Politics, Lobbyists, and the Transformation of Postsecondary Education

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Over the past decade there has been a significant increase in research on for-profit providers of degrees and training in higher education (Breneman, Pusser & Turner, 2000; Ortmann, 2001; Pusser, 2002; Pusser & Turner, 2002; Winston, 1999). Much of that work has turned attention to the possibility of for-profit expansion, with a particular focus on price and subsidies (Hoxby, 1998; Winston, Carbone & Lewis, 1998); technology (Newman & Courtier, 2001); barriers to entry (Winston, 1999), and regulation (Eaton, 1999, Marginson, 1997). While the growth of for-profit providers in general, and of media darling the University of Phoenix in particular is impressive, it comes from a small base. By any measure, the for-profit degree institutions remain a very small portion of total postsecondary activity (Pusser & Doane, 2001). At the same time a separate literature has emerged, including a number of articles by commentators aligned with for-profit institutions, that suggest for-profits have considerably more influence and potential than the number of institutions or their enrollments would suggest (Munitz, 2000; Ruch, 2001; Sperling, 2000; Tooley, 1999). While these authors cite a number of drivers of change, they fundamentally argue that for-profit corporations will use large amounts of capital, technology and the miracle of the market to reshape the higher education arena. These arguments were perhaps best summed up by the title of Ted Marchese's (1998) widely cited article in the AAHE Bulletin "How New Providers are Remaking the Postsecondary Marketplace."

A number of chapters in this volume argue that new providers are not remaking the marketplace; rather, they are effectively capitalizing on shifts in student demographics, and labor market demands. We agree that for-profits are more accurately characterized as beneficiaries - rather than drivers - of change. However, there is one arena in which we suggest for-profit higher education providers and other corporations involved in postsecondary provision do have a very

real chance of altering the postsecondary landscape. It is in the political arena, through the use of lobbying and direct campaign contributions to shape regulations and policies that for-profits may ultimately prove to be of the greatest significance. There are a number of reasons for this, foremost that postsecondary institutions are fundamentally political institutions, and as such particularly salient in the political process (Pusser, 2003). As public institutions, and to a lesser degree private institutions, that receive public subsidies have become increasingly central to state and national political contests, the level of institutional political activity has greatly increased, as has the degree of interest group participation. Our research shows a substantial increase in such political activity at the state and federal levels by both public and private nonprofit institutions, and for-profit providers, and a high level of turbulence in the higher education policy arena.
In this paper we examine the growth in postsecondary political activity, the comparative advantages enjoyed by different institutional forms, and how those advantages might reasonably be deployed in some of the key contests ahead. We begin with a brief analysis of the historical role of institutional political activity in higher education.

Institutional Control & the American Postsecondary System

The higher education system in America is fundamentally a nonprofit system, with 85 percent of two- and four-year degree granting institutions registered as nonprofits (Goldin & Katz, 1998), and fewer than 4 percent of baccalaureate degrees awarded by for-profit institutions. It is also worth noting that baccalaureate degree production in for-profits is the domain of a few institutions, with DeVry, Strayer and the University of Phoenix awarding nearly 80 percent of all for-profit baccalaureates (Breneman, Pusser & Turner, 2000).

To a similar degree, postsecondary students are disproportionately served by public institutions. While 56 percent of the degree granting institutions are private, over 80 percent of enrollments are in public, nonprofit institutions (Goldin & Katz, 1999). There has been some disagreement in the literature over whether to describe the institutional array in the United States as a system (Clark, 1983). Despite the tendency of public policy research to treat the "system" as 50 state systems, given the importance of Pell Grants, guaranteed student loans, and federal tax credits, the federal role in aid and regulation is essential to the success of state institutions. It is fair to conclude that if there is a system in the United States, it is historically based in direct public provision through state chartered institutions (public supply), augmented by state and national subsidies to virtually all accredited institutional types (public subsidy).

Public supply refers to the provision of higher education in public nonprofit institutions. Public subsidy refers to the allocation of public funds to public or private, for-profit or nonprofit institutions. Public subsidies may either be provided by state or federal entities to an institution as direct institutional grants (supply side subsidies), or to students in the form of grants, loans, tax credits and the like (demand side subsidies), that may be used at any accredited institution. Over the past two hundred years, publicly incorporated institutions that have been publicly funded and regulated have become the dominant sites of postsecondary enrollment and the provision of postsecondary degrees. The State, through the establishment of nonprofit public universities, the provision of public funds to nonprofit public and independent institutions, and the establishment of accreditation and oversight functions, has long served as provider, subsidizer, and regulator of American higher education. As we will argue later in this work, a key political and policy battle is emerging in various states over efforts to shift the state role in higher education from public supply to public subsidy (Pusser, Doane & Wolcott, 2003).

