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ETHNIC POLITICS, PUBLIC POLICY,
AND THE PUBLIC INTEREST

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by

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Ethnic Politics, Public Policy, and the Public Interest

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ETHNIC POLITICS, PUBLIC POLICY, AND THE PUBLIC INTEREST

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In this essay we develop a strategy for legislative policy making for public officials of color when they are a numerical minority of legislators. We will argue that effective strategies of legislative advocacy cannot rely upon a *rights-based* logic which has traditionally been pursued in much civil rights legislation and litigation. Rather we will propose that a *consensus-based* strategy focusing on defining the nature of the public interest is likely to be a more effective strategy for Latinos and African Americans to attain more favorable public policy through the legislative process.

ETHNIC POLITICS, PUBLIC POLICY, AND THE PUBLIC INTEREST

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The relationship between formal electoral representation and policy consequences has long been a focus of attention for political scientists. Interestingly, this relationship has led to two mutually reinforcing conclusions. The first is that the relationship among the preferences of the electorate, elected officials chosen, and actual policies enacted, under most circumstances, is weak at best. The extent to which a vote cast for a candidate contains a policy mandate, if not even some policy guidance, is very small. Most often a candidate does not know whether congruence in policy preferences was a reason that voters gave him/her their support, as compared to reasons that can be unrelated to policy congruence such as incumbency, familiarity, tradition, partisanship, age, ethnicity, gender, or race (Sniderman, Brody, & Tetlock 1991). Additionally, even if individuals are elected to office who have a clear mandate from the electorate, entrenched interests among other legislators, administrators, the courts, and interest groups may make policy success extremely problematic when in opposition to the mandate (Moe 1990). Second, the relationship among electoral preferences, elected officials and policy consequences can be strong under unique circumstances. Much of the literature on national elections makes this point when referring to critical realigning elections. Even though the relationship may be neither direct nor immediate, it has been the case in a number of realigning elections that the clarity of the issue positions taken by parties, candidates, and the electorate, the number of newly elected and sympathetic representatives, and the persuasiveness of the presence of these newly elected officials in different sectors of government, can at least set the conditions for major policy changes to begin to occur. In time, some major policy changes have been implemented (Brady 1988; Burnham 1970; Clubb, Flanigan, & Zingale 1980).

In this essay we will conceptually and empirically examine how these relationships among preferences of the electorate, the nature of elected officials chosen, and the natures of public policies enacted can and should be understood when applied to the contemporary circumstances of Latinos and African Americans in the United States. These relationships have not only captured the attention of those in ivory towers. The writing of one legal scholar on the topic, Professor Lani Guinier of the University of Pennsylvania School of Law, captured the attention of the President, the Senate, and the American public for over three months this year when she was nominated by President Clinton to be Assistant Attorney General for Civil Rights. The controversy that Prof. Guinier's writings engendered is an indication of the importance of these relationships to Latinos and African Americans, their significance to the American polity generally, and the need to continue to reconsider the most constructive ways to conceptualize these relationships.

Leaders of Latino and African American communities have long worked to enhance the number of representatives of their respective groups in legislatures with the expectation that, once in office, these representatives would work successfully to enhance the receipt of benefits through public policy to their respective groups. It has been the case since the application of the Voting Rights Act to African Americans in 1965 and to Latinos and other language minorities since 1975 that each of these segments of the electorate has experienced a substantial increase in its levels of voter registration, voter turnout, and election of candidates of first choice. These gains have not come easily. It

took one-hundred years since the end of the Civil War and one-hundred twenty-seven years since the end of the war between Mexico and the United States for these two groups to be given adequate opportunity to participate fully, and perhaps equally, in important phases of the electoral process. For African-Americans this was done with the full knowledge of what the period of Reconstruction had made possible for former slaves, and what became the reality of life after Reconstruction when African Americans Were denied an effective franchise (Kousser 1984). Latinos of Mexican origin had almost never had an effective franchise that led to the election of first choice candidates. When allowed to vote this was often at the direction of white patron landowners who needed Latino votes to maintain their own power. Most often explicit prejudice and language barriers effectively limited electoral participation (Acuna 1988; Anders 1982; Montejano 1987). The gaining of the franchise by each of these groups was seen by many of their leaders and others as a necessary first step in the attainment of meaningful integration into American institutions.

How do we reconcile the drive by African Americans and Latinos to attain the franchise when political scientists have demonstrated for many years that the attainment of the franchise was no guarantee, except in unique circumstances, of the receipt of favorable public policy? Perhaps few expected that the franchise would lead to immediate policy gain. What is more likely is that the franchise was seen as providing a necessary opportunity to begin to work toward favorable public policy. Perhaps it was expected that the effective use of the franchise would institutionalize opportunities to work for policy change through newly elected public officials. In sum, perhaps the franchise was valued most for the hope it represented, more than for the guarantees it assured.

The specific questions we will address in this essay through a review of relevant literature and examination of data are the following:

1. How much formal representation has been gained by Latinos and African Americans at national, state, and local levels of government? Much is made of the tremendous contribution of the Voting Rights Act to greater representation of these groups. We will examine the exact patterns of representation nationally and by each state with sizable Latino and African American populations.
2. How much meaningful policy change has occurred at national, state and local levels as a result of enhanced minority representation since 1965? If the magnitude of change has not been substantial, why has more favorable policy to communities of color not been enacted?
3. What advocacy strategies have been pursued to promote meaningful changes in public policy?
4. What advocacy strategies seem to offer the greatest chances for success?

We will argue that although the levels of representation attained by Latinos and African Americans at the present time is substantial in a historical perspective, it is still far below the levels attained by whites. As a result, we will argue that effective strategies of legislative advocacy cannot rely upon a *rights-based* logic which has traditionally been pursued in much civil rights legislation and litigation. Rather we will propose that a *consensus-based* strategy focusing on defining the nature of the public interest is likely to be a more effective strategy for Latinos and African Americans to attain more favorable

public policy through the legislative process. We do not mean to suggest that attainment of such a consensus regarding the public interest as informed by legitimate representatives of communities of color is guaranteed success. We do mean to suggest that the continued pursuit of a rights-based strategy is guaranteed to fail in our current political environment and in the foreseeable future.

THE VOTING RIGHTS ACT AND POLITICAL PARTICIPATION

The Voting Rights Act was originally intended to enhance the capability of African Americans, particularly in the South, to register and vote in national, state, and local elections.¹ Soon after its initial enactment, the critical role of the federal courts in interpreting and expanding the original meaning and impact of the legislation became evident. This was especially apparent in 1969 in the case of *Alien v. State Board of Elections* (393 U.S. 544) where the majority opinion of the Court stated that attempts at vote dilution, such as procedural and institutional devices designed to limit the effectiveness of blacks exercising the franchise that had been implemented by a number of Southern jurisdictions, were not allowed under the Section 5 Provision of the law. The focus of the law was now largely on guaranteeing not only that African Americans were able to cast a vote, but that in so doing the effectiveness of that vote would not be limited in a way that made it very unlikely that their first choice candidates would ever win election. As a result, the primary impact of the Voting Rights Act was understood by both its proponents and its opponents by how much it led to enhancing the likelihood of election of first choice candidates by African American voters. Representation levels of African American communities became a standard by which the success of the Voting Rights Act was measured. When Latinos and other language minorities were included in the legislation in 1975, the impact of the legislation on this group was understood similarly.

The courts and Congress have spent considerable time trying to specify the criteria by which determinations of vote dilution could be made. These criteria have changed over time, most recently in *Shaw v. Reno* (92 U.S. 357, 1993), but the critical pieces of evidence necessary have always been the presence of unusually low numbers of elected officials preferred by Latinos and African Americans and the presence of substantial vote polarization between a majority white electorate and Latinos and African American voters.

