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GIRLS CAN BE ANYTHING . . . BUT BOYS WILL BE BOYS: DISCOURSES OF SEX DIFFERENCE IN EDUCATION REFORM DEBATES

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INTRODUCTION

In recent years, K–12 public education has emerged as a central staging ground for debating the nature and significance of gender differences. What might the rise of gender-based advocacy in education suggest about contemporary understandings of sex and gender in the United States?¹ Assessing recent efforts to introduce “gender-appropriate” learning strategies into K–12 classrooms, this Article examines the divergent ways advocates articulate claims about gender differences. The terms of gender-based advocacy today suggest that biological essentialism is on the retreat when it comes to girls but retrenching when it comes to boys. Advocates for girls evince skepticism, if not outright hostility, to approaches that attribute gender differences to underlying biological factors, instead directing their efforts to challenging gender bias in the classroom and addressing cultural forces that erode girls’ self-esteem and discourage participation in male-dominated fields like science, math, and technology. In contrast, boys’ advocates have been much more likely to foreground approaches that emphasize biological sex differences when addressing the widely reported gender gap in academic achievement and other indicators that boys are falling behind girls in school.²

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¹ The gender-advocacy trend is not limited to the U.S. In recent years, a “boy turn” has been documented in numerous countries. Across national contexts, there are significant differences in the way the “boy crisis” has been characterized and addressed. See Marcus B. Weaver-Hightower, *Issues of Boys’ Education in the United States: Diffuse Contexts and Futures*, in *THE PROBLEM WITH BOYS’ EDUCATION: BEYOND THE BACKLASH* 1, 1 (2009) (“From Canada to Wales, England to Australia, and New Zealand to Japan, anxieties over boys’ faltering literacy scores and grim social indicators have gripped the attention of the media, parents, administrators, teachers, and politicians. In many of these countries, widespread alarm and concerted local and national interventions have been apparent . . .”).

² Claims that boys are falling behind girls in school have played a central role in galvanizing boys’ advocacy in the United States over the past two decades. See, e.g., PEG TYRE, *THE TROUBLE WITH BOYS: A SURPRISING REPORT CARD ON OUR SONS, THEIR PROBLEMS AT SCHOOL, AND WHAT PARENTS AND EDUCATORS MUST DO* 33 (2008) (“[T]he underperformance of boys is not just an uncomfortable fact but a real and pressing problem.”).

In the context of education reform debates, the rise of essentialist thinking has had the troubling effect of preempting consideration of the role that masculine socialization plays in setting boys up to fail. This role has been productively elaborated in recent masculinities scholarship, which discloses the myriad ways in which male behaviors, presumed to be rooted in nature, in fact have a basis in socialization. Just as law has emerged as a critical site from which to challenge essentialist justifications for policies and practices that have excluded and subordinated women, so too can legal challenges enable contestation of educational reforms that reinforce gender stereotyping.

I. GENDER ADVOCACY IN EDUCATION

Gender advocates—those who frame demands in terms of boys’ and girls’ distinctive needs and interests—have emerged as prominent voices in contemporary education reform debates. Boys’ advocates and girls’ advocates represent two largely distinct camps among education reformers, each with their own organizations and policy objectives.³ At times, boys’ advocates and girls’ advocates have worked in coalition, most notably in the effort to promote single-sex education in K–12 public schools. Even in this context, however, stark differences between the two camps are evident.⁴ While both have adopted a rhetoric of crisis, gender advocates are sharply divided on the fundamental question of whether it is girls who are being “shortchanged” by the system or, rather, boys who are falling behind in school.⁵ Indeed, the relationship between boys’ advocates and girls’ advocates generally has been more adversarial than collaborative. Some advocates for boys suggest that after decades of remedial efforts to address the effects of gender bias in education for girls, it is boys who are now subject to neglect.⁶ On the other side, prominent girls’ advocates have sought to debunk the idea of a boy crisis, worrying that alarmist rhetoric about boys may undermine efforts to confront the remaining barriers to educational gender equity for girls, including pervasive sexual harassment at schools, underrepresentation in math and science fields, exclusion from vocational training programs, and discrimination in athletics.⁷

³ Prominent advocacy organizations in the United States for boys include The Boys Initiative and The Boys Project. For girls, The American Association of University Women has played a central role in seeking to draw public attention to the ongoing challenges facing girls in education. Other organizations include Girls, Inc.

⁴ See Elizabeth Weil, *Teaching to the Testosterone*, N.Y. TIMES MAG., Mar. 2, 2008, at 38. Weil distinguishes two camps among advocates for single-sex education, “those who favor separating boys from girls because they are essentially different and those who favor separating boys from girls because they have different social experiences and social needs.” *Id.* at 40–41.

⁵ The notion of girls being “shortchanged” was popularized by the 1992 AAUW Report. See AM. ASS’N OF UNIV. WOMEN EDUC. FOUND., HOW SCHOOLS SHORTCHANGE GIRLS: A STUDY OF MAJOR FINDINGS ON GIRLS AND EDUCATION 3 (1992) [hereinafter 1992 AAUW REPORT].

⁶ For a discussion of the backlash against the “girl crisis,” see ROSEMARY C. SALOMONE, SAME, DIFFERENT, EQUAL: RETHINKING SINGLE-SEX SCHOOLING 76–80 (2003) (noting that beginning in the mid-1990s, numerous commentators began “beating the drums of girls’ achievement and challenging their continuing image as victims.”).

⁷ Am. Ass’n of Univ. Women Educ. Found., *Separated by Sex: Title IX and Single-Sex Education*, BREAKING THROUGH BARRIERS FOR WOMEN AND GIRLS 1, 2 (2009), <http://www.aaup.org>.

