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# A Communitarian Theory of the Education Rights of Students with Disabilities

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## **Abstract**

*There is a lack of writing on the issue of the education rights of people with disabilities by authors of any theoretical persuasion. While the deficiency of theory may be explained by a variety of historical, philosophical and practical considerations, it is a deficiency which must be addressed. Otherwise, any statement of rights rings out as hollow rhetoric unsupported by sound reason and moral rectitude. This paper attempts to address this deficiency in education rights theory by postulating a communitarian theory of the education rights of people with disabilities. The theory is developed from communitarian writings on the role of education in democratic society. The communitarian school, like the community within which it nests, is inclusive. Schools both reflect and model the shape of communitarian society and have primary responsibility for teaching the knowledge and virtues which will allow citizens to belong to and function within society. Communitarians emphasise responsibilities, however, as the corollary of rights and require the individual good to yield to community good when the hard cases arise. The article not only explains the basis of the right to an inclusive education, therefore, but also engages with the difficult issue of when such a right may not be enforceable.*

**Keywords:** education, rights, people with disabilities, communitarianism, inclusion

## **Introduction: Articulating a Theory of the Right to Inclusion**

There is widespread acknowledgment by policy and law makers that students with disabilities have a right<sup>1</sup> to an inclusive education—an education in a mainstream, non-segregated class room.<sup>2</sup> Indeed, at the time of writing, there are 147 signatories to the United Nations International Convention on the Rights of Persons with Disabilities, which came into force in May 2008.<sup>3</sup> Under that convention, nations must ‘ensure an inclusive education system at all levels’ (Art. 21(1)). Under that convention, the education rights of persons with disabilities encompass a right to ‘not [be] excluded from the general education system on the basis of disability’ (Art. 21(2)(a)) and access to ‘an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live’ (Art. 21(2)(b)).<sup>4</sup>

Although there is international recognition of the right to an inclusive education, there remains very little clearly developed and articulated theory available to underpin that right. Rizvi and Lingard (1996, p. 23), after claiming that the field of ‘special education’ is ‘largely devoid of any discussion of the moral premises upon which it is based’, attempted to fill the vacuum. It could be argued, however, that they have merely shopped from a variety of theories in order to postulate what is needed in disability theory, resulting in a melange of sometimes incompatible ideals: ‘What is

required now is a “complex equality” construction with a strong recognition of cultural rights within a broad redistributive framework’ (ibid., p. 25). Thus, Rizvi and Lingard have combined the ‘best’ of communitarianism, cultural recognition theory and liberalism.

Christensen (1996, p. 70) has asserted that a right to inclusion is best understood in terms of a Rawlsian redistribution of social goods: social justice requires the ‘equal distribution of primary social goods ... unless unequal distribution is to the advantage of the less favoured’ (see Rawls, 1971). She also points, however, to deficiencies in redistributive approaches, such as that of Rawls, which account for the fact that although inclusion is repeatedly promised, it is not always delivered to an extent satisfactory to people with disabilities. Christensen (1996, p. 71) claims that redistributive approaches which leave intact social structures and attitudes that marginalise people with disabilities will not deliver justice to people with disabilities.<sup>5</sup> It is a problem, moreover, of redistributive approaches that they require the ‘labelling’ of a person as ‘less favoured’ before they attract a distribution. In the context of disability, where the very meaning of disability is contested (see Oliver & Barnes, 1998, p. 13; Barton, 1996b, p. 8), such labelling serves, Christensen (1996, p. 72) claims, to entrench the stereotyped view of people with disabilities as ‘deficient’.

Taylor, Rizvi, Lingard and Henry, have implied a similar criticism of redistributive approaches. They argue that such approaches fail to acknowledge that a simple distribution of goods, expressed in the context of education as, say, equal access to schooling for people with disabilities, will not deliver social justice if the school culture remains the same. They argue that for genuine inclusion to be delivered, ‘policies must demand cultural and symbolic changes to the ways schools are structured’ (Taylor, Rizvi, Lingard & Henry, 1997, p. 68).

Slee (1999, p. 125), too, has joined the chorus of criticism of Rawls: ‘this new calculus of redistributive justice ... fails to confront disablement as an issue of cultural politics’. Chiefly, it does not recognise the ‘cultural disrespect’ shown to people with disabilities. Slee has called for ‘sorry books’ to be made available for signing as a step towards reconciliation of people with disabilities with non-disabled people (ibid., p. 120).

Writers such as Christensen, Taylor, Rizvi and Slee are attracted to the ‘politics of recognition’, espoused by feminist theorists such as Fraser and Young (see e.g. Fraser, 1995; Young, 1990), and which emphasises the sources of injustice and oppression as cultural domination, non-recognition and disrespect. While the calls of these writers for the complete deconstructing and restructuring of the existing school system have been dismissed by some as ‘ideological’ (see e.g. Jenkinson, 1997) and, generally, fail to acknowledge the considerable costs, both financial and in terms of social disruption, which would accrue to such a project, the controversy which swirls around the issue of inclusion suggests that their emphasis on the need for cultural as well as economic solutions to the problems of delivering justice to people with disabilities is valid.

