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A Case for Undocumented Students in Higher Education: The Pursuit of Social Justice in Oregon Senate Bill 742

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High school graduates toss their caps towards the sky in celebration of achievement. The audience roars with excitement, family members and friends are cheering. The graduates hear the thunderous wave of applause. For one student, all of the noise slowly fades away. A sudden thought interrupts the celebration: *How am I going to afford college?* Many high school graduates ask themselves this question, but undocumented high school graduates have extreme difficulty finding an answer. The Oregon legislature aims to provide undocumented high school graduates with the opportunity to pay in-state tuition fees. Because undocumented students cannot qualify for financial aid, they should be able to pay resident tuition rates at public universities. Undocumented students should have an equal opportunity to pursue higher education. For this reason, Oregon Senate Bill 742 ought to be passed. To defend this claim, I will present philosophical arguments in support of the bill by using the ideologies outlined in egalitarian and communitarian ideas. These philosophical theories are connected to Senate Bill 742 because the ideas are pillars of American core values. The core values represented in the bill are equality of opportunity in higher education, the common good in Oregon, and pursuing social justice for undocumented high school graduates. The communitarian ideas of Michael Walzer and Philip Selznick will support my thesis. The egalitarian doctrine provides my analysis with a philosophical foundation. Finally, this article will discuss and analyze the liberal ideas of Robert Nozick and Friedrich Hayek as they present counterarguments to my thesis.

Background: Undocumented Students in the State of Oregon

The current political debate over undocumented immigrants in the United States has largely ignored the plight of undocumented students. The Urban Institute estimates that 65,000 undocumented students—that is, children born abroad who are not U.S. citizens or legal residents—graduate from U.S. high schools each year (Gonzales, “Young Lives”). These students have received much of their primary and secondary school education in the United States. Undocumented high school graduates were raised in America, where they were taught to work hard and succeed in a system that rewards merit. Due to these students’ undocumented status, they are prohibited from receiving federal and state financial aid to continue their education.

According to the National Immigration Law Center, “currently, only about 5 to 10 percent of undocumented young people who graduate from high school go on to college, compared with about 75 percent of their classmates” (Bernstein). The low percentage of college attendance may be related to the prohibitive cost of tuition for undocumented students. Unlike their classmates, undocumented students do not have access to in-state college tuition. Because of their

undocumented status they are classified as “out-of-state,” a paradoxical definition given they are not legal residents of another state. Technicalities aside, they are eligible for “out-of-state” tuition, which is three times what residents pay. These students are often from economically disadvantaged backgrounds, which make “out-of-state” college tuition fees unaffordable for many of these students and their families.

Moreover, there is no federal or state law that prohibits the admission of undocumented immigrants to public or private U.S. colleges and universities. However, institutional policies on admitting undocumented students vary from state to state. For example, various policies require applicants to submit proof of citizenship or legal residency and refuse admission to students without documentation, but such admissions policies are not state law. So while undocumented students can legally attend college, they are effectively excluded from doing so because they are ineligible for most forms of financial aid, including in-state tuition.

Currently, thirteen states—including Texas, California, Washington, Utah, New York, and Illinois—have passed laws that permit undocumented students to pay resident tuition rates under certain conditions. In most states, the lower tuition rates apply only to a few dozen or a few hundred particularly talented students. Oregon is not among the thirteen states with tuition equity laws. Undocumented high school graduates would offer Oregon a new source of bright young leaders who are bicultural, bilingual and eager to achieve.

In reality, no one knows exactly how many illegal immigrants are enrolled in colleges or have graduated; schools do not collect such data. But in 2010, an estimated 96,000 young adults without legal status held at least an associate's degree or higher, according to a report from the Migration Policy Institute (Rosenblum, “Earned Legalization”). More undocumented students are likely to pursue a college education, regardless of the obstacles their undocumented status may present. They may volunteer hundreds of hours, pay their way through college, and graduate school with a dozen internships. These high school graduates will more than likely go on to pursue a college education, and it does not seem fair to make them try three times harder than other college bound Oregonians. The bill can persuade college admissions systems in Oregon to provide undocumented high school graduates with the financial help they need for college.

