

B R I A N P U S S E R

# Burning Down the House

POLITICS, GOVERNANCE, AND AFFIRMATIVE ACTION  
AT THE UNIVERSITY OF CALIFORNIA

*Burning Down  
the House*

SUNY series

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# *Burning Down the House*

Politics, Governance, and  
Affirmative Action at the  
University of California

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Brian Pusser

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For her creativity, patience, and irrepressible spirit, this book is dedicated to Rebecca Hart Foster, the love of my life.

## *Burning Down the House: The Politics of Higher Education Policy*

There is a story that blacksmiths tell. It seems that when the pioneers headed west from the territories, as they left a settlement behind, their final act was to set fire to their homes. When the blaze had cooled, the pioneers would sift through the ashes, and collect the nails to begin again.

### INTRODUCTION

On July 20, 1995, in the culmination of twelve months of rising organizational and political economic conflict, the University of California (UC) Board of Regents voted 14–10 to end race and gender preferences in university admissions, and 15–10 to do so for employment and contracting.<sup>1</sup> The votes, having been delayed by a bomb threat, were taken at the end of more than twelve hours of deliberation. The Regents' votes on proposals SP-1 and SP-2 marked a historic reversal of nearly thirty years of UC affirmative action efforts, and made UC the first public university in America to eliminate the use of race and gender in admissions and employment. The Regents' actions were all the more remarkable coming from a university that, as the defendant in the landmark 1978 U.S. Supreme Court case *UC Regents v. Bakke*, had done much to preserve and codify existing national affirmative action policies in higher education.

The fall of affirmative action at UC challenged a number of prevalent understandings of the nature of policymaking and governance in higher education. An impressive array of institutional factions had urged the Regents to preserve UC's existing policies on affirmative action. Supporters included the president of the system, the university provost, all nine chancellors, representatives of the nine campus academic senates, representatives of all nine UC student associations, representatives of the system's major staff organizations, representatives of the university alumni association, and the faculty representatives to the Board of Regents.

There was also considerable support for UC's affirmative action policies beyond the campus borders. The Clinton White House and its Chief of Staff, Leon Panetta, showed considerable support, as did the California State Senate and Assembly Democratic caucuses and a number of elected state officials. They were joined by a significant cohort of organizations devoted to an end to discrimination and the redress of historical economic and social inequalities in America. The Reverend Jesse Jackson representing the Rainbow Coalition, the Reverend Cecil Williams and other church leaders, the NAACP, MALDEF, the ACLU, national student organizations, labor organizations including UPTE and AAUW, and such activist community organizations as the Grey Panthers all came to the defense of affirmative action at UC. Through a number of social and political actions, these groups worked to resist the effort to end affirmative action, and to link the struggle at UC to a broader struggle over access and equality.

Powerful forces were also arrayed in pursuit of an end to affirmative action at UC, including California Governor Pete Wilson, the State Assembly and Senate Republican caucuses, several candidates for the Republican presidential nomination, and a number of conservative legal foundations and interest groups. Despite nearly a year of public deliberation, a barrage of state and national attention directed at the Regents' deliberations, and the active involvement of the university's administrative leadership in the contest, the outcome came as a profound shock to institutional leaders at UC and across the country.<sup>2</sup>

That many in academe were surprised by the outcome of the affirmative action policy contest at UC points to the lack of theoretical and empirical work on contemporary university policymaking in a rapidly shifting political and economic context. Scholars of higher education have rarely addressed the role of public and private universities in broader state and national political contests, nor have they generally linked research on university policies to broader questions of race, gender, and power in the academy. As public universities increasingly become sites of contest over the allocation of scarce public resources, it is imperative to understand the uses of the university as an instrument in broader political contests, and the role of the State in the provision of public higher education.<sup>3</sup>

Intensified global economic competition has led to demands for increased contributions from higher education to state and federal economic development, and has also heightened the competition for access to both the most prestigious institutions and their most prestigious disciplines. At the same time, institutions are faced with competing demands for expanded access to higher education on the part of groups historically underrepresented in the academy, and for a broader distribution of the benefits of higher education throughout society.<sup>4</sup> These essentially contradictory demands have

refocused attention on the importance of postsecondary policy as part of broader national and international policy contests, and have brought to the fore questions of institutional purpose and locus of control.

