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2005

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Repository Citation

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Giftedness, Disadvantage, and Law

By Cynthia V. Ward

Intellect in America is presented as a kind of excellence, as a claim to distinction, as a challenge to egalitarianism, as a quality which almost certainly deprives a man or woman of the common touch.

Richard Hofstadter¹

More than a decade ago, the U.S. Department of Education warned of “a quiet crisis in educating talented students” across the nation.² In its widely circulated report, *National Excellence: A Case for Developing America’s Talent*, the department concluded that “America demands less of top students than other countries do. At the same time our need for the highest levels of skills and expertise is on the rise, many of America’s most talented students are being denied a challenging education.”³ The report attributed the weak performance of top American students to our national “ambivalence toward the intellect,” specifically toward our tendency to see intellectual achievement as deeply threatening to our conception of equality.⁴ The tension between equality and excellence results in mixed messages to talented young people, the report argued: “Our society urges these young people to do well in school; but it also encourages them not to flaunt their intelligence and, in some cases, to avoid high grades and excellent academic achievement altogether.”⁵ The report outlined a “vision for excellent schools”

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This article was presented at a session of the Oxford Round Table, “The Education Needs of At-Risk Children,” in March 2004.

1. “Anti-Intellectualism in American Life” (1970), quoted in U.S. Department of Education, *National Excellence: A Case for Developing America’s Talent* (Washington, DC: Author, 1993) (hereinafter, *National Excellence*), Part I, p. 5.

2. Ibid.

3. Ibid.

4. Ibid.

5. Ibid.

under which school curricula would be designed to “realize each student’s potential, and develop outstanding talent” and in which “achieving success for all students is not equated with achieving the same results for all students.”⁶

In American public school education, recent reports indicate that the long-standing tension between equality and excellence⁷ is degenerating into open warfare. Experts attribute much of the intensifying conflict to the No Child Left Behind (NCLB) Act of 2001,⁸ which sets performance standards for public school students between grades 3 and 12 and requires public schools to meet these standards by making consistent progress toward proficiency as measured by mandated tests, with the ultimate goal of making all public school students proficient in math and reading by 2014. Schools that fail to make steady progress toward this goal may be required to offer tutoring services to students and to allow parents to transfer their children to other, better-performing schools.⁹ The act is directed toward shrinking the achievement gap between wealthy and nonwealthy students and between minority and nonminority students by raising the performance of all students to threshold levels in the core subjects of reading and mathematics.¹⁰

This federal pressure on public schools may be helping the lowest-performing students.¹¹ But it is also having complex, largely disturbing effects on gifted students, who typically perform at levels well above those required by standardized tests. The federal government does not require public schools to offer programs for gifted children, nor does the NCLB Act penalize schools when the test scores of their high-performing students do not progress from year to year. On the other hand, the act creates powerful incentives for schools to focus on raising the test scores of their lowest-performing students, and some schools are doing this by cutting elective programs for gifted children and spending the money from these programs on the effort to comply with NCLB Act requirements.¹² At the same time, neighborhood public schools are seeking to hang on to their gifted students—even if that means not referring such students to off-site gifted programs

6. Ibid., Part III, p. 3.

7. See, e.g., C. A. Tomlinson, “Proficiency Is Not Enough,” *Education Week Commentary*, November 6, 2002, 36 (“One of the reasons it is so devilishly difficult to balance equity and excellence in our schools is that, despite the political rhetoric to the contrary, we simply don’t provide adequate economic support to nurture both goals. We have a substantial history in education, in fact, of supporting one to the detriment of the other.”).

8. No Child Left Behind (NCLB, 2001), 20 U.S.C. Sec. 6301 et seq.

9. Ibid.

10. Ibid.

11. See D. Golden, “Initiative to Leave No Child Behind Leaves Out Gifted,” *Wall Street Journal*, December 29, 2003, 1.

12. Ibid. (“To abide by the law, schools are shifting resources away from programs that help their most gifted students. Because ‘all the incentives in No Child Left Behind are to focus on the bottom or the middle,’ says Stanford University education professor Michael Kirst, ‘reallocating resources there makes sense if you want to stay out of trouble.’”)

that would offer them a more challenging education—because gifted students’ test scores boost the overall performance of their schools.¹³ The competition for these students’ scores is so intense that several states have decided to credit the test scores of gifted students not to the schools in which they are actually enrolled but to their neighborhood schools, a practice some hope will stop “subtle sabotage” by schools that refuse to refer their gifted students to special programs for which they are eligible in order to keep their higher test scores at less challenging neighborhood schools.¹⁴ In short, financial pressures on schools created by the NCLB Act are reducing or ending gifted programs in some school systems while discouraging neighborhood public schools from referring gifted students to programs specifically designed to benefit them.¹⁵

As *The Wall Street Journal* noted in a recent story, the NCLB-inspired emphasis on boosting low performance over encouraging high performance “may create a more knowledgeable U.S. citizenry overall. . . . But reducing programs for the best students could also make it harder to replenish—and diversify—the country’s ranks of top intellectuals and scientists.”¹⁶ Furthermore, reported the *Journal*,

The effects may be felt most by gifted low-income minority pupils whose parents don’t have the option of shifting them to private schools or providing outside enrichment to compensate for cutbacks. Moreover, the priority changes wrought by the law are coming just as districts had been making progress in identifying and nurturing brainy minority students, who’ve long been under-represented in such programs.¹⁷

Thus, gifted students from disadvantaged backgrounds are most harmed by the increased focus on raising the test performance of all disadvantaged students.

Debate over the proper identification and placement of gifted children in public schools is not new. But the pressure put on public schools by the NCLB Act has brought advocates and opponents of gifted education into starker conflict. This presents a chance to reexamine the foundational premises of the argument in closer view and to analyze the potential role of law in resolving it.

