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FOSTERING CAPACITY, EQUALITY, AND RESPONSIBILITY (AND SINGLE-SEX EDUCATION): IN HONOR OF LINDA MCCLAIN

*Martha Minow**

It gives me great pleasure to have the honor of celebrating Linda McClain as she is appointed the Rivkin Radler Distinguished Professor of Law at Hofstra Law School.

No one has done more than Linda to elucidate the material preconditions for self-government. Or, to put it another way, no one has done more to demonstrate how the concerns traditionally associated with women—concerns for educating children, caring for dependents, balancing work and family, managing reproduction—are crucial to the projects of democracy and human flourishing. She has persistently, carefully, and powerfully excavated the resources within liberalism toward these ends. As a result, she has breathed new life and meaning into the key ideas of rights, autonomy, fairness, justice, and, as I will explore here today: equality, capability, and responsibility.¹

Linda's forthcoming book, *Education for Citizenship*, develops these topics. The book will bring these ideas to the broader audience they deserve. And no one articulates these themes better than Linda.

* William Henry Bloomberg Professor, Harvard Law School. Thanks to Jenna Cobb, Mira Edmunds and Kristin Flower for research assistance.

1. See Linda C. McClain, "Atomistic Man" Revisited: Liberalism, Connection, and Feminist Jurisprudence, 65 S. CAL. L. REV. 1171, 1176 (1992).

In her honor, I turn to consider equality, capacity, and responsibility in the context of a related subject not, at least not yet, an explicit subject in Linda's work: single-sex education. The topic of some urgency is single-sex education in kindergarten through high school, not college-level education. For we are in the midst of a not-so-explicit policy shift: now is the time to raise attention and honestly assess it.

Single-sex education has a longstanding history in this country and elsewhere of course. Ever since there has been formal education, much of it has taken place in single-sex settings. That history also includes long practices of excluding girls and women from educational opportunities altogether and from superior opportunities offered to boys and men. When the president of my university speculated in January that the low numbers of women in academic math and science fields may reflect biological differences and life-style preferences, he unfortunately reminded us of many of the old rationales for exclusion of girls and women from excellent educational opportunities.² Maybe females are just inferior; maybe we do not want to bother about some things; maybe we should not. Well, Larry Summers learned a lot in the days and weeks since his remarks.³ When we look back at this time, we may come to view it as the beginning of an era at least in my university of unprecedented responsiveness to gender equity efforts. There really is nothing like an international firestorm to motivate change.

Potentially far more important to the actual educational experiences of many children, though, is a quiet set of developments in Washington, D.C. Did you know that in May 2002, the Office of Civil Rights in the Federal Department of Education declared its intention to permit more flexibility under federal guarantees against sex discrimination in public schools receiving federal funds? The Office of Civil Rights explained plans to promote "important and legitimate efforts to improve educational outcomes for all students . . . and to expand the choices parents have for their children's education consistent with . . . the Constitution."⁴

The government has in mind symmetrical single-sex education: permitting both all-girl *and* all-boy schools, and all-girl and all-boy

2. See, e.g., Sam Dillon, *Harvard Chief Defends His Talk on Women*, N.Y. TIMES, Jan. 18, 2005, at A16.

3. See Marcella Bombardieri, *Summers Sets \$50M Women's Initiative Harvard Panels Recommend Steps*, BOSTON GLOBE, May 17, 2005, at A1 (announcing funds to improve climate for women and minorities).

4. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 67 FED. REG. 31,098 (May 8, 2002) (to be codified at 34 C.F.R. pt. 106).

classrooms within coeducational schools. As a mathematical and demographic matter, it may well be easier to administer and may seem more fair than asymmetrical policies. Yet some people advocate against any all-boy schools or programs, given historical patterns of excluding girls from top educational opportunities, while they argue at the same time for room for all-girl programs on the theory that these can create empowering atmospheres. I'm sure you know about the Young Women's Leadership School, the all-girls school serving grades seven through twelve in Harlem. Meanwhile, some others emphasize that boys are especially vulnerable in the current urban areas and that boys-only schools may be the best way to instill confidence and discipline or to cultivate their emotional maturity.⁵

But such efforts at single-sex schooling draw critics—with some feminists leading the way. The New York Civil Liberties Union and the National Organization for Women (NOW) filed a complaint against the Young Women's Leadership School with the Department of Education's Office of Civil Rights in 1996. The two organizations, as I understand it, never found a young boy who wanted to attend the school but was denied admission, so the case never went to court.⁶ Meantime, every student in the first two graduating classes received an acceptance to college, compared with 50% citywide.⁷ Perhaps this reflects something special about the atmosphere; perhaps it reflects the self-selection of the students, the small classes, intense parental involvement, dedicated teachers and extra resources and attention given to the school. In any case, it is an experiment worth watching. Federal and state governments are not only watching, but also encouraging more experiments.