The contest over affirmative action policy at UC provides a particularly useful lens for understanding contemporary governance and policymaking. Since World War II, the University of California has been a highly salient site of conflict over public policies affecting academic research with military applications, the right to free speech and assembly on campuses, institutional investment practices, and admissions policies.<sup>5</sup> Over the past two decades affirmative action policies have also played a pivotal role in state and national electoral and interest group contests,<sup>6</sup> as these policies have been key factors in State efforts to redistribute access to postsecondary educational opportunity and the private and public benefits generated by higher levels of education.<sup>7</sup> Another unique aspect of this case is that the intensity and personal character of this contest induced policymakers within and outside of the university to reveal their preferences in public.

This contest also offers considerable insight into the nature of contemporary organizational decision making in higher education. Making sense of the Regents' votes entails reconsidering the role of bureaucratic rationality in decision making, the effect of institutional culture on administrative behavior, the concept of collegiality, the extent of faculty authority, and the limits on interest articulation. While each of those approaches to understanding higher education organizations has utility, they are not what define this case. Comprehending the outcome of the contest over affirmative action at UC requires an understanding of the university as a democratic political institution, as an institution with both symbolic and instrumental political value in broader contests for State power and authority. It is a way of understanding public universities that scholars of higher education organizations have rarely adopted.

This is also a story of race and gender. To understand the struggle for affirmative action at the University of California, one must understand the role of public higher education in the redress of racial and gender inequality in America and the ways in which interest groups coalesce politically around those issues. Fundamentally, this is a story of politics and power. It details the long-term efforts of political leaders in one of the nation's key political battlegrounds to gain control of an important public institution and to use that institution's policies on access as levers in broader political contests.

For researchers and scholars of the organization and governance of higher education, this case is ultimately a window into how we understand our own institutions. It offers both a powerful reminder of what is useful about existing models of organizational behavior in higher education, and a challenge to improve our understanding of the political dimension of

those models. The case reveals the influence of the university administrative leadership in the unfolding contest, the collegial, consensus-driven approach taken by the university faculty,<sup>8</sup> the symbolic power of UC's historical commitment to access and affirmative action, and the influence of internal interests in the shaping of the contest. Yet taken together, these frameworks fail to explain the decision reached in this contest.

The decision-making contest over affirmative action at UC was decided both slowly, through nearly twenty years of political action on gubernatorial appointments to the Board of Regents and senate confirmation of those appointments, and all of a sudden in July 1995, by a 15-10 vote of the board. It was also decided both near at hand, by the unsuccessful efforts of the Office of the President to articulate the various interests weighing in on the contest, and at some distance, by the efforts of a powerful governor in the state capitol and his political allies across the country.

Each of these dichotomies serves as a useful reminder of the many ways we have conceptualized decision making in public higher education, and of the fundamental arena in which we have failed to conceptualize that process. The routine description of the mission of a public university encompasses teaching, research, and service, but very rarely addresses the larger role of a university as a political institution, and the political value of a university's mission. More often than not, we have treated political challenges to a university as unfortunate anomalies and have moved forward with existing theoretical lenses and frameworks intact.

The data from this case study suggest that a new framework is necessary for understanding contemporary higher education decision making. That we need new ways of conceptualizing the politics of higher education is due in large measure to a historical separation of political theory and the study of organizations.

## UNDERSTANDING HIGHER EDUCATION ORGANIZATIONS

Understanding the politics of postsecondary organizational behavior has been an enduring challenge for researchers in higher education. While models of behavior in other types of organizations and institutions have been transformed over the past four decades by an infusion of research and theoretical perspectives grounded in political science (Weingast and Marshall, 1988; Wilson, 1973) and economics (Arrow, 1974; Stigler, 1971; Williamson, 1985), research on university organization and governance has generally utilized multidimensional models (MDMs) with little connection to contemporary political or economic theory (Berger and Milem, 2000; Pusser,

2003). This anomaly emerges from some key distinctions between the disciplines. Research in higher education has focused on the institutions themselves, complex organizations with myriad missions that are not easily illuminated by the rational modeling favored in contemporary economics and political science. Further, institutional decision making in higher education has been understood as a consensual process that often avoids the declaration of individual preferences central to political models of organizational behavior. In this case, the public, pitched battle over affirmative action at the University of California offers a rare opportunity to revisit our existing frameworks for understanding organization and governance in higher education (Pusser, 2001).

### THE PREVALENT MODEL OF ORGANIZATIONAL BEHAVIOR IN HIGHER EDUCATION

The multidimensional model of organizational behavior is one of the key analytical frameworks in higher education research on organization and governance (Bensimon, 1989; Berger and Milem, 2000). Although the model varies in the number of elements incorporated and their relative importance, nearly all permutations incorporate the political dimension developed by J. Victor Baldridge (1971). Baldridge's political dimension has been recognized as one of the essential elements of MDMs (Berger and Milem, 2000) and as the analytical frame most in need of revision (Ordorika, 2003; Pusser, 2003). The political dimension of the MDMs can be traced to Baldridge's (1971) *Power and Conflict in the University*, a study of organizational contest at New York University during the student protests of the sixties. Baldridge presented decision-making dynamics through an interest-articulation model, one that portrayed organizational "authorities" who made decisions for the whole, and "partisans" who were affected by those decisions (Baldridge, 1971, p. 136). The authorities served as "boundary spanners," key actors who mediated, or articulated, between internal and external constituencies.