Historical Approaches to Political Activity in Higher Education

From the earliest efforts to establish state charters, through the Morrill Acts, the GI Bill and the Higher Education Act of 1965 (HEA), postsecondary institutions have argued that they operate in the state interest, or the national interest, but not as a special interest (Cook, 1998; Hawkins, 1992). The conceptualization of higher education as a public, not a private good, permeated political contests in the 19th century over the chartering of many large state postsecondary institutions and state systems (Douglass, 2000; Pusser, 2002). Along with concerns over public investment efficiencies, information asymmetries and moral hazards, the dedication to the public interest also helps explain the evolution of the nonprofit organization as the dominant institutional form. The promotion of higher education as a public good, and of the institutions as providers of a key social function, also contributed to the rise to political economic prominence of state flagship universities (Kerr, 2001).

The GI Bill

One of the first significant twentieth-century congressional debates over nonprofit and for-profit postsecondary education concerned the degree to which proprietary and other types of postsecondary institutions would be included under the GI Bill. After considering a number of competing proposals, the Veterans Affairs Committee approved an omnibus bill that included proprietary schools and supported a wide variety of veterans and types of institutions. Congressional support for students in other-than-vocational programs was a departure from earlier policies, as disabled veterans of World War I had been provided with stipends only for attendance at vocational institutions (Loss, 2001; Olsen, 1974).

The Higher Education Act

The Higher Education Act of 1965 constituted a key component of Lyndon Johnson's Great Society programs, and unlike the Morrill Acts or the GI Bill, it was seen as a new structural component of federal policy that would be renewed through Congressional re-authorization on a regular basis. Title IV of HEA created the Guaranteed Student Loan program (GSL), which established a federal role in promoting individual human capital investment and the portability of financial aid. Over time, it has grown to become "the largest and most important student aid program in America" (Breneman, 1993, p. 386). HEA also created Equal Opportunity Grants (EOG) designed to insure access and opportunity for low-income students. The first re-authorization of HEA, in 1972, was equally influential in shaping the contemporary politics of federal support for higher education. At that first re-authorization, a contest was waged over whether the focus of federal financial support should be on institutions (a position supported by the major higher education associations) or on direct student aid (a position supported by a group of legislators led by Senator Claiborne Pell). Pell carried the day, and the Basic Educational Opportunity Grants created at that time were later renamed "Pell grants." Negotiations over HEA 1972 also resulted in the passage of Title IX, a non-discrimination clause that continues to have significant impact on policies in those postsecondary institutions, public and private, that are the recipients of federal funds (DuBrow, 2003).

The political struggles over HEA 1965, and its first re-authorization, revolved in part around ideological conflicts that shape the contemporary postsecondary political debate. Through its commitment to student loans over institutional aid, the Congress endorsed the concept of higher education as a private good, an investment in personal human capital. At the same time, the commitment to eliminating under-investment through loan guarantees and the attention to equity and access signaled support for higher education as a public good. The debate reflected the ascendance of human capital theories (Becker, 1964) and was neatly summarized in a Carnegie report released in 1973 entitled, "Higher education: Who pays? Who benefits? Who should pay?"

At the same time, HEA was a referendum on public supply and public subsidy. Reflecting the growing interest in models of choice and public institutions (Friedman, 1962), Title IV created portable financial aid that students could use at virtually any public or private nonprofit postsecondary institution. With the adoption of BEOG's as student aid, rather than institutional aid, the Congress ensured a greater degree of student mobility and institutional choice. The 1972 reauthorization also greatly expanded the range of institutions that were eligible under Title IV, including many forms of proprietary institutions. While federal support was firmly established as student, rather than institution centered, the states continued on the opposite tack, directing the vast majority of state support for higher education to individual institutions. The tension between the vision of higher education as a public or a private good, and of the relative utility of institutional and individual aid are not only at the center of federal and state policy debates today, but they also have significantly shaped the way postsecondary lobbying has evolved over the past two decades.

Higher Education & Political Advocacy

A number of significant challenges emerge in attempting to describe the extent of postsecondary political advocacy. First, the higher education arena is extremely diverse in character and is not easily encompassed by prevalent models from other policy domains. More important, little research in higher education to date has been turned to building a political theory of higher education. Following on Moe's (1995) assessment of the dearth of positive political approaches to elementary and secondary education, Pusser (2003) suggests that the study of higher education has relied on organizational theory to describe institutional politics, and consequently has adopted an endogenous approach to understanding such contests in higher education. In turn, this has led to a general failure in higher education research to conceptualize postsecondary institutions, particularly publics, as political institutions, sites of contest over the allocation of politically salient costs and benefits. Pusser and Ordorika (2001) have also noted that the instrumental value of universities in broader political and economic conflicts has rarely been addressed and plays little role in contemporary models of postsecondary organizational behavior. In a similar vein, Hardy (1990), Dougherty (1994), and Rhoades (1992) have noted that models of higher education rarely address the role of the State in resource allocation and policy formation. The latter is particularly problematic when attempting to reconcile conflicts between state and federal policies on higher education. What research there is on political advocacy in higher education has focused on the role of professional interest groups (Cook, 1998) and on institutional efforts to use federal policy to increase targeted revenues (Savage, 1999; Slaughter & Leslie, 1997).

