

Public Law 94-142 Reconsidered<sup>1</sup>

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Declarations And Proclamations

The United States declares its independence. The United Nations declares the right of disabled persons. UNESCO brings together its member countries to declare a plan to prevent disability but also to integrate those so afflicted. Similarly, the Syracuse University Center on Human Policy brings together its supporters to declare the inalienable rights of all human beings and the inviolate responsibilities we have to each other. And so it goes. Nations, official organizations, and private societies take it upon themselves from time to time to declare what's good for society or portion of it. Sometimes the declarations stick, like the Magna Charta or our own Declaration of Independence. Sometimes, they are not worth the paper they're printed on because they are forgotten even before the print is dry. The Emancipation Proclamation is one thing, while going to a spare-ribs restaurant to celebrate Brotherhood Week is something quite different.

So what is Public Law 94-142, "the Education of All Handicapped Children" federal legislation which went into effect in 1975? Was this law worth the paper it was printed on? Was it worth the plethora of debates and explanations which some feared would "talk it to death?" Now, ten years later we must ask the question: "Was it all worth it?"

<sup>1</sup>In 1978, I wrote a chapter for Heinich's book, Educating all handicapped children. I titled it, "On the bill of rights and related matters." I have now taken that paper and rewritten it based on the experiences of the past decade.

## Slogans

What countries, states and large organizations do with declarations and proclamations, they (and smaller and less official groups) also accomplish with slogans. And so in virtually every airport, on the television, on billboards we read, "A mind not used is a terrible waste". Who will argue about the slogan with the United Negro College Fund? Or who will argue with the Center on Human Policy's new slogan on behalf of the mentally retarded, "Don't think that we don't think"? There's nothing "wrong" with such slogans, but they leave out too much that shouldn't be left out; or they reflect a set of values out of balance with what should be the needs and aspirations of a decent society. For example, when have you last seen a slogan, "Friendship not expressed is a terrible waste"? When have you seen something like, "Don't think that we don't have feelings"? Lots of important things left unexpressed are terrible wastes--like love, compassion, decency. Lots of human strengths go unnoticed by the mob--such as being helpful to another person, or courage in the face of adversity, or kindness when it could be overlooked.

Again, it isn't that any of these slogans are "wrong"--but they oftentimes do not tell enough, and they sometimes camouflage the real issues--such as when we hear "America first", the "moral majority", "America--love it or leave it", and "let's return to our basic values".

So what does it mean to enact a national law that is called a "Bill of Rights for the Handicapped"? What does it mean when the government guarantees a "least restrictive environment," "individualized educational programs," and "due process safeguards" to all handicapped children? Our history is so strewn with subterfuge, hypocrisy, and downright silliness dressed up as glorious proclamations or slogans that we must examine carefully such promises and their bases.

### The Perspective

Why the United States? As you know, on July 4, 1776, the Declaration of Independence set down reasons. Entitled by the laws of nature and God, we are a nation equal to other nations. As individuals, we are created equal and we have certain inalienable rights. No foreign government may set aside this country's equality among the family of nations and each individual's equality within the human family. Independence had to be declared when once loyal colonists refused to tolerate a King of Great Britain who would deny us that most valuable of all freedoms--free will. Free will, which even God does not intrude upon, formed the core of the idea we call America. School children know all of this, but too few adults do.

Signed on September 17, 1787, and ratified by the States a year later, the Constitution described that more perfect union in terms of justice, common welfare, and liberty. The first ten amendments to the Constitution were enacted on December 15, 1791. Eight of these are known as the Bill of Rights. And for good reason. As the Declaration of Independence proclaimed that all men have the right to life, liberty, and the pursuit of happiness, these and later amendments enlarged and deepened such guarantees. It's all there: the form of our government, the freedom, due process, equal protection, and equal rights.

