2015

How Reconstructing Education Federalism Could Fulfill the Aims of Rodriguez

Kimberly J. Robinson

University of Richmond, krobins2@richmond.edu

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How Reconstructing Education Federalism Could Fulfill the Aims of *Rodriguez*

Kimberly Jenkins Robinson

The *Rodriguez* plaintiffs, Mexican American schoolchildren who resided in districts with a low property tax base, challenged the Texas school finance system in federal court because they sought educational opportunities that equaled those of their more affluent and white peers in a nearby neighborhood. Although state school finance litigation and reform has resulted in some reform of school finance systems, the educational opportunity gap that the *Rodriguez* plaintiffs sought to remedy in the early 1970s remains one of the persistent challenges that plague the American education system. Today, it relegates at least ten million students in low-income neighborhoods and millions more minority students to poorly performing teachers, substandard facilities, and other inferior educational opportunities.

Why have the disparities that the *Rodriguez* plaintiffs attempted to remedy continued to burden the public school system in the United States? Although these disparities have broad roots, they persist in part because the United States invests more money in high-income districts than in low-income districts, a sharp contrast to other developed nations. Scholars and court decisions also have documented the sizeable intrastate disparities in educational opportunity. In addition, interstate inequalities represent the largest component of disparities in educational opportunity. The harmful nature of
interstate disparities falls hardest on disadvantaged schoolchildren who have the most educational needs, and states do not possess the resources and capacity to address the full scope of these disparities.¹

The central aim of the Rodriguez plaintiffs—equal educational opportunity—remains an essential goal of the U.S. education system. Yet it has never been realized. The United States relies heavily on schools to overcome the influence of a child's circumstances, such as family income and structure, on life opportunities despite evidence that schools are not effectively serving this function. Fulfilling the goal of equal educational opportunity will become increasingly important to the nation's interests given the growing need for more highly skilled workers to supply jobs that meet the economy's demands.²

As policy makers, scholars, and reformers continue to search for new ideas for how to fulfill the aims of the Rodriguez litigation, we must identify all of the root causes for these disparities. I believe that one of the overlooked causes is the nation's approach to education federalism—a balance of power across the federal, state, and local governments that emphasizes substantial state autonomy over education—which has played a significant and influential role in undermining federal reforms that address disparities in educational opportunity. Indeed, in a recent article I analyzed how the nation's approach to education federalism served as one of the principal obstacles to three of the most comprehensive federal attempts to advance equal educational opportunity: school desegregation, federal school finance litigation, and the No Child Left Behind Act of 2001 (NCLB).³

In the Rodriguez decision, the U.S. Supreme Court held that the plaintiffs did not have a right under the Constitution's Equal Protection Clause, which required the state of Texas to remedy disparities in funding for schools in high-wealth and low-wealth school districts. One of the principal reasons that the Court rejected the plaintiffs' claims was the need to maintain the current balance of power between the federal and state governments over education. Indeed, the Court acknowledged in Rodriguez that even though all equal protection claims implicate federalism, "it would be difficult to imagine a case having a greater potential impact on our federal system than the one now before us," because upholding the plaintiffs' claims would ultimately lead the Court to invalidate the school systems in all fifty states. Although some contend that these decisions and results are driven more by a lack of political will rather than education federalism, the consistency with which education outcomes vary across states indicates the significant impact these decisions have had on the nation's education systems.

In fact, even the Supreme Court has acknowledged that the federal government has a role to play in the educational system, particularly in light of the increasing recognition of the importance of education to the nation's economic future. In a recent article, the Court observed that "education is a key to economic growth and prosperity," and that "the federal government has a role to play in ensuring that all children have access to quality education."⁴

This recognition of the importance of education to the nation's economic future underscores the need for a more comprehensive approach to addressing educational disparities. A federal role in education must be significant, not incremental. By addressing the root causes of educational disparities, we can ensure that all children have access to quality education, regardless of their family background or geographic location. An effective federal role in education can help to ensure that all children have the opportunity to succeed, and that our economy continues to thrive.

² In Rodriguez v. Texas, the U.S. Supreme Court held that the state of Texas did not have a constitutional obligation to provide equal educational opportunities to its citizens.
³ In Rodriguez v. Texas, the U.S. Supreme Court held that the state of Texas did not have a constitutional obligation to provide equal educational opportunities to its citizens.
⁴ In Rodriguez v. Texas, the U.S. Supreme Court held that the state of Texas did not have a constitutional obligation to provide equal educational opportunities to its citizens.
advantaged schoolchildren who have not possess the resources and can disparities.\(^3\)

Litigants—equal educational opportunity in the U.S. education system. Yet it has heavily on schools to overcome such as family income and structure that schools are not effectively the nation's interests given the growth to supply jobs that meet the economic.

This continues to search for new ideas. In the Rodriguez litigation, we must identify all the overlooked in federalism—a balance of power components that emphasizes substantial has played a significant and influence that address disparities in education. In this article I analyzed how the nation's school finance litigation, the No Child Left Behind (NCLB).\(^5\)

The Supreme Court held that the plaintiffs' Equal Protection Clause, which disparities in funding for schools districts. One of the principal reasons was the need to maintain the federal and state governments over and federalism in Rodriguez that even though federalism, "it would be difficult to pin the impact on our federal system than the plaintiffs' claims would ultimately in all fifty states. All and results are driven more by a result of federalism, the consistency with which federalism has arisen as a real or imagined obstacle to reforms aimed at ensuring equal educational opportunity suggests that federalism is a significant contributing factor, even if other factors also adversely influenced these reforms.\(^6\)

I contend that the United States should strategically restructure and strengthen the federal role in education to establish the necessary foundation for a national effort to ensure equal access to an excellent education. This re-structuring and strengthening of the federal role in education would require shifting some power away from the state and local governments and toward the federal government. The United States would then need to adopt a new understanding of education federalism that embraces the federal government as the guarantor of equal opportunity, because it is the only government with the capacity and sufficient incentive to lead a national effort to achieve this widely supported, yet persistently elusive, goal. Although this would not require federalizing the nation's education system as at least one scholar has recommended, it would require acceptance of a larger federal role in education to hold the states accountable for ensuring that all students receive equal access to an excellent education.\(^7\)

