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REFORMING EDUCATIONAL ACCOUNTABILITY

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This paper examines efforts since 1999 to address California's education crises through a system of accountability for schools and school-level personnel. Since 1999, California has budgeted \$1.17 billion to reward teachers and schools whose students improve scores on a single standardized test. In the same period, on the basis of the same test, 1290 of the 8563 schools in the state have been placed in a program of "immediate intervention" for "underperforming schools." There have been many critics of the implementation of accountability in California. This paper looks beyond questions of implementation to what I will argue are some fundamental design flaws in the accountability system for K-12 education. I also sketch the design constraints to which a more adequate accountability system must conform if we are to achieve those goals now in the process of being delineated in a master plan for California public education.

California public education at the K-12 level faces two related crises: a crisis quality and a crisis of equality. As a matter of statewide averages, in the past three decades California's public education system has by many measures fallen from among the best in the country to among the worst. For example, California is now 49th among states in the ratio of teachers to students.² Last year, the richest state in the country and the home of the Silicon Valley was ranked dead last among states in the availability of computers for instructional purposes.³ And the last time the federal government compared school facilities across the country, California trailed 48 states in the percentage of schools in inadequate condition.⁴ Plainly, the average quality of public schools in California is unacceptable.

However grim, statewide averages mask a reality more troubling still. For individual children do not sit in average classrooms in average schools. Despite constitutionally mandated rough equality in per student funding for basic operations, California public schools remain radically unequal in what they deliver to children. In our worst schools, attended primarily by poor children and children of color, students may have little chance of being taught by an adequately trained teacher, be deprived of textbooks and other basic tools for learning, or be consigned to school facilities that can only be described as slums.⁵ The existence of these conditions is not seriously contested. Although Governor Davis is directing a massively

¹ Professor of Law, UCLA School of Law. I am grateful to Valerie Grab, Laura Faer and Eric Lepping for their research assistance in preparing this paper. My thanks also to Harold Williams, John Rogers and Heinrich Mintrop for valuable insights and comments on an earlier draft.

² Ed-Data Service, available at <http://www.ed-data.k12.ca.us/dev/snapshot2.asp>. When possible, I have cited the most widely available sources, those accessible through the Internet.

³ California Department of Education Press Release, "Student-To-Computer Ratio Improving In California Schools-But Not For All," September 20, 2001, available at <http://www.cde.ca.gov/news/releases2001/rel47.asp>

⁴ GAO/HEHS REPORT TO CONGRESSIONAL REQUESTERS, SCHOOL FACILITIES, PROFILES OF SCHOOL CONDITION BY STATE, No. 96-148 at 32-33 (June 1996).

⁵ UCLA School Conditions Research Project, *Who is Accountable to Our Schoolchildren: Conditions in California Public Schools at the Beginning of the Millennium*, available at <http://www.law.ucla.edu/report517003.htm>

expensive defense to *Williams v. State of California*, a civil rights lawsuit alleging these facts,⁶ he recently sent a fundraising letter with descriptions that might have been written by the student and parent plaintiffs in the *Williams* case:

Crowded classrooms. Uncredentialed teachers. No books for kids to take home. Inadequate funding. Low standards. Wasted taxpayer dollars. Schools that aren't held accountable for their performance.⁷

Sadly, far from being the engine of social mobility and meritocracy that California's founders envisioned in establishing a public school system, that system is now a powerful engine of inequality, not merely reproducing but also amplifying the effects of past inequity.

Inequality or Averages?

Whether one is more concerned with averages or with inequality is affected by perspective. Some statewide political leaders may care most about the average quality of our schools -- the stuff of national rankings. Principals are likely more concerned with school-level averages. Children and parents are less interested in averages of any kind and more interested in the educational opportunities that are delivered to individual desktops in individual classrooms. Of these perspectives, it is that of students and parents that is most consistent with the promise and command of the California Constitution: individual students have a fundamental state constitutional right to an adequate and basically equal education, and State officials have a non-delegable constitutional duty to see that those rights have meaning in individual schools and classrooms.⁸

The promise of the California Supreme Court decisions setting forth those fundamental rights has not yet been realized. Both inadequacy and inequality are revealed, for example, in statistics regarding the availability of the most important ingredient of any educational system: teachers. The Public Policy Institute of California last year documented a shocking level of disparity in the teaching staffs in schools serving students at the upper and lower ends of the socioeconomic distribution: the percentage of emergency credentialed teachers is *more than ten times higher* in the bottom quintile than the top quintile.⁹ An "emergency teaching credential" can be issued to individuals who, however dedicated and well meaning, have not had so much as an hour of teacher training.¹⁰ Figure I compares schools in which *more than half* of the teachers have only an "emergency credential" to schools in which fewer than 3% of the teachers have so little evidence of training, with respect to the median percentages of non-white students and low

⁶ Nanette Asimov and Lance Williams, "Gov. Davis vs. schoolkids; High-priced legal team browbeats youths about shoddy schools," *San Francisco Chronicle*, September 2, 2001, p. 1. I should and do note that I have served as a legal consultant to the counsel for plaintiffs in *Williams*. All of the views expressed herein are entirely my own and do not necessarily represent the views of any party or counsel in *Williams*.

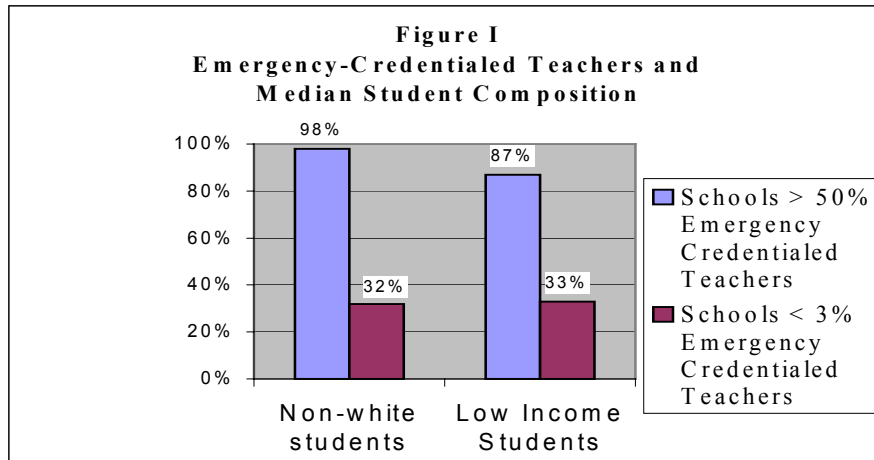
⁷ Governor Davis letter to "Fellow Democrats" (undated, on file with author).

⁸ *Serrano v. Priest*, 5 Cal. 3d 584 (1971); *Butt v. State*, 4 Cal. 4th 668 (1992).

⁹ Julian R. Betts, et al, *Equal Resources, Equal Outcomes? The Distribution of School Resources and Student Achievement in California*, xv, (Public Policy Institute of California, 2000), available at <http://www.ppic.org/publications/PPIC128/PPIC128.pdf/index.html>.

¹⁰ The detailed requirements of the various forms of emergency credentials are available at <http://www.ctc.ca.gov/credentialinfo/leaflets/cl533p/cl533p.html>

income students attending these schools.¹¹ Plainly, the students in schools with the least trained teachers are much more likely to be low income students and students of color.



Although it is the students and parents in our worst classrooms who are most affected by substandard education, all of us should be concerned about substandard and unequal schools. Public education has traditionally been among our most important democratic institutions. As our Supreme Court noted in *Serrano v. Priest*, education is essential to a "free enterprise democracy -- that is, preserving an individual's opportunity to compete successfully in the economic marketplace, despite a disadvantaged background," and thus remains "the bright hope for entry of the poor and oppressed into the mainstream of American society."¹² If that bright hope dims for hundreds of thousands of Californians, so to do our hopes for a productive, vibrant economy and society not riven by class divisions and social turmoil. There are already ominous signs in census data documenting the dramatic decline of the middle class in California.¹³ The decline of our public education system may not be primarily responsible for this decline, but it is difficult to imagine reversing it without dramatic improvements in our schools.

The Concept of Accountability

Notwithstanding the deep and widespread problems that afflict California public education, in recent years the central problem of California public education has been framed in terms of a peculiarly narrow version of one concept: accountability. On January 7, 1999, only hours into his administration, Governor Davis proclaimed that:

My first priority, as you well know -- in fact, my first, and second and third priority -- is education. And my goal is to set higher expectations for everyone involved in education: students and parents, teachers and administrators.

