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James G. Dwyer

William & Mary Law School, jgdwye@wm.edu

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Introduction to symposium

School accountability and 'high stakes' testing

JAMES G. DWYER

School of Law, College of William and Mary, VA, USA

THIS SYMPOSIUM IS a philosophical response to a political and social phenomenon – the recent surge in public schools' emphasis on standardized testing. This phenomenon has occurred in several western nations, but has been particularly pronounced in the USA, where school policy has become intensely politicized and where federal legislation now mandates extensive 'high stakes' testing in schools throughout the nation. The unprecedented attention administrators and teachers now pay to preparing students for standardized tests, and the threatened penalties for schools and students who do not meet imposed standards, raise many questions for parents (and teachers) that the politicians dictating education policy appear unable to answer. Are the tests administered ones that encourage and detect sound educational practices? Can any standardized test do that? Are the consequences attached to good or poor performance fair? The articles in this symposium directly address these questions.

Most of the authors in this symposium are American, so it might be useful to relate a bit of the historical and legal background to the current regime of high stakes testing in the USA. Standardized testing has long been a feature of the public school experience in most states in the USA. However, until 10 years ago (1994), such testing was largely confined to one administration in the elementary years and one in the secondary years. The results of the tests had practical consequences, if at all, only for a small percentage of students, and the consequences were just to secure remedial instruction for those students. Movement towards a heavily test-focused education policy, which became embodied in federal legislation in 1994, began in the early 1980s.

In 1983, the US Department of Education's National Commission on

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Excellence in Education issued a report entitled *A Nation At Risk*, warning that graduates of American schools were lagging far behind their counterparts in other western nations in the skills necessary for economic productivity. The 1980s also witnessed a considerable shift to the right in the political temperament of the nation, and one prominent element of the conservative agenda since that time has been to shift public spending on education from public schools to private schools, through tax credits, voucher programs and charter schools. Depending on one's perspective, legal mandates for increased testing of students might be viewed as a genuine effort to improve the quality of public school systems in the USA, to make them as good as any school systems in the world, or instead, as an effort to harass public educators and impose unrealistic goals on public schools, in order to make them appear inadequate and thereby foster support for public funding of private education.

While there were initially demands at the state level for greater accountability in the public schools, the federal government has come to dominate the accountability scene. In fact, federal law has made debates about accountability at the state and local level moot. The mechanism federal legislators have used to dictate education policy has principally been periodic revising of the Elementary and Secondary Education Act (ESEA). The ESEA was initially passed in 1965, during the Johnson administration, and initially just provided financial support for the education of under-privileged children, with few strings attached. In 1994, Congress and the Clinton Administration amended the Act, adding provisions requiring state recipients of federal funding under the Act to establish content and performance standards in reading and math and to administer standardized tests in reading and math at three points during the K-12 years – once during grades 3-5, once during grades 6-9 and once during grades 10-12. The 1994 amendments did not, however, generate an enforced mandate that states achieve particular aggregate outcomes on the tests. They did introduce a mandate of annual progress for individual school districts and schools, in terms of making a higher percentage of students proficient, but the mandate was vague and the US Department of Education made little effort to enforce it. Some states, though, did begin to attach consequences to poor performance, both for schools – for example, increasing state oversight or providing vouchers for students to transfer to other schools – and for students – for example, by not allowing them to advance to the next grade or to graduate.

Life changed for public school educators throughout the USA after George W. Bush took office in 2001. At the top of his agenda was increased accountability in public schools, and with a Republican-dominated Congress eager to assist, the Bush Administration's 'No Child Left Behind' Act (NCLBA), Public Law 107-110, was passed and, in January 2002, signed into law. The

NCLBA has been described as ‘the most sweeping plan to shake up public education in a generation, as well as the most intrusive federal intervention in local schools’ (Dillon, 2004). The NCLBA amended the ESEA in several important respects.¹

First, the ESEA now mandates administration of standardized tests for reading and math *every* year from third grade to eighth grade, in addition to the administration required once during grades 10–12, and it adds science to the list of required subjects for assessment as of the 2007–08 school year. Second, it mandates that all schools achieve 100 percent proficiency in math and reading – that is, that *every* student in the schools meet ‘challenging’ (as defined by each state)² performance standards for his or her grade level, as evidenced by performance on the standardized tests – by 2014. Between 2002 and 2014, schools are required to demonstrate ‘adequate yearly progress’ toward that goal of 100 percent proficiency – that is, a goal of all students’ achieving certain scores on the standardized tests. They must establish a schedule for reaching certain percentage levels on the way to 100 percent, and can be penalized for not reaching those levels as scheduled. Significantly, school districts must report separately each year average test scores for each of several groups of students – ‘economically disadvantaged students’, ‘students from major racial and ethnic groups’, ‘students with disabilities’ and ‘students with limited English proficiency’ – and failure to achieve adequate yearly progress with respect to *any one* group must trigger intervention in the school district by state education officials (Losen, 2004).

