

THE FUTURE OF
AFFIRMATIVE ACTION

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New Paths to Higher Education Diversity
after Fisher v. University of Texas

Richard D. Kahlenberg, *editor*

A PROJECT OF LUMINA FOUNDATION
AND THE CENTURY FOUNDATION

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Lumina Foundation is an independent, private foundation committed to increasing the proportion of Americans with high-quality degrees, certificates and other credentials to 60 percent by 2025. Lumina's outcomes-based approach focuses on helping to design and build an accessible, responsive and accountable higher education system while fostering a national sense of urgency for action to achieve Goal 2025.

ABOUT THE CENTURY FOUNDATION

The Century Foundation conducts timely research and analyses of national economic and social policy and international affairs. Its work today focuses on issues of equity and opportunity in the United States, and how American values can best be sustained and advanced in a world of more diffuse power. With offices in New York City and Washington, D.C., The Century Foundation is nonprofit and nonpartisan and was founded in 1919 by Edward A. Filene.

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Foreword

In the twentieth century, the American economy flourished in part because we led the world in education. As Claudia Goldin and Lawrence F. Katz write in *The Race between Education and Technology*, by 1900, the United States, unlike most other nations, had “begun to educate its masses at the secondary level not just in primary school” and soon became the richest nation in the world. Although implemented imperfectly, to be sure, we sought to make education inclusive—tapping into the talents of women, racial minorities, and low-income students as well as white, middle-class males.

For a time, the United States also bolstered its economic position by becoming a world leader in the proportion of young people receiving an associate’s degree or higher. But we have now fallen to fourteenth among OECD nations, endangering our competitiveness in a global economy where human capital drives innovation and success.

Both Lumina Foundation and The Century Foundation want to restore American leadership in higher education. Lumina Foundation has committed itself to an ambitious goal around which we focus all of our efforts:

that 60 percent of Americans will have a high-quality postsecondary degree, certificate, or other credential by 2025. Governors, business leaders, and university presidents have all supported the notion of increasing postsecondary attainment. So, too, has the Obama administration, suggesting that two-year institutions should play a particularly prominent role by producing 63 percent of the new degrees or credentials necessary. We believe these goals cannot be reached unless American higher education is both equitable *and* excellent, and prepares its citizenry to meet current and future global needs.

To think through ways to improve community college outcomes, The Century Foundation recently assembled a task force on community colleges, led by Eduardo Padròn and Anthony Marx. The task force's report, *Bridging the Higher Education Divide: Strengthening Community Colleges and Restoring the American Dream*, suggests that we must address growing stratification among colleges and universities, as separate institutions for rich and poor are rarely equal.

With this new volume, *The Future of Affirmative Action: New Paths to Higher Education Diversity after Fisher v. University of Texas*, Lumina and Century have joined forces to address the issues of college completion and stratification in an important subset of higher education institutions: four-year colleges and universities that employ selective admissions.

Research suggests that attending a selective college increases a student's chances of attainment and success as an adult, particularly if he or she comes from a low-income or minority household. As the U.S. student population grows increasingly diverse, promoting racial, ethnic, and economic inclusion at selective colleges is more important than ever.

Selective four-year institutions that engage in race-conscious affirmative action programs represent a fairly narrow slice of the higher education pie—about one-fifth of four-year colleges, according to Harvard University's Thomas Kane. But it matters who goes to these institutions because they offer extraordinary opportunities for success and membership in the American leadership class.

The June 2013 Supreme Court decision in *Fisher v. University of Texas* decision poses a significant challenge for selective universities that wish to remain racially and ethnically diverse. As the essays in this volume make clear, universities cannot simply rely on the old ways of achieving diversity and must think creatively about new solutions that offer concrete evidence of diversity-related policies and practices designed to achieve institutional equity and excellence.

We were pleased to have brought together some of the leading minds in American higher education to think through these issues on the heels of the *Fisher* decision in August 2013. We hope this volume, which grew out of those discussions, will be read closely by university administrators, local, state, and federal policy makers, civil rights advocates, and members of the philanthropic community.

Making higher education more equitable and inclusive, these essays note, is both the right thing to do for individual students, and is the right thing for our democracy. Our country cannot afford to leave any talent behind.