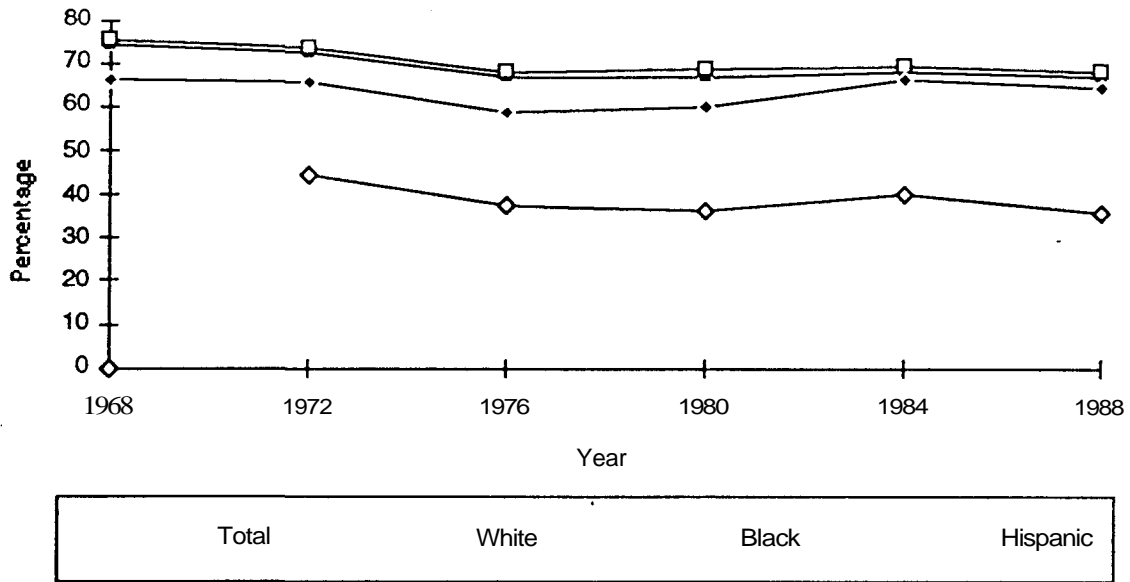
It is the consensus opinion of most analysts of the Voting Rights Act that a substantial percentage, if not an overwhelming majority, of currently serving Latino and African American public officials were chosen after the Voting Rights Act was enacted. Many were chosen as a direct result of litigation, administrative intervention, and threats of such litigation and intervention.

Registration As stated earlier, one of the chief goals of the VRA was to ensure equal access to the ballot regardless of race or ethnicity. Since 1965, Blacks have enjoyed increased access to the polls through fairer registration laws and other protections. With the 1975 expansion of the VRA to include language minorities, Latinos have also received increased access to the ballot through bilingual registration materials and ballots.

¹A full discussion and interpretation of the evolution of the Voting Rights Act can be found in Thornstrom 1987; and Grofman, Handley, and Niemi 1992.

The registration percentage for all voters has, however, declined from 74.3% in 1964 to 66.6% in 1988 or a decrease of 7.7 percentage points². For whites, the decrease in percentage points was 7.5 over the same time period. For blacks, it was 1.7 percentage points- a startling difference from whites. For Hispanic voters, however, a larger decrease occurred: from 44.4% reporting having registered in 1972 to 35.5% in 1988 or a 8.9 percentage point decrease. (Figure 1)

Figure 1: Percentage Reported Registered in Presidential Elections, 1968-1988



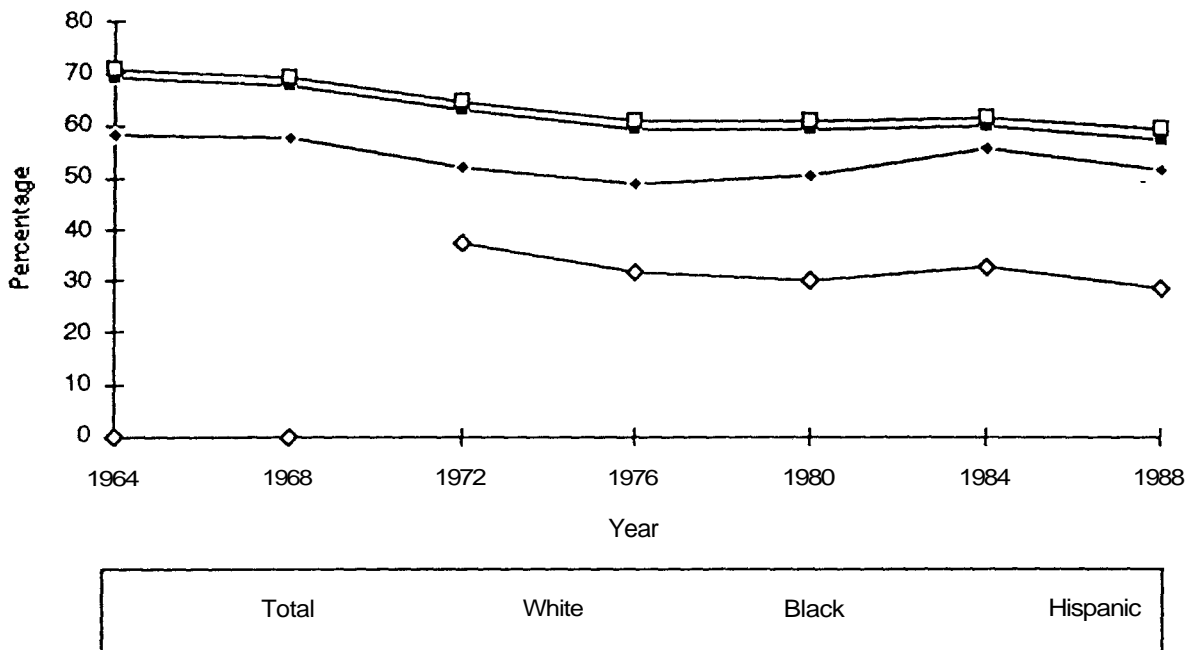
Voting A similar trend is evident in reported voting data. For instance, in 1964, 69.3% of the voting age population reported voting in the presidential election. In 1988, this had decreased to 57.4%- a percentage point decrease of 11.9. Linda Williams points to four possible causes of this decline: 1. the extension of the vote to 18-21 year olds (since 18-21 year olds are less likely to vote or register), 2. the decline of the strength of the political party, 3. loss of political efficacy, and 4. a general rise in dissatisfaction with government (Williams 1987).

