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**Jurisdictional Politics:
A New Federal Role in Education***

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Jurisdictional Politics: A New Federal Role in Education

Since the creation of the Elementary and Secondary Education Act (ESEA) in 1965, the primary role of the federal government in American education has been to administer programs. The federal government supplied funding, administered through state and local educational agencies, to achieve specific objectives. In return for its funding, the federal government promulgated rules and regulations about how the money should be spent, and, more recently, created consequences for schools that do not meet performance targets set by the government.

Despite the best of intentions, this model has a number of limitations which are well-recognized by students of public policy.¹ The first is that American education is a complex inter-governmental system over which the federal government has limited control. In a system with fifty states, roughly 14,000 districts, and 100,000 schools, where 90 percent of the funds are state or local, the ability of the federal government to achieve coherent or systemic change is necessarily limited. The second is the mismatch between increasingly ambitious aims for what we want the system to produce (“all children proficient by 2014”) and the limited means that the federal government provides to achieve those ends.² The third, and more thoroughgoing, critique is that both state and federal governments have limited ability to change the inner workings of schools from afar through programs, regulations, and targets. Programs come into schools as stovepipes which frustrate schools’ ability to achieve internal coherence; regulations foster a compliance mentality which is antithetical to creative problem-solving; and targets are not sufficient to generate internal processes of improvement.³ The federal government has taken the “agents” of schooling as given, and tried through various combinations of carrots and sticks to induce them to alter their behavior. The results, as the other papers in this volume show, have been sobering.

However, in recent years, the federal government has taken on an additional new role in education, one with a different set of opportunities and also new risks: supporting a “jurisdictional challenger” or “alternative governing coalition” (AGC) to the traditional educational structure. The objective here is less to advance particular policy *goals* and more to empower a different set of *actors*. Rather than trying to induce an existing, often recalcitrant or simply uninterested set of agents to do its bidding, the federal government has been acting, in often subtle ways, to support a new set of agents more in sympathy with its goals. Put another way, it has been trying to solve the problem of education reform through identity rather than inducement.⁴

These actors are organizations who run schools, recruit human capital, train teachers or school leaders, or develop supports or technologies for teachers or schools. These actors, who generally see themselves as linked under a banner of “reform” or “entrepreneurial” organizations, are seeking to challenge the more traditional organizations and institutions that have played many of these same functions. The hope is that these organizations will generate positive change closer to the ground through their own internal motivation and know-how, thus avoiding some of the familiar problems of the implementation chain.

In this paper, we explain the concept of jurisdictional competition, briefly discuss its origins and development in American education over the past twenty years, and outline a series of mechanisms by which the government can empower an alternate governing coalition. Broadly speaking, we argue that the government can weaken the dominant regime’s claim to jurisdiction, remove regulatory barriers and create opportunities for the challenger, subsidize the challenger in a variety of ways, and eventually invite the challenger to become part of the state. In this role, the federal government seeks to leverage decentralized political action by actors sympathetic to

its aims rather than to enforce a specific set of administrative goals on unwilling actors. In the concluding section, we reflect upon the ways in which this new role provides a different set of possibilities for the federal government, with its own strengths and weaknesses. Compared to No Child Left Behind, which is the ultimate version of the traditional role, this new role promises less control but potentially more influence. By betting on a particular set of actors at the local and state levels, the strategy is only as good as what these actors can deliver. If they fail, there is no redress, as there is through the sanctions of No Child Left Behind. But these actors may have more potential to succeed: they work in a wide diversity of roles closer to the ground and are thus potentially positioned to provide higher quality schooling. At the same time, by choosing winners and losers across organizations, the federal government risks being drawn into a highly political struggle over who controls American education, a role which is likely to delegitimize it in the eyes of the critics of the actors it supports.

Understanding Jurisdictional Politics

While you wouldn't know it by reading most of the work of professional policy analysts, public policies have goals beyond programmatic effectiveness. Practicing politicians are, quite naturally, concerned about other questions. Will the policy advance the electoral or coalitional goals for which it was advanced? Will swing voters recognize the policy, view it favorably, and alter their behavior based upon it? Will the policy keep a core organized constituency affiliated to a larger political coalition? Will it give that coalition more room to maneuver on other priorities than they would have had without it?⁵

These narrow goals do not exhaust the interests of more far-sighted politicians, whom we call "political investors."⁶ Their fundamental questions are, "Will this governmental action alter

the conditions of future political combat? Does it make possible policy victories in the future that would have been less likely in the absence of that action?” These “government actions”⁷ often involve the use of tools beyond those we associate with ordinary policymaking, like passing laws or promulgating regulations.

Whether actors invest politically is fundamentally shaped by their time horizon—how long they are willing to wait to get a return on their actions—and their risk preferences—whether they are willing to devote resources to relatively low probability/high return activities. We can thus characterize political actors as either political investors (those willing to devote political capital to projects with uncertain, long-term returns) or political consumers (those that use their political capital for relatively certain, quick returns).⁸

Perhaps the most important way that political actors can invest politically is by supporting affiliated social and professional movements or interest groups. Because the universe of organized interests powerfully shapes the character of policy outcomes, actors in government have an interest in supporting them. For the purposes of this paper, we are primarily interested in professionalized policy domains, of which education is one of the most important. As one of us (Teles) has discussed in previous work, in professionalized policy domains major levers that affect system outcomes are not directly in the hands of elected or appointed officials.⁹ Power is shared by professional groups, who exercise considerable influence over occupational entry, training, norms of professionalism and practice, research and conceptual ideas, and agenda control. These various tools add up to giving a particular group or coalition what Andrew Abbott called “jurisdiction over expert work.”¹⁰ That “jurisdiction” can also be conceptualized as a “policy regime.”

