
EQUALITY AND SCHOOLING: LAGGARDS, PERCENTILES AND THE U.S. CONSTITUTION

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Years after my doctoral work in educational foundations helped me realize that my public school education had provided me with something other than a meaningful understanding of civics, I remained unable to recall exactly what was in the U.S. Constitution. For instance, I assumed that the following passage appeared in the Constitution when, in fact, it appears in the Declaration of Independence: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.”¹ Not only did I discover that the passage does not appear in the Constitution, the Constitution makes no reference to the passage *or* the Declaration of Independence. To my surprise, this famous passage that is said to link the founding fathers such as Thomas Jefferson (together with the political ideology of the United States) to Enlightenment thinkers such as Montesquieu and John Locke exists only in a document that was never formerly adopted by the United States of America and that was, for all intents and purposes, a declaration of war.²

Investigation of the Constitution reveals another remarkable fact: the Constitution distances itself from the central idea expressed in the famous passage above—namely the idea of unconditional equality for all male citizens. Where the Declaration of Independence states unequivocally that “all men are created equal,” the Constitution states with equal clarity that representation and taxation were to be determined by “...adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons (sic).”³ The definition of equality in the Constitution clearly contradicts the definition of equality in the Declaration of Independence. On numeric grounds alone, “all men” could not be “created equal” *if* “Indian” (i.e. Native American or indigenous) men were *not* counted as “persons” and “all other” (usually interpreted as enslaved Africans or their descendents) men were counted as “three fifths” of, or less than, a whole person. While this contradiction may never be adequately explained, highlighting it demonstrates that confusion around the concept was

¹Declaration of Independence (adopted in Congress July 4, 1776).

²To Jefferson and his circle “equality was first and foremost a biological fact.” Daniel J. Boorstin, *The Lost World of Thomas Jefferson*. (Boston: Beacon Press, 1948), 105.

³U.S. Constitution (signed September 17, 1897), art. 1, sec. 2.

present from the country's inception. It also offers explanation as to why the confusion continues unabated.

The contradiction between the concept of equality found in the Declaration of Independence and that found in U.S. Constitution led me to question what the Constitution had to say about education. After all, Montesquieu (1689-1755), a French *philosophe* whose work heavily influenced Thomas Jefferson, James Madison and the U.S. Constitution, understood that education was a prerequisite for equality. Specifically, Montesquieu believed that the principle of equality had to be "inculcated through a 'general education' by 'raising the whole people as a family.'"⁴ Thus, one would suppose that if the concept of equality was going to be addressed anywhere in the Constitution, it would be where education was also discussed.

Surprisingly, the U.S. Constitution is found to make no mention of education. No article or section established education as a states' right either. The silence is made all the more deafening by the fact that the colony of Massachusetts had legislated a tax-funded school system one hundred and forty years before the Constitution was signed.⁵ Thomas Jefferson had also argued that "...it is highly interesting to our country... to provide that every citizen in it should receive an education proportioned to the condition and pursuits of his life," putting Jefferson's thinking on the topic in line with Montesquieu's.⁶ What happened to the ideological orientation of the colonial leadership in the eleven years between July 4, 1776 and September 17, 1787? Could there have been a relationship between the decision to back away from the Declaration's unconditional concept of equality and the Constitution's omission of universal education? More specifically, could political wrangling, disagreement, and expediency have led to *both* the abandonment of unconditional equality as an ideal *and* the abandonment of universal education?

This paper proposes that through the omission of universal education on one hand and the failure to clarify the meaning of equality on the other, the U.S. Constitution created a power vacuum with both institutional and conceptual dimensions. Thus, the educational leadership that emerged over the next two hundred years can be viewed as attempts to fill those dimensions of the power vacuum in various ways. Whether in the form of individual luminaries such as Horace Mann, influential organizations such as The Russell Sage Foundation or more recently The Carnegie Foundation or even the federal government, American educational leadership addressed the power vacuum in

⁴ Christopher Wolfe, "The Confederate Republic in Montesquieu," *Polity* 9, no. 4 (summer 1977): 430.

