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Gareth Davies

## **Towards Big-government Conservatism: Conservatives and Federal Aid to Education in the 1970s**

Historians of recent American politics are often preoccupied with the travail of liberalism and the rise of the Right.<sup>1</sup> This makes a lot of sense, given that the Republican candidate won seven out of ten presidential elections between 1968 and 2004, years during which the GOP also enjoyed growing political strength in Congress. And the notion of a rightward shift since the 1960s is sustained further by poll data (declining numbers of Americans identifying with 'liberalism', levels of trust in government), growing inequalities of wealth and income, rates of incarceration, the proliferation of conservative think-tanks and lobby groups, the decline of organized labor, the composition of the Supreme Court, the growth of evangelical Protestantism, the 1996 welfare reform, and the declaration by Democratic President Bill Clinton that 'the era of big government is over'. The list could easily be extended.

Still, it is hard to say that conservatives have been in control of American politics since the 1960s if one conceives of that ideology in the way that Barry Goldwater construed it at the start of that tumultuous decade. Back then, in his book *The Conscience of a Conservative*, the standard-bearer of the Right argued that 'the legitimate functions of government' were confined to 'maintaining internal order, keeping foreign foes at bay, administering justice, [and] removing obstacles to the free interchange of goods'.<sup>2</sup> True, few conservatives even at this time had fully practiced what Goldwater preached: most, by the 1950s, had pragmatically come to terms with the New Deal. Still, they generally sought to resist the further expansion and centralization of government, which President Eisenhower associated with a malignant 'world trend toward

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1 I am thinking, for example, of Bruce Schulman and Julian Zelizer (eds), *Rightward Bound: Making America Conservative in the 1970s* (Cambridge, MA, 2008); Sean Wilentz, *The Age of Reagan: America From Watergate to the War on Terror* (New York 2008); Michael Schaller, *Right Turn: American Life in the Reagan-Bush Era, 1980-1992* (New York 2007); and Godfrey Hodgson, *More Equal Than Others: America From Nixon to the New Century* (Princeton, NJ, 2004). The idea that American political history since the 1960s can be understood primarily in these terms also appears commonly in undergraduate textbooks, including such superior examples as Alan Brinkley, *The Unfinished Nation: A Concise History of the American People* (4th edn, Boston 2004); and William H. Chafe, *The Unfinished Journey: America Since World War II* (5th edn, New York 2003).

2 Barry Goldwater, *The Conscience of a Conservative* (Shepherdsville, KY, 1960), 17.

socialism'.<sup>3</sup> His administration's policies on taxation, spending, defense, labor and civil rights were all shaped in part by this desire to limit big government.

During the next half-century, Republicans would often control the White House, and would chip away at the long Democratic ascendancy on Capitol Hill, culminating in a triumphant seizure of power following the mid-term elections of 1994. More than that, the influence of moderate and liberal Republicans would progressively diminish after the 1960s, as the party's old Northeastern establishment lost out to sunbelt conservatives.<sup>4</sup> Yet government continued to expand. Back in 1959, Eisenhower had mused to cabinet colleagues about the prospects for reining in government, fearing that perhaps 'we cannot get out of it. Perhaps we are like the armed guard with rusty armor and a broken sword, standing at the bridge and trying to stop progress.'<sup>5</sup> The subsequent course of events bore out his pessimism: between 1955 and 1975 federal non-defense spending as a share of GDP would almost triple, from 5.7 per cent to 15.7 per cent, increasing more rapidly during the Republican Nixon administration than it had under Lyndon Johnson, a liberal Democrat.<sup>6</sup> During the remainder of the twentieth century, spending as a percentage of GDP plateaued, as the big social spending programs of the Great Society endured, but struggled to expand. By another important measure, though, the federal government's reach continued to grow: social and economic regulatory spending tripled in real dollars between 1975 and 2002.<sup>7</sup>

By both measures, the expansion of government was particularly marked during the first term of George W. Bush, when the GOP not only occupied the White House, but — unlike during the presidencies of Richard Nixon, Gerald Ford, Ronald Reagan, and George H. W. Bush — also dominated Congress. In those four years, federal domestic spending increased at twice the rate it had during the preceding Democratic administration of Bill Clinton.<sup>8</sup> One dismayed conservative highlighted 'record spending increases in agriculture, highways, and entitlements'. Another characterized Bush's expansion of Medicare to encompass prescription drugs as 'the biggest expansion of the Great Society in over 30 years'. Despite the demands of the 'war on terror' after the terrorist attacks of 11 September 2001, the cabinet department that expanded most in

3 Pessimistic about the prospects for success, these remarks of Eisenhower were made at a 1959 cabinet meeting and recorded by his secretary. See James C. Duram, "'A Good Growl': The Eisenhower Cabinet's January 16, 1959 Discussion of Federal Aid to Education", *Presidential Studies Quarterly* VIII(4) (Fall 1978), 431.

4 See Nicol C. Rae, *The Decline and Fall of the Liberal Republicans: From 1952 to the Present* (New York 1989), and the abundant recent historiography of American conservatism.