The Benefit Typology

However, there are a number of models from social science research that address the broader rationale behind public advocacy, and some shed light on the higher education policy domain. Clark and Wilson (1961) distinguished between interest groups based on the types of benefits that accrue to the actor. Sabatier (1992) defined the elements of their typology as (1) material benefits (tangible, usually monetary, rewards), (2) solidary benefits (rewards from social interaction), and/or (3) purposive benefits (psychic/moral satisfaction from pursuing official goals related to public welfare). This suggests that nonprofit institutions fundamentally pursue purposive benefits. Nonprofits have historically viewed themselves as working to advance the broader public good and have been wary of losing their “privileged status in society” (Murray, 1976, p. 90) through partisan political activity. Gladieux summed up this perspective on nonprofit lobbying a quarter century ago in his comment that "distaste for the art and practice of politics is mixed with genuine concern that aggressive political actions would somehow be inappropriate to the academic enterprise and might even be counterproductive" (1977, p. 43). As one would predict, for-profit postsecondary institutions have adopted a material approach to interest group activity, pursuing direct material benefits such as favorable tax laws, reduced regulatory oversight and policies that benefit the bottom-line.

The Deliberative Theory

Mansbridge (1992) suggests three empirical models of interest group deliberation, and with some utility in evaluating political activity in the postsecondary realm. They are competitive deliberation, collaborative deliberation, and corporatist deliberation. Under competitive deliberation, actors have fixed preferences. Interest groups "implicitly assume the existence of a truth (or a good public policy), the system being designed to elicit the best result through a competition constrained by rules of fair play" (Ibid, p. 38). Under collaborative deliberation, actors attempt to influence the preferences of fellow interest group elites to shape the policy arena in their collective favor. Mansbridge states, "By giving some groups privileged access to decision-making, they exclude others more or less permanently and rigidify the system of interest representation" (Ibid, p. 41).

Under this model, nonprofit institutions of higher education can be located in both the competitive deliberation and collaborative deliberation models. Alternatively, for-profit postsecondary institutions emerge in the corporatist category, which "links interest groups directly with state lawmaking and law-enforcing processes" (Mansbridge, 1992, p. 41). For example, unlike nonprofits, for-profit institutions have exploited the art of campaign contributions. Over the past decade, for-profit higher education providers have made significant direct financial contributions to political actors at the center of the higher education policy debate. For-profits have also aimed to integrate their organizations with legislative and regulatory entities. In February 2001, the Apollo Group (the parent company of the University of Phoenix) nominated the former chairman of House Committee on Education, to the university's corporate board. In October 2001, President Bush nominated Sally Stroup, the chief Washington lobbyist for the Apollo Group, as the Assistant Secretary of Education (Lobbyist Watch, 2001).

At first glance, the political interests of for-profit firms seem apparent – advocate policies that serve the firm's short-term financial interest. However, Plotke argues:

> Contrary to prevailing views, political efforts by business cannot be explained solely in terms of strategic calculation aimed at realizing economic interests. Rather, such political efforts are conceived and pursued when economic phenomena are interpreted in the light of normative political and cultural commitments. (1992, p. 175)

Indeed, cooperation between for-profit firms in lobbying efforts seems to go against the very competitive nature of the corporate model. However, the anti-business sentiment of the 1960s led to greater cooperation among business to influence the long-term political and economic climate for the for-profit model in Washington and the United States.

Coupled with, or perhaps a result of, the cooperation among businesses is the growth of neo-liberalism in social policy making. The rise of a philosophy based on "market deregulation, state decentralization, and reduced state intervention into economic affairs in general" (Campbell & Pedersen, 2001, p. 1) greatly enhanced the stature and relative position of market models in the broader socio-political economy. During the 1970s, business interests collectively organized in an effort to address not just the near-term crisis of falling profits, but the overall regulatory climate, unionization, social spending, and other policies that would improve the overall economic and political climate for the corporate model. By 1980, the corporate sector and affiliated trade associations claimed 50 percent of Washington lobbying offices and 60 percent of PAC campaign contributions flowing to Congressional candidates (Plotke, 1992).

While scholars differ as to whether the mobilization of business helped cause or was a result of the electoral success of conservative governments, it is clear that business was operating in a new environment with the arrival of the 1980s. In its first budget, the Reagan administration argued, "The most important cause of our economic problems has been the government itself" (The White House, 1981). Speaking to its faith in the market, the administration went on to state, "Many special interests who had found it easier to look to the Federal Government for support than to the competitive market will be disappointed by this budget" (Ibid). This rhetorical shift away from government provision to market production has had significant impact on a number of aspects of higher education (Slaughter and Leslie, 1997).

