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Allan H. Macurdy

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RIGHTS RESPIRATION: DISABILITY, ISOLATION, AND A CONSTITUTIONAL RIGHT OF INTERACTION

Allan H. Macurdy†

In 1772, Lord Mansfield, Chief Justice of the King's Bench, presided over a case involving a slave, James Somerset, who had been brought by his master from Virginia to England and who claimed that his simple presence on English soil made him free.[1] Among Somerset's lawyers was one Francis Hargrave, who was arguing the first case of his career that day. Hargrave maintained that "the Air of England was too pure for slavery,"[2] quoting the advocate in a prior case and drawing upon the commonly held understanding that slavery was incompatible with a society of rights, and that it deprived the individual of the very indicia of humanity. Asking rhetorically whether the law of a lowly colony or a barbarous state should prevail over the law of England, Hargrave declared that "[i]n England . . . freedom is the grand object of the laws, and dispensed to the meanest individual."[3]

By virtue of being human, the "meanest individual" is entitled to the fundamental rights of Englishmen, which antecede the law created for their preservation. Indeed, as articulated later in the case by Hargrave's co-counsel John Alleyne, an individual cannot part with the rights "vested by nature and society . . . without ceasing to be a [human being]; for they immediately flow from, and are essential to, his condition as such . . . ."[4] Lord Mansfield agreed, declaring that slavery was "so odious, that nothing can be suffered to support it, but positive law"[5]—and that, therefore, "the black must be discharged."[6]

It is remarkable, at least arguably, that an English court in the 1770s might agree that individuals only need to be human in order to be entitled to rights and are equal because they possess those rights. The idea has since gone on to become an essential part of human rights

† Visiting Professor, Boston University School of Law. This essay is a cleaned-up version of my remarks presented at the 2006 Gloucester Conference, Too Pure an Air: Law and the Quest for Freedom, Justice, and Equality, June 2006. My thanks to Reginald Oh and the other Conference organizers for their gracious support as well as our panel moderator, James McGrath, and co-panelists, Seema Mohapatra and Timothy S. Hall, who made it work with me in absentia. Thanks as well to the editors of the Texas Wesleyan Law Review. The essay is part of a larger project examining human rights lessons from law and disability. For research and other support thanks to Sean Gavin BUSL 2007 and Lhundhrup Dorje. As always, my work is dedicated to Marie Trottier Macurdy, my life and my inspiration.

1. *See* Somerset v. Stewart, (1772) 98 Eng. Rep. 499 (K.B.).
2. *Id.* at 501.
3. *Id.*
4. *Id.* at 502.
5. *Id.* at 510.
6. *Id.*

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discourse. Anchored within the recognition of the equal dignity of all humans, such a perspective posits that equality flows from the universal value of being human. It does, however, stand in marked contrast to the bulk of U.S. constitutional doctrine around equal protection, which largely disconnects equality from rights, proceeding as if they are conceptually independent legal theories. Instead, the prevailing equal protection model proceeds on the assumption that any governmental distinction is acceptable, subject only to rationality, unless the distinction excludes an individual who is arguably just like the paradigm of the white, property-owning male citizen, except for a trait—like race—that is not relevant to the contextual determination.

Such an approach has venerable roots and must be seen as part of the nation's efforts to remedy the legacy of slavery since Reconstruction. Thus, in state government, and especially in the administration of justice, in the electoral process, and in economic life, a black is entitled to—at least formally—the same position as that of the white, property-owning male. Indeed, the Supreme Court, in rejecting racial prejudice in property and contract, has noted that the Constitution requires that "a dollar in the hands" of a black man be equal to one held by the white man.[7]