¹¹ These data are based on calculations performed on the research database available from the Academic Performance Index research database for 2000 (hereafter "API database"), available for downloading at <http://www.cde.ca.gov/psaa/api/yeartwo/base/apiyr2data.htm>. The indicator for "low income" students is financial eligibility for the free and reduced cost lunch program.

¹² *Serrano v. Priest*, 5 Cal. 3d 589, 609 (1971).

¹³ Stuart Silverstein and Lee Romney, "Middle-Class Families Put in Economic Bind; Survey: State ranks above average in high and low incomes," *Los Angeles Times*, August 6, 2001, B-1 [noting that California ranks second lowest among the 50 states in its percentage of families with incomes ranging from \$35,000 to \$75,000 a year].

Accountability must not be just another buzzword. It must have real meaning in the real world. Our children deserve no less. ... No one gets a free ride. Students will be tested. Teachers will be reviewed. Principals will be held to account. And parents will be urged to take greater responsibility.¹⁴

Three months later, the Governor pushed through a special session of the legislature the most recent effort at school reform in California: The Public Schools Accountability Act of 1999 (hereafter, PSAA). As operationalized by the PSAA, "the real meaning in the real world" of accountability is this: principals, teachers, and other school site staff are held responsible for changes in the average performance of students on a standardized test, known as the Stanford Achievement Test Series, Ninth Edition -- or SAT-9.¹⁵ Scores on that test are converted to an Academic Performance Index (API). Although the legislature mandated the eventual inclusion of other measures, including dropout rates in the API, at present the school-average SAT-9 score is its sole component. SAT-9 scores are transformed by simple mathematics into an API, which can range from 200 to 1000.

The State has set an initial statewide goal for all schools at 800 on the API. Each school is then expected to increase its API score by 5% of the difference between its API score and the statewide target. The average scores of numerically significant subgroups (comprising 15% or more of the student population) are expected to increase by 80% of the target for the school.¹⁶ Whether a school meets the growth target has consequences that come in the form of both carrot and potential stick. Staff at schools that exceed the growth target are eligible for monetary awards, awarded both to individual employees and to the entire school.¹⁷ Schools with average API scores below the 50th percentile that do not meet growth targets are eligible to apply for assistance under an Immediate Intervention/ Underperforming Schools Program (II/USP), which requires and pays for the assistance of an outside evaluator to assist the school and district to devise an action plan to correct deficiencies. Schools participating in II/USP also qualify for grants of \$200 per student to implement the action plan.

As a practical matter, participation in II/USP is voluntary: districts or schools may choose not to apply.¹⁸ Sufficient funds were allocated to select 430 schools for inclusion in the initial

¹⁴ Excerpt of State of the State address reprinted in San Diego Union Tribune, January 7, 1999.

¹⁵ California Department of Education, "Academic Performance Index," published at <http://www.cde.ca.gov/psaa/api/fallapi/apiinfo.pdf>

¹⁶ A readable description of these algorithms is contained in the evaluation of the first year of the PSAA program, available at <http://www.cde.ca.gov/psaa/PSAA%20Yr%201.pdf>.

¹⁷ The various incentive programs are described at <http://www.cde.ca.gov/ope/ae/>. Under the Certificated Staff Performance Incentive, teachers can qualify for bonuses from \$1000 to \$25,000. Under the Governor's Performance Awards, schools can qualify for an additional \$150 per student. The School Site Employee Performance Bonus program provides a fund for bonuses at the rate of \$591 per FTE, and an equivalent amount for the entire school. All figures are for 2000-2001.

¹⁸ If insufficient numbers of schools apply, the Superintendent may randomly select schools meeting the eligibility criteria. This has not yet happened. In addition, any school that fails to meet annual state growth targets can be placed in II/UPS. Cal. Educ. Code § 53056.5. Whether this has yet happened is unclear. In October, 2001, the state announced that it was intervening in 13 schools, 10 of them in the Los Angeles Unified School District, apparently under the authority of the federal Title I program. Richard Lee Colvin and Erika Hayasaki, "State Steps In at 10 Lagging L.A. Schools," *Los Angeles Times*, October 3, 2001, p. B-1.

round of II/USP -- about 10% of those eligible. Those schools selected are required to develop an action plan with the assistance of an outside evaluator, and are given some additional resources to make improvements outlined in the action plan over a period of three years. If test scores do not improve at a sufficient pace, the state may take other steps, including reassigning the principal and reorganizing or closing the school.¹⁹

Criticisms of the New Accountability Paradigm

With the passage of the PSAA, California became a latecomer to a particular version of accountability that has been adopted in varying forms in other states, sometimes called the "new accountability."²⁰ In this paradigm, schools are held accountable for student performance on tests, but given substantial discretion in how to achieve results. As the "new accountability" has been implemented in California, three kinds of criticisms have emerged. First, there are numerous flaws in implementation, some of which are in the process of being remedied, as explained below. Second, a growing number of critics question whether the paradigm is achieving intended results and worry about various kinds of perverse incentives that seem to afflict all accountability systems driven entirely by test results. Third, some have begun to question whether the "new accountability" paradigm itself can address some of the most crucial problems in California public education. In this essay, I first briefly survey the first two categories of critique. My primary aim, however, is to suggest that the accountability regime embodied in the PSAA is not merely poorly implemented in California, but suffers from design defects that render it fundamentally inadequate to the task of meeting the either the legislature's objectives or the mandate of the California Constitution.

Implementation critics question the appropriateness of relying entirely on year-to-year changes in school average performance on a single, nationally-normed test, particularly when that test is not "aligned" with State-mandated content standards. In other words, the sole component of the API does not assess whether students have learned what the state requires schools to teach. Moreover, year-to-year changes in school average test scores can be the result of many things other than genuine improvements in individual student achievement: better instruction in test-taking techniques, student population changes, and random noise. Yet as noted earlier, in the past three years on the basis of changes in scores on this single off-the-shelf test, California has allocated a rather staggering \$1.17 *billion* in rewards to schools, teachers and

¹⁹ The components of the Immediate Intervention/Underperforming Schools Program are described at <http://www.cde.ca.gov/iiusp/>. II/USP also incorporates schools within the federal Comprehensive School Reform Demonstration program. Significant amendments to the procedures to be followed under II/USP were adopted by the Legislature in 2001 in Assembly Bill 961, which awaits the Governors signature as this is written. The bill offers more options to underperforming schools and effectively delays the possibility of imposing the most draconian sanctions. The legislation also creates a "High Priority Schools Grant Program for Low Performing Schools," and makes available an additional \$200 per student to schools with the lowest test scores.

²⁰ See, e.g., Richard F. Elmore, et al, "The new accountability in state educational policy," in H. Ladd, ed., *Performance Based Strategies For Improving Schools* (1996); Susan H. Fuhrman, *The New Accountability*, Consortium for Policy Research in Education (CPRE), Policy Brief, January 1999, available at <http://www.gse.upenn.edu/cpre/Publications/rb27.pdf>. There were already in place a number of systems that contained elements of an accountability system, but none of them purported to be a comprehensive accountability system for all schools in California.

other staff.²¹ Some question whether *any* standardized test can adequately assess student achievement, and point to other states relying on more comprehensive assessment measures, including the development of student portfolios.²² Others note that the state has failed to include within the API any measures of school performance beyond test scores, including dropout rates. Dropout rates are not included because there is no statewide tracking system to permit distinguishing between students who have dropped out from those who have simply moved to another school. State officials contend that both these implementation flaws are being corrected. The state has begun "augmenting" the SAT-9 with questions drawn from content standards and aims to develop fully aligned tests by 2002.²³ The computer system that might make possible the meaningful computation of dropout rates possible, the California School Information Services program (CSIS), is now estimated to be completed in another five or six years.²⁴

Others question the reach and scope of the PSAA, particularly with regard to the schools with the greatest problems. First, the II/USP program is limited to 430 schools each year, about 5% of the schools in the state. Moreover, as noted above, participation in the II/USP program is, in practice, voluntary. Although II/USP entails the promise of technical assistance and some funding, it also subjects schools that do not increase performance to at least the possibility of quite drastic interventions by state officials. The Department of Education acknowledges what some districts no doubt see as the risks of particular schools participating in II/USP:

II/USP provides significant funding over a period of years that should lead to significant gains and public acknowledgement. However, the trade-off is the potential for interventions and sanctions as well as full disclosure of the lack of adequate progress.²⁵

School and district officials who have serious doubts about the capacity for improvement in a particularly dysfunctional school can thus escape the possibility of sanctions simply by declining to apply for participation in II/USP. Finally, for those schools that are brought within the II/USP program, the additional resources made available are of relatively low magnitude: \$200 per enrolled student reflects a marginal increase of about 3% in a school's budget -- much less than is spent for example on district office administration.²⁶

Paradigm critics both question whether the "new accountability" regime has actually produced results in other states, and point to serious problems of perverse incentives that afflict

²¹ \$577.2 million has been allocated to "Governor's Performance Awards" for schools, \$250 million to teachers, including payments of \$25,000 each to 1000 teachers; and in 1999, \$350 million to "site employees," including teachers. Data compiled from CDE website.

