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**CALIFORNIA'S AFFIRMATIVE ACTION FIGHT:
Power Politics and the University of California**

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ABSTRACT

This essay discusses the contentious events leading to the decision by the University of California's Board of Regents to end affirmative action in admissions, hiring and contracting at the university in July 1995. This controversial decision provided momentum for California's passage of Proposition 209 the following year ending "racial preferences" for all of the state's public agencies. In virtually any other state, the debate over university admissions would have bled beyond the confines of a university's governing board. The board would have deferred to lawmakers and an even more complicated public discourse. The University of California's unusual status as a "public trust" under the state constitution, however, meant that authority over admissions was the sole responsibility of the board. This provided a unique forum to debate affirmative action for key actors, including Regent Ward Connerly and Governor Pete Wilson, to persuade fellow regents to focus and decide on a hotly debated social issue related to the dispersal of a highly sought public good – access to a selective public university. Two themes are explored. The first focuses on the debate within the university community and the vulnerability of existing affirmative action programs and policies - including a lack of unanimity among the faculty regarding the use of racial preferences. The second relates to the political tactics employed by Connerly and the saliency of his arguments, which were addressed to a larger public, and not to the academic community. Connerly attacked not only the idea of affirmative action but also the coherency of the university's existing admissions programs, the effectiveness of using race in admissions decisions, and the credibility of the university's administrative leaders who defended affirmative action.



Keywords: University of California, Affirmative Action, Access and Equity

The picture that emerged was that of an Institution which had *de facto* racial quotas, which refuses to acknowledge the true extent to which race is used in its admissions activities, and which is determined to maintain the status quo. I came to the conclusion that we are breaking the law.

University of California Regent Ward Connerly, July 1995

In the early morning of Thursday in July, 1995, a moist and gray sky hung over the city of San Francisco. It was a typical summer day in the Bay Area; warm air from California's Central Valley met a cold ocean, creating a damp, cloudy, and stubborn marine layer. In the aftermath of too many unmanageable student protests, the board of regents had ceased holding most of its regular monthly meetings on the main campuses of the University of California.

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Instead, the board had elected several years earlier to use the confines of an auditorium hidden within a concrete and brick building at Laurel Heights—a satellite campus of the university’s medical campus in San Francisco. Laurel Heights offered significant advantages for crowd control. UCSF also enrolls only graduate students who generally lack interest in the time-consuming and usually ineffective pursuit of protesting university policies. Better yet, the Laurel Heights facility is a research center located on a hill a mile or more away from the main UCSF campus. For this meeting, it was no accident that the regents and the president of the university chose Laurel Heights over a campus like Berkeley.

Nevertheless, on this occasion a large group of some 1,000 students and supporters of affirmative action gathered outside the entrance to the auditorium, stretching into the parking lot and down an adjacent street. The cool air met the high emotions of the protestors. Signs reading “Access to Higher Education R.I.P.,” and “No Retreat: Speak Up for Affirmative Action” poked above the fray. Among the crowd were members of a newly formed coalition with the semi-threatening title, “In Defense of Affirmative Action by Any Means Necessary.”¹ Members of Jesse Jackson’s Rainbow Coalition were there, including Jackson himself. Some 500 police officers, including a SWAT team, bunched in various locations along the street and at entrances to the monolithic building. Television trucks lined the roadsides and scores of reporters prepared to chronicle a national news event. A gavel thumped the meeting to order at eight in the morning, beginning what would become a marathon twelve-hour meeting.

Only two resolutions were on the regents’ agenda. If passed, they would effectively end affirmative action—specifically the use of racial preferences in university admissions, contracting, and hiring. Augmented by the large crowd outside, nearly 300 people filled the auditorium to capacity—a colorful mix of protestors, worried university administrators, and nearly every major California politician. In the glare of the national press, the regents chose to be a bellwether on an issue that divides Americans to this day.

Regent Connerly, an African-American businessman appointed less than two years earlier to the university’s governing board by Republican Governor Pete Wilson, offered the two resolutions. One proposed that the university no longer use race as a factor in admissions, the other would end the use of race in the hiring of new faculty or in issuing university contracts for services. Ending racial preferences at UC was Connerly and the governor’s *cause célèbre* – a first step toward a statewide campaign to end affirmative action in California government and eventually in other states, including Washington, Florida, and later Michigan. Connerly was not only seeking the venue of the university’s governing board to debate affirmative action policies, he was using it as a springboard to mount a state constitutional amendment.

With Wilson’s support, Connerly was leading the campaign for a so-called California Civil Rights Initiative (CCRI), what would become Proposition 209. If passed, Proposition 209 would ban affirmative action—essentially, the proactive use of race as a factor in decision making and the allocation of resources—in all public agencies. The campaign had thus far had problems. It had not garnered support from the state or the national Republican Party and it needed a substantial infusion of financial support to gather the threshold of signatures required by law to place it on a ballot.

In virtually any other state, the debate over university admissions would have bled beyond the confines of the governing board. The board would have deferred to lawmakers and an even more complicated public discourse. The University of California’s unusual status as a “public trust” under the state constitution, however, meant that authority over admissions was the sole responsibility of the board. In 1879 the state constitution assigned the university board of regents broad and autonomous powers.² While not invulnerable to political pressure, the board controlled the admissions path, subject only to a specific change in the state constitution by the California electorate. Both Connerly and the governor had an opportunity to have their debate within the confines of an increasingly conservative lay board that included both of them as voting members.

This essay tells the story of the contentious events leading to the regents’ ultimate decision at that meeting in July 1995. Two themes are offered. The first focuses on the debate within the university community and the vulnerability of existing affirmative action programs and policies—including a lack of unanimity among the faculty regarding the use of racial preferences. The second relates to the political tactics employed by Connerly and the saliency of his arguments, which were addressed to a larger public, and not to the academic community. Connerly attacked not only the idea of affirmative action but also the coherency of the university’s existing admissions programs, the effectiveness of using race in admissions decisions, and the credibility of the university’s administrative leaders who defended affirmative action.

¹ *By any means necessary* is a translation of a phrase used by French intellectual Jean-Paul Sartre in his play *Dirty Hands*. It entered the popular civil rights culture through a speech given by Malcolm X at the Organization of Afro-American Unity founding rally on June 28, 1964.

² *California Constitution of 1879*, Article IX, section 9.

1. THE POLITICAL VULNERABILITY OF AFFIRMATIVE ACTION

What was new about the deliberations over admissions in the 1990s? In the past, numerous groups had attempted to influence University of California admissions policies. At one time or another, legislators, governors, school administrators, student activists, and distinct communities sought changes. Individual grievances had also been filed over the years, culminating in the famous *Bakke* case.

What was different was the willingness of a single regent to mount a concerted attack on the university's affirmative action programs. The effect of the attack was heightened by a number of weaknesses in the way that affirmative action had been pursued over approximately three decades at the University of California.

The cumulative process of incorporating racial preferences into university admissions practices and faculty hiring did not create a coherent policy regime.³ The policy grew through multiple internal actions by universities and colleges, conditioned by their own interpretation of court rulings and by the highly decentralized nature of the modern university. The regents sitting on the board in 1994 had little sense of ownership of the university's baffling array of affirmative action policies and programs. Campuses within the system had seemingly created their own array of affirmative action programs and their own set of admissions practices. Arguably, no single person in the University of California had a solid understanding of the variety of affirmative action programs that had sprung up over the years or the discretionary use of racial preferences in campus decision-making.

Like the regents, many if not most faculty had no sense of ownership regarding the admission process by the 1990s, let alone the growing number of administratively operated affirmative action programs. Affirmative action proponents in the university often noted the need to get faculty involved in developing and implementing programs. A 1978 "Affirmative Action Plan" lamented the fact that, "The Faculty of the university [have] not been systematically involved in the Student Affirmative Action effort." While each campus division of the faculty's academic senate had a committee on affirmative action, the committee was one among an average of 20 or more senate committees. All were arguably marginal in their influence on affirmative action efforts. They had no direct authority over administratively run programs—only advisory powers. For administrators and staff in the midst of what appeared an urgent need to increase minority enrollment, with the exception of a small core of proponents, faculty seemed only remotely aware and perhaps simply ignorant of this need.⁴

At one time, the senate controlled and regulated all aspects of university admissions; now it stayed within the confines of setting course requirements and developing general university eligibility indexes. For these reasons, the academic senate proved relatively weak in its subsequent efforts to defend affirmative action. The very structure of the senate made it difficult to mount a convincing defense.