Equality as a universal value stemming from an individual's possession of fundamental rights has a long and notable history in U.S. constitutional law, but it has been neglected in recent decades in favor of a model of class membership.[8] The question is reduced to whether the individual falls within a "suspect class," an idea that has come to be understood as membership in an identifiable group with a history of exclusion and political powerlessness, roughly descriptive of the condition of blacks in the aftermath of slavery. If an individual has been discriminated against on the basis of a class that is suspect—like race—current equal protection doctrine requires that a court employ heightened scrutiny to closely examine the factual context, including the government's justifications for the distinction. Unlike our model in *Somerset*, equality as an actionable legal interest flows from similarity to an archetype, rather than from an individual's status as a human in possession of rights. To be sure, distinctions that implicate fundamental rights are also to be examined closely under the formula in

7. Jones v. Alfred H. Mayer Co., 392 U.S. 409, 443 (1968).

8. Admittedly, the use of heightened judicial scrutiny where the plaintiff is a member of a protected or suspect class developed in response to the need to more closely examine the factual context of governmental distinctions in the face of historic and systematic exclusion of specific populations. Rigid application of a rational relation test had often left courts unable to look behind official explanations and evaluate state behavior in light of important constitutional interests. The unfortunate by-product of this membership scheme, however, is that conduct that is clearly invidious, or that implicates important constitutional interests, will evade judicial scrutiny and legal remedy because an individual does not fit within a previously recognized protected category.

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footnote four of *United States v. Carolene Prods. Co.*,[9] but such challenges are not well represented in appellate opinions. Thus, "suspectness" has become the legal mask for groups who are required to argue that they should be protected because they are just like white males. While this approach has been largely responsible for dismantling oppressive legal structures that give official life to similar prejudice, it is far less effective in combating exclusion where the disadvantaged individual does not as closely resemble the archetypical white male.

Individuals with disabilities have discovered that availing themselves of the Equal Protection remedy has proven problematic, but their experience is similar to that of other groups, particularly women. Kathryn Abrams has pointed out that rigid, unitary conceptions of discrimination have failed to remedy many forms of injustice against women who fall outside of those conceptions and actually reinforce gender stereotypes.[10] While it will be useful to examine her taxonomy of legal approaches to gender in order to fully frame an examination of disutility of the suspect class methodology for injustices based upon disability, here it is sufficient to note that, like gender, disability discrimination is not entirely captured by concepts of equality or difference. Both theories describe the excluded individual with reference to the dominant trait or traits—male, able-bodied, etc.—and proceed on the assumption that "inequality could be traced to something inherent in them—rather than something that had been done to them."[11] This leads the observer to believe that any exclusion is a logical and necessary outgrowth of that difference.

Such a perspective plays into the exertion of power to keep majority norms at the center of the discussion to maintain the mythical image of perfect ability to which persons with disabilities cannot conform. If this is familiar territory, it is because the medical model finds that individuals with disabilities cannot fulfill "expected social roles" solely because of their medical conditions, transforming a functional analysis into a model of social deviance. But rather than being "natural and immutable," the relative disadvantages faced by persons with disabilities are socially constructed, the result of a physically and attitudinally engineered environment that is "artificial," reflecting collective decisions that are therefore subject to change.

But because these constructed differences appear to be obvious, attempts to vindicate constitutional norms of nondiscrimination for persons with disabilities have proven to be difficult, particularly in cases where the contextual determination may have no analogue among the so-called able-bodied. This difficulty stems, at least in significant part, from the view that equality is a function of an individual's similarity to

9. *See* 304 U.S. 144, 152 n.4 (1938).
10. Kathryn Abrams, *The Constitution of Women*, 48 ALA. L. REV. 861, 866–67 (1997)
11. *Id.* at 872.

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the archetypical white able-bodied male, rather than the natural outgrowth of their common humanity. So protection is accorded only if able and disabled are the same, and only if the disabled person can do everything the able-bodied person can do.

But to agree with this proposition one must abandon the attempt to transform institutions that were not designed with disabled people in mind and cede the field to an "able-centric" approach that continues to focus upon the values and interests of the non-disabled population. As Abrams points out, equality theory fails to provide the analytical tools to challenge such institutions to take the experiences of excluded populations and transform our vision of a just society.[12] The equality edifice is unstable because it fails to clearly identify subordination as an affront to all of us as humans, cleaving to a membership scheme that permits conduct that is clearly discriminatory to evade legal redress because an individual does not fit within a previously recognized protected category.