²² For an overview, see Judith A. Arter, et al, "Portfolios for Assessment and Instruction", ERIC digest at http://www.ed.gov/databases/ERIC_Digests/ed388890.html

²³ A U.S. Department of Education assessment of the status of these efforts as of January, 2001, is available at <http://www.ed.gov/offices/OESE/saa/ca.html>

²⁴ EdSource, "Developing CSIS: An integrated public school data system," available at http://www.edsource.org/pdf/CSIS_6-01.pdf.

²⁵ California Department of Education, "Frequently Asked Questions" (FAC), no 58, available at <http://www.cde.ca.gov/iiusp/faq.html>.

²⁶ Education Data Partnership (Ed-Data), "Spending California's Education Dollars," (April, 2001), available at http://www.ed-data.k12.ca.us/edfact_967.asp

most implementations. The first of these relates, again, to dropout rates. The surest way for a high school to increase average test scores is to change the mix of students taking the test. If students expected to do poorly are discouraged from attending school, average test scores will rise without regard to any change in the quality of instruction.²⁷ Less dramatically, schools can affect which of their students take the SAT-9 test, by encouraging some parents to request that their students be excused from the test, or in some cases by reclassifying students as "special education" students, who are categorically exempt from testing. We do not know the prevalence of these practices in California, but research from other states supplies enough evidence to be concerned.²⁸

Other paradigm critics focus on perverse incentives within the classroom. If one cannot alter the mix of students, the next surest way to increasing test scores is focusing instruction on test-taking skills and the peculiarities of particular tests, i.e. "teaching to the test." Some experts point to this phenomenon as accounting for the near universal rise in test scores during the first three years of any testing regime, and the quite disparate performance of the same students on other tests for which they are not being specifically prepared.²⁹ These incentives affect not only what goes on in the classroom, but also the process by which teachers improve. Time once devoted to genuine professional development of teachers may now be spent in teaching teachers how better to teach to the test. Finally, critics question the "high stakes" component of the paradigm, and compare the effectiveness of systems that use assessment for purposes of diagnosing and correcting teaching and learning problem in a timely fashion, rather than merely allocating monetary and other incentives months after the administration of the test.³⁰

I do not disagree with any of these criticisms as they pertain to the current implementation of the "new accountability" paradigm in California. But many of these problems could, in theory, be solved. Taking account of student mobility³¹ and using better assessment tools would reduce some of the perverse incentives just mentioned. And, at least in my view, authentic assessment of student learning *should* be a significant part of any accountability regime: students and parents have a right to know whether students are learning and teachers need to know how instruction can be better targeted. Citizens also have a right to know whether their tax dollars and public education system are producing students who can

²⁷ Although they do not posit a causal connection between high-stakes testing and increasing dropout rates, there is substantial correlational evidence that testing is associated with increasing dropout rates. Marguriete Clarke, et al, "High Stakes Testing and High School Completion," National Board on Educational Testing and Public Policy, January, 2000.

²⁸ There is evidence that all of these processes were at work in what first appeared to be the "Texas miracle" resulting from test-driven accountability. Walt Haney, "The Myth of the Texas Miracle in Education," Education Policy Analysis Archives, v. 8, n. 9 (2000).

²⁹ For example, highly publicized gains in test scores on the Texas Assessment of Academic Skills were not reflected in scores on the National Assessment of Educational Progress, suggesting a significant amount of "teaching to the test." Stephen P. Klein, et al., "What Do Test Scores in Texas Tell Us?" Education Policy Analysis Archives, v. 8, n.41 (2000).

³⁰ See, e.g., Suzanne M. Wilson, et al, "A Case of Successful Teaching Policy: Connecticut's Long Term Efforts to Improve Teaching and Learning," Center for the Study of Teaching and Policy, available at http://depts.washington.edu/ctpmail/Publications/PDF_versions/Connecticut-WDHB-02-2001.pdf

³¹ In the current system, the test scores of students who were not enrolled the previous year are excluded from API calculations, but this provision is not relevant to the loss of potentially low scoring students.

function as effective and productive citizens in adulthood. Assessment of student learning is an essential component of any adequate accountability regime. But it is not sufficient.

Major Flaws

The fundamental flaws in the PSAA accountability regime reflect, in part, the complete reliance on school-average and subgroup-average test scores. Particularly given the disparities in resources or "inputs" made available to students and teachers within schools, it is not reasonable to base incentives entirely on the single "output" measure of school-average test scores. Moreover, by ignoring school-level "inputs," the PSAA accountability regime leaves *unaccountable* not only the majority of employees in some school districts, but also everyone else at any level in the entire apparatus of public education. The PSAA accountability regime is thus entirely at odds with the structure of governance and power to allocate and organize resources. The result is not merely some actual or perceived unfairness in dealing with teachers and school level staff, but something much more important: the potential ineffectiveness of the entire accountability system.

In addition, ignoring inputs and basing incentives only on year-to-year changes in school average test scores renders the accountability regime blind to inequality, both within and among schools. So long as the worst school in California and the best school both meet their 5% annual growth target for test scores, both will be judged "successes." Because there are no effective minimum standards for educationally relevant "inputs," not only can the gap between the worst and the best schools grow; the worst school may remain outrageously substandard for decades.

Finally, the PSAA accountability regime is also blind to inefficiency and to variations in the tasks facing students, teachers and principals. A school attended by predominantly middle class children, but wasting most of the resources available to it, may increase test scores merely by marginally decreasing inefficiency. By contrast, a school operating with great efficiency but attended by poor children -- many of whom are still struggling with English, the only language in which the test is written -- may have much greater difficulty increasing test scores.

Unpacking Accountability

Before turning to the specific issues of accountability in public education, it may be worthwhile to return to basics: what accountability can mean, how the term is deployed in various contexts, and the nature of the problems that accountability systems are intended to solve. According to the Oxford English Dictionary, to be accountable means "Liable to be called to account, or to answer for responsibilities and conduct; Answerable, responsible." There is both a moral and a positive aspect to accountability. Moral accountability or responsibility entails the appropriate allocation of blame and praise for human action.³² Positive accountability has more to do with the allocation of external incentives to produce results.

Accountability can also be purely symbolic, deployed for rhetorical and political purposes. As the sociologist Amitai Etzioni observed:

³² Mark Bovens, *The Quest for Responsibility: Accountability and Citizenship in Complex Organizations*, 22-42 (1998).

When divorced from any systematic efforts to promote actual attainment of the desired values, "accountability" becomes a thin cover for inaction, a "Sunday only" value mechanistically acknowledged in a secular form of lip service.

...

Often, symbolic reassurance from power wielders will provoke quiescence in an unorganized group--at the very least because it takes the edge off dissatisfaction and makes the difficulties of mobilization greater. This quiescence may be quite temporary, soon yielding to a reawakening of demand and a resentment over being manipulated. But those who merely mouth "accountability" do not concern themselves with the longer run.³³

I do not adopt so cynical a view. Instead I assume the good faith and good intentions of state officials in adopting the current accountability system.

