Is Inclusive Education a Human Right?

John-Stewart Gordon

Introduction
The widespread view — proclaimed by proponents of disability studies, some disability federations, and many disabled people — that there is a human right to inclusive education, was eventually substantiated by international law with the UN Disability Convention (CRPD) in 2006. One of the most discussed issues in disability studies concerns the CRPD; the contributions are legion. Surprisingly, there are hardly any substantial contributions that pay particular attention to the important question of whether inclusive education is a moral human right, and, if so, how this particular human right could be morally justified. A related topic that is frequently discussed concerns the question of whether inclusive education is compatible with the International Bill of Human Rights. Other scholars, such as Theresia Degener, wholeheartedly support the idea that inclusive education is a substantial legal and moral human right. The majority of scholars in the debate do not (really) question the idea that there is a moral human right to inclusive education, but simply take it for granted — which is one of the main reasons why there is hardly any critical discussion on this issue. According to them, the normative question of whether one should endorse inclusive education is not a real question; for them it is already clear that inclusive education is better than separate education.

In this article, I question the general idea that inclusive education — i.e., to teach all students in one class — is a moral human right. Human rights are, primarily, universal moral norms that bind all people in all places at all times, independently of any legal recognition. They are primarily universal moral rights and, secondly, international legal rights observed and enforced by nation-states. Whether the right to inclusive education is indeed a legally justified human right depends on the empirical fact of its origin — that is, whether it has been legally authorized in a recognized procedure by the appropriate legal bodies. In this respect, the right to inclusive education is — legally speaking — a human right. In general, it is possible to determine the lack of plausibility of a legal human right, if one is, for example, able to show the following: first, the particular human right is (permanently)

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inconsistent with, or even contrary to, other legal human rights; second, that it is not in accord with the spirit of the International Bill of Human Rights; third, that the feasibility of a particular legal human right is (permanently) prevented by practical reasons (e.g.,

I. Preliminary Remarks
This section offers a brief overview of the three main models of disability in contemporary debate — the individual or medical model, the social model, and the human rights model — and provides some information about the three main forms of education, which are inclusive education, integrative education, and segregated education. The last part of this section concerns human rights and, in particular, the human right to education, in contrast to the human right to inclusive education. The goal of this section is to show the general line of reasoning that I will take in this article, and to provide some valuable background information.

I. Models of Disability
The three most important models of disability are the individual, social, and human rights models, which attempt to offer an explanation of what disability is and what it is not. In addition, they suggest particular actions that might solve complex problems, such as social exclusion in the context of disability. Proponents of the individual – or medical – model of disability claim that the medical condition of having an impairment is disabling (i.e., impairment=disability). According to them, disability is an intrinsically bad state that should be cured in order to restore "normal" or "typical" biological human functioning. Impairments are emphatically not seen as simple variations of human beings that are equally valuable when compared with normal human functioning.

Proponents of the social model of disability – most notably adherents of disability studies – convincingly argue that the person's medical condition or impairment is not disabling. What is disabling is a society that discriminates against people with impairments when, for example, there are no ramps for people who depend on wheelchairs and want to access public buildings or public transportation. They claim that society must change in order to get rid of disabilities since disabilities are — by nature — socially constructed. Impairments are seen as variations in human beings that should be acknowledged and appreciated by others who are not impaired.

The human rights model of disability — institutionalized by the CRPD — does appreciate the value of the social model of disability by acknowledging that disability is socially constructed and not simply a matter of one's individual medical condition. However, the human rights model goes beyond this approach by proclaiming that people with impairments do have enforceable human rights. People

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the human right to paid vacation); and fourth, that it does not withstand moral criticism. In my article, I do not question that, legally speaking, the right to inclusive education is a human right, since the legal authorization that led to the CRPD was correct. I will argue, however, that — from a moral point of view — it should not be seen as a human right and hence, in the last consequence, it should, then, also not be seen as a legal right, even though it is a human right from the current legal standpoint.

This rejection does not commit me to the claim that inclusive education as such should not be endorsed if it can be reasonably accomplished. On the contrary, I propose a refined model of inclusive education that allows teaching both impaired and non-impaired students in one school, and even in one class if the impairment of the student does not rule out reasonable participation. After all, it seems unrealistic, for example, to fully "include" deaf-mute students or students with mental or complex impairments in regular classes. That is, medical impairments are limiting factors of inclusive education. Furthermore, it seems highly paternalistic to make inclusive education mandatory if parents and their impaired children agree that a homogenous educational setting would be more beneficial. The right to inclusive education should not limit their right to freedom of education.

The first part of this article contains some preliminary remarks concerning three different models of disability, i.e., individual, social, and human rights, and briefly outlines the different meanings of inclusive, integrative, and segregated education. The last section of the first part gives a detailed overview of the different layers of the idea of human rights in education. The second part depicts some of the most important pro and contra arguments for inclusive education. The third part is a detailed discussion on some vital issues in the context of justice in education and disability. Here, I examine the notion of equality in different settings.
with impairments do not depend on discriminating alms; instead, they have legal rights to things like appropriate welfare services and inclusive education. The CRPD requires the global community to dismantle all forms of discrimination against people with impairments. It is not the impaired individual, as suggested by the medical model, but society that must change.

It seems correct, however, to assume that each of the disability models bears some truth that is ignored by the rival models. For example, it seems reasonable to claim that most forms of disabling circumstances are — by and large — caused by society (as suggested by the social model of disability), while acknowledging the fact that having an impairment is not necessarily — or commonly — seen as intrinsically neutral or even good, and hence is not seen as a simple variation of human functioning that is equally valuable when compared with “normal” human functioning (see the medical model of disability). Incontrovertibly, as argued by the human rights model, the view that people with impairments should not simply be objects of charity but should be rather seen as bearers of human rights is convincing and well justified. The question remains, however, whether the human right to inclusive education should be on the human rights agenda. This will be discussed below.