As Abbott persuasively argued, however, professional jurisdiction is shifting and

unstable. Jurisdiction is power, and that power creates an attractive target for challenge. Challenging jurisdiction in highly entrenched policy domains, however, is an ambitious exercise requiring mobilization across many sites of conflict—professional schools, scholarly research, lobbying groups, politics at the local, state and national levels, and different political institutions. The strength of existing jurisdiction-holders lies precisely in their ability to coordinate action across these multiple sites, and to defend their control normatively through ideas that legitimate their power. A challenge to jurisdiction, therefore, requires that insurgents form what Stephen Skowronek called an “alternative governing coalition,” a coordinated set of actors capable of mirroring the dominant regime in order ultimately to displace it.¹¹

When the politics of professionalized policy domains is understood this way, the role of political investment in this process becomes clearer. Governments are political investors to the degree to which they devote resources either to further entrenching existing jurisdiction-holders or to dislodging them by supporting an insurgent alternative governing coalition. Governments, we will argue, possess six key tools with which they can engage in jurisdictional politics.

- 1) **Subsidy.** Governments control critical resources that they can directly or indirectly funnel to either the dominant regime or the alternative governing coalition. Government grants, for example, can directly provide resources to organizations, reducing the funds that the organizations must raise from their members or private sources. Governments can also engage in indirect subsidy, for example by shaping their general policies in such a way that they flow to one or the other side of a jurisdictional conflict. A shift in the direction of these subsidies can decisively alter power within a policy domain.
- 2) **Adding or Removing Regulatory Barriers.** Professions frequently create regulatory barriers in order to defend their “turf.” Most obviously, licensing requirements act as a

barrier to entry to the profession and are likely to be particularly powerful when that barrier is manned by affiliates of the dominant regime. Regulations may also determine what constitutes approved professional activity (for example, the functions that need to be engaged in by a school, or the procedures that constitute approved medical practice). Strengthening those regulations will tend to empower the dominant regime, while weakening or entirely deregulating a domain will advantage challengers to jurisdiction.

- 3) **Shaping Perceptions of Costs and Benefits.** Professions maintain their jurisdiction in large part because observers believe that their power has considerable benefits and relatively unimportant costs. Governments have numerous tools to influence these perceptions. They have large research budgets, which can be devoted to collecting information on and establishing authoritative accounts of the balance of costs and benefits. In addition, government actors have a “bully pulpit” which can be used to shape popular perceptions. The statements of governmental authorities are important cognitive shortcuts for the broader public, which lacks the information to know the actual distribution of costs and benefits.
- 4) **Shaping Perceptions of Moral Legitimacy.** Professional groups typically claim power on the basis of their moral fitness to exercise it. The more that incumbents are seen as being oriented toward the public good rather than their own self-interest, the more willing outsiders will be to defer to their judgments and protect the institutional basis of their control. These perceptions of moral legitimacy, however, rest on a culturally constructed foundation—very few people have sufficient direct experience to know whether or not professionals are exercising their power in a public-spirited way. Just as government actors can shape perceptions of costs and benefits, they can also alter perceptions of moral

legitimacy. When government actors challenge an existing professional regime as being “greedy” or “incompetent,” or laud them for being “well-meaning” or “altruistic,” such judgments feed into the larger process through which moral legitimacy is constructed in public culture.

- 5) **Funding or Hampering Demonstrations of Alternative Systems.** One of the most critical obstacles facing alternative governing coalitions is uncertainty. While they may tout claims about the costs and benefits of their preferred alternative, such claims can be dismissed as theoretical and unproven.¹² Given the risk aversion of both policymakers and the broader public (especially where critical services are concerned), this uncertainty is an important resource for incumbents. Insurgents, therefore, typically seek to overcome uncertainty by finding space to try out their alternative through national experiments or local exceptions to national patterns.¹³ Governments have considerable resources to facilitate or hamper such uncertainty-reducing experiments. They can fund them directly, grant waivers of national policy to states or localities, or loosen regulations that make alternatives (in some cases, private alternatives) difficult to get off the ground. Governments can also use their control over information and their salience to advertise or suppress awareness of the findings of these experiments.
- 6) **Investing in Human Capital.** Personal engagement with a challenge to the jurisdiction of a dominant professional group is a risky proposition. Almost by definition, the dominant professional group will tend to stigmatize dissenters, claiming that they are not serious professionals or accusing them of being self-interested. This poses a considerable risk to the livelihood of participants in a professional insurgency. Governments can either exacerbate this risk, or help to mitigate it. By appointing insurgents to official positions,

governments can destigmatize the insurgent identity by associating it with power. Governments can also subsidize the talent pool of the insurgents through the deregulatory or subsidy mechanisms discussed earlier.

Few governments are likely to support or undermine an alternative governing coalition equally across all six of these mechanisms. Many governments have an uneasy, ambivalent relationship to contests for jurisdictional control, with coalition partners on both sides of the conflict. In many cases, these mechanisms are highly discretionary, dependent on the personal commitment and orientation of particular governmental actors. In addition, the degree of commitment to jurisdictional competition is likely to be shaped by the overall orientation (time horizon, risk preference, and political capital) of the government, as well as the idiosyncrasies of its particular members. Finally, the willingness of government to deploy any or all of these mechanisms may be a function of the “ripeness” of the jurisdictional conflict—supporting a challenge in its infancy may be a very different thing, politically, from doing so when a conflict has been fought to something like equilibrium.