Moral Accountability in the PSAA

Symbolic accountability aside, there are aspects of moral accountability at least implicitly at work in California. When focused efforts are made to hold a particular person or group accountable, the usual implication is that there has been some previous failing on the part of that person or group. Statutes with titles that end with the phrase "Accountability Act" are ordinarily directed at groups viewed with distaste or distrust, e.g.: the Health Insurance Portability and Accountability Act of 1996 (health insurers and HMO's), the Media Marketing Accountability Act Of 2001³⁴ (vendors of "adult" material), and the Child Abuse Accountability Act of 1993³⁵ (child abusers). The Public Schools Accountability Act echoes a consistent theme in periodic waves of education reform over a period of five decades, that something is gravely wrong with public education, and that the solution is to hold someone -- usually teachers and principals -- accountable.³⁶

California did not invent these themes. In the 1990's, "accountability" became the mantra of education reform in the same way "responsibility" had been the central theme of welfare reform. The moral dimensions were quite clear in the case of welfare reform: people on welfare were being irresponsible, compelling Congress to enact the "Personal *Responsibility* and Work Opportunity Reconciliation Act of 1996," which radically altered the incentives for persons seeking help from the welfare system. Although denominated the *Public Schools* Accountability Act of 1999, the PSAA significantly alters incentives *only* for teachers and principals. The clear implication is that some lack of effort or poor performance on their part had been to blame for the sorry state of public education. Understandably, representatives of teachers have resisted this allocation of blame.³⁷

³³ Amitai Etzioni, "Alternative Conceptions of Accountability: The Example of Health Administration," 35 *Pub. Admin. Rev.* 279, 280 (1975).

³⁴ S. 792, 107th Congress (Lieberman).

³⁵ Public Law 103-358 (HR 3694)

³⁶ Robert L. Linn, "Assessments and Accountability," 29 *Educational Researcher* 4 (2000).

³⁷ "Accountability won't rescue disadvantaged students," 5 *California Educator* (June, 2001), quoting CTA President Wayne Johnson, available at http://www.cta.org/cal_educator/v5i9/action_accountability.html <visited September 2, 2001>.

Positive Accountability and the Allocation of Incentives

Although moral accountability can have significant consequences, my primary focus here is on the allocation of incentives, on what I will call *positive* accountability. The difference can be illustrated in a simple example. We are morally offended when A takes credit for B's hard work, or when A is blamed for something B does wrong. But some organizations, like the military, are *designed* so that A is held accountable for B's actions, such that A may face adverse consequence for B's failings. This latter situation invokes positive accountability: the superior officer may pay a price for the wrongdoing of a subordinate, even though he or she is not ordinarily regarded as having evidenced some moral failing.

Positive accountability regimes are adopted in service of organizational objectives. Holding a military officer accountable for the acts of subordinates simplifies decision-making under conditions of great stress and is consistent with the hierarchical allocation of power in military organizations. Organizations and enterprises with other goals and structures of power adopt other accountability regimes. Some use more decentralized, even market-like accountability systems. For example, participants in the diamond trading industry are held accountable for honesty and fair dealing by a system that relies entirely on norms and a reputational market: dealers who violate the rules quickly find themselves shunned by other participants and excluded from the industry.³⁸

In general, positive accountability regimes are created to solve a problem as old as our species: how to connect individual rewards to individual effort and accomplishment, and how to discourage "cheating," "shirking," and other individual behaviors that interfere with collective goals. These problems are especially acute when goals can only be achieved through the contributions of effort from many people. Plainly, many people contribute for reasons of altruism, solidarity and adherence to social norms. But most groups, organizations and enterprises assume that such internal motivations are neither universal nor fully adequate. Every organization or common enterprise, public or private, contains opportunities for some people to contribute less than their maximum potential effort, and to take more than a fair share of the proceeds of common enterprise.

The larger the enterprise, the more difficult the problem. The complexities of modern organizational life often make it difficult to assign either blame or credit to individuals. The political scientist Dennis Thompson labeled this "the problem of many hands."³⁹ A vast literature, based in economics, encompasses various approaches to dealing with the resulting problems of possible shirking, "free riders," "moral hazard" and other consequences of a sub-optimal distributions of incentives that can arise when the effort of more than one person contributes to a result.⁴⁰ Notably, within scholarship on educational administration, Jacob Adams and Michael Kirst have used principal-agent theory to tease apart these dynamics within

³⁸ Joachim Zekoll Bernstein "The Gentleman's Agreement in Legal Theory and in Modern Practice: United States" 46 Am. J. Comp. L. 87, 88 (1998); see also Lisa Bernstein "Opting Out of the Legal System: Extralegal Contractual Relations in the Diamond Industry" 21 J. Leg. St. 115 (1992).

³⁹ Dennis F. Thompson, Moral Responsibility of Public Officials: The Problem of Many Hands, 74 AM. POL. SCI. REV. 905, 907 (1980). See also authorities cited in Bovens, fn. 33, at 46.

⁴⁰ See generally Y. Kotowitz, "Moral Hazard," in 3 *The New Palgrave: A Dictionary Of Economics* 549 (John Eatwell et al. eds., 1987).

public school governance.⁴¹ What unifies all the various approaches to the accountability problem is their focus on a common objective: how best to allocate incentives in a way that matches rewards to effort and to accomplishment of tasks within the control of individuals.

Market Signals

At least in theory, in market-driven systems those organizations that do a sufficiently poor job of fitting incentives to individual performance will not survive in competition with better managed enterprises. Certainly, a sole proprietor who performs badly receives direct feedback from "the market" -- her customers -- and goes under. But large private organizations face the same moral hazard and "many hands" problems that afflict large public organizations. A warehouse worker for a large retail chain may observe that the customer service in his company's stores is much worse than that of the competition. His job and future may thus be at risk, no matter how hard he works or how efficiently the warehouse operates.⁴² In any large organization performing complex tasks, the linkage between the organizational performance and the incentives of individual employees is attenuated at best. Nevertheless, other things being equal, given enough time and a sufficiently competitive environment, we expect the market to sort out organizations that have effective accountability systems from those that do not.

Public organizations with effective monopolies are largely insulated from the market. But what constitutes "the market" varies. The Postal Service now has effective domestic competition. At least as regards its core functions, the military does not. In the case of public education, some parents are able to relocate, or to send their children to private schools. We do not know all the reasons the parents of the 640,000 California children have chosen private schools,⁴³ but we do know that some are responding to the perceived inadequacies of our public schools. Their withdrawal of a child from public education sends a vague "market signal" of sorts, but the withdrawal does not directly affect any of those responsible for public education. Rather, it merely decreases both demand and resources (which are based on attendance), and deprives the political process of a traditional source of motivated and influential actors.

Obviously, most parents and students cannot afford to opt for private schools. From this less wealthy sector of the population, there is evidence of a "market signal" of a far more worrisome kind. Despite mandatory attendance laws and the abstract fundamental right to an adequate and equal education, huge numbers of California students simply drop out.

The Belmont Example

Consider a "Belmont scandal" of a different kind. Not far from the site of an abandoned project to build a new Belmont High School atop an abandoned oil field in Los Angeles sits the "Old Belmont" high school. Last year, 5305 students⁴⁴ were crammed into a decrepit

⁴¹ Jacob Adams and Michael Kirst, "New Demands and Concepts for Educational Accountability: Striving for Results in an Era of Excellence," *Handbook of Research in Educational Administration*, 1998.

⁴² I am grateful for this example to a warehouse worker with whom I recently served on jury duty. I withhold his name and that of his company for obvious reasons.

⁴³ Data for 1999-2000 from CDE website, at <http://www.cde.ca.gov/privateschools/listreport.html>.

⁴⁴ Belmont data are for the 1999-00 school year and taken from the Dataquest information service available through the CDE website, <http://data1.cde.ca.gov/dataquest/>. I choose Belmont only because of the "other" scandal. The data for Belmont resemble those of many other high schools attended by large numbers of low income students and students of color.

facility originally designed for perhaps half that many. Because the state has yet to implement a long-planned student tracking system,⁴⁵ so we do not know the actual dropout rate at Old Belmont. What we do know is this: In 1996-97, 1851 students were enrolled in the 9th grade at Belmont. Four years later, Belmont graduated 560 seniors. Of these, only 167 had taken the courses necessary to even *apply* to a California public university. No one knows how many of the students who dropped out did so because of the quality of education they were being offered. Nor can we second-guess the considered decision of a graduating student not to go to college. But we have scant reason to believe that these statistics reflect the decisions of students who were offered reasonable choices.

The students who persisted in their studies at Belmont High School have been held accountable. Like students in nearly all of the other 8562 schools in California, each of them has taken at least one SAT-9 test,⁴⁶ and now they, their teachers and principal face the consequences. Should anyone else have been held accountable for a "Belmont scandal" of a sort that did not gain widespread media attention? An answer to that question requires a clearer understanding of how we should assess accountability systems.

