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Higher Education Reform as a Social Movement: The Case of Affirmative Action

*Robert A. Rhoads, Victor Saenz,
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INTRODUCTION

The June 2003 Supreme Court decisions in *Grutter v. Bollinger* and *Gratz v. Bollinger* offered much-needed guidance for college and university admissions programs and the broader effort to build diverse campus communities. Although neither side claimed a definitive victory, affirmative action clearly has survived its latest judicial scrutiny, and colleges and universities no doubt will be engaged in extensive analyses and revisions of admissions policies and practices for years to come (Schmidt, 2003b). But if the past is any indication, what ultimately comes of affirmative action and race-conscious admissions policies will be determined less by well-reasoned judicial decisions and their interpretations than by the extent and effectiveness of collective action on the part of various groups seeking to advance their preferred agendas.

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Affirmative action often is situated as a great debate in which combatants take turns trying to convince the other of the merits of one's position. We have all heard the lines of reasoning. "Backward-looking" arguments suggest that race-based considerations are justified to compensate for and/or correct past injustices and institutionalized forms of discrimination (Beckwith & Jones, 1997). Without such considerations, underrepresented persons of color will never bridge the economic differences that so define U.S. society. The assumptions are that there is a significant relationship between access to a college education and economic success and that present-day circumstances unfairly limit the educational opportunities available to underrepresented persons of color. Or, the argument is more "forward-looking": To compete in a global economy, we need a diverse workforce capable of succeeding in a multicultural work environment (Beckwith & Jones, 1997). The other side counters that any policy that gives consideration to race is essentially a form of racial preference or quota system and is in violation of the equal protection clause of the Fourteenth Amendment and is therefore unconstitutional. Efforts to eradicate racial discrimination should not adopt the very practices that our society seeks to end (Connerly, 2002). The assumption is that persons of color simply need to try harder and that in time racism will disappear. And so the arguments go.

We contend that, although well-reasoned debates are important and certainly individuals have been swayed one way or the other (or in one of the many directions that the debates often point), key aspects to the process of gaining or losing support for affirmative action are often ignored. Such aspects include the relevance of collective action and the role that ideology plays in advancing social policy. To be clearer, we suggest that analyzing affirmative action as a social movement helps to explain how various nonrational processes are at work in advancing or limiting race-conscious admissions policies.

At the heart of our argument is the idea that affirmative action has taken on its own identity as a cultural form, complete with groups of supporters and oppositional groups as well. Although most people think of affirmative action policies arising from the civil rights movement of the 1960s, we contend that, in time, affirmative action came to assume its own identity as a movement. In making such an argument, we draw from Ralph Turner's (1994) work and suggest that affirmative action may be understood as a "specific movement" operating within the context of a "general social movement"—the civil rights movement (p. 79). As supporters of race-conscious admissions policies, we believe that a social movement analysis has the potential to offer insights about conditions or actions necessary to advance a pro-affirmative action position. Indeed, there is no more telling evidence of the role of collective action than to look at the powerful resistance that has emerged as part of a highly organized effort to end affirmative action (Chávez, 1998; Pusser, 2004; Stefancic & Delgado, 1996).

In addition to our goal of offering insights that might advance affirmative action, a second goal is more theoretical in nature and concerns the utility of social movement analysis. Within the field of higher education and its related intellectual communities, including the Association for the Study of Higher Education (ASHE) and the American Educational Research Association (AERA), organizational theories and perspectives tend to guide empirical work conducted on higher education reform (Clark, 1998; Peterson, 1985, 1989; Tierney, 1988, 1993, 1999). Certainly, other frameworks are also employed in analyzing reform, including theories of the state (Carnoy, 1984; Carnoy & Levin, 1985; Slaughter, 1988), historical perspectives (Geiger, 1986, 1993), economic views (Johnstone, 1998; Massy, 1996), and political frameworks (Ordorika, 2003; Pusser, 2003, 2004; Pusser & Ordorika, 2001).

Every theoretical framework brings to light particular facets of a phenomenon, while leaving other facets in the shadows. Thus, the various frameworks traditionally used in the study of higher education have been useful in some ways and not so useful in others. More to the point, the research in higher education has not adequately addressed the role of collective action and ideology as key elements of large-scale reform processes. Consequently, what we suggest in this paper is another way of conceptualizing analyses of higher education reform, especially with regard to large-scale change operating across multiple institutions and transecting national or even international landscapes. Examples of the kind of reform to which we refer include major initiatives such as those linked to assessment, globalization, multiculturalism, and, in the case of this article, affirmative action. Because social movements often take place within organizational contexts (Zald & Berger, 1978), it is reasonable to argue that the study of colleges and universities as organizations ought to include social movement analyses as well as more traditional frameworks.

In what follows, we discuss some essential understandings of social movements, specifically drawing from the work of Manuel Castells (1997), Alain Touraine (1988), and the “new social movement” literature in sociology. We then highlight a basic chronology that helps us to think about affirmative action as a movement through time. Although we identify three primary phases (pre-emergence, emergence, and destabilization and reform), we choose to focus on the latter phase, as we ultimately seek to make sense of *Grutter v. Bollinger* and *Gratz v. Bollinger* in light of the many social forces that came to bear on this decision, dating all the way back to the historic *Bakke* case.

A SOCIAL MOVEMENT PERSPECTIVE

Social movement theory often is misunderstood. In fact, when we suggested to colleagues that we intended to look at affirmative action as a so-

cial movement, a common response went something like this: "Didn't affirmative action arise from the civil rights movement and legislative efforts to advance integration? I've always thought of affirmative action as a set of public policies, not a movement." Such remarks have merit. Indeed, affirmative action more often than not is seen as a set of policies seeking to advance educational and employment opportunities for underrepresented groups. And yes, it is a sound argument to suggest that affirmative action arose in the context of civil rights struggle and progressive reforms associated with the "Great Society" of the 1960s. However, one does not have to reject such assertions to view affirmative action as its own compelling social force. After all, the classic work of Herbert Blumer (1946) calls attention to the idea that a social movement essentially is two or more people aligning their actions around a common goal or concern. Taken to the extreme, such a view suggests that two people playing two musical instruments together while performing the same piece may be understood as a social movement. Indeed, Italian social theorist Francesco Alberoni (1983) examined the act of falling in love as a social movement. In a rather creative analysis, Alberoni pointed out that sociologists have ignored the social-movement quality of falling in love, favoring larger more public processes such as the development of Islam, the Christian Reformation, the French or Russian revolutions, or the civil rights movement of the 1960s. Few of us participate in such historic events. But many of us fall in love. Thus, for Alberoni, most people have some experiential basis for understanding the essence of a social movement.

When we think of social movements in a most basic way, reducing them to their essence, the effort to advance affirmative action might reasonably be considered as a movement in its own right. Certainly, we witness two or more people engaged in concerted action to advance a common cause. In the case of affirmative action, the common cause to which we refer may be understood as increasing educational and economic opportunities for members of underrepresented groups. But clearly, affirmative action is not a tightly coupled social movement in which most of the key actors and organizations are always on the same page and in step with one another. Indeed, if affirmative action were a musical performance it would be a jazz ensemble, exhibiting points of tension, fractures, and disharmony. And yet, despite so many actors and organizations moving in all directions, there is still some sense of a common goal and points in time during which many key participants march to the same tune.