Advocates for girls and boys oppose each other not only on the question of whether it is boys or girls who are truly in need. There is also a deep division in the way gender difference itself is conceptualized. As I explain below, advocates for girls typically summon a social inequality framework to explain the plight of girls, emphasizing the need to overcome the effects of gender bias and stereotypes in the classroom. In contrast, a growing segment of those heralding the boy crisis foreground claims about innate and hard-wired sex differences to explain the much-publicized “gender gap” in achievement.

II. ADVOCACY FOR GIRLS

Efforts to achieve gender equity for girls took center stage in education reform efforts of the 1970s. In 1972, Congress passed Title IX of the Civil Rights Act, prohibiting sex discrimination in public and private institutions receiving federal financial assistance.⁸ But in the 1980s, education politics took a decidedly different turn following the grim assessment of public education in the U.S., presented in the highly-publicized *A Nation at Risk* report.⁹ Warning of the “rising tide of mediocrity” in the nation’s public schools, the report pushed questions of educational inequity within the U.S. aside to demand comprehensive reforms directed at students across the board, including strengthening high school graduation requirements, dedicating more time to “learning the New Basics,” and improving the quality of teaching and instruction.¹⁰

By the early 1990s, issues of gender equity for girls once again rose to the fore, galvanized by an American Association of University Women (“AAUW”) report entitled *How Schools Shortchange Girls*.¹¹ Noting that girls had “fallen behind their male classmates in key areas such as higher-level mathematics and measures of self-esteem,” the report indicted “[t]he absence of attention to girls in the current education debate.”¹² In a direct challenge to the growing presumption that after decades of feminist advocacy for girls it was now boys being “left behind,” the report declared in no uncertain terms that “the educa-

aauw.org/act/issue_advocacy/actionpages/upload/single-sex_ed111.pdf [hereinafter *Separated by Sex*].

⁸ Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a) (2006). Other important legislative acts passed during this period include the 1974 Women’s Educational Equity Act, Pub. L. No. 93-380, 88 Stat. 545 (1974) (codified as amended at 20 U.S.C. §§ 1861–1864 (2006)).

⁹ NAT’L COMM’N ON EXCELLENCE IN EDUC., *A NATION AT RISK* (1983), available at http://datacenter.spps.org/uploads/SOTW_A_Nation_at_Risk_1983.pdf.

¹⁰ *Id.* at 9 (“What was unimaginable a generation ago has begun to occur—others are matching and surpassing our educational attainments.”).

¹¹ See 1992 AAUW REPORT, *supra* note 5. See also NANCY E. DOWD, *THE MAN QUESTION: MALE SUBORDINATION AND PRIVILEGE* 76 (2010) (citation omitted) (“Contemporary concern about girls and education emerged with the feminist movement in the 1970s and 1980s, peaking in the mid-1990s with studies documenting how girls were cheated of classroom time and respect as compared to boys.”); Weaver-Hightower, *supra* note 1, at 4 (“Attention to girls’ issues ebbed and flowed in subsequent years [after the passage of the Women’s Equity in Education Act in 1973], but the early 1990s saw a firestorm erupt over girls’ needs again.”).

¹² 1992 AAUW REPORT, *supra* note 5, at 2.

tional system is not meeting girls' needs."¹³ In making its case, the report underscored not only the educational but also the developmental challenges facing girls—challenges ranging from pervasive sex and gender bias in testing to dangerously low levels of self-esteem among adolescents.¹⁴

The AAUW report included forty recommendations for reform; single-sex education for girls was not among them.¹⁵ Nonetheless, the report spurred popular interest in exploring the potential of all-girls classrooms to address problems ranging from gender bias in the classroom to reports of girls' plummeting self-esteem in adolescence. By the mid-1990s, the campaign for all-girls public education gained an important ally in philanthropist Ann Rubenstein Tisch, who launched the Young Women's Leadership School of East Harlem in 1996.¹⁶ Since that time, the Young Women's Leadership Network has expanded, opening three more all-girls public schools in New York and creating a network of similar schools in Baltimore, Chicago, Dallas, Houston, and elsewhere.¹⁷ The public justifications provided for these programs are myriad, but advocates share a belief that all-girls educational environments can play an important role in counteracting the negative effects of gender socialization, particularly for economically disadvantaged girls of color.¹⁸ Noting the persistence of pervasive gender bias and sex-role stereotyping in coeducational environments, advocates have emphasized the ability of single-sex schools to provide an intellectually and emotionally supportive environment for adolescent girls and to boost interest and confidence in science and math.¹⁹

The question of single-sex education has proven deeply divisive among gender advocates focused on the challenges facing girls in education.²⁰ But, as

¹³ *Id.* In recent years, the empirical basis for the boy crisis has been challenged by researchers who emphasize that while some gender gaps in achievement remain, overall both boys and girls have made impressive educational gains in the past two decades. *See, e.g.*, SARA MEAD, *THE EVIDENCE SUGGESTS OTHERWISE: THE TRUTH ABOUT BOYS AND GIRLS* 3 (2006), http://www.educationsector.org/research/research_show.htm?doc_id=378705 (“[W]ith a few exceptions, American boys are scoring higher and achieving more than they ever have before. But girls have just improved their performance on some measures even faster. As a result, girls have narrowed or even closed some academic gaps that previously favored boys, while other long-standing gaps that favored girls have widened, leading to the belief that boys are falling behind.”); *Separated by Sex*, *supra* note 7, at 2 (“As women continue to make gains in education and the workplace, it is important to remember that these successes do not come at the expense of men. Unfortunately, that is the insidious implication underlying many of the recent assaults on Title IX that are in turn fueling erroneous notions of a ‘boys’ crisis,’ as well as calls that perhaps Title IX’s work is done.”).

¹⁴ *See* 1992 AAUW REPORT, *supra* note 5.

¹⁵ *Id.* at 84–88.

