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„Tennessee: the ‘State’ of the Right to Education in the United States“

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1 Introduction

Shortly after the establishment of the United Nations, the organisation's Economic and Social Council was tasked with the creation of the Universal Declaration of Human Rights (UDHR).[1] The United Nations Educational, Scientific, and Cultural Organisation (UNESCO) supported the Council in this goal by calling upon philosophers to submit their theories for the philosophical basis of human rights. In an essay supporting the inclusion of a "right to education" in the UDHR, American professor I.L. Kandel expressed his belief that education was "the essential foundation for the enjoyment of human rights.[2]" Kandel went on to express that any right to education should provide a foundation for the realisation of rights for learners themselves, and that it should also promote responsible engagement in society by building respect for the rights of others.

Upon the adoption of the UDHR on 10 December 1948, the right to education became recognised as a universal human right. The enshrined right echoes Kandel's sentiments regarding the right to education, calling for the provision of an education that both yields personal benefit and also benefits broader domestic and global society.

While the United States voted in favour of the adoption of the UDHR, it failed to legally protect the right to education through ratification of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC). Despite this, education plays a critical role in supporting individuals in the enjoyment of their human rights, including the political and civil rights the United States has protected through ratification of the International Covenant on Political and Civil Rights (ICCPR).

Included in international protections for education is the right to higher education. In the United States, individuals with postsecondary degrees experience poverty at lower rates, live longer, and are more politically engaged. The state of Tennessee has gained

[1] J. Maritain, Introduction, Human Rights: Comments and Interpretations, UNESCO, p. I.
[2] I. Kandel, Education and human rights, Human Rights: Comments and Interpretations, UNESCO, 25 July 1948, p. 233.

national attention as a leader in higher education through the creation of innovative programs to promote accessibility and affordability. This thesis will examine higher education in the United States generally and look to Tennessee as a potential model for increasing access nationwide, leading to a greater realisation of the right to education itself and additional rights dependent on it.

1.1 Research Questions

a) What level of educational attainment in the United states best fulfils the minimum standards for the right to education enshrined in international human rights documents?
b) To what extent do recent innovations on higher education policy in Tennessee meet these standards?
c) How can broader higher education policy in the United States be informed by the successes and gaps in Tennessee policy?

1.2 Methodology

This thesis takes an interdisciplinary human rights-based approach to assessing the right to education in the United States. This is achieved through examining the role higher education plays in the United States, identifying a standard measure of educational attainment that best meets human rights standards, and assessing the state of the right to education Tennessee, a national leader in higher education accessibility and affordability.

Chapter 2 establishes international, national, and state context through a review of relevant norms, legislation, and literature. Broad human rights theories are applied to the right to education, providing a theoretical and practical basis for discussing the right to education in the United States and Tennessee.

Chapter 3 discusses the role of higher education in the United States and identifies a level of educational attainment that best meets international human rights standards.

Quantitative methods are used to examine the impacts of higher education on key indicators. Qualitative methods are utilized to discuss literature.

Chapter 4 provides an overview of the role of the United States Government in the United States. Quantitative and qualitative methods are used to analyse the implications of federal funding for higher education.

Chapter 5 examines higher education in Tennessee. Qualitative methods are used through the discussion of state structure and policy in postsecondary education. A quantitative approach is taken to analyse outcomes for Tennessee students.

2 Literature Review

This review of literature will establish the context for analysis of the right to education in the United States, and Tennessee specifically, by: identifying the right to education in international human rights legislation and standards; examining the conception of the right to education, or lack thereof, in the United States Constitution and Tennessee State Constitution; discussing the rationale for analysing the realisation of the right to education in a country that does not explicitly acknowledge the right; and identifying a minimum standard of the right to education.

2.1 The Right to Education in the International Human Rights Framework

The right to education is an economic and social right that is not only a right in itself but has also been recognized as an "empowerment right".[3] Its identification as an empowerment right is justified by the fact that access to a number of other rights is made possible through the realisation of the right to education. This section will examine the right to education as enshrined in the international human rights framework. Included in this analysis will be the UDHR, ICESCR, and CRC. It is important to note that the legally binding human rights treaties included in this section have been signed by the United States, but they have yet to be ratified. The rationale for measuring the state of a human right that has not been acknowledged by the country can be found in Subsection 2.3 of this chapter.

Though not discussed in this chapter, additional relevant documents that build upon the right to education include the following documents from the UNESCO: the Convention against Discrimination in Education; the World Declaration for Education for All; and the World Declaration on Higher Education for the Twenty-First Century: Vision and Action.

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[3] United Nations, Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, sec. 1.

2.1.1 The Universal Declaration of Human Rights

The UDHR, a landmark document in the recognition of human rights, identifies a common standard of achievements for all people and all nations. While not legally binding, the document serves as the foundation from which all human rights law is derived.

The right to education is enshrined in Article 26 of the UDHR. Article 26(1) of the enumerates the types of education should be made available and by what degree. The subsequent section of the article goes on to describe a number or individual and societal goals that should be met through the enjoyment of this right, such as the "full development of the human personality" and the promotion of "understanding, tolerance and friendship among all nations, racial or religious groups."

Of particular relevance to this thesis, Article 26(1) provides guidance regarding the provision of higher education, stating that "higher education shall be equally accessible to all on the basis of merit."

2.1.2 The International Covenant on Economic, Social and Cultural Rights

The adoption of the UDHR established an ideal standard for the realisation of human rights across the globe. Following its adoption in 1948, the United Nations Human Rights Commission was tasked with the creation of an international legal framework derived from the rights enumerated in the Declaration. The products of the Commission's efforts were the International Covenant on Civil and Political Rights (ICCPR) and the ICESCR. These two documents, along with the UDHR, make up what has become known as the "International Bill of Rights." This section will focus on the right to education found in Article 13 of the ICESCR.

Article 13, the longest section of the document, expands upon the right to education as identified in the UDHR. Article 13(1) closely resembles the enumerated goals of education, describing the individual and societal gains derived from education. Article 13(2), however, further expand upon the types of education included in the right and the degree to which they should be made available. In this section, the article also calls for the "progressive introduction" of free education of all types, referring to Article 2(1) of the ICESCR, which

calls on parties to the Covenant to "take steps … to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."[4]

Article 13(2)(c) provides for the right to higher education, including a call for the "progressive introduction of free education." Additionally, where the UDHR called for higher education to be made available based on the "merit" of individuals, the ICESCR states that higher education should be made available based on the "capacity" of individuals. In General Comment No. 13, the Committee on Economic, Social and Cultural Rights offers clarity on the meaning of "capacity," stating that an individual's capacity should be assessed on the basis of their relevant experience and expertise.[5]

2.1.3 Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC) entered into force on September 2, 1990 and seeks to offer supplemental protections to children. In its preamble, the document references other international human rights documents that offer protections for children, but goes on to highlight the unique vulnerabilities faced by those under the age of 18.[6]

While enrolment in higher education typically takes place once individuals are already 18 years of age, the Convention on the Rights of the Child acknowledges the importance of education, including higher education, to children's development and their ability to "be fully prepared to live an individual life in society."[7] Additionally, due to the "merit" and "capacity" qualifications for individual access to higher education, as identified in the UDHR and ICESCR respectively, further protections to the rights of children are

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[4] United Nations, General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, art. 2(1) (ICESCR).
[5] United Nations, Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, sec. 1.
[6] United Nations, General Assembly, Convention on the Rights of the Child, 20 November 1989, preamble, (CRC)
[7] ibid.

welcome and perhaps necessary for equitable access to higher education. With the concept of "capacity" being measured an individual's experience and expertise, both of which are developed through primary and secondary education, ensuring that children are provided an adequate education in primary and secondary school is essential for their realization of the right to higher education when they reach adulthood.

In Article 28, the CRC calls for all state parties to "recognize the right of the child to educations, and with a view of achieving this right progressively and on the basis of equal opportunity…"[8] In section two, Article 28(c) includes access to higher education "on the basis of capacity and by every appropriate means."[9]

2.2 Protections for Education in United States and Tennessee Constitutional Law

With the international documents discussed in the previous section serving as the analytical backdrop, this section will examine protections for the right to education in United Sates and Tennessee constitutional law. In order to establish political and historical context, the first part of the sections will explore the resistance of the United States to ratify international human rights treaties, including those that seek to protect the right to education.

2.2.1 The United States and its Resistance to International Human Rights Law

Following the end of World War II, the world saw an increase in internationalism with the formation of the United Nations and the establishment of the Universal Declaration of Human Rights. In the same period, tensions were increasing between the United States and the Soviet Union, which promoted an increase in "communist hysteria" among the American public.[10]

These tensions, along with the tightly-held American principles of small government and a free market, led to significant pushback to the rising influence of the international

[8] United Nations, General Assembly, Convention on the Rights of the Child, 20 November 1989, art. 2(1), (CRC)
[9] United Nations, General Assembly, Convention on the Rights of the Child, 20 November 1989, art. 2(1)(c), (CRC)
[10] J. Spring, *The universal right to education: Justification, definition, and guidelines*, Abingdon-on-Thames, UK: Routledge, 2000, p. 24.

community through the United Nations. Especially problematic, particularly for conservatives, were the economic, social, and cultural rights expressed in the UDHR. One Republican US Senator went so far as to call the UDHR the "U.N. Blueprint for Tyranny" on the floor of the US Senate.[11] This senator, Senator John Bricker, went on to propose a constitutional amendment that, if passed, would have lessened the impact of international law on United States domestic law. The proposed amendment, which became known as the Bricker Amendment, failed, but has been proposed in various forms in the years since[12]

This conflict over principles has led to a refusal by the United States government to adopt a bulk of the documents that make up the international human rights framework. Despite American aversion to international human rights treaties, the United States is party to three of note: the ICCPR, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The former two were ratified in 1992, with the latter being ratified in 1994.[13]

2.2.2 The Right to Education and United States Constitutional Law

The United States Constitution does not provide for an explicit right to education. Under the Tenth Amendment of the Constitution, any powers that are not delegated to the federal government are reserved to states. Despite there being no presence of an explicit right to education included, numerous interpretive judgements have been made by the United State Supreme Court that have profoundly impacted the educational landscape in the country, including in higher education. The following subsections will examine two of these rulings and discuss their impact.

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[11] Spring, p. 23.
[12] Herbert Hoover Presidential Library and Museum, Bricker Amendment Collection, 1952 – 1956, Manuscript Collections, https://hoover.archives.gov/research/collections/manuscriptfindingaids/bricker, (accessed 4 May 2019).
[13] D. Cassel, 'The United States and human rights treaties: Can we meet our commitments?', *American Barr Association*, [web blog], 1 April 2015, https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/2015--vol--41-/vol--41--no--2---human-rights-at-home/the-united-states-and-human-rights-treaties--can-we-meet-our-com/, (accessed 17 June 2019).

2.2.2.1 Brown v. Board of Education

The case of *Brown v. Board of Education* is likely the most well-known Supreme Court ruling in the United States. Prior to *Brown*, the Supreme Court's decision in *Plessy v. Ferguson* made segregation the law of the land, so long as Black Americans were provided with facilities that were "separate but equal." However, with the ruling in the *Brown* case in 1954, the Supreme Court unanimously ruled that separate was inherently unequal. This decision demanded that school systems desegregate but did not give a clearly defined time the process had to be completed by. The following year, the Court directed schools to desegregate "with all deliberate speed" in *Brown II*.[14]

Rather than taking this decision as a call from the Court to desegregate more quickly, states in both the North and South focused on the word "deliberate." This slowed desegregation efforts down drastically, and many school systems in the South did not desegregate completely for decades.[15]

Additionally, the focus of the ruling of the Court was that Black students should be educated in the same schools as White students. This pulled the focus away from providing Black students with a quality and equal education. Many schools that Black students previously attended were closed and the teachers who worked there, a majority of whom were also Black, were fired. This rationale assumed that Black students simply attending school with White students would provide "equal" education.[16]

2.2.2.2 Bakke v. Regents of the University of California

In a post-*Brown* education system, the 1968 Civil Rights Act was passed, allowing postsecondary institutions to take affirmative action to aid in remediating the racial

[14] T. Yosso, L. Parker., D.G. Solorzano, M. Lynn, 'Chapter 1: From Jim Crow to affirmative action and back again: A critical race discussion of racialized rationales and access to higher education'. *Review of Research in Education*, 28(1), 2004, p. 8.
[15] ibid., p.9.
[16] ibid.

discrimination in American society. This legislation caused an increase in the numbers of females and people of colour being admitted to postsecondary institutions, but ten years later, the federal government was sued for the bill.[17]

The University of California, Davis had implemented a quota system, setting aside a specific number of slots for racial and ethnic minorities. The individual who brought the suit was a White male who was denied admittance to the University's medical school. The case went all the way to the Supreme Court of the United States, where the Court handed down two rulings in *Bakke v. Regents of the University of California*. The first of the decisions declared that racial and ethnic quotas for admission discriminated against White people and thereby was a violation of the Civil Rights Act of 1964. The second decision, however, allowed for some leniency in affirmative action policies. In the ruling, known as the Powell Compromise, the justices ruled that race could be used as one factor in admissions decisions.[18]

In response to the first ruling in Bakke, the dissenting justices challenged the majority opinion of eliminating quotas with the following remark: "Where there is a need to overcome the effects of past racially discriminatory or exclusionary practices engaged in by a federally funded institution, race-conscious action is not only permitted but required to accomplish the remedial objectives of Title VI."[19] Since the Supreme Court's ruling in the *Bakke v. Regents of the University of California* case, even affirmative action as allowed by the Powell Compromise has been taken to the Supreme Court. Despite this, these two rulings have been upheld.[20]

2.2.3 The Right to Education and Tennessee Constitutional Law

As stated previously, with education not being a stated Constitutional duty of the United States federal government, the duty of education falls to states. While education is not

[17] M. Synnott, 'The evolving diversity rationale in university admissions: From regents v. Bakke to the University of Michigan cases', *Cornell L. Rev*., 90, 2004, p. 466.
[18] Yosso, p. 9.
[19] United States Supreme Court, *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 1978.
[20] Yosso, p. 9.

included as a right in Tennessee's Declaration of Rights[21] the document does place the duty of the provision of education on the state, declaring: "The state of Tennessee recognizes the inherent value of education and encourages its support. The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools.[22] Section 12 goes on to speak on higher education, "The General Assembly may establish and support such post-secondary educational institutions, including public institutions of higher learning, as it determines"[23] While this reference to education does not amount to a protected right, it does offer some level of protection to Tennesseans.

The Supreme Court of Tennessee has heard several major cases regarding education. The first of these was Tennessee Small School Systems v. McWherter and involved a claim that the state's funding formula caused substantial financial disparities among school districts, thus violating the constitution's equal protection clauses, found in art. XI, Sec 8 and art. I, Sec 8. Two additional cases involved the education clause itself and claimed that the state was not fulfilling their obligation to provide education by insufficiently funding school systems.

2.3 The Importance of Analysing the Right to Education in the United Sates Despite Treaty Ratification

As noted in previous sections, the United States of America is not party to any legally-binding international human rights legislation protecting a right to education. The following section will consider two areas of justification for the analysis of human rights in states that are not party to corresponding international human rights treaties. These two areas of justification include: the core principles of human rights and measurement and analysis for the sake of progress. This section will begin with the exploration of these concepts and will then apply them to higher education in the United States.

[21] Tenn. Const., art. 1.
[22] Tenn. Cons., art. 11, sec. 12.
[23] ibid.

2.3.1 The Core Principles of Human Rights

According to the Office of the High Commissioner for Human Rights, human rights have several core principles that define them. They are universal and inalienable, interdependent and indivisible, equal and non-discriminatory, and both rights and obligations.[24] This section will focus on the universality, interdependence, and indivisibility of human rights.

2.3.1.1 Universality

The concept of the universality of human rights is expressed in the naming of the Universal Declaration of Human Rights and reiterated throughout the document and numerous international human rights documents since. In the final paragraph of the Preamble of the UDHR, the General Assembly proclaimed the document as a "common standard of achievement for all peoples and all nations."[25]

The American delegate to the United Nations at the time of the adoption of the UDHR was Eleanor Roosevelt, the widow of President Franklin Delano Roosevelt. Upon the adoption of the document, in her famous speech to the United Nations General Assembly, she praised the landmark document, identifying it as a "common standard of achievement for all peoples of all nations."[26] In the same speech, she went on to celebrate the adoption of the UDHR as a "great event both in the life of the United Nations and in the life of mankind."[27]

The principle of universality was strengthened through the Vienna Declaration. Article 1, Section 5 reads:

> *All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national*

[24] United Nations, Office of the High Commissioner for Human Rights, 'What are human rights?', https://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx, (accessed 12 July 2018).
[25] United Nations, General Assembly, Universal Declaration of Human Rights, 10 December 1948, preamble, (UDHR).
[26] E. Roosevelt, *Adoption of the Declaration of Human Rights*, [speech], 9 December 1948.
[27] ibid.

> *and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.*[28]

In his book *Universal Human Rights in Theory and Practice*, Jack Donnelly, a professor of international studies at the University of Denver, explores this concept of universality. He identifies three distinct forms of universality relating to international human rights law and standards. Donnelly refers to these three forms of universality as: international legal universality[29] overlapping consensus universality,[30] and functional universality.[31]

Through defining the concept of international legal universality, Donnelly argues that human rights are universal due to their high ratification rate among UN member states. This is based on the fact that, on average, the six core international human rights treaties have a ratification rate of 88%.[32] He also notes the lack of systemic patterns of deviation with a significant majority of states ratifying these treaties regardless of regional, religious, or political grouping.[33] He argues that this points to not only a universal agreement on the existence of human rights, but also on the substance of these rights. To strengthen his argument for an international legal universality, he acknowledged the proliferation of the language of international human rights law into the rhetoric used by social justice movements around the world.[34]

International legal universality, Donnelly argues, should point to deeper moral and ethical values that have helped to shape this international legislation. He calls this overlapping consensus universality.[35] To substantiate this claim, the author points to the

[28] United Nations, General Assembly, Vienna Declaration and Programme of Action, 12 July 1993.
[29] J. Donnelly, *Universal human rights in theory and practice*, Ithaca, NY: Cornell University Press, 2013, p. 94.
[30] ibid, p. 95.
[31] ibid, p. 96.
[32] ibid, p. 94.
[33] ibid.
[34] ibid, p. 95.
[35] ibid.

overlapping values of the world's most prominent religious, philosophical, and moral doctrines that have built the moral basis for which international human rights have been established.[36]

The final of these three concepts of universality is functional universality. The justification for this form of universality relies on, what Donnelly argues, the "near-universal social-structural features of the contemporary world."[37] Globalisation has led to the spread of market economies and bureaucratic systems that threaten the human dignity of peoples across the globe. Internationally recognized human rights, he argues, are the only proven mechanism to protect human dignity and to make these powerful institutions compatible with a life of dignity for all people.[38] According to Donnelly, this universal threat to human dignity calls for the universal solution provided by international human rights standards and law.

