

The Absence of Ethics in No Child Left Behind

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Abstract

A national debate on the reauthorization of the federal mandate No Child Left Behind (NCLB) will center on the impact the law has had on American public education. Much of this debate will center on the major intent of the law that measures academic proficiency by reliance on the results of standardized tests. Armstrong, (2006) Pardini, (2004) Duck, Trucker, Groden & Heinecke (2003), and Starratt (2004) raise the ethical issues of NCLB. Armstrong contends that NCLB takes away the focus on education of the human begins and instead focuses on standardized tests. As educational leaders are expected to rely more on standardized tests as a measure of student performance they will find themselves more in conflict with their ethical standards. School leaders are faced with the dilemma of allocating resources for the greatest good of the organization or allocate resources to respond to the NCLB mandate. Ethical standards of justice and equality are the expectation that educators have the responsibility to treat all students equally and justly. This opinion paper will present a dialogue regarding the absence of the ethical tenets of justice and equality in NCLB and will present rationale as to why ethics must be included in the national debate.

Introduction

When a government passes legislation it is ethically responsible to legislate a law that is for the good of the whole, or will protect a selected class that has historically been discriminated against. Dennis Thompson writing in *The Ethics Edge* (1998) contends that government ethics provides the precondition for the making of good public policy “ it is more important than any single policy because all other policies are dependent on it.” (page 48) Good public policy framed around sound ethical tenets will build confidence in government. It will allow citizens to view decision (laws) that the government makes to be in the best interest of all citizens. Consequently, ethics does not become an issue. Moreover, citizens are most likely not going to challenge the motives of government officials. Lon Fuller (1964) identifies eight routes of failure to any legal system and is a way to test the premises as outlined by Thompson. These eight routes will lead to the question of the morality of a law and consequently the ethics of a law. These eight routes are; 1) The lack of rules or law which lead to ad-hoc and inconsistent adjudication, 2) failure to publicize or make known the rules of law, 3) unclear or obscure legislation that is impossible to understand, 4) failure to make rules understandable, 5) enactment of contradictory rules, 6) demands that are beyond the power of the subjects and the ruled, 7) unstable legislation (constant revision of the law or re-interpretation of the law, and 8) divergence between adjudication/administration and legislation.

Ethical decision of government officials is also tested by the presumption that laws passed and imposed will create a better society. There will be no harm caused to individuals or groups. Foundations that laws should be grounded on include (a) serve a justice to correct a wrong, (b) remove barriers to the advancement of citizens, and (c) maintain individual freedoms.

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If the government enacts laws that are founded on one or more of the above three conditions they are often not challenged and citizens will come to believe the government acted in an ethical way. For example, laws passed to protect individuals against arbitrary discrimination and protection of personal rights is passed for the good of the whole. If people understand the ethical foundations of a law there is also the likelihood that the laws will be accepted with limited challenges.

Another premise of an ethical law is a sense of social justice. If for example, citizens see the law as addressing justice, or social justice, the law is also accepted with limited challenge. Social justice has been treated in much of the historical studies of ethical theorists. Immanuel Kant and John Rawls and others have propositioned the sense of justice and how it is applied to the acts of government. Kant's categorical imperative requires people to act toward all mankind as if they are an end and not just a means. We need to act as a society and as individuals to treat humanity never as a means only. This is applied to ourselves and any other persons. Kant's premise of his categorical imperative is that we must seek an end that is void of any desires. He does not see any rational being as existing to be arbitrarily used by this will or that will. This is social justice and constitutes ethical behavior.

Rawls postulate is that each person should operate under a "veil of ignorance." That is, where each person and perhaps each institution should operate as free and rational with all factors of inequality eliminated in their thinking. This is, according to Rawls, social justice. It can be concluded that laws may also be subject to Rawls's veil of ignorance. Laws need to be void of all inequity in order to achieve social justice. Laws must be positioned so that all people are treated equally.

