

Culture and Crisis:
Education Federalism and School Choice

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Annie Pleinies-Matzker is currently pursuing her PhD in Public Policy at Liberty University. She first became interested in the School Choice Movement with her work with the Ohio Department of Education. She currently resides in Virginia and works for Liberty University as an Assistant Director of Admissions. Her hope is to continue doing research on education federalism and how that is affected by the increased growth of the School Choice Movement.

Federalism is questioned in many public policy areas where the government imposes extensive regulations over state and local governments. In the field of education federalism specifically, the government has increasingly pushed boundaries both vertically with state and local governments over grant money and horizontally with the different branches of government. This paper will start by discussing the push and pull of education federalism when it comes to federal programs and the executive branch and their initiatives. This paper will also address school choice. School choice is a movement that is growing in momentum as educational needs are not being met by government systems. Parental insight into school choice is changing education federalism significantly and government jurisdiction will become less relevant as parental choice increases. This paper will investigate the school choice movement and how education federalism plays a role in facilitating such movement. This paper will then discuss a biblical worldview behind more localized control of education policy and biblical support for the school choice movement. In the end, this paper will provide support for the need for education policy to be the responsibility and jurisdiction of state and local government. It will also discuss a Christian worldview of school choice and why it is important to give parents the option to choose what kind of education their children will receive based on the Tenth Amendment. Finally, by looking at the relevant literature on this topic, one can infer that ultimately the states and parents should have the greatest control of school choice due to the diverse needs of each individual state and student and to limit federal coercion. Whereas all these resources and research discusses education federalism and various aspects in regard to school choice, this paper's research is a synthesis on why it is important for states and parents specifically to have control over education policy versus the federal government. This paper bridges the gap between education federalism and the school choice debate. It also presents this issue from the viewpoint of the Tenth Amendment and why certain powers should be left to the states and respectively the people (parents).

History of School Choice and Education Federalism

The current public policy arena for school choice and federalism is one of increased back and forth between the state and federal government. Historically, the predominant theme was that the local government had control over schooling (Heise 2017, 1860). Increasingly, the federal government has begun to usurp control over education policy through a variety of different initiatives. The current relevance for this research is timely. The Trump Administration brought an increased desire for parental choice when it comes to education and more options for low-income students. With each successive act, it is also a war between federal and state authority in making these important decisions on education federalism. With the Trump Administration leaving and the Biden Administration coming in, this issue is relevant now more than ever, because Biden will most likely mirror similar stances on federal authority over education policy that his former mentor Barak Obama espoused. Trump undid a lot of what Obama put in place and Biden could potentially implement increased federal authority with his return to the White House.

Moreover, the following section will discuss the major actions that the federal government have taken and alternative acts that have been passed to question federal authority. These actions include the No Child Left Behind program (NCLB), federal education waivers, the "Dear Colleague" letters, and the subsequent Every Student Succeeds Act (ESSA).

No Child Left Behind (NCLB)

No Child Left Behind (NCLB) was the turning point for education federalism in which the federal government usurped a lot of regulatory control from the states on education (Heise 2017, 1861). In this act, the federal government set forth a number of restrictions and benchmarks that states had to meet (Heise 2017, 1867). Although this became more regulatory on behalf of the federal government, the federal government deferred to the state to make their own form of standardized testing to satisfy the assessment requirement in this act (Heise 2017, 1867). This act allowed the federal government to sanction states that were not meeting federal standards (Heise 2017, 1867). It also created the loophole in which states would adjust their own standardized testing in order to avoid being sanctioned by the federal government (Heise 2017, 1867). This act also set out the unprecedented expectation of 100% proficiency in math and English by 2014 which was unattainable (Heise 2017, 1868). This time under the NCLB was a time of increased federal power, “During his (Barak Obama) two terms in office, the federal government would intervene more aggressively in education than perhaps any other domestic policy area other than health care” (McGuinn 2016, 393). Obama also was highly involved in extensive teacher evaluation protocols and grant programs that forced the state’s hands in education policy (McGuinn 2016, 394). This would eventually lead to political backlash against federal overreach in the education policy arena (McGuinn 2016, 394). This act was the definition of federal overreach. In time, most states were set to not meet the NCLB’s standards and were requesting waivers from the Department of Education in the form of political favors including adopting Common Core Standards (Heise 2017, 1870). Critics of such waivers argue that there is no constitutional basis for such waivers and that this causes a major federalism concern (Heise 2017, 1871). Heise describes why this is, “More specifically, in addition to the separation of power and federalism concerns, Secretary Duncan’s use of conditional waiver authority in this manner also may have violated the Spending Clause by, in essence, ‘changing the rules of the game in unexpected ways,’” (Heise 2017, 1871-1872). NCLB directly led to the Department of Education having to grant exceptions, or waivers for states to meet the strict federal education standards put into place.

