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ABSTRACT

Although federal involvement in education has been reduced in the 1980's under the Reagan Administration's "New Federalism," it is far from clear that state and local governments are willing and able to adequately compensate for this decreasing involvement to ensure educational equity and quality. In the current debate over federalism, three types must be distinguished: "doctrinal federalism," which describes how levels of government ought to relate to each other; "functional federalism," which defines how such levels actually do relate to each other; and "strategic federalism," which emphasizes the ways one level of government manages to influence another. The history of the enactment of the "Education for All Handicapped Children Act" (1976) demonstrates the extent to which educational issues raised initially at local levels may assume national importance through court litigation. Recent research into the effectiveness of various intergovernmental grant proposals and the decision in the Minnesota case of "Mueller vs. Allen" in favor of tax deductions for parents sending their children to private schools suggest that responsibility for the future of education should be shifted away from the courts to become more a matter of public policy debate. (JBM)

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FEDERAL INVOLVEMENT IN EDUCATION

In Pursuit of Equity and Quality

The decade of the 1980s is one of radical reconsideration of the federal role in education. Federal expenditures on elementary and secondary education have been cut substantially, reversing the trend of the 1960s and 1970s toward greater federal financial involvement. Much of the aid that continues to be provided has been transformed from funding for particular categories of pupils or services, to block grants for use at state and local descretion. Even national reports advocating drastic educational reforms have largely avoided specifying a significant federal role for their achievement.

Recent shifts in federal policy can be evaluated by reviewing the three major concerns that motivated the rise of federal involvement in education in the two previous decades:

- the effects of uneven educational quality across the states, and a concern that the quality of schooling available to American youngsters depended to an unacceptable extent on their place of residence;
- the inequitable distribution of resources among certain groups or regions of the country;
- the practical gains that result from centralized (federal) planning and coordination.

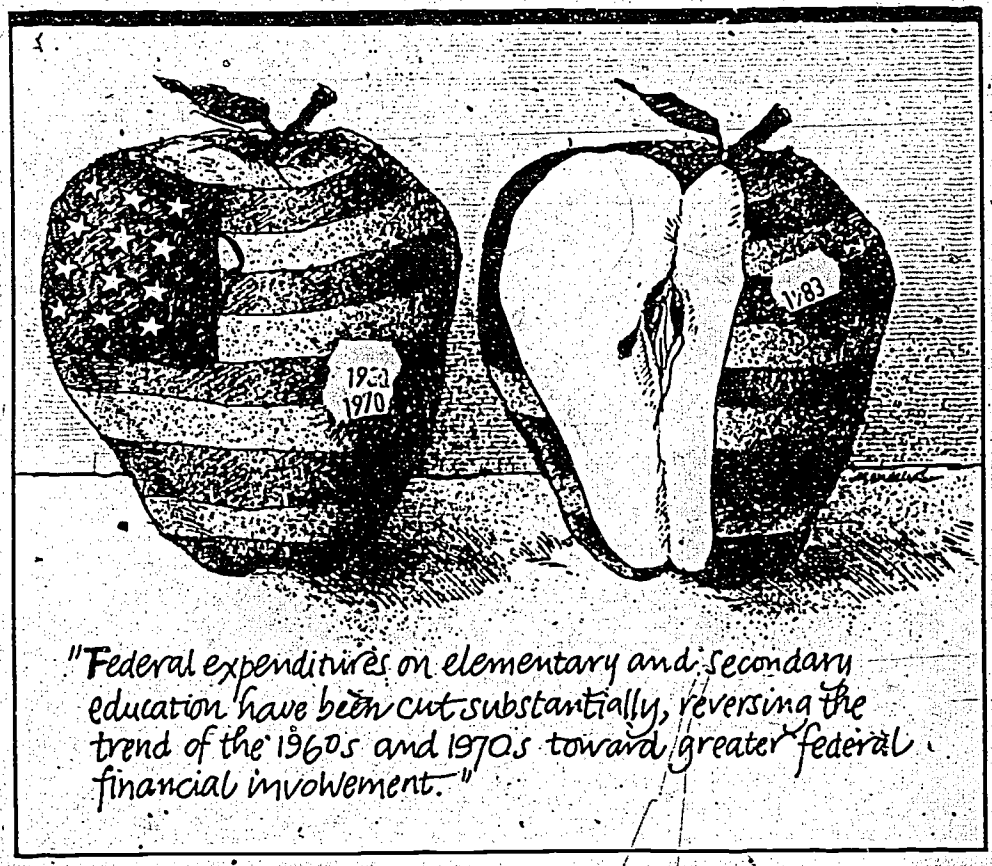
Congress has justified a substantial federal role in addressing these concerns on the grounds that a national commitment to educational quality and equity *could* not or *would* not be met without federal involvement. One remarkable feature of the current spate of reports and recommendations about the status of American education is their silence on the question of the federal role. By inference or design, responsibility for developing and supporting strategies to meet present "crisis" in education is assigned to the states.