In order to achieve the premise of social justice laws need to originate a covenant with the people. If people obey the law that is based on an ethical premise and are socially just the government must promise to not break this covenant and will be just in their enforcement. This is supported by Kant's categorical imperative that government cannot treat citizens as a means to an end. This categorical imperative will be revised later in the paper during the discussion regarding the implantation of No Child Left Behind.

Another test of government ethics is laws must pass the test of time. That is to say laws passed today cannot be passed to address a deficiency that exist in isolation of society needs, or what is not in the interest for the whole. Laws must not only be for the present but must also

address future concerns. The question needs to be asked what history will say about this law and what affect will it have on the citizens living in the future. The test is to see if this law appears right today will it be right in the future. Or to put it another way, the law made today may appear “correct”, but history may judge that it was not the “right” law. This will be the true test of NCLB.

Laws do not come about by themselves. Individuals author them. Although this paper will not challenge the ethics of government officials it is necessary however to establish characteristics and tenants of ethical individuals. Josephson (1998) identifies Six Pillars of Character. These Pillars are the values and principles that can be used to judge the ethical quality decision-making and thus the ethics of a law. These Six Pillars are: (1) trustworthiness, (2) respect, (3) responsibility, (4) fairness, (5) caring, and (6) citizenship. It would be appropriate to see how these six pillars apply to laws. The pillars can be reworded to be asked as questions. Trustworthiness: Is the law trustworthy? Can the citizens trust that the law will achieve its intended outcome? Is there integrity in the law? Respectful: Is the law respectful of its purpose? Is the law respectful of the citizen it is intended to protect? Responsibility: Where is the responsibility to enforce the law? Where is the accountability? Is it the government’s responsibility or the citizens? Fairness: Is the law fair to all? Is the law good for all? Is there equity in the law? Does it result in impartiality? Caring: Does the law care about the people affected. Is the law benevolent? Is there compassion in the law? Citizenship: How will the law result in a better citizenry? Will the law make society a better place today and in the future? Laws too have must have pillars of character. Perhaps the most significant issue of challenging the ethics of a law is to ask the question, does it make good public policy, good policy based on the six pillars?

The positions stated above challenging the ethics of government and law needs to be applied to the federal mandate No Child Left Behind. It is important to “test” this law against the ethical foundations such as social justice, equity and fairness.

The Law: No Child Left Behind

In 2001 Congress passed the landmark federal law, No Child Left Behind, (NCLB). President Bush signed the law on January 8, 2002. NCLB has been the foundation of the Bush Administration’s educational agenda. The four major components of the law are (a) stronger accountability, (b) more freedom for states and communities, (c) proven educational methods,

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and (d) more choice for parents. One of the purposes of the law was to require schools to pay more attention to a segment of the school population. Specifically, minorities and poor, who were being left behind. The law requires that no later than 12 years after the 2001-2002 school year every student who attends public schools shall achieve academic proficiency as determined by state tests.

The goal of NCLB is one with which most would agree and would appear to respond to any ethical challenges of fairness, social justice and equity. Educators should expect all students to demonstrate proficiency in critical academic skills. Educators truly want all students to be successful. This goal of proficiency should be at the forefront of all decisions and actions. If that were the case then few people would argue that NCLB and the decision for implementing the law are not founded in ethics. Both the law and the implementation would be determined to be ethical.

A national debate on the reauthorization of NCLB has begun and will center on the impact the law has had on American public education. Some experts feel the law will not be reauthorized until after the 2008 US Presidential elections. This is an indication of the political nature of NCLB. Much of this debate will focus on the major content of the law that measures academic proficiency by reliance on the results of standardized tests. This debate will have strong proponents who believe the law has met and in some cases exceeded its intent. There will be, however, just as strong opposition claiming the law has failed and is well short of its intended goal. Further, many of the pundits on the opposition side claim the law is fraught with many unrealistic requirements.

Nowhere in the debate does there seem to be a question of the ethical merits of the law. There appears to be an absence of a challenge regarding the ethical tenets of social justice, equity and fairness. Instead the challenges seem to focus more on the implementation of the law. Does it in fact meet the accountability component, and has it offered more parental choice? Additional the debate focuses on the punitive nature of the law. Failure to comply with the law results in sanctions. There is little if any remediation time to fix a deficiency.

