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**THE RHETORIC OF THE NO CHILD LEFT BEHIND ACT OF 2001:
HISTORY, ECONOMICS, AND COERCION**

A Thesis in

Communication Arts & Sciences

by

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ABSTRACT

This thesis undertakes a rhetorical examination of the No Child Left Behind Act of 2001 (NCLB). Since it was signed into law in January of 2002, NCLB has dominated the policy discussion of public education at the national level and deserves attention as a critical episode in the development of American attitudes toward public education. This thesis studies the language of the law itself, rhetorically analyzing the text of NCLB. Although NCLB is the textual focus of this project, this examination of NCLB must draw on additional texts as they are necessary to contextualize the rhetoric of NCLB within a broader historical discourse on public education in the United States as well as within the contemporary cacophony of federal education policy. Particular attention is paid to the rhetoric of authority operating in NCLB. This thesis examines the ways in which NCLB justifies, executes, and enforces its authority through rhetoric, taking a chapter to address each. This focus on authority connects the rhetorical components of NCLB with some of its social and institutional implications. In order to do so, this thesis examines how: (1) the legal history of NCLB is mobilized as a justification for its authority, (2) NCLB executes its authority over education through the characterization of education as economic, and (3) NCLB enforces its authority through coercion and depoliticization resulting in the first federally endorsed pedagogy.

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Chapter 1

An Educational Project

The No Child Left Behind Act of 2001 (NCLB) supplanted both the public and academic discussions of education policy in the United States. One no longer speaks of federal education policy, one now speaks of NCLB. Just as NCLB's importance is rarely disputed, its textual content is rarely the focus of extended discussion. The actual text of NCLB is typically absent from both public and academic dialogue on the law. This is not to suggest that the academic and public discussions about the law have been without value, but to point out that they might benefit from a closer look at the text of NCLB. Although a host of academic works have been written on the political aspects of NCLB, most of those works have focused on the history and process of passing federal education policy, not on NCLB's textual content.¹ Additionally, many of those scholarly projects have eschewed the controversies attendant in carefully examining NCLB's revolutionary content preferring instead to transcend politics and offer an explanation of how its passage became politically possible. Some scholarship has addressed the content of NCLB, criticizing its full-throated endorsement of social-scientific education research or its grounding in neoliberal policymaking, but much of this scholarship is concerned primarily with critical theory

¹ Lee W. Anderson, *Congress and the Classroom: From the Cold War to “No Child Left Behind”* (University Park, PA: The Pennsylvania State University Press, 2007); Kevin R. Kosar, *Failing Grades: The Federal Politics of Education Standards* (Boulder, CO: Lynne Rienner Publisher, 2005); Paul Manna, *School’s In: Federalism and the National Education Agenda* (Washington D.C., Georgetown University Press, 2007); Patrick McGuinn, *No Child Left Behind and the Transformation of Federal Education Policy 1965-2005* (Lawrence: The University of Kansas Press, 2006); Keith A. Nitta, *The Politics of Structural Education Reform* (New York, NY: Routledge, 2008).

and fails to link its criticism to the specific content of the text.² Criticisms based in critical theory, which often embody rigid epistemological perspectives, lack the flexibility to account for more than one of NCLB's purported philosophical sins at a time. Perhaps most flummoxing, the scholarship that has examined the text of NCLB most closely has done so from a quantitative perspective that treats the law as a database of words therefore doing little to account for its rhetorical force.³ Although NCLB is written in the austere legislative prose of the American legal tradition, its contents are far from uniform. NCLB is a rigidly hierarchical document produced by multiple authors that defies uncritical simplification.

This thesis undertakes a rhetorical analysis of NCLB's neglected textual content. The analysis centers on the text itself, drawing in other texts and scholarship in order to explain how NCLB has been constructed and how it operates within legal, educational, and political discourses. Because a detailed analysis of the entire six hundred and seventy page document would be an exercise in tedium and because assuming that every piece of NCLB is of equal importance commits the same fallacy as a strictly quantitative analysis, this project engages a selection of NCLB's critical sections. Although the selected sections offer only a piecemeal account of the rhetoric of NCLB, they are organized so that they offer insight into the most important components of NCLB's statutory rhetoric.

Statutory rhetoric is the set of strategies a law employs in the composition of its text to gain purchase on the world outside of language. The justification, application, and enforcement of authority are enacted in turn to produce the rhetorical force of NCLB. This thesis examines

²Emery J. Hylsop-Margison and M. Ayaz Naseem, *Scientism and Education: Empirical Research as Neo-Liberal Ideology* (New York, NY: Springer, 2007); Carlos Alberto Torres, *Education and Neoliberal Globalization* (New York, NY: Routledge, 2009); Paul Shaker and Elizabeth E. Heilman, *Reclaiming Education for Democracy: Thinking Beyond No Child Left Behind* (New York, NY: Routledge, 2008).

³ Paul Manna and Michael J. Petrilli, "Double Standard? 'Scientifically Based Research' and the No Child Left Behind Act," in *When Research Matters: How Scholarship Influences Education Policy*, by Frederick M. Hess (Cambridge, MA: Harvard Education Press, 2008), 63-88.

each of the three critical components of statutory rhetoric in turn, pairing every one with the relevant section or sections of NCLB.

Exigencies in Addition to Dewey's Prescient Observation

"The benumbing, mechanical influence which is the serious evil of the average American school today is in full operation." – John Dewey, 1896⁴

On January 8, 2002, in a high school in Hamilton, Ohio, President George W. Bush signed the No Child Left Behind Act of 2001 into law stating, "today begins a new era, a new time in public education in our country. As of this hour, America's schools will be on a new path of reform, and a new path of results."⁵ The president then traveled with Senators Ted Kennedy and Judd Gregg, and Representatives John Boehner and George Miller to schools in New Hampshire and Massachusetts to repeat his speech. The bipartisan tour celebrated House Resolution Number 1 of the 107th Congress, which became the first major legislative victory of the nascent Bush administration.

The No Child Left Behind Act of 2001 (NCLB) is a reauthorized version of the Elementary and Secondary Education Act of 1965 (ESEA), which governs the majority of federal funding for kindergarten through twelfth-grade education in the United States. The ESEA requires reauthorization every five years. NCLB is the latest reauthorization of the ESEA and is a product of the political contestation over the federal role in public education that usually attends ESEA reauthorization debates. The ESEA began its legislative life as piece of Civil Rights

⁴ John Dewey, "The Influence of the High School upon Educational Methods," *School Review* 4, no. 1 (1896): 5. *School Review* is now the *American Journal of Education*.

⁵ George W. Bush, *Public Papers of the President of the United States, 2002* vol. 1 (Washington D.C.: GPO, 2004), 23-26.

legislation under the umbrella of President Lyndon Johnson's Great Society programs. The law itself is composed of nine "Titles" each governing federal funding for some aspect of public education.⁶ Although NCLB is developed from the ESEA of 1965, a great deal of the law has been changed in the intervening decades. In addition to other influences, NCLB inherited its commitment to accountability from reforms made to the Texas public schools during President George W. Bush's tenure as governor.⁷

The President's signing statement indicated that the reauthorized law was redesigned so that it would enforce education reform through standardized tests that were to be designed and administered on a state by state basis. Whereas the ESEA provided federal funds to educators in order to correct the social and economic inequalities identified by President Johnson's War on Poverty, NCLB—despite being the statutory descendant of the ESEA—provides those same funds to educators with no direct concern for social and economic inequalities.⁸ Instead, NCLB provides federal funding with the expectation that inequalities in educational achievement will be measurably reduced. In order to fulfill the funding requirements of No Child Left Behind each state creates its own testing system to measure the academic progress of all students at schools receiving federal funds. NCLB conditions federal support on the outcomes of those tests, forcing schools in need of federal funding to find ways to improve their students' test scores.⁹ In this way, NCLB has greatly expanded the role of the federal government in education and has forced a massive realignment of educational practices through the use of funding as an enforcement mechanism.¹⁰

⁶ McGuinn, *No Child Left Behind*, 30-31.

⁷ Jennifer Hochschild and Nathan Scovronick, *The American Dream and the Public Schools* (Oxford: Oxford University Press, 2003), 102.

⁸ David Zaresky, *President Johnson's War on Poverty: Rhetoric and History* (University, AL: University of Alabama Press, 1986), ix.

⁹ Kosar, *Failing Grades*, 192.

¹⁰ McGuinn, *No Child Left Behind*, 8, 182-183.

As a result of the process of reauthorization, the language of NCLB itself has become a major site of contestation over the rhetoric of federal education policy. Much like presidential elections, federal legislation that requires reauthorization elicits significant political discourse each time it is engaged. Because the ESEA is designed to be reauthorized every five to six years, it is regularly the object of political disputes. These disputes are not only useful for sampling the political attitudes toward federal education policy as they occur, but can provide grounds for a historical analysis when compared across time. The disputes over education policy have become especially intense owing to the paucity of alternative laws and institutions governing education at the federal level. The ESEA is one of few education laws over which consequential political conflict can be pursued and has become the focus of most federal education policy.¹¹ Even after the novel federal impositions of NCLB, most administrative decisions concerning public education in the United States continue to be made at the local and state level. There are very few education laws at the national level. The laws that do exist—NCLB included—have the power to determine the policy of the Department of Education. This makes NCLB the most effective option for federal lawmakers who want to make changes to the way public education is carried out on the local level. In other words, NCLB is among the most potent governmental levers for producing actual change in the practice of educating in the United States.

These periodic and intense contestations over federal funding for education through the reauthorizations of the ESEA have altered the language of the act so thoroughly that not even its name has been spared: “No Child Left Behind” is the law’s fourth appellation. The names, in order, are: Elementary and Secondary Education Act of 1965, the name did not change in 1978, Education Consolidation and Improvement Act of 1981, Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Improving America’s

¹¹ Adam R. Nelson, “Epilogue: New Directions in the History of Education,” in *Rethinking the History of American Education*, ed. William J. Reese and John L. Rury (New York: Palgrave MacMillan, 2008): 285.

Schools Act of 1994, and No Child Left Behind Act of 2001. In addition to the name of the law, significant passages are regularly altered, added, or removed. For example, both acts begin with a statement declaring a purpose for the act. The ESEA states that it is, “An act to strengthen and improve educational quality and educational opportunities in the Nation’s elementary and secondary education schools.”¹² NCLB declares that it is, “An act to close the achievement gap with accountability, flexibility, and choice so that no child is left behind.”¹³ The shift in the purpose between the two pieces of legislation is immediately apparent. Whereas the ESEA of 1965 sought to improve public education both in terms of quality and opportunity—the second of which suggests desegregation, NCLB declares its intention to lessen the differences in the level of achievement between public school students. Amazingly, between the version of the statement of purpose from the ESEA of 1965 and the NCLB version of the statement of purpose the words “improve” and “education” are lost. The stated purpose of the act shifted from a concern with education in and of itself to a focus on the outcome of education. NCLB shed both the call to improve schools and to make the opportunities in them more equal in favor of equalizing the effect of all schools on their students. This change is notable across the justification, enactment, and maintenance of NCLB’s statutory rhetoric. Amendments, additions, omissions, and reprioritizations like this one are the focus of this examination of NCLB because they help to account for the rhetorical development and force of NCLB. A more complete understanding of the law and the rhetoric it mobilizes to govern public education in the United States requires the engagement of these textual details.

¹² *Elementary and Secondary Education Act of 1965*, Public Law 89-10, 89th Cong., 1st sess. (April 11, 1965), title page.

¹³ *No Child Left Behind Act of 2001*, Public Law 107-110, HR 1, 107th Cong., 1st sess. (May 14, 2001), title page.

Heavy Reading

“In that box is the bill. I don’t intend to read it all. It’s not light reading.” – President George W. Bush, 2002¹⁴

As President Bush’s statement suggests, committing a rhetorical analysis of NCLB is no small or simple task. NCLB is six hundred and seventy pages of dense legal prose composed by multiple authors, many of whom disagreed about the purpose and content of the law as they were writing it. Because rhetorical analysis has a magnifying effect on language and NCLB is such a lengthy document, analyzing the rhetoric of NCLB therefore necessitates a measure of focus. In order to analyze a text in detail, a rhetorician selects critical portions of a text and produces additional language to explain their function. Like a magnifying glass, rhetorical analysis exposes the inner workings of a text by making its details easier to perceive. Rhetorical analysis is also like a magnifying glass in that it temporarily removes the rest of the text from focus while it reveals the subtle features of a selected portion. The central aim of this thesis is to investigate the text of the No Child Left Behind Act of 2001 as a development in the discourse of education policy. The thesis achieves its rhetorical foci and depth through three sets of questions, each of which magnify certain portions of the text of NCLB: (1) How does NCLB mobilize its rhetorical antecedents as a reauthorization of the ESEA? What language does it reproduce, what language does it change, and what language does it abandon? What societal problem does NCLB propose to solve? (2) How does NCLB figure the world? What means of classification does it create for public schools, how does it define those categories, and how are schools assigned to them? How does NCLB’s system of classification construct education as a malleable object of public policy?

¹⁴ Bush, *Public Papers of the President of the United States, 2002*, 24. President Bush made this comment as part of a speech he gave at the signing of NCLB in Hamilton, Ohio on January 8, 2002. The bill was in a box next to him on the stage. It is ambiguous as to whether the comment meant that Bush would not read NCLB himself or that he would not read the bill to the audience as part of his remarks.

(3) How does NCLB enforce its demands? With an understanding of the system of categorization that NCLB has created, what are the rhetorical consequences for schools once they have been categorized, and what are the values inherent in this system of categorization? How—if at all—does this constitute a pedagogical stance on the part of the legislation?

These questions all begin with the text of NCLB itself because this thesis is concerned primarily with NCLB itself. In order to build an understanding of the rhetoric of NCLB—an understanding of the law itself, not its political history or relation to a critical theory—it is necessary to begin with its textual content and to bring other resources to bear only when the process of building an understanding of NCLB requires them. Because NCLB is a reauthorized law, the questions that drive this project have been organized so that they account for NCLB's statutory rhetoric. Unlike legal scholarship, rhetorical analysis cannot simply grant NCLB its genre without critical examination. NCLB is a law and its composition as such is of critical importance to its textual content. Not only must NCLB fulfill certain generic obligations as a legal document, but it also occupies a particular place in the field of legal discourse. According to its statement of purpose, NCLB is an act of Congress designed to legislate the end-product of public education in the United States. NCLB attempts to influence the results of a process of collective action which requires ordering the actions of a collection of subordinate entities. NCLB is not written for an audience of peers. It is an authoritative discourse. Just like any other law, NCLB commands its audience to take action and functions as the decisive voice on what that action should be. A rhetorical analysis that accounts for NCLB must therefore acknowledge and engage the statutory character of its rhetoric.

Statutory rhetoric is composed with the intention of compelling those to whom it is addressed to take a prescribed action or actions. Using the framework of the law, statutory rhetoric attempts to use language to form the world outside of language. Francis Mootz III recognizes the role of rhetoric in law, asserting that “legal practice is rhetoric all the way down,”

and explaining that “rhetoric is not merely stylistics that mask the exercise of power; its [rhetoric’s] efficacy derives from participating in the generation and definition of authority.”¹⁵ According to Mootz, there can be no law without rhetoric, because rhetoric is the means by which the authority of the law is constituted and applied. Additionally, David V. J. Bell implicates rhetoric in the generation and practice of authority by defining authority as a “communications-relationship expressed as an order or command.”¹⁶ For Bell, authority exists in the world only as an act of communication. If authority itself is an act of communication, then the rhetorical composition of that communication is critical to understanding the apparatuses of authority.

In its assertion of authority, statutory rhetoric employs three basic maneuvers. Statutory rhetoric cannot function without each of these components. They are the justification, application, and enforcement of authority. Justification is the process by which NCLB produces its authority. It is statutory rhetoric’s first step because it legitimates the commanding discourse that follows. NCLB justifies its authority by claiming to inherit the legal authority of the ESEA and by appealing to the value of its purpose as an improvement for public education. Having justified its authority, NCLB is then able to apply it. The application of authority is the second step of statutory rhetoric and it is where the discourse of a law interacts with the world outside of language both describing and prescribing it. NCLB applies its authority by defining education as an economic object of public policy and then balancing federal input with educational output. The last move of statutory rhetoric is the enforcement of authority. Enforcement is the process of creating consequences for the world outside of language and then pairing those consequences with the fidelity or infidelity of that world to the prescriptions of the statute. NCLB enforces its

¹⁵ Francis J. Mootz III, *Rhetorical Knowledge in Legal Practice and Critical Legal Theory* (Tuscaloosa, AL: The University of Alabama Press, 2006), 132-133.

¹⁶ David V. J. Bell, *Power, Influence, and Authority: An Essay in Political Linguistics* (New York, NY: Oxford University Press, 1975), 56.

authority through testing regimes that determine the success or failure of local educational agencies. Each of these moves is investigated in a separate chapter in this thesis.

A More Modest Proposal

Chapter 2 examines NCLB's rhetoric of justification. Since justification is a necessary first step for any authoritative discourse, it usually involves the construction of a legitimating narrative. NCLB capitalizes on its status as a reauthorization to generate an authoritative narrative, asserted most conspicuously in NCLB's declaration of policy. Working through, but not within, the thought of Jurgen Habermas and Pierre Bourdieu, Chapter 2 undertakes a historical analysis of the ESEA's declarations of policy.¹⁷ The declaration of policy is the first substantive statement of a law. Chapter 2 charts the development of NCLB's declaration of policy through the rhetorical analysis of each of the major iterations that precede it: the ESEA of 1965, the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (ESSIA of 1988), and the Improving America's Schools Act of 1994 (IASA of 1994). As a reauthorization, NCLB is a product of the tension between the effort to change the ESEA to suit the needs of the contemporary political climate and the effort to preserve the ESEA so that NCLB can legitimately claim to be a continuation of its authority. Comparing the language of NCLB with the preceding versions of the ESEA reveals some of these tensions and the rhetoric NCLB employs to navigate them.

This longitudinal examination of the ESEA's declarations of policy contextualizes NCLB's justification of its authority within the history and discourse of education policy. In the case of NCLB, justification manifests itself in the purposeful situation of the law as a

¹⁷ Pierre Bourdieu, "Authorized Language: The Social Conditions for the Effectiveness of Ritual Discourse," in *Language & Symbolic Power*, ed. John B. Thompson and trans. Gino Raymond and Matthew Adamson, 6th ed. (Cambridge, MA: Harvard University Press, 2001); Jurgen Habermas, *Legitimation Crisis*, trans. Thomas McCarthy (Boston, MA: Beacon Press, 1973).

reauthorization. Because the role of the federal government in education has been restricted in the past, creating new legislation to enforce the standards-based assessment of public education would be extremely difficult without employing existing power structures. Instead of attempting to construct its own authority justified by the need for accountability in the administration of public education, NCLB borrows the preexisting authority of the ESEA. Appropriating the language of the ESEA where possible, NCLB's reauthorization of the older law cleverly incorporates the new assessment regime into a law that was already expanding federal authority over public education.¹⁸ NCLB also incorporates neoliberal enthusiasm for the private sector and skepticism of existing government programs.¹⁹ Situating NCLB as the legislative heir to the ESEA and appropriating the language of the ESEA in the text of NCLB creates a historical narrative that legitimates NCLB's authority to enact and enforce a new regime of assessment.

Examining NCLB's justificatory narrative reveals the way that the law envisions the problem of public education and itself as the solution. For the majority of the history of federal education policy, education has been manipulated as a means for solving societal problems. The National Defense Education Act of 1958 aimed to bolster the United States' capacity to compete technologically with the Soviet Union. The Elementary and Secondary Education Act of 1965 was passed as part of President Lyndon Johnson's Great Society program and aimed to reduce racial and class inequalities. The *A Nation at Risk* report of 1983 argued that education could be reformed to help the United States compete economically with Japan.²⁰ Chapter 2 reveals NCLB's departure from the strategy of justifying the authority of federal education policy by claiming it will be the solution to another problem. Instead of envisioning education as a solution

¹⁸ Anderson, *Congress and the Classroom*, 159-160.

¹⁹ Torres, *Education and Neoliberal Globalization*, 45.

²⁰ Carl F. Kaestle and Marshall S. Smith, "The Federal Role in Elementary and Secondary Education, 1940-1980," *Harvard Educational Review* 52, no. 4 (November 1982): 384-408; Anderson, 130.

to larger societal problems, NCLB views the public education system itself as the problem and then proposes to fix it.

Education as (a) Good

As a discourse of authority, statutory rhetoric attains its purpose in declarations that constitute the world outside of language. Chapter 3 analyzes how the rhetoric of NCLB attempts to form the world of education policy in section 1111, “State Plans,” and section 1112, “Local Plans.” Both sections describe the plans that the state and local educational agencies must create and submit to the federal government in order to be eligible for funding through NCLB. The plans are required to include academic standards, rules for accountability, and methods for assessing educational achievement. They amount to administrative strategies designed to ensure that each school is making progress toward federally-required state educational achievement standards. Because the plans reflect a commitment to future action on the part of the school districts and states, they operate as a medium through which NCLB—through the states and school districts—can influence action in the world. The plans are rhetorically interesting because they define education as an economic object and treat public education as an economic system.

In sections 1111 and 1112, NCLB deploys three economic discourses. The first two discourses rely on the objectification of education. NCLB discusses education as “educational achievement,” an object that it both commodifies and then monetizes. Using Nikolas Rose’s discussion of the importance of numbers in governance and Davis Schaps’s work on the invention of coinage and monetization of Greek society, Chapter 3 explains how NCLB mobilizes the power of definition to reform the world of education through the economic logic of public

policy.²¹ In addition to defining education as an object, NCLB also discusses education as a system. The systemic definition of education maps the economic logic of NCLB onto school districts, states, and the whole of United States public education. This economic understanding of education makes it possible for NCLB to connect input—in the form of federal support—with output—measures in educational achievement—and then demand results. Those schools that do not produce enough educational achievement are deemed to be “in need of improvement.”²²

The economic rhetoric of NCLB has significant implications for the meaning and execution of federal education policy. Chapter 3 examines the implications of the three economic discourses of NCLB. Each economic discourse offers benefits for the management of education as the subject of federal policymaking, but each discourse also generates a definition of education with potentially problematic structural assumptions. The commodification of education not only turns education into an object that can be manipulated by public policy, but also turns education into a scarce resource. The monetization of education makes it possible to measure the educational output of one school versus another and creates a market for the improvement of educational achievement, but also excludes certain schools and populations because they are not significant enough to draw the interest of the market. Both the commodification and monetization of education help to create NCLB’s economic conception of the United States public education system. Conceiving of public education as an economic system demands constant measurable growth.

²¹ Nikolas Rose, *Powers of Freedom: Reframing Political Thought* (Cambridge: Cambridge University Press, 1999), 197-232; David M. Schaps, *The Invention of Coinage and the Monetization of Ancient Greece* (Ann Arbor, MI: The University of Michigan Press, 2004).

²² McGuinn, *No Child Left Behind*, 179.

Pedagogy of the Coerced

Because no authoritative narrative, even if it is believed, can be successful in compelling perfect adherence to authority, statutory rhetorics often need to impose sanctions on those who fail to act as directed. NCLB enforces its authority by creating a system for determining which schools have succeeded or failed to meet its requirements for educational achievement and then instructing failing schools to select at least one of seven corrective actions. In order to address both portions of this enforcement strategy, Chapter 4 examines the interaction of the two sections that enforce NCLB. Section 6111, “Grants for State Assessment and Related Activities,” describes the requirements for state assessment programs that seek federal funding for their implementation and subsection 1116.c.10.C, “Certain Corrective Actions Required,” prescribes the seven options from which failing schools have to select when they have been identified for improvement. The two sections work together through alignment, a process that requires failing schools to reform their curricula so that it better reflects the pedagogical predisposition of NCLB. Not only do the two sections work together to reform aberrant schools in NCLB’s economic image, but they impose reform through masked forms of coercion and depoliticization.

Chapter 4 uses Roland Barthes’s discussion of myth as depolitized speech to explain the veiled endorsement of inclusion, measureable assessment, and social-scientific research in section 6111.²³ Although inclusion, measureable assessment, and social-science all appear directly in section 6111, they are referenced as authoritative ideas, not as contestable suppositions. NCLB assumes their validity and passes those assumptions into its requirements for the assessments that determine whether a school has produced enough educational

²³ Roland Barthes, *Mythologies*, trans. Annette Lavers (New York, NY: Hill and Wang, 1972), 143.

achievement.²⁴ Barthes's idea that myths remove politics from past events and normalize certain attitudes toward the world helps account for the implicit politics NCLB's appeals to authority.

Chapter 4 then examines the "Corrective Action" subsection using James Andrews's work on coercion.²⁵ Although all law must be coercive when enforcing itself, NCLB masks its coercion behind a list of options for failing schools. Despite offering seven options to failing schools, the corrective action subsection narrows the choices that failing schools have by including six punitive options and only one course of action—curricular reform—that is likely to help a failing school succeed on state assessments the next year. Andrews defines coercive speech as that which "limits the viable alternatives open to the receivers of communication," and NCLB's subsection on corrective action fits his definition despite its democratic pretensions.²⁶

Both sections are tied together through the language of alignment. Because of the coercive function of the corrective action subsection, alignment is a process involving the harmonization of local pedagogical practices with the demands of state assessments. Alignment, which often suggests a multidirectional process of adjustment intended to harmonize two or more things, is unidirectional in the case of NCLB. There is no procedure for encouraging the state to align to local educational practices; it is always the local educational agency that must align itself to the state. Because the state assessments are designed to fulfill NCLB's funding requirements—that they be based on social-scientific research, produce measurable results, and test inclusion classrooms—the effect of NCLB is to enforce, for the first time, a federal pedagogy.

²⁴ The term for this minimum requirement in NCLB is "Adequate Yearly Progress" (AYP).

²⁵ James R. Andrews, "Confrontation at Columbia: A Case Study in Coercive Rhetoric," *Quarterly Journal of Speech* 55, no. 1 (February 1969): 9-16.

²⁶ Andrews, "Confrontation at Columbia," 10.

No Literature Left Behind

“But education not only reflects and adjusts to society; once formed, it turns back upon it and acts upon it. The consequences of this central transformation of education have significantly shaped the development of American society.” – Bernard Bailyn, 1960²⁷

Bernard Bailyn wrote the lines above in his influential call for the revision of the historiography of education in the United States. Although this quotation does not speak directly to his case for revision, it does speak to the greater significance of the study of education as an important cause and effect of United States history. Bailyn’s observation—that the organization of American education is both a noteworthy historical event and an engine that drives the production of new, society-wide, historical events—is as much an argument for the study of the reformation of public education as it is an argument for the study of the original formation of public education. Additionally, Bailyn’s argument is as germane to the study of the rhetoric of education policy as it is to the study of the history of education policy. Because education has and continues to “shape the development of American society,” this thesis draws upon and adds to several significant strands of Americanist scholarship.

At its core, this is a rhetorical project, and that tradition is not just present, it is formative. In addition to the rhetorical works already mentioned in the chapter summaries, the critical perspective of Thomas Benson and Lloyd Bitzer drive the analytical perspective of this thesis.²⁸ From Benson, this project inherits a commitment to embracing inconsistency. Although the role of rhetorical critic is in part to provide a coherent understanding of the object being studied, good

²⁷ Bernard Bailyn, *Education in the Forming of American Society: Needs and Opportunities for Study* (Chapel Hill, NC: The University of North Carolina Press, 1960), 48.

²⁸ Thomas W. Benson, “The Senses of Rhetoric: A Topical System for Critics,” *Central State Speech Journal* 29, no. 4 (Winter 1978): 237-250; Lloyd Bitzer, “The Rhetorical Situation,” *Philosophy and Rhetoric* 1, no. 1 (Winter 1968); 1-14.

rhetorical scholarship does not impose that coherence artificially. From Bitzer, this project inherits a commitment to the careful examination of context. Bitzer's tripartite theory of situation remains a crucial tool for thorough rhetorical analysis. Although not cited in the main body of the thesis, the influence of Edwin Black is also present. In *Rhetorical Criticism: A Study in Method*, Black reminds his readers that, "The critic proceeds in part by translating the object of his [or her] criticism into the terms of his [or her] audience and in part by educating his [or her] audience to the terms of the object. This dual task is not an ancillary function of criticism; it is an essential part of criticism."²⁹ Black's reminder—that criticism succeeds by pulling both its object of study and its audience toward an intellectual meeting point—is particularly germane to the rhetorical criticism of a technical document like NCLB. Representing the legalistic peculiarities of NCLB without distorting its meaning while avoiding the production of a piece of criticism as impenetrable as its object of study, is no small task. Consequently, this project takes seriously Black's parting words from *Rhetorical Criticism*, "it is only through imaginative criticism that we are likely to learn more."³⁰

In addition to the theory of criticism, a number of works of rhetorical criticism are also employed in this project. David Zarefsky's study of President Johnson's War on Poverty provides a methodological model for the rhetorical study of a legislative campaign in addition to historical background on the ESEA's genesis in the lawmaking fervor of the Great Society.³¹ Edward Schiappa's work on the rhetoric of definition provides useful insights into the way that definition can impose persuasive forms on the world outside of language.³² Kendall Phillips's book, *Testing Controversy: A Rhetoric of Education Reform*, provides related rhetorical insight

²⁹ Edwin Black, *Rhetorical Criticism: A Study in Method*, 2nd ed. (Madison, WI: The University of Wisconsin Press, 1978), 6.

³⁰ Black, *Rhetorical Criticism*, 177.

³¹ Zarefsky, *President Johnson's War on Poverty*.

³² Edward Schiappa, *Defining Reality: Definitions and the Politics of Meaning* (Carbondale, IL: Southern Illinois University Press, 2001).

into the rhetoric of education policy.³³ Even Ian Bogost's work on rhetoric of procedure in videogames offers a relevant model for the rhetorical analysis of NCLB's legal rhetoric.³⁴

Together these examples of rhetorical criticism, in addition to those mentioned in the chapter summaries, amount to a repertoire of analytical tools that this project calls upon as necessary.

