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## Public Policy and the Administrative Evil of Special Education

Kevin Timpe

### INTRODUCTION

The primary goal of this chapter is to examine public policy as it applies to public education for students with disabilities. In approaching the issue, I focus exclusively on the public educational context I know the best, namely, that in the United States. However, many of the issues that come up will also apply to other national contexts, particularly those of Western Europe (e.g., the UK's Education Act of 1996, particularly the section on Special Educational Needs).<sup>1</sup> More specifically, I argue that public policy with respect to 'special education'<sup>2</sup> has made important strides in the past half century but in a way that present policy is shaped by that history. I then argue that US public special education policy is an instance of what Guy Adams and Danny Balfour call 'administrative evil.' Advocacy is needed in many instances precisely to overcome the remaining injustices toward students with disabilities that result from the administrative evil inherent in the present approach to special education. This need for advocacy places further demands on the families seeking a free and appropriate public education (FAPE) for their students, demands which are often undue burdens on those already disadvantaged.

Public policy is intended to guide behavior, at both the individual and communal levels. It aims—via recommendations, regulations, or laws—to influence how members of a community act. A similar aim is also true of ethics. As a result,

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This chapter is dedicated to NPS and GRPS. May you one day no longer be deserving of its criticism.

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there is at least a conceptual connection between good public policy and ethics. There are a number of ways that public policy can be framed with regard to the ethical stakes, particularly depending on how closely one wants to wed policy to a particular ethical view.<sup>3</sup> There are pragmatic reasons not to make public policy depend too directly on a specific view in normative ethics, and in what follows, I speak in a general way that I hope can transfer across a range of normative frameworks. Furthermore, while I argue that certain present systems encourage injustice, I am not going to take a stand on a particular account of or justification for justice. Andrew I. Cohen gives the following account of the nature of justice, claiming that it is general enough for public policy debates:

Justice is that body of norms that considers, among other things, what people owe to one another and what they may claim from one another. Justice is at least, in part, a feature of appropriately structured relationships.<sup>4</sup>

I adopt this as a working definition though I am aware that at a finer degree of detail than I have here, the normative details will make a difference to aspects of special educational policy and the need for advocacy.

There is another way in which public policy, while related to ethics, differs from the latter. Whereas ethics (and philosophical reflection, more generally) often focus on differences, public policy has “a need to agree on a practical outcome [that] creates pressure toward convergence.”<sup>5</sup> This need for agreement in order to enact a policy is one reason that public policy tends to be more ‘problem driven’ or ‘bottom-up’ than ‘theory driven’ or ‘top-down.’<sup>6</sup> As Jonathan Wolff notes, “existing policies may be cobbled together to respond to previous historical circumstances, including policy failure,”<sup>7</sup> a fact which contributes to its ‘bottom-up’ approach. The related need for guidance in action even in the face of normative disagreement is another reason that I will be neither assuming nor arguing for a particular understanding of justice here. Instead, my focus is on a particular structural problem that leads to instances of injustice.

My discussion of injustice with respect to education for individuals with disabilities also recognizes that even if the particular injustice at issue were to be eradicated, individuals with disabilities would face other injustices. Drawing on Wolff again, the short-term goal in eliminating particular educational injustices toward individuals with disabilities is not perfect justice but what he calls ‘pragmatic equality’:

[E]ven if we may have to accept that it may be impossible, at least in the short to middle term, to eradicate all injustice, it may be possible to remove special injustice such as that towards people with disabilities.... One way, then, of embedding the discussion within a realistic context [of the kind of bottom-up approach adopted here] is to adopt, for practical purposes, an approach that we could call ‘pragmatic equality’: that justice for people with disabilities requires that disability does not add to the other injustices in the world.<sup>8</sup>

One final prefatory comment. I understand justice as inherently social, but with different demands of justice extending to concentric circles of community, depending on context. The specific demands of justice depend on membership in a particular community. As Michael Walzer argues:

The idea of distributive justice presupposes a bounded world within which distribution takes place: a group of people committed to dividing, exchanging, and sharing social goods, first of all among themselves.... The primary good we distribute to one another is membership in some human community. And what we do with regard to membership structures all our other distributive choices: it determines with whom we make those choices, from whom we require obedience and collect taxes, to whom we allocate goods and service.<sup>9</sup>

