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Being a Good College Student

Being a Good College Student: The History of Good Moral Character Rules in State Financial Aid Programs, 1850 to Now

Bradley Custer, Ph.D.

INTRODUCTION

Federal and state governments regulate the character of their residents as a condition of immigration, employment, social services, and beyond.¹ At the state level, “good moral character” rules have been analyzed in depth for decades, mostly as they pertain to admission to the bar and other licensed professions.² Character requirements also affect the ability of college students to get state-funded financial aid, but these policies have received no scholarly analysis. According to this study’s findings, there have been at least 50 state financial aid grant programs with character rules, which begs the question: what does it mean to be a “good” college student? This paper offers an original study of the character requirements of state financial aid programs, including analysis of how character requirements were and still are interpreted and enforced. New insights are offered on the meaning of good moral character in this higher education law context that contribute to the wider literature on the use of good moral character requirements.

This paper begins with a two-part literature review, first on the history of state financial aid programs and second on the use of good moral character requirements in American law. Then, the methods and results of this original study are presented. Three historic state case studies are discussed in depth to explain how good moral character requirements were interpreted in the past. Also explained is how the few remaining good moral character rules are currently enforced. Finally, a rationale is made for eliminating all

¹ Deborah L. Rhode, *Virtue and the Law: The Good Moral Character Requirement in Occupational Licensing, Bar Regulation, and Immigration Proceedings*, 43 *LAW & SOC. INQUIRY* 1027 (2018).

² See *id.*; Bruce E. May, *The Character Component of Occupational Licensing Laws: A Continuing Barrier to the Ex-Felon’s Employment Opportunities*, 71 *N. D. L. REV.* 187 (1995).

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good moral character requirements from state financial aid programs.

I. THE HISTORY OF STATE FINANCIAL AID

A brief history of how state governments have funded college scholarships provides needed context for the forthcoming study of their eligibility requirements. Though much has been written about the history of federal financial aid programs,³ a comprehensive history of state-funded financial aid programs has not been written – something that the field of higher education needs. Writers typically describe the history of state financial aid dating back only to the mid-20th century, when states began implementing broad-scale need-based grant programs that are the predecessors of today’s programs.⁴ However, some states offered scholarships to their residents at least one hundred years before then.⁵ To illustrate, I conducted a review of state statutes 1800-1950 by searching for the term “scholarship” in the HeinOnline State Session Laws Library, yielding 2,170 results.⁶ In this section, I first outline my findings from the database search. Then, I summarize trends in state financial aid programs from 1950 to present with evidence from the higher education research literature.

A. Early State Scholarship Programs, 1800-1950

Some of the earliest references to scholarships in state statutes are actually privately-endowed scholarships. States and institutions solicited donors by offering full-tuition scholarships to them and their dependents, like at the Virginia Military Institute in 1848,⁷

³ See Matthew B. Fuller, A History of Financial Aid to Students, 44 J. OF STUDENT FINANCIAL AID 42 (2014); Elizabeth A. Duffy & Idana Goldberg, The Development of Need-Based Aid, in CRAFTING A CLASS: COLLEGE ADMISSIONS AND FINANCIAL AID, 1955-1994 at 169 (1998).

⁴ See Donald E. Heller, The Policy Shift in State Financial Aid Programs, in HIGHER EDUCATION: HANDBOOK OF THEORY AND RESEARCH 221 (John C. Smart ed., 2002).

⁵ See *infra* this section.

⁶ The HeinOnline State Session Laws Library is an online database containing over 12.7 million pages of state session laws for all 50 states and more with coverage going back to each state’s inception. The word “scholarship” has several meanings. For example, a “certificate of scholarship” is an old name for a college diploma, and being of “requisite scholarship” or the “highest scholarship” means a person is properly trained and well educated. Thus, a majority of the search results for “scholarship” did not pertain to a financial aid program as it is being used here.

⁷ 1848 Va. Acts 18.

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Ohio's St. Clairsville Collegiate Seminary in 1855,⁸ and Kentucky's Frankfort Female University in 1867.⁹ In these cases, and others like them, state statutes authorized such donations and established rules for the scholarships.

State funds were also directly appropriated to scholarships by the mid-1800s. After the federal Morrill Act granted land to public universities in 1862,¹⁰ the authorizing statutes for the Illinois Industrial University in 1867¹¹ and Arkansas Industrial University in 1868¹² created full-tuition scholarships for children of veterans plus one honorary scholarship per county. Likewise, when Cornell University¹³ and the Pennsylvania Museum and School for Industrial Arts¹⁴ were founded in 1887, a full scholarship for one student per county was created. The "competitive scholarship" for students attending a state's flagship university also became relatively common. A fixed number of full-tuition scholarships were appropriated to students who succeeded on competitive exams, sometimes to students with financial need only. For example, in 1870, California began offering just five competitive scholarships to students with the inability "to provide his own maintenance at the University [of California]."¹⁵ Other states tied the number of available competitive scholarships to the number of counties or congressional districts, like the University of South Carolina State Scholarship of 1874,¹⁶ the University of Oregon scholarships of 1876,¹⁷ the Massachusetts Institute of Technology scholarship of 1887,¹⁸ and the University of Illinois State Scholarship of 1895.¹⁹ Like still today, scholarships were commonly created to recruit new teachers, like the 1853 Massachusetts State Scholarship,²⁰ the 1876 Vermont scholarship for students

⁸ 1837 Ohio Laws 55.

⁹ 1867 Ky. Local & Private Acts, 295.

¹⁰ Morrill Act, Act of July 2, 1862, Pub. L. No. 37-130, at 503, which established land grant colleges.

¹¹ Now the University of Illinois at Urbana-Champaign; Ill. Pub. L., 25th Gen. Assemb., 1st Sess., Act of March 8, 1867, at 123.

¹² Now the University of Arkansas; 1868 Ark. Acts 327.

¹³ 1887 N.Y. Laws 366.

¹⁴ Now the University of the Arts; 1887 Pa. Laws 380.

¹⁵ 1870 Cal. Stat. 546.

¹⁶ 1874 S.C. Acts, Spec. & Reg. Sess., 555.

¹⁷ 1876 Or. Laws 52.

¹⁸ 1889 Mass. Private & Special Stat. 1287.

¹⁹ 1985 Ill. Laws 325.

²⁰ 1853 Mass. Acts 473.

attending normal schools,²¹ the 1892 scholarship for students from Frederick County to attend the Maryland Normal School,²² and the 1899 Utah Normal School scholarship.²³

After the turn of the 20th century, more states implemented the types of programs previously described, but new scholarship opportunities were created for targeted populations, including veterans, African-Americans, students with disabilities, and nurses. In the wake of World War I, new scholarships were created for military veterans and their dependents that were later expanded to include World War II veterans, like those in New York and Illinois in 1919 and Kentucky and South Carolina in 1920.²⁴ Another group that increasingly got financial aid was African-American students, like Oklahoma's 1921 scholarships for African-American students to study agriculture.²⁵ Maryland in 1935, Tennessee in 1937, and Texas in 1939, among others, created scholarships for students to attend universities in other states because their own universities did not admit African-Americans in certain programs, typically graduate and professional programs.²⁶ Then, students with disabilities were awarded scholarships, including Tennessee's 1949 scholarship for blind students and Pennsylvania's 1949 Blind or Deaf Higher Education Beneficiary Grant.²⁷ Finally, a persistent post-war shortage of nurses spurred the implementation of nursing scholarships, like those in Florida, North Dakota, and Rhode Island in 1955.²⁸

B. Modern State Financial Aid Programs, 1950 to Present

At mid-20th century, the United States population, its economy, and its higher education systems were rapidly expanding. State governments wanted more residents to go to college and recognized that price was a significant barrier. The introduction to Pennsylvania's 1966 State Scholarship Program eloquently summarized what many states were experiencing and why legislators created scholarship programs:

²¹ 1876 Vt. Acts & Resolves 117.

²² 1892 Md. Laws 833.

²³ 1899 Utah Laws 121.

²⁴ 1919 N.Y. Laws 1602; 1919 Ill. Laws 922; 1920 Ky. Acts 281; 1920 S.C. Acts 973.

²⁵ 1921 Okla. Sess. Laws 222.

²⁶ 1935 Md. Laws 1203; Tenn. Acts., Act of May 21, 1937, ch. 256, at 1048; L. of Tex., 46th Leg., R.S., Act of Sept. 1, 1939, ch. 8, at 359.

²⁷ Tenn. Acts 1949, ch. 208; 24 PA. STAT. AND CONS. STAT. ANN. §13-1381 (West 2019).

²⁸ 1955 Fla. Laws 572; 1955 N.D. Laws, ch. 283; 1955 R.I. Acts & Resolves 548.

