

A Brief on the Events Leading to SP1

Submitted to the Task Force on Governance
Panel 2 on Shared Governance

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The decision by the University of California's Board of Regents in July, 1995, to end the use of race, ethnicity and gender in admissions (Special Policy 1, henceforth SP1), contracting, and hiring, marked a significant shift in University policy (Special Policy 2, henceforth SP2). Within the University community, two important questions were raised in the aftermath of the Regents' action, the first related to the authority of the Regents to set admissions policy; the second related to a concern that the process of consultation leading to SP1 violated the historical pattern of shared governance in which the Regents, the faculty through the Academic Senate, the administration, and to a lesser extent, students, share in the responsibility of managing the University of California. Both questions are predicated on the delegation of responsibility by the Regents to the Academic Senate for the setting of admissions policy -- a formal delegation that dates back to the 1880s and remains codified in the Standing Order of the Regents.

The following analysis of the events leading to the Regents' decision is based primarily on the written record. Its purpose is to provide a general accounting of the interaction and actions of the Academic Senate and the Office of the President in approaching what was, and remains, a highly divisive issue: the future of affirmative action policies. The focus is not on the merits of these policies, but in the process of decision-making and the contextual factors that made the year-long debate leading up to the Regents action extremely difficult for the Academic Senate, the President, and more generally the University community. The result is a report that reflects

my own interpretation of events and their meaning. Others, and particular those who engaged in the debate, may have a different viewpoint regarding the opinions and strategies employed by administrators, faculty and Regents.

I. Regental Authority in Admissions

The charter of the University of California reflects a general organizational model found in American higher education that provides for a lay board with, as stated in California's constitution, "full powers of organization and government" of the University. Within public universities and colleges, the American innovation of the lay board created a public authority intended to remove sectarian and political influences, linking the operation of the university with the community it serves, and providing a means to both garner and reward benefactors. Legally and operationally, the board is ultimately responsible for the management of the University, and the assurance that it is fulfilling its teaching, research and public service mission.

What is unusual about the organization of the University of California, and the power of the Regents, is the status of the institution as a public trust. Most public universities and colleges, while governed by a lay board, are also subject to significant regulatory controls invoked by their respective state legislatures, and state agencies. As a public trust, the University, and specifically the Regents, have been given a high degree of autonomy in running the affairs of the nation's largest land-grant university, and hence are relatively free of legislative and political caprice. As stated in the California constitution since 1879, the Regents are legally "subject only to such legislative control as may be necessary to insure compliance with the terms of its endowment and the proper investment of and security of its funds."¹ Hence, the Regents possess the exclusive power to operate, control, and administer the University of California. They became virtually a fourth branch of state government -- a "constitutional corporation," explained the state attorney general, Pat Brown, in 1957, "equal and coordinate with the legislature, the judiciary and the executive."²

¹ *California Constitution of 1879*, Article IX, section 9.

² Edmund G. Brown, 30 Ops Attorney General 162 (1957); see also Bion M. Gregory (Legislative Counsel of California) to state Senator Henry J. Mello, January 6, 1989, California Postsecondary Education Commission Library; *Regents of the University of California v. City of Santa Monica*, 77 Cal. App. 3d 130, 135; *San Francisco Labor Council v. Regents of University of California*, 26 Cal. 3d 785, 788-789; Joint Committee on Legislative Organization, Constitution Revision Commission, "Article IX,

Over time and as the University has grown in its size and complexity, the Regents have delegated responsibilities to faculty and administrators, shifting from a mode of detailed micro-management to, in general, that of a policymaking board. Admissions provides an early example of Regental delegation. The 1868 Organic Act establishing the University, directed the Regents to, among other things, set the "moral and intellectual qualifications of applicants for admissions" to the state's land-grant university. The Regents, in turn, looked to the faculty to determine these requirements, and to evaluate individual applicants and, by the 1880s, to develop outreach efforts and to set standards for California's emerging network of high schools.