5 Duram, 'A Good Growl', op. cit., 438.

6 Paul Pierson, 'The Rise and Reconfiguration of Activist Government', in Pierson and Theda Skocpol (eds), *The Transformation of American Politics: Activist Government and the Rise of Conservatism* (Princeton, NJ, 2007), 21–3.

7 *Ibid.*, 26 (Figure 2.3). 'Regulation' refers to federal rules mandating or proscribing particular forms of behavior by states, local governments, and private actors.

8 Federal spending in constant 2000 dollars increased from \$1,820.6 billion in fiscal year 2001 to \$2,214 billion in fiscal year 2005. *Statistical Abstract of the United States: 2006*.

percentage terms under Bush was not Defense but Education, followed by Labor. (Defense was only fifth on the list.)<sup>9</sup>

Seeking to explain the second President Bush's 'compassionate conservatism', some observers wondered whether it bore any relationship at all to Goldwater's traditional model. E. J. Dionne, a liberal commentator for the *Washington Post*, asked 'is conservatism finished?' and concluded that the answer was probably 'yes'.<sup>10</sup> And David Frum, a disillusioned conservative, feared that 'the day in which we could look to the GOP to have an affirmative small-government vision of its own has . . . definitively passed'.<sup>11</sup> Such commentators tended, rightly, to explain big-government conservatism with reference to very recent political events, such as the GOP's need to combat the centrist appeal of 'New Democrat' Bill Clinton during the 1990s, and the political damage that the GOP sustained when House Speaker Newt Gingrich (Republican—Georgia) sought to dismantle the Leviathan state following the *annus mirabilis* of 1994.<sup>12</sup>

The emphasis here, however, is on the deeper institutional and historical sources of big-government conservatism. Just as conservatives did not demolish the expanded federal role of the Progressive Era during the 1920s, and just as they preserved and expanded the New Deal during the 1950s, so during the 1970s they did come to terms with the expanded conception of government that had developed in the Kennedy–Johnson years. In some cases, they might be said even to have embraced it, helping to make possible the big-government initiatives of the second Bush presidency.

In this article, I use the case of federal aid to education during the 1970s to probe some of the institutional and historical dynamics of this process. It offers a particularly vivid illustration of the broader pattern, for two reasons. First, in no other area of public policy had the conservative commitment to limited government and localism been more complete, prior to the Great Society era. Second, the most important domestic political accomplishment of George W. Bush's first term was the No Child Left Behind Act of 2002, which increased the federal role in elementary and secondary schooling beyond anything that

9 Education spending increased (in unadjusted dollars) from \$33.9 billion in 2000 to \$71 billion in 2005. See Gene Healy, 'The Era of Big Government Conservatism', 1 February 2004, article posted on the website of the Cato Institute ([www.cato.org/dailys/02-01-04.html](http://www.cato.org/dailys/02-01-04.html)), downloaded on 19 April 2007; C. Bradley Thompson, 'The Decline and Fall of American Conservatism', *The Objective Standard* 1(3) (Fall 2006), downloaded from [www.theobjectivestandard.com](http://www.theobjectivestandard.com) on 19 April 2007; Kate O'Beirne, 'A Congress Gone to Pot', *National Review*, 22 May 2006, downloaded from <http://findarticles.com> on 19 April 2007; *Statistical Abstract of the United States: 2006*, 318.

10 E. J. Dionne, Jr, 'The End of the Right?' *Washington Post*, 4 August 2006, A17.

11 David Frum, 'Republicans and the Flight of Opportunity', *Cato Unbound*, 1 May 2006. *Cato Unbound* is an online journal published by the libertarian Cato Institute. This article was downloaded from [www.cato-unbound.org](http://www.cato-unbound.org) on 19 April 2007.

12 See Frum, 'Republicans and the Flight of Opportunity', op. cit.; and Patrick McGuinn, *No Child Left Behind and the Transformation of Federal Education Policy, 1965–2005* (Lawrence, KS, 2005).

Lyndon Johnson could possibly have imagined, yet which attracted widespread conservative support.<sup>13</sup>

Before the landmark Elementary and Secondary Education Act (ESEA) was passed in 1965, most conservatives viewed the prospect of an expanded federal role in education with concern. Some were prepared to contemplate federal intervention in the name of national security,<sup>14</sup> and others backed a modest federal subvention to the poorest states.<sup>15</sup> But more general aid was another matter entirely. During the mid-1950s, most conservatives opposed aid for school construction, despite the acute accommodation problems that the baby boom was creating for school districts across the nation. And at the end of the decade, they were still more strongly opposed to aid for salaries, despite the difficulty that those same districts were having in hiring and retaining qualified teachers.<sup>16</sup>

Conservative opposition to general aid had a number of sources. First, Southern Democrats worried that federal involvement would hasten racial integration, especially after the *Brown* decision in 1954. Second, many of those same Southerners, and many Republicans too, were also generally unwilling to support measures that extended aid to children attending parochial schools.<sup>17</sup> For most Republicans, though, the principal issue remained the specter of federal control. In many other areas, the traditional patterns of American federalism had been utterly upended by the successive traumas of the Great Depression and the second world war. In the case of education, however, traditional arrangements remained intact.<sup>18</sup> On the eve of ESEA, the federal government contributed only 4 per cent of total spending on schools.<sup>19</sup>

The very fact of assaults on federalism in other areas (social welfare, financial regulation, labor relations, civil rights) appeared, in a Cold War context,

13 Under the No Child Left Behind Act, states are required to ensure that *all* children in public schools achieve competency in English, math, and science by the year 2014, or face penalties should they fall short. For a helpful overview of its provisions, see Frederick M. Hess and Michael J. Petrilli, *No Child Left Behind Primer* (New York 2006).