Over time, scholars of organizations and higher education have revised the political frame to turn attention to external context, agenda control, interest groups, and legitimate authority in the higher education decision-making process, yet, until quite recently, research in higher education has treated institutional organization and governance as a largely endogenous process.<sup>9</sup> As a result, there is relatively little that a political theorist would recognize in the contemporary political model for research on higher education organizations.



## POLITICAL THEORY AND ORGANIZATION STUDIES

The separation of political theory from the study of organizations has been particularly problematic for the evolution of a political theory of higher education.<sup>10</sup> Terry Moe (1991) has suggested that this differentiation is due to the historical structure of the study of public administration. Since the early part of the twentieth century, administration and politics have been treated as quite separate entities in the study of public sector institutions. Over time, the study of effective administration and organization became the domain of organizational theorists, while political scientists turned attention to the dynamics of Congress and the executive branch.<sup>11</sup>

More recently, an emerging perspective in political science research in the United States, the positive theory of institutions (PTI), has turned attention to institutions as instruments in a broader political process. PTI has been applied to research on the organization and governance of public institutions, combining elements of political and economic theory to address the structuring of political institutions for partisan gain. Moving beyond its original application to regulatory agencies, congressional committees, and bureaucratic structures, the PTI model has been usefully applied to the study of the organization and governance of the elementary-secondary system and to specific structures and processes within postsecondary institutions.<sup>12</sup>

Positive theories have emerged from work on social choice. Kenneth Arrow and other social choice theorists pointed out that although majority rule policymaking is unstable and leaves a great deal undetermined, the political process and political institutions are relatively stable. PTI offered an explanation: the structure of political institutions brought stability to majority rule decision making and offered a mechanism for successfully implementing gains from those decisions. The exercise of public authority through majority rule voting demanded particular structures and processes to ensure that political bargains and contracts could be enforced under conditions of uncertainty. That is, few individuals or interest groups would "contract" to allow a majority rule body to decide gains or losses on a particular issue. Since in a democratic process many policy decisions are made in precisely this fashion, interest groups have an increased incentive to organize such political institutions as legislatures and governing boards in order to make it more difficult to overturn status quo bargains.<sup>13</sup>

The new economics of organization proved a quite useful component of PTI, as it added insights from economic theory, particularly agency theory and transaction cost economics, to the analysis of the structural form of political institutions. Principal-agent contracts between individuals are a staple of modern life, and within the PTI framework the relationship between institutions, state legislatures, and state universities, for example, is conceptualized as a principal-agent problem.<sup>14</sup>

## POSITIVE THEORIES OF INSTITUTIONS AND HIGHER EDUCATION

Initial applications of positive theories of institutions to postsecondary governance have conceptualized the university as a site of struggle between competing interest groups within the institution and have focused on efforts to build institutional structures, such as the tenure system, that help enforce bargains.<sup>15</sup> Like J. Victor Baldrige's early work and the subsequent application of the political frame of multidimensional models of organizational behavior, PTI has until quite recently been applied only to the endogenous articulation process in higher education. While useful, this approach does not go far enough.

A political theory of higher education decision making needs to encompass more than external interest pressure on the internal formulation of institutional policy. It also needs to account for a far more exogenous process, the efforts of external actors and interest groups who intervene in postsecondary policy struggles to gain influence over public benefits and to use public institutions as instruments in a broader political process.

The central elements of external efforts to gain influence over any political institutions are delineated in the PTI model. These factors include efforts to control the agenda for organizational action; ex ante legislative design of institutional governance structures; personal relationships between policy actors apart from any formal relationships; and the control of the allocation of costs and benefits from institutional policy.<sup>16</sup>

## PUBLIC HIGHER EDUCATION INSTITUTIONS AS POLITICAL INSTITUTIONS

Developing a contemporary political theory of higher education entails conceptualizing public higher education institutions as political institutions, entities that control significant public resources, possess the authority to allocate public costs and benefits, implement policies with significant political salience such as conditions of labor or standards of credentialing, and that stand as particularly visible sites of public contest. A number of researchers have argued that these conditions describe public higher education institutions in the United States, that public higher education institutions are political institutions, and that higher education can be seen as a key commodity in its own right.<sup>17</sup> Consequently, the postsecondary policy formation process may be characterized as an interest group struggle for that commodity value.

