Unintended Consequences in Policy Making: The Case of Racial Equity

Dylan W. Bateman and Kelsey A. Mills

Florida State University
Introduction

Equity has long been evasive for African Americans in the United States. Disparities along racial lines have been highlighted by systems of oppression that permeate our healthcare and criminal justice systems. The American public education system is no different. Numerous laws and policies have been created throughout history that intentionally inhibited equitable access and attainment for African Americans in the public education sector. However, there have been laws and policies that more subtly restrict access or equitable treatment of African Americans in the education system even though they may be either written from a “colorblind” perspective or were created to address or lessen inequity. Our research aims to highlight the unintentional consequences of policies and decisions that have negatively affected equitable participation for African Americans in the American educational system.

In this paper, we will highlight both the intended and unintended consequences of federal laws and policies, court rulings, and state-level funding models for higher education. First, we will examine the Morrill Land-Grant Act of 1890 and the Servicemen’s Readjustment Act of 1944, two federal laws that had large impacts on the education system within the United States. We will also show how the ruling in the 1954 Oliver Brown, et al. v. Board of Education of Topeka, Kansas case did not come without its share of negative consequences for African Americans. To show that state-level policies also play an important role in the education system, we will explore the trend of performance-based funding for both 2-year and 4-year institutions that is growing in popularity among the states. Our research spans more than a century to demonstrate that these unintended consequences of policy are neither new nor will they be solved without a conscious effort to address issues of equity.
The Second Morrill Act

Often praised as a policy that helped establish funding for many higher education institutions for African Americans, now commonly referred to as Historically Black Colleges and Universities (HBCUs), the Second Morrill Act had other consequences on African American higher education. Decades prior, the Morrill Act of 1862 established a funding structure for the establishment of institutions that focused on agricultural and mechanical arts. However, many southern and border states elected to create separate institutions for White students and African American students using this funding, establishing some of the first public HBCUs in the nation (Wolanin, 1998, p. 19). While this act provided funding for the establishment of these colleges and universities, states struggled to financially support these institutions long-term (Wolanin, 1998, p. 20).

The Second Morrill Act of 1890 attempted to address this by creating annual grants for the land-grant institutions. However, in the act it states

that no money shall be paid out under this act to any State or Territory for the support made in the admission of students, but the establishment and maintenance of such colleges separately for white and colored students shall be held to be a compliance with the provisions of this act if the funds received in such State or Territory be equitably divided (Agricultural College Act, 7 U.S.C. §321, 1890).

In doing this, the act effectively “legalized the segregation of Black and White public institutions and emphasized a curricular focus on mechanics, agriculture, and the industrial arts” (Harper, Patton, & Ontario, 2009, p. 395). The Second Morrill Act was the first instance of a federal policy supporting segregated higher education institutions, allowing states to receive funding if both predominantly White institutions (PWIs) and institutions primarily for African American
students were equitably funded (Harper et al., 2009). Not only did the Morrill Act provide
governmental support to segregated institutions, but it also relegated African Americans to more
vocationally-minded educational opportunities and effectively denied the ability of African
Americans living in southern and border states to pursue a more traditional liberal arts education.
The Second Morrill Act acted as a double-edged sword in that while it was the first instance of
government funding that directly benefited institutions for African Americans, the funding was
limited to those schools that trained in vocational studies such as agriculture and mechanical arts,
all of which would lead to occupations in fields holding lower stature in the view of society at
large.

Finally, while the Second Morrill Act required that funding was equitably distributed
between White serving and African American serving institutions, history shows that it was not.
Following Plessy vs. Ferguson, “white land-grant institutions were still receiving state
appropriations at a rate of 26 times more than Black colleges” (Harper, Patton, & Ontario, 2009,
p. 396). In the 1930s, land-grant institutions serving African Americans received six percent of
funds for southern and border states whose population was 26% African American (Wolanin,
1998, p. 20). Without the federal government checking for compliance of states to give equitable
funds to African American serving institutions, the effects of the funding disparity have
continued to present day, where “the average per-student allocation of state appropriated funds
during the 2000-2001 school year at public HBCUs was $6,064, compared to $10,266 at public
PWIs” (Harper, Patton, & Ontario, p. 399).

