5-21-2008

THE 2002 NO CHILD LEFT BEHIND ACT (NCLB), THE AMENDED 2004 INDIVIDUALS WITH DISABILITIES EDUCATIONAL ACT (IDEA), AND PROMOTING THE AMERICAN DEMOCRATIC IDEALS OF EQUITY AND ACCESS

Bambi Rene' Bethel-Leitschuh
University of Missouri-St. Louis, bethelb@unit5.org

THE 2002 NO CHILD LEFT BEHIND ACT (NCLB), THE AMENDED 2004 INDIVIDUALS WITH DISABILITIES EDUCATIONAL ACT (IDEA), AND PROMOTING THE AMERICAN DEMOCRATIC IDEALS OF EQUITY AND ACCESS

A CRITICAL ENQUIRY BASED ON THE WORK OF

MICHEL FOUCAULT AND JEAN-FRANÇOIS LYOTARD

BY

Bambi Bethel

B.S. Special Education
M.Ed. Education Administration

DISSERTATION

Submitted in partial fulfillment of the requirements
for the degree of Doctor of Education
in the Graduate School of the
University of Missouri-St. Louis, 2008
St. Louis, Missouri

Acknowledgments

I want to sincerely thank my mother, Phyllis, who has worked diligently as a single parent to teach me the value of persistent, ambition, goal-setting, and achievement. She has supported me during both successful and unsuccessful events occurring in my life over the past forty-five years. Her constant encouragement has kept me sane during all my life's adventures. This dissertation is as much hers as mine.

I also wish to thank my children, Bailey and Chase. Since both of them have been toddlers, all they have ever known is that "mom has to study." They are both wonderful, loving children, and I love and respect each of them more than one could ever know. (Bailey and Chase, I want you to know that God has blessed me with the two of you and I am forever thankful. It is because of each of you that I have joy and a purpose in my life!)

Lastly, I wish to thank Dr. Charles Fazzaro, my advisor and mentor. His patience and guidance have been invaluable to the completion of my dissertation. I have never met anyone who is as dedicated to public education and the Democratic Ideals as he. It has been rewarding learning from him. I will never be able to thank him enough for all his kindness.

Table of Contents

Table of Contents (Cont.) Page

Table of Contents (Cont.)

Chapter 1

Introduction and the Problem

> The minds of people at large, and more especially to give them knowledge of those facts, which history exhibiteth, that, possessed thereby of the experiences of other ages and countries, they my enabled to know ambition under all shapes, and prompt to exert their natural powers to defeat its [tyrannical powers] purposes . . . whence it becomes expedient for promoting the publick happiness that those persons, whom nature hath endowed with genius and virtue, should be rendered by liberal education worth to receive, and able to guard the sacred deposit of the rights and liberties of their fellow citizens...it is better that such should be sought for and educated at the common expense all . . .[1]
>
> Thomas Jefferson (1779)

Introduction

Although a number of factors, such as industrialization, urbanization, and immigration, influenced the public education movement in the United States, one of most important factors was the belief in the principles of democracy.[2] Many of the Founders, in particular Thomas Jefferson, believed that an educated electorate was so essential for a democracy to maintain that government should finance at public

---

[1] Paul Leicester Ford, *From the Works of Thomas Jefferson,* 1904, cited in Kern Alexander and M. David Alexander, *American Public School Law,* 6th ed. (Belmont, CA: Thomson West, 2005), 28.

[2] Elaine M. Walker, *Educational Adequacy and the Courts* (Santa Barbara, CA: ABC CLIO, 2005), 1.

expense a system of general education.[3] Prior to the development of public education, the Founders laid the foundation for what constitutes a just and democratic social structure by adopting the Constitution along with a Bill of Rights.[4] In 1796, five years after the Constitution was ratified, George Washington, in his farewell Presidential address, called for the American people to "[p]romote, then, as an object of primary importance, institutions for the general diffusion of knowledge. In proportion as the structure of government gives force of public opinion, it is essential that public opinion is enlightened."[5]

Although the Constitution does not specifically address education as a fundamental right, the Founders made an educated citizen essential to maintaining a government "of the People." To this end, the Tenth Amendment to the Constitution allows states to assume the the responsibility for establishing and maintaining a system of public schools.[6] The importance of public education to the

---

[3] See, for example among other references, Thomas Jefferson, *Notes on the State of Virginia*, J. W. Randolph, Richmond, Virginia, 1853: 157-60.

[4] The Tenth Amendment stipulates "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

[5] Ellwood P. Cubberley, *A Brief History of Education* (Boston, MA: Houghton Mifflin, 1922), 288.

[6] Amendment XIV (ratified 9 July 1868) of the Constitution designates citizenship rights. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

structures and processes of governance in the United States has been summarized as being both *by* and *of* the government.[7]

Over 150 years after the ratification of the Constitution the Supreme Court of the United States emphasized the importance of education to fulfilling the Constitutional guarantees of access and equity in its landmark 1954, *Brown v. The Board of Education*.[8] Besides many court decisions that followed the precedence of *Brown*, the importance of education to the "pursuit of happiness" also prompted many legislative acts, such as, among many others, the National Defense Education Act of 1958[9] and the Elementary and Secondary Education Act of 1965.[10] Each Court decision and legislative act related to public education had a significant impact on the policies and practice of individual school districts if not every individual school.[11]

---

[7] Newton Edwards, *The Courts and the Public Schools* (Chicago, IL: The University of Chicago Press, 1955), 23.

[8] *Brown v. Board of Education of Topeka*, 347 U.S. 483, 74 St. Ct. 686 (1954).

[9] National Defense Education Act (NDEA), federal legislation passed in 1958 providing aid to education in the United States at all levels, public and private. NDEA was instituted primarily to stimulate the advancement of education in science, mathematics, and modern foreign languages; but it has also provided aid in other areas, including technical education, area studies, geography, English as a second language, counseling and guidance, school libraries and librarianship, and educational media centers. The act provides institutions of higher education with 90% of capital funds for low-interest loans to students. NDEA also gives federal support for improvement and change in elementary and secondary education. The act contains statutory prohibitions of federal direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution. *The Columbia Electronic Encyclopedia,* 6th ed. Columbia University Press, 2005.

[10] The single largest source of federal support for K-12 education is the Elementary and Secondary Education Act (ESEA). Born as part of Lyndon Johnson's War on Poverty in 1965, this $11-billion-a-year Act has been sending federal assistance to poor schools, communities, and children for nearly 30 years.

[11] Throughout the study any reference to school children refers to any child enrolled in grades Kindergarten through grade twelve in a United States public school system.

In particular for this study, the adoption in 2002 of the *No Child Left Behind Act* (NCLB)[12] and the 2004 re-authorization of the *Individuals with Disabilities Educational Act* (IDEA)[13] [hereafter, referred to as the Acts] are critically examined in order to determine if the ideology that serves as the foundation of these Acts is consistent with promoting democratic ideals, such as facilitating socioeconomic mobility.[14] This relationship is important because without "proper" education credentials, at least within the United States, one's life-options can be limited.

The Problem

At the turn of the Twentieth Century American public schools were organized consistent with the principles of "Scientific Management," popularized by the efficiency culture of business and industry at that time.[15] These principles, coupled

---

[12] The purpose of this Act is to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and state academic assessments. To close the achievement gap with accountability, flexibility, and choice, so that no child is left behind. Section 1001 of Public Law 107-110.

[13] IDEA had its foundation from special education legislation passed in 1975 as Public Law 94-142. PL 94-142 was federal legislation ensuring the right of all disabled children to a public school education. It was then amended in 1978, 1986, and in 1990, was finally incorporated into a new law identified as IDEA '97, then re-authorized in 2004. For further information on PL 94-142 and a more thorough discussion of IDEA see, in particular: Kern Alexander and M. David Alexander, *American Public School Law* 6th ed. (Belmont, : Thomas West, 2005) 484-548.

[14] The Census Bureau reports the nation's poverty rate is rising as household income is declining. Poverty rates rose from 11.3 percent in 2000 to 11.7 percent in 2001 according to reports released by the Commerce Department's Census Bureau. Children under 18 continued to have a higher poverty rate (16.3 percent) than people 18 to 64 or 65 and over. Based on differing socio-economic levels, children attending public schools come with some students possessing the "haves" and others the " have nots. Broadly conceived, this study will be an enquiry into the relationship of the Acts on a student's future socio-economic status. Daniel Weinberg, Chief of the Census Bureau's Housing and Household Economic Statistics Division.

[15] For the most authoritative history of this movement in American public education see: Raymond E. Callahan, *Education and the Cult of Efficiency*, .

with the notions of "systems" and embellished by the "sciences" of econometrics and psychometrics, remain current in the education policies and practices and are touted as being beneficial to the welfare of students. But are they? For example, current system-based practices---such as the use of standardized tests as the single determinant of what a child has learned within a particular time-frame---tend to narrow the scope and range of what a student might be capable of learning, potentially inhibiting booth *access* and *equity*; two fundamental democratic ideals essential for pursuing the advancement toward the"good life."

The elements that constitute the character of "Scientific Management" are located within the intellectual foundations of contemporary Western thought (hereafter referred to as Modern Thought or *structuralism*).[16] Under the influence of Scientific Management and its corollaries, schooling practices assume that the best way to achieve education equity is to impose local, state, and national standards on all students regardless of their unique mental and personal attributes. It is the use of empirically-based implied "scientific" notions that dominate contemporary education policies and practices. Thomas McCarthy identifies the central tenets of empirically-based scientific knowledge as constituting the following:

1. There is a "unity of the scientific method" for human as well as natural science.

---

[16] *Structuralism* is defined as "a systematic way of thinking about whole processes and institutions whereby each part of a system defines and is defined by other parts." Cleo H. Cherryholmes, *Power and Criticism: Poststructural Investigations in Education* (New York: Teachers College Press, 1988), 13.

2. Scientific investigation, whether of social or nonsocial phenomena, aims at the discovery of law-like generalizations that can function as premises in deductive explanations and predictions.
3. If the appropriate general laws are known and the relevant initial conditions are manipulable, we can produce a desired state of affairs, natural or social.
4. To test a hypothesis, we can apply deductive logic to derive singular observation statements whose falsehood would refute it.[17]

Some scholars and policymakers pose strong arguments for implementing the tenets of Scientific Management within a system's approach. William Bennet, the U. S. Secretary of Education from 1985-1988, espoused national educational reform measures, including the use of standardized "competency" testing to measure student academic achievement. He believed that such testing would indicate exactly how much children knew so that educators could be held accountable for the degree to which the children learned. Raymond E. Callahan, in his study of school administration in the first quarter of the twentieth century, found that school

[17] Thomas McCarthy, *The Critical Theory of Jürgen Habermas* (Cambridge, MA: MIT Press, 1988), 138-139.

administrators adopted business procedures and perceived themselves as business managers rather than educational scholars.[18]

Critical theorists, such as Jurgen Habermas, Michael Apple, Pierre Bourdieu, and Henry Giroux apply the concepts of Critical theory to modern education/schooling policies and practices, but without necessarily rejecting the tenets of structuralism. Habermas[19] believes communicative competence in the contemporary society is suppressed or weakened by the way in which major domains of social life, such as the market, the state, and organizations, have been given over to or taken over strategic/instrumental rationality, so that

the logic of the *system* supplants that of the *lifeworld* [ethics and morality].[20] Habermas demonstrates how empirical science, as it is taught in schools and is performed by educational researchers, requires revision taking into account its own social context, yet he is not opposed to such systems-based practices under guise of Modernity.[21] Likewise, Michael Apple argues that "it is unfortunate that we teach students to approach knowledge as a non-problematic correspondence of perceptions

---

[18] Raymond E. Callahan, *Education and the Cult of Efficiency: A Study of the Social Forces that have Shaped The Administration of the Public Schools* (Chicago, IL: The University of Chicago Press, 1962).

[19] Jürgen Habermas (1929-) is a philosopher and social theorist in the tradition of Critical theory.

[20] The Free Dictionary at http://encyclopedia.thefreedictionary.com/J%FCrgen+Habermas.

[21] Benjamin J. Endres, a review of "positivism" in his article "Ethics and the Critical Theory of Education" Teachers College, Columbia University; accessed 1 Nov. 2005; available from: http://www.ed.unuc.edu?EPS/PES-Yearbook/97_docs/endres.html.

and reality."[22] By omitting this important part of "problem inquiry" when the scientific process is used to stand alone, then students are encouraged to accept knowledge they are presented without critical reflection. This action might discourage students from being active participants in the both discourse and the academic discipline.

The French philosopher Peter Bourdieu, widely recognized for his work that focuses on social class and education, views education as the main source for success, yet it must combine within the context of cultural behavior.[23] Bourdieu concludes that education ought to help provide students with the necessary "cultural capital," which is essential for social mobility. But can everyone have equal access to "cultural capital" within a system governed by modern thought?

Again, without any clear rejection of modern thought, Henry Giroux, another prominent Critical theorist, refers to today's school systems as generally promoting, ". . . primacy of choice over community, competition over cooperation, and excellence over equality."[24] Since current educational policies and practices reflect a culture based on competition and efficiency, then contemporary educational

---

[22] Michael Apple, *Ideology and Curriculum* (New York: Routledge, 1990), 89-93.

[23] Pierre-Felix Bourdieu (1930 - 2002) was a French sociologist and critical theorist who was a passionate activist for those he believed subordinated by society. *The Free Dictionary*, online, available from:
Internet Explorer@http://encyclopedia.thefreedicitonary.com/Pierre+Bourdieu.

[24] Henry Giroux, *Toward a Critical Politics of Teacher Thinking* (Westport, CT: Bergin and Garvey 1993).

controversies exist in how the orientation, organization, content, and the curriculum are delivered.

If scientific discourse, coupled with the discourse of business ideology, becomes embedded in the current system of public education, then division, rank, standardization, and authority would serve to contradict the fundamental democratic notions of equity and access. The discourse[25] of both Scientific Management and Critical Theory is consistent with that of structuralism, which promotes the discourses of the social sciences (in particular econometrics and psychometrics) in seeking solutions to the problems of education. Reflecting on the past, Cherryholmes succinctly describes the movement in the following.

> The social sciences, imitating the natural sciences, had developed empirical methods for confidently describing structural and functional features of society; and educational researchers, with massive support from the federal government, had developed and were refining an empirical-experimental-statistical-positivist approach that reaches into every important aspect of education and promises solutions to many of the most persistent educational problems.[26]

Cherryholmes further argues that, "Modern, analytical, and structural thought seek rationality, linearity, progress, and control by developing, and inventing

---

[25] Consistent with Critical Enquiry, the term *discourse* used here is defined as any human artifact subject to interpretation including, but not limited to, meaning consciously expressed through acoustic, graphic, symbolic texts, group and individual behaviors, and institutional practices.

[26] Cherryholmes, vii.

metanarratives and *metadiscourses*. . . . [emphasis added]."[27] He suggests another way to view societal and educational issues. That is from a poststructural/postmodern perspective.

Jean-Francois Lyotard, a leading critic of modern thought, defines the term *modern* as "any science that legitimates itself with reference to a *metadiscourse* . . .[emphasis added]"[28] He defines *postmodern* as ". . . incredulity toward metanarratives."[29] He believes this incredulity is "undoubtedly the product of progress in the sciences. . . [which] in turn presupposes it [progress]. The lost faith in such grand metaphysical notions as Hegelian progress has spawned a crisis of confidence in such metadiscourses. The ideas of such ideals as freedom, equity are now

> being dispersed in a cloud of narrative language elements—narrative, but also denotative, prescriptive, descriptive and so on. Conveyed with each cloud are pragmatic valences specific to its kind. Each of us lives at the intersection of many of these. However, we do not necessarily establish stable language combinations, and the properties of the ones we do establish are not necessarily communicable.[30]

---

[27] Cherryholmes, 11.

[28] Jean-Francois Lyotard, *The Postmodern Condition: A Report on Knowledge,* (Minneapolis, MN: University of Minnesota Press, 1984) xxiii.

[29] Lyotard, xxiv.

[30] Lyotard, xxiv.

From Lyotard's perspective, the future of education falls less within the province of structuralism or systems theory, but rather in the pragmatics of language particles.[31]

Consistent with the notion of deconstruction, this study is an attempt to offer a deconstructive "reading" (analysis) asserting "that there is no firm, fixed, immutable grounding of constructs."[32] According to Cherryholmes:

> Deconstructive analysis assumes there are always differences, such as meanings, populations, treatments, and interaction effects . . . there is no immediate presence . . . that decides what measurements and observations mean once and for all.[33]

If public education ought to serve democratic values such as *access* and *equity*, then a critical deconstructive reading of both discourses of NCLB and IDEA should support and be consistent with this view. Both Acts are noble in spirit in that their advocates claim to have designed the Acts to improve the academic performance of children in public education. Specifically, the proposed deconstructive reading of these Acts will concern the relationship between the noble purposes of the Acts and their technologies of implementation and measurement of outcomes. To this end, this study is a *Critical Enquiry* [hereafter referred to as CE] into the Acts as they relate to students who receive special education services.[34]

---

[31] Lyotard, xxiv.

[32] Cherryholmes, 121.

[33] Cherryholmes, 121.

[34] *Critical Enquiry* is suspicious of all meta-discourses – including but not limited to grand theories, ideologies, and "isms" – offered as naturally occurring social structures that transcend human subjectivity, existing outside the boundaries of human consciousness.

Unlike Critical Theory, which is encumbered by structural thought, CE is suspicious of the promises of any metadiscourse. CE involves critical "readings" of historically situated schooling policies and practices leading to the development of the Acts and the implementation and assessment of their provisions. In short, the proposed CE will reveal if the noble discourse of the Acts is consistent with the discourses of the technologies of implementation and assessment.

Statement of the Problem

The purpose of this CE is to determine, through a deconstructive reading (analysis) of policy discourse, if the technologies (methods) of implementation and assessment of the 2002 No Child Left Behind Act (NCLB) relative to the amended 2004 Individuals with Disabilities Educational Act (IDEA) are consistent with promoting the American democratic ideals of *equity* and *access.*

For the purposes of this CE the following definitions of *equity* and *access* will hold:

Critical Enquiry recognizes the subjective, political nature of social structures; thus, it seeks to reveal the power embedded in all forms of historically contextualized discourses that condition popular thought to accept socioeconomic power differentials as "natural," inevitable.

Critical Enquiry works dialectically in an unremitting search for contradictions between existing social arrangements and the liberal democratic ideals relative to human rights and social justice, such as those explicitly and implicitly embodied in the founding documents of the United States (1776 and 1791), The Declaration of the Rights of Man and the Citizen (1789), and the United Nations Universal Declaration of Human Rights (1948).

Critical Enquiry is particularly concerned with the narratives of institutional structures which systematically exclude individuals and groups from sociopolitical power and from the free access to information used to both condition and justify the *status quo.*

Critical Enquiry is based on the belief that emancipation comes only to individuals that increase their understanding and self-reflective analysis of their social conditions. Such an analysis depends on the free and open exchange of knowledge and information uncontaminated by authoritative privilege and sanctions. "Only after meeting these conditions regarding knowledge can citizens in a democratic society be sufficiently prepared to make ethical and moral judgements." Charles J. Fazzaro, "Critical Enquiry: Implications for Education Policy and Practice," *The Journal of Philosophy & History of Education*, Vol. 52 (2002): 52-56.

Equity The aspects of social justice that recognizes the inherent rights of individuals to be accorded their full measure of life, liberty, and happiness.

Access The inherent right of a person living within a liberal democratic society to define the "good life" without any unjust limitations imposed by the institutions *of* government and those sponsored *by* government.[35]

Importance of the Study

Public education has historically been recognized to be essential in promoting American democratic ideals. From the very beginning of the American democracy, the notion of education was important to fostering democratic ideals. Evidence of this belief is massive and includes, for example, the actions of our Founders, especially Thomas Jefferson, to make public education available to all potential voters, the Northwest Ordinance of 1787 which included the provision stating that "religion, morality, and knowledge being necessary to good government and happiness of mankind, schools and the means of education shall be forever encouraged,"[36] the adoption of compulsory education laws by virtually all states, and many decisions of the Unites States Supreme court, such as the landmark 1954 decision in *Brown v. Board of Education*, in which the Court stated

[35] Charles J. Fazzaro, "Critical Enquiry: Implications for Education Policy and Practice," 52-56.

[36] Alexander and Alexander, 63-64.

"[c]ompulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society."[37]

Although education was considered to be essential for democracy, it was not until the 1970s that the federal government began to pass a series of legislative Acts (IDEA) to guarantee access to children with disabilities. More recently, the NCLB was promulgated to insure that *all* children, regardless of socio-economic status, had the same opportunities to acquire the knowledge necessary for a fulfilling life and assume productive civic responsibilities in society.[38] A CE into the purpose, implementation, and assessment strategies mandated in the Acts could determine if they are consistent with the promotion of the democratic principles of *access* and *equity* for students with special needs.

Limitations of the Study

As in all deconstructive readings, this CE is not intended to be prescriptive, only descriptive. The mission of CE is not simply toward the negation of the theoretical foundations of structural discourse, but, more importantly, in the articulation of methods other than structural analyses that

[37] *Brown v. Board of Education of Topeka*.

[38] Richard H. Powers, *The Dilemma of Education in a Democracy* (Chicago, IL: Regenery Gateway, 1984), 103.

arise from within the tradition itself.[39] Not being prescriptive, CE allows for the consideration of a wide variety of solutions to problems.

Methodology

Essential to CE is the recognition that all discourses (1) are conditioned (acquire their meaning) within particular historically situated social, economic, political, and legal contexts, (2) can be analyzed as "texts," as language, and (3) deconstruct at the point that they appeal to a transcendent metadiscourse. Although the general method of CE can be characterized broadly as *deconstruction*, CE can employ a variety of poststructural methods of analysis. To this end, this study will include the works of Michel Foucault, Jean-François Lyotard, and Jacques Derrida.

For CE the historical contexts of any particular discourse is essential. The etiology of any educational "phenomena"—policy and concomitant practice---is the manifestation of the human thought. Humans possess the ability to manipulate meanings in both the discourse of the physical world ("reality") and the discourse of humanity. Because the locus of judgment is within the Human, CE is consistent with Critical Theory in recognizing the importance of ". . . arguments moving from strong metaphysical statements

---

[39] Michael Peters, *Naming the Multiple: Postructuralism and Education* (Westport, CT: Bergin and Garvey, 1998), 1-2.

involving a 'transcendental' to a history, itself, generating the criteria for validity of educational actions."[40]

Relative to the power embedded within a particular discourse, Michel Foucault is noted for his consideration of the social, economic, political, and legal contexts within which particular institutional practices as discourse evolved and gained power.[41] According to Foucault,

> There can be no possible exercise of power without certain economy of discourses of truth that operates through and on the basis of this association. We are subjected to the production of truth through power and we cannot exercise power except through the production of truth.[42]

In short, a review of Foucault's statement essentially questions that if Western society privileges specific fields of discourse under the notion of "truth", then how is that 'truth' made and used in relation to the many persons who lack such knowledge (and power)?"[43]

---

[40] David Held states as he dissects the work of Habermas. David Held, *Introduction to Critical Theory* (Berkeley, CA: University of California Press, 1980), 338.

[41] Michel Foucault addressed the issue of power and legitimacy in society. He thought the problem is to determine what the subject must be, to what condition he is subject, what status he must have, what position he must occupy in reality or in the imaginary, in order to become a legitimate subject of this-or-that type of knowledge.

[42] Michel Foucault, *Power and Knowledge* (New York: Pantheon, 1980), 93.

[43] Scot Danforth, "What Can the Field of Developmental Disabilities Learn From Michel Foucault?" *Mental Retardation* 38 (2000): 365.

Specifically, in this CE Foucault's work is essential in considering the historically situated social, economic, political, and legal contexts within which (1) the purpose of American public education was formulated, (2) the overarching notion governing the administration of the schools was established, and (3) promulgation and implementation of IDEA and NCLB.

Because education today might not always equate knowledge with learning, this study will also utilize the work of Jean-François Lyotard who argues that knowledge is not simply learning. It is a building of competence; such as knowing how to live, speak, and listen. It evokes denotative, prescriptive, and evaluation utterances.[44] Lyotard examined the way that knowledge and information are controlled in the West by analyzing the status of science and scientific research, technology, and the arts after the collapse of the unifying metanarratives that characterize the legitimation of knowledge in the modern era in which American public schools exist. Lyotard used an analytical framework based on the notion of *language games*, first formulated by Ludwig Wittgenstein (1889-1951). The framework recognizes different types of knowledge—narrative, scientific, and technical---in term of specific rules/properties.[45] Lyotard used this framework to analyze narrative knowledge. He argues that narrative language serves as the

---

[44] Jean-Francois Lyotard (1924-1998) was professor emeritus of philosophy at the University of Paris-Vincennes. His concern was that the Discourse of Humanity had been replaced by the Discourse of Developement and that knowledge has become speculative rather than practical. He warned against Modern Thought using data in a too centralized fashion. He describes Modern Thought as relying on science which appeals to nature with a reference to a meta-narrative causing discourse to be outside of man. Rather, Lyotard promotes the Narrative as being subject to values interpretation.

[45] Lyotard, 9.

foundation of all knowledge and the specificity of judgments revealing what he called *differends,* a clash of two languages. This focus on language "games" of Modern Thought comes from a rigorous interpretation of education practices based on either prescriptive, performitivty, and technical.

Specifically, Lyotard was concerned with the "rules" by which statements have meaning relative to institutional policies and practices. His main concern was with three types of statements—*denotative* (true/false), *prescriptive* (just/unjust), and *performative* (efficient/inefficient).[46] This CE is concerned with both prescriptive and performative statements in order to determine if the two discourses they represent are logically consistent and to what extent do educational practices based on performitivity and prescription affect both equal opportunity and access within the institution of public education. To this end, because the intent of this CE is to reveal any contradiction between schooling practices and the democratic purpose the schools are supposed to promote the CE must first identify any *a priori*[47] assumptions (axiomatics) upon which the Acts are based. These assumptions must

---

[46] *Narrative Knowledge:* (Discourse of Humanity) Unlike scientific knowledge, which gives priority to the question of its own legitimation, narrative knowledge certifies itself in the pragmatics of its own transmission without having recourse to proof or a transcendental/metaphysical entity. It goes beyond the simple determination and application of the criteria of truth and efficiency. Narrative is subjective to values interpretation. (Lyotard, 19.). *Scientific Knowledge:* (Discourse of Development) In Western modern times, it reflects an appeal to nature that legitimates itself with reference and appeal to a grand narrative; an external force outside of man's judgement. It looks at axiomatic language including "yes/no" (prescriptive); "true/false" (denotative); and "efficiency vs. inefficiency" (technical). The underlying assumption is increasing productivity by way of increasing input to gain more output. Lyotard, 85.

[47] K-O Apel, "The a priori of Communication and the Foundation of the Humanities," *Man and World*, (February 1972), n.a.

then be tested through a deconstruction to determine if the Acts are meeting their intended goals.

Because CE is suspicious of all meta-discourses offered as naturally occurring social structures that transcend human subjectivity---existing outside the boundaries of human consciousness---then the belief in a *logos*, a "Center," to all meaning is rejected.[48] Consistent with the suspicion in "truths" justified on notions that transcend human subjectivity, the general method for CE is essentially deconstruction in its broadest sense. The idea of deconstruction was popularized by Jacques Derrida (1931-2005). In brief,

> The very meaning and mission of deconstruction is to show that things -- texts, institutions, traditions, societies, beliefs, and practices of whatever size and sort -- do not have definable meanings and determinable missions, that they are always more than any mission would impose, and that they exceed the boundaries they currently occupy. What is really going on in things, what is really happening, is always to come. Every time you try to stabilize the meaning of a thing, to fix it in its missionary position, the thing itself, if there is anything to it at all, slips away. A meaning or a mission is a way to

---

[48] Derrida explains that *logocentrism* is the belief there is an ultimate "Center" to all meaning, *Truth*. From at least Plato, the "Center" appeared to have various locations. He argues that if there is a *logos* we cannot know it; and, if we can know about any particular *logos*, we cannot communicate it to others because of *différance* (there is always a difference between signifiers and their intended signifieds and meanings are always deferred in time). Jacques Derrida, *Of Grammatology*, trans. by Gayatri Chakravorty Spivak, (Baltimore, MD: Johns Hopkins University Press, 1976), xlvii.

> contain and compact things, like a nutshell gathering them into a unity, whereas deconstruction bends all its efforts to sketch beyond these boundaries, to transgress these confines, to interrupt and disjoin all such gathering. Whenever it runs up against a limit, deconstruction presses against it. Deconstruction is the relentless pursuit of the impossible, which means, of things whose possibility is sustained by their impossibility, of things which, instead of being wiped out by their impossibility, are actually nourished and fed by it.[49]

In CE, deconstruction includes this original intent as well as any analysis that seeks to reveal areas where two or more discourses conflict with each other while appealing to the same principles. The point of conflict being a particular *logos*, whose popularity is contingent on a particular historical context.

Summary

The purpose of this study is to examine through a *Critical Enquiry* the relationship of the discourse of two federal acts, NCLB and IDEA, relative to their purpose and their implementation and assessment technologies in order to determine if the character of the two discourses are compatible with the character of the discourse of the democratic ideals of access and equity. To this end, the general method of enquiry will be deconstruction in its broadest sense. Chapters 2 and 3 both provide the contexts necessary to inform the deconstruction. Chapter 4 is an

---

[49] John D. Caputo, *Deconstruction in a Nutshell:A Conversation with Jacques Derrida* (New York: Fordham University Press, 1997), 31-32.

elaboration of the intellectual framework within which the deconstruction was carried out. Chapter 5 is the deconstruction. Chapter 6 includes a summary with conclusions and recommendations addressing the problem statement.

