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# Democracy & Education

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## Educational Life in the Interregnum

### Race, Dis/ability, and Special Education

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#### **Abstract**

This article undertakes a comparative analysis of special education policy through the juxtaposition of two recent Supreme Court actions: *Allston v. Lower Merion School District* (2015) and *Endrew F. v. Douglas County School District* (2017). This comparison reveals an ordering of special education policy around questions of race. Specifically, this article argues that special education policy is governed by a racecraft of disability labeling that defines students of color as variously disabled and through a biopolitics of special education that expands disability services for individual students who are within the truth demarcated by scientific-juridical mediations of life. Against such negative inflections of life, this article concludes by turning to John Dewey's educational and democratic thinking to posit an affirmation of educational life that counters the morbid symptoms that presently define education's interregnum.

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**O**N APRIL 6, 2015, the Supreme Court denied *Allston v. Lower Merion School District* a writ of certiorari. *Allston* had sought legal redress for what the Petitioners argued was persistent, significant, and systematic racial discrimination. Central to this argument was the legal claim that Lower Merion School District (LMSD) had wrongly identified African American students as learning disabled and had as such disproportionality placed and kept Black students in special education environments, depriving the Petitioners of appropriate educations. Given the extent of racial discrimination, the Petitioners sought legal redress under Title VI of the 1964 Civil Rights Act originally before the District Court for the Eastern District of Pennsylvania and then before the Court of Appeals for the Third Circuit. On October 20, 2011, District Judge Harvey Bartle III granted summary judgment for LMSD, holding that the Petitioners had failed to produce sufficient evidence of racial

discrimination. This holding was affirmed in a 2–1 decision by the Third Circuit on September 12, 2014, and on October 29, 2014, the Court of Appeals denied the Petitioners' request for an en banc hearing.

The denial of certiorari for *Allston* helps to narrate the ways special education policy is implicated in a troubled history of racial discrimination in American education. As many scholars (Artiles, 2011; Connor & Ferri, 2005; Ferri & Connor, 2005a, 2005b, 2006; Harry & Klinger, 2006; Losen & Orfield, 2002) have noted, the disproportionate placements of Black students in special education classes subverts *Brown v. Board of Education* (1954) and facilitates the resegregation of American education. While denial of certiorari

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is not a legal decision and as such does not indicate a holding for either the Petitioner or the Respondent, reviewing the latter's Brief in Opposition shows the line of reasoning presented to the Supreme Court concerning the uses of disability labeling within, by, and for special education policy. In responding to the Petition, LMSD presented four arguments. First, the Third Circuit's holding involved application of well-settled law, and claims that it conflicted with other courts of appeals were fabricated. Second, the Petition did not raise a viable legal argument, but instead simply asked the Supreme Court to view the facts of the case differently and was thus nothing more than a request for error correction. Third, statistical and circumstantial evidence of the overrepresentation and disproportionate placements of minority students is not, in and of itself, probative. On this point, LMSD, citing the Third Circuit's majority opinion, argued that "each individual student's educational needs had been assessed and satisfied through a thorough individualized IEP [individual education program] process" ("Respondents Brief in Opposition," *Allston v. Lower Merion School District*, 2015, 3). Finally, LMSD argued that the Court's intervention was unwarranted given the Petitioners' ever-shifting positions "regarding the basic question of whether they are or are not disabled within the meaning of the [Individuals with Disabilities Education Act] IDEA" ("Respondents Brief in Opposition," *Allston v. Lower Merion School District*, 2015, 5).

The importance *Allston* has on special education policy is brought into relief through its juxtaposition with the recent Supreme Court decision in *Endrew F. v. Douglas County School District* (2017). On March 22, 2017, the Court unanimously held that Douglas County School District (DCSD) had failed to meet its substantive obligation under the IDEA to offer Endrew F. an IEP reasonably calculated to allow him to make adequate yearly progress appropriate to his circumstance as a child with autism. This holding vacated a previous decision by the Court of Appeals for the Tenth Circuit, which had held that to meet the intent of the IDEA, school districts simply needed to provide minimal special education services. Writing for the Court, Chief Justice John Roberts argued that the Tenth Circuit had wrongly interpreted the IDEA in maintaining that DCSD had met its substantive obligation to Endrew F. because it had done "merely more than *de minimis*." Against this limited legal interpretation, the Court established the more expansive standard that special education must be "appropriately ambitious" (*Endrew F. v. Douglas County School District*, 2017, 8), and should allow all children "the chance to meet challenging objectives" (*Endrew F. v. Douglas County School District*, 2017, 14). While *Endrew* raised a number of important questions about what legally constitutes free and appropriate education, its juxtaposition with *Allston* raises a more immediate question: "What's so special about special education for poor and minority children" (Colker, 2013, p. 2)?

