

INCREASING MINORITY ENROLLMENTS IN HIGHER EDUCATION:
POLITICAL INSTITUTIONS, PUBLIC UNIVERSITIES, AND POLICY OUTCOMES

A Dissertation

by

ALISA KAY HICKLIN

Submitted to the Office of Graduate Studies of
Texas A&M University
in partial fulfillment of the requirements for the degree of
DOCTOR OF PHILOSOPHY

August 2006

Major Subject: Political Science

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Approved by:

Chair of Committee,
Committee Members,

Head of Department,

Kenneth J. Meier
Kim Quaile Hill
Charles A. Johnson
Lawrence A. Oliver
Patricia A. Hurley

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ABSTRACT

Increasing Minority Enrollments in Higher Education: Political Institutions, Public Universities, and Policy Outcomes. (August 2006)

Alisa Kay Hicklin, B.S., Lamar University

Chair of Advisory Committee: Dr. Kenneth J. Meier

Few debates spark as much interest as the controversy over how to increase access to higher education, particularly for racial minority groups. Despite the knowledge accumulated on the benefits of diversity, the higher education community knows very little about the determinants of minority student enrollment, or what universities can do to affect minority student representation. This dissertation seeks to investigate the factors that affect variance in minority student enrollment levels at public universities, with particular attention devoted to the political environment.

This analysis of the relationship between political institutions and public universities draws on a number of subliterations in public administration and political science, including theories of political control, descriptive representation, and public management. As one of the first major studies of the politics of higher education, the analysis draws on untapped data that allow for better tests of many of these theories. These data include measures of university enrollments, drawn from the Department of Education's Integrated Postsecondary Education Dataset and the Texas Higher Education Coordinating Board, data on political institutions, including racial representation, and interviews of university administrators. The quantitative analysis

uses a combination of methods, including ordinary least squares, hierarchical linear modeling, and descriptive statistics. Using a framework of governance to link these subliteratures together allows for progress toward more general theories about the relationship between political institutions and bureaucracy.

Substantively, this analysis also adds to our understanding of what factors affect minority enrollments. Chapter V uncovers the redistributive effect of the *Hopwood* case and California's Proposition 209, and chapter VI builds on this finding, by testing for the effect of minority representation in state legislatures. Chapter VII then takes a closer look at the Texas system, investigating the effect of the *Grutter* decisions on enrollments, particularly at the flagship institutions. Overall, findings point to the importance of university-specific characteristics -- such as the institution's level of selectivity and the values held by the university -- in moderating the influence of political institutions, particularly of court cases and state-level interventions, on minority student enrollment levels.

DEDICATION

This is dedicated to all of the faculty, staff, and administrators who showed me how higher education can change lives. I hope that my career will contribute to the lives of others, as they have contributed to mine.

ACKNOWLEDGMENTS

There are so many people who have contributed in so many ways to this project and my education, in general. First, I would like to thank my parents, who have supported me in every way through my entire life and particularly throughout my years in college. Equally important has been the support and direction from the Cap'n, Ken Meier, who has opened doors for me that I never knew existed. Because of his generosity, especially with his time, I cannot imagine any way in which my graduate experience could have been improved.

Many other faculty members have also contributed in a number of ways to this project. I would particularly like to thank my committee – Kim Hill, Charlie Johnson, and Larry Oliver – along with Pat Hurley, Larry Lynn, Jim Rogers, Dave Peterson, and Kenneth Ashcraft for their thoughtful comments on drafts, good advice, and general support. I am especially grateful for the support given to me by many members of the faculty and administration at Lamar University, including Bruce Drury, Jim True, Brenda Nichols, Barry Johnson, Steve Doblin, Jimmy Simmons, and especially Terri Davis, who was the one who encouraged me to go into this profession in the first place.

Particular thanks goes to Bob Durant and Paul Volcker Endowment for Public Service Research and Education, for not only supporting the collection of the data used in chapter VI of this project, but also providing considerable encouragement of this work throughout the past year.

Finally, I could not have made it through the rigors of graduate work without my friends and colleagues. So many people have contributed to my life in graduate school

that I hesitate to name particular people, for fear of forgetting some. Instead, I will just say thank you to the ones who have contributed most to my academic survival throughout this process – first of all, Rene Rocha and Greg Hill, who spent days on end with me, writing papers and wading through articles. Also, Eric Juenke, Sean Nicholson-Crotty, Warren Eller, and Daniel Hawes who spent considerable amounts of time working me on so many projects.

I could easily say that I could not have made it through this process without all of these people, but it's more than just that. My graduate school experience has been so well-rounded: full of stress, excitement, ridiculousness, and enlightenment. It has given me countless stories that I look forward to re-telling at conferences and to my students in the future.

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CHAPTER I

INTRODUCTION

Few debates spark as much interest as the controversy over how to increase access to higher education, particularly for racial minority groups. Politicians, university administrators, journalists, bureaucrats, and the public have spent decades arguing over the most effective and appropriate ways to open the doors of academia to more minority students, with particular attention to African Americans and Latinos. In an effort to work toward a more informed discussion of “diversity” in higher education, education scholars have conducted extensive research to track how minority students are underrepresented, how increasing minority student enrollments benefits universities, and making arguments about how the current system needs improvement. Overall, this research presents a compelling case for the need to increase minority student enrollments, an issue on which administrators and policymakers now agree.

Even though most universities have decided on *whether* they will work to attract and retain more minority students, few have settled on *how* they will go about these efforts. Controversy still exists over policies aimed at increasing minority student enrollments, namely those policies that incorporate racial preferences. In assessing the use of affirmative action, two questions should be addressed. The first is the normative question, centered on whether racial preferences are a fair way to boost enrollment. The second question focuses on the effectiveness of using racial preferences, and by

This thesis follows the style of the *American Journal of Political Science*.

extension, the effectiveness of other policy alternatives. The first question -- the normative debate over racial preferences -- is well-documented, particularly in recent court cases, the popular media, and professional publications, like *The Chronicle of Higher Education*. Overall, we know a good bit about how diversity can be beneficial to universities, and the arguments for and against racial preferences have been covered in nearly every forum available.

But in sharp contrast to the information we have on the normative debate, there is remarkably little information on the effectiveness of racial preferences – and more broadly – the other factors that affect minority student enrollment. Other policy areas, such as healthcare, welfare, environmental, and even K-12 education, enjoy an solid foundation of policy-relevant research that can inform politicians and public managers on the options that are available. Ironically, the enterprise that is built on virtues of research is left to its own best guesses and suppositions. Given the importance of increasing minority access to higher education, and the time and money dedicated to developing and implementing these diversity efforts, states and universities need policy-relevant information that can inform these decisions.

This dissertation investigates the factors that contribute to fluctuations in minority enrollments, by focusing on four key elements: the university's political environment, the university's individual characteristics (mission, values, etc), targeted political interventions (particularly court cases), and university policy decisions. The analyses presented in the following chapters are directed at building a foundation on

which future studies of particular policies can be grounded and on which policymakers can draw for a better understanding of the policy environment in which they operate.

Politics, Policy, and Public Management

Although there is very little policy-relevant research available, the majority of what exists often focuses on the effect of court decisions, particularly looking at the earlier cases, *Bakke* and *Hopwood*. With the recent Supreme Court decisions in the *Grutter* and *Gratz* cases, the questions about the influence of judicial interventions have been reinvigorated, and for good reason. The courts have played a significant role in determining how universities will make policy decisions with respect to racial minorities, and many of the most significant decisions about race and affirmative action have been issues related to higher education and admissions. Higher education and the courts have been linked for over 50 years, necessitating research on how these decisions affect student enrollments.

Even beyond the court cases, higher education is a very “political” issue that attracts much debate, especially in legislative bodies. State legislatures, as the primary overseers of public universities, have become more proactive in making demands on public universities, asking for changes in policies and increases in performance. This increased level of accountability, along with decreased support for universities, has caused tension between some universities and their state legislatures, and some of these tensions involve the debate over minority access to higher education. State policymakers, particularly those who represent districts with high minority populations,

have a vested interest in increasing the number of students admitted to the state's best public institutions. Conversely, those legislators who have different beliefs about the proper role of affirmative action in universities also have incentives to become more involved in oversight and accountability efforts.

Finally, a number of university administrators have spent the last few years, especially those after the more recent Supreme Court decisions, reevaluating their admissions policies and beginning new programs aimed at increasing "diversity." As is the case with most initiatives, these policies can be controversial and costly, which increases the need for more information about what policies are the most effective and the most efficient at increasing minority student enrollments. Because of the lack of policy-relevant information on the determinants of African American and Hispanic student representation, these administrators are left making decisions based on unfounded assumptions and a handful of anecdotes on what may have worked at another institution. At the most basic level, these administrators could benefit from knowing more about the environment in which they operate, where they have opportunities to make gains, what issues are out of their hands, and what policies are likely to be most effective. Although a full investigation of these issues is outside the scope of this project, this dissertation seeks to address each topic, at least in part.

Contributions to Theory

Although this project looks to add to our substantive knowledge about minority access to higher education, there are also many opportunities for theoretical

development. Higher education, as a policy area, has unique advantages that offer new ways to ask questions that are of central importance to political scientists, policy analysts, and public administration scholars. In particular, this analysis will focus on theories related to how political institutions and public organizations work together (or in opposition) to influence policy outcomes. These theories of “political control” or “governance” often surface in different forms in disparate subfields, many of which are competing theories that present different explanations of nature of the politics and administration relationship. To make progress in our theory building, there should be a way to link these subliterations together, generate hypotheses, and conduct better empirical analyses.

To link these various middle range theories, the dissertation draws on a more recent framework that has emerged in public administration. This heuristic, the Lynn, Heinrich, and Hill (2001) framework of governance, outlines the many relationships that affect policy outcomes, both in political institutions and in public organizations. The following chapter reviews this framework in more detail and specifies how the framework is used in the empirical analysis.

With respect to the data needs mentioned above, research on higher education policy benefits from the variance among states on multiple issues, including legislative representation, ideology, culture, bureaucratic structure, wealth, and demographics. Higher education at the state level can differ dramatically, as some states have a number of nationally-ranked institutions that are strictly governed by a state-level agency, while other states have a couple of institutions that operate with near-complete autonomy.

Even within states, universities differ dramatically, from small, liberal arts schools in a rural area to large, comprehensive, research-intensive universities in major metro areas. Each of these institutions serves a different clientele, is governed by a different set of public managers (administrators), and has a unique identity within the state.

This variation, paired with reliable data gathered over 20 years, allows for better tests of theories in a number of fields. This dissertation focuses primarily on questions of political control and public management, and touches on literature in representation, rational choice, and policy decisionmaking. The following chapters discuss how higher education offers a particular advantage in testing these theories by supporting research that crosses subfields, drawing on subliteratures in different disciplines in an effort to produce more general theories.

Outline of Dissertation

Chapter II presents a theoretical framework for the empirical chapters, by using the Lynn, Heinrich, and Hill (2001) logic of governance to guide the work that links the disparate middle range theories. Most of the theoretical contributions of this dissertation are included in the individual empirical chapters, with this chapter outlining the key relationships and giving an overview of the literatures that will be discussed in more detail in the later chapters.

Chapter III provides an overview of the history of minority student access to higher education and a review of the substantive work on minority representation in public universities. The backbone of this chapter is a review of the judicial decisions

that have framed much of the debate over minority access, and the majority of the substantive work on the topic that is also focused on the effect of significant court cases. In particular, this chapter reviews the many concepts that we have identified in the popular media as being important (such as the effect of these political pressures) but have neglected in the scholarly work.

Chapter IV begins the empirical investigation by starting where the scholarship has left off: at the effect of judicial restrictions on the use of racial preferences as an effort to increase minority student enrollments. As one of the few studies that include a full range of public universities (from small school to flagship institutions), this chapter investigates the effect of the *Hopwood* court decision and California's Proposition 209, both of which eliminated the use of racial preferences in Texas, Mississippi, Louisiana, and California. This investigation uses a public management and rational choice frame to deduce hypotheses about how these interventions could affect institutions differently, depending on their level of selectivity.

Chapter V builds on the findings in chapter IV and broadens the analysis to include all American public universities from 1990 – 2001. Using hierarchical linear modeling and theories of racial representation and political control, this analysis examines the extent to which increased minority representation in the state legislature and varying bureaucratic structures influence African American and Latino student enrollment levels. This chapter also includes some discussion of the role of institution-specific characteristics, such as mission and reputation, in a university's efforts to increase diversity. The central purpose of this chapter is to offer a more comprehensive

investigation of the political environment that universities face, before delving into more policy-specific analysis.

Chapter VI moves to a much more focused analysis with a case study of the state of Texas, with particular focus on the effect of the *Grutter* Supreme Court decision. This chapter uses data on minority application, acceptance, and enrollment rates, examining how the *Grutter* decision to allow some form of racial preferences may have resulted in fluctuations across the state. The analysis then shifts to a more detailed examination of two universities, the University of Texas and Texas A&M University, investigating how the *Grutter* decision affected their recruitment and admissions policies and testing the effectiveness of their different strategies aimed at increasing minority enrollment.

Finally, chapter VII concludes with a summary of the substantive findings that are relevant for both state-level policymakers and university administrators. This chapter also returns to the theoretical framework to link the empirical findings and produce a more general theory of how political institutions and public organizations combine to affect policy outcomes.

CHAPTER II

THEORETICAL FRAMEWORK

Why should scholars of political science and public administration care about higher education policy? The previous chapter touched on the ways in which political science and public administration can contribute to a better understanding of diversity in higher education, but what can a study of higher education contribute to these disciplines? Political science and public administration each have multiple streams of literature that have been limited, in some part, by data constraints. In political science, we have a small, but substantial literature that is concerned with how minority representation in legislative bodies can affect policy outcomes for minority groups (Fraga, Meier, and England 1986; Meier and Stewart 1991; Meier, Wrinkle, and England 1989; Hero and Tolbert 1995), yet, we know very little about how and when this process works. In public administration, there has been an almost paradigmatic shift away from qualitative work that focuses on very specialized issues to large-n, quantitative work that aims at testing broad, general theories about how public organizations operate. This change requires an equally substantial shift in the types of datasets and organizations that we use to test these larger theories.

Higher education policy offers a laboratory that is unparalleled for testing these theories. Though largely ignored by policy scholars, higher education is a policy arena that has strong, reliable data, collected over time, and drawn from a large number of institutions that vary on several important dimensions. Because higher education is almost entirely controlled at the state level, there is also the benefit of having fifty

unique political systems that are similar enough to be comparable but different enough to encompass key variation in the political environments faced by public organizations.

Having reliable data, drawn over time, for fifty different political systems and hundreds of public institutions creates new opportunities for testing and advancing theories.

This dissertation is one of the very few studies to explore the many ways that this new arena for empirical work can contribute to disparate literatures in many ways.

Theoretically, this work will draw on multiple mid-range theories from different subfields and, using a framework to link these theories together, work toward producing more general theories that speak to these subfields. In particular, the focus will be on the relationships between political institutions and public organizations, and how these relationships affect policy outcomes.

A Framework for the Project

Because this study crosses subfields and includes a wide variety of subliteratures, it is necessary to have some framework to use as a guide. This framework should be broad enough to include both political and bureaucratic dimensions and to give us ways to integrate existing theories from these multiple subfields. In short, because of the fragmented nature of these literatures, we need a way to fit the pieces together. A recent stream of literature in public administration may offer the leverage needed to organize such a broad study. This work centers on the concept of governance, a term that is used to refer to all of the systems, decisions, and structures that are involved in a government's efforts to provide public goods and services to its citizenry.

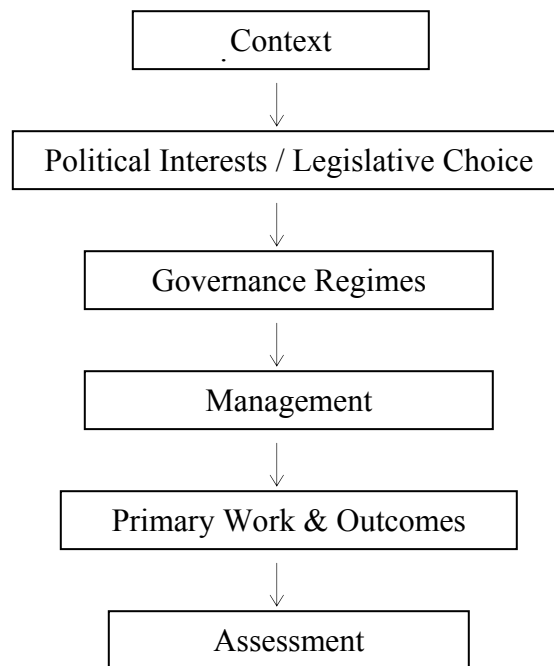
Governance, as a concept, has been used primarily by scholars of public administration as a way to incorporate the various aspects of the political environment that affect public managers and policy outcomes. However, this concept of governance could also serve as a way to "fill in the blanks" that many political science scholars have traditionally left out. A large body of work in political science, often referred to as the "political control" literature, has received some recent criticism for offering theories about the relationships between political institutions and public organizations, but often excluding public organizations from the empirical tests (Moe 1990; McCubbins, Noll, and Weingast 1987; Horn and Shepsle 1989; McCubbins and Schwartz 1987; Wood and Waterman 1994, for criticism see Meier and O'Toole 2006). Unfortunately, few political scientists have taken up the challenge to conduct broader tests that include both political and bureaucratic elements.

Shifting to a governance framework could allow for real theoretical progression both in political science and public administration, but we need more than just a concept to guide empirical investigation. We need ways to organize, in a parsimonious way, the complex set of relationships that make up this very inclusive view of the policy environment. To gain some leverage on this concept of governance, this analysis draws on the work of Lynn, Heinrich, and Hill's model of governance.

Lynn, Heinrich, and Hill, in their book, *Improving Governance: A New Logic for Empirical Research* (2001), offer a framework of governance that is intended for this specific purpose. This framework outlines a hierarchy of relationships that feed into the policy process, in an attempt to provide scholars with a heuristic that can be used to

direct scholarly work toward the incorporation of more of the political and bureaucratic influences that literatures in disparate fields have found to be critically linked to the creation, implementation, and assessment of public policy. The "logic of governance" (LoG) aggregates the numerous determinants of policy into six distinct levels, as shown in figure 1 (Lynn, Heinrich, and Hill 2001, pg 34).

Figure 1: Lynn, Heinrich, and Hill Logic of Governance



Again, the authors present this model not as a *theory* of governance, but a way in which to organize the world and guide empirical work. Though largely descriptive, the model and its explanation trace the basic causal relationships that exist throughout the full policy process. The first level accounts for all of the cultural, economic, and

regional contextual factors that shape the regime's environment, which are treated by the authors as largely exogenous to the policy process. The authors discuss how changes in the economy, differences in the constitutional structure of the government, and variance in national attitudes about politics and policy issues affect political decisionmaking in the regime. Much of the empirical work on this particular "level of governance" can be found in the political science, by scholars of political economy, political culture, and comparative politics.

The model then turns to the relationship between political decisionmaking and the ways in which governments choose to deliver goods and services to the citizenry (governance regimes). Lynn, Heinrich, and Hill (2001) rely heavily on the political control literature that deals with concepts such as "hardwiring" and "deckstacking" to discuss ways in which legislatures can set up the bureaucracy so as to advantage certain interests and disadvantage others (McCubbins, Noll, and Weingast 1987; McCubbins and Schwartz 1989). We know this relationship is an important one, in part, because research on different bureaucratic structures demonstrates that structures can matter greatly in determining what the bureaucracy does, how it goes about doing its work, and the end result of this process (policy outcomes) (Knight 1992; Moe 1990; Spence 2003). Incorporating the multiple levels of influence between politics and policy, the logic of governance then traces the ways in which political decisions and governance regimes affect policy outcomes throughout the bureaucracy.

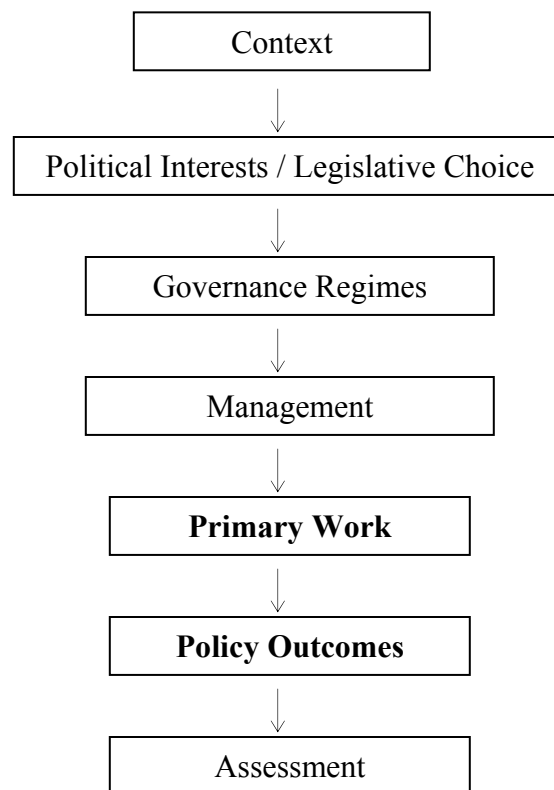
Unlike the vast majority of the studies linking political decisions to policy outcomes, the logic of governance formally incorporates a key part of the policy

processt: public management. The literature on public management has grown dramatically in recent years, yet, it is rarely included in studies of "political control" or "politics and the bureaucracy." We have considerable evidence that public management affects policy outcomes (Brudney, Hebert, and Wright 1999; Wolf 1993; O'Toole and Meier 1999; Moynihan and Pandey 2005; Nicholson-Crotty and O'Toole 2004; Boyne 2002; Lynn, Heinrich, and Hill 2001), but we have very little information about how political institutions and governance structures affect the decisions made by public managers. This is curious gap in the literature, given the almost undisputed notion that public managers are, at least in part, subject to political institutions. This gap offers considerable opportunities for advancing our understanding of public management, and adding an important element to the work on political control.

The logic of governance then moves to the inner workings of the bureaucracy, or the "technical level of governance," (Lynn, Heinrich, and Hill 2001, pg 36). These concepts - public management, primary work, policy outcomes, and assessment - make up the backbone of public administration, but are rarely studied by political scientists. The basic relationships, as outlined by Lynn, Heinrich, and Hill, link decisions made by public managers to what the bureaucracy does (primary work) and the outcome of that work (policy outcomes). Although grouped together in the model, in their discussion of how this framework would be used in empirical work, they are broken apart, with primary work (treatments) as a determinant of outcomes. Because policy outcomes are the focus of this project and of much of the political control literature, it would be particularly advantageous to break primary work and policy outcomes into separate

categories, which would be a slight variation on the original model, as depicted in figure 2.

Figure 2: Extended Model of Governance



The final part of this model is assessment. Assessment is included in a number of models of public policymaking (Anderson 1979; Easton 1965; Jones 1970; Brewer and deLeon 1983) but not always incorporated into empirical examinations that also look at management and treatments. This assessment "level" is also referred to as the "feedback loop," as it is the mechanism by which political institution gauge bureaucratic behavior and compare what the bureaucracy does to what political principals intended.

This is a relationship that has received some attention in studies of congressional oversight (Epstein and O'Halloran 1999; Ogul 1976), fire alarms (McCubbins and Schwartz 1987), and other assessment devices. Although this project touches on some issues of assessment in higher education, this part of the model is largely outside of the scope of this study.

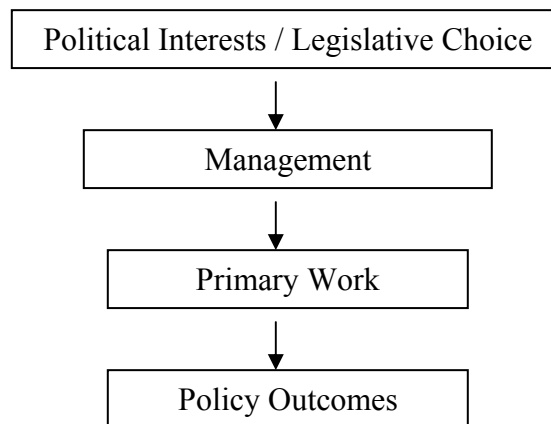
Instead, this dissertation will use different subsets of the full Lynn, Heinrich, and Hill model to advance and test theories within various subfields. Each empirical chapter draws on similar literatures, but has a somewhat different theoretical focus and uses a broad range of empirical methods to test these theories. Although no individual chapter incorporates every level of the logic of governance, the chapters, in combination, include each level of the model to investigate the ways in which concepts related to governance affect outcomes in higher education.

Public Management and Political Institutions

The first empirical chapter in this investigation looks at the ways in which political institutions affect policy outcomes by constraining the policy alternatives that are available to public managers. In the case of affirmative action in higher education, policy alternatives include the various ways in which universities may choose to recruit minority students. Because these decisions are about what the organization will actually do, they are decisions about the primary work of the organization. A focus on these four levels of governance – political decisionmaking, public management, primary work, and

outcomes – engages most of the governance framework but ignores some of the original model, resulting in Figure 3.

Figure 3: Chapter III Model of Governance



The relationship between political institutions and public managers is one that is often talked about in theories of political control, but few of these theories actually incorporate management. Theories that attempt to explain how managers and managerial decisionmaking are affected by political interventions are even more rare. Instead, we have a considerable amount of work on how political institutions affect policy outcomes (presumably with management playing some role) (Wood and Waterman 1991; West 1995), how political appointments of agency heads affect policy outcomes (Ingraham 1987), and mostly descriptive studies of how particular managers have responded to political interventions (Golden 2000). Other theories of political and bureaucratic decisionmaking also make some reference to managers of public organizations, whether as actors in iron triangles (Dodd and Schott 1979), issue

networks (Heclo 1977), advocacy coalitions (Sabatier and Jenkins-Smith 1993), or when incorporated into formal models of policymaking (Epstein and O'Halloran 1999).

Despite this wealth of literature that is mostly in political science, there is very little information about how political interventions affect public managers and their decisionmaking processes. This gap relates back to the central thesis of the Lynn, Heinrich, and Hill model – that public management is an integral part of the governance, and is embedded in a very political environment. Both in the literature in political science and in the model of governance, we assume that political institutions can affect the ways in which public managers make decisions, but we have little evidence as to how these interventions can make a difference. This chapter derives and tests hypotheses about how shifts in the political environment change managerial decisionmaking by using a leading theory of decisionmaking, bounded rationality.

Strictly rational actors are assumed to make decisions based on complete information of all goals, values, policy alternatives, the cost of each alternative, and the probability of meeting goals for each alternative (Downs 1967; Simon 1947). However, we know that most decisions are made without full information about every possible alternative, but instead are made from a constrained, smaller set of alternatives. Although the decisionmaker does not have all of the information about every possible alternative, the decisionmaker still makes rational, goal-oriented choices within the constraints. In short, the decisionmaker is boundedly rational. This theory relaxes the assumption of full information, instead arguing that managers will use informational shortcuts in an effort to make the best decision possible, given their cognitive, time, and

informational constraints (Bendor 2003; Conlisk 1996; Simon 1947; Jones 2001; Kato 1996).

One of the ways that managers can pare down the unlimited options that are available is by assuming that other people will behave rationally, and using that assumption to craft decisions that will mostly directly produce the desired policy outcomes. In higher education, this would mean that an administrator who is trying to raise minority student enrollment rates would craft an admissions policy that is based on the issues that a rational prospective student would consider when deciding where to go to college. Further still, the decisions made by the administrator would be aimed at attracting more minority students, and therefore the decisions would include some elements that are particularly directed at influencing the prospective students' decisions by making the institution more attractive to minority students.

