From Jim Crow to the Top 10% Plan: A Historical Analysis of Latina/o Access to a Selective Flagship University

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Abstract
The persisting underrepresentation of Latina/os in higher education has attracted increasing attention as they lead a dramatic demographic shift. According to the U.S. Census Bureau (2006), the number of Latina/os living in American households rose 500% between 1970 and 2010. By the 2000 census, Latina/os had become the largest racially collated ethnic minority group in the U.S. at almost 13% of the populace (U.S. Census, 2001). By 2008, nearly one in six U.S. residents were Latina/o (U.S. Census, 2009). Despite their growth, Latina/os lag behind every other demographic group in attaining college degrees and are underrepresented relative to their proportion in the U.S. population (Hurtado, Sáenz, Santos, & Cabrera, 2008). In 2008, Latina/os made up about 12% of national higher education enrollment, relative to their proportion of the general populace (U.S. Census, 2009), and they are said to be historically or traditionally underrepresented (Rendón & Nora, 1988).

In Texas, the state Comptroller (2008) reports that Latina/os are the fastest growing population group in the state due to immigration and high fertility rates—rising by 2.3 million between 1990 and the 2000 censuses, an increase of 46.1%. By 2008, Latina/os accounted for 36% of the Texas population (U.S. Census, 2008). Just over 50% of all Latina/os enrolled in higher education are located in California and Texas (National Center for Education Statistics, 2001), and because of the rapid population growth in Texas, Latina/o access to higher education in the Lone Star State has heightened significance. Furthermore, a recent evaluation of Closing the Gaps by 2015, the Texas higher
education plan adopted in 2000, noted that the proportional participation of Latina/os has only marginally advanced in the past ten years (Texas Higher Education Coordinating Board [THECB], 2009). Even though the total number of Latina/os in Texas higher education has increased, they are generally concentrated at two-year colleges and less selective universities (Vega & Martinez, 2008). Essentially, the majority of the growth in Latina/o enrollment in Texas has been segregated to less selective institutions of higher education (Vasquez Heilig, Rodriguez, & Somers, 2011).

From Sweatt (1950) to Hopwood (1996), the University of Texas at Austin (UT–Austin)—the most selective flagship in Texas, and one of the nation's prestigious public universities—has often found itself at the center of the national higher education admissions debate. There is little disagreement as to whether Latina/os are a historically underrepresented group in Texas higher education, especially at UT–Austin, even though historical narrative and real data that describe their underrepresentation are absent from the literature. The purpose of this article is to understand the enrollment of Latina/o students at UT–Austin relative to the evolution of selective admissions, legislative enactments, and judicial decisions since Jim Crow. This article begins by introducing a visual assessment and surname count methodology to create historical higher education enrollment data for Latina/os. We then commence with a narrative of admissions policies at seven time points over the past seventy years and describe how UT–Austin admissions criteria have evolved in the midst of legislative and judicial milestones. Each historical era concludes with a representation analysis of the proportion of Latina/os enrolled at UT–Austin relative to statewide population estimates.

Considering the rapid demographic growth of Latina/os, the continuing challenge of their underrepresentation at selective postsecondary institutions, and a shift away from thinking of racial grouping for making claims on the state, a historical analysis to contextualize key events and policies is important to illuminate the continuing struggle for equity in admissions for Latina/os. It is impossible for this essay to cover the entire range of diffuse social trends such as the GI Bill, increased legislative representation, and expansion of the liberal coalition. Instead, the main focus is to track how admissions contexts changed, calculate underrepresentation between enrollment and state population proportions, and consider whether social justice and equity persist as valid critiques in the current Top 10% admissions policy environment.
Methods

Historical analyses of minority student enrollment are rare in the literature due to the difficulty of obtaining data. In 2009, contemporary student demographic and higher education enrollment data is readily available. For example, the Texas Higher Education Coordinating Board (THECB) manages a data system that includes thousands of variables for hundreds of thousands of students. However, higher education enrollment data that included race did not become publicly available until about 30 years ago. Therefore, to provide a unique and groundbreaking longitudinal analysis of Latina/o undergraduate enrollment at UT–Austin for a seventy-year span, it is necessary to turn to the well-established empirical tradition of utilizing photos and yearbooks as historical data.

Visual assessment of photos as a research method is utilized across disciplines. Collier and Collier (1999) demonstrate that for many decades visual anthropologists have been concerned with “visual observations and the insights that can be gained through the use of camera records” (p. 1). Psychological research has utilized school yearbooks as historical data sources for several decades (Brennan-Parks, Goddard, Wilson, & Kinnear, 1991; Dodd, Russell, & Jenkins, 1999; LaFrance, 1985; Mills, 1984; Morse, 1982). Researching the history of education, Cuban (1984, 2009) has deftly analyzed yearbook and classroom photos to understand how teachers taught.

This essay utilizes a visual and surname count analysis of UT–Austin Cactus yearbook photos to understand how Latina/o enrollment has changed since the era of Jim Crow. The analysis was conducted in 15-year increments tracking backwards from Hopwood (yearbooks from 1997, 1982, 1967, 1952, 1937).¹ For the five yearbook snapshots, the researchers studied each volume and considered surnames and photographs to create Latina/o enrollment counts.² Each page of the Cactus student section was ordered by class and contained the student name, hometown, and photograph. To structure the data collection, we first determined the number of international students

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¹ The researchers conducted a yearbook analysis beyond Hopwood to understand the impact of the Top 10% Plan on Latina/o enrollment in 2001—five years after Hopwood. The essay also gauges Latina/o enrollment and population trends post-Grutter by utilizing 2008 data from University of Texas public enrollment data and the Current Population Survey.