Assessing Accountability Systems

The assessment of any system of accountability⁴⁷ must begin with an inventory of at least the following:

- Who is accountable?
- To whom?
- For what?
- Under what conditions?
- With what consequences?

In each case there is a matching set of questions: Who is not accountable? To whom is accountability not owed? What performances or outcomes are ignored? What conditions are not attended to? For whom are there no, or perversely aligned, consequences?

In terms of the first set of questions, the PSAA accountability regime is very straightforward: It is teachers and principals who are accountable. They are *accountable to* the State educational bureaucracy. They are *accountable for* changes in school-average scores on the SAT-9 (or a successor) test. The *consequences*, both positive and negative, fall entirely on teachers, principals, and indirectly on students and parents. Incentives are allocated completely without regard to the *conditions* under which they were achieved.

⁴⁵ Deb Kollars, "When many kids drop out, state loses track," *Sacramento Bee*, Sept. 6, 1998. Information on the current status and plans for the California Student Information System (CSIS) is available at <http://www.csis.k12.ca.us> <visited September 7, 2001>

⁴⁶ In the most recent round of testing, Belmont had an API of 477, up from 464 the previous year. This places it in the bottom decile of schools, but at about the median of "similar schools."

⁴⁷ The rubric here builds on that in Kenneth Leithwood, et al, *Educational Accountability: The State of the Art* 12-13 (1999).

As with the dog's bark in the Sherlock Holmes story, what is most notable about the PSAA accountability regime is what is missing. No school district official, no administrator above the level of principal, no school board member, no employee of the State Department of Education, no legislator, governor or superintendent of public instruction is held to account. Rather, it is the latter group, the state educational bureaucracy and state officials and leaders *to whom* teachers and principals are directly accountable, bypassing the local district structure altogether. Notably, under the PSAA, no one is *accountable to* students or their parents. What teachers and principals are *accountable for* is only changes in school-average test scores on the SAT-9 (or a successor) test.

The PSAA accountability regime takes no account of essential inputs or the conditions under which changes in test scores are obtained. The PSAA system is blind to the fact that some students may have had no books to study, or have been crammed into classrooms so crowded that students take turns standing, or that some principals have to make do with a teaching staff with little training and a high rate of turnover. Teachers are not able to purchase textbooks for their students, nor are principals entirely responsible for their ability to compete with other schools for skilled teachers. The result is not merely perceived unfairness, but a defect in the accountability system that leaves many people unaccountable and many factors contributing to a quality education unaccounted for.

The PSAA accountability regime deviates substantially from the following principles of accountability one observes in well-functioning organizations, reflecting both common sense and sound principles of management science:

- Everyone is accountable, albeit for different things and under different conditions
- Individuals are held accountable for their own effort and other things they can control
- Those with (e.g., supervisory) power are accountable for the performance of groups they supervise, as to things over which the group has control
- The difficulty of tasks assigned to individuals is taken into account in assessing performance
- Reduced performance caused by the failures of others (except, in some cases, subordinates) is not attributed to individuals
- Assessments are utilized both to allocate incentives *and* to diagnose the causes of problems
- Assessments of inadequate performance lead, at least initially, to corrective action directed at the source of the inadequacy
- "Ultimate" accountability is aligned with the structures of maximum power and control of resources.
- Those with the ability to alter accountability regimes are accountable for those regimes

Although the PSAA system violates each of these principles, not all violations are of equivalent importance. What matters is not whether our accountability system deviates from good practice, but whether it deviates in ways that make it ineffective or unresponsive to the most fundamental problems facing California education.

Implicit and Explicit Models of Educational Achievement

Those problems must first be understood at the level of the factors that contribute to individual student achievement. Every accountability regime is based on some model or theory, implicit or explicit, about the inputs and processes that contribute to outcomes. Leaving aside for now concerns about the validity of the current assessment tools, in order to be clear about the more critical design flaws of the PSAA, it is necessary to be as explicit as we can be about those factors that contribute to outcomes, as measured by those tools. Both common sense and educational research suggest the following, non-exhaustive list of factors plays a role in determining outcomes:

- Student factors.
 - Knowledge acquired outside formal education
 - Residual of prior education
 - Individual Effort
 - Individual capacity, normally distributed in every population
 - Particularized needs
- Family and Community Factors
 - Parental involvement
 - Expectations for students, schools
 - Attitudes and expectations regarding education
- Teaching
 - Quality of instruction
 - Motivation and engagement of students
 - Expectations for student achievement⁴⁸
 - Student-appropriate pedagogy
- Instructional Materials
 - Books: availability and content
 - Other instructional materials, computers, etc.
- Administrative Support
 - Securing other “inputs” to maximum degree possible
 - Professional development and mentoring of teachers
 - Engagement with parents and community
- School Learning Environment
 - Physical:
 - Conditions directly impacting learning: lighting, temperature control, noise
 - Distractions inhibiting concentration: unusable restrooms, infestations of vermin
 - Social/cultural
 - Internal school culture, expectations, values
 - Appreciation for and use of cultural diversity as an asset to learning

⁴⁸ There is a large and growing body of research indicating that the expectations communicated and internalized by students have dramatic effects on their performance, perhaps particularly as measured by tests. For an overview of the research, see Linda Lumsden, "Expectations for Students," *ERIC Digest*, No. 116 (ED409609, 1997). For an account of the underlying psychological processes that may be at work, see Claude Steele and Joshua Aronson, "Stereotype threat and the intellectual test performance of African-Americans," *69 J. Pers. & Soc. Psych*, 797-811 (1995).

- Distractions, including those connected to school safety and the security response to perceived safety problems

Some inputs determine other inputs. For example, the degree of parental involvement in a school is affected by the level of other demands on parents *and* by the degree to which such involvement is encouraged by principals and teachers. Moreover, schools and classrooms may achieve different results with roughly the same resources, because schools vary in *how* resources are used in combination. Thus W. Norton Grubb and Luis Huerta call for "opening the black box" to assess how schools make effective use of the resources available to them.⁴⁹ The relative contributions of all the various inputs and processes to determining outcomes cannot be determined from ideological first principles or personal experience. These are empirical questions, only some of which have been answered through research. The answers to others we can derive at present only through common sense and sound professional judgment. There is, however, no basis for assuming that most inputs and processes beyond the control of teachers and principals simply do not matter at all.

The reason for attending to the entire range of variables that affect student achievement is not to provide excuses to teachers and principals, but rather to insure that we attend to all the factors that matter to whether students succeed. Moreover, we can begin to think about how to locate accountability and allocate incentives more rationally, by insuring accountability for the delivery of *all* the inputs, including those largely beyond the control of teachers and school site administrators.

Design Flaws in the Public Schools Accountability Act

Put in terms of the model of educational achievement described above, the accountability regime of the PSAA is fundamentally inadequate in that it:

- ignores all educational inputs and variations in opportunities for learning, including the radical disparities in opportunities currently provided, especially to poor students and students of color;
- is inconsistent with the existing system of educational governance that determines the allocation of those inputs among classrooms and schools; and
- ignores inefficiency, including inefficiency within schools and school districts.

Ignoring Inputs and Inequality Among Schools

The PSAA's exclusive focus on teachers and principals seems odd at first, given the pervasiveness in the media and political campaign literature of stories about incompetent school districts and their bureaucrats. It also seems odd, because nearly every one agrees that although teaching may be the most important "input" to education, many other things seem to matter quite a lot. Governor Davis implied as much in his recent letter decrying crowded classrooms and the textbook shortages.⁵⁰ Superintendent Roy Romer, the head of California's largest school

⁴⁹ W. Norton Grubb and Luis A. Huerta, *Straw Into Gold, Resources Into Results: Spinning Out the Implications for the "New" School Finance*, Policy Analysis for California Education, 10-14 (April, 2001).

⁵⁰ Note 7, *supra*.

district, spoke recently to 2,000 of the administrators of the district, which employs 75,000 employees to service its 30,000 classrooms:

Teachers are not the only ones who affect students. . .; a child's education also depends on those who pay the bills, route the buses and stock the district's 30,000 classrooms.⁵¹

Moreover, deficits in other inputs affect the ability of schools to attract and retain teachers. As Michael Alpert, Chairman of the Little Hoover Commission, wrote recently,

Schools that are poorly managed, poorly maintained and poorly supplied are unattractive places to work -- even for individuals dedicated to children burdened by poverty, language barriers, domestic problems and neighborhood woes. In these cases, the State has an opportunity and an obligation to help communities assess and address the universe of reasons why good teachers leave, whether it is broken air conditioners or bad management.⁵²

The PSAA ignores all inputs to education other than those that are presumptively within the control of teachers and principals. Although the situation varies among schools and districts, there are relatively few schools in which teachers and principals control the availability of books, computers and instructional materials or the quality of school facilities and the school environment. To be sure, many teachers spend their own money on classroom materials, and exceptional principals may be able to secure computers and other resources through creative entrepreneurship. But the systems themselves are rarely designed to give teachers or principals either the responsibility or the power to control these other inputs.