⁵ L. Dean Webb, *The History of American Education: A Great American Experiment*. (Upper Saddle River, NJ: Pearson Education, Inc, 2006), 69.

⁶ Boorstin, *The Lost World of Thomas Jefferson*, 223.

unique ways that were determined in part by the cultural, historical and political forces at play at any given point in time.

Obviously, a full investigation of this proposition is not possible here. What is possible, however, might be considered a small pilot study to the more substantial investigation, i.e. a dip into the educational reform literature in two places across time in order to analyze the operational concept of equality. In so doing the hope is to determine if the operational concept is closer to the unconditional concept of equality operating in the Declaration of Independence or the conditional, hegemonic concept of equality operating in the U.S. Constitution in order to detect the possibility of change in the concept over time. I begin with the introduction to Ayres's *Laggards in our Schools*⁷ and end with the No Child Left Behind legislation of 2001.⁸

GULICK'S INTRODUCTION TO *LAGGARDS IN OUR SCHOOLS*

Luther H. Gulick introduces Ayres' *Laggards in our Schools* with a statement that seems intended to alarm: "During the past decade it has been increasingly realized that the education of children who are *defective* in body, mind or morals is a matter of great importance to the future of the state" (italics added).⁹ At first glance, he appears to be notifying the reader of the dangers of the "laggards" as "defective children" who somehow threaten the state. The assumption is quickly shown to be false, however when later in the paragraph Gulick seems to dismiss the defective children problem as inconsequential because of their small numbers: "At most [the defective children] do not constitute more than from one to two percent of the school population, and it does not appear that any considerable fraction of them can ever be educated so as to become independent members of the community."¹⁰

This apparent dismissal of the problem becomes even more surprising when he suggests that, in addition to the small number of defective children, the defective children themselves are uneducable. Only then, after the defective children problem is dispensed with in the first paragraph, does Gulick get down to the business of introducing Ayres's book in the second. There, he explains, in a more sober tone, who the laggards are and what 'laggards' means: "The great problem [under investigation here] lies in the very much larger class of those who, while they are not defective, do not keep up with their fellows." The paragraph concludes: "These [children], constituting from five to fifty per cent of our school population, can become either failures or

⁷ Luther H. Gulick, "Introduction." In *Laggards in our Schools: A Study of Retardation and Elimination in City School Systems* by Leonard P. Ayres (New York: The Russell Sage Foundation, 1909), xiii-xv.

⁸ Public Law 107-110, 107th Cong. (8 Jan. 2002).

⁹ Gulick, "Introduction," xiii.

¹⁰ *Ibid.*

successes in life, according to the influences that are brought to bear upon them during their early years.”¹¹

One might be tempted to dismiss Gulick’s opening paragraph as an error. After all, a more thorough reading reveals that the so-called ‘defective children’ of the first paragraph are not the same as the ‘laggards’ of the second paragraph who are also the subject of the rest of the book. But the descriptive clause “while they are not *defective*” in reference to the laggards indicates Gulick’s unmistakable intention to connect the laggards with the defective children and to compare the two.¹² As a result, the inference can easily be made that Gulick’s first paragraph was a rhetorical device aimed at fear-mongering. It reminded the reader of a prior threat, tapped into the reader’s pre-existing fear of that threat, and dismissed that threat as being too small to be of much significance, at least to the public schools. Thus, the rhetorical purpose of the second paragraph is to replace the first threat with a new, ostensibly far greater threat (i.e. the laggards) that is far greater because of its sheer size and its location *in the schools*.

In the process of alerting the reader that *laggards* were the new threat to public schools, Gulick reveals three distinct categories for children that say a great deal about how the administrative progressives such as Ayres (1879-1946) approached children.¹³ Although the ‘defective children’ category is the only category directly labeled by Gulick, the other categories are implied nonetheless, with an array of supporting details including performance levels, percentages of the overall school population, and relative threat level to the state.