Although it takes so much from the rhetorical tradition, this thesis also gives back several contributions. The chief contribution of this thesis to rhetorical studies is to create a model for the study of a reauthorized piece of legislation. Rhetorical studies does not have a good model for the rhetorical analysis of a law that has been reauthorized several times that takes into account the rhetorical force of that legislative history. Despite its lack of flash and appeal, the study of reauthorizations offers an important avenue into the rhetorical and historical study of major policymaking controversies through a process of democratic deliberation every bit as regularized as presidential elections. This thesis also contributes a model for the study of statutory rhetoric that focuses on the centrality of authority to law. This account of the rhetorical force of a law examines the actual text of that law—not only the discourse that surrounds it—while remaining cognizant of the generic burdens of the statute form. Although there are a number of good models for the rhetorical study of legal controversies, few examine the authoritative voice of the law as a crucial feature of statutory rhetoric. In addition to contributing two models for rhetorical study, this thesis also contributes its content. Accounting for the rhetoric of public policy has long been a central focus in the field of rhetorical criticism and this examination adds another important case study to that larger scholarly project. Moreover, the rhetorical analysis of education policy is more than just a case study for rhetorical studies. The study of the rhetoric of

³³ Kendall R. Phillips, *Testing Controversy: A Rhetoric of Educational Reform* (Cresskill, NJ: Hampton Press, 2004).

³⁴ Ian Bogost, *Persuasive Games: The Expressive Power of Video Games* (Cambridge, MA: MIT Press, 2007).

education policy is the study of the rhetoric that makes the material existence of rhetorical studies—like all educational pursuits—possible. This rhetoric would be irresponsible to ignore.

Although this thesis examines the language of NCLB as a rhetorical production, such an analysis cannot confine itself to rhetorical scholarship alone. More often than not, good rhetorical investigations require multidisciplinary approaches to produce fruitful results. Not surprisingly, education policy, in the form of both scholarly and professional work, is drawn on to ground this analysis. The scholarship of education policy provides insights into the theory and practice of education policies on the federal, state, and local levels. It also provides important contextual information about historical and contemporaneous state of public education in the United States.

Questions concerning the nature of the process of producing such policies and the roles played by various policy actors can be best answered through this literature. For example, Keith Nitta's *The Politics of Structural Education Reform* and Paul Manna's *School's In: Federalism and the National Education Agenda* both provide detailed accounts of the political economy of education policy that help to identify the important policy actors and political calculations attendant in legislating NCLB.³⁵ Lee Anderson's *Congress and the Classroom: From the Cold War to "No Child Left Behind"* and Kevin Kosar's *Failing Grades: The Federal Politics of Education Standards* contain important historical information about the context and development of federal education policy.³⁶ Patrick McGuinn's authoritative account of the contemporary political history of education reform, *No Child Left Behind and the Transformation of Federal Education Policy, 1965-2005* is also helpful in providing an overview of the politics and origins of NCLB.³⁷ Additionally, the scholarship of education policy has produced an increasingly sophisticated historical account of the governmental management of education in the United States. This literature, sparked by the revisionist challenge of Bernard Bailyn's *Education in the*

³⁵ Manna, *School's In*; Nitta, *The Politics of Structural Education Reform*.

³⁶ Anderson, *Congress and the Classroom*; Kosar, *Failing Grades*.

³⁷ McGuinn, *No Child Left Behind*.

Forming of American Society, has produced a multiplicity of academic perspectives and projects that help to color this project.³⁸ Those histories are helpful in contextualizing the developments made by NCLB both inside and outside the world of education policy.

Although education policy, in the final analysis, is a product of a larger field of discourse—one that stretches beyond the words of official policymakers alone—this investigation is most interested in those rhetorical inventions that are commonly recognized as discourse concerning education policy on the federal level. Taking NCLB as a linguistic production deployed within a preexisting terrain of discourse requires a rhetorical analysis to uncover the ways in which NCLB utilizes linguistic appeals to accomplish its stated ends. This rhetorical perspective is not intended to discount the importance of the all too real consequences of the often spastic machinations of federal education policy; rather, it is hoped that a rhetorical perspective provides additional insights into those machinations through a focus on the language that is used to enact policy changes. In short, this project aims to add a rhetorical perspective to an existing scholarly conversation that might benefit from its contributions.

One of those contributions stems from the tracing the language of federal education policy as it develops through the production and reauthorization of the ESEA. The historical analysis of the language of education policy offer insights and explanations for the development of education policy from a means through which the government ameliorates pervasive societal problems into a governmental ends in its self. This analysis also offers some insight into the discursive development of the changing diagnoses for the source of educational underachievement that have resulted in the standards movement and its attendant economization

³⁸ Bailyn, *Education in the Forming of American Society*. Other works of education history that are drawn upon include: Milton Gaither, *American Educational History Revisited: A Critique of Progress* (New York, NY: Teachers College Press, 2003); Barry A. Gold, *Still Separate and Unequal: Segregation and the Future of Urban School Reform* (New York, NY: Teachers College Press, 2007); William J. Reese and John L. Rury, ed., *Rethinking the History of American Education* (New York, NY: Palgrave Macmillan, 2008); Eileen H. Tamura, ed., *The History of Discrimination in U.S. Education: Marginality, Agency and Power* (New York, NY: Palgrave Macmillan, 2008).

of public education. Indeed, scholars in education policy have long recognized the importance of rhetorical practices such as “framing” in the production of education policy. William Lowe Boyd has noted that these rhetorical practices often drive critical and sweeping changes to major pieces of education policy.³⁹ A detailed rhetorical analysis of NCLB provides an examination of one of these instances of policy change, which could be useful in charting a new direction in the analysis of education policy.

In addition to rhetorical criticism and the study of education policy, this thesis implicates its observations in the study of democracy. American democratic theory has debated the place of education in the forming and maintenance of democracy since Thomas Jefferson.⁴⁰ John Dewey and Walter Lippmann brought this debate over the purpose and value of public education into the contemporary study of democracy when they recorded their exchange in the early twentieth century.⁴¹ Additional models of the thought are provided by Daniel Allen, Hannah Arendt, and Chantal Mouffe.⁴² Allen’s *Talking to Strangers* provides an overtly rhetoric model for democratic deliberation that hinges on an enlightened notion of sacrifice. In *Between Past and Future*, Arendt defines education as the thing that makes the reproduction of society possible. Like Allen, Mouffe’s vision for democracy in *The Democratic Paradox* is rhetorical. She envisions a healthy liberal-democracy as a perpetual discursive contest between those who favor and those who oppose government action. All of these democratic theorists articulate a vision of democracy that relies on a public educated to engage in a particular set of rhetorical practices.

³⁹ William Lowe Boyd, “Public Education’s Crisis of Performance and Legitimacy: Introduction and Overview of the Yearbook,” *Yearbook of the National Society for the Study of Education* 102, no. 1 (April 2005), 8-9.

⁴⁰ Thomas Jefferson, “Bill for the More Complete Diffusion of Knowledge, 1799,” in *The School in the United States: A Documentary History*, ed. by James W. Fraser (Boston, MA: McGraw-Hill Higher Education, 2001), 17-24. “Statesmen” is used purposely.

⁴¹ John Dewey, *The Public and Its Problems* (Athens, OH: Ohio University Press, 1927); Walter Lippmann, *The Phantom Public*, 9th ed. (New Brunswick, NJ: Transaction Publishers, 1927).

⁴² Danielle S. Allen, *Talking to Strangers: Anxieties of Citizenship since Brown v. Board of Education* (Chicago, IL: University of Chicago Press, 2004); Hannah Arendt, *Between Past and Future: Eight Exercises in Political Thought* (New York, NY: Penguin Books, 1954); Chantal Mouffe, *The Democratic Paradox* (New York, NY: Verso, 2000).

This thesis contributes a textual analysis of federal education policy that is cognizant of its irreplaceable role in the formation and maintenance of a deliberative democracy. Moreover, the analysis this thesis undertakes relies on the same rhetorical skills that are necessary for engaged citizenship in deliberative democracy. This thesis both discusses and performs its contribution to democratic theory.

Most importantly, a rhetorical analysis of NCLB has the potential to offer insights for the American public. Just as scholarly and journalistic investigations of presidential elections have attained a level of public relevance because of the regularity of their appearance at the center of national politics, the regular reauthorization of the ESEA offers a site for recurrent, ritualistic participation in the political process. As federal education policy in the form of successive reauthorizations of the ESEA becomes more and more intrusive in the local practice of educating, the average American public school alumnus is increasingly likely to take interest. I have yet to teach a public speaking course at Penn State in which I did not have students who wanted to speak to their peers about NCLB. Producing a piece of scholarship that traces the debate over education policy at the federal level will likely have an audience—made up primarily of teachers and parents—outside of academia. Additionally, rhetorical scholarship is particularly well positioned to be of use for those citizens who take an interest because it offers strategies for rhetorical engagement with the issues it examines. These strategies are particularly important when the political communication that is being engaged is difficult to read in a meaningful way. Rhetoric is fundamentally empowering. In this sense, this rhetorical investigation may have some measure of the potential that Bailyn ascribes to education to “turn back upon” and “act upon society.”

Chapter 2

A More Modest Proposal

Even a cursory examination of the history of education in the United States quickly reveals that the justifications for creating and altering education policies have almost never rested on the importance or quality of education itself. In nearly all cases, the public justifications for the production of federal education policies are preoccupied with events taking place outside of the classroom. Thomas Jefferson's "Bill for the More General Diffusion of Knowledge," rejected by the State of Virginia's legislature 1799, advocated a rigidly meritocratic system of public education in order to identify and train the most competent statesmen, not to provide for self-improvement of all Virginians.¹ In 1809, the New York politician extraordinaire, DeWitt Clinton, gave a speech arguing for the creation of free schools in New York. He wanted to decriminalize the "debased" children of immigrating Europeans and clean up the streets of New York City.² The Morrill Land Grant Acts of 1862 were designed to create universities to prepare the members of the emerging "industrial class" for agricultural and mechanical professions.³ In 1917, congress passed the Smith-Hughes Act, which provided funding for vocational education. Although some of the arguments made for its passage actually touted the benefits it would have for the people it would educate, its capacity to quell the discontent of working class Americans

¹ Lawrence Cremin, *American Education: The Colonial Experience, 1687-1783* (New York, NY: Harper & Row, 1970), 438-443; Thomas Jefferson, "Bill for the More Complete Diffusion of Knowledge, 1799," in *The School in the United States: A Documentary History*, ed. by James W. Fraser (Boston, MA: McGraw-Hill Higher Education, 2001), 17-24. "Statesmen" is used purposely. Mr. Jefferson's education system would not have included women.

² DeWitt Clinton, *An Address to the Benefactors and Friends of the Free School Society of New York, Delivered on the Opening of That Institution, in Their New and Spacious Building, on the eleventh of the Twelfth Month (December) 1809* (New York, NY: Collins and Perkins, 1810), 4.

³ Joel Spring, *The American School 1642-1985: Varieties of Historical Interpretation of the Foundations and Development of American Education* (New York, NY: Longman Inc., 1986), 243-245.

was also a crucial selling point.⁴ The National Defense Education Act of 1958 was passed amid a flurry of calls for improved science, math, and foreign language education in order to compete with the menacing Soviets, not to improve the lives and education of American school children.⁵ This practice of justifying changes in federal education policy through appeals to contemporary issues in national politics continued into the late twentieth century and beyond.

The history germane to this project begins in 1965 when the eighty-ninth Congress of the United States of America passed Public Law 89-10, the Elementary and Secondary Education Act (ESEA). The ESEA of 1965 was sold as part of President Lyndon Johnson's Great Society legislative program. In accordance with the goals of that program, it was argued that the ESEA of 1965 would help alleviate poverty and racial injustice.⁶ The law itself was only thirty-two pages long and included just six titles, but its control over a large pool of federal dollars has made it the center piece of federal education policy in the United States.⁷ This chapter examines the rhetoric of the reauthorizations of the ESEA up through the No Child Left Behind Act of 2001 (NCLB).

NCLB included three titles that the ESEA of 1965 did not and was comprised of over six hundred pages of text.⁸ From this basic, physical observation alone, it is clear that the process of reauthorization has the potential to dramatically alter the content of federal legislation in the United States. Although an exhaustive, point by point analysis comparing the versions of the

⁴ Spring, *The American School 1642-1985*, 209-211.

⁵ Lee W. Anderson, *Congress and the Classroom: From the Cold War to "No Child Left Behind"* (University Park, PA: The Pennsylvania State University Press, 2007), 41-47. Although Anderson argues that Sputnik was not the proximate cause of the passage of the NDEA, he concedes that a great deal of rhetoric used to justify its passage did rely on the Cold War call to out-compete the Russians. This thesis is interested in the justifications for education policy as they are expressed rhetorically.

⁶ Anderson, *Congress and the Classroom*, 62; Patrick McGuinn, *No Child Left Behind and the Transformation of Federal Education Policy 1965-2005* (Lawrence: The University of Kansas Press, 2006), 29.

⁷ *Elementary and Secondary Education Act of 1965*, Public Law 89-10, 89th Cong., 1st sess. (April 11, 1965), 1-32.

⁸ *No Child Left Behind Act of 2001*, Public Law 107-110, 107th Cong., 1st sess. (January 8, 2002), 1-670.

bills to each other in all of their legal detail would bear significant fruit for scholarship on the legal history of education policy and the process of reauthorization in United States law, this chapter undertakes a more modest, but perhaps equally revealing task. By examining the changes made to the language of the declarations of policy and statements of purpose in each reauthorization that rewrote those section of the ESEA, this chapter identifies the rhetorical imprints of larger changes in United States education policy. In particular, the rhetoric of NCLB, as it developed from earlier versions of the ESEA, narrows its goals from attempting to improve society as a whole to attempting to improve public schools while at the same time it widens its purview from economically disadvantaged students to all students publicly educated in the United States. In addition to analyzing the influence of external political changes on the reauthorizations of the ESEA, this analysis examines how the process of reauthorization bounds each iteration of the ESEA, in part, to its legislative ancestry. Although this chapter will not account for each aspect of the ESEA that has remained the same over time, it will seek to show how each version provides a set of constraints for the next.⁹

The methodological perspective offered by rhetorical criticism provides a set of research questions distinct from the scholarship that already exists on the law. Because rhetorical criticism is interested in the origins and function of the language of NCLB, not just its legal implications, rhetorical criticism is free to pursue the connections between the language of the law and both the larger linguistic world of the law and the world outside of language. In his discussion of rhetorical and poetic criticism, Thomas Benson notes that “paradoxically, it is only if we maintain the distinction between rhetoric and poetic that rhetoric can add something to our understanding of poetic texts.” In the same way that rhetorical and poetic perspectives can provide distinct yet complimentary analyses of the same text, a rhetorical analysis of NCLB will offer novel insights into the “forms, processes, and effects” of NCLB that might be useful for both rhetoricians and

⁹ Lloyd Bitzer, “The Rhetorical Situation,” *Philosophy & Rhetoric* 1, no. 1 (Winter 1968): 8.

those who are interested in studying the legal, political, and educational implications of NCLB.¹⁰

This rhetorical analysis begins by examining the origins of the language NCLB uses to discuss its purpose.

For the purposes of this analysis, there are two major sources for the language of NCLB: previous versions of the law and the rhetoric of contemporaneous education politics. The legal legacy of the legislation stretches back to President Johnson's Great Society programs. The ESEA was passed as part of Johnson's sweeping domestic agenda and has become a commonplace for the negotiation of the federal role in public education in the United States.¹¹ The law has been reauthorized a number of times; at least once during the tenure of each two-term president since Johnson.¹² NCLB, the most recent reauthorization of the ESEA, draws a great deal of its language and structure from the 1965 law and its intervening revisions. Although the structure and language of the ESEA did exert a general influence on the scope and capacity of NCLB, the specifics of the education policy endorsed within the purview of the law—as defined by previous versions of the ESEA—were largely products of a growing movement toward high standards championed by President George W. Bush as the Governor of Texas and as the Republican candidate for the Presidency of the United States. President Bush's policy language—a part of a larger neoliberal movement in United States governance—along with the spoken and written support of other politicians involved in the reauthorization process—such as Senators Edward Kennedy and Judd Gregg and Representatives John Boehner and George Miller—helped to produce the textual content of NCLB.

¹⁰ Thomas W. Benson, "The Senses of Rhetoric: A Topical System for Critics," *Central State Speech Journal* 29, no. 4 (Winter 1978): 238.

¹¹ Patrick McGuinn, *No Child Left Behind*, 29.

¹² The reauthorizations include: (1) Reauthorization of the Elementary and Secondary Education Act in 1973 under President Nixon, (2) Education Consolidation and Improvement Act of 1981 and Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 under President Reagan, (3) Improving America's Schools Act of 1993 under President Clinton, and (4) No Child Left Behind Act of 2001 under President George W. Bush.

A great deal of the policy language of NCLB's leading backers is grounded in—and sometimes in response to—important events and trends in the history of federal education policy. The federal role in K-12 education in the United States, as an important financial force, was not legislated until the passage of the original ESEA in 1965. Although the ESEA of 1965 was not the first education policy made by the federal government, it was the first to make federal monetary aid a regular and accepted practice. Because of the regularity and stability of federal legislative involvement in public education following the passage of the ESEA of 1965, it is now seen as the critical turning point at which federal education policy stopped asking whether to fund public education and began asking how much funding is necessary.¹³

Despite the change in attitudes marked by the ESEA of 1965, federal education policy at large has not enjoyed quite the same endorsement in the two other branches of the federal government. The Department of Education, created for the second time under President Carter, was nearly abolished by the Reagan administration, which saw it as a wasteful product of big government.¹⁴ The Reagan administration's efforts demonstrated that the same question about the appropriateness of federal involvement in the administration of public education that had been applied to the policies of the legislative branch before the passage of the ESEA of 1965 still dogged the executive branch manifestations of the federal influence over education. Additionally, the judicial branch has recently struggled with its own history of proactive federal action. In 2007, the Supreme Court ruled against a program run by Seattle's School District no. 1 in which students' enrollment opportunities had been tied to their race in order to prevent the emergence of de facto segregation. The case amounted to a significant repudiation of the *Brown v. Board of Education* rulings, which predate the ESEA as the first sustained intrusions of federal

¹³ Paul Manna, *School's In: Federalism and the National Education Agenda* (Washington D.C., Georgetown University Press, 2007), 9.

¹⁴ Anderson, *Congress and the Classroom*, 102, 129. The first Department of Education was a short-lived policy of the Andrew Johnson administration.

power into the local administration of public education in the United States.¹⁵ Noting the sea change in judicial opinion, Justice John Stevens wrote “It is my firm conviction that no Member of the Court that I joined in 1975 would have agreed with today’s decision” in his dissent.¹⁶ The Seattle decision is indicative of a presumption against federal involvement in public education that has never completely abated.

The relative recentness and instability of the federal role in education as compared to other federal functions—such as defense and tax collection—has left a mark on the manner in which education policy is composed. Because the ESEA is one of few reliable ways for the federal government to have an effect on educational practice at the local level, its reauthorization has become a process that attracts a lot of political interest. Additionally, when the reauthorized bill is constructed, the still-nascent status of education policy as a legitimate object of federal policy often results in the rehearsal of the standard objections to federal involvement in education. A process of justification is then carried out through the invocation of the rhetoric of the original ESEA.

Justification looms large in the NCLB Act of 2002. As the discussion over the course of this chapter demonstrates, the text of NCLB makes a case for federal involvement in public education in the United States. It is tempting to assume that this implicit expression of anxiety on the part of federal law makers is a symptom of a larger crisis of legitimization. In his seminal work on legitimization, Jurgen Habermas theorized a process of crisis that societal systems undergo during which they risk losing their relevance. In the case of capitalist systems, Habermas explained that their inability to control productive forces leads to crises brought on by the conflicting interests of different classes.¹⁷ However, the language of the NCLB Act of 2002 is

¹⁵ McGuinn, *No Child Left Behind*, 25.

¹⁶ *Parents Involved in Community Schools v. Seattle School District no.1*, 127 U.S. 2738 (2007).

¹⁷ Jurgen Habermas, *Legitimation Crisis*, trans. Thomas McCarthy (Boston, MA: Beacon Press, 1973), 23.

not responding to a governmental crisis of legitimization, much less a crisis brought about by class conflict. NCLB is the opposite of a crisis in governmental legitimization. It is the latest advance in the expansion of federal control over public education. NCLB's passage was a victory for government legitimacy in the production and enforcement of education policy. Although this trend in the governance of public education in the United States is not a product of a crisis of legitimization, Habermas's work still provides some insight that may be useful. If there is a legitimization crisis present in the rhetoric of United States education policy, it is a crisis questioning the capacity of local educational agencies to provide an acceptable quality of education for their students. This "rationality crisis"—a crisis in which the people served by an institution come to believe that the institution is no longer working in their interests—in public education has been driven by the rhetoric of federal education policy and has helped to facilitate the increasing involvement of the federal government in the administration of education by eroding the sacrosanct position of local governance in education.¹⁸

Rituals of justification are also described in the work of Pierre Bourdieu. He noted that authoritative discourse is justified only when its performance expresses correctly the expected properties of the discourse, the authorized position of the person who makes the pronouncement, and their relationship to the institution that confers authority.¹⁹ If one replaces the disembodied voice of the law in which NCLB and the ESEA of 1965 are written with the Congress-people—probably their aids in reality—who actually authored the legislation, Bourdieu's schema has some explanatory power. NCLB is written in the format of and with language appropriate for the law. NCLB's authoritative voice identifies itself as the Congress claiming to be the assembled will of the Senate and House of Representatives. This performance of collective authorship then draws

¹⁸ Habermas, *Legitimation Crisis*, 46.

¹⁹ Pierre Bourdieu, "Authorized Language: The Social Conditions for the Effectiveness of Ritual Discourse," in *Language & Symbolic Power*, ed. John B. Thompson and trans. Gino Raymond and Matthew Adamson, 6th ed. (Cambridge, MA: Harvard University Press, 2001), 111.

upon the authority of the institutions that comprise the legislative branch of the United States Federal Government. However, NCLB does more justificatory work than simply attaching itself to an institution; NCLB's process of justification works upon the institution itself. NCLB very carefully provides a set of justifications for the institution's jurisdiction over the issue of public education in the United States. Bourdieu's work is helpful in explaining how an institution can lend its authority to other actors, but it does not describe the process by which institutions subsume new aspects of life into their authoritative purview.

Together, Habermas and Bourdieu obliquely illuminate some of the basic features of NCLB's rhetorical justifications of its authority, but a more nuanced assessment of that rhetoric requires a direct examination of the text of the law itself. Additionally, a contextually conscious examination of the justificatory language of NCLB requires an analysis that begins with the ESEA of 1965 and continues forward through each of the ESEA's major reauthorizations ending with NCLB. Examining the development of the law's justification for its authority across time and through a direct reading of the text of the law affords a more detailed description of its statutory rhetoric than can be provided by the rigid molds of theoretical models. This examination begins with the statement of purpose from the ESEA of 1965.

Elementary and Secondary Education Act of 1965

The first and most explicit ritual of justification within each version of the law occurs in the opening statement of NCLB. After the formalities of establishing the Congressional authorial voice and giving a table of contents are accomplished, the first substantive portion of the NCLB states the purpose(s) of the law. This is a regular practice in the composition of United States Public Law, especially in laws that control large governmental expenditures, like the ESEA. The statement of purpose portion of the bill has evolved over time through four significant iterations:

the Elementary and Secondary Education Act of 1965 (ESEA of 1965), the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, (ESSIA of 1988), the Improving America's Schools Act of 1994 (IASA of 1994), and NCLB.²⁰

A thorough understanding is best achieved by analyzing them in order. The first version of the statement of purpose, in the original 1965 law, was only a paragraph long:

Sec. 201. In recognition of the special educational needs of children of low-income families and the impact that concentrations of low-income families have on the ability of local education agencies to support adequate educational programs, the Congress hereby declares it to be the policy of the United States to provide financial assistance (as set forth in this title) to local education agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs by various means (including preschool programs) which contribute particularly to meeting the special educational needs of educationally deprived children.²¹

The “Declaration of Policy” in the ESEA of 1965 is much shorter than its progeny, yet it still rewards scrutiny. Perhaps the most striking aspect of this single sentence paragraph is that it is not at all concerned with educational outcomes. The ESEA of 1965 was little more than an appropriations bill for education that used a socioeconomic justification for its passage. Its circumscribed policy goals are apparent in the paragraph where it declares that the law will provide for the “educational needs” of low income students by funding “adequate educational programs.” The law was designed to instantiate minimal educational competence. It sets adequacy as a baseline for public education. Discussion of the outcomes of that education for the low-income students that the bill will provide is absent. The problem that the law implicitly addresses is a gross lack of equity in educational opportunity, not the results of that unfairness. Indeed, the bill does not even proclaim equalizing the quality of the education provided to low-income students with the education provided to middle or upper-income children as a goal.

²⁰ I will use “ESEA” to refer to the law over time. In other words, “ESEA” refers collectively to all four of the laws discussed in this section. I will use “ESEA of 1965” to refer to the original version of the law passed in 1965, “ESSIA of 1988” to refer to the 1988 version, “IASA of 1994” to refer to the Improving America’s Schools Act of 1994, and “NCLB” to refer to the No Child Left Behind Act of 2001.

²¹ *Elementary and Secondary Education Act of 1965*, § 201.

Although the ESEA of 1965's preamble is not concerned with educational outcomes, it is concerned with the socioeconomic status of the students that it purports to aid. The declaration of policy rationalizes the need for federal aid as the result of economic, not educational inequalities. The first clause of the paragraph's single sentence states: "In the recognition of the special educational needs of children of low-income families and the impact that concentrations of low-income families have on the ability of local education agencies to support adequate educational programs. . ." The law and its use of education as a policy lever proceed from this economic justification. Surprisingly, the declaration of policy reveals that the rhetoric of the original ESEA was concerned more with helping to ameliorate the gulf between the economically advantaged and the economically disadvantaged than improving education itself. The egalitarianism that undergirds the economic justifications of the ESEA of 1965 is consistent with Suzy Harris's diagnosis of the education policy of the time being bound up on the politics of the welfare state.²² The goal of the welfare state was to improve lives through the reduction of inequality, rather than later neoliberal projects of inclusion.

This focus on economic status and the absence of discussion of the racial causes of severe economic divisions in the United States are hallmarks of much of President Johnson's War on Poverty rhetoric.²³ It would have been much easier to make the bill politically palatable if it avoided addressing the racial roots of its passage and so it did. This did not prevent it from being effective as part of the civil rights agenda of the 1960s. With the passage of the Civil Rights Act the year before, the United States Federal Government was prohibited from funding any program that was segregated. This meant that all of the new funds being put into the system by the ESEA of 1965 were available only to schools that were in compliance with *Brown v. Board of*

²² Suzy Harris, *The Governance of Education: How Neo-Liberalism is Transforming Policy and Practice* (London: Continuum, 2007), 134.

²³ David Zarefsky, *President Johnson's War on Poverty: Rhetoric and History* (Tuscaloosa, AL: The University of Alabama Press, 1986), 42-43.

Education—ostensibly making the ESEA of 1965 another enforcement mechanism for the landmark Supreme Court decision.²⁴

Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988

The importance of race began to emerge in the “Declaration of Policy and Statement of Purpose” in the ESSIA of 1988. The 1988 version, the first to rewrite the law’s opening statement, broke the declaration of policy into two sub-points. The first sub-point simply repeated the first clause from the original ESEA declaration of policy, but the second named some of the groups of children who had the special educational needs the law sought to satisfy. The groups it identified were the “children of migrant parents, of Indian children, and of handicapped, neglected, and delinquent children.”²⁵ Although this precision certainly constituted a positive step towards the recognition of certain populations of children within the United States, it is perhaps a testimony to the contentious history of race relations in the United States that direct mention of African American students, a large portion of the target of the original 1965 law, remained absent.

This practice of itemizing groups and specific interests began in the ESSIA of 1988 and has become a regular part of the declaration of policy in the subsequent ESEA reauthorizations. It is easy to imagine that the demands of special interests and the rhetorical needs of politicians with disparate objectives may be, in large part, responsible for the emergence of this practice, but the bureaucratizing force of reauthorization may also share some of the blame. The legislation itself was heavily bureaucratized through reauthorizations and amendments in the 1960s and

²⁴ McGuinn, *No Child Left Behind*, 29, 36.

²⁵ *Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988*, Public Law 100-297, 100th Cong., 2nd Sess. (April 28, 1988) § 1001.a.2.

1970s and gained a great deal of its current heft through incremental, clarifying additions.²⁶

Much of this complication was simplified by the 1981 reauthorization and its attendant Education Consolidation and Improvement Act—one of Reagan’s “New Federalism” policies. In addition to reducing the number of categories for federal funding, the 1981 reauthorization also decreased the overall funding provided by the ESEA. However, 1981 was an exception to the general trend toward more federal involvement and spending in the ESEA. The 1988 reauthorization continued this trend where it had left off at the beginning of the Reagan years.

The 1988 reauthorization introduced discussion of the goals of the law into the declaration of policy for the first time. Subsection 2 B states that the law would “expand the program authorized by this chapter over the next 5 years by increasing funding for this chapter by at least \$ 500,000,000 over baseline each fiscal year and thereby increasing the percentage of eligible children served in each fiscal year with the intent of serving all eligible children by fiscal year 1993.”²⁷ This subsection set a clear goal for the legislation. Interestingly the goal, to serve all eligible children, is very basic. The following 1994 reauthorization and 2002’s NCLB have far more elaborate goals concerned with the efficacy of the legislation. Nonetheless, the 1988 reauthorization, in setting the goal to serve all eligible children, set in motion a preoccupation with outcome that has continued since the ESSIA of 1988.