The Emergence of Jurisdictional Struggle in American Education

Over the past twenty years, we have gradually seen the emergence of a jurisdictional challenge to the traditional institutions which organize American public education.¹⁴ These self-styled reformers have created an alternate set of institutions that mirror the existing public ones: charter operators like KIPP, Green Dot, and Achievement First are competing with traditional public schools; Teach for America, The New Teacher Project, and a variety of other alternative certification providers are creating new routes for entering teachers; charter networks have

created their own teacher preparation institutions like Teacher U in New York and the High Tech High Graduate School of Education in California to replace traditional education school training; foundations like the Broad Foundation and the Walton Foundation are actively funding economists and others from outside of the usual educational research world to do what they view as more rigorous analysis;¹⁵ state-level advocates like ConnCAN and its spin-off 50 CAN, and national organizations like The Center for Education Reform and the Alliance for School Choice are developing political support for their alternatives; and superintendents like Alan Bersin, Paul Vallas, and Michelle Rhee have run districts as if the bureaucracies they administer are, at least in part, their enemies. Members of this reform coalition often meet at public gatherings such as the annual Yale School of Management's Education Leadership Conference, as well as at other events sponsored by sympathetic foundations and members of the reform network. A longstanding cartel now has an active challenger. While numerically still small in comparison to the much larger traditional cohort, these challengers have received enormous media attention, have considerable influence in a number of major cities (e.g. Washington, D.C., New York, and New Orleans), and, as we will see, have increasingly had their ideas incorporated into federal policy. How this jurisdictional contest plays out is going to be a key story in American education for the foreseeable future. Table 1 provides a visual comparison of the traditional entrants and their new challengers.

Table 1: Jurisdictional Challenge in American Education

| Dimension | Traditional | Challengers |
|--------------------|--|--|
| Credentialing | Traditional certification | Alternative certification (TFA, TNTP) |
| Teacher training | Education schools | School based (Teacher U, High Tech High) |
| Principal training | Education schools | New Leaders for New Schools, KIPP Fisher Fellows |
| Funding | Ford, Carnegie, Annenberg | Walton, Broad, Gates |
| Knowledge | University research (mostly education schools) | Practice-based + randomized control trials |
| Schools | Regular public | Charter |
| Districts | Traditional districts (school systems) | Portfolio districts (system of schools) |

How exactly this challenge was launched and found its legs is a subject that will need to be investigated in more detail by future historians. But the important point, for our purposes, is that the federal government has been a latecomer to the game, and a relatively minor (although increasingly important) one at that. The basic strategy and early political combat involved private and non-profit actors fighting dispersed battles across a wide range of domains, with little or no help from the federal government. In essence, we are describing a process in which the federal government has belatedly backed a set of actors and has sought to mesh a new set of tools with a pre-existing campaign for change.

There are at least six factors that explain why this jurisdictional challenge in education took off when it did: 1) state policy decisions to open up alternate routes into teaching in the 1980s and to create charter schools in the early 1990s, steps which, in combination, created the initial openings for new entrants;¹⁶ 2) the early success of KIPP charter schools in generating

much higher measured outcomes than traditional public schools serving poor children; 3) a policy climate that focused on equalizing test scores as an outcome and thus validated the work of some of the early new entrants; 4) substantial private philanthropic support for the new entrepreneurs (driven in part by the early success of some new charters); 5) positive media coverage, which provided external validation and legitimacy; and 6) most importantly, the creation of Teach for America (TFA), whose alumni migrated out after their initial stint in teaching to start many of the other organizations that comprise the entrepreneurial sector.¹⁷ In short, the new movement found a regulatory opening, used that opening to show early success, worked within a rhetorical climate that valued what it was providing, gained access to start-up capital, and secured a ready source of ideologically amenable human capital. The emergence of this network, which had built momentum of its own, gave sympathetic actors in the federal government something to work with, a partner with whom it had much greater sympathy and shared motivation than with the existing educational establishment. The federal government, in short, jumped on a bandwagon that was not of its own making, but which it recognized had potential to serve its interests.

This jurisdictional fight does not map onto the traditional left-right struggles of the past. Many of the new “reformers” are Democrats, and are surprised (and a bit horrified) to be accused by others on the left of seeking to “privatize” the system.¹⁸ Among the *bête noirs* of the reform movement are teachers unions, and thus the emergence of this challenge has created a considerable split among Democrats, who are now forced to weigh their allegiances between the new reformers and their old electoral allies. We will see how the Obama administration has attempted to manage this tension in the sections to come.

The development of this alternative governing coalition has created new possibilities and opportunities for the federal government. What is new here is not the idea of attacking the traditional system: the attack on the “educational establishment” goes back at least to William Bennett in the 1980s. Nor is it new to fund networks of schools: the creation of New American Schools in 1991 is an early example of that. What is different now is that there is a set of interlinked organizations, across a variety of dimensions of the school system, that have track records, clear political asks, and the energy and capacity to expand if funded. As former Clinton administration official Andrew Rotherham said in an interview for this paper, “Now, there’s a there there.” “In the Clinton administration,” said Rotherham, “we wanted to do a tour of reformers, and we had one, Kim Smith. Now there are more to pick from than you can count.”¹⁹

Of course, the possibility for a new federal role does not necessarily mean that the federal government will choose to embrace it. From both a policy and a political perspective, government’s interests are essentially orthogonal to the issues of jurisdictional control. In terms of policy, governmental officials are seeking better outcomes, which may be achieved through the traditional institution, through the challenger, or, in some cases, through both. For example, state policymakers might seek both to raise standards for traditionally credentialed teachers while also increasing the number of alternatively certified teachers. In terms of politics, a given government may have allies on both sides of the fence, or, in trying to create a palatable compromise, it may need to support provisions that are attractive to different sets of actors. But there is significant evidence that, at the margin, the federal government has increased its bets on changing the actors in the educational system. The balance of this paper will sketch out some of the ways that it has given its support to the jurisdictional challenge as a complement to traditional carrot-and-stick approaches.

