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Source: *American Journal of Education*, Vol. 116, No. 3 (May 2010), pp. 371-395
Published by: The University of Chicago Press
Stable URL: http://www.jstor.org/stable/10.1086/651413
Accessed: 16-03-2018 17:01 UTC

Paths to Legislation or Litigation for Educational Privilege: New York and San Francisco Compared

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Elite public schools must use some method of selecting their students. Given the desirability of this scarce resource, these methods are closely scrutinized. Demographic and other changes in the school districts may make unstable procedures that were deemed successful at one point. This "recurring problem" is the subject of this article, which compares two cities' elite schools and their admissions systems over the past 30 years. Why they have evolved very different systems is the question this article addresses. Emphasis is placed on how local circumstances, events, and prior actions reinforce the path dependency of each city's trajectory. Complex chains of events produced different means of addressing the problems elite public schools produce. In the end, however, these differences do not produce important differences in enrollments.

Who children go to school with has been a central concern of education since schools were established. The boundaries of school districts and of school attendance zones have been the subject of civil rights and school desegregation rulings and more recently of school financing litigation (Andre-Bechely 2005; Archbald 2004; Kahlenberg 2001; Orfield 2001). The mechanisms of selection for educational opportunity have always been contested, more so as education increasingly has become the means by which adult privilege in our society is rationed (Collins 1979, 2000; Persell 1977).

Collins (1979; also see Berg 1970; and Labaree 1997) argues that the linked and integrated credentialing system throughout all levels of schooling, firmly entrenched by the mid-twentieth century, now dominates the life course of youth in our society and "has been the major new force in shaping stratification in twentieth-century America" (94). He argues that educational credentials have since taken on a life of their own, becoming more important than the content they were originally intended to certify.

Electronically published March 1, 2010

American Journal of Education 116 (May 2010)

0195-6744/2010/11603-0003$10.00

Educational, and especially postsecondary, institutions have established educational credentials that employers favored (for a review, see Bills [2004]). The transformation of the economy and consequential labor market shifts are well documented, leading higher proportions of successive age cohorts to seek enrollment in higher education (e.g., Carnevale and Desrochers 2003; Dougherty 1997).

But all educational credentials have not been created equal, nor do all citizens have equal access to educational opportunities. Race, gender, ethnicity, social class, and other background factors remain important in the process of attaining educational credentials (Karen 2002; McDonough 1997). As education has become more important in the life course, competition for it has soared (Geiger 2002), most notably among selective colleges and universities (Karabel 2005; Stevens 2007; Wechsler 1977).

Competition is not limited to the postsecondary level; it occurs in segments of the secondary education world. This is not a new phenomenon, however, as Labaree (1988) has shown in his history of Central High School in Philadelphia. *U.S. News and World Report* now publishes an annual list of the "100 Best High Schools." Access to and control over "gifted and talented" programs, advanced placement classes, and international baccalaureate programs, as well as other scarce but attractive educational benefits, are contested. These struggles to define the rules by which access to educational privileges is distributed are a continuing feature of U.S. education (Brantlinger 2003). While large-scale historical studies, such as Labaree's examination or Lemann's (1999) history of the Scholastic Assessment Test, are useful, closer, more detailed studies of these processes offer us another perspective on the current debates over educational excellence and reform (see also Andre-Bechely 2005; Smrekar and Goldring 1999). For example, Attewell (2001) details the attributes of elite public high schools and some of the consequences for their students (also see Coleman 2005). As systems of comprehensive high schools give way to greater choice among diverse high school forms, the kind of increased competition for access to selective high schools we now associate with colleges is becoming more common.

This article describes two cases of how the rules for access to highly valued public educational credentials have developed. The conflict generated by the

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competition among groups for these credentials in the two cases discussed here evolved in two divergent ways. This article seeks to understand why such different methods arose and whether there are any important consequences for the adoption of one method over the other.

In each case, in New York City and in San Francisco, a public high school or set of high schools occupied (and still occupy) a very high status among aspiring students and their parents, and there were many more qualified applicants than could be accommodated. This article explores how selection for enrollment in these schools has evolved, or not, over the past 30 years. These schools belong to large, established urban school systems: one school was founded 150 years ago, others more than 70 years ago. Throughout their entire existence, these schools have attracted students and have been able to admit selectively. They are maintained today by school authorities seeking, in part, to retain the support of middle and upper-middle class parents who desire school opportunities to prepare their students for the next level of educational credential competition—selective college admissions (Metz 1990, 2003; Smrekar and Goldring 1999). Because parental support may be vital for maintaining community support for all the urban public schools, administrators are often anxious to be responsive to these parents. The schools have well-organized alumni associations and highly placed defenders who work hard to preserve the schools' elite status through supporting selective admissions criteria based on entrance examinations, state-wide tests, and/or prior grade point averages.

Selective high school admissions policies result in the concentration of high-performing students in a few schools. In large urban districts, this typically occurs through an explicit policy of school eligibility. When more than one high school is available for students, rules emerge to govern how students are distributed. Residence qualifications are very common but so are qualifications based on other criteria, such as legal, race, socioeconomic status (Kahlenberg 2001), and academic performance indicators such as test scores and grade point averages. A lottery selection process is an option, but if an academic hierarchy among schools exists, some form of academic criteria also must be used. Often districts either combine a lottery with student interest or choice and/or student qualifications to sort students among schools (Fuller and Elmore 1996; Hillman 2006).

The elite academic status of these schools, and the value of their credential, however, is not guaranteed. At several points over the past 30–40 years, efforts have been launched to change the selection criteria used to choose students. New York's examination schools and Lowell High School in San Francisco are cases of the politics of privileging a public resource—elite public schooling. These processes have likely been duplicated in other cities where schooling is subject to policies that create high-status schools and ration access to them

(Andre-Bechely 2005; Fuller and Elmore 1996; Metz 2003; Smrekar and Goldring 1999).