This lack of attention to the question of a federal role in education is consistent with a central tenet of the Reagan Administration's "New Federalism": that the "best" government is a government "closest to the people" and that state and local governments are *willing* and *able* to take over the responsibilities previously held by the federal government.

The New Federalism is expressed in education as the 1981 Education Consolidation and Improvement Act (ECIA). ECIA reduces the funding level and regulating support for federal education initiatives consolidated by the Act but retains previously legislated goals of increased equity and excellence. Implicit in ECIA is the assumption that the national interest in education can be served without a substantial federal role.

The initial state and local response to these New Federalist policies suggests that such an assumption may be misplaced. State and local willingness and ability to address the broad federal policy objectives of equity and excellence are uneven at best.

There is currently little evidence that states are capable of making up for the



"Federal expenditures on elementary and secondary education have been cut substantially, reversing the trend of the 1960s and 1970s toward greater federal financial involvement."

cuts in federal dollars for educational expenditures. The most obvious constraint on state action is the fiscal retrenchment affecting the nation's economy. States are having a tough time meeting their commitments at present. There have been property tax limitation measures in two states, and revenue raising limits in many others. With such severe budgetary problems, it is unlikely that states would be able to assume greater financial responsibility than in the past.

Equity

A basic premise for returning to states and localities control over the funds provided to meet national educational goals is that the states now share those same goals. Research over the past decade on compensatory education programs such as Title I does demonstrate that all the states are complying with the basic federal requirements and that federal monies designed to reach poor, educationally disadvantaged youngsters are indeed reaching these children. The same body of research, however, clearly demonstrates that there is a wide variability of commitment among the states to provide compensatory education.

Some states have made the federal goal of equal educational opportunity a goal of their own. They have developed state compensatory, bilingual, and special education programs to which they commit substantial state resources and which they administer in coordination with federally funded programs. New York is a good example of this. That state receives nearly $250 million dollars in federal aid for compensatory education (Chapter 1 of ECIA). The state appropriates more that $170 million of its own money for a state compensatory education program. The federal and state monies are administered out of the same offices at both the state and local level, allowing for a coordinated attack on the problems of educationally disadvantaged students in that state.

However, most states have shown no such commitment to the federal goal of providing compensatory education programs. These states have accepted federal money for compensatory education and have spent it in the ways that comply with federal mandates. These states have not put any of their own money into developing state programs to serve educationally disadvantaged pupils. They have kept federal programs and their monies separate within their educational bureaucracies and there is little attempt to coordinate the federal programs with state and local efforts in education.

Clearly, the political realities that shape the contexts in which state and local educational decisionmakers work have fostered very different responses to federal education initiatives. These vagaries reflect aggregate state political incentives rather than mean-spiritedness. Questions of equity, compensatory assistance and special needs simply do not receive much attention in the majoritarian traditions of state government. This variability in state and local response over the past two decades must lead to a questioning of the basic premise that all states are now willing to assume the responsibility for carrying out the federal education policy goals of educational equity. There is little evidence that states are willing to assume the political liabilities attendant with the "unequal" provision of special resources in favor of the poor or disadvantaged.

Quality

State response to Chapter 2 of ECIA shows an uneven level of competence and attention brought to bear on issues of educational quality — the second broad federal goal. Whereas Chapter 1 substantially reduced the regulations governing federally sponsored compensatory education activities, Chapter 2 has eliminated effectively a state presence.

Chapter 2 awards "absolute discretion" to school districts in designing programs directed at educational quality. Federal support for state administration of these efforts also is sharply reduced. The result is that quality improvement efforts of the type assumed by Chapter 2 (and by recommendations associated with recent reports on the status of education) depend almost entirely on whatever state and local capacity may exist. Chapter 2 grants to local schools are simply too small in most cases to justify much in the way of project planning. Further, both state and local officials point to powerful political pressures encouraging use of Chapter 2 for general aid to education rather than as support for quality improvement.

The only states in which educators expect to see meaningful local Chapter 2 quality-improvement efforts are those in which well-developed, state-supported quality-improvement efforts already exist. In states which have not initiated their own quality-improvement efforts, or in which these efforts are in early stages of development, officials believe that federally supported quality improvement is, for all practical purposes, dead.

State and local response to ECIA, in short, suggests that the political and economic realities prompting a substantial federal role have not changed significantly in almost 20 years of federal program operation. Instead, it appears that the Balkanization of federal goals and services is an inevitable result of the New Federalism. Educationally disadvantaged youngsters will be well served or inadequately served depending on the resources provided by the state in which they live. Whether or not students receive the benefits of quality improvement efforts will also depend on their state of residence.