Weakening the Dominant Regime's Claim to Jurisdiction

One key mechanism that the government can use in jurisdictional competition is to challenge the competence or moral authority of existing actors. In other work, one of us (Mehta) has argued that actors' perceived "moral power" is a critical attribute in political struggle.²⁰ By using civil rights as the frame for attacking the status quo, both the George W. Bush and Obama administrations have undermined the moral power of traditional actors. For example, President Obama said on *The Today Show* in September 2010, "You can't defend a status quo in which a third of our kids are dropping out... You can't defend a status quo when you've got 2,000 schools across the country that are drop out factories."²¹ There are few more powerful rhetorical devices than the claim of the unsustainability or illegitimacy of the status quo. It makes it easier to argue for risky or unproven alternatives since "everyone knows" that something has to replace the status quo.

In July of 2009, Secretary of Education Arne Duncan directly made the case for change in his speech to the nation's largest teachers union, the National Education Association (NEA). He began by challenging unions to be "partners in reform": "I came here today to challenge you to think differently about the role of unions in public education because, when thousands of schools are chronically failing and millions of children are dropping out each year, we all must think differently." While not calling the NEA "terrorists," as former Bush Secretary Rod Paige did, Duncan was clear that unions need to make changes: "We created tenure rules to make sure that a struggling teacher gets a fair opportunity to improve, and that's a good goal. But when an ineffective teacher gets a chance to improve and doesn't—and when the tenure system keeps that teacher in the classroom anyway—then the system is protecting jobs rather than children. That's not a good thing. We need to work together to change that."²²

The Obama administration has also drawn upon the version of the civil rights frame popularized by the reform network in which students and teachers are seen as adversaries. This view was displayed around the debut of *Waiting for Superman*, a documentary which pits the reform (and particularly charter) communities against traditional public schools.²³ The movie's central framing device is a charter lottery, the presumption being that students who won the lottery and got into these charter schools would move on to upward life trajectories while those who lost would be condemned to failure within regular public schools. Given the starkness of the portrayal, the movie became something of a litmus test for educational reformers, with many in the TFA and charter communities organizing gatherings to see the movie, whereas many of the traditionalists denounced it. Secretary Arne Duncan clearly sided with reformers; he was quoted as calling the film the nation's "Rosa Parks moment." Duncan said, "When the country looked at Rosa Parks and looked in her eyes and saw her tremendous dignity and saw her humanity, the country was compelled to act. When you look at the eyes of Anthony and Daisy and the other children in this movie and their parents and their quiet desperation and how much they want a great education and how they know they may be denied that opportunity, it compels all of us to act with a huge sense of urgency. You cannot watch this movie and stay on the sidelines."²⁴

While in some cases the Obama administration has sided directly with the reform community, it has also provided indirect rhetorical support through the way it has organized and framed its major initiatives. In particular, the "Investing in Innovation" (i3) competition has framed the work in such a way that both new and existing entrants are expected to be judged by the same outcomes.²⁵ This creates a level playing field upon which the new entrants can compete. In contrast to the frame preferred by some in the traditional community—that charter schools are "taking away" students from regular public schools, or that alternative certification

providers are “taking away” jobs from regularly certified teachers—the decision to make both compete on equal ground makes reform actors equally legitimate players in the fight to populate and govern schooling.

At the same time, it is clear that the Obama administration has tried to balance its rhetorical support for the reform community with highlighting actions of traditional actors that are consistent with its vision of school improvement. The most notable example of this was Duncan’s effort to work with the American Federation of Teachers (AFT) and the NEA to organize a conference that spotlighted examples of labor-management collaboration. Said Duncan: “In dozens of districts around the country—from Tampa to Pittsburgh to Denver—union leaders and administrators are moving beyond the battles of the past and finding new ways to work together to focus on student success. These districts show us what is possible when adults come together, particularly in tough times, to do the right thing for kids. We need to learn from these successful collaborative efforts and build upon them across the country.”²⁶ It is notable that even in this effort to praise successful union work, Duncan is still employing the reformers’ frame that it is kids who must come first (with the implication that adults are frequently not serving the interests of kids).

Overall, this strategy of playing both sides of the fence has a number of advantages for the administration. In terms of policy, it allows the administration to use a variety of its tools—seeking to encourage what it sees as better behavior on the part of traditional actors while also empowering external actors who are seeking to replace them. Politically, it allows the administration to maintain needed alliances with different constituencies in the education reform debate. And, in terms of the administration’s own legitimacy, it allows it to refute the claim that

it has been wholly captured by the reformers and to maintain its stance as an above-the-fray actor seeking to improve the system.

Removing Barriers and Creating Openings

Jurisdiction is fundamentally a matter of control over the rules. While incumbents may justify their power through the rhetorical devices described above, their first line of defense is designing (and defending) institutions that are biased in their favor. In education these institutional barriers are legion—caps on charter schools, union bargaining rules, last-in/first-out firing rules, and teacher certification. Part of our story, therefore, is about federal government support for deregulation, which erodes the institutional rules that the educational establishment uses to defend its control and keep out challengers.

But the jurisdictional politics of education is more than simply a matter of deregulation and eliminating barriers to entry, since challengers need to create alternative governance structures—new rules, institutions, incentives, restrictions, and metrics. In fact, it is possible for the federal government to create a more regulated system overall while also eliminating regulations that protect existing jurisdictional claims—a reasonable interpretation of the Obama administration’s record. Thus the story of the role of the federal government is also about how, if at all, it has helped education reformers to create new structures at the same time it is trying to dismantle old ones.

The federal government has substantial, but generally indirect, tools with which to shape the institutional terrain of education politics. Since most of the guts of educational governance are at the state and local level, it is instructive to focus on how the federal government provides incentives and even mandates for what we will call establishment deregulation (eliminating rules

that favor incumbents) and insurgent reregulation (creating new rules that advantage challengers).