While the Morrill Acts of 1862 and 1890 did provide funding that helped establish and
fund institutions that served the educational needs of African Americans, the Second Morrill Act
of 1890 had the unintended consequence of legalizing segregation in higher education
institutions and suppressing access of African Americans to a non-vocational education. Lack of government oversight of funding in states with segregated institutions resulted in a funding disparity that has had long-lasting consequences throughout the history of public higher education in the United States.

**Servicemen’s Readjustment Act**

As World War II came to an end, there was fear that the U.S. economy would not have enough jobs to support the millions of soldiers returning to the workforce. Having recently emerged from the Great Depression, many Americans feared another economic disaster that could result if many servicemen were unable to find work. For the Roosevelt administration, the thinking was that the transition from a wartime economy to a peacetime economy would be smoother if it were possible to delay entrance to the workforce for many of these soldiers. Higher education seemed to be a reasonable solution.

Congress narrowly passed the Servicemen’s Readjustment Act, more commonly referred to as the GI Bill, in 1944. The act allocated funds for one year of schooling for every 90 days of service, and by 1950 more than 2 million veterans had opted to enroll in an institution of higher education (Thelin, 2011). It is important to note that the GI Bill did not explicitly prohibit African Americans from receiving the educational benefits due to them. However, as was common for most laws, the bill was interpreted one way for White veterans and another way for African American veterans. Historical context is also helpful in understanding the impact of the GI Bill.

In 1944, many African Americans were living in poverty. This was especially true for those in the South where the system of sharecropping was still common practice. This meant that for many Black servicemen, pursuing an education was not a realistic option as their family
relied on their labor or their income (Herbold, 1994). Additionally, the chronic underfunding of African American high schools left many underprepared for college coursework. Those who did wish to enroll in higher education had to overcome obstacles within the Veterans Administration, who was largely responsible for administering the GI Bill benefits, and within the system of American higher education.

Due to segregation being common practice, and even mandated by law in some states, African Americans who did choose to pursue education after World War II largely turned to HBCUs. While veteran enrollment grew by 29.4% at White institutions in 1947, HBCUs saw a 50% growth (Woods, 2013). This was problematic for two reasons. First, HBCUs were largely concentrated in the Southern states, leaving little opportunity for African Americans living in the North. Second, HBCUs were not equipped to handle the large influx of students and many were placed on wait lists or decided against attending at all. According to Herbold (1994), by 1946 approximately 100,000 African Americans had applied to receive educational benefits, but only one fifth had been registered in college.

It would be dishonest to claim that the GI Bill did nothing to help some African Americans improve their economic situation; however, Africans Americans largely received less benefit from the bill than White people. Due to the role of the GI Bill in creating the American middle-class, this exploration of its discriminatory implementation is critical to fully understanding its impact. The lack of benefits afforded to African American servicemen, including access to quality higher education, not only impacted the individual, but has continued to impact their families for generations. Additionally, this analysis of the negative, unintended consequences of the GI Bill further shows that racial equity should be considered as new policies and programs are designed and implemented, even when they are seemingly unrelated to race.
Brown v. Board of Education

Known as a pivotal moment in the Civil Rights Movement, the Supreme Court decision in *Oliver Brown, et al. v. Board of Education of Topeka, Kansas* had rippling effects for African American participation in the American education system. The Supreme Court ruled that “in the field of public education, the doctrine of ‘separate but equal’ has no place” and that “such segregation is a denial of the equal protection of the laws” (*Oliver Brown, et al. v. Board of Education of Topeka, Kansas*, 1954). This made segregation of public schools illegal, overturning *Plessy v. Ferguson* and beginning the long process of integration in the American public school system. However, this ruling “was more of a civil rights decision than an education decision” (Tillman, 2004, p. 285) and provided little direction on how the act of integration should be carried out. Because school districts were left alone to tackle school integration, Black schools and Black educators suffered disproportionately as they were consistently deemed inferior to White schools and White educators.