2.3.1.2 Interdependence and Indivisibility

Years prior to the publication of the Vienna Declaration, the First World Conference on Human Rights held in Teheran, Iran yielded the Proclamation of Teheran. The meeting and resulting document were intended to assess the progress made in the years since the adoption of the UDHR, as well as to develop a plan for the future development of international human rights. The Proclamation built upon sentiments of the UDHR, as well as addressed international issues that were relevant at the time of the conference. Included in it was a statement reiterating the interdependence and indivisibility of human rights, stating: "Since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible."[39]

Regarding the concepts of interdependence and indivisibility, Professor James W. Nickel, Professor of Law Emeritus at the University of Miami, proposes four ways one right can support another right. He suggests this support can occur by: protecting against some of

[36] Donnelly, p. 96
[37] ibid, p. 97.
[38] ibid.
[39] Proclamation of Teheran, Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968, U.N. Doc. A/CONF. 32/41 at 3, 1968.

the main threats to the supported right; providing a remedy or process that is sometimes, often, or always useful in protecting the supported right; making the institutions and procedures used to implement the supported right less vulnerable to corruption and abuse; and improving the capacities of rightsholders.[40] While Nickel clarifies that the extent to which each right is related varies, he acknowledges that many theorists have argued the linkage between rights, especially the indispensable support economic and social rights offer civil and political rights.[41]

2.3.2 Measuring and Analysis for the Sake of Progress

The second justification for the measurement and analysis of a human right not protected through the ratification of a binding treaty is that measurement and analysis promote dialogue, which spurs progress. In their book *The Power of Human Rights: International Norms and Domestic Change*, the authors examine the role the UDHR has played, if any, in influencing change in countries throughout the world. Their research led them to propose the five-phase "spiral model" of human rights change. This tool was created to better understand how international human rights norms have impacted political transformation across the world[42]. Their work focused not on the impact of the legally-binding treaties that make up the international human rights framework but on the underlying principles and norms, as outlined in the UDHR. This section will provide an overview of the "spiral model."

The "spiral model" integrates the various activities of four levels of actors into one. These levels and activities include:

1. interactions between inter- and transnational non-governmental organisations and international human rights organisations;
2. civil society in the norm-violating state;

[40] J. Nickel. 'Rethinking indivisibility: Towards a theory of supporting relations between human rights'. Hum. Rts. Q., 30, 2008, pg. 988.
[41] ibid.
[42] T., Risse, S. Ropp, K. Sikkink, *The power of human rights: International norms and domestic change* (Vol. 66), Cambridge, UK, Cambridge University Press, 1999, p. 3.

3. the links between oppositional civil society groups and inter- and transnational networks;
4. the national government of the norm-violating state.[43]

The "spiral model" relies on the relationships between, and the communication of, domestic civil society and transnational non-governmental organisations, with domestic society providing grassroots pressure on the national government and outside NGOs providing pressure from above. The authors build on this by detailing the steps to norm socialization, breaking the process into five simplified phases. These phases are identified, in sequential order, as repression and activation of network, denial, tactical concessions, prescriptive status, and rule-consistent behaviour.[44]

The starting point for the spiral model describes a country in which a repressive situation is present, with a weak civil society being unable to provide a check on power and an international community that has not become focused on the human rights conditions in the country. The level of repression and duration of this phase can vary greatly depending on circumstance. In order to move onto phase two of the model, transnational advocacy networks need to have gathered a sufficient level of information on the conditions of the country to become activated and engaged.[45]

The second phase of the "spiral model" is denial. In the denial phase, the target national government responds to critiques by the international community, entering into discursive activities to deny accusations.[46] This denial is seen as part of the socialization process because, though the government is denying the claims against them, they have demonstrated that they are compelled to engage in the international conversation. If the

[43] ibid, pp. 17-18.
[44] ibid.
[45] ibid, p. 22.
[46] ibid.

process of socialization had not begun, the violating government would feel no need to respond to these accusations.[47]

In phase three of the model, the violating government makes tactical concessions, in the form of cosmetic changes, to temporarily quell international criticism. If international focus and pressure is maintained, domestic civil society may have time to mobilize a significant campaign of its own, facilitated by the support of the international community, especially transnational NGOs.[48] These domestic movements use the language of international human rights to express their opposition to the violating government. Once the government has made the tactical concessions previously mentioned, they no longer deny the existence of human rights.[49] While these concessions begin as cosmetic and instrumental to relax pressure from the international community, their concessional actions enters them into dialogue with domestic groups and the international community, with human rights being the focus of conversation.[50] Once this discourse has begun, violating countries have validated the existence of human rights and begin to speak the "language" associated with them. The transition from phase three to phase four of the model is typically marked by internal regime change or the "controlled liberalization" of the violating country.[51]

Phase four of the "spiral model" is referred to as "prescriptive status." This status means that countries use the language of human rights to comment on their own behaviour and the behaviour of others in the international community. The validity of human rights claims are no longer a controversy, but this does not mean that the actions of the violating country have shifted to comply with international norms.[52] This stage in the process is dependent not on the actions of countries regarding the rights of their people but rather on their argumentative behaviour and their conduct in the international realm. The authors provide four ways in which countries can be considered as having "prescriptive status:"

[47] ibid, p. 23.
[48] ibid, p. 25.
[49] ibid, p. 26.
[50] ibid, p. 27.
[51] ibid, p. 28.
[52] ibid, p. 29.

1. respective international human rights covenants and optional protocols have been ratified;
2. the norms have been integrated into domestic or constitutional law;
3. an official complaint mechanism has been established;
4. the government engages in discursive practices that acknowledges the validity of human rights norm both domestically and internationally, does not claim that any criticism of the state of human rights in their country is "interference with internal affairs," and they engage in dialogue with their critics.[53]

So, phase four is not only indicated by an engagement in discursive arguments regarding human rights, but also includes the institutionalization of these norms into their domestic laws and institutions.[54]

The fifth stage of the "spiral model" is entered when the violating country moves from accepting the validity of human rights norms to the full institutionalization of international human rights norms and compliance with these norms becomes common practice, enforced by the rule of law.[55] This phase of the model relies heavily on sustained pressure on the governments from the domestic actors below and international community above. This sustained pressure proves challenging when human rights have reached "prescriptive status" and violations have measurably decreased. These changes in the violating county's behaviour can cause a relaxation of pressure by the international community. If this pressure remains, and these norms have become common practice and protected by the rule of law, the authors argue that it is safe to assume they have been internalized.[56]

[53] Ibid.
[54] ibid, p. 30.
[55] ibid, pp. 32-33.
[56] ibid.

The "spiral model" theory has been revisited by researchers since its conception, and while some question its reliability, it has accomplished much in explaining how casual mechanisms can promote human rights in norm-violating countries, including those that have yet to ratify relevant human rights treaties. In the first phase, the activation of the international network relies on the research on and reporting of violations of human rights, even where countries have not given credibility to them through treaty ratification. This supports the value of the research and study of human rights in countries that have not themselves supported them.

2.3.3 Application: The Universal Right to Education

The two previous subsections have examined the universality, interdependence, and indivisibility of human rights, as well as the benefits of the study of national human rights standards, even where the country is not party to corresponding international human rights treaties. This subsection will apply these concepts to the right to education.

In their analysis of the intersection of education and social justice, Elaine Unterhalter and Harry Brighouse propose three intersecting spheres of benefit of education. The authors identified these three spheres as intrinsic, instrumental, and positional benefits.[57] The intrinsic benefit of education relies on the benefits of education to the individual through the enhancement of quality of life through learning itself. The second sphere of benefit, instrumental benefit, is defined through the opportunities, both employment and otherwise, that are made available through education. The positional benefit, the final sphere, is defined by the competitive advantage offered through education in relation to others in society.[58]

Tristan McCowan of the University of London argues that, while all three of these spheres of benefit are important when discussing the role of education in a society, the first

[57] E. Unterhalter, H.Brighouse. 'Distribution of what for social justice in education? The case of education for all by 2015'. In M. Walker & E. Unterhalter (Eds.), *Amartya Sen's Capability Approach and Social Justice in Education* (pp. 67-86). New York: Palgrave Macmillan US, 2007.
[58] Risse, pp. 32-33.

two are the basis of education as a fundamental right.[59] According to McCowan, the intrinsic value of the right represents the basis of the fundamental right. If there were no intrinsic benefit to education, there would be no right, he argues. Regarding the instrumentality of education, while this educational benefit is not necessarily about the intrinsic value of the right itself, it does speak to the realisation of other rights, such as the right to work, with education serving as a means through with to achieve a number of other rights through augmenting an individual's ability to function in and influence the world around them.[60] Regarding the third benefit, international human rights norms do not protect one's right to have a competitive advantage over another. Where the first two values of education would call for fulfilment through the provision of education, the positional benefit of education would require that an individual's right to realise this benefit is not unfairly denied to them. This especially pertains to the right to higher education, with certifications and degrees offering positional advantage in relation to others in a society.[61]

Prior to the drafting of the UDHR, I.L. Kandel, an American educator at Columbia University, responded to a call for philosophical arguments for a universal right to education. Kandel's submission echoed these spheres of benefit of education, affirming that education is essential both to the development of free personalities[62] and is "the essential foundation" for the enjoyment of fundamental freedoms[63], such as free speech, expression, communication, information, and inquiry.[64] These benefits of education are reflected in the minimum standards for education called for in the UDHR, ICESR, including in its General Comment No. 13, and the CRC. The following list is a composite of the aims of education called for by the minimum standards enumerated in these documents:

[59] T. McCowan, 'Reframing the universal right to education', *Comparative Education*, 46(4), 509-525, 2010, p. 13.
[60] ibid.
[61] ibid., p. 14.
[62] I. Kandel, p. 233.
[63] ibid., p. 231.
[64] ibid., p. 233.

- the full development of the human personality;[65,66]
- the preparation for effective and responsible participation in a free society,[67,68] including through economic empowerment;[69]
- the strengthening of respect for human rights and fundamental freedoms;[70,71]
- the promotion of understanding, tolerance, and friendship among all nations, racial, and religious groups;[72,73]; and
- the furthering of the activities of the United Nations for the maintenance of peace.[74,75]

The intrinsic value of education can be seen reflected in the requirement that it leads to the full development of the human personality. The four remaining minimum standards allude to the instrumental benefit of education, with the second ensuring that individuals can realise rights dependent on the right to education, and the final three acknowledging that education's instrumental benefit can impact those outside of the individual and his/her society. This broader societal impact also alludes the "spiral model" of human rights change discussed in the previous section. The model suggests that transnational dialogue, both on the grassroots and governmental level, are essential to change. In order for this to happen, an educated and engaged electorate must be present.

While these documents refer to systems of education, such as primary, secondary, and higher education, and provide the aforementioned minimum standards of education, they do not offer considerable clarity on the connection between these educational systems and

[65] CRC, art. 29(1)(a).
[66] ICESCR, art. 13(1).
[67] CRC, art. 29(1)(d).
[68] ICESCR, art. 13(1).
[69] United Nations Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, para. 1.
[70] CRC, 29(1)(b).
[71] ICESCR, art. 13(1).
[72] CRC, 29(1)(d).
[73] ICESCR, art. 13(1).
[74] CRC, art. 29(1)(b).
[75] ICESCR, art. 13(1).

the minimum standards through defined curricula or pedagogy. General Comment No. 13 on the Implementation of the International Covenant on Economic, Social and Cultural Rights attempts to elucidate this absence by acknowledging the diversity in educational systems throughout the world.[76] Thus, the level of educational attainment through which these minimum standards can be fully realised will vary depending on the social and economic contexts of each country. This idea will be further explored in chapter 3 of this thesis, where education in the United States is examined against the minimum standards that should be achieved through the right to education. General Comment No. 13 does, however, detail four essential features that education shall have, regardless of national context. These features are: availability, through the quantity of educational institutions and programs[77]; accessibility, through non-discrimination, as well as physical and economic accessibility[78]; acceptability, through the fulfilment of the previously mentioned minimum standards[79]; and adaptability, through flexible academic systems that are able to adapt to meet the ever-evolving needs of societies, communities, and individuals[80].

[76] United Nations Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, para. 6.
[77] ibid., para. 6(b).
[78] ibid., para. 6(c).
[79] ibid.
[80] ibid.

3 The Role of Education in the United States

As previously discussed, while international human rights norms call for a set of minimum standards to be met, the relevant documents recognise that the social contexts of countries differ. Thus, the level of education that meets these standards differs by country. This chapter seeks to establish what level of education in the United States most closely fulfils the minimum standards enumerated in these documents by examining the role of education in the nation and the relationship between educational attainment and the fulfilment of economic and social rights, as well as civil and political rights.

3.1 Equality v. Equity: Education and the Fulfilment of Economic and Social Rights

The concept of equality was foundational during the conception of American democracy. This is evidenced by the infamous quote from the U.S. Declaration of Independence that states, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness."[81] At the time the Declaration was adopted, "men" referred to white men, exclusively. As American society has progressed, the legal interpretation of the word has evolved to include both women and people of colour. This change in interpretation is embodied in cases that led to the abolition of slavery in the United States, women's suffrage and other progressive developments in the state of civil rights in the United States.

While the interpretation of who should be granted the rights referred to in this line of the Declaration has changed, the interpretation of "equality" has remained static. The equality of men mentioned in the document has been interpreted – and is still interpreted – to mean that access to the rights mentioned be granted on even terms to all. This interpretation of the word relies upon the conceptualization of fairness as uniform distribution of access and seems to be the definition American society is most willing to accept.[82]

[81] U.S. Declaration of Independence, Paragraph 2 (1776).
[82] N. Kranich, 'Equality and Equity of Access: What's the Difference?', American Library Association, 20 May 2017, http://www.ala.org/advocacy/intfreedom/equalityequity, (accessed 28 June 2018).

While "equality" has been the goal for many social movements throughout the history of the United States and the world, individuals and organisations advocating for social justice are attempting to shift the conversation from *equality* to *equity*. While these terms are often errantly used synonymously, there is a distinct and important difference between the two.

Though much of the focus throughout American history has been on achieving equality, the concept of equity is not a new one. Philosophers as early as Plato discussed the idea of equity[83], with its modern conceptualization deriving from theories of distributive or "social" justice. Like human rights, the idea centres on all people having a common dignity and that government is responsible for ensuring that all individuals are treated as equals, with the same concern and respect.

In policy making, this is important because equitable policies account for differences in the circumstances of people and see that resources are distributed based on need rather than power[84]. The goal of equality is to make sure everyone has access to the same resources to be successful, and the goal of equity is to understand the different circumstances people come from and to give them what they need to be successful.[85] Where equality seeks to level the playing field, equity asks what equipment do individuals need to play the game. If a society were to achieve genuine equity, one's quality of life and access to opportunity would not be determined based on gender, ethnicity, nationality, or socioeconomic status.[86]

Many arguments for equity rely on the essentialness of equity for the social contract between individuals and the state. The Overseas Development Institute emphasizes the importance of equity in this way:

> *Inequity has a negative effect on every part of society. It erodes trust and community life and is linked to poorly functioning institutions (including*

[83] A. Shiner, 'Aristotle's Theory of Equity', *Loyola Law Review*, Vol. 27, No. 4, 1994, http://digitalcommons.lmu.edu/llr/vol27/iss4/1, (accessed 29 June 2018).
[84] K. Bird, 'Building a fair future: Why equity matters', ODI, [web blog], 24 November 2009, https://www.odi.org/comment/4571-building-fair-future-why-equity-matters, (accessed 29 June 2018).
[85] L. Smiley, 'Equality vs Equity', *Society for Diversity*, [web blog], 2018, http://www.societyfordiversity.org/equality-vs-equity/, (accessed 28 June 2018).
[86] Bird.

> *markets and the institutions of governance and law and order), and to higher levels of violence, insecurity and conflict, drug abuse and crime. It is linked to polarisation – with some very rich people, lots of poor people but few people in the middle. Having a functioning middle class is important – it is associated with a higher tax base, sustained economic growth – but also with more education, better health, better infrastructure, better economic policies, and less political instability, civil war and ethnic tension*[87].

Despite the historical efforts towards equality in the United States and the necessity of equity for a society and its people to thrive, large gaps remain in American society. The history of colonialism, slavery, and immigration in the United States has created a country with a wealth of diversity, both ethnically and culturally. In fact, according to the United States Census, the United States is becoming increasingly diverse. While White Americans are still the largest people group, they are also the only group in which the death rate outpaces the birth rate.[88] With a growing minority population, equity in the United States has never been a more pressing issue.

Not only is the United States rich in diversity, it is also the wealthiest country in the history of the world. In 2014, it was estimated that the U.S. had $63.5 trillion in total private wealth. Despite this fact, the United States is experienced increasing income inequality.[89] In fact, the wealth gap in the U.S. is wider than any other major developed nation in the world.[90] Currently, the top 1% of American households own 42% of the nation's wealth. Additionally, over the past 30 years, nearly half of the nation's accumulated wealth has gone to the top

[87] Bird.
[88] B. Chappell, 'Census finds a more diverse America, as whites lag growth', NPR, 22 June 2017, https://www.npr.org/sections/thetwo-way/2017/06/22/533926978/census-finds-a-more-diverse-america-as-whites-lag-growth, (accessed 28 June 2018).
[89] E. Sherman, 'America is the richest, and most unequal country', Fortune, 30 September 2015, https://fortune.com/2015/09/30/america-wealth-inequality/, (accessed June 27 2018).
[90] C. Collins, 'Wealth of 400 Billionaires = Wealth of All 41 Million African-Americans', Inequality.org, 17 January 2014, https://inequality.org/facts/wealth-inequality/, (accessed 12 May 2018).

