Restoring Higher Education in the 21st Century: Returning the Focus to the Public Good

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The Changing Dynamics of College Access and Success

For most of the past 40 years, the focus of policy and practice related to equity in higher education has been on access to the system. The private benefits of higher education in the form of enhanced careers opportunities and increased earnings are well understood, and access to college and university education is seen as the gateway to these advantages. The public understands well that there is a “pecking order” in American higher education, and the prestige of the university one attends is directly correlated with future career and social prospects. Assuring that there is not discrimination in college admission decisions on the basis of race and ethnicity, gender, condition of disability, and age is an appropriate concern of policy, institutional practice, and law.

In the 21st century, however, higher education’s role in society and the economy is changing. As globalization and attendant trends have made it possible (and necessary) to rapidly move jobs to wherever work can be done at the lowest cost possible, increasing skills and knowledge levels is important not just for individuals, but for the functioning of the economy as well. In this competitive environment, education matters in a way that it never has before. The only way for the U.S. to maintain its competitive position in the world economy, much less improve on it, is to increase the skills and knowledge of its workforce. Having a thin stratum of extremely well-educated professionals over a large workforce with high school credentials or less will not work any longer. Just as there are no longer reliable pathways to the middle class for those with less than a college education, the U.S. cannot get by with the educational attainment levels of the past. Increasing higher education attainment levels carries with it a public benefit that cannot be ignored.

Understanding the shifts in public policy and practice that are the inevitable consequences of these fundamental changes in the world economy is critical. One fact is clear, however – increasing the number of Americans that complete college is a growing national priority. It is no secret – yet nonetheless remarkable – that a little more than half of all students who begin college finish within six years.¹ When higher education is primarily a private benefit,

¹ The six-year graduation rate for all four-year institutions in 2004 was 57%. National Center for Education Statistics, “Placing College Graduation Rates in Context: How 4-Year College Graduation Rates Vary With Selectivity and the Size of Low-Income Enrollment,” October 2006.
this outcome has a certain perverse logic. The fact that increasing educational success is critical to the society and national economy doesn’t mean that issues of fairness and equity in college admissions decisions are not important. It does mean, however, that making sure that access to the current system is equitable is not enough.

The new access and success agenda for higher education includes assuring that all students are prepared for success in college. Students must be able to move efficiently and effectively from high schools to community colleges to universities and into the workforce. Higher education must be affordable for all those who want and need to take advantage of it. Opportunities for adults to return to higher education must be greatly expanded. All this suggests that new approaches to financing higher education, holding higher education systems accountable, and building institutional capacity will need to be developed.

Some of these ideas will be discussed later in this paper. First, however, a closer examination of the data regarding higher education attainment, and the need for the U.S. to significantly increase attainment levels, is warranted.

The Case for Increasing Higher Education Attainment

The U.S. prides itself on the quality of its higher education system, and many still consider it to be the best in the world. By some standards, it undoubtedly still is. But by one important measure in which the U.S. has historically led the world – the overall level of educational attainment of the population – the U.S. has fallen considerably compared to countries in both Europe and Asia.

The clearest evidence of this change is the U.S. position in international rankings of the number of postsecondary degree holders in the adult population. Among older adults – those between the ages of 55 and 64 – the U.S. has the highest percentage of college degree holders among all countries ranked by the Organization for Economic Cooperation and Development (OECD).2 This represents the success of the U.S. educational system of the 1960s in meeting the educational needs of a burgeoning population – a time when the ability of the U.S to expand participation in higher education beyond a small, elite stratum made its system the envy of the world.

International comparative data for younger adults, however, tells a very different story. Today, the U.S. ranks only eighth in the percentage of young adults (ages 25-34) that have completed college with either a two-year or four-year degree. The U.S. is now producing fewer college graduates as a percentage of the population than Canada, Japan, or most of the Scandinavian countries. Even more telling, it has fallen behind both Korea and Ireland, and is only a percentage point or two above countries like France, Spain, and Australia that have not traditionally been known for high rates of college participation and attainment.3

Table 1 shows how this trend is affecting international rankings of college degree attainment over time. In the older adult population, ages 55 to 64, the U.S. ranks first in the percentage

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3 Id.
of the population with college degrees at 36 percent. In the young adult population, ages 25
to 34, the U.S. ranks eighth at 39 percent. In fact, the levels of degree attainment in the
United States are remarkably stable over time. The rate of degree attainment for the U.S.
population aged 35 to 44 is also 39 percent, while for the population between the ages of 45
and 54 it is actually higher, at 41 percent. The United States is one of only two counties
among the 30 in the OECD that has shown a decline in college attainment among younger
adults; the other being Germany.4

What this international comparative data documents is that the U.S. educational system of
today has not expanded opportunity to any significant degree over the past 40 years, while
other countries have increased – and are continuing to increase – higher education
attainment. To match the level of degree attainment of the highest performing nation in
OECD, the U.S. would need an additional 7,000,000 college degree holders in the adult
population aged 25 to 44, representing an increase of approximately 30% over current levels.
Because rates of college degree attainment are increasing in almost every OECD country
closer than in the U.S., the gap will continue to widen until the U.S. significantly improves
rates of both college participation and completion.