² Notably, there is an empirical precedent for Latina/o surname analysis from the United States’ Censuses of 1950, 1960, 1970 and 1980 (Carter, Gartner, Haines, Olmstead, Sutch, & Wright, 2006; Winnie, 1960). A list of several thousand Spanish surnames was compiled by the U.S. Census Bureau to be used as the means of demographic identification for Latinas. The Census Bureau’s method serves as the basis for our surname analysis. The primary focus of the analysis was the Latina/o surname; photos were only ancillary confirmation of gender.
on each page. International students were demarcated by reviewing the hometown listed beside each student’s name. Next, by considering surnames and photos, counts by race/ethnicity and gender were determined page by page.³

To confirm the race and ethnicity proportions calculated in the yearbook counts, we sought to triangulate records of Latina/o enrollees with additional data sources. The UT–Austin catalog publicly disclosed the name of every student attending the university until the early 1940s. As a result, the researchers went page by page through the 1936–37 UT–Austin catalog to conduct a count of all students with Latina/o surnames to compare with the 1937 yearbook count of Latina/os (University of Texas, 1936). The yearbook analysis was also compared with counts conducted by Manuel (1965) that span from the 1920s to the 1950s. Manuel (1965) conducted his surname analysis by utilizing registration reports from UT–Austin.⁴ However, he did not distinguish between foreign and domestic students with Spanish surnames and his research ends in 1958. Thus, our analysis improves upon Manuel (1965) by separating international Latina/os from domestic Latina/os by utilizing the hometown listed in the yearbook and expanding beyond the 1950s. The results of the data triangulation are reported in the representation analyses throughout the essay.

There are a few other important limitations to consider regarding the historical data and the representation analyses. One possible argument is that undereducated immigrants have driven the Latina/o population growth in Texas, and therefore there are not enough qualified Latina/os for selective higher education in the state. This proposition is false. A recent THECB report (2009) shows that over the past eight years the state has graduated almost 40,000 more Latina/o high schools students per year. In fact, during the same time frame, the number of college-enrolled Latina/os across the state grew by 54.5% (THECB, 2009). Another possible critique is whether the census population estimates in the representation analyses should include only college-age individuals in Texas. Since 1930, the U.S. Census has utilized more than five different methods of counting Latina/os and has not reliably gathered college-age data. To be consistent across time periods, we utilized census

³ Sáenz & Ponjuan (2009) have recently argued a silent educational and societal crisis exists for Latino college-aged male students. Compared to Latina female students, Latinos are not enrolling in higher education at the same rates (Hurtado, Sáenz, Santos, & Cabrera, 2008). Though contemporary enrollment disparities by gender are noted in the empirical literature, there is also very little known about the historical access along gender lines. As a result, we include a breakout Latina/o enrollment by gender in the underrepresentation analyses.

⁴ Citing FERPA, the Registrar’s Office at UT–Austin refused access to the registration cards.
estimates that represent all Latina/os statewide. We argue that a representation analysis between enrollment and total proportion of Latina/os is actually a more conservative estimate of the underrepresentation of Latina/os in Texas as the population has trended younger.\(^5\) It is possible to levy other critiques of the sample; however, since the research spans more than 70 years, the representation of Latina/os is as consistent and representative as possible considering the limitations of historical data.

**Birth of Texas’ Flagship University**

UT–Austin opened its doors on September 15, 1883, under the premise that admission be equally accessible regardless of gender or religion (University of Texas, 1975). Yet, the incipient notion of equality was limited, as race could preclude entry. In addition to demographic criteria, the university also stipulated the following admissions requirements: graduating from an affiliated school or passing entrance examinations in selected subject areas, or special approval from the Registrar.

In 1885, UT–Austin, believing that high schools were not adequately preparing students to attend its institution, created the affiliation process (Eby, 1925). This procedure allowed graduates from university-affiliated high schools an advantage over other secondary institutions: entrance without examination (University of Texas, 1895, 1901, 1911). A Visitor of Schools, a UT–Austin faculty representative, interviewed the faculty of a prospective high school. After the evaluation process, the Visitor of Schools distributed a report to the university’s faculty. Upon faculty approval, the names of these schools were recognized in the annual catalog (University of Texas, 1895, 1901, 1911).

UT–Austin did not officially limit admissions to graduates from affiliated schools. Since acceptance to the university was also contingent on having the requisite number of credits in specific subject areas, potential matriculates could also enter by passing optional college entrance examinations (University of Texas, 1911). Students could either take these tests in May at their high schools or at the university in the fall (University of Texas, 1911; State Department of Education, 1923). Sitting for the entrance exam to avoid the admissions preference for students from affiliated schools was rare. For example, in 1918, only 191 students took these examinations under the university’s control (University of Texas, 1918).

\(^{5}\) Solmon, Solmon, and Schiff (2002) also conduct underrepresentation analyses that examine the ratio between enrollment and census population estimates.
Very few students actually passed the entrance examinations in English, algebra, and American history, as passage rates were 27%, 29%, and 43%, respectively (Department of Education, 1923). Not surprisingly, in 1936–37, no students were accepted to UT–Austin solely from passing the entrance examinations (University of Texas, 1937a).

