

Jeffrey Kwong
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Multiple principals, conflicting objectives, and agent enactment failure: The case of Proposition 209 in California

“Hybrid democracy” – a combination of direct democracy and representative institutions at the state and local levels – is “here to stay,” writes Elizabeth Garrett.¹ With seventy-one percent of Americans living in a locality that allows the initiative process in addition to representative institutions, the expectations remain high for this prominent feature of hybrid democracy.² The initiative process has been idealized as providing “a way to circumvent the self-interest of legislators.”³ However, a variety of empirical evidence shows that many initiatives are ignored by the legislature, bureaucracies, or both.⁴ In the case of Proposition 209, the plethora of lawsuits and grassroots action indicates that the state, its agencies, and its constituent units have not followed through with the will of the voters. On November 5, 1996, Proposition 209 (the California Civil Rights Initiative), was passed by voters, amending California’s constitution to prohibit the state from considering race, sex, or ethnicity in contracting, employment, and education policies.⁵ Yet, over a decade since the initiative’s enactment date, the ban remains altered or largely ignored across bureaucracies and in the various governmental units of the State of California, ranging from the University of California system to the Sacramento Municipal Utility District.⁶ I argue that the problem of Proposition 209’s enactment failure can be explained using the multiple-principals—agent framework.

The various agencies and constituent units composing the state of California all act as agents of the people of California and the State Constitution. Chief executive officers from the

¹ Garrett, Elizabeth. “The Promise and Perils of Hybrid Democracy. The Henry Lecture, University of Oklahoma Law School.” *USC Legal Studies Research Paper 5* (13 Oct. 2005): 20.

² Matsusaka, John G. *For the Many or the Few: The Initiative, Public Policy, and American Democracy*. University of Chicago Press: Chicago, 2004. Print. p. 8

³ Garrett 2005.

⁴ Gerber, Elisabeth R., McCubbins, Mathew D., and Lupia, Arthur. “Direct Democracy, Indirect Results: When Does Government Limit the Impact of Voter Initiatives?” *The Journal of Politics* 66.1 (2004): 43-68. *SSRN*. Web. 10 Oct. 2009. <<http://ssrn.com/abstract=1002821>>

⁵ Supported by Californians Against Discrimination and Preferences and the California Civil Rights Initiative Campaign, the initiative passed with 54 percent of the vote.

⁶ The University of California has been under fire by the California Civil Rights Institute, which has alleged that UC administrators now employ a form of underground racial preferences. Also see, *C&C Construction, Inc. v. Sacramento Municipal Utility District*, 122 Cal. App. 4th 284 (2004)

governor to local officials all pledge allegiance to the same state constitution (which includes the Prop 209 affirmative action ban). Because they also serve as agents for many other multiple principals (among them are the voters of the state of California, a collective-principal), their implementation of constitutionally mandated policies are incongruent.

Visual 1. Litigation claiming Proposition 209 non-compliance, primarily led by the conservative Pacific Legal Foundation⁷

Case	Government agent sued	Program/government action in question	Did Court find lack of compliance? ⁸
Taber v. City and County of San Francisco (1999)⁹	City and County	A provision of the City and County of San Francisco’s administrative code dealing with the Minority-Women-Local Business Enterprise Program which preserved specified racial preferences	Dismissed due to lack of standing
Hi-Voltage Wire Works, Inc. v. City of San Jose, 24 Cal. 4th 537 (2000)¹⁰	City	San Jose’s city public works contracting program which required government contractors to solicit bids from companies owned by women and minorities	Yes
Hunter v. Regents of University of California, 00-135 (9th Cir. 2000)¹¹	UC System	Challenged a policy at UCLA’s Corrine A. Seeds Elementary School that admitted students with consideration of applicants’ ethnicity, sex	No
Connerly v. State Personnel Board, 92 Cal. App. 4th 16 (2001)¹²	Community colleges, Lottery, state Treasurer	Race preferences in hiring by California state government and California community colleges, and race preferences in contracting by the state Lottery and the state Treasurer’s office; legal schemes requiring race-based “goals and timetables” for hiring minorities/women at community colleges and in civil service.	Yes
Crawford v. Huntington Beach Union High School District, 98 Cal. App. 4th 1275 (2002)¹³	School District	Policy of the Huntington Beach Union High School District rule which required racial composition of new transfers balance with the racial composition of students transferring out of a high school’s attendance zone.	Yes

⁷ Pacific Legal Foundation. *Pacific Legal Foundation Litigation Defending and Enforcing Proposition 209 – from 1996 Through 2009*. Pacific Legal Foundation. Web. 20 Nov. 2009. <<http://community.pacificlegal.org/Document.Doc?id=301>>.

⁸ Facts of case or ruling may not deal with Proposition 209 compliance directly for some cases but cases shown here do show a plethora of examples of non-compliance dealing with Proposition 209 requirements – the court may not have ruled based on Prop 209 findings but facts of the case deal with Prop 209 requirements.

⁹ Pacific Legal Foundation Sues San Francisco and Mayor Willie Brown for Violating Anti-Bias Initiative – Proposition 209. *Business Wire* 19 Jan. 1999. [Lexis-Nexis Academic: News - U.S. Newspapers & Wires](#). Online. 20 Nov. 2009.

