

Reconsidering Data as an Instrument of Political Control: From Information Asymmetry to Deck-Stacking

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Abstract

One way in which metrics and data disclosure requirements act as oversight processes is by stacking the deck in agency decision-making in favor of preferred constituencies similar to how McCubbins, Noll, and Weingast argued administrative procedures do. Using a critical-constructive theory of information in a case study of the graduation rate data collected through the United States Department of Education's Integrated Post-Secondary Education Data System (IPEDS), this paper shows that by requiring that agencies tailor the information that they provide to the needs of those groups favored by the legislature, agencies are required to report on how well they meet the need of those favored constituencies rather than on their overall performance, creating information asymmetries that work to secure the outcomes favored by those constituencies. Changes in the metrics agencies are required to address reflect changes in the underlying political power of those constituencies. Agencies thus achieve legislative policy goals without the legislature having to expend effort in active oversight measures.

INTRODUCTION

Public agencies are awash in performance metrics and information disclosures, usually in the name of accountability.¹ While sometimes linked to performance funding processes, reporting requirements most often come without explicit accountability mechanisms. Higher education in the United States is a particularly good example: higher education institutions that participate in federal financial aid programs under Title IV of the Higher Education Act of 1965 face a daunting list of reports and disclosures that they must make under various federal laws and regulations: submission

¹ This paper is an expansion of a discussion in my recent book, *Toward Information Justice: Technology, Politics, and Policy for Data in Higher Education Administration* (New York: Springer, 2018). I appreciate the contributions of Michael Dover, Quinn Koller, and Todd Massa in developing this paper.

of education data, disclosure of sexual misconduct incidents, and publication of campus safety records, for instance. While states may use such data in performance funding (largely because it is available) and there are serious federal sanctions for failing to disclose the data, there are almost no federal sanctions related to the substance of the data. In fact, many disclosure requirements are targeted specifically at those who have no ability to formally sanction an agency. It is as if a Management by Objective paradigm had been implemented but performance on the objectives was never reviewed. It is unlikely that the data submitted will lead to effective oversight of public agencies.

Why, then, would Congress expect institutions to submit so much information? One might consider three options. The first is that Congress is wrong to think that metrics matter; metrics and disclosures represent a failure of Congress to exercise effective oversight. A second option, which might be termed “management by magical realism,” suggests that those who implement data disclosure requirements assume that merely establishing metrics will succeed in ensuring agency compliance with legislative expectations. In this case, one is tempted to see data disclosures and performance metrics as ideological in nature: metrics are established because that is the way public agencies are managed successfully. One needs to merely utter the mystical incantation “Sunlight is the best disinfectant,” and agencies will instantly comply with their legislative masters. Neither of these are, of course, particularly compelling explanations, both requiring the assumption that agencies’ legislative principals are either sufficiently unintelligent or sufficiently unprincipled to desist from policies with high costs and negligible effects. While legislatures are certainly not immune to the occasional idiot among their members, to say that legislatures on the whole consist of people who are smart enough to gain and hold office but not smart enough to govern is an extraordinary claim that, even in a contemporary political environment in which Trumpism and Brexit dominate the headlines, requires extraordinary evidence.

A third option is that disclosures and metrics work through effects other than sanction. McCubbins and Schwartz (1984) confronted a similar problem with the problem of oversight generally, questioning what was then scholarly consensus that the traditional methods of legislative oversight were ineffective. They, and later—famously enough to become a mononym—McNollgast² (McCubbins, Noll, and Weingast 1987, 1989) posited instead that oversight took place through structural relationships and administrative processes designed to lead agencies to follow the legislature’s bidding without direct intervention, in particular through structures and processes that “stack the deck” in administrative decision-making in favor of legislatively preferred constituencies.

This paper takes a similar approach with regard to metrics and disclosure requirements. Using a case study of the graduation rate data collected through the United States Department of Education’s (USED)³ Integrated Post-Secondary Education Data System (IPEDS), I show that one way in which metrics and disclosure requirements act as oversight processes is by stacking the deck in agency decision-making in favor of preferred constituencies. By tailoring information that agencies provide to the needs of those groups favored by the legislature (or higher levels of authority within the executive branch), higher education institutions are required to report on how well they meet the need of those favored constituencies rather than on their overall performance. This is a somewhat different argument to that made by McNollgast: reporting does not remedy information asymmetries between principal and agent but rather creates information asymmetries between

2 And thus to treat themselves as a non-gendered single author on its web site, e.g., “McNollgast is most well-known for its early articles that helped introduce positive political theory (PPT) into the study of administrative law” (Weingast 2013).