State and local practitioners have been virtually unanimous in their criticism of the uniformity of former federal regulations and objectives. Variability among states in the nature of federal support activities and in the particular strategies chosen to implement program goals, would be a good thing if it signifies state efforts to tailor federal programs to state needs and capacity. However, where variability in state activities translates into substantially *unequal* services and opportunities across the nation, it is not a good thing, from the prespective of a *federal* policy. Assuming a national interest in education, a clear lesson from the early state and local response to the New Federalism is that subsequent federal policy deliberations — as well as debates about remedies for a "nation at risk" — require careful attention to a federal role. Federal policy choices, as ECIA shows, influence the level and quality of education services provided across the country.

Federal policy choices ... influence the level and quality of education services provided across the country.

Some questions are fundamental to any consideration of the federal role in state or local educational affairs. First, is federal involvement necessary? Second, what form should federal involvement take? What mix of policy tools appears best suited to the reality of the policy setting and particular policy purposes? These questions are difficult and complex. There is no single policy "answer" for the range of interests traditionally addressed by federal education initiatives, and there are few programs for which these answers are evident. ■

FEDERALISM: Different Views, Different Strategies

Is there a federal role in education?

Posing this question produces several reactions. The federal government has asserted its role through a steady growth of policies over the past decade. Those opposed to such involvement maintain that the federal government should return that authority it has usurped to the states and local communities where it traditionally lay. Even supporters of federal intervention in education have criticized the extent of federal involvement, maintaining that the government has overreached itself, and has demonstrated by its ineptitude that it cannot play such a large role.

Underlying this opposition are a number of basic questions about the nature of the federal system, about the role that education plays in that system, and about how much that role should be expressed in policy. Different views of federalism therefore, imply different results. To fully understand any debate on these issues, alternative meanings of the term "federalism" must be examined. Mixing definitions without acknowledging this possibility confuses debate.

Federalism can mean at least three different things. Doctrinal federalism is a set of principles describing how levels of government *ought* to relate to each other. Functional federalism refers to a set of relationships that describe how levels of government actually do *relate* to each other. The strategy that one level of government uses to *influence* another can be labelled strategic federalism.

For instance, politicians frequently assert that state government ought to exercise supremacy in education, but day-to-day operating relationships among levels of government suggest a high degree of interdependency. The question becomes which definition of federalism should hold: the doctrinal assertion that states ought to be held supreme, or the functional assertion that would have all levels being interdependent.

Scholars and political figures often argue that the functions of government should be rationalized according to certain well-defined principles (a doctrinal assertion), when in fact the failure to rationalize functions allows one level of government to exercise influence over another through the use of shared functions (a strategic assertion). Here the issue to be decided is which definition of federalism should dominate.

Another source of confusion stems from the failure to distinguish *national* issues and trends from *federal* policy and practice. The interplay of national influences on the levels of government is usually ambiguous. Just because an issue has been traditionally the prerogative of a local or state government, does not mean that it can never be the subject of federal policy. Sometimes federal policy preempts state and local authority; sometimes it leaves state and local authority in place and adds an incremental federal requirement to it. Education presents a particularly difficult case for the meaning of federalism and the relationship between national issues and federal policy. Policy and practice reflect a strong national interest in education, but at the same time, manifest a deep ambivalence toward a federal role.

Federalism: The Doctrinal View

From a doctrinal standpoint, federalism is the set of principles describing how levels of government *ought* to relate to one another. In the current debate over federal education policy, the central question is whether, within the framework of the Constitution, the federal government has violated principles of federalism by becoming involved in education. If it has, what is the remedy? If it has not, how do the principles of federalism define the federal role in education?

Constitutionally and historically, the federal government derives its authority directly from the people, rather than from the states. This is the essential resolution that describes what the federal government is authorized to do. The federal system works the way it does because it was designed to be a representative system so as to prevent concentrations of power. Neither federal nor state government can claim to be "closer" to the people, since both take their authority directly from the people.

Under the Reagan Administration's "New Federalism", an issue becomes a subject for federal policy only when it cannot be efficiently resolved by lower levels of government. Using the doctrinal definition of federalism, that federalism is the set of principles describing how levels of government ought to relate, education is an especially suspect federal activity because of its tradition of state and local control, and because the federal government's fiscal contribution is relatively small.

Federalism: The Functional View

From a functional standpoint, federalism is what decisionmakers at all levels of government actually do, rather than what they say ought to be done. The functional view of federalism states that relations among levels of government arise partially out of the behavior of politicians and administrators to enhance and maintain their positions. This works to create vertical ties among professionals at different levels of government and to reinforce the authority of elected officials at the state and local levels.

Functional federalism has two levels. First, intergovernmental ties are necessary to make federal policy work at state and local levels. In other words, states and localities must assure that national purposes are carried out in practice. Second, the authority of lower levels of government arises from an electoral base; that is, that states and localities must appropriately represent their electoral constituencies. The question is whether federal policy is sufficiently flexible to respond to both kinds of functions, and whether the behavior of professionals and elected officials to preserve their positions is consistant with representing their constituencies.

Locally sparked changes produced a nationwide education system remarkably homogeneous in curriculum, structure, staffing, financing and governance.