14 The GI Bill for returning veterans (1944), 'impact aid' for school districts housing concentrations of military personnel (1941, 1950), the National Science Foundation (1947), and the National Defense Education Act (1958) were all justified in these terms.

15 The most prominent Republican among their number was Senator Robert A. Taft of Ohio. See James T. Patterson, *Mr. Republican: A Biography of Robert A. Taft* (Boston 1972), 320–6.

16 For more on these two legislative battles, see James L. Sundquist, *Politics and Policy: The Eisenhower, Kennedy, and Johnson Years* (Washington, DC, 1968), 155–220. Although their salaries had been increasing, teachers at this time earned less than skilled manual workers, and often took second jobs.

17 For the standard account of these controversies, see Frank Munger and Richard Fenno, *The National Politics of Education* (Syracuse, NY, 1962).

18 For a more detailed explanation for this pattern, see Gareth Davies, 'Education Policy from the New Deal to the Great Society', in Brian Glenn and Steven Teles (eds), *Conservatives and American Political Development* (New York 2008), forthcoming.

19 National Center for Education Statistics, *Digest of Education Statistics: 2005* (Washington, DC, 2006), Table 152.

only to reinforce conservative devotion to this one remaining bastion of local control. When Dwight Eisenhower, then President of Columbia University, was asked in 1949 what he thought about federal aid to schools, he warned that 'unless we are careful, even the great and necessary educational processes in our country will become yet another vehicle by which the believers in paternalism, if not outright Socialism, will gain still additional power for the central government.' He was not opposed to *all* federal aid, he went on, but in a time of growing Cold War tension he:

firmly believe[d] that the army of persons who urge greater and greater centralization of authority and greater and greater dependence upon the Federal Treasury are really more dangerous to our form of government than any external threat that can possibly be arrayed against us.<sup>20</sup>

A decade and a half later, when ESEA was passed, it was not because conservatives had changed their mind. Rather, they had temporarily become politically irrelevant, following Johnson's crushing electoral victory over Barry Goldwater in November 1964 and the simultaneous advent on Capitol Hill of the first reliable liberal majority in three decades. The depleted ranks of conservatives remained opposed to large-scale federal aid to education: three-quarters of House Republicans voted against ESEA, and so did a majority of their Southern Democratic colleagues. Howard Smith of Virginia — Chairman of the House Rules Committee, and a Jeffersonian Democrat — had this reaction to LBJ's \$1.2 billion bill:

Mr. Speaker, we apparently have come to the end of the road so far as local control over our education in public facilities is concerned. I abhor that. There is nothing dearer to the American home than the neighborhood school, where you have your PTA and your different organizations, and all take an interest in the school and have some control of it. I hate to see that tradition destroyed and that control removed from the little neighborhood in the country and located in the bureaucracy of Washington, but I think I see the handwriting on the wall. This is the great day that the bureaucrats in the Education Department have looked forward to and have fought for for a good many years.<sup>21</sup>

Despite these attitudes, once federal aid to schools was on the statute books, conservatives rapidly changed their position. When ESEA first came up for renewal, in 1966, House Republicans remained opposed, but a majority of Southern Democrats were now supportive. The following year, 1967, a majority of House Republicans supported its extension for the first time. And during the 1970s, opposition all but disappeared, with roughly 95 per cent of legislators voting to renew ESEA, including such generally conservative senators as Roman Hruska (Republican—Nebraska) and John Stennis (Democrat—Mississippi) in 1974, and Orrin Hatch (Republican—Utah) and Strom

20 Letter, Eisenhower to Cong. Ralph Gwinn (Republican—New York), 7 June 1949, in *Public School Assistance Act of 1949*, Hearings before a Special Subcommittee of the Committee on Education and Labor, House of Representatives, 81st Congress, 1st Session (Washington, DC, 1949), 888.

21 *Congressional Record*, 24 March 1965, 5729.

TABLE I  
Roll Call Votes on Passage and Subsequent Major Reauthorizations of ESEA, 1965–1978

Year	Total	Republicans	Southern Democrats
<i>House of Representatives</i>			
1965	263–153	35–96	41–54
1967	294–122	99–80	47–41
1970	312–58	141–17	39–41
1974	380–26	162–15	76–2
1978	350–20	110–14	63–6
<i>Senate</i>			
1965	73–18	18–4	15–4
1967	71–7	23–1	12–6
1970	74–4	35–0	11–4
1974	81–5	31–5	14–0
1978	86–7	30–5	16–1

Source: Statistics taken from *Congressional Record Almanac*, various issues.

Thurmond (Republican—S. Carolina) in 1978. (For details of overall voting figures for both House and Senate, see Table 1.)