0.1% wealthiest households. As can be assumed, the bottom 90% of Americans are seeing a decline in wealth.[91]

Growth in the wealth gap is coinciding with the increasing population of people of colour. The wealth divide can not only be seen by social class, but by race as well.[92] In the United States, for every $1 owned by Black families, White families own $13. The gap persists between Latino and White families, though the gap is slightly smaller, with White families owning $10 for every $1 owned by Latino families.[93] These inequities can be traced back to policies and legislation that have excluded people of colour from the avenues White Americans have been offered to build wealth. From housing policy to education policy, these historical injustices have led the United States to the racially stratified society seen today.[94]

Further inequities can be seen in poverty rates by race in the United States, with people of colour being disproportionately impacted by poverty. The overall poverty rate in the United States is about 13.4%. As can be seen in Table 1 below, people of colour experience poverty at higher rates than White Americans. Nationally, Native Americans experience at the highest rate, with Black Americans experiencing the second highest rates, and Whites having the lowest poverty rates. Overall, poverty rates for households of colour are 2 times higher than for White households.[95]

When examining poverty rates in Tennessee alone, also found in Table 1, the situation is slightly different than that of the U.S. as a whole. Overall, poverty rates are higher in Tennessee than in the United States, with the rate of poverty in Tennessee being 15.2%. Taking a closer look, Asians living in Tennessee experience poverty less than other races, and poverty rates are highest for the Latino population. While the overall poverty rate in Tennessee is higher than the national poverty rate, the gap between the percentage of households of colour and White households experiencing poverty is smaller than the

[91] M. Huelsman, T. Draut, T. Meschede, L. Dietrich, T. Shapiro, L. Sullivan, 'Less debt, more equity: Lowering student debt while closing the black-white wealth gap', Demos, 2015, p. 1.
[92] ibid, p. 1.
[93] ibid, p. 4.
[94] ibid, p. 1.
[95] Prosperity Now Scorecard, Data by location: Tennessee, https://scorecard.prosperitynow.org/data-by-location#state/tn, (accessed 4 June 2019).

nationwide gap. Where poverty rates are, on average, 2 times higher for households of colour nationally, in Tennessee the factor at which these households experience poverty is 1.8 times higher.[96]

	United States	**Tennessee**
Total Population	325,719,178	6,715,984
Percent of Population in Poverty	13.4 %	15.2 %
White	10.2 %	12.8 %
Black or African American	23.7 %	24.3 %
Native American	26.3 %	19.0 %
Asian	12.8 %	9.8 %
Hispanic or Latino	20.9 %	27.9 %

Table 1. Income Poverty by Race: The United States and Tennessee

Table showing poverty rates in the United States by race.[97]

Racial inequalities can also be found in unemployment rates, as seen is Table 2 below. Overall, the unemployment rate in the United States is at 4.5%. When considering unemployment, Black Americans experience the highest rates, and Whites have the lowest level of unemployment. In the U.S., workers of colour are 1.6 times more likely to experience unemployment, while workers of colour in Tennessee are 1.9 times as likely to be unemployed when compared to White workers in Tennessee.[98]

[96] Prosperity Now Scorecard.
[97] Ibid.
[98] Prosperity Now Scorecard.

	United States	Tennessee
Total Population	325,719,178	6,715,984
Percent of Workers Unemployed	4.5 %	4.1 %
White	4.0 %	3.8 %
Black	8.7 %	9.0 %
Hispanic or Latino	5.8 %	3.8 %
Other	5.0 %	4.4 %

Table 2. Unemployment by Race: The United States and Tennessee

Table showing unemployment rate in the United States by race.[99]

These inequities are particularly important because of the negative impact poverty has on one's ability to enjoy a number of economic and social human rights. Individuals living in poverty have worse health outcomes, with their average lifespan being 10 – 15 years shorter than others people.[100] Those suffering from poverty also experience housing insecurity,[101] are more likely to suffer from hunger,[102] and are less likely to have access to transportation.[103]

One of the essential goals served by public higher education in the United States is to remedy the impacts of these inequities. On the federal level, efforts have been made to ease the private burden of higher education costs by leveraging public financial support in the form of student aid. The allocation of these funds in financing postsecondary education is an

[99] ibid.
[100] L. Esposito, 'The countless ways poverty affects people's health', U.S. News & World Report, 20 April 2016, https://health.usnews.com/health-news/patient-advice/articles/2016-04-20/the-countless-ways-poverty-affects-peoples-health, (access 4 July 2019).
[101] R. Tunstall, 'The links between housing and poverty'. Joseph Rowntree Foundation, [web blog], 5 April 2013, https://www.jrf.org.uk/report/links-between-housing-and-poverty, (accessed 17 July 2019).
[102] S. Hillestad, 'The relationship of hunger and poverty', The Borgen Project, [web blog], 18 July 2014, https://borgenproject.org/the-relationship-of-hunger-poverty/, (accessed 17 July 2019).
[103] J. Hyde, 'Transportation: The overlooked poverty problem', Shared Justice, [web blog], 10 March 2016, http://www.sharedjustice.org/domestic-justice/2016/3/10/transportation-the-overlooked-poverty-problem, (accessed 27 June 2019).

effort to reduce, if not break, the connection between the socioeconomic status of parents and the financial future of their children.[104]

Table 3 below details the economic benefits of each level of education. The chart shows both the unemployment rate and median weekly incomes based on degree type. As can be assumed, educational attainment level negatively correlates to unemployment rates and has a positive correlation with median weekly earnings. As a point of clarification, professional degrees are terminal, so a doctoral degree is not necessarily a higher level credential in comparison.[105]

Educational Attainment	Unemployment Rate	Median usual weekly earnings
Doctoral Degree	1.5 %	$ 1,743
Professional Degree	1.5 %	$ 1,836
Master's Degree	2.2 %	$ 1,401
Bachelor's Degree	2.5 %	$ 1,173
Associate Degree	3.4 %	$ 836
Some College, No Degree	4.0 %	$ 774
High School Diploma	4.6 %	$ 712
Less than a high school diploma	6.5 %	$ 520
TOTAL	**3.6 %**	**$ 907**

Note: Data are for persons age 25 and over. Earnings are for full-time wage and salary workers.
Table 3. National Unemployment Rates and Earnings by Educational Attainment, 2017

Table showing unemployment rates and earnings by race.[106]

To further illustrate the benefits of higher education, Figure 1 shows lifetime earnings by educational attainment. While there are cases in which individuals with lower levels of

[104] R. Haveman, T. Smeeding, 'The role of higher education in social mobility', The Future of children, 2006, p. 126.
[105] United States, Department of Labor, Bureau of Labor Statistics, 'Unemployment rates and earnings by educational attainment', 27 March 2018, https://www.bls.gov/emp/chart-unemployment-earnings-education.htm, (accessed 18 July 2018).
[106] United States, Department of Labor, Bureau of Labor Statistics.

attainment have higher salaries or hourly pay than their more educated peers, lifetime earnings increase as a higher level of education is earned.[107]

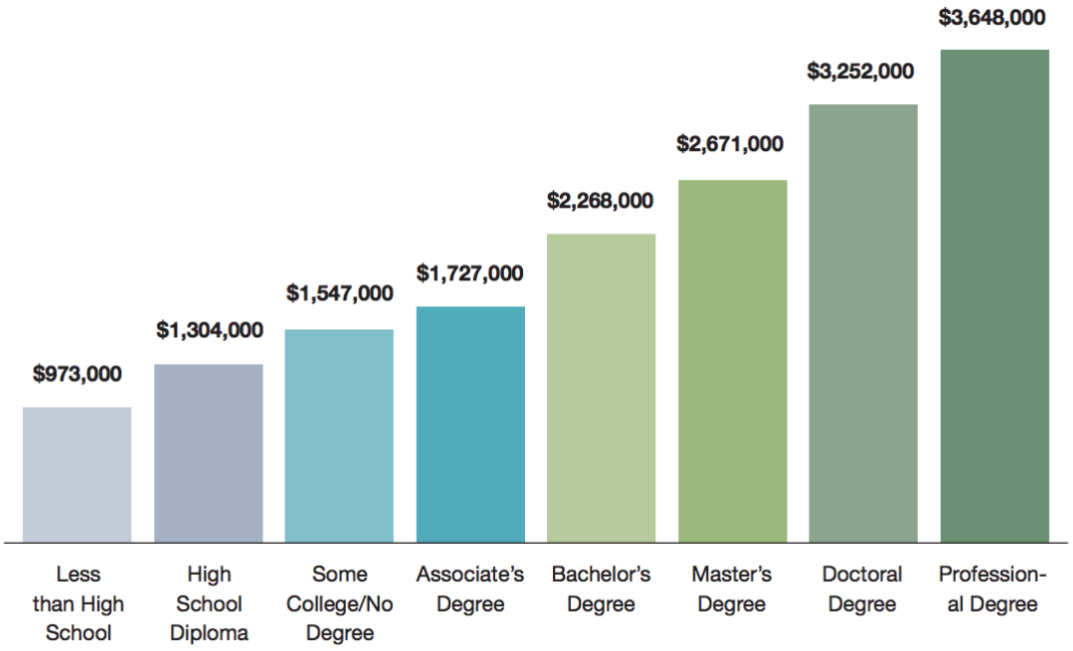

Figure 1. Median lifetime earnings by highest educational attainment, 2009 dollars.

Bar graph showing median lifetime earnings by educational attainment.[108]

As shown in in the two figures above, higher levels of attainment yield higher income potential and lessen the chance of unemployment. Based on the data examined so far in this section, the conclusion can be drawn that access to the economic instrumental value of higher education provides a means of addressing these systemic inequities, leading to the enjoyment of other economic and social rights. With the United States' reluctance to accept its obligation

[107] A. Carnevale, B. Cheah, S. J. Rose, 'The College Pay Off', Georgetown University Center on Education and the Workforce, 2011, p. 3.
[108] Carnevale, 2011, p. 3

to fulfil economic and social rights, the role of education as a protection against the detrimental impacts of poverty is vitally important in the United States.

3.2 Education and The Fulfilment of Civil and Political Rights

While the United States has not acknowledged its obligation to fulfil economic and social rights that are enumerated in the ICESCR, the country was a pioneering state in the formation of civil and political rights and has ratified the ICCPR. While the role education plays in the enjoyment of economic and social rights is quite apparent, the civil and political benefits of education are less tangible. Nonetheless, the impact of education in this area is crucial.

The minimum standards of education call for to fulfil the right to education allude to a civic and political value to education. The ICESCR calls for education to enable the "effective participation in a free society".[109] The CRC echoes this but instead uses the phrase "responsible life in a free society".[110] Research in the United States has shown a positive correlation between educational attainment and political engagement.[111] According to one study, college graduates are 27% more likely to vote than those that do not have a high school diploma.[112]

The benefits of education reach beyond the voting booth as well. The increased access to information provided through education means that college educated voters are more likely to understand the political process,[113] and candidate platforms.[114] More educated Americans are also more likely to follow current events, volunteer,[115] and feel like they play a role in helping to solve local problems.[116] These data regarding the impact of education on the civil and political rights of individuals reflects the instrumental benefit of education. This benefit

[109] ICESCR, art. 13(1).
[110] CRC, art. 29(d).
[111] K. Milligan, E. Moretti, P. Oreopoulos, 'Does education improve citizenship? Evidence from the United States and the United Kingdom', *Journal of Public Economics*, 88(9-10), 2004, p. 1677.
[112] E.L. Glaeser, G.A. Ponzetto, A. Shleifer, 'Why does democracy need education?' *Journal of economic growth*, 12(2), 2007, p. 83.
[113] Glaeser, p. 82.
[114] Milligan, p.10.
[115] ibid.
[116] Glaeser, p. 83

equips people with the tools to successfully navigate and influence the society in which they reside, ensuring their voices are heard and impacts the government that serves them and laws that protect them.

The civil and political benefits of education also reach outside of the individual's society. The minimum standards of this right call for education to promote the following: human rights and fundamental freedoms; friendship among all nations and peoples; and peace through United Nations activities.[117,118,119] These standards imply that the impacts of education reach beyond both the bounds of an individual and his/her society. The internationalisation of universal human rights calls for an education that equips people with the knowledge, tools, and principles to ensure that the human rights of all people are recognized both domestically and globally.

With the United States being a significant global superpower, this global impact of higher education is vitally important. Education that meets the minimum standards of education would develop an American electorate that is both aware of and respects human rights principles and that has a greater capacity to enjoy the ability and right to influence domestic government through political engagement. The result would, theoretically, be a federal government that internalizes these human rights principles, leading to greater respect for human rights both domestically and in conduct abroad.

3.3 The Bachelor's Degree: Meeting the Minimum Standards of the Right to Education

This chapter has examined the role education plays as a foundation for realising both economic and social rights and also civil and political rights in the United States. In order to establish a standard of measurement for the realisation of the right to education in the United States, it is necessary to identify a level of educational attainment that most closely meets the minimum standards called for in relevant international human rights documents.

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[117] CRC, art. 29.
[118] ICESCR, art. 13(1).
[119] United Nations Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999.

With the right to higher education being the highest level of educational attainment enumerated in the UDHR, ICESCR, and CRC, and considering the instrumental value of higher education and its intended role as a remedy to existing societal inequities, the following chapters will use the bachelor's degree as the level of education necessary to meet the minimum standards of education established by international human rights norms. Bachelor's degrees reduce the risk of poverty by enabling for greater access to the job market and increased weekly wages, as indicated by Table 3, and lead to greater lifetime earnings, as indicated by Figure 1. Additionally health outcomes increase significantly for those with bachelor's degrees.[120] Higher education also allows for responsible civic engagement, as detailed in section 3.2 of this chapter. It is important to note, however, that while the liberal education offered through higher education in the United States meets these minimum standards to varying degrees, education in the United Nations itself and international human rights is not generally accessible.

[120] A. Zajacova, R.A. Hummer, R.G. Rogers, 'Education and health among US working-age adults: A detailed portrait across the full educational attainment spectrum', *Biodemography and social biology*, 58(1), 40-61, 2012, p. 54.

4 Higher Education in the United States: Structure and Funding

With the bachelor's degree as the standard of education that most closely fulfils the minimum standards of the right to education in the United States, this chapter will explore the structure and funding of higher education nationally.

4.1 The Evolving Role of the Federal Government in Higher Education

Throughout the history of the United States, the federal government has never taken responsibility over the provision of education. In fact, the role of the United States federal government in education, both K-12 and postsecondary education, is fairly narrow. The role of the federal government in education is generally viewed to cover three areas: to encourage social mobility for underserved populations; to conduct research, information gathering, and dissemination; and to ensure that school systems and institutions meet certain minimum standards.[121] This follows the Jeffersonian ideal of the United States government respecting the rights of states.[122] Where the United States Constitution does not give the federal government authority over a particular area of legislation or enforcement, the right to legislate falls to the states. Education is one of these areas.

Despite the lack of explicit constitutional responsibility, the federal government has handled matters of education at the national level since the mid-19th century. Initially, the presence of education was generally found within independent programs throughout several Cabinet-level departments, but as more of the federal budget was allocated to education, the calls for increased federal presence in education became louder.[123]

Between 1908 and 1975, over 130 bills were introduced in Congress to establish a federal Department of Education. However, it was not until Jimmy Carter, a Democrat, was elected President in 1976 that one of these bills was successful. After Carter's election, US

[121] E.A. Hanushek, 'Expenditures, efficiency, and equity in education: The federal government's role', *The American Economic Review*, 79(2), 1989, p. 47.
[122] P.D. Eckel, J.E. King, An overview of higher education in the United States: Diversity, access and the role of the marketplace, American Council on Education, 2004, p. 3.
[123] D. Stallings, 'A brief history of the US Department of Education, 1979–2002' *Phi Delta Kappan*, 83(9), 2002, p. 680.

Senators in support of the cause introduced the Department of Education Organization Act. After almost 150 years of calls to establish a department of education, President Carter signed the bill into law on October 17, 1979.[124]

While the passing of the Department of Education Organization Act signified some level of federalization of education, even at the inception of the Department, the focus was on strengthening the federal-state relationship while maintaining control of major decisions at the state and local levels. Another matter the Carter Administration chose to focus on was educational equity and reducing regulatory red tape in postsecondary student aid.

President Ronald Reagan followed Jimmy Carter and was the second President of the United States to have a Cabinet-level Department of Education within his administration. Unlike Carter, President Reagan was a Republican who saw the Department of Education as an intrusion on local and state control of education. Initially, Reagan had every intention of abolishing the Department of Education, but overtime came to see the importance of a federal role in education. While Reagan did not abolish the Department, many federal programs did experience drastic budget cut and the overall role of the US government in education was reduced.[125]

President Reagan was followed by George H.W. Bush, another Republican president. Under Bush Sr, the Department took the stance that scholarships designated exclusively for minority students pursuing higher education were illegal. The scholarships, which aimed to increase equity by giving assistance to populations which had been historically disenfranchised, were the target of a ban from the Bush Administration; however, the ban was challenged by a federal appeals panel and the cause was abandoned.[126]

During the Clinton Administration, the Department of Education played a role in the development of the Student Loan Reform Act, which allowed loans to be given to students directly by the federal government. The administration also oversaw the reduction of default

[124] Stallings, p. 681.
[125] ibid, p. 679.
[126] ibid, p. 680.

rates on student loans to the lowest level yet, increased Pell Grants[127] by over $1,000, expanded college work-study programs, and introduced tax credits for higher education.[128]

Clinton was followed by Republican George W. Bush who, to the surprise of many, made several progressive strides in education policy, including in the higher education arena. Bush referred to education as the most important item on his agenda, and proved this in his first education budget, which called for more spending on education than his Democratic predecessor. Under the administration of Bush Jr, the Department prioritized closing the racial and socioeconomic achievement gap. Bush also maintained the direct-lending program left from the Clinton Administration, further decreased the default rate on student loans, and increased the maximum Pell Grant significantly.[129]

During the presidency of Barack Obama, outstanding student loan debt passed $1 trillion, but the administration quickly made changes to soften the blow of the "student debt bomb" experts predicted was looming for the American economy. Under the Obama Administration, the Department of Education implemented an "income-based" student loan repayment plan and also increased the maximum Pell Grant award.

The administration also made sweeping changes to the federal student loan system by reducing interest rates and ending the government's relationship with private lenders. Where federal student loans were traditionally given by private lenders but backed by the government, ending this relationship with private lenders meant individuals and postsecondary institutions now only deal with the federal government. During the Obama Administration, for-profit institutions were also more heavily scrutinized and consumer protections were increased.[130]

[127] Pell Grants will be further discussed in Subsubsection 4.3.2.1.
[128] Stallings, p. 680.
[129] ibid.
[130] C. Sanchez, C. Turner, 'Obama's impact on America's schools', NPR, 2017, https://www.npr.org/sections/ed/2017/01/13/500421608/obamas-impact-on-americas-schools, (accessed 17 July 2019).

During his presidency, President Donald Trump has proposed budget cuts to the Department of Education each year[131] as well as proposing that the Department of Education merges with the Department of Labor.[132] Additionally, the Trump Administration is currently being sued by the American Federation of Teachers over alleged mismanagement of the Public Service Loan Forgiveness program, which encourages college graduates to work in the public sector by offering loan forgiveness after ten years of employment.[133]

This short history of the development of the Department of Education illustrates the changing role of the federal government in education nationally. Throughout most presidential administrations since the founding of the Department of Education, higher education has been a source of federal focus to varying extents. A theme that surfaced during nearly all administrations was affordability in pursuing a postsecondary degree, especially as it related to the country's ballooning student debt and increasing aid to students through the Pell Grant.