In juxtaposing *Allston* and *Endrew*, this essay is interested in how special education policy juridically constructs individuals through scientific classifications that inhere disabilities as discrete rights. What results is a special educational interregnum within which "disability 'harms' and 'injuries' are only deemed bona fide within a framework of scaled-down disability definitions (read:

fictions) elevated to indisputable truth-claims and rendered visible in law" (Campbell, 2009, p. 110). Gramsci (1971) defined *interregnum* as a period of crisis between regimes during which "the crisis consists precisely in the fact that the old is dying and the new cannot be born; in this interregnum a great variety of morbid symptoms appear" (p. 276). Interregnum is a helpful analytic for noting the ways educational life is increasingly experienced through inflections of what Foucault (1990) discussed as biopolitics. *Allston* and *Endrew* provide a way of philosophically reflecting on the movement between educational regimes and on how these moves inflect student lives differently. Read together, these cases suggest juridical uses of classificatory science toward individual determinations of disabilities that preclude redress of the collective effects of racial discrimination and thus the birth of new conditions of educational life.

As Collins (2015) has demonstrated, legal juxtapositions evidence how special education policy exploits the interstice of race and disability toward the dislocation of Black lives. Given that special education is increasingly mediated legally, attending to cases that put into conversation how the Supreme Court's response to the uses of disability labeling differs when race is a constitutive factor is important for understanding the interregnum that presently structures American education. While *Endrew* has been celebrated by disability rights advocates, viewed against *Allston*, it reveals a morbid "biopedagogy" (Lewis, 2009), the lesson of which is that educational life is most easily imaged negatively as not disabled and as non-Black. The juxtaposition undertaken here is motivated by noticing how affirming educational life is made difficult by what Campbell and Sitze (2013) described as "biopolitical racism," that is, a racism that explains why, despite prolonged institutional attempts at inclusion, "certain populations nevertheless seem permanently incapable of achieving flourishing lives within those institutions" (p. 19). For Foucault (1990), biopolitics contingently qualifies which lives are deserving/eligible of fostering and disallows those lives deemed as undeserving/ineligible. These qualifications make life both a location for historical inquiry and a site of future political-economic speculations. It is within these legally mediated qualifications that students of color must navigate their educational futures. As this introduction suggests, these efforts can be disorienting as they requiring moving through legal ascriptions of one's status within education.

That life has both a historicity and futurity necessitates interrogating how special education policy uses inclusion to foster or disallow life. This interrogation is undertaken in two parts: First, by critiquing the normalizing *dispositifs* of ableism and Whiteness from the overlapping theoretical vantages of racecraft, DisCrit, and Critical Whiteness Studies; and second, through elaborating the policy implications of understanding intersections of race and disability as resulting from each moving between in/voluntary statuses. To illustrate these strange maneuverings, this second section undertakes genealogical readings of the learning disability (LD) label, the legal standard of separate but equal, and the psychological study of childhood. Each of these historical emergences presupposes that everyone is always already included—both scientifically and juridically—within both schools and

society. Fundamental to critiquing ableism and Whiteness, then, is an affirmative ontological reframing of disability as definitionally questionable and politically contestable and an epistemic reorientation of the normate gaze away from the abled and raced Other and toward the pathological tendencies of the norm.

### The Normalizing Educational Dispositifs of Ableism and Whiteness

While *Andrew* requires special education policy to do more than the minimum, it minimally disrupts the *dispositifs* of ableism and Whiteness. Taken together, ableism and Whiteness produce a present within which special education policy orders education generally first by qualifying what counts as an appropriate education and then through individual assessments of who—which bodies—are eligible for and deserving of such educations. Moving from sovereign power to the necessity that modern subjects learn to properly conduct themselves according to norms—“architectural forms, regulatory decisions, laws, administrative measures, scientific statements, philosophical, moral and philanthropic propositions” (Foucault, 1980, p. 194)—*dispositifs* are strategic responses to urgent needs that are reciprocally institutional and discursive and that are experienced through the dual processes of functional overdetermination and strategic elaboration. Turning to criminality, Foucault (1980) elaborated the workings of these processes. First, measurements of criminality produce conditions of delinquency within which individuals become subject to the legalistic construction of a delinquent milieu, which is invested in maintaining that delinquents have medically diagnosable behaviors. Having been overdetermined through medical discourses, criminality is transmogrified from being a negative legal effect (i.e., crime) to having positive political-economic purposes by its strategic elaboration into a medical profession (i.e., psychiatry) whose *telos* is the defense of society. This purpose produces ableist and racist conditions that assess every individual in society for the purpose of completing a picture of their heredity, ancestry, and childhood. While the derived images are often presented in court *as if* they were scientifically accurate, the genealogy of their knowledge is a eugenic defense of humanity against degeneration (Baker, 2002; Lewis, 2009).