There is a significant limitation on prevalent models of higher education decision making that must also be addressed in order to build an effective

political theory of higher education. Positive theories in political science rely on pluralist<sup>18</sup> assumptions about the governance of public institutions. The pluralist, “common good” assumption suggests that the political system allows for representative expression of the general will. PTI and interest articulation models have conceptualized decision making as an essentially pluralist process, as they examine, for example, the role of political parties in state and national policymaking. While that is one aspect of political contest, there are many levels of access to a given decision process, and many groups that do not necessarily have meaningful representation. The ways in which their interests are brought to the attention of decision makers and the ways in which the disenfranchised shape public policy contests are unlikely to be made clear under pluralist frameworks. To get beyond the limitation of pluralist processes requires an analysis of the role of political institutions within theories of the State.<sup>19</sup>

#### A STATE THEORETICAL VIEW OF HIGHER EDUCATION

A class view of the State suggested that the State is an instrument for perpetuating and reproducing dominant formations. Subsequently a variety of State theoretical perspectives emerged, including Antonio Gramsci’s (1971) vision of hegemony as key to understanding class conflict and contest. Gramsci’s work brought attention to the role of the State and its institutions, including education, as sites of contest. Bowles and Gintis (1976, 1990) presented a rather static, reproductivist view of the function of the education system, arguing that “the educational system, basically, neither adds to nor subtracts from the degree of inequality and repression originating in the economic sphere. Rather, it reproduces and legitimates a preexisting pattern in the process of training and stratifying the work force” (1976, p. 265). Resistance theorists challenged the reproductivist view by restoring a strong degree of agency to the process. Resistance theory suggests that schools are contested sites characterized by structural and ideological contradictions and student resistance, where subordinate cultures both reproduce and resist the dominant formations.<sup>20</sup> A number of researchers have extended this proposition to suggest that the education system holds the potential for equalization and democratization as well.<sup>21</sup>

Carnoy and Levin (1985) argued that contests over the provision of education can be seen as one part of a broader societal conflict rooted in the inequalities of income, access, opportunity, and power. Labaree (1997) conceptualizes the conflict pointed to by Carnoy and Levin as an essentially political dynamic. Labaree characterizes the tension as one between democratic politics (public rights) and markets (private rights) and suggests that

these inherently contradictory forces have been expressed as three essential and competing educational goals: democratic equality, social efficiency, and social mobility. He suggests, "In an important way, all three of these goals are political, in that all are efforts to establish the purposes and functions of an essential social institution."<sup>22</sup>

The role of the State itself in civil society has been widely debated.<sup>23</sup> Building on Weber's insights on institutions, Mann proposed that State interest is expressed through State political institutions, which in turn constrain future struggles. As Mann puts it, "States are essentially sites in which dynamic social relations become authoritatively institutionalized, they readily lend themselves to a kind of 'political lag' theory. States institutionalize present social conflicts, but institutionalized historical conflicts then exert considerable power over new conflicts." Within this process, the creation and control of public institutions is essential. Mann concludes, "Degrees of success in achieving political goals, including the enactment of social legislation, depend on the relative opportunities that existing political institutions offer to the group or movement in question, and simultaneously deny to its opponents and competitors."<sup>24</sup>

## THEORIES OF THE STATE AND HIGHER EDUCATION RESEARCH

A problematic aspect of research on higher education policymaking is that very little work has invoked State theoretical standpoints. As Wirt and Kirst suggested nearly thirty years ago, scholars of the State and scholars of the school have been "temporarily separated brethren."<sup>25</sup> That "temporary" separation has continued to the present day. As noted, research in higher education has generally been based in pluralist paradigms that conceptualize the university as distinct from the State, and that conceive of the State as a political actor operating independent of higher education institutions (Rhoades, 1992). This rather limited view of the role of higher education in a social welfare context also significantly constrains research on the role of postsecondary institutions as political institutions and sites of contest. Perhaps the foremost exception to the general treatment of the State in higher education is the work of Sheila Slaughter, individually and in collaborations.<sup>26</sup>

In her pioneering work on academic freedom and the state, Slaughter (1988) traced the growth of higher education as both outcome and catalyst for the larger growth of the American State in the post-World War II era. Following Carnoy and Levin's conceptualization of these tensions in education institutions generally, Slaughter (1988) concluded that "it may be necessary to conceive of the State and higher education as engaged in multiple and sometimes conflicting functions simultaneously. For example, the State and higher

education are both the subject and object of struggle. They are arenas of conflict in which various groups try to win ideological hegemony, yet at the same time they are resources for members of contending groups intent on political mobilization in external arenas" (p. 245).