Table 1
Educational Attainment of the Adult Population, 2004
Tertiary Type A and B
Source: OECD Education at a Glance, 2006

<table>
<thead>
<tr>
<th>Country</th>
<th>25-34</th>
<th>55-64</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada</td>
<td>53</td>
<td>35</td>
</tr>
<tr>
<td>Japan</td>
<td>52</td>
<td>35</td>
</tr>
<tr>
<td>Korea</td>
<td>49</td>
<td>35</td>
</tr>
<tr>
<td>Sweden</td>
<td>42</td>
<td>35</td>
</tr>
<tr>
<td>Belgium</td>
<td>41</td>
<td>35</td>
</tr>
<tr>
<td>Ireland</td>
<td>40</td>
<td>35</td>
</tr>
<tr>
<td>Norway</td>
<td>39</td>
<td>35</td>
</tr>
<tr>
<td>United States</td>
<td>39</td>
<td>35</td>
</tr>
<tr>
<td>Spain</td>
<td>38</td>
<td>35</td>
</tr>
<tr>
<td>France</td>
<td>38</td>
<td>35</td>
</tr>
<tr>
<td>Germany</td>
<td>38</td>
<td>35</td>
</tr>
<tr>
<td>Australia</td>
<td>36</td>
<td>35</td>
</tr>
<tr>
<td>Denmark</td>
<td>34</td>
<td>35</td>
</tr>
<tr>
<td>Netherlands</td>
<td>31</td>
<td>35</td>
</tr>
<tr>
<td>Iceland</td>
<td>31</td>
<td>35</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>30</td>
<td>35</td>
</tr>
<tr>
<td>Switzerland</td>
<td>28</td>
<td>35</td>
</tr>
<tr>
<td>New Zealand</td>
<td>28</td>
<td>35</td>
</tr>
<tr>
<td>Greece</td>
<td>26</td>
<td>35</td>
</tr>
<tr>
<td>Poland</td>
<td>25</td>
<td>35</td>
</tr>
<tr>
<td>Austria</td>
<td>23</td>
<td>35</td>
</tr>
<tr>
<td>Hungary</td>
<td>23</td>
<td>35</td>
</tr>
<tr>
<td>Mexico</td>
<td>20</td>
<td>35</td>
</tr>
<tr>
<td>Portugal</td>
<td>19</td>
<td>35</td>
</tr>
<tr>
<td>Italy</td>
<td>19</td>
<td>35</td>
</tr>
<tr>
<td>Slovak Republic</td>
<td>15</td>
<td>35</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>13</td>
<td>35</td>
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<tr>
<td>Turkey</td>
<td>11</td>
<td>35</td>
</tr>
</tbody>
</table>

4 Id.
The U.S. can and should benchmark its performance in educational attainment to that of the highest-performing countries in the world. Since the U.S. spends more than any other country per capita on higher education, has a large and well-developed higher education system, and has historically maintained high levels of higher education attainment, the U.S. should be able to at least equal the performance of other high-performing countries. Both U.S. and international data show increasing benefits from higher levels of educational attainment in terms of earnings potential and career opportunities. At the same time, opportunities for those without higher education are shrinking, and the disparity in income between the educational haves and have-nots is growing. Educational attainment is also increasingly important as a key indicator of economic progress and well-being. To retain its economic prosperity, the U.S. must remain competitive教育ally. The argument for increasing higher educational attainment does not rest solely on economic factors, however. The societal benefits of higher levels of educational attainment in terms of health, citizenship, family stability, reduced crime, and many other factors are well-established in the research literature.

**Higher Education Attainment: A Challenge for States**

States differ significantly in the level of educational attainment of their populations. While both U.S. and international data show increasing benefits from higher levels of educational attainment in terms of earnings potential and career opportunities, state leaders also understand that opportunities for those without higher education are shrinking. The disparities in income between the educational haves and have-nots – both individuals and states – are growing. As a consequence, expanding educational opportunity is a growing policy priority in states.

