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THE BASIC EDUCATIONAL OPPORTUNITY GRANT PROGRAM: ITS IMPACT UPON THE MIDDLE CLASS

Harry J. Hogan

The Basic Educational Opportunity Grant (BOG) program is the most revolutionary legislation affecting institutions of higher education in years. The BOG is commonly regarded as revolutionary in that it is thought to be a program to provide decisive help to students from low-income families. Its effect in extricating young people from a dead-end environment may or may not be realized, and if realized, is socially conservative rather than revolutionary. Its revolutionary possibilities really lie in middle class arenas — specifically in changing the structure and function of the American family by substituting state support in place of family support, in the loss in numbers and changes in function it will cause among higher-cost private colleges and universities by moving them precipitately from a subsidized economy into a market economy, and in the increase in tuition it will cause in the presently lower-cost public institutions.

The BOG program greatly accelerates social trends already manifest. Congress has not examined these trends substantively. Instead, Congressional debate has focussed on the procedural program, i. e. how to introduce BOG with minimum upset.



Dr. Hogan is Director of Government Relations at the Catholic University of America in Washington, D. C. He has also recently served as legal counsel to the House Special Subcommittee on Education and as a professor of law at Delaware Law School.

The traumatic effect of the introduction of BOG is multiplied if BOG is introduced full-scale and at the same time the traditional institutionally based student aid programs are terminated. The traditional programs (Supplemental Educational Opportunity Grants (SEOG), Work-Study (W-S), and Direct Student Loans (DSL) serviced many middle class students because the measurement of need was related to the pricing structure of the college attended. If access to those programs is cut off, and BOG is heavily funded, then middle class students would be driven to press hard upon BOG to meet their needs.

Accordingly Congress has twice rejected Administration proposals to concentrate federal student aid in BOG. In the Education Amendments of 1972 Congress authorized BOG but also reenacted the traditional programs and safeguarded them against BOG domination by a threshold funding requirement: the three traditional programs had to be funded at a combined total of \$653 million before funding BOG. In its Supplemental Appropriation request for Fiscal Year 1973, the Administration disregarded the legislation and requested \$622 million for BOG, \$250 million for W-S, and no new funds for SEOG or DSL.

Congress again rejected that course, funded the traditional programs at last year's levels, funded BOG at only \$122 million, and required that the BOG money be awarded only to first-time full-time students. Effectively in this coming academic year BOG will be a pilot program, of use primarily in establishing procedures.

Dr. Peter Muirhead, USOE Deputy Commissioner of Education, has estimated that in September the average BOG grant would be \$250 with a maximum of \$600. At that level, BOG should generate little interest by middle class students whose needs can still be satisfied by the traditional programs. The crisis is thus postponed. The issue must again be considered by the Appropriations Committee in connection with the Administration request for funding of BOG for FY 1974 at \$959 million, no new money for SEOG or DSL, and \$250 million for W-S.

Thus, it is important to analyze the impact in the area of higher education of heavy immediate funding of BOG coupled with termination of funding of two of the three traditional programs.

BOG and Family Responsibility

The language of the Education Amendments of 1972 indicates an open-ended Congressional intent in regard to social or economic class to be aided or social purpose to be accomplished. The provisions are entirely procedural. They describe eligibility in terms of income and assets, without reference to class. Therefore eligibility is not limited to students from low-income families. An individual from any class can qualify if he can meet the assets standard. Many will be able to do so by the predictable development of constitutional law along two channels. First, an individual from a middle-class family can qualify if he should be able successfully to assert a constitutional right to make himself readily independent of his parents despite adminis-

trative regulations designed to limit his ability to do so, and if, being independent, he can meet the assets standard. Secondly, even though he remains in a dependency relationship to his parents, an individual from a middle-class family can qualify if he should succeed in asserting the legal argument that his dependency upon his parents must be defined in terms of a limited legal "right" of support rather than an administratively defined "expectation" of support.

The program provides each student an "entitlement" of \$1,400 less his assets including parental contribution. In an effort to limit the BOG program to members of the low-family-income socio-economic group, the Office of Education (OE), in its proposed regulations, has attempted to define an "independent" student in ways which would make it difficult for a student from a middle-income family to qualify. An independent student is defined as one (1) whose parents have not claimed him as an exemption nor contributed \$600 to his support in the current year nor in the preceding year, and (2) who has not lived with his parents in the current year nor in the preceding year.