The senate was and is not a purely representative body. A few positions, such as the chair of campus divisions of the senate, are sometimes elected. However, most senate committees, such as admissions, are appointed by a committee of a campus division or, at the system-wide level, by the academic council—the executive body of the university's system-wide senate. The senate is more widely understood to be a deliberative body headed, for example, not by a president but by a "chairperson." As such, the senate faces difficulties when one or more committees claim they represent the views of the faculty on a controversial issue.

In the wake of Connerly's attacks and proposed resolutions, the senate leadership at Berkeley and throughout the nine-campus system attempted to voice general support for affirmative action and for the efforts of the university president. Yet within the ranks of the faculty, most were hard-pressed to defend specific programs and admissions practices operated in large part by administrative staff.

The complexity of faculty sentiment at the University of California, and the ability or inability of the senate to represent their constituents on a controversial issue, was the point of a survey conducted by the Roper Center for Public Opinion Research in January 1995. Opponents of affirmative action, including Martin Trow, a professor of public policy and a renowned scholar of higher education, collaborated with the National Association of Scholars (NAS) to sponsor the survey, well aware that it would likely show a diversity of faculty opinion. It was Trow's idea to do a survey. A sub-group of activist pro-affirmative action faculty, he predicted, would create the semblance of a united faculty front against Connerly's ban. Trow had once served as the chair of

³ David A. Hollinger, "Group Preferences, Cultural Diversity, and Social Democracy: Notes Toward a Theory of Affirmative Action," *Representations* Summer 1995, No. 55., pp. 31-40.

⁴ Office of Outreach Services, University of California Systemwide Administration, "University of California Student Affirmative Action Plan," May 1978, p. 22.

Berkeley's division of the academic senate and had subsequently served as chair of the academic council; he therefore had held a non-voting position on the board of regents as the faculty representative. Trow was no radical conservative, but rather a sophisticated observer of higher education. In the case of affirmative action, he was an adamant opponent. The survey would likely erode the ability of the senate's leadership to effectively voice an opinion on affirmative action.

NAS emerged in the 1980s as an alternative association of faculty and academic researchers defined largely by their opposition to "political correctness." The association established a journal as a venue for discussing the perceived problems of an overly liberal academy. In the early 1990s, the NAS established a California chapter, providing a locus for Thomas E. Wood, an independent scholar turned affirmative action activist, and Glynn Custred, a faculty member at the Hayward campus of the California State University. Wood was motivated by his sense that affirmative action was a cause for his inability to secure a tenured faculty position, and Custred by his concern that affirmative action faculty hires negatively affected the culture and scholarship in his own department of anthropology at Hayward. Wood and Custred mused over the idea of a state constitutional ban on racial preferences in the early 1990s, eventually leading to them launch the CCRI campaign. Connerly would later join their efforts and become the chairman of the campaign.

The Roper survey was sent to a sample group of 1,000 members of the senate less than six months before the regents would consider Connerly's resolution to ban affirmative action. The sample group was asked whether they favored racial and gender preferences in admissions and hiring, or whether they favored promoting "equal opportunities in these areas without regard to an individuals' race, sex, or ethnicity." Some 31% said they did favor preferences, and 48% said they did not. Asked if they favored "using race, religion, sex, color, ethnicity, or national origin as a criterion for admission to the University of California," 52% said they did.

Mixing in the issue of religion expanded the question well beyond the affirmative action goals of the university. Supporters of affirmative action charged that the questions were loaded. Nevertheless, the results did indicate a lack of unanimity. A press release by the California Association of Scholars announced that the Roper survey "found that a wide plurality of faculty at the University of California favors a policy of providing equal opportunity without resorting to racial and gender preferences."⁵

In reaction to Connerly's threat to propose a resolution to the regents, the leadership of the academic senate, including the academic council and each of the campus divisions of the senate, passed resolutions noting their commitment to affirmative action. They claimed to be the voice of the faculty. Anticipating these and other resolutions by the senate, Trow and the NAS took aim at the legitimacy of their proclamations. "Let me begin by saying that on the issue of affirmative action," observed Trow before the regents in the wake of the Roper Survey, "no one can speak for the faculty of this University, not myself, and not even, or perhaps especially not, those who claim to do so with the greatest passion."⁶ In light of the survey, Trow essentially argued that the regents should ignore the senate resolutions.

Another potentially huge problem, and another weakness, lurked in defending the university's admissions practices. The university arguably did not conform to *Bakke*—a charge leveled by Connerly repeatedly. "It is indisputable that we are applying far different standards to 'underrepresented' applicants being considered under the 'Supplemental Criteria' than we are applying to those who are not underrepresented (White and Asians, largely) applicants," wrote Connerly to a fellow regent in 1993. In the early part of his campaign, he pointed directly at Berkeley's admissions program. "Look at the Karabel Matrix and you can see what I mean." Berkeley's program, he noted, gave preference to "nonresidents who are wealthy and are underrepresented," and purposely handicapped "Asian and White students who come from middle-class families." Although different in content, similar policies at three other campuses made race a primary factor in admissions, a "clear violation of *Bakke*, because Asian and White students have a much higher standard to meet than African Americans, Hispanics, and American Indians."⁷

Connerly took the unusual role of a regent who not only asked tough questions of the university's president and administration, he became an aggressive personal investigator of university affirmative action programs, drawing his own conclusions and often questioning the validity of information provided by the university's Office of the President. He became the author and proponent of a major change in admissions policy destined for board approval. Changes in admissions policy were traditionally instigated by the academic senate and increasingly by the Office of the President and campus administrations, often with little if any review by

⁵ California Association of Scholars, Press Release, January 15, 1996.

⁶ Martin Trow, Presentation before the Board of Regents of the University of California, January 18, 1996.

⁷ Ward Connerly to Chairman Howard Leach, December 21, 1993, Board of Regents of the University of California.

the regents. Policy changes that had been presented to the regents for action had tended to be carefully managed by the university-wide administration. But none of this seemed to matter anymore.⁸

2. CONNERLY AND PELTASON

In forming his strategy, Connerly sensed a latent desire by the board to become more engaged in a major policy issue confronting the university. In part, this desire was a reaction by some regents to being over-managed by university presidents in the past. The previous president, David Pierpont Gardner, proved an extremely effective manager of the university and of the board. His approach was to focus the regents on broad policy issues, and, where possible, steer the board away from policy implementation questions, including admissions policies.

Appointed as a regent in 1993, Ward Connerly was relatively disdainful of the regents' previous deference to the president. Connerly desired to "reform the UC Board of Regents" to act more independently of the president and his staff, and essentially to view the university's administration as merely one among many "constituencies." Past deference on issues "allows the public to believe that the Regents fell asleep at the wheel during the Gardner era," continued Connerly in a December 1993 memo to the board.⁹

The new president of the University of California, Jack Peltason was appointed, like Connerly, in 1993 and was a different breed than Gardner. Perhaps no president could have restrained Connerly's agenda but Peltason appeared particularly unprepared to mount a counter-strategy. In 1988, the regents had passed a statement of general support of affirmative action. Now they considered a proposal that essentially reversed this commitment. While Peltason's personal management style in most circumstances served him well, his ability to persuade was undoubtedly compromised by his interim status as president. Where David Gardner may have offered a stiff defense of the prerogatives of the president's office or recruited support from a majority of regents to isolate a rogue regent, Peltason sought compromise and dialogue.

Peltason had previously served as a faculty member and founding vice chancellor at the university's campus at Irvine. He then had served as the president of the University of Illinois before taking the presidency at the American Council on Education in Washington D.C. from 1977 to 1984, then returning to the University of California with his appointment as chancellor of the Irvine campus. Peltason was a highly regarded political scientist and co-author of a widely used college textbook. When Gardner announced his resignation in the wake of his wife's illness and death from cancer, a controversy erupted regarding his retirement package. Peltason was asked to quickly step in, reluctantly taking the position of president of the university relatively late in his career.

