

POLICY REPORT

Postsecondary Education and Institutional Change: Legislating Access and Opportunity for African American Students



INTRODUCTION

The institution of higher education is made up of formal and informal rules, laws, traditions, and norms that define and constrain opportunity at the postsecondary level. Institutions exist within the context of the larger environment. They are artifacts of their social, cultural, and political setting. Institutions determine who has access to resources, providing opportunities for some and barriers for others. Firmly embedded in a society's culture, institutions serve both to maintain the status quo and to act as agents of change (North, 1990). Institutions are critical to understanding issues of opportunity at the postsecondary level. They provide a framework in which to assess the progress and outcomes of higher education policy.

For many years, laws and traditions obstructed access to postsecondary education for African Americans. Segregation restricted African Americans to separate and often substandard facilities. Intergenerationally, inferior education, cultural norms, and socioeconomic barriers further hampered advancement. Over time, a growing awareness of equity and justice issues as well as economic, political, and social forces brought about positive changes in the opportunity structure of higher education. More than 50 years after the landmark *Brown v. Board of Education*, some of these changes are being threatened by emerging political and economic environments.

HOW INSTITUTIONS SHAPE HIGHER EDUCATION IN THE UNITED STATES

Education, especially higher education, has significant benefits. These include higher salaries, improved health, greater life expectancy, and improved quality of life for children. (The Institute for Higher Education Policy, 1998). These benefits are available only as a result of an opportunity or incentive structure that supports them. These opportunity structures are determined by the institutional framework in which they exist (North, 1990). If an institutional framework rewards access and opportunity, then organizations will emerge or change to reflect this agenda (North, 1993).

Historically, higher education did not provide opportunity structures for African Americans. Until well after the Civil War, the benefits of higher education were reserved mostly for those who were wealthy, male, Protestant, and White (Brown, Donahoo, & Bertrand, 2001). Customs, then laws, worked to maintain the status quo of wealth and privilege. Even before the Civil War, sensitivities to racial inequities and the belief that law could redress social wrongs resulted in efforts to change the opportunity structure of education (Brown & Davis, 2001; Ficker, 1999). Since then, constitutional amendments and other federal legislation have opened colleges and universities to African Americans, often through the threat or application of negative sanctions.

A LEGACY OF INEQUALITY AND MISSED OPPORTUNITY

As early as 1740, South Carolina enacted the first law forbidding the education of slaves. Anyone taught teaching a slave to read or write could receive a substantial fine. Even in areas outside the South, education was difficult for African Americans (Erickson, 1997). However, it was not until after slaves gained their freedom that the lack of educational opportunity became a significant issue (Brown et al., 2001). In the wake of the Civil War, Congress passed the 14th Amendment, which provided for equal protection under the law. This landmark legislation paved the way for future rulings and provided new opportunities for African Americans at the postsecondary level. With the passage of this amendment,

public colleges and universities in states without a “compelling interest” in segregation were no longer legally allowed to discriminate by race in admissions practices (Kaplin & Lee, 2007) .

The Morrill Act of 1862 provided federal funds for states to establish land-grant colleges. The second Morrill Act of 1890 extended this funding to institutions enrolling African Americans (Brown & Davis, 2001). The second Morrill Act also limited funding from the land-grant act to those states and territories where there was no race discrimination in admissions. As a means to comply with the law, this legislation allowed for the establishment of separate colleges for African American and White students (Legal Information Institute, 2010). Because of the second Morrill Act, many states established schools specifically for African Americans, giving rise to a model of separate and unequal facilities (Brown & Davis, 2001).

The “GI Bill,” passed at the end of World War II, provided educational benefits to returning veterans, including African Americans (Wilson, 1998). Beginning in the 1960s and 1970s, need-based financial aid became a cornerstone of educational access policy. Legislation, especially the Higher Education Act of 1965, provided loans, grants, scholarships and tax credits for low-income students. The Education Amendments of 1972 created the Basic Education Opportunity Grant (BEOG), also known as the Pell Grant. The Pell grant provides funding for low-income students and was part of the federal government’s attempt to provide more equal economic and social opportunities (The Institute for Higher Education Policy, 1998). These moves led to significant increases in college enrollment by low-income students (Hunt, 2006), many of whom were African American. The latest incarnation of the 1965 act, the 2008 Higher Education Opportunity Act, provides funding for graduate programs at Historically Black Colleges and Universities (HBCUs) and Predominantly Black Institutions (PBIs) (Office of Postsecondary Education, U.S. Department of Education, 2008)

The Civil Rights Act of 1964 is a major influence on educational opportunity, prohibiting discrimination on the basis of race, color, or national origin (Zamani & Brown, 2003). Title VI of this act specifically prohibits the exclusion of any person based on race, color, or national origin from any activity supported by federal funds. As a result of this legislation, the Department of Education forbids recipients of federal funding to discriminate in admissions, enrollment or participation in a program, quality of services provided, financial aid, or other benefits (Kaplin & Lee, 2007). This legislation is significant because of the heavy reliance of many colleges and universities on federal student aid.

Numerous judicial decisions have influenced educational opportunity for African Americans. *Roberts v. City of Boston* (1849) was an early segregation case dealing with the doctrine of “separate but equal.” A Massachusetts state Supreme Court ruling upheld segregation saying, in effect, that as long as schools were of equal quality no rights were being violated. This case came to symbolize the legality of segregation and was used as a precedent for challenges in other states, especially after the Civil War (Ficker, 1999).