In the first part of this article I consider the premises of the equality versus excellence debate as it involves the issue of gifted children and their treatment in the public schools. I conclude that although no innate conflict exists between the goals of achieving educational equality and promoting individual academic excellence, these two goals engage a core *political* conflict that has long thwarted efforts to provide adequate public funding for gifted education. In the second part I

13. D. Golden, “In Era of Scores, Schools Fight over Gifted Kids,” *Wall Street Journal*, February 4, 2004, 1.

14. *Ibid.*

15. *Ibid.*

16. Golden, “Initiative,” 1.

17. *Ibid.*

recount the history of federal support for gifted children from disadvantaged backgrounds, concluding that the political system fails to promote the development of such children and that this fact is unlikely to change. In the third section I discuss the other legal route to delivering needed services to gifted and disadvantaged kids: the creation and funding of nonprofit organizations. I argue that the philosophy behind the nonprofit sector in the United States—that nonprofits exist, in large part, to increase liberty, encourage diversity, and promote innovative solutions to important social problems—makes devising and funding nonprofit ventures a more promising way to benefit gifted and disadvantaged children than government funding. However, the diversity and diffusion of the nonprofit sector present a formidable obstacle to the kind of coherent and organized mandate that would most effectively help gifted children. I identify five core goals of such a mandate and describe one program that, in conjunction with the public school system, seems designed to implement all five.

GIFTEDNESS: A CONFLICT BETWEEN EQUALITY AND EXCELLENCE?

The Dilemma of Equality in Education

As many commentators have noted, the issue of education for the gifted highlights a tension between two deeply rooted American values: equality and excellence.¹⁸ We seem quite willing to acknowledge individual gifts in nonacademic areas such as music, art, and athletics, but when it comes to acknowledging, celebrating, or publicly advancing the greater intellectual potential of some children, we find ourselves caught between the equality rock ("all men are created equal")

18. Where "excellence" is equated with intellect, in the words of R. Hoftstadter in *National Excellence*. See P. S. Bittick, "Equality and Excellence: Equal Education Opportunity for Gifted and Talented Children," 36 *S. Texas L. Rev.* 119, 144 (1995) ("Traditionally, we have stressed equity over excellence in education. Equity has typically meant focusing on a disabled or minority population, whereas excellence has meant focusing on the highly-abled. Many perceive that education can either strive for quality or equality, but not both." Bittick goes on to argue that this view "creates a false dichotomy of policy objectives between equity and excellence"); L. Ketterman, "Does the Individuals with Disabilities Education Act Exclude Gifted and Talented Children with Emotional Disabilities?" 32 *St. Mary's Law Journal* 913, 936 (2001) ("Unfortunately, the achievements of gifted students [in the United States] have declined over the past three decades," and Ketterman attributes the decline in part to "the pitting of equity against excellence rather than promoting both equity and excellence, anti-intellectualism, the 'dumbing-down' of the curriculum, equating aptitude and achievement testing with elitism, the attraction to fads by schools, and the insistence of schools to teach all students from the same curriculum at the same level." [citations omitted]). See also E. Winner, *Gifted Children* (New York: Basic Books, 1996): 234–235 ("An egalitarian, anti-elitist ideology has become dominant in our culture, even though our culture is in reality far from truly egalitarian. . . . This egalitarian ideology buttresses our profound ambivalence about intellectual excellence.").

and the individualist hard place ("be all that you can be").¹⁹ Thus, we are tempted to deny that there is such a thing as academic giftedness²⁰ or to award giftedness, by decree, to all children in equal measure.²¹ In either case the rationale for educational tracking—the placement of students according to differing academic ability—disappears, as does the rationale for gifted education per se.

The principal benefit of such collective denial is that it helps avoid a face-to-face conflict between equality and excellence. But disturbing consequences also flow from failing to develop the intellectual talent of our most gifted students. Comparative data indicate that top American high school students are not being prepared to do high-level college work and that the academic preparation of these top students in the United States lags far behind that of students from other nations.²² According to the Education Department's 1993 *National Excellence Report*, "Compared with top students in other industrialized countries, American students perform poorly on international tests, are offered a less rigorous curriculum, read fewer demanding books, do less homework, and enter the work force or postsecondary education less well prepared."²³ In fact, "international assessments have

19. See Winner, *Gifted Children*, 234–235 ("We do not mind if someone is a star in music, art, athletics, or chess, because it is not considered shameful to lack skills in these domains. But when some children are classified as academic stars, we *do* mind, because such a classification implies the existence of children who are not as strong academically." [citation omitted]); C. J. Russo, "Unequal Educational Opportunities for Gifted Students: Robbing Peter to Pay Paul?" 29 *Fordham Urban L. J.* 727, 730–731; *National Excellence*.

20. See Winner, *Gifted Children*, 234 (quoting Mayor Kenneth Reeves of Cambridge, MA, as that city dismantled its gifted programs: "I don't agree with the concept of more and less gifted. I think that all students can and will learn. We don't want to run a separate system for those *who are perceived to be brighter*.") and 143 ("Psychologists have their own myth: that giftedness is entirely a product of the environment. They argue that the right kind of intensive training, begun at an early age, is sufficient to account for even the very highest levels of giftedness—the levels attained by child prodigies, savants, or adult creators." After sifting through the evidence on this question, Winner concludes that "the psychologist's myth of adult-made prodigies does not hold up. Hard work is not sufficient, and precocious children are not mere drudges." Biology is not the whole story, either, but "there is considerable evidence for a strong, inborn, brain-based component to giftedness.")

21. *Ibid.*, 234 ("Often the argument against special education for the gifted is that *all* children are gifted. This view has developed as definitions of intelligence have broadened beyond IQ and children's gifts in areas not measured by IQ tests have been recognized. Teachers and administrators argue that all children have strengths and that schools should nurture the strengths in each child." Winner makes the obvious response, that "the fact that all children have relative strengths does not mean that all are equally gifted.")