In retrospect, this passage from the 1988 reauthorization was the earliest beachhead of neoliberal policymaking in the ESEA. David Harvey defines neoliberalism as a governmental philosophy that envisions its citizens as individualist entrepreneurs.²⁸ A neoliberal government seeks to create and sustain spaces of free market-like competition. By setting a quantifiable

²⁶ McGuinn, *No Child Left Behind*, 36-37.

²⁷ *Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988*, § 1001.a.2.B.

²⁸ David Harvey, *A Brief History of NeoLiberalism* (Oxford, UK: Oxford University Press, 2005), 2.

goal—despite its improbable ambition—the ESSIA of 1988 began the work of creating a coherent set of rules and objectives to ground a marketplace for education reform.

The discussion of legislative outcomes initiated in the 1988 reauthorization was an early product of the nascent standards movement in United States education policy. What is referred to as either the “standards” or “excellence” movement grew out of the “Crisis of Declining Test Scores” first detected and discussed in the late 1970s. As the policy discussion developed into the early 1980s, the idea that the public school system was responsible for the declining scores began to take root.²⁹

The movement gained national attention with the release of the *A Nation at Risk* report in 1983.³⁰ The report, filed by the Reagan Administration’s Department of Education, argued that the quality of United States education had to be improved in order to make the US economically competitive with rising economies like Japan. In order to be politically palatable to the administration, the report called for increasing investment in education at the state and local level—a call that resulted in the state reforms that later informed the education policy reforms under both the Clinton and George W. Bush Administrations—rather than action by the federal government.³¹ The report’s effects on national education policy, however, were more immediate than the rise of William J. Clinton, George W. Bush, and the other education governors.

The 1988 reauthorization’s call to serve all eligible children by 1993 created a goal that would require measurement to be assessed. This is the first point at which a quantitatively measureable goal appeared in the ESEA declaration of policy. Carlos Alberto Torres explains that the creation of standards and the quantification and comparison that they enable are central

²⁹ Kendall R. Phillips, *Testing Controversy: A Rhetoric of Educational Reform* (Cresskill, NJ: Hampton Press, 2004), 36-37.

³⁰ McGuinn, *No Child Left Behind*, 45-47; National Commission on Excellence in Education, *A Nation At Risk: The Imperative for Educational Reform* (Washington, D.C.: Government Printing Office, 1983).

³¹ Spring, *The American School*, 332-333; Jennifer Hochschild and Nathan Scovronick, *The American Dream and the Public Schools* (Oxford: Oxford University Press, 2003), 96-97.

components of neoliberal education policy.³² Although the promotion of these concerns to the declaration of policy might not seem important initially, their placement in the declaration had an effect on the determination of legislative intent and it served as the basis for future—increasingly neoliberal—versions of the ESEA declaration of policy.³³

Paradoxically, as the ESSIA of 1988 called for incrementally increasing the amount of funding over five years so that it could serve “all eligible children,” it also recorded the first skepticism concerning the federal government’s ability to manage education. Subsection 2 C of the declaration of policy was entirely new and required that the ESEA “provide such assistance in a way which eliminates unnecessary administrative burden and paperwork and overly prescriptive regulations and provides flexibility to State and local educational agencies in making educational decisions.”³⁴ Although the inclusion of this clause might have been a product of the times—the Reagan Administration’s “New Federalism” policies called for reductions in federal spending on social programs—it has persisted in the ESEA’s declaration of policy. This combination of the trend toward skepticism of federal effectiveness with the trend toward enumeration of specific issues and groups shows up in the form of independent clauses in the Improving America’s Schools Act of 1994 (IASA of 1994) and NCLB.

The ESSIA of 1998’s reservations about the capacity of the federal government to effectively reform public education are unique in that its condemnation of the proliferation of paperwork and skepticism of “overly prescriptive regulations” would not appear in later versions of the law. In the case of “overly prescriptive regulations” the trend in education policy created and supported by the standards movement actually favors an increase in regulations. It seems

³² Carlos Alberto Torres, *Education and Neoliberal Globalization* (New York, NY: Routledge, 2009), 48.

³³ Gerald Cushing MacCallum Jr., “Legislative Intent,” in *Legislative Intent and Other Essays on Law, Politics, and Morality*, ed. by Gerald Cushing MacCallum Jr., Marcus George Singer, and Rex Martin (Madison, WI: The University of Wisconsin Press, 1993), 8-10.

³⁴ *Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988*, § 1001.a.2.C.

likely that this trend toward greater accountability explains the loss of language condemning intricate regulations.

The disappearance of the clause concerning paperwork is more complicated. Paperwork is a physical manifestation of “overly prescriptive regulations” and is condemned in the same subsection of the law. Paperwork has long been endemic to the work of educators, although the problem may have been at its zenith in 1988, at the very beginning of the inundation of personal computing in the workplace. That is, paperwork, as an expensive and time consuming limitation saddling the capacity of public schools, was a problem that probably appeared solvable through the implementation of electronic databasing and word processing by the passage of the ESEA reauthorization in 1994.

This changing attitude toward the capacity and usefulness of computing can be seen in the journal of record for education scholars, the *American Journal of Education*. The first scholarly article that discussed the actual implementation of computers in public school was Henry Jay Becker’s 1984 work entitled “Computers in Schools Today: Some Basic Considerations.”³⁵ In the article, Becker discusses the growing profile of computing in schools, but it is clear that the applications were still limited at the time. Computers were first used in the public schools for databases and in laboratories. Becker’s discussion of the potential for “specialized programs” like word processors indicates the limited capacity of the computing available in schools at the time.³⁶ Becker’s article compares nicely with the next scholarly article to discuss computers in schools, Martha Hadley and Karen Sheingold’s extensive “Commonalities and Distinctive Patterns in Teachers’ Integration of Computers.”³⁷ The article by Hadley and Sheingold appeared in 1993 and focused on the pedagogical applications of

³⁵ Henry Jay Becker, “Computers in Schools Today: Some Basic Considerations,” *American Journal of Education* 93, no. 1 (November 1984): 22-39.

³⁶ Becker, “Computers in Schools Today: Some Basic Considerations,” 38.

³⁷ Martha Hadley and Karen Sheingold, “Commonalities and Distinctive Patterns in Teachers’ Integration of Computers,” *American Journal of Education* 101, no. 3 (May 1993): 261-315.

computing. Their discussion focuses on computers as classroom tools and assumes an availability that the Becker article before it did not.

The rise of personal computing thus banished paperwork from physical reality to the realm of metaphorical representation. Like “red tape” and “bean counting,” “paperwork” has become a synecdoche for “overly prescriptive regulations” that no longer has a recognizable physical manifestation. This does not mean that the rise of personal computing was responsible for the elimination of language condemning “overly prescriptive regulations,” but that the rhetorical capital required to make such condemnations increased as the physical referent of “paperwork” disappeared from public life. The word “paperwork” changed from an improper noun to a metaphor and the complexity of its rhetorical deployment changed concomitantly.

Although the paperwork issue disappeared along with the concern about prescriptive regulations, language declaring the primacy of local and state institutions in educational decisionmaking has remained in both the declaration of policy of the IASA of 1994 and NCLB reauthorizations. In both the IASA of 1994 and NCLB, the absence of language directly indicting the federal government’s capacity to administer public education belies the original connection between the endorsement of state and local agencies. As a result, in the text of both of the later reauthorizations, clauses lauding the importance of state and local educational agencies appear only to be public recognition of the competence and importance of state and local agencies, not part of the indictment of the federal government’s competence—the position through which they were brought into the law. Divorced from their original context, the IASA of 1994 and NCLB clauses endorsing state and local control appear to be benign platitudes. One must read the declarations of policy in succession to recognize their vestigial history as arguments against the federal role in public education.

Despite all of the additions to the declaration of policy of the ESEA brought about by the 1988 reauthorization, very little of the original text was eliminated. Some of this language was

rephrased in the reauthorization, but its origins are discernable. Table 2-1 demonstrates this continuity by underlining the parts of the ESEA declaration of policy that were incorporated into the 1988 reauthorization both in the original declaration from 1965 and the 1988 reauthorization. The table clearly demonstrates that nearly all of the language from the original ESEA was promulgated by the reauthorization. The changes made by the 1988 version include splitting the original statement apart between the first major clause and the second, some rephrasing, and dropping some of the redundant language. The result is that most of the changes in the ESSIA of 1988's declaration of policy amount to the addition of the clauses analyzed above. The approach to the question of justification through reauthorization demonstrated by the 1988 revision is to only make additions.

Table 2-1: Evolution of ESEA Statements of Purpose

ESEA of 1965 – Section 201	ESSIA of 1988 – Section 1001
Declaration of Policy	Declaration of Policy and Statement of Purpose
<p>"Sec. 201. <u>In recognition of the special educational needs of children of low-income families and the impact that concentrations of low-income families have on the ability of local education agencies to support adequate educational programs, the Congress hereby declares it to be the policy of the United States to provide financial assistance</u> (as set forth in this title) to local education agencies serving areas with concentrations of children from low-income families <u>to expand and improve their educational programs by various means (including preschool programs) which contribute particularly to meeting the special educational needs of educationally deprived children.</u></p>	<p>"(a) DECLARATION OF POLICY. -- <u>In recognition of</u> --</p> <p>"(1) <u>the special educational needs of children of low-income families and the impact of concentrations of low-income families on the ability of local educational agencies to provide educational programs which meet such needs,</u> and</p> <p>"(2) the special educational needs of children of migrant parents, of Indian children, and of handicapped, neglected, and delinquent children, <u>the Congress declares it to be the policy of the United States to</u> --</p> <p>"(A) <u>provide financial assistance to State and local educational agencies to meet the special needs of such educationally deprived children at the preschool, elementary, and secondary levels;</u></p> <p>"(B) expand the program authorized by this chapter over the next 5 years by increasing funding for this chapter by at least \$ 500,000,000 over baseline each fiscal year and thereby increasing the percentage of eligible children served in each fiscal year with the intent of serving all eligible children by fiscal year 1993; and</p> <p>"(C) provide such assistance in a way which eliminates unnecessary administrative burden and paperwork and overly prescriptive regulations and provides flexibility to State and local educational agencies in making educational decisions.</p> <p>"(b) STATEMENT OF PURPOSE. -- The purpose of assistance under this chapter is to improve the educational opportunities of educationally deprived children by helping such children succeed in the regular program of the local educational agency, attain grade-level [**141] proficiency, and improve achievement in basic and more advanced skills. These purposes shall be accomplished through such means as supplemental education programs, schoolwide programs, and the increased involvement of parents in their</p>

children's education.

The preservation of most of the language of the ESEA of 1965 in the 1988 reauthorization is endemic to the larger process of reauthorization itself. Because a reauthorized law inhabits the same legal space as the law that it reauthorizes, there is a burden to at least pay rhetorical homage to the law that is being replaced. Since reauthorization itself is a politically tedious process, those legislators who wish to reauthorize a bill have to take some care to ensure that they do not stretch the meaning and purpose of the law beyond its breaking point or they risk halting the process entirely.³⁸ Thus, changes to reauthorized bills, like the ESEA, tend to happen over time in a system of incremental alteration and small rhetorical changes to the declaration of policy have increasing value as they afford space for increasing departure from the original meaning over time.

Improving America's Schools Act of 1994

A certain level of fidelity to the previous reauthorization is present in each rewrite of the declaration of policy, but only the IASA of 1994 directly declares its need to reference the preceding version of the law. The IASA of 1994 included the longest declaration of policy of any version of the ESEA. It is broken into four sections: (a) statement of policy, (b) recognition of need, (c) what has been learned since 1988, and (d) statement of purpose.³⁹ Section c of the IASA of 1994's declaration of policy introduced a new method of justification into the reauthorization process of the ESEA.

The process of reauthorization is, at its base, a paradoxical rhetorical exercise. Although reauthorization almost always involves changing the law, at the same time, it usually requires a

³⁸ James H. Cox, *Reviewing Delegation: An Analysis of the Congressional Reauthorization Process* (Westport, CT: Praeger, 2004), 125.

³⁹ *Improving America's Schools Act of 1994*, Public Law 103-382, 103rd Cong., 2nd Sess. (October 20, 1994) § 1001.

level of consistency across each version of the law that is produced. Typically, a reauthorization both alters the existing law in order to improve it while remaining similar enough to the previous version that it can continue occupy the same governmental space. Reauthorization itself became a regular legislative activity in the 1960s, when Congress began—on a regular basis—to saddle executive agencies with reauthorization processes in order to maintain oversight.⁴⁰ In the case of the ESEA, the reauthorization process has become less about congressional oversight over the executive branch and more about national party politics.

For example, section c of the 1994 declaration of policy entitled “What Has Been Learned Since 1988” was produced under a Democratic presidential administration and presented a list of improvements over a version of the ESSIA of 1988, passed under a Republican president. In all the declarations of policy of all of the reauthorizations of the ESEA, this is only point where one version of the law directly addressed another. The c subsection includes twelve points, all meant to highlight the superiority of the new version of the law. The decision to make “What Has Been Learned Since 1988” a section in-and-of itself is political. The phrase “It has been learned since 1988 that . . .” could have been put in front of any of the points made within that section or any of the other sections of the declaration of policy. Instead, the authors of the law thought it important enough to make a category out of the improvements of the 1994 reauthorization over ESSIA of 1988. Although some of the points within section c seem to highlight research or events that have happened in the intervening years, thereby arguing for the need for reauthorization in general, other points are identifiable as party politics.

A couple of the sub-points seem to be critical of the social and budgetary policies of the Reagan administration. For example, the tenth sub-point states: “Attention to academics alone cannot ensure that all children will reach high standards. The health and other needs of children that affect learning are frequently unmet, particularly in high-poverty schools, thereby

⁴⁰Cox, *Reviewing Delegation*, 62-66.

necessitating coordination of services to better meet children's needs.”⁴¹ Although—on its face—this point argues only for the “coordination of services,” the implicit valuation of those services can easily be read as a rebuke of the service-slashing policies of the Reagan administration that oversaw the passage of the ESSIA of 1988. In addition to the tenth sub-point, the twelfth sub-point appears to be directed at the budget-cutting policies of the Reagan years. It states: “Equitable and sufficient resources, particularly as such resources relate to the quality of the teaching force, have an integral relationship to high student achievement.”⁴² The twelfth sub-point neatly highlights the implications of both of these statements. If “equitable and sufficient resources” along with the “coordination of services” are both critical to “student achievement,” then the Reagan administration, which sought to reduce both, was preventing “student achievement.” This is a significant condemnation to encode into public law.

Not all of the political statements in the 1994 declaration of policy were tied to party affiliation. The language of standards, that had just begun to creep into the ESSIA of 1988, was featured much more prominently in the 1994 reauthorization. Section b 4 declared “while title I and other programs funded under this Act contribute to narrowing the achievement gap between children in high-poverty and low-poverty schools, such programs need to become even more effective in improving schools in order to enable all children to achieve high standards.”⁴³ As part of the declaration’s statement of need, subsection b 4 endows the ESEA with the mission of helping schools reduce the “achievement gap” and helping students achieve “high standards.” The call to lower the achievement gap has subsequently become a central piece of contemporary education policy’s system of standards-based quantification. Assessment of the achievement gap has required schools to separate students into groups based on predetermined metrics and to

⁴¹ *Improving America’s Schools Act of 1994*, § 1001.c.10.

⁴² *Improving America’s Schools Act of 1994*, § 1001.c.12.

⁴³ *Improving America’s Schools Act of 1994*, § 1001.b.4.

compare statistics such as test results.⁴⁴ For these comparisons to have any value, student populations have to be comparable in some way. In order to provide that comparability, metrics that can be applied on a national level—like the achievement gap, become arguments for the standardization of tests and curricula.

Making “high standards” the goal of education policy and using systemic reform to achieve those goals is a policy posture that was developed and articulated at the influential Goals 2000 education summit, a convention of governors assembled by President George H. W. Bush in 1989. President Clinton, who was the governor of Arkansas at the time, was among the attendees, and the conference heavily influenced his legislative agenda for education policy as president. The Clinton Administration passed a reform bill called the Goals 2000: Educate America Act, but it was met in the Congress with opposition to federal control over education policy and most of its reforms were gutted. As a consequence, the following 1994 reauthorization of the ESEA included a great deal of the push for standards that had been cut from the Goals 2000 legislation.⁴⁵ The declaration of policy of the IASA of 1994 invokes the Goals 2000 legislation to justify its focus on core subjects, but its presence—along with the language of standards—sent the clear message that the United States Federal Government favored standardization-based reforms.⁴⁶ This strong endorsement of standardization was also a testament to the growing influence of neoliberal policymaking in national education politics.⁴⁷ Nonetheless, the lack of enforcement measures in the IASA of 1994 meant that those reforms did not begin to materialize until the passage of NCLB.

The endorsement of standardization is not the only way in which the 1994 reauthorization presaged NCLB. As demonstrated in Table 2-2, the list of student populations targeted for help

⁴⁴ Lance D. Fusarelli, “Flying (Partially) Blind: School Leaders’ Use of Research in Decisionmaking,” in *When Research Matters: How Scholarship Influence Education Policy*, ed. Frederick M. Hess (Cambridge, MA: Harvard Education Press, 2008), 193.

⁴⁵ Anderson, *Congress and the Classroom*, 130-131.

⁴⁶ *Improving America’s Schools Act of 1994*, § 1001.b.5.

⁴⁷ Torres, *Education and Neoliberal Globalization*, 45, 48.

from the IASA of 1994 is almost identical to the list provided in NCLB's declaration of policy.

Like the ESSIA of 1988, the IASA of 1994 listed the targets of its funding, but this list was moved to a new section labeled "Statement of Need." Although the list in the IASA of 1994 seemed to imply that the new legislation would target disadvantaged African American children through the addition of groups like "low-achieving children in our Nation's highest-poverty schools" and "young children and their parents who are in need of family-literacy services," the IASA of 1994 again declined to list African American children—a major target of the original ESEA of 1965—as intended beneficiaries. This absence—which can be compared with the 1988 version and NCLB in Table 2-2—is notable as other groups, like Indian children and the children of migrant workers, are listed directly, not by the predominant educational problems that might plague them.⁴⁸

Table 2-2 List of Needy Students: 1988, 1994, and 2001

ESSIA of 1988: Section 1001.a.2	IASA of 1994: Section 1001.b.3	NCLB Act of 2001: Section 1001.2
the special educational needs of children of migrant parents, of Indian children, and of handicapped, neglected, and delinquent children, the Congress declares it to be the policy of the United States to -	educational needs are particularly great for low-achieving children in our Nation's highest-poverty schools, children with limited English proficiency, children of migrant workers, children with disabilities, Indian children, children who are neglected or delinquent, and young children and their parents who are in need of family-literacy services;	meeting the educational needs of low-achieving children in our Nation's highest-poverty schools, limited English proficient children, migratory children, children with disabilities, Indian children, neglected or delinquent children, and young children in need of reading assistance;

Another linguistic practice that the IASA of 1994 carried over from the ESSIA of 1988 and into NCLB is using sub-points to address specific concerns and constituents. For example, in the IASA of 1994, both professional development and arts education get their own sub-points as

⁴⁸ Although "children of migrant workers" is not a racial or ethnic designation, the terms "Hispanic," "Latino/Latina," "South American," and "Central American" all leave out major portions of the migrant worker population. Thus, the specificity of the term—a geographic and class distinction—is roughly equivalent with the term Indian.

part of the “Statement of Purpose,” or section d.⁴⁹ Since the ESEA and its reauthorizations are, for the most part, complex appropriations measures, including language that identifies specific educational programs presumably aids the mentioned programs in successfully procuring funding through the law.

Constituencies within the traditional public school system are not the only concerned parties to receive recognition in the form of sub-points. Two sub-points are dedicated to the importance of parents, one sub-point that lauds the effectiveness of decision making at the local level, and another sub-point that praises the efficacy of school choice programs and charter schooling.⁵⁰ All three indicate the distrust of the public education system that first appeared in the ESSIA of 1988.⁵¹ Moreover, all three express portions of the growing neoliberal turn in education policy. The endorsement of local decisionmaking and the value of parents both appeal to the individualization of the student body, parents, and school districts that neoliberalism endorses.⁵² Harris explains that, for neoliberalism, freedom and autonomy are central rhetorical appeals. Articulating a policy as increasing one or both of these virtues above all others gives a piece of public policy a neoliberal appearance. Additionally, Karen Anijar and David Gabbard have established the neoliberal roots of the voucher, or “school choice,” movement in contemporary education policy. Beginning with Milton Friedman’s endorsement of the application of a market structure to public education up through the media campaign of the Future

⁴⁹ Professional development was actually the topic of two sub points: *Improving America’s Schools Act of 1994*, § 1001.c.5; and *Improving America’s Schools Act of 1994*, § 1001.d.4; while arts education was the topic of one: *Improving America’s Schools Act of 1994*, § 1001.d.2.

⁵⁰ Parents: *Improving America’s Schools Act of 1994*, § 1001.c.7; and *Improving America’s Schools Act of 1994*, § 1001.d.6; Federalism: *Improving America’s Schools Act of 1994*, § 1001.c.8; and School Choice and Charter Schools: *Improving America’s Schools Act of 1994*, § 1001.c.9.

⁵¹ Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, § 1001.a.2.C.

⁵² Harris, *The Governance of Education*, 135-136.

of Freedom Foundation, the push for school vouchers retains its origins in celebration of the market's capacity to save publicly administered education.⁵³

No Child Left Behind Act of 2001

Given the neoliberal tendencies of the IASA of 1994—an education bill passed by a Democratic House, Senate, and President—it is easy to understand how the Bush Administration—known for its aggressive form of neoliberalism—could end up passing NCLB with significant bipartisan support. Several of Bush's talking points on NCLB came right out of the declaration of policy of the IASA of 1994. The insistence that “every child can learn,” a phrase that appeared in both Bush's campaign biography, *A Charge to Keep*, and his signing statement for NCLB, is well supported by subsection c 1 of the IASA of 1994, which states: “All children can master challenging content and complex problem-solving skills. Research clearly shows that children, including low-achieving children, can succeed when expectations are high and all children are given the opportunity to learn challenging material.”⁵⁴ Additionally, in Bush's NCLB signing statement he insisted that “schools not only have the responsibility to improve, they now have the freedom to improve.”⁵⁵ This is exactly the same bargain described by the last sub-point of the IASA of 1994's declaration of policy: “providing greater decisionmaking authority and flexibility to schools and teachers in exchange for greater responsibility for student performance.”⁵⁶ Although it is fashionable to describe NCLB as a

⁵³ Karen Anjar and David Gabbard, “The American Privatization Campaign: Vouchers, Charters, Educational Management Organizations, and the Money Behind Them,” in *The Rich World and the Impoverishment of Education: Diminishing Democracy, Equity, and Workers' Rights*, ed. Dave Hill (New York, NY: Routledge, 2009), 22-24.

⁵⁴ George W. Bush, *A Charge to Keep* (New York, NY: William Morrow and Company, 1999), 74; George W. Bush, *Public Papers of the President of the United States, 2002* vol. 1 (Washington D.C.: GPO, 2004), 24; *Improving America's Schools Act of 1994*, § 1001.c.1.

⁵⁵ Bush, *Public Papers of the President of the United States, 2002*, 25.

⁵⁶ *Improving America's Schools Act of 1994*, § 1001.d.9.

major departure from the IASA of 1994 and the ESEA reauthorizations before it, NCLB is not nearly as big a departure as a rhetorical document as it is as a policy document.

Despite the myriad of similarities between the IASA of 1994 and NCLB, there are changes in NCLB's declaration of policy worth noting. The declaration of policy in NCLB is a departure from its predecessors in that it is the first to simplify its form as compared to the declaration before it. NCLB actually uses a two sentence form that is reminiscent of the simplicity of the declaration of policy of the ESEA of 1965. A lead clause declares the law's intention to improve education and then twelve following clauses provide ways in which NCLB will do so. The simplification makes the NCLB declaration of policy significantly shorter than the IASA of 1994's, but leaves it longer than both the ESSIA of 1988 and the ESEA of 1965. Its two sentence form, however, is simpler than the ESSIA of 1988, which uses three levels of legal clauses.

An implication of the simplified form of the NCLB declaration of policy is that there are only two levels of legal clauses and the higher, or more generally applicable, level of clause contains only a single operative clause. It reads: "The purpose of this title 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. This purpose can be accomplished by—."⁵⁷ This single operative sentence holds a privileged space in the declaration of policy and first and strongest statement concerning the intent and goals of NCLB. This sentence modifies the rest of the declaration of policy, so its contents are essential to the meaning of the law.

Standards, which was the subject of one clause among many in the IASA of 1994's declaration policy gets promoted to a critical location in the NCLB version. Torres describes NCLB as neoliberal takeover of public education in the United States by the federal government

⁵⁷ *No Child Left Behind Act of 2001*, § 1001.

and although this might be overdramatizing the change, subtle moves like the position of the discussion of standards are not without consequences.⁵⁸ The ESEA of 1965 called for greater educational opportunities for the economically disadvantaged, but did little to define what those opportunities would be or what the successful delivery of greater success might entail. The ESSIA of 1988 did little more to define the successful addition of opportunities, but insisted that all eligible children should be served and that the government's administration of education should be efficient. The IASA of 1994 does mention standards as a way of assessing the successful delivery of greater educational opportunities, but standards are one benchmark among others in the IASA of 1994, including arts education and access to technology. In NCLB, the new position for standards declares that all success should be measured by student achievement on state administered assessments. This small and incremental change to the language of the ESEA altered the original over time from a law that did little more than appropriate funding to *Brown v. Board* compliant schools to a law that requires the creation and assessment of statewide standards to determine the efficacy of federally funded education programs. This radical change is a testament to the power of the reauthorization process to change the content and consequences of laws over time.

Beyond the promotion of the evaluation of standards, a new word crept into the fourth subsection of the declaration: "accountable."⁵⁹ The fourth subsection indicates that one way to improve the performance of students on state-mandated academic assessments is to hold schools, local educational agencies, and states accountable for the performance of all of their students. This move, although it may seem subtle at first, is monumental in the history of the ESEA. In no previous version of the ESEA was it even suggested that the problem with schools was the schools themselves. The ESEA of 1965 was passed explicitly to help ameliorate the damage

⁵⁸ Torres, *Education and Neoliberal Globalization*, 45.

⁵⁹ *No Child Left Behind Act of 2001*, § 1001.4.

done to students by poverty and racial injustice, not the damage done by their educators. All previous versions of the ESEA simply assume that public education has a positive value. The suggestion that the reason for underachievement is the schools themselves is a radical departure that puts NCLB in opposition with the public school system as opposed to some societal problem like poverty, a bad economy, or racism. Rather than using the public schools as a tool to solve a larger problem, NCLB rhetorically constructs itself as a law made for the sake of fixing the school itself.

The call for accountability assumes that student achievement on standardized tests can be linked to school programs, and NCLB appeals to science to make that link. Subsection 9 of the NCLB statement of policy says: “promoting schoolwide reform and ensuring the access of children to effective, scientifically based instructional strategies and challenging academic content.”⁶⁰ Subsection 9 is not a unique instance of the endorsement of “scientifically based” instruction in NCLB. Paul Manna and Michael Petrilli analyzed NCLB for the use of the term “scientifically based” and found that it occurred some 216 times. Investigating the law to determine whether the term was being used in order to refer to actual education research, they optimistically reported that, for the most part, when NCLB invokes science it actually makes use of qualified education research.⁶¹ Although the use of education research is of some comfort from the epistemological perspective of a quantitative researcher, Manna and Petrilli’s study is not specific to the type of research that is being invoked by NCLB. Torres points out that quantification can be twisted so that it favors a preexisting policy agenda. Designing studies to reprove a theory rather than test it or rejecting unwelcome results as anomalous lends the label “scientific” to ideas that have not been tested as rigorously as the term suggests. Torres

⁶⁰ *No Child Left Behind Act of 2001*, § 1001.9.

⁶¹ Paul Manna and Michael J. Petrilli, “Double Standard? ‘Scientifically Based Research’ and the No Child Left Behind Act,” in *When Research Matters: How Scholarship Influences Education Policy*, ed. by Frederick M. Hess (Cambridge, MA; Harvard Education Press, 2008), 67, 86.

specifically indicts education research for being guilty of this methodological sin.⁶² The troubling possibility that Manna and Petrilli leave out of their article is that science may be invoked to give the impression that there is a “correct” answer to some educational question where the research and the reality might actually be more complex. Subsection 9 declares that instructional strategies are to be effective and “scientifically based,” which suggests that only those strategies that have some study to back them can be determined to be effective. With a great deal of education research being publicly funded through government grants, the possibility for creating a scientific system of self-fulfilling prophesies is potentially dangerous for both education policy and research.

The discourses of standards, accountability, and science in NCLB are still buttressed with some of the same rhetoric from previous versions of the ESEA. For example, subsection 3 of the declaration of policy focuses on closing the achievement gap just like subsection b 1 in the IASA of 1994.⁶³ The same target populations are listed in NCLB as in the IASA of 1994. Additionally, NCLB sets aside individual subsections for parents, professional development, and the coordination of services, just like the IASA of 1994.

However, another departure in NCLB comes in the sixth subsection of its declaration of policy. It states: “improving and strengthening accountability, teaching, and learning by using State assessment systems designed to ensure that students are meeting challenging State academic achievement and content standards and increasing achievement overall, but especially for the disadvantaged.”⁶⁴ What is notable about this section is not the discussion of standards, but the discussion of the students the law targets. Although NCLB retains the list of disadvantaged groups that it seeks to help, here it reveals that the new law is now meant to have an impact on all

⁶² Torres, *Education and Neoliberal Globalization*, 48-49.

⁶³ *No Child Left Behind Act of 2001*, § 1001.3; and *Improving America’s Schools Act of 1994*, § 1001.b.1.