Although the enrollments of the postsecondary institutions of higher learning of this Commonwealth and throughout the nation continue to increase at a rapid pace, and although larger numbers of the Commonwealth's children graduate from both the public and nonpublic secondary schools each year, there continues to be a tragic underdevelopment of the Commonwealth's human talent because of the inability of many needy students to finance a postsecondary educational program. The Commonwealth of Pennsylvania can achieve its full economic and social potential only if every individual has the opportunity to contribute to the full extent of his capabilities and only when the financial barriers to his economic, social and educational goals are removed. It is therefore the policy of the Legislature and the purpose of this act to establish a broad-scale State scholarship program designed to guarantee that the most able students from all sectors of the Commonwealth, the most needy students and students with the capability to successfully complete postsecondary educational programs, and deserving postsecondary students are given the opportunity to continue their program of self-improvement in an institution of higher learning of their choice.²⁹

Around this time, states commissioned studies of their higher education institutions, the postsecondary educational needs of their residents, and financial aid programs, like those of California in 1947,³⁰ Louisiana in 1948,³¹ and Illinois in 1957.³² In the 1950s and 1960s, in part due to these commissioned studies, some of the country's largest state need-based programs were created, including what are now the California Cal Grants, Illinois Monetary Award Program, Indiana Frank O'Bannon Grants, New Jersey Tuition Aid Grant, and Pennsylvania State Grant. Before Congress created the federal Pell Grant

²⁹ Pa. Act of Jan. 25, Pub. L. 1546, No. 541, § 1 (1966).

³⁰ Stat. Cal., 1947, ch. 47, at 542. See A Report of a Survey of the Needs of California in Higher Education, ONLINE ARCHIVE OF CALIFORNIA (1948), <https://oac.cdlib.org/view?docId=hb2p3004kd&brand=oac4&chunk.id=meta>.

³¹ 1948 La. Acts. 1078.

³² ILL. HIGHER EDUC. COMM'N, ILL. LOOKS TO THE FUTURE IN HIGHER EDUC. (1957), <https://www.hathitrust.org/>.

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program in 1972,³³ these and other state grant programs were critical sources of financial aid to needy college students.

In the early 1990s, the broad-based merit scholarship entered the state financial aid policy scene in Arkansas and Georgia, quickly spreading throughout the Southeast and beyond.³⁴ Unlike the need-based scholarships of the preceding decades, these programs were characterized by their academic requirements, and in many cases, by their funding from state lottery proceeds. Innovative at the time, at least 14 states implemented broad-based merit-aid programs by 2004.³⁵ Many scholars have since studied and critiqued these programs, none more so than the Georgia HOPE Scholarship.³⁶

In recent years, the new state financial aid fad is the so-called “promise” or “free college” program, which typically incentivizes middle and high school students to attend in-state colleges by promising them scholarships.³⁷ A recent study identified 150 such state-funded programs, though many are not recent inventions.³⁸ New promise programs, like Tennessee Promise and New York’s Excelsior Scholarship, are making headlines as evidence of their effectiveness becomes available and as politicians latch on to the free college movement.³⁹ Financial aid scholars and state policy experts are carefully watching the free college movement to see if promise programs will revolutionize higher education finance.

³³ Education Amendments of 1972, Pub. L. No. 92-318, 86 Stat. 235.

³⁴ Donald E. Heller, State Merit Scholarship Programs: An Introduction, in WHO SHOULD WE HELP? THE NEGATIVE SOCIAL CONSEQUENCES OF MERIT SCHOLARSHIPS 15 (Donald E. Heller & Patricia Marin eds., 2002).

³⁵ William K. Ingle & Jason R. Ratliff, Then and Now: An Analysis of Broad-based Merit aid Initial Eligibility Policies After Twenty Years, 3 KY. J. OF HIGHER EDUC. POL’Y & PRAC. 1 (2015).

³⁶ Critics of the Georgia HOPE Scholarship primarily point to its funding, the lottery. Lower income people tend to play the lottery. Lottery proceeds then fund merit-based scholarships for students with the highest academic achievements, who typically come from middle and higher-income families and better-resourced schools; therein lies the problem. See ERIK C. NESS, MERIT AID AND THE POLITICS OF EDUCATION (2008); STATE MERIT SCHOLARSHIP PROGRAMS AND RACIAL INEQUALITY (Donald E. Heller & Patricia Marin eds., 2004); WHO SHOULD WE HELP? THE NEGATIVE SOCIAL CONSEQUENCES OF MERIT SCHOLARSHIPS (Donald E. Heller & Patricia Marin eds., 2002).

³⁷ Laura W. Perna & Elaine W. Leigh, Understanding the Promise: A Typology of State and Local College Promise Programs, 47 EDUC. RESEARCHER 155 (2018).

³⁸ Id.; e.g., Indiana’s 1990 21st Century Scholars, Arkansas’ 1991 Academic Challenge Scholarship, Florida’s 1997 Bright Futures, and 1998 Kentucky Educational Excellence Scholarship.

³⁹ Tom Hilliard, Excelsior Scholarship Serving Very Few New York Students. CENTER FOR AN URBAN FUTURE (Aug. 2018), <https://nycfuture.org/research/excelsior-scholarship>; Poutre & Voight, *The State of Free College: Tennessee Promise and New York’s Excelsior Scholarship*, INST. FOR HIGHER EDUC. POL’Y (Sept. 2018), <http://www.ihep.org/research/publications/state-free-college-tennessee-promise-and-new-yorks-excelsior-scholarship>.

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As of the 2016-2017 academic year, the National Association of State Student Grant and Aid Programs estimated that states spent \$12.8 billion on financial aid directly to students through over 600 different programs, including grants, loans, conditional grants, loan forgiveness, tuition waivers, and others.⁴⁰ With college costs on the rise and the proportion of direct state appropriations to public colleges on the decline,⁴¹ state financial aid to students will remain an important funding source of higher education.

For much of the history of American higher education, state governments have funded scholarships for college students. Program trends evolved from competitive scholarships, to financial need-based grants, to merit-aid scholarships, to the newest promise programs. Throughout this history of state financial aid, as will be demonstrated in this paper, state legislators put an important caveat on some of their scholarship applicants: to be of “good moral character.” For context, I next delve into the history of good moral character requirements.

II. GOOD MORAL CHARACTER

The use of good moral character rules in American law is ubiquitous. For example, a search for the phrase “good moral character” in HeinOnline yields over 17,000 entries dating back to 1782, and that is not including all the variations of character rules, including “good character,” “high moral character,” or simply “character.” Because much has already been written about good moral character requirements, this brief review points readers to seminal articles on the topic and establishes a foundation for this study of good moral character requirements in state financial aid programs.⁴²

The study of good moral character rules has focused on at least three subjects: immigration law, occupational licensing, and the state bar.⁴³ Of the three, the good moral character requirements in immigration law are now the best defined. Since the 1790 Naturalization Act, persons seeking to become citizens of the US had to prove

⁴⁰ NAT. ASSOCIATION OF STATE STUDENT GRANT AND AID PROGRAMS, 48TH ANNUAL SURVEY REPORT ON STATE-SPONSORED STUDENT FINANCIAL AID: 2016-2017 ACADEMIC YEAR (2017), https://www.nassgapsurvey.com/survey_reports.aspx.

⁴¹ STATE HIGHER EDUC. EXECUTIVE OFFICERS ASSOCIATION, STATE OF HIGHER EDUCATION FINANCE: FY 2017 (2018), http://www.sheeo.org/sites/default/files/project-files/SHEEO_SHEF_FY2017_FINAL.pdf.

⁴² See *infra* this section.

⁴³ Rhode, *supra* note 1.

their “good character,” but “for over 150 years, Congress offered no guidance whatsoever on what constituted good moral character in the naturalization context.”⁴⁴ It was not until the Immigration and Nationality Act of 1952 that Congress delineated a list of crimes that would disqualify a person from satisfying the good moral character requirement, which was greatly expanded in the 1980s and 1990s.⁴⁵ Today, hundreds of criminal charges and non-criminal behaviors from before and after the five-year statutory review period are permanent or temporary bans on naturalization, including being a “habitual drunkard,” practicing polygamy, being involved in prostitution, and even having convictions that were expunged or pardoned.⁴⁶ With few legal mechanisms for relief, immigrants with such experiences hesitate to apply for citizenship and are vulnerable to removal.⁴⁷

State governments also regulate the character of working professionals. As many occupations were professionalized in the late 19th and early 20th centuries, states exerted control by implementing licensure systems, including good moral character requirements.⁴⁸ Rationales for character requirements include professional gatekeeping (keeping undesirables out), protecting the status and reputation of the profession, protecting the public from bad practitioners, and symbolic reasons.⁴⁹ Legislators, regulatory agencies, and courts have struggled – if not refused – to define good moral character. Criminal convictions are the most common bar, but evidence of other qualities and behaviors that courts may consider range from honesty to integrity, fiscal responsibility, mental or emotional instability, substance abuse, and failure to pay child support.⁵⁰ Some courts, however, have established that a person’s misconduct under question must be reasonably related to the occupation in order to be denied a license.⁵¹ Nonetheless, such requirements are serious em-

⁴⁴ Kevin Lapp, *Reforming the Good Moral Character Requirement for US Citizenship*, 87 *IND. L. J.* 1571, 1572 (2012).