22. See *National Excellence*.

23. *National Excellence*, Executive Summary, 3. More recent test data continue to show American students lagging behind those of most industrialized nations in both reading and mathematics. For example, in 2003 the Program for International Student Assessment (PISA) tested 15-year-olds from the United States and other countries on applied math skills. Among 29 industrialized nations, the American students tied for 21st place. Younger U.S. students are also behind those of other nations in math. Also in 2003, the Trends in International Mathematics and Science Study ranked American 4th graders 12th out of 25 countries in math and 6th in science. A PISA test conducted in 2000 ranked American students 15th in reading skills, behind most other industrialized nations. See Organisation for Economic Co-operation and Development "Messages from PISA 2000" (Paris: Author, 2004), 5.

focused attention on the relatively poor standing of all American students. These tests also show that our top-performing students are undistinguished at best and poor at worst when compared with top students in other countries.”²⁴

Inherent Conflict Between Equality and Excellence?

It is sometimes necessary to prioritize conflicting values and to throw one's limited resources behind the more important. Before doing so, however, one ought to discover whether and to what extent a real conflict exists. Is it true that special programs for gifted children conflict with the goal of equality in education?

First, what is meant by the claim that there is such a conflict? The usual argument is that singling out gifted children and treating their talents as special targets of development creates the danger of elitism.²⁵ Elitism, in turn, is “the belief that certain persons or members of certain classes or groups deserve favored treatment by virtue of their perceived superiority.”²⁶ By distinguishing and separately educating gifted students we are acknowledging their superiority, and—so the argument goes—that acknowledgment threatens to erode equality.

Notice that this view converts intellectual equality into a substantive rather than merely procedural value. It assumes not merely that all children should have equal opportunity to compete for special educational advantages (the procedural vision) but that all children equally *merit* such advantages because they are substantively equal in intellectual capacity. From this substantive vision of equality proceed the contentions that *all* children are equally gifted and that *no* children are distinguishably gifted beyond others.

Furthermore, to make sense of the claim that special programming for gifted children violates the value of equality, we must conclude that the substantive equality posited among all children is equality of intellectual capacity *per se*, because a more expansive conception of equality—for instance, a claim that children have different gifts in different areas but that they all add up to the same amount of giftedness for each child—would offer no basis for opposition to programs for the academically talented on grounds of equality.

For the moment, forget the improbability of the claim that nature endows all children with equal intellectual capacity. If one begins from the assumption that this claim of substantive equality is true, then the inequality of children's performance in school—the fact that some children do better than others academically—becomes a social and political problem that may well demand a response on grounds of equality. If all children are born with equal intellectual capacity

24. *National Excellence*, Part I, p. 2.

25. See Russo, 730; Winner, 2–3.

26. *American Heritage Dictionary*, <http://www.YourDictionary.com>.

but their performance in school varies widely, then something in their environment, either in or outside school, must be creating this inequality. Inequality of performance is created by society, not by nature. The problem for schools, perhaps especially for public schools, becomes how to deal with this socially created inequality. Should they encourage and maintain it by creating special programs for already advantaged children deemed gifted, or should they refuse to perpetuate socially created inequality in public school and, presumably, discourage special education for the best-performing children?

The flowering of this substantive vision of equality was very visible in the debate over tracking in the 1980s and 1990s. In that decade many public school systems ended the practice of tracking—of assigning students to separate academic tracks depending on their prior performance in school—in favor of an all-in-one approach in which students of all ability levels are educated together.²⁷ The rationale for detracking relied heavily on the value of equality. Opponents of tracking took note of the fact that a disproportionate percentage of children in gifted programs and on the college track in high school come from upper-income, highly educated, Caucasian or Asian backgrounds.²⁸ They used these facts to argue that it is the social inequality into which children are born that determines differences in academic performance and that academic tracking perpetuates, or even worsens, this inequality by placing already privileged students into positions from which they have the greatest chance of future success (e.g., by going to good colleges) while convincing other, equally deserving students that they are “dumb” and cannot learn.²⁹

But here one might argue that the belief that all children are born with the same level of intellectual capacity is just not plausible. Suppose we reintroduce the other side of the nature–nurture issue: the claim that giftedness has a large inborn, innate

27. See M. T. Hallinan, “The Detracking Movement,” (Palo Alto, CA: Hoover Institution, 2004), <http://www.educationnext.org/2004/72.html> (discussing the “backlash against tracking that began in the 1980s. Critics argued that tracking, especially in practice, created greater learning opportunities for high-performing students at the expense of their lower-performing peers.” Hallinan notes that “at the height of the detracking movement, organizations including the National Governors Association, the National Education Association, the National Council of Teachers of English, and the California Department of Education came down in favor of detracking.”).

28. See Hallinan (noting that the detracking movement “picked up considerable momentum with the 1985 publication of Jeannie Oakes’s deeply influential *Keeping Track: How Schools Structure Inequality*. . . . Overall, Oakes characterized tracking as an elitist practice that perpetuated the status quo by giving students from privileged families greater access to elite colleges and high-income careers.”). See also Winner, 241 (“Ability grouping has also been accused of being racist and classist, since gifted programs in the United States, for example, are overrepresented by Asians, followed by whites, and underrepresented by blacks and Hispanics. A study by the U.S. Department of Education conducted in 1991 found that programs for gifted students had five times more students from families in the top socioeconomic quarter of the population than students from the lowest quarter.”).

29. Winner, 240 (“When gifted education means grouping children by ability, those opposed to gifted education argue that children left in the low track feel dumb. . . . The low expectations that teachers have for these students, and that these students adopt as a result of being in the low group, become self-fulfilling prophecies.”).

component. In fact, the available evidence supports this conclusion.³⁰ Does this change either the direction or the importance of the equality value in education?

Surely it must. If we begin from the assumption that a significant reason for different academic performance is innate differences in intellectual ability, then a concern for equality could militate strongly in favor of special education for gifted children. In this view, gifted children have unique needs that arise from their innate differences. Like those of disabled children, for whom we freely provide special accommodations in education, gifted children's differences should be accommodated in the form of special training that meets their special circumstances.³¹ Treating gifted children equally means meeting their needs to the same degree to which we meet the needs of other children; indeed, the argument might go, we *must* strive to meet these special needs in order to achieve educational equality.³²

This vision of equality lacks neither moral content nor imperatives to action. Indeed, it has inspired testing experts to devise and implement new methods for identifying gifted children from disadvantaged backgrounds and bringing them into available gifted programs, on the rationale that doing so is necessary in order to realize the goals of procedural equality, equal access to gifted programs by all children, and substantive equality in the revised sense just described: equal treatment of and respect for the special needs of every child.³³ Notice that this view of equality is not at all in conflict with intellectual excellence. If the goal is to challenge each child to the same degree or to realize each child's potential to the same degree, then equality may in fact *demand* the promotion of excellence.