⁶⁴ *No Child Left Behind Act of 2001*, § 1001.6.

of the United States' public schools. NCLB seeks to improve "achievement overall." Again, this is a radical departure from previous versions of the ESEA. The ESEA of 1965 is adamant about its commitment to economically disadvantaged students. The law was designed to do little more than get money into those classrooms that did not have enough of it. The ESSA of 1988 began to slip toward NCLB's policy posture when it stated that its goal was to eventually serve all eligible students, but the term "eligible" at least maintained the fiction that the students served by the ESEA are a portion—presumably the underprivileged portion—of United States public school students. The IASA of 1994 maintained the use of the term "eligible." NCLB obliterates this line and assumes that all United States public school students are in schools that are in some need of federal assistance and therefore beholden the federal directives. Collapsing the privileged students in with the underprivileged students changes the mission of the ESEA from trying to achieve equality to trying to improve quality overall. This is Suzy Harris's neoliberal turn.⁶⁵

NCLB depicts all students as equal in their need for federal assistance and oversight. The political potential NCLB inherited from previous versions of the ESEA, which is their capacity to operate as a democratizing force by bringing a greater measure of equality to education, is excised when the distinction between privilege and the lack of privilege ceases to drive the purpose of the law. NCLB holds all schools and all students accountable for achieving the same standards assuming that parity has already been reached in the initial opportunity to reach those standards. The law rests on the neoliberal assertion that all schools and all students are educational entrepreneurs competing on equal terms. In this way, NCLB has declared an end to the original mission of the ESEA.

⁶⁵ Harris, *The Governance of Education*, 134.

Conclusion

The rhetoric of NCLB, as a reauthorization of the ESEA, is as much a product of new, external influences on education policy as it is the product of rhetorical trends already existing within the ESEA reauthorization process. Examining the rhetoric of each version of the declaration of policy reveals small developments in the rhetorical posture of the declarations that often indicate larger policy changes. In particular, the narrowing of the ESEA from a law designed to help ameliorate large societal problems to a bill focused on improving public education and the concomitant and paradoxical widening of the ESEA's focus from just the underprivileged to all students stand out as notable trends. In other words, the major development of NCLB's statement of purpose is that the ESEA now seeks to do less—in terms of its effect on United States society at large—with more—students.

Chapter 3

Education as (a) Good

As the goals of the Elementary and Secondary Education Act (ESEA) changed from societal reform to school reform, the ESEA's conceptualization of education also changed. Whereas the ESEA of 1965 assumed education to be a moral good with inherent positive benefits, the No Child Left Behind Act of 2001 (NCLB) discusses education in objectified terms like "educational system" or "education achievement." These terms give education objective forms that can be manipulated by political economy public policy. Through the objectification of education, NCLB conceptualizes education in economic terms. However, those terms do not always describe a coherent subject. This chapter examines how the rhetoric of NCLB expresses an economized understanding of education. Consistent with the neoliberal paradigm of government action, NCLB created a marketplace in which educational achievement is a product that can be measured as economic output. In this first case, education becomes a commodity in that educational marketplace. This chapter also investigates the way in which NCLB monetized education by pegging its reforms and the quantified progress of those reforms to a system of funding. Education in its monetized formation becomes a standardized measure of the progress of schools and students. By commodifying and monetizing educational achievement, the rhetoric of NCLB expresses an understanding of the process of education itself as a corporate system in which input and output can be linked to each other and manipulated. Subjecting education to the rules of the market, NCLB conceptualizes the process of education itself as an economic transaction.

The economic conception of public policy that NCLB brings to bear on public education in the United States constitutes the second move of statutory rhetoric. This first move of NCLB's statutory rhetoric is to justify the law's authority by co-opting the language and position of the previous versions of the Elementary and Secondary Education Act (ESEA). NCLB then employs that authority to refigure the world of public education in the United States. That is, as statutory rhetoric, NCLB uses language to figure the world outside of language and for that task it deploys three economic discourses. Whereas the earlier versions of the ESEA conceptualized education as an abstract public good and sought only to increase it, NCLB commodifies, monetizes, and systematizes education as an economic good and seeks to control and refine it.

This chapter elucidates NCLB's economic rhetoric through a close examination of the ways that NCLB implicitly defines primary and secondary education in the United States. Edward Schiappa explains in his work on the rhetoric of definition: "A successful new definition changes not only recognizable patterns of linguistic behavior but also our understanding of the world and the attitudes and behaviors we adopt toward various parts of that world."¹ Although this thesis, as a work of rhetorical scholarship, cannot authoritatively speculate on the direct policy implications of NCLB, I take the same position as Schiappa in asserting that the implications of NCLB's definition of education are real in the material sense. This chapter does not speculate about the implications of the economic definition of education for the effectiveness of education policy, but in the interest of examining NCLB's impact on the world its conclusion implicates NCLB's economic conception of education in relation to the work of several democratic, social, and rhetorical theorists.

¹ Edward Schiappa, *Defining Reality: Definitions and the Politics of Meaning* (Carbondale, IL: Southern Illinois University Press, 2003), 32.

The ESEA and Education as a Public Virtue

In order to produce a meaningful understanding of the economic rhetoric employed by NCLB, this chapter, like the last, begins with the Elementary and Secondary Education Act of 1965 (ESEA of 1965). The ESEA of 1965 provides a useful contrast to NCLB because the ESEA of 1965 assumed public education to be a public good. The 1965 ESEA's declaration of policy and its passage as part of President Johnson's legislative program—the Great Society—positioned public education as a solution to societal inequalities, rather than a source of inequality. As the statements of purpose developed through a series of reauthorizations, the ESEA shifted its focus from using education to ameliorate societal inequalities, to attempting to manage the inequalities caused by inequitable education. The ESEA of 1965 was a very basic problem-solution construction, where education served as part of the solution for systemic and historical inequalities. Although the legislation itself does not declare the capacity of education to solve societal problems, an examination of the context in which the law was created makes this intent manifest. President Johnson's signing statement made the intent of the law clear by declaring the value and potential of the federal investment in public education:

Now, within the past 3 weeks, the House of Representatives, by a vote of 263 to 153, and the Senate, by a vote of 73 to 18, have passed the most sweeping educational bill ever to come before Congress. It represents a major new commitment of the Federal Government to quality and equality in the schooling that we offer our young people. I predict that all of those of both parties of Congress who supported the enactment of this legislation will be remembered in history as men and women who began a new day of greatness in American society.²

Looking past the President's ostentatious prediction for the future historiography of the law's supporters, one gets a whiff of the virtue his sentiments invested in public education. His rhetoric suggests a transformational potential in public education that is both high-quality and equitable.

² Lyndon B. Johnson, *Public Papers of the President of the United States, 1965* vol. 1(Washington D.C.: GPO, 1966), 413.

Although this is a sentiment that survives in NCLB's endorsement of "best practices," NCLB complicates the endorsement of high-quality and equal education by defining those "best practices" as education that can be scientifically proven to be effective.³ In this case, the turn away from education as a public good is apparent even as the same basic value—that equitable and high-quality has transformative potential—is upheld.

Because the curative capacity of education was assumed by the policymakers who created the ESEA of 1965, it was a much less detailed piece of legislation than its progeny. The ESEA of 1965 was only thirty-two pages of legal content, whereas NCLB is nearly seven hundred. Most of the content of the ESEA of 1965 is logistical information concerning how the new federal funds are to be delivered to the local educational authorities who will put them to use. Without the assumption of the inherent virtue of investing public funds in education, NCLB must do a great deal of work to ensure the efficacy of the educational initiatives it funds. This shift in the legislative burden of proof has expanded and complicated the subsequent reauthorizations of the ESEA of 1965 by forcing them to take part in school reform. Because the schools, as opposed to society and history, are now blamed for student underachievement, the ESEA has become increasingly involved in reform, funding and enforcing the process. Creating regimes that encourage and oversee these reforms has substantially expanded the law.

By arguing that the ESEA of 1965 viewed education as a public virtue, I do not mean to imply that the ESEA of 1965 was created without any economic considerations. From an economist's point of view, education, like all human endeavors, is and has always been economic. Despite its inherent economic-ness, education has not always been discussed as economic in the public discourse of federal education policy. Marking this discursive shift is the goal of this part of my project. In addition to the theoretical concerns attendant in this

³ *No Child Left Behind Act of 2001*, Public Law 107-110, 107th Cong., 1st sess. (January 8, 2002) § 6111.2.H.

examination, there are more concrete stumbling blocks. Parsing the difference in NCLB's economic conception of education as compared with that of the ESEA of 1965 is complicated by the economics of the President Johnson's legislative agenda. David Zarefsky points out that Johnson's War on Poverty—of which the ESEA of 1965 was arguably a part—"attempted to redefine a *racial* crisis as an *economic* problem."⁴ Indeed, one could easily interpret the ESEA of 1965 much the same way. In part, the ESEA of 1965 was an enforcement mechanism for the *Brown v. Board of Education* decision. Because the Civil Rights Act of 1964 banned the use of federal funds to support segregation of any kind, all of the new funding created by the ESEA of 1965 was off limits to any school district still practicing segregation.⁵ Despite its implications for the enforcement of desegregation, the ESEA of 1965 itself and President Johnson's signing statements discuss the funding created by the law as a solution for the inequities caused by economic injustices, not the inequities caused by racial injustice. Although the material and economic focus of the ESEA of 1965 is considerable, education itself remains distinct from the economics that surround and affect it. Describing the problems with education as being economic or caused by economics is not the same as describing education itself as inherently economic.

Although the ESEA of 1965's declaration of policy clearly states that the bill was designed to serve the "special needs of children of low-income families," education and economics remain conceptually distinct.⁶ The ESEA of 1965 constructs economics as an outside force that, in this case, makes the process of education more difficult to provide for less affluent communities. The law sought to ameliorate the effects of economics on the quality of education offered to poor American children, but it does not describe education itself—either the process of

⁴ David Zarefsky, *President Johnson's War on Poverty: Rhetoric and History* (Tuscaloosa, AL: The University of Alabama Press, 1986), 43.

⁵ Patrick McGuinn, *No Child Left Behind and the Transformation of Federal Education Policy 1965-2005* (Lawrence, KA: The University of Kansas Press, 2006), 29, 36.

⁶ *Elementary and Secondary Education Act of 1965*, Public Law 89-10, 89th Cong., 1st sess. (April 11, 1965) § 201.

teaching or institutions of learning—in economic terms. To the contrary, the rhetoric of the ESEA of 1965 was rebelling against the incursion of economic factors on public education by declaring their effects to be deleterious and then attempting to fund the disparity out of existence.

Another way in which economics looms large in the ESEA of 1965 is in the material concerns of the second through fifth titles. Each focuses on a category of expenditures made available by the ESEA of 1965, describing the amount and nature of the funding. Each of the categories of funds was designed to enhance the positive impact of public education in the United States by increasing its material capacity. The ESEA of 1965 was little more than an appropriations bill, and Titles II through V make this reality excruciatingly clear. The ESEA of 1965 understood education to be economic in the basic sense that it is a service requiring money to function. Nonetheless, without any attempt to define educational outcomes or to tie those outcomes to this increase in monetary input, the ESEA of 1965 stops short of conceptualizing education itself as an economic exchange or system. The capacity for education to be enhanced by an increase in resources is not the same conceptualization of education as one that understands education as an economic system in which specific forms of input inherently result in specific forms of output. Moreover, the ESEA of 1965 does not even consider the possibility that measurable forms of input might be traceable to specific, measurable forms of output.

The ESEA comes closest to considering the relationship between input and output by being an indirect enforcement mechanism incentivizing the desegregation of public schools, but that incentive scheme does not tie the input of federal dollars to the output of desegregation. That is, the money being provided is not used to fund desegregation. The law works in the opposite direction whereas desegregation is a prerequisite to obtain federal support. There is, of course, manipulation of the education system in the case of the ESEA's desegregation requirement, but the manipulation is not turning the entire process of education into an economic system in the way that NCLB does.

The endpoint for the ESEA of 1965 is simply evening out opportunity, not measuring and attempting to even out results. Whether or not the increased opportunity actually results in any practical change in educational outcomes is entirely absent from the legislation. In this way, the ESEA of 1965 is predicated entirely on deontological grounds. Pragmatic justifications are absent. It assumes the equality of opportunity in education to be a *prima facie* public virtue. For the ESEA of 1965, education is worthy of public funds because it is inherently good. Justification beyond the appeal to the worthiness of education as a positive human behavior is not needed.

Although the conception of education as a public good had existed alongside economic considerations at least since the passage of the ESEA in 1965, the economic concerns began to become more important in subsequent reauthorizations of the law along with the rise of neoliberalism. In the previous chapter, I traced the introduction of language skeptical of the government's ability to administer public education and explained that it has been identified as part of the neoliberal turn in American—and in many cases global—governance. Nicholas Rose notes that “as this advanced liberal diagram developed, the relation of the social and economic is rethought. All aspects of *social* behavior are now reconceptualized along economic lines—as calculative actions undertaken through the universal human faculty of choice.”⁷ Because neoliberalism envisions a citizenry of individualist entrepreneurs, the merits of compensatory education are questionable.⁸ This doubtfulness from the neoliberal perspective is both due to the lack of utility seen in a compensatory education for the idealized, independent neoliberal citizen and to the lack of utility seen in government-run systems that are considered inferior because they

⁷ Nicholas Rose, *The Powers of Freedom: Reframing Political Thought* (Cambridge: Cambridge University Press, 1999), 141.

⁸ David Harvey, *A Brief History of NeoLiberalism* (Oxford, UK: Oxford University Press, 2005), 2.

preclude advancement by that same entrepreneurial innovation. Rose suggests that the political solution to this problem has been to economize the social world—in this case education.⁹

Neoliberalism's relationship with education is not simply unidirectional. Although the neoliberal turn has included a growing distrust in the capacity of government in a number of societal sectors and consequent decline in government involvement in social policy, NCLB actually marks a notable increase in the involvement of government in a sector of social policy. The ESEA of 1965 had a section, 604, dedicated to declaring that no federal entity should dictate classroom or school policy.¹⁰ NCLB has a similar statement in section 6301 which prohibits federal employees from deciding teaching practices for local educational agencies, and yet the law spends the majority of the other six hundred sixty-nine pages effectively enforcing a particular set of pedagogies.¹¹ NCLB's obsession with the market and corporate practices allows a way to explain this paradoxical outcome. In the case of education policy, the political impossibility of mass privatization forced the neoliberal movement to exercise its plan B and attempt to corporatize the bureaucracy they could not kill.¹² Where privatization could not be had outright, neoliberal governance dictated that the principles of the market be brought into the government. Using a strong central government to promote neoliberal interests has become a common strategy and is part of what makes neoliberals “neo.”¹³ Thus, the increase in federal involvement brought on by NCLB is not an endorsement of governmental solutions to public problems as much as it is an admission that, in the case of education, it is more realistic to reform the system from within by changing the politics of the people in charge. In the same way that the rise of neoliberalism accounts for the questioning and declining value of government involvement

⁹ Rose, *The Powers of Freedom*, 142.

¹⁰ *Elementary and Secondary Education Act of 1965*, § 604.

¹¹ *No Child Left Behind Act of 2001*, § 6301.

¹² Carlos Alberto Torres, *Education and Neoliberal Globalization* (New York, NY: Routledge, 2009), 43–45.

¹³ Ravi Kumar and Dave Hill, “Introduction: Neoliberal Capitalism and Education,” in *Global Neoliberalism and Education and its Consequences*, ed. Dave Hill and Ravi Kumar (New York, NY: Routledge, 2009), 3.

in education, the economic focus of neoliberalism might also account—at least in part—for the turn in education policy away from the understanding of education as a public good to the conceptualization of education in economic terms. Let us now turn my to those terms as they manifest themselves in the rhetoric of NCLB.

Education as a Good – Commodifying Education

The rhetorical economization of education in NCLB takes a number of forms, but the most basic is the commodification of education. Martha Ertman and Joan Williams explain that “commodity” is a status that is conferred and demurred through social construction. Because “commoditization lies at the complex of temporal, cultural, and social factors,” any object can fluctuate between existence as a commodity within a market and existence outside of the marketplace.¹⁴ Studying commodification using this transient definition entails more than just determining the current condition of a thing’s existence as a commodity or not—such a determination typically yields little insight. A research question with the potential to produce meaningful insight examines the dynamics of “regimes of value” and asks how they come to identify the object in question as a commodity. In the case of NCLB, the process of the commodification of education has left rhetorical residues in the bill itself.

Commodification is the first step in constructing education as an economic object because the object formation of education allows NCLB to articulate a point at which the force of the market can gain purchase on the nebulous concept of education. Even Ertman and Williams, who trouble the static definition of commodity, seem to agree with the term’s Marxist heritage on the point that a commodity must be a physical thing.¹⁵ Kieran Egan has asked this question

¹⁴ Martha Ertman and Joan Williams, *Rethinking Commodification: Cases and Reading in Law and Culture* (New York, NY: New York University Press, 2005), 37-38.

¹⁵ Ertman and Williams, *Rethinking Commodification*, 35.

directly in his work lampooning the social-scientific study of education. Egan challenges his readers to answer the question, “What is a unit of education?” His point is that there is no clear answer to this question without a larger theoretical framework for understanding education. Only through some larger conception of education can one identify just what it is in the world that amounts to education.¹⁶ NCLB creates this objective conception of education through its focus on educational outcomes. It discusses those outcomes using the term “achievement.” NCLB requires that educational achievement be quantified through instruments like test scores, resulting in the commodified conception of education that it then legislates. As NCLB begins to treat educational achievement as a metonymy for education itself, the language of NCLB takes on a quantitative quality that assumes education can be directly measured and manipulated. This is not to say that the results of education are not measurable, but to point out that NCLB seems to lose track of the logical step that turns educational achievement into a proxy for the quality of the education itself. Although the quality of an education is always going to be socially constructed, the danger in the case of NCLB is that the language of the bill loses sight of the manufactured nature of its referent. The term “educational achievement” is a constructed, object-form of education that makes the manipulation of public policy possible, not an infallible measure of the efficacy of public education. In the shuffle of the legislation, the process of commodifying education is erased. “Educational achievement,” the object-form of education, is imbued with objectivity. To recover this process of object formation, I again turn to the text of the legislation itself.

In this chapter, I examine Part A of Title I. Entitled “Improving the Academic Achievement of the Disadvantaged,” first for its commodifying language, then for the language of monetization, and then systematization. Part A is where NCLB initiates the task of forming

¹⁶ Kieran Egan, *Getting it Wrong from the Beginning: Our Progressivist Inheritance from Herbert Spencer, John Dewey, and Jean Piaget* (New Haven, CT: Yale University Press, 2002), 158-159.

the world outside of language. Part A begins with two sections that set out the requirements for any school that will seek funding under Title I. In Section 1111, “State Plans,” the language of the statute first brings the monetary power of the bill into concert with education policy. The first words of the section declare: “For any State desiring to receive a grant under this part, the State educational agency shall submit to the Secretary a plan . . .”¹⁷ Because this statement comes at the beginning of subsection (a), it modifies the rest of this section including all of its subordinated subsections. This means that all of the requirements of the plans listed in section 1111 are requisites for any state that wishes to access the funds provided by Title I. Section 1112 then repeats the same requirement at the district level. It requires that each district file a school improvement plan with the state before the state is allowed grant it a portion of the federal funds that have been provided to the state.¹⁸ These plans, made at both the district and state levels, are the mechanisms by which NCLB expects educational outcomes to be accounted for and to do so the plans are required to use a method of evaluation that quantifies educational achievement. The rhetorical details of these plans construct NCLB’s conceptualization of education itself.

Section 1111 is broken into four major parts: the first describes the academic standards that each plan must include, the second prescribes the accountability mechanisms that each plan must implement, the third dictates how the achievement of those academic standards must be assessed, and the fourth is a set of sections making additional rules that do not fit into the first three categories. NCLB begins to discuss education as an object in subsection 1111.b.1.C where it defines challenging academic standards as “knowledge, skills, and levels of achievement expected of all children” for “mathematics, reading or language arts, and science.” This definition begins to give form to educational achievement.

¹⁷ *No Child Left Behind Act of 2001*, § 1111.a.1.

¹⁸ *No Child Left Behind Act of 2001*, § 1112.a.1.

The term “education” takes on some measure of concrete definition by listing subjects. The list, “mathematics, reading or language arts, and science,” both defines education inductively as a set of objects and at the same time bounds it to that list by including some subjects in the definition, others are presumably excluded. Many have already complained that arts education, physical education, and the entirety of social studies are absent. Although NCLB allows for states to create additional standards, the difficult and expensive process of creating and accounting for additional standards has meant that many states have altered their content priorities to match those of the NCLB requirements.¹⁹ More importantly, though, this short list creates a manageable set of subjects. NCLB’s list turns education into a divisible thing, implicitly rejecting the significance of a holistic understanding of education. Education, broken into these three components, gets defined as a set of objects that can be studied through an objective paradigm and managed based on the legitimacy of those purportedly objective studies.

The phrase “Knowledge, skills, and levels of achievement” also does some definitional work, but it is not as categorically coherent. “Knowledge” and “skills,” like “mathematics, reading or language arts, and science,” offer inductive definitions, but these terms are defining achievement, not education. Both knowledge and skills describe demonstrable aspects of the achievement of education. According to NCLB, students who have achieved an education should be able to display these as aspects of their successful education. “Levels” also adds to the definition of achievement, but instead of listing an object within the category of achievement, “levels” describes a quality of achievement. That is, “levels” indicates that there are multiple forms of achievement and that those forms are hierarchically related. Again, management creeps into the definition of educational achievement. “Knowledge” and “skills” are set up to act as proxies for the hierarchically determined quality of the education set forth as goals in the state

¹⁹ Joetta L. Sack, “ECS Wants to Put Arts Back on States’ High-Priority List,” *Education Week* 24, no. 31 (April 2005): 33.

plans. Thus, “educational achievement” takes on the beginnings of concrete meaning.²⁰

According to NCLB, knowledge and skills in math, reading, and science can be hierarchically related to other knowledge and skills in the same subjects. Although it is still vague, this definition creates a field of objects which, like commodities, can be the subject of measurement and ultimately, standardization.

By redefining education as educational achievement NCLB not only turns education into an object, it turns it into a concrete object that can be measured. In order for an object to become a commodity it must be quantifiable; that is, it must be possible to represent it numerically. NCLB takes the nebulous concept of an education and gives it objective formations that can be counted and compared to each other. Again, Rose notes the critical importance of measurability and numbers in contemporary governance. Within the paradigm of neoliberal governance numbers play a critical role in constituting the governmental control over objects of public policy like education and in manufacturing the popular understanding of their status. Rose points out that “the relationship between numbers and government is reciprocal and mutually constitutive.”²¹ As the neoliberal turn has made government an increasingly economic enterprise, this mutually constitutive process has become increasing economic as well.

Section 1111 accomplishes much of the task of rhetorically constructing education as a measurable object through its discussions of the assessment process. Subsection 1111.b.3 describes the assessment systems that each state must put in place to determine whether each of its schools is making Adequate Yearly Progress (schools failing to do so are subject to the “Accountability” section 1111.b.2). Subsection A explains that all of the states are required to create yearly academic assessments that are to be given to each student testing his or her skill

²⁰ In the assessment section, NCLB repeats the same definition with slightly different terminology. The same three subjects are listed, but “skills” has become “higher order thinking skills” and “knowledge” became “understanding. *No Child Left Behind Act of 2001*, § 1111.b.3.A and § 1111.b.3.C.iv.

²¹ Rose, *The Powers of Freedom*, 197-199.

levels and knowledge in each of the three required subjects; math, reading, and science.²² The required assessments translate education into two units of measure: the student and the school. For NCLB, students are the containers of educational achievement (differing levels of knowledge and skills in math, reading, and science) and that achievement can be measured and compared by their performance on assessments. The students' individual test scores stand in as the measurement of the objective expression of education itself and their aggregated test scores stand in as the measurement of the educational efficacy of their schools.

In order to reach its goals for reform, NCLB includes requirements for what it calls Adequate Yearly Progress (AYP).²³ AYP is a set of yearly goals that each state creates in order to pace its reforms to meet the demands of the federal timeline. AYP includes goals for statewide and district test scores. Subsection 1111.b.2.C provides a lengthy definition of AYP in which it dictates that any assessments of AYP must be "statistically valid and reliable."²⁴ Validity and reliability are not defined because NCLB conceives of them as mathematic terms that cannot be contested. The requirement that states make AYP statistical assumes the measurability of educational achievement through academic assessments and gives validity and reliability their mathematic definitions. In this subsection, NCLB directly demands measurability and ties that measurable outcome to educational efficacy. In order to make the relationship between the measured results of AYP and the efficacy of the state's education system, NCLB also requires that the goals that are set for AYP be measureable.²⁵ The "Measureable Objectives" subsection directly references the subsection that defines AYP and requires that states define their objectives for improving educational achievement in each subject in measureable terms so that they can be assessed by the AYP process.

²² *No Child Left Behind Act of 2001*, § 1111.b.3.A.

²³ *No Child Left Behind Act of 2001*, § 1111.b.2.B.

²⁴ *No Child Left Behind Act of 2001*, § 1111.b.2.C.ii.

²⁵ *No Child Left Behind Act of 2001*, § 1111.b.2.G.

In addition to directly requiring that states define educational achievement as a measurable object, NCLB makes further demands to ensure that the education it governs can be measured. For example, subsection 1111.b.2.C.v.II states that “The achievement of all public elementary school and secondary school students . . . shall not be required in a case in which the number of students in a category is insufficient to yield statistically reliable information . . .” This subsection deepens NCLB’s commitment to measurability by determining that if a population of students is too small to yield reliable statistical information their educational achievement does not need to count as its own category.

Through these requirements, NCLB rhetorically eliminates the consideration of any assessment of the quality of education that cannot be quantified. Education is reduced entirely to its tangible traces, and those traces are considered only insofar as they are expressible in units. For NCLB, educational achievement is like a tree falling in the forest: if no one is around to count it, it did not happen. As troubling as NCLB’s objectification of education might be for its inability to consider the non-quantifiable aspects of education, the greatest cause for concern is the implications of this objectification within the economic context. Attendant with the commodification of education is the implication that education, as an economic object, must be scarce to have value. Ironically, No Child Left Behind conceives education as a process that must necessarily leave some children behind in order to have value. Reinhold Niebuhr recognized the ironic nature of United States public policy after World War II in *The Irony of American History* where he stated:

Irony however prompts some laughter and a nod of comprehension beyond the laughter, for irony involves comic absurdities which cease to be altogether absurd when fully understood. Our age is involved in irony because so many dreams of our nation have been so cruelly refuted by history. Our dreams of pure virtue are dissolved in a situation in which it is possible to exercise the virtue of responsibility toward a community of nations only by courting the prospective guilt of the atomic bomb. And the irony is increased by the frantic effort of some of our idealists to escape this hard reality by dreaming up schemes of an ideal

world order which have no relevance to either our present dangers or our urgent duties.²⁶

NCLB's ostentatious title—like the United Nations that Niebuhr terms frantic idealism—promises the universalizing of educational achievement also promises a world in which educational achievement no longer has value. Thus, it is not surprising to find that the commodification of education in the text of the legislation assumes that some children will be left behind. The “frantic idealists” in the case of NCLB are those policymakers who seek escape the “hard reality” that education—like international affairs—is a messy process that does not submit easily to quantification. Like the United States’ willingness to use the atomic bomb in the defense of peace, NCLB ironically attempts to enforce learning, a policy that can only result in learning, only indoctrination.

NCLB’s ironic conception of education policy is a problem brought on by the commodification of education. Because the ESEA of 1965 understood education as a public virtue and virtues are not subject to the rules of economics, it did not have to ask the question of whether there would be enough education for everyone. The ESEA of 1965 simply legislated an increase in federal funds for what it understood to be an infinitely democratizable public good. NCLB, by envisioning educational achievement as an economic object, is forced to confront the valuing force of scarcity. The language of scarcity first appears in the subsection defining educational standards. NCLB defines challenging academic standards along two lines: the first provides rules for the content of the standards, and the second provide rules for determining levels of achievement. The second standard requires:

- (ii) challenging student academic achievement standards that—
 - (I) are aligned with the State’s academic content standards;
 - (II) describe two levels of high achievement

²⁶ Reinhold Niebuhr, *The Irony of American History*, 2nd ed. (Chicago, IL: The University of Chicago Press, 2008), 2.

(proficient and advanced) that determine how well children are mastering the material in the State academic content standards; and

(III) describe a third level of achievement (basic) to provide complete information about the progress of the lower-achieving children toward mastering the proficient and advanced levels of achievement.²⁷

By dividing educational achievement into three categories, roman numerals two and three make it clear that NCLB assumes high achievement will not be possible for all of the students in the system. Although this hierarchy may appear on its face to be inconsequential or even an inevitable necessity, its descriptive presentation conceals significant rhetorical maneuver. NCLB does not just capitulate to the existence of a hierachal relationship between differing forms of educational achievement, it relies upon those hierachal relationships to direct its reforms. Levels of educational achievement identify those schools and students in need of reform. This hierarchy creates and reinforces a normative structure for evaluating the quality of different educational outcomes. Indeed, for NCLB to enact its reform public education, it must be able to establish that reform is needed. Requiring that states create multiple levels of educational achievement—in addition to directing the reform process—ensures that there will be always be a hierarchy and the need for improvement through reform. Again, Rose’s assertion that numbers help to create and maintain control is proven correct. However, NCLB does more than just make education a measurable economic object; it also demands that the object form of education be measurable in such a way that it becomes standard.

²⁷ *No Child Left Behind Act of 2001*, § 1111.b.1.D.ii.