¹⁶ Emily Sherwood, *The Young Women’s Leadership School in East Harlem Celebrates 10th Anniversary: Overcoming all Odds, Girls Persevere and Succeed*, EDUC. UPDATE, Sept. 2006, at 9.

¹⁷ *See Affiliated Schools*, TYWLS, <http://www.ywln.org/affiliate-schools> (last visited Jan. 30, 2013).

¹⁸ *See, e.g.*, CORNELIUS RIORDAN, *GIRLS AND BOYS IN SCHOOL: TOGETHER OR SEPARATE?* 101–11 (1990) (research on the effects of single-sex education on African-American and Hispanic students in Catholic schools).

¹⁹ *See, e.g.*, MYRA & DAVID SADKER, *FAILING AT FAIRNESS: HOW AMERICA’S SCHOOLS CHEAT GIRLS* 232–34 (1994).

²⁰ *See, e.g.*, Rosemary C. Salomone, *Feminist Voices in the Debate Over Single-Sex Schooling: Finding Common Ground*, 11 MICH. J. GENDER & L. 63, 63–64 (2004); Rebecca Bigler

factious as the issue has been, a fundamental consensus has emerged that persistent gender inequality cannot be attributed to biological differences; even the most outspoken proponents of all-girls education generally have steered clear of the suggestion that girls benefit from single-sex education because they are endowed with a distinct nature. It is a testament to the uniformity of anti-essentialist sentiment among girls' advocates that legal scholar and single-sex education expert Rosemary C. Salomone once saw a need to urge feminists to "open their minds to new findings on sex-linked developmental and learning differences among children and adolescents" ²¹ In a plea to "move beyond ideology," Salomone attributed feminist resistance to embracing biologically-based accounts of gender difference to an underlying fear of entertaining any claim that might reinforce stereotypes. ²² More recently, however, Salomone seems to be reconsidering her position, acknowledging to a reporter: "Every time I hear of school officials selling single-sex programs to parents based on brain research, my heart sinks." ²³ As the authority of neuroscience successfully has been corralled to justify single-sex programs organized around highly stereotypical gender ideals, opposition that once might have seemed unfounded now seems abundantly justified.

Whatever else may divide them, girls' advocates seem to agree that the problem of gender inequity is properly addressed by attending to social factors that produce inequality, including gender bias in the classroom and threats to girls' self-esteem. Without questioning that sex differences exist, prominent girls' advocates have sought to shift attention to the social practices and cultural beliefs that reinforce narrow and limiting views about who girls are and what they can accomplish. ²⁴ The goal has been to address the consequences of the gendered meanings that society attributes to sex differences so that all girls are given a fair chance to flourish.

III. ADVOCACY FOR BOYS

When the AAUW report first came out, it presented a critical counterpoint to a raging national discourse centered on an alarming crisis facing at-risk boys, particularly young Black men living in the nation's economically-impooverished urban centers. ²⁵ At the time, the media presented the situation as dire.

& Lise Eliot, *The Feminist Case Against Single-Sex Schools*, SLATE (Oct. 31, 2011, 12:39 PM), http://www.slate.com/articles/double_x/doublex/2011/10/the_single_sex_school_myth_an_overwhelming_body_of_research_show.html.

²¹ Salomone, *supra* note 20, at 93. In recent decades, biological essentialism has been subjected to intense critical scrutiny by feminist biologists, historians, sociologists, and legal academics. For an overview, see for example THEORETICAL PERSPECTIVES ON SEXUAL DIFFERENCE (Deborah L. Rhode ed., 1990).

²² Salomone, *supra* note 20, at 92.

²³ Weil, *supra* note 4, at 41. In the same article, Ann Rubenstein Tisch quipped, "Nobody is planning the days of our girls around a photograph of a brain." *Id.*

²⁴ Cecilia L. Ridgeway & Shelley J. Correll, *Unpacking the Gender System*, 18 GENDER & SOC'Y 510, 511 (2004).

²⁵ The boy crisis rhetoric has been traced to the late 1990s, when polemical works like CHRISTINA HOFF SOMMERS, THE WAR AGAINST BOYS: HOW MISGUIDED FEMINISM IS HARMING OUR YOUNG MEN 13–16 (2000) riveted national attention on the challenges facing boys. See MARCUS B. WEAVER-HIGHTOWER, THE POLITICS OF POLICY IN BOYS' EDUCATION: GET-

Deploying a disturbingly de-humanizing rhetoric, young Black men were depicted as an “endangered species” said to be facing extinction given mounting evidence of rising rates of violence, psychological disturbance, and academic underachievement.²⁶ Prominent voices in the debate attributed the crisis to a failure to provide Black boys with proper male role models at home and school. Raised by single mothers and sent to public schools staffed predominantly by female teachers, Black boys were portrayed as victims of a cultural crisis of masculinity.²⁷

In the early 1990s, proposals to create all-male academies providing specialized instruction to empower boys of color sprung up in several urban areas across the country.²⁸ In the face of mounting legal challenges, these plans were soon abandoned.²⁹ A few years later, however, the success of the Harlem Girls School provided renewed vigor to the movement for single-sex public education, and in 2001, a provision was added to the No Child Left Behind Act making federal funding available to public schools wishing to adopt a single-sex format.³⁰ Since that time, proponents of single-sex public education—especially those advocating on behalf of boys—have introduced a new justificatory rhetoric into the debate over education reform. In place of claims foregrounding racial and economic disadvantage, prominent boys’ advocates now center a biologicistic rhetoric of natural, hard-wired, genetic, and biological sex differences.³¹ As a result, over the past two decades, once central claims in boy crisis

TING BOYS “RIGHT” 182–83 (2008). But Sommers did not create the discourse of the boy crisis; rather, she appropriated the crisis rhetoric emanating from popular discussions of young Black males, but shifted the focus from economically disadvantaged boys of color to boys in general.