⁴⁵ *Id.*

⁴⁶ 8 C.F.R. § 316.10(b)(2)(iv) (1993).

⁴⁷ Lapp, *supra* note 44.

⁴⁸ Rhode, *supra* note 1.

⁴⁹ *Id.*

⁵⁰ Larry Craddock, *Good Moral Character as a Licensing Standard*, 28 *J. NAT. ASSOC. ADMIN. L. JUDICIARY* 449 (2008).

⁵¹ *Id.*

ployment barriers to the millions of Americans with criminal records.⁵²

No application of good moral character rules among the professions has been more scrutinized than that of admission to the bar.⁵³ Character requirements have been a fixture of the Western law profession for centuries, but in the United States, they were of little importance until the late 19th century.⁵⁴ In the first decades of the 20th century, the law profession began to formalize its entry standards, and character reviews became more systematic after the 1930s as national and state bar associations garnered prominence.⁵⁵ Since then, courts have avoided defining good moral character and have upheld bar denials for a host of “inconsistent and idiosyncratic” reasons,⁵⁶ including adultery, public homosexual acts and other sexual conduct,⁵⁷ racist beliefs,⁵⁸ failure to pay back student loans,⁵⁹ failure to pay child support or other financial debt,⁶⁰ lack of candor on the application, and a wide range of criminal conduct.⁶¹ Though denials overall are relatively infrequent, there seems to have been a stark increase in the number of bar admission denials based on character in recent decades.⁶² Perhaps recent newsworthy cases of formerly-incarcerated people defying the odds by being admitted to the bar

⁵² Rhode, *supra* note 1; May, *supra* note 2.

⁵³ See Tarra Simmons, *Transcending the Stigma of a Criminal Record: A Proposal to Reform State Bar Character and Fitness Evaluations*, 128 *YALE L. J. FORUM* 759 (2019); Keith Swisher, *The Troubling Rise of the Legal Profession's Good Moral Character*, 82 *ST. JOHN'S L. REV.* 1037 (2008); Theresa Keeley, *Good Moral Character: Already an Unconstitutionally Vague Concept and Now Putting Bar Applicants in a Post-9/11 World on an Elevated Threat Level*, 6 *U. PA. J. CONST. L.* 844 (2004); Marcus Ratcliff, *The Good Character Requirement: A Proposal for a Uniform National Standard*, 36 *TULSA L. J.* 487 (2000); Deborah L. Rhode, *Moral Character as a Professional Credential*, 94 *YALE L.J.* 491 (1985); John R. Starrs, *Considerations on Determination of Good Moral Character*, 18 *U. DETROIT L. J.* 195 (1955); George W. Wickersham, *The Moral Character of Candidates for the Bar*, 9 *A.B.A.J.* 617 (1923).

⁵⁴ Rhode, *supra* note 53.

⁵⁵ *Id.*

⁵⁶ Rhode, *supra* note 53; Rhode, *supra* note 1.

⁵⁷ Barbara Blackford, *Good Moral Character and Homosexuality*, 5 *J. LEGAL PROF.* 139 (1980).

⁵⁸ Jason O. Billy, *Confronting Racists at the Bar: Matthew Hale, Moral Character, and Regulating the Marketplace of Ideas*, 22 *HARV. BLACKLETTER L. J.* 25 (2006).

⁵⁹ Tyler R. Martinez, *The Effects of Student Loan Debt on State Bar Admission – Recalibrating the Good Moral Character Requirement*, 14 *T.M. COOLEY J. PRAC. & CLINICAL L.* 37 (2011).

⁶⁰ Aaron M. Clemens, *Facing the Klieg Lights: Understanding the Good Moral Character Examination for Bar Applicants*, 40 *AKRON L. REV.* 255 (2007).

⁶¹ Rhode, *supra* note 53.

⁶² Rhode, *supra* note 53; Swisher, *supra* note 53.

are a hopeful foreshadowing of fairer, more merciful character reviews in the modern era.⁶³

Many legal scholars have called for the elimination or reform of good moral character requirements for a variety of reasons. As a matter of philosophy and psychology, character remains a contested issue; a person's actions are situation-dependent, and making character assessments based on limited information (perhaps a single bad act) is flawed.⁶⁴ Similarly, one study found that the personal history information reviewed during character reviews is a poor predictor of future misconduct among lawyers.⁶⁵ Thus, if the purpose of reviewing character prior to occupational licensure is to protect safety, some argue that a better strategy would be to discipline more consistently the practicing professionals who commit work-related offenses.⁶⁶ Historically, character reviews were used to keep out political radicals, women, and ethnic, religious, and sexual minorities, which may still occur today.⁶⁷ Similarly, the fear of impending character reviews may dissuade people from seeking mental health support or exercising their free speech rights.⁶⁸ For people formerly involved in the criminal justice system, denying employment because of character rules is a perpetual punishment; doing so often ignores evidence of rehabilitation or how old or unrelated one's crime is to an occupation, is often racially discriminatory, and is counterproductive to reducing criminal recidivism.⁶⁹ Pragmatically, the process of reviewing character itself is taxing and expensive for applicants and agency reviewers alike,⁷⁰ and there is known to be a great deal of subjectivity and administrative error in making character determinations.⁷¹ For these reasons and more, scholars and advocates in the United States have called for reform of moral character reviews in immigration law, occupational licensing, and bar admissions.

The character of people in the United States has been regulat-

⁶³ Simmons, *supra* note 53; Susan Svrluga, He Robbed Banks and Went to Prison. His Time There Put Him on Track for a New Job: Georgetown Law Professor, *THE WASHINGTON POST*, Apr. 21, 2017.

⁶⁴ Rhode, *supra* note 1.

⁶⁵ Leslie C. Levin, Christine Zozula & Peter Siegelman, The Questionable Character of the Bar's Character and Fitness Inquiry, 40 *LAW & SOC. INQUIRY* 51 (2015).

⁶⁶ Rhode, *supra* note 53; Rhode, *supra* note 1.

⁶⁷ Rhode, *supra* note 53.

⁶⁸ Keeley, *supra* note 53; Rhode, *supra* note 53; Levin, Zozula & Siegelman, *supra* note 66.

⁶⁹ Rhode, *supra* note 1; May, *supra* note 2.

⁷⁰ Lapp, *supra* note 44; Levin, Zozula & Siegelman, *supra* note 66.

⁷¹ Lapp, *supra* note 44.

ed by governments beyond these three areas. Applicants for state financial aid programs for college have been, and continue to be, subject to character reviews, but legal scholars have not examined this subject with the same dedication as the others. How many state financial aid programs have character requirements? What does it mean to be of good moral character as a scholarship applicant? How have state officials and courts interpreted good moral character requirements in state financial aid programs? The following study was guided by these questions.

II. THE STUDY

Though scholarship programs and good moral character rules are both nearly as old as the American states themselves, there has never been an analysis of their convergence in state higher education law. The purpose of this study is first to identify historical and current state financial aid programs that contain character requirements and second to analyze how state governments interpreted and enforced character requirements on scholarship applicants.

A. Methods

I analyzed the content of current state statutes for all 524 grants, conditional grants, and tuition waiver programs identified in the 2017 National Association of State Student Grant and Aid Programs (NASSGAP) inventory.⁷² This process identified all the currently-funded scholarship programs with *active* character requirements.⁷³ Next, I used HeinOnline's session laws and historic state statutes databases to find the original session law for each of the 524 programs, which I also analyzed for content. This process further identified all the currently-active programs that *formerly* had character rules earlier in their history.⁷⁴ Then, I analyzed 2,170 HeinOnline search results for "scholarship" between 1800-1950 to identify programs with character rules that are no longer active and thus were not included in the NASSGAP program database.⁷⁵ Finally, through a

⁷² See *supra* note 40. A grant is a non-repayable scholarship. A conditional grant or loan is a non-repayable scholarship that becomes a repayable loan if the student does not comply with the conditions of the program, typically post-graduation in-state work requirements. A tuition waiver is where colleges do not charge a student for tuition at all, which may or may not be reimbursed by the state.

⁷³ See *infra* Table 3.

⁷⁴ See *infra* Table 2.

