

SINGLE-SEX EDUCATION: BENEFITS AND LEGAL IMPLICATIONS OF NARROWING THE ACHIEVEMENT GAP

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Despite attempts to level educational resources such as Title IX and academic organizations, there lacks a response to the different learning needs of women and men; examples such as United States v. Virginia and Mississippi University for Women et al v. Hogan demonstrate that the Court has not dismissed the aim of single-sex schools. This paper discusses the gender specific learning styles and the attempts to level disparities between the genders in education. It then proposes solutions for single-sex education.

Throughout history women have strived to change gender stereotypes and pursue equality with men in many different realms of society including education. Researchers disagree about the benefits for women matriculated in single-sex schools. The law under Title IX has found that these schools are unconstitutional and should not discriminate against a particular gender. However, while the Court upheld this idea in *United States v. Virginia* and *Mississippi University for Women et al v. Hogan*, it has not dismissed single-sex schools entirely, and there are still schools today that practice single-sex education. Two criteria must be considered in women's education: women and men have different learning styles and need distinct teaching styles that will build their confidence and skills, and women need to be able to integrate and compete with men on an educational and work-oriented level. To implement this, institutions should teach separate gender classes based on each gender and learning style to better educate and prepare them for the integrated workforce. In this paper, I will argue that there is a need for single-sex schools, especially in support of women, and while Title IX upholds equal access to educational resources, the Court has not dismissed the aim of single-sex schools. They are necessary because clubs and academic organizations do not significantly level the playing field.

TITLE IX

Title IX appears to be an equalizing law in education, but while it requires all male institutions to allow women access to education, it forces women to assimilate into a traditionally male school. This limits the opportunities for women to succeed because their only option is to compete with men. While it is important to apply the law uniformly among the sexes, men and women have differences that should be recognized. Men and women have different learning styles, and in co-educational classes, teachers use male learning styles to guide their practices for the entire class which dismisses the needs of women altogether. A study conducted in 1995 by Philbin et al. researched the educational processing skills in women and men to determine their learning styles. The study concluded, “men and women have different learning styles, and in general, men seemed to find congruence between traditional education and their learning style while women did not.”¹ Women are therefore, faced with a disadvantage when assimilating into male institutions because they must change the way they understand material. This makes it more difficult for women to compete on an equal level with men. The support for single-sex schools based on this research is not to suggest, however, that men and women should be placed in separate institutions and taught to perpetuate their gender roles, but rather that the same fundamental material should and can be taught differently to the two sexes to maximize their individual learning styles. This research summarizes the different learning styles of men and women that indicate the inability to apply Title IX in a straightforward way. Furthermore, it is necessary to analyze the research and adapt learning styles that will benefit both sexes.

Title IX is a neutral law that was created to ensure equality among the sexes, its use throughout education has benefited women by allowing them to integrate into male-dominated classes. In order to remove the prominent male ideology taught to students, schools “would have male and female professors of all ages incorporating feminist and other non-white-male perspectives into their courses.”² By implementing non-traditional perspectives that teach to all students equally, there would be more room for different perspectives and learning styles. However, while most women have supported Title IX and its promises to females, it lacks control over its application in schools and does not take into consideration the different learning styles of men and women. Title IX benefits those women who can compete with men on their

1 Marge Philbin et al., “A Survey of Gender and Learning Styles,” *Sex Roles Journal of Research* 32 (1995): 485

2 Susan Skiles, “Feminist Legal Theory to the Fore,” *Chicago Daily Law Bulletin* (1991): 3.

own playing field in a traditionally male atmosphere, but it excludes and further oppresses those women who cannot. The argument against single-sex education claims that by segregating women and men, schools further perpetuate the differences between the two genders. However, it is problematic to dismiss the option of single-sex education simply because of this reasoning because co-educational schools use practices that directly benefit male students rather than female students.

JUDICIAL IMPACT

The Court has not made a definitive decision on the legitimacy of single-sex institutions, but it has set precedents that establish the rigorous task of constructing a single-sex school that will hold up to intermediate scrutiny,

The two-pronged test standard applied by the Court, which holds that a gender-based classification is permissible if (1) ‘the classification serves ‘important governmental objectives’ and (2) ‘the discriminatory means employed’ are ‘substantially related to the achievement of those objectives.’³

Two cases that illuminate the Court’s reasoning on the integration of specialized schools are *United States v. Virginia and Mississippi University for Women et al. v. Hogan*. However, both of these cases contain flaws because they involve specialized schools without counterparts and do not recognize a viable solution or valuable goals.