Research on Contemporary Lobbying

In the most comprehensive contemporary study of nonprofit postsecondary lobbying to date, Cook (1998) interviewed a number of university presidents who suggested that the key to their approach was to emphasize the role of higher education as a public good. One comment epitomized their tone: "Higher education is significantly different from other sectors and special interests. It is not self-serving, it is other-directed, it serves society; and it does little special interest pleading (Cook, 1998, p. 140). Another president put it more succinctly, "We wear white hats" (Ibid, p.141). Whether legislators were ever as enamored of the concept of higher education as a public good as these presidents indicate, political actors are likely to be less so today. The combination of declining discretionary resources at the state level, the rise of neo-liberal social policies and the attendant challenge to government provision of social services, has increased legislative demands for a clear return on dollars invested in higher education. Nonprofit postsecondary political activity over the past decade has reflected a shift in approach, one designed to more effectively respond to the changing political economy of higher education.

How They Lobby: Nonprofits

The Big Six

Despite the existence of a myriad of postsecondary advocacy organizations in the capital, for the past several decades nonprofit postsecondary institutions have relied primarily on a set of associations known as the "Big Six." These organizations, the American Council on Education (which serves as the coordinating body for the six), the Association of American Universities, the American Association of Community Colleges, the American Association of State Colleges and Universities, the National Association of Independent Colleges and Universities, and the National Association of State Universities and Land Grant Colleges represent the vast majority of nonprofit two and four- year institutions. According to Cook:

> These six major associations differ from most other Washington higher education associations in that they are presidentially-based. In other words, the presidents of colleges and universities are designated as the principal institutional representatives. (1998, p. 10)

Cook suggests that at the federal level the "Big Six" postsecondary associations practice "public good" lobbying on behalf of higher education writ large. Although the associations do not stand out for the amount of money they spend in support of legislation (at least relative to the individual institutions) they do practice what has been termed "in kind" contributions to political leaders. The associations, through their institutional members, represent blocs of voters and influence over important state industries and economic enterprises (Ansolabehere & Snyder, 1996). The institutions themselves also allocate important benefits (e.g. jobs, often unionized) in the congressional districts, and the most selective institutions often educate powerful constituents of the various members of congress. The associations also provide expert testimony, informal and formal contacts with congressional leaders, planning and drafting of legislation and grassroots organization in support of particular bills.

Institutional Efforts

In a significant shift that has taken place over the past three decades, institutions have rapidly increased other avenues for promoting their causes at the state and federal levels. At the state level this has been manifest in increased institutional expenditures for legislative liaisons and membership in state associations of colleges and universities. At the federal level the transformation has been apparent in the growth of individual governmental relations offices in the capital, and the increased use of hired lobbyists with D.C. connections. At both the state and federal levels the nonprofits also rely heavily on the efforts of institutional constituents, alums, employees of colleges and universities, parents, and not the least, students, who act individually and in concert to bring pressure to bear on legislators. Over the past decade, a number of institutions have also benefited from the efforts of state level political action committees (PACs).

These efforts have resulted in major shifts in the types of representation and the levels of funding brought to bear on behalf of nonprofits. The most significant of these has been the growth in institutional lobbying efforts aimed at garnering congressional earmarks. Savage has defined earmarking as "specifically designating funds for a particular recipient in appropriations, legislation and reports (1999, p. 62). A central aspect of this process is the act of registering institutional lobbyists and/or hiring registered lobbyists to work on behalf of the institution. The number of registered higher education lobbyists increased 740% from 1982-2002 (see Figure 1).

[Figure 1]

As a consequence of this effort, the number of earmarks generated for designated colleges and universities also grew significantly over the same period, increasing by a factor of 20, from 21 earmarks in 1980 to 417 in 1996 (see Figure 2).

[Figure 2]

Similarly, the total dollars generated by earmarks in federal appropriations bills also grew rapidly between 1980 and 1996 (see Figure 3), from some 16 million to over 320 million dollars per year.

[Figure 3]

These impressive gains have come at an economic and political price. As Figure 4 demonstrates, of the more than 200 registered institutions, 10 spent an aggregate of over $6 million on lobbying expenditures for the year 2000 (lobbying expenditures do not include individual, PAC, or soft money campaign contributions). Columbia University alone spent over $1 million. The political costs of earmarking are more difficult to measure, as they have generated intense scrutiny within and outside of Congress, with a significant number of critics suggesting they are both a device to avoid peer review of federally funded programs, and a significant waste of taxpayer dollars (Savage, 1999).

