

# Rethinking Governance

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## **The Real Impact of Governance in Public Education**

Is talk of governance a distraction in the effort to improve America's schools? Some people claim so. Children don't learn from elected officials or the laws and regulations they create; students learn from teachers. Just give every child a good teacher, some say, and all the problems of our schools would be solved. They would be right, of course, if only it were possible to give every child a better teacher without changing the rules by which public schools are governed.

Governance—the rules made by school boards, legislatures, and bureaucracies, and the actions those bodies take to make sure the rules are followed—ultimately determines who teaches whom and what gets taught. Governance sets teacher pay scales and licensing standards. Collective bargaining agreements are part of governance, and they control how teachers are hired, assigned to schools, assigned work, and evaluated. Governance also determines what schools teach, how they use time and money, how their performance is judged, and whether anything is done about a school where children are not learning.

Public education requires governance because it involves two takings of liberty: taxpayers are compelled to pay for it, and parents are compelled either to send their children to publicly funded schools or to make other arrangements at their own expense. Publicly funded education is the only realistic option for the vast majority of parents.

Important conflicts are inherent to public education. Conflicts are found among the preferences of policymakers who define the purposes of public education, the taxpayers who pay for it, parents who surrender their children to it, and educators who are paid to deliver it. These conflicts can never be fully resolved, but they can be managed via agreements about rules and processes for making decisions and managing what gets done. Thus the need for governance.

## **The Harm Done by Current Governance Arrangements**

Public education governance in the United States is a weird product of our nation's history, federal structure, and openness to political entrepreneurship. Nobody designed our mishmash of governance arrangements. Instead, they arose a little bit at a time in response to crises, political entrepreneurship, and interest-group opportunism.

Due to our frontier past, schools grew organically in individual towns and neighborhoods, long before state governments seriously took on the responsibility for education assigned to them by their constitutions. Once states started regulating and funding K–12 education, tensions about who was in charge began. The national government, long inactive in K–12 education, burst into action during the 1960s War on Poverty. Its programs and carrot-and-stick approach (subsidies in return for mandated activities) created new regulatory pressures on schools. Our history of school segregation ultimately pulled courts into K–12. Once the courts proved willing to rule on a broad range of issues framed around equal

protection of the laws, they too became sources of rules and constraints, sometimes at odds with those created by other units of government. In the 1970s teachers unions became the dominant organized force in public education; negotiated collective bargaining agreements became the most potent source of constraints on how teachers work and schools operate.

As a result, K–12 governance is chaotic. Every level of government imposes controls of some kind on how funds will be used and accounted for, who may teach, what jobs teachers may and may not do, how many students may be assigned to a teacher in an hour or a day, what hours and days schools will operate, how space and equipment will be used, what parent groups must be consulted before decisions are made, what facilities schools may occupy, etc.<sup>1</sup> School boards can intervene in almost any detail of school operation under the guise of casework for constituents.<sup>2</sup> Teachers' collective bargaining agreements, court orders, and individualized education plans for students with special needs are also part of governance. So are licensing policies that exclude many people with relevant skills from working in schools.

Governance can tie up funds on unproductive activities, causing schools to spend more for facilities and transportation than school leaders would do if they had their choice, or to teach some students courses they are not prepared for and to teach other students subjects they already know.

Our system acts as if the exercise of discretion and the expertise that goes along with it are dangerous. Over time, as problems arise and new rules are created in an (often futile) effort to ensure that they never happen again, constraints on the educators and parents grow.

Today's governance makes it difficult for the people who know what children need to act on what they know. Parents who know what their children need are given few options to choose the school that best fits their children's needs; principals who have the skills and attitudes to identify a teacher who can be effective in

a particular context are denied the opportunity to do so; teachers and school leaders who know the school's needs and therefore how it should spend its budget are prevented from doing so; and teachers who know what their students have and haven't mastered are denied the discretion that would enable them to use such knowledge to develop a new curriculum or engage technology to help.

## Can We Get Governance Right?

How to fix public education governance in the United States is not a new question. Analysts have suggested many alternative forms of governance, each intended to shift the locus of decision-making from local school boards and state legislatures to other entities, including mayors, parents, and school entrepreneurs.