The dynamics of simultaneous deregulation and reregulation can be seen most sharply in the rules that the Obama administration promulgated for states that wished to compete for Race to the Top (RTTT) funds. In announcing the regulations, Secretary Duncan declared: “States that do not have public charter laws or put artificial caps on the growth of charter schools will jeopardize their applications under the Race to the Top Fund...To be clear, this administration is not looking to open unregulated and unaccountable schools. We want real autonomy for charters combined with a rigorous authorization process and high performance standards.”²⁷ The RTTT regulations declared that states would be preferred to the degree that they: a) had a charter school law that did not substantially limit the growth of “high-performing charter schools”; b) have effective regulations governing their charter schools, in particular an emphasis on “student achievement” in authorization or renewal; c) have “equitable funding” of charter schools and provide resources for facilities.²⁸

Another example of pro-reform reregulation in RTTT is the emphasis placed on longitudinal data systems. Putting pressure on states to reform their data systems serves the reform network in a number of ways. First, longitudinal data systems make it easier to assess the improvement of individual students and consequently easier to determine which schools are succeeding with roughly similar students. These data may make it harder for opponents of charters, for example, to argue that their success is simply a function of cream-skimming. In addition, value-added metrics—reformers’ preferred basis for teacher evaluation—are impossible to establish without high-quality longitudinal data. With the existence of such data, it becomes that much harder to argue against linking individual student performance to individual

teacher retention and compensation. In addition, to be eligible to apply for RTTT (meaning that the requirement had an impact even on the losers) states were required to eliminate rules that forbid linking data on student performance to teacher and principal evaluation. Since the reform network is seeking to have its teachers evaluated on the basis of value-added data, these changes, even if they mostly affect regular public schools, in the long run have the advantage of allowing reform teachers to compete on an equal playing field. More directly, RTTT gives points for the existence of alternative teacher certification mechanisms, a criterion which directly favors the reformers.

All of these provisions reveal the Janus-faced quality of institutional reform. The thrust of RTTT was deregulatory in that it put pressure on rules the traditional system has used to make it difficult for charter schools to expand, such as caps and funding gaps. But it also sought to reregulate charter schools by singling out “high-performing charter schools,” insisting on student achievement (as opposed to, for example, parental demand) as the metric to guide state action, and encouraging states to develop standards in concert with other states. By pushing in both directions simultaneously, RTTT gave reform activists at the state level leverage on both faces of their legislative agenda.

While Race to the Top may have been the most aggressive use of federal power to weaken the institutional constraints on education reform, it was not the first. Under the Clinton administration, the ESEA renewal of 1994 called for exemption from restrictive rules and regulations applied to public schools, greater financial assistance, and a focus on evaluation.²⁹ The Charter School Expansion Act of 1998 modified the ESEA 1994 charter regulations, providing for one authorized public agency outside of LEA and increasing the number of charters held accountable for quality through measurable assessments. In the second Bush

administration, the Charter Schools Facilities Incentive Grant Program of 2001 awarded matching funds to states that offered per-pupil financial assistance to public charter schools to obtain facilities. By 2008, the program had given out more than \$1 billion to 472 charter schools in states like California, D.C., Minnesota, and Utah.³⁰

Subsidizing the Challenger

Challenging the jurisdiction of the education establishment is as much a matter of resources as it is of moral stature and institutional rules. While the federal government may be limited in the ways that it can directly subsidize education reformers, it does possess powerful tools of indirect subsidy. In fact, some of the forms of subsidy that we will point to are of a sort that reformers could never duplicate on their own, no matter how much time or attention they might devote to the effort.

Perhaps the most important form of subsidy that the federal government has at its disposal is the capacity to redirect attention. At any one time, there are far more issues vying for the focus of policymakers than there is space on the agenda. This scarcity of attention serves the interests of those interested in preserving the status quo while disadvantaging those who need to get the sustained focus of policymakers and the public in order to change prevailing policies. Struggling for space on the state and local agenda takes up a great deal of the energy and money of those who are challenging the education establishment. If the federal government can force issues onto the agenda of state governments in a way that is favorable to educational reformers, then it is, in effect, freeing up resources that would be using for agenda setting and allowing reformers to deploy them in other ways.

Race to the Top, which was discussed in the previous section as an example of institutional reengineering, also functions as a form of agenda subsidy. In essence, the federal government either raises the visibility of an issue or creates an action-forcing mechanism at the state level, thereby pushing it up the agenda of decision-makers. As Alex Johnston, head of the Connecticut-based education reform group ConnCAN, observes, federal action may provide a scale of agenda subsidy that dwarfs what reformers could generate on their own.

When that first guidance [on Race to the Top] came out...we dove into it and just read the whole thing.... We started figuring out what Connecticut would have to do to be competitive for this. We started engaging state policy makers about it and this was before the guidelines were finalized... We saw it as an opportunity to structure our whole advocacy campaign during 2010 around, basically, the delta between where the state policy was and where it needed to be in order to make the state competitive [for] Race to the Top. And that was what was great about Race to the Top for us. It allowed us to raise issues in debate that we wouldn't have been able to...Could we ever have gotten a bill on state evaluation that included a link between student achievement and teacher evaluation in Connecticut without that? No. Because there would have been no reason. It would have been just a bunch of advocates coming from left field.... Federal intervention is an advocacy opportunity to raise the issues that certainly wouldn't be on the table otherwise. Which forced...state leaders to respond.³¹