What are the ethical issues of NCLB? A review of some of the literature will assist in addressing this question. Paul Huston (2007) outlines the “seven sins” of NCLB. He sees the law as built on false assumptions about what is wrong, if anything, with American Public education. These wrong assumptions are (1) schools are broken, (2) conflating testing with education, (3)

harming poor children while ignoring the realities of poverty, (4) relying on fear and coercion, (5) lack of clarity, (6) leaving out the experts, and (7) undermining our international competitiveness. The false assumptions as proposed by Huston point out some of the ethical issues with NCLB. If the assumption is the need to fix schools and there is a lack of evidence that schools are fundamentally broken, then justice is absent. If the law ignores the reality of poverty then social justice and equity are absent. If the law conflates testing with education then justice is absent.

Puriefey (2007) reports that (a) NCLB has imposed requirements that are unequal, (b) there needs to be a better system of student achievement, and (c) the public must be engaged in the debate regarding the merits of NCLB. Moreover, the report concludes that it is wrong to assume NCLB can achieve its goal unless there is a stronger will, more resources and capacity.

Huff and Olson (2006) state the law causes schools to ignore the students who are above the “cut off” and concentrate on the ones close to a determined cut off. This is done to move a school to meeting average yearly progress, (AYP) or prevent schools from being placed on needs improvement list. It is very possible that the students below the cut off are minority or poor. However, they are often the ones who are ignored and they may very well fall far below the cut off point. If this is the case the law forces schools to neglect equity and social justice.

Hoff (2006) contends that the law is problematic because you cannot have a single standard that simultaneously challenges students at all levels. This would be void of ethical foundation of equity. Rothstein, Jacobson and Wilder (2006) argue that standards can either be minimal and present little challenge to typical students, or challenging enough and unattainable to below average students. The one size fit all theory does not apply to education. This is inequity. The law attempts to address an achievement gap between groups of non- white and white. For the law to be equitable it should explore achievement gaps within groups including whites. Further, it appears that the standard targets are easily attainable in schools of high socioeconomic status where families are actively engaged in their child’s education. However, the same accomplishment may be more difficult to achieve the same level in schools that have low socioeconomic conditions. Proficiency for all, meaning the elimination of variations within socioeconomic groups, is inconceivable. Closing the achievement gap, meaning the elimination of variations between socioeconomic groups is a daunting task but worth the effort.

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Sternberg (2007) believes that NCLB is creating a generation of test takers and not future educational leaders. Moreover, he sees the fallacies of NCLB. First is the fallacy of unrealistic optimism. NCLB has not produced, according to Sternberg, the positive outcomes that were intended. His second fallacy is the egocentrism. Leaders start out wanting to do what is best for their stakeholders, but over time their leadership becomes more focused on themselves. This is the legacy that seems to be one of the major themes in many state and national campaigns. Individuals running for office want to be known as the educational governor, or educational president, and in some case cause education more harm than good. His third fallacy is false omniscience. President Bush saw NCLB as the way to correct the problems of the American Educational system. He concluded that he knew more about the ills of the American educational system and how to fix them better than educators. The fourth fallacy is the ethical disengagement. Leaders see ethics as important; however, they lose sight of the ethical importance in their own actions. If then as Sternberg argues that leaders and government officials act under the fallacies listed, can the laws they enact be considered ethical?

Smith, and Smith (2006) contend that the law needs to develop a balance between what is right and just in order for NCLB to hold great promise. Sacks (2007) believes the law will never achieve its intent because it ignores the root causes of the educational achievement gap. This gap stems from the economic inequities in America. The law instead of being punitive and rely on standards should focus on improved instruction. This according to Smith and Smith is the balance needed in NCLB. They wonder if we should not take note of the harm standardized tests and the testing practice does to poor children.