We want to make the case that understanding collective action is of greater relevance today than during previous periods in history, thus reinforcing the need to examine important struggles such as affirmative action as social movements. For example, over the last few decades numerous social theorists have called attention to major shifts in the nature of modern society

(Baudrillard, 1994; Castells, 1997; Chomsky, 1998; Touraine, 1988). As advanced societies such as the United States shift from industrial to postindustrial economies, the nature of human relations and identities are also altered (Castells, 1997). One quality of a postindustrial society is that the challenge of engendering social change becomes more complex. For example, Juan-Ramón Capella (2000) argued that the very notion of "citizenship" becomes weakened and "the consequences of human intervention turn out to be increasingly labyrinthine" in a post-industrial context (p. 228).

Castells (1997) maintained that we live in a new age defined not only by powerful organizations but also by markets and networks. He suggested that the nation-state is destabilized in an epoch dominated by neoliberalism, as market forces and global initiatives challenge the autonomy of national governments. Castells went on to argue that a market-driven neoliberal shift involved a weakening of organizations serving the public good, given the dominance of global enterprises and their powerful commitment to privatization and entrepreneurialism. As a global vision expands in power and influence, organizations committed to the larger social good are also forced to act within a market environment that increasingly seeks to privatize services. Such a shift leads to greater economic competition, a trend not always consistent with serving the larger social good.

An example of this neoliberal shift was evidenced by the 1999 student strike at the National Autonomous University of Mexico (UNAM). In this case, a student strike closed the university for almost a year, as students sought to resist tuition increases initiated in part by pressure from the International Monetary Fund (IMF), which sought to force the Mexican government to reduce public expenditures for higher education (Rhoads & Mina, 2001). Here, we see a clear case of a public organization responding to externally driven economic pressures operating as part of a global network. As competition increases within all organizational sectors, social initiatives seeking to more fairly distribute society's resources through programs such as affirmative action come face to face with powerful free-market philosophies. Consequently, a neoliberal shift supporting private interests and a free market philosophy contributes to an environment in which progressive social programs increasingly come under attack. The shift is especially relevant to affirmative action, for as William Tierney (1997) noted, "The radical reinterpretation of the public sector as a sphere solely for individual competition may or may not be justified in multiple arenas, but it is unjustified in institutions that we have traditionally defined as vehicles for upward mobility for all people, not merely for the privileged few" (p. 192).

Like Castells, Touraine (1988) claimed that society no longer exists as it was defined by traditional sociological thought. Social life has come to be dominated by weakened nation-states and organizations that have increas-

ingly taken on multinational characteristics. In turn, national identities and allegiances fracture, while traditional levers for organizational and social change disappear. For Touraine, a sociology founded on a modernist notion of society and social order is no longer useful in conceptualizing and realizing social change:

Today, with the waning of the historical conditions that gave forth the science of societies, we must create a sociology of action. This task is rendered more urgent by the constant threat posed to the field of social life by totalitarian forces, and by the fact that the new social movements, for their part, cannot develop as long as political actors, especially the intellectuals, force them into the molds of institutional channels and languages that belong to an unrecoverable past. (p. 28)

From Touraine's (1988) perspective, the importance of movements as vehicles for social change and resistance increase, given that the power of the nation-state and traditional organizations to promote the public good is weakened by complex forms of capitalism acting in their own interests and legitimized within a global economy. For Touraine, "Technology and rationalization no longer look like liberation forces . . . , but rather as the stakes in the principal debates and struggles of modern societies" (p. 31).

The consequence for the shift in how one effects social change is, as Touraine (1988) argued, the "return of the actor," who is now acting within the context of a social movement (pp. 8–9). Because of the "rapidly failing notion of society" (p. 66), sociology becomes not a sociology of society and organizational life but instead must be conceptualized as a "sociology of action" focused on social movements and centered on a variety of social spheres where collectivities of individuals align their commitments and behaviors and act to create change, mostly in a jazz-like fashion.

Consistent with arguments advanced by Castells and Touraine, recent sociological theory has sought to understand social movements by focusing on identity, ideology, and collective action (Calhoun, 1994; Laraña, Johnston, & Gusfield, 1994; McAdam, 1994; Rhoads, 1998a, 1998b, 2003; Scott, 1990). Part of the goal has been to better understand the relationships between identity and grievance (Johnston, Laraña, & Gusfield, 1994). Accordingly, the new social movement literature has deemphasized traditional social movement research, which approached the analysis of movements by emphasizing the mobilization of resources (resource mobilization theory), the rationality of organizing (rational choice theory), and the role of political and organizational structures (political process theory and rational structuralist perspectives).

With this context in mind, we adopt a social movement perspective as we examine the cultural terrain of affirmative action as it pertains to race-conscious admissions policies in higher education. Although our focus pri-

marily concerns the June 2003 U.S. Supreme Court decisions in *Grutter v. Bollinger* and *Gratz v. Bollinger*, we find it necessary to explore some of the historical antecedents that set the stage for this important Supreme Court case.

A BRIEF CHRONOLOGY OF AFFIRMATIVE ACTION

The birth of affirmative action as an idea may actually be traced back to the work of African American scholars such as W. E. B. Du Bois (1903/1969), who in *The Souls of Black Folk* pointed out: "The problem of the twentieth century is the problem of the color line,—the relation of the darker to the lighter races of men" (p. 54), and Carter Woodson (1933) who, in *The Mis-Education of the American Negro*, laid the groundwork for a racial critique of education. Social critics such as Du Bois and Woodson called attention to the failure of Reconstruction and the need for organizations such as the National Association for the Advancement of Colored People (NAACP) to push "to secure the civil rights of African Americans by forcing the legal system to uphold the Fourteenth Amendment, equal education opportunities, and voting rights" (Bowles, 2001, p. 141). In time, key Supreme Court decisions in *Sweat v. Painter* (challenged de facto segregation in higher education) and *Brown v. Board of Education* (challenged segregation in public schools) began to pave the way for equal opportunity in education. But White resistance, especially in the South, did not end simply with the resounding voices of Supreme Court justices (Bickel, 1998). Consequently, the 1950s saw the rise of a powerful civil rights movement led by Black clergy and grounded largely in the ideals of nonviolence (Halpern, 1995). With the increasing visibility and force of both a mainstream and more radical separatist movement among Blacks, combined with White support from growing progressive and New Left groups, the civil rights movement achieved a major victory with the passage of the Civil Rights Act of 1964.

The 1964 Civil Rights Act supplied the statutory strength to enforce the ban on race- and gender-based discrimination in all programs at public or private institutions receiving federal funds. Segregationists and states' rights advocates such as Senator Barry Goldwater argued against legal racial distinctions and the potential ill effects of racial quotas in hiring, while proponents of the act such as Senators Hubert Humphrey and Joseph Clark endorsed tough sanctions against employers who deliberately discriminated by race or gender (Howard, 1997). When the dust settled, the Civil Rights Act of 1964 was signed into law by President Lyndon B. Johnson, along with two crucial sections that eventually came to define affirmative action policies. Title VI of the Civil Rights Act expedited the desegregation of public schools and postsecondary institutions by assuring that federal funding

would not be appropriated to schools unless they provided equal educational opportunities without regard to race. Title VII of the Civil Rights Act provided equal employment opportunity, thus requiring an end to all types of job discrimination. Most importantly, Titles VI and VII laid the groundwork for the affirmative action policies of the late 1960s and early 1970s, as liberal and progressive forces sought to heed the warning of the 1968 Kerner Report that the United States was “moving toward two societies, one black, one white—separate and unequal.” Indeed, major uprisings in Harlem (July 1964), Watts (August 1965), Newark (July 1967), and Detroit (November 1967) reinforced a growing fear that the country was on the verge of a massive race war and in need of immediate social reform.