This was not in response to the success of ESEA in achieving its primary purpose, which was to equalize educational opportunities for disadvantaged children. On the contrary, education research published after 1965 cast doubt on the efficacy of ESEA and Head Start, and on the capacity of schools more generally to compensate for societal disadvantage.<sup>22</sup> Neither was it the product of national satisfaction with the overall performance of American schooling. Starting in 1965, Scholastic Aptitude Test (SAT) scores declined sharply in both mathematics and English, while the annual poll conducted by the education periodical *Phi Delta Kappan* suggested mounting concern about the adequacy of American education. Further suggestive of discontent was the growing unwillingness of local taxpayers to support their schools: the rate of approval for school bond issues diminished sharply after 1968, and in 1978 California voters shocked school officials by adopting Proposition 13, which capped the property tax (the most important source of school funding). More impressionistically, newspapers during the 1970s were full of stories not just about these topics, but about such conservative hot-button issues as teacher militancy, poor discipline, disastrous teaching fads, racial strife, sex education, and the Supreme Court-imposed ban on prayer in schools.

The seeming puzzle of conservative support for an expanded federal role becomes greater when one considers the broader travail of liberalism during the 1970s, which began with Richard Nixon assailing the excesses of the Great Society, and ended with the election of Ronald Reagan, the most conservative

22 See, for example, James S. Coleman et al., *Equality of Educational Opportunity* (Washington, DC, 1966), 2 vols. For a good historical overview of these research findings, see Julie Roy Jeffrey, *Education for Children of the Poor* (Columbus, OH, 1978).

president since Calvin Coolidge. During the 1970s, faith in government collapsed precipitously, the long postwar economic boom came to an end, the United States lost its first war, and one-term Democratic president Jimmy Carter, almost as much as his GOP predecessors, spoke of the limits of government, and the need for budgetary restraint. So why did the federal role in education continue to gather support?

A large part of the explanation for the growing popularity of ESEA has to do with a basic reality of American politics that is easily lost if one views the story simply in terms of cycles of reform and reaction: there are powerful inertial forces in American political life, and they can work to preserve the liberal legacies of periods of reform in less propitious times just as much as they can constrain innovation. Initially bold departures in policy become embedded in the fabric of American politics, acquire a constituency back home and supporting lobbies in Washington, and become, if not impregnable, then at least firmly resistant to assault. Conservative opponents can turn with surprising speed into conservative champions.<sup>23</sup>

In this light, three political facts about ESEA were particularly salient. First, its big Title I program distributed federal funds to almost every school district in the country, and these got used to receiving the money.<sup>24</sup> If those funds ceased, they would have to make uncomfortable cuts, or raise state or local taxes. Second, state and local education officials enjoyed wide discretion over how those Title I funds were spent: they were *meant* to help disadvantaged children, but — absent close federal oversight — much of the money ended up being used for general purposes, ranging from audio-visual equipment to swimming-pool construction.

Third, in addition to Title I, ESEA provided 'categorical' aid for a variety of other purposes: Title II was for library and equipment purchases; Title III funded specialist educational services not being supplied by the school district; Title IV awarded grants to universities that established education research 'laboratories'; and Title V was designed to enable state departments of education to modernize their operations. In subsequent years, new categories appeared, starting with Title VI for handicapped children in 1966, and Title VII for bilingual education in 1967. By the mid-1970s, while federal aid remained comparatively small, amounting to just 9 per cent of total spending on schools, it was dispensed under a dizzying array of categories.<sup>25</sup>

23 For a classic analysis of this process, see Martha Derthick, *Policymaking for Social Security* (Washington, DC, 1978).

24 Title I purported to distribute aid to districts with high concentrations of poverty, but political considerations led HEW to develop a formula that resulted in federal funds reaching 94 per cent of counties: see Gareth Davies, *See Government Grow: Education Politics from Johnson to Reagan* (Lawrence, KS, 2007), chap. 2.

25 Besides those already mentioned, federal aid was authorized for gifted and talented children, dropouts, the children of migrant workers, metric education, math teaching, and ethnic studies. For a fuller list, see Christopher T. Cross, *A Political Education* (New York 2005), 68–9.



These programs were all tiny, except for aid to the handicapped, and their capacity to effectuate their often grand goals was not obvious. But they had well-placed champions on the House and Senate education subcommittees who — quite apart from pride of ownership — developed close relations with lobbyists: the US Catholic Conference, the National Audio-Visual Association, the American Librarians Association and textbook publishers in the case of Title II; a myriad of higher education groups in the case of Title IV; the Council of Exceptional Children and the National Association for Retarded Citizens in the case of Title VI; and bilingual educators and the Mexican American Legal Defense and Education Fund in the case of Title VII. While most legislators may have known little about these small programs and cared less, outright opposition was small, and the lobby groups had a keen stake in their survival.<sup>26</sup>