This article postulates a communitarian theory of the right to inclusion. It must be acknowledged that communitarianism is one of many theoretical frameworks which may account for such a right. It is to be hoped that this article encourages other authors to explore how the right sits within the boundaries of other theories and philosophies. The development of an academic literature in this problematic area will allow for rigorous debate about the moral basis of the right to inclusion and for rigorous comparison of the strengths and deficiencies of one account of that right—such as the communitarian account—with others.

## Barriers to the Development of a Coherent Theory

While the moral basis of the right to inclusion remains unclear, it could be argued that policy and law articulating such a right amount to little more than what Barton (1992, p. 2) calls 'romantic visions and idealistic rhetoric' and what Slee (1999, p. 125) calls 'fashionably inclusive discourse'. This article, in postulating a communitarian theory of the educational entitlements of people with disabilities, attempts to go some way towards providing a coherent and complete explanation of the moral foundation of the right to inclusion.

Before a communitarian theory of the education rights of people with disabilities is postulated, however, it is useful, first, to look briefly at historical, political and definitional factors which may explain the paucity of theory in this area. It is necessary, secondly, to look at the communitarian theory of education *per se* so that the principles of that theory may then be extrapolated to the more specific area of the education of people with disabilities.

People with disabilities are perhaps the last of the historically oppressed to assert a rights agenda (see e.g. Campbell and Oliver, 1996; Clear, 2000). Before the emergence of the 'politics of disablement' in the 1980s (Oliver, 1990) the disability sector was dominated by charity organisations and disability policy was dominated by a charity rather than a rights discourse. Provision for people with disabilities was predicated on the benevolence of society rather than on the rights of individuals (Barton, 1996a, 1996b; Oliver, 1990). The dominance of the 'medical model' of disability, whereby disability is constructed as an individual problem growing from an individual pathology, a problem to be solved via expert diagnosis and treatment, reinforced the benevolent charity approach to people with disabilities (Slee, 1999; Armstrong and Barton, 1999; Marks, 1999). Under this model, disability is seen as confined to the medical/technical arena and excluded from the rights arena.

Ignorance in the community about disability may also have contributed to a delay in the recognition of rights for people with disabilities (Slee, 1999). Responsibility for people with disabilities was relegated to 'experts' for so long that there remains, perhaps, profound ignorance in the general community of the interests of people with disabilities. A powerful mythology surrounds disability. On the one hand there is the image of the 'hero' triumphing over adversity to succeed in the 'normal' world. Campbell, herself a person with a disability, ironically, calls this the image of the 'super cripp' (Campbell and Oliver, 1996). On the other hand, there is the image of the victim of a cruel fate who is to be, at best, pitied, or, at worst, feared and avoided. Community attitudes are often informed by stereotype and misinformation rather than by any objective understanding of the realities of disability (Slee, 2004, p. 51).

Another factor which has contributed to the delay in the emergence of the 'politics of disablement' is the diversity of disability. People with disabilities are not a group defined by some common genetic or cultural feature.<sup>6</sup> Each variety of disability makes its own demands of the person with that disability and of society. Further, disability affects a person to differing degrees according both to that person's individual pathology and to that person's role and place in society. Each individual's experience of disability is unique. To this extent, it is impossible to articulate 'norms' of disability, hazardous to generalise about the nature of disabilities, and difficult to

formulate the appropriate social response to disabilities. Thus, the articulation of theory in this area is constrained.

Finally, it is not possible simply to extrapolate a theory of disability rights from theoretical statements made in relation to sex, race or religious rights. This is because the removal of discrimination against people with disabilities imposes 'costs' on the community which are not imposed in the removal of discrimination against a sex, race or religious group. These costs may be financial in that environments and procedures and facilities must be modified to accommodate the needs of the people with disabilities. Where a number of people with disabilities, each with different needs, are to be accommodated, the number of modifications which must be made is multiplied and so too is the cost. The accommodation of people with disabilities in schools, for example, may mean that ramps and lifts must be installed, learning materials supplied in Braille or in audio form, learning assistants employed and so on. Different teaching strategies tailored to different learning styles and learning capabilities may need to be developed and implemented. The inclusion of some students with disabilities may impose emotional and even physical costs on other members of the school community. The Australian case *Purvis v State of New South Wales (Department of Education and Training)* (2004) 217 CLR 92 illustrates the fact that such costs may be significant. The complainant in that case was a thirteen-year-old boy who had been excluded from South Grafton High School as a result of his 'problem' behaviour. Daniel's behaviour was caused by and a consequence of brain damage sustained during infancy as a result of an infection with encephalitis. Over the course of the 1997 school year Daniel was suspended several times and ultimately excluded for repeated verbal abuse and violence which included kicking not only furniture and school bags but also other children and teaching staff. A majority of the High Court of Australia (Australia's ultimate appeal court) controversially held that Daniel's exclusion did not offend Australian law. While some may assert that many of the problems or costs perceived to be created by the inclusion of people with disabilities in 'mainstream' schools are exaggerated or attributable to an inflexible school system which has not been structured to cater for individual difference (see e.g. Christiansen, 1996; Slee, 1999) how legitimate costs are to be accommodated must be a consideration in theory development in this area.