This would seem to make the decisions made by universities very straightforward. Find out what minority students look for in choosing a college, and give it to them. Of course, we know that it is not quite that simple, due in large part to political institutions. Administrators are limited, mostly by state legislatures, in the amount of money they have to spend on special programs and scholarships. Administrators are also limited in the extent to which they can target minority groups. As will be reviewed in the next chapter, the legality of giving preferences to minority groups has shifted throughout the last century, largely through various Supreme Court decisions. The courts have regularly placed constraints on the set of policy alternatives that are available to university administrators.

This investigation looks at two particular interventions, one judicial and one legislative, and examines just how this intervention affected how universities could attract minority students. Using a bounded rationality framework, this chapter traces how the *Hopwood* decision and California's Proposition 209 affected how administrators crafted university admissions policies and how these changes affected minority student enrollment rates in four states. Additionally, this analysis considers another important element of the Lynn, Heinrich, and Hill framework – primary work – by incorporating how the differences among universities played a key role in determining how these shifts in the legality of giving preference to minority groups would affect minority student enrollment rates.

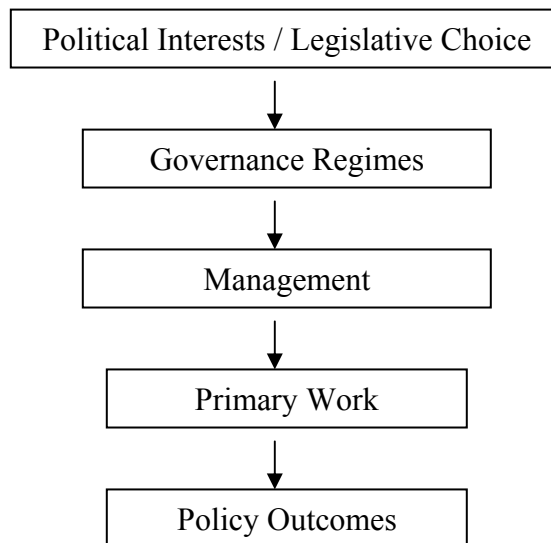
The Effect of Descriptive Representation

The second empirical chapter (chapter V) takes an even broader look at the determinants of minority student enrollments, by using the logic of governance to link minority representation in state legislatures to policy outcomes. In political science, there is a body of work that focuses on whether minority representation in decision-making bodies affects policy outcomes by drawing on theories of representation. Scholars have shown that increases in minority representation in legislative bodies (descriptive representation) results in better policy outcomes for minority groups (substantive representation) (Bratton and Haynie 1999; Karnig and Welch 1980; Lublin 1999; Hero and Tolbert 1995; Meier, Stewart, and England 1989, Meier and Stewart

1991). What has yet to be shown is how this translation from descriptive to substantive representation takes place and why we find it in some places but not others.

Instead of trying to track minority legislators in hope of finding some who work harder or identify more strongly with their racial group, this analysis turns to the policy process. The logic of governance offers ways to tap into the black box of substantive representation by filling in the gaps between legislative seats and policy outcomes. This chapter builds on chapter III and incorporates even more of the Lynn, Heinrich, and Hill model. The model used in chapter V is depicted in figure 4.

Figure 4: Chapter IV Model of Governance



This chapter builds on the previous chapter’s findings by taking the empirical model in that chapter, expanding the sample to include all fifty states, and shifting the focus to the minority legislative representation. The key addition, in terms of the Lynn, Heinrich, and Hill model, is the inclusion of “governance regimes” into the model. As

discussed in the review of the model, “governance regimes” is a very broad concept that includes a number of factors, but generally relates to the way in which the government has set up the bureaucracy, both structurally and through its mission. This analysis considers how the structure of the state’s higher education bureaucratic agency affects the relationship *between* descriptive and substantive representation. Unlike the LHH model, this would specify that the effect of structure is interactive.

States’ higher education bureaucracies take one of two basic forms. Some states have highly centralized, largely autonomous agencies, often called “governing boards,” that have a considerable measure of control over the institutions in the state. These governing boards often make decisions about the basic missions of the various universities, curriculum changes, and funding. This is in contrast to those states with coordinating boards, a much more loose, networked system of governance, that has very little control over the state’s institutions and can often serve as a more organized way for universities and the state legislature to communicate.

There are a number of ways in which these variations in structure could matter. In the political control literature, scholars discuss concepts of “hardwiring” and “deckstacking” to refer to when legislative coalitions attempt to structure a bureaucracy so as to hardwire their political preferences into the institution itself (Moe 1990; McNollgast 1989; Huber and Shipan 2002; Epstein and O'Halloran 1999). This would suggest that more centralized and autonomous bureaucracies would be less affected by changes in the legislature, which by extension, would make it more difficult for increases in descriptive representation to result in better substantive representation.

On the other hand, more centralized bureaucracies may have some advantages. If the bureaucracy is more centralized and hierarchical, a change at the top would be more likely to filter throughout the bureaucracy, than it would in decentralized, networked-type system. Put another way, the process of implementing policy decisions from the top of the organization to the street-level may be more efficient in centralized bureaucracies. If this is the case, increases in descriptive representation should have a stronger effect on policy outcomes in centralized bureaucratic systems.

This chapter incorporates state-level variations in structure to investigate how descriptive representation can actually make a difference in policy. Using hierarchical linear modeling, chapter V examines if descriptive representation matters in minority student enrollments, and, more importantly, builds on existing theories of minority representation to address why we see this representation in some places more than others. These models also include the variables discussed in chapter IV, with particular attention given to the institution's level of selectivity and limits on including race in admissions policies.

Adding Some Depth: Texas as a Case Study

The combination of a governance framework and a large-n, national, time-series dataset allows for a much more inclusive, generalizable investigation of how the political and bureaucratic factors interact to affect policy outcomes. However, there are some tradeoffs in taking this approach. A large-n study is both preferable and, in some ways, necessary to address questions of representation and structure, but it overlooks

other questions of both substantive and scientific importance. The ways in which managers perceive their political environment, and use those perceptions to make policy decisions, can be unique to a particular organization and even a particular individual. Pairing a quantitative analysis with a more qualitative exploration can add the depth needed to fully explore the question at hand.

Chapter VI turns to a case study of the state of Texas, that combines data from an original survey of all universities in the state and a qualitative analysis that compares how two institutions – the University of Texas and Texas A&M University – chose to pursue diversity efforts in the past few years, with particular attention given to the post-*Hopwood* and post-*Grutter* time periods. First, the chapter investigates the perceived effect of the latest political intervention, the *Bollinger v. Grutter* Supreme Court case, that allows these institutions the option to incorporate race into the admissions process, to see the extent to which universities were affected by this political shift. Secondly, this analysis considers whether a public university's stated level of commitment to increasing minority student representation has any effect on student enrollments. These findings offer real insight into some of the concepts and assumptions that can be found at the core of public administration.

The latter part of the chapter again draws on the framework of governance, in an effort to explore the “levels” of governance that we cannot address quantitatively. The interviews with various university administrators allow for the incorporation of issues like context and political assessment, while adding some detail to the previous findings about minority representation and the importance of selectivity. This chapter

incorporates the full model of governance, with the focus at the level of the public manager.

This analysis uses a most similar systems approach by considering two universities which are subject to the same political institutions, draw from the same population, provide the same level/quality of service, are roughly similar in size, geography, and mission, and are pursuing the same goal: to increase the representation of African American and Latino students in their undergraduate student bodies. One would expect these two institutions to pursue this goal of diversity in relatively similar ways. In terms of the logic of governance, these institutions are in almost the exact same situation and subject to the same forces. Yet, in 2003, when the Supreme Court upheld the *Grutter* case (a decision which will be discussed at length in the next chapter), the University of Texas chose to include race into admissions, and Texas A&M University chose to leave it out. What could account for the difference in these key policy decisions?

The findings of this chapter make four important contributions. First, the interviews with chief administrators lend even more support to the Lynn, Heinrich, and Hill logic of governance, as these top administrators regularly speak about how their decisions were integrally affected by the political environment. Secondly, this chapter allows for a limited incorporation of the other levels of the governance model, by discussing how context and political assessment have played a role in diversity efforts. Other findings in this chapter challenge very deeply held assumptions about the barriers to diversity and the ways in which to increase diversity, which makes some progress

toward learning more about the nature of this policy environment. Finally, the qualitative analysis of management style and policy decisions is paired with a basic quantitative investigation centered on when and where each of these universities is making real progress in their attempts to increase minority student enrollments. This chapter presents very tangible, substantive conclusions about how to make real gains in minority enrollments, at least in universities with similar missions and environments.

Conclusion

Although each of the empirical chapters addresses different literatures and draws on different data and methodology, they all speak to the same basic question: how do the political institutions affect policy outcomes? This analysis draws on the Lynn, Heinrich, and Hill logic of governance to link together literatures within political science, public administration, and public policy to generate new hypotheses about how political institutions can shift the ways in which public organizations operate, and thereby indirectly affect policy outcomes. The logic of governance gives us a framework that we can use to broaden the scope of the analysis, incorporating more of the political and bureaucratic issues that come into play and allowing for a better understanding of the substantive issues that are the focus of much of the political debate.

Linking these mid-range theories offers hypotheses that ask “bigger questions” about these fundamental relationships. Throughout the empirical chapters, new questions are asked and tested, with findings that uncover critical additions to our understanding of the policy process. Chapter VII returns to the logic of governance,

drawing on the findings from the empirical chapters and summarizing the theoretical developments in each chapter. This dissertation concludes by presenting more general theories of politics and the bureaucracy.

In the case of higher education, the “politics” of the issue cannot be discounted, as political interventions have caused real shifts in policy and policy outcomes. As universities work to pursue diversity, they are both helped and hindered by their political principles, sometimes through directed action, and other times, though less dramatic shifts in the political environment. The more the higher education community dedicates time and money to increasing the enrollment levels of minority students, the more we need a better understanding of the factors that make up this policy process. Higher education scholars have yet to fully incorporate the theories found in public administration and political science, and scholars of political science and public administration have yet to address higher education. This is somewhat surprising, given that much of the battle over racial equity, an issue that has been of serious interest to political science, was fought on university campuses. The following chapter reviews the history of race in higher education, further exemplifying how politics and higher education have been inextricably linked throughout the history of the academy in America.

CHAPTER III

HISTORY

Public universities have a complex and often dysfunctional relationship with political institutions. In many ways, this relationship is complementary and symbiotic. Universities rely on government monies to support daily operations, research endeavors, construction, and a number of other functions. Public officials, in turn, look to universities to educate the citizenry, train the workforce, offer information about policy issues. They use colleges as ways to reach out to constituencies (often through pork barrel projects), and, at the state level, place a considerable amount of emphasis on how the universities' reputations reflect upon the state¹. At the same time, the relationship between universities and government can be incredibly antagonistic, especially with respect to the courts.

One of the most sacred values in higher education is some level of autonomy - that universities can have some say in choosing which students to educate, how to educate them, and who will educate them. Despite the lore of academic freedom, federal and state political institutions have spent years working to regulate those exact issues, especially with respect to how universities decide who they will choose to educate. These complex relationships between universities and government authority have fluctuated throughout the history of American higher education, and over time, have produced a policy environment with a number of conflicting pressures and ambiguous goals.

¹ A state's universities often attract considerable attention for the state (as a whole), whether through competitive academic offerings or nationally famous athletic programs, among other things.

The purpose of this chapter is to trace the history of how political institutions have tried to regulate institutions of higher education, with respect to how universities choose who will be admitted to the institution. Although these interventions come from various sources (presidents, governors, legislatures), the primary overseers have been the courts. Because of the predominant role that the courts have played in determining how universities will treat the issue of race in admissions, the backbone of this chapter is made up of the most influential court decisions that have shifted higher education policy.

Politics, Race, and the Academy: Early 20th Century

In a country where all people are assumed to have an equal chance to achieve success, access to higher education has always been a contentious issue. Presidential agendas, congressional legislation, state laws, and a number of judicial decisions have worked to either expand, constrain, or shift student access to public universities. We have early evidence that the ivory tower would never be free from political conflict, especially with respect to the opportunities afforded to students of color.

Early in American history, universities continued to be primarily elite organizations: the idea that higher education should be offered to the masses had not yet made its way into the American education system. With the Morrill Act of 1862, the federal government established a mechanism by which states would be able to establish universities to support agricultural and mechanical education, but it took decades before these universities were fully operational and attracting a large number of students. From 1910 to 1920, less than 5% of American 18 to 24 year olds attended universities, and

these students were almost exclusively white males. During this time secondary schools began to open their doors to more students and began to orient their curriculum to more academic (and less vocational) offerings. With more students receiving adequate secondary education, universities saw a real boom in the number of students looking to pursue higher education. Between World War I and World War II, university enrollments grew fivefold, and the African American college-going population grew at an even faster rate, from 2,000 to 14,000 by 1930 (Thelin 2004).

Following the “separate, but equal” doctrine established by the Supreme Court in *Plessy v. Ferguson* (1896), many states with high minority populations had opened all-African American universities to provide undergraduate education to the state’s black population, funded in part by the second Morrill Act of 1890, which established funding for all-black universities. Though these schools virtually never offered an “equal” education, a bachelors degree was attainable. Although these universities offered undergraduate programs, few universities offered a range of graduate programs. In 1936, an African American student (Murray) in Baltimore applied to the all-white law school in the city and was denied admission based on his race. The court decided that, given the absence of an African American law school in the Baltimore area, the student should be granted admission to the all-white law school (*Pearson v. Murray* 1936). This decision was later reaffirmed by the Supreme Court in 1938 in *Gaines v. Canada* (305 US 337 1938), which mandated that the University of Missouri grant admission to African American applicants, given the absence of a black law school in the state.

Although the majority of the formal political attention given to civil rights in higher education came through the courts, issues of racial discrimination in universities began to show up on the presidential agenda, too. In 1946, President Truman commissioned a report on the status and future of higher education. This report outlined a number of issues, but specifically pointed to the social injustice incurred through the racial discrimination and segregation perpetuated by higher education institutions. Although this report received little political attention, the values promoted and the language used in the document showed incredible foresight by the commission. Most notably, the report outlined a number of arguments that can be found on both sides of the current debate. One, finding that a lack of diversity harms both minority and majority students – “segregation lessens the quality of education for whites as well,” and another pointing to the pitfalls of quota systems – “the quota system denies the basic American belief that intelligence and ability are present in all ethnic groups,” (President’s Commission 1947).

The decades leading up to the 1950s are often considered to be less important in making real gains in civil rights, but it is evident that a number of people, especially certain political elites, were laying the groundwork for what was to come. Universities began to feel the pressure of political elites, and the courts were setting up the foundation for what would eventually result in revolutionary judicial decisions.

The Push for Integration in Universities

In 1950, the Supreme Court continued to chip away at the “separate but equal” doctrine in the case of *McLaurin v. Oklahoma*, where a black professor, George McLaurin, was denied admission to the university's doctorate of education program, strictly because of his race. Through the appeals process, McLaurin was granted admission (due to a lack of an all-black Ed.D. program), but was required to sit separately throughout classes and meal times. After he filed suit again, the Supreme Court decided to hear the case. This case was one of the first major shifts away from segregation, as the Court chose to strike down the University of Oklahoma's strict segregation policy. Not only was this case a turning point in the desegregation movement, it also foreshadowed the debates to come, with Chief Justice Vinson, in the majority opinion, arguing that “these restrictions impair and inhibit his ability ... to engage in discussion and exchange views with other students,” (*McLaurin v. Oklahoma* 1950).

McLaurin became the foundation for the next case -- *Sweatt v. Painter* -- the impact of which would be even more broad. Sweatt, an African American, applied to the University of Texas law school for the 1946 term and was denied admission based on his race. The university offered to enroll him at the new all-black law school also based in Austin. Whereas previous cases ruled against requiring black students to travel great distances to attend an all-black law school, this case involved a situation where the black student was offered an alternative, albeit grossly inferior, legal education in the same city. Here the Supreme Court also deviated from precedent and ruled that Sweatt should

be admitted to the University of Texas law school, on the grounds that all available alternatives were substantially inferior to the opportunities afforded to UT law students.

Again, Chief Justice Vinson, in the majority opinion, continued to delineate the issues inherent in the separate but equal doctrine, and again pointed to the importance of the classroom discussion and particularly, the importance of an open and broad discussion of ideas. “Few students...would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned.” Vinson also points to the importance of an individual’s ability to interact with those outside their race, both in the practical world and in terms of individual, cognitive development. Although the decision in this case was limited to law school, it did set up the foundation for the full reversal of the "separate, but equal" doctrine.

In 1954, the Supreme Court officially struck down legal segregation in *Brown v. the Board of Education*. Although this case addressed segregation in the K-12 school system, it clearly spoke to higher education, as the bulk of the case law cited as precedent dealt with issues at the university level. Even more importantly, Justice Warren spoke of the special role that education plays in American society, arguing its critical role in development and future success. Additionally, the opinion discusses the intellectual and psychological damage that may be suffered by students who are educated in an environment that is closed to certain groups. These two concepts - the special role of education and effects of segregation - continue to weave throughout the political, scholarly, and legal discussions of race in higher education.

Almost as historic as *Brown* itself were the riots that took place in response to some institutions' unwillingness to comply with the desegregation decision. In 1962, James Meredith, a 29 year old black man, applied to the University of Mississippi, with full knowledge that his application would not be received favorably (Meredith 1961 [1966]). Meredith was denied admission to the university, despite meeting the academic qualifications, and appealed the decision to the Supreme Court. The Court granted Meredith admission to the university, but the state and university officials refused to allow him to enter the building, physically blocking the entrance. Not only had the University of Mississippi chose not to comply with the *Brown* decision, the state's political leaders, particularly Mississippi governor Ross Barrett, refused to integrate the state's institutions and referred to Meredith's attempt to enroll as "the greatest crisis since the War between the States²," (U.S. Marshals, 2005). It was at this point that President Kennedy decided to get involved in the enforcement of the *Brown* decision, by sending over 500 marshals to control the riots and escort Meredith to class.

President Kennedy's decision to enforce the desegregation order fundamentally changed the battles for civil rights and established the importance of the presidency in the fight for civil rights. Moving beyond issues of discrimination and segregation (proactive policies to exclude racial minorities), Presidents Kennedy and Johnson began supporting policies that took "affirmative action" to include racial minorities. Although the speeches and executive orders that supported the creation of affirmative action

² Just to point out the obvious, this would mean that a black student attending a white university would be a bigger crisis than World War I, World War II, the Great Depression, the Korean War, and a number of political decisions that Barrett would probably not support (14th Amendment, *Sweatt*, *Brown*).

policies mostly focused on employment and contracts, the idea of taking proactive steps to encourage minority participation would later work its way into the academy. Over the next twenty years, the political issues surrounding higher education included a mix of anti-discrimination and affirmative action initiatives that were diverse in intent and effectiveness.

The push toward integrating universities was bolstered with the passage of the Civil Rights Acts of 1964, with Title VI requiring all institutions receiving federal funds to drop any policies that discriminate on the basis of race. Although a number of universities resisted integration and were able to avoid sanctions for a while, in 1973, a federal appeals court required the Department of Health, Education, and Welfare to set up procedures to enforce the Civil Rights Act and give particular attention to states with segregated higher education systems. At the same time, some universities began to embrace the efforts to promote the inclusion of African Americans in higher education, implementing affirmative action programs and using a number of different admissions policies aimed at increasing the number of African American students in state universities. It was during this same time period that a young white man, Marco DeFunis, applied for admission to the University of Washington Law School and was turned down. He filed suit against the university, alleging that he was denied admission, in part, because of his race.

Critical Shifts in Admissions Policies

In the decade preceding DeFunis's application, law schools throughout America saw a boom in applications, as more students chose to pursue a legal education.³ This rise in interest outpaced the law schools' ability to expand, resulting in serious increases in the competitiveness of admissions. The admissions process, fundamentally changed by the surge in applications, turned to more systematic admission policies to reduce the costs of the admissions process. Law schools soon turned to more "objective" measures to evaluate candidates, incorporating formulas that were based on an applicant's undergraduate grade point average and their scores on the recently-developed LSAT (Law School Aptitude Test).

This shift to more quantifiable admissions criteria may have streamlined the process, but it also had negative effects on racial minorities. Given the inequality in the K-12 system and historic biases in standardized testing, these new admissions criteria created additional obstacles for African American applicants, who, at the time, constituted roughly 11% of the population and less than 2% of the legal profession. Universities chose to add some sort of race-based component to their admissions process, in an effort to boost minority acceptance rates, although most of these programs were not publicized, given the anticipated conflict that these programs might invite (Sindler 1978).

The law school at the University of Washington used an index called the Predicted First Year Average (PFYA) to split the applicant pool into three groups. The

³ The review of the facts of the *DeFunis* and *Bakke* cases rely heavily on Sindler 1978.

PFYA was calculated with the applicants' LSAT scores and their GPA from their junior and senior years. For the majority of applicants, those with PFYAs above a certain score (in this case, 77) were accepted, those with PFYAs below a certain score (in this case, 74.5) were rejected, and those applicants who fell in the middle of the two cutoffs were each considered individually. Each of these "in-between" applications were reviewed by one faculty member and one student representative, who would make a recommendation, which would go to the full committee. The full committee then voted on who would be admitted (Sindler 1978).

Although the PFYAs were still used to evaluate minority applicants, the same thresholds did not apply. No minority candidate was rejected on the basis of their PFYA. Instead, all minority applicants went into the pool for review, another stage of the process that was altered for minority applicants. Whereas applications from nonminority⁴ students would be distributed randomly to faculty and students, applications from minority students were distributed only to minority faculty and students. Additionally, once recommendations were made to the full committee, every minority applicant who receive a positive review was granted admission. This resulted in a 1971 incoming class that was 10% minority, a representation level that exceeded minority representation in the applicant pool (at about 4%). All of the 30 minority students accepted for the Fall 1970 class had PFYAs below 74.5, which was lower than DeFunis's score (Sindler 1978).

⁴ The University of Washington chose to include African Americans, Latinos, and American Indians as minorities, deciding that Asian Americans were not underrepresented.

Marco DeFunis, after falling into the middle category, was denied admission to the law school. At that point, DeFunis chose to wait a year, study to take the LSAT again, and pick up a few graduate classes. After bringing up his LSAT score, DeFunis applied to the University of Washington again with a PFYA of 76.23 but, again, was denied admission. After talking to a friend who was a practicing lawyer in the area, DeFunis decided to bring a civil suit against the University of Washington in the summer of 1971, suing for court-ordered admission to the law school (Sindler 1978).

In district court, the judge ruled in favor of DeFunis and ordered his admission to the law school. The law school appealed the case to the Washington State Supreme Court, which ruled in favor of the law school, finding that the law school's efforts to increase the number of minority lawyers and integrate the school's student body were all sound reasons to implement the race-sensitive criteria. The case was then appealed to the Supreme Court, which ruled on the case in 1974. In the meantime, however, DeFunis had been admitted to law school and was nearing graduation. Because the purpose of the suit was to grant DeFunis admission, the Supreme Court chose not to rule on the issue of the admissions policy, determining the case to be moot. (Moreno 2003). Although the Court could have chosen to take on the issue of racial preference in college admissions, the justices chose to "pass" on this case, leaving the issue unresolved, and opening the door for Allan Bakke.

Allan Bakke Applies to Medical School

In 1971, Allan Bakke, a Vietnam veteran employed as a research engineer at NASA's Ames Research Center, became interested in NASA's research on space and the human body. Despite having a masters in Mechanical Engineering from Stanford University, Bakke decided that his real calling in life was medicine. In an effort to prepare for medical school, Bakke (in addition to his fulltime job) began taking understanding biology and chemistry classes and volunteering at a local hospital. Two years later, at the age of 32, Allan Bakke applied to the University of California at Davis Medical School (UCDMS), submitting a passionate application letter discussing his deep desire to pursue a medical career. This admission letter was submitted along with the required transcripts, MCAT (Medical College Admissions Test) scores, letters of recommendation, and list of volunteer activities to the UCDMS admissions committee.

This application was added to the other 2463 applications, all vying for 100 open slots. For the majority of applicants, all applications with a GPA less than 2.5 were summarily rejected. All others went to the regular admissions committee, which was comprised of the dean, roughly 12-15 faculty members, and a few medical students. Applications were divided up among faculty members who screened these applications to determine who would be interviewed. Each applicant receiving an interview was brought on campus and interviewed by one faculty member. The faculty member would then write up a summary of the interview, place it in the candidate's file, and anonymously rank the candidate's entire file on a scale from 1 to 100. The file was then sent to four other faculty members who also ranked the candidate on the same scale.

The five "grades" were then totaled up, so that each candidate received a total score that ranged from 5 to 500, created an applicants "benchmark score." These benchmark scores determined which students would be offered admission, which students would be placed on a waiting list, and which students would be denied. This system was used by the school to fill 84 of its 100 open seats.

The other 16 seats in the program were reserved for the school's special admissions program, a program designed to target racial minorities, in an effort to combat the severe underrepresentation of racial minorities at UCDMS and in the medical profession nationwide. This special admissions program require students to self-identify either as "economically or educationally disadvantaged" (in the 1973 admissions process) or as a racial minority (in the 1974 admissions process). The files of those students who fell into the special admissions category were forwarded on to a subcommittee of the regular admissions committee, comprised of Anglo and Asian faculty, and a diverse group of medical students. It is also important to note that, unlike the regular committee, in the special admissions committee, the number of medical student representatives outweighed the number of faculty.

The applications in this pool were then screened to determine whether or not the applicant was considered to be significantly disadvantaged (based on a number of informal factors), with those not meeting that standard placed back into the regular admissions pool. Applications remaining in the special admissions pool were evaluated much like the regular admissions applicants, with one key exception. Special admissions applicants were not subject to the 2.5 GPA cutoff. Certain applicants were

offered interviews, with the interview summary added to each applicants file. Again, the file was then reviewed by four other faculty, and students were given a benchmark score. These benchmark scores were used for the special admissions committee to make recommendations for acceptance to the general admissions committee. The general admissions committee largely followed the special admissions committee, granting admission to these students until they filled the 16 reserved slots.

Bakke's Application

Bakke's application for admission in 1973 was considered to be strong and competitive. He submitted a GPA of 3.5 and had an above-average MCAT score. UCDMS chose to interview Bakke, and the faculty member who conducted the interview found Bakke to be an impressive candidate, with his only reservation being Bakke's age.⁵ The admissions committee members who reviewed his file rated Bakke relatively highly, giving Bakke a benchmark score of 468 out of 500. Because Bakke's application was submitted later in the admissions process (and UCDMS granted admission on a rolling basis), the benchmark score that originally was the preferred score was now the required score, and Bakke missed the cut off point by only two points. In May of 1973, Bakke was denied admission.

In response to his rejected letter, Bakke wrote a letter to the chair of the admissions committee, Dr. Lowery, asking if there were any way he could be placed on

⁵ Bakke, at the age of 33, was a good bit older than the other applicants, which was to his disadvantage, as it was perceived that after finishing medical school and a residency, he would have significantly less time to practice medicine.

stand-by status (in case a last-minute vacancy were to come open) or audit courses in the fall. A month later, having not received a response from Lowery, Bakke wrote again, this time questioning the special admissions process, relating it to racial quotas and mentioning the "possibility of formally challenging these quotas through the courts" (Sindler 1978, pg 69). Bakke goes on to mention that his only impetus for such a challenge would be to gain admission to the medical school.

Lowery passed this letter on to one of his assistants, Peter Storandt, who was asked to respond to Bakke's inquiry. At that time Lowery was unaware of the personal beliefs held by Mr. Storandt -- beliefs that significantly affected the *Bakke* case. Storandt's personal beliefs were much like Bakke's, and after reviewing Bakke's file, Storandt found him to be a strong candidate. In the first of what would become regular communication, Storandt encouraged Bakke to pursue his "research" on the issue, pointed to the *DeFunis* case that was in the courts at the time, gave Bakke two references, and included a summary of the *DeFunis* case.