Chapter 2

History of Education in the United States

> *The commitment of America to equality of opportunity , the immense importance attached to education throughout American history, the very role of education as an avenue of mobility in a society where status ascribed at birth is felt to be an illegitimate barrier to advancement – all of these historical and social psychological forces are involved in the extraordinary American commitment to mass . . . education.*[1]

Introduction

Americans revere education as a worthwhile investment because education is intended to advance a set of common values for both the individual and society. To gain advancement in the United States, Americans believe that educated young people are in a better and more secure position than those who are not educated. Nicholas Burbules explains Americans also believe the premise that educated citizens have a higher probability to demonstrate the value of "truth, rationality, and moral character . . . serving the interests of social and cultural stability and development."[2]

---

[1] Martin Trow, "The Second Transformation of American Secondary Education," *International Journal of Comparative Sociology* (September 1961): 147.

[2] Nicholas Burbles, "Ways of Thinking about Education," *Quarterly Educational Research*, 33, no.6 (August/September 2004): 5.

As a reflection of the importance of the educational process in America, this chapter is a brief social, political, economic, and legal history of American public education relative to the conditions under which the notion of providing children with a free and appropriate education[3] took root. This abridged historical chapter is organized with a time line from early Colonial times to the present and considers both social and democratic values reflected in legislative mandates that serve as primary influences on the structure of public education.

Education in Early America

The purpose of education was to create and sustain a democratically organized government. Education served as an attempt to achieve equitable opportunities within a democratic society and viewed historically as the primary means by which freedom is maintained. The Founder's belief in education demonstrated a need for a truly democratic society resting on the knowledge, intelligence, and wisdom of the populace. If America lacked an educated society, then the Founders were concerned the democratic ideals would be difficult to adopt and maintain.

Religious Reasons for Education

During most of the 1700s, colonial schooling remained influenced by religion[4] because the first colonist came to America to escape European religious oppression

---

[3] A "free and appropriate education (FAPE) as defined at 34 CFR 300.17, must be made available by school districts to children with disabilities in accordance with 34 CFR 300.101 through 300.103.

[4] It was the intent of the colonists that all children should learn to read. In 1642 Puritan Massachusetts passed a law stating that the inability to read was Satan's attempt to keep people from the Scriptures: available from Http://www.nd.edu/~rbarger/www7/neprimer.html

and create a society where one could openly exercise religious freedom. To this end, education became a necessary priority to reading and comprehending the Holy Bible. Reading the Bible allowed the masses to better understand the reasons for their faith and facilitate the collective training as ministers of God.[5] The colonists did not bring clergy with them so relied upon themselves as church leaders.

As the diversity of population in Colonial America increased, Colonists experience additional needs for education. Citizens had to understand legal aspects of establishing a democratic government to separate from England. Education was essential for people to understand the workings of governments.

Governmental Reasons for Education

Citizens were expected to understand an expanding set of on-going laws established by the Colonial government. The masses needed to be cognizant of all aspects of the workings of a new government. The Founders' viewed equitable educational opportunities as the primary means by which freedom could endure. They believed the masses must be educated in order to understand the written codes of the new Nation and to grasp how the government worked. Echoing Thomas Jefferson, "Intelligence and virtue are the only safe foundations of a Republic."[6]

The Founders needed citizens who could read and write in order to advance the emerging republican form of government. Yet, guidelines organizing public

---

[5] Neil Postman, *The End of Education: Redefining the Value of School* (New York: Knopf, 1995), 4.

[6] Robert Rantoul Jr., a Massachusetts Democrat and activists in the early 1800s as quoted in William J. Reese, *American Public Schools: From the Common School to No Child Left Behind* (Baltimore, MD: The Johns Hopkins University Press, 2005), 24.

schools played a relatively minor role in the formal education of children immediately after the Revolutionary War. Although the Founders did not specifically outline how the actual development of creating a public school system would be established, they knew the creation of public schooling needed to be a basic social institution. Their precept of public schooling would not only forward the act of effective citizenship as a social benefit to the welfare of the States, but also promote the development of productive workers and the cultivation of the self.

The Constitution and Education

The Tenth Amendment to the Constitution, identifies the states as having "any power not delegated by the Constitution, nor denied by the states, is plenary to the States."[7] The Fourteenth Amendment[8] to the United States Constitution (1866) guaranteed "equal protection of the laws" to all citizens. These two Amendments, and others, helped establish individual states as having the responsibility to provide both an equal and accessible public educational opportunity to its citizenry.[9] Today, the authority for providing education is defined in the state constitutions and state laws.[10] Each state now promotes an educational system specifying for whom public education ought to serve and how the education process is organized. State

---

[7] U.S. Constitution Amendment 10.

[8] U.S. Constitution, Amendment 14.

[9] The United States Constitution had not specifically mentioned education as a function of the federal government, the individual states claimed authority over the matter of public education.

[10] The State agencies were formed which could then set minimum standards for all the schools of each state, respectively.

guidelines are consistent with the belief that young people are better equipped to improve their future opportunities and America's common good if properly educated when compared to the uneducated.

Expanding Educational Opportunities in America

From limited teachings in the 17th century to universal education by the 19th century, the academic expectations of learning increased. Cities grew larger influencing trade/commerce increases, immigration rose, goods and services were much more in demand, resulting in the expansion of education requirements to meet the growth. Late into the 19th century, the rise in population also affected the growth of the schools, the curriculum content and the demand for universal knowledge.[11] In recognition of the necessity for expanded educational opportunities, Kern and Alexander note, "The traditions of the United States clearly enunciated the desire and necessity for maintaining a republican form of government. To this end, universal public education was required."[12]

Education in the 18th Century

In the late 1700s, the purpose of education was to encourage the molding of a homogeneous citizenry that would be loyal to the new government. To this purpose, the United States pioneered universal public education in the hope of creating a

---

[11] John I. Goodlad, *What Schools Are For* (Bloomington, IIN: Phi Delta Kappa Educational Foundation, 1979): 34 - 46.

[12] Kern Alexander and M. David Alexander, eds, 6th edition *American Public School Law* (Belmont, CA: Thomson West), 22.

cohesive loyal, and thriving democratic nation.[13] To educationally *thrive*, the system of education demanded some uniformity of access and opportunity, a method by which one could pursue an organized curriculum within a public institution. Having the opportunity to an education could then allow an individual to progress from one level to the next.[14]

Education in the 19th Century

Although the idea of common schooling was widely accepted in the first half of the 19th century, it was not until the mid-19th century that a comprehensive system of education took form and gained momentum. It was in the 1800s, the desire for a free system of education intensified resulting in the United States becoming the first of the Western nations to make public education available to children of all social classes.[15] The concept of the public elementary school became a social institution.

With America being a free society, the general consensus of educating children would better serve the nation's democracy if the majority of children attended a common, nonsectarian school. Reformers argued that it was the public's responsibility to provide both formal instructions and moral education in schools and

---

[13] Thomas Jefferson strongly favored a strong education system. He urged to created a system of schools for the teaching of fidelity to the common wealth. David B. Tyak, *Turning Points in American Educational History* (Boston, MA: Blair Publications, 1967), 85, citing, Thomas Jefferson "Bill for the More General Diffusion of Knowledge"

[14] Alexander and Alexander, 23.

[15] Daniel Hellinger and Dennis R. Judd, *The Democratic Facade,* (Belmont, CA: Wadsworth, 1994) 25.

the school should be free, publicly subsidized, and publicly controlled."[16] Supporters of universal education argued that class distinctions could be lessened only when the notion of a free school meant that *all* children together be given a free education with the entire school system being supported by taxes levied upon everyone.[17] By the 1860s, state legislators and local governments throughout the northeastern and mid-western states began financing public school, albeit not yet with the inclusion of disabled students, through funds collected in the form of property taxes. The democratic goal was to provide as much education as possible for all – *more education affected more people*.

Further support for publicly subsidized schooling came in the form of the Compulsory Attendance Act of 1852 enacted by the State of Massachusetts. Because some families wanted their children to work to gain the income they would receive instead of attending school, the Compulsory Attendance Law had to mandate the requirement of school attendance for children between the ages of eight and fourteen.[18] Consistent with the notion of compulsory attendance, states then began to require elementary aged children to attend several years of academic schooling. The law publically maintained the importance of school and gained public support in

---

[16] Diane Ravitch, "The Public School's Tasks," *The New York Times*, 16 November 1975.

[17] R. Freeman Butts, "Search for Freedom: The Story of American Education," *NEA Journal* (March 1960): 40.

[18] The law stipulated that children must be in school attendance for at least three months out of each year. In 1873, the law was revised. Although the age limit was reduced to twelve, the annual attendance was increased to four months per year. The new law also contained an enforcement by forming jurisdictions for prosecution and the hiring of truant officers to check absences. Available at http://www.nd.edu/~rbarger/www7/compulso.html.

favor of education. As a result, the United States implemented a system of free elementary schools sooner than any other country in the world.[19]

To structure education more uniformly, schools began developing statements of educational objectives emphasizing the mandates of discipline, obedience, and patriotism.[20] Common education further gained momentum when President Abraham Lincoln signed land grant legislation for public schools and colleges in 1862. This Legislative Act required land space to be reserved for the development of building school structures.

Education in the 20th Century

With the turn of the 20th century, the importance of public education demonstrated that it had the sustainability to strengthen a democratic society and advance an individual's personal success. As noted by Postman, ". . . schooling became the central institution through which the young found reasons for continuing to educate themselves [and to prosper, economically]."[21] Educational completion, demonstrating the ability to perform well in school, correlated with the belief that

---

[19] The U.S. was far ahead of the rest of the world in establishing universal public education. The idea of keeping everyone in school until the age of sixteen became a national goal. Nicholas Lemann, *The Big Test: The Secret History of the American Meritocracy,* (New York: Farrar, Straus, and Giroux, 1999), 115.

[20] Discipline, obedience, and patriotism was developed from a strong need for military recruitment and industrialization at that time. Military precision is required... Great stress is laid upon (1) punctuality; (2) regularity; (3)attention; and (4) silence, as habits necessary through life for successful combination with one's fellow men in the industrial and commercial civilization. excerpted in David B. Tyack, *Turning Points in AmericanEducational History* (New York: John Riley, 1967), 326.

[21] Postman, *The End of Education*, xi.

schooling would lead to a path of greater success. Former Senator Ed Bradley referenced the importance of a child benefitting from the enrollment of public education by stating, "There exists a tangible relationship between the

level of opportunity and the security available to every American family and the extent to which we can keep our democracy secure."[22] His statement supports the belief that Americans ought to hold education as a worthwhile investment because it represents the strength and advancement of a society. Education becomes the hope that all members of a society, regardless of stratification by economic or social class, by race, or by creed, will earn their diploma and will represent an opportunity to further the quality of their life.

Women in Education: 18th through the 20th Centuries

Many important women contributed to the history of education. Judith Sargent Murray[23], Emma Hart Willard[24], and Catherine Beecher[25] contributed a great

---

[22] Kevin Phillips, *Wealth and Democracy* (New York: Broadway Books, 2002), xiv.

[23] Judith Sargent Murray (1751-1820) came from a wealthy family, but was given few opportunities to gain a formal education. She gained her education by becoming self-taught. The ideas that women should only be responsible for completing household chores and that women were inferior to men were unacceptable to her. In a joint partnership with other female relatives, she opened a female academy near Boston in 1802. In 1802, Boston was considered New England's center for learning. Both she and her cousins oversaw the education of many students. For more information, refer to *Judith Sargent Murray Biography* available at http://www.uua.org/uuhs/duub/articles/judithsargentmurray.html

[24] Emma Hart Willard (1787-1870) was essentially a self-taught academician. The schools she opened for young girls offered curricula that was many times more advanced than some boys'

deal to the education field during the 1800s. Other 19th century women who significantly influenced

the field of education included Sarah J. Hale,[26] Mary Lyon,[27] Prudence Crandall,[28] and the Peabody Sisters.[29]

---

academies. Her schools taught subjects such astronomy, botany, physiology, and geology. For more information, refer to Emma Hart Willard available at http://ocp.hul.harvard.edu/ww/people_willard_emma.html.

[25] Catherine Beecher studied at the Litchfield Female Academy in Connecticut and was taught by the famous educator, Sarah Pierce. As an understudy of Pierce, Beecher learned that men and women were intellectually equal. She lived by this belief throughout her career. She is also well-known for including physical education and home economics in her schools. For more information, refer to *National Women's History Museum* available at http://www.nwhm.org.

[26] Sarah J. Hale (1788-1879), was somewhat of a radical in advocating for equal education for women and men. Hale advocated that the best way for women to fulfill their mission was by receiving an education first. (A notable contribution lobbied for by Hale to President Lincoln was the proclamation declaring Thanksgiving a national holiday.) For more information, refer Sarh J. Hale available at
http://www.nwhm.org.

[27] Mary Lyon (1797-1849) is best known for her commitment to affordable education for women and her influence in the advancement of women's education to include the hard sciences and math as part of the curriculum in her schools. For more information, refer to Mary Lyon and Mount Holyoke available at http://www.mtholyoke.edu/marylyon/.

[28] Prudence Crandall (1803-1890), a Quaker, followed Quaker traditions who believed that women should be educated. Crandall opened multiple schools, but is best known for her role in advocating for the education of African-American female students. For more information, refer to Suzanne Jurmain, *The Forbidden Schoolhouse: The True and Dramatic Story of Prudence Crandall and Her Students* (New York: Houghton Mifflin, 2005).

[29] Elizabeth Palmer Peabody (1804-1894) is well-known as the first woman publisher. She published pieces such as Nathaniel Hawthorne's first children's books and Henry David Thoreau's *Essay on Civil Disobedience.* Mary Peabody Mann (1806-1887) published *Record of a School* identifying her observations of a revolutionary new schooling concept based on teaching methodologies such as self-expression and mutual respect. Her book was based on her experiences as she worked with Bronson Alcott at the Temple School. She was married to Horace Mann. Sophia Peabody Hawthorne (1809-1871) married Nathaniel Hawthorne and participated in the transcendentalist movement with her husband. She also assisted her sisters in the opening of various schools. For more information, refer to *The Peabody Sisters Biography* available at http://www.uua.org/uuhs/duub/articles/peabodysisters.html.

Judith Sargent Murray, a pioneering educational philosopher, held many ideas about women's education that were extremely radical. She firmly believed that a woman's intellect needed stimulation to its fullest potential. She was a staunch believer in improved educational opportunity for women.

Catherine Beecher, another prominent early education pioneer, vowed to devote all her energies to improving the education opportunities for women. With the help of a sister, Beecher founded a girl's school in Connecticut (later known as Hartford Female Seminary),

aimed at training women to become teachers. Beecher was determined to offer a broad area of subjects and eventually published a book titled "Suggestions on Education" in addition to authoring many textbooks, such as assisting in the development of the McGuffey readers.

As a self-taught female in the early 1800s, Emma Hart Willard was a formidable leader in women's education. By 1807, she was a principal at women's academy in Vermont. She introduced her students subjects such as mathematics and anatomy at a time when this practice was not yet accepted as suitable for proper subjects for women to learn.

A move unheard of for the early 1800s, Willard petitioned the New York State Legislature to expand the educational opportunities for women. In doing so, she wrote *A Plan for Improving Female Education.*

Sarah J. Hale was a prominent editor of two magazines, *American Ladies Magazine*, and *Godey's Lady's Book.* She used the magazines as a tool to further

the education of women by including information about proper writing skills, college-level reading lists, and listing schools accepting women. She held a strong conviction in women becoming teachers.

Mary Lyon began teaching at the age of 17. By 1824, Lyons had opened a girl's school that was committed to providing affordable tuition, teaching serious subjects, and issuing graduation diplomas to female students. In 1837, she opened Mount Holyoke Female Seminary with its new concept of designing a school for middle-class girls who could now afford a proper education. Lyons knew she would have a greater influence on changing the standards for female education if she was able to maintain affordable fees for payment of her services. Mount Holyoke met all the college standards of male academies. (This practice was unheard of at the time.)

The practice of educating young black female students was not widely accepted in the mid-1800s. In 1833, Prudence Crandall, an abolitionist, opened a school in Connecticut to teach black female students born of emancipated parents. Despite the constant hardships she and her students faced from white townspeople, she continued to teach her students advanced grammar, math, and science so they would be able to teach other African-Americans in the future.

The Peabody sisters, Elizabeth, Mary, and Sophia, were taught by their parents to believe that education was of great importance and a strong educational system was critically necessary. Each sister independently and jointly contributed to advancement of all children. They were considered social reformers, supporters of literature and philosophy, and were instrumental in the promotion of the concept of

kindergarten education in the United States. They also provided funds to establishing schools designed specifically to teach Native Americans.

Both Mary McLeod Bethune[30] and Nannie Helen Burroughs[31] were notable contributors to education during the 20th century. Mary Bethune was considered an outstanding international leader of black women in education from the 1920s to the 1950s. She was well-educated, graduating with a post-secondary education. Bethune worked with many notable white women teachers, such as Lucy Craft Laney,[32] adopting many of Laney's ideas into her own educational philosophy. Her educational focus incorporated a strong emphasis on values, especially self-respect and confidence. Eventually her school discontinued elementary and secondary curriculum and made the transition of opening a Bethune-Cookman College in 1929 that included co-educational studies enrolling male and female students together.

---

[30] Mary McLeod Bethune (1875-1955) was both a national and international figure. She was the president of the Bethune-Cookman College, transitioned blacks to the Republican Party, was appointed the head of the National Youth Administration by Eleanor Roosevelt, helped create the Women's Army Corps, and was appointed to the 1945 founding conference of the United Nations by President Harry Truman. For more information, refer to *PBS - Mary McLeod Bethune* available at http://www.pbs.org/wgbh/amex/eleanor/peopleevents/pande05.html.

[31] Nannie Helen Burroughs (1878-1961) develop exceptional speaking skills and became the a spokesperson and secretary for the National Baptist Women's Convention. Her schools blended industrial training and the liberal arts with a Christian Education. For more information, refer to *National Women's History Museum*, available a http://nwhm.org/exhibits/Education/Nannie%20Helen%20Burroughs%20Bio.html.

[32] Lucy Craft Laney (1854-1933) was Georgia's most influential educational leaders. Although a slave, Lucy was taught to read at the age of four years old. As a teacher, she started the first school in Augusta, Georgia for black boys and girls. She also started Haines Normal and Industrial Institute, the first black kindergarten in Augusta, and the first black nursing school in the same city. For more information refer to The Lucy Craft Laney Museum of Black History and Conference Center at http://www.lucycraftlaneymuseum.com/aboutmslaney.htm.

During the year of 1909, Nannie Helen Burroughs founded the Training School for Women and Girls in Washington, D.C. The school was considered a national model school for the teaching of African-American women. The curriculum promoted academic studies and job training for the advancement of racial equality and empowerment of black women through education. The goal of her school was to teach African-American women to become self-sufficient wage earners.

Women's contribution to formal education in America added to the direction and development of a young girl's ability to impart knowledge to society. Their involvement added to the equality and access of the educational system for all learners.

The Development of the Common School

In the early years of the 20th century, the working consensus was the translation of hopes and aspirations into a common school. The school, as an institution, was designed to include a tax supported education (up to the eighth grade) while exposing all students to common attendance requirements and a standard curriculum.[33] The common school was designed to do more than give intellectual training; "it was to provide citizenship training, character education, and a means by which every child might advance up the economic and social scale as far as his talents would carry him." explains Butts.[34]

---

[33] The common school was a terminal institution, and only one in 10 students went on to secondary education. Lawrence A. Cremin, *The Transformation of the School* (New York: Knopf, 1961), 291.

[34] Butts, 41.

Horace Mann, an early educational pioneer, educational advocate and Commissioner of Education for the State of Massachusetts during the early 20th century helped establish the common school program by referencing public education as an "absolute right". He publically recommended for free secular public schools that ought to be supported by both local and state taxation. He wanted children educated to strengthen democracy by extending the benefits of education to vast numbers of people who had not benefitted from schooling previously. Mann's common school approach was established so all children could learn American culture and democratic political beliefs via courses in American history, civics, and citizenship.

20th Century Economic and Social Issues Affect Education

A major educational shift occurred at the beginning of the 20th century. Education based on religion or societal elitism was no longer the driving force; hard science, aesthetic modernism, and political liberalism were on the rise. Changes in the economy predominantly affected the establishment of public education goals. "As the technology grew more complex, and modern life became more organized along the hierarchal lines, the need for formal schooling increased," asserts Thurow.[35] The debate shifted from local interest to the national level. The shift, according to Lemann, was deemed necessary to ". . . catapult the modernization of the labor market and the economy."[36] The U.S. economy would affect the American social structure and strongly influence educational curriculum.

---

[35] Diane Ravitch, *The New York Times* (16 November 1975) n.a.

[36] Nicholas Lemann, 21.

Strong public outcry about economic interest and educational needs demonstrated concern about the advancement and growth of the nation. House noted, "Education is viewed as a driving force behind the economy; thus a poor education results in a declining economy."[37] Ravitch demonstrates this public perseveration with education because the concerns were that public schools ". . . squandered much of its starting advantage by allowing its educational system to atrophy, by allowing itself to run a high consumption, low-investment society, and by incurring huge international debts."[38] The political argument was if a sound economy can help promote the advancement of society, support a democracy, and promote social cohesion and stability, then education, too, must play a major role in maintaining a prosperous economy. Burbules identifies the overriding objective of infusing education into the economy is that it allowed people to fulfill their potential, to become more free, more self reliant, and self determining.[39] Future immigration issues would also become a factor in educating people to reach their fullest potential.

Immigration: A Growing Reason to Provide an Education

The late1800s and early 1900s began a period in the United States where hundreds of thousands of people from other countries were welcomed as they emigrated to America. This extraordinary number of new people teeming into urban

---

[37] Ernest R. House, *Schools for Sale* (New York: Teachers College Press, 1998), 4.

[38] Thurow, Head to Head: The Coming of the Economic Battle among Japan, Europe, and America (NY: Morrow, 1992) 245 cited in Ernest R. House, Schools for Sale: Why Free Market Policies Won't Improve America's Schools, and What Will (NY: Teachers College Press, 1998) 42.

[39] Nicholas Burbules, "Way of Thinking," *Educational Researcher Quarterly* 33, no. 6 (Aug/Sept 2004): 5.

slums presented a great magnitude of social problems such as speaking different languages coupled with following different customs. Some of the immigrants had no tradition or history of self-government and fiercely disliked being ruled by any governmental doctrine.

Since school reformers blamed much of the chaos occurring in the cities on immigrant families, they sought public education as the answer to the social dilemmas of that era.[40] Social reformers, such as Jacob Riis, declared that "the battle against the slum would be fought out, in, and around the public school."[41] The public school's mission was to assimilate immigrants into a nation that reflected English speaking democratic ideals. The premise was immigrant children would greatly benefit from the indoctrination of all learning the same language and the same principles of a democratic government.[42]

The reformers desired that all society believe the promise that schooling would allow children to fulfill the "American dream of opportunity" as an avenue to achieving future economic success. The process of education was intended to strengthen a democratic society by extending educational benefits to vast numbers of the immigrant population, most of whom had not previously benefitted from schooling privileges.

---

[40] In the century between 1820 and 1920, the nation absorbed 33.5 million immigrants. The public reformers, who came from upper-and upper-middle class backgrounds, attributed immigration as the main reason for crime, disease, and ethnic/racial strife in the culture. The idea of mixing children of all social classes together in the same schools was revolutionary at the time. Hellinger and Judd, *The Democratic Facade,* 26-27.

[41] Ravitch, "The Public School's Task" a quote by Jacob Riis, n.a.

[42] By 1900 the great majority of all children aged six to thirteen were in elementary schools. Universal elementary schooling for all children had begun. Butts, 40-41.

Pedro Noguera recognized, "Parents willing to send their children to public school were hoping against the odds that for their child, something good would happen, and a better future through education would be possible."[43]

It became increasingly clear that the opportunity to acquire an extended education should be available to all children. This meant an education must be afforded to poor and the rich, to the slow student and the bright, to boys and girls, black and white, to all practicing different religious faiths, and to the immigrants as well as to those who were native-born. This type of educational proposition would involve a comprehensive education plan, one in which students from all walks of life would study, work, and play together. Equal opportunity stood alongside freedom by accomplishing a solid education as its prime goal. (This concept later became referred to as universal education.)

The Great Depression Influences Education Practices

In the 1930s, the notion, of education remaining as an important socioeconomic equalizer in America, changed. The Great Depression, drastically reducing employment opportunities, effectively closed entry into the labor force for graduates of elementary schools. The Depression was the main contributor to increasing the "school-leaving age" up to age sixteen.[44] This held younger people out of the work

---

[43] Pedro Noguera, *City Schols and the American Dream* (New York: Teachers College Press, 2003), 4.

[44] Later, after WWII, Americans realized growth in the secondary schools (completing high school) would be understood as the passport for entry into the labor force or higher education. Lack of a high school diploma became generally recognized as a serious, lifelong handicap. John I. Goodlad, "The Great American Schooling Experiment," *Phi Delta Kappan* (December 1985): 268.

force and permitted increased time in schools. Coinciding with the Stock Market Crash of 1929, the Depression caused the public to question the entire educational decision-making process. It was during this point in history when four distinct educational perspectives were competing with one another: John Dewey's Progressive Education; Carnegie's Pennsylvania Study; the Eugenics Movement; and the Standardized Testing Movement of E. F. Lindquist.[45]

Progressive Education

John Dewey's "progressive" ideas became popular in the 1920s and 1930s. Dewey's *Progressive Education* emphasized a "child-centered" pedagogy combined with curriculum experimentation. Proponents of Progressive Education desired to "loosen up" the curriculum away from "skill and drill" by including an increased focus on learning units, projects, activities, field trips, laboratories, and the audio-visual usage. Central to Dewey's ideas was the interpretation of individuality with community and creative tension therin.

Dewey's advancement and growth of the progressive education era supported universal access to education for all students. Education for the individual existing within the community was critically important to the survival of democracy and posited that human beings must acquire the capacity to think freely, imaginatively, and

---

[45] John Dewey (1859 - 1952) conceived and became the leader of a new approach to education. It centered on the notion that a broad public education was an essential component of democracy. He devoted much of his time to establishing the Laboratory School at the University of Chicago. See, William H. Honan, "Looking Back at Forward Thinkers," *Education Life* (November 2, 1997) 2.

creatively in order to keep democracy a reality.[46] Critics later blamed Dewey's movement for low economic productivity, immorality among the young, and the decline of academic standards.[47]

The Carnegie Pennsylvania Study

As previously mentioned, secondary schools realized a rapid increase in enrollment due to the collapse of the United States' economy during the Great Depression.[48] Public suspicion and concern grew regarding the practice of the secondary schools becoming the location for unemployed youth. In 1929, the Carnegie Foundation studied the low achievement of secondary students in Pennsylvania which labeled modern day high schools as "mediocre."[49] The foundation criticized high schools by suggesting they promoted little depth of sustainable knowledge. The report indicated that secondary schools should be a learning environment whereby students ought to be responsible to think, reason, and formally expressive themselves in both written and spoken expression. The foundation recommended avoiding the matriculation of high school students solely based on mathematical Carnegie units, but

---

[46] Elaine M. Walker, *Educational Adequacy and the Courts* (Santa Barbara, CA: ABC CLIO, 2005), 1.

[47] William J. Reese, America's Public Schools: From the Common School to 'No Child Left Behind" (Baltimore, MD: The Johns Hopkins University Press, 2005), 80.

[48] Because high schools enrolled only a small percentage of adolescents before the 1900's, many of the high schools were associated as elite branches of higher learning resembling an extension of earlier Latin grammar schools or having a contemporary college domination. The driving demand for education during and after the Great Depression rapidly affected its academic effectiveness by being unable to offer substantial courses, electives, and/or vocational courses due to rapid growth and limited trained teaching professionals.

[49] Reese, 201.

rather to promote specific normalized ("normed") educational targets in an effort to raise faltering academic standards.

The Eugenics Movement

Eugenics Movement discourse, rooted in the late 19th century, believed that the hierarchy of the human race and its characteristics promoted and at the same time prevented America's academic growth.[50] Certain minority populations were thought to be contributing to the "natural degeneration" of the country.[51] The study of Eugenics wanted to define who was of the "ablest normativity"[52] while only tolerating narrow versions of heteronormativity for humanity's benefit.

Residual effects of the Eugenics Movement, although somewhat silenced and more discrete after the Holocaust (Eugenics did not end with the death of Hitler in 1945), has since, as Baker notes, ". . . mutated into a variety of practices, programs, and politics."[53] An argument opposing the practice of eugenics includes the suggestion that now has infiltrated into a wider class, race, religion, gender, and

---

[50] Francis Galton coined the term in 1883 and primarily refers, at the broadest level, to a belief in the necessity of "racial" or "national" improvement through the quality control of population reproduction. It has been promoted through the scientific, medical, psychological, and educational methodologies. Benadette Baker, "The Hunt for Disability: The New Eugenics and the Normalization of School Children," *The Teachers College Record* 104, no. 4 (June 2002): 665.

[51] Henri-Jaques Stiker, *A History of Disability*, trans., Willam Sayers (Ann Arbor, MI: University of Michigan Press, 1999).

[52] According to Baker, the term was used by F. Campbell as circulatory notions of Foucaultian power-as-effects. According to Baker, this means that the term *ableist normativity* refers to how discourses, including technologies, programs, prescriptions, policies, lines of reasoning, and everyday activities constitute as normal certain ways of appearing, of accomplishing something, and of being seen as fully human. Certain technologies can, for example, then destabilize what was previously thought of as natural. Baker, *The Hunt for Disability,* 698.