⁷⁵ See *infra* Table 1.

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process analogous to “snowball sampling,” I sometimes found relevant programs in the databases while in the process of searching for another. These iterative steps add confidence that most programs with character rules (current or old) were identified.

With the programs identified, I then sought to understand the meaning of the character rules. I collected statutes, regulations, court cases, attorney general opinions, government agency reports, research articles, news reports, and other documents from online databases, library archives, and state agencies. Because some programs with character rules are still active, I contacted state higher education agency officials to get official statements on how they currently interpret the existing character rules. At times, when I did not receive an initial response to my requests for records or explanations, I invoked open records laws to compel a timely response.

A. Limitations

Despite my due diligence, I do not claim to have identified every program that ever contained a good moral character rule. My systematic review of HeinOnline records was thorough, but it is possible that some eligible programs were not recorded in the database. In addition, some programs may contain character rules not in statutes but within state administrative codes or agency regulations, which I did not systemically review.⁷⁶ Due to the complexity of the state financial aid landscape, I did not review state loan programs, loan forgiveness or repayment programs, savings or prepaid tuition programs, dual enrollment programs, or work study programs.⁷⁷ There is much still for higher education historians to learn about state financial aid programs; perhaps this paper will inspire new inquiries into the topic.

B. Results

In total, 50 state grant programs with character requirements across 19 states were identified. Table 1 displays the 32 programs that are defunct, meaning they were repealed, reformulated

⁷⁶ See exception Table 2, Tennessee Student Assistance Award.

⁷⁷ I point readers to a few examples of state loan programs that contain character rules, including eight of New Mexico’s loan forgiveness programs: Allied Loan for Service, Health Professions Loan for Service, Health Professions Loan Repayment, Medical Loan for Service, Nurse Educator Loan for Service, Nursing Loan for Service, Teacher Loan for Service, Western Interstate Commission on Higher Education (WICHE) Loan for Service Programs.

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into new programs, or are no longer funded. Table 2 displays the seven programs that are still active but whose character rules have been deleted; states still award these scholarships, but applicants are no longer reviewed for character. Finally, Table 3 displays the 11 programs that are still active and that still contain character requirements.

Most character rules were original to the authorizing statute, except in the few cases where noted when character rules were later added to a program through statutory amendments. The tables display the exact phrases in statute that pertain to a scholarship applicant's character. There are as many as nine variations of character rules, though "good moral character" is most common.

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Table 1
Defunct State Grant Programs with Good Moral Character Rules

State & Program Name	Year	Session Law	Rule	Status
MA State Scholarships for Teachers	1853	Mass. Acts, Act of April 27, 1853, ch. 193, at 473	irreproachable moral character	Repealed, 1866
CA Competitive Scholarship	1870	Cal. Stats., 18 th Sess., Act of April 1, 1870, ch. 392, at 546	character	Repealed, 1961
MD St. John's College Scholarship	1872*	L. of Md., Act of April 1, 1872, ch. 393, at 708	moral character	Repealed, 1967
RI State Scholarship	1873	R.I. Acts, Act of March 7, 1873, ch. 280, at 132	proper character	Repealed, 1894
VT Normal School Scholarship	1876	Vt. Acts, 4 th Bien. Sess., Act of Nov. 28, 1876, no. 39, at 117	good character	Repealed, 1896
OR Competitive Scholarship	1876	Or. Gen. L., R.S., Act of Oct. 21, 1876, at 52	moral character	Repealed, 1909
RI School of Design State Scholarship	1884	R.I. Acts, Jan. 1884, Act of April 11, 1884, ch. 406, at 141	proper character	Repealed, 1977
MD Washington College Scholarship	1898	L. of Md., Act of April 7, 1898, ch. 293, at 858	good moral character	Repealed, 1967
MD Johns Hopkins University Scholarship	1912	L. of Md., Act of April 4, 1912, ch. 90, at 168	character	Repealed, 1967
RI Post-Graduate Teacher Scholarship	1912	R.I. Acts, Act of May 3, 1912, ch. 839, at 236	proper character	Repealed, 1980
RI College of Pharmacy and Allied Sciences Scholarship	1916	R.I. Acts, Act of April 14, 1916, ch. 1374, at 135	proper character	Repealed, 1977

Note. *Character rule added in 1878.
Table 1 (cont.)

State & Program Name	Year	Session Law	Rule	Status
VT Medical College Scholarship		Vt. Acts, 25 th Bien. Sess., Act of April 3, 1919, no. 61, at 76	good moral character	Repealed, 1955
FL Teachers' Scholarship	1923	L. of Fl., Act of May 14, 1923, ch. 9134, at 130	approved moral character	Repealed, 1955
MD Negro Scholarships	1935*	L. of Md., Act of April 29, 1935, ch. 577, at 1203	character	Repealed, 1963
TN Professional Scholarships for Negroes	1937	TN Acts 1937, ch. 256	character	Repealed, 1979
RI Commercial Education Teacher Scholarship	1943	R.I. Acts, Act of 27, 1943, ch. 1354, at 206	proper character	Repealed, 1977
ND Teacher Preparation Scholarship	1949	L. of N.D., 1949, ch. 162	character	Repealed, 1961
RI State Scholarship	1950	R.I. Acts, Act of April 19, 1950, ch. 2516, at 261	proper character	Repealed, 1977
RI Scholarship for Teachers of Handicapped Students	1954	R.I. Acts, Act of April 26, 1954, ch. 3368, at 493	proper character	Repealed, 1980
FL Nursing Scholarship	1955	Ch. 29819, 1955 Fla. Laws, 572	good moral character	Repealed, 1983
CA Competitive Scholarship	1955	Cal. Stats. 1955, ch. 1846	high moral character	Repealed, 1983
ND Nursing Scholarship	1955	L. of N.D., 1955, ch. 283	character	Repealed, 1995
RI Nursing Scholarship	1955	R.I. Acts, Act of May 5, 1955, ch. 3582, at 548	proper character	Repealed, 1977
IL State Scholarship	1957	Act of June 21, 1957, 1957 Ill. Laws 855-861	good moral character	Defunded, 1970
TX Tuition Scholarships	1957	Tex. 55 th Leg. R. S., ch. 435	character	Defunded, 1988

Note. *Character rule added in 1937.

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Table 1 (cont.)

State & Program Name	Year	Session Law	Rule	Status
CA Agriculture Science Scholarship	1959*	Cal. Stats. 1959, ch. 2049	high moral character	Repealed, 1975
NJ Competitive Scholarship	1959	N.J. Acts 1959, ch. 46	high moral character	Reformulated, 1978
IL Fellowship Program for Teachers of Gifted Children	1963	Act of Aug. 5, 1967, 1963 Ill. Laws 2392, 2395	good character ^a	Defunded, c. 1993
IL Trainee/Fellowship for Teachers of Children with Disabilities	1965	Act of July 21, 1965, 1965 Ill. Laws 1948, 1954	good character	Defunded, c. 1993
NJ Educational Incentive Grant	1966	N.J. Acts 1966, ch. 111	high moral character	Reformulated, 1978
TN Tuition Grant	1971	Ten. Acts 1971, ch. 265	good moral character	Repealed, 1976
IL Merit Recognition Scholarship	1984	P.A. 83-1385, 1984 Ill. Laws 2711	good moral character	Defunded, 2005

Note: ^aCharacter rule added in 1961.

Table 2
Active State Grant Programs with Deleted Good Moral Character Rules

State & Program Name	Year	Session Law	Former Rule	Year Character Rule Deleted
ND Indian Scholarships	1963	L. of N.D., 1963, ch. 178	character	1997
MI Competitive Scholarship	1964	Mich. 1964 P.A. 208	good moral character	1981
IN State Scholarship*	1965	Ind. P.L. 157-1965	good moral character	1981
MI Tuition Grant	1966	Mich. 1966 P.A. 313	good moral character	1981
IL Monetary Award Program	1967	Act of Aug. 3, 1967, 1967 Ill. Laws 2644, 2646	good moral character	1992
NJ Tuition Aid Grant	1969	N.J. Acts 1969, ch. 429	high moral character	1999
TN Student Assistance Award	1976	Ten. Acts 1976, ch. 415	good moral character*	1980

Note. *Renamed "Higher Education Award" in 1981; "Character rule appeared in Tennessee Administrative Register, not in statute. See 2 Ten. Admin. Reg. (Feb. 1976). Repeal and new rule filed July 6, 1976; effective Aug. 5, 1976, pp. 22-27.

