Rhetorical Leadership in Framing a Supportive Social Climate for Educational Reforms Assisting Children with Disabilities

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There is a remarkable woman in Canada named Anne Larcade. Ms. Larcade, mother of two, has a son with multiple disabilities. Alexandre always had academic trouble in school. Then at age 7, with no teaching assistant to watch out for him, he was abducted from a crowded school playground, tortured, and sexually abused. The incident exacerbated his problems, and its toll included the end of Larcade’s marriage, already strained by the demands of both parents holding professional careers while meeting the needs of a disabled child and his infant brother. In 1999, when Alexandre was 9, Larcade, now divorced, turned to the province for help in meeting the special requirements and sky-rocketing costs of her son’s care and education. Since the early 1980s, Ontario had had legislation requiring the province to sign special needs agreements to help support children whose needs were greater than could be met by their parents. So, Larcade was stunned to be told in August, 2000, that Children’s Aid Society could not pay for the services Alexandre required unless she signed a paper “legally abandoning” him to become a ward of the state; her alternative was to let her son go without the services that would allow him to be re-integrated into the school system.

Larcade learned that the special needs agreement law, designed to provide help


while allowing parents to keep physical and legal custody of their children, was still in effect, but Mike Harris’s Conservative government had cut off funding for such agreements in the mid-1990s. She temporarily ceded custody to the Children’s Aid Society to get her son the help he required. Meanwhile, Larcade went public with her story, turning such a national media spotlight on the government that they came to an agreement in which she would not have to relinquish custody of Alexandre or full participation in his care and education in exchange for assistance. In spite of her own family’s reprieve, Larcade became a leading advocate, and later the lead plaintiff in a 2005 class action lawsuit against the provincial government, on behalf of hundreds of other Canadian families forced to give up custody to meet their children’s special needs; in her words, “I went public, I went political and now I’ve gone judicial.” And her plight is not unique to Ontario; parents in England also are faced with relinquishing custody to secure the education and care that their special needs children require.

Policy advocacy is practically unavoidable for anyone involved with special needs education. Parents of children with disabilities constantly must advocate for appropriate educational programs and accommodations for their offspring. These parents sometimes

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4 “CANADA: Government’s Decision.”

5 Driscoll.

6 Driscoll.

must argue in court or in the media to maintain reasonable ongoing influence in their own children’s education. Administrators must advocate for budget allocations to accomplish (particularly unfunded or underfunded) mandates affecting disabled students. Educators must advocate to legislators about the potential or observed implications and inequities for children with disabilities that reform legislation, such as No Child Left Behind, creates or intensifies in practice. Health and education professionals must advocate to parents or institutions regarding the best proposed treatment or accommodation options among the available alternatives for children with particular special needs. Advocacy in these scenarios is not merely a matter of participation, but an exercise in leadership. And such leadership can be made more effective with intentional attention to the resources offered by the discipline of rhetoric. Rhetoric, the ways in which symbols influence people and so create and exercise power, is key to leading or to critiquing leadership effectively, especially in situations characterized by social inequities of position (e.g., class, gender, race) and power (e.g., resources, status, formal authority).

What is Rhetorical Leadership and Why Is It Important Now?

Critical management and analysis of meaning—the preparation to recognize and seize the rhetorical moment—are fundamental to effective leadership, argued Gail T. Fairhurst and Robert A. Sarr.8 Using symbols (e.g., speeches, visuals, letters, memos, social protest, opinion pieces) effectively to create, interpret, and critique shared perspectives is the essence of contemporary leadership. Twenty-first century conditions

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require capable citizen leaders “who may or may not have positions of authority, but who inspire and motivate followers through persuasion, example, and empowerment, not through command and control.”9 In a world where no single institution is “in charge,” where power is shared, and where responsibility and information are diffused, the challenge is to find ways to facilitate wise communal choices and coordinate joint action.10 What we need to recognize now is that “there are no chosen few [leaders]. Rather there are skills, abilities, and circumstances that call on all to perform the leadership function.”11 Educating rhetorical leaders unites teachable theory with practice to cultivate the ability to critically assess, shape, and meet leadership situations’ unique symbolic demands, whether as an activist, parent, politician, educator, counselor, clinician, or administrator.12

As an argument scholar, I long have been convinced of the practicality of a rhetorical education in any era. But current conditions (e.g., information access, fluid organizations) create various opportunities not only for civic and social participation but for citizen leadership. Many assumptions that ground existing leadership preparation

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10 Bryson and Crosby, xi, 4.


12 For more on the University of Wisconsin – Milwaukee’s Graduate Certificate/Concentration Program in Rhetorical Leadership, the only systematic program of its kind, visit http://www.uwm.edu/Dept/rhetlead/ or http://www.uwm.edu/Dept/Commun/certificates.html
programs—control over scarce information, enduring formal organizational hierarchies with established lines of authority, long-term relationships within a business, civic, neighborhood, or religious community—no longer apply. Instead, citizens find themselves called upon to play often-temporary leadership roles in numerous areas of their lives without the aid of a formal position, established reputation, control of the relevant information, a permanent or professional team, or much organizational support. In such situations, one’s ability to engage in effective symbol use to test assumptions and evaluate information, build credibility and community, and adapt quickly to changing conditions requires rhetorical skills based in sound theory and practice. A rhetorical leadership education levels the playing field by helping those who enjoy fewer social privileges build the critically reflexive perspectives, skills, and sensibilities to take advantage of opportunities to lead for the common good.13

**The Stock Issue of Inherency and the Reasons to Analyze Barriers to Policy Change**

Given limited space, let me illustrate this claim by showing the practical value to education advocates of understanding the traditional rhetorical concept of “inherency.” Inherency is one of the five “stock” issues that an advocate is responsible to prove to justify policy change. These same stock issues also provide the basis for arguing effectively against a proposed change. The stock issues of jurisdiction, significance or ill, inherency or blame, solvency or cure, and advantages/disadvantages or costs constitute

the affirmative burden of proof not because some rhetoric scholar declared it so, but because they encapsulate what real policy-makers expect real advocates to demonstrate before they give assent.\textsuperscript{14} Even untrained or novice advocates usually recognize that they

\textsuperscript{14} The notion of the five stock issues as constituting a prima facie case that meets an affirmative burden of proof for policy change--that is, a case complete and strong enough on its face to require opponents to respond, though not necessarily to prevail in the end--rests in long-standing norms for managing risk and responsibilities in real-world advocacy. Change of any sort always carries risk. Thus, however sound or flawed, the existing system has presumption, and the advocate of any proposed change has the burden of proof in an argument. That is, the present system preoccupies the ground and, even if only by inertia, likely will continue in place until successfully challenged by an advocate of change; unless a proponent for policy change can mount sufficient arguments on the five stock issues to challenge the present system with a viable alternative, those who favor the existing system need not actively defend it.

