



Public Schools and the Original Federal Land Grant Program

A Background Paper from the Center on Education Policy

The foundation of our political institutions, it is well known, rests in the will of the People, and the safety of the whole superstructure, its temple and altar, daily and hourly depend upon the discreet exercise of this will. How then is this will to be corrected, chastened, subdued? By education—that education, the first rudiments of which can be acquired only in common schools.

Report of U.S. House Committee on Public Lands, 1826

Summary

From the late 18th century through the middle of the 20th century, the federal government granted control of millions of acres of federal land to each state as it entered the Union. These lands were given in trust, with the stipulation that proceeds from their sale or lease be used to support various public institutions—most notably, public elementary and secondary schools and universities. These state land grants have played an important role in the development of the American system of public education and continue to provide revenues to maintain that system today.

This background paper from the Center on Education Policy (CEP) examines the origins, history, and evolution of federal land grants for public schools, as well as their significance as an early example of the federal role in education. It is intended to serve as a more detailed companion to another CEP paper, *Get the Federal Government Out of Education? That Wasn't the Founding Fathers' Vision* (CEP, 2011), which mentions land grants as part of a broader look at the historical federal role in education.

Several key points can be drawn from this paper:

- ***Federal support for public schools is not a modern concept.*** Rather, it goes back more than two centuries to the time of George Washington and the nation's founding. Two early federal Acts—the Land Ordinance of 1785 and the Northwest Ordinance of 1787—granted federal lands to new states and set aside a portion of those lands to be used to fund public schools.
- ***The nation's founders saw these land grants as a way to encourage public education and incorporate the principles of democracy throughout the vast western territory.*** Many of the founders viewed education as a primary way to ensure citizens were prepared to exercise the freedom and responsibilities of a democratic society. By the end of the 18th century, there was a general consensus in favor of using public funds to support public schooling for the common good.
- ***The policy of land grants for education continued to be endorsed in federal laws spanning from the Jefferson Administration through the Eisenhower Administration.*** The land grant concept established by the Land and Northwest Ordinances was also included, often with refinements, in each of the Enabling Acts that spelled out the conditions of statehood for new states entering the Union—from the 1802 Act for Ohio's statehood to the 1958 Act for Alaska's statehood. Thus, the two original Ordinances shaped federal contributions to education for more than 170 years.
- ***Land grants were an early example of the federal government using a carrot-and-stick approach with states.*** To receive their land grants, states had to agree to certain requirements included in their Enabling Act by the Congress. Over time, these requirements became more specific, but this was often because the Enabling Acts incorporated language about education that states previously admitted to the Union had chosen to write into their state constitutions. Thus, land grants were also an early example of a policy shaped by a state-federal partnership.
- ***Federal land grants continue to generate revenues for education.*** Because each state has managed and maintained its lands in a different way, the land grants are a more important source of revenue for schools in some states than in others. In states that still hold the original land grants, funds come from a range of land uses, including agriculture, sales of oil and gas reserves, and commercial development. In four states examined for this paper, three-fourths or more of the revenues from these lands goes to public schools, and these land grant revenues for schools provide up to 10% of the state portion of the education budget.

Introduction

The relationship between the federal government and state and local governments in the United States is an uncommon one among nations. Throughout American history, these branches of government have struggled to find the right balance between unity and structure on one hand, and the exercise of state and local control on the other. State and local jurisdictions, especially in the territories of the early American West, relied on federal support to build their infrastructure but wanted these funds to come without strings, while the federal government sought to attach stipulations to the granting of resources as a way to extend its control over a quickly growing area. One particularly sensitive intersection of federal and state power was, and still is, the management of land and the valuable resources it often contains.

More than 80% of the land in the U.S. has been titled to the federal government at some point in its history. Over time, some of these lands have passed out of federal control and into state or private hands. Among the lands that the federal government turned over to local control were millions of acres of “state trust lands,” which were given by the federal government to the newly formed states in the form of trusts. These lands eventually totaled more than 80 million acres in the lower 48 states—one and a half times the size of the lands managed by the National Park Service (Souder & Fairfax, 1996). (Over 100 million acres were granted separately to Alaska.) State trust lands were spread across the country but were concentrated west of the Mississippi River, and encompassed every sort of terrain, from the mineral-rich lands of the Northwest, to the fertile farmlands of the Midwest, to the dry areas of the Southwest (Culp, Conradi & Tuell, 2005).

These state trust lands were granted by the federal government to new states for the support of various public institutions, such as prisons, hospitals, military institutions, and—most significantly for this paper—schools and universities, the main recipients in the lower 48 states. In total, 77,630,000 acres of these trust lands were set aside for the use of common, or public, schools (Tyack, James & Benavot, 1987).

These land grants, as they came to be known, played a little-understood yet crucial role in the history of public education. As Souder and Fairfax (1996, p. 1) explain, “The land grants were originally made for a single, explicitly stated purpose—to support common schools and similar public institutions—and that purpose continued to be controlling at the end of the twentieth century. Very few programs in this or any other nation have such a deep, clear past or such a consistent core.” Much has been written about the legal, economic, and administrative aspects of these grant lands and trusts, since the

authority over and management of these lands has important implications for economic and commercial development, the environment, state's rights, and other issues. However, few scholars have written for a popular audience about the relationship of the early federal land grants to the public school system.

Many people are familiar with educational land grants in the context of the land-grant colleges created through the Morrill and Agricultural College Acts of 1862 and 1890. In fact, those college land grants were the successors to a much older and more systematic arrangement of granting lands for the support of schools.

Two early federal Acts formed the basis for all subsequent federal land grant policy—the Land Ordinance of 1785 (officially, *An Ordinance for Ascertaining the Mode of Disposing of Lands in the Western Territory*) and the Northwest Ordinance of 1787 (officially, *An Ordinance for the Government of the Territory of the United States, North-West of the River Ohio*). These ordinances established a series of trust relationships between the federal government and the states, in which the government granted the asset (land) to be held in a trust and used to support a system of schools in a state (Souder & Fairfax, 1996).

Although these ordinances were approved by the Continental Congress before the adoption of the Constitution in 1789, they remained the law of the land in the new United States, just as anything enacted or ratified by the Continental Congress was binding after 1789.¹ As Northwest Ordinance scholar Peter S. Onuf (1987) notes, “the Ordinance was treated as a constitutional document” (p. xvii). Additionally, as discussed in the next section, the power of these two laws was already established and accepted in the eyes of the founding fathers.