[Figure 4]

The Role of Individuals & PACs

A third key element in the nonprofit postsecondary lobbying effort consists of individual, political action committee (PAC), and soft money donations to candidates and political parties. Because 501(c)(3) charitable organizations are not allowed to make direct contributions to candidates with state or federal funds, these data are more difficult to interpret for higher education than for other policy realms. Figure 5 portrays the growth over time in higher education related campaign contributions for the period 1990 to 2002. From a low of just over $2 million, these funds totaled more than $16 million in the year 2000 electoral cycle. While the total dollar figure was lower in 2002, there is a clear upward trend of expenditures across similar election cycles (e.g. presidential elections, 1992, 1996, 2000).

[Figure 5]

Campaign dollars are also the nonprofit dollars distributed in the most partisan fashion. Figure 6 shows the 10 largest higher education related campaign contributors for the year 2002. This figure reflects primarily individual contributions for which the individual listed an educational organization as place of employment. Harvard University ranked first, with some

[Figure 6]

$500,000 in contributions. As one measure of partisanship, 96 percent of those dollars went to Democrats. Second on the list, those who affiliated with the University of California, generated $250,000, 82 percent of which went to Democrats. Although no federal nonprofit postsecondary institutional PACs reported for the 2002 cycle, there are significant dollars generated by nonprofit institutional PACs at the state level (see Figure 7).

[Figure 7]

Postsecondary For-profits: How They Lobby

The universe of for-profit postsecondary lobbying organizations is similar in many ways to that of the nonprofits. Associations, institutions, individuals, and PACs all play significant roles in shaping the policy environment. A fundamental distinction is that individual for-profit institutions are not constrained in donating directly to individual candidates or political parties and consequently they rely more heavily on PACs and soft money contributions.

Associations

The largest and most visible association of for-profit postsecondary institutions is the Career College Association (CCA). CCA represents some 950 two and four-year for-profit institutions. CCA ranked 8th among higher education campaign contributors in 2002, contributing 53% of its dollars to Republicans (see Figure 6). Most of those dollars were from CCA's PAC, which was the largest higher education PAC for that cycle (see Figure 8).

[Figure 8]

Institutions

As noted earlier, a handful of for-profit degree granting institutions produce the majority of degrees granted in the entire sector. The leader in this group by nearly any measure is the University of Phoenix and its parent corporation the Apollo Group. In 2002, Phoenix enrolled over 120,000 students and had gross revenues of over $1 billion. Not surprisingly, the Apollo Group has been extremely active in state and national politics. Apollo ranked behind only Harvard and the University of California in higher education campaign contributions for the 2002 cycle (see Figure 6). As shown in Figure 9, Apollo's campaign contributions have

[Figure 9]

been steadily increasing since it went public in 1995. In 2002, Apollo contributed over $250,000, nearly 5 times what they contributed in 1994. About one-quarter of those funds came from Apollo's higher education PAC (see Figure 8).

As shown in Figure 10, Apollo is the leading postsecondary institutional contributor

[Figure 10]

of soft money (donated to parties, rather than individual candidates), having given $140,000 with 60 percent of that money directed towards Republican candidates. DeVry, another postsecondary for-profit, gave a smaller amount in federal soft money contributions, as did Corinthian Colleges. Each of those institutions gave their entire contributions to Republican candidates.

Cook (1998) also points to one critical distinction between nonprofits and for-profits, the willingness to become involved in the electoral process and the legislative process. The for-profits have made direct campaign contributions and targeted them at key legislators. Three members of Congress are of particular interest in this case, Representative John A. Boehner, the chairman of the House Committee on Education & the Workforce; Representative Howard "Buck" McKeon, the chairman of the Subcommittee on 21st Century Competitiveness, and Senator James Jeffords, former chairman of the Senate Committee on Health, Education & the Workforce.

As Figure 11 indicates, Representative Boehner received $11,000 in PAC contributions from for-profit postsecondary organizations.

[Figure 11]

Representative McKeon garnered $17,000 from for-profit postsecondary PACs, and Senator

[Figure 12]

Jeffords was the recipient of $22,100 from for-profit postsecondary PACs.

[Figure 13]

As Figure 8 illustrates, when looking at the totality of education PAC contributions in the 2001-2002 election cycle, a number of familiar names emerge, including Apollo, CCA, Corinthian and DeVry. It should be noted that these are not particularly large amounts of money in the grand scheme of campaign contributions. In the 2001-2002 election cycle, the National Association of Realtors was the top PAC contributor with $3,648,526 in contributions (47%

Democratic, 53% Republican). However, the exclusion of the nonprofit sector of higher education ensures that what little money is donated by education PACs to electoral campaigns comes from the hands of for-profit higher education.