The State and Local Plans – Monetizing Education

In addition to commodifying education, NCLB also monetizes it. For NCLB, education is a uniform medium of comparison and exchange. More specifically, in addition to envisioning education as a measurable and manageable economic object, NCLB defines education as a measurable and manageable economic object that has standard, interchangeable units. The *Oxford English Dictionary* explains that to “monetize” is to “realize the value of an asset as currency.”²⁸ Typically, an object is monetized by being given a value in terms of a preexisting system of currency. Although NCLB does match educational output to monetary input thus monetizing education in this first sense, it also standardizes and unitizes education itself. This standardization turns education itself into a kind of currency. Through test scores and other measures, educational achievement becomes what David Schaps calls “a universal standard of value” within federal education policy.²⁹ Educational achievement, in addition to being treated as a good, becomes a unit for the valuation and comparison of various reform efforts.

At this point one might reasonably wonder: since the definition of monetization includes the definition of commodification, is it not just the case that NCLB ultimately monetizes education? This would be true if NCLB had a more coherent and static definition of education, but even within section 1111, the “State Plans,” the definition is constantly shifting. Parts of section 1111 stop short of monetization. To argue that NCLB just monetizes education would be to inaccurately reduce all of the language of the bill into a single coherence that does not exist. Not only would this be inaccurate—NCLB employs a commodified, monetized, and systematized definition of education as they are convenient—but it would do violence to the critical perspective of this project. Part of the rhetorical critic’s perspective requires what Thomas

²⁸ Oxford English Dictionary Online, s. v. “monetize” http://dictionary.oed.com.ezaccess.libraries.psu.edu/cgi/entry/00313966?query_type=word&queryword=monetization&first=1&max_to_show=10&single=1&sort_type=alpha (accessed June 10, 2009).

²⁹ David M. Schaps, *The Invention of Coinage and the Monetization of Ancient Greece* (Ann Arbor, MI: The University of Michigan Press, 2004), 196.

Benson describes as the “celebration of the inconsistency of actual cases.”³⁰ NCLB is a deeply inconsistent document that was produced by a number of authors, many of whom held oppositional political positions on education policy.

Monetization always has political implications. In his work on the introduction of coinage and the subsequent monetization of ancient Greece, Schaps notes that “the management of money . . . opened up new avenues to the management of the state.”³¹ Although Schaps was talking about the first introduction of money in the Western world and the spending of it on public works to produce political power for both the Greek city-state of Athens and individuals within Athens, the power to manage that money created for the state is relevant to contemporary education policy.³² Although it is not the case that NCLB is the first version of the ESEA to deal with state spending, NCLB is the first version of the ESEA to put a monetary value on a measureable form of education, educational achievement. NCLB does more than just put a monetary value on education; it standardizes education, creating a value system out of educational achievement itself. For NCLB achievement, like coins in ancient Greece, is a medium of exchange. It facilitates the comparison of students, schools, and districts, and acts as a medium of exchange between the local educational authorities and the federal government. Although the shift in the locus of political power in Greek society that Schaps describes is not as easily identifiable in public education, some changes—like the more active role of the federal government—do bear some similarities. Additionally, the new and high valuation of test scores that many have bemoaned evidences the monetization that this chapter describes.³³

³⁰ Thomas W. Benson, “The Senses of Rhetoric: A Topical System for Critics,” *Central States Speech Journal* 29, no. 4 (Winter 1978): 238. The quote has been modified to agree with the tense of this sentence.

³¹ Schaps, *The Monetization of Ancient Greece*, 137.

³² Schaps, *The Monetization of Ancient Greece*, 128-129.

³³ Emery J. Hylsop-Margison and M. Ayaz Naseem, *Scientism and Education: Empirical Research as Neo-Liberal Ideology* (New York, NY: Springer, 2007), 114.

In the previous chapter, I discussed the historical trend in the text of the ESEA towards the expectation that the results of education will be quantifiable and came to agree with Suzy Harris's conclusion that the decline of the welfare and rise of the neo-liberal state has resulted in a move away from viewing education as a public good to viewing it as an economic good. In the same passage where Harris comes to this conclusion she goes on to explain that the contemporary neo-liberal state seeks to include all of its citizens by training them to be entrepreneurial and individualistic.³⁴ For Harris, the concentration on economic success inherent in education reform is simply a particularized expression of what David Harvey calls neoliberalism's theory of political economics. This view of governance asserts that the role of the government should be limited to creating and enforcing the rules of a playing field where individual entrepreneurs can compete for a scarce reward.³⁵

Sections 1111 and 1112 of NCLB create just such a playing field. In economic terms, these two sections create a market for federal education dollars. Whereas Harris is discussing the entrepreneurial spirit that neoliberal education seeks to inculcate in contemporary students, NCLB seeks to inculcate that same sense of entrepreneurialism in educators and educational administrators. Sections 1111 and 1112 lay down the basic rules under which US states and school districts compete for federal funds. In these two sections, the text of NCLB interacts with the world outside of language by creating a market in which states and schools districts compete for money. Using the neoliberal model and economizing public policy reveals the dependence of NCLB on the neoliberal project in order to gain purchase on the world outside of language. NCLB's approach to improving education reform is to introduce and enforce a market rationale to the reform process itself.

³⁴ Suzy Harris, *The Governance of Education: How Neo-Liberalism is Transforming Policy and Practice* (London: Continuum, 2007), 134.

³⁵ Harvey, *A Brief History of NeoLiberalism*, 2.

The market that NCLB describes for educational achievement is critical to understanding the development in education policy from the ESEA of 1965 to NCLB. The monetizing rhetoric in NCLB takes two primary forms: the direct attachment of funding to education achievement and the standardization of achievement, students, and schools as interchangeable measures of education. The first, more overt version is far less common in the rhetoric of the bill even though NCLB, in practice, has a more clearly discernable effect on actual dollars. Since the ESEA was created in order to control a pool of federal funds for schools in need of additional fiduciary support, the capacity of the ESEA to disperse those funds is almost assumed out of existence in the language of the law.

Section 1111 begins with a statement requiring the creation of state plans in order for any state or school within a state to receive funds. Since these plans outline the school's process for the improvement of educational outcomes, these plans connect education, through a series of steps, to money. Positioning the plan requirement at the beginning of section 1111 means that all of the requirements that follow it—some eighteen pages—are describing conditions for the possibility of funding. Thus, the position of the requirements for funding statement at the beginning of the section has an influence on the meaning of a large portion of the law.

In addition to the state plans, NCLB connects education to funding in the accountability subsection of section 1111. Subsection 1111.b.2.A.iii requires that “each State accountability system shall . . . include sanctions and rewards, such as bonuses and recognition, the State will use to hold local educational agencies and public elementary schools and secondary schools accountable for student achievement . . .”³⁶ This subsection of the law requires that states put a monetary value on educational output by offering bonuses to educators and administrators whose students succeed on standardized assessments. This system of rewards is supposed to motivate educators to improve their methods and creates the illusion of enthusiastic participation in the

³⁶ *No Child Left Behind Act of 2001*, § 1111.b.2.A.iii.

curricular reforms endorsed by NCLB. In this part of the law, the neoliberal project of fabricating market forces to create a spirit of entrepreneurialism is particularly evident. This productive, market force operates through the relation of measureable amounts of money with measurable amounts of educational achievement. NCLB's rhetoric of reform is thereby monetized and gains a certain force from the preexisting capacity of money to determine value.

NCLB also monetizes education by standardizing educational achievement. It is not the case that NCLB lays all achievement flat. Instead NCLB makes all educational achievement comparable by the same units of measure. This is achieved by requiring that each state create a uniform set of academic standards and a uniform testing system to assess which schools' students have met the standards and to what degree. This system is described in a couple of places in section 1111. In the subsection labeled "Challenging Academic Standards," NCLB indicates that, "the academic standards required by subparagraph (A) shall be the same academic standards that the State applies to all schools and children in the State."³⁷ In the next subsection, labeled "Accountability," NCLB discusses the requirements of AYP repeating the demand that each state's AYP "apply the same high standards of achievement to all public elementary school and secondary school students in the State"³⁸ Demanding that all students take the same tests was sold by the Bush administration as a democratizing benefit of NCLB, but it also helps to standardize educational outcomes.³⁹ With a standard test, the only way that student and school achievement can be compared is along a spectrum. Except in the cases where students or schools receive the same score, the spectrum creates a hierarchy of achievement between students and schools. Because the tests account only for test-taking success in three subjects, this standardized system of assessment does not allow for more complex comparisons that might

³⁷ *No Child Left Behind Act of 2001*, § 1111.b.1.B.

³⁸ *No Child Left Behind Act of 2001*, § 1111.b.2.C.i.

³⁹ George W. Bush, *Public Papers of the President of the United States, 2002* vol. 1 (Washington D.C.: GPO, 2004), 25.

involve factors other than testing or comparisons other than hierarchical relationship between higher and lower test scores.

NCLB demonstrates its commitment to making the measurement of academic achievement generalizable in subsection 1111.b.2.I.ii where it requires that each school has at least ninety-five percent of each of its populations participate in the assessment of academic achievement for the assessment to count. Requiring this high participation rate is meant on the one hand to discourage cheating, but it also facilitates the unitizing process at the level of the school. If almost all of the students in a school participated in the test, then an administrator or government official can reasonably argue that the test score gives an accurate depiction of the school's level of educational achievement.

NCLB's rhetorical construction of educational achievement as a standard unit of comparison and exchange creates some questionable characterizations of students and student populations. Subsection 1111.b.3.C.xiv under the "Assessments" section stipulates that the state assessments shall "be consistent with widely accepted professional testing standards, objectively measure academic achievement, knowledge, and skills, and be tests that do not evaluate or assess personal or family beliefs and attitudes, or publicly disclose personally identifiable information."⁴⁰ This requirement can be read both as an attempt to ensure the democratic fairness of the evaluations and as another part of the process of monetization. Because this statement bans personal and family beliefs from being tested, it acts as a protection against tests that might favor students with particular religious or political backgrounds. Although any test will assess culture to some extent—however small—the attempt to prevent outright religious or political discrimination makes sense in the context of American legal practice.

This stipulation is also a useful requirement for the standardization process. If the authors of the law believe that cultural biases can be eliminated from testing, then the integrity of

⁴⁰ *No Child Left Behind Act of 2001*, § 1111.b.3.C.xiv.

the test scores can be justified as a comparative metric for all students—even across important racial and class differences. Emery Hyslop-Margison and M. Ayaz Naseem note this problem in their criticism of empirical pedagogical research. They argue that one of the problems with empirical research in education is that it observes classroom conditions in a specific location and then assumes that those observations can be generalized to all classrooms.⁴¹ Although the research itself, and in the case of NCLB, the tests themselves, do provide useful measures for each situation in which they are applied, when those observations and tests are taken out of their original context the integrity of the generalization becomes questionable. Regardless of whether NCLB's testing regime is valid when making comparisons within and across state lines, the law's assertion that testing data can be generated free of cultural biases elides some of the complexity of culture and hegemony. NCLB's assumption that such biases are so easy to identify that they can be banned through a vague and sweeping prohibition suggests an impoverished conceptualization of cultural bias.

NCLB's commitment to the monetization of education supersedes its commitment to accounting for cultural difference in subsection 1111.2.C.v.II where the law explains “that disaggregation of data . . . shall not be required in a case in which the number of students in a category is insufficient to yield statistically reliable information . . .”⁴² This means that if the population of students of any particular type at any school is small enough, the school does not have to consider those students as a separate population entitled to unique consideration. The logic of money and the market takes precedence. Where there are not enough students to makeup a statistically significant demand for policy consideration, NCLB allows the local educational agency to act as a business would in a marketplace and refuse to invest in them. Again,

⁴¹ Hyslop-Margison and Naseem, *Scientism and Education*, 79.

⁴² *No Child Left Behind Act of 2001*, §11112..C.v.II.

ironically, the language of No Child Left Behind, not only sanctions, but requires that some student populations are left out.

Another implication of NCLB's monetization of education is the law's focus on skills to the exclusion of content. NCLB introduces its subject requirements in the "Challenging Academic Standards" subsection by declaring that each state's standards must include "mathematics, reading or language arts and (beginning in the 2005-2006 schools year) science, which shall include the same knowledge, skills, and levels of achievement expected of all children.⁴³ The same subject requirements are then repeated in the "Assessments" subsection to ensure that those standards are tested.⁴⁴ The subject requirements are interesting because they do not suggest any specific content. Instead of testing the students on literature of any kind, they are to be tested on reading or language arts. Although NCLB indicates that both skills and knowledge must be tested, listing math, reading, and science specifies certain skills whereas the knowledge content is never discussed beyond the insistence that it be present. The implication of this requirement is that the content is immaterial; all that is required of the school is that it imparts the skill of literacy to its students. Like reading, math, as a subject, is similarly devoid of its own content. It is not as easy to make this same claim of science, but science certainly envisions itself as—in its ideal form—disinterested and objective. Subjects that cannot be taught without the careful consideration of content, such as the arts and social studies, are conspicuously absent from NCLB's requirements. This position is consistent with NCLB's vision of students as interchangeable vessels of educational achievement and it creates the sort of management capacity that Michel Foucault discusses as a product of the creation of the examination. In *Discipline and Punish* Foucault explained that the examination makes it possible to document individual qualities and behaviors and then to identify and group people using those qualities and

⁴³ *No Child Left Behind Act of 2001*, §1111.b1.C.

⁴⁴ *No Child Left Behind Act of 2001*, §1111.b.3.A.

behaviors.⁴⁵ The academic assessments of NCLB are similar in that they constitute a school system that differentiates students by their testable skill sets. As indicated by the subsection that defines educational standards, the standardized testing regimes—examinations—required by section 1111 identify and group students within a hierarchy of levels of achievement based on the outcome of the tests.⁴⁶

The Economy of Reform – Systematizing Education

The economic rhetoric of NCLB departs from previous public policy discussions most radically in that it views the education system itself as an internally economic enterprise. In addition to variously defining education as a commodity and as a currency, NCLB understands the education system as an economic process in which input is causally traceable to output. Section 1111, entitled the “State Plans,” is illustrative. It requires that plans for the administration of public education at the state level must have three components: challenging academic standards, accountability, and academic assessments. For NCLB, the process of educating the public is a manageable, input-output system the successes and failures of which can be tied to specific actors who are held to account for the quality of its output.

Unlike the ESEA before it, which assumed that the outcome of education is always positive, NCLB distinguishes between more and less educational achievement and puts the burden of producing the requisite levels of achievement on the schools and faculty. This move, while it may seem simple enough, does constitute a significant rhetorical choice and it creates a rhetorical force by incentivizing increasing levels of educational achievement. Peter Shrag explains in his *Harper’s* article from 2007 that the burdens Americans have put on public schools

⁴⁵ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan, 2nd. ed. (New York, NY: Vintage Books, 1995), 189-190.

⁴⁶ *No Child Left Behind Act of 2001*, § 1111.b.1.D.ii.

to produce certain outcomes have changed over time with the concerns of the American public.⁴⁷

Although Schrag mostly discusses the ways that national politics have forced United States schools to take on projects external to education, NCLB's demand that the education system educate successfully regardless of the state of US society is problematic for similar reasons. Among them is that a great number of externalities factor into the test scores that determine educational achievement including the composition of the test and all of the advantages and disadvantages the students who take them are subject to both in and outside of school. Choosing to put the entire burden of educational achievement on the school itself sets a number of potential causes for educational achievement aside. This move is consistent with the law in that it assumes that through well-designed tests and the universalization of standards within each state, each school can begin with roughly the same input—students. This attempt at democratization, however, remains shallow when it paves over historically relevant differences—like race and class—between United States schoolchildren.⁴⁸

Because NCLB understands education as a system of input and output in which the causes of the output can be traced and understood, it opens space for education policy to control the output of the education system. One means for control is the stipulation that academic programs must be scientifically based. Subsection 1112.c.1.F states that each local educational agency plan shall provide assurance that the local educational agency will “take into account the experience of model programs for the educationally disadvantaged, and the findings of relevant scientifically based research indicating that services may be most effective if focused on students in the earliest grades.”⁴⁹ NCLB is calling for the policy of focusing funds on younger children by appealing to the authority of science, and especially, science that has correlated educational

⁴⁷ Peter Schrag, “Schoolhouse Crock: Fifty Years of Blaming America’s Educational System for Our Stupidity,” *Harper’s* 315, no. 1888 (September 2007), 36.

⁴⁸ Hyslop-Margison and Naseem, *Scientism and Education*, 106.

⁴⁹ *No Child Left Behind Act of 2001*, § 1112.c.1.F

practice with outcome. For NCLB, the use of scientifically backed educational practices is a lever that can have an effect on output, educational achievement. The appeal to science to produce a more effective and efficient educational outcome thus relies upon and reinforces NCLB's assumption that educational practices have causal outcomes that can be predicted and controlled.

The mobilization of science as a rhetorical justification for policy decisions is yet another aspect of NCLB's neoliberal policy posture. Hyslop-Margison and Naseem point out this reliance on the authority of science as a new way in which the education policy made by neoliberals is justified as the best way forward.⁵⁰ Scientific study is particularly useful for the neoliberal narrative of market practices saving education policy because scientific work is able to claim that it can objectively and accurately identify the most effective and efficient way to educate. The narrative of the neoliberal takeover of education policy is that market practices are both more effective and more efficient than typical public sector methods, and requiring the use of scientifically backed methods lends credence to this narrative.⁵¹ Although such studies are generally accepted by the education policy community as useful for helping produce more effective outcomes, they are not without their critics. In particular, Egan has questioned whether scientifically based studies that are generalized to all educational situations actually have the effects that they claim. Grounding his criticism in the initial suspicions as to whether human behavior can be studied scientifically in the same way that the natural world can be, he argues that the social-scientific study of education has little improvement to show for its efforts.⁵² Egan's argument, while it might not be damning, does highlight the alternatives to attempting to improve education through social-scientific study, thus highlighting NCLB's endorsement of scientifically backed research as a choice.

⁵⁰ Hyslop-Margison and Naseem, *Scientism and Education*, 34-35.

⁵¹ Harris, *The Governance of Education*, 21.

⁵² Egan, *Getting it Wrong from the Beginning*, 151-157.

More than just appealing to scientific study as an external source of legitimacy, NCLB also encourages the states to take undertake the scientific study of education policies themselves. Subsection 1111.b.3.B requires that “each State educational agency may incorporate the data from assessments under this paragraph into a State-developed longitudinal data system that links student test scores, length of enrollment, and graduation records over time.”⁵³ These longitudinal measures tie educational practices over time to various forms of educational achievement like test scores and graduation rates. A database of these figures allows for the states to monitor trends in the relationship between their input and output and creates a set of figures that future researchers will be able to access in order to do their own scientific work on educational practice in each state. Again, the scientific approach to education policy assumes NCLB’s economic model of public education, but is complicated by the insistence that even state bureaucracies can participate in scientific study.

The rhetoric of science in NCLB positions science to serve as the main means by which neoliberalism’s vaunted entrepreneurial creativity is injected into the education system. This process of injection often occurs when policymakers in search of a way of legitimating their policies look to education research for literature supporting their position. Jeffrey Henig, using Caroline Hoxby’s dealings with the charter school movement, explains the increasing influence of education research on public policy rhetoric by pointing to the accelerating influence that new information technologies have had on the accessibility of education research. Since results of studies are often reported electronically, even preliminary data—data that has not been fully analyzed—is sometimes used in making arguments for and against certain policies.⁵⁴ Although his explanation is helpful in understanding the ability of lawmakers to very quickly incorporate

⁵³ *No Child Left Behind Act of 2001*, § 1111.b.3.B.

⁵⁴ Jeffrey R. Henig, “The Evolving Relationship between Researchers and Public Policy,” in *When Research Matters: How Scholarship Influences Education Policy*, by Frederick M. Hess (Cambridge, MA: Harvard Education Press, 2008), 48-50.

education research in their policy decisions, without the influence of neoliberal policymaking it is difficult to understand why those lawmakers would feel the urgent need to do so—especially in a case like Hoxby’s where the scramble to include her research led to use of miscalculated figures. This use of incorrect data highlights the high value that NCLB’s endorsement has put on scientifically-based education research, and some of the dangers of its use by lawmakers who do not understand the contingent and time-consuming nature of research process.

NCLB does not just try to control the process that modifies input into output; it also tries to unify the goals for education system’s output. This is illustrated particularly well by the portion of the law that makes the rules for the establishment of Adequate Yearly Progress (AYP) in each state. Subsection 1111.b.2.B declares that AYP should be designed to narrow the achievement gaps in each state. This means that AYP is to be designed to help even test scores among school districts. This declaration of purpose is interesting because it suggests that the end goal of NCLB is to increase parity between school districts, but NCLB is designed only to raise test scores, not to lower them, so the entire burden of achieving that parity is put on the districts that have done the worst historically on state assessments.

NCLB’s insistence on improvement of test scores—output—begins to take an unrealistic turn in the section defining AYP. NCLB dictates that each state’s AYP requirements must result “in continuous and substantial academic improvement for all students” and that this improvement must be annually measurable.⁵⁵ NCLB even requires that this annual improvement be prescribed ahead of time by a statewide timeline for increasing educational achievement.⁵⁶ Here, NCLB’s economic logic begins to tear itself apart. The law requires the constant and predictable increase in academic achievement despite its definition of achievement as a scarce resource that will be obtained at varying levels. Not only does this economic metaphor prove itself to have some

⁵⁵ *No Child Left Behind Act of 2001*, § 1111.b.2.C.ii, 1111.b.2.C.v.

⁵⁶ *No Child Left Behind Act of 2001*, § 1111.b.2.F.

conceptual flaws, but in the moment where it assumes infinite growth it proves itself to be more than just an economic conception of public education, it is identifiably capitalist. Although the call for continuous and predictable growth is also a hallmark of harsher socialist economic policies like Stalinism, neoliberalism's influence assures that the demand for continuous and predictable growth stems from the will to make educational agencies operate like successful businesses. The residues of neoliberal rhetoric can be detected in the presumption that improvement can be manufactured at will—by successful policy entrepreneurs—and that the government ought to be able to expect consistent growth in educational achievement from a successful local educational authority. The high stakes of improvement and their similarity to the high stakes of capitalist entrepreneurialism are unmistakable. Just as in the business world, if an education system cannot produce then it loses its ability to do so.

Implications for Economizing Education

At different points, NCLB commodifies, monetizes, and systematizes education as well as students and schools. Education is treated both as a scarce and standard object. Education is also envisioned as a process with clear inputs that are tied to equally clear outputs. NCLB understands education as a controllable good that must be controlled in order to produce value. Through the use of the rhetoric of—neoliberal—economics NCLB deploys these conceptualizations of education as though they are natural processes that require only description, not discursive contestation.

In *Between Past and Future* Hannah Arendt describes education's relationship to authority saying, “the problem of education in the modern world lies in the fact that by its very nature it cannot forgo either authority or tradition, and yet must proceed in a world that is neither

structured by authority nor held together by tradition.”⁵⁷ Perhaps her statement can be modified to read “the problem of education in the postmodern world lies in the fact that by its very nature it can forgo achievement and economics, and yet must proceed in a world that is structured by achievement and held together by economics.” The economic rhetoric of NCLB has created what Egan described as a theory of education. Instead of the marketplace of ideas, NCLB ditches the ideas and constructs education as a literal marketplace. The object form of education, its standardized value, and the system of education itself have been redefined in economic terms. Additionally, the economization of education in NCLB has put a high value on educational achievement as it has come to be defined as measured by test scores. This new way of valuing education, for its goods in the economic sense, has implications for the work education and political theorists.

Perhaps one of the most famous debates over the value of education as a governmental policy is the academic argument between John Dewey and Walter Lippmann. NCLB represents the complete victory of Lippmann’s thought over Dewey’s in the arena of United States public policy. In *The Public and Its Problems*, Dewey argued for the use of education to produce citizens who can make informed and intelligent decisions.⁵⁸ He specified that an education capable of producing such citizens cannot be mechanized, but must teach creative thought. Specifically, Dewey warns against treating humans as economic objects. For Dewey, education must serve and support human free-will.⁵⁹ Lippmann, in *The Phantom Public*, argued against Dewey’s endorsement of education in a chapter entitled “The Unobtainable Ideal.” Lippmann wagered that education could not keep up with modern problems because education is focused on

⁵⁷ Hannah Arendt, *Between Past and Future: Eight Exercises in Political Thought* (New York, NY: Penguin Books, 1954), 191.

⁵⁸ John Dewey, *The Public and Its Problems* (Athens, OH: Ohio University Press, 1927), 209.

⁵⁹ Dewey, *The Public and Its Problems*, 198-199.

the problems of society, not on finding solutions.⁶⁰ Lippmann's vision for the United States government was an organization in which the people were distanced from the governing and expert bureaucrats were allowed to manage their areas of expertise.⁶¹

NCLB signals the triumph of Lippmann over Dewey in several ways. The economic focus of NCLB turns education into a largely skills-based enterprise. Being knowledgeable about the government and its current dealings are not valued by NCLB, which leaves social studies out of the curriculum. Dewey's vision for an actively democratic citizenry is forgotten and the production of bureaucrats with narrow expertise is preferred. NCLB itself as a law follows the Lippmann model. Democratic decision making in the production of education policy is eschewed and replaced by expert management. Bureaucratically produced regimes of assessment are the arbiters of good and bad education in NCLB, not the people or even their elected representatives. Lippmann's victory is especially thorough because it comes in the field of education policy, Dewey's greatest hope for the improvement and preservation of democracy in the United States.

The focus on education as an economic object, free of its democratic moorings, has implications beyond Dewey. The progressive dreams of authors such as Richard Rorty, Jurgen Habermas, Chantal Mouffe, and Danielle Allen rely on the capacity for society to grow and change as a whole. Public education is often a critical component in society-wide change. NCLB's vision of a public education system that focuses almost entirely on teaching and testing basic skills does little to prepare students for implementing change outside of themselves. Students educated to prepare for and succeed on tests are implicitly trained to respect and rely on the educational and societal system of the status quo and endanger the future of that system by failing to learn how to make changes to it.

⁶⁰ Walter Lippmann, *The Phantom Public*, 9th ed. (New Brunswick, NJ: Transaction Publishers, 1927), 12-17.

⁶¹ Lippmann, *The Phantom Public*, 164, 188-189.

Chapter 4

Pedagogy of the Coerced

Section 6301 of the No Child Left Behind Act of 2001 (NCLB) states: “Nothing in this title shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school’s specific instructional content, academic achievement standards and assessments, curriculum, or program of instruction, as a condition of eligibility to receive funds under this Act.”¹ This prohibition might be easier to believe if it were a part of a more substantial section—it is the entirety of section 6301.² In comparison with the other six hundred sixty-nine pages of NCLB carefully detailing the federal standards, assessments, and curricular requirements for schools and states receiving funding, this small interdiction against the influence of the federal government—or at least its employees—is more conspicuous for its solipsistic impotence than any serious rule-making capacity.

Nonetheless, the regulatory posture precluding the federal government from making local educational decisions has been a central axiom in the rhetorical world of education policy throughout United States history.³ Section 6301’s nod to NCLB’s humbler statutory forebearers therefore calls attention to the new regulatory reality instituted by NCLB. For the first time, federal education policy has endorsed a set of pedagogies that have an influence in determining local classroom practices. This chapter examines the emerging influence of the federal

¹ *No Child Left Behind Act of 2001*, Public Law 107-110, 107th Cong., 1st sess. (January 8, 2002) § 6301.

² A number of the sections of the *No Child Left Behind Act of 2001* span tens of pages.

³ Lee W. Anderson, *Congress and the Classroom: From the Cold War to “No Child Left Behind”* (University Park, PA: The Pennsylvania State University Press, 2007), 29-31; Patrick McGuinn, *No Child Left Behind and the Transformation of Federal Education Policy 1965-2005* (Lawrence: The University of Kansas Press, 2006), 1.

government in the creation and implementation of pedagogy at the local level through an examination of NCLB's enforcement mechanisms.

The enforcement mechanisms in NCLB comprise the final move of its statutory rhetoric. After justifying and enacting its authority, NCLB protects its declared purview and capacity to constitute the world outside of language by devising a way of evaluating the outcomes of its declarations and then "correcting" those outcomes that are undesirable. NCLB enacts this control by requiring each state to set up a process for assessing the success or failure of each of its schools and then requiring each state to choose from a set of predetermined corrective actions when the assessed schools fail to meet state standards. In this way, assessment determines whether corrective action is necessary. Together, assessment and corrective action create an enclosed system inside of which NCLB has limited the possibilities for policy action and outcome. Assessments must be scientific and statistically reliable. They must determine either that the school has succeeded in meeting state standards or failed. Corrective actions are limited to seven options, all of which are presumed to help the corrected school succeed at the assessment. The internal logic of this system is thus notable both for what it includes and the possibilities it excludes.

NCLB provides space for the rhetorical analysis of this process both where it declares what types of assessment it is willing to fund and where it lists the corrective actions that a state can choose from in each instance of failure. The interactions between the law's requirements for state assessment regimes and the law's options for corrective action create NCLB's method for enforcing a social scientific brand of education reform. This chapter analyzes the language of these two sections of NCLB separately and then together. This second analysis investigates the ways in which the term and process of "alignment" is deployed in order to mediate between assessment and corrective action. Upon close inspection, it is clear that the deployment of

alignment results in what is effectively an endorsement of a set of scientific and skills-based pedagogies that are enacted through a federally approved process of reform.