[53] Baker, 666.

ability constructions to shape social and educational policies.[54] The infusion of *academic* eugenical issues targets certain school populations such as students, who are seen as defective or deficient, based on the use of technological tools and strategies, namely the scores on standardized tests.

Standardized Testing Movement of E. F. Lindquist

The turn of the 19th century and the advent of the industrial revolution brought an increased interest to standardizing school curriculum and pedagogical activities. The need for further public school scrutiny and accountability evolved. Attempts were made to apply educational measurement techniques through the use of formalized test construction, pre-developed testing batteries/manuals, and the proliferation of testing agencies.[55] A driving force behind assessing human behavior to identify and improve academic learning, E. L. Lindquist used quantitative analysis:

> To the extent that such instruments conform to the principles of quantitative logic, it becomes possible to know with greater exactness the relationships among various aspects of educational procedure, the aptitude of learners, and the changes in human behavior. The purpose

[54] Steven Garton, *Writing Eugenics: A History of Classifying Practices,* in Marie T. Crotty , John Germov, and George Rodwell (eds.), *A Race for a Place: Eugenics, Darwinism, and Social Thought and Practice in Australia* (New Castle, AU: The University of Newcastle Press).

[55] Both local and regional testing programs developed as early part as the 1900's, but gained a great deal of interest beginning in the 1930s and 1940s. Large testing companies and grant dollars resulted in such entities as the Cooperative Test Service, the Measurement and Guidance Committee of the American Council for Education, and subsequently the Educational Testing Service. For more information, see E.F. Lindquist (ed.), *Educational Measurement* (Washington, D.C.: American Council on Education, 1951).

> of this is to make possible more accurate prediction and control in the educational process.[56]

Not only was education affected by the use of quantitative analysis, but corporate America also applied similar principles as a means of producing efficiency in the workplace.

Economic and Business *Efficiency* In Education

Universal economic opportunity has been a profound theme in American rhetoric throughout history. Due to similarities of identified objectives applied to both the education and business industry, the two distinct areas began to appear increasingly interconnected with proficiency driven foci. With mixed results, this partnership became tightly interwoven over time. The history of building corporations, using theories of productivity coupled with rules of increased efficiency, became mainstreamed in education settings resulting in a significant force toward achievement attainment. Similar use of technologies were used in both systems.

If American education became tied closely to modern business and the economy, then there existed a need for formal education as a response to the training requirements necessary for survival in such a technological systems-based society. Education became a contributing factor of production. The U.S. educational system appears to co-exist in an era of private corporate interest. Corporate fundamental ideas and policy-making decision have their roots embedded in education, leaving education vulnerable to business ideologies.

---

[56] Walter W. Cook, in E. F. Lindquist, *Educational Measurement*, 3.

As American business and industry expanded, Friedrich Winslow Taylor[57] contributed to the expansion of industry with the onset of the "efficiency movement." Taylor concerned himself with making factories more efficient in production with less cost, effort, and materials. He pioneered the practice of scientific management[58] where he contracted with companies to determine the fastest and most efficient method to simplify the tasks which each employee performed. Scientific Management not only increased production, but reduced an employer's need for skilled labor and thus reduced the overhead costs of each employer. With Taylor's conviction of his single direction for production, he emphasized that the philosophy and practices related to Scientific Management principles would benefit workers and society at-large.[59]

The schools were also influenced by the efficiency movement with extraordinary implications. The field of education equally responded to the effects of the new factory conditions, new claims, and new ideas of Scientific Management by embracing and replicating the search for efficiency in educational production. School systems conducted an enormous mobilization toward achieving efficiency by eroding

---

[57] Frederick W. Taylor (1856-1915) was an early "efficiency expert." Some refer to him as the first modern efficiency expert in world history. Around the 20th century, he developed a set of ideas designed to get employees in manufacturing industries to produce more output. He termed his methodology as "scientific management" yet some referred to the practice as, "Taylorism."

[58] For a detailed account of this movement in public education see , Raymond E. Callahan, *Education and the Cult of Efficiency: A Study of the Social Forces that have Shaped The Administration of the Public Schools* (Chicago, IL: The University of Chicago Press, 1962).

[59] Jonathan Rees, "Frederick Taylor in the Classroom: Standardized Testing and Scientific Management," *Radical Pedagogy* 3, no. 2 (Fall, 2001) located at http://readicalpedagogy.icap.org/content/issue3.2/.

the concept of the student as a human learner. Instead, the schools were conceptualized as factories, teachers as factory workers, and students as the raw material then turned into a product to meet the technological specifications of the needs of the 20th century. Teachers were required to document wasted time, educational administrators were to make better use of time and space, and all workers were expected to standardize routines.

Efficiency standards within the schools, much like business, introduced requirements for better production. Educational standards of comparisons were adopted for general improvements to benefit the entrance into the workforce. Uniformity and accuracy of student learning depended on standardization and production. Students were to be separated by age and ability level. Classroom grade levels were separated and mandates were established for the curriculum content taught or learned in each grade. Guidelines for teachers became more prevalent by incorporating specific teacher training programs. Production leaders or school principals were needed for each school building. Corporations formed with central administration overseeing the technical attributes of each school district. The modern day factory system, with its division of labor for the purpose of increasing productivity, became the basis for the modern day school system. Business had developed a method of controlling its labor force; schools, too, had a corresponding method.

The institutional arrangements for 20th century education were shaped by both social and economic forces. Business extremes of a methodological spectrum based

on a framework of hierarchy continued its attempt to bound the field of education. The framework was similar to Alfred E. Chandler's[60] *Organizational Synthesis*; a structured model to produce substantial business and educational results for the 20th century economy and society[61] Evidence of this influence is reflected in the development and implementation of technologies for measuring and controlling student achievement (production) in the classroom. Ultimately, these practices became federal, state, and local educational mandates supported by the legal system.

Litigation and Federal Legislation Guarantee Public Education

Responding to the unequal education outcomes for many students during the mid-20th century, educational policy changes occurred at the local, state and federal levels in an attempt to equalize educational opportunities for all public school students. Significant legal and legislative decisions made an indelible imprint on this country. Included among these are: (1) the 1954 *Brown v. Board of Education*[62]

---

[60] Alfred E. Chandler was considered by many as the preeminent historian of American business. Dr. Chandler has been credited with creating the field of business history with a preferred subject on understanding the works of large organizations. He was a longtime professor teaching at both the Massachusetts Institute of Technology and Harvard Business School. His accomplishments included winning the 1978 Pulitzer Prize for history and the Bancroft Prize for the author of *The Visible Hand: The Managerial Revolution in American Business*.

[61] Louis P. Cain and Paul J. Uselding (eds.) *Business Enterprise and Economic Change* (Kent, OH: The Kent State University Press, 1973) 55.

[62] Brown et al v. Board of Education of Topeka et al. posed the principle that racial discrimination in public education is unconstitutional. It reversed the courts below which had permitted racial segregation in public schools. The most important principle is that the defendants were to make a prompt and reasonable start toward full compliance with the decision requiring desegregation. The decision was made on May 31, 1955. [349 U.S. 294]

decision; (2) the National Defense Education Act (NDEA) of 1958;[63] (3) the 1965 passing of the Elementary and Secondary Education Act[64]; (4) the 1974 *Lau v. Nichols* Supreme Court decision:[65] (5) the 1975 Education for All Handicapped Children's Act;[66] (6) Goals 2000, and (7) the No Child Left Behind Act (NCLB) of 2002.[67]

---

[63] NDA was instituted primarily to stimulate the advancement of education in science, math, and modern foreign languages, but it also provided aid in other areas, including technical education, area studies, and geography. The Act also contains statutory prohibitions of federal direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution. National Defense Education Act is available at http://caselaw.lp.findlaw.com.

[64] Public Law 89-10

[65] On January 21, 1974, the Supreme Court directed the San Francisco school system to provide English language instruction to approximately 1,800 students of Chinese ancestry who did not speak English. The judgement stated that inadequate instruction procedures denied the students a meaningful opportunity to participate in the public educational program, and thus violated 601 of the Civil Rights Act of 1964. [414 U.S. 563].

[66] In 1975, Congress passed the watershed legislation entitled the *Education for All Handicapped Children's Act* (EAHCA) as PL-94-142 (Part B) which made available a free and appropriate public education to school-aged students with disabilities. Since 1975, this Act has been periodically amended to become the Individuals with Disabilities Act (IDEA) written in 1990 as PL 101-476 to include the use of nondiscriminatory and multidisciplinary assessment practices, free and appropriate education (FAPE), parental involvement in the development of the Individual Educational Plan, and included the concept of the Least Restrictive Environment. The reader is also encouraged to review *Pennsylvania Association for Retarded Citizens v Commonwealth of Pennsylvania* and *Mills v District of Columbia* rulings further stating the requirements of FAPE. Today's most current law is now referred to as the Individuals with Disabilities Improvement Education Act of 2004 (hereafter referred to IDIEA) PL-108-446, Section 1400(a). When combined with other congressional acts dealing with disabilities, such as the Rehabilitation Act of 1973, Section 504, and the Americans with Disabilities Act (ADA- PL 101-336), they collectively form the legal framework for the protection of students with disabilities. Leo H. Bradley, *School Law for Public, Private, and Parochial Educators* (Lanham, MD: Rowman & Littlefield Education, 2005), 212.

[67] Congress enacted the No Child Left Behind Act (NCLB) in 2001, and the President George W. Bush signed it in 2002, for the purpose of improving the education of all students in all public schools in the United States. NCLB rests on six major principles of accountability, principle of highly qualified teachers, principle of scientifically based intervention, principle of local flexibility, principle of safe schools, and the principle of parent participation and parent choice. It imposes annual testing of all public school students in reading and math, grades three through eight,

Brown v. Board of Education

Prior to 1954, the courts upheld the decision from *Plessy v. Ferguson*[68] acknowledging the legal practice of "separate by equal facilities" for black and white students did not violate the equal protection clause of the Fourteenth Amendment of the U.S. Constitution. By the 1940s and 1950s, various legal communities questioned the legality of such ruling by raising arguments based on the belief that separate schooling *did indeed* constitute a human rights and educational violation. The United States Supreme Court rejected the Plessy decision in 1954 and concluded that "separate but equal" had no place in public education because "separate facilities were inherently unequal."[69] This ruling came as the result of the 1954 of *Brown v. Board of Education of Topeka*. The ruling established the right to an education for all children and brought the role of the federal government into public education in contemporary American life.[70] Education was reaffirmed as a guarantee by state constitution and not seen as a privilege by the Supreme Court.

---

and high school. It also requires annual report cards on school performance. Rutherford Turnball, *The Individuals with Disabilities Education Act as Amended in 2004* (Upper Saddle River, NJ: Pearson, Merrill Prentice Hall, 2006), 2-3.

[68] *Plessy v. Ferguson,* 163 U.S.537 (1896).

[69] Louis Fischer, David Schimmel, and Leslie R. Stellman, *Teachers and the Law* (Boston, MA: A and B, 2003), 298, referencing *Brown v. Board of Education of Topeka ,* 347 U.S. 483 (1954).

[70] The guiding principles was to make a prompt and reasonable start toward full compliance with deliberate speed, provide the district courts supervisory responsibility to oversee school officials as they proceeded with good-faith implementation to desegregate schools, and that the courts could also consider the conditions of the physical condition of schools, transportation, and personnel. Louis Fischer, David Schimmel, and Leslie Stellman, *Teachers and the Law* (Boston, MA: Allyn and Bacon, 2003) 309.

The National Defense Education Act

After the Brown decision mandated integration of students from different races and ethnicity, education's next great impact occurred when Soviet Union launched Sputnik. Sputnik was considered one of the most successful space exploration missions that took place in 1957. The launching of Sputnik caused unrest in America, thereby prompting the U.S. government to become heavily involved in the public school development in both curricular areas of science and math. Patterns of organizational change, such as the "disciplined-centered" curriculum[71] was included, encouraging secondary school students to develop a deeper understanding of higher-order mathematics. In addition, students began to study more than general science, but enrolled in biology, chemistry and physics. The overarching reason for the National Defense Education Act (NDEA) of 1958 was then to appropriate federal funding to public schools to provide money to support more advanced math, science, and technology curriculum.

The Elementary and Secondary Educational Act of 1965

As children gained greater access to more equitable educational opportunities via federal policies and litigation decisions, education still had a mission to mitigate the effects of poverty, language deficiencies, and handicapping conditions adversely affecting student learning. Both President John Kennedy and Lyndon Johnson promoted legislation as part of their *War on Poverty* and *The Great Society*

---

[71] John I. Goodlad, *Directions of Curriculum Change*, included in Frederick R. Smith and R. Bruce McQuigg (eds.), *Secondary School Today: Reading for Educators* (NY: Houghton Mifflin Company, 1965), 79.

campaigns. To minimize these educational disadvantages, the Federal Government intervened in1965 and passed the1965 Elementary and Secondary Educational Act (ESEA). For the first time, the Federal Government provided direct funding to the states to assist in educating certain groups of students. Yell notes, "The purpose of the ESEA was to provide federal money to states to improve educational opportunities for disadvantaged children."[72]

Title 1 Compensatory Programs

Through ESEA the federal government initiated and supported educationally related categorical programs, such as the Title I Compensatory Program.[73]

> The significance of the Title I's origins is that education became a part of a larger struggle for social, political, and economic equality. Consequently, the federal interest in education was framed by the language of rights and entitlement. Education became the center piece of social policy, integral to the national commitment to social justice through equal opportunity.[74]

---

[72] Mitchell L. Yell, *The Law and Special Education* (Upper Saddle River, NJ: Pearson Merrill Prentice Hall, 2006), 69.

[73] Of the more than 42,000 Title I schools identified in the 2004-05 for improvement under NCLB, approximately 6,000 (13%) of these schools remain in need of improvement. Of this thirteen percent who remain in need of improvement, the majority of these schools are located in large urban communities. This concentration is disproportionate when compared to the total number of schools.

[74] Thomas Timar, "Program Design and Assessment Strategies in Chapter 1." In K.C. Wong and M.C. Wang (eds.), *Rethinking Policy for At-Risk Students* (Berkeley, CA: McCutchan Pubublishers, 1994), 69.

Due to the adoption of the 2002 NCLB Act, many states have "back-loaded" their annual numeric measurable achievement goals causing the states' percentages determining passing Annual Yearly Progress to rise slowly for the first few years of the implementation phase, then more rapidly after 2010.[75] It is highly likely the number of Title 1 schools identified for improvement will rise in the future as annual achievement targets increase.

Lau v. Nichols Influence on the Civil Rights Act of 1964

Although *Lau v. Nichols* focused on providing an appropriate education for students of Chinese ancestry who did not speak English as their primary language, it also determined that certain educational practices and procedures violated the Civil Rights Act of 1964.[76] This case law set precedence for nondiscriminatory educational practices to include all students whose public school systems received Federal financial assistance. It held school officials responsible for any unequal educational opportunities and school operations which violated the Fourteenth Amendment of the United States Constitution.

---

[75] K. Schek, "Deferred AYP Goals Catch Up with States This Year," *Education Daily* (January 24, 2005): 38, n.a., 14.

[76] Lyndon B. Johnson, who, at the time, was the Senate majority leader in history, was largely responsible for the Civil Rights Act of 1957. Then, with many sweeping provisions, the Civil Rights Act of 1964 forbade racial discrimination in public schools and empowered the Justice Department to sue districts that failed to comply more rapidly and effectively with court orders to integrate public school students. It also gave authority to the Department of Health, Education, and Welfare (HEW) to press for more compliance , which led its administrators to set numerical quotas to measure whether a school was integrated. William J. Reese, *America's Public Schools* (Baltimore, MD: The John Hopkins University Press, 2005), 244-245.

From the remarks made by Supreme Court Justice Blackmun, concern was demonstrated for the large numbers of students who entered school not knowing, understanding, or speaking English, "This is a very substantial group that is being deprived of any meaningful schooling because the children cannot understand the language of the classroom."[77] Mr. Justice Stewart agreed by stating

> Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open the instructional program to these students."[78]

This case allowed for a student, with respect to national origin bounded by language deficiencies, the enjoyment, advantage, and privilege of the objectives of a public academic program.[79]

A second benefit of the Supreme Court decision was the effect on the educational practice of *tracking*. The Supreme Court concluded, "Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to

---

[77] [414 U.S. 563]

[78] [414 U.S. 563, 571]

[79] From the Office for Civil Rights of the Department of Health, Education, and Welfare in 1970, 35 Fed. Reg. 11595 stated, ". . . the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students." [414 U.S. 563, 571]

meet such language skills needs as quickly as possible and must not operate as an education dead-end or permanent track."[80]

Individual with Disabilities Act (IDEA)

IDEA 2004 generally consists of four main parts (subdivisions) which (1) address barrier/solutions and national policy for educating students with disabilities; (2) authorizes funds to educate students ages three to twenty-one while receiving a Free and Appropriate Education (FAPE); (3) authorizes funds to educate infants/toddlers ages birth to three years; and (4) authorizes national research training, demonstration, and technical assistance activities.[81] It provides a zero reject policy assuring that any child, regardless of his/her disability is entitled to a free appropriate education on an non-discriminatory basis. The programs identified for special needs students make every effort to take place in a general educational classroom with non-disabled peers, better known as the Least Restrictive Environment (LRE)[82]. Parents are encouraged to work closely with the school district and are provided procedural due process for reasons of accountability. IDEA reiterates America's policy to educating students with disabilities by stating

---

[80] This statement was to comply with the Civil Rights Act of 1964 . . . and all the requirements imposed or pursuant to the Regulation. [414 U.S. 563, 5969]

[81] Rutherford Turnbul, Nancy Huerta, and Matthew Stowe, *The Individuals with Disabilities Education Act as Amended in 2004* (Newark, NJ: Pearson Merrill Prentice Hall, 2006), 1.

[82] Under IDEA, Least Restrictive Environment mandated that children with disabilities receive their education with nondisabled peers to the maximum extent possible. It also requires to the maximum extent possible, a continuum of placements must be available for students with disabilities, ranging from general education classroom placement with additional support to educational services through a homebound or hospital instructional program. Michael L. Hardiman, Clifford J. Drew, & M. Winston Egan, *Human Exceptionality: Society, School, and Family,* 5th ed. (Boston, MA: Allyn and Bacon, 1996), IS 6.

> Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.[83]

Both IDEA (including revisions) coupled with NCLB have raised expectations for all students participating in the general curriculum while assessing them for proficiency of the curriculum. Other requirements include improved parent participation, high qualifications for all educators, and the evidence of data-based, data-driven decision making.

Goals 2000: Educate America Act.

In March 1994, Congress set in law six national education goals with the passage of *Goals 2000: Educate America Act.*[84] To remedy declining academic achievement and to provide safe school environments, fifty governors adopted goals focused on school readiness, school completion, students achievement and citizenship, science and mathematics, adult literacy/life-long learning, and a safe, drug-free school environment. A new emphasis on national performance standards, improved

---

[83] IDEA, Section 1400(c)(1).

[84] The idea began in 1989 following a growing number of national reports including *A Nation at Risk: The Imperative for Educational Reform* (National Commission on Excellence in Education (1983) and John I. Goodlad's, *A Place Called School: Prospects for the Future* (New York: McGraw-Hill Book, Co. 1984). Americans were committed to higher levels of learning by students and wanted all individuals – students, parents, educators, employers, and communities – to share in that responsibility.

technology, and the development of innovative student performance assessments gauging student progress were placed into action in the adoption of Goals 2000. Given that individual state participation was voluntary, those that chose to participate implemented a comprehensive plan to raise student standards. Goals 2000 was a precursor of federal acts that would soon follow.

No Child Left Behind Act (NCLB) of 2002

After the law was passed with bipartisan support and signed by President George W. Bush in 2002, it directed schools to operate with a clear set of expectations, whereby teachers and students should achieve a certain level of mastery in critically important core subjects. The goal is to close the achievement gap between children attending a public K -12 institution. NCLB requires each state to establish its own standards of what students should know and be able to master at certain grade levels. The presumption is that standards are the guideposts toward academic achievement. The mandate intends to help direct schools toward implementing common academic goals and benchmarks which then directly affect the adoption of textbooks, lesson plans, and teacher preparation practices. It also seeks accountability to gather specific, objective data through scores obtained from state tests align with district curricula and state standards. The systematic data collection process intends to identify both the strengths and weaknesses of the academic performance of an individual school district and school buildings.

Once the strengths and weakness are identified, the districts are required to prepare a district-wide report card to inform taxpayers as to how the students have

performed on state tests in comparison to the state average. This report card also disaggregates academic information for student subgroups according to race, ethnicity, gender, English Language Proficiency, and migrant/disability/and low-income status.

The final yearly phase of NCLB directs public school districts to report whether if they have achieved Annual Yearly Progress (AYP)[85] based on specific cut scores. This quantifiable usage of cut scores is the latest American trend to determine whether public educational institutions are meeting the identified needs of both elementary and secondary students.

Summary

In order to understand contemporary educational practices in the United States, it is important to become familiar with the historical developments of the social, legal, political, and business influences affecting modern educational events. The purpose of the chapter was: (a) to recognize the initial importance of education to create strong religious and democratic societies; (b) to highlight the legislative and legal requirements in establishing universal and progressive educational practices; and (c) to emphasize how social, economic, and legal issues have strongly influenced historical and current school practices.

---

[85] Annual Yearly Progress (AYP) demonstrates to the Federal Government that a designated number of students enrolled in each building of a public school district have demonstrated proficiency on a yearly basis. If a school district meets the AYP requirements for a specified year, then are eligible for various academic achievement awards. If a school district does not achieve AYP for a given year, then those districts face serious effects identified in the NCLB. These sanctions could include accountability demands such as being required to offer public school choice, supplemental services, or undergo corrective action with restructuring plans.

Chapter 3

History of Special Education

Introduction

Presented in this chapter is an overview of both past and present educational practices for students with special needs. The information contained in this section is a brief historical time line of the American public system of education for students with disabilities relative to their equitable access to quality education (as compared with nondisabled students). Relevant to the issue of access and equity of disabled students being provided a "Free and Appropriate Education (FAPE)" are two federal mandates – Individuals with Disabilities Act 2004 (IDEA) and the No Child Left Behind Act (NCLB) passed in 2002.

Despite the legislation, including students with disabilities in general education has been slow to develop. People with physical, cognitive, and/or emotional disabilities were historically responded to with oppressive treatment and general societal nonacceptance. Individuals with disabilities were viewed by the non-disabled as existing outside the borders of what was considered human and referenced as malcontents, social disturbances, or possessed by the unnatural. Individuals with

disabilities encountered unmitigated hardships including the lack of an occupation, resulting in no viable source of income, limited social interactions, and sparse religious comfort.[86] According to James Jacob, individuals with disabilities were regarded by the masses as being ". . . held in derision or looked upon as degraded and inferior beings."[87] Their treatment was considered by many as dehumanizing and relegated to the lower strata of society.[88] Continued public disdain and social nonacceptance led to the formation of segregated institutions for the physical and mentally disabled.[89] These underlying societal beliefs of trepidation influenced an ideology denigrating any advancement of fully and inclusively educating the disabled population Containment, and not education, became the governing force for school-aged children with disabilities.[90]

Historical Individuals

The ability to master language (speech or written acts) as a tool to converse, allows an individual to gain meaning and the opportunity to possess knowledge.

---

[86] Margret A. Winzer, "A Tale Often Told: The Early Progression of Special Education," *Remedial and Special Education*, 19, no.4 (July/August, 1998): 213-214.

[87] James Jacob, "Dummies" *American Annals of the Deaf and Dumb* 14 (1869): 20.

[88] Robin M. Smith and Nirmala Erevelles, "Towards an Enabling Education: The Difference that Disability Makes," *Educational Researcher*, 33 (November 2004): 31.

[89] Most persons with disabilities were housed in large institutions designed to protect them from the public and to protect the public from them. David J. Smith and K. Ray Nelson, *The Sterilization of Carrie Buck.* (Far Hills, NJ: New Horizons Press, 1989), 30-33 & 130-134.

[90] The availability for educational services for more severe disabilities was nonexistent. Extreme difficulties were experience when trying to enroll students with any type of disability in any public school system during this period. Kern Alexander and M. David Alexander, *American Public School Law* , 6th ed., (Belmont, CA: Thomas West, 2005), 485 - 486.

Enabling a person to contribute and be positively accepted as a citizen was important to those who sought the need to teach persons with atypical abilities. In the past four centuries, significant contributors using a form of language, improved both the level of acceptance and educational opportunities of disabled individuals. Such individuals included John Locke, [91] Jean-Marc Gaspard Itard, Thomas Galluadet,[92] Samuel Gridley Howe,[93] and Anne Sullivan.[94] Each contributed to the historical advancement toward educating persons with disabilities.

---

[91] John Locke (1632-1704), a French philosopher, rejected the 17th century view of empirialistic infallible knowledge. Rather, he posited that knowledge was gained through experiences and senses. His term of *tabula rosa* implied that humans were born with a "blank slate" and learned from the experiences within an environment.

[92] Thomas Hopkins Galluadet was the founder of the first special education institution in North America for deaf students. Prior to Galluadet, the primary interest in European teaching of the deaf dates back to one of the earliest educational attempts in the development of permanent school buildings where deaf children were instructed by professional pedagogies including the use of identifiable methodologies. Winzer, *A Tale Often Told*, 213.

[93] Samuel Gridley Howe was the Superintendent of the first school for the blind. His work also affected general education. Horace Mann, who brought about the common schools of Massachusetts and training of teachers in normal schools, was closely influenced by the pedagogical ideas of Samuel Howe. Mann incorporated Howe's ideas into the curricula of the common school. For more information refer to E. Freeberg, "More important rabble of common kings: Dr. Howe's education of Laura Brigman," *History of Education Quarterly* 34 (1994): 305-307.

[94] Anne Sullivan Macy (1866-1936) was visually impaired during her youth due to a bacterial infection of the eyes. She learned to read braille at the Perkins Institute for the Blind in Boston, Massachusetts. At age fifteen, she later regained some of her vision through surgery but remained visually impaired throughout her life. She is most associated with her work with Helen Keller who was

and blind. Her teaching methods were instrumental to educating persons with visual impairments.For more information refer to http://www.afb.org/ann sullivan/asmgallery.asp?GalleryID=17.

John Locke: The Concept of the *Tabula Rasa*

During the Period of Enlightenment, John Locke, formalized his notion of the *tabula rosa.*[95] It focused on the process of learning as both innate and as a process achieved through a series of sensory stimuli. The advancement of special education from Locke centered on issues of the differentiation between humans and humanity – from that of animals; for example, what distinguished humans from beasts. Locke's intense scrutiny about humanity was generalized by Winzer:

> Obsessed with trying to define the essence of humanity, they [18th century philosophers] ultimately hoped to answer questions revolving around what it took to be counted in the ranks [of humans], what it owed to nature, what it owed to nurture, and how predictable humans were?[96]

Locke applied his findings to *rationalize* the existence of persons with disabilities and to formulate a better understanding of how to teach them. He influenced other educational researchers, such as Jean-Marc Gaspard Itard, who shared the belief that knowledge was gained from sensory stimuli.

---

[95] Tabula Rosa is defined as a " smoothed tablet or blank slate (Latin: scraped plate or clean slate) – used especially of the mind before receiving outside impressions < *came into this world with a mind innocent and blank*>. *Webster's Third International Dictionary*, 2002 ed. s.v.

[96] Winzer, 215.

Jean-Marc Gaspard Itard: The Wild Boy of Averyron

In another attempt to determine differences between Man and Beast, Itard worked with Victor, a boy found in the Aveyron Forest in 1799.[97] He believed Victor had survived alone in the forest for many years resulting in a profound aversion to society. Itard asserted Victor's apparent mental deficiency was entirely due to lack of human interaction. To assist Victor in socialization and learning, Itard developed an intensive educational program, similar to the intent of currently constructed students plans outlined in an Individual Educational Program (IEP).[98]

Although Victor was unable to live independently after years of behavioral intervention, Itard's efforts did initiate a significant attempt to developing positive behavioral teaching techniques for individuals with disabilities.[99] Previously, few efforts had been documented or attempted to systematically educate persons with mental retardation.

Thomas Gallaudet: Implementation of Sign Language

Thomas Gallaudet, who traveled to France to learn a system of sign language communication used to converse with deaf children, was a teacher and an advocate for deaf children. He established educational programs offered in his school, the

---

[97] Victor was approximately eleven or twelve years of age when he was found in the wild. He had apparently been abandoned at an early age and was raised by wild animals. Victor was unable to talk and lacked any resemblance of socialization.

[98] The IEP is used to target individualized educational annual goals and objectives. The legal document identifies service provisions and a cascade of service delivery arrangements based on least restrictive educational arrangements.

[99] Itard's published writings were the first recorded attempts to educate a person with mental retardation. Burton Blatt, *The Conquest of Mental Retardation* (Austin, TX: PRO-ED, 1987), 32-33.

American Asylum for the Education of the Deaf and Dumb (referred to currently as the American School for the Deaf) which opened in 1817. This school is considered the first attempt, in America, to establish a school for person with disabilities.

Samuel Gridley Howe

Samuel Gridley Howe was another pioneer educational leader upholding the educational rights of children with disabilities. His advocacy centered on the humane treatment and equal educational opportunities for disabled students. His work included students with blindness, deaf-blindness, and intellectual disabilities.

Howe's educational contributions convinced the Massachusetts Legislature to provide public funding for the teaching and training of "idiot children" in October of 1848[100] Because mental retardation was viewed as a social stigma, Howe's interventions were considered radical practices of the time.[101]

Anne Sullivan Macy: *The Miracle Worker*[102]

Anne Sullivan Macy contributed to the development of communication by using the sense of touch or fingerspelling (tactile writing systems) to understand diction and voice. Her methods were different than American sign language because she spelled each word in English word order. In 1887, she began teaching Helen

---

[100] Maude Howe and Florence Howe Hall, *Laura Brigman* (Boston, MA: Little Brown, 1904), 228-229.