Several criteria were employed in selecting the two cases. First, the cities had to be big enough to have a number of high schools; one or more of these schools had to have an elite reputation that produced many more applicants than could be accommodated; the school district had to have produced rules governing the selection process; and, finally, variation among the rules employed was sought. In these two cases, different mechanisms were developed to manage and contain the conflict generated by the competition for control of the schools. In New York's case, the state legislature stepped in to set the terms of admission to New York City's examination schools through the Hecht-Colandra Bill, which has been in effect since 1971. In San Francisco's case, groups have repeatedly turned to the courts to adjudicate their claims for entry into Lowell High School. Excluding students on the basis of academic criteria has generated resistance from those excluded. In each case, a form of accommodation for those excluded also has evolved. The differences between these methods of exclusion and accommodation, however, are important and points to the last question: Does the method used to address the problem, legislation or litigation, matter? Is one approach more likely to increase the access resource-poor groups have in gaining benefit from educational structures offered by the two cities?[1]

Methodology

This article uses newspaper articles (especially *New York Times*[2] and *San Francisco Chronicle*), documents, and other materials to develop a narrative history of periods of significant challenge to the rules of access to these selective high schools. These data are subject to unknown biases (i.e., there may be significant events that were not covered), and reporters or editors may have influenced the content of the reporting (Franzosi 1987). I have tried to avoid relying on the interpretations contained in the articles, and I use this material to establish a time line of events and to identify the participants and their actions and rationales. The events discussed in this article were widely reported and were of deep and abiding interest to many citizens, so it is unlikely that significant participants have been left out of the discussion. These newspaper reports seem less subject to the biases of special interests that are likely to influence other papers' reporting (Earl et al. 2004). To fill out the data and to check on the reliability of the newspaper accounts, I have drawn on historical accounts of these events in New York (Biondi 2003; Kahlenberg 2007; Lavin et al. 1981; Perlstein 2004; Podair 2002) and the Bay area. For New York, I have also drawn on the documents submitted to the governor's office from

interested parties trying to influence the governor's decision about signing the bill or not. For San Francisco, I have consulted reports from David Kirp, who extensively studied the desegregation efforts in San Francisco in the late 1960s and 1970s (Kirp 1978, 1982), and others (Clarke et al. 2006; Crain 1968; Fraga et al. 1998; Stone et al. 2001), and the reports of the court-appointed master for the decree under which the United San Francisco School District operated until the decree was lifted at the end of 2005 (Biegel 2005).

Utilizing analytical approaches of comparative and historical sociology, this article identifies how historical contingencies affected later events and whether they promoted a given path of development in each city (Clemens 2007; Mahoney 2000). The problem of managing conflict among groups over the rules of access to these elite schools is a recurrent one. Once the decision is made to maintain elite schools, this decision creates critical initial conditions: criteria for eligibility for enrollment must be specified. Those criteria are conditional, dependent on the actions of groups and circumstances that are present in each city. The case for path dependence is as a heuristic device that "provides a plausible way to represent and account for historical trajectories; it builds social actors and multiple time lines into an explanatory account; and it offers a richer sense of how earlier outcomes shape later ones" (Haydu 1998, 341; also see Isaac 1997).

Haydu's research methods are well tailored to the problem faced by New York and San Francisco (also see Calhoun 1998; and Mahoney 2004). Haydu recommends constructing a historical time line that can be examined for causal precedents that affect the future course of events. He alerts us to the possibility of "forks in the road" and "switch points" that have important consequences for the events that follow. This analysis focuses on how prior events set in motion consequences that affect subsequent events. Decisions made at earlier points in time may constrain the choices available at later points; the weight of prior events on the possibilities of future action is central to the analytic strategy. Mahoney asserts that "path dependent sequences are marked by relatively deterministic causal patterns or what can be thought of as 'inertia'—i.e., once processes are set in motion and begin tracking a particular outcome, the processes tend to stay in motion and continue to track this outcome" (Mahoney 2000, 511).

As each system developed and additional high schools were added, these schools became an elite sector of secondary education, and the problem of how to dispense this scarce and valuable good had to be addressed. In this sense, the existence of an elite sector determined future crises and as such constituted a veritable "fork in the road" (Haydu 1998). Forces, both in favor of and in opposition to the elite schools, constrained future options, setting the path of development for each system. But, as these two cases demonstrate, while the

path was set by the existence of an elite sector, the future of the sector would be contested, not predetermined.

These two cities evolved very different solutions to their problems of selection after the "switch point" Haydu discussed. Once actors in New York and in San Francisco took a particular path to addressing the "reiterative problems" they faced, they were locked into a set of options that were limited by the respective systems chosen. In New York, a legislative solution was chosen, and a set of consequences followed. Petitioners in San Francisco chose to litigate their grievance, limiting their solutions to the court system. At the point of the initial conflict, a number of alternative approaches to the conflict potentially existed; once one approach was chosen, other options became increasingly unlikely.

There are a number of important differences in these two cases, including that, from 1982 until the end of 2005, San Francisco Unified School District operated under a legally binding consent decree to achieve greater racial desegregation among the students in its schools. This decree applied to Lowell, as to all the other schools in the district. New York has not faced the same oversight and approval process, though it did face the scrutiny of an Office of Civil Rights investigation in 1977–78 (Chambers 1977). The result of this investigation, however, left New York's schools untouched. As the *New York Times* editorialized, "the Federal Agency has acknowledged that there is an irreconcilable conflict between academic selectivity and admission by quotas that are aimed at insuring a perfect sample of the overall demography" ("On the Right Track," 1978). Thus, New York City never had to face the legal constraints that have characterized San Francisco's situation. The courts have not been an important factor in the conflict over access to New York City's elite high schools, just as the state legislature has not been a factor for San Francisco. Why these differences exist is our primary question. Whether these differences actually matter is the secondary question this article addresses.