From a social movement perspective, we see the Civil Rights Act of 1964 and Executive Orders 11246 and 11375, which served the purpose of implementation and enforcement and were signed by President Johnson in 1965, as key events in the birth of affirmative action as public policy. Interestingly, these policies were born even though a silent majority opposed them and many civil rights leaders were concerned about racial backlash (Beckwith & Jones, 1997). In time, some of the concerns of the former “silent majority” would emerge as part of the conservative turn of the 1980s.

In our chronology of affirmative action in higher education (see Figure 1), the pre-emergence phase of affirmative action ends with the adoption of the 1964 and 1965 legislation and, consequently, gives way to the emergence of affirmative action as public policy.

We contend that the emergence phase of affirmative action continues to this day in that we continue to see colleges and universities adopting creative ways of recruiting and retaining underrepresented students of color. But at the same time, today there is a clear and severe assault on affirmative action that we date principally to the *Bakke* case, which is reflected in judicial decisions such as *Hopwood* (Texas) and *Smith* (Washington), and in legislative acts such as Proposition 209 in California and I-200 in Washington. These decisions and acts weakened the emergence phase, hence the dotted line in Figure 1. Thus, in terms of a chronology of affirmative action as a social movement, we see the emergence phase existing simultaneously from the point of *Bakke* onward with a third phase—destabilization and reform. It is this latter phase to which we devote our attention as we seek to make sense of key social forces that came to bear on the *Grutter* and *Gratz* cases.

THE SIGNIFICANCE OF *BAKKE*

The *Bakke* decision played a pivotal, yet paradoxical role in the affirmative action movement. This decision more than any other of its era helped to reaffirm and endorse the need for affirmative action policies in higher

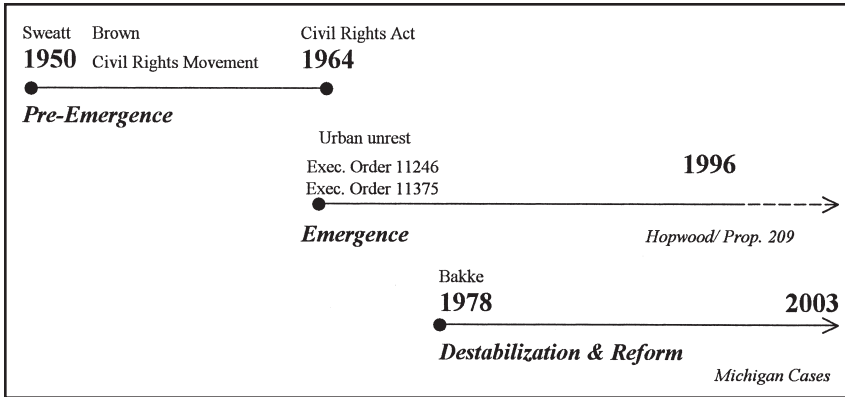


Figure 1. A Chronology of Affirmative Action in Higher Education.

education and other settings, while at the same time limiting its scope. Given that the recent Supreme Court ruling in the Michigan Law School case *Grutter v. Bollinger* drew heavily from it, the *Bakke* case is probably the most significant court decision throughout the contentious history of affirmative action and, in general, marks a fracture between a period of emergence and early growth and a subsequent and parallel phase of destabilization and reform. What we mean by this will be highlighted in subsequent pages, but essentially *Bakke* provided a basis both for reinforcing affirmative action in college admissions and for unseating such policies. Because of the significance of this case, a brief review is in order.

Allan Bakke was twice rejected by the UC-Davis Medical School and subsequently sued the school for discriminating against him because of his race in violation of the equal protection clause of the Fourteenth Amendment. Despite the fact that the Supreme Court struck down racial quotas in higher education admissions with their decision in *Bakke*, it upheld the use of race as a “plus” factor in college admissions decisions. In his majority opinion, Justice Lewis F. Powell Jr. held that to seek a diverse student body was a constitutionally permissible goal for an institution of higher education. (This position has come to be known as the “Powell Compromise.”) Further, the majority opinion stated that cultivating a diverse student body served a “compelling interest.” The end result of this case was an endorsement of the diversity rationale for affirmative action but a narrowing of its scope. In essence, the compensatory social justice or economic redistribution rationale for affirmative action policies in college admissions was severely weakened in favor of educational diversity as a “compelling interest.”

Worth noting, however, is that the dissenting opinion, representing four of the justices (Marshall, White, Brennan, and Blackmun) supported affir-

mative action on the basis of ongoing and historical discrimination. These judges did not see affirmative action as a violation of the equal protection clause but instead as a necessary policy in fulfilling the social contract with minority groups. It also is worth noting that the *Bakke* decision came at a time when the civil rights movement had somewhat stalled, having become more institutionalized and controlled than during the previous decade (McAdam, 1988). A legitimate question to ponder is whether or not the Supreme Court's decision might have been different had the political and social pressures of a powerful civil rights movement remained strong throughout the 1970s. Despite whatever conjecture we might offer, the reality is that *Bakke* changed the landscape of affirmative action in college admissions. Diversity as a "compelling interest" would play a pivotal role in later cases, most significantly in the Michigan rulings.

As a consequence of the *Bakke* decision, public colleges and universities across the country, while prohibited from using quotas in admissions, could still use race as a "plus" factor (among other factors) in making admissions decisions (Kolling, 1998). Many higher education institutions interpreted the *Bakke* decision as a mandate for institutionalizing race-conscious admissions policies to promote campus racial or ethnic diversity as a compelling interest. The *Bakke* decision effectively justified their respective race-conscious practices and facilitated the creation of additional programs targeting the recruitment and support of underrepresented students of color. Accordingly, large numbers of postsecondary institutions instituted or modified affirmative action practices in the areas of admissions processes, retention efforts, and scholarship programs (Bowen & Bok, 1998; Howard, 1997; Kolling, 1998). Yet even while affirmative action enjoyed a degree of prosperity and support across many sectors, conservative forces opposed to affirmative action were growing in size and strength.

As social movement analysts, what is of particular interest to us, leading up to and subsequent to the *Bakke* decision, were the many groups lobbying to influence judicial decisions and public policy. Among the nearly 40 organizations that filed *amicus* briefs in support of the University of California were the NAACP Legal Defense Fund and Educational Foundation, Inc., the American Bar Association, the Mexican American Legal Defense and Education Fund, the American Association of University Professors, the American Civil Liberties Union, the National Conference of Black Lawyers, the Association of American Medical Colleges, the National Association of Minority Contractors, the National Fund for Minority Engineering Students, the UCLA Black Law Students Association, and the National Employment Law Project, Inc. The arguments utilized to frame these *amicus* briefs ranged from the assertion that the Constitution does not prevent the use of racial classifications as a means of addressing the consequences of past discrimination to the contention that the medical school's special

admissions programs were vital to achieving the significant educational goals derived from a diverse learning environment. Despite the diverse ideological foundations upon which these briefs were grounded, the organizations offering their support to the University of California understood the power of collective action and actively engaged in the common struggle to uphold the principles and practice of affirmative action.