Adding to the difficulties of that era and reducing the attractiveness of the university presidency, California had fallen into a serious economic decline. The university faced state budget cuts of approximately 25% over three years between 1992 and 1995. Peltason agreed to take the position only on a short-term basis and to help guide the university through its fiscal problems. In the midst of Connerly's campaign against affirmative action, the university launched a new search for Peltason's replacement. Midway through the affirmative action debate, one possible candidate, university vice president Walter Massey—a prominent African-American physicist and former director of the National Science Foundation—announced that he was leaving the university to take the position of president of Morehouse College in Georgia.

Peltason asked Massey to take a lead role in presenting the case for affirmative action before the board. The difficulties of that task, however, were considerable. As a new-comer to the culture of the university and its board, Massey perhaps did not fully gauge the complexities of his task. The nature of Connerly's attack wore on him. In turn, the obsession with the affirmative action debate appeared to lessen his interest in staying at the university; on the other hand, Massey's support of such programs may have prevented him from succeeding Peltason. He decided to move on.

The transitory nature of Peltason's presidency and Massey's plans to leave the university weakened Peltason's influence with the board. The president and the campus chancellors were not fully prepared for the gauntlet that followed. Regent Connerly initiated and guided the plan of attack; but it was the governor who would close the deal by pressuring select regents to back Connerly and vote to end racial preferences.

⁸ See John Aubrey Douglass, "Shared Governance at the University of California," CSHE Research and Occasional Papers, CSHE.1.98 (March 1998)

⁹ Connerly to Chairman Leach, December 21, 1993.

3. QUESTIONS, CREDIBILITY, AND A PROPOSAL

In a memo to a fellow regent written in June 1995, Connerly pointed to a specific event as the seed to his campaign. He claimed it grew after he received a 1994 letter of complaint about a student who failed to get into medical school, a story that was similar to that of Allan Bakke. It sparked, he said, a moral crusade. But clearly Connerly's viewpoint was formed well before this inspiring moment. Governor Wilson had specifically appointed regents who conformed to or supported his political viewpoint—arguably more so than previous governors.

Most appointees contributed to his various election campaigns. At one time a moderate on the issue of affirmative action, Wilson became a widely known opponent during his governorship, carefully crafting his position for his run at the US presidency. Connerly, a black businessman long associated with the Republican Party, had an engaging personality and a strong sense of loyalty. Could there have been a better man to lead a campaign against such a divisive issue in American politics focused on race?

Even if Connerly were not doing the governor's bidding and their mutual interests were simply synergistic, much of the academic community and liberal supporters of affirmative action assumed a conspiracy. This in itself proved a source of resentment and some confusion within the university community. How should the university react to Connerly? Was he a regent concerned about affirmative action or a political operative?

In August 1994, regents Clair W. Burgener and Ward Connerly reviewed the complaints of Jerry and Ellen Cook after receiving a letter from them regarding their son—the letter that Connerly claimed sparked it all. Cook was a professor at the University of California's campus at San Diego. Burgener was a former Republican congressman from Southern California. The Cooks complained of unfair use of race-based decision-making in the university's medical schools. Despite achieving significantly higher test scores than a number of many minority students who gained admission, their son was denied admission to the university's medical school at San Diego. The Cooks offered statistical information to back their protest. In his memo to Burgener, Connerly recalled how the Cooks plea proved a catalyst:

As you know, I consented to meet with them, as did many other members of the Board . . . After our meeting, I very carefully weighed the material which they left with me and called the Office of the President to get information which would either validate or invalidate their findings, because on the face of their presentation it appeared to me that the University was guilty of violating the *Bakke* decision . . . you and I requested that the matter be reviewed and that a report be presented to the Regents . . .”¹⁰

In November 1994, President Peltason gave the regents a report on UC medical school admissions. At a meeting of the board, the president and other university administrators, including Conrelius Hopper, a vice president in charge of overseeing the university's various medical programs, stated that underrepresented students simply received a “bump” up in the admission process. A number of regents questioned the use of affirmative action in the university's medical schools, including Dean Watkins and Leo J. Kolligian. Watkins was an appointee of Governor Ronald Reagan and was an electrical engineer and professor at Stanford. Kolligian was a Boalt Hall graduate, a lawyer from Fresno, an appointee of Governor George Deukmajian in 1985, and part of a significant, generally conservative, group from California's Armenian community.

Watkins and Kolligian asked if the university was practicing reverse discrimination. Connerly stated there was a disjuncture between the complaint of the Cooks and what the Office of the President and campus administrators were telling the board. “You didn't address the questions raised by the Cook Report,” noted Connerly. “What we've just heard doesn't sound right and doesn't sound fair,” he concluded. University administrators seemed “a little tetchd,” Connerly later wrote in a personal account, *Creating Equality*. The meeting ended with no clear resolution, just questions. University administrators, Connerly thought, seemed “smug” and confident that they had extinguished “the Cook's little brush fire.” Connerly, however, thought the board had “crossed a Rubicon even if we didn't know it at the time. This November 1994 meeting of the regents had let the genie of race preferences out of the bottle previously kept hidden away in the UC chamber of horrors.”¹¹

If university administrators thought they had contained the complaints of the Cooks and the concerns of Connerly, they were very wrong. As a regent, Connerly could place virtually any item on the agenda of future meetings of the board. Less than two months later, in early January 1995, Connerly informed President Peltason that he would request a general study of the university's

¹⁰ Ward Connerly to Clair W. Burgener, Chair of the University of California Board of Regents, June 30, 1995.

¹¹ Ward Connerly, *Creating Equality: My Fight Against Race Preferences* (San Francisco: Encounter Books, 2000): 126-128.

affirmative action programs. There was more: He planned to force a vote on the issue by the regents in June. This warning marked the official beginning of Connerly's campaign. He would force a period of debate on existing affirmative action programs before submitting his own proposal for ending the use of racial and ethnic criteria in decisions.

Almost simultaneously, Connerly emerged as the head of the CCRI campaign. Governor Wilson had recently won reelection against Kathleen Brown, daughter of famed "pragmatic liberal" and former California governor Pat Brown (1959-1967) and sister to past governor Jerry Brown (1975-1982). Connerly, Kolligian, and others on the board of regents were active in contributing to and working for Wilson's reelection. Newspapers now talked of Wilson's presidential desires and his likely run in the Republican primary. For Wilson, the issue of affirmative action and reverse discrimination offered a route to national headlines. His stance on this issue and on anti-immigrant initiatives was credited, in part, for his reelection in California.

The political climate was ripe for a calculated political attack on affirmative action. There were a number of court cases winding their way through the legal system. Anti-affirmative action strategists sought select cases to test and hoped eventually to overturn *Bakke*. In June 1995, in *Aderand vs Pena*, the Supreme Court provided an apparent building block for further legal efforts to limit or end group preferences. The court elaborated on the idea of "strict scrutiny," essentially requiring proof of historical patterns of discrimination by an employer or, by inference, a university, before they could legally develop affirmative action programs or make race-based decisions. Further, the court ruled that these programs needed to be narrowly tailored.¹²

The *Aderand* case seemed to indicate a pattern of future rulings largely hostile to affirmative action. It also energized the CCRI campaign in California and Connerly's desire to tackle California first before moving to initiatives in other states. The same month as the Supreme Court's *Aderand* decision, Governor Wilson issued an executive order to "End Preferential Treatment and to Promote Individual Opportunity Based on Merit," essentially laying a precedent for ending affirmative action in personnel cases in public agencies. Its legal application, however, was not clear. In any case, it was not applicable to the University of California. The university's status as a *public trust* in the state constitution protected it from such executive orders. Wilson and his staff knew as much. His edict was an initial salvo on affirmative action—an announcement of his next battle following his successful campaign to pass Proposition 187, an initiative to end the extension of social services to illegal immigrants in California.

For Connerly and perhaps the governor, a period of six months of deliberations by the board beginning in January and leading to a regental action seemed a reasonable and defensible path. The debate would give momentum to Connerly and Wilson's drive to place an initiative before California voters to end racial and ethnic preferences in public institutions. It also was timely for Wilson's presidential campaign.