Whether those regulations, in imposing a two-year waiting period, unreasonably discriminate between people similarly situated in that they are in fact independent of their parents, is a justiciable issue. Predictably, it will be litigated.

In similar situations the Courts have been inclined to regard extended periods for qualification of benefits as unreasonably discriminatory. For example, the requirement of an extended residence within a state as a prerequisite before qualifying as a welfare recipient (*Shapiro v Thompson*, 394 U. S. 618 (1968)) has been held discriminatory. The same reasoning has been applied to invalidate extended residency requirements for admission to public housing (see *Cole v Housing Authority*, 312 F. Supp. 692 (D.R.S.) (2 year requirement)). In *Jolicoeur v Mihaly* 96 Cal. Rptr. 697, 488 P. 2d. 1 (1971), the California Supreme Court invalidated, as in conflict with the 26th Amendment, an opinion of the State Attorney General that "for voting purposes the residence of an unmarried minor . . . will normally be his parents' home regardless of where the minor's present or intended future habitation might be." The Courts may hold in comparable fashion in regard to the length of time required by OE as a prerequisite for eligibility for independent status in the BOG program.

Definition of the legal right of support for the costs of post-secondary education by a student against his parents can also be important in making BOG available to middle-income students even though they do not declare themselves to be independent of their parents.

In the early case of *Middlebury College v Chander* 16 Vt. 683 (1844) it was held that a college education was not such a "necessary" that a college could recover on a minor's contract to pay for it. More recently the issue has been litigated among divorced parents in regard to the right of the child

to be supported at college. Generally the courts have moved in the direction of imposing a limited support responsibility (see *Jackman v Short*, 165 Ore. 626 (1941); *Luques v Luques*, 127 Me 356 (1928)). Typically, the courts consider the financial circumstances of the defendant father. In *Straub v Straub*, 213 Cal. App. 2d 792 (1963), the Court required a well-to-do father to make increased payments to support his nineteen-year old son at Stanford University. The courts have generally held that support responsibility ends when a child reaches 21 or becomes self-supporting. In appropriate circumstances courts have compelled parents to pay for a child's college education after the child attains majority (*Commonwealth ex. rel. Decker v Decker*, 204 Pa. Super. 156 (1964); *Maitzen v Maitzen*, 24 Ill. App. 2d 32 (1959)). The recent lowering of the age of majority for specific purposes from 21 to 18, as by the 26th Amendment, has complicated the problem.

Traditionally, Federal student aid programs, like other student aid programs, have been designed to deliver aid to students in the proportion that the students' own resources, including family contribution, are insufficient to meet the expenses of higher education. Determination of the amount of expected family contribution is a necessary calculation in order to obtain the residual unmet need of the student, which would then be met by the aid programs. That calculation is not based on a legal right by the child to collect support but assumes a willingness by the parents to make a "sacrifice" for the education of their children. Erosion of family structure and the concomitant liberation of parents to achieve personal expectations has increasingly adversely affected parental willingness to make such a "sacrifice".

The change in view of familial responsibility has been masked in the past by flexibilities in the student aid award process which the BOG program removes. One such flexibility lay in the imprecisions in past years in the calculations by the institutions of higher education, and the College Scholarship Service or the American College Testing Program, of tables measuring the expected parental contribution. That flexibility has gradually been reduced over the years by the increasingly sophisticated analysis of the ability of the parents to pay. It is now eliminated under the BOG program by the construction of rigid tables to be applied nationally. The rigidity is necessary in order to obtain an "entitlement."

In the past, there was a second flexibility in that the willingness of parents to meet the post-secondary educational expenses of their children was in practice treated as a variable, rather than a constant. The Student Financial Aid Officer at the particular institution of higher education had the freedom to consider it and modify it in each particular instance. The tables of "expected family contribution" provided by College Scholarship Service or American College Testing Program or constructed by the institution of higher education from parental income tax returns or other information, were treated as guides to the Student Financial Aid Officer in applying his judgment to the situation of the applicant student. The willingness of the parents to contribute was an unpredictable variable to be considered by the Student Financial Aid Officer in determining the eligibility of the applicant student for an award.

The process of tightening the standards on determination of the ability to pay has the unrecognized effect of narrowing the freedom of the parents to maneuver in regard to their willingness to pay. The necessary end result is to force a testing of the assumption that parents are willing to make the required "sacrifice."