In light of the continuing debate about federal influence versus local control of public schools, it is notable that the state land grants first made by these ordinances set the stage for a consistent federal policy that was incorporated in later legislation and applied to every state as it entered the Union.

Lands in a New Republic

The Land Ordinance of 1785 and the Northwest Ordinance of 1787 were influenced greatly by the political, social, and economic context of the American Revolution, and they emerged in tandem with the new republic.

¹Gordon Wood, personal communication to Alexandra Usher, February 18, 2011.

Almost immediately after the Revolutionary War and the colonies' cession of their Western lands to the new government, concern began to spread about the management of those lands. The members of the new Continental Congress worried that if they did not act, several problems would occur: land speculation would become rampant as settlers moved westward; valuable natural resources, and the land itself, might be lost; and the fragile new Union might fracture if settlements decided to secede or establish non-democratic governments (Onuf, 1987). Additionally, there was a fear of foreign influence spreading in the unsettled territories, with the presence of the French in Louisiana and other parts of the Mississippi River basin, the Russians in Oregon, the British in Canada, and the Spanish in Florida and California. The fledgling American government worried that a settler in Ohio, for example, "was as likely to end up speaking French as English."²

While these concerns were all valid, the concerns about states seceding or adopting non-democratic governments became a source of great worry, and the Continental Congress decided to deal with it in two ways. First, the Northwest Ordinance specifically mandated that any new state, in order to be admitted to the Union, must adopt a Republican (i.e., democratic) form of government. Second, this Ordinance broadly declared that "schools and the means of education shall forever be encouraged." Many of the revolutionary leaders and Founding Fathers, most famously Thomas Jefferson, held a fervent belief in the importance of education. They felt that providing a public education was the only means by which to ensure that citizens were prepared to exercise the freedoms and responsibilities granted to them in the Constitution and thereby preserve the ideals of liberty and freedom. Education was the most promising way to make sure that Americans, no matter where in the country or territories they were located, were being raised as English-speaking citizens loyal to the ideals of democracy (Culp et al., 2005).

The practice of using land grants to support education was not a new idea in 1785. Before independence, many American colonies supported schools through land endowments, a practice rooted in European and even ancient Greek and Egyptian origins (Culp et al., 2005). Further, by the end of the 18th century, there was already general consensus in favor of using the "public bounty" for the support of common schools, and many citizens saw widespread schooling as beneficial to both the Union and the common good. By the 1800s, schooling was already considered a right, and new states were clamoring for federal support for their school systems (Tyack et al., 1987).

²Peter Culp, personal communication to Alexandra Usher, February 26, 2011.

In order to understand what a significant undertaking these ideas about the importance of common schools were, it is pertinent to review the educational landscape in America at the time of the American Revolution.

The Status of Public Education in 18th Century America

Before the Revolutionary War, elementary education varied greatly among the colonies. Some colonies required the education of all children as early as the 1600s, while others left education to the discretion of parents, churches, and other community groups. Access to education was limited by geography and income, as well as race and gender (Center on Education Policy, 2007). Soon after the American Revolution, some of the nation's founders recognized that this haphazard approach to schooling was inadequate to educate the people of the developing nation and that a more formal system was needed.

In addition to encouraging the development of morality and democracy through education, the land grants provided a crucial economic resource for the new territories. The already-established eastern states had a settled property base that could fund schools through taxes, while the newly forming west, with its lands under the federal public domain, had few resources available to fund fledgling governments (Culp et al., 2005). Without the federal government's endorsement of free public schooling for all citizens and legislation specifically setting aside land and money for the establishment of schools, the expansive territories and nascent states may have struggled to sustain education as a monetary and political priority. As Tyack, James, and Benavot describe:

Even Southern Congressmen committed to states' rights and opposed to federal subsidy of internal improvements believed it appropriate for the national government to underwrite schooling in the new states. By requiring territories to devise state constitutions, Congress induced leaders in new states to think systematically about how to provide public education as one among an array of institutions designed to build a republican form of government (Tyack, 1987, p. 14).

The Congressional concerns about the management of western lands and the establishment of a well-educated citizenry went hand-in-hand to spur the passage of the Land and Northwest Ordinances. These two laws together laid out how federal land would be used and distributed; how territories would be surveyed, divided, and governed; and by what process new states were to be formed from those territories. To

make certain that their insistence on public education was not cast aside, the founders included a requirement in the Land Ordinance that certain lands be set aside for schools (Culp et al., 2005). They also included language in the Northwest Ordinance that encouraged education in general—the language in the epigraph to this paper. It is important to remember that these two ordinances did not apply to all land in the U.S., but only to land held by the federal government in public domain. However, after the revolution and subsequent acquisitions through wars and purchases by the government, this federal land included almost all the territory west of the Mississippi (Fairfax, Souder & Goldenman, 1992).

Thus, what made the grants established through Land Ordinance and Northwest Ordinance unique from their historical precedents was their scope. Never before had land trusts been established on such a systematic or grand scale. It was this federal-level involvement that was noteworthy, the “scaling-up” of an effective practice to the federal level.

The Land Ordinance of 1785

The Land Ordinance of 1785 dictated that the new western lands were to be surveyed and divided into townships of seven statute miles square and 36 sections each, and then organized into Territories by Congress. Moreover, the Land Ordinance presented an explicit answer to fears of sectional conflict, the development and management of the vast western territory, and the survival of the East-West union. This early legislation set the stage for the Northwest Ordinance, which was then able to deal more directly with the practical problems of settling these territories (Onuf, 1987).

The importance of the Land Ordinance for the development of schools cannot be understated. This ordinance was the first federal legislation to specifically provide land for public education. As stated in the ordinance:

There shall be reserved for the United States out of every township, the four lots, being numbered 8, 11, 26, 29, and out of every fractional part of a township, so many lots of the same numbers as shall be found thereon. There shall be reserved the lot No. 16, of every township, for the maintenance of public schools within the said township.

The nation’s founders envisioned an array of systematically distributed communities across the new country, each drawn mathematically and organized with its own local government and education systems. They hoped this would inspire citizens to take

ownership of their municipalities, thereby ensuring the continuation of the democracy and, as stated by the Supreme Court in *Cooper v. Roberts* (1855), “plant in the heart of every community the same sentiments of grateful reverence for the wisdom, forecast, and magnanimous statesmanship of those who framed the institutions of these new States.” In other words, the founders intended to spread democracy across the new country in a system of self-governed townships, which had at their heart a public school that would be the catalyst for instilling and furthering these democratic ideals.