If there is an obligation to extend public education to them, that presupposes that individuals with disabilities are members of the community, and thus have a legitimate claim through policy to the relevant good. Focusing on public education policy in the United States, the assumption that individuals with disabilities are owed public education presupposes that they are part of the relevant community. However, for much of US history, they have not been treated as members of that community, at least not fully. This is true both in general and with particular regard to education. As we shall see, one reason for the history of injustice that, in part, shapes contemporary public education policy is a history of thinking that individuals with disabilities are not full and welcome members of our community because of their disabilities.

### UNJUST PUBLIC POLICY TOWARD INDIVIDUALS WITH DISABILITIES

While the history of both politics and public policy since the eighteenth century in the West is largely seen as one involving progress toward justice, it is nevertheless common to fail to notice the role that disability has played in justifying remaining inequality in treatment of various groups. It is important to situate current policy with regard to special education, and its failures, within the wider historical pattern of injustice on the basis of disability within the United States.

As historian Douglas C. Baynton writes, disability is both “one of the most prevalent justifications for inequality” and “has rarely been the subject of historical inquiry.”<sup>10</sup> Baynton’s work aims to show “not only that it has been considered justifiable to treat disabled people unequally, but [also that] the *concept* of disability has been used to justify discrimination against other groups by attributing disability to them.”<sup>11</sup> He directs our attention to what he calls the three great citizenship debates of the nineteenth and early twentieth centuries: women’s suffrage, African American freedom and civil rights, and immigration. While this section focuses on how disability was employed in arguments against equitable treatment of these groups, it is also worth noting that this inequitable treatment also had implications for their receiving public education.

Consider, first, slavery. A number of the most common arguments for why slavery was in fact beneficial for the slaves utilized claims about disability. Slaves taken from Africa, as well as their descendants, were often seen as having inherent physical and mental weakness that caused them to become disabled without the 'care' of their owners.<sup>12</sup> For instance, Samuel Cartwright, a medical doctor and proponent of scientific racism, argued that "blacks' physical and mental defects made it impossible for them to survive without white supervision and care."<sup>13</sup> While ascribing disability to members of other racial and ethnic groups, as well as using the ascription to justify slavery, have been appropriately criticized, these criticisms often fail to call into question the underlying assumption that those with disabilities were not to be afforded the same rights.<sup>14</sup>

A similar pattern is found in arguments regarding women's suffrage. It is widely acknowledged that in the late nineteenth and early twentieth centuries, some opposed to women's suffrage argued that women had disabilities, and thus that they were incapable of exercising suffrage properly. Anti-suffrage rhetoric often pointed to the "to the physical, intellectual, and psychological flaws of women, their frailty, irrationality, and emotional excesses."<sup>15</sup> Others, including influential educational leaders, argued that while women were not disabled, attempts to educate them with an eye toward informed voting would likely lead to their becoming disabled. What is less remarked upon by historians, however, is that many who favored women's suffrage agreed that individuals with disabilities ought to be denied the same political rights as those without disabilities: "Suffragists rarely challenged the notion that disability justified political inequality and instead disputed the claim that women suffered from these disabilities."<sup>16</sup> In fact, some pro-suffrage advocates claimed that women were being slandered by being classified with individuals with disabilities, indicating the social position and the treatment that was thought to justifiably follow from disability.

Finally, for much of its history the United States has used disability as a way of excluding individuals seen as a burden on the country, often by denying them access. Indeed, this was often one of the driving imperatives of American immigration policy. According to the Commissioner General of Immigration in 1907, "The exclusion from this country of the morally, mentally, and physically deficient is the principal object to be accomplished by the immigration laws."<sup>17</sup> The belief that discrimination against individuals with disabilities was morally and politically acceptable helped justify immigration quotas and targeting particular ethnic groups that were routinely associated with disability, often coupled with an understanding of disability as contrary to evolutionary progress.<sup>18</sup>