New York and the Hecht-Calandra Bill

In the late 1960s and early 1970s, urban schooling faced a number of major crises, as did other urban institutions (Rury 2004; for information about desegregation efforts in New York after World War II, see Biondi [2003]). In New York, there were very strong movements to open access to many aspects of education, including enrollment in the City University of New York, and to improve the responsiveness of the board of education to the variety of students who attended its schools. The open admissions policy adopted by the Board of City University of New York in 1970 is a well-known example of the results of pressures for inclusion at the time (Lavin et al. 1981).

In the lower schools, the best known example is the decentralization of administration and governance of the elementary and middle schools with the creation of 32 community school districts with their own elected boards of education and superintendents.[3] This decentralization resulted from efforts to achieve community control in a few neighborhoods in the city and the bitter teachers' strikes of 1968 (Fein 1971). Perlstein (2004; also see Podair 2002) describes the racial and political environment of New York at about this time by focusing particularly on the teachers' strikes of 1968 and how this series of events broke what he calls the "liberal consensus" of the city. In particular, the teachers' strike saw white, and often Jewish, teachers struggling against black educators and community leaders. These groups had long been united in support of the civil rights movement and other progressive causes (the liberal consensus Perlstein refers to), and the dispute over local control of the schools dramatically weakened their coalition.

Importantly, Perlstein (2004) details the use of state law by the unions and others to address the insurgency of community control—efforts by black activists and their supporters to take control of their community schools were thwarted by the teachers' strikes of 1968 and eventually the decentralization law of 1969 (also see Kahlenberg 2007). This law, while seemingly creating a decentralized school system, strictly limited the authority of the new community school districts, their elected boards, and appointed superintendents. Perhaps of most importance, it left intact the citywide collective bargaining contract between the teachers union and the central board of education. The local districts were not given the authority to bargain their own contracts—a leading objective of the community control movement and something the teachers' union strongly opposed (Kahlenberg 2007). The use of the state legislature to resolve the community control/decentralization dispute set a pattern that would soon be used again.

Early in 1971, only two years after the teachers' strike and the new decentralization law, the superintendent of one of the new community school districts, Alfredo O. Mathew Jr., of District 3 in Manhattan's upper west side, asserted that Bronx High School of Science "was a privileged educational center for children of the White middle class because 'culturally' oriented examinations worked to 'screen out' black and Puerto Rican students who could succeed at the school" (Handler 1971). On these grounds of racial discrimination, the superintendent and his local school board members asked the chancellor's office to change the policy to eliminate the entrance examination and to move to admission based on the recommendation of elementary school personnel.[4]

The challenge presented by the superintendent of District 3 to the admissions process used by the examination high schools was perceived as a threat to a resource many valued highly, while others strongly supported the chal-

lenge. White and middle-class youth were greater beneficiaries of the examination high schools, and their benefit was predicated on their performance on an examination that heavily weighted math and science performance. High scores on these tests, defenders argued, had less cultural bias than other subjects (such as English or social studies). Thus, the disproportionate enrollment of white and middle-class youth in the examination schools was explained by school system authorities as a result of their better performance on the examination, not their class or race privileges.

The perception of threat to the examination high schools was only increased when the chancellor of the New York public schools, Harvey Scribner, responded to the complaint rom District 3. On February 23, 1971, Chancellor Scribner announced that, while "I do not believe that it is possible for me to make a determination to change existing policies, I have discovered enough, however, to raise serious questions with reference to admissions policies in all our specialized high schools" (Malcolm 1971, 50).

While the chancellor assured parents that the current admissions cycle would not be affected, not all were assured. By the end of March 1971, a bill had been introduced into the state legislature, supported by 14 senators and 42 assembly members of both parties, asking their "colleagues to approve a measure to protect the current status and quality of specialized academic high schools in New York City" (Ronan 1971, 39). Sponsored by Senator John D. Calandra, a Bronx Republican, and Assemblyman Burton G. Hecht, a Bronx Democrat, the bill was motivated, they said, by "the most insidious attack thus far upon the finest educational schools in New York City." They said the chancellor's "attempt to destroy these schools must be stopped immediately" (Ronan 1971, 39). About five weeks later, on May 4, 1971, Chancellor Scribner appointed 23 members to the committee to examine the admission process of specialized high schools ("Schribner Names" 1971).

On May 17, the *New York Times* ran an article titled "Board Asks Defeat of a Bill Retaining Four Specialized Schools' Entrance Tests" (Buder 1971, 26) that reviewed the arguments for and against the bill and provided data on enrollment by ethnic status for the specialized high schools alongside systemwide data. The board's arguments for defeating the bill included that it represented an infringement on its policy-making ability and school administration. Moreover, it would undercut the chancellor's committee ability to study the issues involved. Foretelling what would become a crucial issue, the board noted that a provision of the bill would "substantially reduce the proportion of disadvantaged students, the majority black and Puerto Rican, who are admitted under a special 'discovery' program even though they did not pass the entrance examination" (Buder 1971).[5]

Sponsors, with strong bipartisan support in both houses, argued that the bill was necessary to protect the schools. Support came from the schools' principals,

parents of current students, and alumni, who "assert that without such protection, the schools face possible 'destruction'" (Buder 1971, 26). "Many city parents look upon these schools as islands of educational excellence and opportunity in the problem-racked public school system. Some parents—particularly, but not exclusively, White parents—also view them as a last resort (some say 'refuge'), the alternative to sending their children to private schools, if they could afford them, or moving out of the city" (Buder 1971, 26).