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Contents

	FOREWORD	v
	<i>Jamie P. Merisotis, Holiday Hart McKiernan, Susan Johnson, and Janice Nittoli</i>	
1	INTRODUCTION	1
	<i>Richard D. Kahlenberg</i>	
	PART I. The Stakes: Why Racial Diversity Matters and Why Socioeconomic Diversity Matters	
2	DEFINING THE STAKES	
	Why We Cannot Leave the Nation's Diverse Talent Pool Behind and Thrive	27
	<i>Nancy Cantor and Peter Englot</i>	
3	PROMOTING ECONOMIC DIVERSITY FOR COLLEGE AFFORDABILITY	35
	<i>Sara Goldrick-Rab</i>	
	PART II. The Legal Challenge: The Meaning of <i>Fisher v. University of Texas</i>	
4	EMPHASIS ADDED	
	<i>Fisher v. University of Texas</i> and Its Practical Implications for Institutions of Higher Education	43
	<i>Arthur L. Coleman and Teresa E. Taylor</i>	

5	NEW RULES FOR AFFIRMATIVE ACTION IN HIGHER EDUCATION A Practical Guide to <i>Fisher v. University of Texas</i> for Colleges and Universities <i>Scott Greytak</i>	57
PART III. State Experiences with Race-Neutral Strategies		
6	TRANSITIONING TO RACE-NEUTRAL ADMISSIONS An Overview of Experiences in States Where Affirmative Action Has Been Banned <i>Halley Potter</i>	75
7	STRIVING FOR NEUTRALITY Lessons from Texas in the Aftermath of <i>Hopwood</i> and <i>Fisher</i> <i>Marta Tienda</i>	91
8	THE USE OF SOCIOECONOMIC AFFIRMATIVE ACTION AT THE UNIVERSITY OF CALIFORNIA <i>Richard Sander</i>	99
9	CONVERGING PERILS TO COLLEGE ACCESS FOR RACIAL MINORITIES Examples of Responses that Work from Washington State and New Jersey <i>Richard L. McCormick</i>	110
10	ENSURING DIVERSITY UNDER RACE-NEUTRAL ADMISSIONS AT THE UNIVERSITY OF GEORGIA <i>Nancy G. McDuff and Halley Potter</i>	122
PART IV. Research on Promising Race-Neutral Strategies		
11	ADDRESSING UNDERMATCH Creating Opportunity and Social Mobility <i>Alexandria Walton Radford and Jessica Howell</i>	133
12	TALENT IS EVERYWHERE Using ZIP Codes and Merit to Enhance Diversity <i>Danielle Allen</i>	145
13	REDUCING RELIANCE ON TESTING TO PROMOTE DIVERSITY <i>John Brittain and Benjamin Landy</i>	160

14	ADVANCING COLLEGE ACCESS WITH CLASS-BASED AFFIRMATIVE ACTION The Colorado Case <i>Matthew N. Gaertner</i>	175
15	ACHIEVING RACIAL AND ECONOMIC DIVERSITY WITH RACE-BLIND ADMISSIONS POLICY <i>Anthony P. Carnevale, Stephen J. Rose, and Jeff Strohl</i>	187
16	THE WHY, WHAT, AND HOW OF CLASS-BASED ADMISSIONS POLICY <i>Dalton Conley</i>	203
	PART V. Public Policy Proposals	
17	A COLLECTIVE PATH UPWARD Working Smarter and Cooperatively to Improve Opportunity and Outcomes <i>Richard Sander</i>	215
18	INCREASING SOCIOECONOMIC DIVERSITY IN AMERICAN HIGHER EDUCATION <i>Catharine Hill</i>	226
	NOTES	235
	INDEX	279
	ABOUT THE CONTRIBUTORS	295

1

Introduction

RICHARD D. KAHLENBERG

As the United States experiences dramatic demographic change—and as our society’s income inequality continues to rise—promoting racial, ethnic, and economic inclusion at selective colleges has become more important than ever. Most people recognize that to be economically competitive and socially just, America needs to draw upon the talents of students from all backgrounds. Moreover, the education of all students is enriched when they can learn from classmates who have different sets of life experiences.

At the same time, however, many Americans—including several members of the U.S. Supreme Court—are uneasy with explicitly using race as a factor in college admissions. To date, several states, with more than a quarter of the nation’s population, have banned the use of race in admissions at public colleges and universities, prompting institutions of higher education to experiment with a variety of new paths to diversity.