The Immigration Acts of 1882, 1891, 1907, and 1924 allowed for government officials to restrict the immigration of those who were either disabled or likely to become so. In the early twentieth century, immigration officials were told that "any mental abnormality whatever ... justifies the statement that the alien is mentally defective,"<sup>19</sup> a judgment that could be

used to prevent an individual's immigration into the United States. (Not surprisingly, such laws resulted in a higher deportation rate for individuals from Asia than from Europe.) In fact, these laws became increasingly permissive of how disability could be used to exclude, from people who were 'unable to take care of himself or herself without becoming a public charge' to those whose disabilities 'may affect' their financial independence. Furthermore, the range of conditions which automatically disqualified individuals from immigration steadily increased during the same period.<sup>20</sup> As Baynton claims reflecting on this period, "the issues of ethnicity and disability were so intertwined in the immigration debate as to be inseparable."<sup>21</sup>

### RECENT PROGRESS REGARDING DISABILITY AND EDUCATIONAL PROTECTION

As seen in the previous section, much of the history of discrimination against individuals with disabilities has been not only intersectional with race and gender but also motivated by economic concerns. Brad Byrom argues, for example, that it is largely the worry that individuals with disabilities (and in particular those with mobility impairments, such as the growing number of veterans labeled 'cripples') would become "immoral characters who siphoned off the lifeblood of the economy"<sup>22</sup> that led to the educational reforms at the end of the nineteenth and first half of the twentieth centuries. Individuals with disabilities who were dependent for their economic well-being on others were seen as "the antithesis of American citizenship, challenging America's identity as the land of opportunity."<sup>23</sup>

For much of US history, there was little federal policy regarding special education in public schools.<sup>24</sup> While each state had compulsory school attendance laws, individuals with disabilities were often exempt from them as uneducable—exclusions upheld by state and federal courts until the early 1970s.<sup>25</sup> Public education for students with disabilities varied greatly from state to state and was not disconnected from the larger political challenges the country faced during this same period.<sup>26</sup> Fewer than half of the states had statutes mandating special education.<sup>27</sup> Looking back at this period, Michael Ferrer presents it in a stark light: "the past history of provision for special children may be presented as the oppression of these pupils."<sup>28</sup>

Even when the US Supreme Court ended "separate but equal" public education in 1954, students with disabilities were often kept out of public school or, when they were included, they were educated in a segregated way that achieved (and perhaps aimed at) lower educational quality. Michael Oliver writes that "by the 1960s it was becoming obvious that [public education] was failing the vast majority of disabled children, both in educational terms and in terms of personal and social development" and that such students received "an education inferior to other children."<sup>29</sup> The importance of the *Brown v. Board of Education* decision for students with disabilities and their right to a public

education would not fully develop for another two decades when the *Mills v. Board of Education of the District of Columbia* decision in 1972 extended the right to a public education to children with disabilities. The decision also established the principle that lack of educational funding could not be used to deny public education to students with disabilities. The Education for all Handicapped Children Act (EAHCA) was passed in 1975. At that point in time, "about one in eight children with disabilities was still totally excluded from public education and another three in eight children were receiving an *inappropriate* program in public schools."<sup>30</sup> According to another source, "55 percent of children with disabilities were not receiving any school services related to their unique learning needs."<sup>31</sup>

When EAHCA's regulations were implemented in 1977, all students, regardless of disability, were given the right to "a free appropriate public education" (FAPE).<sup>32</sup> Updated in 1990, the EAHCA became the Individuals with Disabilities Education Act (or IDEA; formally Public Law 94-142).<sup>33</sup> IDEA requires that schools provide not only a FAPE but do so in a way that, as with other kinds of inclusion and integration, actively works to undermine the 'separate but equal' approach to public education that has marked much of US history as much as possible, given the student's disabilities. According to IDEA,

each public agency must ensure that: (i) to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and (ii) special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.<sup>34</sup>

Currently over six million students, or about 13% of American school-age children, receive special education services under IDEA.