Extended to schooling, preventing crime is presently elaborated through the medical-legal overdetermination of a school-to-prison pipeline within which students of color, especially those with disabilities, are disproportionately dislocated (Adams & Erevelles, 2015). Applied here, the *dispositifs* of ableism and Whiteness function within special education policy by ableist overdeterminations that project ability as species-typical and through strategic elaborations of Whiteness as property (Harris, 1993). Campbell (2009) noted that ableism is overdetermined by the construction of ableist ontological norms and through the epistemic maintenance of an abled/not-abled dualism. The resulting disableist milieu positions disability negatively, as something to be ameliorated without interrogating the norms that govern such efforts or those binary policies which maintain that persons are *either* disabled *or* abled. LMSD's Response employed such reasoning not only to discredit the Petitioners' argument that

they had been misidentified but to also position these students' disabilities negatively. The juxtaposition of *Allston* and *Andrew* thus evidences Campbell's biopolitical observation that the “law's investment in biomedicalism invokes a moral landscape wherein the unruly body is culpable and blameworthy (and thus held responsible) whereas the ‘real’ disabled body is innocent (thus deserving of legal protection)” (p. 35).

Within such investments, *Allston* emerges as part of a larger forgotten history of using institutional inclusion to disallow people of color flourishing lives. In contrast to the dualism used in *Allston* and the presumption employed by *Andrew* that particular disabilities are discrete and deserving of protection, DisCrit questions either/or uses of disability labeling and contests reductive medical and social models of disability. Reading Critical Race Theory (CRT) and Disability Studies together, DisCrit “recognizes the shifting boundary between normal and abnormal, between ability and disability, and seeks to question ways in which race contributes to one being positioned on either side of the line” (Annamma, Connor, & Ferri, 2013, p. 10). Given its interrogation of either/or thinking and its attention to the uses of the race and dis/ability, DisCrit critically extends Dewey's (1938/1997) critique of educational absolutisms. Viewed against, and in terms of, historically contingent articulations of the normed body as White, male, cis-gender, and able, DisCrit interrogates attempts to medically ground disabilities as biological impairments and to socially rationalize racial discrimination through scientifically neutral disability labels. In doing so, DisCrit highlights the scientificity of juridically sanctioned forms of racial discrimination and the politicality of scientifically assessed measures of race.

What results from these interrogations are disruptions to dichotomous and temporally linear uses of disability/ability and a critical appreciation for how special education policy variously constructs and maintains statuses of dis/ability. No longer an either/or, dis/ability embodies an educational use value that situates students of color and their White peers differently despite the presumed universality of inclusion. As bodies already marked by racism, students of color are more likely to experience dis/ability from a positionality that dislocates them as being “at risk” and or as having cultural deficits in need of “fixing.” Uses of dis/ability within special education policy ignore how the collective effects of racial discrimination dislocate students of color as “non-citizens and (no)bodies by the very social institutions (legal, educational, and rehabilitational) that are designed to protect, nurture, and empower them” (Erevelles & Minear, 2013, p. 355). Ultimately, DisCrit forces special education policy to contend with how race and dis/ability strangely maneuver between scientific and juridical adjudications and to acknowledge that “without racialized notions of ability, racial difference would simply be racial difference” (Annamma et al., 2013, p. 15).

Understood as a sleight of hand that is easy to miss, special education policy maneuvers through individualized confluences of race and dis/ability within which “racism and ableism often work in ways that are unspoken, yet racism validates and reinforces ableism, and ableism validates and reinforces racism” (Annamma et al., 2013, p. 6). Important to these maneuverings is that race and

dis/ability are taken for granted as objectively real. Fields and Fields (2014) defined these strange maneuverings within which “racism, something an aggressor *does*” is transformed into “race, something the target *is*” as racecraft (p. 17; original emphasis). Disability labeling furthers the taken-for-grantedness of race because it lends scientific explanations to social practices predicated solely upon heredity, ancestry, and childhood. Noting the importance of recognizing the collective intersections of race and dis/ability, Ogbu (2004) drew critical attention to how a racecraft of disability labeling disallows students of color appropriate educations by dislocating minority identities as populational status problems:

*Status problems are external forces that mark a group of people as a distinct segment from the rest of the population. A group so created is usually bounded and named . . . Status problems are collective problems which members of the subordinate group find difficult if not impossible to solve within existing systems of majority-minority relations. (p. 4)*

Racecraft exposes the sumptuary codes behind the external forces that mark race for the purposes of creating populational groups. Moving through present-historical folk classifications of race, including contemporary uses of DNA, Fields and Fields (2014) demonstrated how racecraft “highlights the ability of pre- or non-scientific modes of thought to hijack the minds of the scientifically literate” (pp. 5–6). A racecraft of disability labeling thus functions as both science and superstition. For example, while crime is the political-economic effect of a delinquent milieu, because criminals are believed to exist, their existence can be readily proven by testing prisoners for criminal genes. The capacity of racism to prove the existence of race while also disappearing behind ableist classifications helps explain why racecraft purposefully invokes witchcraft, which also worked by maneuvering between scientific and superstitious descriptions to transform an epistemic label (witchcraft) into an ontological status (witches). Within the circularity of this circumstantial logic, “witchcraft has no moving parts of its own, and needs none. It acquires perfectly adequate moving parts when a person acts upon the reality of the imagined thing; the real action creates evidence for the imagined thing” (p. 22). Like the seemingly antiquated belief in witches, racism (and ableism) are thus an “action and a rationale for action, or both at once” (p. 17).