The Office of Civil Rights issued the actual proposal to revise federal regulations exactly one year ago.⁸ The decision to issue the proposed change may have been part of a campaign year strategy; in any case, the Bush administration has not issued a final regulation. Nonetheless, by publishing the proposed rule, the federal government has clearly signaled a green light for experiments.

5. See generally ROSEMARY C. SALOMONE, *SAME, DIFFERENT, EQUAL: RETHINKING SINGLE-SEX SCHOOLING* 220-22 (2003).

6. Rachel P. Kovner, *Education Dept. Readies Rules to Support Single-Sex Schools*, N.Y. SUN, May 1, 2002, at 1.

7. SALOMONE, *supra* note 4, at 24.

8. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 67 FED. REG. 31,098.

The states are reading the message. Currently, at least twenty-four states have some single-sex public schools.⁹ Dallas, for example, opened a Young Women's Leadership School this past September.¹⁰ And bipartisan support for single-sex education has emerged in Congress, led by Senator Hillary Rodham Clinton and Senator Kay Bailey Hutchinson.¹¹ Advocates for women's and girls' rights line up as both supporters and opponents of these developments. As Rosemary Salamone writes, this is a moment when the sands of feminism seem to be shifting, and

[s]ome [women's rights advocates] who had passionately denounced all-male admissions at state military academies . . . were suddenly rallying to support public single-sex schools for inner-city girls in the name of affirmative action. Others, despite their avid support for [that concept], were condemning [such schools] with equal resolve.¹²

To some extent, these conflicts reflect the debates over whether gender equality calls for treating males and females the same, or instead attending to differences between them. The debates also importantly reveal disagreements about whether gender as a category lends itself to universal truths and policies—or whether instead the complex interactions among gender, class, race, disability, and region prevent meaningful generalizations or claims about what all girls or all boys need.

Indeed, few recent debates affecting gender equality have grown as vituperative in the past few years as the ones over single-sex education. This may reflect what we used to call problems of consciousness-raising or false consciousness. Who knows what is good for girls and women? If women and girls do not prefer coeducation, should their views matter or do they reflect socialization that itself should be challenged? As Linda McClain once wrote:

There has been a deep impulse in feminism, throughout its history, to engage in judgment or critical evaluation with a view to helping women. Arguably, the role of consciousness-raising as a feminist

9. Jane Gross, *Dividing the Sexes, for the Tough Years; A Coed School Offers Boys and Girls Separate Classes in Grades 6-8*, N.Y. TIMES, May 31, 2004, at B1.

10. *Plan's Effects*, DALLAS MORNING NEWS, Nov. 2, 2004, at 14B (Irma Rangel school, grades 7 and 8); *Go Girls! Education Isn't a One-Size-Fits-All Endeavor*, DALLAS MORNING NEWS, Aug. 17, 2004, at 10A.

11. Bill McAuliffe, *Feds May Clear Way for Single-Sex Classes*, STAR TRIB. (Minneapolis), June 14, 2004, at 3B.

12. Rosemary C. Salamone, *Feminist Voices in the Debate Over Single-Sex Schooling: Finding Common Ground*, 11 MICH. J. GENDER & L. 63, 70 (2004).

method yielding knowledge about women's lives reflects this impulse. But, as applied to other women, a stance of judgment may suggest an us/them or self/other relationship in which feminists attempt to interpret the experience and voices of other women. Particularly when differences such as race, ethnicity, and class exist, there are risks of incomprehension and misinterpretation, as well as solipsistic use of one's own experience as a measure or norm. The consequences are exacerbated when the interpreter is in a position of power (e.g., to prescribe policy agendas or to regulate the lives of the women under interpretation).¹³

Risks of misinterpretation, solipsistic use of one's own experience by a person of power—these phrases each conjure up old ideas about innate gender differences as a possible explanation for the low representation of women in the academic sciences. The condemnation and defense of Larry Summers rivals the debate over single-sex education in intensity of disagreements. The frailty of the empirical base in both contexts probably helps to explain why there's so much more heat than light.

