Exploring the Roots of Federal Language on Discrimination: The 1947 President’s Commission on Higher Education

IHELG Monograph 02-09

Philo Hutcheson
Educational Policy Studies Department
Georgia State University
Atlanta, GA 30303
404-651-3236
phutches@gus.edu

Please do not quote this paper without the author’s permission, as it is part of a much larger work in progress.

© 2002, Philo Hutcheson, $5.00
University of Houston Law Center/Institute for Higher Education Law and Governance (IHELG)

The University of Houston Institute for Higher Education Law and Governance (IHELG) provides a unique service to colleges and universities worldwide. It has as its primary aim providing information and publications to colleges and universities related to the field of higher education law, and also has a broader mission to be a focal point for discussion and thoughtful analysis of higher education legal issues. IHELG provides information, research, and analysis for those involved in managing the higher education enterprise internationally through publications, conferences, and the maintenance of a database of individuals and institutions. IHELG is especially concerned with creating dialogue and cooperation among academic institutions in the United States, and also has interests in higher education in industrialized nations and those in the developing countries of the Third World.

The UHLC/IHELG works in a series of concentric circles. At the core of the enterprise is the analytic study of postsecondary institutions --with special emphasis on the legal issues that affect colleges and universities. The next ring of the circle is made up of affiliated scholars whose research is in law and higher education as a field of study. Many scholars from all over the world have either spent time in residence, or have participated in Institute activities. Finally, many others from governmental agencies and legislative staff concerned with higher education participate in the activities of the Center. All IHELG monographs are available to a wide audience, at low cost.

Programs and Resources

IHELG has as its purpose the stimulation of an international consciousness among higher education institutions concerning issues of higher education law and the provision of documentation and analysis relating to higher education development. The following activities form the core of the Institute's activities:

- Higher Education Law Library
- Houston Roundtable on Higher Education Law
- Houston Roundtable on Higher Education Finance
- Publication series
- Study opportunities
- Conferences
- Bibliographical and document service
- Networking and commentary
- Research projects funded internally or externally
Many scholars use the 1954 Brown decision as a starting point for discussion of the federal language on discrimination. Using both the literature on President Truman’s Commission on Civil Rights, the very limited literature on the Commission on Higher Education, and the literature on civil rights and education, as well as some archival records of Commission members (federal records were destroyed in the 1950s), this paper investigates how previously unexamined relationships of civil rights and higher education in the 1940s provided a framework for federal discussions of civil rights. The paper focuses on the historiographical and historical contexts of the report as well as the ensuing discussions of civil rights in this country.

The 1947 report of the President’s Commission on Higher Education is a common citation for scholars examining the post-World War II era in higher education. Yet curiously, it is one of the rare primary source document citations, one with only a minimum of scholarship, while other major events in the history of higher education have far broader scholarly examinations. For example, scholars commonly cite a number of works for historical examinations of African-Americans, women, and general overviews of higher education; only brief works exist for the Truman Commission, despite its importance.\(^1\) It is commonplace to note the apparent impact of

the Commission on Higher Education on the development of community colleges (an impact that has yet to be analyzed historically, and therefore remains an apparent impact), and somewhat commonplace to suggest that the Commission’s statements regarding the general educable levels of United States citizens had an impact on such activities as financial aid, statewide planning, and general education.\(^2\) Only Freeland’s work on Massachusetts provides historical analysis of the Commission; other works note the Commission’s importance without the accompanying analysis of how and why institutions or individuals incorporated its recommendations.

In order to begin to address this lacuna in our understanding of the Commission, thereby furthering efforts to understand historically federal initiatives and institutional and individual responses, this paper reports on a highly important aspect of the Commission’s report, the issue of desegregating higher education. The Commission specifically addressed four groups in terms of access to higher education: women, the poor, Jews, and Blacks. In view of a concomitant presidential commission report on civil rights with an emphasis on Blacks, *To Secure These Rights*, this paper investigates the specific relationship of civil rights for Blacks and the capacity

of higher education to address those civil rights.