²⁶ Pedro Noguera noted that “[i]n recent years, terms such as ‘crisis,’ ‘at-risk,’ ‘marginal,’ and ‘endangered’ have been used with increasing regularity to describe the plight and condition of young Black males.” Pedro A. Noguera, *Responding to the Crisis Confronting California’s Black Male Youth: Providing Support Without Furthering Marginalization*, 65 J. NEGRO EDUC. 219, 219 (1996) (internal citations omitted).

²⁷ See, e.g., Spencer Holland, Editorial, *Black Boys Need Black Male Teachers*, ST. LOUIS POST-DISPATCH, Sept. 19, 1989, at 3B.

²⁸ See SALOMONE, *supra* note 6, at 130 (“[A] number of school systems, including Dade County, Baltimore, Detroit, and Milwaukee, established committees to examine the status of African-American males. . . . They recommended separating boys and girls, hiring not just males but African-American males to serve as teachers and role models, and reorganizing the curriculum to enhance racial pride and self-esteem.”).

²⁹ *Id.* at 130–31.

³⁰ 20 U.S.C. § 7215(a)(23) (2006) (Providing funds for “innovative assistance programs” including “[p]rograms to provide same-gender schools and classrooms (consistent with applicable law).”).

³¹ See, e.g., MICHAEL GURIAN ET AL., *BOYS AND GIRLS LEARN DIFFERENTLY!: A GUIDE FOR TEACHERS AND PARENTS* 13–70 (rev. ed. 2011); MICHAEL GURIAN, *THE WONDER OF GIRLS: UNDERSTANDING THE HIDDEN NATURE OF OUR DAUGHTERS* 28–64 (2002); MICHAEL GURIAN, KATHY STEVENS & PEGGY DANIELS, *SUCCESSFUL SINGLE-SEX CLASSROOMS: A PRACTICAL GUIDE TO TEACHING BOYS AND GIRLS SEPARATELY* 21–39 (2009) [hereinafter GURIAN ET AL., *SUCCESSFUL SINGLE-SEX CLASSROOMS*]; ABIGAIL NORFLEET JAMES, *TEACHING THE MALE BRAIN: HOW BOYS THINK, FEEL, AND LEARN IN SCHOOL* 13–84 (2007); LEONARD SAX, *WHY GENDER MATTERS: WHAT PARENTS AND TEACHERS NEED TO KNOW ABOUT THE EMERGING SCIENCE OF SEX DIFFERENCES* 11–38 (2005). The biological case for gender-based learning differences invokes the authority of the popular neuroscience literature, including books by SIMON BARON-COHEN, *THE ESSENTIAL DIFFERENCE: MALE AND FEMALE*

discourse concerning class-based and race-based discrimination increasingly have been subordinated in public debates to assertions of essential sex differences.

Across the United States today, single-sex education is being promoted to educators, policymakers, and parents on the grounds that boys and girls learn differently due to underlying biological factors including hormone levels, neurological function, and even hearing ability.³² While many proponents of “brain-based learning” favor single-sex education, “gender-sensitive” pedagogies and curricula have been vigorously promoted in coeducational environments as well, extending the reach and influence of the campaign for single-sex public education far beyond the particular classrooms in which sex segregation has been put in place. The portrait of boys that emerges from prominent boys’ advocates is one that centers a narrative of “essentialized masculinity,” portraying boys as naturally aggressive, active, competitive, and, upon adolescence, intensely distracted by sexual attraction to girls.³³

IV. MAKING MASCULINITIES VISIBLE

The prominence of essentialist claims in education-reform debates today stands as one indication of a new biological determinism gaining currency in the media and in public policy debates in the United States.³⁴ A renaissance in gender essentialism can be seen as well in the flourishing cottage industry of parenting, relationship, and career advice books proclaiming stark and immutable differences between the male brain and the female brain—books that counsel readers to embrace rather than challenge the truth of sex difference.³⁵ While essentialist thinking may be on the rise generally, in education-reform debates, it is a discourse that has been mobilized primarily by boys’ advocates. In con-

BRAINS AND THE TRUTH ABOUT AUTISM (2003); DEBORAH BLUM, *SEX ON THE BRAIN: THE BIOLOGICAL DIFFERENCES BETWEEN MEN AND WOMEN* (1997); and ANNE MOIR & DAVID JESSEL, *BRAIN SEX: THE REAL DIFFERENCE BETWEEN MEN AND WOMEN* (1989).

³² Weil, *supra* note 4, at 42–43 (quoting single-sex education advocate Leonard Sax’s estimate that over eighty percent of the U.S. public schools using sex segregation in 2008 were “coming at this from a neuroscience basis.”); *see also* Diane F. Halpern et al., *The Pseudoscience of Single-Sex Schooling*, 333 *SCIENCE* 1706, 1707 (2011) (citation omitted) (“In his books, Web site, and teacher-training programs, [Leonard] Sax rationalizes different educational experiences for boys and girls by using obscure and isolated findings about brain maturation, hearing, vision, and temperature sensitivity.”); Lise Eliot, Abstract, *Single-Sex Education and the Brain*, *SEX ROLES: RES. J.* (Aug. 18, 2011), <http://www.springerlink.com.ezproxy.library.unlv.edu/content/c63105666nw1788k/fulltext.pdf> (“Educators who cite brain or hormonal research as evidence for boys’ and girls’ different pedagogical needs are often misusing or misconstruing a small number of studies Gender differences in hearing, vision, and autonomic nervous function are modest, with large overlap between boys’ and girls’ measures.”).

³³ *See* David S. Cohen, *No Boy Left Behind? Single-Sex Education and the Essentialist Myth of Masculinity*, 84 *IND. L.J.* 135, 138 (2009).

³⁴ *See, e.g.*, CARYL RIVERS & ROSALIND C. BARNETT, *THE TRUTH ABOUT GIRLS AND BOYS: CHALLENGING TOXIC STEREOTYPES ABOUT OUR CHILDREN 1* (2011).