Those opposed to the bill argued that "they do not want to destroy these schools but to improve them and to assure that all gifted children in the city have equal opportunity to attend." "We are the last ones in the world who would want to do away with these schools—our children would have no place else to go. . . . But we do favor changes," said the parent of one student (Buder 1971, 26). The *New York Times* editorially asserted that the bill would have the effect of "petrifying the high school" ("Petrifying the High Schools" 1971, 38). "Neither their admissions process nor their curriculum is sacrosanct. Enactment of the bill by the State would be a flagrant violation of educational home rule" ("Petrifying the High Schools" 1971, 38).

One of the most divisive issues of the 1968 teachers' strike in New York was the role of "merit" in the schools. Podair (2002) describes "Black Values" and "White Values" as they were emphasized in the rhetoric of the strike and its aftermath. Prominent among the "White Values" espoused by teachers, he argues, was a "competitive, individualist culture, which was presumed to apply objectively measured standards of merit, without respect to group origins, to educators and students" (Podair 2002, 53). Teachers themselves faced the universalistic demands of the City University of New York and other colleges and universities from which they earned degrees. These educators argued that New York high school students faced teachers and administrators who sought to prepare their students for success in this white world. But these "White Values" were directly challenged, during the strike and after, by such groups as the African American Teachers Association, which promoted "Black Values." Podair describes these as emphasizing mutuality and cooperation, the cultural legitimacy of the black poor, the use of cultural resources of the black community as a form of currency in local and national marketplaces, and a pluralism based on community and group distinctiveness (Podair 2002, 69). The debate was thus framed largely as one between "merit" and subjective values, not on the definition(s) of merit itself and its measurement.

It was the removal of several white teachers from the schools in the new community school district that precipitated the teachers' strike. The new district's leaders wanted to replace these teachers with those of their own choosing, not necessarily those next on the official Board of Education hiring eligibility list. Arguing that the schools should be responsive and respectful of a community's customs and values, including communal solidarity, these activists

sought an affective and diffuse orientation in education better fitted, they argued, with the lives of African American children in New York's inner city schools. In part this meant hiring "appropriate" teachers.

As many of New York City's teachers at the time were Jewish, discrimination and ghettos (and the Holocaust) were real phenomena in their own and their family's experiences. They strongly supported "objective" definitions of merit that were based on measures of individual performance. Using such assessments, many of them had been successful in improving their lives through educational channels, including standardized tests and the achievement of educational credentials (also see Lemann [1999], in his discussion of resistance to affirmative action; and Wechsler 1977). The imposition of local, communal standards in the provision of public services was seen by many white teachers and their leaders as akin to the discrimination based on religion and ethnicity, as well as race, only recently attacked by the civil rights movement many had strongly supported. At the same time, some of the new black school leaders understood that universalistic standards constituted weapons that effectively prevented them from controlling the institutions serving their community.

This "culture clash," Podair asserts, was responsible in part for the depth of animosity that characterized the strike (Podair 2002, 48–70). To defend their vision of the rules New York schools should employ, the union went to the state legislature to make sure that the new decentralization law did not challenge the "merit" principle.

The debate over the existence of elite high schools was a direct replay of these earlier conflicts (see MacDonald 1999). The defenders of the "merit" principle, especially as defined by standardized measures, such as the specialized high school examination, saw the objections raised by Alfredo O. Mathew Jr., of District 3, as the same as the attack on the merit principle involved in teacher qualifications that produced the teachers strikes two years earlier. And the means to address the latest version of the recurring problem was also the same: change state law. This path had been adopted in the aftermath of the teachers' strike.

The Assembly passed the Hecht-Calandra Bill on May 19, 1971, by a vote of 107 to 35, and sent it up to the Senate. The bill outlawed any admissions criteria to the four examination schools other than a standardized test emphasizing math and science performance. The debate was heated and centered on the bill's provision of a quota of 14 percent of students admitted through the "Discovery Program," a nonexamination recommendation process. Data from the board of education showed that about 10 percent of admits were from the Discovery program. Yet, the setting of a quota created a negative impression for many legislators. "Where are all the liberals who are always protecting blacks and Puerto Ricans? I don't see them today," said Louis Nine, a Bronx Democrat (Clines 1971).

The vote split the parties in complex ways: the opposition included 31 of the Assembly's Democrats and four of its 79 Republicans. According to the *New York Times*' account of the debate, one Democrat "likened the scene to an 'encounter session' that 'touches the nerve [of] urban life, all of the concerns, all of the polarizations'" (Clines 1971, 1). On May 25, however, the State Senate passed an amended bill without debate by a vote of 49 to 3. A factor widely cited as the reason for the different outcomes in the Assembly and the Senate was that the Senate version "deletes the stipulation of 14 percent and permits programs for disadvantaged students of high potential 'without in any way interfering with the academic level of these schools'" (Farrell 1971, 52). The Assembly approved the change by a vote of 142 to 5, and the bill was sent off to the governor. The offending quota gone, opposition to the bill disappeared.

As the bill moved to the governor's office, a final opportunity was available for lobbying. The bill "jacket" contains letters and other documents submitted by individuals and groups urging the governor to sign or to reject the bill. The list of those in support of the bill included the principals of the examination schools, a New York City Council resolution, the United Federation of Teachers, the New York State Council of Churches, and editorials from the *New York Daily News* and WCBS radio. Against the bill were letters and petitions from Mayor John Lindsay, the State Education Department, the State's Board of Regents, the New York City Board of Education, the Public Education Association, the state attorney general, the Association of the Bar of New York, the New York State School Boards Association, and the Conference of Large City Boards of Education.