The subordination of individuals with disabilities in our society begins with their differentiation—the application of a label that reduces them to a single characteristic. On that basis, society and the legal system perpetuate and maintain the belief that those designated as disabled are truly different from the rest of us. It should not be surprising—although it may be—that the conclusions we draw about the disability experience are true of all human existence. First, one cannot be defined accurately in terms of a single attribute rather than a complex set of components. That is, the whole of the individual is not described by the label of disability because each of us is made up of a bundle of abilities, and lack of abilities, of elemental traits. For society and the legal system to treat individuals as if they were merely a singular label is unjust.

Second, and flowing from the previous point, because we possess certain abilities and lack others, we must depend upon other people to do things and provide things for us. None of us, whether or not we have disabilities, can accomplish any of our civic, economic, or social objectives, nor can we exercise autonomy, apart from the organic, foundational relationships we form and live within, rather than our separation from others. Thus, independence from others is not only myth but is pernicious, imposing isolation by impeding the development of relationships.

Third, the allocation of abilities and lack of abilities is not static, but ever-changing. As children we can do things that we cannot do as adults; when adults, there are many things we can do that we could not do as children. Disease, accident, and "failure to use" can take away abilities while experience, training, and education can augment our bundle of abilities. Any assessment of equality cannot, then, be

12. *See id.* at 869.

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valid without paying close attention to the context of an individual's situation because the label of disability is not even stable for a particular individual.

Its instability not withstanding, applying the label of disability—like any other membership label—creates a perception of actual difference, causes other people to accept the characteristics attached to that label, and results in profound isolation. When a parent pulls a curious child away from a person with a visible disability; when a crowd recedes disproportionately away from a group of children with disabilities in a shopping mall; or when a waitperson looks past a person with a disability to take the dinner order of his or her non-disabled companion, each actor draws upon a received ideology and validates it through further observation through the ideological lens. All this would be a purely internal process with arguably fewer social implications, except that by acting, the actor reinforces and transmits that ideological imagery to others, replete with stereotypical assumptions. Here, each actor evidences the belief that the life of the person with a disability is full of tragedy, isolation, and incapacity. Each concludes that the person with a disability is incapable of communicating, unable to participate, or simply too unhappy to connect with other people.

More disturbingly, each conveys the idea that such people should be avoided if not actually feared. Why? Because we want to avoid thinking about what—to us—is a terrible life situation; our fear requires that we avoid—or not see—individuals with disabilities.[13] Comments such as "I do not know how I would do it," "You are braver than I would be," or rather less kindly, "I would rather be dead than live like that,"[14] can be seen as outward manifestations of the observer's psy-

13. As Milner Ball has put it, "Blindness to people may be of a piece with their oppression." Milner S. Ball, *The Legal Academy and Minority Scholars*, 103 HARV. L. REV. 1855, 1856 (1990).

14. Harlan Hahn, a sociologist who has examined societal perceptions of disability, distinguishes between two sorts of anxieties experienced by non-disabled persons when faced with individuals with disabilities: aesthetic and existential anxiety. Simply put, aesthetic anxiety is fear or avoidance of an individual because that person looks different—that is, in a way at variance with majority norms of beauty or function. This anxiety occurs not only in encounters with individuals who have visible facial disfigurements or amputations, but wheelchair users, individuals with speech impediments, and those with tremors or spasticity as well. Perhaps this constitutes prejudice at its most elemental, echoing the primeval experiences of humans living in insulated clans or villages with little contact with "others." But it is traditional prejudice without the "alien-ness"—individuals born with, or acquiring, disabilities were native babies, neighbors, or kin. They shared the experiences of family, clan or village life in common with those without disabilities, and still met rejection and fear. Prejudice grounded in outward appearance or communicative differences operates in a similar way across several forms of difference, yet this level of "otherness" construction is foundational, an initial impulse upon which to build a complete ideology. Hahn's existential anxiety may describe a characteristic unique to disability-based prejudice. An observer may be made uncomfortable in the presence of an individual with a disability not simply because that person looks "different," but also because of an aversion to thinking about that person's life as if it were the observer's own life. That is, be-

