

The Self-Regulation of Higher Education:

Accreditation under Attack

by

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Abstract

Self-regulating agencies present a challenge to the notion of accountability in a democracy. In theory, public policy in a democratic system is created according to the will of the people. Self-regulating agencies, however, are often self-appointed and are therefore, not accountable to any formal democratic institution. What is the power balance between government and private regulatory agencies? Does their existence challenge constitutional notions of democracy? This paper will answer these questions based on the current conflict between the federal government (as represented by Secretary of Education Margaret Spellings) and the accreditors of higher education. The autonomy of education accreditation agencies and the ability to self-regulate in higher education is an issue of growing debate within Congress, thus providing a timely example of the conflicts that can arise over the need for accountability from self-regulating industries and agencies on one system of self-regulation – accreditation of higher education institutions. The paper concludes that self-regulating agencies can be held accountable through the Constitutional structure of checks and balances and so their existence does not pose a threat to the notion of democracy. In fact, ill outcomes stemming from their authority (or lack thereof) can be attributed, at least in part, to an apathetic electorate and to the tendency of key government actors to be influenced by political ideology and rent seeking.

Introduction

Self-regulating industries present a challenge to the notion of accountability in a democracy. In theory, public policy in a democratic system is created according to the will of the people. Self-regulating agencies, however, are often self-appointed and are therefore, not accountable to any formal democratic institution. What is the power balance between government and private regulatory agencies? Does their existence challenge constitutional notions of democracy?

This paper looks at the issue of self-regulation with a focus on the escalating conflict currently taking place between the federal government (as represented by Secretary of Education Margaret Spellings) and the accreditors of higher education. The autonomy of education accreditation agencies and the ability to self-regulate in higher education is an issue of growing debate within Congress, thus providing a timely example of the conflicts that can arise over the need for accountability from self-regulating industries and agencies.

The paper concludes that self-regulating agencies can be held accountable through the Constitutional structure of checks and balances; therefore, their existence does not pose a threat to the notion of democracy. In fact, ill outcomes stemming from their authority (or lack thereof) can be attributed, at least in part, to an apathetic electorate and to the tendency of key government actors to be influenced by political ideology and rent seeking.

Higher Education Accreditors vs. the U.S. Department of Education

The United States has a unique system of accreditation. In many countries, the federal government outlines a curriculum to be taught and specific standards to be met for graduation. The United States, however, does not have a Ministry of Education. Institutions of higher education are granted a degree of autonomy simply does not exist in other countries. The Higher Education Act of 1965 explicitly states that no department, agency, officer, or employee of the

United States is authorized “to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any education institution...”¹

One problem that has resulted from the great diversity of higher education institutions in the U.S. is that ranking schools can be extremely challenging. By what common criteria does one compare community colleges, vocational schools, career colleges, religious schools, liberal arts colleges, etc.? Simply establishing which schools are of high quality and which are merely degree-mills can be very challenging. The solution to this problem has been self-regulation, via accreditation.

According to the Council for Higher Education Accreditation (CHEA), the accreditation process is intended to “assure and improve academic quality”. Accreditation is framed as a means of quality control. However, the system is likely attributable, at least in part, to the self interest of existing colleges and universities. Self-regulation through accreditation discourages substandard schools from competing while preventing, until now, formal government involvement.

Another reason for self-regulation was the increased financial involvement of the federal government. After World War II, the Serviceman's Readjustment Act of 1944 (a.k.a. the G.I. Bill) granted financial aid to all veterans interested in seeking a higher education. The result was a surge in the number of students. For example, the University of Michigan increased its enrollment from fewer than 10,000 students before the war to over 30,000 in 1948. Similarly, Syracuse University has approximately 6,000 students before the war but by 1947 had 19,000 students.²

¹ The Higher Education Act (1965). <http://www.higher-ed.org/resources/HEA.htm>

² Wikipedia. *G.I. Bill*. http://en.wikipedia.org/wiki/G.I._Bill

The increase in government investment was accompanied by an increased demand for accountability. The federal government needed a way of monitoring the academic quality of the institutions for which it was providing loans and grants. The leaders of universities and colleges concluded that self regulation would be vastly preferable to regulation by the federal government, and the current private-public partnership developed as a result.