The arguments in favor of the bill asserted that the excellent schools needed protection from political pressure groups; the Discovery Program provided for greater opportunity for disadvantaged youth; and state law creates and recreates the New York City Board of Education, and this bill, therefore, has no conflict with local control. Those opposing the bill noted that Chancellor Scribner had appointed a committee to study the admissions question and that they should be allowed to do their work; that the legislation restricts action by authorities vested with responsibility to administer the educational system; that it creates inflexible rules in times of change; that the validity of examination for admission was not established; and that many minorities view the legislature's action as vindictive and signing it would increase their sense of resentment. In the end, Governor Rockefeller sided with those in favor of the bill and signed it into law (2590-g, 12 a, b, c, and d; Title 2, Art. 52-A–pp. 476–77).

The law remains in effect today, and the competition for entry into the specialized schools is stiffer than ever, with more than 26,000 eighth graders vying for about 4,000 freshmen seats (Hernandez 2008). In the almost 40

years since the bill became law, there has been very little criticism of the examination schools or of their admissions process. An exception to this was the report, "Secret Apartheid II: Race, Regents and Resources," issued by the advocacy group ACORN (1997), which pointed out the disparity of enrollments from different segments of the city's population and the success of private school graduates in gaining admission through the examination process. The legislation is not immutable, but interests opposing it have not mounted a visible campaign to change it—as recently occurred to the law that decentralized governance of the city's school system.

The program identified in the legislation as an alternative path, then known as the Discovery program, has become the Specialized High School Institute, which now selects incoming seventh graders and offers them an intensive afterschool, weekend, and summer program aimed to prepare them to successfully take the Selective High Schools Admissions Test. Enrollment in this program, now offered at locations throughout the city, has recently expanded.

A final observation should be added here. The number of examination schools has been increased to nine. In addition to the Brooklyn Latin School, schools have been added to CUNY campuses at City College in Manhattan, at Lehman College in the Bronx, at York College in Queens, and in Staten Island. They, too, use the specialized high school examination as the only mechanism for admissions (except for LaGuardia which uses grades, auditions, and portfolios), and while new and usually smaller than the older schools, they also enroll a disproportionate percentage of Asian and white students. New York has also seen the development of other competitive high schools, such as Townsend Harris High School in Queens and a number of attractive new small high schools that have provided alternatives for children and their parents who do not qualify for the specialized high schools (also see Pallas and Riehl 2007).

San Francisco: Lowell High School

Founded in 1856, Lowell High School claims to be the oldest public high school in California. It was founded as an academic institution and has faced continuing efforts to make it more comprehensive like other San Francisco high schools. For example, in 1924, as a result of the expansion of population of the Richmond District, the school board considered moving Lowell to a new location and implementing a comprehensive instructional program. Efforts in 1961 also sought a general high school, but they were defeated. However, the NAACP and CORE pressed the district to act to desegregate its schools. By 1962, they filed a suit, *Brock v. Board of Education.* This litigation was allowed to lapse because the board issued a policy statement indicative

of their efforts to increase desegregation while also protecting the neighborhood schools (Kirp 1978, 422–23). In 1967 the board of education asked the Stanford Research Institute to propose ways to increase the racial balance of San Francisco's schools. Their proposals included plans to turn Lowell into a regular zoned comprehensive high school (Kirp 1978, 431). Out of their plans emerged the Citizen's Advisory Committee, appointed by the superintendent, to suggest ways to increase racial balance into the system (Kirp 1978, 434). Little concrete action resulted from these reports and committees, however, and frustration grew among the civil rights activists. By late in 1969, a plan was developed that envisioned education complexes that drew from diverse communities, with magnet schools that offered the possibility of greater desegregation than had existed before. This plan was the result of extensive political negotiations among the civil rights groups, elite citizen groups, Hispanic leaders, and Chinese groups. Only white conservatives, according to Kirp, were not supportive of the complex plan. They eventually were able to gain the support of Mayor Alioto, and the plan was defeated. In June 1970, the NAACP filed *Johnson v. Board of Education* (Kirp 1978, 436–89), accusing the board of maintaining a segregated school system.

While *Johnson* and its appeals worked their way through the courts, in 1972 the NAACP filed another suit against the district, demanding desegregation of San Francisco's secondary schools, including Lowell. That suit was dismissed about a year later, but that decision was appealed. In July of 1974, the U.S. Court of Appeals ruled that "the district's legitimate interest in establishing an academic high school, admission of which is based on past achievement, outweighs any harm imagined or suffered by students whose past achievement had not qualified for admission to that school" (Lucey 1989, H57; for detailed discussion of the legal history of school desegregation in San Francisco, see Crain [1968], Fraga et al. [1998], and Kirp [1978, 1982]). Anticipating the future, however, the court also ruled that the policy of admitting equal numbers of boys and girls, and thus requiring boys to be more qualified (because more of them applied for admittance), was illegal. The proportion of boys rose in the following year to 58 percent of the entering freshman class (Lucey 1989, H57).

Johnson stimulated the interventions of other ethnic groups, including Chinese, Filipino, and Hispanic groups who wanted to assure that any resolution of the case took their interests into account. This litigation continued for years, with, according to Kirp, little to show for the effort (Kirp 1978, 489–92).

The legal saga continued in 1982 when the NAACP filed a suit claiming that the San Francisco City Schools discriminated against black youngsters in the assignments to high schools. In response, the San Francisco Unified School District entered into a court-ordered consent decree with the following provisions: all students would be assigned to one of nine ethnic groups; all schools would have an enrollment made up of at least four of these groups;

no single group could comprise more that 39–45 percent of the student body of the school. For selective high schools, that is, for Lowell High School, the figure was 40 percent. The groups identified in the consent decree were Chinese Americans, Japanese Americans, Korean Americans, Filipino Americans, American Indians, whites, African Americans, Latino Americans, and other nonwhites. This solution was in effect for several years but faced increasing protest by segments of the Chinese American community, whose children, they felt, were disadvantaged by the decree.