The Academic Senate became the lead agency for setting admissions policy, managing the actual process of selecting and rejecting students to the University. But as in other areas of University operations, this delegation of responsibility did not abrogate the ultimate authority of the Regents. While the board has historically deferred to the Academic Senate concerning changes in admissions policy, they did not give the Senate, as some faculty have argued recently, the "right of instigating" policy changes, or abridge their own right to take action independently in a vital area of the University's operation: essentially, the allocation of what is widely viewed as a public resource, access to a public university.

The Regents' commitment to shared governance has more to do with the process of decision-making, than with legal arguments over the authority of faculty or administrators. It is the delegated duty of the Academic Senate to guide the admissions process, and to provide advice to the Regents on major policy changes. And conversely, it is the responsibility of the Regents, through the President, to seek the Senate's input before making a decision. Historically, the Senate has met its responsibility, and the Regents have deferred to faculty opinion. The Regents' SP1 decision marks a significant change in this pattern of decision-making in two important ways: one, the Regents, not the Senate or the administration, generated the proposed change in admissions policy; and two, the Regental approval of SP1 came despite the formal opposition of both the Academic Senate and the administration.

II. SP1 and Shared Governance

Did the Regents violate the tradition of shared governance in reaching their decision to end race, ethnicity and gender as factors for admissions? A review of the events leading to SP1 and SP2 provides a complex answer, and one conclusion by the Task Force on Governance could be that shared governance malfunctioned more than it was violated. The reasons for this breakdown are multiple, and responsibility can be shared among the Regents, the Office of the President, and the Academic Senate.

Two factors help in providing the context for the Regents' decision, and the difficulties it posed for the University. The first relates to the process of Regental action. 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 the Regents. Policy changes that have been presented to the Regents for action have tended to be carefully managed by the universitywide administration. The events leading to the passage of SP1, however, offered a significant shift in policymaking in this area of the University's operations. The Office of the President, and the Academic Senate, found themselves in the unusual position of defending existing affirmative action programs and reacting to a Regental initiative.

The willingness of many Regents to take up this issue, despite the pleas of the University President not to, also reflected, in some form, a desire by the board to become more engaged in major policy issues facing the University -- perhaps a reaction to a sense of being over-managed by university administrator in the past.

A second factor important to understanding the process leading to SP1 was the highly charged political environment that accompanied the debate over affirmative action programs and admissions at the University of California. Affirmative action is the focus of a polarizing national discussion over the best methods to ameliorate racial, gender and socio-economic inequities in American society. Discussion within the University community reflected this division, but was further complicated by charges that Regent Ward Connerly and Governor Pete Wilson were using the University for political purposes -- as a vehicle to generate publicity and support for Proposition 209, to launch a general attack on affirmative action policies in public agencies, and to bolster the Governor's presidential campaign. Why should the University be engaged in a politically divisive debate that could be settled by the California electorate? This was a question

posed by University President Jack Peltason, but one that was ignored by the majority of Regents. “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 I hope we can conduct our dialogue on this subject with the clarity, thoughtfulness, and precision it deserves.”³

The Regents’ questions regarding the legitimacy of race-based decision-making corresponded with a national debate on the future of affirmative action, and the apparent saliency of the issue with California’s voters. In March, 1995, President Peltason reported to the Academic Council that questions regarding the University’s affirmative action programs came not only from the Regents, but the Legislature.⁴ A month later the Governor was “making good” on his promise to abolish affirmative action programs under his control, announcing the elimination of a number of state panels that encourage minorities and women in hiring, promotions and contract awards.⁵

For many within and outside of the University community, the Regents’ action was driven, at least in part, less by principle and the best interests of the University, and more by political expediency. The charge of political interference in the operation of the University is a serious one. Wracked by charges of Regental corruption and partisan motives in managing the affairs of the state’s land-grant institution, in 1879 Californians passed an amendment to the state constitution intended to reduce if not banish political use of the University: “The university shall be entirely independent of all political or sectarian influence and kept free therefrom in the appointment of its regents and in the administration of its affairs”⁶ While noble in intent, clearly political influence has not been expunged from the University’s operation, with examples too numerous to cite.