Taken together, State theoretical perspectives effectively challenge endogenous models of higher education governance, as they suggest that powerful external forces, operating within a context of historical developments and conditions, shape political action and decision making at the institutional level.

## RESEARCH DESIGN AND DATA

Two fundamental strands of data collection were used in this research. The first entailed building a historical record of this case using archival records and documents from the Bancroft Library of the University of California, the Office of the Secretary of the Regents of the University of California, and the UC Office of the President. Primary source documents included minutes of meetings of the Regents, documents and reports produced for the Regents during the period under study, as well as system-wide and campus-based reports and publications. These institutional documents were supplemented by state level data, including material from the Office of the Governor, legislative hearing transcripts and reports from members of the legislature, as well as such national data as Office of Civil Rights investigative summaries relating to the University of California, and Federal Court rulings. Another key portion of the documentation of this case was the transcription of the entire Regents' meeting of July 20, 1995. That transcript, compiled from nearly twelve hours of audio and videotape, is a verbatim record of the Regents' deliberations on the day of their votes to eliminate affirmative action.

The second avenue of data collection centered on semi-structured interviews with individuals central to the decision making contest. Those interviewed included individual Regents of the University, administrators on the individual campuses and in the Office of the President, state policymakers, students, representatives of the UC staff associations, alumni representatives to the Board of Regents, faculty Senate representatives to the board, and community activists. These interviews were transcribed, coded, and analyzed for linkages to the core analytical categories framing the study of this case (Strauss and Corbin, 1994). The presentation of this case includes a range of voices, perspectives, and data sources in order to illuminate the individual and institutional processes of education, negotiation and decision making that shaped the contest.

## THE UNIVERSITY OF CALIFORNIA

Chartered in 1868, the University of California was created as a public land grant university and is administered under the authority of a constitutionally empowered Board of Regents. At the time of the Regents' deliberations over affirmative action in 1994-95, the university consisted of nine campuses: Berkeley, Davis, Irvine, Los Angeles, Riverside, San Diego, San Francisco, Santa Barbara, and Santa Cruz. Eight of the campuses provided broad undergraduate, graduate, and professional education, while UC San Francisco has been dedicated to the health sciences. A tenth campus, the University of California at Merced, is expected to open in 2004.

The University of California is one of the most complex postsecondary enterprises in the world, encompassing the ten campuses, a number of academic medical centers, research institutes, and national laboratories operated under contract with the federal government. National Science Foundation data indicate that at the time of the votes on affirmative action in 1995, five UC campuses (Berkeley, Los Angeles, San Diego, San Francisco, and Davis) ranked among the top 25 universities nationally for total research and development revenues. At that time, three UC campuses (Berkeley, Los Angeles, and San Diego) were members of the Association of American Universities, and UC had more academic programs ranked among the top 10 in the nation than any other public or private institution. The university had a total budget for 1994/95 of nearly \$10 million. A measure of the centrality of the university to the state of California is that UC received over \$2 billion in appropriations from the state for fiscal year 1995. Enrollment for fall 1994 was over 150,000 students with roughly one-quarter of those graduate and professional students.<sup>27</sup> The university is based in an equally large and diverse state. The total population of California in 1995 was over 32 million, with some 45% of the population White, 35% Hispanic, 12% Asian/Pacific Islander, and 6% Black.<sup>28</sup> California has the largest state economy in the nation, accounting for nearly 12% of the national GDP, and UC has long played a key role in the economic development of the state.<sup>29</sup>

The prominence of the University of California, its central role in the political economy of the nation's most populous state, and the prolonged public character of the challenge to affirmative action provide a unique insight into the contemporary politics of postsecondary organization and governance. The making of postsecondary policy is a dynamic, path-dependent process, one that is best understood in light of historical formations and precedents. For that reason, the struggle over affirmative action has its roots in the founding of the university, and it is there that the analysis of the case appropriately begins.

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## *The UC Governance and Decision-Making Structure: History and Context*

The context for policymaking at the University of California at the time of the Regents' votes was shaped by four key historical factors: (1) UC's constitutional autonomy under the Organic Act and the California constitution; (2) a state constitutional provision calling for the majority of the board to be appointed by the governor, subject, after 1972, to State Senate confirmation; (3) the enactment of Regents' bylaws and standing orders allocating responsibility for curricula and admissions policies to the academic senates; and (4) the California Master Plan of 1960 (Douglass, 2000, 2001).