During the period from 1840 to 1900 the organization of public schools in the U.S. changed. Responsibility for schooling passed from local voluntarism through neighborhood decentralization to its current, locally-centralized bureaucratic-form. Although locally sparked, the changes produced a nationwide education system remarkably homogeneous in curriculum, structure, staffing, financing and governance.

In the early 20th century, as states assumed more and more responsibility for rationalizing finance, organization

and professional certification, it became accepted doctrine to say that education was a state function, and so any federal interest was clearly subordinate to the primary role of the states. However, this historical evidence suggests another interpretation: that public education came about as a result of a nationwide movement and that it was instigated as a national enterprise.

So in terms of functional and doctrinal federalism, it appears that the federal role in education is as it was designed. Any ambiguity involving division of labor among levels of government is a reflection of the fact that education is a national enterprise to which all levels of government have a claim.

Negative by-products of federal involvement, like rules and procedures displacing professional judgement and distance from the locus of problems, do pose serious problems for educational policy. However, they are not, by themselves, symptoms of a failing federal system. The failure occurs when elected representatives at the local, state and federal level do not adjust policy and exert control when necessary. Any adjustments should be seen as functional interdependence of all levels of government rather than a breaking down of that system of government.

Federalism: The Strategic View

From a doctrinal standpoint, nothing in the language of the U.S. Constitution or the theory of federalism precludes federal involvement in education. The history of federal involvement shows that no domain — finance, structure, staff development or curriculum — is immune from federal influence. From a functional standpoint, the growth of interdependence among levels of government, while it raises difficult political and administrative problems, is hardly evidence that the federal system is failing. Indeed, some level of interdependence is required in order for one level of government to influence another.

The first and most basic limit on federal influence is the federal government's share in educational budgets — just under 10 per cent of all educational expenditures. In a period of fiscal retrenchment, declining school enrollments, and a declining proportion of the voting-age population with school-age children, the important strategic question for educational decisionmakers is education's share relative to other public expenditures, not the relative contribution of different levels of government.

This fiscal limit on federal influence means that the federal role in the delivery of educational services is marginal. Playing a marginal role puts the federal government in the position of depending heavily on other levels of government for its own success. However, this fraction is not an accurate measure of its utility to state or local governments. Eighty to eight-five per cent of most local school budgets are in fixed costs, mostly salaries, while the federal contribution is mostly in that precious portion that is discretionary and is devoted to special services and program innovation. So it is an important contribution in that it allows schools to undertake, and assume credit for, activities that would not otherwise be possible within existing budgets.

Is there an answer to the question of a federal role in education? Federal influence depends on the ability of policymakers to find the margin where federal policy is likely to be most effective, to ration the use of federal resources to those purposes where they are most likely to have an effect, and to avoid engaging in activities that erode the base of services upon which marginal federal resources operate. ■

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PL 94-142: From Courts to Congress

The Education for All Handicapped Children Act (PL 94-142) which went into effect in 1976, was the result of political activity and successful court suits by handicapped rights groups around the country. The history of its passage demonstrates how an historically local concern becomes a subject of Congressional activity.

Two million handicapped children between the ages of 7-17 were not enrolled in school in 1970. Many of these handicapped youngsters were excluded by state laws which designated them as ineducable or untrainable. Other handicapped children were consigned to institutions offering only custodial care.

Transforming the claims of the handicapped from charity to legal rights began in the 1950s. The pressure to treat the handicapped as persons with rights increased with the creation, in 1961, of the President's Panel on Mental Retardation. The law task force of that panel announced that the retarded should be accorded the same rights enjoyed by other citizens.

By the late 1960s, the inhumanity of the treatment meted out to the handicapped at some institutions, and the questionable reasons for excluding handicapped children from schools led reformers to demand a radical change in the way handicapped people generally and handicapped children in particular were treated.

From Proclamations To Courts

The civil rights movement and the War on Poverty provided the key ideas and the context for the movement on behalf of handicapped people. The position of the handicapped was compared to that of blacks, Native Americans, and the poor. By 1969, the courts were accustomed to hearing class action suits, there was a body of law concerning the guarantees of the Fourteenth Amendment to which they could refer, and there was a pool of lawyers experienced in poverty and civil rights law practice and strategy.

In addition, two crucial research findings were becoming widely accepted in the education community. The determination that all children could benefit from education undermined the rationale for excluding retarded children from public schooling as ineducable. Research also suggested that testing procedures for the

assignment of children to classes for the retarded were racially discriminatory. Once it could be argued that such children were educable, it became well-nigh impossible to mount a politically viable argument denying any handicapped child's claims to education.

Soon the organizations representing the interests of handicapped children pressed the claims of these youngsters as entitlements in state, national and international forums. Though these groups put considerable pressure on state governments to upgrade facilities and programs for the handicapped, little concrete action followed government expressions of good intent. Finally, one handicapped rights group, the Pennsylvania Association for Retarded Children (PARC), met with success in the courts. The consent agreement in *PARC v. Commonwealth of Pennsylvania* (1972) recognized the educational entitlements of the retarded as legal arguments that were formally recognized in a court of law.