But if this is true, then what legitimate basis remains for opposing gifted education in the public schools?

In their answer to that question, the opponents of gifted education too often plunge from the rationally defensible into the morally disturbing. At its base, the argument they make against recognizing giftedness is grounded not in equality but in its opposite—in radical inequality.

30. Ibid., 152–153 (“There is considerable evidence for a strong inborn, brain-based component to giftedness.”); Ibid., 153–169 (summarizing and evaluating such evidence.).

31. See Bittick, 139 (“Comparing gifted and talented students to learning or physically disabled students is appropriate. The social, emotional, and educational problems of gifted children can be as complicated as those who are physically or learning disabled. Both are populations of exceptional students. . . . The special educational needs for those student groups deviate from the normal pedagogical instruction appropriate for most other students.”).

32. Ibid.

33. See J. H. Borland and L. Wright, “Identifying Young, Potentially Gifted, Economically Disadvantaged Students,” *Gifted Child Quarterly* 38 (1994): 164, 165–168 (describing process of devising and implementing complex identification procedure for purposes of selecting gifted students at public school in central Harlem, New York City). See also *National Excellence*, Executive Summary (“The United States is squandering one of its most precious resources—the gifts, talents, and high interests of [its most gifted] students. . . . This problem is especially severe among economically disadvantaged and minority students, who have access to fewer advanced educational opportunities and whose talents often go unnoticed.”).

Consider this conclusion more closely. On one hand, opponents of ability-based tracking argue that all children are equally gifted in intellectual capacity or, alternatively, that no children have intellectual gifts that surpass those of others. This substantive equality claim is the basis for arguments against special programs for the gifted. But this claim is seldom expressed in the literature, perhaps because it is so implausible on its face. That is, like advocates, opponents acknowledge a substantial biological component to giftedness. Therefore, the argument against ability tracking must find another rationale, and it has. However, that rationale is grounded in exactly the opposite assumption: that gifted children are different (for whatever reason) and that their differences should be offered up to their less gifted classmates to further the collective good. Thus, opponents of special tracking for gifted children express the belief that because nongifted students sometimes feel less valued when their gifted peers are educated separately and because the presence of gifted students in the classroom may improve the educational experience for nongifted students, “the harm that gifted education does to the non-gifted far outweighs any value it may have for the gifted child.”³⁴

This view, that giftedness should be pressed into the service of the collective good, has found new and pernicious expression in the NCLB Act. In a recent *Wall Street Journal* article detailing the effects of the act on gifted children, Daniel Golden reported that because their ratings under the NCLB Act depend on consistently rising test scores, neighborhood public schools are fighting to keep their top-scoring students from transferring to special programs for the gifted.³⁵ For example, when a regional program for gifted students first opened 20 years ago in Youngstown, Ohio, neighborhood schools were eager to refer their gifted students to the program: “There was a real pride in having someone from your building selected for the program.”³⁶ However,

with the advent of high-stakes testing, that enthusiasm was replaced by what [one expert] calls “subtle sabotage.” One principal, Kathleen Good of Youngstown’s Mary Haddow Elementary, decided not to refer any gifted children, contending

34. Winner, 241; see also 240–241. Winner notes that opponents also argue that ability tracking harms gifted students by encouraging elitism on their part and that teaching other children can be of benefit to gifted children. Why is such an arrangement of more benefit to gifted children than the additional knowledge they would gain on a faster academic track? The usual answer is that whatever benefit separate tracking has is trumped by the harm it inflicts on nongifted children—that is, the collective good argument.

35. Studies indicate that such programs offer the best and most intellectually challenging means of educating gifted children. See J. Van Tassel-Baska, *Excellence in Educating Gifted and Talented Learners*, 3rd ed. (Denver: Love, 1998): 217 (“Gifted children thrive and learn best in special classes where they are together on a daily basis for all or most of the school day. . . . Special classes are also more cost-effective. . . . Van Tassel-Baska, Willis, and Meyers (1989) conducted a study of full-time, self-contained classes for gifted students and found very positive effects. . . . Feldhusen . . . argued that such classes are the best arrangement for highly gifted students, especially because they profit so much from working with other gifted students.”).

36. Golden, “In Era of Scores,” 1 (quoting Carol Baird, the gifted education supervisor in Youngstown: . . .

her school met their needs with its own gifted program. When the district asked six children from Mary Haddow to attend the city's gifted programs in 2000, Mrs. Good protested so strongly that the invitations were withdrawn. "It wasn't fair to pull out your top group and place them somewhere else," Mrs. Good says. "You're creating artificially high scores in some [the schools with gifted programs'] buildings."³⁷

In this view the fair approach is to hold gifted and talented kids in neighborhood schools in order to keep their higher test scores at those schools, despite the availability of off-site gifted programs that would welcome them and would best fit their needs.³⁸

A second dimension to this rationale is revealed in the case of Principal Beverly Schumann of Youngstown's Harding Elementary School. Attempting to stop 10 of the school's top students from leaving the school for gifted programs elsewhere, Schumann "pleaded with the mother of Heidi Wingler, a gifted third grader, to keep her at Harding for the fourth grade."³⁹ Consider the mother's account of that conversation. "She told me she was encouraging the gifted students who were leaving to stay," Elizabeth Wingler says. "Her rationale was that she needed the gifted kids to pull the other kids up. But it seemed to me she was really more worried about the test scores."⁴⁰

In this view it is justifiable to deny talented kids access to gifted programs in order to keep their high test scores at their neighborhood schools; such children also may be denied a challenging education if their presence in general classrooms would improve the educational experience of the other children.⁴¹ This approach

37. Ibid. Golden notes that some educators argue that keeping talented children out of gifted programs is better for the children; for example, one Youngstown principal advises parents of gifted but shy children not to send them to a gifted program, on the theory that such children are better off in a small "family school" environment. However, "gifted-education specialists respond that children who seem withdrawn in a regular classroom often blossom among their intellectual peers." See also Van Tassel-Baska, 217.