The Northwest Ordinance of 1787

The Northwest Ordinance of 1787 established a system of governance for the territories and, more importantly for the purposes of this paper, the process by which they could apply for statehood. Under the Northwest Ordinance, when a territory’s population reached 60,000 free inhabitants, that territory could petition Congress for admission to the Union—but this was no simple task. States had to bargain with Congress, eventually agreeing to a basic contract, formalized in an Enabling Act, that spelled out the terms of their statehood. The Enabling Act would authorize the territory to compose a state constitution and form a state, and would set out federal mandates for that state apart from those in the state’s self-imposed constitution (Fairfax et al., 1992). These individual federal Enabling Acts (and, in some states, the official acts of admission to the Union) laid out the specifics of the school land grants in each state. The appendix to this paper lists the individual Enabling Acts and the specific lands they granted.

In reality, however, this orderly process for statehood was not consistently carried out. Particularly around the time of the Civil War, states’ admittance had become tied up in political arguments. In addition, the Northwest Ordinance technically applied only to the territory that would become the states of Ohio, Indiana, Illinois, Michigan, Wisconsin, and Minnesota. Also, although the Ordinances encouraged the formation of a national system of schools, the development of the actual schools themselves was a complicated, lengthy process unique to each state and even each township (Kaestle & Foner, 1983). Still, the principles and spirit of the Northwest Ordinance were maintained because it was used as a template to create each new state. Building on the premise established by the Land and Northwest Ordinances, Congress continued to set aside lands for schools and other institutions in each new Enabling Act (Fairfax et al., 1992).

Trusts under the Law

To grasp the history of state land grants for education, one must first understand the means through which these grants were given. The agreement between the federal government and each new state to grant lands for public institutions established a trust relationship. A legal trust is formed when an asset (the *trust corpus*) is given, under specific terms, by one participant to be held by a second participant for the benefit of a third participant. Therefore, three parties are needed to form a trust: a *settler* or *trustor*, which provides the property or asset to establish the trust; the *trustee*, which manages the trust according to the trustor's instructions; and the *beneficiary*, which reaps the benefits of the asset held in trust (Souder & Fairfax, 1996).

Subsequent Supreme Court decisions have found that in nearly all cases the Enabling Acts of each state established a legal trust that set out how the granted lands were to be held and managed.³ In this case, the federal government was the trustor, and the state specified was the trustee (in earlier cases the individual township or county was the trustee, as discussed later). In general, the system of common schools was the beneficiary. In addition to complying with the trustor's instructions, the trustee was charged with a series of responsibilities governing how the trust should be managed. Essentially, these responsibilities included managing the trust honestly, skillfully, in good faith, and in the best interest of the trust and the beneficiary. The trustee (in this case, the state or local government) had to manage the asset (the granted land) in the best interest and for the benefit of the beneficiary (the schools). Thus, the federal land grants, through this trust system, established a triangle of influence and control among the federal government, the states and townships, and the schools.

The Grant Recipients

Altogether, 30 states received federally granted lands for schools through the process established by the Land Ordinance of 1785. The original 13 colonies joined the union without their lands ever being held in the public domain, so they were not subject to these laws. The same was true for Vermont, Kentucky, Tennessee, Maine, and West

³ Although some analysts have debated whether this land grant relationship was truly a "trust" in the strict legal sense, courts have usually ruled in favor of the trust relationship, declaring that to have been the intention, or at least the spirit, of the original laws. For example, the Supreme Court ruled that, even in cases where the trust was not clearly established in either the Enabling Act or the constitution of the state, the land grant nevertheless imposed a "sacred obligation on the public faith" (Culp et al., 2005). (See also *Lassen V. Arizona Highway Department* and *County of Skamania v. State of Washington*.)

Virginia, each of which was carved out of lands ceded by another state but never held in the public domain. Texas and Hawaii both set aside land for schools but under a different process. Since both Texas and Hawaii existed as independent republics prior to statehood, the public domain of those states continued to be held by the state, not the federal government, and many of their existing laws, including those setting aside school lands, were simply adopted into their state constitutions. The appendix lists all of the states that received land grants under the provisions of the Land and Northwest Ordinances.

Although the federal government remained the trustor and the schools remained the beneficiary throughout the land grant process, the designated trustee changed over time. In keeping with the philosophy of self-governing townships, Congress first granted the lands directly to each township in the state for the management of that township's schools. Subsequent Enabling Acts granted the lands to individual counties in each state. Finally, the Enabling Acts of later states simply mandated that the state should manage the lands for the benefit of that state's schools (Souder & Fairfax, 1996). This change was made partly to address the awkwardness of the regimented rectangular survey system, which made more sense in the division of the already-settled Midwestern territories, with their wide expanses of fertile and land and relatively flat terrain, than it did in the mountainous, arid states of the West. In the West, population centers developed around economic and natural resources and transportation routes. Therefore, each artificially drawn township did not necessarily have the population or resources needed to manage the granted lands (Culp et al., 2005). In Montana, for example, 49 of 81 counties reported losses in the common school fund resulting from "insufficient security, insolvent parties, absconding debtors, or corrupt officials" (Tyack et al., 1987). As a result, the trusteeship of the public trust lands was transferred to the state's hands. Over time, it simply became more practical to grant lands to each county, and in the end, simply to each state.

Though the schools in general remained the beneficiaries of the trusts, the language defining the beneficiaries also changed over time. The Enabling Act for Ohio simply states that lands be reserved "for the maintenance of schools," while Colorado's states that the lands are to be used "for the support of common schools," and Oklahoma's refers to "the use and benefit of common schools." (The appendix lists the Enabling Acts of each state.) These variations, and the lack of Congressional specificity about the process for allocating and managing lands described later in this paper, have led to many differences among states in their trust lands (Souder & Fairfax, 1996).