³ Minutes, University of California Board of Regents, January 19, 1995.

⁴ Minutes, Academic Council Meeting, March 15, 1995.

⁵ Minutes, Academic Council Meeting, April 12, 1995.

⁶ *California Constitution of 1879*, Article IX, section 9.

The board is, nevertheless, responsible both for insulating the University of California from the outside political world, and at the same time linking it to the needs and perceived realities of contemporary society. This dual and sometimes contradictory role for the Regents complicates charges of undue political influence: where do issues of principle end and political motives begin? In the case of the events leading to SP1 and SP2, it is clear that within the University community there existed a widespread perception that politics played a larger role than appropriate.

Within this context, both the Universitywide administration and the Academic Senate needed to react to the Regents questions regarding affirmative action, and ultimately to the proposal forwarded by Regent Connerly and to the timetable he and other Regents set for final action. Several conclusions can be drawn from a review of the interactions of the Regents, the administration and the faculty.

1. *The Regents did not provide adequate time to garner a careful review of the implications of the proposal to end race- and gender-based decision-making, and possible alternative options for University admissions.*

While discussion regarding the merits of the myriad of affirmative action related programs within the University began nearly a year before the July, 1995, Regents' SP1 and SP2 decision, it was not until that month that a formal proposal was forwarded for review by the University administration and the Academic Senate. "In the normal course of events," later explained Academic Council Chair Arnold L. Leiman before the Regents, "initiatives are proposed; they are then discussed among administrators, faculty and Regents; and they are then approved, rejected, or modified." Presentations and discussion related to the "general topic of affirmative action at the University" noted Leiman, did not provide an adequate basis for Regental action. "What did not happen prior to the Regents vote . . . was any sort of substantive analysis and commentary on the particular measures the Board actually approved. These measures were presented to [the] administration and faculty as legislative enactment that needed to be implemented rather than proceed through the political course of analysis, compromise, and agreement."⁷

⁷ Minutes, University of California Board of Regents, November 16, 1995.

Leiman's successor as Academic Council chair, Duncan Mellichamp, reiterated this point in an interview held in the Spring of 1996:

Somewhere along the way the changes that Regent Connerly wished to propose became specific proposals, in fact, only a couple of weeks before the July 20 meeting The Regents felt that they had already consulted, because there had been much discussion at Regents meetings for nearly a year. And Regents had held many discussions with faculty and administrators as individuals leading up to the July 20 meeting. But what was missing . . . is not just a general discussion of the topic but . . . the opportunity for the affected parties to comment on the proposal -- to indicate to what extent it would be helpful or hurtful or how it might be modified in ways that would make it better. This normally is a rather elaborate process that can takes months. The Regents, for whatever reasons, apparently weren't interested in taking the normal route.⁸

2. *At the same time, neither the University administration nor the Academic Senate provided adequate analysis and discussion of the merits and problems of existing affirmative action programs, and possible policy options to guide the Board of Regents.*

Beyond the contextual factors noted earlier, two other factors help to explain the decision of the Regents to move forward with SP1 and SP2 despite the formal opposition of the University President and the Academic Senate. First, it appears that a majority of Regents sensed that the administration, the Academic Senate, and student leaders were intransigent in their defense of affirmative action programs at the University. And second, a number of Regents questioned the credibility of the Office of the President's description of University programs intended to promote diversity. Both perceptions contributed to the view of a significant number of Regents that the request by the President and the Academic Council for further study of the merits of existing affirmative action programs, and the implications of SP1 and SP2, were simply delay tactics.