The critical frame of Whiteness lends further explanation to a racecraft of disability labeling and the formation of minority identities as status problems. The biopolitical racism of special education policy invokes what Leonardo (2009), extending Mills’s (1997) formulation, describes as a Racial Contract. The implicit consensus of this sumptuary codes is that students of color enter into a world already structured by state apparatuses, like schools, which function as “mechanisms of white power in a herrenvolk democracy where the dominant white group experiences liberty at the expense of the subordination of racial groups” (p. 52). Special education policy contractually obfuscates Whiteness through appropriately ambitious IEPs that at once codify personal sovereignty as scientific and reasons disabilities as juridically discrete.

Such scientific-judicial adjudications disperse, by rendering invisible, the functionings of special education’s Racial Contract. While a Whitening of autism has been documented (Eyal, Hart, Oncular, Oren, & Rossi, 2010; Heilker, 2012), the critical reading of *Endrew* undertaken here is less concerned with knowing why White children are more likely to be diagnosed with autism and more interested with interrogating how the pathological tendencies of ableism and Whiteness make it easier to discretely inhere a diagnosis that relies on eccentric expressions of personal sovereignty to bodies that are already interpolated as not only possessing rights but having rights based on their expected future use value. Both interpolating effects makes Whiteness, as Harris (1993) argued, a property.

Understood as an extension of Whiteness, rights are things that come to be possessed and leveraged as property by Whites as a dispensation from communal obligations. While rights are foundational to this possessive logic, as Leonardo and Broderick (2011) made evident, to whom disability rights inhere is contingent upon a series of interest convergences that expand the juridical and scientific borders of Whiteness: “Whiteness as an ideology is untied to certain bodies,” rather it is an “articulation of disparate elements . . . that benefit Whites in absolute ways and minority groups relative only to one and other” (p. 2209). As a series of disparate elements, Whiteness recruits into its propertied borders identities that extend its political-economic reach. *Endrew* points to how juridical practices affirm individual lives as deserving of and eligible for fostering when they are recognized as sovereign and in possession of their disabilities. Arguing against these legal protections, Leonardo (2009) has noted that Whiteness as property requires first propertizing Black bodies and secondly transforming the political-economic benefits of this maneuver into common sense (p. 177). American jurisprudence is thus predicated upon Whiteness being a private possession whose immediate guarantee is indefinitely extended into the distance through legal protections that enclose life by rendering it private property.

Within this common sense, dis/ability often goes unrecognized as a property due to the obfuscating effects of special education’s Racial Contract. In expanding the scope of IEPs, *Endrew* reinscribes individualized rights claims and property damages as the proper avenues for legally redressing misuses of special education. Accordingly, even when legal decisions are not ostensibly about race, Whiteness is still validated as a property with an expected future use value that is deserving of and eligible for legal protections. The appropriately ambitiousness of special education policy post-*Endrew* is thus likely to extend the biopolitical horizons of Whiteness to include dis/ability while continuing to define students of color as status problems who, because they are dislocated by the propertied logic of Whiteness, are likely to be included within special education policy as populational groups who are “at risk” or in need of “fixing.” Extending this reasoning, Campbell (2009) argued that the same interest convergences that govern special education’s Racial Contract also orders how the law narrates dis/ability. That is, similar strange maneuverings work to delimit the *ability* of students of color to legally redress racial

discrimination even while contingently qualifying dis/ability through a racecraft of disability labeling.

Turning to CRT, Campbell (2009) has noted that ableism, like Whiteness, also functions through dispersals. Campbell's theorizing of dispersal echoes Ogbu's (2004) arguments about the collective experiences Black students have with racism while also bringing into critical relief how the Racial Contract that governs special education policy displaces students of color into undesirable special education environments through a racecraft of disability labeling. Within the present interregnum, disablement is dispersed and ableism is emulated toward individualizations of disability labeling that often leave students of color to internalize their oppression or alter their selves toward performances that reinscribe Whiteness. Similar to how Whiteness renders special education's Racial Contract invisible through interest convergences that appropriate dis/ability, the dispersal of ableism works by dislocating disablement as a non-normate way of being and stigmatizing difference often to the point of erasure. Dislocated special education classrooms and the resegregation of American education evidence this erasure as do racial performances like "acting white" (Ogbu, 2004) and ableist celebrations of exceptional persons who refuse to be defined by their disability. Each of these moments of erasure is witnessed by ableism and Whiteness as signs of progress, as inclusive movements toward a future negatively defined as not disabled and non-Black.