While presidents would sometimes resist the proliferation of new, specialized, under-funded programs, and Nixon, Ford and Reagan sought to consolidate them into block grants, Congress did not take their suggestions seriously, listening instead to supporters of existing arrangements who charged that these presidents were 'anti-education', and seeking to cut federal funding. Over time, moreover, the initial instinct of the lobby groups to compete with one another for the limited pot of federal funds yielded to a more co-operative model, in which they worked together in a bid to secure 'full funding' of *all* their programs. This co-operation made them much more potent on Capitol Hill: in 1969, they persuaded a bipartisan Congress to boost President Nixon's education budget by 25 per cent. Critics of their activities labeled them 'the second most powerful lobby in Washington', and espied an emergent 'education-industrial complex'.<sup>27</sup>

The political successes of this Committee on Education Funding were facilitated by fundamental institutional change in Congress during the 1970s. The central common element in these changes was decentralization; power flowed away from committee chairs and party leaders, and towards proliferating subcommittees, each of which had its own particular programs and interest groups. Even quite junior legislators could expect to chair a subcommittee by the mid-1970s, meaning that they had a budget, employed specialist staff, and were wooed by lobby groups. The club-like, hierarchical world of the mid-century Congress had disappeared, replaced by one that at the same time encouraged policy entrepreneurship by lobbyists, staffers and junior legislators, and protected their innovations from subsequent political attack.<sup>28</sup>

Yet talk of an 'education-industrial complex' was overheated, and the political power of the Committee on Education Funding should not be exaggerated.

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26 For an analysis of this brand of 'client politics', see James Q. Wilson, 'The Politics of Regulation', in J. Q. Wilson (ed.), *The Politics of Regulation* (New York 1980), 369.

27 The critics were Representatives George Mahon (Democrat—Texas) and Edith Green (Democrat—Oregon); Gary Orfield, *Congressional Power: Congress and Social Change* (New York 1975), 140.

28 On these institutional changes, see Julian Zelizer, *On Capitol Hill: The Struggle to Reform Congress, and Its Consequences* (New York 2004).

Whereas the National Education Association dreamed at the start of the 1970s of increasing the federal share of school spending to one-third, in the event the federal share never exceeded 10 per cent. That dispiriting outcome owed much to changing economic circumstances. During Nixon's first term, the long post-war boom came to a juddering halt, and presidential efforts to reduce inflation and contain a ballooning budget deficit placed tremendous pressure on discretionary spending programs. Since education programs, unlike most health and social welfare spending, were discretionary, rather than according to a fixed formula, they were peculiarly vulnerable to these campaigns, the more so given that such items as Title I could so easily be portrayed as inefficient, or as falling short of their goals. In these conditions, preserving Great Society gains was a significant achievement.

Judged by a different standard, though, the federal role in schools did not stand still during the 1970s, but increased markedly. While federal spending levels stood still, the conditions attached to receipt of those dollars became far more onerous than they had been in 1965. To understand this development one must go back further than the passage of ESEA, to the previous year's Civil Rights Act. Title VI of this epochal measure provides that 'No person in the United States shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.'<sup>29</sup> At the time, this did not seem like a very big deal, attracting far less controversy than Title II (which covered discrimination in public accommodations) and Title VII (which had to do with employment).<sup>30</sup> In retrospect, though, as the late Hugh Davis Graham has observed, it was the great 'sleeper provision' of the 1964 Act, heavily associated with a subsequent shift in American federalism that, incongruously, would gather more momentum during the relatively conservative Nixon-Ford presidency than during the high Great Society years of the Johnson presidency.<sup>31</sup>

There was nothing new about the federal government attaching conditions to aid; that had been the norm since the Progressive Era, when the first grant-in-aid programs to the states had been enacted (for vocational education, and road-building). What *was* new was the character and extent of the conditions that were now being applied. Before, they had to do with things like state-wide

29 Civil Rights Act of 1964, section 601. Title VI is reproduced in full in Stephen C. Halpern, *On the Limits of the Law: The Ironic Legacy of Title VI of the 1964 Civil Rights Act* (Baltimore 1995), 338-9.

30 In part, Title VI attracted little attention because federal aid to schools was so small. Also, the US Office of Education — which would be responsible for interpreting this language — had always maintained exceptionally deferential relations with local educators, including Southern school superintendents. See Gary Orfield, *The Reconstruction of Southern Education: The Schools and the 1964 Civil Rights Act* (New York 1969).

31 See Hugh Davis Graham, 'Since 1964: The Paradox of American Civil Rights Regulation', in R. Shep Melnick and Morton Keller (eds), *Taking Stock: American Government in the Twentieth Century* (New York 1999), 187-218.

uniformity of provision, or professional administration. Now, they became instruments of social policy, and that is what Title VI became after 1964: a vehicle for eradicating segregation in schools.<sup>32</sup> In the spring of 1966, for example, the Department of Health, Education, and Welfare (HEW) told Southern school districts that they would be vulnerable to losing their federal education dollars unless they at least doubled their rates of integration during the next school year. And two years later, new guidelines were issued that ordered these same districts to complete the process of integration during 1969–70. A new era of ‘regulatory federalism’ had begun, and education policy provides as good an illustration as any of the way that it altered federal-state-local relations.