I define equal access to an excellent education as the opportunity for all students to attend a high-quality school that enables them to effectively pursue their life goals, to become engaged citizens, and to develop their abilities to their full potential.\(^8\) Equal access to an excellent education enables all students to receive "a real and meaningful opportunity to achieve rigorous college- and career-ready standards."\(^9\) If the United States pursues equal access to an excellent education as the primary goal for its education system, it will break the traditional link between low-income and minority status and inferior educational opportunities. This goal recognizes that educational opportunities should be tailored to meet the individual needs of students that may vary dramatically depending on a variety of factors, including family structure and stability, students' health and nutrition, and neighborhood climate. This goal also embraces closing the opportunity gap as an essential prerequisite for closing the achievement gap. Furthermore, embracing racially and economically diverse schools is essential for achieving this goal given compelling research regarding the harms of racial and class isolation, the benefits of diversity, and evidence of diverse schools providing important educational benefits that cannot be duplicated by alternative reforms.\(^10\)

An excellent education for all schoolchildren should be the nation's ultimate
education goal, because all families ultimately want a first-rate education for their children and because the United States would benefit economically, socially, and politically from providing such an education.

My proposal for disrupting education federalism is particularly timely. First, the United States is undergoing an unprecedented expansion of the federal role in education and an accompanying shift in its approach to education federalism. The American Recovery and Reinvestment Act of 2009, also known as the stimulus bill, authorized an unprecedented $100 billion to invest in education funding, tuition tax credits, and college grants. President Barack Obama trumpeted this as "the largest investment in education in our nation's history." The stimulus bill included $4.35 billion for the Race to the Top (RTTT) program, which represented far more discretionary funding than all of Secretary of Education Arne Duncan's predecessors. Although RTTT has its shortcomings, it has sparked significant education reform, including greater state support for the Common Core State Standards, charter schools, and revisions to state laws regarding the use of student testing data to evaluate teachers. In a number of states and districts, the two years following the creation of RTTT sparked more reform than those locations had seen in the preceding twenty years. The stimulus bill built on the expansion of the federal role in education established in the No Child Left Behind Act of 2001. NCLB represents the most expansive federal education reform law in the history of the United States. For example, the law's far-reaching provisions require annual testing in math and reading in grades 3 through 8 and once in grades 10 through 12 and periodically in science. NCLB also instituted public reporting of results of student assessments on the content of state standards; launched disaggregation of this data for a variety of student characteristics, including race and ethnicity; created accountability interventions for Title I schools; and set minimum requirements for highly-qualified teachers.

Second, there is currently a national focus on improving educational performance of poor schoolchildren and reducing the achievement and opportunity gaps. For instance, a 2013 report from the Equity and Excellence Commission, a panel of education policy experts convened by President Obama, proposed a variety of far-reaching reforms that would greatly expand federal responsibility for equal educational opportunity. Scholars similarly have offered a variety of thoughtful proposals for how to reduce the opportunity gap that would require greatly expanding federal authority over education and thereby reform by a successful and identify achievement the significant.

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Promoting Equal Access to an Excellent Education

ultimately want a first-rate education for all students. The United States would benefit economically, socially, and culturally by providing such an education.

Education federalism is particularly timely, given an unprecedented expansion of the federal role in education. The Reinvestment and Recovery Act of 2009, authorized an unprecedented $100 billion in education tax credits, and college grants. President Obama’s “largest investment in education in history” has sparked significant education reform for the Common Core State Standards, ensuring equal access to an excellent education.

In offering a proposal for restructuring education federalism, I build on Yale Law professor Heather Gerken’s argument that scholars developing and critiquing federalism theory should consider the appropriate balance of institutional arrangements for a specific context. Therefore, I only propose a shift in the balance of federal, state, and local authority in order to strengthen the federal role in ensuring equal access to an excellent education.

UNDERSTANDING THE CURRENT STRUCTURE OF EDUCATION FEDERALISM AND ITS BENEFITS

Historically, the hallmarks of education federalism in the United States have been decentralized state and local control over public schools and a limited federal role. The constitutional foundations for this approach lie in the Tenth Amendment’s reservation of authority for the states in all areas that the Constitution does not assign to Congress.

However, three trends are noteworthy to understand the current structure of education federalism. First, the federal role in education has grown exponentially from its original narrow role. After Brown v. Board of Education in 1954, Congress passed several statutes that fostered federal responsibility for equal educational opportunity, including the Elementary and Secondary Education Act of 1965 (ESEA). In the last two decades, Congress has expanded the federal role to encourage higher standards and greater accountability for the education of all children, most recently through NCLB and its waivers and the RTTT program.

Second, state control over education has risen substantially over the last half century or more of school reform. School finance litigation and reform encouraged centralization of education authority with state officials who eventually became the primary funders of public schools. States currently contribute 45.2 percent of school funding, and local government provides 44.6 percent. The federal government provides 10.2 percent of funds for education, and this represents an increase in federal education funding over the
last decade, although not a steady one.\(^\text{19}\) The increase in the state proportion of funding led to an increase in state authority over schools. State-created standards and tests also have expanded state influence over the curriculum.\(^\text{20}\)

Finally, the third trend necessarily follows from the first two. The rise in federal and state authority over education has led to a substantial decrease in local control of schools for the last half century. Local authority over education is primarily focused on the daily administrative responsibilities for running schools, including implementing federal and state categorical programs and court orders; hiring and supervising staff; constructing, acquiring, and maintaining school buildings; managing vendor contracts; and transporting students. Most local school boards also may raise funds for public schools through property taxes.\(^\text{21}\)

The nation's current approach to education federalism has been praised for its ability to reap several benefits. Some find this approach superior, based on Justice Louis Brandeis's view that state and local governments may serve as experimental "laboratories" that can help solve the nation's economic and social challenges. States and localities have adopted a diverse array of governance structures for education that are designed to respond to state and local interests and preferences. This decentralized approach also allows state and local governments to adopt a variety of curricula, teaching, and learning approaches.\(^\text{22}\)

Others praise the current structure of education federalism for its ability to produce the most effective outcomes. For example, proponents of localism contend that local decision making can produce more effective policy reforms because those most affected by the decision shape the reform. Still others contend that a decentralized approach to education is more effective at identifying the most successful educational approaches given the existing uncertainties regarding how best to educate children. Localism also can create an efficient allocation of goods and services by allowing local governments to compete for citizens by offering an attractive array of public services. When localities offer diverse learning options, some citizens can shop for the best schools or relocate so that their children can attend schools that best serve their educational needs.\(^\text{23}\)

Additionally, state and local control over education is commended for its ability to foster greater accountability to citizens. Individuals exert greater influence over local government policy than over federal or state government. Local control can enable parents to become involved in and influence their child's education and to shape their children's educational experience.