At the time of this decision, “most Black teachers were employed in the segregated South” (Tillman, 2004, p. 282). Yet many would come to lose their teaching positions as school districts would elect to keep on those who were perceived as superior educators, the White teachers. In a letter to a Black teacher, Darla Buchanan, a school board member wrote if the Supreme Court should rule that segregation in the elementary grades is unconstitutional our Board will proceed on the assumption that the majority of people in Topeka will not want to employ negro teachers next year for White children. It is necessary for me to notify you now that your services will not be needed for next year” (Tillman, 2004, p. 280).
Prior to the *Brown v. Board of Education* decision, around 82,000 Black teachers were employed, and in the decade following, “more than 38,000 Black educators in 17 southern and border states were dismissed from their positions” (Tillman, 2004, p. 286). Discrimination cases were brought against school boards who fired Black educators, such as in the *Naomi Brooks et al. v. School District of the City of Moberly, Missouri* case. In this decision, the school district had fired all its Black educators while not firing any of their 125 White teachers (Tillman, 2004, p. 288). The judge ruled “that the Board of Education had the ‘right to make that decision,’ and almost every case involving Black educators who charged discrimination between 1954 and 1965 was dismissed on the basis of the *Moberly* ruling” (Tillman, 2004, p. 288).

The effect of the mass firing of Black teachers has continued for over half a century. In 2001, only six percent of public school teachers were African American, while African American students made up more than 17% of the public school population (Tillman, 2004, p. 286). The *Brown v. Board of Education* decision, while a huge step for the Civil Rights Movement, brought enormous consequences on the presence of Black educators in the American public school system that can still be felt today.

**Performance-Based Funding: 4-year Institutions**

Performance-based funding models for higher education emerged in 1979 due to increased demand for efficiency and effectiveness from various stakeholders (Alshehri, 2016). This means that at least a portion of the funding that an institution receives from the state is tied to measurable outcomes established by the state legislature. Although these outcomes vary by state, they include things like “the number of degrees awarded, the number of transfer students, retention rates, credit-hour accumulation, course completions, job placement rates, and research funding received” (Hillman & Corral, 2017, p. 1757). The portion of funding that is
tied to performance measures varies greatly between states. Illinois ties less than 1% of allocated higher education funding to performance measures, while the state of Tennessee ties 100% of funding to performance measures (Alshehri, 2016).

Since 2005, twenty-one states have adopted performance-based funding for four-year institutions (Hillman & Corral, 2017). Tennessee provides an interesting case study as one of the earliest adopters of performance-based funding for institutions of higher education. Tennessee State University (TSU), which is the state’s only public HBCU, includes open-access in its mission and is one of only two institutions in the state to increase enrollments since the inception of this policy (Hillman & Corral, 2017). Despite these facts, and because the state is measuring "credit-hour accumulation, degree completion, research funding, degrees per full-time equivalent (FTE) student, and graduation rate" (Hillman & Corral, 2017, p. 1758), TSU has received less funding every year since 2011. Hillman and Corral’s (2017) research shows that minority serving institutions in performance-based funding states lost on average $750 per FTE student, proving that TSU is just one example of many.

As more states move toward performance-based funding, it is likely that more minority serving institutions will be negatively impacted unless careful consideration is taken when crafting these policies. With less state funding, these institutions will be forced to cut programs that contribute to student success or to increase tuition costs. Neither of these options would be likely to adequately address the issue. Additionally, Hillman and Corral (2017) argue that performance-based funding measures will likely lead minority serving institutions to abandon their historical missions of serving students of minoritized groups and first-generation college students. To correct these issues, states could move towards models of racial justice or equity-based funding or need-based funding for institutions of higher education (Hillman & Corral,
Performance-Based Funding: 2-year Institutions

Like their 4-year counterparts, 2-year institutions are also vulnerable to negative unintended consequences created by poorly designed performance-based funding models. There are both potential and actual negative consequences associated with these funding models, all of which are likely to have a negative impact on students who are underprepared for college, or who are from a lower socioeconomic status. Because both groups are over-representative of African Americans, these performance-based funding models are more likely to contribute to the issue of racial inequity in education than to correct it.

Although performance-based funding models differ between states, many include measures that incentivize higher degree completion rates. While the missions of community colleges often include a focus on open-access, if an institution is dependent on state funding, it may be forced to take measures to increase the likelihood that their students will complete a degree or certificate. McKinney and Hagedorn (2017) stated that one way that community colleges may do this is by decreasing their recruitment efforts at high schools that predominantly serve at-risk populations such as African Americans, older adults, and GED holders. These are the very students who need the services that community colleges provide as they are less likely to gain admittance to a 4-year institution.

In a similar effort to prevent the enrollment of at-risk student populations, community colleges could also reduce the number of developmental level course offerings (McKinney & Hagedorn, 2017). Without developmental level course offerings, underprepared students would be unable to enroll. These institutions could also institute limits on the number of times a student
could retake developmental-level courses, making them high stakes for students who need to successfully complete them to continue pursuing their education (McKinney & Hagedorn, 2017). Although we did not find research to show that institutions have pursued these measures as of yet, it is still troubling that more states are adopting policies that incentivize a decrease in access to higher education for the most at-risk students.

