Lessons From and For "Disabled" Students

Sharon E. Rush
University of Florida Levin College of Law, rush@law.ufl.edu

Follow this and additional works at: http://scholarship.law.ufl.edu/facultypub

Part of the Civil Rights and Discrimination Commons, and the Education Law Commons

Recommended Citation

This Article is brought to you for free and open access by the Faculty Scholarship at UF Law Scholarship Repository. It has been accepted for inclusion in Faculty Publications by an authorized administrator of UF Law Scholarship Repository. For more information, please contact outlier@law.ufl.edu.
Lessons From and For “Disabled” Students

Sharon E. Rush*

I. INTRODUCTION

II. HOW IMPORTANT IS EDUCATION?

III. HOW IMPORTANT IS THE UNIVERSAL TENET OF HUMAN EQUALITY?
   A. The Invisibility of Non-traditional Disabilities
   B. Inequality Lessons Throughout Society
      1. Sex Scandal at Air Force Academy
      2. The Harvey Milk School
      3. Segregated High School Proms
   C. Gender Equality
   D. Sexual Orientation Equality
   E. Racial Equality
   F. Inequality Lessons in the Modern Classroom

IV. FINDING AN AFFIRMATIVE DUTY TO TEACH EQUALITY
   A. Teachers as Inculcators of Democratic Values

V. SUMMARY

The young children waited eagerly at the starting line for the coach to yell “go.” As soon as they heard the magic word, they were off. Laughing and giggling, they raced toward the finish line in hopes of possibly being the winner. But wait. Their friend was having trouble and had not gotten very far beyond the starting line when the other children noticed his predicament. What should they do, they wondered? What did they do? They all turned around, went back and helped their friend, and then they all, hand-in-hand, made their way to the finish line and crossed it together. Still laughing, still giggling. Absolutely full of pride and joy.1

This is a true story told much more eloquently by Wayne Dyer on public television, which he also writes about in his book, *There's a Spiritual Solution to Every Problem.*2 The children involved were participating in a “Special Olympics” race. They were all handicapped or “disabled.”

* Irving Cypen Professor of Law, Levin College of Law University of Florida. Copyright 2003. All rights reserved. Thanks to my colleagues Berta Hernandez-Truyol and Nancy Dowd who read and commented on earlier drafts. Thanks also to my research assistant Stephen Schmier and the entire staff of the Journal.

1. WAYNE W. DYER, THERE'S A SPIRITUAL SOLUTION TO EVERY PROBLEM 1 (2001).
2. Id.
I. INTRODUCTION

The traditional understanding of "disabled" means to have a physical, mental, or emotional limitation. It is unfortunate that the word has negative connotations because we all have the ability to do some things and not others. For example, the young children in the footrace are disabled in the traditional sense, but they are not at all limited in their ability to understand complex human emotions like empathy, compassion, and cooperation. Indeed, people who are not disabled in the traditional sense often lack those abilities and need to be educated to learn them.

Moreover, an individual's disabilities, traditional or otherwise, do not diminish her as a person or detract from the universal tenet that all people are inherently equal and entitled to be treated with dignity. This universal tenet and its relationship to the education of all children—traditionally and non-traditionally disabled students—is the focus of my essay. Importantly, I am not suggesting that traditional disabilities, the types covered by disability law, are "just like" or "no more important than" non-traditional types of disabilities. Generally, it is unproductive to compare the circumstances of one group with another for the purpose of discerning which group has it better or worse. Struggles by different groups to achieve equality have different concerns and are entitled to be "recognized" independently and within broader contexts. Simultaneously, struggles for equality are just that: we all want to be equal human beings before the law.

Consistent with the purpose of this Journal, it is important to acknowledge that traditionally disabled children are not all the same with respect to wealth, race, ethnicity, sexual orientation, religion, and myriad other identity traits. We also need to keep in mind issues and concerns about the intersectionality of disability law with other antidiscrimination laws to avoid essentializing traditionally disabled students. Moreover, even traditionally disabled students can be excluded from the universal tenet because of their disabilities. For example, the Supreme Court recently held that it does not violate federal law to read a disabled student's grades aloud in the classroom even though this practice embarrasses and shames the student. Thus, the equality issues in this area are complex, but I save the deeper analysis for another essay. My immediate goal is much more modest: to inspire further reflection on the lessons we can learn from traditionally disabled students and our national commitment to their education. Because my research interests are in the area of racial equality, the primary focus of this essay is racism and education. However, I briefly explore sexism and

---

3. See, e.g., Trina Grillo & Stephanie M. Wildman, Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (or Other Isms), in PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCE UNDERMINES AMERICA 85, 99 (Stephanie M. Wildman ed., 1996) ("Recognition time acknowledges both the need to honor the pain of those oppressed by other isms, each in their turn, and the need to allow the oppression being focused on to remain center stage.").

homophobia to illustrate how my analysis also can be applied in those areas.

II. HOW IMPORTANT IS EDUCATION?

Federal law provides that all "disabled" children, under the age of twenty-one, are entitled to receive a "free appropriate public education." The federal government gives grants to states that provide students with "Individualized Educational Programs," (IEPs), as all states do. The cost of providing IEPs to children with disabilities is significant. During the 1999–2000 school year, the special Education Expenditure Project found that the costs for IEPs was almost twice that of the per student costs in general education: $12,474 versus $6,556 per student, respectively. "Nationwide, the total expenditures during that year for educating students with disabilities made up almost twenty percent of the total expenditures for elementary and secondary educational services."

Federal disability law reflects an enormous financial commitment to the education of traditionally disabled children. Perhaps this commitment is not surprising because our society places a high premium on education. Although the Supreme Court has never held that education is a fundamental right, it has suggested that if states did not provide children with free education, then perhaps the Court would find that right in the Constitution.

Simultaneously, the Court has held that economic disparity in children's education is constitutional. When the inner-city Mexican-American children in Rodriguez argued that the per capita expenditure for their education was significantly less than that for their suburban white counterparts, the Court basically said, "Too bad. That's life." Nine-year-old Sarita Kadrmas and her younger siblings were left at the bus stop 16 miles from their school, because they could not afford the bus fee. If Sarita has children of her own some day, we can imagine how she will tell them how far she had to walk to school every day to quiet their complaints about how hard their lives are. And no matter how hard life might be for Sarita's children, it is difficult to imagine that they will have a harder time getting to their "free" public school than she did.


6. Initially, the federal government set a goal of providing 40% of the extra costs, but as of 2002, has provided states with only 18% of the extra costs. See Policy Information Clearinghouse, Special Education Funding, 10 NASBE POL'Y UPDATE No. 12, at http://www.nasbe.org/Educational_Issues/Policy_Updates/10_12.html (last visited Feb. 23, 2004).