State leaders increasingly recognize that their workforces must compete in a global environment and not just against other states. As a consequence, the international comparative data is very useful for illustrating the demands on states to increase educational attainment. U.S. Census data makes it possible to compare state levels of educational attainment to the international benchmarks provided by OECD data.

**Table 2**

Percent of 25-34 Year Olds with College Degrees, by State Compared with OECD Countries

Source: OECD and U.S. Census Bureau
As table 2 shows, levels of educational attainment vary significantly across states. A few states are close to the best countries in the world, although no state has a college attainment level among its young adult population that matches those of the highest performing countries. The range of performance across states is wide, however, with the lowest performing states reaching an educational attainment rate of less than half those of the highest performing states.

The Changing Demographics of the United States

What will it take to increase higher education attainment rates to world-class levels? The rapidly changing demographics of the U.S. mean that closing the attainment gap between the U.S. and other countries will require that the U.S. close the attainment gaps among students from groups that have traditionally been underrepresented in higher education. The reason is simple. The U.S. population is expected to grow by 56 million by 2020, but 46 million (82 percent) of these new Americans will be members of minority groups.5 Reaching best-in-the-world levels of college attainment will require the U.S. to find ways to assure that all residents have the opportunity to succeed in higher education.

The degree to which the U.S. population is becoming increasingly diverse is remarkable. By the year 2020, the U.S. Census Bureau projects a 77% increase in the number of Hispanics, a 32% increase in African-Americans, a 69% increase in Asians, a 26% increase in Native Americans, and less than a one percentage point increase in the White population. As shown

5 U.S. Census Bureau, “U.S. Interim Projections by Age, Sex, Race, and Hispanic Origin,” 2004, (http://www.census.gov/ipc/www/usinterimproj/)
in Table 2, the growth in minority populations, particularly among Hispanics, is strong even in absolute terms.

### Table 3

**Growth in the U.S. Population, 2000 to 2020**

<table>
<thead>
<tr>
<th></th>
<th>2000</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td>10,207,000</td>
<td>9,547,000</td>
</tr>
<tr>
<td>Black</td>
<td>7,304,000</td>
<td>7,304,000</td>
</tr>
<tr>
<td>Hispanic</td>
<td>4,747,000</td>
<td>4,747,000</td>
</tr>
<tr>
<td>Other</td>
<td>9,547,000</td>
<td>7,304,000</td>
</tr>
</tbody>
</table>

While the White population of the U.S is growing, all of the population growth is taking place in older population groups – the number of younger White Americans is actually declining. The numbers of non-Hispanic Whites is actually falling in many parts of the U.S., particularly among the young. A much larger proportion of the young are members of traditional minority groups.

### Table 4

**Growth in the Texas Population by Age, 2000 to 2020**

<table>
<thead>
<tr>
<th>Age Group</th>
<th>White</th>
<th>Hispanic</th>
<th>African American</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-17</td>
<td>-1.83%</td>
<td>6.50%</td>
<td>1.11%</td>
<td>1.20%</td>
</tr>
<tr>
<td>18-24</td>
<td>-0.88%</td>
<td>-0.88%</td>
<td>0.42%</td>
<td>0.33%</td>
</tr>
<tr>
<td>25-44</td>
<td>-6.59%</td>
<td>5.49%</td>
<td>2.03%</td>
<td>1.41%</td>
</tr>
<tr>
<td>45-64</td>
<td>7.12%</td>
<td>7.32%</td>
<td>3.69%</td>
<td>2.79%</td>
</tr>
<tr>
<td>65+</td>
<td>12.40%</td>
<td>2.97%</td>
<td>2.29%</td>
<td>1.57%</td>
</tr>
</tbody>
</table>

The result of all these trends is that population growth in the U.S. is most pronounced in traditional minority groups. The growth is particularly strong among Hispanics. This trend is extremely strong in the fastest growing states (California, Texas, Florida), but is prevalent throughout the U.S. As shown in Table 5, by the year 2050, the United States will be a “majority minority” nation – a majority of the total population will be members of traditional minority groups. The implications of this reality for the higher education system are inescapable.

### Table 5

**Composition of the U.S. Population**

<table>
<thead>
<tr>
<th></th>
<th>2000</th>
<th>2020</th>
</tr>
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<tbody>
<tr>
<td>White</td>
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</tr>
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</table>
Changing Demographics and College Attainment

As a result of the rapid growth of minority populations in the United States, in many regions of the country members of minority groups constitute a majority of the school- and college-age population. However, Hispanics, African-Americans, and Native Americans are underrepresented at each stage of the educational pipeline. The effect of the problem of underrepresentation is cumulative, as is shown by the following statistics:

- Of every 100 White kindergartners, 93 graduate from high school, 65 go to college, and 33 obtain a bachelor’s degree.
- Of every 100 Black kindergartners, 87 graduate from high school, 50 go to college, and 18 obtain a bachelor's degree.
- Of every 100 Hispanic kindergartners, 63 graduate from high school, 32 go to college, and 11 obtain a bachelor's degree.
- 60% of young people from high income families graduate from college by age 26.
- 7% of young people from low income families graduate from college by age 26.