The lure of funding in RTTT built on the administration's use of the bully pulpit to raise the salience of issues important to the education reform movement. Arne Duncan has been especially aggressive in this regard. On charter caps, for example, Duncan has observed: "Our administration is pushing so hard to lift charter caps. We want new educational options for those communities. We want innovation to flourish, and where charters are doing well there should not be barriers to growth."³² The focus on innovation is a key rhetorical trope of education reformers, and Duncan has provided a subsidy to reformers by making their language part of the standard terminology of the education debate. For example, Duncan observed: "America's schools need innovation. Educational innovation should not be confused with just generating more great ideas or unique inventions. Instead we need new solutions that improve outcomes—

and that can, and will, be used to serve hundreds of thousands of teachers and millions of students. Smart innovation and entrepreneurship are not the only way to dramatically accelerate achievement and attainment. But without them, we will surely fall short of our goals—and do a disservice to our children.”³³

As important as this “soft subsidy” is, the Obama administration has also directed tangible financial subsidies to reformers on a scale that dwarfs that of its predecessors. The administration’s “i3” competition winners, for example, include such core education reform members as TFA, KIPP, School of One, and the New Teacher Project. TFA and KIPP were awarded the largest possible grants of \$50 million—not necessarily huge numbers in the context of the federal budget but quite significant in the context of private philanthropy, a primary source of these organizations’ funding. And this funding is important not simply in financial terms, but also for the way that it increases the “brand value” of the main education reform organizations by placing the administration’s imprimatur or mark of “distinction” on them.

Bringing the Challengers Into the State

The final step for the jurisdictional challenger is to become part of the state. This happens when personnel of the AGC join the government in important roles, particularly roles where they can make discretionary decisions.

It is beyond the scope of this paper to conduct a formal study of the degree to which important roles in the Obama administration are held by members of the reform community. However, it is striking that three of the highest profile people in the Obama administration have strong ties to the jurisdictional challenger. New Leaders for New Schools’ co-founder Jon Schnur served as co-chair of the Obama presidential campaign's education policy committee, as

well as of his transition team for education. Schnur has also been credited as the architect of Race to the Top. Former NewSchools Venture Fund Chief Operating Officer Joanne Weiss was recruited to oversee Race to the Top, and is also Arne Duncan's Chief of Staff. Former Gates Foundation program director James Shelton is the Assistant Deputy Secretary for Improvement and Innovation, where he has been tasked with overseeing the i3 competition. Even if the total number of appointments from the jurisdictional challenger turn out to be few, it is notable that the two most prominent initiatives of the federal DOE in the Obama administration were designed and are being run by members of the reform community.

Obviously, at the district and state levels we have already seen a number of members of the reform community move into prominent roles in government (e.g., Michelle Rhee, Joel Klein, and Paul Vallas). In many of these cases, they have explicitly tried to bring alternate providers into the regular system by incorporating high performing charter schools or alternatively certified teachers into their districts. Places like New York and New Orleans are hybrid models that incorporate the challengers alongside more traditional actors. Thus, what began as a jurisdictional challenge may over time become a kind of mixed model wherein reform actors become responsible for core functions of government. In one sense, this represents a significant gain in power for the alternative governing coalition, but it also raises the possibility that some reform goals may be co-opted by the move to the inside. Only time will tell.

Conclusion: The Federal Government and the Politics of Jurisdictional Conflict

It is still early days in this jurisdictional challenge. Teach for America is only twenty years old, and many of the reform organizations which comprise this alternate governing coalition have

started or found their legs only in this past decade. As such, the number of teachers, students, and schools this group reaches is still very small when compared to the educational field as a whole.

At the same time, this group has rapidly captured media attention, and, as we've seen, has been able to convince the federal government to throw its substantial resources and influence behind the reformers' strategy. The government has used its rhetoric to undermine traditional actors and empower the reform coalition. It has used its most prominent program to date, Race to the Top, to push states to open their doors to the reform challenge,, most notably through pushing for the elimination of charter caps and the hiring of alternatively certified teachers. The Obama administration's other major program to date, the i3 competition, similarly let the federal government directly subsidize initiatives and actors outside the usual implementation chain, and a number of the winners were members of the alternative governing coalition. The administration has also promised that the reauthorization of ESEA will follow the principles set out in Race to the Top, a policy which would take another huge pot of money and commit it in the same direction that we have already seen through RTTT.

To be sure, we do not mean to imply that supporting the jurisdictional challenge is the only, or even the primary, role of the federal government in the Obama administration. The government clearly has a number of priorities: it is trying to move away from sticks and towards carrots in its overall approach; it is trying to encourage the development of new common core standards to develop metrics for higher order thinking; it is trying to encourage the creation of state and district level coalitions among traditional actors, unions, and reformers to improve schools; and it is trying both to pressure unions to act more in the needs of students and to highlight examples where labor-management collaboration has led to progress. The government,

quite appropriately, is using multiple tools in its arsenal to try to generate school improvement; aiding a jurisdictional challenger is only one of them.

Helping a jurisdictional challenger is, at least thus far, a new role for the federal government, and not (yet) a replacement for its traditional functions.³⁴ That is not surprising, since until reformers are able to take over more of the central functions of education governance, coercive or incentivizing tools will be necessary to move practice on the ground.

But, while from the point of view of the current government, sponsoring the jurisdictional challenger is only one tool among many, from the point of view of the sector, the battle for jurisdictional control may be the more important development over the longer run. There is also reason to believe that, as the limits of even the more powerful sets of carrots and sticks that have been deployed recently become clear, the federal government may shift its attention even more to changing the personnel on the ground, as opposed to simply attempting to influence their behavior. To that end, we want to conclude by examining three core issues that the creation of a jurisdictional challenger poses for government: the question of legitimacy, the question of comparative advantage, and the question of efficacy.