Throughout the 1994-95 academic year, the Regents provided opportunities for analysis and discussion of both affirmative action and the prospect of ending the use of race and gender

based decision-making in admissions, hiring and contracting. Though there was no specific policy proposal provided by any Regent until early July, 1995, as early as January of that year, and one might argue as early as October, 1994, it was clear that a proposal to this end was destined for the Board's consideration.

In August, 1994, Regents Clair W. Burgener and Ward Connerly reviewed the complaints of Jerry and Ellen Cook regarding race-based decision-making in the University's medical schools. Their son had been denied admission to one of the University's medical schools, despite having achieved higher test scores and other indicators of academic achievement than many minority students who gained admission. They offered statistical information to back their protest. In a memo to Burgener, Connerly recalled how the Cook case provided a catalyst for a larger discussion about affirmative action at the University of California:

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”⁹

In November, 1994, President Peltason provided to the Regents a report on UC medical school admissions. In turn, many Regents asked additional questions regarding existing affirmative action programs, with Regent Connerly expressing concern about the seeming disjunction between the complaint of the Cooks and what the Office of the President and campus administrators were telling the board.

By early January of the following year, Regent Connerly had told President Peltason that he would request a study of the University's affirmative action programs and that he planned to force a vote on the issue by the Regents in June. At their January 19th meeting, the Regents

⁸ Interview with Duncan Mellichamp (then Vice Chair, Academic Council), “Shared Governance,” *Coastlines* (Spring 1966) pp. 6-7, 20-21, 34.

⁹ Ward Connerly to Clair W. Burgener, Chair of the University of California Board of Regents, June 30, 1995.

supported Connerly's request and placed the burden on the President and the Academic Senate to develop analyses and to outline possible policy options.

Yet the Office of the President either did not fully comprehend the desire of the Regents for a serious review of policy options, or it deliberately avoided such a discussion. The following briefly describes the interaction of the University administration and the Academic Senate on the issue of affirmative action and the use of race, ethnicity and gender in admissions, hiring and contracting. This analysis is based largely on the formal interaction of the Regents, administrators and the Academic Senate (e.g., committee minutes and memos).

The Role of the University Administration:

The Office of the President, it appears, was largely engaged in a process of describing and defending the myriad of affirmative action related programs in the University -- a strategic approach reinforced and encouraged by the Council of Chancellors. At the outset of the debate, a sense prevailed among universitywide and campus administrators that any indication that the University's affirmative action policies might require modification would weaken their ability to defend diversity efforts. Anything but a strong defense of the University's existing policies and programs, one might conjecture, might also draw significant criticism among students, faculty and others. The highly charged political environment, and the divisive nature of the debate, left little room for an analytical discussion of the role of affirmative action within the University.

Responding to Regent Connerly's request for a review of affirmative action policies and programs, President Peltason stated in January , 1995 that the Office of the President 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 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.¹⁰

President 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.”¹¹

Subsequent interaction with the Regents provided evidence of a significant division between Regents such as Connerly and the University’s administration concerning the proper scope and merits of race-based decision-making. This divide became increasingly apparent, marked by heated and often acrimonious debate. A segment of the Regents were concerned that the University’s affirmative action programs had not only gone too far, possibly violating the *Bakke* decision, but that they also did not represent the intended purpose of affirmative action set by present and past members of the board. 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 lesser extent, the faculty who had become increasingly less involved in, for example, shaping admissions policies.¹²

The decentralized nature of affirmative action efforts within the nine campus system also presented significant difficulties for the President and universitywide administrators, including Provost Walter Massey, and staff within the Assistant Vice President’s office of Student Academic Services, to describe accurately the breadth of programs that had incorporated race-based and gender-based decision-making. At one time President Peltason and Provost Massey stated that no campus admitted students solely on the basis of their race -- it was simply one factor in many in choosing among UC eligible students.

¹⁰ Minutes, University of California Board of Regents, January 19, 1995.