2. Inclusion, Integration, and Segregation in Education

One should readily assume, however, that “all” people working in the field of disability are trying their best to avoid discrimination and to help the people who have been impaired at birth or through accident or disease. There is, of course, a wide range of different approaches, particularly within the educational setting, which attempts to accomplish the best for all parties concerned, taking into account students with impairments, students without impairments, teachers, and parents. There are at least three main approaches in education for students with disabilities at present: inclusive education, integrative education, and segregated education.

The model of inclusive education that is highlighted in the CRPD and proclaimed as a legal human right requires the educational sector of each member state that has signed and ratified the CRPD to educate students with impairments in the same class as non-impaired students. Whether this also rules out dedicated schools for students with specific impairments, such as intellectual impairments, learning difficulties, quadriplegia, and sensory impairment, is a matter of debate. Inclusive education is expensive and requires the member states to invest a great deal of money in order to provide the pre-conditions for joint education, such as proper buildings and well-equipped classrooms, as well as special training for teachers. In addition, inclusive education also requires team teaching, where the specialist subject teacher will be teaching alongside (several) teachers of students with special needs. It turns out — based on teaching experiences — that this is a real challenge. The overall rationale of inclusive education is that the educational system must adjust to accommodate people with impairments and not vice versa.

The model of integrative education offers particular students with impairments the possibility of attending mainstream schools if they are able to adjust to the educational setting of the school in question. This usually excludes a large number of students with impairments such as learning difficulties or sensory impairments who, in light of the CRPD, have the legal human right to inclusive education. There is also a lack of team teaching in mainstream schools, and students with impairments are required to cope with the situation — almost always — alone, with little external help.

The model of segregated education usually offers a wide range of special schools, focused on the needs of the students in question. Students with impairments are also, of course, given the opportunity to attend regular schools if they fulfil the pre-conditions, but a non-inclusive education system commonly develops a range of special schools for people with impairments in order to provide a homogenous teaching atmosphere. Inclusive and integrative education is by...
nature heteronomous. Segregated education is seen as discriminating because special schools promote and substantiate exclusion not only in education but also thereafter in society.

3. On Human Rights
Most contributions on inclusive education in the context of disability refer to human rights, in particular to the CRPD,\textsuperscript{24} which was the first international legal human rights document to proclaim inclusive education a human right. However, hardly any research details what kind of human right the “human right to inclusive education” really is. For example, is inclusive education a special right that each impaired person enjoys? Or, is it rather a group right? Is it a general right that belongs to all human beings? Are there any reasonable limits to inclusive education? Are the bearers of the corresponding duties of the human right to inclusive education individuals or collectives, and what is the exact content of the duties? These and related questions are of great importance. In order to examine whether inclusive education is a legal and moral human right, one must go beyond the mainstream discussion in disability studies and discuss the very meaning of a human right. Ontologically speaking, just because the UN proclaims that inclusive education is a legal human right does not necessarily mean it is a moral human right. In fact, this article does not attempt to illuminate the issue of whether deeming inclusive education to be a human right is consistent with the rights found in the Universal Declaration of Human rights\textsuperscript{25} and both Covenants — the International Covenant on Economic, Social and Cultural Rights\textsuperscript{26} and the International Covenant on Civil and Political Rights.\textsuperscript{16} Rather, the idea is to question the claim that inclusive education is a moral human right.

A. HUMAN RIGHTS
Human rights are, primarily, universal moral norms that bind all people in all places at all times, independently of any legal recognition. They are, primarily, universal moral rights and, second, international legal rights observed and enforced by nation-states. It is a matter of debate among scholars whether all human beings have human rights simply because they are human beings (in question, for example, might be foetuses, people in permanent vegetative states, the status of collective rights, beings with non-human natures such as animals and the environment). The philosophy of human rights shows that there is currently no common ground with regard to the moral and legal justification or the ontological and epistemological status of human rights. Despite major problems concerning the theoretical foundations of human rights, there is a widespread agreement on the practical importance of human rights.\textsuperscript{17}

Historically speaking, one can by now distinguish four generations of human rights development. The first generation of human rights concerned political rights — which were by nature participation rights — and civil rights, which were by nature (so-called) rights of defense against possible encroachments of the state (18th and 19th centuries). The second generation of human rights concerned social, economic, and cultural rights; they can be summed up under the heading of general welfare rights (20th century). The third generation of human rights applied to non-human nature, such as higher animals like the great apes and the environment (21st century).

In fact, some scholars, such as the classical utilitarian Jeremy Bentham\textsuperscript{18} as well as, more recently, Alasdair MacIntyre\textsuperscript{19} claim that there are no human rights. Others, such as Maurice Cranston,\textsuperscript{20} argue that only political and civil rights are real human rights — thereby excluding socioeconomic rights from the human rights agenda. Many contemporary scholars, however, believe that the idea of human rights is valuable, and that it could be possible to reach a consensus on basic rights without having a consensus on their theoretical foundations (e.g., Loren Lomasky\textsuperscript{21}). The ultimate question is, then, which path should be followed. If one argues that there are no human rights, then it necessarily follows that there is also no human right to education; if one sides with Cranston, then it turns out that there is also no moral human right to education. For proponents of a human right to inclusive education such as Degener,\textsuperscript{22} the only possible option is to follow the general line of reasoning, at least according to Lomasky and others who claim that the idea of human rights is valuable independently of an attainable consensus on the theoretical level. Whether this is a valid position remains to be seen.