But if it's all in the Constitution and its amendments, how did the Founding Fathers explain the treatment of certain "different" people? Why, despite constitutional guarantees, did many people have to fight for their rights? You may not like their answer, but here it is. The idea of equal treatment is based on the premise that people are equally valuable as human beings. Otherwise, such a claim doesn't work. As for a relevant example, in

the Virginia Declaration of Rights, which served as the basis of our Bill of Rights, slaves were not considered constituents of society; the principle, "all men are equally free" did not apply to them. The fact of slavery produced the "fact" of inhumanness about that oppressed group. And that fact was "necessary," else how could slavery have been tolerated by a civilized state? How indeed? So the Blacks were specifically excluded from enjoyment of supposedly inalienable rights until, of course, the Emancipation Proclamation and the 13th, 14th, and 15th amendments. And as most everyone knows, until enactment of the 19th amendment, women were denied the franchise and even today are denied a great deal more than could ever be articulated in the laws. Of course, there are other examples that come to mind--Nazi Germany the most obvious, where 13 million people perished because their lives were "devoid of value".

Tradition takes almost forever to die, especially unjust tradition. Therefore, although Blacks and women have come a long way in the United States, it's only within recent years that they have attained the semblance of true equality. Now we must examine another oppressed group, the so-called handicapped, and redress violations of their inalienable rights; the law is a human instrument that requires constant surveillance and tinkering sometimes.

The handicapped have always been a paradox to Americans. And in America. In this Land of Opportunity, they seem unable to seize opportunities. In the Land of the Free, they are enchained. In the Land of Plenty, they are in need. In America the Bountiful, they are treated meanly. For them, the idea of America is little different than the idea of the Totalitarian State. But that which was denied Blacks and women by statutes, has more often been denied the handicapped by handshakes and winks of ladies and

gentlemen. What was legislated and implemented in the guise of friendship and compassion for the handicapped--sterilization codes, marriage prohibitions, even euthanasia--did not free but further restricted them or denied them their very lives. Especially here, the flight to legalism reflected the weakness rather than the strength of our society, for what was not legislated was perpetrated--in the name of treatment or protection, but often with negative consequences. What has been done to those human beings does not make for a pleasant story. What we have done does not make our lives pleasant.

Like the Blacks, the severely handicapped especially were not considered to be persons as you and I are persons. Unlike the Blacks, the founding laws of our land were silent about them. Unlike the Blacks, the handicapped were not considered to be valuable merchandise and, thus, were not a political issue. Times have changed. For whatever reasons--compassion, votes, humanism, dollars--the handicapped are big business today, are political factors not to be taken lightly. My thesis is that, had the original Constitution and Bill of Rights included the handicapped, the Bill of Rights for the Handicapped would be unnecessary. Furthermore, this newer Bill of Rights is necessary for exactly the same reasons that the 13th, 14th, 15th, and 19th amendments had become necessary. However, because the Constitution was so absolutely silent about the handicapped, there is nothing relevant concerning them to amend. Consequently, we needed Public Law 94-142, the Bill of Rights for Handicapped Children.

#### Education of All Handicapped Children

There should be something called "The Law of Inertia." With seeming inevitability, when action on an important issue is indicated, it is either too early or too late to do anything at the moment. Furthermore, the

predominant theme of the day is "business as usual." And nowhere are these two motivations--"inertia" and "business as usual"--observed with more regularity than in government. If forming this nation had been contemplated during our time, the Founding Fathers might have waited so long to declare its independence that it never would have happened; people would have surely become bored with the whole thing. Research on an important issue doesn't seem to matter either, such as the research on exercise. If you don't exercise, you will experience 25% increased danger to your vital system. If you do exercise, you will also experience 25% increased danger because of something that has to do with shock to a flabby and indolent body. It seems that today we can't get a school bus to go on an agreed route much less create a country--or an educational mandate. Of course, school busing is an important and complex issue. But that's the point; we can't seem to deal with important and complex issues. Maybe technology itself is part of the fault as well as the solution. A computer mistake gets multiplied, its effects influencing the lives of thousands of people. Maybe the telephone is partially to blame; a lie is transmitted all too quickly. Maybe the tube; the mistake is immediately made known to the world (the living room bore offers almost instantaneous knowledge of what were once the dark secrets of kings and king makers). Maybe as it now seeks to come to our rescue, technology itself must bear some responsibility for the many leaders today who lead so few and for the many advocates in a culture that is characterized by such weak advocacy. Maybe with the magnification of mistakes today, few in government will take responsibility to act. Of course, there is another explanation of the notion that governments change slowly. There's something to the belief that organizations are most successful when they deal vigorously on behalf of individuals but conservatively on issues related to complex systems. Nevertheless,

the point remains that governments respond reluctantly to the demand for major systems change, however powerful a case for change may be.