The trend toward increased value for control over education of state or local governments can serve as an example of state and local governments taking control over educational reform. In addition, the trend toward federalism in education can have value for education as well.

**Reasons for Federalism**

Given the trend toward increased value for control over education of state or local governments, reexamination of the idea of redistribution of authority among state and local governments is necessary. Given: "...that it is desirable to maintain the benefits of freedom, decentralization has been a goal of education reformers and that the prevailing view, despite its constraints, has been that reliance on innovative systems and programs is necessary to achieve effective educational opportunities."

Even the state's efforts to improve school financing can be seen as experimental in nature.
child's education and school. Many parents regularly interact with and monitor their child's school, and this involvement can improve student performance.\textsuperscript{24}

The tradition of local control of education also remains an important value for many within the American public. Many view state and local control over public elementary and secondary education as a central component of state and local government. While public opinion polls reveal an increasing comfort with federal involvement in education, the polls continue to indicate that Americans generally prefer state and local control over education. In addition, state and local authority over education has resulted in diversity in education governance that influences the impact the federal government can have on education.\textsuperscript{25}

\textbf{REASONS FOR REEXAMINING EDUCATION FEDERALISM}

Given these benefits, why should the nation reexamine the structure of education federalism and consider increasing federal authority over education as part of a national plan to ensure equal access to an excellent education? This reexamination is needed for at least five reasons.

\textbf{The Inconsistencies in the Benefits of Education Federalism}

Although education federalism undoubtedly reaps some of the benefits that it is designed to accomplish, the current approach does not consistently yield the benefits that it is supposed to secure. For instance, education federalism has been praised for its ability to allow the state and local governments to serve as "laboratories" of reform. However, research reveals that in the area of school finance reform, most reforms have been fairly limited in scope and that the reliance on property taxes to fund schools remains the prevailing approach to local school funding.\textsuperscript{26} This approach has continued despite the Supreme Court's 1973 call for school finance reform in \textit{Rodriguez}: "The need is apparent for reform in tax systems which may well have relied too long and too heavily on the local property tax. And certainly innovative thinking as to public education, its methods, and its funding is necessary to assure both a higher level of quality and greater uniformity of opportunity."\textsuperscript{27}

Even when plaintiffs have prevailed in litigation that sought to reform school finance systems, most states typically have maintained the same fundamental and unequal structure for school finance. Additionally, in a substantial
majority of the states, funding inequities between wealthy and poor districts and schools persist. In 2012, only fifteen states provided more funding to districts with high concentrations of poverty than those with low concentrations of poverty, despite consistent research that low-income students require more resources for a successful education than do their more affluent peers. The 2013 Equity and Excellence Commission report notes that substantial reform is needed because, apart from a few exceptions, states fail to link their school finance systems to the costs that they would need to invest to educate all children in compliance with state standards. Given decades of reforms that have not made consistent and substantial inroads on these challenges, the states are not serving as effective laboratories for school finance reform.

Education federalism also is supposed to yield an efficient and effective education system. However, the U.S. education system regularly falls short of achieving these goals. The substantial percentage of poorly educated students inflicts substantial costs on the nation, resulting in numerous inefficiencies. For example, substantially increasing the high school graduation rate could save the nation $7.9 to $10.8 billion annually in food stamps, housing assistance, and welfare assistance. The nation forfeits $156 billion in income and tax revenues during the life span of each annual cohort of students who do not graduate from high school. This cohort also costs the public $23 billion in health-care costs and $110 billion in diminished health quality and longevity. By increasing the high school graduation rate by 1 percent for men age twenty to sixty, the nation could save $1.4 billion each year from reduced criminal behavior.

Local participation in the governance of school districts also is quite low and thus does not accomplish the accountability that it is supposed to secure. The growing federal and state influence over education has led some scholars to contend that “local control” no longer exists in American education and, in fact, has not existed for quite some time. Typically, no more than 10 to 15 percent of voters participate in school board elections, and school board meetings also often experience low citizen attendance. In low-income communities in particular, community participation regularly can yield little influence due to the lack of political power and financial means of residents. Although the quality of schools certainly influences where many families purchase homes, low-income families typically lack the financial ability to choose the best schools because such schools are zoned for more expensive housing options.

In noting the benefits that it is desirable to provide some important American education system reforms, such as innovation, such as national and local reform which fosters more student decisions than does the current system, these benefits also suggest that federalism needs restructuring to make its promises more effective.

Education Federalism and Equal Education Options

Elsewhere I have noted the federal role in court-ordered school desegregation. The Supreme Court's requirements for reintegration and desegregation of the reasons for making, these opinions stated that education was solving the problem. It already been established that the educational system needs additional federal educational opportunity programs for language learners and long-standing issues such as the standards for restructuring to adopt rigorous curricula.

Certainly, even these reforms, which are widely acknowledged and applauded, are not enough to create an effective education system. In this book, we look to a more radical reform, which is not education federalism.
In noting that education federalism does not consistently yield the benefits that it is designed to secure, I am not suggesting that it does not yield some important benefits. Certainly, the decentralized nature of the American education system fosters some state and local experimentation and innovation, such as curricular reform, teaching innovations, and other state and local reforms. The current structure of education federalism undeniably fosters more state and local control and accountability for state and local decisions than does a completely federalized system of education. Although these benefits are worth preserving, the inconsistency in reaping these benefits suggests that it is worth reexamining how education federalism could be restructured to more reliably secure such benefits.