Senate Bill 742 can implement a relational understanding of social justice in Oregon. Social justice is concerned with equal justice, not only in court systems, but in all aspects of society. The concept of social justice maintains that it is unfair to punish undocumented high school graduates for what they cannot control or change. Senate Bill 742 could help to rectify the injustice inherent in the college admissions system.

Legislature: Senate Bill 742

In the spring of 2011, the Oregon Senate introduced and approved Senate Bill 742. The bill allows undocumented students to pay resident tuition rates at the state's seven public universities. In order for undocumented students to qualify for the lower tuition they would have to meet specific credentials to access in-state tuition. They must have attended a U.S. school for at least five years, attended an Oregon school for three years, and graduated from an Oregon high school. Students must also prove they are actively working toward U.S. citizenship.

Several months after the bill was passed in the Senate, the bill advanced to the House for a vote. An emotionally charged debate exposed the disagreement among lawmakers, and the bill died on the House floor. The bill was not introduced in the 2012 session, but will be introduced again in 2013. Senate Bill 742 entertains the idea that every high school graduate, regardless of his or her immigration status, is entitled to have an equal opportunity to pursue higher education.

The controversy that has erupted in response to Senate Bill 742 invites us to reflect upon what the Austrian political thinker Friedrich Hayek considered to be one of the “most important” questions of social justice: “whether there is a case for so changing our institutions as to eliminate as much as possible those advantages due to environment” (89), such as inequalities in family, inheritance and education. In Oregon state politics today, the important question posed by Friedrich Hayek is at the core of the proposed legislation. Allowing undocumented students access to in-state tuition in Oregon’s public universities would be one way of changing state institutions to level the playing field. Senate Bill 742 is designed to help reduce the inequalities in family, inheritance and education by granting these students the ability to pay resident tuition rates. The bill supports the idea that undocumented high school graduates have earned the equal opportunity to an affordable higher education.

One of the requirements outlined in Senate Bill 742 is that undocumented students must be “actively working toward U.S. citizenship.” The concept of citizenship is central to this discussion because undocumented students do not need to be citizens to qualify for the in-state tuition. To further understand this concept, a good definition of citizenship is necessary. According to political philosopher Dominique Leydet, “a citizen is a member of a political community who enjoys the rights and assumes the duties of membership” (Leydet). Undocumented students have fulfilled the second half of the definition by assuming the duties of membership. These students have assumed various membership roles in the community. For instance, many undocumented high

school graduates were volunteers, student leaders, honor roll students, athletes, and valedictorians. They are aspiring teachers, engineers and doctors.

A duty of membership is to model productive citizenry and these students have fulfilled their roles as members of the community. The first half of the definition however, requires the social recognition of essential rights as promised to the members of a community. This membership is implied when undocumented students have access to a K-12 education and earn a high school diploma. However, undocumented students do not enjoy the rights embedded in the duties of membership because they suffer from inequalities in a social and economic context.

Philosophical Lenses: Egalitarian and Communitarian Ideas

Senate Bill 742 can be seen through the philosophical lens of equality. The school of thought in political philosophy that favors equality among human beings is Egalitarianism. The bill embodies an egalitarian perspective. A solid definition of Egalitarianism will provide a philosophical foundation for my analysis.

According to political philosopher Richard Arneson, Egalitarianism is “the idea that all human persons are equal in fundamental worth or moral status” (Arneson). In principle, every human being is entitled to equal rights and equal opportunities. The American legal philosopher Ronald Dworkin offers an interpretation of the egalitarian doctrine. Dworkin explains that, “we must distinguish between two different principles that take equality to be a political ideal” (62). The first principle requires that the “government treat all those in its charge as equals, that is, as entitled to its equal concern and respect” (62). Undocumented students are in the state government’s charge because they are recognized as members of primary and secondary school communities. For instance, the U.S. Supreme Court found in *Plyler vs. Doe* (1982) that because undocumented children are illegally in the United States through no fault of their own, they are entitled to the same K–12 educational opportunities that states provide to children who are citizens or legal residents.