A prospective student could also matriculate without examination under “individual approval.” Applicants over 21 years old with special approval from the Registrar could be admitted to the university by showing evidence that they had sufficiently covered the content of curricular units required of other potential applicants and by demonstrating his/her command of English by writing a composition. These students could remove this status by satisfactorily completing coursework in English and mathematics as well as receiving a “C” average from at least thirty credits during the first fall long session (University of Texas, 1936).

This system worked squarely against the admission of minority students, but in different ways for Latina/o (largely Mexican Americans) than for African Americans. Latina/o were not racially excluded from admission to UT–Austin. In 1897, the federal district court in San Antonio in In Re: Rodriguez declared that the Treaty of Guadalupe Hidalgo and subsequent federal policies conferred upon Mexican Americans the racial status of White for naturalization and classification purposes (Wilson, 2003). Latina/o theoretically had equal access to the same public schools as Anglos, yet most attended inferior, segregated, “Spanish-speaking” schools in which it was very difficult to earn a high school diploma (San Miguel Jr., 1987). Mexican “greasers” faced cultural prejudices analogous to the racial animus suffered by African Americans, with several high profile lynchings and city governments like Houston actively encouraging repatriation during the Great Depression (De León, 1983; Garcia, 2000).

To combat such bias, Mexican American advocates, most notably the League of United Latin American Citizens, attempted to publicly Americanize and assert their “Whiteness” to gain access to Anglo schools (Garcia, 2000; Wilson, 2003). The courts, while agreeing that English-speaking Mexican students ought to have equal access, allowed schools to use language deficiency as justification for separate treatment, provided schools did not deny access to the White schools arbitrarily (Wilson, 2003; Independent v. Salvatierra, 1930; Delgado v. Bastrop ISD, 1948). In practice, that is exactly what happened (Wilson, 2003).
Representation analysis. Since the vast majority of Latina/o students only had the opportunity to attend segregated primary education, it follows that there would be a narrow, slow-moving pipeline into the university. Manuel (1965) found that 1.5% of the student body was Latina/o in 1938–39—which aligns with counts from the 1937 UT–Austin catalog that show Latina/os at approximately 1.4% of the student population (Table 1 below). As a result of data triangulation, the researchers are confident in the count of Spanish surnames from the 1936–37 Cactus that found that 1.2% of the student body had Latina/o surnames. Though there were three ways to gain admission to UT–Austin, very few Latina/o students were granted the opportunity to attend the university by the 1930s.

TABLE 1 | Latina/o student enrollment percentage at the University of Texas at Austin

<table>
<thead>
<tr>
<th>Year</th>
<th>Latino male enrollment</th>
<th>Latina female enrollment</th>
<th>Total Latina/o enrollment</th>
<th>Census Latina/o</th>
<th>Enrollment and census disparity</th>
</tr>
</thead>
<tbody>
<tr>
<td>1937&lt;sup&gt;i&lt;/sup&gt;</td>
<td>1.0%</td>
<td>0.4%</td>
<td>1.4%</td>
<td>11.5%</td>
<td>10.1%</td>
</tr>
<tr>
<td>1952&lt;sup&gt;ii&lt;/sup&gt;</td>
<td>1.3%</td>
<td>0.9%</td>
<td>2.1%</td>
<td>13.3%</td>
<td>10.9%</td>
</tr>
<tr>
<td>1967&lt;sup&gt;iii&lt;/sup&gt;</td>
<td>1.8%</td>
<td>1.1%</td>
<td>2.9%</td>
<td>17.7%</td>
<td>14.8%</td>
</tr>
<tr>
<td>1982&lt;sup&gt;iv&lt;/sup&gt;</td>
<td>4.2%</td>
<td>4.9%</td>
<td>9.2%</td>
<td>21.0%</td>
<td>11.8%</td>
</tr>
<tr>
<td>1997&lt;sup&gt;v&lt;/sup&gt;</td>
<td>5.7%</td>
<td>5.8%</td>
<td>11.5%</td>
<td>25.5%</td>
<td>14.0%</td>
</tr>
<tr>
<td>2001&lt;sup&gt;vi&lt;/sup&gt;</td>
<td>6.2%</td>
<td>7.0%</td>
<td>13.2%</td>
<td>25.5%</td>
<td>12.3%</td>
</tr>
<tr>
<td>2008&lt;sup&gt;vi&lt;/sup&gt;</td>
<td>7.4%</td>
<td>8.5%</td>
<td>15.9%</td>
<td>36.0%</td>
<td>20.1%</td>
</tr>
</tbody>
</table>

<sup>i</sup> Census 1940 Latina/o estimates based on persons of Spanish Mother Tongue.
<sup>ii</sup> Census 1950 Latina/o estimates based on persons of Spanish Surname.
<sup>iii</sup> Census 1970 Latina/o estimates based on Spanish origin.
<sup>iv</sup> Census 1980 and 2000 Latina/o estimates based on Spanish/Hispanic origin.