In the Supreme Court’s most recent case, *Fisher v. University of Texas* (2013), the justices placed new emphasis on a requirement that universities use race in admissions only when “necessary.” In a key passage, the Court ruled that universities bear “the ultimate burden

of demonstrating, before turning to racial classifications, that available, workable race-neutral alternatives do not suffice.”¹ While in the past, the Court took universities at their word that race-neutral strategies were not sufficient, in *Fisher* the Court, for the first time, held that universities would receive “no deference” from judges on whether using race is in fact necessary.² Legal observers believe the decision has implications for both private and public universities because the Court has ruled that Title VI of the Civil Rights Act (which applies to all higher education institutions receiving federal funding) has the same meaning as the Fourteenth Amendment of the Constitution.³

Higher education officials are understandably resistant to efforts by courts to closely scrutinize their use of race in admissions. No one likes to be told what to do, and in the case of college admissions, university officials are right to guard their academic freedoms strenuously. Moreover, these officials contend that, if a school’s goal is racial diversity, why not just let admissions officers consider race in admissions directly, as opposed to constructing less efficient, indirect means of creating a racially diverse student body?

In the *Fisher* case, though, only one justice—Ruth Bader Ginsburg—took that position, as the other members of the Court’s 7–1 majority said race should only be employed when absolutely necessary. Many legal experts suggest that now is the time for universities to begin seriously thinking about how to promote racial, ethnic, and economic diversity in new ways.⁴

In August 2013, on the heels of the *Fisher* decision, Lumina and Century assembled some of the country’s best minds to address this issue at a conference titled “New Paths to Higher Education Diversity.” The meeting included university and college presidents, admissions officers, government officials, civil rights leaders, legal experts, higher education scholars, and members of the philanthropic community. This volume is an outgrowth of that gathering.

In their chapters, the authors tackle the critical questions: What is the future of affirmative action given the requirements of the *Fisher* court? What can be learned from the experiences of states that created race-neutral strategies in response to voter initiatives and other actions banning consideration of race at public universities? What does research by higher education scholars suggest are the most promising new strategies to promoting diversity in a manner that the courts will support? How do public policies need to change in order to tap into the talents of all students in a new legal and political environment?

Although all of the conference participants and authors in this volume support racial and ethnic inclusion, some also see the judiciary's new emphasis on race-neutral strategies as an opportunity to broaden higher education's notion of diversity to include economic status as well as race and ethnicity. To date, many universities have achieved racial and ethnic diversity by recruiting fairly well off students of color. According to William G. Bowen and Derek Bok's *The Shape of the River*, 86 percent of African American students at selective colleges are middle or upper-class—and the whites are even wealthier.⁵ According to a different study by Bowen, being an underrepresented minority increases one's chances of being admitted to a selective college by 28 percentage points, but being low income provides no positive boost.⁶ Nationally, 41 percent of undergraduate students had family incomes low enough to be eligible for Pell Grants in 2011–12, yet at selective colleges the proportion is usually much lower.⁷ At the University of Virginia and Duke University, to take two examples, only 13 percent of students are Pell eligible.⁸

In a 2013 report, Anthony Carnevale and Jeff Strohl noted that while white students are overrepresented at selective colleges by 15 percentage points, the overrepresentation of high-income students is 45 percentage points, three times greater.⁹ Despite greater attention being paid to higher education's income divide than in the past, progress has been slow. In 2013, Catharine Hill reported that “only 10 percent of students attending selective colleges and universities came from the bottom 40 percent of the income distribution in 2001, and that little progress had been made by 2008, except at a few of the very wealthiest institutions.”¹⁰

Many of the race-neutral approaches outlined in this volume emphasize efforts to embrace economically disadvantaged students of all races. In that sense, might *Fisher* represent not only a new challenge to the use of racial criteria but also a new opportunity to tackle, at long last, burgeoning economic divisions in society? Can new approaches be created that honor racial, ethnic, and economic diversity in one fell swoop?

This volume proceeds in five parts.

The Stakes

Part I addresses the stakes involved in diversity discussions. Why do racial, ethnic, and socioeconomic diversity matter in higher education? Why are universities right not to simply select the students with the highest grades and test scores irrespective of diversity? Why, indeed, should we care at all about who attends selective colleges in the first place?