¹¹ *Ibid.*

¹² See “Setting the Conditions of Admissions: The Role of University of California Faculty in Policymaking,” study commissioned by the University of California Academic Senate, Feb. 1997.

However, evidence soon appeared that at least two campuses automatically admitted all UC eligible underrepresented students, and that Berkeley and UCLA employed a tiered admission process that heavily favored underrepresented groups. While such revelations did not directly refute the statements of the President and other universitywide administrators, it provided evidence to the Regents that they were not being told the true extent of affirmative action programs.¹³ 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.¹⁴

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 coordinated a series of presentations, including a review of admissions at UCLA and Boalt Hall, 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, this 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.¹⁵

This study provided an extremely important source of information, stating that such a change in admissions at UC might result in a decline in Chicano/Latino and African-American enrollment, an increase in Asian-American and Euro-American enrollment, and an increase in

¹³ Statement of President Peltason to the Regents, Minutes, , University of California Board of Regents, July 20, 1995.

¹⁴ *Ibid.*

¹⁵ 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.

lower income students. However, many Regents viewed it as another politically motivated attempt to defend affirmative action programs. The study did not attempt to analyze alternative scenarios (e.g., possible changes in the college-going rates of Chicano/Latinos, instead of keeping their rates steady for projection purposes), or provide for a discussion of alternative admissions models that would increase underrepresented enrollments. The report noted that further study was needed, but for critics of the University's affirmative action programs its purpose appeared to be alarmist in intent, developed to draw media attention and increase pressure on the Regents not to take action. The credibility of the Office of the President and its working relationship with the Regents continued to decline. The administration's rigid support for existing programs, it appears, essentially reinforced the ideological division that President Peltason had warned against.

In a news-release announcing his intention to propose a resolution to the Regents to end race-based decision-making, Regent Connerly pointed to the credibility problem of the administration and the need for 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. We now know such a 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.¹⁶

Governor Wilson also stated that the true extent of race-based decision-making, and its consequences, had not been revealed to the Regents by the administration. Before the Regents, the Governor insisted that the board 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."¹⁷

¹⁶ Ward Connerly, News-Release, July 5, 1995.

The Role of the Academic Senate:

Until July, a month prior to the Regents' action, the President and the universitywide and campus administrations had steadily defended affirmative action programs, providing the primary source of information on issues such as admissions policy. In this cause, the Office of the President viewed the Academic Senate largely as a potential source of support, but not as a critical component in either reviewing University activities in this area or developing a strategic response to the Regents.

While Academic Senate leaders could have independently 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 and University admissions policies, they did not. Instead they deferred to the Office of the President for guidance regarding an issue that was politically charged and potentially divisive among faculty. While the Chair of the Academic Council attempted to garner broader universitywide Senate participation in forming a response to the Regents, Academic Senate activity was largely confined to generating and passing a resolution in support of affirmative action at the Council and Divisional levels. The failure of the Senate to become more engaged in a policy area delegated to them by the Regents, and the myopic approach of the Office of the President, provides, in part, the reason for the failure of shared governance in this case.

The marginalization of the Academic Senate in the affirmative action debate might be interpreted as an effort by the University President to protect the Senate and faculty from what appeared to be a divisive debate. In general, the Academic Senate has not been terribly effective when it is embroiled in issues that are highly political. One might also conjecture that the Office of the President was wary of Senate involvement precisely because of a potential division among faculty about aspects of affirmative action policy lest it detract from their defensive strategy and their attempt to manage the Regents' pending discussion. In the view of administrators, it appears, the Senate was viewed as a source of support and no more. But perhaps more important in explaining the approach employed by the Office of the President was the pervasive sense

¹⁷ Minutes, University of California Board of Regents, July 20, 1995.

among administrators that affirmative action programs, including admissions policy, are largely the purview of the administration.