Assessment – The Depoliticization of Education Reform

Although the previous chapter analyzed the monetizing force that NCLB’s assessment requirement has on education, a close examination of NCLB’s language of assessment also reveals its influence on the enforcement of education reform. The detailed discussion of assessment in NCLB creates and circumscribes a set of possibilities for the outcomes of educational efforts of the school districts of the United States. It also dictates how those outcomes will be determined. After introducing the assessment requirements in the “State Plans,” section 1111, NCLB goes into greater detail about the specific requirements for funded assessment regimes in Subpart 1, entitled “Accountability,” of Part A of Title VI. Section 6111—which purposely bears a related numerical identification to section 1111—provides ample ground for rhetorical analysis that, at points, calls upon other portions of Title VI. Section 6111 describes the requirements that each state’s assessment regime must adhere to in order to receive grant funding from the federal government through NCLB. It is the most coherent statement of NCLB’s expectations for the process of assessment, revealing many of the critical assumptions made by the law. Additionally, the assessments it describes are used to determine whether corrective action is necessary on a school by school basis, so its provisions play a critical role in determining how, when, and where NCLB must take action to enforce its authority. In short, the assessment section creates a system in which the corrective actions prescribed by NCLB can be authorized.

A cursory reading of section 6111 reveals its structural simplicity.⁴ There are two consequential subsections: the first declares that the Secretary of Education will make funds available to help pay for the development of new assessment regimes in states that do not have them and the second states that the Secretary will make funds available to administer those tests and then lists the requirements for their administration and composition. Like many of NCLB's provisions, section 6111 is enforced only through funding. The purpose of the section is to describe the conditions under which a state can get funding to pay for its assessment regime. This funding becomes available when the state's assessments fulfill the description given in points A through H of subsection 2. Submitting to the assessment regime then makes it possible for the state and its local educational agencies to access the broader well of federal funds controlled by NCLB. Thus, the assessment process is an investment in the possibility for additional federal funding, and complying with the requirements of section 6111 is a way of offsetting the cost of that initial investment. Through these monetary enticements, section 6111 encourages states both to participate in the assessment process as a whole and to participate in it along the lines of subsection 2's eight requirements.

Although section 6111 may appear to be non-rhetorical because it reads as an austere list of bureaucratic requirements for assessment, its austerity is one aspect of the section's carefully crafted governmental authority. In his book on the rhetorical nature of the law, Francis Mootz III points out that "legal practice is marked by a vehement denial of its rhetorical nature."⁵ NCLB constructs its authority, in part, through its association as part of the legal tradition. Its directives must appear non-rhetorical in order to maintain its legal legitimacy. Additionally, the austere voice in which NCLB delivers its directives obscures the partisan politics that produced the law.

⁴ *No Child Left Behind Act of 2001*, Public Law 107-110, 107th Cong., 1st sess. (January 8, 2002) § 6111.

⁵ Francis J. Mootz III, *Rhetorical Knowledge in Legal Practice and Critical Legal Theory* (Tuscaloosa, AL: The University of Alabama Press, 2006), 128-129.

Subsection 2 of section 6111 contains eight requirements and all of them, A through H, read as directive platitudes. The blankness of those requirements speaks the disinterested and universalizing voice of governmental authority. At first blush, much of this language appears to be banal rule-making. For example, points F and G are adamant about the importance of including as many students as possible in each state's testing regime. Point F demands the inclusion of all students by declaring that one of the requirements for funded assessments is that each state regime must be engaged in "Strengthening the capacity of local educational agencies and schools to provide all students the opportunity to increase educational achievement."⁶ On its surface, this requirement appears to exist outside of rhetoric as a simple necessity for law-making, but under point F, NCLB is asserting its ability to produce declarations that apply to all children. Additionally, NCLB tasks the local educational agencies in seeing that they are accounting for all of NCLB's subjects. In *The Powers of Freedom*, Nikolas Rose observes that "language is not secondary to government, it is constitutive of it" and in this case NCLB constitutes its authority to govern all of the children of the United States public school system through the use of language that simply presumes that NCLB already has that control.⁷ In this way, NCLB constructs authority by performing it. The implicit control NCLB has over local educational agencies, actualized by the federal funding lever that NCLB holds over the states, is expressed as an expansive and absolute authority when point F speaks for the interests of all United States school children.

After declaring that the funds will be made available—a statement early in the section that effects everything written under it—section 6111 continues to deliver its directives in a universal tone. In the declarations that follow, the performance of authority is so meticulous that it becomes easy to forget that funding is the only means of enforcement. Each requirement,

⁶ *No Child Left Behind Act of 2001*, § 6111.2.F.

⁷ Nicholas Rose, *The Powers of Freedom: Reframing Political Thought* (Cambridge: Cambridge University Press, 1999), 28.

divorced more and more thoroughly from the initial discussion of funding, appears to be backed by the general authority of the law. The result is that NCLB's assessment requirements, if not read carefully within the briefly mentioned context of funding enforcement, appear to be the directions of an authoritative voice that speaks for the interests of all United States school children.

This governmentalizing speech continues in subsection 2 as point G discusses inclusion of a different kind. The G subsection indicates that the funded tests and test administrators at the state level must be: "Expanding the range of accommodations available to students with limited English proficiency and students with disabilities to improve the rates of inclusion of such students, including professional development activities aligned with State academic achievement standards and assessments."⁸ In this case, "inclusion," is a synonym for "mainstreaming"; the process of moving students with special needs from separate, special education classrooms to more "inclusive," or "mainstream," classrooms. This category of educational needs can include students for whom English is a second language, students with learning disabilities, and even exceptionally gifted students. Interestingly, NCLB's discussion of inclusion comes down solidly in favor of the practice, eliding its controversial nature. Inclusion was strongly contested during the late nineties—just before the creation of NCLB—causing deep pedagogical divisions among special education experts and practitioners.⁹ Some special education instructors saw the trend toward greater inclusion as threatening to eliminate special education classrooms—and thus special education instructors—entirely.

In the process of paving over this history and its attendant controversies, point G communicates using what Roland Barthes called the mythological form. Barthes explains that "Myth does not deny things, on the contrary, its function is to talk about them; simply, it purifies them, it makes them innocent, it gives a natural and eternal justification, it gives them a clarity

⁸ *No Child Left Behind Act of 2001*, § 6111.2.G.

⁹ Kenneth A. Kavale and Steven Forness, "History, Rhetoric, and Reality: Analysis of the Inclusion Debate," *Remedial and Special Education* 21, no. 5 (September/October 2000): 279-280.

which is not that of an exploration but that of a statement of fact.”¹⁰ Point G is one example of this naturalization of NCLB’s pedagogical perspective. By presenting inclusion as the only option for positive educational reform regarding children with special needs, NCLB depoliticizes inclusion and claims an “eternal justification” for its adoption by local school districts.

In addition to its mythic presentation, the strategic value of the move toward inclusion should not be ignored. The endorsement of inclusion insinuates an authoritative motive and strategy. Michel Foucault spent an entire career writing about the strategic relationship between the state, power, and classification. In *Discipline & Punish*, Foucault explained that turning behavior into identity—that is, using behavior as a method of classification—is a way in which an organization can manage a population.¹¹ In *Society Must be Defended*, a collection of his College of France lectures from 1975 and 1976, Foucault argues that the contemporary nation-state is a persistent state of race war and that this struggle requires the constant purification of its people to reproduce normalcy.¹² Both of these strategic moves are present in point H. Not only does inclusion operate as a system of classification, but it also makes it easier to account for children and the statistical information that applies to them by collapsing students into simpler and simpler categories. Inclusion has the capacity to normalize students into a homogenous population and then justify a concomitant standardization of educational practices. Amazingly, inclusion accomplishes this educational normalization even for those children who have been distinguished specifically by their atypical educational needs.

Point H is not the only point under subsection 2 that has strategic implications for the power relations of NCLB’s assessments. Points C and E mobilize the language of statistics, demanding that the assessments implemented for NCLB be “valid” and “reliable.” Both terms

¹⁰ Roland Barthes, *Mythologies*, trans. Annette Lavers (New York, NY: Hill and Wang, 1972), 143.

¹¹ Michel Foucault, *Discipline & Punish: the Birth of the Prison*, trans. Alan Sheridan (New York, NY: Vintage, 1977), 181-182.

¹² Michel Foucault, *Society Must be Defended: Lectures at the College de France 1975-1976*, trans. David Macey (New York, NY: Picador, 2003), 60-62.

describe a relationship between the assessment and the education that it evaluates. “Validity” refers to the ability of assessment to reflect the world accurately and “reliability” refers to the ability of the assessment to produce an accurate reflection each time it is applied. Both of these aspects of the assessments—when they are implemented—make it possible for NCLB to take stock of and prescribe changes to schools. They create the rules for governmental action that ultimately to do the work of governing.

Although it may be administratively useful, NCLB’s demand that assessments be “valid” statistical representations presents some potential problems for democratic education. Point E specifically indicates that the states must be “developing multiple measures to increase the reliability and validity of State assessment systems.”¹³ This statement presumes that measurement—the process of taking phenomena in the world and expressing them numerically as a quantity of a standard unit—provides the most “valid” representation of the state of education. Not only does point E’s demand for statistical validity elide the constructed nature of any system of measurement, but it reveals the ambivalence toward rhetorical democracy that Elizabeth Britt has identified in the rhetoric of the proponents of statistical governance.¹⁴ Rose makes an important point when he notes that “democracy, if it is to be taken seriously as an art of government rather than as philosophy or rhetoric, depends upon the delicate composition of relations of numbers and numeracy enabling a calculated and calculating government to be exercised over the persons and events to be governed.” However, Britt’s alarm at the process of numbers being put into opposition—rather than conversation—with rhetorical deliberation is warranted.¹⁵ Rose is correct that it is nearly impossible to imagine a functioning democracy that does not use statistical representations to determine both the will and makeup of its people, but

¹³ *No Child Left Behind Act of 2001*, § 6111.2.E.

¹⁴ Elizabeth C. Britt, “Dangerous Deliberation: Subjective Probability and Rhetorical Democracy in the Jury Room,” *Rhetoric Society Quarterly* 39, no. 2 (Spring 2009): 121.

¹⁵ Rose, *The Powers of Freedom*, 232.

there is serious danger for the rights of individuals and the delicate balance of the practice of democracy when rhetoric and deliberation are supplanted entirely by the comparison of “valid” numerical representations of reality. Indeed, the perception that NCLB has naïvely invested in the validity of numbers has resulted in the creation of disparaging nicknames like “No Child Left Untested.”¹⁶

The demand for “reliability” in sections A and C also serves to bolster NCLB’s enforcement regime. When a government relies on numbers in order to manage a population, the reliability of those numbers becomes critical in extending governmental power. Rose explains that government at a distance requires the state to invent statistical measurements because those measurements allow the state to represent the events that happen at a distance, know them, and then act upon them.¹⁷ For NCLB, having the states create assessments that produce a particular kind of statistical representation of the practice of education affords the federal government greater control than it has ever had over the disparate practices of public education in the United States. Testing and the statistical representations that tests create of the education occurring on the local level give the federal government a basis on which to diagnose successful and unsuccessful schooling. NCLB, through this testing regime, now has the power to determine whether or not a school or school district is in need of reform and, through the provisions of the corrective action subsection, can enforce the demand for reform by withdrawing federal support from schools that do not follow NCLB’s guidelines. Never before has it been possible for the federal government to be the arbiter of successful and unsuccessful schooling.

The subpart that section 6111 falls into is entitled “Accountability.” Section 6111 declares its intention to make this process of accounting as broad as possible in point A under subsection 2 when it says the states should be “developing challenging State academic content

¹⁶ Sam Dillon, “Rename Law? No Wisecrack Left Behind,” *The New York Times*, sec. A, February 22, 2009.

¹⁷ Rose, *The Powers of Freedom*, 148-149, 212.

and student achievement standards and aligned assessments in academic subjects for which standard and assessment are not required by section 1111(b)."¹⁸ This means that not only does NCLB require that states create assessments for math, reading, and science, but that those states should be creating similar assessments for all of the other subjects that are taught in their public schools. Not only does NCLB seek to create new ways of counting, measuring, and governing education, but it aspires to eventually do so holistically. For NCLB, all acceptable pedagogies must be able to favorably navigate the law's demand for accountability through statistically valid and reliable assessments.

In addition to making education more governable, the demand for accountability through assessments that produce statistically reliable and valid data also depoliticize NCLB's reforms making them less arguable and therefore easier to implement. Using terms like "valid" and "reliable" to describe statistical measures suggests that those statistical measures have an authoritative purchase on reality. It naturalizes statistical measurement without addressing the social inequalities or historical influences that such measurements can reinforce. It also presumes that all good pedagogical perspectives produce results that can be measured statistically and that all desirable educational results are similarly measurable. These unreflective declarations help to assemble a depolitized pedagogical vision driving NCLB's reforms.

Although the law attempts to deny endorsing a pedagogical perspective through statements like section 6301, every requirement for the construction and administration of assessments in section 6111 confirms the existence of NCLB's pedagogical leanings.¹⁹ Among these leanings is the endorsement of scientifically-tested classroom practices. Point H declares that assessments must improve "the dissemination of information on student achievement and

¹⁸ *No Child Left Behind Act of 2001*, § 6111.2.A.

¹⁹ ¹⁹ *No Child Left Behind Act of 2001*, § 6301. It is quoted at the beginning of this chapter and it states: "Nothing in this title shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's specific instructional content, academic achievement standards and assessments, curriculum, or program of instruction, as a condition of eligibility to receive funds under this Act."

school performance to parents and the community, including the development of information and reporting systems designed to identify best educational practices based on scientifically based research or to assist in linking records of student achievement, length of enrollment, and graduation over time.²⁰ In point H, NCLB appeals to scientific research as the arbiter of “best educational practices.” NCLB treats science as a privileged way of knowing, but does so by excluding even the mention of other possible epistemologies. This is precisely the naturalizing move that Barthes identifies in his discussion of the myth. This appeal to science “permanently embodies a defaulting.”²¹ For NCLB, science is not only the best way to know, it is the only method even considered when constructing knowledge. Moreover, point H demands that the information gained from these scientific studies of local schools be disseminated to parents as the official—scientific—discourse on the success, failure, and future direction of the school.

The scientific discourse in NCLB has been noted by other authors. Emery J. Hyslop-Margison and M. Ayaz Naseem harshly criticize NCLB for its appeals to science in their book, *Scientism and Education*.²² They identify a portion of the same problem that Barthes illuminates by applying the term “scientism” to NCLB. They define “scientism” as the belief that science always produces the best solutions to any problem.²³ However, they do not just contest the naturalizing myth that science has a unique purchase on the production of knowledge, their criticism is itself ideological. Unlike Barthes, who attempts to stay out of the ideological fray when he identifies the rhetorical form of the myth, Hyslop-Margison and Naseem propose an alternative epistemology arguing that education simply cannot be studied with science. They demarcate a boundary between the scientific study of the natural and the scientific study of the

²⁰ *No Child Left Behind Act of 2001*, § 6111.2.H.

²¹ Barthes, *Mythologies*, 143.

²² Emery J. Hyslop-Margison and M. Ayaz Naseem, *Scientism and Education: Empirical Research as Neo-Liberal Ideology* (New York, NY: Springer 2007), 34-35.

²³ Hyslop-Margison and Naseem, *Scientism and Education*, 116.

social world.²⁴ Forcefully disputing the influence of scientism, they go as far as to take up the epistemological certitude of the natural sciences and marshal the likes of Thomas Kuhn and Karl Popper in order to discredit the capacity of social science to produce useful or accurate knowledge.²⁵ I will leave the discussion of the wisdom of their argumentative strategy to Hyslop-Margison and Naseem and other education experts, but what I do want to note is that the existence of their argument—which is by no means an *ex nihilo* construction—demonstrates the contingent nature of the value of science in the determination of education policy. Their book, and the work of Kieran Egan before them, exposes NCLB's scientism as mythic.²⁶

The appeal to science in NCLB, although fleeting, is important to identify as a rhetorical phenomenon. One could argue that the appearance of the language of science and research in NCLB are unremarkable because any responsible piece of education policy should marshal the resources of the intellectual community that studies education, but this is not exactly what NCLB's language is doing. NCLB does not appeal to the authority of education research at large; it appeals particularly to the authority of scientific methods of research. The difference is significant. NCLB is endorsing a particular way of knowing. Recognizing this epistemological endorsement and its attendant hierarchy is a critical piece of insight that rhetorical analysis alone provides.²⁷ Without the recognition that NCLB is a constructed piece of discourse and an attendant analysis of that construction, it would be impossible to identify where the law, which always operates under the pretense of immutability, is contestable.

Mootz explains the centrality of rhetorical thought in the law: “legal practice is rhetoric all the way down, with rhetorical engagements layered upon rhetorical engagements in a dynamic and challenging confluence that cannot be constrained by pretenses of analytical certainty. To

²⁴ Hyslop-Margison and Naseem, *Scientism and Education*, 3, 37-41.

²⁵ Hyslop-Margison and Naseem, *Scientism and Education*, 49-57.

²⁶ They draw particularly heavily upon Kieran Egan, *Getting it Wrong from the Beginning: Our Progressivist Inheritance from Herbert Spencer, John Dewey, and Jean Piaget* (New Haven, CT: Yale University Press, 2002) which is largely in-line with his previous works dating back to the mid-seventies.

²⁷ Benson, “The Senses of Rhetoric,” 248.

deny the existence of rhetorical knowledge would be to deny the existence of legal knowledge.²⁸ This means that not only is rhetorical analysis critical in bringing to light the contestable aspects of a law, but it is critical in investigating the composition and meaning(s) of a law. In the case of the assessment section on NCLB, the production of assessments at the state level must include all students in as few categories as possible, use statistical measures that make the governance of education from afar easier, and call upon scientific research to arbitrate which teaching practices—pedagogies—work best. Appealing to the authority of inclusiveness, statistical certainty, and science depoliticizes the process of reform that the state assessments have the authority to initiate for any United States school. These appeals naturalize governmental action much like Barthes's myths while performing the denial of their own rhetorical nature that Mootz identifies as endemic to legal discourse. Revealing the composition of this depoliticization brings to the surface some of the hidden rhetorical force of NCLB. In this spirit of revelation, I now turn to NCLB's section on corrective action.

Corrective Action – or at Least the Threat of Corrective Action

The corrective action section of NCLB is barely rhetorical. It is thinly veiled coercion, and the veil may be more a product of the cumbersome statutory dialect in which NCLB is written than any ethically cognizant attempt to conceal coercion. Considered in combination with section 6111 on assessment, it amounts to a list of threats designed to encourage curricular reform at the level of the school in order to open space for NCLB's preferred pedagogies. In the previous section, I examined the rhetoric of NCLB's rules for state assessments in order to demonstrate that the law has pedagogical preferences. In this section and the next I explain how NCLB uses coercive and procedural rhetoric to enforce those preferences.

²⁸ Mootz, *Rhetorical Knowledge in Legal Practice*, 132.

Closely analyzing NCLB's rhetorical deployment of consequences for those schools that are judged as failing by the state assessments requires focusing on section 1116.c.10.C entitled "Certain Corrective Actions Required."²⁹ This subsection includes a brief heading and then seven potential policies that can be put into action by the state in order to improve the performance of a failing local educational agency on the state's assessment. This list of possible corrective actions is part of a larger subsection that discusses the yearly reviews each state is to perform of each of its schools. According to subsection 1116.c.3, the list of corrective actions becomes legally relevant when a school fails to make adequate yearly progress (AYP)—as measured by the assessments described in section 6111—for two years running.³⁰ At that point, subsection C indicates that "the State educational agency shall take at least one of the [seven] corrective actions."³¹ NCLB uses the assessments to determine which schools are in need of reform and then corrective action to prescribe that reform. Because the seven corrective actions are both consequences for failing to meet AYP and the actual steps taken in order to reform those failing schools, they are a confusing mix of actions designed in part to punish and in part to improve.

The subsection reads:

(C) CERTAIN CORRECTIVE ACTIONS REQUIRED.—In the case of a local educational agency identified for corrective action, the State educational agency shall take at least one of the following corrective actions:

- (i) Deferring programmatic funds or reducing administrative funds.
- (ii) Instituting and fully implementing a new curriculum that is based on State and local academic content and achievement standards, including providing appropriate professional development based on scientifically based research for all relevant staff, that offers substantial promise of improving educational achievement for low-achieving students.
- (iii) Replacing the local educational agency personnel who are relevant to the failure to make adequate

²⁹ *No Child Left Behind Act of 2001*, § 1116.c.10.C.

³⁰ *No Child Left Behind Act of 2001*, § 1116.c.3.

³¹ *No Child Left Behind Act of 2001*, § 6111.a.2.C.

yearly progress.

(iv) Removing particular schools from the jurisdiction of the local educational agency and establishing alternative arrangements for public governance and supervision of such schools.

(v) Appointing, through the State educational agency, a receiver or trustee to administer the affairs of the local educational agency in place of the superintendent and school board.

(vi) Abolishing or restructuring the local educational agency.

(vii) Authorizing students to transfer from a school operated by the local educational agency to a higher-performing public school operated by another local educational agency in accordance with subsections (b)(1)(E) and (F), and providing to such students transportation (or the costs of transportation) to such schools consistent with subsection (b)(9), in conjunction with carrying out not less than one additional action described under this subparagraph.³²

This section is coercive. Of the seven options for corrective action, only the second option—adopting a stricter version of the federally imposed state curriculum—does not represent an existential threat to the school itself. Option one requires reducing funding. In a bureaucracy, the reduction of funding often shrinks budgetary space in subsequent years, ultimately threatening the existence of the item or program losing funding. Additionally, there is little hope that reduced funding will increase the successful educational output of any school, so option one is more likely to operate as a punishment for the problem of low test scores than a solution to it. Pragmatically, the employment of option one alone seems to all but guarantee that the school will be back in the same place in a year. Options three through five all amount to roughly the same thing, firing and replacing some of the teachers and administrators at the failing school. For the teachers and administrators, the targets of this threat, this option is existentially threatening. At its most extreme, option four makes it possible to gut the school both administratively and structurally and re-form it as a private/public enterprise. The existential threat in option six needs little

³² *No Child Left Behind Act of 2001*, § 1116.c.10.C.

interpretation. It empowers the state to terminate the district. Option seven involves sending some of the offending school's students to different districts. Like option one, it does not threaten the immediate abolition of the school, but carried to its end, it would. Additionally, since state funds in many states are determined by enrollment, option seven carries the same bureaucratic threat to the existence of the school as option one. The only self-preserving option open to a school district selected for corrective action is option two: to reform the school's curriculum so that it more directly reflects the federally mandated state curriculum. It is the only option that does not directly weaken the school or threaten the job security of its employees.

This process of limiting "viable alternatives" is exactly how James R. Andrews defined coercion when he wrote about his experience at Columbia in 1968. Andrews explained that "rhetoric becomes less persuasive and more coercive to the extent that it limits the viable alternatives open to the receivers of communication."³³ In this subsection, NCLB gives a list of possible options, but only one of those options might reasonably help the school district in its effort to successfully navigate NCLB's testing regime the following year. All of the options for corrective action except for number two are punitive either to the school or to the administrators and teachers who run it. Although NCLB presents a list of options for action, the list is still coercive because with the exception of curriculum reform, each option would require the teachers and administrators of the school to agree to a course of action that would damage the functioning and institutional health of their school.

One might question the depth of a piece of rhetorical criticism that identifies coercive language in a law because, by its nature, law is coercive. In order to enforce themselves, laws typically prescribe forceful state action—action that often breaks the same or another law—

³³ James R. Andrews, "Confrontation at Columbia: A Case Study in Coercive Rhetoric," *Quarterly Journal of Speech* 55, no. 1 (February 1969): 10.

resulting in a text that is threatening and coercive.³⁴ Mootz even recognizes rhetoric as the aspect of the law that transmits power, explaining that “rhetoric is not merely stylistics that mask the exercise of power; its efficacy derives from participating in the generation and definition of authority. Rhetoric places the issue of power in play precisely because rhetoric is involved in the exercise of political power (as opposed to physical force) in a fundamental way.”³⁵ For Mootz, the law derives its power from the coercive force of rhetoric. However—Mootz goes on to argue—the coercive function of legal rhetoric is a starting point for analysis, not an end point. Coercion in the corrective action portion of NCLB is significant first because—as section 6301 demonstrates—NCLB does not admit to its coercive nature. NCLB presents itself as a structured instrument designed to aid school reform, not to foist it upon failing schools. Additionally, assuming that there will be coercion in any law, it is still critical to examine the precise nature of the coercion taking place. Such an examination is critical in this case because NCLB is not coercive in the traditional legal sense. It does not just seek to end one debate on the direction of education policy; it aspires to end all debate on the direction of education policy by becoming an engine of continuous school reform. NCLB also denies its coerciveness by consistently proclaiming its commitment to flexibility in school reform and administration. That the law’s enforcement mechanisms amount to a forceful standardization of the curriculum in failing schools is a significant departure from that professed faith in flexibility. Moreover, NCLB’s coercion is deceptive. The corrective action subsection presents a truncated set of options, many of which confuse assistance with punishment, as a set of significantly different and viable options.

The punitive nature of many of the options in the list offered in subsection 1116.c.10.C troubles the meaning of the term “corrective” as it is employed by NCLB. It could mean corrective in the sense of “corrective training” which the *Oxford English Dictionary* defines as a

³⁴ Giorgio Agamben, *State of Exception*, trans. Kevin Attell (Chicago, IL: The University of Chicago Press, 2005), 38-39.

³⁵ Mootz, *Rhetorical Knowledge in Legal Practice*, 133.

process of “setting right what is erroneous or faulty.” This would indicate an intention to repair the school’s ability to educate its students in a way that the state finds acceptable. However, NCLB’s use of the word might also mean corrective in the sense of “corrective justice,” which the *Oxford English Dictionary* differentiates from other forms of justice for being especially “castigatory” or “punitive.”³⁶ This definition would suggest that the section is designed to offer ways of reprimanding school districts for failing to meet the standards set for them. All of the options offered in the section could be accounted for by one definition or the other, which presents a serious interpretive problem for the enforcement of the law. Whether the spirit of the law is interpreted as intending to punish or repair school districts has important implications for the goals and nature of “corrective” action.

If either definition of “corrective” can be favored, it is probably the definition of “corrective” as a “punitive” and “castigatory” sense of justice. In an earlier portion of the “State Review and Local Educational Agency Improvement” subsection entitled “Rewards,” NCLB states: “In the case of a local educational agency that, for 2 consecutive years, has exceeded adequate yearly progress as defined in the State plan under section 1111(b)(2), the State may make rewards of the kinds described under section 1117 to the agency.”³⁷ This subsection, since it prescribes action for the opposite case of subsection 1116.c.10.C, defines “corrective” action by naming its antonym. If success is met with “reward,” then failure must be met with “punishment.” Indeed, the specific rewards described in the “State Recognition” subsection of section 1117 appear to be opposites in some cases.³⁸ NCLB authorizes states to reward succeeding schools by giving them additional funding, special status as “Distinguished Schools,” and to give pay bonuses to outstanding teachers at those schools.

³⁶ Oxford English Dictionary Online, s.v. “corrective” http://dictionary.oed.com.ezaccess.libraries.psu.edu/cgi/entry/50050709?single=1&query_type=word&queryword=corrective&first=1&max_to_show=10 (accessed May 19, 2009).

³⁷ *No Child Left Behind Act of 2001*, § 1116.c.2.

³⁸ *No Child Left Behind Act of 2001*, § 1117.b.1.

In addition to the slipperiness of the word “corrective,” NCLB’s coercive rhetoric is deceptive in that it presents an abbreviated set of choices as though they represented true flexibility on the part of the law. Curricular reform is not the only productive possibility for school reform, but it is the only non-punitive option offered by NCLB. Subsection 1116.c.10.C does not acknowledge the existence of other possible ways of improving a school’s performance, but, ironically, section 6302 does. Section 6302 is entitled “Rules of Construction on Equalized Spending” and it states the following: “Nothing in this title [Title VI—Flexibility and Accountability] shall be construed to mandate equalized spending per pupil for a State, local educational agency, or school.”³⁹ NCLB specifically prohibits the practice of equalizing spending per pupil in order to improve educational results in schools that are failing to make AYP. Section 6302’s prohibition documents the law’s awareness of one of the possible reform policies that it excludes from its options for corrective action in subsection 1116.c.10.C. This seemingly superfluous proscription inadvertently admits to the truncation of the set of choices offered to struggling school districts by enumerating an excluded option too conspicuous to leave to the chance that it might be enacted despite its absence.

It would be fair to ask why NCLB needs to use coercion to enforce a curricular reform that has already had its potentially controversial aspects—inclusion, testing, and scientism—depoliticized. However, the deceptiveness of the coercion in the corrective action subsection of NCLB works in conjunction with the depoliticization of the assessment requirements. The deceptive rhetoric in the corrective action subsection creates the appearance of a genuine political process by presenting a field of options that look to be “corrective” in the repairing sense. The way that NCLB masks its coercion returns—in outward appearance—politics to the law, but in a controlled form. This process of depoliticization and repoliticization along preapproved lines is similar to what Kenneth Burke described as the “bureaucratization of the imaginative” in

³⁹ *No Child Left Behind Act of 2001*, § 6302. The section is quoted in its entirety.

Attitudes Toward History. Burke explained that “an imaginative possibility (usually at the start Utopian) is bureaucratized when it is embodied in the realities of a social texture, in all the complexity of language and habits, in the property of relationships, the methods of government, production and distribution, and in the development of rituals that re-enforce the same emphasis.”⁴⁰ In the case of NCLB, the unpredictable and often perilously utopian process of education reform is redacted from its traditionally local context and institutionalized into an enforcement mechanism within the authoritative discourse of NCLB’s statutory rhetoric. Education reform, in its new—bureaucratized—context, can thus reasonably incorporate punishment for schools that fail to meet AYP requirements because those schools become obligated to satisfy their bureaucratic superiors that they are worth investing resources in.