Milton Friedman's book *Capitalism and Freedom* set off a debate on education governance that continues to this day. He argued for putting parents in charge. John Chubb and Terry Moe suggested a more complex system, with parents in charge but also some roles for regulators, from whom school operators would need to get licenses.<sup>3</sup> Moe has since made a strong case for a mixed system in which government's role is strictly limited and choice and entrepreneurship are emphasized.<sup>4</sup>

Others have suggested leaving a government-operated school system intact, but putting different people—mayors,<sup>5</sup> appointed boards, or state officials<sup>6</sup>—in charge and using performance standards to focus the attention of educators on student learning, not distracting rules.<sup>7</sup>

Proposals to fix governance by putting mayors or state officials in charge are popular, if poorly thought-through. A change in mode of selection is always a good idea when a governing body is overly politicized or deadlocked.<sup>8</sup>

Takeovers by mayors have overcome the blocking power of unions and district bureaucracies in New York, Hartford, Connecticut, and other cities, but they only work for a while. The

same is true of takeovers by special masters or statewide school districts like Louisiana's Recovery School District. As this is written, the New York and Hartford reforms are both in danger of being thrown out by successor mayors who can gain union support by bashing their predecessors' policies. The promising state takeover in Oakland, California, has already been abandoned under political pressure. Louisiana's Recovery District is required by law to return schools to local control.

Mayorally appointed boards and superintendents can run into the same problems as elected ones, particularly if provider groups or political machines control appointments. Appointed boards often confound the expectations of mayors and others who appoint them, just as elected boards can disappoint voters. Any way of selecting board members is open to abuse. When things are not working out well under one method, the grass can look much greener under another.

More fundamental new governance ideas from both sides of the political spectrum also have flaws, from even more open town-meeting style control of schools on the left to total abandonment of governance in preference for market mechanisms on the right.

Unbounded public deliberation about the goals and means of public education would lead to continual and escalating regulation of schools, accelerating the harmful developments of the past thirty years. Each succeeding crisis or emergence of a noble cause would lead to new regulations, to be layered on top of those created earlier.

In an ideal world, well-intentioned regulation driven by community politics would serve to increase equity of access and outcomes. In practice, it leads to precisely the opposite outcome by severing the link between those who know something that might help and those who make the decisions.

Total reliance on the market is also unrealistic. A pure market would allow only parents' consumer behavior to govern who ran schools, which schools were forced to close, what schools offered

in the way of instruction, and thus ultimately what children would learn. While consumer choice would drive improvement, it is likely that, absent government oversight, data-cooking and exclusion of hard-to-educate students by a subset of schools would destabilize the entire arrangement.<sup>9</sup> Our existing legal protections governing discrimination and child protection would lead to court intervention and piecemeal re-regulation of exactly the kind that produced the irrational governance system we have today.

A pure market would in time attract innovators and entrepreneurs with new ideas about how to meet existing and new needs. It would also ultimately teach families the consequences of bad choices—as poorly prepared children could not get needed education or jobs—but nobody knows whether that would take a few years or a few generations.<sup>10</sup> In the meantime, many could suffer, and the pressure for re-regulation would be hard to resist.

Governance changes are tricky. Proposals that assume that some class of actors, if put fully in charge, will naturally seek effective schools for all children are doomed to failure. No one group or entity has exactly the same interest as children, and each can be expected, in the long run, to pull schooling, and the uses of public funds, in directions that meet its own interests.

Proposals that educators be left to govern themselves, deciding how much money schools need and assessing their own performance, are obvious non-starters. Teachers have their own interests and can't always be trusted to automatically give children what they need. Similarly, proposals that governance be reduced to standard-setting are based on the Pollyanna assumption that lack of knowledge about what students need to know is the only barrier to effective, concerted action among educators, parents, and taxpayers. Misalignment in the education system is due to differences in agendas and interests, not to lack of information.