With respect to legitimacy, the federal government has always struggled to define its role in a system that is primarily controlled and funded by states and localities. Given this history, the federal government has in recent years sought to build upon and extend efforts originating in lower levels of the system. For example, the federal government's push for standards in the 1994 ESEA and in No Child Left Behind built upon similar efforts already underway at the state level. A similar dynamic seems to be happening now: changes in state rules made room for charter operators, alternatively certified teachers, and a number of actors to prepare people for these roles; these efforts were enlarged with substantial help from the philanthropic community. Once

these efforts were rolling, the federal government sought to extend their reach and increase their momentum through initiatives like Race to the Top and i3.

What is particularly tricky in this case is that rather than simply building on state efforts, the government is picking winners and losers among non-profits, and, in particular, favoring politically controversial non-profits that have substantial backing from private philanthropy. From the point of view of strategic philanthropy, this is precisely how reform is supposed to work: philanthropy backs promising efforts on a small scale, and successful ones then develop more sustainable funding streams from the government. But from the point of view of democratic accountability, the government risks being seen as captured by a particular group of school reformers and the philanthropists who fund them.³⁵

Given these cross-pressures, the Obama administration has attempted to straddle the fence, an approach which, as emphasized above, is potentially both good policy and good politics. In terms of policy, it avoids placing all of one's eggs in the basket of a reform coalition that is still numerically small in comparison to the sector as a whole, and allows the government to operate on multiple fronts simultaneously. Politically, it preserves the ability of the administration to claim neutrality (structuring competitions with clear rules to be judged by external reviewers) while at the same time empowering the jurisdictional challenger to compete on equal footing. Taking such a stance preserves the government's legitimacy in the early days of a jurisdictional challenge while also enabling the challenger to gain some ground.

With respect to comparative advantage, the federal government (as opposed to states or districts) has some particular strengths when it comes to jurisdictional politics. First, the bully pulpit role is clearly important here: the federal government has the largest megaphone, which is particularly useful when it comes to legitimizing the challenger. The bully pulpit is potentially

more powerful in jurisdictional politics than in the more traditional programmatic role, because framing the public debate is useful in building political support but less relevant to forcing regulatory compliance. Second, the federal government can push states (and perhaps, in the future, districts) to open up space for the challenger, as we have seen in the changes in state laws during Race to the Top. Third, the incentive-oriented strategy that the federal government is adopting more generally is well-suited to helping a jurisdictional challenge. The reform network has developed unevenly, stronger in some places than in others, and the Race to the Top and i3 funding structures allow the federal government to encourage these pockets to grow. Thus while the jurisdictional challenge started locally, and the battle will continue to be fought across districts and states, there are clear things the federal government is well positioned to do if it wants to increase the prospects of the challenger.

In terms of efficacy, aiding a jurisdictional challenger creates a new role for the government that may be more promising than the more traditional programmatic one. The major benefit of this strategy is that it is much more consistent with what we know about how to generate quality schooling. Three decades of research on effective schools, Catholic schools, and, most recently, high-performing charter schools suggests that good schools are built at the site of schooling—where you need a clear mission, strong leadership, an internal culture of accountability, and highly capable teachers. The federal government’s ability to create those practices through policies which flow through state and local education agencies is highly limited, and tightening the reins tends to increase compliance but not to improve performance. In contrast, using the government’s powers to empower a reform coalition working in a wide diversity of roles closer to the ground may enable these actors to achieve better education. Similarly, to the degree traditional actors have failed to realize our hopes for the education of our

children, empowering a different set of actors may lead to better results. While newer is not necessarily better, the emerging approach at least avoids repeating the mistakes of the top-down approaches of the past. Over time we will see whether empowering a new set of actors will create the much improved schools that we seek.

Notes

¹ Jeffrey Pressman and Aaron Wildavsky, *Implementation* (Berkeley: University of California Press, 1973). For a more recent view specific to education, see Richard Elmore, *School Reform From the Inside Out* (Cambridge, MA: Harvard Education Press, 2004).

² David Cohen and Susan Moffitt, *The Ordeal of Equality* (Cambridge, MA: Harvard University Press, 2009).

³ Jal Mehta, “Inverting the Pyramid,” *Harvard Education Letter*, October 2010.

⁴ Two interesting parallels to the process we are describing here can be seen in: Martha Derthick, *The Influence of Federal Grants: Public Assistance in Massachusetts* (Cambridge: Harvard University Press, 1970), which argued that the federal government sought to alter the character of state welfare administration by encouraging social work professionalization, thereby essentially colonizing state administration; and Daniel Carpenter, *Reputation and Power: Organizational Image and Pharmaceutical Regulation at the FDA* (Princeton: Princeton University Press, 2010), which found that the FDA actively sought to alter the personnel, training, and scientific worldview of pharmaceutical companies as a way to deal with the challenge of regulating a huge, complicated industry with a relatively small agency staff.

⁵ Versions of this alternative approach can be seen in: Mark Kleiman and Steven Teles, “Market Failure and Government Failure,” in Robert Goodin, Michael Moran and Martin Rein, eds., *Oxford Handbook of Public Policy* (Oxford, 2006), pp. 622-648 and Steven Teles, “The Paradoxes of Welfare State Conservatism,” *The Public Interest*, Fall 2000, pp. 17-40.

⁶ Steven Teles, “Transformative Bureaucracy: Reagan’s Lawyers and the Dynamics of Political Investment,” *Studies in American Political Development*, April 2009, 61-83.

⁷ A discussion of the non-legislative actions of legislators can be found in David Mayhew, *America’s Congress: Actions in the Public Sphere* (New Haven, CT: Yale University Press, 2000).

⁸ A similar distinction can be found in Daniel Galvin’s *Presidential Party-Building* (Princeton: Princeton University Press, 2009).

⁹ The character of politics in professionalized policy domains is discussed in Steven Teles, *The Rise of the Conservative Legal Movement* (Princeton: Princeton University Press, 2008), Chapter One.

