evidence that National Board Certified teachers produce modest gains in student achievement. *See* James Cowan & Dan Goldhaber, *National Board Certification and Teacher Effectiveness: Evidence from Washington State*, 9 J. RSCH. ON EDUC. EFFECTIVENESS 233, 234 (2016), <https://files.eric.ed.gov/fulltext/EJ1106512.pdf> [<https://perma.cc/9NW8-KPL7>] (finding that National Board Certified teachers “are about 0.02-0.05 standard deviations more effective” than non-certified teachers with similar levels of experience in math, and 0-0.02 standard deviations more effective in reading). These gains, however, are just a fraction of the student learning gains produced in the Talent Transfer Initiative experiment. *See supra* note 77 and accompanying text.

from \$1,600 to \$5,000 and available for a limited period of years.⁹³ Similar problems plague the primary federal intervention aimed at teachers in high-need schools: the federal TEACH grant provides a \$4,000 annual grant to college students who teach in high-poverty schools for four years, but it does not distinguish between high and low-performing teachers.⁹⁴

To be clear, my point is not that existing state and federal policies that provide across-the-board benefits to teachers in high-poverty schools are misguided. By increasing the overall size of the pool of teaching applicants for these schools, across-the-board benefits should theoretically lead to improvements in teacher quality, even if only indirectly. My point instead is that paying larger, longer-term bonuses exclusively to teachers who are *already proven* to be high-performers would be more cost-effective if our end goal is to attract and retain great teachers in high-need schools.

Why, then, do existing policies prefer the across-the-board approach? One possibility may be the perception that paying bonuses only to high-performing teachers would be politically unpopular insofar as it might encourage more suburban teachers to leave their schools. A second argument might be that teachers' unions will oppose any effort to treat teachers differentially based on their performance. I consider these objections in turn.

B. *The Political Economy of Teachers' Choice*

Recall that the root of suburban parents' opposition to inter-district integration and school choice was their perception of both interventions as a radical departure from the status quo: such parents view the existing demographic composition of their schools—i.e., the “type” of students whom their children will interact with and befriend—as a baseline expectation to be defended against drastic change. What is more, altering that baseline triggers the psychological bias of loss aversion—a particularly salient force for suburbanites who often purchase homes or make employment decisions based on the quality of their neighborhood schools.⁹⁵

⁹³ See NAT'L COUNCIL ON TCHR. QUALITY, *supra* note 92 (listing state policies concerning differential pay for high need schools).

⁹⁴ See *A TEACH Grant Can Help You Pay for College If You Plan to Become a Teacher in a High-Need Field in a Low-Income Area.*, FED. STUDENT AID, <https://studentaid.gov/understand-aid/types/grants/teach> [<https://perma.cc/XTU4-KPY9>] (outlining the eligibility requirements for a TEACH grant, which omit any standard related to performance).

⁹⁵ See Michele Lerner, *School Quality Has a Mighty Influence on Neighborhood Choice*, *Home Values*, WASH. POST (Sept. 3, 2015), https://www.washingtonpost.com/realestate/school-quality-has-a-mighty-influence-on-neighborhood-choice-home-values/2015/09/03/826c289a-46ad-11e5-8ab4-c73967a143d3_story.html [<https://perma.cc/YJA2-MVFP?type=image>] (emphasizing the importance that home buyers associate with well-performing neighborhood schools).

The critical difference with teachers' choice is that it represents a more modest change to the status quo perceived by these same suburban parents, and as such, triggers a dampened sense of loss aversion. For whereas a sudden influx of thousands of new children (who are more likely to be poor and minority) into a local public school would be a very salient change to the average suburban parent, the voluntary departure of some modest number of additional teachers would be less so. This is true for three reasons.

First, suburban parents often lack specific expectations regarding the identity of their child's future teachers. This is most obviously true for suburban parents of younger children vis-à-vis teachers in higher-level grades—frequently the parents will not even know who these teachers are, much less know which are the highest performing. But parents also often lack a settled expectation with regard to their child's future placement in the classroom of a well-known, high-performing teacher in their current school. This is because teacher assignments in most schools are not announced until just weeks—or even days—before the start of the school year.⁹⁶ What is more, these assignments are frequently made through an opaque or even randomized process, further precluding suburban parents from treating their child's future placement with a particular teacher as a bankable status quo. For all of these reasons, few suburban parents choose where to live, which house to buy, and what job to take based on an expectation that their child will someday have Mr. Smith in the fifth grade or Mrs. Thomas for high school physics. And if that is so, then a policy that provides Mr. Smith or Mrs. Thomas a financial bonus to teach in a higher-need school is unlikely to trigger the same psychological biases as a mandatory inter-district integration or school choice policy.