### **The Temporality and In/voluntariness of Race and Dis/ability**

Attending to the biopolitical implications of *Allston* and *Andrew* suggests that in addition to joining life and special education policy through scientific-judicial adjudications, there is also a neoliberal logic that presumes everyone is already included within both schools and society. This logic requires individuals to articulate needs as a qualifying condition of their sovereignty. IEPs contractually structure this arrangement because the capacity to request educational resources qualifies individuals as sovereign beings in possession of their disabilities. By contrast, there is little investment in juridically undoing scientifically ascribed disability labels given that they have already satisfied special education's Racial Contract. The juxtaposition of *Allston* and *Andrew* evidences how special education policy forces students of color to articulate harms that are populational and often aimed at undoing previously ascribed disability labels, even while it expands qualifying conditions for students who can articulate disabilities within an educational regime ordered by future personal and propertied inflections of life. Within this interregnum, there is not an outside to schooling or society; rather, individuals exist as part of a totality of other individuals, all of whom compete to successfully articulate their needs (Simons & Masschelein, 2015).

This individual/totally double bind means that no one is excluded from society even if particular populational groups are disallowed flourishing lives by its social institutions (i.e., schools). Instead, life is governed as if it were an individual political-economic domain of freedom. Extending biopolitical racism to legal questions of dis/ability, inclusion comes to mean that even though "certain people have 'mental or physical handicaps'—in the

traditional sense—[there] is not a reason to exclude them because they, like others, have their own needs, and each of their lives can include enterprises as much as can the respective lives of nonhandicapped people" (Simons & Masschelein, 2015, p. 217). Expected future economic-political uses of oneself as an enterprising individual govern how special education policy uses inclusion to overdetermine rights as strategic elaborations of a Racial Contract whose legal logics produce a "matrix of scientific ableism" (Campbell, 2009, p. 33). IEPs do not equalize educational conditions as much as they reconfigure the allocation of educational resources through racially inflected scientific-judicial adjudications of dis/ability. Ogbu (2004) problematized this presumption, noting that "minorities experience their mistreatment regardless of their individual differences in education and ability, in status, physical appearance or place of residence" (p. 5).

This argument raises the importance of temporally engaging with special education policy. If, as Ogbu (2004) evidenced, minorities experience being interpolated as status problems across time, then special education policy functions atemporally toward students of color. In contrast to static formations of minorities as status problems, Whiteness can transmogrify its propertied borders to include dis/ability. Disability case law has similar temporal functionings that variously position everyone as already potentially disabled while also suggesting that disabilities are temporary given the existence of ameliorative technologies (e.g., cochlear implants). Further extending DisCrit into special education policy, this section attends to how race and dis/ability are made and unmade as in/voluntary statuses. First, this section reflects on Campbell's (2009, 2015) legal observations that dis/ability classifications are mitigated by either/or medical-legal distinctions that presume individuals have either immutable (involuntary) or elective (voluntary) disabilities. A brief genealogy of the LD label evidences the capacity of special education policy to strangely maneuver between in/voluntary statuses. Next, this section genealogically explores the involuntary ways schooling forms the identities of students of color. Within the history of special education, two emergences evidence this formation: *Roberts v. City of Boston* (1849) and progressive-era studies of childhood. These events produce a temporal horizon against which race maneuvers strangely between in/voluntary dis/ability statuses.

In/voluntary distinctions of dis/ability make it something that is dependent upon degrees of amelioration. According to this reasoning, involuntary disabilities are deserving of and eligible for care, whereas voluntary disabilities are undeserving and ineligible for support because they result from individual choices. Campbell (2009, 2015) has suggested that voluntary disabilities require individuals to articulate their needs or else risk being sanctioned for not taking responsibility for their status problem. Disability case law, like recent case law that has converged to argue that African Americans no longer deserve electoral protections, is intended to delimit which bodies get access to disability labels by claiming that if everyone is potentially already disabled, then everyone is legally included within the matrix of scientific ableism. This reasoning precludes an understanding how disability labeling is used within special education policy. While *Allston* was

undoubtedly included within the meaning of the IDEA, its inclusion differed markedly from the appropriately ambitious inclusion mandated by *Endrew*.

