The more limited and specific the goal, the more likely was the reform to endure. More children were in school for more years than at any time in the past. School buildings were better equipped and more commodious. More teachers had college degrees. Classes were smaller. There were more curricula to choose from, more methods in use, and a greater variety of materials. The schools may not have been saved, but they had survived nonetheless.

CHAPTER 8

The New Politics of Education

DURING THE DECADE AFTER 1965, political pressures converged on schools and universities in ways that undermined their authority to direct their own affairs. New responsibilities were assigned to educational institutions, even as effective authority was dispersed widely among students, faculty, unions, courts, state and federal regulatory agencies, state legislatures, Congress, the judiciary, and special interest groups. Educational administrators found themselves in the midst of unfamiliar power struggles. In colleges and universities, students demanded enlarged powers over the curriculum and the structure of governance; the courts and federal civil rights agencies required adherence to affirmative action programs to increase the representation of minorities and women on the faculty; faculties organized into unions; Congress, the courts, federal agencies, and state legislatures devised burdensome and costly new mandates. In elementary and secondary schools, almost no area of administrative discretion was left uncontested: students demanded new rights and freedoms; teachers' unions asserted a new militancy; political-action groups complained about books in the classrooms and libraries, for reasons of sexism, racism, or immorality; the courts ordered the busing of students in many communities, as well as reassignment of faculty, to achieve racial integration; Con-

gress, the courts, federal agencies, and state legislatures imposed special mandates across a wide range of issues, such as restricting or requiring certain tests, setting standards for promotion and graduation, and establishing new requirements governing the treatment of handicapped students and of students who were either female or members of a racial or linguistic minority. Considering the traditional reluctance of the courts to intervene in the internal affairs of educational institutions, of the federal bureaucracy to violate local control of schools, and of the Congress to bestow federal aid upon education, it is all the more remarkable how rapidly the courts, the federal bureaucracy, and the Congress shed their doubts and hesitation after 1965.

The enlarged federal presence in educational institutions was founded in substantial measure on Title VI of the Civil Rights Act of 1964, which empowered federal officials to withdraw funds from any program violating antidiscrimination laws and regulations. The rapid expansion of federal funding for education at all levels after 1965 meant that the threatened cutoff of federal funds was a potent weapon. With Title VI as the stick and federal funds as the carrot, the federal government became a significant factor in setting rules for the nation's schools, colleges, and universities. A school system whose budget relied on federal funds for about 10 percent of its revenues or a major university that received several millions for research programs and fellowships was not in a strong position to oppose federal directives.

By 1966, racial issues had become a central element in debates about educational policy. In order to receive badly needed federal funds, southern school districts had to assign children by race in order to meet federal standards for racial integration, and the success of their efforts was judged by numerical standards. This shift from color-blindness to color-consciousness, from the rights of the individual to the concept of group rights, reflected the rise of ethnocentrism in American politics. Stimulated by uprisings in urban ghettoes, ethnocentrism spread beyond small nationalist groups like the Black Panthers and the Black Muslims to black leaders in SNCC, CORE, antipoverty agencies, and academe. The civil disorders in poor black communities in the mid-1960s had their counterpart in the world of education, in a rebellion by minority scholars against the conventional wisdom that for years had explained the low educational performance of minority children as a function of their "cultural deficiencies" or "cultural disadvantage." Some black educators and community-control activists charged that black children had been deprived of their own rich cultural heritage in feckless efforts to make them think and act like whites.

To the standard analysis of the defects of ghetto education, they responded that black children needed to study their culture, to identify with black heroes, and to find classroom acceptance for the "black English" with which they were comfortable. As the number of black students on traditionally white campuses expanded rapidly in the late 1960s, similar demands were presented for black studies programs. Eager to cool racial tensions, colleges and universities established courses, programs, or departments to grant the bachelor's degree in this relatively new field.

In courtrooms and classrooms, it proved impossible to address critical social issues without recourse to race-conscious solutions. Whether the cry was for racial integration or racial separatism, a vocabulary drawn loosely (and often inaccurately) from the social sciences was called upon to rationalize either course of action. When federal officials or judges imposed a racial integration plan on a school district, they relied on a substantial body of social science literature as evidence that segregated schooling psychologically and emotionally harmed black children, producing feelings of inferiority that limited black aspirations and achievement. Proponents of black separatism drew on some of the same arguments but turned them to their own purposes. They claimed that generations of black children had been psychologically and emotionally harmed by white domination; that the only way to eradicate feelings of inferiority among black children was to educate them in an environment where blacks were in control, providing role models of strong and effective leadership; and that a period of racial separatism was necessary in order to build economically and politically powerful black institutions as well as healthy black psyches. Social science research offered some support for all of these theories, even those that were diametically opposed to one another. The problem lay not in social science, which produces divergent and limited evidence, but in those who expected tentative and partial findings to sustain complex social policies.

What emerged from this welter of conflicting claims was a unique constellation of social forces, at one and the same time egalitarian and particularistic. Normally the two tendencies are at war, since one insists on equal and similar treatment for all, while the other demands different treatment for special groups. But in this unusual time both egalitarianism and particularism traced their roots to the *Brown* decision. Egalitarians could point to the *Brown* decision to confirm their claim that racially separate schools were unconstitutional; advocates of black solidarity could respond that the *Brown* decision confirmed the psychological harm done to black children by white subordination, a harm they intended to reverse by restoring self-esteem and racial pride, even if it meant ignoring the Su-

preme Court's admonition that "Separate educational facilities are inherently unequal."

Initially the leaders of the traditional civil rights organizations resisted the turn to ethnocentrism and clung to the traditional liberal concept of individual rights (not group rights) and color-blindness (not color-consciousness). But their position was untenable because the new militants won real victories—concessions from school boards to hire and promote more blacks, agreements from universities to increase recruitment of black students and black faculty members and to create black studies programs and departments. Compared to these tangible gains, the lofty goal of formal legal equality seemed abstract and empty indeed, utterly lacking in the economic gains and the emotional rewards that came from a victorious confrontation with the power structure. Ethnocentrism was further legitimized by foundation support for programs that championed ethnic particularism (such as the Ford Foundation's projects demonstrating community control of schools in New York City, which were administered by ethnic separatists).

The revival of ethnocentrism, however, involved costs. For years American liberals had sought to reduce group prejudice by preaching the virtues not only of tolerance among different peoples but of the insignificance of group differences. The goal was to see each person as a person, a fellow human being, not as a group representative. But in the late 1960s, the call to black power and black pride was soon followed by other assertions of group consciousness. Chicanos, American Indians, and other minorities imitated the black model with calls for brown power and red power. By 1970, not to be outdone, descendants of immigrants from southern and eastern Europe proclaimed the arousal of a white ethnic movement and celebrated Italian power, Slavic power, Polish power, and Irish power, among others. Champions of "the new ethnicity," as it was widely called, declared that "the melting pot" had failed and that White-Anglo-Saxon-Protestants had foisted assimilation on immigrants in order to strip them of their cultural heritage and their identity.

The surge of the new ethnocentrism coincided with the intensification of the Vietnam war and of the protest movement against it on the streets and campuses of America. Against this background of social dissension, social crisis, urban riots, and antiwar fervor, the American system came under harsh attack for its defects. In the late 1960s, one scholar observes;

> the view that America was systematically oppressive and immoral was not the majority view, but it had been advanced so vehemently by numerous partisans and acquiesced in so tamely by authoritative figures that national confidence and self-respect were severely shaken. Both domestic and foreign policy were castigated, not merely as wrong, but as evil and obscene. . . . The American creed, according to this interpretation, had never been anything but a sham; the American dream had always been a nightmare.[1]

In this atmosphere of discord and distrust, those with grievances turned naturally to the courts and the federal government to enforce their rights against local school boards and university administrators. Programs, regulations, and court orders began to reflect the strong suspicion that those in control of American institutions were not to be trusted with any discretion where minorities, women, and other aggrieved groups were concerned. The idea that schools and universities provided equal opportunity for all American youth to improve themselves and succeed on the basis of individual ability without regard to their origins was scorned, as ethnic groups complained that the schools forced them to give up their language and culture, as women complained that institutions of higher education discriminated against them because of their gender, and as blacks complained that white racism was so pervasive that institutional neutrality was impossible.

This was the context within which the federal government promoted several programs that proved to be highly controversial, among them affirmative action and sex equity in higher education and bilingual education in the schools. Carried along on the general egalitarian tide were such issues as the rights of the handicapped. Advocates and opponents of each new program disputed its worth, sometimes bitterly, as though each presented a choice between destroying the institution or saving the students. Some initiatives were absorbed, others foundered; what changed, probably permanently, was the relationship of the federal government and the courts to educational institutions in the United States.

The legitimization of ethnicity as a basis for public policy and the assertion that minority children were educationally damaged by the denial of their native culture were powerful themes in congressional hearings in 1967 on bilingual education. The original bill was intended to provide federal funding for demonstration projects "to meet the special educational needs" of Hispanic children only. The principal sponsor of the legislation, Senator Ralph Yarborough of Texas, claimed that the proposed benefits should be limited to Hispanics because other non–English-speaking groups had come voluntarily to this country and left behind their language and culture, while Spanish speakers in the Southwest had been conquered and "had our culture superimposed on them." Throughout the

hearings, conducted in Texas, California, and New York (where the number of Hispanic children and voters was greatest), testimony was presented mostly by Hispanic spokesmen and local politicians who wanted to demonstrate their commitment to the welfare of their Hispanic constituents. To prove the need for bilingual education, several witnesses (including the U.S. commissioner of education) decried the fact that adult Mexican Americans in the Southwest (those twenty-five years and older) had completed 7.1 years of schooling, compared to 12.1 years for "Anglos" and 9 years for nonwhites, a disparity attributed to the failures of the American school. No one pointed out that among the adult Mexican Americans twenty-five and older were many who had been born and educated (or not educated) *outside* the United States.[2]

All of the congressmen and witnesses agreed that the purpose of bilingual education was to enable the Hispanic child to learn English. Yarborough explained that he proposed bilingual education because "unless a child becomes very fluent in English he will rarely reach the top in American cultural life. He might as a baseball player, but he could not as a performer on radio; he could not in law; he could not in medicine; he could not in any of the professions or in business."[3]

Four assumptions, which were usually stated as facts rather than as assumptions, dominated the hearings: first, that Hispanic children did poorly in school because they had a "damaged self-concept"; second, that this negative self-appraisal occurred because the child's native tongue was not the language of instruction; third, that the appropriate remedy for this problem was bilingual instruction; and fourth, that children who were taught their native language (or their *parents'* native language) and their cultural heritage would acquire a positive self-concept, high self-esteem, better attitudes toward school, increased motivation, and improved educational achievement. One bilingual educator testified that "When these children know their native language well, it is going to be very much easier for them to establish a bridge to English and learn it more effectively." A Puerto Rican spokesman complained that "the psychic cost of the melting pot" was probably responsible for the extent of "mental and emotional illness" in the United States; he held that the necessity of learning a new language gives children "a negative self-image."[4]

In the midst of a steady stream of extravagant claims made on behalf of bilingual education, one educator sounded a warning note. Hershel T. Manuel, professor emeritus of educational psychology at the University of Texas, warned Yarborough that any new legislation should emphasize research and experimentation because educators did not have answers to the problems of teaching children whose home language is not English.

"The school has been right in its emphasis on English," Manuel held, "and this emphasis on English must continue, but it has not been right in its neglect of the child's home language." He cautioned, however, that "no one best program is possible. . . . We know a great deal about teaching languages, but we do not know enough about teaching two languages together. . . . We desperately need carefully controlled experiments with measured results and we should be careful that, in our enthusiasm, we do not simply proliferate unproved and unwise programs which can only lead to disillusionment and delay."[5]

When Congress passed the Bilingual Education Act of 1968 (subsequently referred to as Title VII of the Elementary and Secondary Education Act), the act covered not just Hispanic children but "children of limited English-speaking ability" (a necessary political compromise in order to garner support for the bill in Congress), and it was focused on low-income children. Significantly, the bill neither defined "bilingual education" nor stated the purpose of the act, other than to provide money for local districts "to develop and carry out new and imaginative elementary and secondary school programs" to meet the special needs of non–English-speaking children. The vagueness of the legislation was intentional. Yarborough candidly admitted that "Every time people ask me, 'What does bilingual education mean?' I reply that it means different things to different people." Supporters of bilingual education thought that they had won a victory for preservation of non-English cultures and languages, but congressional supporters thought of bilingual education as a remedial program to help children become literate in the English language and then join English-speaking classes. This issue was central to debates over bilingual education during the next fifteen years. Was the purpose of bilingual education to provide a *transition* to the regular English-language school program or was its purpose to *maintain* the language and culture of non-English-speaking children?[6]

The Bilingual Education Act did not require any district to offer bilingual programs; it provided money ($7.5 million the first year) for what were supposed to be demonstration programs initiated by local districts. This permissive approach did not last long, however. In 1970, the Office for Civil Rights (OCR) in the Health, Education, and Welfare Department decided that discrimination against children who were "deficient in English language skills" violated Title VI of the Civil Rights Act (which provided that "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance"). OCR informed every school dis-

trict "with More than Five Percent National Origin-Minority Group Children" that

> Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.