Considering that Latina/os made up about 12% of the Texas population in the 1940 Census, their underrepresentation of slightly more than 10 percentage points between the state population levels and enrollment in selective higher education at UT–Austin during the era of Jim Crow was substantial (see Table 1). In fact, bearing in mind the segregationist attitudes toward Latina/o students, it is apparent that the denial of representative matriculation with Whites at UT–Austin in the 1930s was rooted in the lack of access and success in elementary and secondary education.
Access, Opportunity, and Adjudication

The discussion will now center on the 1950s and 1960s and detail the role of legal enactments in the context of the desegregation era and their impact on Texas’ K–12 public schools and UT–Austin. Specifically, we will consider how pervasive and hostile attitudes toward desegregation influenced the speed with which students of color had access to all levels of education in Texas, and then transition to the impact of the Civil Rights movement on Latina/o access and opportunity.

The official end of *de jure* segregation in Texas’ public schools came through the thunderous Supreme Court decisions of *Sweatt v. Painter* (1950) and *Brown v. Board of Education of Topeka, Kansas* (1954). In 1950, the Supreme Court exposed the fraudulent activity of Texas creating a separate law school for African Americans rather than admitting Heman Marion Sweatt to UT–Austin’s Law School, declaring that “such education is not available to him in a separate law school as offered by the State (*Sweatt v. Painter*, 1950).” This ruling opened the door for the Court’s full consideration of segregated public schools in *Brown* and Chief Justice Earl Warren’s famous majority opinion that declared, “Separate educational facilities are inherently unequal” (*Brown v. Board of Education*, 1954). Of course, integration was not that simple. Texas Governor Alan Shriver believed that state’s districts did not need to change and Attorney General Jon Ben Sheppard left it up to individual districts to determine integration timelines (Wilson & Segall, 2001). The later order in *Brown II* (1957) that districts needed to integrate “with all deliberate speed” turned into “all deliberate slowness” (Goldstone, 2006; Ogletree, 2004; Shabazz, 2004).

The strategy of slowness also permeated postsecondary institutions in Texas. In May of 1954, four months after *Brown* (1954), it was the University of Texas’ policy, according to President Logan Wilson, to accept African American graduate students only when these programs were not offered in the state’s black colleges (Duren, 1979). African American undergraduates were then excluded from undergraduate admissions at UT–Austin since they could find their majors in other segregated postsecondary institutions (Duren, 1979). This changed in July 1955, when the University of Texas’ Board of Regents decided that the institution would integrate by September 1956. Again, UT–Austin became a progenitor of access as the first higher education institution in the South to decide to allow African Americans as undergraduate students.6 Desegregation had become inevitable.

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6 The Regent’s decision came only a few months before Autherine Juanita Lucy enrolled at the University of Alabama and the U.S. Supreme Court voided portions of Texas’ Constitution concerning segregation (Clark, 1993).
While perhaps shocking to a modern audience, even after *Brown*, Mexican Americans continued to cling to their “Caucasian cloak” and pursued their complicated strategy of asserting legal Whiteness (Gross, 2007). Advocates like the tireless James DeAnda believed that their best path to access laid in advancing due process violations, deliberately eschewing the equal protection argument of Brown, judging the case of little precedent for them (Wilson, 2003). Blanton (2006) goes into depth on how other figures, especially influential UT professor George I. Sanchez, worked with African American leaders like Thurgood Marshall, but persisted in approaching integration from “opposite directions” (p. 602). The continuation of this viewpoint was reflected in *Hernandez v. Driscoll CISD* (1957), in which a district court struck down the linguistic separation of Mexican children, in which the school kept them in first grade for up to three years. The ruling again came largely on due process grounds, not defining Mexican Americans as a mistreated minority. Winning these cases changed little for Latina/o children, and frustration over such entrenchment prevented another desegregation case from being filed for a decade (Wilson, 2003).

**Admissions and Latina/o Enrollment circa 1952**

Early on, UT–Austin created a process for high schools to gain an affiliation status to provide preferences in admissions for their students. By the 1950s, only the Texas Education Agency (TEA) was accrediting high schools. Applicants to UT–Austin were required to graduate in the upper quarter of the class from an accredited high school with fifteen “acceptable units” as stipulated by the Division of Professional Standards of the TEA (University of Texas, 1952b). Students could also bypass credit requirements by obtaining “individual approval” from the Registrar if they were a Texan over 21 years of age and could demonstrate that they had covered with sufficient depth the required units for matriculation. Few students, about 30 per year, entered via TEA examinations and individual approval in the 1950s (University of Texas, 1952b).

In addition to graduating from an accredited school or gaining special registrar approval, prospective students encountered aptitude tests as a new mandatory gateway for admission to UT–Austin. As noted above, a student could gain admission without an aptitude test by graduating from an affiliated school or through special Registrar approval during the 1930s. Henceforth, incoming
freshmen were required to take an aptitude test; failure to comply with this regulation meant automatic denial (University of Texas, 1951). By 1956, an applicant could either take a free university aptitude test or the Scholastic Aptitude Test (SAT) (University of Texas, 1957a). In addition to taking either achievement test, the applicant could satisfy course requirements by passing admissions examinations that were administered by TEA's Division of Professional Standards.