At their January 19, 1995, meeting, the regents supported Connerly's request to have the board make a formal decision on racial preferences in admissions and other university activities, placing the burden on the president and the academic senate to outline possible policy options. Yet the Office of the President did not fully comprehend the building desire of the regents for a serious review. The Office of the President was largely engaged in a process of describing and defending the myriad affirmative action-related programs in the university—a strategic approach reinforced and encouraged by the council of chancellors, who met with the president regularly. Moreover, at the outset of the debate, a sense prevailed among university-wide and campus administrators that any indication of fault with the universities affirmative action policies would weaken their ability to defend diversity efforts. Anything but a strong defense of the university's existing policies and programs, it was assumed, might also draw significant criticism among students, faculty, legislators, and interest groups who strongly favored affirmative action. The highly charged political environment seemingly left little room for an analytical discussion within the academic community.

Responding to Regent Connerly's request for a review of affirmative action policies and programs, President Peltason stated to the regents that his office was, "preparing an inventory and report on affirmative action programs, not because I intend to make recommendations for change—in my judgment, no changes are needed—but because we want to be prepared to answer any questions about them that may arise as a result of recently proposed legislation and constitutional amendments." He continued: "Over the past 30 years, we have established a series of programs designed to ensure that the University of California includes individuals from all backgrounds, both as an educational objective and as a matter of equity. We have done this partly in response to federal executive orders, congressional action, and legislative action by the State of California, and partly at the urging of the Board of Regents."¹³

¹² *Aderand v. Pena*, June 12, 1995.

¹³ Minutes, University of California Board of Regents, January 19, 1995.

Peltason also told the regents that he would “accelerate” the completion of the report so that it would be available for the June, 1995 meeting of the board—the meeting at which Regent Connerly noted his intention to submit a proposal for a possible change in the university’s affirmative action policy. The president concluded that the university’s policies derived from a “broad national consensus,” and indicated that it would be premature for the regents to act: “If that consensus changes, so will federal and state policy and law. The University, as it is obligated to do, will respond at the appropriate time.”¹⁴

Subsequent interaction, marked by heated and often acrimonious debate, revealed significant division between regents such as Connerly and university administrators concerning the proper scope and merits of race-based decision-making. Connerly would call the various reports and testimony of university administrators a “Phony War,” meant as an impenetrable wall of “bureaucratess” with “endless statistical tables.”¹⁵ Now more fully engaged in the merits of affirmative action, a number of regents besides Connerly asked if the university’s affirmative- action programs had not only gone too far, possibly violating the *Bakke* decision but did not reflect the board’s intended purpose.

Although many members of the board had supported President Gardner’s 1988 resolution affirming the use of race and ethnicity in admissions (the last formal action of the board on the issue), it seemed a distant memory or an action that simply gave license to widespread abuse. As a result, there was no strong sense of ownership of affirmative action programs among the regents. Such ownership existed only within the administration and to a much lesser extent among the faculty and the academic senate.¹⁶

The decentralized nature of affirmative action efforts presented significant difficulties for the president and university-wide administrators. In the initial period of questioning by Connerly, they had difficulty accurately describing the breadth of programs that incorporated race-based and gender-based preferences or those created exclusively for a single ethnic group. Indeed, the true extent of racial preferences within the culture of a vast network of the university was not fully understood by the academic and administrative leadership—a point Connerly argued effectively.

At one point, President Peltason and Provost Massey stated that no campus admitted students solely on the basis of their race. It was simply one factor among many in choosing among UC-eligible students, they insisted, reiterating the mantra of the *Bakke* decision. General counsel at the university made the same unequivocal claim. These statements would prove a significant mistake. On further investigation, Peltason learned that at least two campuses automatically admitted all UC-eligible underrepresented students—including the Irvine campus, where Peltason had been chancellor. Further, both Berkeley and UCLA employed a tiered admission process that heavily favored underrepresented groups.

As information surfaced on the differences in programs and approaches among the campuses, the credibility of the administration fell in the eyes of the regents. Did the president and his staff truly understand the vast array of affirmative action programs within each campus? Did they purposely misrepresent the character of these programs? Connerly seized the opportunity, exposing a university culture that, arguably, was obsessed with the issue of race.

Credibility and trust are key ingredients for an effective relationship between a university governing board and its president. Connerly constantly reminded the board that they had not been told the true extent of racial preferences in admissions and other university decisions—they could not trust the president and his staff or the admonishments of the campus chancellors.¹⁷ The board, argued Connerly, needed to strike out on its own and derive its own conclusions. Not until late in the debate would President Peltason concede that,

some of our programs need to be modified, either because we have concluded that a current policy or practice is inappropriate, or because we are convinced that the policy or practice is no longer necessary for us to meet our objectives . . . most have to do with our undergraduate admission process. This should come as no surprise, since that process must balance a complex set of principles, policies and procedures.¹⁸

At the May 1995, meeting of the board of regents, Provost Massey and the assistant vice president of student academic services, Dennis J. Galligani, provided a package of materials on the university’s affirmative action programs and a number of

¹⁴ *Ibid.*

¹⁵ Connerly, *Creating Equality*, p. 131.

¹⁶ See Douglass, “Setting the Conditions of Admissions,” February 1997.

¹⁷ Statement of President Peltason to the Regents, Minutes, University of California Board of Regents, July 20, 1995.

¹⁸ *Ibid.*

presentations, including a review of admissions at UCLA and Berkeley's Boalt Hall School of Law and a report on "Policies and Procedures Governing Undergraduate Admissions." The regents also received a report on "The Use of Socio-Economic Status in Place of Ethnicity in Undergraduate Admissions." Prompted by the request of several regents for an analysis of the potential impact of ending the use of race-based criteria in undergraduate admissions, the report provided a simulation regarding what a freshman class at UC might look like, and specifically the impact on minority enrollments, if economic factors replaced ethnicity in the admissions process. The simulation was based on data from the Berkeley and San Diego campuses.¹⁹

Opponents of affirmative action often pointed to the possible use of economic criteria as a morally acceptable substitute for race and ethnicity. The university's study attempted to refute this claim, focusing on the highly selective Berkeley campus and the, at that time, moderately selective San Diego campus. Using economic criteria alone, the study projected a decline in Chicano/Latino and African-American enrollment and a simultaneous increase in Asian-American and Euro-American enrollment. One reason was the substantial number of white, low-income students from rural areas of the Central Valley and Northern California. Another reason was that a substantial number of underrepresented minorities applying to UC were not lower-income students; most were from middle and upper-income families.

For Connerly's opponents, the university's study offered proof of the disaster to come if race and ethnicity were removed as factors in admissions. Underrepresented student enrollment would decline—never mind that lower income groups would benefit. There were a number of variables simply not assessed in the Office of the President study. For example, it assumed that the college-going rate of Chicano/Latinos would never change. Yet arguably with the rise of a Chicano/Latino middle class and with possible improvements in the quality of secondary schools and hopeful increases in high school graduation rates, a slight increase in these rates would create a larger flow of UC-eligible students.

For critics of affirmative action programs, the study appeared alarmist in intent, developed by university officials to draw media attention and increase pressure on the regents to avoid a decision. It also added to a perception that affirmative action was simply a special-interest benefit. Preferences were being given to a racial group regardless of their family income or other indicators of privilege and social capital. Why should the university give preferences to upper-income blacks? The study exposed the corrupting influence of racial preferences—essentially giving preferences and privileges to students from upper-income groups over, for example, lower-income Asian Americans often with superior academic records.

California State Senator Tom Campbell, a Republican and former economist at Stanford (and a future dean of Berkeley's Hass School of Business), pointed to the university's analysis as proof of racial bias, using the example of a student from a "lower-income Asian family" who "worked extremely hard," yet is insidiously denied access to Berkeley so as to provide a space for a "child of a professional couple of upper-middle income, no more academically qualified but possessing a different skin color."²⁰

"Affirmative action loses its credibility when benefits are distributed to those who have suffered no disadvantage, to the detriment of those who have caused no harm," noted Connerly in a memo to his fellow regents. Connerly explained that when he "brought this topic up for consideration in January, I concluded that the only way I could have any hope of ever affecting any change would be to increase its public visibility . . . Right or wrong, I felt that I had no way of getting the University to take me seriously other than focusing the public spotlight on the problem."²¹

The net effect of the university's study was arguably a precipitous decline in the working relationship between many members of the board and the Office of the President. The report seemed to simply confirm Connerly's charge of intransigence. The administration's rigid support for existing programs reinforced the very ideological division that President Peltason warned against. Connerly never directly attacked President Peltason or other university officials. Instead he consistently pointed to an internal bureaucratic culture blindly invested in affirmative action and driven by no direct federal or state law. "I have no doubt that President Peltason is operating in good faith," he wrote to the regents via a memo to Regent Burgener; "however, I have grave doubts about the wisdom of leaving this in the hands of the campuses, considering their failure to be forthcoming about their practices until now, and their absolute insistence on trying to preserve the status quo by whatever means possible."²²

¹⁹ Office of the Assistant Vice President, Student Academic Services, Office of the President, University of California, "The Use of Socio-Economic Status in Place of Ethnicity in Undergraduate Admissions: A Report on the Results of an Exploratory Computer Simulation," May 1995.