Any special program for these children "must be designed to meet such language skill needs as soon as possible and must not operate as an educational dead-end or permanent track." Essentially, OCR took the reasonable position that school districts had to provide special assistance for those children who could not participate in the regular educational program because of their limited English skills.[7]

These guidelines were upheld by the Supreme Court in 1974, when it ruled against the San Francisco school system for failing to provide English language instruction to eighteen hundred non–English-speaking Chinese students. In the *Lau* v. *Nichols* decision, the Supreme Court held that "there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education." The Supreme Court suggested no particular remedy: "Teaching English to the students of Chinese ancestry who do not speak the language is one choice. Giving instruction to the group in Chinese is another. There may be others." Like the OCR guidelines of 1970, the Court's *Lau* decision of 1974 directed the schools to create special language programs for non–English-speaking children to "rectify the language deficiency," while prudently avoiding any pedagogical dictates.[8]

Prudence was not, however, the hallmark of guidelines fashioned in the summer of 1975 by a task force that was appointed by the commissioner of education, Terrell Bell, and was composed of bilingual educators and representatives of language minority groups. Known as the "Lau remedies," the task force's report prescribed in exhaustive detail how school districts were to prepare and carry out bilingual programs for non–English-speaking students. The districts were directed to identify the student's primary language, not by his proficiency in English but by determining which language was most often spoken in the student's home, which language he had learned first, and which language he used most often; thus a student would be eligible for a bilingual program even if he were entirely fluent in English. Although the Supreme Court had not endorsed any

pedagogical approach, the Lau task force declared that non–English-speaking students were to receive bilingual education that emphasized instruction in their native language and native culture. Districts were discouraged from offering "English as a Second Language" (ESL), which was intensive, supplemental English-only instruction. ESL, said the task force, was "not appropriate" for elementary school children and could not be used as the only program for high school children. The task force overlooked the fact that the failure of the San Francisco schools to provide ESL to all Chinese children in the system was the basis of the *Lau* decision.[9]

The task force recommendations reflected a new consensus among proponents of bilingual education. At congressional hearings in 1974 on a bill to extend Title VII, it was clear that bilingual educators had come to see the program as a way to preserve non-English languages and cultures, even though congressmen still thought of it as a bridge to help learn English. While a strong supporter like Congresswoman Shirley Chisholm of New York City insisted that bilingual education had to be "a real priority" because "those students who do not understand English are effectively foreclosed from any meaningful education," the director of New York City's bilingual program insisted that "at no time should we simply view this as a way of providing the transition from the native language to English." Others vigorously protested suggestions that the program should be limited in time, since their ideal was to maintain students in a bilingual curriculum through twelve years of schooling.[10]

The 1974 hearings also revealed the effects of the ethnic revival, as speakers berated the melting pot and celebrated cultural pluralism. An Italian spokesman complained that "bilingual funds should be spread out amongst other nationalities" but admitted that the high dropout rate of Italian-American youth "was not primarily a language situation." A member of the New York City Board of Education waxed enthusiastic: "I believe in this bill for the Haitian children who are coming to New York, for the Chinese children . . . for the Greek and for the Italian kids who are coming in, and I believe in this for the Hungarian children and the Latvian and the German grandchildren of people who have a right again to know something about where their ancestors came from and why."[11]

The Nixon administration viewed the bilingual/bicultural approach with skepticism. Frank Carlucci, the undersecretary of HEW, testified that "We simply do not have firm evidence to embrace any one model to the exclusion of others. . . ." Carlucci reminded the House committee that the goal of language programs was to teach the English language to children who knew little or no English. Additionally, he insisted that it was not the role of the federal government to support the cultural interests of the

nation's many ethnic groups: "The cultural pluralism of American society is one of its greatest assets. But I believe such pluralism should be a matter of local choice and not subsidized by the Federal Government."[12]

Since the Bilingual Education Act was up for renewal during the crisis-ridden days in the summer of 1974 as pressure was building for President Richard Nixon to resign because of the Watergate scandal, his administration's opposition to the legislation merely strengthened its support in the Democratic Congress. The new version of Title VII, sponsored principally by Senators Edward Kennedy of Massachusetts and Alan Cranston of California, incorporated a version of bilingual education that satisfied ethnic militants. It was heavily weighted toward maintenance programs; no longer a demonstration program, bilingual education was now treated as a proven method of instruction. The 1974 act explicitly recognized that many children of limited English-speaking ability "have a cultural heritage which differs from that of English-speaking persons," and "that a primary means by which a child learns is through the use of such child's language and cultural heritage," and "that, therefore, large numbers of children of limited English-speaking ability have educational needs which can be met by the use of bilingual educational methods and techniques." Furthermore, the legislation made all limited English-speakers eligible for such programs, not just those from low-income homes. The Bilingual Education Act of 1974 was a landmark of sorts, for it represented the first time since the enactment of federal aid that the Congress had dictated a specific pedagogical approach to local educational agencies.[13]

By 1977, the U.S. Office of Education reported that it had allocated $115 million for bilingual programs in more than five hundred local districts to teach more than three hundred thousand children in their native language. In addition to providing training for about twenty-five thousand teachers and aides, the federal government funded the preparation of teaching materials in sixty-eight languages, including not only those with sizable numbers of speakers, like Spanish, French, Korean, Chinese, Italian, Greek, Russian, and Japanese, but also in seven Eskimo languages (Gwich-'in, Inupiag, Siberian Yupik, Sugpiag, Upper Kuskokwim, Aluet, and Upper Tanana) and a score of American Indian languages (some of which had no written form).[14]

The 1977 congressional hearings on the renewal of federal funding for bilingual education introduced a few jarring notes into the usual pas de deux between the congressmen and ethnic lobbyists. For the first time, educators raised pointed questions about the direction and efficacy of the programs. Gary Orfield of the University of Illinois, a desegregation specialist, complained that federal grants

> often provide for expensive, highly segregated programs of no proven educational value to children. Worse, I believe there is sometimes a tendency to train children who do not need the program and may be hurt by it. Some programs pursue not successful integration in American society but deeper cultural and linguistic identity and separation. . . . Congress began support of bilingual programs without any significant proof that they would work. The history of research on bilingualism is full of ambiguous findings and careless methods. . . . There is nothing in the research to suggest that children can effectively learn English without continuous interaction with other children who are native English speakers.[15]

Even more unsettling was the report of a four-year study of Title VII commissioned by the U.S. Office of Education. Prepared by the American Institutes for Research (AIR), a well-known research organization, the study sampled 286 classrooms in all 38 Spanish/English projects that had been in operation for at least four years as of 1975. The object of the evaluation was to determine whether the program was helping limited English-speaking children to gain competency in English while progressing in their other school subjects through the use of their native language.[16]

One congressman stated that he lost part of a night's sleep when he saw the results of the AIR study. The first finding was that while three-quarters of the children in the Title VII classrooms were Hispanic, less than a third had limited proficiency in English. Further, about 85 percent of the project directors told the evaluators that Hispanic students remained in bilingual classes after they had become competent in English. Bilingual educators saw nothing wrong with these figures, since they believed that children should learn bilingually from kindergarten through twelfth grade. But some congressmen were astonished because they had seen bilingual education as a transitional effort to prepare Hispanic children to move into the regular English-language curriculum.[17]

AIR's report on student achievement and attitudes was equally disappointing. On tests of English, Hispanic students in Title VII classes did not do as well as Hispanic students who did not learn bilingually. On tests of mathematics (given in Spanish and English), Hispanic students in both Title VII and non–Title VII classes performed at about the same level. Relative to national norms, both groups were far behind (at the twentieth percentile in English and the thirtieth percentile in mathematics). Students in Title VII classes did not have a more positive attitude toward school; both groups were said to feel neither strongly positive nor strongly negative toward school. The only area in which Title VII students could be said to have improved was in their ability to read Spanish. In short, the study

found that studying Spanish improved the student's command of Spanish but not necessarily of English or of other subjects.[18]

The AIR study was attacked not only by bilingual educators but also by a spokesman from the bilingual/bicultural division of the National Institute of Education, the major federal research agency. But congressmen, accustomed only to statements about the positive effects of bilingual education, were deeply disturbed, particularly by the finding that so many children in federally funded bilingual programs already knew English. When asked what he thought of the latest evaluation, John Molina, the director of the Office of Bilingual Education, responded, "You actually can't evaluate a bilingual education program. It is philosophy and management. You can evaluate courses. For example, evaluation should be limited to reading, mathematics, science and social science. I think we need a tremendous amount of research in order to determine what are the best methods and if children learn in languages other than English." His was a blunt admission that bilingual education proceeded from ideological grounds, and not as a result of research validating the best methods of teaching children of limited English-speaking ability.[19]

Although it seemed in one sense astonishing that federal education officials still lacked any research basis for the practices they had been funding for ten years (and that Congress had mandated), Molina's answer struck to the core of the problem. As one scholar put it, "The proposition that the preservation of native language and culture would produce healthy children and a healthy polity could not be tested. Only the educational impact of the programs could be measured." To those who believed that the purpose of bilingual education was to promote ethnic solidarity, test results were beside the point; in their terms, the very existence of bilingual/bicultural education was a success. To those who thought that its purpose was to speed the transition of limited English-speakers into the regular English curriculum, bilingual education lost some of its luster.[20]

In the amended version of Title VII which passed in 1978, Congress limited the number of English-speaking children in bilingual classes to 40 percent and made clear that they were there to help the other children learn English. Programs were required in the future to form parent advisory councils, to be sure that the projects were providing what parents wanted for their children. Local schools were also instructed to evaluate individually any child who remained in bilingual programs for more than two years, a move intended to stress congressional disapproval of programs devoted to cultural maintenance rather than to transition to English-speaking classes.[21]

Even with these restrictions, bilingual education continued to be

highly controversial. When the Department of Education proposed new regulations in 1980 to mandate bilingual education, there was broad-based opposition; not only did such professional organizations as the Chief State School Officers, the National School Boards Association, the National Association of Elementary School Principals, the National Association of Secondary School Principals, and the American Federation of Teachers object to this direct assertion of federal control of pedagogy, but thousands of letters from individuals were sent to Washington, denouncing this threat to their ideal of the melting pot. These regulations, which would have had the force of law, were never put into effect by the Carter administration and were subsequently withdrawn by Terrell Bell, the Reagan administration's secretary of education (who, ironically, had supervised the preparation of the 1975 "Lau remedies," which first committed the federal government to bilingual/bicultural methods).[22]

Like so many other issues, bilingual education merged both political and educational concerns in ways that were difficult to separate. It was originally advocated as a way to reverse low educational achievement and high dropout rates and to increase self-esteem among Hispanic and other non–English-speaking minorities. Real as the problems were, there was no evidence to demonstrate that they were caused by the absence of bilingual education. To the extent that belief in bilingual education was ideological and political, it was not subject to evaluation; to the extent that it rested on claims that it would improve the achievement of non–English-speaking children, it had finally to be measured against impartial research. In a 1982 survey of research about bilingual education, Iris Rotberg of the National Institute of Education found that "bilingual programs are neither better nor worse than other instructional methods." She cited an international study which concluded that "at the world level, the field of research on bilingual education is characterized by disparate findings and inconclusive results. . . . a study can be found to support virtually every possible opinion." Rotberg noted, significantly, that most language programs "may be more alike than their labels imply. For instance, bilingual components are typically included in immersion programs, and almost every bilingual program uses some ESL techniques." She concluded that there is "no legal necessity or research basis for the federal government to advocate or require a specific educational approach."[23]

By 1980, thirteen states mandated bilingual education, and some federal judges had ordered its use by school districts or even entire states, so there was no question that it would continue to be a controversial issue so long as it was perceived as a bulwark of cultural separatism. As the ethnic revival faded, deflating some of the political rationale for bilingual-

ism, the possibility remained that advocates of bilingualism might merge their interests with the larger public concern about the decline of foreign language instruction in American schools and universities.[24]

Bilingual education was controversial because of disagreement about its purposes, and congressional debates revealed the very different expectations of congressmen and ethnic lobbyists. Affirmative action, on the other hand, was controversial in part because both proponents and critics clearly understood its purpose and disagreed vigorously, but also because it became government policy in the absence of either congressional debate or legislation. Neither bilingual education nor affirmative action enjoyed popular support; public opinion polls consistently showed overwhelming majorities opposed to both. Affirmative action symbolized the shift in government policy from color-blindness to color-consciousness, from individual rights to group rights, and from a government policy forbidding specific acts of discrimination to a government policy relying on statistical disparities among groups as presumptive evidence of discrimination. Private and governmental efforts to increase the number of minority students and faculty in higher education opened a national debate on the nature of equal opportunity and the question of compensatory justice.[25]

Affirmative action emerged in the late 1960s as an effort to speed up black economic advancement in light of paradoxical trends. A prolonged period of both racial turmoil and racial progress followed the landmark civil rights legislation of 1964 and 1965. Conspicuously in public view were urban riots and the rise of quasi-military groups like the Black Panthers. At the same time, black educational attainment and college enrollment rose dramatically, and for the first time, a sizable minority of educated blacks achieved middle-class incomes. Even though the second half of the 1960s was a time of unparalleled social and economic progress for blacks, black leaders continued to warn sympathetic federal officials that the slow pace of racial change would cause further unrest and disorders.[26]

