

PROCESSES OF LEGITIMATION:
THE UNIVERSITY OF PHOENIX AND ITS INSTITUTIONAL ENVIRONMENT

By

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SIGNED: Martin David Hughes

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DEDICATION

To my family

and

To my teachers

and

To Joseph Ferdinand Gould (1889-1957)

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ABSTRACT

Specifically, this dissertation explains the rise of the for-profit university in the United States. Generally, it explains the legitimation of a new (form of) organization in an institutional environment.

In this dissertation I demonstrate that organizational legitimation is a process whereby a key audience serving as an institutional gatekeeper cognitively comprehends an applicant as a member of an existing category in the audience's classification system. When this process is problematic or contested, it consists of active negotiations between the audience and the applicant (and sometimes third parties) over how to apply or interpret the rules of classification.

Using a case-study framework I selected seven cases from the history of the leading for-profit university, the University of Phoenix. These cases represented episodes of successful legitimation by the three key gatekeeping audiences in the postsecondary education environment. I assembled the documentary record for each of these cases and supplemented them with informant interviews. With this evidence I compiled a narrative for each episode which I then analyzed using comparative and historical methods.

I found that audiences' classification systems varied according to their category configurations and their classification rules, and that these variations may affect how legitimation proceeds. I further found that audiences and applicants draw from their own tool kits of unilateral, bilateral, and multilateral strategies. Finally, I found that legitimation may proceed according to one of several different temporal models.

1. INTRODUCTION

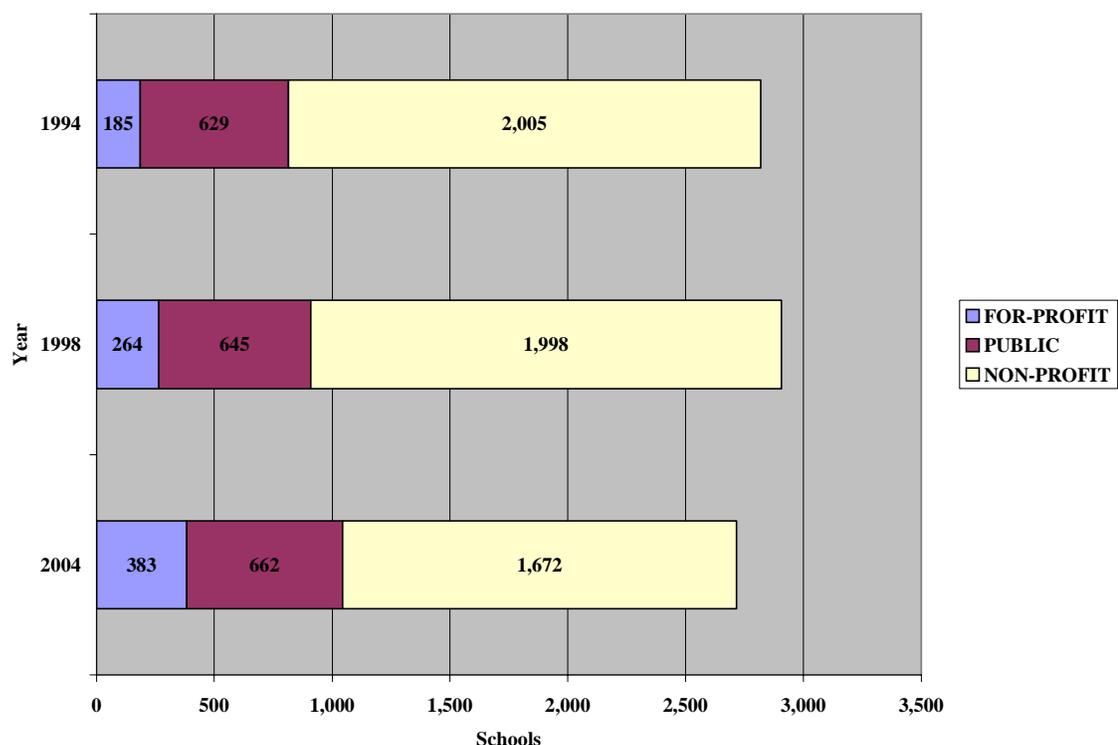
Education for profit simply doesn't seem right; it violates the established order of things.

John Sperling, Founder, University of Phoenix

1.1. THE PHENOMENON: UNIVERSITY OF PHOENIX'S EXTRAORDINARY SUCCESS

The “educational services industry” has transformed the U.S. postsecondary environment (Table 1.1). In ten years the number of for-profit universities doubled. Over the same decade public four-year schools grew slightly, but the dominant non-profit segment shrank. As of 2004 one in seven schools granting bachelors degrees and higher was organized for-profit, and this share is predicted to rise even further (Ruch 2001).

Table 1.1. American Four-Year Colleges and Universities by Sector, 1994-2004.



Source: National Center for Education Statistics, U.S. Department of Education

Although they sprang from very modest beginnings, by the turn of the 21st century all of the major for-profit universities were large multi-campus systems owned and operated by publicly traded corporations.¹ The undisputed industry leader—indeed, now a leader across all sectors of U.S. postsecondary education—is the University of Phoenix.

With corporate headquarters in Phoenix, Arizona, the University of Phoenix (UOP) is an accredited university that awards degrees ranging from associates to doctorates. From a total enrollment of eight students in its first year (1976) it has since become the largest university in the country, with more than 227,800 students seeking degrees at 157 sites across 33 U.S. states, and with more than 120,400 of these students using distance-education delivery systems from potentially anywhere in the world.

Meanwhile, the University of Phoenix's parent company, Apollo Group, Inc., posted a 2004 profit of \$278 million on revenues of nearly \$1.8 billion.² And in May 2002 Apollo Group, traded publicly on the NASDAQ exchange since 1994, became the first education company ever to be included in the widely-used Standard and Poor's stock index, the S&P 500.

How did all of this happen? How has the University of Phoenix not just survived, but thrived in an environment that once ignored for-profit universities—or worse, rejected them as illegitimate? How can UOP grow so large so fast, even as “it violates the established order of things” (Sperling 2000:105)?

The phenomenal success of the University of Phoenix is all the more extraordinary because of its hybrid organizational form. It is a novel combination of familiar elements from traditional higher education, proprietary career education, and

late-twentieth-century investor capitalism. The for-profit university's unique form long defied facile classification into any of U.S. postsecondary education's existing categories.

For example, unlike most traditional colleges and universities, faculty members at the University of Phoenix are almost entirely non-tenured, with most instructors employed on a part-time, contractual basis. The school boasts no library buildings, shelves, or books, no athletic teams, no residence halls, no student unions, and no picturesque campuses. It holds classes in leased or loaned office space throughout the country, or in cyberspace. Students—typically at least 21 years old and employed full-time—attend classes once a week, complete courses in five to eight weeks, and attend year-round, enrolling in one course at a time. Convenient, flexible, and practical, UOP is a national university with a global reach, and is touted by its founder as “the very model of a twenty-first-century university” (Sperling 2000:80).

Conversely, unlike most proprietary schools, the University of Phoenix is accredited by the same voluntary membership association that accredits neighboring public Arizona State University, and Grand Canyon University, a private Christian liberal arts college that was non-profit for the first half-century of its existence.³ UOP primarily grants academic undergraduate and graduate degrees, not technical, trade, or vocational certificates or diplomas. The school requires faculty members to possess both an advanced credential and relevant work experience, and to undergo rigorous training and ongoing review processes. UOP's classrooms and learning resource systems are state-of-the-art, meeting or exceeding the technological standards of many of its non-profit and public counterparts. It evaluates students regularly and extensively to determine what

they are actually learning. In short, UOP is a polished, professional enterprise serving the educational demands of a savvy clientele.

1.2. THE PUZZLE: ORGANIZATIONAL LEGITIMATION IN AN INSTITUTIONAL ENVIRONMENT

The University of Phoenix phenomenon presents sociology with a curious puzzle: How can a new (form of) organization become so successful, in so short a time, despite appearing and behaving so differently from so many other organizations in its institutional environment? How did it become legitimate when it did not seem to conform to many of the rules of how to look and act? How has it received legitimation from an institutional environment that does not necessarily endorse or support it?

These questions raise still other questions. What are the rules used to classify an organization as legitimate, and where do these rules come from? How do audiences in an institutional environment develop and apply these classification rules? What happens when the rules are insufficient to classify an organization as either legitimate or illegitimate? What are the categories into which audiences classify legitimate organizations, and where do these categories come from? How do audiences reckon with organizations that seem to violate their classification system of categories? What happens when an organization does not agree with an audience's classification rules, or does not accept an audience's classification decision?

In this dissertation I consider all of these questions with a multiple-case study in processes of organizational legitimation. Building on cultural theories from organizational and economic sociology, I use qualitative analysis techniques to address

three different kinds of significant episodes (seven episodes total) in the first three decades of the history of the University of Phoenix.

Using evidence from these episodes I show that organizational legitimation is not always unproblematic, and that it is a temporal process that occurs whenever organizational legitimacy is contested or difficult. During legitimation processes, organizations and audiences (and sometimes third parties) negotiate over how the rules that classify an organization as legitimate—i.e., as a member of an existing social category—are to be interpreted and applied.

Because it involves both interpretation and negotiation, the legitimation process is simultaneously a cultural and political activity. The research I present here is primarily cultural in its theoretical orientation, but it has many implications for strategic management as well.

1.3. THE PROJECT: THE PLAN OF THE DISSERTATION

I have organized this dissertation into nine chapters. In Chapter Two, immediately following this introductory chapter, I build a process theory of organizational legitimation based on elements of existing theories of legitimacy and legitimation and of institutional theories. My theory generates several sets of propositions with which I am able to analyze the evidence the cases I present in the three empirical chapters: legitimation episodes from the history of the University of Phoenix.

Before I present my case evidence I first provide a history and profile of the University of Phoenix in Chapter Three, situating this phenomenon into the broader institutional context of the U.S. postsecondary education environment, specifically that

part of the environment from which for-profit universities like the University of Phoenix emerged: the chain business college. Next I discuss the methods, analysis, and evidence of the dissertation in Chapter Four.

In the three chapters that follow I present evidence and analysis for each of the three cases, which I have arranged in roughly chronological sequence: Chapter Five is the case of accreditation by the North Central Association; the case of licensure by four U.S. states is in Chapter Six; and Chapter Seven is the case of investigation by the U.S. Department of Education. My comparative analysis of all three sets of cases appears in a separate chapter, Chapter Eight.

Finally, in Chapter Nine I offer a closing discussion of the dissertation. I draw conclusions and offer directions for broader application and future research.

¹ In 2004 eight of the largest were, in alphabetical order: Apollo Group, Career Education Corporation, Corinthian Colleges, DeVry, Education Management Corporation, ITT Educational Services, Laureate Education (formerly Sylvan Learning Systems), and Strayer Education (Apollo Group 2004b).

² Figures are current as of August 2004, the close of UOP's most recent fiscal year (Apollo Group 2004a, 2004b).

³ In early 2004 a private venture capital firm purchased most of GCU's assets for an undisclosed sum. With this change in ownership the school became the first for-profit Christian college in the United States. Investors hope to "grow the school to rival the University of Phoenix" (Broida 2004; Smietana and Barnes 2005:24).

2. THEORIZING ORGANIZATIONAL LEGITIMATION

2.1. INTRODUCTION

Few concepts are more integral to sociological inquiry than legitimacy. It is a social construction par excellence—“like beauty, it resides in the eye of the beholder” (Ashforth and Gibbs 1990:177). Many areas of sociology have rich literatures on legitimacy, but current theories still do not adequately explain how an organization becomes legitimate. After a half-century of research,¹ theories of organizational legitimation continue to assume that it is a unilateral and non-processual event. Consequently, no process theory of legitimation yet exists at the organizational level.²

The University of Phoenix phenomenon thus presents a unique opportunity to build a theory of organizational legitimation, because nowhere is legitimacy more crucial than in postsecondary education. In several ways what postsecondary education produces is legitimacy. Postsecondary education certifies individuals as legitimate employees by awarding them degrees (Stinchcombe 1990); it forms bodies of knowledge as legitimate disciplines or professions by offering them as academic programs (Meyer 1977); and in certain instances, it affirms business enterprises as legitimate industries by creating linkages between those enterprises and its own established curricula (Aldrich and Fiol 1994). In summary, postsecondary education cannot effectively produce legitimacy without being legitimate(d) itself.

In this chapter I construct the theoretical framework I will use to analyze several episodes from the history of the University of Phoenix as cases of organizational legitimation. My theory addresses the following questions:

- WHAT is “legitimation”? I define legitimation as the cognitive comprehension of an organization by a key audience. I propose that cognitive comprehension is causally prior to normative (or “socio-political”) legitimation. I further propose that cognitive legitimation is a necessary but insufficient condition for socio-political legitimation.
- WHO are the agents of legitimation? In my theoretical formulation, I propose that three key audiences in an organizational field—communities of practice, critics, and gatekeepers—may legitimate an organization. Of these three, gatekeeping audiences offer the most consequential legitimation because they enforce institutional rules, maintain field boundaries, and control access to resources. I propose that organizations seeking legitimation almost always formally apply for it from gatekeepers.
- HOW does an organization undergo legitimation? The heart of my theory is the process itself, which is analogous to the process used in the professions to diagnose human problems. I propose that when legitimation is unproblematic, an audience uses its classification rules to put the organization into an existing category in its classification system. In instances where legitimation is problematic or contested, I propose that the legitimation process consists of active negotiations between the audience and the applicant over how to apply or interpret the rules of classification.

The foundation on which I build my theory consists of elements of existing theories of legitimacy and of institutional theories. I first discuss these foundational elements before introducing my process theory of organizational legitimation.

2.2. EXISTING THEORIES OF LEGITIMACY: RESOURCE VS. RULES

Legitimacy is dual: it is both a cultural resource and a set of cultural rules (Giddens 1984; Sewell 1992; Stryker 1994). However, many theories of legitimacy treat it only as a cultural resource to be exchanged or mobilized. A resource approach is essential to understanding and explaining legitimacy, but too often it focuses only on the social structure in which legitimacy is embedded, neglecting the culture that gives legitimacy its meaning. A rules approach is also necessary.

Table 2.1 summarizes the distinctions between a resource approach and a rules approach to legitimacy and legitimation.

Table 2.1. Legitimacy and Legitimation: Resource vs. Rules.

	RESOURCE	RULES
ORIGIN	Weber	Durkheim
BASIS	Normative	Cognitive
PURPOSE	Evaluation	Comprehension Classification
EMPHASES	Outcome “Legitimacy”	Process “Legitimation”
APPLICATIONS	Political Sociology Social Movements Social Psychology	Cultural Sociology Economic Sociology

Legitimacy-as-resource comes from Weber (1947). From this perspective legitimacy is a cultural resource that establishes authority in macro-social structures. Such structures, in turn, constrain and orient micro-social actions and create systematic (often hierarchical) patterns in social relationships. The emphasis here is on outcomes.

Applications of this approach to legitimacy abound in such research settings as political sociology, social movements, and social psychology. At the macro-level, legitimacy-as-resource helps account for the support of a political or ideological regime (Habermas 1975; Lamont 1987; Lipset 1959; Tilly 1978); the acceptance of a stratified class or caste system based on wealth, status, or expertise (Brint 1994; Della Fave 1980, 1986); and the obedience to laws or the conformity to social conventions (Tyler 1990). At the micro-level, a resource approach to legitimacy helps explain the differentiation of social roles and a local division of labor (Burke 1968); the exercise of power and the development of a prestige order (Berger et al. 1998; Ridgeway and Berger 1986); the management of conflict (Ford and Johnson 1998; Johnson and Ford 1996); and the building of coalitions for collective action (Thomas et al. 1986; Walker et al. 1986). All of these applications treat legitimacy as a cultural resource that “increases the acceptance of, or reduces the resistance to, something else” (Zelditch 2001:5).

By contrast, legitimacy-as-rules traces back to Durkheim. From this perspective, legitimacy is a set of cultural rules governing fundamental “categories of understanding” or “frames that confine thought” (Durkheim 1995:8,9). Legitimacy rules classify phenomena as members of discrete, mutually exclusive categories that constitute a cosmological system imbuing social reality with order and meaning (Bowker and Star 1999; Douglas 1986). Here the emphasis is on the interpretive process.

Sociological applications of this approach to legitimacy are also abundant, but in many instances the research does not explicitly identify the concept as such. At both the macro- and micro-levels, legitimacy-as-rules helps explain how everyday reality is

experienced as an all-encompassing, integrated totality of “typificatory schemes” that “puts everything in its right place”—even in the slightest of social interactions or encounters (Berger and Luckmann 1966:31,98; Goffman 1959, 1974). At the meso-level it helps account for certain developments in “finite provinces of meaning” (Berger and Luckmann 1966:25), such as aesthetic genres (DiMaggio 1982b, 1987); religious conceptions of the sacred and profane (Durkheim 1995); the organization of scientific knowledge into disciplines and paradigms (Foucault 1972; Kuhn 1996); and the classification of all manner of social phenomena, from educational credentials (Rawlings and Bourgeois 2004) to labor market applicants (Zuckerman et al. 2003) and legal codes (Levi 1949), and from commercial products (Lounsbury and Rao 2004) to professional diagnoses (Abbott 1988). All of these applications treat legitimacy as a set of cultural rules for a system of categories “into which things can be put to do some kind of work” (Bowker and Star 1999:10).

2.3. A RULES APPROACH TO ORGANIZATIONAL LEGITIMACY AND LEGITIMATION

Organizational theories usually treat legitimacy as a symbolic resource whose necessity equals or exceeds that of material resources (Dowling and Pfeffer 1975; Pfeffer and Salancik 1978). The need for legitimacy may be greatest during organizations’ nascence period when “liabilities of newness”³ are most acute (Aldrich and Fiol 1994; Rao 1994; Zimmerman and Zeitz 2002), but it remains a vital resource throughout the entire organizational life course (Elsbach 1994; Kostova and Zaheer 1999; Ruef and Scott 1998). According to this perspective legitimation is merely the organization’s acquisition

of this resource, either through strategic actions, institutional processes, or both (Ashforth and Gibbs 1990; Oliver 1991; Suchman 1995).

When applied to organizations a resource approach is of limited use. While it does help to account for the survival of a single organization (Rao 1994), a population of organizations or an organizational form (Hannan and Carroll 1992), or an entire industry (Aldrich and Fiol 1994), legitimacy-as-resource fails to explain certain other empirical observations, such as why an organization's deviant appearance, behavior, or change does not necessarily result in its illegitimacy or de-legitimation (D'Aunno et al. 2000; Elsbach and Sutton 1992; Goodrick and Salancik 1996; Kraatz and Zajac 1996).

Organizational legitimacy and legitimation are environmental phenomena. The broadest and most holistic definition of the environment takes as its level of analysis⁴ the "organizational field": "the totality of relevant actors . . . that, in the aggregate, constitute a recognized area of institutional life" (DiMaggio and Powell 1983:148). Put another way, the organizational field⁵ is "a system of organizations operating in the same realm as defined by relational linkages and shared cultural rules and meaning systems. Local as well as distant connections are included as are both horizontal and vertical ties and linkages between similar and dissimilar organizations" (Scott 2003:130).

What makes the environment institutional, rather than merely material, is the shared cultural rules and meaning systems. These form the means of a rules-based legitimacy. "In a resource-dependence or social exchange approach to organizations, legitimacy is typically treated as simply another kind of resource," writes Scott. "However, from an institutional perspective, legitimacy is not a commodity to be

possessed or exchanged but a condition of reflecting perceived consonance with,” among other things, “relevant rules and laws” (Scott 2001:59).

2.4. INSTITUTIONAL THEORY: FOCUSING ON RULES

Organized as it is around a conception of institutions as rules, institutionalism—particularly the new institutionalism in organizational analysis—is a hospitable theoretical framework. Economics, political science, and sociology each began developing theories of institutions in the late 1800s, and since the 1940s scholars have applied these theories to organizations. Simon (1945), Selznick (1949), and Parsons (1956a; 1956b) were among the first generation of institutional analysts of organizations. A subsequent generation of researchers, including Meyer and colleagues (Meyer and Rowan 1977; Meyer and Scott 1983) and DiMaggio and Powell (1983), introduced what is now called “new institutionalism,” a theoretical reformulation that stresses cultural elements of the environment, in contrast to the political elements that “old institutionalism” emphasized (Scott 2001). More recently the “old” and “new” versions of institutional theory have achieved some rapprochement (Hirsch and Lounsbury 1997; Selznick 1996; Stinchcombe 1997). In the institutional environment of organizations, both culture and politics matter, and the two interact in complex and contingent ways (Greenwood and Hinings 1996; Schneiberg 2005).

Put simply, institutional theories define institutions as the “rules of the game.” They are not the game’s players. This differentiation is crucial, and it distinguishes the theoretical definition from ordinary usage. Non-academics—even academics who are non-institutionalists—define an “institution” as roughly synonymous with an

organization, as in, “universities are ‘institutions of higher education.’” However, this dissertation consistently uses institutionalist definitions: organizations are actors, and institutions are the rules of action. Institutional rules structure everyday society by defining and limiting the set of choices available to actors. Whether formal or informal, written or unwritten, institutions reduce uncertainty by establishing stable patterns of social interaction that are maintained and reproduced over time (Jepperson 1991; North 1990; Zucker 1977).

Scott recently offered “the following omnibus conception of institutions:”

- Institutions are social structures that have attained a high degree of resilience.
- Institutions are composed of cultural-cognitive, normative, and regulative elements that, together with associated activities and resources, provide stability and meaning to social life.
- Institutions are transmitted by various types of carriers, including symbolic systems, relational systems, routines, and artifacts.
- Institutions operate at multiple levels of jurisdiction, from the world system to localized interpersonal relationships (Scott 2001:48).

Finally, and most importantly, “institutions by definition connote stability but are subject to change processes, both incremental and discontinuous” (Scott 2001:48). Indeed, it may be their very stability and reduction of uncertainty that make institutional change—changes in the “rules of the game”—possible (Beckert 1999). Institutional rules are not only constraints on action; they are also opportunities for innovation. And because these rules are so complex and deeply embedded, such change is almost always incremental, taking place at the margins. Even apparently revolutionary transformations are usually made up of evolutionary shifts (Clemens 1993, 1997; North 1990).

Institutions do not change by themselves; actors change them. Because they are multiple, heterogeneous, and potentially contradictory, institutions are insufficient to determine social action. Thus actors must access “repertoires” or “toolkits” from which they select, combine, and modify institutions to advance their own interests and articulate with one or more “logics of appropriateness” in the institutional environment⁶ (Clemens 1997; Friedland and Alford 1991; Swidler 1986). Consequently, institutions “co-evolve” along with participating actors in the field (DiMaggio 1982a; Haveman and Rao 1997).

Not all actors are equally likely to try to change institutions. The principle of “middle-status conformity” predicts that institutional change emanates from either the core or the periphery of a particular organizational field, but not the middle-status zone in between, the “semi-periphery.” Since actors in the semi-periphery are insecure in their structural position, they are expected to conform most closely to existing institutions. By contrast, because their position is secure, core actors are “emboldened to deviate from conventional behavior,” even though “their nonconformity should be of a rather limited sort”;⁷ likewise, those at the periphery “are more open to altering the rules of the game,” and they “feel free to defy accepted practice because they are excluded regardless of their actions” (Phillips and Zuckerman 2001:380,385).

However, although the central actors that dominate an organizational field have the wherewithal to seek institutional change, they often lack the will. Why, after all, would “those who occupy the positions of power in the existing institutions willingly change their practices?” Since the interests of the powerful are reflected and supported by existing institutions, members of the core “would have the most to lose” if those

institutions were to change (Leblebici et al. 1991:337). “The status quo serves [these] members well”; thus they tend to be reactive rather than proactive, defensive rather than offensive (Stearns and Allan 1996:702).

Therefore peripheral actors are the most likely to challenge existing institutions. New actors at the margins become the primary agents of institutional change by introducing “deviant innovations”: new forms of organization representing new activities or ways of practice—or perhaps more common, new combinations of actor, organizational form, and activities (Clemens 1993, 1997; Hirsch 1986; Ingram 1998).

But among those actors seeking institutional change, not all are equally likely to be successful in their attempt. Challengers may indeed be “fringe players,” but they must still have access to a modicum of resources: “information, experience, networks, and a legitimate base from which to operate” (Stearns and Allan 1996:708). Consequently, “to produce institutional change, challengers are likely to be marginal, but not too marginal. . . . Rather than resulting from the resistance of the most disempowered, lasting rearrangements of institutional rules are more likely to be produced by the least marginal of the marginalized, the most advantaged of the disadvantaged” (Clemens 1997:63,12).

Broader contextual conditions, external to the particular organizational field, are also important factors to consider. This is not to suggest that institutional change is the simple and direct result of an exogenous shock that punctuates the equilibrium. Rather, such external developments as technological breakthroughs, shifts in demographic patterns, economic or political crises, and the like are circumstances that help or hinder the attempt and ultimate success of deviant innovations by peripheral actors. In other

words, absent favorable conditions, institutional change is more difficult if not impossible (Schneiberg 2005; Scott 2001).

Both economic and political changes are particularly favorable factors for institutional change from the periphery. “Economic change has the effect of disrupting current institutional arrangements, and in the process, providing challengers with increased resources and opportunities.” Meanwhile, political change “provides all groups with new opportunities, although it is the challengers who are the first to take advantage of these new opportunities.” Specifically, Stearns and Allan found that “for a merger wave to occur,” prompted by the actions of interested outsiders, “the necessary economic and political changes must occur simultaneously”: large amounts of capital both available and accessible to the outsiders in question, combined with the weak state enforcement of antitrust (Stearns and Allan 1996:701). Likewise Clemens’ (1993; 1997) study of institutional change unfolds during an “unsettled” (Swidler 1986) period in U.S. politics.

At the same time, however, peripheral institutional change is possible whether institutions are strong or weak in a particular organizational field. The U.S. radio broadcasting industry sprang up in the 1920s, had its “golden age” throughout the Great Depression and World War II, and found a new equilibrium after the advent of television. “In each historical period, most new practices were introduced by the less central parties of the period,” Leblebici and his colleagues concluded. “They were initiated by shady traders, small independent stations, renegade record producers, weaker [broadcasting] networks, or enterprising advertising agencies” (Leblebici et al. 1991:358).

Not only do challengers' innovations deviate from existing institutions, but both challengers and their innovations are initially perceived as illegitimate by core actors. At first this perception is purely cognitive. It does not take on a normative dimension until later⁸ (Hirsch 1986).

In order for deviant innovations to change the rules of the game, they must eventually be acknowledged, absorbed, and adopted by a critical mass of the organizational field, including established powerful actors in the core. As these practices shift from the periphery to the core, they increasingly become reframed as legitimate. Indeed, they are legitimate by sheer virtue of their being practiced by core actors (Clemens 1997; Hirsch 1986; Stearns and Allan 1996; Strang and Soule 1998).

But once thus appropriated and reframed, these practices are no longer deviant or innovative. They become institutions that may not even change the structural positions of any of the players! This is the irony of institutional change: the more things change, the more they stay the same. As innovation leads to imitation, "many onetime insurgents find that they are increasingly defeated in a game whose rules they had helped to invent" (Clemens 1997:13).

Actors can and do change institutions, but the ability of institutions to change actors is just as profound. Organizations are subject to environmental pressures to conform to prescribed models of structure and behavior (Meyer and Rowan 1977). New institutionalism asserts that organizations undergo "an inexorable push toward homogenization," a force it has called "isomorphism" (DiMaggio and Powell 1983:148).

Isomorphism is powerful and pervasive, both conceptually and empirically, but it does not explain all organizational phenomena. Analysis of isomorphism was a cottage industry in organizational sociology for more than a decade (Mizruchi and Fein 1999), with most analysts treating it as a case of social contagion or diffusion (Galaskiewicz and Burt 1991; Galaskiewicz and Wasserman 1989; Strang and Soule 1998). But although “the recognition that organizations not only must be viable in terms of whatever competitive processes are at work but must also exhibit structural features that make them both recognizable and in conformity with normative and regulative requirements goes a long way to explain observed similarities in the same arena” (Scott 2001:153), isomorphism is not inexorable, and evidence of persistent heterogeneity exists in some fields, including postsecondary education (Kraatz and Zajac 1996).

Meanwhile, commensuration is “the expression or measurement of characteristics normally represented by different units according to a common metric,” according to Espeland and Stevens. It “transforms qualities into quantities, difference into magnitude. It is a way to reduce and simplify disparate information into numbers that can easily be compared. This transformation allows people to quickly grasp, represent, and compare differences.” In other words, commensuration is integral to classification, and is therefore “crucial to how we categorize and make sense of the world” (Espeland and Stevens 1998:315,316,314).

Commensuration is different from isomorphism. Whereas isomorphism necessarily requires organizations to resemble each other, commensuration only requires that organizations be treated as sufficiently similar so as to be comparable. Isomorphism

focuses on, for example, how “one university tends to resemble closely another university” (Scott 2001:153), whereas commensuration focuses on “college rankings that numerically compare organizations” (Espeland and Stevens 1998:315). Whereas isomorphism focuses on the object of inquiry, commensuration focuses on the subject conducting the inquiry, the audience. Commensuration deals in subjective interpretation and comprehension more than the objective “reality” of isomorphism. “Institutionalized categories can withstand a good deal of variation” because “beliefs associated with categories are decoupled from the technical features of category composition” (Lounsbury and Rao 2004:974; Phillips and Zuckerman 2001). Moreover, even if phenomena within a category are substantially and substantively different, audiences are more likely to treat them as more similar to each other than to other phenomena not in that same category (Carruthers and Stinchcombe 1999).

Under certain conditions commensuration can be a mechanism for isomorphism. Zuckerman’s (1999; 2000; 2004) ongoing program of research on financial markets has found that publicly-traded firms must be “coherent,” that is, comprehended by securities analysts as unambiguous members of their respective category. “Incoherent” firms face greater volatility in stock price, greater trading volume, and among conglomerates a greater likelihood of de-diversification. Likewise, Lounsbury and Rao (2004) recently found that too much intra-category heterogeneity in the mutual fund industry led to the reconstitution of categories by a critical audience.

2.5. BUILDING A THEORY OF ORGANIZATIONAL LEGITIMATION

Existing theories of legitimacy, along with institutionalism, thus provide a foundation on which to build a process theory of organizational legitimation. At minimum such a theory must address the following questions:

- WHAT is “legitimation”?
- WHO are the agents of legitimation?
- HOW does an organization undergo legitimation?

2.5.1. *What is Legitimation? Cognitive Comprehension*

The duality of legitimacy does not establish the primacy of rules or resources, but—contrary to Sewell (1992)—it does claim a sequential ordering. Before legitimacy can be a resource, it must first be a set of rules that enables audiences to make sense of relevant phenomena in the social environment. Sociologists of knowledge have called this sense-making process “legitimation” (Berger and Luckmann 1966). Legitimacy-as-resource, then, is an outcome of the legitimacy-as-rules process of legitimation.⁹

Moreover, legitimation is a two-stage process in which cognitive comprehension is a necessary but insufficient precondition for normative evaluation.¹⁰ In other words, before an audience can pass judgment on whether a given phenomenon (in this dissertation, an organization) is desirable, good, or proper, that audience must first reckon with what that phenomenon (organization) is. Thus the initial stage of legitimation is a process of diagnostic classification.

The claim that cognitive legitimation precedes normative legitimation is the first major theoretical premise of this research, and it accords with recent formulations in the sociology of organizations (Aldrich and Fiol 1994) and economic sociology (Zuckerman

1999). A corollary premise is that, although cognitive legitimation by certain key audiences (i.e., gatekeepers) is necessary for an organization’s ultimate survival in that environment, normative (or “sociopolitical”) legitimation is not—it is optimal yet optional (Suchman 1995).¹¹

Proposition 1a. Cognitive legitimation of a phenomenon is causally prior to normative legitimation.

Proposition 1b. Cognitive legitimation of a phenomenon is a necessary but insufficient condition for normative legitimation.

Proposition 1c. Cognitive legitimation by gatekeeping audiences in the institutional environment is necessary for an organization’s ultimate survival; normative legitimation is optimal yet optional.

2.5.2. *Who Are the Agents of Legitimation? Key Audiences*

Early research on organizational legitimacy did not explicitly acknowledge specific actors in the environment (e.g., Dowling and Pfeffer 1975). Some later analyses corrected this oversight, referring to environmental actors variously as “audiences” (Elsbach 1994; Suchman 1995), “authorities” (Scott 2001), “constituencies” (Ashforth and Gibbs 1990; Ruef and Scott 1998), “interest groups” (Pfeffer and Salancik 1978), “sources” (Zimmerman and Zeitz 2002), “stakeholders” (Aldrich and Fiol 1994), and “targets” (Galaskiewicz 1985), among others. Following Zuckerman (1999), and for the sake of clarity, this dissertation consistently refers to them as audiences.

Organizational analysts have identified several key audiences in the institutional environment. What these audiences are “varies from time to time and place to place, but in our time, agents of the state and professional and trade associations are often critical for organizations” (Scott 2001:60). Other audiences identified include “licensing boards,

funding agencies, intellectuals, professional bodies, unions, business circles, and public opinion and the media” (Ruef and Scott 1998:880).

The variety of potential audiences may seem endless, but they can be grouped into three main types: communities of practice, critics, and gatekeepers. Each of these types of audience may legitimate an organization. The concept of community of practice is borrowed from the sociology of science. “It is, put simply, a set of relations among people doing things together” (Bowker and Star 1999:294). In an organizational field the community of practice is made up of those individual and collective actors most directly involved in the activities around which that field is structured. From the above list, professional bodies, unions, and business circles are all members of the community of practice; in postsecondary education the community of practice consists of colleges and universities, faculty, administrators, and their various representatives. Although their importance as actors is obvious, the role of the members of the community of practice as an audience is all but unacknowledged in the literature.

Critics are another type of audience. This concept has been used fruitfully in economic sociology, where critics mediate between buyers and sellers in a market. Critics such as securities analysts are especially crucial in markets like financial markets, where value is determined largely by social rather than economic forces (Zuckerman 1997, 1999)—in other words, where the environment is appreciably institutionalized. Critical audiences emerge to make sense of the environment and to offer their expert interpretations to other audiences.¹² Intellectuals and the media are examples of critics (in postsecondary education many intellectuals are also members of the community of

practice). Some research addresses the role of critical audiences, especially the media, in organizational legitimacy and legitimation (e.g., Deephouse 1996; Elsbach 1994).

Finally, the type of audience that has received the most analytical attention—and rightly so—is the gatekeeper. The concept of gatekeeper has its roots in social psychology, and refers to a position of control in a social network or structure (Corra and Willer 2002). More than just acting as social control agents in an industry (Zald 1978), more than just serving as governance structures for organizations in a field (Scott et al. 2000), gatekeeping audiences “keep the gates” by enforcing institutional rules and maintaining field boundaries. Agents of the state, licensing boards, and funding agencies are all gatekeepers, as are voluntary accreditation associations like those found in health care (Ruef and Scott 1998; Scott et al. 2000) and postsecondary education (Durand and McGuire 2005; Wiley and Zald 1968). Most if not all gatekeepers control access to substantive and/or symbolic resources, making their role doubly important.

Of the three types of audiences, gatekeepers most fully embody the duality of resources and rules that Sewell (1992) described. Resources give their rules power and durability, primarily through formalization (Stinchcombe 2001). For these reasons the main empirical focus of this dissertation is on legitimation by gatekeeping audiences. It is both more consequential and more formal than legitimation by other types of audiences. Organizations seeking legitimation almost always formally apply for it from gatekeepers.

<p><u>Proposition 2a.</u> Three key audiences in an organizational field may legitimate an organization: communities of practice, critics, and gatekeepers.</p>

Proposition 2b. Gatekeeping audiences offer the most consequential legitimation because they enforce institutional rules, maintain field boundaries, and control access to resources.

Proposition 2c. Organizations seeking legitimation almost always formally apply for it from gatekeepers.

2.5.3. How Does an Organization Undergo Legitimation? Classification or Negotiation

The process of cognitive legitimation is analogous to the two-step process used in the professions to diagnose human problems. Abbott calls the two steps of professional diagnosis “colligation” and “classification.” The first step, colligation, “is the assembly of a picture of the client; it consists largely of rules declaring what kinds of evidence are relevant and irrelevant, valid and invalid, as well as rules specifying the admissible level of ambiguity.” The second step, classification, “means referring the colligated picture to the dictionary of professionally legitimate problems. A classification system is a profession’s own mapping of its jurisdiction, an internal dictionary embodying the professional dimensions of classification” (Abbott 1988:41). Thus a problem is legitimate if it can be diagnosed by the profession, and professional diagnosis, then, is a strictly cognitive process of comprehension.

One finds analogues of all the basic elements of organizational legitimation in professional diagnosis. Regarding the actors, professionals are the audience and the client is the organizational applicant. Concerning the actions, colligation is the application of classification rules to the applicant’s evidence, and classification is the interpretation of that evidence by those rules. Finally, with respect to the conceptual framework, the

abstract, formal ordering of professional knowledge is the audience's classification system by which it can determine the legitimacy of the applicant organization.

The term "diagnosis" usually conjures up images of doctors, but an even more relevant profession is the law. As a special case of professional diagnosis, legal reasoning by judges shows some of the most striking similarities to the process of organizational legitimation, most notably the fundamental ambiguity of rules. "In an important sense legal rules are never clear, and, if a rule had to be clear before it could be imposed, society would become impossible" (Levi 1949:1).

Legal ambiguity makes judicial interpretation—i.e., diagnosis—not only possible but absolutely necessary. "The finding of similarity or difference" between two or more cases "is the key step in the legal process" and "is the function of each judge" (Levi 1949:2). But judges are not the only ones interpreting legal rules. Organizations subject to (and settings for) laws also engage in the construction of legal meanings (Edelman 1992). Here is where analogy and reality meet: audiences are organizations engaging in actual legal reasoning, a form of the diagnostic process of colligation and classification.

Like legitimation, the diagnostic process of legal reasoning is inductive, not deductive. Rules, categories, and their respective meanings and relationships are dynamic, not static (Dibble 1973).

Thus it cannot be said that the legal process is the application of known rules to diverse facts. Yet it is a system of rules; the rules are discovered in the process of determining similarity or difference. . . . A working legal system must therefore be willing to pick out key similarities and to reason from them to the justice of applying a common classification. . . . Therefore it appears that the kind of reasoning involved in the legal process is one in which the classification changes as the classification is made. The rules change as the rules are applied. . . . The law forum is the

most explicit demonstration of the mechanism required for a moving classification system¹³ (emphasis added) (Levi 1949:2-3).

This leads to the final set of theoretical premises. Legitimation requires a classification system into which an audience can put a given organization. If an applicant for legitimation unambiguously fits within an existing category of an audience's classification system, then legitimation usually proceeds without any difficulty. It colligates and classifies in an automatic, routinized, or ceremonial manner. In other words, when legitimation is unproblematic, the audience uses its classification rules to put the organization into an existing category in its classification system. When legitimation is problematic or contested, however, the audience and applicant actively negotiate over how to apply or interpret the rules of classification (Neilson and Rao 1987; Oliver 1991; Suchman 1995).

Proposition 3a. When legitimation is unproblematic, the audience uses its classification rules to put the organization into an existing category in its classification system.

Proposition 3b. When legitimation is problematic or contested, the audience and applicant actively negotiate over how to apply or interpret the rules of classification.

2.6. CONCLUSION

I have built my process theory of organizational legitimation on the foundation on existing theories of legitimacy as well as institutionalism. My theory has generated three sets of propositions which I will use to analyze the evidence in subsequent chapters. Meanwhile, I introduced the concepts of institutional change from the periphery and commensuration and isomorphism in the literature review because they organize the next chapter on the University of Phoenix and its institutional environment.

¹ Parsons (1956a; 1956b) is widely credited as the first to address specifically organizational legitimacy, although Clark's (1956) study of adult education, published the same year, was the first to address the topic empirically.

² Organizational ecology (Hannan and Carroll 1992) attends to legitimation processes at the population level, but is silent about how individual organizations undergo legitimation.

³ Stinchcombe's (1965) "liability of newness" concept figures prominently in ecological analyses of the legitimation of an organizational form. Other research has discussed the necessity of legitimacy for organizations experiencing "liabilities of foreignness" (e.g., multi-national enterprises) (Kostova and Zaheer 1999).

⁴ Other possible levels of analysis for the study of organization-environment relations include the "organizational populations" of ecological research and "organization-sets" popular in earlier generations of organization-environment scholarship (Scott 2003).

⁵ "Organizational field" is roughly equivalent to "industry" (Hirsch 1985) or "societal sector" (Scott and Meyer 1991).

⁶ "While individuals may master the differences between the interactions expected at a business meeting and a dinner among friends, this does not ensure that they will be guided by those expectations. Insofar as they do, institutional reproduction and the preservation of order result. Insofar as they don't, there is a possibility of change. If this failure is intentional, it constitutes a potent strategy for political opposition" (Clemens 1997:10).

⁷ "While both high- and low-status actors deviate more often, the former may qualify their departure from convention by signaling to the audience not to interpret it as a sign that they are no longer players" (Phillips and Zuckerman 2001:386).

⁸ In Hirsch's example, "hostile takeovers" of businesses had originated in the American southwest in the 1950s, where it attracted little attention in financial centers. Even by the 1960s, "the established business community had become aware of, but remained largely unaffected by, the hostile takeover as a technique. . . . Through much of the 1960s, most of those employing the hostile takeover remained apart from and non-threatening to what, by any significant measure, constitutes the business elite." It was not until the late 1960s that hostile takeover activity—at least, as it was practiced on the periphery—was rejected rather than ignored. "It appeared that this innovation lacked acceptance, and that its usage had been deterred and effectively sanctioned for violating the values and culture of both the institution and the surrounding polity" (Hirsch 1986:807,809).

⁹ For organizations legitimacy is not the only outcome of legitimation; Rao (1994) argues that reputation is another outcome. For more about the relationship between an organization's legitimacy and its reputation, see Deephouse and Carter (2005).

¹⁰ "It is important to understand that legitimation has a cognitive as well as a normative element. In other words, legitimation is not just a matter of 'values.' It always implies 'knowledge' as well," and "'knowledge' precedes 'values' in the legitimation of institutions" (emphasis added) (Berger and Luckmann 1966:93,94).

¹¹ "If an organization simply wants a particular audience to leave it alone, the threshold of legitimation may be quite low. Usually, the organization need only comport with some unproblematic category of social activity (e.g., 'doing business'). . . . To avoid questioning, an organization need only 'make sense'" (Suchman 1995:575).

¹² Indeed, “in industries where they exert significant influence, such critics, who may not even take part in the flow of exchange, replace consumers as the primary audience that determines the fate of products” (Zuckerman 1999:1400).

¹³ Levi’s insights on classification have made infrequent, superficial appearances in socio-legal studies, but never into organizational sociology. Even Edelman, whose research best represents the intersection of law and organizations, fails to cite the classic work.

3. THE UNIVERSITY OF PHOENIX AND ITS INSTITUTIONAL ENVIRONMENT

3.1. INTRODUCTION

What is the University of Phoenix? Where did it come from? How did it get to where it is today? In this chapter I present a basic history and profile of UOP, and then I situate the organization into the broader institutional context of the U.S. postsecondary education environment. With this chapter I set the scene for the specific empirical episodes I present in Chapters Five, Six, and Seven.

3.2. THE UNIVERSITY OF PHOENIX: BECOMING A PHENOMENON

The history of the University of Phoenix can be divided roughly into three stages. First is the “Pre-Organizational” stage, which includes actions and events that were consequential to the subsequent organizational development of UOP. For this reason, and also because it is not represented among the legitimation episodes in the three empirical chapters, discussion of the first stage is more in-depth than that of either of the latter two.

Before the University of Phoenix there was the Institute for Professional Development, and before that there was the Institute for Community Research and Development. Without resorting to infinite regress, UOP can trace its beginnings to founder John Sperling’s twelve years as a humanities professor at San José State College¹ during the heady days of the Great Society. Caught up in the spirit of the time and place, he achieved notoriety on campus as a provocateur both in and out of the classroom. Despite his impeccable credentials—an undergraduate degree from Reed College, and graduate degrees from Berkeley and Cambridge—Sperling was a radical pedagogue and the strident president of the faculty union (Sperling 2000).

Sperling developed a series of educational programs during his time at San José State. In 1972 he responded to an opportunity to conduct a federally-funded project that would attempt to lower the juvenile delinquency rate in the neighboring community of Sunnyvale, California. Sperling identified teachers and police officers as potential change agents and enrolled 30 of them in the pilot program. They responded positively. Soon they “began to lobby me to create degree programs for them—BA’s for the police, all of whom had associate’s degrees, and MA’s for the teachers” (Sperling 2000:69).

When Sperling sketched out a possible curriculum, his students “insisted that it would draw hundreds of working adults into the programs.” Thus emboldened, he took a proposal to his school’s Academic Vice President. He presented the plan and his estimate of how many students it would attract, but the administrator’s response was discouraging. “It would not fly, he said. The people who would have to approve the plan didn’t like me, and didn’t give a damn about having more students, especially adults.” Moreover, the bureaucratic approval process would be too lengthy and involve endless revisions. “If and when they were approved, they would be unrecognizable. His advice was, ‘John, go back to teaching and writing, and forget about any new degree programs’” (Sperling 2000:69).

Spurned by his own school, Sperling offered his proposed programs on a contractual basis to private schools that might be interested in the revenue potential. The first contract was with the University of San Francisco (USF), a financially-distressed Catholic school, where Sperling generated vocal opposition among faculty and administrators, but managed to secure the support of the president, a senior vice president, and Peter Fries, an assistant to the provost.

Sperling enrolled 35 police officers in a bachelor of arts in public service program and collected tuition payments from them, but no University of San Francisco dean would accept them as students or cash their checks. The approval process there was no less bureaucratic—or political—than it would have been at San José State. When the school turned up short for a payroll a month later, however, USF's Vice President for Finance ordered Fries to deliver the \$40,000 in uncashed checks for immediate deposit. “Peter happily complied, and immediately the question changed from ‘Will some dean accept the program?’ to ‘Which dean will accept the program?’ (Sperling 2000:73).

With assistance from Allen Calvin, the University of San Francisco's new Dean of the School of Education, Sperling organized his consulting work into an arrangement called the Institute for Community Research and Development, later reorganized as a for-profit corporation he named the Institute for Professional Development (IPD). “Losing control of the [faculty union], after I had built it with my own two hands, made me quite wary of creating another non-profit organization that some board could yank away from me. Calvin confirmed my decision to make the Institute a for-profit corporation—one of the best decisions I have ever made” (Sperling 2000:74).

Success came quickly to the fledgling company, and with success came unwanted scrutiny. IPD's first year yielded nearly a quarter-million dollars in revenues, and contracts with two other private colleges in California; the following year IPD grossed nearly \$3 million. Officials at the state education department and the Western Association of Schools and Colleges (WASC), California's regional accrediting association, took notice and became increasingly concerned.

We had no idea the extent to which education is a highly politicized and regulated activity, nor the extent to which innovators were to be searched out and destroyed as quickly as possible by the academics who controlled the institutions and by their allies in the regulatory agencies. Our awakening to the realities of the education industry was rude and not long in coming. The first indication of trouble came when the administrators of competing institutions began to denounce the quality of the IPD programs and to claim that IPD was turning the University of San Francisco into a diploma mill. . . . They denounced the scandal of IPD peddling 400 years of Jesuit tradition to non-Catholics and various others of the great unwashed. Competing institutions turned to the educational regulators for help, and that help was immediately forthcoming (Sperling 2000:78).

The University of San Francisco was due for a WASC accreditation visit in 1975. Although “the USF administration had been careful to abide by WASC regulations regarding contracts with non-accredited entities,” IPD “emerged as a threat to USF’s accreditation. . . . One of the arguments [WASC] used as a reason for the attack upon USF and the IPD contract was that it had not received careful academic scrutiny. This charge was well off the mark.” But a meeting between WASC representatives and IPD officials did not go well, and the visiting team produced a negative report that characterized the USF-IPD relationship as “controversial.” Consequently the WASC Senior Commission twice decided to postpone its decision to reaffirm USF’s accreditation and called for a follow-up visit. A second WASC-IPD meeting was even more disastrous. This visiting team’s report was entirely critical of the IPD-USF contract, especially regarding the financial arrangements. The WASC Senior Commission issued an ultimatum to the University of San Francisco: terminate the contract with the Institute for Professional Development or lose your accreditation. In the face of mounting negative publicity, USF agreed to the former² (Sperling 2000:81,83).

The Western Association of Schools and Colleges thus effectively chased

Sperling out of state by threatening to rescind the accreditation of any school contracting with IPD. After legal action proved too costly and too slow, and political action too ineffectual—“WASC was too well-organized”—“the only recourse remaining was to seek contracts with colleges and universities outside of California” (Sperling 2000:93).

The second, “Organizational” stage began that same year, when IPD relocated to Arizona, reorganized as the University of Phoenix, and began operations as a free-standing entity. Schools in Arizona operate under the jurisdiction of a different accrediting body, the regional North Central Association (NCA). Although accreditation from NCA was not perceived as categorically impossible, as it had been with WASC, it would prove to be less than automatic. Four separate teams conducted site visits during the candidacy period (1976-1978), during which time the school was permitted to operate but was not yet eligible to administer federal student financial aid. UOP received accreditation from NCA in December 1978 (Sperling 2000).

During these early organizational years the goal was survival. It was only after the University of Phoenix became stabilized locally that it began its growth and expansion strategy. After becoming accredited the University of Phoenix has been able to open up branch campuses anywhere in the United States (including Puerto Rico), Canada, and parts of Mexico, provided it first receives an operating license from the appropriate governing body at the state or province level. This is because its accreditation is vested in its Phoenix headquarters, where many of its operations are centralized³ (Sperling 2000).

Ironically but not unexpectedly, San José, California, became one of the earliest expansion sites (1980). Other early sites were established in Guaynabo, Puerto Rico

(1980), Orange County, California (1981), Denver, Colorado (1982), Tucson, Arizona (1983), Salt Lake City, Utah (1984), and Albuquerque, New Mexico (1985). An online, distance-learning program began in 1989. Physical expansion has continued in a northeasterly direction across the continent, and the pace has accelerated in the third and final stage, the “Institutional” stage.

The “Institutional” stage started in the early 1990s and persists into the present. It began with UOP’s preparation for its initial public offering (IPO); the IPO itself took place in late 1994. Other for-profit educational corporations, including some created by traditional non-profit organizations, have since followed UOP onto Wall Street. Together these organizations have propelled for-profit postsecondary education into a “phenomenon” attracting the attention of the national news media. This new attention is double-edged, prompting increased public awareness but also heightened public scrutiny by academic researchers and government regulators (Ruch 2001; Sperling 2000).

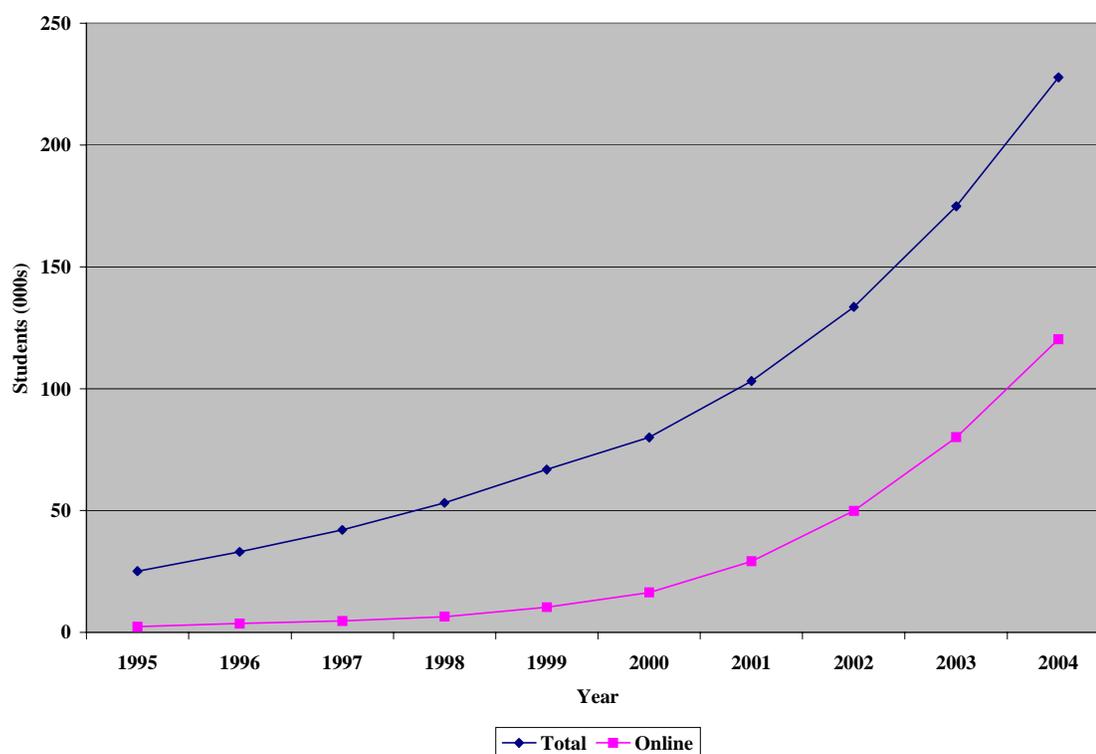
The current stage is likely not the final stage. Future developments that are not known, and therefore cannot be analyzed, may nevertheless be foreshadowed by events of the recent past. In the mid-1990s two investigations by the US Department of Education ultimately resulted in the modification of a federal policy about what constitutes full-time, continuous enrollment. The next stage, then, may be one in which for-profit universities, including UOP, take the lead in revising the classification rules and categories to reflect their own interests.