Education Federalism as a Roadblock to Equal Educational Opportunity

Elsewhere I have analyzed how a preference for local control and a limited federal role in education have functioned as one of several critical roadblocks to three of the primary reforms that promote equal educational opportunity: school desegregation, school finance litigation in federal court, and NCLB. The Supreme Court relied on education federalism as one of the primary justifications for rejecting a federal right to education in *Rodriguez*. Similarly, key Supreme Court decisions, from the 1974 decision in *Milliken v. Bradley* to the 1995 decision in *Missouri v. Jenkins*, have relied on the structure of federalism and the American tradition of local control of education as one of the reasons for severely curtailing effective school desegregation. In so doing, these opinions clung to a form of dual federalism which insisted that education was solely a state and local function. However, dual federalism had already been eschewed in prior Court decisions that prohibited segregated educational systems and in federal legislation and enforcement that provided additional federal funding for low-income students and that required equal educational opportunity for girls, women, disabled students, and English language learners. Even when Congress was adopting NCLB, the nation's long-standing approach to education federalism insisted that states decide the standards for students and teachers, which resulted in many states failing to adopt rigorous standards for either students or teachers.

Certainly, education federalism does not stand alone as an obstacle to these reforms. Numerous other obstacles, including state and local backlash against court-ordered desegregation, the challenges of court-mandated
school reform, and inadequate funding for NCLB, also undermined the effectiveness of these reforms.\textsuperscript{35} Nevertheless, education federalism was one of the central obstacles to the effectiveness of these reforms.

Education Federalism Allows States to Make Equal Educational Opportunity a Low Priority

Throughout this nation's history—even acknowledging state reforms in education and school funding—the states have not taken sustained and comprehensive action to ensure that all students receive equal access to an excellent education. Redistributive goals and equity concerns are simply not consistent state priorities for education.\textsuperscript{36} Indeed, the 2013 report from the Equity and Excellence Commission found that "any honest assessment must acknowledge that our efforts to date to confront the vast gaps in educational outcomes separating different groups of young Americans have yet to include a serious and sustained commitment to ending the appalling inequities—in school funding, in early education, in teacher quality, in resources for teachers and students and in governance—that contribute so mightily to these gaps."\textsuperscript{37} Furthermore, intrastate reforms cannot address significant and harmful interstate disparities in funding.\textsuperscript{38}

The limited scope of many reforms also reveals that the United States has lacked the political will and investments in enforcement to adopt and implement the type of reforms that would make equal access to an excellent education a reality.\textsuperscript{39} Given this generally consistent failure to undertake comprehensive and sustained reform, the United States should not expect different results from a system that has failed to ensure equal access to an excellent education for many generations of schoolchildren. Instead, an assessment of how education federalism could be restructured to support a comprehensive national effort to achieve this goal is long overdue.

Education Federalism Invites Inequality

Primary state and local control over education essentially invite inequality in educational opportunity because of pervasive state insistence that local governments raise education funds and state funding formulas which do not effectively equalize the resulting disparities in revenue. Although some influential victories have occurred, school finance litigation has mostly failed to change the basic organizational structure of school finance systems and their reliance on property taxes to fund schools. Instead, this litigation at best has obtained limited effect on improving property tax funding ratios.

Evidence collected in the 2013 report on NCLB and its consequences that "no one in the history of education has yet to propose an effective, unequivocal solution short of reforming the NCLB that guarantees a national educational policy with an equity mandate that is likely to produce a truly just and equal system of education in the United States.\textsuperscript{40}

The hard reality is that state reforms are not enough. The Nation's schools are not equal. On average, a student in the U.S. is more likely to attend a higher quality school if he or she is white, male, from a middle-class family, or from a family not living in poverty. State action is necessary, but insufficient, to ensure true equity and opportunity among students. However, this is not just a state problem; it is a national problem. As a result, the current state of educational equity is, in fact, falling further behind.

Although many states have obtained impressive results in their efforts to improve access to school quality, the central problem is that education is a federal public good that requires national leadership and national action to achieve. To the extent that the United States has not achieved the national level of ambition and commitment that citizens demand is an indication of the scale of the challenge and of the need for new ways to help states make equal educational opportunity a reality.
obtained limited increases in funding for property-poor districts while allowing property-rich districts to maintain the same funding level or to raise their funding rate at a slower pace. 40

Evidence of the persistent inequalities in school funding can be found in the 2013 Equity and Excellence Commission report. The report found that “no other developed nation has inequities nearly as deep or systemic; no other developed nation has, despite some efforts to the contrary, so thoroughly stacked the odds against so many of its children.” These disparities are due in substantial part to the continued state reliance on property taxes to fund schools. As a result, many predominantly low-income and minority schools predictably produce poor outcomes because they typically lack both the resources to ensure that their students obtain an effective education and the capacity to undertake effective reforms even when these reforms are well conceived. 41

The harms from persistent and pervasive disparities in educational opportunity are not limited to schoolchildren, their families, and their communities. These disparities also harm nationwide interests in a strong economy and a just society. The United States needs to maintain international academic competitiveness to attract businesses and prevent the loss of jobs to other, more educated nations. Research reveals that the long-term vigor of the U.S. economy will depend on the advanced skills that are typically provided in higher education and that are needed for upper-level technical occupations. Yet, international assessments reveal that the performance of U.S. students is often average or below average when compared with students from other countries, which will make it difficult for American students to compete successfully. 42 Eric A. Hanushek, Paul E. Peterson, and Ludger Woessmann summarize the lackluster performance of U.S. students on international assessments, noting that “the evidence of international comparison is now clear. American students lag badly and perversely. Our students lag behind students not just in Asia, but in Europe and other parts of the Americas. It is not just disadvantaged students or a group of weak students who lag, but also American students from advantaged backgrounds. Americans are badly underrepresented among the world’s highest achievers.” 43

Although some scholars challenge such conclusions from international assessments as overblown and simplistic, others conclude that these less-than-stellar outcomes indicate that the U.S. education system is failing to prepare many of its students to compete successfully for jobs with other students
from around the world. The nation also has a strong interest in ensuring that entire segments of the public are not denied the American Dream due to their family income and racial/ethnic background.

