Federal policy and the push to privatize education

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Under Republican and Democratic administrations alike, the federal government has encouraged the outsourcing of core parts of public education's work.

Both in the United States and around the world, the 21st century has seen a massive expansion of efforts to privatize educational services that were formerly provided by public agencies and school systems. Guided by the belief that this will make schooling more productive, innovative, and affordable, federal policy makers (Democrats and Republicans alike, but with new urgency under the Trump administration) have taken aggressive steps to deregulate the education marketplace and create strong incentives for public schools to contract with outside agencies (both for-profit and nonprofit) to deliver products and services, typically targeting low-achieving and economically disadvantaged students. Every year, as a result, billions of U.S. taxpayer dollars meant for public education pass through private hands.

For two decades, my research has been driven by questions about the extent to which this movement to privatize educational services has or has not led to improvements in public schooling. I start from the premise that significant school improvement will require bold action by people working in a variety of sectors, including business. However, I also hold that such work must be informed by rigorous research, including scrutiny of the ways in which corporations take advantage of public policies, what they do with public funds, and whether their products and services actually benefit students, particularly those from low-income backgrounds.

The Bush and Obama years

In the early 2000s, federal education policy — especially the No Child Left Behind Act (NCLB) — prompted a rush to privatize various school functions, particularly in the areas of testing and test preparation, teaching and tutoring, data, and human resources management. As I explained in my book *Hidden Markets* (2009), the evidence suggested that these policies and practices were having harmful effects on children living in poverty, Black and Latinx students, students with disabilities, and English learners — the very children who proponents had claimed would benefit from increased privatization.

Nevertheless, over the subsequent years, federal policies did little to slow the rush to privatize educational services. If anything, Race to the Top — the Obama administration's signature school reform initiative, launched in 2009 — doubled down on NCLB's market-friendly principles. At the time, Congress had approved more than $4.5 billion in new education spending as part of the broader federal effort to help speed the economic recovery from the Great Recession, and states were required to *compete* with each other for their share of these funds (making this the largest competitive grant program for education in U.S. history). Further, the administration let it be known that states would be more likely to win funding if they promised to adopt certain favored policies, such as removing caps on the expansion of charter schools and leasing or purchasing large-scale data systems to monitor the performance of students and teachers.

Indeed, from its first days in office, the Obama administration sought to open education markets to corporate capital, on the theory that to compete successfully in a global economy, the country must begin by competing successfully in the *knowledge* economy. This, the administration argued, required aggressive investments in new information technologies at every level of government and across all government sectors, including education.

How does the education marketplace look today, five years since passage of the Every Student Succeeds Act (ESSA)

Keep in mind that the economy was struggling mightily in the early Obama years. The financial system had all but collapsed. Many Americans' college savings had been wiped out, their retirement funds had disappeared, and their homes had been put in foreclosure. And yet, with all that going on, the education industry appeared to be as buoyant as ever. In 2010, when I took another look at the companies I had analyzed a few years earlier for my book, I found that they were still expanding into new markets, their advertising budgets remained high, and their CEOs continued to draw large salaries. Under the radar, I saw signs that some of the key players — such as Pearson — were jostling for position and struggling to fend off competitors. By and large, though, education businesses seemed to be thriving. Although there was still no real evidence that their services and products were helping to improve student outcomes, they were doing quite well, thanks to strong and continuing federal support for privatization.

Has the federal government's stance toward the privatizing of public school functions changed since then? How does the education marketplace look today, five years since passage of the Every Student Succeeds Act (ESSA) and almost four years into the Trump administration?

If anything, the privatizing of educational services has become even more ubiquitous, and businesses around the world have become even more aggressive in pushing for policies that allow them to profit from government outsourcing. Recent years have brought some new forms of educational commodification, too, and in the U.S., we've seen the creation of new federal policies to prop them up.

Free markets and edtech: Inherent goods?

Today, NCLB is remembered mostly for its emphasis on standardized testing and school accountability, but it also made it easier and less risky for private companies to sell goods and services to schools and districts, especially those serving students from low-income backgrounds. Under provisions referred to as Supplemental Education Services (SES), for example, NCLB mandated that if schools and districts did not make test score targets, then they had to provide needy students with tutoring, paid for out of a federal pot of money.

Several years into NCLB, the U.S. Department of Education funded the researchers Carolyn Heinrich, Annalee Good, and me to conduct a national evaluation of SES. While the initiative's designers had promised that the program would unleash the creativity of private tutoring companies, leading to bold and innovative new approaches to helping struggling students, we found quite the opposite: The evidence showed that most tutoring services provided old-fashioned and low-quality "chalk and talk" instruction and scripted lessons.