Changes in Grants Over Time

Other land grant policies also evolved over time. One such policy was the amount of land reserved for schools. As noted above, the Land Ordinance first established land grants for schools that consisted of one section of every township, section 16. In 1816, the Enabling Act for Indiana included grants for a “seminary of learning.” setting a precedent for university land grants in later states. Indiana received a total of 36 sections, or the equivalent of one township, for its higher education seminary, while many later states received 72 sections, or two townships, for universities. In 1857, Minnesota was the first state to be granted two sections (16 and 36) per township for the use of schools, as well as 72 sections for a university. Many other states followed suit. After Utah was admitted in 1894, states began receiving four sections per township, with the exception of Oklahoma, which received only two. (The appendix also shows the specific sections allocated to each state.)

The regulations governing the management and administration of the granted lands also changed over time. Early state land trusts were sometimes badly managed or plagued by incompetence or corruption. Some early land-grant states made poor leasing decisions and squandered their schools lands, while others sold the land too early to try to reap immediate benefits. As a result, Congress began to add more specific provisions over how the land was to be managed (Tyack et al., 1987). As Tyack and his colleagues explain, “although the federal government saw its role as distributing benefits rather than regulating schools, over time Congress became more and more prescriptive about education in its Enabling Acts and more careful to ensure that endowments were not wasted, as they had typically been in states admitted to the union in the early nineteenth century” (p. 14).

This change becomes clear when comparing, for example, the wording in Ohio’s Enabling Act of 1803 and that in the Omnibus Enabling Act of 1889, which covered North Dakota, South Dakota, Montana, and Washington. Ohio’s act simply granted “section 16 for the use of schools.” The Omnibus Enabling Act set specific terms, including price restraints, for the sale and lease of the land, and even went so far as to prohibit the land from being used for a sectarian or denominational school. Idaho and Wyoming have similar provisions in their acts. The Omnibus Act, as well as Utah’s Enabling Act, passed in 1894, also had a separate article explicitly stating that “provision shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of said state and free from sectarian control.” By the time New Mexico and Arizona were admitted to the Union, their acts included incredibly detailed provisions that specified rules for the leasing of the land, the size and price of the lands that could be sold, the time periods during which the

lands could be auctioned, and the appraisal of the lands' "true value" prior to auction (Culp et al., 2005).

The state of Michigan came up with a unique method to address the problem of grant mismanagement, which was then adopted by many other states. Michigan's innovation was to establish a permanent fund into which the proceeds from the sale of trust lands would be invested. The interest from that fund, combined with rental revenues from the lands, would be returned to the schools. Beginning with Colorado, Congress mandated that subsequent states also establish such a fund (Souder & Fairfax, 1996). Many states still maintain these "permanent" funds, and some have also established second funds; often, the permanent fund contains revenues from non-renewable resources, while a more general schools fund manages the interest and dividends from the permanent fund investments and revenues from renewable sources such as leases and permits.

Beginning with Colorado, Congress also began allowing *in lieu* grants for states in which the sections of land allotted for schools were already occupied by homesteaders, railroad grantees or other federal reservations, such as Indian reservations. In these cases, states were allowed to select federal lands within their state boundaries, in lieu of their allotted lands, to be granted for schools. These *in lieu* grants allowed states to select contiguous blocks of land instead of the piecemeal sections in each township. This *in lieu* approach sometimes proved much more profitable when it came to sale or lease of the land but in other cases proved troublesome. A similar issue played out on a smaller scale with the traditional sectional grants; some of these sections enjoyed a prime location or a wealth of resources, while others did not and were less profitable (Culp, et al., 2005).

One problem with *in lieu* grants was their timing. States were being admitted to the Union at the same time the Homestead Act was being implemented, Indian reservations were being established, and numerous other settlement activities were occurring. This meant that the states admitted later had far less land to choose from by the time they selected their grant lands. Washington State was able to select its land only after companies, the railroad, settlers, and various other parties had staked their claims. Therefore, the lands granted for the schools were the least desirable, far from waterways or railroads, and provided very little funding for educational needs in the early years of the state. This was true for many states that received grants during a time when selling the land was favored over retaining it but whose trust lands lacked value and were not marketable. Unexpectedly, some of these lands have since become prized. Arizona, for example, benefited in its choice of once-remote lands that have recently become desirable because they are among the few remaining undeveloped tracts in the state. One state official estimated that one 20,000-acre parcel of land north of Phoenix

could yield as much as \$40 billion in revenue to the state trust over the next 100 years (Culp et al., 2005).⁴

It is important to note that although the regulatory language in the Enabling Acts increased, the requirements themselves did not necessarily become more stringent. This was because many of the early states had adopted similar regulations through language in their own constitutions. What changed over time is that Congress incorporated this language from the early states' constitutions into the later states' Enabling Acts in order to better enforce what they saw as mismanagement on the part of the trustees (Fairfax et al., 1992). Put another way, the federal language in the early Acts was vague, and states developed their own policies for managing and administering their land grants. Once these early states led by example, the responsibilities they chose to take on were mirrored back into the language of later federal acts in a unique give-and-take relationship.

This federal-state relationship also represents an early example of the federal government enforcing federal policy at the state level through monetary incentives. As the provisions listed in the Enabling Acts grew more specific, the federal government was essentially forcing states to agree to more federal requirements (i.e., funding for schools) before granting them land. This view is especially interesting in light of recent criticisms of the Obama Administration's efforts to use potential funding as an incentive to encourage states to enact more reform-minded education laws. In reality, this carrot-stick approach to federal funding and requirements has existed since the beginning of the nation, and education is merely one area in which it is exercised.

Sales Versus Leasing of the Grant Lands

As explained above, the language governing management of the land grants evolved over time (Fairfax et al., 1992). The early Enabling Acts simply stated that trustees should lease their grant lands. In the 1840s, when states were designated as the trustees, they added provisions to their constitutions specifying what states could do with the lands—provisions that were later incorporated into future states' Enabling Acts (Souder & Fairfax, 1996).

⁴Interestingly, many states with the granted lands that have recently become valuable may have gotten overambitious in their attempts to generate revenue for their trusts. Arizona, for example, sold much of its empty land during a boom in residential development. This generated a large amount of revenue but put inordinate amounts of pressure on the school system from an influx of many new residents, thus negating the financial benefits of selling the land (S. Fairfax, personal correspondence, February 17, 2011).