Today, accreditation of higher education in the U.S. is handled by a variety of private, nonprofit organizations. These organizations conduct external quality reviews to ensure that higher education institutions in the U.S. maintain high standards, thereby making these schools eligible for federal funds, such as student aid and other federal programs. This system has been in place for roughly the past 50 years.³ If a school cannot achieve or maintain accreditation, all government funds are cut off and a degree from that institution becomes essentially worthless.

According to the U.S. Department of Education's web-site:

The goal of accreditation is to ensure that education provided by institutions of higher education meets acceptable levels of quality. Accrediting agencies, which are private educational associations of regional or national scope, develop evaluation criteria and conduct peer evaluations to assess whether or not those criteria are met. Institutions and/or programs that request an agency's evaluation and that meet an agency's criteria are then "accredited" by that agency.

The U.S. Department of Education does not accredit educational institutions and/or programs. However, the Secretary of Education is required by law to publish a list of nationally recognized accrediting agencies that the Secretary determines to be reliable authorities as to the

³ Eaton, "Is Accreditation Accountable?"

quality of education or training provided by the institutions of higher education and the higher education programs they accredit.⁴

Under the Higher Education Act (HEA), the federal government reauthorizes the accreditation agencies every five years in a process commonly referred to as “recognition”. Without recognition, accrediting agencies would still be free to accredit schools, but those accreditations would be largely meaningless because, as explained earlier, those schools would not be eligible for any sort of government funding.

Traditionally, the federal government has reauthorized accrediting agencies with minimal debate. That began to change, however, in 1992. Since 1992, standards for accreditation have been a controversial issue, particularly the issue of accountability and the gathering of data concerning student learning outcomes. Judith Eaton, president of the Council for Higher Education Accreditation (CHEA), has described the issue in this way:

In a crucial shift in thinking, federal officials have moved from “Accrediting organizations are accountable if they do a responsible job of carrying out reviews” to “Accrediting organizations are accountable if they do a responsible job of carrying out reviews *and there is evidence that institutions and programs perform well and that students learn.*”⁵

“The 1992 reauthorization of HEA represented one of the most successful efforts to date on the part of the federal government to influence higher education through its recognition-based controls on accreditation.”⁶ One element of this shift in government control over higher education was the establishment of the National Advisory Committee on Institutional Quality and Integrity (NACIQI) (Public Law 102-325). The web-site of the U.S. Department of

⁴ “Accreditation in the United States: Overview of Accreditation.” *U.S. Department of Education*. <http://www.ed.gov/admins/finaid/accred/accreditation.html#Overview>

⁵ Eaton, “Is Accreditation Accountable?” Italics hers.

⁶ Ibid.

Education states that the mission of the NACIQI is to advise “the Secretary of Education on matters related to accreditation and to the eligibility and certification process for institutions of higher education.”⁷

As the government became more interested in student learning outcomes, a pertinent question was raised: How can one measure learning outcomes in such a diverse system of higher education? Institutions vary by type (i.e. corporate higher education institutions, distance learning, and international higher education)⁸ and subject matter (i.e. religious schools, liberal arts colleges, community colleges, technical schools, law schools, acupuncture programs, etc.) What criteria can be applied fairly to all of them? It is not at all clear that the accrediting agencies have developed any sort of response to these changes and that is a source of concern. The desire to evaluate the quality of learning in federally funded institutions is certainly understandable. In 2002, the federal government spent approximately \$69 billion in student grants and loans. So while the growing insistence on the part of the federal government for increased accountability and transparency in accreditation is disquieting for some in the higher education industry, it is certainly based on legitimate concerns. Indeed, one might argue that if self-regulating agencies are to be permitted to make policy decisions, the government must maintain a close eye on their activities. Accreditors may have bristled at the increased involvement of the federal government, but in a truly democratic society, such agencies must be accountable to someone.

That which the private sector had been dreading for more than a decade began to materialize on September 19, 2005, when “U.S. Secretary of Education Margaret Spellings announced the formation of the Commission on the Future of Higher Education which subsequently completed

⁷ “National Advisory Committee on Institutional Quality and Integrity.” *U.S. Department of Education*. <http://www.ed.gov/about/bdscomm/list/naciqi.html>

⁸ Ibid.

a report with actionable recommendations that focus on four areas of higher education: access, affordability, accountability and quality.”⁹ Accreditors and college directors became especially nervous since Spellings’ past statements indicated that she strongly favored the use of standardized-test scores to help measure learning and increase accountability.