However, the language of the Civil Rights Act of 1964 posed an obstacle to any governmental efforts intended to help blacks or any other specific racial, ethnic, or religious group. Aimed at guaranteeing an end to discrimination based on one's group identity, the act represented a clear affirmation of the equality of all persons before the law. During hearings on the bill, a number of congressmen had expressed concern that the law might be used to impose racial balancing in schools or preferential hiring; to allay these fears, the act explicitly barred the use of race, religion, or national origin in school assignment or in hiring practices (also, sexual discrimination was banned in employment). Title IV of the act included

a definition of desegregation as "the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but 'desegregation' shall not mean the assignment of students to public schools in order to overcome racial imbalance." Title VII, intended to end employment discrimination, included a statement that "nothing contained in this title shall be interpreted to require any employer . . . to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer. . . . " Both of these guarantees were enforced by Title VI, which declared that no federal funds would go to any activity or program that practiced discrimination: "No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."[27]

Yet, as smoke darkened the sky over several of the nation's cities in the aftermath of black uprisings, an ominous sense of apocalyse intensified the need to do something for blacks that was visible. Harold Howe, II, the U.S. commissioner of education, explained bluntly in 1966 that "a revolution is brewing under our feet," and that "it is largely up to the schools to determine whether the energies of that revolution can be converted into a new and vigorous source of American progress, or whether their explosion will rip this nation into two societies." It became the task of federal officials to find ways to remedy past segregation without running afoul of the statutory commands in the Civil Rights Act. In the area of school desegregation, the imposition of racial integration on southern schools seemed a fitting recompense, not only because the South had degraded blacks for so many generations but because these districts had for more than a decade willfully ignored or evaded the *Brown* decision. Federal judges, in order to square their orders assigning children to schools by race with the Civil Rights Act's command not to assign children by race, adhered to the principle that a violation must be followed by a remedy. Once a district had violated the law by intentionally segregating children, then the remedy of racial balancing was appropriately invoked. Because the South did not have clean hands, its complaints to the rest of the nation about the new federal role won little sympathy.[28]

In the area of employment, discrimination was banned not only by Title VII of the Civil Rights Act but also by several presidential executive orders. President Franklin Roosevelt had first barred discrimination in

defense industries in 1941; additional executive orders were issued by presidents Truman, Eisenhower, and Kennedy, extending nondiscrimination to other government contractors and strengthening its enforcement. In 1965, President Lyndon Johnson issued Executive Order 11246, which was amended in 1967 to include "sex" among the categories where nondiscrimination was mandated. Johnson's executive orders provided that "The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin."

Enforcement of the executive order was the responsibility of the Department of Labor, which in May, 1968, a few weeks after the assassination of Martin Luther King, Jr., and the ensuing disorders in Washington, D.C., issued regulations explaining what "affirmative action" meant. The government contractor was expected to post a statement of nondiscrimination in conspicuous places, to advertise job openings widely, and to notify collective bargaining agents of the agreement not to discriminate. Contractors were required to prepare a "written affirmative action compliance program" that included an analysis of "utilization of minority group personnel" in all job categories and, "when there are deficiencies, the development of specific goals and time tables for the prompt achievement of full and equal employment opportunity." For the first time, government contractors were told to prepare an ethnic census of their work force, to report the number of employees who were from designated minority groups ("Negroes," "Orientals," "American Indians," and "Spanish Americans"). But the overall emphasis was on enlarging the pool of applicants by aggressive advertising and recruiting, on expanding "opportunity" rather than on statistical representation by race, nationality, and gender.[29]

The election of a Republican president, Richard Nixon, with little support from civil rights groups evoked fears that federal enforcement efforts might slacken. Surprisingly, under the Nixon administration, the idea of affirmative action was transformed into a vigorous federal program to compel government contractors to increase their employment of persons of minority background and of women. J. Stanley Pottinger, the Nixon administration's director of the OCR, oversaw the transition to an affirmative action policy that was, in the language of the 1970 guidelines, "result-oriented." Each new set of guidelines advanced and clarified the government's requirement that employers analyze the number of minority persons and women in each job category, determine where these groups were "underutilized," and specify "goals and timetables" to correct the

deficient utilization of these groups in every job classification. In effect, the federal government endorsed the concept that "underrepresentation" of a particular group implied a pattern of discrimination, even when no individual acts of discrimination could be identified. Despite the distrust between the Nixon administration and advocacy groups for women and minorities, OCR worked amicably with these organizations to extend its enforcement powers. Pottinger claimed that the pre-Nixon executive orders had been "unnoticed" in relation to higher education until they were "discovered" in 1970 by women's organizations and minority groups, which then helped his office gain new staff and a larger mission. The relationship, often observed in regulatory agencies, was symbiotic: protests by the aggrieved constituency groups increased the power of the agency, and each new grant of power to the agency enhanced the position of both the agency and its constituency of minorities.[30]

By the time OCR began doing compliance reviews of institutions of higher education in the fall of 1971, the concept of nondiscrimination had been decisively redefined: it no longer meant that contractors should hire and treat employees *without regard* to their race, color, religion, sex, or national origin but that they should act *with regard* to those factors. Typically, universities complied with federal requirements by supplying a description of the number of blacks, Hispanics, Asians, American Indians, and women in each department and job category, as well as an analysis of the availability of each group in the job market and a projection of the university's program to increase the representation of each "underutilized" group. During the early 1970s, federal grants to twenty leading universities were held up until the universities filed affirmative action plans that satisfied OCR. Complaints against colleges and universities could be filed not only with OCR but also with the Equal Employment Opportunity Commission, the Department of Labor, and state antidiscrimination agencies, all of which were authorized to launch investigations and compliance reviews. In addition to pressure from the federal government to hire more women and minorities, many institutions of higher education responded positively to demands by their own black students to increase black enrollment and to hire more black professors and administrators.[31]

Unwilling to risk federal grants, universities usually complied, but individual professors unleashed a barrage of criticism against affirmative action. Their concerns were, first, that academic merit (intellectual ability, teaching experience, scholarship, recognition by one's peers) should be the only consideration in selecting faculty members; second, that the pressure to hire minorities and women would force universities to hire less qualified people; third, that white males would be the victims of "reverse discrimi-

nation"; fourth, that the issue gave federal investigators access to confidential faculty files, thus endangering the traditional process of peer review among colleagues; and fifth, that government intervention in the internal affairs of the university infringed on academic freedom.

The underlying fear of the critics was that the government was trying to force universities to accept the principle of proportional representation —by race, gender, and national origin—in place of merit. What they saw, surrounded by euphemisms and bureaucratic jargon, was governmental power imposing hiring quotas on the university. It seemed unreasonable to extend preferential treatment to, for example, recent immigrants from the West Indies or Latin America merely because of the color of their skin or their Hispanic surnames. In the domain of the mind, they insisted, no qualifications should matter other than the ability to think, to write, and to teach. An unusual number of the critics were Jewish, and many were immigrants or children of immigrants. Those who had been educated in Europe recalled the ethnic and religious restrictions on education and employment; those who had been educated in the United States knew that quotas limiting the enrollments and employment of Jews, Catholics, blacks, and other groups had only recently been eliminated by many major universities. The critics defined equal opportunity as a fair chance for all individuals to compete for rewards on the basis of ability. "Quotas" for minorities meant that the federal government was redefining equal opportunity to mean equal representation for all groups, regardless of individual merit. That this policy was advanced in the name of "nondiscrimination" made it all the more galling.[32]

Those who defended the affirmative action policy argued that members of racial minorities and women would never gain equal opportunity for employment in the university, dominated as it was by an "old boy" network of white males, without government pressure; nor could equal opportunity enable members of the designated groups to overcome the effects of past discrimination in education and employment. Spokesmen for OCR insisted that the invocation of "quotas" was a scare tactic, that the government meant only to urge universities to determine whether women and minorities were adequately represented on their faculties in relation to their availability, and if they were not, actively to recruit and hire them. Scores of articles were written on whether OCR's "goals and timetables" were unconscionable quotas or were merely useful indicators of desirable changes in hiring patterns. What was indisputable, however, was that the antibias regulatory agencies imposed an inappropriate industrial model of employment on the university. For example, after its first three plans were rejected as inadequate, Harvard University submitted a

five-volume affirmative action plan to comply with OCR's requirements, but its approval was contingent on Harvard's agreeing (among other things) to "develop and submit detailed criteria for selection and promotion for each job category and for faculty by rank by department where they have not been previously submitted," to "validate all tests presently used in selection, upgrading, or promotion," and to prepare a "salary equity analysis," which compared all employees in terms of such criteria as their years at the institution, their education level, their number of publications, and so forth. While such requests may have been easily answered by large industrial companies, the same rationalization of job categories simply did not fit the faculty model, where scholarly distinction and research interests could not be tailored to fit a conventional job analysis; where decisions about hiring and promotion are made by the tenured faculty (not by a personnel officer); and where two professors might have the same number of publications and the same years on the faculty without having equal stature within their field.[33]

Although most criticism was directed at government intervention into university employment practices, the major court tests of affirmative action challenged the use of racial preferences in graduate-student admissions programs. Competition for admission to graduate professional schools had become especially intense as the children of the baby boom came of age in the late 1960s; most law schools and medical schools had far more applicants than places. In 1971, Marco DeFunis filed suit against the University of Washington Law School after he was rejected for the second time. Competing with sixteen hundred others for only three hundred places, DeFunis complained that he had been unconstitutionally discriminated against because the university had classified applicants by race and preferentially admitted members of certain racial groups (blacks, Chicanos, American Indians, and Filipinos) whose qualifications were less than his. A state court ordered the University of Washington to admit him. In 1974, when DeFunis's case reached the U. S. Supreme Court, he was already in his last term of law school. By 5 to 4, the Court decided that his case was moot, since he would graduate regardless of their holding.[34]

Though the Court avoided rendering a decision, another case quickly appeared to test the same issue. Allan Bakke, a white engineer, charged that he had been discriminated against by the University of California at Davis Medical School. A new medical school, open only since 1968, Davis had a dual system of admissions: a regular admissions program, in which all applicants competed for eighty-four places; and a special admissions program, in which only members of disadvantaged minorities competed for sixteen places. When Bakke was turned down for the second time in

1974, he decided to sue. Other medical schools had turned him down because he was thirty-three, too old, some thought, to begin a career in medicine. His academic credentials, however, were excellent, and his scores on the Medical College Admissions Test were well above the average of those admitted under the regular admissions program and substantially above those admitted under the special admissions program. Bakke claimed that the special program operated as an unconstitutional racial quota that discriminated against him on the basis of his race.[35]

The California Supreme Court, noted for its liberal orientation, declared the Davis admissions program to be unconstitutional by a vote of 6 to 1 and ordered the university to admit Allan Bakke. The Court described the Davis special program as

> a form of an education quota system, benevolent in concept perhaps, but a revival of quotas nevertheless. No college admission policy in history has been so thoroughly discredited in contemporary times as the use of racial percentages. Originated as a means of exclusion of racial and religious minorities from higher education, a quota becomes no less offensive when it serves to exclude a racial majority.[36]

The state court advised the university to use "flexible admission standards" and to adopt aggressive programs to select disadvantaged students of all races, but to maintain a context of racial neutrality.

The University of California appealed to the U. S. Supreme Court. Many civil rights organizations tried to persuade the university to drop its appeal and to persuade the Supreme Court not to take the case. They were fearful, first of all, because their interests were represented by the University of California, which they did not entirely trust; they recognized also that the case was not strong from their point of view: it had already lost in the California courts; the Davis program separated minorities for special treatment; and the school itself was too new to have a record of prior discrimination to justify the adoption of a racial remedy.[37]

Once it became clear that the *Bakke* case would be reviewed by the Supreme Court during 1977, the sides were quickly drawn. The University of California, to allay concern about its seriousness, engaged Archibald Cox, former solicitor general of the United States, to defend the Davis program. Allan Bakke was represented by Reynolds Colvin, a prominent San Francisco attorney who had never argued a case before the Supreme Court. Fifty-eight "friend-of-the-court" briefs were submitted in the *Bakke* case, more than for any previous decision, including even the *Brown* decision, and about three-quarters of them opposed Bakke. Among the many defenders of the University of California's special admissions procedure

were many private universities, the Justice Department, the American Civil Liberties Union, the National Education Association, the Association of American Law Schools, the Association of American Medical Colleges, and civil rights groups. Bakke's position was defended mostly by Jewish organizations, white ethnic groups (of Italian, Polish, and Ukrainian descent), and conservatives.