Having presumption, then, does not imply any judgment about a position’s relative desirability or truth. As nineteenth-century scholar and churchman Richard Whately so elegantly explained,

Thus, it is a well-known principle of the Law, that every man (including a prisoner brought up for trial) is to be \textit{presumed} innocent till his guilt is established. This does not, of course, mean that we are to \textit{take for granted} he is innocent; for if that were the case, he would be entitled to immediate liberation: nor does it mean that it is antecedently \textit{more likely than not} that he is innocent; or, that the majority of these brought to trial are so. It evidently means only that the
must appeal to a proper body with the authority to enact the proposed change (i.e., jurisdiction), that they must demonstrate the existence of a substantial immediate or imminent problem within the present system (i.e., significance or ill), that they must propose a solution that is both practical and solves much of the demonstrated ill (i.e., solvency or cure), and that they must be prepared to show that, on-balance, the advantages of this particular solution are greater than the disadvantages (some unrelated to the original problem) that it likely will generate or exacerbate (i.e., on-balance costs).\textsuperscript{15}

\textsuperscript{15} Fuller explanations of these stock issues and their relationships are available in most argumentation texts. For example, good discussions can be found in George W. Ziegelmueller and Jack Kay, \textit{Argumentation: Inquiry and Advocacy}, 3d ed. (Boston:
To illustrate, in Larcade’s case, the significant ills were the anguish and stigma of hundreds of parents forced to relinquish custody of their special needs children in exchange for services, the suffering of special needs children and their families when the parents refused to cede custody and their children were denied adequate services or the families foundered financially and emotionally to meet those needs on their own, and the negative effect on public trust of the hypocrisy of a government commitment not legally changed but no longer fulfilled. The inherency or blame lay in the administration’s prioritizing cost-cutting over meeting the needs of and legislative promises to the province’s most vulnerable citizens. The solution or cure that Larcade sought was to reinstate funding for the special needs agreements that served children without requiring their parents to make them wards of the state. Since this policy had been in effect prior to the Harris administration with no significant disadvantages (e.g., budget-breaking expenses) or extra advantages and since any parent of a disabled child already could, at any time, force the government to cover all costs of care and education by ceding parental rights, the stock issue of cost was a stalemate.\textsuperscript{16} Jurisdiction moved from the provincial executives and policy-makers to the courts over time.\textsuperscript{17}

\textsuperscript{16} See Andre Marin, \textit{Between a Rock and a Hard Place}, ombudsman’s final investigative report, May, 2005, 29-33, 40-41, for a convincing refutation of the “floodgates” argument.

\textsuperscript{17} When Ontario’s provincial government steadfastly refused to follow the law and cut other parents the same deal that it finally gave Larcade (i.e., not requiring her to give up
The one stock issue that is not as intuitive as the others, but that is at least as important to effective advocacy as the other four, is inherency or blame. The issue here is not “who can be blamed for or who initiated the problem?” It is far more analytically crucial than that. The issue is “Why can’t the present system fix itself, unless the proposed policy change is enacted?” “How is the present system responsible for the perpetuation of the problem, by its very nature?” “Why is the currently flawed position

permanent custody in order to receive help for her son), the families, led by Larcade, mounted a $500-million class action lawsuit. Ultimately, it became the first time a Canadian court certified a class action over the government’s improper cancellation of a benefits program, claimed Larcade’s lawyer Doug Elliot, “Parents.” Still, the administration resisted with the Attorney General’s office appealing on the grounds that parents have no right to sue the province for negligence, “CANADA: Government’s Decision.”

The difficulty for citizen-leaders of grasping and using inherency effectively is magnified when basic communication or writing educators allow the introduction of common organizational formats (e.g., problem-solution, cause-effect) to substitute for teaching invention more substantially; standard patterns of arrangement stand in for dynamic consideration of obstacles to agreement, usually skipping the inherency or blame analysis step between ill and cure altogether or reducing it to an historic narration of the problem, Katherine E. Rowan, “A New Pedagogy for Explanatory Public Speaking: Why Arrangement Should Not Substitute for Invention,” Communication Education 44 (1995):336-50.
tolerated, or why have attempted solutions failed?"\(^{19}\) After all, most shared problems that warrant advocacy are neither invisible nor brand new; a plethora of quantitative and

\(^{19}\) Inherency is such an elusive and complex issue that it often is misunderstood even by experts. For example Arthur N. Kruger, “The Inherent Need: Further Clarification,” *Journal of the American Forensic Association* 2 (1965): 109-19, takes to task a colleague for consistently misusing the notion in Robert P. Newman, “The Inherent and Compelling Need,” *Journal of the American Forensic Association* 2 (1965):66-71. One of the more important missteps that Newman’s essay makes is the assumption that the immediacy of a significant ill or that existing or potential ill’s apparentness to the policy-making audience is part of inherency; see Newman, 66, and Kruger, 109-10. David Zarefsky furthered the discussion with arguments that the need to prove inherency does not depend, as some infer, on whether the significant ill is current or impending or on whether the defect is an evil to be eliminated or a potential benefit not yet realized, “The ‘Traditional Case’-‘Comparative Advantage Case’ Dichotomy: Another Look,” *Journal of the American Forensic Association* 6 (1969):13, 18. He further showed that inherency analysis occurs because something other than a mere quantitative change in the current way of doing things (e.g., more staff or money for existing programs) is needed to solve the problem, Zarefsky, 13-14. Given this stock issue’s complexity, Patterson and Zarefsky enumerate other questions that inherency does not pose for policy advocates, questions such as “What brought the problem into existence in the first place?” or “Why has the proposed change not yet been adopted?” adding “[r]ather, the issue focuses on why we must affirm the resolution [i.e., proposed policy change] in order to be able to solve the problem,” 131.
qualitative ill evidence is usually available. And sometimes an array of potential solutions have been offered or even enacted, yet the significant ill persists. Rarely do those in power claim that a well-documented problem is flatly unimportant or that they are not interested in solving it. So, what is the heart of this issue, and where can an advocate—either for or against a proposed policy change—turn? The answer is to an analysis of inherency: “Inherency focuses the debate on the distinctions between an existing system and a proposed one. Central to the issue is the question of whether or not a new system is required in order to solve a problem we may be experiencing.”

Identifying and analyzing the inherent barrier or barriers to productive change in the present system serves policy advocates in at least two ways. First, it establishes some reasonable chain of causality showing how the present system perpetuates, intentionally or unintentionally, a significant problem. Inherency, wrote John T. Morello, is “a causal argument indicating that the present system is at fault for any existing problems.”

Inherency analysis systematically seeks

a causal relationship between the absence of the resolution [i.e., proposed change] and the continuation of the problem cited. It asks why the problem will continue as long as we fail to affirm the resolution [i.e., proposed change], or—to state the same thing in other words--why affirming the resolution [i.e., proposed change] is


a necessary condition for the solution of the problem.\textsuperscript{22}

Why will the documented problem, now that we are well aware of it and its negative effects, persist as long as we fail to ratify the proposed reform?\textsuperscript{23} Such analysis is crucial, since often the existing system does have policies or institutions explicitly designated to

\textsuperscript{22} Patterson and Zarefsky, 130-31.

\textsuperscript{23} Richard A. Cherwitz and James W. Hikins propose a detailed plan for thorough policy analysis of inherency that parallels Aristotle’s four causes of natural phenomena (i.e., formal, final, material, and efficient) as laid out in the Physics and Metaphysics in their essay “Inherency as a Multidimensional Construct: A Rhetorical Approach to the Proof of Causation,” Journal of the American Forensic Association 14 (1977):83. For policy matters, they equate the “formal” cause to the institutions, laws, mores, and traditions that preclude solution of the problem, the “final” cause to the attitudes or motives that entrench and ensure the perpetuation of the formal cause and so preclude the current system’s self-repair, the “efficient” cause to the general or on-balance existing implementation—counter-examples or counter-attitudes being shown to be insignificant or infrequent exceptions—of the “formal” and “final” causes, and the “material” cause to the inability of alternative aspects of or competing avenues in the existing system (i.e., those not operating within the province of the institutions examined by the inherency claim) to solve the problem without the proposed change, Cherwitz and Hikins, 85-89. “What makes a problem truly inherent,” they concluded, “is the point at which attitude, structure, implementation, and means merge. In short, it is only the bringing together of final, formal, efficient, and material cause that attests to the status quo’s inherent incapacity to rectify a problem,” Cherwitz and Hikins, 89.
work on the problems identified but these have achieved insufficient success for reasons that must be identified (e.g., Equal Employment Opportunity, No Child Left Behind, Department of Homeland Security). Inherency analysis pushes one to look beyond the symptoms of a problem to the causes so that relatively more effective solutions emerge.