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chological process of fear-avoidance. Not only is there fear of disability fueled by stereotype, but also by fear of acknowledging another's pain, recognizing someone else's courage, and comprehending the injustices others endure as people of feeling who are marginalized and devalued. Thus the ideology sets and legitimates a profound social distance that reinforces the perception that the lives of individuals with disabilities are universally tragic, depressing, and even pointless.

It is not surprising, then, that interactions with individuals with disabilities are stilted, awkward, or non-existent.[15] When others recoil from acknowledging you or simply assume you are incapable of participation, no one hears your perspective and societal norms and value hierarchies go unexamined and unchallenged.[16] The absence of conversation between us is unremarkable because the lives of individuals with disabilities have been "marginalized," rendered irrelevant by adherence to false visions of perfect ability and mythical autonomy. Such isolation stigmatizes, denies our social nature, and impedes the exercise of human rights.

The experiences of individuals with disabilities illustrate that we have yet to truly understand that equality is not the result of conformance to a unitary norm, not a feature of lines that separate us, but is enabled by our interdependence. This, of course, is not necessarily a new perspective. In *Somerset*, Hargrave maintained that the rights of all Englishmen are threatened if anyone in England remained a slave—a view that rests upon a profound insight that freedom is not found in isolation but in our very interdependence.[17] Whether one embraces the genuine equality of all individuals, or simply believes that the "meanest individual" is the canary-in-a-mine-shaft that warns us of deterioration in the atmosphere of freedom, slavery cannot be permitted. As your bondage threatens my liberty, my freedom depends upon yours.

This is a conception of equality that rests upon the reality of our social nature as well as the recognition of the universality of human value. Freedom, our ability to be autonomous, to live "subject to [our] own law" is only possible within a web of human relationships. As Jennifer Nedelsky once noted, "[R]elatedness is not, as our tradi-

cause the observer wants to avoid thinking about what to him is a terrible life situation, his fear requires that he avoid—or not see—individuals with disabilities. *See* Harlan Hahn, *The Politics of Physical Differences: Disability and Discrimination*, J. Soc. Issues 39, 42–46 (1988).

15. For example, when dining out, it has been very common for those serving the meal to be unsure how to proceed with me at the table. Common reactions are to speak to me in a voice reserved for children, yell at me, "What do you want to order?(!)," or ask my dinner partners what "he would like to have." I have watched a waitress pick up three menus, look over at the three of us in the booth, put one down, and give menus to my two companions.

16. *See* Ball, *supra* note 13.

17. *See* Somerset v. Stewart, (1772) 98 Eng. Rep. 499, 500–01 (K.B.).

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tion teaches, the antithesis of autonomy, but a literal precondition of autonomy, and interdependence a constant component of autonomy."[18]

But the importance of interdependence is even greater. It does more than simply enable our autonomy. Each of our fundamental rights cannot be exercised, and are actually meaningless, apart from that complex web of relationships. Free expression is fruitless apart from a society able to respond; voting can affect nothing without other voters and political actors; freedom of belief lacks value without others of like belief to gather around or public officials to influence; and the right to die with dignity has no meaning unless others support and implement the decision. To see rights within the context of our social existence is to realize that interaction is essential to their exercise.

The social relations theory of freedom, an understanding of equality as a result of our interconnectedness, enables us to examine familiar legal disputes and Supreme Court equal protection doctrine in a very different light. Let us begin with arguably the most famous—and certainly the most talked about—civil rights decision, *Brown v. Bd. of Educ.*[19] In *Brown*, the Court considered whether "segregation of children in public schools solely on the basis of race . . . deprive[s] the children of the minority group of equal educational opportunities?"[20] In a remarkably empathetic opinion, Chief Justice Warren declared that separation from other students of similar age and abilities on the basis of race "generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone,"[21] and that such a '"sense of inferiority [in turn] affects the motivation of a child to learn."'[22] On the basis of that psychological evidence, the Court concluded that separate schools were inherently unequal.