3 Common initials for the US Department of Education include both “USDE” and “USED.” This paper uses the latter in conformity with the department’s own—admittedly unfortunate—usage on Twitter (@USEDGov) and to avoid confusion with the United States Department of Agriculture (USDA). “DOE” is also sometimes used, but this most commonly refers to the United States Department of Energy.

agencies and constituencies and between favored and unfavored constituencies. Institutions then adjust their performance to the needs of those constituencies because those constituencies are able to make more effective and legitimate political claims than those unfavored by the information the institutions disclose.

This paper proceeds in three main sections. I first review the McNollgast oversight model, particularly focusing on the deck-stacking mechanisms within the model, developing an informal model of information disclosure from a deck-stacking perspective. This model reflects a critical-constructive rather than a realist theory of information that lends itself to understanding data as a political construct. I then present a history of efforts to develop a federal graduation rate that institutions are required to report. This approach culminated in the IPEDS Graduation Rate Survey (GRS) methodology. I show that the GRS methodology was designed to support the needs of traditional college students, who were—and continue to be—a politically favored minority when the GRS was developed, by requiring institutions to report on how they meet the needs of such students rather than of their student body generally. Finally, I examine the development and implementation of the IPEDS Outcomes Measures, designed as an alternative to the GRS methodology that arose along with the political power of the for-profit higher education sector and was critical to achieving political outcomes favorable to that sector.

STACKING THE DECK WITH INFORMATION

It is tempting to begin understanding data reporting⁴ from the conventional perspective of data realism: data is an internally and externally consistent and objective representation of reality. It

⁴ For the purposes of this paper, I will use “metrics,” “reporting,” and “data disclosure” more-or-less interchangeably. This is not to say that these are identical processes, but rather to say that the same mechanism, explained in this paper, applies to data that is provided (1) to other government actors to

would also be wrong. A critical-constructive approach to information sees information as rooted in choices among alternatives that construct informational representations. Data is a construct built by conscious decision-making that translates reality into data by selecting one data state from among the many possible data states that correspond to reality, a translation based more on social than on technical considerations. Recognizing that constructive process allows information practices to be analyzed critically in the sense of Young's key insight into critical theory:

Critical theory is a mode of discourse which projects normative possibilities unrealized but felt in a particular given social reality. Each social reality presents its own unrealized possibilities, experienced as lacks and desires. Norms and ideals arise from the yearning that is an expression of freedom: it does not have to be this way, it could be otherwise. (Young 1990, 6)

For example, there are many ways in a database to represent gender, and no technical constraints on those representations. The decision to represent a binary or complex gender structures is primary, even if it is made through an unconscious assumption rather than a conscious decision. Even limiting a data system to binary representations, one must decide whether to represent biological sex or gender expression and the range of permissible values: whether to require a binary value in the data field, to allow a "not disclosed" value, or to allow the field to be null. The many different representations can make significant differences in policy outcomes, such as the ability of a higher education student to represent—and thus address the needs—of transgender students. Structuring

assess performance of an organization (metrics); (2) to other government actors for more general purposes of policy administration such as research or policy design (reporting); or (3) provided to the public, whether directly or through another agency (disclosure).

data is, therefore, necessarily a political act, often with explicitly political aims and always with political consequences (Johnson 2015).

One of those aims is, of course, oversight. It is, to be sure, quite common that data is used in ostensible oversight processes, but they present the same problem that McCubbins and Schwartz noted: agencies that present data that reflects poorly on them often face no consequences, with many data reporting mechanisms that are explicitly about oversight completely lacking any mechanism for sanction. The Utah System of Higher Education (USHE), for instance, adopted a series of system performance metrics with associated goals for each institution within the system in March 2019. This came in response to 2017 legislative requirement that the State Board of Regents “establish measurable goals and metrics and delineate the expected contributions of individual institutions of higher education toward these goals” (Millner 2017). While the USHE metrics included institutional goals, in neither the USHE metrics nor the underlying law includes any mechanism to hold institutions or the system accountable for achieving these goals. How, then, do metrics and similar data reporting processes provide legislative or senior executive oversight?