Third, the ESEA now effectively imposes penalties for failure to comply with the Act’s mandates. If a school fails for 2 years in a row to show adequate yearly progress, state officials must take some action, which could include overseeing a school more closely, dismissing particular staff members, taking over operation of the local school board, allowing parents to transfer their children to another public school, or closing down a school altogether. A state’s failure to take such remedial action can result in loss of federal funds. These penalties that the ESEA now imposes on schools, school districts and states, along with the consequences for poor test performance (e.g. denial of a diploma) that many states’ laws impose, are what make all states’ standardized testing regimes today ‘high stakes’ ones.³

In sum, current law in the USA combines the unassailable aim of public school accountability with a remarkably liberal emphasis on the educational interests of under-privileged and disadvantaged children attending public schools. Yet, high stakes testing has generated serious concerns. The result on the ground so far appears to be an unprecedented preoccupation with standardized testing among school administrators and, therefore, among public school teachers. Preparation for the testing, which includes exercises in

completing test forms as well as study of subject matter, occupies a significant portion of class time throughout the school year, intensifying in the months preceding administration, and so has forced teachers to narrow their curricula (National Association of State Boards of Education, 2003; Pedulla et al., 2003; von Zastrow, 2004). Many students who are subject to testing manifest a high degree of anxiety and many teachers report feeling demoralized and ask to change position to a grade in which testing does not occur (Pedulla et al., 2003). Some states have *lowered* their proficiency standards so that they can more easily show high rates of proficiency (Hoff, 2002).

At the same time, the NCLBA has forced some states, who had not previously done so, to articulate clear academic standards, and it has induced schools to devote additional resources to their poorest performing students (Hayes Mizell, 2004). It might be too early to assess whether the net effect of the NCLBA is positive or negative, it having been in effect now for only 2 years. In any event, such an assessment will not be possible without a clearer sense of what counts as a good result – that is, an educational benefit – and what counts as a cost.

On the legal side, in December 2003, the Reading, PA school district filed the first lawsuit challenging implementation of the NCLBA, after two-thirds of its schools were designated as failing to show adequate yearly progress (Chute, 2003). Similar lawsuits are likely to arise elsewhere. The Attorney General of Wisconsin recently issued a written opinion that the NCLBA is an unconstitutional infringement on states' rights.⁴ In the political arena, parent groups and teacher organizations have organized boycotts, protests and petition drives in various locales to express their opposition to the heightened emphasis on standardized testing (Elizabeth, 2004; Hartocollis, 2002). And very tense relations have developed between the Bush administration and the National Education Association (NEA), one of the nation's largest labor organizations. Administration officials have accused educators who object to the increased testing of being obstructionist. Indeed, the US Secretary of Education went so far as to characterize the NEA as a 'terrorist organization', in response to NEA criticisms of particular aspects of the NCLBA and of what it sees as a failure on the part of the Bush Administration to provide sufficient funding for implementation of the Act (Selingo, 2004). State education agencies and legislators are likely to come under increasing pressure by school districts and teachers' organizations to relax implementation of, or seek amendment to, the NCLBA, as deadlines for reaching certain levels of proficiency approach. Many state legislatures have already taken steps to mute the law's effects in their states (Toppo, 2004).

Whatever the fate of the NCLBA, high stakes standardized testing is likely to remain a prominent feature of public schooling in the USA (and elsewhere)

for the foreseeable future. It is particularly fitting at this time, when attention to school accountability is so high, to re-examine the underlying premises of such testing. While accountability is an aim none assails, not just any assessment tool will serve that aim well. To judge whether education policy today, with its singular focus on high stakes standardized testing, is on the right track, one must have a good sense of what schools should be accountable for – that is, what constitutes a good education, what forms of assessment adequately reflect appropriate pedagogical aims, and what incidental effects particular forms of assessment and particular rewards or penalties can have on schools and students. This issue of *Theory and Research in Education* brings together philosophers of education who have examined these issues in depth and who offer careful analyses of many of the questions generated by high stakes testing.

Harvey Siegel critically examines the rationales policymakers offer for using high stakes testing to improve school performance, and then considers whether the kinds of tests states typically employ are well connected to an appropriate set of educational aims. Randall Curren looks at fundamental conceptual questions concerning the capacity of any diagnostic devices, but particularly the multiple choice questions that predominate in standardized testing, to measure a child's knowledge, understanding, and reasoning skills. Francis Shrag's article shifts the inquiry to the realm of political philosophy and distributional justice, asking what sorts of aggregate results from high stakes testing – in particular, the effects on the relative high school graduation rates of persons who are white and persons of minority race – are morally acceptable.