Table 3
Active State Grant Programs with Good Moral Character Rules

State & Program Name	Year	Session Law	Rule
IL Industrial University Scholarships (Children of Veterans Tuition Waiver)	1867	Ill. Pub. L., 20 th Gen. Assemb., Act of March 8, 1867, at 123	good moral character
VA Unfunded Scholarship	1936	Va. Acts 1936, ch. 236, at 447	character
AL Dental Scholarship	1945	Al. Laws 1945 Act No. 207	good character
VA Nursing Scholarship*	1950	Va. Acts 1950, ch. 569, at 1289	character
PA State Scholarship	1966	Pa. Act of Jan. 25, 1966 (P.L. 1546, No. 541)	character
VA Soil Scientist Scholarship	1970	Va. Acts 1970, ch. 620	character
SC Tuition Grant	1970	S.C. 1970 Act No. 1191	good moral character
OK Tuition Aid Grant	1971	1971 Okla. Sess. Laws, ch. 149	high moral character
AL Graduate Nursing Scholarship	1977	Ala. Laws 1977 Act No. 67	good character
AL Optometric Scholarship	1982	Ala. Laws 1982 Act No. 82-460	excellence of character
SC Need-Based Grant	1996	S.C. 1996 Act No. 458, pt. II, sec. 20(A)	good moral character

Notes. *Comprised of four scholarships, including Mary Marshall Nursing Scholarship Program for Licensed Practical Nurses, Mary Marshall Nursing Scholarship Program for Registered Nurses, Virginia Nurse Educator Scholarship, and Virginia's Nurse Practitioner Nurse Midwife Scholarship.

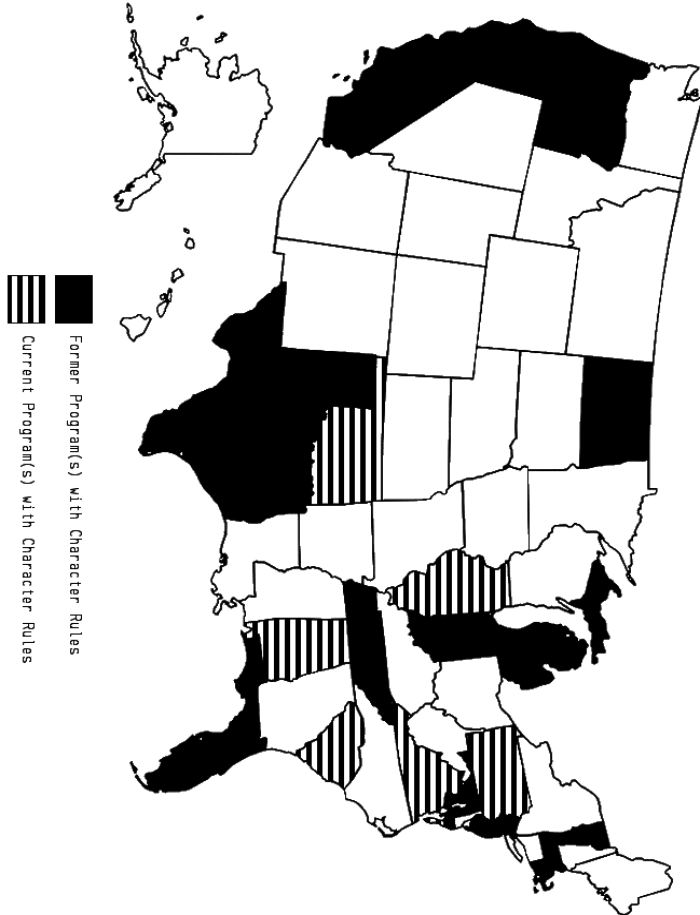


Figure 1 is a map of the United States showing the states that currently administer at least one program with character rules compared to states that formerly had at least one program with character rules.

III. BEING A GOOD STUDENT: THE MEANING OF GOOD MORAL CHARACTER

Most state financial aid programs with character rules are relics of the past.⁷⁸ Historically, how did state policymakers, government officials, and university administrators interpret and enforce the character rules in these programs? Programs from Illinois, Pennsylvania, and Michigan are discussed next as “case studies” because they are insightful for their unique historical circumstances.

A. Illinois

In 1955, Illinois Governor William Stratton created the Illinois Higher Education Commission (IHEC) to study the condition of higher education in Illinois.⁷⁹ In 1957, IHEC issued its report, which included a proposal for a new need- and merit-based scholarship that would support the training of more Illinois residents.⁸⁰ The legislature adopted the proposal as the State Scholarship Act of 1957.⁸¹ IHEC proposed specific eligibility requirements for the scholarship, including a “good moral character” requirement. IHEC’s only explanation for the requirement was rather uninformative: “For obvious reasons, good moral character should be a condition of eligibility.”⁸² Further, nothing in the report indicated where this “obvious” rule came from, but a historian of Illinois’ scholarship programs pointed to one explanation. According to a report of the Illinois State Scholarship Commission, “the IHEC patterned the [State Scholarship Program] after a recently created California program.”⁸³ Indeed, Califor-

⁷⁸ See Tables 1 & 2.

⁷⁹ See *supra* note 32.

⁸⁰ *Id.*

⁸¹ 1957 Ill. Laws 855-861. By 1971, the State Scholarship was defunded, but still today, the most academically strong students from across Illinois are designated as State Scholars by the Illinois Student Assistance Commission.

⁸² See *supra* note 32, at 158.

⁸³ Paul R. Eber, *The ISSC’s Statutory Evolution: Scholarship and Grant Programs 1957-1982*, IL. HIGHER EDUC. STUDENT ASSISTANCE COMM’N, at 27 (1982) (on file with author).

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nia legislators created the Competitive Scholarship in 1955.⁸⁴ Applicants had to demonstrate financial need and “high moral character, good citizenship, and dedication to American ideals.”⁸⁵ If IHEC did model the State Scholarship off the California Competitive Scholarship, perhaps this is from where the good moral character requirement came.

Regardless of where it came from, the good moral character requirement was “historically troubling for the [Illinois State Scholarship Commission]” to implement.⁸⁶ An agency rule adopted prior to 1973 defined good moral character as:

A student’s personal record of conduct, determined by the high school to be in keeping with school and community standards. High schools which withhold their recommendations of students for reasons of ‘moral character’ shall have the responsibility of explaining their positions, as necessary, to parties having a proper and valid interest in this information.⁸⁷

In practice, high school principals determined who had good moral character. Officials from the scholarship commission had to clarify parameters for character occasionally, like in the 1960s when they decided that premarital pregnancy should not disqualify a student on moral grounds.⁸⁸ According to meeting minutes, commission officials debated the legal standard of good moral character at least six times between 1957 and 1973, and the rule was recommended to be abolished several times between 1972 and 1975.⁸⁹ It was estimated that six to ten students each year were denied scholarships for moral reasons, though “no systematic study has been done of the reasons high schools have withheld moral character certifications to otherwise qualified State Scholar applicants.”⁹⁰

In 1967, legislators created what is now called the Monetary Award Program (MAP), a need-based grant with no initial academic qualifications.⁹¹ They included the character rule in the MAP program, too, which shortly thereafter subsumed and replaced the State

⁸⁴ 1955 Cal. Stat. ch. 1846.

⁸⁵ *Id.* at § 21702(e).

⁸⁶ Eber, *supra* note 84, at 22.

⁸⁷ *Id.* at 23.

⁸⁸ *Id.* at 22.

⁸⁹ *Id.* at 23.

⁹⁰ *Id.*

⁹¹ 1967 Ill. Laws 2644, 2646.

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Scholarship. The good moral character requirement continued to be challenging to interpret after the creation of the MAP grant, especially when it came to the question of whether incarcerated students should be disqualified on moral grounds. In 1971, the Illinois State Scholarship Commission Executive Director, Joseph Boyd, asked the Illinois Attorney General to issue an opinion on the matter. Mr. Boyd asked:

Is there a legal definition of good moral character? Does a person assigned by the courts to any institution of correction automatically disqualify himself for an award as long as he is serving out his/her sentence? This matter has become an issue since a considerable number of public and private institutions in Illinois are now offering credit courses to those persons in Illinois institutions of correction.⁹²

In March 1972, the Illinois Attorney General William Scott responded with a 12-page, unpublished opinion.⁹³ On the first question, the attorney general stated there was no consistent legal definition of good moral character and that each case needed to be decided on the facts: "It is the applicant's actual conduct that is at issue, not the reputation of the applicant."⁹⁴ His best advice was that officials "must objectively determine whether an applicant is of good moral character by determining whether he measures up to the generally accepted moral standards currently prevalent within the State of Illinois."⁹⁵

On the second question, the attorney general opined: "the fact that an applicant for a scholarship is incarcerated in a correctional institution does not automatically disqualify him for a scholarship." Though a person who commits a felony was, at the time, not of good moral character, he suggested, other factors must be weighed when evaluating the character of a person after the fact, such as evidence of rehabilitation.