Individuals and groups opposed to the continued consideration of race in the medical school's admissions process also submitted *amicus* briefs, but in support of Bakke. Organizations such as the Queens Jewish Community Council and the Jewish Rights Council, the American Federation of Teachers, Order of Sons of Italy in America, Young Americans for Freedom, Anti-Defamation League of B'nai B'rith, and the American Subcontractors Association argued that the UC-Davis medical school special admissions programs established the equivalent of a racial quota system which failed to serve a compelling interest and as a result violated the Fourteenth Amendment. The *amicus* briefs filed on both sides of the *Regents of the University of California Regents v. Bakke* case provided articulate and persuasive arguments in support of and in opposition to the consideration of race in higher education admissions policies. Many of these same ideological frameworks resurfaced 25 years later in the 85 *amicus* briefs filed in the *Grutter v. Bollinger* Supreme Court case. Far from providing a rational and definitive ruling on the constitutional legitimacy of affirmative action in higher education admissions programs, an examination of the *Bakke* case reveals a powerful venue in which individuals and groups acted collectively to advance particular ideological convictions.

Affirmative action as a social movement experienced a fairly significant period of expansion for almost three decades. From the Civil Rights Act of 1964 through the *Bakke* decision of 1978 and into the mid- to late-1990s, many colleges and universities around the country took steps to consider race as a factor in making admissions and even financial aid and scholarship decisions. The movement also was coupled with the expansion of financial aid programs through the Higher Education Act of 1965 and its reauthorization in 1972. Increased financial support allowed for greater access to higher education for a broader range of students, especially those from economically disadvantaged backgrounds. This phase of the movement was marked by ideological perspectives rooted in the liberal/progressive reformism of the "The Great Society" of the 1960s. However, the *Bakke* decision revealed a serious divide within judicial and public policy circles, rendering three differing opinions, one reflective of progressive reformism (the dissenting view which argued for addressing the effects of past and ongoing discrimination), one reflective of conservative resistance to programs designed to address race-based inequities through the consideration of race in any implicit or explicit numerical quota or timetable (part of the major-

ity view), and the Powell Compromise, which permitted the use of race as a factor in admissions decisions, but only on the basis of enhancing the educational climate at a particular college or university through increased diversity. Thus, the *Bakke* decision revealed a fundamental problem with the social advances spawned by the 1960s: Public policy aimed at progressive-minded reform was built along a fault line. Eventually, progressive reformism would be fractured by a conservative restoration that sought to erode the political, social, and cultural changes associated with the liberalism brought about by the "decade of unrest."

AN ERA OF DESTABILIZATION AND REFORM

A shift in the political winds in the late 1970s is perhaps traceable to reactions among males and Whites to the social and cultural changes brought about by the 1960s, including contributions from the civil rights and women's movements. For example, Gallup Poll election surveys revealed that in 1976 Democratic presidential candidate Jimmy Carter received 53% of the male vote to Republican candidate Gerald Ford's 45%. Four years later, incumbent President Carter received only 38% of the male vote to Republican candidate Ronald Reagan's 53%. The shift in White voting is just as telling, with Reagan receiving 56% of the White vote to Carter's 36%. (In terms of the White vote, Ford had received only 6 percentage points more than Carter in 1976.) These trends continued into the 1990s when the White male vote garnered by the Republican Party increased from 51% in 1992 to 63% in 1994 (Stefancic & Delgado, 1996). One interpretation of these data is that Whites and males were reacting to the liberal reforms of U.S. society and that the conservative rhetoric of Reagan (and later George Bush and Newt Gingrich) posed a powerful political and social alternative.

Ironically, what is most surprising about the conservative rhetoric that has characterized the past 20 years or so is the reliance by conservatives on the ideological underpinnings and political strategies of the civil rights movement. For example, the Center for Individual Rights (CIR), a conservative public interest law firm that has initiated many of the anti-affirmative action court cases, utilizes a similar public advocacy model as that crafted by the NAACP Legal Defense Fund almost 50 years ago to secure judicial victories instrumental in advancing civil rights. The CIR carefully selects its cases with an eye for high precedent-setting value and sympathetic plaintiffs. Conservative foundations and lawyers eager to donate their time and money to the anti-affirmative action cause finance CIR initiatives. And given the Reagan-Bush judicial appointments of the 1980s and early 1990s, victories are far more likely today than during previous reformist-oriented judicial eras. As Idris Diaz (1997) explained, "Finally, just as liberal advocacy groups benefited from a sympathetic judiciary during the heyday of the

civil rights movement, CIR has benefited from the corps of conservative judges appointed during the Reagan and Bush years” (p. 17).

In addition to co-opting the judicial strategies of the civil rights movement, scholars opposing affirmative action programs also have drawn parallels between contemporary conservative ideologies and the liberalism that defined the 1960s struggle for civil rights. In an essay entitled, “The Loneliness of the ‘Black Conservative,’” Shelby Steele (1998), a prominent African American research fellow at Stanford’s Hoover Institution and strong critic of affirmative action, praised the “freedom-focused liberalism” of the early civil rights movement that “saw the mark of race as anathema to freedom, to the individual, and to the pursuit of happiness” (p. 58). In contrast, Steele described post-1960s liberalism as “redemptive liberalism—not a discipline of individual freedom but an ideology of conspicuous racial and social virtuousness” (p. 44). By co-opting the language and principles of the 1960s civil rights movement—namely, that the use of “racial preferences” in educational and employment decisions is morally wrong—conservative opponents of affirmative action carved out a powerful ideological niche that was difficult to challenge in the courts during the final two decades of the 20th century, especially in light of popular White sentiments and the makeup of the federal bench. Their contention was, and remains, that racial preferences amount to reverse discrimination and represent a violation of Title VI and VII of the Civil Rights Act, which protect individuals from discrimination on the basis of race, gender, or religion in both educational and employment settings. Essentially, conservatives contend that policies and programs ought to be “color blind.” What we are left with is much uncertainty, with one side arguing that race must be used as a legitimate factor in addressing discrimination and the other arguing that the very use of race is itself discriminatory. The only ideological certainty seems to be that the problem of the color line and the role of affirmative action will continue to be a source of debate well into the 21st century.

Numerous challenges to affirmative action policies in education and other arenas came before the Supreme Court during the 1980s and 1990s, all the while chipping away at the prevailing *Bakke* interpretation of campus diversity as a “compelling interest.” Michael A. Olivas (1999) noted that cases such as *Wygant v. Jackson Board of Education* (decided in 1986) and *City of Richmond v. Croson* (decided in 1989) began to narrow the reach of affirmative action policies in education and in hiring practices, mostly by requiring strict tests in employing preferential policies. Nonetheless, affirmative action in higher education endured. In *Wygant*, for example, Justice Sandra Day O’Connor wrote in the majority opinion that racial diversity is sufficiently compelling to support the use of racial considerations.