The loss of flexibility in calculation of parental responsibility and the transformation of the variable into a constant, accomplished by law in the Basic Opportunity Grant program are effectively a treatment of the parental contribution as a "right" of the student rather than as a "gift" to him. If so, the legal questions then become significant: Does the legislation confer on the student a right to sue his parents to compel them to provide the support set out in the OE family contribution tables? If not, does the consequent reduction in aid to the student constitute an unjust discrimination?

If the amount of expected family contribution calculated by the federal government exceeds the amount which the family is willing or can be compelled to pay, then the student is to that extent unable to qualify for federal student aid. Therefore, the unwillingness of persons, viz. parents, outside the student aid program to volunteer aid beyond that required of them by law, would result in the student being to that extent unable to qualify for aid. The requirement that a student be disqualified for an aid program, because of the possibility that he might receive aid from volunteers, may constitute unjust discrimination.

If the right of a mature student to enforce a duty by his parents to support him in college is non-existent, or limited, then the BOG entitlement is made available to a great number of young people from middle income families. Parents in those families will be glad to trade off an income tax exemption of \$750, worth perhaps \$100 to \$350 depending upon tax bracket, in return for freedom from a much larger support responsibility. Similarly, many young people may prefer to lift the burden of their support from their parents. Independently of financial considerations, they may prefer to achieve the emotional independence associated with the substitution of an impersonal grant from the state in place of the parental supervision associated with parental support.

If so, young people of all socio-economic classes may be financed by the nation into independence upon their graduation from high school. Such a development would very significantly affect the impact of the program. It would transform it from a social program to provide access to higher education by a low socio-economic group, into a social program to provide tax-supported independence to all young people at their option.

Such a social program is not necessarily bad. It may be a good thing. It is certainly consistent with the progressive disintegration of the family in our society. Our decision to bite the bullet is revolutionary only if the momentum it gives to that disintegration is uncontrollable.

BOG and the Institutions of Higher Education

The BOG, by providing students with an "entitlement," puts students directly and immediately in the position of making market judgments on the offerings of institutions of higher education. Since the Student Financial Aid

Officer (SFAO) has no control over the award of the BOG, the student can take his grant anywhere. Assuming as normal a desire by the student to maximize the return to him, the student should invest his BOG in that post-secondary education which offers him the best career preparation, i.e., the best assurance of increased future earning. He can most probably obtain that assurance from vocationally or career oriented proprietary or public institutions, characteristically urban, non-residential, and relatively low-cost.

In order to compete with such institutions, the traditional college or university would have to lay on top of the student's BOG, additional student aid in the form of other federal aid programs or the institution's own aid programs drawn from its own resources. Only so could the student obtain the additional aid to meet the institution's higher pricing structure. Since the resources of the institution are typically limited, its ability to provide the additional aid is directly dependent upon the continued large scale availability of the traditional institutionally based federal student aid programs. To the extent and for the period that those programs are adequately funded, the higher cost public and private colleges and universities will have a period in which to accommodate their operations to the emerging market value.

The continued availability of the Guaranteed Student Loan (GSL) program and its expansion through the Student Loan Marketing Association (SLMA) will not relieve colleges and universities from facing a market judgment by their student constituency. The GSL program will provide students with additional resources and therefore lifts their horizons, but it does so in a way directly productive of a judgment on the effectiveness of higher education in increasing the student's future earning capability.

The possibility of maintaining the scale of parental contribution, let alone increasing it, is also bleak. The conceptions of support responsibility, that have in the past pervaded middle-class morality and on which in the past CSS and ACT have based their calculations of expected family contributions in regard to both federal and institutionally based student aid programs, is weakening. The BOG program itself should hasten their collapse. That collapse cannot be limited to the area of student aid. It will accelerate the weakening of parental support responsibility generally, a matter of significant import to all institutions of higher education including those whose students do not receive BOGs.

In the past, in spite of the difficulties in their financial situation, private institutions of higher education have attempted to minimize their price competition with each other. For example, institutions competing within the same student constituencies have attempted to keep their tuition charges in alignment. They have also attempted to administer their student aid programs so as to extract from each student a maximum contribution. They have attempted to avoid competition for students on a price basis. The entire system is classically a conspiracy to fix prices at the highest level that the market will accept. In economic history, such a voluntary arrangement is inherently unstable. Market conditions are now such as to make the higher education arrangement increasingly vulnerable. The advent of the BOG program should

precipitate its disintegration. In the ensuing free-for-all, the weaker institutions particularly should suffer.