Since public education is administered in the United States at the state rather than federal level, each state develops its own application of IDEA. While these state laws and policies are ultimately based on IDEA, there are a number of important differences between them where states require things beyond which IDEA itself requires.<sup>35</sup> Perhaps more important in the present context is that each state also determines its own level and method of funding special education in public schools. The failure to properly fund special education puts pressures on public schools and districts that contribute to their often adversarial relationships with parents—particularly given that IDEA is an 'unfunded mandate' for state departments of education.<sup>36</sup>

#### ADMINISTRATIVE EVIL

In their 1998 award-winning<sup>37</sup> book *Unmasking Administrative Evil*, and in the three subsequent updated editions, Guy Adams and Danny Balfour seek to name, characterize, and explain a particular sort of evil they name

'administrative evil.' For Adams and Balfour, specifically, administrative evil is a kind of evil performed by the interplay of individual, social, and organizational dynamics, where the individuals involved are acting within professional or administrative roles with no intent to do evil, and very often with no awareness that they are contributing to or committing administrative evil. The two characteristics of administrative evil are that individuals are (1) "simply act[ing] appropriately in their organizational role—in essence, just doing what those around them would agree they should be doing" and (2) because of their focus on their constrained and procedural contribution to the task at hand, those who commit administrative evils are "unaware that they are in fact doing anything at all wrong."<sup>38</sup>

The first of these characteristics contributes to, and perhaps even encourages, administrative evil by prioritizing the procedural rationality over other concerns and are packaged in such a way—often by appealing to individual intentions and procedural appropriateness—so as to make the results seem normal and acceptable. Via deference to existing policy or procedure (even if insufficient or cobbled together), personal conscience and responsibility—even if it goes beyond one's professional responsibility—is devalued. A person's "conscience [is] regarded negatively as subjective and personal, whilst structures of authority are objective and public."<sup>39</sup>

Adams and Balfour discuss how the rise of technical rationality in the past century and a half has greatly contributed to administrative evil. Furthermore, approaches to public policy that approach the task primarily as 'problem-solving' are especially apt to lead to administrative evil, given that, on this approach, "the stated purpose of public policy is to identify, develop, and implement solutions to an array of discrete social problems."<sup>40</sup> Within this context, Adams and Balfour argue that the belief that having the right policy will solve the relevant administrative problems is a myth underpinned by false rationalist assumptions: "the culture of technical rationality has analytically narrowed the processes by which public policy is formulated and implemented, so that moral inversions are now more likely."<sup>41</sup> The attempted use of technical rationality to solve a social or moral problem "can also set the stage for administrative evil because rational programming in human affairs inevitably entails some degree of dehumanization and often restrictions on the political rights of those affected."<sup>42</sup>

The second characteristic of administrative evil, which they think is a result of the first, is its typically 'masked' nature:

Administration evil may be masked in many different ways, but the common characteristic is that people can engage in acts of evil without being aware that they are in fact doing anything at all wrong. Indeed, ordinary people may simply be acting appropriately in their organizational role—in essence, just doing what those around them would agree they should be doing—and at the same time, participating in what a critical and reasonable observer, usually well after the fact, would call evil.<sup>43</sup>

Not only can administrative evil be hidden from those who suffer it, it can also be hidden to those who commit it. The masked nature of administrative evil often creates what they call a 'moral inversion,' which occurs when "something has been redefined convincingly as good, [and] ordinary people can all too easily engage in acts of administrative evil while believing that what they are doing is not only correct, but in fact, good."<sup>44</sup> This is precisely what it often found with regard to how public education is provided for students with disabilities.

### CURRENT EDUCATIONAL PUBLIC POLICY, DISABILITY, AND ADMINISTRATIVE INJUSTICE

In this final section, I explore how current public special education policy often encourages administrative evil so understood. Clear progress has been made with respect to special education in the United States; but current policy nevertheless remains problematic precisely because it permits and even encourages administrative evils that can harm the very students that IDEA is supposed to help. (This criticism of IDEA and its state instantiations can be true even if the passing and implementation of IDEA was a marked improvement over the previous lack of educational protections for students with disabilities.) IDEA is characterized by a kind of 'systemic ineptness' that often harms the students that it is supposed to provide a FAPE for, given the history of unjust treatment, due to disability, regarding education.

