DOCTORAL-GRANTING UNIVERSITIES: RECOMMENDATIONS FOR UNIVERSITY OF TEXAS AT AUSTIN'S FISHER V. UT AUSTIN AFFIRMATIVE ACTION CASE

Dino J. Laury and Audrey Patricia Burns
University of Rochester

Abstract

Affirmative action is a recurrent issue in United States' higher education, due to the legal complications of using race (and other discriminating factors) as an admission's decision factor. Utilizing the case study of Fisher v. University of Texas at Austin, a literature review and cybernetics' loop of interaction framework was used to deconstruct the position(s) of the University of Texas Austin's admissions department and affirmative action policy, the stakeholders, and the Supreme Court. In turn, this paper worked to construct an analysis on affirmative action. Drawing from the cybernetic framework, the literature review presented affirmative action's history, examined admission policy to cultural and social movements, and noted that UT Austin declined Fisher's admission and offered her other opportunities to enter, which she declined. From the cybernetic framework, the value of variable demonstrated the interconnection between social controls (i.e., communication, group interaction of stakeholders) and structure controls (i.e., affirmative action policy, governance process) of an organizational culture. Moreover, of the 6,715 students from the admission class of 2008, 3,256 students performed better on the SAT, whereas 311 African Americans and 1007 Hispanics scored better than Ms. Fisher. Thus, Ms. Fisher accused UT Austin of using a race-based admissions affirmative action policy. The two arguments that the University of Texas Austin provided were: 1) UT suggested that diversity at the school-wide level was insufficient (Kahlenberg, 2012), and 2) "the class-based affirmative action and Top 10% plans did not produce sufficient levels of socioeconomic diversity within the student body's black and Latino communities" (Kahlenberg, 2012). The recommendations were to resolve affirmative action and maintain diversity through different venues, and take into account socioeconomics because this includes underrepresented candidates, which can increase the diversity of the institution.

INTRODUCTION

The issue of affirmative action and its impact on institutions of higher education in the United States will be analyzed utilizing the University of Texas at Austin (UT Austin) as a case study. The paper will begin with an analysis of the structure of the University of Texas at Austin and the role this structure plays in decision-making and implementing change. The paper will then introduce the history of affirmative action policy at UT Austin and within the UT system using a social constructivist framework, demonstrating the environment in which the Fisher v. UT Austin case occurred. After an analysis of the Fisher v. UT Austin case, this paper will conclude with recommendations for UT Austin that align with the current structure and functions of the institution while utilizing a cybernetic model.

Institutional Overview

The University of Texas system consists of six independent systems, with practically one college or university for every district. There are four main universities and over one hundred public colleges. Each of the six systems maintains its own board of regents and governing structure. The University of Texas at Austin is one of the four main universities in Texas and is part of the UT system (Gittel & Kleinman, 2000). The specific governance structure of UT Austin will be analyzed in the following section.

UT Austin is the flagship university in the UT system, meaning that being founded in 1883 it is the first established university in the state of Texas focused on public research. According to the Carnegie Classification System, UT Austin is a doctoral-granting university with high levels of research activity. UT Austin does maintain high levels of research activity and awards more than 800 doctoral degrees, the Carnegie criteria for being classified as a doctoral-granting institution is that the institution awards at least twenty research doctoral degrees per year, which does not include professional degrees (Characteristics of Doctoral Programs, 2010). Research at UT Austin takes place from the undergraduate to the faculty level and spans many academic disciplines from the humanities and arts to the sciences. A few notable facts concerning research at UT Austin are that 1.1 billion dollars was awarded in research grants over the past two years (both privately and publicly), the university runs and utilizes for research purposes one of the fastest supercomputers in the world as well as a state of the art laser. In terms of humanities projects, the university maintains strong archeological research among other disciplines; the university operates two field work sites in the Ukraine and in the South of Italy (Research, 2013).

In addition to the researching-granting doctoral programs, the university also houses the UT system's law school, policy school and a large number of the professional degree granting programs. As the university's mission clearly states, the university is committed to excellence in "undergraduate and graduate education, research and public service" (About UT, 2013). This is a common thread throughout institutions under similar classifications in the Carnegie system. As a research institution, the priority on research directs many of the academic focus areas, undergraduate opportunities, and a commitment (along with the perceived obligation to commitment from the public) to doing public good.

There are 11,128 graduate students, 1,108 law students and 39,977 undergraduate students currently enrolled at UT Austin; the institution has a large student body fitting for the number and breadth of academic programs and separate colleges within the institution. Based on 2011 statistics: the demographics of in state students compromise almost 80% of the student population,

while 9.1% and 11% characterize foreign and out-of-state students, respectively (Student Characteristics, 2011). These statistics contribute to the identity of the school and the cohesiveness of the organizational mission. As a public university serving mostly in-state students, UT Austin's mission to serving the public good and contributing to the betterment of the state of Texas is of paramount importance to UT Austin as well as the Texas community. The state of Texas continues to grow in the diversity of its constituents, especially in terms of racial/ethnic demographics. UT Austin, as a commitment to representing the growing diversity of the state, as well as attempting to rectify the lack of diversity in the past, has placed priority on increasing diversity within its institution as well as preparing students to work in a state (i.e. Texas) that is diverse and inclusive. Later, in this paper, the implications of the institutional make-up, mission, and environment will be expanded upon.

