

Higher Education and Public Policies in the United States

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For Governing America:

Major Policies and Decisions of Federal, State and Local Government

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Brief Over-View

During the 19th and 20th centuries higher education in the United States was distinctive, perhaps unique, among nations in its lack of constitutional, statutory, or customary provision for a national ministry of education or any federal organizing authority for higher education policies. This historic absence of a definite national authority in American higher education has resulted over time in the evolution of a hybrid mix of local, state, and federal initiatives to provide resources and incentives for establishing colleges and universities. It has been an uneven development because there seldom has been a symmetrical provision for these same bodies to draft or enforce many commensurate institutional regulations. Perhaps the defining characteristic of higher education in the United States has been the deference to state governments as the source of granting charters to colleges and universities. Important to note is that this state power to grant a charter has never completely nor clearly defined what is meant by “state control.” Colleges and universities in the United States, whether in the early 19th century or the early 21st century, have included a substantial provision for what has been called

the “private” or “independent” sector of institutions. The residual legacy, then, is the coexistence of what are called “public” and “private” colleges and universities – a delineation characterized by varied and changing connotations.

Despite this lack of a clear federal source of national policies for colleges and universities, higher education from the colonial era of the 18th century to the contemporary era of the 21st century has been an attractive, growing enterprise in American life. Indeed, the popularity of establishing colleges and universities has been sufficiently great that a tendency toward over-expansion has left higher education in the United States often subject to the whims and vacillations of consumerism and a roughly defined market place in which the burden of all institutions, whether public or private, has been to attract year by year an adequate base of enrolling students and generous donors. Even the gradual yet persistent increase in government involvement in higher education at all levels and nation-wide in all states in both funding and regulation has had to acknowledge – and even defer – to this American custom of consumerism and voluntary associations.

1. Problems and Politics

A fundamental political change in the oversight of colleges and universities took place in the shift from status as the American colonies to the “new” United States in the late 18th century – and gaining momentum throughout the entire 19th century. The original colonial colleges followed the English custom of restraint in the granting of a royal charter – subjecting each petition for founding a college to detailed scrutiny to avoid an over-proliferation of academic degree gr. At the same time, those fortunate petitioners who were granted a charter by the crown were then assured generous,

continuous funding. The colonial governments emulated this English practice – usually limiting college charters to one per colony. The colonial governments also honored the royal practice of guaranteeing long term financial support for its chartered colleges. In contrast, by the early 1800s the power of state governments to confer academic charters to applicants was accompanied by the convenient use of this power as a source of political patronage. Whereas under the royal and colonial auspices, a college charter was difficult to obtain and carried with it great privileges and responsibilities, the American model represented an institutional world turned upside down. A state charter was easy to obtain – but carried with it no pledge of sustained state government support for the institution. The result was a proliferation of colleges not only in the established regions of New England and Mid Atlantic states, but also – and especially – in the newly created states of the South and West. When Lord James Bryce visited the United States in 1890, he observed that England, with a large and dense population, was host to three chartered universities. In contrast, the sprawling, under-settled United States had more than three-hundred colleges or universities. Indeed, the state of Ohio alone was home to more than thirty colleges. A problem that followed from this distinctive American enterprise was that the ease and excess of college building led to an excessive number of institutions, all of whom competed for rather limited number of students and donors. Financial support from a state government was uneven and haphazard – ranging from an occasional award of lottery proceeds or land to a particular college.

Early in the 21st century the public policies associate with higher education in the United States continues to reflect and respond to these historic precedents. It is both the number and diversity of institutions which characterize a nation committed to

approaching universal access to higher education. At the same time the diverse clustering of colleges and universities have staked out discernible missions and constituencies – ranging from “open admissions” for almost any applicant and continuing to another extreme to colleges and universities whose courses of study are highly selected and academically advanced. In 2007 the profile of higher education in the United States includes over three-thousand degree granting institutions whose combined enrollment surpasses 15 million students per year. And, even state universities which receive annual appropriations from their state legislatures, share with all institutions in the United States a perpetual competitiveness and awareness of consumerism exhibited by numerous constituencies – ranging from prospective students to alumni as donors, private foundations, and federal agencies sponsoring research projects.