Second, inherency is valuable to the policy advocate because it establishes an implicit standard by which proposed solutions can be evaluated. Identifying the obstacle(s) to reform within the present system establishes a standard by which a new proposal’s enforcement means and likelihood of success must be judged. A proposal that fails to overcome, avoid, or somehow build on the aspects of the present system that functionally facilitate an existing problem’s continuation is not a reasonable gamble for policy-makers seeking improvement. Inherency, then, “is a substantive issue which concerns whether the adoption of the procedures included in the proposition [for change] are required in order to achieve the goals outlined.” A theoretically good reform that cannot be shown to avoid or reverse the witting or unwitting tendencies of the present system that enable the problem’s continuation by their very nature should be rejected by prudent policy-makers. Clearly, inherency is more than a theoretical definition or academic concept; it is a useful system for inventing arguments, whether one is defending

References:


26 Morello, “Defending,” 121.
or refuting a proposed policy change.\textsuperscript{27}

**Executing an Analysis of Inherency in Preparing Policy Advocacy**

Generally speaking, argumentation scholars acknowledge three types of inherency as hunting grounds for important barriers to change (beyond the inertia of presumption, that is): structures, attitudes, and philosophies. Structural inherency denotes the idea that the system cannot change itself because of its structure.\textsuperscript{28} Agencies, institutions, laws, mores, and traditions are all structures that potentially limit a system’s ability to change policy course.\textsuperscript{29} In the case of achieving equal rights for African-Americans, for instance, Jim Crow laws, voting restrictions, poll taxes, gerrymandering, and enduring local traditions of segregation structurally barred realizing equality, even after that value was affirmed in the Constitution and by the federal government. In Larcade’s case, the Harris administration’s intentional blockage of funding for the province’s safety-net system for disabled children was a structural barrier perpetuating the identified ills in the existing system (e.g., the decreased involvement in and control of their children’s care and education for parents who complied; such families’ social stigmatization for “abandoning” their children; the deprivation of education and care suffered by disabled

\textsuperscript{27}Cherwitz and Hikins, 89.

\textsuperscript{28}Newman, unhelpfully to real-world policy advocates, I believe, argued that, as long as the proviso “in theory” is added, any system’s structure could be changed, 67-68. Such a position also ignores the power of attitudinal and philosophical inherency, concepts articulated subsequent to the publication of Newman’s article but detailed below.

\textsuperscript{29}See Cherwitz and Hikins, 85; Ziegelmueller and Kay, 174-76.
students whose parents refused to give up custody, but did not have adequate personal resources to provide appropriately; damage to public trust). Ontario’s subsequent Liberal administration likewise refused to reinstate funding for the special needs agreements and attempted to legally defend that position.  

Attitudinal inherency, a concept that only has been in scholarly use since about 1970, “admits that the present system has the capability to solve the ills, but claims that the system will not do so because of a deeply rooted attitude” that is not easily subject to change (e.g., self-interest, the profit motive, racial bias). Attitudinal barriers may explain why certain conditions and ills persist, in spite of formal attempts to address them. They are sometimes “vested interests” that explain why, in spite of structural possibilities for improvement, the ills identified will continue in practice, and an advocate for policy change must consider them as formidable barriers when proposing a solution.

For instance, in the case of African-Americans’ struggle for equal rights, the racist attitudes of Southern state and local officials proved so strong that the federal government, in response to the provocative strategic choices by Civil Rights movement leaders (e.g., staging protests to integrate interstate bus terminals and other federally controlled venues), had to bypass these officials in order to pass and enforce legislation

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30 “CANADA: Government’s Decision.”


32 Ziegelmueller and Kay, 174.

33 See Cherwitz and Hikins, 85-86; Ziegelmueller and Kay, 174-76.

34 See Krueger, 110.
that approached greater racial equality.  

With respect to education today, barriers to equity include a belief that education can be isolated from, blamed, and reformed without concomitant attention to the interacting effects of “economic decline, corporate rapaciousness, inequalities of race, class and ethnicity, government indifference to poverty, collectively experienced homelessness, poor medical care, inadequate nutrition, and so forth.”  This attitude is difficult to detect because, as David E. Purpel and Svi Shapiro argued, it is cloaked in a “discourse of excellence” that protects the economically privileged from responsibility while playing to working and middle class fears of shrinking economic opportunities, relative loss of status, and the egalitarian educational reforms begun in the 1960s.

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35 See Ling and Seltzer, 281.

36 David E. Purpel and Svi Shapiro, Beyond Liberation and Excellence: Reconstructing the Public Discourse on Education (Westport, CT: Bergin & Garvey, 1995), 56.

37 Purpel and Shapiro, 31-68, esp. 50-60. In a particularly sharp passage, they write, Given a sharp contradiction in the prospects for upward mobility, educational practices that appeared to embody greater selectivity were easily connected to the daily anxieties and concerns of middle-class Americans. Excellence, in these circumstances, contains the unstated promise of school policies that will impose greater restrictions on entry into upper-level classes and programs by those who appear to have benefited disproportionately from the egalitarian educational reforms of the last two decades. Excellence and the call for improved quality in schools provided a language through which the clamor of minorities, immigrants, and other disadvantaged groups in the American underclass might be stifled. It
Purpel and Shapiro contended that the democratic and egalitarian educational reforms of the 1960s (e.g., curriculum changes, challenges to testing, opportunities for wider access by excluded and marginal groups, including the disabled) affected the lives of many working and middle class people (threatening and even undermining their relative social privilege) and challenged “some of the ideological and institutional conditions that have structured class, race, and gender relations in America.”

They continued,

In this sense the call for excellence and higher standards was, implicitly, a call for a return to a more socially selective set of educational principles. . . .

Conservative demands that schools raise their standards found a political resonance among those made insecure by the possibilities of a more democratic and equitable school system. These class and racial tensions found expression in provided a way to justify an education that in the 1980s dramatically expanded the infrastructure of educational testing and evaluation, designated and funded special elite public schools as well as programs for so-called academically gifted students, and added new graduation requirements. In all of these ways the economic situation appeared to be addressed, but through a recipe that displaced the origins of the shrinking opportunities for economic well-being from the investment decisions of corporations and government budget priorities to what, it was argued, were the declining standards of the classroom. Such a displacement carries with it racist and nativist undertones, and shifts the blame from those who occupy the ‘commanding heights’ of the economy to the inadequacies of teachers and student, 53-54.

38 Purpel and Shapiro, 54.
insurgencies against social promotion, mainstreaming, bicultural/bilingual education, declining test scores, and affirmative action. These tensions gave rise to policies that promised to produce and enforce a greater stratification within and between schools through a more intense use of testing and greater differentiation in the curriculum.³⁹

Such powerful underlying attitudes shape, then entrench education policy against reform. In Larcade’s case, the Ontario ombudsman who investigated the province’s behavior characterized the government’s attitude toward funding the law in place as “as if special needs agreements were some kind of dirty ad hoc agreement for giving squeaky wheels grease.”⁴⁰ An attorney for the class action lawsuit elaborated:

> We say that if the Ontario government, the Harris government at the time, wanted to cancel this program, they had to go back to the legislature to do it, and they did not. I think, really, the previous Harris government went through the back door. They didn't want to face Parliament and say “We're taking this away from disabled children, we're not going to look after disabled children anymore.” So instead they simply went behind closed doors and said, “We just won't do it anymore. We will pretend the law isn't there.”⁴¹

Finally, philosophical inherency indicates that the present system should not

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³⁹ Purpel and Shapiro, 54-55.