Related Associations: The Student Lenders

Some of the most politically active groups in the higher education area are the organizations involved in the student lending market. The student loan market totals more than $30 billion annually, with $6 billion in subsidies and fees provided to the lenders by the federal government. As one example of their political effectiveness, in 1999, the lenders began a successful lobbying campaign to change the way interest rates were calculated on student loans, shifting the reference rate from government securities to commercial paper. By one estimate the change was worth $1.7 billion in profits and subsidies for lenders, including $692 million for Sallie Mae (Watzman & Miller, 2000). Sallie Mae, a former federal lending agency that is in the midst of a decade-long transition to private status, holds over a third of the total student lending market. Over the past three election cycles Sallie Mae has given a total of just under $1 million dollars in PAC contributions (see Figure 11), roughly evenly divided between Republicans

[Figure 14]

and Democrats. Sallie Mae had total lobbying expenditures of over $7 million in the 1998-2000 election cycle (see Figure 15).

[Figure 15]

The financial services industry, which includes many providers of student loans, is one of the most powerful political entities on the hill, spending some $40 million on lobbying over the past two election cycles (Watzman & Miller, 2000).

Nonprofits & For-profit Lobbies: Convergence & Divergence

Predictions of how nonprofit and for-profit political activities will shape the higher education arena going forward rely on an assessment of their respective comparative advantages in the process, and the ways in which the broader political economy views their respective efforts. If nonprofits and for-profits share common cause on an issue, variations in their approach to access and expenditures in the political process may produce useful complementarities. Where they diverge, significant costs to both parties and ineffective policy transformations may well result. Our analysis of postsecondary policy contests over the past three decades points to four key areas of contest that will loom large in the 2004 HEA reauthorization and beyond: (1) regulation and barriers to entry; (2) finance; (3) the role of entrepreneurial revenue generated by individual institutions; and 4) the tension between public provision and public subsidy. While in each of these categories there are a number of points of contest and convergence, a few key examples will demonstrate the respective positions of nonprofits and for-profits.

Regulation and Barriers to Entry

Regulation has been seen in much of the literature on nonprofit and for-profit competition in higher education as a source of protection for nonprofit organizations (Ruch, 2001). However, our analysis suggests that contemporary policy contests reflect a certain commonality of interest between the leading for-profits and nonprofits. Prime examples of this are federal regulations controlling incentive compensation and student eligibility for aid. The incentive compensation conflict concerned the method by which institutions pay admissions counselors and recruiters for delivering new student enrollments. In the late 1980s, challenges were raised to the manner in which some for-profits were recruiting new students, and regulations were gradually strengthened. The issue garnered significant attention in 2000 due to allegations of fraudulent recruiting by a large for-profit provider, Computer Learning Centers (CLC). CLC subsequently declared bankruptcy amid calls for increased scrutiny of incentive compensation (Borrego, 2001). As a result, tight regulations were imposed governing how institutions could recruit students. However, during the drafting of new regulation in 2002, both nonprofit and for-profit institutions argued for a clarification of existing regulations, rather than increased constraints. The final rule released in November 2002 presented twelve safe harbors within which institutions could offer incentive based compensation, and was met with approval across institutional types (Farrell, 2002).

The contest over another key regulation defining student eligibility, the 12-hour rule, resulted in a similar convergence of interests. The Department of Education has historically relied on the 12-hour rule as a protection against fraudulent practice by distance providers of postsecondary education. It defined full-time enrollment as 12 hours per week of classroom based instruction, a regulation that has been seen as a significant impediment to generating Title IV funds for students enrolled in distance programs. During debate over the rule in 2002, for-profit advocates were joined in opposition to the rule by such nonprofit entities as the American Association of University Professors, who argued that the rule limited innovation in online pedagogy. The rule was allowed to expire in November of 2002.

On a number of issues, such as the 50-percent rule, significant differences have emerged between the institutional sectors. The 50-percent rule mandates that colleges that enroll more than 50 percent of their students in distance courses can only offer federal financial aid with the permission of the Department of Education. As a result of nonprofit resistance to changes in the 50-percent rule, in November 2000, the University of Phoenix and another for-profit, Capella University, founded the Online, Learning, Research, and Training Association. John Sperling, Chairman of the Apollo Group stated, “a new trade group was necessary because existing higher-education groups do not represent the interests of distance education” (Lobbyist Watch, 2000). In 2001, the Internet & Equity Education Act was passed in the House and referred to committee in the Senate. The bill would have modified the 50-percent rule, eliminated the 12-hour rule, and clarified incentive compensation regulations.

One of the most divisive issues dividing nonprofits and for-profits, and one that is seen as a significant barrier to for-profit expansion concerns the transfer of course credit. Indeed, when the Career College Association withdrew from ACE, it noted its disappointment with the lack of support from the ACE and its member institutions for the adoption of new guidelines to facilitate the transfer of academic credits from for-profit to nonprofit colleges (Borrego, 2002).