³⁵ *See, e.g.*, LOUANN BRIZENDINE, *THE FEMALE BRAIN 1–5* (2006); LOUANN BRIZENDINE, *THE MALE BRAIN: A BREAKTHROUGH UNDERSTANDING OF HOW MEN AND BOYS THINK 1–8* (2010).

trast, approaches that focus on gender bias and sex-role stereotyping remain dominant in discussions about educational remedies for girls.

The divergent path taken by boys' advocates and girls' advocates attests to the impact of decades of feminist activism directed at overturning limiting stereotypes about the capacities and interests of girls and women. In the wake of a powerful cultural assault on traditional assumptions about gender, essentialist explanations for female underrepresentation in arenas long-dominated by men can elicit swift and furious opposition—as former Harvard President Lawrence Summers discovered in 2005 when he suggested that the low numbers of female math and engineering professors might be due to gender differences in natural ability at the highest end of the spectrum.³⁶ The same does not appear to be true, however, in the case of boys, where generalizations about innate differences in cognitive and emotional development commonly are rallied to explain why boys appear to be falling behind girls in school. This is not to deny that those promoting essentialist perspectives on the boy crisis do not also recommend “girl-friendly” reforms as well. It is crucial to appreciate, however, that practitioners of the new biological determinism adopt a strikingly different approach when describing the way innate factors influence the academic experiences of girls and boys. In his co-authored teacher handbook, Michael Gurian—popular author and founder of a professional development organization that trains educators in “nature-based learning differences”—offers advice to teachers and parents based on “the latest information” about “brain-based gender differences.”³⁷ Gurian et al. identify seven different parts of the brain that they claim differ significantly, on average, between males and females.³⁸ For each part of the brain, they describe what this means for boys and girls.³⁹ They instruct that, in comparison to boys, “[t]he increased number and speed of the neural connections [in the cerebral cortex] may help girls process and respond to classroom information faster, help them make transitions faster, help them multitask, and help them access needed verbal resources (reading, writing, complex speech) as they engage in learning.”⁴⁰ They explain further that, because “[t]his area matures more slowly in the male brain,” we find “boys being more apt to engage in high-risk behavior, respond impulsively and, in general, to ‘think less before they act.’”⁴¹ As a result, we can expect boys to be slower to acquire verbal skills, to be less able to control themselves physically, to be more fidgety, and to “need[] more time to process before they can respond to content information.”⁴² Indeed, in almost every area of brain function Gurian and his co-authors describe, including capacities for multi-tasking, impulse-control, verbal tasks, and memorizing, girls are portrayed as having the natural advantage.⁴³

³⁶ See Marcella Bombardieri, *Summers' Remarks on Women Draw Fire*, BOSTON GLOBE, Jan. 17, 2005, at A1.

³⁷ GURIAN ET AL., *SUCCESSFUL SINGLE-SEX CLASSROOMS*, *supra* note 31, at 23.

³⁸ *Id.* at 24–27.

³⁹ *Id.*

⁴⁰ *Id.* at 24–25.

⁴¹ *Id.* at 24.

⁴² *Id.* at 25–26.

⁴³ *Id.* at 24–27.

Interestingly, when it comes to describing boys' innate deficits when compared to girls, the authors adopt a bluntly descriptive tone. But this changes in the rare moments when a "brain-based" advantage for boys is discussed. In the case of spatial processing, for example, the authors report that "males have increased resources for spatial reasoning, abstract reasoning, and the like," an aptitude attributed to differences in brain organization purportedly caused by males' greater in utero testosterone exposure.⁴⁴ While noting that "females tend to have less right hemisphere area devoted to spatial resources," however, the authors gingerly sidestep the implication of an innate inferiority, venturing only that "[g]irls tend to be so good at literacy skills that they don't get enough opportunity to practice using their spatial capacities."⁴⁵ Similarly, the authors assert that, due to sex differences in the hippocampus and the amygdala, girls "tend to attach more emotional and sensory detail to events and to remember them longer."⁴⁶ On the flip side, readers are informed that girls are neurologically primed to "hold grudges a long time," while "males seem to 'get over it' more easily."⁴⁷ But, again, the authors are careful not to leave the impression that girls are emotional prisoners of gendered brain chemistry; instead, they counsel teacher intervention and mentoring to counteract girls' biologically-based penchant for "drama."⁴⁸

While Gurian and his co-authors suggest that girls can overcome innate tendencies with the helpful guidance of adults, they adopt a decidedly different attitude when it comes to boys. Here, the recommendations focus on the need for educators to accommodate the fixed and immutable nature of boys. Proclaiming that the larger size of the male cerebellum "means that messages between the brain and body can move more quickly (and with less impulse control) in the male body," the authors warn that "[s]itting still can frustrate the male system, causing a boy to exhibit behavior that can appear disruptive or impulsive."⁴⁹ The authors acknowledge that such behavior might "appear" to be "disruptive or impulsive"; suggesting the problem lies not with the behavior itself but, rather, with the way it gets labeled.⁵⁰ Rather than prescribe mentoring to help boys learn to calm their bodies, the authors recommend that free movement be integrated into instructional plans. For example, they suggest that students toss balls to each other as they answer questions, that kids be permitted to stand and stretch at will during class time, and that squeeze balls be made available for use during class.⁵¹ Other boys' advocates similarly emphasize the need to accommodate "boy energy" during class time rather than penalizing boys who act on natural impulses.⁵² Popular authors Dan Kindlon and Michael Thompson observe approvingly that "[w]hen *normal* boy activity levels and developmental patterns are accommodated in the design of schools, curricula,

⁴⁴ *Id.* at 28.

⁴⁵ *Id.* at 28–29.

⁴⁶ *Id.* at 27.

⁴⁷ *Id.* at 26–27.