At the same time that the demands of the global economy are increasing the need to improve rates of college participation and success, demographic changes in the U.S. mean that more and more of the pool of potential college students are from populations that traditionally have not been well served by the education system. Left unchecked, the U.S.
will have a hard time even maintaining the current rate of college participation and graduation, much less increase it to the levels needed in a globally competitive environment.

As a result of these trends, the strategies of colleges and universities in the U.S. to attract, retain, and graduate more minority students are shifting beyond traditional approaches like affirmative action to efforts that can significantly increase rates of student success. These include improving the academic preparation of students, reducing the cost of higher education for low income students, increasing transfer between two- and four-year institutions, better understanding student learning outcomes, and significantly raising college graduation rates. The need to adopt success-oriented strategies has significant implications for higher education policy, as discussed in the next section of this report.
The Changing Policy Agenda for College Access and Success

Increasing the number of college degree holders in the U.S. population by more than 30%, the minimum necessary to remain competitive with the highest-performing countries, will require broad-based strategies addressing preparedness, affordability, quality, equity, and successful completion. The policy agenda related to meeting this challenge includes the following elements:

1. Assuring that every child graduates from high school with the necessary preparation and support to be successful in college and the workplace.

2. Assuring that every potential student has access to affordable high quality two- and four-year higher education opportunities.

3. Strengthening community college systems as a major contributor to meeting these goals.

4. Improving accountability systems, particularly through the development of state-of-the-art student performance data systems.

5. Improving student learning outcomes from higher education.

There are no “quick fixes” to these issues. Much larger numbers of students must be brought to much higher levels of educational attainment. The first step is improving preparation for college.

1. Assuring that Students are Prepared for College

In an environment in which far higher numbers of students are expected to attend and graduate from college, assuring that all or almost all students are well prepared for college is essential. By setting low expectations for the majority of students, many of America’s high schools do not adequately prepare students to have a realistic opportunity for success in college. This is particularly true of schools attended by most low income and minority students.

The rigor of the high school curriculum is a strong predictor of college success. Of students taking the most rigorous curriculum, 82% will obtain a Bachelor’s degree. Of those students taking the least rigorous curriculum, only 9% will obtain a Bachelor's degree. A rigorous curriculum in high school increases college success rates for minority students even more than it does for White students.\(^6\) Unfortunately, minority group students are much less likely to take a rigorous curriculum in high school.

There are, of course, promising initiatives that are addressing this issue. The Early College High School initiative sponsored by the Bill and Melinda Gates Foundation is a large-scale effort to reinvent the American high school, and prepare all students for success in college.

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This initiative is linked to a significant effort by the National Governors Association to reform high school education in the U.S. A few states, including Texas, have taken steps to make the college prep curriculum the default for all students, rather than an option left to student choice. Higher education can and should play a significant role in expanding these and similar efforts. California State University’s Early Assessment Program (EAP) is an excellent example of an innovative approach with enormous potential to improve college preparation for large numbers of students.

Another promising approach to improving preparation for college is the expansion of accelerated learning opportunities for high school students, including Advanced Placement (AP), the International Baccalaureate (IB), early college high schools, and dual and concurrent enrollment. These programs expand access to higher education, raise academic standards, shorten time to degree, and reduce costs. These programs are growing rapidly around the country, and today more than three million students are enrolled in accelerated programs.

Table 6

Percent of Students Taking Advanced Courses in High School
Source: U.S. Department of Education, 2004

As is shown in Table 6, however, minority students are significantly less likely to have the advantages of accelerated learning programs. In many cases, accelerated learning programs are simply not available to minority students, particularly those that are enrolled in high schools in low income neighborhoods or rural areas. Assuring that all students have access to accelerated learning programs would be a large step toward improving college success rates.

2. Assuring College Affordability

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8 http://www.calstate.edu/EAP/
As the cost of attending college has continued to rise, low- and moderate-income students are increasingly priced out of higher education. To meet the educational and workforce needs of the nation in the future, all potential students must have assured financial access to higher education. Meeting this challenge requires action on multiple fronts, including controlling higher education costs, providing low-cost alternatives, and ensuring adequate financial planning by families and individuals. However, even with these steps, assuring affordable access to higher education requires adequate need-based financial aid.