In issuing these desegregation guidelines, and in cutting off funds from non-compliant districts, civil rights officials at HEW incurred a vitriolic, sometimes hysterical, response from Southern politicians and school officials. One Alabama congressman charged in 1966 that education commissioner ‘Harold Howe has pressed down upon the brow of the South a crown of thorns as cruel and as torturous as that pressed upon the head of the Prince of Peace when they crucified Him on the cross.’<sup>33</sup> Partly because of that sort of reaction, and the political problems that it created for President Nixon, after 1969 federal recourse to funding cut-offs declined markedly. Title VI, it seemed, was a dead letter.

Curiously enough, though, even as Title VI enforcement lapsed in the case of Southern school desegregation, it became a vehicle for reconfiguring the federal-state relationship in other education policy contexts. The story starts in 1970, when HEW’s Office for Civil Rights (OCR) boldly declared that Title VI prohibited discrimination against ‘language-minorities’: school districts must take special measures to help children with limited English proficiency, or risk losing federal dollars. Whereas OCR’s previous enforcement of Title VI had jeopardized Nixon’s political prospects by alienating the white South, this latest move was helpful, given the Republican Party’s growing interest in winning support among Latinos, who were the nation’s largest language-minority.<sup>34</sup> Accordingly, when OCR’s broad construction of Title VI came before the Supreme Court in 1973, in the case of *Lau v Nichols*, it won strong support from Nixon’s Solicitor General, the highly conservative Robert Bork.

The court’s unanimous backing for OCR paved the way for a tremendous expansion in federally imposed bilingual education during the second half of the 1970s, affecting all districts that contained significant clusters of children with limited English proficiency. Absent of federal direction, it is unlikely that this would have occurred, for bilingual education was an unproven and expensive remedy. (Think of the hiring, resource, and retraining implications of

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32 It is not clear that Title VI was widely thought of in this way in 1964. Rather, it seemed commonsensical that federal aid should not be granted to jurisdictions that were in violation of the US Constitution.

33 David Allen, in *Congressional Record*, 5 October 1966, 25353.

34 See Gareth Davies, ‘The Great Society After Johnson: The Case of Bilingual Education’, *Journal of American History* 88(4) (March 2002), 1405–29.

having to teach each subject in more than one language, and all this amid the adverse fiscal climate of the 1970s.) It was also a controversial remedy, given the growing emphasis of its advocates on bilingualism as a form of 'cultural maintenance' for minorities, to be maintained throughout school (and not just as a transitional program until a child became fluent in English). Many districts, left to their own devices, would have preferred to do nothing, or to have provided language minorities with intensive instruction in English.

A decade earlier, federal officials, even had they deprecated such choices, would not have dreamed that it was within their power to have changed them, for this would have appeared an egregious breach of the powerful and resilient attitude that schooling was a matter for the states. Now, however, federally imposed bilingual education was not only within the sphere of practical politics, but could win the backing of as unflinching a conservative as Robert Bork. And this was just one of a number of instances during the Nixon–Ford presidency where the federal government moved from trying to stimulate local action by school boards and state educators (the ESEA model) to telling them what to do. In 1972, for example, Congress enacted Title IX, which barred gender discrimination in any education institution receiving federal assistance. In response, HEW designed what one scholar describes as having been 'exceedingly long and detailed' regulations barring discrimination on the basis of sex in 'housing, facilities, access to courses, schools, counseling, financial assistance, employment assistance, health and insurance benefits and services, and athletics'.<sup>35</sup> Three years later, in 1975, Congress passed the Age Discrimination Act, barring 'discrimination on the basis of age in programs or activities receiving Federal financial assistance'.

Finally, toward the end of the same year, Congress approved the most consequential of all these federal civil rights interventions: the Education for All Handicapped Children Act. Now known as the Individuals with Disabilities Education Act (IDEA), this measure has revolutionized provision for children with special needs in the United States. An extraordinarily prescriptive law, it requires school districts to provide a 'free, appropriate public education' to all Americans with disabilities, and entitles them to an 'individualized education program'. Before the 1970s, just as they had neglected the problems facing language-minorities, states and school districts had commonly paid little attention to their special needs children: they were often assumed to be ineducable; they were expensive to care for; and their parents lacked political power. Following the passage of IDEA, that all changed: finding the money for special education, hiring qualified staff, and avoiding IDEA-related litigation have been among the highest priorities for schools and school districts ever since.

So what does this pattern of policy innovation during the 1970s tell us about the condition of American conservatism? Partly, what it tells us is that conservatives were not in control of education politics. Most obviously, Democrats

35 John David Skrentny, *The Minority Rights Revolution* (Cambridge, MA, 2002), 255–6. The most publicized and dramatic impact of Title IX was felt in the last-named area, as schools and higher education institutions were forced massively to increase their spending on female sports.

controlled the Congress, and liberals increasingly controlled the Democratic Party. That helps to explain Title IX and IDEA. Also important was the remarkable energy, commitment and skill that reformers deployed in their dealings with two *other* parts of the federal government that remained liberal-dominated during the 1970s: the courts, and the social welfare bureaucracy. For the most striking feature of education reform politics during the 1970s was its comparative detachment from the world of electoral politics.