Following these three initial papers are two thoughtful responses to all three, one by Nel Noddings and one by Catherine Elgin. Noddings focuses especially on the connection (or lack thereof) between standardized tests and sound educational aims. Elgin explains how standardized tests *can* be useful tools of assessment and accountability, but cautions against exaggeration and misuse of the information the tests generate. The final article in this Symposium, by Stephen Norris, Jacqueline Leighton and Linda Phillips, returns to the question raised by Curren as to whether a student's response to test questions provides a clear window into the student's mind. These authors argue for a more cognitivist and less behaviorist approach to assessing children's capabilities and understanding.

Ultimately, none of the authors rejects standardized testing, even with high stakes attached, altogether. Instead, each refines our understanding of how and when such testing can be used to good purpose. With high stakes testing increasingly a subject of political struggle and public debate, it is likely that educators and legislators will be striving to refine their accountability systems

in the near future, and the insights these papers offer can helpfully inform that process.

NOTES

1. The current law is codified at 20 United States Code ss. 6301 *et seq.* (West, 2000, Suppl. 2003).
2. The Act does elaborate that content standards must 'contain coherent and rigorous content' and must 'encourage the teaching of advanced skills', and that achievement standards must be 'aligned with the State's academic content standards'. 20 U.S.C. ss. 6311(b)(1)(D). In addition, assessment tools must 'involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding'. 20 U.S.C. ss. 6311(b)(3)(C).
3. Significantly, though, neither federal nor state laws require accountability of private schools, and the Bush Administration has manifested no interest in the quality of education received by children in Fundamentalist, parochial, or other private schools, even while expressing strong support for government funding of such schools (Dwyer, 2002).
4. The letter is available at the website for the Office of the Attorney General, <http://www.doj.state.wi.us/>.

REFERENCES

- Chute, E. (2003) 'School district fights state over No Child Left Behind sanctions', *Pittsburgh Post-Gazette* 17 December. Available at <http://www.post-gazette.com/localnews/20031217nclb1217p3.asp> (accessed 23 June 2004).
- Dillon, S. (2004) 'Some school districts challenge Bush's signature education law', *New York Times* 2 January.
- Dwyer, J.G. (2002) *Vouchers Within Reason: A Child-Centered Approach to Education Reform*. Ithaca, NY: Cornell University Press.
- Elizabeth, J. (2004) 'Most state school chiefs oppose "No Child Left Behind"', *Pittsburgh Post-Gazette* 18 May. Available at <http://www.post-gazette.com/pg/04139/317929.stm> (accessed 23 June 2004).
- Hartocollis, A. (2002) 'Boycotts and a Bill Protest Mandatory State Tests', *New York Times* 6 March, Section B, p. 9, col. 3.
- Hayes Mizell, M. (2004) 'From muck to mountaintop', *Education Law Reporter* 33: 261-73.
- Hoff, D.J. (2002) 'States Revise the Meaning of Proficient', *Education Week* (Oct. 9, 2002): 1.
- Losen, D.J. (2004) 'Challenging racial disparities: the promise and pitfalls of the No child left behind act's race-conscious accountability', *Howard Law Journal* 47: 243-98.
- National Association of State Boards of Education (2003) *The Complete Curriculum: Ensuring a Place for the Arts and Foreign Languages in American's Schools*. NASBE, Alexandria, VA.
- Pedulla, J., Abrams, L., Madaus, G., Russell, M., Ramos, M. and Miao, J. (2003)

Dwyer: Introduction to symposium

'Perceived effects of state-mandated testing programs on teaching and learning: findings from a national survey of teachers', *National Board on Educational Testing and Public Policy* 2–5.

- Selingo, J. (2004) 'Secretary Paige calls National Education Association a "terrorist organization"', *The Chronicle of Higher Education* 24 February.
- Toppo, G. (2004) 'States fight No Child Left Behind, calling it intrusive', *USA Today* 11 February. Available at http://www.usatoday.com/news/education/2004-02-11-no-child-usat_x.htm (accessed 23 June 2004).
- von Zastrow, C. (2004) 'Academic atrophy: the condition of the liberal arts in America's public schools', *Council for Basic Education* 8 March. Available at http://www.c-b-e.org/PDF/cbe_principal_Report.pdf (accessed 23 June 2004).

BIOGRAPHICAL NOTE

JAMES DWYER is a professor of law at the College of William & Mary, in Williamsburg, Virginia, USA. He is the author of two books on state regulation and financing of private schools – *Vouchers Within Reason: A Child-Centered Approach to Education Reform* (Cornell University Press, 2002) and *Religious Schools v. Children's Rights* (Cornell University Press, 1998) – as well as numerous articles on the topic of children's rights in education and in other contexts. Correspondence to: Jim Dwyer, Marshall-Wythe School of Law, College of William & Mary, South Henry Street, Williamsburg, VA 23185, USA. [email: jgdwyer@wm.edu]