7. Id.

8. Id.


And then there is Garret F., whose spinal column was severed when he was four years old. The accident paralyzed him and caused him to be placed on a respirator for life, although he remained unaffected intellectually. His family rallied to help him in every way they could. When he was in kindergarten, his 18-year-old aunt attended him; in the next four years, his family used settlement proceeds they received after the accident, their insurance, and other resources to employ a licensed practical nurse. Eventually, they ran out of financial resources and needed help to pay for the medical care Garret needed to stay in school and remain in his mainstream classroom. Garret’s family believed that federal law entitled them to have the government pay for the necessary care, which, the school district argued, imposed an undue financial burden. Notwithstanding the cost, the Supreme Court upheld Garret’s right to an IEP.

Garret was not alone in requesting help to meet his needs. Approximately 2,200 of the 17,500 students in his district also had special needs that schools handled. This number represents 12.5% of the district’s school population. Recent research from The Civil Rights Project at Harvard University indicates that in 2002 about six million children received an appropriate education under federal disability law requirements.

We rightfully invest in the education of Garret and many other disabled children because we recognize the importance of education. In fact, the Supreme Court uses the rhetoric of “disability” to describe the possible life circumstances of a child who is not educated:

Illiteracy is an enduring disability. The inability to read and write will handicap the individual deprived of a basic education each and every day of his life. The inestimable toll of that deprivation on the social, economic, intellectual, and psychological well-being of the individual, and the obstacle it poses to individual achievement, make it most difficult to reconcile . . . a status-based denial of basic education with the framework of equality embodied in the Equal Protection Clause.

---

14. Id. at 69.
15. Id. at 70.
16. Id.
17. Id.
18. Id. at 76–77.
20. Id. at 70.
21. THE CIVIL RIGHTS PROJECT, HARVARD UNIV., RACIAL INEQUITY IN SPECIAL EDUCATION: EXECUTIVE SUMMARY FOR FEDERAL POLICY MAKERS (June 2002), at http://www.civilrightsproject.harvard.edu [hereinafter RACIAL INEQUITY IN SPECIAL EDUCATION].
As Rodriguez and Kadrmas illustrate, however, the importance of education alone is not sufficient to make us pull out our checkbooks, particularly to eliminate racial and economic inequalities in education. Perhaps because disabilities like Garret's are visible and devastating, and also fall within the traditional definition of disability, we are able to embrace Garret and other children with similar disabilities because we see their inherent humanity and respond accordingly. It would be inhumane, and not in keeping with the universal tenet, to fail to respond to Garret. In the area of traditional disabilities, we try to live by our theoretical commitment to everyone's humanity by providing children with IEPs.

III. HOW IMPORTANT IS THE UNIVERSAL TENET OF HUMAN EQUALITY?

Outside of situations like Garret's that clearly fall into the traditional disability definition, we as a society are far less committed to the education of minority and poor children, as Rodriguez and Kadrmas illustrate. In fact, often disability laws are invoked in ways that actually handicap students who are incorrectly identified as disabled. Given our commitment to include traditionally disabled students like Garret in mainstream classrooms, it is startling to think about how much effort school officials exert to remove from classrooms and schools a disproportionate number of minority students by labeling them "disabled." For example:

In 1998, approximately 1.5 million minority children were identified as having mental retardation, emotional disturbance, or a specific learning disability. More than 876,000 of these were black or Native American.... [I]n most states, African American children are identified at one and a half to four times the rate of white children in the disability categories of mental retardation and emotional disturbance.23

There is a huge irony in this: we recognize the inherent humanity of, and importance of education to, some traditionally disabled students, and strive to include them in mainstream classrooms, while we simultaneously remove from mainstream classrooms many students, particularly racial minority students, who are wrongly labeled as traditionally disabled. Erroneous decisions like these have devastating, lifelong, and life-altering consequences for children. Predictably, they are more likely to drop out of school and many engage in behavior that necessitates involvement in the juvenile and even adult criminal justice systems.24

This ironic and racially discriminatory approach to education teaches all

23. RACIAL INEQUITY IN SPECIAL EDUCATION, supra note 21, at http://www.civilrightsproject.harvard.edu.

24. This phenomenon of racial minority youth dropping out of school and ending up in prison, the "school-to-prison pipeline," is the focus of the Harvard Civil Rights Project. Unpublished papers on this topic are available for review. THE CIVIL RIGHTS PROJECT, HARVARD UNIV., at http://www.civilrightsproject.harvard.edu (last visited Jan. 15, 2004).
children a lesson dramatically at odds with the universal tenet. Specifically, this practice teaches all children that the education of racial minority students is unimportant. Why? Children of all races deduce that the mistreatment of racial minority students can only be the result of thinking they are inferior to racial majority students. Stated alternatively and in a way that makes visible a huge part of the problem, this practice teaches all children that majority students are superior to minority students. This anti-democratic lesson disables all students in the non-traditional way because it jeopardizes their chances to mature into authentic human beings who understand that every person is a human being and human beings are inherently equal to each other. We are equal souls.

Thus, under a broader definition of disabled, all students have a "special" need that parents and teachers are not meeting: the need to be taught how to value and live up to the democratic principle and universal tenet that all humans are equal. I think parents and teachers are people of goodwill and do not mean to ignore this lesson or inadvertently teach inequality lessons. There is value in asking: Why do we not invest in protecting the inherent humanity and dignity of all students? Why are we not teaching them to value each other and work together to reach the finish line of human equality and dignity?

A. The Invisibility of Non-traditional Disabilities

Generally, teachers are able to observe a student’s traditional disability, leaving little doubt that the student’s success ultimately depends on providing him with the “special” resources he will need. Most majority students who are not traditionally disabled do not understand that the racial inequality in the administration of disability laws hurts them too. Because dominant group members enjoy privileges that come with belonging to dominant groups, it is difficult for them to see or understand how their privilege “disables” them and exacts from them the price of being less than an authentic human being. This harm is invisible25 to most majority members because they have been taught to believe in democracy and equality but they have not been taught that protecting their privilege promotes inequality. Closely related, life in America is often seen as one big life-time competitive race to the top. Individuals are responsible for running and managing their own race. Thus, when dominant group members have opportunities either to use their privileged status to promote equality or to get further ahead in the race, they choose to race ahead of the less privileged, often without even looking back. They are unable or unwilling to live by the universal tenet because they have learned to believe it in theory but disregard it in practice.