The Senate, of course, has the ability to pursue issues it deems important, and to voice its position to the President and ultimately to the Regents. Both the Chair and Vice Chair of the Academic Council sit on the board, and the President, the Provost and other important administrators visit the Council and other universitywide committees on a regular basis. There they have the opportunity to both gain information and to provide advice on the issues at hand. The dynamics of the divisive affirmative action debate, however, indicate a tremendous cautiousness on the part of the Senate leaders and the various universitywide and divisional committees. Not only was there a desire to support the efforts of the President and the Provost, but a predilection to allow the administration to grapple alone with the issue of affirmative action and the Regents. The record of formal interaction between the president and Senate committees also suggests that neither the Senate nor the President accurately gauged the momentum among the Regents, spearheaded by Regents Connerly and Governor Wilson, to take up this issue until very late in the process.

While 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 universitywide Academic Senate did not broach the issue until January 18th of the following year. At a meeting of the Academic Council, neither President Peltason nor Provost Massey discussed affirmative action in the public record of the meeting, despite the president's intention to offer a formal statement to the Regents the following day. However, the Council Chair, Daniel Simmons, did explain that Regent Connerly would address the Regents the next day to request a study of the University's affirmative action programs. "It is also expected that he will force a Regents vote on the issue in June," stated Simmons., and that "Connerly has been outspoken on this issue and is seeking an end to special preferences for minorities and women."¹⁸ The Academic Council agreed at that meeting that it needed to bring its position to the Regents, and that the universitywide committees such as BOARS, the Coordinating Committee on Graduate Affairs, and the Committee on Academic Personnel, should seek information on affirmative action and provide advice to the Council.

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

Yet none of these committees responded in any serious way to the Council's request, despite the efforts of Chair Simmons. In part, universitywide committees such as BOARS did not have an adequate base of information to judge coherently the costs and benefits of existing affirmative action programs, despite their formal charge to monitor and guide such efforts at the various campuses. The sense that the issue should be managed by the President's office, and the lack of a consensus regarding the merits of all affirmative action programs, contributed to a sense of lethargy. Like the administration, the members of the Academic Senate, it appears, did not fully comprehend the vigor with which Regents, and in particular Ward Connerly, would debate the future of affirmative action at UC.

A month after the Council meeting, the universitywide Senate's Committee on Affirmative Action met for the first and last time for the 1994-95 academic year. Academic Council Chair Simmons attended and voiced his desire that the committee take a leading role in forging the Senate's response to the Regent's demand for a review of affirmative action. The Affirmative Action chair later summarized the recommendations of his committee in a memo to Simmons, which in turn provided the strategic course the Senate would follow. He extolled 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 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. First, 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.¹⁹

¹⁹ Walter W. Yuen (Chair, Universitywide Committee on Affirmative Action) to Daniel Simmons (Chair, Academic Council), February 5, 1995.

However, the committee advocated the issuing of a strong and positive general statement by the Academic Council “to the Regents and the public” supporting the University’s present and past affirmative efforts, and the “highlighting of a small number of programs which, in the Senate’s view, are exemplary of the positive impact of Affirmative Action.” The committee also recommended that a meeting be held between the Council chair, the chair of the Committee on Affirmative Action, and the chair of the Regents’ Affirmative Action committee to discuss how both committees might play a more active role in this process of reshaping affirmative action programs at the University -- a meeting that was never held..²⁰

The Affirmative Action chair noted the general need for the Academic Senate and perhaps the Regents to become more fully engaged in reviewing affirmative action efforts. This review, he stated should “be done 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.”²¹

The members of the Universitywide Committee on Affirmative Action subsequently developed a resolution for approval by the campus divisions of the Senate stating their general support for the University’s affirmative action programs, but also noting the need to “strengthen” them. 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.²²

²⁰ *Ibid.*

²¹ *Ibid.*

²² Minutes, Academic Council Meeting, February 15, 1995.