Second, a given school district's teacher force is already the subject of considerable change. For example, 22% of Texas teachers leave their public schools each year, roughly half of whom move to a different Texas school.⁹⁷ To suburban parents, in other words, the status quo is *already* that teachers in their child's school will vary greatly from one year to the next (unlike the

⁹⁶ See Kara Corridan, *When (and How) Did You Find Out Who Your Kid's Teacher Is?*, PARENTS (Aug. 27, 2014), <https://www.parents.com/parents-magazine/parents-perspective/when-and-how-did-you-find-out-who-your-kids-teacher-is> [<https://perma.cc/D27C-MTZP>] (describing the normal time frame in which parents discover their child's teacher assignment as anywhere from two to four weeks before school begins to the night before).

⁹⁷ See KATE SULLIVAN, ELIZABETH BARKOWSKI, JIM LINDSAY, VALERIY LAZAREV, THANH NGUYEN, DENIS NEWMAN & LI LIN, U.S. DEP'T OF EDUC., TRENDS IN TEACHER MOBILITY IN TEXAS AND ASSOCIATIONS WITH TEACHER, STUDENT, AND SCHOOL CHARACTERISTICS 5-8 (2017), <https://files.eric.ed.gov/fulltext/ED578907.pdf> [<https://perma.cc/WR3L-B4VE>] (finding a 22% teacher mobility rate in 2015–16 and that of these teachers, 50% either moved schools within their district or to different districts in Texas).

school’s demography). To some parents, then, increasing this turnover by a modest amount would be either undetectable or unworthy of uproar.⁹⁸

Finally, even to the extent some suburban parents do view their child’s future assignment to a *specific* teacher’s class as a part of the *existing* status quo, the nature of the proposed intervention is itself one that diminishes political opposition. Unlike a court-ordered integration plan or a state-imposed inter-district school choice plan, teachers’ choice incentives do not entail government mandated disruptions of suburbanites’ school expectations. Instead, the key feature of teachers’ choice is that the ultimate decision whether to transfer remains in the hands of high-performing teachers themselves; the government is merely influencing these teachers’ choice architecture.⁹⁹ One of the greatest virtues of such “nudges,” of course, is that they produce greater public support than similarly-motivated government mandates.¹⁰⁰ And taken together, all of these dynamics diminish the political economy problems that doomed suburban participation in integration and public school choice.

C. The Political Economy of Teachers’ Unions

Another politically oriented objection to the suggested teachers’ choice policy is the argument that teachers’ unions will oppose them insofar as they treat high-performing teachers differently from all others.¹⁰¹ But there are reasons to be skeptical of this claim.

First, teachers and unions alike recognize the appeal of general policies that increase pay for *all* teachers in hard-to-staff schools, such as those in high-poverty areas. When asked whether incentives should be paid to teachers “who work in tough neighborhoods with low performing schools,” roughly 70% of

⁹⁸ To be sure, this observation is contingent on how many of a given school’s high performing teachers choose to leave. Because evidence from the Talent Transfer Initiative suggests that 22% of *qualifying* teachers will choose to apply (roughly one of every twenty-five teachers total, given that only the top 20% are eligible for the transfer incentive), it is unlikely that a single school would experience such high uptake as to upset suburban parents’ perceived status quo. *See supra* notes 70 & 76 and accompanying text. Still, the possibility of this churn supports a teachers’ choice policy that phases in incrementally over time, such that disruptions to an individual school’s workforce are imperceptible beyond the existing baseline of teacher attrition and turnover.

⁹⁹ *See generally* RICHARD H. THALER & CASS R. SUNSTEIN, *NUDGE* 83-104 (Penguin Books rev. & expanded ed. 2009) (describing the concept of choice architecture).

¹⁰⁰ *See* Cass R. Sunstein, *Do People Like Nudges?*, 68 ADMIN. L. REV. 177, 183-84 & n.33 (2016) (explaining that “people are far more negative about mandates and bans” than they are about “nudges”).