¹⁰ Cox, Marjorie E. "Hi-Voltage Wire-Works, Inc. v. City of San Jose." *Public Law Journal* 24.2 (2001): 1-1. *State Bar of California*. State Bar of California Public Law Section. Web. 20 Nov. 2009. <http://calbar.ca.gov/calbar/pdfs/sections/public/public-law-journal_01spring.pdf>.

¹¹ "Court Allows Pupils Based On Race." *Associated Press Online* 2 Oct. 2000. [Lexis-Nexis Academic: News - U.S. Newspapers & Wires](#). Online. 20 Nov. 2009.

¹² Kravets, David. " Appeals Court guts state government affirmative action programs." *The Associated Press State & Local Wire*. 4 Sept. 2001. [Lexis-Nexis Academic: News - U.S. Newspapers & Wires](#). Online. 20 Nov. 2009.

¹³ Ofgang, Kenneth. "Court of Appeal Strikes Down Race-Based School Transfer Policy." *Metropolitan News Enterprise* [Los Angeles] 4 June. 2002: 1-1. Print. [Lexis-Nexis Academic: News - U.S. Newspapers & Wires](#). Online. 20 Nov. 2009.

Friery v. Los Angeles Unified School District, 01-56016 Cal. Sup. Ct. (2002) ¹⁴	School district	District policy prohibiting teacher transfers if it lowered the number of minority faculty at a school to less than 15 percentage points or more than 25 percentage points above the figure for the district as a whole	No; standing
Scott v. Pasadena Unified School District, 306 F.3d 646 (9th Cir. 2002) ¹⁵	School District	Pasadena Unified School District policy which, in certain cases, allowed "race, gender, and other characteristics," to be a factor in the district's student lottery, which determines school placement.	Dismissed due to lack of standing
C&C Construction, Inc. v. Sacramento Municipal Utility District, 122 Cal. App. 4th 284 (2004) ¹⁶	Municipal Utility District	Sacramento Municipal Utility District policy which include race-based preferences, "participation goals" and "evaluation credits."	Yes
Neighborhood Schools for Our Kids v. Capistrano Unified School District, 05CC07288 California Superior Court (2006) ¹⁷	School district	Capistrano Unified School District's new attendance boundaries for district high schools and middle schools were created using race as a factor.	Yes
Cowles v. Gilroy Unified School District ¹⁸	School District	School district policy, whereby students were assigned to school based on their race in order to achieve racial balance	Yes
Connerly v. Schwarzenegger, 146 Cal. App. 4th 739 (2007) ¹⁹	Legislature and governor	Statute amending Proposition 209 to redefine the term "discrimination" in Proposition 209 based on international treaty language that provided an exception for preferences favoring racial minorities.	Yes
American Civil Rights Foundation v. Los Angeles Unified School District, 169 Cal. App. 4th 436 (2008) ²⁰	School district	Los Angeles Unified School District policy which considers race and ethnicity as a factor in student placement in magnet schools and busing programs.	No
American Civil Rights Foundation v. Oakland and the Port of Oakland (2008) ²¹	City	City of Oakland and the Port of Oakland 2006-2008 non-car rental concessions program, which had an 18.7% race-conscious goal	Yes
Avila v. Berkeley Unified School District (2009) ²²	School district	Berkeley Unified School District policy which used racial balance as a criteria in student assignment.	No
Coral Construction Co. v. C&C of San Francisco (Super. Ct. No. 319549) and Schram Construction, Inc. v. CCSF (Super. Ct. No. 421249); Cal. App. 1st A107803 (2007) ²³	City	City and County of San Francisco policy that requires general contractors bidding on public works projects either to meet a quota for minority- and women-owned subcontractors or to make "good faith" efforts to do so.	Pending w/Ca. Sup. Ct.
American Civil Rights Foundation v. Berkeley Unified School District, 172 Cal. App. 4th 207 (2009) ²⁴	School district	Berkeley Unified School district's admissions policy which put into consideration the racial makeup of a student's neighborhood in student assignment	No

¹⁴ MetNews Staff Writer. "Ninth Circuit Asks State Supreme Court to Look at LAUSD Rule on Transfers for Teachers." *Metropolitan News Enterprise* [Los Angeles] 23 Aug. 2002: 1-1. [Lexis-Nexis Academic: News - U.S. Newspapers & Wires](#). Online. 20 Nov. 2009.

¹⁵ Ofgang, Kenneth. "Court Overturns Order Blocking Pasadena School Assignment Plan" *Metropolitan News Enterprise* [Los Angeles] 5 Sept. 2002: 1-1. Print. [Lexis-Nexis Academic: News - U.S. Newspapers & Wires](#). Online. 20 Nov. 2009.

¹⁶ Ofgang, Kenneth. "C.A.: Utility Affirmative Action Program Violates Proposition 209." *Metropolitan News Enterprise* [Los Angeles] 15 Sept. 2004: 1-1. [Lexis-Nexis Academic: News - U.S. Newspapers & Wires](#). Online. 20 Nov. 2009.