38. As Golden reports in "In Era of Scores," Ohio and several other states have adopted policies under which gifted students' test scores are attributed to their neighborhood schools, whether or not they actually attend those schools. "Some gifted-education advocates say they supported the change because they felt it was the only way to ensure that neighborhood schools would send their best students to gifted programs. Without the change, 'local administrators and boards of education would begin to dismantle programs for gifted education,'" said one expert.

39. Ibid.

40. Ibid.

41. Again, some argue that education in the general classroom is in the best interests of gifted children (see Winner). But these arguments have the flavor of post hoc rationalizations, especially given the evidence that gifted children thrive most in special classes "where they are together on a daily basis for all or most of the school day" (Van Tassel-Baska, 217) and the evidence of substantial teacher resistance to recognizing and developing the talents of gifted students in the general classroom (Ibid., 214: "Gross (1993) documented well the precocity of gifted and talented children. All of the children she studied were achieving and functioning intellectually at levels far beyond what would be normative for their chronological ages. Yet schools, and teachers in particular, were often reluctant to acknowledge the precocity or to make any modifications in the curriculum.").

is not one of equality but the opposite of equality: the belief that the special talents of some children may be used for the ends of either nongifted children or their teachers and administrators, whose continuance depends on rising test scores.

Thus, the argument against special education for the gifted is grounded in two flatly contradictory rationales: that all children are equal in intellectual ability, and therefore singling out some for gifted programs makes no sense, and that gifted children are more talented than others and that their higher level of ability relegates them to a lower status than others in that their special talents may justifiably be pressed into the general service of their schools or their nongifted classmates. The first argument is extremely implausible; the second is morally untenable.

Under the only surviving vision of educational equality, then, equality and excellence should work in tandem, and special programs for the gifted should be supported. This seems to be the premise underlying the Jacob Javits Gifted and Talented Students Education Act,⁴² under which

the term "gifted and talented students" means children and youth who give evidence of high performance capability in areas such as intellectual, creative, artistic, or leadership capacity, or in specific academic fields, and who require services or activities not ordinarily provided by the school in order to fully develop such capabilities.⁴³

The Javits Act is premised on the idea that gifted students, like all other students, should receive the services they need to develop to their full potential.⁴⁴ In this view there is no conflict between acknowledging equality and developing excellence; instead, equality *requires* doing so. And, once again, the need to do so may be most urgent when the gifted students come from disadvantaged socioeconomic backgrounds, where race, poverty, or other socially grounded obstacles may prevent them from reaching their full potential in the absence of publicly funded gifted programs.⁴⁵

42. Public Law 100-297, Apr. 28, 1988; current version codified as part of the No Child Left Behind Act of 2001.

43. NCLB 2001, Title V, Part D, Subpart 6.

44. See also Bittick, 139; Russo, 758 ("It is time to redress the ongoing inequity of failing to provide equal educational opportunities for gifted children.").

45. See Russo, 731; Winner, 252-253 ("The argument that gifted programs discriminate because certain minority groups are underrepresented in these programs can be countered by the argument that such programs are actually *more* important for the disadvantaged gifted than for the advantaged gifted. . . . [Consider children] from poor families in rural or inner-city schools. Such schools are our weakest, and thus the ones least likely to have challenging after-school activities. In addition, children who attend these schools are far less likely than affluent ones to have educated parents with the time and resources to provide the enrichment that schools do not."). See also Golden, "In Era of Scores," 1 (reporting that in Youngstown, Ohio, "a Rust Belt city battered by a shrinking enrollment and tax base," two elementary schools offer separate 4th- through 6th-grade classes for gifted students throughout the district. "Of 144 gifted students in the two elementary buildings," Golden reports, "44% are black and 92% qualify for free or reduced-price lunches." . .

The argument thus far suggests two things: that no inherent conflict exists between the goals of equality and excellence, and that the apparent debate over these two values therefore must be grounded in a different kind of conflict. I think both conclusions are right, and if they are then a new question immediately presents itself: In the context of gifted education, what is the debate between equality and excellence really about?

I suggest that a value for equality—in its pro-excellence dress—grounds one side of the argument, and for the reasons detailed earlier. In a view often adopted by advocates for special gifted programs and echoed in the Javits Act, the goal of public education is to develop the individual potential of each student. Thus, providing special educational programming for gifted students is a matter of treating them equally, of according them equal respect to other students whose special needs, we have decided, warrant substantial public expenditures.⁴⁶ Proponents of public education for the gifted make coherent use of the value of equality.

But the other side of the argument, which opposes the use of public money to fund special programs for gifted children, has nothing to do with equality at all. The best argument here does not rest on any conception of the proper relationship between education and equality. Instead, it rests on a particular account of the proper relationship between education and democracy. The idea is this: The fundamental goal of public education is not to guarantee equality but to ensure that all students receive threshold levels of training in certain core skills that will prepare them to be good and participating citizens. For example, in this view special educational programming for disabled students—which may be necessary in order to impart the threshold levels of necessary skills—may well be required, whereas such programs for the gifted, who may already possess the requisite levels of such skills upon entering school and are much more likely to acquire them in the general classroom than are disabled students, may well *not* be required. In short, public education is about ensuring that all children acquire the essential skills needed for good citizenship. We might wish and hope that gifted children be given the means to maximize their special talents, but until we have achieved the goal of bringing all children up to the requisite threshold level of skills, public schools bear no obligation to establish gifted programs. Again, equality is relevant to this argument only in a very basic, threshold sense. Whatever the differences between children, from wherever they come, and however long they persist, the proper goal of education is to prepare *all* children for democratic citizenship. Why? Because democracy functions best when the voting citizenry is well informed, and being well informed entails the acquisition of certain basic skills and information about one's society and about the world. From the standpoint of democracy, that necessary information and those requisite skills would make up the content of the public school curriculum.