Although the *Bakke* decision was key, other judicial decisions since *Bakke* laid the groundwork for the most recent Supreme Court decisions in *Grutter*

and Gratz. In 1994, the U.S. Fourth Circuit Court of Appeals ruled in *Podberesky v. Kirwan* that the University of Maryland's Banneker Scholarship for African Americans was unconstitutional, because it used race as the sole determinant of eligibility (Chapa & Lazaro, 1998). In effect, the case ruled that awarding scholarships to in-coming Black students was illegal because other students were equally needy. The Supreme Court refused to hear the *Podberesky v. Kirwan* case, and, in effect, signaled a possible shift in race-conscious admissions policies. The possible shift was also indicated by the fact that the Appeals Court did not defer to the *Bakke* ruling on using race as a "plus" factor in the scholarship decision. In essence, the stage was set for a more serious challenge to *Bakke* and race-conscious admissions policies in higher education.

In 1995, *Adarand Constructors v. Peña* alleged "reverse discrimination" in setting aside public contracts for minority-owned businesses. Once again, Justice O'Connor noted in the majority opinion that race-based action is necessary to further a compelling interest and that such an action is within Constitutional constraints. However, the Court's decision explicitly limited minority preferences in public contracting, calling for strict scrutiny in determining whether discrimination existed before implementing a federal affirmative action program. This case further revealed the continuing onslaught against affirmative action policies and the prevailing *Bakke* decision, presaging the eventual success of the plaintiffs in the *Hopwood* case. As Olivas (1999) noted, the *Hopwood* ruling proved to be more "harsh and unyielding" in its result than the *Bakke* decision (p. 226).

In *Hopwood v. State of Texas*, the Fifth Federal Circuit Court in 1996 rejected the "compelling interest" argument that Justice Powell had opined in *Bakke*. The crux of the Fifth Circuit Court decision was that diversity in the student body was not and can never be, in itself, a compelling interest; and it further declared that the *Bakke* decision was dead (Chapa & Lazaro, 1998). The jurisdictional reach of this case included the states of Texas, Louisiana, and Mississippi. The political reach of the case proved far more extensive, as many other states, including California, responded by scaling back or abolishing their race-conscious admissions policies for fear of legal or political backlash (Lederman, 1996).

From a social movement perspective, decisions in cases such as *Wygant*, *Podberesky*, and *Hopwood* did not take place in a vacuum. These cases were strongly influenced by broad efforts to erode the advance of affirmative action in college and university admissions policies. Resistance actually grew sizeable at the same time that affirmative action policies were being institutionalized, especially within the higher education arena. The 1980s, for example, saw the increasing institutionalization of affirmative action, while political and ideological forces associated with the "new conservatism" and hyper-individualism of President Ronald Reagan sought to overturn such

programs and practices. Although legal and political challenges to affirmative action were a constant throughout its early development, these threats were often muted by the dominance of liberal reformist politics, politically charged racial struggle, and an increasingly activist Supreme Court intent on preserving the legacy of the landmark *Brown* decision. This legacy included the Civil Rights Act, the Higher Education Acts, Executive Orders issued by Johnson and Nixon, and the pattern by which the Supreme Court relied heavily on the *Brown* decision in subsequent race-related cases.

The 1980s, however, signaled a change in the prevailing political and judicial winds. In time, 12 years of judicial appointments under Presidents Reagan and George Bush effectively reshaped the ideological landscape of the federal bench and provided the impetus for opponents to renew their attacks on affirmative action (Diaz, 1997; Tobias, 1993; Tomasi & Velona, 1987; Wines, 1994). Also, during the 104th and 105th Congresses, from 1995 to 1998, Newt Gingrich used his position as Speaker of the House to wage an assault on affirmative action. For example, in early 1995, Gingrich indicated that abolishing "racial-preference" laws would be a top priority of his party upon completion of the 100-day Contract with America (Stefancic & Delgado, 1996). Additionally, conservative think tanks and legal groups such as the Washington Legal Fund, Center for Individual Rights, Heritage Foundation, Center for Equal Opportunity, Hoover Institution, Cato Institute, and Manhattan Institute for Policy Research, supported by the likes of wealthy conservatives Joseph Coors and Richard Scaife, provided ideological, legal, and financial support with which to attack affirmative action (Stefancic & Delgado, 1996). Together, these organizations added fuel to a growing counter-movement against affirmative action.

The reverse-discrimination argument and the individualist discourse of the new conservatives carried much weight throughout the 1990s and into the early 2000s. Conservatives have been careful in how they describe affirmative action practices to the general public. For example, they have opted for phrases such as "racial preference" or "racial quotas" to convey that Whites are passed over for "preferred" persons of color, when in fact typical college admissions policies simply use race as one of many factors in making decisions about applicants. Consequently, conservatives are guilty of presenting a "hard" version of affirmative action to the public when in fact most colleges and universities embrace a "soft" version. Soft affirmative action has received relatively little attention and includes such processes as race-conscious, non-preferential programs designed to enhance minority or female participation in a particular educational institution, company, or government initiative. Specific strategies in which soft affirmative action has been implemented include affirmative marketing, recruitment, and counseling programs, and a commitment to anti-discrimination in the employment process (Adams, 1998, 2001). Numerous public opinion polls

have assumed a hard affirmative action stance and therefore often have underestimated the support for “race as a consideration.” For example, a February 2003 poll conducted by the *Los Angeles Times* repeatedly used the phrase “racial preference” (Schmidt, 2003c).

As Bill Clinton started his presidency in 1992, many liberals and progressives hoped for a revitalization of affirmative action as a social force. But 1990s liberalism was nothing like its predecessor of the 1960s. In addition to not having to address a forceful civil rights movement or a strident race-based nationalist movement, liberal thought and action had to cope with powerful new forms of conservatism that had evolved in reaction to fallout from the 1960s (Gitlin, 1993, 1995). Consequently, for a progressive vision to endure politically, many liberal politicians like Clinton believed that a shift toward the center was required. As a consequence, the new liberalism of the 1990s did not look a whole lot different from the old conservatism, including how liberals incorporated the free market and globalizing beliefs of conservative capitalists. This pattern was never more apparent than in the increasing movement toward a global economy, the expansion of Americanized free market philosophies around the world, and the key role President Clinton played in promoting such a shift (Chomsky, 1998; Stiglitz, 2002).

Hope for a resurgence in affirmative action policy and practice was soon replaced by skepticism about its very survival. Progressive supporters adopted a rearguard strategy, seeking to protect what remained of a once powerful social force. The reality is that Clinton seemed prepared to abandon affirmative action altogether if not for third party ruminations from Jesse Jackson (1996) prior to the election of 1996. A possible abandonment of affirmative action was in keeping with Clinton’s centrist shift which, in higher education terms, was evidenced by his support for such merit-based scholarship programs as the Hope and Lifelong Learning credits (Selingo, 2002). Our analysis suggests that need-based scholarship programs lost out for the same reason that affirmative action lost ground—the increasing advance of competitive, individualistic processes mirroring the cultural values and perspectives of privileged classes and groups and reflecting the power of the “conservative restoration” that had united neoconservatism and neoliberalism (Apple, 2000). This is clearly the case with merit-based scholarship programs in which middle- and upper-income families have been the major beneficiaries; and the programs have only served “to exacerbate gaps in college participation, causing poor and minority students to fall further behind their wealthier and white peers” (Heller, 2002, p. 21).