2. Policies

To speak of higher education “policies” in the 19th century runs the risk of imposing or at least implying a level of government coherence or deliberation in constructing legislative guidelines for the operation and support of colleges. Most striking in this evolution is the relative lack of a systematic arrangement of elementary and secondary schooling within states and locales as a base for future college student enrollments. What one does find are some few yet important examples of landmark legislation. Most conspicuous was the 1862 Morrill Act – federal legislation that provided to each state government an incentive plan for the sale of distant undeveloped lands in the far Western regions of the United States. The price for this federal largesse was that proceeds from the allotted land sales were required to be used by a state government to provide for advanced instruction in the useful arts of agriculture, mechanics, military as well as the

liberal arts. Significant as this legislation was, its slow passage underscored the relative strength of state governments to initiate and to block initiatives. The proposed federal legislation had been before Congress for over a decade – but always had been effectively stalled or blocked by Senators and members of Congress from the Southern States. The rationale for their strong opposition was, first, to derail any attempt to extend the federal government's power – at the possible expense of the states rights doctrine; and, second, an indifference of large land owners and planters in the South who had little interest in extending formal education programs.

The historic example of the federal government's Morrill Act of 1862 also is significant because it illustrates a principle and precedent for federal strategies involving higher education as part of larger national issues and priorities. Since the federal government tended to be prohibited or at least limited in its direct involvement in higher education legislation, U.S. presidents and Congress used higher education as a secondary vehicle to carry out primary legislative aims. The 1862 Morrill Act, for example, was crucial to colleges and universities for its incentives and program resources. Yet from the perspective of national politics, this was secondary to the foremost concern about how to settle and appropriately dispose of vast sums of land in Western territories. The congressional vote to allow for state governments to sell western land allotments as a source of new income for higher education programs represented an important and deliberate decision to forego giving large land tracts to railroads or other industrial corporations and, rather, to promote popular settlement and homesteading.

In a similar vein, the famous Servicemen's Readjustment Act passed at the end of World War II was understandably hailed by colleges and universities as a generous

gesture by the federal government to increase accessibility and affordability in higher education for a generation of veterans who probably heretofore had limited options to go to college. Yet this was a secondary accomplishment – a residual, unexpected benefit – that accompanied the legislation’s urgent, primary concern of avoiding widespread societal unrest that might have emanated from returning military veterans who were disgruntled by a job market that had few opportunities for them. Portable financial aid, then, provided an attractive alternative of “going to college” – rather than seeking a job.

Another significant example of this distinctive federal relationship with higher education surfaced with congressional approval of massive, on-going funding for research and development projects. The aim of a federal research grant was not foremost to assist colleges and universities or to build programs or campuses – although this often was a by-product or secondary effect. Rather, it was a contractual relationship in which a federal agency provided the funding to a university-based faculty researcher whose obligation then was to provide solutions to problems the federal agency deemed important. In other words, a federal grant was intended to provide the resources to cure a disease, build a better weapon, or develop a psychological test – as explicitly spelled out in the grant contract. The happy coincidence for science professors was that it so happened that universities were a competent, useful partner in such research enterprises.

A fourth, reasonably contemporary, example of colleges and universities as a vehicle for helping the federal government accomplish a particular goal comes from a part of the 1972 Reauthorization of the Federal Higher Education Act. Since the federal government still gave some deference to the constitutional and customary restriction on direct involvement in higher education, Congress once again relied on financial incentives to

provide an indirect route for extending federal influence on colleges and universities. This was done via creation of the so-called “1202 commissions” – designated agencies in each state which would be eligible to receive substantial federal funding to be used exclusively for the purpose of building coordinating mechanisms to promote statewide planning among individual colleges, the state agency, and the federal government. It was not a mandated program. Yet for state governments the prospect of being eligible for federal funding to implement systematic planning was attractive – so much so that 36 states’ governments voluntarily agreed to participate in the federal program.