The "ethnic cap" meant that, for students entering in the fall of 1993, the score (a composite of the California Test of Basic Skills and junior high school grades) that qualified a Chinese American applicant for admission had to be above 63; it had to be above 60 for whites, Filipinos, Japanese Americans, Korean Americans, and "other" nonnwhite applicants; it had to be above 50 for African Americans and Latinos. By requiring Chinese Americans to score higher than any other group, the San Francisco school system, it was argued, held them to a higher, and illegal, standard than other applicants. Many Chinese American applicants with scores above 50 were denied entry, while their fellow students from other ethnic and racial groups, including white applicants, were admitted with lower scores. Even at the higher cutoff point, Chinese American applicants were close to, and sometimes over, the 40 percent of the student body limitation of the consent decree (Asimov 1993).

On July 11, 1994, parents representing 16,000 Chinese American students sued the San Francisco public schools in federal court, asserting that the 12-year-old consent decree actually creates "state-sponsored segregation today" (Asimov 1994). Although the consent decree applied to all San Francisco schools, the focus of the suit was on Lowell, where the scores required for admission varied significantly by ethnic group in order to maintain the ethnic cap provided for by the decree.

In response to the suit by Chinese parents, a school board–appointed committee proposed a new admissions process for Lowell. The plan evolved and was presented by Superintendent Rojas to an open meeting on February 13, 1996 (Asimov 1996a). The plan "would establish a single academic entrance criterion for students of all ethnicities. To comply with a federal desegregation plan, however, about 20 percent of applicants would come from families on welfare or in public housing. This pool would be judged partly on their academic record but also on their involvement in clubs, sports, hobbies, or community work. These students would be chosen by a committee of 15 teachers, parents, administrators . . . alumni and Lowell students" (Asimov 1996a).

This proposal was adopted by the district's board of education at a meeting on February 18 (Asimov 1996b). The policy also would require students admitted in the second group (now to comprise 20–30 percent of the incoming freshman class) to attend summer school and would provide help from tutors.

The Chinese American parents who filed the suit against the older policy were supportive of the new policy but said that the suit would continue in an effort to maintain pressure on the board (Asimov 1996b).

Even as the policy was implemented, questions remained. While all students scoring between 63 and 69 on the academic scale used for admissions were admitted, black, Latino, and Native American applicants were automatically admitted if they scored above 50 points on the scale. Other applicants scoring between 63 and 54 "are considered according to a host of new criteria: student leadership, clubs, extra academic courses, artistic talent and family need. This pool represents about 10% of the 740 freshmen accepted. The selection committee awarded points in each of these categories, including poverty levels and even family crises that may have caused good students to fall behind" (Asimov 1996c).

"It's still race-conscious, and it's still illegal," said Daniel Girard, a lawyer for the Chinese Americans suing the district. NAACP attorney Peter Graham Cohn is quoted in the *San Francisco Chronicle* as being literally incredulous that black, Latino, and Native American students were admitted based on race alone. Superintendent Rojas is quoted as saying that the pool of African American, Latino, and Native American students was too small to turn any of them away. A total of 48 African American students were admitted, along with 97 Latino students, 279 Chinese Americans, and 145 white students.

On February 17, 1999, a settlement of the 1994 suit against the San Francisco school district by Chinese American parents was announced, just before the trial was to begin (Asimov 1999b). The agreement, entered into by the Chinese American families, the school district, and the NAACP, essentially did away with the ethnic caps that had been established for all schools in an earlier agreement with the NAACP. The school district was allowed, however, to use socioeconomic background as an enrollment criterion to diversify schools.

In an effort to develop an admissions system in compliance with the settlement, the board proposed to restrict applicants to Lowell to those who fell into "its eligibility pool." "The pool 'will be established by taking a percentage of the highest-ranking students from each middle school. The percentage will be the same for each middle school. Only those students in the eligibility pool will be allowed to file applications for Lowell,' the plan says" (Asimov 1999a). This proposal was widely criticized because schools now sending large proportions of their students on to Lowell would have a strict limit placed on them, in effect, said parents, punishing students who attend competitive middle schools. On November 3, 1999, Federal Judge Orrick ruled that the plan submitted by the San Francisco school district "may be unconstitutional because it relies partly on race to assign students to campuses" (Asimov 1999c). As a result, the district put forth another plan but still retained race as a factor. "Under the proposed plan, 70 to 80% of

Lowell's entering class would be based solely on grades and test scores. Other factors could be considered for the remaining 20 to 30% of spots—including socioeconomic status, middle-school course work, extra-curricular activities, achievement in the arts and 'other extenuating circumstances,' among them race" (Sward 1999). A lawyer for the Chinese Americans who filed the suit settled in February asserted that the plan was flawed; it still uses race-ethnicity as a criterion, "and this violates—in our view—both the settlement of the consent decree and the Constitution" (Sward 1999).

On December 17, 1999, Judge Orrick ruled that San Francisco schools cannot consider race when assigning students to campuses (Asimov 1999c). In response, the school board decided, according to the *San Francisco Chronicle*, to "abandon attempts to keep schools from becoming ethnically lopsided" (Asimov 2000). The *Examiner* reported in January of 2000 that, without the racial caps in place at Lowell, Chinese American students comprised 51.6 percent of incoming freshmen, compared to 46 percent the year before (Seligman 2000). By 2003, the state-appointed monitor of the school system's desegregation efforts wrote that the district is now on "a continuing slide toward resegregation" (Knight 2003).[6]

The school's admission policy today is described at the Lowell Web site as being based on grade point averages from the first and second semesters of the seventh grade, grade point averages from the first semester of the eighth grade, and test results of the CST (STAR) test or a Lowell Admissions exam. In addition, students must submit two applications: one for Lowell High School (requesting extracurricular activities demonstrating leadership skills, extenuating circumstances, demonstrated ability to overcome hardship, and family information) and one for the San Francisco United School District.