4.2 The Higher Education Act

Prior to the establishment of the Department of Education, the federal government primarily influenced education in the United States through the Higher Education Act (HEA). The bill, which is reauthorized every six years, was passed during the presidency of Lyndon B. Johnson. The first version of the bill, the Higher Education Act of 1965, changed federal support of higher education by broadening the scope of the funding provided to states and students. This increased funding allowed prioritization of higher education in the national discourse while also keeping the responsibility for education at the state level. The passing

[131] A. Harris, 'The Trump Administration Really Wants to Cut Education Funding. Congress Doesn't.', *The Atlantic*, 11 March 2019, https://www.theatlantic.com/education/archive/2019/03/trump-administration-would-cut-education-budget-again/584599/, (accessed 30 July 2019).
[132] C. Lombardo, 'White House Proposes Merging Education and Labor Departments', *NPR Ed.*, 21 June 2018, https://www.npr.org/sections/ed/2018/06/21/622189097/white-house-proposes-merging-education-and-labor-departments, (accessed 30 July 2019).
[133] D. Douglas-Gabriel, 'American Federation of Teachers sues Betsy DeVos over public service loan forgiveness program', *The Washington Post*, 11 July 2019, https://www.washingtonpost.com/education/2019/07/11/american-federation-teachers-sues-betsy-devos-over-public-service-loan-forgiveness-program/?utm_term=.e3510ab7615b, (accessed 30 July 2019).

of the Higher Education Act of 1965 was a major step for the federal government into the space of higher education, and the subsequent authorizations of the bill allow for supplements, extensions, and modifications of the programs established in the 1965 bill.[134]

Programs authorized by the HEA are administered by the Department of Education. The most prominent programs, and those that are most relevant to this paper, are the Title IV programs. Title IV programs are those which provide financial assistance to students. In 2016, $125.7 billion were allocated to student assistance programs through Title IV of the HEA, benefitting 13.2 billion students.[135] The primary forms of aid administered through Title IV are: the Federal Pell Grant, Federal Work-Study programs, and federal loan programs.

While, as discussed previously, the responsibility of education falls to the state, the Department of Education exercises influence where possible. The allocation of funding through the Higher Education Act is the primary tool the federal government has to influence education policy on the state level. These efforts are most often directed at increasing equity in higher education by targeting federal funds to students underrepresented at postsecondary institutions, such as low-income students. The federal government controlling such an essential funding source allows the institutions to be coerced into following federal and state requirements for collecting and distributing data. These data allow the federal government to see to what degree institutions are serving national and state priorities, such as access and completion, the effects of financial assistance, consumer protection, and accountability.[136]

The most recent reauthorization of the Higher Education Act occurred during the presidency of Barack Obama. Under the Obama Administration, the Department of Education implemented an "income-based" student loan repayment plan and also increased the maximum Pell Grant award. The administration also made sweeping changes to the

[134] R. L. Capt, 'Analysis of the Higher Education Act reauthorizations: Financial aid policy influencing college access and choice', *Administrative Issues Journal*, 3(2), 2013, pp. 1-2.
[135] A. Hegji, 'The higher education act (HEA): A primer', Library of Congress, Congressional Research Service, 2014, p.2.
[136] ibid.

federal student loan system by reducing interest rates and ending the government's relationship with private lenders.[137]

A future reauthorization of the HEA is currently under discussion in the United States Congress.[138] With the 2020 presidential election on the horizon, funding for higher education has become central to the platforms of several candidates in the Democratic primary. Proposals have notably included free public higher education and eliminating student debt for some or all Americans

4.3 Federal Funding of Higher Education

With funding being the primary role of the federal government in higher education, the following section will look at the application process to access these funds, as well as the forms and amounts of aid distributed to students through federal programs.

4.3.1 The Federal Application for Federal Student Aid

In order to access the aid provided by the federal government, and often that provided by state governments and postsecondary institutions, students or their parents must complete the Federal Application for Federal Student Aid (FAFSA). As part of the FAFSA, family income and assets are assessed to determine the amount that a student's family should be able to put towards higher education. This amount is known as the Expected Family Contribution (EFC).

For a majority of students, the factors taken into establishing a student's EFC include family size, the number of family members enrolled in college, parental age, and any income or assets owned by the student.[139] However, if a student is 24 or older, married, active duty or veteran of the U.S. Armed Services, has children or other dependents they are supporting, or faced a lack of support from their parents or guardians, students can claim independent

[137] Sanchez.
[138] Harris.
[139] B.T. Long, 'What is known about the impact of financial aid? Implications for policy. An NCPR working paper', *National Center for Postsecondary Research*, 2008, p. 6.

status.[140] This status causes the calculation of the EFC to be calculated differently, and parental income is not taken into consideration. Despite this, the income of the students themselves, dependent or independent, is weighed rather heavily. It is assumed that students that are working should be dedicating their income to their education, so students that work a substantial amount before and during college are penalized in the EFC formula.[141]

After a student's EFC is calculated, financial need is determined by subtracting the amount from the total cost of attendance. This means that the need of two practically identical students attending different institutions could have differing calculated need. Evaluating a student's calculated need and EFC together, determines their eligibility for federal aid programs. Students with a low EFC and that have a calculated need are eligible for federal aid.[142] All of the following forms of financial aid in this section require the FAFSA to be filed.

4.3.2 Types of Federal Aid

This subsection will provide additional context for the federal funding of higher education by examining the various types of aid it provides. Following this overview of federal aid, the federal funding landscape and its implications for students will be discussed.

4.3.2.1 Grants

Grants are a type of financial aid that does not need to be repaid. The U.S. Department of Education distributes three primary types of student aid in the form of grants: Federal Pell Grants, Federal Supplemental Opportunity Grants, and Teacher Education Assistance for College and Higher Education Grants.[143]

[140] United States, Department of Education, 'F. S. A. Federal student aid dependency status', https://studentaid.ed.gov/sa/fafsa/filling-out/dependency, (accessed 22 July 2019).
[141] Long, p. 6.
[142] ibid.
[143] United States, Department of Education, 'F. S. A. 2016 Annual Report', 2016.

Federal Pell Grants are a form of federal financial aid that are awarded exclusively to undergraduate students with proven financial need.[144] According to the Congressional Budget office, seven and a half million Americans depend on funds distributed via the Pell Grant to access higher education and earn a degree, making it the largest financial aid program in the nation.[145] An overwhelming majority of Pell Grants are awarded to students whose families' have incomes at or below $40,000. Beginning in Fall 2018, the maximum Pell Grant award will be $6,095, which covers only 28% of the average cost of attending a university.[146]

The second form of grant aid distributed by the federal government comes in the form of Federal Supplemental Educational Opportunity Grants. Unlike Pell Grants, these grants are not distributed directly to students. Instead, a lump sum is allocated to institutional financial aid offices, which is broken up by the offices and awarded to students.[147]

The final and smallest federal grant program is the Teacher Education Assistance for College and Higher Education Grant. These awards can be awarded to both undergraduate and graduate students. Recipients must agree to teach science, math, or another specialized subject at a high-poverty school for at least four years. These four years must be completed within eight years of earning their diploma. The grants included in this program can total up to $4,000 annually, but if students do not fulfil the requirements above, the grants convert into loans, plus interest from the time the award was granted.

4.3.2.2 Loans

The second type of financial aid provided by the federal government is through two loan programs. Currently, there are two major loan programs: the William D. Ford Federal Direct Loan Program and the Federal Perkins Loan Program. Loans provided through these

[144] United States Department of Education, 'F. S. A. 2016 Annual Report', 2016.
[145] Long, p. 6.
[146] The Institute for College Access and Success, 'Pell grants help keep college affordable for millions of Americans,' The Institute for College Access and Success, 2018b.
[147] United States Department of Education, 'F.S.A. 2016 Annual Report', p. v.

programs make of the largest share of student aid allotted to students seeking a postsecondary education.[148]

Within the William D. Ford Federal Direct Loan Program, there are two different types of loans. The first is the Direct Subsidized Loan, which is available to undergraduate students based on financial need as determined by the FAFSA. On this type of loan, the government does not charge interest while students are in school. Interest on the loan is also paused with the loan is in grace or deferment status. The second loan within this program is the Direct Unsubsidized Loan. On unsubsidized loans, available to both undergraduate and graduate students, interest accrues from the time the loan is taken out.[149]

The Federal Perkins Loan is the second type of loan offered by the federal government for higher education. Postsecondary institutions that participate in this program are given a set dollar amount to distribute to students with financial need.[150]

4.3.2.3 Work-study

The third and final type of federal financial aid comes in the form of the Federal Work-Study program. Work-study is available to students at all levels of higher education that meet the financial need qualification determined by the FAFSA. The program offers students part-time jobs for students to earn money towards education. The program is administered on the institutional level. Participating colleges and universities are encouraged to provide community-service work, work related to the students' area of study, or both.[151]

4.3.2.4 Analysis of Federal Funding

Chapter 3 of this thesis provided context for the role of higher education in the United States and identified the bachelor's degree as the level of educational attainment that most closely fulfils the minimum standards for the right to education. This chapter has provided

[148] United States Department of Education, '2016 Annual Report', p. iv.
[149] ibid.
[150] ibid.
[151] ibid.

additional context through an overview of the role of the federal government in higher education policy, funding, and student aid. This subsubsection will assess whether the federal government is achieving its mission of increasing equity in higher education.

According to the Congressional Budget Office, 7.5 million Americans rely on Pell Grants to fund their postsecondary education, increasing enrolment in institutions and improving graduation rates for low- and moderate-income students. Among recipients of the Pell Grant are nearly 60% of undergraduate Black students and about half of the Latino student population. Despite playing an essential role in the realisation of the right to education for all students, including students of colour, Pell Grants are not keeping up with the rising costs of college.[152]

The maximum Pell Grant for the 2018 – 2019 school year is $6,095 and will pay for the smallest portion of costs since the inception of the program, covering only 28% of the cost of attending a public university.[153] In order to qualify for this maximum award, students must receive an automatic zero EFC from the FAFSA. In order for this to happen, students must have a family income of $25,000 or less.

It is estimated that, after taking the maximum grant aid into account, students with a family income between $20,000 and $25,000 would have to spend half of the family's total income in order to afford the costs of attending a university and one-fourth to cover the costs of attending a community college.[154] There are also costs outside of tuition that must be paid as a student, including books, transportation, and housing. Under the current system, any money from these grants that is spent on anything besides tuition is taxed as income, even if the money is used for education-related expenses.[155] This creates additional barriers for both access and success in postsecondary program for vulnerable, low-income students. The

[152] Institute for College Access and Success, 2018b.
[153] ibid.
[154] Institute for College Access and Success, 'House FY18 budge increases uncertainty and complexity in the financial aid process for students living in or near poverty', The Institute for College Access and Success, 2017.
[155] Institute for College Access and Success, 'How to secure and strengthen Pell grants to increase college access and success', The Institute for College Access and Success, 2018a.

combination of these issues creates issues that are often unsurmountable for these students, especially students of colour, which heavily rely on these grants.[156]

When Pell Grants do not cover the cost of tuition and other education-related expenses, students are often forced to rely on the nation's federal loan programs discussed above. In fact, recipients of the Pell Grant are more than twice as likely to have student loans than their peers. When it comes to university graduates, eight out of ten Pell Grant recipients have student loan debt, with an average debt $4,500 more than their peers.[157] This burden weighs heavier on Black Americans than their White classmates.

In a country with a significant racial wealth gap, young Black households are far more likely to have student debt than young White households, with about 54% of young Black households dealing with student debt.[158] Additionally, Black students that have taken loans out for an education are more likely to drop out of college without having finished a degree, so a portion of these households do not even have the earning potential that comes with holding a degree.[159] Financing their education through loans can cause vulnerable Black students to being their careers in the red, exacerbating the already-existing wealth gap.

Table 4 below details federal spending on each of the financial aid programs discussed in this section. As can be seen, the amount spent on federal loan programs is more than three times the amount spent in the allocation of federal grants.[160]

[156] Institute for College Access and Success, 2018a.
[157] Institute for College Access and Success, 2018a.
[158] Huelsman, p. 2.
[159] ibid, p. 6.
[160] United States Department of Education, 'F.S.A. 2016 annual report', p. 8.

Programs	Dollar Amount
Grant Programs	
Federal Pell Grant Program	$ 28,189
Federal Supplemental Educational Opportunity Grant Program	$ 729
The Teacher Education Assistance for College and Higher Education Grant Program	$ 90
Other Grant Programs/Rounding	$ 1
Subtotal Grant Programs	**$ 29,009**
Loan Programs	
William D. Ford Federal Direct Loan Program	$ 94,685
Federal Perkins Loan Program	$ 1,044
Subtotal Loan Programs	**$ 95,729**
Work-Study Programs	
Federal Work Study Program	$ 964
Rounding	(1)
Grand Total of Student Aid	**$ 125,701**

Table 4. Federal Financial Aid Disbursed to Students by Program (in millions), 2016

Table showing federal financial aid disbursed to students by aid program.[161]

From a fiscal perspective, the assumption that these loans will be paid back makes loans a more preferable form of aid than grants, which do not have to be repaid. However, a growing number of borrowers are having trouble making the payments on these loans. As of 2015, 36% of loans were either more than 30 days delinquent or were in default, deferment, or forbearance. The cash total of this 36% of loans not currently being repaid is $168.7 billion.[162]

[161] United States Department of Education, Federal Student Aid, 'Annual Report FY 2016', Washington, D.C., 2016.
[162] Demos, 'No recourse: Putting an end to bankruptcy's student loan exception', Demos, 2015, p. 1.

Unlike other types of loans, student loans are incredibly difficult to discharge through bankruptcy, so students struggling to repay the money for their education are stuck with student debt, often despite the harshness of their circumstances.[163]

In pursuit of its mission of increasing equity in the United States, the government's efforts alone fall short of ensuring equitable opportunity in higher education. Financial aid awarded through federal grant programs covers a decreasing amount of the cost of college attendance each year, and federal loan programs are further perpetuating inequities in American society. However, federal grants and loans are not always the only forms of financial assistance students have access to. States, which the responsibility for providing and overseeing education falls to, often have aid programs as well.

4.4 Postsecondary Degrees in the United States

There are six types of postsecondary credentials that exist in the United States: certificates,[164] associate degrees, bachelor's degrees, master's degrees, professional degrees, and doctoral degrees.[165] Each of these credentials falls under the broader umbrella of either undergraduate or graduate. There is no federal legislation in place to govern the titles of degrees, but the level of degree that institutions can award is usually determined by state agencies. While each institution has the autonomy to set curriculum and program requirements, states or specialized accrediting agencies typically establish broad guidelines institutions must adhere to.[166] This section provides a brief overview of the postsecondary academic landscape in the United States by examining the types of degrees available, where they fit into the labour market, and the various types of postsecondary institutions that confer these degrees.

4.4.1 Types of Postsecondary Degrees

[163] Demos, p. 1.
[164] National Center for Education Statistics, 'Vocational education in the United States: The early 1990s', 1994, p. 2.
[165] United States, Department of Education, 'Structure of U.S. education', https://www2.ed.gov/about/offices/list/ous/international/usnei/us/edlite-structure-us.html, (accessed 28 July 2018).
[166] Eckel, p.9.

This subsection will provide an overview of the six degree types available in the United States, as well as what instrumental benefits they offer to degree-holders.

4.4.1.1 Certificates

Certificates are awarded after the successful completion of a course of study based on a particular field. Certificates fall into three categories, depending on the amount of time they are meant to be completed in: short-term (less than one year), medium-term (one or two years), and long-term (two to four years). Short-term certificates are the most common type awarded, making up 54%of certificates. Medium-term certificates follow shortly behind with 41%and long-term certificates constituting only 5% of awards. This type of postsecondary credential is typically awarded by for-profit institutions or two-year public vocational, technical, or trade schools.[167]

The average earnings of a certificate-holder are 20% higher than individuals with no postsecondary education. When working in the field they are certified in, individuals make nearly as much as the median associate's degree holder.[168]

4.4.1.2 Associate Degrees

Associate degrees are most commonly awarded by community colleges, but some four-year institutions also grant these degrees, though in much smaller numbers.[169] Associate degrees are usually earned after completing 60 credit hours, or 20 classes. This amount of coursework can be completed in two-years if a student attends full-time. Associate degrees fall into one of two categories: occupational degrees, which train students to take a job in a specific career upon completion, and transfer degrees, which include both associate of arts and associate of science, are a step towards a bachelor's degree.[170]

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[167] A. Carnevale, S.J. Rose, A.R. Hanson, 'Certificates: Gateway to gainful employment and college degrees', Georgetown Center on Education and the Workforce, 2013, p. 3.
[168] ibid, p. 4.
[169] Eckel, p. 9.
[170] O. Crosby, 'Associate degree: Two years to a career or a jump start to a bachelor's degree', *Occupational Outlook Quarterly*, 46(4), 2003, p. 3.

Occupational degrees are designed for students who wish to enter the workforce directly after completing their associate degree. Common degrees in this category are associate of applied science, associate of applied arts, associate of applied technology, and associate of occupational studies. As their titles allude to, these degrees focus on the application of particular knowledge and skills, with course-work that supplements general education courses, such as math and English, with courses that are more hands-on. Occupational degrees often offer certificates in their field of study once a student has completed their first year. While some occupational degrees can be transferred to a bachelor's degree program, many of them are terminal.[171]

Transfer degrees are about half of the coursework towards a bachelor's, but students must make sure classes completed in their associate degree program align with the requirements of the bachelor's degree program they hope to attend later. Many students who are working towards a bachelor's degree study broad subjects, such as liberal arts or general studies, which often satisfy general education courses in bachelor's degree programs.[172]

Often, community colleges and public four-year institutions in the area sign articulation agreements, aligning the courses offered at community colleges with degree programs at the local four-year institution. This, ideally, offers a seamless transfer pathway for students starting in community colleges but hope to receive a bachelor's degree. This cross-institutional collaboration, when implemented effectively, saves students time and money by allowing students to graduate in a timely manner and make use of the credit hours they have completed.[173]

4.4.1.3 Bachelor's Degrees

Bachelor's degrees, also known as baccalaureate degrees, are the most common type of degree by far and offer preparation for graduate programs and a majority of jobs that require

[171] Crosby, p.4.
[172] ibid.
[173] Center for American Progress, 'Articulation agreements and prior learning assessments', Center for American Progress, 2011, p. 4..

a postsecondary degree.[174] They are offered by public, as well as private, four-year institutions and typically require around 120 credit hours to complete. Common bachelor's degrees include the Bachelor of Arts (B.A.), Bachelor of Fine Arts (B.F.A.), Bachelor of Science (B.S.), and Bachelor of Business Administration (B.B.A.).[175]

When enrolled full-time, this amount of coursework takes between four and five years to complete. Curricula for bachelor's degrees includes both general education and major-specific courses. General education courses equip students with broad knowledge and the critical thinking skills to be engaged and informed citizens.