Let us consider how the issue of single-sex education can be illuminated by thinking, as Linda McClain tells us to, about concepts of equality, capacity, and responsibility. Here is an initial sketch of how the analysis could go.

I. EQUALITY

Over 150 years after they first were uttered, these words, written in 1848, remain startling: "We hold these truths to be self-evident: that all men and women are created equal . . ." Preserved in Elizabeth Cady Stanton's *History of Woman Suffrage*, these words were crafted by the first-wave feminists who gathered at the First Women's Rights Convention in Seneca Falls.¹⁴

Determining what equality should mean has remained difficult ever since. Determining what equality should mean in the context of kindergarten through grade twelve education has proved especially arduous. Should equality be measured in terms of outcomes, like grades, performance on standardized tests, and college admission records? On this view, single-sex education should be assessed in light of these kinds

13. Linda C. McClain, "Irresponsible" *Reproduction*, 47 HASTINGS L.J. 339, 446 (1996) (citations omitted).

14. Declaration of Sentiments, The First Women's Rights Convention, Seneca Falls, July 19-20, 1848, reprinted in 1 HISTORY OF WOMAN SUFFRAGE 70-73 (Elizabeth Cady Stanton et. al. eds., 2d ed. 1889).

of measures drawn as comparisons of boys and girls in both coeducational and single-sex settings. Some empirical studies of single-sex education exist but only with a limited factual base. Most of the studies to date have focused on girls' schools that are private and differ in scale, parental income and involvement, and other factors from the public school programs under development. Even with these difficulties, and further ambiguity over how to interpret the data, studies apparently repeatedly demonstrated that boys dominate coeducational classrooms but girls outperform boys on most indicators of performance.¹⁵ Some data also suggest that girls' academic achievement improves in single-sex education while boys' declines. If that indeed is true, can any solution benefit all the children? Equally?

Short-term test scores and even longer term college admissions may not capture what equality in education should mean. Actual aspirations, specific resources and inputs, and the quality of programming are also key. The Philadelphia High School for Girls defines itself as a "highly competitive college-preparatory school for gifted women of multi-cultural backgrounds,"¹⁶ although it did not offer an academically challenging program until its "brother" school, Central High, became coeducational under a court order.¹⁷ Central High and other schools for girls have transformed earlier missions framed by low expectations and stereotyped roles for girls and women into self-consciously competitive preparation for the full range of intellectual and career trajectories, but that transformation itself should remind us of the importance of paying close attention to the specific courses, teacher expectations, and programs adopted by single-sex schools.

One more alternative line for assessing equality looks to the social meaning and social messages of the schooling experiences. This approach specifically draws from the school desegregation cases which have addressed stigma as well as expenditures and outcomes. Analogies between race and gender are notoriously crude but I think that useful insights can emerge from analogy between the legal discussions of racial segregation and legal discussions of gender separation.

Brown v. Board of Education provides an explicit statement of this commitment in its famous announcement in the context of mandated racial segregation that "[s]eparate educational facilities are inherently unequal."¹⁸ There the Supreme Court reasoned that "[t]o separate

15. See SALOMONE, *supra* note 4, at 86-92, 98-101.

16. *Id.* at 30.

17. *Id.* at 25.

18. 347 U.S. 483, 495 (1954).

[African-American] children from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.”¹⁹ Quoting a trial court assessment, the *Brown* Court noted that “[t]he impact [of segregation] is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the [N]egro group.”²⁰