Hence, "everyone's" surprise with the passage of P.L. 94-142. It caught us unprepared, stunned and still unbelieving. And who's to blame us? Who was to believe that, by 1982, the federal government would invest 3.1 billion dollars a year in this program? I didn't. But that, I thought, was my problem more than it needed to be your reality. So I acted as if my cynicism was but another of my aberrations. And I tried not to appear as if I was always searching for the likely perversions of the legislation. Yet admit it, wasn't it a surprise that our government enacted this law and scheduled its full implementation by fiscal year 1978? Didn't most of us merely go through the motions of trying to give support to the bill that eventually became the law? Weren't there only a zealous few who believed in its inevitability? Of course. And who ever believes zealots?

As Goodman noted (1976), the law was a blockbuster. Not only would the handicapped feel its influence, not only would the schools feel its influence, but the entire nation would feel it. Overwhelmingly passed by the Congress, it put the nation's stamp on the claim that the handicapped child is entitled to a first-rate education, thus making the claim for all children. But why did the Congress pass what was believed to be the most significant federal legislation relating to the schools since the enactment of Title I of the Elementary and Secondary Act of 1965? And why then?

As reported to the Congress at the time, the situation was alarming. There were reputed to be more than 8,000,000 handicapped children in the United States, but more than half of them did not receive appropriate educational services. A million of these children were excluded or exempted from any public school opportunities, appropriate or otherwise. Because of

the unavailability of adequate programs within the public schools, many families were forced to look elsewhere for services--and at their own expense. It also seemed that teacher training institutions were in better positions than ever before to provide sufficient instruction for regular and special education teachers to serve this group. It seemed that in 1975, more than ever before, state and local agencies accepted responsibility to provide services to the handicapped, but inadequate resources prevented them from fulfilling such responsibilities. Simply, it was the conclusion of the Congress that it would be in the best interests of our nation if the government would engage more directly and vigorously in educational programs on behalf of the handicapped. The Law appeared to become the exception to the Law of Inertia.

P.L. 94-142 had been written about to the point of saturation. However, it may be well to briefly note some of the major elements which comprised this Law: (Gettings, 1976).

1. A new entitlement formula was to go into effect in fiscal year 1978. Under it, states would be able to receive amounts equal to the number of handicapped children between ages 3 and 21 receiving special education services multiplied by a specified percentage of the average per pupil expenditure in public schools in the United States. Federal aid would increase from 5% in fiscal year 1978 to 10% in fiscal year 1979. In fiscal year 1982 and in succeeding fiscal years, federal aid was supposed to grow to 40%.

2. To discourage states from including non-handicapped children in the program, the law provides limitations on the numbers who may be counted (to a maximum of 12% of total school age population between the ages of 5 and 17) and also limits to no more than 2% the percentage of children who may be counted because of specific learning disabilities.

3. To qualify for participation, the state was required to establish policies for all handicapped children between the ages of 3 and 18 by 1978, and between the ages of 3 and 21 by 1980. Such policies would not apply to children between the ages of 3 to 5 and 18 to 21 where mandatory services are inconsistent with state law or court order.

4. The states each were to receive up to \$300 for each child between the age of 3 and 5 who received special education services.

5. The law requires that an individualized educational program must be developed for each handicapped child. First priority must be given to unserved children. The severely handicapped who are not receiving adequate services will be given second priority.