As anticipated, the result of the Spellings commission’s report was extremely critical of accreditors. In fact, the original language was so harsh that the writers of the report were eventually persuaded to go back and rewrite certain phrases in the interest of diplomacy.¹⁰ Even after criticism on earlier drafts, the panel’s [final report](#) derided the current accreditation system as having “significant shortcomings” and charged the system with stifling innovation, paying short shrift to student outcomes, and being secretive.¹¹

The commission’s report recommended several measures for increasing accountability and uniformity in the accreditation system, some of which were highly controversial:

- Encouraging states to require that public institutions measure their students’ learning through a potpourri of tests and surveys, and directing colleges to “make aggregate summary results of all postsecondary learning measures ... publicly available in a consumer-friendly form.”
- Developing a “unit record” system (“with appropriate privacy safeguards”) to allow for the tracking of student performance across their academic careers.
- Creating a “national accreditation framework,” though the draft does not specify whether this should be in addition to or in place of the current system of regional accreditation.¹²

⁹ “Commission on the Future of Higher Education.” *The National Council of Teachers of English*. <http://www.ncte.org/about/issues/featured/124395.htm>

¹⁰ Doug Lederman, “A Stinging First Draft.” *Inside Higher Ed*. June 27, 2006. <http://www.insidehighered.com/news/2006/06/27/commission>

¹¹ Doug Lederman, “Regulatory Activism?” *Inside Higher Ed*. August 21, 2006. <http://insidehighered.com/news/2006/08/21/regs>

¹² Lederman. “A Stinging First Draft.”

On December 5, in an unprecedented action, NACIQI refused to grant recognition to the American Academy for Liberal Education (AALE), the accrediting agency that accredits liberal arts colleges and universities. “The panel took the harsh step of essentially recommending a freeze on the AALE’s ability to accredit new institutions until its petition for renewal is revisited at the next meeting of the National Advisory Committee on Institutional Quality and Integrity, in June.”¹³

The decision came as a surprise to the AALE, partly because this was the first time that recognition had ever been refused but particularly because the AALE had been led by NACIQI to believe that they would be reauthorized without any problems; they were, in fact, told that “the group was in compliance in regards to assessing student outcomes.”¹⁴ The AALE’s first warning that there might be a problem came just one week before they were scheduled to defend themselves before the committee.

There are many interesting questions that emerge from the current battle between accreditors and the government, not the least of which is to what extent the committee is being used by Spellings (and, presumably, by President Bush) to federalize higher education and to legislate specific changes without having to go through Congress.¹⁵ The question that this paper seeks to answer, however, is why the balance between government and the private regulators shifted and to if the activity by Spellings and the NACIQI challenges the notion of a truly democratic society. Pure self-regulation without any public input or oversight is clearly undemocratic. Few, if any, would argue for complete government control of higher education, however. Indeed, one

¹³ Elizabeth Redden. “The Heat is Turned Up.” *Inside Higher Ed*. December 6, 2006. <http://www.insidehighered.com/news/2006/12/06/aale>

¹⁴ Ibid.

¹⁵ Burton Bollag, “Fear of Possible Federal Learning Standards Grows as Liberal-Arts Accreditor is Penalized.” *The Chronicle of Higher Education*, December 6, 2006. <http://chronicle.com/daily/2006/12/2006120601n.htm>

might argue that the American way is often to find the balance that best prevents abuse of power and, when that balance tips too far in one direction or the other, to adjust the system accordingly.

How does this reasoning apply to the case of self regulation in higher education? Prior to 1992, the role of the federal government in developing accreditation standards was minimal. They reserved the right to not recognize an accrediting agency if it was found that the agency was not performing its function well, but this authority was never exercised. It is impossible to state with absolute certainty why things began to change in the early 1990s, but we will delineate a chain of events that, together, offer some insight into this ensuing change in the balance of power between the public and private sector over education accreditation.

In 1983, a national commission issued a report entitled “A Nation at Risk”. The report concluded that public school standards were too low, effectively opening the door to increased testing and the push to find measurable outcomes of student learning.¹⁶ The report’s findings created a sense of panic within the United States that the education system was in a state of crisis. Although the crisis was perceived as being in primary and secondary schools, it started people thinking was only a matter of time before policy makers began questioning the quality of higher education institutions as well.