46. See Russo.

But if this recasting of the debate over gifted education helps us account for the intense opposition of some and the passionate advocacy of others to special programs for gifted children,⁴⁷ then we should immediately recognize that the debate does not involve an inherent conflict between bedrock values but is instead rooted in a *political* conflict over values that, though not logically opposed, are forced into battle in the wake of intervening realities such as the scarcity of educational resources, the limited government role in education, the very great range of quality in the public schools, the self-interest of the powerful and well-organized educational establishment, and the low status of education and intellectual development in American culture. In short, the debate is a political one, and this conclusion should transform the discussion entirely.

POLITICAL CONFLICT

Why transform? Because when the controversy over educating the gifted is seen not as a disembodied conflict between equality and excellence but instead as a political debate about the primary goal of public education, the realistic options for gifted education become much clearer.

The history of government support for gifted education in the United States sets the stage for this conclusion. That history reflects profound ambivalence toward educating gifted children. In 1931 the federal Education Department created the Section on Exceptional Children and Youth, the federal government's first program for the gifted.⁴⁸ Although public support for gifted education waned in ensuing years, support rose again in the 1950s when education of the gifted was seen by some as a matter of national defense: "Since gifted students had the ability to make significant contributions to the Nation's welfare, especially in the essential areas of science and technology, it was vital to develop programs to assist them in achieving their full potential."⁴⁹ Then, under the Elementary and Secondary Education Act of 1965 (ESEA), federal support for gifted students waned under pressure to fund programs for better education of disadvantaged children.⁵⁰

47. See Winner, 240 ("The debate [about methods] within the field of gifted education is mild compared to the heated controversy between those in favor of any kind of gifted education and those opposed. Each side fervently believes that it is in the right, and that the other is morally wrong. Each side believes that it cares about the interests of *all* children, while the other side cares only about the interests of some. The arguments pro and con are not specific to the United States but can be heard in most advanced countries today.")

48. Russo, 733. This section relies heavily on the very helpful research in Professor Russo's article.

49. *Ibid.*, 737.

50. *Ibid.*, 737–738 ("Federal resources that would otherwise have been earmarked for programs for the gifted were diverted to other programs under the auspices of the ESEA. The federal government adopted a policy that essentially robbed Peter to pay Paul by providing resources for one group of deserving students at the expense of another." [citations omitted]).

Advocates of gifted children persisted, and in 1970 President Nixon signed the Gifted and Talented Children's Education Assistance Act. In 1974 Congress passed amendments to the ESEA that expanded the federal role in gifted education and authorized a maximum of \$12.5 million per year—about \$1 for each gifted student—to gifted programs, and in 1978, via the Gifted and Talented Children's Education Act, Congress provided for financial assistance to states for the purpose of planning and developing programs for gifted students.⁵¹ Three years later that act was repealed by President Reagan in the Omnibus Budget Reconciliation Act, which also closed the Office of Gifted and Talented and greatly reduced federal involvement with and funding for gifted education.⁵² In the late 1980s federal support for the gifted was reborn in the form of the Jacob Javits Gifted and Talented Students Act, which was most recently reauthorized by Congress as part of the NCLB Act of 2001.⁵³ Although it did reinstate federal gifted programs that had been discontinued in the early 1980s, the Javits Act has been criticized for offering very low levels of financial support for the gifted and for failing to mandate state programs for the gifted.⁵⁴

In short, federal support for the gifted has been intermittent at best, and even at its height it has offered very limited incentives, financial or legal, for states to prioritize gifted education.⁵⁵ In comparison, consider that the federal Individuals with Disabilities Education Act (IDEA) "guarantees all children between the ages of three and twenty-one with specifically identified disabilities a 'free appropriate public education' in the least restrictive environment in conformance with an Individualized Education Program,"⁵⁶ and that federal and state funding of IDEA dwarfs funding for the Javits Act.⁵⁷ In the wake of the NCLB Act of 2001, the Javits Act offers gifted children and their advocates no defense against states and localities that are defunding their gifted programs.⁵⁸

Consider this history in the context of educational goals. If the primary goal of public education is to develop each student to his or her full potential,

51. *Ibid.*, 738–740.

52. *Ibid.*, 740–741.

53. NCLB 2001.

54. *Ibid.* See also Golden, "Initiative," 1 ("One reason gifted-child education is vulnerable to cutbacks is that the U.S. government doesn't mandate programs for the three million or so students considered to be in the category. The federal contribution is limited to \$11.2 million a year for research and state grants." Golden also reports that "more than half of states require districts to offer gifted-student programs, but few provide enough state aid to cover the costs.").

55. See Russo, 741 ("Consequently, its good intentions aside, the Javits Act can virtually be ignored by states that do not place a priority on programs for gifted children.").

56. *Ibid.*, 735–736 [citations omitted].

57. For example, in 2003 federal funding of IDEA, including grants to the states, amounted to more than \$20 billion; meanwhile, the federal government gave a mere \$11.2 million to fund the Javits Act that year.

58. See Golden, "Initiative," 1.

then the up-and-down history of government support for gifted students and the dramatic contrast between that history and the history of the IDEA (and, before it, the Education for All Handicapped Children Act) make no sense at all. If individual potential is the gauge, then support for children with special education-related needs should be distributed evenly, regardless of what those needs happen to be. But, considered with another goal in mind, the history becomes instantly intelligible. If the fundamental goal of public education is to train all students to a threshold level of skill in preparation for productive citizenship, then it makes sense for schools, and the government, to focus public education on bringing those at the bottom up to a minimum level of proficiency rather than on raising those already at or above that level to heights unreachable by most children.

In fact, in the context of this “threshold theory” of education, the government’s low level of support for gifted education, as well as the emphasis in the NCLB Act on raising everyone to proficiency rather than on developing each student to his or her full potential, is not only comprehensible but also rationally defensible. It makes sense in a democracy for the government to use public education to help create an informed and productive citizenry. Furthermore, it makes sense in this context for the government to prioritize that goal both legally and financially by saying, in effect, “Until *every* child has achieved a threshold level of proficiency, the goal of achieving this threshold shall take priority over other educational goals, such as the development of all children to their individual potential.” This has been the animating force of federal educational programs for decades; it is the animating force behind the NCLB Act of 2001; and, it will continue to drive federal educational policy in the foreseeable future. Federal and state support for the gifted will continue to be sporadic, poorly funded, and vulnerable to annihilation by the argument from democracy.