In addition to the potential, negative unintended consequences that accompany performance-based funding for 2-year institutions, there are actual negative consequences that have already been observed. Some community colleges have increased the number of short-term certificates that are awarded. These certificates are less beneficial than an associate’s degree or a longer-term certificate, meaning students who pursue them will likely earn less after leaving the institution (Li & Kennedy, 2018). Even though this negative consequence of performance-based funding is not disparate along racial lines, community colleges are known for serving more minoritized and low-income students. Additionally, this shows that community colleges are willing to enact changes to secure more state appropriations, even if the changes are not in the best interest of their students. If institutions take a similar approach to the policies outlined above, an even more critical situation could emerge.

**Future Implications**

Clearly, decisions made at both the federal and state levels of government do not always consider the potential consequences they may have on certain populations in the United States — even when they may be written to support that population. There are some at the state and federal levels who advocate for “colorblind” policy creation — that is policies that do not take race into consideration whatsoever. However, it is clear from the examples we have examined that without using a critical lens, policies may inadvertently and negatively impact minoritized groups when
they do not consider racial equity. It is doubly clear that precise language on implementation and oversight of compliance should be included in future education policies and decisions. Without these, groups responsible for affecting the changes may choose to interpret the requirements in a way that decreases racial equity and access to quality public educational opportunities.

Federal and state policies and judicial decisions must take into consideration equity for minority groups in America. Policies must be considered from a critical lens and include clear guidelines for implementation and oversight of compliance. Without thorough consideration, we risk the chance for unintended negative consequences for African Americans, as well as other minority groups throughout the various public systems and educational infrastructure in the United States.

Conclusion

Historically, America’s educational policies and judicial decisions have often had far-reaching consequences that may or may not have been the initial intention of the policy creators. Throughout this paper, we have described the repercussions of some policies and decisions that have negatively impacted equity and access in public education for African Americans.

While the Morrill Act of 1890 did help provide funding for the creation and maintenance of some of the nation’s first institutions built to serve African American students, it also pigeonholed curriculum at public HBCUs to vocational studies, limiting the access of African American students in the southern and border states to a traditional liberal arts education. The Second Morrill Act additionally established a funding model that included a compliance model for states that implemented segregated institutions. While this act did require an equitable distribution of funds between PWIs and HBCUs, it did not establish any form of oversight or audit to ensure states complied. The result was that HBCUs received far less state-appropriated funding than
PWIs, creating an inequitable situation for African Americans seeking to pursue higher education.

The GI Bill is commonly lauded for protecting the United States economy following World War II and providing educational opportunities for the veterans returning from war; however, the opportunity to take advantage of the educational benefits was far more available to White Americans than African Americans due to segregation and discrimination. African American lacked access to institutions that would accept them outside of HBCUs. Additionally, the lack of infrastructure and government funding of these institutions to support the influx of veteran students attempting to take advantage of the educational benefits of the GI Bill resulted in many would-be students never having the opportunity to enroll in higher education.

In the historic Brown v. Board of Education Supreme Court decision, a major step in the Civil Rights movement was made, yet the lack of clear instruction on how desegregation should be executed resulted in the widespread firing of African American educators throughout the United States. Because implementation was left up to school districts, many African American educators and schools were deemed inferior to their White counterparts and were fired or shut down. This has created a disparity in representation of African American educators in the public school system that can still be seen to this day.

While there are many performance-based funding models that are implemented across four-year and two-year institutions and across different states, these models have the potential to incentivize institutions to take actions that will decrease equity and access for African American populations. These actions could include decreasing recruitment at high schools that serve more at-risk students, reducing developmental-level course offerings, and limiting the number of times students are able to take these courses.
Policies have the potential to improve issues of equity and access for African Americans in the United States public education system; however, even with the best intentions, they can fail or even worsen those issues. Future policies and decisions must not be “colorblind” but instead take into consideration potential consequences that may not be immediately discernible through careful analysis and research prior to their implementation. Should lawmakers and judges employ critical examination and analysis, policies and judicial decisions may more effectively address and solve issues of equity and access for African Americans in the United States public education system.
References