According to the ISSC historian, the opinion was not particularly helpful to the agency, and it is not clear how officials handled

⁹² 1972 Ill. Att'y Gen. Op. 434 (NP) at 1-2.

⁹³ Id.

⁹⁴ Id. at 5.

⁹⁵ Id. at 6.

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the good moral character requirement in its wake.⁹⁶ However, when ISSC issued its first program regulations in the new 1986 Illinois Administrative Code, a person was said to be of good moral character “if the applicant will benefit from postsecondary instruction and is allowed to enroll at an approved postsecondary institution.”⁹⁷ This definition left open the possibility that incarcerated students enrolled in prison higher education programs could receive state grants, which indeed happened so frequently that it caught the attention of state legislators. After a lively debate on the merits of funding scholarships for incarcerated students, legislators eliminated their eligibility through statutory amendment in 1989.⁹⁸ Then, they eliminated the good moral character rule from the MAP statute in 1992 amidst a broad reorganization of the Higher Education Assistance Act.⁹⁹ Nonetheless, the 1986 definition of good moral character remains today in the definitions section of the Illinois Student Assistance Commission regulations that apply to all grant programs.¹⁰⁰ However, there is no good moral character requirement listed in the regulations’ section on general applicant eligibility requirements, nor is it listed on the commission’s official website,¹⁰¹ which seems to indicate that the good moral character rule no longer applies to grant applicants in Illinois.¹⁰²

B. Pennsylvania

In 1966, the Pennsylvania legislature created the State Scholarship Program to be administered by the recently created Pennsylvania Higher Education Assistance Authority (PHEAA). An original statutory rule stated that scholarship applicants “shall satisfactorily meet the qualifications of ‘financial need,’ *character* and academic promise, as well as academic achievement, as established by the

⁹⁶ Eber, *supra* note 84, at 31.

⁹⁷ 23 Ill. Admin. Code pt. 1700.20 (1986).

⁹⁸ 1989 Ill. Laws 6809, 6820.

⁹⁹ 1992 Ill. Laws 2128, 2137.

¹⁰⁰ Formerly the Illinois State Scholarship Commission; 23 Ill. Admin. Code pt. 2700.20 (2018).

¹⁰¹ Illinois Student Assistance Commission, Monetary Award Program, Eligibility (2019), <https://www.isac.org/students/during-college/types-of-financial-aid/grants/monetary-award-program/#Eligibility>.

¹⁰² 23 Ill. Admin. Code pt. 2700.40 (2018).

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agency,"¹⁰³ which remains in statute today.¹⁰⁴ In 1969, the legislature left the character rule in place but added requirements related to criminal history:

(a) The agency may deny all forms of financial assistance to any student:

(1) Who is convicted by any court of record of a criminal offense which was committed after the effective date of this act which, under the laws of the United States or Pennsylvania, would constitute a misdemeanor involving moral turpitude or a felony; or

(2) Who has been expelled, dismissed or denied enrollment by an approved institution of higher learning for refusal to obey, after the effective date of this act, a lawful regulation or order of any institution of higher education, which refusal, in the opinion of the institution, contributed to a disruption of the activities, administration or classes of such institution; or

(3) Who has been convicted in any court of record of any offense committed in the course of disturbing, interfering with or preventing, or in an attempt to disturb, interfere with or prevent the orderly conduct of the activities, administration or classes of an institution of higher education.¹⁰⁵

Punishing college students for campus unrest saw brief popularity in the late 1960s, spurred on by Congress' decision in the 1968 Higher Education Amendments to block students convicted of similar disruptive behaviors from receiving federal financial aid.¹⁰⁶ By 1971, at least eleven states passed laws to prohibit scholarship eligibility to students convicted of similar offenses (Keeney, 1971),¹⁰⁷ but these rules did not last long,¹⁰⁸ including in Pennsylvania.

¹⁰³ Emphasis added; Pa. Act of Jan. 25, P.L. 1546, No. 541 (1966).

¹⁰⁴ 24 Pa. Stat. § 5154 (a)(5).

¹⁰⁵ Pa. Act of Dec. 18, 1969 (P.L. 171, No. 169) § 2.

¹⁰⁶ Higher Education Amendments of 1968, Pub. L. No. 90-575, § 504, 82 Stat. 1062.

¹⁰⁷ Gregory D. Keeney, *Aid to Education, Student Unrest, and Cutoff Legislation: An Overview*, 119 U. PA. L. REV. 1003 (1971).

¹⁰⁸ The campus disruption rules were repealed from the Higher Education Act in 1980; Education Amendments of 1980, Pub. L. No. 96-374, 94 Stat. 1367.

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In *Corporation of Haverford College v. Reeher* (1971), students and colleges sued PHEAA over the new rules.¹⁰⁹ A majority of the United States District Court for the Eastern District of Pennsylvania struck down the “misdemeanor involving moral turpitude” rule as unconstitutionally vague and struck down the two rules pertaining to students who were disciplined or convicted for campus disruptions as unconstitutionally vague and overbroad.¹¹⁰ The court left intact the state’s ability to deny state financial aid to felons. The plaintiffs did not ask the court to rule on the constitutionality of the “character” requirement, though a dissenting judge commented on it. Judge John William Ditter Jr., citing language from the 1966 statute,¹¹¹ argued that the state *should* be allowed to deny aid to people convicted of the prescribed crimes for fiscal reasons under the authority of the statutory character rule:

PHEAA must dispense millions of dollars of taxpayer's money and choose which among thousands of applicants are "deserving" and which are most likely to help the Commonwealth of Pennsylvania "achieve its full economic and social potential" because they are persons of "character". Viewed as a part of a legislative plan to allocate state money, the subsections in question do not offend the requirements of due process.¹¹²

After winning another lawsuit in which PHEAA’s ability to withhold aid from scholarship applicants who had pending felony charges was upheld,¹¹³ PHEAA issued new regulations to correct the unconstitutional provisions. Relying on the character rule, it created new restrictions for people convicted of felonies and other specified crimes:

In order to be eligible for financial assistance a student applicant or recipient *shall have and maintain satisfactory character*. A student applicant or recipi-

¹⁰⁹ *Corporation of Haverford College v. Reeher*, 329 F. Supp. 1196 (E.D. Pa. 1971).

¹¹⁰ The legislature never corrected the statute, so the unconstitutional provisions remain. See 24 Pa. Stat. § 5158.2.

¹¹¹ See supra p. 6; Pa. Act of Jan. 25, 1966 (P.L. 1546, No. 541) § 1.

¹¹² *Reeher*, 329 F. Supp. at [PINCITE NEEDED].

¹¹³ *Corporation of Haverford College v. Reeher*, 53 F.R.D. 374 (E.D. Pa. 1972).

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ent who is convicted of any of the following offenses *may be deemed to lack satisfactory character* and be denied any or all forms of financial assistance by the Agency:

(1) A criminal offense which under the laws of the United States or Pennsylvania constitutes a felony. (2) Adultery. (3) Arson of personal property. (4) Assault and battery. (5) Pointing deadly weapons. (6) Bribery. (7) Fornication and bastardy. (8) Prostitution and assignation. (9) Bigamy. (10) Blackmail. (11) Abandoning an infant. (12) Corrupting the morals of children. (13) Neglect to maintain child. (14) Use of drugs. (15) Extortion. (16) False pretense. (17) Fraud. (18) Desecrating flag of United States or Pennsylvania. (19) Forcible entry and detainer. (20) Indecent assault. (21) Libel. (22) Perjury. (23) Driving under the influence of liquor or drugs or permitting same.¹¹⁴

With the “misdemeanor involving moral turpitude” rule struck down, PHEAA relied on the statutory character rule to delineate these crimes as eligibility requirements. Dissatisfied with the new regulations, convicted students returned to the same federal court to sue PHEAA again.

In *Carbonaro v. Reeher* (1975), students who were convicted of felonies and who lost aid eligibility under PHEAA’s new satisfactory character regulations sued PHEAA on the grounds that discriminating against people with felony convictions violated their Fourteenth Amendment rights to equal protection under the law.¹¹⁵ The court analyzed the extent to which denying financial aid to felons had a legitimate state purpose. The state made a fiscal argument with which the court agreed, much like Ditter’s dissent in *Corporation of Haverford College v. Reeher* (1971): “The state contends that the classification is reasonable because the state has only finite resources and wishes to maximize the potential gain from the available

¹¹⁴ Emphasis added; 2 Pa. B. 506 (March 25, 1972).

¹¹⁵ *Carbonaro v. Reeher*, 392 F. Supp. 753, 755 (E.D. Pa. 1975).