The history of the University of Phoenix is a story of phenomenal growth. One must measure UOP’s growth along several dimensions: the total number of students

enrolled and the number of online student enrollments; the number of physical sites and states; the number of faculty employed; and the number of degrees and programmatic offerings. One may also measure growth in the coverage by the national news media, and by the value of UOP's publicly traded stock.

Table 3.1 presents a graphical summary of the growth of both total enrollment and enrollment in online education,⁴ which first began in 1989.

Table 3.1. University of Phoenix Enrollments, 1995-2004.



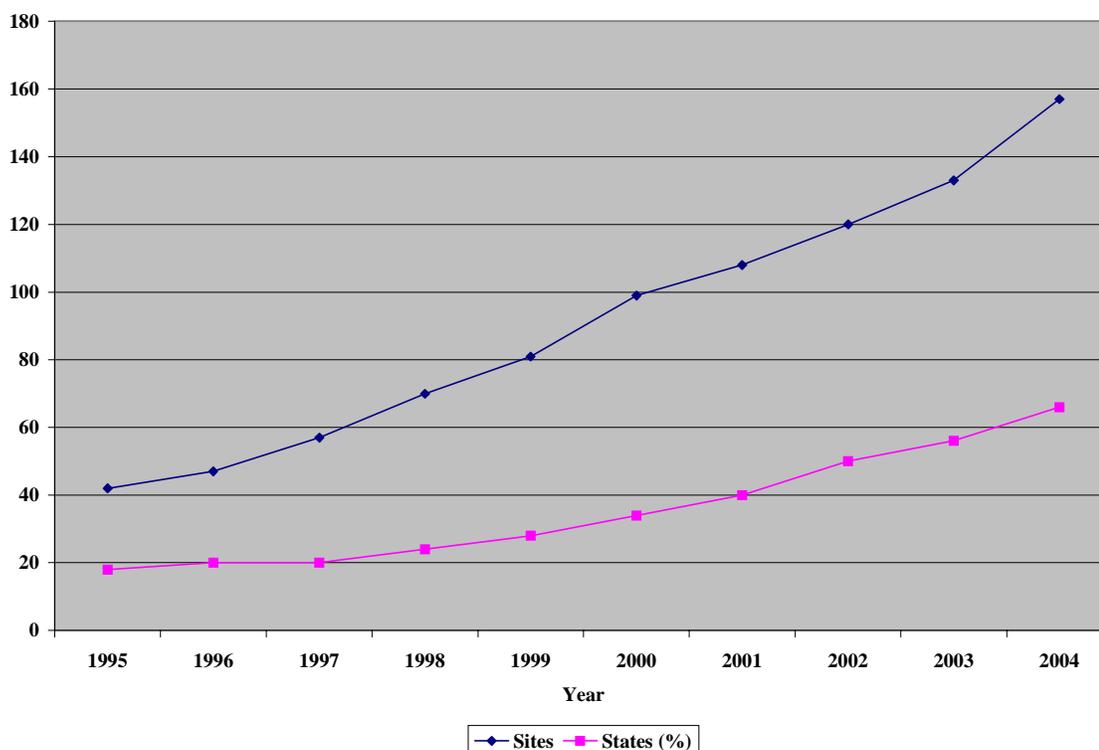
Sources: Apollo Group, Inc., SEC Annual 10-K Reports

The two trends are very similar in their pattern. Total enrollment rose from approximately 25,200 students in 1995 to 227,800 by August 2004, a 904% increase;

online enrollment rose from approximately 2,400 to 120,400 across the same ten-year period, an even more astonishing increase of 5,017%. The online student population is a subset of the total, rather than a distinct population. Its share of the total has risen from less than one in ten (9.5%) to more than one in two (52.9%). Both enrollment series show that UOP is increasingly a viable educational option among working adults.

Accompanying the rise in enrollment was an expansion of facilities (Table 3.2).

Table 3.2. University of Phoenix Locations, 1995-2004.



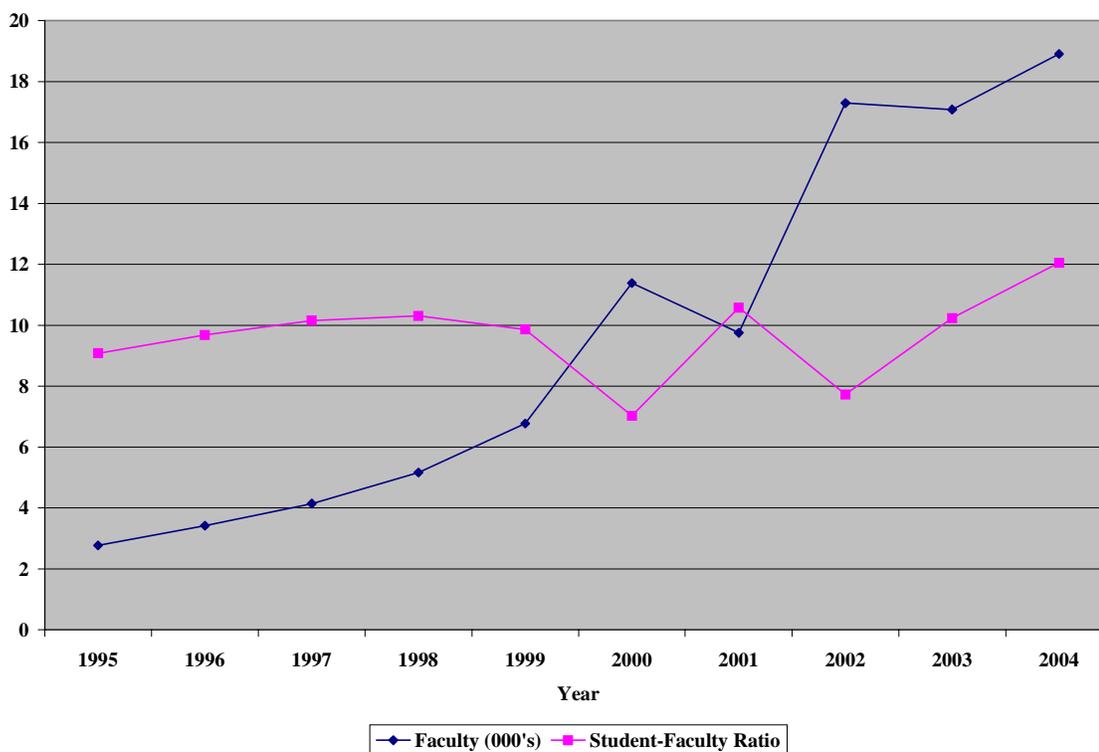
Sources: Apollo Group, Inc., SEC Annual 10-K Reports

Because the University of Phoenix rents rather than acquires its sites, it can open new locations quickly. Based on its market research, UOP selects locations at a metro

area's critical commuter junctions. In the early 1990s Sperling projected that "within ten years UOP will be within a twenty-minute commute of 65 percent of the urban population of the United States" (2000:178). This table reveals that he was not far off the mark. By 2004 UOP was operating at 157 sites in 33 states, or 66% of the states in the union. Both the number of sites and the percentage of states of operation more than tripled over the ten-year period.

As facilities expanded throughout the nation, the demand for faculty has grown accordingly, as depicted in Table 3.3.

Table 3.3. University of Phoenix Faculty and Student-Faculty Ratio, 1995-2004.

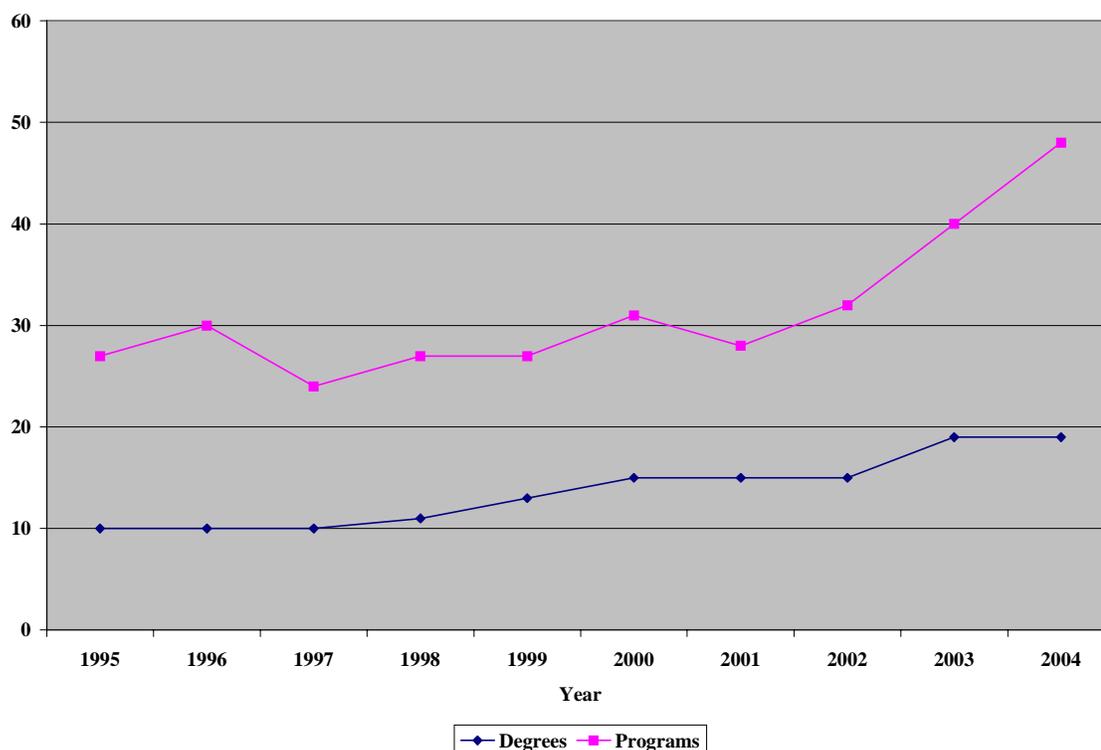


Sources: Apollo Group, Inc., SEC Annual 10-K Reports

Faculty ranks have sextupled from 2,775 to 18,901, but growth has been inconsistent. Most UOP instructors have single-course contracts, so a decline in total faculty may indicate that instructors are teaching more courses simultaneously. Meanwhile, the student-faculty has fluctuated inversely to the trend in total faculty. The “normal” range is around ten students per instructor, whereas in the two anomalous years, it dipped down to about seven students per instructor. In 2004, however, both faculty and the student-faculty ratio rose; whether this is the beginning of a new trend is not clear.

Finally, growth in the degrees and programs the University of Phoenix offers has been less dramatic (Table 3.4).

Table 3.4. University of Phoenix Degrees and Programs, 1995-2004.

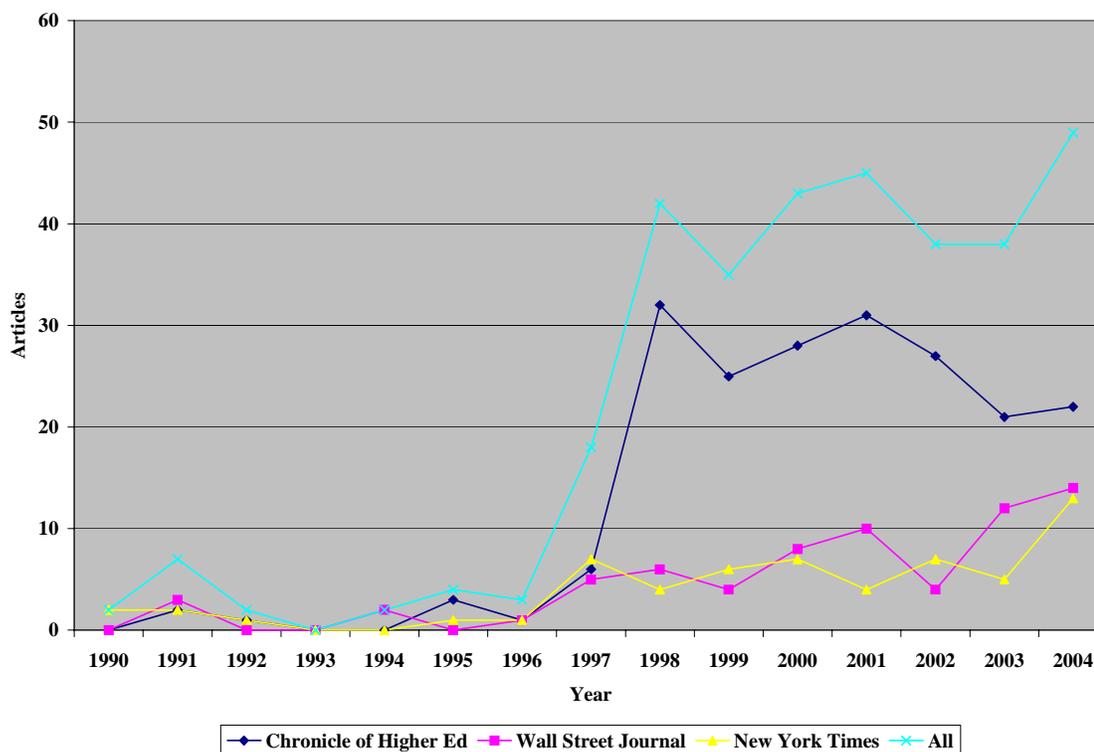


Sources: Apollo Group, Inc., SEC Annual 10-K Reports

The number of different degrees, ranging from Associates to Doctorate, has risen from ten to nineteen over ten years (+90%).⁵ The number of programs, such as a specialization in e-Business in the Bachelor of Science in Business degree or a concentration in Special Education in the Master of Arts in Education degree, has grown from 27 to 48 (+78%). Responding to market demands, UOP has expanded its offerings while still specializing in only a few subject areas, primarily business and education.⁶

It is also interesting to analyze the media coverage of the University of Phoenix over time, as well as to compare between education- and business-oriented sources (Table 3.5).

Table 3.5. University of Phoenix National Media Coverage, 1990-2004.



This table presents the annual number of articles including the phrase “University of Phoenix” anywhere in the full text of the Chronicle of Higher Education, the Wall Street Journal, and the New York Times for the fifteen years from 1990 to 2004. The Chronicle is the source of record for news about the field of U.S. postsecondary education; the Journal is the corresponding source for the field of U.S. business. The Times represents an alternative source for business news and is included for purposes of comparison and validation.

Overall, the University of Phoenix had virtually no recognition from the national printed news media until 1997. Beginning in 1997, however, the weekly Chronicle sharply stepped up its attention to the school, while the two daily newspapers increased their coverage slightly. The total national media coverage of UOP has risen considerably, driven in large part by its higher profile in the Chronicle.

Since 1997 the annual number of articles on UOP appearing in the Wall Street Journal has varied within a narrow range between four and fourteen. The range for the New York Times is even narrower: in the seven years from 1997 to 2003 it never published fewer than four articles or more than seven annually—2004 is anomalous (thirteen Times articles) because of UOP founder John Sperling’s financial and intellectual involvement in presidential politics.⁷ Suddenly, however, the University of Phoenix became big news for the Chronicle of Higher Education. During the same seven-year period it appeared in no fewer than 170 articles, ranging from 21 to 32 articles per year. Chronicle coverage peaked in 1998 and again in 2001.⁸

Finally, in its first decade on the NASDAQ stock exchange, the stock for the University of Phoenix's parent company, Apollo Group, Inc. (APOL), has been a Wall Street juggernaut (Figure 3.1). Its growth has far exceeded that of its peers, including DeVry University (DV) and ITT Educational Services (ESI), as well as the S&P 500 stock index, in which it has been included since May 2002. Since its initial public offering in December 1994, the value of Apollo shares has increased by a factor of 100, with seven stock splits during that ten-year period.

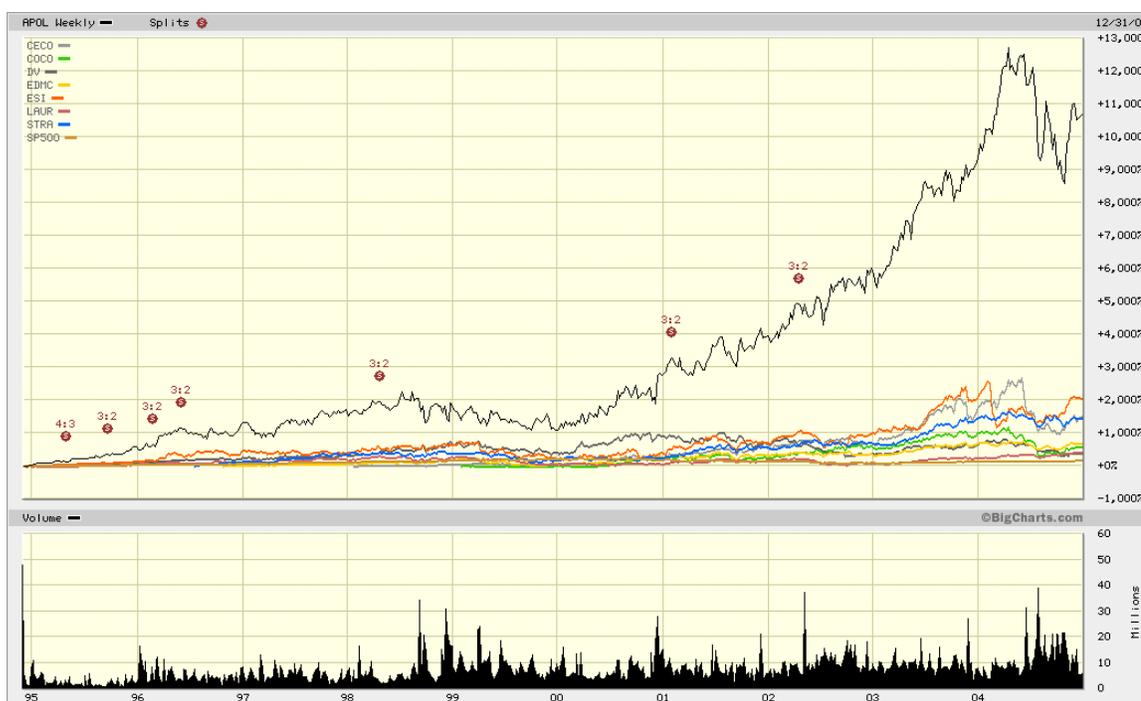


Figure 3.1. University of Phoenix Stock Price and Volume, 1995-2004, with Comparison Groups (Source: www.bigcharts.com).

This history and profile of the University of Phoenix describes the phenomenon but does not explain it. In order to understand the rise of the for-profit university, one must understand the broader institutional and organizational context.

3.3. U.S. POSTSECONDARY EDUCATION: A CHANGING INSTITUTIONAL ENVIRONMENT

The field of U.S. postsecondary education resembles that of U.S. health care in several ways. Most importantly, both have cycled through eras of professional dominance (~1920-1965) and governmental involvement (~1965-1980), to the present era of managerial control and market orientation (~1980-) (Scott et al. 2000). These shifts have effected profound changes in environments formerly conceived of as being largely immune from commercial forces (Bok 2003; Kirp 2003).⁹

Some postsecondary education researchers have referred to these shifts collectively as “academic capitalism”: the increased emphases on (a) commercialization of scholarly output; (b) competition between and among educational providers; (c) entrepreneurialism in the introduction of new organizations and in the development of new activities; and (d) privatization both in terms of ownership and governance arrangements as well as the very nature of the educational enterprise as a market transaction (Rhoades and Slaughter 1997; Slaughter and Leslie 1997).

The rise of academic capitalism signals a change in “institutional logics,” the deep-rooted, broad-based cultural assumptions that serve as higher-order principles in a field of social activity (Clemens 1993, 1997; Friedland and Alford 1991; Scott 2001). While multiple, even contradictory, logics often co-exist in a given field (Alexander 1996; Heimer 1999), one logic or set of related logics frequently dominates all others (Scott et al. 2000; Thornton 2002, 2004; Thornton and Ocasio 1999). Logics are subject to change over time as the outcome of various social movements (Rao et al. 2003).

Many scholars of postsecondary education have restricted their focus to

knowledge creation through scientific investigation (e.g., Owen-Smith 2000), and thus necessarily to research-oriented universities, schools that are disproportionately large in both size and significance, but a very small minority in sheer numerical terms: a mere 7% of all Carnegie-classified schools as of 2000 (Carnegie Foundation for the Advancement of Teaching 2001). From this perspective, the federal Patent and Trademark Act of 1980, authorizing universities to retain intellectual property rights to federally-funded research,¹⁰ fully consummated academic capitalism as the primary logic in the field.

However, a focus that also includes knowledge transmission through instruction, an equally important academic function, and one that encompasses the entire population of U.S. postsecondary schools, recognizes that academic capitalism has been at least a secondary logic throughout the entire four centuries of European settlement in North America. “As long as there has been a social and economic need for the acquisition of knowledge and the development of skills, enterprising individuals, groups, and organizations have found ways to provide education to meet these needs” (Ruch 2001:51-52). The history of for-profit education extends all the way back to colonial times, long before the contemporary distinctions between private and public were even meaningful.¹¹

Considering both academic functions, then, knowledge creation and knowledge transmission, suggests a modified account for how academic capitalism emerged as the primary institutional logic of U.S. postsecondary education. This alternative account extends back a full generation before the Reagan-era legislative changes, beginning instead with the federal Higher Education Act of 1965 (HEA). Such an account emphasizes the contest between conservatives demanding greater educational efficiency

and liberals advocating for broader educational equity, through several rounds of amendments to HEA. Finally, it underscores the tragedy of unintended consequences, when a primary defense of academic traditionalism, the Carnegie classification system, becomes instead a principal catalyst for greater commodification and marketization when it is exploited by U.S. News and World Report to create rankings.

In the half-century after World War I the field of U.S. postsecondary education grew in size, complexity, and heterogeneity (Levine 1986; Rudolph 1962; Veysey 1965). Accompanying this growth was an increasingly acute need for field-level order, driven largely by rising federal involvement. By the time the baby boom generation began graduating from high school in the mid-1960s, the patchwork agglomeration of smaller, more localized fields was coalescing into a single, large national field.¹²

Three separate projects contributed to the consolidation of a national-level field of postsecondary education in the United States, and accordingly created the conditions necessary for academic capitalism to become its primary institutional logic. The Higher Education Act of 1965 inaugurated an era of federal involvement in which postsecondary education was not only promoted as a route out of poverty, but was also transformed into a competitive market for a consumer service. Next, the Carnegie Classification of Institutions of Higher Education, initially developed in the early 1970s by the non-profit Carnegie Commission on Higher Education, provided the first comprehensive taxonomy of degree-granting schools according to functional rather than geographical criteria, and thereby altered both the group and the basis for inter-school comparison. Finally, with its annual rankings begun in 1983, the (for-profit) national weekly news magazine U.S.

News and World Report further emphasized within-group comparison and intensified direct competition on the basis of quantifiable measures of “educational quality.”

The Higher Education Act of 1965 authorized the federal financial support of postsecondary students, programs, and schools. Passed by a Democratic Congress and signed into law by a Democratic President during the “War on Poverty,” other expansionist legislation such as Medicaid, the Voting Rights Act, and the Elementary and Secondary Education Act, overshadowed HEA as an anti-poverty measure. Although it originally focused on organizational providers rather than individual purchasers, Title IV of this omnibus statute also consolidated the various aid programs already in existence at the time, including grants, loans, and work-study, which together would come to be referred to collectively as “Title IV programs,” and account for most of the assistance available to postsecondary students in the United States (Hannah 1996; Parsons 1997).

With its emphasis on financial aid, federal policy thus recognized and asserted the central importance of the student as consumer of educational services. Broader cultural trends furnished multiple reasons for this orientation: a reaction against big bureaucracy and a demand for more humanization and adaptivity of organizations; an insurgent national movement championing consumer rights; the new youth culture and its social and political ramifications (including a lower voting age and the elimination of universities’ in loco parentis policies); and a general enrollment decline that made postsecondary education essentially a “buyer’s market” (Gladieux and Wolanin 1976).

By the 1960s, then, an alternative logic had emerged that posited postsecondary education primarily in economic terms of market efficiency, as a service being sold to

individual purchasers seeking to maximize quality and minimize cost. No longer was the presumption that an aspiring postsecondary student would apply to and enroll at the most proximate appropriate school, selecting from a heterogeneous group of local options. The presumption was now becoming that a student would attend the “right” school (from among a nationalizing menu of options) at the “right” price (with financial aid packages figuring more and more prominently in the application process).

Moreover, this ascendant logic viewed this service as a “private good” rather than a “public good” or “mixed good.”¹³ A new skepticism had arisen to challenge assumptions about the benefits of postsecondary education to society. Public financing of postsecondary education had long been justified on the grounds that society was the principal beneficiary through research and knowledge expansion, the production of educated manpower, enhancement of culture, and the “quality of life.” Such faith, seemingly limitless during the Cold War, waned during the Vietnam War era, when campuses became visible sites of youth unrest (Gladieux and Wolanin 1976).

Academics were also beginning to challenge the benefits-to-society assertion. Most economists tended to discount what they considered overblown claims of “external benefits” (social gains) from higher learning (Gladieux and Wolanin 1976). Researchers started calculating the individual costs and returns to postsecondary education: among others, economist Becker (1962; 1964) conceptualized it as a private investment in “human capital,” and sociologists Blau and Duncan (1967) isolated its influence on individual socioeconomic status. Social scientists convened a conference at the University of Chicago in June 1971 to present papers on “Investment in Education: The

Equity-Efficiency Quandary.” The following year, the Journal of Political Economy published the papers as a special supplement, and the University of Chicago Press published them as a book.¹⁴

The extreme economic view was that of “full-cost pricing”: in keeping with the assumption that postsecondary education is a private good, individuals should bear its full costs. Nearly every economist writing on the subject of postsecondary education finance in the late 1960s urged a freer play of market forces and criticized prevailing patterns of public subsidy. The general prescription they offered was to establish greater student sovereignty in the allocation of resources by having states reduce their general subsidies to schools, raise general student charges, and expand direct aid to students with financial need. Predictably, traditionalists in the postsecondary education community, especially its public segment, opposed such schemes (Gladieux and Wolanin 1976).

The traditionalists’ response could be found in a volume titled Higher Education: Who Pays? Who Benefits? Who Should Pay? released in 1973 by the Carnegie Commission on Higher Education. The book’s introductory paragraph reads as a rallying cry against the conservative economic view of privatization.¹⁵ All thirteen of its policy recommendations reasserted that postsecondary education is fundamentally a public good: in order to realize universal access and to strengthen a diverse system, taxpayers should pay moderately more; state governments should ensure fair and adequate taxation systems, and also take steps to narrow the tuition differential between public and private schools in their jurisdictions; the federal government should increase its level of support, including the appropriation of full funding for state student incentive matching grants, the

chartering of a national student loan bank, and the expansion of the scale and scope of its Basic Opportunity Grants¹⁶ program; all schools should maintain a low-tuition policy for lower-division students and a progressive, graduated tuition policy for upper-division and graduate students; and private schools should voluntarily cap tuition increases at the rate of inflation (Carnegie Commission on Higher Education 1973b).

Few of these recommendations were ever implemented. In the early 1970s the Nixon administration, working with national policy groups and representatives of both private and public postsecondary education, introduced the idea of market forces to that field. Together they developed a “high tuition-high aid” policy through which government gave aid to students rather than to schools (Slaughter and Leslie 1997).

Congress had reauthorized the HEA in 1968. In 1972, amid all the scholarly wrangling, the legislature substantively amended the statute. The 1972 Amendments “established equal opportunity as the principal policy objective for postsecondary education, thereby deciding the long debate over institutional versus student aid in favor of students” (Hannah 1996:504). Individual aid, whether in the form of grants or loans, was “essentially student vouchers designed to foster competition among institutions by emphasizing student choice” (Slaughter 1998:212). Local choice for students and local competition among schools had always existed in various forms and to various extents; making vouchers “portable” introduced a trans-local dimension to these phenomena.

Subsequent reauthorizations of HEA in the 1970s, 1980s, and 1990s increased and expanded student loan programs, and introduced additional programs for parents borrowing to finance the schooling of their children. However, grant programs, while

also expanded in absolute terms, lost ground in relative terms because they did not keep pace with either loan disbursements or tuition costs. An increasing proportion of student financial assistance thus came to require repayment after graduation (Hannah 1996).

Soon after the passage of the Higher Education Act of 1965, the Carnegie Foundation for the Advancement of Teaching (CFAT) founded the Carnegie Commission on Higher Education in 1967 in order to review the structure and financing of postsecondary education and to provide a coherent national policy plan. An elite liberal yet traditionalist non-profit organization, CFAT had already well established its leadership in American education. Headed by University of California President Clark Kerr, who in 1960 had introduced the California Master Plan for Higher Education, the Carnegie Commission's vision of postsecondary education was of an "orderly and rational hierarchical system . . . much like the three-tiered California model over which Clark Kerr had himself presided."¹⁷ During its brief seven-year existence, the Carnegie Commission spent roughly \$6 million in issuing over twenty official reports and sponsoring more than sixty other research projects (Brint and Karabel 1989:104).

One of the most influential publications the Carnegie Commission released was A Classification of Institutions of Higher Education (1973a), a comprehensive taxonomy of U.S. degree-granting schools. Initially developed in 1970 for internal use,¹⁸ the Carnegie classification system quickly became a standard reference among educational researchers. CFAT has since released four revised editions to account for school foundings and closures, changes in the classification of individual schools, as well as broader changes in the overall scheme of categories and subcategories. Although its overall structure has

been reasonably stable over three decades, every revision (1976; 1987; 1994; 2001) has introduced new (sub)categorical definitions (see Table 3.6).

Table 3.6. Categories and Subcategories of the Carnegie Classification System, 1973 and 2000.

1973 Version	2000 Version
1. Doctoral-Granting Institutions a. Research Universities I b. Research Universities II c. Doctoral-Granting Universities I d. Doctoral-Granting Universities II	1. Doctoral/Research Universities a. Doctoral/Research Universities— Extensive b. Doctoral/Research Universities— Intensive
2. Comprehensive Universities and Colleges a. Comprehensive Universities and Colleges I b. Comprehensive Universities and Colleges II	2. Master’s Colleges and Universities a. Masters Colleges and Universities I b. Masters Colleges and Universities II
3. Liberal Arts Colleges a. Liberal Arts Colleges I b. Liberal Arts Colleges II	3. Baccalaureate Colleges a. Baccalaureate Colleges—Liberal Arts b. Baccalaureate Colleges—General c. Baccalaureate/Associate’s Colleges
4. Two-Year Colleges and Institutes	4. Associate of Arts Colleges
5. Professional Schools and Other Specialized Institutions a. Theological schools, Bible colleges, and other institutions offering degrees in religion b. Medical schools and medical centers c. Other separate health professional schools d. Schools of engineering and technology e. Schools of business and management f. Schools of art, music, and design g. Schools of law h. Teachers colleges i. Other specialized institutions	5. Specialized Institutions a. Theological seminaries and other specialized faith-related institutions b. Medical schools and medical centers c. Other separate health profession schools d. Schools of engineering and technology e. Schools of business and management f. Schools of art, music, and design g. Schools of law h. Teachers colleges i. Other specialized institutions
	6. Tribal Colleges and Universities

The Carnegie Commission based its classification criteria on functional definitions rather than on geographical considerations. The primary distinctions between (sub)categories are in terms of the orientation toward either research or teaching (as measured by the highest degree awarded), and among non-research-oriented schools, in terms of the curricular orientation toward either the liberal arts or some specialized field, whether religious, professional, technical, or vocational. These latter types of schools were lumped together into a residual category—separate, however, from Community Colleges and Tribal Colleges which each warranted its own category. Insufficient numbers in two other categories, established for nontraditional and corporate-sponsored schools, prevented them from persisting beyond one version of the classification system: 1976 and 1987, respectively.

The Carnegie classification system affected the field of postsecondary education in several important ways. First, it transformed the group to which a school compared and contrasted itself, and by which it was compared and contrasted by others, including students. Previously a school's peer group was usually local (or possibly regional) and heterogeneous; now it had become national and homogeneous, further heightening trans-local competition and facilitating direct inter-school comparisons.¹⁹ It also established the universe of "higher education" as exclusively those schools and programs that awarded degrees rather than only diplomas or certificates. Despite U.S. Education Commissioner Sidney Marland's (1974) assertion that all postsecondary education was directed toward a job and was thus "career education," the omission of all non-degree-granting schools (most of which are for-profit and proprietary) from the classification system is an even

more salient indication of its elitist, traditionalist bias than its privileging of research over teaching, and a liberal arts curriculum over all others, among degree-granting schools.

The Carnegie Foundation released revised editions of its classification system in 1976, 1987, and 1994. Shortly after being appointed to the office in 1997, CFAT president Lee Shulman convened a group of scholars and experts to undertake the first major reconstruction of the system. Too many people had come to use it as a hierarchical ranking system, as a kind of academic “pecking order.” What was needed was a classification system that was “a more flexible and informative tool, better reflecting the complexity of” the field, and less subject to misinterpretation and undesired, unintended applications (Carnegie Foundation for the Advancement of Teaching 2001:vii).

We came up with an ambitious two-stage plan. We would publish an updated Classification in 2000 that uses current data and makes limited changes. By 2005 we intend to put in place a Classification system that will replace the present single scheme with a series of classifications that will recognize the many dimensions of institutional commonality and difference. . . . The second stage of the plan, which is already underway, is to conduct the research necessary to implement a 2005 edition of the Classification that will provide a sophisticated, adaptive set of tools that allows users to cluster institutions in several different ways. Our goal in developing a multiple classification system is to provide a series of lenses through which to examine and analyze institutional mission and other important differences among institutions. Users of such a system will have to make deliberate choices about which dimensions are relevant for a given purpose. Our hope is that this system will reveal varied pictures of the institutional universe, capturing in a more authentic way the true complexity of the U.S. higher education system. Such a system should serve the needs of both the higher education research community and other users more faithfully than a single monolithic classification scheme (Carnegie Foundation for the Advancement of Teaching 2001:viii).

When implemented such changes may affect the use of the Carnegie classification system among researchers, but they are nearly a quarter-century too late to alter the

perception of the field of U.S. postsecondary education among many others, especially students and their parents. These “consumers” never have been well acquainted with this system, only with how it has been exploited by more popular and accessible critical audiences, chief among them U.S. News and World Report—and ultimately by the community of practice audience, the schools themselves, in their marketing efforts.

U.S. News and World Report released its first ranking of colleges and universities in 1983 as a mere nine-page special section (Solorzano and Quick 1983). For its initial survey, it grouped degree-granting schools²⁰ into categories drawn from the most recent Carnegie classification, presumably the 1976 revision. It then sent these groupings to academic administrators and asked them to “pick the five best undergraduate schools from a list of institutions most similar to his or her own in terms of enrollment and the range of academic degrees and programs offered” (Solorzano and Quick 1983:40).

“There was nothing scientific or subtle about the survey and most people just shrugged it off” as a beauty contest (Thompson 2000:16). Nevertheless, sales were strong enough—485,000 copies (McDonough et al. 1998)—to warrant two subsequent editions of the reputation-based rankings in 1985 and 1987 under the direction of a new publisher, Mortimer Zuckerman. In an attempt to make the U.S. News rankings into a respectable franchise, Zuckerman recruited a veteran journalist from rival Newsweek, who in turn enlisted a number-cruncher. Together, they repackaged the rankings as an annual event titled “America’s Best Colleges” (Confessore 2003; Thompson 2000).

Since 1988 U.S. News “has produced an eagerly anticipated list that precisely orders every college in the country” on the basis of such “scientific” criteria as student

selectivity, academic reputation (which, at 25%, is still the single largest component of a school's overall score), student retention and graduation rates, faculty quality, financial resources, and alumni giving. Each of these criteria is analyzed with a set of algorithms that is subject to perennial modification. However, “no one outside the magazine can figure out exactly how [the rankings] work” (Thompson 2000:16,17).

The annual U.S. News rankings and their underlying criteria are the subject of much debate (Confessore 2003; Graham and Thompson 2001; Kuczynski 2001; McDonough et al. 1998; Meredith 2004; National Opinion Research Center 1997; Thompson 2000), and rightly so, since the stakes have risen so dramatically for students and schools alike.²¹ But the relevance of the annual publication persists because it attempts to (among other things) imbue a large, diverse field with order and meaning—a vitally important activity in an era when an undergraduate degree has become a presumptive prerequisite for adult “success” (i.e. access to preferred and preferable employment opportunities), and a degree from the “best” or “right” school purportedly confers distinct advantages in a “credential society” (Collins 1979).²²

At its inception, the U.S. News rankings were not a comprehensive catalog of the population of America's colleges and universities. The 1983 inaugural survey included five different categories and nine subcategories, but ranked only the first half-dozen to dozen schools in each subcategory. In other words, it attended only to the “leaders” of the (degree-granting) postsecondary education field, rather than to the field in its entirety.

The original U.S. News categories nominally resembled the Carnegie (sub)categories, but in many ways the former distorted and inverted the latter (Table 3.7).

Carnegie's Comprehensive Universities and Colleges II became Comprehensive Universities in the U.S. News rankings, while Comprehensive Universities I became Regional Liberal Arts Colleges instead, even as Carnegie-classified Liberal Arts Colleges II are renamed Smaller Comprehensive Universities. U.S. News also included geographic subcategories in some but not all of its categories, when the 1976 Carnegie classification made no such distinctions.²³

Table 3.7. Inaugural (1983) U.S. News Categories and Their Corresponding Carnegie Subcategories.

U.S. News Category (Subcategories)	Carnegie Subcategories
National Universities	Research Universities I and II Doctorate-Granting Universities I and II
National Liberal Arts Colleges	Liberal Arts Colleges I
Regional Liberal Arts Colleges (Eastern, Western)	Comprehensive Universities and Colleges I
Comprehensive Universities (Eastern, Western)	Comprehensive Universities and Colleges II
Smaller Comprehensive Universities (Eastern, Southern, Western)	Liberal Arts Colleges II

From 1976 to 2000 the number of Carnegie-classified schools increased nearly 40 percent, from 2,837 to 3,941 (Carnegie Commission on Higher Education 1973a; Carnegie Foundation for the Advancement of Teaching 2001). The number of subcategories U.S. News employs in its rankings has grown apace. In its 2005 edition, published in September 2004, the magazine still made use of five broad categories: National Universities, National Liberal Arts Colleges, Universities—Master's, Comprehensive Colleges—Bachelor's, and Unranked Specialty Schools. These are now

much more closely and accurately aligned with the Carnegie categories. However, each U.S. News category is now divided into at least four, and as many as sixteen subcategories. Both the National Universities and National Liberal Arts Colleges categories have four tiers, with schools in the top two tiers ranked numerically and those in the bottom two tiers listed alphabetically by tier. Two of the three remaining three categories also have four tiers for each of their respective four regional subcategories, while the subcategories in the Unranked Specialty Schools category are based on functional rather than regional differences. The result is a dizzying array of subcategories (46 total), most of each with its own rankings, all ostensibly generated to help anxious students and their parents make sense of a bewildering postsecondary environment.²⁴

The annual U.S. News rankings thus affect the field of U.S. postsecondary education by defining the scope and terms of competition among schools for and by students. First, they emphasize comparison within rather than across (sub)categories. While it may be that “some institutional leaders adopt ‘moving up the Carnegie Classification’ [i.e., changing from Associate’s to Baccalaureate, from Baccalaureate to Master’s, or from Master’s to Doctoral/Research] as an explicit institutional goal” (Carnegie Foundation for the Advancement of Teaching 2001:vii), academic administrators are more likely to adopt the narrower, more pragmatic strategy of “rising in the U.S. News rankings” in their current category. And second, schools rise in the rankings by improving their scores on the criteria presented by the magazine as quantifiable measures of “educational quality.” The fact that most variables used by U.S. News are difficult for schools to change, especially in the short term, increases the

likelihood that improvements come from deliberate manipulation or “gaming” of the numbers—usually in the admissions office through such programs as “Early Action” or “Early Decision”²⁵—or through outright falsification or deceit. Even honest-won quantitative improvements are suspect and are only dubiously related to substantive improvements in educational quality (Fallows 2001).

The Higher Education Act of 1965, the Carnegie classification system, and the annual U.S. News rankings were three separate yet not unrelated developments whose cumulative effect was institutional change. A new institutional logic, academic capitalism, emerged within a nascent national field of U.S. postsecondary education because these efforts imbued the complex environment with order, comprehensibility, and meaning.

By making student financial assistance the centerpiece of federal postsecondary education policy, the Higher Education Act of 1965 and its subsequent amendments rendered postsecondary education a market transaction of a “private good” between student purchasers and provider schools. Not only did this increase inter-organizational competition, especially beyond and across local environments, it also enabled federal and state governments to shift an ever-growing share of the financial responsibility to students who were expected to bear the costs concomitant with the (individual socioeconomic) benefits of a postsecondary education.

Through its use of functional rather than geographic criteria to develop a “comprehensive” system of postsecondary categories, the Carnegie Classification of Institutions of Higher Education changed both a school’s comparison group and the basis

on which it is compared. It sought to reassert an elitist, traditionalist conceptualization of “higher education” as exclusively degree-granting but instead heightened the cultural emphasis on credentials and preparation for a “career.”

Finally, by producing an annual issue of “America’s Best Colleges” that includes no fewer than 46 subcategories—each with its own “top” school—the U.S. News and World Report rankings further emphasized within-group comparison and intensified direct competition on the basis of “objective,” “scientific” (i.e., quantitative) measures of “educational quality.” Although the rankings purport to be a kind of Consumer Reports, their attempt to hold schools accountable in the face of rising tuition costs has had the opposite effect, as many applicants and their parents (are willing to) spend ever more money²⁶ for the right “brand.”

3.4. FOR-PROFIT PROVIDERS OF “CAREER EDUCATION”: ORGANIZATIONAL INNOVATION IN A STRUCTURED FIELD

The same year that it published its widely influential classification system, the Carnegie Commission on Higher Education also released a publication that defined postsecondary education as “all education beyond high school.” It divided this field into two categories based on organization and mission: “‘higher education’ . . . takes place on college or university campuses or through campus-substitute institutions” and is “oriented toward academic degrees or broad occupational certificates”; while “‘further education’ . . . takes place in many noncampus environments” and is “oriented toward more specific occupational or life skills rather than academic degrees” (Carnegie Commission on Higher Education 1973c:3).

The reference “further education” never gained much currency in the academic community or in wider society. Other suggestions were “occupational education” or “career education,” even though all postsecondary education including “higher education” was officially considered preparation for a career. Whereas degree-granting “higher education” was the highly structured core of the postsecondary field, non-degree-granting “career education” was its periphery whose very lack of structure precluded a strong or satisfactory definition. Historically, “higher education” represented established civilization; “career education” represented the uncivilized, largely uncharted frontier in which roamed a motley assortment of business, commercial, industrial, technical, trade, vocational, and other schools and programs (Bolino 1973).

A field is “structured” if inter-organizational interaction is extensive and patterned, information about organizations and the field in general is considerable and readily available, and field participants are mutually aware of being involved in a common enterprise (DiMaggio and Powell 1983).²⁷ According to this definition it is clear that the “higher education” core of the U.S. postsecondary education field is highly structured; until relatively recently, however, the “career education” periphery was highly unstructured because interaction among organizations was sporadic and limited, most participants did not know much about each other or “career education” in general, and many did not consider themselves to be involved in a common enterprise.

A cause and/or a consequence of this lack of structure in the periphery of the field is the multiplicity of organizational forms found there. Historically, providers of “career education” have included businesses, the government (especially the military), and labor

unions whose personnel require on-the-job training (Clark and Sloan 1958, 1962, 1964). Many degree-granting schools have offered adult and continuing education programs through correspondence or extension courses, and community colleges and even some secondary schools have absorbed many kinds of occupational curricula (Bolino 1973; Brint and Karabel 1989). However, for-profit proprietary schools have always been a prominent organizational form in the provision of “career education” (Ruch 2001).

Although “established in the seventeenth century and continuing without interruption to the present day,”

for most of this time the for-profits were the invisible partners in the education industry, receiving little or no recognition from federal or state governing bodies. As a result, there is no central source for records providing such basic data as the number of institutions and enrollments (Ruch 2001:60).

What is generally known about the history of for-profit proprietary schools is that they began in the colonial era, they have responded to local needs and demands for skills and training, and they have provided educational access to marginalized and excluded groups, including women, non-whites, and people with disabilities (Ruch 2001).

At the beginning of the twenty-first century, more than 7,000 for-profit proprietary schools were preparing students for careers in a wide array of occupational categories (Ruch 2001). These include but are by no means limited to the following: aviation; automotive; barbering and cosmetology; broadcasting; computers and electronics; culinary arts; drafting and art design; fashion and interior design; health and medical services; performing arts; real estate; transportation; and travel and hospitality.

Virtually all of these educational programs culminate in a diploma or certificate rather than a degree (Belitsky 1969, 1970; Lee and Merisotis 1990).

One of the most successful and innovative types of for-profit proprietary school is the college of business and/or commerce, which “has traditionally had little or no articulation with other forms of postsecondary education” (Trivett 1974:12). The heritage of this particular form of career education extends back to the first part of the nineteenth century, when “private schools began to offer classes of bookkeeping in the principal cities of the United States. . . . Most of the early schools were founded on a bookkeeping basis, but other schools emphasized the teaching of penmanship” (Bolino 1973:150).

Private schools of business grew with the rise of industrialization and the geographic expansion of the country. In the 1850s and 1860s, partners H.B. Bryant and H.D. Stratton pioneered the concept of the “chain school” when they founded a string of colleges throughout the east and midwest. At the time of Mr. Stratton’s death in 1867, the chain of nearly 50 Bryant-Stratton schools enjoyed a virtual monopoly on commercial education in America’s major urban centers. Competitors would soon replicate and challenge their success, including chains run by H.G. Eastman, G.W. Brown, and J.F. Draughon, among others. Some of these schools are still in operation at the end of the twentieth century, although in many cases the lineage is only nominal (Bolino 1973; Lee and Merisotis 1990).

The period between the Civil War and World War I was one of dramatic growth in for-profit proprietary business education. According to the U.S. Office of Education, in

1870, 5,824 students attended 26 private business schools; 912 schools enrolled 192,388 students by 1916 (Bolino 1973:155).

The story became more complex over the course of the twentieth century. “In the years following World War I the conditions facing private business schools altered.” Enrollment first plateaued and later declined as high schools and colleges began offering their own variations on business and commercial curricula. Nevertheless, “the peak enrollment of private business schools was reached in 1942, when there were 634,546 students.” Over the quarter-century after World War II, the numbers remained in the 100,000- to 200,000-student range, and some of these students were enrolled in programs that granted degrees in commerce or business. Once the dominant segment, by the late 1960s these schools still accounted for about one-fourth of all student enrollments in career education (Bolino 1973:156, 160; Lee and Merisotis 1990).

By the 1970s federal involvement would extend structure from the core to the periphery of the postsecondary education field. For-profit proprietary business schools experienced this structure earlier than many other kinds of career schools. They founded a trade association in 1912, which became a federally recognized accrediting agency in 1956, just four years after the recognition process was introduced (Trivett 1974).²⁸ Trade associations are a common medium for the diffusion of structure throughout a field (DiMaggio and Powell 1983).

The U.S. federal government had long been interested in pragmatic postsecondary education. The belief that degree-granting schools could conduct research and provide instruction in “the practical and useful arts” was what animated Congress’s passage of the

Morrill Land Grant Act of 1862, the Smith-Hughes Act of 1917, and the George-Deen Act of 1936. All three of these laws oriented higher education further and further away from the traditional liberal arts curriculum, but none directly addressed career education.

The landmark G.I. Bill provided \$14 million in education and job training assistance to nearly eight million returning veterans, more than two-thirds of whom attended non-degree-granting programs or schools. For-profit proprietary schools were eligible to participate in the G.I. Bill if they received state approval to offer training. This resulted in the proliferation of such schools by the early 1950s, many of whose legitimacy was challenged by a number of government commissions and investigations (Lee and Merisotis 1990).

Among the 1972 amendments to the Higher Education Act was a provision that expanded the official definition of postsecondary education to include the non-degree-granting career education of for-profit proprietary schools and two-year colleges (Hannah 1996), something that even the Carnegie Commission on Higher Education had actively supported (1970).²⁹ Now all postsecondary schools, irrespective of governance or curriculum, would and could compete for federally subsidized students.³⁰

A more recent development brought additional structure to the periphery of the field, and integrated it more closely to the core. In 1996 the Integrated Postsecondary Education Data System, maintained by the National Center for Education Statistics at the U.S. Department of Education, changed its definition of higher education schools to include for-profit proprietary schools eligible for financial aid programs.

To be eligible, institutions must offer an associate's degree or higher program consisting of at least 300 clock hours of instruction, possess

accreditation recognized by the DOE [Department of Education], have been in business for at least two years, and have signed an agreement of participation with the DOE. This change made clear the criteria for recognition by the DOE, and in one year (1996) it increased the number of institutions included in the higher-education universe by 7.5 percent. Under this new definition, the DOE now includes some 669 for-profit schools recognized as accredited colleges and universities. . . . Most of the . . . schools . . . specialize in business and technology fields (Ruch 2001:61).

The recent phenomenon of for-profit universities emerges out of this complex context. Thanks in large part to the advance of academic capitalism, as well as the added field structure, these schools have begun to breach the categorical boundary that once separated the higher education core from the career education periphery. Not only do these schools grant degrees, but they are also accredited by the same regional accrediting associations as their non-profit and public counterparts (Ruch 2001).

However, strong cultural distinctions nevertheless persist—not to mention some consequential legal distinctions. The most apparent of these distinctions have to do with finance: for-profits are motivated, of course, by profit, as contrasted to the motive of prestige among non-profit schools. For-profits rely on investors (partners, or more recently stockholders) to capitalize their operations; non-profits finance their activities through the solicitation of donations from a variety of stakeholders. These donations are tax-exempt, while the educational services provided by for-profits are subject to taxation (Ruch 2001).

Other differences pertain more fundamentally to the organizations themselves. Non-profit schools pride themselves on a model of shared governance, wherein faculty enjoy power and decision making follows from disciplinary interests. For-profits are

organized according to more traditional principles of centralized, hierarchical management, and administrators make decisions in response to market interests and the power of customers—students and their employers (Ruch 2001).

Finally, for-profits are distinctive in terms of their mission and goals. They are much more oriented to the practical (workplace) applications of learning, rather than pursuing the cultivation of knowledge or learning for its own sake. And instead of focusing on the quality of “inputs,” something over which the school can take little or no credit, they focus on “outcomes,” especially in terms of student placement or alumni assessments of the educational experience (Ruch 2001).

Historically, the field of U.S. postsecondary education was bifurcated into a degree-granting core (“higher education”) and a non-degree-granting periphery (“career education”), with the former having much more structure than the latter. While for-profit proprietary schools had flourished for centuries in the relative obscurity of the periphery, one kind of school, the college of business or commerce, began to breach the categorical divide as structure extended outward from the center of the field. The recent phenomenon of for-profit universities, particularly the University of Phoenix, is best understood in this context of institutional change and developing field structure.

3.5. CONCLUSION

In a few words, then, the University of Phoenix phenomenon might be explained as follows. Originally developing as a nontraditional alternative to the traditional degree-granting school, UOP benefited from the emergence of a new institutional logic in the field of U.S. postsecondary education, that of academic capitalism. “Academic capitalist”

(or “institutional entrepreneur”) John Sperling borrowed heavily from the cultural-organizational model of the for-profit proprietary business college, especially the concept of the “chain school,” with its attendant growth pattern. At the same time, however, he took advantage of an extending structure that was forging new links between the field’s core and periphery: he strategically called his school a university, he sought accreditation from a regional association, and he obtained state authority to grant degrees, the academic credential of choice among working adults and their employers, many of which are large corporations. Finally, even as he sought necessary legitimacy from the field of U.S. postsecondary education, he was also obtaining legitimacy from the field of business: employers were paying for their employees’ education there, the national print news media was according it greater recognition as a going concern, and Wall Street was registering its affirmation with a substantial capital investment.

By situating the University of Phoenix phenomenon into its institutional and organizational context, I have provided in this chapter the necessary background for the three empirical analyses of legitimation episodes I will present in later chapters. In an intervening chapter I discuss the research methods, analysis, and evidence.

¹ Now San José State University, a campus in the California State University system.

² In retrospect Sperling is sanguine about the outcome. “It was a cordial parting, and, considering the stress which the war with WASC placed on both IPD and USF, the relationship was amazingly free of conflict or hard feelings. Perhaps the cordiality was an aspect of the symbiosis that had come to characterize the relationship. At the end of five years, USF had developed a capability in adult education that it probably would not have had without IPD, and IPD had become a viable company” (Sperling 2000:90).