This can be seen as a particular case of the general problem of apparently lax legislative oversight. Recognizing the scholarly consensus of the late 1970s, McCubbins and Schwartz wrote:

Scholars often complain that Congress has neglected its oversight responsibility: despite a large and growing executive branch, Congress has done little or nothing to oversee administrative compliance with legislative goals. As a consequence, we are told, Congress has already lost control of the executive branch: it has allowed the executive branch not only to grow but to grow irresponsible. In popular debate as well as congressional scholarship, this neglect of oversight has become a stylized fact: widely and dutifully reported, it is often bemoaned, sometimes explained, but almost never questioned. We question it. (McCubbins and Schwartz 1984, 165)

This was especially peculiar given the strong evidence that by and large agencies did typically deliver results favored by Congress (see, for example, the works cited in McCubbins, Noll, and Weingast 1987, 249).

McCubbins and Schwartz's questions led them, and more extensively McNollgast, to suggest that oversight took place not through reactive measures (the textbook means of punitive budgeting, advice and consent to appointments, and statutory revision) but through structure and process (McCubbins, Noll, and Weingast 1987, 1989; McCubbins and Schwartz 1984). Most famously, McNollgast argued unified administrative procedures and oversight by arguing that administrative procedures served as a substantive, not simply procedural, check on the bureaucracy. Faced with expensive needs for monitoring the bureaucracy, McNollgast argued that administrative procedures we designed to achieve substantive outcomes by, first, mitigating the information advantages of the bureaucracy over the legislature and, second, allowing preferred constituencies to directly assert their preferences to the bureaucracy rather than working through legislative action.

The latter insight followed from McNollgast's key recognition about member's policy preferences: In many cases, member's preferences are simply that which satisfies preferred constituencies rather than for a specific substantive outcome. That makes it possible for administrative procedures to do the work of oversight directly:

The most subtle and, in our view, most interesting aspect of procedural controls is that they enable political leaders to assure compliance without specifying, or even necessarily knowing, what substantive outcome is most in their interest. By controlling processes, political leaders assign relative degrees of importance to the constituents whose interests are at stake in an administrative proceeding and thereby channel an agency's decisions toward the substantive outcomes that are most favored

by those who are intended to be benefited by the policy. (McCubbins, Noll, and Weingast 1987, 244)

This thesis, which has come to be called the “deck-stacking” approach, explained how oversight could take place without apparent action by Congress. With the deck stacked in favor of preferred constituents in the process that agencies themselves used to make policy and Congressional preferences being nothing more than satisfying those constituencies, routine Congressional action is unnecessary to make agencies comply with legislative expectations.

McNollgast argue that administrative procedures play an important role in policymaking by remedying information asymmetries that work to the advantage of bureaucratic independence. This is, to be sure, a significant advantage of administrative procedures, one that often plays an important role in many oversight processes. But there is a limitation to the effectiveness of this. As McNollgast notes, “Administrative procedures can be solutions to the problems of noncompliance by agencies only if procedures actually affect the outcomes of decisionmaking processes” (McCubbins, Noll, and Weingast 1987, 253). When the decision is in the hands of the agency rather than the legislature and the legislature lacks an effective method of sanction, it is not at all clear how remedying information asymmetry can remedy oversight. And in many cases, disclosure requirements amplify rather than remedy information asymmetry, for example, by requiring data collection and management by the agency itself (as in the IPEDS system), by requiring that data be disclosed to the public but not be collected centrally (as under the Cleary Act campus safety disclosures), or by in fact preventing information from being collected (for example, the bar on student unit records under the Higher Education Act). From McNollgast’s perspective, it would seem that in many cases Congress deliberately creates policies to enhance information asymmetries and, therefore, bureaucratic independence.

This seems implausible given the efforts Congress (and to a lesser extent the Presidency) frequently puts into selecting the data that agencies must collect, report, and measure themselves against. Why would they put so much effort into a relatively low-profile activity that runs counter to their own interest? McNollgast provide their own answer. It is not at all difficult to understand required metrics as having the same deck-stacking effect as administrative procedures. Data requirements can often be better understood as *ex ante* controls *creating* information asymmetries that empower preferred constituencies. No data is universally useful, and (in principle) no rational representative chooses a metric or demands that data be reported without considering how their favored constituencies will fare under these requirements. Data should be seen, then, as *prima facie* supporting the needs of specific constituencies. And agencies, knowing that they are required to report data that will demonstrate how well they are meeting the needs of these constituencies, tailor their actions to those needs rather than to the overall performance of the agency. By designing metrics, reporting requirements, and data disclosures into legislation, legislators constrain the behavior of agencies such that an agency will, on its own, secure the favored outcome, defined as the outcome that is favored by favored constituencies.