One consequence of the persistence of state government authority over education, including higher education, was that well into the 20th century there was no national agency that could approximate functionally or constitutionally what other countries readily adopted as a “national ministry of education.” The closest proxy to such an entity was the transformation of great industrial fortunes in oil refining, steel production, banking, railroads and shipping, and banking into voluntary associations characterized by private initiatives. The paramount example of this trend was the creation in the early 1900s of The Carnegie Foundation for the Advancement of Teaching. Under the leadership of the former president of the Massachusetts Institute of Technology, this led to a simultaneous reliance on incentives and coercions to influence colleges and universities nation-wide to adopt both standards and standardization of academic practices. The incentive was that the CFAT would fund a generous faculty pension plan for any institution which was approved by the CFAT board. The coercion was that an applying college had to agree to certain terms: it would enroll a minimum of 300 students; it would require entering students to show a transcript of approved college

preparatory courses from an approved secondary school; and, college officials would have to show evidence that its curriculum was void of orthodoxy or polemics from a religious denomination.

During the decades between World War I and World War II the composite role of the various major foundations was to provide substantial, focused funding on innovations which colleges and universities – let alone state or federal agencies – were unlikely to sponsor, whether due to lack of resources or lack of interest. The Rockefeller Foundation, for example, funded and helped establish the “SREB” (Southern Regional Education Board) as a clearing house, evaluator, and funding agent for numerous initiatives to increase the extent and minimal quality of education in the Southern states. During this period the Julius Rosenwald Fund, whose resources were provided by Sears Roebuck, Inc., dedicated funding for about twenty years to constructing sound, safe school buildings for Black students in states where public funding for education was racially separated – and racially unequal.

Although state legislatures had been sporadic and meager in funding for public higher education in the late 19th and early 20th centuries, after World War I one finds a significant trend of state reliance on tax revenues to provide state universities with stable annual appropriations. And, especially in the Midwest and Pacific Coast regions, annual appropriations were increasingly generous as well as stable. The era 1945 to 1970 was called “Higher Education’s Golden Age” in honor of this transformation of state funding – along with amply funded federal programs of sponsored research and student financial aid. Illustrative of a large, affluent state’s generous commitment to affordable and accessible higher education was California. For over a century it maintained a state

policy of charging no tuition to any in-state student. And, its umbrella of institutions included the University of California with 10 campuses enrolling over 190,000 students, the California State University and Colleges whose 19 campuses enrolled over 45,000 students, and 110 community colleges with an annual enrollment of 2.5 million, plus 64 independent colleges and universities. To another extreme, states in the Northeast such as New Hampshire have demonstrated state commitment to building campuses – but with a philosophy of education which emphasized that students enrolling at state universities should not enjoy no or low tuition – but should be expected to pay a substantial portion of educational costs without taxpayer subsidy. Despite such end points and differences within state universities, state support for higher education has been universally strong and enduring.

At the end of the 20th century, however, state governments inherited the simultaneous situation of tapering state revenues plus increasing demands for subsidies dealing with other state services – ranging from health care, senior citizens issues, road construction, and industrial tax exemptions. The result was that presidents and boards of state colleges and universities faced a new era in which their customary “most privileged” status for state appropriations faced review and renegotiation. Part of the price to pay was a demand from legislatures and courts for accountability in academic affairs, ranging from treatment of students to procedural fairness in deliberations on faculty tenure and promotion – spheres of institutional activity which historically had been out of bounds for external scrutiny.

The layer of government that tends to receive scant mention in discussions of higher education and public policies is that of local bodies – usually at the municipal or county

level of jurisdiction. In fact, this has been a deceptively distinctive and important locus for colleges and universities. In some states, notably highly populated California, for decades the responsibility for funding the public two year colleges rested with local governments. In addition to this domain, a primary reason cities and counties are important for higher education is that local governments have been responsible for granting tax exemptions to colleges and universities. This was significant for the colleges and universities because typically they were large land owners and large employers in their respective communities, ranging from a small “college town” to such major metropolitan areas as Baltimore, Boston, and Providence. This benefit of business could have been a potentially major tax liability without the local exemptions. The corollary was that most local governments relied exclusively on local real estate taxes to provide annual operating budgets for local public schools. By the 1970s, with a failure of numerous school bond measures in local elections, combined with general industrial decline, many cities and counties became increasingly strapped for cash. Hence, over time, colleges and their communities increasingly go through an annual ritual of reconsidering the efficacy of the customary college tax exemptions. It also created the tense situation that a tax exemption for one segment of education (e.g., colleges and universities) tended to drain tax revenue support for another segment of education (e.g., local school districts from kindergarten through high school). The usual stop-gap resolution is that college and university presidents have agreed to pay to their municipalities and mayor a “voluntary fee” – always careful to avoid the formal nomenclature of a precedent setting “tax.” The reciprocation also was that city

