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**INSTITUTIONALIZED DISADVANTAGE IN EDUCATION AND THE
RIGHT TO EQUAL BENEFIT OF THE LAW:
THE NEXT STEP AFTER NON-DISCRIMINATION**

*By Judith Bernhard**

Issues of minority rights and freedom from discrimination have been prominent on the agenda of Western countries such as Canada and the US for the last few decades. The first phase of this fight was against overt and blatant discrimination.

The second phase has focused on more subtle forms of discrimination. For example, having a certain height requirement for police officers may have a discriminatory effect against certain Asian groups. Recently a Canadian court ruled it was unfair for a woman applying to become a firefighter to have to undergo the same running speed test as her male counterparts. The effects and overall patterns are particularly damaging to certain groups.

These forms of discrimination are less blatant and harder to detect but still involve overt identifiable acts. One has to be able to show there is a particular action or policy that has a discriminatory effect. In the legal arena, the plaintiff in these cases argues that the standard is arbitrary and unconnected with the performance of the duties.

We are entering a third phase in the fight for the social equality of minorities. This entails the minority right to equal benefit of the law without discrimination in the 1984 *Canadian Charter of Rights and Freedoms* [hereinafter the *Charter*], Section 15.

I stress the words "equal benefit." Now that the more overt forms of discrimination are fading, it is important to look at the hindrances to obtaining equal benefit of the law. In these cases we are looking at routine institutional processes and it is not possible to point to a specific act of bias or arbitrary act: The process has a seeming rationality to it. The fact remains, however, that the institutional functioning gives rise to poor outcomes for particular groups, outcomes which are arguably unequal and inequitable.

In the *Charter*, the right to equal benefit, I would argue, goes beyond freedom from overt discrimination. Section 15(2) clearly recognizes the limitations of a narrow focus on non-discrimination. It allows special measures to be taken to ameliorate the conditions of disadvantaged individuals or groups. We argue further, that "equal benefit of the law" includes the right of individuals and communities to equitable outcomes within the operation of the mainstream systems, particularly education.

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Official multiculturalism in Canada promoted valuable ideals but it has not gone far enough to remedy continuing systemic disadvantages.

What we propose is a vision of minority equality rights where every human being has a right to develop him or herself maximally, to get the best education possible, and generally to flourish. This also means the right of every community to flourish and live well; to keep its language and culture alive. We argue that all of this is included in the *Charter* generally and under the concept of equal benefit of the law.

My perspectives on these issues derive mainly from our research with one particular ethno-cultural group – the Latinos in Ontario. I use the term Latinos to include those of Hispanic culture in Mexico, the Caribbean, Central and South America. As I will argue later, the position of Latinos in Canada is similar to that of a number of other ethnic groups.

Latinos in Canada do not face too much overt discrimination in the educational system. Even when looking at more subtle acts, it is not easy to see much that could be called discrimination. But it is easy to see persistent inequality and lack of equal benefit of the law. The group, in many ways, is not flourishing, especially in comparison to other groups. One can see this by looking at a number of indicators:

- Only 10% of the group are University graduates;
- Only 65% obtain a high school diploma;
- At the high school level, Latinos are under-represented in the advanced classes leading to university admission;
- Students quickly become disengaged from school and many drop out.

At the group level, Latin American communities face high unemployment, poor housing, and relative poverty. There are also assimilative pressures toward abolishing Spanish as a language of the home.

In this phase of trying to eliminate systemic discrimination and getting groups to do well, there is a great danger. Since people do not see any overt acts of discrimination, they often say that poor outcomes are because students are not trying hard enough. This is an unfortunate situation because it allows policy makers and educators to avoid assuming responsibility.

I. Overview of our Research Program in the Educational System

Over the last few years, we have been conducting investigations with Latino children and families living in the Toronto area. Our studies focus on basic disadvantages or hindrances that people face in dealing with mainstream educational institutions. Although these institutions do not discriminate in the overt sense, they systematically disadvantage certain groups and yield poor outcomes for them.

This is despite multicultural policies at the federal, provincial and school board level. These poor outcomes for certain groups continue to occur in the presence of seemingly fair arrangements and of teachers who do not appear to have any overt biases. We are studying how certain people, in the presence of seemingly fair arrangements, end up doing very poorly on a number of indicators.

Another aspect of our work has been to see how the parents' capital and that of the community is nullified or rendered irrelevant. What I mean by "capital" is a set of valued dispositions and abilities. The role of such capital is key in primary schooling. Children's educational outcomes are affected when cultural capital does not match with the demands of the school.

We are conducting micro-level ethnographic studies that are designed to help us understand the parents' experiences. We are not simply asking families to fill out a survey, but are going to great lengths to address them in their own language, in their own terms, to gain their trust, visit families in their home, and talk about the issues that matter to them.