In Chapter 2, Nancy Cantor, the president of Rutgers Newark and the former chancellor of Syracuse University, explains with her colleague Peter Englot that racial, ethnic, and economic diversity on campus is vital. They begin by citing the economic imperative of tapping into the talents of America's new majority. The twin trends of increasing economic inequality and the racial and ethnic shift in the population mean that America can no longer afford to bypass its growing number of low-income and minority students. The toddler population is already majority minority in fourteen states, including California, New York, Texas, and Florida, they write. "If we do not dramatically expand college access and opportunity for poor students generally and minority students specifically, we are headed for a catastrophe," they predict.¹¹ Failing to educate this growing portion of the population means "losing the very talent that can rebuild our communities and create civic renewal."¹²

They also cite the critical ways in which campus diversity enriches the learning experience of all students. When students bring differing life experiences to discussions, they "strongly enrich the quality, creativity, and complexity of group thinking and problem-solving" that occurs.¹³ Research finds that groups including individuals with different perspectives outperform groups of individual high performers in problem solving "because diverse groups increase the number of approaches to finding solutions to thorny problems."¹⁴ More broadly, students take away critical social skills in diverse environments. "Learning how to work and learn and live across difference," they argue, is "a prerequisite to a vibrant democracy."¹⁵

In Chapter 3, Sara Goldrick-Rab of the University of Wisconsin at Madison offers an additional, less widely recognized reason that economic diversity on campus is important. Not only does having students from a variety of economic backgrounds enhance the learning and discussions on campus, it also might make college more affordable for everyone, she argues. Selective colleges are economically segregated in part because they are so expensive. But the converse may also be true: colleges are expensive because they cater to such a wealthy clientele. Rich students expect certain amenities (fitness centers, well-manicured lawns, elaborate sports facilities) that drive up costs. Having economic diversity on campus would temper these pressures, she says, and balance university priorities to serve all students.

Diversifying selective colleges matters not just because of the effect on campus climates but also because attending selective colleges provides

entre into America's leadership class. According to research by political scientist Thomas Dye, 54 percent of America's top corporate leaders and 42 percent of government leaders are graduates of just twelve universities.¹⁶ And diversifying selective colleges is likely to lead to a net increase in the total earnings of graduates. Research by Princeton's Alan Krueger and Stacey Dale of Mathematica Policy Research finds that attending a selective college has little impact on the earnings of advantaged students but can have a substantial impact on the earnings of first-generation and minority students, perhaps because they are exposed to new social networks that put them on a different trajectory in life.¹⁷

The Legal Challenge

Part II of the book examines the legal environment and the meaning of the Supreme Court's decision in *Fisher v. University of Texas*. In concrete and practical terms, what do universities need to begin to do to produce diversity in a way that will avoid litigation?

The threshold legal question is: To what degree (if any) did *Fisher* alter the law from where it stood in the 2003 decision in *Grutter v. Bollinger*, in which the Supreme Court upheld affirmative action at the University of Michigan Law School? There is some evidence that many universities greeted *Fisher* with a yawn. A 2013 *Inside Higher Ed* poll of admissions officers, for example, found that only 1 percent of public and private institutions were "very likely" to change policies after *Fisher*. Only 4 percent of public and 8 percent of private institutions were "somewhat likely" to change.¹⁸ But the legal analysis in this volume suggests universities must carefully reexamine their policies.

In Chapter 4, Arthur Coleman and Teresa Taylor of Education Counsel LLC and the College Board's Diversity and Access Collaborative note that while some perceived *Fisher* as "a dud" it is in fact "a decision of consequence," one with "important implications for the higher education community."¹⁹ In Chapter 5, higher education attorney Scott Greytak goes even further, declaring "*Fisher* represents a deliberate and measured step forward on the path to colorblindness. It is a blueprint for destabilizing race-conscious admissions plans. This is our warning, and we must react accordingly."²⁰ Although Coleman, Taylor and Greytak are all supporters of race-conscious affirmative action, they believe universities must change their way of approaching the issue in light of *Fisher*.

While *Fisher* broadly reaffirmed *Grutter*'s support of diversity as a compelling interest worthy of pursuit, there are critical differences in the two rulings. As Coleman and Taylor note, of the five justices who participated in both *Grutter*, upholding affirmative action, and *Fisher*, vacating a lower court decision that supported affirmative action and remanding the case for further review, four switched sides. Justices Anthony Kennedy, Clarence Thomas, and Antonin Scalia dissented in *Grutter* and joined the majority in *Fisher*; while Justice Ruth Bader Ginsburg was in the majority in *Grutter* and dissented in *Fisher*. (Only one justice, Stephen Breyer, joined the majority in both cases.)²¹