This is all familiar enough so far, but I am asking that you allow me the chance to shift how you perceive this seminal case. We generally regard *Brown* as standing for the proposition that, because of our history of racial inequality, the separation of children on the basis of race is unconstitutional because it stigmatizes black children by conveying to them, as well as to society, that such children are inferior. I, of course, agree with this point of view, but I believe we can tease out a more complete understanding of the interests at stake in the Topeka public schools.

18. Jennifer Nedelsky, *Reconceiving Autonomy: Sources, Thoughts and Possibilities*, 1 YALE J. L. & FEMINISM 7, 12 (1989).

19. Brown v. Bd. of Educ., 347 U.S. 483 (1954).

20. *Id.* at 493.

21. *Id.* at 494.

22. *Id.* (quoting in part the district court below in Brown v. Bd. of Educ., 98 F. Supp. 797 (D. Kan. 1951)).

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By incorporating the psychological dimensions of discrimination, Warren undertakes a startlingly different approach from earlier equality cases, but he is not quite able to convey the complete nature of the damage to the child or society. The phrase "separate is inherently unequal" identifies separation as the cause of inequality, which is the harm to black children. More precisely, these children are harmed by the stigma of inferiority brought about by their separation from other children on the basis of race. In this view, separation is not the harm; it is the immediate cause of the harm.

But, I submit that separation serves more than one role. First, in addition to causing stigma, separate schools, lunch counters, restrooms, and neighborhoods are the result of racial inequality in our society which is a manifestation of white supremacy. More significantly for our purposes, separation is also a cognizable harm in itself. In *Brown*, the Chief Justice cited a prior decision requiring that a black graduate student be treated like all other students.

In that case, the Court noted that the black students' "ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession"[23] was intrinsic to an equal educational opportunity. Likewise, Warren quoted from one of the lower court opinions that a '"sense of inferiority affects the motivation of a child to learn"'[24] and, therefore, limits his or her educational development.[25] Thus, separation harms by impeding interaction.

Interaction is part of what Chief Justice Warren is concerned about when he notes that in a graduate education '"study[ing], . . . engag[ing] in discussions and exchang[ing] views with other students"'[26] is essential. To him, "[s]uch considerations apply with added force to children in grade and high schools."[27] Indeed, he went on to describe the purpose and importance of public education to our democratic society. Public education is necessary to the performance of our most basic public responsibilities and, thus, is the foundation of good citizenship. Indeed, it is vital to the maintenance of healthy democracies.[28]

23. *Id.* at 493 (quoting McLaurin v. Okla. State Regents, 339 U.S. 637 (1950)).

24. *Id.* at 494 (quoting Brown v. Bd. of Educ., 98 F. Supp. 797 (D. Kan. 1951)).

25. *Id.*

26. *Id.* at 493 (quoting McLaurin v. Okla. State Regents, 339 U.S. 637 (1950)).

27. *Id.* at 494.

28. Howard Thurman, civil rights leader and spiritual mentor of Dr. Martin Luther King, Jr., once stated:

> [M]eaningful and creative experiences between people can be more compelling than all the ideas, concepts, faiths, fears, ideologies, and prejudices that divide them; and absolute faith that if such experiences can be multiplied and sustained over a time interval of sufficient duration *any* barrier that separates one person from another can be undermined and eliminated.

HOWARD THURMAN, WITH HEAD AND HEART 148 (1979).