⁴⁰ Andre Marin, quoted in Blizzard.

change if it is to be true to its more important values or priorities.\footnote{See Ziegelmueller and Kay, 175-76; Ling and Seltzer, 278.} The foundation of philosophical inherency, I believe, lies in policy-makers’ need to prioritize and implement, in practice and with limited resources, multiple values that are accepted generally. Philosopher Chaim Perelman and his collaborator Lucie Olbrechts-Tyteca observed:

Value hierarchies are, no doubt, more important to the structure of an argument than the actual values. Most values are indeed shared by a great number of audiences, and a particular audience is characterized less by which values it accepts than by the way it grades them. . . . A hierarchy which should not be disregarded is established by the intensity with which one value is adhered to as compared to another.\footnote{Ch. Perelman and L. Olbrechts-Tyteca, \textit{The New Rhetoric: A Treatise on Argumentation}, trans. John Wilkinson and Purcell Weaver (Notre Dame, IN: University of Notre Dame Press, 1969), 81.}

Goodnight, Balthrop, and Parson offer a good example of philosophical inherency, even if that is not what they called it at the time (and although presidential and law enforcement conduct since the 2001 terrorist attacks on the World Trade Center show a reordering of these priorities in deference to a reactive vision of “national security”):

\begin{quote}
[I]ndividual structures established by law are given certain priorities which either explicitly or implicitly raise their status above others within a given field established by the topic area. For example, the presumption that each man is innocent until proven guilty is placed above the laws of social order even though
\end{quote}
at times one may conflict with the other. The laws which guarantee the pursuit of personal happiness are subordinate to laws of the common defense in times of crisis. The laws guaranteeing security of the nation may be placed above the laws of free speech. . . . The debater who approaches an issue from this perspective most profitably seeks out those priorities which are in conflict because of “inappropriate” placement within the hierarchy. . . . In each instance, the placement of one priority—or value—above another creates a harm which cannot be solved within the current hierarchy of priorities. The debater argues not so much that the structure should be eliminated—as would a revolutionary—but rather that the ranking of priorities must be altered so that solution of a significant problem takes precedence over mere adherence to existing order.44

When considering the 1950s to 1970s struggle for Civil Rights, the priority on domestic peace and focus on political and military conflicts abroad (e.g., the Cold War, including specific events such as President Kennedy’s impending meeting with Khrushchev; the Vietnam War) were offered to justify why concerted efforts to realize equal rights for African-Americans should wait or at least be on the country’s back burner. In more recent times, an assumption that “excellence” and “equal access” necessarily trade off in education has led to prioritizing one over the other in policy and willingly sacrificing the lower priority when resources are scarce.45 In the Larcade case, the Conservative Harris

Goodnight, Balthrop, and Parson, 236-37.

and the subsequent Liberal administrations’ preference for the value of cost-cutting over the values of parental rights, assuring care and education for special needs children, or adherence to existing legislation (none of which were challenged outright, only implicitly and relatively prioritized) constituted philosophical inherency.

Perhaps needless to say, any case for policy change may face multiple inherent barriers of different types or may turn on only one. In any case, the wise advocate for change crafts a demonstration of the significant ill(s) and selects and defends the proposed solution according to a thorough inherency analysis. And inherency analysis is just as useful to a proponent of the existing system or of a competing policy change. Even when there is admittedly a glaring imperfection in the present system and advocates present policy alternatives, these proposals can be refuted on the grounds that they are misguided and do not address the inherent barriers that perpetuate the present system’s acquiescence to the problem; a solution that does not address or circumvent the forces that make tolerance of even an evident ill the prevailing practice does not promise a sufficient level of solvency to risk a major policy change. As Arthur N. Kruger explained, “For if this cause [again, for why the ills are allowed to persist, not necessarily their origin] is not identified with the existing policy, the negative [i.e., advocates against

Henry A. Giroux recommend Purpel and Shapiro’s work is their concern for linking these values (rather than setting them in competition with each other) and providing “concrete strategies” for education reforms that take the complex underlying relationships into account, “Series Foreword: Educational Reform with No Apologies” to Beyond Liberation and Excellence: Reconstructing the Public Discourse on Education, by David E. Purpel and Svi Shapiro (Westport, CT: Bergin & Garvey, 1995), xi.
the particular proposed policy change] will soon enough point out that there is then no need to eliminate this policy, and, furthermore, that the proposed policy will not solve the problem. To vanquish a proposed policy change, then, an opponent need not dismiss the documented problem or show that the solution is flawed internally, but may triumph by identifying the proponent’s missing or mistaken analysis of what blocks productive change in the present system and what would be required to elude in practice those often inconspicuous or multi-layered obstacles. Thus, the present system’s presumption and the need to establish from the outset its inherent barriers to change are not a formality but a practical requirement for effective advocacy on any side of a policy dispute.

Displaying Inherency’s Usefulness: Barriers to Education Reform Concerning Special Needs Students

Since structural barriers are the easiest to identify and are specific to the particular policy proposed or challenged, the remainder of this essay demonstrates the value of inherency analysis by identifying two contemporary attitudinal or philosophical barriers that merit consideration by advocates for all sorts of education reforms. Variations and combinations of these deeply-held attitudes or value prioritizations underpin resistance to policy changes in pursuit of a goal widely acknowledged to be laudable: an excellent education for disabled students.

Viewing Education Primarily as an Individual, Rather than a Social, Good

In a fascinating essay, Holly G. McIntush, a research specialist for the Texas House of Representatives’ Office of Bill Analysis, traced this now-prevalent view to the

46 Kruger, 112.
1983 release of *A Nation at Risk* by the National Commission on Excellence in Education. McIntush argued that this presidential task force report, a report that was requested to prove that American schools were sound and to lay the groundwork for eliminating the new (established in 1980) Department of Education (DOE), set the agenda for U.S. education policy and discourse from the Reagan years to the present. Her contention is that uncritical acceptance of *A Nation at Risk*, particularly in light of the legitimacy and aura of prestige and objectivity that the authoring presidential commission lent it, publicly “shifted the focus of education discourse from education as a means of social and political equalization to education as a means to economic prosperity.”

While this was not a new theme—prior to Ronald Reagan, American presidents including Theodore Roosevelt and Woodrow Wilson had argued that the “use” for education was to foster economic and technological development and a competitive edge in international rivalry—it is a very different, much more instrumental view than Franklin Delano Roosevelt’s or Lyndon B. Johnson’s intermediate contention that education is a civil right.