Dear Colleague Letters

Further, the federal government was also accused of federal overreach in their “Dear Colleague Letters” in which the Obama Administration’s Civil Rights Division challenged schools to allow students who identified as a different gender to use their choice of bathrooms (Heise 2017, 1876). When several states had statues that said otherwise, the Civil Rights Division superseded their laws (Heise 2017, 1876). Although it was often discussed in reference to restroom rights, it was the broader defining of a student’s gender identity versus biological sex that caused a stir (Heise 2017, 1876). States wanted the rights to be able to define such important distinctions themselves and this is another example of federal encroachment into education policy and education federalism as a whole. This mandate was passed under the Obama Administration and would later be repealed by the Trump Administration (Heise 2017, 1877).

Every Student Succeeds Act

In 2015, the Every Student Succeeds Act (ESSA) was initiated which undid a lot of what NCLB did and established greater state control over education policy once again (Heise 2017, 1861). This is an example of the push and pull that exists within the field of education policy as administrations come and go. This act was enacted to essentially replace the NCLB and was created to give further discretion and control to the state’s on development of academic metrics

and standards (Heise 2017, 1872). ESSA allowed states to withdraw Common Core as their standard and develop and test their own academic metrics (Heise 2017, 1872). It also did not have that many ramifications for failure to meet yearly progress (Heise 2017, 1873). States have greater autonomy when it comes to standards and preventing the federal government from having major regulatory power to provide waivers, or exceptions as what happened during the NCLB (Heise 2017, 1873). There is a lot of evidence to show that this specific act returned the power of education federalism back to the states (Heise 2017, 1873). The ESSA in general is a more state-centric law that dramatically reduced the federal government's power in education federalism (Heise 2017, 1875). Some of the reasons why the ESSA is more beneficial is it allows states more autonomy and it allows them to make standardized testing and metrics that best suit their state and their student population's needs. This act returned the power back to the states over education policy.

Increased Demand for Parental Choice

Further, along with the back and forth between jurisdiction at the state and federal level, parents have also exhibited growing concerns over school choice (Heise 2017, 1862). Parents have increasingly requested more school choice and freedom when it comes to education options (Heise 2017, 1862). Evidence of the growth of the parental choice movement is evident in the increased enrollment in charter school programs and the increased existence of alternative education programs such as school vouchers (Heise 2017, 1882). Alternatively, public school education enrollment has decreased statistically, "Data from the U.S Department of Education make clear that this percentage has declined from 80% in 1993 to 73% in 2007...a 7% decline in students attending their traditional government 'assigned' public school implies an approximate drop of 3.5 million students over a fifteen-year period" (Heise 2017, 1882). Public school education is statistically dropping in its share of the education market as alternative options become available to parents and students. Some of the education options that have been discussed include, "charter schools, school voucher programs, tax credit programs, and homeschooling" (Heise 2017, 1862). These all are examples of options that have been discussed in the policy arena in regard to school choice. The increased presence of parents in the education choice debate calls for more of a market approach to education policy (Heise 2017, 1863). Schools will increasingly have to compete to draw in parents and provide a quality education. This is known as "parental consumerism" (Heise 2017, 1863). This is the same idea of marketplace competition that was presented by Milton Friedman in his text, *Free to Choose*.

In addition, this draw away from governmental entities and to the parents as a greater factor in education choice causes reduced control of the government over education as a whole (Heise 2017, 1894). Heise describes how increased parental control affects the tug-o-war between state and federal authority in education federalism, "While control over education policy—particularly public education policy—can dramatically influence schools, as more parents gain control over where their kids go to schools, jurisdictional squabbles among governmental units over what happens within schools will decline in importance" (Heise 2017, 1894). It is also important to make the distinction that legally, parents have a legal right to exercise their parental authority (Heise 2017, 1894). *Pierce v. The Society of Sisters* was a landmark case that sealed the ability for there to be a plethora of school options (Heise 2017, 1895).