Education Federalism Should Be Guided by Research Rather Than Politics

The expansion of the federal role in education has largely been guided by politics, and politics, indisputably, will continue to play an influential role in education reform. Nevertheless, the expanding federal role should be guided primarily by rigorous research regarding the strengths of federal policy making, just as research about the importance of educational opportunities for disabled students informed Congress’s passage of the Education for All Handicapped Children Act of 1975. Although federal education law and policy are also influenced by politics, the federal government has demonstrated a willingness to leverage politics and research to address the needs of the disadvantaged within American society when politics has prevented effective reform at the state and local levels.

A THEORY FOR DISRUPTING EDUCATION FEDERALISM

Education federalism should be restructured to embrace greater federal leadership and responsibility for a national effort to provide equal access to an excellent education. Any substantial strengthening and reform of the federal role in education will transform the nature of education federalism, because substantive changes to federal authority over education directly affect the scope of state and local authority over education. These shifts in education federalism have occurred throughout U.S. history, including federally mandated school desegregation and NCLB. This broad theory could be used to guide development of federal legislation, new initiatives by the Department of Education, or, most likely, a combination of the two. I focus here on future action by Congress and the executive branch, rather than doctrinal reform through the courts, because the legislative and executive branch enjoy numerous policy-making strengths over courts.

The following six policy-making areas identify how the federal government’s role in education should be expanded to ensure equal access to an excellent education:

1. Prioritize equal access to an excellent education.
2. Increase research and development to address the needs of the disadvantaged.
3. Focus on the federal role in education.
4. Disrupt the federal role in education.
5. Demonstrate leadership in education.

Each of the above priorities is vital for the reformation of federal policies to improve access to an excellent education.

Prioritizing Access to an Excellent Education

Some nations are more successful than the United States in ensuring equal access to education. How can the United States be more successful? For instance, the Department of Education could adopt a policy of promoting equitable access to education. This policy could be implemented through the provision of resources, such as funding, to schools and communities that struggle to provide quality education.

Federal education policy is also crucial for ensuring equal access to an excellent education because it sets the standards for states and localities to follow. Federal policy typically does not directly provide funding for schools, but it can influence state and local policies through legislation and regulations. For example, federal laws such as the Individuals with Disabilities Education Act (IDEA) and the No Child Left Behind Act (NCLB) have had a significant impact on state and local education policies.

The federal government has a unique role in education because it has the ability to set national standards and create incentives for states and localities to provide equitable access to education. Federal policy can also help to address systemic issues such as poverty and racial inequality that affect education outcomes. By prioritizing equal access to education, the federal government can help to ensure that all students have the opportunity to succeed and reach their full potential.

In summary, the federal government has a critical role in ensuring equal access to an excellent education. By prioritizing research and development, focusing on the federal role in education, disrupting the federal role in education, demonstrating leadership, and establishing standards, the federal government can work to create a more equitable education system for all students.

This approach to education federalism recognizes the importance of the federal role in education and the need for a national effort to address the needs of disadvantaged students. By embracing greater federal leadership and responsibility, the federal government can work to ensure equal access to an excellent education for all students.
1. Prioritizing a national goal of ensuring that all children have equal access to an excellent education and acknowledging that achieving this goal will require disrupting education federalism.  
2. Incentivizing development of common opportunity-to-learn (OTL) standards that identify the education resources states must provide.  
3. Focusing rigorous research and technical assistance on the most effective approaches to ensuring equal access to an excellent education.  
4. Distributing financial assistance with the goal of closing the opportunity and achievement gaps.  
5. Demanding continuous improvement from states to ensure equal access to an excellent education through federal oversight that utilizes a collaborative enforcement model.  
6. Establishing the federal government as the final guarantor of equal access to an excellent education by strengthening the relationship between federal influence and responsibility.

Each of these elements either suggests how to leverage existing strengths of federal policy making more effectively or fills in important gaps of federal policy making and enforcement.

Prioritizing a National Goal of Ensuring Equal Access to an Excellent Education

Some national leaders already have noted the importance of a national goal of ensuring that all children are provided equal access to an excellent education. However, some key points are missing from this rhetoric that must be emphasized to support the type of comprehensive reforms I envision. For instance, the nation’s top education leaders, including the president, the secretary of education, and members of Congress, must initiate a national conversation on why the United States should no longer tolerate long-standing disparities in educational opportunity and why federal action is needed to address them. Initiating such a conversation also requires the federal government to prioritize equal access to an excellent education on its national policy-making agenda.

Federal and national education leaders also must make the case that the entire nation would benefit from ending inequitable disparities in education, because research reveals that reforms to help those who are disadvantaged typically do not succeed unless they benefit more privileged Americans.
Therefore, the federal government must convince the more affluent segments of American society that a more equitable distribution of educational opportunity would inure to their benefit. This could be accomplished in part by publicizing existing research which quantifies the myriad high costs that the United States pays for offering many schoolchildren a substandard education and which acknowledges that even many advantaged children are not competing effectively with their international peers.57

Federal leadership also must explain why a reexamination and restructuring of education federalism is warranted. This discussion should highlight federal willingness to shoulder greater responsibility for leading the national effort to achieve this goal. It also should emphasize that effective, comprehensive reform must involve a shoulder-to-shoulder partnership among the federal, state, and local governments.

Fortunately, the federal government has proven its ability to herald the importance of new educational goals and approaches in the national interest. Research and history confirm that agenda setting serves as one of the strengths of the federal government in education policy making. For instance, President Lyndon Johnson successfully convinced Congress to advance equal educational opportunity for low-income schoolchildren through the ESEA, which includes Title I, and the Economic Opportunity Act, which includes programs like Head Start and Upward Bound. President George W. Bush championed NCLB and its insistence on proficiency for all children in math and reading, public reporting of testing data disaggregated by subgroups, and a range of accountability interventions for failing schools.58 Therefore, a federal call to implement a comprehensive plan to ensure equal access to an excellent education should build on the lessons learned from these and other federal reforms that set the nation's education agenda.