From the time the Supreme Court agreed to hear the *Bakke* case, hardly a week passed without an article in a journal defending discrimination in favor of minorities or attacking racial quotas. In a widely noted article in the *Atlantic Monthly*, McGeorge Bundy, president of the Ford Foundation, warned that the *Bakke* case had "an importance not exceeded by any single case from the past," including the *Brown* decision. The decision in California, he believed, threatened "the constitutionality of all forms of affirmative action that are aimed explicitly at helping racial minorities." To classify students by race in order to give them special help was "not only rational but necessary for compelling purposes." Racial neutrality, Bundy argued, would not suffice: "The reason is simple, if also painful: the gaps in social, economic, educational, and cultural advantage between racial minorities and the white majority are still so wide that *there is no racially neutral process of choice that will produce more than a handful of minority students in our competitive colleges and professional schools.*"[38]

Supporters of the Davis program argued that universities had an obligation to provide special help for racial minorities in order to overcome the effects of past discrimination. It was in the interest of society, they held, to increase the number of nonwhite professionals, both to improve the availability of legal and medical services in their communities and to provide role models of achievement for young people. Universities made two additional claims on behalf of the Davis program. First, they asked the Court to respect the University of California's freedom to select its students, and second, they insisted on the value of diversity in their enrollments. Harvard University explained that its admissions officers purposefully sought diversity in accepting students to the college; for many years, they had selected students from different geographical regions, with different talents and different aspirations. In recent years, they also sought diversity of economic, racial, and ethnic background, recognizing that "a farm boy from Idaho can bring something to Harvard College that a Bostonian cannot offer. Similarly, a black student can usually bring something that a white person cannot offer." Harvard claimed that it pursued diversity without using minimums or target-quotas but by paying "some attention to distribution among many types and categories of students." Harvard did acknowledge that "diversity" was emphasized more in the

selection of undergraduate students than at the graduate or professional levels of the university.[39]

An indication of how much had changed since the *Brown* case was provided by the brief of the NAACP Legal Defense Fund (LDF). In 1952, LDF lawyers insisted that "the Fourteenth Amendment precludes a state from imposing distinctions or classifications based upon race and color alone" and submitted a lengthy history of the Fourteenth Amendment to prove that the framers intended "to eliminate race distinctions from American law." In the *Bakke* case, the LDF argued that "the Fourteenth Amendment prohibits any racial classification which has the purpose or effect of stigmatizing as inferior any racial or ethnic group," and presented a history of the Fourteenth Amendment to demonstrate "that the framers intended it to legitimate and to allow implementation of race-specific remedial measures."[40]

By the spring of 1978, as the debate raged, media coverage of the impending decision was intense. On June 28, when the decision was announced, Justice Powell explained, "We speak today with a notable lack of unanimity. I will try to explain how we divided." There was much to explain. Six of the nine justices wrote opinions, and the upshot was that the University of California was ordered to admit Bakke to the Davis Medical School, was permitted to take race into account in its future admissions decisions, but was directed to abolish Davis's two-track system for students of different races. "Perhaps there has never been a case before the Supreme Court with opposing arguments of more equal legitimacy," wrote one analyst. "The Court's own task in *Bakke* was to avoid a conclusive outcome. It must not, in this most divisive of cases, hoist the arms of a victorious contestant." The decision, a 4-1-4 split, was "a Solomonic compromise," "a brokered judgment," "a well-modulated counterpoint." Or as the cover of *Time* magazine put it, "QUOTAS:NO/RACE:YES."[41]

One bloc of four justices (William Brennan, Byron White, Thurgood Marshall, and Harry Blackmun) contended that the Davis program was a valid, voluntary effort to overcome the effects of societal discrimination and to reduce the underrepresentation of minorities in the medical profession, even though Davis had never been guilty of discrimination. The Brennan group argued that neither the Congress nor the Court had ever adopted the proposition that the Constitution must be color-blind. There could be no doubt, they held, about the permissibility of "racial preferences for the purpose of assisting disadvantaged racial minorities." In additional opinions, Justice Marshall held that historic discrimination against the Negro justified the provision of "greater protection under the Fourteenth Amendment where it is necessary to remedy the effects of past

discrimination," and Justice Blackmun declared, "In order to get beyond racism, we must first take account of race."[42]

Another bloc of four justices (John Paul Stevens, Warren Burger, Potter Stewart, William Rehnquist) believed that Davis had violated Title VI of the Civil Rights Act by excluding Bakke from participation in a federally funded program on the basis of his race. They contended that "the meaning of the Title VI ban on exclusion is crystal clear: Race cannot be the basis of excluding anyone from participation in a federally funded program." The proponents of Title VI, they believed, "assumed that the Constitution itself required a colorblind standard on the part of government." The Stevens group voted to uphold the judgment of the California Supreme Court, voiding the special program and admitting Bakke.

Justice Lewis Powell delivered an opinion that was signed by no one else, but which became the judgment of the Court because he cast the deciding vote on different sides of the issue. Powell agreed with the Brennan group that it was appropriate, under certain circumstances, to take race into account as a factor in the admissions process, and he agreed with the Stevens group that the Davis program was unconstitutional and that Bakke should be admitted to the medical school.

Powell found that the Davis program was unconstitutional because it used an "explicit racial classification." Applicants who were not black, Asian, or Chicano were "totally excluded from a specific percentage of the seats in an entering class." He did not accept the claim that blacks were entitled to greater protection by the Fourteenth Amendment or that white males as members of the majority were entitled to less protection: "The guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal." Because the nation was composed of so many different minority groups, most of which "can lay claim to a history of prior discrimination," Powell rejected the idea that the Court could adjudicate preferences among racial and ethnic minorities because there would be no principled basis by which to adjudicate their competing claims: "Courts would be asked to evaluate the extent of the prejudice and consequent harm suffered by various minority groups. Those whose societal injury is thought to exceed some arbitrary level of tolerability then would be entitled to preferential classifications at the expense of individuals belonging to other groups." The danger of preferential programs, he asserted, is that they "may only reinforce common stereotypes holding that certain groups are unable to achieve success without special protection based on a factor having no relationship to individual worth."

Powell approvingly quoted Alexander Bickel, a prolific legal scholar at Yale University who had died in 1974. Coauthor of a brief on behalf of Marco DeFunis, Bickel viewed with concern the growing demand by government and civil rights groups for racial remedies, even in the absence of a constitutional violation. "The lesson of the great decisions of the Supreme Court," wrote Bickel, "and the lesson of contemporary history have been the same for at least a generation: discrimination on the basis of race is illegal, immoral, unconstitutional, inherently wrong, and destructive of democratic society. Now this is to be unlearned and we are told that this is not a matter of fundamental principle but only a matter of whose ox is gored. Those for whom racial equality was demanded are to be more equal than others. Having found support in the Constitution for equality, they now claim support for inequality under the same Constitution."[43]

Under what circumstances was the University of California entitled to consider the race of an applicant? Powell rejected any program whose purpose was to obtain a specified percentage of a racial or ethnic group in the student body: "Preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake. This the Constitution forbids." Nor had the University of California demonstrated that racial classifications were appropriate in order to redress the injuries of societal discrimination or to improve the health-care services in underserved communities. However, Powell *was* persuaded that it was constitutionally permissible to take race into account as a way of achieving a diverse student body. Powell specifically commended Harvard University's admissions program, which avoided numbers or quotas, viewed all candidates as part of the same pool, but considered diversity of race or ethnic background as one element in selecting an entering class.

Because so much media attention had portrayed the case as a clash between the interests of minorities and those of the white majority, Bakke's personal victory was initially interpreted by civil rights spokesmen as a devastating setback. An NAACP official called it "a very sad day in the United States"; a Chicano official complained that the high court had removed the special protection that minorities had previously enjoyed; a black congressman called it "a racist decision by the Nixon court"; and the black-owned *Amsterdam News* in New York City ran the simple headline: "Bakke—We Lost." Other minority spokesmen, however, realized that little had been lost: Vernon Jordan of the National Urban League saw the decision as a "green light to go forward with acceptable affirmative action programs."[44]

Those in charge of implementing government affirmative action programs interpreted the decision as support for their activities. Eleanor

Holmes Norton, chairman of the Equal Employment Opportunity Commission (EEOC), said, "My reading of the decision is that we are not compelled to do anything differently from the way we've done things in the past, and we are not going to." Five months after the *Bakke* decision, EEOC issued new guidelines for affirmative action in which the *Bakke* decision was invoked to rebut those who continued to insist that employment decisions should be made "without consideration of race, color, religion, sex, or national origin." The lesson of *Bakke,* EEOC declared, was that the Supreme Court had approved consideration of such factors. Similarly, the chairman of the U. S. Commission on Civil Rights, Arthur Flemming, hailed the Supreme Court's "unequivocal support . . . for the consideration of race and ethnicity in admissions programs." To allay any further doubts, President Jimmy Carter issued a memorandum to all heads of government agencies advising them that the *Bakke* decision "enables us to continue" affirmative action programs "without interruption."[45]

The Supreme Court, perhaps to keep the matter in flux, avoided a definitive resolution of the issue in subsequent decisions in the late 1970s, but federal regulatory agencies pushed forward in their efforts to make statistical parity of groups the measure of "equal opportunity." By 1981, the U.S. Commission on Civil Rights had begun to gather data on "Euro-ethnic groups," which were defined as "the various and unique ethnic, religious, and nationality groups of Eastern and Southern Europe." In the offing, the commission implied, might be statistical analyses and affirmative action not just for blacks, women, Hispanics, Alaskan Natives, Asian or Pacific Islanders, and American Indians but for a whole new galaxy of minorities.[46]

The changes resulting from a decade of affirmative action in higher education are not easily assessed, largely because the effects of one policy are not clearly separable from the effects of other, concurrent policies and social trends. The enrollment of blacks and women in higher education and their receipt of advanced degrees rose substantially during the decade, a trend that was well underway before the onset of governmental pressure. Although most critics and proponents of affirmative action seemed to believe that institutions would be judged by whether their workforce reflected the proportion of women (50 percent) and blacks (11 percent) in the population, the actual changes in employment patterns in higher education by the end of the 1970s were far from those figures. Women, who had held about 20 percent of faculty positions during the 1960s, increased their share of faculty positions to 26 percent. Black representation on college and university faculties rose from approximately 3 percent in 1960 to 4.4 percent in 1979, a statistic that mirrored the limited supply of blacks with graduate

degrees. According to an estimate by Harvard economist Richard B. Freeman, in 1973 blacks held 1.4 percent of all Ph.D. degrees. In the years from 1974 to 1980, about one thousand blacks received doctorate degrees each year, representing between 3 to 4 percent of new doctorates but not enough new degree-holders to augment substantially the number of black professors on the nation's twenty-five hundred campuses.[47]

While federal civil rights agencies shared a strong consensus about their mission, public opinion polls showed an equally strong consensus in opposition. In late 1980, after the issue had been thoroughly aired, only 10 percent of the Gallup Poll's sample believed that race, sex, and national origin should determine decisions about employment or college entry. The idea of group rights, regulated by the government, apparently was a political concept that most Americans—even most blacks and women—disliked. After a decade of discussion, few were convinced that the way to overcome a past in which benefits and burdens depended on race, sex, and national origin was to make permanent a system in which benefits and burdens depended on race, sex, and national origin.[48]

Since the early nineteenth century, the issue of equal rights for women had emerged periodically, usually in tandem with other social reform movements. It was not surprising, then, that militant feminism reappeared in the mid-1960s as factionalism within other protest movements. Activist women in the New Left and civil rights organizations, taking seriously the demands for equality and participatory democracy of their organizations, rebelled against their usual consignment to housekeeping functions within supposedly egalitarian movements. By the late 1960s, there were two different thrusts to the "new feminist movement." The public was most aware of the "Women's Liberationists," who specialized in the development of ideology and in the promulgation of consciousness-raising activities, through the formation of discussion groups, publications, films, and demonstrations. Women's Liberationists were relatively few in number, but attracted wide attention because of their flamboyance and studied outrageousness. WITCH (the Women's International Terrorist Conspiracy from Hell), with only a handful of members, captured headlines and television time by performing "guerrilla" theater in public places; other groups, like Redstockings, the Feminists, and the New York Radical Women, reflecting their radical origins, devised manifestoes, organized brigades, conducted ideology workshops, and debated such issues as the relationship of feminism to capitalism, to lesbianism, and to social relations within the family.[49]

Though temporarily overshadowed by the antics of the Liberationists,

the other side of the new feminism—women's rights organizations—paved the way for momentous political and legal changes in the status of women in American society, and in time, absorbed the Women's Liberationists altogether. The National Organization for Women (NOW) was organized in 1966 to "take action to bring women into full participation in the mainstream of American society," and to "press for enforcement of laws which prohibit discrimination on the basis of sex." With chapters across the country, NOW persuaded President Johnson to revise his executive order to ban sex discrimination in the government and by federal contractors, lobbied for additional legislation against sex discrimination, and led the political battle for an Equal Rights Amendment to the Constitution, which was passed by the House of Representatives in 1971 and the Senate in 1972 (the amendment subsequently failed to receive the approval of three-quarters of the states, and it expired in 1982).[50]

NOW's political activities were enhanced by the establishment in 1968 of the Women's Equity Action League (WEAL), which pursued legal attacks against discriminatory practices in education, industry, and other institutions, and worked for legislative changes to strengthen the prohibition of sex discrimination. Hundreds of other feminist organizations were created in the late 1960s and early 1970s, including caucuses within professional organizations, women's groups on campuses and in industry, community-based organizations, centers for women's studies, and political-action committees to support legislation and promote the election of female candidates. Feminist publications, films, and books proliferated, and some, like Kate Millett's *Sexual Politics* and Germaine Greer's *The Female Eunuch,* reached a large popular audience. In addition, the spread of feminism on campus stimulated the production of hundreds of research studies documenting the existence of sex discrimination in education and society. A study published in 1974 reported the existence of nearly one hundred and thirty new feminist periodicals, most started in 1970 or 1971, and offered a sampling of the hundreds of articles, as well as books, newsletters, and bibliographies on the new feminism.[51]

As the issue of sex discrimination developed, the target of feminist anger was, to a marked degree, educational institutions. At one level, this focus was due to the stress that feminists placed on the way that schools "socialized" female students to accept an inferior status. But at another level, there was a practical consideration that directed special attention to education: an extraordinary proportion of feminist leaders were well-educated, middle-class and upper middle-class whites. One survey found that nearly 90 percent of the women's rights members had at least a B.A., and a third held graduate degrees. This suggests that most of them, though

not disadvantaged by any measure, knew from their own experience that the university was, at its highest reaches, a male domain. As educated women, they turned naturally to education as the best possible lever in their campaign to reconstruct the social order.[52]

Perhaps the most remarkable achievement of the new feminism was that it was transformed in the span of a few years from the angry rhetoric of a few radical feminists to a political force to be reckoned with by both major parties. In 1970, Congresswoman Edith Green of Oregon opened hearings on discrimination in education. At that time, the major federal restraint on sex discrimination was contained in the presidential executive order requiring affirmative action and nondiscrimination. Green introduced a bill to prohibit sex discrimination in all federal programs. She proposed to amend the Civil Rights Act of 1964, which did not ban sex discrimination except in employment; to amend Title VII (the employment section of the Civil Rights Act) to remove the exemption enjoyed by educational institutions; to remove the exemption of executive, administrative, and professional employees from the Equal Pay Act; and to empower the U.S. Commission on Civil Rights to investigate discrimination against women. These changes, major items on the feminist agenda, would make institutions of higher education subject to the federal civil rights agencies, which were armed with the power to cut off their federal funds.