Dworkin’s second principle requires that the “government treat all those in its charge equally in the distribution of some resource of opportunity” (62). In this case, the “resource of opportunity” has been partially met for undocumented students because they are entitled to a K–12 education. However, the other half to the “resource of opportunity” is the equal opportunity to an affordable higher education, which is not possible for these students because “out-of-state” college tuition rates are three times more expensive. So, the egalitarian values of equality and solidarity support the idea that residential undocumented students should have the equal opportunity to pay resident tuition rates.

The communitarian ideas of Michael Walzer and Philip Selznick also support providing undocumented students with access to in-state tuition. The communitarian school of thought values reciprocity and the inclusion of members belonging to a particular society. Communitarianism argues that the natural inequalities that exist between human beings must be substantially reduced. In other words, the “natural inequalities” of undocumented students—inequalities in family, inheritance, and education—can be substantially reduced with access to in-state college tuition.

The American sociologist and legal scholar Philip Selznick argues that, “at the heart of the communitarian understanding of social justice is the idea of reciprocity: each member of the community owes something to all the rest, and the community owes something to each of its members” (Etzioni xxxiv). Therefore, the Oregon community owes undocumented students recognition for their secondary school education, not simply through a high school diploma, but also by providing them with the opportunity to pursue higher education. Undocumented students are not granted the privilege of furthering their education because they were not born with the same privilege as other Oregonians. These high school graduates may be more likely to give back to the community if they believe they will be supported in fulfilling their societal role as Oregonians, including in their pursuit of a college education.

According to Philip Selznick, “a persuasive rhetoric of individualism, and a preference for individual-centered models of thought and action, has tended to marginalize conceptions of the common good” (10). From one point of view we can understand the common good in the state of Oregon, as presented by Senate Bill 742, to be a fundamental belief in equal opportunities for the pursuit of higher education regardless of a student’s citizenship status. In this case, equal opportunity is related to the common good because it provides the conditions necessary for various degrees of human flourishing, such as finding a better job, higher income, and the ability and likelihood to give back to the community.

Selznick further writes, “People often ask, who decides what is the common good? The answer is we all decide, not by abandoning our special interests and perspectives but by...discovering ways of binding them to more comprehensive interests and ideals” (12). We cannot expect a *completely* shared conception of the common good. However, if we do indeed value equal opportunity in scopes of public education the proposed bill is a bold attempt to put into practice the purest meaning of *equal* higher education opportunities.

Argument

My claim entails providing equal opportunities to individuals born with inequalities in family, inheritance and education. For these students, the inequality

of family is being born to parents without U.S. citizenship or legal residency, which means they could not inherit the legal title of U.S. citizen or Oregonian. The inequality of inheritance is a consequence of having unauthorized immigrant parents or relatives without the means to provide them with an inheritance of wealth. In other words, unauthorized parents or relatives have no ties to the U.S., and cannot provide these students with the financial stability that is needed to pay “out-of-state” college tuition fees. Thus, their inequality of education is a direct result of their inequalities of family and inheritance. Many of these high school graduates were raised in Oregon, and as such they are Oregon residents. Undocumented high school graduates were removed from their country of origin at a young age to be raised in a state that they now call their home. There is no other state in which these students could be considered “in-state.”

The issue of granting undocumented students access to in-state tuition becomes even more important when they find paths to college careers. There are thousands of young adults who were brought to the U.S. illegally as children now holding college degrees. Consequently, we are held at the mercy of reverse brain drain, in other words highly educated undocumented college graduates migrate to work abroad, instead of contributing to the “common good” by reversing “brain drain.” Senate Bill 742 benefits both the students and workforce in Oregon.

The bill’s prerequisite of “actively working towards U.S. citizenship” may help solve the problem undocumented high school graduates face if they do manage to achieve a college degree—not being able to find employment due to their undocumented status. Senate Bill 742 encourages undocumented students to seek out citizenship. Therefore, once these students take steps to become citizens the problem of unemployment virtually disappears. They will be able to find better jobs, contribute to the common good, and play an active role in the success of the Oregon economy.