I am now going to give some brief examples from our research to illustrate the above points. Afterwards I will propose ways of improving outcomes and moving closer to the vision of equal benefit of the law for all minorities.

In one study we supported a group of parents who met on a monthly basis to discuss their children's schooling. Throughout the course of the study, the parents learned not only to assert their interests and collaborate with teachers, but also to affirm the worth of their ethnocultural differences. The parents have begun to take action and make their voices heard.

We have also focused on seeing how things work in the educational institutions, the assessment tools that are used to measure children's progress, and the statements and procedures that are used. We have observed children in their classrooms, interviewed teachers and principals and inspected report cards and school records.

II. Selected Findings from Our Studies

A. Problems of communication

In the majority of cases, the Latino parents we interviewed do not have a sound understanding of the meaning of many of the terms used by the teachers. Words such as "withdrawal," "special education" and "reading clinic" are often not understood.

The majority of the parents did not know how to read their children's report cards. The wording of the correspondence resulted in additional comprehension difficulties for the parents as many did not know how their children were doing at school. Many were confused and completely unaware of the extent of their child's educational achievement deficit.

In general we found that interactions with school personnel were generally scarce and brief. One standard method of interaction was the ten-minute parent interview. The parents described situations in which the teacher began the interview by offering a great deal of information that they did not understand, even with the help of a translator.

Common phrases used included: "She has special needs," "She is working at her own pace," and "She is more involved in social studies." Then the teacher would pause and wait for the parent to give feedback on what had just been reported. A number of parents did not know what to say and felt embarrassed by their lack of understanding of such terms.

In summary, procedures for placing and assessing children were generally opaque to the parents.

B. Issue of Passivity

Teachers routinely informed us that Latin American parents were not involved, did not come to meetings and simply could not be mobilized to participate in their children's schooling. This was often given as an explanation for the children's poor school performance.

I introduce Mrs. Perez, a Uruguayan mother of three who speaks English reasonably well. She places a high value on her children's education. Yet she feels put off by the teacher when she goes to find out how the child is doing:

The teacher told me he did not need any special classes because there was someone in the class who was helping to get him up to the class level. But now that he finished school, they sent me an entire book to work on for the summer because he was behind in math. She should have sent daily homework and not waited until the end. I am a little unhappy about that. It does not seem right. If I would have known...

The experience of Mrs. Perez reflects her encounter with what can be characterized as an *expert, institutional approach*. The teacher had the role of the "expert."

Mrs. Perez did not feel she was in a position to make her views known to the teacher and feared making criticisms. It is clear, however, that her resultant inaction might possibly be labeled as "parental passivity" or "lack of concern."

C. Uneasiness Remains Regarding Second Language Issues

In trying to explain children's under-achievement, the teachers often demonstrated an uneasiness about the use of Spanish in the home. They were not genuinely convinced that children could succeed academically while speaking another language at home.

D. Issue of Impersonal Institutional Functioning

We found some parents had a degree of success in intervening on behalf of their children. Ricardo's mother, for example, dropped by to chat with the teacher frequently. She said she had been lucky enough to meet a man who told her that to get anything from the school they had to see that you were physically present on the school premises and willing to pop your head in the door for an informal chat. In contrast, many parents avoided teachers and all school personnel:

Whenever I find someone at school who can speak Spanish I ask so I know what is going on. I like to know things. Since I don't understand the teacher much, I keep a distance from her, I try to stay far away from her. There are always words I don't understand. I only speak to one other mother who speaks Spanish.

In keeping her distance, this parent generally avoided contact with the teacher and never visited the classroom. Like others, she was not fully effective in supporting her child.

E. Ways of Assisting Children at Home

A common pattern of helping children with their homework is illustrated by Sylvia's mother who, like many other parents drills her child on basic tasks such as pronunciation:

The teacher tells her to write in her journal, so she brings it home to finish and we make her read what she has written and we correct the words that are not well written or what is redundant, we erase and make her do it again...

The parents of other children reported similar drilling practices to help their children with mathematics skills. Because the parents had learned highly specialized procedures for performing mathematical operations and likely did not have the conceptual basis for the operations of the "new math," they focused on the mechanics of the operations.

This difference often became a source of conflict between parents and children. The children became angry when the parents tried to help and the parents felt their children were being disrespectful and ungrateful. Roberto's mother told us how she resolved the situation:

This house was becoming a war zone so I decided to take away the tension that was ripping the family apart. Now we leave him to do his homework any way, any time he wants to.