Governance and Organizational Structure

The University of Texas (UT) system employs the Board of Regents as the governing body, composed of nine regents and one student regent. Although the governor appoints the regents, also confirmed by the Senate, the chancellor is the chief executive officer of the UT system and reports to the Board of Regents. Also, the Chancellor has an Executive Vice Chancellor for Academic Affairs and ten executive officers that work collaboratively with ten universities within the UT system (Leadership, n.d.).

The University of Texas at Austin (UT Austin), which reports to the Chancellor and Executive Vice Chancellor for Academic Affairs, employs an organizational structure with ten Vice Presidents (Vice Presidents, n.d.) and eighteen Administration staff members (Staff, n.d.). Every Vice President has his or her own organizational structure and mission statement within the respective divisions; therefore, creating a decentralized model.

According to a comparative study by Gittel and Kleinman (2000), "The political culture of Texas, which values individualism and local authority, can be seen in its decentralized system..." (p. 1059). Gittel and Kleinman proceed to say that "Texas resisted dozens of proposals to more logically coordinate and centralize its disparate systems of higher education," (p. 1059). We then propose to classify this unruly, sprawling system as under a bureaucratic model, whereas each college has a major positivist view, due to its hierarchy.

In terms of decision-making, due to the decentralized model, the president of UT Austin (currently William Powers Jr.) has a governing ability almost equal to that of the UT system leader. However, in more recent years, the Texas legislature has been taking on an increased role in dictating policies throughout the UT system (Gittel & Kleinman, 2000). This increased role from the Texas legislature places more pressure on the president and governing board to respond to policy changes and occurrences in the political system.

The issue facing the University of Texas at Austin and the UT system, which will be presented, is the legality of affirmative action in admission decision-making. The way that policy changes the relationships within the various departments at UT Austin is crucial for examination, in that recommendations can be made regarding the issue at stake.

The University of Texas' state governance policy environment and system design "uses a federal design within a predominantly regulatory policy environment" (Bracco 1999, pp. 95). Bracco et al., (1999) defined federal system as "a statewide board responsible for collecting and distributing information, advising on the budget, planning programs from a statewide perspective, and encouraging articulation" (pp. 93). In other words, this indicates the relationship

between the institution and market controlling changes, which challenges administrators to allocate resources by eliminating the incentives for efficient operations (Bracco 1999, pp.92). This indicates tight-loose coupling among the University of Texas' governing policy and the institution's Admission's policy. How will the Fisher v. UT case impact higher education, the state, and the market of the university in the future?

Issue

Abigail Fisher, a white female, applied for undergraduate admission to the University of Texas at Austin (UT) in 2008 and a twofold situation occurred whereas "Abigail was not entitled to automatic admission under Texas's Top Ten Percent Law (Top 10% Law), and instead competed for admission against other non-Top 10% in-state applicants under a system which UT expressly considered a race in order to increase enrollment of Hispanic and African-American applicants" (UTA 2011, pp. 2). UT denied Fisher's admittance to the university wherein race was one of the criteria in admissions decisions as well as other factors.

To expand more on Abigail Fisher and the criteria in admission decisions factors; like Fisher, applicants who fail to graduate in the top 10% of their high schools have an opportunity to gain admission to the University by scoring highly in a process which evaluates their talents, leadership qualities, family circumstances and race (Haurwitz, 2012). From the implementation and Results of the Texas Automatic Law, also known as the HB 588, Annual Report for Academic year 2009 from the University of Texas Austin, the admission process for students who are not automatically admitted is elaborated and involves the merit. The merit is expanded into "Academic Index" (AI) and "Personal Achievement Index" (PAI) (HB 588, 2012, pp. 2).

The Academic Index (AI) is a multiple regression equation that includes class rank, completion of UT required high school curriculum, extent to which students exceed the UT required units and SAT/ACT scores (HB 588, 2012, pp. 2). In addition, the Personal Achievement Index (PAI) is a holistic approach that includes these factors, including scores on two essays, leadership, extracurricular activities, honor awards, work experiences, service to school or community and/or special circumstances on other features such as socio-economic status of family, single parent and language spoken at home, family responsibilities, socio-economic status of school attended, average SAT/ACT of school attended in relation to student's own SAT/ACT score, and race "with approval by the UT Board of Regents in 2003" (HB 588, 2012, pp. 2). As stated earlier, the students that were not automatically admitted are now plotted on the UT Austin's "Admission Decision Grind" (HB 588, 2012, pp. 3), with the most qualified candidates being review and decided upon by the Dean's office, faculty members, or the Admission liaison to determine which students to admit. Thus, "Texas resident applicants are either admitted, 'cascaded' to their second choice of major, offered Summer Freshman Admission if spaces are available, or offered the coordinated Admission Program (CAP) at a UT system component school" (HB 588, 2012, pp. 3).