With these provisions in place, the trend shifted from leasing the land to selling it. Indiana, Illinois, Wisconsin, Michigan, and Ohio each tried to develop a system of leasing the lands, but all proved to be failures. In 1827, Ohio asked Congress to allow the state to sell the lands rather than lease them, a provision that became standard thereafter. The Colorado Enabling Act of 1875 was the first to put restrictions on the method and price at which the lands could be sold, a policy included in the Enabling Act for every state that followed except Utah. In later decades, another shift occurred, as many states eschewed the chance to sell their lands and instead retained them.

Although at first it was assumed that the federal government would eventually dispose of all public domain lands—a policy not officially renounced until the 1970s—it became clear over time that this would not happen. The states followed suit by retaining their lands as well. As a result, many of the states that joined the Union later still hold more of their school trust lands than the older states do. Though they favor retention as a rule, states still sell and exchange the lands as they see fit (Fairfax et al., 1992).

What Became of the Grant Lands?

The grant lands in many regions continue to play a crucial role in the schools. The states created before 1850 have sold all or most of their granted lands. California, which joined the Union in 1850, now retains only 10% of its original grant lands. On the other hand, newer states still hold a majority of their grant lands; approximately 87% of lands in Nevada and 75% in Arizona are in federal holding.⁵ Over the years, the lands still held in trust have been the subject of numerous disputes and lawsuits. During the 20th century, it became common for states to dedicate parts of their school lands to other state purposes, such as rights-of-way. This occurred mostly on a small scale as the need arose, but without providing compensation for the schools. Several prominent court cases centered on this practice, and ultimately the Supreme Court ruled that this was a violation of the states' trust agreements (Souder & Fairfax, 1996).

The lands granted by the federal government have proved to be an asset for the nation's schools, a reflection of the significance placed upon education by the founders more than two centuries ago. As Tyack and his colleagues (1987) state:

Altogether, Congress gave the states 77,630,000 acres for common schools, far more than the total of 21,700,000 it gave the states for universities, hospitals, asylums and other types of public institutions under the land-grant provisions of the Morrill Act and other federal laws. By the end of the

⁵Peter Culp, personal communication to Alexandra Usher, February 26, 2011.

nineteenth century, most states west of the Mississippi River were receiving more than 10 percent of all their school revenues from income from those grants (p. 22).

According to Fairfax and Souder as of 1996, 22 states still retained and managed some of their original grant lands, although not all of these states maintained their permanent funds. Revenues from these lands come predominantly from the sale of resources like coal and minerals, the sale of the land itself, or fees from grazing, commercial development, or other surface use, as well as interest derived from the permanent fund, if the state has one. These revenues are used to pay for an array of expenses, including teacher salaries and construction, and as collateral for school loans (Culp et al., 2005).

As of 1990, New Mexico, Texas, and Washington were generally receiving substantially more money from their trust lands than any other states, mostly through revenues from oil and gas, timber, and land sales (Souder & Fairfax, 1996). Additionally, some states liquidated all or part of their permanent funds in order to maintain budgets during times of economic crisis (Fairfax et al., 1992). Of those states that maintained a permanent fund, Arizona, New Mexico, Oklahoma, Texas, and Wyoming all had monetary levels over \$500 million as of 1990. California, Nebraska, South Dakota, Utah, and Washington each had monetary levels at or below \$100 million in 1990 (Souder & Fairfax, 1996). States continue to receive varying levels of revenue from their trust lands, depending on whether those revenues come from agricultural fees, leasing royalties, or other means (Culp et al., 2005).

Table 1, which is based on data from the Lincoln Institute of Land Policy, shows how four states manage their grant lands and distribute their permanent funds. While other states maintain permanent funds, and while some states without permanent funds still distribute revenues from grant lands to their schools, these four states were chosen because they vary in location and size and illustrate the vast differences among states in funding, management, and distribution of lands and revenue. Among these four states, the land trusts provide between 1% and 10% of the state-provided education funding. In all four of the states analyzed, between 78% and 99% of the trust land revenue goes directly back to the public schools. It is clear that the contribution of the federal government, which began so long ago, continues to generate significant dividends for the public schools in these states.

Table 1. Management of trust lands and permanent funds in four states

Issue	Arizona	Nebraska	North Dakota	Washington
Acres of trust lands remaining	9.3 million surface acres 9 million mineral acres	1.4 million surface acres 2.9 million mineral acres	700,000 surface acres 1.8 million mineral acres	2.2 million surface acres
Use of lands	Commercial & residential development, agriculture, grazing, minerals, oil, gas	Grasslands, croplands, mineral lands	Agriculture, grazing, right-of-way, oil, gas, coal	Timber, agriculture, grazing, commercial use
Manager of trust lands	Arizona State Land Department	Nebraska Board of Educational Lands and Funds	Board of University and School Lands	Department of Natural Resources, overseen by Commissioner of Public Lands
Beneficiaries of trust land revenue (by percentage of acres)	88% public schools 8% other schools or universities 5% other public institutions	99% public schools 1% other schools or universities	91% public schools 6% other schools or universities 3% other public institutions	78% public schools 14% other schools or universities 8% other public institutions
Greatest sources of revenue for public schools	Land sales principal, lease rentals	Surface rental, agricultural leasing	Oil & gas royalties	Timber harvests, agricultural & grazing leases, commercial real estate leases
Where revenue comes from and how it is distributed	Permanent Fund . revenue from non-renewable resources All other revenues distributed directly to beneficiaries, up to \$72 million; excess revenue deposited in Classroom Site Fund, distributed to districts on a per-pupil basis	Permanent Fund . revenue from non-renewable and long-term renewable resources Temporary School Trust Fund . revenue from renewable resources, interest and dividends from Permanent Fund; distributed to schools on a per-pupil basis	Common Schools Trust Fund . revenue from non-renewable resources All other revenues and investment income distributed to school districts, less operating and management expenses	Permanent Fund . revenue from non-renewable resources Common School Construction Fund . revenue from renewable resources, interest from Permanent Fund; distributed through superintendent for construction uses
Manager of Permanent Fund (investor)	State Treasurer	State Investment Office	Board of University and School Lands	Asset Management Council
Percentage of total education funding from land revenue	State funds 45% of education budget; 4% of state funds are from trust land revenue	State funds 33% of education budget; 3% of state funds are from trust land revenue	State funds 35% of education budget; 10% of state funds are from trust land revenue	State funds 56% of education budget; 1% of state funds are from trust land revenue

Note: State data in table is from fiscal year 2006, except the data in Washington State is from fiscal year 2004.