²⁰ State Senator Tom Campbell, Press Release, July 17, 1995.

²¹ Connerly to Burgener, June 30, 1995.

²² *Ibid.*

Governor Wilson also repeatedly pointed to institutional intransigence as a reason for regental action. The true extent of race-based decision-making and its consequences had not been revealed to the regents by the administration. The regents must not tolerate university policies and practices that “violate fundamental fairness, trampling individual rights to create and give preference to group rights. It has become clear,” he argued, that “despite official claims to the contrary . . . race has played a central role in the admissions practices at many UC campuses.”²³

In a May 23rd letter, Ward Connerly urged the board to gather all the information necessary before coming to a decision. In late June, he argued that that time had come. Connerly informed Peltason and the board of his plan for a formal proposal to end preferences based on “race, religion, sex, color, ethnicity and national origin” in employment by January 1, 1996, and the same for admissions by January 1, 1997. As opposed to the normal path of offering a resolution directly to the board, Connerly chose a July 5th news release to announce the reasons for his opposition to affirmative action and his formal proposal to the board to end race-based decision-making. This announcement came merely two weeks before the regents meeting in which he would ask for a vote. In his news release, addressed to the regents, he again took direct aim at the credibility of the university administration.

The intransigent university administration, Connerly claimed, required the regents to take action: “At the beginning of this evaluation, there were those who said no one is admitted to the University of California who is not eligible.” But that “statement is not true. We were informed that no one was automatically admitted to the University of California solely on the basis of race or ethnic background. We have now confirmed the inaccuracy of that statement. We were told we that race was never a major factor; it was only a ‘bump.’ Again, we have confirmed that on at least four of our campuses such a statement is blatantly false.”²⁴

Connerly’s gauntlet, thrown by the self-proclaimed “Lone Ranger” among the regents, “pursuing what I felt I had to pursue as a matter of conscience and due diligence,” caused confusion within the university’s Office of the President.²⁵ How to react? On one side was a Republican governor and a regent, and on the other was a significant university community in support of affirmative action and a Democratic state legislature still pushing the university to become more diverse.

Beginning in earnest in January 1995, President Peltason’s strategy successively moved through three phases. First was the impetus to circle the wagons, to defend any and all affirmative action programs at the university. Second was to persuade the regents of the complexity of the problem and seek compromise, stating that a ban on racial preferences might risk the university’s access to federal fund, because affirmative action was a requirement of federal law and policies. Connerly would contest this and simply add to his draft resolution a clause stating that the board would take no action that would make the university ineligible for federal funds to mollify the potential concerns of his fellow regents. The third phase was to request that the board defer judgment on the issue of affirmative action in the face of a planned constitutional initiative (Proposition 209), and to allow the academic senate to review and recommend changes if the initiative passed.

In each phase, the president and his advisors thought they had a good chance to garner enough votes among the regents to defeat a proposal by Connerly. Why should the university be engaged in a politically divisive debate that could be settled by the California electorate? Why should the University of California become the first major American university to eliminate race and ethnicity in its admissions process? Peltason posed these questions to the regents at their January 19th meeting, the day after the academic council meeting. “I believe that in our discussions of the University’s programs and policies,” Peltason warned, “we need to be careful not to embroil The Regents, and therefore the University, in a debate that is and should be taking place in the state and national arenas. Affirmative action is a volatile issue that generates strong feelings on every side.” Still he hoped, “we can conduct our dialogue on this subject with the clarity, thoughtfulness, and precision it deserves.”²⁶

4. THE ACADEMIC SENATE RESPONSE

The role of the senate in the deliberations on affirmative action offers a window into the culture of the university and the often cumbersome nature of shared governance in a large and complex organization. Connerly’s initiative exposed the weakness of the faculty’s ownership of admissions and its general aversion to a conflict that, at first, seemed to pit a president and his administrators against a rogue regent.

²³ Minutes, University of California Board of Regents, July 20. 1995.

²⁴ Ward Connerly, News Release, July 5. 1995.

²⁵ Connerly, *Creating Equality*, p. 131.

²⁶ Minutes, University of California Board of Regents, January 19. 1995.

In the fight over affirmative action, the senate was relegated to a minor role. The reasons were multiple: the effective efforts of affirmative action opponents to demonstrate the weakness of any claim of faculty resolve through the Roper survey; the strategy of the president and administrators to be the front line of defense; and internal weaknesses within a senate largely forgetful of its once-dominant role in setting admissions policy. In light of the key role the faculty and the senate had played in shaping the university's social contract, this abrogation of authority and duties was a significant factor in the story of the regents' deliberation and final vote on affirmative action.

Until July, less than a month prior to the regents' action, the president and the university-wide and campus administrations steadily defended affirmative action programs independently of the academic senate. In their cause, the Office of the President viewed the senate largely as a potential source of general support but not a forum for reviewing university activities in this area or for helping to develop a strategic response to the regents. The senate and faculty in general were not well informed on the issue and their deliberations were often slow and sometimes unpredictable.

While academic senate leaders independently could have taken action in light of their historic charge in the area of admissions--through BOARS and other standing committees or through a special task force charged to review affirmative action programs--they did not. The regents began their dialogue with the Office of the President on the form and merits of affirmative action programs as early as August 1994. Committees of the university-wide academic senate did not broach the issue until January 18th of the following year. At that meeting the Academic Council (the system-wide executive body of the university's academic senate) discussed how to respond to Regent Connerly charges. "It is also expected that he will force a Regents vote on the issue in June," stated Daniel Simmons, the chair of the council.²⁷

With seeming bravado, the council initially agreed that the senate should offer its formal view to the regents via the president. The relevant university-wide committees--BOARS, the Coordinating Committee on Graduate Affairs, and the Committee on Academic Personnel--were asked to provide advice to Simmons on how to respond. In subsequent months, however, none of these committees responded in any serious way, despite being informed of Connerly's intention to present a resolution to the board.²⁸ The only senate committee to respond to Simmons' plea was the previously dormant Committee on Affirmative Action--a committee that rarely met.

In January, the senate's affirmative action committee met for the first and only time during the 1994-95 academic year. Simmons attended and asked that the committee take the lead role in forging the senate's response, possibly including a review of affirmative action programs. Walter Yuen, the committee's chair and a professor of engineering at UC Santa Barbara, later summarized the committee's recommendations in a confidential memo to Simmons, which in turn provided the strategic course the senate would follow.

Yuen understood the difficulties of providing advice on affirmative action--what was in reality a vast network of programs within the university. "The committee is in agreement with you," he stated to Simmons, "that the Senate needs to play a role to support the University's past and present Affirmative Action efforts in response to Regent Connerly's attack and our committee is more than willing to play a leadership role in such an effort. But we do not feel that a 'hurry up' three-months effort to review all of the existing Affirmative Action programs will be the right strategy for the Senate." Yuen noted that the president's office "has probably accumulated most of the relevant data and their staffs should be able to generate a report for Peltason which is supportive of Affirmative Action. Since all the standing Senate Committees and our committee will start essentially from 'ground zero,' we do not believe that our efforts will add much to what the President's office can do."²⁹

However, the senate committee did advocate issuing a strong and positive general statement by the academic council "to the Regents and the public" supporting the university's present and past affirmative action efforts. Yuen stated the general need for the senate to engage in reviewing affirmative action efforts. There was a need to do this "independently of the President's office, whose staffs are directly responsible in running many of the AA programs (in effect, they are evaluating themselves!). I am in agreement [with] many skeptics of AA that many of the current programs are not effective and should be modified. In the spirit of shared governance, I believe that the Senate made a crucial mistake in letting staffs in the administration 'run away' with many of these programs with essentially no Senate input."³⁰

²⁷ Minutes, Academic Council Meeting, January 18, 1995.