B. HUMAN RIGHT TO EDUCATION\textsuperscript{23}
What does it mean to state that there is a human right to education? In Article 26 of the Universal Declaration of Human Rights, one can find an initial answer to this important question. Here, the Declaration states that the main goal of education — which should be free, compulsory in the early years, accessible, and based on merit for higher education — is the following:

1. To fully develop human personality
2. To strengthen respect of human rights and fundamental freedoms
As Mona Montakef convincingly puts it, the right to education has become a right to human rights education. In this respect, the human right to education — seen as an empowerment right — is not only a particular human right but also a fundamental instrument for the furtherance of other human rights. In fact, this view makes education the fundamental anchor of the whole human rights agenda. However, one might raise the question what the notion of “full development of the human personality” really means. Does it mean to live a good life according to Western standards, i.e., to successfully compete in a highly competitive market based on the best available education possible, in order to make a lot of money to enjoy the fruits of capitalism? Or is the goal more moderate: that one should, at least, be able to read, write, and calculate in order to meet the standards for a dignified life? Furthermore, who knows what a dignified life really is and what its constituents are? Is a simple life with no elementary education always inferior? As many anthropologists have taught us, many indigenous peoples were content without having an elementary education — which usually contains more than being able to read, write, and calculate — and were in accord with nature, animals, and their fellow tribe members (at least, until they encountered Western “civilization”). Of course, if shame, lack of education, and religious superstition lead to social exclusion of people with impairments because the traditional belief system proclaims that congenital impairment is a divine punishment, then one should enlighten the people by providing valuable information, for example, to explain the medical causes of impairments in order to help people with congenital impairments to resist becoming social outsiders. In this and related cases, proper education can be a reliable protection against false religious and traditional beliefs.

In general, it seems that there are at least two different notions of education at work: first, education consists in gaining as much specialized knowledge as possible (narrow sense); secondly, education is not only about the acquisition of specialized knowledge, but also offers social elements that enable a person to become a valuable member in his or her community (wide sense). Following this line of reasoning, it might well be the case that the so-called simple life in which people have no or hardly any specialized knowledge or little education is not necessarily a life without dignity because it can contain — but is not necessarily limited to — valuable social ties.

C. HUMAN RIGHT TO INCLUSIVE EDUCATION

Most scholars are content with the fact that the CRPD states that inclusive education is a legal human right. They do not morally question the idea of whether it is reasonable and well justified to refine the human right to education in order to make it legally obligatory to internationally endorse inclusive education. To fail to do so is to adopt either integrative or segregated education in the educational system, which is, then, a human rights violation.

Scholars such as Cranston have argued that human rights are by nature negative rights, as rights of non-interference (associated with the first generation of human rights). Instead, positive rights such as welfare rights obligate others, like the nation state, the community, and fellow members, to assist, support, and promote the bearer of a positive right to accomplish his or her legitimate claim (associated with the second, third, and fourth generation of human rights). For example, Cranston justifies his refusal to accept the socioeconomic human right to paid vacation by pointing out that this would be an instance of a positive human right which is non-existing. Furthermore, he argues that the human right to paid vacation is a utopian ideal and therefore will never become a real right.

Analogously, one could argue that the human right to inclusive education is a positive right and stands for a utopian ideal that will never be realized globally and therefore — since human rights are real and enforceable international basic rights — inclusive education is simply not on the list of real human rights. A somewhat different response might highlight human rights as regulative ideals that will never be realized to full extent — since they are ideals by nature — but according to which we should strive for as much as possible, since they stand for important ideas and promote valuable goals. The latter approach, by accepting the claim that human rights are both negative and positive rights, would allow for integrative education but try to accomplish inclusive education wherever it is possible.

Let us assume — for the sake of argument — that human rights can be both negative and positive rights and that some human rights are inspirational by nature and promote valuable goals that people strive for. Would these comprehensive concessions guarantee that inclusive education is also a moral human right?

It seems uncertain, after all, that inclusive education is a consistent legal human right that is compat-
ible with the International Bill of Human Rights and the Additional Protocol § 2,1 of the European Convention on Human Rights (e.g., Christine Langenfeld). For example, if parents have the legal right to educate their children in a non-traditional way, maybe in home schooling (or even un-schooling), then it seems strange to proclaim a human right to inclusive education. If — as many scholars and lay people proclaim — integrative and segregated education is a human rights violation, then this causes severe problems by undermining the fundamental right of the freedom of education. For example, if parents and their impaired children both agree that a special school for people with learning difficulties would be a better fit by providing a secure environment, then it seems highly paternalistic — legally and morally — to only offer inclusive education. This fact is substantiated by the rather unconvincing claim that special schools for people with learning difficulties are, in the last consequence, a human rights violation.

The remainder of this article will examine the problem of whether inclusive education is a moral human right by analyzing the complex net of important notions related to inclusive education, such as non-discrimination and equality of opportunity.

II. Education — From Exclusion to Inclusion

In her report on the right to education in 2002, the special rapporteur of the United Nations for the right to education, Katarina Tomasevsky (1998-2004), depicted a historical development of four stages concerning the right to education from exclusion to inclusion. This paragraph certainly inspired the “Guidelines for Inclusion: Ensuring Access to Education for All” (2005) published by the UNESCO-Initiative “The Right to Education for Persons with Disabilities: Towards Inclusion” that was founded in 2001 in order to promote the interests of people with impairments. The four developmental stages focus on children and teenagers with impairments, and show how the process from exclusion to inclusion in education depends on the social preferences of a given community that, in turn, deeply influence to whom and how education is provided, as follows:

1. Denial: Students with impairments receive no education (social exclusion)
2. Acceptance: Students with impairments receive segregated education based on beneficence and charity
3. Understanding: Students with impairments receive an integrative education in addition to support of their special educational needs
4. Knowledge: Inclusive education for all students

Without doubt, social exclusion that amounts to not educating students with impairments is a severe human rights violation (“denial”) that should be avoided. In this sense, the three historical stages of the different forms of education — inclusive (“knowledge”), integrative (“understanding”), and segregated (“acceptance”) — do reflect a development.