¹⁰¹ *See generally* Dan Goldhaber, *Teacher Pay Reforms: Political Implications of Recent Research* 27, (Ctr. for Educ. Data & Rsch., Working Paper No. 2010-40, 2010), https://moam.info/teacher-pay-reforms-the-globe-and-mail_59e0533c1723dd86e6885005.html [<https://perma.cc/RXF6-7PXE>] (describing union opposition to merit-based teacher pay proposals).

teachers responded favorably.¹⁰² Perhaps unsurprisingly, then, both of the nation's largest teachers' unions are on record in support of such incentives. At least since 2003, the American Federation of Teachers (AFT) has supported "increased professional compensation for . . . agreeing to teach in hard-to-staff and/or low-performing schools."¹⁰³ And in 2012, the National Education Association (NEA) released a report embracing the view that "[t]eachers who work in hard-to-staff schools . . . [should] earn a higher salary."¹⁰⁴

The rub, of course, is that to be effective, a teachers' choice plan has to target its financial incentives at *high performing* teachers alone (as measured by student value-added scores), for those are the teachers with the greatest ability to break down the opportunity gap that afflicts children of color. This requirement would appear to run into a problem: there is general opposition among teachers and their unions to the idea of linking teacher pay to student achievement on standardized tests (so-called "merit pay" plans).¹⁰⁵ Yet district-wide merit pay plans are notably different from the kind of incentive that is offered in a teachers' choice proposal.

To see how, begin with the following fact: from the union's perspective, opposition to merit pay is most powerfully rooted in a concern for false negatives—that is, the concern that a test-score based system might wrongly identify a given teacher as ineffective and thus wrongly reduce her pay (or worse, fire her). But a teachers' choice plan does not trigger this concern. That is because its goal is not to set district-wide pay levels; indeed, teachers' choice bonuses would be layered on top of participating districts' existing, union-negotiated salary schedules. Instead, a false negative on a teachers'

¹⁰² PUB. AGENDA, STAND BY ME: WHAT TEACHERS REALLY THINK ABOUT UNIONS, MERIT PAY AND OTHER PROFESSIONAL MATTERS 24-25 (2003), <https://www.policyarchive.org/handle/10207/5621> [https://perma.cc/NVS6-HQRF].

¹⁰³ AM. FED'N OF TCHRS., WHERE WE STAND: TEACHER QUALITY 34 (2003), https://www.aft.org/sites/default/files/wvs_teacherquality_2003.pdf [https://perma.cc/5NTZ-CV72].

¹⁰⁴ COMM'N ON EFFECTIVE TCHRS. & TEACHING, NAT'L EDUC. ASS'N, TRANSFORMING TEACHING: CONNECTING PROFESSIONAL RESPONSIBILITY WITH STUDENT LEARNING 19 (2011), <https://www.nea.org/sites/default/files/2020-09/Transformingteaching2012.pdf> [https://perma.cc/W3EP-QZY2].

¹⁰⁵ See Amanda Zhou, *Support for Boosting Teacher Pay Is at a 10-Year High, New Survey Finds*, CHALKBEAT (Aug. 21, 2018, 12:02 AM), <https://www.chalkbeat.org/2018/8/21/21107222/support-for-boosting-teacher-pay-is-at-a-10-year-high-new-survey-finds> [https://perma.cc/7G3S-XTJE] (noting that 73% of teachers oppose merit pay); NAT'L EDUC. ASS'N, 2020 ANNUAL REPORT 42 (2020), https://ra.nea.org/wp-content/uploads/2020/06/NEA_Legislative_Program_2020.pdf [https://perma.cc/3NYW-EKBT] (describing the NEA's opposition to "initiatives that mandate or promote traditionally defined merit pay or incentive pay schemes . . . that link educator compensation to student performance"). For its part, the AFT has been less categorical. For instance, AFT President Randi Weingarten declared in 2008, in response to the economic recession and dwindling public school resources, that (with the exception of school vouchers), "no issue should be off the table"—including even possibly merit pay. Sam Dillon, *Head of Teachers' Union Offers to Talk on Tenure and Merit Pay*, N.Y. TIMES (Nov. 17, 2008), <https://www.nytimes.com/2008/11/18/education/18teach.html> [https://perma.cc/K2H6-L3DU].

choice policy would have far less pernicious consequences: it would merely represent the failure to identify a high-performing teacher as such, preventing that teacher from having the option to receive a bonus upon transferring to a high-need school (at least until additional years of data are available). This, to say the least, is a far cry from firing a teacher or cutting her salary based on inaccurate data. As a result, teachers' choice presents far lower stakes than district-wide merit pay—and should not provoke the same opposition from unions.