Finally, "Fisher had a grade point average of 3.59 as adjusted to 4.0 scale, was in the top 12% (82 out of 674 students) of her class at Stephen F. Austin High School, and scored 1180 on her SAT (Amended 2008, pp. 3). Her SAT score was within the 25th and 75th percentiles of the incoming class at UT-Austin, which were 1120 and 1370 (Amended 2008, pp. 3). She was involved in the orchestra, math competitions and volunteered at Habitat for Humanity" (Joint appendix 2012). "At the time of her application to UT Austin, Ms. Fisher had taken the Scholastic Aptitude Test (SAT) twice… The test is composed of three sections; critical reading, math and

critical writing … The writing section, added to the SAT in 2005 … UT Austin did not consider the writing section in its undergraduate admission decision for the 2008 incoming class" (Amended 2008, pp.4). Having said this, it is crucial to consider the estimated relationship between SAT and ACT scores, and to get a more accurate representation of what comes from a concordance table, not to equate scores, but rather to find comparable scores.

From the ACT-SAT Concordance Table (2011), UT Austin reviewed only the Critical-reading and Math section, Ms. Fisher's two-part SAT score (1180) is comparable to ACT score of 26. Thus, this translates to a three-part SAT score of 1740-1790 SAT score range. For the remainder of this paper, the 1740-1790 SAT score out of 2400 will be perceived in order to accurately juxtapose with all other applicants of the 2008 admission class that was identified on the University of Texas' annual report.

"On or about March 25, 2008, Ms. Fisher received a rejection letter from UT Austin sighed by Defendant Bruce Walker, Vince Provost and Director of Admission, explaining that her application for admission to UT Austin's Undergraduate program had been rejected" (Amended 2008, pp. 26). Ms. Fisher was offered admission to the UT Austin's CAP program. "Students who fulfill the requirements of CAP may then enroll, but are guaranteed admission into only the College of Liberal Arts or the College of Natural Sciences" and must agree by May 1, 2008 with an admission fee of $200 (Amended 2008, pp. 26). At the same time, Ms. Abigail Fisher applied for two colleges and was admitted to undergraduate programs at Louisiana State University and Baylor University (Amended 2008, pp. 27). Eventually, she attended LSU.

The issue of race based admissions decisions reflects on the idea of affirmative action on a federal basis as a whole and all of the so-called "entitlement programs." The idea of affirmative action on a federal level spreads to a wide range of contexts, one of the most notable being employment and employment standards as well as department of education programs that specifically take race into account. The decision on race-based admissions can have sweeping significance for other affirmative action or "entitlement programs." Thus, the main objective for affirmative action is to prevent discrimination based of color, religion, sex, or national origin. The incentive is a desire to ensure public institutions represent the population they serve. Moreover, if the incentive does not serve the population, social issues (or problems) are created, such as social inequity, education inequity, pay inequity, and/or access among people in higher education (Social Issues, n.d.). This differs from the general public's social issues like stem cell research, gun control, abortion, immigration, and gay rights. To reiterate the higher education constituent, social inequity involves different forms of inequality such as gender, race, age, and class issues. The education inequity issues are paramount when students experience disparity from other students as per grades, ACT/SAT scores, social-economic status from home and school district, and/or disability, which will ultimately impact access to education. Overall, to the citizenry, social issues impact the public good.

Juxtapose Admission Scores of Fisher v. Other applicants

Once again, Abigail's grade point average was 3.59/4.00, she was in the top 12% of her class, and scored 1180 on her SAT, whereas the incoming class scored 1120-1370. She was not accepted to the University of Texas at Austin and currently is suing UT Austin for race-based discrimination. How did Ms. Fisher's academic status compare with the remaining of fall 2008 Admission applicants?

In the Fall of 2008, UT Austin received 29,501 applications. 12,843 offers of admission were given and their freshman class size was 6,715 (HB588 2009, pp. 4). The composite of 6,715 students admitted was 52% white (3513), 0% Native Americans (23), 6% African American (375), 19% Asian American (1249), 20% Hispanic (1338), 3% International (208), and 0% Unknowns (9) (HB 588, pp.6). Moreover, the Top 10% and non-Top 10 first-time enrolled freshman from Texas high schools, by racial/ethnicity, SAT and ACT scores juxtaposed with GPA and ethnicity backgrounds will be illustrated and finally position Fisher's status.

The composite of Top 10% first-time enrolled freshman from Texas High schools (5114 students) are: 8% white (2480), 0% Native Americans (14), 6% African American (305), 20% Asian American (1025), 23% Hispanic (1164), 2% International (122), and 0% Unknowns (4) (HB 588, pp.7). Next, the composite for non-Top 10% first-time enrolled freshman (1280 students) from Texas High Schools are: 65% white (790), 1% Native Americans (8), 5% African American (58), 14% Asian American (173), 13% Hispanic (158), 1% International (18), and 0% Unknowns (3) (HB 588, pp.7). In other words, there were 6,322 students who graduated from Texas high schools. 81% of students (5114) were admitted via the Top 10% and 19% (1208) students were admitted via the non-Top 10% (HB 588, pp.9).