However, it seems still unreasonable, contrary to what many die-hard inclusive educationalists wholeheartedly proclaim, to allow students who happen to be in coma or in a persistent vegetative state (PVS) to participate in an established class. On the contrary, it might be the case that this action undermines the human dignity of the comatose student, who has not given his or her informed consent. This is, then, a case of good intentions that unfortunately produce rather bad consequences. The claim that it is to the benefit of the comatose student who will somehow be able to receive “valuable” experiences can be reasonably called into question. Furthermore, if proponents claim that other students will socially benefit from having a comatose person in the class, this is even more problematic, since the comatose student is only a means to an end and hence he or she is eventually only an instrument for some higher goals.

What about less extreme cases? It seems, all in all, correct that one should promote inclusive education as long as it is reasonably applied and also allows for exceptions due to the complexities of particular impairments and the consent of the particular students with impairments who might feel safer in a more homogenous setting. In addition, other non-impaired students do also have the right to the best available education in order to successfully compete in a highly competitive job market. This right, as some opponents could claim, might be infringed by permanent interferences caused by students with particular impairments and, in general, a slower acquisition of knowledge if, for example, students with learning difficulties attend the same class, so that the subject matter cannot be properly taught in the available time. This amounts to a collision of rights — the right to inclusive education of people with impairments and the right to the best education of non-impaired students. Whether it is possible to successfully mediate between the two positions will be further discussed below.

The following table offers an overview of some of the most important pro and contra arguments concerning inclusive education, which is widely seen as the silver bullet against marginalization, stigmatization, and discrimination. I briefly comment on the
Table of the Pro and Contra Arguments for Inclusive Education

<table>
<thead>
<tr>
<th>Pro</th>
<th>Contra</th>
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<tbody>
<tr>
<td><strong>Empowerment:</strong> Promoting the capabilities of impaired people to participate in the social life of the community:**</td>
<td>Better care: Better care for people with impairments is provided at special schools with experienced and specially trained teachers.</td>
</tr>
<tr>
<td>Comments: This is without doubts a valuable goal, but it is difficult to determine whether inclusive education and/or special schools can better accomplish this goal.</td>
<td>Comments: Depending on the medical impairment, it seems possible that students with impairments can also attend non-special schools without lacking good care. A case-by-case decision seems appropriate.</td>
</tr>
<tr>
<td><strong>Equality:</strong> Equal opportunities for students with and without impairments in education.</td>
<td>High costs: Inclusive education is extremely expensive if applied to all students with impairments (e.g., teachers, buildings, infrastructure).</td>
</tr>
<tr>
<td>Comments: Whether the ideal of equal opportunities necessarily leads to inclusive education is a matter of debate. For example, opponents of inclusive education argue that the idea of equal opportunities is best guaranteed by also providing better care and attention for extreme cases at special schools.</td>
<td>Comments: This is correct.</td>
</tr>
<tr>
<td><strong>Social benefit:</strong> Social benefit through heterogeneity for non-impaired students in the classroom and school. Education is not only about gaining knowledge.</td>
<td>Injustice: Students hinder non-impaired students in their learning effects with impairments due to additional noise, time-consuming special care and attention for the impaired students, numerous repetitions for students with learning disabilities, etc. Gaining knowledge is very important in order to get a good job in the highly competitive job market.</td>
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<td>Comments: Social benefit is an important value. However, it does not do justice to realities outside the education system in which people must compete for jobs in a highly competitive job market based on educational merit.</td>
<td>Comments: It might be possible that the important value of the social benefit outweighs practical limitations in class.</td>
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<tr>
<td><strong>Respect:</strong> Respecting human dignity leads to inclusive education.</td>
<td>Utopian idea: Realizing widespread inclusive education is utopian by nature since one is unable to put this idea into practice. In this respect, the human right to inclusive education is comparable with the human right to paid vacation; it will never become a practical reality.</td>
</tr>
<tr>
<td>Comments: The use of the notion of human dignity in (bio-)ethical discourses is problematic and hence the term should be avoided.*** Whether human dignity necessarily leads to inclusive education is questionable.</td>
<td>Comments: Inclusive education could work as a regulative idea that urges society to implement it as far as possible.</td>
</tr>
<tr>
<td><strong>Recognition:</strong> Inclusive education promotes recognition and understanding of people with impairments.</td>
<td>Exclusion: Some students with complex impairments might be excluded and hence the very idea of inclusive education is undermined.** The regular school system seems to be overcharged to include students who can neither hear nor speak, or severely mentally impaired students.</td>
</tr>
<tr>
<td>Comments: This is an excellent point.</td>
<td>Comments: It is correct that regular schools are overcharged by more extreme cases, but this is the reason why society needs well-equipped inclusive schools that are able to deal with such cases.</td>
</tr>
<tr>
<td><strong>Diversity:</strong> Promoting a conception of people that favours diversity and sensitivity over homogeneity.</td>
<td>No better results: Empirically speaking, it is questionable whether students with impairments become, in general, better students in a more heterogeneous learning context.****</td>
</tr>
<tr>
<td>Comments: Whether heterogeneity in education is always best should be empirically examined.</td>
<td>Comments: This claim must be evaluated by empirical studies.</td>
</tr>
<tr>
<td><strong>Autonomy:</strong> Freedom of choice by respecting the individual autonomous decision of the student with impairment to opt for inclusive education.</td>
<td>Social outsiders: It has been shown that students with impairments who were attending regular schools become social outsiders at some point. This, in turn, negatively affects their self-conception and lowers their self-esteem.***** Social inclusion at schools cannot be forced upon others without first changing society at large.</td>
</tr>
<tr>
<td>Comments: If the medical condition allows inclusive education, then one should always support it.</td>
<td>Comments: One should, of course, have recourse to special measures to avoid students with impairments becoming social outsiders.</td>
</tr>
<tr>
<td><strong>Better results:</strong> Students with impairments will become better students in a heterogeneous learning atmosphere.</td>
<td></td>
</tr>
<tr>
<td>Comments: This claim must be justified by empirical studies.</td>
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Table references:

***** Lindner_Brigitt.pdf (last visited October 1, 2013).
arguments and discuss the strongest points of each side in more detail.