Storandt also pointed to the timing of Bakke's application and encouraged him to reapply for the 1974 class. Given Bakke's commitment to going to medical school, he decided to re-apply for admission and not file the lawsuit, fearing that the lawsuit would hurt his chance of admission. Between 1973 and 1974, two changes took place. The school had added a student interview to the admissions process, and the number of applications increased by over 1000, while the number of open slots remained the same. In short, Bakke's application had not changed, but the pool had become more competitive.

Again, Bakke's application was strong enough to warrant an interview. This time, however, Bakke was interviewed by one faculty member and one student, drawn at random. As chance would have it, Bakke's faculty representative was Dr. Lowery, who not only remembered Bakke from his letters questioning the special admissions program, but also brought up the special admissions program in the interview. In his summary of the interview, Dr. Lowery was extremely negative in Bakke's character assessment, depicting Bakke as narrow-minded and an ideologue. This assessment ran counter to the interview summary written by the student interviewer, who found Bakke to be an excellent candidate. From their discussion of Bakke's issues with the special admissions program, the student interviewer came to the conclusion that Bakke was neither litigious or narrow-minded, but instead, concerned with what he considered to be the fundamental flaws of the UCDMS admissions system.

In the overall benchmark scores, Bakke's scores were 96, 94, 94, 92, 87, and 86, resulting in a composite of 549 out of 600. This composite score was less competitive than his score from the previous year. UCDMS chose not to accept Bakke under the Early Decision Admissions Process, and pushed his application into the regular admissions pool, where he was rejected again. A few months later, in June of 1974, Bakke filed suit against the school. Bakke's suit focused primarily on having the court order his admission, arguing that the seats reserved for minorities put him at an unfair disadvantage. Given how the suit was filed, the court might not have chosen to address the constitutionality of the special admissions program, but UCDMS, in an effort to put

the conflict to rest, filed a cross complaint to have the program reviewed and declared legal.

Bakke Goes to Court

Two questions were to be addressed by the courts: whether Bakke should be admitted to UCDMS and whether the special admissions system was constitutional. Bakke's first priority was to gain admission, with the legality of the program a distant second, but early signs pointed to an uphill battle for Bakke. On the issue of Bakke's admission to UCDMS, the district court judge issued a "Notice of Intended Decision" which argued that the court had no business intervening in the admissions decisions of a school, unless there is evidence of "fraud, unfairness, bad faith, arbitrariness, or capriciousness" (Sindler 1978, pg 82) and that the burden of proof was on Bakke to show that he would have been admitted had he been allowed to compete for all 100 slots. The judge did, however, find the special admissions program to be unconstitutional.

In response to the Notice, Colvin (Bakke's attorney) convinced the judge to make a couple of critical shifts before handing down his decision. First, the judge decided that judicial intervention into the admissions decisions would be fair, given that he found the special admissions system to be unconstitutional, and therefore could fall under the "unfairness" part of his previous standard of when it would be appropriate for the court to intervene. Secondly, although the judge continued to place the burden of proof concerning Bakke's admission on Bakke, the judge held the university responsible for providing the evidence concerning Bakke's application and the admission procedures.

Although the decision did not serve Bakke's end goal of ordering admission, this did open a few windows for later court proceedings.

As expected, Bakke appealed the decision concerning his admission, and UCDMS appealed the decision that the special admissions program was unconstitutional. Because the California Supreme Court found the issues in question to be of central importance, the case went straight to the California Supreme Court. Concerning Bakke's admission, the appeal mostly rested on the argument that, because Bakke was denied admission under a unconstitutional system, the burden of proof should not have been on Bakke to show that he would have been admitted had all seats been open. The California Supreme Court agreed, and sent the case back to district court with the burden of proof shifted to the university to show that Bakke would not have been admitted even if all seats had been opened. Although the California Supreme Court planned to send the issue of Bakke's admission back to district court (with the burden of proof now on the university), the university intervened, conceding that it could not prove that Bakke would not have been admitted and therefore accepting that they must admit Bakke.

The California Supreme Court then turned to the question concerning the constitutionality of the UCDMS special admissions program. Because the program explicitly considered race, the court decided that strict scrutiny would be applied. Once choosing to apply strict scrutiny, two questions became the standard by which the decisions would be made. One, did the program serve a compelling state interest, and two, was the program narrowly tailored to serve that state interest? When reviewing the

special admissions system, the court agreed that UCDMS's goals of diversifying the medical profession and training more physicians who would be willing to serve in high-minority areas were compelling state interests, but found that the special admissions program was not structured so as to most efficiently (and least intrusively) meet those goals. In the two-pronged strict scrutiny test, the UCDMS program passed the first hurdle, but could not make it over the second. In short, the California Supreme Court ruling was a huge victory for Allan Bakke and his legal team.

Bakke on the Big Stage

Looking back, it seems that the decision by UCDMS to appeal the case to the Supreme Court would be an obvious one. However, what would seem as a cut-and-dry next step became incredibly political. A number of minority organizations, including the National Urban League, the Mexican American Legal Defense and Educational Fund, the National Conference of Black Lawyers, and the National Organization for Women all put incredible pressure on the University of California to not appeal the case (Sindler 1978, pg 236). This move would seem puzzling, but it was very strategic. Sindler (1978) identifies three key reasons why UCDMS did not have strong backing from the very political groups that would be expected to champion their cause. First, the minority advocacy groups were concerned with their lack of involvement. Both in the *DeFunis* case and in the *Bakke* case, the battle was between a white applicant and a mostly (if not all) white university administration. Minority groups had little to no participation in the dispute. Secondly, many of the minority advocacy groups were suspicious of the

University of California system's commitment to affirmative action and minority advancement, given what was seen as a history of discrimination and half-hearted attempts to increase minority inclusion.

The third, and probably most central issue that discouraged the minority advocacy groups from supporting UCDMS in appealing the *Bakke* case, was the perceived weakness of UCDMS's policy and argument. Many pro-affirmative action groups believed that the special admissions system, having already been declared unconstitutional both in district and state court, had a weak chance of winning in the Supreme Court. These skeptics encouraged UCDMS not to file an appeal, but instead to accept the decision, and wait for a case that had a stronger chance of success. Given the success of Bakke's counsel in linking the special admissions program to illegal quotas, minority advocacy groups feared that the *Bakke* case might offer the best argument for further restrictions on affirmative action efforts. Although the groups did not advocate UCDMS's decision to pursue this case, after the decision was made, a number of organizations spoke out on the issue.

Once the Supreme Court granted certiorari, the Court received 57 amicus briefs (statements and opinion of groups who were not officially involved in the case) related to the case, which, at that time, was the most in history of the Supreme Court. One of these amicus briefs was submitted by the Department of Justice and edited by the Carter Administration. This brief made some comments that pointed to a rejection of racial quotas but never really took a strong stand on any policy issue, with language that

exemplified the struggle to find a middle ground between these two sides -- a struggle that continues throughout this debate up to present time.

The Supreme Court Decides.... Sort Of

"Perhaps no case in my memory has had so much media coverage. We speak today with a notable lack of unanimity. I will try to explain how we divided." Justice Powell

Eight months after hearing oral arguments, amid much speculation and debate, the Supreme Court announced its decision on the *Bakke* case. Although Allan Bakke's priority rested on receiving admission to medical school, this was little more than an afterthought in the public debate. Both sides understood what this decision could mean for affirmative action in America, and the justices felt this pressure, too. Justice Powell handed down a split decision, which unlike the relatively common 5-4 or 6-3 split decisions, was a 4-1-4 split. Given the many questions at hand, the Court had a number of possible ways to decide. All of the justices agreed that, because of the incorporation of racial classifications, strict scrutiny must be applied. This is where the unanimity ended.

The Court considered the two issues related to strict scrutiny: whether the program served a compelling state interest and whether it was narrowly tailored to serve that interest. Four justices -- Brennan, White, Marshall, and Blackmun -- found the UCDMS program to be constitutional, as it served a compelling state interest and was narrowly tailored. These four justices were countered by Justices Stevens, Burger, Stewart, and Rehnquist, who rejected the university's claims of serving a compelling state interest and declared the program unconstitutional. Justice Powell broke the 4-4

tie, finding that the UCDMS program did serve a compelling state interest but was not narrowly tailored. Because his opinion bridged the gap, it is regarded as the majority opinion, but because no five justices joined in this opinion, there is some uncertainty as to what should be regarded as precedent.

Compelling State Interest

When defending the use of racial classifications, UCDMS offered a number of "compelling interests" that the program served. Four of these arguments are reviewed in Justice Powell's opinion, only one of which he deemed legitimate. The first two justifications are linked but are somewhat distinct. UCDMS argued that affirmative action was needed to ensure adequate representation of minority groups and to correct for societal discrimination. Justice Powell dismissed both arguments, finding that the first reason, grounded in ideas of equality of outcomes, resulted in "discrimination for its own sake."

The second argument, that the state has a compelling interest to aid groups that have suffered societal discrimination, was also rejected. Here, Justice Powell legitimized the use of affirmative action when used to "redress the wrongs worked by specific instances of racial discrimination" (*Bakke* 1978), but not in situations where there is no evidence of direct discrimination by the organization. UCDMS did not implement the special admissions program to counteract policies that explicitly excluded racial minorities. Instead, the preference given to racial minorities was an effort counter

societal discrimination, which Justice Powell found to be too broad to address any particular issue.

Additionally, in the case of medical school admissions, there is a zero-sum game. In a system with a fixed number of opportunities, an opportunity extended to one person necessarily reduces opportunities for others. Under a justification for societal discrimination, white applicants would be denied admission as recompense for discrimination that neither the university nor the white applicants could be held responsible. Thus, without substantiation of a particular discriminatory practice, the state did not have a compelling interest to give preference to racial minorities, which necessarily excluded Anglos, in an effort to pay back a societal debt that cannot be directly linked to the parties involved.

The third purpose of special admissions program, as argued by UCDMS, was to affect the health care system in minority communities. The medical school argued that the state had a compelling interest to improve the availability, access, and quality of medical care in minority communities. Although this goal of improving health care was determined to have some merit and could be considered compelling in some situations, Justice Powell pointed to the design of the program in his rejection of this argument. Quoting from the California Supreme Court's decision, Powell discussed the lack of evidence that the special admissions program was designed to promote this goal and that minority students who expressed interest in working with minority communities actually ended up in these areas. In short, even if this justification would have been considered "compelling," the program was not narrowly tailored to meet this goal.

The fourth justification for the special admissions program was the attainment of a diverse student body, which is the only justification that a majority of the Court deemed compelling. Drawing on precedent concerning university admissions, Justice Powell linked university admissions decisions to academic freedom, which the Court previously considered to be guaranteed by the First Amendment in *Keyishian v. Board of Regents* (385 US 589). Justice Powell summarized the findings of *Keyishian* and applied them to the UCDMS policy:

The atmosphere of 'speculation, experiment, and creation' - so essential to the quality of higher education - is widely believed to be promoted by a diverse student body. As the Court noted in *Keyishian*, it is not too much to say that the 'nation's future depends upon leaders trained through wide exposure' to the ideas and mores of students as diverse as this Nation of many peoples. Thus, in arguing that its universities must be accorded the right to select those students who will contribute the most to the 'robust exchange of ideas,' petitioner invokes a countervailing constitutional interest, that of the First Amendment. In this light, petitioner must be viewed as seeking to achieve a goal that is of paramount importance in the fulfillment of its mission.

Narrowly Tailored

After establishing that the university's goal of increasing diversity in the medical school could be considered a compelling state interest, the Court addressed the last element of a strict scrutiny test - that the program is narrowly tailored to serve the identified state interest. On this issue, the majority of the Court found that the UCDMS special admissions program was not narrowly tailored in its pursuit of diversity for two reasons. One, the value of diversity is much more broad than strict racial diversity, and any efforts to increase diversity should be much more inclusive. Powell continued to

point to race as "a single, though important element" of diversity, but only considering race would "hinder rather than further attainment of genuine diversity."

Powell's second concern addressed the structure of the special admissions system, the two-track admissions policy. In a test of narrow tailoring, the question moved to whether the policy under examination took only those steps that were necessary to attaining the identified goal. Powell concluded that the UCDMS policy was not narrowly tailored, because other programs had shown that there were other, less discriminatory ways to achieve diversity. Powell argued that instead of using set-asides, universities should build a diverse student body by examining each applicant's background and qualifications on a case-by-case basis. In an effort to promote racial diversity (along with other forms of diversity), universities could consider the applicant's race to be a "plus," but not the defining feature.

After finding the UCDMS program to be unconstitutional, because it failed to be narrowly tailored, Powell chose to go one step further, by bringing attention to an admissions system that he believed to be constitutional. Powell briefly discussed the Harvard College program, which was design to promote diversity and, in practice, included a wide array of factors in its assessment of how an applicant could contribute to the diversity of the student body. In this review of the Harvard program and the discussion of what a constitutional inclusion of race might look like, Justice Powell also reversed the California Supreme Court's decision that race could not be used in any manner.

What About the Other Justices?

The *Bakke* case, though a landmark decision in affirmative action, left considerable uncertainty about the limits to the use of race in admissions. Justice Powell gave one example of what would be constitutional, but the opinion was not exactly a majority opinion, as this one opinion did not represent the judgment of any five justices, with four justices concurring in part but dissenting in part. Although Justice Powell's decision stands as precedent, it is informative to consider two of the other opinions that were submitted in this case. Justices Brennan, White, Marshall, and Blackmun concurred with Justice Powell in his decision that the UCDMS program did serve a compelling interest (although they upheld more than just the diversity justification), but they dissented in the decision concerning narrow tailoring, as they found the UCDMS program to be a legitimate, focused mechanism for increasing minority representation.

The other four justices, Burger, Stevens, Stewart, and Rehnquist, also submitted an opinion that was concurring in part and dissenting in part. These four justices joined Justice Powell in finding the UCDMS program unconstitutional, but unlike the other five justices, did not find the use of race to serve any compelling state interest. In fact, this opinion did not consider the issues of "compelling state interest" and "narrow tailoring" to be pertinent to the discussion. Instead, the Justices considered the program to be in violation of the Civil Rights Act of 1964, which barred racial discrimination. Unlike the other five justices who supported some consideration of race in limited circumstances, this opinion supported ending any program that could incorporate race in admissions.

In the end, the *Bakke* decisions left universities in a relatively precarious situation, both in policy and in politics. Universities had to reevaluate their admissions policies, that now could incorporate race into admissions in an effort to promote diversity, but only as long as each applicant was evaluated on an individual basis, and race was considered along with a number of other factors. Politically, the way the decision was made also left room for controversy. One different opinion could have fundamentally changed the outcome, meaning that any turnover on the Supreme Court could result in a whole new game. Universities could now use race, but even more importantly, they had to use caution. Powell's opinion may have struck a compromise, but it opened the door for future legal disputes (Bybee 2000).

The Effects of Bakke

As university officials tried to interpret the legal boundaries set by *Bakke*, they worked to change the fundamentals of their diversity policies. Many proponents of affirmative action charged *Bakke* with undermining the future of minority educational access, a hypothesis that has been tested by scholars in the aftermath of the decision (Post 1998; Simmons 1982; Welch and Gruhl 1998). Unfortunately, a number of intervening factors make it difficult to tease out exactly how *Bakke* affected enrollments. Bowen and Bok (1998), in *The Shape of the River*, point to a number of issues involving how university admissions policies were in flux and how economic factors may have obscured the effects of *Bakke*.

In tracing the history of African American access to higher education, Bowen and Bok (1998) show significant gains by African Americans from 1960 to 1975 -- progress that ended in 1975. They summarize the period just before the *Bakke* case and the years following (1975-1985) as a time where "black enrollments did not decline as a percentage of total enrollment, but they did stop increasing" (Bowen and Bok 1998, pg 9). What caused the halt in African American enrollment gains? Did *Bakke* tie the hands of university administrators, or is something else to blame?

The studies that followed *Bakke* yield mixed results. Simmons (1982) offers one of the first systematic studies of *Bakke*'s effect, testing to find if the restrictions caused a drop in minority participation. Through his survey of 469 minority officers located within special programs and colleges/schools of engineering, business, law, and medicine, Simmons (1982) found that *Bakke* had a negative significant effect on the minority officers' ability to attract, recruit, and enroll minority students.

Unlike the Simmons (1982) study, Welch and Gruhl (1998) tested the same hypothesis but came to a drastically different conclusion. Through a survey of admissions officers at medical and law schools, the primary battlefield for legal disputes, Welch and Gruhl (1998) found almost no effect on university policies. According to their survey results, only approximately 6% of schools in the study reported that they have previously used quotas, and over 84% of respondents considered the *Bakke* decision to have little to no impact on admissions policies (Welch and Gruhl 1998). Additionally, the applicant pools for both medical and law schools were not affected by the *Bakke* decision. In evaluating the final effect on enrollments, the authors find no

losses, but also no gains in minority enrollments; but instead, they conclude that the lack of progress in minority student enrollments could be attributed to economic shifts, not changes in policy.

In explaining the tapering off of African American progress, Bowen and Bok (1998) point to another set of factors outside of a direct effect of the *Bakke* decision that might have led to the decline in African American gains. In discussing the effect of the Civil Rights Act of 1964 on university admissions policies, Bowen and Bok (1998) point to how some universities were unsure as to what the Civil Rights Act meant for affirmative action. They believe that some universities anticipated that the "plain language" of the Civil Rights Act (with the regard to the barring of discrimination on the basis of race) invalidated the use of race in admissions and therefore caused some institutions to back off of their aggressive recruiting and affirmative action policies. This could explain the finding that black enrollments did not decrease, but also stopped increasing as universities may have "watered down" their affirmative action efforts without eliminating them.

Another explanation offered by Bowen and Bok (1998) builds on what Welch and Gruhl (1998) suggest, by looking at the effect of the economy. The *Bakke* decision came down in a time when universities were under "severe financial pressures brought about by the oil prices and stagflation. These pressures affected financial aid budgets, drove up tuition, and in general made it harder to build on previous efforts to enroll a more diverse student population," (Bowen and Bok 1998, pg 8-9). They bolster this explanation by pointing to the 1980s and early 1990s, where they argue that, because of

the rebounding economy, universities were able to reinvigorate their affirmative action and recruiting efforts, which resulted in significant increases in Hispanic and Asian American undergraduate student enrollments (though African American enrollments remained constant).

Welch and Gruhl (1998) also show a boom in minority enrollments in the late 1980s and 1990s, tracking the dramatic increase in African American and Hispanic enrollments in medical and law schools. However, key supporters of affirmative action - Supreme Court Justices Powell, Marshall, and Brennan -- retired during this time period, and were replaced by Reagan and Bush appointees, Justices Scalia, Kennedy, and Thomas, all of whom were much less supportive of affirmative action policies. Given how evenly the *Bakke* decision was divided, any shift in the courts could mean significant changes in what would be held constitutional.

Hopwood v. Texas

In 1989, the Supreme Court struck down an affirmative action policy in Richmond, Virginia, that set aside 30% of construction contracts for minority businesses, ruling that set-asides were unconstitutional if no record of previous discrimination was established (*Richmond v. Croson* 1989). This decision sent a signal that hinted at the Court's possible shift away from supporting affirmative action, although they were careful not to go too far, claiming that the *Richmond* decision did not

overturn the previous decision that upheld a set-aside program run by the Federal Communication Commission.⁶

Five years later, the Court continued to back away from its support of affirmative action, overturning another set-aside program, this time in the Department of Transportation. In *Adarand Constructors Inc. v. Peña* (1995), the Court ruled that all determinations of constitutionality in which the policy used racial classifications would be evaluated under a strict scrutiny standard, and therefore must demonstrate a compelling state interest and evidence of being narrowly tailored to serve that interest. Again, the Court began to nip away at the latitude given to public institutions in their efforts to increase minority participation, without speaking directly to affirmative action in higher education.

About the same time as the *Adarand* decision was being argued, more conflict over the use of race in admissions sprung up in the district courts. This time, it was a white student in Texas who chose to fight the use of affirmative action, in a case that largely resembled the *Bakke* case. As much as the facts of the case pointed to a repeat of *Bakke*, this case took a significantly different path with an outcome that added to the ambiguity left by the *Bakke* decision.

Cheryl Hopwood Applies to the Law School

In 1992, Cheryl Hopwood applied for admission to the University of Texas School of Law (UTSL) and was denied admission. Hopwood, a 32 year old mother from

⁶ The Court chose to differentiate between programs established by Congress and programs established by state and local governments.

San Antonio, believed that her rejection was attributable to the fact that the UTSL reserved a number of seats for minority students. She, along with three other white males, sued the law school on the basis of what they considered to be unconstitutional racial preferences for minority students. Much like the *Bakke* case, the details of the Law School's admissions process became the focus of a highly contested court case.

The University of Texas School of Law, a program of national prominence, had a very competitive admissions process, with approximately 4,000 students a year competing for 500 seats. In an effort to efficiently sort through the applicant pool, the school utilized a system based on a numerical score that was calculated with a combination of a student's Law School Aptitude Test (LSAT) score and undergraduate grade point average. This score, called the "Texas Index," was used to sort the applicants into three groups. Those students with the higher scores fell into the "presumptive admit" category, with those students at the low end falling in the "presumptive deny" category, and the scores in the middle falling into the discretionary zone. These categorizations determined the extent to which the applicant's file would be reviewed.

The applicants in the "presumptive deny" category were quickly reviewed by one or two professors, who occasionally might bump a few students up into the discretionary zone, with the vast majority of students in this category being rejected. Similarly, the "presumptive admit" applicants were given little consideration by one or two professors, most of whom were offered admission. A few students in this category would be bumped down to the discretionary zone, if the reviewer felt that the student's

background was not as strong as the TI score might have indicated (maybe a great GPA at a weak undergraduate institution or “easy” major).

The applications that ended up in the discretionary zone were given the most thorough review. The admissions committee broke up into three-person subcommittees, and each subcommittee received thirty applications to review. Each member of the subcommittee could vote for a certain number of applicants (usually nine to eleven) out of the thirty. For the most part, all candidates who received two or three votes from the subcommittee received an offer. Candidates with only one vote were placed on a waiting list, and candidates receiving no votes were rejected.

Minority applicants⁷, while still reviewed under this basic admissions structure, received somewhat different treatment. In an effort to increase minority student enrollments by widening the pool of applicants that were seriously considered for admission, different TI cut-offs were used to place minority applicants into the “presumptive admit” and “presumptive deny” categories. Additionally, the minority applicants were not sent to the regular subcommittees in the groups of thirty. Instead, all minority applications went to a three-person minority committee, and each application was discussed individually (instead of with votes). Although all decisions by the minority subcommittee were reported to the full committee, the minority committee decisions were almost always final. Additionally, UTSL kept separate waiting lists for minority students.

⁷ In 1992, the University of Texas School of Law deemed Mexican Americans and African Americans as minority groups that would receive preference in the admissions process. Asian Americans were subject to the same admissions process as Anglo Americans.

Each year, the school chose where to place the TI cutoffs for minority students with some eye toward achieving minority percentages in the incoming classes that reflected the state's population. These percentages fluctuated with population changes, and in 1992, the goals for the incoming class were 10% Mexican American and 5% African American. This year, the TI scores for "presumptive admits" were those scores above 199 for non-minority students and 189 for minority students. "Presumptive denials" were those applicants with a TI score less than 192 for non-minority students and 179 for minority applicants.

Cheryl Hopwood, though not the only student to sue the law school, but the one receiving the most attention, had a TI score of 199. This would have placed her in the "presumptive admit" category, but she was downgraded to the discretionary zone because the chair of the admission committee felt that her undergraduate background was weaker than her GPA indicated. When reviewed by the subcommittee, she received only one vote, and was offered a place on the waiting list, which she declined. She soon filed suit against the school.

Hopwood in District Court

The district judge who heard this case followed the process much like that of the *Bakke* decision. Because the admissions process used race, a suspect classification, the policy was evaluated under strict scrutiny. Strict scrutiny required two questions to be addressed. Did the law school's policy serve a compelling state interest, and was the policy narrowly tailored to meet that interest? On the issue of compelling state interest,

the law school offered five different values of the policy (quoted from the district court opinion [*Hopwood v Texas*, 861 F Supp. 551 (W.D. Tex. 1994)]):

To achieve the School of Law's mission of providing a first class legal education to future leaders of the bench and bar of the state by offering real opportunities for admission to members of the two largest minority groups in Texas, Mexican Americans and African Americans;

To achieve the diversity of background and experience in its student population essential to prepare students for the real world functioning of the law in our diverse nation;

To assist in redressing the decades of educational discrimination to which African Americans and Mexican Americans have been subjected in the public school systems of the State of Texas;

To achieve compliance with the 1983 consent decree entered with the Office for Civil Rights of the Department of Education imposing specific requirement for increased efforts to recruit African American and Mexican American students;

To achieve compliance with the American Bar Association and the American Association of Law Schools standards of commitment to pluralist diversity in the law school's student population.

In evaluating these five arguments, the district judge found two to be compelling, based on precedent established in *Bakke* and in *United States v. Paradise* – the educational benefits of diversity and overcoming past effects of discrimination, respectively. On the issue of narrow tailoring, the district judge ruled the admissions policy was not narrowly tailored, as it violated one of the central components of what Justice Powell determined to be appropriate in the *Bakke* case – minority applicants were never considered in the same pool as non-minority applicants. Instead, their entire decision process was insulated from competition with white applicants. The court ruled

that the UTSL could continue to use race in the admissions process as long as the school abandoned the separate admissions committees system, which the university did in 1994.

The judge also considered whether Cheryl Hopwood and the other plaintiffs should be granted admission to the law school. Although the university's policy was found to be unconstitutional, the district judge left the burden of proof on the students to show that they would have been admitted had the university not employed the two-track system. Since the students could not substantiate that they would have been admitted, the court did not order the law school to accept these students. Instead, the students were allowed to reapply without having to pay the application fee again.

Hopwood in the 5th Circuit Court of Appeals

The case was soon appealed to the 5th Circuit Court of Appeals, where a three-judge panel heard the case, with Judge Smith delivering the majority opinion. Again, the court found that, due to the use of race, strict scrutiny should be used to evaluate the school's policy, and turned to the two-pronged test of "compelling state interest" and "narrow tailoring." The key differences in the district court and appeals court decisions rested in their evaluation of what constitutes a compelling state interest, how precedent speaks to the constitutionality of the various "interests" argued by the law school, and exactly how each of these rationales could be applied to real policies.

The district court found two of the law school's explanations for using race to meet the judicial standard of a "compelling state interest." For the first, the educational benefits of diversity, the district judge based his judgment strictly on the precedent set by

Bakke. In a clear departure from conventionally-accepted precedent, the circuit court did not consider Justice Powell's opinion to be the binding, as his opinion -- and particularly his support for using race for the sake of promoting diversity -- was not supported by a majority of the Justices. Although Judge Smith's opinion acknowledges that Justice Powell's opinion in *Bakke* "became the judgment of the court," the finding of diversity as a compelling state interest was rejected.

Justice Powell's argument in *Bakke* garnered only his own vote and has never represented the view of a majority of the Court in *Bakke* or any other case. Moreover, subsequent Supreme Court decisions regarding education state that non-remedial state interests will never justify racial classifications. ... Justice Powell's view in *Bakke* is not binding precedent on this issue. ... There has been no indication from the Supreme Court, other than Justice Powell's lonely opinion in *Bakke*, that the state's interest in diversity constitutes a compelling justification for government race-based discrimination.

