

---

## Deregulating Education

by David Boaz



*This article appeared in The Politic - Yale University on November 10, 2007.*

Education is a perfect example of one major theme of limited government: that many vitally important things in American society are not the province of the federal government. No one questions the importance of education in a complex modern society. Education is the process by which we impart moral values to our children, make them part of our particular culture, develop their ability to think, and give them specific kinds of information that they will need to be productive adults, good citizens, and civilized human beings.

Today there is great concern about the quality of American education. Every year brings another study on how poorly American students fare in international competition.

But neither the importance of education nor the poor quality of our schools affords the federal government a role in the classroom. Education is not mentioned in the Constitution of the United States, and for good reason. The Founders wanted most aspects of life managed by those who were closest to them, either by state or local government or by families, businesses, and other elements of civil society. Certainly they saw no role for the federal government in education.

Once upon a time, not so very many years ago, Congress understood that. The History of the Formation of the Union under the Constitution, published by the United States Constitution Sesquicentennial Commission, under the direction of the president, the vice president, and the speaker of the House in 1941, contained this exchange in a section titled "Questions and Answers Pertaining to the Constitution":

Q. Where, in the Constitution, is there mention of education?

A. There is none; education is a matter reserved for the states.

The greatest service Congress could perform for American education would be to rekindle the original understanding of the delegated, enumerated, and thus limited powers of the federal government and to return the control and financing of education to states, localities, and families.

This argument is not based simply on a commitment to the original Constitution, as important as that is. It also reflects an understanding of why the Founders were right to reserve most subjects to state, local, or private endeavor. The Founders feared the concentration of power. They believed that the best way to protect individual freedom and civil society was to limit and divide power. Thus it was much better to have decisions made independently by 13 — or 50 — states, each able to innovate and to observe and copy successful innovations in other states, than to have one decision made for the entire country. As the country gets bigger and more complex, and especially as government amasses more power, the advantages of decentralization and divided power become even greater.

The science of economics was in its infancy when the Constitution was written, and modern management theory had not even been imagined. But two centuries later we can make even stronger arguments against a federal role in education. Not only is freedom safer when power is divided, but we now recognize that progress is far more likely under decentralized and competitive systems than under central direction.

After state test results showed that the vast majority of California public school students could not read, write, or compute at levels considered proficient, Superintendent of Public Instruction Delaine Eastin appointed two task forces in 1995 to investigate reading and math instruction. The task forces found that for 10 years there had been a wholesale abandonment of the basics — such as phonics and arithmetic drills — in California classrooms. It was bad enough that California taxpayers spent more than \$200 billion to impose such disastrous "reforms" on more than four million students. But imagine how much worse the problem would have been if the U.S. Department of Education had been able to impose such a scheme on the whole country.

### **Origins of the Department**

Defenders of the federal role in education insist that the Department of Education has no power to impose anything on the nation's schools. It can only study, advise, inspire, and offer supplemental funding. Of course, our folk wisdom tells us that he who pays the piper calls the tune — as federal money increases, so does federal control.

When the department was created in 1979, many critics warned that a secretary of education would turn into a national minister of education. Rep. John Erlenborn, Republican of Illinois, for instance, wrote, "There would be interference in textbook choices, curricula, staffing, salaries, the make-up of student bodies, building designs, and all other irritants that the government has invented to harass the population. These decisions which are now made in the local school or school district will slowly but surely be transferred to Washington." Dissenting from the committee report that recommended establishing the department, Erlenborn and seven other Republicans wrote, "The Department of Education will end up being the Nation's super school board. That is something we can all do without."

Such concerns were not limited to Republicans. Rep. Patricia Schroeder, Democrat of Colorado, predicted, "No matter what anyone says, the Department of Education will not just write checks to local school boards. They will meddle in everything. I do not want that." David W. Breneman and Noel Epstein wrote in the *Washington Post*, "Establishing a cabinet-level department is a back-door way of creating a national education policy." And Richard W. Lyman, president of Stanford University, testified before Congress that "the two-hundred-year-old absence of a Department of Education is not the result of simple failure during all that time. On the contrary, it derives from the conviction that we do not want the kinds of educational systems that such arrangements produce."