At the Council meeting, Chair Simmons asked that the division chairs return to their campuses and gain an endorsement from their divisions. By May, each of the divisions, either through their executive committees or their representative legislatures, had endorsed a version of this resolution. The net effect was a resounding show of support for affirmative action, and specifically the University's effort to bolster diversity, that would be forwarded to the President and the Regents. But it also provided a sense of absolution regarding any further attempt to analyze race-based decision-making, or to engage actively in devising an alternative strategy that might persuade the Regents toward a more deliberative process. From the viewpoint of a majority of Regents, the Academic Senate had no special role to play in the debate beyond that of supporting the defensive posture of the Office of the President.

In universitywide Senate meetings held in February, March and April, there was no substantive discussion on affirmative action beyond endorsing the statement developed by the Committee on Affirmative Action. With admissions policy a major focus of the affirmative action debate, BOARS' only action was to endorse the statement made by President Peltason at the January meeting of the Regents. The Universitywide Committee on Educational Policy had no substantive discussion of the issue in its two meetings during that time. Beyond the general resolution supporting affirmative action programs, the Academic Council focused on organizing an "Affirmative Action Forum" at UCLA with the intention of promoting a scholarly discussion of the general merits of the race- and gender-based decision-making. Held on May 24th, the forum drew a sparse audience. And while it provided a useful discussion on the national debate regarding affirmative action, it addressed neither the specific policies of the University of California, or the issues raised by the Regents and critics of affirmative action programs.

For these and perhaps other reasons, the viewpoint of the Academic Senate on affirmative action programs was not presented to the Board of Regents until their July 20th meeting. Pointing to the resolution adopted by all nine divisions of the Senate, Academic Council Chair Simmons stated that "The faculty leadership of the University of California has spoken with a unified voice on this issue. The view of the leadership," he continued, "is that while UC may wish to make changes in some affirmative action programs, it should not abandon its affirmative action efforts, but rather should enhance them."²³

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

An irony of the nearly year-long debate over admissions policy by the Regents is that Senate authority was not cited as a prerequisite for a Regental decision until very late in the board's deliberations. President Peltason, cognizant that a resolution would be presented to the Regents to end affirmative action in admissions as early as December, 1994, did not argue for Senate consultation until a July 10th, 1995 letter to the Regents. Senate purview was suddenly a factor and a reason for the Regents to delay their decision. The president stated that

if the Regents decide to modify the admissions process, it is essential to involve the faculty at every step The Regents have delegated to the faculty responsibility for setting the conditions of admissions. The faculty are closer [than] anyone else in the University to the process of teaching and learning. The Regents must look to them, through the Academic Senate, for advice on how we can meet our responsibilities under the law and our equally important obligations as an educational institution It will be up to the Regents to decide what action the University should take in light of the various proposals and ballot initiatives regarding affirmative action, and of course I will implement whatever decision the Board makes. I want to emphasize my view, however, 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 1966 election.²⁴

At their July 20th, 1995, meeting the Regents proceeded to pass a resolution "ensuring equal treatment of admissions," which removed race, ethnicity and gender related decision-making in admissions, as well as in contracting and employment. Among its directives was the first formal sanctioning of the percentage of students that could be admitted on purely academic grounds: "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.²⁵ The

²⁴ President Jack Peltason to the Regents, July 10, 1995.

²⁵ Three guidelines issued by the Office of the President provided the basis for using race and ethnicity as a factor in accepting UC eligible student students within the regular admissions process: Frank

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.”²⁶ 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.

A Different Scenario?

In summary, the Regents acted hastily, driven by a host of factors, not the least of which was a general mistrust among some that the Office of the President, the Chancellors and, to a lesser degree, the Academic Senate, were intransigent in their defense of affirmative action programs, and would simply offer more of the same.