Proposals that charter schools or charter management organizations should govern themselves constrained only by family

choices are similarly naïve. Charter school operators have very good motives—to serve the students they enroll as effectively as possible—but they are not responsible for any student they do not admit. Predictably, some charter operators in New Orleans have tried to avoid serving disabled children, and some charters in New York City have tried to rig admissions lotteries and have refused to admit children who move into the city in the middle of the school year. Online education providers in Ohio have worked hard to prevent competitors from entering the marketplace.

Only a few charter schools and online providers have done these things. Nor will most public school teachers cheat their students by tampering with test booklets to inflate the results. But such things do happen because some actors will define their interests narrowly. Because one dramatic case of neglect or discrimination can lead to re-regulation, a stable governance system cannot place blind trust in any group.

## Emerging “Mixed Governance” Ideas

It is possible to move toward a system that harnesses the power of markets by significantly enhancing the openness and competitiveness of the system and choice for families while at the same time creating real protections for children who might otherwise suffer discrimination and neglect.

Since 1990, promising new ideas about limiting governance and employing market mechanisms have emerged. Led by Chubb and Moe in *Politics, Markets, and America’s Schools*,<sup>11</sup> these proposals would limit government to oversight rather than operation of public schools. Independent parties would operate schools, choose curricula and instructional approaches, employ staff, and control budgets based on student enrollment.<sup>12</sup> Parents would freely choose any school. Government would only license, contract with, or charter schools and ensure that parents had access to good performance information.

The most recent “constitutional” proposal is the most explicit: local school boards should have no powers whatever other than to decide on a slate of independently run schools to operate in their localities.<sup>13</sup> By law, school boards would be forbidden to employ teachers or principals, incur debts, or own property. Schools could enforce their freedom from regulation in court.

Growing numbers of states and localities are experimenting with one or another of these proposals, all of which are consistent with the principle expressed by David Osborne and Ted Gaebler that “government should steer but not row.”<sup>14</sup> Some states’ movement from program-based to pupil-based funding and investment in longitudinal student performance databases reinforce these developments in governance.

In the next ten years, ideas like these will need to be tried and refined to make room for new possibilities created by technology and social entrepreneurship:

- Schools that serve students statewide or even nationally, via online instruction
- Hybrid schools where student and teacher work is organized around individualized, computer-based learning, which might employ fewer but more highly skilled teachers, require student attendance only part-time, and need far more modest facilities than existing schools
- Schools that don’t employ teachers directly but obtain them from specialized services (analogous to providers of specialized physician services to hospitals)
- Voucher systems that allow parents to hire different providers for different parts of their child’s learning experiences

To accommodate these inevitable changes in educational practice and instructional delivery, governance must become less bound to geographically defined provision; less prescriptive about whom schools employ and how they use time and money; more focused



on accountability for performance; and vastly less focused on compliance. Yet, voters will still demand accounting for public funds and evidence of results. Courts and legislatures can't be prevented from taking action when someone can make a good case that children have been neglected or abused.

## **The Work of the Next Decade**

Governance challenges are not insoluble. But solving them requires hard thinking about design, disciplined experimentation with possible solutions, and close analysis of real-world experience. Any governance reform must be closely scrutinized for its susceptibility to "capture," i.e., one group's domination of schools in its own interest.

There will be no substitute for data-based tracking of implementation, results, and unexpected developments. Things seldom work out as intended, both because theorists who invent new governance ideas can seldom think through all the angles the first time and because good ideas can be distorted in implementation.

Failure to track implementation can mean a governance idea is called a proven failure when in fact it was never tried. In Philadelphia, for example, opponents claimed that increasing school-level control of resources was a failure because student results did not improve. Reformers had no response to these claims, though subsequent analysis showed that the schools concerned never got the promised freedom over staffing and spending and that the traditional schools to which they were compared got a great deal of extra money.

Solving the governance problem will require serious analysis, not just sloganeering. When it comes to creating a governance system in which schools are free from continual re-regulation, the truth sounds paradoxical: schools would be freer and suffer less governance instability if new governance plans anticipated areas in

which schools would surely be regulated and were clear about what data and other forms of evidence schools must provide.