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49 McIntush, 421.
and an end in itself.\textsuperscript{50}

The report frames education reform as an urgent problem couched, from its opening paragraph, in \textit{economic} terms, both in values (e.g., individualism, competition, “marketable” skills, prosperity) and solutions.\textsuperscript{51} McIntush wrote,

\textit{A Nation at Risk}'s most influential legacy was that it shifted focus from how education could be used to achieve equality to how education functions as a means of economic competition. This shift can be seen throughout the document. The focus on the free market and the war metaphors carry with them an emphasis on competition. Free market ideology teaches us that competition is a good thing—it inspires us to try our best and push ourselves to the limit. This is more than a semantic shift: there is a trade-off between equality and competition. The commission’s competition-related findings and proposed solutions, particularly the focus on standardized achievement tests, the support of ability grouping and tracking, and the subsequent consideration of school choice initiatives, have very serious implications for education equality today.\textsuperscript{52}

This report precipitated a significant value re-prioritization from the major goal of U.S. education since the Supreme Court’s 1954 \textit{Brown v. Board of Education} decision:

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\textsuperscript{51} McIntush, 426-29.
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\textsuperscript{52} McIntush, 435.
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universal access to education.\textsuperscript{53} That decision championed education’s importance to people performing basic public citizenship and explicitly affirmed it as the very foundation of good citizenship.\textsuperscript{54} \textit{Brown} not only distinguished access to a quality education as an essential means to prepare all citizens to participate in the body politic and the economic community, but also characterized the state’s failure to provide equal education as “a devastating form of discrimination and a violation of students’ civil rights.”\textsuperscript{55} In the wake of \textit{A Nation at Risk}, though, “the interests of society are subservient to and contingent upon the interests, effort, and success of the individual.”\textsuperscript{56} Education is re-defined as an individual good, and so the primary responsibility falls on \textit{individual students and schools} to “keep up,” as \textit{No Child Left Behind} makes manifest. This view suggests that those who do not “keep up” will suffer economically and be effectively disenfranchised and that, while regrettable, such individual consequences are justifiable or at least not the responsibility of the federal government to remediate.\textsuperscript{57} Obviously, entrenchment of this attitude and value hierarchy makes it easier to decline to provide (particularly costly) services and accommodations for students who have difficulty “keeping up” on their own, such as students with disabilities.

Three corollaries make this barrier one to which reform advocates must pay careful attention. First, it sets up education as a matter of consumption rather than social

\textsuperscript{53} McIntush, 437.


\textsuperscript{55} McIntush, 435.

\textsuperscript{56} McIntush, 429.

\textsuperscript{57} McIntush, 425, 428-29, 430.
obligation. While the negative implications of the “student as consumer” metaphor at the university level have been explored, the consequences of employing this metaphor at the elementary and secondary levels are worse. It obscures the responsibility of and benefit to society of providing an adequate education for all its children and ignores the compulsory nature of elementary and secondary schooling. As Robert Bellah and his *Habits of the Heart* colleagues found, America may have a strong latent affinity for “community,” but its discourse displays a dominant tendency toward “individualism.” Any wise policy advocate must take this bias into account, either challenging the general value prioritization overtly or showing how the policy being defended actually serves the dominant individualistic strain (even if that is not the policy’s main purpose) or tapping the vein of community interest to make a special case for why that latent value should take priority in the case at hand (i.e., why an exception is warranted).

Second, this predisposition reinforces not only an individualistic take on education but also the disturbing trend of equating citizenship with consumption. Michael W. Apple, the John Bascom Professor of Curriculum and Instruction and Educational Policy Studies at University of Wisconsin – Madison, noted that democracy has been reduced to consumption and citizenship to possessive individualism, with the result that “our very sense of public responsibility is withering in ways that will lead to

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even further social inequalities.” And Communication scholar Greg Dickinson recently traced the 125-year trend in Europe and the United States of consumer culture becoming a crucial way for individuals to enact public citizenship. With his case study of responses to the September 11, 2001 attacks on the World Trade Center, Dickinson demonstrated how thorough-going is the perceived equation of consumption and democracy. His essay shows how individual consumption (both amount and choices such as buying a “Support Our Troops” car magnet or patronizing a store that donates a small percent of each purchase to Hurricane Katrina aid) has been equated rhetorically with democratic participation. McIntush’s history of the changes in framing debates over education reform during the last 25 years indicates how Americans came to equate fulfilling their democratic obligations with proper consumption choices, rather than engaging in more traditional types of participation that are indispensable to democracy.

Both moves narrow citizens’ sense of responsibility to just themselves and their own families, making education reform that does not directly affect their consumption of education of little interest and encouraging resistance to reforms that might require higher taxes—which would reduce the amount of money that they have available for individual discretionary consumption and so also consumption as the enactment of citizenship. To


illustrate, Apple noted that the virulence of the home schooling movement mirrors the growth of privatized consciousness in other areas of society. It is an extension of the “suburbanization” of everyday life that is so evident all around us. In essence, it is the equivalent of gated communities and of the privatization of neighborhoods, recreation, parks, and so many other things. It provides a “security zone” both physically and ideologically. . . . This “cocooning” is not just about seeking an escape from the problems of the “city” (a metaphor for danger and heterogeneity). It is a rejection of the idea of the city [with its] cultural and intellectual diversity, complexity, ambiguity, uncertainty, and proximity to “the Other” . . . .

If the impulse to isolate oneself from participation in difference or value challenge is so strong, the aversion to using tax money to support or expand that opportunity for others is likely even stronger.

Apparently the de facto compromise legitimating an activist welfare state with its implications for supporting public schools, which emerged after World War II and held until the mid-1970s, is now a thing of the past. Purpel and Shapiro elaborated, “Standards,” “excellence,” and “rigor” became the rallying cry for those Americans who, embattled on the economic front and alarmed by a shutting down of the ready prospects of upward mobility for their children, chose a strategy that would increase the differentiating and hierarchical effects of schooling. The strategy gave support to methods of instruction, forms of evaluation, and

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62 Apple, 155.

63 Apple, 158-59.
curricula, [sic] that intensified the competitive aspects of education and that reasserted the culturally advantaged position of children from the middle class and of their peers from white and native working-class backgrounds. Among these groups “excellence” becomes an extension of a competitive and individualistic discourse of survival in the context of an economy whose manufacturing industry is in rapid decline and skilled work much harder to find.64

Public admission of a social responsibility to provide for and integrate society’s neediest students into education or consideration of education as a civil right, priorities during the presidencies of Franklin Roosevelt and Lyndon Johnson,65 no longer have presumption.

Third, education reform on behalf of any group with especial needs is impeded further by the interaction of these two dimensions with a third: an expected public posture of political apathy. In her extensive participant-observer study of American volunteers, activists, and recreational groups, Nina Eliasoph documented an interesting contradiction in the ways people talk to each other about the political world and their place in it: citizens’ public or “front-stage” conversations about issues of shared concern were less wide-ranging and couched as more self-interested and biased than were their intimate or “back-stage” conversations on those matters. In other words, the norms in public were to define very narrowly which political issues impacted one’s life, dismiss other shared problems as “not close to home” or “too big for me to do anything about,” and blatantly frame one’s political positions on the tiny remainder as a matter of personal

64 Purpel and Shapiro, 54.

65 Keppel, 8-9, see also 11-12.
experience and selfish, not social, interest. One-on-one, Eliasoph repeatedly found her subjects more well-informed, discerning, and public-spirited than they posed in public settings. On the rare occasions when they advocated in public, these Americans defaulted to personal experience and self-interested explanations for their involvement. Apparently they saw it as most socially acceptable to posture in public as politically apathetic; on those few divisive issues on which Eliasoph’s subjects did take a position or advocate in public, it was considered more decorous to rely primarily or exclusively on evidence from one’s personal, subjective experience and to claim a direct personal stake (perhaps in order to warrant a “legitimate” right to speak?).

Consistent with Eliasoph’s argument, it would be acceptable for Larcade to advocate for reform in Ontario’s practices because her family was affected directly and personally. If Eliasoph is correct, it would be difficult for others without such personal stakes and experience to be acceptable as public advocates on behalf of disabled children’s education, even if they privately believed it was a matter of shared, public concern and had solid (but not personal) evidence of the negative social effects of existing practices. This combination creates an enormous burden for the minority who most obviously endures the brunt of the ill to serve also as a reform’s primary credible advocates, on top of coping with the effects of those ills on their own lives. Further, this preference in public to express a shared concern based on an advocate’s “selfish” motivations and to rely on individual experience makes it that much easier for a “rational” institution to dismiss such challenges as subjective or exceptional, retrenching

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its position in a claim to consider “objectively” the “public good” of “all the citizens.” The intertwined complexity of this set of inherent barriers to education reform deserves serious consideration for any advocate planning a policy case.