Despite having rejected the use of race for the sake of diversity, Judge Smith upholds the other rationale that was supported by the district judge, finding that the use of race as an effort to remedy past discrimination to be constitutional. However, Judge Smith again departs from the district court. Leaning on the *Richmond v. Croson* opinion, the circuit court ruled that the use of race would only be constitutional if the state organization or actors could prove that there was discrimination that it is attempting to remedy. The UTSL argued that incorporating race was an effort to overcome the racially inequities that exist throughout the state's education system, even pointing to the 1983 Office for Civil Rights plan to increase racial equity in the states. Again, the judges rejected this reasoning, finding that the state actor must substantiate previous discrimination within its own organization (the law school) and went on to say that this

discrimination must have been somewhat recent. Judge Smith's opinion continued to further restrict the use of race:

Even if, [for the sake of argument], the state is the proper government unit to scrutinize, the law school's admissions program would not withstand our review. For the admissions scheme to pass constitutional muster, the State of Texas, *through its legislature*, would have to find that past segregation has present effects; it would have to *determine the magnitude* of those present effects; and it would need to *limit carefully the "plus" given to applicants to remedy that harm*. (emphasis added)

Given that neither justifications offered by the law school were deemed to satisfy a compelling state interest, the issue of narrow tailoring became moot for the circuit court. The opinion goes on to note that the changes made to the admissions process (removing the two-track review system) by the law school, in response to the district court opinion, were not sufficient. The circuit court overturned the district court's ruling that race could be used in the decision process and made it unconstitutional for universities under the jurisdiction of 5th Circuit Court to use race in any way. Of particular note, was the dissenting opinion from Judge Wiener, which found diversity to be a compelling state interest, and even suggested that the majority opinion may have overstepped its bounds.

Understandably, this decision rocked the higher education community, as it was seen as a sweeping departure from *Bakke* and a huge blow to affirmative action and minority groups in Texas, Louisiana, and Mississippi. It caused additional tensions with the Department of Education, who, immediately after the decision was handed down, ordered the universities to continue their affirmative action programs or lose their federal dollars. Resolving the conflict in a quick shift of policy, the Department of Education,

only a month later, chose not to counter the *Hopwood* ruling, and encouraged universities to comply with the circuit court's ruling (Welch and Gruhl 1998).

The case was then appealed to the Supreme Court, where proponents of affirmative action lost another battle, as the Supreme Court chose not to hear the case. The decision of the Justices to pass on this case and let the decision stand sent the nation's universities into a heated debate over how to interpret this decision (or non-decision). Was this the Supreme Court's way of warning universities that affirmative action was on its way out? What did it mean for institutions in other states?

The Effect of *Hopwood*

Unlike the *Bakke* decision that left universities with somewhat ambiguous guidelines that resulted in some changes to affirmative action, *Hopwood* ended it for Texas, Mississippi, and Louisiana. Because of the magnitude of the change, this offered an opportunity for scholars to test for the effects of affirmative action policies. Much of the next two chapters incorporates a test of the effect of the *Hopwood* decision on minority enrollments, but a handful of studies have looked at the effects of *Hopwood* at particular institutions or graduate programs. These studies offer a foundation for the following empirical work.

Some of the first work on the effects of *Hopwood* took place in the University of Texas School of Law, identifying how the court cases affected UT law school enrollments. In the year after the *Hopwood* decision, black and Hispanic enrollments in the first year dropped by 90% and 60%, respectively. In real numbers, the number of

first-year black law students went from 38 to 4, and the number of Hispanic students dropped from 64 to 26 (Laycock 2001). Another study that looked at four law schools in Texas compared minority acceptances for 1995 and 1996, finding that the effect of *Hopwood* on UT's law school was somewhat unique. UT suffered considerable losses of minority students, while other law schools in the state (Texas Tech, University of Houston, and Texas Southern) were not affected to the same extent. In fact, while Hispanic acceptances at UT dropped, they actually increased at the three other law schools. Additionally, African American acceptances plummeted at UT, while the University of Houston saw an increase, and the other two schools suffered a relatively small decline (Chapa and Lazaro 1998).

Chapa and Lazaro (1998) offer two explanations as to why the University of Texas was hit harder by *Hopwood* than the other law schools. One, because UT was at the center of the *Hopwood* case, all of the publicity could have caused a decrease in applications from minority students due to negative reputation. The other explanation is that a limit on affirmative action could have caused minority students to be redistributed into less selective schools. So, instead of going to UT, the average student might have chosen to attend the University of Houston. In the aggregate (for the four law schools in this analysis), there was no reduction in Hispanic applications or acceptances between 1995 and 1996, but UT suffered a serious decline, while other schools benefited. This would support the second explanation. However, all schools except the University of Houston decreased in African American student representation, suggested that black students may have chosen not to go to law school or go out of state.

An analysis of the effect of *Hopwood* on undergraduate enrollments at Texas A&M University, the second largest university affected by *Hopwood*, also showed a considerable downturn, both in minority applications and acceptances. Even more dramatic, the post-*Hopwood* scholarship application pool changed significantly, with a 71% drop in African American scholarship applications and a 36% drop in Hispanic applications at Texas A&M University (Finnell 1998). Broader studies also point to the effect of ending affirmative action on application rates, with drops in undergraduate applications both throughout Texas (Dickson 2006; Heller and Schwartz 2002; Hurtado and Cade 2001), and in statistical estimations based on SAT scores (Long 2004b).

State Bans on Affirmative Action

Other states also passed state-wide bans on the use of affirmative action, many of which had similar effects on enrollments. In 1995, the California Board of Regents banned the use of affirmative action in the University of California System (California's top institutions), which was followed by a state-wide ban in 1996, with the passage of Proposition 209. Proposition 209, an initiative that included the elimination of racial preferences in education, employment, and contracting, was a controversial law that split California voters along racial lines (Karabel 1998). The effect of the regents' decision and Proposition 209 was much like that of *Hopwood*, resulting in a decrease of minority applications to the UC schools (Karabel 1998; Pusser 2001).

Similarly, the state of Washington chose to eliminate racial preferences in university admissions in 1998. Although some scholars consider this decision to be less

severe, as it allowed racial preferences in privately-funded scholarships, Washington's Initiative-200 still produced a significant drop in minority participation at the University of Washington (Heller and Schwartz 2002). Overall, almost all of the bans on affirmative action had an inarguably negative impact on minority enrollments for the most selective universities in the state.⁸

In 1999, Governor Jeb Bush announced that Florida would also no longer include racial preferences in admissions decisions for Florida's universities. Instead, a new program would be implemented, called the Florida Talented 20 Plan, which grants automatic admission to one of Florida's public universities for Florida high school students who graduate high school in the top 20% of their class. Although the percentage plan was new to Florida, it was not the first in the nation. In addition to the controversy over eliminating affirmative action, Governor Bush also received criticism based on the mixed evidence concerning the effectiveness of percentage plans in other states.

Percentage Plans: An Effective Substitute?

The majority of states that could not use racial preferences implemented some form of a percentage plan to overcome the negative effects of eliminating race in admissions. Texas announced the Top Ten Percent Plan in 1997, which guarantees all Texas high school students who graduate in the top 10% of their high school class admission to the Texas public university of their choice (unlike Florida, which only

⁸ We have much less research on the less selective institutions.

guarantees admission to at least one Florida public institution). Two years later, California governor Gray Davis proposed a plan that would guarantee the top 4% of high school graduates admission into a UC system school (but not necessarily their top choice). Most studies of these programs have found that, despite posting some gains in minority applications and enrollments, they have been unable to help universities rebound from affirmative action bans, especially when considering minority population growth over the last few years (Dickson 2006; Marin and Lee 2003; Tienda, Leicht, Sullivan, Maltese, and Lloyd 2003).

In a more comprehensive study of the three percentage plans (Texas, California, and Florida), Horn and Flores (2003) offer somewhat mixed findings. After an initial drop in minority admissions following each state's elimination of affirmative action, all three states have rebounded somewhat under these percentage plans, although the progress made over the last few years has not kept pace with population growth. Although Texas and Florida have regained the minority percentage levels that were lost under the affirmative action ban, the University of California system has not yet reached pre-Proposition 209 minority enrollment levels. Additionally, none of the states have been able to regain the same level of minority representation relative to the increasing representation of minorities in the high school graduating classes. As of 2003, all three states had significantly fewer minority students enrolled in the state's flagship universities than would be predicted in a system that utilized a limited form of race-sensitive affirmative action (Horn and Flores 2003).

As the universities in these three states struggled to cope with the elimination of affirmative action, other state institutions enjoyed much more latitude in the incorporation of race into admissions decisions. Because the most prestigious institutions compete nationally for the top high school graduates, some institutions felt that they were at a competitive disadvantage, compared to states that were not bound by these bans on race-sensitive admissions policies. Legally, the conflict left by the 1996 *Hopwood* ruling continued to raise questions of the constitutionality of affirmative action, as the standard could shift when one traveled across state lines. Most university administrators and legal experts agreed that this issue inevitably was going to return to the Supreme Court, but no one knew exactly when it would happen.⁹ In the end, it was a lawsuit filed just after the *Hopwood* decision that would be the one to make it to the Supreme Court.

Grutter, Gratz, and the University of Michigan

In 1997, Jennifer Gratz and Patrick Hamacher, both white, undergraduate applicants who were denied admission to the University of Michigan, filed suit in U.S. District Court, alleging that the University of Michigan's undergraduate admissions policy was unconstitutional, due to the minority preferences that were a part of the policy. At the time, the University of Michigan (UM) admissions policy was based on a point system, where applicants received a certain number of points for particular

⁹ Other cases had been tried in lower courts but did not reach the Supreme Court, including *Podberesky v. Kirwan* (1995), *Hopwood*, *Smith v. University of Washington* (2000), and *Johnson v. Board of Regent of University of Georgia* (2001).

attributes. Under this policy, points were awarded for grades, standardized test scores, leadership, and a number of other qualities, the sum of which needed to exceed 100 to be guaranteed admission. An applicant's race was formally incorporated into the policy, with 20 points awarded to minority applicants from historically disadvantaged groups, which included African Americans, Hispanics, and Native Americans.

The same year, Barbara Grutter, a white applicant denied admission to the University of Michigan Law School, filed suit against the law school, claiming that the law school's use of race as a "plus" for minority applicants in the admissions process also violated the Fourteenth Amendment and constituted reverse discrimination. Unlike the undergraduate admissions policy, the law school did not use a regimented point system to determine admission -- a detail that would become integrally important in the upcoming court decisions. By 1999, both the undergraduate and the law school cases gained political momentum that resulted in the addition of more plaintiffs, and an expansion of both cases to class-action lawsuits against the university. A number of minority students petitioned the district court to be including in the lawsuit (arguing for the continuation of race-sensitive affirmative actions), but their request to intervene was denied.

Gratz and Grutter in District Court

The issues argued in these cases paralleled the issues in *Bakke* and *Hopwood*. The use of race in admissions, because race is a protected class, was evaluated under strict scrutiny, which requires that the institution promoting race-sensitive policies

establish a compelling state interest and prove that the particular policy is narrowly tailored to serve that interest. In the 2000 state court trial of the *Gratz* case, Judge Duggan found that the goal of promoting a diverse student body, with respect to racial and ethnic makeup, is a compelling state interest, based on the evidence in the numerous amicus briefs that supported that claim. The UM policy (as of 1998) also passed the test of narrow tailoring in district court, as the judge interpreted the extra 20 points awarded to minority students as a constitutional “plus” that did not insulate minority students from competing with nonminority students in the pool. In sum, the district court’s ruling of *Gratz* was an overwhelming victory for the University of Michigan (*Gratz v. Bollinger* 2000).

The district court was not as favorable to the *Grutter* case, as Judge Friedman ruled the law school’s admissions policy to be unconstitutional. In an exhaustive review of all of the evidence and details of the case, Judge Friedman found the law school admissions system to be overly biased in favor of racial minorities. Additionally, the decisions based on the two prongs of strict scrutiny echoed much of the *Hopwood* circuit court decision, with Judge Friedman ruling that the racial diversity was not a compelling state interest, and even if it were, the UM law school policy was not narrowly tailored to serve that interest. As would be expected, both the *Gratz* and *Grutter* cases were appealed.

All the Way to the Supreme Court

Although both cases were argued in front of the Sixth Circuit Court of Appeals, only the *Grutter* case was decided in circuit court, in 2002. Here, the nine judges delivered a 5-4 vote, with a number of concurring and dissenting opinions that represented the complexity and conflict that this case would continually confront. The majority opinion reversed the district court's opinion, holding that Justice Powell's decision in *Bakke* was precedent, and that the UM Law School's policy was much like the Harvard plan referenced by Justice Powell. The law school policy was upheld and determined to be narrowly tailored to meet the compelling state interest of diversity (*Grutter v. Bollinger* 2002).

Unlike *Grutter*, the circuit court did not rule on *Gratz*, as the Supreme Court chose to hear both cases before the circuit court could rule on the undergraduate admissions policy. In April of 2003, oral arguments began on both cases, amid media coverage and public debate. Given the shifts away from affirmative action in recent Supreme Court opinions involving employment and contracting, many speculated that the Court would see this as an opportunity to end affirmative action altogether (Elliot and Ewos 2005). Yet, the Supreme Court chose to uphold the limited use of race in university admissions, handing down split decisions in June of 2003.

Both cases received split votes and very passionate opinions, with a 5-4 decision to uphold the law school's policy in *Grutter* and a 6-3 decision to overturn the undergraduate policy as argued in *Gratz*. Justice O'Connor served as one of the swing votes in both cases, and delivered the majority opinion in the *Grutter* case. Instead of

the two cases having differing views of what constituted a compelling state interest, the majority of the Court held that the importance of racial diversity in higher education did constitute a compelling state interest in both cases, which then raised the question of narrow tailoring.

The split between the *Gratz* and *Grutter* decisions hinged on the details of the policies. In the examination of what constituted “narrow tailoring,” the Court found the undergraduate policy’s use of a blanket 20-point addition to a minority applicant’s file did not constitute the individualized review that was deemed appropriate by Justice Powell in the *Bakke* decision. Because the policy treated all minority applicants the same, awarding them a bonus that was often the decisive factor for minimally-qualified students, the policy was not considered to be narrowly tailored. Chief Justice Rehnquist delivered the opinion of the Court in *Gratz*, which determined the undergraduate plan to be unconstitutional (*Gratz v. Bollinger* 2003).

The University of Michigan fared much better in the *Grutter* case, with the Supreme Court upholding the law school’s admissions policy, in a decision that closely paralleled the Sixth Circuit Court decision. Here, Justice O’Connor again discussed the value of diversity in higher education and the precedent set forth in the *Bakke* decision. The case was upheld mostly because the UM law school policy operated much like the Harvard program referenced by Justice Powell, with a “plus” given to applicants that was not always the decisive factor in admissions and strength of which could vary by applicant.

Despite this decision being seen as a big win for proponents of affirmative action (Elliott and Ewos 2005), Justice O'Connor's opinion left some uncertainty, as she argued that racial preferences should be temporary in nature. In one of the most often quoted portions of the opinions, Justice O'Connor writes in *Grutter* that "the Court expects that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today." This indication of a temporary approval of race-sensitive policies, along with the most recent Supreme Court appointees (both of whom are considered to be conservative), indicate that race-sensitive policies, despite now being constitutional, still lack the solid foundation that some proponents would want.

The *Grutter* and *Gratz* decisions finally gave the nation's universities a standard for what would be considered constitutional, even if the standard was not clear. States constrained by *Hopwood* were now allowed to add race back into the admissions equation, and other states had to re-evaluate their admissions policies to see if they complied with the ruling. Universities varied widely in the ways they chose to shift policy after *Grutter*, and because these decisions first affected the 2003 incoming class, we have little scholarship on how this decision has affected minority enrollments.

Conclusion

Despite the many changes in the use and constitutionality of race in admissions, many of the values held by those on both sides of the debate have remained constant. The value of classroom diversity, rooted in the importance of intellectual exchange among people of different backgrounds, has been a cornerstone of the argument for

increasing affirmative action efforts, from the Vinson Court in *Sweatt v. Painter* through the *Grutter* decision. As seen in the amicus briefs in the Michigan cases, higher education scholars have amassed considerable evidence that supports the value of diversity in universities, but we have little knowledge about what factors affect minority enrollments. Now that the majority of universities have decided to place considerable emphasis on increasing minority enrollments, there is a real need for more scholarship that can help administrators better understand how their environment may constrain or advance their efforts. Additionally, we should have some interest in “what works,” including what types of policies universities are using in recruitment and retention efforts, and which of these programs are most effective.

The next four chapters investigate the extent to which universities are affected by judicial decisions, state political influences, institutional reputations, policy strategies, and a host of other factors. Chapter IV examines how the *Hopwood* decision and California’s Proposition 209 shifted minority enrollments in those four states. Chapter V takes a more holistic approach, examining the political and bureaucratic factors that affect minority student enrollments in all fifty states. After exploring the macro-level determinants of enrollment, chapter VI then moves to a case study analysis of the state of Texas, drawing on an original survey of university presidents and deans to explore what strategies these institutions are employing in their efforts to increase diversity. This dissertation concludes with a chapter that summarizes the key findings and offers policy-relevant information to university administrators and state-level policymakers

that can contribute to more effective and efficient policy strategies aimed at expanding access to higher education for disadvantaged populations.

CHAPTER IV

THE EFFECT OF *HOPWOOD* AND PROPOSITION 209

The previous chapter outlined the history of controversy over the use of racial preferences in admissions, an issue that has sparked intense debate in legislatures, the courts, the academy, and the media for decades. Proponents of race-based admissions argue that, without a university's ability to include race, minority applicants will be further excluded from the higher education arena (Chapa and Lazaro 1998; Karabel 1998; Light and Strayer 2002), resulting in limited educational opportunities for minority students and a lack of student diversity on college campuses. Arguments made in the *Grutter v. Bollinger* case point to student diversity on college campuses as critical to debunking racial stereotypes, preparing students for the diverse workforce, and the body of research that establishes the academic benefits reaped by all students when they are a part of a more diverse learning environment. Conversely, the opponents of race-based admissions consider Proposition 209 and *Hopwood* to be an end to "reverse discrimination," and believe that ending race-based admissions will not substantively hurt minority enrollments.

Each of these decisions represents a direct, targeted effort of a political institution to control bureaucratic policy, but not bureaucratic outcomes. Therefore, we would expect that these new stipulations would alter the ways in which universities, as bureaucratic agencies, craft recruitment and admissions policies, but the outcomes of this policy shift are unknown. Speculations have been made about the effect of the shift, with critics arguing that universities will see a decrease in minority admissions, but there

are only a handful of studies that test for the effects. Although some substantive studies on *Hopwood* and Proposition 209 exist (Chapa and Lazaro 1998; Karabel 1998), they either focus on a small set of affected universities (usually only the flagship universities), consider only graduate and professional schools, or have little systematic evidence to substantiate their claims. This study takes a broader approach by using a rational choice framework to examine the effects *Hopwood* and Proposition 209 on minority enrollments at all public universities affected by *Hopwood* and Proposition 209.

Bounded Rationality in the Ivory Tower

Understanding bureaucratic policymaking begins with understanding how managers make decisions. This study will be rooted in a leading theory of public management: bounded rationality, a derivation of rational choice theory. Strictly rational actors are assumed to make decisions based on complete information of all goals, values, policy alternatives, the cost of each alternative, and the probability of meeting goals for each alternative (Downs 1967; Simon 1947). However, we know that most decisions are made without full information about every possible alternative, but instead are made from a constrained, smaller set of alternatives. Although the decisionmaker does not have all of the information about every possible alternative, the decisionmaker still makes rational, goal-oriented choices within the constraints. In short, the decisionmaker is boundedly rational. This theory relaxes the assumption of full information, instead arguing that managers will use informational shortcuts in an

effort to make the best decision possible, given their cognitive, time, and informational constraints (Bendor 2003; Conlisk 1996; Simon 1947; Jones 2001; Kato 1996).

This study will be based on a rational choice framework, viewing managers as boundedly rational actors who make policy decisions under the assumption that all other actors will behave rationally. Assuming rationality on the part of other actors allows the manager to reduce the infinite policy alternatives that may be available. Even though the manager knows that other actors will not *always* behave rationally, the manager must still assume some measure of rationality to make the most basic decisions. One simply cannot plan for all possible kinds of irrational behavior and to attempt to do so would generate overly complex processes. Additionally, the assumption of rationality creates some measure of certainty for managers, allowing them to better speculate on what each policy alternative would produce. The manager has some concept of the other actors' values, costs, and goals, and, therefore, can construct some sort of utility function for the other actors. With this utility function in mind, the alternative set is then constrained to those policies which will manipulate the expected utility of other actors so as to produce behavior that is consistent with the manager's goals.

Numerous examples of rational choice frameworks can be seen across policy sectors and bureaucratic agencies. Much of the literature on "political control" (how democratic institutions control the bureaucracy) considers how agency structures and policy design can be crafted to ensure specific behavior and outcomes (Epstein and O'Halloran 1999; McNollgast 1989; Scholz and Wood 1998; Wood and Waterman 1994: for a summary of recent work, see Hammond and Knott 1996). Studies on regulatory

agencies consider how agencies design codes and injunctions based on the assumption that well-crafted policy will induce industries and consumers to find it in their best interest to comply to the laws (Licari and Meier 1997; McGarity 1991). In criminal justice, deterrence policy combines incentives to abide by laws, along with harsh penalties for deviations, all under the assumption that would-be criminals will think rationally, finding compliance in their best interest (Stover and Brown 1975; Williams and McShane 1994). Even in higher education, a number of policies are crafted under the assumption of rationality -- professors increase plagiarism penalties to reduce cheating (Woessner 2004) and departments craft merit-based pay to encourage better performance. In these cases, we not only assume bureaucrats to be rational, but we assume the consumers of government goods to behave rationally.

In many ways, managers take significant information shortcuts by assuming that the consumers of government goods behave rationally. This way, a manager's policy alternatives can be reduced to those alternatives which will manipulate a client/consumer's utility function to induce behavior that favors the interests of the manager. Additionally, this provides decisionmakers with the ability to make better projections about the expected results of each policy alternatives. In short, managers can be boundedly rational, making decisions based on the assumption that other actors in the environment will behave rationally.

In the case of higher education, this lens allows us to understand how university administrators, as public managers, make policy decisions for their bureaucratic agency - the public university. Because this study focuses on issues of student enrollment, the

"consumers" of government goods are the potential students. So, an application of the theory suggests that university presidents will make policy decisions based on their perception of a student's self-interest. Effective university administrators would craft recruitment and admissions policies based on the issues that students consider when deciding where to send applications, and ultimately, which university to attend.

Higher education scholars have devoted much time and attention to understanding the student decision-making process in choosing a university. The leading theories of student choice fall into two major categories: status-attainment and economic (Hossler, Schmit, and Vessler 1999). Status-attainment models are more sociologically based, descriptive understandings of the myriad factors and influences involved in a student's collegiate decisions (Alwin and Otto 1977; Boyle 1966; Sewell, Haller, and Portes 1969; Sewell and Shah 1978). Economic models draw on rational choice models that require a cost-benefit analysis and a decision based on a student's expected utility (Hossler, Braxton, and Coopersmith 1989; Kotler and Fox 1985). The economic models of student choice, which comprise some of the more recent scholarship of student choice, offer parsimonious models which lend themselves to quantitative analysis. For the purpose of this study the economic approach is a more appropriate frame. Within the higher education literature, the economic approach has dominated the discussion of how public policy affects equal access to higher education (St. John 1994; Cabrera and La Nasa 2000).

Numerous scholars offers a discussion of the factors that influence a student's decision about where to send applications and where to enroll (Boyer 1987; Cabrera and

La Nasa 2000; Hossler, Schmit and Vessler 1999; Litten 1991; Manski and Wise 1983; McDonough 1997; Turner 2004). A very general utility model for the decision to apply would include the perceived probability of gaining admission and a basic cost-benefit analysis (Turner 2004; Litten 1991). In equation form, the general model of student college choice is $EU_i = P(B-C)$, where EU is the student's expected utility, P is the perceived probability of gaining admission, B is the perceived benefits that would be received by attending the university, and C is the perceived costs that would be incurred when attending the university.

Once accepted, the decision on where to attend would be based on the cost-benefit calculation, which, given the short time span between applying and being accepted, should be relatively constant. Although students are known to include idiosyncratic factors into their decisions about college, a university cannot possibly include the infinite number of factors upon which a student may make their decision. It is impossible to account for where every single applicant's boyfriend/girlfriend chose to go or the possibility of a student hearing about a random, bad experience at a particular university. The purpose of the economic models of student choice is to offer a parsimonious model that still captures the rational nature of student decisionmaking, which, while not comprehensive in its descriptive ability, allows us to consider enrollment at the macro level.

Assuming Rationality

Affirmative action policies in higher education have no clear path. A number of alternatives exist, and universities know very little about what works. Any attempt to

consider all possible alternatives and their expected outcomes would be daunting, if not impossible. Instead of trying to make admissions and recruitment policy from scratch, universities look for ways to focus on a smaller number of alternatives. In this case, university administrators assume that most students will make rational decisions about where to apply to college and ultimately where to attend.

Using the utility function presented above, a manager can now narrow the set of possible policy alternatives to those policies which will affect one or more factors of a student's utility calculation. For example, to increase minority student applications, administrators of "Alpha University" would create a policy that manipulates P (the probability of gaining admissions), B (the perception of benefits), or C (the perceived costs). More specifically, the end goal would be to manipulate these factors so as to increase the minority student's expected utility that would be gained from attending Alpha University, relative to other universities. Because administrators are looking to increase the utility of potential *minority* students, they would look to find policies that would target the changes in P, B, and C to minority students beyond their Anglo counterparts, to produce a more effective and efficient policy.

The recent changes to admissions policies at the two leading universities in the state of Texas offer an example of this process. After the *Grutter* case struck down the limitations placed by *Hopwood*, the University of Texas chose to reinstate the use of race in admissions decisions. Conversely, Texas A&M University decided to continue to restrict the use of race in admissions, but instead launch major recruitment and financial aid programs that targeted minority students. Each university used these efforts as a way

to reach out to the minority community, as an attempt to be viewed more favorably by the African American and Hispanic communities. While the University of Texas attempted to alter a minority student's expected probability of gaining admission (P), Texas A&M University worked to change minority students expected cost of attending Texas A&M (C). The public relations campaign, both in the media and in regular recruitment efforts, that followed these decisions was launched with the intention of changing the way that minority students perceived the quality and openness of each respective university (B). Each university is sending signals to potential students about their expected utility.

The Politics of Diversity

Within the framework of this analysis, political institutions play a critical role in determining the set of policy alternatives from which the manager must choose. A university's policy options consist of all manipulations of a student's perceived probability of being admitted (P), a student's perception of the benefits of the university (B), and a student's perception of the cost incurred at the university (C). In the case of minority student enrollment, the alternatives that are of interest are those policy alternatives that are focused on affecting the expected utility of minority students, beyond their Anglo counterparts. Over the last thirty years, there are numerous examples of how political institutions have constrained the manager's ability to manipulate each of these factors, reducing discretion at lower levels. This study will

focus on two specific attempts made by political institutions to affect university admissions policy: *Hopwood* and Proposition 209.

Despite the incredible amount of media and public attention given to the politics of diversity, our knowledge of the effects of political forces is far from complete. Most of the scholarly literature on these issues focuses primarily on the *benefits* of diversity, not the policies targeted at increasing diversity ("Beyond" 2002; Bowen, Bok and Loury 2000; Duderstadt 2000; Hurtado and Cade 2001). Additionally, most studies only include a handful of universities, most of which are elite, Ivy League universities, concentrated in specific geographic areas (Chapa and Lazaro 1998; Horn and Flores 2003; Post 1998; Simmons 1982; Welch and Gruhl 1998). This raises a question of generalizability, which is a key concern throughout the higher education literature.