The table of pro and contra arguments reveal the hopes and fears of people who either support or oppose inclusive education. The most important point is, however, that both sides attempt to help and to promote students with impairments and seriously care for them. The remaining complex issue is how this can be accomplished — either through inclusive or integrative education. The idea of a complete segregated education for all students with impairments, independently of the nature of the impairment is, indeed, discriminatory and a violation of their fundamental rights. In the following, I briefly discuss the empowerment argument and the better care argument.

Pro: The Argument of Empowerment
The general idea of promoting the capabilities of students with impairments so that they can participate in the social life of the community is an important and valuable goal. Proponents claim that this goal can be best accomplished by inclusive education — that is, to teach all students in one class independently of the complexity of the particular medical impairment in question. Social exclusion might be fostered and maintained when students with impairments are confined to attend special schools.

Proponents of inclusive education who appeal to the argument of empowerment usually refer to Martha Nussbaum and her well-known capabilities approach in the context of justice and disability. The general idea is that each person — impaired or non-impaired — should be promoted by the state so that he or she can acquire the means, or basic capabilities, to live a good and valuable human life. At first sight, it seems promising to follow Nussbaum and others who proclaim that inclusive education is important in order to empower students with impairments by promoting their capabilities to participate in the social life of the community. If there is a fundamental right to the development and fulfillment of one’s own basic capabilities, then it seems acceptable to justify the right to inclusive education by appealing to Nussbaum’s capabilities approach. At second glance, however, it seems that the capabilities approach has the potential to discriminate against people with complex impairments, if the impairments prevent those people from fully developing their basic capabilities despite the support offered, as Sigrid Graumann rightly observes. If this is the case, then the lives of people with complex impairments should be seen as less valuable compared to the lives of non-impaired people, at least according to Graumann’s reading of Nussbaum. Whether this also leads to withholding support from those who would be unable to fully develop their basic capabilities is a matter for further discussion. It is conceivable, however, that — following this line of reasoning — one might jeopardize the idea of “full” inclusive education by separating out people with complex impairments who will never be able to fully develop their basic capabilities. Many advocates of inclusive education, however, would disagree with the latter claim since they believe that all people are, in general, able to live a good life independently of the complexity of the particular impairment.

Additionally, the idea of universal human rights, to which the legal human right to inclusive education belongs, is by nature alien to virtue ethics. Even if Nussbaum’s virtue ethical capabilities approach attempts to almost close the right-virtue gap between human rights and basic capabilities, it still remains unclear how human rights could be adequately conceived in virtue-ethical terms. This otherwise interesting idea — that human rights come very close to what she thinks basic capabilities stand for — remains unconvincing from a more traditional virtue-ethical point of view. To put it in a nutshell, the capabilities approach fails on two points: first, it might potentially discriminate against people with complex impairments concerning the value of life, and second, it is unclear how a virtue-ethical approach could adequately endorse universal human rights, including the human right to inclusive education.

Finally, methodologically speaking, the capabilities approach itself does not necessarily favor inclusive education over other reasonable forms of education. On the contrary, it could also be argued on the basis of the capabilities approach that most students with complex impairments could be better educated at special schools at which they receive the best possible care and attention because their basic capabilities will be better promoted at these well-equipped schools. That would, however, undermine the general idea of inclusive education to teach all people in one class independently of the complexity of the particular medical impairment.

Contra: The Argument for Better Care
Proponents of the better care argument might claim that students with complex impairments such as those who are deaf, deaf-mute, deaf-blind, or have mental impairments, should not be educated in the same class together with non-impaired students. In such cases — as could be argued — better care is provided at special schools that are able to provide the appropriate environment for the particular impaired student (see, e.g., Framework for Action on Special Needs Education 1994). Against this background, why then should
one attempt to provide less care for students with complex impairments who rely on professional care provided in a particular setting?

Yet it might well be the case that under the pretext of better care — proponents think that students with complex impairments should not slow down the educational process of non-impaired students. Exemptions, it could be claimed, open the door for less extreme cases, which leads to a slippery slope by providing strict guidelines in order to decide which students and which complex impairments might reasonably qualify for special schools in order to receive the best possible care and attention.

The previous discussion and overview of the pro and contra arguments provide the background for the next section, regarding the very meaning of the human right to inclusive education.

III. Justice in Education and Disability
The first brief section concerns an often — but wrongly — proclaimed analogy between injustice in education concerning African Americans and people with impairments, by pointing out the distinctive difference of the motif at stake. Against the background of an analysis of the meaning, scope, and limits of the human right to inclusive education, the second section examines the notion of equal opportunities and the egalitarians’ claim that we ought to equalize undeserved life prospects.

1. Equality in Education — The Linda Brown Case
In his article, Christian Lindmeier mentions that Katarina Tomasevsky justifies the idea that availability in education is also a matter of equality by appealing to, among other things, the historical decision concerning the famous Linda Brown case in the U.S. Supreme Court in 1954. The Supreme Court ruled in favor of the young African-American daughter of a priest who wanted to attend the closest primary school, which was only for white students, by claiming that “separate is not equal,” thereby proclaiming that segregated education based on race was an infringement of the principle of equality and hence a violation of the constitution.