Two admittedly incompatible suggestions are worth considering. One advocacy route is to promote a proposed education reform on the basis of its ability to serve as a means to achieve the prevailing value hierarchy. In other words, explicitly articulate the value of the reform to a wider circle of “selfish” and “close to home” interests, currently the interests of individuals beyond those directly affected (i.e., students with disabilities and their families). This approach is the less difficult and less extreme, though perhaps more philosophically objectionable, one because it uses rather than resists entrenched attitudes and value priorities to leverage policy change. It avoids or even employs what have been inherent obstacles to change by framing the reform as a move that somehow significantly serves the well-being of education “consumers” beyond those whose interests motivated the proposed change (e.g., disabled students). Alternately, one could position proposed reforms as realizing other highly-placed values, such as patriotism, through means other than consumption. Treating federal education policy as an instrument to other ends (e.g., fighting a war, national security, breaking down racial

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67 For instance, the G.I. Bill of Rights, one of the most far-reaching innovations in American higher education, was driven by a desire to absorb the huge numbers of soldiers being discharged after World War II so as not to drive up unemployment and hurt the economy (and so other individuals’ economic welfare), rather than by some loftier motive, Halperin and Clark, 19-20; Keppel 9. A noble result indeed can emerge from a policy decision otherwise motivated, and skilled advocates can help that happen.
barriers) rather than as a good in itself is standard practice in U.S. history. Persuasively framing a move’s consistency with one of these ends, without even providing substantial proof that the change actually helps achieve the goal in practice, has proven sufficient in the past to warrant opponents’ agreement.68 In these approaches, the advocate capitalizes on the existing attitudes and philosophical priorities in a new way to achieve his or her ends.

An opposing argumentative path is to try to overcome these barriers with a frontal assault, attacking on their face the attitudes and value priorities that succor existing policies and advocating for specific alternatives. Minimally, the advocate can expose the existing, often implicit attitudes and value hierarchies that fund the existing system and its discourse on education (e.g., individualism over community). One then can take further steps to oppose those barriers on their face as undesirable or inappropriate to the situation or argue actively for a better alternative prioritization. This is by far the more difficult argumentative tack, but also the one that, if successful, has greater potential to ground more radical and extensive reforms. And it is not as impossible as it may seem at first glance. In addition to Bellah et al.’s evidence that a latent, yet accessible community sense exists among Americans, Frances Keppel, former U.S. Commissioner of Education under Kennedy and Johnson, observed four themes in presidential discourse on education. Presidents Washington through Jefferson were concerned about education as nation-building, or “the type of education that would prepare a generation capable of building their nation.”69 From the end of the Civil War through Theodore Roosevelt,

68 Halperin and Clark, 19-20.

69 Keppel, 6.
presidents were most interested in education as a way to absorb and homogenize immigrants and new citizens, such as blacks.\textsuperscript{70} Theodore Roosevelt also launched a third theme, echoed by such Presidents as Wilson, Kennedy, and Reagan, touting the usefulness of education in economic development and international rivalry.\textsuperscript{71} Fourth, Franklin Roosevelt, Kennedy, and Lyndon Johnson, at least sometimes, spoke of education as a right and a good in itself.\textsuperscript{72} Significantly, Keppel made the point that “[t]hese four presidential themes don’t rise, fall and disappear. They rise, fall and sometimes come back again.”\textsuperscript{73} Thus, all four themes, plus Americans’ latent communitarianism, are resources available to advocates, and they co-exist, shifting order with the times and public advocacy. So, the reformer who wants to prioritize a different theme from the prevailing one(s) and to advance policy changes in light of it need not start from scratch but can work to reactive one of the other latent themes, setting the reform in a longer historical context and trying to shift some presumption to that alternative.

**Desires for Easy Accountability, Quick and Total Improvement, and Punishment over Support**

Perhaps no case displays these entrenched attitudes and value priorities as well as No Child Left Behind. A federal act passed by a strong bipartisan majority and signed into law by President George W. Bush in January, 2002, No Child Left Behind (NCLB) 

\textsuperscript{70} Keppel, 7.

\textsuperscript{71} Keppel, 7-8.

\textsuperscript{72} Keppel, 8-9.

\textsuperscript{73} Keppel, 10.
has the laudable goals of mandating that there be “highly qualified” teachers in every classroom and that schools accepting federal funds be accountable to raise the achievement levels of all students, particularly those with disabilities, from low-income families, who are racial or ethnic minorities, and with limited English proficiency. Part of the law’s (and its subsequent adjustments’) explicit intention was to assure that students with special needs get a quality education, as evidenced by improved educational outcomes and shrinking achievement gaps between various NCLB student subgroups; the means involved imposing new requirements for standards, assessments, and accountability. However, the implementation and assessment of schools’ progress not only do not serve NCLB’s stated objectives, but may, in fact, undermine their realization. The attitudinal and philosophical barriers hampering the present system’s ultimate success involve the desires for easy accountability, quick and total improvement, and punishment over support and incentives as the primary path of enforcement.

74 Mantel, 469, 471, 473.

75 Candace Cortiella, “No Child Left Behind and Students with Learning Disabilities: Opportunities and Obstacles,” SchwabLearn.org, 10 October 2003.


76 For the purposes of this paper, I will leave aside NCLB’s goal of “highly qualified” teachers to focus on the goal of student achievement, especially regarding children with disabilities.
Since the 1980s and 1990s, a public discourse of accountability has driven American education toward the accountability provided by tests and standardized achievement measures.\textsuperscript{77} It represents a larger trend, as Purpel and Shapiro observed: The pressure to make quick and easily understandable statements concerning the success or failure of what was happening in school classrooms meant the reduction of teaching and learning to measurable categories. The assignment of numerical values to anything of importance in the curriculum was seen as the surest way to make the kinds of comparisons that both the public and politicians were urging on the schools. . . . [The resulting coming together of education and scholastic testers and corporate measurers of standardized achievement] was a match that had long been maturing in a culture that was less and less able to define its purpose and meaning in ways that were not rooted in the values and rationality of technological thinking.\textsuperscript{78}

The desire for easy accountability manifests in the means by which NCLB tracks student achievement. Each state is responsible to set “challenging” grade-level proficiency levels in math, reading and eventually (starting in academic year 2007-8) science, to provide annual benchmarks for “adequate yearly progress” (AYP) in raising achievement at their schools, to develop standardized tests for students, to regularly test students\textsuperscript{79} and

\textsuperscript{77} Purpel and Shapiro, 49.

\textsuperscript{78} Purpel and Shapiro, 48-49.

\textsuperscript{79} Originally students were to be tested four times in grades K-12; beginning in September of 2005, the law calls for testing children annually in grades 3 through 8 and once in high school, Mantel, 473.
publicize the results. The state and district must develop a two-year improvement plan for any school that does not meet its AYP benchmarks; schools that fail to reach their AYP benchmarks for two consecutive years are labeled “in need of improvement” and all students must be given the option to transfer out. Those schools that fail three consecutive years must pay for tutoring, after-school programs, and summer school; after four consecutive failures, the state must restructure the school. Single standardized tests—with all the controversy that surrounds their ability to evaluate the absolute or relative progress of disadvantaged students in particular—rather than more comprehensive and costly assessments, like portfolios, are NCLB’s sole measure of student achievement and improvement. In addition to targeted percentages for test score improvement,

80 Mantel; Cortiella.

81 Mantel, 473. Consistent with the prevailing view of education as a competitive, individual good over a social one, the bulk of remediation requirements (e.g., right to transfer, tutoring) is aimed primarily at advancing individual goods (e.g., choice, competitive advantage).