However, the decrease in voter participation has not occurred equally across racial and ethnic lines. In 1964, 70.7% of whites reported voting as compared to 58.5% of blacks. In 1988, these numbers had decreased to 59.1% for whites and 51.5% for blacks. The percentage point decrease for whites is 11.6 and 7.0 for blacks. This suggests that even though the turnout is decreasing overall among the voting age population, it has decreased much more significantly for whites than for blacks. A similar case can also be

²The data collected for this section on registration and voting are drawn from Census Reports. Specifically, they are found in the Current Population Reports, Series P-20, Nos. 143, 192, 253, 322, 370, 405. Data from these reports is also used in the later calculations of parity ratios in states.

made for Latino voters.³ In 1972, 37.5% of Latino voters reported going to the polls. In 1988, that number had declined to 28.8% or a decrease of 8.7 percentage points. This decrease is still smaller than the overall decrease for whites. Figure 2 illustrates this point

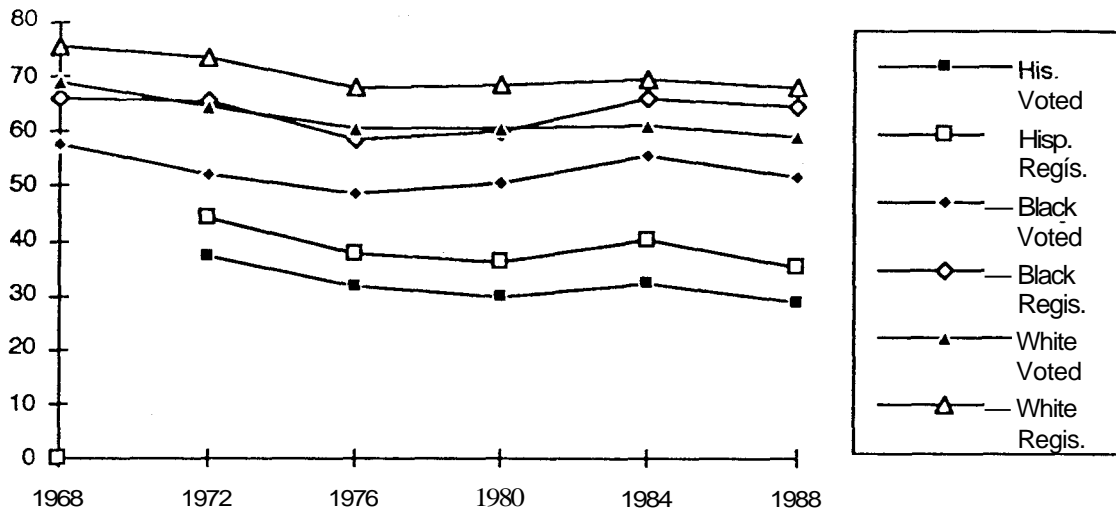
Figure 2: Percentage Reported Voting in Presidential Elections, 1964-1988



Finally, it may be useful in thinking about these issues to also consider the percentage differences between registration and voting within each race or ethnic category. In 1968, the percentage point difference between reported registration and reported voting for whites was 6.3 and 8.6 for blacks. By 1988, the difference for blacks had increased dramatically to 13 points while remaining relatively constant for whites at 8.8. For Latinos, the numbers are also fairly constant with a 6.9 point difference between reported voting and reported registration in 1972 and a 6.7 point difference in 1988. (Figure 3)

³Reported registration and voting data is available for whites and blacks in presidential elections from 1964- 1988. However, the first available information for Latino or Hispanic voters is from the presidential election of 1972.

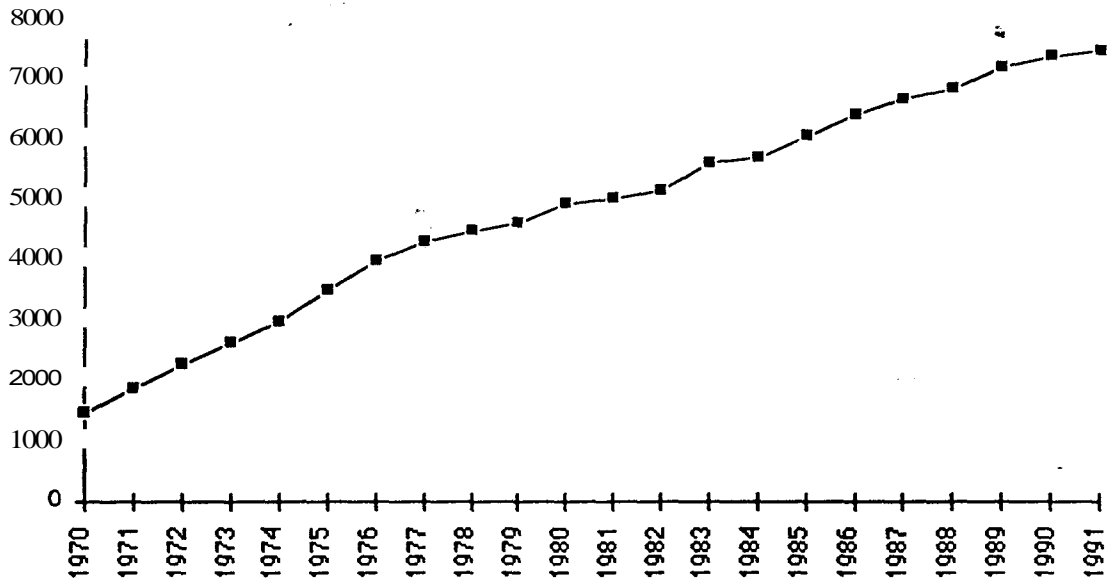
Figure 3: Percentage registered and voting in presidential election years, 1968-1988



Representation The focus on the election of minority representation both by the Supreme Court in *Gingles* and by the VRA has led to a dramatic increase in the numbers of Blacks and Latinos elected. These gains have not been uniform however. The local levels of government have seen the largest increases. And the trends have been slightly different for Blacks than for Latinos. We will discuss both below.

The first comprehensive data that was collected on the progress of Blacks in the political process was undertaken by the Joint Center for Political and Economic Studies Press in 1970. In that year, the JCPES reported that 1,469 Blacks had been elected. By 1991, this number had increased to 7,477. (Figure 4)

Figure 4: Total Number of Black Elected Officials, 1970-1991



However, the gains in representation did not take place equally in all types of offices. Table 1 shows the distribution of the elected officials in these years:

Table 1

<u>Office</u>	<u>1970</u>	<u>1991</u>	<u>% Change</u>
Federal Officials	10	26	160%
State Officials	169	458	171%
Regional Officials	NA	15	NA
County Officials	92	810	780%
Municipal Officials	623	3,683	491%
Judicial Officials/Law Enforcement	213	847	298%
Education/School Board Representatives	362	1,638	352%
Totals	1,469	7,477	409%

As is shown above the greatest gains in representation are found on the county and municipal levels. In 1991, there were 8.8 times as many county officials as in 1970. For municipal officials, 1991 had 5.9 times as many as 1970, while the number of federal officials in 1991 showed an increase of only 2.6 times as many as 1970.

Another way of looking at these data is through an analysis of percentage distribution of elected officials according to types of offices. In 1970, 6.26% of all black elected officials were county officials. In 1991, this number had increased to 10.83%. In 1970, 42.41% of black elected officials were found in municipal offices. In 1991, this

number had risen to 49.21%. In fact, with the exception of regional offices⁴, these were the only two types of offices that experienced growth. (Figures 5 and 6)