[101] J. D. Smith, "Histories of Special Education: Stories from Our Past, Insights for Our Future, *Remedial and Special Education* 19, no.4 (July/ 1998): 196-200. Until the 1800's, a "normal" person, if merely seen in close proximity or association with a defective person, was considered stigmatized, simply by affiliation.

[102] Samuel L. Clemens (Mark Twain) is credited for the nickname "miracle worker."

Keller. With her student being deaf-blind, Anne Sullivan Macy used Helen's hands to sign words. This method allowed Helen to understand the idea that everything had a name and thus communication was developed. From her contributions, she continued to promote that people with disabilities could live productive and successful lives.

18th Century: A Developing Educational System

Such barbaric and harsh treatment of disabled people occurred throughout early American history. Public apathy and denial delayed any significant educational efforts. Not until end of the 18th century were noticeable attempts made to better understand or address disability education.[103] It was during the *Period of Enlightenment* when the notions of *equality* and *access* spawned alternative practices improving the quality of life and education for the perceived defective human beings. Specifically, the field of special education burgeoned as a trend that began with an upsurge taking focus through the current 21st century with special education practices codified through federal and state laws.

The Age of Enlightenment

The French Enlightenment elicited new concepts, theories, and speculations about the sensorily deprived that inevitably led to concerns for individuals impaired

[103] These attempts were more superficial than analytical; more devoted to human curiosities than physical proofs or attainment toward educational intervention . J. P Seigal, "The Enlightenment and the Evolution of the Language of Signs in France and England.," *Journal of the History of Ideas*, 30 (1969): 96-115.

by mental retardation and mental illness.[104] European society was infatuated with reason based on perceived common sense and tolerance. Barron describes the intent as "to forge a link between human rationality and the idea of a universal consensus . . . through an appeal to reason, truth – hence the elimination of disagreement."[105] The Era prompted the philosophical and moral foundation concerning the humane treatment of all individuals.[106] According to the historian J. P. Seigal, it was during this period when *all* humans were recognized as "possessing the ability to be good with very little prejudgement occurring."[107] The paradigm of Enlightenment signified universal citizenship.[108] The Period signaled a change in the preconceived negative social mind-set toward a population of individuals who were once referred to as different.[109]

19th Century: Educational Developments

State adoption of compulsory education laws occurred in latter part of the 1800s.[110] As a result of compulsory education, a growing influx of public school-aged

---

[104] Margaret Winzer, *Tale Often Told*, 213.

[105] Anne Barron, *Lyotard and the Problem of Justice*, cited in Andrew Benjamin, ed., *Judging Lyotard* (New York: Routledge, 1992), 26.

[106] Paul Brians, *The Enlightenment*, 18 May 2000, online available from: Explorer@www.theenlightenment.htm.

[107] Seigal, 114.

[108] Benjamin, *Judging Lyotard*, 169.

[109] Winzer, 215.

[110] In 1870, fifty-seven percent of all five to eighteen year old children were enrolled in school, and by the year 1900, the percentage had risen to seventy-two percent. William J. Reese, *America's Public Schools* (Baltimore, MD: The Johns Hopkins University Press, 2005), 77. By

children with special needs were enrolled in the educational system. Improved achievement remained an issue because the schools were ill-equipped to handle such students in large numbers. As a result of the increasing numbers of diverse groups of children requiring an education, the administrative structures of public education identified children as having differences in cognitive abilities relating to academic, social, and emotional needs. Educators judged exceptional individuals to be qualitatively different and tended to focus on their handicaps, disadvantages, and weaknesses that needed specialized instruction and attention.[111] Segregated classroom settings evolved.

Compulsory Attendance and Special Education

School officials recognized an on-going need to provide special education curriculum. Some public schools began initiating minimal attempts to serve these "special" children, yet special education curriculum remained virtually nonexistent. Still, the emergence and enforcement of compulsory laws were cited by Lawrence Cremin as being at the heart of the development of special education:

> Compulsory school attendance marked a new era in the history of American education. The crippled, the blind, the deaf, the sick, the slow-witted, and the needy arrived in growing numbers. Thousands

---

1918, compulsory education laws were in place in the United States. Mitchell L. Yell, *The Law and Special Education* (Upper Saddle River, NJ: Pearson Merrill Prentice Hall, 2006), 62.

[111] During the first half of the 20th century, categories and subcategories of exceptionalities were introduced. Students identified as poor performers were given new labels such as *orthogenic, dyslexia, brain damaged, and learning disabled.* Margret A. Winzer, *The History of Special Education: From Isolation to Integration*, (Washington, DC: Gallaudet University Press, 1993) 338.

> of recalcitrants and incorrigibles who in former times might have dropped out of school now became public charges for a minimum period.[112]

Over time, special education manifested into a program of qualifying individuals based on disability type. In response, schools initiated rigorous tracking, sorting, categorizing and labeling of special needs children.[113] The use of scientific methodology burgeoned as a readily usable educational tool (through standardized IQ tests) further scrutinize children who could not maintain the pace of the development of the "typical" student.[114] By actively using achievement and intelligence tests to classify children in general education classrooms, further exclusion forced many special needs students to forgo continuing formal education. Stratification based on intelligence was permitted as standard practice by both the educational and legal community.

Litigated Exclusionary Effects

Court rulings, statutes, and legally acceptable practices also allowed for the exclusion of persons with a disability. This practice was upheld in multiple court

---

[112] Cited in James W. Trent, Jr., Inventing the Feeble Mind: A History of Mental Retardation in the United States (Berkeley, CA: University of California Press, 1994), 143.

[113] Winzer, *The History of Special Education,* 338.

[114] As an example of standardized intelligence assessments, the Binet IQ test was predominantly used in the 20th century. It was translated and promoted by H. H. Goddard.

decisions, such as *Watson v City of Cambridge (1893);*[115] *Beattie v Board of Education* (1919);[116] and the *Department of Public Welfare v Haas* (1958).[117]

20th Century: Increased Attention Given to the Needs of Children With Disabilities

At the turn of the century, special education services in the public school system remained limited. Most of the large cities assumed some responsibility for children identified as being a part of the special education system.[118] It was only during the next two decades (1910-1920) that the public's view of childhood disabilities involved a societal change from placement into isolated institutionalized settings to segregated classrooms within the public schools.[119]

---

[115] In 1893, the Massachusetts Supreme Judicial Court ruled that a child who was "weak, in mind" and could not benefit from instruction, was troublesome to other children, and was unable to take "ordinary, decent, physical care of himself" could be expelled from public school. (*Watson v. City of Cambridge*,
SUPREME COURT OF MASS. 157 Mass 561:32 N.E.864 (Mass. 1893).

[116] In 1919, the Wisconsin Supreme Court ruled that school officials could exclude a student with disabilities ,even though the student had attended public school until the fifth grade. In this specific case, school officials claimed this student's condition nauseated the teachers and other students, required too much teacher time, and negatively affected school discipline and progress. The student was expelled. (*Beattie v. The Board of Education*, SUPREME COURT OF WISCONSIN, 169 Wis. 231; 172 172N. W. 153 (Wis. 1919).

[117] In 1950, *Department of Public Welfare v Haas* (No. 34924, Supreme Court of Illinois, 15 Ill. 2d 204; 154 N.E.2d 265; 1958) the courts held the State of Illinois' existing compulsory attendance legislation did not require the state to provide a free public education for the "febble-minded" or children who were "mentally deficient", and who, because of their limited intelligence, were unable to reap the benefits of a good education. For further information, refer to Mitchell. L.Yell, D. Rogers, and E. Lodge-Roberts, E, "The Legal History of Special Education," *Remedial and Special Education* 19, no. 4 (1998): 219-228.

[118] For example,"In 1901, there were 70,000 students in the public schools, yet, in St. Louis, the only provision for students with disabilities was a 'deaf school' that had been in operation for 20 years." Philip M. Ferguson. "Creating the Continuum: J.E. Wallace Wallin and the Emergence of Public School Special Education." Presented at the Annual Meeting of the American Educational Research Association, San Francisco, CA, April 10, 2006: 1.

[119] Nationally, by 1922, over 130 cities in 23 states reported serving an enrollment of over 23,000 pupils in special education classes of all types. Richard C. Scheerenberger, *A History of*

By 1910, special segregated classes became a common public school occurrence.[120] Ferguson notes, "most especially during the decade from 1910 to 1920 [the Progressive Era] – special education became established as a distinct part of the public school systems in versions that we would recognize as very similar to what exists today."[121] Court action was further pursued to force the acceptance of a child with a disability to enroll in an inclusive public school setting.

The Courts' Involvement: Promoting Special Education

With contemporary court decisions and civil rights activism during the mid 20th century, significant changes occurred in the adoption of more inclusive special education practices. Case law such as *Brown v Board of Education* (1954);[122] *Pennsylvania Association for Retarded Citizens (PARC) v Commonwealth of Pennsylvania* (1972);[123] and *Mills v Board of Education* (1972)[124] were paramount

---

Mental Retardation (Baltimore, MD: Paul H. Brookes, 1983), 166.

[120] Margret A. Winzer, "A Tale Often Told," 212- 218.

[121] Ferguson, 2.

[122] On May 17, 1954 the United States Supreme Court had reached a unanimous decision in supporting a more equal United States school system. Chief Justice Earl Warren stated, "To separate from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. We conclude that in the field of public education, the doctrine of 'separate by equal' has no place. Separate educational facilities are inherently unequal."

Central to the *Brown* decision was the constitutional guarantee of equal protection under the law found in the Fourteenth Amendment. The Amendment stipulates that the states may not deny any person, within its jurisdiction, equal protection under the law. If states have undertaken to provide an education to its citizenry, then they must do so for all its citizens. *Brown v. Board of Education* , 347 U.S. 483.

[123] *PARC v Commonwealth of Pennsylvania*, 343 F. Supp. 279 (ED. Pa. 1972).

[124] *Mills v Board of Education of the District of Columbia*, 348 F. Supp. 866 (1972).

in establishing student rights, namely for students of color and students with disabilities.

Brown v Board of Education

Brown v Board of Education established a critical legal precedent resulting in sweeping changes in public schools' policies regarding segregation of both minorities and students with disabilities. The court's decision was considered central in determining that segregation of pubic school students due to race violated equal protections under the law and, therefore, denied black students equal educational opportunities.

As *Brown* determined that segregation of the races in schools denied Black students admission to schools attended by white students and segregated schools were not and could not be made equal, it also made an unintentional impact upon other student characteristics, namely persons with disabilities. On-going community advocation representing the disabled community claimed that an unacceptable level of differential treatment of children with disabilities was also occurring. They, too, were not offered an equal education. The *Brown* decision applied a progressive legal implication by lending attention to the educational standard for students with disabilities. Similar factors relating to students of color in the denial of *equal educational opportunity and access* appeared to apply to the disabled.[125] Special education soon advanced resulting from further litigation.

---

[125] Report from a conference in Williamsburg, VA marking the 4oth anniversary of *Brown v The Board of Education of Topeka, KS* found in "Education Milestone" *JET* 86, no. 17 (29 Aug 1994): 20.

Sixteen years after the *Brown* decision, the concept of equal opportunity, as interpreted in federal court still applied to children with disabilities. Two additional landmark decisions brought action against state statutes and policies that excluded students with disabilities: *Pennsylvania Association for Retarded Citizens (PARC) v Commonwealth of Pennsylvania* (1972) and *Mills v Board of Education of the District of Columbia* (1972).

PARC v Commonwealth of Pennsylvania

The *PARC* decision helped to lay the foundation for students with disabilities to received a free and appropriate education (FAPE). Specifically, the *PARC* ruling designated that all children with mental retardation, between the ages of six and twenty-one years, must be provided a free public education and established the premise that it was most desirable to educate children with mental retardation in a program most like the programs provided of nondisabled peers.[126] This case set the precedent for continued positive developments regarding the education rights of students with disabilities.

Mills v Board of Education of the District of Columbia

Mills was a class action suit filed in the Federal District Court for the District of Columbia against the Board of Education on behalf of all *out-of-school* students with disabilities. It resulted in a judgement against the defendant school board and mandated the board provide all children with disabilities with a publicly supported

---

[126] For further information, refer to Erwin L Levine and Elizabeth. M. Wexler, *PL94-142: An Act of Congress,* (NY: Macmillian, 1981).

education. The ruling also ordered the school district to provide *due process*[127] safeguards which later became the framework for the due process component of the Education of All Handicapped Children Act.[128] As a procedural safeguard for both parents and local education agencies, due process has maintained throughout each special education legal revision and updates.

Civil Rights Movement

In 1964, President Lyndon B. Johnson signed the Civil Rights Act.[129] The Act helped reshape the nation by bring attention to racial oppression in society. For schools, the Act increased federal monies targeted for additional vocational education programs offered in the public schools. While other education programs benefitted as well, the overarching goal was to improve achievement scores of poor students. According to William J. Reese:

---

[127] Due Process is to allow the parent or the school district to file a written complaint with the State Board of Education alleging the rights of a child, with a disability, have been violated. The complaint is then acted upon by mediation, hearing, and/or legal action engaging a means of dispute resolution. For further information see Part B of the Individual with Disability Educational Act, 34 CFR, Article 14 of the School Code.

[128] For further information, refer to Jeffrey J. Zettel and Joseph. Ballard, *The Education for All Handicapped Children Act of 1975, P.L. 94-142: Its History, Origins, and Concepts*. In Joseph Ballard, Bruce A. Ramirez, and Frederick Weintraub (eds.), *Special Education in America: Its Legal and Governmental Foundations,* (Reston, VA: Council for Exceptional Children, 1982) 11- 22.

[129] PL 88-352 (02 July 1964) The purpose of the Civil Rights of 1964 is to enforce the constitutional right to vote, to confer jurisdiction upon the distinct courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

> On average, blacks may have earned lower grades, had higher rates of suspension and expulsion, lower graduation rates, and had an overall tougher road to adult achievement, but a beginning had been made. The sheer presence of African Americans in high school and at college, compared to the age of Eisenhower, was impressive.[130]

The Civil Rights Act targeted federal aid to the black population, but included children with disabilities because many of the black students were disproportionally identified as being mentally retarded or having other developmental disabilities. The Civil Rights Movement ultimately aimed toward promising greater individual rights for the citizens of the United States under the Constitution and enforced by legislation. The tenets of the Civil Rights Act included equality and social justice for minorities while having an impact on other demographic populations such as furthering the rights of women and allowing society to communicate openly and clearly about disabilities. By providing rights to all citizens on an equal basis, including the treatment of students with disabilities within the public school system, the Civil Rights Amendment can be considered a major contributor to educational case law and advocacy procedures.

Education Legislative Acts 1960 - 2004

In the last third of the 20th century, parents and advocates for students with disabilities lobbied the federal government to force public elementary and secondary

---

[130] William Reese is a Professor of Educational Policy Studies at the University of Wisconsin-Madison. William J. Reese, *America's Public Schools* (Baltimore, MD: The Johns Hopkins University Press, 2005), 246.

school systems to provide equal educational opportunities for all disabled individuals ages three to twenty-one.[131] Persuasion from frustrated parents, educators, and advocates, encouraged the Federal and State educational agencies to overcome disability bias and unfairness. Local and national organizations combined to establish a growing supportive membership throughout the United States arguing for the rights of the disabled.[132] The disability rights movement originated in response to the widespread negative attitudes toward individuals with disabilities. Organized efforts unfolded into subsequent legislation and litigation granting students with disabilities the right *to a free and appropriate public education in the least restrictive educational environment*[133] possible with all deliberate speed and accountability.

---

[131] As indicated in Chapter 1, public education is not mentioned in the federal Constitution, it is presumably reserved to the states or to the people. Therefore, federal involvement in public education is an indirect roles and emanates from three sources: (1) The general welfare clause of the Constitution in Article 1, section 8 which allows Congress to define education as general welfare and to tax and appropriate funds for educational purposes; (2) The *Commerce Clause* of the Constitution whereby *commerce* refers to the broad meaning as not merely the exchange of goods, but also a means for the advancement of society, labor, transportation , intelligence , care, and various other mediums of exchange, therefore regulating education standards relating to safety, transportation, and labor; and (3) the actions by federal courts enforcing federal constitutional provisions protecting individual rights and freedoms which applies to the *Supremacy Clause* that elevates the authority of congressional legislation and applies enumerated power in the Constitution and therefore a legal exercise of federal authority. For further information refer to Leo H. Bradley, *School Law for Public, Private, and Parochial Educators* (Lanham, Maryland: Rowman & Littlefield Education, 2005), 12 – 15.

[132] Various organizations developed in support of students with disabilities to ensure equal educational opportunities in public school systems. Earlier in 1922, the Council for Exceptional Children (CEC) was founded. In 1949, the United Cerebral Palsy Association (UCP) was chartered. In September of 1950, it was the beginning of the National Association for Retarded Citizens (now ARC/USA). By 1961, the National Society for Autistic Children was developed. In 1974, it was the establishment of the Association for Persons with Severe Disabilities (TASH). This is not an all inclusive list.

[133] A "free and appropriate education (FAPE) as defined at 34 CFR 300.17, must be made available by school districts to children with disabilities in accordance with 34 CFR 300.101 through 300.103.

During the 20th century, special education pedagogy, armed with newly established legal support and federal/state requirements, was aligned with special education policy and thus systemic reform initiatives ensued. Fuchs explains, "special education's purpose was to bring the performance of students with disabilities closer to that of their nondisabled peers in regular classrooms, to move as many students as possible into the mainstream with appropriate support."[134]

Throughout the later part of the 20th century through the current 21st century, the area of special education has maintained four major areas of student support: individualized education programs based on the least restrictive environment, state performance goals, student assessments, and funding.[135] Both family members of children with disabilities and advocates for civil rights joined together to establish a common educational goal; *to move all students toward a more typical setting via a cascade of placement options.*[136]

Elementary and Secondary Education Act

In 1965, President Lyndon Johnson signed the Elementary and Secondary Education Act (ESEA).[137] Eradicating poverty was initially the purpose of this

---

[134] Doug Fuchs, "Toward a Responsible Reintegration of Behaviorally Disordered Students," *Behavior Disorders* 16 no.2 (19 February 1991): 133-147.

[135] Margaret McLaughlin, Victor Nolet, Lauren Morano Rhim, "Integrating Standards, Including All Student," *Teaching Exceptional Children* 31 no. 3 (Jan./Feb. 1999): 66-71.

[136] For further insight into the disabilities movement, refer to Evelyn Deno, "Special Education as Developmental Capital," *Exceptional Children* 30(1) (November 1970):229-237; and Dixie Snow Huefner, "The Mainstreaming Cases: Tensions and Trends for School Administrators," *Educational Administration Quarterly* 30 no.1(February 1994): 27 - 55.

[137] Public Law 89-10

important education mandate. ESEA helped to accomplish its purpose by providing state funding to assist in educating certain groups of students, a needed precursor of direct aid for students with disabilities.[138]

In 1970, replacement of Title VI of the ESEA was enacted. The Education of the Handicapped Act (EHA) became the basic framework for future similar legislation.[139] The guidelines of EHA were to continue funding special education school projects, but also pressed higher education to create certified teacher training programs in the area of Special Education coupled with the development of resource centers to assist the schools with technical assistance.[140] In 1974, EHA was amended and renamed the Educational

Amendments of 1974.[141] It provided for both the development of the *National Advisory Council on Handicapped Children* and required each state, receiving federal special education funding, to establish a goal of providing full educational opportunities for all children with disabilities.[142]

---

[138] The purpose of the ESEA was to provide money to states to improve educational opportunities for disadvantaged children, including students with disabilities who attended state school for the deaf, blind, and retarded. The following year, an amendment to this act (Title IV) added funding for grants to pilot programs to develop promising programs for children with disabilities. Dixie Snow Huefner, *Getting Comfortable with Special Education Law: A Framework for Working with Children with Disabilities* (Norwood, MA: Christopher-Gordon Publications, 2000), 18-20.

[139] Public Law 91-230

[140] Mitchell L. Yell, *The Law and Special Education,* 69.

[141] Public Law 93-380

[142] Yell, *The Law and Special Education,* 70.

Rehabilitation Act of 1973

The first federal civil rights law to *directly* protect the rights of persons with disabilities was developed in 1973 when Congress passed the Rehabilitation Act of 1973.[143] Section 504 of this Act does not directly address students per se; rather, it requires individuals be afforded reasonable accommodations with respect to those things available and required in regular education programs. It viewed the process of referral, identification, and the determination of necessary accommodations for eligible students as regular educational functions and provided protection against discrimination on the basis of one's disability.[144]

The Education for All Handicapped Children Act of 1975

The educational acts identified previously in this section were designed for all students to have *full access* to the regular curriculum in their respective neighborhood school. In 1974, Congress did not find existing data to support this as occurring in educational systems. The findings indicated that more than 1.75 million students with disabilities did not receive educational services during the 1973-74 school year, and more than three million students with disabilities, who were admitted to public schools, did not receive an education that was appropriate to their needs.[145] Concern

---

[143] Public Law 93-112

[144] "No otherwise qualified handicapped individual in the United States . . . shall solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subject to discrimination under any activity receiving federal financial assistance." 29 USC 974

[145] Mitchell L. Yell, Erik Drasgow, and Renee Bradley, and Troy Justesen, *Critical Legal Issues in Special Education,* in Audrey McCray Sorrellls, Herbert J. Reith, and Paul T. Sindelar, eds., *Critical Issues in Special Education*: *Process, Diversity, and Accountability* (Boston, MA: Pearson, 2004), 16 – 37.

for the education of children with disabilities mounted as the American culture and conscience began to understand the additional need for legislative action in providing more equitable learning opportunities. Bradley announced, "The watershed event was the passage by Congress of the 1975 landmark legislative decision entitled the Education for All Handicapped Children's Act [EAHCA better known as Public Law 94-142].[146] The 1975 Act provided a flow-through federal funding mechanism to states which identified all students with disabilities who were receiving a free and appropriate public education. This form of inclusive education for the disabled was in direct opposition to segregating them from age appropriate general education classrooms with same-age non-disabled peers.[147]

A centerpiece of EAHCA was the adoption of the Individual Education Program (IEP). The IEP became the legally binding vehicle allowing teachers the ability to design special education programming delineated by annual goals and objectives, appropriate placement location, length of school year, and an evaluation and measurement criteria.[148] By 1985, all states had complied with the requirements of this Act[149] Further reauthorizations followed to clarify and extend the requirements

---

[146] Leo Bradly was a professor of law, teacher, principal, curriculum director, and superintendent in Ohio public schools. Bradley, 212.

[147] Other provisions included the right to (a) nondiscriminatory testing, evaluation, and placement procedures; (b) education in the least restrictive environment; and (c) procedural due process, including parent involvement. Refer to PL 94-142.

[148] Mitchell L Yell, David Rogers, and Elisabeth Lodge Rogers, "The Legal History of Special Education: What a Long, Strange Trip It's Been!," *Remedial and Special Education* 19 (July/August 1998): 226.

[149] Yell, *The Law and Special Education,* 71.

of EAHCA.[150] Congress has continued amending the Law on several occasions. In 1990, the EAHCA was formally renamed to the *Individuals with Disabilities Act* (IDEA).[151] IDEA has also experienced revisions in 1997 and 2004.[152]

IDEA's Alignment with the No Child Left Behind Act (NCLB)

IDEA 2004 is intended to align with the federal educational requirements stated in the 2002 involving academic performance, adequate yearly progress, teacher quality, and instructional interventions provided by school districts.[153] The alignment of IDEA and NCLB forces an increased emphasis on accountability, challenging schools to meet more demanding standard-based progress demonstrated

---

[150] The Handicapped Children's Protection Act of 1986 was added to provide the award of reasonable attorney's fees and cost to parents who prevailed in due process litigation.

[151] The 1990 changes were reflected to include "people first" language, the inclusion of "Traumatic Brain Injuries" and "Autism" as separate and distinct identification categories, and the adoption of "Transitional Planning" was added to the IEP for students age 16 and older.

[152] The 1997 Amendments (Public Law 105-17) was signed by President Bill Clinton with a major focus on improving the performance and educational achievements of students with disabilities in both the special and general education curriculum. Disabled students were now included in both state- and district-wide assessments. The IEP was to accurately measure and report a student's progress toward annual goals. Secondly, a provision for nonadversarial mediation methods were developed to help resolve differences between the families and the school system. The last significant changed addressed behavioral concerns regarding appropriate discipline intervention methods for students with disabilities. For further information refer to the *State Report of the Individual with Disabilities Act Amendments of 1997* available at www.wais.access.gpo.gov.

The 2004 reauthorization was Public Law 108-446. The basic organization of IDEA remains unchanged. Part A declares the barriers, solutions, and national policy for educating students with disabilities. Part B authorizes funds to educate students between the ages of 3 and 21. Part B also reiterates FAPE. Part C authorizes funds to educate infants and toddlers, birth/0 to 3. Part D authorizes national research, training, demonstration, and technical assistance activities. Rutherford Turnball, Nancy Huerta, and Mathew Stowe, *The Individuals with Disabilities Education Act as Amended in 2004,* (Upper Saddle River, NJ: Pearson Merrill Prentice Hall, 2006), 1.

[153] Under the guidelines of NCLB, the general components are to measure a school district's Adequate Yearly Progress (AYP) based on each student's annual statewide test scores and to address the rigorous academic requirements to earn a standard high school diploma. *No Child Left Behind*. (2001). Available at www.ed.gov/nclb/index/az/index.html.

with supporting data. The assessment and achievement data are expected to indicate increased achievement performance of all students relating to curricular standards and objectives. Katsylannis, Zhang, and Hendricks, of the Clemson University of School of Education report, "The challenges of special education when reporting NCLB data include the availability of "highly" qualified personnel, making adequate yearly progress (AYP), and increasing litigation."[154] Schools have become more successful providing inclusive special educational services, yet achievement outcomes remain disappointing as reported annually by disaggregating graduation statistics and standardized test score data.[155]

Adequate Yearly Progress (AYP)

Accountability guidelines outlined in IDEA and NCLB are legally applied to the daily operations of public school districts that receive federal funding support. School officials must ensure that all students, including students with disabilities, receive quality standard-based education supported by state testing results demonstrating academic progress. To continually assess the progress of students who have an IEP, IDEA mandates that all students must be accorded meaningful

---

[154] Antonis Katsylannis, Dalun Zhang, and April Hendricks, "Legal and Policy Issues in Special Education in an Era of Reform," *A Legal Memorandum: Quarterly Law Topics for School Leaders* (Spring 2005): 2.

[155] According to the U.S. Department of Education 2002 graduation statistics, the graduation rates of students with learning disabilities was 27.6% and those with emotional disorders was 51.4%. U.S. Department of Education. (2002). *Twenty-fourth annual report to Congress on the implementation of the Individuals with Disabilities Act.* Washington, DC: Author

participation in state, district, and local assessment programs.[156] The scores obtained are then used to determine if an individual student and collectively, the district/*all* students , are meeting Annual Yearly Progress. The results are also disaggregated to determine if the percentage of students in special education are meeting the annual AYP cut score.[157] AYP is based on all students receiving the core curriculum (using research-validated instruction) with or without support, quantitative data for progress monitoring, and state administered annual testing.[158]

The AYP requirement, specifically the issue of accountability using standardized tests for students with special needs, is causing school districts serious concerns and has become highly controversial. Some states are considering revisiting the law's requirements regarding high-stakes testing for the determination of AYP because of high rates of failure among students with disabilities.[159] Disability rights activists are seeking alternative ways of assessing students with disabilities by

---

[156] The states are allowed only a 1% cap of students with significant cognitive disabilities to take special alternative assessments (rather than the grade-level tests).

[157] State Educational Agencies (SEAs) collect annual educational data and disseminate school district report cards for public viewing as required by NCLB.

[158] A. Coulter, "Focusing Only on Compliance Could Cripple AYP Efforts," *Education Daily* 37, 1 & 3 Available at www.**educationdaily**.net/ED/splash.jsp

[159] The states of MN, OH, VA, and MT have called for a waiver involving the requirement basis of increasing the 1% cap of alternative testing for severely cognitively impaired student populations. "State Plans Contain Specific Data for Exceptions to 1 percent cap," *The Special Educator* 19 (May 4, 2004): 6 available at LexisNexis(TM) Academic - Document.

challenging the current system, because they argue the system imposes discriminatory practices toward students with disabilities.[160]

Summary

Historically, children with disabilities have received unequal treatment in the public educational system. The significance of both civil rights actions and disability litigation forever altered how schools provided educational services to children. Within the last forty years, progressive legislation, specific federal laws, and Supreme Court decisions have attempted to force states to provide more inclusive and equal educational opportunities for children with disabilities. The current and most impacting of these changes has been driven by the Individual Disabilities for Educational Act correlated with the No Child Left Behind Act. Yet, the efforts of the two Acts have brought about controversial practices – strict adherence to standardized test scores, demonstrated AYP (and the consequences resulting from), and increased emphasis on scientifically oriented outcome-based researched pedagogical practices.

The admittance of students with special needs to the public schools has increased, yet the rate of educational achievement appears inadequate and the assessment requirements lacks appropriateness. Opinions are embedded in polarized viewpoints regarding the existence of educational inadequacies. The latent effects

---

[160] "A Brief History of High-Stakes Testing Challenges, Interpretations," *The Special Educator* 19 (2004): 7 available at LexisNexis (TM) Academic - Document. For further review of court cases involving NCLB and students with special needs refer to *Rene by Rene v Reed* , 34 IDELR 284 (Ind. Ct. App. 2001) and *Chapman v California Department of Education*, 36 IDELR 91 (N.D. Cal. 2002).

from these mandates are still undetermined and unclear and the overall reference to equity remains challenged.