6. To qualify, a state was required to submit a plan which: guarantees that federal funds will be used in a manner consistent with the law's requirement; includes a program for personnel development; provides free services for children placed by local educational agencies in private schools; guarantees that federal funds will supplement and increase rather than supplant state and local funds; prescribes a program evaluation system; provides for an advisory panel on unmet needs; and specifies procedures for record keeping and accountability. Each participating local educational agency was required to submit a plan similar to the aforementioned.

7. Due process safeguards had to be incorporated into the requirement for state and local participation. Federal and state monitoring procedures were included. All participants were required to include affirmative measures to employ qualified handicapped individuals (which may raise the issue of "deviant" staff serving "deviant" clients). Lastly, the legislation

required the Commissioner of Education to conduct whatever studies are necessary to adequately report to the Congress on progress achieved as a result of this legislation.

Obviously, there were problems, some quite serious. For example, while on the one hand many parents were pleased with the "mainstreaming" thrust of the legislation, others worried about the effects of general as contrasted with specialized programming. Teachers too had their concerns. Regular teachers expressed anxiety about their unpreparedness to assume responsibilities for children with problems unfamiliar to them. Special educators worried about the "least restrictive environment" as another way of saying "removal of intensive specialized services". Both groups of teachers keenly felt the need for major efforts to prepare regular teachers and administrators to assume the new responsibilities demanded of them if the legislation was to work. Of course, institutions that prepare teachers had those concerns magnified in light of those responsibilities. It seemed that everyone was worried, but it also seemed that most everyone thought it was good legislation, that it was a fine thing that happened. It seemed that it would take a great deal to discourage that view.

### Theory And Practice

In the same manner that the Emancipation Proclamation was not only about Black people, Public Law 94-142 is not only about handicapped people. In one way, The problem in special education is simple. In a way, there is virtually no problem. Yet, special education has proved to be not only a problem but a monumental one. I mean by the above that society has it within its capabilities to include the handicapped not only in its regular school

programs but everywhere. If we but thought differently about certain things, we would behave differently. It is not that we can't, but we choose not to. And indeed, because we choose not to, we have the seemingly insurmountable problem.

There's another point of view from a different mountain, the idea of those who would enjoin us to simply change ourselves and stop the foolishness of creating legislation and bigger opportunities for people in the business of special education and its derivative occupations. That point of view will not argue against the wisdom that society can change and, thus, The problem could be solved by us merely changing ourselves. Nevertheless, it would not be inconsistent with that view to also argue that if there must be laws about something and somebody, there should be such a law as this one. We could argue that, while Public Law 94-142 may not have been necessary had we not made it necessary, the way things are today it's a Godsend—or at least the best we know how to do. Therefore, irrespective of agreement that we would all be better off if we stopped the foolishness around special education, there was general agreement from the beginning that this law had been long overdue.

We should now turn to the claim that The problem is quite simple. All serious human problems are simple. Simple to avoid and simple to end. For example, ending pollution of the environment is simple to achieve. That kind of problem is not like such complex affairs as finding a cure for cancer or eradicating heart disease. In the former, it seems as if we don't want the problem to go away. In the latter, we can't make the problem go away. Obviously, the situation is different for the individual. The person deals better with his own than with society's problems, be they simple or complex. That's a truism that only the ignorant would argue about.

What needed to be done was done. For the first time since I entered this field years ago, I witnessed the passage of legislation that contained the best thinking in our field, imperfect as it is, and a plan for the most vigorous action. Earlier, I suggested that what is wrong with so much of society--for example the university--is that it's all theory and no action. Others have suggested that what's wrong with society--for example the government--is that it's all action and no theory. Here we had a law based on the best theory available, originally funded at a higher level than any previous legislation, and which promised to deliver the goods fairly quickly. That's impressive--even if the promise was more than could be delivered.

#### The Long And The Short Of It

I once said something like, "People should be judged by what's best about them, but governments must be judged by what's worst." If there were such an understanding, the capacity of an individual would be determined less by the averaging of his scores and more by the highest score he received. However, with governments (which in principle should be distrusted), there would be an element of disbelief, of knowing that someone somewhere among the politicians or the bureaucracy is trying to pull the wool over our eyes. Therefore, where governments are concerned, the rule should be that if the behavior is rotten, it's to be expected and incurable. And if the behavior is exemplary, it's an accident or a mirage.