However, to cast a claim in terms of a right guaranteed by the Due Process Clause of the Fourteenth Amendment also implies creating a set of procedures to protect that right. The consent agreement drawn up between the lawyers for the parties in *PARC* contained a detailed set of procedures, giving parents the right to challenge, at a hearing, the educational program received by their children. By 1974, 25 states required similar procedures. Pennsylvania later expanded the *PARC* protections to include other categories of handicapped children, in addition to the retarded.

From Test Case To Federal Legislation

Many factors combined to make education for the handicapped an issue ripe for federal legislation in the wake of *PARC*. White House initiatives and other court cases prompted bills to reform school finance in both houses of congress.

A federal law would establish an authoritative national standard and secure change in many states at once.

Publicity about the treatment of the handicapped led to the introduction of bills adding handicap to Title VI of the Civil Rights Act. Discrimination against the handicapped in education was specifically mentioned as one reason for the proposed amendment. A Senate Sub-Committee on the Handicapped, formed in 1972, decided to take up the issue of special education, thus tentatively placing handicapped education on the federal agenda.

Court cases, however, proved to be the decisive factor in the shift to the federal level. Court orders required individual states to provide a free and appropriate public education for handicapped children. They also specified detailed procedural and reporting requirements to be met by the states. While several states had developed or were in the process of developing legislation, court decisions sometimes obliged states to act more rapidly than they wished. The high cost of expanding educational opportunities for the handicapped forced the states to turn to Washington for assistance.

Court action also influenced handicapped rights groups to shift their efforts to Washington and work for passage of a federal law. A federal law would have several advantages, including the establishment of an authoritative national standard. It also promised to secure change in many states at once. States would be obliged to accept conditions imposed by new federal legislation in order to obtain the fiscal necessary to comply with court orders.

The approach advocates took in developing special education legislation paralleled that of the courts. Handicapped children were said to have a right to a free and appropriate public education, with a presumption that students would be placed in environments as similar to the regular classroom as possible. Beyond that, the substance of the right was unspecified. Yet even this vagueness had political benefits. A more specific definition might have failed to garner widespread political support, since education was still regarded essentially as a local responsibility. Even in this interventionist era, federal substantive mandates would have seemed excessive.

The proposed federal legislation guaranteed to every handicapped child an "appropriate" education. Essential to the enjoyment of this right was the individualized education plan (IEP). The IEP was to contain a statement of the child's level of educational performance, long-range educational goals, intermediate objectives, the specific services to be provided, the date of commencement and the duration of the services, and objective criteria and evaluation procedures to determine whether the goals were being achieved. The IEP is a legal document, a logical extension of the fact that handicapped children had been accorded rights. It also gives detail and substance to the right to a free and appropriate public education, not by specific legislative prescription, but by procedural requirements.

The IEP is also an ingenious device in terms of political acceptability. Like many of the court decisions, it avoids the treacherous waters of mandating specific services and recognizes the rights of children, and involves them and their parents in the educational process. It avoids

briefly...

Consulting editor for this issue of *Policy Notes* is Milbrey McLaughlin, associate director of IFG. The introductory article written by McLaughlin and Patrick Shields, "Federal Involvement in Education, In Pursuit of Equity and Quality" is a summary of current research on the "New Federalism" McLaughlin is conducting. Shields is a Ph.D. student in Stanford's School of Education. "Federalism: Different Views, Different Strategies" was contributed by Richard Elmore, professor of Political Science in the Graduate School of Public Affairs at the University of Washington. The article summarizes a lengthier paper, "Education and Federalism: Doctrinal, Functional, and Strategic Views", available from IFG.

David Kirp and David Neal contributed "PL 94-142: From Courts to Congress", from a lengthier manuscript entitled "The Allure of Legalization Reconsidered: The Case of Special Education". Kirp is a professor in the Graduate School of Public Policy at the University of California, Berkeley, and is currently an editor at the *Sacramento Bee*. Neal is on the faculty of Law at the University of New South Wales in Australia.

"Where Do the Dollars Go?" is written by Mun Tsang, a Ph.D. candidate in Stanford's School of Education. A more thorough discussion of the material can be found in "The Impact of Intergovernmental Grants on Educational Spending" written by Tsang and Henry M. Levin.

IFG Research Associate Donald N. Jensen wrote *"Mueller v. Allen*: A Precedent for Federal Aid?" A complete examination of the case is available in "Tuition Tax Credits: Has the Supreme Court Cleared the Way?" also from IFG. The illustration on the first page is the work of Barbara Mendelsohn of Stanford's News and Publications Office.

undermining the professional discretion of teachers and potentially enhances their influence over placement decisions. It provides a means of holding local administrators accountable while paying some deference to the belief that the federal government should not interfere too much with local autonomy in education. Finally, it appeals to local school officials by fixing an upper limit to liabilities with respect to the child. At the same time, its vagueness as to specific services to be offered the individual child made it generally acceptable to all the interested parties.