Duke, Grodens, Tucker and Heineckel (2003) reported ethical concerns of the Virginia accountability plan that was established to address the NCLB pillar for accountability. They contend there is injustice in using a one-dimensional measurement of student achievement. If treating students fairly and equitably is a requirement of justice then it is near impossible to comply with the requirements of NCLB. To rely on high stakes testing is to neglect what learning is (Starratt, 2004). This reliance on standardized test and reporting as mandated by NCLB appears to violate the ethical tenets of justice and equality. Justice and equality are the expectation that educators have the responsibility to treat all students equally and justly.

A measurement of an ethical law is the ramifications the law places on people required to implement the law. Such an examination is needed regarding school leaders. Educational leaders

are governed by professional ethical standards. In 1996 the Interstate School Leaders Licensure Consortium and The American Association of School Administrators (AASA) proposed in 1996 a statement of Ethics developed ethical standards for educational leaders. The National Association of Elementary Principals and The National Association of Secondary Principals also implemented a code of ethics for their members. Each of these professional organizations has an ethical code that requires its members to act in an ethical manner and treat all students equally. As a result of NCLB school leaders are faced with the dilemma of allocating resources for the greatest good of the organization or allocate resources to respond to the NCLB mandate. It is the responsibility of educational leaders to assure that all students are engaged in the learning process.

Educational leaders face ethical dilemmas because, as leaders, they must consider how their behavior, which is founded on ethical standards, will affect others within the organization (Lashway 1997). Moreover, ethical leadership is the process of educational leaders recognizing that they hold a set of ethical principles and beliefs that will govern their actions (Starratt, 2004). It is the responsibility of educational leaders to assure that all students are engaged in the learning process. Educational leaders must strive to assure that no group of students is disenfranchised from this educational process (Rebore, 2001).

The ethical dilemma educational leader's face is evident regarding how the success of the law is measured on standardized test. Educators are concerned about the push for standardized tests. This is the foundation of the accountability requirement of NCLB. Scores from standardized tests and what the results mean for accountability do not by themselves tell educators the whole story of a student's learning. To rely on the results of a standardized test does not measure the total skills students should and needs to learn. This is very evident when testing students with special needs and limited English language. Educational leaders are responsible to make educational decisions that do not rely on standardized tests alone. They are responsible to make educational decisions that consider the significance of teaching and the curriculum that is taught. (Popham, 2003, Schwartzbeck 2003, Starratt, 2004)).

How are educational leader's ethical standards in conflict with the testing and reporting requirement of NCLB? First, ethical standards suggest that educational leaders act in an ethical manner. They need to assure that a service to all students' education is provided in a nondiscriminatory manner. They must provide an environment that builds trust, and one that

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promotes the success of all students. Further, they should pursue appropriate measures to correct law and regulations that are in conflict with sound teaching and learning practice. These ethical standards appear to be incongruent with the testing and report requirements of NCLB. Consequently, it places school leaders in an ethical dilemma.

Measuring accountability and academic achievement based on standardized tests is not an authentic measure of learning (Pardini 2004). The results of standardized test measure only a part of the demonstrated skills of learning. A testing process that is comprehensive, assessing truly what a student knows is critical in an authentic accountability system. To develop a system that does anything less places school leaders in an ethical dilemma

Second, if educational leaders affirm the virtues of a moral leader they are responsible to be just in their actions. If a district or school is placed on the watch list because the results of the testing reveal that a sub group is not meeting proficiency, it is an unjust measurement of the success of all students. In addition, it could require school leaders to allocate limited resources to a select group of students. This action can be viewed as educational leaders acting unjust. They are not treating all students equally. To do anything less would place educational leaders in an ethical dilemma.