Chapter 4

Framework for Analysis

A Critique of Modern Thought

> "We are subjected to the production of truth through power and we cannot exercise power except through the production of truth."
> Michel Foucault[161]

Introduction

Since at least the Enlightenment, what has come to be known as "Modern Western Thought" has sought complete rationality to explain all events and phenomena through what critics refer to as "metadiscourses" or "metanarratives."[162]

---

[161] Michel Foucault in Alec McHoul and Wendy Grace, *A Foucault Prime: Discourse, Power, and the Subject* (Carlton, Victoria-Canada: Melbourne University Press, 1997), 93. It is important to note that Foucault is less concerned with the "power" as an entity or process than with an interrogation of Western societies. (59)

[162] *Discourse* used here is defined as any human artifact subject to interpretation including, but not limited to, meaning consciously expressed through acoustic, graphic, and symbolic texts and individual behaviors and group and institutional practices. A *meta discourse or metanarrative* can include any grand, all encompassing story, classical text, or archetypal account of the historical record. They can also provide a framework upon which an individual's own experiences and thoughts may be ordered. The stories are typically characterized by some form of "transcendent and universal truth" in addition to explaining human existence. An example: *The Enlightenment theorists believed that rational thought, allied to scientific reasoning, would lead inevitably toward moral, social, and ethical progress.* Available at: http//en.wikipedia.org/wiki/Metanarrative. A *metanarrative* implies a philosophy of history is used to legitimate knowledge, thus justice is

Cherryholmes describes the modern project as being characterized by dominant "discourse-practices" emphasizing "order, accountability, structure, systematization, rationalization, expertise, specialization, linear development, and control."[163] Skeptical of the Modern project, Jean-François Lyotard describes *Postmodern* thought as being "incredulous toward metanarratives."[164] This chapter is a postmodern framework for a Critical enquiry into the question: Are the implementation technologies of the No Child Left Behind Act (NCLB), as particularly relates to children eligible to receive services under the Individuals with Disabilities Educational Act (IDEA), consistent with the American democratic ideals of *equity* and *access?* In this chapter, the works of two critics of Modern thought, Michel Foucault[165] and Jean-François Lyotard,[166] are used to examine how the modern issues

---

cosigned to the grand narrative in the same way as *truth*. Jean-Francois Lyotard, *The Postmodern Condition: A Report on Knowledge* (Minneapolis, MN: University of Minnesota Press, 1997), xxiv.

[163] The *metanarrative* can include any grand, all encompassing story, classical text, or archetypal account of the historical record. They can also provide a framework upon which an individual's own experiences and thoughts may be ordered. The stories are typically characterized by some form of "transcendent and universal truth" in addition to explaining human existence. An example: *The Enlightenment theorists believed that rational thought, allied to scientific reasoning, would lead inevitably toward moral, social, and ethical progress.* Available at: http//en.wikipedia.org/wiki/Metanarrative. A *metanarrative* implies a philosophy of history is used to legitimate knowledge, thus justice is cosigned to the grand narrative in the same way as *truth*. Jean-Francois Lyotard, *The Postmodern Condition: A Report on Knowledge* (Minneapolis, MN: University of Minnesota Press, 1997), xxiv.

[164] Postmodern thought involves a radical break, both with a dominant culture and aesthetic, and with a rather different moment in socioeconomic organization against with what is considered legitimate and how innovations are measured. Lyotard, *The Postmodern Condition,* vii and xxiv.

[165] Michel Foucault, a social critic, examined the relationship between power and knowledge used to first objectify then control the individual. Mary Woodard Bevel, "Justice, Judgement, Access, and Special Education Policy Analysis and the Language Games of Jean-Francois Lyotard" (Ed.D. diss., University of Missouri-St. Louis, 1997), 14. Foucault was interested in the rules which govern the practice of discourse resulting in who possessed the power to speak and what was permissible to say. These discourses were then appropriated by "professionals"who assumed the power. According

of knowledge, power, truth, subjectification, technologies, and language games affect contemporary educational practices.

Michel Foucault and What Counts as Knowledge in the Pursuit of Truth

If promoting citizenship ought to be the primary function of public education, then the most fundamental education policy question becomes: "What counts as knowledge?" An answer guides the policies and practices that govern both the knowledge content and technologies of public schooling. Other questions applicable to public schooling include: Who transmits learning?; What is transmitted?; To Whom?; Through what medium?; In what form?; and With what effect?[167]

As Jean-Francois Lyotard indicated, the transmission of knowledge might then be convoluted in that "knowledge is no longer designed to train individuals with the skills capable of guiding a nation towards emancipation, but rather to supply a system with players capable of fulfilling their roles at the pragmatic posts required by its institutions."[168] The educational institution and efficiency of language games is antithetical to democratic ideal because the Discourse of Humanity has been replaced

---

to Foucault, these rules were embedded in discourse and located in institutions. For further information, see Michel Foucault, *The Archeology of Knowledge and Discourse on Language*, trans., A.M. Sheridan Smith (New York: Pantheon Books, 1972) and Michel Foucault, *Discipline and Punishment: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage Books, 1979).

[166] Based on the earlier work of Ludwig Wittgenstein, Lyotard introduced the expression "language games" which he identifies as "literary politics". According to Lyotard, language games are played in every aspect within a society throughout all discourses creating and legitimating knowledge by obtruding its set of rules on all individuals. Lyotard, *The Postmodern Condition: A Report of Knowledge* (Minneapolis, MN: University of Minnesota Press, 2002), 10.

[167] Jean-Francois Lyotard, *The Postmodern Condition*, 48.

[168] Lyotard, 48.

by Discourse of Scientific Development which is a juxtaposed interpretation of scientific purpose and an appeal to a grand narrative.

Foucault's Epistemes

Foucault argues that changes in the epistemological foundation of "What counts as knowledge?" have occurred periodically through history in the form of three *epistemes*: the Renaissance, Classical, and Modern periods.[169] He critically analyzed the presence or void of an historical *a priori*, the formative level of scientific discourse.[170] Relative to this objective, Johanna Oksala notes that

> [t]he question that guides Foucault's archaeology is thus a transcendental question in the sense that it concerns the condition of possibility of knowledge: what determines different forms of scientific knowledge and makes possible certain discussions and problems? . . . By revealing the conditions of possibility of the thought of a particular period, Foucault seeks to reveal the nonsubjective conditions that make subjective experiences of order and knowledge possible.[171]

---

[169] Much of Foucault's work centers around what counted as truth within different historical periods, called *epistemes*. Foucault focused on three epistemes, the Renaissance, Classical, and Modern Ages. His intent was to write a *history of the transcendental*: a historical description of the varying conditions of possibility of knowledge in different periods and to denote the entirety of western knowledge. Johanna Oksala, *Foucault on Freedom* (Cambridge, New York: Cambridge University Press, 2005), 21. Foucault introduced the concept of *episteme* in *The Order of Things: An Archaeology of the Human Sciences* (New York: Vintage Books, 1970).

[170] For Foucault, there does not exist an *a priori*, but rather there are conditions that are importantly historical: they are formed in history and also changed by it. They condition, significantly, a subject's experiences. Oksala, 21.

[171] Oksala, 20.

Foucault focused attention to questions of knowledge throughout his interpretation of the epistemes.[172] He referred to units of knowledge as *discourses*.[173] He used discourse and knowledge to better understand political power and social developments to include the examination of the use of control, management, surveillance, and policing to address politics, the thought process of man, and how human conduct was coerced through power.

The Renaissance Episteme (1250 - 1650)

The Renaissance Episteme was the age of analogies.[174] Foucault found that the character of knowledge as "truth" was legitimated through *similitude* and *resemblance*. Western culture valued simile/comparison in that it interpreted both visible and invisible text. Similitude organized language, while language reinforced or limited thought. Language did not have meaning itself, but merely represented meaning. Words meant everything. Signs had meaning and revealed hidden

---

[172] Throughout his career, Foucault shifts concentrations from discourse to power and the subject while trying to examine the broader more philosophical question of "who we are?" His approaches to these aspects of ourselves in today's society can be framed as set of questions: (a) who are we in terms of our knowledge of ourselves; (b) who are we in terms of the ways we are produces in political processes; and (c) who are we in terms of our relations with ourselves and the ethical forms we generate for governing these? McHoul and Grace, x.

[173] Alec McHoul and Wendy Grace, ix.

[174] Foucault identifies the *Four Similitudes* as *conventional emulation, analogy, play of sympathy, and antipathy* These were practiced by way of conventional convenience. A sign of the internal relationship based upon visual effects. Before the 1600's everything mirrored something else. Subtle, invisible similarities could extend from a single point to and endless number of relationships, such as *star-sky, organism-earth.* For further reference, the reader is encouraged to further read Foucault, *The Order of Things,* xiv.

resemblances.[175] Knowledge was considered as madness which became the signifier[176] of unreason. A person was to look for the meaning of something by discovering what it resembled, which involved understanding the world through religion. During the Renaissance, nature was read like a book, a seamless text encompassing and explaining everything. Truth was driven by religion from the will of God found in the Book of God and Book of Nature.

During the Renaissance Episteme, two features allowed for the primacy of language--similitude between observation and the written word coupled with constant reiteration, *commentary.*[177] The commentary was very important to Foucault, yet explained "The task of commentary can never, by definition, be completed."[178]

The importance of analogy between signs and things, written words and what they resembled, would change. Meaning and function during the upcoming Classical Episteme would appear discounted to simple fiction. There existed differences from the Renaissance to the Classical Episteme with the definition of "What counted as Truth?"

---

[175] During the 1500s, one would search for meaning through resemblance. This is how things were linked. Nature was only as broad as the understanding of signs. Foucault, *The Archaeology of Knowledge*, 29.

[176] The language of the 1500s was caught between the primal *text* (original meaning, foundation) and the infinity of the *interpretation*. *"Signifier* as used in the sentence refers to as 'of giving word over meaning." Jacques Derrida, *Of Grammatology*, trans. Gayatri Chakravorty Spivak (Baltimore, MD: The Johns Hopkins University Press, 1997), lxiv.

[177] Commentary was saying the same thing each time spoken, but only using different speech. Foucault, *The Order of Things,* 38.

[178] Foucault, *The Order of Things*, 40.

The Classical Episteme (1650-1800)

The Classical Period meticulously wove together knowledge and language. The legitimacy of knowledge was no longer grounded in language of *resemblences*, rather it was grounded in *representation* a table of identities.[179] Foucault confirmed that knowing and speaking consisted first in the simultaneous analysis of representation, in the discrimination of its elements, in the establishment of the relations that combined those elements, and the possible sequences according to which they could be unfolded.

> Classical Order, too, could be established as a framework for acquired knowledge . . . the Classical metaphysic resided precisely in that gap between order and Order, between classifications and Identity, between natural beings and Nature; in short, between man's perception (or imagination) and the understanding and the will of God.[180]

He adds, "Knowledge is like a language whose every word has been examined and every relation verified."[181]

---

[179] Foucault notes the difference between the *resemblance* of the Renaissance and *representation* of the Classical period. It is no longer sixteenth-century thought becoming troubled as it contemplates itself and beginning to jettison its most familiar forms; it is Classical thought excluding resemblance as the fundamental experience and primary form of knowledge, denouncing it as a confused mixture that must be analyzed in terms of identity, difference, measurement , and order. He further reflects that the Classical Age was lodged within "ideology" – inside the analysis of representation. *The Order of Things,* 225.

[180] Foucault, *The Order of Things, 219.*

[181] Foucault, *The Order of Things,* 87.

The Classical Episteme used language as knowledge only in an unreflecting form. Foucault distinguishes language as playing a decisive role in representation according to a necessarily successive order. That is, "In its strictest sense, language is analysis of thought, not simply patterning, but a profound establishment of order in space."[182] The link between language and knowledge afforded an unobstructed entrance to an entire historical field that had not previously existed. The genesis of language in the *language of action* entirely avoids the Renaissance alternatives of natural invitations and arbitrary convention. The intention was to determine which conditions language could become the object of the period's knowledge. Soon after the dawning of the seventeenth century, a dramatic change was to take place in how the Western world was to determine what would count as knowledge. The Classical Age would pave the way for scientific inquiries and investigations.[183] Rene' Descartes and the notion of the Cartesian world would spread rapidly and quickly to replace the Renaissance brand of *resemblance*. Descartes developed a mechanism which applied a mechanical reality to living things. The involvement and weight of Descartes' religion in the Classical period confused the institution of life at the time. His

---

[182] Foucault, *The Order of Things*, 82.

[183] One has only to recall the scientists of the era such as Francis Bacon, Rene' Descartes, Galileo Galilei, and Isaac Newton. Rene' Descartes (1596-1650), a French philosopher, proclaimed to have discovered the "true" source and methods of knowledge. His work, La ge'ome'trie, includes his application of algebra to geometry from which we now have Cartesian geometry, because he wanted to develop a method that could be used to yield scientific truth. He relied heavily on the appeal to deductive argument and the employment of mathematics. In the words of authors John L. Beatty and Oliver A. Johnson, "Descartes was one of the leaders in the scientific revolution of the seventeenth century." Descartes was a transitional figure between the new world of modern science and the Renaissance Age. John L. Beatty and Oliver A. Johnson (eds.), *Heritage of Western Civilization: Volume II* (Englewood Cliffs, NJ: Prentice-Hall, 1987), 12.

mathematical involvement and scientific premise that all living things could be viewed through a grid of knowledge.

Although Descartes rejects *resemblance*, he does not exclude the act of comparison from rational thought, nor even by seeking to limit it. On the contrary, he universalizes it, giving it its purest form.[184] He wanted to justify knowledge and truth by proving there existed only two forms of comparison: measurement and order. To this end, he helped to separate *unreason* of the Renaissance era from *reason* of the Classical era.

During the Classical Episteme, language and discourse were simply a means of communicating knowledge, not representing it. It was a practice of open inquiry and commitment to search for the truth. This interpretation helped pave the way for language of *Natural History*.[185] At the end of the 18th century entered the classification of words, languages, roots, documents, and tabulators. Next came the writing, the establishment of archives, filing systems, cataloging, indexing, and inventories. Foucault explains all this liberated the Classical era from rationality.[186] According to De Oliveira, "[it] was only in the seventeenth century that an ever-

---

[184] Descartes believed one could know the essence, the meaning of True Order of Nature by looking, measuring, quantifying, associating in taxonomies, clarifying identities and differences, and ordering in Cartesian grids. By way of grid manipulation, Descartes thought he could ultimately discover the true order of things –Truth itself.

[185] The goal of *Natural History* was to reduce the distance between things and language as close as possible to the observing gaze. *Natural History* was nothing more than the nominations of the visible. *Natural History* reduced the importance of the focus on the body as it had during the Renaissance time. See Foucault, *The Order of Things,* 132.

[186] Foucault, *The Order of Things,* 132.

growing, methodic differentiation between the conception of metaphysics and the sciences of nature would lead to the autonomy of modern sciences in the 19th century."[187]

Such actions were descriptions establishing the system of identities and the order of differences existing between natural entities, thus developing descriptive language. Now,

the world was known not through signs revealing their secret resemblances, but by observing the elements, component parts, and the physical characteristics that make up the "real". The origin of knowledge was sought within its pure sequence of representations. That is, knowledge could become embedded by duplication. This practice could no longer be conceived and was replaced with the onset of Modern Thought.

The Modern Episteme (1800 - 1968)

The Modern Episteme is characterized by the rebirth of the *sign*. Similar to the Renaissance Episteme, language is given a central roles in the legitimation of knowledge. From the Renaissance, Modernity received the notion that knowledge could be discovered through human inquiry instead of being exclusively revealed by God.[188] Modernity also brought labor and wealth into the forefront. Labor, although unseen, had value but was not amenable to Cartesian analysis. Because of the conflict

---

[187] Nythamar Fernandes De Oliveira, *On the Genealogy of Modernity: Foucault's Social Philosophy* (New York: Nova Science Publishers, Inc., 2003), 122.

[188] John Cottingham, ed., *The Cambridge Companion to Descartes* (Cambridge, UK: Cambridge University Press, 1992), 1.

of analysis, the medium of wealth and labor and its meaningful traces, needed something to follow.[189] "The whole is greater than the sum of its parts" became the mantra of modern thinking. *Natural Sciences* was in vogue and was the metaphor for the human sciences. The Human was considered a quantifiable object amenable to scientific analysis. Knowledge of the human sciences became an influential and powerful force in the exercise of social practices designed to control the body as a productive force. Legitimacy came in the form of science; new realities were needed to replace the old.

Structuralism[190] became the foundation of all Western social, economic, and political theories. History was abandoning the eruption of events in favor of stable structures. Structuralism found its justification in the intellectual legitimacy claimed by the fact and value dichotomy inherent in the scientific method, ultimately allowing ethics to be separated from the theoretical.[191] Structuralistic ideology claimed the locus of meaning was embedded within the relationship of structural elements. Lane

---

[189] Labor, in and of itself, can not be seen, thus, its worth can not be quantified and analyzed like gold, silver, property, or products from factories. Labor left behind only traces (signs) in the transformation of raw materials into products.

[190] Structuralism is based, in the first instance, on the realization that if human actions or productions have meaning there must be an underlying system of conventions which makes meaning possible . . . actions are meaningful only with respect to a set of institutional conventions. Jonathon Culler, *The Linguistic Basis of Structuralism,* ed., found in David Robey, *Structuralism: An Introduction* (Oxford, UK: Claredon Press, 1973), 21-22.

[191] Mary Woodard Bevel, " Justice, Judgement, Access, and Special Education Policy Analysis and the Language Games of Jean-Francois Lyotard" Ed.D. diss. University of Missouri- St. Louis, 1997, 23.

writes that structuralism is the, " abstract rules that define and govern what we normally think of as language."[192]

The social "sciences" were born through the modern ideas inherent in structuralism and were applied to humanity. Structuralism acted in the name of efficiency to control and divide. Bevel notes, "One might argue that the structuralist concept of 'efficiency through division' conditioned the intellectual 'discoveries' that ultimately shaped social, economical, and political thought."[193] To fulfill its mission, Modernity had assume that everything could be conceived as a valueless, objective reality.

As Foucault viewed the foundation of the Modern Episteme, his concern centered around the relationship of power to the production and use of knowledge and discourse. Through his historical analyses, he focused on the relationship between scientific thought, social principles, and social institutions. These concerns complimented his interpretations of epistemology of knowledge, power, and subjectification. Foucault wanted to use his epistemic histories to question and critique the work of scientists such as Descartes and Newton, who involved the usage of rational, universal methods, and theology to examine human inquiry, and allowed

---

[192] Michael Lane, *The Structural Method: Structure and Structuralism* (London, England: Jonathan Cape, 1971), 13-14.

[193] Bevel provides examples of structuralism with Darwin's Theory of Evolution, Marx's Economic Determinism, Saussure's Structural Linguistics, and Quetelet's Conception of the Normal Man. Bevel, 31.

for the empirical focus of all modern sciences.[194] His critique was not simply an interpretation of historical events, but a conception of history to better understand the tension of "power relations."[195] His analyses aided in the genealogical dissection of the regimes of truth, power relations, and ethical practices during modernity.

Foucault is considered as an anti-structuralist because structuralism is the most systematic of all efforts of social science legitimation.[196] Unlike the structuralists, Foucault recognized that social systems are not perfect, but are instead infected by history and change in an unpredictable and chaotic way.[197] In Foucault's words, "[t]he forces of history are not controlled by destiny or regulative mechanisms, but respond to haphazard conflicts [events]."[198] Rather, Foucault's analyses of history was a compilation and processes of bodies of power/knowledge and the cultural productions of truth that have been marginalized by historiographies.[199] His philosophical and social analyses of human discourse created a subjectification triangle

---

[194] Foucault focused on the questions of method in his archeology of knowledge, so as to establish the historicity of all truth. He looks at the problems of methodology as the heart of philosophical investigations on history, truth, and human nature. His aim is to undermine the transcendental subject by introducing the "representation-anthropology, and thus counters any attempt to ground knowledge into a philosophical *a priori*. Rather, he saw the structuralist practice as an *a priori of subjectivity.* De Oliveira, 123.

[195] De Oliveira identifies Foucault's conception of history as an apparent inflation of the *power-genealogy axis.* De Oliveira, 118-122.

[196] Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977,* Colin Gordon (ed.) (New York: Pantheon Books, 1980), 114.

[197] Edmund White, "The Emperor of the Mind," *Vogue*, November 1984:232, 236.

[198] Paul Rabinow (ed.), *The Foucault Reader* (New York: Pantheon Books, 1984), 88.

[199] De Oliveiera, 124.

(knowledge/truth, power, and subjectification). Within Western practices, the triangle included a history of scientific production, a history of systems of thought, and discursive discontinuities resulting in history of *systems of thought*.[200]

Subjectification Triangle: Knowledge/Truth, Power, and Subjects

Foucault interpreted conflicts within social institutions as including aspects of knowledge/truth, power, and subjectification (triangle) of man. He referred to this development of the triangle as complex, varied, and discontinuous exercises of power.[201] His central theme to the Modern uses of discursive practices was based on *knowledge* and its relationship to power.

Knowledge/Truth

Foucault's conceived *truth* as rules such governing rules including control, selection, and strict organization/practice of discourse.[202] The rules included the true/false binary with specific effects of power relative to the *truth*. Foucault asserts the truths in Modernity are power driven and authenticated through science and

---

[200] The History of Systems of Thought (historical analytics) evolved in 1969.

[201] Foucault's approach is to challenge the existing social order of the present by showing how it emerged from the will to dominate through the creation of a fictitious individual self and its equally manufactured objectification as an entity to be investigated scientifically. Roger Mourad, Jr., "Education after Foucault: The Question of Civility," *Teachers College Record*, 103 no. 5 (2001): 741-42.

[202] The rules involved discourse order such as what is and what is not permitted as legitimate discourse. The rules are located in: (a) the institutions themselves – again such as asylums, hospitals, schools, and prisons; (b) the historical context of social environments in which the institutions first developed and now exist; (c) the evolution of the professions and disciplines that helped effect the development of these institutions and now help maintain them." D. R. Shumway, *Michel Foucault*, (Boston, MA: Wayne Publications, 1989), 10 -11.

interpreted as socially accepted.[203] Modernity's will of truth was derived from the social, political, and scientific processes. Foucault's ontological[204] perspective of the Modern Episteme concluded that seeking any degree of validity of historical conditions was explained by the production and types of "scientific" truths accepted by the Western world.

Foucault argued that discourse was bounded within the parameters of knowledge, truth, and power. Knowledge and truth, under the scrutiny of power, was without any scrutiny, accepted by man. He found modern discourse influenced its subjects (subjectification) toward legitimizing knowledge as truth.[205] "The authority manipulates discourse usage by means of theory and interest, representations and signs, and by a series of genesis that is reconstituted upon the body – the body and it forces, their utility and docility, and their distribution and submission."[206] This passive acceptance of discursive practices lead to social control by the participation of the intellectual acting as a docile/mechanical member of the power process.

Rather, Foucault wanted the "constitution of the self as the an autonomous subject" which released society from the status of "immaturity."[207] He preferred an

---

[203] Michel Foucault, *Power/Knowledge: Selected Interviews*, 132.

[204] Foucault's *ontology* questioned the present by examining the conceptions and mechanisms of power. Michel Foucault, " Kant on Enlightenment and Revolution," *Economy and Society* (15)1: 96.

[205] Charles Lemert, "Michel Foucault: Social Theory as Transgression (New York: Columbia University Press, 1982), 1-82.

[206] Foucault, *Discipline and Punishment*, 25, 49.

[207] Rabinow, 34, 88.

individual to act with courage and test his independence in the reflexive, critical use of his reason.[208] His message to support his perspective states

> [I]t seems to me that the real political task in society such as ours is to criticize the working of institutions which appear to be both neutral and independent; to criticize them in such a manner that the political violence which has always exercised itself obscurely through them will be unmasked, so that one can fight them.[209]

He wanted to challenge the existing social order by revealing its emergence to dominate, albeit, through the fictitious facade of the individual self. This entailed a process where those, with perceived power within the society, manufactured objectifications intended to be investigated and legitimated scientifically.[210]

Power

Foucault analyzed *power*[211] by also focusing its relationship within contemporary social institutions.[212] Involved in social sciences was a relationship with

---

[208] The German philosopher, Immanual Kant (1724 - 1804), was heralded by Michel Foucault after Kant wrote an essay in the *Berlin Monthly* (1784) which Kant said about the Enlightenment, a person should "Sapere aude" – dare to know, have the courage, the audacity to know. Rabinow, 35.

[209] Rabinow, 6. Yet, at a speech given at the Lecon inaugural in Paris in 1970, Foucault proceeded to speak of man's understanding of "true discourse" as "incapable of recognizing the will of truth [will of power] that pervades it. De Oliveira, 130

[210] Mourad, 739-59.

[211] The term"Power" means "a more-or-less organized hierarchial, co-coordinated cluster of relations." Foucault, *Power/Knowledge*, 198.

[212] From translated notes taken from a lecture on power relations given by Foucault acknowledges "power" as the name that one attributes to a complex strategical situation in a particular society. Robert Hurley, trans. *The History of Sexuality: An Introduction* 1st Am. ed., (New

man as a subject for who was imbricated into power struggles, political upheaval, and the enforcement of "truth." Foucault observed Man as a social body that has been gradually coerced into progressive subjectification through a series of social/political influences. He examined the birth of social practices in relationship to social sciences by including the confinement of the mad, psychiatry, morbid anatomy, modern medical sciences, the modern prisons, and penology.[213] From his analysis of Epistemilogical discourse, Foucault develops four areas of power that reflects criticism of institutional effects from power.[214] The acts of power were directly related to the manipulation of discourse usage over men and directly influenced an unyielding hold of man's actions within a society. Foucault recognized the hold as "essentially negative power which presupposes on one side a sovereign whose role is to forbid, and on the other side a subject who must in some way say yes to this interdict."[215] Man is then subjected to an asocial existence where he is marked, train,

---

York: Pantheon Books, 1978), 93.

[213] For further reading on Foucault's perception of penalogy and medical perceptions, the reader is encouraged to read Michel Foucault's two publications, *Discipline and Punish*, (and *The Birth of the Clinic,* (New York: Vintage Books, 1973)..

[214] *Power is something that is possess – some people do and others do not; Political power is always localized in a definite in definite number of elements and essentially in the state apparatuses; Power is a definite kind of maintenance, continuation and reproduction or a mode of production, that is, that power is always subordinated to a mode of production; and From the notion according to which power, within the order of knowledge, produces nothing but ideological effects.* This transmission is of a series of notes taken at a lecture given by Michel Foucault. It therefore has a very summary character, and it has been included for its range of suggestions and indications, it should be clearly understood that in no sense is this a text "by" Michel Foucault. In the original lecture, the analysis of power relations was embedded in a long and detailed historical analysis of specific institutions. Meaghan Morris and Paul Patton, eds., *Michel Foucault: Power, Truth, and Strategy*, (Sydney, Australia: Feral Publications, 1979), 59.

[215] Foucault thinks that one can never be "outside" of power, yet he admits that is not necessary "trapped" by power. He recognized that power relations were mobile, reversible, yet

tortured, and forced to carry out daily tasks, yet forced to belief these methods are justified.

Although Foucault's concept of power was initially exercised by sovereign authoritative means of violence (mechanics of power), it was furthered in modernity by the mechanisms of power controlling time, labor, space, movement, and thought – material coercions in place of physical injuries. As stated by Foucault, "It is ultimately dependent upon principle, which introduces to a genuinely new economy of power, that one must be able simultaneously both to increase the subjected forces and to improve the force and efficacy of that which subjects them."[216]

The Use of the *Disciplines*[217] to Ensure a Disciplined Society

Foucault observed all Western cultural, economic, legal, educational, and political formations used some form of authority by referring to "scientific" truths involving power relations functions. He was most critical of the fact that "scientific" truths had also invaded governmental ideology and assumed control of both biological and social life processes. This interpretation of scientific truths assumed a position within a variety of disciplines.

---

unstable. An excerpt from an interview with Michel Foucault conducted by the *Re'voltes Logique* collective published in the *Les Re'voltes Logiques*, 4 (Winter, 1977) Trans. as cited in Meaghan Morris and Paul Patton., *Michel Foucault: Power, Truth, Strategy*, 53.

[216] Foucault, *Power/Knowledge*, 104.

[217] For the purpose of this section, *Discipline* (singular) refers to structure and obeying from a subject; *Disciplines* (plural) refers to the variety of training techniques applied in learning institutions, places of employment, military training, governmental agencies, etc. *Disciplines* reflect a wider societal emphasis on so-called *rational* procedures as the most effective way of inducing certain bodily effects. McHoul and Grace, 68.

As a critical social philosopher, Foucault was not interested in searching for scientific answers related discursive practices formed around the question of "Who is (was) the author?" because the speaker, nor the power assumed by the speaker, was not the focus. Rather, his interest lie more with answering questions such as "Where does a particular discourse come from?" and "How is it circulated and controlled?" – referred as the *Author-Function.*[218]

The function and control of legitimated discourse is located in: (1) the institutions themselves; (2) the historical context of the social environments in which the institutions first developed and now exist; and (3) the evolution of the professions and disciplines that helped effect the development of these institutions and now helps to maintain them.[219] The specific rules of the disciplines within the institutions are not in the forefront, but it is the *abstract* rules that governs the *practice* of the discourse that establishes order intended to regulate the actions of a society.[220] Likewise, the *author*, by virtue of who he/she is in a visible sense, does not attain absolute situational power; it is the underlying/invisible privileged practices or *functions* that conditions a society. Foucault explored these functions by furthering the work of

---

[218] Through his author-function concept, Foucault treats any assumed transcendental qualities of a discourse – such as *meaning* and all other qualities of authorship – and the author that supports them – as *constructions.* Constructions are an habitual way of thinking, the habit being reinforced by the terms which the thought occurs. Therefore, Foucault assumed that most of our knowledge and experience of the world takes place as an effect of these constructions. From noted philosophical historian, Dr. Charles Fazzaro, the *author-function* has value in that it serves to distinguish certain discourses from other discourses within historically situated social contexts. Charles Fazzaro, *Michel Foucault [*University of Missouri-St. Louis] 2003," photocopied (St. Louis, Missouri: Department of Education Leadership and Administrative Policy), Chapter 3.