¹⁰ Andrew Abbott, *The System of Professions* (Chicago: University of Chicago Press, 1988).

¹¹ Stephen Skowronek, *Building a New American State* (Cambridge, MA: Cambridge University Press, 1982).

¹² This argument draws on Chapter Seven of Steven Teles, *Whose Welfare? AFDC and Elite Conflict*, Revised Ed. (Lawrence, KS: University Press of Kansas, 1998).

¹³ Frank Baumgartner and Bryan Jones, *Agendas and Instability in American Politics*, 2nd ed. (Chicago: University of Chicago Press, 2009), Chapter 11.

¹⁴ Jal Mehta, “Getting in the Game: Jurisdictional Contests and Sociological Opportunities,” paper presented at the American Sociological Association meetings, August 7, 2009.

¹⁵ A recent analysis by Sarah Reckhow quantifies the growth of the new foundations as compared to the old. She finds that in 2000, Annenberg, Carnegie and Ford gave a little more than \$100 million to education; in 2005, the figure was roughly the same. Gates, Walton, and Broad also gave a little over \$100 million in 2000, but by 2005 they had increased their outlays to nearly \$400 million. Reckhow’s analysis is quoted in Dana Goldstein, “Education

Reform Philanthropy Has Changed Radically Over the Past Decade,” http://www.danagoldstein.net/dana_goldstein/2011/05/education-reform-philanthropy-has-changed-radically-over-the-past-decade.html.

¹⁶ C. Emily Feistritzer and Charlene K. Haar, *Alternate Routes to Teaching* (Upper Saddle River, NJ: Pearson, 2008).

¹⁷ Monica Higgins, et al, “Creating a Corps of Change Agents,” *Education Next*, Summer 2011.

¹⁸ As Paul Tough wrote on this point in 2006, “[KIPP founder David] Levin and [Achievement First founder Dacia] Toll sometimes seem surprised by the political company they are now keeping — and by the opponents they have attracted. ‘I’m a total liberal!’ Toll said, a little defensively, when I asked her recently about this political divide.” See Paul Tough, “What It Takes to Make a Student,” *New York Times Magazine*, November 26, 2006.

¹⁹ Interview with Andrew Rotherham, February 17, 2011.

²⁰ Jal Mehta and Christopher Winship, “Moral Power,” in *Handbook of the Sociology of Morality*, eds. Steven Hitlin and Steven Vaisey (New York: Springer, 2011).

²¹ Stephanie Condon, “Obama Calls for Big Education Reform—More Charter Schools, Longer School Year,” *CBS News*, September 27, 2010. http://www.cbsnews.com/8301-503544_162-20017666-503544.html.

²² Arne Duncan, “Partners in Reform,” Speech to the National Education Association, July 2, 2009: <http://www.ed.gov/news/speeches/partners-reform>.

²³ Another movie released at almost the same time, with an almost identical rhetorical frame, was *The Lottery*. The overlapping frames of these two movies is a good indication that the movement has built a strong moral argument that can be drawn upon to structure conflict across multiple sites of conflict.

²⁴ Arne Duncan, “Education for All,” *The Oprah Winfrey Show*, September 24, 2010, accessed at <http://www.oprah.com/oprahshow/Viewers-React-to-Waiting-For-Superman/5>. The civil rights framing of educational choice was pioneered by the Institute for Justice, which was at the vanguard of drawing arguments for libertarian objectives from the history of the black freedom struggle. This is discussed in Steven Teles, *The Rise of the Conservative Legal Movement* (Princeton: Princeton University Press, 2008), Chapter Seven, and in Steven Teles, “The Eternal Return of Compassionate Conservatism,” *National Affairs*, Fall 2009. This framing has the advantage of creating at least potential conflict between teachers (who represent “government producer interests”) and black parents and children, whereas the status quo had suggested a community of interest between them.

²⁵ See <http://www2.ed.gov/programs/innovation/legislation.html>

²⁶ Arne Duncan, “Duncan, AFT & NEA Call for National Education Reform Conference on Labor-Management Collaboration,” October 14, 2010, available at <http://www.ed.gov/news/press-releases/duncan-aft-nea-call-national-education-reform-conference-labor-management-collab>.

²⁷ “States Open to Charters Start Fast in ‘Race to the Top,’” June 8, 2009, available at <http://www2.ed.gov/news/pressreleases/2009/06/06082009a.html>.

²⁸ Federal Register, Department of Education, Overview Information for Race to the Top Fund Section (F)(2), available at <http://www2.ed.gov/legislation/FedRegister/announcements/2010-2/041410a.pdf>.

²⁹ 1994 ESEA reauthorization: Part C – Public Charter Schools, Sec. 10301, Findings and Purpose.

³⁰ <http://www.publiccharters.org/issues/federalpolicy>

³¹ Interview with Alex Johnston, February 4, 2011.

³² Arne Duncan, Governors Education Symposium, June 14, 2009.

³³ Arne Duncan, America's Choice Superintendent's Symposium, August 20, 2009.

³⁴ For an excellent interpretation of the overall direction of the Obama Administration, with a particular focus on Race to the Top, see Patrick McGuinn, *Creating Cover and Constructing Capacity: Assessing the Origins, Evolution, and Impact of Race to the Top*. American Enterprise Institute Education Stimulus Watch Special Report 6, 2010, accessible online at <http://www.aei.org/paper/100165>.

³⁵ See Janelle Scott, "The Politics of Venture Philanthropy in Charter School Policy and Advocacy," *Education Policy*, 23(1): 106-136; Joanne Barkan, "Got Dough? How Billionaires Rule Our Schools," *Dissent Magazine*, Winter 2011. <http://www.dissentmagazine.org/article/?article=3781>.