Further, thanks to laissez-faire contracting regulations, private providers had little to no accountability for their poor performance. Many of them continued to receive funding for years in spite of low student attendance, failure to maximize instructional time, wide variations in teacher practice within tutoring programs, and ineffective teaching in general, including numerous cases in which tutors taught materials that did not align with the school's curriculum and/or serve the given students' needs (Burch, Good, & Heinrich, 2016; Heinrich et al., 2014).

The great irony here is that plenty of empirical research studies have found that instructional tutoring, when well-designed and implemented, tends to have significant benefits for needy students. Further, before NCLB, most large school districts had well-established tutoring programs in place. However, SES contracting rules excluded many of those district-run programs from serving as providers. In effect, the designers of NCLB (and SES in particular) assumed that most public school officials are incompetent, wasteful, inexperienced, and corrupt and that private providers tend to be innovative, efficient, and morally responsible. Thus, they created a funding process that made it easier for the latter to win contracts.

Pay for Success

With the 2015 passage of ESSA, the SES program was eliminated, and few people were sorry to see it go. However, the new law continued the emphasis on market-based reform strategies, particularly the use of "social impact bonds." Under this approach, corporations and/or their philanthropic entities assume the role of investor, bankrolling innovations that the government lacks the resources or technical expertise to develop on its own. The idea is to incentivize these groups to create effective new educational tools, resources, and services. If they succeed, then the government rewards them, either by paying them directly or helping them bring their products to scale (by selling them to large school districts or entire states).

Under ESSA's version of social impact bonds — the Pay for Success Initiative — investors are encouraged to bet big on their own ability to get students and schools to meet specific benchmarks, and if they do so, then districts and states will pay them handsomely for their efforts.

Pay for Success was modeled after a program that had been implemented in the home state of its main congressional sponsor, Sen. Orrin Hatch (R-Utah). Along with bankers at Goldman Sachs, the businessman (and now governor of Illinois) J.B. Pritzker invested millions of dollars in a preschool initiative in one Utah school district, then statewide. In this case, the desired impact of the program — i.e., the benchmark that would decide whether investors would be rewarded — was for relatively few of the preschool participants to receive special education referrals once they moved into kindergarten and beyond.

One year into the initiative, evaluators determined that just 1% of the participating students — far fewer than expected — were found to require special education services in kindergarten (McIntyre, 2015), suggesting that the program had been remarkably successful in reducing the need for these expensive services. Based on this initial outcome, Goldman Sachs was paid $260,000 — a portion of the state's estimated cost savings — with more payments to come in future years if children from the preschool program continued to show lower-than-expected enrollments in special education.

However, reporting by the *New York Times* (Popper, 2015) raised concerns about the methods used to determine the program's success. No other preschool initiative has ever been found to have such an impact on students' need for special education, several experts told the *Times*, and researchers are always suspicious of results that fall so far outside the norm. As one put it, "Here, they seem to have either performed a miracle, or" — a more plausible explanation — "these kids weren't in line for special education in the first place." That is, the state's initial estimate of how many of these children would require special services may have been dramatically inflated. If so, then the actual number was bound to be much lower than the estimate, *regardless* of what happened in preschool. And if that was the case, then Pritzker and Goldman Sachs may have seen their investment as a no-risk proposition: Even if their program made no real difference, it would *appear* successful, the state would credit it for reducing special education enrollments, and they would reap a profit.

To keep providers honest, Pay for Success requires that each project be monitored and evaluated by a neutral third party (in the Utah example, the United Way played this role). And in theory, this brings accountability into the contracting dynamics, making it difficult for either the public funding agency or the private firm to influence the outcome. However, as the *Times* reporting suggests, savvy investors may be able to beat the system, finding a way to get paid for outcomes they haven't actually brought about.

Technocentrism

In recent years, faith in the inherent goodness of the free market has tended to merge with faith in the goodness of new educational technology (edtech). Taking advantage of the public's enthusiasm for digital tools and services — *technocentrism*, as Seymout Papert (1987) termed it — multinational corporations have made massive investments in edtech, particularly the expansion of online education, aggressively marketing it as a surefire way to improve access to quality learning for high-poverty student populations (Apple & Jungck, 1990; Picciano & Spring, 2013; Williamson, 2016).