Analogously, contemporary proponents of inclusive education often argue that their case is similar to that of segregated education concerning African-Americans in the U.S. At first sight, it seems correct to assume that — since both groups, students with impairments, and African-American students were denied access to regular schools and provided with special schools, thereby receiving a comparatively worse education — this points to the fact that both cases are on the same level. At second glance, however, this is not the case: the rationale of segregated education based on ethnicity was based on a prejudice that African-Americans are by nature inferior and should either not be educated at all or only receive an elementary education. African-Americans were faced with social exclusion, the most severe form of denial in human relations. The rationale of segregated education for students with impairments was charity and benevolence. They should receive the best available care in
special schools (which was not available at regular schools); and teachers of students with special needs were educated in order to take better care of students with impairments. It is certainly correct that students with impairments receive a comparably worse education, and that they often face social prejudice, but to claim that students with impairments faced the same unfortunate fate as that of African-Americans is unconvincing.

Interestingly, the social model of disability applies to African-Americans and other visual minorities rather more than to people with impairments since only here it is true that only society must change in order to remove the disabling social limitations. In this sense, ethnicity and color, interpreted as non-medical "impairments," are socially constructed disabilities. They can only be removed if society changes. People with medical impairments, instead, will still face having "disabilities" even if society becomes fully inclusive, since they will remain biologically limited by their medical condition. This is the reason why Tom Shakespeare, a former proponent of a radical version of the social model of disability, changed his mind after a harmful experience in 1997, where he stayed in bed for nearly six months due to extreme back pain caused by his particular medical impairment — his small stature. He now claims, "While attention to labelling and discourse is important, there is a danger of ignoring the problematic reality of biological limitation."47

The Linda Brown case shows that it is unjust to treat equal people differently based on contingent factors like biological categories such as ethnicity and color. As Aristotle convincingly points out in the Nicomachean Ethics, “[E]quals should receive equal shares, un-equals un-equal shares.”48 ‘The important questions, however, remain, such as: what are the preconditions of equality among people, and how does it affect the sphere of education? Furthermore, the historical Supreme Court decision also made clear that people should be free from discrimination in education based on ethnicity and that equal access should be guaranteed. The practice of segregated education infringed the human dignity of African-Americans because it was a violation of their constitutional right.

In addition, that impaired people feel beloved and valued is not under the control of other people because it would require that other people not only act according, but also have the right motive when they do so. And this is something that cannot be legally demanded without destroying the very meaning of the thing itself. One can only educate people to become more social, in terms of trying to endorse inclusive practices in daily life — comparable to the social and political movement of African-Americans in the U.S. — according to the old saying that "constant droppings wears the stone." In this respect, it seems unreasonable to adhere to a human right to inclusive education. The following sections substantiate this claim.

2. REQUIREMENTS
A moral human right concerns the most basic interests of a person. Traditionally, these basic interests can be further divided into two types of interests: first, fundamental human needs and second, important life plans and personal goals. It is certainly correct that inclusion is an important social value and fundamental right that is frustrated whenever people are socially excluded based on contingent factors such as ethnicity, color, sex, religion, old age, and disability. For example, people with impairments suffer greatly when they are marginalized, stigmatized, and discriminated against. They have a basic moral right to be treated in a fair and equal way, even though they are, empirically speaking, unequal. They have the right to be free from discrimination because they are morally equal. Furthermore, basic moral rights must — at least — fulfill two further requirements: first, the content of the right must be enforceable by the moral community, and, second, it must be under the control of the party whose corresponding moral duty the right is.

At first sight, it seems that the right to inclusive education fails to adequately address the second and third condition, while it does concern one of the most basic interests of students with impairments — not to become socially excluded by being taught at separate schools (like Sinti and Roma, above). Whether the second and third condition could be properly met will be discussed below.

2.1. REQUIREMENTS

2.2. INCLUSIVE EDUCATION — A SPECIAL OR GENERAL RIGHT?

Whether the human right to inclusive education is a special or general right is a matter of debate about who the actual bearer of that right is. For example, does the human right to inclusive education concern all human beings (general right) or only those with impairments (special right)? If one argues that students with impairments have a special right, then this
type of right must be based on the particular medical condition of the impaired student. As Felder rightly points out, special rights can be further differentiated into group rights and individual rights depending on how the right to inclusion can be ascribed to people with impairments. Social groups are, in general, characterized by their particular social relations and certain forms of group identification that distinguishes the group from other groups by, for example, their particular way of life. It is a matter of debate as to whether the right to inclusion is eventually group-based or whether it is individual-based.

Over the last few decades, people have supported the idea that cultural and ethnic minorities, as well as people with impairments, probably need an additional protection that goes beyond the classical individual rights approach, in order to guarantee their survival and to promote and preserve their group identities. The concept of group rights, however, is problematic since subjective rights need a clearly defined legal subject, and this is not the case with minorities. Minority groups are a social phenomenon with floating limits, whose members cannot be easily determined. Whether the minority group of people with impairments can successfully rely on the notion of autonomy in order to become a legal subject is an open question.

2.3. WHO OWES WHAT TO IMPAIRED STUDENTS? — CORRESPONDING DUTIES OF INCLUSIVE EDUCATION

Moral egalitarianism generally proclaims, among other things, that “unfair life prospects should be equalized,” which is to say that people with undeserved disadvantages, such as congenital impairments, should be compensated. Equal opportunities means that the chances for all people should be equal concerning a just distribution of (1) access to certain basic goods (such as education), and (2) opportunities in life, including freedom from any form of discrimination based on sex, ethnicity, color, religion, and disability, etc.