The links among civil rights, a call to democratic action, and education are deeply evident in the words of African Americans. For example, both Ralph Ellison and Charlayne Hunter Gault, decades apart in their observations, voiced the powerful conviction that the victory over fascism in World War II heralded the time for the country to extend democracy to all of its citizens, especially Blacks who had faced decades of discrimination despite their willingness not only to participate in the affairs of the nation but also to die for the nation. This conviction, in combination with a broader national conviction about the power of democracy, had a specific effect on the Commission on Higher Education.

The national sentiment after World War II, as the nation celebrated its victory over the Axis powers, was an overriding context for the Commission on Higher Education. Commission members began the report by addressing the nation’s new responsibility for strengthening democracy at home and maintaining peace internationally, lessons learned from World War II. Commission members called for a new nation—a common call in that period—writing that the meaning of E Pluribus Unum included:

*A strong and dynamic national community, intertwining in harmony and unity of purpose*

---

an infinite variety of individual talents and careers, and in time a strong and dynamic world community, embracing in brotherhood and mutual respect a rich and enriching diversity of national cultures.⁴

They also specified the meaning of “equal educational opportunity,” declaring it to be for “all persons, to the maximum of their individual abilities and without regard to economic status, race, creed, color, sex, national origin, or ancestry.”⁵

The Commission (with the exception of a dissenting statement, discussed below), was remarkably unrestrained in its critique of colleges and universities in regard to discrimination. The Commission argued that discrimination was “an undemocratic practice” and colleges and universities refused to acknowledge their exclusionary behaviors: “Discriminatory practices are denied, ignored, or rationalized.”⁶ These practices were in terms of both the admission of new students and once minority students were on campus. The Commission urged higher education to fight against discrimination:

**Each institution should conscientiously plan and prosecute a well organized**

---

⁴Higher Education for American Democracy: A Report of The President’s Commission on Higher Education (New York: Harper & Brothers, 1947), Vol. 1, 2 on lessons from World War II, 102 on E Pluribus Unum. Throughout the report the Commission members used italics and bold to highlight principles and recommendations, and these font styles are reproduced accordingly. The Commission appears to have been the result more of executive office staff self-interest than external pressures or presidential interest; see Kerr, “From Truman to Johnson.” Nevertheless its report, by 28 members assisted by staff members, remains an important reflection of the times and the ensuing expectations about United States higher education.

⁵Ibid., Vol. 2, 3.

program to reduce and where possible promptly to eliminate discrimination, not only by correcting its policies and practices, but also by educating its students to seek the abolition of discriminatory practices in all their manifestations.\(^7\)

Clearly the Commission proposed solutions that went far beyond the dominant response to proposals for equality in the 1940s. As James Anderson has shown in his discussion of African-American professors and white colleges and universities in the 1940s, institutions of higher learning were unwilling to provide places, much less create supportive institutional mechanisms, in order to integrate their campuses.\(^8\) Thus the Commission established a language on discrimination in higher education that spoke to equality, to the reform of institutional practices that would in fact lead to equality of opportunity, rather than on the conviction that the protection of individual liberty would account for opportunity.\(^9\)

\(^7\)Ibid., Vol. 2, 27.


\(^9\)I argue this framework of liberty and equality with three considerable risks. First, the words themselves evoke the Declaration of Independence, and given that they are linked in that document, a genuine critique might be that the Founders intended both to happen. I would respond that such interpretation is eisegesis, not exegesis, as meanings of liberty and equality in the 1700s were deeply rooted in the Enlightenment; the original Constitution itself makes all too clear that all people, much less all men, were not equal in the eyes of the Founders. Women were not allowed to vote, and slaves were counted as two-thirds of a human being. On concepts of liberty and equality, see John Locke, "Of the State of Nature," Two Treatises of Government, intr. By Peter Laslett ((New York: Cambridge University Press, 1963 rev. edition), 309-318. On more modern conceptions of equality, and especially equality of opportunity, see W.E.B. DuBois, "Of the Sons of Master and Man," in The Souls of Black Folk (Avenel, New Jersey: Gramercy Books, 1994), 125-144. Second, I run the risk of simple dualism, that my argument establishes the terms as distinct when in fact they are not. I do not intend such dualism, although for the sake of this paper I am highlighting the range of meaning between the two. The best conception of these terms is in fact a dichotomous continuous variable; practices of one, conceptions of the other are indeed related. Finally, and related to the other two points, I am not claiming that
The section on discrimination against Blacks noted both the overwhelming discrepancies in educational attainment and occupations as well as the problems of the South. It is in regard to that last issue that another characteristic of federal language on discrimination appears.