The danger inherent in the combination of NCLB’s depoliticized assessment rhetoric and its coercive rhetoric of corrective action is that they combine to create an enforcement mechanism that does not operate as a flexible, non-ideological product of open politics as it initially appears to be. NCLB provides little real flexibility for corrective action, pushes inclusion, testing, and scientism as crucial values in its vision of education reform, and treats those issues—which are intensely political—as non-political while presenting the rigid corrective action options as a site for serious political input though it is not. Burke discusses this danger arguing that “a bureaucratic order approaches the state of alienation in proportion as its “unintended by-products” become a stronger factor than the original purpose.”⁴¹ Interestingly, Burke uses quotes around the term “unintended by-products” suggesting perhaps that they might both be intended and the main effect. He then notes that any bureaucratic order that becomes so unbalanced risks losing the adherence of those who operate within it every day. This is a perception that NCLB has struggled with for some time, and Burke’s warning is made all the more acute by the possibility

⁴⁰ Kenneth Burke, *Attitudes Toward History*, 3rd ed. (Berkeley, CA: The University of California Press, 1937), 225.

⁴¹ Burke, *Attitudes*, 226.

that some of NCLB's deceptive and depoliticized rhetoric runs the risk of being understood as masking manipulation.

Alignment, Pedagogy, and Reform – Enforcement as Procedural

Having established that NCLB has created a system that forces failing schools to redesign their curricula to meet state standards—which have been created to federal specifications—it becomes possible to investigate how NCLB's rhetoric facilitates that redesign. NCLB discusses the harmonization of standards, curricula, and assessments in several places in the law, most commonly using the language of “alignment” to describe the process. Not only is alignment part of the law’s overall strategy to improved educational policy, but with subsection 1116.c.10.C coercing states to use curricular reform as the primary means to redress failing school districts, alignment becomes the mechanism for enforcing NCLB. The effect of the requirement for curricular reform is to make school reform both bureaucratic and perpetual. NCLB does not just legislate school reform, it legislates school reforms. As schools fail to meet standards they are required to initiate a reform process. Additionally, because of the depoliticized ideologies inherent in NCLB’s requirements for the creation of state assessments, the brand of school reform that is perpetuated by NCLB has a distinct pedagogical character. The endorsement of a particular set of pedagogies, however implicit, marks a significant turning point for federal education policy.

For this analysis of alignment, one particular appearance of the word stands out as important to the rhetorical function of NCLB. In subsection 6111.2.D NCLB indicates that the states must be “refining State assessments to ensure their continued alignment with the State’s academic content standards and to improve the alignment of curricula and instructional

materials.”⁴² This subsection describes the only condition for funded state assessments not analyzed in the first section of this chapter. In addition to being scientific, testable, and inclusive, state assessments must be carefully aligned with the state standards set forth in the state plans analyzed in Chapter 3. Again, the language of the assessments section is depoliticized, but this time there is no mythic sleight of hand at play, NCLB simply mischaracterizes the process of alignment. Point D of the assessment requirements suggests that alignment is a process by which the state “refines” its tests to “align” better with the state standards and curricula. Point D suggests that this process of alignment is bi-directional in that classroom practices dictate the content of the test and vice versa. This, however, is not the case. Subsection 1116.c.10.C.ii indicates that corrective action should institute and fully implement “a new curriculum that is based on State and local academic content and achievement standards, including providing appropriate professional development based on scientifically based research for all relevant staff, that offers substantial promise of improving educational achievement for low-achieving students.”⁴³ The actual enforcement of alignment assumes that the school and its curriculum are the problem, not the test. There is no provision in NCLB to enforce the redesigning of the assessment to match up with the curriculum on the state and local level. Instead, the enforcement provisions in NCLB assume that alignment must work only in the direction of harmonizing local educational practices with state assessments. Although “alignment” suggests a bidirectional process meant to encourage the reflexive design and redesign of state assessments, it is actually enforced only at the level of the school district, where it requires capitulation to the demands of the state.

The bi-directionality of alignment is additionally undercut by the etymology of the term itself. Once again, NCLB’s use of a term leaves its definition ambiguous. The *Oxford English*

⁴² No Child Left Behind Act of 2001, § 6111.2.D.

⁴³ No Child Left Behind Act of 2001, § 1116.c.10.C.ii.

Dictionary suggests three groups of definitions for “alignment.” One set of definitions is mathematical and suggests drawing a line through a point. It seems unlikely that this is the definition NCLB favors since it is too abstract to reasonably describe the prescriptions of the law. The other two definitions are likelier candidates. The dictionary gives a definition of alignment in the political sense as “the process or result . . . of the grouping or agreement of parties or powers.” This seems to accurately define the way that “alignment” is used in subsection 6111.2.D to describe a situation where the interests of curriculum and assessment are balanced by some sort of bidirectional exchange that results in an agreement. However, the *Oxford English Dictionary* gives a third, militaristic definition. It explains that “alignment” can be used to describe the “arrangement of soldiers in a line or lines.”⁴⁴ This definition is more descriptive of the way alignment is actualized in subsection 1116.c.10.C.ii where the bidirectional exchange is replaced with a top-down, hierarchical sort of agreement. So, although alignment is a “process or result . . . of the grouping or agreement of parties or powers” in its actual usage in NCLB, in the language of its implementation, it is more like the “arrangement of soldiers in a line.”

It would be easy, and probably passable, to leave this description of NCLB’s use of alignment where it is, as impossible to determine, but the rhetorical force of NCLB’s procedure for enforcing corrective action suggests that the NCLB is using alignment in the militaristic sense. The persuasive force of NCLB’s procedural language can be accounted for rhetorically through the work of Ian Bogost. In his book, *Persuasive Games*, Bogost defines procedural rhetoric as “a subdomain of procedural authorship; its arguments are made not through the construction of words or images, but through the authorship of the rules of behavior, the

⁴⁴ Oxford English Dictionary Online, s.v. “alignment” http://dictionary.oed.com.ezaccess.libraries.psu.edu/cgi/entry/50005692?single=1&query_type=word&queryword=alignment&first=1&max_to_show=10 (accessed May 20, 2009).

construction of dynamic models.”⁴⁵ Like many videogames, NCLB persuades by convincing the people engaged with it to engage in a specified behavior or set of behaviors. Although “alignment” is used to mean a bidirectional exchange in the law itself, when it is implemented at the district level it requires the local educational agency to alter its curriculum to match the curriculum suggested and assessed by the state. This procedure, as described in the corrective action subsection, is itself part of the persuasive force of NCLB. In this case, where the functional and textual definitions of the term “alignment” clash, the active nature of NCLB as a law favors the functional definition. If NCLB were not a document that required those it effects to take action, the textual definition might hold more weight.

The unidirectional definition of alignment also has benefits for many of the policymaking parties. For the school districts and states, given the federal rules set out by NCLB, it is the easiest option to pursue when a school is identified as failing. Additionally, since it harmonizes the school curriculum more closely with the state assessments, the process of curricular reform does have a reasonable chance of raising the students’ test scores and making the school’s education performance better, at least by measurable standards. For the federal government, the process of alignment takes most of the actual work of school reform out of the hands of the federal government and puts it in the hands of the state and local authorities. Indeed, since alignment is supposed to happen between state and local authorities, the state and local governments are pitted against each other in the struggle to determine what school reform will look like. This takes all of the reflection and attention away from the federal government, which does not have to align itself to any other agency. All three governmental levels benefit from the fact that curricular reform is relatively painless and cheap compared to more comprehensive versions of school reform. The decrease in investment makes alignment an easy policy to favor.

⁴⁵ Ian Bogost, *Persuasive Games: The Expressive Power of Videogames* (Cambridge, MA: The Massachusetts Institute of Technology Press, 2007), 29.

The ease with which alignment can be selected as the appropriate response to failure to make AYP for two years along with the rest of the corrective action subsection appropriates the process of education reform into a regular governmental function. Much in the same way the United States Constitution appropriated revolution into a governmental function through the electoral process, NCLB attempts to make structural education reform a matter of regular, bureaucratic action. However, the Constitution integrated revolution by creating a nonviolent process for the contesting the future direction of United States government. Politicians and their parties meet and compete to take temporary control of the country. Indeed, the need for conflict and confrontation in liberal democracy has been noted by Chantal Mouffe in *The Democratic Paradox* where she notes that:

Democratic politics does not consist in the moment when a fully constituted people exercises its rule. The moment of rule is indissociated from the very struggle about the definition of the people, about the constitution of its identity. Such an identity can never be fully constituted. . . . Hence the importance of leaving this space of contestation forever open, instead of trying to fill it through the establishment of a supposedly ‘rational’ consensus.⁴⁶

NCLB has a different vision for incorporating the change of management into a regularized, governmental process. Instead of embracing competition and agonism, NCLB attempts to institutionalize reform through the production of consensus on what reform should be. Rather than creating a laboratory where new reforms can be attempted and compared, NCLB encourages curricular reforms that introduce inclusion, testing, and scientifically researched and approved pedagogies. NCLB commits the folly that Mouffe identifies as the attempt to build an unnecessary consensus and to imbue that consensus with the lofty quality of rationality. The result is that NCLB bureaucratizes an impoverished process of renewal into federal education policy. In addition, this process of renewal has a specific pedagogical character that is institutionalized along with the process that it inhabits.

⁴⁶ Chantal Mouffe, *The Democratic Paradox* (New York, NY: Verso, 2000), 56.

Conclusion – A Federal Pedagogy

In *Between Past and Future*, Hannah Arendt defined education as “the point at which we decide whether we love the world enough to assume responsibility for it and by the same token to save it from that ruin, which, except for renewal, except for the coming of the new and the young, would be inevitable.”⁴⁷ Her definition speaks to the great regenerative power of education, celebrating its capacity to make the human world over again generation after generation. Her theoretical reduction of education to its essence speaks both to its ability to produce consistency between generations and to its dependence upon the process of renewed investment of each generation in its progeny. NCLB represents an institutionalized version of both the capability of education to reproduce aspects of society and of its dependence upon the investment of one generation in the next. However, NCLB’s investment has produced a particularly rigid form of renewal.

Reading the bill confirms the impotent solipsism of section 6301 prohibiting federal employees from deciding curricula for local educational agencies. Despite its forbearance, NCLB has a clear pedagogical position. It uses alignment to enforce inclusion, measureable testing, and scientifically tested teaching techniques on local schools. All schools are required to include as many children into the regular curriculum as possible, allowing them to be tested and accounted for by the states as easily as possible. Although there is controversy over whether inclusion is the best possible method for teaching students with profound educational difficulties, NCLB clearly takes a pedagogical stance in the controversy. To satisfy NCLB’s assessment requirements, all schools must test their students in a statistically “reliable” and “valid” way. In addition to the requirements in subsection 6111.2, subsection 411.b.2 concerning the National Assessment of Education Progress (NAEP) and entitled “Measurement and Reporting”

⁴⁷ Hannah Arendt, *Between Past and Future: Eight Exercises in Political Thought* (New York, NY: Penguin Books, 1954), 193.

specifically discusses the statistical measures that the federal government will consider when making decisions concerning test scores.⁴⁸ Not only are schools required to give tests that are statistically sound by the assessments section of the law, but the procedure described by the law for evaluating state test scores also assumes that they will be reportable as a collection of statistical measures. Moreover, all new pedagogical practices are required by the assessments section and the corrective action section to have some basis in scientific investigation. Again, NCLB is enforcing the measurement and testing of a practice before it is brought into the classroom to ensure that it will have an effect on measurement and testing once it is put into practice.

Inclusion, testing, and science combine to produce a pedagogy that assumes that all education that matters is measureable. NCLB does not discuss the content of teaching or the content of testing. Although NCLB never indicates its pedagogical disposition, it assumes that all valuable teaching imparts skills and that those skills are demonstrable in ways that can be counted and compared. For the first time in the history of education policy, the federal government has a clear and enforced pedagogy. In NCLB the federal government demands that school impart a set of scientifically approved, testable, and comparable competencies.

⁴⁸ *No Child Left Behind Act of 2001*, § 411.b.2.

Chapter 5

Rhetoric, Education, and Democracy

The No Child Left Behind Act of 2001 (NCLB) is a complex and lengthy legal document that has become the center of education policy in the United States. Its position and influence demand attention, but its length and dense legal prose have discouraged close analysis of its language. This project addressed the textual content of NCLB and found that NCLB uses rhetoric to justify, implement, and enforce its authority over public education in the United States. Through the process of reauthorization, NCLB inhabits the legal position of the Elementary and Secondary Education Act (ESEA) using its material and rhetorical resources to legitimize neoliberal education reform. Over time, the ESEA has evolved from a law that seeks to ameliorate social problems through education to a law that seeks to improve education in spite of social problems. NCLB mobilizes three economic conceptualizations of education in order to influence the practice of education in United States classrooms. Because the processes of learning and teaching are difficult to govern, NCLB defines and redefines education as an economic object or process so that it can influence the practice and outcome of public education in the United States. NCLB's economic conceptualization of education as an economic good stands in contrast with the ESEA's legacy of endorsing education as a public good. NCLB enforces its economic conception of education by systematizing education reform. Through the processes of assessment, corrective action, and alignment NCLB forces failing schools to select from a truncated set of reform options. The reform options endorsed by NCLB are depoliticized through the invocation of the supposed political neutrality of scientific research.

This analysis of NCLB accounts only for its basic functions as a policy because NCLB tests the bounds of textual analysis. Its length, some six hundred and seventy pages, defies most totalizing claims. Its authorship is obscured and plural. Its dense legal prose is littered with pregnant phrases, terms, and constructions, which require translation. Its hierarchical structure relates clauses across tens of pages so that its meaning can only be ascertained by reassembling the text. Yet despite its defiance to interpretation, it is often deployed as a metonymy for United States education policy. Through the machinations of bureaucracy NCLB's daunting linguistic density patrols the boundaries of pedagogy in United States classrooms justifying its metonymic status. NCLB has remade the rhetorical terrain upon which education policies are constructed, contested, and implemented. As a game-changing rhetorical document, NCLB rewards scrutiny from those rhetoricians interested in the rhetorical production and force of policy discourse.

Although the complexity of NCLB makes it resistant to holistic judgments, analyzing its textual content has implications for the studies of rhetoric, education, and democracy. For rhetoricians, the troublesome nature of NCLB's authorship and its relationship to previous versions of the ESEA present challenges that demand methodological flexibility. Although legal documents and the minutiae of policy discourse might be the farthest things from novel for rhetorical scholarship, it is methodologically innovative to confront the complexities and implications of the reauthorization process as more than a sophisticated account of context. The rhetorical study of reauthorization offers another unit of analysis for public address, and this unit of analysis has an audience among both legal and historical scholars in addition to rhetoricians.

The rhetorical analysis of the ESEA and NCLB also has an audience among education scholars. Not surprisingly, NCLB has motivated a fantastic quantity of attention and scholarship from those who study education. Despite the existence of a great deal of academic work criticizing NCLB for its philosophical, and in some cases, rhetorical posturing, there is no work that undertakes a careful reading of the law itself as the primary source for its claims. Most of the

academic work on NCLB in education has focused on the political speech surrounding the law and the quantifiable implications of its implementation.¹ Lawmaking is an inherently communicative and linguistic act. It is rhetorical.² If NCLB is regarded as an attempt to translate a set of ideas about education into action in the world of education outside of language, a rhetorical analysis of NCLB takes on the capacity to address the crucial question of how education has been legislated. The question of how NCLB has legislated education complements and deepens the existing scholarship by addressing an additional set of questions. The extant work has obsessed with what NCLB has legislated education to be while rarely addressing the means by which the law has created so much upheaval.

Those who theorize democracy also pay special attention to the importance of rhetoric and education as necessary practices for the production of democracy. Like the law, democracy requires communication—which is almost always rhetorical—to function. For many theorists, successful democracy entails an education. The rhetoric of education policy takes on particular importance for democracy as it both creates the policies that determine how democratic practices are habituated among a population through education and stands as a product of the democratic deliberation it seeks to instantiate. Because NCLB is an example of rhetoric, education, and democracy while at the same time it articulates a theory of each, this law offers particularly fertile ground for academic analysis implicated in the study of each field.

¹ Lee W. Anderson, *Congress and the Classroom: From the Cold War to “No Child Left Behind”* (University Park, PA: The Pennsylvania State University Press, 2007); Emery J. Hylsop-Margison and M. Ayaz Naseem, *Scientism and Education: Empirical Research as Neo-Liberal Ideology* (New York, NY: Springer, 2007); Kevin R. Kosar, *Failing Grades: The Federal Politics of Education Standards* (Boulder, CO: Lynne Rienner Publisher, 2005); Paul Manna, *School’s In: Federalism and the National Education Agenda* (Washington D.C., Georgetown University Press, 2007); Patrick McGuinn, *No Child Left Behind and the Transformation of Federal Education Policy 1965-2005* (Lawrence: The University of Kansas Press, 2006); Keith A. Nitta, *The Politics of Structural Education Reform* (New York, NY: Routledge, 2008); Carlos Alberto Torres, *Education and Neoliberal Globalization* (New York, NY: Routledge, 2009); Paul Shaker and Elizabeth E. Heilman, *Reclaiming Education for Democracy: Thinking Beyond No Child Left Behind* (New York, NY: Routledge, 2008).

² Francis J. Mootz III, *Rhetorical Knowledge in Legal Practice and Critical Legal Theory* (Tuscaloosa, AL: The University of Alabama Press, 2006), 132-133.

Implications for the Study of Rhetoric

A close reading of NCLB has more to offer rhetoric than the illumination of another complicated text. Much of NCLB's content cannot be accounted for without analyzing its composition as a reauthorization. Such an analysis requires the comparison of the significant versions of the ESEA as they help to explain the content and structure of NCLB. Because this comparative analysis involves the examination of previous versions of the ESEA as both rhetorical texts in themselves and as constitutive of NCLB, this method of rhetorical analysis troubles the boundary between text and context. In other words, the comparative examination of the versions of a reauthorized law are not just contextual matters in the sense that they are part of the law's history, they are also textual matters because they require their own rhetorical analysis as texts in order to access their contextual significance.

These complications are not new; the American study of rhetoric has long struggled with the challenges posed by the often-competing demands of text and context. Early in the development of the field, rhetoricians adopted the methodological struggles of history and literary criticism as their own in the pursuit of analytical harmony. Donald Bryant lent his voice to these concerns in a 1937 article in the *Quarterly Journal of Speech*. In the article, he identified two central problems for the study of rhetoric: (1) whether rhetoricians should be critics or study history, and (2) whether rhetoricians should focus on individual or social history. Bryant answered the first question by lauding the importance of historical work in the practice of criticism. Although Bryant was careful enough with his own rhetoric to avoid arguing that rhetoricians should not be critics, he clearly favored the writing of "rhetorical history," claiming that it was more foundational than criticism.³ Bryant's vision for the study of rhetoric has itself become an object of history as rhetoric has proven itself robust enough to include the critics, the

³ Donald C. Bryant, "Some Problems of Scope and Method in Rhetorical Scholarship," *Quarterly Journal of Speech* 23, no. 2 (April 1937): 183.

public address scholars, and many others. Bryant's concern with social versus individual history—a methodological controversy imported from history—reflects the neoaristotelean obsession with context.⁴ Bryant feared that there could be no place for the study of “rhetoric,” by which he meant great speeches given by great men, in an academic climate that valued only works of social history. Bryant could not foresee the advent of the movement study and again, the solution to Bryant's problem has been for the field to do both.

Comparing Bryant's arguments to the subsequent direction of rhetorical scholarship is not meant to berate him for failing to foretell the future. Instead, Bryant's brief discussion of the demands of text and context speak to a fundamental question for the study of rhetoric. Bryant's attempt to identify a methodology that appropriately accounts for both text and context reminds contemporary scholars that—although it may not be feasible or wise to identify a single attitude toward text and context that works for all rhetorical artifacts—rhetoricians should continue to ponder new methods for negotiating the demands of text and context. Not only do new methodologies enhance rhetoricians' abilities to analyze texts, but they also enhance their ability to recognize the contexts that produce texts and warrant attention. In this way, a contemporary reading of Bryant's article does not produce a new controversy; instead, it resurrects an old one. The study of rhetoric benefits when rhetoricians experiment with new methods that may be, in part, reusable by other rhetoricians. This is not meant to suggest that we should all be rhetorical theorists, but it is meant to insist that rhetorical scholarship can be enhanced by considering the applicability of its methods to more than one text. The purposeful search for new methods and models for studying rhetoric should not be abandoned because those new models will never provide a universal method. While Roderick Hart might rebuff scholarship that aspires to anything less than the universal, James Darsey might also protest work that puts theory-building

⁴ The historical origin of Bryant's second question reveals, ahead of time, his answer to the first.

ahead of situation-specific criticism.⁵ Both views of rhetorical scholarship risk forgetting that: (1) good criticism will always require the use of methods, but will go bad when those methods rob the critic of his or her agency, and (2) that those methods will always be useful in multiple contexts, but will never attain universality and do not need to in order to be valuable. The study of reauthorized legislation offers just such a method for rhetorical analysis; a method that strikes a unique balance between text and context.

The reauthorization process appeared for the first time in United States Federal Law during the New Deal era. The Reciprocal Trade Act of 1934 was the first United States Law to be temporarily authorized. The act gave the president the power to negotiate lower trade tariffs with countries on an individual basis, but required renewal every three years.⁶ Temporary authorization hit its peak popularity as a lawmaking instrument in the 1970s along with the legislative movement favoring sunset provisions.⁷ Since the 1970s, the use of temporary authorizations at the federal level has steadily declined, but a number of temporarily authorized laws continue to require and win reauthorization, including the ESEA.

The process of reauthorization leaves a trail of discarded laws that can be analyzed to help explain the rhetorical composition of the laws that come to occupy their former legal place. Because the process of reauthorization justifies the creation of a new law on the premise of renewing an old one, there are always connections between the structure and language of reauthorized laws and the laws they reauthorize. Laws require authority to be effective and a

⁵ James Darsey, “Must We All Be Rhetorical Theorists?: An Anti-Democratic Inquiry,” *Western Journal of Communication* 53, no. 3 (Summer 1994): 177; Roderick P. Hart, “Theory-Building and Rhetorical Criticism: An Informal Statement of Opinion,” *Communication Studies* 27, no. 1 (1976): 70; Roderick P. Hart, “Doing Criticism My Way: A Reply to Darsey,” *Western Journal of Communication* 58, no. 4 (Fall 1994): 309. Hart suggests genre studies as one way of doing theoretical work within rhetoric. Although reauthorized legislation does constitute a (tedious) genre, the study of reauthorizations and the methods it requires does not achieve its value from the constitution of a genre. Its existence as a genre is not insight; it is self-evident, but the comparative analysis reauthorization necessitates is novel and useful.

⁶ James H. Cox, *Reviewing Delegation: An Analysis of the Congressional Reauthorization Process* (Westport, CN: Praeger, 2004), 53. Cox goes on to explain that the Reciprocal Trade Act has been renewed every three years since 1934, but since the 1960s it has included certain restrictions.

⁷ Cox, *Reviewing Delegation*, 54-56.

reauthorized law will often access the authority of the law that preceded it by either co-opting or denouncing its language. The explication of these rhetorical reverberations and reactions requires analyzing the rhetoric of the laws being reauthorized, which constitute a context, as a set of comparable texts. In the case of a reauthorization, context is not just a question of historical description, it is a question of rhetorical analysis and comparison. This is a rhetorical method for the analysis of history and sets the study of reauthorized legislation apart from a great deal of rhetorical scholarship on public policy.

One might reasonably question the uniqueness of the study of reauthorization by asking why reauthorized laws could not be studied in the same way rhetoricians study speeches that go through several documented revisions. Much like a drafted speech, NCLB is the culmination of a process of rhetorical production that spans time and includes several points of solidification. But, unlike most drafted speeches, the version of the ESEA that became law did so at considerable temporal distance from each other. Additionally, the collective authorship of each version of the ESEA changed significantly. In short, each passage of the ESEA is its own public speech act, unlike the drafts of a speech. Although it is possible to examine the development of NCLB from the ESEA like the development of a speech in many ways, reauthorization does not provide quite as much contextual stability as a drafted speech. The indecidability of the textual or contextual classification of the previous versions of the ESEA vis-à-vis NCLB makes the study of reauthorization distinct from the study of almost any other genre of rhetorical document.

In addition to the trail of antecedent laws, the reauthorization process creates a rich and coherent rhetorical history. James Cox explains that the Congress often uses temporary authorization to create a future review procedure that gives the body a certain amount of control over federal laws and agencies that produce large bureaucracies.⁸ In the process, they also create a recurring commonplace for rhetorical production. When each law or agency is reauthorized, the

⁸ Cox, *Reviewing Delegation*, 8-9.

Congress has the option of debating the merits or details of reauthorization. These debates serve as the centerpiece of a larger rhetorical exchange over issues pertaining to the law or agency being considered. These rhetorical commonplaces have more than the location and timing of their rhetoric in common; the reauthorization process generates a host of contextual recurrences each time a temporarily authorized bill is reauthorized. Not only must the law be passed by the Congress, but it must also be approved by the President, which creates a regular space for presidential rhetoric. Many reauthorizations become the object of media attention and many reauthorizations attract the attention of vocal groups of citizens, both of which add their own rhetorical voices. Each of these groups produces rhetorical artifacts that can be studied as they change across time.

Laws that need reauthorization present a space for political contestation. The result of that contest is the passage of a new law that is at least slightly different from the law it replaces. Over time, reauthorized laws and the rhetoric that attends their reauthorization creates a series of rhetorical artifacts that reflect the development of legal and governmental thinking concerning the issue that they govern. These iterations of the same law combine to create an interesting text for rhetorical analysis. Such a text is not without its challenges. Accounting for each iteration of a reauthorized law along with the attendant policy rhetoric from sources like congressional debates, the executive, the public, and the media can be tedious, but leaving any of it out can leave an analysis incomplete. For example, it would be foolish to study NCLB without considering the influence of previous versions of the ESEA. In some cases, reauthorized laws are brief enough to be compared in total or there are particular rhetorical artifacts that stand out as needing attention, but often, these rhetorical artifacts must to be broken into their parts and compared piecemeal.

This thesis analyzes NCLB's rhetoric by inspecting the way NCLB justifies, executes, and enforces its authority. Examining the justifications for authority as they are influenced by the reauthorization process required comparing the declaration of policy as it developed from the

Elementary and Secondary Education Act of 1965 (ESEA of 1965), through v (ESSIA of 1988), the Improving America's Schools Act of 1994 (IASA of 1994), and finally NCLB. This comparison reveals a turn from justifications rooted in the governmental logic of the welfare state to justifications rooted in neoliberalism. Whereas the ESEA of 1965 sought to help ameliorate inequality in the United States by making better public education more available through an increase in federal funding, NCLB seeks only to fix public education, which it identifies as a source of inequality. The ESEA of 1965 mandated that the federal government should take action in communities where the local educational agency lacked the resources to provide an adequate education. It proposed a net increase in action by the federal government. This is consistent with what Suzy Harris describes as the project of the welfare state. The ESEA of 1965 sought, through education, to emancipate economically disadvantaged American's from their unjust condition.⁹ NCLB shows its neoliberal stripes by blaming government involvement, in education, for inequalities in education. NCLB seeks to fix a broken system that has been too generous, and unproductive. For the ESEA of 1965, authority is justified by the pursuit of equality. NCLB justifies its authority by identifying the failings of previous governmental action.

Studying the declaration of policy in NCLB as it developed across four decades of federal education legislation catches some of the long-term trends in US federal education policy as they are expressed in the language of the legislation. Because law is a fundamentally rhetorical endeavor, to trace the rhetorical development of the ESEA is to trace the development of ESEA.¹⁰ Neoliberalism becomes a part of the ESEA's justification for authority when neoliberal language is recorded as a part of the law for the first time in the ESSIA of 1988.¹¹ A close reading of the text of each version of the ESEA grounds the history of the ESEA in the law itself. Although this

⁹ Suzy Harris, *The Governance of Education: How Neo-Liberalism is Transforming Policy and Practice* (London: Continuum, 2007), 134-135.

¹⁰ Mootz, *Rhetorical Knowledge in Legal Practice*, 132-133.

¹¹ I provide a more detailed discussion of this claim above on pages 34 and 35.

might seem tautological, historical work often focuses as much or more on the social and political context surrounding the production of a law like NCLB than on the actual content of the law itself.

The study of reauthorizations ought to be of interest to scholars of public address because the reauthorization process creates a rich set of historical artifacts that can only be explained in a compelling way through rhetorical analysis. Historical analysis alone cannot adequately account for the relationship between the attendant texts and criticism alone cannot account adequately account for the content of those texts without considering historical context. The influence of one reauthorization on a subsequent reauthorization or the developments of presidential, movement, or journalistic discussion of a reauthorized law all require rhetorical analysis. Additionally, analyzing the textual products of reauthorization often has implications for historical scholarship on the same topics. By speaking both to the rhetorical and historical aspects of policy discourse, the reauthorization study fulfills both the rhetorical and historical promise of public address scholarship.

Implications for Education Policy

Whereas rhetoricians need good reasons for studying NCLB because it an esoteric object, scholars of education policy require good reasons for studying NCLB because it is an obvious and overanalyzed object. Adding another voice to the chorus of education policy experts who have registered their academic opinions on this law necessitates a tenor that is both novel and meaningful. The textual analysis in this thesis is innovative in that it relies on the text of NCLB to speak for itself. Rather than analyzing the press releases of the state department or the words of President George W. Bush, this analysis centers around the law itself, letting it give its own testimony as to its meaning and function. This analysis is meaningful because its primary method

is the dissection of the product of education policymaking. Laws like NCLB are the central objects of study for education policy and rhetorical analysis puts their linguistic content front and center. Although the list of education policy books on NCLB is lengthy and growing, few scholars of education policy have closely examined the language of NCLB and even fewer have done so with attention to the rhetorical dimensions of that language. The majority of education policy research has been interested in the political history and effects of NCLB. This thesis contributes an analysis of the law itself that is primarily concerned with how the language of NCLB justifies, enacts, and enforces its authority over public education in the United States.