[219] For a more thorough elaboration of this focus on discourse, see Shumway, 10-11.

[220] Fazzaro, 5.

Ludwig Wittenstein,[221] who identified the disciplined areas through the use of fictional lenses, or modes, referred to as Objectification, Scientific Classification, and Subjectification.

Mode of Objectification

Institutional and scientific disciplines apply principles that Foucault identifies as the *Art of Distribution*[222] resulting in human limitation and control. The disciplines use surveillance and various training methods to condition man within a narrow framework. These conditions include controlling space, enclosures, rank, and hierarchy. Foucault identified these discipline training measures as the root to underlying disciplinary power. "It trains the confused useless multitudes of bodies and forces [them] into a multiplicity or individual elements."[223]

During training, control is dominated by strict confinements such as walls and partitions. The use enclosing the subjects is intended to break up collective dispositions and conversations, diffuse circulation, and at any moment oversee the

---

[221] Ludwig Wittgenstein (1889 - 1951) Austrian philosopher who made important contributions to logic and the foundations of mathematics. Later in his life, he moved away from the formalism to an investigation of the logic of informal language. He has been credited as a leading analytical philosopher of the twentieth century. He determined that sentences are meaningful within the rules of a particular "language game," but each game is nothing more than a part of language, and the various parts do not share a common essence but on a "family resemblence." He wanted his students at Cambridge to search for the implicit rules in various language games. More information is available at www.bookrages.com/biography/ludwig-wittgenstein/.

[222] Foucault found the art of distribution required an architectural enclosure designed to provide boundaries, a place for each individual to be separated from others, rigorous distribution and partitioning off a space, and each individual is assigned a rank that defines a particular place to be occupied in a classificatory scheme. *Discipline and Punish, 141-149.*

[223] Foucault, *Discipline and Punish*.

supervision and conduct of each individual. Within education institutions, tables, desks, and chairs are aligned in uniformity which provides the ability to oversee all geographical areas while still comparing individuals and their skill, speed, and efficiency.[224] Creating discipline within the *disciplines* is then maintained by the general visibility or *panoptic* view of subjects.[225]

Mode of Scientific Classification[226]

Institutional bureaucracy also demands discipline and power with the continuous ranking and on-going use of placing individuals in hierarchial placements while maintaining an environment of perpetual movement. Subjects do not hold a fixed position and are placed within competitive environmental situations where perpetual movement of distribution and circulation serves as both a reward or a punishment. Rank and hierarchy are considered temporary and artificially developed

---

[224] Educational institutions also manifest discipline by controlling activities, organizing segments or stages of training, and the overall coordination of all its academic procedures.

[225] In the Foucault's book, *Discipline and Punish,* Michel Foucault discusses criminals confined to penitentiaries. He describes the design of an Panopticon, which was a tower in the center of the prison grounds surrounded by a ring-shaped building composed of cells, each housing a prisoner. He saw this technological apparatus as an important event upon the effect of disciplinary power. From this practice came the term *panopticism*. Panopicism is the exemplary technique through which disciplinary power is now able to function in Modernity. It relies on surveillance and the internal training ths produces to incite states of docility, thereby, no longer needing to rely on physical or violent force. Panopicism is expected to induce a state of conscious and permanent visibility that assures the automatic functioning of power.

[226] The instruments used in Foucault's second lens – Scientific Classification – include three areas: hierarchal observation, normalization judgement, and examination. Surveillance uses a small number of persons to observe large groups of individuals which is perceived as higher ranking individuals are separated by distant from those of lower rank. "Normalizing" avails individuals to fit into a predetermined "homogeneous social body" by causing them to behave (act) in particular ways. Examination is a combined the ceremony of power, the deployment of force, and the establishment of truth. Examination manifests the subjection of those who are perceived as objects and the objectification of those who are subject. *Discipline and Punish,* 170-184.

by law, an established program, and/or a set of regulations based on natural and observable processes.[227] Foucault explained the result of the practice of classification as disciplinary apparatuses that "hierarchized the 'good' and the 'bad' subjects in relation to one another. . . their potentialities, [and] their level of value."[228]

He then proposed the mechanisms used to create discipline over an individual is formally constructed into established policies. "What was then being formed was a policy of coercions that act on the body, a calculated manipulation of its elements, its gestures, it behaviour. The human body was entering a machinery of power that explores it, breaks it down, and rearranges it," states Foucault.[229] If the individual is being fabricated (subjected) through the technique of forces and power bodies, then subjectification emerges.

Mode of Subjectification

Foucault uses Whittensteins lens of subjectification as a way to describe how humans turn themselves into subjects through institutional practices and discourses that appear to give substantive meaning as it relates to the self.[230] Foucault contends

---

[227] An example of such would be the duration of an apprenticeship, the time taken to learn and perform an exercise, or the level of aptitude of demonstrating the adherence to a rule.

[228] Foucault, *Discipline and Punish*, 137

[229] Foucault, *Discipline and Punish*, 138.

[230] Michel Foucault, "The Subject and Power," in *Michel Foucault: Beyond Structuralism and Hermeneutics*, by Hubert Dreyfus and Paul Rainbow (Chicago, IL: The University of Chicago Press, 1982), 208.

that the subject is transformed into a docile body by "operations on people's own bodies, on their thoughts, and on their conduct."[231]

Freedom from Subjectification

Michel Foucault avoided any acknowledgment of a metaphysical component and was resistant to any anthropological essentialism when examining humanity and modern discourse. He perceived the modern Western world and its most insidious forms of power as "productive forces engaged in the subjectification of their victims"[232] Foucault's position was that "truth" could no longer be grounded in an autonomous subject [individual], and the Western society operated within a framework involving the dominators and those who were dominated. Robert M. Srozier noted that Foucault refused to completely empower the subject because societal power is always present and the subjects are never outside because the influence of power has no margins.[233]

To a degree, Foucault promoted valor with the act of subjects struggling against and destabilizing the hegemony as means to modify the knowledge/power/subjectivation axis. He commented, "There is no question that a society without restrictions is inconceivable, but I can only repeat myself in saying these restrictions have to be within the reach of those affected by them so that they

---

[231] Michel Foucault, *Subject and Power*, 208; cited in Dreyfus and Rabinow, 7.

[232] Leslie Paul Thiele, "The Agony of Politics: The Nietzschean Roots "*American Political Science Review"* 84, no. 3 (September 1990): 907

[233] Robert M. Strozier, *Foucault, Subjectivity and Identity: Historical Constructions of Subject and Self*, (Detroit, MI: Wayne State University, 2002), 54.

at least have the possibility of altering them."[234] If deconstructing the discursive practices and the conditions under which knowledge/truth information is disseminated, then its connections to power may yet result in a functional analysis able to articulate alternative and more suitable outcomes.

To further support this study in the use of discursive practices to legitimize social behavior, the work of the postmodernist, Jean-Francois Lyotard will be examined. Lyotard also sought to understand the modern practice obliging itself to legitimate the rules of its own game as a tool of authority.

Michel Foucault and Jean-Francois Lyotard: Modern Western Discourse

Applying postmodern perspectives, both Foucault and Lyotard devoted considerable attention to the problematic links between Modernity, language, and humanity and individually applied critical insight to reflect on the problems of contemporary discourses. Yet, each used varying methods and styles of delivery to explain their personal concerns in reference to Western discourse.

Michel Foucault and Jean-Francois Lyotard: Similarities

Each framework addressed historical aspects of Western discourse, referencing both spoken and written language (language of politics, law, and ethics) in an attempted to legitimate *knowledge, truth, and power.* They critically reviewed the process of rules/policies and legitimation with the effects upon individuals living in a society. Both Foucault and Lyotard applied scientific knowledge as a kind of

---

[234] Michel Foucault, "Sexual Choice, Sexual Act: An Interview with Michel Foucault", *Salmagundi* 1982-1983 (58-59): 16 -17.

discourse and realized its conflict and opposition to narrative principles occurring in the discourses of the Western world. Foucault "left the door open" for subjects to attempt unsubjectugation; Lyotard's views were similar with his ideas of justice, judgement, and the ruse[235].

Foucault and Lyotard dealt in the present/now[236] (Modernity) by reflecting on the what has happened in the past (historicities) in order to make critically informed future projections for man existing in the Western society during the Postmodern Era. Each would substantiate that Western discourse would undergo a transformation based on language interpretations.

Michel Foucault and Jean-Francois Lyotard: Differences

Lyotard's methodology differed from Foucault; Lyotard went beyond the spoken language and appeared to operate on the edge of the textual to include meaning/signification and rhetoric. His discursive interpretation of the textual space (similar to Saussurian[237] structural linguistics[238]) operated within a structure of operations of language in terms of the significance for the sign. Lyotard placed the sign to its relationship to the figural, thus separating the figural from the

---

[235] A nonexistent language game.

[236] Foucault and Lyotard viewed the now as temporal and based on the judgemental question of "What counts for knowledge and truth."

[237] Ferndinand Saussure was Swiss linguist thought to be the father of modern linguistics. David Holdcroft, *Saussure: Signs, Systems, and Arbitrations* (Cambridge, MA: Cambridge University Press, 1999), 13-14.

[238] Structural linguists study the anatomy of speech and language to include both speaking and writing within and unconscious infrastructure, relationship between signs, and how signs form a system to explain the linguistic phenomenon. Terrance Hawkes, *Structuralism and Semiotics* (Berkely, CA: University of California Press, 1977), 17.

representation.[239] His concept of figural language opposed the text. Lyotard's alternative perspective determined that an individual could become fully independent and unencumbered by societal constraints. (Foucault did note that subjects, or individuals, could attempt to disassociate, to some degree, from the coercion of power, yet not on a completely.)

Jean-Francois Lyotard: Language Games

To achieve further critical policy analysis used in this study, it is important to include the work of Lyotard's *Language Games.* For Lyotard, his notion of Language Games are referred to as

> each of the various categories of utterance can be defined in terms of rules specifying their properties and the uses to which they can be put . . .[they] are played in every aspect within society throughout all discourses creating and legitimating knowledge by obtruding its set of rules on all individuals.[240]

In developing his Language Games, Lyotard scrutinized the failures of modernity and Western metaphysics to fulfill the promises of the Enlightenment and demanded that politics be addressed by the juxtaposition of metanarratives to little narratives that

---

[239] The *figural* is yet another possibility which opens discourse, "to radical heterogeneity, a singularity, a difference which cannot be rationalized or subsumed with the rule of representation. Bill Readings, *Introducing Lyotard, Art, and Politics* (New York: Routledge, 1991), 3.

[240] Jean-Francois Lyotard, *The Postmodern Condition: A Report on Knowledge*, 10.

serve legitimate discourses.[241] In an effort to better explain his games, Lyotard also introduced six certain conditions attributed to the set of rules of the games.

Conditions of Language Games

He used certain conditions to develop his framework because the conditions represent an expression of how a language game is set up, its applications, and how it affects the various categories of the games.[242] Lyotard states

> First, there is that their [language games] rules do not carry with themselves legitimation, but are the object of a contract, explicit between players. The second is this if there are no rules then there is no game, that even an infinitesimal modification of one of the rules alters the nature of the game, a move or an utterance that does not satisfy the rules does not belong to the game they define. The third remark is suggested by what has been said: every utterance should be thought of a move in a game. Within the multiplicity of language games; no game is privileged over any other game.[243]

---

[241] Metanarratives function to categorize historicity into a specific revelation of succinct sequential moments while ordering the and legitimating as culture. Metanarratives posses an origin with rules that the origin might govern that culture. (Lyotard sometimes referred to the Metanarrative as the "Grand" Narrative. Little Narratives, particularly historical narratives, express the culture of humanity by uncovering transformations and disputes using language pragmatics. They displace the scientific claims of narrative theory enabling sequenced events or units of information to become capable of giving rise to something of meaning. Bevel, 61 -67.

[242] Lyotard provides and analogy to better understand the concept of Language Games. It is similar to the same way the game of chess is defined by a set of rules determining the properties of each of the pieces and the proper way to move them. Lyotard, *Postmodern Condition*, 10.

[243] Lyotard, *The Postmodern Condition*, 10.

Lyotard's analysis observes that social bonds are composed of a variety of language *moves*.

A Formal Description of Language Games

Lyotard's Language Games[244] involved not only following specific conditions, but the games also involved obeying different rules; *denotative* (truth), *prescriptive* (justice), and *technical* (efficiency). He explored the legitimacy of Western discourses using his postmodern ideals of these three types of games.

Applying perspectives of Lyotard, it was discourse embedded in the language of *justice* that allowed open access for the individual to achieve autonomy to his/her fullest extent possible.[245] It was precisely the language that consumed specific pragmatic instances, linguistic operations, and specific characteristics allowing the language games of a variety of discourses to be strong, commanding, and controlling of humanity.[246]

In order for humanity to progress, knowledge and communication is based between the players and how the game is executed. It takes into effect how words, usages, and an utterances form ideas and concepts between individuals. The organization of language is involved as meaning as it is based on the differences among words, rather distinct from meaning based on representation between words and things.

---

[244] A Language Game is a set of rules by which some use of language is governed.

[245] Bevel, 49, 80-83.

[246] Jean-Francois Lyotard, *The Differend: Phrases in Dispute*, trans. Georges Van Den Abbeele, (Minnesota: The University of Minnesota Press, 1984) 10.

Denotative Language Games

The denotative game is referenced by what is considered relevant; a true/false distinction. This game involves both an addressor (sender of a spoken utterance) and an addressee (receiver) who is in the position of having to agree or disagree about a certain topic (referent[247]) in a specific fashion. Lyotard explained the denotative scenario as:

> [t]he utterance places (and exposes) the sender in the position of the 'knower', the addresee is put in the position of having to give or refuse his assent, and the referent itself is handled in a way unique to denotatives, as something that demands to be correctly identified and expressed by the statement that refers to it.[248]

The addressee, or sender, is expected to be invested with the authority to make valid statements. This usually entails the sender as having scientific knowledge because he/she has direct accessibility to the referent and direct observations of the referent in order to be judged as relevant by the experts.[249] The addressee, or receiver, is not in a position to verify or discuss what the sender has said because the question

---

[247] Here, *referent* is used to represent what the utterance or statement deals with.

[248] Lyotard further clarified his thought within the context of using a university setting as an example. The university, in general, is the referent, the sender is the dean, and the receiver is the university staff. Lyotard, *The Postmodern Condition,* 9.

[249] A scientific truth is truth only if it can be replicated. Lyotard explained that the process of verification allowed for a horizon of consensus to be brought to the debate between partners (addresser and addressee) and not every consensus is a sign of truth. He warns though that it is presumed that truth of a statement necessarily draws consensus. Lyotard, *The Postmodern Condition*, 4.

of truth and judgement is linked to the denotative game.[250] The receiver does possess the task of agreeing, disagreeing, or not responding to the spoken words of the speaker. If the move of the receiver is not to respond, then that is considered an agreement or submission and the receiver has merely been placed in a new context created by the sender's utterance.

This game is based on a scientific (empirical) standard using true/false criteria. On this basis, the research hypothesis is rejected or not within a certain confidence level. Because all may not be verified in all cases, the denotative game has difficulty containing all knowledge under the guise of postmodern thought. The denotative game also lacks the ability to prove if a statement is just or unjust. Lyotard has identified the use of the Prescriptive Game to determine is the spoken work is *just*.

Prescriptive Language Game

Prescriptive language games, according to Lyotard, provide for judgements based on language criteria as being just/unjust. The sender (usually seen as an authority figure) prescribes the "ought" (what should be done) in regard to a referent by way of an order, command, recommendation, etc. Yet, the prescriptive game only comes into existence if the receiver chooses to accept the obligation. If so, then the addressor's phrase or spoken words demands the receiver carry out the obligation. A receiver may ask himself/herself, "Is what I ought to do fair?" The worth of the

---

[250] This type of scientific knowledge used in the denotative game is *didactic*. It only demands the truth of a sender's or scientist's statement to be verified or is subjected to approval by his/her's group of equals. A didactic validation separates itself from being part of a social bond, because it only is verified by establishing an internal dialogue with others who, too, have the authority to speak it. Lyotard, *The Postmodern Condition*, 8, 25.

action expected is determined by its conformity to a binding rule of case-by-case justice, rather than the consequences of the action.[251] The speaker becomes concerned with convincing the receiver to act on the obligation with only the primary speaker's first utterances.[252]

If the receiver chooses to not accept the command or obligation from the first sender, then the sender and the receiver's roles are switched. This renders the first speaker's primary text as merely commentary[253] and the receiver becomes the potential sender with secondary text. This act of double requirement persists as each assumes he or she is an equal. Once the roles are exchanged, the change again causes convincing someone of the reason for obligation until one chooses to cease and desist, performs the obligation, or switches to an alternative language game.

Neither the Denotative or Prescriptive Game has the ability to produce the so-called "Grand Narrative." Both lack the additional needed proof to support and contain all knowledge. The third game, the technical attribute, thus becomes critically

---

[251] McCoy, *Education, Democracy, and Jean-Francois Lyotard*, Ed.D. diss. University of Missouri - St. Louis, 2002, 16.

[252] Lyotard, *The Postmodern Condition*, 11.

[253] Here, *commentary* is used if the individual cites another person's opinion. It can occur even if the primary opinion is to gain a second opinion, cite an opinion, or take no action. Commentary, as described by Michel Foucault, operates as the space between the "primary" and "secondary" text. He explains the primary text as those texts which are fixed in time and secondary text as those text that reiterate, expound, and comment. Commentary minimizes the risk of discourse through the actions of an identity taking the form of repetition and sameness; thus allowing one to speak with authority, with finality, as truth itself. Michel Foucault, "The Discourse of Language," appendix to *The Archeology of Knowledge*, trans. A. M. Sheridan Smith (New York: Pantheon, 1972), 220.

important in Modernity to further provide the quantitative information the other two games lack.

Technical Language Game

Involved in the technical game are the concepts of efficiency and inefficiency by accelerating performance by means of maximizing the output and minimizing the input. The technical game excludes any involvement with truth or justice. Rather, terror and power becomes the major components. The addressee is required to perform efficiently, at optimum performance by simultaneously reducing the amount of energy expended with the input and increasing the output to its optimum level. Lyotard refers to this as the *Performativity Principle.*[254]

The control of performativity yields governmental, political, economical, and scientific power through technology and considers it realistic knowledge/truth. It is this power that Lyotard speaks about as it is displayed in Modern Western Society. By its use, this language game assumes the role of reality because the proof is based on scientific and technological principles. During Modernity, the role of science is the master of whatis real. Technology is all the more reinforced if one has scientific knowledge and decision-making authority.[255]

---

[254] According to Lyotard, the Perfomitivity Principle includes devices that optimize the performance of the human body for the purpose of producing proof requiring additional expenditures. Lyotard, *The Postmodern Condition,* 45.

[255] "Since "reality" is what provides the evidence used as proof in scientific argumentation, and also provides prescriptions and promises of juridical, ethical, and political nature with results, one can master all these games by mastering 'reality'. This is precisely what technology can do. By reinforcing technology, one 'reinforces' reality, and one's chances of being just and right increase accordingly." Lyotard, *The Postmodern Condition*, 47.

Lyotard provides an excellent example of how the game of scientific language also becomes the "game of the rich, in which whoever is the wealthiest has the best chance of being right. An equation between wealth, efficiency, and truth is thus established."[256] Thus society is placed into two opposing forces, the "haves" and the "have nots." Those who covet their scientific/technology knowledge for deriving truth and those who are subjected to subsume the role of being controlled by a reality full of power and coercion. This is the very reason Lyotard speaks to the fact that discourses can clash causing a *differend*[257] which eventually might allow for a new game to surface; thus creating a *Postmodern Era* that is open to the bonding of humanity.

Summary

Every utterance spoken in the Western world either in accordance to Lyotard's Language Games or Foucault's historicities and genealogies, is a form of discourse(s) that has dissected the social bond in Modern times. It is precisely the dissection which places a gap between the members of the society. Meaning, knowledge and trust remains bounded without allowance to reflective judgement.

It is the very nature of the discourses which sets the framework for this study as an attempt to critically analyze educational language and policies. If public education

---

[256] Lyotard, *The Postmodern Condition,* 45.

[257] The *differend* is the identification of a gap between two language games or even within one language game and the object that is desired is to be expressed in reality. Lyotard said this why the search for the *differends* presents a joyous opportunity for a new discourse, not to make reality but to present allusions through one's imagination to state and solve the *differend.* Lyotard, *The Differend*, 13.

has adopted the discourse of science to capture all knowledge, then performativity (efficiency language game) will establish the norms for public educational policy. Those who control the discourse will use a Grand Narrative to replace independent thought and critical thinking by students, teachers, and administrators. The interpretation of what constitutes justice, equal access, and equity within our educational system, reflecting the essence of American democracy, would be replaced with standardization, formal accountability practices, and data driven decision-making. Separation, rank, hierarchal practices based on perceived power would become the norm. These identified modern principles are the bases of both IDEA and NCLB practices and applications.

Chapter 5

Application of Framework to Modern Educational Policies

The nation's schools now stand on the brink of the largest high-stake testing experiment in history.[258]

Introduction

In chapter 4, the analytical/philosophical frameworks of Michel Foucault and Jean-Francois Lyotard were introduced. In brief, both frameworks assume the primacy of discourse as the foundation of all institutional policies and practices. Foucault, an historian of institutional practices, argued that these discourse/practices reflect the dominant discourse of the historical period (*epieteme*) within which they evolved. Lyotard viewed institutional policies and their concomitant practices

[258] Dr. Ralph Mawdsley, Professor , School of Education and Health Services, Cleveland State University, concluded, "NCLB enacted in 2002 contained more specific and far-reaching requirements than any federal education law before it." Ralph D Mawdsley and J. Joy Cumming, "School District Accountability, Special Education Students, and the Dilemma of High Stakes Testing: An Australia-United States Comparison," *West's Education Law Reporter* (29 July, 2004): 3.

through a framework of three language games – *scientific*, *prescriptive*, and *efficiency*. Consistent with Foucault, Lyotard dismissed the possibility of a *grand narrative*, a transcendent objective explanation of institutional practices.

Specifically, through the application of the work of both Foucault and Lyotard, the purpose of this chapter is to provide a logical and consistent answer to the fundamental question that this Critical Enquiry addresses:

> Are the technologies of implementation and assessment policies of the 2002 No Child Left Behind Act (NCLB) relative to the 2004 (as amended) Individuals with Disabilities Educational Act (IDEA) consistent with promoting the American democratic ideals of *equity* and *access*.

For the purposes of this enquiry, from Chapter 1, the following definitions of *equity* and *access* hold:

Equity The aspects of social justice that recognizes the inherent rights of individuals to be accorded their full measure of life, liberty, and happiness.

Access The inherent right of a person living within a liberal democratic society to define the "good life" without any unjust limitations imposed by the institutions *of* government and those sponsored *by* government.

Foucault and Disciplinary Technologies

In his form of historical analytics, Foucault refers to the disappearance of a "total history" with an emergence of something very different called "general history." Foucault defines total history as "one that seeks to reconstitute the overall form of civilization, the principles–natural and spiritual–of a society, the significance common to all the phenomena of a period, the law that accounts for their cohesion . . . ."[259] In contrast, *general history* rejects all of the tenets of total history and, instead, concerns itself with viewing history as a discontinuous unfolding of discrete elements (e.g., institutional practices) conditioned by and within the contexts of social, economic, political events. In particular for this study, general history is concerned with, among other aspects, specific methodological problems. Among them, according to Foucault, are:

> (the quantitative treatment of data, the breaking-down of the materials according to a number of assignable features whose correlations are then studied, interpretative decipherment, analysis of frequency and distribution); the delimitation of groups and subgroups; the determination of relations that make it possible to characterize a group (these may be numerical or logical relations; functional, causal, or analogical relations; or it may be the relation of the 'signifier' (*signifiant*) to the 'signified' (*signifié).*[260]

---

[259] Michel Foucault, *The Archaeology of Knowledge and the Discourse on Language*, trans. Sheridan Smith (New York: Pantheon Books, 1972) 9.

[260] Foucault, *The Archeology of Knowledge*, 11.

This new history would thus consider both quantitative (numerical) and qualitative (narrative) sources of data and methods of analysis. Both data and methods are considered as discourse having meaning and consequences relative to their effects on the establishment and maintenance of the characteristics of historically situated social structures. For purpose of this enquiry, Foucault's analysis of social histories will be linked to current movements in education associated with the two Acts in question. The link can be illustrated in the application within American public education of (1) principles of scientific management, (2) social science principles in pre-kindergarten through post-secondary education, and (3) behavioral objectives within special education.

Scientific Management

The new "general history" appeared during the turn of the 19th century with changes related to industrial development. Challenges such as acts of series, divisions, limits, differences in level, shifts, and particular forms of re-handling usurped the old view of cohesiveness of the society.[261] The problem of this new history was determining if any relationships existed between the series of changes allowing the development of an overall universally accepted principle, one consistent with a meta-discourse. On the contrary, the general history occurring with the introduction of System's Management and "Taylorism" (Scientific Management) would deploy the space of dispersion. The introduction of scientific management practices within American education can be traced to at least the beginning of the 19th

[261] Foucault, *The Archeology of Knowledge*, 10.

century. Much of this history is from the incisive work of Keith W. Hoskin and Richard H. Macve.[262]

In the early 1800s, both Sylvanus Thayer,[263] of the West Point Navy Academy, and Daniel Tyler,[264] of the Springfield Armory Board of Inspectors, adopted standardized human accountability measures.[265] The measures incorporated a general disciplinary *power-knowledge framework* to increase productivity and reduce waste in terms of costs.[266] Such practices contributed to the American System of Manufacturing and Economic Development and was used to influence educational practices. Due to what was perceived as similarities of objectives in both business/industry and education, the two were increasingly interconnected with efficiency driven ideologies.

---

[262] Keith W. Hoskins and Richard H. Macve, " The Genesis of Accountability: The West Point Connections," *Accounting, Organizations, and Society*, 13 no. 1 (1988), 37-73.

[263] In 1817, the development of examinations and mathematical grading system was used with engineering graduates at West Point under the meticulous pedagogical system of Sylvanus Thayer. He introduced the concept of "total human accountability" at West Point from 1817 and 1832. For further information refer to Hoskin and Macve, 38.

[264] Daniel Taylor was a West Point graduate in 1819. He was a member of the Board of Inspectors that reviewed Springfield's labor practices in 1832. The outcome of the review included the concept of a "full day" and measures on how much time was spent in the manufacturing process. Hoskin and Macve, 38.

[265] The methods used by the military at the Springfield Armory during the 19th century was an attempt to develop a worker type of "discipline" based on standardized rules and frequent inspections. Norms of expected human behaviors were established which assigned workers a value and a fixed place within a statistical population. Hoskin and Macve, 38 - 39.

[266] Norms were established to define acceptable productivity and expected behavior by the military enlisted and civilian workers at Springfield Armory. These individuals were constantly visible and watched for any concerns if they deviated from the norm. It is a form a worker control through surveillance and has since been applied to the organization of business and education. Hoskin and Macve, 40-46.

The focus on efficiency continued during the Industrial Revolution. As previously indicated in Chapter 2, Scientific Management and the onset of the efficiency movement allowed the factory to become an aspiring model for what was considered effective management by including analyzing, planning, and controlling the entire manufacturing process in specific task-oriented detail.[267] With Taylor's conviction to his uninominal form of production, the philosophy and practice of Scientific Management would benefit workers and society at-large. According to Raymond Callahan, "When improved methods were developed, they would replace older methods and would then become the standard. Taylor's idea was that every aspect of the job . . . should be standardized." [268] Education was directly influenced by the industrial methodology.[269] The modern day factory system, with its division of labor, became the basis for the modern schooling system.

The Social Sciences and Education

An erosion of confidence in labor and education productivity began at the end of the 1900s. It was during the time of the Industrial Revolution that more focus was placed the production of achieving maximum output with little occasion of error. In

---

[267] Raymond E. Callahan, *Education and the Cult of Efficiency* (Chicago, IL: The University of Chicago Press, 1962) 27.

[268] Callahan, 30.

[269] An early example of such a policy is the issuance of *A Manual of Education Legislation* written by the U.S. Bureau of Education in 1919. The manual was designed to reform and standardize the schooling of children into an efficient systemic manner. David Tyak and Larry Cuban, *Tinkering Toward Utopia: A Century of Public School Reform,"* (Cambridge, MA: Harvard University Press, 1995) 19-20.

the words of Foucault, a *discontinuity*[270] occurred. The problem with the early stages of a discontinuity occurring is the relations between *thought* and *culture* must begin anew. The archaeology of *thought* was now defined by a system's approach to achieve efficiency, yet the *culture* of social sciences had just begun. Social sciences brought forth comparisons with primary thought being in terms of identity, difference, measurement, and order. The process was similar to Cartesian rationale stating that all knowledge "is obtained by the comparison of two or more things with each other."[271]

To understand the 20th century acceptance of social sciences in both business and education, two forms of comparison exists. Foucault explains the two forms as being the comparison of measurement and that of order.[272] The application of measurement proceeds from addressing the whole and then divides it up into parts, yet within the comparison of division, both are analyzed according to a common unit. The common unit is then measured to the mathematical relations of equality or inequality. In Foucault's words, " Measurement enables us to analyze like things according to the calculable form of identity and difference."[273]

---

[270] *Discontinuity* is the fact that within the space of a few years a culture sometimes ceases to think as it had been thinking up till then and begins to think other things in a new way – probably begins with an erosion from the outside. Michel Foucault, *The Order of Things: An Archaeology of the Human Sciences*, (New York: Vintage Books, A Division of Random House, Inc., 1970) 50.