From the National Center for Education statistics, the 2008 average three-part SAT score was 1509 (Reading 501, Mathematics 515, Writing 493) or two-part SAT score was 1016 (SAT Profile, 2012), and 20.6 English and 21.0 Mathematics (ACT Profile, 2012). Therefore, according to UT Austin, who reviewed only the two-part SAT score and the ACT-SAT concordance translation, Abigail's translated SAT score reflected 1740-1790. Furthermore, by juxtaposing Abigail's scores and performances with HB 588, automatic admits, and other enrolled freshmen, the University of Texas Austin's student profile (Student Profile, 2010) indicated that approximately 3,459 of 6,715 students possessed higher SAT scores than Abigail (pp. 4). The breakdown for under-represented minorities' mean SAT scores along with how many scored better than Fisher is as follows: for African Americans - 1577, whereas 64 of 375 had higher SAT scores, and for Hispanics – 1654, whereas 331 of 1338 had higher SAT scores (Student Profile, 2010, pp. 5).

On the other hand, Ms. Fisher's high school GPA was 3.59 and was better than 4,919 Top 10 % applicants with SAT mean scores of 1219, and 1,149 non-Top 10% applicants with SAT mean scores of 1285 overall. To composite with race and ethnicity, she scored better than 2,373 Top 10% white students with an SAT mean of 1267, and 745 non-Top 10% white students with SAT mean of 1300 (HB 588 2009, pp. 12). As for African American Students, she scored better than 305 Top 10% students with an SAT mean of 1068, and 58 non-Top 10% students with an SAT mean of 1087 (HB 588 2009, pp. 12). As for Hispanic Students, she scored better than 1156 Top 10% students with an SAT mean of 1111, and 158 non-Top 10% students with an SAT mean of 1211 (HB 588 2009, pp. 14). Finally, no determination was able to be made as to the socio-economic criteria of Ms. Abigail Fisher, in comparison to that of the other applicants.

To reiterate: 81% of 5,144 students from the state of Texas were admitted via Top 10%, and 19% students (1,208) were admitted via non-top 10% (HB 588, pp. 9). The Top 10% state mandate law guarantees in-state students admissions. For in-state applicants, outside of the Top 10% offered the academic index (AI) and personal achievement index (PAI) schemes, which included SES. Research shows that SES is an important factor. The factors indicated are "children from low-SES environments acquire language skills more slowly, exhibit delayed letter recognition and phonological awareness, and are at risk for reading difficulties (APA, n.d., as cited

in Aikens & Bardarin, 2008). Moreover, children with higher SES backgrounds were more likely to be proficient on tasks of addition, subtraction, ordinal sequencing, and math word problems than children with lower SES backgrounds (APA, n.d., as cited in Coley, 2002), regardless of race or gender of the applicant. Thus, we are recommending applying the SES lens to all applicants regardless of meritocracy because it is (1) safer politically, and (2) includes all diversity and under-represented applicants that will level the playing field. Furthermore, this will satisfy the two arguments that UT Austin raised. Argument 1 is: "UT suggested that diversity at the school-wide level was insufficient (Kahlenberg, 2012), and argument 2 is: "the class-based affirmative-action and TOP 10% plans did not produce sufficient levels of socioeconomic diversity within the student body's black and Latino/ Latina communities (Kahlenberg, 2012).

Historical Context of Issue

UT Austin is not the only higher education institution that is facing legal and social backlash from affirmative action policies. Affirmative action was first developed under the John F. Kennedy administration, but enacted as law under Lyndon B. Johnson; however, the development of the idea of affirmative action began much earlier. As stated by G. Rhoads et al. (2005), "the birth of affirmative action as an idea may actually be traced by 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 relationship of the darker to the lighter races of men" (Rhoads, Saenz & Carducci 2005, pp. 197 cited by Du Bois).

G. Rhoads et al. (2005) illustrated a basic time line of affirmative action in higher education that progressed through three different stages: pre-emergence (1950 - 1964), emergence (1964 – 1996 and beyond) and destabilization & reform (1978 - 2003 and beyond) (pp. 193 and 199). The pre-emergence stage developed in 1950 with the Sweat v. Painter case, which challenged de facto segregation in higher education, and the Brown v. Board of Education, which challenged the segregation of public schools. The pre-emergence period closed with the 1964 Civil Rights Act that "supplied statutory strength to enforce the ban on race and gender-based discrimination in all programs at public or private institutions receiving federal funds" (Rhoads et al., 2005, pp. 197).

After the Civil Rights Act of 1964, where "the Civil Rights Act and executive orders 11246 and 11375 served the purpose of implementation and enforcement of key events in the affirmative action as public policy", the Hopwood v. Texas weakened the emergence period (Rhoads et al., 2005, pp. 198). The University of Texas system responded to the outcome of this case and was forced to find alternative ways to diversify their student population, "After the Fifth Circuit's Hopwood v. Texas decision in 1996, University of Texas's race-conscious admissions concluded. In response, the Texas Legislature adopted the Top 10 Percent Law, which affected admissions cycles beginning in 1997, seniors in the top 10 percent of their high school class guaranteed admission to any Texas state university" (Fisher, n.d.). Finally, the destabilization and reform period (1978-2003 and beyond), and the phasing out of emergence stage presented two crucial cases, which included the Bakke Case (UC-Davis Medical School) and Grutter V. Bollinger (Michigan Law School Case). Both used race as a "plus factor" in admission decisions. The stages of affirmative action law and the Supreme Court challenges have affected UT Austin's use of race as an admissions factor.