The language that NCLB uses to enact its authority over public education is of particular interest to scholars of education policy because it is where the law attempts to realize its purpose. The process of making education policy is an attempt, through language, to order the world of education outside of language and NCLB enacts this ordering by requiring each local educational agency and each state to create a school improvement plan.¹² The requirements NCLB describes for the state and local improvement plans are the actual policy changes it enacts in classrooms across the United States. If scholars of education policy are interested in assembling a thorough understanding of the way that NCLB works, they must give some attention to the language that NCLB uses when it enacts change.

Analyzing NCLB's requirements for the school improvement plans reveals that the law understands education as economic, both in its object and systemic form. In portions of the state and local plans sections, NCLB characterizes education as a commodity. In other words, it defines education as an object that has a clear monetary value for which it can be produced and exchanged. The commodification of education is troubling because in order for education to have value—like any other commodity—it must be scarce. At points, NCLB monetizes education. In

¹² *No Child Left Behind Act of 2001*, Public Law 107-110, 107th Cong., 1st sess. (January 8, 2002) § 1111 and 1112.

those cases where education is monetized, NCLB turns education into a unit—by school, student, and/or test score—that can be used to measure the output of a school or state school system and then compare those schools and systems to each other or across time. The monetization of education is concerning because it creates a metric for comparison that elides historical reality—all schools and students are represented as having been given an equal opportunity to succeed. Monetizing education also enables market-like decision making that can exclude entire populations because from educational opportunities because they do not present enough potential for improving educational achievement. In addition to treating education as an economic object, NCLB also treats the process of educating students as an economic exchange. The state and local plans sections assume that successful educational agencies will be able to plan for and predict the amount educational achievement they produce. NCLB presumes that educational achievement—as measured by test scores—can be increased predictably and *ad infinitum*.

The economic metaphor that underlies NCLB’s conception of education is important for education policy experts to be aware of and understand. The metaphors that drive public policies have significant consequences for implementation of those policies. Once a metaphor becomes so accepted that it is no longer recognized as a metaphor it takes on the ability to limit and direct the perceptions of all those who use the language of the metaphor. George Lakoff and Mark Johnson go so far as to claim that “metaphors can be self-fulfilling prophesies.”¹³ Scholars of education policy need to take note of the economic metaphors in NCLB’s state and local plans sections because if they fail to do so they risk losing agency over their perception of education. This thesis is not concerned with whether it is wise to view education as an economic object or system, but it is concerned that the economic metaphors in NCLB might go unnoticed and consequently unexamined. The ESEA of 1965 viewed education as a public good. Although it

¹³ George Lakoff and Mark Johnson, *Metaphors We Live By* (Chicago, IL: University of Chicago Press, 1980), 156.

understood education as subject to the influence of economic realities, the ESEA of 1965 defined education itself outside of economics as an inherently positive civic activity. Uncritically accepting the economic characterization of education in NCLB forgets the history of the ESEA and a host of alternative policy postures.

This discussion of metaphor is not meant to suggest that the field of education policy has uncritically accepted NCLB's assumptions concerning the nature of education and education policy. Paul Shaker and Elizabeth Heilman address the question of the rhetoric of NCLB, but their analysis assumes that rhetorical appeals are inherently bad. They begin their chapter on NCLB, "Policy as Propaganda: A Critical Examination of NCLB," by lamenting the twisting of Marion Wright Edelman's slogan "Leave no child behind" into the title of the law. Shaker and Heilman then examine how NCLB uses rhetorical appeals to present its modernist assumptions—such as democracy, competition, neoliberalism, and patriotism—as positive attributes. Although this analysis is a welcome start to examining the rhetoric of NCLB, Shaker and Heilman's preoccupation with the capacity of NCLB to mislead or appeal to the public misses the legal and structural functions of its language. In fact, Shaker and Heilman, like most other education scholars, barely examine NCLB. They quote only the statement of purpose from the bill, choosing for the rest of the chapter to examine the language of the Department of Education and President George W. Bush.¹⁴ Their examination amounts to an ideological critique. Although such a criticism clearly has its value in the case of NCLB, its focus on ideology does little to explain how the text itself is functioning beyond the identification of some of its troubling philosophical dispositions. Education policy certainly benefits from the many perspectives of critical theory, but using critical theory to investigate the assumptions made in education policies involves the imposition of a particular political perspective on a policy. Like the influence of

¹⁴ Paul Shaker and Elizabeth E. Heilman, *Reclaiming Education for Democracy: Thinking Beyond No Child Left Behind* (New York, NY: Routledge, 2008), 42-58.

metaphor that Lakoff and Johnson discuss, this methodology runs the risk of producing a collection of self-fulfilling prophesies. A rhetorical analysis that begins with the text itself and brings critical perspectives to bear as the text necessitates them. When executed with concern for the text, such analysis yields a more thorough explanation of the rhetorical functions of the text and avoids the production of a tautological condemnation.

In their making, all education policies are committed to written language and in the process of being committed they are also made rhetorical. For the study of education policy to account for the composition and consequences of specific policies, it must address the role of rhetoric. Even if the rhetorical analysis of education policy is circumscribed to the close reading of education policies like the one in this thesis, rhetorical analysis still offers a range of potential studies. Analyses like this one can examine policies for the assumptions they communicate about education. Cataloging a list of ways in which education policy has envisioned and defined education might help in both the analysis and production of future policy. The rhetorical analysis of education policies might also explain some of the means by which education policy is transferred into practice. Since language mediates between the ideas for education and its practice, rhetorical analysis might be able identify some of the strategies used to procure change. Additionally, rhetorical analysis could help to account for the influence of external interests on the language of education policy. The study of public policy has already produced a sophisticated language for describing the process of producing policies, but rhetorical analysis could contribute a method that accounts for the content of those processes. For example, education policy experts have long been concerned with the relationship of education policy to the production and maintenance of democracy. Rhetorical analysis offers a way to account for the democratic origins and aspirations of specific policies.

Implications for Democratic Theory

The study of democracy is the study of rhetoric and education by other means. Few modern theories of democratic governance fail to account for the roles of discourse and learning and many of the most celebrated theorists of democracy have expended as much effort theorizing education and communication as they have theorizing political systems. John Dewey is at least as famous for his writings on education as he is for his work on democracy and Dewey did not confine his thoughts concerning democracy and education to separate projects. In *The Public and Its Problems*, Dewey argued for a form of education that would “release new potentialities” as a central component of his theory of democracy.¹⁵ In the same work, Dewey expressed his concern over the power of symbols to “control sentiment and thought.” He asserted that any democratic social formation would need a set of symbols—a rhetoric—to help it garner political support.¹⁶ Much of Dewey’s vision of democracy was expressed in the form of educational and communicative practices. More recently, Danielle Allen began and ended her book on American democracy, *Talking to Strangers*, with examples of democratic action within educational contexts. She explained that the integration of Little Rock’s Central High School helped to reconstitute the meaning and practice of citizenship in the United States and used that reconstituted citizenship to compose a letter to the University of Chicago concerning its relationship with the impoverished African American neighborhoods that surround it.¹⁷ Allen grounded her appeal to the University of Chicago to reach out to its surrounding neighborhoods in classical rhetorical theory. She argued that Aristotle’s *Rhetoric* is a treatise on the process of

¹⁵ John Dewey, *The Public and Its Problems* (Athens, OH: Ohio University Press, 1927), 198-199.

¹⁶ Dewey, *The Public and Its Problems*, 142.

¹⁷ Danielle S. Allen, *Talking to Strangers: Anxieties of Citizenship since Brown v. Board of Education* (Chicago, IL: University of Chicago Press, 2004), 175-184.

talking effectively to strangers and asserts that contemporary citizens and institutions can make use of its teachings to construct a better democracy.¹⁸

Although Dewey, Allen, and most other contemporary scholars implicate their work in the practice of governing, traditional scholars of democracy have investigated questions concerning the structure and processes of governing more directly. Their method of inquiry assumes the perspective of those in power—wielding the power of fiat over architecture of rule. For example, Bryan Garsten explains that Thomas Hobbes required citizens to “distance themselves from their everyday political decisions and judgments by creating a sovereign to judge controversial matters for them.”¹⁹ Garsten goes on to explain that Jean-Jacques Rousseau did not abolish the point of view of the sovereign; instead, he encouraged citizens to internalize that view. According to Garsten, Immanuel Kant envisioned a citizenry ruled by reason.²⁰ Democratic theory constructed from the perspective of government did not die with Kant. Walter Lippmann’s *The Phantom Public*, written in response to *The Public and Its Problems*, begins by asserting that no amount of education can prepare a citizenry for its democratic task and concludes by proposing that the best possible government is one that is run by bureaucratic experts.²¹ By privileging governmental expediency, Lippmann prescribes a system of government that is barely recognizable as democratic.

Because this preoccupation with governance often leads away from democracy, many contemporary democratic theorists have shifted their focus from the reform of governmental formations to civil society. In *The Democratic Paradox*, Chantal Mouffe argues for an agonistic politics. Mouffe envisages a society driven by the public contention between impassioned

¹⁸ Allen, *Talking to Strangers*, 142-143.

¹⁹ Bryan Garsten, *Saving Persuasion: A Defense of Rhetoric and Judgment* (Cambridge, MA: Harvard University Press, 2006), 10.

²⁰ Garsten, *Saving Persuasion*, 57, 84.

²¹ Walter Lippmann, *The Phantom Public*, 9th ed. (New Brunswick, NJ: Transaction Publishers, 1927), 12-15, 188-189.

liberals and democrats.²² Although Allen discusses action at the level of educational institutions, her suggestions for building a better democracy center on the dual processes of talking to strangers and sacrifice. Allen envisions a society where citizens make political friends with each other, which enables them to make sacrifices when they find themselves on the losing end of political disputes.²³ Both Mouffe and Allen are concerned with governmental actions, but they do not presume fiat over them. Instead, they presume fiat over social interaction and propose new norms of citizenship for creating and sustaining democracy. Although their suggestions are pragmatic in the sense that they are practicable for anyone who reads their books, letting governmental formations off the hook risks circumscribing the potential for change through social organization.

Rhetorically analyzing NCLB as an education law that expresses an attitude toward democracy offers an avenue for understanding and theorizing United States democracy. Although the suggestion of theorizing democracy from a text might sound methodologically exotic, Allen uses the events in Little Rock and Ralph Ellison's *Invisible Man* as inspiration for her theory and Mouffe's book is a response to Carl Schmitt's *The Concept of the Political*.²⁴ A rhetorical analysis of NCLB reveals that NCLB enforces its authority through depoliticized coercion. This process can be understood by examining the section of NCLB that describes the requirements for state assessments along with the section of NCLB that forces the state to take action when a school fails to pass those assessments for two consecutive years. The assessment requirements present inclusion, scientifically-based educational practices, and statistically valid and reliable testing practices as natural requirements for any assessment thereby depoliticizing

²² Chantal Mouffe, *The Democratic Paradox* (New York, NY: Verso, 2000), 129, 134.

²³ Allen, *Talking to Strangers*, 28-29, 121, 140.

²⁴ Carl Schmitt, *The Concept of the Political*, trans. George Schwab, expanded ed. (Chicago, IL: The University of Chicago Press, 1996).

each of those requirements.²⁵ The corrective action section of NCLB then prescribes seven actions for schools that have failed to meet Adequate Yearly Progress (AYP) for two consecutive years.²⁶ Although the school has to choose only one of the seven options, six of those options are punitive and only one—reforming the failing school’s curriculum so that it is better aligned with state standards—is likely to aid the school in succeeding at the standardized tests the following year. The result is that NCLB presents a field of options, but coerces each school into picking the same one. NCLB puts on the pretense of being democratic, while it is actually restricting the actions of school officials. Through aligning state and local agencies—a process that presents itself as a give and take, but is actually a way to bend the local authorities to the requirements of the state—the local educational agencies are coerced into accepting a set of pedagogical practices as depoliticized requirements. NCLB amounts to the first federal endorsement of a particular pedagogy. Students must be included—standardized—as much as possible and they must be assessed in ways that allow them—and their schools—to be counted and compared with one another. These comparisons then authorize a judgment that declares the school as succeeding or failing in its reform. NCLB thus endorses a set of pedagogies through the systematization of education reform while implementing a constrained version of democracy.

As a law that governs education, NCLB is both a product of democratic deliberation and a potential engine for the creation and maintenance of democratic deliberation. Insofar as it is a product of democratic deliberation, NCLB reflects societal attitudes toward democracy. The law’s coercive flavor of school reform hides behind the appearance of choice, enacting a cynical brand of democracy where choice is poorly simulated through the introduction of unrealistic options for action. When NCLB is examined as a policy designed to create an education system that teaches students how to be effective democratic citizens, it also falls short. NCLB’s

²⁵ *No Child Left Behind Act of 2001*, § 6111.

²⁶ *No Child Left Behind Act of 2001*, § 1116.c.10.C.

pedagogy prefers the teaching of skills over content. Excising content requirements like history from the curriculum debases students. Without an understanding of their societal context, students have no grounds from which they can enact change or construct their own politics. Additionally, democratic citizenship is not among the skills that NCLB teaches, so even if students are able to construct their own contextual understanding of their society and their place in it, they will be far better prepared to complete math, science, and language problems than they will be to organize themselves or address governmental power.

Although the current prognosis is poor, NCLB also offers a site for prescriptive democratic theory. Some of the most influential democratic theorists in the United States have addressed rhetoric, education, and democracy organically in their work, and arguing for the future form of the ESEA is a place where each of these concepts can be theorized and put into action. This thesis has established that NCLB is an exceedingly rhetorical document. NCLB is educational on face, and because it prescribes educational practice for the United States as a whole, its prescriptions are bound up in the national interest and democracy. NCLB has to negotiate the interests of the federal government with the educational interests of its people. As an intermediary between the central government and the people, NCLB has the power to prepare citizens for democratic participation or any other form of civic engagement. As a site for both theory and action, NCLB combines the power of fiat over government with the power of fiat over the social. To change NCLB is to make a change to a government policy that expresses an attitude toward democracy. In addition, to change NCLB is to make a change to society at large because a great deal of societal understanding of the history and nature of democracy is created by classroom experiences in kindergarten through the twelfth grade.

Democracy, in both its governmental form and societal form is created and sustained through communication. The Constitution of the United States created the rules for democracy in America, but as Bernard Bailyn demonstrated, pamphleteering in the mid and late eighteenth

century also helped to create the societal conception of democracy that informed the creation of the Constitution.²⁷ NCLB and the language it uses to characterize education as democratic or otherwise plays its own role in the formation and maintenance of American democracy both within government and in society at large. Rhetorical study offers democratic theorists an additional tool to help understand the American attitude toward democracy and to reform it. Democratic theorists have endorsed the capacity of the practice of rhetoric to help produce and maintain democracy. Dewey recognized the potential for “symbols” in the creation of democracy, Garsten ends his book by arguing that rhetoric provides the best means for making judgments, Allen proposes the use of rhetoric for making friends, and Mouffe embraces the antagonism of verbal confrontation.²⁸ However, democratic theorists have yet to realize the potential that rhetorical analysis has to enhance their understanding of contemporary attitudes toward democracy and to guide the project of improving it. This close reading of NCLB reveals that the law has little regard for its potential to help in maintenance and improvement of democracy in the United States. NCLB includes no teaching requirements that are relevant to democracy and it pretends to offer school administrators a set of democratic choices which are actually unfair and coercive. A rhetorical analysis of NCLB reveals a site for potential action. As democratic theorists look for ways to convert their theories into practice—at least on paper—careful readings of the leading social and governmental documents will offer direction.

Rhetoric, Education, and Democracy

With all that has been written about NCLB, all that it is said to do, and all that it is said not to do, it is easy to forget what NCLB is. NCLB is six hundred and seventy pages of public

²⁷ Bernard S. Bailyn, *The Ideological Origins of the American Revolution*, enlarged ed. (Cambridge, MA: Harvard University Press, 1967), 3-4.

²⁸ Garsten, *Saving Persuasion*, 174.

law. The thing itself is written language. It is rhetoric. Although a great deal has been written about its political history and its effects, neither of those things are the physical manifestation of NCLB itself. This thesis is a study focused centrally on NCLB itself. Unfortunately, that means that this conclusion includes no scientifically-based pronouncements about the effects of NCLB on America's schools. It is equally void of predictions for the future of the ESEA, United States education policy, or educational practice in the classroom. Because this rhetorical analysis was interested only in better understanding and explaining the language that constitutes NCLB, the following remarks only relate NCLB to the world outside of its linguistic content insofar as its rhetoric appears to be designed to gain purchase on that world. In other words, this analysis only follows where the language of NCLB takes it.

NCLB is a law. It attempts to order the world outside of language. To accomplish this task, NCLB relies on the production of authority through language. NCLB justifies this authority through appeals to its statutory forbearers. Despite redefining education as an economic good, it retains and references the language of social justice that was introduced in the ESEA of 1965 and replicated in each subsequent version of the ESEA. NCLB justifies its policy changes by turning inward, criticizing the capacity of past legislation to obtain measureable educational results. This justificatory move, which plays out over the declaration of policy of the ESSA of 1988 and IASA of 1994 in addition to NCLB, required NCLB to re-envision education as an economic good as opposed to a societal good. Because NCLB re-envisions education as economic, that metaphor drives its enactment of authority. NCLB legislates measureable changes to education policy that assume that education can be measured and standardized as an economic object. NCLB also envisions the process of education as an economic system. It assumes that inputs and outputs can not only be measured, but that they can be related to each other and manipulated. To ensure that its vision for education is carried out, NCLB enforces its authority through depoliticization and coercion. Alternative means of evaluation that do not ensure statistical

reliability are simply excluded from consideration. All evaluation and policy has to be scientifically verifiable to be acceptable practice under NCLB. Politics is brought back into NCLB's enforcement mechanism, but in a restricted form. NCLB offers seven options for school reform for schools that have failed to make the grade, but only one of those reforms is corrective as opposed to punitive. This limited choice coerces schools districts into undertaking curricular reform.

Because the No Child Left Behind Act of 2001 is a piece of rhetoric designed to legislate education, the act relies on certain sources of authority, certain metaphors, and even coercion as it attempts to achieve the lofty goals set out for it by the politicians who helped to create it. NCLB's lengthy linguistic content offers a wealth of opportunities for rhetorical investigation, the vast majority of which are yet unexplored. Within its turgid and prodigious prose No Child Left Behind records a great deal about attitudes toward education and democracy in the United States of the early twenty-first century. The only way to understand and make use of the No Child Left Behind Act of 2001 is to engage directly with it as the considerable collection of words that it is.

Bibliography

- Agamben, Giorgio. *State of Exception*. trans. Kevin Attell. Chicago, IL: The University of Chicago Press, 2005.
- Allen, Danielle S. *Talking to Strangers: Anxieties of Citizenship since Brown v. Board of Education*. Chicago, IL: The University of Chicago Press, 2004.
- Anderson, Lee W. *Congress and the Classroom: From the Cold War to “No Child Left Behind”*. University Park, PA: The Pennsylvania State University Press, 2007.
- Andrews, James R. “Confrontation at Columbia: A Case Study in Coercive Rhetoric.” *Quarterly Journal of Speech* 55, no. 1 (February 1969): 9-16.
- Arendt, Hannah. *Between Past and Future: Eight Exercises in Political Thought*. New York, NY: Penguin Books, 1954.
- Bailyn, Bernard S. *Education in the Forming of American Society*. Chapel Hill, NC: The University of North Carolina Press, 1960.
- Bailyn, Bernard S. *The Ideological Origins of the American Revolution*. enlarged ed. Cambridge, MA: Harvard University Press, 1967.
- Barthes, Roland. *Mythologies*. trans. Annette Lavers.(New York, NY: Hill and Wang, 1972.
- Becker, Henry Jay. “Computers in Schools Today: Some Basic Considerations.” *American Journal of Education* 93, no. 1 (November 1984): 22-39.
- Bell, David V. J. *Power, Influence, and Authority: An Essay in Political Linguistics*. New York, NY: Oxford University Press, 1975.
- Benson, Thomas W. “The Senses of Rhetoric: A Topical System for Critics.” *Central State Speech Journal* 29, no. 4 (Winter 1978): 237-250.

- Bitzer, Lloyd. "The Rhetorical Situation." *Philosophy and Rhetoric* 1, no. 1 (Winter 1968): 1-14.
- Black, Edwin. *Rhetorical Criticism: A Study in Method*. 2nd ed. Madison, WI: The University of Wisconsin Press, 1978.
- Bogost, Ian. *Persuasive Games: The Expressive Power of Video Games*. Cambridge, MA: MIT Press, 2007.
- Bourdieu, Pierre. *Language & Symbolic Power*. ed. John B. Thompson and trans. Gino Raymond and Matthew Adamson, 6th ed. Cambridge, MA: Harvard University Press, 2001.
- Boyd, William Lowe "Public Education's Crisis of Performance and Legitimacy: Introduction and Overview of the Yearbook." *Yearbook of the National Society for the Study of Education* 102, no. 1 (April 2005): 105-107.
- Britt, Elizabeth C. "Dangerous Deliberation: Subjective Probability and Rhetorical Democracy in the Jury Room." *Rhetoric Society Quarterly* 39, no. 2 (Spring 2009): 103-123.
- Bryant, Donald C. "Some Problems of Scope and Method in Rhetorical Scholarship." *Quarterly Journal of Speech* 23, no. 2 (April 1937): 182-189.
- Burke, Kenneth, *Attitudes Toward History*. 3rd ed. Berkeley, CA: The University of California Press, 1937.
- Bush, George W. *A Charge to Keep*. New York, NY: William Morrow and Company, 1999.
- Bush, George W. *Public Papers of the President of the United States, 2002*. 3 vols. Washington, DC: Government Printing Office, 2004.
- Clinton, DeWitt. *An Address to the Benefactors and Friends of the Free School Society of New York, Delivered on the Opening of That Institution, in Their New and Spacious Building, on the eleventh of the Twelfth Month (December) 1809*. New York, NY: Collins and Perkins, 1810.
- Cox, James H. *Reviewing Delegation: An Analysis of the Congressional Reauthorization Process*. Westport, CT: Praeger, 2004.

- Cremin, Lawrence. *American Education: The Colonial Experience, 1687-1783*. New York, NY: Harper & Row, 1970.
- Darsey, James. "Must We All Be Rhetorical Theorists?: An Anti-Democratic Inquiry." *Western Journal of Communication* 53, no. 3 (Summer 1994): 164-181.
- Dewey, John. "The Influence of the High School upon Educational Methods," *School Review* 4, no. 1 (1896): 1-11.
- Dewey, John. *The Public and Its Problems*. Athens, OH: Ohio University Press, 1927.
- Dillon, Sam. "Rename Law? No Wisecrack Left Behind." *The New York Times*, February 22, 2009, sec. A.
- Egan, Kieran. *Getting it Wrong from the Beginning: Our Progressivist Inheritance from Herbert Spencer, John Dewey, and Jean Piaget*. New Haven, CT: Yale University Press, 2002.
- Ertman, Martha and Joan Williams. *Rethinking Commodification: Cases and Reading in Law and Culture*. New York, NY: New York University Press, 2005.
- Foucault, Michel. *Discipline and Punish: The Birth of the Prison*. trans. Alan Sheridan, 2nd. ed. New York, NY: Vintage Books, 1995.
- Foucault, Michel. *Society Must be Defended: Lectures at the College de France 1975-1976*. trans. David Macey. New York, NY: Picador, 2003.
- Fraser, James W. ed. *The School in the United States: A Documentary History*. Boston, MA: McGraw-Hill Higher Education, 2001.
- Gaither, Milton. *American Educational History Revisited: A Critique of Progress*. New York, NY: Teachers College Press, 2003.
- Garsten, Bryan. *Saving Persuasion: A Defense of Rhetoric and Judgment*. Cambridge, MA: Harvard University Press, 2006.
- Gold, Barry A. *Still Separate and Unequal: Segregation and the Future of Urban School Reform*. New York, NY: Teachers College Press, 2007.

- Habermas, Jurgen. *Legitimation Crisis*, trans. Thomas McCarthy. Boston, MA: Beacon Press, 1973.
- Hadley, Martha and Karen Sheingold. "Commonalities and Distinctive Patterns in Teachers' Integration of Computers." *American Journal of Education* 101, no. 3 (May 1993): 261-315.
- Harris, Suzy. *The Governance of Education: How Neo-Liberalism is Transforming Policy and Practice*. London: Continuum, 2007.
- Hart, Roderick P. "Theory-Building and Rhetorical Criticism: An Informal Statement of Opinion." *Communication Studies* 27, no. 1 (1976): 70-77.
- Hart, Roderick P. "Doing Criticism My Way: A Reply to Darsey." *Western Journal of Communication* 58, no. 4 (Fall 1994): 308-312.
- Harvey, David. *A Brief History of NeoLiberalism*. Oxford, UK: Oxford University Press, 2005.
- Hess, Frederick M., ed. *When Research Matters: How Scholarship Influences Education Policy*. Cambridge, MA: Harvard University Press, 2008.
- Hill, Dave ed. *The Rich World and the Impoverishment of Education: Diminishing Democracy, Equity, and Workers' Rights*. New York, NY: Routledge, 2009.
- Hill, Dave and Ravi Kumar eds. *Global Neoliberalism and Education and its Consequences*. New York, NY: Routledge, 2009.
- Hochschild, Jennifer and Nathan Scovronick. *The American Dream and the Public Schools*. Oxford: Oxford University Press, 2003.
- Hyslop-Margison, Emery J. and M. Ayaz Naseem. *Scientism and Education: Empirical Research as Neo-Liberal Ideology*. New York, NY: Springer, 2007.
- Johnson, Lyndon B. *Public Papers of the President of the United States*. 10 vols. Washington, DC: Government Publishing Office, 1965-1970.

- Kaestle, Carl F. and Marshall S. Smith. "The Federal Role in Elementary and Secondary Education, 1940-1980." *Harvard Educational Review* 52, no. 4 (November 1982): 384-408.
- Kavale, Kenneth A. and Steven Forness. "History, Rhetoric, and Reality: Analysis of the Inclusion Debate." *Remedial and Special Education* 21, no. 5 (September/October 2000): 279-296.
- Kosar, Kevin R. *Failing Grades: The Federal Politics of Education Standards*. Boulder, CO: Lenny Rienner Publishers, 2005.
- Lakoff, George and Mark Johnson. *Metaphors We Live By*. Chicago, IL: University of Chicago Press, 1980.
- Lippmann, Walter. *The Phantom Public*. 9th ed. New Brunswick, NJ: Transaction Publishers, 1927.
- MacCallum, Jr. Gerald Cushing Jr., Marcus George Singer, and Rex Martin eds. *Legislative Intent and Other Essays on Law, Politics, and Morality*. Madison, WI: The University of Wisconsin Press, 1993.
- Manna, Paul. *School's In: Federalism and the National Education Agenda*. Washington, D.C.: Georgetown University Press, 2007.
- McGuinn, Patrick J. *No Child Left Behind and the Transformation of Federal Education Policy, 1965-2005*. Lawrence, KA: University of Kansas Press, 2006.
- Mootz, Francis J. III. *Rhetorical Knowledge in Legal Practice and Critical Legal Theory*. Tuscaloosa, AL: The University of Alabama Press, 2006.
- Mouffe, Chantal. *The Democratic Paradox*. New York, NY: Verso, 2000.
- Niebuhr, Reinhold. *The Irony of American History*. 2nd ed. Chicago, IL: The University of Chicago Press, 2008.
- Nitta, Keith A. *The Politics of Structural Education Reform*. London: Routledge, 2008.

- Oxford English Dictionary*. 2nd ed. Oxford: Oxford University Press, 1989.
- Parents Involved in Community Schools v. Seattle School District no.1*, 127 U.S. 2738 (2007).
- Phillips, Kendall R. *Testing Controversy: A Rhetoric of Educational Reform*. Cresskill, NJ: Hampton Press, 2004.
- Reese, William J. and John L. Rury, ed. *Rethinking the History of American Education*. New York, NY: Palgrave Macmillan, 2008.
- Rose, Nikolas. *Powers of Freedom: Reframing Political Thought*. Cambridge: Cambridge University Press, 1999.
- Sack, Joetta L. "ECS Wants to Put Arts Back on States' High-Priority List." *Education Week* 24, no. 31 (April 2005): 33.
- Schaps, David M. *The Invention of Coinage and the Monetization of Ancient Greece*. Ann Arbor, MI: The University of Michigan Press, 2004.
- Schiappa, Edward. *Refining Reality: Definitions and the Politics of Meaning*. Carbondale, IL: Southern Illinois University Press, 2003.
- Schmitt, Carl. *The Concept of the Political*. trans. George Schwab. expanded ed. Chicago, IL: The University of Chicago Press, 1996.
- Shaker, Paul and Elizabeth E. Heilman. *Reclaiming Education for Democracy: Thinking Beyond No Child Left Behind*. New York, NY: Routledge, 2008.
- Spring, Joel. *The American School 1642-1985: Varieties of Historical Interpretation of the Foundations and Development of American Education*. New York, NY: Longman Inc., 1986.
- Tamura, Eileen H., ed. *The History of Discrimination in U.S. Education: Marginality, Agency and Power*. New York, NY: Palgrave Macmillan, 2008.
- Torres, Carlos Alberto. *Education and Neoliberal Globalization*. New York, NY: Routledge, 2009.

U.S. Congress. *Elementary and Secondary Education Act of 1965*. Public Law 89-10. 89th Cong., 1st sess. (April 11, 1965).

U.S. Congress. *Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988*. Public Law 100-297. 100th Cong., 2nd Sess. (April 28, 1988).

U.S. Congress. *Improving America's Schools Act of 1994*. Public Law 103-382. 103rd Cong., 2nd Sess. (October 20, 1994).

U.S. Congress. *No Child Left Behind Act of 2001*. Public Law 107-110. 107th Cong., 1st sess. (May 14, 2001).

Zarefsky, David. *President Johnson's War on Poverty: Rhetoric and History*. Tuscaloosa, AL: University of Alabama Press, 1986.