Now, analogies to *Brown v. Board of Education* are commonly invoked by opponents of single-sex education. Yet it is equally important to arguments defending majority minority schools. Consider Justice Clarence Thomas’s objection to questions raised about the capacity of such schools to provide excellent learning opportunities. In *Missouri v. Jenkins*, joining the Court’s majority in rejecting the remedial plan that turned to magnet schools to draw white students back to the inner city minority schools, he expressed distress “that the courts are so willing to assume that anything that is predominantly black must be inferior.”²¹ He reasoned that to presume psychological harm to black children that retards their mental and educational development “rests on an assumption of black inferiority.”²² By analogy, to assume that an all-girls school harms girls is to assume that girls are inferior and cannot receive the same level of educational challenge alone together that they would in a coeducational setting. (I say “alone” here—I am thinking of the time a man came up to a group of women seated and talking together at a bar and said, “Now what are you girls doing alone here?”) The social meaning of integration strategies could risk the implication that excellence cannot come in the work of schools composed entirely of Black and Hispanic kids, or the work of an all-girls math class. That would be empirically wrong and potentially harmful to the project of promoting equality in respect as well as outcomes.

Justice Thomas’s warning is useful. But his analysis elides the distinction between de jure and de facto segregation, and he does not even consider the further distinction between voluntary and involuntary segregation that could be quite fruitful here. The segregation in *Brown* was so obviously legally coerced that the Court did not have to spend time talking about it. In contrast, Thomas’s analysis gestures toward historically Black colleges where the racial separation has never been

19. *Id.* at 494.

20. *Id.*

21. *Missouri v. Jenkins*, 515 U.S. 70, 114 (1995) (Thomas, J., concurring).

22. *Id.*

itself mandated by law nor has it rested on exclusion of Whites, Hispanics, or Asians. The racial identification of historically black colleges grew from reactions to exclusion but also from proud and vigorous commitments to excellence. (The segregation in the Kansas City schools at issue in *Missouri v. Kansas* looks like a much more complicated story.)²³ Voluntariness on the part of individuals selecting those schools has come to characterize historically Black colleges now that racial exclusion has ended at other schools. This voluntariness contributes to the social meaning of historically Black colleges. The same can be said of women's colleges, even though the Supreme Court rejected the exclusion of men from a state women's nursing school in *Mississippi v. Hogan*. There, the Supreme Court reasoned that the exclusion of a man from a public nursing school "tends to perpetuate the stereotyped view of nursing as an exclusively woman's job . . . and makes the assumption that nursing is a field for women a self-fulfilling prophesy."²⁴

We can and probably should debate the particular assertions about social meaning that members of the Supreme Court make as well as their general competence to tread in these waters. But the waters themselves are crucial, I think, to assessing equality, and very much a part of what Linda McClain's own attention to equality has meant.

Thus, single-sex education could be far more defensible where offered on an entirely voluntary basis than where it is mandated by law. If available on an entirely voluntary basis, single-sex education could well convey the social message of expected excellence and invitation to full striving. But if not handled carefully, such schools could instead convey assumptions about the vulnerability and incapacity of girls to compete fully with boys, at least in the world as currently constructed. Much is made these days of the potential benefits of all-girls math classes to help girls get over "math phobia." There may be very real virtues in such programs but I would worry especially if they extend throughout a child's entire education. Such pervasive separation communicates to boys and to girls that girls need separate math classes and that a coeducational setting carries risk of harm. More empirical work is certainly needed to conclude anything meaningful on this subject. That would require having some single-sex settings to permit empirical comparison with coeducational settings. Currently, researchers

23. See Wendy Parker, *The Supreme Court and Public Law Remedies: A Tale of Two Kansas Cities*, 50 HASTINGS L.J. 475 (1999) (examining the complex combination of seemingly intractable doctrinal and political obstacles to desegregating the Kansas City schools).

24. *Mississippi v. Hogan*, 458 U.S. 718, 729-30 (1982).

rely on studies in other countries—such as an Australian study finding that girls in coeducational math and science classes hold less favorable attitudes about those subjects than both girls in single-sex classes and boys whether in single-sex or coeducational classes. One study in the United States finds, confusingly, that girls in a single-sex math class view the subject more favorably than the comparison set in a coeducational class, but the girls in the single-sex class “personally became more negative about mathematics.”²⁵

In her work, Linda attends to equality within families and equality among families. This reminds me of a further significant meaning of gender equality in the context of schooling. We should not let attention to potential disparities in the particular classes or programs offered to girls and boys within one school, or even within one school system, distract us from enormous disparities between school systems. The disparities in resources, expenditures, labs, and teacher qualifications in Mississippi schools compared with schools in New York—and in suburban Texas schools compared with the urban schools—remain enormous. Research indicates that access to peers from middle and upper class backgrounds is a strong predictor of school success for poor students.²⁶ This may look like déjà vu all over again; desegregation across economic class differences may be crucial to school equality. This insight should not get lost in discussions of single-sex education.