While Adams and Balfour speak primarily of administrative evil, they acknowledge that evil comes in various sorts. Injustice is one subspecies of evil. Given my interest in injustices that occur within the confines of current public policy with respect to special education in this section, I focus primarily on specifically 'administrative injustices' rather than the broader category of administrative evils. Nevertheless, this restriction should not be interpreted to suggest there are no other forms of administrative evil fostered by current public education policy. The dominant current approach to special education in the United States is too often grounded on procedure and the ability of parents and advocates to hold schools and districts accountable to those policies. As Marshall Strax, Carol Strax, and Bruce S. Cooper note, "many administrators manage special education programs in their districts using the same classical bureaucratic top-down management style that they use with all other programs under their control.... Administrators adhere rigidly to federal and state laws and regulations for special education, making no attempt to grasp the spirit of the law and the unique qualities of children in special education programs."<sup>45</sup> While parents have an official (and, according to the law, equal) voice in the individualized educational plan (IEP) process, in practice their voices are often muted, particularly when pitted against the financial needs and credentialed expertise of the school and its staff. According to Marshall Strax, "when parents meet with education professionals schooled in the language of law, psychological assessment, and educational jargon, the unequal terrain creates a vertical wall parents cannot scale alone."<sup>46</sup>

Consider, for instance, knowledge of the protections and guidelines required by IDEA in terms of the school district's obligations to provide FAPE requires, for instance, that students be provided with accommodations and supports as needed for their ability to access their FAPE in the Least Restrictive Environment (LRE). As mentioned earlier, IDEA requires that schools educate students with disabilities with nondisabled peers to the maximum extent appropriate, removing them "from the regular educational environment occurs *only* if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."<sup>47</sup> Despite this requirement, too often students are removed from their general education classroom simply because of their disability, and the required use of supplementary aids and services is not even properly attempted. This is an injustice toward those with disabilities, one often made possible by the fact that many parents of students with disabilities do not know the requirements of IDEA. But this, by itself, does not make it an instance of specifically administrative evil. For such examples, we look elsewhere.

In addition to regulations governing the qualifying criteria and how a FAPE must be provided in the LRE, there are also procedural safeguards built into IDEA. These safeguards provide not only for the requirement<sup>48</sup> of written consent but also include avenues for parents to push back against the public school district's suggested specialized education for a particular student. These avenues include:

- i) the right to an Independent Educational Evaluation (IEE) provided at no cost to the family and performed by a qualified examiner not employed by the district if the child's parents or legal guardians disagree with the school district's suggested qualification diagnosis;
- ii) due process complaints "on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child, or the provision of a FAPE to your child"; and
- iii) state complaints alleging that a district has violated part of their legal responsibilities toward a student with a qualifying disability under IDEA (e.g., failing to provide a student with agreed-upon services, accommodations, or supports).

The procedural safeguards are required to be given or offered to parents at all IEP meetings. Even if the information is given, no attempt is typically made to explain their contents to parents by those individuals working for the school districts who are, in principle, there to advance the educational needs of the students. The asymmetry in knowledge structurally disadvantages parents and guardians, even if the district and its staff follow the procedural guidelines required by law. The information is given, but no one has the specific role of making sure parents understand their protections. The various steps of diagnosis can all too easily become a series of steps that appears designed to deny

special education services. In both of these cases, ‘passive evil’ results in something less than what is best for the student being realized.<sup>49</sup>

In terms of their power dynamics, IEP meetings too often proceed exactly along the lines of procedural precision that Adams and Balfour claim can lead to administrative injustice. Each involved teacher, therapist, social worker, or other school official typically performs their specific tasks and leads the discussion of a section of the IEP. But too little attention is paid to the way that IEP meetings as a whole typically exclude a focus on the overarching needs of the students who may not be easily captured in individual quantifiable goals and objectives. IEP meetings are too often characterized by inequalities in power and privilege, as well as by undeserved trust. Even if all the individuals involved care about the education of students with disabilities, the structure of the system serves procedural formality rather than the common good. As Marshall Strax puts it, “special education practices follow the mandates of the IDEA—appearing to be caring, but on closer inspection only attempting to provide the just concepts of fairness and equity.”<sup>50</sup> Here, we see both of the characteristics that Adams and Balfour say characterize administrative evil—namely the prioritizing of procedural rationality that then masks the systemic harms by focusing on organizational role and intention rather than explicitly looking at the dynamics of the IEP system as a whole. The procedural rationality encouraged by IDEA leads to what Strax et al. call a ‘micropolitics’ that too often fails those it is designed to help. (To put the point in the language of virtues, what is needed is not just procedural wisdom but practical wisdom rightly sensitive to the larger good special education seeks to serve—i.e., what is required is prudence.)