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funds by providing assistance only to those students with ‘satisfactory character.’”¹¹⁶ The court returned to the original language of the 1966 statute, which states that only “deserving” students should be given the aid and that students must “satisfactorily meet the qualifications of ‘financial need,’ *character* and academic promise.” Character, according to the court, was distinct from the other academic and financial requirements, and a felony conviction may be indicative of unsatisfactory character. The state, the court concluded, was justified in requiring felons to prove their satisfactory character to PHEAA:

To reiterate, we hold that the statutory and administrative program whereby Pennsylvania places the burden on former felons to prove that they are of satisfactory character in order to receive state financial assistance for postsecondary education does not violate the equal protection clause of the Fourteenth Amendment. The felon classification bears a rational relationship to the legitimate state purpose of assuring that only responsible citizens receive state aid.¹¹⁷

PHEAA prevailed in this case, but the agency grew weary of defending itself in court. Seeking the most stable legal footing possible to avoid future litigation, PHEAA made regulatory changes by loosening its requirements on convicted students. In the months after the 1975 lawsuit, PHEAA began approving all applicants with misdemeanors and first-degree felonies for aid “based on (1) the experience of [the Administrative Review Committee] approving such cases [on appeal] and (2) a question as to whether courts would uphold our denial of aid based on a misdemeanor conviction.”¹¹⁸ In 1978, PHEAA eliminated the character test in the loan program so that any felon denied grant aid could at least get a loan.¹¹⁹

In the 1980s, PHEAA further narrowed how it defined unsatisfactory character. In 1980, the Administrative Review Committee

¹¹⁶ Id. at 757.

¹¹⁷ Id. at 760.

¹¹⁸ Gary D. Smith, BRIEF HISTORY OF THE SATISFACTORY CHARACTER/CRIME POLICY, PA. HIGHER EDUC. ASSISTANCE AUTHORITY, at 2 (1990) (on file with author).

¹¹⁹ 8 Pa. B. 3085 (November 11, 1985).

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began automatically reviewing any felon applicants that initial staff could not agree on, and in 1985, staff were permitted to approve nearly all felons so long as they paid for their first term of college out pocket, which apparently was a demonstration of deservingness for future aid.¹²⁰ By 1988, data showed that almost all students with felony convictions were eventually approved for aid after exhausting their appeal options.¹²¹ From then on, including still today, PHEAA assumes “that once an applicant is released from incarceration, he will be presumed to be of satisfactory character and eligible for aid. Therefore, only currently incarcerated applicants are now denied grant aid under the satisfactory character provision of the law.”¹²² It took nearly twenty years, but Pennsylvania finally came to an interpretation of good character that it could maintain and justify, which remains in force today.

C. Michigan

By 1979, the state of Michigan administered four grant programs for college students. That year, the auditor general conducted an audit of the four programs, finding many inconsistencies in their eligibility requirements.¹²³ One such inconsistency was that two of the programs – the 1964 Competitive Scholarship and the 1966 Tuition Grant program – contained “good moral character” rules but the other two did not. State legislators authored bills to correct the inconsistencies.¹²⁴ In the first drafts of Senate Bills 1275 and 1276 introduced on September 23, 1980, the legislators proposed to strike the good moral character rules from both scholarship programs, but two weeks later, they added a rule making incarcerated students ineligible for the Competitive Scholarship in Bill 1276. According to a senate analysis summary from November 10, 1980, this amendment was thought to “sharpen the original intent of the ‘good moral char-

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ STATE OF MICH. OFFICE OF THE AUDITOR GEN., AUDIT REPORT: STUDENT FIN. ASSISTANCE SERVS., ET AL., DEP’T OF EDUC. (1979) (on file with author).

¹²⁴ Mich. 1980 SB 1275 (Michigan Tuition Grants); Mich. 1980 SB 1276 (Michigan Competitive Scholarship); Mich. 1980 SB 1277 (Differential Grants Program); Mich. 1980 SB 1278 (Legislative Merit Awards Program).

acter' provision."¹²⁵ For consistency, they then added the incarceration rule to Bill 1275 to replace the character rule in the Tuition Grant program, which senate analyses again suggested would sharpen the original intent of the character rule.¹²⁶ When Senate Bills 1275 and 1276 passed in 1981, the character rules were indeed replaced with prohibitions on aid to incarcerated students,¹²⁷ as remains the case today.¹²⁸ Thus, legislators apparently believed that incarcerated people were not of good moral character and were therefore undeserving of scholarships for college. Today, only the incarceration requirements remain in both programs, freeing state officials from having to define good moral character.

D.Active Programs

The three state case studies presented above demonstrate how state lawmakers, government officials, and courts interpreted good moral character rules in financial aid programs between the 1960s and 1980s. But Table 3 shows that there are at least 11 active programs that still contain character rules, suggesting that student applicants must continue to meet character requirements. How do officials *currently* interpret and enforce the character rules in these programs? This section discusses the six states shown in Table 3.

In Pennsylvania, the original "character" rule from 1966 remains in statute, and a state regulation still stipulates "a student applicant or recipient shall have and maintain satisfactory character."¹²⁹ As described above, court decisions and regulatory actions of the 1970s and 1980s yielded what is still today the interpretation of satisfactory character for the Pennsylvania State Grant.¹³⁰ Though there is no statute or regulation that says so, the *only* condition that triggers the satisfactory character clause is incarceration, even though other conditions are still listed as possibilities in the Penn-

¹²⁵ MICH. S. ANALYSIS SECTION, S.B. 1275, 1276, 1277, & 1278: FIRST ANALYSIS, at 3 (Nov. 10, 1980) (on file with author).

¹²⁶ MICH. S. ANALYSIS SECTION, S.B. 1275, 1276, 1277, & 1278: SECOND ANALYSIS, at 3 (Dec. 22, 1980) (on file with author).

¹²⁷ Mich. 1981 P.A. 500 § 4; Mich. 1981 P.A. 503 § 3.

¹²⁸ Mich. Compiled Laws 390.974 (2017); MCL 390.993 (2017).

¹²⁹ 22 Pa. Code § 121.6(a).

¹³⁰ See discussion *supra* Part IV.B.

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sylvania Code.¹³¹ In the eyes of the Pennsylvania Higher Education Assistance Authority, to be of *unsatisfactory character* is to be incarcerated. This interpretation is made clear in the 2017 Pennsylvania State Grant Program Policy Manual in a section titled “Satisfactory Character,” which states: “State Grant eligibility is not impacted by a felony conviction unless the student is also currently incarcerated. All incarcerated students are ineligible for State Grant awards.”¹³² As Pennsylvania added new scholarship programs over the years, PHEAA tied their eligibility requirements to that of the State Grant, rendering incarcerated students in Pennsylvania ineligible for all state-funded grant programs.

There is one remaining Illinois scholarship statute that still contains a character rule. The present-day University of Illinois Children of Veterans Tuition Waiver has its roots in one of the oldest scholarship programs in the study sample: the 1867 Illinois Industrial University scholarship: “for the benefit of the descendants of the soldiers and seamen who served in the armies and navies of the United States during the late rebellion.”¹³³ Though amended many times, the program is still active, and the state administers this program directly through the University of Illinois, rather than through the state’s financial aid agency. However, the University of Illinois application for the program conspicuously omits any mention of the character requirement, despite an otherwise detailed accounting of the eligibility requirements.¹³⁴ It seems the old character rule is simply ignored in practice, and an official from the University of Illinois did not respond to my request for more information about how they evaluate character.

Virginia funds three programs that contain character rules. The Virginia State Board of Health administers four scholarships for undergraduate and graduate students under the 1950 Nurse Scholarship program. Regarding character, the Board checks all applicants’ nursing licenses for disciplinary issues, and on the application

¹³¹ 22 Pa. Code § 121.6(a)(1-3).

¹³² PA HIGHER EDUC. ASSISTANCE AUTHORITY, PA STATE GRANT PROGRAM POL’Y MANUAL, at 23 (2017), <https://www.pheaa.org/documents/grants/ph/2017-18-policy-manual.pdf>.

¹³³ 1867 Ill. Pub. L. 123.

¹³⁴ See application form, available at https://osfa.illinois.edu/wp-content/uploads/2018/11/1920_COV_App.pdf.

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forms, college nursing faculty must attest to a scholarship applicant's character.¹³⁵ Officials from Virginia Tech did not respond to my emails about how they administer the 1970 Soil Scientist Scholarship. Each institution in Virginia administers the 1936 "unfunded scholarship," and I did not attempt to learn from each institution how they define character.

Similarly, three entities administer scholarship programs in Alabama with character rules. The Alabama Board of Nursing administers the 1977 Graduate Nursing Scholarship, but a Board official reported that there is no single definition of "good character" for the purpose of the scholarship.¹³⁶ Instead, several sections of the administrative code outline the standards of practice, conduct, and accountability that would be referenced when selecting scholarship applicants.¹³⁷ Officials from the Alabama Optometric Association and the Alabama Board of Dental Scholarship Awards did not respond to my requests for information about the scholarship programs that they administer.

