

**A HISTORICAL PERSPECTIVE ON FEDERAL  
INVOLVEMENT IN HIGHER EDUCATION  
IN AMERICA**

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**16TH ANNUAL LAW & HIGHER EDUCATION CONFERENCE**  
Clearwater Beach, Florida  
February 12-14, 1995

**A Historical Perspective on Federal Involvement  
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**by  
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Seymour Lipset (1989) in his book Continental Divide has noted the very obvious fact that our nation, unlike our neighbors to the north, was founded on the rejection of government intrusion into our private affairs. In many ways Lipset's hypothesis is accurate, but in the area of education we seemed to have strayed from that principle.

Even before our Constitution was ratified, Charles Pickney of South Carolina proposed to the Continental Congress that it be authorized "to establish and provide for a national university at the seat of government of the United States" (Rainsford, 1972, p. 17). The proposal was defeated by a vote of 6-4. Three years later President Washington, in his first message to Congress also urged the formation of a national university, but the Congress rejected the idea since the newly adopted Constitution reserved to the states those powers not delegated to the United States nor prohibited by it to the States and education is never mentioned in the document (Art. X, United States Constitution). In fact, each of the first six presidents urged Congress to create a National University although both Jefferson and Madison recognized that the Constitution would need to be amended in order to involve the federal government in the educational enterprise. Fortunately, or unfortunately, depending on one's perspective, Congress subsequently has not had a problem injecting itself into education. Using the power to provide for the general welfare under Article I, Section 8 of the Constitution, Congress has become very active in education.

Although Congress historically has been very much involved in education, there has been no consistent federal policy for education except to use it as an instrument to operationalize federal policy in other areas. As Senator Moynihan has said, "Higher education

was a means of obtaining goals elsewhere in the political system" (Moynihan, 1975, p. 153). As early as 1785 The Survey Ordinance required township to set aside one section of land for the endowment of schools and seminaries. The Northwest Ordinances of 1787 similarly provided for the creation of seminaries to support education. Both of these laws were designed to get people moving westward and the addition of a tract of land for a school or seminary was thought to be an attraction.

In 1802 and 1845 Congress created the United States Military Academy at West Point and the Naval Academy at Annapolis under their power to raise and maintain an army and a navy (Article I, Section 8). Have you ever wondered why in 1802 when the country was beginning a significant westward movement Civil Engineering was the primary curriculum at the military academy?

In 1838 over 6,000 farmers in New York signed a petition asking for state aid for agricultural education. This unrest and the fact that in 1850 half the free males over 15 years of age in this country were farmers probably had a lot to do with the idea of another Northerner, Justin Morrill. His Land Grant Act failed twice and required a third resolution and the secession of the South before it became law. According to Gladieux and Wolanin (1976) under the Morrill Act of 1862 ". . . support for higher education was indistinguishable from federal support for road construction or river or harbour improvements. The object of each case was to make public lands more attractive to prospective buyers" (p. 5).

After the Civil War was over and the South came back into the Union Congress passed the Second Morrill Act. Two important aspects of this law continue to haunt education even today. This second land grant act authorized Congress to cut off funds to institutions that did not meet the conditions of the Act. When the House Committee on Education and Labor sent series of questions to institutions to determine whether they were complying with the

obligations of the law one professor characterized them as "unfriendly in motive and in aim" (Williams, 1991, p. 76). But even more significant was another stipulation Congress added to the law, which continues to cause us untold social problems. The Morrill Act of 1890 provided that no federal funds would be made available to states or territories "where a distinction of race or color is made in the admission of students" but the provision would be satisfied if the state had separate facilities for black youth if the funds were divided on a "just and equitable" basis (Rainsford, 1972). The Congressional creation of the concept of "separate but equal" educational systems preceded Plessy v. Ferguson (1896) by six years.

Historians Brubacher and Rudy (1976) also noted that "The Morrill Act was significant because it imitated the practice of using federal grants-in-aid to achieve specific objectives desired by government. This was to prove a powerful weapon during subsequent years in developing various federally controlled programs for 'the general welfare'" (p. 228).