The rearguard strategy that dominated the late 1990s and the early years of the 21st century focused on empirically validating the positive effects of diversity on campuses, reasserting Justice Powell’s thinking in the *Bakke* decision. Consequently, as debates around *Grutter v. Bollinger* were waged

before the Sixth Circuit Court of Appeals, progressive scholars sought evidence for the positive outcomes associated with campus diversity, including structural diversity, classroom diversity, peer group diversity, and so forth (Allen & Solórzano, 2001; Chang, 1999; Chang et al., 2003; Gurin, 1998; Orfield & Miller, 1998; Orfield & Kurlander, 2001). The potential problem with such arguments was two-fold. First, when one argues that *if* campus diversity enhances learning *then* this is reason enough for affirmative action, one also must consider the opposite as a possibility: that campus diversity should *not* be promoted if student learning is *not* enhanced. And, of course, such a position would be untenable to most progressives. Consequently, progressive social scientists found themselves in the position of having to verify the positive effects of diversity.

And herein was the second problem. Conservatives mounted their own body of evidence to dispute progressive claims that diversity enhances collegiate learning, as evidenced by the Wood and Sherman (2001) report supported by the conservative National Association of Scholars (NAS). As we see in this instance, the strategy of the pro-affirmative action supporters was largely being dictated by *Bakke*—the diversity as a compelling interest argument—but at the same time, such arguments existed in opposition to later court decisions in *Hopwood* and *Johnson*. Progressives were more or less forced to argue that colleges should make special efforts to recruit underrepresented minorities, because such diversity improves the overall learning environment—and not because it is the socially just thing to do in light of years of social and economic oppression (and a desire to preserve the social contract with minorities). Chang (2002) suggested that liberal- and progressive-minded supporters of affirmative action followed a narrow “preservationist” vision of diversity—one that sought to improve the proportional representation of underrepresented students. He went on to argue that the ideals upon which affirmative action originally arose were rooted in a far more complex vision of diversity and, in fact, were linked to “democratic principles of equal opportunity and equality” (p. 129). Prior to the Supreme Court decision in the Michigan cases, Chang astutely observed that, “While the general public discourse aimed at preserving the consideration of race in admissions may well prove to be a sound legal defense and perhaps even a persuasive public one, it often fails to acknowledge more fully the breadth and depth of diversity as practiced on college campuses” (p. 128).

Throughout the mid- to late-1990s, as judicial opinions and public referenda began to narrow the scope and even disavow affirmative action policies, states and institutions responded by rescinding their decades-long affirmative action efforts. In California, for example, the state enacted Proposition 209 in 1996, which was framed as a “civil rights initiative” even though, ironically, it turned back some of the advances achieved by the civil rights

movement. A year before Proposition 209 was approved by California voters, the University of California Board of Regents had helped to pave the way by eliminating race-conscious admissions policies throughout the UC system with the passage of Special Policy-1 (SP-1) (Pusser, 2004). Indeed, on the basis of the UC Regents' conservative turn, board member and right-wing activist Ward Connerly became an outspoken opponent of affirmative action and a national voice for ending race-conscious admissions practices. He later sought to end the practice of collecting racial data at public colleges and universities altogether.

While in California the UC decision in SP-1 set the stage for a wider state-wide policy (Proposition 209), Texas saw a court decision, the *Hopwood* case, extended as public policy throughout the state when Texas Attorney General Dan Morales applied the Fifth Circuit Court's ruling to all public higher education institutions and public contracting, effectively eliminating affirmative action policies from all public functions. Proponents of these anti-affirmative action efforts, including Connerly, David Horowitz at the Center for the Study of Popular Culture, and Dinesh D'Souza of the Heritage Foundation, were vocal advocates in rebuking what they saw as misguided social interventions by liberals. These opponents of affirmative action continually cited what they saw as its contradictory themes of equal opportunity for minorities and discrimination against nonminorities.

In the late 1990s and early 2000s, in response to changing public policy and anti-affirmative action sentiment, many states and higher education institutions enacted measures to preserve commitments to enrolling a diverse student body, while at the same time avoiding race-conscious admissions practices. In California, following the ratification of Proposition 209 in 1996, UC Regents sought an alternative admissions plan that would, among other objectives, achieve results similar to those of affirmative action. In May 2001, SP-1 was rescinded by a 22-0 vote, "symbolically" reaffirming the regents' commitment to diversity (University of California, 2001). Although still compelled to abide by race-neutral practices as a consequence of Proposition 209, the rescinding proposal called for the university to "seek out and enroll" a student body that reflects California's diversity and to support those students in their studies.

What had changed between the UC Regents adopting SP-1 in 1995 and then rescinding it in 2001 was increased pressure from powerful organizations dissatisfied with the ways in which the University of California was serving underrepresented students of color. For example, the regents experienced severe political pressure in the form of budgetary threats from California's powerful Latino caucus, led by Assemblyman Marco Firebaugh (D, East Los Angeles). As a consequence of increasing pressure, and following the lead of Texas and its Ten Percent Plan and Florida's Talented Twenty Percent Plan, UC instituted a new admissions pathway for the in-coming

class of 2001: Eligibility in a Local Context (ELC). This program ensured admission to UC of the top 4% of students graduating from a participating California high school, based on grades earned in UC-approved coursework during their sophomore and junior years. Thus, shifting policies in Texas, Florida, and California reflected the changing times and the influence of decisions such as *Hopwood*. The next major decision was soon to come.

The conservative push to end affirmative action that so dominated the 1990s did not go unnoticed by college students (Rhoads, 1998a). Although the notion of “social movement” that we employ in this paper does not necessarily require the presence of highly visible public demonstrations, this is not to suggest that such forms of direct action did not contribute to the vitality of pro-affirmative action efforts or to the countermovement as well. Indeed, students on campuses around the country made their positions known to university and public officials through a variety of direct-action strategies for and against affirmative action. For example, at UC Berkeley in 1995, the Coalition to Defend Affirmative Action and Integration and Fight for Equality By Any Means Necessary (BAMN) was formed in response to attacks on affirmative action policies within the UC System (i.e., SP-1 and SP-2) (About BAMN, n.d.). BAMN, along with the Affirmative Action Coalition at UCLA, were emblematic of progressive student organizations throughout California that remained committed to their cause in the face of the conservative restoration. BAMN for one recognizes that “to successfully defend affirmative action” requires the “power of a social movement like the one that secured affirmative action in the first place: a new, militant, integrated, mass civil rights movement” (About BAMN, n.d.). In recognizing the necessity of being proactive, students in California held conferences, walk-outs, circulated petitions to pressure administrative leaders and policy makers, threatened litigation, and expertly utilized media to convey their message.