Finance

Perhaps the clearest area of convergence in political activities has been in the pursuit of increased federal funding for postsecondary education. Both nonprofits and for-profits have been in strong agreement over the need for increased federal contributions to student aid, although significant disagreements remain over what form the aid should take. Despite a general concern over rising levels of student indebtedness, both nonprofit and for-profit institutions have begun to advocate for an increase in loan limits in the 2004 HEA re-authorization (Morgan, 2002). While nonprofits would have preferred the support in different forms, both nonprofits and for-profits have been significant beneficiaries of the tax credits for students and families generated by TRA 1997.

A significant and unresolved dispute concerned regulations governing student eligibility for federal financial aid. Nonprofits advocated strict eligibility restrictions for for-profits, while the for-profits argued that they should be subject to the same guidelines as nonprofits. On this issue, higher education associations suggested Congress was giving preferential treatment to for-profits. Congress may actually have been recognizing the growing influence of the for-profit lobby. Just over a month before the 1998 reauthorization, *the Chronicle of Higher Education* noted, “Now, the increased popularity of the University of Phoenix and other for-profit institutions is about to pay off on Capitol Hill as well, in the form of newfound respect from lawmakers” (Burd, 1998, p. 2).

Entrepreneurial Revenue Generating Practices

A third key arena of political contest at the state and federal level revolves around entrepreneurial revenue generating strategies in nonprofit institutions. Despite a general perception in the policy community that for-profit institutions are better positioned to capitalize on changing demographics and labor force training requirements, there is little empirical evidence of that. It is the case that over the past decade nonprofit institutions have been rapidly increasing their provision of distance courses, offering greater numbers of certificates and degrees through continuing education and adult learning programs, and expanding the use of contract education programs and industrial partnerships.

Taken together these efforts constitute a significant convergence of institutional behaviors, an entrepreneurial wave that has the potential to create an array of hybrid institutions, the “for-profit nonprofits” (Pusser, 2000). As with the growth of academic earmarks, much of this transformation has taken place with little notice, in part because to date it has required few state or federal resources. The rise of entrepreneurial nonprofits may soon challenge existing regulations governing nonprofit behavior, and may also engender political challenges from for-profit providers. In a similar fashion, those universities conducting significant applied research have also made significant revenue gains through patent licensing and collaboration with industrial corporations. Since the passage of the Bayh-Dole Act in 1980, nonprofit research universities have ratcheted up their pursuit of "academic capitalism" (Slaughter & Leslie, 1997). Revenues from nonprofit university patents now exceed $1 billion annually (Blumenstyk, 2002) and universities in turn have lobbied vigorously to enhance their patent protections and royalties.

Public Provision & Public Subsidy

Of the emerging policy contests that will shape the future of nonprofit and for-profit political activities, none will figure as prominently as the struggle over public provision and public subsidy. The annual subsidy provided by the states directly to individual nonprofit institutions has long been the most important source of funds available to postsecondary institutions. It has also been a subsidy with unique characteristics, fundamentally directed to public nonprofits, and a relatively unrestricted source of support for undergraduate education. It would not be an exaggeration to describe state block grants to institutions as the backbone of the contemporary postsecondary system. As Figure 13 demonstrates, state support for the postsecondary institutions in the 50 states now exceeds $63 billion annually.

[Figure 16]

State block grants also serve a key role in limiting the price of tuition, as a reduction in the former invariably leads to calls for increases in the latter. State block grants are also generally considered the largest "discretionary" items in a state budget and consequently the site of continuous political contest and negotiation. The public provision of social welfare functions in the United States is currently under siege to a degree unprecedented since its emergence with the New Deal. Under the banner of markets, choice and efficiency, a succession of Republican presidents from Reagan forward have, as noted earlier, challenged the legitimacy of public provision (Pusser, 2002). President George W. Bush, in concert with Republican majorities in the House and Senate has attempted to supplant public provision with private enterprise and public subsidy at every opportunity (with the possible exception of the military, where public provision abides, albeit in alliance with significant private contracting).

The neo-liberal restructuring at the federal level has now begun to impact the ability of the states to maintain previous commitments to public provision. As regulatory responsibilities have devolved to the states, so have considerable costs, without attendant federal support. In FY 03 the states face the most severe fiscal crisis since the Great Depression. A number of state legislatures, most notably Texas and Colorado, are considering legislation that would end state block grants to public and private nonprofit postsecondary institutions in favor of direct student grants. Whatever gains in choice and efficiency might or might not ensure, these plans propose a revolution in student financial aid, an unprecedented level of support for "higher education vouchers," and offer a unique opportunity to for-profit providers (Pusser, Doane & Wolcott, 2003). At the state level, institutional leaders have begun to make the case for public provision with renewed vigor, citing access and equity concerns, the role of public education in workforce development, and a host of other public benefits. However, given that both for-profits and private nonprofits have been traditionally disenfranchised from state grants to institutions, there would seem to be considerable potential for a new political coalition in favor of a shift away from public provision to public subsidy.