When it comes to education, it seems reasonable that the state must take responsibility to build appropriate schools, provide an area-wide access to schools and universities, organize appropriate procedures for the educational system, and take all necessary steps for each person to be nurtured according to his or her particular needs in order to participate in the social life of the community. In this respect, the corresponding moral and legal duty regarding education concerns the collective or the community rather than the individual person. The right to inclusive education requires massive financial resources so that all impaired students are guaranteed access to inclusive schools within their neighborhoods. It seems far-fetched to internationally endorse full inclusion in education by making it legally obligatory for all states. Pragmatically speaking, this financial burden is out of reach for most countries in the world, and communities would face severe burdens at the expense of other valuable social and political demands. Inclusive education ultimately leads to the normative question of what the moral community should be obligated to against the background of other moral commitments.

Proponents of the moral human right to inclusive education claim that discrimination and unequal treatment in education should be avoided by promoting equal opportunities. Here, it is common to distinguish two forms of equal opportunities — equal opportunities at the start, or concerning the goal. According to the former, all students should enjoy equal start opportunities supported by an appropriate socio-political framework. According to the latter, all students who face undeserved disadvantages such as medical impairments should be supported in order to accomplish the same goal as everybody else.

It seems that the goal-oriented approach to equal opportunities would be unsuitable for (inclusive) education since the significant differences in the capabilities of the students cannot be fully equalized
to ensure that all students will accomplish the same goal, for example, to pass the exam with an outstanding grade. One might object, however, that it is not about the goal of accomplishing an outstanding grade but simply passing through high school. In this case, it seems conceivable that, for example, students with learning difficulties may receive additional support in order to successfully reach the goal to pass through high school. That means the plausibility of the goal-oriented approach mainly depends on the reasonableness of the goal itself. The approach of the equal start opportunities does not rely on a pre-determined and fixed goal but attempts to provide an adequate infrastructure to equalize undeserved disadvantages such as medical impairments. This does not rule out the opportunity we have to additionally support students with impairments by offering individual compensations such as private lessons. In this sense, the approach of the equal start opportunities is more holistic and comprehensive.

If one endorses the wider sense of education — by endorsing inclusive education — then one might jeopardize many non-impaired students who will not be adequately nurtured according to their particular needs and capabilities, since the educational standards might be lower than if we endorse the narrow sense of education. This prominent objection concerns the balancing of moral interests of both groups by stressing the vital point that inclusive education might do injustice to non-impaired students by not giving them the opportunity to receive the best possible education (narrow sense). In addition, teachers might be concerned to meet the particular needs of the impaired students by neglecting the legitimate demands of non-impaired students and the curriculum. Or, vice versa, regular teachers simply do not care about the needs of the impaired students since they want to meet the general schedule of the curriculum. Furthermore, the requirements and demands of lessons might, in general, strain many students with, say, learning difficulties. This in turn leads to frustration, and students may lose their self-esteem together with non-impaired students and partly in the same class, depending on the complexities of the particular impairment. This is a mediative approach and offers a non-discriminatory way to “education for all” by protecting the interests of all students.

V. Conclusions
The previous discussion shows that the widespread view in disability studies — that there is a moral human right to inclusive education — can be reasonably called into question by virtue of the cumulative efficacy of the proposed counter arguments, but without denying that inclusive education is of utmost importance. Practically speaking, the legal human right to inclusive education is of great practical value for impaired students, and for their basic right to be free from discrimination in education, since their concern thereby gains great legal and moral force. But, theoretically speaking, this particular human right lacks an attainable consensus concerning proper moral justification. This is exactly what Lomasky60 and others proclaim, namely, that the idea of human rights is valuable independently of an attainable consensus on the theoretical level — that is, independently of a sound and comprehensive moral justification. After all, some scholars might claim that this is the best one can hope for. But, from a more philosophical point of view, it remains unsatisfactory to internationally endorse far-reaching legal commitments without being able to provide a proper moral justification.

Acknowledgement
I am thankful to Holger Bürckhard and Jerome Bickenbach for their valuable comments on earlier drafts of this paper. However, I am particularly thankful to Johann-Christian Pöder for his helpful comments and very fruitful discussions on earlier versions of this article. The paper is part of my international research project on “Global Bioethics. Human Rights and Disability,” which is funded by the Hermann und Marianne Straniak Stiftung and the Forschungskolleg “Zukunft menschlich gestalten” (Bioethikl: 44501303) of the University of Siegen.
SYMPOSIUM

References


8. It seems correct to assume that no one would argue that living in constant chronic and extreme pain is, indeed, "equally valuable" to any other life. As Tom Shakespeare convincingly argues in Disabilities Rights and Wrongs, impairments are sometimes extremely unpleasant experiences that profoundly limit people's lives. However, other impairments that also limit people's lives but do not cause constant chronic and extreme pain, such as deafness, are seen by the deaf community as not disabling by nature. According to their view, it is society that places a "disabling" burden on deaf people. See T. Shakespeare, Disabilities Rights and Wrongs (Routledge: London, 2000).


11. See CRPD, supra note 1.

12. See Degener, supra note 5.


16. Id.

17. See Gordon, supra note 7.


20. M. Cranston, What Are Human Rights? (London: Bodley Head, 1973). Admittedly, Cranston's position can be described as right-wing conservative concerning rights, which certainly makes him a non-mainstream thinker, but the related idea concerning his position - that one should attempt to stop the general inflation of human rights - is less provocative than one might think.


22. See Degener, supra note 5.

23. In 1592, the converted Calvinist Johann I. (1550-1604) - who was impaired - made education for boys and girls compulsory in his principality of Pfalz-Zweibrücken, which was part of the Holy Roman Empire (the so-called “Old Empire” from the Middle Ages until the 19th century, followed by the German Empire 1871-1945). This was the very first time in human history in which education became legally obligatory. (See E. Sehling, Die evangelischen Kirchenordnungen des 16. Jahrhunderts, Band 18, Rheinland-Pfalz I [Tübingen: Mohr-Siebeck, 2006]: at 406). In time, compulsory education was introduced by many nation states, until it became a legal human right in 1948. See Universal Declaration of Human Rights, supra note 14, § 26; UN General Assembly, European Convention on Human Rights (1954), at Additional Protocol Nr. 1, § 2, 1, available at <http://www.echr.coe.int/Documents/Convention_ENG.pdf> (last visited October 11, 2013); 1966 International Covenant on Economic, Social and Cultural Rights, supra note 15 § 13.