Although Gulick never explains the threat that the ‘defective children’ actually pose to the school system or to the state—perhaps the omission is evidence of more fear-mongering, making the threat more ominous—he does suggest that the threat of the ‘defective children’ is smaller than the threat of the laggards because of their fewer overall numbers and their fewer numbers in the schools. Since laggards are described as “those who do not keep up with their fellows” a third category of children is clearly indicated, though not given a label by either Gulick or Ayres.¹⁴

The characteristics of this third unnamed category can be determined by inferring the opposites of the descriptions of the ‘defectives’ and ‘laggards’. Its relative performance level can be determined the same way. Finally, the relative size range of this third unnamed category can be calculated by using

¹¹ *Ibid.*

¹² *Ibid.*

¹³ David B. Tyack, *The One Best System: A History of American Urban Education*. (Cambridge, MA: Harvard University Press, 1974), 182-198.

¹⁴ Gulick, “Introduction,” xiii.

the numbers from the other two groups and subtracting them from 100%. Thus, this third group of children is characterized by regular grade completion in accordance with their age, physical health, independence and punctuality. Furthermore, this group can be estimated to make up between 48% and 94% of the total school population. When the labels, inferred labels, descriptors, inferred descriptors, and percent ranges of school population are all assembled, a taxonomy emerges with the defective children on the bottom, laggards in the middle and the ‘grade completers’ on the top:

TABLE 1

Taxonomy of children as articulated by Gulick

Category Label	Performance level	% of school pop.	Threat level
Grade completers	age appropriate	48-94	none
‘laggards’* or ‘retarded’+	behind, potentially educable	5-50	high
‘defective’	behind, mostly uneducable	1-2	low

*Term found only in the title

+ Ayres’s language, not Gulick’s, found later in the study.

Even the apparent fear-mongering in the introduction does little to prepare the reader for the rather cruel view of children captured in Table 1. Here we find disparaging names such as ‘defective’ or ‘laggard’ turned into category labels that both refer to, define, and in all likelihood were used to stigmatize, large numbers of children. Furthermore, these labels are based largely on what the children they refer to are *not*. Thus, ‘defective’ suggests that those children are *not* functioning in the way that the ‘grade completers’ are, and ‘laggards’ or ‘retarded’ suggests that those children are lagging behind the ‘grade completers’.

Sadly, the taxonomic arrangement of students suggested by Gulick’s introduction to Ayres’s book sounds far too familiar. Not only does it portend student tracking, a practice that became prominent in the 1960’s and continues in one form or another today, it echoes the conditional, hegemonic concept of equality found in the Constitution, but with a notable Jeffersonian twist.¹⁵ As in the Constitution, which defined slaves as less than those considered “whole persons” (i.e. white males of European descent), Gulick’s introduction sorted children into categories of relative inferiority defined against the most successful group—most likely White, English-speaking children of Western European descent. Indeed, Tyak’s presentation of this period of educational history confirms the interpretation. Tyak also suggests that the so-called laggards referred to by Gulick and Ayres may in fact have been the children of

¹⁵ David M. Sadker, Myra P. Sadker, and Karen R. Zittleman, *Teachers, Schools, and Society*. (New York: McGraw Hill, 2008), 176-179.

Irish and non-English speaking Central European immigrants. Thus, the designation of ‘laggard’ was likely a euphemism for immigrants who were not White Anglo-Saxon and Protestant and who did not speak English.

In spite of Gulick’s apparent xenophobia, however, it should be emphasized that at no point did Gulick (or Ayres) suggest that the laggards not be counted and therefore not be allowed into or removed from the public schools as the Indians had been by the Constitution. Instead, the message was that if public education was to be made available to the children of non-English speaking immigrants and other outsiders, then the public had to be made aware of the nature of the threat that these intruders posed—hence the need for Ayres’s study. Including the laggards in the schools of 1909 suggests that the public school system may have taken a small step away from the conditional, hegemonic concept of equality of the Constitution and a step towards the unconditional concept of equality of Jefferson and the Declaration of Independence in spite of xenophobia. At the same time, Gulick and Ayres made it clear that said equality came at a price, and that price was submission to the authority of the public schools (and White Anglo-Saxon Administrative Progressive researchers such as Gulick and Ayres). They believed that they knew who the problems were and what exactly was needed to fix them.