Incentivizing Development of Common Opportunity-to-Learn Standards
A federal effort to ensure equal access to an excellent education should incentivize the states to develop common opportunity-to-learn standards that would identify the in-school and out-of-school resources students should receive in order to meet rigorous achievement standards. Most states are implementing the Common Core standards, which were developed by a group of assessment specialists and academics in response to a request from the Council of Chief State School Officers and the National Governors Association, among other groups, to develop a set of high standards and assessments to measure students' progress toward college and career readiness.59 Many states have included explicit references to these standards in their state constitutions and state education master plans. In the words of the association's chair, the current state education standards are:

Myths and Realities of Education

Education reform has been a hot topic for many years. One of the central themes in education reform is the idea that standards and assessments should be high quality and aligned with the needs of the workforce. This idea has been supported by many educational leaders and policymakers, but there are also many who believe that the current standards and assessments are not high enough or are not aligned with the needs of the workforce. The debate over education standards and assessments is complex and involves a variety of stakeholders, including parents, teachers, and business leaders. It is important for policymakers to consider the evidence and make informed decisions about education reform.
must convince the more affluent segment of society that a suitable distribution of educational opportunities to all children, regardless of background, is worthwhile. This could be accomplished in part by quantifying the myriad high costs that the denial of education to disadvantaged children could have in terms of many advantaged children are not conditioned for their welfare.17

The common argument is reexamined and restructured, yet the claim remains that education is an essential service that children have a right to in a democracy. This discussion should highlight the responsibility of the nation to ensure that those who have the power to lead the nation have a commitment to educate all young people.

The government has proven its ability to lead through the National Education Agenda. For instance, a new agenda that establishes a national education policy making is in place. For example, the inclusion of the Early Childhood Education Act and the Comprehensive School Improvement Act into the National Education Agenda. The standards are intended to provide a clear set of math and English language and literacy standards for kindergarten through twelfth grade that would prepare all public school children to complete their high school education and be ready to enroll in college or participate in the workforce.58 OTL standards are essential for ensuring equal access to an excellent education because, as Linda Darling-Hammond has noted, two decades of high standards and testing implementation have revealed that there is plentiful evidence that—although standards and assessments have been used in clarifying goals and focusing attention on achievement—tests alone have not improved schools or created educational opportunities without investments in curriculum, teaching, and school support.59

Common OTL standards would identify both what educational resources should be offered and the quality of the resources needed to effectively implement standards.

I recommend the adoption of common OTL standards to set a floor of equal educational opportunity, so that state adoption of high academic standards can have the intended effect of improving outcomes. During its inception, the standards and accountability movement recognized that the success of academic standards depended on ensuring that students receive the knowledge within high standards. OTL standards were tested, but proved politically unsustainable, in the mid-1990s. In 1994, Congress passed the Goals 2000: Educate America Act, and this law provided for two options for the creation of OTL standards that established the conditions and resources needed throughout the education system to provide students the opportunity to learn the content set forth in voluntary national or state content standards. The Improving America’s Schools Act of 1994 (IASA) also conditioned Title I funds on state development of rigorous content and performance standards. It included a requirement that state plans must describe how states will help districts and schools “develop the capacity” to achieve high standards and that state plans could include OTL standards. However, shortly after the passage of these laws, a Republican-controlled Congress repealed the federal power to establish OTL standards and the mandate that states should establish such standards.60

My theory has the states serving as the primary architects of the standards, because this approach fosters greater cooperation in implementing the standards and reduces criticism that the standards represent a federal takeover
of education. Common OTL standards would preserve the ability of states to adopt a variety of educational governance, funding, and policy-making structures. Once the states develop the standards, states would implement plans to identify the gap between existing resources and the OTL standards, determine the cost of bridging the gap, and raise funds and implement reforms to close the gap. Any federal support for common OTL standards should encourage state-level innovation and experimentation regarding how each state implements the standards, thus preserving the states as laboratories for education reform.

Others also have called for OTL standards and proposed possible content, including the Schott Foundation’s National Opportunity to Learn Campaign and education law scholars Michael Rebell and Jessica Wolff. In contrast to these proposals, I recommend that the federal government provide incentives for states to develop common OTL standards. As a result, these standards would not be federally defined, as the National Opportunity to Learn Campaign and Rebell and Wolff recommend, or designed individually by each state, as with Goals 2000 and IASA.

Although securing federal support to incentivize the states to adopt common OTL standards will likely involve a tough political battle, the battle would begin with greater ammunition and more favorable conditions than did the previous effort. When OTL standards were first considered in the mid-1990s, vigorous debates were ongoing about the content and implementation of academic standards and the appropriate federal role regarding those standards. Today, although some states have chosen not to adopt the Common Core standards, and some opposition has arisen regarding concerns such as the pace of implementation, all states have adopted academic standards, and the states are far closer to adopting common academic standards than ever before. These standards provide a foundation for the states to engage in a joint effort to identify what resources student need. State leadership also could draw on the lessons from school finance litigation that define the educational opportunities students must receive to meet state constitutional obligations for education, which was not available when OTL standards were first introduced through federal legislation.

The Need for Additional Federal Research and Technical Assistance

Although the federal government currently provides research and technical assistance to states and school districts, I recommend that federal research and technical assistance approach expands state control on educational governance, principal hindrances and local level supported research and experiments development.

Congress has already authorized additional funds for educational research and the authorizing legislation would permit states to use their research and development monies to identify the policy options for an excellent environment for students. In addition, Congress authorizes the National Safe School Commissioners to develop a national database and support research on the prevention of violence in schools and the funding of such research.

In addition to efforts already underway on its current and technical assistance, I recommend that Congress authorize additional funding for state level and that typically state level technical assistance to states and local school districts. For example, diversion of revenue from local school districts to other state that is not tied to the educational achievement of students.
would preserve the ability of states, funding, and policy-making. Standards, states would implement standards, and raise funds and implement report for common OTL standards and experimentation regarding how preserving the states as laborato-

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Research and Technical Assistance

I recommend that federal research and technical assistance should be refocused to help identify the most effective approaches for ensuring equal access to an excellent education and to expand state capacity to achieve this goal. Substantial variations exist in the educational, economic, and administrative capacities of states. One of the principal hindrances to NCLB’s success is insufficient capacity at the state and local levels to implement the required changes. Therefore, federally supported research and technical assistance must help state and local governments develop the capacity to implement effective reforms.