³ UOP must also demonstrate that the new branch campus meets the same NCA accreditation criteria and standards.

⁴ Systematic data on student enrollment at the University of Phoenix were not available before Apollo Group's initial public offering in December 1994. Since 1995, Apollo Group has disclosed enrollment figures in its annual 10-K filings to the U.S. Securities and Exchange Commission.

⁵ As of 2004, UOP offered the following degrees: Associate of Arts in General Studies; Bachelor of Science in Business; Bachelor of Science in Criminal Justice Administration; Bachelor of Science in Human Services Management; Bachelor of Science in Health Administration; Bachelor of Science in Information Technology; Bachelor of Science in Management; Bachelor of Science in Nursing; Master of Arts in Education; Master of Business Administration; Master of Counseling; Master of Health Administration; Master of Management; Master of Science in Nursing; Master of Information Systems; Doctor of Business Administration; Doctor of Education in Educational Leadership; Doctor of Health Administration; and Doctor of Management in Organizational Leadership.

⁶ The average number of programs per degree has actually decreased; the absolute increase in the number of programs is a function of new degrees added, especially at the graduate (master's and doctoral) level.

⁷ With two co-authors Sperling wrote a book titled, The Great Divide: Retro vs. Metro America, published by PoliPoint Press, a left-leaning house Sperling founded that specializes in progressive books on politics, culture, and science. The book's catchy, mysterious advertising campaign in the summer of 2004 generated the desired media hype.

⁸ It is conceivable that the 2001 figure would have been higher still, if not for the almost-universal absorption of media attention by the September 11 terrorist attacks in New York, Pennsylvania, and Washington, D.C.

⁹ Evidence suggests that additional sectors underwent such shifts in the final decades of the twentieth century, e.g., scholarly publishing (Powell 1985).

¹⁰ A related piece of legislation, the Stevenson-Wydler Technology Innovation Act of 1980, enabled universities and individual investigators to profit directly from their scientific developments.

¹¹ Postsecondary education directly (albeit involuntarily) participated in the development of these distinctions. In the landmark case Trustees of Dartmouth College v. Woodward (17 US 518 [1819]), the United States Supreme Court decided that the New Hampshire governor's attempt to gain control over the Dartmouth College charter was an unconstitutional intrusion into the affairs of a private corporation.

¹² This local-to-national shift is another point of similarity between postsecondary education and health care fields—and possibly others—at this historical moment. Interestingly, the study of organization-environment relations shifted from a “community ecology” approach to an “institutionalist” perspective at approximately the same time.

¹³ A “private good” is one that is enjoyed exclusively by the paying consumer, such as a loaf of bread. Of course, the consumer may share this good with others, but at personal expense—more for one is less for another. Conversely, a “public good” is one that is non-exclusive and thus available to all on an equal, non-zero-sum basis, whether one pays for it or not. An example of a public good is national defense. A “mixed good” is one that possesses characteristics of both private and public good (Samuelson 1954, 1955). An “ambiguous good,” an economic concept introduced later, has the potential to be either private or public, based on other considerations (Head and Shoup 1969).

¹⁴ Theodore Schultz, a Nobel-prize-winning economist conducting an active research agenda in “human capital,” edited both the journal supplement and the book.

¹⁵ “Benefits from higher education flow to all, or nearly all, persons in the United States directly or indirectly, and the costs of higher education are assessed against all, or nearly all, adults directly or indirectly. Few Americans are denied any benefits and few adults escape any costs. The benefits take many forms and are delivered in quite unequal amounts; the costs, likewise, are assessed in many ways and in quite diverse sums” (Carnegie Commission on Higher Education 1973b:vii).

¹⁶ In 1980 Basic Opportunity Grants were renamed Pell Grants in honor of their original sponsor, Claiborne Pell (D-RI), the Chairman of the Senate Subcommittee on Education.

¹⁷ California’s system of postsecondary education is a subject of Chapter Six, the chapter on state licensure.

¹⁸ “At an early stage in its work, the Carnegie Commission on Higher Education recognized the need for a classification of institutions of higher education that would be more useful for purposes of analysis than existing classifications. We sought to identify categories of colleges and universities that would be relatively homogenous with respect to the functions of the institutions as well as with respect to characteristics of students and faculty members. The classification was developed in 1970 and has since been used in much of the Commission’s analytical work” (Carnegie Commission on Higher Education 1973a:v).

¹⁹ Certainly intercollegiate athletics had contributed to competition via a nationalizing (or at least regionalizing), homogenizing peer group prior to the Carnegie classification system. But this competition was more important among alumni and community residents than potential or actual students, and had more to do with “school spirit” and the maintenance of symbolic boundaries than with actual substantive differences in the schools themselves (Rudolph 1962). In a humorous yet revealing anecdote in the biography of Harvard’s longest-serving president, Charles Eliot remonstrated some boisterous football fans who were singing a song “in which occur the words ‘Three cheers for Harvard and Down with Yale.’ Eliot remarked, ‘Of course it’s right to be enthusiastic for your own side; but why sing a song that’s rude to our guests? Why wouldn’t it be better to sing, “Three cheers for Harvard and one for Yale”?’ The song, thus amended, became a favorite with his grandchildren, to be sung derisively, in frolicking moments, for their own and their grandfather’s refreshment; but the amendment was never offered to the student body” (emphasis original) (James 1930:vol II, 69-70).

²⁰ “Not covered in the survey were professional schools, such as Bible colleges and other specialized institutions, including military and maritime academies, that generally do not emphasize a liberal-arts program” (Solorzano and Quick 1983:40).

²¹ “Prospective students and their parents pay attention because U.S. News-style rank seems a fair way to gauge whether a school would give them their money’s worth. . . They say, ‘I’m willing to take a second mortgage out for a school I’ve heard about that I presume is of good quality, but not for one that I’ve never heard of that may or may not offer a quality education’” (Confessore 2003:119). Of course, it is important to bear in mind that U.S. News-style ranking activities bear a consequential portion of the responsibility for so raising the stakes (and costs).

²² Recent empirical evidence (e.g., Dale and Krueger 1999) challenges this notion but has done little to diminish its power.

²³ The authors claimed they used geographic criteria for their subcategories because the designated schools predominantly served students from their own state or region (Solorzano and Quick 1983), but an equally plausible explanation is that identifying more “leaders” would enhance the rankings’ credibility among schools and sell more copies at the newsstand. An eventual move to comprehensive coverage may have been motivated by a similar rationale.

²⁴ U.S. News even produces specialized rankings that isolate a particular segment (Top Public Schools), criterion (Best [economic] Values or Lowest Acceptance Rates), or academic program (Best Business or Engineering Program) within a category or subcategory.

²⁵ “Early Action” and “Early Decision” admission programs help increase a school’s “selectivity” and “yield.” Selectivity is the proportion of applicants awarded admission, and yield is the proportion of students admitted who actually attend. “If selectivity measures how frequently a college rejects students, yield measures how frequently students accept a college” (Fallows 2001:40). Some schools have recently modified or abandoned their admissions procedures in response to criticism.

²⁶ This money is not just spent on school tuition but on any number of cottage industries that have sprung up in the past decade or so, including tutoring and preparation for standardized entrance tests, and even admissions consultants, counselors, and coaches (many of them former high school counselors or college admissions officers), whose fees run in the thousands of dollars (Confessore 2004).

²⁷ The process of “structuration” (Giddens 1979, 1984) is not automatic; much of it is carried out by interested professionals who, individually and collectively, have a stake in the degree and kind of a field’s coherence (DiMaggio 1991). Scott et al. (2000) provide an extensive set of indicators of field structuration.

²⁸ As a result of a series of mergers, this organization has undergone many name changes, including the National Association of Accredited Commercial Schools, the United Business Schools Association, and the Association of Independent Colleges and Schools. It is now called the Accrediting Council for Independent Colleges and Schools, and is a national accrediting agency for postsecondary schools offering primarily business and business-related programs of study at non-degree and associate’s, bachelor’s, and master’s degree levels.

²⁹ The Nixon administration had been impressed by the promise of such schools because their curriculum seemed better suited to many young peoples’ interests and to the nation’s personnel needs, and did not seem to attract the rabble-rousers that had been besieging the four-year liberal arts campuses in recent years. “Overall, federal appropriations for postsecondary [career] education were more than fifteen times as large in 1972 than they had been a mere four years before” (Brint and Karabel 1989:110).

³⁰ A 1986 amendment to HEA enhanced the eligibility of part-time students (i.e., nontraditional in age, ethnicity, socioeconomic status, etc.) for financial assistance. Consequently, federal aid to students attending for-profit proprietary schools increased (Parsons 1997).

4. DISCUSSION OF THE RESEARCH METHODS, ANALYSIS, AND EVIDENCE

4.1. INTRODUCTION

By itself, settling on a general topic is insufficient to determine how the research should proceed. It is also necessary to identify explicitly the specific questions to be asked about that general topic. In this chapter I discuss how theoretical considerations influenced methodological decisions about how I designed and conducted the present research. I then close with a discussion of the kinds and sources of the evidence I used in this dissertation. The primary purpose of this chapter is to establish scientific validity and reliability by systematically accounting for the choices I made and the actions I took throughout the entire research process.

4.2. SELECTING THE CASE STUDY METHOD

Social scientists design and conduct their research by selecting from a variety of methodological options. Method selection should not be based on convenience, investigator proficiency, or any intrinsic property of the evidence (e.g., qualitative vs. quantitative). Instead, it should be based on “(a) the type of research question posed, (b) the extent of control an investigator has over actual behavioral events, and (c) the degree of focus on contemporary as opposed to historical events” (Yin 2003:5).

The case study method is the most appropriate method “when a ‘how’ or ‘why’ question is being asked about a contemporary set of events, over which the investigator has little or no control” (Yin 2003:9). Therefore, this dissertation is best conducted as a case study. Its subject is contemporary and beyond direct control, and although some of the preliminary research questions presented at the conclusion of Chapter Two possess

“who” and “what” dimensions, they all share a “how” or “why” quality.

More than a mere investigative technique, the case study method is a comprehensive, all-encompassing research strategy. As with other methods such as laboratory experiments, the purpose of a case study may be exploratory, descriptive, or explanatory. Moreover, it may be based on any kind of qualitative or quantitative evidence which may or may not include direct observation. The case study method facilitates a holistic understanding of complex social phenomena by retaining the meaningful characteristics of real-life events (Yin 2003).

Within an explanatory case study framework, this dissertation applies comparative-historical analyses to real-life episodes in the history of the University of Phoenix, the leading private provider of postsecondary education in North America. Among others, Chandler (1962), Selznick (1949), Vaughan (1996), and Zald (1970) each used historical material from actual nontrivial, undisguised organizations to help build sociological theory. The present research seeks to continue this rich tradition.

Theory is integral to every aspect of the case study method, but the relationship between theory and evidence is different from how it is commonly conceived. Without a sufficiently developed theoretical framework, determining case selection as well as data collection, analysis, and interpretation would all be extremely difficult if not impossible. Moreover, “case studies, like experiments, are generalizable to theoretical propositions. . . . [T]he mode of generalization is ‘analytic generalization,’ in which a previously developed theory is used as a template with which to compare the empirical results of the case study.” This is in contrast to the more commonly recognized “statistical

generalization” that guides research methods using a probability sample to represent a larger, predetermined population (Yin 2003:10, 32-33).

In summary, exemplary cases warrant in-depth study because they help to build new theories (Eisenhardt 1989; Ragin 1987, 1994; Ragin and Becker 1992; Yin 2003). The present research uses a case study framework to consider important broader theoretical issues at the intersection of culture, organizations, and historical processes.

4.3. SELECTING THE CASES

A primary distinction in designing case study research is between single- and multiple-case designs. In general, several compelling rationales exist for selecting a single case, but a multiple-case design provides opportunities to draw cross-case comparisons and contrasts that do not exist in a single-case design. More importantly, multiple cases allow for a replication of findings, which contributes to their robust explanatory power and generalizability (Yin 2003). In the absence of a compelling rationale for studying a single case, and with several cases available from which to select, the present research has a multiple-case design.

A logic of theoretical replication should determine how many, and which, cases to select for analysis. Indiscriminately adding cases to increase the “n” is unwise, both because of the costs involved and because it incorrectly assumes a “sampling logic” that guides statistical research. In a case study “[e]very case should serve a specific purpose within the overall scope of inquiry,” specifically the purpose of replication (Yin 2003:47). With a replication logic a point of “theoretical saturation” exists, beyond which the actual costs of additional cases outweigh their potential benefits (Eisenhardt 1989).

Theory determines case selection in part by identifying the appropriate unit (and possibly subunits) of analysis. Cases may be actors such as individuals, organizations, industries, or nations; or they may be actions such as decisions or programs; finally, cases may be some combination of actors and actions, such as exchanges or events. Some analytical units are aggregations of others that are thereby rendered as subunits. For example, multiple individuals make up an organization, or a program is an accumulation of decisions. Whatever the unit of analysis identified, it should be appropriate to the theoretical questions or propositions that animate the research (Yin 2003).

Whether the case study is a single- or multiple-case design, when attention is given to subunits within an analytical unit it is an “embedded” case study. An embedded design has advantages as well as disadvantages. “An embedded design can serve as an important device for focusing a case study inquiry,” guarding against slippage between theory and evidence. At the same time, however, another kind of slippage may occur “when the case study focuses only on the subunit level and fails to return to the larger unit of analysis” (Yin 2003:45).

There are several plausible candidates for the primary unit of analysis of this dissertation. A casual observer may conclude that the research presented here is a single-case study of the field of U.S. postsecondary education, or of the for-profit degree-granting university, or of the University of Phoenix. However, the primary unit of analysis is actually none of these. As discussed in Chapter Three, these represent different layers of the broader context. A hallmark of case study research is that the boundaries between the phenomenon being investigated and its broader context are not

clearly evident (Yin 2003). The primary unit of analysis is neither a single actor, nor a type of actor, nor an aggregation of actors; it is instead a combination of actors and actions defined here as an episode, an essentially embedded case.

4.4. THE UNIT OF ANALYSIS: THE CASE FOR EPISODES AS CASES

Simply put, an episode is a set of interrelated, contingent events, a “story” with “a beginning, followed by an enchainment of events, which leads finally to an end” (Abbott 1983:132).¹ The concept of event is integral to historically-oriented research (Abbott 1983, 1992), as well as to many substantive fields of social science inquiry such as political sociology (Sewell 1996), social movements (Olzak 1989), and the sociology of the life course (Hogan 1978). An event is usually conceived of as a social occurrence that is discrete in both its temporal and spatial boundaries, such as an election, a protest, or a marriage. But one usually finds these events embedded in broader patterns of social phenomena: an electoral campaign, a “movement,” a dyadic relationship. These broader patterns are here defined as episodes.

Since they are divisible into subunits that warrant separate attention, episodes are essentially “embedded” cases. These subunits include the component events, but they also include the actors who participate in one or more of these events, their actions and their (contemporaneous and retrospective) perspectives of their and other actors’ actions and the events. If episodes are “stories,” then events are their “chapters,” and actors are their “characters,” with each character representing a distinct “point-of-view.”

It is often more difficult to determine an episode’s analytical boundaries than those of individual events. Although some episodes involve events that mark a definitive

beginning, ending, or “turning point,” many episodes involve marginal events whose relatedness may never be fully or satisfactorily settled. Nevertheless, there should be a clear, unambiguous relationship among most or all of the events included in an episode.

Connecting events together as an episode is usually some form of historical contingency: the existence, type, and outcome of a prior event all affect those of subsequent events. The threshold for contingency is higher than for random accident, but lower than for causality (Abbott 1983). While Sewell (1996) argues that it is the very nature of events to produce (or be produced by) other events, contingency is a more reasonable claim than causality. Oftentimes it may never be known, or even knowable, whether a given event “caused” (or was “caused” by) another, later (or earlier) event.

Contingency may be addressed from at least two different perspectives. One perspective emphasizes the structural sequencing or ordering of events, the story’s “grammar.” However, this approach effectively renders the event the primary unit of analysis, rather than an analytical subunit of the episode. This dissertation’s research questions do not address event structure directly. Instead they address contingency from another perspective, one that preserves the episode’s holistic quality by focusing on broader cultural “plots” found in the narrative (Abbott 1983).

The episode is the appropriate analytical unit for this dissertation for two primary reasons. First, it maximizes the advantages and benefits of the case study methodology. Many “how” and “why” questions are best answered—and some are arguably only answered—by examining a series of interrelated, contingent events. “The case study inquiry copes with the technically distinctive situation in which there will be many more

variables of interest than data points,” such as exist in an episode (Yin 2003:13). But more importantly, with its complex interplay of actors and actions over time, the episode best addresses the theoretical questions about organizational legitimacy and legitimation processes (presented in Chapter Two) that provide the basis for the present research.

The rationale for case selection comes from the structure of gate-keeping in U.S. postsecondary education. Three integral audiences combine to make a gate-keeping triad: voluntary accrediting associations, state-level regulatory agencies, and the federal Department of Education. With some notable exceptions, almost all postsecondary schools must undergo legitimation from each of these three audiences. The three episodes studied as empirical cases are Accreditation, State Licensure, and Investigation. (Chapter Six presents additional case-selection rationale for state licensure.)

4.5. CONDUCTING HISTORICAL RESEARCH

While this dissertation is situated in the contemporary era, the episode as an analytical unit is fundamentally temporal, and therefore calls for a historical research method within the broader case-study framework. More specifically, the analysis of the “plots” of episodes recommends a narrative approach.

Although to some, narrative analysis may seem to be the “natural” or only option for this type of research, the above discussion of contingency suggests that a variety of possibilities do exist that can be employed independently or in tandem (Mahoney 1999; Yin 2003). Compared to its alternatives, however, “narrative analysis has the obvious strength of allowing the analyst to show sensitivity to detail, process, conjuncture, and causal complexity. Successful narrative accounts are not subject to the criticism of

‘oversimplification.’ However, narrative appraisal carries with it key limitations,” most importantly the potential to obscure or undermine theoretical parsimony (Mahoney 1999:1168). Such key limitations notwithstanding, many landmark studies of organization-related phenomena have made effective use of narrative historical analysis, and the method is gaining currency in organization studies (Czarniawska 1997a, 1997b). Moreover, the multiple-case design of the research presented here enables the pursuit of a true combination of comparative and historical research methods.

There are two (potential) differences between historical research methods and other methods of social scientific research. One has to do with theory, while the other involves the evidence. With respect to the former, “there has been a spirited, sometimes heated debate over the theoretical standing of historical sociology.” One line of argument contends “causal explanations in historical research require attention to causal relations and mechanisms specified in general theory. This argument contrasts the use of ‘general, trans-historical’ theoretical concepts with the purported retreat of historical sociology to particularism and purely inductive inquiry.” Meanwhile, “others have argued for alternative understandings of theory as profoundly historical” (Clemens and Hughes 2002:222). While it is purposively designed as an inductive inquiry, this dissertation nevertheless carefully attends to the complex dialectic between theory and history.

With respect to historical evidence, caveats abound. Research using documentary sources requires particular attention to questions of authenticity, representativeness, genre, and interpretation (Hodson 1999; Platt 1981). It is dangerous to rely on “a simple ‘reflection’ model that takes a text or account as evidence of what ‘really’ happened or

what people ‘really’ believed or how society ‘really’ was” (Clemens and Hughes 2002:207). Documents are cultural artifacts; therefore, documentary analysis should attend to issues developed in the sociology of culture, including issues related to interpretation and theoretical explanation. Historical research must strive toward a complete understanding of the sources, and compensate for any lack of understanding by triangulating the evidence through multiple sources, as well as multiple methods where appropriate (Yin 2003). This dissertation assembles the entire documentary record for each of the selected cases, and then validates and extends that record with interviews of key participants.

4.6. THE EVIDENCE

Four different kinds of sources provide information about the University of Phoenix. They are as follows: the organization itself and several of its members, especially its founder, John Sperling; the popular press, including national and local news publications, as well as the postsecondary education “trade” press and the business press; policy and academic research; and the various other organizations and individuals in the institutional environment with which the University of Phoenix interacts. As each kind of source offers different information for different purposes and audiences, each is distinguished by its inherent usefulness and limitations.

Like most colleges and universities in the United States, the University of Phoenix provides considerable information about itself, although most of it is promotional or public relations oriented, and undoubtedly all of it is framed for public consumption. Little of this information is historical, longitudinal, or retrospective; much

is oriented to the present or the future, and aimed at very specific audiences. It deploys its past strategically, to establish credibility either as a provider of educational services, or a viable profit-making enterprise, or both.

This self-produced information, much of which is available at its internet site (www.phoenix.edu), is oriented to four primary audiences: students, employers, instructors, and investors. For students, UOP presents an array of practical information addressing the what, when, where, how, and why of its educational services, including information on admissions, financing, campus locations, and academic programs.

To employers, the University of Phoenix touts itself as an ongoing upgrader of employee skills, which it argues translates directly into increased business productivity, return on investment, and decreased turnover. Employers can arrange for UOP to conduct an educational needs assessment of their organization, provide educational counseling to their employees, or bill them directly—rather than individual students—for educational services rendered. In some instances, employer training of employees may qualify for course credit, or employers may assist in the custom design of curricular offerings.

Because the University of Phoenix utilizes a mostly part-time, contracted, practitioner faculty, it seeks working adults to be its instructors as well as its students. Prospective instructors must meet rigorous qualifications, but in exchange UOP promises significant benefits, including enhanced professional expertise, networking opportunities, and altruistic satisfaction.

Finally, investment information about the University of Phoenix is located at the internet site of its corporate parent, Apollo Group, Inc. (www.apollogrp.edu). There,

actual and potential investors will receive financial information about the past performance and projections of future performance of the University of Phoenix, Inc., and its sibling, the University of Phoenix Online, whose public stock was traded separately on the NASDAQ exchange from September 2000 to August 2004.² Apollo Group's investor relations office maintains an online archive of news and earnings releases dating back several years. One can also electronically access up-to-the-minute stock prices, annual reports, links to federal filings, and the contact information of investment analysts who cover either or both stocks.

The most extensive and comprehensive internal treatment of the University of Phoenix is found in the autobiography, Rebel with a Cause: The Entrepreneur Who Created the University of Phoenix and the For-Profit Revolution in Higher Education (2000), written by its founder, John Sperling. Although by no means balanced, it is a reasonably candid and factually reliable account, and provides a useful roadmap to the critical episodes and milestones in UOP's history. Unfortunately, however, Sperling glosses over many organizational details, treating most events as epic clashes of individual wills and personalities, which is of course consonant with the conventions of this literary genre. Ultimately the book is a personal memoir rather than an organizational history, although Sperling devotes 65 out of 256 pages of text to describing the organization since its inception in 1976.

In an earlier self-published volume, Against All Odds: Teaching America How to Compete in a Global Economy (1989), Sperling combines a rougher version of some of the material he included in the 2000 book, with arguments in favor of adult continuing

education as a general end, and the University of Phoenix as a specific means. A third publication, For-Profit Higher Education: Developing a World-Class Workforce (1997), which Sperling co-authored with former fellow Apollo executive Robert Tucker, offers a more restrained, academic version of the same arguments, accompanied by reasoned criticisms and practical policy recommendations.³

Coverage by local publications has usually consisted of a few items documenting the University of Phoenix's arrival to the metropolitan region covered by the newspaper in question. An electronic search of the major⁴ daily newspapers in California, Colorado, Illinois, and Massachusetts (the four states selected as cases of state licensure in Chapter Six) yielded surprisingly few articles on the subject of UOP at the local or regional level. Occasionally, however, a feature story discusses a larger trend, such as (online) distance education or the economics of for-profit postsecondary education, or profiles one or more local nontraditional postsecondary students.

At the national level, the New York Times, the Wall Street Journal, and the Chronicle of Higher Education, the weekly trade publication for all U.S. postsecondary education, each began its coverage of for-profit postsecondary education generally, and the University of Phoenix specifically, in the middle 1990s. Chapter Three summarizes the quantitative trends of this coverage.

Policy research on American for-profit education has clustered at several academic sites along the eastern seaboard, and has depended on financial support from a handful of grant makers. These funded research activities have resulted in a number of working papers and reports (Breneman 2003; Couturier 2003; Education Commission for

the States 2000; Immerwahr 2002; Kelly 2001a, 2001b; Pusser and Wolcott 2003; The Futures Project 2000).

The For-Profit Higher Education Research Project, supported by the Alfred P. Sloan Foundation, is located at the Curry School of Education of the University of Virginia. Teachers College at Columbia University hosts the National Center for the Study of Privatization in Education (NCSPE). Funded by the Pew Charitable Trusts and the Ford Foundation, NCPSE addresses a variety of topics related to privatization in primary and secondary education, including charter schools, school choice, and vouchers. By contrast, the Futures Project, housed at the Taubman Center for Public Policy and American Institutions at Brown University, focuses exclusively on postsecondary education, although not explicitly for-profit providers. Like NCSPE, the Futures Project also receives funding from Ford and Pew. Frank Newman, its director until his death in 2004, was a visiting professor at both Brown University and Teachers College, but from 1985 to 1999 he was the President of the Education Commission for the States (ECS) in Denver, Colorado. Although ECS is primarily a policy clearinghouse for state governments, it recently produced a series of reports on for-profit postsecondary education, courtesy of the Alfred P. Sloan Foundation.⁵

Academic research on for-profit postsecondary education is scant; scholars have only recently begun to pay attention to this social phenomenon. Some members of the academic community, faculty and administrators alike, have published jeremiads on the recent trends toward commercialization and marketization in postsecondary education more generally, but these are not primarily empirical studies (Bok 2003; Kirp 2003).

Those engaging in empirical work tend to examine the production of knowledge rather than its consumption. Literature on the privatization of university science and research—known as “technology transfer”—is both rich and abundant (e.g., Croissant 2000; Owen-Smith 2000; Slaughter and Leslie 1997).

A few educational researchers have investigated the University of Phoenix specifically. Their findings are preliminary, descriptive, and atheoretical, and they rely heavily on internal informants who provide “official” accounts (e.g., Embree 2001; Rutherford 2002). A recent volume on for-profit postsecondary education relied principally on the author’s personal experiences as an administrator at a DeVry University campus in New Jersey. He gives a brief history of the “education industry” in America and profiles of the major players, including the University of Phoenix. His profile of UOP comprises a mere four pages and is heavily anecdotal (Ruch 2001).

Unfortunately, these three kinds of sources tend to form a closed circuit of evidence; none have reckoned fully with the final kind of source, if they reckon with it at all. The University of Phoenix interacts with various other organizations and individuals in its institutional environments, including the audiences discussed in Chapter Two. These interactions, which are the substantive basis of the following empirical cases (the episodes of organizational legitimation), necessarily generate documents. Many, though not all, of these documents are official public records, although as such they are not always easily accessible.⁶ However, this portion of the documentary record provides a vital yet heretofore neglected perspective on UOP.

The following organizations and individuals provided documents upon verbal or written request. For the accreditation episode: the Higher Learning Commission (formerly the Commission on Institutions of Higher Education) of the North Central Association; the Arizona Board of Regents. For the state licensure episodes: California Bureau of Private Postsecondary and Vocational Education; California Postsecondary Education Commission; California State Archives; California State Assembly; California Secretary of State; Colorado Commission on Higher Education; Colorado Secretary of State; Illinois Board of Higher Education; Illinois Secretary of State; Massachusetts Board of Higher Education; and Massachusetts Secretary of State. For the investigation episodes: the U.S. Department of Education.

Each of the above sources provided different kinds of documents in various combinations. However, most of the documents were one of the following: published reports; minutes of meetings; internal memoranda; and written correspondence. These documents were used to establish a broader context, as well as to verify and expand upon Sperling's narrative account. Since most secondary accounts on the University of Phoenix rely almost exclusively on Sperling's primary account, they offer few additional details beyond those given by Sperling himself.

The present research is thus based on all extant documents from all available primary and secondary sources. Each episode's narrative was constructed from the comprehensive documentary record. By "triangulating the data"—drawing evidence from multiple sources—this dissertation addresses methodological concerns about validity and reliability that are ever present in a case study (Yin 2003).

Since the episodes are contemporary, it was possible to validate and extend the documentary record with open-ended, semi-structured interviews of approximately twenty key participants. These unrecorded interviews lasted from 30 minutes to two hours, and were conducted in person or over the telephone, often with follow-up interactions via telephone or email. Informant follow-up is a vital aspect of case study research, since this feedback opportunity contributes to factual accuracy and interpretive clarity (Yin 2003). Appendix B provides a list of informants and their affiliations.

Contact with informants followed a protocol that complied with policies that protect human subjects in scientific research. Once they had been identified (usually by one or more documents) as having directly participated in an episode being studied, informants were asked to provide their own account of events as they recalled them. Their accounts were then used to verify and/or amend the narrative of the respective episode. Finally, many informants reviewed the completed narrative to provide yet another check on its validity (Yin 2003).

Informant interviews were not completely unproblematic. Several key participants from earlier episodes had already died. Some, though still living, were in various stages of senescence, with limited power of recall. Others (especially past and present University of Phoenix personnel) were unavailable or otherwise unwilling to consent to an interview. Even among those individuals who did consent to act as informants, some were not always completely forthcoming about their knowledge and/or recollection. However, as an alternative research method with an alternative set of sources, interviews were nevertheless an integral element of the case study design of this dissertation.

4.7. CONCLUSION

By discussing the research methods, analysis, and evidence in this chapter, I have established the scientific validity and reliability of the empirical analyses of legitimation episodes that I present in the next three chapters. I have arranged these chapters in rough chronological sequence, beginning with the earliest episode: accreditation by the North Central Association.

¹ Alternative formulations include “the progression of events through time” (Cobb 1984:485) and “a sequence or pattern of development” (Pondy 1967:298). Organizational sociology has applied the concept to discussions of power (Cobb 1984), conflict (Pondy 1967), and escalation (Ross and Staw 1993) in organizational settings.

² On August 27, 2004, Apollo Group converted all outstanding shares of University of Phoenix Online (UOPX) to class A shares of Apollo Group (APOL) stock.

³ The most useful information appears in one of its several appendixes: a detailed summary of state regulations of, and licensure processes for, private postsecondary education organizations (Sperling and Tucker 1997).

⁴ “Major” is measured by circulation, as tracked by the Audit Bureau of Circulations (www.accessabc.com), which tracks the top 100 daily U.S. newspapers. The following publications were included in the search: for California, the Los Angeles Times, the Sacramento Bee, the San Diego Union-Tribune, the San Francisco Chronicle, and the San Jose Mercury-News; for Colorado, the Denver Post and the Rocky Mountain News; for Illinois, the Chicago Sun-Times and the Chicago Tribune; and for Massachusetts, the Boston Globe and the Boston Herald.

⁵ All of these policy research centers and institutes maintain internet sites: www.curry.edschool.virginia.edu/forprofit/start.htm; www.ecs.org; www.futuresproject.org; and www.ncspe.org.

⁶ Experiences accessing public records varied. Some documents were available online free of charge; others were readily obtained upon the simple direct request of the investigator, either free or for the cost of their reproduction; still others required a formal request procedure, such as that prescribed by the federal Freedom of Information Act (FOIA).

5. ACCREDITATION OF THE UNIVERSITY OF PHOENIX BY THE NORTH CENTRAL ASSOCIATION

The battle for accreditation was a battle for survival.

John Sperling, Founder, University of Phoenix

5.1. INTRODUCTION

This chapter is the first of three sets of empirical cases of organizational legitimation. I have drawn the evidence for these cases from episodes in the history of the University of Phoenix. In each chapter I consider legitimation by one of the three primary gatekeeping audiences in the field of U.S. postsecondary education.

In this chapter I treat accreditation as a case of the organizational legitimation process. I use evidence from an episode in which the University of Phoenix received accreditation from the North Central Association in the mid-1970s. I begin with a discussion of accreditation as a process of organizational legitimation, and then I provide some historical background on the North Central Association. Finally, I present and analyze the evidence from the case.

5.2. ACCREDITATION AS A LEGITIMATION PROCESS

Contrary to popular perception, the accreditation¹ of postsecondary education is not a regulatory responsibility uniformly undertaken by the government. While most U.S. states directly regulate the authority to award educational credentials, and the federal government now assumes a significant role in financing postsecondary enrollment, the task of accreditation has largely devolved upon voluntary membership associations, on behalf of the peer organizations in one of six regions of the country.²

Historically, control of American education has followed the pattern of American government. Control has been decentralized with most powers vested in state and local bodies and with relatively little direct control by the federal government. Due to this structure, no agency has been able to set minimum standard requirements for all of the educational institutions in the United States. As American higher education expanded during the nineteenth century, various institutions sought definition and support of minimum standards. Regional accrediting agencies developed for this purpose (Wiley and Zald 1968:27).

Accrediting associations initially arose to address the dual cultural problem of field-level order and meaning. “Regional associations grew up at the end of the nineteenth century when the situation in higher education became quite confused” (Harclerod 1980:3). These voluntary associations,³ whose members are individual schools, emerged primarily to establish and maintain the categorical boundaries of secondary and postsecondary education, which they came to do through the practice of accreditation (Young et al. 1983). In other words, as an audience accreditors are gatekeepers, but they also represent the community of practice.

By the middle of the twentieth century the primary purpose of accreditation was no longer cultural but rather material. “Concrete endorsement of the regional associations’ position” in the field of U.S. postsecondary education “came from both private and public agencies”: the Ford Foundation made \$500 million dollars available in the 1950s for grants to colleges and universities on the stipulation that applicants must be accredited; other philanthropic organizations enforced the same eligibility requirement. “Such endorsements were soon to be augmented immeasurably after federal funds became available for educational institutions, because the United States Office of Education⁴ adopted the policy of relying on the evaluations of the regional associations as

a basis for determining institutional eligibility for grants.” Moreover, a 1938 federal court ruling gave accrediting associations additional clout. Both the U.S. District Court and the U.S. Circuit Court of Appeals upheld a decision by the North Central Association (the largest regional accrediting association) to dis-accredit the North Dakota Agricultural College over the objections of the governor of that state (Geiger 1970:56-57).

Accreditation is thus a process of legitimation. Through accreditation, an organization’s peers determine that it is a legitimate provider of postsecondary education. Applying a set of assessment criteria, successful accreditation classifies the organization as a member of the heterogeneous category of postsecondary schools operating in that region of the United States. Once an accrediting association has made this determination, its oversight is periodic, with reviews required every five to ten years.⁵

Initial accreditation remains a consequential process, but one whose favorable outcome is increasingly certain, as it takes on a ceremonial nature and relies on participants’ good faith (Meyer and Rowan 1977). In the 45 years between 1915 and 1959, the ratio of accredited to total postsecondary schools in the North Central Association’s jurisdiction more than doubled, from 39.4% to 81.1% (Wiley and Zald 1968:50), whereas the incidence of dis-accreditation during that same period was notably infrequent (Geiger 1970).

5.3. THE NORTH CENTRAL ASSOCIATION

While not the oldest, the North Central Association of Colleges and Schools (NCA) has always been the largest regional accrediting association in the country, with a jurisdiction covering nineteen states and approximately 1,000 member schools.⁶

Throughout its history NCA has often taken the lead in philosophical and practical developments in American postsecondary education (Davis 1945; Orlans 1975).

Begun in 1895, NCA was the first to move toward the enforcement of measurable standards for members and potential members. “A set of standards was first presented at the annual meeting in 1908” and implemented by 1912. “In 1913 the first list of accredited colleges was published” (Geiger 1970:xii). The inaugural list included 125 schools that met a set of twelve fairly specific and explicit criteria.⁷ “[Standards] were expanded periodically to include even more quantitative criteria (e.g., percent of Ph.D.’s on the faculty, size of library, number of departments, etc.)” (Wiley and Zald 1968:41).

However, within two decades the uniform, quantitative-oriented accreditation system encountered problems. “Growth had brought under the same rubric educational institutions with widely divergent purposes, organization, and level of quality.” Expansion of the field, coupled with increased organizational heterogeneity, “led to a questioning of the usefulness of numerical standards. . . . The attack on quantitative standards led to a reappraisal of the standards then in use within the North Central Association” (Wiley and Zald 1968:42, 43).

Consequently, in 1934 NCA revised its accreditation system away from objective, quantitative measures to more subjective, qualitative ones, emphasizing the “total pattern” of the organization (NCA 1997). “Indicative of the spirit of the NCA reforms in college requirements . . . was the changed language associated with accreditation,” noted an official North Central historian. “‘Inspection’ gave way to ‘evaluation,’ ‘standard’ was

used with decreasing frequency, and such words as ‘criteria,’ ‘ideals,’ ‘growth,’ ‘objectives,’ and ‘individuality’ were conspicuous” (Geiger 1970:27).

Not only did the revised measures affirm evaluative subjectivity; they also celebrated the growing organizational diversity (HLC 2003). “A new principle of ‘individuality of institution’ was given a prominent place; uniformity was even marked down as undesirable, and experimentation was to be ‘encouraged.’ A ‘pattern map’ made of each institution was to show how it compared on any selected characteristic with other accredited institutions.” Even the prescriptive “pattern map” concept soon came to be seen as too constricting.⁸ Thus NCA made additional revisions to its new accreditation guidelines in 1938, 1941, and 1954, with each modification liberalizing the guidelines even further “in the direction of variation and flexibility” (Geiger 1970:28).

Accompanying these changes was an increased emphasis on process. Among the statements in the report by the NCA committee charged with drafting the revised accreditation guidelines: “A standard should not be regarded as fixed but as referring to something alive and developing” (Davis 1945:71). Most of the accreditation literature since the 1950s has emphasized its processual nature (e.g., Young et al. 1983).

NCA devised the status of “candidate,” and the period of “candidacy,” as a formal initiation of the accreditation process. Beginning in 1961, a postsecondary school had first to apply for candidacy before it would be considered for accreditation by NCA. Candidacy allowed the accrediting association to extend its organizational affiliations without necessarily extending the rights and benefits of full membership. North Central then introduced the category of “Correspondent” in 1967 to indicate the status of schools

intending to apply for candidacy (Geiger 1970). It explicitly stated, and required of candidates to disclose publicly, that “attainment of this affiliate status does not automatically assure accreditation” (NCA 1976:27).

The Council on Postsecondary Accreditation (COPA),⁹ a national consortium of all federally recognized voluntary nongovernmental accrediting associations—but especially the six regionals—recommended in 1978 that the “process model” of accreditation be revised to a “process-performance model.” Whereas the catholic “process model” had sought to assess each postsecondary school exclusively on its own terms, the revised “process-performance model” recommended that such assessment be augmented by the measurement of actual student outcomes (Andrews 1978).

Why this recommendation? Because of the rise of “nontraditional” education, “the innovative or unconventional design and/or delivery of educational programs for a new clientele, programs that emphasize educational accomplishments and outcomes and recognize an individual’s prior learning experiences when relevant to current educational goals.” The various accrediting associations recognized by the 1970s that they continued to ignore this nascent movement at their peril. In claiming jurisdiction over it, they sought to integrate it into their own well-established jurisdiction of “traditional” education.¹⁰

Briefly, we have found that nontraditional education (1) is basically a variation within, not a departure from the traditional purposes, processes, and outcomes of American postsecondary education; (2) focuses on equality of access, quality of results, and individual achievements; (3) is a positive and creative force in postsecondary education; (4) is a stimulus for constructive change in postsecondary education; and (5) is achieving acceptance among the constituent groups of postsecondary education as seen by the adoption and integration of nontraditional characteristics by a significant number of traditional institutions (Andrews 1978:7,9).

COPA requested funding from the Kellogg Foundation in June 1976 to support a national research project on the assessment and accreditation of nontraditional education. Its study included 62 nontraditional degree-granting postsecondary schools—many of which were public or non-profit—in all six accrediting regions. The project officially began in April 1977, and was concluded in September 1978, fewer than three months before UOP's accreditation by the North Central Association.

The COPA research team published a series of reports that analyzed undergraduate and graduate nontraditional education and made a number of policy recommendations. Among the most intriguing of these recommendations, the “process-performance model” sought to address the shortcomings of the “process model.” “When problems do occur in the evaluation of nontraditional study, they appear to be in two basic areas,” the team reported: “(1) the adaptation of the process-oriented evaluation model of the accrediting body to an evaluation of the nontraditional, and (2) the inadequacy of the operational processes and procedures of the nontraditional institution or program. Many times there simply is not enough to look at to be comfortable with the decision that must be made” (emphasis added). Accordingly, the “process-performance” model recommended that accreditation “focus more on the effectiveness of the education offered and less on the form, structure, and delivery employed” (Andrews 1978:21, 26).

Beyond the problems of assessing nontraditional education lay the potential problems of nontraditional education itself. For-profit schools were particularly suspect, since they raised the specter of charlatanism and deceptive motives. “The quickness with

which the nontraditional movement [has] developed and expanded has made it vulnerable to the educational huckster” (Andrews 1978:17).

The North Central Association had presented its position early on: for-profit proprietary schools were categorically excluded from eligibility for accreditation. It issued the first such declaration in 1938, four years after it had introduced revised assessment guidelines; it affirmed this policy of categorical exclusion in 1961. The following year the Executive Board of NCA’s Commission on Institutions of Higher Education (CIHE) considered a proposal to reverse the policy but declined to do so, claiming that the association was already unequal to the task of accrediting eligible non-profit schools and re-accrediting its existing membership¹¹ (Geiger 1970).

In the early 1970s most of the regionals, North Central among them, still deemed for-profit or proprietary schools categorically ineligible for accreditation.¹² Like all other regional accreditors, however, NCA began to accept membership applications from for-profit schools after a court case involving another regional.¹³ Although the Middle States Association won the case on appeal, accrediting officials nationwide realized that the legal grounds for categorically excluding for-profits were not very strong, and that such exclusion would probably not justify the potential legal costs involved¹⁴ (Orlans 1975).

By the time, then, that the University of Phoenix submitted its initial accreditation inquiry to the North Central Association in 1976, its for-profit status was no longer a legal obstacle and its nontraditional model was becoming more culturally accepted.¹⁵ But UOP’s for-profit, degree-granting, non-traditional model still represented an unfamiliar combination of familiar organizational elements in postsecondary education.

5.4. ACCREDITATION OF THE UNIVERSITY OF PHOENIX

Because of his experiences in California, John Sperling was convinced that accreditation of IPD/UOP¹⁶ by the Western Association of Schools and Colleges (WASC) was impossible.¹⁷ But he hoped that accreditation from the North Central Association would be possible, albeit neither certain nor easy (Sperling 2000). Indeed, three separate NCA teams conducted site visits, and at least seven NCA committees or panels held consequential meetings during UOP's accreditation episode (Table 5.1).

Table 5.1. Events in the Accreditation Episode.

DATE	EVENT	OUTCOME
June 13-14, 1977	First Site Visit	Recommended Candidacy
June/July 1977*	<i>Review Panel</i>	Affirmed Recommendation
July 25, 1977	<i>Committee on Insitutions of Higher Education (CIHE)</i>	CANDIDACY Granted
June 6-8, 1978	Second Site Visit	Recommended Continued Candidacy
July 1978*	<i>Review Panel</i>	Recommended Accreditation
July/August 1978*	<i>CIHE</i>	Continued Candidacy Granted, Option to Re-Apply in One Year
July/August 1978*	<i>Committee on Reconsideration</i>	
July/August 1978*	<i>CIHE</i>	Recommended Fact-Finding
August 28-29, 1978	Third Site Visit	Recommended Accreditation
October 27, 1978	<i>Committee on Reconsideration</i>	Recommended Accreditation
December 9, 1978	<i>Board of Directors</i>	ACCREDITATION Granted
* Exact date unknown	NCA Site Visits in Boldface <i>NCA Meetings in Italics</i>	Actions of Record in CAPS

Before receiving accreditation the school's financial situation was precarious. It

could operate but was not yet eligible to administer federal student aid.¹⁸ At the time “the only way for a student to attend UOP was to pay the tuition by cash, check, or a credit card. In the first year, only eight students were willing to pay cash to enroll in a non-accredited university.” Payments from lapsed IPD contracts did continue for another eighteen months, giving the embattled school a vital revenue stream (Sperling 2000:106).

In the 1970s NCA accepted an organizational “status study” document, accompanied by copies of the most recent course catalog, and faculty and student handbooks, as an application for candidacy. “Candidate for accreditation status indicates that an institution (a) has provided evidence of sound planning, (b) has available the resources to implement its plans, and (c) appears to have the potential for attaining its goals within a reasonable time” (NCA 1976:19).

At the time, the eligibility criteria for candidacy were as follows:¹⁹

1. Have a charter and/or formal authority from the appropriate governmental agency to award a certificate, diploma, or degree.
2. Have a governing board which includes representation reflecting the public interest.
3. Have employed a chief executive officer.
4. Offer, or plan to offer, one or more educational programs at least one academic year in length or the equivalent at the postsecondary level, with clearly defined and published educational objectives as well as a clear statement of its means for achieving them.
5. Include general education at the postsecondary level as a prerequisite to or an essential element in its principal educational programs.
6. Have admission policies compatible with its stated objectives.
7. Have developed a preliminary survey or evidence of basic planning for the development of the institution.
8. Have established an adequate financial base or funding commitments and have available a summary of its latest audited financial statement (NCA 1976:20-21).

Regarding the first criterion: in the state of Arizona, “all that was required to

establish a degree-granting institution of higher education was to create a corporation for that purpose” (Sperling 2000:98). In 1976 the state corporation code was the only law governing postsecondary schools in Arizona. Elsewhere, state licensure sometimes substituted for accreditation, but at the time Arizona did not have a licensure process.²⁰

As for the second item, among those serving on the governing board were Ray Shaffer, retired president of the Greyhound Corporation (then one of the largest companies headquartered in metropolitan Phoenix) and Dr. John Prince, founder and Chancellor Emeritus of the Maricopa County Community College District. Both men were established in and respected by the local community, and both were linked to the fledgling school through Snell and Wilmer, the influential Phoenix firm handling IPD/UOP’s legal work (Sperling 2000).²¹

As chief executive officer and board chairman, John Sperling himself satisfied criterion number three. The latter five criteria²² would be addressed by the status study with supporting documentation, and verified by a team of NCA “consultant-evaluators.”

Sperling initiated correspondence with NCA in July 1976. In August and November of that same year, he met with accrediting officials who encouraged him to submit a status study application. Once NCA received the status study application, it scheduled a two-day site visit (Sperling 2000).

The first NCA team site visit took place in Phoenix on June 13-14, 1977. Consultant-evaluators were typically administrators and faculty from NCA member schools. They performed their services for an honorarium (then \$100 a day, with the team’s chair receiving another \$100 overall) and expenses (NCA 1976).

“Instructions issued in 1964 advised the teams about whom to visit on a campus, what to look for, and what to include in a report” (Geiger 1970:82). The NCA Handbook on Accreditation furnished the following description of a site visit:

The team chairperson, in consultation with the team members and the chief executive officer of the institution, establishes tentative plans for the evaluation in advance of the visit. These plans should include consultation with the staff of the state coordinating/governing agency, if appropriate, and with other constituencies of the institution.

Team members arrive the day before the visit, usually early evening, to discuss and review plans for the evaluation of the institution and the writing of the team report. The chairperson takes special care to explain the evaluation process to members of the team. Team members discuss how the work is to be divided, whom they wish to interview, and what initial questions are to be raised. . . . All evaluators are expected to stay the full number of days arranged for the visit, with departure scheduled after the exit interview.

Team members meet with the chief executive officer of the institution and other staff members who may be designated by the chief executive officer to set the stage for the visit and to discuss the institution’s structure and programs. On the basis of the institutional materials furnished them, the evaluators may arrange interviews with individual administrative officers and faculty members. They may have conferences with, among others, the director of learning resources, the chief student personnel officer, department heads, and a representative group of faculty and students. Team members gather data and information, verify the information obtained, and arrive at conclusions. They reconvene periodically to assess their findings and to determine subsequent assignments. At a final session, a rough summary of the team’s findings is prepared and a tentative accreditation judgment is made in preparation for the exit interview.

Before leaving the campus, the team meets with the chief executive officer and the designated members of the staff to review the team’s findings with regard to the institution’s strengths and areas of concern. During this meeting, the accuracy of facts and judgments is also checked. If it seems useful to do so, the chairperson may share the team’s tentative accreditation recommendation during the exit interview. The team ordinarily meets briefly after the exit interview to consider once again their summary and findings. These findings form the basis for the draft of the evaluation report (emphases added) (NCA 1976:24-25).

“When I received the names of the [first] North Central team,” Sperling wrote in

his memoir, “my spirits immediately collapsed. Everyone was a traditional academic and they were not lightweights” (2000:103). However, the outcome of the site visit was favorable. One NCA team member recalled that, although IPD was in the early stages of its development and just getting started, it had nevertheless demonstrated sufficient evidence of good faith compliance and showed promise for the future.²³

Because they believed that IPD met the eight eligibility criteria, and that it also appropriately satisfied the three elements of candidacy status, the three-member team unanimously recommended that such status be granted. A review panel ratified the team’s recommendation, and the NCA Commission on Institutions of Higher Education (CIHE)²⁴ accordingly granted IPD candidacy on July 25, 1977. In September 1977, upon the advice of NCA, John Sperling changed the name of the newly independent entity from IPD to the University of Phoenix.²⁵

Upon receiving candidate status, the postsecondary school “is subject to the requirements of the Commission applicable to its status as stipulated by the Bylaws of the Association and the Procedures of the Commission.” It is also responsible for paying annual dues, filing annual reports, and hosting a biennial inspection. “Candidate for accreditation status is limited to a maximum of six years,²⁶ provided that the biennial evaluation reports indicate that the institution is progressing satisfactorily toward accreditation.” Failure to make satisfactory progress could result in the revocation of this status (NCA 1976:27). Sperling erroneously believed that “the minimum time that could elapse between the grant of candidate status and the application for accreditation was two years,”²⁷ although he was probably correct in his belief that “UOP had no choice but to

make the attempt” at the earliest possible opportunity, as certain political forces were gathering against it in the state capital (Sperling 2000:110).

Sperling and his associates spent the interim period battling the Arizona postsecondary education establishment. At the urging of the three state universities—Arizona State University (ASU) in Tempe, Northern Arizona University (NAU) in Flagstaff, and the University of Arizona (UA) in Tucson—the Arizona Board of Regents (ABOR) came to oppose UOP’s bid for accreditation, as did some state legislators.

The Arizona Board of Regents, the state authority that governs Arizona’s three public universities, responded unfavorably to the University of Phoenix’s candidacy with NCA. At the Regents’ November 26, 1977, meeting, Larry Woodall, ABOR Executive Coordinator, “reported that the state is literally being flooded with every conceivable type of educational institution imaginable.” Without identifying UOP specifically, Woodall mentioned that “something has occurred in the last few weeks that causes him to wonder about” whether the Regents “would have assistance from the North Central Association in holding these people in check. . . . He urged that strong representation be made to the North Central Association regarding this matter and asked for comment from the Academic Vice Presidents” (ABOR 1977b:2,3).

Both Dr. Karl Dannenfeldt, Academic Vice President of ASU, and Dr. Eugene Hughes, holding the same position at NAU, went on the record with their concerns. Dannenfeldt stated that ASU “is concerned about this most recent development [with] the University of Phoenix, which is practically in the back yard” of ASU. He spoke on behalf of his school by remarking that “the University was quite astonished to see the North

Central Association, which it has considered to be a rather conservative and tough association, extending candidacy for accreditation to the University of Phoenix.” He acknowledged the difference between candidacy and accreditation, but emphasized that candidacy status is “preparatory to actual accreditation.” Hughes, also referring specifically to UOP, remarked that [NAU] “personnel are concerned about their own accreditation with North Central, which has been recognized as one of the most prestigious of these regional accrediting bodies, and we should make our concerns felt as far as North Central is concerned” (ABOR 1977b:3).

Larry Woodall, having regained the floor, “suggested a strong request be made to North Central Association to take a good hard look at the situation, and to consult with university personnel.” The consultant-evaluator team that had visited in June, he noted, failed to meet with any ABOR or public university representatives. “We could try to persuade them to at least look at the community, the facilities, [the] people involved and particularly in this state at the universities and community colleges.” A motion was presented and seconded. Following additional discussion, the Regents

stated the motion was to instruct Mr. Woodall to pursue this matter, investigate the situation, and report back to the Board. Mr. Woodall stated that although the University of Phoenix was used as an example . . . he did not want to leave the impression that we were zeroing them in particular. . . they are not being singled out for condemnation over and above many others that are here (ABOR 1977b:4).

Next, ASU President John Schwada “said he cannot understand how North Central can pursue accreditation of an organization such as” the University of Phoenix, “and at the same time argue with [ASU] interminably about every book that it has in the library and the quality of every teacher and quality of laboratories and library, etc. The

motion was put to a vote and unanimously carried” (ABOR 1977b:4).

Regents’ President Rudy Campbell sought to downplay the NCA-UOP controversy and soften its adversarial tones. At the following ABOR meeting, on December 16, 1977, he recommended that the Board of Regents consider a policy stating its official position on private and nontraditional postsecondary education in the State of Arizona. Campbell believed that many observers had mistakenly concluded that the Board was opposed to new postsecondary schools. “He said the Board members individually and collectively support responsible higher education in many forms, and the development of a variety of ways of presenting education” (emphasis added). ABOR introduced such a policy, which it unanimously adopted after revision by the Board’s legal counsel (ABOR 1977a:5).