²⁸ Minutes, Academic Council Meeting, April 12, 1995.

²⁹ Walter W. Yuen (Chair, Universitywide Committee on Affirmative Action) to Daniel Simmons (Chair, Academic Council), February 5, 1995.

³⁰ *Ibid.*

The members of the university-wide committee on affirmative action subsequently developed a general resolution for approval by the campus divisions of the senate. There was a need to “strengthen” the universities affirmative action programs—a hint that the university might need to carefully review its affirmative- action practices *a la* President Clinton’s “mend it don’t end it” mantra. Presented at the February 15th meeting of the academic council held at UC San Diego, the resolution read,

The affirmative action programs undertaken by the University of California have made the University a better institution by making it a more diverse institution in terms of the gender, racial, and ethnic makeup of its faculty, students, and staff. This work is not yet finished. The University should continue to act affirmatively to increase the participation of individuals from underrepresented groups, evaluating and modifying its programs in order to strengthen them.³¹

Simmons asked that the division chairs return to their campuses and gain endorsements from their divisions. By late May, each of the divisions, either through its executive committees or its representative legislatures, had endorsed a version of this resolution. Only ten days before the regents’ historic meeting, and before the resolutions by the divisions was formally presented to the board, President Peltason argued for the first time that further senate involvement was a necessity. He cited this need as a major reason for delaying the regents’ vote, writing to the board that, “that any action now to dismantle our diversity programs would be premature and against the best interest of the University of California . . . We should instead begin immediately the process of working with our faculty to decide how the University can best respond if the California Constitution is amended in the November 1996 election.”³²

The net effect of the senate’s resolution was a general show of support for affirmative action. Arguably this response also provided a sense of absolution. The senate need not attempt to analyze the extent of race-based decision-making at the university or to engage actively in devising an alternative strategy for consideration by the regents.

5. A REGENTAL DECISION

The weeks before the regents meeting on July 20th were full of press statements, alternative proposals, and political posturing. The day before the meeting, President Bill Clinton reiterated his theme of mending but not throwing out affirmative action. At a ceremony at the National Archives, he admitted that “affirmative action has not always been perfect and affirmative action should not go on forever . . . it should be retired when its job is done.” But he noted that clearly “the evidence suggests, indeed screams, that that day has not come.”³³ Governor Wilson appeared on *Face the Nation* and other national shows to outline the extent to which race was used in University of California admissions and explained his determination to bring such practices to an end. They were “unfair” and “wrong.” He planned to urge his “colleagues” on the board of regents to move “our nation forward toward a vision of equality, opportunity and fairness.”³⁴

Jesse Jackson promised to attend the regents meeting in order to “guide” them and, if necessary, disrupt the proceedings as an act of civil disobedience. Jackson repeatedly charged that Wilson’s interest in affirmative action was based solely on his personal drive to run for president. Jackson was not alone in this perception. The regents’ meeting would provide Wilson with his biggest national spotlight yet, spiced by a confrontation with Jackson. “Governor Pete Wilson is using the dismantling of affirmative action as a cornerstone of his Republican Presidential bid,” stated the *New York Times*. “Jesse Jackson is coming to town on Wednesday to lead protests,” noted the article. Clinton “will deliver an important address on the subject on Wednesday. The twenty-six members of the Regents themselves appear to be sharply divided.”³⁵

Wilson decided not to chair Thursday’s meeting, although as the board’s president he had a legal right to this privilege. Clair Burgener—the incumbent chair of the board, a former Republican legislator, and an ally of Wilson and Connerly—would run the meeting. Within a crowded theater on the University of California’s Laurel Heights facilities sat all the members of the board, including eighteen appointees of the current and past governors, one student, and seven *ex officio* members. These included university president Jack Peltason; the speaker of the state assembly, Willie Brown; two representatives of the university’s alumni association; Lieutenant Governor Gray Davis; and the state superintendent of public instruction. A Democrat, Davis was not only a strong supporter of affirmative action, he had his own political ambitions. While Wilson eyed the presidency, Davis had his sights on the governorship.

³¹ Minutes, Academic Council Meeting, February 15, 1995.

³² President Jack Peltason to the Regents, July 10, 1995.

³³ Los Angeles Times, July 20, 1995.

³⁴ *Ibid.*

³⁵ *New York Times*, July 19, 1995.

Also participating at the board's meeting were non-voting representatives of the faculty: the chair of the academic council, Daniel Simmons, and the vice chair of the council and chair-elect, Arnold Leiman. The student and faculty representatives were added to the board in 1974, following the tumultuous student demonstrations of 1960s and early 1970s. Their presence, it was thought, might improve the board's connection to the students and the academic community. One hope was to mitigate future conflicts. Voting rights were extended to both the student and faculty regent in 1974; however, the academic senate chose not to have a voting representative lest he or she be compelled to formally join in decisions of the board that did not, and could not, accurately reflect the diversity of senate opinions.

The nine campus chancellors, as usual, also attended the meeting of the board, sitting along the front row but with no official capacity to speak unless recognized by the chair of the regents. The chancellors, and in particular Chang Lin-Tien at Berkeley and Charles (Chuck) Young at UCLA, had repeatedly voiced their full support for affirmative action programs. Tien, in particular, had openly challenged Connerly on his facts and conclusions in meetings of the regents. The other chancellors included Richard Atkinson at UC San Diego (the future president of the university), and Karl Pister at UC Santa Cruz.

Representing the campuses that had taken the most aggressive efforts at affirmative action, Tien and Young had suffered the full brunt of a slew of difficult questions posed by regent Connerly and other critics over the past year. In the months leading to the July meeting of the board, Connerly received strong support from regents Glenn Campbell, Frank Clark, Tirso del Junco, Leo Kolligian, and David Lee. Clair Burgener also appeared to offer support. Each held ties to the Republican Party. Campbell and Clark were affiliated with the Hoover Institution located at Stanford University—the first of a growing contemporary network of conservative think-tanks. Campbell, del Junco, Kolligian, and Lee insisted that the regents weigh in on the affirmative action debate and they accused President Peltason of playing politics by requesting that the regents await an “election that may or may not occur.”³⁶

Regent Meredith Khachigian indicated on the morning of the vote that her mind was not entirely made up. She openly questioned the use of racial preferences at the university—would she follow the admonishments of Governor Wilson? Her husband, Ken Khachigian, was a former speech writer for Ronald Reagan and remained an important political advisor to the state Republican Party and Republican candidates, including Wilson. A simple count of regents and their party affiliation indicated an edge for Connerly and Wilson. At least six regents had contributed to the governor's most recent gubernatorial campaign: Connerly, Howard Leach, Stephen Nakashima, John Davies (who also served as the governor's advisor for the appointment of judges), Clark, and William Bagley. Leach had given \$82,000; Connerly contributed \$73,000.³⁷ While appointed as non-partisan and independent actors on a board of high prestige, regents usually aligned with the governor who appointed them on an issue he strongly cared about. Over the many decades of the university's existence, it was not an unusual practice for a governor to appoint an old friend or political ally to the board, but increasingly a litmus test seemed to be a financial contribution to a governor's election war chest.

Still, President Peltason and others in the Office of the President thought they could secure the necessary votes to block Connerly's motion. Regent Roy Brophy appeared to be an influential swing vote. Brophy noted his general support for affirmative action, but, like Khachigian, worried over the university's use of race in admissions. A Sacramento real estate developer, Brophy was a rare breed—a Republican appointed by a Democratic governor, Jerry Brown. He had served previously on both the California Community College's board of governors and the California State University's board and had long been a supporter of Wilson. Brophy, fellow regents Bagley (a moderate conservative), and Ralph Carmona (the incoming alumni representative) appeared sympathetic to Peltason's call to leave the matter to voters if and when the CCRI got on the ballot. They worked together to find an alternative action the regents could pursue in the weeks before the June meeting.