It is striking how much of the advocacy for single-sex public education—for boys as well as for girls—occurs as people try to improve failing inner city schools. Single-sex education might give focus and a sense of being special to some of these schools quite apart from any generalizable lessons about the value of or need for single-sex learning environments. It actually may matter less what a school’s philosophy is than whether it has a philosophy and how much the teachers and parents are reading from “the same page” in pursuit of that philosophy. The opportunity to mobilize resources and the attention that the debate over single-sex instruction may be creating are similar to the developments created by charter schools, magnet schools, and pilot schools. If these efforts lend focus to schooling, motivate the adults at the front-lines, and give the kids a sense that something special is going on, it seems wrong, given the state of urban public education, to rule particular single-sex initiatives out of bounds.

25. Patricia B. Campbell & Ellen Wahl, *Of Two Minds: Single-Sex Education, Coeducation, and the Search for Gender Equity in K-12 Public Schooling*, 14 N.Y.L. SCH. J. HUM. RTS. 289, 303-05 (1997).

26. See James E. Ryan, *Schools, Race and Money*, 109 YALE L.J. 249, 297-300 (1999).

II. CAPABILITY

The second concept that Linda's work makes central is capability. Linda refers to the work of Amartya Sen and Martha Nussbaum. Sen and Nussbaum collaborated to develop the conception of human capabilities as an alternative to wealth, income, or other indicators of utility in articulating and measuring the quality of people's lives. Capabilities offer a conception that moves closer than utility to results, avoids the distortions of individual preferences, and addresses functioning across a broader range of human experience than can be captured purely by considering allocation of resources. A focus on capabilities—or valuable human freedoms—draws attention to the material bases for human freedom and to group disparities while emphasizing human agency. The notion of capabilities in this sense invites evaluation not in terms of actual achievement but instead in terms of real opportunities, and in this way the concept preserves latitude for freedom by the individual in choosing whether to take up those opportunities.²⁷ The ideas developed by Sen and Nussbaum have actually become incorporated into measurement of human well-being as used by the United Nations and several developing countries. This marks a real improvement over measurement simply of wealth or assets, because it allows us to see who has leisure time; who has an opportunity to become literate; and who has chances to participate in community or national governance.

Especially appealing in the capabilities approach is the underlying commitment to human flourishing that reaches for a richer understanding of human experience than what can be measured in the terms used by contemporary welfare economics. The approach tries to remain attentive to cultural context, and yet it also aspires to articulate what every human being should be enabled to have as options in life. Controversial and often characterized as utopian, the capabilities approach nonetheless helps to focus debate and push others to explain why assurances of capabilities should not be pressed at least as aspirations for all people, with particular attention to resisting the constraints of conventional gender roles.

Nussbaum's articulation in 1999 includes:

1. Life. Being able to live to the end of a human life of normal length

27. See AMARTYA SEN, DEVELOPMENT AS FREEDOM (1999); AMARTYA SEN, *Capability and Well-Being*, in THE QUALITY OF LIFE 30-51 (Martha C. Nussbaum & Amartya Sen eds., 1993).

2. Bodily health and integrity.

3. Bodily integrity. Being able to move freely from place to place; being able to be secure against violent assault, including sexual assault

4. Senses, imagination, thought. Being able to use the senses; being able to imagine, to think, and to reason; being able to use one's mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech and freedom of religious exercise; being able to have pleasurable experiences and to avoid nonbeneficial pain.

5. Emotions. Being able to have attachments to things and persons outside ourselves; being able to love those who love and care for us . . . not having one's emotional developing blighted by fear or anxiety.

6. Practical reason. Being able to form a conception of the good and to engage in critical reflection about the planning of one's own life.

7. Affiliation. Being able to live for and in relation to others, to recognize and show concern for other human beings, to engage in various forms of social interaction; being able to imagine the situation of another and to have compassion for that situation; having the capability for both justice and friendship. . . . Being able to be treated as a dignified being whose worth is equal to that of others.