The consent decree was formally put aside by U.S. District Judge William Alsup in a ruling on November 9, 2005, after 22 years (Egelko 2005). In his final report on San Francisco Unified School District desegregation efforts, Stuart Biegel, the state monitor, states: "Our review of final Fall 2005 enrollment figures obtained from the District has revealed once again that the resegregation documented in our previous reports continues unabated. The number of SFUSD schools resegregated [60% or higher] at one or more grade levels increased yet again during the past year, and has now reached approximately 50 schools for the first time in this era" (Biegel 2005, 3–4).

The Lowell High School student selection process is a continuing work in progress—with a consistent history of efforts of litigants to achieve better representation at the school. It has been caught up with district-wide desegregation efforts and the controversies of affirmative action. While this article has focused on the case of Lowell, virtually the same history has characterized admissions issues at the University of California and more widely as a result of Proposition 209 and the Regents SP1 and 2 policies on college admissions.

As in the case of New York, these earlier and simultaneous events in the metropolitan area set a precedent for the Lowell controversy discussed here. In particular, the *Bakke* court case at the University of California, Davis, Medical School in the middle to late 1970s and the University of California Board of Regents' decision in 1995 to bar the use of affirmative action in university admissions operated to fuel the dispute over admissions at Lowell. In his *Burning Down the House,* Pusser (2004) details the 1995 events of this decision and shows how important it was for the university and for the State of California. Clearly, events at Berkeley, just across the bay from Lowell High School, affected the events in San Francisco and at Lowell.

The use of courts to resolve ethnic and racial disputes over educational issues has a long history in California, in San Francisco, and especially at Lowell High School. From the early 1960s through the 1980s, when the first consent decree between the NAACP and the board of education was entered into, the courts have been the site for resolution of conflicts. The aim of groups who felt their interests were not being met by the decree has been to modify the decree or to have it changed entirely. Alternative solutions not involving the courts have not been used. The path chosen by the NAACP in 1962 has limited the options available for addressing the problem of selective admissions at Lowell. The current inability to use race as a factor in Lowell High School admissions, and the inability to find a useful proxy for it, are among the continuing forces that the San Francisco School Board is dealing with as it attempts to devise an admissions policy for Lowell and the District's other high schools (Fulbright and Knight 2006). Whether the courts will be the site of future conflict is unclear; that there will be future conflict seems assured.

At the end of his lengthy examination of school desegregation in San Francisco, published in 1978, Kirp states: "Litigation represents an end run around the political process of dispute resolution. That is both its strength, from the advocates' viewpoint, and its limitation. The very system by-passed by bringing an issue to court will bear the responsibility for converting the court's decision into policy and practice. It is possible for a judge to do more than Weigel [the judge in the Johnson case] did in supervising this process; it is not possible for any judge to substitute himself for the implementation process" (Kirp 1978, 491).

Discussion

New York City and San Francisco have established elite schools that are very attractive to students and their parents. The schools' reputations are maintained by the use of academic achievement criteria, the diminution of which would threaten the schools' status. Given the strong associations between

socioeconomic status and academic achievement, however, each has a broadly nonrepresentative student body that generates controversy and conflict.

Real differences do exist between legislation and litigation as means of channeling the conflict generated by the existence of elite high schools. Courts seem more accessible, but their rulings have not been stable; courts require winners and losers, but legislation can be politically crafted to have more than one winner. However, mobilizing to affect a legislature's actions is likely more difficult than mobilizing for a court case.

The legislative solution to this conflict used in New York followed the example of other contemporary conflicts, especially the very divisive teachers' strike of 1968 and the decentralization law that followed. Winners of those battles forged a legislative solution that legally defined terms that benefited their position. When the challenge to the examination schools arose only a few years later and from the same source that had previously challenged the teachers' union and the board of education, a similar solution was quickly chosen. The previously successful path set the precedent for how to address subsequent challenges. Another feature of the legislative solution adopted in New York was that no particular group was identified as a victim or beneficiary of the solution. The compromise allowed for some students to be admitted outside of the examination process—how many and who they might be, however, was not part of the legislation. Thus, groups not party to the original solution or those new to the metropolitan area could be absorbed into the existing solution without the recalibration of the terms of the agreement required in San Francisco. It is also worth noting that New York's procedure used only a single examination score and that the emphasis in the examination was on mathematics and science and science-related material. In this sense, the admissions procedure was a common one—everyone was assessed against the same measure, and admission went to those on top.

In the case of San Francisco, the situation was confounded by the series of legal challenges to the system's admissions plans. While the initial consent decree concerned African American students, some Asian Americans saw the solution it imposed as harmful to their children's chances of entrance. This history of conflict produced the perception of what Ming (2002) calls a "hostile environment" that kept successful black and Hispanic and Latino students from enrolling at Lowell once admitted, further exacerbating the already skewed enrollment. In addition, since Lowell is the only public high school in San Francisco with an exclusive reputation, it has stood out in ways that New York's examination schools and many other selective schools and programs do not. Yet, in San Francisco, as in New York, the path taken to address early formations of the problems posed by selective admissions strongly determined the available options for addressing future iterations of the conflict.

Unlike New York's case, in San Francisco specific groups were identified

as being harmed or as benefiting from the configuration of the selection process. Each attempt at a solution at one period not only limited future options but also precipitated later crises, structured available options, and shaped the choices made at those future junctures. This illustrates a sequence of events that Mahoney terms "reactive," where "inertia involves reaction and counter-reaction mechanisms that give an event chain an inherent logic" in which one event "naturally" leads to another event (Mahoney 2000, 511).