Systems theory offers a useful heuristic for studying these interactions. In higher education, "systems" exist at many levels: nationally, statewide, intrastate multi-university networks (often called systems), the individual institutions, and components within the university (colleges, departments, etc). Drawing on systems theory, we can conceptualize these changes in higher education law as changes within the environment that place constraints on the organization's behavior. As an open system, we would expect universities to be affected by these changes, resulting in a change in outputs (Easton 1965; Banathy 1973; Shafritz and Ott 2001). However, we are unable to hypothesize about how these changes in the environment affect the system's outputs without tapping into some aspects of the system. To produce systematic knowledge on higher education policy, it is important to incorporate many of the critical differences

between public universities throughout the country. Specifically, this project will combine how changes to the environment interact with university-specific characteristics, namely, the institution's level of selectivity, to produce changing outcomes.

Judicial Interventions

The most recent and politically salient political interventions are the court cases addressing the use of race in admissions policies. *Bakke*, *Hopwood*, and the Michigan cases each altered the university's ability to affect admission's probabilities (P) for minority students. The Supreme Court's *Bakke* decision set a precedent of ambiguity that has plagued universities ever since, articulating both sides of the debate between those who support policies aimed at raising minority student enrollment levels versus those who object to policies that allow a person's race to be formally incorporated into policy decisions.

Hopwood, the 1996 ruling of the 5th Circuit Court of Appeals, restricted all use of race in admissions decisions for public universities in Louisiana, Mississippi, and Texas, eliminating a university's ability to attract minority students through race-based admissions policies. Because of *Bakke*'s ambiguity and *Hopwood*'s limited jurisdiction, American universities were left without a common standard until 2003, when the Supreme Court ruled again on the use of race in admissions policies. The Michigan cases (*Grutter* and *Gratz*) lifted the *Hopwood* ban on race, but still restricted a university's ability to incorporate race into admissions. The model should be able to

predict how these interventions would affect affirmative action policies and minority enrollments.

Legislative Policies

State legislatures, as the primary overseers of public universities, also craft a number of policies that are aimed at regulating the policies employed by universities when pursuing diversity. Some of these actions restrict policy alternatives while others are directed at choosing specific alternatives for the universities. In each of these cases, the state elected body passes legislation that is aimed at affecting bureaucratic discretion. These laws vary in the magnitude of change. California's Proposition 209 stripped the higher education community's ability to use race as a factor in any of the university admissions or financial aid decisions. The state of Florida also passed similar restrictions (One Florida 2002).

Modeling the Effect of Political Interventions

How do these interventions affect minority student enrollment? In popular rhetoric, we hear two stories. One, eliminating race-based admissions policies will keep many qualified minority students from going to college (i.e., minority enrollments will decrease). Two, restricting race-based admissions policies for some states (*e.g.*, *Hopwood*) will cause that state's best minority students to go to unrestricted states for college. Here is an example where using a rational choice framework provides considerable leverage in understanding these problems. Consider how interventions like *Hopwood* and Proposition 209 would affect minority enrollments.

As discussed in the previous chapter, *Hopwood* and Proposition 209 restricted the university's ability to affect P , the probability of a minority student gaining admission to a university. Because the probability of admissions varies with the selectivity of the university, selectivity will be a key organizational issue in understanding the effect of this specific political intervention. For the sake of simplicity in modeling, we will make a few assumptions. One, all public universities are pursuing diversity. Two, the differences in costs between universities within a given state will be substantively insignificant.¹⁰ Three, out-of-state tuition is significantly higher than in-state tuition.¹¹ Four, more selective universities are, on the whole, more prestigious universities, and will be perceived to offer more benefits than less selective universities.

Now consider a state with six hypothetical public universities, ranging in level of selectivity (1 - least selective, 6 - most selective). Each university is assigned a value for *selectivity*, representing the probability of an average student gaining admission with no consideration given to race. Each university is also assigned a *quality* value, on a scale of 1 to 100, representing the perceived level of benefits afforded to the average student. With these two values, we can calculate the student's expected utility for each university. Since costs within states are assumed to be relatively constant, the full model for each state, $EU = P(B-C)$, would collapse to $EU = P(B)$ for this analysis. Table one presents the hypothetical universities.

¹⁰ Although some differences exist, the differences between in-state tuition rates of public universities are usually very small, especially when compared to the tuition costs of out-of-state tuition or private universities.

¹¹ This is a reasonable assumption for the states included in this analysis (Texas, Mississippi, Louisiana, and California).

Table 1: Hypothetical Universities in State X With No Race-Based Admissions

<u>University</u>	<u>Selectivity</u>	<u>Quality</u>	<u>Expected Utility</u>
1. Alpha University	0.95 ¹²	25	23.75
2. Beta University	0.65	40	26.00
3. Delta University	0.50	55	27.50
4. Theta University	0.35	70	24.50
5. Lambda University	0.20	90	18.00
6. Omega University	0.10	100	10.00

If we remove the restrictions on race-based admissions policy, the probability of a minority student gaining admissions will increase. We can then reassign probabilities of gaining admission and expected utilities for each university. Table two presents the values for the hypothetical universities with race-based admissions policies.¹³ The university's probability of admitting the average minority student would increase (from Select to Select*), the quality of the university would remain the same, and the expected utility would change (from [Select x Quality] to [Select* x Quality]).

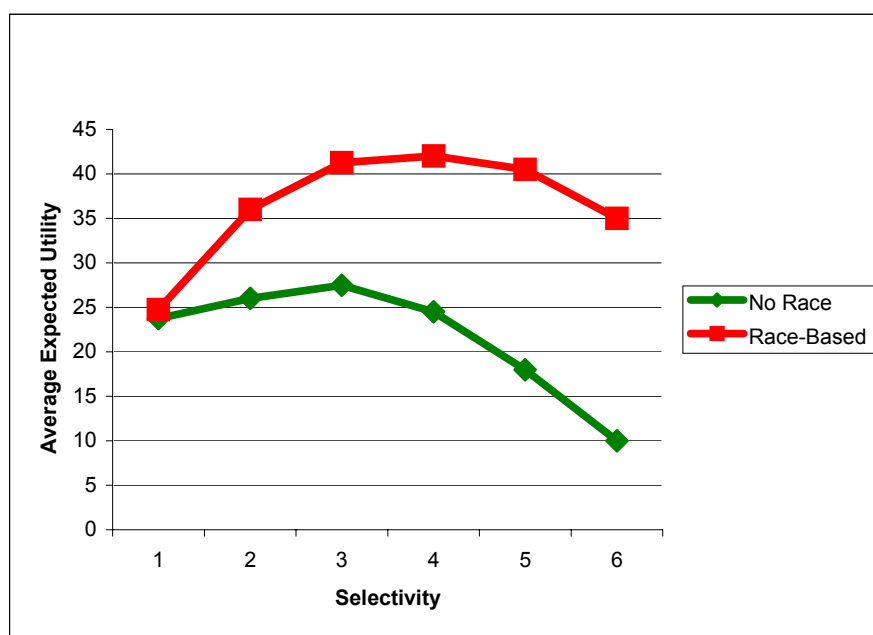
¹² Because selectivity scores represent the probability of being admitted, the larger the number, the less selectivity the university. In this case, Alpha University would be the least selective, and Omega University would be the most selective.

¹³ The asterisk (*) denotes the values for universities under race-based admissions policies.

Table 2: Hypothetical Universities in State X With No Race-based Admissions

University	Select	Select*	Quality	EU	EU*	Difference
1. Alpha University	0.95	0.99	25	23.75	24.75	1.00
2. Beta University	0.65	0.90	40	26.00	36.00	10.00
3. Delta University	0.50	0.75	55	27.50	41.25	13.75
4. Theta University	0.35	0.60	70	24.50	42.00	17.50
5. Lambda University	0.20	0.45	90	18.00	40.50	22.50
6. Omega University	0.10	0.35	100	10.00	35.00	25.00

A minority student's expected utility for a university that uses race in admissions (denotes EU*) would be affected by the change. This effect is seen in the difference between the first expected utility calculation and the second expected utility calculation. The model predicts that for a certain state, restricting a university's ability to incorporate race into admissions does not have a blanket effect for all institutions. Instead, these restrictions have the greatest effect on the most selective universities. The relationship can be seen in the graph of the utility differences in figure 5.

Figure 5: Effect of Restricting Race-Based Admissions

As selectivity increases, so does the gap between the expected utility calculations for minority students. This specific example results in a testable hypothesis that offers a different story concerning how judicial and legislative interventions may affect minority enrollments. Instead of reducing the number of minority students attending college or shifting students to other states, the judicial restriction of race-based admissions would result in minority students being *redistributed throughout the state*, from the more selective universities to the less selective institutions.¹⁴

¹⁴ Although this a very general model, it is important to note that it may not be directly applicable to the graduate level, mostly because of the way in which these variables are operationalized. First, graduate school selectivity is most often measured at the departmental level, not at the institutional level. Secondly, graduate students are much more likely to look to out of state institutions who put together funding packages in a number of different, often creative ways. Although the basic principles still hold, it is important to note that the critical differences between graduate and undergraduate admissions processes may limit the applicability of this particular model in some analyses. Additionally, as discussed in the *Grutter* and *Gratz* opinions, the ability of graduate programs to consider applicants at the individual level

Knowing that these policies redistribute students within the state, we must also question whether these policies also redistribute students across states, sending students from states that do not use race in admissions to states that do use race. Using data on higher education enrollments, we can empirically test the original finding, along with the competing explanations for the effects of race-based admissions. Two hypotheses will be tested:

Hypothesis One: Hopwood and Proposition 209 will reduce minority enrollment levels only at the more selective universities.

Hypothesis Two: Hopwood and Proposition 209 will reduce the number of minority students across the state (either through excluding students or inducing minority students to go out of state).

Data and Methods

For the states affected by *Hopwood* and Proposition 209, I gathered university level data on minority enrollment levels from the National Science Foundation's WEBCASPAR database. The units of analysis are all public, four-year universities in California, Texas, Louisiana and Mississippi -- those states affected by *Hopwood* and Proposition 209. These data are yearly data from 1990 to 2000.¹⁵ The enrollment data

(more so than undergraduate admissions capabilities) also changes the ways in which overall admissions decisions may be made.

¹⁵ The data for 1999 were interpolated, due to the gap in the Department of Education's dataset.

represent the percentage of undergraduate students who are African American or Hispanic. The limitations on race-based admission standards are included as a dummy variable, represented as a "1" when the university was held under the *Hopwood* and Proposition 209 decisions, and a "0" otherwise.

I also created a selectivity score for each university. The selectivity score is an ordinal variable based on the selectivity category given in Barron's Profile of American Colleges (Barron 2001). Barron's categorization of selectivity is a measure the difficulty of gaining admission to a university, based on average SAT/ACT scores, the percentage of applicants who are accepted, and other factors. Selectivity ranges from 1 to 6, with 6 representing the most selective universities. Finally, an interaction variable was created by interacting the ordinal measure of selectivity with the dummy variable for the years when *Hopwood* and Proposition 209 were in effect (Hop/Prop209).

This analysis also includes a lagged dependent variable, serving as a control variable. Because the dependent variable is all student enrollment, and the hypotheses focus mainly on students who are choosing to enter a university (incoming freshman), a lagged dependent variable should be included. Statistically, this sets a high hurdle for the other variables to achieve significance, making for a more rigorous test of the independent variables of interest. It is also important to note that a dummy variable for historically black colleges and universities (HBCUs) is included. HBCUs have a unique history in American public education, and we must control for those distinct differences.

Because of the nature of these data, with multiple panels over ten years, ordinary least squares is an inappropriate estimator. Diagnostic tests show heteroskedasticity and

first order autocorrelation issues that must be addressed.¹⁶ For these reasons, I chose to use a more appropriate estimator, a generalized estimating equation (GEE) population-averaged model, which computes panel-specific robust standard errors and corrects for the autocorrelation (Greene 2002; Stata 2003).

This results in the following model.

$$M_t = \beta_0 + \beta_1 M_{t-1} + \beta_2 L_t + \beta_3 S_t + \beta_4 L_t \times S_t + \beta_5 H_t + \varepsilon$$

Where

M_t = percentage of students who are minority

(either African American or Hispanic)

L_t = limits on including race in admissions standards

(*Hopwood*/ Proposition 209)

S_t = ordinal measure of selectivity, and

H_t = historically black university.

If hypothesis one is correct, we would expect the dummy variable for *Hopwood* and Proposition 209 to be insignificant, showing no across the board decrease in minority enrollments, and the interaction of selectivity and Hop/Prop209 should be negative and significant. If hypothesis two is correct, the dummy variable for

¹⁶ The likelihood ratio test for heteroskedasticity yielded a chi-square of 1146.61 (p<.0001), and the Wooldridge test for autocorrelation in panel data yielded an F statistics of 75.530 (p<.0001).

Hop/Prop209 should be negative and significant. The significance of the dummy variable allows us to determine if aggregate minority enrollments decrease.

Table 3: Redistributive Effects of *Hopwood* and Proposition 209

Dependent Variable: Percentage of Current, Undergraduate Student Body Made Up of

	<u><i>African Americans</i></u>	<u><i>Hispanics</i></u>
<i>Independent Variables</i>		
Lagged Minority Enrollment	.999*** (0.002)	1.008*** (0.003)
<i>Hopwood</i> /Proposition 209	.111 (0.162)	-.087 (0.142)
Selectivity	-.079*** (0.027)	-.043 (0.046)
Selectivity* <i>Hopwood</i> /209	-.075* (0.045)	-.168*** (0.052)
Historically Black	-.059 (0.298)	
Constant	.444*** (0.102)	.589*** (0.144)

N	790	790
Wald chi squared	943391.35	97023.21

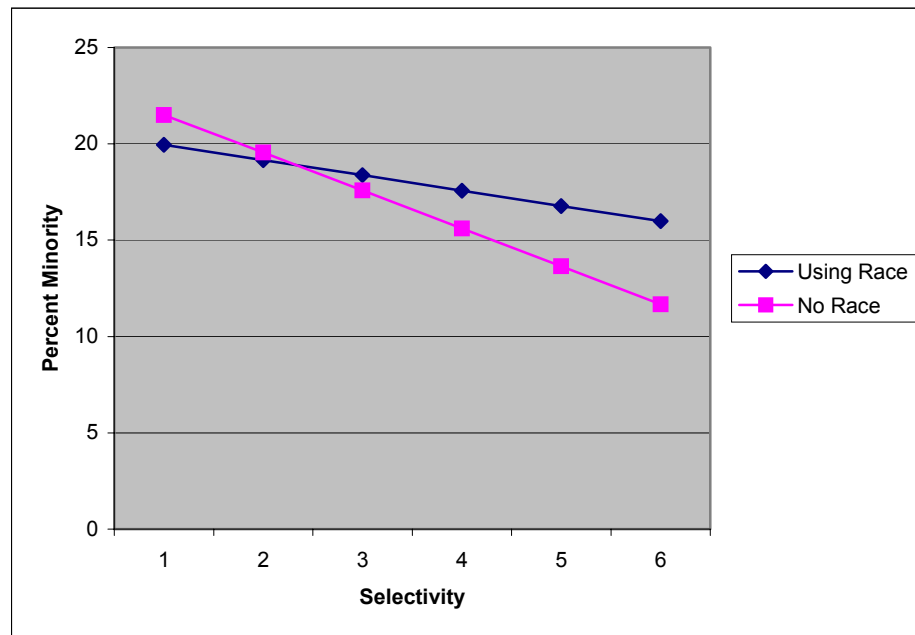
Standard errors reported in parentheses.

The findings in table 3 show clear support for hypothesis one in both minority student groups. Restrictions on race-based admissions affect the more selective universities, redistributing *but not reducing* minority college students throughout the state. As would be expected, the lagged minority enrollment variable is significant and substantively large. Because the dependent variable is all enrollment, not just incoming freshman, we expect last year's enrollment to be a strong predictor. Given the highly autoregressive nature of minority enrollment, the ability of the other variables to achieve statistical significance adds to the strength of the relationship.

The restrictions on race-based admissions placed by *Hopwood* and Proposition 209 were *not* significant for either African American or Hispanic students, when controlling for selectivity. On its own, selectivity was negative and significant for African American but not Hispanic students. The real test of the hypotheses can be seen in the interaction term. As hypothesized, the effects of *Hopwood* and Proposition 209 are seen only in the more selective universities. For the universities considered to be nonselective, less selective, or simply selective, *Hopwood* and Proposition 209 led to an *increase* in minority enrollments. For the most selective, highly selective, and more selective universities, minority enrollments *decreased* significantly.

This effect is best illustrated by calculating hypothetical values for a set of universities. Assume that minority representation is equal at all universities in the state, at 20 percent African American enrollment. Using the coefficients reported in Table Three, we can simulate the change in enrollment attributed to the restriction of race-based admissions policies for universities at different levels of selectivity. Restricting

the use of race in admissions leads to a 5.5 percent drop in minority enrollment over 10 years for the most selective universities (i.e. UCLA, UC-Berkeley), a 3.5 percent drop in the highly selective universities (i.e. UT, Texas A&M), and a 1 percent drop in more selective universities (i.e. LSU, Mississippi State). For the other universities, this restriction on using race would result in a 1 percent increase in the somewhat selective universities (i.e. University of New Orleans, University of Houston), a 3.3 percent increase in the less selective universities (i.e. San Francisco State, University of Southwestern Louisiana), and a 5 percent increase in the nonselective universities (i.e. University of Texas at Tyler, Northeast Louisiana State). Figure six represents how the restrictions on using race affect universities differently. Here the university is assumed to have 16.5 percent African American students (the mean for the sample). Over ten years, assuming that no changes are made to scholarships or recruiting policies, a restriction on using race results in the more selective universities seeing a considerable drop in minority populations, relative to least selective universities.

Figure 6: Hypothetical Changes

Conclusions

The conventional wisdom, that restricting race-based admissions will push some students out of higher education or send them to another state, is not supported. Judicial and legislative restrictions on race-based admissions do not reduce the number of minority students in a state, but, instead, *redistribute* minority students into the less selective institutions. Although these findings debunk some concerns, they raise other normative issues. These interventions were put into place on the grounds of normative concerns about equity and fairness in the processes, yet result in what many would consider inequitable results. Neither the 5th Circuit Court nor the state of California limited race-based admissions because they felt that more minority students should be attending less selective universities, yet this is the result.

University administrators who are trying to raise minority enrollments at the more selective universities should be aware of the how admissions policies work, relative to other universities, and how the higher education policy environment has changed. Since the latest Supreme Court ruling allows the limited use of race in admissions, the selective universities in states that were formerly restricted by *Hopwood* now have the option to add race back into the admissions equation. But what will that mean for prospective minority students? Adding race into the admissions policy could have both a symbolic and a substantive effect. Substantively, minority students have a real added advantage in their probability of gaining admission. Linking back to basic economic-based models of college choice, this would mean that universities who choose not to add race will not be affected, while those who do add race would see some increase. However, we must consider the symbolic effects of the decision to include race in admissions. The decision not to include race (especially as other universities hurry to make the shift) may cause a university to be portrayed as hostile or uncaring toward the minority community. In terms of the decision-making calculus, this may lower a student's perception of the benefits they would receive at the university. In terms of luring students, reputation can be everything, and administrators must consider how students will perceive these shifts in policy, in addition to the actual effects of the policy change. These issues will be revisited in chapter VI, when evaluating how these substantive and symbolic effects factored into how Texas universities have fared after *Hopwood*'s restrictions were lifted.

Before looking at how specific institutions responded to the more recent decisions, it is important to expand the scope of the analysis to include other ways that political institutions and structures could shift minority enrollments. The next chapter broadens the analysis to include all fifty states and incorporates more of the elements of the policy process, as were reviewed in chapter II. In particular, this chapter focuses on the role of minority representation in state legislatures and how increases in representation may have differing effects on enrollments, dependent on the state's bureaucratic structure.

CHAPTER V

RACE, STRUCTURE, AND STATE GOVERNMENTS

Much of the literature concerning race and politics focuses on minority representation in legislative bodies. For some time now, scholars have studied how minority groups gain seats in legislative bodies - often termed descriptive representation - and whether this increased presence produces shifts in policy that benefit that particular minority group, usually referred to as substantive representation (Hero and Tolbert 1995; Mansbridge 1999; Pitkin 1967). We now have a body of evidence showing that, in many cases, increases in descriptive representation do translate into increased substantive representation for racial minorities. Not all studies find this relationship; however, and there is considerable variance in the strength of this relationship.

The majority of existing literature on this topic takes one of two forms. Studies either test how changes in minority representation affect the legislation that is passed in that body (Bratton and Haynie 1999; Karnig and Welch 1980; Lublin 1999), or they test how minority legislative representation affects policy outcomes (Meier, Stewart, and England 1989, Meier and Stewart 1991). These studies offer considerable insight into minority representation but are limited in their ability to speak to *how* representation affects the actual welfare of the groups in questions. These limitations may be a result of not tapping into what we know about the policy process. Theoretically, we can now shift from asking if there is a relationship between descriptive and substantive representation to asking more nuanced questions about when, where, how, and, even more interesting, why these relationships exist in some places but not in others. This

paper begins addressing these questions by drawing heavily on literature in public policy and public administration.

State Governments and Minority Student Enrollments

Higher education policy offers great potential in advancing our knowledge about the effects of minority representation. Unlike other policy areas where we have considerable difficulty in linking a certain policy good to a particular minority group, racial diversity in college student bodies is a salient issue that one can directly relate to the interests of minority populations. Since higher education is controlled, in large part, by state governments, we have a natural quasi-experiment because legislative bodies vary considerably in levels of representation for both African Americans and Latinos. Finally, because African Americans and Latinos have distinctly different histories in the higher education environment, an issue that will be revisited later, we can examine the differences between African Americans and Latinos to further investigate the nuances of the descriptive/substantive representation link.

State legislatures play a critical role in the success of public universities, serving as the primary overseer in policy, funding, and accountability. The state legislature determines the level of public funding that each university will receive, through the specification of a funding formula and through grant programs, specific projects, and other avenues. Policies concerning private universities and out-of-state students are also influenced by the state legislature, and in turn these policies affect a public university's ability to generate its own revenue. Legislatures also can regulate tuition, set statewide

admissions policies, and advance policies in the K-12 system that will affect the pipeline of students who eventually feed into universities.

Because public universities are controlled by the state government, differences among state legislatures should have some effect on the state's universities. Theories of descriptive representation would lead to the expectation that increases in minority representation should result in more favorable policy outcomes for the state's minority population (Pitkin 1967; Mansbridge 1999). This relationship was found to be an important factor in the improving of educational outcomes for minority students in the K-12 system (Fraga, Meier, and England 1986; Meier and Stewart 1991), as increased minority representation in the decision-making organization (the school board) was positively associated with increased student performance (standardized test scores, attendance, graduation rates) for minority student groups. Because of the similarity between the two systems and the theoretical expectations of increases in descriptive representation, one would expect the same relationship to exist in higher education. Drawing from these literatures gives us hypothesis 1.

H1: Increased minority representation in the state legislature will positively affect levels of minority student enrollments at public universities.

Hypothesis 1 allows us to test for the direct effect of minority representation on policy outcomes, which we know are a large part of this process, with states allocating

extra money to minority-serving institutions and funding minority-targeted scholarships, among other initiatives. We also want to consider, however, ways that elected officials can indirectly affect policy through the bureaucracy.

Structures, Experience and Resources

Each state has a state-level agency responsible for some measure of oversight for the state's universities. These agencies vary significantly in their structure, especially with respect to their centralization and amount of control. Some states have very centralized autonomous boards, called governing boards, which can control daily decisions made at each university, including personnel, budgeting, and curriculum. In these states, universities are bound by rules and regulations set at the state level and carried out at the university level (Lowry 2001). Other states have various types of coordinating boards, a less authoritative entity with some control over university policies, but not to the extent of governing boards. Coordinating boards often take care of much of the lobbying and master planning for the state and leave most operational decisionmaking discretion to the universities.

Some studies have shown how structure affects many other aspects of higher education policy (van Ginkel 2001; Lowry 2001; McLendon 2003, Richardson et al 1999). Generally speaking, in the case of minority representation, we would expect that the structure of the chief bureaucratic agency could matter significantly. A centralized structure permits legislatures to apply political pressure more efficiently to a single bureaucratic entity. We would expect that, all things being equal, the work of a

legislative body to change bureaucratic institutions would be more effective over time in a more centralized, dominant bureaucratic system. This would give us hypotheses 2.

H2: Increased centralization of the chief bureaucratic agency should positively increase the effect of minority legislative representation on minority student enrollments.

Structures may also have a second influence on policy. The distribution of bureaucratic discretion through varying structures has been shown to significantly affect how legislative objectives are translated into policy. After all, political structures are designed to create biases, to advantage some interests and disadvantage others (Knight 1992). Although structures may not be as rigidly determinative as some would portray them in locking in the values of past governing coalitions (Moe 1990), at a minimum they require knowing the institutional rules and the appropriate method and forum for pressing interests. Viewing institutions and structures in these terms suggests two key variables are necessary for political influence—political experience (or knowledge) and political resources.

In an effort to generate an additional testable hypothesis, this analysis will probe the implications of some recent literature known as the "delegation problem" (Huber and Shippan 2002; Epstein and O'Halloran 1999). This literature is concerned with legislative decisions to grant discretion to bureaucracies, particularly how much discretion will be granted. An implicit implication of the literature, although one that is

not usually examined empirically, is that because legislative and bureaucratic institutions are distinctly different forms, changing the locus of the decision from a legislature to a bureaucracy will result in different decision processes and perhaps even different policy outcomes (Spence 2003).

How do legislative decision processes differ from bureaucratic ones? Legislative decisions, even with the processes of committee government, are more transparent than bureaucratic ones. Although there are numerous exceptions, legislative decisions often make the news, while bureaucratic ones seldom do. Legislative politics, at one level, is relatively understandable: issues are raised, they are debated, and the majority rules. Bureaucratic politics, in contrast, is a mix of expertise and distinctly nonlegislative processes that for the most part do not follow majority rules and in many cases eschew voting (Carpenter 2002). Although there are exceptions to these general statements, bureaucratic processes add more transactions costs to participation and rely on a set of criteria that are not identical to legislative processes.

The implications of the differences in legislative and bureaucratic processes are that political experience and political resources are both likely to play a larger role in bureaucratic processes than in legislative ones. While legislative processes can be complex, they pale in comparison to bureaucratic ones that may take place in myriad locations, follow quasi-legislative processes, quasi-judicial procedures, or numerous other forms, and rely more on expertise and scientific analysis than the normal legislative process.

To determine if the above logic of structures holds requires either finding a set of policy questions that vary in terms of structural complexity but have similar interests involved or finding a set of identical policies where the composition of interests and the political development of those interests varies. Using the latter option, we contend that while African Americans and Latinos comprise about the same proportion of the U.S. population, the African American community has a longer history of using the political process to redress policy grievances and has built up more political resources.

Conscious black political activism dates at least back to the Civil War as African Americans were initially brought into reconstruction governments and later systematically excluded. By 1909 with the formation of the National Association for the Advancement of Colored People, African Americans developed interest group structures to press their policy claims. For Latinos, efforts to build such structures, were delayed for the most part until after the second world war (for example, the League of United Latin American Citizens, see San Miguel 1987).