Compliance:
Legalization Begets Legalization

While these early federal proposals to reform school finance, including provisions for federal funding of education for the handicapped, came to nothing, court cases on behalf of handicapped children continued successfully. Courts ordered states to provide expensive services to children, leading the states to bring again intensive pressure on the federal government to provide emergency funding. Some support was forthcoming in the Education Amendments of 1974 (the Stafford Amendments). Lobbyists for the handicapped, however, were determined that the states not receive this money free of strings; they insisted that the amendments include at least attenuated due process provisions lifted from draft bills of what was to become PL 94-142.

Congress continued to ponder passing a comprehensive bill to guarantee the right of handicapped children to an education. For example, how was accountability from about 15,000 school districts to be assured? On the one hand there was concern from congressmen and staffers who had experience of federal funds being misapplied at the local level. On the other hand, the advocacy and civil rights groups did not trust local school administrators and teachers, and pushed for due process protections.

The idea of a central oversight agency, an early provision of one handicapped rights bill, was abandoned in 1973. Besides the astounding problems associated with reviewing as many as 8 million IEPs in Washington each year, political factors weighed against review. Any watchdog agency large enough to police 15,000 school districts would have violated the traditions of local governance in education, and a law establishing such an agency would be unlikely to pass.

The due process provisions, however, fit perfectly into the federal legislative scheme. They carried through the notion of individual entitlement developed in the IEP, and also allowed client and advocacy groups, to undertake their own enforcement initiatives. Enlightened self-interest would obviate the need for a large watchdog agency and reassure advocacy groups who believed that court action and legal procedures were the only way to counteract the power of local school boards.

What is provided in the final federal bill, Education for All Handicapped Children Act, is in large measure procedural and borrows heavily from earlier court decisions. PL 94-142 provides one procedure for giving substance to the rights of handicapped children, and another for enforcing it. Neither of these procedures defines the meaning of "appropriate" education as guaranteed by the law. Indeed this may be the attraction of the legal model. Since formulation of the substantive goal was deemed impossible, or not feasible, the procedural solution at least had the virtue of being attainable. Procedure was not, of course, thought to be an end in itself. The aspiration of the drafters of PL 94-142 was that the IEP and the due process procedures would result in a better education for handicapped youngsters. However mixed the success of PL 94-142 has been, it marked a high-water level in the use of legal values in federal education policy. ■

Where Do the Dollars Go?

Federal support for education has taken diverse forms in the past 20 years. Most recently, there has been a shift at the federal level from categorical funding, grants tied to specific programs, to block grants, which provide money for education generally. These shifts have important implications because the form of the grant appears to have a profound influence on the amount of the grant actually spent for educational services at the local level.

In primary and secondary education, intergovernmental grants constitute an important source of funding. An intergovernmental grant is a grant from a higher-level government to a lower-level government in order to augment the revenue of that agency or to induce it to devote more financial resources to certain specified activities. It may be a grant from the federal government to a state or local government, or a grant from a state to a local government. They include general aid to education, matching grants, categorical grants, and revenue sharing.

The impact of an intergovernmental grant is often characterized by the terms dilutive, substitutive, and stimulative. When the grant results in a reduction in total expenditure, it is considered to be dilutive. When it results in a reduction in expenditure from local revenue sources (but not in total expenditure), it is substitutive. When it results in an increase in total expenditure, it is stimulative.

State Grants
And Educational Spending

State governments have long been a major source of funding for education, and their role in school finance has been acquiring increased significance in recent years. In the school year 1959-1960, state governments provided 39.5 percent of the total funding for elementary and secondary schools, a level that increased to 40 percent in 1969-1970, and to almost 50 percent in the 1981-1982 school year. This upward trend is likely to continue through the 1980s.

• **General Aid.** Most state education grants have been awarded to local governments in the form of the "Strayer-Haig-Mort foundation grants." These are "equalization" grants given to school districts with meager property tax resources to enable them to provide at least a minimum educational program.

In conjunction with these foundation grants, the state also provides general aid to local governments in the form of population membership grants or ADA grants. Under this grant scheme, the state gives a flat amount of aid for each child attending a school district as reflected in average daily attendance (ADA). Both foundation grants and flat grants are essentially unrestricted block grants. They increase the income of local governments and reduce the reliance of local governments on local property taxes.

Most of the studies on unrestricted state block grants for education (or general state equalization aid in the form of foundation grants and/or flat grants) indicate that the average effect of such grants on the total educational expenditure of a local government is substitutive-stimulative. A local government receiving such a grant will typically use part of the grant for educational services; in this respect, the impact of the grant is stimulative. The local agency, however, may also use part of the grant on non-

educational activities. It may use some of the state aid for other government functions or it may use it to reduce the local tax burden; in this respect, the state block grant is a substitute for local expenditure. Estimates suggest that there is a 50 cent increase in total educational expenditure for each dollar of unrestricted state block grants.