The report on Blacks had a statement of dissent that argued that in the South progress would only be made in accordance “within the established patterns of social relationships.” While the signers (all four of whom were at Southern or border state institutions) of the dissent understood “the high purpose and the theoretical idealism” of the report, they believed that both the history and the contemporary conditions of the South required movement toward equality that would have to be exceptional.\(^\text{10}\) Emory University president Goodrich White, one of the signatories to the dissent, argued in a letter to George Zook, chair of the Commission, that it was not worthwhile for him to protest the discussions about desegregation, but he wanted to dissent from the recommendation against immediate desegregation, arguing for “‘gradualism’” as the realistic solution.\(^\text{11}\) This resistance would be played out in the South for several decades, as Southern jurists and politicians simply hold respectively to positions of liberty and equality. As I argue later about the 1980s and more recently, the political right in both judicial and executive/legislative activities has espoused liberty. Nor have liberals of the 1990s and more recently been especially prone to argue for equality. The divisions, however, appeared to have been much clearer through the 1960s. See, for example, Jean Preer, “Lawyers v. Educators: Changing Perceptions of Desegregation in Public Higher Education,” *Journal of Higher Education* 53 (March/April 1982), 119-141.

\(^\text{10}\) *Higher Education for American Democracy*, Vol. 2, 29, note 1. On the Commission’s broad interest in discrimination, see 29 for a list of groups experiencing discrimination, a list including “Negroes, Jews, Catholics, Puerto Ricans, Mexicans, Latin Americans, Italians, and Orientals.”

\(^\text{11}\) Goodrich White to George Zook, October 27, 1947, Box 17, Goodrich White Papers, Special Collections, Emory University.
whites found multiple ways to forestall requirements for desegregation. The language of the dissent also eventually found currency in the national conservative political language of the 1980s, when progress became an economic rather than legislative or judicial solution. The 1947 President’s Commission on Higher Education developed and offered two federal languages on discrimination, a conceptual one of equality of opportunity and one of implementation, gradualism, which was not necessarily connected to the language of equality.

In view of the silence on discriminatory practices of higher education, how did it occur that the Commission members offered a public language of equality of opportunity on the issue of discrimination? Despite his minimal involvement in the affairs of the Commission, and in higher education, President Truman made clear that this particular topic held urgency. Although initially evidencing little concern about racism, a meeting with Black leaders who told him of lynchings and brutality in the South changed his mind.\textsuperscript{12} He appointed the Commission on Civil Rights in 1946, and it issued a frank report in 1947, \textit{To Secure These Rights}. This report preceded the report of the Commission on Higher Education, and affected Truman’s political activities; in 1948 he included ten of its recommendations for legislation on civil rights in a message to Congress.\textsuperscript{13}


\textsuperscript{13}Bernstein, “The Ambiguous Legacy: The Truman Administration and Civil Rights,” 281. On Truman’s 1947 message, see Billington, “Civil Rights, President Truman and the
To Secure These Rights offered a highly critical view of race relations in the United States. It was remarkably inclusive, specifically naming and addressing discrimination faced by such groups as (in the language of the time) Negroes, Mexicans, Hispanos, American Indians, Chinese, Japanese, Filipinos, Koreans, Eskimos, Indians, Polynesians, Micronesians, and Puerto Ricans. The Commission was most concerned, however, about African-Americans. It designated four essential rights: “the right to safety and security of the person,” “the right to citizenship and its privileges,” “the right to freedom of conscience and expression,” and “the right to equality of opportunity,” which included educational opportunity.14 Although much of the report addressed problems of law enforcement, voting, housing, and health care, the Commission took a harsh albeit brief look at higher education. The document highlighted northern higher education and the exclusion of Jews. It also discussed liberal arts colleges’ tendency to argue “representative and diversified student body” as means to exclude on the basis of race or religion. It even identified the explicit mechanisms by which colleges and universities used application questions on race and religion to exclude, and noted that in northern institutions Jews and Blacks never had much representation. Nor were professional schools exempt from criticism, with medical schools in New York City identified as discriminatory—with a later argument that Blacks as a result had more health problems than Whites.15

---

14President’s Commission on Civil Rights, To Secure These Rights: The Report of the President’s Commission on Civil Rights (New York: Simon and Schuster, 1947), 15-16 on groups, 6-9 on four rights.