[271] Descartes, *Regulae*, XIV, p. 168 as cited in Foucault, *The Order of Things*, 52.

[272] Foucault, *The Order of Things*, 53.

[273] Descartes, *Regulae*, XIV, p. 182 as cited in Foucault, *The Order of Things*, 53.

Once differences between student test scores are established, Foucault description of normalizing judgement[274] can be applied as another activity of control under the guise of scientific classification. Normalizing judgements based on resemblances and differences between beings and the discontinuities that separate them into a taxonomic discourse. The act of distributing students according to aptitudes and abilities in a monopolistic framework cosigns students as less-than-equal status and thus excludes them to the direction of homogeneity via segregation and exclusion and hampers inclusiveness. Order is imposed to achieve the status of definitively acquired knowledge within a defined structure of ideality.

Order, according to Foucault, is discovered by "that which is the simplest. . . . In this way, an established series is formed independently of any other nature, then other terms are established by increasing differences."[275] In all, there are two types of comparisons: "the one analyses into units in order to establish relations of equality and inequality; the other establishes elements, the simplest that can be found, and arranges differences according to the smallest possible degrees."[276]

As a result of the emergence and refinement of technologies of measurement and order, Western culture was now based on Cartesian *rational thought*. Everything was now subjected to proof by comparison of one to another and discrimination of one from another. Language and the written (narrative) word no longer is included

---

[274] Foucault, *The Order of Things*,

[275] Foucault, *The Order of Things*, 53.

[276] Foucault, *The Order of Things*, 53

in signs of truth. Rather, quantifiable evidence and distinct perception becomes the sign of truth. The mantra representing absolute and certain knowledge becomes: "Enumeration alone, whatever the question to which were are applying ourselves, will permit us always to deliver and certain judgment upon it."[277]

By the 20th century, both the military[278] and higher education institutions[279] began to apply principles and theories of the social sciences to justify quantifying individual achievement. The introduction of one standardized assessment score, the Individual Quotient (IQ), was systematically implemented through proficiency examinations.[280] The inclusion of such examinations was seen as an expansion of accountability. Assessment innovations occurred to include the introduction of

---

[277] Descartes, *Regulae*, XIV, p. 110 as cited in Foucault, *The Order of Things*, 55.

[278] Through the twentieth century, the military continued to make improvements to standardized "human" accountability. By the 1950s, with the onset of the Korean War, the use of standardized test-taking procedures propelled to a new level. President Truman authorized the Selective Service System to work with Educational Testing Service to jointly develop a large scale draft deferment test. Its purpose was to identify and separate individuals would remain in college from who would be sent to active duty at the front lines of military combat operations. The end result of the joint collaboration was the refinement of a tool, *The Draft Deferment Test,* that was alluring because it quickly processed large numbers of potential solder candidates. The *Draft Deferment Test* was considered a key event to promulgating large group intelligence testing applicable to the educational environment. Such military assessment protocol demonstrated the United States would recognize the merits of using results from a mass implementation of an I.Q. test. Nicolas Lemann, *The Big Test*: *The Secret History of the American Meritocracy.* (New York: Farrar, Strauss, and Giroux, 1999), 72-79.

[279] Colleges and Universities throughout the U.S. used the IQ rating; such as Lewis Thurman at Stanford University and Edward Thorndike of Columbia University. These men were influential advocates for the use of IQ testing in American schools so students could be assessed, sorted, and taught at the level of their capabilities. Lemann, 17.

[280] In 1905, Alfred Binet, a French psychologist, developed the first test of intelligence from which answers, he claimed, could derive a rating of their "mental age." Additionally, Lewis Thurman from Stanford University provided the name of "Intelligence Quotient Theory" considering the ratio of mental to physical age. Lemann, 17.

written assessments, mathematical marking systems, and individual rankings.[281] As an example, the connection of social sciences became integral to practices implemented in higher education institutions.

The College Entrance Essay Examination Board was founded in 1900 and began using standardized entrance examinations based on the mastery of boarding school curriculum.[282] During the 1920s, public school officials began administering multiple sources of intelligence tests[283] to elementary and secondary school students in addition to higher education institutions who were already conducting such tests. It was only a short time thereafter, that an outgrowth of IQ tests became the precursor to achievement testing. By the late 1920s, the New York Board of Regents assigned Ben Wood[284] to construct an objective exam for high school students and a scoring machine that could score millions of tests during mass administrations.

By the early 1930s, graduating high school students were being tested consistently with college entrance exams. College entrance exams were justified by

---

[281] Keith Hoskin, "The Examination, Disciplinary Power, and Rational Schooling," *History of Education* n.v. (1979): 135-146.

[282] The College Entrance Examination Board was founded to perfect the close fit between New England's boarding schools and Ivy League Colleges. The boarding schools wanted wanted a uniform admissions test that ll colleges would accept. The College Entrance Examination was suspended after the bombing of Pearl Harbor and was never resumed. The Scholastic Aptitude Test (SAT) later became the admissions tool used by colleges and universities. Lemann, 28-29.

[283] The Lewis Thurman National Intelligence Test was the choice of IQ testing protocols used in the American Elementary Schools. It had a heavy reliance on vocabulary and multiple choice questions, as did most intelligence tests of that time. Lemann, 30.

[284] Ben Wood founded the Cooperative Test Service. The Service sold tests to elementary schools and colleges. Thomas Watson (founder of IBM) and Ben Wood co-developed the scoring machine. In 1935, Wood developed the Graduate Record Exam (GRE) that is still used extensively today. Lemann, 35.

higher education administrators as ensuring a standardized "proven" methodology to determine which entering freshman males would receive scholarships. The colleges and universities were acting on the tests reliability and validity factors as a means of selection to equally distribute the scholarships. This mode of selection gave rise to the basic mechanism for sorting college Freshman.

Later in 1937, Henry Chauncey, the founder of the Education Testing Service (ETS), regularly used his company to administer the Standardized Achievement Test (SAT)[285] replacing the majority of any other college entrance exams in use. By the 1940s, the use of SAT college entrance exams as well as other scholarly disciplines (i.e. *Law School Aptitude Test* and the *Medical College Aptitude Test*) were considered a routine test expected of all students planning on attending a higher education institution. The prevalence of assessment accountability filtered down into the public elementary and secondary school system.

[285] Henry Chauncey wanted to expand mental testing because he saw it as a science with limitless possibilities. Both Chauncey and James Bryant Conant, former president at Harvard, embarked on the world's largest-scale program of mental testing – SAT. The intent of the SAT was to demonstrate who possessed the ability to successfully attend the universities and what place in society a person should then occupy based on the scores. Opponents of the test argued the SAT was fraudulent because it allowed a proportion of children in the middle and upper class to reign a shroud of scientifically demonstrated superiority and also posed a strong cultural handicap for pupils of the lower socioeconomic group. Yet, Conant was certain that using the SAT would create a natural aristocracy which allowed a system to provide a strict slection of who would attend universities and others who would attend two-year junior colleges or less. Lemann, 5-6.

The influx of the testing mania catapulted throughout the 20th century.[286] Following the circulation of *A Nation At Risk Report*,[287] educational reformists and testing companies diligently wanted a part of the testing trend.[288] High stakes testing was promoted by the nation's education crusaders, politicians, and the corporate sectors of society. In 1988, Marc Tucker, founder of the National Center on Education and the Economy (NCEE),[289] responded, "the current movement toward national standards and examinations may turn out to be the most powerful reform

---

[286] In the 1950s, school superintendents left their positions to earn more money by assuming the role of test publishers, although the published tests had little validity or reliability studies to assure integrity and lack measures for test security. Conversely, another sector of educational professionals established lucrative careers publishing articles and delivering speeches protesting the excess use of group standardized assessments. For further reading refer to Banesh Hoffman, professor at Queens College and scientific author of *The Tyranny of Testing* (New York: Crowell-Collier Press, 1962).

[287] *A Nation at Risk* was a landmark government report published in 1983. The end report centered around a 18-month study conducted by the Reagan's Administration's National Commission on Excellence with a litany of dismal statistics reporting regress, not progress as the trend in public education. The report stated, "The educational foundations of our society are presently being eroded by a rising tide of mediocrity that threatens our very future as a nation and as a people." John A. Stormer, *None Dare Call It Education* (Florissant, MO: Liberty Bell Press, 1998), 8, quoting the *National Commission on Excellence* initiated by President Ronald Reagan in 1983.

[288] *A Nation At Risk* indicated the SAT scores were plunging, the U.S. ranked last among the industrial nations in seven out of nineteen unspecified "academic areas", and drastic declines in math, English, reading, and science scores were reported. The document called attention to supposedly how far American students lagged behind the rest of the developed world in virtually all subjects. It provided alarming facts about the demise of the nation's schools. Bhawin Suchak, "Standardized Testing: High Stakes for Students and for Corporate Bottom Lines," *Journal for Living* 23 (2001): 36.

[289] The NCEE and its founder, Marc Tucker, became an influential private education reform organization in America. In 1992, NCEE introduced a national testing experiment, *The New Standards Project*. States throughout America, including large scale school districts, were paying up to $500,000 annually to be members of the *Project.* It became internationally known as "the benchmark" testing program. Additionally, David Kearns, while employed by the George E. Bush Administration as the Deputy Secretary of Education, founded The New American Schools Development Corporation (NAS). NAS received extraordinarily large amounts of funding from both Congress and corporate America. It, too, developed standards-based curricula that emphasized increased testing. Hoffman, 37.

strategy we have."[290] With the advent of the testing programs, Tucker's perseverance, and the formation of the NCEE (who solicited a large number of corporate supporters) the floodgates opened for corporate-sponsored educational assessment programs in the nation's public schools. The tenacity of big business involvement in education grew at an exponentially alarming rate.

Behavioral Objectives

A significant outcome from social system theorists, came the system's notion of the Behavioral Model. The introduction of the Behavioral Model, developed from the tenets of productivity and efficiency, was popularized in the 1970s. The model established measurable objectives with the intent to improving a student's learning environment.[291] Educational policy makers supported the use of behavioral objectives to achieve greater efficiency and accountability toward the process of ranking, grouping, and sequencing instruction for large group of students.[292] Behavioral objectives became the sorting and selection of students to satisfy the numeric accountability of schools.[293]

---

[290] Marc Tucker, *Toward National Standards Measuring Up America* ( ), quoted in Banesh Hoffman, 37.

[291] Behavioral objectives considers the learning process as a description of a performance standard each learner is to exhibit before the learner is considered competent within a specific area of the curriculum. R. Mager, Preparing Instructional Objectives, 2nd ed. (Bemont, CA: Fearon-Pittman Publishers, 1975) 5.

[292] The model evolved into a discourse of human accountability as noted in Hoskin and Macve, 41.

[293] Robert Canady and Phyllis Hotchkiss, "It's a Good Score: It's Just a Bad Grade," *Phi Delta Kappan* (September 1989): 68-71.

Foucault identifies the modern educational use of a system's driven approach and behavioral objectives to demonstrate that using disciplinary technology ultimately removes subjectification from objectification. The subject (student, school building, or district) is objectified by the effect of power. The federal government objectifies the subject by mandating educational requirements based on results of empirical and calculated methods to control and correct the operations of the subject/body (the student).

The subject/body is considered *docile* "that it may be subjected, used, transformed and improved . . . [so that] infinitesimal power controls the active body."[294] The active body is the economy of the body, the efficiency of movements and its products of labor. Foucault states, "[t]he human body was entering a 'machinery of power' that explores it, breaks it down and rearranges it. A political anatomy, a mechanics of power, was being born, it defined how one may have a hold over others' bodies . . . with the techniques, the speed and the efficiency that one determines."[295] The techniques applied, it is accepted that some individuals will be included, yet many will be excluded by a process of a asocial containment.

The behavioral objectives approach failed to reduce the widening achievement gap. Children simply continue to fail[296] (a variable contributing to the numbers of

---

[294] Another language used is *docility-utility* in reference to disciplinary methodology. Foucault, *Discipline and Punishment*, 136-137.

[295] Foucault, *Discipline and Punish*, 138.

[296] In a study of student perception relating to assessment and the idea of grades being an academic motivator, the findings included: (1) there exists and increasing tendency for many low-achieving students to perceive any type of evaluation as arbitrary and often unfair; (2) lower

early school leavers.) Because the achievement gap still exists, it poses a critical educational concern.[297] In response to the social implications of failing academic growth for a large percentage of public schools, government passed No Child Left Behind (NCLB) legislation and NCLB guidelines were also reflected in the 2004 re-authorization of the Individuals with Disabilities Act.

Equity and Disciplinary Technologies

As generally stated earlier, Foucault's work reveals how institutional practices serve to divide, categorize, and rank the individuals that they purport to serve in order to disassociate power from their bodies. Specific for this enquiry, as illustrated above for example, social science practices serve to establish differences of unequalness through the authoritative quantification of theoretical constructs relative to human behaviors. The effect has been to work against the Constitutional notion of equality. Over the past one hundred years, it is these very notions that helped legitimize the professional education discourse.

The Founders believed that only an educated citizenry could ultimately secure for all citizens their rights to life, liberty, and the pursuit of happiness. To achieve and sustain the noble intent of equity, the educational system ought to access as the

---

achieving students perceive earning good grades was something beyond their control or influence; and (3) students interpreted evaluation according to their individual needs, fears, motivations, and understandings, and from extrinsic motivators. For further information refer to Ellis. D. Evans, *A Development Study of Student Perceptions on School Grading*, a paper presented at the biennial meeting of the Society for Research in Child Development, Toronto, Ontario, Canada, 25-28 April 1985. [ED 256 482]

[297] John A. Stormer, *None Dare Call It Education: The Documented Account of How Education "Reforms" are Undermining Academics and Traditional Values* (Florissant, MO: Liberty Bell Press, 1998), 3.

authority by applying various distributive processes, but are suspect to carrying a core of domination. With the applications of principles of the social science, all thought well-meaning, came unintended consequences that effects the power relations between sovereign (political legislative mandates) and its subjects (students). Foucault views these institutional regulations (brought about by human social sciences) as subjugating individuals (students) to the "corpuscular"[298] level of underlying and sophisticated mechanism of domination. It is important to explore the mechanisms of domination/disciplinary actions occurring in the educational system based on the mandated requirement of the Acts.

The laudable goals of NCLB are to close the achievement gap by applying standardized accountability measures for all students by 2014. NCLB sustains that traditional democratic notions of equality can be realized by denoting student success in term of test scores and is underscored by the main focus of scientific accountability measurements. The core issue of accountability is the expectation that all students will demonstrate academic proficiency in the same way. This legislated notion of equity assumes that every student is provided an equal place in the educational system based on the bold assumption that all students receive the same level of education experiences. The one-size-fits-all approach abstracts student subgroups from unique social, cultural, economic, academic situations of which they are embedded within the community, yet at the core of the regulations, remains accountability. If one

[298] Richard Wolin, "Foucault the Neohumanist?," *Chronicle of Higher Education*, September 2006, 1.

subgroup fails to achieve, then a particular school building's/district's overall scores are indicated as not being a proficient. In the face of the testing requirements, subgroups, such as students with special needs, might be inevitably be perceived as a burden to the district's ability to meet proficiency.

As noted in previous chapters, NCLB mandated all public school students to complete annual standardized assessments to indicate Adequately Yearly Progress (AYP).[299] State governments are charged with defining the equitable structure of a monitoring system that ensures all districts would participate and be held accountable to the same state standards[300] is then annually reported annually to the Federal government.[301] NCLB requires analyzation of scores, separating those who achieve from those who do not. Because NCLB relies on human social sciences with regard to accountability practices ensuring academic knowledge, the federal government will

---

[299] . The authors further include the testing parameters outlined in the law: a) students in grades 3 through 8 be tested annually and at least once in grades 10-12, states are required also to develop and administer science assessments beginning 2007-08 at least once in grade 3-5, grades 6-9, and grades 10-12. Additionally, English proficiency of Limited English Proficient students. Overall, at least 95% of students in each school district must take annually the state's test measuring academic performance. By 2013-14 academic year the number of students taking the test is 100%. Mawdsley and Cumming, 3

[300] AYP is reported to both the Federal and State Education Agencies on a yearly basis after the results of state-developed standardized testing has been completed by public school students. NCLB is designed to compel each state to develop its own coherent system of standards-based reforms. All tests were required to be fully developed by 2007 and aligned to self-imposed state standards. According to NCLB, by 2014, states must demonstrate that all students are making 100 % proficiency as indicated by AYP.

[301] NCLB is designed to compel each state to develop its own coherent system of standards-based reforms. All tests were required to be fully developed by 2007. The tests, aligned to self-imposed state standards, are expected to raise all students to 100% "proficiency" levels by 2014.

continue to function with a scientifically-based panoptic[302] view in determining who meets or exceeds, who lacks proficiency, and which schools will be academically accredited or discredited.[303] Foucault sees this measure of visibility as those that can dominate and view (oversee) everything without being seen by those being dominated.[304] Then, punitive and restrictive measures will be executed . . . as if the absolutistic punitive practices have the purpose of exposing the truth based on proven scientific results.

Foucault's views related to the science of education are seen as an exercise of social practices designed to control the body. It is a force using modern politically-based education discourse governing institutions with an established set of rules. Based on accountability, schools are designated differently penalty procedures are

---

[302] Jeremy Bentham's *Panopticon* from the year 1887 is typically the ideal model that condenses disciplinary power, to speak, to an architectural form. He depicts an institution that monitors and confines while remaining centrally located to centrally view an entire area. Everybody is seen but the person in the center watching over the people. The central location can remain unoccupied, since the individuals will inevitably behave as if they were exposed to the watchful view of a constant observer. They supervise themselves. According to Fink-Eitel, Bentham's model should find an application to schools. Isolation, total organization and controls, complete transparency and constant supervision of self controls in the absence of a visible controlling power center: this is the utopia of disciplinary power. Hinrich Fink-Eitel, *Foucault: An Introduction*, trans. Edward Dixon (Philadelphia, PA: Pennbridge Books, 1992), 51.

[303] If schools fail to meet AYP targets, sanctions are imposed. Sanctions such as the removal of Title I monies, required district adoption of a scientifically-based improvement plan, and public distinction that the school is in need of improvement. Parents may transfer their child to another public school in that district (who has made AYP) with transportation provided as a process of reintegration in the social system through treatment and normalization strategies. Other detrimental sanctions range from administrators being fired, student retention, and the requirement of summer school and/or tutoring. Ultimately, a district may be overtaken by the State as a restructuring effort to improve achievement scores.

[304] Gulles Deluze, *Foucault*, transl. And ed., Sean Hand, forward by Paul Bove' (Minneapolis, MN: University Press, 1986), 47-69. Originally published in France in 1986 by Les Editions de Minuit.

established with sophisticated technologies to place conditions on how the school is to operate to improve achievement. Although noble in its intent, the NCLB doctrine, acting as the authority, claims control over a school's conformity (strict subjectification) to prescribed standards believed to represent knowledge. For Foucault, this translates into the practice of structured events that become inherently unstable and will eventually rupture with changes in history. Similar structures are present in the Individuals with Disabilities Act.

With regard to students identified as requiring special education services, Rod Paige, former United States Secretary of Education, indicates the goal of IDEA was to align with the principles of No Child Left Behind to ensuring accountability measures improve student achievement.[305] IDEA states such requirements will be "derived from federal authority and those imposed additionally pursuant to Article 14 of the School Code or the authority of the State Board of Education."[306] The framework of IDEA includes the concept of a free and appropriate education (FAPE), the use of an Individual Education Plan (IEP), and post-high school transition planning.

The concept of FAPE might be challenged by Foucault, because the terminology of the word *appropriate* is subject to the operations of the system.

---

[305] United States Department of Education at http/:www.ed.gov/news/pressreleases/2003/02/02232003.html

[306] Illinois Administrative Code 226.10.

What is identified as appropriate in one school district, building, or classroom might be altogether different from another based on inconsistent redistribution of resources.

He would also question the current use of the IEP, because the IEP is based on categorizing students and developing a scripted plan for a student to work toward some dictated standard considered proficient by the institution. The lack of equity of the IEP is demonstrated by the misnomer that the IEP goals and objectives will shape and train the docile body morphing it into something of educational utility. If not successful, the student may then be reclassified and further separated from peers who are considered academically proficient.

Transition planning is required for a student with disabilities in order to plan for his/her future life after high school graduation or completion at age twenty-two. Referencing Foucault's Art of Distribution[307] process, transition planning incorporates ranking students according to performance, age, and behavior. Students are academically and/or vocationally assessed to determine which post-high school *compartment* or option would be best suited to meet their needs. Completed annually, the transition plan becomes a powerful plan stipulating which high school activity one should participate in to prepare for his/her transition plan. Equity is thus based on personal performance, subjected professional recommendations from educational staff, and directly related to various examinations.

Access and Disciplinary Technologies

[307] Foucault, *Discipline and Punish*, 141-149.

If access to appropriate schooling is based on the determination of students test scores to denote quality schooling, then how is it that a portion of disabled students are excluded from mainstreamed education and not provided the necessary curriculum to meet the testing expectations. If it were based on access, then equality would simply mean the same for all because the social meaning of the Acts would be relative to what is at stake; proficiency for all students. Each student ought to have the same opportunity rather than the dominance of one group monopolizing the achievement standards over others. Foucault interprets an external power such as educational policies and disciplines regulating the opportunity for student success leading less to a democratic notion and more toward a control of activity.[308]

An example of controlling an activity with technologies with time tables and a system of routines and hierarchies to carry out mandates is reflected in students who have severe cognitive disabilities. In regard to AYP assessment and accountability measurements, the Acts dictate that of a district's total number of students, 1% may take an alternative assessment.[309] This 1% are considered to have severe cognitive impairments. In 2004, IDEA amended the number to 2%.[310] These are means to ensure that *all* students meet the arbitrary standard of proficiency within a similar time table and under the auspices of a hierarchal single framework. The single imposed

---

[308] Foucault, *Discipline and Punish*,

[309] L. Goldstein, "Long-awaited Special Education Testing Rules Issued," *Education Week* 27, no.4 (2004): 27.

[310] C. Samuels, "Special Education Test Flexibility Detailed," *Education Week* 24, no. 37 (2005): 22.

flexibility draws these students into the formula by which schools will be judged. The implication of dominance initially demonstrates this group of students are counted as worthy participants, but in actuality students within the subgroup effectively ensures they really do not count. The powerful scientific education system has discovered a mechanism legalizing the nullification of their contribution to the school community and effectively determine whether a student is educated or not.

Lyotard, Justice and the Analysis of Policy Language

As elaborated in Chapter 4, Jean-François Lyotard applies the notion of language games to educational policy by comparing the pragmatics of narrative and scientific discourse in the legitimation of knowledge. According to Lyotard, "Scientific knowledge cannot know or make known that it is true knowledge without resorting to the other, narrative, kind of knowledge, which from its point of view is no knowledge at all."[311] He analyzes the use of the language games of prescriptive and efficiency, a "paralogy" of modern education, as an attempt to establish the truth of utterances spoken and/or received by the sender, listener, object and context which can be applied to educational practices mandated in the Acts. Specifically, this Critical Enquiry is concerned with the relation between the nature of the language of the intent of the Acts and that of the implementation of the Acts. Any contradiction

[311] Lyotard, *The Postmodern Condition* (Minneapolis, MN: University of Minnesota Press, 2002), 29.

between the two languages would constitute what Lyotard considers, as described in Chapter 4, to be a *differénd*.

Equity and Policy Language

According to NCLB regulations in Sec. 111,

> For any State desiring to receive a grant under this part, the State educational agency shall submit to the Secretary [of Education] a plan, developed by the State educational agency . . . The State shall have such academic standards for all public elementary school and secondary school children . . . which shall include the same knowledge, skills, and level of achievement expected of all children.

Similar language present in both Acts indicates the need to provide a positive effect on the needs of low-achieving students by influencing policies, practices, and priorities in many public school districts.[312] Such prescriptive language is a noble in that it seek justice for all students. Contrary to the noble intent, the methods of implementation counter the prescriptive discourse by mandating accountability requirements that responds with institutional practices of division, categorization, and hierarchical. Lyotard would describe this as efficiency language, which contradicts the noble prescriptive language of the intent of the Act.[313] In modernity, the truth or

---

[312] Center on Education Policy, *Year 3 of the No Child Left Behind Act, 30.*

[313] "To testing proponents, accountability is a straightforward proposition: A school, like a factory, turns out a product; if the product is subpar, the factory must be at fault. Schools' products are manifestly subpar. Testing is the key to promoting higher standards because it will dramatize schools' weaknesses and motivate improved results by teachers and pupils by tough consequences." Robert Evans, "The Great Accountability Fallacy," *Education Week* XVIII, 20 (1999): 52.

justice factor rests on underlying scientific verification of efficiency. According to Lyotard, using prescriptive discourse, "a statement's truth-value is the criterion determining its acceptability. . . One is 'learned' if one can produce a true statement about a referent." [314] Now the relationship to acquiring knowledge is solved by the premise based on scientific competence.[315]

The scientific competence appeals to a meta-discourse existing outside of ourselves. NCLB then becomes a socio-political legitimacy that is a consensus by the people and formulate prescriptions that have the status of the norms of truth and justice.[316] The consensus is comprised of a social and political contract entered into by members of government to reach an agreement and dictating themselves as the source of authority that governs by the passage of the Acts. Lyotard suggests the principle of consensus (a component of the system) as a criterion for this type of validation seems to be inadequate.[317]

Educational reform comprised of assisting federal, state, and local to annually produce a snapshot of how a student is progressing provides a sensible goal if the

---

[314] Lyotard, *The Postmodern Condition*, 25.

[315] Scientific knowledge is in this way set apart from the language games that combine to form the social bond. Unlike narrative knowledge, it is no longer a direct and shared component of the bond. But, it is indirectly a component of the bond. But it is indirectly a component of it, because it develops into a profession and gives rise to institutions, and in modern societies language games consolidate themselves n the form of institutions run by qualified partners (the professional class). The relation between knowledge and society becomes one of mutual exteriority. Lyotard, *Postmodern Condition*, 25.

[316] A Kantian review would indicate utterances expected to be just rather than true and which in the final analysis lie outside the realm of scientific knowledge. Lyotard, *Postmodern Condition*, 33.

[317] Lyotard, *Postmodern Condition*, 69.

language of the term *proficient* were translucent and equitable. The productivity and efficiency discourse of cut scores differ from state to state in order to meet the AYP standard percentages. According to Finn and Petrilli, experts in the area of identifying national programs and policies, the "proficiency passing score – the score a student must attain in order to pass the test" varies greatly between the states in the U.S.[318] The legitimation of truth of a student being "proficient" in one subject according to the education bureaucrats in a particular state, could very well have scored much worse or much higher in many other states. The idea of legitimacy then becomes how high or how low the bar has been set per state education agencies to demonstrate AYP gains. Scientific data to identify proficiency becomes an elusion, while speculative educational dialogue remains stuck in the genre of repetition of what is expected and not refuted. School districts remain obligated to the language of efficiency and accountability in the face of erroneous and internally inconsistent achievement data based on an elastic yardstick between the definition of cut scores between states.

In terms of imposed standards representing knowledge, the state and federal guidelines also obligates school districts to enforce the mandates. In the his book, *The Differénd*, Lyotard' addresses the discourse of *obligation*.[319] When an addressee

---

[318] The authors further identify that on the whole, states do a bad job of setting and maintaining the standards that matter most — those that define student proficiency for purposes of NCLB and states' own accountability systems. Chester E. Finn, Jr. and Michael J. Petrilli, "Conjuring Cut Scores," *American Educator* (Winter 2007-2008): 20 -28.

[319] Lyotard, *The Differend*: *Phases in Dispute*. Trans. Georges Van Den Abbeele (Minneapolis, MN: The University of Minnesota Press, 1984) 107-108.

hears a call, one is held to be held by it. Although one can resist it or answer it, one must find oneself placed in the position of addressee receiving a prescription. Once the law is stated , the order is to be done. The law does not allow one to distinguish the rightful authority from an impostor, thus the entity is received as though it were law. The addressor, the political elements of NCLB, requires the prescription to be followed by the addressees, the public school system, and the third party, the student, is obligated to the addressee and has no access to the addressor. The addressee then assumes the role fo the addressor to the third party and must convince the third party of the reasons for obeying the prescribed law. "The blindness or transcendental illusion resides in the pretension to be found in the good or the just upon the true, or what ought to be upon what is."[320] It is understood or presupposed that the orders given by the politicians and received by the school districts are just. If something is just then the binary of it being unjust is not plausible. Lyotard warns that, obligation to what pretends to be true and just, should be viewed as a scandal for the one who is obligated: deprived of the "free" use of oneself.[321]

The discursive summation of what is what is just and equally accessible by means of scientific accountability is based on a *consensus of the system* via the *manipulation of the system* to improve performance but not considered a substantive change. Lyotard states, "In this case, its only validity is an instrument to be used

[320] Lyotard, *The Differend*, 108.

[321] Lyotard, *The Differend*, 109.

toward achieving the real goal, which is what legitimates the system – power."[322] Power is instituted to solely improve efficiency by establishing new rules and norms based explicitly on the language of technology and science. It is a power derived from contextual control or "de facto legitimation"[323] to maintain a stable system.