**Representation analysis.** During this era, minority students were theoretically granted expanded opportunity for admission to UT–Austin by the changing legal landscape. Yet, it is possible that the opportunity pathway into UT–Austin for Latina/os was muted by the introduction of aptitude tests, “all deliberate slowness,” and other factors. The yearbook count from 1952 (See Table 1) shows that 2.2% of the university’s student body was Latina/o (.9% females and 1.3% males)—an increase of about a half of a percentage point since 1937. The enrollment level of Latina/os in the 1952 yearbook count parallels Manuel (1965), as his analysis found that about 2.4% of the total enrollment was Latina/o students in 1958–59. Based on the Texas population proportions of Latina/os in the 1950 Census and the yearbook analysis, the disparity with enrollment was about UT–Austin was reticent as evidenced by Latina/o enrollment that remained depressed throughout the 1950s.

**Civil Rights and Targeted Admissions Initiatives**

Despite the changing legal environment, structural barriers such as low levels of schooling, aptitude testing, and *de facto* segregation continued to work in concert to limit the enrollment of Latina/os at UT–Austin. Latina/o students were segregated in their own dormitory called “the barracks” (Barrera, 1998). Yet there were progressive voices on campus, notably its preeminent Latina/o faculty members, including historian Carlos Castañeda, English professor Américo Paredes, and George I. Sanchez (Limón, 2006). In the 1960s, spurred by the Supreme Court, federal civil rights legislation, and pressure associated with the 1960s social protest movement, UT–Austin began to attempt piecemeal efforts to achieve diversity by race and ethnicity (Duren, 1979; Goldstone, 2006).

In the 1960s, the university began two targeted admissions programs to increase the enrollment of historically underrepresented minority students: Program for Education Opportunity (PEO) and Provisional Admissions Program (PAP)
In 1962, the Regents created PAP to admit students who had not met admissions requirements, including underrepresented minorities. The program allowed participants to enroll during the summer session to demonstrate their ability to perform well in a university setting. If the student could show that he or she could do satisfactory work in specific courses, they could then qualify for admission to the university in the fall (Duren, 1979). Critics of PAP pointed out that the program benefitted middle class students rather than disadvantaged minorities; students accepted into the program usually did not receive additional financial aid assistance from the university. Due to the intensity of taking 12 credit hours in the summer, the university administrators did not encourage provisional students to work. Therefore, low-income African American and Latina/o students did not have the financial resources to pay for summer classes after graduating from high school—which limited the reach of the program for minority students (Goldstone, 2006).

Seeking to create more access for African American and Latina/o students, the university created the Program for Educational Opportunity (PEO) during the 1968–69 academic year. PEO’s goals were to help “educationally, culturally and financially disadvantaged students” who, based on recommendations and interviews, could be successful at the postsecondary level, but were not able to demonstrate this aptitude on entrance examinations (Goldstone, 2006, p. 147). Moreover, this program sought to compensate for inadequately funded and poor quality K–12 schooling that many Latina/o students had received that did not adequately prepare them for success on standardized tests such as the American College Test (ACT) and the Scholastic Aptitude Test (SAT) (Goldstone, 2006).

During its first year (1968–69), 12 African American and 13 Latina/o students attended the university under this program. Twelve of the students successfully returned to the university the following academic year. However, despite this limited success and the Faculty Council’s recommendation to expand this program in May of 1969, PEO was terminated by the Board of Regents. The Board declared that funds appropriated by the state legislature and other local institutional monies should not be used for direct recruitment of students who would not have gotten into the university otherwise (Goldstone, 2006).

In spite of the small scale of the minority admissions programs, the program faced overt hostility from within the university. Frank C. Erwin, Board of
Regents Chair, speaking in front of the Texas State Legislature said, “We are turning down thousands of applicants from Irish, Scotch, Yugoslav … and other desents because they did not meet the university’s admissions standards but … at the same time deliberately admit Afro-Americans and Mexican Americans who fail to meet these same standards” (Morrison, 1969, August 22, as cited in Goldstone, 2006, p. 148).

**Admissions and Latina/o Enrollment circa 1967**

The integration of public education institutions after the *Sweatt* decision and later the *Brown* decision was a slow process. U.S. Supreme Court decisions did not carry much weight in Texas in terms of the speed of implementation. However, federal legislative enactments to undergird the U.S. Supreme Court decisions were soon to follow, particularly Title VI of the Civil Rights Act of 1964, which placed in jeopardy federal funding for segregated educational institutions (Bickel, 1998).

The younger generation of Mexican Americans grew frustrated with the pace of integration and the “other White” fiction and began to assert their own racial identity, embodied in the Chicano and La Raza movements of the 1960s (Blanton, 2006). Faculty like Paredes encouraged students to explore their heritage; he would become the first director of the Center for Mexican American Studies at UT–Austin in 1970 (Limon, 2006). In 1967, the pathbreaking Mexican American Legal Defense and Education Fund (MALDEF) was formed, intended to be the Latina/o equivalent of the NAACP (Wilson, 2003). In the first suit it brought, *Cisneros v. Corpus Christi Independent School District* (1970), the district court recognized segregation of Mexican students as illegal discrimination against a distinct minority group, making them eligible for protection under *Brown*—a view the Supreme Court would codify in 1975 in *Keyes v. School District No. One, Denver* (San Miguel, Jr., 1987).