¹⁷ Neighborhood Schools for Our Kids v. Capistrano Unified School District, 05CC07288 California Superior Court (2006). Superior Court of California, County of Orange Minute Order. Web. 20 Nov. 2009. <<http://www.cusdrecall.com/page68/page63/page95/files/MSA%20Order%20082506.pdf>>.

¹⁸ Pacific Legal Foundation. *Pacific Legal Foundation Litigation Defending and Enforcing Proposition 209 - from 1996 Through 2009*. Pacific Legal Foundation. Web. 20 Nov. 2009. <<http://community.pacificlegal.org/Document.Doc?id=301>>.

¹⁹ Pacific Legal Foundation. *Pacific Legal Foundation Litigation Defending and Enforcing Proposition 209 - from 1996 Through 2009*. Pacific Legal Foundation. Web. 20 Nov. 2009. <<http://community.pacificlegal.org/Document.Doc?id=301>>.

²⁰ "Court Ruling Upholds Los Angeles Schools' Desegregation Plan." *PRNewswire-USNewswire*. 23 Dec. 2008. [Lexis-Nexis Academic: News - U.S. Newspapers & Wires](#). Online. 20 Nov. 2009.

²¹ Public Law Group. *Constitutional challenge to Oakland International Airport's Concession DBE Program Dismissed*. Constitutional Challenge Dismissed. Bay Area Contract Compliance Officer's Association ("BACCOA"). Web. 20 Nov. 2009. <<http://www.baccoa.net/?p=57>>.

²² Bhattacharjee, Riya. "State Supreme Court Rejects Challenge to Berkeley's Assignment Plan." *Berkeley Daily Planet*. 11 Jan. 2009. Web. 20 Nov. 2009. <<http://www.berkeleydaily.org/issue/2009-06-11/article/33147?headline=State-Supreme-Court-Rejects-Challenge-to-Berkeley-s-Assignment-Plan>>.

²³ Coral Construction Co. v. C&C of San Francisco (San Francisco County Super. Ct. No. 319549) and Schram Construction, Inc. v. CCSF (San Francisco County Super. Ct. No. 421249). *California Judicial Branch*. Web. 20 Nov. 2009. <<http://www.courtinfo.ca.gov/opinions/revpub/A107803.DOC>>.

²⁴ Halpenny, Diana D. "School District's Admissions Policy That Considers the Racial Makeup of a Student's Neighborhood, But Not Individual Student's Race, Is Constitutional." *Martin Dale Legal Library*. 30 Jun. 2009. Web. 20 Nov. 2009. <http://www.martindale.com/civil-rights-law/article_Kronick-Moskovitz-Tiedemann-Girard-A_743372.htm>.

Visual 1 lists some of the most publicized cases involving plaintiffs challenging government programs that allegedly utilize some form of racial or gender preference(s); the large number of litigation points to high levels of Prop 209 non-compliance. Why are there such high levels of non-compliance? Existing models explaining compliance, such as Gerber et al (2004), are not satisfactory. Under that model, the winning initiative p , the affirmative action ban, is slated to replace the status quo policy, sq . The agents of the voters' will – government agencies and entities evaluates its compliance costs, k , especially in relation to changes to sq . Voters are said to be able to observe ($Z=1$) the policy outcome, G , and whether an agent is in full compliance.²⁵ However, this model is difficult to apply in the case of Prop 209. First, the status quo policy (sq) on affirmative action where $sq \in \mathfrak{R}$, does not account for the full range of pre-1996 affirmative action policies. There are too many status quo policies, $sq_{1, 2, 3...n}$ each carrying separate implementation costs $k_{1, 2, 3...n}$. Secondly, in the implementation stage, when each policy sq ranging from a minority contracting policy ($sq_{contracting}$) to a magnet school admissions program ($sq_{admissions}$) is replaced by p , each policy implementation entails costs $k_{contracting}$ or $k_{admissions}$ to the agent. The political cost incurred from implementing p upends political resources needed to support other government initiatives, especially those requiring support from opponents of Proposition 209. Finally, the biggest difficulty in applying models of compliance to Proposition 209 is the plethora of principals involved. Each agent charged with implementing p is responsive to multiple principals.

Government entities must consider its status quo policies and choose whether or not to enact policy in line with the new initiative. From the start, enacting Proposition 209 has involved entities each answering not only to the “original” principals who passed Proposition 209 (the voters), but many other principals to whom the agent is subject to direct oversight. In Kiewert

²⁵ $S=1$ denotes lack of compliance (i.e. $G \neq p$) and when $S=1=Z$, sanctions in the form of point deductions occur; otherwise sanctions do not occur.