Some behavior that violates the universal tenet can be egregious and


HeinOnline -- 8 J. Gender Race & Just. 80 2004-2005
individuals need to be held accountable for the harm they do to others. Simultaneously, violations of the universal tenet are institutionalized throughout society. Large, systemic inequality—sexism, homophobia, and racism, to list a few examples—reflect a tenuous societal commitment to the democratic principle and universal tenet. Society, at deep institutional levels, teaches inequality lessons that some individuals wrongfully, but perhaps not surprisingly, act upon.

B. Inequality Lessons Throughout Society

Below are three recent examples that explore lessons in gender, sexual orientation, and racial inequality that are being taught in some schools. I touch on the recent scandal at the Air Force Academy where many female cadets were raped and sexually harassed, the creation of the Harvey Milk School to provide a safe place for gay students, and the segregation of high school proms only to illustrate that the inequality in education cuts across many lines. This Journal is renowned for inspiring intellectual non-essentialist thinking. Thus, the brevity of my observations in those examples compared to the one I explore in the context of racial inequality is not an indication that I think sexism and homophobia are not as serious or important. My emphasis on racial inequality reflects my primary research interest.

1. Sex Scandal at Air Force Academy

Since 1993, women at the U.S. Air Force Academy have been complaining about the criminal sexual abuse they endure by the male upperclassmen.\textsuperscript{26} Some of the women were raped.\textsuperscript{27} Although ample evidence demonstrates that high ranking officials knew of the problem, they did nothing to stop it.\textsuperscript{28} “Between 1993 and 2002 . . . 142 allegations of sexual assault . . . were reported, a figure that averages out to 14 a year.”\textsuperscript{29}

\textsuperscript{26} Judith Graham, \textit{Air Force Leadership Blamed for Sex Scandal; Academy's Climate of Abuse Traced to Officers' Inaction}, CHI. TRIB., Sept. 23, 2003, at 1C.

\textsuperscript{27} Id.

\textsuperscript{28} Id.

\textsuperscript{29} Id. The following women’s stories highlight the harm done to them:

\textbf{Louise.} “Louise said fellow cadets harassed her after she reported her attack. She eventually left the Academy. ‘He ended up pulling me into a bedroom and shutting me in there, and that’s when it happened,’ Louise said.” Channel 7 News, \textit{More AFA Victims Come Forward as Roche Speaks to Cadets}, Feb. 28, 2003, at www.thedenverchannel.com/news/2010609/detail.html.

\textbf{Lindsey.} “I was able to get this person to leave my room. And then I just cried all night,’ Lindsey said. Lindsey said when she asked the Academy for help after her sexual assault, investigators told her the attack was all in her head.” \textit{Id}.

\textbf{Lynn.} “I tried to fight him off for about two hours, but I was just crawling around the room to get away from him,” said Lynn. Lynn was ill in bed when an upperclassmen [sic] assaulted her in her dorm room. She said academy officials did nothing.” \textit{Id}. 
Some women who reported the incidents to their supervisors were “threatened with disciplinary action for breaking rules.”

Many female cadets quit the academy, ending their military careers, and now live in “fear of further retribution.”

2. The Harvey Milk School

New York City recently gave $3.2 million to help expand a public high school that is being held out popularly as the gay high school. In reality, the school is open to any student who has been the target of homophobia, including children of gay parents and “straight kids who are perceived to be gay . . .” It was created to provide a safe place for gay students, who, as a group, “face a greater risk of bullying than any other students in American high schools,” according to the 2001 Human Rights Watch Report.

3. Segregated High School Proms

There is a southern tradition in some parts of Georgia for high school seniors at public schools to hold racially segregated proms. Although this did not physically take place at the schools, it happened with the help of the schools. Specifically, school officials canceled the school-sponsored proms at the urging of the parents of white students, who then paid for their children’s whites-only proms. Only one student, Gerica McCrary, tried to break the tradition.

Traditional disability law is unconcerned with the “disabling” of the victims in these examples. It is even more difficult to see how the

Marie. Marie reported her assault under an “amnesty program,” but received no protection from it. 7NEWS Investigates: Victims of Academy Rapes Speak Up, Punished, (Channel 7 News television broadcast, Feb. 14, 2003), at www.thedenverchannel.com/news/1981421/detail.html. She received seven of the most serious reprimands and punishments possible including one for sexual activity in cadet dorms, drinking alcohol, and fraternization with upperclassmen. She said, “They tried to convince me it was my fault. They told me repeatedly that’s how I would be perceived . . . . They wanted to put blame on somebody and it was hard to put it on three guys as opposed to putting it on one freshman girl.”


31. Graham, supra note 26, at 1C.


33. Id.

34. Id.


36. Id.

37. Id.
perpetrators and bystanders also were "disabled" because of the gross violations of the universal tenet in these situations that prevent all of us from becoming authentic people in a true democracy. Whether or not we believe that teachers, parents, leaders, and many adults are teaching children to accept the validity of inequality lessons, children are learning this from somebody. It is critically important to reflect on this problem and counteract it.

C. Gender Equality

Given the widespread commodification of women as sex objects, it is naïve to think we, as a society, have effectively taught boys and girls to respect the universal tenet as applied to gender equality. The male cadets who abused their classmates acted out learned lessons of male superiority. Perhaps the best evidence of this is the widespread condoning by high-ranking officials of the crimes, including sexual assault and rape.\(^{38}\) It is taking a long time for the Air Force Academy to create a safe place for its female cadets.\(^{39}\)

Not only did the leaders not respect the inherent equality and dignity of the female cadets by choosing to do nothing to stop the crimes committed against them, but they also reinforced the validity of the inequality lesson that men are superior to women, indicating that the leaders had learned and continue to believe it too. What kind of role modeling is that? This failure of the male cadets and their commanding officers to learn to respect and protect the inherent equality and dignity of the female cadets results in the disabling of all their lives. Most obviously, the female cadets were violated in egregious ways and they have to deal with the resulting damage to make themselves physically and emotionally whole again. Additionally, some of them lost their military careers and, consequently, their hopes and dreams were dashed.

The problem was so pervasive it extended to a summer sports camp for teens, where a counselor, Robert Ryan Burdge, a senior at the Academy, raped a thirteen-year-old girl who was attending camp to train as a cheerleader.\(^{40}\) One night after she had already gone to bed, Burdge and his roommate "bang[ed]" on her door and just walked in.\(^{41}\) They took her to

---

38. Graham, supra note 26, at 1C.

39. The problem of sexual abuse of women in the military is not limited to the Air Force Academy and is pervasive throughout all branches. Recently, Rep. John McHugh (R. N.Y.), chair of the armed services Total Force Subcommittee, requested that the Department of Defense look into this entire problem. Amy Herdy & Miles Moffeit, Rumsfeld Urged to Respond to Post Series Report on Sex Assault, Domestic Violence in Military Spurs House Panel Chief to Act, DENVER POST, Dec. 9, 2003, at A-04.