In my own research, conducted in the U.S. and overseas, I've focused on the ways edtech-related policies are challenging many of our familiar assumptions about schooling (for instance, what it means to be a teacher, how we define a classroom or school, and what constitutes a semester or school year). More specifically, my colleagues and I have studied the ways teachers, staff, and students perceive and react to these changes. Under what conditions, we've asked, do they buy into new models of teaching and learning, and when do they resist them? If, say, teachers find that their class enrollments have ballooned (on the theory that technology can help them reach many more students at a time), do they come up with new ways to differentiate their instruction? Do they give up on differentiation and provide the same instruction to everybody? Do they leave the profession?

Several years ago, for example, we studied a high-profile edtech initiative in Northern India (partly funded by U.S. media giants, which replicated the initiative across the country), in which teachers were given financial incentives to use the new technology as often as possible (i.e., cash rewards for those who used it the most). We found that this had significant effects on the nature of the teachers' *workday* — what they did when they arrived in school, how they spent their lunch hour, when and which parts of their work were evaluated, and so on (Burch & Miglani, 2017). For instance, administrators posted daily charts showing who was "winning" the race for the most edtech usage, and teachers were expected to check these lists first thing in the morning. Lunch hour became a time to review their progress. As a result, schools that had been operating under an ethos of democratic education shifted to a culture of competition. Meanwhile, administrators ignored various problems with teachers' working conditions (including low pay, transportation challenges, and inadequate health benefits).

Keep in mind that in conducting this and other studies, my colleagues and I have made no effort to cast edtech in a negative light. We would never claim that edtech (or the free market, for that matter) is inherently evil, just as we would never accept the edtech movement's constant assertions that technology will make teaching more efficient and effective. Rather, our goal has been to bring empirical research to bear on these issues, looking to see what actually happens under policies that encourage schools and school systems to purchase and use edtech products and services.

To date, we and other researchers have found some evidence that some kinds of edtech sometimes have some positive benefits for teaching and learning (but it tends to add such value *only* in the hands of a skilled teacher, ideally one who is physically present in the classroom or, at a minimum, is regularly available to help students in real time) (c.f. Burch, Good, & Heinrich, 2016). Much more often, though, researchers have arrived at findings that are consistent with what we saw in India: Technocentric ideals and policies prop up investments in expensive products and services despite the absence of strong evidence that they deliver on their promises.

Antitrust law: A means of turning the tide?

What do antitrust laws have to do with K-12 education? Short answer: Everything. The overarching premise of antitrust law is that competitors must make significant business decisions individually rather than in collaboration. The Sherman Act of 1890 prohibits agreements among corporate rivals that would have the effect of restraining competition and commerce. (For instance, businesses cannot conspire to set prices at a high level, they cannot make a secret agreement to keep their staff salaries low, and they cannot guarantee their profits by pledging not to pursue each other's customers.) Just as important, the law also prohibits companies from taking strategic actions meant to exclude competitors from a market and create a monopoly.

In recent years, the U.S. Congress, the Justice Department, and the Federal Trade Commission have announced that they are reviewing and/or investigating players in the edtech world — Google, most prominently — for possible violations of the Sherman Act. To date, Google has been shielded from such scrutiny because many of its products are "free," putting those products outside the traditional purview of antitrust law. However, as Natasha Singer of the *New York Times* reported in May 2017, this has allowed the company to:

> upend the sales methods companies use to place their products in classrooms. It has enlisted teachers and administrators to promote Google's products to other schools. It has directly reached out to educators to test its products — effectively bypassing senior district officials. And it has outmaneuvered Apple and Microsoft with a powerful combination of low-cost laptops, called Chromebooks, and free classroom apps.

At the time of Singer's reporting, "more than half the nation's primary and secondary school students — more than 30 million children — [were using] Google education apps like Gmail and Docs," and Chromebooks made up roughly half of all mobile devices purchased by schools. In effect, Google appeared to be distributing "free" and underpriced products in an effort to stifle competition and carve out a dominant position in the edtech market, which it monetizes primarily through advertising, the sale of user data, and the sale of hardware and apps that are integrated with its free offerings. In effect, then, the company's nominally free products come with hidden price tags, and those hidden price tags could make it subject to antitrust law.

As it stands, Google and other big-tech companies are not just competing for public education dollars but also acting to undermine competition and lock in profits for themselves. Given the scale of the K-12 education market, the stakes are exceedingly high, both for the private corporations involved and for the taxpaying public.