15Ibid., 63 on Jews, 66 on liberal arts colleges, application questions, and Jews and Blacks, 67 and 72 on medical schools and health care.
Yet the Commission’s recommendations evidenced hesitancy about education in its call for federal and state action. Its discussion of grants tied to federal insistence upon compliance had varying interpretations: a minority of members believed that only federally affected programs should not discriminate and opposed the suggested requirement that segregation be abolished. Others opposed a non-segregation requirement for education because they opposed “federal control over education,” thinking that raising education of all people the best solution. In regard to the recommendation that states enact laws prohibiting discrimination in education based on “race, color, creed, or national origin,” there was “a substantial division with the Committee” with a majority in favor. None of the other 33 recommendations, in a range from establishing a permanent federal civil rights office to eliminating segregation in the District of Columbia, had any mention of divisions or opposition.16 The opposition to federal control serves as an important reminder to us as we examine issues of federal involvement in education, that a constitutional issue (regardless of the existence of a federal Department of Education) remains part of the narratives about education and that only recently, the mid-1960s, did a full federal effort in education take place. The Constitutional argument undergirds much of the gradualism framework, and apparently also affected the recommendations of the Commission on Civil Rights. Nevertheless, the Commission on Civil Rights provided a specific and detailed context for a statement on education and civil rights and placed pressure on the members of the

16Ibid., 166-167 on abolishing segregation, 167 on raising educational levels, 168 on state laws. On all recommendations, see Chapter 4, “A Program of Action: The Committee’s Recommendations,” 139-173.
Commission on Higher Education.\(^\text{17}\)

The papers of Harold Swift, a member of the Commission on Higher Education, also provide evidence of the reasons for the public language about discrimination. At the March 1947 meeting of the Commission, discussion about the section on discrimination included a reminder that President Truman wanted “a clear statement against discrimination” as well as Commission member discussion in support of the statement opposing discrimination. A comment, apparently in Swift’s handwriting, from his notes on that meeting also indicate that the Commission was “under Pres. instruction, cannot ignore that USA stands for complete opportunity.” Swift’s notes also indicate that discussion of “Evolution” as a means of correcting the problem “can go wrong.”\(^\text{18}\) Whatever reticence the dissenters felt, Commission members heard a direct statement about President Truman’s preference. The shift in Truman’s position, a result of the meeting with Black leaders and the report of the Commission on Civil Rights, was substantial. His charge to the Commission on Higher Education directed members, among other activities, to examine “ways and means of expanding educational opportunities for all able young people,” and the phrase “all able young people” is of course subject to a wide range of interpretations.\(^\text{19}\)


\(^{18}\text{“Report of the Commission Meeting, March 20-22, 1947,” Harold H. Swift papers, Special Collections, University of Chicago, Box 180, Folder 3, 2. On Swift’s notes, see “Notes, March 20, 21, 22, 1947,” Harold H. Swift papers, Special Collections, University of Chicago, Box 180, Folder 5, fourth page (unnumbered).}\)

His shift in his position held, apparently for reasons of both principle and politics.20

Following the publication of the report by the Commission on Higher Education, President Truman spoke to equal opportunity and education. In two State of the Union addresses President Truman mentioned education specifically in terms of civil rights. In 1948 he declared, “Another fundamental aim of our democracy is to provide an adequate education for every person,” linking civil rights, opportunity, and citizenship, just as the Commission on Higher Education had done.21 In 1949 he called on the nation to combat prejudice in a number of areas, including education.22 The theme of opportunity and education occurred in other speeches. In 1948 he argued in his message on civil rights that “all men are entitled to equal opportunities for jobs, for homes, for good health, and for education.”23 In view of the myriad of pressures in the United