## Notes

1. For extensive critiques of existing governance arrangements, see Noel Epstein, *Who's In Charge Here? The Tangled Web of School Governance and Policy* (Washington, DC: Brookings Institution Press, 2004). See also Dominic Brewer and Joanna Smith, "Evaluating the 'Crazy Quilt': Educational Governance in California" (Stanford, CA: Institute for Research on Education Policy and Practice, 2006).
2. For a review of school board duties as assigned by state legislation, see Paul T. Hill, Christine Campbell, Kelly Warner-King, Meaghan McElroy, and Isabel Munoz-Colon, "Big City School Boards: Problems and Options" (Seattle: Center on Reinventing Public Education, 2003).
3. John Chubb and Terry M. Moe, *Politics, Markets, and America's Schools* (Washington, DC: Brookings Institution Press, 1990).
4. Terry M. Moe and Paul T. Hill, "Moving to a Mixed Model: Without an Appropriate Role for the Market, the Education Sector Will Stagnate," in *The Futures of School Reform*, ed. Jal Mehta, Robert B. Schwartz, and Frederick M. Hess (Cambridge, MA: Harvard Education Press, 2012).
5. Kenneth K. Wong, Francis X. Shen, Dorothea Anagnostopoulos, and Stacey Rutledge, *The Education Mayor: Improving America's Schools* (Washington, DC: Georgetown University Press, 2007). See also Kenneth K. Wong, "Measuring the Effectiveness of Mayoral Takeover as a School Reform Strategy," *Peabody Journal of Education* 78, no. 4 (2003): 89–119.
6. Chester E. Finn Jr., "Reinventing Local Control," *Education Week*, January 23, 1991, 40.

7. Jennifer A. O'Day and Marshall S. Smith, "Systemic Reform and Educational Opportunity," in *Designing Coherent Education Policy: Improving the System*, ed. Susan H. Fuhrman (San Francisco: Jossey-Bass, 1993), 250–312.
8. Ashley Jochim and Paul T. Hill, "Mayoral Intervention: Right for Seattle Schools?" (Seattle: Center on Reinventing Public Education, 2008).
9. Cases brought by parents of handicapped children already threaten re-regulation of the all-charter New Orleans public school system.
10. On the time dimension in implementation of choice, see a recent Hoover Institution Press book by the present author, *Learning as We Go: Why School Choice is Worth the Wait* (2010).
11. Chubb and Moe, *Politics, Markets, and America's Schools*.
12. See, for example, Paul T. Hill, Lawrence Pierce, and James Guthrie, *Reinventing Public Education: How Contracting Can Transform America's Schools* (Chicago: University of Chicago Press, 1997); Andy Smarick, *The Urban School System of the Future: Applying the Principles and Lessons of Chartering* (Lanham, MD: Rowman and Littlefield, 2012); Paul T. Hill, Christine Campbell, and Betheny Gross, *Strife and Progress: Portfolio Strategies to Manage Urban Schools* (Washington, DC: Brookings Institution Press, 2012); and Neerav Kingsland, "An Open Letter to Urban Superintendents in the United States of America, Part I: Reformers and Relinquishers," in *Rick Hess Straight Up* (blog), January 23, 2012, [http://blogs.edweek.org/edweek/rick\\_hess\\_straight\\_up/2012/01/an\\_open\\_letter\\_to\\_urban\\_superintendents\\_in\\_the\\_united\\_states\\_of\\_america.html](http://blogs.edweek.org/edweek/rick_hess_straight_up/2012/01/an_open_letter_to_urban_superintendents_in_the_united_states_of_america.html); and William Guenther and Justin Cohen, *Smart Districts: Restructuring Urban Systems from the School Up* (Boston: Mass Insight, 2012).

13. Paul T. Hill, “Picturing a Different Governance Structure for Public Education,” in *Education Governance for the Twenty-first Century: Overcoming the Structural Barriers to School Reform*, ed. Patrick McGuinn and Paul Manna (Washington, DC: Brookings Institution Press, 2013).
14. David Osborne and Ted Gaebler, *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector* (Reading, MA: Addison-Wesley, 1992).