The New York case provides an illustration of the politics of compromise. While the elite nature of the examination schools was preserved, the provision of an alternative admissions process was responsive to the concerns of those who initially opposed the bill. That this compromise was a robust one is evidenced by the stability of the solution fashioned by the amended bill. In more than 35 years, there have been no significant challenges to the legislative solution even as the city's demography and politics have changed dramatically. That the number of examination schools has doubled, of course, is not irrelevant; as the competition for entry into these schools has increased, so too have the number of schools and slots in the entering classes relieving some of the pressures for admission into the schools. Returning to Mahoney's framework, this is an example of a "self-reinforcing" sequence in which inertia involves mechanisms that "reproduce" a particular institutional pattern over time (2000, 511)

For Lowell High School, its history since 1924 has included reoccurring challenges to its status as an elite high school. As the population of San Francisco has changed, a series of lawsuits claiming discrimination in the student selection process have prevented the system from devising a stable solution. The determined efforts of Lowell alumni and others have defended the school's elite status. For example, a 1984 Alumni Association Newsletter declared: "The Association stands ready to apply its total resources and energies to fight for the continuance of Lowell in its present form as an all-City college-preparatory high school with a curriculum grounded primarily in academic study" (Lucey 1989, H57). Thus far, Lowell has remained an elite school, and the competition for entrance is expressed in continuing group litigation, as well as individual student effort. The current situation is unstable, and legal challenges to Board actions may again be filed (Fulbright and Knight 2006). It also may be the case that there are limits to the court's ability to resolve social issues, as Kirp pointed out in 1978.

One aspect of the current study sets its findings apart from much of the literature on magnet schools and choice plans. The beneficiaries of these schools are not only whites (Perry 2002; Staiger 2004). In each case, Asian students have proven to be very successful. The majority-minority divide does not apply in its usual way in these schools. While the economic backgrounds of students at these schools are more advantaged than typical students in the

systems, they are hardly all affluent. This, too, helps to support the perception of the "fairness" of the selection mechanisms, since affluent whites are not the single-largest beneficiaries.

Finally, the questions of whether the different approaches to addressing the recurrent problem of elite high school admissions matters can be addressed. Although the two cases describe very different means to address conflicts over admissions policy, enrollments at the New York City high schools and at Lowell are not very different. In all the schools, Asians and whites are overrepresented; blacks, Hispanics, and Latino students remain underrepresented. The policies have created schools with high levels of academic performance. For example, Stuyvesant seniors scored an average of 1408 on the SAT examination in 2003; Lowell seniors averaged 1236. The admissions process produces high achievement, but it continues to inadequately represent the two cities' student populations. Although the paths taken in each case are different, the social and economic inequalities generating unequal achievement have not been amenable to these solutions. These inequalities are themselves a main producer of the hierarchy of educational opportunities—they both generate the demand for a hierarchy and are the potential reward (or punishment) of the competition.

It is not clear that either solution provides a greater advantage to those with the fewest resources. The accommodation afforded by the state law in New York is real but leaves the system intact and has produced enrollments in the examination schools that overrepresent the resource rich and white and Asian segments of the city's population. As noted above, however, the increase in the number of examination schools in New York differentiates this case from San Francisco, where Lowell remains the only elite school. The consent decree, in its various iterations, also has left the poor and African American and Hispanic populations equally underrepresented at Lowell (also see Baker 2001).

Understanding the evolution of the approaches to addressing the conflict over admissions rules for elite high schools has benefited from the search for links between the important events across time. Identifying the paths these events traced and situating their temporal order has provided an explanation for the linking of their effects to the actions taken at later points in time. The results of this analysis show that the different approaches to the admissions problem taken by the protagonists in New York and San Francisco were the result of different prior conditions and decisions that limited and constrained the choices they understood were available. Sequences of prior events may not always determine future events, but the findings of this article suggest that in these cases they do.

Notes

The author thanks Scott Davies, Karly Ford, James Frazier, Mitchell Stevens, Lisa Stulberg, Jon Zimmerman, and the members of the New York University Education Workshop for their comments and suggestions. The editors and reviewers of this journal were most helpful as well.

1. The case of Boston Latin School might also be an example. This case was not developed here because it essentially only involved affirmative action litigation and it offers nothing new from the San Francisco case. Boston has a long legal history with school desegregation (Dentler and Scott 1981), most of which did not involve Boston Latin or the city's other two public exam schools, Boston Latin Academy and the O'Bryant School of Mathematics and Science (Daley 1998; Pressley 1999).

2. While a paper of the "national record," the *New York Times* has assiduously covered news of these schools because of their unique role in the status system of the city.

3. This was recently undone with the takeover of control of the city's school system by Mayor Michael Bloomberg in the fall of 2003 as a result of action by the New York State Legislature.

4. In March 1971, enrollment for other (white) was 79.4 percent at Stuyvesant, 81.4 percent at Bronx Science, 76.6 percent at Brooklyn Technical, and 62.9 percent at Music and Art. White enrollment in all city academic high schools was 50.8 percent at the time. Black students represented 29.5 percent of all academic school enrollment, but 10.3 percent at Stuyvesant, 9.7 percent at Bronx Science, 12.3 percent at Brooklyn Technical, and 24.3 percent at Music and Art (Buder 1971).

5. For the freshman class of 1971, about 15,000 examinees competed for almost 3,500 places, and an additional 352 came from the Discovery program (Hechinger 1971).

6. In its Western Association of Schools and Colleges midterm report of 2003, the school reports that Chinese students are its largest group, comprising 55 percent of the student body. The school's Accountability Report Card for the 2002–3 school year puts the school's "Asian American" population at 69.8 percent, its Filipino American population at 4.7 percent, and its white population at 17.4 percent; its African American students are 2.2 percent of the population, and Hispanic or Latino students are pegged at 4.2 percent (San Francisco United School District 2003).

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