and McCubbins' analysis of the federal government, bureaus are a good case of an agent answering to multiple principals and being subject to direct oversight by the president at the federal level, various House and Senate committees, and within these committees, vote-seeking politicians.²⁶ In terms of initiatives post-Election Day victory, voters have to compete for their interests ($p=L$) alongside other principals seeking other goals, including $sq>p$. In particular, school districts and local city governments have often opted for non-compliance and non-enactment of Proposition 209, especially when pressed by other principals preferring the status quo to any degree of compliance ($sq>p$). In many of these cases of non-compliance, the further delegation of instructions from the city to the sub-city level (like the individual schools in the Berkeley School District) creates problems in the delegation of power. This is analogous to the agency loss observed as power is transferred from the people to legislative bodies and from legislative agents to bureaucrats.²⁷ Secondary and tertiary agents (answering to their principals above them; i.e. school administrators answering to the superintendent), when left to their own devices, fail to carry out the principals' interests, especially when one is a collective principal like the voters of California. As Gerber writes, "Laws passed by organizations that subsequently disappear are disadvantaged when it comes to tracking initiative compliance."²⁸ Voters, as a collective principal lacking institutionalization and organizational power are ineffective in monitoring the agent's behavior. Agency loss is especially profound since (i) the collective-principal cannot possibly share common interests with the agent since there are multiple principals, and (ii) the collective-principal – the electorate – is far from knowledgeable about the consequences of the agent's activities (See Lupia and McCubbins 1998). Agency loss is therefore

²⁶ See Kiewert, D. Roderick and McCubbins, Mathew D. *The Logic of Delegation: Congressional Parties and the Appropriations Process*. Chicago: University of Chicago Press. 1991

²⁷ Lupia, Arthur. 2001. "Delegation of Power: Agency Theory." Published in Neil J. Smelser and Paul B. Baltes (eds.) *International Encyclopedia of the Social and Behavioral Sciences* 5. Oxford, UK: Elsevier Science Limited. Pps. 3375 – 3377. *University of Michigan (personal website)*. Web. 10 Oct. 2009. < www-personal.umich.edu/~lupia/delegation.pdf >.

²⁸ Gerber, et al. 2004. p. 46

maximized under this multiple-principal (with collective-principal included) framework.²⁹ For this collective principal, control over the agent is severely weak when compared to other non-collective principals.

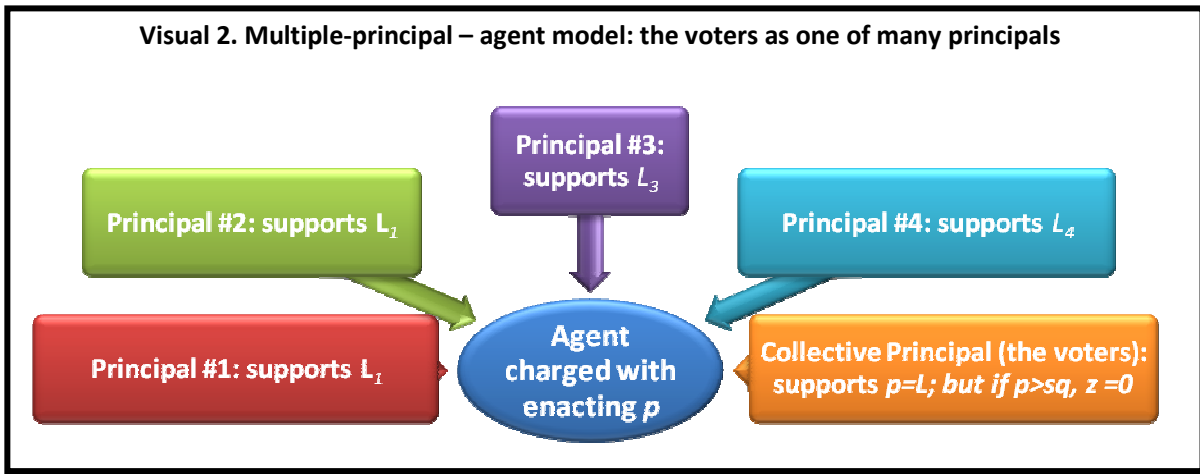
Multiple-principal—agent model

Failed compliance, therefore, can be better explained by a multiple-principal—agent framework, borrowing key assumptions from the N-Actor Model (Gerber, et al 2004) while taking into account the opportunities for multiple principals to indicate their interests and their policy preferences in p through implementation and further stages in p 's enactment. In my multiple-principal scenario, an actor goes through a two-actor model involving each of the actor's principals. The actor considers each principal's instruction $L_{principal\ 1, 2, 3...n} \in [sp, p]$. Then the actor considers whether L differs between principals, for example, whether $L_{principal\ 1}$ conflicts with $L_{principal\ 2}$. If $L_{principal\ 1} = L_{principal\ 2} \dots = L_{principal\ k}$, the process continues with the actor considering costs k of implementation against actor's own interests. If $L_{principal\ 1} \neq L_{principal\ 2} \dots \neq L_{principal\ k}$, the process can also continue with the actor considering costs k of implementing one principal's will against another principal's will or not implementing any of the principal's will at all ($k_{L_{principal\ 1} > L_{principal\ 2}}$ or $1 - (L_{principal\ 1, 2, 3...n})$). The sequence of events, as in the 2-actor model, ends with the sanctioning stage. The wide range of sanctioners is multiplied compared to the 2-actor model because of the wide range of principals involved, each with $L_{principal\ 1, 2, 3...n} \in [sp, p]$ and their own worries about electoral impacts, fiscal damage, and other costs afflicted from their own principal(s). Of course, sanctioning resources may be limited.³⁰ In the multiple-principal—agent game, the actor is most worried about the most threatening sanction (i.e. $z=1$).