4.4.1.4 Advanced Degrees

There are three types of advanced degrees: master's degrees, professional degrees, and doctoral degrees. Master's degrees are graduate-level degrees which are offered at many public and private four-year institutions and require a bachelor's degree. Common master's degrees include the Master of Business Administration (M.B.A.), Master of Science (M.S.), and Master of Arts (M.A.). While some of these degrees provide a path to doctoral programs, others are terminal.[176] Master's programs typically take between one to two years to complete. In the academic year 2015-2016, nearly 786,000 master's degrees were granted in the United States.[177]

Where master's degrees are often a required step towards a doctoral degree, professional degrees are terminal degrees that provide access to professions in specific fields, such as medicine, law, pharmacy, and education. In order to practice certain professions, such as becoming a doctor or lawyer, it is required by law to earn a professional degree. Doctors must earn a Doctor of Medicine (M.D.), while lawyers are required to hold a Juris Doctor

[174] Eckel, p. 9.
[175] K.S. Meier, 'What is the difference between a master's, bachelor's, doctorate and degree completion?', *Seattle pi*, 2019, https://education.seattlepi.com/difference-between-masters-bachelors-doctorate-degree-completion-1722.html, (accessed 14 July 2019).
[176] Eckel, p. 9.
[177] National Center for Education Statistics, 'Graduate degree fields, NCES, https://nces.ed.gov/programs/coe/indicator_ctb.asp, (accessed 14 July 2019).

(J.D.) before practicing law. Other professional degrees include the Doctor of Education (Ed.D.) and the Doctor of Pharmacy (Pharm.D.).

Doctoral degrees are the highest academic award in postsecondary education. The most common degree of this type is the Doctor of Philosophy (Ph.D.) Doctoral degrees recognize that graduates are able to conduct independent research.[178]

[178] Eckel, p. 9.

5 Higher Education in Tennessee: Structure and Funding Model

Building off of the national funding and academic landscape established thus far, Chapter 5 focuses on the status of the right to education in Tennessee. In recent years, the state of Tennessee has become the nationwide leader in postsecondary access and affordability. Notably, the state was the first in the nation to make community and technical college tuition-free for high school graduates through the Tennessee Promise program and later for adults through the establishment of the Tennessee Reconnect program. These programs were part of Governor Haslam's Drive to 55 initiative, which was established in reaction to the Lumina Foundation's findings that the nation's population was not educated enough to fill the talent needs of an evolving economy.[179] This chapter will examine higher education in the state of Tennessee by reviewing and analysing its structure, as well as how its funding policies build on federal funding to increase accessibility and affordability. With Tennessee being the leader in this area, the postsecondary policies have become a model for the rest of the country and should provide helpful context for the national status of the right to education.

5.1. Institution Types and Governance in Tennessee

Public postsecondary education in Tennessee is provided at three types of institutions: Tennessee Colleges of Applied Technology (TCATs), which award certificates;[180] community colleges, which award associate degrees;[181] and public universities, which award bachelor's, master's, professional, and doctoral degrees. These institutions are governed by two agencies in state government. The Tennessee Board of Regents (TBR) is over the state's 27 TCATs and 13 community colleges,[182] while the Tennessee Higher Education Commission governs Tennessee's public universities.[183] These universities are broken into two clusters that include the University of Tennessee System (UT),[184] which is made of up

[179] Lumina Foundation. 'Strategic plan for 2017-2020', Lumina Foundation, 2017, p. 3.
[180] State of Tennessee, *Tennessee Blue Book*, Nashville, TN, 2018, p. 285.
[181] ibid.
[182] ibid.
[183] ibid.
[184] ibid.

three undergraduate universities, and Locally Governed Institutions (LGIs), which consist of six public universities that have independent boards.[185] Higher education is also offered by private postsecondary institutions. These private universities are united by the Tennessee Independent Colleges and Universities Association (TICUA), which seeks to provide them with a collective voice and mission.[186]

5.2 State Funding Policy for Higher Education in Tennessee

Tennessee's postsecondary funding landscape is comprised of three key programs: the Tennessee Education Lottery Scholarship Program (TELS), Tennessee Promise, and Tennessee Reconnect. These programs, particularly the Tennessee Promise, have been praised nationally for improving both accessibility and affordability in higher education. This section will provide an overview of these programs and analyse the degree to which they have made higher education more accessible in the state.

5.2.1 Tennessee Education Lottery Scholarship Program

On November 5, 2002, the citizens of Tennessee voted to pass the first amendment to the Constitution of Tennessee. Tennessee Amendment 1, also known as the Lottery for Education Amendment, legalized the lottery in the state, under the condition that all net revenues go to supporting Tennessee students enrolled in a postsecondary program. Prior to the passage of the amendment, Article XI, Section 5, of the Constitution of Tennessee read, "The Legislature shall have no power to authorize lotteries for any purpose, and shall pass laws to prohibit the sale of lottery tickets in this state."[187] While the amendment did not necessarily change any of the language found in the original text, the period at the end of

[185] Lumina Foundation, 2017, p. 3.
[186] Tennessee Independent Colleges and Universities Association, 'About', https://ticua.org/default.aspx, (accessed 20 June 2018).
[187] Ballotpedia, 'Tennessee lottery for Education, Amendment 1', 2001, https://ballotpedia.org/wiki/index.php/Tennessee_Lottery_for_Education,_Amendment_1_(2002)(Ballotpedia, 2002), (accessed 20 June 2018).

Section 5 was exchanged for a comma, and additional language was added. This section now reads:

> *The Legislature shall have no power to authorize lotteries for any purpose, and shall pass laws to prohibit the sale of lottery tickets in this state, except that the legislature may authorize a state lottery if the net proceeds of the lottery's revenues are allocated to provide financial assistance to citizens of this state to enable such citizens to attend post-secondary educational institutions located within this state.*[188]

Shortly after the passage of Constitutional Amendment 1, then Governor Phil Bredesen signed into law legislation establishing the TELS program, offering funding to students pursuing higher education. Today, the TELS programs includes four streams of scholarship dollars, all with differing criteria. These dollars can be used at virtually all postsecondary institutions in Tennessee, including private universities.

The first and primary stream is the Tennessee HOPE Scholarship. This scholarship serves as the base upon which the others are built.[189] The second is the General Assembly Merit Scholarship (GAMS), a merit-based supplement to the HOPE Scholarship.[190] Thirdly is the Aspire Award, a needs-based supplement to the HOPE Scholarship.[191] The fourth and final scholarship in the TELS program is the Tennessee HOPE Access Grant, a needs-based scholarship that has more lenient academic eligibility requirements but also provides less

[188] Tenn. Cons., art. 11, sec. 5.
[189] Tennessee Higher Education Commission, 'Tennessee Education Lottery Scholarship Program Annual Report', 2018, p. 2.
[190] ibid.
[191] ibid.

financial support.[192] The eligibility requirements for these scholarships can be seen in Table 5 below.

	HOPE (base)	GAMS (HOPE with merit supplement)	Aspire (HOPE with need supplement)	Access
Minimum High School Grade Point Average (GPA)	3.00	3.75	3.00	2.75 – 2.99
Minimum ACT Score	**OR** 21	**AND** 29	**OR** 21	**AND** 18 - 20
Family Adjusted Gross Income (AGI)	No requirement	No requirement	$ 36,000 or less	$36,000 or less
Postsecondary Retention GPA	Traditional Path – Cumulative 2.75 at 24 (after semester 1) & 48 credit hours (after semester 2); cumulative 3.0 at 72, 96, 120 credit hours (after semesters 3, 4, & 5)			Cumulative 2.75 at 24 credit hours qualifies student for HOPE
	Provisional Path – Cumulative 2.75 – 2.99 at 72, 96, 120 credit hours, with 3.0 prior semester			
Scholarship Amounts: Students who first received HOPE in Fall 2009 – Summer 2015				
4-year Institution	$ 6,000	$ 7,500	$ 8,250	$ 4,125
2-year Institution	$ 3,000	$ 4,5000	$ 5,250	$ 2,625
Updated Award Amounts: Beginning Fall 2015				
4-Year: Freshman & Sophomore	$ 5,250	$ 6,750	$ 7,500	$ 3,750
4-year: Junior & Senior	$ 6,750	$ 8,250	$ 9,000	N/A
2-year: Freshman & Sophomore	$ 4,500	$ 6,000	$ 5,250	$ 2,625

*Award amounts divided equally over fall, spring, and summer semesters.

Table 5. Tennessee Education Lottery Scholarship Eligibility Criteria, 2017-2018

Table showing criteria for the Tennessee Lottery Scholarship.[193]

Additional requirements for eligibility for first-time participation in the Tennessee Education Lottery Scholarship Program include: submission of the FAFSA each year; residency in

Tennessee for at least one year prior to enrolling; full-time enrolment in a college or university in Tennessee, private or public, within six months of completing high school.[194] In addition to requirements for first-time freshmen, students must reapply each year by submitting their FAFSA, as well as meeting the GPA requirement in Table 5. If students lose their scholarship by dropping below the GPA requirement, it can be regained one time by bringing their GPA back in line with the above requirements.[195] Additionally, students lose all scholarship funds if they do not graduate within four years.

5.2.1.1 Analysis

With the passage of Constitutional Amendment 1, Tennessee's state government sought to supplement the funds provided by the federal government to lessen the financial burden on Tennessee's college students. However, the requirements for eligibility directed these funds to a limited number of students who met the criteria. The Tennessee Higher Education Commission reported that TELS funds were awarded at the highest rates to students who are female (57%) and White (78%) between 2011 and 2016. Additionally, those with families at the highest income level, more than $96,000 annually (33%) received the largest portion of state funding.[196] This can be seen below in Table 6 and Figure 2.

[192] Tennessee Higher Education Commission, 2018, p.2.
[193] ibid.
[194] Tennessee Higher Education Commission, 2018, p.2.
[195] ibid.
[196] ibid, p. ii.

		2011	2012	2013	2014	2015	2016
First-time TELS Freshmen	**Female**	56 %	57 %	57 %	57 %	57 %	57 %
	Male	44 %	43 %	43 %	43 %	43 %	43 %
All TELS Recipients	**Female**	13 %	58 %	60 %	60 %	60 %	60 %
	Male	78 %	42 %	40 %	40 %	40 %	40 %
First-time TELS Freshmen	**Black**	13 %	13 %	13 %	12 %	12 %	13 %
	White	78 %	80 %	80 %	79 %	79 %	78 %
	Other	9 %	7 %	8 %	9 %	9 %	10 %
All TELS Recipients	**Black**	13 %	12 %	11 %	10 %	10 %	10 %
	White	78 %	80 %	81 %	82 %	82 %	81 %
	Other	9 %	8 %	8 %	8 %	8 %	9 %

*Excludes students whose race is unknown.

Table 6. TELS Awards by Gender and Ethnicity, Fall 2011 – 2016

Table showing TELS award distribution by gender and ethnicity.[197]

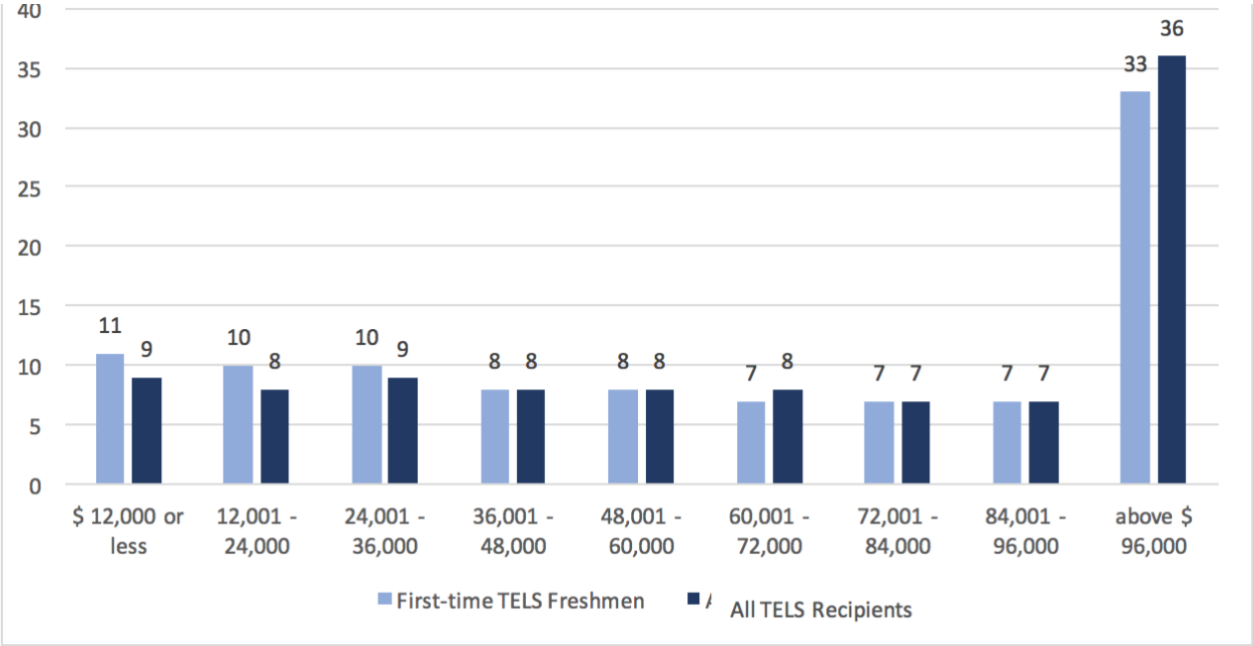

Figure 2. Lottery Scholarship Receipt by Family Adjusted Gross Income (Percentages), Fall 2016

Graph showing TELS award distribution by income.[198]

Women have been attending college and earning degrees – across all degree levels – at a higher rate than their male counterparts for some time now,[199] so the fact that women receive a larger share of the TELS funds comes as no surprise. Despite this fact, the gender-pay gap persists.[200] When it comes to issues of access and success in higher education by gender, all other factors constant, women are outperforming men. Due to the persistence of the gender pay gap and issues of sexism, men receiving a slightly smaller percentage of the scholarship allocation does not seem to be tied to any systemic inequity.[201]

This is not the case, however, for TELS scholarship allocation by race. As shown again in Table 6, white students usually receive about 80% of the funds from the program annually, while Black students receive about 11% of funds and students of other races receive about 8% of funds. Due to the distribution of wealth by race in Tennessee, and in the nation as a whole, students of colour often need more supports, both academic and financial, in order to succeed in higher education.[202] When viewing this program through the equity, the TELS program fails to provide equitable funding to students of colour and instead contributes a disproportionate amount of the funds to White students.

Another issue that arises in these data is that all students of colour, with the exception of Black students, are grouped into the single category of "other." Without disaggregating data by the groups represented by "other," the full story of racial inequity is not told. In

[197] Tennessee Higher Education Commission, 2018, p. 11.
[198] ibid.
[199] National Center for Education Statistics, 'Bachelor's, master's, and doctor's degrees conferred by postsecondary institutions', NCES, https://nces.ed.gov/programs/digest/d16/tables/dt16_318.30.asp?current=yes, 2014-2015, (accessed 12 July 2019).
[200] N. Graf, A. Brown, E. Patten, 'The narrowing, but persistent, gender gap in pay', Pew Research Center, 2019, https://www.pewresearch.org/fact-tank/2019/03/22/gender-pay-gap-facts/, (accessed 28 June 2019).
[201] ibid.
[202] V.Yuen, 'New insights into attainment for low-income students', Center for American Progress, [web blog], 21 February 2019, https://www.americanprogress.org/issues/education-postsecondary/reports/2019/02/21/466229/new-insights-attainment-low-income-students/, (accessed 17 July 2019).

Nashville alone, over 120 languages are spoken in the Metro Nashville Public School system. These languages represent immigrant populations of a wide range of races and ethnicities from all over the world.[203] By grouping all people that do not identify as Black or White together, the stories of these populations are lost, making it impossible to know how this policy is serving them and to make targeted policy decisions to increase equity.

Additionally, as can be seen in Figure 2, a vast majority of funds through the TELS program are allotted to students of families making more than $96,000 per year, with these families receiving 36%of the funding in Fall 2016, and other lower income levels receiving, on average, about 8% of the funds. The distribution of TELS dollars by income shows, again, that money is not being equitably distributed by the program. Students coming from the wealthiest families, who very likely would have been able to go to college without assistance, are getting a significant amount of the overall dollars. Meanwhile, students coming from the poorest families are receiving more than 20% less than their higher-income classmates.

Low-income students often face financial barriers, outside of the cost of tuition, that prevent them from accessing higher education. These costs include, among others, transportation, childcare, housing, and food.[204] This issue is exacerbated by the requirement for students to attend college full-time in order to access TELS dollars. While students who enrol full-time are more likely to graduate, many low-income students also have jobs, and full-time enrolment means more time taken away from work and less pay.[205] Additionally, many students who enrol part-time cite family obligations, such as helping to care for younger siblings, as the primary reason.[206] Rather than funding the education of students who can already afford college, the TELS program could transfer dollars away from higher-income students to lower-income students, even if only enrolled part-time, to help them pay for the costs of attending college outside of tuition, enabling them to work less.

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[203] Metro Human Relations Commission, 'Metro language access report', Metro Human Relations Commission, 2017, p.2.
[204] Complete Tennessee, 'State of Higher Education: Beneath the Surface', 2017, p.4.
[205] P. Fain, 'Full-time finishers', Inside Higher Ed., 19 April 2017, https://www.insidehighered.com/news/2017/04/19/students-who-attend-college-full-time-even-one-semester-are-more-likely-graduate, (accessed 22 July 2019).
[206] ibid.

Additionally, increased equitability of the program could be achieved by changing the requirements for access to the scholarship. Currently, the TELS scholarship is a merit-based scholarship, meaning requirements for participation in the program are based on students' academic performance, both their GPA and standardized test scores. Research has shown that low-income students, a demographic in which students of colour are disproportionately represented, do not perform well on standardized tests.[207] This is not due to the level of capability of these students, but rather the negative impact poverty has on educational performance.[208] Financial assistance based on need, or need-based scholarships, would be a more equitable way to provide financial supports for students in Tennessee.