Figure 5: Percentage of Black Elected Officials by office type, 1970

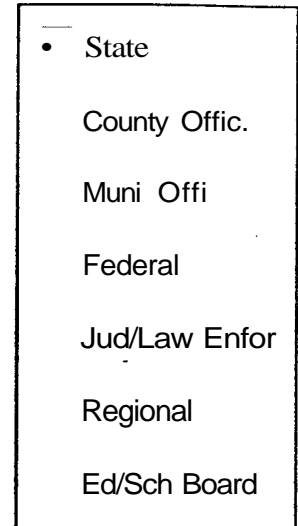
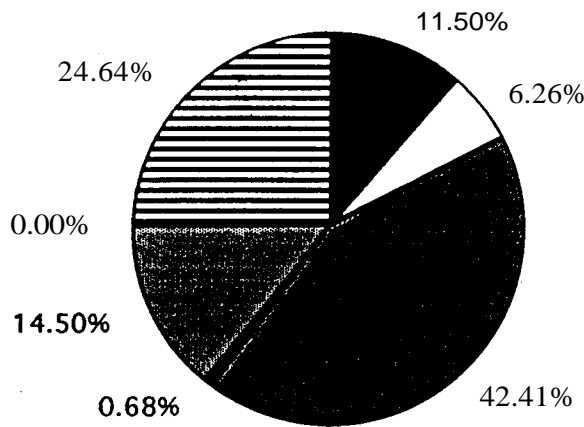
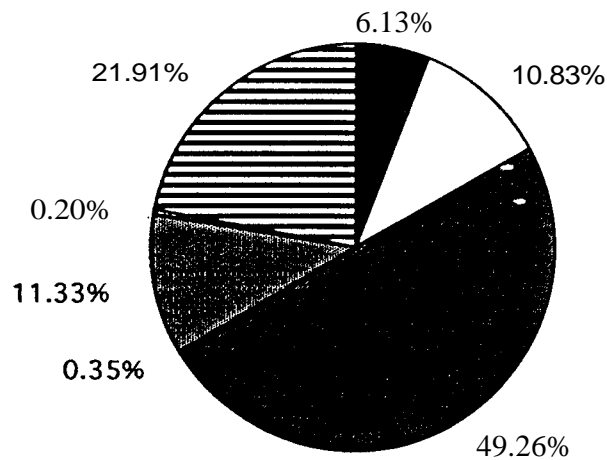


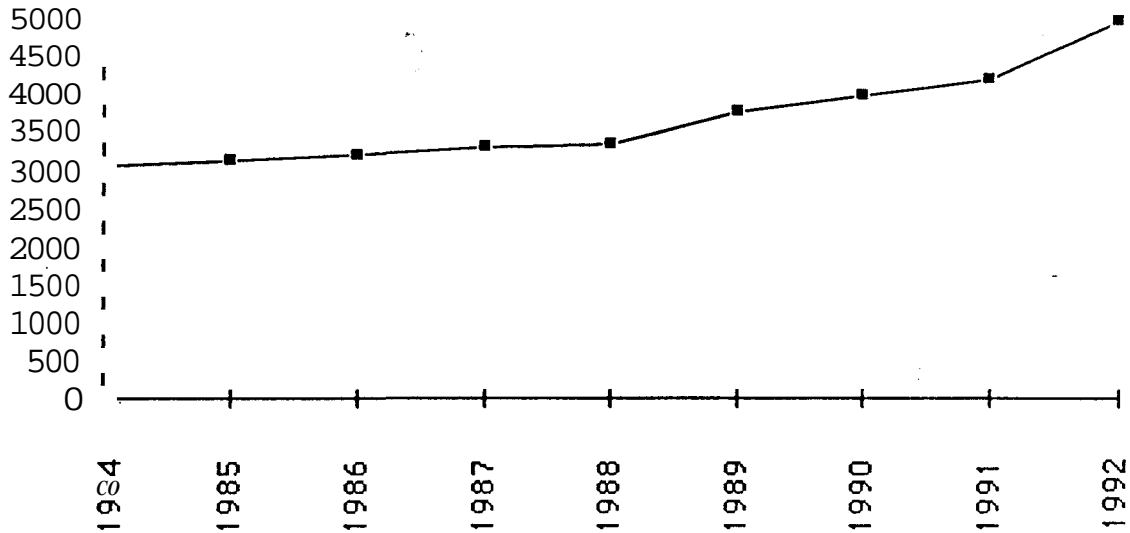
Figure 6: Percentage of Black Elected Officials by office type, 1991



⁴The designation of regional official did not appear in the JCPES data until 1976. These officials are mainly found in the Virgin Island government

Latinos have also enjoyed an increase in the number of elected officials. In 1984, the National Association of Latino Elected and Appointed Officials began collecting data and publishing the National Roster of Hispanic Elected Officials. In 1984, they reported that 3,063 Latinos had been elected nationwide. In 1992, this number had increased to 4,994. (Figure?)

Figure 7: Total Number of Hispanic Elected Officials, 1984-1992



Again, the gain in representation has not been equally distributed throughout office types. As shown in the table below (Table 2), the greatest gains have occurred in school boards and education offices⁵ followed by municipal officers and county officials.

Table 2

<u>Office</u>	<u>1984</u>	<u>1992</u>	<u>% Change</u>
US Reps	9	11	22%
US Senate	0	0	0
Governor	1	0	-1%
State Officials	4	8	1%
State Legislator	105	131	25%
County Official	289	386	34%
Municipal Official	987	1362	38%
Judicial/Law Enforcement	495	628	27%
Education/School Board	1173	2308	97%
Special District	NA	160	NA
Totals:	3063	4994	63%

⁵It is important to note that this conclusion rests on data which include the dramatic increase in the number of Latino representatives found in the Chicago School System. From 1991 to 1992, the number of representatives increased by 656 persons as the Chicago School System underwent restructuring.

It is again useful to view these data in terms of the percentage distribution of elected officials across office type and time. Most notable is the increase of 7.9 percentage points in the area of school board officials⁶ and the decrease of 3.6 percentage points in the offices of judicial and law enforcement (Figures 8 and 9).

Figure 8: Percentage of Hispanic Elected Officials by office type, 1984

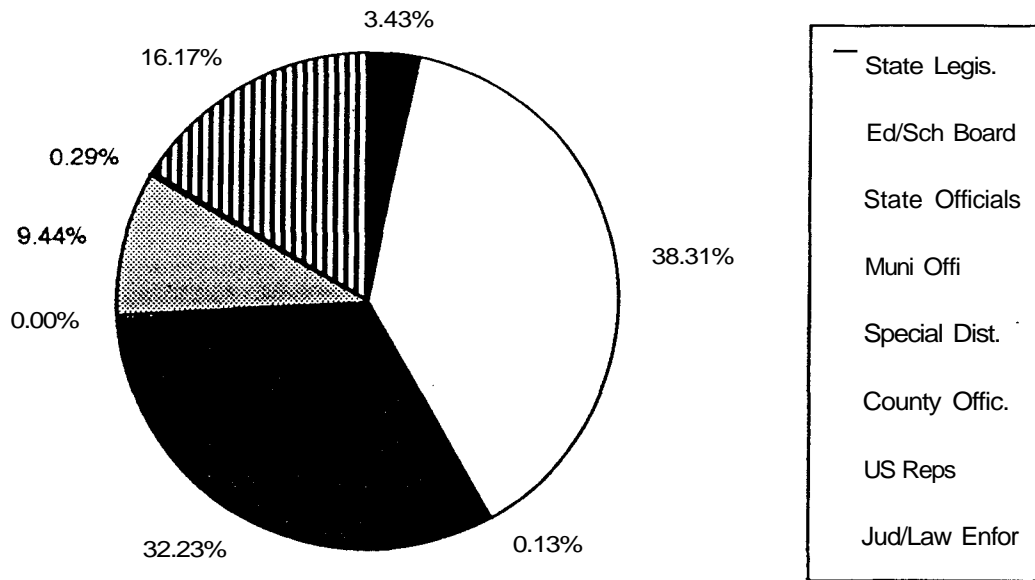
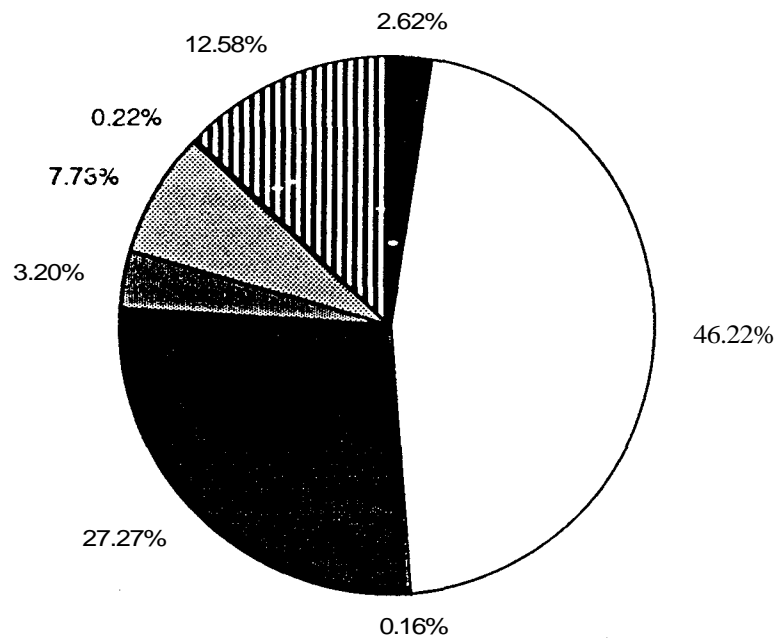