⁴⁸ *Id.* at 27.

⁴⁹ *Id.* at 25.

⁵⁰ *Id.* at 25–26.

⁵¹ *Id.* at 100.

⁵² See Cohen, *supra* note 33, at 158–59. The proliferation of the idea in education debates that "boys are naturally aggressive and schools need to adapt to that . . ." *Id.* at 155.

classrooms, and instructional styles, an entire stratum of ‘boy problems’ drops from sight.”⁵³

One important effect of the accommodationist position is to deny the role played by masculine socialization in encouraging problematic behaviors in the classroom. In the education-reform debates, claims about the biological basis of gender place masculinity beyond the reach of gender critique. But, as masculinities scholars forcefully have argued, masculinity is a social construct, not a biological given. By bringing into view the “invisible” and “largely unspeakable” role that gender socialization plays in the lives of boys and men, masculinities scholarship contests the naturalization of gender and exposes the social basis for masculine behavior.⁵⁴ In the context of education in particular, masculinities scholars have been highly critical of the way appeals to essentialized masculinity foreclose consideration of the social and cultural factors at play in priming boys for school failure.⁵⁵ As sociologist Michael Kimmel insists, “[i]f we really want to rescue boys, protect boys, promote boyhood, then our task must be to find ways to reveal and challenge this ideology of masculinity, to disrupt the facile ‘boys will be boys’ model.”⁵⁶ By treating “typical boy behavior” as natural and immutable, the social practices, ideas and expectations that contribute to boys’ failure to reach their full potential go unattended.

While essentialist explanations for the boy crisis have proliferated in recent years, the demand to address masculinities has gained only limited traction, most notably in consideration of at-risk boys, particularly boys of color.⁵⁷ These discussions have been framed around the problematic aspects of socialization into racialized masculinities defined by an implied contrast with traditional norms of (white) masculinity.⁵⁸ What happens when constructivist approaches predominate in discussions of Black boys while essentialist

⁵³ Dan Kindlon & Michael Thompson, *Thorns Among Roses: The Struggle of Young Boys in Early Education*, in THE JOSSEY-BASS READER ON GENDER IN EDUCATION 153, 176 (2002) (emphasis added).

⁵⁴ Nancy Lesko, *Introduction*, in MASCULINITIES AT SCHOOL xi, xiii (Nancy Lesko ed., 2000) (“[M]asculinity as a problem remains largely unspeakable, invisible, and incredibly powerful, for we cannot yet collectively imagine things to be otherwise.”).

⁵⁵ See, e.g., Victoria Foster, Michael Kimmel & Christine Skelton, “*What About the Boys?*”: An Overview of the Debates, in WHAT ABOUT THE BOYS?: ISSUES OF MASCULINITY IN SCHOOLS 1, 14–15 (Wayne Martino & Bob Meyenn eds., 2001).

⁵⁶ Michael S. Kimmel, “*What About the Boys?*” *What the Current Debates Tell Us—and Don’t Tell Us—About Boys in School*, 14 MICH. FEMINIST STUD. 1, 20 (2000).

⁵⁷ See, e.g., ANN ARNETT FERGUSON, *BAD BOYS: PUBLIC SCHOOLS IN THE MAKING OF BLACK MASCULINITY* (2000); EDWARD FERGUS & PEDRO NOGUERA, *THEORIES OF CHANGE AMONG SINGLE-SEX SCHOOLS FOR BLACK AND LATINO BOYS: AN INTERVENTION IN SEARCH OF THEORY* 14 (Edward Fergus & Pedro Noguera eds., 2010) (“These schools conceive themselves as mechanisms through which young men of color develop an alternative masculinity that runs counter to stereotypical ‘street’ images that tend to keep them from being successful.”).

⁵⁸ While acknowledging the need to address culturally specific meanings of masculinity, Pedro Noguera warns that “cultural” explanations of boys of color school experience must not displace attention to “structural” causes of the boy crisis. Noguera, *supra* note 26, at 220–21. Noguera’s position underscores the need, widely recognized among masculinities scholars, to move beyond a depoliticized account of “multiple masculinities” by interrogating the structures of power that construct differential masculinities. See C.J. PASCOE, *DUDE YOU’RE A FAG: MASCULINITY AND SEXUALITY IN HIGH SCHOOL* 7–8 (2007).

approaches prevail in discussions of a universalized boy crisis? White boys may come to stand as the embodiment of authentic maleness, while racialized boys become the subject of inquiry into the differential effects of culture. In this way, dominant masculinity becomes invisible, as the behavior of socially unmarked boys is attributed to nature, while the situation of boys of color is read as an effect of racialized cultural differences and economic disadvantages.

V. CHALLENGING GENDER ESSENTIALISM

Feminist legal organizations have been among the most visible opponents of education policies premised on the “new biological determinism.”⁵⁹ Critics charge that a pseudoscience of sex differences has conferred undeserved legitimacy on educational practices that promote harmful and inaccurate sex stereotypes.⁶⁰ Although “gender-sensitive” pedagogies are being pursued in both coeducational and single-sex school settings, legal challenges to education reforms premised on essentialist accounts of gender have been mounted primarily in the context of single-sex public school initiatives. While the 2001 No Child Left Behind Act encouraged single-sex educational initiatives, it included the proviso that innovative programs must be consistent with the applicable law.⁶¹ However, given the contested legislative history and sparse record of judicial interpretation on K–12 single-sex public education, this qualification suggests more an effort to dodge than to resolve the question of the legality of single-sex K–12 public education.⁶² Recognizing the chilling effect of the unsettled legal environment, in 2006 the Department of Education issued new Title IX regulations.⁶³ The new regulations reiterate the constitutional standard that single-sex programs must satisfy a “means-ends test” demonstrating that a sex-based classification serves an important governmental objective and is substantially related to the achievement of those goals.⁶⁴ Proponents of single-sex public education were quick to laud the new regulations for providing greater latitude for single-sex education than many presumed Title IX would allow. Nonetheless, many observers remain unconvinced that the more expansive interpretations of the 2006 guidelines are compatible with Title IX’s ban on sex discrimination in educational programs.⁶⁵ At the same time, opponents continue to insist that single-sex initiatives rest on “shaky constitutional foundations” given the recent trajectory of constitutional equal protection analysis.⁶⁶

⁵⁹ See, e.g., RIVERS & BARNETT, *supra* note 34, at 1 (“A new biological determinism is sweeping through American society.”).