The Green hearings were considered a major landmark by feminists because for the first time their case against American education was presented in a prestigious forum. Witnesses testified to the underrepresentation of women in the higher levels of academic employment and to the exclusion of women from professional opportunities because of narrow conceptions of what was appropriate for women and men. The representative of WEAL complained that

> Half of the brightest people in this country—half of the most talented people with the potential for the highest intellectual endeavor are women. These women will encounter discrimination after discrimination as they try to use their talents in the university world.
>
> They will be discriminated against when they first apply for admission. They will be discriminated against when they apply for financial and scholarship aid. They will be discriminated against when they apply for positions on the faculty. If they are hired, they will be promoted far more slowly than their male counterparts; and furthermore, if hired at all, women will most likely receive far less money than their male colleagues.[53]

Others complained, in testimony recalling the by-now standard sociological arguments invoked by all minorities seeking special protection, that

because of domination of the culture by males (blacks would say "whites," Hispanics would say "Anglos"), women were made to feel inferior, to have a negative self-image and lowered expectations. One speaker saw no contradiction between her statement that women at newly coeducational Yale University were "outdoing men by every measure of academic achievement" and her claim that women were psychically damaged by a "male-oriented, male-administered institution within an androcentric culture." Another witness called on Congress to "cure the causes" of sexism and denounced "the sexually negative atmosphere in which women live and work," which was characterized by "psychological warfare . . . [and] daily propaganda with regard to [women's] intrinsic weaknesses and inferiority." One speaker based her claim for federal intervention on the need to curb overpopulation. Contraceptives, she held, would not be enough: "Unless women have, from the moment of birth, socialization for, expectations of, and preparation for a viable significant alternative to motherhood as their chief adult occupation, women will continue to want and reproduce too many children instead of producing ideas, art, literature, leadership, inventions, and healthier social relationships." She argued, further, that "the only job for which no women can or could be qualified is sperm donor. The only job or jobs for which no man is or can be qualified would be human incubator or wet nurse, period."[54]

The leitmotifs expressed at the Green hearings came to characterize the rhetoric and activity of the decade ahead: that women had low self-esteem because of discrimination by males; that the principle of proportional representation was a proper measure of discrimination; that the federal government had a responsibility to correct statistical imbalances in university employment; and that, while there was much discussion of the plight of low-income women, the most compelling arena for federal concern about sex discrimination must be higher education.

Although the bill containing Congresswoman Green's amendment failed to pass in the summer of 1970, a victim of campus turmoil, by 1972 the women's movement had achieved its major legislative goals. Title IX of the Higher Education Act of 1972 stated that "no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. . . ." The only exemptions were for single-sex undergraduate institutions, religious institutions, and military academies. In the same session, Congress amended Title VII of the Civil Rights Act of 1964 (which banned employment discrimination) to remove the exemption enjoyed by educational institutions and revised the Equal Pay Act of 1963 to remove the exemp-

tion of executive and professional employees. Educational institutions did not object, perhaps because the liberality and fair-mindedness on which they prided themselves made it unreasonable to question the goal of equality for women. Certainly they did not realize that Title IX was far more sweeping in its implications than affirmative action or any other grant of federal power over educational institutions.[55]

A combination of demographic, economic, and social factors had drawn women out of the labor market after World War II. During the postwar period of prosperity and low unemployment, women married earlier, fertility rates rose, suburbs grew, and many women stayed home to raise the children of the baby boom, which continued into the early 1960s. At the same time, college enrollments and university faculties experienced dramatic growth; the coinciding of the expansion of higher education and the baby boom meant that a large number of young women were caring for young children while their male peers participated in the great increase of new students and new faculty members. Although the number of female Ph.D.s grew steadily each year, the actual proportion of female doctorates declined in relation to that of male Ph.D.s, which soared to meet the demand for college professors and industrial researchers. Thus, in 1945/46, women received 19.1 percent of the doctorates awarded, but the proportion of female doctorates declined each year until the late 1950s. In 1970, women received only 13.3 percent of the doctorates awarded that year and held only 11.6 percent of all the doctorates awarded since 1930. Since women held about 20 percent of all full-time faculty positions in 1970, they were actually *overrepresented* relative to the number of women with doctorates.[56]

However, female professors were concentrated in the lower ranks of the faculty, as instructors and assistant professors, and they were clustered in certain traditionally "female" fields, like education, social work, library science, and nursing, where there were large numbers of women with advanced degrees. To some extent, the slow advancement of female professors resulted from the work patterns of married women, who left the labor market while their children were infants or received their degrees later than men of the same age in order to start a family or, because of family responsibilities, worked part-time or published fewer articles. The disproportionate number of female faculty members in the so-called "female" fields was due in part to their discriminatory exclusion from fields like medicine, law, and business, but it was also attributable to the fact that these were fields where the demands on one's time could be blended with family responsibilities.

Just as demography, economics, and social attitudes had merged in the

postwar era to emphasize the role of women as homemakers, so did comparably powerful trends intersect in the late 1960s to bring women into the labor force and to oppose artificial barriers to women's occupational achievement. As the baby boom ended and as families sought to improve their economic situations, women's labor-force participation grew rapidly, including substantial numbers of women with school-age children and even preschool children. After 1960, the birthrate dropped; family size fell; the number of women who were single, widowed, or divorced increased; and women were marrying at a later age. At the same time, women students were staying in school longer, and beginning in 1976, more women entered college than men. With substantial numbers of women in the labor force (50 percent of women by 1978) and in higher education, occupations where women had been excluded or limited in the past by nothing more than "tradition" came under severe challenge.[57]

While education was supposedly a woman's field, not many women made it to the top. In public schools, where the preponderance of teachers were women, there were few female superintendents or principals. In higher education, there were only a handful of female college presidents or administrators. In the prestigious research universities, there were many departments that were all-male, even though a substantial number of their graduate students were women. Although many states had already equalized the pay scales for men and women doing the same job in public institutions, many colleges and universities paid women less on the common assumption that the head of a family (male) needed more income.[58]

After Congress expanded the prohibition against sex discrimination to cover educational institutions and professional positions in 1972, many institutions were sued by female faculty members and compelled to award them back pay, salary adjustments, and promotions. A number of standard practices became illegal because of Title IX. Anti-nepotism rules, adopted to prevent the hiring of faculty spouses, were declared to be discriminatory against women. OCR informed schools and universities that they could no longer spend disproportionate amounts of money on boys' athletics, nor award more scholarships to male athletes; they were also told that they must not favor male students in allocating financial aid. Nor could residential institutions enforce different parietal rules for girls' dormitories and boys' dormitories. Vocational education programs were advised that they could no longer steer men and women to different occupational activities. Beginning in 1973, OCR directed campuses and school districts to report whether there were any classes "comprised of [*sic*] 80% or more of students of one sex," presumably to identify potentially discriminatory activities.[59]

The legal guarantees won in 1972 set off a round of litigation and

formal complaints to federal agencies, but still did not get to the heart of the matter. What remained after the laws were rewritten and enforced was sexism, the attitudes of males toward females, and even of females toward themselves. This, the leaders of the movement decided, must also be an issue for the federal government. So in the fall of 1973, Senator Walter Mondale conducted hearings on the Women's Educational Equity Act, which he sponsored. The purpose of the act was to provide federal funds for the development of nonsexist curricula and to support education, training, and research activities related to women; any organization or group could apply for federal funds, even one that had been in existence for less than a year. Representatives from several feminist organizations explained that it was essential to "counter sexism in education." It was clear that what they and Senator Mondale had in mind was "a national consciousness-raising concerning women's status and roles." Witnesses described how girls were taught to accept sex-role stereotyping by their teachers and textbooks:

> From the time a young girl enters school she learns more than just reading, writing, and arithmetic. Her textbooks are far more likely to be written about boys and men; girls and women are rarely major characters. She will read about boys who do interesting, exciting things; they build rafts and treehouses; they have challenging adventures and solve problems, and they rescue girls who are "so stupid" that they get into trouble. One typical book pictures a 14-year-old girl standing on a chair, screaming because there is a frog on the floor; her 8-year-old brother rescues her.

Not only did girls see themselves depicted as weak and passive, but readers showed mothers in aprons, staying home all day as housewives. The witness complained that the "lives and talents and aspirations" of half the population "are crippled by a society which sees them as second-class citizens." When a witness told Senator Mondale about discrimination against women with advanced degrees at the University of Minnesota, he responded, "I cannot help but be struck by the almost identical recitation of problems in the civil rights movement, it is almost the same, the textbooks, poverty, the whole thing."[60]

It was not just textbooks and attitudes that the women's movement wanted to change, not just the male-orientation of the English language, in which "mankind" represented men and women and in which the pronoun "he" stood for each person, but the position of women in American life. The speaker from NOW expressed her contempt for the kind of education that women received in American universities:

> What the universities are offering is an education designed to turn out efficient little suburban housewives with a minor marketable skill so they can be secondary earners until the babies come, with enough liberal arts so they can enrich their children's lives and not disgrace themselves in front of husband's business associates, so they can read Book of the Month, listen to Walter Cronkite, and participate with other housewives in a little steam-cleaned, organized, community good works.[61]

Concern about sex-role stereotyping in textbooks was so great, the director of OCR informed Senator Mondale, that he convened a meeting in October, 1973, "with representatives of major textbook publishing firms to discuss the sex stereotyping issue. As of now we believe that in order to realize corrective action on a broad scale, OCR must seek the cooperation of textbook publishers." Apparently OCR never wondered whether this kind of pressure from the government might be an invasion of the publishers' First Amendment rights. On the contrary, OCR sent Senator Mondale copies of an exchange with the superintendent of schools of Kalamazoo, Michigan, informing him that a complaint had been filed alleging that the district had violated Title IX by adopting readers that contained sex stereotypes. While OCR had not yet decided whether the use of such textbooks was covered by Title IX, it asked the superintendent to explain why these books had been selected. The superintendent responded with a six-page, single-spaced letter, defending the district's textbook adoption procedures, presenting a new "count" of the number of female characters portrayed in the series, promising to drop "certain words and questions" from the teachers' guides, and assuring OCR of the inclusion of new material that had the approval of such publishers as the Feminist Press. In his eagerness to avoid a federal investigation, the superintendent never questioned whether OCR had the right to monitor the district's choice of textbooks.[62]

Although the Nixon administration was not enthusiastic about the Women's Educational Equity Act, its own Office of Education prepared a lengthy report stating that women were second-class citizens, subjected to "exploitation and exclusion" along with "ethnic minorities, the handicapped and the poor." With virtually no opposition, the act passed in 1974, creating a twenty-member National Advisory Council on Women's Educational Programs (although HEW already had a nineteen-member Advisory Committee on the Rights and Responsibilities of Women). From 1976 to 1982, nearly $55 million was appropriated to the Women's Educational Equity Program, which granted funds to state and local education agencies, colleges and universities, nonprofit organizations, and individuals, to pro-

duce nonsexist textbooks, curricula, instructional materials, and other feminist educational activities.[63]

Legislation at the federal level was complemented by vigorous activity at the local level. Feminist critics studied children's books and textbooks for evidence of sex bias, counting the number of times girls or boys appeared in illustrations or as the major character in a story, the kinds of occupations or activities in which the different sexes were shown, and whether girls and boys were portrayed with "feminine" and "masculine" personalities. Through publications and NOW locals, feminists circulated lists of "sex-stereotyped" books; across the nation, parent groups and feminist organizations demanded the removal of "sexist" textbooks and stories. In Seattle, the school system launched a major study of sex-role stereotyping in every grade, "from teacher attitudes to textbooks." Teacher-training seminars were held in Ann Arbor, Michigan, where role reversal was practiced: "Male teachers served the coffee." Education journals featured articles exploring sex bias in every aspect of the classroom—in the social studies curriculum, history books, Dick-and-Jane readers, math and science textbooks, toys, standardized tests, and of course, in the sex-stereotyped placement of boys in auto mechanics and girls in home economics.[64]

Assertions to the contrary, it was impossible to demonstrate that girls were, in fact, "damaged" by textbooks that quoted men more often than women or by readers that showed mothers as housewives. Since girls achieved at least as well as boys (and usually better), both in school and in college, there was no evidence that the depiction of women in schoolbooks had destroyed the self-esteem or motivation of female students. Girls and boys finished high school in roughly the same proportions in 1970; more males finished college and received advanced degrees. Clearly, the intervening variables were demographic factors like women's age at marriage and the fertility rate, not the language of readers. To the extent that women married young and bore children early in their marriage, they were less likely to attain advanced degrees, less likely to be in the labor force, and more likely to earn less than men who had worked continuously. Nor was labor force discrimination against women in any way comparable to the situation of blacks and Hispanics, for by 1970, 60.5 percent of all white-collar jobs were held by women. Like the claim that bilingual education improved children's self-esteem, the charge that sex-role stereotyping in the school "damaged" girls' psyches was inherently untestable. It was a value statement about how things should be, and, like any other ideological concept, it was not open to proof or disproof.[65]

Feminists won their most significant victory in their efforts to "de-

sex" the English language. Common usage, they charged, expressed sex bias and reinforced male domination of the culture. Why were women addressed as "Mrs." or "Miss," which identified them by their marital status, while all men were "Mr."? Why shouldn't all women be referred to by the neutral address "Ms."? Why did so many occupations have the suffix "-man" attached, thereby excluding women who might otherwise aspire to be a policeman, fireman, postman, or salesman? Why was the leader of a meeting the chair*man?* How could women not feel diminished when they constantly read and heard descriptions of "man's history," "the story of mankind," and similar male-oriented references. And then there was the nettlesome problem of the male referent ("each person has his book"), a practice dictated by standard English grammar.