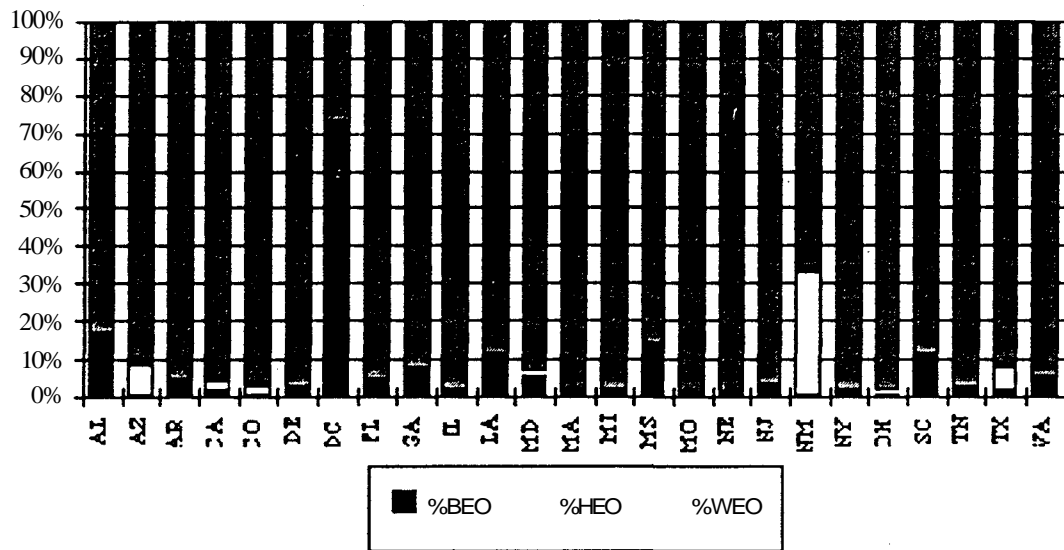
Figure 9: Percentage of Hispanic Elected Officials by office type, 1992



⁶Again, this conclusion is influenced by the restructuring of the Chicago school system.

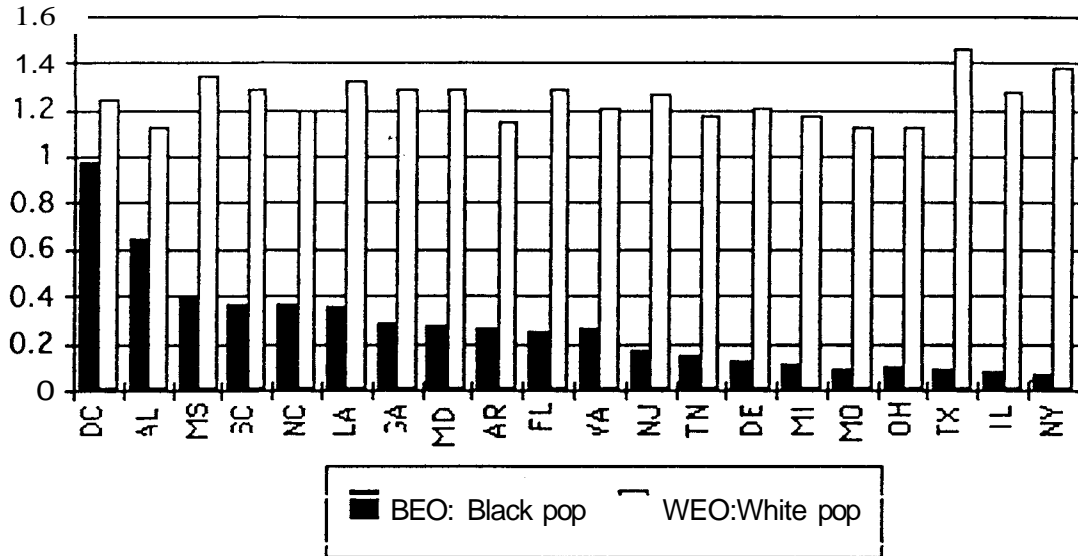
Looking at the increase in the number of representatives in terms of the percentage of total representatives of each state also informs our discussion. As Figure 10 shows, no state has more than 40% minority legislators.

Figure 10: Percentage elected officials in states having Black or Latino populations greater than 10%, 1991



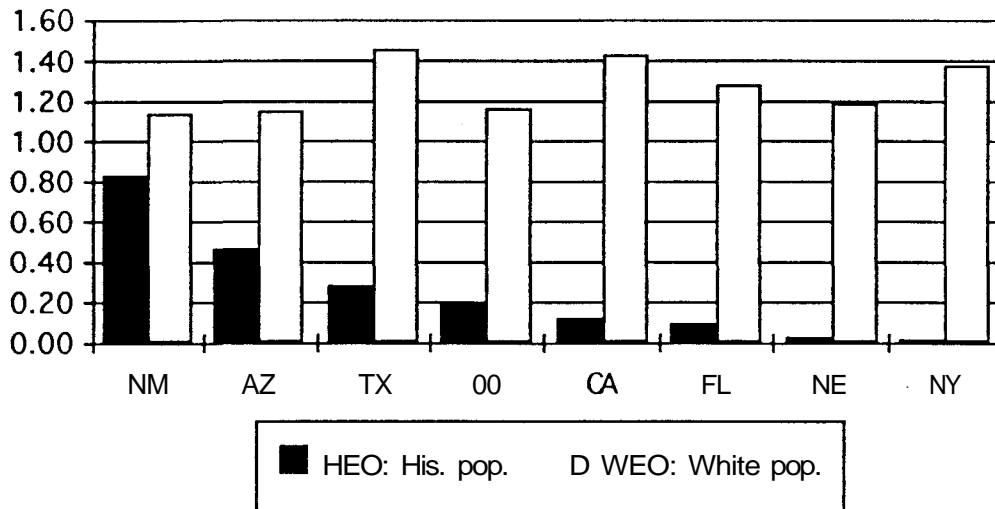
A final way of looking at these data is through the analysis of parity ratios. These ratios are calculated by dividing the percentage of the elected officials of a minority group by that group's respective population percentage. Essentially, the ratio illustrates how close each minority group is to attaining parity in representation. For example, the city of Washington D.C. has a total of 209 African American elected officials or 64.3%. Its African American population is 65.9% of the total population. Washington D.C.'s parity ratio with regards to African Americans is thus very close to 1. In fact, it is .98. However, no state comes close to achieving this type of parity. Figure 11 illustrates the parity ratio for states that have a African American population greater than 10%. Figure 12 does the same for states that have a Latino population greater than 10%

Figure 11: African American Parity Ratios, 1991



Parity ratios are calculated by dividing the percentage officials of each group by the percentage population of the respective group.