### THE FIRST CALIFORNIA CONSTITUTION AND THE ORGANIC ACT

The origin of the University of California governance and policymaking structure can be traced to the California Constitutional Convention of 1849. At the convention, article IX of the constitution was adopted, providing that funds received from the sale of federal land grants under the Morrill Act would be used for the funding of schools and the establishment of a common university. In 1868 the California legislature passed the Organic Act, authorizing the creation of a single state public university, the University of California. According to UC historian Verne Stadtman, the Organic Act was crafted so as to "qualify the University for federal agricultural-college land grants, while permitting the immediate introduction of courses in letters and pure sciences" (Stadtman, 1970, p. 32).

The Organic Act also delineated the structure of the first UC Board of Regents, a structure that would remain remarkably unchanged for the next 130 years. The Organic Act called for a board with eight members appointed by the governor, serving sixteen-year terms with staggered appointments. The appointed Regents were joined on the board by six *ex officio* members: the



governor, lieutenant governor, Speaker of the Assembly, superintendent of public instruction, and the presidents of the State Agriculture Society and the Mechanics Institute. The appointed and exofficio Regents were responsible for jointly appointing eight additional Regents, bringing the total on the board to twenty-four.

The power to choose a president was vested in the board and, even before appointing the first president, the Regents selected a core faculty. From that point the Act clearly prescribed the following:

The immediate government and discipline of the several colleges shall be entrusted to their respective Faculties . . . for approval by the Regents. . . . All the faculties and instructors of the University shall be combined into a body which shall be known as the Academic Senate, which shall have stated meetings at regular intervals, and be presided over by the president . . . and which is created for the purpose of conducting the general administration of the University. (California Statutes of 1867–68, 248, in Douglass, 2000, p. 368, note 71)

In 1869 the university enrolled its first class. The essential governance and policymaking structure then defined was much as it is today, with general education policy set by the Regents. Over time a significant shift in structure has occurred. At the founding, faculty members were responsible for serving as both instructors and the university's general administrators. The president served as the liaison between the Regents and the faculty, empowered to sit on both the Board of Regents and the Academic Senate. Today a bureaucracy has emerged on each campus to handle university administration in consultation with the academic senates. The chancellors and their administrative cohorts serve as a link between the campuses and the University of California Office of the President (UCOP). The Office of the President, which is located in Oakland, California, apart from all campuses, is the contemporary liaison between the Regents and the Academic Senate (Gumport and Pusser, 1995).

## THE SECOND CALIFORNIA CONSTITUTION

At the time of the second California Constitutional Convention, held in Sacramento in 1879, the university was under political siege. A coalition of delegates was attempting to disband the Regents and place the university under the control of a legislative board (Douglass, 2000). One of their complaints was that the land grant university had become the captive of California's elite and that it was created out of collusion between bankers, railroad owners, and business interests for their own benefit, at the expense of farmers and other workers.<sup>1</sup> The coalition also complained about the

appointed members of the Board of Regents, noting that its membership consisted of “merchants, lawyers, physicians and devines, devoid of one practical and experienced educator” (Schulte, in Douglass, 2000, p. 48). A bill was introduced into the California Senate in 1874 to reorganize the Regents so that the board would consist of seven *ex officio* Regents and eight elected Regents, one from each of the state’s eight congressional districts. Although the legislature resisted efforts to revise the university governance structure, Gilman, an early believer in academic freedom, left in disgust to take the job as first president of Johns Hopkins. In his resignation letter he wrote, “However well we may build up the University of California, its foundations are unstable, because it is dependent on legislative control and popular clamor.”<sup>2</sup>

The struggle at the convention was essentially between Grange members and Workingmen’s Party delegates on the one hand, who favored placing the university under direct electoral control, and California Whig Republicans who represented the state’s business class and major financial interests. At that time in California there was tremendous concern on the part of the populist political parties about the growing power of the railroads and banks, the lack of proportional representation in state government, and legislative corruption.<sup>3</sup> Their apprehension was made manifest in the question of whether Regents should be appointed or elected, a debate essentially over whether the university should be autonomous, or under direct legislative and electoral control.