### **The Department Today**

Almost 30 years after its founding, what has the Department of Education achieved? Although its advocates promised that a cabinet-level department would be leaner and less expensive than the previous federal education programs scattered through many agencies, the department's budget has continually increased, from \$14.5 billion to \$67.2 billion. It is no wonder that the National Education Association and other professional educationists wanted to see a Cabinet department for education.

It's much less clear that the department has had any positive effect on education. The accompanying chart shows per-pupil education spending in the United States, along with scores on the Long-Term Trends testing series of the National Assessment of Educational Progress. Clearly, despite doubling real spending over the past generation — and increasing federal money and influence — we have not shown any improvements in educational achievement.

President Bush, who campaigned on the theme of "My opponent trusts government; I trust you," worked closely with Democrats in Congress to approve the No Child Left Behind Act, an unprecedented extension of federal authority over states and local schools. NCLB establishes strict and unrealistic standards for student performance, imposes an annual testing regimen on all schools, sets standards for teacher credentials, and imposes federal sanctions on schools and school districts that don't comply. NCLB is more than 300,000 words long — the Constitution with all its amendments is about 7,500 words — and states are responsible for understanding and obeying it all.

The entire thrust of NCLB is to use federal dollars to impose rules written in Washington on 15,000 school districts in 50 states. Many people who think American schools need better teachers, more testing, and higher standards have welcomed NCLB without thinking through the implications of a centralized, one-size-fits-all, command-and-control system. If the twentieth century taught us anything, it should be that markets, competition, and decentralization work better than mandates, monopoly, and central direction.

Actually, it taught us one other relevant lesson: Powerful states will not only to seek to impose their will, they will produce statistics and reports on what a good job they're doing. And indeed the Department of Education is already trumpeting the accomplishments of NCLB, just a few short years after its passage in 2002. But a rigorous review of NAEP national and state-level test results by Jaekyung Lee for Harvard's Civil Rights Project finds little or no improvement in overall achievement and no narrowing of the achievement gap.

### **New Directions**

As the world is turning away from central planning and government mandates, U.S. education policy is moving in just the opposite direction. A legitimate concern about the quality of education has been co-opted by the education establishment and turned into an excuse for more funding and more federal regulation. We spend five times as much per pupil today as we did in 1950, after adjusting for inflation. If money could solve the problems of American schools, surely it would have done so by now.

The problem with U.S. schools is not lack of funding. The problem is that the schools are run by a bureaucratic government monopoly, which is increasingly isolated from competitive or community pressures. We expect good service from businesses because we know — and we know that they know — that we can go somewhere else if we're not happy. We instinctively realize that we won't get good service from the post office or the Division of Motor Vehicles because we can't go anywhere else.

So why, in the twenty-first century, are we still running our schools like the post office instead of Federal Express? We need to open education to competition. Let parents choose the schools they think will be best for their children, without making them pay once for government schools and again for an independent school.

You can bet that if schools had to depend on satisfying customers, there wouldn't be many that decided to skip phonics and math for 10 years — as California's schools did — and then say, "We made an honest mistake" — as California's superintendent of public instruction did. Long before 10 years had passed, the students and their families would be gone.

The way to improve American education is to open the system to choice and competition. Give parents the freedom to send their children to schools that they choose. Get the dynamic and innovative for-profit sector looking for ways to deliver more education for less money. Let a thousand experiments bloom — from

charter schools to vouchers to tax credits to private management to full separation of school and state — and let families and school systems emulate the successful ones.

But don't do any of this at the federal level. Don't reform education. Don't change the rules. Don't set up a demonstration project. Don't impose national standards. And by all means don't set up a national voucher plan. Even block grants to states, favored by some conservatives, have many problems: they continue the illusion that federal money is "magic money" that doesn't come from the people in the several states; they get state and local education agencies hooked on federal money; and they subsidize the very monopolies that need to be opened to competition.

Just eliminate the Department of Education, end its meddlesome subsidies and regulations, and return the \$70 billion that the federal government spends annually on elementary and secondary education to the American people in the form of a tax cut. Then let 300 million Americans decide how best to spend that money. The question isn't whether Americans will spend lots of money on education. The question is who will spend that money: Congress and the federal bureaucracy, state bureaucracies, local school districts, or families. The closer to the family we push the decisionmaking, the more dynamic, competitive, and innovative the educational system will be.

Congress should affirm the wisdom of the Founders in not granting the federal government any power over education and return the vital function of education to the states, localities, and families where it can be managed best.