Nor does the PSAA take into account the varying needs of students or, put another way, the "inputs" that students bring with them to school. The PSAA does require computation of a School Characteristics Index (SCI) and Similar Schools Rank (SSR) that takes into account student characteristics (mobility, ethnicity, socioeconomic status, English proficiency) and a few characteristics of schools (percentages of teachers with full credentials and those with emergency credentials, average class sizes, and whether the school operates on a multi-track year-round educational program). But rather than set out any explicit account of how these variables might affect student performance on tests, or how they should be viewed in responding to apparent student success or failure, they are all thrown into one large regression equation from which a Similar Schools Rank is eventually calculated.⁵³ Some educators view this as the creation of an "Excuse Index." Others see some value in being able to compare the performance of principals facing somewhat similar challenges and constraints. In the end, however, other than providing a

⁵¹ Massie Ritsch, "Principals Urged to Visit More Classrooms," *Los Angeles Times*, August 24, 2001.

⁵² Letter of Michael E. Alpert to Governor and Members of the Legislature, September 5, 2001, transmitting the report of the Little Hoover Commission, *Teach Our Children Well* (September, 2001), available at <http://www.lhc.ca.gov/lhcdir/160/report160.pdf>

⁵³ Technical Design Group of the Advisory Committee for the Public Schools Accountability Act of 1999, "Construction of California's 1999 Similar Schools Characteristics Index and Similar Schools Ranks, PSAA Technical Report 00-1.

potential source of (perhaps misplaced) pride or embarrassment, the Similar Schools Rank plays no role at all in the allocation of material incentives, positive or negative.⁵⁴

In the course of preparing these the "similar schools" data, however, the Technical Design Group compiled data that are quite useful to understanding the contexts in which the accountability system operates. For example, the correlation between average SAT-9 scores in high schools and average reported parental education for those schools is 0.931. This means that if we know nothing at all about a high school beyond the average educational level of parents, we can predict average SAT-9 scores with 87% accuracy.⁵⁵ This manifestly does *not* mean that low parental education *causes* low test scores, or that we should lower expectations for students whose parents have limited education. It does mean we should take into account the greater educational needs of some students before allocating praise, blame, or money, and then do what is required to insure that every student has an opportunity to succeed at the highest levels.

Moreover, other little-noticed statistics in the same technical report suggest that there are some vicious cycles at work. For example, the schools attended by poor children and children of color are much less likely to be staffed by fully credentialed teachers. Table I sets forth the highly significant⁵⁶ correlations between teacher training and a range of student characteristics at the school level:

Table I
Correlations with Percentage of Teachers with Full Credentials

API/SAT-9 Scores	0.492
Socioeconomic Status ⁵⁷	-0.402
Parental Education	0.406
Percentage of White Students	0.519

Other comparisons offer starker contrasts. I have already noted the great racial and class disparity in the allocation of untrained teachers. The disparities persist across other important inputs. Thus, in schools so overcrowded that they have adopted a "Concept 6" year-round, multi-track schedule (which maximizes facilities use but delivers less instructional time than a normal school schedule), on average 80% of the students are poor enough to qualify for the free and reduced cost meals program.⁵⁸

The California Department of Education does not produce statistics on the race and social class of students consigned to the worst facilities or deprived of adequate textbooks and instructional materials. But there is every reason to believe that the stark pattern of inequality

⁵⁴ No doubt there may be some incentives that derive from self- perception and public-perception, and local districts are free to use the Similar Schools Rank in their own programs that may affect incentives.

⁵⁵ 2001 Supplement to PSAA Technical Report 00-1, p. 8. ($0.931^2 = 0.867$).

⁵⁶ All the correlations reported are significant at the 0.001 level. The square of the correlation is the percent of the variance "explained". The fact that these are correlations of aggregate variables will is no doubt partially responsible for the high levels of correlation and significance.

⁵⁷ Based on student eligibility for the free or reduced lunch program, which is tied to parental income.

⁵⁸ Computations on API database, together with data compiled from another database on CDE website, at <http://www.cde.ca.gov/facilities/yeararound/direct00.htm>

and inadequacy persists across these other "inputs" that bear on average test scores. For example, we know that teachers of Advanced Placement ("AP") courses in low-SES schools are nearly twice as likely to report that they lack instructional materials necessary to prepare students for the AP examination, compared to teachers in schools attended by students at the other end of the socioeconomic spectrum.⁵⁹

Absence of Minimal Standards for School Level Inputs

The indifference of the current accountability regime to school-based inputs is important for a reason beyond the manner in which it distorts the allocation of incentives: It also permits the existence of schools that are just barely schools: overcrowded, substandard facilities where students may be taught by an endless succession of untrained teachers, and lack access even to books in core subjects, to say nothing of computers and the internet. The current accountability regime is deficient not merely because it blames teachers and principals for the inevitable consequences of these conditions, but because it relies entirely on student test scores as indicators of failures. As Jennifer O'Day and Marshall Smith have written:

[A] solely performance-based strategy might be likened to closing the barn door after the horse is stolen. We know that many schools simply do not have the resources to provide the level of opportunity necessary for their students. We do not need to wait until we have clear outcome documentation of failure before addressing obvious problems.⁶⁰

To use an analogy, we provide incentives for restaurants to provide better food, prepared under safe conditions, through market forces and health department rankings. We do not stop there, however: there are certain levels, affecting public health, below which we will not permit any restaurant to fall. As with other areas of public concern, when we determine that some conditions are simply unacceptable, we do the following: we establish quality standards, we see that inspections take place, and we take action when substandard conditions exist. Of course, there might in theory be other ways to accomplish the same result. Rather than inspect the kitchens of restaurants, we might merely survey diners for instances of foodborne illness and reason backward to the existence of unsanitary conditions. Similarly, we might note the correlation between student test scores and the numbers of uncredentialed teachers, and use test scores as an indirect measure of the latter. But, as with restaurants, there are far more effective routes to determining whether inputs are substandard.

"Substandard" implies the existence of standards. There are, in fact, shockingly few standards in California for the most important inputs to education. As my colleagues and I have pointed out elsewhere,⁶¹ there is but one regulation in California that requires that schools provide sufficient books for students to take home for study. Unfortunately, that regulation pertains only to schools for barbers and cosmetologists. And, despite numerous studies documenting how uncomfortable classroom temperatures degrade learning, there is but one

⁵⁹ William F. Furry, et al., *Characteristics and Performance of Advanced Placement Classes*, June, 2001, at 66, available at <http://www.csus.edu/ier/materials.html>.

⁶⁰ Jennifer A. O'Day and Marshall S. Smith, "Systemic Reform and Educational Opportunity," 250-312, 271 in *Designing Coherent Education Policy* (Susan H. Fuhrman, ed., 1993).

⁶¹ *Who is Accountable to Our Schoolchildren?* Note 5, *supra*. The other facts recounted in this paragraph are set out in greater detail in the same publication.

regulation requiring that classrooms be adequately heated or air-conditioned -- for classrooms in traffic schools. There is no standard preventing some students from being taught by a different, untrained substitute teacher every day. There is no standard requiring that students have any access at all to books or other learning materials. While there are detailed standards regarding the construction of new schools facilities, there are only the vaguest suggestions that K-12 schools be maintained in ways that do not seriously interfere with learning. Where vague standards do exist, no one inspects schools to determine whether they are being routinely violated. And when substandard conditions become widely known through press or other accounts, there are no consequences -- for anyone. Any system of accountability that holds no one accountable for the most shocking departures from what we expect our schools to provide to students is no accountability system at all.