At trial, two UT–Austin professors offered competing testimony that perhaps crystallized the tensions in educational opportunities. Dr. Thomas Carter, from UT–El Paso, argued passionately that segregation had deleterious effects on Mexican American students’ ability to finish school and gain access to higher education. He advocated integration as the first step in remediating the discrimination that led Mexican Americans to not “fill their proportional
number of doctors, lawyer, merchant, and chief kind of slot in the society” (Cisneros v. Corpus Christi, 1970). By contrast, UT–Austin professor Lawrence Haskew testified for Corpus Christi, defending the continuation of segregated neighborhood schools because, “education conducted for people in ghettos is the best route” (Cisneros v. Corpus Christi, 1970). Such viewpoints made it all the more clear to MALDEF that they had to forcefully argue for integration, and they would go on to file 71 desegregation lawsuits from 1970 to 1980—76% of its total caseload (San Miguel Jr., 1987).

**Representation analysis.** Table 1 shows that in 1967, several years after the passage of the first Civil Rights Acts and near the height of the social protest movement, 2.9% of the student body was Latina/o (1.8% and 1.1% male and female, respectively). Informal conversations with officials in the admissions and registrar’s offices revealed that institutional data on race and ethnicity were not gathered at UT–Austin until the 1970s. The first publicly available data on race/ethnicity are for the fall of 1972, when there were 1,542 Latina/o students out of a student population of 39,900, about 3.9% (University of Texas at Austin, 1976). Considering the yearbook counts and publicly released data—despite Civil Rights legislation, targeted admissions programs, and an amenable legal and legislative environment—large Latina/o enrollment disparities persisted at UT–Austin. Relative to the 1970 Census, Latina/os were underrepresented by about 15 percentage points—a sizeable increase of about five percentage points since the Jim Crow era (see Table 1).

**Affirmative Action and the Backlash**

By the 1980s and 1990s, UT–Austin and selective universities nationwide sought to remedy the small pool of eligible African American and Latina/o applicants with affirmative action programs that admitted minorities with lower test scores to graduate and undergraduate programs. Whites began to question whether their rights were being violated by these practices and sought to limit these mechanisms in the courts. Several U.S. Supreme Court cases changed how universities were able to admit and allocated resources based upon race. Several major U.S. Supreme Court cases have had a significant impact on race in the admissions process at the undergraduate and graduate levels at UT–Austin: Bakke (1978), Hopwood (1996), and Grutter (2003). These cases

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7 The yearbook proportion can’t be compared with Manuel (1965) as his last analysis came from the fall of 1958–59.
8 We are fairly confident that the yearbook counts during this time period are representative, as they are within 1% of publicly reported institutional data.
synthesized “strict scrutiny.” In other words, states needed to show that the racial classifications in law “served a compelling and legitimate state interest” (Howard, 1997, p. 33).

In 1973, Allan Bakke, a White male applicant, was refused admission to the University of California–Davis Medical School. In *Regents of California v. Bakke* (1979), he claimed that the medical school had denied him equal protection under the Fourteenth Amendment because sixteen seats were reserved for economically disadvantaged minority students. The U.S. Supreme Court decided that Bakke should be allowed into the medical school but that “although race or ethnicity should not demand inclusion or exclusion, minority racial or ethnic status could constitute a ‘plus’ in an applicant’s file” (Bickel, 1998, p. 10).

While the Bakke case was under review at the U.S. Supreme Court, the U.S. Office of Civil Rights (OCR) began a review of Texas higher education in February of 1978. The OCR eventually found that Texas had not eliminated vestiges of *de jure* segregation (Moses, n.d.). After thirty months of negotiations, several court orders, and discussions with two gubernatorial administrations, the state of Texas agreed to develop a higher education desegregation plan on a voluntary basis (*Hopwood*, 1996; Moses, n.d.). A period of foot dragging ensued, and by 1983, facing a forty-five day ultimatum from the *Adams* desegregation court to develop an enrollment plan, Texas Attorney General Mark White encouraged state leaders to adopt a voluntary plan of action to diversify Texas higher education to forestall a direct federal order to desegregate the state’s colleges and universities (*Hopwood*, 1996). The state responded by creating the Texas Opportunity Plan for Education, also known as the Texas Plan (THECB, 1988).

In all, there were three Texas Plans: the first in 1983, the second in 1989, and a final iteration in 1995 (Scott & Kibler, 1998). Each was designed to strategically address the lack of diversity at Texas’ postsecondary institutions (THECB, 1983). Over the course of five years, the goal of the first Texas Plan was to enroll an additional 2,432 African American and 3,190 Latina/o undergraduates, in addition to 240 African Americans and 463 Latina/os in graduate programs. It also stipulated 100 more Latina/os and African Americans in professional studies at predominantly White Texas public universities. However, by 1986, UT–
Austin and its peer universities realized that they were not meeting their goals. For instance, in the 1984–85 academic year at UT–Austin, there were only 13 more Latina/o undergraduates than in 1977–78 (THECB, 1986).

**Admissions and Latina/o Enrollment circa 1982**

Considering the general admissions requirements for UT–Austin for the 1981–82 academic year, there was a new bright line that prospective students had to hurdle for admissions that was not officially published in the 1960s: specific scores on either SAT or ACT on a sliding scale with class rank. Admissions requirements now listed “admissions tests” (i.e. SAT or ACT) as the first priority entrance requirement (University of Texas, 1981). An informal conversation with an individual employed in the UT–Austin admissions office from the 1960s to the 1980s revealed that more emphasis was being placed by the university on achieving a particular score in 1982 (for SAT: 1100 or more for students) than in 1967, when the student needed only a “satisfactory” score in combination with the student’s high school ranking (University of Texas, 1966, 1981). Although students were still admitted under “individual approval” and through the provisional program (PAP), this emphasis on testing played a large role in continuing to limit students of color from being accepted to the university, due to long-standing underperformance on the SAT and ACT (Thomas, 2004). As priority criteria, the admissions tests had the potential to limit the pool of eligible Latina/o students.