The UT-system's most updated policy as it relates to race being used in admissions is the development of the aforementioned Top 10 Percent law. Applicants that are not admitted via the Top 10 Percent Law are placed in an additional applicant pool where race is considered a part of

the admissions criteria (Perez-Pena, 2012). In response to other cases where affirmative action policies were called into question (i.e. Grutter V. Bollinger), the UT-system utilized its Collective-Action view, adapting to the political and social environment. Within the UT-system, minority representation was not at a level that reflected institutional diversity or equity.

As higher education historically and currently is fraught with issues of access, equity and representation for minorities and other, under-represented groups, race being used as a factor in admissions and policy, like the Top 10 Percent Law, attempt to increase diversity on campuses and address issues of college access. The Top 10 Percent law in the UT-system means that UT applicants are being compared against their classmates, not against all applicants from various schools. As educational inequity within the K-12 public school system often means that minority students are attending lower preforming schools that are potentially under-preparing them for standardized testing and other higher education admittance factors, the Top 10 Percent Law equates to more minority students passing the threshold of being the top 10 percent in their class, therefore gaining admission to the UT system.

As a consequence of the Bakke v. California decision, "public colleges and universities across the country, while prohibited from using quotas in admission, could still use race as a "plus" factor (among other factors) in making admissions decisions (Rhoads et al., 2005, p. 200, as cited by Kolling, 1998).

The color-blind stance (or antiracial) preferences argument directly opposes the premise of affirmative action policy (O'Neil 2008, pp. 377). Known as reverse discrimination, this position applies to affirmative action and race-conscious admission policies. The question presented was "whether the University of Texas at Austin's use of race in undergraduate admissions decision is lawful under this court's decision interpreting the equal protection clause of the Fourteenth Amendment, including Grutter v. Bollinger, 539 U.S.306 (2003)" (UTA 2011, p. i).

In the case of affirmative action, the common cause to which this paper refers may be understood as increasing education 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 (Rhoades et al., 2005, p. 194). As the Fisher case continues to unfold in the Supreme Court, UT-Austin and other higher education institutions in the United States are critically evaluating admissions policies and engaging in the larger conversation of access and (in)equity in higher education.

The framework analysis and contributions to existing research indicate that the framework of Affirmative Action cases show a continuum of decisions that have impacted policy, both federally and privately, and have provided an appendix timeline to some piece of civil rights. In placing the current case within the framework of this continuum, one is capable of seeing how decisions evolved over time and may be able to predict possible outcomes and explanations. In addition policy recommendations and adjustments can be made based on the dual factors of civil rights and court-mandated law.

Critical Analysis of Issue

R. Birnbaum (1988) stated in his chapter, *The Cybernetic Institution: Providing Direction through Self-Regulation,* that the cybernetic loop of interaction in the cybernetic systems segment is one of the best analytical tools in the regulatory process. As he explained, "Cybernetic is a trans-disciplinary approach for exploring regulatory systems …, and social systems" (Cybernetic,

n.d.). Cybernetic controls are introduced as a self-correcting mechanism, which monitor organization functions providing attentive cues (p. 179), and, as Birnbaum (1988) stated, "begins when changes in the external or internal environment leads to an organization response that alters the value of some variable. If that variable is being monitored by some formal or informal group and that change of value moves it beyond reasonable limits, the group will seek to influence the administration to change the organization response until the variable moves back into the acceptable range" (p. 192).

In addition, the cybernetic loop of interaction's horizontal linkage between 'environmental leads', 'organization responses' and to the 'value of variable' demonstrates the input-output in the horizontal direction as social controls (i.e., communication, group interaction). In addition, it must be considered that there are "controls developed through the interaction of individuals in groups that lead them toward shared attitudes and concerns for group cohesion" (Birnbaum 1988, p. 182). The cybernetic loop of interaction's vertical linkage between the 'value of variable', 'sensing unit' and the 'controlling unit' to 'organization responses' demonstrates the input-output in the vertical direction as structure controls (i.e., affirmative action policy) as they "consist of controls manifest in organizational rules, regulation and structures" (Birnbaum, 1988, p. 182). Finally, the cybernetic loop of interaction's horizontal linkage between the 'sensing unit' and the 'controlling unit' reflect the input-output direction as social control where administrators and the admission department will likely have a lot of interactions.