By allowing undocumented students to stay in Oregon and attend college, it is keeping some of its best and brightest in the state. Undocumented students’ most important community membership resides in academic institutions. The academic life atmosphere relentlessly fosters innovation and creativity. An institution of higher learning begs an exposure to diverse minds—diverse ways of thinking in order to discover new mediums of creativity and innovation. Undocumented students have the potential to bring such innovation and creativity into a classroom setting; however, in not providing them with an equal opportunity to pursue higher education we are depriving them and also ourselves from a sense of human dignity. For this reason, undocumented students should be able to pay resident tuition rates at Oregon’s public universities.

The communitarian principle of reciprocity works both ways, undocumented students must remain in the U.S. to repay, in its entirety, their duties of membership—which includes working toward citizenship—and the state

repays its debt by recognizing these students as members of the community and granting them access to in-state tuition. Additionally, the communitarian ideal also emphasizes inclusion into the greater Oregon community.

A communitarian perspective “recognizes both individual human dignity and the social dimension of human existence” (Etzioni xxv). As a result, in a thriving community people want to be treated as members; and they aspire to full membership. Therefore “inclusion is a major principle of social justice” (Selznick 69). Undocumented students seek full membership in the community. These high school graduates, who are for all intents and purposes “Oregonians,” have earned the same opportunity to a more affordable state university education. The idea of membership has two working parts; the first being of legal or documented status, the second aspect of membership requires recognition of the social membership that becomes an integral part of living in the state of Oregon. Therefore, the communitarian values of inclusion and membership directly supports the idea that undocumented students should be allowed to pay in-state tuition at Oregon’s public universities.

Rebuttal

Now, let us consider the argument likely to be made against Selznick’s idea of reciprocity. The counterargument may be that undocumented students are not owed the same treatment because they “broke the law to enter the United States.” If we do not make it up to the U.S. children of law-breakers for the sins of their parents, why should we do it for illegal immigrants? Let us consider the following scenario, if a bank robber has their two-year-old child in the backseat of the getaway car, that two-year-old does not go to prison for being part of the robbery; the fault lies in the parent who broke the law.

Consequently, when undocumented students are not allowed to pay in-state tuition fees and deported to their “home” country, they are considered guilty of knowingly committing the same crime as their parents or relatives. In this case, undocumented students should not be accused of breaking immigration law because they are here as a result of the decisions of others. The U.S. children of law-breakers are not held accountable for the sins of their parents, in the same manner that undocumented high school graduates are unfairly held accountable. Therefore, granting undocumented students’ in-state college tuition does not reward illegal activity, instead it recognizes the exemplary model of productive American citizenry. Senate Bill 742 is an effort to balance the scales of justice for undocumented high school graduates.

Furthermore, the counterarguments that challenge my thesis address the legal dimension of why these students should not gain access to in-state tuition. The first argument focuses on the rule of law. The second argument consists of

Hayek's perspective on national groups, and lastly, the libertarian response as offered by Robert Nozick. Legal scholars provide various interpretations of the rule of law. The rule of law adds dialog to our discussion because undocumented students face deportation when immigration authorities are informed of their illegal immigration status.

According to legal scholar Brian Tamanaha, "some believe that the rule of law is purely formal in nature, requiring only that laws be set out in advance in general, clear terms, and be applied equally to all" (3). This interpretation does not accurately represent the aim of justice in Senate Bill 742 which is, egalitarian-communitarian oriented social justice. For this reason, Dworkin's principle of *true* equality challenges the notion that the rule of law should be applied *equally to all*. In other words, when immigration laws are enforced on undocumented students, it is unjust. The rule of law cannot be applied *equally* to undocumented students because they are subject to a "natural state" of inequality due to family, inheritance, and education. Therefore, the state pretends to have admirable principles of equality, and fails to enforce such principles of *equality* for undocumented students by not allowing them to pay resident in-state college tuition.

However, others assert that the rule of law encompasses the "social, economic, educational, and cultural conditions under which man's legitimate aspirations and dignity may be realized" (Tamanaha 3). This understanding of the rule of law is much more organic. Senate Bill 742, in principle, attempts to meet this interpretation of the rule of law. Of course, the rule of law must be upheld, but sometimes the law cannot represent the human dignity of individuals. Current immigration laws, as they are enforced on undocumented students, do not respect the dignity of their American identity—their Oregonian identity. The multifaceted problem surrounding illegal immigration boils down to a simple explanation: undocumented high school graduates reside in Oregon with the cultural and social claim to "citizenship," better understood as community membership, without the legal entitlement to such citizenship.