Figure 12: Latino Parity Ratios, 1991



Parity ratios are calculated by dividing the percentage officials of each group by the percentage population of the respective group.

Conclusions The above data indicate that registration and turnout rates of Latinos and African Americans have largely followed national trends and still lag behind those of whites. Although declines in African American and Latino registration and voting have not always been as dramatic as that of whites over the time period examined, overall rates of participation and voting for each of these communities of color remains below that of whites.

What is perhaps most interesting is the data regarding representation. The increases in both Latino and African American representatives since the Voting Rights Act have been dramatic. However, equally dramatic is the pattern of representation by level of government and the magnitude of that representation relative to whites. The largest increases in Latino and African American elected officials has been at local levels. Representation at state and national levels has increased much less. Using state wide data for all offices combined, one sees that the representation levels of these groups does not begin to approach a majority of officials in any state and is far below that of whites. Using percentage of the population as a baseline, parity ratios demonstrate that in no state are Latinos and African Americans represented at levels equal to or greater than whites. Whites are always over-represented on legislative bodies relative to their population, and African Americans and Latinos are always underrepresented.

These data regarding levels of representation must inform our subsequent consideration of the success public officials of color have had in enacting policy favorable to their constituencies. Specifically, it is important to note the effect that the persistent underrepresentation has had on a representative's status within a legislature or council. The African American or Latino representative remains a minority in the policy making arena. Logic then follows that a minority representative who pursues blatantly self-interested policies designed to benefit his/her constituency only will face substantial obstacles and almost certain defeat on the legislative floor. This conclusion is developed more fully below.

REPRESENTATION AND POLICY CONSEQUENCES

Studies of the impact of minority public officials on the enactment of policy favorable to the needs of their constituencies reveals that only limited success has been attained. When success has been achieved, some authors argue, it has been largely in areas of greatest interest and benefit to middle class interests of these communities. The working and lower classes have gained virtually nothing despite the steady increase in the presence of public officials of color. Other authors contend that it is the business and pro-growth segments of the community who have benefited.

Several important studies of African American and Latino public officials reveal that, at least at the level of city governments and school boards, the increased presence of public officials of color has led to some gains for respective constituencies. Perry and Stokes (1987) found that under the mayorship of Ernest Morial in the city of New Orleans there was a substantial increase in the number of blacks in city employment and the number of black appointees to certain boards and commissions. Rich (1987) argues that since Coleman Young was first elected mayor of Detroit in 1977 the number of blacks in city government generally, and in the police force in particular, has increased. Button (1990) found similar gains in six cities in Florida that had experienced increases in black representation. He documents increases in the responsiveness of the police, fire, public works, and recreation departments in both employment and service provision. Browning, Marshall and Tabb (1984) found that in most of their ten cities in the San

Francisco Bay Area greater levels of political incorporation by African Americans and Latinos led to a greater receipt of favorable policy in the areas of municipal employment, appointments to boards and commissions, affirmative action programs, minority firm contracting, and the presence of a civilian police review board. Fraga, Meier and England (1986) found that increases in the number of Latinos on school boards led to increases in Latino/a teachers which then led to modest but noticeable benefits in the treatment of Latino students. Fraga (1990) also found increases in the presence of African American and Latinos in executive positions and in the police and fire departments in the cities of San Antonio and Dallas when one compares their presence before representation provided through the Voting Rights Act to that after gains in representation through single-member districts.

Nonetheless, these gains must be balanced with the conclusions of other authors who argue strongly that these gains have been minimal at best, solely symbolic at worst, and certainly provide few benefits to those members of Latino and African American communities who are in most material need. Reed (1988) argues that gains made by African American public officials in cities has often resulted from white flight. The consequent decline in the metropolitan political economy places overwhelming constraints on black mayors. They must now focus on developing strong working relationships with holders of substantial investment capital and therefore become participants, if not leaders, in pro-growth corporate centered policy-making coalitions. Although he provides no systematic data, he does say that levels of poverty and unemployment remain unacceptably high in cities with black mayors (Reed 1988, 139).

Orfield and Ashkinaze (1991) level a similar criticism of black political leaders in the city of Atlanta. They argue that the historical presence of African Americans in some important decision making positions in the city and school system has done little to help Atlanta's most disadvantaged blacks. The tendency of Mayor Andrew Young during his tenure to pursue suburban focused economic development plans led to continued disinvestment from areas of Atlanta with the highest concentrations of low income blacks. Levels of neighborhood and school segregation have remained largely the same. As a result, "opportunity systems" (1991, xiv.) have developed in the city where most African Americans with material needs will never be able to take advantage of jobs and other opportunities provided by Atlanta's recent growth.

The most thorough criticism of the policy gains made by African Americans as a result of the increased presence of black public officials is made by Guinier (1991a; 1991b). Guinier attributes the lack of greater policy success by currently elected black public officials to the continued presence of white racism in many legislatures in local, state, and national levels (1991b, 1444). She argues that the focus of the Voting Rights Act on the creation of majority-minority single-member districts as a remedy to vote dilution often simply transfers the traditional problems of being a "discrete and insular minority" from the polling place to the municipal or county council (p. 1434). Mechanisms of legislative decision making such as requiring a second before a legislator can get an issue on the agenda, the formation of secret committees or committees based on seniority, and the traditional operation of much majoritarian decision making rules all have been used to marginalize newly elected representatives of color (pp. 1434-1436).

Reed (1988), Orfield and Ashkinaze (1991), and Guinier (1991a; 1991b) hold many black public officials themselves largely responsible for the lack of gains made by most African Americans in respective communities. They all point to the ways in which many of these elected officials seem to use their race to gain substantial acceptance in the minds of black voters but then, essentially, sell out these voters to the needs of corporate

capital. And even when these officials try to provide for their lower income constituents, according to Guinier, they often face legislative racism.

We are convinced that the gains referred to by the first set of authors is noteworthy, and we are also convinced that these gains are modest. Most increases in representation have occurred at local levels of government, and it is precisely these governments that are most constrained by the needs of capital which is mobile, have smaller amounts of tax generated revenue relative to state and national governments to develop public policy, and must confront the daily consequences of governing service-needy populations. As well, local governments tend not to have the authority to enact the sorts of comprehensive policies that might benefit materially needy citizens most. Indeed, the challenges faced by public officials are formidable.

LEGISLATIVE STRATEGY AND POLICY CONSEQUENCES

Rights-based approach As discussed, enhanced legislative representation for Latinos and African Americans is certainly no guarantee for the receipt of favorable public policy. Even though the Voting Rights Act has been effective in removing barriers to vote dilution, as Guinier (1991a; 1991b) indicates, it does little if anything to enhance the probability of success in legislative arenas. As Reed (1988) and Orfield and Ashkinaze (1991) argue, when blacks become such a sizable portion of the electorate that they can elect a substantial number of local legislators, the factors associated with their numerical predominance such as residential and business out-migration inhibit their capacity to effectively bargain with the holders of major capital. Again, legislative success becomes problematic.