At the first ABOR meeting of the following year, January 13, 1978, the report of the Policy Committee all but confirmed that the Regents and the three state universities would be unsuccessful in their attempt to influence the accreditation decisions of NCA. The language became more diplomatic and conciliatory in tone.²⁸ Regent Sidney Woods

moved that staff and the universities continue to work with the North Central Association and all other concerned parties, looking forward to a resolution of perceived problems in accreditation as regards traditional versus nontraditional instruction, and that every effort be made to reach solutions which will be in the best interest of higher education in Arizona. The motion was seconded . . . and unanimously carried (ABOR 1978:6).

The Regents’ agenda subsequently dropped this item, and it would not reappear until the Long-Range Planning Committee took it up at the September 9, 1978, meeting.

When it became apparent that NCA would not be swayed, the Regents next sought to secede from NCA and join WASC. “Reasons for making the transfer include

the constant change of residents and students between Arizona and California; close athletic association”—ASU and UA had recently joined the Pacific Athletic Conference (PAC-10)—“substantial academic and scholarly exchanges, and the similarity of the Arizona university system’s programs with those of the Western [WASC] schools” (ABOR 1979:8). ABOR continued these secession efforts in vain through the summer of 1979, months after UOP had successfully obtained NCA accreditation.

“Secession required at least the informal approval of the [state] legislature,” which was not forthcoming without a fact-finding investigation. “The investigation determined that, except for their belief that the North Central Association had abandoned standards and that WASC hadn’t, the reasons cited by the Regents for requesting the move to WASC were unconvincing.” Consequently, “legislative leaders quickly put a stop to the secession effort” (Sperling 2000:121).

During this period UOP also retained the services of two NCA consultants—a service NCA endorsed and coordinated (NCA 1976)—who assisted in the drafting of a “self study” document. Whereas the application for candidacy was the status study, the application for accreditation was the self study; the former was a planning document and the latter was a review document (Sperling 2000).

The NCA consulting team also conducted a series of mock site visits.²⁹ “We spent the better part of the spring of 1978 preparing for the accreditation visit,” scheduled for the three days of June 6-8, 1978.³⁰ As a candidate for accreditation, a two-year visit was already in order for UOP. However, instead of the customary two-day “biennial visit,” this subsequent visit by a different team would be a more extensive, three-day

“accreditation visit” (Sperling 2000:112).

The schedule of this visit consisted of interviews with UOP officers, administrative staff, the governing board, and the legal counsel; some representative employers, faculty, and students; and unlike the previous visit, ASU administrators and ABOR representatives. The consultant-evaluator team punctuated this interview schedule with periodic meetings to report and discuss individual findings (Heller 1978b).

During this second visit, “the team conducted a thorough examination of the university and made a legitimate, if conservative recommendation. The recommendation was not to grant accreditation but to continue candidacy—a decision that was almost, but not quite, fatal” (Sperling 2000:113). The official team report stated, “It is recommended that the University of Phoenix be denied accreditation at this time, but that it be retained in Candidate for Accreditation status. This recommendation is based mainly on the fact that many changes instituted by the University are so recent that it is not feasible to ascertain how they will be applied and what their effects will be” (Heller 1978b:26).

As of 1976, most of the eligibility criteria for accreditation were identical to that of candidacy. There were two omissions (items 3, a Chief Executive Officer, and 7, preliminary planning) and one addition: “Have completed a major portion of at least one cycle of its principal programs prior to an on-site evaluation” (NCA 1976:30). The decision to continue candidacy after the second year, rather than to grant immediate accreditation, surely hinged upon this added criterion.

Indeed, by June 1978 UOP had not yet independently completed one cycle of the process of assessing students’ prior learning. Previously, IPD had shared this function

with its contracted partners, the host schools. The assessment of prior learning was a critical component of the UOP model, for in its absence UOP would not have satisfied item 5 of the eligibility requirements: the inclusion of general education as a prerequisite.

Contrary to public perception, the assessment of prior learning and credit for life experience was a time-consuming process—so time-consuming, in fact, that the student’s preparation of a “Prior Learning Portfolio” was itself awarded course credit. The Prior Learning Portfolio was to be evaluated by faculty who would determine how much and what kind of course credit to award. At the time of the June 1978 accreditation visit, UOP had not established the routine whereby it would evaluate such portfolios (Heller 1978b).

Nor had the University of Phoenix fully developed several aspects of its organizational governance. These included the membership and functions of UOP’s Board of Directors, “senior” (i.e., full-time) faculty, and faculty in general, including part-time instructors (Heller 1978b).

While the team expressed concern over these and a few other organizational deficiencies, it did not withhold its commendation of the numerous strengths—several of which were not yet fully realized—of UOP in its embryonic period. From the perspective of the visiting team, UOP was indeed a legitimate provider of postsecondary education because it was already successfully satisfying the demands of key constituent groups, including adult students and their employers, as well as the modest faculty and staff (Heller 1978b). One consultant-evaluator recalls that all three members of the NCA visiting team were in agreement on this point.

The recommendation to continue candidate status was standard, perhaps even

default, for “biennial visits.” It may have been that the team was operating in that mental framework, given that it was only the second time that an NCA team had inspected UOP.

The basis for this determination [continuation of candidacy] was not that the university was unqualified for accreditation, but rather that the university had been in existence such a short time that the team could not be certain that the university would continue to operate as it was then operating. In short, they said we needed more time to acquire a track record (Sperling 2000:113).

UOP did not accept this decision. In fact, John Sperling had already registered his objections in a five-page letter to the team chairman, dated June 26, 1978, a little more than two weeks after the visit. “In the best of times, a recommendation to continue candidacy would not be damaging,” he wrote, “but these are not the best of times for our University. A continuation of candidacy will, in all probability, make it impossible for the University to continue to function. . . . It is evident that unless accreditation is achieved, enrollments will slowly drop to an insignificant number.” Sperling proceeded with an argument that “the inability to enroll students in University programs does not lie in any lack of educational value as perceived by the students, their employers, or by North Central visiting teams or consultants.” Instead, UOP’s efforts to recruit students were being directly thwarted by third parties, including governments, employers, and other schools that made accreditation necessary to obtain, even as they made obtaining accreditation difficult if not impossible (UOP 1978:1,2).

By contrast, “we believe that we have met the essential criteria for North Central Association accreditation, and we respectfully request the visiting team carefully to consider the damaging consequences of a recommendation to continue candidacy and to reexamine that recommendation in light of the unique position of the University.”

Sperling then itemized how he believed UOP met specific criteria (UOP 1978:3).

Next Sperling made two peculiar appeals. First he argued that, although UOP was not yet a member of NCA, it had acted like one and deserved, in turn, to be treated like one.³¹ Afterward, he pled ignorance. Citing the team's decision to continue candidacy on the basis of multiple recent changes, Sperling rebutted that "we are unaware that the North Central Association has published any statement, nor were we ever made aware of any statement, setting forth the criteria for accreditation which would make this"—multiple recent changes—"a valid reason to deny accreditation. We do not believe that an institution should be held to a standard of which it has no knowledge" (UOP 1978:4).

In the conclusion of his letter, Sperling returned to the assertion that "the University is substantially doing what it should be doing," and that "because we feel that the University of Phoenix has met the basic North Central criteria for accreditation as demonstrated in the team's findings, we are requesting that the team reconsider its recommendation and recommend accreditation." As concessions, he offered for UOP to be subject to indefinite annual visits and self studies, and to refrain from introducing any new or additional changes without prior NCA approval (UOP 1978:4, 5).

The response from the team chairman was brief. In a one-page letter, dated June 30, 1978, he stated simply that the team had observed official NCA procedures in forwarding its report to the CIHE office, and that these procedures allowed UOP to render an official response. "We understand to the fullest how critical your situation is," the chairman wrote in closing,

But it is our unanimous perception of North Central policy that the likely consequences of accreditation decisions are not to enter into the making of

such decisions. As evaluators, we must take the NCA standards as we know them and the institution as we see it. To the extent that your particular circumstances raise issues of NCA policy, their resolution must come at a level higher than that of an evaluation team (Heller 1978a:1).

At that time an NCA review panel was a mandatory next step in the process, as it had been after the first NCA visit that ultimately resulted in UOP's candidacy. Review panels were routine elements of normal NCA business conducted semiannually. A representative of the applicant organization was invited to review the visiting team's recommendation as presented by the team chairperson, with additional NCA representatives (some of whom did not have voting privileges) serving on the panel itself. At this particular hearing, the site visit team's chairman indicated that he had initially voted to recommend accreditation, but that he had permitted the majority of the three-person panel to rule in favor of continuation of candidacy (Sperling 2000).

Ultimately, "the [review] panel recommended that UOP be granted accreditation. Alas, it was not to be." CIHE's executive board did not ratify the reversal.³² It did make the concession that UOP could reapply for accreditation in one year rather than the customary two years (Sperling 2000:113). Granting such a concession was among the board's powers prescribed by the NCA Handbook on Accreditation (1976).

Believing that there was no other alternative—"the continuation of candidacy was the kiss of death"—Sperling filed a petition for a hearing before the NCA Committee on Reconsideration (Sperling 2000:114). This committee reported directly to the NCA Board of Directors, thus bypassing the administrative hierarchy of the CIHE, which usually made accreditation decisions on behalf of NCA.

A second appeal triggered a third site visit, with the CIHE Executive Board

charging a new consultant-evaluation team with the specific mandate of determining “whether UOP was a stable institution that was likely to continue to operate in an accreditable manner.” This third visit was two days of fact-finding, completed on August 28-29, 1978, less than three months after the previous visit for accreditation, and this third team was responsible for double-checking the accuracy of the comments made by the second team. “Their report was substantially favorable and found ‘the institution better able to abide by Association standards than did our colleagues on the [accreditation] team’” (Sperling 2000:114,115).

UOP then submitted its petition and the three recommendations—two favorable and one unfavorable—to a five-member Committee on Reconsideration, for an appeal hearing that took place on October 27, 1978. This committee ruled in favor of recommending accreditation, and this time the matter was referred to the NCA Board of Directors, rather than to the CIHE Executive Board. At a special meeting in Tucson, Arizona, on December 9, 1978, the NCA Board of Directors finally granted accreditation to the University of Phoenix, approximately two years, five months after the school had initiated the accreditation process (Sperling 2000).

5.5. ANALYSIS

This episode has shown that accreditation is indeed a process of cognitive rather than socio-political legitimation. Despite the contestation and intense negotiation, the case of the University of Phoenix was actually a relatively unproblematic instance of the legitimation process. Based on the several NCA diagnoses UOP was clearly legitimate; it conformed with all of the classification rules, which themselves were straightforward and

uncontroversial. The negotiation was not over whether UOP would be accredited, but rather when.

In fact, this negotiation was the result of the contestation that was external to the accreditation process. Members of the community of practice objected to sharing a category with (schools like) the University of Phoenix. They fundamentally misunderstood both the nature of UOP and the purpose of accreditation, but they did understand accreditation's cognitive consequences. They knew that they were always subject to comparison with other members of their category.

The North Central Association had a classification system that had only one big category because their purpose was solely to maintain the boundary between legitimate (degree-granting) postsecondary education and everything else. Consequently, the category consisted of a large number of heterogeneous constituents. While heterogeneity made intra-categorical comparison problematic for some members, the large number of constituents diluted any political influence those members may have had over the actions of the association.

Because they knew they ultimately represented the existing membership, NCA representatives acted conservatively but always in good faith. Nevertheless, like judges, they focused on the fair and impartial assessment of the evidence.

5.6. CONCLUSION

In this chapter I have presented evidence and analysis of the first of three sets of empirical cases of organizational legitimation, specifically accreditation of the University of Phoenix by the North Central Association. This is the earliest and most singular of the

three sets of cases. In the next chapter I turn to state licensure.

¹ There are two primary types of accreditation: institutional accreditation deals with the school as a whole, while specialized accreditation generally looks at a selected part of school, whether a division, department or program. Generally, regional associations carry out institutional accreditation, while national accrediting bodies perform specialized accreditation, bodies whose members may be units within schools, individual practitioners, or both schools and individual practitioners. Another alternative is joint sponsorship by two or more other accrediting associations, such as is the case with law, medicine, teaching, and engineering (Young et al. 1983). This chapter addresses institutional accreditation only; it does not address specialized accreditation.

² “By and large, the associations’ [regional] boundaries reflect certain historical operational and character differences. . . . Regions grew and were defined at random without much attention to size or regional continuity. As a consequence, the current boundaries of the six regions make little sense. . . . Considerable time and effort have been devoted to regional realignment, but with no success. . . . No matter what reasons are presented for a realignment of regional boundaries, it is difficult to achieve” (Young et al. 1983:28, 177, 178). Several specialized accreditation associations do operate on a national basis, but they represent a small minority of schools, most of which are closer to the periphery than the core of the field of American postsecondary education.

³ The six regional accrediting associations are as follows, with the first date in parenthesis the date of formation, and the second date the date of its initial accreditation standards: New England (1885, 1954); Middle States (1887, 1921); North Central (1895, 1910); Southern (1895, 1919); Northwest (1917, 1921); Western (1924, 1949) (Orlans 1975:9).

⁴ The Office of Education later became part of the Department of Health, Education, and Welfare, and in 1980 became the Department of Education (see Chapter Seven for more details).

⁵ The North Central Association began its program of periodic review to reaffirm the accreditation of its members in 1956-1957 (HLC 2003).

⁶ Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, and Wyoming comprise the regional jurisdiction of NCA. As of 2005 more than two dozen of its member schools are organized for-profit (<http://www.ncahigherlearningcommission.org>).

⁷ The initial twelve items maintained minimum requirements for accreditation. Three items dealt with teachers: they should possess at least an MA degree; there should be at least one full-time faculty member for each of no less than eight liberal arts departments; and they should devote no more than eighteen hours per week to course preparation. One item addressed the qualifications of students: they should have completed fourteen high school units upon admission. A school’s curriculum and instruction was the subject of three of the items: no more than 30 students per class; graduation requirements of at least 120 semester hours; and a curriculum sufficiently rigorous and comprehensive so as to provide preparation for admission to graduate programs. Two items concerned physical facilities: there should be sufficient libraries and laboratories, and the entire location should possess acceptable hygienic conditions. The two requirements for a school’s finances were an endowment of at least \$200,000 and an annual income of at least \$100,000. The final criterion was a general characterization of the organization as duly serious and respectable (Geiger 1970).

⁸ It became apparent that the notion of standardization—the pressure to conform—was inherent in the very idea of norms. The idea of a norm assumes similarity; institutions could not be measured against a norm

unless they were basically alike. But the 1934 principle accepted the fact that they were not alike” (NCA 1997:4).

⁹ Begun in 1975, COPA was the result of a merger between the National Commission on Accrediting (1949) and the Federation of Regional Accrediting Commissions of Higher Education (1964) (Orlans 1975). COPA was disbanded in 1993 and ultimately succeeded by the Council for Higher Education Accreditation (CHEA), formed in 1996 to address issues of educational quality. Whereas COPA’s membership and governance was exclusively accrediting associations, CHEA’s membership currently includes both accreditors and postsecondary schools, and accreditors are excluded from its governance (<http://www.chea.org>) (Bloland 2001).

¹⁰ “The Commission [CIHE] joined the other regional postsecondary accrediting accrediting commissions in responding to these changes by adopting a set of ‘conditions for eligibility’ . . . [that] limited and described the kinds of postsecondary institutions the regional associations would accredit” (NCA 1997:4).

¹¹ As mentioned previously, NCA began a program of periodic review in 1956-1957, whereby it would renew accreditation on a decennial basis, or more frequently where necessary and appropriate. It would thus visit every member school no less than once every ten years (Geiger 1970).

¹² “To our question, ‘Are for-profit or proprietary programs or schools now eligible for accreditation by your agency?’ the North Central and Middle States higher education commissions and the Southern and New England commissions for higher as well as vocational education replied, ‘No.’ the Northwest and the two Western higher education commissions said, ‘Yes, in certain circumstances,’ but the circumstances were rare, since Northwest has accredited none; the Western Commission for Senior [four-year] Colleges has accredited one proprietary institution and the Commission for Junior Colleges has given candidate status to two. All the regionals had suspended further applications pending resolution of the basic policy issue by [the Federation of Regional Accrediting Commissions of Higher Education, a precursor to COPA],” which in turn sought to balance concerns about duplicating the efforts of national specialty accrediting associations and adversely affecting the regionals’ tax-exempt status on the one hand, with the recognition that “certain decent, degree-granting schools should be eligible” on the other (emphasis added) (Orlans 1975:80, 81).

¹³ The case was Marjorie Webster Junior College v. Middle States Association of Colleges and Secondary Schools, Inc. (139 U.S. App. D.C. 217). In 1970 the U.S. Court of Appeal in the District of Columbia reversed a lower court’s decision that Middle States’ refusal to accept the 1966 accreditation application of a for-profit school was a violation of the Sherman Anti-Trust Act. In its reversal the appellate court ruled that the Sherman Act did not apply to this case as it was presented, and that the circumstances did not warrant judicial interference with Middle States’ accrediting and membership policies. The U.S. Supreme Court declined to review the case, and the plaintiff ceased operations in 1974.

¹⁴ NCA had only recently experienced its own lawsuit brought by a non-profit Iowa school, Parsons College, over an accreditation decision (Geiger 1970; Orlans 1975).

¹⁵ NCA had already accepted the for-profit Keller Graduate School of Management as a candidate for accreditation in 1975, and would grant it accreditation in 1977.

¹⁶ The Institute for Professional Development, Inc., became the University of Phoenix, Inc., in September 1977, after it achieved the status of candidate for accreditation with the North Central Association.

¹⁷ This despite the fact that WASC was the only regional that had theretofore granted accreditation to a for-profit school (Orlans 1975).

¹⁸ A federal regulation specifically excluded for-profit schools from Title IV eligibility until after receiving accreditation. Both non-profit and public schools were Title IV-eligible upon receiving candidacy status (Sperling 2000). For more about the federal role in financing postsecondary education, see Chapter Three and Chapter Seven.

¹⁹ Accreditation criteria have changed several times since 1976, with discussion ongoing for future changes (HLC 2003).

²⁰ Arizona now has a state agency governing private postsecondary education, the Arizona State Board of Private Postsecondary Education. However, this organization is essentially an instrument of industry self-policing. Of the seven board members appointed by the governor, one represents the public, another represents the business community, and the remaining five represent the 164 member schools. As of 2005, both UOP and DeVry had executives serving on the board (<http://azppse.state.az.us>). For more about state licensure, see Chapter Six.

²¹ Later, NCA “consultant-evaluators” raised concerns that with the number of company officers on the board equaling that of outside directors (five each as of June 1978) the board’s decision-making might be skewed too far in favor of the officers (Heller 1978b).

²² Before IPD’s contracts with its host schools lapsed, the host schools were responsible for providing “general education” to students. After it became a free-standing organization, UOP met this requirement through the assessment of prior student learning—i.e., life experience. NCA probably designed this particular criterion to distinguish its accredited schools from trade schools and “career colleges,” which have their own accrediting associations (NCA 1997). For more about the relationship between the “higher” education core and the “career” education periphery of the U.S. postsecondary education field, see Chapter Three.

²³ This team member, for whom this visit was among the first of perhaps 75-80 consultant-evaluations for NCA, also recalled IPD as being well organized, and especially noted that it made use of computer and electronic technologies for its library resources.

²⁴ In 1908, NCA created a commission for the administration of accreditation. This commission was divided into two separate commissions in 1916, one for secondary schools and the other for postsecondary schools (Geiger 1970). “In November 2000, both commissions became independent corporations with clear legal responsibility for their accrediting activities. When it filed for new corporate status, the Commission decided to change its name . . . to the Higher Learning Commission” (HLC 2003:1.1-2).

²⁵ The Arizona corporation IPD, Inc., was not the same legal entity as the original California-based consulting firm IPD. The name was therefore changed to eliminate confusion and to clarify the relationship between the two. As previously mentioned, the original IPD never ceased its operations and continues as a member of the Apollo Group, Inc., family of education companies, contracting with existing colleges and universities to develop curricula and related services for working adults (<http://www.ipd.org>).

²⁶ NCA later reduced the maximum candidacy period to four years (NCA 2001).

²⁷ In fact, NCA never had a minimum candidacy period, since it was possible for “mature” schools (e.g., nationally-accredited Bible colleges liberalizing their curricula) to apply for NCA accreditation immediately.

²⁸ The Board of Regents may also have become more diplomatic because of the presence of John Sperling. Although neither his presence nor his remarks are recorded in the official ABOR meeting minutes, Sperling himself indicated that he attended the January meeting to present UOP’s side of the story (Sperling 2000).

²⁹ On one such mock site visit, conducted April 18-19, 1978, one of the consultants participated in a meeting organized by the University of Phoenix and attended by representatives from each of the three major Arizona universities, and an ABOR official. At this meeting, UOP made presentations on its purposes and programs, but apparently these four individuals had a pre-arranged agreement to be “non-responsive” to the presentations (Sperling 2000).

³⁰ Note that the second visit took place only twelve months after the initial NCA visit, and a mere ten and one-half months after the actual conferral of candidacy status.

³¹ “The University believes that the North Central Association should provide it protection against the encroachments by other, more powerful, institutions which have clearly jeopardized its educational effectiveness. We believe that the University has conducted its affairs in an open, honorable, and prudent manner, fully in accord with the canons of behavior which would be expected of a candidate or a member of the association and, thereby, deserves such protection” (UOP 1978:3).

³² The perceived problem with the 1978 process was that if the review panel found that CIHE had erred, the panel made the accrediting decision. There was no assurance in the process that the panel would make the best professional judgment on accreditation, since each appeal established an entirely new panel, while CIHE had temporal continuity and the experience of making many accrediting decisions. After 1978, NCA amended the appeal process to provide that if the review panel found that CIHE had erred, the panel would explicitly identify the errors and then return the decision to CIHE for reconsideration that corrected the identified errors. Thus the review panel did what it was established to do (audit CIHE actions), while CIHE continued to do what it was established to do (make accreditation decisions). Incidentally, the amended appeals process also avoided the possible problem of a review panel’s finding that CIHE had erred but still upholding CIHE’s decision, exposing NCA to costly and burdensome lawsuits.

6. LICENSURE OF THE UNIVERSITY OF PHOENIX BY FOUR SELECTED U.S. STATES

To continue the growth we had to expand UOP into new states, and between UOP and a state license stood the higher education bureaucrats, usually backed by the local higher education establishment.

John Sperling, Founder, University of Phoenix

6.1. INTRODUCTION

In this chapter I consider state licensure as a process of legitimation. I use evidence from episodes in which the University of Phoenix received licenses to operate in four U.S. states: California, Colorado, Illinois, and Massachusetts. The earliest of these episodes began in 1980, and the two latest episodes both ended in 2001. I begin the chapter with a discussion of state licensure as a legitimation process. Next I provide some general background on state licensure procedures and present a rationale for selecting these four cases. From there I proceed with a presentation of the evidence from each case. Finally, I conclude with an analysis that makes cross-case comparisons among the four state licensure processes.

6.2. STATE LICENSURE AS A LEGITIMATION PROCESS

Before the late eighteenth-century ratification of the Constitution, the British settlements in America had established themselves as the superintendents of colonial postsecondary education (Rudolph 1962; Tewksbury 1932). The tenth amendment's "reserve clause" in the Bill of Rights only guaranteed in theory what was already true in practice—that "the powers not delegated to the United States by the Constitution, nor prohibited to it by the states, are reserved to the states respectively, or to the people."

Among the powers reserved to the states is the authority to issue diplomas and grant degrees. While accreditation by a federally recognized regional or national accrediting association now qualifies postsecondary education organizations as eligible to receive federal financial aid, neither the accrediting associations nor the federal government have ever assumed the principal responsibility for regulating them. States confer their authority upon providers through a process referred to here as “licensure.”¹

In analytic terms, state licensure is a process of legitimation. Through licensure, a state determines that an organization is a legitimate provider of postsecondary education. Applying a set of criteria codified through statute and interpreted through administrative rules and procedures, successful state licensure classifies the organization as a member of one of several discrete categories for postsecondary education organizations operating within its borders.² Once a state has made this determination, its oversight of that organization is usually minimal and reactive. Since most such organizations are familiar to the state already (due to their “domestic” origin or a sufficient period of “domestication”) the process is, in the main, a ceremonial formality (Ashforth and Gibbs 1990; Meyer and Rowan 1977).

Until relatively recently postsecondary education in America has had a local or regional orientation. Through the first four centuries, most schools have operated solely within their state of origin, and most of a given state’s providers (enrolling virtually all of its students) are of “domestic,” intrastate origin. Thus state licensure is typically a single, non-repeating event in the history of a given school—and for many schools it is a non-event, since numerous states often “grandfather” or otherwise exempt considerable

segments of their postsecondary education community, including their own public education systems; private organizations whose existence predates the enactment of their regulatory statutes; schools with the appropriate regional or national accreditation; and/or religious-oriented providers shielded by constitutional church-state separation.

6.3. THE UNIVERSITY OF PHOENIX AND STATE LICENSURE

By contrast, the University of Phoenix's experience with state licensure has been quite atypical for three related reasons: first, because of its plurality; second, because of its heterogeneity; and third, because of its exceptionality.

Rather than undergoing the event once, the University of Phoenix has experienced state licensure no fewer than 33 times in the past three decades, with the pace having quickened considerably since its initial public offering in 1994. By 1985, UOP had obtained licenses in "only" five states in the southwest: Arizona, Colorado, Utah, California, and New Mexico. The late 1980s and early 1990s were an extended period of inactivity, in which UOP did not receive any new state licenses. Then came a dramatic reversal. Between 1993 and 2004, an additional 28 states licensed UOP to operate within their borders, extending from Hawaii in the far west; across the south through Texas, Louisiana, Georgia, and Florida; to Oregon and Washington in the northwest; through the vast interior, including Nevada, Idaho, Wyoming, Oklahoma, Kansas, Arkansas, Missouri, Minnesota, Illinois, Wisconsin, Tennessee, Kentucky, Indiana, Michigan, and Ohio; and up the east coast to the northeast corridor, from North Carolina in the south on through Virginia, Pennsylvania, Maryland, New Jersey, and Massachusetts. Figure 6.1,

Figure 6.2, and Figure 6.3 vividly depict UOP's radical geographic transformation from a regional to a national organization through the accumulation of state licenses.³

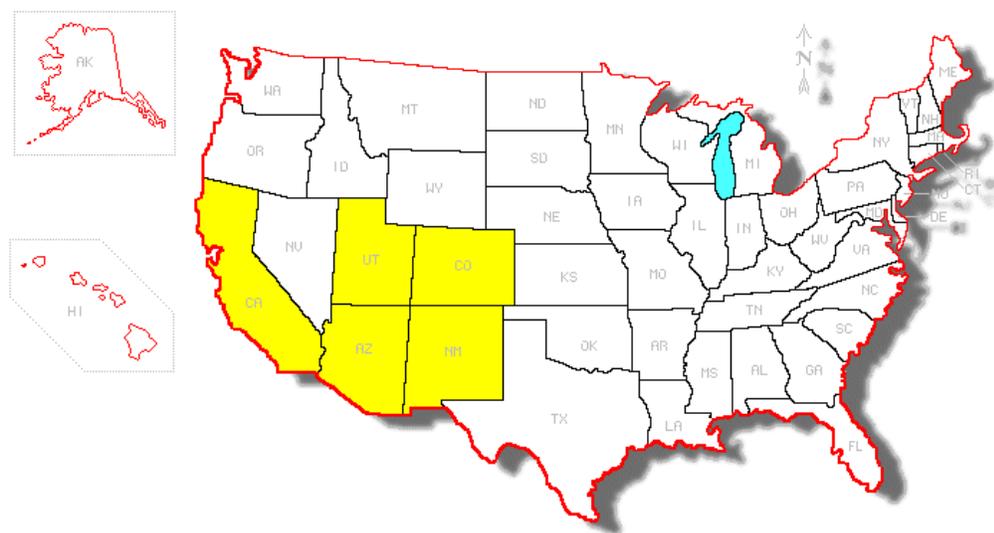


Figure 6.1. State Licensure of the University of Phoenix, 1985

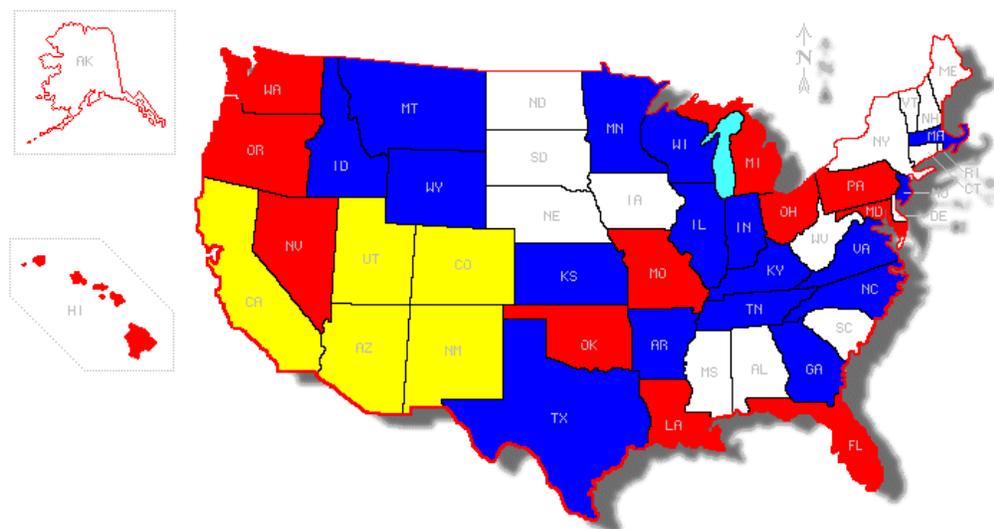


Figure 6.3. State Licensure of the University of Phoenix, 2004

Although patterns of similarity do exist, these 33 state licensure processes were by no means identical. The multiple elements of licensure vary across states and fluctuate through time. Different states have different rules, administered by different agencies, and applied through different procedures (McGuinness 2002; Millard 1979; Skolnik and Jones 1992; Smittle 1939).⁴ Moreover, in some states the licensure process has been marked by continuity, with little or no substantive change for an extended period; in other states the process is more volatile, subject to changes that may be profound, sudden, and/or frequent.⁵ UOP founder John Sperling lamented this state-level heterogeneity in licensure rules, agencies, and procedures with the following litany:

[T]hirteen states require applicant institutions to “demonstrate” the need for their programs, and eight of these states either require approval from local competing institutions, or they give local institutions an opportunity to meet the “demonstrated” need before licensure will be granted. . . . Ten states do not recognize the adequacy of a practitioner faculty or an electronic library with full-text searching, immediate document delivery and inter-library loans for hard-to-find books; instead, they demand a full-time faculty and a building with books. Two states . . . bar all for-profit institutions of higher education. Most states have loosely worded regulations and give a wide latitude to the decision-making body that administers them. . . . Barriers to entry range from the obvious to the subtle. [Some] states . . . are blatant; they simply state that they want no competition to local institutions and reject all applications from out-of-state colleges or universities seeking licensure. States with more subtle regulations profess fairness and objectivity but then use procedural barriers to entry. Usually, these states allow or require comment and/or approval by the local institutions that would have to compete with the out-of-state institution. . . . In eleven states . . . no out-of-state institution can be licensed to operate (Sperling and Tucker 1997:58-59, 62).

Already his statement is no longer fully accurate; some states have changed their licensure rules, agencies, and/or procedures since it was written—evidence of those states’ relative volatility and also of the role the focal organization has played (and continues to play) as a strategic agent in the legitimation process.

Finally, the University of Phoenix’s experience with state licensure is exceptional in 32 out of 33 cases because it is a “foreign,” out-of-state school. This fact, combined with its for-profit status, accounts for many of the difficulties it has encountered in some of these processes. Even though the majority of states do not explicitly prohibit foreign applicants, more than half (28) had no licensed out-of-state providers as late as 1993 (Sperling and Tucker 1997). Thus UOP was among the first foreign organizations applying for licensure in many states, if not the very first.⁶

6.4. HOW MANY STATES? WHICH STATES?

The several states are not independent of each other. They alternate as actors and audiences on a national stage, innovating their own policies and practices or imitating those of their counterparts throughout the country (Clemens 1997). It is possible to treat licensure as evidence of each state's potentially unique socio-political environment, a warrant for a multiple-case design with a larger sample of states. Conversely, it is possible to treat state licensure as a fairly uniform set of policies and practices that have diffused across states, a justification for a single-case design with one state.

Of primary interest here, however, are through-time processes and over-time changes: that is, some states' licensure of UOP were more contested than others, and some took place earlier in the organization's history (and in the history of U.S. postsecondary education) than others. Therefore, selected here is a comparative, multiple-case design that addresses these two variables simultaneously. The selected case design does not—indeed, cannot—address variation in outcome, since all 33 states are cases of successful licensure;⁷ instead, it makes variation in process the object of inquiry.

Since both variables are dichotomous—less vs. more contested, and earlier vs. later—a bivariate relationship yields four possible combinations in a cross-classified research design. Selecting one U.S. state to represent each of the four possible combinations of the two variables thus yields a comparative case study involving four states, as depicted in Table 6.1. Among the five early states granting licensure, UOP encountered the most contestation in California; by contrast, Colorado did not contest its licensure of UOP at all. Among the 28 later states, Massachusetts' licensure was much less contested than that of Illinois.

Table 6.1. Cross-Classification of Selected U.S. States

Time Period	Level of Contestation	
	Less Contested	More Contested
Earlier (1976-1985)	Colorado (1982)	California (1980-1985)
Later (1993-2004)	Massachusetts (1998-2001)	Illinois (1982-2001)

Disparities between earlier and later states pose potential methodological problems: not enough choices for case selection in the former instance, and too many choices in the latter. The population of earlier states is much smaller than the population of later states (five vs. 28); accordingly, the two earlier states sampled represent a much higher percentage of the population than do the two later states (40% vs. 7.1%). Nevertheless, these four states recommend themselves for analysis for compelling reasons (discussed below) in addition to their satisfying the bivariate criteria prescribed by the research design.

All four states are leading sites of postsecondary education activity. Table 6.2 summarizes their respective average national rankings on three key historical measures.

Since 1980, California has had more postsecondary students enrolled at more postsecondary schools than any other state in the union, and has spent more on educational services than all but New York. Meanwhile, Illinois and Massachusetts have both ranked in the top quintile for total enrollments, schools, and expenditures. Along these dimensions Colorado is closer to the median of U.S. states, although it does rank

higher than the three other earlier states not selected (Arizona, New Mexico, Utah). If it is not a national leader, at minimum Colorado leads its neighboring states in the mountain west region. Finally, not included in the table but also relevant to the current analysis is the fact that Ruch (2001) identifies California, Colorado, and Illinois as ranking first, third, and fourth, respectively, in the total number of for-profit degree-granting schools specializing in business and technology—that is, UOP and other similar schools.

Table 6.2. Average National Rankings of Selected States' Postsecondary Education Activity, 1980-2000

State	Enrollments	Organizations	Expenditures
California	1 st	1 st	2 nd
Colorado	23 rd	22 nd	25 th
Illinois	4 th	5 th	5 th
Massachusetts	9 th	10 th	4 th

Sources: National Center for Education Statistics, U.S. Department of Education; Bureau of Economic Analysis, U.S. Department of Commerce

California is a significant case by almost any measure. For most of the twentieth century it has been integral to the cultural, economic, and political life of the nation. This state's rise to national prominence coincided with American postsecondary education's rise to world prominence after World War II. Introduced in 1960, California's seminal Master Plan of Higher Education helped provide an early structure to the statewide field and a model for other states to emulate, and also signaled both a strong role for state government and a primary position for its three-tiered public system: ten research-oriented University of California campuses, 23 teaching-oriented California State Universities, and 110 community colleges as of 2004. California nevertheless boasts

some of the country's most prestigious private schools, including Stanford and the California Institute of Technology ("Caltech"), while dozens of lesser-known liberal arts colleges and hundreds of other specialized schools also dot the landscape (Douglass 2000; Organisation for Economic Cooperation and Development 1990).

This large number of diverse postsecondary providers has engendered a volatile regulatory environment, with authority divided among multiple agencies and periodically transferred from one agency to another; ongoing political debate over the state's proper role vis-à-vis the Western Association of Schools and Colleges (WASC), the Oakland-based regional accrediting association whose jurisdiction includes four-year degree-granting schools in California (a separate WASC commission accredits two-year community colleges); and numerous statutory changes in response to the perceived problem of "diploma mills," fraudulent organizations selling bogus credentials.

The case of Colorado offers both striking similarities and sharp contrasts to California. Another large western state with a growing population, Colorado also has a system of public education that is preeminent in its respective statewide field. The 1954 founding of the U.S. Air Force Academy in Colorado Springs further marked the state as an ascendant postsecondary education destination of consequence nationwide. And during the 1960s and 1970s, Colorado developed the innovative Auraria Higher Education Center in downtown Denver, one urban campus hosting three different public providers (Community College of Denver, Metropolitan State College of Denver, and University of Colorado—Denver Campus) that combine to serve more of the state's postsecondary students than any other facility.

However, Colorado has enjoyed relative continuity in its regulatory environment since the passage of the Degree Authorization Act in 1981: a clear distinction of its responsibilities from those of the state's regional accrediting association, the Chicago-based North Central Association (NCA)⁸; a single agency administering Colorado's Master Plan governing postsecondary education since 1965; statutes that have not substantially changed; and the relative absence of the specter of diploma mills.

Both earlier states are western states; the later states represent other regions of the country. Today Illinois is the heart of America, but it had once been the nation's frontier—at the same time that postsecondary education in the United States was finding its own distinctively American expressions. This is best illustrated by the development of new organizational forms: both the modern research university and the community college trace their origins to turn-of-the-20th-century Illinois, with the founding of the University of Chicago in 1892, and Joliet Junior College in 1901, respectively (Brint and Karabel 1989; Veysey 1965). Moreover, as the birthplace of the DeForest Training School in 1931—now DeVry University, one of the University of Phoenix's most directly comparable peers—Illinois also figures prominently in the history of the for-profit university (Ruch 2001). Its public postsecondary system, although formidable, does not dominate in quite the same manner as California's or Colorado's (Van der Slik 2001).

The stable regulatory environment in Illinois does, however, resemble that of Colorado. One agency has exercised authority over all postsecondary education since 1979, implementing the state's Master Plan first developed in the mid-1960s. During that time, administrative rules and procedures have changed little, and the relevant statutory

codes not at all. Springfield regulators have conducted their affairs separate from and independent of NCA accreditors in Chicago. And it was not until the 1990s, with the advent of online distance education programs, that the state fully reckoned with the matter of diploma mills. Until then, it was widely believed that the combination of strong laws and vigilant enforcement had successfully checked fraudulent activities; even afterward, Illinois regulators recommended no substantive changes in policy or practice.

Any comparative study would be incomplete without one of the original thirteen British colonies along the Atlantic coast, home to the nine colonial colleges.⁹ The University of Phoenix currently operates in seven of these thirteen states; chief among them, of course, is Massachusetts, birthplace of American postsecondary education.

In contrast with most states, including the three others selected here, private providers have dominated the field through all of the nearly 400 years of Massachusetts history. Although the state founded its first public land-grant school soon after the Morrill Act of 1862, the University of Massachusetts foundered for more than a century (Brint and Karabel 1989). Harvard College, on the other hand, long enjoyed a privileged relationship with the colony (and later the commonwealth). Its charter was even written into the state constitution, and it regularly received a variety of public subsidies (Morison 1936). A remarkable 157 years passed before Williams College—at the extreme opposite geographically—broke Harvard's monopoly on postsecondary education in Massachusetts, in 1793. Once broken, however, the monopoly quickly turned into panoply, with private schools populating every quarter of the small state, but especially its eastern coast in and around the capital, Boston. These schools opened up new

opportunities to otherwise disadvantaged or excluded groups, including rural populations (Amherst, Williams), women (Mount Holyoke, Smith), and religious and ethnic minorities (Boston College, Brandeis, Holy Cross) (Rudolph 1962).

The regulatory environment in Massachusetts has been marked by continuity since at least 1990, when it consolidated administrative responsibilities for all postsecondary education under a newly established Higher Education Coordinating Council (renamed the Massachusetts Board of Higher Education in 1996). With its tradition of private provision, the state has amicably played the role of junior partner to the New England Association of Schools and Colleges (NEASC), the country's oldest regional accrediting association (founded in 1885) whose headquarters are now in suburban Boston (Bedford). Due in part to strong licensure statutes, diploma mills have never posed a real threat to Massachusetts' postsecondary education community.

Assembling a more appropriate set of cases in which to study the University of Phoenix's experiences with state licensure would be difficult. While Massachusetts characterizes the rich private origins of American postsecondary education, California demonstrates its present public state-of-the-art. Likewise, Illinois illustrates the nation's distinctive organizational contours of its most significant historical period to date, and Colorado represents a "typical" yet nontrivial U.S. state. The insights derived from these four cases should be readily applicable to the other 29 states where UOP has already obtained licensure, as well as the remaining 17 states where it might do so in the future.

6.5. STATE LICENSURE OF THE UNIVERSITY OF PHOENIX

6.5.1. *California: 1980-1985*¹⁰

Almost immediately after it arrived in Arizona and received NCA accreditation there, the University of Phoenix prepared to go back to California, where John Sperling had earlier founded UOP's precursor, the Institute for Professional Development (IPD). That UOP would attempt to re-enter that state is not surprising, given that it was a large and growing market that Sperling already knew well. Nor is it surprising that California highly contested this return, since political forces there had only recently precipitated IPD's involuntary retreat across state (and regional accreditation association) lines.

At the time of the University of Phoenix's founding in 1976, California's 236 private degree-granting colleges enrolled more than 185,000 students, a figure surpassing the aggregate enrollment of the University of California system. The state also estimated approximately 1,500 non-degree-granting vocational, technical, and career schools in operation during the 1975-1976 academic year. The entire private sector of California postsecondary education accounted for some 350,000 students altogether, a formidable number in absolute terms but quite modest relative to a total postsecondary population approaching 2 million. However, private degree-granting schools outnumbered their public counterparts by nearly two to one (CPEC 1976).

Along certain dimensions California's regulation of private postsecondary education has been in a state of flux for almost 50 years, beginning in the middle of the twentieth century and continuing into the beginning of the twenty-first. A summary of critical statutes and the agencies responsible for administering them appears in Table 6.3.

Table 6.3. California Changes in the Regulation of Private Postsecondary Education

Date	Statute	Administrative Agency (DEPARTMENT)
1958	Amended California Education Code	Bureau of School Approvals (EDUCATION)
1977	Private Postsecondary Education Act	Office of Private Postsecondary Education, later Private Postsecondary Education Division (EDUCATION)
1989	Private Postsecondary and Vocational Education Reform Act	Council for Private Postsecondary and Vocational Education (INDEPENDENT)
1998	New Private Postsecondary and Vocational Education Reform Act	Bureau for Private Postsecondary and Vocational Education (CONSUMER AFFAIRS)

After 1958 California regulated all private postsecondary education through Division 21 of the amended state education code, which required state licensure of all non-public postsecondary schools, both degree-granting and non-degree-granting. The 1958 amendments included proprietary schools in the code for the first time, making them eligible for state licensure to grant degrees. A stated purpose of these revisions was to eliminate the sale and misuse of postsecondary degrees (CPEC 1976, 1989a).

California Department of Education's Chief Executive Officer, the Superintendent of Public Instruction, had delegated the administration of Division 21 to the Bureau of School Approvals (BSA), originally called the Bureau of Readjustment Education when it was established to supervise educational courses for veterans. Because the state had modeled some Division 21 regulations directly on federal Veterans' Administration (VA) course-approval requirements, considerable overlap existed between the responsibilities for VA approval and the administration of Division 21. Until

the 1990s both kinds of BSA activities relied heavily on funding from VA contracts, since the state provided no direct financial support (CPEC 1976, 1989b).

Section 29023 of Division 21 effectively produced and maintained a three-category classification system of private degree-granting colleges and universities: “accredited,” “approved,” and “authorized.” “Accredited A-1 Institutions”¹¹ received state licensure as an automatic consequence of their accreditation by a nationally recognized accrediting body, usually the Western Association of Schools and Colleges (WASC). Accreditation exempted a private school from state regulation except for the requirement to file an annual affidavit of accredited status with BSA. As of 1976, state regulators classified 99, or approximately 40 percent, of the 236 private degree-granting schools as members of the “A-1” category; of these 99 schools, 84 had WASC accreditation. “Approved A-2 Institutions” received state licensure by a formal BSA process modeled on WASC’s. Of the three categories for private degree-granting organizations, the “A-2” category had the fewest members: twenty-six of 236 in 1976, or just over ten percent. Finally, “authorized A-3 Institutions”¹² received state licensure on the basis of their ownership of at least \$50,000 in real or personal property devoted exclusively to educational purposes, and through the submission of a “full disclosure” statement. The state classified 111, or nearly half, of the 236 private degree-granting schools as members of the “A-3” category (CPEC 1976).

The state agency responsible for the central coordination and planning of all postsecondary education, public and private, was the California Postsecondary Education Commission (CPEC, or the Commission), established in 1974. The Master Plan for

Higher Education, presented in 1960 by University of California President Clark Kerr, had secured the long-term preeminence of public postsecondary education in California (Douglass 2000), but CPEC did not wait long before officially recognizing the significance of the private sector as a vehicle for access, opportunity, innovation, and alternative education, as well as a potential vehicle for fraud and abuse. In response to a legislative mandate, it issued a report, The Role of the State in Private Postsecondary Education: Recommendations for Change, in July 1976. This report described the existing problems in the operation and effectiveness of California's regulation of private postsecondary schools and offered several proposed revisions (CPEC 1976).

In one of the sections of the report the Commission confronted what it characterized as "the A-3 Problem." Although it took great pains to emphasize that most if not all existing "A-3" schools were bona fide providers, CPEC proposed to close the loopholes for potentially fraudulent or criminal enterprises seeking to operate in the state under these provisions, and to fortify the state's regulatory capacity over this category. "The A-3 institutions make an important contribution to California private postsecondary education . . . However, the question remains as to whether this contribution is being maximized or minimized by the lack of public supervision of the integrity of degrees and the quality of educational program" (CPEC 1976:74).

Specifically, existing regulations did not require public inspection or peer evaluation, leaving no basis for quality control and opening the door for alleged degree-mills and unethical operations. Moreover, although "A-3" schools were statutorily

required to submit annual “full disclosure” statements including financials to BSA, no government agency verified or evaluated these documents (CPEC 1976).

One proposed alternative was to eliminate the “A-3” category altogether. Many members of the state’s postsecondary education community had already endorsed this action, arguing that statutory requirements were insufficient to address issues of educational quality or organizational legitimacy (CPEC 1976).

Still, compelling reasons existed for preserving the classification. Significantly, the “A-3” provision was the sole route by which a new degree-granting school could be established in California. It was thus the primary means of introducing innovative, experimental, or alternative forms of postsecondary education. By offering nontraditional curricula through nontraditional methods, “authorized” schools reached out to under- and unserved student populations and therefore addressed a perceived educational need in the state. The CPEC report ultimately recommended the retention of an improved version of the existing system that would preserve the benefits of the “A-3” category while reducing the potential for fraud and abuse by “unethical, unscrupulous operators”¹³ (CPEC 1976).

“A-1” schools raised an issue of their own. The Commission argued that since state licensure for this category automatically followed accreditation by a non-governmental entity, California was effectively abdicating its responsibilities to promote educational quality and protect its educational consumers. It recommended revising Division 21 to include specified minimum standards that would apply to applicants in all categories, including those applying for “A-1” status. The state should reserve the right to require additional evidence of compliance to these standards, above and beyond the

applicant's accreditation status. Despite this strong position, however, CPEC did not recommend or even mention any specific standards. Thus the uncertain relationship between state regulation and private accreditation that first arose in the 1970s, in part due to the conflict between WASC and Sperling's IPD,¹⁴ would continue unresolved for another decade (CPEC 1976, 1981, 1984a, 1984b, 1989c, 1991).

More generally, the Commission argued that BSA played too subsidiary a role in the state Department of Education, and did not have the resources to administer Division 21 effectively. The Department of Education, moreover, was not the appropriate agency to assume these responsibilities, since its state-mandated focus was public primary and secondary rather than private postsecondary education. Division 21 responsibilities should be centralized in a reorganized Council for Private Postsecondary Educational Institutions (CPPEI, or Council)¹⁵ which should be responsible to the governor and the legislature, and completely independent of the Department of Education (CPEC 1976).

California passed Assembly Bill 911, the Private Postsecondary Education Act of 1977, implementing some but not all of the recommendations CPEC presented in the report it published the previous year. The law reorganized as well as revised the education code, so that what had formerly been Division 21 became Division 10. Division 10 preserved the tripartite classification system of state licensure for private degree-granting postsecondary education organizations, with the three categories now represented by the shorthand "a," "b," and "c," in reference to their respective subdivisions in Section 94310. It also reorganized CPPEI into a fifteen-member body charged with administrative duties previously performed by BSA, and renamed BSA the

Office of Private Postsecondary Education.¹⁶ What the law did not change was the Council's responsibility to the Superintendent of Public Instruction at the Department of Education, another issue that would await future resolution (CPEC 1981, 1989b).

Thus the Office of Private Postsecondary Education was administering the statutes of Division 10, as legislated by the Private Postsecondary Act of 1977, at the time the University of Phoenix filed for incorporation and applied for state licensure in California in early 1980. "Almost as soon as UOP gained North Central accreditation," wrote Sperling, "we began planning our return to California . . . Fortunately, in California a regionally accredited institution had simply to apply to gain a license to operate" as an "a" school under Division 10. "With that [license] soon in hand, we marched back into California. We sited our first campus in San Jose, our original home" (Sperling 2000:151). A southern California campus began operations in Orange County in 1981.

That might have been the end of the California licensure story for the University of Phoenix, but it was not. In fact, it was only the beginning. By the end of 1985, UOP's California licensure would become jeopardized not once but twice through political actions at the state level. In October 1981, eighteen months after receiving licensure, UOP received notice from the California Department of Education that the state would not recognize its NCA accreditation as of June 30, 1983. The legislature had just passed Senate Bill 272, which eliminated three words from the licensure criteria for the "accredited," "a" category: "or applicable regional."¹⁷ In other words, the state was discontinuing its participation in the longstanding practice of reciprocity among regional accrediting associations. While other states honored the WASC accreditation of

California-based schools operating within their borders, California would not continue to honor any of the other five regional associations' accreditation of the "foreign" schools operating within its borders (California Higher Education 1983; Sperling 2000).

If it was to continue operating in California beyond June 30, 1983, the University of Phoenix would need to apply for re-licensure under the new rules. UOP could either seek WASC accreditation of its California operations, thus meeting the revised eligibility requirement for "a" schools; or it could apply as an "authorized," "c" school.¹⁸ Without successful re-licensure through one of these options, UOP would have to withdraw from the state, just as IPD had done a few years earlier (California Higher Education 1983).

The University of Phoenix was not the only out-of-state accredited school that S.B. 272 compelled to apply for re-licensure. CPEC identified twenty such organizations in operation in 1980; by 1983, the number had increased to 32. Of these, six applied for WASC accreditation; WASC accepted five applications and denied the sixth. Five organizations received accreditation from national specialist accrediting associations. Eleven schools suspended their California operations, and the remaining ten schools, eventually including the University of Phoenix, applied for re-licensure through "authorization" (California Higher Education 1983; CPEC 1981, 1984a, 1984b).

At first the University of Phoenix's decision had been "none of the above." It had conformed to the relevant rules as they had been at the time of its licensure, the rules had since changed, and now they were being applied in an arbitrary, punitive, and unfair manner. Through some high-level political connections from his earlier days at San José State University, Sperling and his local agents lobbied for a new bill that would reinstate

the clause deleted by S.B. 272, or failing that, provide for a two-year moratorium of the law's implementation. They were unsuccessful in both attempts; powerful forces opposed them, including CPEC (California Higher Education 1983; Sperling 2000).

As the mid-1983 deadline neared, UOP considered its options. Sperling believed that he confronted a Hobson's choice. "There was no chance that WASC would accredit UOP's California programs," though some faulted him for not even making the attempt. Ultimately Sperling had to choose between another licensure category and withdrawal, and "UOP had no intention of exiting the California market without a fight" (Sperling 2000:152). Thus UOP applied for and received a second California license, this time as an "authorized," "c" school (California Higher Education 1983).

The 1977 Private Postsecondary Education Act had not resolved issues of educational quality that had beleaguered the California state licensure system, wherein two out of the three categories of private postsecondary licensees (formerly "A-1" and "A-3", now "a" and "c") were exempt from direct and ongoing state oversight. In fact, the revised statutes did not address this matter at all. A 1981 review and evaluation of the act also avoided specifics; instead, in its follow-up report CPEC concluded that Division 10 and the Council were generally effective in this regard (CPEC 1981).