CONCLUSION

Much like the broader movement for racial justice that is subsumed loosely under the banner of Black Lives Matter, the major challenge facing educational equity advocates today is not disagreement over *what*, but rather *how*.¹⁰⁶ Equity advocates agree vehemently on the goal of eliminating racial inequality in the American education system and hastening the day when every child has the opportunity to achieve her full potential. But we do not agree on how to prioritize the numerous interventions that might help break down this inequality. Some reformers continue to advocate deeper, structural changes such as integration; others have trained their sights on more incremental reforms.¹⁰⁷ This strategic disagreement, I have suggested, is but one incarnation of the broader debate between proponents of radical and incremental change. Similar debates are ongoing across other public policy issues beset by racial inequality.¹⁰⁸

There is a perception that one's position on the radical–incremental change divide is a function of their character or morality. To those on the political left, for example, the tension between an unabashed progressive like Alexandria Ocasio-Cortez and her more moderate Democratic counterparts might be conceptualized as a contrast between those who are “focus[ed] more on moral imperatives than on incremental policy wins.”¹⁰⁹

America's ongoing struggle with racial inequity in public education suggests, however, that this character-driven understanding may be too simplistic. Even the most fervent supporter of court-ordered integration might be willing to consider more incremental change when faced with the political reality of intractable suburban opposition and a Supreme Court that

¹⁰⁶ See *supra* note 1 (describing the strategic debate over how to attain the Black Lives Matter movement's widely shared goals).

¹⁰⁷ See *supra* note 67 and accompanying text (describing class size reduction and universal pre-K).

¹⁰⁸ See *supra* notes 1–5 and accompanying text.

¹⁰⁹ Charlotte Alter, ‘Change Is Closer than We Think.’ *Inside Alexandria Ocasio-Cortez's Unlikely Rise*, TIME (Mar. 21, 2019, 5:59 AM), <https://time.com/longform/alexandria-ocasio-cortez-profile> [<https://perma.cc/JNH6-4Q8G>].

will not permit even *voluntary* school integration efforts.¹¹⁰ The real question is whether any incremental alternatives to integration are themselves efficacious and politically attainable.

In the decades since integration's fall, however, school reformers have struggled to implement such alternatives—a possible indication that reformers should have never settled for less in the first place.¹¹¹ Another possibility, though, is that we have settled for the *wrong something*. Because it operates through the same critical teacher quality variable that made integration so effective in a manner that diminishes suburban hostility, a robust teachers' choice policy deserves close consideration. The policy does not eliminate all grounds for suburban opposition, to be clear; it's quite possible that some especially active suburban parents may object to the idea of offering fiscal incentives to high-performing teachers who transfer to higher-need schools. But this rare moment of racial reckoning—a moment characterized by growing consciousness of white privilege¹¹²—offers an important opportunity to seek out some shared societal sacrifice. A policy like teachers' choice may be just the kind of modest yet impactful sacrifice worth pursuing.

¹¹⁰ See *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 748 (2007) (plurality opinion) (“The way to stop discrimination on the basis of race is to stop discriminating on the basis of race.”).

¹¹¹ See Hannah-Jones, *supra* note 15 (“[I]t is an incredible sleight of hand to argue that mandatory school desegregation failed, while ignoring that the past three decades of reforms promising to make separate schools equal have produced dismal results for black children, and I would argue, for our democracy.”).

¹¹² See *Voters Attitudes About Race and Gender Are Even More Divided than in 2016*, PEW RSCH. CTR. (Sept. 10, 2020), <https://www.pewresearch.org/politics/2020/09/10/voters-attitudes-about-race-and-gender-are-even-more-divided-than-in-2016> [https://perma.cc/P5TL-5WFR] (“Currently, 34% of all registered voters say White people benefit a great deal from advantages that Black people lack, up from 23% in July 2016.”).