**Representation analysis.** By 1982, Civil Rights directives, in particular Title VI and affirmative action enforced by the *Adams* desegregation courts, sought to provide wider access for students of color. Despite the noble intentions of the belated Texas Plans and other outreach programs, UT–Austin had not met its promised goals for diversity. As shown in Table 1, a review of the 1982 *Cactus* found that 9.1% (4.2% male and 4.9% female) of the student population at the university was Latina/o. This is the first year in the analysis in which the estimated proportion of Latinas enrolled exceeded Latinos. Nearly 15 years after the Civil Rights movement, Latina/os remained underrepresented compared to their statewide population in the 1980 Census by about 12 percentage points (see Table 1). In this era of *Bakke*-sanctioned affirmative action, the gap between enrollment at UT–Austin and the state’s Latina/o population narrowed from 15 percentage points in 1967, to 12 percentage points in the early 1980s.
Hopwood and the Top 10% Plan

Nearly fifty years after the landmark *Sweatt* case against the UT–Austin School of Law, Cheryl J. Hopwood and Stephanie C. Haynes, two White females, applied to the UT–Austin School of Law. When they were rejected, they filed a lawsuit in U.S. District Court stating that they were denied their constitutional guarantee of equal protection under the law when “less qualified” minorities were admitted. Both claimed that although they had met the school requirements for admittance, the Law School had “preferential” admissions policies for African American and Latina/o applicants (Goldstone, 2006). Stephanie C. Haynes was dismissed from the suit on February 11, 1993. Ultimately, Douglas Carvell, Kenneth Elliott, and David Rogers, three White males, joined the existing lawsuit as plaintiffs alleging claims similar to Hopwood’s (*Hopwood v. Texas*, 2010).

The 5th Circuit U.S. Court of Appeals ruled in *Hopwood* that any consideration of race or ethnic background by the UT–Austin Law School to achieve a diverse student body did not apply under the Fourteenth Amendment. In addition “the use of race … simply cannot be a state interest compelling enough to meet the steep standard of strict scrutiny” (*Cheryl J. Hopwood, et al. v. State of Texas et. al v. Thurgood Marshal Legal Society and Black Pre-law Association*, 1996). This ruling had major implications for all affirmative action policies at postsecondary institutions in the 5th Circuit. Texas Attorney General Dan Morales instructed all of the state’s colleges and universities to function on a “race-neutral” basis in regard to all procedures and policies such as recruitment, retention, financial aid, and tutoring.

In reaction to the *Hopwood* court decision and to encourage minority representation at UT–Austin and Texas A&M, House Bill 588 (The Top 10% Plan) was passed by the state legislature and signed into law in 1996. Under this statute, a Texas student who graduated in the top ten percent of his or her class would receive automatic admission to any state college or university. As with any new policy, there were contrasting arguments—proponents of this plan argued that this law would increase the number of minority students at the two public flagship campuses; opponents contended that the program would only work if secondary schools remained segregated and the state avoided dealing with this issue (Tienda & Niu, 2006). Others argued that accepting all top ten percent students would lower the quality of education at these schools, since the plan needed to accept students from “weaker” schools (Goldstone, 2006).
Admissions and Latina/o Enrollment 1997–Present

By 1997, the backlash against affirmative action had increased to a crescendo, as opponents of minority admissions preferences were emboldened by *Bakke* in the late 1970s and then *Hopwood* in 1996. The year after *Hopwood*, the yearbook analysis suggests Latina/os were about 12% (5.7% male and 5.8% female) of the total student population at UT–Austin (see Table 1). The yearbook counts are similar to public data released by UT–Austin showing Latina/o enrollment at 14% (The University of Texas at Austin Office, 1998).\(^9\) As shown in Table 1, considering the 2000 Census, Latina/os were underrepresented at UT–Austin by at least 14 percentage points relative to their statewide population.

It is interesting to note that during the first year of the implementation of the Top 10% law (1998–99), the university enrollment data show Latina/os at 12.7% (The University of Texas at Austin, 2001a). Several years after the implementation of the Top 10% admissions plan, the yearbook count suggests that 13.2% of the student body was comprised of Latina/o students. Thus, Latina/os appear to have made dramatic strides since 1937.\(^10\) However, it must also be considered that Latina/os’ demographic proportions in the state were also trending upward. By the 2000 census, Latina/os were 25.5% of the state’s population (see Table 1).

In 2003, the use of race as a criterion among many in the admissions process was reaffirmed by the U.S. Supreme Court in *Barbara Grutter v. Lee Bollinger et al.* (2003), a case challenging the admissions policy of the University of Michigan Law School. The *Grutter* decision elevated Justice Lewis Powell’s concurring opinion of using race as a plus factor, stating that “student body diversity is a compelling state interest that can justify the use of race in university admissions” (*Grutter v. Bollinger*, 2003). With *Hopwood* overturned, the Board of Regents reinstated an overt affirmative action program, narrowly tailoring it to fit the guidelines of *Grutter*. In 2009, the District Court for the Western Division of Texas upheld UT–Austin’s policy, stating that it adhered to the Michigan program so closely that “if the Plaintiffs are right, then *Grutter* is wrong (*Fisher v. University of Texas*, 2009). Now, not only did Latina/os appear to benefit from the Top 10% law, but they could also be admitted with a preference in secondary reviews.