At the University of Texas, a coalition of student groups called the Students for Access and Opportunity (SAO) mobilized to renounce the abandonment of affirmative action policies throughout the state, holding sit-ins, teach-ins, and countless rallies in the aftermath of the *Hopwood* ruling. Opposing groups such as the Young Conservatives of Texas often held counter-events aimed at discrediting SAO's efforts (Dedman, 1997). More recently, and in the face of major victories by anti-affirmative action forces, University of Michigan students not only mobilized in favor of affirmative action but also sought to participate in the debate. Student interveners were allowed a voice in the judicial proceedings at the Sixth Circuit Court through a petition submitted to the court. Other student organizations, such as Young Americans for Freedom, opposed such efforts and instead supported the plaintiffs' cases (Hunt & Khatri, 2002). The efforts of student activists at the University of Michigan highlighted the importance of the *Grutter* and *Gratz* cases.

THE MICHIGAN CASES: *GRUTTER* AND *GRATZ*

On June 23, 2003, the U.S. Supreme Court delivered decisions in both the *Grutter v. Bollinger* and *Gratz v. Bollinger* affirmative action cases. Far from providing a definitive ruling on the Constitutional legitimacy of considering race in higher education admissions decisions, the opinions delivered in the *Gratz* and *Grutter* cases left much room for interpretation. Writing for the majority in the *Grutter v. Bollinger* case, Justice O'Connor (joined by Justices Stevens, Souter, Ginsburg, and Breyer) upheld the University of Michigan Law School's right to consider an applicant's race when making admissions decisions. They reaffirmed Justice Powell's finding in the historic *Regents of the University of California v. Bakke* case: that "student body diversity is a compelling state interest that can justify the use of race in university admissions." The *Grutter* majority opinion then continued by outlining the contexts and conditions under which colleges and universities could consider an applicant's race. Perhaps the most significant finding in Justice O'Connor's opinion was the Court's explicit recognition of the educational benefits derived from a diverse learning environment:

These benefits are not theoretical but real, as major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas and viewpoints. . . . What is more, high-ranking retired officers and civilian leaders of the United State military assert that, "[b]ased on decades of experience," a "highly qualified, racially diverse officer corps . . . is essential to the military's ability to fulfill its principal mission to provide national security." (*Grutter v. Bollinger*, 2003, pp. 333–334)

This excerpt from the majority opinion established the ideological context within which the Court condones the consideration of race in higher education admissions decisions. It is the compelling interest of diverse learning environments—not the need to redress the historical and continuing effects of prejudice and discrimination—that justifies the constitutional legitimacy of higher education affirmative action programs. The *Grutter* decision was not unanimous, however, with Chief Justice Rehnquist and Justices Scalia, Kennedy, and Thomas filing dissenting opinions. Justices Scalia and Thomas explicitly challenged the educational benefit rationale asserted by the majority Justices:

The Court's deference to the Law School's conclusion that its racial experimentation leads to educational benefits will, if adhered to, have serious collateral consequences. The Court relies heavily on social science evidence to justify its deference. . . . The Court never acknowledges, however, the growing evidence that racial (and other sorts) of heterogeneity actually impairs learning among black students. (*Grutter v. Bollinger*, 2003, p. 355).

Despite the fact that the U.S. Supreme Court issued a decision that upheld a university's right to consider race when making admissions decisions, this excerpt from the Thomas and Scalia opinion clearly illustrates the continued presence of ideological differences within the judicial arena. Justices on both sides of the *Grutter* decision cited empirical evidence to support their opinions; yet given the divergent research findings presented with respect to the educational benefits of diverse learning environments, it is evident that the outcome of the *Grutter* lawsuit was as much about ideology as it was well-reasoned debate.

The *Grutter* and *Gratz* Supreme Court decisions also outlined the essential conditions and specific criteria that must be used to frame the practice of affirmative action. Justice O'Connor's majority opinion in the *Grutter* case further stated:

We find that the Law School's admissions program bears the hallmarks of a narrowly tailored plan. As Justice Powell made clear in *Bakke*, truly individualized consideration demands that race be used in a flexible, nonmechanical way. It follows from this mandate that universities cannot establish quotas for members of certain racial groups or put members of those groups on separate admissions tracks. . . . Universities can, however, consider race or ethnicity more flexibly as a "plus" factor in the context of individualized consideration of each and every applicant. We are satisfied that the Law School's admissions program, like the Harvard plan described by Justice Powell, does not operate as a quota. (*Grutter v. Bollinger*, 2003, p. 336)

Although the University of Michigan Law School's admissions policies were affirmed by the U.S. Supreme Court in the *Grutter* decision, a majority of the Justices in the *Gratz* case did not uphold the practice of the University of Michigan's College of Literature, Science and the Arts (LSA) of automatically allocating 20 points (100 were needed for guaranteed admission) to applicants from underrepresented racial or ethnic minority groups. The majority opinion, written by Chief Justice Rehnquist, and joined by Justices O'Connor, Scalia, Kennedy, and Thomas, reaffirmed that the educational benefits derived from a diverse learning environment present a compelling interest but they found that the LSA point system was *not* "narrowly tailored to achieve the interest in educational diversity the respondents claim justifies the program" (*Gratz v. Bollinger*, 2003, p. 261). Rehnquist went on to write: "Unlike Justice Powell's example where the race of a 'particular black applicant' could be considered without being decisive, the LSA's automatic distribution of 20 points has the effect of making 'the factor of race . . . decisive' for virtually every minimally qualified underrepresented minority applicant" (*Gratz v. Bollinger*, 2003, p. 268).

Certainly, the *Grutter* and *Gratz* decisions provide college and university admissions officers with much-needed direction with respect to the condi-

tions and contexts under which they may consider an applicant's race. At the same time, however, it is unlikely that these Supreme Court decisions will end the ideological, legislative, and judicial conflicts that have characterized the battle over affirmative action. For example, in his *Grutter* dissenting opinion, Justice Scalia asserted that the "*Grutter-Gratz* split double header seem perversely designed to prolong the controversy and the litigation" (*Grutter v. Bollinger*, 2003, p. 345). Scalia predicted that "some future lawsuits will presumably focus on whether the discriminatory scheme in question contains enough evaluation of the applicant 'as an individual' . . . Still other suits may challenge the bona fides of the institution's expressed commitment to the educational benefits of diversity that immunize the discriminatory scheme in *Grutter*" (*Grutter v. Bollinger*, 2003, p. 345). Scalia's forecast of continued affirmative action litigation and controversy in the post-*Grutter/Gratz* era is in line with our understanding of affirmative action as an ideologically contentious social movement. Far from outlining a rational and objective explanation of constitutionally legitimate principles and practices, the Supreme Court decisions underscored the value of collective action as a means of influencing the legislative and judicial future of affirmative action.

For example, in the *Grutter* majority opinion, Justice O'Connor noted that the "Law School's claim of compelling interest is further bolstered by its *amici*, who point to the educational benefits that flow from student body diversity" (*Grutter v. Bollinger*, 2003, p. 333). Here, she is referring to the nearly 70 organizations, corporations, professional associations, universities, political figures, and military officers who filed *amicus* briefs in support of the University of Michigan. On the other side of the courtroom, 11 organizations and individuals filed *amicus* briefs in support of *Grutter*.