MEASURING GRADUATION RATES

The collection of graduation rates for United States higher education institutions provides a useful case demonstrating the deck-stacking approach to data requirements. In the United States, authority over higher education is divided between the federal and state governments. Unlike the states, the federal government largely does not operate universities. It plays some regulatory role, especially with regard to the private accreditation bodies that play the most direct role in regulating universities, but its major role is funding higher education through research grants and student financial aid programs (known commonly as “Title IV” programs after the section of the Higher

Education Act of 1965 that created the major programs in use today). The universities eligible to participate in federal financial aid programs for higher education bear significantly increased regulatory burdens consequent to receiving federal money. This chiefly takes the form of reporting requirements, most notably reporting to IPEDS. IPEDS is the major postsecondary education data reporting process used in the United States. It requires educational institutions that offer Title IV financial aid to provide an extensive list of information about the institution to the National Center for Education Statistics (NCES), which then makes the data available publicly via the Internet. IPEDS consists of a series of surveys collecting a wide range of aggregated⁵ data on institutional characteristics, admissions, enrollment, completion, financial aid, human resources, and institutional finance. IPEDS does not include any direct measures of student performance, such as grade point averages, standardized test scores for post-graduate admissions, or licensing exam statistics.

One of the more challenging data elements in IPEDS has been graduation rates, which are collected through the GRS. While the collection of education data dates to 1867, graduation rates for post-secondary universities in the United States have only been collected since the 1997-98 academic year (Fuller 2011, 5–6). Between 1966 and 1987, the Higher Education General Information Survey (HEGIS), IPEDS' immediate predecessor, collected data on the number of degrees awarded; the HEGIS completions survey was replaced by the IPEDS Completions Component in the 1987-88 academic year, collecting data for the number of degrees and other formal awards conferred annually. While additional information has been added to the IPEDS Completions Component, especially as required under the 1998 amendments to the Higher

⁵ The Department of Education is barred from collecting student unit record data under sec. 113 of the Higher Education Opportunity Act of 2008. While efforts to change this are very nearly constant, none have yet come particularly close to success.

Education Act (HEA) of 1965 and the Higher Education Opportunity Act (HEOA) of 2008,⁶ the basis of the IPEDS Completions Component remains reporting on the number of awards and the number of students who receive them (Fuller 2011, C1–3). Neither HEGIS nor the IPEDS Completions Component by themselves collect graduation rates (i.e., the percentage of students graduating), nor could the IPEDS Completions Component be combined with other IPEDS components to calculate such a rate prior to the creation of the GRS.

Both HEGIS and the original IPEDS components operated in an era when the federal government collected data primarily for research purposes. One of the Congressional purposes in the Department of Education Organization Act of 1979⁷ was “to promote improvements in the quality and usefulness of education through federally supported research, evaluation, and sharing of information” (sec. 102), a purpose furthered with the creation of the Office of Educational Research and Improvement (sec. 209) that had responsibility for HEGIS and subsequently, until a statutory reorganization of the department in 2002⁸, IPEDS. The orientation toward research-driven data collection changed significantly with the Student Right to Know and Campus Security Act of 1990,⁹ shifting emphasis from supporting research to providing “consumer” information. The Congressional findings in the act showed concern with student performance and the universities’

6 Higher Education Act, Pub. L. No. 89-329, 79 Stat. 1219 (1965); Higher Education Act Amendments, Pub. L. No. 105-244, 112 Stat. 1581 (1998); Higher Education Opportunity Act, Pub. L. No. 110-315, 122 Stat. 3078 (2008). The acts discussed in this paper are all largely codified in 20 U.S.C. ch. 28, complicating the analysis presented here which relies on the legislative history rather than current codification. Citation of section numbers is thus to that used in Statutes at Large except as otherwise noted with a reference to the United States Code.

7 Pub. L. No. 96-88, 93 Stat. 668 (1979).

8 Education Science Reform Act, 116 (2002) Stat. 1940

9 Pub. L. No. 101-542, 104 Stat. 2381 (1990).

required educational commitments, in particular finding that “knowledge of graduation rates would help prospective students and prospective student athletes make an informed judgment about the educational benefits available at a given institution of higher education” (sec. 102). The language of data submission also changes, from a language of collection by USED to one of disclosure by universities (sec. 103). This change in emphasis gave rise to the collection specifically of graduation rates rather than just counts of degrees awarded. Section 103(a) of the Student Right-to-Know Act requires universities to make a “Disclosure of Completion or Graduation Rates” as an amendment to section 485(a)(i) of the HEA, which notably concerns “information dissemination activities for prospective and enrolled students” about academic programs and financial aid, which otherwise uses a quite different language of passive availability of information rather than the positive obligation of disclosure.