\(^9\) The 2 percentage point difference between the yearbook and institutional data could be accounted for by international Latina/os.

\(^10\) Latina/os are overrepresented by about 1% in the yearbook count as compared to the official UT enrollment data.
Another outgrowth of *Grutter* was that UT–Austin could resume financial aid and outreach programs that specifically targeted Latina/os. For example, the University of Texas’ Ex-Students’ Association created the Longhorn Opportunity scholarship to provide $5,000 to incoming economically disadvantaged students from historically underrepresented Texas communities (*Gratz v. Bollinger*, 2003). In addition, UT–Austin representatives, such as President Bill Powers, traveled the state to visit predominantly minority high schools to encourage students to apply. However, the question remains: Did the 10% law and outreach programs decrease the underrepresentation of Latina/o students at UT–Austin?

**Representation analysis.** If the representation analyses ended in 2001, a key finding would be that Latina/os had made gains at UT–Austin since the era of Jim Crow. However, to consider the long-term impact of the Top 10% law in the midst of a burgeoning Latina/o population growth and the post-*Grutter* admissions environment, the researchers conducted an additional comparison of 2008 Latina/o enrollment relative to statewide demographics. By 2008, demographic growth had far outpaced enrollment growth, resulting in underrepresentation that had *doubled* since the Jim Crow era—from ten percentage points in 1937 to 20 percentage points in 2008 (see Table 1). This finding raises important social justice concerns about the success of the Top 10% law for decreasing the underrepresentation of Latina/os at UT–Austin relative to the speed of demographic growth.

**Discussion**

When the Texas State Legislature began its 81st session in the winter of 2009, the Top 10% plan, the most recent policy expected to remedy minority underrepresentation in the state’s college and universities, emerged as a topic on the forefront of the legislative agenda. Research on the statewide admissions policy that automatically accepted students in the top 10% of their class into any of Texas’ 35 state public higher education institutions found that it had not yet created greater diversity at the state’s selective universities (Horn & Flores, 2006; Long & Tieda, 2006). The UT–Austin administration argued in the Texas legislature that the university was adamantly opposed to the Top 10% policy because the threshold admissions plan took away from the admissions discretion of the institution and actually limited minority enrollment (Erasing race, 2009, February 28).
The Texas Senate modified the Top 10% plan when it passed SB 175 in the spring of 2009. The bill allowed Texas universities to admit students in the Top 10% of their graduating high school class up to 50% of the incoming freshman class. As 81% of the 2008 freshman class at UT–Austin was determined by the Top 10% plan, it is the only university in the state that is currently affected by the cap (Root, 2009). In practice, UT–Austin announced it would admit students in the Top 8% of their graduating class (Haurwitz, 2009).

Are there social justice ramifications for Latina/o enrollment associated with modifications to the Top 10% plan? The preceding historical analysis makes it difficult to ignore that the total number and proportion of Latina/o students enrolled at UT–Austin is at an all-time high. However, this accomplishment is muted by the fact that Latina/o underrepresentation has doubled. Despite all of the legal and legislative machinations, the state of Texas has not been able to deliver equal education at the primary and secondary level, which has compounded the historic suppression of Latina/o enrollment at the state’s flagship institution. Part of the problem lies within the nature of the discrimination faced by Mexican Americans. The emerging scholarship on the “other White” phenomenon has argued that the cultural discrimination intertwined with the racial discrimination, embodied in transgressions like separate English and Spanish schools, continues to infiltrate the present desegregation discourse (Gross, 2007).

The structural barriers blocking the pathways to UT–Austin for Latina/os have always been formidable. The poor quality of the separate Spanish schools practically guaranteed that the overwhelming majority of students would not have the requisite skills, aspirations, or financial resources to enter UT–Austin. As the courts and legislatures began to open up more pathways, the animosity that Latina/o students faced on campus intensified. Not until the 1980s did the university deliberately embark on a policy of constructive outreach to help prepare and encourage minority enrollment—and then such programs were at the mercy of the judiciary (Laylock, 2006; Niu, Sullivan, & Tienda, 2008). The yearbook representation analysis presented here shows at least part of the
effect of such barriers on Latina/o enrollment. It also begs the question—how, in light of the changes to the Top 10% law, renewed affirmative action, and a purported commitment by the university to diversity, will the conundrum of underrepresentation improve?

Conclusion

This historical analysis is not exhaustive and did not consider every general historical trend, but instead examined admissions policies, key litigation, and enrollment. We are sympathetic to arguments that focus on the public school finance system in Texas or the momentum to add more selective top tier institutions. There are many fundamental issues on the table in Texas that interact with selective higher education admissions. The fact that this article does not focus on them does not suggest that they are less important, but that the latter could continue to limit and rationalize the exclusion of Latina/os from selective higher education. As Texas and the nation grapple with issues of social justice and selective higher education admissions in conjunction with the human capital requirements of a 21st century global economy, policymakers must consider how to eviscerate the structural barriers noted in this article that have escalated the underrepresentation of Latina/os, rather than narrow opportunity and access to selective higher education.

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