²⁹Ong, Dorothy also uses the example of multiple-principal—agent framework and looks at the weak control the collective principal has over the agent under this framework. See "Multiple Principals and Collective Action: China's Rural Credit Cooperatives and Poor Households' Access to Credit." *Journal of East Asian Studies* 6 (2006), 177–204. *The Berkeley Electronic Press*. Web. 10 Oct. 2009. <http://works.bepress.com/cgi/viewcontent.cgi?article=1001&context=lynette_ong>

³⁰ Gerber, et al (2004), p. 51

Visual 2. Multiple-principal – agent model: the voters as one of many principals



In the case of constitutional amendments, state entities are usually sanctioned by the state Attorney General’s office. In the case of Proposition 209, however, potential cases of non-compliance have not resulted in a single Attorney General’s Office action to enforce the initiative. Instead, the harshest sanctions have been handed down by courts ruling that government entities must comply with Proposition 209’s mandate.

An example of the Multiple-principal—agent model

An example of the *Multiple-principal—agent model* as described above, are professional pageant contestants who compete at multiple contests over the years, who must deal with new industry rules (usually adopted annually by the industry trade group) ranging from the height of pumps to the “permissible level of disclosure of sponsors and references” on a contestant’s standard resume. A pageant contestant evaluates her compliance of pageant rules, sq , and the newly imposed policy, p , in this case, new rules on the height of pumps to a minimum of five inches. She then evaluates her compliance costs, k , especially in relation to dress code changes, which can cost from hundreds to thousands of dollars. If she chooses to comply or not comply, she then evaluates the costs of implementation by her own agents – her pageant coach, hired

choreographer, designers, and makeup artists. Her decision to follow the pump guidelines will please her “by-the-book” pageant coach but will incur costs k with her choreographer (who has already designed dance steps requiring agility in movement) and her designers (who need to adjust dress length for shoe changes). In the sanctioning stage, her principals (pageant organizers, sponsors, parents, audience members) are able to observe the policy outcome, G , and whether the contestant is in full compliance.³¹ When $S=1=Z$, sanctions in the form of point deductions occur; otherwise sanctions can occur from individual principals each with probability of enacting Z . The collective-actor principal, “the audience vote” component of any pageant contest is analogous to the collective-actor principal of the “voters of California.” Both have collective action problems and their vote outcome does not take into account internal divisions in the collective-actor voting process (the ballot translates voters’ wishes into a “yes” “no” binary outcome).

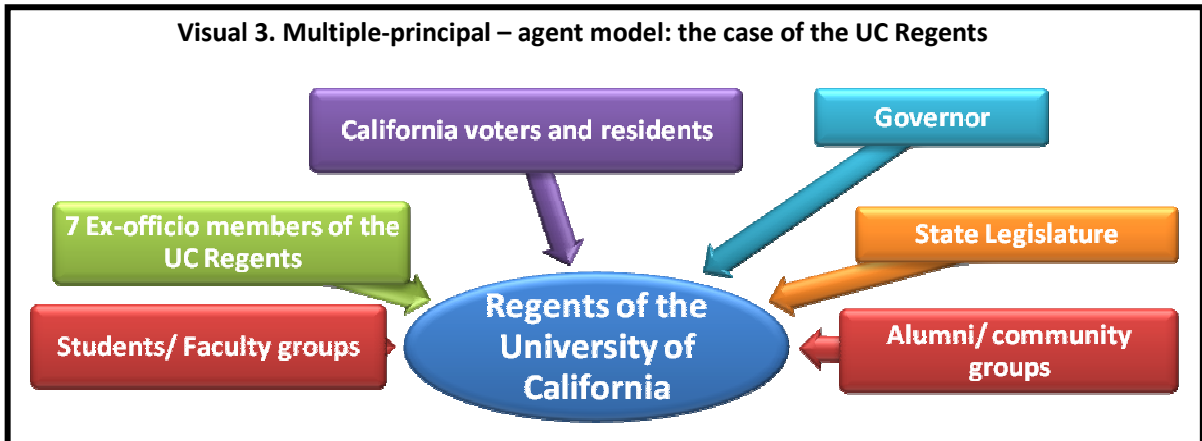
Empirical case #1: Competing Multiple Principals and objectives at the University of California

In the aftermath of Prop 209, chaos broke loose on University of California (UC) campuses statewide. Principals of the UC System each had organized interests and exerted efforts on their agent, the Regents of the UC system.

In addition to voters who can enact laws directly governing the 18 Regents of the University of California³², (1) the ex-officio members of the UC System – the Governor, the Lieutenant Governor, the Speaker of the Assembly, the president and the vice president of the Alumni Association of UC and the UC President, (2) the people of California, (3) the state legislature, (4) various constitutional officers of the state, (5) the students, faculty and alumni interest groups all serve as principals.

³¹ $S=1$ (i.e. $G \neq p$) denotes lack of compliance and w

³² The regents are the governors of the University of California System as required by Article 9 (Education), in the Constitution of the State of California; see “The Constitution of the State of California,” Article 9. *Official site for California legislative information. WWW site maintained by the Legislative Counsel of California.* Web. 10 Oct. 2009. <http://www.leginfo.ca.gov/const/article_9>



In a system where principals are scattered throughout the political apparatus and the general public, therein lies basic principal-agent information asymmetry. (i) Conflicts of interest between different principals and (ii) the failure for the agent to follow the majority of the principals' interest serve as major problems in this principal-agent relationship.