• Categorical Aid. Although state categorical grants in education to local governments are provided by many states, they are nominal in relation to foundation grants. Categorical grants are tied to specific programs or educational services such as school lunches, school construction, and reading.

State categorical grants for education are substitutive-stimulative for some school districts, but purely stimulative for others. A number of more recent studies have indicated that for each additional dollar of state categorical grants for education, total educational expenditure will increase by an amount that is close to one dollar. On the average, state categorical grants for education appear to be more stimulative than state unrestricted block grants for education. This may be due to the fact that a categorical grant usually has more strings attached to it than an unrestricted block grant, so that the government receiving the grant is induced to spend more on the categorical program per dollar of aid.

• Matching Grants. A few states such as Massachusetts, Michigan, and Colorado have used some forms of power equalizing grants and percentage equalizing grants. Under these grants, a state government will match local expenditures, thus lowering the price of educational services for local governments. For the few states that have employed some form of matching grants to lower the price of education services for a local government, empirical studies have found a negative relationship between total educational expenditure and the price of education services. (However, the studies found that a local government was either quite responsive or not responsive at all to the grant.) The precise impact of a state matching grant for education seems to depend critically on the characteristics of a local government receiving the grant, and it is not always possible to generalize the experience of school districts in one state to school districts in another.

Federal Grants
And Educational Spending

Federal involvement in education, which began effectively with the 1965 Elementary and Secondary School Act, has been relatively modest (at 8 percent of total expenditures) compared to state and local involvement. Federal support for education, like state fiscal strategies, has taken diverse forms.

• Categorical Grants. Most of the federal grants for education take the form of categorical grants targeted for specialized education programs. The largest such grant is Title I of the Elementary and Secondary Education Act (ESEA) of 1965 which provides compensatory education for children from low-income families. Based on extensive studies, it appears that an additional dollar of federal categorical grant funds for education is associated with an average increase of 70 cents to one dollar of local educational expenditure.

• Matching Grants. The federal government has seldom used matching grants for education. However, a recent study indicates that a state will reduce aid to a local government which receives a matching grant from the federal government. The impact of a federal matching grant may thus be less stimulating than a state matching grant.

• General-Revenue Sharing Grants. There is, however, another type of federal grant to state and local government which will affect educational spending; it is a general revenue sharing grant (GRS grant). Revenue sharing refers to the scheme by which the federal government returns a portion of federal revenue to state and local governments to use as they see fit. Since the purpose of revenue sharing is to augment state and local government revenues, it should not be viewed as a system of grants to support any particular public service like education. The specific effects of revenue sharing on educational spending depend crucially on the relative preferences of state and local governments receiving GRS grants for using additional revenues on education as opposed to other public goods.

Most of the studies on GRS grants and unrestricted lump-sum grants have found that 25-43 cents out of every GRS dollar will go to new spending. Assuming that a state-local government spends 20-25 percent of its total expenditure on local schools, five to ten cents of every GRS dollar will be spent on education.

Conclusions

A review of the empirical studies on the impact of intergovernmental grants on educational spending indicates that intergovernmental grants have a significant effect on educational spending and that the average effects are different for different types of grants. These studies, however, also indicate that there can be considerable variation in the responses of local government units. Their fiscal patterns and spending behavior are so complex, it is hard to predict precisely how a particular government will respond to a given grant scheme.

In general, money given by states as general education aid has been found to be much less predictable in its effects than that given as categorical aid. Federal Title I grants tend be relatively more uniform in their effects. Both the average effect and the degree of uniformity are important parameters to consider in designing educational policies involving intergovernmental grants. ■

Mueller v. Allen:

A Precedent for Federal Aid?

Since the late 1970s, Congressional legislation has been proposed to provide tax credits for parents who send their children to private elementary and secondary schools. So it was with some fanfare that the Supreme Court announced in June that a Minnesota tax deduction program for parents of school children was constitutional. Many observers concluded that the decision removed constitutional obstacles to any federal tuition tax credit plan such as that requested by President Reagan. Yet close examination shows the case to be very limited in impact, and the constitutionality of the federal tuition tax credit proposal remains in doubt.

The case, *Mueller v. Allen*, involved a Minnesota law permitting state taxpayers to claim a deduction from gross income

Mueller v. Allen:

for certain expenses incurred in the education of their children. These expenses are limited to the actual costs of tuition, textbooks and transportation of dependents attending elementary and secondary schools. The amount may not exceed $500 for elementary school students and $700 for children in the upper grades. The deduction is available to parents of children in both private and public schools, although parents of public school children cannot claim a deduction for the cost of tuition since obviously they pay none.