governments started to expect a campus community to pay a growing share of user fees for such services as fire departments and police.

3. Effects

The effect of the 1862 Morrill Act was to stimulate within most states the creation of either state programs or state colleges whose mission included applied fields in the sciences and engineering and also to develop a statewide extension program to bring expertise in agriculture, home economics, and industrial development to constituencies beyond the campus. It also laid the groundwork for increased federal involvement in providing incentive funding to colleges and universities nation-wide.

At the same time, the model of the private wealth and voluntary association which characterized the founding and funding of the Carnegie Foundation for the Advancement of Teaching stimulated a number of wealthy industrialists to establish their own versions of private foundations whose purpose was to influence public policies in higher education. It included the Rockefeller General Education Board, the Rosenwald Fund (from Sears Roebucks Company wealth), the Duke Trusts, and later, the Ford Foundation which was founded in 1936. Over the past seventy years, although the actual dollar amounts the major foundations devote each year to higher education related projects has risen substantially, the concurrent entrance of the federal government and its massive resources into a few selected areas has tended to re-shape the role of foundations away from dominating external funding. Instead, often their role is to serve as the innovative force whose experimental programs over time provide a model for large programs sponsored by federal agencies.

Important to note about this relationship of private foundations and public agencies is that it is relatively new. Only after World War II would the involvement of the federal government in higher education policy and programs gain substantial presence. It would be displayed in two markedly contrasting domains: the enduring congressional support of advanced research and development via sponsored grants awarded to highly qualified faculty in the sciences and health fields via such new entities as the National Science Foundation and the National Institutes of Health. To another extreme, the federal government provided immediately after World War II an unexpectedly attractive, successful program to provide returning military veterans with portable financial aid to the institutions of their choice. In 1959, stimulated by the real and imagined fears of the United States' slippage to the USSR in mathematics and science, the U.S. Congress quickly passed and generously funded the National Defense Education Act. And, the high mark of federal programs committed to college student financial aid would gain enthusiastic support in the 1972 renewal of the Higher Education Act. This marked the appearance and availability of such large scale student aid programs as The Pell Grants and numerous student loan programs.

Although the general principle and generous commitment of the federal government to massive student financial aid programs has endured into the early 20th century, its details and proportions have undergone important and often controversial renegotiations. Most visible and volatile has been an increasing reliance on student loans as the medium of financial aid – as distinguished from federal grants and scholarships. Furthermore, redefinitions of student loan programs has included recent provision for encouraging the participation of private lenders – e.g., commercial banks and loan

agencies – as formidable partners with government and colleges. By November 2006, however, this accelerating trend confronted an abrupt scrutiny and suspension by the United States Congress in response to sustained complaints from the parents of students who were influential as voters and consumers.

4. Issues

The coexistence of a growing federal presence in higher education programs combined with the traditional role of state governments in chartering colleges and universities – and also providing appropriations for state universities, and fused with a long tradition of private donations and support for institutions, created a fertile and fluid environment for somewhat incoherent yet generous national commitment to higher education. At the same time, these gains and alliances continue to be dominated by tensions within the United States’ priorities: reconciling pursuit of academic excellence versus giving foremost concern to achieving educational equality. This included the contrast of the federal agencies research emphasis on excellence as distinguished from the student financial aid programs emphasis on equity. For example, federal agencies such as the department of defense ascribed to the proposition of “Big Science as the Best Science.” This meant that federal research grants were to be awarded to the most talented scientific research faculty and teams at large universities with a proven track record of large-scale research success. There was little if any concern for assisting under-developed colleges with enhancing their research programs. In marked contrast, programs such as student financial aid gave less attention to identifying and funding top academic talent among student applicants in favor of programs intended to make going to college affordable for students from under-served groups. This latter emphasis, with

priority for civil rights and social justice, was intended to extend access to undergraduate education.