Under pressure from feminists, the federal government adopted sex-neutral terminology in the mid-1970s; the title "Ms." and words like "personpower" and "personhours" entered the federal vocabulary. Professional associations devised guidelines to cleanse their journals of sexist language, especially by eliminating the generic use of "man," as a suffix, a pronoun, or a term for humankind. The American Psychological Association, for example, advised contributors not to use phrases like "mankind," or "the average man," or a verb like "to man a project"; the National Council of Teachers of English suggested avoiding the use of terms like "man-made" or "the common man" or "old wives' tale." Between 1974 and 1977, sensitivity to disturbances in the marketplace prompted such major publishers as McGraw-Hill; Scott, Foresman; John Wiley; Holt, Rinehart, and Winston; Harper and Row; and Prentice-Hall to publish guidelines to nonsexist language for their authors and editors.[66]

The enactment in 1972 of Title IX, which banned sex discrimination in all educational activities and programs receiving federal funds, and the revision of Title VII of the Civil Rights Act to bar sex discrimination in educational institutions put the full force of federal law and the federal civil rights bureaucracy on the side of the women's cause. Women who were denied promotion or tenure turned to the federal government or the courts for assistance. Sometimes a complaint to OCR or EEOC was sufficient to trigger a major compliance review of an institution, which would create enough pressure to compel a settlement in order to avoid a costly law suit. The threat of litigation was itself a powerful weapon: Brown University settled out of court after it was sued by a female professor who was denied tenure; even without a court battle or an admission of guilt, the university paid more than $1 million in legal fees.[67]

The increase of litigation required educational institutions to develop new administrative positions in order to handle legal challenges and to

negotiate with federal and state agencies. WEAL filed suit against the systems of public higher education in seven states. A professor at the University of Georgia who refused to divulge how he had voted on a promotion decision involving a female professor was sent to jail for three months by a federal judge who rejected the claim that academic freedom protected the confidentiality of the academic review process. According to the Project on the Status and Education of Women, an organization created to monitor the progress of women, a public high school in North Carolina and a religious school in Iowa were ordered to reinstate teachers who had been fired because they were pregnant and unmarried; a federal court in California ordered several public colleges to provide day-care centers, because their failure to do so excluded women from participation; female coaches sued Washington State University, complaining that male coaches received a free car; female athletes sued West Texas State University on the grounds that outside "booster clubs" were providing extra scholarships for male athletes; and female basketball players sued the University of Alaska, charging that the men's team got newer uniforms and a bigger budget than did the women's team. Although athletic programs did not receive federal funds, the regulations written for Title IX directed educational institutions to spend the same amount on sports for men and women (however, certain sports—like wrestling, football, and basketball—did not have to be available to both sexes). Even unsuccessful suits, such as those based on the claim that the university's requirement of a Ph.D. discriminated against women because more men had such degrees than women, involved costly legal proceedings.[68]

The enforcement of Title IX brought federal regulations onto every campus, public and private, in the nation. Affirmative action, which applied to institutions receiving federal contracts or grants, covered only nine hundred of nearly three thousand institutions of higher education. Title IX was interpreted by HEW officials to cover every educational institution that received even indirect forms of federal assistance, like federal student loans or veterans' benefits. A handful of institutions of higher education that had never received federal contracts refused to sign the Title IX compliance form; charging that refusal to comply was itself a violation of Title IX, HEW threatened to cut off all student aid to these campuses and successfully sued the recalcitrant institutions in the lower federal courts.[69]

The new presence of the federal government and courts on the campus stimulated debate about governmental intervention in faculty personnel decisions and threats to academic freedom. The tendency of the government to treat the university like any other government contractor alarmed

those who shared a view stated in one of the Supreme Court's McCarthy-era decisions:

> It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail 'the four essential freedoms' of a university—to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.[70]

Traditionally, universities were zealous of their independence from any government control, fearful that government might stifle free thought or use the resources of the university for partisan purposes. Decisions to hire, fire, promote, or grant tenure to faculty members were customarily made by the faculty, using a confidential peer review process. In their own fashion, universities were as autonomous from government regulation as churches, because both vigilantly resisted infringement of their autonomy.

The growth of government regulation, designed for beneficent purposes, gave government investigators powers over higher education that they had never exercised before. Confidential personnel records, rigorously protected from the eyes of the FBI and state investigators during the McCarthy years, were opened to investigators from EEOC and the Department of Labor who were looking for evidence of sex discrimination. In 1972, an EEOC official admitted to a meeting of leaders of higher education that her agency knew little about "how faculty decisions are made; what employment processes exist," but assured them "that the Commission will attempt to apply what it has learned in seven years of combatting job discrimination in the industrial sector." At the same meeting, a feminist leader complained that "academic freedom" and "institutional autonomy" were "smokescreens" thrown up by universities to protect the "old boy" method of recruiting. Her subject was "Affirmative Action on the Campus: Like It or Not, Uncle Sam Is Here to Stay."[71]

One person who did not like affirmative action was former Congresswoman Edith Green of Oregon, the original proponent of Title IX. She was "surprised and dismayed" to learn that the ban against sex discrimination had become the basis for "reverse discrimination" favoring women. In 1977, no longer a member of Congress, she said that when Title IX was written, "we sought to be exceedingly explicit so that the establishment of quotas would be prohibited." She considered the distinction between "quotas" and "goals" to be "a game of semantics." She could not understand "the reasoning that now leads well intentioned people, in simplistic zeal, to institute reverse quotas. Do they believe that one injustice deserves

another? Is the basis of judgment to be 'merit' or some strict ethnic or sex formula?" Of course, Title IX was not the source of affirmative action, but Title IX was interpreted by the civil rights bureaucracy as congressional authorization to extend the federal regulatory reach to virtually every campus in the nation.[72]

The interpretation of Title IX took a new turn in the late 1970s, when "sexual harassment" became an important issue. A Yale student sued a professor who had allegedly given her a lower grade after she had resisted his sexual advances; a federal judge dismissed the case because the student could not prove that the improper offer had been made or that she had been adversely affected. Other suits quickly followed, as students sued their professors and as female professors claimed that they had been denied promotion or tenure for refusing to have sexual relations with male professors. A survey of five hundred women who had received their doctorates in psychology in the previous six years revealed that one out of four had engaged in sexual relations with a professor, compared with only five percent who had received their degrees twenty-one or more years ago. Patricia Harris, the secretary of HEW, declared that sexual harassment was "a component of sex discrimination"; the Department of Labor issued guidelines prohibiting sexual harassment in the workplace; and EEOC instructed all federal agencies to prepare plans and to develop training programs to prevent sexual harassment. EEOC defined sexual harassment as "explicit or implicit unwelcome verbal or physical conduct of a sexual nature." The president of the University of Miami warned that sexist remarks would not be tolerated, and the university's women's commission agreed to meet with a professor who made sexist jokes, in order to devise a "joke guideline" to impermissible humor. A survey at the University of Florida revealed that 31 percent of women graduate students and 26 percent of women undergraduates reported sexual advances by professors. Meanwhile, on several campuses, male faculty members launched countersuits, claiming they had been libeled; and charges of McCarthyism were leveled at student organizations that kept secret lists of professors who were suspected to be sexual harassers.[73]

After a decade of decisive action by the federal government against sex discrimination, the barriers that had blocked women's educational and occupational advance were breached. Women outnumbered men among undergraduates, received 28 percent of the doctorate degrees by 1978/79, and accounted for 25 percent of the enrollment in legal and medical schools. (In a few medical schools, like Michigan State University, women were a majority of the entering class.) By 1981, there had been substantial increases in the number of female engineers, lawyers, judges, doctors,

pharmacists, scientists, and insurance adjusters. Women who were full-time faculty members in colleges and universities increased from about 20 percent in 1970/71 to 26.4 percent in 1980/81. During the same period the number of women who were full professors edged up from 8.6 percent to 10.2 percent, a reflection of the low rate of turnover among tenured faculty.[74]

Many of these changes could be attributed to the effects of the feminist movement, insofar as it had stimulated women's ambitions, encouraging them to enter nontraditional fields and to compete on equal terms with men. Its influence may also have contributed to the marked shift of such vital demographic barometers as low birth rates and the higher age of women at marriage. That the changes of the 1970s represented a readjustment of the social structure rather than a revolutionary dissolution of sex roles was indicated by the fact that a majority of women who received advanced degrees majored in such traditionally female fields as education, social sciences, literature, home economics, fine arts, and library science.[75]

For women, the changes of the 1970s were substantial, as measured by degrees and occupational diversification. Even more substantial, however, was the changed relationship of the federal government to higher education; through the issue of sex discrimination, federal agencies gained access to confidential personnel records, compelled universities to divulge tenure deliberations, and caused the creation of new bureaucratic structures within the university to supervise their orders. In one university, a federal investigator surreptitiously monitored classes for evidence of bias in professors' lectures. By 1980, federal regulatory authority reached into every institution of higher education in the nation, even those that had never accepted federal contracts. This substantial encroachment on institutional autonomy, so long considered a necessary component of academic freedom, would have been resisted tooth-and-nail in the 1950s; because government purposes in the 1970s were perceived to be beneficent, the new order was quickly effectuated.[76]

The activities of the civil rights movement in the field of education provided a valuable model for others who sought structural change. The civil rights movement argued persuasively that blacks had been victimized by American schools and that the prejudice of local school officials made federal and judicial intervention necessary. The case for intervention rested on the documentation of the educational and social disadvantages suffered by blacks and the reasonable charge that those responsible for such injuries could not be trusted to rectify them. Advocates of bilingual education and the feminist movement adapted their strategies to the civil

rights model because it offered a way not only to bypass local and state education authorities but to compel these officials to accept rules over which they had little control. The success of the strategy depended on the ability of the interest groups to ally themselves with congressmen on relevant committees and to gain a permanent voice within the executive branch to advocate their concerns regardless of who was president (for racial minorities—and after 1972, for women—this voice was the Commission on Civil Rights, OCR, and EEOC; for women, the National Advisory Council on Women's Educational Programs; and for linguistic minorities, the Office of Bilingual Education). Once these relationships were established, interest groups were able to dominate hearings on issues that concerned them and to have considerable influence when new legislation was under consideration or when new regulations were drafted.

In one important instance, the model itself helped to create a constituency that had not previously coalesced. Recognizing the effectiveness of the methods of the civil rights movement, advocates for handicapped children began to coordinate their political activities. When Congress passed its first comprehensive federal aid program in 1965, most organizations for the handicapped were busy fighting for programs and funds at the state and local level, often with disunity among the different organizations representing children who were deaf, crippled, blind, mentally retarded, and otherwise handicapped. Handicapped children could rightly claim the status of a neglected minority. Depending on the kind and degree of handicap, some children had been entirely excluded from the benefits of public education or had been placed in special classes with little opportunity to learn with nonhandicapped children. The critical needs were, first, to get all handicapped children into publicly supported educational programs; second, to train enough teachers to staff such programs; and third, to pay for both.

After 1965, advocates for the handicapped concentrated their efforts at the federal level. They sought an expansion of federal funding, but more significantly, they wanted the federal government to require the states to provide a free and appropriate public education to all handicapped children, as a matter of right. The handicapped constituency was composed of numerous organizations representing specific disabilities, as well as groups like the National Association for Retarded Citizens, which had been formed in 1950 by families of handicapped children, and the Council for Exceptional Children, which was the voice of special education professionals. There was no accurate count of the number of handicapped children, but, depending on how the term was defined and whether it included learning disabilities as well as physical and mental impairments, congressional staff and witnesses estimated that between five and eight million children were handicapped.[77]

Advocates for the handicapped proceeded to wage a brilliant political campaign for federal protection. Their assets were considerable. They represented the interests of the handicapped with deep conviction, and seldom did anyone oppose their demands. In addition, it is probable that almost every congressman had a friend or relative who was handicapped. The educational needs of handicapped children were beyond challenge, as well as beyond the resources of most states and local school districts. The question was not whether the federal government would assist the handicapped, but how this assistance would be framed and at what cost.