8. Other species. Being able to live with concern for and in relation to animals, plants, and the world of nature.

9. Play. Being able to laugh, to play, to enjoy recreational activities.

10. Control over one's environment. (A) Political: being able to participate effectively in political choices that govern one's life; having the rights of political participation, free speech and freedom of association (B) Material: being able to hold property (both land and movable goods); having the right to seek employment on an equal basis with others²⁸

This list might sound laughably utopian, but utopian thought is not out of bounds on today's lovely occasion. Also, it should not seem

28. MARTHA CRAVEN NUSSBAUM, *SEX AND SOCIAL JUSTICE* 30, 41-42 (1998); MARTHA NUSSBAUM, *WOMEN AND HUMAN DEVELOPMENT: THE CAPABILITIES APPROACH* 34-35 n.2 (2000).

utopian to strive for basic physical safety for girls in schools. It is sobering to think that some argue for single-sex education for girls to ensure protection against sexual assaults as well as to foster the development of practical reason, emotional attachments and affiliations, and participation.

Articulating a threshold level of capabilities can provide a basis for constitutional principles that citizens should be able to demand from their governments. These principles would withstand the vagaries of political preferences.²⁹ Similarly, a capabilities approach might help articulate elements of education that students and parents should be able to demand. This would even comport with third-wave school finance litigation strategies across this country that have sought to realize state constitutional guarantees of education in terms of specific features of "adequate education."³⁰

Linda McClain has developed a particular notion of capacity in fostering citizenship: collectively we should facilitate people's abilities to use "their moral powers, or capacities, to enable them to take part in public life (democratic self-government), and to conceive and live out a good life, including forming relationships and associations (personal self-government)."³¹ This goal could well warrant single-sex education for girls if evidence demonstrates that it would enable them to become self-governing in devising and carrying out plans for their own lives. Existing research findings indicate that girls in coeducational settings tend to participate less and have less interaction with the teacher than girls in all-girl school settings.³² Also, according to some studies, the students facing the greatest amount of harassment are boys in single-sex settings.³³

29. Like the Kantian or Rawlsian approaches, the capability idea emphasizes the equal moral worth of every individual. Unlike the theories of Kant and Rawls, the capabilities perspective also imagines a civil society that is an organic collective embracing members who each have equal moral worth or dignity in virtue of their human capabilities; social arrangements having the weight and texture of affection and lived experience; and social bonds becoming palpable and not merely artifacts of a hypothetical social contract.

30. *E.g.*, Campaign for Fiscal Equity v. New York, 744 N.Y.S.2d 130, 138 (N.Y. App. Div. 2002); see Molly S. McUsic, *The Promises and Pitfalls of School Finance Litigation*, in LAW AND SCHOOL REFORM: SIX STRATEGIES FOR PROMOTING EDUCATIONAL EQUITY 88 (Jay P. Heubert ed., 1999). Whether courts rather than legislatures are equipped to articulate the elements of adequate education is another matter. See, e.g., Avidan Y. Cover, Note, *Is "Adequacy" a More "Political Question" Than "Equality?"*: *The Effect of Standards-Based Education on Judicial Standards for Education Finance*, 11 CORNELL J.L. & PUB. POL'Y 403, 410-11 (2002).

31. LINDA C. MCCLAIN, *THE PLACE OF FAMILIES: FOSTERING CAPACITY, EQUALITY, AND RESPONSIBILITY* (forthcoming Jan. 2006) (manuscript at 5, on file with author).

32. Campbell & Wahl, *supra* note 25, at 303 (citing studies).

33. *Id.* at 303-04 (citing studies).