41. Id.
another part of the camp where Burdge sexually assaulted her. When he returned her to her dorm, he warned her not to talk. "I was scared. I didn't know what was going to happen. I didn't know what they were going to do," said the teenager, who was so emotionally scarred from the incident that she could not even tell her parents. She said the two cadets were drinking and one sniffed a white powder. Then, Burdge's roommate got up to leave the room. "I felt nauseous because I had seen stuff that I had never seen before and I didn't know what to do. I was stuck there," Abbey said. Amazingly, "Burdge was assigned to be a cadet counselor with responsibility over minors, even though he was on conduct probation at the academy and was the focus of a drug investigation. In fact, it was through that investigation that the Air Force agents heard about the sexual assault." Her parents found out when the investigators contacted them. There is no way to describe the harm suffered by the women as a result of the crimes committed against them.

The failure of society to teach and practice gender equality also costs society in other ways. For example, in United States v. Morrison, the Supreme Court held that Congress did not have power under the Commerce Clause to regulate violence against women. Even if one agrees with the Morrison Court that the congressional record did not establish that gender-motivated violence substantially affects interstate commerce, it is impossible to ignore the high costs to society of such violence, which are listed in the Morrison dissent. Focusing on the financial costs, the dissent noted that "estimates suggest that we spend $5 to $10 billion a year on health care, criminal justice, and other social costs of domestic violence." Significantly, the financial loss to society of gender violence was only one among a long list of harms. For example, approximately 100,000 rape victims lose their jobs trying to cope with the consequences of being abused. Tragically, such violence results in the deaths of 2,000–4,000 women annually, a statistic highlighted by the dissent.

42. Id.
43. Id.
44. Id.
45. Id.
47. Id.
48. Id.
49. Id.
50. 529 U.S. at 615.
51. Id. at 632–33 (Souter, J., dissenting) (quoting S. REP. NO. 103-138, at 41 (1993)).
52. Id. at 636.
53. Id. at 632 (citing S. REP. NO. 101-545, at 36 (1990)).
No one, of course, is hurt in the same way as individual women who are victims of gender inequality, especially when it evidences itself in criminal activity like that at the Air Force Academy. It would not solve the problem if the men involved were also forced to lose their military careers, but many of them have not seen any consequences of their actions. These men also lost part of their humanity and dignity as well, even if they never understand it. One expects that their consciences eventually will catch up to them, and, if that happens, their conduct will haunt them the rest of their lives. Potential employers, future friends, spouses, parents, siblings, children the cadets may have, and all significant people in their lives will learn about the dishonorable and criminal way they behaved toward women simply because they were women and because the cadets had learned to treat them with disregard for their humanity. How do they escape their own consciences? Can they ever truly get back their self-respect? Certainly, these questions are much harder to answer the stronger the societal condemnation of their behavior. The universal tenet as applied to gender equality must be deeply ingrained in boys and girls to ensure that what happened at the Air Force Academy does not happen again. Only when we have a culture of equal respect for women and men can crimes against women be seen as individual aberrations, rather than the somewhat unsurprising and tragic outcomes of a society that privileges men over women.

To summarize thus far, once the scandal at the Air Force Academy became public, the harm the female cadets suffered became visible, much like Garret's traditional disability is visible. The harm to the male perpetrators and society, however, remains largely invisible. We rarely reflect on the connection between sanctioned institutionalized inequality and individualized "acted out" inequality. I am not saying the male cadets and commanding officers are not responsible for their choices to violate the humanity and dignity of the women. Rather, closer reflection by loving teachers and parents would enable us to see that we are giving our children mixed messages about what equality means. When high ranking officials at the Air Force Academy knew and did nothing about the individual behavior that violated the universal tenet, they institutionalized the inequality at the expense of the women, the community at the Academy, society, and themselves.

**D. Sexual Orientation Equality**

I hesitate to use the Harvey Milk School because I have not quite decided whether I think it is a "good" idea. Simultaneously, the school illustrates the limited point I am trying to make about teaching inequality lessons. Regardless of whether one thinks the school is or is not a good idea,
it is clear that children are learning inequality lessons in the sexual orientation context.

Perhaps my point is more difficult to see in the Harvey Milk School example because it is humane to provide safe places for students who are targets of homophobia. In fact, one could even say that this example is different from the Air Force Academy because some adults focused on protecting the humanity and dignity of the gay students and chose to do something about the problem. I absolutely agree that gay students should not be subjected to brutality and harassment.

On the other hand, anyone who beats up someone else because of hate has learned this is a legitimate way to act out one’s emotions. Homophobic bullies who bash gays violate the basic value of respecting the inherent dignity of others. They know they are not alone in believing that they are superior to gays because no one disabused them of this learned lesson. The bullying became so bad that a separate school was created to provide a safe place for the students. Rather than confronting the bullies and stopping the abuse within the school, the bullies and everyone else in the school environment—regardless of their sexual orientation—learned the lesson one more time: it is legitimate to violate the universal tenet when the superiority lesson validates heterosexuality as the norm.

It is difficult for some heterosexuals to see or understand how discrimination against sexual minorities also hurts heterosexuals, but the lesson is the same as it is in the Air Force Academy example. To the extent our democracy condones hatred against minorities, including sexual minorities, it is an incomplete endeavor. Thankfully, the Supreme Court held in Romer v. Evans that animosity toward gays is irrational and is an unjustifiable reason to discriminate against them. In Lawrence v. Texas, the Court held that the right of privacy in the Constitution extends to gays, steering the country back toward the democratic trail. Disappointingly, many heterosexuals denounced this advancement toward equality for everyone and instigated a tremendous public outcry to amend the Constitution to protect heterosexual privilege by defining marriage as a union of a man and a woman. It is difficult to tell from statistics how much support or opposition there is to the amendment. For example, “[a]n online petition supporting the amendment boasts more than 850,000 signatures.” Simultaneously, a recent study by the Pew Research Center for the People and the Press reports that 10% of Americans support the amendment, while 59% oppose gay