The calculation of graduation *rates* is significantly more complex than that of completions, however, as it includes both time and base population dimensions. At least two questions immediately arise: which students to include in the denominator of the rate, and when rates will be calculated relative to the student. Not all student groups are equally useful in making an informed judgment about educational benefits. Students not seeking degrees, for example, do not complete a program in any traditional sense, and prior credits earned makes it difficult to treat first-time and transfer-in students as part of the same statistical population. The time constraint is equally complicated; part-time students are likely to take much more time than full-time students, while students who transfer into the institution will in principle take less time at the institution from which they graduate than first-time students. These choices reflect the initial informational situation posited by the critical-constructive theory of information described in the previous section: There many possible ways of representing (and in fact, of constructing, but that’s another episode) whether students complete their degrees which cannot be reduced to a single approach solely on technical

considerations alone. There is thus a need to define—through a social process—how the reality of students graduating will be translated into ostensibly objective data points.

The IPEDS graduation rate was defined politically through the federal legislative and regulatory rulemaking processes. Student Right-to-Know initially defined the base population as “certificate- or degree-seeking, full-time students entering such institutions.” It also defined three classes of students who could be excluded from the graduation rate cohort upon leaving without graduating: those who left to serve in the military, in a religious mission, or in the Peace Corps. The act defines completion as graduation from the program (or, recognizing the transfer role of community colleges, transfer to another institution for which the program provides preparation) “within 150 percent of the normal time for completion of or graduation from the program” (sec. 103). USED published final regulations implementing the Student Right-to-Know requirements in 1999,¹⁰ which further specified the graduation rate cohort to include, at most universities, only those students who entered the institution during the fall term (with first-time students who entered in the summer and continued to fall considered to have entered in fall), and added two more categories of exclusions: students who are deceased or who are totally and permanently disabled.¹¹ This was further codified by HEOA in 2008, which added a 200% of program time graduation rate, added a recalculation provision for schools with large numbers of exclusions, and gave responsibility to NCES for collection through IPEDS (secs. 132, 488).

10 Information on Completion or Graduation Rates, 34 C.F.R. 668.45 (2009).

11 Neither the restriction to fall entry nor the additional exclusions are explicitly authorized beyond the general authorization in the Educational Sciences Reform Act of 2002 to collect data that is “useful for policymaking at the Federal, State, and local levels” (sec. 157), which is the current statutory basis for IPEDS.

IPEDS operationally implements these requirements by defining the GRS cohort as “all students who enter an institution as full-time, first-time degree or certificate-seeking undergraduate students during the fall term of a given year” (National Center for Education Statistics n.d., “Fall Cohort”), and the graduation rate as the 150% program time rate under Student Right-to-Know. IPEDS collects the initial cohort size during the year students enter the institution. It then collects the number of graduates and the number of authorized exclusions at 100%, 150%, and at 200% of program time to calculate the graduation rates (colloquially, the “GRS100,” “GRS150,” and “GRS200” rates), calculating them as the number of completers divided by the adjusted (initial less exclusions) cohort (National Center for Education Statistics n.d., “Graduation Rate”) for the highest undergraduate degree offered by the institution as well as for all undergraduate degrees and certificates. The rate explicitly excludes students entering in fall terms as part-time or transfer-in students and all students entering in other terms. This definition, with emphasis on the GRS150 rate, serves as the standard definition of graduation rates in United States higher education.

While this was by no means the case when it was defined in Student Right-to-Know, in the 21st Century this definition of graduation has become a significant means by which education funding is allocated: it is thus something that constituencies are willing to fight over. It does so, however, mainly through the states rather than through Congressional oversight. As of 2015, 38 states used or were implementing some form of performance-based funding to allocate resources to higher education institutions. In 16 of these, GRS rates, nearly always including the GRS150, are used as part of performance funding formulae. Utah used the GRS100, GRS150, and GRS200 for completion and the GRS cohort for retention rates initially before later moving to a completions and enrollment metric. Florida also used all three GRS rates for completion and the GRS cohort for retention. Illinois, Kansas, Michigan, included the GRS150 in its formula for four-year institutions. Indiana and Missouri used the GRS100 for completion. Montana used the GRS cohort for

retention; North Carolina used it for a 12-credit hour progress rate and a success measure. Many other states used retention and completion rates without publicly specifying the GRS cohort or a GRS rate, but due to the need for national comparison it is all but certain that these states were using GRS-based metrics (National Conference of State Legislators 2015). A change in the GRS150 definitions, then, has the potential to reallocate millions of dollars in higher education funding.