As Douglass (2000) has chronicled, a key figure at the convention was Joseph Winans, a Regent of the university and chairman of the convention’s Education Committee. Winans led the committee in presenting a recommendation for constitutional language that included these words: “The University of California shall constitute a public trust, and its organization and government shall be perpetually continued in their existing form and character, subject only to such legislative control as may be necessary to insure compliance with the terms of its endowments, and of the Legislature of this State, and of the Congress of the United States, donating lands and money for its support.”<sup>4</sup> The committee further recommended that the constitution incorporate language ensuring that “the University would be entirely independent from all political or sectarian influences, and kept free therefrom in the appointment of its Regents and in the administration of its affairs.”<sup>5</sup>

When the issue came before the convention for a vote, it was presented in the form of a constitutional amendment supported by the Workingmen that would have removed the words “public trust” from the university’s charter and placed both the university and the Regents under direct legislative control, with Regents’ terms and responsibilities dictated by legislative statute.

Floor debate was ended and the amendment passed by a vote of 68–49. Its sponsor returned home, as did a number of other delegates (Douglass, 2000).

According to Douglass (2000), six days before the convention adjourned, the issue was brought up again by supporters of the university. A new amendment was proposed, restoring the status of the Regents and the university as a public trust under the Organic Act. It also included language ensuring that no persons would be excluded from the university on account of their sex and incorporated language that provided the university remarkable insulation, 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.”<sup>6</sup> This time the amendment passed, and thus the university’s autonomous status was established in the constitution.<sup>7</sup> The importance of that status can hardly be overstated. The conceptualization of the university as an institution belonging to, and under the control of, the people of California rather than the legislature has been an essential part of the state’s social and political culture. UC’s autonomous status has been cited throughout the years in research on academic freedom and institutional control.<sup>8</sup> Former California Governor Edmund G. Brown described the university as “virtually a fourth branch of state government, equal and coordinate with the legislature, the judiciary and the executive.”<sup>9</sup>

## THE REGENTS UNDER THE CONSTITUTION

As a consequence of the codification of the university’s status at the 1879 convention, subsequent changes in the structure of university governance have required constitutional amendments. Over the years, there have been four significant amendments. In 1918 two additional ex officio Regents were added. In 1970 the legislature passed, and the electorate ratified, a constitutional amendment requiring that Regents’ meetings be open to the public.<sup>10</sup> In 1972 the constitution was amended by a statewide ballot initiative, Measure 5, which required that the governor’s nominations to the Board of Regents be ratified by a majority vote of the State Senate Rules Committee for consideration by the full Senate (Scully, 1987).

In 1974 a number of significant changes were introduced. Regents’ terms were reduced from sixteen years to twelve. In a nod to changes in the state’s political economy, the ex officio seats provided to the president of the State Board of Agriculture and the president of the Mechanics Institute of San Francisco were deleted, and an ex officio seat for the vice president of the university’s alumni association was added. More significantly, the number of appointed board seats was increased from sixteen to eighteen, and an advisory board was created to consult with the governor prior to making nomi-

nations to the Board of Regents. The advisory board consists of the legislative leadership and six members of the public appointed to four-year terms by that leadership, and representatives of students, alumni, and faculty. This board seems to have had relatively little influence over the years. The amendment also added language stating that the appointed Regents be “broadly reflective of the economic, cultural, and social diversity of the state, including ethnic minorities and women.”<sup>11</sup>

### THE REGENTS AS CALIFORNIA’S ELITE GOVERNING BOARD

Despite the intentions of the framers, since the founding of the university, the Regents have been an elite group. Many of the appointed Regents have been wealthy and throughout its history the board has resembled a Who’s Who of California’s political and economic elites. Their names are often found on buildings, businesses and monuments throughout the state. The bankers have included A.P. Giannini, founder of the Bank of America, William H. Crocker, founder of Crocker Bank, as well as I. W. Hellman, a principal of Wells Fargo Bank. Regents Leland Stanford and Charles Crocker helped create the state’s transportation infrastructure. Business leaders turned Regents include Edward Carter, chief executive of the Broadway-Hale Corporation, William Roth, chairman of Matson Lines, and industrialist Norton Simon. Since founding, few of the appointed Regents have been women, among them Phoebe Hearst and Dorothy Chandler, one of the principals of the *Los Angeles Times*.<sup>12</sup> At the time of the votes on affirmative action, it was estimated that the median net worth of the eighteen appointed Regents was close to \$1 million. It may be that the wealth of the Regents was significantly higher, as the public reporting limit for any single type of Regent’s personal investment was simply “over \$100,000 dollars” (Schwartz, 1996).<sup>13</sup>

In 1976, the language of the constitution was again amended to add an aspect that would be invoked often in the deliberations over affirmative action. The 1879 language ensuring that women would not be excluded from the university was amended to read, “no person shall be debarred admission to any department of the University on account of race, religion, ethnic heritage or sex.”<sup>14</sup>

### HISTORICAL GOVERNANCE CONTESTS

In addition to the changes in university governance structure enacted over the years, a number of shifts have also occurred in the process of making policy and in the allocation of authority for making policy at the university. Many

of these shifts have occurred as the result of broader institutional and national struggles over university autonomy and shared governance.