While the Aspire Award provides funds based on need, this award serves as a supplement to the HOPE scholarship, meaning that students who do not meet the merit-based requirements to qualify for the HOPE scholarship, are ineligible to receive this need-based award. The HOPE Access Grant has both need-based and merit-based eligibility requirements. The academic requirements for qualification for the Access Grant are lower than those for the HOPE scholarship, but any academic requirements are a barrier to access for low-income students. The Aspire Grant also offers less than $1,000 less annually than the HOPE scholarship, as shown in in Figure 7.

To further this point, below are the renewal and retention rates for students receiving scholarships through the TELS program. One-year scholarship renewal rates tell the percentage of students who maintained their TELS program scholarship from their freshman year to their sophomore year, as seen below in Table 7 and Table 8 by gender, race, and income. The Fall-to-Fall retention rates for first-time freshmen, found in Table 9 below, tell the number of students that persisted to their sophomore year after losing their TELS scholarship due to not meeting the renewal requirements found in Table 5 on page 54. Together, these data show how many students dropped out of college after losing access to this financial assistance.

[207] D.E. Heller, P. Marin, 'State merit scholarship programs and racial inequality', The Civil Rights Project at Harvard University, 2004.
[208] ibid.

		HOPE	GAMS	Aspire	Access	Total
TELS Scholarship Renewal Rate	**Female**	63 %	95 %	53 %	17 %	**62 %**
	Male	52 %	90 %	44 %	21 %	**52 %**
	Black	50 %	100 %	42 %	23 %	**46 %**
	White	59 %	93 %	52 %	15 %	**59 %**
	Other	56 %	92 %	56 %	22 %	**57 %**
	Overall	**58 %**	**92 %**	**50 %**	**19 %**	**58 %**

*Table excludes students whose race/ethnicity and gender is unknown or missing.

Table 7. One-year Scholarship Renewal Rates by Gender, Ethnicity, and Original Scholarship Program, Fall 2015 First-time TELS Freshmen

Table showing one-year TELS renewal rates by gender and race.[209]

		HOPE	GAMS	Aspire	Access	Total
TELS Scholarship Renewal Rate	**$ 12,000 and below**	Students receive Aspire or Access		45 %	12 %	**43 %**
	12,001 – 24,000			52 %	25 %	**49 %**
	24,001 – 36,000			53 %	21 %	**50 %**
	36,001 – 48,000	51 %	94 %	Programs require family income of $36,000 or less		**53 %**
	48,001 – 60,000	53 %	87 %			**56 %**
	60,001 – 72,000	55 %	90 %			**57 %**
	72,001 – 84,000	58 %	94 %			**61 %**
	84,001 – 96,000	58 %	90 %			**60 %**
	Over $ 96,000	64 %	93 %			**68 %**
	Total	**58 %**	**92 %**	**50 %**	**19 %**	**58 %**

Table 8. One-year Scholarship Renewal Rates by Adjusted Gross Income and Original Scholarship Program, Fall 2015 First-time TELS Freshmen

Table showing one-year TELS renewal rates by income.[210]

[209] Tennessee Higher Education Commission, 2018, p. 19.
[210] ibid.

	Adjusted Gross Income	HOPE	GAMS	Aspire	Access	Total
Fall-to-Fall Retention Rate	**$ 12,000 and below**	Students receive Aspire or Access		49 %	36 %	**48 %**
	12,001 – 24,000			53 %	50 %	**53 %**
	24,001 – 36,000			57 %	47 %	**56 %**
	36,001 – 48,000	51 %	33 %	Programs require family income of $36,000 or less		**51 %**
	48,001 – 60,000	51 %	88 %			**51 %**
	60,001 – 72,000	53 %	40 %			**53 %**
	72,001 – 84,000	57 %	57 %			**57 %**
	84,001 – 96,000	57 %	45 %			**57 %**
	Over $ 96,000	65 %	73 %			**65 %**
	Total	**56 %**	**67 %**	**55 %**	**43 %**	**55 %**

*Table only includes students in public institutions. TICUA only collects data from scholarship recipients.
*HOPE recipients that received the Aspire supplement are grouped with Aspire.

Table 9. Fall-to-Fall Retention Rate for First-time TELS Freshmen who Lost Scholarship Eligibility during their Freshman Year by AGI, Fall 2015

Table showing fall-to-fall retention rates for freshmen who lost TELS. [211]

The data from these tables tell us that vulnerable populations, such as students of colour and low-income students, both fail to meet the requirements to maintain TELS program eligibility at higher rates, and once the scholarships are lost, these populations are less likely to persist to their sophomore year. Therefore, as discussed previously, not only do vulnerable populations receive a smaller percentage of TELS funding upon entry into college, they also lose access to these funds at higher rates, bringing another layer of inequity to the surface.

As previously discussed, these students face barriers outside the classroom that prevent them from succeeding in higher education. Even once students meet the initial

[211] Tennessee Higher Education Commission, 2018, p. 23.

academic requirements, enrol full-time, and complete the application process, vulnerable students are unable to meet the requirements, academic and otherwise, necessary to maintain eligibility in the program.

Aside from costs outside of tuition, another reason students may be unable to meet the eligibility requirements for scholarship renewal is unpreparedness for college-level work. Students of colour and low-income students often attend primary school systems that do not adequately prepare them for what will be expected of them in higher education.[212] This, paired with the obstacles previously discussed, such as costs outside of tuition, often present barriers that students are not able to overcome in order to receive an education that could provide them with the means to improve their quality of life.

5.2.2 The Tennessee Promise Scholarship Act of 2014

The Tennessee Promise Scholarship Act of 2014[213] established the Tennessee Promise program, Governor Haslam's primary lever to push the state towards its Drive to 55 goal. With its implementation of the Tennessee Promise program, Tennessee became the first state in the nation to make two years of community or technical college free for high school graduates, gaining the state national attention for unprecedented access and affordability in higher education.[214]

The Tennessee Promise provides a last-dollar scholarship, meaning the funds cover the cost of tuition and other mandatory fees not covered by other federal and state aid, including the Pell grant, HOPE scholarship, and the Tennessee Student Assistance Award.[215] The scholarship program began in the 2015-2016 academic year and is only available to students enrolling in one of the state's community colleges, technical colleges, or other eligible associate degree program the fall semester after completing high school or earning

[212] J. Gonzales, 'Large numbers of Tennessee students not ready for college, new state data show', *Tennessean*, 13 February 2019, https://www.tennessean.com/story/news/education/2019/02/13/large-numbers-tennessee-students-not-ready-college-new-state-data-show/2858538002/, (accessed 19 July 2019).
[213] Tenn. Code Ann., sec. 49-4-708
[214] Drive to 55 Alliance, 'Tennessee Promise', http://driveto55.org/initiatives/tennessee-promise/, (accessed 12 June 2018).
[215] Tennessee Higher Education Commission, 2019, p.7.

an equivalent diploma prior to their nineteenth birthday.[216] The Tennessee Promise program has several requirements. To be eligible, students must:

- complete the FAFSA annually;
- complete FAFSA verification if required;
- complete the Tennessee Promise application;
- apply to a Tennessee community college or technical school;
- attend two mandatory meetings;
- participate in a mentorship program;
- complete and report 8 hours of community service prior to each semester;
- enrol full-time at a Tennessee community college or TCAT; and
- maintain a 2.0 GPA each semester.[217]

Failing to fulfil any of these requirements disqualifies students from the scholarship funds available through the Tennessee Promise, and once disqualified, there is no possibility of reapplication to the program.[218]

In order to provide funding for the program, the Tennessee Promise Scholarship Act of 2014 also created a new trust account called the Tennessee Promise Reserve. The account combines the interest from the existing Tennessee Lottery Reserve account, which was created to fund the TELS program, with surplus revenue from the Tennessee lottery proceeds to fund the Tennessee Promise program.[219]

[216] Tennessee Higher Education Commission, 2019, p.7.
[217] ibid.
[218] Tenn. Code Ann. Sec. 49-4-708
[219] ibid.

5.2.2.1 Analysis

As stated previously, the establishment of the Tennessee Promise program was a milestone accomplishment in postsecondary access and affordability nationwide. While it has been celebrated as the first "free college" program in the nation, in order to be eligible for the opportunity, students must meet several requirements. The first of which is that the program is available only to those who enrol full-time in a community college or TCAT the fall semester directly after completing high school. In addition to this, scholarship funds are contingent on the submission of two applications and the FAFSA, students' attendance at two meetings, their participation in a mentorship program, and the completion and reporting of eight hours of community service each semester.

The Tennessee Promise is not available to anyone in the state who wishes to attend a community college or TCAT tuition-free. Only a very specific individual is able to apply for the program – those who are eligible to go to college in the fall semester directly following their completion of high school. This requirement leaves out all of Tennessee's population who have yet to receive a degree or credential. However, with the launch of Tennessee Reconnect program in the fall of 2018, which will be discussed in the next subsection, the opportunity to attend community and technical colleges tuition-free was made available to a wider range of people. Despite these two programs, gaps persist.

Further, participation in the program is only available to students who enrol full-time in an eligible institution. As stated in the preceding analysis of the TELS program, while full-time students are more likely to complete their degree, mandating full-time enrolment has the potential to shut out low-income students who must work or have family obligations and could benefit from financial support.[220]

Table 10 below provides data on the number of students from each of the four cohorts who progressed along several stages of the process. These data show that a significant number of students do not successfully advance through the process to become eligible, with the most sizable group dropping out when they do not complete the community service

[220] Fain.

required for eligibility. About half of students have failed to meet the community service requirement every year since the program was established.

	Cohort 1	Cohort 2	Cohort 3	Cohort 4
Applied for Tennessee Promise	57,660	59,355	60,461	62,570
Filed the FAFSA	45,744	49,020	51,866	55,126
Completed Community Service	22,718	23,728	25,689	--
Enrolled	16,206	17,172	17,782*	--

*Cohort 3 enrolment as of 04/30/2018. Institutions will continue to certify enrolment through 06/30/2018.
Table 10. Tennessee Promise Application Process, Cohorts 1 through 4

Table showing number of students progressing through each phase of the Tennessee Promise application process.[221]

There is a significant likelihood that a number of the students who complete the application for the Tennessee Promise, the first phase of the process, do not advance through to enrolment voluntarily. These students may have decided to attend an institution that is ineligible for the program, or they may have decided not to go to college at all. While it is unclear why students did not progress from one phase to another, it is also probable that some, if not many, of these students were involuntarily disqualified from the program for not completing the requirements. Further research should be done to determine if these eligibility requirements, especially the community service component, are presenting a barrier for students to accessing the funds available through the Tennessee Promise program.

Due to the relatively recent establishment of the Promise program, comprehensive data is only available for the first cohort of applicants and students. For this reason, Table 11 and all remaining data will include only this cohort. Continuing this analysis, Table 11 provides demographic information for those who applied for the Tennessee Promise and those who enrolled after fulfilling all of the eligibility requirements. When comparing the demographics of applicants to those who persist to enrolment, several striking shifts occur. First, while both Black and Hispanic students are represented proportionately to their

[221] Tennessee Higher Education Commission. Tennessee Promise Annual Report, 2019, p.7.

percentage of the Tennessee population in applicants,[222] the pool of students who eventually enrol is both whiter and higher-income.

	Applicants	Students
Gender		
Male	50.2 %	47.7 %
Female	49.8 %	52.3 %
Race		
White	63.5 %	77.0 %
African-American	22.0 %	12.0 %
Hispanic	4.6 %	3.5 %
Asian/Pacific Islander	1.3 %	1.1 %
Other	2.0 %	1.7 %
Unknown	6.6 %	4.7 %
First Generation	37.7 %	45.6 %
Median Adjusted Gross Income	$ 38,000	$ 55,710
Median Expected Family Contribution	$ 1,716	$ 4,945
Average ACT Score	19.2	18.8
Total	57,600	16,207

Table 11. Tennessee Promise Applicants and Tennessee Promise Students, Cohort 1

Table comparing demographics of Tennessee Promise applicants and students.[223]

The second notable shift is that the average ACT score, an indicator of college readiness, drops slightly. Thirdly, and perhaps a point of encouragement, is that the representation of first generation students is higher in those who enrol than in applicants.

These data indicate that Tennessee's most vulnerable students, specifically lower-income students and students of colour, are applying for the Tennessee Promise program in proportion to their percentage of the state population, but they are not moving on to actually benefitting from the program by enrolling. In conjunction with this, the drop in average ACT

[222] United States, Department of Commerce, Census Bureau, 'Quick facts, Tennessee', 2018, https://www.census.gov/quickfacts/TN, (accessed 23 May 2018).
[223] Tennessee Higher Education Commission, 2019, p.13.

score represented in the table may indicate that these vulnerable students are more academically prepared for college than the White students who are enrolling. As mentioned previously, it is possible that some of these students went to an institution that is not eligible for the Tennessee Promise, such as a university or an institution in another state, but it is likely that many of these students were not able to complete the eligibility requirements and, disqualifying them from the program.

Despite the decrease of students from the application phase to enrolment, the Tennessee Promise program has measurably increased the number of high school graduates enrolling in college. In the program's first year, 5.9% more graduates enrolled in college than the year prior, with the percentage of graduates jumping from 58.4% to 64.3%.[224] While this is surely a success for the program, access alone does not earn students' degrees. When assessing outcomes for Tennessee Promise students from the first cohort, the data are not as positive. Of the students who enrolled during the program's first year, 63.7% of them have not earned an associate degree,[225] which when enrolled full-time, as required, typically takes two years. Though they are no longer eligible to receive Promise dollars, 15% of the cohort is still enrolled, which accounts for a portion of those who have not earned degrees.[226] 18.9% of the cohort went transferred to a university in pursuit of a bachelor's degree.[227]

The lack of a reapplication method for the program is consequential to both its eligibility requirements and student outcomes once enrolled. All students disqualified from the Tennessee Promise program are unable to regain access to the financial aid provided through the program. This includes failing to complete community service hours, falling below the required academic standing, and taking time off from their studies. This "one strike" policy leaves students with few financial aid options if they lose eligibility, with no chance of recourse.

[224] Tennessee Higher Education Commission, 2019, p.16.
[225] ibid, p. 18.
[226] ibid.
[227] ibid.

5.2.3 The Tennessee Reconnect Act

The Tennessee Reconnect Act expanded the opportunity to access tuition-free community college to adults without a degree or credential through the establishment of the Tennessee Reconnect program.[228] The program, launched in the fall of 2018, marked Governor Haslam's last major accomplishment as governor and was the final program added to support his signature economic development initiative, the Drive to 55. Like the Tennessee Promise program, Reconnect was the first of its kind in the nation.[229]

The Tennessee Reconnect program closely mirrors the Tennessee Promise program, with few exceptions. Like the Promise program, Reconnect is a last-dollar scholarship offering the opportunity to access Tennessee's community and technical colleges. This opportunity, however, is only available to adults who do not have a degree, are 25 and older or are deemed independent by the FAFSA, and have lived in Tennessee for at least a year.[230] Additional similarities include eligibility requirements, such as completion of the FAFSA and the maintenance of continuous enrolment and a 2.0 GPA. Similar to the Promise program's mentoring requirement, Reconnect students must participate in an approved advising program. The Tennessee Reconnect program is also funded through money from the Tennessee Lottery Reserve.[231]

Despite the programs' many similarities, the Reconnect program differs in one significant way. Where the Promise program requires students to be continuously enrolled full-time, Reconnect allows for part-time enrolment.[232]

5.2.3.1 Analysis

[228] J. Gonzales, 'Free Tennessee community college for adults program shatters expectations in its first year', *Tennessean*, 29 August 2018, https://www.tennessean.com/story/news/education/2018/08/27/tennessee-reconnect-community-college/1109159002/, (accessed 2 July 2019).
[229] ibid.
[230] Tennessee Student Assistance Corporation, Rules of the Tennessee Student Assistance Corporation Chapter 1640-01-28, Tennessee Reconnect Grant.
[231] ibid.
[232] Ibid.

As noted previously, while the establishment of the Tennessee Promise program was a milestone in increased postsecondary accessibility and affordability, the restriction of scholarship dollars to a narrow group of students left gaps in opportunity. The formation of the Reconnect program filled many of these gaps by providing tuition-free college to adults over the age of 25 without a degree or credential. The program also allows access for those who can claim "independent" status on the FAFSA, including those below the age of 25 that are married, veterans, members of the armed services, orphans and wards of the court, parents, emancipated minors and people experiencing homelessness or are at risk of homelessness.[233]

The Reconnect program greatly expanded the number of individuals eligible to earn an associate degree or certificate tuition-free. In particular, the inclusion of those with independent status under the age of 25 allows the program to capture some of the state's most vulnerable populations. There are, however, still individuals that fall outside of the eligibility requirements for both the Reconnect and Promise programs. A critical example of this is a dependent, low-income individual under the age of 25. A student in this situation would have lost Promise eligibility either by not applying directly after high school or not by fulfilling the requirements to stay in the program.

With the Reconnect program still in its first full year, limited data is available for both enrolment and outcomes. Rough first-year application and enrolment numbers were shared at a meeting of the THEC commissioners shortly after the fall semester began in 2018. Of the 33,258 applicants, 14,962 had gone on to enrol in an eligible postsecondary program by 25 September 2018, with a 55% loss from application to enrolment.[234] Both the applicant and enrolled student pools were made up predominately of White, working mothers in their mid-30s that make below $ 50,000. Of them, 56.71% plan to work full-time.[235] While these data

[233] United States, Department of Education, ' F.S.A. Federal Student Aid Dependency Status'.
[234] Tennessee Higher Education Commission, 'Fall 2018 Tennessee Higher Education Commission Meeting' [online video], 7 November 2018, https://www.tn.gov/thec/about-thec-tsac/commission-members0/commission-meetings/commission-meeting-archive/2018-commission-meeting-archive/fall-2018-commission-meeting.html, (accessed 7 June 2019).
[235] ibid.

points reflect a large drop from application to enrolment, they are not sufficient to draw any conclusions.

5.3 An Integrated Analysis of Higher Education Funding and Outcomes in Tennessee

Thus far, this fifth chapter has provided an overview of Tennessee's postsecondary institutions, along with their governing bodies, and reviewed and analysed the state's key scholarship programs and their respective outcomes. This section will examine the statewide implications of these programs and, more broadly, how well postsecondary institutions and programs in Tennessee, the nation's leader in postsecondary access and affordability, are serving the state's students.

5.3.1 An Analysis of Higher Education Funding Policy in Tennessee

Section 5.2 of this thesis both reviewed and analysed Tennessee's key programs that seek to increase accessibility to higher education by providing scholarship funding to Tennessee students. As reflected, each of these programs have distinct aims. The TELS program awards scholarships to students based on academic achievement, while neither the Tennessee Promise nor Reconnect programs have a merit requirement. Instead, these programs are targeted at specific groups, and funds were available to anyone in these groups that fulfilled their respective requirements.