At the same time, a more imaginative approach by the University administration and the Academic Senate (e.g., providing alternatives that might reduce the use of race and ethnicity in UC admissions, but not eliminate it) might have provided an alternative route to SP-1 -- but this is, of course, only conjecture. A deliberative process would have engaged BOARS and other Universitywide committees of the Academic Senate in a review of affirmative action programs beginning, at least, in January. Under this scenario, President Peltason would have requested the Academic Senate’s help in formulating responses to the Regents and in developing policy options. The Senate, on the other hand, could have acted on its own prerogative -- particularly in the policy area if admissions where it has been delegated important responsibilities by the Regents.

Whether any of this would have altered the final outcome is unclear. Shared governance is not a policy outcome (although one hopes that it creates, in general, good policy), but a concept of due process and shared responsibility between three major policymaking bodies in the University of California: The Regents, the administration, and the Academic Senate. Not only was the issue of affirmative action politically charged by both the left and right of the political

L. Kidner, Vice President, Educational Relations, to Chancellors, May, 1971: “Revised Implementation of Administrative Policy Relating to Undergraduate Admissions”; President David S. Saxon to the Chancellors, June 12, 1979, “University of California Guidelines on Fair and Equal Opportunities to Participate in Undergraduate and Graduate Programs”; President David Gardner to the Chancellors, July 5, 1988: “Guidelines for Implementation of University Policy on Undergraduate Admissions and for Fall 1990 Term.”

²⁶ Minutes, University of California Board of Regents, July 12, 1995, Regents adopt resolution “Policy Ensuring Equal Treatment -- Admissions.”

spectrum, but the strategic and latent decisions made by administrators and the Academic Senate were made within an organizational culture that did not lend itself to the alternative process noted above. The consternation created by the Regents' decision has created a desire for greater clarity regarding the respective roles and authority of these three groups. It might be argued that a legalistic and structured understanding of the exact authority of each would have avoided the confusion caused by SP1 and SP2. The somewhat elusive concept of shared governance would then be exactly defined.

Certainly, in admissions and other areas of policy, there is a need for a stronger understanding of the responsibilities of each group, at the universitywide and the campus levels, and the appropriate universitywide policies to guide and regulate the activities of the campuses. In part, these issues are the focus of the Task Force on Governance. But members of the University community need also to recognize that there are benefits in avoiding strict rules on how decisions are made. Shared governance and effective policymaking can only exist if there is a high level of collegiality and a sense of common purpose within a university. In 1934, Lawrence Lowell, the president of Harvard, noted this point:

Attempts have been made to define, and express in written rules, the relation between faculties and the governing boards; but the best element in that relation is an intangible, an undefinable, influence. . . . The essence of the relation is mutual confidence and mutual regard; and the respective functions of the faculties and the governing boards -- those things that each had better undertake, those it had better leave to the other, and those which require mutual concession -- are best learned from experience and best embodied by tradition. Tradition has great advantages over regulations. It is a more delicate instrument; it is more flexible in its application, making exceptions and allowances which it would be difficult to foresee or prescribe. It is also more stable. Regulations can be amended; tradition cannot, for it is not made, but grows, and can be altered only by a gradual change in general opinion, not by a majority vote. In short, it cannot be amended, but only outgrown.²⁷

²⁷ A. Lawrence Lowell, "The Relation Between Faculties and Governing Boards," in *At War with American Traditions in America* (Cambridge, Mass.: Harvard University Press, 1934), pp. 281-91.

Yet it is important to add that tradition can be rudely interrupted. Politically charged and divisive issues such as affirmative action -- the center of a national debate that transcends the University of California -- tear at the sense of collegiality and common purpose within a university that is a precondition for shared governance to function effectively. In the short term, such events can seem catastrophic. In the long term, however, they can be catalysts for positive change. At key periods, issues arise that force a reassessment of the nature and of the advantages and disadvantages of shared governance. The result can be adjustments that improve both the management and activities of the University. One might argue that the Regents recent decision and its aftermath provides just such an occasion.