Constituencies

THE GRS AS AN OVERSIGHT MECHANISM

From a classical view of administrative oversight, one might conventionally expect that Congress would seek the definition of graduation rates that most fully ensures that its policy goals are met and that institutions use federal funding wisely. This case presents a serious challenge to that approach: The GRS150 has no enforcement mechanism. USED cannot sanction institutions for low graduation rates. The most it can do is threaten accrediting bodies whose member institutions perform poorly, and indirect sanction at best. Accrediting agencies have in some cases responded. the Council of Regional Accrediting Commissions (C-RAC),¹² faced with increased federal pressure to scrutinize institutions with low graduation rates, announced in 2016 that regional accreditors would heighten oversight of institutions with “graduation rates” (which has been universally interpreted to mean the GRS150) below threshold values. But there is no indication that accreditors are willing to deny institutions accreditation on graduation rates alone. Performance funding is significant, but even more tenuously connected to Congressional intent as it is entirely a state-level policy framework. Like many metrics—and like the fundamental challenge that McNollGast

12 Presumably because someone wisely decided an acronym that could be pronounced “crack” might not project the most favorable image.

identified in Congressional oversight—it seems that Congress has no way to oversee performance on the GRS150.

The essential insight of the McNollGast approach to administrative procedures is the key to understanding how such a flawed metric came to dominate U.S. higher education. Members of Congress do not have, in most cases, specific policy preferences of their own; their preference is that their preferred constituencies are satisfied with the policy. In this light, the Congressional intent of the GRS150 is not hard to understand. The language of informed choice, consumer information, and on-time graduation combines with the specification of first-time, full-time students in the Student Right-to-Know Act to make clear that required reporting—and policy analysis by the Department of Education based on the data reported—is intended to favor traditional students from traditional families attending traditional institutions. The cohort is defined as, essentially, students entering university immediately after high school or following a traditional gap year, beginning in the fall term. Students who enter under other conditions are excluded from the reporting even as such students are the majority in U.S. higher education. This points to a targeting of a specific view of a “normal” student, one who comes from a background whose family is most likely to participate in the political process and attends institutions that are likely significant political actors in their own rights.

The 150% time restriction is especially illustrative of the GRS150’s normalization of the traditional student. At a typical U.S. university, students taking the minimum credit hours required to be classified as a full-time student (typically 12) would nominally graduate from a bachelor’s degree program in five years, 125% of program time. But given the incremental number of credit hours for which students typically enroll (in blocks of three or four credit courses in most cases), the maximum practical number of credit hours for a part-time student is nine rather than 11; such students would graduate in 14 semesters, or 175% of program time. And in 1991-92, as these

standards were being developed, the average student at public and private non-profit degree granting universities took only 16.95 credit hours per *year*, taking 15 semesters—188% of program time—to graduate from a typical bachelor’s degree program. The 150% time standard thus cannot be understood as representing the majority of students or as accounting for part-time attendance without also understanding those who selected and implemented it as at best spectacularly uninformed. Rather the 150% time standard should be seen as the time by which all “normal” students would have graduated—and thus as defining what constitutes normalcy itself.

By setting the GRS150 as an essentially national standard, Congress can be seen as requiring that institutions pursue policies that favor (or at least meet the needs of) those traditional students regardless of their effects on other students, about whom neither USED nor Congress know much. The GRS150 remedies an information asymmetry between institutions and Congress’ preferred constituencies by eliminating the additional information available to institutions (about students not in the GRS cohort) from consideration in the policy sphere. Graduation rates for part-time transfer students are (at least until the Outcome Measures gain currency) not standardized; an institution’s report of them is anecdote rather than national data and thus not part of the graduation rate.

Universities must, therefore, respond to the needs of the educated, middle-class voters favored by Congress because universities must report a graduation rate specific to their needs. No matter what an institution can show about completions per FTE or extended graduation rates, the traditional families of traditional students who expect a traditional university experience are in a position to ask, “But what about your *graduation rate?*,” confident (or even without considering to the contrary) that “graduation rate for people like my child” is implicit in the question.