Although historical differences in population size play a role (in 1980 blacks were 11.8 percent of the population and Latinos only 6.4 percent), the greater experience in political activities has generated a substantial difference in political resources. In 2001 the U.S. Congress had 39 black representatives and only 19 Latino members. For all state legislatures, blacks held 7.9% of the seats while Latinos held only 2.6%. While the reasons for these differences (e.g., citizenship, unique political histories, diversity among Latinos) are interesting, what is most relevant for the current study is simply the notion that African Americans have had greater success in gaining political

representation over a longer period of time. The differences in political resources that can be mobilized, then generates our third hypothesis:

H3. African Americans will be more successful in gaining policy benefits from bureaucratic processes than will Latinos. Specifically, African American political resources will work more effectively through bureaucratic structures to influence the levels of black student enrollments in higher education.

How might the two groups fare in legislative processes? Although one might expect that African Americans with their greater resources would do better overall, the growth in Latino resources could well generate a greater change in benefits for Latinos. This suggests that many of the gains of blacks will be built into the processes of the legislature as they achieve additional seniority and experience. The implication is that black legislative resources will matter more in terms of the level of student enrollments but that Latino resources will matter more in terms of the change in student enrollments.

H4. Latino legislative representation will matter more in changes in policy outcomes while black representation will better predict the distribution of outcomes. Specifically, Latino representation will better predict student enrollments when controlling for past enrollment levels

whereas black representation will better predict the level of enrollments without controls for past enrollment levels..

Other Players in the Fight Over Affirmative Action

In addition to the effects of representation and bureaucratic structure, we know that other political and bureaucratic factors can greatly constrain the ability of other actors to affect change. In the case of affirmative action in higher education, we cannot overlook the effects of outright restrictions on the use of race in admissions, nor can we ignore the vast difference among institutions within the higher education system.

Restrictions on Using Race

For the last 40 years, interest groups, politicians, and educational institutions have battled over how to ensure equitable access to all groups of American students. Affirmative action policies have been enacted at a number of universities, allowing some universities to aggressively recruit minority students by using race as a factor in admissions decisions. These policies have been attacked by other groups as constituting "reverse discrimination," and many of these policies have been struck down by courts and legislatures. The constitutionality of including race in admissions has not been a cut and dried issue. Instead, the constitutionality of such programs depends on the location of the university, the year, and the nuances of the policy. The arguments over the appropriateness of including race in admissions have taken place both in the courts and in state legislatures, but the outcomes of the battles have virtually identical constraints

on institutions. Because of the similarities between the judicial and legislative constraints, they will be reviewed separately, but in the empirical analysis, will be combined into one variable, representing when universities are restricted from incorporating race.

Judicial Interventions

The most recent and politically salient political interventions are the court cases addressing the use of race in admissions policies. *Bakke* (Regents 1978), *Hopwood*, and the Michigan cases each altered a university's ability to include race as a factor in determining admissions and financial aid. The Supreme Court's *Bakke* decision set a precedent of ambiguity that has plagued universities ever since, articulating both sides of the debate between those who support policies aimed at raising minority student enrollment levels versus those who object to policies that allow a person's race to be formally incorporated into policy decisions (Grutter 2003).

Hopwood, the 1996 ruling of the 5th Circuit Court of Appeals, restricted all use of race in admissions decisions for public universities in Louisiana, Mississippi, and Texas, eliminating those universities' ability to attract minority students through race-inclusive admissions policies. Because of *Bakke*'s ambiguity and *Hopwood*'s limited jurisdiction, American universities were left without a common standard until 2003, when the Supreme Court ruled again on the use of race in admissions policies. The Michigan cases (*Grutter* and *Gratz*) lifted the *Hopwood* ban on race but still placed some restrictions on how a university incorporates race into admissions.

Legislative Policies

Before the *Grutter* and *Gratz* decisions, while the constitutionality of using race was exceptionally vague, some states passed laws that precluded the use of race in admissions, often substituting other policies that attempted to increase diversity, without giving preference to certain groups. These state laws were passed in response to *Hopwood*, in states that were not bound under the 5th circuit court. California's Proposition 209 and Florida's "One Florida" policy restricted institutions from incorporating race into admissions. This limited many institutions in their pursuit of diversity, and each state has received considerable criticism. Some of the criticism focuses on accusations of increasing minority student segregation among universities and increased educational disenfranchisement, with fewer minority students enrolling.

We test the effect of these judicial interventions and state restrictions on race with hypothesis 5.

H5: Restricting the use of race in admissions is negatively associated with levels of minority student enrollment.

University Characteristics

Some of the more interesting questions about how state-level factors affect policy outcomes are not focused on their direct effects, but on how the relationship between state-level factors and policy outcomes is moderated by the bureaucracy, or in this case, university-specific characteristics. One of most substantial differences between universities is their level of selectivity. Selectivity, a measure of competitiveness or

prestige, affects almost every facet of a university -- type of students, mission, curriculum, faculty, budgets, etc. Not considering how differences in institutional selectivity play a role in policy would be to ignore a critical component of the higher education policy environment. This is why the existing literature on affirmative action in university admissions is so limited in generalizability. Only including Ivy League and flagship universities ignores the importance of varying levels of selectivity.

Previous research has shown that the institution's level of selectivity has a significant moderating effect on the relationship between race restrictions and minority enrollments for universities bound under *Hopwood* and California's Proposition 209 (Hicklin 2005). Because the inclusion of race into admissions is intended to give minority students a more competitive edge in gaining admissions, those universities with open enrollment policies would not see the inclusion of race as a means to increase minority enrollment. If everyone who meets the minimum requirement is accepted, the value of providing an extra edge is limited. Alternatively, if a university is very selective, any advantage is significant. Because most previous research does not include universities of varying selectivity, we know little about how these differences affect outcomes. This relationship will be tested for all American public universities with hypothesis 6.

H6: The effect of race restrictions on minority student enrollment depends on the institution's level of selectivity.

Other institutional-specific characteristics will be included in this study as well. Because public universities compete in a market (though not a free market) for minority students, some measure of cost should be included. Only in the last few years, however, have many states deregulated tuition and seen significant differences among public universities. Compared to the difference among public and private schools, which can exceed \$30,000 a year, differences between public universities are almost negligible. This may soon change, as state budgets have not kept up with the increasing costs of education, and universities have been forced to generate a greater percentage of their budget through tuition and fees. For the sake of model specification, tuition will be included as a control.

Finally, in the case of minority student enrollments, we know that some public universities have identified serving African American students as their primary mission. Many of these universities date back into the mid-1800s and now carry the designation "historically black colleges and universities" (HBCUs). HBCUs are often given special consideration by the state and federal governments through additional appropriations. These universities also have a strong reputation in minority communities that cannot quite be captured in any way other than with their HBCU status. Similarly, other universities have been designated Hispanic-serving institutions (HSIs). Although this designation does not carry the history or distinction of HBCU, it does enjoy some importance within the minority community and often allows universities to receive special funds. These designations will also be incorporated.

Data and Methods

The data for this project have been compiled from numerous sources. Student enrollment data, tuition data, and HBCU status is drawn from the Department of Education's Integrated Postsecondary Education Data System (IPEDS) from 1990-2001 (IPEDS 2004). University selectivity is based on the competitiveness measure in Barron's Profile of American Colleges (Barron's 2000). State minority legislative representation for African Americans and Latinos is drawn from the Joint Center for Political and Economic Studies (Joint 2004) and the National Association of Latino Elected and Appointed Officials (NALEO 2004), respectively. Restrictions on including race for this study's time period were collected from various public media.

Units of Analysis

The units of analysis are all American public, four-year universities from 1990-2001. This includes all public universities that offer a four-year bachelors degree. Excluded institutions include private universities, community colleges, technical/vocational schools, professional schools, exclusively upper-level schools, and remote campuses. Because of the hierarchical linear modeling software used in this analysis, those universities missing data for any variable in the analysis were dropped from the dataset for that year. The original dataset included 594 universities for the 11 years (with some exceptions), resulting in 5772 data points. The dataset used in estimation (after dropping those with missing data) included 4689 data points.

Dependent Variables

Minority enrollment is operationalized as the percentages of undergraduate students who are African American and Hispanic, analyzed separately. The decision to use only African American and Hispanic students as the measures of minority enrollments is a pragmatic one. Nationally, Native American students are concentrated in only a few areas, especially in the case of public university enrollment, which causes major problems in estimation and interpretation. Asian Americans, although often considered a minority group, generally have not been identified in the higher education policy arena as "historically disadvantaged." Finally, the use of the term "minority" can be misleading in universities where "minority" students make up the majority of the population, so it is important to note that the term minority is a term used to describe historically underrepresented groups, without any reference to their actual numerical status.

Separate models for African American and Hispanic students explore the differences between these student groups. Practically speaking, universities are often more focused on raising minority enrollments in general, but administrators often have separate strategies for attracting African Americans and Hispanics. Because these two populations have substantially different histories, especially in terms of education enfranchisement and political representation, we are able to investigate specific hypotheses about different influences for blacks and Latinos.

Independent Variables

This study considers state-level and university-level determinants of minority enrollment. Minority legislative representation is the percentage of the state legislature (both chambers) that is of the same race as the dependent variable (i.e. African American representation used to predict African American student enrollment).¹⁷ State bureaucratic structure is a dummy variable representing the degree of centralization and autonomy held by the state's chief higher education agency. A "1" represents a more autonomous, centralized governing board, and a "0" represents a decentralized coordinating or planning board (see Lowry 2001).

A dummy variable is used to represent the years when state universities are restricted from using race in admissions policies, whether from the courts or the state government (1=restricted, 0=unrestricted). This variable is used to explore the relationship between a university's level of selectivity and the minority enrollment levels. Selectivity is an ordinal measure, based on the Barron's Profile of American Colleges (2001) measure of competitiveness. The measure is a six-point scale, with categories including noncompetitive, less competitive, competitive, more competitive, highly competitive, and most competitive, in that order.

Three control variables are included in these analyses. Although public universities are bureaucratic institutions, they also compete in the market. Because of this, public universities spend substantial amounts of time and money to improve their reputation. In the case of minority enrollments, many universities are well-known for

¹⁷ Latino legislative representation was not available for 1996 so these numbers were estimated from 1995. With most state legislatures holding biannual elections, this should not affect the results.

being receptive or hostile to minority students. In an effort to account for some of the reputational effect, we added two control variables. First, we include a dummy variable for those universities who are designated to be a "historically black college or university" (HBCU) or a "Hispanic-serving institution" (HSI). This variable is included in an effort to catch some measure of reputation. Second, we include a lagged dependent variable. Although universities receive new students each year, the undergraduate enrollment numbers are largely a function of previous enrollments. This also raises the bar for achieving significance, resulting in more conservative estimates. Finally, in an effort to control for the market forces that often affect college-going decisions, we include a variable for cost, operationalized as the yearly, in-state tuition and fees cost per student, centered around the state mean. We chose to group center the tuition measure in an effort to account for some cost-of-living issues.

Methodology

Because these data are drawn from two levels of aggregation (state and university), we employed a multilevel approach to estimate the models, using hierarchical linear modeling. The structure of the data, with universities clustered by states, makes OLS an inefficient estimator, violating the assumption that individual errors are independent, and resulting in artificially low standard errors. The key hypotheses in this study also rely on the hierarchical relationships between states and universities, calling for a multilevel modeling approach.

We estimated the random-intercept portion of the model using all of the state-level determinants. Additionally, to test for the interactive effect of restrictions on using race (a state-level factor) and institutional selectivity (a university-level factor), we estimated a random slope model. The full model is reported in the Appendix.

Findings

As expected, the models for African American and Hispanic students differ substantially. The relationship between the states and the minority populations are not the same, in either substance or magnitude. In an analysis of the variance components, states account for only 2.1% of the variance in African American student enrollment levels, while accounting for a considerable 12.1% of the variance in Hispanic student enrollment trends.¹⁸ Similar differences show up in hypothesis testing. Findings are presented in table four.

¹⁸ The lagged dependent variable is likely incorporating past state-level actions that influenced enrollments.

Table 4: Determinants of Minority Student Enrollment

Dependent Variable: Percentage of Student Undergraduate Enrollment Who Are:

	<u>African Americans</u>	<u>Hispanics</u>
Minority Legislative Representation	0.0046 (0.820) ¹⁹	0.0313** (2.315)
Bureaucratic Structure	-0.0191* (1.771)	0.0046 (0.869)
Representation * Structure	0.0080*** (4.401)	-0.0039 (0.708)
Restrictions on Race	0.0255* (1.940)	0.2754** (2.370)
Selectivity	-0.0551*** (4.973)	0.0035 (0.494)
Race Restrictions*Selectivity	-0.0637* (1.913)	-0.1597*** (4.153)
HBCU/HSI	-0.1293 (0.574)	0.4682*** (5.159)
Tuition	-0.0010 (0.034)	-0.0440** (2.111)
Lagged Dependent Variable	1.00051*** (347.197)	1.0095*** (144.705)
<hr/>		
N	4689	4689

*p < .10 two tailed test

**p < .05 two tailed test

***p < .01 two tailed test

¹⁹ T-scores are reported in parentheses and are based on robust standard errors.

Legislative representation, on its own, matters for Hispanic student enrollments but not for African Americans. Both models report positive coefficients, but the coefficient for African American is both substantively smaller and insignificant. The positive, significant coefficient for Hispanic students represents the weak but noticeable effect that Hispanic representation in the state legislature has on the state universities' enrollments. A hypothetical 10% increase in Hispanic legislative representation translates into a 4% increase in student enrollments over a ten year period.²⁰ As predicted by hypothesis 4, linking political experience and resources to race, the difference between these coefficients reflect the representatives' influence on past minority enrollments which is absorbed by the lagged dependent variable. When these models are estimated without the lagged dependent variable (results not shown), the black representation coefficient jumps to .431 ($t=9.61$) and is substantially larger than the Latino coefficient of .213 ($t=3.25$). These sets of relationships are consistent with our fourth hypothesis and the notion that black representation impacts are greater overall, but that Latinos have larger immediate impact at the present time.

The effect of legislative representation on African Americans depends on the structure of the bureaucracy. Although black representation does not independently affect enrollments in table 4, some effect is seen in states with more centralized bureaucracies. Both independently and in conjunction with legislative representation, the centralization and autonomy of the state's chief bureaucratic agency affects African

²⁰ This impact is calculated with reference to the lagged dependent variable which continues to add impact from the independent variable over time.

American student enrollments but does not change Latino enrollment levels. The model for African American students supports both hypotheses 2 and 3. The main effect of bureaucratic centralization yields a small, but significant negative coefficient, lending support to the hypothesis that more autonomous, centralized bureaucracies would not be beneficial to minority groups. An increase in black legislative representation, however, coupled with a more centralized bureaucracy results in a small, but significant increase in black enrollments. A hypothetical 10% increase in black legislative representation, coupled with a centralized bureaucracy, would result in a 0.5% increase in enrollments over a ten year period.

Although the main effect of legislative representation for African Americans is insignificant, the interactive effect of representation and structure is positive and significant. This finding, along with the positive and significant coefficient for the effect of representation on Hispanic enrollments lends substantial support to hypothesis 1, that increased legislative representation results in increased minority student enrollment levels. This is a classic case of how descriptive representation results in substantive policy gains for minority groups. Although we find weak support for hypotheses 2 and 3, substantively speaking, structure does not seem to have much of an independent effect on student enrollments. The differences between governing and coordinating boards can most often be seen in curriculum decisions, hiring policies, and administrative issues. These boards often encourage and aid in the pursuit of diversity, but are most likely constrained in their ability to affect real change in enrollment levels.

Among the many differences between the two minority groups, the one consistent relationship is the effect of race restrictions on enrollment levels. The independent effect of restricting the use of race in admissions is, *prima facie*, puzzling. Restricting universities from using racial background as a "plus" in admissions results in the counterintuitive, *positive* correlation with enrollment levels for both minority groups. Considering a university's level of selectivity, however, shows that the effect of including race in admissions is contingent on selectivity of the university; and for almost all universities, the relationship changes direction. As a university's level of selectivity increases, it is more negatively affected by the inability to include race into admissions. For example, the impact on black enrollments for the least selective universities (coded = 1) is -.0296 (or .0255 - .0551). For the least selective universities and Hispanic students the impact is +.1157 (.2754 - .1597) and the next least selective the impact is - .0443 (.2754 + (2x -.1597)). As a result, restrictions on the use of race result in a redistribution of minority students throughout the state (and for blacks a net reduction in students attending college). Minority students who would have attended flagship universities instead opt for second-tier universities, and those students who would have attended the mid-size universities decide to enroll in smaller, regional schools.

Diversity efforts at smaller universities benefit when the more elite universities are unable to use race-inclusive admissions policies to draw more minority students. This positive relationship, however, only exists for the least selective universities. Universities with moderately selective admission standards are not affected by the ability to include race, while competitive universities feel the negative effects of the state-level

restrictions. These findings negate hypothesis 5 but strongly support hypothesis 6 for both minority groups.

The coefficients for the control variables vary between the African American and Hispanic student enrollment models. For African Americans, tuition costs have no significant effect on enrollments, while the relationship is negative and significant for Hispanic students. Because this measure is centered around the each state's average tuition costs, the interpretation is a bit different. For Hispanic students, less expensive (often regional) universities have an advantage in attracting minority students relative to other, more expensive universities in the state often because significant Hispanic populations reside in areas served by regional universities. Due to the inclusion of only public universities, there is less variance in tuition and fees rates, and the insignificant coefficient for African American students is not surprising.

Similarly, the variables for reputation did not achieve statistical significance for African American but did achieve significance for Hispanic students. This may be a function of the differences between the HBCU and HSI distinctions. HBCU status is a older distinction and has a long history in the higher education community, both in reputation and in the availability of special funds. Because of this, the lagged dependent variable may be overpowering the HBCU distinction.²¹ In the case of HSIs, this distinction is a more recent development in higher education. States have just recently initiated special funding opportunities for these institutions, offering HSIs more opportunities to recruit students and add to the quality of their institutions. These recent

²¹ When the equations are reestimated without the lagged dependent variable, the HBCU coefficient becomes very large and statistically significant. It is then three times the size of the HSI coefficient.

developments, along with the rapidly increasing Hispanic population, may account for the independent effects of both the lagged dependent variable and the HSI status.

Conclusion

In examining the politics of higher education diversity for African American and Latino student populations, we found many similarities but also many interesting differences. For both student groups, minority representation in the legislature has a positive effect on enrollments, yet in one case it works directly and in the other through bureaucratic structure. For both student groups, the complex relationship between selectivity and restrictions on race works in the same way, whereas the effect of reputation is different. The most substantial difference lies in the amount of influence that state-level factors can have on enrollments. States have six times more influence on the enrollment patterns of Hispanic students, with state-level factors accounting for 2% and 12% of the variance in the African American and Hispanic models, respectively.

The differences in the two models can be explained by the differences in political resources and political experience. African American representation works through the bureaucracy whereas Latino representation does not. Similarly, African American representation is more apparent when the dependent variable is not lagged implying that much of the impact of black representation has already been input into the process. Latino representation, in contrast, works through the legislative process in a contemporary manner.

The relative size of the overall state effects suggests that, especially for Latino students, variations in state governments matter. If a relatively large number of qualified Latino students are under-placing themselves (not choosing to attend college when they are capable), due to family constraints or lower aspirations, the state may have an opportunity to intervene. Legislatures could fund special projects targeted at Latino families to inform parents about the college-going process. The state's chief higher education agency could launch more aggressive programs aimed at motivated Latino students in high school. The growing size of the Latino population also enhances the effectiveness of such policy instruments.

The lack of influence on African American enrollments at the state level does not mean that states cannot work toward improving higher education for their African American students. Obviously, state efforts directed at improving the K-12 system would be critical. Additionally, enrollment numbers are only one indicator of how minority groups fare in educational arenas. Further research on retention rates, graduation rates, and other performance indicators may find avenues where state governments are more influential and important. Additionally, these findings are showing that there are certain factors that do matter, such as minority representation and restrictions on race.

With these findings, we now have a better (though far from complete) understanding of how the higher education political environment shapes enrollments for African American and Hispanic students. However, this analysis is limited because it neglects to address what universities are actually doing on campus, particularly with

respect to policy decisions that are specifically targeted at increasing minority enrollments. This chapter gives us some information about the effects of the macro-level determinants, but it cannot give us any insight about how university administrators' perceptions of these shifts in the environment or how this environment changes what the universities actually do to affect enrollments. The following chapter narrows the focus to offer a more descriptive analysis of how all of these determinants combine to produce policy outcomes.

CHAPTER VI

A CLOSER LOOK AT THE STATE OF TEXAS

The last two chapters investigated the numerous factors that shape the higher education policy environment in an effort to produce findings that could be used to guide administrative decisionmaking. Two of the key findings in the empirical analysis pointed to the importance of restrictions on race and how a university's individual characteristics can affect outcomes. Additionally, these chapters demonstrated how the many influences outlined in the Lynn, Heinrich, and Hill (2001) logic of governance can shift policy outcomes.

Although both chapters offer useful information, they are limited in their ability to speak to the issues that are of chief importance to policymakers, administrators, and higher education policy scholars – how the most recent court decisions have affected universities and how university changes affect student outcomes. Despite the extensive coverage of the most recent Supreme Court decisions, *Grutter* and *Gratz*, we know very little about how universities have responded to this critical decision concerning the constitutionality of using race in admissions. Additionally, there are very few studies that use quantitative data to explore university diversity policy decisions, the effectiveness of these policies, and the level of institutional support. This chapter shifts to a smaller sample to explore these questions, drawing on original survey of Texas public university administrators.

Effect of *Grutter* and *Gratz*

Chapters IV and V produced similar conclusions about the effect of restricting the use of race in university admissions, finding that eliminating the use of race resulted in minority students moving from more selective institutions to less selective institutions. These chapters speculate that this redistribution of students can be attributed to how *Hopwood* and Proposition 209 decreased institutional discretion, with respect to how they would recruit and admit minority students, and how these limits put the more selective universities at a greater disadvantage.

On one hand, we would expect the *Grutter* decision to have just the opposite effect on universities that were constrained by *Hopwood*. At the most basic level, *Hopwood* moved these states from a *Bakke* standard to no affirmative action, and – seven years later – *Grutter* moved the standard back to *Bakke*. By extension, this would lead to the expectation that enrollments would redistribute back to the way things were prior to *Hopwood*. However, drawing on the literature in public administration, there are some reasons to suspect that this change may not have reversed the trend. In fact, there is considerable evidence that would lead to competing hypotheses.

Political Control

Rational choice scholars in political science have investigated the many ways that political actors can exert control over public institutions. Political institutions frequently set up structures to indirectly control the bureaucracy (McNollgast 1989; Moe 1984). These structures allow for significantly less oversight and still provide indicators

of bureaucratic shirking. Most notably, we see issues of "deck-stacking" (Balla 1998), the creation of advisory committees (Balla and Wright 2001) and the concept of fire alarms (McCubbins and Schwartz 1984; Lupia and McCubbins 1994) and smoke detectors (Meier, Polinard, and Wrinkle 1999), where Congress has set up effective ways for outside interests to identify problems and bring them to the attention of Congress. These studies show that these indirect methods are indeed effective and that political institutions regularly choose the extent to which they will exert control.

We also have indications of dynamic responsiveness to changes in political principals, work that incorporates principal/agent theory (Wood and Waterman 1994; Scholz and Wood 1998). This work finds that bureaucratic behavior responds to executive appointments and legislative partisanship, respectively, tying bureaucratic behavior to both legislative and executive institutions. This work does not consider judicial interventions, which have also been shown to have significant influence over how public organizations make policy decisions, a line of research that is particularly relevant to the study of how Supreme Court decisions might affect public universities.

Scholars of the relationship between political institutions and bureaucratic agencies often note that the judiciary has the least control over agencies, except in very specific policy areas (Meier and Bohte 2007), one of which is civil rights. As reviewed in chapter III, the courts have played a major role in determining how public agencies will operate with respect to discrimination and affirmative action, with a number of critical interventions over the last 150 years (see also Naff 2004). In empirical studies of the relationship between the courts and bureaucratic agencies, much of the work on civil

rights and employment finds the judiciary wielding significant influence (Bullock and Stewart 1984; Thompson 1984)

However, there are some limits on the extent to which the courts can specify particular policy decisions. Unlike legislative or executive mandates that can delineate the details in policy, the courts are mostly restricted to serving as a thermostatic control over policymaking within public agencies, where agencies are given an accepted range of behavior. If organizations pursue policies that go outside of this range of behavior, legal action can be taken, and the public organizations will be forced to comply (Shipan 1997). Each of the court decisions that have been so critical in determining what types of affirmative action policies would be constitutional have expanded or constrained the range of policy options available to universities.

The *Bakke* decision put some constraints on affirmative action policies, by eliminating quotas, goals, or insulated application reviews, but these constraints were somewhat minor, as they only outlawed certain types of affirmative action policies. Most of the studies of the effects of *Bakke* find little to no effect on policies or minority enrollments (see chapter III for review). *Hopwood*, on the other hand, outlawed any use of racial preference in the four states bound by the circuit court, and as a result, the case had a substantial effect on minority enrollments. In these cases, the courts placed different constraints on the policy options available to universities and communicated very different messages about the use of racial preferences. Given the differences in *Hopwood* and *Bakke*, it is unclear if universities responded to the direction of the Supreme Court, as a cue of political preferences (following direction), or just shifted

policy to be in compliance with the range of behavior deemed constitutional (avoiding discipline).

The *Grutter* case differed from *Bakke* and *Hopwood* in that it expanded the options available to states that were formerly constrained by *Hopwood* and showed some support for the limited use of racial preferences in admissions decisions. Evaluating the effect of the *Grutter* case offers an opportunity to investigate the extent to which public organizations (universities) responding to shifts in the policy opinions stated by the Court. If the courts exert considerable control over public organizations, we would expect all public organizations to shift their own policies. However, as discussed in chapter IV, it is important to note that for a number of universities, there is no benefit to adding race into the admission policies, as a number of these institutions have open admissions (or very close to it). Because of the possibility that this is no opportunity to shift policies, it is important to also test for the effect of *Grutter* only on the more selective institutions.

These two questions can be tested with hypotheses one and two:

Hypothesis One: The Grutter decision, as an endorsement of racial preferences by the Court, will result in policy shifts for all of the universities formerly constrained by Hopwood.

Hypothesis Two: The Grutter decision, as an endorsement of racial preferences by the Court, will result in policy shifts for the more selective universities formerly constrained by Hopwood.

Bureaucratic Values

But, what if universities do not change their policies in response to *Grutter*?

Other scholars of bureaucracy argue that public organizations often make policy decisions based more on their own values than the directives of political institutions (Long 1952; Appleby 1949; Waldo 1948; Meier and O'Toole 2006). These scholars find that public organizations have their own agendas that they will pursue, regardless of what political institutions may want. This basic idea, that public agencies have distinct preferences that will guide decisionmaking, is the foundation of much of the formal theory literature that constructs formal models based on agency preferences and the threat of judicial review. If bureaucratic values dominate, then we could expect that when the courts choose to grant more discretion to public organizations, these organizations will pursue policies that serve their own preferences.

In the case of higher education policy and the *Grutter* decision, this would lead to the speculation that the *Grutter* decision will affect only those universities who already hold values similar to the opinions expressed by the Court. This relationship can be tested with hypothesis two:

Hypothesis Three: The Grutter decision will have a significant impact only on those universities that consider student diversity to be among their most important concerns.