In addition to a statistical analysis of the laggards problem across the country, Ayres’ book includes recommendations for the standardization of schools, grading, and administrative procedures all aimed at saving money, time and ultimately the promise of a reduction the laggards problem.¹⁶ Attempting to understand or accommodate the so-called laggards was not part of the answer. Increasing school efficiency was.

THE NO CHILD LEFT BEHIND ACT OF 2001

One might assume that, in all that has happened in the one hundred years since Ayres’ study, including war, unprecedented economic and technological expansion, educational reform, ever-increasing diversity, not to mention the Civil Rights Movement and the Americans with Disabilities Act, the concept of equality in education would have continued to have moved closer to the unconditional ideal of Jefferson and Montesquieu. Indeed, a glance down the table of contents of the No Child Left Behind Act of 2001 suggests that it may have been so. For instance, Title III is “Language Instruction for Limited English Proficient and Immigrant Students” and Title VII “Indian, Native Hawaiian, and Alaska Native Education.” With the exception of Title I, “Improving the Achievement of the Disadvantaged,” the names attempt to describe the diverse populations being targeted by the bill in terms of what they

¹⁶ Leonard P. Ayres, *Laggards in our Schools: A Study of Retardation and Elimination in City School Systems*. (New York: The Russell Sage Foundation, 1909).

are rather than what they are *not*. Furthermore and perhaps more importantly there is little evidence that the author was attempting to impose a strict taxonomy based on the perceived negative aspects of the groups as defined against a top group of achievers representing some sort of ideal or norm. In other words, the table of contents of NCLB gives the impression that the groups, together with the characteristics that make each unique, are respected and are also treated equally, at least from the perspective of the bill.

The inference that NCLB represents the unconditional concept of equality is further supported by the Statement of Policy sections that introduce each title. The Statement of Policy section that introduces Title VII, for example, ends with the sentence:

The Federal Government will continue to work with local educational agencies, Indian tribes and organizations, postsecondary institutions, and other entities toward the goal of ensuring that programs that serve Indian children are of the highest quality and provide for not only the basic elementary and secondary educational needs, but also the unique educational and culturally related academic needs of these children.¹⁷

The phrase “unique educational and culturally related academic needs” in particular suggests that the bill at least *intends* to accommodate the differences of its targeted populations. In the case of Title VII, the focus is on the accommodation of the Indian’s cultural diversity. However, the purpose sections of each title negate the impression and the bill quickly shows itself to be operating according to a conditional, hegemonic concept of equality.

Surprisingly, the beginning of the purpose section of Title I—where the shift takes place—actually *sounds* Jeffersonian. In fact, the opening phrase could even be read as an attempt to fill the power vacuum around education created by the Constitution all of those years ago: “The purpose of this title is to ensure that all children have a *fair, equal, and significant opportunity* to obtain a high-quality education...”¹⁸ Although the language falls short of guaranteeing universal education as a right, it does appear to support the notion that all American children should at least have the *opportunity* to go to school and to receive a good education (whatever that means—‘high-quality education’ is not defined).

Then, well before the end of the sentence, the language takes a surprising turn. State-determined, standardized testing is introduced as the mechanism by which equality or equal opportunity would be assessed: “...and [that all children will] reach, at a minimum, *proficiency* on challenging State *academic achievement standards* and *state academic assessments*.”¹⁹ Of

¹⁷ Public Law 107-110, 107th Cong. (8 Jan. 2002), 7101.

¹⁸ Public Law 107-110, 107th Cong. (8 Jan. 2002), 1001

¹⁹ Public Law 107-110, 107th Cong. (8 Jan. 2002), 1001.

course, standardized testing measures individual performance against either a norm or a passing ‘cut score’, depending on the type of test. Thus, in NCLB, in spite of the rhetoric to the contrary, ‘equality’ appears to be conditional as it is with Gulick and the U.S. Constitution. But, instead of determining the students’ (or people’s) relative inferiority according to their common behavior (Gulick: laggards, i.e. students who were tardy or poor attendees) or cultural or ethnic group (Constitution: white Anglo-Saxon protestant male=whole person, slaves=three-fifths of a person, and Indian=non-person), relative inferiority is determined by the individual’s performance on standardized tests. Hierarchy is created between individuals when some do not do as well as others. Unfortunately, the conditions placed on equality by NCLB do not stop there.