<u>Principal</u>	<u>Information asymmetry</u>	<u>Monitoring costs: labor effort</u>	<u>Monitoring costs: financial effort</u>	<u>Action costs</u>
Voters	High: information accessed primarily through the media	High: need to overcome collective action problem but can channel efforts through pro-Prop 209 groups	High: need to overcome collective action problem	High: No ability to dismiss or instruct the Chancellor
Governor	Medium: information accessed primarily through the media and official reports from the UC system	High: dispersed actors throughout executive branch	High: power of the purse strings decreasing	Medium: Limited ability to dismiss or instruct the Chancellor
Students	Medium/High: information accessed primarily through the faculty, staff, and official reports from the UC system	Medium: need to overcome collective action program but can channel efforts through ethnic student groups	Medium: low labor costs and high labor time flexibility	Medium: Limited ability to dismiss or instruct the Chancellor but can protest and perform acts of disobedience
UC Regents	Medium/Low: information accessed primarily through monitoring activities, visitations, faculty, staff, and official reports from the UC system	Medium: need to rely on professional staff	Medium: Cannot monitor chancellor/campus actions directly	Low: Nominally unrestricted in ability to dismiss or instruct the Chancellor
Staff/Faculty	Medium/Low: information accessed through staffing offices and role as agents of the chancellor	Low: rely on “expert” and “activist” monitors in Ethnic Studies, Gender/Women’s Studies, and Asian/Chicano/AfAm Studies departments	Low: Fully paid staff through unions that opposed Prop. 209; faculty and staff paid as agents of the university	Low: Nominal ability to sanction or instruct the Chancellor; Unrestricted in ability to mobilize staff/faculty’s own agents (students, interest groups)

First, in terms of costs to monitor the chancellor and various vice chancellors, the costs are extremely high for voters that are dispersed throughout the state. They can choose to align interests with a few anti-racial preferences groups like the American Civil Rights Coalition or the Pacific Legal Foundation, or sympathetic UC regents. The governor can monitor with relatively less costly efforts by aligning the interests of the UC agents through the annual budget process or other incentives but these incentives rarely deal with the specific interest (of enacting Prop. 209) in question. Students and UC Regents have similarly less costly monitoring mechanisms.

Regents can rely on professional staff like the affirmative action officers and the chief legal counsel's office to monitor agents in question. Students can rely on specialized niche groups like the Black Students Union or the BAMN (By Any Means Necessary) Coalition to monitor Prop 209 implementation. In contrast, the costs to monitor the local campus/chancellor are lowest for staff and faculty, which predominantly favor delayed or no implementation of Proposition 209. They have sufficient incentives to monitor the chancellor and to correct her actions as necessary, according to the preferences of the faculty/staff.

So there exist at least quintuple principal-agent relationships involving the UC chancellor. Within this network of relationships, the faculty and staff are located in the best position in the structure of the UC system and the state of California's governance system in effecting the UC's policy on Prop. 209.

Except for the voters who support Prop 209 ($L=p$), other principals support a value of L from partial compliance ($L \in (sq, p)$) to zero compliance, $L = sq$. Since 1996, the University of California has adapted varying levels of partial compliance ($L \in (sq, p)$). On March 8, 2001, some of the most vocal anti-p groups, the California Statewide Affirmative Action Coalition and the Coalition to Defend Affirmative Action By Any Means Necessary (BAMN) organized thousands of UC students and local high school students to protest in Berkeley, demanding the repeal of SP-1, the UC's policy banning affirmative action originally introduced by UC Regent Ward Connerly. Across the UC system various BAMN chapters and ethnic interest student groups joined in organizing statewide protests. The student protests became formidable and numerous administrative buildings were occupied. In one case, the Los Angeles mayoral debate was even forcibly cancelled due to student occupation of a UCLA building.³³ In a somewhat symbolic move, the Regents dropped SP-1.

³³ Dundjerski, Marina. "Students urge regents to repeal SP-1. Board to discuss issue at May meeting in San Francisco." *The Berkeleyan*. 22 March 2001. Web. 20 Nov. 2009. <http://berkeley.edu/news/berkeleyan/2001/03/22_sp1.html>

The case of the UC system shows an agent constrained by its multiple principal-agent relationships. The Regents have to evaluate the various instructions offered by its principals and the principals each have unique organizational characteristics to compel agent compliance and to minimize agency loss. Compared to the other agents of the UC system, voters have a collective action problem – they cannot occupy the Student Services Building on Library Walk or California Hall at UC Berkeley, they cannot haul Marye Ann Fox, the UCSD chancellor, out of her office and into an Assembly Education Committee hearing in Sacramento, nor can they threaten budget cuts in next year’s draft proposal.