As per the Fisher v. UT Austin Affirmative Action case (see Fig. 1), the cybernetic loop of interaction for Fisher v. UT Austin proceeded through the courts and it became clear this case would greatly impact college admission processes (environment change). In turn, the UT Austin President and the Admission's Office became largely responsible for admissions policy, potentially altering the value of race-based admission policy (organization responses). The organization response was to evaluate the issue of the Affirmative Action policy based on race as one of the criteria in admissions for students not admitted under the "Top 10% Law" and how the University handled quota numbers (important variable) in a diversity scorecard (i.e., AALANA, student enrollment numbers). The data or indicators (i.e., student numbers in diversity categories) are typically analyzed and discussed annually with UT Austin's Academic Affairs, Admissions, and the University as a whole (internal sensing unit). Since Abigail Fisher filed a lawsuit, the external sensing unit is now being observed by the Supreme Court and Lower Court as formal sensing groups. The informal sensing groups could include the American Council of Education (ACE), Association of American Universities (AAU), and the American Society of Higher Education (ASHE). These groups could influence the Supreme Court or University of Texas-Austin, respectively. In this case, it is possible that the value (i.e. important variable) will change and accommodate societal justice. The internal and external groups will attempt to influence the Supreme Court and University of Texas (controlling units) to change the organization's structure until the variable is acceptable by the society's critical mass, which includes culture, race, ethnicity and disability. In addition, the Bakke v. UC-Davis and Grutter v. Michigan cases have the potential of influencing the cybernetic loop of interaction's horizontal linkage of the 'sensing unit' and the 'controlling unit', dynamically. Furthermore, the internal and external stakeholders of the critical mass may influence the 'organization responses' and 'environment change' linkage, once the variable is determined. Therefore, the structure of a race-based admission policy and the "10% law" may adapt through the advancement of the cybernetic process.
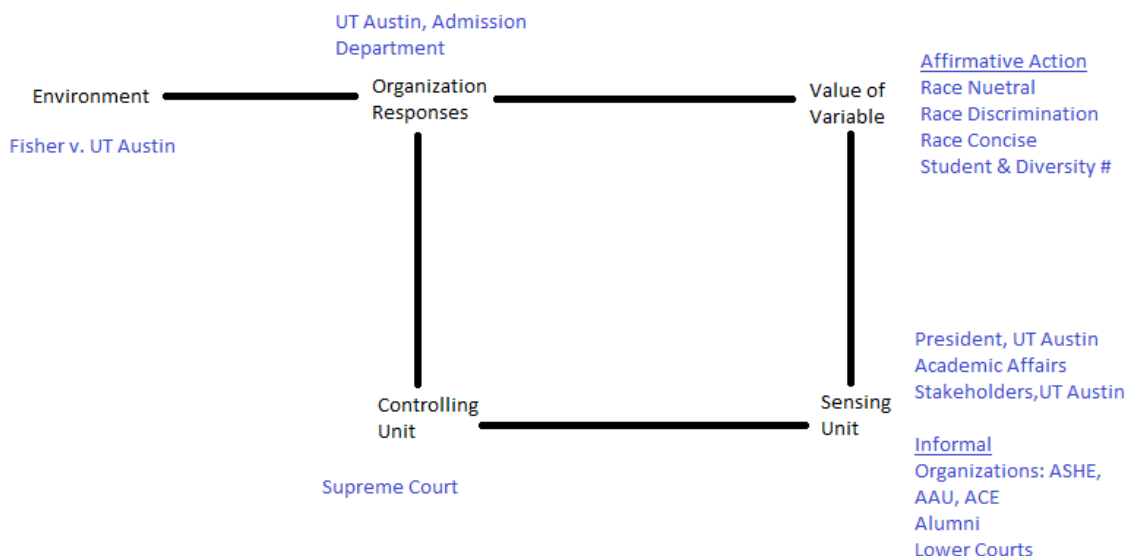
**Figure 1: Cybernetic Loop of Interaction
on Fisher v. UT Austin Case**

In Figure 1, the value of variable's surrounding areas within the cybernetic loop of interaction demonstrates interconnection by social contact through illustrating inputs-output values. The value of variables included the diversity student numbers through a race-based affirmative action which includes race-concise (i.e., of pride and understanding of AALANA heritage and culture in America), race-discrimination (i.e., treating someone unfavorably due to his/her race, ethnicity, culture or disability), or race-neutral (i.e., Top 10% Law at UT Austin) which may or may not promote the benefits of diversity. The "Top 10% Law" which is a race-neutral policy, purportedly does not consider race in making the admission decision, but is still designed to assemble a student body reflecting the diverse composition of the college-age population (Appendix 4, p. 2). Moreover, the fact that Abigail Fisher did not meet this race-neutral policy, and how the University's Admission Department handled student quota numbers serve as crucial variables. Concurrently, when Ms. Abigail Fisher applied in 2008, the UT Austin's "2008 freshman applications was 29,501 and offers of admission was 12,843, and the Fall 2008 Freshman class size was 6,715" (HB588 2009, p. 4). The composite of 6,715 students was 52% white (3513), 0% Native Americans (23), 6% African American (375), 19% Asian American (1249), 20% Hispanic (1338), 3% International (208), and 0% Unknown (9) (HB 588, pp.6). Of those, 216 were admitted under the program that is being challenged" (Sherman, 2012).

Furthermore, the feedback from the 'value of variable' unit within the cybernetic loop of interaction's vertical linkage to the 'sensing' unit and its surrounding areas are often evaluating the diversity card, which includes the number of students from each race, gender, ethnicity and disability, or reviewing university policies. These indicators are often reviewed and discussed by the Admissions Department, Academic Affairs and the University as an internal sensing unit and stakeholders such as the Board of Trustees consider students as external sensing units. Having said this, based on the variables stated earlier, the University of Texas at Austin made two arguments toward the "controlling unit", presumably the Supreme Court and future stakeholders, as a way to influence the outcome. The first argument was "UT suggested that diversity at the school-wide

level was insufficient" (Kahlenberg, 2012). The second argument was "the class-based affirmative-action and Top 10% plans did not produce sufficient levels of socioeconomic diversity within the student body's black and Latino communities" (Kahlenberg, 2012). In addition, the University of Texas argued that "having wealthier black and Latino students in the mix is critical to the process of breaking down racial stereotypes that other students might have" (Kahlenberg, 2012). Kahlenberg (2012) also stated that wealthier students of color are, on average, the candidates most likely to quality for admission on merit. UT at Austin's innovation to draw in greater numbers of low-income students of all races is precisely what is missing in American Higher Education today. Thus, does this raise a new perspective of stereotyping another variable and provide a new 'feedback' that is to be considered?