### **Communitarian Education**

Communitarians regard the school<sup>7</sup> as a community within a community. It is both a microcosm of the wider community and a place of transition from the family to the wider community. If school fills the intermediate space between family and society, it fills also the intermediate time between infancy and adulthood (Walzer, 1983, p. 198). It has the primary responsibility—above family, above neighbourhood, above church—for building citizens who are equipped to create a strong, free, democratic society. The school's responsibility is both explicit and implicit: to teach the practical and moral information students need to function as citizens; to model the structure and shape of democratic society.

Communitarians see social reform not as a revolutionary but as an evolutionary process. The education policy and practice they advocate may not bring instant improvement but will deliver results as today's children mature to virtuous adulthood: 'The purpose of such actions is to help to develop the next generation as responsible

citizens even if it is too late for some members of the present generation' (Tam, 1998, p. 76).

### *The Explicit Role of the School*

Communitarians repeatedly refer to two kinds of knowledge which must be an element of the explicit curriculum of the school. The first of these is the 'common knowledge' needed by citizens to belong to and to function effectively within the community. The second is perhaps a subset of the first: the core values of the community.

#### CITIZENSHIP EDUCATION

Communitarians regard it as right that a community secure its own future by introducing new members to the core knowledge which unites and distinguishes that community. Responsibility for determining the scope and content of this core knowledge lies, presumably, with the state as the 'community' within which all smaller communities 'nest'. Communitarians, while insisting that core knowledge must be identified and passed on from generation to generation, do not spell out in specific detail the content of that core knowledge. It is right, perhaps, that they do not, for the details will surely vary from state to state, from region to region, even from community to community. Through inculcation of this core knowledge, the state not only 'reproduces' itself, it also produces citizens who both belong to society, in that they share knowledge of its history and adopt its key beliefs, and are equipped to participate in and to contribute to community life.

Walzer insists that 'simple equality' demands that all future citizens need an education. Further, students must learn to be 'citizens first'. Any differences in the treatment of students related to their different destinations in life—worker, manager, professional—should be postponed until 'shared knowledge' of the information 'citizens need to know' is achieved: 'Everyone studies the subjects that citizens need to know' (Walzer, 1983, p. 203). The goal of teachers here is not to provide equal chances but to achieve equal results. Mastery of the subject matter is crucial: 'common work' for a 'common end' (ibid., p. 206).

Galston (1991, p. 243) describes civic education as 'the formation of individuals who can effectively conduct their lives within, and support, their political community'. Civic education cannot be 'homogeneous and universal': 'It is, by definition, education within, and on behalf of a particular political order' (ibid.). Galston claims that civic education is based more on rhetoric than on rationality. The aim of such education is the creation of citizens who embrace, perhaps without question, core knowledge as 'valid and binding' (ibid., p. 244). According to Galston, the responsibility, indeed the right, of the state is to pass on this core knowledge even if it is at odds with parental beliefs (ibid., p. 252).

#### VALUES EDUCATION

Values education is an aspect of education for citizenship—shared principles are integral to shared citizenship (see ibid., p. 245). Communitarians, dispelling fear that the articulation and inculcation of core values is exclusionary and authoritarian, insist that it is both possible to identify values which are common across cultures, which prevail 'beyond all our differences' (ibid.), and to impart those values without infringing essential freedoms.

Communitarians seem less reluctant to spell out the values that ought to be taught than the rest of the content of core knowledge. The Responsive

Communitarian Platform—a document drafted by Etzioni, Galston and Glendon and supported by many other prominent communitarians—spells out the ‘values Americans share’ and which schools ‘ought to teach’:

... that the dignity of all persons ought to be respected, that tolerance is a virtue and discrimination abhorrent, that peaceful resolution of conflicts is superior to violence, that generally truth telling is morally superior to lying, that democratic government is morally superior to totalitarianism and authoritarianism, that we ought to give a day’s work for a day’s pay, that saving for one’s own and one’s country’s future is better than squandering one’s income and relying on others to attend to one’s future needs. (Etzioni, 1993, pp. 258–259)

Supporters of the platform dismiss as ‘farfetched’ the ‘fear that our children will be “brainwashed” by a few educators’ (ibid., p 259).

Tam, writing from a British perspective, distils from a decade of communitarian thinking four key values: love and compassion for others, the critical quest for truth, the pursuit of fairness and personal fulfilment. Tam regularly uses the ‘shorthand’ terms: love, wisdom, justice and fulfilment (see e.g. Tam, 1998, pp. 15, 59–62, 234–235). Tam addresses ‘the myth that the teaching of common values must involve authoritative assumptions’ (ibid., p. 66). He advocates teaching methods which involve ‘co-operative inquiry’ into, and the modelling of, principled behaviour as superior alternatives to authoritarian ‘chalk and talk’ (ibid.).

Analysts of communitarian thinking have also attempted to identify and enumerate communitarian values. Frazer (1998, p. 246), for example, compiled a useful list of what she claims to be ‘communitarian values’ for an analysis of ‘the corpus of “political communitarianism”’: ‘civic spirit, solidarity, equality, democracy, voluntary service, social capital, common good, participation, political power, cleanliness, responsibility, self-discipline, mutuality’ (ibid., p. 249).