Alternate View

The alternate viewpoint to state/parent control of education choice and policy is for federal control of education policy. Federal control of education policy is best exemplified in the No Child Left Behind (NCLB) program and the “Dear Colleague Letters,” by the Department of Education. Both of these incidents are examples of both legislative and executive education policy that took away freedom and flexibility from the states. Proponents who believe that the federal government should play a bigger role in education policy point to the disparities among states when it comes to states being control of education policy (Bowman 2017, 15). Bowman argues that differences in education quality, school funding, and equality as a whole are results of states being in control of education policy (Bowman 2017, 15). Bowman cites the importance of a quality education and how statistically it can lead to less poverty, less welfare, and less crime overall (Bowman 2017, 15). Research by Robinson points to how federal authority over education policy needs to exist at a greater capacity, because of the education disparities and inequality that state control creates across the United States (Robinson 2013, 288). Robinson describes how education quality has a direct correlation with the nation’s goals of creating students fit for democratic society (Robinson 2013, 290). In summary, the biggest alternative viewpoints that have been expressed in research describe that education quality can affect national goals and therefore the federal government should play a greater role in facilitating education equality in education federalism. These proponents of greater federal control disregard the importance of states being able to make policies that best suit the needs of their citizenry and also disregard the evidence of prior demonstrations of federal authority that have failed (NCLB).

Literature Review

Because of the issues listed above on the various acts—both legislative and executive in nature that have caused the push and pull of education federalism, there is significant literature that covers this topic. Heise describes in depth statistics surrounding a decrease in public school education and the increased parental authority and school choice initiatives that have been created (Heise 2017). Federal authority over education policy is dwindling as parents becoming increasingly involved in education choice (Heise 2017, 1894). The federal government showed that federal authority over academic standards was not successful through its NCLB initiatives in which most states had to request waivers from the Department of Education, or be held liable for failure to meet the act’s requirements (Heise 2017, 1870). This also created the requirement of the adoption of Common Core Standards which created a whole new set of problems for the education world (Heise 2017, 1870). Heise describes in his research that returning authority back to the states through the Every Student Succeeds Act (ESSA) was a turning point in which states were able to regain authority and create their own attainable testing standards (Heise 2017, 1872). This would allow for states to truly create academic standards and education policy that meets the diverse needs of their citizenry. In addition to his 2017 piece on education federalism as a whole, Heise also wrote a research piece breaking down if the NCLB is unconstitutional because it breaches Congress’ conditional spending authority (Heise 2006, 125). Heise finds through his research that it is not unconstitutional in nature, but it is coercive by nature (Heise 2006, 125). This is a prime example how over time the federal government encroaches on its constitutional boundaries and slowly usurps more coercive force over historically state ventures. An important distinction on how the NCLB changed the education federalism game is that it now focused on standards in all schools versus targeting key demographics such as low-income households or disabilities (Heise 2006, 125). Heise describes that although faulty and coercive by nature, the NCLB does fall in line with the decision in *South Dakota v. Dole* in regards to

Congress' spending authority (Heise 2006, 125). During the time of the passage of the NCLB, the court was going through a "federalism revival" according to Heise in which the NCLB was in direct opposition of its premise (Heise 2006, 125). Since the NCLB passes the Dole test, the only other option for education federalism in this sense is to pass legislative boundaries to protect the education world from federal encroachment and to reign in the federal government and their spending authority (Heise 2006, 125).

In addition, Kurzweil's research on education federalism discusses the fact that at the federal level—education policy is often bogged down by bureaucracy and there are various solutions in which the federal government can turn over authority to the state, or even local level in order to be more efficient with education initiatives (Kurzweil 2015, 567). Kurzweil's research investigates three ways in which the federal government attempts to invigorate education policy. The first way is through administrative waivers as was done by the Department of Education during the NCLB program (Kurzweil 2015, 567). The second way is through cooperative federalism in which the federal government empowers the state and local governments to take over education policy initiatives (Kurzweil 2015, 567). The third way is coined as "experimentalism" by the author in which private and public parties come together to problem-solve education policy (Kurzweil 2015, 568). According to Kurzweil, each of these has public policy implications. Specifically, cooperative federalism as is most relevant to this article has the possibility of altering national policy interests through its implementation (Kurzweil 2015, 568). Alternatively, Kristi L. Bowman's research indicates that the education federalism realm is not one of cooperative federalism, but is one of dual federalism (Bowman 2017, 5). The education world itself has not kept up with the move towards cooperative federalism that other programs and initiatives have such as the Clean Air Act (Bowman 2017, 6).