Incongruence with Governance and Resource Control

This lack of congruence between responsibility and control over essential tools is characteristic of the PSAA as a whole. One can imagine a system of governance of K-12 education in which the PSAA accountability regime would seem sensible. For example, if (1) the entire superstructure of public education were dismantled and each principal made the CEO of a separate enterprise, *and* (2) adequate essential resources were allocated to each school in a way that reflected the costs of educating children with widely different educational needs, then the school-level personnel could reasonably be held primarily accountable for student outcomes. In such a system, the principal might obtain supplies from private suppliers, contract with a maintenance company, and hire the best teachers available on the market. The origins of failure could not be located in any school district bureaucracy, because there would be none.

Whatever its theoretical virtues, there is no politically realistic scenario that leads to this result. The long history of local control (albeit increasingly chimerical) and the political clout of local school boards and school administrators are powerful forces against such a radical transformation. The system of purported local control also serves well the political purpose of allowing state officials to blame local district officials when things go wrong. School districts provide a layer of political insulation between Sacramento and the sordid reality of many of our schools. At the same time, the current regime permits Sacramento to bypass local control anytime this is politically convenient - as in distributing incentives under the PSAA.

Our system of educational governance has not evolved nearly so rapidly as the distribution of power and control over resources. The basic structure of governance of public education devised in the 19th century persists into the 21st.⁶² Locally elected school boards oversee 1054 local school districts, ranging in scale from Feather Falls Union Elementary District, which serves 41 students in one school, to Los Angeles Unified School District, which is responsible for educating 721,346 students in 655 schools.⁶³ When this system of governance was devised, the resources for education -- chiefly the *ad valorem* tax on real property -- were also locally controlled. But since 1978, control over resources has shifted to Sacramento. Even the expenditure of "local" property taxes is highly constrained by state law. This is partly the

⁶² A readable survey of the evolution of governance in public education can be found in Education Commission of the States, *Governing America's Schools: Changing the Rules*, 6-11 (November, 1999).

⁶³ All data reported are from the most recent available on the website of the California Department of Education as of August 8, 2001.

consequence of the constitutional mandate of *Serrano v. Priest* that children living in poorer districts not thereby be deprived of basic educational equality,⁶⁴ and partly the result of the complex series of changes in school finance in California, enacted both in the legislature and directly by the electorate.

Whatever the causes, it is clear that the last thirty years have seen a dramatic divergence between the location of formal and symbolic responsibility for K-12 education and the location of the political and financial capacity to respond to educational needs. The State's demands for better performance from local schools was not accompanied by any commensurate commitment to provide the resources required to achieve that performance. Rather, the PSAA rests on an implicit assumption that all that is required is more effort on the part of teachers and principals, and that that effort can be secured through material incentives.

Ignoring Inefficiency

Ignoring inputs also leads to ignoring inefficiency. The critical number upon which the entire California accountability scheme rests is the year-to-year change in school average test scores. Any school that meets the 5% improvement target receives no further attention. This is the case even if a school is initially performing extremely poorly at the task of converting inputs to student achievement, however measured. Conversely, a school that is initially performing at peak efficiency – given the available resources – may find itself subjected to sanctions for failure to meet essentially unattainable improvements in effectiveness and efficiency.

By way of illustration, consider School A and School F. School A has a surplus of everything: experienced teachers, the best facilities in the State, ample supplies of instructional materials, and so on. Given these resources and the characteristics of School A's student population, at the time the PSAA system was first implemented we might have expected School A to attain a score of 900 on the Academic Performance Index. In fact, School A scores only 600. Some attribute this to a wildly ineffective management and leadership at the school, leading to a culture of indifference and neglect. Others hint at outright corruption. But so long as School A's average test scores increase at a rate of 5% a year, it will continue to fly below the radar of purported accountability.

But not School F. School F makes do with a cadre of enthusiastic, if untrained, teachers, a decrepit facility, and constant shortages of textbooks and other supplies. Nevertheless, the teachers and staff at School F do a remarkable job with the resources they have. The effort shows in the school's initial API, which at 600 was much higher than anyone had reason to expect. Being the perhaps most efficiently run school in California in terms of producing high student test scores also has a downside: it is harder to improve. If we could estimate the efficiency of schools with the same precision we determine the efficiency of power plants, School A might be operating at an efficiency of 60% compared to School F's 95% efficiency. School A can meet the 5% annual increase in its API by merely reducing rampant inefficiency.

⁶⁴ *Serrano* did not reach three factors that continue a significant degree of inequality in education. First, a large part of the money for the physical plants of schools is still raised by means of bonds approved by local voters. Second, in many schools attended by children from more affluent families, families themselves contribute significantly to the resources available at the school level. Third, *Serrano* dealt directly only with inter-district disparities, leaving in place significant intra-district disparities in resources in many districts.

School F may face the drastic consequences because it is unable to achieve perfection. Ignoring inputs leads not only to substandard educational opportunities for students, but also to ignoring the efficiency of our schools.

Specifications For A Constitutional Accountability System: The Constitution and Seven Design Constraints

Some of the above critiques of the current accountability regime carry with them implicit suggestions for a better system. In this section I examine in a more general way the minimal requirements for an effective system of educational accountability in California. There are many different systems of accountability that might meet those requirements, just as there are effective systems of accountability in other domains that look quite different from each other. In some cases, there are choices to be made at the level of implementation, for example, in the degree of reliance on more centralized systems of regulation as compared to systems that are more decentralized more market-like. My aim here is not to take sides in such debate, but rather to remain focused on the design constraints that should be satisfied by any system of accountability for K-12 education.

The overall constraints are not a matter of preference or practicality, but of the fundamental law of the state, the California Constitution, as authoritatively construed by our courts. First, the ultimate question of accountability is clear: "The state has ultimate responsibility for the constitutional operation of its schools."⁶⁵ The legislature may create school districts to initiate and administer school programs and activities.⁶⁶ However, the state may not fulfill its duty merely by establishing and funding local school districts. The state alone is constitutionally responsible for the education provided to students,⁶⁷ because the system of delegation to local districts is "not a constitutional mandate, but a legislative choice."⁶⁸ Moreover, in California constitutional law education is also a fundamental right of every child. State action or inaction that has the effect of denying to some children the basic educational opportunities provided to most children in the state are unconstitutional unless state officials can establish a compelling reason for the inequality.⁶⁹

Within the constitutional framework, the ultimate effect of any accountability regime must therefore be to hold state officials accountable for insuring the delivery of constitutionally adequate and basically equal opportunities for learning to the desktop of every public school student in the state. Although state officials have broad discretion in how this result is to be achieved, they have no constitutional discretion as to whether it is achieved. Beyond constitutional dictates are requirements derived from common sense and what we know of human and organizational behavior. Taken together, these general constraints suggest that any adequate system of accountability for K-12 education the state may devise should meet the seven specific constraints outlined below.

⁶⁵ *Salazar v. Eastin*, 9 Cal. 4th 836, 858 (1995) (en banc).

⁶⁶ CAL. CONST. art. IX, § 14.

⁶⁷ The state's responsibility "cannot be delegated to any other entity." *Butt v. State*, 4 Cal. 4th 668, 681 (1992) (en banc).

⁶⁸ *Butt v. State*, 4 Cal. 4th 668, 688 (1992).

⁶⁹ *Butt v. State*, 4 Cal. 4th 668, 704 (1992).

One: Clarity of Purpose and Goals

Although the California Constitution sets a minimum level of educational opportunity that must be provided to every student, one would hope that the constitutional minimum would not become an acceptable target. Our ambition should extend beyond raising our national ranking from 49th to 40th on some measure. Nor is it enough to set goals for the mean or median performance of any group of students. Both the California Constitution and sound civic judgment counsel against a system blind to radical inequalities of opportunity that lie obscured beneath averages at any level.

In my view, a reasonable goal for California should be that our system of public schools should provide the means for any student, of whatever background, to have a chance to compete for entry into the state's public university system. This is not to say, of course, that every student should or will want to attend college. But we ought not to be effectively making college admissions decisions for students in the fifth grade.

Others may prefer less operationalized goals. One of the results of educational adequacy litigation in other states has been a variety of thoughtful declarations concerning the purposes of public education and the capacities education should develop in children. For example, in interpreting the education clause of that state's constitution, the Kentucky Supreme Court declared that the system of public education must, at a minimum, reasonably lead to the following:

- (i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic, social, and political systems to enable students to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (vi) sufficient training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient level of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.”⁷⁰

California might arrive at a different formulation, but it is hard to imagine serious argument that California's goals should be less expansive than those adopted by Kentucky more than a decade ago.