In 1966, the Democratic Congress established a Bureau of Education for the Handicapped (BEH), which was placed within the Office of Education in HEW, and created a National Advisory Committee on Education and Training of the Handicapped. This was a critical victory, because both BEH and the National Advisory Committee functioned (and were intended to function) as advocacy agencies for the handicapped within the federal government. The lobbyists for the handicapped worked closely with the education committees in the House and the Senate, and each body eventually created a subcommittee on the handicapped to prepare legislation. In 1970, the Congress passed new legislation, increasing the amount of federal aid for education of the handicapped and expanding the definition of "handicapped" to include learning-disabled children, such as those with perceptual problems and dyslexia.[78]

It was not simply money but a federal mandate that was needed, so the battle shifted to the federal courts, where handicapped plaintiffs won two important decisions. In 1971, the state of Pennsylvania was sued on behalf of severely retarded children who were not receiving public schooling; the state accepted a consent decree by a federal court, which required the state to provide a free public education to all retarded children in the state between the ages of six and twenty-one and established extensive due process mechanisms to provide for hearings, appeals, and continual monitoring. In 1972, the federal court in the District of Columbia held that under the due process clause of the Fifth Amendment to the Constitution every school-age child in the district must be provided with "a free and suitable publicly-supported education regardless of the degree of a child's mental, physical or emotional disability or impairment."[79]

After these legal victories, the Congress passed the Rehabilitation Act of 1973, which included Section 504, the handicapped person's equivalent of Title VI of the Civil Rights Act of 1964. Section 504 requires that

> No otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Under Section 504, every recipient of federal funds was required to provide full access to the handicapped, without discrimination, and enforcement became the responsibility of OCR. The potential cost of 504 evoked substantial opposition, the most serious that the handicapped movement had encountered. President Nixon vetoed the bill, but the Democratic Congress overrode his veto. Enforcement was delayed during the Nixon and Ford administrations because of HEW's failure to draft regulations (even Joseph Califano, the secretary of HEW in the Democratic Carter administration, hesitated until a vociferous protest in his office by handicapped demonstrators changed his mind).[80]

The passage of 504 over the president's veto demonstrated that the handicapped interest groups were part of what political scientists call "the iron triangle." They had forged close relationships, as one study of legislation for the handicapped shows, with the staff and members of the congressional education committees and with the federal agency officers responsible for administering programs for the handicapped. Congressional staff worked with the representatives of the handicapped to develop new legislation, BEH urged stronger enforcement and more funds, and spokesmen for the interest groups were well prepared whenever hearings were called or when new regulations were being drafted. So well-organized and articulate was the constituency for the handicapped that Congress passed its legislation by overwhelming, bipartisan majorities.[81]

The most significant victory for handicapped children was the passage in 1975 of Public Law 94–142, titled the "Education for All Handicapped Children Act." Although the interest groups knew that "lack of funds, personnel, and an adequate delivery system were all real problems," they determined that such constraints should not prevent passage of tough mechanisms to compel states and local districts to supply services to all handicapped children. The basic purpose of Public Law 94–142 was to assure that all handicapped children receive "a free appropriate public education which emphasizes special education and related services designed to meet their unique needs." The act has been described as "probably the most prescriptive education statute ever passed by Congress." It is written "in the sort of detail that is generally found in regulations, not in statutes." The law required that each handicapped child receive an "individualized education program," which was defined as

> a written statement for each handicapped child . . . which statement shall include (A) a statement of the present levels of education performance of such child, (B) a statement of annual goals, including short-term instructional objectives, (C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs, (D) the projected date for initiation and anticipated duration of such services, and (E) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

The law also contained elaborate due process safeguards for parents, so that any questionable action by the school or teacher would be subject to a speedy appeals process and litigation. Congress declared its intention to pay for a portion of the "excess costs" of special education, beyond the cost of the regular school program; the portion was supposed to start at 5 percent of costs, then rise in time up to 40 percent.[82]

Education for the handicapped, a program that had been beyond criticism for nearly a decade, was soon plunged into controversy. The cost to local districts put a strain on budgets around the nation at a time of rising inflation. In addition to hiring new personnel trained in special education and creating affirmative action plans to hire handicapped workers, districts had to bear the expense of eliminating architectural barriers to the handicapped and of paying tuition for severely handicapped children in private schools. School officials had supported the federal commitment on the assumption that the Congress would be willing to fund what it mandated. However, the congressional mandate was never matched even at the levels of partial funding that had been promised. Because of the Carter administration's efforts to reduce the federal budget, funding levels for the program never exceeded 12.5 percent of the districts' costs. Inevitably, local school budgets increased to satisfy the law's costs, which were often met by reducing services to nonhandicapped children. One writer described it as resembling "a regulation by the city council that you take your next-door-neighbor to dinner twice a week and pay for it out of your own pocket."[83]

Cost was not the only problem. The law mandated that handicapped children were to be educated with children who were not handicapped, "to the maximum extent appropriate." This became known as the requirement to "mainstream" handicapped children in "the least restrictive environment." Some parents of handicapped children preferred special schools; special education teachers wondered if mainstreaming might lead to renewed neglect or might threaten their jobs; regular teachers worried about their ability to teach classes that included children with physical and

emotional impairments; and parents of nonhandicapped children feared that their children's education would be neglected or diluted. In addition, school officials and teacher organizations complained about the time and paperwork required by preparation of the "individualized education plan" and objected that the plan might be considered a legally binding contract, providing grist for new litigation.[84]

Uncertainty about the scope of the federal laws was settled to some extent by two Supreme Court decisions. In 1979, the Court ruled unanimously that a North Carolina college was not required by Section 504 to accept a deaf woman into its nursing program; her handicap disqualified her because "the ability to understand speech without reliance on lip reading is necessary for patient safety." Section 504, the Court held, "imposes no requirement upon an educational institution to lower or to affect substantial modifications of standards to accommodate a handicapped person." In 1982, in the first major test of Public Law 94-142, the Supreme Court held in a 6-to-3 decision that a school district in New York was not required to provide a sign-language interpreter for a deaf fourth-grader. Since the child was performing above average in regular classrooms and receiving special services, the Court concluded that her education was "appropriate." The intent of Congress, said the majority, was "more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside."[85]

These decisions allayed the fears of educational authorities that the new legal requirements would prove unworkable but did not by any means relieve the obligation of educational institutions to educate all handicapped students. Nor did it relieve anxiety that local school districts would be left by Congress with an expensive, bureaucratic mandate but without the federal funds to comply, a scenario for endless litigation and disappointed hopes.

By the spring of 1980, OCR reported that more than 4 million handicapped children—representing 98 percent of all students in need of special education—had been evaluated and placed in special education programs in accordance with Public Law 94-142, far fewer than originally anticipated by Congress. Nearly two-thirds of the handicapped enrollment in local school districts consisted of children with specific learning disabilities or speech impairments. Almost 70 percent of the handicapped students were enrolled in regular classes. The programs were still underfunded and still capable of provoking resentment by parents of nonhandicapped children in a time of declining educational resources. But, nonetheless, in a short period of time, advocates of handicapped children had skillfully

entered the political arena to establish the right of all children, whatever their condition, to a free public education.[86]

Whoever the claimant, whether representing blacks, women, the handicapped, or non–English-speaking minority groups, the avenue of political remedy was the same: to bypass educational authorities by working directly with sympathetic congressional committees and by gaining judicial supervision. Each victory led to the imposition of mandates on school and university officials, requiring them to do promptly what they otherwise would have done slowly, reluctantly, or not at all. By their very nature, these outside interventions diminished the authority of educational administrators, not only leaving them with less discretion but also introducing new levels of bureaucracy and new staff to administer the federally mandated programs and to determine whether the multiple federal, state, and local requirements had been met.

By the end of the 1970s, the universities had adjusted to the new relationship with the federal government, largely because it had so little bearing on the life of the average professor. Demands for affirmative action for women, blacks, and members of other minority groups were, as it turned out, easily deflected or absorbed because the available pool of female and minority-group professors with appropriate professional qualifications was extremely low in those fields where underrepresentation was most typical.

However, the public schools did not adjust easily or quickly to the new programs of the 1970s. For one thing, unlike college professors, who could go on teaching as they always had, schoolteachers were directly affected by some aspect of the new situation—by the introduction of bilingual education; by the mainstreaming of mildly retarded children into their classrooms; by busing of school children or by reassignment of teachers for racial balance; by the removal of a textbook because it was offensive to some particular group; by the splitting of history into courses on ethnic groups or women; or by the ethnic revival, which some professional educators joined by declaring that all students have the "right to their own patterns and varieties of language—the dialects of their nurture or whatever dialects in which they find their own identity and style."[87]

Besieged as they were by the rapidity of change, the public schools sustained yet another blow when the College Board revealed in 1975 that scores on the Scholastic Aptitude Test (SAT), taken each year by more than a million high school seniors, had declined steadily since 1964. More than any other single factor, the public's concern about the score declines touched off loud calls for instruction in "the basics" of reading, writing, and arithmetic. Complaints about lax standards in the schools increased in

1977 when the College Board's own blue-ribbon panel reported that, though the causes of the score declines were many and complex, they certainly included the findings "(1) that less thoughtful and critical reading is now being demanded and done, and (2) that careful writing has apparently about gone out of style." In response to public complaints and demands to restore "the basics," thirty-eight state legislatures passed laws requiring public schools to administer minimum competency tests in the basic skills.[88]

At the end of a decade in which interest groups, the courts, and the federal government had said repeatedly through enactments, directives, and court orders that the schools, if left to themselves, could not be trusted to do the right thing, it was somehow fitting, though at the same time profoundly sad, that the state legislatures communicated to the schools that they could no longer be trusted to do the very thing that everyone assumed schools did first and best: the teaching of literacy.

After the mid-1960s, well-intended efforts to improve, reform, or regulate educational institutions increased by leaps and bounds, and almost every level of government as well as numerous private organizations joined the fray. After generations of stand-offishness, federal lawmakers rolled up their sleeves: between 1964 and 1976, the number of pages of federal legislation affecting education increased from 80 to 360, while the number of federal regulations increased from 92 in 1965 to nearly 1,000 in 1977. Some of these legislative interventions had unintended consequences. The Buckley Amendment, for example, sponsored by a Conservative party senator from New York, was intended to protect the rights of students by opening their educational records to them; in reality, it meant that letters of recommendation could no longer be confidential, which destroyed their candor and made them worthless to college admissions officials (thereby giving added weight to SAT scores).[89]

The federal courts, of course, became deeply involved in educational matters: the number of federal court decisions affecting education numbered only 112 between 1946 and 1956, rose to 729 from 1956 to 1966, and climbed to "in excess of 1,200 in the next four years." There seemed to be no educational issue outside the courts' purview. In 1975, the Supreme Court ruled that a student could not be suspended from a public school in Ohio for even a single day without a hearing; the dissenting minority complained that for the first time "the federal courts, rather than educational officials and state legislatures" had assumed "the authority to determine the rules applicable to routine classroom discipline of children and teenagers." In Ann Arbor, Michigan, a federal judge required the school

system to train teachers in Black English. In California, a federal judge banned the use of intelligence tests to place minority children in classes for the mentally retarded and ordered the state to "eliminate disproportionate placement of black children" in such classes. In Pennsylvania, federal courts ruled that public schooling must be provided for seriously handicapped children all-year round, not just 180 days per year. A university was ordered to reinstate a medical student who had been expelled for poor academic performance because the university had never formally defined what "marginal quality" meant. No matter seemed too far-fetched to bring suit, even though some were unsuccessful, like the Princeton senior who sued the university for denying her a diploma as a penalty for plagiarism or the high school graduates who sued their school districts for educational malpractice when they realized that they were illiterate.[90]

Some issues, like school finance reform, involved state courts, federal courts, interest groups, and state legislatures. The purpose of the school finance reform movement was to equalize school expenditures within states. Most states financed local public schools by relying largely on local property taxes. Even though the states often contributed additional revenues to offset the advantages of wealthy districts, wealthy districts generally had more money to spend on public schools than did poor districts. The first major victory of the school reform movement was the case of *Serrano* v. *Priest* in 1971, when the California Supreme Court ruled that it was unconstitutional to base the quality of a child's education on "the wealth of his parents and neighbors." Similar suits, challenging the property-tax basis of public school finance, were filed in many states. However, in 1973, the U. S. Supreme Court ruled in a 5-to-4 decision that the Texas system, based on local property taxes, was not unconstitutional; the Court held that "only relative differences in spending levels" were involved, not "an absolute denial of educational opportunities." After this ruling, the battle shifted to state courts, where state constitutions provided the basis for challenges to unequal spending. In some states, like New Jersey and Connecticut, reliance on local property taxes was found to be in violation of the state constitution; in New York, however, the highest state court found that it was not necessary to equalize school spending among districts. Responding to demands for equity, twenty-eight states revised their system of financing public education in the decade after *Serrano* in order to reduce disparities among districts.[91]

Another complicating factor for those responsible for managing educational institutions resulted from the dramatic growth of teacher unionism. In 1960, the American Federation of Teachers (AFT) represented more than fifty thousand teachers, and its rival, the National Education Associa-

tion (NEA), had over seven hundred thousand. The AFT offered affiliation with the organized labor movement, and NEA boasted of its "professionalism." By 1978, the NEA claimed a membership of 1.7 million, and the AFT over 500,000. Thousands of other noninstructional school personnel became members of the American Federation of State, County, and Municipal Employees. By 1980, more than 75 percent of the nation's teachers were union members. Much of this rapid growth was attributable to the intense rivalry between the NEA and the AFT, but it occurred at a time when school systems were becoming larger, more impersonal, and more bureaucratic; when teachers were underpaid and not keeping pace with others of similar educational levels; when teachers, on the whole, were younger, better educated, and more likely to be male (male teachers were likelier to join a union than were female teachers); when the cultural context encouraged political activism and collective action; when educational decision making was increasingly removed to the state or federal level, where teachers had no influence; and when criticism of public education was rising rapidly.[92]