25. Id., at 12.


27. See Cranston, supra note 20.

28. Id.

29. Proponents of this conservative view are not necessarily committed to the claim that all positive rights are utopian and therefore must be avoided. In fact, the right to education itself is also a positive right that requires the state to provide a means to guarantee the education of the citizens. It would be, indeed, unconvinced to question this particular positive right.

30. See Langenfeld, supra note 3, at 421.

31. Of course, the right to inclusive education is not the same as the obligation to participate in inclusive education, but if proponents such as Katarina Tomasevsky claim that integrative and segregated education must stop, because it violates the human dignity of students with impairments, then it is necessary the case that this option becomes the only possibility. See K. Tomasevsky, Report of the Special Rapporteur on the Right to Education (2002), available at <http://daccess-ddsny.un.org/doc/UNDOC/GEN/G03/104/95/PDF/G0310495.pdf?OpenElement> (last visited September 30, 2013).

32. Id., at 28.


34. An interesting point in case is the story about a comatose student who attended a regular class (see M. J. Franz, "Begegnungen mit einer Schülerin im Wachkoma," Empirische Sozialpädagogik 1, no. 2 (2009): 68-78). In addition, the Whole
Schooling Consortium, which is a program of Wayne State University in Detroit, is an international network of schools, teachers, administrators, parents, and faculty members who are dedicated to creating inclusive schools for all children. In 2001, Michael Peterson, the director of the Whole Schooling Consortium, and Lynne Tamor published a paper, "Inclusive Education – Progressive Education: What Is the Relationship?," in which they claim that even in cases where the student is lying in coma or in a PVS, one should include him or her in class. They claim: "It is possible that many disability rights activists themselves may question whether it always can be done: they are driven simply by the conviction that it must be done. One often hears activists say that they are willing to entertain the theoretical possibility that a person who cannot be included may exist...but in their own experience they have never met such a person and in fact cannot imagine such a person. Again, they adhere to Judith Snow's powerful state-

quip that the only requirement for inclusion is breathing...and if technological assistance is required for the breathing, that's okay too. One can, of course, derail the basic premise here by spending time and energy debating the status of people in deep comas and so-called 'persistent vegetative states'. We argue that this debate is a red herring, and further that extending inclusive practices 'even' to these people may well bring about changes in individual people's status. Indeed, there is a growing body of stories of people in such states who were none the less included as much as possible in community life, and seem to have emerged from those states, even if to a limited degree, as a result." See L. Tamor and M. Peterson, "Inclusive Education – Progressive Education: What Is the Relationship?" Whole Schooling Consortium (Detroit, Michigan: Wayne State University, 2001): at 4-5, footnote 3.


36. In her book, "Woman and Development: The Capabilities Approach," Nussbaum argues that the state should promote 10 basic capabilities: life; bodily health; bodily integrity; senses, imagination, and thought; emotions; practical reason; affiliation; other species; play; and control over one's environment. See M. C. Nussbaum, "Woman and Development: The Capabilities Approach" (Cambridge: Cambridge University Press, 2000).

37. See Graumann, supra note 3.

38. Id., at 93.

39. See Machtyre, supra note 19.


41. See Machtyre, supra note 19.


43. Until this point, the Czech Republic had not undertaken any meaningful steps to end their discriminating policy.

44. See Tamor and Peterson, supra note 36.


46. See Felder, supra note 6, at 72.


49. See Felder, supra note 6, at 237.


51. What type of equality is adequate for inclusive education? It is reasonable to assume that equality in education must be proportional according to a particular standard. It would be unjust to adhere to arithmetical or strict equality – all people receive the same equal shares – since the starting positions for non-impaired people and impaired people are usually different. To provide the latter with the same amount of support in quantity and quality that non-impaired students receive is therefore unfair. The task, then, is to flesh out the particular standard of distribution in detail in order to show how one could guarantee each student an adequate education.

52. See Felder, supra note 6, at 225.


54. I.-R. Young, "Structural Injustice and the Politics of Difference," in G. Craig, D. Gordon, and T. Burchardt, eds., Social Justice and Public Policy (Bristo: Policy Press, 2008): 77-104. See also Felder, supra note 6. A related debate concerns the dangers of a group-based approach for people with impairments since structural discrimination and inequality might be supported by the ascension of being a member of the group. In this context, stigmatization, marginalization, and social exclusion might be promoted and not avoided (see T. Shakespeare, "What Is a Disabled Person?" in M. Jones and L. Bassar Marks, eds., Disability, Diversibility and Legal Change (The Hague: Kluwer, 1999): 26-34, at 31; see Felder, supra note 6, at 233-234). The fact that people in social groups might be better able to console each other by virtue of a shared understanding, to support people in the same situation, and to provide valuable help during hard times than it is the case for individuals, who must continue on their own, seems plausible (see, the civil rights movements of the African-American community, gay people, and gender equality).

55. G. Brunner, "Menschenrechte von Minderheiten: Individualrechte, Gruppenrechte oder Selbstbestimmungsrechte?" Jahr-


56. In order to determine whether people with impairments do have a legal (and moral) claim to rely on group rights, this must be thoroughly discussed. However, a detailed discussion of this issue goes beyond of the scope of this article. All in all, I am skeptical about the existence of group rights in the context of human rights and hence of particular group rights for impaired people.


59. In order to cover the costs of, for example, area-wide technologically well-equipped schools, designed to house people with different of impairment, specially trained teachers, and educational programmes of successful team teaching, and so on.

60. See Lomasky, supra note 21.