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More significantly for our purposes, Warren described public education as "a principal instrument in awakening the child to cultural values . . . and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."[29] Notice that all of these considerations are left unaddressed in the absence of unimpeded personal interaction. These themes are picked up by Justice Marshall's dissent in 1972 in *San Antonio Indep. Sch. Dist. v. Rodriguez*,[30] where he emphasized that "the majority's holding [demonstrates] . . . unsupportable acquiescence in a system which deprives children in their earliest years of the chance to reach their full potential as citizens."[31]

Another case that can be reconsidered within the context of interaction is *City of Cleburne v. Cleburne Independent Living Center, Inc.*[32] The Center, along with several individuals, challenged a city zoning ordinance requiring issuance of a special use permit for a group home for individuals with mental retardation. They alleged that the zoning ordinance, on its face and as applied, violated the equal protection rights of the Center and its potential residents. The City argued that the ordinance should be upheld because of the negative attitudes of nearby property owners, fears of elderly residents, and the danger that the residents of the group home would be to subject to harassment.

Justice Powell, writing for the majority, surprised few observers when he determined that individuals with mental retardation were not a suspect class. Normally the City's justifications would be taken at face value, but because he was convinced that the City's objectives were illegitimate, Powell concluded that the refusal to grant a special-use permit was based upon irrational prejudice against individuals with mental retardation. Finding that the ordinance—at least as applied—represented "arbitrary or irrational"[33] action and was based upon a '"bare . . . desire to harm a politically unpopular group,"'[34] he invalidated the ordinance as invidious discrimination.[35]

Interestingly for our purposes, Justice Powell mentioned, but did not consider, application of the third component of the definition, noting that individuals with mental retardation "have and retain their substantive constitutional rights in addition to the right to be treated equally by the law."[36] Had he considered it carefully, Powell would certainly have recognized the fundamental nature of the right to live

29. *Brown*, 347 U.S. at 493.
30. San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973).
31. *Id.* at 71 (Marshall, J., dissenting).
32. City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432 (1985).
33. *Id.* at 446.
34. *Id.* at 446–47 (quoting United States Dep't of Agric. v. Moreno, 413 U.S. 528, 534 (1973)).
35. *Id.* at 450.
36. *Id.* at 447.

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where you wish as articulated by the Supreme Court across a variety of cases ranging from the invalidation of inordinately lengthy residency requirements for state benefits to prohibitions on racially-discriminatory zoning regulations. On that basis, he could have grounded his model of equality upon the universality of human rights rather than membership.

But there is a more significant level of understanding to be set out. Rather than simply an application of the fundamental right to live where one wishes, the Court's decision can be seen as the preservation of a fundamental constitutional value of interaction upon which all other rights depend. This is particularly poignant since group homes are a manifestation of the therapeutic understanding that individuals with mental retardation are able to develop significant life skills when placed in community settings where they can be immersed in everyday human interactions.

Like the critical function of public schools, interaction serves both the therapeutic purposes of group homes and the constitutional values springing from our interdependence. For a human being to truly possess autonomy, to exercise her fundamental rights, barriers to full interaction must be removed. Thus, the principles of antidiscrimination recognize the destructive power of isolation and seek to protect this core value of human interaction upon which our freedoms and our democracy depends. Isolation not only obstructs the achievement of the purposes of education or community placement, it also results in a deterioration of an individual's freedom.

How would this right of interaction work? To explore this question, I place the facts of a Supreme Court special-education case within a constitutional framework, issues not considered in the original case. Amy Rowley was a bright eight-year-old attending elementary school in a town in New York. Amy happened to be deaf and was, by many estimates, doing quite well academically despite only comprehending 50% of what was being said in the classroom by her teacher and classmates. Deeply concerned about their daughter's educational opportunities, the Rowleys requested that the school system provide sign language interpreters so that Amy could fully benefit from, and participate in, her education.

When the school system refused, the family brought suit under the Education for All Handicapped Children Act (now known as the Individuals with Disabilities Education Act), which guaranteed every schoolchild the right to a free appropriate public education.[37] Among the statute's requirements was that a school system provide students with related services including "such developmental, corrective, and other support services . . . as may be required to assist a child with a

37. *See* 20 U.S.C. § 1400(a), (d) (2000).