Dustin Hornbeck's research centers on education federalism and if the national government should have any role in education (Hornbeck 2017, 72). Hornbeck relies on the Tenth Amendment as his justification as to why states and the people should have a primary role in facilitating education policy (Hornbeck 2017, 72). Hornbeck reflects on an important part of why education should be localized as much as possible,

Within the context of education, the United States is made up of a collection of villages, townships, counties, and other local government entities. Local school boards have traditionally controlled the schooling/education systems for localities, and each school board has power and control to make independent decisions as to what they feel is best for the children in their community. Individual communities have different needs, and every citizen of each community can vote for their school board members which represent the polis of each village. Schooling and education from the perspective of virtue ethics posited by Aristotle would best be served by the local community. It is within the local community that people learn from one another and witness virtue with the hope of obtaining this as their telos toward the goal of eudaimonia. Situated within a community, individuals find friendship, and within relationships between friends, virtue is found, (Hornbeck 2017, 72).

Hornbeck's contribution to the education federalism's literature is one of a philosophical approach to the issue of who should ultimately have jurisdiction and it is clear from the above paragraph that the more localized—the better. The closer to home education policy is, the more individualized the solutions can be for the citizenry and the citizenry (or parents) can hold

elected officials accountable if their policies do not line up with citizenry desires (Hornbeck 2017, 72). Where Hornbeck differs is he believes that there should be an equal balance between federal, state, and local governments when it comes to education, but that the federal government should intervene if the national ideal of inequality is not being upheld in states (Hornbeck 2017, 72). In addition, a common democratic voice should guide federal decision making (Hornbeck 2017, 72).

In addition to the literature above, Shannon McGovern also has done research on education federalism. Like previous researchers, McGovern believes that the federal government's relationship to education policy and the states is one of "cooperative federalism," or at times "coercive federalism" (McGovern 2011, 1519). McGovern defines cooperative federalism as, "Cooperative federalism' is a model popularized in the mid-twentieth century that emphasizes shared interests and voluntary collaboration between state and federal governments, including state implementation of national policy through federal grants" (McGovern 2011, 1519). By contrast, coercive federalism is mandates and regulation that force states into compliance of federal education policy (McGovern 2011, 1519). McGovern discusses a failure of the NCLB program is states having to inflate scores and change metrics in order to meet federal standards in what she dubs as a "race to the bottom" (McGovern 2011, 1519). This is the failure of federal coercion and overreach as it creates issues where states are bending education policy and initiatives to meet the federal narrative. Further, McGovern identifies four areas in which federal oversight needs to be objected and re-evaluated as a whole,

(1) conflicts with the doctrine of local control and its attendant values of democratic participation and quality education; (2) limited federal funding and unfunded mandates; (3) threats to the institutional autonomy of state legislatures; and (4) ossification of unproven education reform trends. While each of these considerations may counsel in favor of a continued state role in education reform, they do not require exclusion of the federal government, (McGovern 2011, 1519).

According to McGovern, federal coercion should be limited, but the federal government should still have an high-level regulatory approach to education policy.

States' Role in Education Policy

After reviewing the literature and studies done on education federalism and school choice, it is clear that states have the primary role to play when it comes to education policy. Traditionally, the federal government has attempted to take control of education policy and that role should be left to the states and to the people (parents) respectively. The research indicates that the more localized control—the better. Several reasons that have been revealed through relevant research have pointed to why past federal programs have not worked and why philosophically the state must maintain education policy. From a constitutional standpoint, a defense for state jurisdiction in educational policy is derived from the Tenth Amendment of the United States that reserves rights to the states and the people (Hornbeck 2017, 72). This agrees with Hornbeck's philosophical analysis of why from an Aristotelian point of view, education should be handled as locally as possible (Hornbeck 2017, 72). The premise of federalism is to prevent tyranny from the government and the government is held accountable for the decisions it makes through the ballot box. When decisions on education policy are made at the state, or local level, then the people (and parents) have a greater chance to hold lawmakers accountable and advocate for school choice. In addition, McGovern provides various reasons as to why federal

coercion should be avoided, because as evidenced in the NCLB, it causes states to bend standards and inflate scores to receive federal funding (McGovern 2011, 1519).