Another way to look at this is in relevance to GPAs of Top 10% and non-Top 10% graduates of Texas high schools during 2006, which shows 3.14 and 2.96 respectively (Top 10% Law, p. 5). In other words, the 2006 Freshman-year grade point average for students in 6-10% is at 2.97, 11-15% is at 2.97, and 16-20% is at 3.02 for the top percentage of the graduating high school class (Top 10% Law, p. 5). This translates to an extremely small percentage of well-qualified, non-Top 10% students that can be accommodated at UT (Top 10% Law, p. 6). Perhaps, the Top 10% Law that went into effect in 1997 was valuable, but as demographics have changed over the years, society does not need the Top 10% Law today.

Finally, in summary to the prior cybernetic' s controlling unit, the Supreme Court heard arguments on October 2012 about Ms. Abigail Fisher's case and how race was used in the University of Texas' Admission decision process. Pertaining to the Supreme Court, the justices involved in this case were: John G. Roberts, Jr., Samuel A. Alito, Jr., Antonin Scalia, Clarence Thomas, Stephen G. Breyer, Ruth Bader Ginsburg, Sonia M. Sotomayor, Anthony Kennedy, and Elena Kagan (who recused herself from the case) (What, 2012). Judge Kagan served as the United States' solicitor during the Obama Administration's submission of brief, which supported Texas when the case went before a lower court (What, n.d.). The intuitive conclusion of which judge would or would not support the Fisher v. Texas case is noteworthy. Those likely to favor Abigail Fisher are: Roberts, Alito, Scalia and Thomas. These judges are "regarded as skeptical of race-conscious government policies, and will perhaps seek to abandon the 2003 Grutter v. Bollinger decision" (What, 2012). Recalling the Grutter v. Bollinger case, "the Supreme Court held that colleges seeking to promote diversity must give 'serious, good-faith consideration' to race-neutral alternatives to affirmative-action preferences" (What, 2012), which is what Ms. Fisher is arguing, in that UT Austin limited her race-concise entry. Moreover, the three judges: Breyer, Ginsburg, and Sotomayor are likely to favor the University of Texas at Austin and "uphold race-conscious admission policies" (What, 2012). As for Justice Kennedy, he serves as the potential swing voter who may have accepted the idea that narrowly tailored race-conscious admission policies provide education benefits that serve a government interest (What, 2012), which is true of the original intention of the Top 10% Law. At the same time, he "rejected the policy at issue in the 2003 Grutter v. Bollinger case because University of Michigan's Law school gave too much weight to race in admission and used 'numerical goals indistinguishable from quotas" (What, 2012).

While the case is still pending, from the "Survey of Presidents' current perspectives" on: 1) did race in admission have a positive effect, and 2) what will the Supreme Court do, a survey was issued and solicited feedback from 841 college presidents. Of these, 227 participated (27%) in the survey. As the data showed, seventy percent of participants agreed/strongly agreed that race in admission did have a positive effect while 19% were neutral and 11% disagreed. Fifty-one

percent of the participates speculated that the Supreme Court will impose modest changes to the policy while 26% will uphold the current policy and 23% will impose major changes to the policy (Insidehighered, 2013). Thereafter, this is the place where members of sensing and controlling units of the Cybernetic framework should be considering strategies of effective leadership that are based on the quality of Admission's raced-based application processes. As Birbaum (1998) explained, "Organizations resolve conflict among goals, in part, by attending to different goals at different times" (p. 190). By buffering goals with time, organizations permit themselves to solve one problem at a time, and attend to one goal at a time (Birbaum, 1998, p. 190, as cited by Cyert and March, 1963, p. 118). This provides an example of loose-coupling in the cybernetic system, based on complex organizations dealing with problems of multiple and conflicting goals by assigning responsibility for these goals to different subunits (Birnbaum 1998, p. 247). Race-based affirmative action policy is currently tightly-coupled within the Supreme Court and University of Texas.

Recommendations

As made obvious by the cybernetic model of organizations, leadership components of the organizational change process are not limited to the sensing unit, which includes the university leadership, stakeholders, and other related organizations like the American Council of Education (ACE), Association of American Universities (AAU), and the American Society of Higher Education (ASHE). Besides these components, the control unit of the cybernetic model is a key factor, and is included in the Fisher vs. UT Austin Case. Effective leadership can result from high quality and fair communications between each of the components of the sensing and controlling units of the loosely coupled cybernetic model.

Based on this case, the problem can be best addressed from a contingency perspective of leadership. According to this theory, a leader's behavior is influenced by situational variables such as task and followers' characteristics. From this perspective, not only the leader, but also the context in which the leader makes decisions is important. The effectiveness of the leader is improved by aligning the leader's style with the needs of the situation. The ambiguity of the Fisher v. UT Austin case can best be explored and driven towards a solution from a situational style of leadership.