First, *United States v. Virginia* discusses the discrimination against women in the prestigious Virginia Military Institute (VMI). The Supreme Court concluded that Virginia had not shown an important governmental interest in justifying the single-sex school, nor did the Virginia Women’s Institute for Leadership (VWIL) program that Virginia implemented in response to the male school aimed to serve the interests of women. However, this evidence does not show that this is an obvious discrimination case. Rather, the Court gives the criteria needed in order to justify the separation of sexes in the school. “Although VWIL would share VMI’s mission—to produce “citizen-soldiers”—the VWIL program would differ, as does Mary Baldwin College, from VMI in academic offerings, methods of education, and financial resources.”⁴ The court ruled that Virginia failed to institute a similar program for females which makes VMI discriminatory against women. This case therefore, leaves open the interpretation of the laws pertaining to single-sex schools with a better justification for the difference in institutes.

3 *Yeaw v. Boy Scouts of America*, 55 Cal. App. 4th (1997): 611.

4 *United States v. Virginia*, 518 U.S. 515 (1996): 526.

If the two programs mirrored each other financially and offer similar programs, Virginia could provide the rationale that men's and women's practices are dissimilar. In theory, men are often more physical and have a higher range of athletic abilities; therefore, it is necessary to train the sexes separately to ensure that they can both perform the required tasks. However, the Court did not hold that VMI was blatantly discriminatory, but rather that its programs failed to meet the objectives of the court. Galen Sherwin asserts, "The proposed regulations provide that once a recipient of federal funds decides to establish a single-sex institution, it must also offer a 'substantially equal' opportunity for the other sex."⁵ Therefore, although the VMI is not obligated to allow females into the program, Virginia must find a viable solution to the problem of inequality. While facially, the Court's ruling in *United States v. Virginia* appears to discourage single-sex schools, it actually highlights Virginia's missed steps. According to the Court's decision, "VMI's defenders were unable to demonstrate a tight enough fit between the state's objective and its methodology for the all-male school to survive constitutional scrutiny."⁶ A single-sex institution would be protected by the Constitution if it had a substantial proposal with specific goals.

On the other hand, in *Mississippi University for Women et al v. Hogan*, the Supreme Court ruled that universities that are state-supported may not exclude men into nursing schools because it is a violation of the equal rights provision in the Fourteenth Amendment. The Court concluded,

The state having made no showing that the gender-based classification is substantially and directly related to its proposed compensatory objective, to the contrary, the policy of permitting men to attend classes as auditors fatally undermining its claim that woman are adversely affected by the presence of men in the classroom and, accordingly, the state having fallen far short of establishing the exceedingly persuasive justification needed to sustain the classification.⁷

In this case, men were allowed to attend the university as auditors, but not permitted to take nursing classes. The University could not justify denying male applicants access to its nursing classes because they were already there. Moreover, nursing is generally seen in society as

5 Galen Sherwin, "Single-Sex Schools and the Antisegregation Principle," *Reviews of Law and Social Change* 30 (2005): 55.

6 Denise Morgan, "Anti-Subordination Analysis after *United States v. Virginia*: Evaluating the Constitutionality of K-12 Single-Sex Public Schools," *The University of Chicago Legal Forum* (1999): 384.

7 *Mississippi University for Women et al. v. Hogan*, 458 U.S. 718 (1982): 1.

a female-dominated profession, so women do not have a compelling interest to support single-sex courses because the state does not have an interest to help level the playing field by offering women a more specialized education in a particular field. Rather, nursing is a field that women already dominate and do not need specialized attention. In his dissent, Justice Powell highlights the narrow application of this case by emphasizing,

the Court's holding is limited to the context of a professional nursing school. Since the Court's opinion relies heavily on its finding that women have traditionally dominated the nursing profession, it suggests that a State might well be justified in maintaining, for example, the option of an all-women's business school or liberal arts program.⁸

Although, Powell argues that the Court should have taken a firmer stand in reinforcing equality in every aspect of education, he recognizes the Court's request for a more compelling reason to justify single-sex education. It is obvious then, that the Court is willing to implement single-sex schools as long as they hold up to intermediate scrutiny and offer a compelling state interest. In this case, the Supreme Court does not discourage single-sex education, but rather leaves the topic open for reassessment in future cases.

In these two cases, the Court defined the use of intermediate scrutiny when considering education equality and the theory and practice of single-sex schools. In both cases, the two respective states could not demonstrate a compelling objective to maintain a single-sex program, but the Supreme Court's language did not entirely discourage single-sex education. Instead, the Court set stringent standards that a state must meet in order to justify single-sex education. Therefore, while these two cases reinforce co-educational programs, the Court does not completely rule out the possible benefits of single-sex education.