Supporters of the Communitarian Platform and Tam identify a lack of values in education as dangerous (see e.g. Etzioni, 1993, p. 259; Tam, 1998, p. 57). Galston (1991, p. 255) reiterates what he claims to be a ‘basic fact of liberal sociology’: ‘the greatest threat to children in modern liberal societies is not that they will believe in something too deeply, but that they will believe in nothing very deeply at all’. Values education need not be a discrete subject within the school curriculum. Values can be taught and learned across the curriculum; explanation and discussion of values can be integrated into every existing subject. It should not matter, therefore, which subjects students are interested in, which subjects they choose to study (Tam, 1998, p. 59). Moreover, an absence of overt values education does not mean an absence of values education altogether. No individual, no social institution is morally neutral. Each person, each organisation, each administration reveals a moral code—or lack of it—through behaviour tolerated, decisions made, actions taken.

### *Implicit Content of Schooling*

Communitarians regard the school culture as imparting important lessons to students. These lessons are not studied; rather they are absorbed, simply by ‘being’ at school. Etzioni (1993, p. 115), for example, regards the ‘experiences school generates’ as the ‘single most important factor that affects education’, placing it above both the explicit curriculum and teaching strategies. Experiences, says Etzioni, are ‘more effective

teachers than lectures' (ibid., p. 103). Walzer (1983, p. 63) makes a similar claim: 'the content of the curriculum is probably less important than the environment in which it is taught'. Schools have the opportunity to model the democratic community for students in two ways: first, how a school is managed can model core democratic values in action; secondly, the demographic structure of a school can model the inclusive nature of democratic society.

#### SCHOOL MANAGEMENT

Etzioni (1993, p. 105) argues the first step in enhancing the role of the school as a 'moral educator' is to 'increase the awareness and analysis of the school as a set of experiences'. His implication is that the school culture should not simply evolve, it should be deliberately constructed. While students may learn lessons from school management unconsciously, those lessons should be consciously formulated:

Ideally, the teachers and principals of each school should at least once every three years engage in an extensive 'retreat'. Here they would spend a weekend, in some secluded place, drawing on professional facilitators, examine the experiences their school generates. They would agree to set aside cognitive questions about the curriculum ... and focus on one question: what experiences do we fashion? (ibid., pp. 106–107)

Schools, says Etzioni (ibid., p. 105), are not simply 'a collection of teachers, pupils, classrooms and curricula'. What happens in the car parks, cafeterias and corridors is an equally important ingredient of the education experience. The school must generate and implement policies which promote tolerance and maintain fairness and discipline in those places as well as in the classroom.<sup>8</sup>

The clear implication is that there should be a high degree of conformity between the explicit and implicit moral lessons learned at school. If what happens at a school is not consistent with the moral code expressly advanced by that school, then the only 'values' lessons learned by students will be, first, cynicism and, secondly, that there is no coherent moral order which informs the community.

#### SCHOOL DEMOGRAPHICS

Democratic society purports to be inclusive. Communitarians insist that democratic schools should, similarly, be inclusive. The role of the school is not merely to mirror the community at large, however. The school has the opportunity to model inclusive policies and practices to the broader community, teaching both students and their parents that such policies and practices are essential in a genuine democracy.

The rationale for inclusion is not only that it is just. Inclusion enables both the experience of collective action and the personal growth necessary to develop as an effective citizen:

Inclusive communities enable all members to participate in the collective processes affecting their lives ... Human beings need to relate to others on a substantial basis to develop their experience of love, collaboration in the discovery of truths, establish justice and expand their opportunities for genuine fulfilment. Only inclusive communities which respect their members as having equal shares of the overall power for determining collective action, and welcome their exercise of that power, can ensure that



what people need for common life will be sustained in practice. (Tam, 1998, p. 8)

Tam (*ibid.*) asserts that an inclusive community would not tolerate schools which encouraged or even allowed 'supremacy' in access to education based on 'wealth, race, religion, sex, or any form of group allegiance'. Further, it is vital that citizens learn to work together. As such, 'differentiation according to a narrow range of academic abilities would produce citizens who are ill at ease with co-operating with others who possess different skills and abilities' (*ibid.*). Inclusive schooling, therefore, is both just and a training for citizenship.

Walzer (1983, p. 198) stresses the characteristic normative structure of the education process, emphasising that 'education distributes to individuals not only their futures but their presents as well'. If students—in their present—are to belong to and be accepted in the community they must be accepted in school as well. The structure of the school is, however, a potent agent for reform of the structure of society. Walzer (*ibid.*, p. 199) refers to Dewey's notion of the school as a 'special social environment' protected—to some extent—from external social and economic pressures (see Dewey, 1977). The school has the opportunity to organise itself according to principles of equality and the power to model equality as a desirable social good.

The embedding of the school in the neighbourhood is also acknowledged as important by Walzer. In principle 'neighbourhoods have no admission policies' (Walzer, 1983, p. 224). Moreover, when a community comes to regard a school as its own, 'its existence may serve to heighten feelings of community' (*ibid.*). Walzer (*ibid.*, p. 225) draws the following conclusion: 'The democratic school, then, should be an enclosure within a neighbourhood, a special environment within a known world where children are brought together as students exactly as they will one day come together as citizens'.