There do seem to be serious defects in the research base, though. Many of the researchers are advocates on one or the other side of single-sex education. And, as is true about educational research in general, the multiple dimensions of classroom learning can defy efforts to focus on any one dimension. Classroom activities, teacher expertise, size of the student body, and school mission each matter so much that they may swamp the contributions of gender composition to student achievement and experience.³⁴ (All of these factors actually are miniscule when compared with the effects of parental educational and economic backgrounds. That is why Linda's attention to families is so crucial to the study of capabilities.) There are vital roles for formal institutions, whether public or private, in fostering young people's capacities for reason, affiliation, self-direction, and democratic participation. Yet a full program to promote human flourishing, overcome gender bias, and enable the development of responsible self-governing individuals must attend seriously to the roles that parents and extended families need to play in these tasks. Thus, honest attention to gender dimensions of the capabilities approach demands that we broaden our lens from the debate over single-sex or coeducational schooling to include (1) the work-family arrangements that make it more or less possible for parents to support their children's learning, (2) the after-school settings that can support homework and help families juggle responsibilities, and (3) the opportunities for parents to increase their own learning, civic engagement, and time to spend with their children and others in their care. Such attention to context—and to the responsibilities of the larger community—is fully compatible with the reminder of individual responsibility as well put by a teenager some time ago. Anne Frank, in her diary written while she hid from Nazis, wrote, "Parents can only advise their children or point them in the right direction. Ultimately, people shape their own characters."³⁵ Her comment, for me, is a reminder that young people are capable not only of taking responsibility under extreme circumstances, but also reflecting on the very dynamics by which they learn to be responsible.

III. RESPONSIBILITY

Elizabeth Cady Stanton wrote in her essay, "Solitude of the Self," that "[n]othing strengthens the judgment and quickens the conscience

34. *Id.* at 305-06.

35. ANNE FRANK, *THE DIARY OF A YOUNG GIRL* 329 (Otto H. Frank & Mirjam Pressler eds., Susan Massotty trans., Doubleday 1991) (1952).

like individual responsibility.”³⁶ In her own work, Linda McClain also highlights responsibility, including individual agency in decisions about reproduction and intimacy. She advocates sex education classes that promote equality, moral capacities, self governance, not just abstinence.

Given my preoccupation today, I cannot help but notice that most sex-education classes probably will, and should, occur in single-sex settings. Whatever else may be the virtues of coeducation, at least some of the discussions around these issues will proceed with a greater sense of candor when girls talk with girls and boys talk with boys. Nonetheless, it would also be wonderful if classrooms could create contexts for honest coeducational discussions about sexual responsibility and choices. Achieving sufficient comfort for honest conversation in class between boys and girls could equip young people entering adulthood to have direct and honest conversations as they grow older and explore intimate relationships.

It is intriguing to think about what it would take to organize an entire curriculum to foster individual responsibility. Might this help reduce the harassment of students by other students? Programs that teach kids dispute resolution techniques and give them roles as mediators and problem-solvers in the school directly give them responsibility. Such programs seem to reduce violence and disciplinary problems at schools; they certainly develop capacities for individual students that assist them in and out of school.

Yet the focus on responsibility risks suggesting that the larger context need not change. Of course, individuals even in the worst circumstances can take control of their lives. But how can a focus on individual responsibility remain mindful of the significance of context, and forces beyond the individual’s own control, to each person’s ability to exercise responsibility? If a teenage girl lives in a world where the most positive reinforcement she can get arrives if she becomes pregnant and has a baby, is it an act of irresponsibility or a correct reading of social cues that leads her to get pregnant and have the child? But if the teen instead has a realistic path to higher education and a ticket out of the inner city, exercising personal responsibility seems often to take a very different path. Extensive research on teen pregnancy suggests that more effective than any direct instruction on abstinence, or birth control, or related matters is making real opportunities for more education and

36. Elizabeth Cady Stanton, *The Solitude of the Self* (1892), reprinted in GEOFFREY C. WARD, NOT FOR OURSELVES ALONE at 191 (1999).

meaningful careers available to young girls.³⁷ Here, individual girls may exercise responsibility in their choices about intimacy and birth control not because they have suddenly found a new locus of internal control, but because they have realistic hopes.

The topic of education for responsibility has a particular significance for one setting where females have until very recently been entirely excluded. The educational setting that prepares individuals for the ultimate responsibility of citizens to serve their nations in times of conflict and in times of peace were open for most of history only to males.³⁸ The historical exclusion of girls and women by military academies of course reflected the historically gendered views of patriotism and military service. Those views have changed officially if not completely in practice. The legislation proposing a draft that failed last year in the Congress by a vote of two to 402 would have required military service for women and men.³⁹ With changes in practice and ideology, we have seen serious and successful challenges to the exclusionary admission rules of the Citadel in South Carolina and the Virginia Military Academy. Shannon Faulkner successfully sued the Citadel to gain admission, though she withdrew, citing medical reasons. One report said she “wilted” under the physical demands of the training but let’s recall that two of the four women who immediately followed her there quit after their clothes were set on fire and deodorant was sprayed in their mouths.⁴⁰