I am certainly *not* saying that advocates for the gifted should simply give up, that the central role of education in maximizing individual potential should be ignored, or that government money and legal protections should be allowed to disappear completely from the debate over gifted education. However, the argument from democracy does suggest a change of emphasis on the part of those who promote gifted education.⁵⁹

59. Or the education of all children. Many experts have complained about the low level of expectations and the low substantive standards that dominate American public education. See Winner, 244–245 (“American schools hold comparatively low expectations for their students. . . . Not surprisingly, American children fare poorly when compared to children in most other developed countries. . . . The comparative findings provide an argument not only for challenging our gifted more, but for challenging *all* of our students more.”). Were the goal of maximizing potential to become more central to our educational programs, this might create an incentive to raise general expectations, and the level of instruction offered, to all children.

FUNDING GIFTED EDUCATION THROUGH NONPROFIT ENTERPRISE

One way to secure government funding for a project is to ask the government directly, in which case one must lobby, persuade government actors that one's project is more worthy than others, and suffer periodic battering by the winds of political change. Advocates for gifted education have fought this direct funding battle for decades, with limited success.

Fortunately, there is another way. The United States also houses a thriving nonprofit, or independent, sector, comprising more than a million organizations. These organizations receive income tax exemptions and other federal and state benefits, and contributors to them may deduct contributions from their individual income tax. American taxpayers happily offer these subsidies in exchange for the diversity, innovation, and opportunity to pursue individual visions of freedom offered by the nonprofit sector. In *America's Voluntary Spirit* John W. Gardner wrote,

Perhaps the most striking feature of the [independent] sector is its relative freedom from constraints and its resulting pluralism. Within the bounds of the law, all kinds of people can pursue any idea or program they wish. Unlike government, an independent sector group need not ascertain that its idea or philosophy is supported by some large constituency, and unlike the business sector, they do not need to pursue only those ideas which will be profitable.⁶⁰

Gardner points out that "government bureaucracies are simply not constructed to permit the emergence of countless new ideas, and even less suited to the winnowing out of bad ideas." On the other hand, "institutions of the nonprofit sector are in a position to serve as the guardians of intellectual and artistic freedom. Both the commercial and political marketplaces are subject to leveling forces that may threaten standards of excellence. In the nonprofit sector, the fiercest champions of excellence may have their say."⁶¹

Although private schools constitute a major segment of the nonprofit sector in the United States,⁶² schools specifically designed to serve gifted students are rare, as are charities whose sole or chief function is to provide services to gifted children

60. J. W. Gardner, "The Independent Sector," in *America's Voluntary Spirit*, ed. B. O'Connell (New York: Foundation Center, 1983): ix.

61. Ibid.

62. See L. M. Salamon, "America's Nonprofit Sector: A Primer," in *Nonprofit Organizations: Cases and Materials*, 2nd ed., eds. J. Fishman and S. Schwarz (New York: Foundation Press, 2000), 15 (Social service agencies are the single largest group among 501(c)(3) organizations. "The next largest group of nonprofit service agencies are *educational and research institutions*, including private elementary and secondary schools as well as private universities and colleges, libraries, and research institutes. Close to 38,000 such nonprofit educational institutions exist and they comprise 22 percent of the sector's institutions.").

from disadvantaged backgrounds.⁶³ This paucity of nonprofit services is particularly striking in light of the fact that the independent sector seems to offer an excellent environment, free of content-based government interference, for the creation of and experimentation with opportunities to help gifted children who need it. The creation of nonprofit enterprises offers a way to get government support (through entity-based and contributor tax exemptions) for gifted children without doing political battle with competing visions of education, mainstream cultural indifference toward education, or hostility toward the gifted.

In the face of these evident advantages, why do advocates for the gifted place so much emphasis on winning direct government funding for their cause? The reasons are undoubtedly complex, and here I offer a speculation that, even if true, can be only a partial account. To the extent that advocates for the gifted choose the nonprofit route, they benefit from the independent sector's toleration of freedom and diversity, but they may also suffer from its lack of coherence and central planning. Statutes such as the Javits Act not only provide specific services such as funding research into giftedness, but also offer the opportunity to craft, in the highly visible setting of federal legislation, a coherent vision of giftedness and the services needed to develop it.⁶⁴ In the world of nonprofits, where freedom and diversity are the order of the day, unity of vision may be much more difficult to achieve.

It is not impossible, however. Indeed, the latest research on gifted education suggests that there are common core elements to successful gifted programs. The research indicates that maximizing the abilities of gifted children, particularly gifted children from disadvantaged backgrounds, requires at least five overlapping endeavors.

First, it requires imaginative methods of identifying giftedness in children who lack many of the socioeconomic advantages enjoyed by the wealthier Caucasian

63. See Winner, 268 (naming the Nueva School in California as "one of the few U.S. schools explicitly designed for academically gifted children") and 269 ("The Illinois Math and Science Academy is one of a handful of public schools (some residential, some not) that are reserved for the gifted, mostly at the high school level, and mostly focusing on math and science"). But this is not to say that there are no organizations with national reach that are designed to help the gifted. In addition to the National Research Center on the Gifted and Talented, based in Connecticut and funded by the Javits Act, in recent years a growing number of nonprofit charities have arisen to serve the needs of the gifted. A few prominent examples include the National Gifted Children's Fund (ngcf@direcway.com), Supporting Emotional Needs of the Gifted (<http://www.sengifted.org>), High IQ for Humanity (<http://www.hiqh.org>), and family foundations such as the Davidson Foundation (<http://www.davidsonfoundation.org>) and the Jack Kent Cooke Foundation (<http://www.jackkentcookefoundation.org>).