The law provides tax relief to parents of many of the 91,000 students attending private elementary and secondary schools in Minnesota, 95 percent of which are church related. A group of Minnesota taxpayers challenged the constitutionality of the state's tuition deduction program, claiming that it violated the Establishment Clause of the U.S. Constitution by providing financial assistance to sectarian institutions. That clause prohibits Congress from making any law "respecting an establishment of religion" and has long been held to apply to the states as well.

Finding the overwhelmingly sectarian character of private schools to be of critical importance, the Supreme Court has invalidated several state financial assistance plans in the past. It has held that church affiliation meant that aiding private schools constituted aid to religion, thereby breaching the "wall of separation" that the Constitution requires between church and state.

The test of constitutionality used by the Court in resolving such cases is identified with the *Lemon v. Kurtzman* case decided in 1971. In order to be constitutional, a law assisting private schools or parents of private school students must 1) have a secular purpose; 2) have a primary effect that neither advances nor inhibits religion; and 3) not lead to excessive entanglement between church and state.

In June 1983, the Supreme Court found in *Mueller* that Minnesota's deduction program passed the *Lemon* test. Minnesota may legitimately seek to defray the cost of educating all its children, whether they are enrolled in public or private schools. Since the deduction is available to all parents of school children, the statue is neutral toward religion. A tax deduction is one of the many ways the state allows a citizen to reduce tax indebtedness. Furthermore, since Minnesota channeled its tax assistance through parents, and not directly to schools, the force of Establishment Clause objections is reduced.

The *Mueller* holding was interpreted by many as portending a change in the Supreme Court's attitude toward aid to religious schools, but in fact, the Court has made little change at all. Justice Lewis Powell, who earlier had voted to strike down a New Jersey bill that rendered tax credits to private school parents, apparently found the Minnesota bill less constitutionally objectionable and he switched his vote in *Mueller* to one supporting the assistance plan. In fact, the *Mueller* decision made more certain the likelihood that the federal tax credit plan would be declared unconstitutional.

The Administration's tuition tax credit plan in 1983 would reimburse parents who pay private school tuition for up to one half of those expenses, with a credit that rises from $100 to $300 in succeeding years. Taxpayers earning more than $40,000 annually would be eligible for only a partial credit, and those earning more than $40,000 annually would be eligible for only a partial credit, and those earning more than $60,000 would be ineligible for the program.

The federal tax credit plan differs from the Minnesota plan in two significant ways. First, it proposes tax credits, rather than tax deductions. A tax credit is dollar for dollar forgiveness against the net payable tax after all exclusions and deductions have been taken. Although a less direct form of aid than direct tuition grants, tax credits may involve the state more deeply in assisting sectarian schools than do either tax benefits or deductions.

A federal deduction like the one used in Minnesota would be quite different than a tax credit. A deduction helps the citizen reduce his tax burden when calculating how much is owed to the government. It would be merely one of many charitable and medical deductions available under existing tax laws and probably would involve the government in less direct support of parochial schools. Thus, a federal deduction plan would raise fewer constitutional difficulties than would a tax credit plan.

Second, the plan before Congress also would provide tax credits only to parents of private school students, not parents of all school age students. Thus, unlike the plan challenged in *Mueller*, parents of public school children would not benefit from its passage at all. Whether the inclusion of public school families in the Minnesota tax program was in fact a "masquerade" for a private school aid plan, as the minority opinion in *Mueller* suggested, is really beside the point. A majority of the Court was convinced that a law neutral on its face between public and private school families, like Minnesota's, was constitutional. The current federal plan will probably not be as convincing.

What will happen in the wake of *Mueller*? Certainly the decision means that some form of federal tax assistance plan to parents of school children may survive court scrutiny. The Administration may wish to write its current bill to more closely resemble Minnesota's, and states may try to pass tax deduction laws patterned after the program validated in *Mueller*.

But major changes in the federal plan may cause further problems. Including parents of public school students in a federal plan may add significantly to the program's cost, a move that might prove unpopular in an era when the federal government is seeking to reduce the size and cost of its commitment to education. The provision of tax credits might be changed to give tax deductions to parents of school children, but that may only be of marginal importance in giving families the "meaningful" assistance which supporters of the program desire. Such a move may be politically popular.

But the preoccupation with the bill's legality and political support obscures an important issue. No one really knows what the effect of tax assistance to parents of private school children will be. In homogeneous areas such as Minnesota the effect may indeed be small. But in the inner cities with racially diverse student bodies the impact may be to induce middle class students to leave the public schools.

That so much attention has been given to the constitutionality of tuition tax credits is not surprising. Americans, as is often observed, have a tendency to turn questions of public policy into legal controversies, and the debate over tuiton tax credits is but the latest example of that habit. Unfortunately, they also often display a tendency to equate legality and constitutionality with prudence and wisdom. Debate over the wisdom of using tax policy to encourage educational choice has hardly begun. Let us not continue to let the courts monopolize the debate on the future of our schools and our children. ■