Theoretically, a well-funded BOG program should pose for the public institutions exactly the same revenue-raising problem that family resources have posed in the past for the privates. State legislatures will be tempted to maximize institutional income from BOG by raising tuition or fees. Since the maximum BOG Contribution is \$1400 but not less than one half the costs of attendance, such costs should logically be priced at \$2800. On the analogie of the private institution's experience in regard to family income, the public institution should then install scholarship arrangements to cover that part of the student's costs which BOG and the student's other resources will not cover.

Long-run, therefore, a well-funded BOG program should produce diminishing price distinctions between public and private institutions. The pricing differential should persist only in proportion to the difference in maximum published price between the two categories of institutions. Theoretically, public institutions should retain a price advantage only as long as the BOG ceiling is low. If that ceiling should be raised, at some point private institutions with their greater decision-making flexibility will be able to offer lower tuitions.

At the present time, with a low BOG ceiling, low-cost public institutions tend to favor the BOG concept, and the higher-cost private institutions tend to be suspicious of it. At that future time when the BOG ceiling is high — always assuming that the program is well enough funded to become a factor in the planning of state legislatures — the attitude of the public institutions and the privates should tend to reverse. Such a BOG program should threaten both the stability of the public institutions and their historic mission of free or low-cost education.

From the point of view of the SFAO at a particular institution, assuming inadequate funding of institutionally based student aid programs, the BOG gives the student an independence that makes his enrollment decision relatively uncontrollable. The kind of independence that it gives a student logically should lead him to work against the higher education system rather than with it. Assuming as normal a desire to maximize the advantage which the BOG gives him, the student should take it to an institution which, in addition to charging little or no tuition, has obtained BOG program approval for high living costs (books, board, room and commuting expense) which the student has a chance to beat in practice (by buying second-hand books, and eating and living at less than the tabulated expense.)

It must also be noted that if the student works, his entitlement will be reduced by one-third of the amount of his earnings. The system will either discourage self-help or encourage dishonesty. Such a system should produce a student attitude favoring institutions which require only a minimum contact by him with the institution's administrative officers, including most particularly the SFAO.

Such minimum contact will not adversely affect the student if, as is proposed by the President in his budget, there are no other federal aid pro-

grams which the SFAO can open up to him. Work-Study will be available in FY74; thereafter possibly not. Even if available, it would have to be treated differently than other earnings if the student is to protect his BOG. Once a student has ascertained that the SFAO will be unable to provide him with institutionally based aid — and he can learn that before the semester starts — his self-interest motivations should lead him to stay away from the SFAO.

Not that the SFAO should have any interest in reporting misrepresentations to the Office of Education; to do so would be to disadvantage the college as well as the student.

Apart from harassment, the only enforcement device that the Office of Education can count on is the impractical perjury indictment made possible by the notarization requirement for the student's affidavit supporting his entitlement application and the related civil remedy. Prosecution would involve an almost unbelievable combination of activation by the Office of Education and cooperation by the Department of Justice. Much more probable in the event of detection of facts that would make an award too large would be a simple reduction in the amount of the grant, and where that is not possible, a request for a refund.

The BOG program is not self-disciplinary. If it is directly to the student's advantage to fudge a little, there is no advantage for the college in the SFAO detecting or reporting the misrepresentation. A sense of responsibility may produce that result, but there is no self-interest served thereby. Enforcement will be the concern of the national bureaucracy, and the oneness of the concern should generate constant friction.

All these factors should produce the result that students receiving BOGs will tend to attend low-cost non-residential urban institutions, either public or proprietary.

The pressure of the BOG program to place institutions of higher education under a market judgment will be greatly increased by the termination or reduced availability of the traditional federal student aid programs. The withdrawal of the traditional federal aid programs from students who cannot qualify for BOGs will confront those students with the necessity of borrowing the difference between their resources and the cost of attending the institutions of their choice. For most of them, institutional resources for student aid will not be available. The alternative would be to transfer to any institution with lower costs. Logically students should tend to choose that option — a course of action already independently evident.

CONCLUSION

At the beginning of this analysis, I described these changes to be revolutionary. Those who disagree with the analysis will say that they hope the changes do not occur. It will take more than hope to stop them. Indeed, our margin of choice is probably limited to the degree of melioration of impact of inevitable change. Essentially that melioration would have to be accomplished through continuation of Congressional decisions to fund the traditional institutionally based student aid programs.