Applying the above rule to judgment of our nation's efforts on behalf of handicapped children, we score poorly. Too many of the children aren't getting their due. Too many are in inadequate or no classrooms. Too many are growing up unnecessarily without the proper tools they will need to serve

society and themselves. So what better time was there to correct the errors of those who misinterpreted the original Bill of Rights, of those who had unfortunately concluded that the handicapped were to be held exempt from many of the rights and opportunities enjoyed by other citizens? What better time was there to proclaim to the world--but most of all to proclaim to ourselves--that each human being counts for something, that merely to be a human being entitles one to a privileged place within society? Probably today, more than ever before, we should live as if a decision to deny a person any right enjoyed by others is to be made only after proof is given that the person is a serious threat to the public's good, and only under the most carefully supervised equal protection and due process guarantees, and only after all other means have been exhausted. P.L. 94-142 was created to be the instrument to correct the errors of the past.

Of course, society and its institutions continue to need their declarations, proclamations, slogans--and public laws. As disability itself, arm and flag waving, card carrying, and assorted types of oratory on behalf of the disabled is not a new phenomenon. But wouldn't you think that, as our society better educates itself, as society more adroitly identifies its shallowness and puffery, we would give up some of the considerable effort it takes to create and publicize these slogans--and spend more of our time working on behalf of the disabled. Who was it who said that good deeds and accomplishments should be revealed more than announced? The good deed of the 70's was supposed to be Public Law 94-142. Was it indeed a good deed? If I was the teacher, what report card would I send home to the nation?

In a nutshell, subsequent to passage of Public Law 94-142 in 1975, subsequent to the widespread optimism predicting the eventual good it would accomplish on behalf of handicapped children, there have been numerous disappointments and disaffections. The federal money promised to support the legislation never quite came through--at least, never to the extent necessary to implement its provisions. Secretary of Education Bell and the special education leaders in his Department all worked vigorously to so decimate the law by amendment that it would have virtually no authority, no responsibility, and no funds. They failed, but not from not trying.

There's more! In many school systems, committees on the Handicapped became routine rubber stamps representing administrative interests. In too many classrooms, the "Individualized Educational Program" was cloned from a computer program, or a ditto master, or simply another child's program. We found out that "thoughtfulness" was unable to be legislated, as we also learned that it's difficult to legalize such virtues as integration, due process, and equal opportunity if the people don't particularly want them.

On the other hand, more severely disabled children are in school today than ever before. And more of them are in ordinary schools, some in ordinary classes. More moderately and mildly handicapped children are in appropriate programs today than ever before. And more of them are in ordinary classes. We have more, possibly even better teachers of the handicapped today! And more teachers of ordinary children today know how to teach the handicapped--and do. More parents of the handicapped today know their rights, and they get them. And more ordinary citizens today not only understand the "new language"--integration, mainstreaming, least restrictive environment, equal opportunity, zero reject--but they support the rhetoric of the "new language", which is the rhetoric of reform.

The long and the short of it is that all has not been well with Public Law 94-142 since its passage. But remember what used to be said about prohibition, "It's better than no drinking at all." Well, Public Law 94-142 is better than no law at all. In many ways, "it done good". And it may even do better. I remain optimistic, glad that the law had passed. There are still many colleagues who appear to agree with me.

Surely, there have been and will be problems. But there will also be opportunities. There may even be a day when historians and your children's children will look back on this period and say, "That was the time when our ancestors finally learned that, while all humanity is a wonderful and awesome creation, each individual is fragile and dependent. While our people are strong and free, each person needs the protection of the total society. That was the time when our ancestors learned that each human being is an irreplaceable link to the past and to the future. Each life is priceless."

That is the vision some people nurture. I pray more of us will embrace it as seriously as if our souls depend on it—for they do depend on it. That's the compelling reason why the "Bill of Rights for the Handicapped" remains such an important law.

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