### **The Theoretical Basis of the Right of People with Disabilities to an Inclusive Education**

While communitarian writers have published little work explicitly on inclusive education for people with disabilities it is possible to extrapolate a theory from their general theory of education combined with their comments directly on point. It is clear that communitarianism offers the best features of both liberal and feminist theory in relation to treatment of people with disabilities. It acknowledges both that a redistribution of goods is necessary to people with disabilities and that such 'simple equality' alone cannot deliver justice (see Walzer, 1983). Further, in their emphasis on democracy as inclusive, communitarians recognise the entitlement to respect as citizens and the right to self-determination of people with disabilities which are also at the heart of the 'politics of recognition'. Communitarianism offers a solution to another problem with the Rawlsian version of liberalism. The fundamental Rawlsian ideal of 'fair equality of opportunity' fails to account for the right to their share of social goods for some people with disabilities. Howe (1996, p. 60), speaking in the context of education, explains that some students 'by the nature and severity of their disabilities ... are precluded from enjoying equality of educational opportunity' and argues that some other 'rationale' must be advanced for educating such students. Communitarianism offers such a rationale via emphasis on education not so much as an instrument of opportunity as of inclusion. The fundamental purpose of education

is not to provide opportunities to students but to provide the information students need to belong to and to participate in the community.

### *The Right to Inclusion in Society*

The starting point is that, although communitarians are suspicious of 'rights talk' and regard the creation of new rights as an excess of liberalism and expensive to the community (see e.g. Glendon, 1991; Etzioni, 1993), it is clear that inclusion in society is a right for all citizens. Tam (1998, p. 8) puts this bluntly: 'democratic society is inclusive'. While most communitarian writing on inclusion relates to themes of sex, race and religious discrimination, there are some statements which extend the right to inclusion explicitly to people with disabilities. Tam (*ibid.*, p. 137), demonstrating some sensitivity to the 'politics of disablement', says that citizens vulnerable to discrimination because of disability 'should have confidence that society as a whole is on their side, and should not be made to feel isolated as troublemakers who refuse to accept their lot'. It is the role of the community not merely to care for people with disabilities, but to empower them to play an active part in the determination of their futures and to preserve their dignity and responsibility (*ibid.*, p. 134). Their membership of the community presupposes both their recognition as citizens and their entitlement to inclusion and support. Hauerwas (1998, p. 151) stresses the interdependence of community and the need for correlation between beliefs and actions. He observes that people without disabilities learn and grow from their interactions with people with disabilities, highlighting one way that people with disabilities can demonstrate 'mutual obligation', can give back to the community.

Of the communitarian theorists, MacIntyre (1999) has produced the most comprehensive analysis of the 'place' of a person with a disability within the community. MacIntyre's rhetoric focuses more on recognition and respect than on rights and obligations, importing, perhaps, some of the cultural recognition theory of writers like Fraser and Young into communitarian theory. He implies that respect from others and self-respect are important aspects of this place. Recognition from the community is fundamental to this respect and self-respect. Fundamental to community recognition is the understanding that 'each member of the community is someone from whom we may learn and may have to learn about our common good and our own good, and who always may have lessons to teach us about those goods that we will not be able to learn elsewhere' (MacIntyre, 1999, p. 135). Unlike many writers about disability, MacIntyre confronts the issue that some forms of disability will limit the opportunities of those 'afflicted'. He speaks of those 'whose extreme disablement is such that they can never be more than passive members of the community, not recognising, not speaking or not speaking intelligibly, suffering but not acting' (*ibid.*, pp. 127-8). However, like Hauerwas, MacIntyre emphasises that even those members of the community who cannot actively participate in community life, have the important—if passive—role of providing others with the opportunity to learn through caring and giving. MacIntyre emphasises, further, that as teachers of the vital virtue of 'just generosity', people with disabilities are entitled to 'political recognition' in the form of respect from the community (*ibid.*, p. 140).

### *The Right to Inclusion in the Neighbourhood School*

As the school is both a microcosm of and the model for the wider community it follows, then, that the communitarian school is inclusive. Walzer (1983, p. 222) has

emphasised the relationship between school and neighbourhood. It is important that all children have access to their neighbourhood schools. Further, while it is impossible and probably pointless to insist that a school's student body reproduce a pattern which exactly replicates a democratic social pattern, it is 'crucial' that schools 'aim at a pattern of association anticipating that of adult men and women in a democracy' (ibid., p. 217). Walzer (ibid., p. 221) elaborates: 'one could not conceivably organise a democratic society without bringing together people of every degree and kind of talent and lack of talent'.

Yet, communitarians clearly recognise that access to school does not necessarily equate with inclusion. Walzer (ibid., p. 202) sees equality of access to education as delivering 'simple equality' to students, but he is quick to point out that 'simple equality' is soon lost—for no educational system can ever be the 'same for all'.