Third, as Starratt and Robre contend, to rely on the results of standardized tests, without regard to how students learn and not relying on authentic assessment, is to act unethical. This statement is at the fundamental incongruence of the testing and reporting requirements and the ethical standards of school leaders. Educators are asked to rely on the results of standardized test to determine the measurement of successful teaching and learning. An authentic assessment needs to consider how students organize their thoughts, how they can examine alternatives, how they can demonstrate their knowledge, how they can conduct inquiry, how they can articulate their thinking, how they can demonstrate their proficiency in writing, how they can look beyond their classroom and the ramification of what they have learned (Newmann, 1996). To measure and report student achievement by any less comprehensive measure would place educational leaders in an ethical dilemma

Forth, it is arguable that some reports of “cheating” on reporting of test results is an attempt of educators to remain off the watch list Hoff reporting in *Education Week* (November, 2003) “New York Teachers Caught Cheating on State Tests” states that critics contend that teachers will do what needs to be done to raise student performance. The report of how the

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Huston School District manipulated attendance and graduation results are another example of educators allegedly cheating in order to comply with the requirements of NCLB. School leaders are placed in conflict with the virtue of honesty.

Why does NCLB not pass the ethics test of justice, fairness and equity? Why is there an absence of ethics? A summary of the ethical issues raised in this paper will address the answers to those questions. Does the law make for good public policy? The answer to this question is maybe. It does seem to address the issue of requiring schools to consider a segment of the school population that has historically been undereducated, poor students and minorities. It does required schools to develop strategies to address educational inequities. However, the implementation policy that resulted from this law is punitive and that is not good public policy. Further, it is founded on false assumptions regarding what needs to be done. It is also a policy that looks at what needs to be fixed based on single measures. Consequently, it does not consider the education of the whole student. The public policy is one that is not equitable or just.

Does the law serve justice and attempt to correct a wrong? Does the law attempt to address a wrong that is affecting the general welfare of the citizens? If students are considered citizens, and they are, then the law may in fact be attempting to right a wrong. The wrong is to address the neglected poor and minority students who have not received the educational attention they deserve. As this is partially addressed in NCLB one could argue the law is ethical. However, as the law requires only one measure of learning, standardized test, and the test may be biased toward a certain segment of the population it is not possible to determine if this part of the law is achieved. So, even though the law a the surface may look ethical it is not possible to discern if in fact it is ethical. David Jennings, superintendent of the Chaska, Minnesota schools states “It (NCLB) is not merely misguided, as some believe. It is, in fact, destructive and I believe intentionally so. It tests kids on the wrong things for the wrong reasons and, if it’s not changed, this cruel piece of federal cynicism will end up leaving nearly all children behind.” (Minnesota 2020, July 24, 2007)

Does the law build a covenant of trust with citizens? Is the law written such that a covenant is created between the citizen and the government? Is the language of the law written so if the citizens abide by the law then the government guarantees the citizens will be protected and not discriminated against? The covenant should be completely understood by all involved. If the law is written with an ethical foundation then the covenant is implied. NCLB is not an agreed

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to covenant. It was founded under incorrect assumption. One, that the American School system is broken. The creation of the covenant was written without the proper citizens involved. It is government doing it to the citizens rather than with citizens. Additionally the law is not totally understood by all citizens.

Does the law create a means to an end or is the end the most important. As Kant articulates in his categorical imperative, government cannot treat people as a means to an end. Are students in the case of NCLB used as a means to an end? It appears as if the law is more interested in the ends, accountability, and not concerned about the means to get there. Even though the process of how to get to the end is left to local school districts the punitive nature of the law causes schools to focus on the ends and not the means. This means to an end can be addressed by the law's emphasis on standardized tests. Consequently, based on Kant's categorical imperative the law is unethical.

Does the law and implementation create a "veil of ignorance" and social justice? Is the law impartial and looks beyond the inequities that may exist. It would be appropriate to say the law did not look beyond inequities that may exist. Inequities may not have been removed for the lawmakers thinking. It did however at first attempt to correct educational inequities and create social justice. So with that being the case the law would be ethical.

Does the law have a long-term affect? It is not possible yet to determine the law's long-term affect. It is still too early. However, the assumption that the law may be a correct law will be determined at some time in history and it may very well be determined it was not a right law.