Following the publicity and controversy over the Fisher case, UT should transcend to the political model, instead of a large-scale bureaucratic one that provides a social constructivist view between many departments because it is a community of colleagues in a triad-communication structure (i.e. the President, Board of Regents, and Admissions) that improves the affirmative action policy. In the near future, the Supreme Court's tentative status (4-3-1) is in favor of Abigail Fisher and skeptical of race-conscious government policies, which may change. Judge Kennedy, who may hold the swing vote, has admitted that he has accepted the idea of using narrowly tailored race-conscious admission policies meant to provide education benefits that serve government interests (What, 2012).

The group raised a potential caveat depending on who wins the case: the recommendations are for colleges and universities to continue supporting affirmative actions, including merit (Top 10%, Florida One Plan, prop 209, etc.), and would be based solely on an applicant's socio-economic class. Why is socio-economic status becoming a more important characteristic? While unable to determine Ms. Abigail Fisher's socio-economic class (regardless of diversity, race, entity, etc.), it was possible to produce an economic status breakdown for the enrolled 2008 (HB

588) freshman class of 6715 students. There were 3,212 students (47%) who came from households of $79,999 or less (HB 588 2008, p. 6). This demographic that was pulled from the socio-economic breakdown shows a greater distribution of students, regardless of diversity, race, or gender, who may be more of a disadvantage and are definite for needing to improve the public good. Furthermore, children with higher SES backgrounds were more likely to be proficient on tasks of addition, subtraction, ordinal sequencing, and math word problems than children with lower SES backgrounds (APA, n.d., as cited in Coley, 2002), regardless of the race or gender of the applicant. Thus, we are recommending applying the SES lens to all applicants regardless of meritocracy because it is: 1) safer politically, and 2) includes all diversity and under-represented applicants who will level the playing field. Furthermore, this will satisfy the two arguments that UT Austin raised; argument one: "UT suggested that diversity at the school-wide level was insufficient (Kahlenberg, 2012); argument two: "the class-based affirmative-action and TOP 10% plans did not produce sufficient levels of socioeconomic diversity within the student body's black and Latino/ Latina communities (Kahlenberg, 2012). Ultimately, this opportunity will maintain diversity in other ways such as Top10%, Florida One Plan, or Prop 209.

CONCLUSION

Like the Fisher v. Texas' race-based case, "the Bakke (a white man who was rejected twice by the UC-Davis Medical school) decision played a pivotal, yet paradoxical role in the affirmative action movement", and "helped to reaffirm and endorse the need for affirmative action policies in higher education" (Rhoads et al., 2005, p. 198). Unlike the Fisher v. Texas and Bakke v. UC Davis cases, the Grutter v. Bollinger case provided a diverse view, since on June 23, 2003, the U.S. Supreme Court delivered the decision by Justice O'Connor, which upheld the University of Michigan Law School's right to consider an applicant's race when making an admission decision (Rhoads et al., 2005). To make affirmative action fair and effective, as mentioned earlier about critical race theory (CRT), the issues of diversity, race, gender and ethnicity must intersect within each other in order to remain important in our culture. To improve the public good is to improve societal good. For those who work hard from socio-economic backgrounds and deserve opportunities, the cybernetic framework could recognize socioeconomics as a "new value" of variable and a possible resolution that could come from the 'sensing and controlling' units, and as part of a feedback discovery. This would give socioeconomically-challenged students an advantage in gaining financial aid and attending college. To make this happen, our current affirmative action policies need to align with socioeconomic-based affirmative action in order to improve the public good.

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AUTHOR BIOGRAPHIES

Dino J. Laury received his Ed.D. in educational leadership, with concentrations in higher education and administration, at the Warner School of Education and Human Development, University of Rochester. His decision-analysis dissertation was centered on associate degree program offerings within the Department of Engineering Studies at the National Technical Institute for the Deaf. Dr. Lauria's coursework and research interests revolve around decision analysis, governance policy, collegiality issues, program evaluation, tenure and collective bargaining. Currently, he is an appointed department chairperson of Engineering Studies at the National Technical Institute for the Deaf (NTID) at the Rochester Institute of Technology (RIT) in Rochester, NY. He received his B.S. in Mechanical Engineering Technology and M.S. in Information Technology from RIT. In his 24 years of higher education, he served as chair for institutional committees in the areas of tenure and promotion, strategic planning, academic senate, faculty council, and search committees. Dr. Lauria also fostered STEM education for deaf and hard-of-hearing students from Budapest, Hungry and Moscow, Russia.

Audrey Patricia Burns is a M.S. Educational Administration candidate at the Warner School of Education and Human Development, University of Rochester with concentrations in Higher Education and Teaching English as a Second Language. Her coursework and research focus on issues in international education. In the spring of 2014, Ms. Burns will be conducting research on short term study abroad programs in Germany and the Czech Republic. She received an International Baccalaureate Diploma in 2007 and a B.A. in Writing and Rhetoric from Syracuse University in 2010. Currently, as a University of Rochester employee Ms. Burns coordinates a College Preparation Center in a Rochester city high school.

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