Balancing these dual, sometimes conflicting, characteristics of excellence versus equity for dispensing federal funds required careful consideration by colleges and universities. Campus officials were cautious because they tended to invoke a principle and precedent of institutional autonomy which they were reluctant to jeopardize by participating in federal programs. The customary way this played out was that those colleges and institutions which voluntarily accepted federal monies via student financial aid programs and federal agency research grants then positioned themselves to be subject to compliance with a large and growing number of federal regulations – many of which had only incidental connection with the original source of the federal funding. In other words, dispersing federal resources to institutions became one way in which the federal government could have substantial leverage in prompting colleges and universities to comply sooner rather than later with new federal legislation in the area of social justice and civil rights.

Foremost in this precedent was the gradual yet persistent strategy of the United States Justice Department to use the 1954 Supreme Court decision in *Brown versus the Board of Education of Topeka* as a means to introduce racial desegregation in state universities whose policies had embraced a historic custom of racial separation in higher education. Colleges and universities typically were either exempted from or given delays in compliance with such legislation. However, between 1958 and 1964 federal marshals and U.S. Justice Department attorneys prevailed over the complaints of some governors and over-saw the mandatory compliance of some state universities in the South – e.g.,

the University of Alabama and the University of Mississippi – in enrolling African-American students – a constituency previously denied access by state government.

Another good example of this process of diffusion from federal mandate to state compliance has been the 1972 legislation known as Title IX – legislation whose broad language was vague in ascertaining its scope of authority. In the four decades since its passage, one of the main and largely unexpected consequences has been its application and enforcement in the area of gender equity in intercollegiate athletics programs and other campus based educational activities.

Given the growth of interest in and support for university-based scientific research and development since World War II, the incentive of acquiring – and retaining – federal agency research funding has provided a source of institutional compliance with federal regulations. For example, in July 2001 virtually every national newspaper and television and radio news broadcast gave headline attention to the announcement that the federal government had suspended federal research grant funding to The Johns Hopkins University in Baltimore, Maryland due to the death of a subject in a federally funded asthma experiment. It was newsworthy because Johns Hopkins University had been for many years the largest single institutional recipient of federal support for medical research – with its sponsored research grants expenditures exclusively from federal agencies in 2005 surpassing \$1.2 billion – a dollar figure that represented more than 50% of the university's annual operating budget.

In 2007-2008 philanthropy and higher education surfaced as an example of congressional investigation – with some potential for future attempts at federal regulation. The object of concern was the ability of prosperous, established universities

to build perpetual endowments, with little obligation to “spend down” more than 4% to 5% each year. The most conspicuous institutions for scrutiny were, predictably, the wealthiest ones – e.g., in 2006 Harvard University with an endowment of over \$29 billion, along with Yale, Stanford, University of Texas, and Princeton each with endowments in the range of \$13 billion to \$18 billion. The essence of the congressional query was, “Why should an established institution which has had more than 20% returns on endowment income each year for several consecutive years not be expected to spend a substantial part of this largesse on student financial aid and other aspects of campus operation?” Subsequent testimony and debates have invoked the historic arguments of institutional autonomy which have characterized campus relations with government for over three centuries.

The most significant issue facing all colleges and universities in the early 21st century is consideration of an essential historic change in government attitudes toward American higher education. Historically, colleges and universities at least since the late 19th century enjoyed some combination of an absence of government intrusion at local, state and federal levels – and/or generous financial support. In the past two decades, however, higher education increasingly is viewed by the U.S. Congress, state legislatures, the courts, and government agencies as an established “mature industry.” The policy corollary is that colleges and universities face some reduction of generous subsidies and relaxed regulation – and increasingly must compete with institutions dealing with health, criminal justice, and transportation for support not only from government but also from the influential sector of private philanthropy in the United States.

5. Suggested Further Readings

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