This detachment was most conspicuous in the case of bilingual education. True, there was a Bilingual Education Act, passed in 1968, but appropriations for it were tiny, and nothing in its legislative language *required* school districts to do anything at all. Of far greater consequence were the HEW Title VI regulations of 1970, the Supreme Court's decision in *Lau v Nichols*, and the 'Lau remedies' that OCR promulgated in 1975. In a characteristic ratchet effect (first seen in the context of school desegregation a few years earlier), bureaucrats and judges combined to create new federal mandates that could not have come about through a majoritarian process. The same could be said of the new mandates affecting handicapped children: although IDEA was an act of Congress, a close examination of how it was achieved reveals the central role of a congeries of unelected political actors.<sup>36</sup>

On the face of it, then, this is a story of liberal activists outfoxing conservatives by exploiting changes in American governance. But there is more to it than this, for one of the most interesting features of education reform politics during the 1970s is the extent to which conservatives went along with these challenges to traditional American federalism. Among those who supported HEW's broad construction of Title VI to encompass the rights of language-minorities were not just Solicitor General Bork, but the most conservative members of the Burger Court: Chief Justice Warren Burger himself, Lewis Powell, and William H. Rehnquist. Supporters of IDEA a couple of years later included such staunch conservatives as Senators Strom Thurmond (Republican—S. Carolina), Barry Goldwater (Republican—Arizona), and John Stennis (Democrat—Mississippi), and Representatives John Ashbrook (Republican—Ohio) and Sonny Montgomery (Democrat—Mississippi). And when Jimmy Carter proposed to create a federal Department of Education at the end of the decade (a move that LBJ had eschewed back in 1965, on the grounds that it would be too much of a provocation for conservatives), the supporters of the idea included such rock-ribbed conservatives as Senators Jake Garn (Republican—Utah) and Thad Cochran (Republican—Mississippi), and Representatives Newt Gingrich (Republican—Georgia) and Trent Lott (Republican—Mississippi).

<sup>36</sup> The key political players in this case were Fred Weintraub, chief lobbyist for the Council for Exceptional Children; Lisa Walker, staff member to the Senate Labor and Public Welfare Committee; federal judges Frank Johnson, Joseph Waddy, and Thomas Masterson; Ira DeMent, US Attorney for the middle district of Alabama; and Edwin Martin, director of HEW's Bureau for the Education of the Handicapped. See Davies, *See Government Grow*, op. cit., chap. 7.

No single explanation accounts for all of these individual decisions. However, the place to start — again — is with the civil rights revolution. For a decade after *Brown*, the national commitment to extirpate Jim Crow was constrained (among other factors) by doubts about the extent of the federal government's authority to act.<sup>37</sup> While Washington's authority in general had expanded massively since the 1930s, it remained an article of faith of American federalism that — as a 1956 commission had put it — 'neither level of government may place burdens on the other'.<sup>38</sup> For mid-century conservatives, such as Dwight Eisenhower, the preservation of what remained of the federal system after the New Deal, the second world war, and the Cold War national security state was an important duty.

The combination of the moral grandeur of the African American freedom struggle and the squalid baseness of massive resistance greatly weakened this brand of anti-statist conservatism during the 1960s. As the political scientist Martha Derthick has put it,

the tenacity and violence of southern resistance to changes in race relations gave federalism a very bad name. Repeatedly, extreme acts of resistance elicited a national response. When a system of decentralized power was seen to produce flagrant violations of fairness (now literally seen on national television), the system itself was discredited.<sup>39</sup>

Conservatives who had hitherto resisted expansive social programs on federalism grounds became increasingly reluctant to use that argument. And without that hallowed rationale, how could any but the most unflinching or politically impregnable conservative oppose help for federal aid to poor kids, or civil rights for the handicapped and the elderly? These were what political scientists call 'valence issues': that is, questions of public policy where 'voters pick candidates on the basis of which one most fully exemplifies, by slogans and experience, the sentiment that most voters have'.<sup>40</sup> During the 1970s education lobbyists framed the defense of Great Society programs in terms of whether one was 'pro-education' or 'anti-education'. Framed thus, there was only one side of the argument to be on, and even conservative Republicans in Congress adjusted to that reality during the Nixon–Ford years.<sup>41</sup>

37 See, for example, Burke Marshall, *Federalism and Civil Rights* (New York 1964).

38 This was the Kestnbaum Commission. 'The national government', it had continued, 'is generally not allowed to impose mandatory duties on state and local officials.' Cited in American Commission on Intergovernmental Relations, *Regulatory Federalism: Policy, Process, Impact, and Reform* (Washington, DC, 1984), 94.

39 Martha Derthick, 'Crossing Thresholds: Federalism in the 1960s', in Derthick, *Keeping the Compound Republic: Essays on Federalism* (Washington, DC, 2001), 148–9.

40 This definition comes from James Q. Wilson, 'Why They Don't Campaign About the Environment', *Slate Magazine*, 27 October 2000, downloaded from [www.slate.com](http://www.slate.com) on 4 March 2007.

41 In 1980, when Mayor Ed Koch of New York, a populist conservative, complained about all the federal 'unfunded mandates' that beset his city, he also acknowledged that he had voted for them as a congressman. 'After all,' he observed, 'who can vote against clean air and water, or better access and education for the handicapped?' See Koch, 'The Mandate Millstone', *The Public Interest* (Fall 1980), 44.