---

55. 517 U.S. at 620.
56. Id. at 635.
57. 123 S. Ct. at 2472.
58. Id. at 2482.
Lessons From and For "Disabled" Students

marriage and 51% oppose civil unions for gays.60

As the Pew study indicates, many adults who do not openly support the Amendment nevertheless promote the inequality of sexual minorities because of their unconscious homophobia and belief in the superiority of heterosexuality.61 For example, many supporters of laws defining marriage as between a man and a woman simultaneously support civil contracts for gays, suggesting they are the equivalent of marriage. The major 2004 democratic presidential candidates who oppose gay marriage but support civil unions provide an excellent example.62 Massachusetts Governor Mitt Romney articulated this view in his response to the Massachusetts Supreme Court ruling that held denying gays the right to marry is a violation of their equal protection under the state constitution.63 Romney stated:

Marriage is an institution between a man and a woman. I will support an amendment to the Massachusetts constitution that makes that expressly clear. Of course, we must provide basic civil rights and appropriate benefits to non-traditional couples, but marriage is a special institution that should be reserved for a man and a woman.64

Civil contracts are not equal to marriage or there would be no reason to deny gays the right to marry. Supporters who want to preserve marriage for heterosexuals yet offer civil contracts to homosexuals promote inequality by protecting their own privilege. Undoubtedly, on some level of consciousness they understand and intend this result even though they suggest the distinction between marriage and civil unions is not substantive. Privilege of all kinds remain largely invisible to those who enjoy it.

E. Racial Equality

Some might wonder what the harm is in holding segregated proms. Arguably, segregated dances do not hurt anyone. We know this is untrue in the Georgia case. Specifically, many black students (and some white students) did not want separate proms and preferred to have only one dance as they had done the year before for the first time in thirty one years.65 "'I cried,' said Gerica McCrary, a black student who helped organize last year’s integrated dance, of the moment when she heard the news. 'The black [students] said, 'Our prom is open to everyone. If you want to come,

60. Id.

61. See id.

62. Id.


64. Younge, supra note 63.

65. Id.
The decision to hold segregated proms came from a group of white students, who were "clearly unhappy with the integrated precedent set" the year before. McCrary noted that no vote was taken and that the group basically imposed its choice on everyone. The involuntary segregation of a minority group from the dominant group is not equality. If society learned nothing else from the practice of de jure segregation, this is one lesson it should have learned, as Brown v. Board of Education illustrates. While this decision technically was made by private parties and not the state, thereby avoiding constitutional infirmities, public officials condoned it and the resulting harm to the students was effectively the same.

Moreover, the only motivation the whites could have had for wanting segregated proms is their belief in white superiority. This is particularly compelling for most whites when the context of intermingling is social or romantic. Most whites continue to oppose interracial couples and families. "[O]ne national survey found two-thirds of white respondents saying that they would have a negative reaction if a close relative of theirs married a black person." In fact, the tradition of holding segregated proms in Georgia grew out of concerns about interracial dating.

Certainly, the practice of holding segregated proms teaches students to believe in the myth of white superiority and black inferiority, which is a lesson that violates the universal tenet. The white students and their parents essentially conspired with school officials to violate the universal tenet because they had learned to believe in their white superiority. The parents and school officials orchestrated the private proms, reflecting how those adults immersed their children in principles and values that contradict the universal tenet. The white students and parents, of course, did not understand how their decision to violate the universal tenet also harmed themselves.

Racial inequality harms whites, too, in many ways. For example, some businesses recognize that having a racially diverse work force is inevitable because of changing demographics. Social scientists predict that by the year 2050, whites will be the minority racial group in the United States.

66. Id.
67. Id.
68. Id.
69. 347 U.S. at 483.
71. Id.
72. Younge, supra note 63.
74. FEAGIN & O'BRIEN, supra note 70, at 6.
Executives know that workers are more productive when they get along with each other than when they do not. Consequently, many businesses have developed diversity training for their employees. Recently, the Supreme Court held in Grutter v. Bollinger\textsuperscript{75} that racial diversity in higher education is a compelling state interest.\textsuperscript{76} Sharing public space\textsuperscript{77} and fostering healthy race relations are consistent with the universal tenet and the democratic principle of equality. Many whites are beginning to acknowledge the importance of developing deeper understandings of cultural differences.

Another harm befalls whites who fail to live up to the universal tenet with respect to racial equality. Whites who contribute, consciously or unconsciously, to racial inequality deny themselves the chance to be authentic human beings because they unfairly reap benefits from privileges they did not earn. The gigantic head start whites took in life's race began with slavery and the conquest of Native Americans. For centuries, white society has protected its dominant social position through heinous practices that were legally condoned. It is indisputable that white society benefits from the historical oppression of blacks and other people of color. There simply is no way for people of color to ever "catch up" in America's race because the distribution of wealth at the very beginning created vast disparities.\textsuperscript{78}

White society believes the gap between theoretical racial equality and true racial equality is acceptable and a legitimate outcome in a democracy. This is a deeply ingrained lesson in white society and is held even by prominent whites who openly denounce racism. For example, Justice Harlan opined in his Plessy dissent that the white race would always be the dominant race\textsuperscript{79} and thus far in the United States, his words ring true. In the context of education, our schools remain persistently segregated and woefully unequal. For example,

[a] new report from Harvard Civil Rights Project . . . finds 70\% of the nation's black students go to predominantly minority schools. 37\% of Latino students attend schools where 90\% to 100\% of the students are also minorities, while white students on average attend schools where more than 80\% of the students are also white.\textsuperscript{80}

Within schools, students remain largely segregated, both physically and emotionally. For example, data that focuses on African American students indicates a serious problem with physically segregating them from other

\textsuperscript{75} 123 S. Ct. at 2325.
\textsuperscript{76} Id. at 2339.
\textsuperscript{78} RANDALL ROBINSON, THE DEBT: WHAT AMERICA OWES TO BLACKS passim (2000).
\textsuperscript{79} Plessy v. Ferguson, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting).
students. "[T]hey are much more frequently subjected to suspension and corporal punishment; drop out at higher rates ... and are placed in gifted and talented programs in numbers well below their presence in the school population."\footnote{Theresa Glennon, \textit{Race, Education, and the Construction of a Disabled Class}, 1995 Wis. L. REV. 1237, 1322 (1995).} White students are placed in gifted programs at a rate twice that of African American students.\footnote{Id.} Decisions by school officials to erroneously classify minority children as "disabled" because of the officials' negative stereotypes about the children is an enormous part of the problem.\footnote{Id.}

My recent work focuses on the phenomenon of emotionally segregating students based on race in a physically integrated classroom. Because of unconscious racism, this type of inequality generally is invisible to most white teachers and parents. An example is requiring students to read \textit{Huckleberry Finn}. It is difficult to imagine that sensitive whites would be indifferent to the reality that the novel often makes students of color, particularly black students, uncomfortable and even embarrassed and ashamed.\footnote{Sharon E. Rush, \textit{Emotional Segregation: Huckleberry Finn in the Modern Classroom}, 36 U. MICH. J.L. REFORM 305 passim (2003).} As difficult as it is, however, \textit{Huckleberry Finn} is revered as an antiracist classic and has become a mainstay in most classrooms. Emotional segregation is another lesson that violates the universal tenet.