In South Carolina, two grant programs still have character rules, which are administered by separate state agencies. An official from the South Carolina Higher Education Tuition Grants Commission informed me that they do not interpret or define the "good moral character" requirement in the 1970 Tuition Grant program, nor would they deny an applicant based on moral reasons, alone.¹³⁸ Any denials would be based on other existing requirements. An official from the South Carolina Commission on Higher Education did not respond to my email about the 1996 Need-based Grant program.

Finally, regarding the 1971 Oklahoma Tuition Grant Program, an official from the Oklahoma State Regents for Higher Education was not able to clarify the state's position on enforcing the "high moral character" requirement.¹³⁹ Since higher education institutions share responsibility for eligibility requirement enforcement, it is possible that a student may be denied eligibility under the character rule following an incident of campus misconduct, the official sug-

¹³⁵ See application forms, VA DEPT. OF HEALTH, available at <http://www.vdh.virginia.gov/health-equity/forms-and-applications/>; Personal Communication, Mar. 21, 2019 (notes on file with author).

¹³⁶ Personal Communication, Feb. 20, 2019 (e-mail on file with author).

¹³⁷ Ala. Admin. Code Rules 610-X-6; 610-X-6-.03; 610-X-8; 610-X-8-.03.

¹³⁸ Personal Communication, Apr. 12, 2018 (e-mail on file with author).

¹³⁹ Personal Communication, Mar. 23, 2018 (e-mail on file with author).

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gested. What is more likely is that the 1995 amendment to the Tuition Grant program statute that made incarcerated students ineligible for aid rendered the character rule itself moot.¹⁴⁰

V. ELIMINATING CHARACTER REQUIREMENTS

Good moral character rules in state financial aid programs are mostly relics of the past. Of the 50 programs identified with such rules since 1850, just 11 (22%) are active today with their character rules still intact. In the historical cases of Pennsylvania, Illinois, and Michigan, the character rules were eventually converted into bans on financial aid to incarcerated students, which may represent contemporary beliefs about what it meant to be of good moral character. In the six states where financial aid programs still contain character rules, the rules are largely ignored, as best illustrated by the requirement being left off the Illinois Children of Veterans Tuition Waiver application. In others, explicit eligibility requirements pertaining to criminal history, financial standing (e.g., not being in default on loans or owing child support), or other misconduct are enforced in lieu of any behavior that otherwise might be representative of unsatisfactory character. In other words, character rules are meaningless or redundant as applied in most of today's state financial aid programs.

At least six states have stripped their current financial aid programs of old character rules.¹⁴¹ There are good reasons for policymakers to continue this trend by deleting the last remaining good character rules from financial aid program statutes and regulations. First, despite one court's assertion that it is in the state's interest to award scholarships only to deserving applicants with satisfactory character,¹⁴² character requirements contradict the policy goals of modern state financial aid programs. The broad need-based programs are intended to make college affordable so that all residents can gain new knowledge and skills, get higher paying jobs, and bolster the American economy.¹⁴³ Thus, denying any academically-

¹⁴⁰ 1995 Okla. Sess. Laws, ch. 247.

¹⁴¹ See *supra* Table 2.

¹⁴² *Carbonaro v. Reeher*, 392 F. Supp. 753, 759 (E.D. Pa. 1975).

¹⁴³ *Supra* notes 25 & 27.

qualified state resident the benefits of college scholarships because of character or criminal history works against the public interests of a well-educated society. Access to and completion of higher education is more dependent now than ever on the ability to pay for college,¹⁴⁴ and denying aid to applicants based on character is an arcane way to save the state a small amount of money. Any state resident who has been admitted to a recognized college should be considered to meet the baseline qualifications for a grant.¹⁴⁵

Second, the inconsistency of program rules is cumbersome. Of the six states that still have character requirements, only Pennsylvania's character statute applies to all programs. In the other states, it is a fluke of history that just one or two programs still have character requirements. For example, Virginia currently funds 38 grants, conditional grants or loans, and tuition waiver programs to undergraduate, graduate, and professional students, just three of which have character requirements.¹⁴⁶ Like Michigan did in 1981, states should eliminate their remaining character requirements for the sake of simplicity and consistency across programs.

Third, the rules themselves are burdensome to administer. State officials, program administrators, and college financial aid officers would not have to field questions from students, parents, and the rare researcher about the meaning of good moral character if they deleted them. Perhaps the reason that six state officials – even after making open records requests in some cases – did not respond to my request for clarification on the character rules is evidence they did not have an answer or were too busy. Either way, governmental efficiency would be improved ever so slightly by striking these burdensome rules.

Fourth, though likely infrequent, there still may be colleges or state agencies that deny eligibility to students for ill-defined reasons of unsatisfactory character. This is especially possible where individual institutions make character determinations for scholarship programs based on their knowledge of an applicant's prior behavior (e.g., criminal convictions or discipline at previous education-

¹⁴⁴ See SARA GOLDRICK-RAB, *PAYING THE PRICE: COLLEGE COSTS, FINANCIAL AID, AND THE BETRAYAL OF THE AMERICAN DREAM* (2016).

¹⁴⁵ For example, see Illinois' definition of good moral character: 23 Ill. Admin. Code pt. 2700.20 (2018).

¹⁴⁶ See *supra* note 40.

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al institutions) or an applicant's behavior on campus (e.g., academic or behavioral misconduct violations). Eliminating character requirements may restore scholarship eligibility to some students.

Finally, confusion around what constitutes good moral character may be a deterrent to qualified applicants. In a U.S. Department of Education survey of college students who did not apply for federal financial aid, 18.9% said the forms were too much work and 60.7% thought they would be ineligible, though over half of them were in fact eligible for a Pell Grant.¹⁴⁷ Combine that with evidence that formerly-convicted students were deterred from applying to college when they knew they faced criminal history questions on the application.¹⁴⁸ It stands to reason that an otherwise qualified student with a criminal conviction, for example, may be deterred from applying for a state scholarship with a nebulous character requirement out of stigma, fear of rejection, or confusion over the requirement. Eliminating character rules helps to ensure that students will not be deterred from applying because of confusing requirements.

For these reasons, the current practice of ignoring or haphazardly enforcing good moral character rules is unsatisfactory. State policymakers should delete the few remaining good moral character requirements from financial aid programs.

VI. CONCLUSION

For nearly a century, legal scholars have lamented good moral character rules in immigration law, occupational licensing, and bar admissions; yet during that period and prior, good moral character rules also existed in state financial aid programs for college students. For the first time, this paper offered an accounting of state scholarship programs with good moral character rules and an analysis of what they mean and how they are enforced. Most of the 50 identified programs with character rules are now defunct, but applicants for at least 11 programs in six states still must contend with character requirements, to varying degrees. I join the chorus of other scholars in

¹⁴⁷ Mark Kantrowitz, *Reasons Why Students Do Not File the FAFSA*, STUDENT FINANCIAL AID POL'Y ANALYSIS, (Jan. 18, 2011), <http://www.finaid.org/educators/studentaidpolicy.phtml>.

¹⁴⁸ Center for Community Alternatives, *Boxed Out: Criminal History Screening and College Application Attrition* (2015), <http://www.communityalternatives.org/fb/boxed-out.html>.

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advocating that good moral character requirements should be deleted.

The identification of character requirements in financial aid programs raises the question as to what other previously-identified subjects are affected by good moral character rules, especially within education law. For example, in my review of historical state statutes, I found laws that listed good character as a requirement for *admission* to college, not just for scholarships. Today, most colleges require students to disclose criminal history on college applications,¹⁴⁹ but do any still evaluate character? Law schools, for example, certainly ask applicants “character and fitness” questions, ranging from criminal history, educational discipline, military discipline, substance abuse history, to involvement in civil litigation.¹⁵⁰ Future research might pursue a review of good moral character requirements in college admissions policies and in other higher education laws.

¹⁴⁹ See Bradley D. Custer, *College Admission Policies for Ex-Offender Students: A Literature Review*, 67 J. CORRECTIONAL EDUC. 35 (2016); Douglas N. Evans, Jason Szkola & Victor St. John, *Going Back to College? Criminal Stigma in Higher Education Admissions in Northeastern US*, CRITICAL CRIMINOLOGY 1 (2019) (advance online publication); Robert Stewart & Christopher Uggen, *Criminal Records and College Admissions: A National Experimental Audit* (Sept. 10, 2018) (unpublished working paper).

¹⁵⁰ John S. Dzienkowski, *Character and Fitness Inquiries in Law School Admissions*, 45 S. TEX. L. REV. 921 (2004).