Visual 4. Organizational Characteristics of the Multiple Principals of the UC Regents

Multiple Principal(s)	Organizational characteristics		
	Economic power	Grassroots power	Oversight power
(1) the 7 ex-officio members of the UC System	Yes, Budget powers		Limited
(2) the state legislature	Yes, Budget powers		Limited
(3) the governor	Yes, Budget powers		Limited
(4) students/faculty/alumni interests		Yes, student groups and activism	
(5) the voters people of California		Limited; primarily through litigation	

In general, the UC system of governance involves multiple principals, resulting in poor oversight. The state legislature often berates University of California leaders, the Academic Senate criticizes the President, the students take over California Hall, but with so many principals, the agent has numerous opportunities to shirk, to dodge, and to not enact *p*. On top of this, the Regents of the University of California itself consists of numerous agents: for example, the Academic Senate, made up of faculty members and charged with setting academic policies, handles faculty recruitment and retention, which should follow the restrictions set by Proposition 209.

The affirmative action policies enacted by UC reflect these divergent principal interests. While being forced to admit compliance to Prop 209 due to overwhelming (Z=1) potential of sanctions if found to be in *de jure* incompliant with the affirmative action ban, the UC has numerous, additional policies to attempt to vary and limit levels of compliance. On faculty search committees, the UC President's Office proposes that, "Each department should require search committees to create written search plans that describe, at a minimum, the underutilization and availability of women and minorities in the field, the methods of recruitment and advertising, the position description, and the criteria to be used in selecting candidates."³⁴ Other instructions are more explicit, including those on admissions: "efforts must be made to expand the pipelines of minority students entering graduate programs."³⁵ Administrative officials clearly face day-to-day possible sanctioning from school constituency groups every day. UCLA Chancellor Albert Carnesale complains, "UCLA's faculty is still overwhelmingly white (81%) and male (78%)" with his former vice-chancellor of academic development, Raymund Paredes, stating that diversity "certainly includes affirmative action."³⁶ The level of *de jure* compliance but high levels of *de facto* non-compliance represents the divergent interests advocated by the UC System's principals.

³⁴ University of California. Office of the President/Academic Advancement. *Best practices for Faculty Recruitment*. UC Affirmative Action Guidelines for recruitments and retention of faculty, 2 Jan. 2002. Web. 20 Nov. 2009. <www.ucop.edu/acadadv/fgsaa/documents/affirmative.pdf>.

³⁵ University of California. Office of the President/Academic Advancement. *Recruitment and retention of faculty*. UC Affirmative Action Guidelines for recruitments and retention of faculty, 2 Jan. 2002. Web. 20 Nov. 2009. <www.ucop.edu/acadadv/fgsaa/documents/affirmative.pdf>.

³⁶ As quoted in Jones, Andrew. "An exquisitely devious plan." *Diversity@UCLA*. Web. 20 Nov. 2009. <<http://www.bruinalumni.com/articles/diversityatuc1a1.html>>

Empirical case #2: Competing Multiple Principals at the city government level

Cities and local government actors are another example of the multiple principals-agent framework. In line with the analysis of Proposition 227 in Gerber, et al 2004, counties that opposed Proposition 209 and especially those that voted overwhelmingly against it like San Francisco (70% opposed) and Alameda (60% opposed) have low compliance. Of the 51 counties that supported Proposition 209, only 2, Sacramento and Orange faced lawsuits challenging their compliance with Proposition 209.

The fractured nature of governmental entities proves problematic for Prop 209 implementation. The constitutional amendment requires implementation across 58 counties, 48 cities, over 500 state agencies, 989 school districts from ABC Unified to Yucaipa-Calimesa Joint Unified District, and countless other sub-state level divisions in the State of California.³⁷ Within these localities, 147 cities have directly elected Mayors and city clerks, 174 cities have elected city treasurers, and 11 cities have elected city attorneys.³⁸ In the case of *Taber v. City and County of San Francisco* (a case suing the city for Prop 209 compliance), for example, the agent, the City Attorney (who ensures legal compliance of all city programs) answers to multiple principals – the state constitution which compels Prop 209, an elected San Francisco Board of Supervisors, other top governmental officials, and his own voters (the City Attorney is an elected official). San Francisco overwhelmingly rejected Proposition 209 (70% opposed) but the state as a whole, of which the county is a constituent unit of, passed the initiative. The agent has no incentive to enact *p* and the collective-principal (the California voters) has no way of sanctioning the City Attorney, except for those who reside in San Francisco and most likely to have voted against Prop 209 anyways.

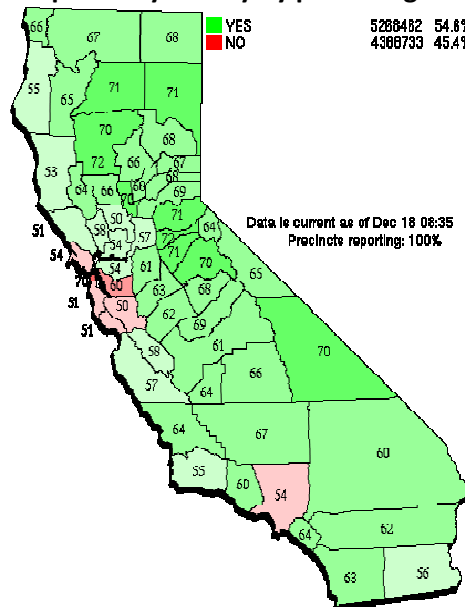
³⁷ "California School Districts." KCSOS. Web. 21 Nov. 2009. <<http://www.kern.org/fcmat/resources/state/all.html>>.