Inertia

Despite the ongoing debate over whether public organizations follow political institutions or pursue their own agendas, there is also the popular belief that agencies are very unresponsive and resistant to change, a somewhat cynical view. Instead of making rational decisions, bureaucrats regularly engage in the most current, popular rhetoric concerning an issue but are unable (or unwilling) to make real changes to policy that would have any effect on the organization. Instead, the organization will continue to operate as it did before, as long as the organization is not likely to face major disciplinary consequences for this behavior. In terms of the *Grutter* decision, this would predict that an expansion of discretion could have two possible consequences. One, that there will be no effect on policies, either measured by managerial perceptions of change or by real outcomes. Or two, that public managers will talk about changes that would reflect the direction of the latest political intervention, but there will be no real shift in policy outcomes. These last two possibilities will be tested with hypotheses three and four.

Hypothesis Four: University administrators will not see the Grutter decision as having any influence on policy, and there will be no identifiable shift in policy outcomes.

Hypothesis Five: University administrators will report significant shifts in policy decisions, but these shifts will be uncorrelated with changes in policy outcomes.

The purpose of this chapter is twofold, much like the preceding chapters. First, this chapter taps a new data source to test competing theories about the nature of the relationship between political institutions and public organizations. Second, it offers new information about the perceived and substantive impacts of the *Grutter* decision, exploring how this impact differs across universities and how the decision has affected minority student participation.

Data and Findings

In 2005, a survey was sent to public university presidents and deans in the state of Texas, for all four-year, not-for-profit, degree-granting institutions, excluding deans of law schools, medical schools, and general studies colleges. The universe included 28 presidents and 187 deans. The response rate was 71% for presidents and 57% for deans. The survey included a battery of questions about personal background, interaction with multiple actors, goals, diversity initiatives, and questions about the relationship between the institution and government.

Respondents vary widely on a number of dimensions. Universities vary on a number of dimensions: in size, from under 1,500 to over 35,000 students; in selectivity, from open enrollment to nationally competitive; in location, from large urban areas to rural; in focus, from comprehensive research institutions to regional universities; and in clientele, from the most homogeneous student populations to the most diverse. Additionally, the individual respondents also make up a diverse group, with marked differences in age, experience, background, gender, and race.

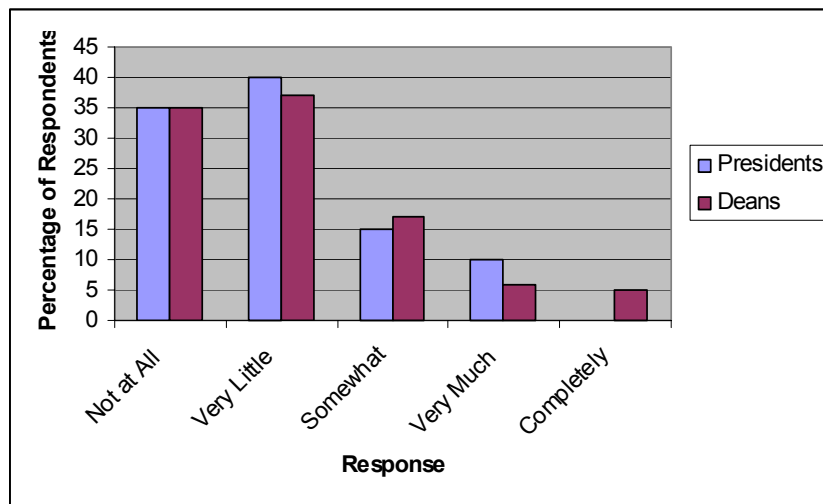
These survey data are paired with university-level data drawn from the Texas Higher Education Coordinating Board that report the number of applications, accepted students, and enrollments by race, for the fall semesters of 1998-2005. Six years of data prior to the *Grutter* intervention and three years of data after *Grutter* lifted the restrictions on using race, should allow for a reasonable test of differences attributed to the shifts in constitutionality.

Perceived Influence of *Grutter*

All of the hypotheses mentioned above speculate about the type of effect the shift in the constitutionality of racial preferences might have on university policies. Much like the Welch and Gruhl (1998) study of the effects of the *Bakke* decision, this survey asks university presidents and deans about how *Grutter* changed their policies with the following question:

To what extent did the University of Michigan (Grutter/Gratz) Supreme Court rulings affect your policies toward affirmative action?

Respondents could choose: not at all, very little, somewhat, very much, or completely.

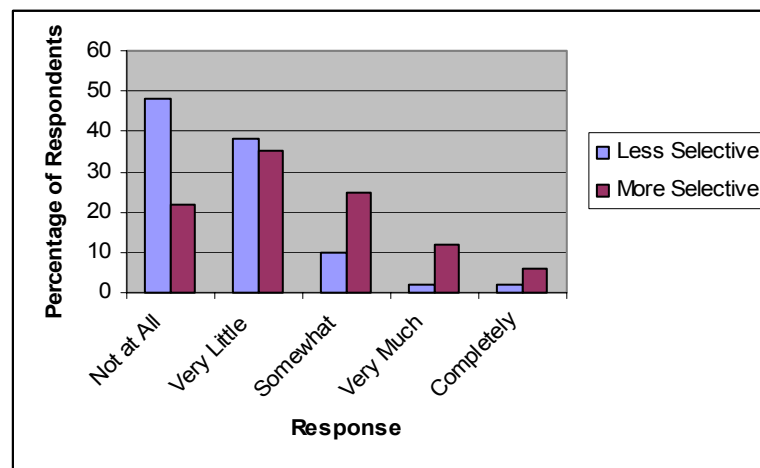
Figure 7: Effect of *Grutter* on Affirmative Action Policies

In the aggregate, presidents and deans did not consider *Grutter* to have much of an effect, as almost 75% of all respondents answered “not at all” or “very little,” as depicted by figure 7. However, only a third of respondents said that there was no change whatsoever, meaning that a large majority of institutions did see some shift in their admissions policies. Given that Justice O’Conner’s opinion outlined very limited support for racial preferences and the decision was so evenly split, it is not unsurprising that very few administrators said that the case completely changed their admissions policies. So, we find that a large number of institutions did not respond to the more recent opinions of the Court, which gives us some evidence that would reject hypothesis one.

However, there are a substantial number of institutions for whom *Grutter* did make some difference. What is different about the one quarter of the respondents who found *Grutter* to have at least a marginal effect on their admissions policies? The

previous chapters suggest that the key difference among universities is selectivity, and these court cases are going to have a greater effect on those institutions that are more selective. The same measure of selectivity (drawn from Barron's profile of American Colleges) can be used to test hypothesis two by splitting the sample around the mean, with the more selective universities (those scoring 3 to 5) in one group, and the less selective institutions (those scoring 1 or 2) in the other group.

Figure 8: Effect of *Grutter*, by Level of Selectivity

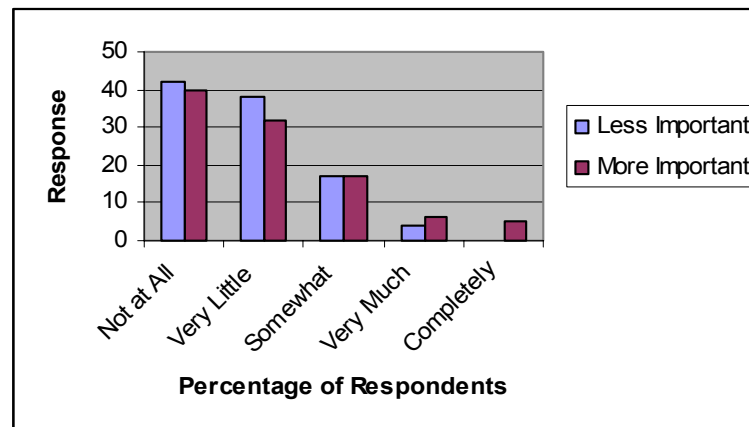


Here, we see some evidence in figure 8 that the more selective institutions are disproportionately affected by these shifts in university policies, which would lend limited support to hypotheses two. 43% of respondents reported that *Grutter* had at least “somewhat” of an effect on their affirmative action policies. With this evidence we can also reject hypothesis four – that universities are non-responsive to shifts in the political environment. However, this does not give us the ability to tease out whether the university is following directions of the Court, making decisions based on their own

preferences, or merely talking about change, without making real modifications. To test hypothesis three, that universities responded to *Grutter* in ways that reflect their own values, we would need some measure of the value placed on student diversity at the institution.

On the survey, presidents are also asked to gauge the importance of the university's initiatives aimed at increasing student diversity. Each respondent rated the importance of these initiatives as minimally important, somewhat important, very important, or top priority. Figure 9 groups respondents into two categories. For those administrators who consider diversity initiatives to be either minimally or somewhat important, they are grouped in the category "less important." For those respondents who consider diversity initiatives to be very important or the top priority, they are grouped together as "more important."

Figure 9: Effect of *Grutter*, by Importance Placed on Diversity Efforts



Looking at the graph in figure 9, it is obvious that both of the groups trend together, with a very small difference in those administrators who consider diversity initiative to be more important being only slightly more likely to consider *Grutter* to have an effect on policy. However, this split is clearly not what is driving responses on changes to *Grutter*. Although it would seem that the debate over political control has set up a dichotomy, so that all decisions can be linked to either political preferences or bureaucratic values, in this situation we find that neither seem to exert a strong effect on affirmative action policy changes.

So far, the only relationship that seems to be a determinant of administrative perceptions of *Grutter*'s effect is selectivity. This would lead us to believe that the more selective institutions took advantage of the leverage afforded to them by the latest Court rulings. The most logical explanation would be that, in response to this decision, university presidents chose to shift their policies to be more aggressive in recruiting and admitting minority students. Because these types of decisions affect the entire university, we would expect that the institution, as a whole, modified its policies. In an effort to dig deeper into how universities have responded to the *Grutter* decision, it could be informative to look not just at the individual responses but the consistency of the responses at the organizational level.

Organizational Consistency Among Administrators

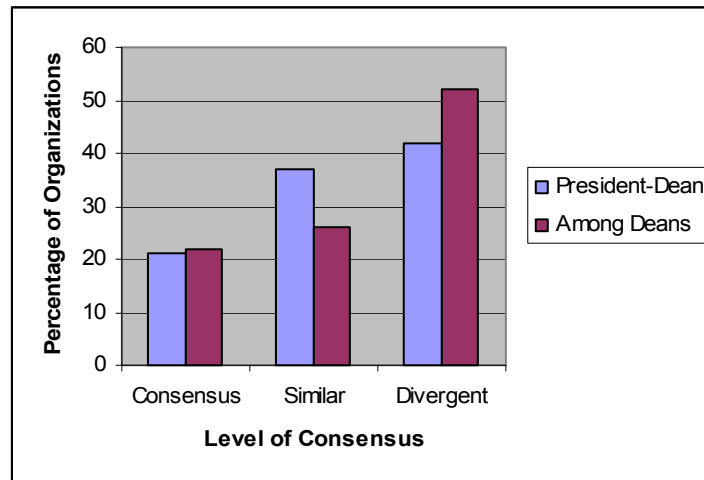
Organizations that have a strong commitment to particular policies are likely to communicate those policy priorities to the employees in the organizations. At a

minimum, one would expect that the key managers in the organization would be “all on one page,” particularly for those issues that are most salient. Given the political attention focused on this case, any decision to shift policies in response should also attract considerable attention. In evaluating the extent to which universities have been affected by judicial interventions, one might expect that the upper and middle administration would all respond similarly to a basic question about the changes in policies that might be attributable to such a critical shift.

Two measures of consistency are evaluated in figure 10. First, for those institutions that returned the president’s survey and at least one dean’s survey (19 institutions), the responses were grouped into three different categories. For those institutions where the president’s response on the *Grutter* question matched the dean’s response, they are coded as “consensus.” For the institutions where responses (on the scale of 0 to 5) diverged by only one point, so that the deans’ responses are only +/- 1 point of the president’s response, they are coded as “similar.” Finally, when the responses differed by more than 1 point (i.e. president = very little, dean = very much), the institution is coded as “divergent.”

The same scheme is applied to measure consistency among deans. For those institutions that had more than one dean respond to the survey, similarity among responses to the *Grutter* question are used to group the institutions.

Figure 10: Consensus Within Organizations About the Effect of *Grutter*



These results do not lend much credibility to the consistency of responses within the organization, as over 50% of institutions diverge significantly, between the president and deans, in opinions on the effect of *Grutter*, and over 40% of institutions having considerable disagreements among their deans. For those universities where the president considers the *Grutter* decision to have either “somewhat” of an impact or “very much” impact on outcomes, there is still incredible variance among the deans, which – particularly for some institutions – calls into question the level of organizational commitment to these affirmative action policies. Further still, it raises some questions as to the extent that these perceived changes in policy are shifts in real procedures or only changes in rhetoric, which can be tested by looking at differences in minority student admission and enrollment rates before and after the *Grutter* decision.

Moving Past Perception: *Grutter*'s Effect on Outcomes

Any shifts that can be attributable to changes in the legality of certain affirmative action policies should result in some changes in application rates, acceptances, and enrollments of black and Hispanic students. Given that the *Grutter* case mostly applied to using racial preferences in admissions, the acceptances should be influenced the most, but some institutions may incorporate racial preferences into financial aid decisions, which might affect the universities "yield" rate (the number of students who choose to enroll, relative to the number of students who are accepted). Finally, as discussed in earlier chapters, any decision made by a university that might seem to be advantageous to minority causes could attract more minority students to apply to the institution. For that reason, this analysis considers the application rates, acceptance rates, and enrollments.

For the purpose of the exploratory analysis, the application rate represents the percentage of applications that are submitted by African American or Hispanic students. The acceptance rate is the percentage of minority applicants who are granted admission. As evidenced by the rational choice model in chapter IV, any incorporation of racial preferences should automatically increase the minority acceptance rates. Finally, the enrollment rate will be the "yield" rate, or the percentage of minority admits who choose to attend the institution. For this part of the analysis, HBCUs will be excluded, as they are relatively unique in their history and reputations.

From 1998 to 2005, minority application, acceptance, and enrollment rates in Texas fluctuate very little in aggregate. Figures 11 and 12 show the trend over the eight year period.

Figure 11: Hispanic Application, Acceptance, and Enrollment Rates

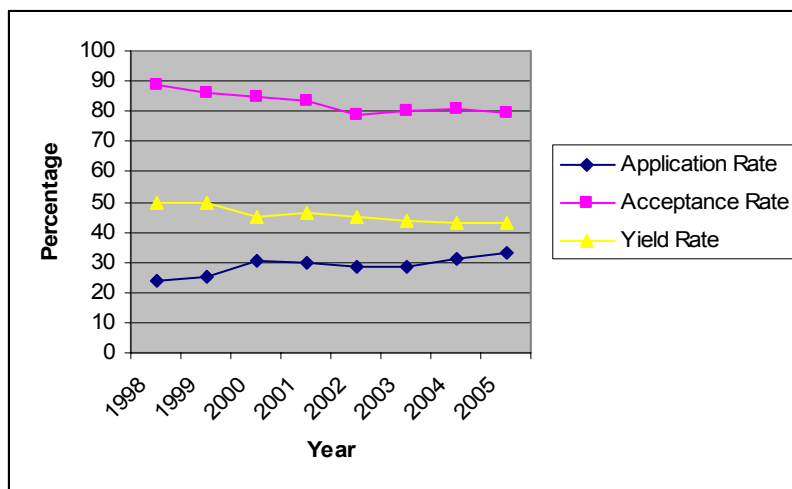
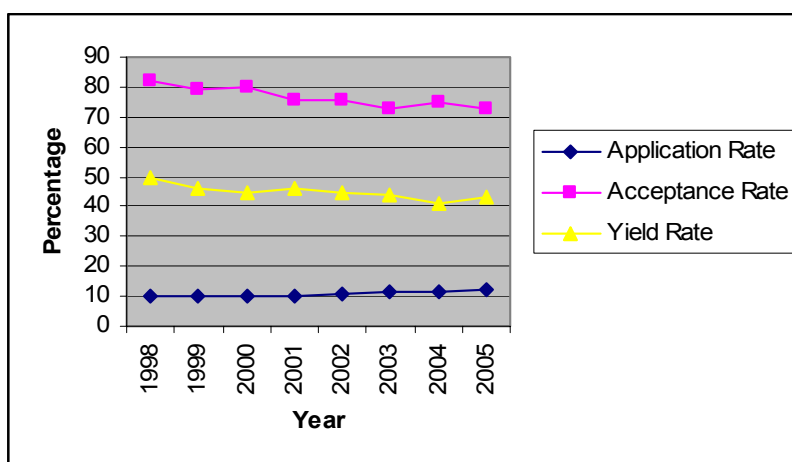


Figure 12: African American Application, Acceptance, and Enrollment Rates



Figures 11 and 12 are somewhat surprising in their similarities, especially with respect to the lack of sharp trends over the time period. Most obvious is the lack of any effect that the *Grutter* decision had on aggregate acceptance rates. For the state as a whole, there was practically no change (or a slight decrease) in acceptance rates either after 2003 (when the ruling was announced) or in the years after that (when some institutions first accepted students under new policies). However, most of the findings in this analysis have hinged on how selectivity often makes a difference in the effect of these decisions. The above graphs are replicated, but only for the more selective institutions in the state.

Figure 13: Hispanic Rates at Selective Institutions

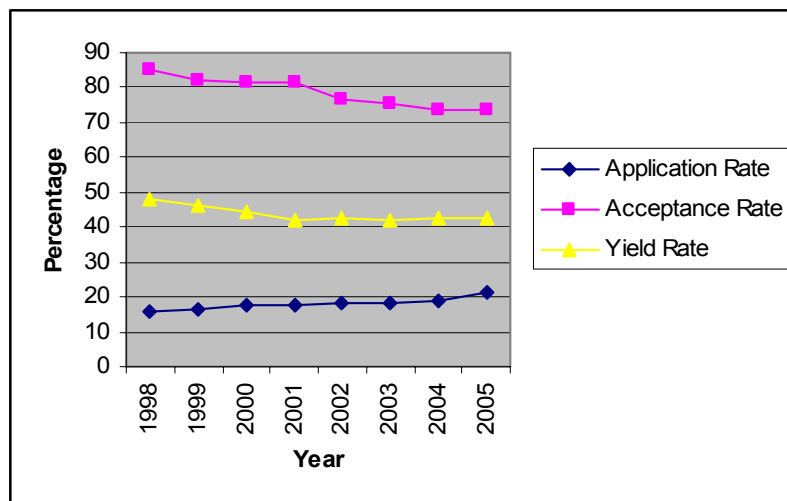
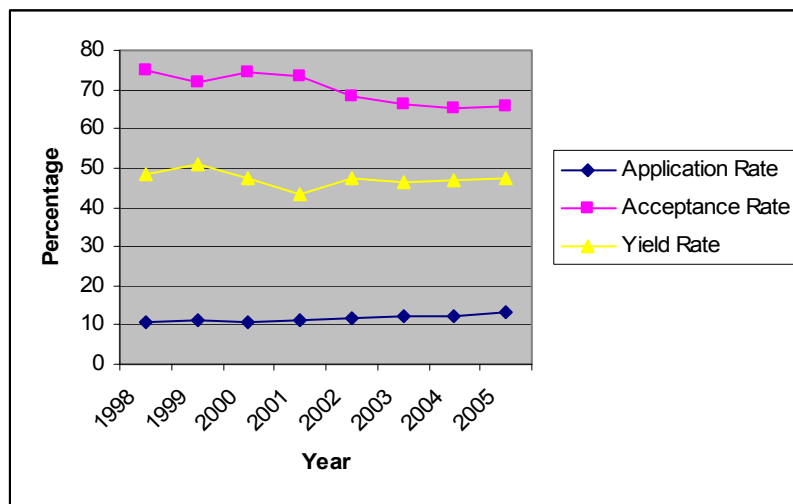


Figure 14: African American Rates at Selective Institutions

Much like the graphs for the entire state, figures 13 and 14, depicting the more selective institutions, do not lead us to conclude that *Grutter* had any substantial effect on minority application, acceptance, or enrollment rates in Texas universities. The only exception seems to be in application rates, which have some upward trend for both minority groups over the course of the eight year time period, and in particular, after *Grutter*. However, this may have nothing to do with the effect of actual policies. Instead, the Supreme Court's decision to allow racial preferences may have prompted more minority students to apply to more selective institutions, assuming that their probability of being granted admission had increased. Additionally, these increases began before 2003, likely due to minority population increases.

What is most puzzling is that, despite all of the evidence that leads to the conclusion that *Grutter* did not have a significant effect on enrollments, there was an incredible amount of media and political attention focused on the two flagship

institutions in Texas in the wake of the court decision, concerning how the two institutions would respond. For months after the Court handed down the cases, local newspapers, television reporters, and particularly *The Chronicle of Higher Education*, ran stories on the differences between Texas A&M University and the University of Texas, with respect to admissions policies, political pressures, and histories with the minority populations. Given the flurry of debate, the very public policy decisions, and the universities' claims of pursuing aggressive minority recruitment and admissions policies, how could there be no real change?

Two Roads Diverged

Immediately following the Supreme Court decisions, all eyes turned to Texas. As the state that was hit hardest by *Hopwood*, the months leading up to the *Grutter* decision were filled with constant speculation over how the flagship institutions would respond if the Court were to strike down the *Hopwood* decision. The week after the Court handed down the decisions, *The Chronicle of Higher Education* published a special edition concerning the *Gratz* and *Grutter* rulings, a large portion of which discussed how Texas universities would respond.

The lasting effect of the Supreme Court decisions will reach far beyond the University of Michigan, but the most drastic changes are likely to be felt in such states as Louisiana, Mississippi, and Texas. While federal desegregation orders and the lack of competitive admissions at college in Louisiana and Mississippi muted the effects of the *Hopwood* decision in those states, Texas' flagship institutions, the University of Texas at Austin and Texas A&M University at College Station, watched their minority enrollments plummet.

Jeffrey Selingo, *Chronicle of Higher Education*, July 4, 2003

Indeed, as discussed in the previous chapters, the more selective universities, especially the University of Texas (UT) and Texas A&M University (TAMU), suffered from real drops in minority enrollment after *Hopwood*.

These drops in enrollment came at a time when the stress on all of the institutions in the state increased, both financially and in terms of accountability. Minority populations continued to grow while the funding declined and state legislators put more pressure on universities to serve the minority clientele. Despite the similarities of the two universities (they are roughly the same size, both research-intensive institutions, both subject to the same legislative body, and only two hours apart), UT and A&M have developed very different reputations over the years, namely UT as the urban, more liberal campus and Texas A&M as the more rural, conservative university. These differences may not seem like factors that would affect policymaking and outcomes, but those differences played a significant role in determining how both of the institutions would respond to the *Grutter* decision.

Interviews with the presidents of both institutions uncover some of the key issues that affected the content and timing of the policies that the institutions chose to pursue. Throughout these conversations, both presidents raised a number of issues related to how different factors, primarily political issues, substantially affected their decisions about how to respond to the *Grutter* decision. Exploring the similarities and differences among the presidents' views of the *Grutter* decision and the political pressures that followed uncovers the complexity of the relationships between political institutions,

bureaucratic values, and policy decisions that is often overlooked in quantitative analysis.

“It’s a Big Change for Us”

On June 23, 2003, the day the Supreme Court ruled on the Michigan cases, PBS interviewed a handful of university presidents, discussing their reactions to the decisions. One of the university presidents participating in the roundtable was Larry Faulkner, president of the University of Texas. In that interview, President Faulkner discussed how the ruling was “a big change” for the university, and how the university would incorporate some racial preference, which would allow them to compete more effectively with institutions in other states (PBS 2003). The decision to add race back into the equation was not controversial for the University of Texas. In many ways, it was a given.

These same sentiments were repeated by President Faulkner in January of 2006, in my interview concerning how the *Grutter* decision affected UT’s policy decisions and student outcomes. Because the University of Texas was at the center of the *Hopwood* decision, the institution was very familiar with the legal battles involving affirmative action and public scrutiny brought on by these high-profile legal battles. In 1996, after losing the *Hopwood* case, the university faced a difficult issue. Even before racial preferences were outlawed, the university considered the goal of increasing minority enrollments to be a high priority. After losing *Hopwood*, this battle became even more complicated for a number of reasons.

First, the formal elimination of racial preferences constrained UT's options in increasing the number of minority students who would be admitted. Second, because minority students and their high school counselors were very aware of the decision, a number of minority students believed that this decision hurt their chances of admission, and as a result, minority applications dropped. Both of these effects were to be expected, but a third issue arose during the *Hopwood* battle that the university had not expected. A considerable faction within the Texas minority community came to believe that the University of Texas held considerable biases that worked against minorities and had chosen to pursue the *Hopwood* case as a way to end affirmative action. This accusation is summarily dismissed by university administration, and no evidence exists to support those claims, yet, as is often the case, perception became reality and the university had to combat an even more negative reputation among the minority community.

In 1998, upon the arrival of President Faulkner, the university decided to make minority recruitment a top priority, and it devoted considerable resources to an effort to combat the negative effects of the *Hopwood* decision by increasing the pool of qualified minority applicants. One of the strategies included more targeted recruitment in high minority communities, including numerous trips by the UT administration to schools, families, and individual students, as an effort to educate more people about the university and improve UT's reputation with the minority community. The university also began a very competitive scholarship program in 1999, called the Longhorn

Opportunity Scholarships, which was used to recruit outstanding students, with a particular eye toward students from disadvantaged backgrounds.

These programs, along with the Texas 10% plan, helped the university to begin increase minority enrollments but were still less effective than policies that allowed some consideration of race. The university's upper administration was clear in its support of race-sensitive policies, deeming them necessary to combat the inequities in the K-12 system and help to produce better leaders in the minority communities. As soon as the *Grutter* decision was handed down, the university announced its decision to incorporate race into admissions, within the parameters specified in Justice O'Connor's opinion. With the exception of a number of advocacy groups, the university received very little backlash, either from conservative state legislators or alumni.

“We Had to Do It Our Own Way”

Unlike the immediate decision made by the University of Texas to incorporate race into admission, Texas A&M University president Robert Gates chose to wait a few months before announcing how Texas A&M would respond to the *Grutter* decision and the many groups pressuring the institution from both sides of the issue. When President Gates announced his decision to forego including racial preferences, the university faced a direct attack by the minority communities in the state. The central issue became the university's reputation. As discussed in the previous chapter, universities do not operate in a vacuum. Universities spend amounts of time and money promoting the institution,

in an effort to develop a reputation and an identity throughout the state and nation.

However, some reputations are harder to change.

Texas A&M University has a long history as a land-grant institution, known for its nationally competitive agricultural and engineering programs. Additionally, the university has a strong reputation for the cohesiveness of its students and alumni, known as the “Aggie Network.” However, for a long part of the university’s history, this network included very few racial minorities, in part due to segregation prior to the mid-1960s and in part due to the agricultural tradition (attracting students from rural communities). Even now, Texas A&M University’s diversity efforts suffer from a reputation of being a university that might not be open to minority students. In the recent Princeton Review description of Texas A&M as one of the Best Value Colleges, in the “what student say” section, a student is quoted as saying, “most of the student body is made up of Texan, white, Christian, and conservative people. And we do mean very conservative” (Princeton Review 2006).

Thus, the university was already at a disadvantage with the minority community, and the decision to not include race fueled the fire of critics. However, the administration continually reiterated its support of aggressive diversity initiatives, while continuing to grant admissions on a merit-based system²². Amid the turmoil, the administration decided that the policy had to be compatible with the majority of the current and former constituencies. The institution had to find a way to increase minority enrollments without using racial preferences.

²² To keep with the merit-based system, the university also dropped legacy admissions soon after announcing the decision to not include race.