States in the post-World War II era, he was unable, however, to convince Congress to pass any legislation in response to the Commission’s report.\textsuperscript{24}

Despite that commitment, the language of equal opportunity has not provided a clear direction for means to providing civil rights through education. The executive and legislative framework tended toward equality in its language well into the 1960s. In such cases, equality emphasizes both the opportunity to partake of institutions and institutional responsibility for assuring that the opportunity occurs, and to some degree the origin of that language has a long tradition. For example, during the Reconstruction, the Congress and the states passed the Fourteenth and Fifteenth Amendments, which sought respectively to protect Blacks by prohibiting the denial of due process and to secure the right to vote.\textsuperscript{25} In more contemporary terms, when the Congress finally passed civil rights legislation nearly two decades after the reports of the Civil Rights Commission and the Commission on Higher Education, Title VI of the Civil Rights Act of 1964 specifically prohibited institutional discrimination. Thus individuals were legally empowered to exercise their civil rights to such opportunities as education although the enforcement of the Act


\textsuperscript{25}For an extensive discussion of these Amendments, see Kenneth S. Tollett, Jeanette J. Leonard, and Portia P. James, “A Color-Conscious Constitution: The One Pervading Purpose Redux,” \textit{Journal of Negro Education} 52 (Summer 1983), 192. As I argued in an earlier footnote, it is not possible to simply argue these positions of equality and liberty as a mere dualism, and in some very important ways the Fourteenth and Fifteenth Amendments sustain that argument, as they speak to both and not simply equality. See Tollett, Leonard, and James, “A Color-Conscious Constitution,” 203, for a discussion of how the Brown decision extends some of the basic requirements of the Fourteenth Amendment.
was hardly as robust as the language sounded.\textsuperscript{26}

The language of the Brown decision reflects the position of liberty and the affirmation of democracy in terms of liberty. In specific institutional terms, the provision of liberty affords all individuals the opportunity to enter institutions without regard to such characteristics as race, creed, or color (i.e., a more traditional language of discrimination). In this regard, the Brown decision required access but not the assurance of institutional mechanisms to ensure equal opportunity; in the words of the Justices in regard to access to education: “In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.”\textsuperscript{27} Furthermore, there is a long judicial history that reflects such an argument, evident in United States Supreme Court decisions beginning in the 1870s. The Supreme Court repeatedly narrowed the conditions of the Fourteenth and Fifteenth Amendments, most notably in the Plessy v. Ferguson case in 1896 and the 1899 case of Cumming v. Richmond County Board of Education, which applied the Plessy case to education. While the Plessy case affirmed the right of the Louisiana legislature to require separate but equal seating on railway passenger cars, the Cumming case gave even less room of

\textsuperscript{26}Delores P. Aldridge, “Litigation and Education of Blacks,” \textit{Journal of Negro Education} 47 (Winter 1978), 103.

interpretation to the Fourteenth Amendment, approving the closure of a Black high school in Richmond, Virginia, because the school board did not have enough funds for two high schools, one Black, one White.\textsuperscript{28} The Brown decision struck down the separate but equal doctrine but nevertheless sustained the language of liberty. The concept of liberty remains, of course, in a variety of settings as parents choose to pay for schools or homes with segregated settings. Some independent schools serve as “havens for white students,” and \textit{de facto} segregated public schooling is still widespread in the North as well as the South.\textsuperscript{29}

Thus the Brown decision represents a shift away from the emphasis on equality evident in the 1947 report of the Commission on Higher Education and President Truman’s statements. It was also an expression of national sentiment, or perhaps what we might term sufficient national sentiment, as Congress did not act to reverse the Court’s decision.\textsuperscript{30} The Court continued to make liberty a center of its decisions even though it evidenced more and more impatience with the pace of “deliberate speed” of desegregation that it had insisted upon in the Brown decision of 1955. Finally in 1968 the Court decided that it had to focus on the results of desegregation attempts, especially since so-called freedom-of-choice plans, allowing students to transfer schools, did not result in desegregation. By 1970 the Supreme Court was insisting upon busing

\begin{footnotes}
\footnote{Tollett, Leonard, and James, “A Color-Conscious Constitution,” 194-197.}