The Commission nevertheless attempted to address the perceived problem of educational quality. It recommended that California require all private degree-granting schools, including the less traditional "c" schools, to provide instruction as a part of their educational program. It also recommended that the state require all members of the "authorized," "c" category that were not exclusively religious or theological to obtain

licensure as either an “accredited” or an “approved” school within five years of their “authorized” licensure. Thus membership in the “c” category would be temporary rather than permanent for most legitimate private postsecondary schools, an entry point rather than a destination. Five years was a reasonable time period to gain accreditation or “approval,” either of which processes involved an evaluation of educational quality (by an accrediting agency or the state, respectively), and were sufficiently flexible to accommodate providers’ organizational and programmatic diversity (CPEC 1981).

Opposition to the recommended limit on “authorization” licensure led to a compromise. A special committee including representatives of “authorized” schools would develop explicit standards for the licensure of “c” applicants. In its report the committee recommended 105 specific criteria that could be explicitly demonstrated by an applicant and verified by a visiting team. CPEC formally endorsed the committee’s reported recommendations in 1983, adding a few recommendations of its own for the licensure rules and process (CPEC 1983).

Enacted during the 1984 legislative session, Senate Bills 1923 and 2151 incorporated virtually all of CPEC’s endorsed recommendations and changed the California licensure process for “c” and “b” applicants. The new process required all existing “c” schools as well as future “authorization” applicants not exclusively religious or theological to meet comprehensive qualitative standards as of June 30, 1987—thus spinning off an exempt “d” category from the “c” category. Correspondingly, the legislation also amended the process by which “authorized” schools applied for “approval” licensure. The state had previously granted “approval” on a program-by-

program basis; now, “approval” would be comprehensive of the entire school. These statutory changes reduced the number of existing “c” schools from 203 in 1983 to 94 by 1987, and to 78 by 1989 (CPEC 1985, 1987a, 1989a).

California oversight of accredited out-of-state private degree-granting schools followed an almost identical course. As with the “authorized,” “c” schools, neither the 1976 CPEC report nor the 1977 Private Postsecondary Education Act had addressed the matter. Although Division 10 required them to apply for state licensure, it did not contain explicit provisions that specifically addressed their unique situation. Moreover, since the state had placed them in the “accredited,” “a” category, it did not oversee these schools beyond the initial licensure application. Current state law had assumed that they were operating their California programs in compliance with minimum standards required by the accrediting association and/or the home state’s regulatory agency (CPEC 1981).

Again, the 1981 CPEC review was the first public mention of a problem. It mentioned that some other states’ and accreditors’ standards were either lower than California’s, or they were not rigorously enforced by their respective administrator. WASC coordinated joint reviews of the California operations of accredited out-of-state schools with its peer accrediting associations, but the home accreditors assumed the exclusive oversight of all their members’ programs (including those operating in WASC territory), for which they applied their own standards. While S.B. 272 eliminated such coordination and jurisdiction problems, California would not have the authority to revoke the license of an accredited school that it believed to be in noncompliance with the state’s minimum standards of educational quality until 1988 (CPEC 1981, 1984a, 1989a).

During the 1985 session the California legislature introduced Senate Bill 1036, a compromise that permitted accredited out-of-state private schools to offer degrees in California while also enabling the state to assure compliance with its quality standards. (A similar bill introduced during the previous session failed in committee by one vote). The Accredited Out-of-State Colleges and Universities in California (AOCUC), nominally a trade association but essentially a UOP mouthpiece,¹⁹ had sponsored the bill and its predecessor and lobbied on their behalf. In its original draft, S.B. 1036 restored the language earlier deleted by S.B. 272, but the opposition, including CPEC, WASC, the Department of Education and the Governor's office, insisted that licensure for such schools be contingent on direct ongoing state regulation (CPEC 1986).²⁰

Governor George Deukmejian signed into law a final version of S.B. 1036 on October 1, 1985. The revised statute, which took effect January 1, 1986, "represented the state's strongest, most thorough assessment process and promises to provide a useful precedent for extending the state's oversight to its own accredited private institutions" (CPEC 1989c:33). It also meant that "UOP's position in the California market was once again secure" (Sperling 2000:157). For the third time in five years, UOP applied for and received a license to operate in the state of California, this time as a member of the "accredited out-of-state" category of private degree-granting schools, a category created largely by and in response to UOP itself.

A provision in S.B. 1036 directed CPEC to convene a committee to draft proposed licensure standards and procedures for this new category. Serving on the nineteen-member committee were representatives of the out-of-state schools, including

John Murphy, UOP Vice President for Public Affairs, who also served as the chair of AOCUC. The remaining nine committee members represented public and private colleges and universities and PPED at the state Department of Education (CPEC 1986).

The committee submitted a report of their proposals to CPEC in early 1986. In its work of developing recommended standards and procedures, it agreed to abide by certain principles that S.B. 1036 either stated or implied. Included among these principles was the assertion that accredited out-of-state schools appropriately belonged in the same statutory category as WASC-accredited schools, and that the state should treat both groups with equal regulatory rigor (CPEC 1986).

The committee divided its report into two sections of proposals: recommended procedures and recommended standards. Successful initial licensure applications of accredited out-of-state schools seeking to operate in California should receive a provisional one-year license, during which time they may enroll students and offer programs, but not award degrees. Applications for provisional licensure should include a copy of its most recent self-study report; a copy of the accreditors' visiting team report; a copy of any response to this team's report; a list of all proposed California sites; and a list of all proposed programs, as well as the curriculum and faculty planned for utilization for each program. Upon receipt of this application, the Superintendent of Public Instruction should arrange an evaluation visit for the California sites, with a report submitted by the team no more than 45 days after it has conducted its visit. Upon the report's recommendation, the Superintendent should have the authority either to continue

provisional licensure for six months, after which the applicant would be eligible for a four-year license, or to deny the licensure application (CPEC 1986).

While applications for renewal included only a copy of the most recent self-study report and accrediting team report, the state should reserve the right to request additional information where necessary or appropriate. The committee also recommended that renewal applications should require an on-site evaluation visit with a follow-up report. It was the applicant's responsibility to notify its home accrediting association of this procedure. Typically, the Superintendent of Public Instruction of the Department of Education should withhold action on the California operations of the institution until the regional accrediting association took action on the accredited status of the institution. However, the Superintendent should retain the authority to act on the institution's licensure status at any time deemed appropriate. The state could accept the application for licensure, grant conditional licensure, or deny the application altogether. The state should grant licensure for no more than four years at a time, but in most cases the licensure period should be concurrent with the period of accreditation (CPEC 1986).

The committee recommended 72 specific proposed state licensure standards along the following seven dimensions: governance and administration; educational services and curriculum; faculty and their qualifications; students' academic achievement; learning resources; financial resources; and physical plant, materials, and equipment. It also recommended to the Commission that the state should revise its education code to preclude an accredited out-of-state school from operating under an alternative category, such as "approved," "b" or "authorized," "c." Further, California should calibrate the

licensure renewal cycle more closely with the accreditation cycle, which was five years instead of four; and the Council for Private Postsecondary Educational Institutions should include a representative of accredited out-of-state schools (CPEC 1986).

CPEC endorsed the committee's report in April 1986 and sponsored Assembly Bill 4251 in the current state legislative session to implement the recommendations in the statutes. Meanwhile, PPED prepared to conduct reviews of all existing accredited out-of-state degree-granting schools by December of the following year. By the time that the regulations became operational the number of members of this category had dropped to twelve; even so, PPED's focus on in-state "authorization" and "approval" processes meant delays in implementing the new procedures and standards for the out-of-state schools seeking re-licensure (CPEC 1987a, 1989a, 1989b).

This series of legislation raised the total of categories from three to five. Statutory changes expanded the former tripartite system of licensure by accreditation, approval, or authorization by splitting both the authorization and accreditation categories. The rewriting and reorganization of Section 94310 of Division 10 rendered any shorthand reference of letters and/or numbers too unwieldy to be of practical use.²¹ Moreover, not only had the system of categories expanded, but the licensure process had changed for many of the categories, old and new alike (CPEC 1987a, 1987b).

In anticipation of its reauthorization slated for 1991, in 1987 the Commission inaugurated a series of reports to review and evaluate the Private Postsecondary Act of 1977, as amended. Concerned about confusion among students and other interested observers, CPEC was not at all satisfied with the existing law's complexity, its

proliferation of categories and its seemingly ceaseless changes. It also questioned the sufficiency of the rigor of licensure standards, especially as these pertained to protecting the integrity of degrees and diplomas; the statutory division of licensing and regulatory authority among several state agencies; the appropriate relationship between state regulators and non-governmental accreditors and the concomitant distinctions between state licensure and accreditation; and the appropriateness of locating oversight responsibilities in the state Department of Education (CPEC 1987b).

The Commission repeated these criticisms in other reports. It recommended combining the “approved” and “authorized” categories into a single “licensed” category. It further recommended abolishing PPED and transferring regulatory responsibilities and administrative oversight of state licensure to an independent CPPEI that would be sufficiently funded and staffed with knowledgeable specialists (CPEC 1989a, 1989b).

California passed Senate Bill 190, the Private Postsecondary and Vocational Education Reform Act of 1989, which CPEC sponsored to implement the recommendations it had presented in this most recent series of reports. When the legislation took effect in 1990, it established a single licensure process for all private degree-granting and non-degree-granting schools, although regulations differed for in-state and out-of-state providers. Only non-profit WASC-accredited schools, nationally-accredited schools, and exclusively religious or theological schools were exempt from the new regulations. The law also established a single, independent agency called the Council for Private Postsecondary and Vocational Education Institutions (CPPVE), and eliminated both PPED and CPPEI at the Department of Education (CPEC 1995).

There is general consensus in the California postsecondary education community that 1990 to 1997 was the period of optimal state regulation of private postsecondary education. Although it did recommend numerous minor changes to the 1989 act and its implementation, CPEC concluded that it was generally effective in protecting consumers and improving the integrity of degrees and diplomas, and therefore advocated for its indefinite continuation beyond the sunset date of January 1998 (CPEC 1995).

Nevertheless, when the California legislature reauthorized the law as the New Private Postsecondary and Vocational Education Reform Act of 1998, it transferred regulatory responsibilities from the independent CPPVE to the Bureau of Private Postsecondary and Vocational Education (BPPVE, or Bureau) at the California Department of Consumer Affairs, which oversees the state licensure of an array of occupational groups, from accountants to veterinarians (BPPVE 1998; CPEC 2004).

As of 2004 the BPPVE regulated and licensed approximately 3,000 private postsecondary providers, including 300 degree-granting schools. Categorical exemption from regulation included all WASC-accredited schools, religious or theological schools, and other regionally- or nationally-accredited schools that comply with very specific criteria. Out-of-state accredited schools are exempt from licensure review but are subject to all other regulatory and oversight provisions of the act (CPEC 2004).

However, AOCUC and UOP sponsored Senate Bill 967 and introduced it in the California legislature on February 21, 2003. The bill proposed to exempt degree-granting private schools with non-WASC accreditation from all state licensure requirements

(except for consumer protection provisions) in the new Private Postsecondary and Vocational Education Reform Act of 1998.

AOCUC argued that S.B. 967 would streamline the operations at the newly created Bureau and eliminate unnecessary duplication of effort for the overworked and under-resourced regulatory office. Accreditors already ensure minimum standards of quality among their accredited members; the Bureau should concentrate its review efforts on schools not subject to external oversight.

No organized opposition arose against the bill. With little fanfare Governor Gray Davis signed it into law in September 2003, just one month before Arnold Schwarzenegger replaced him in a recall election. Twenty years after the state nearly regulated the University of Phoenix out of existence, UOP was virtually free of any regulatory oversight in California, and its growth there has continued.

6.5.2. *Colorado: 1982*

In 1982 Colorado became the third state, after Arizona and California, to license the University of Phoenix. As in California, UOP followed where the Institute for Professional Development led: the Jesuit Regis College of Denver had an IPD contract dating to 1979. But more than just prior knowledge and relationships drew John Sperling to Colorado. With a population of nearly 500,000 by 1980, Denver was the eleventh largest city west of the Mississippi—but the fifth largest where UOP had not already established operations.²² Denver thus represented the next big market opportunity in UOP's own back yard. In fact, Sperling was so taken by its potential that he almost moved UOP headquarters there in 1984, lured by cheap office space (Sperling 2000).

Before the 1980s private postsecondary education was not subject to any state regulation in Colorado. The state had established the Colorado Commission on Higher Education (CCHE, or the Commission) in 1965, and had vested it with statutory authority over the entire public postsecondary education system. Sixteen years later, in 1981, the General Assembly enacted legislation that expanded CCHE's authority to include the licensure of private postsecondary education organizations.

The Degree Authorization Act defines the types of organizations authorized to conduct business and grant degrees in the state. It classifies providers into one of the following four categories: Colorado publicly-supported colleges and universities, "properly accredited private"²³ colleges and universities, postsecondary seminaries and Bible colleges, and private occupational schools authorized by the Division of Private Occupational Schools to offer associates' degrees.²⁴ All such organizations must apply with CCHE, meet the criteria, and obtain state licensure before opening for business, recruiting students, or offering educational or any other related services. Moreover, Colorado will not license any applicant seeking to provide educational services in the state without establishing a physical presence there.

Applicants initiate the licensure process by personally consulting with the designated administrator at the Commission. The application itself requires very little beyond a verification of the applicant's status as a member of the relevant classificatory category. Unless the applicant is a Bible college or seminary or an authorized private occupational school, however, it must either be accredited or be actively pursuing accreditation to be a legitimate member of the category. Therefore, if a private college or

university documents its “proper accreditation” to the Commission, a pro forma review of its Colorado site(s) by that accrediting association is sufficient to satisfy the licensure rules. A nonaccredited private school must first demonstrate its “potential for accreditation” to CCHE’s satisfaction by submitting documentation of its mission statement, organizational structure, degrees and academic programs, admission policies, and financial resources. It must then make reasonable and timely progress toward accreditation within six months of obtaining preliminary licensure.

The story of Colorado’s licensure of the University of Phoenix has few details—and no drama. As one CCHE administrator put it, “There are no ghosts in the UOP file.” Since UOP was already accredited by the North Central Association (NCA) when it submitted its application in 1982, obtaining a state license was “fairly easy,” according to another Commission representative. Its application would have consisted only of a document certifying its status as NCA-accredited; afterward it would only need to submit itself to an NCA site visit within twelve months of beginning operations in the state.

In anticipation of this licensure, the University of Phoenix incorporated in Colorado in January 1982. Three months later, a short article in the Rocky Mountain News announced that UOP would be “open for business” by April 26 (Seldner 1982:104). Despite a large media budget—the article cited \$14,500 for three months’ worth of radio and print advertisements—no subsequent press coverage appeared in any of Denver’s major daily newspapers.

6.5.3. *Illinois: 1982-2001*

Illinois was one of the first states beyond the American southwest to which the University of Phoenix sought to expand its operations. Expansion to Illinois was compelling for three related reasons. First, greater Chicago was the second largest city in the country, and another sizeable city, St. Louis, was easily accessible across Illinois's southwestern border. Second, earlier in his career UOP founder John Sperling had spent time as a faculty member at Northern Illinois University in DeKalb, about 60 miles west of Chicago. And third, Sperling's Institute for Professional Development (IPD) had already been operating in the state since 1976. IPD was operating programs under contract with National College in Evanston and Elmhurst College in Elmhurst. "The two contracts ended in 1981 and this gave UOP an opening to move into a well-understood market, or so I thought" (Sperling 2000:157).

At the time of the University of Phoenix's first application for Illinois licensure in 1982, more than half of the state's postsecondary students attended one of the approximately 50 public, two-year community colleges (387,822 of 744,636, or about 52.1%). Also that year, 114 "independent" schools—both private non-profit and private for-profit postsecondary providers—were operating in the state, accounting for 161,543 students, or about 21.7% of total enrollments.²⁵

Among independent schools, however, Illinois non-profits dominated for-profits, both in terms of number and enrollments. Even in 2001, when the University of Phoenix was finally successful in obtaining its license there, more than three-fourths of the independents were non-profit (94 of 123, or about 76.4%), enrolling nearly nine out of every ten non-public students statewide (191,436 of 218,479, or about 87.6%).

Nevertheless, Illinois figured prominently in the early and ongoing development of for-profit postsecondary education. Dr. Herman DeVry established the Deforest Training School in Chicago in 1931. The school's name changed several times in subsequent years, becoming DeVry Technical Institute in 1953, DeVry Institute of Technology in 1968, and DeVry University in 2002, after it had purchased the Keller Graduate School of Management in 1987—another Illinois organization, founded in 1973 as the CBA Institute of Chicago. With no fewer than six campuses operating across North America by 1970, and as the first for-profit postsecondary education organization ever to launch an initial public offering,²⁶ DeVry's successful growth and expansion thus preceded that of the University of Phoenix.

Before World War II, Illinois did not regulate private postsecondary education. After the war, schools began to spring up across the state to absorb the increased demand created by the influx of discharged service personnel. To address perceived problems of academic quality, the Illinois legislature passed the Private College Act in 1945. The new law required new degree-granting schools to obtain state licensure before incorporating, but it did not require any state review after receiving such licensure. Continued enrollment growth combined with expanded federal involvement in the education of veterans sparked a subsequent wave of state legislative activity in the early 1960s. The Academic Degree Act of 1961 was patterned after model consumer protection legislation to protect Illinois consumers and to check the spread of bogus credentials (IBHE 2002d).

The Illinois Office of Superintendent of Public Instruction transferred administrative responsibility and oversight authority over private postsecondary

education to the Illinois Board of Higher Education (IBHE, or the Board) in 1979. In an attempt to coordinate and integrate the two statutes, the Board drafted a set of administrative rules. These rules have remained substantially unchanged over the past quarter-century, and still provide strong guidance for staff interpretation of both statutes. The two acts and rules require schools established after 1945 to obtain IBHE licensure to operate; additionally, they require schools established after 1961 to obtain separate licensure for each new degree program (IBHE 2002d).

Thus state licensure is a two-step process: first, obtaining a license to operate, and second, obtaining a license to grant degrees. Operating licensure represents the state's legitimation of the organization as a whole; degree-granting licensure represents the state's legitimation of a particular program, upon the successful completion of which the organization may confer a specific degree. All new schools must obtain operating licensure before receiving degree-granting licensure, and most applicants obtain degree-granting licensure within three years of receiving operating licensure (IBHE 1999).

Certain schools are exempt from these regulations. Those in existence before the passage of the Private College Act of 1945 do not need operating licensure unless they seek to move to a new location or offer instruction at a new branch or off-campus location. Accordingly, schools operating prior to the passage of the Academic Degree Act of 1961 do not need degree-granting licensure for any new or existing academic program at their main site.²⁷ Private providers with religious affiliation or sponsorship are not exempt from operating and degree-granting licensure, however, unless they are devoted solely to non-degree-granting religious or theological programs. Nevertheless, the Illinois

Board of Higher Education requires all schools, whether exempt or not, to respond to its various reporting requests (IBHE 1999).

In 1999, IBHE published the Application Guide: Operating Authority and Degree-Granting Authority for Independent Colleges and Universities, which it now provides to prospective applicants. In addition to supplying both application forms, this publication presents the statutory authority and policy objectives of the Board; explains the two different kinds of licensure; discusses the application process and time frames; describes the sets of evaluation and review criteria; and answers frequently asked questions (IBHE 1999).

A prospective applicant initiates the licensure process by informing IBHE of its intent to obtain operating licensure. Next an applicant may opt to consult with the Board before submitting its application. The Board staff then analyzes the submitted application and supporting materials. If necessary, it may also conduct a site visit and/or retain the services of an outside consultant. Follow-up correspondence between the staff and the applicant would address any additional questions or requests. After the staff completes its review, it prepares a recommendation to the Board, which then takes action on the recommendation at its next scheduled bimonthly meeting. The application process for obtaining operating licensure usually takes about six months (IBHE 1999).

Applications for operating licensure and degree-granting licensure are strikingly similar in format, and the information requested from the applicant is nearly identical. Especially noteworthy is a section titled “Statewide Needs and Priorities,” that is included in both forms. While programs proposed by public postsecondary schools in

Illinois face a “demonstrated need” requirement, those proposed by their private counterparts do not. Moreover, this requirement is only for specific programs, not for organizations in toto (IBHE 1999).²⁸

Sections 1030.30 and 1030.60 of Title 23 of the Illinois Administrative Code are the sets of rules by which the staff of the Illinois Board of Higher Education evaluate and review applications for operating and degree-granting licensure, respectively. Not surprisingly, like the applications to which they correspond, these two sets of criteria are nearly identical.

The rules emphasize means rather than ends. Consequently, the application necessarily begins with the definition of the applicant’s mission, goals, and objectives. “The central question considered by the Board staff in reviewing an application is, has the institution shown that it can achieve its goals?” (emphasis original) (IBHE 1999:5). Once the applicant defines its ends, it must then demonstrate adequacy, sufficiency, and above all consistency of its means.

Even the applicant organization’s very name is a strategic consideration.

It is important that an institution’s name appropriately reflect its mission. The names “school,” “institute,” “college,” “seminary,” and “university” convey important messages about the institution to prospective students and the general public. For example, an institution that plans to offer associate degree programs in business and secretarial science probably would be justified in using the name “Smith Business College” and not “Smith University” (IBHE 1999:5).

In June 1982 a six-year-old proprietary school with fewer than 2,000 students about 2,000 miles away, applied for operating authority in the state of Illinois under the name of University of Phoenix.

With its initial application for operating authority in Illinois, “thus began a year dealing with what Dickens would have called a ‘circumlocution office’—no matter how carefully drafted was UOP’s application, it was always insufficient.” Vague, open-ended terminology in the application rules, Sperling asserted, “gave the staff total discretion” in evaluation and review. He gave examples of “such precise words as ‘quality,’ ‘high quality,’ ‘high caliber,’ [and] ‘adequate breadth and depth,’ which they used to circumlocute the applicant. UOP’s first application was rejected for failing all of the above criteria” (Sperling 2000:157).

The Board notified the University of Phoenix on October 6, 1982, that its application to operate in the state of Illinois would be recommended for denial. In a three-page letter addressed to John Sperling and signed by the board’s Executive Director, Richard Wagner, the Board identified the specific rules by which it evaluated the application, and upon which it based the denial recommendation (IBHE 1982).

The grounds for denial were threefold. First, the staff had concluded that the curriculum and instruction did not meet the stated educational objectives. To support this claim, it offered the following three items of evidence: direct instructor-student interaction was too limited; senior faculty oversight of individual course instructors was insufficient to ensuring consistent quality; and academic programs were not developed enough to allow for within-program specialization (IBHE 1982).

Second, the staff believed that the space, equipment, and instructional materials were inadequate to provide education of suitable quality. Specifically, while the University of Phoenix had arranged for students to access a remote, centralized learning

resource system—located at its Phoenix, Arizona, headquarters—it did not provide the Board sufficient assurance that such access would be both easy and timely. Neither did it show proof of establishing any formal arrangements to ensure student access to local information resources (IBHE 1982).

Finally, the qualifications of senior faculty and front-line instructors did not convince the staff that the University of Phoenix could or would deliver the education as promised. Its heavy dependence on adjunct faculty challenged both the over-time continuity and across-course consistency of academic quality. Moreover, staff felt that the lack of range of qualifications among senior faculty would interfere with its responsibilities to oversee both curriculum and instruction (IBHE 1982).

The staff would present its negative recommendation for Board action at its next meeting, scheduled for November 9, 1982. The Board invited the University of Phoenix to submit a written response, and to have representatives personally attend the meeting to present a brief statement and respond to Board questions (IBHE 1983a).

Instead, the University of Phoenix withdrew its application, thus removing the item from the meeting agenda. It then “filed a detailed rebuttal and resubmitted” its application in December 1982. “This time, in addition to requiring a variety of changes, the staff asked UOP to document the need for its programs in Illinois.” According to Sperling, the Board staff also required the University of Phoenix to notify the entire postsecondary education community in Illinois of its intentions and to solicit formal comment at a public meeting. “The University was required to bear all of the expenses in providing a forum in which its potential competitors could memorialize their opinions

and objections. As required by the regulations, minutes of the meeting were taken by a professional stenographer (paid for by UOP) and transmitted to the Illinois Board of Higher Education” (Sperling 2000:157-158).

Representatives from 29 Illinois colleges and universities²⁹ attended the meeting, held in Chicago on January 23, 1983. “After a presentation by the UOP Academic Vice President, comments and questions were received . . .—all of them hostile. . . . [and a]fter reaching an unchallenged consensus that there were already too many colleges and universities in Illinois, it was moved that the assembly register its objection to granting UOP a license and the ‘motion was accepted without opposition’” (Sperling 2000:158).

As noted above, both applications include requests for information related to “Statewide Needs and Priorities.” And in an attempt to encourage more interorganizational cooperation, the Board had implemented an informal and unofficial practice in the early 1980s of requesting applicants to ask for public feedback from the statewide postsecondary education community. But all of the schools participating in these meetings behaved competitively, contrary to the Board’s expectations. However, at no time did the staff base its recommendations on the outcomes of these meetings; they used them for advisory purposes only. After it became clear that the advice was neither useful nor used, the Board discontinued the practice. Throughout, the Board staff’s recommendation to approve or deny licensure was always based solely on the prima facie evidence presented in the application.

The University of Phoenix’s revised and resubmitted application met with another negative recommendation from the Board staff. IBHE sent a second letter, signed by

Executive Director Richard Wagner and dated April 1, 1983, notifying Sperling of its determination. The letter's content followed the same format as its predecessor, citing the same specific rules. Slight changes addressed the new and additional arguments the University of Phoenix had presented (IBHE 1983a).

Specifically, the Board repeated the assertion that faculty-student interaction was too limited, despite the fact that students were adults and would ostensibly be more self-directed learners. It drew an unfavorable comparison to other academic programs that were already established in the same fields and levels of study, and it claimed that UOP had not provided evidence that adequate rigor has been incorporated into the programs to compensate for the reduced hours of instruction. The Board also cited the insufficient development of the proposed nursing and business programs, and the procedures related to the evaluation of life experience. It repeated the staff's previous assertions about deficiencies related to instructional and information resources, and it cited an inadequate library budget and the lack of arrangements to provide local library materials. Finally, the Board revisited the topic of adjunct faculty. Although the staff conceded that the procedures for recruiting qualified instructors was sound, it remained unconvinced that such faculty could adequately cover the curriculum objectives. Nor did it believe that direct faculty involvement with students was adequate to monitor or provide academic leadership for the proposed programs at Illinois sites (IBHE 1983a).

Again, the Board noted that the staff would make its recommendation for action at the next scheduled meeting, and that the University of Phoenix was welcome to respond in writing, in person, or both (IBHE 1983a).

On May 2, 1983, the day before the meeting, University of Phoenix legal counsel James Fletcher contacted IBHE, requesting that the recommended action be deferred until the following meeting, scheduled for July 12. Sperling and his colleagues wanted more time to prepare a presentation in response to the staff recommendation. The Board agreed to this request, suggesting that UOP also make available a prepared statement prior to the presentation (IBHE 1983a).

The prepared statement was a four-page memorandum to the Board, authored by John Sperling and dated June 17, 1983. Sperling introduced his statement by insisting that his purpose for writing was not to persuade the IBHE to reverse the staff's recommendation. Instead, he hoped to persuade through argument, rather than compel through legal challenge, the Board to change its policies and procedures to be more favorable to the University of Phoenix's application for Illinois licensure (Sperling 1983).

The University of Phoenix argued that the denial of a license was both unconstitutional and unwise. Denial was unconstitutional because the Board was prejudiced against the applicant, since the substance of the arguments for both denials was the same; and the recommendations for denial were based on the inconsistent application of the rules and regulations, since the Board had licensed other applicants that utilized the same educational delivery system, including the use of part-time faculty and electronic learning resources, in their own extended education programs (Sperling 1983).

Sperling's unconstitutionality argument sought to reframe education as a commercial service, provided to student-consumers by businesses in an interstate market, and subject to federal rather than state oversight. "The courts have recognized that higher

education is in the stream of commerce and that states can no longer restrain commerce in higher education under the guise of protecting educational consumers.” If it so chose, Sperling asserted, UOP could argue persuasively in federal court that the Board staff used rules and regulations to restrain trade in education, interfere with interstate commerce, and unlawfully protect the markets of Illinois colleges and universities. “In so acting, the staff not only fails to protect the consumer of educational services, it acts to harm the educational consumer” (emphases added) (Sperling 1983:2, 3).

Denial of a license was also unwise. Government overregulation of education was unnecessary and would lead directly to the economic and political decline of a country resistant to necessary educational innovation and change. The memo crescendoed to the following conclusion:

The University of Phoenix believes that the Illinois Board of Higher Education could best serve the interests of the Illinois economy and polity by freeing institutions from the regulatory burdens which it now places upon them. The University of Phoenix also believes that it could make a significant contribution to the economic and social welfare of the citizens of Illinois. We hope that, in time, the members of the board will decide to provide the University the opportunity to make such a contribution (Sperling 1983:4).

Still, at its July 12, 1983, meeting, IBHE voted unanimously to deny the University of Phoenix authority to operate and grant degrees in the state of Illinois. No UOP representatives attended the meeting. After the vote, one board member asked, “Has the Board ever been questioned or sued for denying requests such as this?” in apparent reference to Sperling’s memorandum. Executive Director Richard Wagner replied, “No, we have denied . . . requests previously but have not been sued” (IBHE 1983b:7).

Despite its unfavorable experiences in Illinois, the University of Phoenix never lost interest in expanding its operations there. Although nearly twenty years lapsed between its unsuccessful and successful licensure applications, it wrote to the Board every few years through the later 1980s and early to middle 1990s, inquiring whether the state's licensure requirements had changed. IBHE dutifully responded to each of these inquiries, notifying UOP that nothing about the process had substantively changed.

In late 1997 or early 1998, University of Phoenix Vice President for National Affairs Charlie Siegel contacted the Illinois governor's office,³⁰ in the belief that it would help secure a meeting with IBHE Executive Director Keith Sanders. But since the governor's office either did not know the purpose of the desired meeting, or did not convey this information to Sanders or the Board, this intermediate step probably delayed arrangements by several months. Ultimately, Sanders arranged to meet with Siegel in Springfield on April 1, 1998.

On March 18, 1998, Siegel sent Sanders a letter in anticipation of the arranged meeting. In this two-page letter, Siegel indicated that the University of Phoenix was still "very interested in offering our programs in Illinois." He expressed his hope that the meeting would be the first step toward greater mutual understanding and cooperation. He also briefly described UOP's educational and business practices, emphasizing how it served a unique student population and thus did not compete directly with existing providers. "[M]any of our students are not part of the 'competitive pool' for students in any area . . . This indicates that UOP is less of a threat to other institutions than they might think" (UOP 1998:1, 2).

Several other Board staff members attended the April 1 Siegel-Sanders meeting, including some who were not directly involved with state licensure. Consistent with the years of written inquiries, at the meeting Siegel asked whether the state's regulatory climate had changed, and announced that UOP intended to submit a new application for Illinois licensure. The meeting was a fairly free-ranging discussion of matters that had little to do with the actual administration of the licensure process. Siegel may have perceived an excess of caution and ambiguity on the part of those Board staff members not directly involved with state licensure. Consequently, he may have perceived the tone of the meeting as less positive and encouraging than it would otherwise have been if he had met directly with members of the Academic Affairs staff, who could address authoritatively any specific questions or concerns about a licensure application.

It is possible that the University of Phoenix delayed its Illinois application as a result of these impressions. UOP sent its official, fifty-two page application via Federal Express on February 5, 2001, nearly three years after the meeting (UOP 2001a, 2001b).

According to Illinois regulations, licensure is for a specified region or set of regions rather than statewide. The Illinois Board of Higher Education has divided the state into ten regions which, with the exception of the City of Chicago and the West and North Suburban Regions, are large areas spanning multiple counties. Regional boundaries are consistent with community college district boundaries. The three Chicago-area regions are among the smallest in terms of area but are among the largest in terms of population (IBHE n.d.). In its original application, UOP requested operating licensure in

all ten regions, but was later required to limit its request to the proposed physical sites that were actually to be included in the initial application (UOP 2001b).

The University of Phoenix was the ninth item IBHE considered at its October 2, 2001, meeting. Marcia Langsjoen, Associate Director and Staff Counsel for Academic Affairs, presented the Academic Affairs staff report to the board. Langsjoen began her presentation by describing exactly what it was the staff was recommending for board action regarding the University of Phoenix: “This authorization will permit [UOP] to offer degree credit instruction face-to-face at sites within the West Suburban and North Suburban approval regions” (IBHE 2001:18).

The University of Phoenix proposed campuses in Schaumburg and Warrenville, both located in the West Suburban Region.³¹ Both prospective campuses were sited just off the major arteries radiating northwest (I-90) and southwest (I-88) from downtown Chicago. Warrenville abuts the Fermi National Accelerator Laboratory; Schaumburg is home to Motorola, and adjacent to both Hoffman Estates, global headquarters for Sears, and Elk Grove Township, where United Airlines is located. The areas surrounding both sites are dotted with other colleges and universities, both public and private, including DePaul University’s Naperville campus, Northern Illinois University’s (founder John Sperling’s former employer) Hoffman Estates campus, Wheaton College, Benedictine University, College of DuPage, North Central College, Elmhurst College, Midwestern University, and the National University of Health Sciences.

Langsjoen’s presentation next described the University of Phoenix’s plans for its two proposed sites. The proposed programs were consistent with those offered at UOP

sites out-of-state, as well as those offered online to Illinois students since 1989. “[I]t is worth noting,” remarked Langsjoen, “that staff has not received a single complaint during this time concerning the University [of Phoenix] or its programs” (IBHE 2001:18).

“In recommending approval to operate, staff affirms its belief that despite [its] nontraditional features, the institution meets all approval criteria” (IBHE 2001:18). Langsjoen next reviewed each rule, both what the state’s regulatory standards were, and how they were demonstrated as met by the University of Phoenix (IBHE 2001).

The first rule addressed the school’s mission and objectives. “We found the University of Phoenix name to be consistent with what is implied by this mission and found the objectives for planned degree programs to be consistent with the degree titles.” The second rule addressed the condition that programs meet defined objectives. “[S]taff took particular care to assure that degree objectives were not compromised. . . . [E]vidence of student achievement combined with a strong system for assessment provides assurance that degree objectives will be achieved” (IBHE 2001:18, 19).

Adequate and appropriate space, equipment, and instructional materials—including library and other learning resources—constituted the third rule. The staff found space allocations to be consistent with those at existing Illinois schools; it also found “library resources adequate to meet the needs of students and faculty.” Faculty and instructor qualifications were addressed by the fourth rule. The staff pointed to student outcomes as demonstrable proof that this criterion was satisfied. “Here again, results count. Given strong evidence of student achievement, staff believes the University has

shown that its alternative staffing and governance model does not compromise quality and is effective” (IBHE 2001:19).

The University of Phoenix did not have any trouble satisfying the rule of financial stability, Langsjoen remarked. The staff also indicated its satisfaction with the rules addressing publications and records, advertising and marketing, and various other administrative practices. “Again, the University’s practices are standardized and have been developed and refined to a high standard. . . . In summary, staff is confident that the University meets or exceeds standards of common practice despite the incorporation of nontraditional features and a reduction in faculty-student contact” (IBHE 2001:19).

Langsjoen offered the University of Phoenix’s accreditation by the Higher Learning Commission and its membership in the North Central Association (NCA) as additional evidence supporting its conclusion to recommend state licensure. “While regional accreditation does not in itself establish compliance with Illinois standards, it does mean that the institution has engaged in regular self-study and peer evaluation in each of its five-year comprehensive evaluations.” Beyond its comprehensive evaluations, Langsjoen noted that the organization had undergone “focused” evaluations each time it sought to operate a new program or in a new location, “making it by NCA’s account one of the ‘most scrubbed institutions’ NCA accredits. Mr. Chairman, it is with confidence that staff recommends approval of this institution to operate in Illinois” (IBHE 2001:20).

At the conclusion of her presentation, Langsjoen introduced University of Phoenix Provost Craig Swenson, who was in attendance and presented his own statement and made himself available to the Board for further questioning. Swenson’s remarks were

brief. He discussed his organization's unique mission and the population of students it sought to serve: working adults. He outlined the pioneering techniques his organization had implemented to develop and evaluate student competencies. He concluded by declaring his organization's commitment to partnership with and membership in the Illinois postsecondary education community. After concluding his remarks, Swenson indicated that he would be happy to answer any questions (IBHE 2001).

Samuel Gove, political science professor emeritus at the University of Illinois at Champaign-Urbana and a Board member since 1998, registered his misgivings at the earliest opportunity.

This item was sent to us a week ago and we haven't had much time to really digest it. It can be very important to the future of the higher education system in Illinois. I wish we had had an opportunity to hear from the higher education community on this issue. There has been controversy in the Chronicle of Higher Education, most recently on the approval in New Jersey (IBHE 2001:21).

The University of Phoenix had applied for licensure in New Jersey, but then withdrew its application when it became apparent that opposition there would render licensure impossible at that time. In 2003 UOP finally succeeded in receiving a New Jersey license.

When the University of Phoenix was accredited by the North Central Association [in 1978], this raised a lot of doubts in the higher education community. In 1983—and I just learned this on Friday—this Board turned down the University of Phoenix. None of the members here were on the Board then. I would ask Marcia [Langsjoen], has the state approval law been changed since then? If not, what are the differences in the application of the University of Phoenix from then to now? (IBHE 2001:21).

Compelled to rationalize and defend the staff recommendation, Langsjoen explained that while the statute had not substantially changed, “the University [of Phoenix] has made a great deal of progress since 1983.” Library resources and the part-

time faculty model had been two of the primary reasons for the unsuccessful outcome of the earlier application. “As you know, today, online library access is more state-of-the-art than it is nontraditional. That’s one major change. The other major change is that Phoenix now has an eighteen-year track record. That gives us tremendous confidence. We know that their students learn what they need to learn. For that reason, we don’t have an issue with the part-time faculty model” (IBHE 2001:21).

After presenting his own response to the issue of faculty, University of Phoenix Provost Swenson then fielded questions about faculty-student ratios and tuition rates from several board members. Then the discussion returned to where it had begun. Recently appointed board member (and subsequent Chairman) Steven Lesnick, CEO of a public relations and marketing firm, asked what the Board was being asked to approve. Langsjoen reminded them that state approval in Illinois was a two-step process.

There is operating authority, which is the first step. That’s an institutional authority that will give Phoenix confidence in leasing facilities and getting operations underway. What the Board would do today would be to approve the institution’s plan to develop programs. That does not commit us to recommend approval of . . . any individual program (IBHE 2001:23).

Lesnick then asked what the University of Phoenix would be authorized to do should it receive the board’s approval. “That is an oddity of our statutory structure,” replied Langsjoen.

Institutions that receive institutional operating authority can offer certain courses for degree credit. It is a requirement, however, to maintain operating authority that they receive degree-granting authority for at least one program within three years. We do have some degree applications from Phoenix in the office right now, and we will be reviewing those (IBHE 2001:23).

Swenson added, “Our practice is to come in and make sure that our systems are running correctly, to build up a student population, to build up a staff and faculty to serve them, and then, as we have demonstrated that there is a need and an opportunity . . . we will bring forward [additional programs] and ask the Board for approval” (IBHE 2001:23).

At that point Keith Sanders, the Board’s Executive Director, intervened to provide clarity on the approval process. He restated for Lesnick what Langsjoen and Swenson had just said. If IBHE voted for institutional approval, the University of Phoenix would be able to open for business and offer courses, but it would be unable to offer degrees unless and until it received the necessary programmatic approval. “The whole idea is to give them a chance to put the management in place, to hire the people they need to hire, to find facilities, and to begin a little bit the process of offering courses. That’s what this does, but it doesn’t give them degree-granting authority” (IBHE 2001:23).

The liminal period between the steps in the state approval process raised issues of consumer protection. Several Board members expressed concern that students might not be made adequately aware of this ambiguous status. Swenson assured the board that students would be duly notified of any and all statutory limitations or restrictions on UOP’s Illinois operations, and that UOP would submit these notices to the Board for its review prior to their implementation (IBHE 2001).

Executive Director Sanders framed his own support for licensure in terms of an argument raised earlier in Langsjoen’s presentation: the reality that UOP was already a viable educational option in their state via the internet. The University of Phoenix would exist in Illinois with or without state oversight. It was now making such a request from

the board, and thus the board would be remiss not to exercise that oversight. At the same time, Sanders was asserting that the rigor of Illinois regulation was sufficient to assure organizational legitimacy. “Phoenix could continue to operate ad infinitum in Illinois with its online offerings without ever coming to this Board. I’m glad it’s here because we’ve had a chance now to scrub them as an institution about as tough as they can be scrubbed, along with 22 other scrubs they’ve received” from the other states in which they were then operating. “It’s not a question of whether they will be or not, it’s a question of whether or not we will have something to say about quality” (emphasis added) (IBHE 2001:24).

With the force of the staff recommendation, combined with the endorsement of that recommendation by the Executive Director, a motion to approve the item was made and then seconded. Ominously, Board member Samuel Gove said, “After the action on this item, I would like to make a statement” (IBHE 2001:24).

As the Board carried out its administrative responsibilities, several members expressed dissatisfaction with both the rules and the process associated with state licensure. In his motion, Robert English had said, “My understanding of the statutes and the rules that we use to implement those statutes says that basically, if an institution meets our minimum bar requirements which are not very significantly high”—a very different characterization provided by the board’s chairman—“we must approve them, that we have no option” (emphasis added) (IBHE 2001:24). Fellow Board member (and subsequent Chairman) James Kaplan did not dispute this characterization, but Robert Barr, the lone dissenting vote, had replied,

Bob [English], I respectfully disagree with your view as to our powers here because, certainly, if I understood you correctly in saying that the staff having made a determination that they meet the standards, then we have no choice, then really this Board plays no role. Why do we even bother to vote on this if the staff determination is the final word? I've had this thought about some other things over the years. In fact, that determination is a determination made by the Board. The staff can tell us what they think about it, and we have great respect for our staff and we often defer to their judgment, but we're not required to defer to their judgment. If we as Board Members are not completely satisfied that they meet these requirements or feel that we haven't had the time to review this adequately, then we do have the option to vote no—which I intend to do, by the way—but my comment is related to the role of the Board in this process (IBHE 2001:24-25).

English's response was, "I stand corrected" (IBHE 2001:25).

Executive Director Sanders rebuilt the momentum for the recommendation. "Mr. Barr, the staff understands its role. It is not our determination; it is yours. If we believe they meet the minimum requirements, it is up to us to persuade you that they have met them, but it is your determination that counts, not ours" (IBHE 2001:25).

English restated his original assertion. "I believe that we would have to say that we don't believe they meet the following requirements within the statutes to not approve them and disagree with the staff on that issue." In other words, his understanding was that the board was incapable of denying licensure to any applicant that satisfied the statutory rules. "Mr. Barr commented, 'Not necessarily. We might well say we haven't had time to fully consider this and we'd like to hear more about it before we make our decision'" (IBHE 2001:25). Barr's response did not fully address the issue raised by English. The board had, if nothing else, the power to slow the application process, but it was not at all clear that they could bring it to a complete stall or to foreclose on it altogether.

In a maneuver to separate the specific action of the approval of the University of Phoenix from the general issue of the Board's discretionary authority, Chairman Philip Rock announced that at the conclusion of the day's meeting, he would get a list of all pending applications for the Board to review. But this may have been a symbolic gesture, for he quickly added, "It seems to me that some years ago, it was determined that that's not the best use of this Board's time, to go through every one of these applications, that we have literally said to the staff, make a determination as to whether or not the minimum requirements are met" (IBHE 2001:25). (This was the first record of the Chairman speaking since he introduced Langsjoen's presentation.)

Langsjoen was equally obliging.

If our staff analysis is not persuasive, it is certainly appropriate for the Board to ask for further information. We have an application for Phoenix, and appendices probably two feet tall. . . . We go through these rather meticulously. However, if you do want to know more about a particular criterion and how the institution has met that criterion, we can provide you with the materials from the applications, and we'll be happy to do so (IBHE 2001:25).

Having made this conciliatory gesture to the board, which was further affirmed by his subordinate, the Chairman once again assumed his official authority to conduct the meeting. He called the question and asked the secretary to call the roll. IBHE voted 9-1 to approve the University of Phoenix's application for operational licensure in the West and North Suburban regions of the state.³² "These authorizations are granted subject to the institution's maintenance of the conditions that were presented in its application and which form the basis upon which this Certificate of Approval and Authorization to Operate is granted" (IBHE 2001:25).

Board member Steven Lesnick asked if a copy of the University of Phoenix's five year plan could be furnished to him. "Absolutely," replied Chairman Rock, "and copies of anything else." Then, addressing board member Samuel Gove's concern about the Chronicle of Higher Education reports of the UOP application in New Jersey, Rock said,

"I read the article . . . from September 21 and was persuaded that the things that New Jersey [was] concerned about, we were concerned about also, and we were satisfied." Mr. Lesnick said, "I would also suggest that when it comes time to approve any degree program or any licensure program that the Board should be given a little bit more time to consider it" (IBHE 2001:25).

The member with the first word also had the last word. As promised, Samuel Gove delivered his statement to the board:

"I think we need to take a close look at our approval statute in light of recent developments. For example, should we tell applicants for new program approval that they must show need for the program? We had surveys when we were considering the need for the University Center of Lake County [north of Chicago, near the Wisconsin border]. When the University of Illinois at Springfield wanted the Capital Scholars Program, we had surveys. I think the private sector ought to have to provide a statement on need. Keith [Sanders, the Executive Director] and I have discussed the fact that the statute needs to be reviewed. I would make the following motion: I move that the staff review the statutes and come back at a subsequent meeting with recommendations on them." [Board member Lucy] Sloan seconded the motion (emphasis added) (IBHE 2001:26).

An item titled, "Review of Program Approval Statutes: The Private College Act and the Academic Degree Act," was indeed on the agenda of the next Board meeting, held February 5, 2002, but the Board's chairman tabled the issue until the following meeting.³³ The matter was instead taken up at the April 2, 2002 meeting. After a brief introduction by Chairman Phillip Rock, Marcia Langsjoen presented the staff report, which consisted of three parts: a brief history and summary of the two statutes that had

governed the licensure of private postsecondary education organizations in Illinois since 1945; the scope of the existing regulatory structure, with its strengths and weaknesses; and three proposed strategies for strengthening state oversight, with special consideration of the feasibility of each strategy (IBHE 2002d).

Langsjoen introduced her remarks by reminding the Board that the report had been prepared in response to the requests of several members. She affirmed these requests as responsible in light of the “significant increase in the number of applications from institutions characterized as nontraditional, not just in their mode of instructional delivery, but in their financial structure, administrative organization, and in their use of faculty and systems of faculty governance.” Of paramount importance to the Board “[d]uring this period of rapid change” was the adequate protection of Illinois consumers, and whether existing statutes provided sufficient authority to regulate private postsecondary education (IBHE 2002a:7).

Then Langsjoen summarized the strengths and weaknesses of the Private College Act of 1945 and the Academic Degree Act of 1961. She presented the good news first. “A comparison among states shows Illinois to have relatively strong statutes which combine the best features of several regulatory systems. This Board is empowered to assess institutions’ success in meeting their objectives, to assure that they meet minimum quality standards based on common practice, and to assure the accuracy of information provided to students.” The written report pointed out, however, that regulatory rigor did not stifle educational innovation. “Despite strong authority to approve and revoke, Illinois has been described as relatively friendly to the private sector, or a ‘low hassle’

state.” Applicants are not required to pay any fees, post bond, or apply for any renewal (i.e., the term of licensure was indefinite) (IBHE 2002a:8, 10).

The bad news was that “the coverage of existing regulatory statutes is incomplete. . . [and t]hese gaps in regulatory coverage justify concern.” Specifically, “[a]pproval statutes do not reach institutions serving Illinois residents from out of state if these institutions have no physical presence in Illinois.” The October 2001 Board meeting raised the specter that the University of Phoenix would continue to operate free of state regulation and outside of Illinois’ legal jurisdiction if the Board elected not to approve the school’s application (IBHE 2002a:8).

As undesirable as these problems were, they were not perceived as the statutes’ primary weakness. “Staff believes that the greater challenge to [educational] quality derives from the practical difficulties in conducting thorough and timely review of approved programs while simultaneously processing an increasing number of new program requests.” By 2001, the small staff of the Academic Affairs department analyzed approximately 200 degree program applications annually. “These demands on staff time have restricted program review to such an extent that review now occurs primarily in response to consumer complaints” (IBHE 2002a:8).³⁴

Langsjoen concluded her presentation by reviewing the report’s conclusions. Many of the proposed alternatives were desirable but not practical or feasible given staff and financial limitations. Ultimately the staff adopted a conservative recommendation of voluntary self-policing: “the best approach to improving the quality of higher education

in Illinois is for existing institutions to act cooperatively to maintain high standards on their campuses, thereby raising the bar of common practice” (IBHE 2002a:8).

At the conclusion of her presentation, Langsjoen fielded questions and comments from the board. Samuel Gove was among the first to respond. He said, “At the last meeting, I raised the question on the Internet interstate aspect of this, which I think is a federal issue. I think we should be looking into that and we should be taking the lead to try to have some federal legislation to handle some of the misuse of the Internet” (IBHE 2002a:9) Indeed, the written staff report had attributed the proliferation of illegitimate activities threatening to invade Illinois’ borders largely to the Internet. “As some states have become unwilling havens for substandard Internet-based institutions seeking to avoid regulation in other states, there have been individual attempts at legislative remedy. Thus far, however, no model code has been proposed to address problems created by this new breed of institutions,” some of which were themselves calling for regulatory reform, or even for the displacement of the regulatory burden from the several states to the federal government (IBHE 2002d:8).

Member (and previous Chairman) Jerry Blakemore, CEO of the Illinois Sports Facilities Authority, directed his response both to Gove and Langsjoen. He expressed his belief that Gove’s concern was more a matter of administrative housekeeping—which was certainly appropriate to discuss in the context of legislative action to reform existing statutes. However, he asserted that these housekeeping issues were

of such little significance that [they] will not make a big difference now. . . . The more fundamental issue for me . . . is . . . the fact that this Board does not have the authority to take away. We have the authority to give, but not to take away. I would like to see some consideration of the

implications of enhancing that power . . . I'm not suggesting at this point that that is the action the Board should take, but it is an action in terms of review that I believe the staff should do (IBHE 2002a:9).

Langsjoen registered the final remark on the subject. "I want to clarify that the Board does have authority to revoke an institution's degree-granting authority for private colleges and universities. It is for public institutions that the Board can only approve and does not have the authority to revoke" (emphases added). Thus the matter closed without the Board taking any official action (IBHE 2002a:9).

As part of its Consent Agenda at its October 2002 meeting, IBHE gave degree-granting authority to the University of Phoenix in the West Suburban Approval Region. This approval was for the Bachelor of Science in Business (B.S.B.), with specializations in Administration, Management, Marketing, and e-Business; the Bachelor of Science in Information Technology (B.S.I.T.); the Bachelor of Science in Management (B.S.M.); the Master of Science in Computer Information Systems; the Master of Arts in Organizational Management; and the Master of Business Administration (M.B.A.), with specializations in e-Business, Global Management, and Technology Management. The written item detailed the admissions and course requirements for each degree program. The Board vote was unanimous (IBHE 2002b, 2002c). Likewise, in June 2004 it voted unanimously to give UOP degree-granting authority in the Chicago and North Suburban Approval Regions for each of the same bachelor's and master's level programs and specializations. Interim Deputy Director for Academic Affairs Gary Alexander reminded Board Chairman James Kaplan that it was necessary for UOP to undergo the process each time it sought to enter a new region of the state (IBHE 2004a, 2004b).

6.5.4. *Massachusetts: 1998-2001*

With a concerted strategy in place by the mid-1990s to acquire state licenses nationwide, the University of Phoenix set its sights on the densely populated northeastern states. Early efforts focused on Maryland, Massachusetts, New Jersey, New York, and Pennsylvania. Success in obtaining licensure came sooner in Maryland (1998) and Pennsylvania (1999) than in Massachusetts (2001) and New Jersey (2003). Meanwhile, as of 2004 a New York license had not yet materialized.

When the University of Phoenix applied for Massachusetts licensure in 1998, less than one-quarter (24.7%) of the state's 413,505 degree-seeking postsecondary students attended its fifteen public colleges and universities, including the five campuses of the University of Massachusetts system. Another 17.5% were distributed among sixteen community colleges. Meanwhile, nearly three in five Massachusetts students (57.2%, or 239,147) were enrolled at one of 89 private degree-granting schools, all but two of which were non-profit. The two for-profit schools then in operation enrolled fewer than 500 students between them.³⁵ Neither of these schools was Massachusetts-based.

The governance of public postsecondary education in Massachusetts had changed soon after Governor William Weld took office in January 1991. A single board of trustees now directed the entire five-campus University of Massachusetts system, and the Higher Education Coordinating Council (whose name changed in 1996 to the Board of Higher Education [MBHE, or the Board]) had replaced the state board of regents. As the new statewide coordinating agency, to MBHE belonged "the responsibility for defining the mission of public higher education and establishing goals to achieve a well-

coordinated quality system of public higher education in the Commonwealth” (MBHE 2002:3). Also assigned to the Board was licensure authority over all “independent institutions of higher education.”