Just days before the historic July meeting, Peltason offered a substitute motion to Connerly's resolution. It again asked the regents not to embroil the university in a decision they need not take. Instead, he asked that the board instruct him “to develop, in consultation with the Academic Senate, appropriate changes in undergraduate, graduate, and professional school policies governing admissions.” The proposed action item also stated that these policies would take effect on or before January 1997, subject, of course, to “possible changes in state or federal law”—i.e., a state initiative or a possible federal court ruling on

³⁶ Regents Campbell, del Junco, Kolligian, and Lee to President Peltason, July 13, 1995, cited in Pusser, “The Contest Over Affirmative Action at the University of California: Theory and Politics of Contemporary Higher Education Policy” (dissertation, Stanford University, 1999): 250. Along with Chavez' book *The Color Bind*, Pusser's dissertation and later book, *Burning Down the House: Politics, Governance, and Affirmative Action at the University of California* (Albany, New York: SUNY Press, 2004) offer the most detailed discussion of the regents debate.

³⁷ This according to Jesse Jackson's statement before the regents at their June 20, 1995 meeting.

affirmative action. The nearly two-year delay in formal changes in admissions process was the same as in Connerly's resolution, providing sufficient time to generate new policies and to inform prospective students and their families of any new admissions requirements.

In a last show of united support for President Peltason, the chancellors and the president and his vice presidents issued a joint statement—an unusual step. They returned to a question discussed throughout this book's historical review of a public university's social contract: how to balance the needs of individual opportunity with the university's larger social purpose in their statement, they reiterated the thoughts of earlier university leaders, in particular Daniel Coit Gilman. "The explicit democratic mission of the public university challenges us to serve 'the people' who represent a diverse and dynamic constituency," announced Peltason and his compatriots. It was the university's duty to create outreach programs *and* admissions policies that "ensure a diverse pool of students" and who "reflect California society in the broadest possible sense, not just for the sake of diversity, but because the democratic value of a public education lies in the strength of its access to all qualified students."³⁸

Adding to the mix of voices, and to the confusion, five days before the historic regents meeting the University of California's system-wide student government (the UC Student Association) offered its own substitute proposal. As a voting member of the board, student regent Ed Gomez submitted a proposal that reflected the anger and frustration of student activists with the course chosen by Connerly and possibly the board. He reiterated the "imperative to have the population of the University of California truly represent the people," and the need for forceful action to have the "students, faculty, staff, and administration" reach parity with the state's population. "Nondiscrimination is a passive process toward equality, one whose timeline is intolerably slow, indefinable and unenforceable." The proposal contained a firm demand that the university simply "continue to implement its current Affirmative Action policies without direct intervention by the Regents."³⁹

Student activists led dozens of demonstrations on the campuses of the university and formed a variety of new associations to battle Connerly—including the semi-threatening 'Coalition to Defend Affirmative Action by Any Means Necessary.' These demonstrations often resulted in sit-ins, attracting a host of non-university organizations and people, from Jesse Jackson to busloads of high school students from largely minority areas brought in to bolster the number of demonstrators. The effort of protesters, and Jackson's admonishments in particular, was not particularly productive in the campaign to block Connerly's motion. In the view of university officials, Jackson's presence was divisive, indeed a potential fatal blow to their effort to persuade politically moderate regents to reject Connerly's proposal.

When regent Clair Burgener gavelled the meeting to order in the Laurel Heights auditorium, the outcome was not clear. All 300 seats in the room were occupied. The only regent not at the meeting was the Speaker of the Assembly, Doris Allen. Allen was a short-lived speaker, appointed in a compromise between Republicans and Democrats within an Assembly almost evenly split between the two parties. Reflecting her weak political position, she abstained from attending the historic meeting.

The regents' secretary, Leigh Trivette, received innumerable requests to speak. The initial portion of the meeting was devoted to public comment. But Governor Wilson asked to speak first. With the full attention of the audience and the media, Wilson offered a rebuttal to Peltason's earlier pleas. Wilson stated that in this "matter of fundamental fairness and justice" only the regents could act. "We cannot ignore or duck that responsibility nor temporize in making the required decision." Wilson reiterated his earlier charge: "Race has played a central role in the admissions practices at many UC campuses. Indeed, some students who don't meet minimum academic requirements have been admitted solely on the basis of race."⁴⁰

Then came a cavalcade of statements from some forty speakers, each lasting ten minutes or more, often spiced by repeated shouts of support or derogatory comments by student activists—acrimony that brought repeated gavelled demands by the chair for order and pleas for courtesy. In the midst of the public statements and before the regents' private deliberations, regent Roy Brophy asked Wilson to meet with him in a room just outside the auditorium. Wilson obliged. While noting his general support for Connerly's proposals, Brophy urged the governor to seek a compromise: the regents could vote on approving the ban on affirmative action, but give the university president and his staff a year to study its potential impact. By then Proposition 209 would be decided—presuming it got enough signatures to appear on the ballot. If Proposition 209 failed, the board might revisit its decision. Wilson said no to the idea. There was no room for compromise and he wanted an up or down vote that day.⁴¹

³⁸ Statement of the President, Chancellors, and Vice Presidents of the University of California, July 10, 1995.

³⁹ Ed Gomez and the University of California Student Association to the University of California Board of Regents, July 17, 1995.

⁴⁰ Minutes of the Regents, July 20, 1995.

⁴¹ Chavez, *The Color Bind*, 64.

Jesse Jackson was the last to speak during the public comment period. Wilson and Brophy had returned to their seats to hear Jackson. "Let us stand together and join hands and have prayer," Jackson announced. The reverend's admonishment presented an awkward moment, with regents slowly standing, glancing at their fellow board members to gauge the appropriate collective action. Only Wilson remained seated as Jackson launched his prayer, calling on the heavens for guidance. He then launched into a forty-minute plea for affirmative action.⁴²

When Jackson finished, the board began its own deliberations. Disruptions intensified. One by one, motions to table, substitute motions, compromise language, and the alternative proposals offered by President Peltason and the student regent, were discarded. Nine hours into the marathon meeting, a bomb threat forced the evacuation of the meeting hall. After a nearly two-hour delay, university police gave clearance for the regents to meet in a room down the hall prepared for just such an event. Deliberations could legally continue in a secluded room, stated UC general counsel Jim Holst, if security for the board could not be guaranteed. Live radio and a TV link still preserved the right of the public to witness the board's deliberations. Though some protested, Wilson insisted that the board get on with its business.⁴³

Two hours later, the board voted to close off debate. A steady stream of proposed amendments to Connerly's proposal came to an end. Only one amendment was passed: a statement drafted by regents Bagley, Connerly, and Governor Wilson, reasserting the university's commitment to attaining a diverse student body. The amendment read: "Because individual members of all of California's diverse races have the intelligence and capacity to succeed at the University of California," the actions of the board were intended to achieve a student body that "reflects this state's diversity." It was hardly a compromise. It included the statement that such diversity should be achieved through the "preparation and empowerment of all students in this state to succeed rather than through a system of artificial preferences."⁴⁴ Connerly reportedly agreed to the change on the chance that the new language might influence the final vote in his favor.⁴⁵

In the last hour of a thirteen-hour meeting, and without the threatening glare of student protestors, the board voted on the two motions offered by Connerly, with the sole amendment noted. The first, SP-1 (nomenclature for a special regental action number one) removed race, ethnicity, and gender related to university admissions, "ensuring equal treatment." It also set new parameters on the percentage of students admitted solely on academic criteria—test scores and grades. "Effective January 1, 1997," stated the resolution, "not less than fifty (50) percent and not more than seventy-five (75) percent of any entering class on any campus shall be admitted solely on the basis of academic achievement." Previously, the Office of the President had set these guidelines with no formal action by either the regents or the academic senate.⁴⁶

Connerly's resolution also called on the president to "confer with the Academic Senate of the University of California to develop supplemental criteria for consideration by the Board of Regents."⁴⁷ In this request, the regents appeared not only to confirm the historic role of the senate in admissions policy, but also the ultimate authority of the board to set policy in a major area of the university's operation. The second motion, SP-2 removed race, ethnicity, and gender in the realm of employment and contracting.

By a vote of 15 to 10, the Regents proceeded to abolish affirmative action in hiring and contracting (SP-2). And by a vote 14 to 10, with one abstention and with only the amendment devised by Connerly, Wilson and Bagley, SP-1 passed. Regent Bagley voted for the end of racial preferences in hiring and contracting, but abstained on the SP-1. The votes reflected the affiliations of the regents, with those voting for approval almost exclusively appointees of Wilson and the previous Republican governor, George Deukmejian; those opposed were mostly appointees of Jerry Brown.