82 President George W. Bush, formerly Governor of Texas, endorsed this approach partly based on what he called the “Texas Miracle.” Critics, though, take issue with both whether student achievement in Texas significantly improved under this model and how the Texas program advantageously manipulated test scores in ways that are not allowed under NCLB. On the first point, Laredo (TX) Independent School District Assistant Superintendent of Schools Sylvia Bruni is quoted as saying:

This District has been very assertive in its criticism of the rigid high-stakes approach to student accountability. We see NCLB as the Big Brother of this type
schools are benchmarked for testing at least 95 percent of their students in a subgroup (to
of unreasonable assessment of children’s learning. We have reason to be concerned. For the past twenty years, Texas public schools have been holding their students accountable for their performance via a single, high-stakes test . . . and the consequences have been increasingly more and more tragic, especially for the growing number of minority students that make up a growing number of students in our public schools. (quoted in NCLBGrassroots.org, “NCLB Left Behind: Report Finds 47 of 50 States in ‘Some Stage of Rebellion’ against Controversial Law,” press release, 17 August 2006. 

On the second point, the discrepancy in how many special needs student can be exempted from tests/scoring under the Texas program and NCLB, NCLBGrassroots.org reported:

The Department of Education fined the State of Texas because the Commissioner of Education chose to exempt 9% of special needs students from regular testing requirements, rather than 1% permitted under NCLB. For the coming year, the Department of Education has announced a compromise position that will permit Texas to exempt 5% of its special needs students for the regular testing requirements. Given that much of NCLB’s testing regime is based on the so-called “Texas Miracle,” it is somewhat ironic that the Commissioner has refused to comply with certain components of the law, and that a school district in Texas has joined a lawsuit challenging NCLB. (NCLGrassroots.org, “NCLB Left Behind: Understanding the Growing Grassroots Rebellion against a Controversial Law,” 2005. http://www.nclbgrassroots.org/landscape.php)
account for absences on test day, yet prevent inflating aggregate scores by neglecting to test lower-performing students), meeting state-determined attendance requirements, and improving high school graduation rates. Significantly, a school must meet all of these targets to qualify as making “adequate yearly progress.” Patricia Sullivan, director of the Center on Education Policy, noted, “The problem is the lack of distinction between the school that misses by a little and the school that misses by a lot.” Schools suffer the same sanctions if they miss on one benchmark for two consecutive years or all benchmarks. Even with its subsequent refinements, NCLB and its implementation clearly are centered on the ease of comparative assessment, whether or not those tools are up to the assessment task and even if the results are judged with and punishment meted out based on blunt, uncalibrated “Pass/Fail” distinctions.

Embedded with the desire for ease of achievement assessment is NCLB’s expectation of quick and total improvement, which seems consistent with the law’s refusal to distinguish between failing on a single or multiple benchmarks and failing barely or greatly. NCLB requires that all students be grade-level proficient in reading and math, as shown by their test scores, by 2014. In other words, though annual achievement benchmarks are set by the states themselves, a state’s series of benchmarks

83 Mantel, 475.

84 Quoted in Mantel, 477.

85 Mantel, 475.

86 See U.S. Department of Education for refinements regarding testing disabled students; many of the changes shifted responsibility for definitions of subgroups to the states while mandating the testing and reporting percentages for which states are liable.
must ramp up progressively to culminate in 100% proficiency for all students in a dozen years—an unrealistic goal even with the best of circumstances and support—or suffer increased sanctions.\textsuperscript{87} The goal seems impossible. According to a 2005 essay by \textit{CQ Researcher}’s Barbara Mantel,

Last year, 11,008 public schools—nearly 12 percent of the nation’s total—were identified as needing improvement. \textsuperscript{[17]} Critics of the law see that number rising dramatically. “Essentially, all schools will fail to meet the unrealistic goal of 100 percent proficient or above,” wrote testing expert Robert Linn, “and \textit{No Child Left Behind} will have turned into \textit{No School Succeeding.”} \textsuperscript{[18]}\textsuperscript{88}

Subsequently, a Massachusetts coalition’s study projected that, by 2014, 74 percent of Massachusetts’s schools will fail to make AYP under the most optimistic and lenient Safe Harbor/Gain Score method and 90 percent will fail to make Statutory AYP\textsuperscript{89}—and Massachusetts long has been a leader in standards-based education reform.\textsuperscript{90} Studies in

\textsuperscript{87} For example, my own state of Wisconsin, a progressive, high-tax Midwestern state with a strong history in elementary and secondary education, required that 67.5 percent of a school’s students be grade-level proficient in reading this year, 87 percent six years hence, and 100 percent in 2014, Mantel, 474-75.

\textsuperscript{88} Mantel, 476; see also the insert on 475.


\textsuperscript{90} NCLBGGrassroots.org, “NCLB Left Behind: Report.”
other states predict similar AYP failure rates by 2014 (from 75 to 99 percent).\textsuperscript{91} 

Worse yet, this expectation interacts with the chosen assessment means and increasingly strong sanctions to further disadvantage and stigmatize the very students it aims to help. A recent example from Levi Barber Middle School in Detroit, Michigan, illustrates how the inherent barriers in the present system create this downward spiral. As of February, 2006, Barber is one of six schools that has been on Michigan’s NCLB list of failing schools for six consecutive years, putting it in Phase Six beyond even the law’s five-year plan for progressively stronger, more punitive interventions; the state claims it has no federal guidance on what to expect or how to proceed beyond Phase Five.\textsuperscript{92} During this period, Barber’s tested student achievement has improved significantly, and the school has thrown itself into the changes that NCLB requires (e.g., revamping the curriculum, increasing one-on-one tutoring, bringing in special advisors, and overhauling the way the school is managed).\textsuperscript{93} Dr. Yvonne Caamal Canul of the Michigan DOE’s Office of School Improvement confirmed that Barber has done “incredible things . . . just about everything they could possibly do,” yet does not meet NCLB’s AYP standards, and the federal department can offer the state no direction on what to expect or do next.

In spite of its progress in all subgroups and 2003’s relaxed reporting requirements

\textsuperscript{91} MassPartners, 29; NCLBGrassroots.org, “NCLB Left Behind: Report,” “NCLB Left Behind: Understanding.”

\textsuperscript{92} At the time of this report a total of 436 Michigan schools were failing the state’s AYP standards. Claudio Sanchez, “States Struggle With Next Step for Failing Schools,” NPR’s All Things Considered, February 22, 2006.