Teacher unions became involved not just in conditions affecting pay and other benefits but in "the entire range of policies related to conditions under which teachers teach and children learn . . . class size, number of classes taught, curriculum, textbooks and supplies, and hiring standards—in fact, anything having to do with the operation of the school." As the unions' power grew, the administrators' discretion over the same matters correlatively shrank. How these changes affected the tone and quality of instruction was by no means clear. Since the rise of unionism coincided with a period in which the schools were severely criticized for poor teaching, indifference to students, bureaucratic rigidity, and low standards, critics of the schools tended to direct much of the blame at unions. One critic (a one-time champion of teachers' unions), Myron Lieberman, charged that it was in the nature of collective bargaining to demand "less work for more pay" and to resist administrative control over assignments and transfers, even when such changes might improve the overall functioning of the schools.[93]

But a study by Susan Moore Johnson concluded that the effects of collective bargaining had been far less extensive than was generally believed. While it was true that "principals' formal authority had been restricted and teachers' formal authority had been increased," nonetheless "school site administrators in even the strongest union districts could manage their schools well. Principals were neither figureheads deferring to union representatives nor functionaries complying slavishly with the contract. . . . Schools were remarkably autonomous in interpreting and administering the contract." Johnson found that even among schools within the same district there were wide variations in labor practices. She concluded that the schools had been "altered, but not transformed by collective bargaining."[94]

By the mid-1970s, there was nothing tenuous about the position of teacher unions, regardless of their critics. Opinion surveys of educators and the public regularly indicated that Albert Shanker, the AFT president, was considered one of the nation's leading educators, a tribute to his staying power and to the burnout rate of college presidents and school superintendents. Indeed, both the AFT and the NEA had become major powers, not only in their school districts but in state legislatures and in the nation, and the real question was whether any school district had either the political power or legal resources to deal with them as equals. Because of their size and the activism of their members, both unions were courted by candidates for national office. The NEA was acknowledged to be one of the key power bases of President Jimmy Carter, who repaid his debt by persuading Congress to establish a new Department of Education in 1979 (over the objections of the AFT).[95]

The only impediment to the advance of teacher unionism occurred in the Supreme Court, which ruled in 1980 against faculty members in private colleges and universities who were trying to organize a union. In a 5-to-4 decision, the Court held that faculty members at Yeshiva University were "managerial" employees who were "in effect, substantially and pervasively operating the enterprise." Faculty members, said the majority, "make recommendations to the dean or director in every case of faculty hiring, tenure, sabbaticals, termination and promotion," and they "effectively determine its curriculum, grading system, admission and matriculation standards, academic calendars and course schedules." At the time of the decision, unions represented about half of the nation's professors, mostly those in public institutions. Although expert observers disagreed on the implications of the Yeshiva decision, it seemed likely to encourage resistance to unionization by private institutions and to block the path to power pursued by unions in public elementary and secondary schools.[96]

As the number of competitors hoping to share decision-making power over elementary and secondary schools increased, the states—which had traditionally been responsible for public education—intensified their legislative involvement in educational policy making. In the early 1970s, state legislatures seeking ways to improve the efficiency of the much-criticized schools mandated a wide variety of "accountability" schemes. Accountability laws required the schools to adopt new management systems for planning, budgeting, evaluation, and goal-setting. The object, certainly,

was to make schools function more rationally, but the likely outcome was to add another level of bureaucratic measures and managers to already overburdened school districts.[97]

As though the schools did not have enough to cope with just trying to keep track of new directives from courts, legislatures, and other governmental agencies, citizen groups complained vigorously about the cost, quality, and nature of public education. In a widely-heralded taxpayers' revolt, voters in California and Massachusetts enacted propositions that restricted property taxes, on which schools depend; the probable effect was to speed the state takeover of the financing of public education that reformers had been unable to win in the courts. Textbooks and library books came under fire by opponents of sexism, racism, evolution, pornography, and sexually explicit language. In reaction against open education and declining test scores, parent groups pressed state legislators for more attention to basic skills, which fueled the passage of minimum competency testing and came to be known as the "back to basics" movement. Right-wing groups, resentful ever since the Supreme Court's ban against prayer in the public schools in 1963, complained about the intrusion of "secular humanism" in courses like the federally funded "Man: A Course of Study" (MACOS) and about the neglect of the Biblical account of creation.

To an extraordinary degree, the consensus that had undergirded American education for most of its history seemed to be dissipating, and the emergence of rival claimants mirrored growing uncertainty about the purpose of education. The lesson of the federal categorical programs (such as bilingual education, compensatory education, and special education), federal directives, and court orders, it appeared, was that each interest group had to look out for itself, to get as much federal protection and as many public dollars as possible, regardless of the effect on the institution. Lost in the new order of things was any conception of the common interest, the idea that made common schooling possible. Outside intervention assumed that local officials were not to be trusted to do the right thing, and distrust is a corrosive sentiment, especially in an institution where parents entrust their children to the care of strangers. According to annual Gallup polls, public confidence in the public schools declined steadily during the 1970s; while educators thought that the schools' greatest need was innovation, the public each year believed that "lack of discipline" was the biggest problem facing the schools. Two-thirds of the Gallup sample thought that educational decisions should be made by the local board, not by federal or state authorities.[98]

By the late 1970s, concern about distortion of the educational process by outside intervention came not just from parent groups and conservative

critics but from liberal scholars of education policy. Arthur E. Wise, one of the early advocates of school finance reform, wrote in 1979 that well-meaning intrusions by Congress, federal agencies, the courts, and state legislators into education were bringing about "the bureaucratization of the American classroom." Each new requirement, he pointed out, was followed by new rules, new procedures to govern everyday decision making, more centralization, and more standardization; administration by rules was replacing administration by persons, and each new round of rule making was followed by more litigation and adversarial procedures, not less.[99]

In a similar vein, J. Myron Atkin, dean of the school of education at Stanford University, reflected somberly in 1980 that the nature of state and federal involvement in education policy had changed dramatically in the previous two decades. Until the 1960s, he wrote, few could have imagined that "politicians and civil servants might determine how mathematics was to be taught, how twelve-year-olds were to be tested, or how instructional plans for individual children were to be developed." Atkin described the Education for All Handicapped Children Act as "one of the sharpest intrusions of the federal government into the details of teaching practice" because of its unprecedented specification of teacher behavior. Following the federal lead, state legislatures too had begun to tell teachers how to teach and what to teach. "Increasingly," he warned, "local school administrators and teachers are losing control over the curriculum as a result of government action. . . . In this process, the local administrator becomes less of an educational leader and more of a monitor of legislative intent."[100]

Besides loss of leadership, Atkin believed that recent trends had stimulated the flight of middle-class parents, black and white, from troubled public schools:

> As a result of legislative directive, handicapped children increasingly are placed in regular classrooms, without additional resources provided for the teacher, forcing the teacher to redirect attention from "average" youngsters to the new group. As another example, judges frequently send delinquent children back to classrooms from which they had been excluded because they were extraordinarily disruptive. The courts act to protect the civil rights of the excluded children. But when many of these youngsters go back to the classroom, they continue to disrupt the regular educational activities and command disproportionate amounts of teacher time. There is little doubt that many of the new schools established by middle-class parents are a response to such developments.

Atkin's most withering criticism, however, was reserved for the federal curriculum development projects sponsored by the National Science Foun-

dation in the 1950s and 1960s. These well-funded projects created new specialized roles: "text writer, subject-matter expert, test developer, classroom manager, program evaluator, curriculum planner." Before there was a curriculum reform movement, "the teacher considered it part of his or her professional responsibility to assume each of these roles." Thus, the latent impact of the curriculum reform movement may have been to narrow the autonomy of the teacher, to turn the teacher from a professional to a technician, and to reduce those areas in which the teacher exercises "sensitive and sophisticated judgment." Each new effort to impose reform on the school, Atkin implied, had simply undermined the schools' autonomy and effectiveness.

University presidents, burdened by the cost and complexity of federal regulations, joined the chorus of critics. Because of the burst of new laws and regulations in the 1970s, universities had to add new administrative staff to process the paperwork and had to spend millions of dollars to comply with the Occupational Safety and Health Act, with environmental regulations, with Section 504 for the handicapped, with requirements for affirmative action, and with Title IX's directives on providing equal athletics for men and women. In 1980, a new federal regulation (Circular A-21 from the Office of Management and Budget) outraged research universities by requiring that faculty members who had any portion of their salaries paid by federal research funds must account for 100 percent of their "time and effort," to the satisfaction of government auditors. Federal rule makers assumed that research universities, like other contractors, were hierarchically organized corporations of managers and employees; they could not understand the faculty's somewhat anachronistic conception of collegiality or its resistance to hourly monitoring of its time.[101]

Whether a university was public or private, it was subject to federal regulations affecting admissions, personnel policy, wage and salary administration, housing, athletics, record keeping, financial aid, research, physical plant construction and management, among other things. Some worried that this relentless standardization and bureaucratization would inevitably erode diversity in higher education. The president of Duke University, Terry Sanford, charged that "the avalanche of recent government regulations . . . threatens to dominate campus management." The president of Yale University, A. Bartlett Giamatti, assailed the "mounting wave of regulation" and "requirements for massive amounts of paperwork" that impaired the relationship between the federal government and the universities. Willis D. Weatherford, president of Berea College, complaining that he spent one-fourth of his time coping with government regulations, foresaw "a deadening monotony creeping across colleges and

universities in America—a uniformity induced by excess government regulation." Derek C. Bok, the president of Harvard University, argued that there should be a presumption against government involvement in academic matters:

> if the government freely substitutes its judgment and overrules universities on academic issues, the results, on the whole, will be harmful to the quality of higher education . . . because government officials will not know as much about academic issues as educators and faculty members; because government rules are likely to impress uniformity and rigidity on a field of activity that needs diversity, experimentation, and change; because teaching and research do better under conditions of freedom rather than external direction; and because efforts to determine the academic policies of 3,000 separate institutions are likely to be expensive and difficult to enforce.[102]

The unhappiness of the colleges and universities was not the whole story, however. What had also changed was the dependence of many large universities on federal research funds, which by 1980 were close to $6 billion annually. Just as school districts had come to count on federal funding, even when it provided only 10 percent of the district's total budget, so universities found that their research faculties, their laboratories, their graduate students, and their prestige depended to some degree on maintaining their funding from the federal government, no matter how nettlesome their relationship with federal agencies might become. And while their complaints were well grounded, the fact was that in the most important matters colleges and universities had preserved their integrity and their freedom of action. With rare exceptions, the institutions continued to decide for themselves, on academic terms, who would teach, what would be taught, how it would be taught, and who would be admitted to study. Federal regulation was costly, and it added a new layer of administrators within institutions, but it did not destroy what was best about American higher education.[103]

Nonetheless, vocal criticism of federal intervention into the affairs of higher education and local school districts became especially intense during the administration of President Jimmy Carter, not necessarily because Carter's policies were unusually burdensome but because during his administration the regulations governing the treatment of the handicapped and women (laws passed during the Nixon and Ford years) were promulgated. Under Carter, the federal education budget was substantially increased and a federal Department of Education was established. Ironically, the first secretary of the new department was a federal judge rather than an educator, and the implicit signal from Washington was that the network

of regulations and mandates would be administered by an experienced hand. Carter was defeated in 1980 by a conservative Republican, Ronald Reagan, who pledged to dismantle the Department of Education and to reduce federal regulation of education, both tasks that were easier said than done.

By 1980, regardless of who was elected president, there was no turning back to the days when local school boards were near-autonomous and when higher education was as remote from the government as were churches. The changed situation was a new fact of life, like the discovery of nuclear energy. No matter how much one might deplore it, and no matter how many might deplore it, it did not go away. As John Dewey might have observed, the new relationship between education and the government was a problem, and as a problem, it was a challenge to critical intelligence. As such, it was to be studied, debated, criticized, and acted on. No one could doubt the value of efforts to rethink flawed assumptions, to reconsider unsatisfactory regulations, or to rewrite legislation that had adverse consequences. Much had been gained because of the active dedication of the federal government and the courts to the rights of all children. To the extent that the pursuit of good ends jeopardized equally valuable ends, like academic freedom, institutional autonomy, and diversity; to the extent that absorption by educators in bureaucratic procedures overshadowed the educational function of the schools; and to the extent that government programs gave new responsibilities to academic institutions while depriving them of the authority needed to carry out those responsibilities, there remained a compelling agenda for future educational reformers.

Epilogue: From 1945 to 1980

WHEN HEARINGS on federal aid to education were held in 1945 and teachers came from around the nation to tell the Congress about the needs of their schools, the problems of American education seemed nearly insoluble. It was no accident that the teachers who testified came from rural districts, because it was there that the schools were in the direst financial straits. Urban districts were conspicuous by their absence from these hearings, because they were considered relatively privileged, well staffed, and well financed. Rural schools, however, suffered from low funding, poor facilities, obsolete teaching materials, and a critical teacher shortage.

Inequitable funding was only the most immediate problem, however. Whether urban or rural, privileged or poor, American schools reflected the racial bias that was common in the larger society. In many states, this bias was institutionalized in racially separate schools where black students received fewer months of schooling and had teachers who had less training and lower pay than their white peers. So deeply imbedded was the practice of racial segregation that there seemed little reason to believe, at war's end, that any political change might be seismic enough to destroy the power of state-enforced racial segregation. Furthermore, access to higher education