Congress has begun to recognize the need for federal support for high-quality education research to enable the United States to reach its essential educational goals, as evidenced by passage of the Education Sciences Reform Act of 2002 (ESRA). Rigorous, objective research that supports a national effort to ensure equal access to an excellent education should build on this success while also establishing an agenda that identifies the critical research states need to understand as they enact reforms to achieve this goal. Federal research should examine the essential characteristics of an excellent education and the most cost-effective and efficient state funding approaches, including models from other nations. A federal research agenda also should identify the primary state and local impediments to ensuring equal access to an excellent education and how to overcome them. Establishing a federal research agenda such as this would capitalize on the federal government’s substantial comparative advantage over states and localities in conducting and supporting research while eliminating the inefficiencies and costs of each state conducting its own research.

In addition to research assistance, the federal government should build on its current technical assistance by offering states support for implementing reforms that ensure equal access to an excellent education. This technical assistance is essential for expanding the limited capacity of state education agencies that typically have focused on distributing and monitoring funds and that typically “possess little expertise in actually working on substantively important education initiatives.” States may need federal technical assistance on the most effective and efficient funding mechanisms and how to develop test collection systems that enable states and localities to document the scope of opportunity gaps and the effectiveness of efforts to reduce those gaps. Federal technical assistance should help to avoid any unnecessary diversion of resources and duplication of effort that would occur if each state had to develop such technical expertise on its own.
Federal Financial Assistance to Close Opportunity and Achievement Gaps

Federal financial assistance will be essential for expanding the capacity of states to participate in a comprehensive national effort to ensure equal access to an excellent education. The federal financial contribution should include both incentives and assistance to address opportunity and achievement gaps. Financial incentives would draw attention to this critical issue and motivate states to implement reforms, just as incentives motivated reform through RTTT. Financial assistance also would expand the potential reform options beyond what states could implement with their own state resources and would supply political cover for politicians who support reform.69

The federal government should generously increase its contribution to education costs while continuing to share these costs with the state governments. Additional financial support for education would leverage the federal government’s superior ability to redistribute resources among the states. Past experience reveals that federal resources can be an effective means for influencing state and local education policy. Generous federal financial assistance would fund a larger percentage of the costs of reforms than it did with past education reforms, which typically failed to deliver the substantial funds anticipated when the laws were enacted. The level of generosity of federal funding should be based on the disparate capacities of states to close opportunity and achievement gaps. Additionally, a blend of federal and state funding would encourage greater efficiency than full federal funding because it should encourage both governments to contain costs.70

Demanding Continuous Improvement Through a Federal Collaborative Enforcement Model

A federally led effort to ensure equal access to an excellent education should include federal monitoring of, and accountability for, state progress. In addition to fostering improvement, such oversight also would enable the federal government to identify states’ needs for research, technical, and financial assistance.71

Federal monitoring should focus on a collaborative enforcement approach to resolve any disputes regarding how states achieve this goal. The theory I propose here should be implemented by including a collaborative enforcement model similar to the one I proposed in a 2007 article.72 With such an approach, state obligations would be written into any improved state laws so that such obligations would be sought by the citizens to enforce.

A participation of federal monitoring is essential.
In addition to requiring states as an unenforceable complicity, state agreements would require states to fund reform initiatives and not rely on federal dollars.

The Federal Role of Equal Access

By enacting and enforcing the federal standards, the federal government would be ensuring education quality standards for federal dollars. Federal dollars would thus be traceable to the goal of education quality and would ensure that governments will incorporate it into the standards. With the federal government supporting state efforts, state governments could ensure greater commitment of resources, some funding, and others could also be the case.
equal access to an excellent education

The Federal Government as the Final Guarantor of Equal Access to an Excellent Education

By enacting federal legislation, programs, and initiatives that embrace the elements discussed above, the federal government would reestablish itself as the final guarantor of equal access to an excellent education. Historically, ensuring equal educational opportunity was one of the principle rationales for federal involvement in education by assisting vulnerable groups when the states have failed to act in the national interest. Yet, an increasing focus on standards and accountability has shifted federal attention away from issues of educational equity, while federal reforms have unsuccess fully attempted to ensure a quality education for all schoolchildren. Although the federal government consistently should aim to maintain excellence, it also needs to reassert itself as the final guarantor of equal educational opportunity. In making this recommendation, I join with other scholars, such as Michael Rebell and Goodwin Liu, whose proposals call on the federal government to guarantee some form of equal educational opportunity.

History suggests that the federal government is likely to be the only level of government to engage in the leadership and substantial redistribution of resources that equal access to an excellent education will require. Local politics often hinders substantial efforts to redistribute resources. Thus, it is not
surprising that it took federal legislation to initiate numerous past reform efforts that addressed disparities in educational opportunity, such as those that assist disadvantaged students, girls and women, and disabled children. The federal government possesses an unparalleled ability to mobilize national, state, and local reform when the nation is confronted with an educational crisis. Therefore, my call for a stronger federal role in education builds on the historical federal role in advancing educational equity and the superior ability of the federal government to accomplish a redistribution of educational opportunity.

By focusing its attention on the policy-making areas identified above, the federal government would shoulder the primary burden for a national effort to ensure equal access to an excellent education and draw on its strengths in education policy making. Federal leadership would incentivize the states to engage in a collaborative partnership with the federal government to achieve this goal. At the same time, states, facing compelling incentives to join the national effort, would retain substantial control over education in choosing among a wide array of reforms.

Some may argue that the states should bear the primary burden for ensuring equal access to an excellent education because education remains primarily a state function. I reject this dualist understanding of education and highlight here the long history that reveals that the states will not rectify opportunity and achievement gaps on their own. Embracing federal leadership on these issues builds on the growing consensus reflected in NCLB and other federal education legislation: the federal government should exercise a substantial role in education law and policy.

Others may contend that the federal government should relinquish its growing role in education. In some ways, this criticism points to the failures of past initiatives as evidence that the federal government's role in education should be curtailed. Most recently, some scholars condemn the shortcomings and implementation of NCLB and RTTT. Undeniably, the federal government has undertaken a variety of unsuccessful education reforms. Yet, an established track record in education over the last fifty years has given the United States ample evidence to identify the strengths and weaknesses of federal education policy making. My theory embraces a variety of federal policy-making strengths and builds on the federal government's superior and more consistent reform record on issues of educational equity in the face of inconsistent and overwhelmingly ineffective state reform.