### CONCLUSION

As the current status quo, IDEA and other existing public regulations regarding special education have a privileged position.<sup>51</sup> But if, as I have argued, those very same policies not only permit but often give rise to administrative injustices, then their privileged position should be challenged. This will require advocacy not only at the level of individuals to ensure that students with disabilities are given FAPE in the LRE as required by law, but also at the systemic level to change the present culture and policy which leads to those administrative injustices through their overreliance on procedural rationality. What is required, however, is engaging in such advocacy without committing further administrative evils.

In closing, I want to suggest that when considered more generally, the patterns suggest a further injustice in that the distribution of administrative injustice is disproportionately born by those who have the fewest resources. The kinds of advocacy needed to make sure that school districts follow the letter and spirit of the law require resources of time, knowledge, and often money that not all individuals have.<sup>52</sup> Families without these resources will too often have to trust the public systems that fail their students, either by simply failing

to follow the relevant laws and regulations in the first place, or by following them in a way that involves rigid procedural rationality that masks how those procedures themselves fail the very students they are designed to help.<sup>53</sup>

### NOTES

1. My focus on federal educational policy means that my discussion is limited in a number of interrelated ways. First, each state in the United States is responsible for its own implementation of the relevant federal regulations. Sometimes, these state laws and regulations go beyond those at the federal level, in ways that it is important for parents and schools to know. Second, I am going to ignore ways that public schools may act “beyond their official roles, [such that] their actions do not constitute or express public policy” (Andrew I. Cohen, *Philosophy, Ethics, and Public Policy* (New York: Routledge, 2016), 4). Finally, I concentrate primarily on the Individuals with Disabilities Education Act (IDEA), though there are other laws and regulations that are also relevant.
2. I find the phrase ‘special education’ to be problematic, for similar reasons to why many individuals involved with disability studies or disability rights think the phrase ‘special needs’ is problematic. While the testimony of individuals with disabilities isn’t uniform with respect to a number of terminological issues, many object to the use of ‘special needs’ and ‘special education’ in a way we ought to take seriously. Furthermore, it is not the aim or importance of education that is ‘special’; rather, it is primarily the delivery modalities of that education that is special. Thinking of ‘special education’ as distinct from education *simpliciter* makes it too easy to apply different standards, thereby contributing to discrimination or ableism. Nevertheless, ‘special education’ is the leading term in the relevant subsection of education literature; it is even defined in IDEA 300.39 as “specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.” Given this, I use it—but with reservations.
3. For a discussion of these issues, see Cohen, *Philosophy, Ethics, and Public Policy*, Chap. 1.
4. *Ibid.*, 192.
5. Jonathan Wolff, *Ethics and Public Policy* (New York: Routledge, 2011), 3.
6. *Ibid.*, 9.
7. *Ibid.*, 7.
8. *Ibid.*, 154.
9. Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983), 64.
10. Douglas Baynton, “Disability and the Justification of Inequality in American History,” in *The New Disability History: American Perspectives*, eds. Paul K. Longmore and Lauri Umansky, (New York: New York University Press, 2001), 33.
11. *Ibid.*, 33.
12. *Drapetomania* and *Sysaesthesia Aethiopsis* were two mental conditions used in this way, claimed to be significantly more frequent among free Blacks in the North compared to among slaves in the South.
13. Kim E. Nielsen, *A Disability History of the United States* (Boston: Beacon Press), 57. This kind of sentiment was not limited to contexts of slavery; it also affected