These programs have made progress in increasing postsecondary accessibility by making accessing college more affordable. Research has shown that the HOPE Scholarship may have even led to an increase in student ACT scores.[236] Additionally, as shown in Figure 3 below, following the creation of the Tennessee Promise program in 2015, college-going rates for Tennessee students have increased.[237] In the fall semester following its inception alone, the number of high school graduates jumped almost 6%.

[236] A. Pallais, 'Taking a Chance on College: Is the Tennessee Education Lottery Scholarship Program a Winner?', *The Journal of Human Resources*, 44-1, 2009, p. 204.
[237] Tennessee Higher Education Commission, 2019, p. 16.

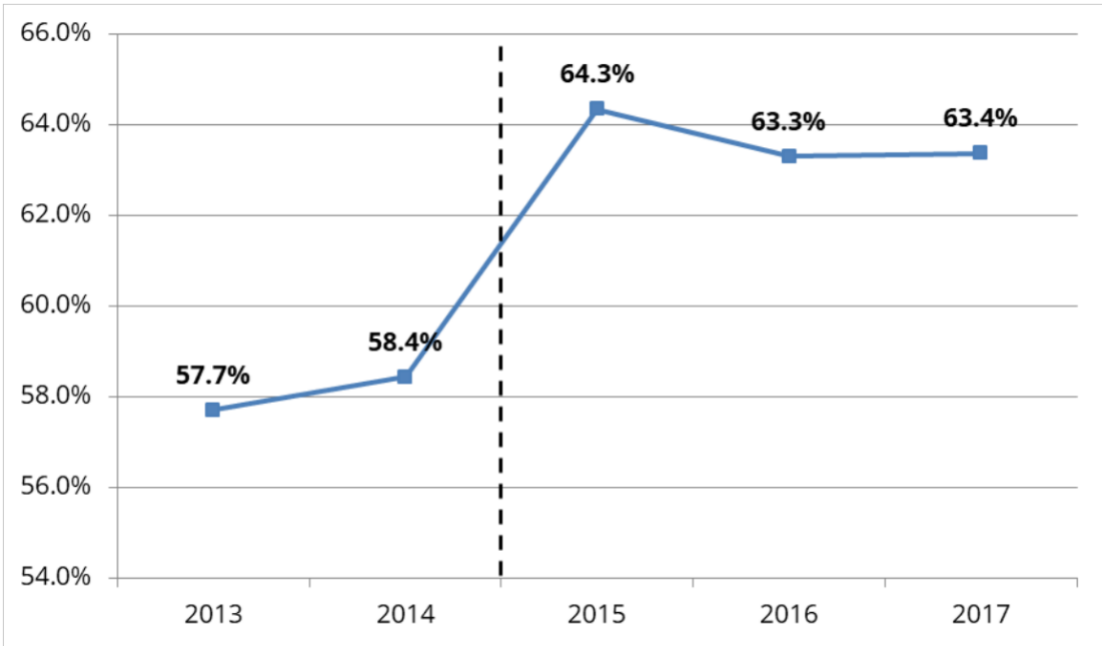

Figure 3. College-Going Rate of Tennessee High School Graduates, 2013 - 2017

Line graph showing Tennessee college-going rates from 2013 – 2017.[238]

While the programs have had successes, points of concern around equity arise upon closer inspection. To examine inequities in Tennessee's funding of higher education, the remainder of this subsection will review who scholarship funds benefit, identify where scholarship recipients are using state funds, and determine how the state pays for these scholarships.

5.3.1.1 The Who: Identifying the Average Tennessee Scholarship Recipient

State funding is more likely to benefit White, higher-income individuals, while students of colour and low-income students are not proportionately represented in scholarship recipients. As mentioned in the analysis of the TELS Program in subsubsection 5.2.1.1, students from high-income families receive significantly more funding than students from other socioeconomic backgrounds, with the richest students receiving 36% of the funds and the

[238] Tennessee Higher Education Commission, 2019, p. 16.

remaining income brackets receiving less than a third of that. Further, students of colour are not proportionately represented in the beneficiaries of the TELS Program. The review of the Tennessee Promise program in subsection 5.2.2 highlighted room for concern as well, with high rates of dropout throughout the application to enrolment process, with students of colour and low-income students not reaching enrolment at higher rates. Additionally, outcomes for students that do reach enrolment are weak, with a majority having not earned a degree after three years.

The inequities in fund distribution become more prominent when examining the total number of dollars that goes to each of these programs. By program, the TELS provides $288m to a total of 75,181 students, while the Tennessee Promise paid about $28m to 15,118 recipients.[239] This means the average TELS student receives about $3,826.54, and an average of $1,860.77 goes to the average Tennessee Promise student.[240] With the TELS program providing the greatest amount of funds to White and higher-income individuals, both the total amount of money going into the program and the cost per student are striking. These dollars, or a large portion of them, could be targeted more equitably by better supporting Tennessee's low-income students, first-generation students, and students of colour.

It is important to also note that undocumented students are not eligible to access any state funding for education, including the TELS, Promise, and Reconnect programs.[241] The requirement of the completion of the FAFSA in order to access these programs presents a barrier for these students. Students who are undocumented are not assigned social security numbers, which are required for the completion of the FAFSA.[242] The inability of these

[239] Tennessee Student Assistance Corporation, 'Tennessee Education Lottery Scholarship Program Summary Report, 2017 – 2018,' Tennessee Student Assistance Corporation, 2018, https://www.tn.gov/content/dam/tn/collegepays/money-for-college/lottery/tels-data/TELS%20Board%20Report%20-%202017-2018%20AC%20Year%20Ending.pdf, (accessed 18 July 2019).
[240] ibid.
[241] S. Taylor, W. Del Pilar, 'Can undocumented students access free college programs?', The Education Trust, 4 December 2018, https://edtrust.org/resource/can-undocumented-students-access-free-college-programs/, (accessed 19 July 2019).
[242] ibid.

students to access these funds means students are often left with the decision to either take out loans or to not pursue higher education.

As discussed, Tennessee's three primary financial aid programs tend to be more beneficial to White and higher-income individuals while neglecting the greater financial need low-income students and students of colour, including undocumented students, face to accessing higher education. While this information tells us how funds are distributed by student demographic, the institutions at which students spend scholarship funds also warrants evaluation.

5.3.1.2 The Where: Institutions Receiving State Funds Through Scholarships

Due to the varied requirements of relevant state scholarship programs, students can use these funds at diverse institutions around the state. The TELS program does not tie scholarship eligibility to a particular type of institution, so long as the institutions are accredited. This means that institutions of all types in Tennessee receive money from the program, including private and independent TICUA institutions, which are often more expensive than public institutions, leaving more students with debt.[243] The Tennessee Promise and Reconnect programs, however, offer students a more limited selection of institutions. Because students receiving Promise and Reconnect funds must be enrolled in an associate degree or certificate program, they tend to be enrolled in one of Tennessee's community colleges, but these students also have access to a small number of public universities, as well as private and proprietary institutions that offer these programs.

All of Tennessee's state scholarship programs are administered by The Tennessee Student Assistance Corporation (TSAC), a non-profit organisation and designated federal student loan guaranty agency.[244] The funds that support these programs are generated from revenue from the Tennessee state lottery. In their 2018 year-end report, TSAC published a

[243] E. Kerr, 'The cost of private vs. public colleges', *U.S. News & World Report*, 25 June 2019, https://www.usnews.com/education/best-colleges/paying-for-college/articles/2019-06-25/the-cost-of-private-vs-public-colleges, (accessed 10 July 2019).
[244] Tenn. Code Ann. 49-4-903

summary report detailing the amount of state money spent on scholarships over the last three years, how many students received state funding for higher education, and at which institutions these funds were used.

In the 2017 – 2018 school year alone, 90,299 Tennessee students received funding through the TELS and Promise programs, with nearly $317m paid out.[245] A large percentage of total funds paid out were utilized at public community and technical colleges and universities, but about $57m, close to 18% of total funding, went to TICUA institutions, including private religious institutions.[246] Shifting these funds away from non-public postsecondary institutions and toward vulnerable students attending public postsecondary would be a step in promoting a more equitable funding.

5.3.1.3 The How: Identifying the Source of State Scholarship Funding

As briefly mentioned in previous sections, the funds for all state-administered scholarships, including the TELS, Promise, and Reconnect programs, are provided through an account established with revenues from the state lottery, which was legalized by constitutional amendment to provide funding for education.[247] Across the nation, revenues from lotteries are important to state budgets.[248] These lottery funds supplement government budgets without imposing tax increases, which are especially unpopular in politically conservative states, like Tennessee. However, researchers have conducted studies on who plays the lottery, the results of which highlight how supplementing budgets with income from state lottery systems could be problematic.

[245] Tennessee Student Assistance Corporation, 2018.
[246] ibid.
[247] Tenn. Const. art. 11, sec 5.
[248] J. Wihbey. 'Who plays the lottery, and why: Updated collection of research', *Journalists Resource*, 2016, https://journalistsresource.org/studies/economics/personal-finance/research-review-lotteries-demographics/, (accessed 21 June 2018).

Social scientists agree that an inverse relationship exists between income level and the amount of money spent playing the lottery.[249] But the correlation extends beyond income level. A correlation with lottery play also exists for those with lower education levels, employment status, as well as race and ethnicity.[250]

A survey conducted by the University of Chicago's National Opinion Research Center found these correlations to be true. The survey found that Black Americans spend $998 playing the lottery annually, while White players only spent $210, as shown in Table 12. Looking at educational attainment levels, those without a high school diploma spent $700 annually, while college graduates spent $178. Finally, when comparing lottery play by income level, those at the lowest level, making less than $10,000 per year, spent $597, while those at the highest income level spent only $289, also reflected in Table 12.[251] While this study was conducted in 1999, these data are still used today when discussing trends in lottery play by socioeconomic and demographic breakdown.[252]

[249] J. Beckert, M. Lutter, 'Why the poor play the lottery: Sociological approaches to explaining class-based lottery play', *Sociology*, 47(6), 2013, p. 1154.
[250] K.B. Lang, M. Omori, 'Can demographic variables predict lottery and pari-mutuel losses? An empirical investigation', *Journal of Gambling Studies*, 25(2), 2009,173.
[251] R, Volberg, 'Gambling impact and behavior study', National Opinion Research Center at the University of Chicago, 1999, p. 24.
[252] A. Chang, '4 ways the lottery preys on the poor', *Vox*, 13 January 2016, https://www.vox.com/identities/2016/1/13/10763268/lottery-poor-prey, (accessed 22 May 2019).

Demographic & Socioeconomic Characteristics	Participation Rate	Annual Per-Capita Play
Race/Ethnicity		
White	52.0 %	$ 210
Black	48.2 %	$ 998
Hispanic	53.6 %	$ 289
Other	49.8 %	$ 295
Educational Attainment		
Less than a high school diploma	47.7 %	$ 700
High school diploma	52.4 %	$ 409
Some college, no degree	55.6 %	$ 210
College degree	48.0 %	$178
Household Income		
<$ 10,000	48.5 %	$ 597
10,000 – 24,999	46.7 %	$ 569
25,000 – 49,999	57.9 %	$ 382
50,000 – 99,999	61.2 %	$ 225
More than $100,000	51.0 %	$ 289

Table 12. Patterns in Participation and Annual Per-Capita Lottery Play

Table showing patterns in annual per-capita lotter play by race, education, and income.[253]

According to these data, some of our society's most vulnerable populations contribute a majority of the funding to state lotteries. Critics of lottery systems have gone so far as to refer to the programs as taxes on poor and uneducated people.[254]

In the context of higher education in Tennessee, these data are especially relevant. Low-income students and students of colour both receive these state scholarships at lower rates at lower rates and lose eligibility for them at higher rates. The reality is that Tennessee's state scholarship programs are funded, in majority, by lower-income and minority individuals, while the moneys collected through the programs are being used, in disproportionate amounts, to fund higher education for individuals that are primarily high-income and White.

[253] Volberg, p. 24.
[254] ibid.

5.3.2 Tennessee Postsecondary Outcomes: Accessibility, Affordability, and Completion

Tennessee has been celebrated throughout the country for its unprecedented progress in postsecondary accessibility and affordability provided through the creation of the Tennessee Promise and Reconnect programs. Figure 3 on page 71 indicated that the state saw a spike in access reflected in college-going rates. Based on these data, the tuition-free program allowed more students to pursue a degree. While both the access and affordability provided through these programs is noteworthy progress, especially in a deeply conservative state like Tennessee, simple access to postsecondary institutions does not provide the benefits of education. This subsection will explore the impacts of these programs on student enrolment trends and student success in postsecondary programs by institution.

The commitment by the state to provide tuition-free higher education for individuals pursuing an associate degree or technical certificate increased the number of high school graduates going to college.[255] With access to these funds being tied to enrolment in certain these specific degree and certificate programs, the Tennessee Promise program incentivised students to attend one of the state's community colleges or colleges of applied technology, where these types of credentials are primarily offered. This can be seen reflected in Table 13 through a significant change in the number of students enrolling in community colleges and TCATs. While these data show Tennessee's public universities suffered decreased enrolment in 2015, the first year of Promise availability, the following year these institutions saw an increase in enrolment. Despite this uptick in 2016 enrolment, it is likely that students who would have attended public universities before the establishment of the Tennessee Promise program will continue to opt for tuition-free attendance at a community or technical college.

[255] Tennessee Higher Education Commission, 2018, p. 16.

	Fall 2014	Fall 2015	Fall 2016	% Change, 14 - 15	% Change, 14 - 16
TCATs	8,691	10,432	11,500	+20.0%	+32.3%
Community Colleges	17,379	22,190	20,770	+27.7%	+19.5%
LGIs	11,983	11,309	12,171	-5.6%	+1.6%
UT System	7,977	7,541	7,804	-5.5%	+1.6%
Total	46,030	51,472	52,245	+11.8%	+13.5%

Table 13. Change in First-Time Freshmen Enrolment by Sector, Fall 2014 though Fall 2016

Table showing the change in freshmen enrolment at Tennessee colleges and universities from 2014 – 2016.[256]

Where the previous table looked at freshmen enrolment alone, Figure 4 below shows Tennessee's total enrolment in postsecondary education divided up by institution type. This figure shows that community colleges serve the largest number of Tennessee college students, with locally governed institutions falling shortly behind and the state's TCATs serving the smallest population of students. Additionally, overall enrolment trends have stayed relatively flat since 2014.

[256] Tennessee Higher Education Commission, 2018, p. 16.

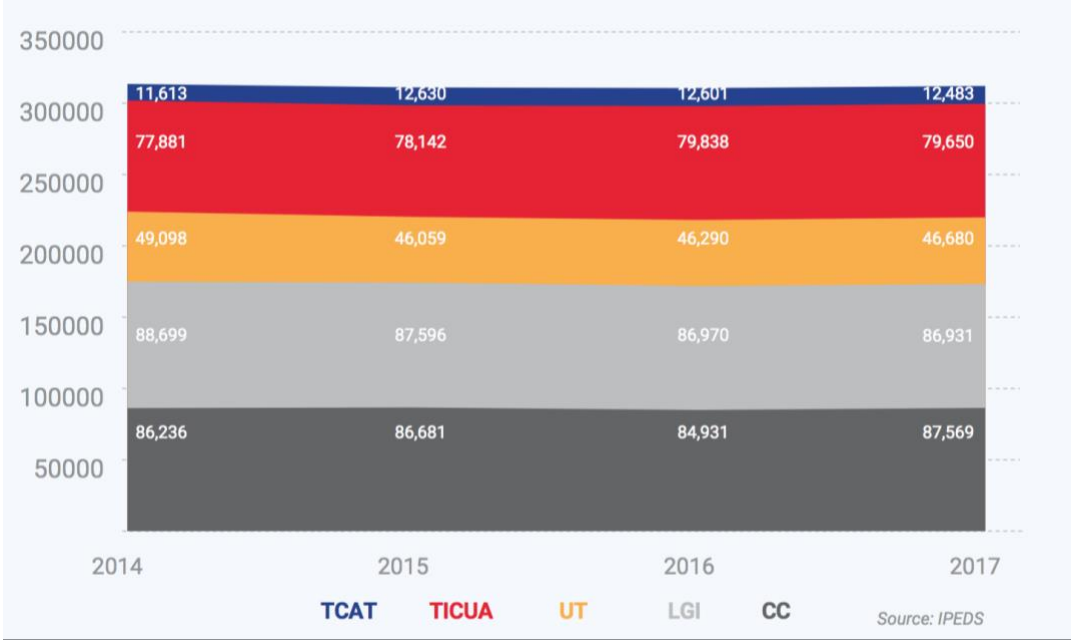

Figure 4. Tennessee Higher Education Total Enrollment by Institution Type, 2014 – 2017

Graph showing enrollment rates in Tennessee colleges and universities by institution type.[257]

Figure 4 provides vital context for the examination of graduation rates in Tennessee, which can be seen by institution type in Figure 5 below. As indicated, community colleges have the lowest graduation rate among institution types, with an average graduation rate of 22% among the state's thirteen community colleges. These rates differ quite significantly by institution. Motlow State Community College holds the highest graduation rate, with about 33% of the institution's students graduating after three years.[258] In contrast, only about 11% of students that enroll in Southwest Tennessee Community College graduate in the same time frame. It should also be noted that Southwest Tennessee Community College is located in Memphis, TN, which has both the largest Black population and the highest

[257] Complete Tennessee, 'State of Higher Education: No Time to Wait, 2018-2019', Complete Tennessee, 2019, p.7.
[258] Tennessee Board of Regents. Three year graduation rate trends, Tennessee Board of Regents, https://app.powerbi.com/view?r=eyJrIjoiMDc2MTY2MDYtYmI0Yi00OTZkLTk0NGQtNTNiYWYzOTkxNmJmIiwidCI6Ijc4ZTkwNWIzLTE4ZWEtNGE5MS04YjlmLTMzZTRmZTNjYTQ4YSIsImMiOjN9, (accessed July 20 2019).

concentration of poverty in the state. In fact, the city is second poorest metropolitan service area in the nation, and also[259] has the sixth highest Black population among US cities.[260]

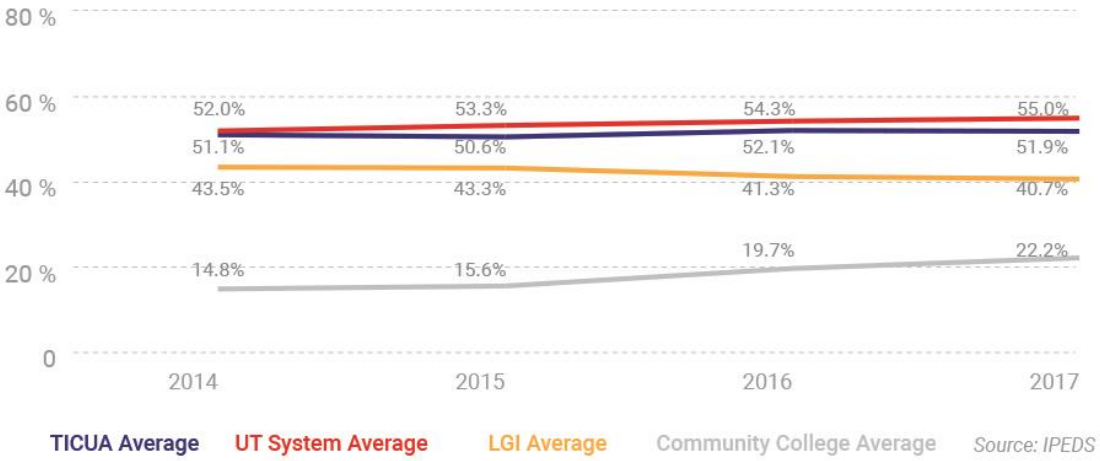

Figure 5. Graduation Rates by Institution Type, 2013 - 2017

Line graph showing graduation rates from 2013 – 2017 at Tennessee colleges and universities by type. Community college rate measured on three-year graduation rate. Others measured on six-year graduation rate.[261]

Further data on community college graduation rates can be found in Figure 6 below. The college graduation rates by race shown in Figure 6 reveal that while a greater percentage of students are graduating from these institutions after three years, Black students graduate at significantly lower rates than other groups. On average, 24% of White students are graduating, but this number drops to 11% for Black students. These inequities are also reflected in community college graduation rates by socioeconomic status, shown in Figure 7.