Does the law treated individuals affect fairly? This is the foundation of social justice. Will all people be treated in a fair and equitable manner? Will the law do no harm? These are the driving questions in determining the ethics of a law. NCLB does treat people in an equitable manner. However, as stated above the law implementation is not equitable. States are implementing the law as they see fit. It means that the law is interpreted and implemented differently in each state. Consequently, a student maybe treated differently from one state to another. This is one of the unethical issues of the law. It may require educational officials to selectively exclude some students and focus on yet another group. School officials may very well focus on students who are just below a predetermined cut off point of not making proficiency and ignore those who are well above and those who are well below. In addition the law does not

focus on the educational disparities that exist in education. It will not achieve its goal because it does not address the root problems of why some students do not learn.

Is the law implementation punitive or remedial? This is perhaps the greatest ethical issue and questions concerning NCLB. Failure of a school district to achieve the status of making Average Yearly Progress (AYP) is to have sanctions imposed. There is no remediation time allowed. The goal of all, 100%, students making proficiency by 2014 is an unrealistic timeline. It does not take into consideration the educational make up of how some student learn and perhaps will never make proficiency. And yet the law requires this. There are no levels of proficiency in the law to allow for individual differences. So with the law void of this justice issue the law maybe unethical

What affect does the law have on the ethics of those who are required to implement the law? Does it conflict with their professional ethics and moral foundations? As pointed out earlier, the law does impose several ethical dilemmas for school leaders. Covered by codes of ethics to do what is right for all students NCLB requires that school leaders do just the opposite. In order to avoid the punitive consequences of the law, school leaders may allocate a disproportional amount of resources to a select group of students. Consequently, school leaders will ignore some students. This puts them in conflict with their code of ethics. This questions the ethics of NCLB. It can also be concluded that if a law challenges a person's ethical foundations and moral values the law cannot be ethical. Educational Leaders face situations daily that ask them to look deep into their ethical and moral beliefs. Ethical standards must be the foundations that guide decisions of educational leaders. Educational leaders are responsible for how a decision will affect the education of the students they are responsible for. The federal law No Child Left Behind has added to the ethical dilemmas educators face. It has challenged educators to examine how they are to comply with the law and yet be true to their professional ethical standards. There are a number of ethical standards for educational leaders to consider in their decision-making strategies. Ethical standards are found in state laws as well as in the policies of professional organizations. NCLB offers a challenge to leaders to examine how they are to comply with the law that is void of ethical foundations and yet be true to their professional ethical standards. State legislatures have addressed ethical codes or standards that are intended to govern educational leaders. These ethical standards are founded on social justice, fairness and equity.

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Is the law founded on ethical assumptions? To state that the law is founded on unethical assumptions would not do the law justice. Fundamentally the law does appear to be a just law and founded on ethical principles. The problem however, is that the law assumes that the only way to measure learning of all students is based on one set of measurements, standardized tests. This is unjust and brings into question the ethics of the law. It is unjust because it attempts to treat unequal and equals. It does not allow for individual learning and does not take into account other factors in learning.

As was also pointed out the law may be grounded on incorrect assumptions. These assumptions are that there is something fundamentally wrong with American Schools. The law should intend to “fix” something.

However strong one argues about the merits of NCLB it seems the law is void of ethics, specifically social justice, fairness and equity. Armstrong (2006) contends that much of the “crisis” in the American education system is a result of the implementation of NCLB. He sees NCLB as an expansion of the federal government in dictating what goes on in the classroom. He further contends that the legacy of NCLB maybe one that takes away the educational dialogue of education of human beings to one that focuses on tests, standards and accountability.

Ethics is the standards educators need to consider in all decisions that affect people whom they are required to protect from injustice. It is an educational leader’s moral obligation to support the interest of all students. Ethics becomes a measure of how educational leaders are held to this moral requirement, how they, and others, will judge their behavior as a moral leader. Further, they will be judged by how appropriately they managed the well being of those whose learning we are entrusted. In order to assure that all are treated equally, that school leaders are not place in an unethical position and that the laws implementation will in fact create a more just society, ethics issues must become a part of the national debate concerning No Child Left Behind. There needs to be included in this national debate a dialogue of how the law can become more just and embed the ethical tenant of social justice, equality, and fairness.

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