Reed (1988) and Orfield and Ashkinaze (1991) offer only limited guidance as to which legislative strategies might be pursued by public officials of color to promote the interests of their constituents through public policy. Reed briefly recommends that such officials tax those businesses whose profits are locked into the geography of the city and therefore are unlikely to relocate, use their cultural authority to make moral arguments in favor of the disadvantaged, take outrageous stands on controversial issues to dramatize the needs of their cities, call for a metropolitan wide tax, promote a nationally coordinated industrial policy, or promote a policy of reindustrialization (Reed 1988, 166-173). Orfield and Ashkinaze also outline recommendations. Among the policies they propose are reviving civil rights enforcement, understanding urban issues from a metropolitan perspective, focusing on alleviating poverty and income inequality, enhancing education and job training for the materially needy, promoting their college access, and exercising more active leadership (Orfield & Ashkinaze 1991, 221-234).

What is common to these two sets of proposals is the use of a *rights-based* logic to promote the interests of communities of color. That is, all of the policy recommendations rely on an understanding of what is in the self-interest of African Americans or, by extension, of Latinos to justify the provision of policy. The logical sequence is as follows: 1) communities of color are in material need, 2) they should not be in material need, 3) policies should be enacted that better meet this material need because these communities have been hampered in their development by remnants of past discrimination as well as by economic forces largely beyond their control, 4) public officials representing communities of color should be the leaders in the promotion of these policies because their constituents will directly benefit and also because their very representation is likely to be a result of legislation and litigation intended to redress past

discrimination, and 5) therefore, communities of color have a *right* to these sorts of benefits through public policy.

This logic is most clearly articulated in the writings of Guinier. Her calls for the implementation of practice of voting and legislative decision making guided by "proportionate interest-representation" are replete with this rights-based logic (Guinier 1991a, 1080). Guinier proposes to compensate for the lack of focus on legislative decision making in traditional understandings of the Voting Rights Act by 1) enhancing the likelihood that representatives of communities of color can be successfully elected through the adoption of systems of cumulative voting, and 2) enhancing the probability of legislative success for representatives of color through such techniques as super majorities, minority veto, concurrent legislative majorities, consociational arrangements, and rotation in office (pp. 1138-1140). In these ways, the limits of relying on geographical compactness for election are less. Similarly, legislative success is less dependent on the continuous attainment of simple majorities.

Guinier states that she is trying to develop an understanding of "politics that is both interest-based and deliberative" (1991a, 1145). In our view, her understanding is also one that is clearly rights-based: African Americans and other communities of color protected under the Voting Rights Act have the "right" to special protection from entrenched white majorities in legislative decision making. Guinier's discussion of the circumstances faced by black legislators in Etowah and Russell counties in Alabama make this understanding very clear (p. 1144). These special protections are gained by changing the rules of legislative decision making to allow representatives of communities of color a special capacity to thwart simple legislative majorities.

We fully support Guinier's efforts to focus on the deficiencies in the relationship among electoral preferences, elected officials and policy consequences for communities of color. However, her call for proportionate interest representation, as currently articulated, has a greater potential to inhibit the interest-based and deliberative politics that she advocates than it does to enhance it. She notes criticisms regarding views that her proposals amount to basically a set-aside program for representatives of communities of color and are unlikely to occur during a time of retrenchment and regression from aggressive civil rights enforcement. We agree that these concerns are well-founded.

In addition, other concerns confront us. For instance, why should a legislative majority voluntarily agree to lower its capacity to maintain power as is suggested under proportionate interest representation? Under what logic can a court mandate such a circumstance? If the rights-based logic is pursued, i.e., because African Americans and Latinos can face hostile legislative majorities they need to be protected in the legislative process, how is this right justified to other legislative minorities who have also been frequent losers to legislative majorities, such as other numerically small groups like civil libertarians, socialists, and extreme conservatives? Would the application of super majorities and the minority veto apply only to representatives of African Americans and Latinos or would it apply as a general principle of legislative decision making? If it applies generally, what would prevent a continuous hostile legislative **minority** from blocking legislation favoring communities of color when their representatives have put together simple majority support? It is of course possible to argue that African Americans and Latinos are largely unique in their legislative experiences as an extension of the justifications offered to provide them special protection under the Voting Rights Act in the first place. If this is so, will it not be necessary to establish the same sort of evidentiary standards for proving "legislative racism" as are necessary for proving vote dilution?

Also problematic is Guinier's contention that "the promotion of self-identified, rather than geographically predetermined, interest preferences....helps alleviate social conflict and political alienation" (Guinier 1991a, 1149). Proportionate interest representation calls for the combination of an electoral system based on interests and a cumulative voting scheme designed to register the strength of voter support. This system would allow African American and Latino communities a greater opportunity to achieve higher levels of representation. It is unclear how this system will alleviate social conflict. At issue is the idea that as Blacks and Latinos reach greater levels of representation, often at the expense of white legislators, that a different kind of social conflict or backlash is likely to occur. Yes, this backlash will not be targeted at officials elected from geographical districts. Instead, it will likely occur as a result of the simple fact that more representatives of color are winning seats on councils and in legislatures. Much the same reaction will occur with regards to these special electoral procedures that have, according to Guinier, already been established regarding the formation of single-member districts. Thus, we are left uncertain as to how these new electoral procedures will alleviate social conflict. In fact, processes of formulating and implementing such a proposal are likely to exasperate racial and ethnic tensions.

Finally, we are also uncertain how proportionate interest representation will increase responsiveness of the elected official to their constituents as Guinier contends it will. It is her argument that district based elections reduce the amount of competition by essentially guaranteeing reelection. Conversely, proportionate interest representation would increase electoral competition by requiring candidates and elected officials to "be continuously engaged in issue identification and articulation" (Guinier 1991a, 1149), or put more simply, candidates would be constantly engaged in campaigning for support. Guinier hypothesizes that this increased electoral competition would lead to a greater responsiveness to voters and constituents since no one would be guaranteed reelection. However, as recent literature has shown (Sniderman, et al. 1991), identifying constituency preferences is a problematic task. The representative is left with the impossible undertaking of discovering what exactly motivated his or her supporters. When this idea is coupled with the fact that it will become more difficult to identify such supporters when no longer geographically based, it becomes apparent that a greater level of responsiveness is not likely to occur. In fact, just the opposite is likely to take place.

Consensus-based approach Distinct from the rights-based approach taken by Guinier (1991a; 1991b) in developing legislative strategies to enhance the policy success of representatives of African American and Latino communities, we argue that a consensus-based approach is more likely to lead to success. The consensus-based approach that will be developed further below has the same fundamental goal as that proposed by Guinier: the attainment of the legislative agreement necessary to enact policies that address the needs of communities of color. However, it understands the legislative policy-making process more fully and gives noticeably greater weight to the possibility of policy change occurring at the stage of agenda-setting, than does the rights-based approach. We will also argue that a consensus-based approach is more likely to avoid the concerns of white backlash that a rights-based approach engenders. We will argue as well that a consensus-based approach is more likely to lead to the attainment of a deliberative, self-interested politics favored by Guinier. Lastly, we argue that a consensus-based approach differs enough from the rights-based approach to require that minority public officials see themselves in unfamiliar, new ways.

Baumgartner and Jones (1993) provide a conceptualization of the policy-making process that provides the framework for our consensus-based approach. The normal process of policy making in the United States is one where major changes in policy do

not occur. However, there are instances when new policy proposals appear on the national agenda and are implemented into law. Baumgartner and Jones offer a model of the policy-making process in the U. S. that accounts for both periods of substantial stability and major change: a model of "punctuated equilibrium" (1993, 18). They state:

The lack of a general equilibrium in politics does not rule out partial equilibria, especially where those partial equilibria are enforced through institutional structures such as policy subsystems. Such partial equilibria are not maintained through a balance between policy preferences of the mass public and the policy outputs of government. Rather, such arrangements are maintained through the allocation of attention of governmental elites and the apathy of those not keenly interested in the particular issue handled by the policy subsystem (p. 18).