Perhaps intra-school segregation should not be surprising because approximately 90% of all public school teachers in this country are white and about 80% are white women.\footnote{Karen MacPherson, \textit{Study Finds Few Male, Minority Teachers}, POST-GAZETTE, Aug. 28, 2003 (citing a study by the National Education Association in 2000–2001 school year, which found only 21% of teachers were male, and only 10% were racial minorities of which 6% were African American).} Most white teachers identify as antiracist and truly believe in the universal tenet. However, data shows that most whites unconsciously harbor negative stereotypes about people of color.\footnote{Joe R. Feagin, \textit{Racist America: Roots, Current Realities, and Future Reparations} 109 (2000) (citing to research studies that support the statement that there is "a substantial level of acceptance by whites of some negative thinking about black Americans") (footnote omitted).} Public schools teachers are not beyond the reach of unconscious racism. Some data demonstrates that many white teachers become uncomfortable with some of the behavior of minority children and solve their discomfort by removing the child from the room.\footnote{Glennon, \textit{supra} note 81, at 1319–20.}

The racial disparity in demographics alone should cause concern among people who believe in the universal tenet because this picture is one of gross inequality both among schools and within schools. How can this picture hang in our Halls of Democracy? If we are oblivious to or simply do not care about the blatant racial inequality, how are we to see, and why would we be
motivated to stop, the inequality that seeps into our psyches? Just how deeply ingrained are the inequality lessons about race?

What have young children learned about race and racism? Many whites think children do not see racial differences, but research shows that children begin to differentiate races as early as age two. Moreover, children’s differentiation of races typically reflects that they have been taught that whites are superior to people of color. For example, some white children think that black and brown children are “dirty” and need to wash themselves. Some children of color express sadness that they are not white. I remember my daughter, who is black, saying at age six that she wanted to fly to the moon because the sun only made her darker and it was no fun being dark. Many parents try to teach their children that everyone is equal, but children often learn just the opposite in the outside world, including in their classrooms.

In his classic book, The Nature of Prejudice, Gordon Allport suggests that by age eight, children begin to verbalize their prejudices, and by age twelve they have learned to stop voicing their prejudices. Unfortunately, twelve-year-olds’ choices to keep their prejudices to themselves merely reflect a learned social response. In reality, children are unlikely to say they believe in the inequality of the races, but they actually have internalized this lesson, which may evidence itself in their conduct. Allport describes the phenomenon:

The paradox, then, is that younger children may talk undemocratically, but behave democratically, whereas children in puberty may talk (at least in school) democratically but behave with true prejudice. By the age of 15, considerable skill is shown in imitating the adult pattern. Prejudiced talk and democratic talk are reserved for appropriate occasions, and rationalizations are ready for whatever occasions require them. Even conduct is varied according to circumstances . . . . Double-dealing, like double-talk, is hard to learn. It takes the entire period of childhood and much of adolescence to master the art of ethnocentrism.

Consistent with Allport’s findings, many of the whites involved in the Georgia prom incident self-identify as non-racist but their decision to hold a whites-only prom defies this reality.

91. ALLPORT, supra note 88, at 310.
92. Id.
93. Id.
94. Id.
Thus, racially segregated proms may seem unimportant and benign in the overall scheme of the extant racial inequality in education. There are bigger problems to solve. But the prom incident is important. It illustrates a huge, systemic problem of racism and racial inequality in children's education. Practices that involuntarily racially segregate students reflect a deep historical lesson in white superiority. With hindsight, we can see that *Brown* did little to create racial equality in education but symbolically removed state-imposed, involuntary segregation. The theoretical and symbolic importance of *Brown* is a triumph in the struggle for racial justice, but the struggle for racial justice continues fifty years after *Brown*. This seemingly benign situation in Georgia today is a reminder that yesterday's Topeka, Kansas is still with us. The prom incident manifests a national transgression of the universal tenet. The individuals involved in ensuring the proms were segregated may self-identify as non-racist but, on some level of consciousness, they must know they are being disingenuous. Loving parents and teachers who truly believe in racial equality nevertheless are unwittingly educating children to accept and promote racial inequality. The costs to individuals, communities, and the country are staggering.

Importantly, anyone who fails to live by the universal tenet misses opportunities to develop into an authentic human being. Loving parents and teachers owe children the opportunity to live in a complete democracy as authentic human beings. What steps are we taking toward this goal?

**F. Inequality Lessons in the Modern Classroom**

Recently, much attention has been given to creating and teaching multicultural curricula. Multiculturalism generally means including in curricula works by authors of color and lessons that introduce students to different cultures and peoples.\(^{95}\) This is pedagogically sound and consistent with the universal tenet that all people are inherently equal and their histories and cultures worthy of inclusion in curricula.

Given this effort to diversify curricula and learn about differences among people, one might disagree with my claim or think I am overstating the situation. However, the mere inclusion of lessons about different people does not always mean that the lessons teach equality. For example, sometimes even multicultural curricula merely add to syllabi without removing the inequality lessons. This would be the case if a lesson is embedded in a Eurocentric view of the world that functions on a presumption of white superiority, for example.\(^{96}\) In fact, sometimes, often the multicultural lesson itself inadvertently contributes to and reinforces the

---


lesson of inequality because teachers are unable or unwilling to learn about and address the "special" needs of students to be appreciated and valued for who they are.  