Equal access to school does not guarantee equal treatment or opportunity at school. Communitarians acknowledge that the school culture, and not only its enrolment policies, must be inclusive. The school is the training ground for citizenship—students learn both from the explicit curriculum and from the implicit curriculum, the school culture—the information they need to function as citizens. This information includes the virtue of not only tolerance but also respect for diversity (Etzioni, 1993, pp. 258-9). Tolerance and respect for diversity must be apparent not only in the lessons taught in the classroom but also in the demographics and governance of the school. Reform of school culture is necessary for genuine inclusion to occur. Communitarians regard reform as an evolving process: while benefits may not be delivered to the present generation of learners, incremental cultural changes can deliver benefits to future generations (Tam, 1998, p. 76).

Communitarians emphasise the interdependence of community: self is constructed not only from individual traits but also from membership of the community. This is the main reason, perhaps, that inclusion is of such importance to communitarians—if a person is excluded from society, he or she is excluded from the opportunity not only of complete citizenship but also of complete development as a person. The community provides both emotionally and physically for each citizen but does so on the basis of mutual obligation and, as such, each citizen must be 'responsive', must give to the community to balance what they take. Slee's (1999, p. 128) cogent criticism of contemporary society is that people with disabilities trade in a currency which is not recognised as valuable. That is, people with disabilities are commonly regarded as having little or nothing to contribute to the community. For communitarians, one purpose of inclusive education is for the various members of a community to learn from and through our relationships with others (see e.g. Hauerwas, 1998, p. 149; MacIntyre, 1999).

### **Limits on the Right to an Inclusive Education**

Whilst inclusion is a fundamental tenet of communitarianism, communitarian theory does imply some limits to the right to an inclusive education. Communitarians dispute the argument that considerations of the public good necessarily entail a 'sacrifice of rights' by individuals and argue that both may occupy the same 'turf' (Etzioni, 2004, p. 96) but it is nevertheless a corollary of the principles of mutual obligation and of community interdependence that when the 'hard cases' arise, that is, when problems of competing rights and obligations arise, these problems are likely resolved in the manner which will benefit the wider community rather than the

individual. The Responsive Community Platform rationalises this preference on the basis that individual rights and freedoms are best protected in a strong community: 'neither human existence nor individual liberty can be sustained for long outside the interdependent and overlapping communities to which we all belong ... The exclusive pursuit of private interest erodes the network of social environments on which we all depend and is destructive to our shared experiment in democratic self-government' (Etzioni, 1993, p. 258). It can be extrapolated from this preference for community welfare over individual 'rights' that when problems of competing rights and obligations arise in respect of the inclusion of people with disabilities in mainstream schools, the right to inclusion must in some circumstances be surrendered for the good of the community. Competing rights and obligations are most acutely apparent in the case of the inclusion of students with intellectual and neurological disabilities in mainstream schools where the disability causes behaviour which compromises the quality and the safety of the learning environment for other students and the working environment for staff.

Walzer (1983, p. 214) cautions that when it comes to the 'difficult' distributive problem of deciding who goes to which school and with whom, it must be remembered that 'it isn't only [school] places that are distributed to children; children themselves are distributed among the available places'. Not all children can study together in the one class or even at the one school. Different decisions, 'political' decisions, must be made allocating students to places.

While communitarians tend to focus on education as socialisation for citizenship, others, particularly employers and even parents and students themselves, focus on education as preparation for the workplace, as a means of sorting students into boxes for life. MacIntyre (1987, p. 17) identifies one of the major roles of modern education systems as 'to fit the young person for some particular role and occupation in the social system'. What happens, however, when the 'socialisation' and the 'sorting' roles of education clash? What happens if, before a child's 'socialisation as a citizen' is complete, that child's intellectual ability—or disability—determines the time has come for him or her to be 'sorted' into a 'special' school or out of school altogether? What happens when the inclusion of some hinders the development of others? Communitarian writers, particularly Tam and Walzer, reveal some sensitivity to the moral and social difficulties raised in attempting to answer such questions.

Tam and Walzer do contemplate that some form of 'streaming' may be necessary to accommodate the different abilities of students. Streaming, says Tam (1998, p. 68), has 'the advantage of developing pupils with diverse potentials'. Walzer (1983, p. 221) admits 'there are educational reasons for separating out children who are having special difficulties with mathematics, for example'. The best inference to be drawn from their 'streaming' comments is that it should result in the accommodation of some students in separate classes at their neighbourhood school rather than in their relocation to a different school altogether. This inference is supported by the fact that both Tam and Walzer are adamant that a policy of total segregation of students with learning difficulties is not only undemocratic, it is counterproductive for the community. Tam (1998, p. 68) cautions that 'total segregation could mean that a culture of co-operative citizenship could be seriously undermined'. Walzer (1983, p. 221) argues that segregated schools could reinforce inequality in the wider community:

... there are neither educational nor social reasons for making such distinctions across the board, creating a two-class system within the schools, or creating radically different sorts of schools for different students. When this is done, and especially when it is done early in the education process, it is not the association of citizens that is being anticipated but the class system in roughly its present form.

Tam is wary of parents who, wanting the 'best' for their own children, selfishly insist on segregating from the mainstream those students whose needs are perceived as interfering with the academic progress of their peers. The 'best' course for some individuals may have as its corollary the 'worst' course for other individuals, and for the community as a whole: 'the admission policy of schools must ultimately help to meet the needs of the community as a whole and not just some parents who do not care about the needs of others' (Tam, 1998, p. 74). Walzer (1983, p. 221) wryly points out that 'the adult world is not segregated by intelligence'. Segregation, Walzer (ibid., p. 221) reiterates, is practically and politically wrong: 'in a practical sense we are required by our work to mix up and down the status hierarchy; further, democratic politics requires that we mix with a wide range of people'.