When viewing this from the relationship between legislatures and (potentially) favored constituencies, setting metrics or data disclosure requirements remains a distributive form of politics: Favored groups are given opportunities to intervene in the political process that other groups lack. A

university is not given enumerated powers by Congress, NCES, NWCCU, or USHE beyond which it cannot go. It retains the full authority to make policies prioritizing whatever students it wants to prioritize. But it is told by an agency with the power to effectively terminate the institution's operations (by denying it eligibility to offer federal financial aid) that it will be subject to "special attention" if the graduation rate for traditional students falls below 25%. Whether the GRS150 is an appropriate measure for the institution or not, the university will be required to provide "information about the conditions that may have led to low graduation rates and how the institution is working to improve" (Council of Regional Accrediting Commissions 2016), information that must show how the university addresses the needs of the targeted constituency.

THE DEMISE OF THE GRS REGIME

One point of agreement throughout higher education is that the GRS150 is, empirically speaking, an ineffective performance measure for many institutions. In 2016, C-RAC, implicitly noted the much-remarked weaknesses of the GRS made apparent by a quarter-century of policy debates in describing how accreditors would evaluate graduation rates (Council of Regional Accrediting Commissions 2016). C-RAC's concern reflects a much longer history of criticism. As the Student Right-to-Know requirements were being implemented it was already clear that the majority of students were not included in the cohort and if they were they would not meet the 150% time standard. Even in 1990 a majority of students were part-time and thus excluded from the GRS cohort. The cohort also excluded all students who had transferred into an institution (still counting them toward the institution at which they began) and students who entered in the spring (who simply did not exist in educational data). The 150% of program time standard has also been extensively criticized, especially by community colleges and the for-profit sector, as data from groups such as the Consortium for

Student Retention Data Exchange (CSRDE) collects data out to 12 years, allowing institutions to show that students continue to complete degrees well beyond 6 years.

Congress was surprisingly uncritical of USED's definition of graduation rates; if anything, Congress has largely focused its criticism on USED's failure to improve institutions' performance on the GRS150. Change only started after nearly two decades. As required by the section 488 of the HEOA, USED's convened a Committee on Measures of Student Success to develop a series of recommendations to support more accurate description of student success for two-year institutions (Committee on Measures of Student Success 2011). NCES subsequently convened several Technical Review Panels to develop a broader set of Outcomes Measures (TRP #37, February 2012; TRP #40, October 2012; TRP #45, September 2014; TRP #50, August 2016) leading to the implementation of the Outcome Measures component to IPEDS in 2015-16 alongside the existing GRS component. The Outcomes Measures define four distinct cohorts (a matrix of full-time or part-time enrollment and first-time or transfer-in students) and measure graduation, transfer, and ongoing enrollment at eight years after entry regardless of program time. IPEDS also expanded collection of GRS200 data through the same process (Aliyeva, Cody, and Low 2018). While the GRS150 remains the standard definition of completion in most discussions, the Outcomes Measures are beginning to have some relevance, especially for institutions where there are large gaps between GRS-based rates and Outcomes Measures.

The development of the Outcomes Measures would, on the surface, seem to challenge this argument. There are two matters of concern here. The first is that the Outcomes Measures muddy the waters for traditional students. Under the GRS regime, there was one undisputed primary measure of achievement that clearly favored a politically advantaged minority. The Outcomes Measures recognize a wider range of constituencies as normal parts of the higher education landscape (traditional students are only one of four Outcomes Measures cohorts). As it is collected

alongside the GRS measures, there is no longer a fully dominant data point for evaluating institutions, allowing institutions to provide meaningful counternarratives. A second, more specific concern for this paper's approach is that the Outcomes Measures are explicitly meant to help two-year colleges, which generally serve politically disadvantaged constituencies. HEOA specifically authorized the committee to "recommend additional or alternative measures of student success for such [two-year] institutions in light of the mission and role of such institutions" (sec. 488(a)(3)). The Outcomes Measures seem a rather ineffective way to serve (either intentionally or through what Congress sees as a happy coincidence) the favored constituencies or traditional students and traditional institutions.

The development of the Outcomes Measures is best understood as reflecting a change in the underlying politics of higher education in the United States. The first clue to this is the absence of any Congressional interventions when NCES explicitly exceeded the authority granted to the advisory committee. NCES did not adopt the Outcomes Measures for two-year colleges, as it was authorized to do; it adopted them for all institutions. That this did not seem to trouble Congress suggests that its concerns were elsewhere. That elsewhere is widely recognized to be the for-profit sector. At the time HEOA was being written and implemented, for-profit higher educational institutions emerged as significant providers of bachelor's and graduate degrees rather than their traditional largely vocational role. This made for-profit institutions the major consumer of federal student aid, with the highest rates of borrowing (and thus the most revenue dependence) of any higher education sector; they also have significantly lower graduation rates (Scott-Clayton 2018, 6). This made for-profit institutions a major political player in U.S. higher education (Angulo 2016), increasing its annual lobbying budget from \$300,000 in 1999 to \$11.2 million in 2011 and increasing its campaign contributions to members of Congress from \$108,000 in the 1990 election cycle to \$2.7 million in the 2012 election cycle (Center for Responsive Politics 2019). For-profit institutions were

also significant players in a number of political initiatives concerned with metrics and disclosures in this period, especially the demise of the Obama Administration's Gainful Employment rules that targeted for-profit institutions.