\textsuperscript{93} Sanchez.
for schools with an inordinate number of special needs students, one Barber student subgroup, the special education students who constitute 20 percent of Barber’s enrollment, has not been able to make adequate improvement year over year to meet NCLB standards. Once a school has “failed” (whether on one criterion or all), the law’s “safe harbor” alternative might engage. But according to Linn, even the best schools would have difficulty recovering because that provision’s threshold is so extreme; a failing school can make its AYP if the number in a student subgroup who fall below the proficiency level decreases by 10 percent from the previous year. For a disadvantaged school like Barber to improve its performance on all other benchmarks in six years is incredible; to demand that it raise the test scores of its disabled student subgroup 10 percent per year for as many consecutive years as it misses the benchmark requires little short of a miracle, especially since each gain short of the 10 percent mark raises the bar for the next year’s round of tests and the achievement incline gets steeper and increasingly less attainable. NCLB provides inadequate technical or financial support for such miracles, as the next paragraph shows. As a result of NCLB’s insistence on punishing anything other than quick, total, and even accelerating success, others at Barber now view their disabled students as responsible for the sanctions suffered by the whole school and articulate their mounting frustration: “Linda Mulberry, a reading specialist, says everybody at Barber works hard to help disabled students. But she says kids and teachers here have been walking around for the last six years with a big F stamped on their foreheads. . . . ‘And we’re not F by any means, and that’s not wishful

94 Sanchez.

95 Mantel, 476.
thinking. We are an excellent school.”

Third, privileging punishment for falling short over appropriate support to achieve substantive improvement or reward for incremental success animates the enforcement of NCLB and is a third inherent obstacle to solving the existing system’s problems. NCLB’s leverage with states and districts, the bodies directly responsible for elementary and secondary education, is its attachment to the Title I funds provided by the Elementary and Secondary Education Act, first enacted in 1965; Title I is the single largest source of federal funds for public schools, a major bargaining chip. The majority of schools in the nation’s largest districts are eligible for Title I funds, and most states are applying NCLB requirements and sanctions to all schools in Title I districts, even those that do not take Title I money. And, while the Bush administration touts the increase in federal spending for education that coincided with NCLB, schools and opponents argue that the increase does not nearly cover even the costs of developing and implementing NCLB’s measurement requirements, let alone affecting the actual quality of education.

Aggravating the problem is the fact that Congress appropriated $27 billion less than it authorized for implementing NCLB. Nine school districts in Michigan, Texas, and Vermont, the National Education Association (the nation’s largest teachers’ union), and ten state and local NEA chapters have sued the Department of Education because of the

96 Sanchez.
97 Cortiella.
98 Mantel, 473.
99 Mantel, 469, 471-72.
100 Mantel, 471.
law’s unfunded or underfunded mandates; legislatures in other states have directed their Attorney Generals to explore litigation, and school districts in Illinois and California are suing over perceived conflicts between NCLB and the Individuals with Disabilities Education Act and NCLB’s requirements for testing English language learners, respectively.\footnote{NCLBGrassroots.org, “NCLB Left Behind: Understanding.” See also Mantel, 469, 471-72, 479, 486. States object to such extensive federal intervention as NCLB represents partly because Congress provides only 8 percent of the total funding for public education, yet, since the 1960s, the U.S. DOE has exercised increasing power over schools, Mantel, 472.}

Connecticut has threatened to sue DOE, too, and Utah’s Republican-controlled legislature passed a law giving priority to state education goals when they conflict with NCLB and ordering officials to spend as little state money as possible to comply with NCLB.\footnote{Mantel, 472, 479, 484, 486.}

Colorado passed a law permitting local districts to opt out of NCLB without facing state penalties.\footnote{NCLBGrassroots.org, “NCLB Left Behind: Understanding.”}

Together these three attitudes, ensconced in the NCLB program itself, make it increasingly unlikely for the law to deliver on—and, in the end, may completely subvert--its explicit goal of an improved and excellent education for all the nation’s students, with some of the worst consequences and stigma falling on the student subgroups it explicitly targeted for help.

A reform advocate facing these barriers might consider two sets of suggestions: oppose the current barriers by proposing a concrete alternative that gets around the ills’ source or expose and oppose the current barriers on their face as counter-productive in

\footnote{NCLBGrassroots.org, “NCLB Left Behind: Understanding.” See also Mantel, 469, 471-72, 479, 486. States object to such extensive federal intervention as NCLB represents partly because Congress provides only 8 percent of the total funding for public education, yet, since the 1960s, the U.S. DOE has exercised increasing power over schools, Mantel, 472.}

\footnote{Mantel, 472, 479, 484, 486.}

\footnote{NCLBGrassroots.org, “NCLB Left Behind: Understanding.”}
achieving NCLB’s own goals. In the first case, one might pitch policy changes to reassert the state, rather than the federal, government as the key authority in education and/or push for repeal, circumvention, or at least federal accountability on behalf of federal requirements that fall on the states and districts, as Utah and Colorado’s laws and Connecticut’s lawsuit do. And the majority of states, 47 of the 50 according to NCLBGrassroots.org’s generous criteria, have given some indication that they are willing to fight federal interference specifically regarding NCLB. This situation is fortuitous for advocates of change because there is a stable, even preferable, authority in place ready and authorized to (re-)assume control of education. Utah State Representative Margaret Dayton said, “Education has traditionally been a states’ rights issue. There is no provision in the United States Constitution that gives the federal government control over education. In fact when it applied for statehood, Utah had to meet the requirements that all states did, which included having a proposed state constitution that outlined plans for education its residents.” As J. Robert Cox noted, when the present system’s inherent barriers are attitudinal (or philosophical, given how he uses the term), a reformer needs to identify “an efficacious mechanism whereby legal or constituted power may be

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104 NCLBGrassroots.org, “NCLB Left Behind: Report,” “NCLB Left Behind: Understanding.” NCLBGrassroots.org counted as state resistance opting out of federal Title I funds to avoid NCLB’s requirements (even if only some districts in the state opted out), requests for waivers and exceptions from NCLB requirements, and undertaking “cost-to-the-state” studies or “failing school” projection studies as well as actual litigation and legislation.

105 Quoted in NCLBGrassroots.org, “NCLB Left Behind: Report.”
divested of one body and transferred to another.”106 On matters of education, there are strong logical and Constitutional justifications for the states, which have not shown such a strong propensity for these counter-productive attitudes as the federal government, to make policy, and the states seem to want to take back control.

A second suggestion is to make explicit and concerted attempts when advocating for education reform to expose the prevailing attitudes and implied prioritization of values and their stakes for public consideration, address upfront or oppose on their face key questionable assumptions (e.g., must “excellence” and “access” trade off?), and argue assertively for a more hospitable prioritization (i.e., defend a better alternative). Studies such as the one done on the Massachusetts’ schools contain many practical “solution” (or solvency/cure) recommendations, but ones that do not fit with the current default biases for easy accountability, quick and total improvement, and punishment over support.107 Until NCLB opponents deal forthrightly with the inherent barriers that impede implementing these more nuanced recommendations—the attitudinal and philosophical barriers underpinning NCLB’s bipartisan passage as well as the structural barrier of the law itself—success seems unlikely.

Conclusion

Goodnight, Balthrop, and Parson wrote that a policy case for change “that ‘defends itself’ should be constructed so that inherency challenges may be incorporated within the case. . . . Thus, a sound analysis of inherency should establish the structural

106 Cox, 161.

gaps and barriers at the outset of the debate forcing the [opponent] to confront the specific position rather than arguing for random repairs.”

Hopefully, this essay has shown that the same is at least as true, and perhaps more so, for the more elusive, more nefarious attitudinal and philosophical barriers to change. With respect to education reform for students with disabilities, we need citizen leaders who are both well-trained in the discipline of rhetoric and willing, like Anne Larcade, to take the risk to advocate publicly. Suzanne W. Morse explained our contemporary responsibility in *Innovative Higher Education*, “All too often the popular concept of leader has to do with people who are in positions of power or moral authority. It eludes the situations and people who need it most; those who carry on the business of living, working, guiding families, and making society work. No president, prime minister, or general can do that for us.”

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108 Goodnight, Balthrop, and Parson, 235.

109 Morse, 71.
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