Source: Table assembled by Center on Education Policy based on data published by the Lincoln Institute of Land Policy, 2010.

Conclusion

Kaestle and Foner (1983) described the evolution of the American school system in this way: “The history of American federalism is one of constantly evolving relationships between local, state, and national governments, conditioned but not mechanically determined by technological, economic, political, constitutional, and cultural changes” (p. 224).

Federal land grants, which go back to the founding of our nation, are a good example of an evolving local, state, and federal partnership in which each level of government played an essential role. The grants given through the Land and Northwest Ordinances and the subsequent laws admitting states to the Union were exceptional in their scope and helped to create a partnership system of public education that survives today.

The state's role in schooling is well-established, and even clearer is the local government's role. What is perhaps less obvious, though no less important, is the role of the federal government. To summarize the conclusions of this paper, the very idea of public schools may have never taken hold without federal involvement to motivate states to establish public schools and emphasize the value of doing so. Rallying the nation around broad and ambitious goals has always been the purview of the national government, and in education it does the same. Encouraging and unifying our system of schools is no less important today than it was in the 18th century.

Along with this inspirational role, the federal government has also provided the public schools, from their very inception, with financial support. And from the beginning, much like today, this support came with regulations and strings attached. The carrot-and-stick approach so recently publicized in education policy has always been essential in motivating states and localities to work towards national goals. This basic concept of expecting states and localities to do something to benefit the national interest in return for federal funding remains a cornerstone of education policy,

The history of the school land grants is an instructive example of a cooperative relationship. Federal language in the early Acts was vague, so that a state could manage or administer its grants as it chose and could specify how that land grant was to be administered—a federal mandate that states administered autonomously. Once these early states led by example, the responsibilities they chose to take on were mirrored back into the language of later federal acts in a unique give-and-take relationship.

Each level of government—federal, state, and local—was instrumental in these policies. The federal government provides a national vision, motivation and a sense of purpose, as well as some funding; states are key in refining policies to fit local context, ensuring their implementation and providing additional funds; local governments influence state and national policy and carry out the actions the policies call for. This model, with its roots in the land grant formula, has since been utilized to enact decades of bipartisan education laws, such as the National Defense Education Act, the Elementary and Secondary Education Act, and the No Child Left Behind Act. Most importantly, the partnership would not function without the participation of each key player; remove the state and local actors, and you lose context, refinement, and implementation; but

remove the federal actors, and you lose the sense of national motivation, encouragement, and purpose.

Our founding fathers created a complex system of government, one that demands interaction among the federal, state and local levels. This can sometimes make developing policies a difficult and slow process, one reason it has taken the U.S. so long to take decisive action towards improving the quality of public education. But as this paper shows, this complex process can work. Thanks to laws penned by our forefathers in the 18th century, the United States now has public schools in every corner of the nation. In such a large and diverse country, this is no small accomplishment, and is a testament to the possibilities of true political cooperation.

References

- Center on Education Policy. (2011). *Get the federal government out of education? That wasn't the Founding Fathers vision*. Washington, DC: Author.
- Center on Education Policy. (2007). *Why we still need public schools: Public education for the common good*. Washington, DC: Author.
- Cooper v. Roberts, 59 U.S. 173, 178 (1855).
- Culp, P. W., Conradi, D. B., & Tuell, C. C. (2005). *Trust land in the American west: A legal overview and policy assessment*. Cambridge, MA: Lincoln Institute of Land Policy.
- Fairfax, S. K., Souder, J. A., & Goldenman, G. (1992). School trust lands: A fresh look at conventional wisdom. *Environmental Law* 22, 797-910.
- Hubbard, B. (2009). *American boundaries: The nation, the states, the rectangular survey*. Chicago, IL: The University of Chicago Press.
- Kaestle, C. F., & Foner, E. (1983). *Pillars of the republic: Common schools and American society 1780-1860*. New York, NY: Hill and Wang.
- Land Ordinance. (1785, May 20). *A century of lawmaking for a new nation: U.S. Congressional documents and debates, 1774 – 1875. Journals of the Continental Congress, 28*. Retrieved on March 25, 2011, from <http://memory.loc.gov/cgi-bin/ampage?collId=lljc&fileName=028/lljc028.db&recNum=386&itemLink=r?ammm/hlaw:@field%28DATE+17850520%29::%230280388&linkText=1>

- Lincoln Institute of Land Policy. (2010). Managing state trust lands, state by state [Web tool]. Retrieved on March 20, 2011, from <http://www.lincolninst.edu/subcenters/managing-state-trust-lands/state/>
- Northwest Ordinance. (1787, July 13). *Miscellaneous papers of the Continental Congress, 1774-1789; Records of the Continental and Confederation Congresses and the Constitutional Convention, 1774-1789*. Record group 360, National Archives. Retrieved on March 25, 2011, from <http://www.ourdocuments.gov/doc.php?flash=old&doc=8#>
- Onuf, P. S. (1987). *Statehood and union: A history of the northwest ordinance*. Indianapolis, IN: Indiana University Press.
- Souder, J. A., & Fairfax, S. K. (1996). *State trust lands: History, management, and sustainable use*. Lawrence, KS: University Press of Kansas.
- Tyack, D., James, T., & Benavot, A. (1987). *Law and the shaping of public education, 1785-1954*. Madison, WI: The University of Wisconsin Press.
- U.S. Congress, House of Representatives. (1826, February 24). Report of the Committee on Public Lands, 1826. In *American Journal of Education* 28 (3), 939-946. H. Barnard, Ed. Retrieved on March 27, 2011, from http://books.google.com/books?id=cWILAAAAMAAJ&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false

Credits and Acknowledgments

This paper was written by Alexandra Usher, an intern at the Center on Education Policy. Nancy Kober, a CEP consultant, edited the paper. Jack Jennings, CEP's president and CEO, and Diane Stark Rentner, CEP's director of national programs, provided advice and assistance. We are also grateful to Peter Culp, Christopher Cross, and Carl Kaestle for reviewing the report and offering suggestions.

Based in Washington, D.C., and founded in January 1995 by Jack Jennings, the Center on Education Policy is a national independent advocate for public education and for more effective public schools. The Center works to help Americans better understand the role of public education in a democracy and the need to improve the academic quality of public schools. We do not represent any special interests. Instead, we help citizens make sense of the conflicting opinions and perceptions about public education and create the conditions that will lead to better public schools.