- medicine, as when an article in the *New Orleans Medical and Surgical Journal* argued that “it is this defective hematosis, or atmospherization of the blood, conjoined with a deficiency of cerebral matter in the cranium, and an excess of nervous matter distributed to the organs of sensation and assimilation, that is the true cause of that debasement of mind, which has rendered the people of Africa unable to take care of themselves” (as quoted in Baynton, “Disability and the Justification of Inequality in American History,” 37.) Sometimes, these two came together, as when J.F. Miller argued in the *North Carolina Medical Journal* that freedom caused congenital health and mental defects.
14. Baynton, “Disability and the Justification of Inequality in American History,” 50. A desire to not be associated with the stigma of disability is also a reason that aspects of the Deaf community have rejected the claim of disability.
  15. *Ibid.*, 41. Baynton also discusses how, as with discussions of race and ethnic minorities, the claims of women’s inferiority were often couched in terms of a lower level of evolutionary progress.
  16. *Ibid.*, 43.
  17. As quoted in *ibid.*, 47.
  18. For instance, the term Mongoloid, originally used to refer to individuals with Down Syndrome, is rooted in anti-Asian racism and used as a way of identifying the condition with a reversion to a ‘less evolutionarily advanced race,’ the Mongols. Similarly, as late as the 1940s, the claim that Native Americans were particularly prone to disability was used to justify failing to extend full rights to indigenous populations.
  19. Nielsen, *A Disability History of the United States*, 103.
  20. See Baynton, “Disability and the Justification of Inequality in American History,” 45f. In fact, it was under this regulation that many gays and lesbians were denied entry into the United States prior to the American Psychiatric Association removing homosexuality from their list of mental illnesses in 1973.
  21. *Ibid.*, 48. Exclusion of individuals with disability from full participation in the community was also rooted in other forms of public policy. During the same period between the late nineteenth and first few decades of the twentieth centuries, numerous cities enacted laws that prohibited those with disabilities or other ‘mutilated or deformed bodies’ from being in public.
  22. Brad Byrom, “A Pupil and a Patient: Hospital-Schools in Progressive American” in *The New Disability History: American Perspectives*, eds. Paul K. Longmore and Lauri Umansky, (New York: New York University Press, 2001), 133.
  23. *Ibid.*, 135.
  24. A dated but worthwhile discussion of this period with a focus on cognitive disabilities, but which extends beyond just education, see R.C. Scheerenberger, *A History of Mental Retardation* (Baltimore: Brookes Publishing Company). An excellent but more compressed overview of twentieth-century history of special education in the United States can be found in Allan G. Osborne and Charles J. Russo, “Free at Last? Legislation for Children with Disabilities,” in *Kids in the Middle: The Micropolitics of Special Education*, eds. Marshall Strax, Carol Strax, and Bruce S. Cooper (Lanham, MD: Rowman & Littlefield, 2012), 31–45.
  25. Historically, important cases include *Watson v. City of Cambridge* (1893), *State ex rel. Beattie v. Board of Education of Antigo* (1919), and *Board of Education of Cleveland Heights v. State ex rel. Goldman* (1934).