⁶⁰ See, e.g., SAX, *supra* note 31, at 88.

⁶¹ Vivian Berger, *Sex-Segregated Public Schools: Illegal and Unwise*, NAT’L L.J. ONLINE (Jan. 16, 2012), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202538339145&Sexsegregated_public_schools_illegal_and_unwise.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Allison Kasic, *Title IX and Single-Sex Education* 4 (Indep. Women’s Forum, Position Paper No. 613, Oct. 2008), available at iwf.org/files/94e524c4bb6632b2a298d04275f6a458.pdf.

⁶⁶ Berger, *supra* note 61; accord Cohen, *supra* note 33, at 138, 140.

Law has an important role to play in opening up space to contest gender essentialism. One way this may happen is through rigorous application of the still-evolving anti-stereotyping principle in constitutional equal protection analysis. The determination of whether a classification constitutes stereotyping generally has been understood to pivot on the question of whether an overbroad generalization is at play. As a result, the judicial account of sex difference has been characterized as a form of “sexual realism.”⁶⁷ As Katherine Franke argues, in constitutional jurisprudence, “the wrong of sex discrimination is premised upon a right of sexual differentiation, that is, a fundamental belief in the truth of biological sexual difference.”⁶⁸ From this perspective, “[d]iscrimination occurs when false or stereotypical differences are mistaken for real differences.”⁶⁹ More recently, however, legal scholar Cary Franklin has demonstrated that the anti-stereotyping principle is being applied *even in cases in which a biological sex difference is recognized*.⁷⁰ Reflecting on the significance of the 1996 decision *U.S. v. Virginia*, in which the Supreme Court found the male-only admission policy at a state-supported military college unconstitutional, Franklin finds growing judicial support for the view that “equal protection law should be particularly alert to the possibility of sex stereotyping in contexts where ‘real’ differences *are* involved, because these are the contexts in which sex classifications have most often been used to perpetuate sex-based inequality.”⁷¹ In other words, the anti-stereotyping principle is now invoked to engage the question of the social meaning attributed to sex differences by a classification. In so doing, anti-stereotyping analysis thrusts the social construction of masculinity to the fore, a development that creates critical leverage for future challenges to essentialist pedagogies in court.

The evidence rallied to support sex segregation must be carefully reviewed to ensure that sex stereotyping does not take the place of meaningful education reforms.⁷² Responding to legal challenges, proponents of “gender-friendly”

⁶⁷ Katherine M. Franke, *The Central Mistake of Sex Discrimination Law: The Disaggregation of Sex from Gender*, 144 U. PA. L. REV. 1, 13 (1995).

⁶⁸ *Id.* at 4.

⁶⁹ *Id.* at 12.

⁷⁰ Cary Franklin, *The Anti-Stereotyping Principle in Constitutional Sex Discrimination Law*, 85 N.Y.U. L. REV. 83, 153 (2010).

⁷¹ *Id.* at 146.

⁷² In the summer of 2009, two weeks before school opened, it was announced that students in Rene A. Rost Middle School (RRMS) in Kaplan, Louisiana would be segregated by sex in core classes when they returned to school that fall. Like many other single-sex programs across the country, the Vermillion plan was heavily influenced by the theories of Sax and Gurian. The ACLU quickly filed suit, charging that the program violated Title IX and the Fourteenth Amendment. The ACLU argued there was no legitimate justification for sex-segregation, citing highly flawed data used to demonstrate the effectiveness of single-sex education in boosting student achievement. The plaintiffs also took aim directly at the scientific evidence presented to justify segregation, charging that the plan “relied heavily on gender stereotypes.” In an October 2011 settlement, the Vermillion Parish school board agreed to end its single-sex program, and promised not to initiate any new sex-segregation programs in any of its nineteen schools until at least 2017. *See* Press Release, ACLU, La. Sch. Bd. to Halt Single-Sex Classes After ACLU Intervention (Oct. 13, 2011), available at <http://www.aclu.org/womens-rights/louisiana-school-board-halt-single-sex-classes-after-aclu-intervention>. Proposed programs in Pennsylvania and Madison also have been scrapped following opposition from the ACLU. *See* ACLU, PRELIMINARY FINDINGS OF ACLU “TEACH KIDS,

educational initiatives portray their detractors as feminist ideologues unwilling to accept the simple facts of nature. But rhetorical warfare is no substitute for a fair and impartial review of existing evidence. Indeed, an important legacy of feminist legal reforms of the past several decades has been a progressive strengthening of the anti-stereotyping principle in sex-discrimination law.⁷³ The vigorous application of a robust anti-stereotyping principle in law has played a critical role in defeating essentialist justifications for policies that promote the subordination of girls and women.⁷⁴ But in the case of boys and men, essentialist discourses are proving more resilient. No doubt law once again has a central role to play in challenging essentialist policies that insist we accommodate rather than interrogate the basis for masculine behavior.