The genealogy of the LD label attests to this difference. As Sleeter (1987) noted, the LD label emerged within the historical context of postwar American educational reform and was motivated by a desire among White parents to see that their children were not labeled according to the extant psychological categories of mentally retarded, slow learner, emotionally disturbed, and culturally deprived. As originally conceived, the LD label was thus intended for failing White students whose poor academic performances differed from those of students of color. In developing this label, psychologist borrowed diagnostic language from nineteenth- and twentieth-century medical studies of brain injuries to derive a “belief that some sort of organic defect causes some people difficulty in learning to read” (Sleeter, 1987, p. 225). Said differently: the LD label emerged as an involuntary disability. This use of the LD label was furthered by its statutory definition, which excluded children who have “learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or environmental, cultural, or economic disadvantage” (Education for All Handicapped Children Act of 1975, 3). That the IDEA also excludes emotional disturbance in defining autism raises questions about the intended audiences of both labels and how disability labeling interacts with neoliberal uses of inclusion.

This is not to suggest that *Endrew F.*'s status as a child with autism is voluntary or that it should be read as a fiction; the intent is rather to bring into critical relief how the present neoliberal interregnum is more likely to recognize the immutability of discrete disabilities than the involuntary statutes ascribed to racialized minorities. This is because American jurisprudence inflects *Allston* and *Endrew* differently. *Endrew* is an instance of redressing a personal injury and economic harm. The tragedy of *Endrew* is located in the future expected uses of education for which *Endrew F.* is both eligible and deserving but which inappropriate IEPs curtailed. By contrast, *Allston* is a moment of social injury that is collectively unjust but not tragic because each of the Petitioners' needs were individually satisfied. The codification of the LD label in the Education for All Handicapped Children Act (1975) and the exclusion of emotional disturbance from the definition of autism found in the IDEA evidence how special education policy variously instantiates the in/voluntariness of dis/ability. Biopolitical materialities like environmental, cultural, or economic disadvantage as well as emotional disturbances instead reflect voluntary choices to live in poor neighborhoods or attend failing schools. The logic employed by LMSD parallels Campbell's (2009, 2015) observation that individuals with disabilities are expected to avail themselves of ameliorative technologies. Indeed, given the availability of such technologies, individuals who fail to do so might not be considered disabled within the meaning of the Americans with Disabilities Act (1990) because they should have chosen to mitigate their disability.

If the LD label emerged to protect the expected future uses of White children's educations, then the logic of separate but equal

and progressive-era studies of childhood confirm how education orders the inclusion of children of color. *Roberts* prefigured the neoliberalization of inclusion through the logic of separate but equal while also foreshadowing a racecraft of disability labeling. Sarah Roberts was a young Black girl who sought redress before the Massachusetts Supreme Court for having been denied admittance to White-only common schools. Central to Roberts's claim was that she had to walk past five White-only schools to attend a Black-only school, which was some distance from her home. In finding for Boston, the court held that Roberts was not definitionally excluded from attending school because she was already legally included within Boston common schooling:

*The plaintiff had access to a school, set apart for colored children, as well conducted in all respects, and as well fitted, in point of capacity and qualification of the instructors, to advance the education of children under seven years old, as the other primary schools . . . Under these circumstances, has the plaintiff been unlawfully excluded from public school instruction? Upon the best consideration we have been able to give the subject, the court are of the opinion that she has not.* (p. 1708)

Deferring to the judgment of the Boston School Committee (BSC), the court argued that the BSC can legally prescribe qualifications for school admittance and thus organize common schooling as it deems fit. This meant that so long as a Black school was available, the BSC was operating statutorily. The court furthered this separate-but-equal logic by grounding Roberts's segregation through an appeal to how the BSC established intermediate schools in response to what Osgood (1997) describes as an undermining of the common school ideal:

*It has been found necessary, that is to say, highly expedient, at times, to establish special schools for poor and neglected children, who have passed the age of seven, and have become too old to attend the primary school, and yet have not acquired the rudiments of learning, to enable them to enter the ordinary schools . . . and it is expedient to organize them into a separate school, adapted to their condition.* (p. 1710)

Inflecting *Allston* through *Roberts* evidences how inclusion is used to create discriminatory educational conditions. Reading these cases together, the following reasoning emerges: The Petitioners had access to an education even if it was set apart through special education practices that marked these students as learning disabled, according to the expediency of a thoroughly individualized IEP process. *Roberts* also brings into critical relief a paradox of the Racial Contract. In the decades following the common school era, school attendance will become a legal mandate, which will require students of color to voluntarily submit themselves to a system of education that, as Baldwin (1963/1998) observed, is not intended for their lives. Marked by scientific classifications that move faster than the possibilities of legal redress, Ogbu (1990) warranted why Roberts found it difficult to redress her status problem within extant systems of race relations by arguing that African Americans experience schooling and society as involuntary minorities. In distinction to autonomous, or

numerical minorities (i.e., Jews and Mormons), and voluntary minorities, or immigrants whose previous cultural locations provide them with extant collective identities that tend to be understood by Whiteness as additive, involuntary minorities are “people who did not initially chose to become members of a society; rather they were brought into that society through slavery, conquest, or colonization” (p. 46).