26. For more on this period, see also Nielsen, *A Disability History of the United States*, particularly Chap. 7.
27. Osborne and Russo, “Free at Last?” 31.
28. Michael Farrell, *New Perspectives in Special Education: Contemporary Philosophical Debates* (New York: Routledge, 2012), 31.
29. Michael Oliver, *Understanding Disability: From Theory to Practice* (London: Macmillan, 1996), 80.
30. Marshall Strax, Carol Strax, and Bruce S. Cooper, “Preface” in *Kids in the Middle: The Micropolitics of Special Education* (Lanham, MD: Rowman & Littlefield, 2012), xii. According to the National Council on Disability’s 2000 report “Back to School on Civil Rights: Advancing the Federal Commitment to Leave No Child Behind,” over one million children, many of them institutionalized in state institutions, received limited or no educational services. Another 3.5 million children received a public education but were ‘warehoused’ in segregated classrooms or facilities that offered little, if any, academic instruction.
31. Marshall Strax, “Borderline: The Political Divide in Special Education,” in *Kids in the Middle: The Micropolitics of Special Education*, eds. Marshall Strax, Carol Strax, and Bruce S. Cooper (Lanham, MD: Rowman & Littlefield, 2012), 6.
32. That same year, *Panitch v. State of Wisconsin* ruled that failure to provide an appropriate education to children with disabilities at public expense violates the equal protection clause of the 14th amendment.
33. IDEA has since been amended in 1997 and 2004; for an excellent discussion of the history of IDEA, see Charles J. Russo and Allan G. Osborne Jr., “The Limits of Freedom: Legislation and Litigation in Special Education,” in *Kids in the Middle: The Micropolitics of Special Education* (Lanham, MD: Rowman & Littlefield, 2012).
34. IDEA § 300.114.a.2, emphasis added.
35. For instance, part 6 of the Michigan Administrative Rules of Special Education (MARSE), which focuses on funding of special education in the state of Michigan, is based on no federal IDEA regulations.
36. It is estimated that on average it costs about 1.9 times as much to educate a student with a disability as it does to educate a nondisabled one; see B. D. Baker, P. Green, and C. E. Richards, *Financing Education Systems* (Saddle River, NJ: Pearson Education, 2008), 197.
37. *Unmasking Administrative Evil* was awarded the 1998 Louis Brownlow Book Award, the National Academy of Public Administration’s highest award for excellence in public administration scholarship, among other awards.
38. Guy B. Adams and Danny L. Balfour, *Unmasking Administrative Evil*, 3rd ed. (Armonk, NY: M. E. Sharpe, 2009), 4.
39. Margaret H. Vickers, “A New Concept,” *Public Administration Review* 60.5 (2000), 476.
40. Adams and Balfour, *Unmasking Administrative Evil*, 109.
41. *Ibid.*, 5.
42. *Ibid.*, 112.
43. *Ibid.*, 4.
44. *Ibid.*
45. Strax, Strax, and Cooper, “Preface,” xiv.
46. Strax, “Borderline,” 7.
47. IDEA § 300.114.a.2, emphasis added.

48. IDEA's procedural safeguards allow an avenue for the implementation of an IEP without the parents' consent in cases of sustained noninvolvement by the parents.
49. See Eugenie Samier, "The Problem of Passive Evil in Educational Administration: Moral Implications of Doing Nothing," *International Studies in Educational Administration* 36.1 (2008), 2–21.
50. Strax, "Borderline," 13.
51. "At any time, some public policy will be in place, and in most circumstances, the burden of argument for change is higher than for reflective or unreflective continuation of current policy.... In public policy debates the 'home team' has a significant advantage" Wolff, *Ethics and Public Policy*, 5 and 82.
52. This is another reason that the intersectionality of disability with other factors, such as race, native language, and socioeconomic status are so important to address in a full treatment of special education in the US.
53. Thanks to Frederick Aquino, Carlo Tarantino, and David Boonin for helpful input on an earlier version of this chapter. A previous version of this chapter was presented at the Wesleyan Philosophical Society conference in 2018.

## Manufacturing Monsters: Dehumanization and Public Policy

*David Livingstone Smith*

### INTRODUCTION

On February 1, 1893, a twenty-seven-year-old man named Henry Smith was lynched in the town of Paris, TX. Smith, a mentally disabled black farm worker, was accused of raping and dismembering the four-year-old daughter of the local sheriff. The *New York Sun* sent a reporter to Texas to cover the event. His article, which appeared the same day, stated that a festive atmosphere prevailed in Paris that day. Bars, schools, and businesses were closed as droves of spectators poured into town. An elevated platform was erected for the execution. Smith was escorted to it and securely tied down. And then, as the throng of 10,000 men, women, and children looked on, the spectacle began.

His clothes were torn off piecemeal and scattered in the crowd, people catching the shreds and putting them away as mementos. The child's father, her brother, and two uncles then gathered about the Negro as he lay fastened to the torture platform and thrust hot irons into his quivering flesh. It was horrible—the man dying by slow torture in the midst of smoke from his own burning flesh. Every groan from the fiend, every contortion of his body was cheered by the thickly packed crowd of 10,000 persons. The mass of beings 600 yards in diameter, the scaffold being the center. After burning the feet and legs, the hot irons—plenty of fresh ones being at hand—were rolled up and down Smith's stomach, back, and arms. Then the eyes were burned out and irons were thrust down his throat.

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