64. Such a vision has occasionally emerged from the federal government's halting efforts to support gifted education. See, e.g., the Javits Act answer to the definitional question, "What is giftedness?" (NCLB 2001); see also Russo, 739 ("At the outset of the 1970s, the federal government had assumed a much more active role in providing for the educational needs of the gifted. On October 6, 1972, Commissioner of Education Sidney Marland submitted his national assessment of programs for the gifted to Congress. Not surprisingly, the Marland Report urged Congress to provide ongoing support for the development and maintenance of programs for gifted students.").

youngsters who have traditionally dominated gifted programs. Such methods are exemplified both in new forms of testing for giftedness⁶⁵ and in the transcendence of standardized testing in favor of other, more contextualized methods of identification.⁶⁶

Second, gifted children, particularly those who are profoundly gifted, have different cognitive and emotional styles from other children. Thus, helping them perform to their highest potential may involve counseling to foster a healthy self-concept or, in the case of gifted students from disadvantaged backgrounds, to help such students deal with pressure from their home cultures *not* to do well in school.⁶⁷

Third, to be challenged intellectually gifted children need appropriate curricula and the opportunity to learn in an environment that is supportive of their gifts, preferably an environment in which they can interact frequently with other gifted children.

Fourth, gifted children from disadvantaged backgrounds often need financial help not only to pay tuition but also for such basics as transportation to and from their special classrooms, books and other study materials, and tutoring in the English language. A fully realized program for gifted education would offer the funds to pay for such services.

Finally, helping gifted children from any background involves educating their parents and involving them in the process of developing their child's talent. Evidence overwhelmingly suggests that superior academic performance by children is strongly associated with high parental expectations, flexibility in parenting, and parental support for the child's efforts.⁶⁸

65. See Van Tassel-Baska, 20 (naming the nonverbal Raven's Progressive Matrices test as "a test that yields a g score for general intelligence and that is widely used to avoid verbal biases in test content"), 90 ("Tests such as the Raven's Progressive Matrices or the performance section of the WISC-R can be used to identify abilities often masked by disabling conditions that limit verbal ability."), and 98 (describing promising nontraditional approaches to the identification of giftedness and noting that in "one recent study, the Advanced Raven's Matrices was found to identify a significantly greater percentage of minority students than did a traditional measure."). See also Borland and Wright, 164 (authors went to an inner-city elementary school in Harlem and used a variety of traditional and nontraditional methods to identify gifted children, some of whom went on to be successful in programs for the gifted).

66. See Borland and Wright.

67. See R. D. Hoge and J. S. Renzulli, "Self Concept and the Gifted Child" (Storrs, CT: National Research Center on the Gifted and Talented, 1991); D. Y. Ford, "Support for the Achievement Ideology and Determinants of Underachievement as Perceived by Gifted, Above-Average, and Average Black Students," *Journal for the Education of the Gifted* 16 (1993): 280 ("To some Black students, for example, being an honor student or straight-A student is an indication of racelessness or 'acting white.' . . . In short, some gifted Black students want no part of school, particularly when it is perceived as benefiting Whites rather than Blacks. Weis (1985) and MacLeod (1987) have suggested that, for some Black students, the mere act of attending school is evidence of a semi-conscious—or even conscious—rejection of the Black culture.").

68. See N. M. Robinson, R. A. Weinberg, D. Reddin, S. L. Ramey, and C. T. Ramey, "Family Factors Associated with High Academic Performance Among Former Head Start Children," *Gifted Child Quarterly* 42 (Summer 1998): 148 ("Like others who have studied parents of gifted children . . . we find the essential ingredients of parental responsiveness, time, involvement, and high expectations reappearing in this study.").

These five requirements—nonbiased identification, innovative curricula delivered in a stimulating and encouraging environment, individual counseling, financial assistance for school-related purposes, and parental involvement—can form the basis for a coherent and unified program to help gifted and disadvantaged students, whether that program originates in government or in the non-profit sector.

Indeed, most of these elements can be found in at least one program that is already in place. The Open Gate program, in San Diego, California, is funded and managed by the Human Development Foundation (HDF), a private nonprofit organization. In conjunction with the San Diego public school system, the Open Gate program identifies and offers educational resources to highly gifted elementary school students from low-income families. According to HDF's own documentation, "if not supported by Open Gate-like programs, these children are likely to be among the most qualified people who do not go to college, and are statistically likely to end up in the tragedy of teenage gang activity."⁶⁹ Children are identified for the program in the 2nd grade. Once admitted to the program the children are placed in separate daily classrooms for the gifted, run by the San Diego public school system, and offered a variety of services by Open Gate. Before this program was established most students in the city's gifted seminars came from wealthy or middle-income backgrounds; the Open Gate program "addresses the systemic causes of disadvantaged communities, by empowering individual children at the developmental stage when their leadership potential can be fostered toward the work force and productive self-reliant futures."⁷⁰ Not only are gifted and disadvantaged students offered language tutoring and money to cover transportation, books and supplies, and other expenses, but a companion program, Open Gate Parents' Place, was recently established "to directly involve parents in their child's education by providing English language instruction for parents at their child's level of learning. . . . The program is designed to provide parents with a basic foundation in English literacy skills and develop strong skills to help their children with their homework."⁷¹ The companion program also involves the introduction of parenting skills, especially those relevant to homework and study habits.⁷²

69. "Human Development Foundation" (<http://www.sdfoundation.org>), description of Open Gate program. According to the Human Development Foundation, Open Gate receives funds from a variety of sources, private and public, individual and institutional, in the San Diego area.

70. *Ibid.*

71. *Ibid.* Most children and families in the program are second-language students, so heavy emphasis is placed on language training for both students and parents. This emphasis is site-dependent.

72. *Ibid.*

CONCLUSION: A SYSTEMIC APPROACH USING NONPROFITS

Open Gate is only one example of a systemic approach to helping gifted children. But it does suggest that such an approach is possible via the nonprofit sector, and by its existence and ambition it elevates the possibility of a unified, coherent vision of helping gifted children—particularly those who are least able to help themselves—to realize their individual potential. In an educational era in which government support for the gifted is threatened by defunding and by the pathological responses of public schools under pressure from standardized testing, such endeavors are particularly welcome.