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disability to benefit from special education . . . ."[38] At the Supreme Court, Justice Rehnquist, writing for the majority, rejected the plaintiff's argument that the statute requires maximum educational benefit. Instead, he noted that Congress sought to make public education available to students with disabilities, and thus "did not impose upon the States any greater substantive educational standard than would be necessary to make such access meaningful."[39] As the intent of the act was to open the door to public education but not guarantee any particular level of education, the family's request was denied.

Justice White's dissent brings us back to the idea of equal educational opportunity first advanced in *Brown*. He noted that the purpose of the statute is to "eliminate the effects of the handicap, at least to the extent that the child will be given an equal opportunity to learn if that is reasonably possible."[40] Because without the interpreter Amy comprehends less than half of what hearing students comprehend in the classroom, White concluded that "[t]his is hardly an equal opportunity to learn, even if Amy makes passing grades."[41] Further, the statute also contains a preference for mainstreaming students with disabilities into regular classrooms where possible. Clearly, both the statute and Justice White convey the understanding that education requires not only that a teacher communicate with a student who then learns, but that learning actually happens through immersion in constant and complex interaction amongst student, teacher, and classmates.

Thus, as mainstreaming is simply a mechanism to ensure that students with disabilities get to interact with their peers, and sign language interpreting permits that interaction to occur, the issue should be framed as whether the denial of interpreting impaired her interaction with teaching and classmates, and thus violated Amy's right to equal educational opportunity.[42] Clearly, the failure to provide interpreting implicates all of the issues we have already raised in the context of segregation, but because it singles out a specific child for isolation, it is far more destructive of her self-esteem and far more damaging to her individual development, and thus should be considered a far greater constitutional violation. It also notably impairs the right of all the hearing students to interaction with this very bright student. An emphasis upon the mutual benefit of interaction can transform the nature of our equal protection jurisprudence—tran-

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38. *Id.* § 1401(22).

39. Bd. of Educ. of the Hendrik Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 192 (1982).

40. *Id.* at 215 (White, J., dissenting).

41. *Id.*

42. Had the family brought a discrimination claim under the 1973 Rehabilitation Act, the issue would have been whether the denial of a reasonable accommodation—sign language interpreting—impaired Amy's right to equality of access to her education.

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scending the evils of membership with an appreciation for our diverse humanity.[43]

In his *Letter from the Birmingham City Jail*, Martin Luther King, Jr., declared that "[i]njustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny."[44] King understood, and the experiences of individuals with disabilities confirm, that exclusion spills directly from the denial of our interdependence. Prejudice would have us see no connection between ourselves and others, and therefore no reason to acknowledge or respect our common humanity. Systematic and pervasive impediments to human interaction in the significant arenas of human life are corrosive of individual dignity and the maintenance of community, and thus isolation should be seen to be at a heart of the evil to be combated through our constitutional protections.

Indeed, the purpose of all civil rights statutes implementing those protections is to enhance and ensure human interaction for the sake of human rights, the health of our democracy, and our common humanity. James Somerset, upon his arrival in England, breathed in the pure air of rights, air that carried to him the holy symbols of his humanity. As all of us take in from the same air, slavery cannot be allowed to exist because it poisons the atmosphere of rights upon which our humanity depends. Each relies upon the other to protect the air, and each is necessary to the effectuation of rights that have no meaning or consequence except within a web of relationship. Rights respiration can only occur within our social context, and thus isolation constitutes social asphyxiation and the death of self.

43. For example, consider the situation of a Muslim student in a public school in a predominantly Christian community. If the only way this student could attend public school is if he were allowed several prayer breaks during the school day, would a refusal to permit such breaks violate not only his rights but those of his classmates to a diverse, representative atmosphere of interaction?

44. Martin Luther King, Jr., Letter from Birmingham Jail (April 16, 1963), *available at* http://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html (last visited Feb. 5, 2007).

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