There are several reasons why this is the case. Federal financial aid – in particular the Pell Grant program – has not kept up with rising college costs and the increasing numbers of students who need assistance. While many states have tried to keep college affordable by keeping tuition charges as low as possible, the total cost of attending college for many students (including living expenses, health and child care, and transportation costs) has risen to levels that many students cannot afford to attend without help. Research has shown that students without adequate financial aid are at great risk of dropping out of college as the result of even relatively minor unexpected expenses like a family illness. While merit aid programs have their place – particularly as a way to provide an incentive for students to prepare themselves academically for college – there is no substitute for adequate need-based aid.

3. Developing Strong Community College Systems

Community colleges play a key role in providing higher education access to low-income residents, adults, and part-time students, at the same time they allow states and communities to respond much more rapidly to growing demand for higher education and changing workforce needs. In most states, community colleges play a key role in economic development efforts by responding rapidly to the training needs of new and expanding industry, retraining displaced workers, and supporting entrepreneurship. Throughout the United States, community colleges offer a route to advanced education for millions of people that cannot be as effectively served by traditional four-year institutions.

4. Creating Student Unit Record Data and Accountability Systems

There is really only one way to produce lasting change and improvement in higher education, and that is through the rigorous use of performance data. Without good data, it is impossible to clearly identify state needs, figure out which programs and strategies are effective and which need to be scrapped, assign responsibility for action among the range of institutions supported by the state, and effectively allocate resources to achieve desired outcomes. Performance data should be used at all levels of the education system – from the individual classroom to the state capitol.

Fortunately, there is now a lot of information available about how to design and implement the kind of data system that will produce lasting improvement in the performance of education systems. Lumina Foundation’s Achieving the Dream (AtD) initiative has identified the key data elements that higher education institutions need to better serve all their students. With this information, AtD institutions are developing the structures to enable campus faculty and staff to learn from the data what needs to be done, and to create the will
to make the often painful, but necessary, changes that are needed. The Data Quality
Campaign, involving most of the national education policy groups including the National
Governors Association, has identified the key characteristics of effective data systems.9
Florida has already developed a data system that can track individual students from
kindergarten, through the K-12 system, through higher education, and into the workforce.10
Several states are developing their own systems based on the Florida model, but with even
more capacity to drive performance improvements. These states will soon be able to answer
such powerful questions as when and where students are dropping out of the education
pipeline, which teachers/faculty, programs, and schools/colleges are effective – and which
are not – and how much students are actually paying for their college education.

The accountability system can and should be designed to track and report on other
important public policy issues, such as graduation rates, faculty workload, productivity, and
higher education costs. A state-of-the-art system also would link to multiple measures of
student learning, including scores on licensure and qualifying exams (such as the GRE,
LSAT, and teacher licensure exams) and learning outcomes assessments. With a system in
place that provides this kind of data on results, states could move toward new approaches to
higher education finance that reward institutions for their success in increasing educational
attainment, rather than simply enrollment.

5. Focusing on Student Learning

Student success is at the heart of any educational enterprise, but student outcomes in higher
education are poorly understood and not generally considered in either campus-level or
public policy decision-making. Quality in higher education is too often defined in terms of
inputs and resources rather than student success and learning. A better understanding of
student success in higher education in terms of student learning, completion and graduation,
and transition to further education and employment is essential to developing stronger, and
ultimately more useful, definitions of quality. Recent research suggests that a better
understanding of student learning will be particularly important in the development of
approaches to increase the success of underrepresented students in higher education.
Unfortunately, higher education in the U.S. has never done a very good job of defining the
specific learning outcomes that students are expected to achieve, or measuring the actual
learning that takes place within classrooms and institutions. As a consequence, quality in U.S.
higher education tends to be defined in terms of inputs, such as the knowledge levels of
entering students, and not outputs, such as the knowledge level of college graduates.

Fortunately, progress is finally occurring on this front. The Collegiate Learning Assessment
(CLA) of the Council for Aid to Education is a groundbreaking effort to both define and
measure the higher-order learning that a baccalaureate degree represents, such as advanced
problem solving, abstract reasoning, and communication skills.11 More efforts like this are
needed to assure that student learning is seen as the true measure of educational quality.