For example, most parents today probably learned that Christopher Columbus "discovered" America when he sailed across the ocean in the Nina, Pinta, and Santa Maria. Most of us did not learn as young children that the Native Americans, who were conquered by the Europeans, were human beings. Rather, many, if not most, of us learned that they were savages. Today, of course, it would be difficult to find an adult who says he still believes in that version of Columbus' expeditions, and most parents, particularly parents of Native Americans, would be upset if teachers taught students that Native Americans were "savage heathens" and not really human beings. But does white society truly believe in the humanity of Native Americans? There is evidence that many Americans continue to believe the "Celebrate Columbus" version of Native American history. We still celebrate Columbus Day as a national holiday in honor of his "discovery" of America. Consider another example, which came to my attention in an article by Professor Marilyn Cochran-Smith, and is taken from L. Banks' book, The Indian in the Cupboard. This book won a national book award when it first appeared in 1981, and Paramount Pictures recently released the story as a movie, which was a box office hit. It is the story of a young, white boy who discovers that the plastic Indian toy on his cupboard shelf comes alive at night. Admittedly, this is a fascinating tale to young imaginations and seemingly harmless—to most whites. But it is another lesson in white superiority, which is readily apparent to Native Americans and others who are sensitive to issues of white privilege. One critic, McCann, articulated significant problems with this story:

Little Bear is a plastic toy Indian who comes to life in the boy's magical cupboard, but remains just three inches in height. He grunts and snarls his way through the story, attacking the child, Omri, with a hunting knife, and later attacking a traditional enemy,

---

97. GLORIA LADSON-BILLINGS, THE DREAMKEEPERS: SUCCESSFUL TEACHERS OF AFRICAN AMERICAN CHILDREN 17-18 (1994) (contending that each child's culture is valuable in its own right); THOMAS LICKONA, EDUCATING FOR CHARACTER: HOW OUR SCHOOLS CAN TEACH RESPECT AND RESPONSIBILITY 102 (1991) (asserting that students need to feel they are part of the group as element of creating moral community).

98. See, e.g., FEAGIN, supra note 89, at 72–74. "The early English Protestants regarded themselves as Christian and civilized, but those they conquered as unchristian and savage." Id.

99. IRA SHOR, EMPOWERING EDUCATION: CRITICAL TEACHING FOR SOCIAL CHANGE 118-120 (1992) (arguing for the importance of teaching a more honest version of Columbus' role in American history).


a three-inch cowboy. At every turn of plot, Little Bear is either violent or childishly petulant until he finally tramples upon his ceremonial headdress as a sign of remorse. The historical culpability of the cowboy and others who invaded [North American] territory is ignored. Native Americans are seen as the primary perpetrators of havoc, even as they defend their own borders.

McCann describes problems with the story itself, but also asks us to consider what viewing it does to children, particularly Native American children, as articulated by a Native American: "My heart aches for the Native child unfortunate enough to stumble across, and read, th[is] book . . . . How could she, reading this, fail to be damaged? How could a White child fail to believe that he is far superior to the bloodthirsty, subhuman monsters portrayed here?" Notice this critique presumes a child will "stumble" across the book. What if a teacher included it in the curriculum to study Native American culture? Does it fit into teaching a more diverse and multicultural curricula?

Knowing about and understanding the insights of McCann and Native Americans, it is unlikely any loving parent or teacher would use this story to "celebrate" and learn about Native Americans and their culture. But the book and the movie are overwhelmingly popular, indicating that many readers and viewers did not see the inhumanity in the story. The cloak of privilege generally is invisible to those who wear it.

All students need to feel that their histories and cultures are integral parts of the classroom and not merely an afterthought tacked on to the Eurocentric curriculum. If parents and teachers truly have the best interest of all students in their hearts, they should educate themselves about race, racism, and race relations and ensure that they teach children to respect the inherent equality and dignity of everyone.

IV. FINDING AN AFFIRMATIVE DUTY TO TEACH EQUALITY

Pedagogy refers to a deliberate attempt to influence how and what knowledge and identities are produced within and among particular sets of social relations. It can be understood as a practice through which people are incited to acquire a particular "moral character." As both a political and practical activity, it attempts to influence the occurrence and qualities of experiences. When one practices pedagogy, one acts with the intent of creating experiences that will organize and disorganize a variety of understandings of our natural and social world in particular ways . . . . Pedagogy is a concept

103. Id. (citing D. McCann, Native Americans in Books for the Young, in Teaching Multicultural Literature in Grades K–8 137, 145 (V. Harris ed., 1993)).

104. Id. (citing B. Slapin & B. Seale, Through Indian Eyes: The Native Experience in Books for Children 122 (1992)).
which draws attention to the processes through which knowledge is produced.\textsuperscript{105}

Education is so important to our children’s lives that we legally require them to attend school. Consequently, teachers play a vital role in shaping the way children think about many things, including equality. I think teachers have a constitutional duty to teach children the principle of equality as I explore below.

\textit{A. Teachers as Inculcators of Democratic Values}

Some fundamental values are widely enough shared for unhesitating intergenerational transmission... None of us wants children who succumb to dishonesty, drugs, or cruel or antisocial behavior; and all of us want our children to endorse justice, legitimate authority, the needs of others, and their own responsibilities as citizens in a democratic society.\textsuperscript{106}

The source of teachers’ duty to teach democratic principles is found in \textit{Ambach v. Norwick}.\textsuperscript{107} Ms. Norwick and Ms. Dachinger, citizens of Great Britain and Finland, respectively, were married to U.S. citizens and had lived in the United States for more than ten years at the time of their lawsuit.\textsuperscript{108} They applied for positions to teach in New York state’s public elementary schools.\textsuperscript{109} Ms. Norwick graduated \textit{summa cum laude} from a Massachusetts college and continued her graduate studies at the State University of New York.\textsuperscript{110} She had teaching experience in the United States as well as Great Britain.\textsuperscript{111} Ms. Dachinger graduated \textit{cum laude} from the City University of New York, where she also earned her master’s degree in Early Childhood Education.\textsuperscript{112} She had experience teaching at a daycare center in New York.\textsuperscript{113} Despite their outstanding academic qualifications, their status as wives of U.S. citizens, and their residency in the United States


\textsuperscript{106} THOMAS J. LASLEY II, TEACHING PEACE: TOWARD CULTURAL SELFLESSNESS 103 (1994) (citing WILLIAM DAMON, THE MORAL CHILD 144 (1988)).

\textsuperscript{107} 441 U.S. at 68.

\textsuperscript{108} \textit{Id.} at 71.

\textsuperscript{109} \textit{Id.}

\textsuperscript{110} \textit{Id.} at 85.

\textsuperscript{111} \textit{Id.}

\textsuperscript{112} \textit{Id.}

\textsuperscript{113} \textit{Ambach}, 441 U.S. at 85.
for over a decade, both women were denied certification by New York because they refused to apply for United States citizenship.114

The women brought suit against the State of New York, alleging that the State had treated them unequally compared to U.S. citizens in violation of their Fourteenth Amendment constitutional right to equal protection.115 The principle was well-established that the Constitution protects all "people" within a state's jurisdiction and not just citizens, so this was not an issue in their case.116 Rather, the issue was whether the State could justify imposing a citizenship requirement to obtain teaching certification.117 Naturally, the women did not think that their foreign citizenship made them unqualified to teach in the state's public schools, especially given their outstanding academic qualifications.