As a means of discouraging such under-the-radar monopolistic practices, the government often imposes hefty fines on bad actors. But for companies the size of Google, even a hundred-million-dollar fine isn't a real deterrent, any more than the threat of a parking ticket deters one-percenters from parking wherever they like. Thus, while antitrust charges against big-tech companies may provide some leverage for public school educators and advocates hoping to slow the movement to privatize public schooling, they will be far from sufficient to turn the tide.

Postscript

As I write this, in August 2020, COVID-19 has disrupted life as we know it, and schools and universities across the U.S. (and in much of the world) have moved classes online. The guiding principle here is "safety first" — to the extent possible, educators should offer continuity of instruction without exposing students and their families to potential risk. Emergency situations require emergency measures.

In recent years, however, even natural disasters and other emergencies have come to be viewed as opportunities to further privatize the education sector. For instance, not long after Hurricane Maria ravaged Puerto Rico, the island's government passed legislation to expand charter schools and create a new voucher program. Puerto Rico's Secretary of Education Julia Keleher — appointed in 2017 by President Donald Trump — strongly supported the move, arguing (and echoing an argument often heard in New Orleans after Hurricane Katrina, in 2005) that the devastation offered a chance to introduce free-market reforms to a failing school system.

National emergencies have come to be seen as golden opportunities to push for deeper private involvement in public education.

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Today, Keleher is under indictment for corruption related to her management of roughly $15 million in federal disaster relief. According to the FBI, she gave preferential treatment to associates in what was supposed to be an open and fair bidding process on contracts to help rebuild Puerto Rico's school system. For good reason, then, media coverage of Keleher's tenure as the island's secretary of education has focused mainly on the problems of bribery and corruption in government contracting. However, she ought to be remembered also for the eagerness with which she seized on the hurricane to promote market-based school reforms. Apparently, that has become our new normal: National emergencies have come to be seen as golden opportunities to push for deeper private involvement in public education.

As the pandemic continues to unfold, this bears watching. Already, COVID-19 has begun to challenge Americans' assumptions about the nature of public schooling, including where and when it happens. Even before the virus struck, much of the everyday work of schools was conducted online — data collection, communication with parents, class projects, and so on — but now that so many school districts have shut their doors, the online classroom has become, in effect, the primary way many of us experience public education.

I worry that the online tail will soon start wagging the educational dog.

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Given how quick education policy makers have been to take advantage of other emergencies, I expect to see a rush of efforts to introduce new policies and practices that further reduce the government's role in public schooling, while increasing the discretion and authority of private providers to decide what counts as a "course" or a unit, how students will be evaluated, who will be able to access recorded lectures and classes, and so on. In short, I worry that the online tail will soon start wagging the educational dog.

It remains to be seen whether the current shift to remote instruction will prove to be a temporary fix or the beginning of public education's gradual transformation to largely online teaching and learning. What is obvious already, though, is that as the pandemic forces so many of us online, the boundaries separating public and private have begun to weaken, and the business prospects for online providers have begun to soar.

References

Apple M. & Jungck, S. (1990). You do not have to be a teacher to teach this unit: Teaching, technology and control in the classroom. *Journal of Education, 291*, 149-172.

Burch, P. (2009). *Hidden markets: The new education privatization*. New York, NY: Taylor & Francis.

Burch, P. & Miglani, N. (2017). Technocentrism and social fields in the Indian edtech movement: Formation, reproduction and resistance. *Journal of Education Policy, 33* (5), 590-616.

Burch, P., Good, A., & Heinrich, C. (2016). Improving access to quality and the effectiveness of digital tutoring in K–12 education. *Educational Evaluation and Policy Analysis, 38* (1), 65-67.

Heinrich, C., Burch, P., Good, A., Acosta, R., Cheng, H., Dillender, M., Kirshbaum, C., Nisar, H., & Stewart, M. (2014) Improving the implementation and effectiveness of out of school time tutoring. *Journal of Policy Analysis and Management, 3* (2), 471-494.

McIntyre, E. (2015, December 4). The controversy behind ESSA's Pay for Success initiative. *Education Dive*.

Papert, S. (1987). Computer criticism vs. technocentric thinking. *Educational Researcher, 16* (1).

Picciano, A.G. & Spring, J.H. (2013). *The great American education industrial complex*. New York, NY: Routledge.

Popper, N. (2015, November 3). Success metrics questioned in school program funded by Goldman. *New York Times*.

Singer, N. (2017, May 13). Education disrupted: How Google took over the classroom. *New York Times*.

Williamson, B. (2016). Silicon startup schools: Technocracy, algorithmic imaginaries and venture philanthropy in corporate education reform. *Critical Studies in Education 1* (1).

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