9 Data Quality Campaign, “Creating a Longitudinal Data System: Using Data to Improve Student
Achievement,” 2006
10 Data Quality Campaign, “Florida Case Study: Building a Student-Level Longitudinal Data System,” 2006
11 http://www.cae.org/content/pro_collegiate.htm
The Changing Practice Agenda for College Access and Success

As previously noted in this paper, the economic and political realities confronting America in the 21st Century demand dramatic action. As noted by Thomas Tierney,

America is underperforming. The nation, the states, and our institutions of higher education are not making the gains in college access and completion the new global economy requires. We are performing at a level that might have been adequate a quarter century ago, but now falls far short of what is required in the future.12

When one considers America's precipitous drop in comparative international rankings, at a time when “a global and highly competitive new knowledge-based economy . . . requires enormous numbers of workers with education and training beyond high school,”13 it is no longer acceptable to protect at all costs the status quo in American higher education. Nor is it acceptable, when study after study indicates America's future labor force will come increasingly from “minority and lower income groups that our present education system is most likely to leave behind,”14 for American higher education to continue in its century long infatuation with educating the elite, the white, and the wealthy.

Rather, if American higher education is to rise to the occasion and reestablish its preeminence in the world, it must be willing to not only rethink its educational policies, but also to reexamine, reevaluate, and, if necessary, change its previously-considered foundational beliefs and practices, including those that to some may be considered “sacred cows.” Nothing should be spared the magnifying glass, including, but not limited to, those practices of American higher education that are generally regarded as being beyond question or generally recognized as having legal underpinnings. From faculty rights and tenure, to affirmative action and federal regulation, America's leaders and educators must reevaluate and reconfigure higher education practices with the purposes of improving flexibility, redeploying resources to where they are most needed, and controlling regulation, all with the goals of increasing capacity and participation, and assuring successful completion.

Improving Flexibility - Example Given: Faculty Rights and Tenure

No aspect of American higher education is more representative of the status quo and the “way it has always been done” than is tenure and American higher education's focus on faculty rights. Tenure, of course, is "an arrangement whereby faculty members, after successful completion of a period of probationary service, can be dismissed only for adequate cause or other possible circumstances, and only after a hearing before a faculty committee."15 Of course, since its founding in 1915, there has been no stronger proponent


14 Id.

15 American Association of University Professors (www.aaup.org/AAUP/issueded/tenure/).
or protector of tenure as necessary to protect academic freedom than the American Association of University Professors (AAUP). The AAUP, true to its membership, consistently has argued and has acted with a focus on protecting faculty rights and maintaining the faculty’s position in higher education.

The results of AAUP’s efforts over the last century have been the creation of policy after policy impacting every aspect of faculty life and the relationship of the faculty to the administration and to the institution. Knowingly or unknowingly, American institutions of higher education, both public and private, often have adopted AAUP policies as their own, often creating legal rights for faculty members far beyond the four corners of their employment agreements or institutional policies and procedures. The end result has been the creation of a complex system of individual rights and protections, all with legal implications that arguably ignore societal needs, institutional and economic realities, and students' changing interests and desires. Rather, institutions find themselves restricted in the ability to respond to changing societal and institutional needs, and spending countless resources, both in time and in treasure, accommodating procedures and processes that protect faculty members, whether deserving or not, and addressing legal concerns and claims, whether meritorious or not. And this at a time when resources are scarce and the financial needs of students, and the challenges facing higher education, are significant.

Such faculty protections and processes were less disruptive and costly to the effective operation and administration of institutions of higher education during the last half century. But at that time, students in America and from around the world were swarming to American institutions of higher education, and American institutions of higher education were more than adequately addressing the needs of America’s growing economy. As noted in this paper, however, circumstances have changed. No longer is American higher education adequately addressing the nation's need and demand for highly educated young people. No longer is American higher education unquestionably the standard by which all others are judged. And yet efforts to change course and address such concerns are and will be impeded by procedures and processes, developed over the years, which preserve and protect the status quo.

Today what is needed is institutional flexibility – the ability to respond quickly to changing societal needs and to change, without significant resistance, curriculums, course offerings, and teaching personnel in order to address shifting interests among students and growing and declining needs in the world economy. Tenure and the nation's historic focus on faculty rights do not address these concerns, but rather often serve as roadblocks and barriers that frustrate the ability of American higher education to answer the nation's call to action.

This institutional frustration is increasingly being evidenced on many fronts. As noted in a recent issue of the Chronicle of Higher Education, “[i]f the majority of college presidents had their way, tenure would become as obsolete as the slide rule.”16 This despite the protests of AAUP representatives who assert the “[t]he best institutions . . . are the institutions where tenure is secure and freedom flourishes.”17 The cracks in the tenure and faculty rights wall

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17 Id.
can also be seen in the rapid increase in the numbers of part-time and adjunct faculty contracted by institutions of higher education, and in the increasing use of continuing long term contracts with faculty members.