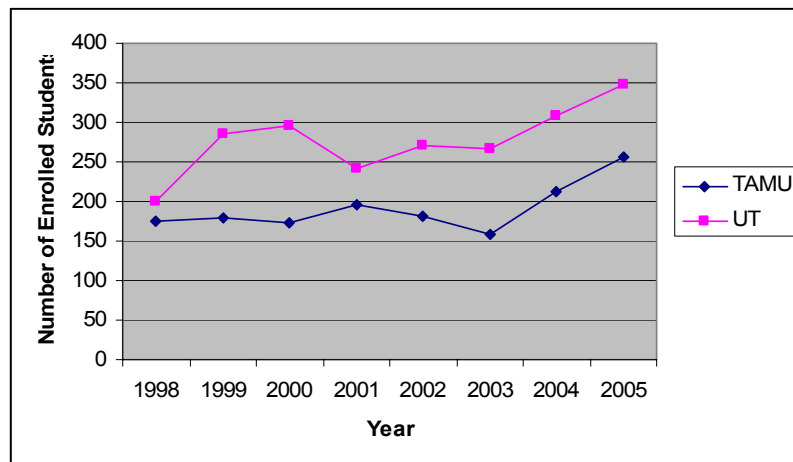
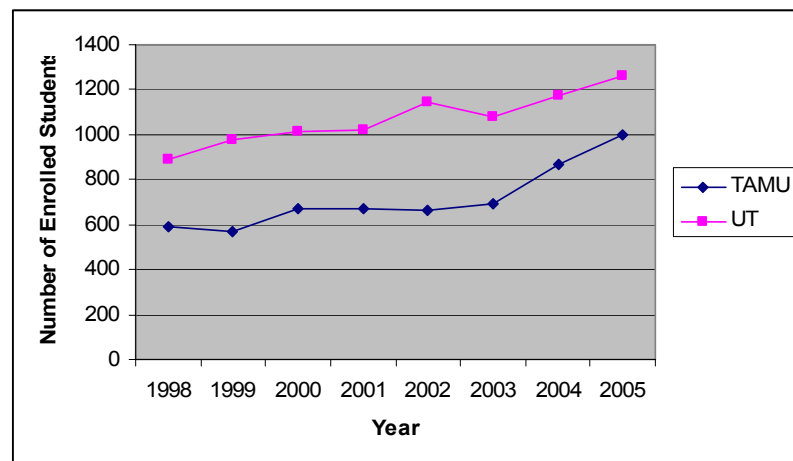
In the months after announcing the decision, President Gates addressed the political conflict in a very personal way, often saying publicly that he would stake his own reputation on the university's ability to increase minority student enrollments. He asked the legislature to give him a year, and he would show them results. Most of the minority legislators, skeptical of the university's commitment to increase minority enrollments refused to support the decision, but President Gates found pockets of support that opened some doors in improving the university's reputation.

In the campaign to increase minority enrollments without racial preferences, Texas A&M chose to focus on increasing the minority application rates, and – more importantly – the minority yield rate (the percentage of accepted students who choose to enroll), which was substantially lower for minority students than for white students. The university then lobbied its alumni, particularly those alumni who were most passionate about not including racial preferences, and asked them to “put their money where their mouth is.” From this effort, the university expanded its minority recruitment efforts, much like those of the University of Texas, setting up university centers in high-minority communities, spending more time with minority families, and bringing key recruits on campus. These efforts were paired with an extra 8-9 million dollars in scholarship funds that were aimed at students from disadvantaged backgrounds, through the Regents Scholars program.

What Works in Increasing Student Enrollments?

Generally speaking, when university administrators are asked about the greatest barriers to minority access to college, they often cite the pipeline problem: that minority students are often not interested in or prepared for college, because of an inadequate high school education. Although one might expect that these two institutions would be spending resources to fight over a small number of students, neither president believes that they are fighting over the same students. Instead, both presidents talk about trying to identify talented high school students and encourage more of them to pursue a four year degree, instead of community college or going straight into a full-time job. But regardless of how they are trying to find students, the state legislators and the higher education community are interested in one thing: outcomes.

Because Texas A&M University and the University of Texas chose different strategies aimed the same goal, this offers a natural experiment of what works in increasing minority enrollments. Using the same data from the earlier analysis, we can look at the most recent enrollment numbers to evaluate if these institutions have been successful.

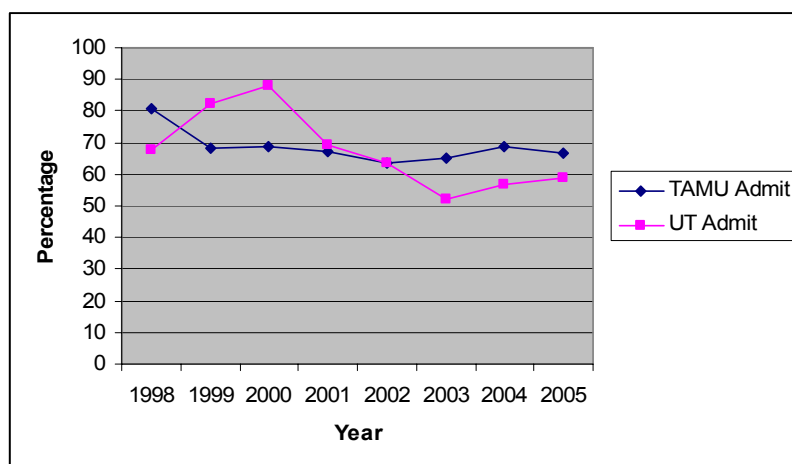
Figure 15: African American Enrollments at TAMU and UT**Figure 16: Hispanic Enrollments at TAMU and UT**

The first class of students to be affected by the post-*Grutter* policies is the 2004 incoming class, for which – in both figures 15 and 16 – there is an upturn in enrollments for both institutions and both minority groups. In figure 15, the enrollment rates for the University of Texas jumped in 1999 (the year the Longhorn Opportunity Scholars program was introduced) and in 2004 (post-*Grutter* changes). Texas A&M University

has also seen some success, as African American enrollment rates were relatively static up until 2004, but then increased in 2004 and 2005. For Hispanic students, enrollments at both institutions increased throughout the time period, but also jumped significantly in 2004 and 2005. Clearly, both institutions have been somewhat successful in increasing minority enrollments.

The next question turns to the effect of adding race into the equation. The University of Texas made the decision to add racial preferences, which required more money to be put into the admissions offices to support the individualized reviews. However, they also continued their aggressive recruiting efforts and likely enjoyed a boost in applications due to the publicity of adding race back into the equation. Taking a very basic look at the trends in admission and yield rates may give us an idea as to the extent that these particular policies (versus other factors, such as changes in perception affecting application rates) affect minority acceptance/admission rates.

Figure 17: Minority Admission Rate (African American & Hispanic)



Unlike the very static admissions rate for Texas A&M, the rate for the University of Texas has fluctuated considerably over the eight year period. Figure 17 shows admission rates have increased in the two years after the decision to add race into the equation, but the gains have not been overwhelming. On one hand, this raises questions about the effectiveness of racial preferences, but at the same time, these modest gains support much of the intent of the *Grutter* decision – that the incorporation of race would not result in admission becoming a “sure thing” for minority applicants. Instead, race would be one of many factors that contribute to an applicant’s chances of gaining admission, which might result in the gains like the ones seen in figure 17. Given this increase, there is some evidence that would point to the effectiveness of the University of Texas’ policy decisions.

The next logical step would be to test the effectiveness of the Texas A&M strategy. President Gates made a number of very strong statements about how the institution would focus on the yield rate in these diversity efforts. Again, examining the fluctuations in the yield rates at Texas A&M and the University of Texas can offer some information as to whether the Texas A&M strategy has been able to produce the effects it has intended.

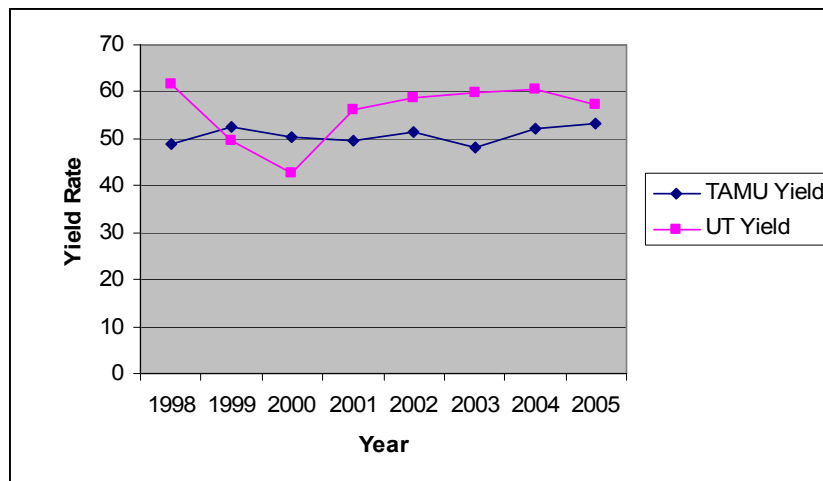
Figure 18: Minority Yield Rate (African American & Hispanic)

Figure 18 shows that Texas A&M is making modest gains in the yield rate. Given that changes in the yield rate are contingent on the university's ability to change its reputation with minority students, the effect of this policy is likely to come in small increments. However, if the trends for both institutions continue on the same path as the last two years, the yield rate for A&M could surpass that of UT. That said, the yield rate over the eight year period is still relatively flat, and the 2005 rate is not much higher than the rate in 1999. In short, A&M has made some gains, but the real test of these decisions will be in its ability to sustain these gains and continue to improve.

A more focused look at these two institutions offers a number of conclusions. One, that despite the similarities between these institutions, they differed widely in how the preferences and pressures from political institutions combined with the values of the institution to affect policy decisions. Despite taking very different paths in the effort to increase minority enrollments, both institutions have been somewhat successful, and

some of this success can be attributed directly to the decisions made by the administration.

Summary

An evaluation of the perceived and actual effects of the *Grutter* decision yields somewhat mixed results. In the aggregate, most university administrators considered the Supreme Court decision to have little to no impact on university policies. The perception of *Grutter*'s influence did differ somewhat for more selective institutions, but little evidence supports the idea that – in the aggregate – these perceptions of change are actual reflections of shift in university policy, as most administrators did not have views that were consistent with others at the same institution. Additionally, these perceptions of change did not seem to trend with the importance that administrator's placed on diversity. In an exploration of whether political influences or bureaucratic values dominated policy decisions after *Grutter*, there is little evidence that either were a driving force.

However, when moving to a more qualitative comparison of the two institutions that could be most affected by the Court's decision, some explanations begin to emerge. Here, we see that bureaucratic values played a predominant role in the policy decisions made by Texas A&M University and the University of Texas, but the directives of the political institutions also affected efforts at each institution. The University of Texas, clearly predisposed to adding racial preferences back into the admissions policy, was quick to change their policy but careful to conform to the details of the *Grutter* opinion.

Texas A&M University approached the problem differently, choosing not to add racial preferences, largely due to the conservative nature of the institution and its alumni.

Because the decision was not supported by political elites, the university was subjected to increased political pressure and public scrutiny, resulting in smaller changes to policy (including dropping legacy admissions earlier than was intended) and necessitating some success in their recruiting efforts.

Both institutions have seen some gains in minority enrollments and are continuing in their efforts. Over the next few years, the higher education community will be able to evaluate the effectiveness of each strategy, the costliness of these programs, and any possible trade-offs that may exist. As the minority populations in Texas continue to grow, institutions of higher education will continue to be responsible for finding new ways to attract more students to college and support these students throughout their undergraduate career.

CHAPTER VII

CONCLUSION

In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. Justice Sandra Day O'Connor, *Grutter v. Bollinger*

American public universities have spent 50 years grappling with how to find the most equitable and inclusive way to provide a quality education to the citizenry, and the debate continues. As the courts, administrators, pundits and politicians struggle to balance the issues of merit and opportunity, affirmative action will continue to be a heated issue. Undoubtedly, historically disadvantaged minority groups – particularly African Americans and Latinos – are underrepresented in institutions that provide the most reliable means of increasing social mobility in our society. Regardless of one's beliefs about the use of racial preferences, most people agree that increasing minority access to college is a good thing. We know that we want to broaden access. We know much less about how to do that without coming in conflict with other values that we consider to be important.

Higher education policy is just as “political” as welfare, social security, K-12 education, healthcare, and other policy issues; but unlike these other areas, the politics of higher education have been largely neglected by political scientists and public policy scholars. Many of the same issues that are considered central to political science – such as representation, effectiveness, responsiveness, and equity -- are also integral to higher education, and unlike many other issue areas, higher education offers an exceptional “laboratory” for testing and advancing a number of theories in political

science. With such reliable data gathered over decades from hundreds of institutions that vary widely in size, mission, location, governing structures, and political principals, higher education is a ripe area for empirical investigation. This dissertation set out to make two types of contributions -- first, to use higher education policy to advance our theories about political control and public management, and second, to offer substantive, policy-relevant information about the determinants of minority student enrollment.

Implications for Theory

The majority of this work focuses on the relationship between political institutions and public universities, drawing on theories most often referred to as theories on “politics and bureaucracy.” Chapter II uses the Lynn, Heinrich, and Hill (2001) logic of governance as a framework for identifying the complex, interrelated levels of governance that affect the translation of political decisions into policy outcomes. Each of the three empirical chapters focuses on a subset of these relationships, looking to take middle-range theories found in disparate subliteratures within political science and public administration and link them together in an effort to ask bigger questions.

Political Control

Taken together, the results of the three empirical chapters offer considerable insight into the much-debated theories of the extent to which political institutions control the bureaucracy. As much of the literature continues to go back and forth over whose preferences “win out” in determining policy decisions, there is implicit understanding

that these policies are a function of *both* political preferences and bureaucratic values, along with other issues. However, most of the work on political control has not really focused on the numerous factors that could moderate this relationship between political principals and public organizations.

Overall, the three previous chapters have shown that political institutions have a significant effect on policy decisions and outcomes. In particular, we see real influence wielded by the courts and the state legislators, but we also see considerable evidence that shows that this influence is not uniform. Instead, it fluctuates considerably depending on various organizational characteristics. Chapters four and five show how the *Hopwood* decision significantly changed minority enrollment levels for public universities, but these changes differed both in direction and substance depending on the university's level of selectivity. More selective institutions lost a substantial number of minority students while less selective institutions increased in African American and Hispanic enrollments. Similarly, chapter VI also shows the effect of the *Grutter* case, also finding that the university's level of selectivity moderated the effect of the Court's decision on student enrollments.

Additionally, the composition and preferences of the state legislature can be significant determinants of university policy decisions and policy outcomes, but this effect is also moderated by a number of factors that scholars of public administration have often identified as important (despite being ignored by many scholars of political control). Chapter V investigates the effect of minority representation in the state legislature and finds that minority representation can make a difference in student

enrollments, but that difference is sometimes contingent on the structure of the state's chief higher education agency.²³ In terms of the political control literature, this would mean that the ability of principals to affect agency outcomes would depend, in part, on the structure of this principal-agent relationship. More centralized bureaucracies could increase the principal's ability to ensure that their preferences are communicated more effectively and efficiently to the organizations they are trying to impact, instead of political preferences being diffused through a loose, fragmented system.

Although adding structure to the principal-agent model increases our ability to explain when we are more likely to see control from political principals, this addition still neglects to incorporate bureaucratic values. Chapter VI explores the struggle between political preferences and bureaucratic values by comparing Texas A&M University and the University of Texas and their responses to the *Grutter* decision. The majority opinion in the *Grutter* decision advocated the use of a limited form of racial preference in admissions, a policy position that was also adamantly supported by minority legislators in the Texas state legislature. Both Texas A&M University and the University of Texas were equally subject to both of these pressures, yet the institutions responded differently, with the University of Texas pursuing some form of racial preferences and Texas A&M University choosing not to incorporate racial preference into admissions. This difference in policy can be attributed to variance in bureaucratic values, as these two universities serve primary constituencies that, on average, hold very different views on affirmative action.

²³ These relationships are somewhat different for African Americans and Hispanics.

This is where we see a real test of political control versus bureaucratic values. Political principals advocate a particular means (affirmative action) to achieve a particular end (increasing minority enrollments). Because the values of the University of Texas aligned fairly well with those political principals, the University of Texas pursued the means *and* the ends advocated by the Court and state legislators. If one were to look at this outcome without considering UT's values, it would look like a case of political control. However, we cannot disentangle the values of the political principals and the values of the organizations because they covary so closely.

Texas A&M University offered a more rigorous test of political control, as there was considerable disagreement between political principals and the university. In the end, we see that Texas A&M chose not incorporate racial preferences, making policy decisions based on their own values. However, the Texas A&M's decision not to follow the Court and the minority legislators' direction on the "means" (affirmative action) necessitated a greater commitment to pursuing the "ends" (increasing minority enrollments). Here, we see a situation where the "political control vs. bureaucratic values" debate misses the mark. Instead of these policies being decided with respect to one or the other, we see that the influence of political principals on policy outcomes is *moderated* by the values of the organization.

This shifts our view of the relationships away from the traditional political control/bureaucratic values theories, depicted in figure 19, to a more complex relationship that incorporates both models, as depicted in figure 20:

Figure 19: Political Control versus Bureaucratic Values

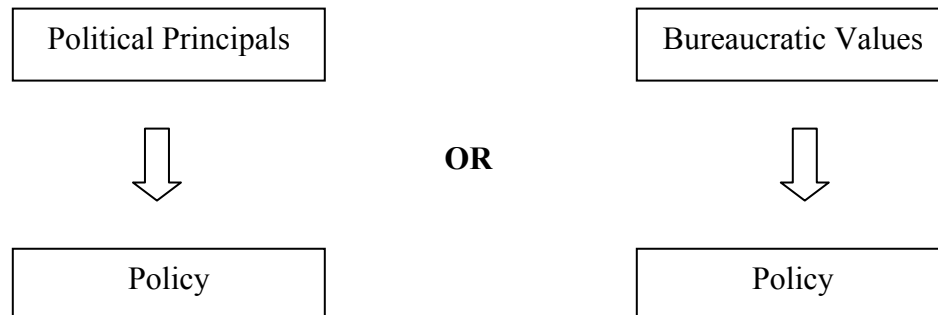
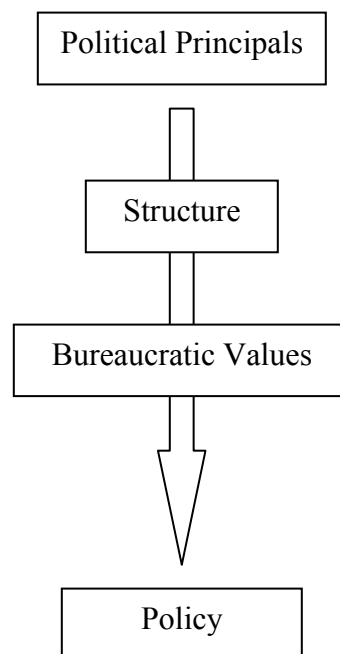


Figure 20: Political Control via Bureaucratic Values



Clearly, the second graph looks much like part of the Lynn, Heinrich, and Hill (2001) model, and it obviously includes many parallels. However, whereas the LHH

model offers “levels of governance,” constructed as a way of grouping together complex relationships, this model is a bit more specific in the “groups” and in specifying the causal relationships between these different levels. Using a strict application of the LHH model, we would predict that legislatures would change bureaucratic structures, and that these changes in structures would shift the ways in which public managers operate, and finally, that differences in public management would influence outcomes. Yet, the findings from the previous chapters show these relationships to be more nuanced.

Instead of A have some effect on B, then B on C, and so on, figure 20 shows political principals attempting to influence policy, but not necessarily by changing structures (e.g. when state legislators were pressuring university administrators to make particular policy decisions). This incorporates multiple levels of behavior (either by politicians or bureaucrats) and multiple levels of structures that have been linked to policy outcomes. Including these multiple levels also allows us to integrate the two leading theories of “political control,” increasing the explanatory power of these theories. With these changes, the causal relationships would specify that political influence does not necessarily have a direct impact on bureaucratic values, which then affect policy, but instead, these preferences of political principals are *filtered* through the bureaucracy and affected by the values of the organization and its employees.

We see this relationship in three ways in the previous chapters. First, in chapter IV, *Hopwood* and Proposition 209 did not have the direct effect on outcomes, but instead was moderated by the structure and values of the individual universities (captured by the university’s level of selectivity). Then in chapter V, we see how the effect of

increased minority representation is contingent, in part, on the state's bureaucratic structure. Finally, the previous chapter explores the filtering effect of bureaucratic values by comparing the two Texas institutions in their response to both the *Grutter* decision and the pressures from the state's minority legislators.

Incorporating these findings results in the relationships specified by figure 20, where the ability of political institutions to affect policy outcomes would depend on the ability of these preferences to be effectively communicated down through the organization (either inhibited or enhanced by certain structures) and on the extent to which the values of the organization coincide with the values of the political principals. This would mean that if there are certain structures and values that disadvantage political actors, those political actors will be forced to "push" harder or find new avenues to affect policy. This may be why we see occasional reorganization of agencies (changing structures) and shifts of responsibilities from one agency to another (finding those institutions with values that are considered to be more in line with those of the principals). Of course, the empirical tests offered here include only a few different measures of political preferences/activity, structures, bureaucratic values, and outcomes, and more tests would need to be conducted to determine the extent to which these relationships hold across agencies, less salient policy outcomes, and different levels of government.

Public Management

These findings also have implications for the study of public management. As a few scholars have mentioned, research in public administration too often neglect how political institutions affect the decisions made by public managers and how those decisions can influence outcomes. Decisions made by public managers are too often treated as the independent variable, even though we know these decisions are not exogenous. More work on the contextual nature of public management is needed to better understand how public managers make decisions, particularly while weighing the competing interests from above (political mandates / pressures) and within the organization.

Scholars of public management have somewhat of an advantage over political scientists in studying the relationship between political institutions and public organizations. Public administration, as a discipline, has amassed considerable knowledge about the complexity involved in the translation of political decisions into policy outcomes (the implementation process), much of which has been discussed in the previous chapters. As a field, we know how the organization's reputation can influence the relationship between politicians and bureaucrats, that public agencies are integrally connected (or networked) in a way that requires us to look at these relationships broadly (like the redistributive effect of *Hopwood* discussed in chapter IV), and how the conflicting values of various stakeholders can shape decisionmaking. These issues and many more will likely be the avenues by which scholars are able to advance our

understanding of how political institutions in a democratic society work with public organizations to deliver goods and services to the citizenry.

Implications for Policymakers

Although a study of higher education is attractive because of the above-mentioned opportunities for theoretical development, the impetus for this project was a substantive one. The overwhelming majority of policymakers, university administrators, and the public believe that we need to increase minority access to higher education. Despite this near-consensus of goals, there is little consensus about *how* to make this happen. Part of this conflict is due to differences in ideology, particularly with respect to affirmative action, but a considerable amount of conflict can be attributed to the fact that most states and universities are designing “diversity policies” based on little to no policy-relevant information. States know very little about how they can craft systems and policies that will effectively open doors to minority students, and university administrators know very little about the environment in which they operate, which means that they lack information on what they can and cannot control, and they know even less about “what works.”

As well-intentioned policymakers and administrators spend time and money crafting policies to increase minority enrollments, few scholars are examining the effectiveness and efficiency of these decisions and how the impact of these policies will be determined, in part, by their environment. Although this project does not even begin

to address the many unanswered questions about how to increase minority student enrollments, some conclusions can be drawn.

University-Level Factors

The most important finding for university administrators is likely to be the importance of selectivity and reputation. Unfortunately, most of the current scholarly work that deals with how to best attract minority students is focused on Ivy League schools and flagship institutions.²⁴ The majority of universities are left out of these analyses, resulting in a situation where Northeastern State University is trying to attract minority students using the Harvard model. Obviously, this raises questions about generalizability of this information. Unlike the very top institutions, most state universities are inextricably linked, and any significant changes in funding, policy, or enrollments at one institution will likely affect the other institutions. If over time, the post-*Grutter* gains by flagship institutions come at the expense of smaller state universities, administrators of these institutions should be aware of why their enrollments may be decreasing or stalling.

Additionally, administrators need as much information as possible about the ways in which they may be constrained by their political and economic environments. We know very little about the extent to which public universities have any control over their minority enrollments. Although we see some shifts in enrollments that can be attributed to the efforts at Texas A&M University and the University of Texas, chapter V

²⁴ Including this project, to some extent.

shows the importance of factors that are obviously outside of administrators' hands, and we know that there are a number of factors in addition to those outlined in this project. That said, it is important not to downplay the progress made by some institutions over last few years. The success of some schools demonstrates that we have the ability to make some gains in increasing access and equity, like the modest post-*Grutter* gains at Texas A&M and the University of Texas. We just need more information about where to focus our time and efforts, what the state can do, what individual institutions can do, and how the system can make real gains.

State-Level Factors

Most importantly, we can easily see that the university's environment *does* matter. Minority enrollments are affected by much more than admissions policies, and these other factors must be incorporated in policymaking. Minority legislators can make a difference in opening access, but their effectiveness will hinge on the mechanisms by which the legislatures can direct universities, namely, through the state's higher education agency and through the personal relationships that they can build with university administrators (as evidenced by the Texas case study). Just as important, a state's political leaders (as a whole) must evaluate the unintended consequences of the decisions that are made for the universities. If a state chooses to reward universities for increasing minority enrollments, it would be important to know if any changes in the constitutionality of affirmative action would likely result in a redistribution of students in the state. After all, if the goal is to add students to the system, it would be somewhat

unfair to reward a university for increasing its minority enrollments, if these students were mostly “poached” from other state institutions.

In the same vein, state leaders would be wise to investigate what universities are doing that seems to be working. In the state of Texas, both flagship institutions reported that their most effective strategies involved going into minority communities and speaking to prospective students and their families. Unfortunately, this strategy is incredibly costly, and therefore unlikely to be pursued by resource-poor institutions. States may be interested in investing money in other universities who are looking to pursue this strategy, but unable to find the resources to support these efforts.

Finally, and most importantly, as a number of states are beginning to talk about crafting accountability systems for public universities, it is imperative that these policymakers understand the differences that exist among institutions of higher education. Some states, such as California, group institutions by function (research intensive, teaching intensive, community college) and offer different types of support to those different types of institutions. Other states, such as Texas, have a much less centralized system and do not make as much of an effort to match types of resources to the unique needs of institutions. Any accountability system that ties funding to quantifiable outcome indicators, such as graduation rates and retention rates, needs to take into account all of the varying needs and strengths of individual universities.

We need a diversity of institutions; some whose primary focus is to provide a quality and affordable education to students in a certain region, and some whose focus is to compete nationally for research and development funds while educating the best

students in the state. We need institutions that serve different clientele, including the students who come from economically disadvantaged backgrounds. Most importantly, there has to be some realization that a 70% retention rate at the state's flagship institution, that serves the best students and supports them with high levels of financial aid, is fundamentally different from a 70% retention at a state regional university that serves students with weaker educational background, lower socioeconomic status, and who are likely to have more obstacles in their path (such as family, working fulltime, or health issues). We know that minority students are statistically more likely to be in the latter group, as they face more issues that work against educational achievement. Any system that inequitably disadvantages institutions that serve students who might be "harder to educate" will be a system that hardwires racial biases that will compound racial inequity for years to come.

In the end, there is some optimism about our opportunities for progress. However, this optimism must be balanced with a realistic understanding of the complexities that lie at the core of this issue. There are no easy answers, quick fixes, or "one size fits all" strategies. As states continue to cut funding for higher education and increase demands for accountability, these tensions will only put more strain on the system. This strain, coupled with the increasing minority population (and broader dispersion of minority populations among the states), will force the higher education community to continually revisit these questions that have fueled the debate for decades.

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VITA

Name: Alisa Hicklin

Address: Department of Political Science, 4348 TAMUS, College Station, TX
77843-4348

Email Address: ahicklin@politics.tamu.edu

Education: B.S., Political Science, Lamar University, 2002