Under challenge for violating equal protection with its policy of excluding women, the Virginia Military Institute defended its “adversative method of teaching” which depersonalized the cadets as a practice designed to produce citizen soldiers adhering to the school’s values.⁴¹ The Fourth Circuit found a constitutional defect in the school’s

37. BEATRIX A. HAMBURG & SANDRA LEE DIXON, *ADOLESCENT PREGNANCY AND PARENTHOOD, IN EARLY PARENTHOOD AND COMING OF AGE IN THE 1990S*, at 16 (K. Rosenheim & Mark F. Testa eds., 1992).

38. The original mission of The Citadel, a military college established by South Carolina in 1842 was “to provide a ‘system of education for the poor but deserving boys’ of South Carolina . . . [and to] provide[] young ‘cadets’ [with] military training for ‘times of conflict’ and ‘knowledge in the practical arts and sciences for service as citizens in times of peace.’” See Jeremy N. Jugreis, Comment, *Holding the Line at VMI and the Citadel: The Preservation of a State’s Right to Offer Single-Gender Military Education*, 23 FLA. ST. U. L. REV. 795, 799 (1996) (quoting THE GUIDON: 1994-1995 33 (Kirby R. Baker Ed., 1994)).

39. See Charles Meredith, *Congressmen Give Their Views on 37 Topics*, MORNING CALL (Allentown, Pa.), Mar. 2, 2005, at B1.

40. Michael Janofsky, *Military College Awaits Its First Female Cadets*, N.Y. TIMES, July 20, 1997, at § 1 p. 12.

41. See *United States v. Virginia*, 518 U.S. 515, 516 (1996).

exclusion of women but offered three alternative remedies: admission of women with the appropriate adjustment of the program, establishment of a parallel program for women, or abandonment of state support.⁴² The school and the commonwealth responded by establishing a sister program for women, which the Fourth Circuit found acceptable under the Equal Protection Clause because it would accord women “substantively comparable benefits,” despite the lack of history and prestige surrounding VMI.⁴³

The Supreme Court reversed and found that Virginia failed to offer an “exceedingly persuasive justification” for the exclusion of women from VMI—and also found that the parallel program failed to provide an equal opportunity for women who wanted to attend the military academy.⁴⁴ Central to the Court’s view was the failure of the plan to eliminate the effects of past discrimination or to prevent future discrimination. The case also gives us the message that the Constitution demands “skeptical scrutiny” of official action denying opportunities on the basis of sex, which would require an “exceedingly persuasive justification.”⁴⁵ The Court ruled that Virginia failed to meet that standard, and thereby rejected the arguments that single-sex education was necessary because of the physical training, absence of privacy, and adversative method used at VMI. But the Court carefully restricted its conclusions to the particular shortfall in the parallel women’s school.⁴⁶ The Court acknowledged that a state could pursue diverse educational opportunities, and did not pass on whether separate but equal undergraduate institutions could comport with equal protection.⁴⁷

It is the standard of “exceedingly persuasive justification” that now must govern public educational experiments in single-sex programs. Perhaps that is why, despite its clear interest in promoting such experiments, the Bush administration has not yet quite found the way to issue final regulations authorizing such programs. The administration may find support, though, in congressional findings from 1994 that girls do not pursue math and science as much as boys, and considerably fewer women than men enter the sciences.⁴⁸ With clear encouragement at the federal level and strong interests in the states, I predict that distinctive

42. *United States v. Virginia*, 976 F.2d 890, 900 (4th Cir. 1992), *cert denied*, *Virginia Military Inst. v. United States*, 508 U.S. 946 (1993).

43. *United States v. Virginia*, 44 F.3d 1229, 1241 (4th Cir. 1995), *rev’d*, 518 U.S. 515 (1996).

44. *Virginia*, 518 U.S. at 523.

45. *Id.* at 531.

46. *Id.* at 540.

47. *Id.* at 534.

48. 20 U.S.C. § 7283 (b)(3)(C).

educational programs for girls and single-sex educational settings will be expanding.

I hope that the searching equal protection inquiry demanded by the Court can encompass the considerations of equality, capability, and responsibility, considerations wonderfully animated in the work of Linda McClain.