Implications

There is a tendency in much of the contemporary literature on postsecondary organization to take for granted an impending victory of markets and competitive forces (Newman and Courtier, 2001; Duderstadt, 1998; Goldstein, 1999, Ruch, 2001), and given that victory, a subsequent transformation of the finance and provision of higher education. That transformation would also seem to favor the expansion and success of for-profit providers, and many venture capitalists have bet fortunes on that proposition in pursuit of an increased share in what has been estimated as a roughly $300 billion industry (Blumenstyk, 2003). Given the popularity of neo-liberal social policies in a Republican-dominated Congress and in increasingly conservative legislatures across the country, the conclusion that nonprofits are in serious trouble is understandable. It may not, on the other hand, be correct. As we have argued, there is a significant increase in political activity and lobbying by nonprofit associations and institutions, and by organizations concerned with the future of nonprofit higher education. There is also considerable evidence that nonprofits are succeeding in a variety of entrepreneurial revenue generating pursuits, and that they are investing politically to protect those revenue streams.

There is another important issue that emerges from this research, one that may be the best indicator of the future of the political struggle between nonprofits and for-profits. That issue is the continued failure of the neo-liberal project and the for-profit enterprises in the American K-12 system. From the publication of Chubb and Moe's *Politics, Markets, and America's Schools* (1995) over a decade ago, public policy advocates, political leaders, interest groups and venture capitalists have attempted to shift the K-12 system from one that is essentially nonprofit, marked by public provision, to a hybrid mix of nonprofit and for-profit institutions, with a reduction in public provision and an increase in public subsidy. It would be fair to say that they are not there yet, and that there is little evidence they will get there soon.

Despite the myriad distinctions between the two sectors, there are a number of lessons from the political contest over the K-12 system that offer insight into the future of political action in the postsecondary arena. First, building coalitions contributes to political success. Nonprofit postsecondary institutions have been characterized over the decades by a peculiar form of political isolation and atomization, both on campuses and in external relations. Despite critical claims that higher education has suffered politically for its inability to "speak with one voice," advocates of nonprofit public provision at the K-12 level have garnered significant political influence by speaking not with one voice, but through a coalition of powerful voices. That coalition has included parents, representatives in Congress and the legislatures, and perhaps most important, unions.

As pressures on revenues have increased in nonprofit postsecondary institutions, a number of entities have emerged that predict for a very different lobbying effort in the future. Unions are playing an increasingly active role on many university campuses, in support of a wide variety of employees including maintenance workers, clerical staff, faculty and graduate students (Rhoades, 1998). Figure 17 portrays the lobbying expenditures of a number of political organizations with postsecondary affiliations. The United Auto Workers (UAW), currently

[Figure 17]

[Figure 18]

active in organizing graduate student unions, spent nearly $2 million on lobbying activities. The American Federation of State and Municipal Employees (AFSME), which represents staff on a number of campuses, spent over $1.5 million. The Communication Workers of America (CWA), also developing graduate student unions, spent another quarter of a million dollars. The degree of investment of these organizations is further evidenced by their PAC contributions (Figure 18). AFSME spent nearly 2.5 million dollars on candidates in the 2002 election cycle. The UAW contributed just under $2.5 million and the CWA more than $1.5 million. At this point only a small portion of these contributions is linked to postsecondary lobbying efforts, but these relationships give an indication of the potential influence that may be brought to bear one day, particularly if the contest is over the future of many billions of state dollars for higher education.

When contemplating the potential for postsecondary political organizing, it is useful to keep in mind the scale of the nonprofit postsecondary sector. As one example, there are approximately 150,000 students in the UC system, 350,000 in the California State system, and over 1,000,000 in the California Community Colleges. UC has about 75,000 full time employees, CSU over 40,000 and the Community Colleges just over 60,000. Taken together they constitute nearly 2 million individuals directly linked to the public nonprofit institutions in one state. They may well be 2 million actors with quite different political orientations and social locations, but they may also represent the building blocks of a significant new political coalition.

In the period since WWII, the public postsecondary institutions in California and across the country have enjoyed an astonishing period of investment, growth and success. Even under the neo-liberal social policies introduced in the Reagan administration they have seen significant growth in income and enrollments. In the past decade, major structural adjustments have severely threatened those gains and the quality of life on those campuses. Posed against three centuries of postsecondary provision in the United States, it is unclear whether the past decade represents an anomalous moment or a vision of the future. The nonprofit postsecondary system in the United States has, politically speaking, long been something of a sleeping giant. Given the emerging shifts in state and national policies, and the potential conflict between nonprofit and market ideologies, it appears there are now significant incentives for the giant to awaken.

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