Throughout the months leading up to the *Grutter/Gratz* decisions, organizations on both sides of the debate fought hard to influence the outcome. For the anti-affirmative action forces, organizations such as the National Association of Scholars, Center for Individual Rights, and Center for Equal Opportunity engaged in a variety of efforts and activities to influence the Court and the court of public opinion. Similarly, and arguing on behalf of race-conscious admissions practices, a number of organizations, including the American Educational Research Association, the Association of American Law Schools, the American Bar Association, and the NAACP Legal Defense and Educational Fund, offered support to the University of Michigan. Some groups, such as the Student of Color interveners, led by their lead counsel, Miranda Massie of the United for Equality and Affirmative Action Legal Defense Fund, actually supported race-conscious admissions practices on the basis of the dissenting opinion in the *Bakke* case—that historical and ongoing discrimination constituted a legitimate basis for affirmative action. Massie cited a number of social science research findings highlight-

ing the ongoing inequality and discrimination faced by students of color (Allen & Solórzano, 2001; Solórzano, Ceja, & Yosso, 2000).

A point of interest to us is the fact that 64 Fortune 500 companies (including Microsoft and Shell Oil) signed on to the 3M et al. "friend of the court" brief in support of the University of Michigan. This highlights the fact that both the pro- and the anti-affirmative action movements are complex and multiplicitous; or, in terms of our earlier musical metaphor, they are more like a jazz ensemble than a finely orchestrated symphony. It may seem odd for some to see corporations come down on the same side as more progressive and left-leaning organizations; but after all, there are significant financial benefits to having a diverse workforce in a globally driven marketplace. Furthermore, we should also keep in mind that some 436 Fortune 500 companies did not sign the *amicus curiae*.

Support of *Grutter* and *Gratz* by particular race- or gender-based organizations such as the Mexican American Legal Defense and Educational Fund (MALDEF), NAACP Legal Defense and Educational Fund, National Asian Pacific American Legal Consortium, Hispanic National Bar Association, and the National Organization for Women Legal Defense and Education Fund accentuated the reality that affirmative action had taken on since the late-1960s: Although the movement itself largely emerged from Black struggle and the civil rights movement, it had evolved into a far broader movement, encompassing the interests of a diverse spectrum of racial minorities as well as women, immigrants, refugees, lesbians and gays, and the disabled.

CONCLUDING REMARKS

In the introduction to this article, we identified two primary goals: (a) to examine and inform affirmative action in higher education based on a social movement perspective, with the objective of supporting affirmative action, and (b) to explore the utility of a social movement perspective as a way of thinking about and studying large-scale higher education reform efforts. We close by offering some concluding remarks about each goal.

In terms of making sense of affirmative action as a social movement, we must first recognize how public pressure has been brought to bear on legislatures and courts. For example, affirmative action arose in a climate of liberal and progressive reform (the pre-emergence and emergence phases) and then was partially eroded during a political and cultural period dominated by conservative politics. The result was a phase of destabilization and reform. The actions and debates that advanced such phases have been as much about ideology and political organizing as they were about well-reasoned arguments and advances in knowledge.

Second, as we consider the future of affirmative action, supporters must recognize that new barriers will arise and that collective action will likely play a major role in overcoming such barriers. For example, shortly after the *Grutter* and *Gratz* decisions, Ward Connerly announced his intention to begin organizing a massive campaign in Michigan and perhaps elsewhere to limit affirmative action through legislative efforts (Schmidt, 2003a). Consequently, supporters of affirmative action must turn to their vanguard groups to resist such efforts, including nationally prominent organizations such as the NAACP, but also less prominent student-led organizations such as BAMN. Support of these organizations may prove crucial in preserving and strengthening affirmative action in the coming years.

Although race-conscious admissions practices may continue under certain guidelines throughout much of the country, we must also recognize that a sizeable population of underrepresented students will not receive the benefits of such policies. Proposition 209 is still the law of the land in California. Alternative admissions policies and practices that emerged subsequent to the passage of Proposition 209 have proven inadequate in fostering high levels of participation among underrepresented students of color (Horn & Flores, 2003). And now there is a dramatic reason to return to the pre-Prop 209 days: the *Grutter* decision. After all, Prop 209's passage was part of a conservative restoration aimed at ending policies such as affirmative action. With the decision in *Grutter*, the anti-affirmative action forces lost significant momentum. Given that pro-affirmative action forces now have the Supreme Court on their side (at least to a degree), repealing Proposition 209 and bringing California public universities in line with the Supreme Court's June 2003 decision is a reasonable possibility.

A fourth point concerns the makeup of the federal bench. One area in particular that affirmative action supporters must pay greater attention to is the appointment of federal judges. We must keep in mind that the conservative restoration specifically targeted the federal bench and that the Reagan-Bush judicial appointments made it possible to severely weaken affirmative action (Stefancic & Delgado, 1996). Clearly, judicial appointments often represent a struggle of values between oppositional forces such as the Left and the Right. Senator Charles Schumer of New York recognized as much when he argued that ideology ought to be included for discussion during the confirmation of federal judges (Newfield, 2002). In practical terms, progressive internet-based organizations such as "moveon.org" likely will be crucial to such efforts; and in fact, this group was actively involved in organizing resistance to the appointment of right-wing judges like Carolyn Kuhl in California.

As for our second goal—that of examining the utility of a social movement perspective—our analysis of affirmative action helps us to understand two key facets of higher education policy: (a) the reach of colleges and uni-

versities and their ability to initiate and sustain policy change are often beyond their scope, and (b) rationality often falls by the wayside when it comes to highly charged issues and in its place arise ideology and politics.

As modernist organizations caught in a changing post-industrial society, universities must seek alternative strategies for advancing their interests. Indeed, it is time to recognize that today's postindustrial societies require different ways of conceptualizing social change. The reality is that organizations are increasingly limited in their ability to initiate and sustain major reform initiatives. It is, in Alaine Touraine's (1988) words, time for the "return of the actor" who is engaged in social struggle within the context of a complex social movement. In terms of higher education policymaking, we must recognize the contemporary limitations of organizations and the inability of colleges and universities to fully shape their own destiny. The battles to come will not be fought within traditional organizational locations but instead will take place within rapidly changing and highly permeable inter-organizational and non-organizational networks and spaces—the sort of networks and spaces that social movements are more likely to reach.

Finally, given the powerful mythology surrounding the academy as the "ivory tower" of objective and rational thought, engagement in social movements rooted in ideological and political concerns must be carefully negotiated. But the reality is that the most compelling forces shaping colleges and universities today often are highly embedded in political and ideological positions. For example, many of the global initiatives impacting universities are tied to free market philosophies and neoliberal economic views. Neoliberal economic views are not neutral positions. Also, pressure over the past few decades to better assess the performance of colleges and universities clearly has been linked to a conservative push for increased accountability and a corresponding withdrawal of support for public-good enterprises (some consider this movement "privatization"). And, changes in policies and practices associated with multiculturalism obviously have been hotly contested among progressives, liberals, traditionalists, and conservatives, and institutional victories here and there rarely have been absent such ideological tension. Hence, reform is almost always embedded in a political/ideological context and so the idea of universities as "neutral enterprises" must be abandoned once and for all. From privatization, to globalization, to multiculturalism, ideological and political perspectives frame the nature and direction of reform possibilities, and universities and their representatives must become engaged in the political processes that shape such debates and changes. Clearly, such a goal is possible; and the involvement of the University of Michigan in efforts to support affirmative action is an example of an institution and its leaders taking a stand and becoming actors in a key social movement.

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