

## EARLY EVOLUTION OF FEDERAL ROLE IN EDUCATION

### INTRODUCTION

While the controversy regarding federal involvement in state education programs has intensified in recent years, issues such as states-rights claims and the silence in the federal constitution regarding education have a long history. The courts generally recognize the primary responsibility for education resides in the state constitutions while early interest in education was focused on what could be best described as nation building. Understanding this, state courts are conflicted on declaring the right to education as a fundamental right – some do, some do not. In an effort to untie this complicated knot of these early controversies is intensified by involvement by the federal government more recently that has far extended beyond the nation building concept. What follows is a brief account of some of the most important early (prior to 1900) events shaping federal involvement in education. It is intended as an overview of the events leading to the growing activism of the federal in education during the 20<sup>th</sup> century. Future articles on the AASA website will extend the discussion of the federal role in education in recent times.

Legal scholars Kern and David Alexander in their seminal work, *American Public School Law* (2011), help set the groundwork for understanding the relationship between states and their operation of education and that of federal government involvement in education as a national agenda item.

### LAND ORDINANCES

Alexander and Alexander remind us that the Continental Congress enacted Land Ordinances in 1785 and 1787 which encouraged states to establish with the sixteenth section in each township devoted to schools.



The foundation of this effort as stated in the act:

*"Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."*

(<http://www.ourdocuments.gov/doc.php?flash=true&doc=8>)

So what motivated the Continental Congress to act in this manner? Scholar David Carleton suggests doing so:

- Creates value for the federal government;
- Encourages education and avoids having to distribute limited federal funds to the states to support education;
- Provides a vehicle for spreading democratic beliefs;
- Unites the nation as it has in the New England states through education.

We see the first elements of the role education was perceived to play in nation building. It is apparent that the Congress saw education as an essential partner in sustaining the development of the country.

(David Carleton, *Landmark Congressional Laws on Education*. Connecticut, Greenwood Press, 2002. p. 15.)

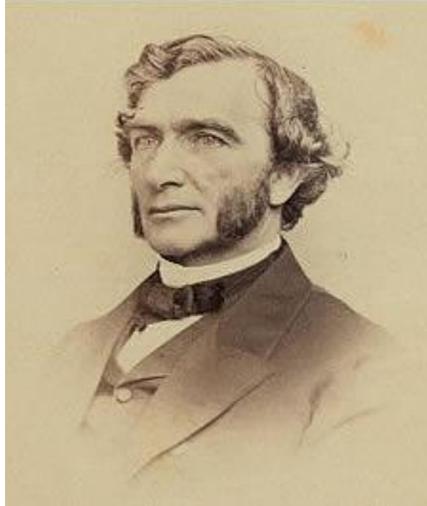
## **MORRILL ACT**

While an indirect influence over public schools, the Congress in enacting the Morrill Act of 1862 sought to establish a foundation of colleges during the turbulent civil war time by providing 30,000 acres of land for each congressional delegation.

*"An Act Donating Public Lands to the Several States and Territories which may provide Colleges for the Benefit of Agriculture and the Mechanic Arts."*

(<http://www.loc.gov/rr/program/bib/ourdocs/Morrill.html>)

Again we see evidence of that nation building role in a time when productivity of the nation was placed at risk by a nation suffering from the devastation of war.



Justin S. Morrill (1810-1898)

## FEDERAL COURTS AND THE FEDERAL CONSTITUTION

Again Alexander and Alexander remind us of the ebb and flow of court opinion over the ensuing years between the Civil War and the early 20<sup>th</sup> century regarding the federal role. These constitutional provisions largely formed the basis for the evolving involvement of the federal government in education and were the topic of growing court scrutiny. They cite the following (p. 75):

### Article I, Section 1

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

### Article I, Section 8

[1] The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States;

[3] To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

### Article I, Section 10

[1] No state shall . . . pass any . . . law impairing the obligation of contracts, or grant any title of nobility.

### Article II, Section 1

[1] The executive power shall be vested in a President of the United States of America . . .

#### Article III, Section 1

The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish . . .

#### Article VI, Clause 2.2 Supremacy Clause

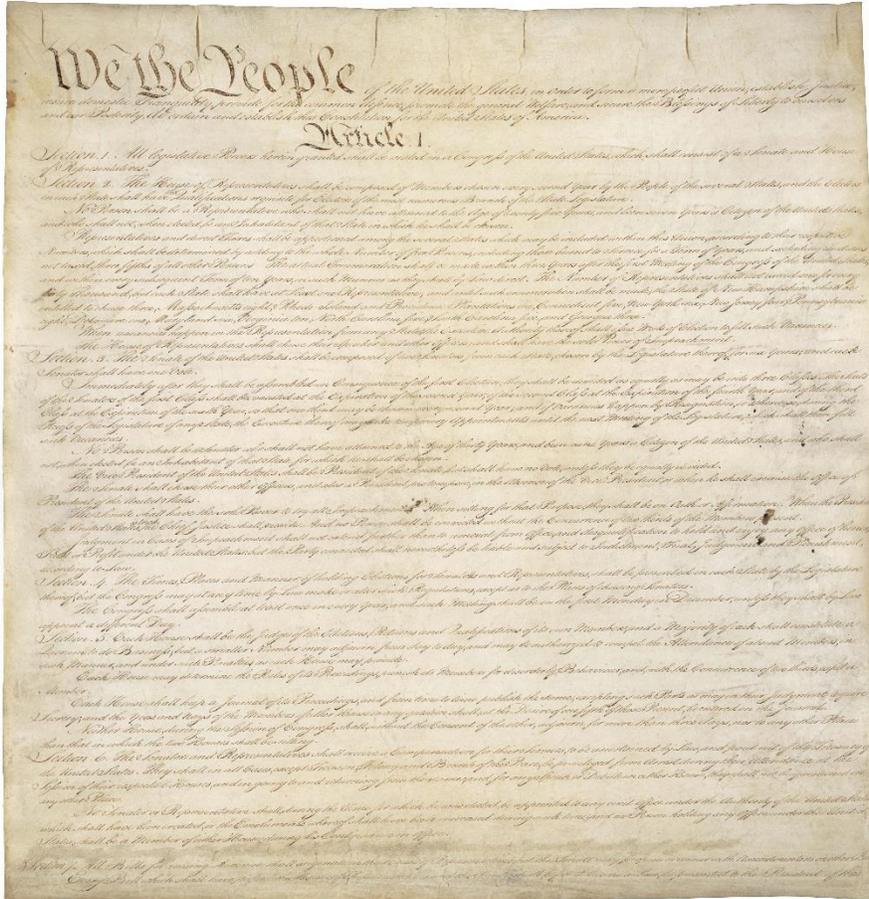
This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land . . .

#### Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

#### Amendment XI

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.



## SETTING THE STAGE FOR WHAT WAS TO COME

Through the Land Ordinances and the Morrell Act one can see the early involvement of the federal government in education as an effort in nation building. Constitutional boundaries were beginning to be tested in the courts and some fundamental expansion of the nation building role were beginning to be investigated. The Civil War, reconstruction, increased awareness of national defense, and emerging emphasis on individual citizen rights could reasonably be assumed to invite greater federal government involvement, beyond nation building, to a much broader agenda. While the courts continued their active review of important issues regarding federal involvement in education, we see this broader agenda also evolving in Congress. The combination of broader involvement Congress linked with the periodic activism of the courts set the stage for a continued dialogue on the essential role of federal government in education and the eventual establishment of a cabinet-level department directing that involvement. Future articles concerning federal involvement will document, in this abbreviated form, that evolution with a particular emphasis on the impact of this development on public school superintendents.