It thus comes as little surprise that between 2008, when Congress directed USED to consider metrics appropriate to two-year institutions, and 2014, when NCES implemented the Outcomes Measures, Congress would have come to see the expanded use of such metrics favorably: They worked to the advantage of a favored constituent. They did so particularly at the moment of a significant challenge to the for-profit sector in the form of President Obama's higher education policy agenda, which stressed access, affordability, and completion driven by a focus on demonstrated outcomes. The Obama Administration's signature initiatives, the Postsecondary Institution Ratings System (PIRS) and a revamped College Scorecard, were intended to curb perceived abuses in the for-profit sector that led to high debt and low levels of success by publicizing institutions with poor outcomes. PIRS would have further stacked the deck toward traditional institutions and the traditional, middle class constituents that they serve. A Congress more favorably disposed toward the for-profit sector (and unfavorable toward anything that might look like a victory for those who supported President Obama) would be expected to allow the Outcomes Measures to go forward in order to re-stack the deck in favor of a constituency with growing power, in this case providing for-profit institutions with a counter-metric with which to argue that they were achieving much better outcomes than the GRS would suggest, largely because they served students that the GRS ignores. The emergence of the Outcomes Measures made agreement on the essential metric for completion impossible ultimately leading to the failure of PIRS, furthering the for-profit sector's political agenda.

CONCLUSION

This paper has demonstrated that one political function of metrics, data reporting, and data disclosure requirements is to achieve passive legislative oversight by stacking the political deck in favor of preferred constituencies in ways similar to McNollgast's analysis of administrative procedures. Data, it argues, is a process of translating reality into a data system by selecting one among the many possible data states that can represent that reality, a process that makes data an instrument of political action. The IPEDS Graduation Rate Survey developed a metric that became the national standard in spite of poorly measuring degree completion at most universities. That metric, however, did focus institutions on a particular constituency, traditional students of middle or upper-middle class backgrounds, a constituency that is generally favored by Congress. Institutions, required to very publicly report a number that indicated how well they meet the needs of this constituency, tailor their efforts toward improving that number rather than overall performance. The institutions thus achieve Congressional policy goals that are no more specific than implementing such policies as the constituency will find favorable to itself without having to expend effort in active oversight measures. This process is an ongoing one in which new Congressional preferences among constituencies support new metrics favorable to the newly preferred groups, as seen in the development of the IPEDS Outcomes Measures.

The intent of this paper is to identify this mechanism in order to further the understanding of both oversight mechanisms and the political use of data. I do not, by any means, assert that this process is universal, and believe that the particular pattern of data politics is likely strongly contingent situationally. This process is certainly one of many ways in which data may be used politically, and one of many possible low-cost oversight mechanisms, but in any given case there may be very different mechanisms present. While it is beyond the scope of this paper to provide more than a speculative analysis of that contingency, it seems plausible that the deck-stacking

approach to data is most likely in situations where members of Congress have no inherent policy preferences of their own, especially issues with little partisan or ideological salience, but either have active constituencies that are significant to the member or that provide opportunities for credit-claiming that will be recognized by broad audiences. In this case we have seen both situations. One notes as well that these uses of data can be unintended but still has oversight effects, as seems likely the case in the Outcomes Measures. The Outcomes Measures suggest as well that political opportunism and policy entrepreneurship (Kingdon 1995) are likely important to the development of these kinds of data regimes.

The extent to data as a political act is underappreciated by many who study data-driven processes, and especially so by those who advocate assessment-driven policy and administrative processes. This is largely due to the misplaced realist view of information. Even a casual review of political actors, however, will show that they are keenly aware of the politics of data; the longstanding ban on federal funding of gun violence data clearly establishes that political actors know the value of creating information asymmetry. By taking a critical-constructive view of information its inherently political nature becomes apparent and makes possible serious questioning of the fetishism of data seen in contemporary higher education administration and public administration generally.

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