NCLB goes beyond using standardized tests to assess and rank students individually; it ties the federal funding of schools to the schools’ overall performance on the tests. Instead of federal funding being tied to demonstrable need as it had been previously, an idea rooted in the idea of unconditional equality, NCLB mandates that schools’ overall test scores must improve annually (referred to as Adequate Yearly Progress or AYP) or else face denial of federal funding. In spite of the fact that federal funding of public education is less than ten percent nationwide, the message was clear: from 2001 onward, standard test scores were to be used to establish the criteria for what constituted a successful student and a successful school, a successful student and a failing student, and everything between.²⁰ Pre-existing inequities between schools were ignored by the mandate, as were biases within the tests themselves. What started off sounding like a near- triumph of unconditional equality ended up as a huge leap in the direction of conditional, hegemonic equality. Test scores are used to highlight hegemony between individual students and between schools and the hegemony is further institutionalized by the threat of a funding reduction. Even the rather naive unconditional equality alluded to by Gulick is undermined by NCLB because ‘low-performing’ schools are threatened with closing. Many of the students in the most need of a quality public education now run the risk of losing it altogether because of their poor performance on standardized tests, which was the result of long-standing inequities to begin with.

Like the students of Ayres’s day, students of today are referred to, defined and in all likelihood stigmatized by their rankings—particularly if their ranking is below the passing ‘cut score’. Furthermore, much like Gulick’s ranking system, today’s student rankings are defined in accordance to what they are *not* (or, at least, what they are ‘less than’). Even a student in the ‘99th percentile’, for instance, is one *under* the top percentile, and those in the percentiles below the 99th are even ‘lower’ than that. But, unlike the students of

²⁰ Ibid.

Ayres's day, each of today's students receives his or her own individual ranking. What is more, entire schools are now being ranked and stigmatized in a similar manner using the very same scores. Finally, no school of students is safe from either the stigma or the economic punishment meted out by NCLB. Thus, student test scores are transformed from one potential tool among many that might help with school improvement to a single blunt instrument inspiring fear and paranoia, against which a school lives or dies.

With the passage of NCLB, not only did the Bush administration put the 'old wine' of Gulick and Ayres into new bottles, it created new labels covered with the 'rhetoric of diversity' that suggested the wine was new. Finally, it added a strong hallucinogen to the old wine to create fear and paranoia in those who partake of it. The result: a system that lives in fear of losing resources, that 'measures' each individual student in terms of what they are not, and that can blame the lowest performing students, i.e. the 'defective 2%', for a school's apparent shortcomings.

CONCLUSIONS

Although the definition of equality may have changed in the hundred years since Ayres's *Laggards in our schools*, it does not appear to have changed much where it should matter most: the public schools. The Constitution created a power vacuum around equality and education when the founding fathers failed to address it. In response, people with strong opinions about education such as Ayres and philanthropic organizations such as the Russell Sage Foundation stepped in to fill that vacuum. Consequently, *their* competing ideas about equality and education, interacting with changing ideas about equality and other historical factors, shaped and continue to shape an ever-changing educational agenda, contributing to never-ending 'policy churn'.²¹

Most recently, the executive branch of the government entered directly into the on-going quagmire, setting an extremely conditioned, hegemonic view of equality and education into law. Is there any real chance at substantive change as long as students and now schools are being sorted into categories that are defined according to what they are not? Unfortunately, history suggests not. The American public schools appear to have inherited a hegemonic understanding of equality and do little but repackage it. Meanwhile, universal education as the means to Jeffersonian equality remains more elusive than ever.

²¹ See Kenneth K. Wong, *Funding Public Schools: Politics and Policies*. (Lawrence, KS: University of Kansas Press, 1999).