Redress for persistent, significant, and systematic racial discrimination is difficult because such efforts reify the conceit that race is objectively real, despite being a scientific-juridical invention used for the explicit purpose of racial subordination. Extending this analysis, neoliberalism requires Roberts’s inclusion because democracies do not contractually exclude even if segregation remains an operative practice (Simons & Masschelein, 2015). Similarly, while LMSD argued that the Petitioners first desired and then sought to revoke their LD labels, statements from the Petitioners express frustration about the process of disability labeling. It was not, then, a series of ever-shifting positions that led some Petitioners to rescind previous requests for disability status but their experience with IEPs as delimiting their possibility of receiving appropriate educations. Baker’s (1998) genealogy of childhood is another reminder of how special education’s Racial Contract presumes a temporality that is applied differently to different student bodies. The emerging study of children, a historical precursor of special education, was predicated throughout upon the construction of Blackness “as synonymous with ‘savagery’ and with childhood at all ages,” which meant that “one could have a childhood only if one was eventually able to occupy adulthood,” and “one could not occupy adulthood if one was thought to have inherited ‘savagery’” (p. 127). The conclusion to this racist syllogism was that moving beyond childhood requires individual students to supersede Blackness, that is, to individually escape inappropriate educational conditions, a movement that education continues to define as educability. Furthermore, defined biopolitically and “encoded in the meaning of ‘scientific pedagogy,’” Blackness became “the property through which Whiteness could secure itself” (p. 128).

Extending Harris (1993), possessing or “having” a childhood helps explain why, despite prolonged institutional attempts, students of color seem permanently incapable of achieving flourishing lives. Against the emergences of separate but equal and eugenic studies of childhood, Ogbu (2004) critiqued how the individualizing *dispositifs* of ableism and Whiteness continue to collectively dislocate involuntary minorities as educational status problems:

*[I]nvoluntary minorities respond collectively as a group and they respond as individuals in ways that reinforce their existence and collective identity . . . That is, their very attempts to solve their status problem leads them to develop a new sense of who they are, that is in opposition to their understanding of who the dominant group members are. (p. 5)*

Read together, Baker (1998), Campbell (2009, 2015), and Ogbu (1990, 2004) suggest that determinations of who—which bodies—get to “have” a childhood attests to how scientific

reasoning superstitiously embodies and then puts to use childhood for particularizing biopolitical ends. Those colonial populations encountered through child study became involuntary minorities whose existence outside the temporality of Western civilization warranted their racial subordination because of their ascribed disabled and childlike statuses. This reasoning continues to justify special education interventions into the lives of children of color who remain eugenically positioned as being “at risk” and in need of “fixing.” Scientific speculations about the future qualifications of which lives matter finds a legalistic corollary in the uses of disability labeling to obscure the collective lived experiences of students of color in favor of already prescribed individual educational futures.

*Allston* and *Andrew* are contemporary examples of how special education policy both constructs and maintains in/voluntary statuses through convergent uses of race and dis/ability. On the one hand, *Allston* requires students of color to articulate harms that are collective while denying their collectively shared involuntary experiences with racism; on the other hand, *Andrew* expands individual rights for students with discrete disabilities who articulate individual injury as an economic harm that prevents their voluntary future uses of education. The collective harms being challenged by *Allston* are complicated by LMSD’s argument that the Petitioners’ disabilities were ever-shifting and thus potentially voluntary, whereas the regime of personal sovereignty being celebrated in *Andrew* is complicated by presumptions that discrete disabilities are involuntary and that rights inhere equally across the population despite being particular in their design and immunizing in their intent. Impacting this juxtaposition, Baker (2002) has argued that “institutions can make judgments about further categories such as race, class, sexuality, and gender by calling them ‘individual differences’ or something else (‘intelligence’) and refer for security’s sake to the exam results” (p. 694). Any examination, as Fields and Fields (2014) demonstrated, results in an unequal rank ordering of individuals through sumptuary codes that always justify previous classifications and which already disallow those populational groups dislocated by the examination appropriate educational futures.

### **Conclusion: Affirming Educational Life**

The temporality of race and dis/ability provides a critical backdrop against which the future possibilities of educational life can be addressed. A racecraft of disability labeling makes possible the continuing maintenance and construction of racial discrimination because special education policy attends to the amelioration of life by enclosing it within a propertied logic that values education according to its expected future use value. This temporality not only governs which disabilities are understood to be in/voluntary but also orders the inclusion of involuntary minorities within special education. The present-historical configurations of special education policy explored in the previous two sections attests to the uses of disability labeling to delimit the educational growth of students of color and to restrict their access to appropriate educations. In suggesting an affirmation of educational life, this concluding section gestures toward the life-affirming possibilities of

education understood as, Esposito (2008) has argued, the pluralization of life rather than protections of individual lives. Understood affirmatively, education becomes a space where the collective lived experiences of students of color are valued for their educational vitality. Such valuations take seriously Dewey's (1916/1997) democratically motivated claim that "since education is not a means to living, but is identical with the operation of living a life which is fruitful and inherently significant, the only ultimate value which can be set up is just the process of living itself" (pp. 239–240).

