

“Open to All” and “Closed to Many”: The Legitimacy of the Secretary of Education’s Commission on Opportunity in Athletics

In 2002, the former Secretary of Education established a “milestone” commission to examine ways to strengthen enforcement of the law and expand opportunities to ensure fairness for all college and high school athletes (www.edgov.com, 2006). Four town hall meetings were held where “expert” opinions from invited speakers and testimonies from the public about the issues pertaining to Title IX’s application and effect on equal opportunity were heard. Subsequently, the *Open to All: Title IX at Thirty* report was released, which provided findings and recommendations for “improving the enforcement of Title IX” (Secretary’s Commission on Opportunity in Athletics, 2003). A minority report was also released by two Commission members, as they were dubious about the process and outcome of the Commission. Whilst the co-chairs of the Commission characterized the procedures as “open, fair, and inclusive”, the overall credibility of the Commission was questioned by various critics and participants in terms of representation and procedural fairness (Rosenthal, Morris, & Martinez, 2004; Staurowsky, 2003).

Federal commissions are commonly used as a regular democratic procedure to actively engage the “Nation’s” citizens in government decision-making processes (USDA OGC, 2000). The *Federal Advisory Committee Act* (USDA OGC, 2000) asserts that commissions provide Federal officials with “objective” and current insights about issues from the citizens who in return make recommendations to the state. Deliberative democratic procedures are the basis for legitimate policy making where the *process* of deliberation is central rather than deliberative *outcomes* (Habermas, 1996; Parkinson, 2006). Procedural conditions involve for legitimate deliberative policy requires at a minimum broad representation (communicative competence and inclusiveness), quality of deliberations (publicity and reciprocity), and credibility (fair procedures) (Gutmann & Thompson, 2004; Habermas, 1996; Parkinson, 2006). Although Commissions are an important means for gaining citizen input about state issues, little is known about how this type of public deliberative process realizes deliberative democratic principles. The purpose of this presentation is to examine the legitimacy of Commissions as a deliberative democratic process through the examination of the *Secretary of Education’s Commission on Opportunity in Athletics*. To adequately address the purpose, the following research questions were posed: 1) What was the selection criteria for individuals to participate in the Commission? 2) How did the communicative competence impact the deliberations? 3) How did the procedures impact the quality of the deliberations? and 4) How did the procedures impact the credibility of the Commission?

In order to examine the legitimacy of the Commission as a deliberative democratic process in terms a qualitative case study (Yin, 2003) approach was used. Archival documents from each of the town hall meetings, Commission reports, organizational websites, and newspaper media were collected. Semi-structure audio-taped phone interviews with 20 individuals that either served on the Commission or were asked to speak at the respective town hall meetings were carried out. Participant interviews lasted approximately 30-60 minutes in length and were transcribed verbatim. Drawing from

deliberative democracy theory (Gutmann & Thompson, 1996; Habermas, 1996; Parkinson, 2006) the data was inductively and deductively analyzed into major categories and sub-categories.

Preliminary findings revealed that certain aspects of the Commission did not fulfill principles conceived in a deliberative democratic process. First, in addition to critics' concerns about representation and the make-up of the Commission, data analysis also showed that the criteria for selecting invited speakers and what constituted an "expert" at the town hall meetings was vague. Second, the nature of the procedures raised questions about the quality of deliberations, in particular, the limited amount of time allowed to present and discuss information restricted the participant's ability to effectively deliberate about the issues. The public nature of the proceedings also limited the quality of deliberations by Commission members as they believed that they were not able to freely ask questions without being labeled. Last, the data showed that Commission participants held different perceptions about the credibility of the proceedings. Many participants felt that the procedures represented "an open, fair, and inclusive" process and the final report indicated that participants were able to appropriately assess the data and provide sound recommendations to the state. Conversely, other participants believed that Commission was "closed, unjust, and exclusive" and questioned the legitimacy of the process in terms of the deliberative democratic principles of representation, quality of deliberations, and credibility (Cohen, 1989; Gutmann & Thompson, 2004; Habermas, 1996; Parkinson, 2006). Theoretical and practical implications of examining Commissions and the sport policy evaluation framed through deliberative democratic theory will be discussed along with suggestions for future research.

References

- Gutmann, A. & Thompson, D. (2004). *Why deliberative democracy?* Princeton, NJ: Princeton University Press.
- Habermas, J. (1996). *Between facts and norms*. Cambridge, MA: MIT Press.
- Parkinson, J. (2006). *Deliberating in the real world: Problems of legitimacy in deliberative democracy*. NY: Oxford University Press
- Rosenthal, C.S., Morris, M.L., & Martinez, J. (2004). Who's on first and what's on second?: Assessing interest group strategies on Title IX. *Women in Sport and Physical Activity Journal*, 13(2), 65-86.
- Staurowsky, E.J. (2004). Title IX in its third decade: The Commission on Opportunity in Athletics, *Entertainment Law Journal*, 2(3), 70-93.
- United States Department of Agriculture, Office of the General Counsel. (2000). *Federal Advisory Committee Act*. Portland, OR.
- United States Department of Education (2002). *Boards & commissions: About the Commission—Secretary's commission on opportunity in athletics*. Retrieved July 5, 2006, from <http://www.ed.gov/about/bdscomm/list/athletics/about.html>
- United States Department of Education. (2003). *Secretary's commission on opportunity in athletics "Open to All": Title IX at Thirty*. Retrieved July 5, 2006, from <http://www.ed.gov/about/bdscomm/list/athletics/title9report.pdf>
- Yin, R. (2003). *Case study research. 3rd Ed.* Thousand Oaks, CA: Sage Publications.