The Supreme Court ruled against the women by a vote of five to four and held that New York's law was constitutional.118 Interestingly, the decision turned on New York State's ability to rationally distinguish noncitizen teachers from U.S. citizen teachers in the classroom.119 If being a U.S. citizen made a difference to the teacher's effectiveness in the classroom, then New York was justified in requiring teachers to be U.S. citizens and the state would not have to certify Ms. Norwick or Ms. Dachinger. What did this mean? Significantly, by requiring teachers to be U.S. citizens, the state was saying that citizen-teachers were more qualified than foreign teachers. Citizen-teachers were better teachers in the eyes of New York voters. Accepting the state's right to determine teacher qualifications, the Supreme Court's review required the Justices to decide if the law was rationally related to the state's purpose of hiring citizen-teachers because of the special role teachers play in our democracy. Quoting from the 1954 decision in Brown v. Board of Education,120 in which the Court held the "separate but equal" doctrine in public schools unconstitutional, the Ambach majority stressed the importance of education:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument

114. Id. at 71.
115. Id. at 69.
116. Id. at 73 (citing Yick Wo v. Hopkins, 118 U.S. 356 (1886)).
117. Id.
118. Id. at 81.
120. 347 U.S. at 483.
in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.\textsuperscript{121}

Given the importance of children’s education in the United States, the critical question in \textit{Ambach} reduced to this: In the eyes of New York voters, including parents and teachers, what made citizen-teachers more qualified than foreign teachers to teach in the state’s public school system?

According to the Supreme Court, New York voters constitutionally could conclude that the citizenship requirement is essential to a teacher’s ability to teach democratic principles.\textsuperscript{122} More emphatically, the Court suggested that states may constitutionally impose a duty on public teachers to teach democratic principles. The five Justices in the majority opined, “a state may regard all teachers as having an obligation to promote civic virtues and understanding in their classes.”\textsuperscript{123} The four dissenting Justices had the better argument and opined that citizenship is not necessary to qualify a teacher to teach democratic principles, and highlighted the fact that New York enacted the law in reaction to World War I.\textsuperscript{124} Nevertheless, all nine Justices agreed that teaching democratic principles is necessary to sustain a democracy.\textsuperscript{125} Justice Blackmun’s language in his dissent is even stronger than the majority’s on this point:

One may concede, also, that public schools are an “‘assimilative force’ by which diverse and conflicting elements in our society are brought together on a broad but common ground,” . . . and that the inculcation of fundamental values by our public schools is necessary to the maintenance of a democratic political system.\textsuperscript{126}

Thus, the Supreme Court Justices unanimously agreed that teachers have a responsibility to “inculcate” students with fundamental democratic principles even though the majority held that New York rationally could conclude that this was best accomplished by hiring only citizen-teachers.\textsuperscript{127} According to the majority of the Justices, citizen teachers understand better than foreign teachers the importance of our democratic principles and can more effectively convey them to students.\textsuperscript{128}

Clearly, as loving parents and educators who believe in democracy, we are concerned about teaching our children values consistent with that form of government. While we do not want teachers imposing their own values on

\begin{itemize}
\item \textsuperscript{121} \textit{Ambach}, 441 U.S. at 76–77 (quoting \textit{Brown}, 347 U.S. at 483).
\item \textsuperscript{122} \textit{Id.} at 80–81.
\item \textsuperscript{123} \textit{Id.} at 86.
\item \textsuperscript{124} \textit{Id.} at 82–88 (Blackmun, J., dissenting).
\item \textsuperscript{125} \textit{See id.} at 68 (1979).
\item \textsuperscript{126} \textit{Id.} at 86 n.6 (Blackmun, J., dissenting) (citation omitted).
\item \textsuperscript{127} \textit{Ambach}, 441 U.S. at 80.
\item \textsuperscript{128} \textit{Id.}
\end{itemize}
our children, and while we generally eschew value inculcation, most teachers and parents want democratic values instilled in their children. Historically, such inculcation was thought necessary for the democracy to survive. Today, we insist that our children be taught democratic values and be taught how to live up to them because they coincide with the universal tenet. Our aspirations for our children extend beyond democratic theory; we want them to be happy and know the joy that comes from community spirit. We want them to know what it feels like to cross the human dignity finish line together.

V. SUMMARY

The lessons we can learn from disability law extend beyond its application to traditionally disabled people. Although disability law could and should do more to help traditionally disabled students receive educations, the law symbolically is consistent with the universal principle that all humans are equal. The law acknowledges that each child deserves a chance to be as successful as possible.

Sadly, society’s commitment to the education of some children who are not traditionally disabled seems less than sincere. Indeed, many racial minority children are brought under the umbrella of disability law when they are not even disabled. This subversion of the law impedes rather than fosters the educational development of those children who are erroneously labeled “disabled.” No matter how committed we are as a society to educate traditionally disabled students, the law cannot maximize the educational benefits of a child who is erroneously classified.

The disproportionate labeling of racial minority students as “disabled” is indicative of a more systemic problem: our general lack of commitment to teaching children the universal tenet that all humans are equal. We ordinarily do not think that non-traditionally disabled students are nevertheless disabled by their inability to live up to the universal tenet. A major source of this problem is the institutional inequality that remains largely invisible to those who are most privileged. In turn, they reinforce and perpetuate inequality by the lessons they teach young people. The examples of tolerating sexism, homophobia, and racism in our children’s schools merely illustrate a nationwide problem.

But there is hope. Many adults are positive role-models and step forward. The students who put this symposium together are wonderful examples of the leadership this country demands. The inspiring insights of


130. Thomas Jefferson perhaps is the most noted historical figure who believed this. See CRUSADE AGAINST IGNORANCE: THOMAS JEFFERSON ON EDUCATION (Gordon C. Lee ed., 1961). For a modern analysis of the importance of education in a democracy see generally AMY GUTMANN, DEMOCRATIC EDUCATION (1987); DAVID T. SEHR, EDUCATION FOR PUBLIC DEMOCRACY (1997).
the other participants in the symposium also exemplify that many people are immersed in the struggle for equality for everyone. Perhaps the Air Force Academy will ferret out the sexism. Perhaps segregated schools that are created to escape inequality will be unnecessary someday. Perhaps people of all colors eventually will share public spaces equally and we will foster racial integrity in this country and throughout the world. Perhaps society will know someday what the world would be like if equality for all people truly existed. Then we all will be free from the disabling chains of inequality and be able to know peace.