Connerly and Wilson orchestrated a major victory. The University of California become the first and only public university to have its board formally ban the use of race and ethnicity, and gender in admission decisions. The next day, the *Sacramento Bee*

⁴² Minutes of the Regents, July 20, 1995.

⁴³ *Ibid.*, Lydia Chavez, *The Color Bind: California's Battle to End Affirmative Action* (Berkeley: University of California Press, 1998): 66.

⁴⁴ Minutes of the Regents, July 20, 1995.

⁴⁵ Chavez, *The Color Bind*, 65.

⁴⁶ President David Gardner to the Chancellors, July 5, 1988: "Guidelines for Implementation of University Policy on Undergraduate Admissions and for Fall 1990 Term."

⁴⁷ Minutes, University of California Board of Regents, July 12, 1995, Regents adopt resolution "Policy Ensuring Equal Treatment -- Admissions."

reported that Reverend Jackson led an “impromptu march through the streets of San Francisco.” An estimated 350 people joined Jackson: “The crowd was spirited – there were six peaceful arrests – but relatively small.”⁴⁸

6. THE INITIAL MEANING OF CALIFORNIA’S DEBATE

Critics of affirmative action focused on the seeming injustice of providing preferences for specific racial groups. Their most poignant protests, however, centered on the perceived violation of individual rights. In this view, affirmative action is not a question of public benefits, but of private benefits denied. Individual merit, rather than group identity, should be paramount in admissions decisions. Merit, furthermore, is not a broad and subjective notion, but should be determined according to two quantifiable factors: grades and test scores.

This narrow approach to the role of public universities and the increased dependency on test scores for determining merit potentially formed a profound paradigm shift in the historical purpose of public universities. What would it mean (to provide one extreme example) to accept only students with high test scores to America’s most selective public universities? It would mean precluding factors related to a student’s socioeconomic background, proclivities, and academic engagement not reflected in a standardized test. It would mean less diversity in thought and achievement and in the economic and ethnic backgrounds of students. It would mean a profound narrowing of institutional mission and, in short, the death of the original ideal of public universities as agents of social change.

The purpose of public universities, their governance, and the breadth of their academic programs are all the result of public resolve and investment over time. Universities were created for a reason and in the spirit of broad access and broad social benefits. These institutions have accumulated responsibilities that have been purposely and publicly declared. Historically, they have attempted, and often struggled, to promote the ideals of meritocracy and inclusiveness by establishing admissions requirements that are sufficiently broad to allow access to the disadvantaged or to those who show talents outside traditional academic norms. Few conservatives openly argue against these traditions and values; rather, their desire was to tip the scales even more towards measurable academic standards.

The advocates of affirmative action, on the other hand, often manipulated the concept of the social contract as solely a matter of race and racial representation. In the course of their arguments, affirmative action supporters dangerously and unnecessarily narrowed the concept of the social contract of public universities. While external pressures, including lawmakers and racial interest groups, influenced this course, universities developed internal cultures that inordinately elevated race in admissions and other decision-making. To a marked degree, institutions such as the University of California lost their bearings in their ardent effort to become more inclusive of underrepresented racial and ethnic groups; their advocacy inadvertently diminished the viability of affirmative action within the political culture of present-day America.

Together, both critics and advocates of affirmative action created a polarized debate with little middle ground for pragmatic compromise. In an indication of the values of our era, public debate and attention has focused not on the difficult balance of public and private benefits afforded students and society. Rather, both sides have placed emphasis on the mechanics of the admissions process and their outcomes—e.g., on the plight of individuals denied access, on the perceived fairness of the admissions process, on the number of underrepresented students enrolled. The distribution of the resource—who gets what, and where, and when—has driven the discussion almost exclusively.

In the resulting politicized environment, many higher education institutions were distracted (to be kind) or simply negligent (to be harsh) in probing and articulating their historical purpose in society. Is the purpose of public universities simply to provide an education to those who have the best test scores—even if those scores are only marginally predictive of academic success at the university and are also correlated closely with socioeconomic privilege? In this model, the tendency is to view the entrance gate to a public good as a reward.

In the short run, the loser in California’s fight over affirmative action was the university itself, and the growing population of minority students in the state. The administration had lost much of its credibility with the board, a crucial element for an effective working relationship. The effect on minority applications and enrollment at the university, particularly at campuses such as Berkeley and UCLA, was a sharp downward trend.

⁴⁸ Ken Chavez, “Jackson Marchers Protest ‘Mockery’” *Sacramento Bee*, July 21, 1995.

For the winners, not all was achieved. Wilson's presidential hopes briefly brightened. Wilson gained name recognition in national polls conducted over the summer of 1995. There also was a small surge in campaign contributions, mostly from Californians. The eventual Republican candidate for president, Bob Dole, also weighed in on affirmative action, calling it "a corruption of the principles of individual liberty and equal opportunity upon which our country is founded."⁴⁹ Wilson dropped out of the race in September. Bill Clinton won re-election relatively easily, and the issue of affirmative action proved a footnote in the national election.

For Connerly and the CCRI campaign, however, the decision by the board brought much-needed media attention. It helped boost financial contributions to the campaign and momentum at a critical time. Enough signatures were gathered to place Proposition 209 on the November 1996 ballot. Was the regents' decision a decisive factor in the eventual success of the proposition? Lydia Chavez, in her book on the anti-affirmative action campaign in California, credits the regents' action as an important component in the march to victory. Most significantly, the decision proved the saliency of the issue for the Republican Party in both state and national politics. Ultimately, she notes, "Wilson and the state Republican Party could take the credit for putting CCRI on the ballot. It was they who pumped nearly \$500,000 into the campaign and paid the signature gatherers to stay on the street."⁵⁰

Within the university, student groups organized a new round of demonstrations. Proponents of affirmative action continued to predict a decline in underrepresented students gaining entrance to Berkeley and UCLA. More or less left out of the media was consternation among the faculty not so much on the merits of affirmative action but on the appropriate locus of admissions policymaking. The Berkeley division of the academic senate considered a proposal to censure the board of regents—an action with no formal authority other than to simply state the displeasure of Berkeley's faculty with the board. A vote of all Berkeley's faculty was approved at the division's general meeting.

But the vote never came. It was deftly tabled by Berkeley's senate leadership at the behest of Arnold Leiman, Simmons' successor as chair of the university-wide academic senate. Such a condemnation would not have been hardly constructive; the animosity between a number of key members of the regents and the senate was already deep. How to reconstruct the senate's role in admissions in the new environment? How to regain some semblance of broad political support for the university's revised admissions policies? Both the senate and the university administration sought a more prominent role for the faculty in devising a strategy for reforming admissions practices and for re-invigorating the university's outreach programs.

Mitigating projected declines in underrepresented student enrollment would require a concerted effort and resources. The task would not be easy. Reflecting the sentiments of one side of the affirmative action debate, an angry and politically powerful state senator, John Vasconcellos, wrote to the regents the day after their decision, "How dare you rush to judgment—according to no public interest timetable—to join the desperate effort of a presidential candidate to jumpstart his nonstarter campaign. How pathetic!" But there was more: "You have committed the most destructive act in modern California history," he intoned, and after a night of "outrage and agony" he now stated that as chair of the state senate's committee on the budget, "the regents action yesterday makes it virtually impossible for me to vote for any 1995/96 budget that provides the University of California[s] Board of Regents any money whatsoever."⁵¹

The White House initially stated that it might rescind some four billion dollars the University of California received in federal grants—highly unlikely, but a mild show of protest. The American Association of University Professors convened a commission to study the action of the regents and then issued a report. Chaired by Robert Atwell, the former president of the American Council on Education, the commission's report argued that the regents had somehow broken the rules of shared governance—even though their knowledge of the deliberations was marginal. Lawsuits were filed against the regents and against Wilson for breaking the state's sunshine laws that prohibit private lobbying among fellow lay board members.

Politics had proven a decisive force in refashioning the university's admissions policies. The subsequent political backlash against the regents' decision proved an insufficient force to undo their decision on racial affirmative action. The university community needed to comply with dispatch. The board and then the people of California had ended racial preferences. There was no available end run—exactly as opponents of Proposition 209 had predicted.

⁴⁹ Quoted in Chavez, *The Color Bind*, 67.

⁵⁰ *Ibid.*, 76.

⁵¹ State Senator John Vasconcellos to the Board of Regents of the University of California, July 21, 1995.