The Center on Education Policy receives nearly all of its funding from charitable foundations. We are grateful to the George Gund Foundation and the Phi Delta Kappa International Foundation, which provide the Center with general support funding that assisted us in this endeavor. The statements made and views expressed are solely the responsibility of the Center.

© Center on Education Policy April 2011

Center on Education Policy
1001 Connecticut Avenue NW, Suite 522
Washington, D.C. 20036
Ph: 202-822-8065
Fax: 202-822-6008
E-mail: cep-dc@cep-dc.org
Web: www.cep-dc.org

Appendix

The table below shows basic information about which states received federal land grants, which lands were granted to these states for use of the public schools, and which federal act granted these lands. The land grants referred to in this table are those made under the “Section 16” provision of the original Land Ordinance of 1785 and subsequent legislation built on that precedent. Land grants made to the schools by other means or other legislation, such as the Morrill Act of 1862, are not included. Rather than tracing the entire history of state lands, the table shows the most recent status of the lands before a state entered the Union.

Table A. State school land grants based on the precedent set by the Land and Northwest Ordinances

In order of their date of entry into Union

State	Date of entry into Union	Prior status	Lands granted for schools according to federal mandate	Federal act granting lands
Delaware	December 7, 1787	Original colony	NA	NA
Pennsylvania	December 12, 1787	Original colony	NA*	NA
New Jersey	December 18, 1787	Original colony	NA*	NA
Georgia	January 2, 1788	Original colony	NA*	NA
Connecticut	January 9, 1788	Original colony	NA*	NA
Massachusetts	February 6, 1788	Original colony	NA*	NA
Maryland	April 28, 1788	Original colony	NA	NA
South Carolina	May 23, 1788	Original colony	NA	NA
New Hampshire	June 21, 1788	Original colony	NA*	NA
Virginia	June 26, 1788	Original colony	NA	NA
New York	July 26, 1788	Original colony	NA*	NA
North Carolina	November 21, 1789	Original colony	NA*	NA
Rhode Island	May 29, 1790	Original colony	NA*	NA
Vermont*	March 4, 1791	Land disputed between New York and New Hampshire	NA	NA
Kentucky*	June 1, 1792	Formerly Virginia	NA	NA

State	Date of entry into Union	Prior status	Lands granted for schools according to federal mandate	Federal act granting lands
Tennessee ^e	June 1, 1796	Formerly North Carolina, then Southwest Territory	NA	NA
Ohio	March 1, 1803	Northwest Territory	Section 16 in each township (or other equivalent lands, if that section has been sold, granted, or disposed of) for the use of schools	7 th Congress, Session 1, Chapter 40, April 30, 1802
Louisiana	April 30, 1812	Territory of Orleans	Section 16 in each township reserved for the support of schools in that township	11 th Congress, Session 3, Chapter 14, February 15, 1811 Later re-ratified in the admission act for the State of Louisiana: 12 th Congress, Session 1, Chapter 50, April 8, 1812
Indiana	December 11, 1816	Indiana Territory ^f	Section 16 in each township (or other equivalent lands, if that section has been sold, granted, or disposed of) for the use of schools One entire township (36 sections) reserved for the use of a seminary of learning	14 th Congress, Session 1, Chapter 5, April 19, 1816
Mississippi	December 10, 1817	Mississippi Territory	Section 16 in each township for the maintenance of public schools	14 th Congress, Session 2, Chapter 23, March 1, 1817 (Declared that rules of the Northwest Ordinance - and therefore the Lands Ordinance of 1785 - apply to Mississippi)
Illinois	December 3, 1818	Illinois	Section 16 in each township (or other equivalent lands, if that section has been sold, granted, or disposed of) for the use of schools One entire township (36 sections) reserved for the use of a seminary of learning	15 th Congress, Session 1, Chapter 67, April 16, 1818
Alabama	December 14, 1819	Mississippi Territory	Section 16 in each township (or other equivalent lands, if that section has been sold, granted, or disposed of) for the use of schools One entire township (36 sections) reserved for the use of a seminary of learning	15 th Congress, Session 2, Chapter 47, March 2, 1819
Maine ^e	March 15, 1820	Formerly Massachusetts	NA	NA
Missouri	August 10, 1821	Missouri Territory	Section 16 in each township (or other equivalent lands, if that section has been sold, granted, or disposed of) for the use of schools One entire township (36 sections) reserved for the use of a seminary of learning	16 th Congress, Session 1, Chapter 22, March 6, 1820

State	Date of entry into Union	Prior status	Lands granted for schools according to federal mandate	Federal act granting lands
Arkansas	June 15, 1836	Arkansas Territory	Section 16 in each township (or other equivalent lands, if that section has been sold, granted, or disposed of) for the use of schools One entire township (36 sections) reserved for the use of a seminary of learning	24 th Congress, Session 1, Chapter 100, June 15, 1836 (Declared that same rules apply as applied to the state of Missouri . see above)
Michigan	January 26, 1837	Michigan Territory	Section 16 in each township for the maintenance of public schools	24 th Congress, Session 1, Chapter 99, June 15, 1836 (Ratified the act of February 16, 1819, ch. 22, which ratified the act of January 11, 1805, ch. 5, which declared that the rules of the Northwest Ordinance ^o and therefore the Lands Ordinance of 1785 ^o apply)
Florida	March 3, 1845	Florida Territory	Section 16 for the maintenance of public schools	28 th Congress, Session 2, Chapter 48, March 3, 1845 (Declared that Florida and Iowa not interfere with the public lands, allowing the rules of the Land Ordinance of 1785 to stand)
Texas^e	December 29, 1845	Formerly the Republic of Texas	NA ^{te}	NA
Iowa	December 28, 1846	Iowa Territory	Section 16 in each township for the maintenance of public schools	28 th Congress, Session 2, Chapter 48, March 3, 1845 (Declared that Florida and Iowa not interfere with the public lands, allowing the rules of the Land Ordinance of 1785 to stand)
Wisconsin	May 29, 1848	Wisconsin Territory	Section 16 in each township (or other equivalent lands, if that section has been sold, granted, or disposed of) for the use of schools Two entire townships (72 sections) reserved for the use of a university	29 th Congress, Session 1, Chapter 89, August 6, 1846
California	September 9, 1850	Mexican Cession land; held by the U.S. 1846-1848; annexed as a state through the Compromise of 1850	Sections 16 and 36 granted to the state for the purposes of public schools in each township	32 nd Congress, Session 2, Chapter 145, March 3, 1853