The executive branch of the state government and the courts at both the state and the federal levels have had significant influence over the UC policymaking process.<sup>15</sup> UC's constitutional autonomy has been particularly circumscribed by the courts. Gardner (1967) noted in his discussion of the California Supreme Court ruling on the UC Regents loyalty oath of 1949, "On the point of the University's constitutional rights, the decision continued: 'Laws passed by the legislature under its general police powers will prevail over regulations made by the Regents with regard to matters which are not exclusively university affairs.'"<sup>16</sup> Despite the exceptional degree of constitutional autonomy that UC possesses, and the power of the Regents, a shared system of governance over academic and administrative affairs has been enacted out of a series of confrontations between various internal and external constituencies of the university. One of the earliest and most influential episodes has become known as the Berkeley Revolution of 1920 (Fitzgibbon, 1968).

#### *The Berkeley Revolution of 1920*

The Berkeley Revolution of 1920 codified a number of the relationships and responsibilities that have formed the basis for what has been generally understood as shared governance in the UC system to this day.<sup>17</sup> The revolution was inspired in part by the publication of the *1915 General Declaration of Principles* prepared by the American Association of University Professors. The General Declaration of Principles spoke to academic freedom on three dimensions: "freedom of inquiry and research; freedom of teaching within the university or college; and freedom of extra-mural utterance and action."<sup>18</sup> The declaration went on to point to the importance of delineating "1) the scope and basis of the power exercised by those bodies having ultimate legal authority in academic affairs; 2) the nature of the academic calling; 3) the function of the academic institution or university."

The UC Academic Senate met in October 1919 and produced a proposal that was later described as possibly "the most important memorial ever sent forward to the Board of Regents."<sup>19</sup> The senate requested a modification of the Regents' Standing Orders in order to clearly delineate a number of procedures and structures that addressed academic freedom and the conduct of the university. The revised orders, approved by the Regents in June 1920, assigned the university president the responsibility of recommending personnel changes to the Regents, but specified that such action could only be taken after consultation with faculty advisory boards. The orders further required the president to consult with the Academic Senate before making changes in educational policy, and enhanced communications through the creation of a

joint Regent-senate conference committee. Perhaps most germane to the university's affirmative action contest, the revised Standing Orders gave unprecedented authority to the senate in the area of admissions policy, stating that "The Academic Senate, subject to the approval of the Board of Regents shall determine the conditions for admission, for certificates, and for degrees other than honorary degrees."<sup>20</sup> This portion of the Standing Orders formed a key rationale for faculty authority over admissions in arguments presented to the Regents by faculty and Academic Senate members during the affirmative action debate (Karabel, 1996; Schwartz, 1996).

### *The Loyalty Oath*

Despite the careful structuring of roles and responsibilities in the 1920 revision of the Standing Orders, just over thirty years later the system would again be rocked by conflict over authority, in the loyalty oath controversy of 1949–1952. The loyalty oath crisis revolved around three primary issues: a Regents' proposal that all faculty and staff prepare affidavits disavowing membership in the Communist Party; a Regents policy prohibiting appointment to the faculty of members of the Communist Party; and a struggle within the university for authority over appointment, promotion, and dismissal of faculty members (Gardner, 1967). The Regents' move to require the signing of the loyalty oath was prompted in part by legislative efforts that were seen by the university as an attempt to usurp some of the institution's constitutional autonomy. Bills were introduced into the State Assembly in 1949 to amend the university's constitutional status, in order to assign to the legislature the power to ensure the loyalty of UC employees.

The first two issues were resolved by the Supreme Court of the State of California, which ruled that the Regents could not demand an oath of its employees that superseded the existing oath required by the state. In that ruling, *Tolman v. Underhill*, the court held that "It is well settled that laws passed by the Legislature under its general police power will prevail over regulations made by the Regents with regard to matters which are not exclusively University affairs."<sup>21</sup> Elsewhere in the ruling, the court made it clear that matters of statewide concern are not exclusively university affairs, and that principle guided their ruling against the university (Scully, 1987). Neither the court nor the amendment spoke to the third issue, which continues to be debated to this day.

The Regents' actions in the face of legislative efforts to usurp UC's autonomy in 1949 point to the impact of external political considerations on UC governance. As Gardner (1967) makes clear, the Regents' actions at the time of the loyalty oath were shaped by a broader issue, the growing concern over world communism, and the efforts of key legislators to embroil the university in that broader ideological and political struggle.