The licensure criteria and process for all non-public “independent” schools is codified by Massachusetts state law (610 CMR 2). The statute recognizes two categories of applicants: existing Massachusetts-based schools with regional accreditation seeking additional degree-granting authority, and all other schools. Combined within this residual category are new and/or unaccredited Massachusetts-based schools and all out-of-state schools, whether non-profit or for-profit. For both categories the regulations strongly encourage, but do not require, prospective applicants to consult with MBHE staff before submitting an application. Officially, all applications begin with filing the appropriate corporation certificate at the Secretary of State’s office; an out-of-state school must file for incorporation as a “foreign” entity.

Applicants must also submit a formal petition to the Board that provides organizational and programmatic information as required by law. Out-of-state applicants must furnish additional information, including documentation of accreditation and degree-granting authority in their state of origin, and evidence that their proposed operations in Massachusetts will be consistent with their own operations elsewhere and those of comparable Massachusetts-based schools.

The statute also specifies the licensure process once initiated by the applicant. Upon receipt of an application, the Board has nine weeks³⁶ to determine whether it is complete or not, and to notify the applicant of this determination. The Board must then

appoint, in consultation with the applicant, a visiting committee within six weeks of notification of a complete application. After the visiting committee has studied all application materials and assessed their compliance with the review criteria, it may elect to meet personally with applicant representatives. The committee must submit a report of its evaluation, including recommendations, to MBHE within six weeks of its review. The Board will forward the visiting committee's final report to the applicant, which then has six weeks to issue a response or request an extension. If Board staff determines that the visiting committee should review the applicant response, it will forward a copy to committee members. Unless the applicant requests an extension, the Board will next set a date for a public hearing³⁷ within four weeks of receiving the response. In the six weeks following the scheduled public hearing, Board staff will evaluate the application materials, the written committee report, the written response, evidence submitted at the hearing, and any additional information. On the basis of its evaluation, the staff will make a specific licensure recommendation to the Board, which will take action by formal vote to approve or disapprove the request. The Board will then send written notification of its decision to the applicant and the Office of the Secretary of State. If its determination is to disapprove the request, it will provide a statement of reasons for the decision, and the applicant has 30 calendar days from the receipt of this notification to file an appeal in superior court. The maximum time from the receipt of an application to the Board's action on it is 37 weeks, or approximately nine months.

The University of Phoenix filed for a foreign corporation certificate in June 1998.³⁸ It submitted an application to MBHE the following April, initially seeking

authority to offer Bachelor of Science in Business (B.S.B.) and Master of Business Administration (M.B.A.) degree-granting programs in Massachusetts (MBHE 2000a).³⁹

MBHE assembled a six-member visiting committee to assist in the evaluation of UOP's application for Massachusetts licensure. The eight evaluation criteria included the applicant's mission, planning, and evaluation; organization and governance; financial position and performance; academic programs; faculty; student services and facilities; library and information resources and services; and public disclosure. Additionally, the Board requested that the committee evaluate the applicant's overall ability to provide an appropriate learning environment for all students (Brandenburg 1999).

In its review, the committee examined UOP's application and supporting documentation, and spent one day at corporate headquarters in Phoenix and three days at the Orlando, Florida, campus conducting on-site inspections. Inspection activities included review of programs, organization, staffing, facilities, and services; personal interviews; and observation of administrative meetings. Chairman Richard Brandenburg, professor of business at the University of Vermont, submitted a written report of the committee's evaluation to MBHE in August 1999 (Brandenburg 1999).

The seventeen-page committee report was generally favorable, although it noted several points of concern. While it validated UOP's mission and affirmed that school practices were consistent with that mission, it cited three challenges "that the Committee has confronted in discharging its responsibilities" of evaluation on behalf of the Board:

First, gauging "comparability" with programs at other institutions of higher education in Massachusetts must be done very selectively, with a clear understanding of the limits to the substantive relevance of any such comparisons and the appropriateness of any chosen institutional reference

group. Second, very little information has been made available to date on operating plans and schedules, customer-market analyses, designated personnel, or other documentation that apply specifically and definitively to Massachusetts. Third, a pervasive dimension of the University of Phoenix context is the need to reconcile the rapid growth of new programs in new locations with quality improvement and control in existing programs at existing campuses (emphasis original) (Brandenburg 1999:2-3).

For each of the eight evaluation criteria noted above, the report identified UOP's strengths and the committee's concerns, making specific suggestions wherever appropriate. The committee concluded by "strongly recommend[ing] that entry by the University of Phoenix into Massachusetts should be conditional and sequential," specifying four conditions to be met for licensure (emphasis original) (Brandenburg 1999:16). It recommended that UOP should submit to the Board staff for review "a definitive plan and schedule for appointing a Massachusetts Campus Director and Director of Academic Affairs, for recruiting appropriately qualified . . . faculty members, and for establishing the overall academic infrastructure"; "a formal agreement with a library of at least a baccalaureate level academic institution that is responsive to the teaching and learning requirements of the business and general education curricula in Massachusetts"; "a draft of a catalog that specifically and accurately defines the degree program offerings, learning resources, and faculty and staff that constitute the operations" of UOP in Massachusetts; and a summary of UOP's "responses to the concerns raised in the report of the Visiting Committee" (Brandenburg 1999:16).

The committee also recommended that MBHE not license UOP's M.B.A. program for at least one year after it began operating its undergraduate business program. After this one-year period, the Board should appoint a new committee of external

evaluators to review subsequent developments in addressing specific concerns in the original committee report, including recruiting qualified faculty, designing rigorous curricula, and conducting analyses that demonstrate sufficient market demand. The second committee should then submit a report of its findings and conclusions that MBHE should take into advisement when considering whether or not to license any additional UOP programs in Massachusetts (Brandenburg 1999).

In late November 1999, UOP submitted to the Board its written response to the visiting committee's report. In a twenty-page document supported by several appendices, "[t]he University provided answers to many of the Committee's concerns, gave dates on which other items would be completed, and offered to fulfill specific conditions prior to enrolling students in Massachusetts" (MBHE 2000a:9). UOP's response concluded by addressing the visiting committee's recommendation that licensure be sequential.

In short, the University agrees that the set of thoughtful conditions recommended by the team should be met prior to the beginning of classes in Massachusetts. However, we view these conditions as applying to both undergraduate and graduate programs alike. Therefore, we would respectfully request that the University be approved to offer both undergraduate and graduate programs once these conditions have been satisfied (UOP 1999b:20).

After reviewing the response, chairman Richard Brandenburg wrote the Board a letter on behalf of the committee that proposed a compromise arrangement. He acknowledged UOP's good faith efforts but still expressed continued "serious concerns about initiating the proposed M.B.A. program absent any demonstration of how actual staffing, structure, administrative systems, undergraduate program delivery and working relationships with external constituencies are organized and operated specifically in the

Commonwealth of Massachusetts” (emphases original) (Brandenburg 2000:1). He reiterated the committee’s recommendation for a conditional licensure, citing many of the same or similar conditions as it identified in the original report, but in the place of a recommendation for a sequential licensure was a recommendation that the Board license both programs simultaneously and an external evaluation committee review both programs after two years instead of one. One of the recommended conditions, however, was that UOP would not offer any graduate courses until at least nine months after it began offering courses at the undergraduate level (Brandenburg 2000).

With this amended recommendation in hand, the Board proceeded with the next required step in the licensure process: the public meeting held on February 18, 2000, in the MBHE offices in downtown Boston. In attendance was Mr. Clare Cotton, President of the Association of Independent Colleges and Universities in Massachusetts (AICUM), who “urged the Board to recall the seriousness of its regulations governing the approval of independent institutions.” While its position was not to oppose the applicant’s bid for licensure, Mr. Cotton submitted AICUM’s request

that the Board require the University [of Phoenix] to adhere to the standards found in CMR 610 2.00—especially those regarding general education, faculty, student services, and library resources—even if such adherence required conditional approval of the University petition to ensure continued compliance (MBHE 2000a:11).

Next, Board staff conducted “an exhaustive review of all documentation and discussions with University administrative officers and review committee members” (MBHE 2000a:11). Based on UOP’s agreement to adhere to the specified conditions, the staff recommended that MBHE approve the petition for approval to offer B.S.B. and

M.B.A. programs and degrees in the Commonwealth of Massachusetts (MBHE 2000a). It presented this recommendation to the Academic and Campus Affairs Committee at its February 29, 2000, meeting.

The Academic and Campus Affairs Committee customarily meets one to two weeks before each Board meeting, and these earlier committee meetings are often the venue for more lengthy discussion of specific action items. No lengthy discussion, however, attended the committee's motion to approve UOP's licensure application. Among those present at this meeting were five Board members, four of whom were also committee members; two school presidents; eleven staff members, including Acting Chancellor Judith Gill; and other representatives from twenty schools and interested organizations.⁴⁰ Minutes of the meeting do not record any comments other than those of Mr. Clare Cotton of AICUM, who had spoken at the public meeting eleven days before. His only comments this time were to commend the excellence of the visiting committee and the Board staff (MBHE 2000b).

The committee voted to approve the motion with only minor revisions. As amended, the motion recommended that UOP not be permitted to advertise or enroll any undergraduate students until the school met the conditions as set forth in the visiting committee report and subsequent correspondence. Specifically, the school

must submit documentation to the Chancellor of Higher Education confirming the appointment of a Massachusetts Campus Director and Director of Academic Affairs, designating its Massachusetts campus location, specifying student services and program support infrastructure, and identifying the membership of a Massachusetts Campus advisory committee (MBHE 2000b:8).

It must also submit credentials for all faculty, a library agreement with an appropriate Massachusetts school, and the text of advertisements and the final course catalog for its in-state operations. Moreover, it would not be permitted to enroll graduate students until it received Board approval, based on a review of additional evidence: the credentials for M.B.A. faculty, a results and status report nine months after first enrolling undergraduates, an update on plans and commitments to improving the quality and rigor of the M.B.A. program, and a demonstration that the formal library agreement is sufficient to meet the needs of master's level business students (MBHE 2000b).

The motion also recommended a review after two years of operating the M.B.A. program. At that time “the Chancellor of Higher Education will appoint a team of external reviewers to evaluate the overall progress and performance of the University in Massachusetts. The Chancellor will report back to the Board of Higher Education” (emphasis original; indicates revision of the original motion) (MBHE 2000b:9).

Accordingly, at the March 7, 2000 meeting of the Massachusetts Board of Higher Education, the Board accepted the Academic and Campus Affairs recommendation to approve the licensure of the University of Phoenix's Bachelor of Science in Business and Master of Business Administration programs, noting the committee's required conditions. Minutes for the meeting recorded that “the petition . . . has been thoroughly reviewed by an expert Visiting Committee that visited a branch campus for three days last summer with BHE staff.” Moreover, the committee justified its approval by stating that it “provides a reasoned, incremental introduction of the University [of Phoenix] into the Massachusetts market while providing the Board sufficient opportunity to monitor the

actual implementation of the University's plan." Nevertheless, "a lengthy discussion on the conditional and sequential nature of the motion ensued." One member moved that the motion be amended to give the board authority to enforce the conditions of the motion, rather than the chancellor, but this amendment failed. Instead, the board asked the MBHE staff to provide monthly updates of UOP's progress. When the motion was put to a vote, only one member registered opposition (MBHE 2000c:25,26). With licensure in hand, UOP was cleared for a certificate of foreign incorporation at the Secretary of State's office.

6.6. A COMPARATIVE ANALYSIS

All four of these episodes have shown that state licensure is, like accreditation, a process of cognitive rather than socio-political legitimation. In each case the state granted a license to the applicant after a diagnostic process of colligation and classification. Whether the process was automatic and unreflexive, as it was in Colorado, or pro forma, as it had been in Massachusetts and Illinois, or disrupted by politics, as in California, the process was ultimately driven by each state's classification system, categories, and rules.

Nowhere was this clearer than in Illinois. There, several members of the Board of Higher Education, like the Arizona Board of Regents in the accreditation episode, misunderstood licensure to be socio-political approval. They objected to the fact that they could not reject an application if it satisfied the classification rules for the category.

Likewise in California. There the University of Phoenix was successful in obtaining state licensure not once, but three times. What kept changing were the categories and the classification rules for each. It is altogether likely that these several

changes were attempts to express socio-political disapproval for the University of Phoenix, even as the licensure process itself expressed official impartiality.

6.7. CONCLUSION

In this chapter I have presented evidence and analysis of the second of three sets of empirical cases of organizational legitimation, specifically licensure of the University of Phoenix by four selected U.S. states. In the next chapter I turn to federal investigations.

¹ The terms “license” and “licensure” are used consistently throughout this chapter, although actual terminology varies across states. Nevertheless, some states imbue significantly different meanings to these terms and to their seeming equivalents, such as “authorization” and “approval.”

² The most common classificatory distinction is incorporation status (public vs. private [and, less frequently, private non-profit vs. private for-profit]). Other distinctions include highest degree offered (postbaccalaureate [“university”] vs. baccalaureate [“college”] vs. prebaccalaureate [“community college” or “junior college”]) and curricular or programmatic orientation (liberal arts vs. technical-vocational vs. religious). Some states divide oversight between or among multiple agencies on the basis of these classifications.

³ Charles Siegel joined Apollo Group in 1992 as Vice President for National Affairs. A former press officer for the Democratic Congressional Caucus, Siegel became Apollo’s Washington, DC-based lobbyist, directing political efforts at the nation’s capital as well as coordinating lobbying activities at state and provincial capitals throughout North America. Siegel’s vision of (inter)national growth and expansion through licensure “quickly revived” UOP founder John Sperling’s “idea of creating the first national university” in America. “In his role as a lobbyist, Charlie was a glad-hander and a name-dropper and so were most of the politicians we met. . . . In an amazingly short time, Apollo and UOP were better known on the Hill than all but the state universities and the nationally known private institutions. Excellent though his work was in Washington, the big payoff I got from his talents was his work in the states” (Sperling 2000:178).

⁴ Current information about state governance of postsecondary education is available from the Education Commission of the States (www.ecs.org).

⁵ All states are also subject to larger period effects, although these may manifest themselves differently according to local conditions. In the late 20th and early 21st centuries, a deficit of resources (both funding and staffing) and a surplus of conservative political ideology have combined to restrict state regulators to the modest, narrow functions of protecting individual purchasers and sanctioning the most egregious offenses among providers.

⁶ In 1988, approximately 115 postsecondary schools operated in a state other than their state of origin; of these, only ten schools operated in more than one “foreign” state. These figures had declined to 34 and nine schools, respectively, by 1993. In both years, student enrollment in “foreign” operations amounted to approximately 1.5 percent of total postsecondary enrollments. In 1993 the University of Phoenix and

DeVry accounted for nearly two-thirds of the 47,000 students enrolled in out-of-state postsecondary education programs (Sperling and Tucker 1997).

⁷ Such “limited diversity” (Ragin 1987) is common in qualitative and macrosocial empirical research.

⁸ For many years the NCA’s Commission on Institutions of Higher Education, the administrative unit that handled regional accreditation matters, was based in nearby Boulder but had no other relationship with state regulators in Denver.

⁹ In order of their pre-Revolutionary founding, these are Harvard (Massachusetts, 1636), William and Mary (Virginia, 1693), Yale (Connecticut, 1701), Princeton (New Jersey, 1746), Columbia (New York, 1754), University of Pennsylvania (1755), Brown (Rhode Island, 1764), Rutgers (New Jersey, 1766), and Dartmouth (New Hampshire, 1769) (Tewksbury 1932).

¹⁰ For an introductory overview of California’s regulation of private postsecondary education, see Lamb (2002).

¹¹ Each category of private postsecondary education organization was addressed in a separate heading in Section 29023 of Division 21 of the California Education Code. The first category was authorized under Section 29023(a)(1), the second category under Section 29023(a)(2), and the third under Section 29023(a)(3) (CPEC 1976).

¹² “The ‘A-3’ provision was initiated in 1935 as part of the Government Code relating to filing articles of incorporation with the Secretary of State. The original purpose of this provision probably was to screen out financially weak degree-granting institutions . . . and to maintain a process for establishing postsecondary institutions independent of State control. In 1958, with the adoption of Division 21, the provision was ‘grandfathered’ into the Education Code” (CPEC 1976:70).

¹³ Among the items to be preserved was the \$50,000 net asset requirement: it demonstrated a financial commitment to the educational program and provided necessary resources to meet obligations in the event of a sudden closure. When the dollar figure had originally been set in 1935, the sum was much more substantial; however, an inflation-adjusted increase would likely prohibit the initiation of new ventures. The Commission did recommend revising the \$50,000 net asset requirement as follows: it should be maintained for the duration of the organization’s entire existence, not merely for the duration of its licensure process; it should be maintained within the state’s borders; and it should be appraised by a certified public accountant, rather than an inheritance tax appraiser. Among the other recommended changes was to verify the applicant’s “full disclosure” statement through a campus visit. Initially, the sole purpose of the proposed visit was to verify the accuracy of the “full disclosure” statement, not to evaluate educational quality. A few years later, however, CPEC would propose substantive changes in the goals and objectives of verification visits—changes that would increase the significance of these visits in the licensure process (CPEC 1976, 1983).

¹⁴ In the mid-1970s California lawmakers debated whether they could and should establish their own state accrediting association. John Sperling actively worked with then-Lieutenant Governor Mervyn Dymally and State Assemblyman John Vasconcellos to introduce such legislation that ultimately failed (Sperling 2000).

¹⁵ The California legislature established the Council in 1973 as an advisory body to the Superintendent of Public Instruction. In its original inception, the ten-member Council had no direct administrative responsibility or staff support, but met at least bimonthly to give advice to the Department of Education on

the administration of Division 21, and to review and make recommendations on the BSA budget (CPEC 1976).

¹⁶ “In the early 1980s, the agency became known as the Private Postsecondary Education Division, a unit in the Department of Education that was staffed by professionals who had public school administrators’ training and experience” (Lamb 2002:54).

¹⁷ This deletion was not part of the original bill sponsored by Senator Joseph Montoya; it was part of a technical amendment attached to it by the Assembly Subcommittee on Postsecondary Education. In subsequent legislative sessions, Senator Montoya sponsored several bills on behalf of UOP to reinstate the phrase in the statutes (Sperling 2000).

¹⁸ Application for re-licensure as an “approved,” “b” school was not a viable option before the passage of Senate Bill 1923 in 1984, since the state approval process theretofore dealt with particular programs rather than the school in its entirety.

¹⁹ Minutes of an AOCUC meeting held October 15, 1984, reveal that “while a number of institutions have participated in legislative activities in California, the majority, if not all legislative costs, e.g., payment for lobbying services, hosting of meals, mailing and administrative costs, have been borne, quite willingly, by the University of Phoenix,” and “the need to adopt a little more formal structure really arises from the problem of credibility should someone be inclined to check and see who has been paying the bills. While this is public information, and has never been withheld, it would prove useful [to] our legislative struggle to report that all institutions have made a nominal financial commitment to the effort” (AOCUC 1984:10, 11). This is consistent with Aldrich and Fiol’s observation that “the catalyst to a [trade] association’s founding is often an industry champion who steps forward and volunteers to cover the costs of running the association as it recruits enough members to gain a stable dues base” (1994:658). They argue that it is a common legitimation strategy.

²⁰ Throughout the legislative negotiations UOP and AOCUC maintained that they advocated for state oversight of all private postsecondary education organizations, including accredited out-of-state degree-granting schools.

²¹ For the record, the five categories of “accredited in-state,” “accredited out-of-state,” “approved,” “authorized non-exempt,” and “authorized exempt,” were represented by Sections 94310.1(a), 94310.1(b), 94310.2, 94310.3, and 94310.4, respectively, of the California Education Code.

²² Three of the other four were in Texas; the fourth was Seattle, Washington. Both states have licensure requirements characterized by Sperling and Tucker (1997) as “restrictive.” The University of Phoenix received state licensure from Texas in 2001, from Washington in 1997.

²³ Interestingly, these statutes classify other states’ publicly-supported schools as “private” for the purposes of Colorado state licensure.

²⁴ The Commission is the lead agency in the Department of Higher Education, which reports directly to the Governor and the General Assembly. Another departmental agency, the Division of Private Occupational Schools oversees the administration of non-degree-granting and associates’-degree-granting private providers. These “private occupational schools,” which provide training in everything from floral design to hypnotherapy, and from canine or equine massage to fly-fishing or outdoor adventure guidance, are regulated by a separate set of Colorado statutes.

²⁵ Data on organization and student enrollment counts are from the Illinois Board of Higher Education.

²⁶ DeVry's 1991 IPO was traded on the NASDAQ stock exchange; in 1995, the stock began trading on the New York Stock Exchange. The histories of DeVry and the Keller Graduate School are from DeVry University (www.devry.edu). Ruch (2001) also provides a brief history of DeVry.

²⁷ In relevant documents, these pre-1945 and pre-1961 schools are categorized as "grandfathered."

²⁸ In its 2002 review of the statutes regulating private postsecondary education, IBHE remarked that private schools must demonstrate economic viability but not "economic justification," since they were dependent upon tuition revenues rather than on state subsidies. Nor was "educational justification" required, but instead private schools "must show that their institutional mission and program objectives are appropriate for a degree-granting institution; that information provided to the public is accurate and not misleading; and that faculty, curricula, and instructional resources are adequate to achieve these objectives" (IBHE 2002d:9). According to board staff, the use of the heading "Statewide Needs and Priorities" represents a strained effort to create parallel applications for public and private degree-granting licensure.

²⁹ In another account, Sperling identifies the number of organizations represented as 39 (Sperling and Tucker 1997).

³⁰ At the time, Illinois' governor was Jim Edgar, a second-term Republican. Sperling noted that Republican politicians were often more "willing to look at their states' old ways of doing things with a new eye, and . . . encouraged private enterprise and the opportunity to provide new models for their citizens" (Sperling 2000:180).

³¹ The University of Phoenix did not file a Notice of Intent to establish branch campuses in the North Suburban Region until February 2004. This second Notice of Intent also included the Chicago Region (IBHE 2004c).

³² The only opposing vote was cast by ex officio member J. Robert Barr, Chairman of the Illinois Student Assistance Commission. Samuel Gove voted "Present."

³³ The minutes for the February 2002 board meeting provide no explanation for this, but apparently Samuel Gove, who had been among those calling for the review, wanted it to say something about the desirability of federal involvement in approval matters. In a discussion where the staff asked Gove to clarify his concerns, everyone came to an agreement that the scope of the item would be limited to state licensure issues.

³⁴ The report also addressed "a growing phenomenon in higher education, the multi-state corporate institution"—a veiled reference to the University of Phoenix and other out-of-state for-profits that might follow its lead into the Illinois educational market. Existing statutes failed to address this new organizational form, and "it seems likely that adjustments will have to be made sometime in the future." Since the report drew no conclusions, recommended no actions, and considered no alternatives, Langsjoen did not mention this issue in the staff presentation to the Board (IBHE 2002d:11).

³⁵ Data are from the Integrated Postsecondary Education Data System (IPEDS) of the National Center for Education Statistics at the US Department of Education.

³⁶ All references to time frames in the statute are in terms of "business days." In the interest of readability, the time frames have been translated into weeks based on the formula of five business days per week.

³⁷ "The hearing will be scheduled as soon as Board staff determines that the institution has reached a state of readiness for final public comment before a recommendation is made to the Board" (610 CMR 2.06 [3]).

³⁸ The incorporation application signatures of John Sperling and Jorge Klor de Alva are dated June 3; apparently, the Secretary of the Commonwealth date-stamped it twice, first on June 18, and again on February 2, 1999. Some MBHE documents related to the Foreign Corporation Certificate refer to the latter date, while at least one document mentions August 1998 as the date of initiating incorporation.

³⁹ Unlike the Illinois application, the Massachusetts application did not identify concentrations or specializations within degree programs. Nor was UOP required to specify a particular region of the state.

⁴⁰ William Pepicello, Charles Siegel, and David Tibbetts represented UOP at the meeting.

7. INVESTIGATIONS OF THE UNIVERSITY OF PHOENIX BY THE U.S. DEPARTMENT OF EDUCATION

Beyond the monetary damage was the damage to our reputation that will take years to repair.

John Sperling, Founder, University of Phoenix

7.1. INTRODUCTION

In this chapter I treat investigation as a special case of the legitimation process—specifically, the process of defending or repairing organizational legitimacy in response to a direct challenge from an audience in the environment. I use evidence from an episode consisting of two related federal investigations of the University of Phoenix during the mid- to late-1990s. I begin with a discussion of investigation as a special process of legitimation. Next I provide some historical background about the U.S. Department of Education, emphasizing its activities in financially assisting postsecondary schools and students. I then focus on the immediate context of the federal investigations of the University of Phoenix by surveying the 1992 reauthorization of the Higher Education Act of 1965. From there I proceed with a presentation of the evidence from each case. Finally, I conclude the chapter with an analysis that makes cross-case comparisons between the two federal investigations.

7.2. INVESTIGATION AS A LEGITIMATION PROCESS

Although it has never exercised direct control, the United States now wields significant influence over postsecondary education through the power of the purse (Gladieux and Wolanin 1976). The federal Department of Education (ED) makes no claim to enforce standards of academic quality or individual consumer protection; instead

it accepts on good faith the accreditation decisions made by voluntary membership associations for the former, and licensure decisions made by the several states for the latter. Nevertheless, it does reserve the right to investigate licensed, accredited schools' compliance with federal statutes and regulations, many of which pertain to the administration of federal student financial assistance.

Investigation is thus a process of legitimation (although it is simultaneously a potential process of de-legitimation¹). Through investigation, the nation determines whether an organization is a legitimate provider of postsecondary education, and whether it is eligible to participate in federal programs authorized by Title IV of the Higher Education Act of 1965 (HEA). Applying a set of legal statutes, administrative regulations, and interpretive "guidance," successful investigation classifies the organization as a member of the category of Title IV eligible postsecondary schools operating in the United States. Once ED has made this determination, its oversight of that organization is periodic, with reviews possible every ten years or so.

Investigation is an example of an important yet under-explored type of legitimation: the process of defending or repairing² organizational legitimacy in response to a direct challenge from an audience in the environment. In some respects this process resembles that of initial legitimation. For instance, both are high-intensity processes involving close audience scrutiny. In other important respects, however, repairing differs from gaining legitimacy. It is primarily reactive rather than proactive, with the audience often initiating the process and the actor being compelled to address the immediate disruption. Repair strategies are also more likely to be symbolic than substantive, with

retrospective acknowledgement or denial accounts attempting to (re)frame the disruptive issue(s) (Ashforth and Gibbs 1990; Elsbach 1994; Oliver 1991; Suchman 1995).

While the literature discusses at length the strategic responses to legitimacy challenges, it is silent about audiences' goals or motives. Perhaps occasionally an audience's goal is to eliminate an organization entirely, driven by some altruistic or egoistic motivation. Evidence from these two cases of federal investigation suggest that a audience's goal is usually much more modest—perhaps simply to effect greater conformity to the classification criteria of the category, motivated by a desire to exercise the privileges reserved to gatekeepers and to wield an influence over the organization.

7.3. THE U.S. DEPARTMENT OF EDUCATION

Federal interest in postsecondary education predates the 1980 creation of the U.S. Department of Education by more than a century. Animating the series of relevant national legislation, beginning with the Morrill Land Grant Act of 1862, and culminating in the Higher Education Act of 1965, was the sentiment that postsecondary education should serve the interests and needs of the country as a whole.

Over time, the early focus on bricks-and-mortar gave way to a strategy of ongoing financial assistance to schools and students. While the watershed Morrill Act was a major contribution to the national educational infrastructure, a subsequent Morrill Act in 1890 transformed the one-time giveaway into a permanent subsidy by authorizing annual appropriations to land-grant schools. Some fifty years later another watershed, the Servicemen's Readjustment Act of 1944 (the "G.I. Bill"), established the practice of individual student aid later institutionalized in HEA.

The nation's conception of its educational interests and needs also changed over time. Development of the "agricultural and mechanical arts" was the initial formulation. The Hatch Act of 1887 created the agricultural experiment station, and the Smith-Lever Act of 1914 established cooperative extension services between land-grant schools and the U.S. Department of Agriculture. Later, the country successfully framed its active support of postsecondary education in terms of national defense. Congress passed the National Defense Act in 1916, which spawned Reserve Officer Training Corps (ROTC) programs at more than 500 campuses nationwide by the end of the Great War; and the Cold War (especially the launching of the Soviet satellite Sputnik) provided the backdrop for the National Defense Education Act of 1958, the precursor to HEA. One of the major offensives in President Johnson's War on Poverty, HEA occurred at a brief historical moment when the United States considered education a matter of public welfare—like health or housing—but since then it has justified its involvement largely on the basis of postsecondary education's role in economic opportunity and workforce development.

Finally, as federal activities related to education multiplied, they required additional organizational complexity. Several decades of agitation for a national education agency led to the creation of the original "Education Department" in March 1867, with a staff of four and an annual operations budget of \$25,000. An 1868 law renamed it the U.S. Office of Education (OE) and placed it in the Interior Department. The initial legislation did not specifically mention postsecondary education, and it was not until 1911 before a two-person division addressing the nation's colleges and universities appeared in the organization³ (Lykes 1975). In 1939 President Roosevelt

made OE a part of the Federal Security Agency, which in 1953 became the cabinet-level Department of Health, Education, and Welfare (HEW) (Radin and Hawley 1988).

Passage of the Higher Education Act was ample evidence that by the 1960s the Office of Education had already outgrown its position within the Department of Health, Education, and Welfare. It

had its own very separate relationships with the Congress and its interest groups. The formal organization chart . . . showed a Commissioner of Education reporting to an Assistant Secretary for Education who, in turn, reported to the Secretary of HEW. In reality, however, Congress frequently ignored the organization chart and gave direct authority to the Commissioner of Education, delegating specific responsibilities not to the Secretary of HEW but to the Commissioner of Education (Radin and Hawley 1988:14).

Proposals to create a cabinet-level Department of Education began as early as 1922 but were not consummated until 1980. Attempts by Presidents Harding, Hoover, and Lyndon Johnson were all unsuccessful. Jimmy Carter successfully exercised the presidential authority to reorganize the executive cabinet structure, signing legislation that created the Department of Education (ED) in October 1979. Since 1980 ED has assumed the responsibility of (among many other tasks) ensuring compliance with all education-related federal statutes and regulations (Radin and Hawley 1988).

Notwithstanding the sustained national activity for nearly a century, the Higher Education Act of 1965 inaugurated an era of expanded federal involvement. Many of the important details of the early history of HEA appear in Chapter Three; for the purposes of this chapter, most noteworthy is the fact that HEA is an authorizing statute. “This means that it defines the purpose of the programs under the act and sets the life span at the end

of which programs must either be reauthorized or come to an end.” Congress reauthorized HEA for the sixth time in 1992⁴ (Parsons 1997:39).

Although it was born of compromise and constraint, the 1992 reauthorization of HEA initially promised broad changes. “For the first time since 1972, plans for major program reform and restructuring, rather than marginal tinkering, appeared on the agendas of the primary policy actors” (Parsons 1997:114). But while the 1972 Amendments had launched a decade of bipartisan support for postsecondary education, “a decade of divided political power, anti-education sentiment, and more severe budget restrictions” set the scene for the 1992 reauthorization (Hannah 1996:505).

Student financial assistance is the heart of HEA, so Title IV programs were, as usual, the heart of the reauthorization debate. One major issue was the optimal ratio of grants to loans; another major issue was the loans themselves. By 1992 HEA had authorized over \$100 billion through its Guaranteed Student Loan (GSL) program—the single largest Title IV program—which had been shaped by numerous education acts, tax bills, and budget bills. “The result was an elaborate multi-tiered system involving five kinds of loans, more than 7,500 educational institutions, about 7,800 commercial lenders, 35 secondary marketers, 46 state or non-profit guarantee or loan service agencies, and ending in innumerable international capital markets” (Hannah 1996:509).

Simplification of student financial aid programs was an explicit goal among many policy actors.⁵ The concept of “direct loans,” which “was to eliminate everyone but the student, the postsecondary institution, and the federal government in the loan process,” had been introduced to the national education policy arena as early as the 1960s,⁶ but

vested interests—especially the banks receiving government guarantees on student loans—had long prevented it from gaining political traction. Many interested parties were sympathetic to the concept of direct loans, but some raised doubts about the practicability of the federal government administering such a program (Hannah 1996:509).

Another salient concern during reauthorization was program efficiency. A complex student aid system was expensive. In an era of budget deficits and concomitant calls for fiscal responsibility, a direct loan program promised cost savings (\$1 billion, by General Accounting Office estimates) that could be used to expand educational access to low- and middle-income Americans—an objective that had broad bipartisan appeal in a presidential election year (Parsons 1997).

Ultimately, however, restoring program integrity emerged as the focal policy issue in the 1992 reauthorization of HEA. From 1980 to 1990, student loan defaults had mushroomed from \$263 million to \$2.4 billion. During that same decade, the costs associated with defaulted loans went from sixteen percent to 45 percent of total GSL program costs. While total loan volume had doubled, the volume of defaulted loans had more than tripled, “indicating that the default problem was not merely a function of [GSL] program growth” (Parsons 1997:107).

The problem of student loan defaults soon came to be linked closely with for-profit proprietary schools. President Reagan’s Education Secretary William Bennett regularly “used proprietary schools and loan defaults interchangeably in discussing the problems of the GSL program” (Parsons 1997:175). Meanwhile, when the Senate Permanent Subcommittee on Investigations (PSI), chaired by Georgia Democrat Sam

Nunn, convened public hearings on high-profile cases of financial aid scams, it drew all of its cases from the proprietary sector.⁷ The Nunn committee then released its “widely publicized finding that the GSL program was ‘plagued by fraud and abuse at every level’ in the midst of reauthorization hearings in the spring of 1991” (Hannah 1996:508).

Proponents of a federal direct loan program were unsuccessful in arguing that it could satisfactorily address program integrity as well as simplicity and efficiency. They “were unable to convince the larger community that a complete reconstitution of the GSL program . . . would solve the problems associated with the GSL program, retain the advantages, and not create a new set of problems.” The “direct loan program was added as a new, parallel program” to GSL (Parsons 1997:156-157). Even the Nunn committee report had recommended retaining GSL and merely changing several of its programmatic rules and regulations.⁸

One such amendment that emerged from the 1992 reauthorization of HEA was the “12-Hour Rule,” which took effect July 1, 1995, and defined an academic year as a minimum of 30 weeks of instructional time.⁹

The 30-week academic year and the 12-hour rule, derived from it, serve as proxies for guaranteeing that postsecondary institutions are providing an adequate amount of instruction to warrant the taxpayers’ investment. . . . By defining the term academic year, the Congress hoped to address fraud and other abuses related to the length of higher educational programs, in particular the practice by certain institutions of stretching the length of their educational programs without providing additional instruction in order to maximize the amount of federal student financial aid received by their students (ED 2001:13, 15).

However, the statute did not explicitly define what constituted a week of instructional time; it fell to ED to generate definitions through its own regulations. For

educational programs using “standard terms” such as semesters, trimesters, quarters, or clock hours, ED defined a week of instructional time as any week in which the program offers “regularly scheduled instruction, examination, or preparation for examination.” For educational programs using “nonstandard terms or non-terms,” ED defined a week of instructional time as any week in which the program offers at least twelve hours¹⁰ of “instruction, examination, or preparation for examination” (ED 2001:5-6).

The 12-Hour Rule did not require a school to hold classes for a minimum of twelve hours per week. Instead, compliance was a matter of applying the new formula to an educational program. A school whose educational programs were nonstandard term or non-term could be in compliance with the new 12-Hour Rule with any week/hour combination that yielded at least 360 hours of instruction time in a given academic year.

The 12-Hour Rule was only one of numerous ED regulations that sought to enforce the integrity of Title-IV-participating postsecondary schools. Not all regulations focused on educational program length to prevent the potential for fraud and abuse. As demonstrated through the cases presented below, other ED rules focused on the actual administration of financial aid, the management of student attendance and enrollment, the design of curriculum and programming, and accounting practices and procedures.

7.4. INVESTIGATIONS OF THE UNIVERSITY OF PHOENIX BY THE U.S. DEPARTMENT OF EDUCATION

7.4.1. *Office of Student Financial Assistance: 1997-1999*

When the Education Department’s Office of Student Financial Assistance (SFA) began its investigation of the University of Phoenix in March 1997, the for-profit school

had already become “one of the largest regionally accredited private universities in the United States” (Apollo Group 1997:2). Accordingly, UOP was among the largest disbursers of Title IV funds: it disbursed nearly \$220 million in grants and loans for the 1996-1997 award year, and more than \$473 million combined over the three-year program review period (ED 1998f:6). In its annual report to the U.S. Securities and Exchange Commission that year, Apollo Group stated that most UOP students participated in Title IV programs, and that UOP derived approximately 51% of its net revenues from Title IV-participating students (Apollo Group 1997).

SFA charged a San Francisco-based team from the Southwest Case Management Division of ED’s Institutional Participation and Oversight Service with reviewing six of the 88 UOP sites then in operation. In addition to campuses in Arizona, California, Florida, and Puerto Rico, the case team also reviewed the Center for Distance Education in Phoenix, the University of Phoenix Online, then located in San Francisco,¹¹ and the Apollo Financial Aid office at corporate headquarters in Phoenix, which centrally administered Title IV programs for students at all UOP sites¹² (ED 1998f).

The Education Department conducted the SFA investigation (or “program review”) to determine the University of Phoenix’s compliance with federal statutes and regulations regarding the administration of Title IV programs.¹³ After a preliminary visit to corporate headquarters in March, the case team conducted field work between April 7 and May 2, 1997. During that period investigators examined related university policies and procedures, student academic files, attendance records, account ledgers, and fiscal

records covering the 1994-1995, 1995-1996, and 1996-1997 award years; they also interviewed key officials at UOP and Apollo Group (ED 1998f).

Upon completion of on-site field work on May 2, 1997, the case team's lead reviewer, Senior Institutional Review Specialist Steve Hansen, compiled a set of exit notes. Hansen's notes outlined twelve "systemic findings" and four "fiscal findings," and bore a strong resemblance to subsequent official reports (Hansen 1997). SFA circulated a preliminary draft of its program review report in September 1997, and released a Revised and Reissued Program Review Report in April 1998. A Final Program Review Determination Letter, dated July 28, 1999, officially closed the investigation.

However, even before it had completed its preliminary draft, the case team had contacted the Education Department's Office of the Inspector General. At a June 1997 meeting between representatives from SFA and OIG, the former indicated to the latter that it had

identified several issues that they felt needed OIG attention. They felt that they did not have the resources or expertise to fully develop the issues, and they felt they did not have the authority to force the Apollo Group to institute the necessary changes to bring them into compliance with ED regulations. . . . Program Review will report their findings as issues rather than specifics as they might normally do. They will report . . . to the best of their abilities but they didn't seem to think that they had the power to force the Apollo Group to make the changes necessary. . . . Program Review seemed to feel that OIG has the power to impose such measures, that the OIG could go in deeper and look at . . . the basic systemic problems (ED 1997c:1,3).

The Revised and Reissued Program Review Report, released on April 22, 1998, listed a total of six major "findings requiring [university] action." First, the case team determined a "lack of administrative capacity" at UOP; second, it concluded that the

school did not adequately or appropriately enforce its “Satisfactory Academic Progress policy”; third, UOP did “not timely determine that a student is no longer enrolled; hence, refund calculations [were] not timely made”; fourth, the University of Phoenix “had late/unpaid refunds and late return/unpaid credit balances” for various Title IV disbursements; fifth, the case team encountered a “failure to provide reviewer with requested records/information”; and finally, investigators found “a lack of clear audit trails” at UOP (ED 1998f:9,11,16,26,33,35).

The first SFA finding was that the University of Phoenix had demonstrated an overall lack of capacity to administer Title IV programs. This finding was a summary of, and contingent on, all of the other more specific findings. The report offered no substantiating evidence for this finding beyond the mere existence of the subsequent findings. If UOP could demonstrate that it had remedied those other findings, it would thereby resolve this finding as well (ED 1998f).

Second, SFA found that the University of Phoenix was not enforcing its own federally mandated Satisfactory Academic Progress (SAP) policy, which held that students must maintain a minimum grade point average (GPA) and be on track to complete their degree program within the maximum time frame allowed by ED regulations. UOP’s policy called for an evaluation of a student’s SAP status before every disbursement of Title IV funds (ED 1998f).

Although the original purpose of the SAP policy was to monitor students’ academic eligibility for federal aid, in non-term educational programs it also served to monitor students’ enrollment status. It was UOP’s policy to conduct SAP-status checks

for each 24-credit increment of a student's educational program. However, SFA investigators were concerned that the school did not check SAP status at every schedule change. "Students had dropped classes, but there was no incremental check of SAP," the case team noted. Instead, it "saw substantial evidence that the campuses aggressively sought to enroll the student in another course," and it never received any documentation "showing that the student was still on track to complete his or her program of study within the maximum time frame." Instead, it found "documentation of unscheduled breaks, or leaves of absence; however these were invalid in many instances because they were obtained retroactively to cover a period of non-attendance" (ED 1998f:13).

For this finding the case team required the following actions. First, UOP should develop policies and procedures to ensure the appropriate check of Satisfactory Academic Progress for all students at all sites, "and that documentation of said SAP check be available for audit and review." Second, the university should furnish written copies of its new SAP policies to ED officials, as well as its own written assurance that it had implemented them universally (ED 1998f:16).

The next two SFA findings also related to student enrollment and its association with Title IV eligibility. UOP did not always calculate timely refunds of financial aid disbursements for students no longer enrolled, so it was late in refunding some disbursements, and in other cases it had not made aid refunds at all (ED 1998f).

University officials acknowledged this problem, but argued that it was a mere matter of recordkeeping. They claimed that since each UOP site handled its own students' attendance records, while Apollo Group kept all financial aid documents in

Phoenix, there was a lag between what was known locally and what was acted on at corporate (ED 1998f).

The case team insisted to the contrary: the Apollo Financial Aid (AFA) office had data readily available to identify students that were no longer in attendance, but instead of terminating non-attending students, UOP recruited them for re-enrollment. Meanwhile, the school “continued to carry these absent students as active students, many for extended periods of time.” The financial aid files of re-enrolled students “often contained documentation of (1) a scheduled break, (2) an unscheduled break, or (3) a leave of absence” (ED 1998f:22).

In accordance with federal regulations, University of Phoenix policy permitted students to take “scheduled breaks” between courses without adversely affecting their enrollment status or their eligibility to receive federal financial aid. The Apollo Financial Aid office had a routine administrative procedure for certifying and approving disbursements for programs of study that included one or more scheduled breaks per loan period. Students were individually responsible for making advance arrangements with the school for any scheduled breaks between courses, and “the case team notes that unscheduled breaks and retroactive leaves of absence are invalid for purposes of sustaining students’ eligibility for Title IV student financial aid” (ED 1998f:22).

To review the timeliness of disbursement refunds, the case team requested a list of withdrawn students, from which it randomly selected a sample of 186 student files. However, “we were informed that the withdrawal list was inaccurate and that only 40 of these students had actually interrupted or terminated their studies.” The other 146

students ostensibly had been re-enrolled. Only these 40 of the sample of 186 student files included worksheets for calculating financial aid refunds. After reviewing 31 of the 40 files, the case team cited seventeen instances of unpaid or late refunds of financial aid disbursements (ED 1998f:26).

For this pair of findings, SFA required UOP to take several actions. First, the university was to review its attendance records for all students enrolled at any time during the 1994-1995, 1995-1996, and 1996-1997 award years. For these students, it “must strictly apply its withdrawal/termination policy, i.e., students who miss more than two classes and do not start another course within 30 days from the end of the course from which they dropped, must be withdrawn from the institution” (ED 1998f:25).

The purpose of this action was to recalculate refunds of financial aid disbursements for withdrawn students. For each student “who officially withdraws, drops out unofficially, or is expelled on or after the student’s first day of class,” UOP should determine whether a refund or repayment of a credit balance was due, and if so, whether it was paid in a timely manner. It should then submit a report listing all students due a refund or a payment of a credit balance, and provide summaries of refunds and credit balances for each of the three award years under review. SFA required the university to pay immediately all unpaid refunds it identified, including interest and special allowances, and submit proof of payment. UOP should also make these attendance records available for audit by a certified public accountant, and create written policies and procedures to terminate or withdraw students and calculate refunds appropriately. As

with the previous finding, UOP should provide written assurance to ED officials that it had implemented these new refund policies and procedures universally (ED 1998f:24).

SFA's penultimate finding was that the University of Phoenix failed to provide the case team with certain records and information it requested. As with the first finding, if UOP could demonstrate that it had satisfied the documentation issues related to the other findings, it would thereby resolve this finding as well (ED 1998f).

Finally, SFA found that UOP lacked clear audit trails. In the report the case team cited multiple computing problems. For this finding the school was to "develop an adequate student account ledger system which identifies all financial transactions and provides a clear audit trail of the student's account," and "submit a copy of this updated ledger system" to ED. It was also to "have its independent CPA auditor comment on the adequacy and completeness" of the new system. Indeed, all six major findings required independent verification by a certified public accountant (ED 1998f:36).

A cover letter directed the University of Phoenix to "review and respond to the accompanying report as required, indicating the corrective actions taken" to address the findings. UOP was to submit its response to the senior member of the case team, Steve Hansen, within 45 days of receipt of the report (ED 1998f:2). Forty-two days later, on June 3, 1998, Arthur Andersen wrote Hansen a letter on UOP's behalf, requesting an extension to respond to the two findings that required the university to reconstruct and review three years of student files. Representatives at the accounting firm argued that it needed more time for such a labor-intensive project. Hansen granted UOP a 210-day extension on the conditions that it complete the requirements for the findings "exactly as

stated in the program review report,” and if it deviated at all from those requirements then it must notify the case team in advance and obtain prior approval. The extension set the new deadline for UOP’s response to these two findings at January 5, 1999 (ED 1998a:1).

Meanwhile, the University of Phoenix submitted its own twenty-four-page response to the other four findings directly to Steve Hansen the following day, June 4, 1998. The letter began with a

general overview of UOP that we feel provides necessary context crucial to any review of the UOP. We noted that some of the information contained in the Background portion of the report was inaccurate or did not provide complete background information concerning the University of Phoenix and the Apollo Group, Inc. As such, we would like to take this opportunity to provide additional information to clarify the organizational structure of the Apollo Group, Inc., and the University of Phoenix and more fully explain the educational mission of the University of Phoenix.

The first seven pages of the response addressed the school’s founding and ownership, accreditation and affiliations, enrollment and student profile, its numerous assessment techniques, and the benefits of attending UOP, before proceeding to its response to each of the SFA report’s findings (UOP 1998:1).

The University of Phoenix addressed the first finding, a lack of administrative capacity, by notifying ED that it had purchased and was implementing an integrated information system software package designed specifically for colleges and universities. This integrated system would administer data for student demographics, academic records, advising, financial aid, and accounts; admissions and recruitment; and human resources. Since it was ramping up this system over a three-year period, well beyond the SFA-imposed deadline, UOP noted that it had implemented the student financial aid module of the software package first (UOP 1998).

In its response UOP disagreed with the second SFA finding about not enforcing its Satisfactory Academic Progress policy. It argued that it “has consistently strived to apply its SAP standards for measuring whether a student is maintaining SAP before disbursing Title IV funds.” Further, it

believes that it has adequate policies and procedures in place to ensure consistent application of its SAP standards. It appears that the case team’s comments may have been the result of an inadequate understanding of our procedures and/or the documentation maintained in the individual student files for monitoring SAP. . . . UOP strongly believes that it consistently applies its SAP standards to all SFA recipients and that documentation of the monitoring of a student’s SAP is contained in the individual student files.

Previously, the school had monitored individual students’ SAP with the same software system that had tracked their attendance, grades, and course completions; it argued that the new integrated system would further enhance its ability to monitor students’ SAP status in the future (UOP 1998:14).

Although it had made arrangements to respond to the requirements of the next two findings separately, the University of Phoenix nevertheless addressed some of the information from the program review report regarding these findings. It argued that the case team had misunderstood UOP’s published policies on student attendance and withdrawal. “Please note that the student is withdrawn from the course, not the institution when a student misses more than two classes” (emphases added), and did not necessarily become Title IV ineligible as a result. The university acknowledged that its recent growth had inhibited its capacity to timely identify all students out of attendance, but that many of those students had ultimately re-enrolled, thereby preserving their Title IV eligibility. UOP stated that it had developed new monitoring policies and procedures that would

enable it to calculate refunds quickly and accurately for withdrawn students. And here, as before, the new integrated software package would further enhance the university's ability to monitor student attendance (UOP 1998:17).

For the other finding for which it had requested and received an extension, the University of Phoenix submitted an attachment that explained the procedures and the format of the required response. It sought official ED approval before committing its resources to such a costly project, one that it estimated would require 60,000 person-hours to complete, employing no less than 75 over a period of six months or more. "Please inform us immediately if the auditor's report format, the agreed-upon procedures, or the file review spreadsheet is insufficient to meet the Department's requirements for the performance of the file reviews." The letter repeated Arthur Andersen's request for a 210-day extension (UOP 1998:20).

In response to the SFA finding that it had failed to provide requested records and information, the University of Phoenix issued a flat denial. The school claimed that it could not fulfill some requests sooner because it needed to locate and retrieve records from a storage facility off site. And finally, while maintaining that its current systems did in fact provide a clear audit trail—albeit one not readily understood by the SFA case team—UOP again stated that its new integrated system would further enhance its ability to administer Title IV programs and meet official ED requirements (UOP 1998).

In summary, UOP's initial response to the SFA report made few concessions. It attributed many of the findings to the case team's lack of understanding of its internal organizational procedures. Insofar as it did acknowledge problems, the school declared

that these were the benign, unintended consequences of its recent growth, and now that the problems had come to light, UOP could remedy them with purely technical and procedural solutions. The university steadfastly maintained its position that it had always been, and continued to be, in compliance—or if it were out of compliance in any way at any time, that it was strictly a matter of inadvertent oversight.

Several months after the University of Phoenix's initial response, in November 1998, Apollo Group President Todd Nelson corresponded with Carl Hammack, Director of Southwest Case Management and Steve Hansen's superior at ED. In the three-page letter Nelson informed Hammack of the "steps we have taken to improve the administration of the SFA program," including committing more financial and human resources, and acquiring and implementing a new integrated system software package.

A review of the Program Review Report and SFA Audit Report findings will show that the majority of the compliance findings identified stemmed from the difficulty UOP . . . had in determining when a student had withdrawn from the institution. During the past several years, the institution has experienced tremendous growth as it continues to expand its program offerings. As a result, significant strains were placed on the various information systems utilized at the campus and Apollo corporate offices to track and monitor student attendance. While the institution is confident that the published attendance policies and procedures were adequate, the mechanisms to monitor individual students' enrollment status in accordance with these policies may in some cases have been insufficient. As a result, in some cases Apollo Financial Aid and the campuses had difficulty in identifying students who were out of attendance. In most instances the students re-enrolled in a course after a period of non-attendance. Once the institution was aware that a student had withdrawn, the required procedures were performed (Apollo Group 1998a:2).

A response from Hammack at the U.S. Department of Education two weeks later did not directly address Nelson's correspondence. Instead it instructed Apollo Group

about issues related to the SFA investigation. One issue was UOP's official policy concerning student enrollment status. The case team had received guidance from ED's General Provisions Policy Staff about whether UOP could and should be treated like a standard term program for the purposes of refunding Title IV disbursements. This guidance gave UOP two options for considering a student still enrolled in the university without being enrolled in a course: the school may either "grant the student an official leave of absence for a period of up to 60 days to bridge the gap between courses, but this approach may only be used once in a 12-month period," or the student must have an established schedule for future courses, in which "the gap between courses is reasonable"—that is, "the student completed the previous course, there are no other courses the student can take, and the student is enrolled in the next course." Otherwise, "if the student does not attend class when the next course begins, UOP must consider the student's withdrawal date the last recorded date of class attendance in the last course." If it could not determine that the student's enrollment status satisfied either of these two conditions, it must consider that student withdrawn from the university (ED 1998a:3-4).

During this same general time period, the University of Phoenix's independent auditor, Arthur Andersen, notified it of the results of the file reconstruction and review required for the remaining two findings. Regarding one of these findings, the accounting firm stated that it had "identified 3,302 out-of-attendance dates that had unpaid refunds/credit balances at the time of the file review. . . . However, the institution has now paid these unpaid refunds to the applicable lender and/or Pell fund account." As for the other finding, Arthur Andersen had "identified 4,760 corresponding out-of-attendance

dates that had refunds/credit balances that were not paid on a timely basis.” UOP had already issued 1,426 payments; meanwhile, in 3,774 cases “the students subsequently re-entered and continued in their program of study” (Arthur Andersen n.d.:2).

UOP submitted its response for the two remaining findings on January 4, 1999, one day before the extension deadline. In this eight-page letter the university referred to the recent materials Arthur Andersen had submitted separately that documented the file review project and summarized its results. It also informed ED that it had “entered into a strategic alliance with Arthur Andersen” to “become the third-party-servicer of our federal aid programs beginning on or about February of 1999,” believing “that the centralization of all key financial aid functions . . . will allow the University to more closely monitor the administration” of its Title IV programs. “We believe that the University currently has in place the necessary systems to support our current students and future growth and is committed to continuous review and improvement of our processes and systems to ensure quality, timeliness, and compliance” (UOP 1999a:2,3).