Two: Minimal Standards

Whatever the aspirations for California public education, whatever our ambition to raise the average quality of California's schools above the bottom tier, there are conditions that should not be allowed to exist under any circumstances in any facility allowed to call itself a school. That means that, with regard to each educationally significant input, we must have standards that describe what every student has a right to expect: a safe and healthy facility without the distractions of leaking roofs, rats and cockroaches; a reasonable opportunity to be taught by a person with sufficient training; access to books for homework and other instructional materials

⁷⁰ *Rose v. Council For Better Education*, 790 S.W.2d 186, 212 (Ky. 1989)

that are essential to learning. Certainly, an accountability system should do more than secure adherence to minimal standards, but any acceptable accountability regime must *at least* insure that children are not subjected to violations of the most basic standards.

Three: Accountability TO students and parents

An adequate accountability system must make real the abstract promise of the California Constitution: that students have of individual, fundamental rights to an adequate and equal education. This means that the entire project of accountability must be turned right side up. Whereas we now proceed as if it is the students and teachers who are accountable to state officials for student performance on nationally normed tests, and therefore for California's rankings among other states, we must now devise a system that holds accountable those constitutionally charged with delivering educational opportunities to students. The state may decide to accomplish this result in many different ways, but one path seems irresistible: taking advantage of the caring and capacity of students themselves, their parents and teachers.

To cite the most simplistic example: We do not need an army of bureaucrats inspecting bathrooms, the condition of which is already known to students -- provided that we provide the means for officials to listen and respond to students. Sadly, in some schools students and parents have come to expect the unacceptable. Establishing and publicizing clear input standards should alter these expectations. More generally, we know that increasing parental involvement can have significantly positive effects on schools. Although some parents become involved with or without encouragement of school officials, it might also make sense to hold both state and local school officials accountable for their effectiveness in facilitating parental and community involvement.

Four: Accountability for performance and for all educationally significant inputs

Paying attention to inputs does not mean that we should abandon assessment, but rather that we should continue to improve the validity of assessment tools, and reduce the creation of perverse incentives that inevitably result from any "high-stakes" assessment. The best way to accomplish that is to refocus the purposes of assessment, from allocating blame and incentives, to identifying and correcting problems in teaching and administration, and identifying those approaches to teaching and learning that are particularly effective and worthy of replication.

Richard F. Elmore has made the case for accountability beyond student performance in calling for what he calls "reciprocity of capacity and accountability." This would lead to different uses for tests:

. . . [T]he first diagnosis of school failure should not be directed at teachers and students, but at the way policymakers and administrators have organized resources to promote new knowledge and skills in schools.⁷¹

O'day and Smith agree that a better performance-based accountability system "would hold students and schools, and presumably school systems and even states, accountable for their

⁷¹ Richard F. Elmore, "The Politics of Education Reform," *Issues in Science and Technology Online*, Fall, 1997, available at <http://www.nap.edu/issues/14.1/elmore.htm>.

respective performances."⁷² But they go on to argue that if we are locate some accountability for performance at the school level, in addition to performance standards, we must have *resources standards* and *practice standards* at that level. Resource standards pertain to whether a school "has the essential human and other materials to offer all of its students the opportunity to learn the content of the curriculum frameworks to a high level of performance." Practice standards relate to whether a school "actually implements a program of study likely to provide its students such an opportunity."⁷³

No accountability regime can succeed if it ignores those factors that contribute to educational opportunity and leave unaccountable those responsible for insuring their delivery to the classroom. Focusing on inputs at the classroom level provides a method for locating accountability for their delivery, which will vary according to the organization and governance of the school and district. Thus, Elmore observes:

For example, a failing school in which teachers have not had sustained and effective professional development, organized in a way that is directly connected to standards for student performance, is not a failing school. It is a school managed by failing policymakers and administrators.⁷⁴

To cite another example, if school-level officials are authorized to secure necessary maintenance from a source of their choosing and given an adequate budget, then one need look no further in allocating blame or praise for the condition of school facilities. If, on the other hand, replacing a broken window requires requests of a bureaucracy, then we must look to the top of that particular division within the bureaucracy when the window remains broken over the years. And we must look to the overall management of the district for the maintaining an internal structure of accountability that permits such unacceptable results. And finally, the California Constitution requires that state officials be accountable for the failures of accountability systems at the district level and above.

Five: Universal Accountability

Once one reframes accountability in terms of the delivery of the tools for learning to individual classrooms and the responsibility for insuring their delivery, it becomes even more obvious that the exclusive focus on teachers and principals is misguided. With each role in the vast bureaucracies and organizations that deliver public education, from the school custodian to the Governor and Superintendent of Public Instruction, there are only two possibilities: either the person in that role is accountable in some way for the delivery of one or more significant inputs to education, or that role should be abolished and its funding transferred elsewhere. Which is the case is an empirical question, rather than one of politics or morals.

The structure of all organizations reflects, to some degree, a kind of structural inertia: we remain organized as we were last year unless there is some significant pressure to change. Absent such pressure, large bureaucracies in particular can acquire a significant amount of deadwood, reflecting not the value of the people assigned to particular roles, but rather the value of the roles themselves. Until a school, school district, or the Department of Education has been

⁷² O'Day and Smith, *supra*, note 62, at 271.

⁷³ O'Day and Smith, Note 62, at 275-276.

⁷⁴ *Id.*

subjected to fairly searching scrutiny, we cannot know whether disappointing performance is the result of inadequate funding or of poor accountability and management systems at work at each level. Liberals and conservatives will have different hypotheses, of course, but these are also empirical questions to which ideology supplies no adequate answer. We must, however, start with the principle that accountability should be comprehensive⁷⁵ or universal.

Six: Coherence with Governance

Universal accountability by itself can accomplish nothing, of course, unless those who are accountable have control of the resources and processes that make success possible. It follows that the structure of accountability must be coherent with the structure of governance and the control of resources. Holding people accountable for things over which they exercise no control may serve political ends, but it can do nothing to improve overall performance. Organizational inertia and social change may also leave us with formal structures of governance that no longer match the control of resources or any rational allocation of accountability. Rhetoric of decentralization and local control rooted in old political struggles may be contradicted by the current facts of centralized control of resources. The coherence principle does not lend support to any particular style of governance, no preference for centralization or its opposite or alternatives. Rather, it means only that any workable accountability regime must fit the structure of governance.

Seven: Sensitivity to Efficiency

Finally, any accountability system must be responsive to one of dominant concerns that has made accountability a theme not only in the past decade, but in each wave of school reform: inefficiency and waste in the public school system. Taxpayers deserve the assurance they seek, that public education dollars are well spent. They deserve a genuine response rather than political gestures. This is yet another reason that any accountability system must take account of the relation of inputs to student performance. Once our citizens are reasonably satisfied that the public education system makes efficient use of public funds, then they may also be more willing to see per-student funding rise to levels above 33rd among the 50 states.⁷⁶ In the end, unless California schools become radically more efficient than those in other states, California cannot have a first class system of K-12 education when it provides 33rd class funding. Improving the accountability regime for K-12 education may be a necessary predicate to making that case.

Conclusion

An outline of an accountability system adequate to the challenges of California public education can be found in a few sentences in the *Framework to Develop a Master Plan for Education* prepared by the legislature's Joint Committee to Develop a Master Plan for Education -- Kindergarten Through University:

The state must develop and maintain an accountability system to ensure that the state's responsibility to provide a high quality education to students is being met. All

⁷⁵ Much the same point has been made by John Goff, former Ohio Superintendent of Public Instruction, in "A More Comprehensive Accountability Model," available through the Council for Basic Education, at <http://www.c-b-e.org/articles/goff.htm>.

⁷⁶ The ranking for 1999-2000 per the National Education Association, available at <http://www.nea.org/publiced/edstats/00rankings/h-11.html>

participants in the educational process -- adults and organizations, as well as students -- must be accountable for performing their functions effectively, so that the defined knowledge and skills are being imparted successfully to students. An effective accountability system must offer constructive interventions when learning does not meet performance standards, and employ sanctions that reflect the importance of meeting the state's obligation.⁷⁷

For reasons I have sought to explain herein, the current accountability system in California falls short of the legislature's vision. My ambition in this paper has been to help clarify what we must do in order to realize that vision and to insure that we provide to every child in California the quality education to which he or she is entitled under our Constitution.

⁷⁷ Joint Committee to Develop a Master Plan for Education -- Kindergarten Through University, *Framework to Develop a Master Plan for Education*, 10 (August, 2000).