World War I once again brought federal involvement in education. In order to "prevent the unnecessary and wasteful depletion of our colleges" (Brubacher & Rudy, 1976, p. 225) Congress passed the National Defense Act of 1916 providing for campus ROTC or as it was then known, the Student's Army Training Corps.

Prompted by the need to provide jobs the National Youth Administration was created during the height of the depression and put over 600,000 students to work. Again, the objective was to accomplish political and social goals using education rather than advancing education.

As World War II wound down the government was faced with several problems. First, there was concern about what would happen if all the returning veterans flooded the labor market. But there was also a concern that the veterans, without work, might invade Washington as their counterparts had done after World War I. Recalling that it took four

companies of infantry and calvary led by Douglas MacArthur to roust the Bonus Expeditionary Force from D.C., government planners once again used higher education to accomplish a national objective--to keep the veterans busy and out of the labor force (Ross, 1969). The unintended outcome of this law was to change the face of higher education forever.

The Truman Commission Report of 1947 was one of the most farsighted pieces of federal planning ever to deal with higher education. Headed by John Zook of the American Council on Education and other prominent citizens and educators the report called for major new initiatives, many of which still have not been realized. Among the ideas advanced in the report were scholarships for nonveterans, public grants for capital expenses, free public education through the 14th grade, and legislation to eliminate racial and religious discrimination in the selection of students. However, it took another five years to break down the racial barriers to education and then the courts, not the legislature, had to do it. In 1954 the Supreme Court reversed *Plessy* and the Congressionally created concept of "separate but equal" fell (*Brown v. Board of Education*, 1954).

When the Russians propelled Sputnik into space the government once again looked to education ". . . to counter the Soviet achievements in scientific manpower training and research" (Wilson, 1983, p. 45). The National Defense Education Act was not only a defense measure rather than an educational windfall, but according to then Senator Goldwater, the beginning of federal control of education. Prior to the passage of the NDEA Senator Goldwater warned that "If adopted this legislation will mark the inception of aid, supervision and ultimately control of education in this country by federal authorities" (Weinberger, 1979, p. 47).

Although a county court in Pennsylvania in 1887 held that students were entitled to due process (*Commonwealth ex rel Hill v. McCauley*, 1887) prior to being suspended, no one paid

much attention until the Fifth Circuit Court of Appeals issued a similar decision in 1961 (*Dixon v. Alabama*, 1961). Historically speaking you might be interested to know that it was Thurgood Marshall who served as attorney for the suspended students in *Dixon*. During the era of the 1960's it was primarily students at historically black colleges and universities who were winning the basic legal rights students enjoy today. They were not waiting for Congress to act to provide for the general welfare but took their cases to the courts.

Congress did respond in 1964 with the passage of Title VI of the Civil Rights Act. The end of a segregated society had to begin with an end to segregation in education.

The most comprehensive legislation affecting higher education was sponsored by Congresswoman Edith Green of Oregon. The Higher Education Act of 1965 which has been periodically amended since then includes sections dealing with community service and continuing education, library resources, aid to developing institutions, student financial aid, improving instruction, and construction of academic facilities. The higher education community, heeding Senator Goldwater's earlier warning, was fearful of accepting federal funds because of the control it might bring; however, the government promised if we took the money there would be no control. Section 1144(a) of the Act stated:

Nothing contained in this Act shall be construed to authorize any department, agency, officer or employee of the United States to exercise any direction, supervision or control over the curriculum, program of instruction, administration, or personnel of any educational institution, or over selection of library resources by any educational institution [20 USC 1144(a)]

Five years later on April 13, 1970, Thomas Jefferson's birthday, this section was repealed and a section saying the same thing was added to the General Education Provisions (20 USC §1232a).

Most college students became adults in 1971 with passage of the 26th Amendment, but 13 years later Congress declared that these adults were not to purchase alcohol (23 U.S.C. 158). These two laws created horrendous enforcement problems on campus.