ACADEMIC ORGANIZATIONS

Organizations such as fraternities and sororities address the academic and social needs of students in a high stress environment. Sororities assist women at universities by allowing them to come together, which may not be possible in the classroom. Moreover, these types of organizations are beneficial to women's education, because "the purpose [is] to encourage women to study and to assist those engaged in that endeavor."⁹ Women have access to resources and

⁸ *Women et al. v. Hogan*, 733

⁹ Shannon Ball, "Separate But Equal is Unequal: The Argument Against an All-Women's Law School," *Notre Dame Journal of Law, Ethics & Public Policy* 15 (2001): 179.

support through these groups. Most critics of single-sex schools claim that sororities have been able to narrow the resource and achievement gap between men and women. This assertion is problematic because while sororities have directly benefited women and have supplied them with outside resources, “women formed single-sex organizations when they were forbidden to join men’s organizations.”¹⁰ Thus, it is important to recognize that female organizations are a response to the exclusion from male fraternities that provide only males additional resources.

While fraternities and sororities provide examples of single-sex organizations, it is important to recognize that they are private organizations and not public institutions, meaning that men and women are free to create groups that they wish to associate with allowed by the Unruh Act. This Act grants men and women the right to use public institutions such as schools and business establishments. However, the act also states, “a ‘right not to associate’ which implies that an association has a First Amendment interest in not being forced to accept unwanted members.”¹¹ Therefore, individual groups have the right to privately fund separate clubs in which members may be chosen through discriminatory methods. Furthermore, these types of gender-specific organizations are present in primary and secondary education such groups as Boy Scouts and Girl Scouts, as well as the YMCA and its counterpart the YWCA.

However, in the *Yeaw v. Boy Scouts of America* decision, the Boy Scouts organization was not considered a business establishment according to the Unruh Act because the Court held that “the purpose of the corporation shall be to promote...the ability of boys to do things for themselves and others.”¹² In this case, the Court excludes females and specifically states that the program is important in furthering the interests of boys to help them excel. Single-sex organizations are specifically intended to have a positive effect on learning and growth, and the Court does recognize this value, revealing that the Court does not refute the idea that single-sex learning is beneficial, but rather it must be implemented with caution. Moreover, using outside organizations, while beneficial to furthering the needs of the individual sexes, are not enough to balance the achievement gap between men and women. In addition, because female organizations are a response to already existing male organizations, it does not give women more access to resources that will help them better assimilate with males—rather, it illustrates

10 Jennifer Brown, “‘To Give Them Countenance’: The Case for a Women’s Law School,” *President and Fellows of Harvard College Harvard Women’s Law Journal* (1999): 6.

11 Craig Sandok, “Public Educational Institutions and Their Unconstitutional Regulation of First Amendment Rights of Fraternal Organizations: An Analysis of the Maryland Plan,” *Syracuse Law Review* 48 (1998): 333.

12 *Yeaw v. Boy Scouts of America*, 611.

more of the obstacles women must overcome.

SINGLE-SEX CLASS SOLUTION

Males and females need to interact and learn to compete, but it is also necessary for schools to constructively educate both sexes. Critics contest that “sex-segregated schools fail to address or challenge stereotypes because they deprive boys and girls of the opportunity to learn more about each other, and prepare them poorly for social interactions later in life.”¹³ Males and females in all levels of education should have the opportunity to interact with each other in social contexts and should be able to work and compete together in the same environment to prepare them for future careers. To do so, however, males and females do not need to be integrated in classroom education, but rather in a school environment. The ability to teach students how to compete and interact may on levels be better if education is separated.

Education is taught to males and females through the lens of a male perspective. This is problematic for female students because men and women have different learning styles and by teaching through a traditionally male approach, women have a more difficult time competing. For example, women have reported, “when a male student was called on, it was like the heavens opened up,” however, “women who assert themselves are viewed as too aggressive.”¹⁴ Some actions such as the No Child Left Behind Act of 2001 were introduced to benefit all students and close the achievement gap. According to the No Child Left Behind Act of 2001, “local educational agencies [can] use some funds to support single-sex schools and classrooms consistent with applicable law.”¹⁵ Furthermore, the National Assessment of Educational Progress has shown an increase in knowledge since its application because students who used the program had specialized teaching techniques to meet their needs more adequately. The ability to introduce single-sex classes into co-educational schools would provide both male and female students a more comfortable learning atmosphere supported by positive achievement results that would help women better assimilate into a traditionally patriarchal society.

It is important to produce well-educated and confident men and women for the workforce. Therefore, it is necessary to teach women in a way that they can learn and feel comfortable. This is neither to say

13 Sherwin, 66.

14 Laura Duncan, “Law School Notes,” *Chicago Daily Law Bulletin* (1993): 3.

15 Kimberly Jenkins, “Constitutional Lessons for the Next Generation of Public Single-Sex Elementary and Secondary Schools,” *William & Mary Law Review* 47(2006): 1957.

that men and women should not interact, nor that both views should not be considered, but schools need female-tailored teaching techniques to replace the forced patriarchal tradition that could reinforce female inferiority. Similarly, students would not be distracted by the opposite sex and students would feel more confident engaging in class activities. As Kimberly Jenkins maintains, “Single-sex schools also may be developed to address past or present discrimination in coeducational schools. Such discrimination may include sexual harassment and disparate treatment that may harm achievement of girls.”¹⁶ Single-sex education can teach men and women the standard curriculum, but can also offer women ways to fulfill additional confidence needs that will help them interact and compete with men.