As noted earlier, Walzer (ibid., p. 208) also nods to the 'sorting' role of education by acknowledging that not only are some students better suited to a more 'specialised education', it is also in the community's interests to provide it to them. Such specialised—and potentially exclusive—education, however, must be delayed until the foundations of citizenship have been laid for all: 'citizenship, unlike medicine or law, doesn't require a license; students don't need a passing grade in democratic politics. But they should definitely take the course' (Walzer, 2006, p. 230).

Walzer (1983, p. 221) also makes one curious comment which suggests a clear limit to the right to an inclusive education: 'Except for a total incapacity to learn, there are no reasons for exclusion that have to do with the school as a school'. Unfortunately, Walzer does not elaborate on how the ability or inability to learn is to be assessed. Further, Walzer's comment is somewhat contradictory in light of the communitarian insistence that many lessons—often very valuable moral lessons—are absorbed not by conscious intellectual effort but by experience. Walzer's comment also fails to account for the strong assertion of such communitarians as Hauerwas and MacIntyre that we learn essential life lessons from shared experiences with people with disabilities (see e.g. Hauerwas, 1998, pp. 149ff.; MacIntyre, 1999). It should, however, be acknowledged, that Hauerwas and MacIntyre do not explicitly contemplate the class room as the context for that learning or the difficulties that might attend the meshing of formal instruction and the informal lessons learned through interaction with people whose impairments impact on the learning environment. Walzer's throwaway line suggests, perhaps, that where there is a clash, the communitarian ideal of the classroom as model of democratic society yields to the communitarian ideal of the classroom as a place of explicit instruction in the skills prerequisite to citizenship. It may also imply a controversial default position of 'integration' rather than full inclusion as an appropriate accommodation of those students with disabilities whose learning is disruptive to others.

While Walzer's 'total incapacity to learn' comment is problematic and lacks, perhaps, the detail of mature theory. Walzer's comment does indicate, at the very least, a communitarian willingness to confront the hard case of the student with severe intellectual or behavioural disability who asserts a right to education at his or her

neighbourhood school—the hard case which continues to challenge legal systems worldwide.

It should be noted at this point that communitarian writers have not directly addressed the issue of whether the allocation of extra resources to support the inclusion of students with disabilities prefers the good of the individual student to the good of the community. There is no explicit set of guiding principles, therefore, to inform an assessment of whether or when community spending to support inclusion of people with disabilities threatens to compromise the welfare of the whole community. The lack of explicit writing in this area is, no doubt, symptomatic of the general lack of writing in disability theory. Nevertheless, it may be speculated that, as it is a basic tenet of communitarianism, the good of the community prevails over the good of the individual citizen, and where spending on a minority threatens the good of the community as a whole, that spending may be justifiably curtailed. Whether or when ‘cost to the community’ arguments should be allowed to justify the exclusion of a student with a disability from a mainstream school, and by implication exclusion from access to citizenship and participation in community, however, remains unclear.

### **Conclusion: Fundamental Principles of the Communitarian Approach to the Education Rights of Students with Disabilities**

Several principles underpinning the communitarian approach to education for people with disabilities can be postulated from communitarian writings in the area. First, communitarian education is inclusive in the sense that there is a *prima facie* right for any student—regardless of sex, race, culture, religion or ability—to education in a mainstream setting. The fundamental rationale for such inclusion is that communitarian society is inclusive and school is both a microcosm of and a model for communitarian society. Further, every student must have access to necessary lessons which must be learned before he or she is equipped to function effectively as a citizen. The necessary lessons are learned through both the explicit curriculum of the school and the implicit curriculum which comprises its environmental and administrative culture.

Secondly, the right to inclusion in the mainstream setting for people with disabilities is of particular importance because some necessary lessons are best learned alongside those with disabilities. By providing the opportunity for others to learn, students with disability are contributing to the good of the community and, as such, entitled to be accorded the respect of the community.

Thirdly, communitarians acknowledge that there may be a limited place for the ‘streaming’ of students according to ability where that streaming is appropriate to achieve specific desirable education outcomes. One such appropriate situation may arise in relation to the education of students with disabilities. The ‘streaming’ of classes, however, should not justify the exclusion from a mainstream community school of students with disabilities. ‘Streamed’ classes can be provided within a mainstream setting to maximise the opportunities for development of an inclusive culture.

Fourthly, it is a basic tenet of communitarian philosophy that in a competition between what is good for the community and what is good for the individual citizen, community prevails. Therefore, where the inclusion of a student with a disability in a mainstream education setting compromises the ability to learn of the majority of students, it may be necessary for the exclusion of that student from the mainstream

setting. Similarly, where the inclusion of a student with an impairment compromises the safety of other members of the school community the exclusion of that student may be warranted. While communitarians have not expressly considered, for example, the implications of the inclusion of students with problem behaviour for the educational opportunities and the safety of others, it is clearly consistent with communitarian principles that majority rights should prevail in such a case. Whether the financial cost to the community of supporting students with disabilities in mainstream schools, however, is ever sufficient to compromise the general good, and thus to justify the exclusion of such students remains unclear.