Plessy v. Ferguson (1892) addressed segregation in the transportation sector but is credited with establishing the doctrine of separate but equal at the federal level. Later, *Brown v. Board of Education* (1954) refuted *Plessy v. Ferguson* and the “separate but equal” doctrine, ending legal segregation in schools. For the first time, the U.S. Supreme Court ruled that public education was not just a state matter; school segregation by race was in violation of the 14th Amendment specifying equal treatment under the law (Ficker, 1999). While *Brown v. Board of Education* focused mainly on elementary and secondary education, the 1992 case, *United States v. Fordice*, was a landmark ruling addressing racial desegregation in higher education. Mississippi, with 71% of the state’s African American students attending HBCUs, was clearly in violation of the Constitution and the 1964 Civil Rights Act as well as the *Brown v. Board of Education* ruling. The court eventually held that this case required the establishment of a racially neutral and uniform system of higher education (Kaplin & Lee, 2007; Parker, 1998). Later rulings in this case invalidated the use of standardized test scores for awarding scholarships. Traditionally White institutions had used test scores to award funding to White students, which left small amounts for African American students, effectively restricting their access (Parker, 1998).

DeFunis v. Odegaard, in 1973 set a precedent for attempting to increase racial diversity through affirmative action. The original ruling, that the University of Washington's Law School's use of race in admissions was unconstitutional, was overturned and it was argued that it was in the state's interest to address shortages of African American and Hispanic attorneys. In 1978, the Supreme Court ruled in *The Regents of the University of California v. Bakke* that strict set-asides and quotas were not allowed but that race as one factor among many was a legitimate means of increasing diversity (Zamani & Brown, 2003).

Two important affirmative action cases, *Gratz v. Bollinger* (2000) and *Grutter v. Bollinger* (2001) were filed against the University of Michigan in 1997. In the *Gratz* case, the court ruled against the university's undergraduate admissions policy saying that the policy treated entire groups of applicants differently based only on their race and therefore violated both the equal protection clause of the constitution and Title VI of the 1964 Civil Rights Act. In the *Grutter* case, the court upheld the law school's admissions policies. It was, the court indicated, a case where the law school had a compelling interest in enrolling a racially and ethnically diverse student body (Schmidt, 2003; Zamani & Brown, 2003). Although these rulings leave individual colleges open to legal challenges, they confirm the validity and legality of affirmative action policies (Schmidt, 2003).

IMPLICATIONS

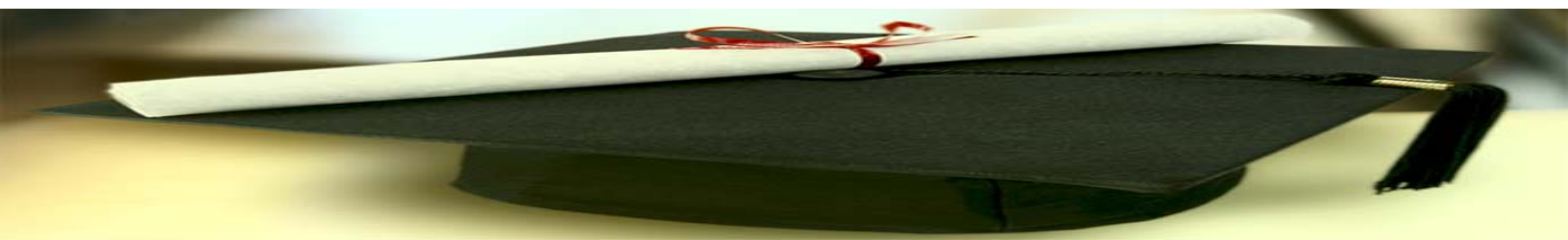
Examining access and opportunity in higher education using federal legislation as a measure shows substantial progress. No longer is it legal, in most cases, for colleges and universities to differentiate between individuals based solely on their race. While these changes represent the struggle to align the framework of higher education with that of changing ethical, social, political and economic contexts, there remains a great deal to be done.

The current political and economic environment could slow or even reverse progress in educational attainment for African Americans. Arguments for less government intervention, lower taxes, and less spending could result in cuts for programs that support low-income and minority students. Policy choices such as reduced funding in the preK-12 segment will exacerbate the already substantial academic achievement gap for African Americans, eventually hampering degree attainment at both secondary and postsecondary levels. At the postsecondary level, increased emphasis on two-year colleges as an affordable alternative to four-year schools may result in an unintended de facto re-segregation of these institutions.

RECOMMENDATIONS

It's not enough to make laws or policy. They must be enforced or implemented, evaluated, and changed, if necessary. Institutions must be held accountable for their outcomes. The passage of the Higher Education Opportunity Act (Public Law 110-315) in 2008 includes provisions for a number of studies that will examine opportunity issues such as bias in standardized testing and a study of minority male academic achievement (Office of Postsecondary Education, U.S. Department of Education, 2008). The information provided by these and other studies must be utilized to determine the effectiveness, efficiency, and equity of programs addressing these concerns.

Higher education policy is developed and implemented within a larger context of changing political, social, and economic settings. Effective policy must acknowledge and address the interactive nature of these surroundings. Also, environments change over time. Education policy and the resulting institutional structures must be crafted so that they not only address the present crisis but secure equal opportunity for the future.



CONCLUSION

Significant progress has been made in improving access to higher education for African Americans through legislation and litigation at the federal level. These outcomes have effectively and positively changed much of the opportunity structure of higher education. It is now up to policymakers to maintain these gains.

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