III. Comment on Findings

These experiences show that although there may not be overt acts of discrimination against these families, the institutional functioning is too narrow, too

rigid and not responsive to non-standard kinds of situations. This holds despite the good intentions of those involved.

Before I continue this discussion I want to emphasize that the findings have a certain degree of generality. In the Toronto educational system with which I am most familiar, a number of other ethnic and racial groups show persistent poor outcomes as evidenced in academic performance and drop out rates. Let's review what kind of practices underlie the problems we have described.

In the most general sense, the educational institution is operating according to one universal or standard view of what the student and his or her parent should be. These practices, even though nominally multicultural, in fact ignore significant cultural differences and cultural capital. The alleged deficiencies in the families and in their support of the children are simply the result of mismatch between the school's requirements and the way in which the minority families function.

I remind you that a number of these parents were well educated professionals in their own countries who had the highest of educational aspirations for their children. Even these most capable families, however, were rendered ineffective because of the routine processes to which they were subjected.

The families' strengths in their own language became a handicap. We did not find teachers who said it is bad to speak Spanish to your child. But we did encounter, in some cases, teachers who expressed reservations about the effects of Spanish only home environments. We do not regard this as conscious bias, but as the result of lack of exposure to research on bilingualism. Nonetheless, many parents gave up. A number of them in fact gave up and began speaking English in the home, no matter how poorly. This phenomenon is known to occur for other ethno-linguistic groups as well.

A second feature of the linguistic aspect is that the school, despite its official commitment, did not provide sufficient resources for the teachers to interact and discuss matters with Spanish parents. Parents, in some cases had to take their children with them to teacher interviews to interpret what was said.

Simply having large armies of interpreters at the school would not solve the above problems. The discourse of the school itself hindered the parents' abilities to secure their goals. For instance, school assessments in terms of "below grade level functioning in English" simply ignore the child's overall linguistic competence in two or more languages. Again, the institutional processes produce obscurantism.

The mismatch between the children and institutional norms was routinely construed as deficit or deficiency. It is now a common practice to construe problems connected with language and enforced assimilation as special education problems. This imposed an even further burden on the parents since many lacked acquaintance with special education concepts and were unable, as mainstream parents would, to argue with classification of their children as pupils with special needs or with learning disabilities. We suspect that this mis-classification is due to inadequacies in teacher education.

The final pattern I wish to emphasize is the tendency of the system and those in it to make inferences about the parents' efforts and commitments based on the below-norm performance of the children. I underscore that we found substantial efforts have been made by most of the parents and where efforts had diminished, it was arguably because of the parents' beliefs that effort was futile.

To conclude this discussion, our research has helped shed light on the subtle processes leading to these families' failure to obtain equal benefit of the law, specifically the full and equal benefit of the educational system.

Before I make recommendations I wish to make one point. Because the causes we have described are institutional there are, in several respects, reasons to be hopeful. We found educators and teachers to be dedicated and possessed of a great deal of good will. As the facts become better known, we are sure that educators and teachers, given the resources, will be eager to implement the recommended changes.

Our specific recommendations to move toward minorities receiving equal benefit of the law are as follows:

- First, governments must take the next steps to move beyond seeing an end to overt discrimination. Their policies must affirm minority rights to equal benefit of the law. This entails, for minorities, as well as dominant groups, a right to live well, to flourish in their culture and to language based on educational and employment opportunities. The key to such policies is recognition of inequitable outcomes despite the lack of overt discrimination.
- Secondly, governments must make a clear commitment to democratization. Parents need to have a say in their children's education. Further, substantial effort must be given to obtaining effective input from parents. Schools need to form better working relationships with community and parent groups that are outside its walls.
- A third area of recommendations would be connected with teacher training: First there should be recruitment of minority persons as teachers and of persons who have experiences in diverse cultures and languages. Teacher trainees need to become aware of how institutions work and how they disadvantage certain groups in their routine operations. Teachers also need to know how families work in different cultural milieus. (There have been experiments in which a portion of teacher training is spent working within ethnic community settings.) Next, teachers should be better prepared to be partners, not merely authoritative experts. Educators must do more to encourage teacher trainees to have an appreciation of the cultural capital of the family groups with which they are dealing.
- The fourth and final recommendation is as follows: For educators and teachers, there must be exposure to research indicating the desirability of maintaining the home language and producing bilingual, bicultural children.

* * *

Fundamental school reform, while often talked about, has proven elusive. A critical interrogation of the structures of educational delivery has not occurred. It is imperative for educators to rethink views about the meaning of multiculturalism and to consider new ways in which communities can be involved in the educational system.

Based on our present knowledge, we are now in a position to take the practical steps necessary to help ensure that all minority children and families do well in the educational system and receive equal benefits of the law.