This might suggest that the support of conservatives for something like IDEA was largely tactical; if they could have gotten away with it politically, one might assume, they would have voted the other way. It is likely, though, that the changing attitude of conservatives toward federalism had rather deeper roots. The political scientist Shep Melnick cites the case of Congressman John W. Byrnes of Wisconsin, who was ranking Republican on the Ways and Means Committee, and a noted conservative. Asked about his support for stringent federal conditions in the area of welfare policy, he replied: 'Hell, we can't trust the states. We can't depend upon them to carry out the philosophy of our program.'<sup>42</sup> In other words, it is not just that civil rights made it politically hard for conservatives to deploy the federalism card; increasingly, they did not want to. They, as well as liberals, shared what the economist Alice Rivlin has called 'the escalating perception . . . [that] states were performing badly even in areas that almost everyone regarded as properly assigned to them'.<sup>43</sup> More broadly, Hugh Hecló notes that, following the civil rights revolution and the Great Society, 'public authority became the default setting of expectations, the presumptive agent to which one should turn for securing the most vital purposes of personal and national life.' 'Everyone,' he adds, 'including conservatives, had become would-be policy-makers responding to the people's concerns.'<sup>44</sup>

Perhaps it might have made a difference had these conservatives possessed alternative ideas that could plausibly be presented as being 'pro-education'. But for the historian writing in the age of the Manhattan Institute, and the Cato, Fordham, and Heritage Foundations, one of the most intriguing aspects of education politics during the 1970s is how few ideas there appeared to be on the Right. True, school vouchers were being discussed (the Nixon administration funded a small trial in Alum Rock, a low-income neighborhood of San José, California), but the idea did not catch the wider political imagination.<sup>45</sup> While the Great Society might have lost much of its luster, conservatives who wished to replace Title I and Head Start needed something more attractive to offer the voters than 'revenue-sharing', 'block grants', or cuts in spending. This

42. R. Shep Melnick, *Between the Lines: Interpreting Welfare Rights* (Washington, DC, 1994), 116. Melnick observes that 'States' rights was becoming a policy without a constituency.'

43. Cited by R. Shep Melnick in 'Governing More but Enjoying it Less', in Morton Keller and R. S. Melnick (eds), *Taking Stock: American Government in the Twentieth Century* (New York 1999), 284.

44. Hugh Hecló, 'The Sixties' False Dawn: Awakenings, Movements, and Postmodern Policy-making', in Brian Balogh (ed.), *Integrating the Sixties: The Origins, Structures, and Legitimacy of Public Policy in a Turbulent Decade* (University Park, PA, 1996), 54, 72. For a classic exploration of this paradigm shift, see James Q. Wilson, 'American Politics: Then and Now', *Commentary* (February 1979), 39-46.

45. On vouchers, see Milton Friedman, 'The Voucher Idea: Selling Schooling Like Groceries', *New York Times Magazine*, 23 September 1973, 23, 65. Attesting further to the intellectual plight of conservatism, such limited momentum as the vouchers concept did achieve during the 1970s came primarily from iconoclastic liberal intellectuals: John E. Coons, Christopher Jencks, Theodore Sizer.

was part of a broader pattern. When, on the dawn of the Reagan presidency, Daniel Patrick Moynihan detected intellectual stirrings on the Right, this puckish Democratic intellectual adopted a tone of amazement. 'Of a sudden,' he exclaimed, 'the G.O.P. has become a party of ideas.'<sup>46</sup>

Rather than fight the expanded federal role in education during the 1970s, Republicans increasingly sought a share of the political credit. Within the GOP, conservatives may have gained ground at the expense of liberals and moderates.<sup>47</sup> But what it was to be a conservative had changed in important ways. This is not to say that conservatives would have been prepared by 1980 to vote for an education bill as prescriptive and intrusive as the No Child Left Behind Act of 2002. Still ahead, indeed, lay Ronald Reagan's effort to reduce the federal role in education, and Newt Gingrich's subsequent attempt to abolish the federal Department of Education. The point is, though, that those efforts came to nothing.<sup>48</sup> More than that, they failed in part because they were opposed by *conservatives*, who, largely during the 1970s, had come to accept the legitimacy of a substantial federal role in education. Few could have anticipated such a contingency back in 1965, when liberals as well as conservatives had proclaimed their devotion to the hallowed principle of local control of schools. Since then, a veritable revolution had taken place in American governance and political culture, and — far from diminishing — it had quickened in intensity after Lyndon Johnson's departure from office. Few areas were more affected by that development than elementary and secondary schooling, where state and local educators, accustomed to being left alone, now found themselves subject to a hitherto unimaginable tapestry of federal regulations and mandates.

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<sup>46</sup> Cited in *Time Magazine*, 17 November 1980, downloaded from [www.time.com](http://www.time.com) on 4 March 2007.

<sup>47</sup> See Nicol Rae, *The Decline and Fall of the Liberal Republicans: From 1952 to the Present* (New York 1989).

<sup>48</sup> See Davies, *See Government Grow*, op. cit., chap. 10 and Conclusion.