An additional factor may have been the development (and labeling) of the information economy. While it is not clear exactly when the information economy began or precisely what the term encompassed, it became a part of the public’s lexicon in the early 1990s. As more and more studies demonstrated the correlation between a highly educated population and economic growth, the tendency for people to perceive higher education as a public good increased substantially. Much as Sputnik inspired policy makers to focus on reforming education in the

¹⁶ Jay Mathews, “Just Whose Idea Was All This Testing?” *Washington Post*, November 14, 2006; A06. http://www.washingtonpost.com/wp-dyn/content/article/2006/11/13/AR2006111301007_pf.html

late 1950s, the dawning of the information economy and the lingering sense of dissatisfaction with public education combined to place a spotlight on higher education as an area ripe for reform.

As the perceived importance of higher education grew, a policy window was opened for the federal government to increase its oversight of that sector. It is one thing, for example, to stand by and let the American Restroom Association ("America's advocate for the availability of clean, safe, well designed public restrooms")¹⁷ set its own standards with minimal government oversight. The federal government is not investing hundred of billions of dollars into restrooms and the quality of existing restrooms is not a major issue of debate in the U.S. Higher education, however, had grown significantly over the years and it was entirely appropriate for the government to become more involved.

Government regulation that leads to rent seeking is particularly likely to occur in an industry that involves huge amounts of money and that is perceived to be a partisan issue. The industry of higher education fits the bill. There is little question that the report released by the Spellings commission is, at least in part, a result of political differences between the Democrats and the Republicans. Education has traditionally been seen as a Democratic issue; teachers generally vote Democratic and the Democratic Party, in return, has always vigorously defended the Teachers' Union. Margaret Spellings would not be the Secretary of Education and nothing resembling the report that was released by the Spellings commission would have been written under a Democratic administration.

¹⁷ American Restroom Association. <http://www.americanrestroom.org/>

In recent years, the Republican Party has been highly aggressive in its attacks on higher education institutions, accusing them of liberal bias in both hiring and curriculum.¹⁸ These attacks have been particularly focused against liberal arts colleges and universities. Given that the Republican Party has assembled the current NACIQI committee¹⁹ and that it was this same NACIQI committee that ambushed the American Academy for Liberal Education and denied them accrediting status, it is logical to deduce that some of the shift in power is politically motivated. The connection becomes stronger when one considers that the day before, NACIQI had granted recognition to a regional accrediting agency, the Accrediting Commission for Senior Colleges and Universities of the Western Association of Schools and Colleges (WASC), which had been found to have all the same flaws as the AALE.

The fact that politicians sometimes use their power to achieve political ends is hardly news, and the line between *using* the power of one's office and *abusing* it is quite thin indeed. If NACIQI had held the WASC to the same standards as the AALE and if it had given the AALE due notice that its recognition was in jeopardy, it would be difficult to argue with the legitimacy of the committee's actions, even if one disagreed with the political beliefs that motivated them. It is these violations of procedure, however, and the discrimination demonstrated against liberal arts colleges and universities that are absolutely opposed to the spirit of the American Constitution and the American Creed.

In addition to political polarization surrounding education issues, there is also evidence for the existence of rent seeking.²⁰ One of the members of NACIQI is Arthur Keiser, chancellor of

¹⁸ Scott Jaschik, "The Liberal College Conspiracy." *Salon.com*. December 12, 2006.
<http://dir.salon.com/story/news/feature/2004/09/20/college/index.html>

¹⁹ Members are appointed by the President.

²⁰ In addition to the case of Keiser and the Career College Association, there are also accusations that testing companies have been lobbying the Bush administration to mandate programs such as "No Child Left Behind" and the standardized testing that is now being considered for higher education. Although it is also a very good example of rent seeking, it was decided that there was no additional gain by having a second example and that, in going

Keiser College, the fourth-largest independent college and the largest career college in Florida. Keiser is an adviser to the U.S. secretary of education on matters regarding establishing and enforcing the standards of accrediting agencies and associations. Keiser and his colleagues in the Career College Association have been clamoring for some time for congress to force all higher education institutions to publish “institutional report cards” that would focus on so-called "outcome measures" such as career placement, professional schools placement rates, passage rates of students on competency tests or certification exams, and transfer rates. As a general rule, career colleges such as Keiser’s score much higher on these criteria than liberal arts colleges because that is their focus. Therefore, if congress were to create a national database based on such outcome measures, career colleges would receive much higher ratings than liberal arts schools. Suddenly, career colleges such as Keiser’s College would be in the top ranked higher education institutions in the country.