The application of single-sex classes should be done in public schools to produce uniform practices throughout the country. Some supporters of single-sex education propose that the participation in this type of schooling should be voluntary. However, schools that offer single-sex education should not be limited to private schools because this would give greater opportunities to wealthy families who can pay for their son or daughter to have more focused teaching techniques. It is also problematic to restrict single-sex education to private institutions because it will likely widen the achievement gap by making the rich richer, as they can afford specialized education. However, this is contradictory to the goal of single-sex education. Therefore, public institutes and schools can construct single-sex classes without disrupting funding.

If grade schools had at least two classes per grade, it would be easy to separate the classes by gender. Teachers would then be able to focus on the needs of their class and tailor their teaching styles based on the class’ gender. Both classes would receive the same information, but teachers would be able to address the different learning styles to maximize each gender’s education. For example, one common concern about the differences in male and female learning styles is that men often excel in math and sciences while women rarely pursue these subjects. Allison Dalton states, “By instituting single-sex programs, many schools hope to alleviate specific problems, such as a lower rate of achievement by females in science and math.”¹⁷

By teaching subjects like math and science to each gender separately, teachers would be able to focus their attention on the learning styles of each gender which would in turn likely increase the success rate for women in these fields. Females are justified in advocating for single-sex classes because it can be argued that women are a minority group and have sufficient, specific needs that must be met to help them

16 Jenkins, 1976.

17 Allison Dalton, “Fourth Annual Review of Gender and Sexuality Law: Education Law,” *The Georgetown Journal of Gender and the Law* 4 (2002): 397.

better assimilate into society. Opponents of single-sex education claim that separating the sexes will only affirm traditional female roles in an all female classroom setting. Some scholars argue that “sex-segregated institutions have provided channels not only for expressing individual autonomy and fostering collective goals, but also vehicles for denying individual opportunity and perpetuating collective subordination.”¹⁸ For example, instead of teaching women topics they are struggling in collectively, such as math and science, single-sex classes may instead focus on a topic that is seen fit for a woman such as home economics which in turn would lead to the continued oppression of women. The difficult task is to ensure that men and women are being taught the same material, but test scores, which have shown an increase in female scores with single-sex programs, stresses its success.

Single-sex classes would also benefit male students because they would have more competition in a class of all male students and would be able to participate more advantageously. For example, male students would be able to learn math and science topics at a faster pace than women due to their unique learning style and would not be held back by the female presence in the class. Furthermore, research suggests that “students should be encouraged to bring their own theoretical insights into the classroom.”¹⁹ By separating the genders into different classes, males and females would have a better working relationship and feel more comfortable discussing class topics with peers of their own gender. For example, female students would be more likely to discuss topics such as math and science in a class of women rather than men because they have similar learning processes. With an integrated school that employs single-sex programs, students would benefit from specific teaching practices, but would have the same recesses and lunches so that they can interact. This limited interaction between males and females would be beneficial because they would not be competing together in class, so females would likely feel less inferior to males because they would not feel excluded from the learning practices taking place in the classroom.

CONCLUSION

Today women still face oppression in career positions because they have not been adequately prepared to compete with men. Just as education is taught through the white male ideology, professions “still remain overtly male; the qualities valued for success are seen

18 Deborah Rhode, “Association and Assimilation,”
Northwestern University Law Review 81(1986): 109.

19 Duncan, 3.

through the male perspective.”²⁰ Therefore, in today’s society, there is still a need to support the success of women and provide them with opportunities to establish in society. Furthermore, women still need private organizations and institutions geared toward their learning styles and abilities. While it is crucial for women to further integrate into society and contend with men, they need organizations that prepare them to do so. Education, which offers knowledge and skills, is a precursor for the work environment that can prepare men and women equally for the future. Therefore, there is a need for single-sex schools, especially in support of women, and according to the application of intermediate scrutiny by the Supreme Court and the No Child Left Behind Act, there is a strong governmental interest in single-sex schools to help women obtain equal education and jobs in the future. Single-sex education will further this interest because empirical research, such as the Philbin et al. study, demonstrates that males and females have different learning styles, and that by separating education, women will have the opportunity to learn better and impact the future equally in the workforce. Moreover, while clubs and academic organizations linked with education such as sororities do provide some support, they are not enough to level the playing field in education and cannot be seen as an alternative to single-sex education. The viable solution then, is to maintain public co-educational schools with single-sex classes that are adapted to the different learning styles of male and female students.

20 Duncan, 3.

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