VI. GIRLS CAN BE ANYTHING . . . BUT BOYS WILL BE BOYS

After two decades of concerted gender advocacy in the United States, girls' advocates and boys' advocates are sharply divided when it comes to questions of gender difference. Building on legal reforms of the 1970s that were designed to curtail sex discrimination and gender bias in the classroom, advocates for girls traditionally have emphasized the need to challenge social attitudes and practices that stand in the way of girls' success. Where at one time the dominant social view of girls emphasized inherent limitations, there is now a flourishing discourse of possibility and "the sky's the limit" thinking about girls.⁷⁵ The same cannot be said in the case of gender advocacy for boys, where essentialist claims have risen to the forefront. Indeed, among boys' advocates, there is a growing demand to adjust educational environments and expectations to accommodate boys' innate capacities and interests. What emerges, then, is a divergent discourse about kids, one which simultaneously proclaims that girls can do anything but boys will be boys.⁷⁶

In this way, contemporary gender discourse in education suggests a striking shift in what anthropologist Sherry Ortner has called the "underlying logic

NOT STEREOTYPES" CAMPAIGN 29, 42 (Aug. 20, 2012), *available at* http://www.aclu.org/files/assets/doe_ocr_report2_0.pdf (prepared for U.S. Dept. of Ed. Office for Civil Rights); *see also* Press Release, ACLU, ACLU Asks Dept. of Education to Investigate Single-Sex Programs Rooted in Stereotypes (Dec. 6, 2012), *available at* <http://www.aclu.org/womens-rights/aclu-asks-dept-education-investigate-single-sex-programs-rooted-stereotypes> ("The ACLU wants [the federal Department of Education's Office of Civil Rights] to provide guidance to all school districts and make clear that the 2006 Title IX regulations do not authorize schools to adopt programs based on gender stereotypes.").

⁷³ *See* Neil S. Siegel & Reva B. Siegel, *Struck by Stereotype: Ruth Bader Ginsburg on Pregnancy Discrimination as Sex Discrimination*, 59 *DUKE L.J.* 771, 791–93 (2010); *see also* Franklin, *supra* note 70, at 83.

⁷⁴ This is not to deny that the anti-stereotyping principle has been applied vigorously as well in the case of policies that exclude or disadvantage men.

⁷⁵ As Michael Kimmel recounts, when he asks young women to explain "what they think it means to be a woman," they seem "puzzled" at the very suggestion that being a woman implies "anything" at all about one's interests, capacities, or social roles. MICHAEL S. KIMMEL, *GUYLAND* 44 (2008).

⁷⁶ Psychologist and popular author William Pollack characterizes the "boys will be boys" attitude as a "major myth[] . . . deeply embedded in the culture . . ." WILLIAM POLLACK, *Real Boys: The Truth Behind the Myths*, in *REAL BOYS: RESCUING OUR SONS FROM THE MYTHS OF BOYHOOD* 52, 52 (1998).

of cultural thinking” about sex and gender.⁷⁷ In a now classic essay, *Is Female to Male as Nature is to Culture?*, Ortner declared “the secondary status of woman” to be “one of the true universals” of human societies.⁷⁸ Ortner attributes this “stubborn” fact to the universal association of woman with nature and man with culture, an attribution derived from “woman’s greater bodily involvement” with reproduction.⁷⁹ But the message emerging from boys’ advocates today suggests a significant reversal in the familiar terms of gender discourse. In contemporary education reform debates, it is in discussions of girls that we most often encounter a transcendent rhetoric of possibility. In contrast, we are much more likely to be warned of the damaging effects of pushing boys beyond biologically-determined cognitive and emotional limits. One should not presume, however, that this shift indicates a reversal in the gender hierarchy, for the appropriation of an essentialist discourse by boys’ advocates may in fact serve to reinforce male privilege. Today, appeals to nature function as an implicit rejoinder to the suggestion that boys’ troubles emanate in practices of gender socialization that reward aggression and discourage the expression of emotional vulnerability in boys and men. Indeed, in the education-reform debates, the assertion of boys’ fixed and immutable nature has emerged as a powerful tool to subvert interrogation of masculinity. From this perspective, among the most important items of unfinished business for feminism today is a more serious reckoning with the effects of essentialized masculinity.⁸⁰

⁷⁷ Sherry B. Ortner, *Is Female to Male as Nature Is to Culture?*, in *WOMAN, CULTURE, AND SOCIETY* 67, 68 (M.Z. Rosaldo & L. Lamphere eds., 1974).

⁷⁸ *Id.* at 67 (“The secondary status of woman in society is one of the true universals, a pan-cultural fact.”); *see id.* at 76 (“Because of woman’s greater bodily involvement with the natural functions surrounding reproduction, she is seen as more a part of nature than man is.”).

⁷⁹ *Id.* at 67–68, 76 (“The universality of female subordination . . . indicates to me that we are up against something very profound, very stubborn, something we cannot rout out simply by rearranging a few tasks and roles in the social system . . .”). While reproduction has not always been understood to preclude women from engaging in culture, Ortner contends, it has led woman universally to be placed “lower on the scale of transcendence than man.” *Id.* at 76. Ortner offers a thoughtful reconsideration of her original essay in *So, Is Female to Male as Nature Is to Culture?*, in *MAKING GENDER: THE POLITICS AND EROTICS OF CULTURE* 173, 173–180 (1996). Recognizing the valuable insights provided by critics who challenged her assertion of the universality of both “male dominance” and the “nature/culture” distinction, Ortner maintains that both are significant and pervasive (“The logic that de Beauvoir first put her finger on—that men get to be in the business of trying to transcend species-being, while women, seen as mired in species-being, tend to drag men down—still seems to me enormously widespread . . .”). *Id.* at 180.

⁸⁰ Here I seek to contribute to a growing body of scholarship that seeks to bring feminist theory and masculinities studies into greater dialogue. *See, e.g.*, DOWD, *supra* note 11, at 1–2; *see also* Nancy Levit, *Separate Silos: Marginalizing Men in Feminist Theory and Forgetting Females in Masculinities Studies*, at 2–5 (Feb. 8, 2010) (unpublished manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1550365.