State	Date of entry into Union	Prior status	Lands granted for schools according to federal mandate	Federal act granting lands
Minnesota	May 11, 1858	Minnesota Territory	Sections 16 and 36 in each township (or other equivalent lands, if those sections have been sold, granted, or disposed of) for the use of schools Two entire townships (72 sections) reserved for the use of a university	34 th Congress, Session 3, Chapter 60, February 26, 1857
Oregon	February 14, 1859	Oregon Territory	Sections 16 and 36 in each township (or other equivalent lands, if those sections have been sold, granted, or disposed of) for the use of schools Two entire townships (72 sections) reserved for the use of a university	35 th Congress, Session 2, Chapter 33, February 14, 1859
Kansas	January 29, 1861	Kansas Territory	Sections 16 and 36 in each township (or other equivalent lands, if those sections have been sold, granted, or disposed of) for the use of schools Two entire townships (72 sections) reserved for the use of a university	36 th Congress, Session 2, Chapter 20, January 29, 1861
West Virginia^c	June 20, 1863	Formerly Virginia	NA	NA
Nevada	October 31, 1864	Nevada Territory	Sections 16 and 36 in each township (or other equivalent lands, if those sections have been sold, granted, or disposed of) for the support of common schools	38 th Congress, Session 1, Chapter 36, March 21, 1864
Nebraska	March 1, 1867	Nebraska Territory	Sections 16 and 36 in each township (or other equivalent lands, if those sections have been sold, granted, or disposed of) for the support of common schools Two entire townships (72 sections) reserved for the use of a university	38 th Congress, Session 1, Chapter 59, April 19, 1864
Colorado	August 1, 1876	Territory of Colorado	Sections 16 and 36 in each township (or other equivalent lands, if those sections have been sold, granted, or disposed of) for the support of common schools Two entire townships (72 sections) reserved for the use of a university	43 rd Congress, Session 2, Chapter 139, March 3, 1875
North Dakota	November 2, 1889	Dakota Territory	Sections 16 and 36 in each township (or other equivalent lands, if those sections have been sold, granted, or disposed of) for the support of common schools Two entire townships (72 sections) reserved for the use of a university.	50 th Congress, Session 2, Chapter 180, February 22, 1890
South Dakota	November 2, 1889	Dakota Territory	Same as ND	Same as ND
Montana	November 8, 1889	Montana Territory	Same as ND	Same as ND
Washington	November 11, 1889	Washington Territory	Same as NC	Same as ND

State	Date of entry into Union	Prior status	Lands granted for schools according to federal mandate	Federal act granting lands
Idaho	July 3, 1890	Idaho Territory	Sections 16 and 36 in each township (or other equivalent lands, if those sections have been sold, granted, or disposed of) for the support of common schools Two entire townships (72 sections) reserved for the use of a university	51 st Congress, Session 1, Chapter 656, July 3, 1890
Wyoming	July 10, 1890	Wyoming Territory	Sections 16 and 36 in each township (or other equivalent lands, if those sections have been sold, granted, or disposed of) for the support of common schools Two entire townships in each township (72 sections) reserved for the use of a university	51 st Congress, Session 1, Chapter 664, July 10, 1890
Utah	January 4, 1896	Utah Territory	Sections 2, 16, 32, and 36 in each township (or other equivalent lands, if those sections have been sold, granted, or disposed of) for the support of common schools Two entire townships (72 sections) reserved for the use of a university	53 rd Congress, Session 2, Chapter 138. July 16, 1894
Oklahoma	November 16, 1907	Oklahoma Territory and Indian Territory	Sections 16 and 36 in each township (or other equivalent lands, if those sections have been sold, granted, or disposed of) for the use and benefit of common schools One-third of Section 13 in each township reserved for the use of a university	59 th Congress, Session 1, Chapter 3335, June 16, 1906
New Mexico	January 6, 1912	New Mexico Territory	Sections 13, 16, 33, and 36 in each township (or other equivalent lands, if those sections have been sold, granted, or disposed of) for the support of free public nonsectarian schools 75 sections reserved for the use of a university	59 th Congress, Session 1, Chapter 3335, June 16, 1906
Arizona	February 14, 1912	Arizona Territory	Sections 13, 16, 33, and 36 in each township (or other equivalent lands, if those sections have been sold, granted, or disposed of) for the support of free public nonsectarian schools 75 sections reserved for the use of a university	59 th Congress, Session 1, Chapter 3335, June 16, 1906
Alaska	January 3, 1959	Alaska Territory	Sections 16 and 36 in each township (or other equivalent lands, if those sections have been sold, granted, or disposed of) for the support of common schools Section 33 of each township in the Tanana Valley reserved for an agricultural college and school of mines	Public Law 85-508, July 7, 1958 (Applied to Alaska State the act of March 4 th , 1915, which mandated the land grants upon the acquisition of Alaska Territory by the U.S. government)
Hawaii	August 21, 1959	Republic of Hawaii	NA [§]	NA

Source: Center on Education Policy, based on data state government websites, the specific laws cited, and Hubbard, 2009.

Note: States in bold type were never federal territories with their lands held in public domain, and so did not follow the same pattern of land grants.

¹Although there were no federal land grants to support education in the original 13 colonies, the nascent state governments of Connecticut, Massachusetts, New York, New Hampshire, New Jersey, Pennsylvania, North Carolina, and Georgia established provisions to support public schools, including permanent school funds that were financed by revenue from public land, granted land for specific education institutions, or set aside lands for schools (Souder & Fairfax, 1996).

⁴Although Vermont, Kentucky, Tennessee, Maine, and West Virginia were created out of lands ceded by other colonies or states, they were not subject to the federal land laws since their lands were never held in public domain. Similarly, Texas already existed as an independent republic when admitted to the Union, and therefore its lands were never federally held in public domain. See Culp et al., 2005, and Hubbard, 2009.

⁶When Texas was still an independent republic, it reserved section 16 lands for schools. See Culp et al., 2005.

⁸When Hawaii was annexed, it had already existed as a kingdom and a republic, and therefore already had in place various laws governing its land use. A royal proclamation of 1840 that had set aside land for schools was ratified in the 1959 statehood act (Souder & Fairfax, 1996).