At this point it would seem that the University of Phoenix had responded to all six of the findings and requirements detailed in the SFA program review report, but the November 1998 letter from Carl Hammack opened up new issues. “We wish to make it clear that the University is committed to cooperate with the Department and see that the Program Review Resolution process moves forward, even while we seek additional clarification regarding the new policy guidance. . . . [But] the University is extremely concerned that” the guidance “might have an adverse retroactive or prospective impact

upon the University's teaching model and enrollment policies. We would like to take this opportunity to present a preliminary statement of our position" (UOP 1999a:4)

Over the next three pages of the letter, UOP stated that it disagreed with the "highly restrictive conditions presented in the policy guidance," especially the condition that it "cannot count the gap between courses as instructional time to determine the student's cost of attendance, eligibility for Title IV grants or loans, refunds or disbursements." While it did not count gaps between courses as actual instructional time, or disburse funds during such gaps, the school's enrollment policies did "classify certain students as fully enrolled and registered notwithstanding an interim gap in instructional activity," which it believed to be based on federal regulations. Therefore, "the University cannot understand the regulatory basis and intent of the policy guidance issued," nor could it "submit a comprehensive response to the new policy guidance" (UOP 1999a:5,6).

UOP asked the Education Department to provide specific information that would enable it "to understand the Department's position on this issue" and "to present its in-depth position with regard to the regulatory/policy concerns." Meanwhile, it maintained that ED could and should not apply the recent policy guidance retroactively to the award years covered by the SFA investigation. Despite a willingness to cooperate with the investigation, the university asserted the right to dispute that guidance and any potential allegations of noncompliance that may stem from it (UOP 1999a:7).

Having received both a response from the University of Phoenix and a record of attestation from Arthur Andersen, the Education Department notified the school that the

SFA investigation was in its final stages. A March 25, 1999 letter acknowledged UOP's discussion of the new policy guidance, but did not engage that subject further than to agree "with your statement that the University of Phoenix academic program is unique"; instead, it abruptly set all lingering matters aside to facilitate a tidy conclusion to the investigation. "As soon as the San Francisco Case Management Team has completed their review of your institution's response to the program review report," Carl Hammack wrote to Todd Nelson, "we will be conducting a follow-up site visit to the Apollo Group's corporate office, as well as the University of Phoenix's main student financial assistance offices. The purpose of our visit will be to verify the University of Phoenix's response to the April 22, 1998, program review report." In his letter Hammack made no mention of having received or reviewed the work plan Arthur Andersen had submitted the previous month, in anticipation of reviewing more student files as directed by the new policy guidance (ED 1999a:3,4).

On July 28, 1999, the Student Financial Assistance office of the Education Department issued its Final Program Review Determination Letter for its investigation of the University of Phoenix. The letter indicated that "the San Francisco Case Management Team has now made final determinations concerning all of the outstanding findings of the 4/28/98 program review report." The purpose of the letter, signed by James Castress, Area Case Director of the San Francisco Case Management Team, was to identify financial liabilities and provide instructions for repayment, as well as to notify UOP's right to appeal and to officially close the SFA investigation (ED 1999b:1).

With the Final Program Review Determination Letter, UOP had resolved all six of the findings published in the April 22, 1998 report to the satisfaction of the case team—including the overall finding of a lack of administrative capability. Two findings involved monetary liabilities. “In its program review response University of Phoenix identified \$8,493,618 in total untimely refunds and \$2,779,961 in unpaid refunds which were subsequently paid.¹⁴ UOP is liable for interest and special allowance paid by the Department totaling \$280,732. . . . Your institution must make this payment within forty-five (45) days of the date of this letter” (ED 1999b:25).

Word of the investigation had already reached the broader community months earlier. On September 17, 1998, the Wall Street Journal ran a front-page story in its “Heard on the Street” column, headlined “Apollo Shares Trade Near the Head of the Class, but Many Investors May Be Overlooking Risks.” The tone of the article was somewhat balanced between optimism and caution. Although the lead paragraph did mention the SFA investigation, more detailed information did not appear until the article’s ninth paragraph (out of thirteen), which also noted the subsequent investigation by the Office of the Inspector General, already in progress (Scism 1998). An October 2, 1998 article in the Chronicle of Higher Education, titled, “Report on U. of Phoenix Sends Stock Price Down,” focused on the effects of the Wall Street Journal article more than on its cause, not addressing the substance of the investigation or its findings until the fourth of six paragraphs (Basinger 1998).

The national media were not as interested when the Education Department concluded its investigation the following year. Apollo Group had issued a brief press

release on July 30, 1999, announcing the completion of the SFA investigation (Apollo Group 1999), but the Wall Street Journal did not run a follow-up story to its earlier bombshell announcement. Meanwhile, the Chronicle of Higher Education did publish a pair of articles reporting the investigation's outcome. The first article, dated August 6, 1999, ran with the headline, "Audit of Aid at U. of Phoenix Expected to Result in Smaller Penalty than Projected" (Burd 1999a). The second article, published the following week (August 13, 1999), identified the total amount owed by Apollo Group. Titled "Education Department Orders U. of Phoenix to Pay \$650,000," the story indicated that the amount included refunds made directly to lenders, as well as those payments remitted to the government (Burd 1999b).

In his memoir founder John Sperling reflected on the fallout from the first ED investigation and the ensuing media coverage. "The decline in the value of Apollo stock cost the shareholders some \$2 billion. What was the final amount Apollo had to pay to the government to settle all outstanding issues? \$280,000. In short," UOP had incurred "an additional penalty of \$1,999,720,000" (emphasis original) (Sperling 2000:187).

7.4.2. Office of Inspector General: 1997-2000

Although the precise date is uncertain, the Inspector General's office at the U.S. Department of Education began its investigation of the University of Phoenix sometime during 1997. ED's regional office in Sacramento, California, handled the OIG audit. Gloria Pilotti, Regional Inspector General for Audit, assumed primary responsibility, with assistance from Natalie Forbort, Regional Inspector for Investigations. As

mentioned previously, OIG met with the SFA case team as early as June 23; representatives from the two offices later held a follow-up meeting in September.

The OIG investigators conducted their on-site field work from October 1997 to March 1998, primarily at the corporate headquarters in Phoenix, but also at several campuses throughout the metro Phoenix area. Data collection and analysis by OIG investigators was ongoing in the Sacramento office through April 1999. During that period they reviewed university policies and procedures, reports from the SFA investigation including the Arthur Andersen audits, and university system data covering the 1995-1996 and 1996-1997 award years (i.e., all award years since the 12-Hour Rule took effect); they also interviewed university officials, faculty, and staff (ED 2000).

The stated purpose of the OIG investigation was to evaluate the University of Phoenix's management of Title IV programs.¹⁵ "We focused our review on the following areas: (1) Required hours of instruction in an academic year under the 12-Hour Rule, (2) Institutional and program eligibility for Title IV funds, and (3) Causes that contributed to the University's failure to make refunds or to make the refunds within required time frames" (ED 2000:25).

The Inspector General's office circulated a preliminary draft of its audit report in July 1999 (the same date of the SFA Final Program Review Determination Letter) and released a Final Audit Report in March 2000. With the release of the Final Audit Report, OIG officially transferred the investigation to the Office of Student Financial Assistance. According to ED's Audit Resolution Directive, SFA had the official responsibility to

bring the investigation to resolution, which it did by entering into a settlement agreement with UOP in April 2000.

In its Draft Audit Report, the Inspector General's office identified two major investigative findings. The first was that UOP was not in compliance with the recently-introduced 12-Hour Rule. Second, OIG found that distance-learning courses offered through UOP's Center for Distance Education were not telecommunications courses, but rather correspondence courses. On the basis of these two findings OIG argued that UOP had disbursed Title IV funds improperly (Freeman et al. 1999).

OIG investigators determined that the University of Phoenix's academic year for its non-term undergraduate programs did not provide the required instructional hours. In other words, UOP programs did not satisfy the requirements of the 12-Hour Rule. OIG disallowed UOP's inclusion of four weekly hours of group-study time in its calculation of instructional time for its academic year.

Because its classes meet for only four hours per week, the University of Phoenix never had fulfilled the 12-Hour Rule's requirements with class time alone. To accumulate the minimum 360 instructional hours required for full-time enrollment, an academic year based solely on class time would be 90 weeks in length. Instead, UOP had always supplemented class time with "Scheduled Cohort Group Study" (SCGS) sessions,¹⁶ which also meet weekly for four hours. At eight hours per week, UOP programs comply with the 12-Hour Rule with a 45-week academic year.

The University of Phoenix referred OIG investigators to official ED correspondence it believed affirm that study group time qualified as instructional time.

UOP furnished a letter it had written in early 1995, before the 12-Hour-Rule's implementation, specifically asking "if the Department would continue to consider the 'scheduled cohort group study' as acceptable hours of instruction." The official ED response was, "we would as long as the study group concept is still operating" as UOP had earlier described. "That is, it is required of all students in the program, and that it is held at a site under the control of the institution" (ED 1995:1; UOP 1995).¹⁷ Later on, ED further defined control of the site as either ownership of or holding the lease to the facility where the study group met.

Through its on-site field work, OIG investigators concluded that study group sessions had not been satisfying these conditions. They determined that UOP did not require students to meet at locations it owned, leased, or in any other way controlled. On a four-day visit to UOP's flagship campus ("Hohokam" campus) in Phoenix in March 1998, they observed the usage of space for study group meetings, identifying about three dozen rooms that would be appropriate for such activities, and considering any meeting involving between two and five students to be a possible study group. However, they did not disturb the meetings to confirm whether they were in fact official study group sessions. On two of the four days they did not observe any possible study groups in these rooms; on the other two days they observed a total of seven possible study groups. With a maximum number of five students per study group, they calculated that the courses offered at the Hohokam campus would require at least 512 study groups. Given that they observed only seven possible study group meetings over a four-day period, they concluded that UOP "students are not using University of Phoenix space during the day

for study groups,” and that much of the same space was unavailable during evenings and weekends; therefore, “student study groups are not required to meet in space controlled by the institution” (ED 1998g:2-3). Visits to other UOP campuses throughout the Phoenix metropolitan area yielded similar results.

In its Draft Audit Report the Inspector General’s office also disqualified study group sessions as instructional time on other grounds. Neither UOP officials nor faculty supervised them; they could not confirm whether study groups met regularly or for the required four hours. Faculty did not even attend the meetings; only students attended study group sessions. The instructor did receive and review regular attendance reports, but did not keep or submit any records of study group attendance (Apollo Group 1998a).

In a survey of ten undergraduate students and two faculty members at the Hohokam campus, OIG investigators inquired about the actual experiences of study groups. Nearly all student respondents indicated that their group met for less than four hours per week, and more than half identified an off-campus location for their group. “Although the number of respondents was limited . . . it appears as though University of Phoenix does not ensure that students do a minimum of four hours of study group work at a location under its control. This survey shows that University of Phoenix is not in compliance with the criteria given by the Department” (ED 1998g:2). One faculty member told investigators that “in his opinion, UOP was very lax in what it required from study groups,” that UOP did not provide adequate space for study group meetings, nor did it hold faculty or students accountable for study group activities (ED 1998g:1).

Investigators also reviewed documents provided to students to evaluate whether these provided any guidance about study groups. They concluded that “none of these documents outlined the frequency of study group meetings, the amount of time required for study groups, or the location of study group meetings” (ED 1998h:3-4). They drew similar conclusions from a new-student orientation video.

In addition to their finding regarding study groups and the 12-Hour Rule, OIG investigators also determined that the internet-based programs University of Phoenix offered were “correspondence” or “home study” rather than “telecommunications,” “independent study,” or “directed study” courses, affecting the Title IV eligibility of those programs. UOP had begun offering courses online in 1989 through a San Francisco-based unit it called ACCESS, later renamed the Center for Distance Education (CDE).¹⁸ When OIG began its investigation in 1997, only 3,300 of UOP’s approximately 42,000 students (or 7.9%) were enrolled in online courses (Apollo Group 1997).

In 1990 the Education Department had approved online educational programs offered through CDE for Title IV funding. Its approval criteria at that time were as follows: the online programs were accredited by the North Central Association; they were approved by the state of Arizona; they met the minimum instructional time requirements; and they offered degrees (ED 2000).

But federal rules treat “home study” or “correspondence” courses differently from “directed study,” “independent study,” or “telecommunications” courses. The Higher Education Act “does not allow institutions to include cost of living expenses when determining financial need for students enrolled in correspondence courses,” so OIG

concluded that “the University over-awarded Title IV funds to students enrolled in correspondence courses provided through CDE” (ED 2000:17).

The Inspector General’s office had begun focusing on the categorical definition of the University of Phoenix’s online operations very early on in the investigation. OIG investigators met with CDE representatives in October 1997, at the beginning of their on-site field work. When it came time to discuss the Title IV eligibility of CDE courses and programs, certain questions elicited nervous agitation. In a report on the meeting, OIG noted that online program officials “started rapidly shaking their legs and feet. After we left this subject area, the shaking ceased and [they] seemed to calm down” (ED 1997a:2).

After this meeting, and in consultation with ED policy experts (ED 1997b, 1997d), the OIG investigators concluded that online CDE courses were home study or correspondence. Their challenge focused on the UOP assertion that students had regular weekly contact with the instructor. “It does not seem possible for a student to have the same exposure to a faculty person with CDE as with the on-ground classes.” Using the CDE-reported figure of 25 students per instructor, “if the students were to have the same exposure, the faculty person would be working over 100 hours per week for the CDE courses alone. This does not seem reasonable” (ED 1997a:3). A February 1998 teleconference with UOP officials about instructional and evaluative methods did not change the conclusion.¹⁹ “Although 25 percent of [faculty-student] communications are conducted via email, CDE is still a correspondence school because of the nature of its environment. The majority of the communication is conducted via mail and fax” (ED 1998c:2). Ironically, then, the online courses were not online enough.

Meanwhile, the University of Phoenix vigorously argued the opposite position. The school had applied ED's own guidance on how to classify courses as independent study: for courses to be classified as such, they must have weekly instructor-student contact, and they must use the same curriculum and have the same time-frame requirements as their campus-based counterparts. Based on their compliance with this guidance, UOP had determined that CDE courses were not correspondence but rather independent study (ED n.d.-b).²⁰ The university also furnished ED with a six-page report, ostensibly to further describe and explain its online operations, but its opening paragraph was a direct response to OIG's assertions.

The courses comprising the University of Phoenix Online Degree Programs are telecommunications courses, not correspondence courses. Our Online programs are based upon the same exacting academic standards applicable to our residential programs, but they are offered principally through the use of computer transmission. Therefore, they are telecommunications courses, not correspondence courses (Apollo Group 1998b:1).

In the report UOP made equally strong assertions about the equivalency between online and campus-based courses, arguing that it enforces stricter attendance and participation requirements for online students, who in turn consistently outperform "residential" students on official outcomes assessments (Apollo Group 1998b).

At the request of the Inspector General's office, legal advisors from the Education Department's Office of General Counsel (OGC) weighed in on the issue in June 1999. While OIG considered UOP's online delivery of education a form of "correspondence," "OGC concluded that it was not unreasonable to consider the University of Phoenix's Online Education course to be telecommunication courses. Based on the OGC opinion,

we [OIG] decided not to pursue this potential finding” as vigorously as the finding pertaining to the 12-Hour Rule, although it nevertheless appeared in both the draft and final versions of the OIG report (ED 1999c:2, 2000).

Rather than respond directly, as it had done in the first investigation, the University of Phoenix issued its formal comments on the Inspector General’s Draft Audit Report through its legal representatives. On October 31, 1999, three principals of a Washington, DC-based law firm submitted 34 pages of comments that made frequent references to jurisprudential theory and case law. They argued that OIG should rescind both of its preliminary findings—that study groups did not count as instruction time toward the fulfillment of the 12-Hour Rule, and that online courses were correspondence rather than telecommunications courses—and close the investigation without issuing a Final Audit Report or any other further action (Freeman et al. 1999).

The University of Phoenix’s legal representatives opposed the Inspector General’s primary finding on multiple grounds. Regarding study groups and the 12-Hour Rule, they argued (among other things) that study group time should count toward instruction time; that the Education Department had always counted it as such prior to the investigation; that ED was statutorily forbidden to interfere with UOP’s curriculum by disallowing study groups; that the Inspector General was exceeding its statutory authority; and that the Department of Education was guilty of selective enforcement of its regulations. They devoted 26 of 34 pages to the rebuttal of this finding (Freeman et al. 1999).

Through its attorneys the University of Phoenix argued that it “maintains strict control over its Scheduled Cohort Group Study model and activities.” UOP asserted an

alternative definition of “control” that relied more on programming than logistics. The proof lay in the results: all courses required group project assignments, which needed to be completed outside of class time in study group sessions; instructors held students accountable first by reviewing session attendance logs and then by awarding grades on the assignments completed during those sessions.

Hence, contrary to Finding One, the SCGS methodology is dictated, defined, scheduled, monitored, and controlled by the University of Phoenix. Every study group that meets does so for the express purpose of achieving the academic objectives specified in the curriculum modules for the course for that particular study group session. The study group sessions are comprised of instructional activity and classroom preparation, all of which are regularly scheduled. The Draft Audit Report does not refute or deny the foregoing indicia of control (emphasis original) (Freeman et al. 1999:4-5).

In addition to asserting an alternative definition of control, the legal comments attempted to undermine the warrant for the Inspector General’s asserted definition.

OIG’s focus is solely upon one non-qualitative factor: the prospect that some study groups choose to meet off-campus. By itself, this factor presents no compliance issues. . . . There is no requirement, regulatory or otherwise, mandating that study groups otherwise controlled by the University must meet on-campus. Indeed, the applicable regulations explicitly contemplate inclusion of off-campus activities within the 12-Hour Rule calculation. . . . Nowhere does the regulation expressly or implicitly impose an “on-campus” requirement; instead . . . the Secretary [of Education] expressly included off-campus activities in the 12-Hour Rule formulation (emphasis original).

Even off-campus instructional activities, such as independent study and internships, that were not directly supervised by faculty or other school personnel qualified as instructional time that counted toward the academic year, according to the Education Secretary’s official commentary on the 12-Hour Rule (Freeman et al. 1999:5,6).

The attorneys also cited the 1995 correspondence with the Education Department that had originally introduced the “control” concept, arguing that OIG had interpreted the definition incorrectly. The Secretary of Education had “published in the Federal Register a definitive commentary making it clear that the definition of ‘regularly scheduled instructional activity’ was not and is not constrained by any ‘on-site’ requirement. . . . and [ED] staff lacks any authority to simply ‘announce’ new regulations in this fashion.” This correspondence, they continued, did not represent the official position of the Department of Education—and even if it did, it could not be enforced. It was the private opinion of an agency subordinate, not the result of a formal administrative process, and it did not have binding regulatory authority (Freeman et al. 1999:7).

Not only did OIG incorrectly interpret the “control” definition, the argument went, but it was attempting to apply its interpretation selectively and inconsistently. The comments noted the growth of non-traditional (i.e., non-standard term and non-term) programs, many of which were being offered by established traditional schools.

Notwithstanding the broad-based emergence of UOP-type program delivery modes throughout postsecondary education, neither the OIG nor the Department can point to even a single instance where an institution’s academic year has been redefined by ED based on the purported “on-campus” requirement cited in draft Finding One. . . . There is little or no evidence that these proliferating program offerings are being held to any 12-Hour Rule criteria, much less to a standard that would exclude all instructional activity offered off-campus. . . . On this basis alone, the draft Finding One is arbitrary and capricious and must not be incorporated in any Final Audit Report (emphasis original).

The attorneys claimed that ED’s differential treatment of UOP violated the General Education Provisions Act, and the imposition of requirements retroactively and without advance notice violated due process and fair play principles (Freeman et al. 1999:9,10).

After presenting factual, legal, and regulatory arguments refuting the first finding, UOP's legal representatives argued that ED, and specifically OIG, had exceeded its statutory authority. By law ED could not interfere with the school's right to control its educational programs and curriculum, and OIG could not assume program operating responsibilities on behalf of the Department (Freeman et al. 1999).

Finally, the University of Phoenix disputed the Inspector General's calculation of related financial liabilities. Its position was that "even if there existed some law or regulation to support the underlying draft finding—and there is none—OIG's draft estimates are unproven, arbitrary, incorrect, and grossly overstated" because they lacked documentation. Absent these data, UOP could not present a detailed response to which it claimed it was entitled. The school also charged OIG with extending the estimates forward a full year beyond the official audit period and unduly delaying the issuance of its draft report, both of which resulted in substantially inflating the total liability. "For all of these reasons, the University denies the underlying basis and accuracy of the estimated assessments set forth in the Draft Audit Report" (Freeman et al. 1999:27,28).

The attorneys devoted a mere four pages of their response to dispute the Inspector General's second finding, that the University of Phoenix's online courses were "correspondence" or "home study." They cited the Draft Audit Report which left open "the question of which category—correspondence or independent study—is correctly attributable to CDE. Yet, nowhere does the draft finding explain its assumption that the CDE directed study model should be classified as correspondence instead of independent study" (Freeman et al. 1999:29).

Moreover, while ED regulations provided definitions of correspondence, it did not do so for independent study. Therefore “the definition adopted by another federal agency, the Department of Veterans’ Affairs (VA), is instructive.” The VA regulations defined independent study as a program without regular classroom or laboratory sessions yet with regular student-faculty interaction, whether face-to-face or mediated by communications technology; they further limited Title IV eligibility to those independent study courses leading to a degree and offered by a college or university on a set term basis. “Hence, the VA definition of independent study places special emphasis on collegiate-level instruction, degree-granting authority, and interaction between the student and the instructor” (Freeman et al. 1999:30,31).

The attorneys summarized their position on online courses as independent study.

The regulations make clear that the mere fact that the institution and the student “correspond” by use of the mails or other means does not signify that the course is correspondence instead of independent study. These rules contrast with the VA’s home study definition, which focuses on unsupervised study. The definitions and distinctions promulgated by the VA parallel the distinctions that the University has drawn between CDE and correspondence courses, and they confirm the University’s contention that CDE constitutes independent study, not correspondence (emphasis added) (Freeman et al. 1999:31).

After establishing online courses as “independent study,” the attorneys then sought to establish them as “telecommunications.” Again, the root problem was definitional: “it appears that OIG failed to consider the full scope of the definition of telecommunications.” Specifically, contrary to OIG assertion, “facsimile transmissions qualify as telecommunications,” with the result being, familiarly, that “the Draft Finding

is arbitrary and capricious, and should not be incorporated into any Final Report” (Freeman et al. 1999:32).

In two closing paragraphs, the University of Phoenix’s legal representatives offered their conclusions.

The foregoing comments demonstrate the following: Draft Finding One has no basis in law, regulation, or fact and should not be included in any Final Audit Report; Draft Finding Two is incorrect and internally inconsistent and should not be included in any Final Audit Report; . . . For all of these reasons, the draft findings set forth in the OIG’s Draft Audit Report dated July 28, 1999, should be rescinded and closed. No Final Audit Report should issue, and the Office of Inspector General, U.S. Department of Education, should instead affirm in writing that the audit . . . is now closed (emphases original) (Freeman et al. 1999:33-34).

These conclusions notwithstanding, Inspector General Lorraine Lewis did in fact issue a Final Audit Report on March 31, 2000. The two findings from the Draft Audit Report remained largely unchanged. The report recommended four requirements of the University of Phoenix: first, that UOP should establish an academic year that complied with the 12-Hour Rule; second, that it should no longer include living expenses in needs-assessments for students enrolled in its online courses; third, that it should return \$50.6 million in loans and \$4 million in grants it had disbursed improperly, plus interest and special allowance²¹; and fourth, that UOP should calculate the amount of Title IV funds it improperly disbursed for periods not covered by the OIG estimate (ED 2000).

The final report also noted UOP’s comments to the earlier draft findings, briefly summarizing their substance and then providing the OIG’s response to each in sequence. In fact, it devoted much space to this interlineated dialogue, despite having included the full text of UOP’s official comments (via its legal representatives) in an attachment to the

report. In general, “the University did not agree with our conclusions and recommendations,” but “the University’s comments did not change our conclusions or recommendations” (ED 2000:2). Table 7.1 lists the comments and their accompanying responses for the primary finding regarding study groups and the 12-Hour Rule.

Table 7.1. Inspector General's Final Audit Report Responses to University of Phoenix's Comments about Study Groups and the 12-Hour Rule.

UOP Comments	OIG Response
UOP had adequate and appropriate controls over study group meetings.	OIG considered several factors of control, including study group site. Its investigative findings contradicted several UOP statements asserting control.
ED was fully aware of UOP’s controls over study groups.	Correspondence between UOP and ED does not specifically describe the school’s actual controls.
OIG definition of control is contrary to ED regulations and guidance.	UOP should have notified ED of alleged contradictions before the OIG investigation.
Study groups are regularly scheduled instruction.	OIG would have considered them as such if they had actually satisfied ED’s conditions.
ED failed to give UOP proper notice of the policy interpretation disqualifying study groups.	The policy interpretation did not impose a new condition on UOP, but clarified a pre-existing requirement.
The General Education Provisions Act (GEPA) requires that ED uniformly apply its rules and regulations.	GEPA does not bar ED from responding to requests for guidance on how regulations should be applied in specific situations.
GEPA also prohibits ED from interfering with UOP’s curriculum.	The 12-Hour Rule is a reasonable requirement to ensure the appropriate use of Title IV funds.
OIG engaged in activities expressly reserved for ED—i.e., program operating responsibilities.	OIG did not engage in program operating responsibilities, but instead investigated whether UOP practices met the requirements for the 12-Hour Rule.

Source: ED 2000

The Final Audit Report also repeated the Inspector General’s earlier assertion that online courses were correspondence and not telecommunications courses. “The

regulatory definition of a correspondence course focuses on the method of delivery, not the structure, content, and academic requirements of the course. The CDE method of delivery parallels the description provided in the regulatory definition of a correspondence course.” OIG further supported its claim with evidence from UOP’s accrediting association, North Central Association, which in 1990 had also characterized the online courses as correspondence. Finally, it concluded that they “do not meet the requirement that telecommunications courses be ‘principally’ offered through computer transmission Students’ use of facsimile to submit assignments and examinations was one of the factors that led us to [this] conclusion” (ED 2000:17,20).

Though OIG has investigative authority, it has no authority to enforce program operations. With the release of the Final Audit Report, Inspector General Lorraine Lewis referred the case to Greg Woods, who as Chief Executive Officer of ED’s Student Financial Assistance office was “the action official responsible for the resolution of the findings and recommendations . . . resulting from our audit of the University of Phoenix” (Lewis 2000:1). Woods was responsible for the settlement agreement between ED, Apollo Group, and UOP.

The terms of the March 2000 settlement agreement were a compromise, most likely the result of negotiations involving legal counsel. Apollo agreed to pay a substantial fine, and UOP would change some of its policies and procedures, but neither would admit any wrongdoing.

The first set of terms addressed the 12-Hour Rule and study groups, specifically the site and time requirements. The University of Phoenix consented to establish and

implement written policies stating the site requirements for study group meetings. Sites would not necessarily be facilities owned or leased by UOP, but would nevertheless be environments that are conducive to learning. ED specifically required that all sites should have an individual seating and writing area for each study group member; adequate lighting and appropriate climate and noise controls; electrical and telephone service with access to UOP library resources; adequate parking and restrooms; and general accessibility as prescribed by the Americans with Disabilities Act of 1990. All parties acknowledged that certain kinds of sites would be presumed to be conducive to learning, including UOP classrooms and study group meeting rooms, public and educational libraries, and corporate training facilities or meeting rooms. A student's residence could also be considered such a site if the course's faculty member gave written approval that it met the necessary requirements (Apollo Group et al. 2000).

The parties further agreed that faculty members must require twenty hours of scheduled study group time per course. Faculty would also be responsible for collecting and certifying student attendance records for these sessions (Apollo Group et al. 2000).

If UOP implemented these provisions of the settlement agreement, then ED would acknowledge and agree that UOP was in full compliance of the Twelve-Hour Rule and that study group time could legitimately be included in the calculation of a program's academic year under that regulation (Apollo Group et al. 2000).

The next set of terms addressed online courses. As part of the settlement agreement, UOP agreed to treating its students enrolled in programs offered through its Center for Distance Education as half-time students, and to calculate those students' costs

of attendance by including only tuition and fees, and if required, books, supplies, and travel expenses. If UOP structured and delivered these programs as telecommunications programs instead, then it would not need to consent to treating the students as half-time, with the attendant restrictions on cost calculations (Apollo Group et al. 2000).

The terms of the agreement also included a financial settlement. Apollo Group and ED agreed to a sum of six million dollars plus interest in full satisfaction of all monetary findings arising under the investigative findings contained in the Final Audit Report (Apollo Group et al. 2000). According to the 10-K report it filed with the U.S. Securities and Exchange Commission later that year, Apollo Group paid \$1.5 million when it signed the settlement agreement in March 2000, and made arrangements to pay the remaining \$4.5 million in its 2003 fiscal year (Apollo Group 2000b).

However, all parties agreed that the settlement agreement did not constitute an admission of noncompliance or wrongdoing, and that the stipulated changes were not even legally required. “The parties enter into this agreement solely for the purpose of settlement, and the terms set forth herein do not constitute an acknowledgement, admission, or concession by any party with respect to any finding of fact or issue of law or regulation contained in” either the draft or final report (Apollo Group et al. 2000:8).

On March 28, 2000, Apollo Group issued a brief press release announcing the settlement to investors and the public. Apollo President Todd Nelson noted that “we disagree with the audit findings concerning issues of interpretation and control over the University’s educational processes,” and “the agreement reached requires no change in our teaching-learning model.” He also commented on the monetary payment:

Reluctantly, we have agreed to pay the Department of Education \$6,000,000, although we believe there is no basis either in statute or regulation for this assessment. Given our experience in dealing with the Department of Education, it is better for UOP to resolve this issue now than go through the additional expense, management distraction, and uncertainty of a lengthy appeal process. Having resolved all outstanding issues, we look forward to continuing a positive relationship with the Department (Apollo Group 2000a:1).

Both the Chronicle of Higher Education and the New York Times published articles on the settlement, but the Wall Street Journal did not. The Chronicle report ran under the headline, “U. of Phoenix Agrees to Pay \$6-Million to Settle U.S. Inquiry Into Student Aid.” It described UOP officials as “outraged by the inspector general’s complaints,” and Apollo Group President Todd Nelson “called the charges ‘outrageous’” (Burd 2000:A35). Meanwhile, in the Times story, Nelson “said that by settling with the department, the Apollo Group had avoided an estimated \$3 million to \$4 million it would have cost to appeal the case over several years. ‘That would be unfair for the students,’ he said. ‘We are glad to have this resolved’” (New York Times 2000:A17).

But the story does not end here. Within two years after the conclusion of the two federal investigations President George W. Bush nominated, and the Congress unanimously confirmed, the appointment of a former Apollo Group lobbyist as Assistant Secretary of Education, the highest-ranking federal official for postsecondary education. Moreover, within three years the Education Department eliminated the 12-Hour Rule, only a decade after its introduction and seven years after its initial implementation.

In the spring of 2000 the Education Department was considering its response to the growth of non-traditional education, especially distance-learning programs. It put the definitions for standard term, non-standard term, and non-term, as well as the 12-Hour

Rule itself, on the proposed agenda for “negotiated rule-making.” “In placing these two items on the agenda, the Department intended to begin the process of discussing the numerous issues involved in providing student financial assistance to students enrolled in non-traditional educational programs.” But after holding internal discussions at ED, “it became obvious that taking a piecemeal approach to these issues was not appropriate.” In the interest of facilitating “a more comprehensive examination and discussion of these issues . . . the Department committed to a process outside of negotiated rulemaking in which interested parties would meet and discuss” them (ED 2001:10).

In the final months of the Clinton Administration, from October 2000 to January 2001, the Education Department held a series of public meetings and focus groups with the national postsecondary education community to discuss issues related to non-traditional education, including the 12-Hour Rule. By the final meeting, “most participants . . . [had] suggested eliminating the 12-Hour Rule” (ED 2001:21). Even the American Council on Education, defenders of traditional education, had lobbied the Congress to abolish it, since many traditional schools had begun or were planning UOP-style programs. But meeting participants had no alternatives to suggest. In July 2001 ED submitted a report that presented the testimony it received, but did not make any specific recommendations concerning the contested rule (Carnevale 2000, 2001b; ED 2001).

President George W. Bush took office in January 2001, at the beginning of a new legislative session. As the Bush Administration sought to advance its agenda by making appointments to executive posts at ED, the U.S. Congress also applied itself to education-related issues. During the summer of 2001, Republican-sponsored legislation sought to

eliminate regulations that restricted distance-education programs, including the 12-Hour Rule. The House voted a bill out of subcommittee and committee over the objections of Democratic members; the bill passed the full House by a wide margin but later stalled in the Senate (Borrego 2002; Carnevale 2001a, 2001c, 2001d, 2002b).

Meanwhile, in October 2001, President Bush nominated Sally Stroup to be the Education Department's Assistant Secretary for Postsecondary Education. Stroup had formerly worked at a student-loan-guarantee agency in Pennsylvania, the country's second-largest. She had also been an aide to Representative William Goodling (R-PA) during his service as chair of the House Committee on Education and the Workforce from 1995 until his retirement in January 2001. Stroup was one of the principal architects of the 1998 reauthorization of the Higher Education Act. At the time of her appointment, however, she was the chief Washington lobbyist for Apollo Group, Inc., UOP's corporate parent, a position she had held since the beginning of the legislative session (when Representative Goodling retired). The Senate confirmed Stroup by a unanimous vote in March 2002 (Burd 2001; Chronicle of Higher Education 2001, 2002).

At the beginning of 2002 the Education Department returned to the 12-Hour Rule, first convening a panel for the "negotiated rule-making" process that would determine its fate. After several months and multiple extensions, however, the panel could not reach a consensus about the rule, so ED disbanded the group. In August the Department proposed changing the 12-Hour Rule to a "One-Day-Rule," which was already in effect for standard and non-standard term programs. The One-Day Rule required at least one day's worth of instruction per week, although neither Congress nor ED had ever specifically

defined what that meant. The 12-Hour Rule finally expired on November 1, 2002, and the One-Day-Rule took effect for non-term education programs (Borrego 2002; Borrego et al. 2002; Borrego and Carnevale 2002; Carnevale 2002a, 2002c).

7.5. A COMPARATIVE ANALYSIS

From the perspective of the U.S. Department of Education, then, the University of Phoenix was suspect because the school was for-profit and was disbursing extraordinarily large amounts of Title IV funds, in an era of widespread suspicion about for-profit proprietary schools. Compounding the situation was UOP's use of non-traditional delivery methods (including the internet) and non-term schedules, combined with an aggressive marketing strategy for student recruitment and retention. The school had also recently attracted national attention in the business and education media due to its phenomenal growth in student enrollments and number of sites across the country, including in the northeast near the nation's capital. In short, UOP had become too formidable, too visible, and too proximate for the federal government to ignore.

A comparison of the two investigations reveals dual patterns of similarity and difference. Both cases involved cognitive misunderstandings between the organization and its audience, but each case manifested a different basis of misunderstanding, as well as a different substantive focus. Moreover, UOP actively responded to both legitimacy challenges with a vigorous defense, but with different tactics in each case. And finally, in neither instance did ED agree with UOP's perspective, but the Department nevertheless agreed to settle both investigations with the university without requiring major changes or an admission of any wrongdoing.

The University of Phoenix likely believed that the Education Department first investigated UOP because ED fundamentally misunderstood the school's mission and methods. ED did not truly understand what kind of school UOP was, how it operated, or why. If it had understood, then the Department would have realized that UOP was indeed legitimate and never would have challenged the school's legitimacy. Just because it was different from many other schools, however, and did things a different way for different reasons, did not mean that UOP was not legitimate.

During the first investigation one of the University of Phoenix's primary objectives was to demonstrate that it was indeed legitimate and had been all along, whether the Education Department realized it or not. If ED had misunderstood UOP, then it was incumbent upon the university to supply the Department with all of the pertinent facts. The school devoted the first one-third of its initial response to providing information about itself that helped to "clarify" and "explain" matters raised during the SFA investigation. It also referred to previous correspondence between UOP and ED that recounted relevant details.

UOP's specific responses to individual investigative findings used this same conciliatory tactic. For example, it answered the finding that it did not always calculate disbursement refunds in a timely manner for students no longer enrolled, by stating that SFA investigators had misunderstood the fact that students' withdrawal from a course was not the same as their withdrawal from the university. Likewise, UOP asserted that it did not lack clear audit trails, it was just that SFA investigators had not understood them because they were not familiar with them.

The non-term schedule of the University of Phoenix's academic programs was particularly perplexing, especially as it related to student enrollment. At the time most federal rules and regulations were based on the set of assumptions of term programs: that continuous full-time enrollment is the enrollment in multiple courses simultaneously during a term, with several breaks scheduled between as well as during that term of enrollment. Given these assumptions both the Satisfactory Academic Progress (SAP) and the thirty-day refund rules were reasonable. But neither rule addressed the conditions of continuous full-time enrollment in a non-term setting, and ED had done nothing to modify these rules to make them more applicable to non-term programs. When it did make the attempt, as it did with the 12-Hour Rule, the resulting modifications still kept the term-based assumptions, limiting the rule's applicability.

During the first investigation the University of Phoenix did not rely solely on specific substantive strategies to facilitate greater understanding; it relied on general symbolic strategies as well. The school presented itself to the Department as a serious organization, with equally serious commitments to the administration of its academic and financial aid programs. UOP emphasized its track record and its numerous instruments of student assessment and evaluation to demonstrate its serious commitment to academic quality. To demonstrate its serious commitment to operational integrity, the university referred frequently to its new integrated information system software package designed specifically for colleges and universities, and it never neglected to mention the financial and human resource expenditures attending that transaction. Finally, the school invoked its association with high-status third parties, most notably Arthur Andersen, as further

evidence of its seriousness.²² Even if ED was having difficulty understanding some of the finer details about UOP, then it should at least have understood the “big picture” that the university was indeed legitimate.

The second investigation also involved misunderstandings, but this time these were based on interpretations of the facts, not on the facts themselves. Unlike the SFA investigation, UOP likely believed that OIG had obtained all the necessary information but simply chose to interpret it unfavorably and unfairly. Given that it was a follow-up investigation, and that it was being conducted by the Inspector General’s office, UOP was probably justified in shifting to a more adversarial tactic, relying on legal representatives to argue over definitions with determined defiance.

The focus of the two investigations also differed. Whereas the first investigation focused on whether the school’s accounting and administrative practices were in federal compliance, the second investigation challenged the school’s educational practices, in both its “on-the-ground” and distance-learning programs. In the former case, ED was concerned about what constituted full-time, continuous enrollment; in the latter case, it attended to what constituted bona fide instructional activity.

The Education Department responded similarly in both cases, resulting in similar outcomes. While each investigation was in progress, ED did not concede anything to the University of Phoenix, nor did it make any concessions in its official reports. As both investigations concluded, however, ED was reluctant to engage any further with UOP about additional matters that arose during the process. The Department seemed more intent upon “closing the case” than on insisting on major changes, penalties, or even an

admission of any wrongdoing. Apparently ED was satisfied just to have made the challenges.

7.6. CONCLUSION

In this chapter I have presented evidence and analysis of the last of three sets of empirical cases of organizational legitimation, specifically investigations of the University of Phoenix by the United States Department of Education. This pair is the most recent of the three sets of cases. In the next chapter I consider all of the sets of cases together in a cross-case analysis.

¹ While all legitimation processes have the potential to de-legitimate (Meyer and Rowan 1977)—making them “double-edged” phenomena (Ashforth and Gibbs 1990)—investigations are often initiated and conducted with an assumption of bad faith rather than the good faith assumption characterizing many other kinds of legitimation processes.

² Defense and repair are functionally equivalent terms and are used interchangeably in this chapter.

³ The first chief of the Division of Higher Education was Kendric Babcock, who had served as President of the University of Arizona since 1903 (Lykes 1975).

⁴ The other reauthorizations of HEA took place in 1968, 1972, 1976, 1980, 1986, and 1998. It was due for reauthorization again in 2004.

⁵ Policy actors include the members of the relevant committees and subcommittees in both chambers of the legislature, ED officials and other key individuals in the executive branch, and a national lobby located in the nation’s capital. “While there are a large number of associations, only a few are recognized as active policy actors . . . The major associations are housed in the National Center for Higher Education at One Dupont Circle in Washington, DC, and the address has become a shorthand way to refer to higher education associations. Of the twenty plus associations that reside at One Dupont, only the American Association of Community and Junior Colleges (AACJC), the American Association of State Colleges and Universities (AASCU), the American Council on Education (ACE), the Association of American Universities (AAU), and the National Association of State Universities and Land-Grant Colleges (NASULGC) have been consistently active policy actors in the higher education policy arena” (Parsons 1997:83, and Table 83, 88). Interestingly, the proprietaries’ Career College Association, formed by the 1991 merger of the National Association of Trade and Technical Schools and the Association of Independent Colleges and Schools, is “noticeably absent from One Dupont Circle,” despite the fact that it represents the largest number of postsecondary schools in the country (Hannah 1996:519).

⁶ Actually, neoclassical economist “Milton Friedman is credited with introducing the concept as early as 1945” (Parsons 1997:136).

⁷ “In 1993 and 1995, PSI held related hearings concerning proprietary schools’ fraud and abuse under the Federal Pell Grant Program” (ED 2001:7).

⁸ Curiously, the U.S. government was willing to entrust the financing of postsecondary education but not the actual delivery of that education to the for-profit sector.

⁹ “The regulations specified that instructional time does not include periods of orientation, counseling, vacation, or other activity not related to class preparation or examinations. In the preamble to the final regulations, the Department stated that instructional time does include internships, cooperative education programs, independent study and other forms of regularly scheduled instruction” (ED 2001:9).

¹⁰ “In an effort to provide greater flexibility to institutions that serve nontraditional students, the November 29, 1994 final regulations changed this provision to require that 12 hours, rather than 5 days, of regularly scheduled instruction, examination, or preparation for examination occur in a week to be counted as a week of instructional time” (emphasis added) (ED 2001:8).

¹¹ Since that time, the University of Phoenix relocated its Online operations to Phoenix, Arizona. As of the end of the 2004 fiscal year it enrolled approximately 120,400 degree-seeking students (Apollo Group 2004b).

¹² The SFA investigation initially focused on the University of Phoenix, but since Apollo Group provided core administrative services for UOP, the scope widened to include both organizations. In this section, references to the University of Phoenix or UOP represent either the university by itself or together with Apollo Group; references to Apollo Group, then, are limited to only those instances when it is necessary to represent the corporate parent by itself.

¹³ The Education Department may have initiated its investigation as a responsive measure. In early 1997 Arthur Andersen reported the conclusions from its independent audit of the University of Phoenix for the year ending June 30, 1996. The audit revealed that UOP was in material noncompliance with several requirements relative to its participation in Title IV programs. In its report the accounting firm noted that UOP did not dispute the findings and questioned costs, although the school had not taken appropriate corrective action from its last audit report for the previous year (Arthur Andersen 1997). A UOP letter dated the same day as the audit report asserted that the school had made a good-faith effort to comply with all federal student financial assistance program requirements (UOP 1997).

¹⁴ These figures total to \$11,273,579, a formidable sum, but less than 2.4% of all the Title IV funds UOP disbursed during the period under review.

¹⁵ In their entrance report the OIG investigators “explained that we were at . . . UOP . . . because we had seen a lot of growth from the school recently. Our purpose was to evaluate the management controls over Title IV programs, particularly cash management, and information systems including the controls over those systems We were asked if our audit was triggered as a result of the . . . program review which was done recently. We answered that the main reason was the unusual amount of growth we’d seen in connection with student loans made at UOP” (ED 1997e:1).

¹⁶ In its response to the OIG Draft Audit Report, UOP’s attorneys stated that “the term ‘study groups’ is a misnomer. . . . The . . . SCGS model entails far more than what might be commonly inferred from the label ‘study groups.’ To more accurately describe what the model entails, and to address the confusion that the title has already created, the University plans to change the name to ‘task teams’” (Freeman et al. 1999:3).

¹⁷ In the margins of the OIG copy of this correspondence, the following “auditors note” appears: “We did not agree that the policy interpretation complies with the 12-Hour Rule. As a result we requested an OGC

[Office of General Counsel] opinion on the use of study groups as acceptable hours of instruction under the 12-Hour Rule”(ED 1995:1).

¹⁸ OIG investigators also reviewed UOP’s Continuing Professional Education Program, which offered short-term non-degree programs online, and its FlexNet program, which added an online component to campus-based courses. The former was not eligible for Title IV funding, and an ED review of students enrolled in this program indicated that none were receiving federal financial aid (ED 1998b). Meanwhile, ED concluded that the latter fell outside the scope of the OIG investigation, so they would not pursue it any further “unless there is indication that the program is not eligible for financial aids and aids are awarded” (ED 1998e:1-2).

¹⁹ Indeed, similar conversations the previous month about “directed study”—“very similar to independent study”—courses had indicated a discrepancy between official UOP policies and procedures on the one hand, and actual practices on the other. In a directed study course, “the students are required to have contact with the faculties at least once per week via email, face-to-face and/or telephone; and assignments must be submitted once per week for the length of the course. However, according to” UOP’s Directed Study Manager, “this is not always followed. The faculties are requested to keep weekly logs of all contact with students. Again, this is not always followed” (ED 1998d:1,2).

²⁰ OIG conducted its own investigation, comparing the Online program specifically with programs at the Northern California campus, and concluded that the online and campus-based programs were indeed equivalent (ED n.d.-a).

²¹ This figure represents approximately 15.7% of all Title IV funds UOP disbursed during this period.

²² At the time Arthur Andersen’s association with scandal-ridden Enron had not yet fatally tainted the major accounting and consulting firm. In fact, until the Enron debacle Arthur Andersen had long enjoyed a stellar reputation as a paragon of integrity, which explains why its association with UOP was so meaningful. The U.S. Supreme Court partially vindicated this reputation in 2005 when it unanimously overturned the firm’s 2002 federal conviction on obstruction-of-justice charges.

8. ANALYSIS AND SYNTHESIS

8.1. INTRODUCTION

What broader lessons can a handful of episodes from the history of the University of Phoenix teach us about organizational legitimation? How might these particular cases advance our current sociological understanding of legitimation processes more generally?

In this chapter I argue that my research on the University of Phoenix makes three main contributions to the sociological study of organizational legitimation. My first contribution is conceptual: thinking about legitimation involves considering the origins and outcomes of variation in classification systems and rules. The second contribution I make is behavioral: “doing” legitimation involves taking into account the different sets of strategic tool kits available to the various actors. Finally, I close this chapter with the third contribution, which is temporal: the conceptual and behavioral combine into some holistic models that illustrate several of the ways that legitimation can proceed.

8.2. THINKING ABOUT LEGITIMATION: VARIETIES OF CLASSIFICATION SYSTEMS

Legitimation requires a classification system into which an audience can put a given organization. Without categories, and rules about how to classify phenomena such as organizations into those categories, making sense of the environment is difficult if not impossible. However, evidence from American postsecondary education demonstrates that more than one classification system may exist in an environment. A single classification system, with its promise of shared meaning, is necessarily the result of an ongoing compromise. The existence of multiple classification systems indicates that such a compromise may not always be possible or preferred.

Where, then, do differences in classification systems come from? Heterogeneous thinking about legitimation begins with heterogeneous thinkers. Audiences differ. They are not all gatekeepers; they may otherwise be “critics” or members of a “community of practice.” Different audiences thus occupy different roles and perform different functions, and each audience’s unique structural position affords a unique perspective that affects how it comprehends and interprets its environment.

The various audiences in U.S. postsecondary education fully represent this diversity. The North Central Association, the U.S. Department of Education, and state regulators are all gatekeepers. The Carnegie Foundation for the Advancement of Teaching and the Chronicle of Higher Education are two notable examples of critics. And members of the postsecondary education community of practice include Arizona’s three public universities and the Arizona Board of Regents, the Association of Independent Colleges and Universities in Massachusetts, the Association of Out-of-State Colleges and Universities in California, and the American Council on Education.

Accordingly, different audiences advance different agendas. Whereas organizations seeking legitimation almost always do so to obtain desired or needed resources, from the audience’s perspective the purpose of legitimation varies. Gatekeepers assert their sanctioned authority to police the environment; critics offer their expert interpretation of the environment to other audiences; and communities of practice regularly monitor the environment to protect and pursue their own interests. Variation in audience position and purpose thus lead to variation in classification systems.

Consider the “triad” of postsecondary education gatekeepers in the United States. Over the course of the twentieth century they coordinated a division of labor in which regional accreditors now ensure “educational quality,” state regulators protect individual consumers (i.e., students) against fraud and abuse, and the federal Education Department monitors the disbursement of financial assistance to students and schools. Although as gatekeepers they all have the same abstract purpose—“keeping the gates,” as it were—each has substantively different goals and objectives, and each perceives the environment somewhat differently.¹ As a consequence their classification systems are not identical, even though they all share a common general purpose of policing the environment.

In summary, variation in classification systems originates in audience variation. Here the discussion turns from origins to outcomes: how does all of this variation actually manifest itself in a classification system? Every system has a tendency to “lump” or “split” phenomena into categories. Understanding this systemic property will enhance understanding of the observable differences among classification systems.

A classification system may tend to lump phenomena together on the basis of similarity or split them apart on the basis of difference.² The kind of classification rules the audience applies depends on this tendency. Rules that identify similarities across phenomena are more general; those that detect differences are more specific.

The tendency either to lump or split appeared throughout the legitimization episodes. For instance, Colorado state regulators were “lumpers.” Their classification system put out-of-state public postsecondary schools into the same regulatory category as private postsecondary schools despite obvious differences in governance and mission.

State statutes treated both kinds of schools as “private” insofar as neither was sponsored by the Colorado government. Likewise, regulations in Illinois and Massachusetts lumped postsecondary schools into one of two categories, public and “independent.” By contrast, California was a “splitter.” State regulators there split private postsecondary schools into three categories, and later split those three categories into five as intra-categorical differences emerged. Another vivid example of splitting, this one from a critical audience, appeared in Chapter Three: the annual rankings in U.S. News and World Report. In its inaugural ranking the magazine had already split schools into categories, acknowledging consequential differences between teaching-oriented colleges and research-oriented universities. The tendency to split has continued unabated since then, even as the number of Carnegie categories has remained fairly constant over time.

It is beyond the scope of this dissertation to identify the determinants of an audience’s tendency to lump or split. Future research could examine the structural factors of audiences and the contextual factors in the environment that lead to the different varieties of classification systems.

Variation in classification systems traces its origins to several sources, and is manifest along at least one key systemic dimension. What, then, are the possible configurations of categories that classification systems may actually take? Three fundamental category configurations derive from the extent of inward or outward forces. Depending on whether it tends to lump or split, a classification system may consist of either (a) more, smaller categories; (b) fewer, larger categories; or (c) one big category.

When an audience tends to split, the result is a classification system with more, smaller categories. Legitimate phenomena in this system are divided (or re-divided) by their differences relative to each other. California's classification system consisted of more, smaller categories, and it produced additional categories over time.

By contrast, an audience's tendency to lump results in a classification system configured of fewer, larger categories. State regulators in Colorado, Illinois, and Massachusetts, as well as the U.S. Department of Education all employed systems with fewer, larger categories.

Finally, while a tendency to split, taken to its theoretical extreme, produces a system with one category per phenomenon, an extreme tendency to lump yields the most basic configuration: one big category. In this system all legitimate phenomena are united by their similarity relative to those illegitimate phenomena excluded from the system entirely. NCA's Commission on Institutions of Higher Education—later the Higher Learning Commission—had one big category in its system.

So, does variation in category configurations correspond at all to variation in legitimation processes? Is there a relationship between a particular audience's variety of classification system and the way legitimation proceeds for a particular organization? More specifically, is it possible to predict how problematic the legitimation process will be, based solely or primarily on the configuration of categories?

Some of the evidence from the legitimation episodes seems to confirm just such a relationship. California's system did have the greatest number of categories of any of the gatekeeping audiences considered, and the University of Phoenix did encounter the most

difficulties there. Meanwhile, other audiences' classification systems were configured of fewer, larger categories, and in these cases legitimation was indeed somewhat less problematic. But if it is simply a matter of the number of categories, then legitimation should have proceeded with the least contestation in the accreditation episode, where the North Central Association's classification system had only one big category. However, this is not what happened. Although accreditation was only moderately difficult, the most problem-free legitimation was instead state licensure in Colorado, whose classification system was configured of twice as many categories as NCA's.

Any possible relationship between system structure and legitimation is likely to be more nuanced. It may be that any possible relationship is mediated by, or interacts with, some other systemic property, such as the rules of classification.

Up to this point in the chapter, the analysis of classification systems has focused on categories. But thinking about legitimation must also involve considering variation in classification rules. If categories are the "what," then rules are the "how" of classification systems: they are the means of determining similarity and difference among phenomena. Rules also vary, and it may be that variation in classification rules better explains variation in legitimation processes than the configuration of categories in the system.