Lyotard further refers to the work of Rene' Thom based on Thom's similar direction of questioning the validity of the notion of a stable system because circumstances happen, due to conflict, thereby resulting in instability. When reviewing the narrative language of the Acts, intended to better student achievement, the conflict results when the use of scientific language replaces the narrative to prove the qualifiers of achievement. Juxtaposing the intent of scientific credibility of the Acts rather than the bases relying on the narrative, Lyotard makes known that "Scientific knowledge cannot know or make known that it is the true knowledge without resorting to the other, narrative, kind of knowledge, which from its point of view is no knowledge at all."[324]

Summary

When applying Foucault's principles of historical analytics to the development and implementation of both NCLB and IDEA significant contradictions were revealed between the noble intent and implementation of both Acts. On the one hand, the Acts promise justice through equity and access. On the other hand, when implemented

---

[322] Lyotard, *The Postmodern Condition*, 61.

[323] Lyotard, *The Postmodern Condition*, 47.

[324] Lyotard, *The Postmodern Condition*, 29.

according to official mandated regulations the Acts serve only to contradict the principles of both equity and access. The same results were found when applying principles of Lyotard's language game analysis. The noble prescriptive language game of justice used to describe the intent of the Acts was contradicted by the efficiency language game when the Acts were actually implemented. The consequences of these contradictions will be addressed in Chapter 6.

Chapter 6

Summary, Conclusions, and Recommendations

"One group's reform can be another group's calamity."

(Jan Freeman," Reform School," Boston Globe, January 2003, L3.)

Introduction

This study was a Critical Enquiry relative to two Federal education Acts intended to maximize a child's constitutional rights of both *equity* and *access* through

federally funded educational practices. As explicated in Chapter 1, the specific purpose of this Enquiry was to:

> [D]etermine, through a deconstructive reading (analysis) of policy discourse, if the technologies (methods) of implementation and assessment of the 2002 No Child Left Behind Act (NCLB) relative to the amended 2004 Individuals with Disabilities Educational Act (IDEA) are consistent with promoting the American democratic ideals of *equity* and *access.*
>
> For the purpose of this CE the following definitions of *equity* and *access* will hold:

Equity The aspects of social justice that recognize the inherent rights of individuals to

accorded their full measure of life, liberty, and happiness.

Access The inherent right of a person living within a liberal democratic society to define the "good life" without any unjust limitations imposed by the institutions of

government and those sponsored *by* government.

The analytical framework for the Enquiry was composed of both the historical analytics of Michel Foucault and the language games of Jean-Francois Lyotard.

Summary

When the Acts were critically examined through the framework of Foucault's historical analytics it was shown there is a fundamental contradiction between the

noble intent of the Acts and their implementing practices. Fundamental contradictions were likewise revealed when the Acts were examined through Lyotard's language game framework.

Conclusions

The discourse legitimating the mandates of the Acts remains juxtaposed between justice and the use of power as revealed through the application of Foucault's power/knowledge historical analytic framework and Lyotard's language game framework. If the Acts were to fulfill their noble intents to provide equitable and accessible learning environments fostering increased individual achievement with the intent of closing the achievement gap for all students, then social scientific methods would not be the sole criteria used for justification.

The current use of scientific and efficiency discourse in public education policy--as opposed to a justice narrative--is antithetical to the educational needs students generally and students with special needs in particular. "Scientific" measurements of accountability to conform to political ideologies is fundamentally unjust. The results pose unattainable levels of achievement of all students based on the premise that the most efficient demonstration of learning achievement for one student may be inefficient for another. To assume the best way to achieve educational equity is to impose local/state/national standards, regardless of disparities and uniqueness of individual student learners, is a mistake. It is the results of these same standards that further divides, classifies, and ranks students in the public educational system.

Since the 19th century, both the influence of business coupled with scientific notions of modernity have captured the philosophy of education by placing the Systems Model in the forefront. Education is also not isolated from social, economic, and political contexts. The efficiency methodology ignores the fact that the economic, political, and educational interests of individuals are rarely identical, so both the measurement processes excludes human quality factor.

Deconstruction of the inherent discourse of the politically-based educational mandates, epitomizes modern thought involving power, rigidity, rank, and order to the exclusion of postmodern democratic ideals based on humanity. As reflected in the current implementation of the Acts, the focus of education remains centered around the concepts of speed, structured methodology, and academic standardization in both general and special education. The governmentally imposed Acts, including standardized mandates, significantly affects the discourse and conversations throughout the nation. The use of such modern discourse shapes curriculum, instruction, student/teacher behavior, and the entire structure of schooling.

Recommendations

Institutional awareness by both political and educational leaders ought to acknowledge how the intent and the implementation of the Acts are contradictory because scientific principles of data collection lacks sensitivity to one's differences and reinforces one's ability to tolerate the incommensurable. The realization of the technical language embedded in the Acts are conditioned by social forces outside the school system. Schools need to rethink the modern practice of allowing the

government to impose such Acts while the government continues to oblige itself to legitimate the rules of its own game as a tool of authority.

Administrators and teachers need to be more vigilant when advocating for each student's right to be provided an education based on fairness and equity. It is also their duty to promote a student's access to an educational environment that supports individual differences and intrinsic value. A step toward such goals begins with denouncing a system of rules that are forcibly imposed to identify students in predetermined categories or taking disaggregating subgroup data at face value.

Administrators and teachers are overtly aware of the discrepancies existing in the delivery of instructional opportunities that are or are not afforded to students based on disabilities, economic status, and school resources. These are the true social and economic conditions of school equality.

Parents need to be made aware of current educational policies and their potential consequences on the district, school building, and student placement. They need to question educational policies that do not necessarily lead to appropriate achievement outcomes. Student need to be afforded practices that are authentic and based on individual learning skills to also include creativity, insight, and multiple forms of identifying learning not based on a grand narrative which currently characterizes the legitimation of knowledge in the modern era of education.

BIBLIOGRAPHY

Books

Alexander, Kern, and M. David Alexander. *American Public School Law.* 6th ed. Belmont: Thomson West, 2005.

Apple, Michael. *Ideology and Curriculum*. New York: Routledge, 1990.

Ballard, Joseph, Bruce A. Ramirez, and Frederick Weintraub, Eds. *Special Education in America: Its Legal and Governmental Foundations.* Reston,: Council for Exceptional Children, 1982.

Beatty, John L. and Oliver A. Johnson, Eds. *Heritage of Western Civilization:* Vol 2. Englewood Cliffs: Prentice-Hall, 1987.

Benjamin, Andrew, ed. *Judging Lyotard*. New York: Routledge, Chapman, and Hall, Inc. 1992.

Blatt, Burton. *The Conquest of Mental Retardation*. Austin: PRO-ED, 1987.

Bradley, Leo H. *School Law for Public, Private, and Parochial Educators.* Lanham: Rowman & Littlefield Education, 2005.

Cain, Louis P. and Paul J. Uselding, eds. *Business Enterprise and Economic Change.* Kent: The Kent State University Press, 1973.

Callahan, Raymond E. *Education and the Cult of Efficiency: A Study of the Social Forces that have Shaped The Administration of the Public Schools.* Chicago: The University of Chicago Press, 1962.

Caputo, John D. *Deconstruction in a Nutshell:A Conversation with Jacques Derrida.* New York: Fordham University Press, 1997.

Cherryholmes, Cleo H. *Power and Criticism: Poststructural Investigations in Education.* New York: Teachers College Press, 1988.

Cottingham, John ed., *The Cambridge Companion to Descartes*. Cambridge: Cambridge University Press, 1992.

Cremin, Lawrence A. *The Transformation of the School.* New York: Knopf, 1961.

Cubberley, Ellwood P. *A Brief History of Education.* Boston: Houghton Mifflin, 1922.

De Oliveira, Nythamar Fernandes. *On the Genealogy of Modernity: Foucault's Social Philosophy*. New York: Nova Science Publishers, Inc., 2003.

Deluze, Gulles . *Foucault*, transl. And ed., Sean Hand, forward by Paul Bove' Minneapolis: University Press, 1986.

Derrida, Jacques *Of Grammatology*. Trans. Gayatri Chakravorty Spivak. Baltimore: The Johns Hopkins University Press, 1997.

Edwards, Newton. *The Courts and the Public Schools,* Chicago: The University of Chicago Press, 1955.

Fink-Eitel, Hinrich. *Foucault: An Introduction*. Trans. Edward Dixon Philadelphia: Pennbridge Books, 1997.

Fischer, Louis, David, Schimmel, and Leslie R. Stellman. *Teachers and the Law.* Boston: A and B, 2003.

Ford, Paul Leicester. *From the Works of Thomas Jefferson.* 1904, cited in Kern Alexander and M. David Alexander, *American Public School Law.* 6th ed. Belmont: Thomson West, 2005.

Foucault, Michel. *The Archeology of Knowledge and Discourse on Language*. Trans. Alan M. Sheridan. New York: Pantheon Books, 1972.

Foucault, Michel. *Discipline and Punishment: The Birth of the Prison*. Trans. Alan M. Sheridan. New York: Vintage Books, 1979.

Foucault, Michel. *The Order of Things: An Archaeology of the Human Sciences.* New York: Vintage Books, 1970.

Foucault, Michel. *Power and Knowledge.* New York: Pantheon, 1980.

Foucault, Michel. *The Birth of the Clinic.* New York: Vintage Books, 1973.

Foucault, Michel. *The Subject and Powering.* Eds. Hubert Dreyfus and Paul Rainbow. Michel Foucault: Beyond Structuralism and Hermeneutics. Chicago: The University of Chicago Press, 1982.

Foucault, Michel. *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977,* ed. Colin Gordon, New York: Pantheon Books, 1980.

Garton, S. *Writing Eugenics: A History of Classifying Practices*need book info Cited in M. Crotty , J. Germov, and G. Rodwell eds. *A Race for a Place: Eugenics, Darwinism, and Social Thought and Practice in Australia* New Castle: The University of Newcastle Press.

Giroux, Henry. *Toward a Critical Politics of Teacher Thinking.* Westport: Bergin and Garvey, 1993.

Goodlad, John F. *A Place Called School: Prospects for the Future.* New York: McGraw-Hill Book, Co., 1984.

Goodlad, John I. *What Schools Are For.* Bloomington: Phi Delta Kappa Educational Foundation, 1979.

Goodlad, John I. *Directions of Curriculum Change*, cited in Frederick R. Smith and R. Bruce McQuigg eds. *Secondary School Today: Reading for Educators*. NY: Houghton Mifflin Company, 1965.

Hardiman, Michael L., Clifford J. Drew, and M. Winston Egan, comps. *Human Exceptionality: Society, School, and Family.* 5th ed. Boston: Allyn and Bacon, 1996.

Hawkes, Terrance. *Structuralism and Semiotics.* Berkely: University of California Press, 1977.

Held, David. *Introduction to Critical Theory.* Berkeley: University of California Press, 1980.

Hellinger, Daniel, and Dennis R. Judd. *The Democratic Facade.* Belmont: Wadsworth, 1994.

Hoffman, Banesh. *The Tyranny of Testing.* New York: Crowell-Collier Press, 1962.

Holdcroft, David. *Saussure: Signs, Systems, and Arbitrations.* Cambridge: Cambridge University Press, 1999.

House, Ernest R. *Schools for Sale: Why Free Market Policies Won't Improve America's Schools and What Will.* New York: Teachers College Press, 1998.

Howe, Maude and Florence Hall, *Laura Brigman.* Boston: Perkins Institution, 1904.

Huefner, Dixie Snow. *Getting Comfortable with Special Education Law: A Framework for Working with Children and Disabilities.* Norwood: 1998.

Hurley, Robert. *The History of Sexuality: An Introduction*. Trans. New York: Pantheon Books, 1978.

Jurmain, Suzanne. *The Forbidden Schoolhouse: The True and Dramatic Story of Prudence Crandall and Her Students.* New York: Houghton Mifflin, 2005.

Lane, Michael. *The Structural Method: Structure and Structuralism*. London: Jonathan Cape, 1971.

Lemann, Nicholas. *The Big Test: The Secret History of the American Meritocracy.* New York: Farrar, Straus, and Giroux, 1999.

Lemert, Charles. *Michel Foucault: Social Theory as Transgression*. New York: Columbia University Press, 1982.

Levine, Erwin L.and Elizabeth. M. Wexler. *PL94-142: An Act of Congress.* New York: Macmillian, 1981.

Lindquist, E.F. ed., *Educational Measurement.* Washington, D.C.: American Council on Education, 1951.

Lyotard, Jean-Francois. *The Differend: Phases in Dispute.* Trans. Georges Van Den Abbeele. Minneapolis: The University of Minnesota Press, 1984.

Lyotard, Jean-Francois. *The Postmodern Condition: A Report on Knowledge.* Trans. Geoff Bennington and Brian Massumi. Minneapolis: University of Minnesota Press, 1997.

Mager, Robert. *Preparing Instructional Objectives*, 2nd ed. Belmont: Fearon-Pittman Publishers, 1975.

McCarthy, Thomas. *The Critical Theory of Jürgen Habermas*. Cambridge: MIT Press, 1988.

McHoul, Alec and Wendy Grace,. *A Foucault Prime: Discourse, Power, and the Subject*. Carlton: Melbourne University Press, 1997.

Morris, Meaghan and Paul Patton, eds. *Michel Foucault: Power, Truth, and Strategy*. Sydney: Feral Publications, 1979.

Noguera,Pedro. *City Schols and the American Dream.* New York: Teachers College Press, 2003.

Oksala, Johanna. *Foucault on Freedom*. Cambridge: Cambridge University Press, 2005.

Peters, Michael. *Naming the Multiple: Postructuralism and Education*. Westport: Bergin and Garvey, 1998.

Phillips, Kevin. *Wealth and Democracy.* New York: Broadway Books, 2002.

Postman, Neil. *The End of Education: Redefining the Value of School*. New York: Knopf, 1995.

Powers, Richard H. *The Dilemma of Education in a Democracy.* Chicago: Regenery Gateway, 1984.

Rabinow, Paul, ed. *The Foucault Reader*. New York: Pantheon Books, 1984.

Readings, Bill. *Introducing Lyotard, Art, and Politics.* New York: Routledge, 1991.

Reese, William J. *America's Public Schools*. Baltimore: The John Hopkins University Press, 2005.

Reese, William J. *America's Public Schools: From the Common School to "No Child Left Behind*". Baltimore: The Johns Hopkins University Press, 2005.

Robey, David. *Structuralism: An Introduction* in *The Linguistic Basis of Structuralism,* ed., Jonathon Culler. Oxford: Claredon Press, 1973.

Scheerenberger, Richard C. *A History of Mental Retardation.* Baltimore: Paul H. Brookes, 1983.

Shumway, D. R. *Michel Foucault*. Boston: Wayne Publications, 1989.

Smith, David J. and K. Ray Nelson. *The Sterilization of Carrie Buck.* Far Hills: New Horizons Press, 1989.

Sorrells, Audrey McCray, Herbert J. Reith, and Paul T. Sindelar, eds., *Issues in Special Education.* Boston: Allyn and Bacon, 2004.

Stiker, Henri-Jaques. *A History of Disability*, Trans. William Sayers. Ann Arbor: University of Michigan Press, 1999.

Stormer, John. *None Dare Call It Education: The Documented Account of How Education "Reforms" are Undermining Academics and Traditional Values*. Florrisant: Liberty Bell Press, 1998.

Strozier, Robert M. *Foucault, Subjectivity and Identity: Historical Constructions of Subject and Self*. Detroit: Wayne State University, 2002.

Trent, James W. Jr. *Inventing the Feeble Mind: A History of Mental Retardation in the United States.* Berkeley: University of California Press, 1994.

Turnball, Rutherford, Nancy Huerta, and Mathew Stowe, *The Individuals with Disabilities Education Act as Amended in 2004.* Upper Saddle River: Pearson Merrill Prentice Hall, 2006.

Turnball, Rutherford. *The Individuals with Disabilities Education Act as Amended in 2004*. Upper Saddle River: Pearson, Merrill Prentice Hall, 2006.

Tyak, David B. Turning Points in American Educational History. Boston: Blair Publications, 1967.

Tyak, David B. & Cuban, Larry. *Tinkering Toward Utopia: A Century of Public Reform.* Cambridge: Harvard University Press, 1995.

Walker, Elaine M. *Educational Adequacy and the Courts*. Santa Anna: ABC CLIO, 2005.

Winzer, Margret A. *The History of Special Education: From Isolation to Integration*. Washington, DC: Gallaudet University Press, 1993.

Wong, K. C. and M. C. Wang. Eds. *Rethinking Policy for At-Risk Students.* Berkeley: McCutchan Pubublishers, 1994.

Yell, Mitchell L. *The Law and Special Education.* 2nd ed. Upper Saddle River: Pearson Merrill Prentice Hall, 2006.

Journals

Apel, K-O. "The a priori of Communication and the Foundation of the Humanities." *Man and World*, (February 1972): n.a.

Author unknown. "Educational Milestone." *Jet* (29 August 1994): 20.

Baker, Benadette. "The Hunt for Disability: The New Eugenics and the Normalization of School Children." *The Teachers College Record* 104, no. 4 (June 2002): 665.

Burbles, Nicholas. "Ways of Thinking about Education." *Quarterly Educational Research*, 33, no.6 (August/September 2004): 5.

Butts, R. Freeman. "Search for Freedom: The Story of American Education." *NEA Journal* (March 1960): 40.

Canady, Robert and Phyllis Hotchkiss. "It's a Good Score: It's Just a Bad Grade." *Phi Delta Kappan* (September, 1989): 68-71.

Danforth, Scot. "What Can the Field of Developmental Disabilities Learn From Michel Foucault?" *Mental Retardation* 38 (2000): 365.

Deno, Evelyn. "Special Education as Developmental Capital." *Exceptional Children* 30, no. 1 (November 1970):229-237.

Evans, Robert. "The Great Accountability Fallacy." *Education Week* XVIII, 20 (1999): 52.

Fazzaro, Charles, J. "Critical Enquiry and Implications for Education, Policy, and Practice." *The Journal of Philosophy & History of Education* 52 (2002): 52-56.

Finn, Chester E. Jr. and Michael J. Petrilli. "Conjuring Cut Scores." *American Educator* (Winter 2007-2008): 20-28.

Foucault, Michel. "Kant on Enlightenment and Revolution." *Economy and Society* 15, no.1 **YEAR**: 96.

Foucault, Michel. "Sexual Choice, Sexual Act: An Interview with Michel Foucault", *Salmagundi* 1982-1983 (58-59): 16 -17.

Freeberg, E. "More important rabble of common kings: Dr. Howe's education of Laura Brigman." *History of Education Quarterly* 34 (1994): 305-307.

Fuchs, Doug. "Toward a Responsible Reintegration of Behaviorally Disordered Students." Behavior Disorders (February 1991): 133-147.

Goldstein, L. "Long-awaited Special Education Testing Rules Issued." *Education Week* 27, no. 4 (2007): 27.

Goodlad, John I. "The Great American Schooling Experiment," *Phi Delta Kappan* (December 1985): 268.

Honan, William H. "Looking Back at Forward Thinkers." *Education Life volume* # (November 2, 1997): 2

Hoskin, Keith W. And Macve, Richard H."The Genesis of Accountability." *Accounting, Organizations, and Society* 13 no. 1(1988): 37-73.

Jacob, James. "Dummies" *American Annals of the Deaf and Dumb* 14 (1869): 20.

Katsylannis, Antonis, Dalun Zhang, and April Hendricks. "Legal and Policy Issues in Special Education in an Era of Reform." *A Legal Memorandum: Quarterly Law Topics for School Leaders* (Spring 2005): 2.

Marodsley, Ralph D. and J. Joy Cumming. " School District Accountability, Special Education Students, and the Dilemma of High Stakes Testing: An Australia - United States Comparison." *West's Educational Law Reporter* (29 July 2004): 3.

McLaughlin, Margaret, Victor Nolet, and Lauren Morano Rhim. "Integrating Standards, Including All Student." *Teaching Exceptional Children* 31, no. 3 (Jan./Feb. 1999): 66-71.

Mourad, Roger Jr. "Education after Foucault: The Question of Civility." *Teachers College Record*, 103 no. 5 (2001): 741-42.

Samuels, C. "Special Education Test Flexibility Detailed." *Education Week* 24, no. 37 (2005): 27.

Schek, K. "Deferred AYP Goals Catch Up with States This Year." *Education Daily* 38 (January 24, 2005): 14.

Seigal, J. P. "The Enlightenment and the Evolution of the Language of Signs in France and England." *Journal of the History of Ideas* 30 (1969): 96-115.

Smith, Robin M. and Nirmala Erevelles. "Towards an Enabling Education: The Difference that Disability Makes." *Educational Researcher* 33 (November 2004): 31.

Smith, J. D. "Histories of Special Education: Stories from Our Past, Insights for Our Future." *Remedial and Special Education* 19, no.4 (July/ 1998): 196-200.

Snow Huefner, Dixie. "The Mainstreaming Cases: Tensions and Trends for School Administrators." *Educational Administration Quarterly* (need volume number)(February 1994): 27 - 55.

Suchak, Bhawin. "Standardized Testing: High Stakes for Students and for Corporate Bottom Lines." *Journal for Living* 23 (2001): 36.

Thiele, Leslie Paul. "The Agony of Politics: The Nietzschean Roots." *American Political Science Review* 84 no. 3 (September 1990): 907.

Trow, Martin. "The Second Transformation of American Secondary Education." *International Journal of Comparative Sociology* n.s. (September 1961): 147.

Winzer, Margret A. "A Tale Often Told: The Early Progression of Special Education." *Remedial and Special Education* 19, no.4 (July/August, 1998): 214.

Winzer, Margret A. "A Tale Often Told: The Early Progression of Special Education." *Remedial and Special Education* 9, no.4 (July/August 1998): 212- 218.

Wolin, Richard. "Foucault the Neohumanist?" *Chronicle of Higher Education* (September, 2006): 1.

Yell, Mitchell L., David Rogers, and Elisabeth Lodge Rogers. "The Legal History of Special Education: What a Long, Strange Trip It's Been!," *Remedial and Special Education* 19 (July/August 1998): 226.i

Yell, Mitchell. L., D. Rogers, and E. Lodge-Roberts. "The Legal History of Special Education" *Remedial and Special Education* 19, no. 4 (1998): 219-228.

Magazines

White, Edmund. "The Emperor of the Mind." *Vogue*, (November 1984): 232, 236.

Newspapers

Ravitch, Diane. "The Public School's Task and How They Grow." *The New York Times*, 16 November 1975.

Nonprint

Evans, Ellis D. "A Development Study of Student Perceptions on School Grading," paper presented at the biennial meeting of the Society for Research in Child Development, Toronto, Ontario, Canada, 25-28 April 1985 [ED 256 487].

Ferguson, Philip. "Creating the Continuum: J.E. Wallace and the Emergence of Public School Special Education," paper presented at the Annual Meeting of the American Educational Research Association, San Francisco, CA, 10 April 2006.

Electronic

American Experience Online, 1995 ed, PBS - Mary McLeod Bethune, accessed 5 Feb 2008; available from http://www.pbs.org/wgbh/amex/eleanor/peopleevents/pande05.html.

American Federation for the Blind -Ann Sullivan Macy, 2008 ed.; accessed on 16 Feb 2008; available from http://www.afb.org/annesullivan/asmgallery.asp?GalleryID=17.

Brians, Paul. "*The Enlightenment*" access 18 May 2007; available from: http://www.thenlightenment.htm.

Coulter, A. "Focusing Only on Compliance Could Cripple AYP Efforts." *Education Daily* 37: 1 at LRP Publications, 2004; accessed 8 Jan 2008; available from http://www.**educationdaily**.net.

Encyclopedia of World Biography - Ludwig Wittgenstein, 2005 - 2006 ed.accessed 3April 2007; available from http://www.bookrags.com/biography/ludwig-wittgenstein/.

Endres, Benjamin J. "Ethics and the Critical Theory of Education." *Teachers College, Columbia University*; accessed 1 Nov. 2005; available from: http://www.ed.unuc.edu?EPS/PES-Yearbook/97_docs/endres.html.

FindLaw Resources for Legal Profressionals - a Thomson Reuters Business, 1994 - 2008, National Defense Education Act, accessed on 30 September 2007; available from http://caselaw.lp.findlaw.com.

Harvard University Library - Open Collections Program - Women Working - Emma Hart Willard, 2008 ed.; accessed 15 Feb 2008; available from http://ocp.hul.harvard.edu/ww/people_willard_emma.html.

LexisNexis, 2004 ed.; "A Brief History of High-Stakes Testing Challenges, Interpretations," *The Special Educator* 19 (2004): 17; accessed 3 May 2004; available at http://www. LexisNexis.com.

LexisNexis, 2004 ed.; "State Plans Contain Specific Data for Exceptions to 1 percent cap," *The Special Educator* 19 (2004): 6; accessed 3 May 2004; available at http://www. LexisNexis.com.

Mount Holyoke College - Office of Communication -Mary Lyon and Mount Holyoke, 1997 ed.; accessed on 30 Jan 2008; available from http://www.mtholyoke.edu/marylyon/.

National Women's History Museum - Nannie Helen Burroughs, 2007 ed.; accessed on 15 Feb 2008; available from http://nwhm.org/exhibits/Education/Nannie%20Helen%20Burroughs%20Bio.html.

National Women's History Museum - Catherine Beecher Snow, 2007 ed.; accessed 15 Feb 2008; available from http://www.nwhm.org.

National Women's History Museum - Sarah J. Hale, 2008 ed.; accessed on 10 Feb 2008; available from http://www.nwhm.org.

No Child Left Behind, 2001. Online. available from www.ed.gov/nclb/index/az/index.html.

Rees, Jonathan. "Frederick Taylor in the Classroom: Standardized Testing and Scientific Management," *Radical Pedagogy* 3, no. 2 (Fall, 2001) accessed on 14 July 2006, available from http://radocalpedagogy.icap.org/content/issue3.2/.

State Report of the Individual with Disabilities Act Amendments of 1997, Online. Available from www.wais.access.gpo.gov.

The Free Dictionary - Jorgen Habermas, 2008, accessed 23 Oct 2007, available at http://encyclopedia.thefreedictionary.com/J%FCrgen+Habermas.

The Lucy Craft Museum of Black History - Lucy Craft Laney, 2007 ed., accessed on 16 Feb 2008; available from http://www.lucycraftlaneymuseum.com/aboutmslaney.htm.

The Free Dictionary - Pierre Bourdieu, 2008 accessed 23 Oct 2007, available from http://encyclopedia.thefreedicitonary.com/Pierre+Bourdieu.

The Dictionary of Unitarian and Universalists Historical Society - Biography of Judith Sargent Murray, 1999 - 2008 ed., accessed 1 March 2008 available from http://www.uua.org/uuhs/duub/articles/judithsargentmurray.html

Government Documents

1990 Individuals with Disabilities Act: PL 101-476

2004 Individual with Disabilities Educational Act: 34 CFR 300.17 PL 108-446 Sec. 1400a and 34 CFR 300.101 through 300.103.

Americans with Disabilities Act: PL 101-336

Census Bureau's Housing and Household Economic Status Division

Center on Educational Policy. *Year 3 of the No Child Left Behind Act*, 35.

Civil Rights Act of 1964: PL 88-352 [414 U.S. 563]

Education for All Handicapped Children's Act (EAHCA): PL 94-142

Elementary and Secondary Education Act: PL 89-10

Handicapped Children's Protection Act of 1986

IDEA Part B 34 CFR - Article 14 of the School Code

Illinois Administrative Code 226.10

National Commission on Excellence in Education . *A Nation at Risk: The Imperative for Educational Reform.* Washington, D.C.: United States Department of Education, 1983.

No Child Left Behind Act: Sec. 1001 - PL 107-110

Rehabilitation Act of 1973: PL 93-112 29 USC 974

U.S. Constitution Amendment 10

U.S. Department of Education. *Twenty-fourth annual report to Congress on the implementation of the Individuals with Disabilities Act.* Washington, DC: Author, 2002.

U.S. Constitution Amendment 14.

Court Cases

Brown v Board of Education of Topeka 347 U.S. 14 St. Ct. 686 (1954)

Beattie v The Board of Education SUPREME COURT of WISCONSIN, 169 Wis. 231; 172 N.W. 153 (Wis. 1919)

Chapman v California Department of Education 36 IDELR 91 (N.D. Cal. 2002)

Department of Public Welfare v Haas (No. 34954, Supreme Court of Illinois 15 O;; 2d 204; N.E. 2d 265, 1958)

Lau v Nichols [Civil Rights 414 U.S. 563, 571 and 5969]

Mills v Board of Education of the District of Columbia 348 F. Supp. 866 (1972)

PARC v Commonwealth of Pennsylvania 343 F. Supp. 279 (ED. Pa. 1972)

Plessy v Ferguson 163 U.S. 537 (1896)

Rene by Rene v Reed 34IDELR 284 (Ind. Ct. Appl. 2002)

Watson v City of Cambridge SUPREME COURT of MASS 157 Mass 561: 32 N.E. 864 (Mass, 1893)

Unpublished Sources

Fazzaro, Charles J. "Michel Foucault" [University of Missouri-St. Louis] 2003," St. Louis, Missouri: Department of Education Leadership and Administrative Policy n.d. Photocopied.

Dissertations

Woodard Bevel, Mary. "Justice, Judgement, Access, and Special Education Policy Analysis and the Language Games of Jean-Francois Lyotard." Ed.D. diss., University of Missouri-St. Louis, 1997.

McCoy, Arteveld J. II. "Education, Democracy, and Jean-Francois Lyotard's Language Games: Accountability and Testing in Missouri's Public Schools." Ph.D. diss., University of Missouri-St. Louis, 2002.