³⁸ "All About Cities." League of California Cities. Web. 21 Nov. 2009. <<http://www.cacities.org/index.jsp?displaytype=§ion=allabout&zone=locc>>

Visual 5. Litigation claiming Proposition 209 non-compliance, by county³⁹

Cases Involving Specific Localities	County	% support for Prop 209
Hi-Voltage Wire Works, Inc. v. City of San Jose	Santa Clara	49% opposition
C&C Construction, Inc. v. Sacramento Municipal Utility	Sacramento	57% support
Crawford v. Huntington Beach Union High School Dist.	Orange	64% support
Scott v. Pasadena Unified School District	Los Angeles	54% opposition
Cowles v. Gilroy Unified School District	Santa Clara	49% opposition
Taber v. City and County of San Francisco	San Francisco	70% opposition
Hunter v. Regents	Los Angeles	54% opposition
Avila v. Berkeley Unified School District	Alameda	60% opposition
American Civil Rights Foundation v. Los Angeles Unified School District	Los Angeles	54% opposition
Neighborhood Schools for Our Kids v. Capistrano Unified School District	Orange	64% support
Friery v. Los Angeles Unified School District	Los Angeles	54% opposition
American Civil Rights Foundation v. Oakland and the Port of Oakland	Alameda	60% opposition
Coral Construction Co. v. C&C of San Francisco and Schram Construction, Inc. v. C&C of San Francisco	San Francisco	70% opposition
American Civil Rights Foundation v. Los Angeles Unified School District	Los Angeles	54% opposition
American Civil Rights Foundation v. Berkeley Unified School District	San Francisco	70% opposition

Visual 6. Support for Prop. 209 by county by percentage of support/opposition⁴⁰



³⁹ Pacific Legal Foundation. *Pacific Legal Foundation Litigation Defending and Enforcing Proposition 209 – from 1996 Through 2009*. Pacific Legal Foundation. Web. 20 Nov. 2009. <<http://community.pacificlegal.org/Document.Doc?id=301>>.

⁴⁰ Secretary of State of the State of California. "November 5, 1996, General Election Statement of Vote." *Proposition 209 (By county election returns)*. Secretary of State of the State of California. Web. 10 Oct. 2009. <<http://ss.ca.gov>>.

Findings

Multiple principals and conflicting objectives have resulted in agent enactment failure in the case of Proposition 209 in California. We should be able to test the following hypotheses in a future study: Agencies or governmental units constrained by little to no principals in addition to a collective-principal are more likely to implement $p > sq$. The likelihood of implementation, p , will approach 0 if an agency has many principals in addition to a collective-principal.

For the University of California system and local entities, one principal should have ultimate sanctioning power ($Z=1$). Possible sanctioning entities include the Attorney General's Office and internal UC/city lawyers. Local entities can develop incentive structures, institutions, and techniques to monitor government officials and ensure Prop 209 enactment. Only with sufficient institutional changes to the multiple-principals—agent framework can the problem of noncompliance arising from initiative enactment by voters be resolved. If hybrid democracy is to work, the voters' will through the initiative process needs to be applied to state entities in a way that ensure minimal agency loss and congruous implementation throughout all state entities.

Conclusion: Towards Democratic Accountability

One of the basic democratic principles of American governance is that people elect members agent and they in turn hire and oversee other agents that implements the people's will.⁴¹ The agency framework, presented above, is therefore crucial in understanding decisiveness in policy implementation and preference allocation. Without proper delegation, the public suffers from severe agency loss, leading to a disunited state purpose.⁴²

If we assume the initiative process and systems of hybrid democracy represent the general will and that this ensures the legitimacy of elections as a proper expression of popular

⁴¹ For an example involving schools, see Roscoe C. Martin, *Government and the Suburban School* (Syracuse, 1962), pp. 39-63.

⁴² See McCubbins and Cox.

will, the agents must do their part.⁴³ But in fact, the agent, say the UC Chancellor, does fail to do her part. The various interests intensify cleavages on the playing field throughout the governance structure of UC agencies charged with implementing voters' wishes. The high costs of participation, monitoring, and action, has allowed one actor to serve as the primary, dominant principal – the faculty and staff and their unions.⁴⁴

Turning to another determinant of an agent's decisiveness – the institutional rules and policy authority of school boards and school systems, McCubbins and Cox argues that “when a state reduces the number of veto points and unifies diverse interests, it becomes more decisive.” In fact, the UC system was originally conceived of as a way to unify public university and public higher education efforts within a single governance system and to improve decisiveness in providing education. The multiple-principals-agent model provides an answer to the UC's stagnation and inability to produce change. There are too many status quo policies, each carrying separate implementation costs and in the implementation stage, each policy implementation entails separate costs to the agent. For the agent, the political cost incurred from implementing *Prop 209* upends political resources needed to support other government initiatives, especially those requiring support from opponents of reform.

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⁴³ Adam Swift draws out this difference between correctness and legitimacy and the connection between popular will and democratic legitimacy.

⁴⁴ The power of unions and their effect on electioneering and mobilization has been studied. An observational study shows that teachers and unionized/municipal workers form an ideological alliance – their turnout is 50% compared to 10% regular turnout for non-incentive driven voters.

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