Thinking through educational life affirmatively holds in attention how the *inability* to make life a norm toward which special education policy is articulated interdicts against the living possibilities of education. As education becomes more scientifically and juridically mediated, the possibilities of future growth become increasingly delimited. This means that education is inextricably biopolitical and raises the question of whether life can be preserved apart from its negative protections. The juxtaposition of *Allston* and *Andrew* is attentive to these particular embodiments of educational life and to the uses of disability labeling to qualify life within education. Remembering Colker's (2013) question, we might also ask: If education is something that cannot help but inflect life, how might education and life be read together to counter the morbidity of education's present interregnum? What is needed contra apparatuses that secure the propertied futures of specific children are practices of education capable of releasing the biopolitical energy of childhood. Such practices must account for how race and dis/ability have genealogically defined educational life through a racecraft of disability labeling. Arguing against adherence to strict empiric definitions of childhood, Dewey (1902/1990) noted that the child and the curriculum are mutually constitutive forces rather than discrete essences:

*Abandon the notion of subject-matter as something fixed and ready-made in itself, outside the child's experience; cease thinking of the child's experience as also something hard and fast; see it as something fluent, embryonic, vital; and we realize that the child and the curriculum are simply two limits which define a single process.*  
(p. 189)

Following this formulation, children of color are no longer problem-solvers, which suggests a negative attention to deficits in intelligence and an overemphasis on ability, but become problem-posers, which means science is not something done by psychologists to them through eugenically motivated examinations but is something that is already a part of their everyday lived experiences. Within this formulation of educational life, the present becomes a problem for inquiry. If science has a troubling history of being applied to children of color, it is important to experiment with present life as a creative force through which these children can reinscribe the world with new collective meanings. In reconfiguring the temporality of race and dis/ability through childhood, it is perhaps helpful to recall Dewey's (1938/1997) own historical thinking: "the sound principle that the objectives of learning are in the future and its immediate materials are in present experience can be carried into effect only in the degree that present experience

is stretched, as it were, backward. It can expand into the future only as it is enlarged into the past" (p. 77). A continuity of experience thus organizes both the lives of students of color and the life of education. The problem for education, then, is not a dearth of pedagogical situations or a lack of biopolitical energy, but a failure to utilize these situations and this energy methodologically. Understood as scientific inquirers in the world rather than objects of scientific study, children of color provide a way "for getting at the significance of our everyday experience of the world in which we live" and "a working pattern of the way in which and the conditions under which experiences are used to lead ever onward and outward" (p. 88).

To move onward and outward, education must recognize the increasing role special education policy plays in defining educational life and qualifying life within education as well as the ways either/or thinking continues to inform how such policies use race and dis/ability. For Leonardo (2009), any such confrontation will necessarily require practices of neo-abolition within which White students and parents own their racialization. This formulation attends to how Whiteness operates as property within special education policy without ever having to be owned by those who benefit from such operations. Critical Whiteness Studies brings into relief how certain disabilities can be possessed to the benefit of White students and parents without either having to own their Whiteness. Divesting special education policy from Whiteness thus requires first acknowledging how education is invested in perpetuating possessive neoliberal logics even while Whiteness forgets its past. In contrast to moments of forgetfulness, Ogbu (2004) noted that involuntary minorities tend to view the past as a condition of potential success that often stands in contrast to present iterations of poor school adjustment and academic performance. Echoing Leonardo, this temporal critique reminds special education policy how it ascribes disability labels onto students of color in ways that interpolate them as disabled often in contrast to these students' past and present lived experiences. Constructed as such, involuntary minorities tend to view their cultural differences not as barriers to be overcome but as strengths that distinguish them from Whiteness. Accordingly, educational life for involuntary minorities is less about acquiring individualized disability labels and more about collectively overcoming persistent, significant, and systematic racial discrimination.

While building an affirmative theory of educational life will have to be attentive to these insights, there is perhaps scaffolding already contained within Dewey's (1938/1997) reflections on experience and education. In dispelling the either/or thinking that accompanied debates between traditional and progressive education, Dewey rejected dualisms that position experience and education, the child and the curriculum, and the school and society as oppositional. Instead of negations designed to protect life, Dewey argued for the creation of *and/and* spaces within which life might circulate as lived growth. This biopolitical formulation suggests that rather than imposing new scientific-judicial adjudications, special education policy should recognize those experiences which already exist. Such affirmations make possible future critiques of how a neoliberal philosophy of life

cannot be understood apart from the lives such a philosophy makes possible while also providing entry into imagining educational life once again anew, as a practice of living.

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