Moreover, the influence of the AAUP, which for years has been the staunchest advocate for and champion of tenure, faculty rights, and the status quo appears to have lost some of its influence. Although regularly censoring or condemning institutions for failing to protect academic freedom and tenure, the growing list of censured institutions suggests that the belief that AAUP censureship will harm an institution's reputation and faculty recruitment may be somewhat overstated. Except for possibly the most elite of institutions, a growing number of college presidents may share the view of one of their colleagues who, following institutional censure by the AAUP, stated to one of the authors that he wore censure by the AAUP "as a badge of honor."

Certainly, when one considers the current status of higher education in America, including the scarcity of resources and the need for increasing institutional flexibility to meet the future needs of the nation, its economy, and its people, the inflexibility and complexity of the trappings of academia, and in particular, the practices of the tenure system and the historic focus on faculty rights, must be reexamined and evaluated. Otherwise theses practices and their legal trappings will increasingly become impediments to American higher education's ability to respond successfully to America's needs in the 21st Century.

**Redeployment of Resources – Example Given: Moving From Affirmative Action to Broader Access**

The Supreme Court's seminal decision in *Regents of the University of California v. Bakke*, 438 US 265, 98 S. Ct. 2733 (1978), first approved the use by public institutions of higher education of race to further an interest in student body diversity. According to Justice Powell:

> [E]thnic diversity . . . is only one element in a range of factors a university properly may consider in attaining the goal of a heterogeneous student body. Although a university must have wide discretion in making the sensitive judgments as to who should be admitted, constitutional limitations protecting individual rights may not be disregarded . . . . As the interest of diversity is compelling in the context of a university's admission program, the question remains whether the . . . programs racial classification is necessary to promote this interest. In re Griffiths, 413 U.S., at 721-722, 93 S. Ct. at 2854-2855. 98 S. Ct. at 2760-2761.

The Bakke decision introduced American higher education to 25 years of increasing use of race and ethnicity as selection criteria in higher education admissions and financial aid programs. Institutions of higher education created admission and financial aid "affirmative action" programs that focused on minority recruitment and enrollment and that identified race as a significant selection criteria. The decades that followed produced significant advances in minority student access to higher education.
Despite the successes of the affirmative action practices and programs implemented by American institutions of higher education over the last quarter century, such practices and programs will not address the issues currently facing America and its system of higher education. As an initial matter, the Bakke decision has been significantly limited over time. "[E]fforts of anti-affirmative action groups have slowly chipped away at the precedential weight of Bakke, so that educational institutions operate in a legal landscape with uncertain landmarks and constantly shifting terrain."\(^{18}\) Moreover, the period has evidenced a number of court rulings and Department of Education interpretations that have resulted in limiting the consideration of race by educational institutions in admissions and financial aid selection criteria.\(^{19}\) The two most recent examples, the Supreme Court's decisions in Grutter v. Bollinger, et. al. and Gratz v. Bollinger, et. al.\(^{20}\) although initially hailed as victories for institutions of higher education that have traditionally espoused the worth and importance of diversity on campus, have led to significant reviews of existing affirmative action programs in admissions and financial aid. Institutions of higher education around the country have been reevaluating existing admissions and financial aid programs in light of the Supreme Court's recent clarifications. The result has been that many affirmative action programs, both in admissions and in financial aid, have been discontinued or significantly altered.\(^{21}\) It is doubtful that affirmative action programs will again regain their former position of influence without further guidance from the Supreme Court.\(^{22}\)

Of even greater significance, however, Bakke and its progeny focused on removing barriers and providing equal opportunity to existing opportunities in higher education. The efforts then were focused on ensuring that scarce and valuable student slots on college campuses were apportioned in an equitable manner. This is understandable in that, at the time these decisions were made, there was no knowledge-based world economy, there existed no significant shortage in institutional capacity or college graduates, the majority of college-age students were not minorities, and the costs of obtaining a degree in higher education were far less prohibitive.


\(^{19}\) See Hopwood v. Texas, 78 F. 3rd 932 (5th Cir. 1996), cert. denied, Texas v. Hopwood, 518 U.S. 1033 (1996) (rejecting the diversity rationale as applied to admissions at the University of Texas Law School); Adarand Constructors v. Pen. 515 U.S. 200 (1995) (applying strict scrutiny to racial classifications in federal programs); Rodriques v. Kirwin, 38 F. 3d. 147 (4th Cir. 1994), cert. denied, 514 U.S. 1128 (1995) (applying strict scrutiny and narrow tailoring to financial aid programs); see also Vinik, supra note 7, at 418.