In addition, a defense for school choice subsequently encourages competition, because it creates a marketplace for schools to compete for students and consequently improve in their practices and performance (Heise 2017, 1894). From a bureaucratic standpoint, research from Kurzweil indicates that states' facilitating education policy is more efficient, because education policy can be bogged down by bureaucracy on the legislative side of the federal government (Kurzweil 2015, 567). This is why cooperative federalism can be utilized in which the federal government provides funding for states to utilize towards their education policy initiatives (Kurzweil 2015, 567). From a historical standpoint, prior uses of excessive federal authority has created issues of states being held to unattainable standards. The NCLB program is an example of such in which a 100% math and English proficiency was required of states and federal loopholes were the only way for states to comply (Heise 2017, 1870). When the NCLB was replaced with ESSA, states were able to create their own academic testing and standards to best fit their individual citizenry needs (Heise 2017, 1870).

Biblical Integration

From a biblical standpoint, education is fundamental. Proverbs states, "Train up a child in the way he should go; even when he is old he will not depart from it" (Proverbs 22:6). This verse discusses the importance of education and instruction in children's lives. Parents should be able to choose and be informed as to what their child is taught in a school setting and that's the main premise behind the school choice movement. From the beginning, man was made in God's image and therefore was given free will. Therefore that free will should translate into choosing how a parent wants their child instructed. Christian statesmen should advocate for school choice which would ultimately also allow for religious instruction to be a part of curriculum, it also advocates for free will that we are endowed to as a "pursuit of happiness." In addition to the Declaration of Independence, state constitutions also possess this call for liberty and free will. According to Bowman, liberty can be described as "freedom of coercion" and one facet of liberty is positive liberty in which one has the freedom to make choices to better one's life (Bowman 2017, 12). Bowman explains,

In this respect, an affirmative right to a quality education, for example, is grounded in the idea of liberty because its goal is to empower a person to have meaningful choices about the direction of his or her life. At the state level, language in each state's constitution creates a right to education and thus theoretically establishes this individual liberty," (Bowman, 2017, 12).

Moreover, state control of education policy traditionally provides a less regulatory approach than federal jurisdiction and it also accounts for the diverse needs of one's state versus a blanket approach. Therefore, a Christian statesmen should advocate for state/local jurisdiction where parents can be more involved in school choice. In addition, a Christian statesmen should understand as the founders' did that tyranny can happen when the federal government usurps too much control. This is because of man's inevitable sin nature as characterized in the Bible, "Therefore, just as sin came into the world through one man, and death through sin, and so death spread to all men because all sinned—" (Romans 5:12). Therefore, federalism is needed to restrain the government from usurping too much power. What specifically can a Christian statesmen advocate for in government? As discussed by Heise' 2006 research on education

federalism, although Congress has conditional spending authority and it often passes the Dole test for judicial standards, a Christian statesmen could advocate for greater legislative boundaries for the federal government's spending authority (Heise 2006, 125). This would prevent federal coercion in many policy areas, but would directly impact how they use education policy to coerce the states. A secular policy maker may not realize the importance of parental choice from a biblical worldview as well as the need for federal restraint in a world of tyranny due to man's sin nature. In summary, a Christian statesmen must advocate for state and local control over education policy over federal overreach and must also advocate for policies that encourage parental choice in the education policy arena.

Conclusion

In conclusion, it has become clear that there are ever-increasing options in the world of school choice and an equally controversially debate when it comes to education federalism. States should have greater control in the education federalism debate, because they are able to cater to the diverse needs of their population. In addition, greater school choice should become available, because it allows the education world to become a marketplace in which schools better themselves due to competition. Education vouchers, or tax credits are a tool that states can utilize in order to afford greater choice to the citizenry and support low income families and parents that still want to choose their ideal schooling for their diverse student's needs. More than ever, the education policy arena is shifting to allow for increased parental choice in the education world. A Christian statesmen should advocate for parental choice, because of the liberties enclosed in founding documents. In addition, they should advocate for greater state and local authority, because of the ability for the people and parents specifically to hold education lawmakers directly accountable for decisions that are made.

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