How can classification rules vary? Recall that the rules for lumped categories are more general, while those for split categories are more specific. But there are other ways rules may vary. The most important of these is the organizational evidence they address. In broad terms, rules classify organizations by addressing either what the organization is or what the organization does. For several decades regional accrediting associations

classified schools on the basis of their incorporation status—an “is” rule. Meanwhile, many U.S. states, including several selected for study here, classify schools on the basis of whether they grant degrees, or what kind of degrees they grant (if indeed they grant degrees). These are “does” rules.

Since what an organization is and what it does may be only loosely coupled—if not completely decoupled—then “is” rules and “does” rules may capture significantly different aspects of the organization, and thereby set in motion potentially different legitimation dynamics. In general, it is much easier for an audience to ascertain what an organization is than precisely what it does. Thus “is” rules simplify the colligation step in diagnosis. At the same time, however, it is usually easier for an organization to modify what it does than what it is. Consequently, “does” rules engender negotiation between applicant and audience about colligation and classification.

8.3. DOING LEGITIMATION: TOOL KITS FOR ACTORS

The preceding discussion of classification rules reinforces the fact that legitimation is not just conceptual; it is also behavioral. It is more than the mere existence of classification systems and rules. Audiences must then actively apply and interpret those rules to put organizations into appropriate categories. The legitimation episodes in the history of the University of Phoenix show that the configuration of categories is not always sufficient, or there may be dispute over the rules or their application or interpretation. In such cases “doing” legitimation becomes more problematic.

Just as there are varieties of classification systems, there are also varieties of legitimation processes. Some episodes are more problematic than others; doing

legitimation may involve more or less contestation. The level and type of related actions vary according to the degree of difficulty with which legitimation proceeds. Where it is unproblematic, these actions may seem automatic, routinized, or ceremonial, and involve only minimal reflexivity. For those more difficult cases, however, the actions taken by audience and applicant alike make the legitimation process more complex and contingent.

Seekers and granters of legitimation each have their own tool kits of possible actions. An audience must respond to applicants as they appear in the environment, and the applicant must strategically engage with that audience, either through bilateral negotiations, multilateral politics, or some combination of both.

If an applicant for legitimation unambiguously fits within an existing category of an audience's classification system, then legitimation usually proceeds without any difficulty. But what happens when an applicant does not neatly fit into a single category? What are the possible audience responses to problematic phenomena? One possible response is for the audience to ignore the applicant organization as unintelligible. Another alternative is to reject that applicant as illegitimate, as not belonging anywhere in the audience's classification system.

Since they share a common outcome, analytically distinguishing between these two types of audience responses is not always possible—or pertinent. Recall from Chapter Three that the Chronicle of Higher Education failed to record even a single mention of the University of Phoenix during the school's first fifteen years, and referred to it a mere three times during years sixteen through twenty.³ Either the weekly

publication disregarded what it did not yet understand, or it considered UOP as beyond the external boundary of “higher education,” and thus outside its journalistic purview.

But the Chronicle is a critical audience; gatekeeping audiences rarely enjoy the luxury of ignoring problematic phenomena. Because they are charged with policing the environment and enforcing categorical boundaries, gatekeepers must reckon with all applicants and make an authoritative determination of the legitimacy or illegitimacy of each. And they are not much more likely to reject than they are to ignore, since with rejection comes a loss of influence (present and future) over the applicant organization. Staff members warned the Illinois Board of Higher Education that rejecting the University of Phoenix’s application for state licensure would not stop it from operating in the state via the internet. Because of its well-established online operations UOP would continue to operate there with or without the board’s oversight.

Rather than rejecting or ignoring outright, audiences—especially gatekeepers—may defer their response, choosing instead to wait and see what develops. Perhaps additional time will help the audience comprehend the applicant better, or perhaps future developments will render the applicant more comprehensible or bring it into closer conformity to the appropriate set of classification rules. In any event, a deferred response is a non-responsive response; for gatekeepers it must necessarily be followed by a more directly responsive response, either negative (rejection) or positive (legitimation).

The North Central Association responded to the University of Phoenix’s bid for accreditation with just such a wait-and-see approach. It accepted UOP’s application for candidacy without any difficulty, but when the school then sought to convert from

candidate status to accredited status, NCA demurred. It wanted more information, which in turn required additional time. In fact, the candidacy period was itself a formalization of the deferred response, as was the first stage of the two-stage application process for state licensure in Illinois. Both were structurally imposed waiting periods, “in-between” stages during which the applicant was not illegitimate but not yet fully legitimate.

Another possible response, one that may or may not be preceded by a deferred “wait-and-see” response, is for the audience to classify the applicant into a category that already exists, either a substantive category or a residual “other” category. After initially deferring their responses, Illinois and the North Central Association both eventually put the University of Phoenix into a pre-existing category. Meanwhile, California, Colorado, Massachusetts, and the U.S. Department of Education each classified UOP into an already-existing category without first deferring their responses.

But why did the University of Phoenix’s experiences in California and Massachusetts, and with the federal government, not resemble its experience in Colorado? All of these episodes involved the same audience response, yet the processes differed. How did this type of response lead to unproblematic legitimation in one case, but to more problematic legitimation in the other cases?

The differences between these episodes are either of degree or of kind. In two of the cases where legitimation was more difficult, audience scrutiny of the applicant was more thorough. Neither the commonwealth of Massachusetts nor the federal Education Department had the same degree of good faith as the state of Colorado, which had accepted the University of Phoenix’s accreditation by the North Central Association as

bona fide evidence of categorical membership. This in turn relates back to the nature of classification rules. The application of “is” rules requires considerably less finding of fact, and relies more heavily on the good faith of both parties involved. Unlike Colorado, legitimation by Massachusetts and ED followed substantial fact-finding activities similar to those in the Illinois and NCA episodes. The California episode differed differently—it was a difference of kind. Like Colorado, California’s classification of UOP was unproblematic, but the school itself was not satisfied by its membership in the “authorized A-3” category.

Some of the differences between problematic and unproblematic legitimation come from the interaction between audience responses and certain applicant strategies. Although this section of the chapter presents these two tool kits of actions separately, in actual legitimation processes they occur in much more complex and contingent patterns. Thus it seems appropriate to interrupt this series of audience responses with a brief discussion of some related applicant strategies. More details about these and other strategies will follow further below.

Applicants may surmount initial difficulties in the legitimation process by changing strategically to conform more closely to an audience’s classification rules. For example, when gatekeepers argued that the University of Phoenix’s physical library and learning resources were insufficient for its proposed campuses in Massachusetts, UOP entered into a resource-sharing agreement with a nearby postsecondary school. Since the state’s classification system did not include a residual “other” category, this action helped make the audience response of classifying the applicant into an existing category more

likely, something that had not been as likely at the outset. Similarly, UOP changed some of its policies and practices to facilitate compliance with certain federal regulations, thereby enhancing the Education Department's ability to classify it as legitimate.

Another applicant strategy is to request re-classification into a different category. An applicant seeking legitimation is nearly always very interested in the category into which an audience puts it, for at least two primary reasons. First, the category shapes the applicant organization's identity by delimiting its reference group, the other organizations to which comparisons and contrasts may be most appropriately drawn. Being identified with the "wrong" or undesired reference group may lead to a fate worse than illegitimacy, at least from the applicant's perspective. This danger becomes especially acute in situations involving a residual "other" category, whose members are often marginalized as systemic misfits.

The University of Phoenix was not at all satisfied with its classification by the state of California as an "authorized A-3 institution." This category functioned as a de facto residual "other" category and suffered from a widespread perception (whether correctly or incorrectly) of being a haven for fraudulent degree mills. Much of UOP's efforts during that episode focused not on classification but rather on re-classification into a more preferred, higher-status, substantive category: "accredited A-1."

Where the first reason deals with the cultural implications of classification, the second reason has to do with its technical effects. An applicant organization is also interested in the category into which an audience puts it because of the technical requirements of membership in that category. Certain ongoing expectations of varying

costs always accompany category membership. In an attempt to minimize their regulatory burden, applicants will weigh these technical costs against the cultural benefits when selecting a target category.

The federal investigation episode and the California state licensure episode both contain evidence of the consideration of technical factors. The University of Phoenix disputed the Education Department's classification of its distance-learning courses and programs as "correspondence," arguing that they should instead be classified as "telecommunications." The "wrong" classification would have translated into less favorable terms for the provision of federal student assistance. Similarly, California passed legislation in 1984 that placed far more (and more specific) requirements on "authorized A-3" schools, which previously had enjoyed the same absence of state oversight as schools in the "accredited A-1" category.

Now the discussion returns to the audience's tool kit of legitimation actions. To review: audiences may respond to problematic phenomena by ignoring, rejecting, deferring, or classifying into an existing category. But the possibilities are not yet exhausted. The following responses are more likely to be prompted by an applicant strategy than spontaneously initiated by the audience. The first such possibility is for an audience to create an entirely new category that accommodates the applicant.

As is true of existing categories, the audience's newly created category may be either residual or substantive. Whether an audience creates one kind of category or the other depends on a variety of structural factors, including the systemic tendency to lump

or split; the number, size, and nature of existing categories; the number and type of the new organizations to be classified; and the type of the system's classification rules.

Audiences, least of all gatekeepers, do not resort to this response very often. They find it prohibitive since the creation of a new category usually involves costly changes in the law or administrative procedures. Still it did happen on more than one occasion in this dissertation. As briefly mentioned in Chapter Three, the Carnegie classification system added several categories to address nascent developments of the 1970s and 1980s. Most of these additions were short-lived, however. When the actual growth of non-traditional and corporate postsecondary education (to name two examples) failed to rise to expected levels, Carnegie dissolved the added categories and absorbed their member schools into existing categories. Meanwhile, for several years in the early 1980s the University of Phoenix proposed legislation that would restore its position in the existing "accredited A-1" category in California. When the governor finally signed the bill into law in 1985, it created a new, separate category for accredited out-of-state schools.

Another possible audience response is to modify the classification rules for the existing categories in its system. In the attempt to render an applicant organization unproblematic, audiences can eliminate or change existing rules or add new ones. Here the dynamic between "is" rules and "does" rules may come into play.

It is not uncommon for gatekeepers to rely on other audiences—including critics and communities of practice—to assist in these rule modifications. In the federal investigations episode, a formal "negotiated rule-making" process invited representatives from the postsecondary education community to determine the fate of the 12-Hour Rule

(a “does” rule). After negotiations failed to produce an alternative, the Education Department “sunsetting” the 12-Hour Rule and replaced it with the rule already in effect for traditional education: the One-Day Rule. This modification applied the same standards to postsecondary programs, traditional and non-traditional alike.

Not all modifications to the classification rules simplify matters; to the contrary, sometimes rule changes make things more complicated. Not long after the University of Phoenix’s arrival in the state, California passed legislation that excluded schools accredited by an agency other than the Western Association of Schools and Colleges from its “accredited A-1” category (an “is” rule). However, further developments in the California episode more closely resemble the “negotiated rule-making” from the federal investigations episode. When subsequent legislation established a separate category for out-of-state accredited schools, state regulators invited representatives from the community of practice, including a University of Phoenix vice president, to serve on a committee to draft proposed licensure rules for the category.

Finally, audiences may respond to problematic phenomena by modifying their entire classification system. More than merely adding or subtracting categories or changing classification rules, this response is a wholesale transformation—a true “paradigmatic revolution.” Understandably, such revolutions occur very infrequently, usually as a result of broader environmental changes, and not merely the emergence of a few anomalous applicant organizations.

Considering the small number of cases and the relatively brief time span, the fact that no examples of this response appear in the foregoing chapters should come as no

surprise. However, in late 2005 the Carnegie Foundation for the Advancement of Teaching rolled out its new classification system—or, more accurately, classification systems, since they are comprised of multiple sets of categories and classification rules. Carnegie now orients classification along three dimensions: what is taught, to whom, and in what setting. This multi-dimensionality transcends the simplistic research-teaching duality that had for so long been the system’s hallmark, but it is too early to determine whether the modifications are truly revolutionary.

Before continuing with a presentation of applicant strategies, Table 8.1 summarizes the audience responses and their corresponding example(s).

Table 8.1. Audience Responses.

Response	Example(s)
Ignore	<u>Chronicle of Higher Education?</u>
Reject	<u>Chronicle of Higher Education?</u>
Defer (“Wait-and-See”)	Accreditation by North Central Association Illinois State Licensure
Classify into Existing Category (Substantive or Residual)	Accreditation by North Central Association (after Defer) California State Licensure (multiple) Colorado State Licensure Illinois State Licensure (after Defer) Massachusetts State Licensure Investigations by U.S. Department of Education
Create New Category (Substantive or Residual)	Carnegie Classification System California State Licensure
Modify Existing Classification Rules	California State Licensure Investigations by U.S. Department of Education
Modify Existing Classification System	Carnegie Classification System?

Thinking about legitimation undoubtedly affects how one “does” legitimation, and vice versa. How an audience responds to a difficult or problematic legitimation episode almost certainly correlates with structural properties of its classification system. But it is beyond the scope of this dissertation to identify the determinants—structural or otherwise—of an audience’s decision to respond with one strategy rather than with another. These relationships must await future research opportunities.

Legitimation by a gatekeeper always begins with the applicant, not with the audience. Organizations must take strategic action, and they must act first before audiences respond to them. An organization’s first audience-oriented action, then, is to present itself for legitimation. Environments are usually sizeable, often complex, and sometimes densely populated. Organizations seeking legitimation cannot risk an audience overlooking them, nor can they afford to wait until that audience takes unprompted notice of them. Instead they must take the initiative by proclaiming their intentions, whether formally or informally. Indeed, most gatekeeping audiences require some kind of formal application to initiate the legitimation process.

Applying for legitimation is always a highly reflexive strategic action, for the organization if not always for the audience. The initial application is a prime opportunity for an organization to specify explicitly to itself and to its environment just what it claims to be at that moment, and what it aspires to be in the future. In its application the organization must declare what it is by indicating what it is like and, conversely, what it is not like. In short, an application for legitimation consists of (among other things) an asserted self-classification.⁴

But what if the applicant classifies itself into a category that does not exist in the audience's classification system? Or what if the audience's classification rules do not affirm the applicant's assertions? Organizations seeking legitimation are highly motivated. They do not often resign themselves passively to an unfavorable response; they will usually take strategic action to improve their likelihood of the desired outcome.

Applicant organizations have three different kinds of strategies in their tool kit of actions. These strategies vary in their substance and also in terms of the number of actors involved. The first kind of applicant strategy is a unilateral choice between conformity and withdrawal. Clearly withdrawal is not a very viable option unless the applicant has recourse to an appropriate alternative: an audience with whom legitimation is likely to proceed more favorably. In the mid-1970s the newly-formed University of Phoenix withdrew to Arizona to pursue accreditation from the North Central Association there, rather than seek it from the Western Association in California. Similarly, UOP withdrew from Illinois in the 1980s and applied for licensure from states offering less resistance.

When an applicant cannot identify any appropriate alternatives, the pressures to conform to an audience's existing categories and rules are of course very strong. After eliminating the Western Association as an option, the North Central Association represented the University of Phoenix's best hope of receiving accreditation. Throughout the process of initial accreditation, and again during the periodic reaffirmation processes afterward, UOP made numerous minor operational changes resulting in greater conformity with NCA rules, and consequently with other postsecondary schools in the NCA region and nationwide.

Organizational change leading to greater conformity is a reasonable applicant action that is consistent with existing theories of legitimacy and legitimation. In fact, nearly all of the legitimation episodes included examples of this unilateral strategy. But these episodes have also shown that applicant organizations do not always (change to) conform, and that their divergent change or nonconformity does not always prevent an audience from legitimating them. Although conformity is probably the most frequent—perhaps even the default—applicant strategy, there are others that may also lead to successful organizational legitimation.

Beyond the unilateral strategies of conformity and withdrawal, strategies of bilateral negotiation and multilateral politics are also available to an applicant organization. Applicants may engage in direct negotiations with audiences over the rules or how they are applied or interpreted. Alternatively, applicants may enlist third parties in a political attempt to have the audience reconsider its application or interpretation of the rules, or to have the audience change the rules altogether.

Bilateral negotiations over legitimation center either on the applicant or on the rules. When the applicant makes itself the focus of negotiation, it does not dispute the rules per se, but rather the evidence to which the rules are applied. In essence, the applicant is protesting to the audience, “You’re wrong about us!”

This strategy usually begins with optimistic diplomacy: “You don’t know/understand us.” Presuming the audience’s good faith, the applicant tries to be as helpful as possible and offers explanations of itself and its actions that are painstakingly detailed. It treats any difficulty in legitimation as simply the audience’s inadequate

knowledge or incorrect understanding of the applicant. Thus the applicant organization meets the task of “setting the record straight” with enthusiasm and good will.

An initial conciliatory stance should not be mistaken for applicant naïveté. All strategies other than conformity involve some risk of failure, and calling an audience “wrong” is no exception. No matter how wrong an applicant thinks an audience is, when that audience stands between the applicant and the legitimation that it seeks, it cannot be too cautious or tactful.

The versatility of the “You don’t know/understand us” negotiation strategy makes it common among applicants’ tool kits of actions. Accordingly, the University of Phoenix used it on several occasions, such as when arguing that it was already conforming to the audience’s rules (e.g., accreditation); or when protesting that it had been inappropriately classified into the “wrong” category (e.g., California state licensure, as discussed above).

However, if this strategy fails to produce the desired effect, the applicant’s presumption of the audience’s good faith can reverse dramatically. Suspicion—perhaps even paranoia—supplants trust; confrontation replaces conciliation in a desperate bid for relief. The protest shifts from, “You don’t know/understand us” to “You’re killing us!”

If an applicant cannot presume that the audience is acting (any longer) in good faith, then it is highly pessimistic about its chances of being legitimated. Thus the “you’re killing us” approach is a desperate appeal of last resort, an appeal on the basis of outcome rather than process. This strategy entreats the audience to reflect on the adverse consequences of an unfavorable decision. But because the audience considers legitimation to be a strictly cognitive process, it is usually unwilling to comply with such

a request. It is usually an ineffective strategy, but it does give the applicant a chance to invoke a moral or normative claim over the otherwise cognitive (and presumably neutral) proceeding. It may also serve as a stall tactic to engage the audience while preparing another, perhaps adversarial and/or political strategy.

When faced with the likelihood that it would remain in candidacy status rather than receive accreditation, the University of Phoenix's argument of "you're killing us" had an interesting twist: "they're killing us," and "please protect us." The school had deflected its accusation to target other actors—especially the Arizona Board of Regents and the state university system—rather than the North Central Association itself. It cast NCA in the role of hero rather than villain, but NCA did not fulfill those expectations, at least not immediately or in direct response to this particular strategy.

Sometimes the applicant makes the rules the focus of its bilateral negotiation strategy. "You're wrong about the rules" can take on one of at least two different forms: either the rules do not work, or they are unfair. These rule-centered strategies are not as hostile as "you're killing us," but neither are they as friendly as "you're wrong about us." While both are only moderately confrontational, the two differ in the level of good faith they assume of the audience. Applicants argue that "the rules don't work" when they assume that the audience is operating in good faith; by contrast, when they assume an audience's bad faith, applicants argue that "the rules aren't fair."

The University of Phoenix regularly made use of "the rules don't work" strategy, most notably in the investigations episode. Through its legal representation it vigorously disputed the U.S. Department of Education's definitions of "correspondence," "home

study,” “independent study,” and “telecommunication” courses, “control” of scheduled cohort group study meetings, and “attendance” and “withdrawal,” among others.

Implicit in the assertion that “the rules aren’t fair” is that they privilege the status quo and needlessly put deviant innovation at a disadvantage, consistent with existing institutional theories. Again, it is a moral-normative claim about a (purportedly) strictly cognitive process. This strategy avers that “what is” is unnecessarily and inappropriately sublimated into “what ought to be.” It is a shrewd yet risky strategy, because while a gatekeeping audience would likely dismiss such a claim as irrelevant, it cannot ignore an accusation that its role is susceptible to political influence. While it may not jeopardize the audience’s actual control over access to resources, this kind of an attack threatens to weaken the gatekeeper’s moral authority to police the environment.

The University of Phoenix cried foul about the rules on multiple occasions. It argued that California had changed the rules and had sought to apply the new rules retroactively; it made a similar contention about the federal government’s enforcement of some of its regulations, including the 12-Hour Rule. In its bid for state licensure in Illinois, and again in the federal investigations, UOP claimed that the audience inconsistently applied and enforced its rules, either across schools or through time. Also regarding the U.S. Department of Education, as well as the North Central Association twenty years earlier, UOP asserted that some of the rules weren’t fair because UOP did not know about them in advance.

Joining bilateral negotiation strategies in an applicant organization’s tool kit of actions are multilateral political strategies. Perhaps negotiations earlier in the legitimation

process failed to yield the desired results, or perhaps the applicant sought to ensure the success of anticipated or current negotiations. Whatever the rationale and sequencing, politics may also center on either the applicant or the rules. An applicant-centered political strategy is usually a symbolic endorsement by a third party; a rule-centered strategy involves a third party's substantive patronage.

Symbolic third-party endorsement is a legitimation strategy familiar to organizational theories. It centers on the applicant and its general, diffuse legitimacy as a member of the audience's classification system. In the accreditation episode the University of Phoenix secured endorsements by retaining the legal services of the prestigious local firm Snell and Wilmer, and the accounting services of nationally-respected Price Waterhouse. Later on, during the investigations episode, UOP touted its endorsement by the then-unimpeachable Arthur Andersen accounting firm, and it teamed up with a Washington, DC-based partnership specializing in education law, Powers Pyles Sutter and Verville. UOP obtained all of these endorsements in an attempt to burnish its own credibility as a legitimate university, and to dispel any misapprehension that it was an illegitimate degree mill.

But symbolic endorsements only go so far. The enlistment of substantive patronage is an outright attempt to change the rules. Memorably, University of Phoenix officials met with the governor's office in Illinois because they believed that such a meeting would influence the way the state Board of Higher Education adjudicated the licensure process. The California episode is riddled through with incidents of direct intervention by state legislators UOP rallied to its cause. Indeed, UOP founder John

Sperling does not apologize for his use of the political process, replete with lobbying at the federal and state capitals, in his quest for rules and regulations that are favorably disposed to his company.

As with the preceding table of audience responses, Table 8.2 gives a summary of applicant strategies for ease of reference.

Table 8.2. Applicant Strategies.

Strategy	Applicant-Centered	Rules-Centered
Unilateral Decision	Conform	Withdraw
Bilateral Negotiation	You're Wrong about Us <ul style="list-style-type: none"> • You Don't Know / Understand Us (Good Faith) • You're Killing Us (Bad Faith) 	You're Wrong about the Rules <ul style="list-style-type: none"> • The Rules Don't Work (Good Faith) • The Rules Aren't Fair (Bad Faith)
Multilateral Politics	Symbolic Endorsement	Substantive Patronage

8.4. PROCESSES OF LEGITIMATION: SOME TEMPORAL MODELS

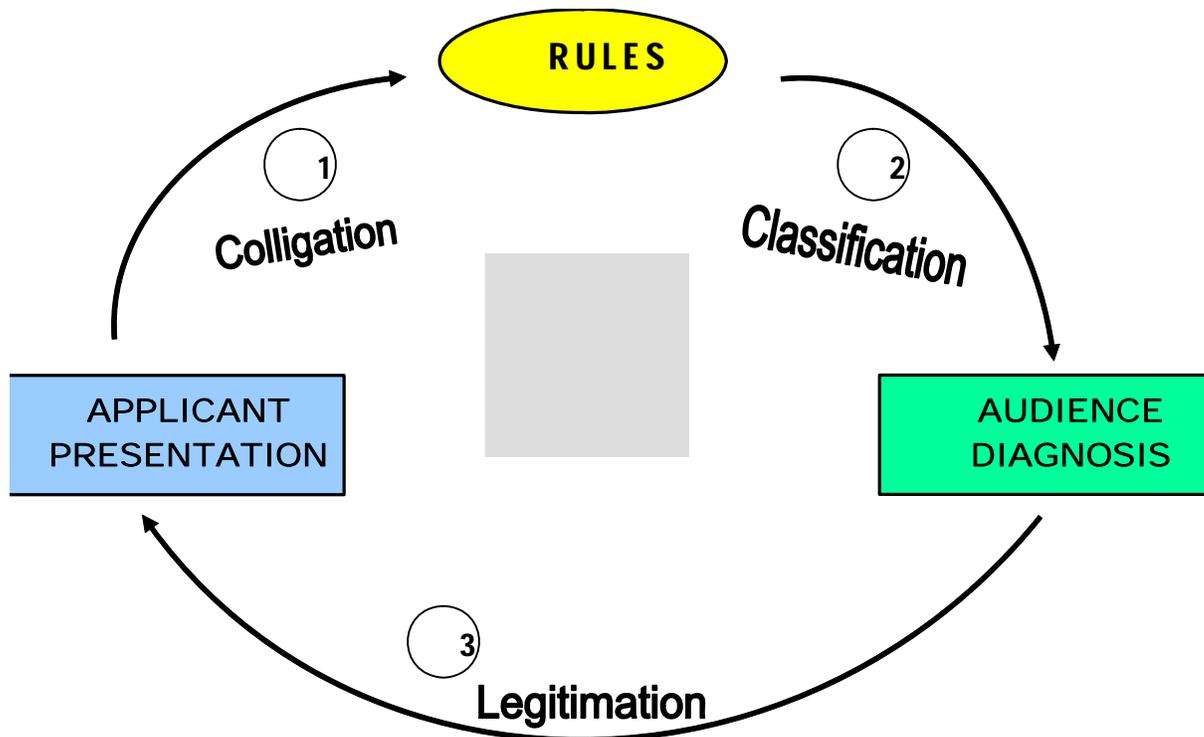
By themselves, neither of the above discussions—thinking about legitimation and doing legitimation—emphasize the temporal dimension. Although at certain points they allow for temporality, both are fundamentally a-temporal elements of a theory of organizational legitimation. By combining the conceptual and behavioral into some holistic models, however, it is possible to construct a theory of several of the ways that organizational legitimation can proceed. In other words, by incorporating these a-

temporal elements into a temporal framework, a process theory of organizational legitimation can emerge.

This research has identified at least three possible processes of organizational legitimation. These vary according to how problematic and contested legitimation is, and they also vary according to the number of actors and the orientations of their actions.

The first model, referred to as “Model ‘B’” for “basic,” is the simplest (Table 8.3).

Table 8.3. Basic Model of Legitimation.



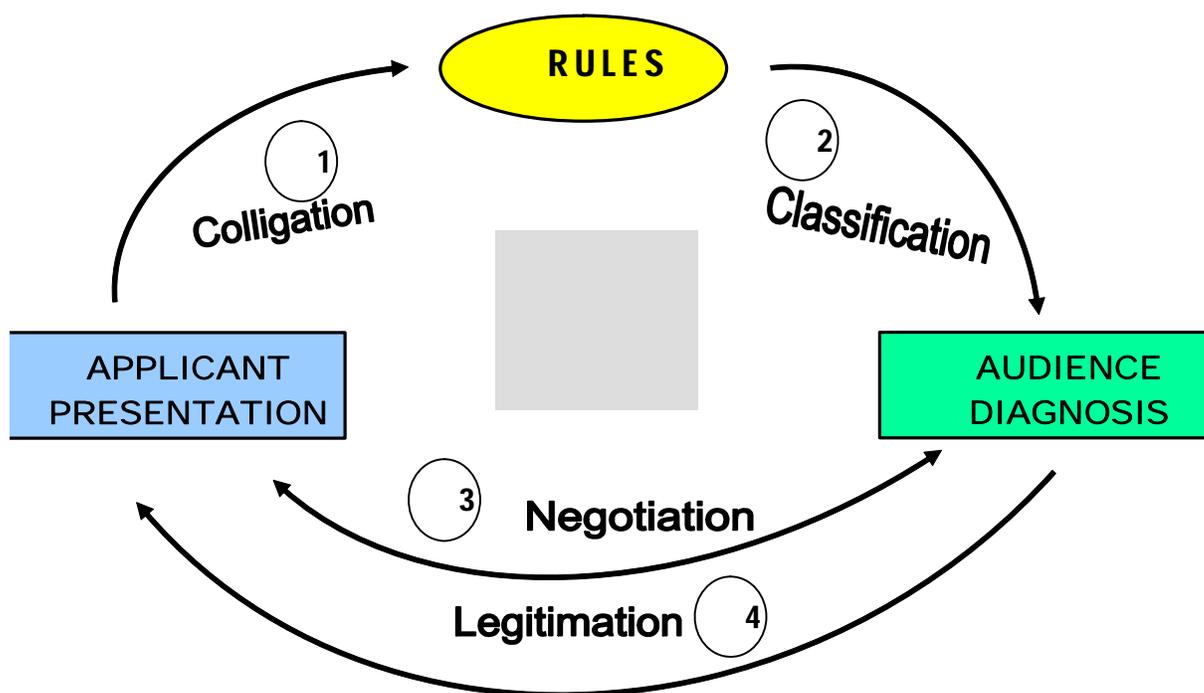
In it the legitimation process is ceremonial or even automatic. This model of organizational legitimation is most familiar—perhaps (because) it is the most frequent—and it is fully explained and predicted by existing institutional theories. An organization initiates the process by presenting itself for legitimation by a gatekeeping audience, usually through a formal application. Diagnosis—that is, colligation and classification—proceeds unproblematically because the applicant is unambiguously a member of an existing category in the audience’s classification system. There is no contest between audience and applicant about the appropriate category or the applicability of its classification rules.

In this model the rules completely mediate the audience-applicant interaction. If the process has any temporal dimension, it is most likely due to the technical and/or bureaucratic requirements of colligation: the gathering, sorting, and processing of the information about the applicant organization to which the audience then applies its rules.

The next model, identified as “Model ‘N’” for “negotiation,” introduces more complexity to the process. It addresses legitimation episodes that are more problematic and contested, a possibility that existing theories do not consider or reckon fully with. As with the first model, this model begins with the organization presenting itself for legitimation by a gatekeeping audience. However, difficulty arises when the audience is unable to diagnose either (a) whether or not the applicant belongs somewhere in the classification system; or (b) precisely where in the system—in which particular category—the applicant belongs. In this model the existing classification rules are

insufficient, or they result in a classification that is not satisfactory to the applicant organization (Table 8.4).

Table 8.4. Negotiation Model of Legitimation.

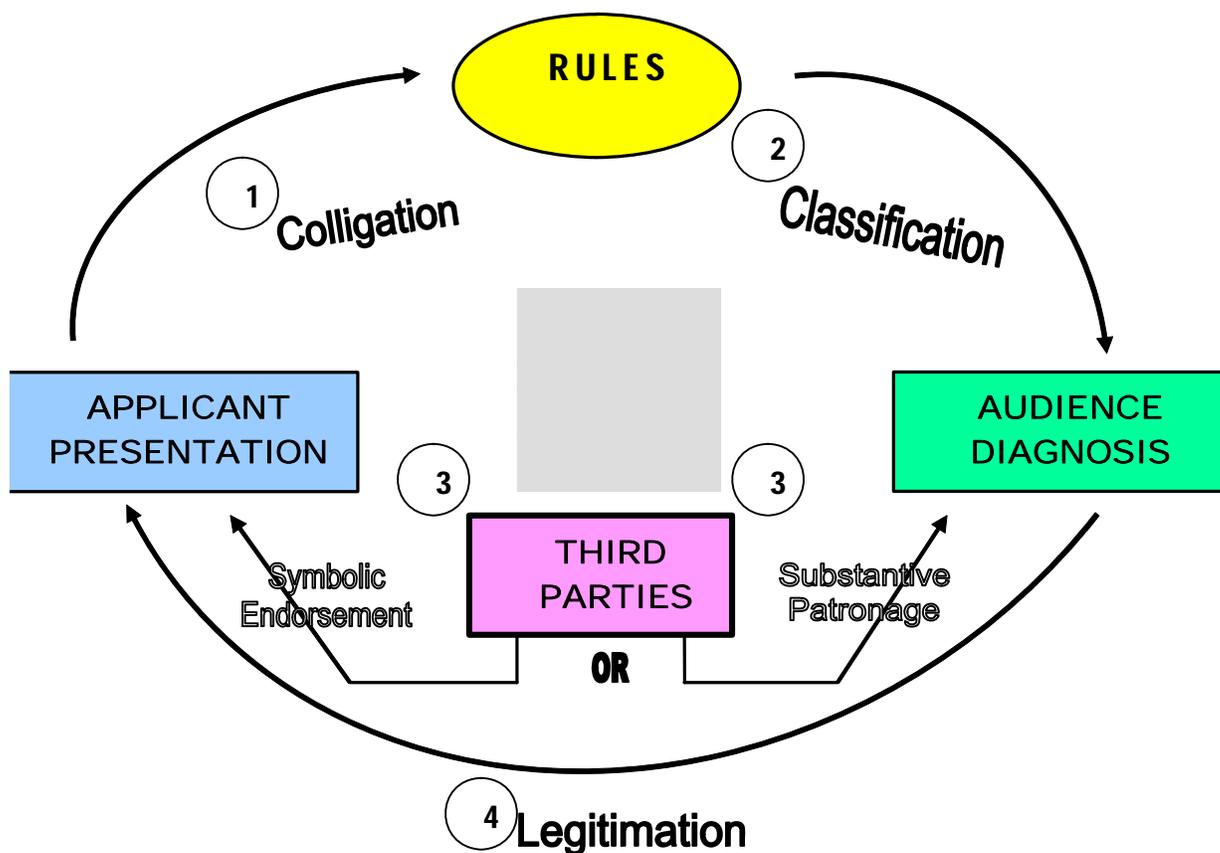


Unlike the first model, the rules do not entirely mediate the applicant-audience interaction. The applicant also engages the audience directly through a second line of communication. As discussed above, negotiations center on either the rules or how they are interpreted or applied to the applicant's evidence. Whereas the former strategy,

“you’re wrong about the rules,” addresses the classification step in the diagnostic process, the latter strategy, “you’re wrong about us,” addresses the diagnostic step of colligation. Temporality in this model may derive from the technical/bureaucratic requirements of diagnosis, from the ensuing negotiation when diagnosis fails or is unsatisfactory, or some combination of the two.

The final model, labeled “Model ‘P’” for “politics,” shifts from a bilateral to a multilateral process (Table 8.5).

Table 8.5. Politics Model of Legitimation.



Again, legitimation begins the same as in the first two models, but in this model the applicant strategy for resolving any difficulties involves the political mobilization of third parties. As discussed above, the applicant may mobilize one or more third parties for a symbolic endorsement or for substantive patronage. Whereas symbolic endorsement is the political equivalent of “you’re wrong about us,” substantive patronage is the political equivalent of “you’re wrong about the rules.” The temporal dimension may come from the technical/bureaucratic requirements, from the multilateral political engagements, or some combination of the two.

A contested, problematic legitimation may proceed according to one or the other of these latter two models, or both models either consecutively or concurrently. For example, an applicant may mount a political strategy after its negotiation strategy proves unsuccessful, or it may mobilize its allies before or in tandem with its negotiation strategy to ensure success. Clearly, a complex combination of the two models has the potential to make the legitimation process quite lengthy in temporal terms.

8.5. CONCLUSION

In this chapter I have used evidence from accreditation, state licensure, and federal investigations episodes in the history of the University of Phoenix to develop sociological knowledge about processes of organizational legitimation. I have analyzed their conceptual, behavioral, and temporal elements, and synthesized them into holistic models that illustrate several of the ways that legitimation can proceed. The following chapter concludes the dissertation.

¹ It is not just perception—at least some environmental differences across audiences are in fact real. For instance, the geographic scope of the environment is not always the same in each case. Until relatively recently U.S. states dealt only with schools within their own borders. Not so with the voluntary accrediting associations. Since their inception all six of the regional jurisdictions have spanned multiple states, with the North Central encompassing more than one-third of the nation. And the postsecondary education environment of the federal government, of course, consists of the entire country including the District of Columbia and other possessions.

² Sociologists that have discussed this phenomenon include Bowker and Star (1999) and Zerubavel (1996).

³ This protracted silence was not due to an absence of newsworthy events during that period of the school's history. Indeed, even UOP's historic initial public offering in December 1994 failed to attract the Chronicle's notice.

⁴ The applicant's own classification system probably most closely resembles that of the community of practice that it seeks to join, although it may resemble the systems of other audiences as well.

9. CONCLUSION

9.1. INTRODUCTION

In this concluding chapter I summarize the dissertation project and discuss its limitations. Next I turn to the potential contributions of my dissertation to theory, to social science methodology, and to organizational and educational research. Finally, I close the chapter—and the dissertation—with a tentative agenda for future research.

9.2. SUMMARIZING THE DISSERTATION

I began my dissertation with a puzzling phenomenon: the rise of the for-profit university in the United States. My investigation focused on the largest for-profit university, the University of Phoenix. The University of Phoenix is not only the largest for-profit university, it is now the largest American university across all sectors. I wanted to learn how this for-profit university had become so successful, in so short a time, despite appearing and behaving so differently from so many other organizations in its environment. In sociological terms, I wanted to know how it became a legitimate organization when it did not seem to conform to many of the rules of how to look and act. I also wanted to understand how it received legitimation from an institutional environment that did not necessarily endorse or support it.

Existing theories of organizational legitimation could not adequately explain this phenomenon. I needed to build a process theory using elements from existing theories of legitimacy and institutions. My theory focused on the cognitive dimension of legitimation; the role of specific audiences—especially gatekeepers; and the function of classification rules and categories in the legitimation process.

In my theory I argued that before legitimacy can be a resource, it must be a set of rules that enables audiences to make sense of relevant phenomena—here, organizations—in the social environment. I hypothesized that legitimation is a two-stage process in which cognitive comprehension is causally prior to, and a necessary but insufficient precondition for, normative evaluation. I also hypothesized that while cognitive legitimation by certain key audiences (i.e., gatekeepers) is necessary for an organization's ultimate survival in that environment, normative (or sociopolitical) legitimation is not. It is optimal yet optional.

My theory further hypothesized that specific audiences, rather than the environment in general, legitimated organizations. The three key legitimating audiences in an organizational field are communities of practice, critics, and gatekeepers. Moreover, I hypothesized that gatekeeping audiences offer the most consequential legitimation because they enforce institutional rules, maintain field boundaries, and control access to resources. Organizations seeking legitimation, I hypothesized, almost always formally apply for it from gatekeepers.

Finally, in my theory I likened legitimation by gatekeeping audiences to diagnosis by professionals. When legitimation is unproblematic, I hypothesized that the audience uses its classification rules to put the organization into an existing category in its classification system. When legitimation is problematic or contested, however, I hypothesized that the audience and applicant actively negotiate over how to apply or interpret the rules of classification.

I used these hypotheses to analyze key legitimization episodes in the history of the University of Phoenix. Because my research questions shared a “how” or “why” quality, I designed my qualitative analysis within a case-study framework. My cases were “episodes” of legitimization—complex interplays of actors and actions over time—and my analytical methods were narrative and historical. The evidence I studied came from a variety of sources, including the organization itself and its members; the popular, trade, and business presses; policy and academic research; and various other organizations in the institutional environment, most notably the gatekeeping audiences that were directly involved in these episodes.

For my analysis I selected episodes involving each of the three gatekeeping audiences in the University of Phoenix’s institutional environment: regional accreditors, state regulators, and the federal government. In Chapter Five I studied accreditation by the North Central Association. I compared licensure episodes in four U.S. states in Chapter Six. And in Chapter Seven I analyzed a pair of investigations by the U.S. Department of Education.

A synthetic comparison of these episodes yielded three important findings regarding the process of organizational legitimization. First, conceptualizing legitimization involves considering the origins and outcomes of variation in classification systems and rules. Second, strategically doing legitimization involves taking into account the different sets of tool kits available to the various actors. And finally, legitimization is a temporal process involving both the conceptual and the behavioral dimensions.

Not all audiences share a common classification system. In fact, classification systems vary even within a single institutional environment, and across audiences that are structurally equivalent (e.g., gatekeepers). Audiences' classification systems tend to "lump" or "split" phenomena into categories, producing considerable variation in their category configurations, ranging from more, smaller categories, to fewer, larger categories, and even one big category. There may be a relationship between an audience's classification system and how legitimation proceeds, but this relationship probably extends beyond the configuration of categories to include the nature of its classification rules: general vs. specific, and "is" vs. "does" rules.

Seekers and granters of legitimation both act strategically, and each has its own tool kit of possible strategies. An audience must respond to applicants as they appear in the environment. They may choose to respond by ignoring or rejecting the applicant as illegitimate, deferring a response, classifying the applicant into an existing category, creating a new category, modifying existing classification rules, or in rare instances, modifying the entire existing classification system. Meanwhile, the applicant must engage with that audience, either through unilateral decisions, bilateral negotiations, multilateral politics, or quite often some combination of these. An applicant's bilateral or multilateral strategy may focus on either itself or on the rules.

Cultural-cognitive concepts and strategic actions are animated by a temporal process that begins with an applicant's presentation, followed by an audience's diagnosis on the basis of classification rules, and either a straightforward legitimation decision, a

negotiation between applicant and audience, or political endorsement or patronage by one or more third parties.

9.3. LIMITATIONS OF THE PROJECT

Every research project has limitations, and my dissertation suffers from more than what a random distribution would have estimated. I do not consider all of these limitations as deficiencies, but I do disclose them here so as to discuss how they affected both the process and the outcome of my research.

Even “purely” methodological limitations have significant theoretical implications. Many of the drawbacks I encountered resulted directly from the multiple “n of one” problems I accepted when I designed the research. I mention a few of the more noteworthy ones here, and I speculate on their theoretical impact.

One organization. I only analyzed legitimation episodes involving the University of Phoenix. Other organizations may make very different strategic choices during their own legitimation processes, choices I did not consider in my research. Therefore my model of applicant actions may be incorrect at worst, incomplete at best.

One audience type. All three audiences in the episodes I analyzed were gatekeepers. I chose to background critics and communities of practice, which affected how I conceptualized legitimation as a formal process to which an organization must officially apply. If I were to build a more general theory of organizational legitimation I would need to account for variation in the ways different types of audiences cognitively comprehend and diagnose.

One field. Because I studied the rise of the for-profit university, specifically the

University of Phoenix phenomenon, I restricted my scope to postsecondary education. Fields vary in their structure and dynamics. Not every field, for instance, has a “triad” of audiences among which gatekeeping responsibilities have been divided. My single-field approach prevented me from accounting for any field-level variations in my theory of organizational legitimation.

One outcome. I selected on the dependent variable because I restricted my scope to successful legitimation episodes. Thus my theory cannot identify the critical factors that determine the success or failure of a particular process of legitimation. Until it can, its power is only in explaining past episodes, rather than in predicting future ones.

One source (or a few sources). Access to data was one of my biggest methodological concerns as I conducted my research. I reviewed documents and conducted informant interviews, ever mindful that I would never be fully aware of what I was missing. I was only getting part of the story, the part that people were willing and able to share with me, and the part that had been committed to posterity by being recorded. Some key informants died only a few months or years before I sought them out; some important documents were lost or destroyed before I could review them.

For this research project my sources were often a mile wide, but in some places not much more than an inch deep. At points I was forced to rely primarily or even exclusively on the words of one person—especially John Sperling, a seeming straight-shooter but by no means a disinterested party. My reconstruction of events and episodes, and consequently my analysis, reflects those source limitations.

One investigator. I did not complete this dissertation by myself. I benefited from

the direction and help of my committee, interested colleagues, and of course the scholars whose intellectual insights I have cited in these pages. Nevertheless my interests, perspective, biases, and judgments have guided the dissertation process from beginning to end. They led me to the topic; they shaped how I designed the project; they influenced me as I collected and analyzed the data; and they determined what I would write and how I would write it. If someone else had conducted this research, this dissertation—and especially its theory—would likely be very different.

9.4. CONTRIBUTIONS TO SCIENTIFIC KNOWLEDGE

Notwithstanding the project's many limitations, both identified and unidentified, this dissertation nevertheless makes several contributions to knowledge in the social sciences: theory, methodology, and substantive areas of research.

With this dissertation I have begun to build a process theory of organizational legitimation. My theory takes cognition and interpretation, processuality and temporality, and the strategic agency of applicants and specific audiences more seriously than existing theories of either legitimacy or institutions have. I began with the duality of legitimacy: it is a set of cultural rules as well as a cultural resource. A rules approach to legitimacy and legitimation attends to processes of interpretation and negotiation. My process theory of organizational legitimation required me to identify actors, actions, and cultural constructs such as classification systems, rules, and categories.

Another contribution was to social science methodology, especially in the qualitative, comparative-historical tradition. Whereas previous case-based research used the event as the main unit of analysis, my research used the episode, a set of interrelated,

contingent events. Episodes are the narrative stories of which individual events are the component “chapters.” The episode concept can be fruitfully applied to historically-oriented research more generally, but also to many substantive social science fields, including political sociology, social movements, and the sociology of the life course. Using the episode as the main unit of analysis opens up new lines of inquiry into the “plot,” “grammar,” and other elements of narrative structure.

Finally, this dissertation contributes to research on organizations more generally, and on (postsecondary) education organizations more specifically. In recent years organizational research has largely abandoned the case-study framework to focus on large-n, quantitative analyses of organizations or their various subunits. Some of these scholars have shifted their focus from the organization to the material or institutional environment. Others have replaced the organization as actor or subject with an organization as setting or backdrop for more micro-level action. This dissertation has sought to balance the focus between micro, meso, and macro. Environments, organizations, and individuals all matter. Additionally, I have attempted to give equal attention to matters of both agency (politics) and culture.

Moreover, the sociology of education has yet to explore the for-profit university phenomenon. It has begun to reckon with entrepreneurial developments in primary and secondary education, including charter schools and home-schooling, but entrepreneurial developments at the postsecondary level remain unexplored. Perhaps for-profit postsecondary education is “too close for comfort” for many sociologists, most of whom are employed by traditional public or private non-profit schools. Also, there is a general

lack of interest among educational sociologists in postsecondary education, perhaps because of the rise of a separate academic field devoted specifically and explicitly to colleges and universities.

Whatever the reason, this dissertation represents a significant advance in sociological knowledge about this emergent phenomenon. Regardless of whether for-profit universities like the University of Phoenix ever become more than a minority of schools, enrolling a tiny fraction of postsecondary students, they represent a consequential segment of the field, both for what they are in and of themselves, as well as their effects on the environment.

9.5. DIRECTIONS FOR FUTURE RESEARCH

Additional research on organizational legitimation should seek to remedy some of the limitations of this project, as well as to pursue interesting and important implications left unexplored.

In the future I want to include a larger sample of organizations. One possibility is to compare the University of Phoenix with its “industry peers,” such as DeVry University, Strayer University, and Argosy University. I also want to include other audiences besides gatekeepers. From even my limited attention to them in this dissertation, critics and communities of practice are clearly integral to organizational legitimation processes. Including more organizations and other audiences increases the likelihood that I will encounter episodes that have negative outcomes, which would redress another limitation of the present research.

Likewise, I have applied my theory to the field of postsecondary education, but a

robust theory should be applicable in a large and heterogeneous number of fields. Most fields are subject to the same broader contextual conditions. For example, education at the primary and secondary levels is undergoing similar changes as postsecondary education. So, too, are the fields of healthcare, social services, and the carceral system. Each of these fields is the site for organizational innovation and institutional change, and as such are potential laboratories for research in organizational legitimation.

It would be a mistake, however, to limit the focus of analysis to only one organization. Future research should strive to make comparisons across organizations within a field, as well as comparisons across fields and even across nations. Even if the nature of the research remains fundamentally qualitative, it would still be possible—and useful—to expand the number of cases.

9.6. CONCLUSION

One concluding remark: the rise of the for-profit university in U.S. postsecondary education is still unfolding. As this phenomenon continues to develop, our theories should also be evolving, reckoning with the new reality as it happens.

APPENDIX A: ABBREVIATIONS

	UNABBREVIATED TERM AND DEFINITION
ABOR	Arizona Board of Regents, a state agency governing three public universities
AFA	Apollo Financial Aid, the central office administering student financial assistance for the University of Phoenix
AOCUC	Accredited Out-of-State Colleges and Universities in California, a non-profit trade association
AICUM	Association of Independent Colleges and Universities in Massachusetts, a non-profit trade association
ASU	Arizona State University, Tempe, AZ, a public university
BPPVE	Bureau for Private Postsecondary and Vocational Education (California), a state regulatory agency
BSA	Bureau of School Approvals (California), a state regulatory agency
CCHE	Colorado Commission on Higher Education, a state regulatory agency
CDE	Center for Distance Education, San Francisco, CA, the original UOP program offering online courses
CFAT	Carnegie Foundation for the Advancement of Teaching, the national policy and research center
CIHE	Commission on Institutions of Higher Education, the NCA entity that makes accreditation decisions concerning postsecondary schools
COPA	Council on Postsecondary Accreditation, a national consortium of accrediting associations
CPEC	California Postsecondary Education Commission, a state coordinating agency
CPPEI	Council on Private Postsecondary Educational Institutions (California), a state advisory agency
ED	United States Department of Education, a federal executive agency
HEA	Higher Education Act of 1965, the federal legislation
HEW	United States Department of Health, Education, and Welfare, a federal executive agency
IBHE	Illinois Board of Higher Education, a state regulatory agency
IPD	Institute for Professional Development, the for-profit predecessor to and now the sister of the subject organization
NAU	Northern Arizona University, Flagstaff, AZ, a public university
NCA	North Central Association of Colleges and Schools, the non-profit regional accrediting association for nineteen U.S. states including Arizona
OIG	Office of Inspector General, an ED division administering internal reviews
OPPE	Office of Private Postsecondary Education (California), a state regulatory agency
PPED	Private Postsecondary Education Division (California), a state regulatory agency
SEC	United States Securities and Exchange Commission, a federal independent agency
UA	University of Arizona, Tucson, AZ, a public university
UOP	University of Phoenix, Phoenix, AZ, the subject organization, a private, for-profit postsecondary school
VA	United States Veterans' Administration, a federal executive agency
WASC	Western Association of Schools and Colleges, the non-profit regional accrediting association for two U.S. states including California

APPENDIX B: INFORMANTS

INFORMANT NAME	PRESENT OR PAST AFFILIATION
Steve Baker	California Bureau for Private Postsecondary and Vocational Education
Andrew Breckel	Colorado Commission on Higher Education
Marge Chisholm	California Postsecondary Education Commission
Lara Couturier	The Futures Project, Brown University
Steven Crow	North Central Association
Tim Grieder	Colorado Commission on Higher Education
Murray Haberman	California Postsecondary Education Commission
Bruce Hamlett	California State Assembly Committee on Higher Education
Sheila Hawkins	California Bureau for Private Postsecondary and Vocational Education
Francis Heller	North Central Association
Jesus Jaime	California Bureau for Private Postsecondary and Vocational Education
Aundrea Kelley	Massachusetts Board of Higher Education
Marcia Langsjoen	Illinois Board of Higher Education
Thurston Manning	North Central Association
William Neptune	North Central Association
Therese Rainwater	Education Commission for the States
Lynette Robinson-Weening	Massachusetts Board of Higher Education
Roy Troutt	North Central Association

APPENDIX C: UNIVERSITY OF PHOENIX TIME LINE

YEAR	SIGNIFICANT EVENTS
1972	John Sperling co-founds Institute for Community Research and Development (ICRD) in San Jose, CA
1974	ICRD begins first programs at University of San Francisco ICRD changes to for-profit Institute for Professional Development (IPD)
1975	IPD begins programs at St. Mary's College in Moraga, CA, and Phoenix, AZ
1976	IPD moves headquarters from San Jose, CA, to Phoenix, AZ University of Phoenix (UOP) incorporates in AZ
1977	IPD merges with UOP
1978	North Central Association accredits UOP
1980	UOP begins operations in California
1981	John Sperling creates Apollo Group as holding company for UOP
1982	UOP begins operations in Colorado
1984	UOP begins operations in Utah
1985	UOP begins operations in New Mexico
1989	UOP begins online operations
1990	<u>New York Times</u> first mentions UOP
1991	<u>Chronicle of Higher Education</u> and <u>Wall Street Journal</u> first mention UOP
1993	UOP begins operations in Hawaii, Nevada
1994	NASDAQ lists Apollo Group's (APOL) initial public offering
1996	UOP begins operations in Florida, Louisiana, Michigan
1997	UOP begins operations in Oregon, Washington U.S. Department of Education Office of Student Financial Assistance (SFA) begins audit investigation of Apollo Group
1998	UOP begins operations in Oklahoma U.S. Department of Education Office of Inspector General (OIG) begins audit investigation of Apollo Group
1999	Apollo Group settles SFA audit investigation UOP begins operations in Maryland
2000	Apollo Group settles OIG audit investigation UOP begins operations in Missouri, Ohio, Pennsylvania NASDAQ lists University of Phoenix Online's (UOPX) initial public offering
2001	UOP begins operations in Massachusetts, Texas, Wisconsin
2002	UOP begins operations in Georgia, Idaho, Illinois, Tennessee, Virginia APOL added to Standard and Poor's S&P 500 stock index
2003	UOP begins operations in Indiana, Kansas, Kentucky, North Carolina
2004	UOP begins operations in Arkansas, Minnesota, Montana, New Jersey, Wyoming Apollo Group ranks 926 th on <u>Fortune 1000</u> UOPX shares converted to APOL shares, UOPX delisted from NASDAQ

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