This is a rather blatant example of rent-seeking.²¹ It is precisely this sort of situation that the Founding Fathers anticipated when designing the system of checks and balances in the Constitution. When one branch of the government oversteps its boundaries, there is a system in place to put a stop to it. A good example is the bureaucracy - the so-called “fourth branch” of government. The legislative branch is in a position to cease funding if they find that one of the agencies is abusing its power or not carrying out the law as intended.²²

Despite this carefully designed system, there is no guarantee that congress will choose to act against Spellings or NACIQI. Now that Congress is under Democratic control, it is more likely that members will start a conflict with the president’s hand-picked committee. The point,

through the evidence necessary to support the accusation, it would ultimately distract from the overall point being made.

²¹ There are numerous other cases of rent seeking connected to Keiser, many of which have occurred in Florida with the help of Jeb Bush, the president’s brother.

²² Fritschler and Rudder, *Smoking and Politics*, 40-41.

however, is that the option exists for congress to step in if an agency overreaches, just as the agency had the power to step in when it felt that the self regulating agencies were not fulfilling their responsibilities. This is how a system of checks and balances works. Not to mention, it is an excellent example of why self-regulation does not pose a significant threat to democracy.

Putting aside the issues of rent seeking, the pros and cons of testing, and the perils of undivided government, this case demonstrates that self regulation does not occur in a vacuum and that it is regulated by the government, if only by the potential threat of government interference. Consider the sequence of events: First, the public became concerned about the quality of higher education (one might argue that they were manipulated into being concerned but that is not relevant to this particular point). Next, a government agency stepped in to impose regulation upon the accrediting agencies, at least in part because the American people were insisting that something be done. Going further, if the government agency oversteps its boundaries to the point that the American people become upset and start complaining, congress can pull the reins on the government agency. In other words, congress is accountable to the people, NACIQI is accountable to congress, and the “self regulating” accrediting agencies are accountable to NACIQI.

This is not to suggest that the American system is perfect. The public can be manipulated. Agencies can find loop-holes within their congressionally-mandated instructions and abuse their positions. Under a single-party government, it can be very difficult for the opposition to mobilize sufficiently to force the government into action. As always, the political system cannot work if people are apathetic or uninformed.

It was never the intention of the Founding Fathers, however, to create a perfect society. Rather, their goal was to create a political system for a very imperfect society that would provide

an opportunity for the American people to force their government to respond to their wishes. Whether or not Americans use this opportunity wisely or not is a separate issue indeed.

Conclusion

This paper has attempted to answer the question of whether or not self-regulating agencies present a significant challenge to the notion of accountability in a democracy. At first glance, it would appear that self-regulation is “un-American” in the sense that policy is being made by institutions which have not been chosen by the citizens of the country but have rather chosen themselves. These institutions are often powerful and wealthy and, at least to a certain extent, the acting in their own self interest.

Where is the accountability in such a system?

By using the example of accreditation in higher education and the recent struggles between those who self regulate and those in the government who wish to assume more control over the industry, this paper has shown that pure self regulation could never actually exist in the United States. There is some degree of government oversight in all industries, whether for good or ill.

This paper does not seek to condone the actions of Secretary Spellings or the NACIQI committee or to downplay the fact that they have committed several procedural and ethical breaches in denying the American Academy for Liberal Education recognition. Power can be abused within a system of checks and balances just as it can be abused in a dictatorship. The difference, however, is that if the people decide to take action, in a system of checks and balances they will have the resources that they need to force the government to obey their will.

It does not always work out that way and there is certainly no guarantee that NACIQI and Spellings will pay for their abuse of power in this particular instance. The Founding Fathers,

however, never promised that the passage of the U.S. constitution would lead to a perfect world.

James Madison said it most eloquently:

“Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature?”²³

²³ James Madison, the Federalist No. 51.