[259] Tennessee Board of Regents.
[260] S.Rastogi, T. Johnson, E. Hoeffel, M. Drewery, Jr., 'The Black Population: 2010', *2010 Census Briefs*, United States Census Bureau, 2011, p. 14.
[261] Complete Tennessee, 2019, p.9.

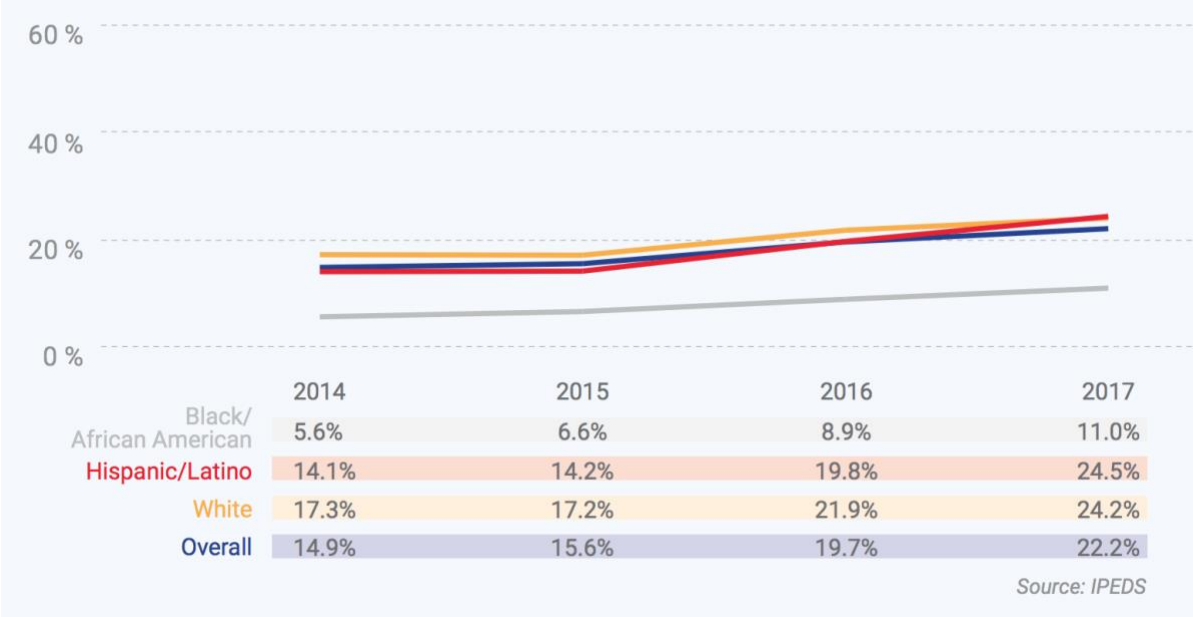

Figure 6. Three-Year Community College Graduation Rates by Race, 2013 - 2017

Line graph showing three-year community college graduation rates.[262]

Figure 7 displays three-year graduation rates by student eligibility for the Pell Grant, which serves as an indicator for the socioeconomic status of students. Eligibility for the Pell Grant reflects financial need, which is helpful in identifying low-income students and measuring their success. As could be expected, graduation rates for all groups went up, but disparities between low-income students and their classmates, with non-Pell eligible students graduating at an 11% higher rate than students with Pell.

[262] Complete Tennessee, 2019, p.10.

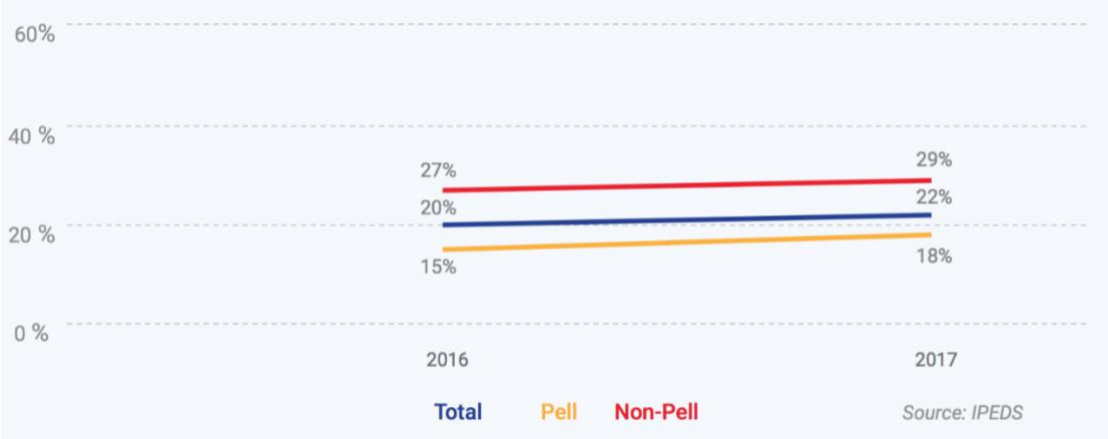

Figure 7. Community College Graduation Rates for Low-Income Students, 2016 - 2017

Line graph showing three-year community college graduation rate from 2016 – 2017.[263]

While community college graduation rates in the state are increasing for all represented demographics, Tennessee still lags behind the national average of about 30%.[264] As discussed above, equity gaps by both race and socioeconomic status are present in community college graduation rates as well. While similar gaps in completion rates are also present at Tennessee's public universities, the likelihood of graduation for both students of colour and low-income students at these intuitions increases quite significantly. The graduation rate of Black students at the state's LGIs nearly doubles, jumping from 11% to 31%.[265] The UT System graduates this same demographic at the even higher rate of 47.7%.[266] Similar outcomes can be seen for low-come students attending these institutions. With an 18% graduation rate at the state's community colleges, graduation rates for low-income students at the state's LGIs and in its UT System increase to 31% and 50% respectively.[267]

[263] Complete Tennessee, 2019, p.12.
[264] National Center for Education Statistics, 'Indicator 23: Postsecondary Graduation Rates', NCES, February 2019, https://nces.ed.gov/programs/raceindicators/indicator_red.asp, (accessed 26 July 2019).
[265] Complete Tennessee, 2019, p.10.
[266] ibid, p. 11.
[267] ibid., p. 13.

Tennessee's community colleges serve a larger portion of the Tennessee student population than other types of institutions in Tennessee, and the creation of the Tennessee Promise program has increased their enrolment through offering tuition-free attendance. However, graduation rates at community colleges are significantly lower than those at the state's public universities, especially those of vulnerable populations. While all student demographics are more likely to leave these universities with a degree, gaps at these institutions show that inequities exist across Tennessee's entire higher education system.

Examining the college graduation rates of students by income level nationally shows that these inequities are present outside Tennessee as well. Figure 8 below compares college graduation rates by both parent income level and college entrance exam scores, a key measurement of student "merit" that is meant to indicate a student's ability to succeed in college. The figure shows, however, that while entrance exam scores do predict success in higher education, the greatest predictor of success is wealth. As shown, low-scoring students that come from the wealthiest families are more likely to earn a degree than high-scoring students from the poorest families. Considering the relationship between wealth and the completion of a degree, as highlighted in Figure 1 on page 30, along with the correlation between wealth and college graduation reflected in Figure 8 below, leaving college without a degree can have a multi-generational impact.

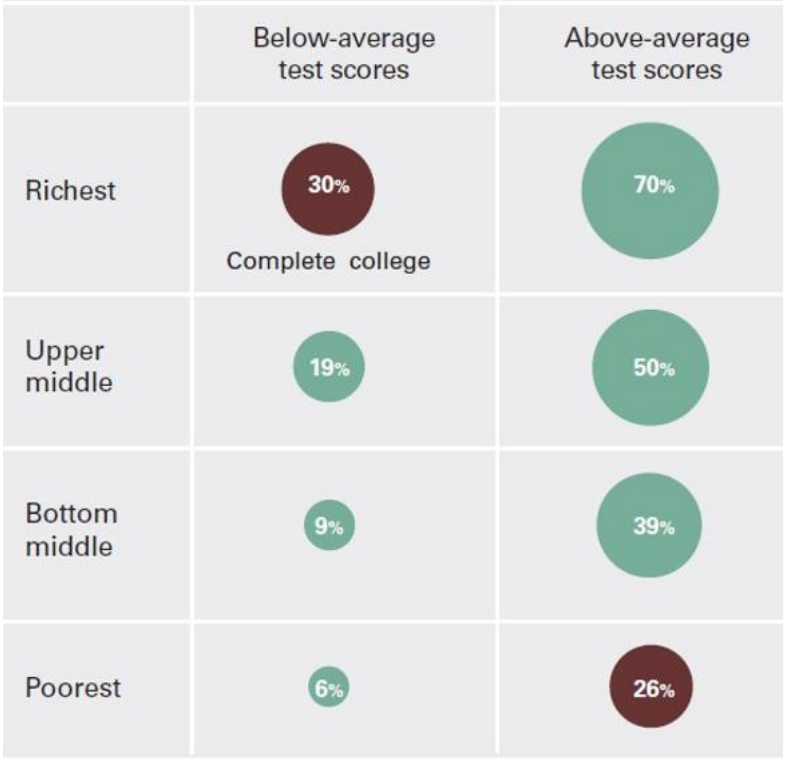

Figure 8. College Graduation Rates by Family Income and Test Scores

Figure showing college graduation rates by income and test scores.[268]

Table 14 below shows the percentage of individuals in Tennessee and the United States who were successful in earning a postsecondary degree or credential. The racial inequities reflected in both postsecondary enrolment and completion in Tennessee are mirrored here. While the state lags behind the United States average in overall attainment, equity gaps exist nationally as well. Tennessee, the nation's leader in postsecondary access and success, ranks 41st among states in degree attainment.[269]

[268] The New York Times, 'Affluent Students Have an Advantage and the Gap Is Widening', *The New York Times*, 2012, https://archive.nytimes.com/www.nytimes.com/interactive/2012/12/22/education/Affluent-Students-Have-an-Advantage-and-the-Gap-Is-Widening.html?_r=0, (accessed 2 May 2018).
[269] Talk Poverty, 'Poverty by state, Tennessee', 2018, https://talkpoverty.org/state-year-report/tennessee-2018-report/, (accessed 2 May 2019).

	Tennessee	United States
White	37.9%	47.1%
Black	28.4%	30.8%
Hispanic	18.8%	23.7%
Asian and Pacific Islander	61.9%	62.7%
American Indian	34.9%	24.5%
Total Population	42.7%	47.6%

*Reflects number of individuals who have earned at least an associate degree or high-quality credential.

Table 14. Attainment Rate by Race, Tennessee and United States

Table comparing Tennessee and United States degree attainment rates.[270]

Postsecondary degrees, especially bachelor's degrees and higher, open the door to many economic opportunities, enabling individuals to secure a more stable life for themselves and increasing the likelihood that their children will do the same. Degree-holders are less likely to experience poverty and its related impacts, such as housing insecurity,[271] hunger,[272] and a lack of transportation.[273]

Currently, Tennessee has one of the highest poverty rates in the nation, with a rank of 41.[274] The state also ranks in the bottom half of states in income inequality, teen birth-rate, and health insurance coverage.[275] If higher education is to serve as a remedy to poverty and its impacts, more must be done in Tennessee to ensure individuals can both access institutions and are supported in earning a degree once enrolled.

[270] Lumina Foundation, Stronger Nation, 2019, http://strongernation.luminafoundation.org/report/2019/#nation, (accessed 18 July 2019).
[271] Tunstall.
[272] Hillestad.
[273] Hyde.
[274] Talk Poverty.
[275] ibid.

5.4 The Right to Education in Tennessee

Thus far, this chapter has examined Tennessee's higher education system, analysed the impact of recent statewide initiatives on student outcomes, and the implications of these outcomes. Considering Tennessee's role as a national leader in postsecondary access and affordability, this section seeks to measure the realisation of the right to education in Tennessee by the minimum standards called for in international human rights documents.

As previously stated in section 3.3, the attainment of a bachelor's degree will be used as the standard for the realisation of the right to education. This level of degree attainment most closely fulfils the minimum standards of the right to education through the intrinsic and positional benefits it holds. The liberal education provided through bachelor's degree programs support the full development of the human personality. The access to the economy granted through a bachelor's degree allows for a more effective participation and navigation of society. More so than at any lower levels of educational attainment, Bachelor's candidates are exposed to a curriculum that empowers them to be more responsible citizens, both domestically and globally.

When applying the standard of a bachelor's degree to the Tennessee context, the state falls short in fulfilling the right to education of its people, with only 28.7% of Tennesseans holding a bachelor's degree or higher.[276] Even the state's higher education funding programs, which have been celebrated nationally, do little to promote progress towards meeting this standard. Tennessee's two tuition-free programs, the Tennessee Promise and Tennessee Reconnect, have increased the number of students accessing higher education, but their outcomes show that few students who apply go on graduate. Students of colour and low-income students are at higher risk of leaving higher education institutions without a degree. Additionally, the completion of an associate degree would not fulfil the bachelor's degree standard, and only 18.9% of Promise students transfer in order to pursue their bachelor's.[277]

[276] Talk Poverty.
[277] Tennessee Student Assistance Corporation, 2018.

Unlike the Promise and Reconnect programs, the TELS program provides scholarships for all students who meet its eligibility requirements, including those pursuing a bachelor's degree at a public or private university. However, the funds are only available on the basis of merit, resulting in glaring inequities in scholarship allocation. While the chances of graduation for low-income students and students of colour would greatly increase at public universities, these funding inequities leave them behind. About 90% of total funds distributed through state scholarship programs go to TELS recipients, which are predominately white students from high-income families.[278]

Retargeting state funds with a focus on low-income students and students of colour could relieve these inequities. Providing students with need-based aid that could be utilized at public universities could increase outcomes for these students and allow for access to tuition-free bachelor's degree programs. However, international human rights norms call for the progressive realization of the right to free higher education. Even state aid targeted at these populations falls short of this. Additionally, with the United States being the richest country in the history of the world, there is little room to claim that the country would be unable to financially fulfil this right.

Despite the shortcomings of these programs, Tennessee has become a national model for promoting affordability and accessibility in higher education. With Tennessee itself falling far short of the fulfilment of the right to education for its people, this is likely indicative of the rest of the country.

[278] Tennessee Student Assistance Corporation, 2018.

6 Conclusion

Tennessee's innovative funding policies in higher education have made it a national leader in postsecondary access and affordability. However, the outcomes of these programs show that the state's higher education system are not equitably serving students, with many still facing barriers to access and completing a degree program once enrolled.

The inequities present in higher education also exist in the populations of both Tennessee and the United States. Considering the vital role education plays as a means of economic and political empowerment, these inequities in educational outcomes are perpetuating broader societal inequities, such as poverty, hunger, and the inability to engage in political processes. However, the United States does not acknowledge its obligation to fulfil the economic and social rights of its citizens. If the United States is to maintain its reliance on its educational systems to provide a remedy to these inequities, education in the United States must not mirror these same issues.

The minimum standards established for the right to education through international human rights law and norms acknowledge the right's role as a conduit for the realisation other rights. The ability of individuals to enjoy their human rights is inextricably linked to their access to the intrinsic and instrumental values of education. Where these minimum standards are not met, the enjoyment of human rights suffer for the individual, his/her society, and the globe.

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Abstract

The right to education has been deemed an "empowerment right" internationally. Education provides a foundation from which to realise a number of other human rights. In the United States, education serves as a means through which the government seeks to create a more equitable and just society. Despite the essential role education plays in the access to human rights, the U.S. has failed to ratify any legally-binding international treaties that protect this right. However, the state of Tennessee has received national praise for its progress in removing barriers to accessing higher education and being a pioneering state in the "free college" movement. Utilizing an interdisciplinary approach, this thesis will examine the state of the right to education in Tennessee and discuss the implications these celebrated policies could have on the rest of the U.S.

Abstract (auf Deutsch)

Das Recht auf Bildung wird international als „Ermächtigungsrecht“ eingestuft. Bildung bietet die Grundlage für die Verwirklichung einer Reihe anderer Menschenrechte. In den Vereinigten Staaten sieht die Regierung Bildung als Mittel zur Erreichung einer gerechteren Gesellschaft an. Trotz der entscheidenden Rolle die Bildung für die Ausübung der Menschenrechte spielt, hat die USA keine rechtsverbindlichen internationalen Verträge ratifiziert, die dieses Recht schützen. Der Bundesstaat Tennessee jedoch erhielt auf nationaler Ebene Lob für seine Fortschritte beim Abbau von Hindernissen, die den Zugang zu höherer Bildung erschweren und als Pionier in der sogenannten “free college” Bewegung. Mithilfe einer interdisziplinären Methode wird in dieser Arbeit der derzeitige Stand des Rechts auf Bildung in Tennessee untersucht und mögliche Auswirkungen erörtert, die diese hochgelobte Politik auf den Rest der USA haben könnte.