Federal government leadership has been important in addressing educational disparities, especially in disadvantaged areas, where educational outcomes are often lower than those in wealthier communities.

In this way, the federal government can play a critical role in promoting equal access to an excellent education, ensuring that schools are adequately funded and that students have access to high-quality teachers and resources. Federal leadership in education policy making can help to address longstanding educational disparities and promote educational equity for all students. By embracing federal leadership, states and local education agencies can work together to create a more equitable and just educational system for all students.
To initiate numerous past reform efforts, the federal government's role in education builds on weaknesses and failures. The government's ability to mobilize national, federal, and state resources to address educational challenges has been limited. The federal government is confronted with the need to ensure that educational equity and the superior performance of educational programs continue to be achieved.

The federal government has a unique role in education reform. While making areas identified above, the federal government bears the primary burden for a national effort to rectify education shortcomings. The federal government would incentivize the states to improve educational opportunities for children, and the federal government should exercise a substantial role in the education of children.

The federal government should rein in its growth because education remains a public good. It is the states' responsibility to ensure that their educational systems meet the needs of students. Embracing federal leadership in the federal government's role in education is critical. The federal government's role in education is essential.

Today, although the federal government invests in education, this investment is quite limited relative to state and local investments. Increasing federal demands for its limited contribution have enabled the federal government to avoid shouldering a substantial portion of the costs and burdens associated with accomplishing the nation's education goals while still enjoying the ability to set the education agenda and demand results. Having the federal government as the final guarantor of equal access to an excellent education would strengthen the relationship between growing federal influence in education and greater federal responsibility for accomplishing national objectives. This transformation would greatly improve on the nation's current cooperative federalism approach to education.

Finally, even though the U.S. Supreme Court, for the first time, has placed limitations on Spending Clause legislation in National Federation of Independent Business v. Sebelius (NFIB), that decision still leaves the executive branch and Congress ample constitutional room to restructure and expand their authority over education. I agree with scholars Samuel Bagenstos and Eloise Pasachoff, who contend that for the Court to find a statute unconstitutional under the Spending Clause after NFIB, a federal education program would have to take an existing, large, well-entrenched program, add new and unforeseen conditions that are so substantial as to constitute an independent program, and present the possibility of losing all funds for both the old and new programs as conditions for any state not wanting to follow the new conditions. The need to run afoul of multiple concerns simultaneously will leave Congress with ample room to enact far-reaching education legislation.

RECONSTRUCTING EDUCATION FEDERALISM WOULD EMPOWER STATE AND LOCAL CONTROL, ACCOUNTABILITY, AND INNOVATION

In this chapter, I offer ways to reduce harmful aspects of state and local control of education while simultaneously empowering beneficial and collaborative aspects. States admitted would lose some control over education because they would be accountable to the federal government for ending long-standing disparities in educational opportunity. At the same time, other aspects of state and local control of education would remain. States would retain authority to control education policy making through education governance, the nature and content of a school finance system, state assessments
and graduation standards, and a wide variety of teaching and curricular decisions. Localities would continue to administer education, manage the daily operation of schools, hire teachers and staff, build and maintain schools, and transport students. Maintaining these functions under state and local authority fosters continuance of most of the existing levels of state and local control, accountability, and innovation for education.

Most importantly, placing primary responsibility on the federal government for leading a national effort to close the opportunity and achievement gaps would foster new types of state and local control over education. Currently, substantial disparities exist in each state's capacity to offer high-quality educational opportunities. With the federal government in the lead role, state and local governments would both have a greater and more equal capacity to offer all children an excellent education. This enhanced capacity would empower states and localities to engage in innovative reforms previously hindered by capacity limitations; they would decide how they want to achieve equal access to an excellent education and thus continue to function as laboratories of reform—but with new federal research, technical expertise, and financial assistance to support the identification and implementation of appropriate reforms.

Such reforms might diminish some state and local accountability for education. Federal accountability is more diffuse and less effective than state and local accountability because federal officials are more removed from state and local electorates and are held accountable for a wider range of decisions. However, it is important to note two responses to this concern. First, the public has not effectively held state and local officials accountable for closing the opportunity gap; therefore, adding an additional layer (even if diffuse) of accountability could facilitate achievement of this objective. Second, state and local officials would be charged with designing and implementing plans to achieve this goal, and thus critical aspects of state and local accountability would be preserved. Federal leadership and support to accomplish this goal ultimately would increase total government accountability.

CONCLUSION

Disrupting the nation's long-standing approach to education federalism and reconstructing it in ways that support the nation's education goals will be essential to successful education reform. My theory for reconstructing education fostered by the ideas I present here is predicated on a system in which localities, states, and the federal government work collaboratively to promote educational opportunities for children across the nation. The theory hinges on the premise that educational opportunities should be accessible to all children, and that the education system must be held accountable for ensuring access to those opportunities. To achieve this goal, the education system must be transformed from one in which accountability is diffused and weak to one in which accountability is strong and well-defined.

In conclusion, I argue that educational opportunity gaps can be narrowed by reframing the relationship between federal, state, and local governments in education. By placing primary responsibility for education on the federal government and empowering states and localities to engage in innovative reforms, we can create a system that offers all children an excellent education. This is a significant shift from the current system, in which accountability is diffused and weak. By reconceptualizing education federalism and implementing stronger accountability mechanisms, we can ensure that all children have access to high-quality educational opportunities. This is an essential goal for creating an education system that is responsive to the needs of all students and prepares them for success in the 21st century.
education federalism envisions the federal, state, and local governments joining together in a shoulder-to-shoulder partnership to build an education system in which all schoolchildren receive equal access to an excellent education. In recommending the federal government as the final guarantor of equal educational opportunity, I offer innovative ways to incentivize and empower state and local governments to close opportunity and achievement gaps.

Though we continue to seek new ways to expand educational opportunity and improve educational quality, and support for federal involvement in education has been growing, the United States has lacked a theory for how the federal role should evolve. And while the nation currently lacks sufficient political will to adopt all aspects of my theory, the pioneering ideas I present here seek to contribute to the growing momentum for reform by moving our national dialogue away from educational paralysis and toward educational excellence.