\(^{22}\) The Supreme Court currently has two cases under review that may provide additional guidance. See Meredith v. Jefferson County Board of Education, No. 05-915 (involving public schools in Louisville, Kentucky, and its surrounding suburbs) and Parents Involved in Community Schools v. Seattle School District No. 1, No. 05-908.
In the current environment, however, whether one is for or against affirmative action programs has little relevance. The urgent questions today are no longer “who gets to fill the existing spaces,” but rather “how do we get more spaces, how do we get more students into those spaces, and how do we ensure their success?” America’s 25 year preoccupation with the individual’s right to an education and higher education’s general preference to teach the best and the brightest needs to be augmented, or even replaced, with an understanding of the urgent public need for more, better-educated individuals, both young adult and adults. Higher education in America must spend its energy and resources in creating broad access to a successful American higher education experience. Existing student spaces must be filled, additional student spaces must be created, and facilities must be built. And, federal, state, and institutional spending on financial aid must be redirected to the needy, rather than to those who, although brilliant, can easily afford the cost of a degree. In the 21st Century, affirmative action will either become unnecessary and a relic of the past, or the vast majority of American institutions of higher education, as well as the nation itself, will continue the current slide into mediocrity.

Controlling Regulation – Example Given: Federal Regulation and Deregulation of Higher Education

As noted by Craig W. Parker in a recent issue paper for the Secretary of Education, "there may already be more federal regulation of higher education than in most other industries."23 Mr. Parker goes on to note that “[t]he list of federal statutes which have some applicability to higher education is long, now more than 200 such laws, and growing.”24 In addition he notes that:

> It is probably fair to say there is not any institution in the country that is able to be in complete compliance with all these federal laws. The problem is not that institutions don't want to comply. The volume, complexity, and constant change in the regulations make it impossible to do so completely."25

No one would argue that federal regulation of higher education has been without benefit. Laws and regulations impacting student safety and privacy and providing access to higher education have certainly had a positive impact. In addition, those addressing immigration, environmental concerns, copyright and trademark, and employment issues, among others, have in many cases improved, to varying degrees, certain aspects of higher education. But it is also true, and most people in higher education would argue, that many federal (and state regulations) are ill-conceived and ill-considered, of little or no benefit to institutions of higher education or their constituencies, and too complex and confusing to be of any real value. Moreover, complying with such regulations, in the words of Mr. Parker, “can absorb

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24 Id., p. 10.

25 Id.
huge amounts of time and waste scarce campus financial resources with little tangible benefit to anyone. 26

When one considers the significant challenges that face American higher education, and the limited resources most institutions have to face these challenges, it will be increasingly important that institutions be released, as much as is possible, from meaningless and complex regulations that waste time and resources. The problems addressed here are national in scope, and the consequences for failure to successfully address these problems will fall directly on the general public and American society. Accordingly, it will be vitally important that legislators and federal agencies work closely with their colleagues in higher education in reviewing, revising, and, where possible, eliminating existing regulations. When new laws are enacted and regulations are drafted and promulgated, efforts also should be made to ensure that those laws and regulations are meaningful, necessary, and easily implemented. Higher education and the nation no longer can afford legislation for legislation's sake, or new rules and regulations because they are politically correct or popular. Rather, all should recognize that regulation and deregulation have a direct impact on what can be accomplished on our campuses in meeting the challenges that lie ahead. Higher education cannot be forced to engage the battle set before it with one hand tied behind its back.

26 Id., p. 2.
Concluding Thoughts about the Changing Policy Agenda for College Access and Success

For many people both inside and outside the U.S. higher education system, the thought that America’s colleges and universities have fallen behind the rest of the world, are not providing the opportunity they should to millions of potential students, and need to consider significant reforms of cherished ways of doing things is difficult to accept. The U.S. has always prided itself on the quality of its higher education institutions, and much of the world still envies the American system. But in increasingly significant ways, the U.S. higher education system is not up to the challenge that it now faces – one of raising the educational attainment level of the U.S. by educating large numbers of new students, most from groups that have traditionally not been well served by higher education. It must also do so without sacrificing quality or bankrupting society. This is a tall order.

But there is no alternative to meeting this challenge. Education is now critical to the functioning of the global economy and the role of both nations and individuals within it. Just as it is now almost impossible for individuals to maintain an economically secure life for themselves and their families without postsecondary education, it is likewise impossible for societies to meet the needs of their members and to prosper without ever-increasing levels of educational attainment. Higher education policy and practice in the United States is mainly about the allocation of a scarce and increasingly valuable resource – higher education itself – and the privileges that accrue both to those that have access to it and that provide it to others. This must change. The new policy and practice agenda for higher education is to assure that everyone that needs higher education has access to it and that far more students that begin higher education complete their studies with a degree or other credential. The results of addressing this agenda will be a significant increase in the higher education attainment rates of the U.S., a stronger economy and society, and greater opportunities for millions of Americans.