In 1972 Title IX was passed but it took more than three years to obtain regulation. The same year Sallie Mae was created and student loans were now obtained under the National Direct Education Act rather than the National Defense Education Act. In 1972 "defense" was not a politically acceptable term.

The Rehabilitation Act of 1973 including Section 504 opened access to higher education to disabled students and the following year Senator Buckley clashed with Senator Pell when he amended the Emergency School Aid Act on the floor without first going through Pell's committee. What we ended up with was a poorly written law designed for K-12 but applied to higher education and prohibiting the publication of one's height, weight, class or high school in an athletic program or one's hometown in a playbill. It took a special Senate resolution to pacify egos and rewrite the law. Again, it took almost 2 years to obtain regulations and 20 years later there is still confusion over the interpretation of the law.

The federal government became firmly entrenched in the education business in 1979 with the creation of the Department of Education. The Department was the fifth largest in the Executive Branch and had the eighth largest budget. But, not to fear, the enabling statutes creating the Department promised:

It is the intention of the Congress in the establishment of the Department to protect the rights of State and local governments and public and private educational institutions in the areas of educational policies and administration of programs and to strengthen and improve the control of such governments and institutions over their own educational programs

and policies. The establishment of the Department of Education shall not increase the authority of the Federal Government over education or diminish the responsibility for education which is reserved to the States and the local school systems and other instrumentalities of the States.

(20 U.S.C. §3403)

In 1982 higher education was again used as an instrument to effectuate political ends when Congress tied the receipt of financial aid to draft registration with the Supreme Court subsequently upholding the requirement (Selective Service System v. Minnesota Public Interest Research, 1984).

Frustrated by the Supreme Court's decision in Grove City College v. Bell (1984) Congress passed the Civil Rights Restoration Act of 1987 (P.L. 100-259) defining program or activity as every operation of a college or university. Thus, now the federal government not only controls public funds, but private funds as well.

Beginning in the late 80s the government's emphasis shifted from one of redistributive to protective policy laws. Secretary Bennett led the charge to have Congress pass the Drug Free Schools and Communities Act and its 1989 Amendments requiring that every adult and minor in attendance or employed be provided a written copy of information related to rules, sanctions, laws, help and health risks associated with alcohol and illicit drugs.

The following year higher education was required by law ". . . to provide students and parents with better information in selecting a postsecondary institution" (1990 U.S. Code Cong. & Admin. News, 3364). The Student Right-to-Know and Campus Security Act (20 U.S.C. §1092) passed by the 101st Congress reintroduced the requirement to compile graduation rate data which the 96th Congress earlier found to be ". . . very costly and difficult to obtain and frequently misleading" (1980 U.S. Code Cong. & Admin. News 3183). We



have no final regulations on this portion of the law as yet. The Campus Security portion of the law was passed by Congress to make campuses safer but it, like other measures imposed on institutions, did not provide funds to do so. What it did do was to impose costly record keeping and programmatic requirements on already thin budgets in order to inform adults that they should be careful. The Sexual Assault Victims Bill of Rights (P.L. 102-325) was passed in 1992 and was another Congressional effort at protective policy. It amended the Campus Security portion of the law.

Finally, this past year Congress was still not satisfied that the campus was safe nor that their discipline systems were adequate, so buried in the Violent Crime Control and Law Enforcement Act of 1994 [P.L. 103-322] is \$200,000 appropriated for the Attorney General to conduct a study of college campuses to determine among other things "the ability of educational institutions' disciplinary processes to address allegations of sexual assault adequately and fairly" [§40506(b)(5)(E)].

What Charles Pickney failed to accomplish in 1787 has slowly been done without a vote being taken on the issue. We are rapidly evolving into a Federal University System and the Board of Trustees has no coherent overall policy for the direction of our institutions.

With that introduction we can now begin to look toward the future and to examine the current situation of federal involvement in higher education.

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