Finally, and most controversially, at least one writer, Walzer (1983, p. 221), has suggested that the exclusion from a school altogether may be allowable where a student, by reason of impairment, demonstrates a 'total incapacity to learn'. This assertion, however, fails to account for the more dominant communitarian view that students with a disability have a teaching as well as a learning role. Thus, there is a clear rationale for the inclusion of even those students who lack the capacity to learn on the basis that they have the capacity to teach.

In summary, although communitarians are suspicious of 'rights' talk, it may be postulated that in a communitarian society a student with a disability has a *prima facie* right to inclusion in a mainstream school. The communitarian preference for the good of the community above the good of the individual, however, means that communitarians will concede a 'thicker' set of limitations on individual rights and freedoms than would be the case under, say, a liberal analysis. The individual's right to inclusion, therefore, will yield to the extent necessary to protect the rights of others in the community. In this situation the benefit to the community of a learning environment which models and promotes inclusion is displaced by a detrimental disruption to others in that learning environment. Complete exclusion from a mainstream school, however, is justified only when the inclusion of a student with a disability compromises the ability to learn or safety of the other students at the school.

## Notes

1. Here, and throughout the article, unless otherwise stated, the use of the term 'right' is intended to imply its generic, 'dictionary' meaning as 'a benefit or claim entitling a person to be treated in a particular way' and is not intended to imply a meaning consistent with any particular theoretical framework. For the adopted definition see Butt, 2004, p. 381.
2. It is acknowledged that inclusion and inclusive education are contested terms. For the purpose of this article they are taken to refer to the situation where a student with a disability is educated at his or her local school, in a non-segregated classroom, alongside students without disabilities. See, for example, Armstrong & Barton (2007, p. 10), 'an inclusive education ... is based on the belief that all children have the right to attend their local school, regardless of difference and that schools are part of communities'. It is acknowledged, too, that while in some countries debate swirls about the right to an inclusive education, the anomaly exists that in other countries, where respect for human rights is yet to be entrenched, or where government funds preclude their delivery, the debate is still properly, if frustratingly, focussed on the right to education per se.
3. It is interesting to note that two large modern democracies, the United States of America and the United Kingdom are not signatories. Both these nations have, nevertheless, demonstrated a commitment to the delivery of an inclusive education. While there is no constitutional right to education in the United States (See *San Antonio Independent School District v Rodriguez*, 411 US 1 (1973)), there is specific legislation which provides that students with disabilities are entitled to a 'free and appropriate public education' in the 'least restrictive environment': *Individuals with Disabilities Education Act 2004* 20 USC § 1400. Similarly, in the UK, since 2001, there has been a *prima facie* 'duty to educate children with special educational needs in

mainstream schools': see *Education Act 1996* (UK) s 316. The *Education Act 1996* (UK) was amended to create the duty by the *Special Educational Needs and Disability Act 2001* (UK) C 10, s 1.

4. The article is concerned to postulate a theory of education encompassing the compulsory years of education. A consideration of the rights of students with disabilities in the tertiary education sphere is beyond the scope of this paper. See also n. 6, below.
5. It could be argued, however, that to imply criticism of Rawls in this respect is to misunderstand and to misrepresent his approach to the redistribution of social goods. Rawls' two principles of justice acknowledge that before any distribution of goods takes place, basic liberties must first be guaranteed to each person. The basic liberties include freedoms specified by the liberty and integrity of the person. Further, Rawls held that, within his second principle of justice, fair equality of opportunity (including freedom from social discrimination) must also be assured before there was any redistribution of social goods (See Rawls, 1993, pp. 4-6, 291-3).
6. It is increasingly recognised in relation even to issues of sex, race and class that it is essential to recognise the diversity of interests within groups typically regarded as homogenous. O'Brien, as long ago as 1984 referred to the phenomenon of the 'commatiation' of difference—sex, *comma*, race, *comma*, class, *comma*—to describe this failure to account for the differences within and the intersections between different groups (O'Brien, 1984).
7. The term 'school' is used generically to encompass the range of education institutions involved in the compulsory phases of education. While communitarians have theorised about the role and function of tertiary education (see e.g. Bellah *et al.*, 1991; Bellah *et al.*, 1996; Calvert, 2006), close consideration of the rights of students with disabilities in the tertiary sector is beyond the scope of this paper.
8. On the point of what schools may do in a practical sense to model inclusion, it is interesting to note the proactive Australian approach towards reducing harassment and marginalisation of students with disabilities. The *Disability Standards for Education 2005* (Cth) s 8(1) obliges all education institutions, public and private, pre to post compulsory sectors, 'to develop and implement strategies and programs to prevent harassment or victimisation of a student with a disability'. Furthermore s 8(2) provides that education institutions 'must take reasonable steps to ensure that its staff and students are informed about ... the obligation not to harass or victimise students with disabilities ... the appropriate action to be taken if harassment or victimisation occurs; and ... complaint mechanisms available to a student who is harassed or victimised'.

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