Policy making tends to be stable because those with the greatest interest in a policy area tend to have shared values regarding how an issue should be addressed. These shared values can be characterized as a "policy image" (p. 25). This policy image refers to the ways in which policies are understood and discussed which includes substance, logical linkages across relevant phenomenon, and related emotive appeals (pp. 25-31). These shared values tend to be institutionalized in specific "policy venues" (p. 31). The venues refer to the institutions and groups who have the authority to make decisions on issues (p. 31).

Moreover, the policy-making process is not static. Issues change and views on issues change. But perhaps most significantly, those who currently do not benefit from a particular policy redefine issues such that new images can be considered as relevant to an issue and so that new participants can now take an active role. In fact, Baumgartner and Jones state that the policy-making process is in considerable flux, and quoting William Riker, state that "Disequilibrium, or the potential that the status quo be upset, is a characteristic feature of politics" (Riker 1980 as quoted on p. 13). Baumgartner and Jones conclude at one point, "Issue definition and institutional control combine to make possible the alternation between stability and rapid change that characterizes political systems" (p. 16).

A consensus-based approach in legislative strategy is fully consistent with the characterization of punctuated equilibrium provided by Baumgartner and Jones (1993). A consensus-based approach has as its goal the implementation of public policy that addresses the needs of communities of color. The successful adoption of identified public policy is the end the consensus-based approach attempts to attain. This approach focuses on the stage of agenda-setting in the policy-making process. As in Baumgartner and Jones (1993), this approach recognizes the opportunities available in the early stages of policy making to affect the final outcome of a legislative decision. It is here that this approach attempts to develop the policy image that will promote the support of enough legislators and others to assure the passage of the legislation. As in Baumgartner and Jones, it is understood that this image is not just a rhetorical device. The image is based upon a presentation of evidence and resulting substantive discussion that allow individuals predisposed to support the policy, and those not so predisposed, to fully assess its benefits and decide on the basis of this evidence whether or not to support the policy proposal. Additionally, a consensus-based approach utilizes relevant changes in policy venues as opportunities to promote and hopefully institutionalize new policy images. In this regard, we are suggesting that through this approach we can understand the unique opportunity presented by the Voting Rights Act to change policy venues. Public officials newly elected through the application of the Voting Rights Act represent new institutional players in policy decision making. These new players often come with

interests that have been historically excluded or underrepresented. This newness should provide different approaches to the resolution of salient issues.

A consensus-based approach also suggests that a successful policy image must effectively address the self-interest of communities of color, the self-interest of whites, and the self-interest of the broader community, at the same time. A consensus-based approach to policy image cannot be based solely on what benefits one particular segment of the electorate. The reconciliation of these different self-interests we shall term the attainment of an *informed public interest*. This approach drives public officials of color to continually work toward the attainment of this informed public interest. Lastly, a consensus-based approach, as has been evident throughout the previous discussion, has very high expectations of public officials of color. They are the key players in determining whether the informed public interest is ever attained and therefore whether policy responsive to the needs of communities of color is ever implemented.

Our earlier data demonstrated that public officials representing Latinos and African Americans do not constitute a majority of the legislators in most legislatures in the United States. In fact, in all national and state legislatures they are a clear minority of representatives. It is likely that in an overwhelming majority of local governments in the United States with substantial populations of these groups, representatives of color also do not comprise over 50% of legislators. As stated by Guinier, rules of majoritarian decision making in these legislatures require that these representatives build coalitions with other representatives if they are ever to have their policy proposals enacted into law.

A rights-based approach, such as proportionate interest representation as proposed by Guinier (1991a; 1991b), would statutorily mandate that the interests of public officials of color be given substantial weight in the final stages of the legislative process. A consensus-based approach requires that these representatives focus their attention on the agenda-setting stage of policy decision making to develop a favorable foundation of support throughout the legislative process. A consensus-based strategy requires that representatives of communities of color promote policy images which facilitate legislative support rather than procedures of decision making which effectively serve to mandate that support, as would a rights-based approach. This can be accomplished through the couching of policy proposals in terms that appeal to the self-interest of the community of color, as well as the self-interest of whites, and the self-interest of the general community as a whole. For example, enhanced educational opportunities, enhanced employment opportunities, enhanced health care, and enhanced housing opportunities would be promoted as benefiting communities of color and the entire society. The benefits to the entire society through a consensus-based approach would not rely upon an appeal to conscience, rather they would be based upon identifiable concerns such as cost savings, promotion of long term economic growth, reductions in crime, and reductions in the costs of law enforcement and imprisonment. It is the attainment of such an understanding of individual, group, and community self-interest that we referred to earlier as an informed public interest. A further departure from the rights-based approach is the importance of public officials of color. In a consensus-based approach representatives of communities of color have direct responsibility for capitalizing on changes in policy venues to work to change policy images that would lead to favorable outcomes. In granting this responsibility to public officials of color, a consensus-based approach also empowers the minority electorate to hold their representatives accountable for the delivery of favorable public policy.

The incentive to representatives of color to pursue such a legislative strategy can be outlined. Reed (1988) and Orfield and Ashkinaze (1991) argue that public officials of color have not been successful in pursuing policies that benefit their constituents in most

material need. The studies referred to earlier that attempted to catalogue beneficial policies pursued at local levels demonstrated only minimal benefit to substantial numbers of low income and low education African Americans and Latinos. It is necessary to recognize that in leveling this criticism, scholars have held public officials to standards of understanding to which they have not held themselves. Perhaps one reason more progress has not been made in the successful pursuit of such public policies is because we scholars have not provided them a more effective logic to demonstrate how the needs of the materially needy can be met, at the same time that the needs of corporate interests can be met, at the same time that the needs of middle class taxpayers can be met, at the same time that overall economic growth can be maintained. Our recommendation of the pursuit of a strategy of consensus-based decision making through the identification of an informed public interest attempts to provide such a logic. If the logic is sound, at least as a beginning, the benefits to the representatives of communities of color are apparent. Their constituencies should have a greater probability of receiving favorable public policy and these representatives will not incur the sort of severe criticism from representatives of white constituents. The minority constituency is provided benefits. As well, the representative maintains credibility with whites which should make the possibility of winning higher public office, which often requires electoral support from whites, even greater.

In sum, we view the consensus-based approach to legislative strategy as presenting the greatest opportunities for public officials of color to begin to work to attain public policy favorable to their constituents more successfully than they have been able to do in the recent past. Unlike a rights-based approach that attempts to statutorily mandate the development of consensus, we have outlined what we consider to be a useful logic that allows for legislative consensus to be built. Our approach is not guaranteed success. Nonetheless, it is, in our view, viable.

CONCLUSION

In this essay, we have developed a logic of legislative decision making that we think is capable of contributing to a better understanding of how public officials of color can more effectively strategize to promote supporting consensus in legislatures. We are realistic about our proposals. We are well aware that what we have proposed may seem to some as idealistic, to others as unrealistic, and still to others, perhaps because we are now from California (although both originally from Texas), as far too holistic. We accept these labels if they are assigned in good faith.

What is most apparent to us, however, is that we can all appreciate what the consequences have been for communities of color of not having scholars, intellectuals, and politicians spend more time doing the hard thinking necessary to strategize about how historically underrepresented racial and ethnic minorities can better position themselves to enact public policy that responds to the myriad of concerns in these communities. We do not take the easy way out of most scholars to sit back and criticize public officials for not doing more. It is more than time for us to assess our own scholarship by the same criteria that we use to assess public officials elected from Latino and African American communities. We have, of course, only presented the beginnings of such scholarship. It is a scholarship that we think is well worth pursuing.

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