The second counterargument consists of Hayek's perspective on national groups. Hayek explains that, "national groups will become more and more exclusive.... Rather than admit people to the advantages that living in their country offers, *a nation will prefer to keep them out altogether*; for, once admitted they will soon claim as a right a particular share to wealth" (96, my added emphasis). If the students remain undocumented, then they will not receive their legitimate claim to particular rights. However, undocumented students have earned their legitimate claim to a post-secondary education. Hayek's argument identifies the underlying rationale that creates controversy over Senate Bill 742. National groups, which ultimately translate into national patriotism, are not necessarily a bad thing. But our country's branding of patriotic chest-thumping is

getting in the way of incorporating this still young and exceptionally bright population into American society, state by state.

Furthermore, Robert Nozick provides an additional challenge to my thesis. Nozick argues in favor of the notions of self-ownership, individual rights, and a minimal state. According to political philosopher Edward Feser, Nozick's "main defense of libertarianism is a moral one, ... the strongest reason to advocate a libertarian society is simply that such advocacy follows from a serious respect for individual rights" (Feser). The argument holds that the bill is impeding a fundamental freedom, the exercise of individual rights.

However, Senate Bill 742 does not hinder the individual rights of U.S. citizens or legal residents. High school graduates have many options that enable them to pay in-state tuition fees, even if they are out-of-state students. Some states and colleges are so eager to attract out-of-staters that they make it easy for them to qualify for in-state tuition. Undocumented high school graduates do not have such easy options available. Senate Bill 742 is a means to recognize the dignity of undocumented high school graduates. The well-being of community members holds greater value in terms of achieving social justice than achieving individual conceptions of privilege.

Although, Nozick's political philosophy would object overall to government funding in higher education institutions, in our society government funding is naturally built into our educational system. One of the central arguments against the proposed legislation is that, the Senate bill discriminates against U.S. citizens by favoring the needs of undocumented students. However, this bill is not an effort to undermine the educational pursuits of U.S. citizens or legal residents, but rather to level the academic playing field in a way that lessens the socio-economic discrepancies undocumented students must endure due to their inequalities in family, inheritance and an affordable higher education.

Conclusion

The premise of my claim is founded on the ideas of equality and community. My proposal of an egalitarian-communitarian form of social justice is based on the distinction between legal residency and residency based on community membership. Senate Bill 742 upholds the core American values of achieving the common good, equality of opportunity in higher education, and pursuing social justice.

Legislation is the process of declaring or discovering the values and interests within in the life and culture of the community (Tamanaha 43). Senate Bill 742 is a proclamation that expresses Oregonians are ready to fully integrate undocumented high school students into society. Undocumented students can be integrated fully into the community when they are allowed to pay resident tuition

rates, work toward citizenship, and earn a college degree. Senate Bill 742 will provide these students with the financial support they need to have an equal opportunity to pursue higher education. Undocumented high school graduates hope to seize the opportunity of a post-secondary education in Oregon, so that they can rise to the top and hit the ground running. As creators of the future, armed with a college education, these “Oregonians” have the potential to become highly trained, highly motivated, and creative contributors in the community.

Undocumented high school graduates belong in institutions of higher education in Oregon because they have demonstrated the potential to cultivate depth, diversity, and creativity in a classroom environment. Undocumented high school graduates have earned an equal opportunity to an affordable post-secondary education. Senate Bill 742 ought to be passed to ensure that undocumented high school graduates can contribute to academic communities in Oregon’s public universities.

Next year, high school graduates will toss their caps towards the sky in celebration of their education. This picture perfect moment may once again be interrupted by a sudden thought of one or more of the graduates. Hopefully, when an undocumented student asks himself or herself: *How am I going to afford college?* Senate Bill 742—high school counselors, teachers, friends, and lawmakers—will finally be able to give them an answer.

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