\footnote{Alan F. Westin, “The Supreme Court and Group Conflict: Thoughts on Seeing Burke Put Through the Mill,” \textit{American Political Science Review} 52 (September 1958), 675. As for the degree of sentiment, as Kenneth Clark reminds us, the decision was unanimous; Clark, “The Brown Decision,” 126.}
\end{footnotes}
students, while the Nixon administration was engaged in a careful slowdown of anti-
discrimination efforts by the Department of Health, Education, and Welfare.\textsuperscript{31} This shift in
judicial and executive branch activities suggests that the tension between a language of equal
opportunity and a language of liberty now found different bases as the Supreme Court moved
toward equal opportunity and the executive branch moved toward liberty.

In a very important sense, this work shows that the 1947 President’s Commission on Higher
Education contributed to the federal discussion of civil rights in ways heretofore unexamined
through its presentation of a language of equality. There is, however, an additional contribution.
I would argue that the development of federal legislation in the 1960s, based on a language of
equality, was a result of the President’s Commission on Higher Education, although admittedly at
this early point in my work this is speculation about impact. In this arena as well as several
others that the President’s Commission addressed (such as financial aid and building and
equipment support), it appears from my initial investigation that several of the Commission
members represent a developing national polity on higher education. As Hugh Hawkins argues,
by the 1940s the education associations were sufficiently organized to begin operating as a
polity.\textsuperscript{32} The obvious Commission member in this regard is George F. Zook, president of the
American Council on Education and chair of the Commission (some references employ an
eponymous term, the Zook Commission, for the President’s Commission). In addition,

\textsuperscript{31}Aldridge, “Litigation and Education of Blacks,” 100 on the Brown decision of 1955,
106 on the 1968 decision, Green v. New Kent County Board of Education, 108-110 on busing
and 107-108 on the Nixon administration.

\textsuperscript{32}Hawkins, \textit{Banding Together}, 221.
Commission members also represented the federal government at the time and in the future. For example, Francis Brown, executive secretary for the Commission, was a staff member of the United States Office of Education, a staff member of the American Council on Education, and afterward a consultant for a variety of accrediting and professional organizations. Earl McGrath, a Commission member, would shortly become head of the United States Office of Education, and then head of the higher education programs at Teachers College and Temple University.  

Although Truman was not able to get any legislation from the Commission report, it may well be that much of what the Commission argued indeed came to pass but not as incidentally as current scholarship might suggest. 

What makes the 1947 President’s Commission on Higher Education remarkable is not only its discussion of civil rights, a rare enough narrative in the first half of the twentieth century, but

---


34Hawkins, *Banding Together*, 169-176 on what has happened since the Commission report. As Hawkins argues, a complex national polity on higher education was forming at this time (see 181); I argue that the Commission represents one enduring version of that polity. Janet Kerr argues that the Commission was meant to educate President Truman and the public, see Kerr, “From Truman to Johnson,” but as Galdieux and Wolanin argue, the Higher Education Act of 1965 reflected twenty years of debate about the federal role in higher education stemming from the 1947 Commission. Lawrence E. Galdieux and Thomas R. Wolanin, *Congress and the Colleges: The National Politics of Higher Education* (Lexington, MA: Lexington Books, 1976), 12, 16.
also its identification of education as a means for achieving civil rights. While the United States Supreme Court affirmed that identification in 1954, a substantial difference remained. The explicit demand of the President’s Commission that institutions adjust policies and practices to provide opportunity indicates an initial statement of equality in higher education that is if not radical, more than simply surprising for its time. The Brown decision, commonly identified as the starting point for extensive federal discussion about discrimination and education in the post-World War II era, is not only part of a larger tradition but is also separate from another federal language of discrimination, and it is not until the late 1960s that the Court, for only about a decade, moved toward the language of equality. Thus it is important to recognize that since 1954 the federal language has shifted more than once, toward equality in the legislative acts and judicial decisions of the 1960s and early 1970s, and more recently back toward liberty in the 1980s and 1990s. A substantial tension in educational interpretations of desegregation remains, one that is even played out on campuses today as administrators, professors, and students struggle to identify the meaning of affirmative action and its relationship to equality of opportunity and liberty.