What accounts for the switches? Many observers believe that in *Fisher*, Justice Kennedy was essentially able to make his dissent in the *Grutter* case the law of the land. Kennedy dissented in *Grutter* in part because he believed that Justice Sandra Day O'Connor's majority opinion did not apply genuine strict scrutiny, a demanding level of judicial review that places a heavy burden on universities to prove that using race is necessary. A true strict scrutiny, Kennedy wrote in *Grutter*, would "force educational institutions to seriously explore race-neutral alternatives. The [*Grutter*] Court, by contrast, is willing to be satisfied by the Law School's profession of its own good faith."²² *Grutter*, as Greytak suggests, spawned "a decade of deference," in which universities were not pressed on the issue of race-neutral alternatives.²³ In *Fisher*, by contrast, universities receive "no deference" on whether using race is necessary. To drive home the point, Kennedy wrote in *Fisher* that "Strict scrutiny must not be strict in theory but feeble in fact."²⁴ *Fisher*'s emphasis on race-neutral alternatives was foreshadowed, Greytak argues, in the 2007 *Parents Involved v. Seattle* case involving the use of race at the K–12 level, in which Kennedy wrote that "individual racial classifications may be considered only if they are a last resort to achieve a compelling state interest."²⁵

In *Fisher*, rather than directly rebuking the majority in *Grutter*, Kennedy admonished the lower court for applying a watered-down and overly deferential type of strict scrutiny. But most realize this was an artifice, for Kennedy was asking the lower court to apply a version of strict scrutiny that, Coleman and Taylor note, was "not present in *Grutter*."²⁶ The target of Kennedy's ire, Judge Leon Higginbothom of the Fifth Circuit, wryly noted during a November 2013 hearing of the remanded *Fisher* case that the Fifth Circuit's mistake was "in not following the dissent in *Grutter*, by not anticipating that it would become [the rule]."²⁷

So what, as a practical matter, should universities and colleges begin to do? The chapters by Coleman and Taylor and by Greytak both home in on the meaning of the key passage: that universities bear “the ultimate burden of demonstrating, before turning to racial classifications, that available workable, race-neutral alternatives do not suffice.”²⁸ A related passage provides, if a race-neutral approach “could promote the substantial interest about as well [as the race conscious approach] and at tolerable administrative expense,” the institution may not use race.²⁹ In particular, three questions arise.

First, what is sufficient diversity? Presumably, sufficiency is tied to achieving a “critical mass” of minority students who will feel comfortable contributing to classroom discussions. In *Fisher*, the University of Texas avoided tying critical mass to a certain percentage of minority students, but it seems unlikely that the Supreme Court will ultimately accept a standard akin to what Fifth Circuit Judge Emilio Garza described as “know[ing] it when you see it.”³⁰

Is critical mass tied to a level of minority representation that universities have achieved in the past using race? (The University of Michigan Law School, for example, defined 11–17 percent minority as having achieved critical mass.)³¹ Are changing demographics in a state relevant, or would a university taking that into account be involved in “racial balancing,” something that the Court has explicitly said is “patently unconstitutional”?³² As Harvard University’s Thomas Kane and James Ryan ask, if a race-neutral alternative can create 60 percent as much minority representation as using race, does that count as sufficient?³³

Supreme Court decisions also raise a related consideration about sufficiency. As Coleman and Taylor note, to be justified, racial preferences need to do more than provide a marginal boost in minority admissions. In the *Parents Involved* case, the Court struck down the use of race in K–12 schooling where the effect of using race was marginal, and specifically contrasted the case to *Grutter*, in which the University of Michigan Law School’s use of race had a significant impact, boosting minority enrollment from 4.5 percent to 14 percent.³⁴

Second, what is the dividing line between a “workable” and “unworkable” race-neutral alternative? One aspect of this goes to academic selectivity. In *Grutter*, the majority said universities theoretically might achieve considerable racial diversity by using a lottery for admissions, but that would so fundamentally alter the academic nature of the institution as to render the alternative unworkable. But what about a

much smaller diminution of selectivity? The University of North Carolina at Chapel Hill, for example, conducted a study which found that if Chapel Hill adopted a Top 10 Percent plan like that used in Texas—admitting all students with the highest GPAs within North Carolina’s individual high schools—the nonwhite under-represented student population would actually increase modestly over race-conscious admissions (from 15 percent to 16 percent) but the median SAT score would decline 50 points, from the ninety-first percentile to the eighty-sixth.³⁵ Will courts suggest that avoiding such a modest decline justifies the use of racial preferences?

Another aspect of workability is cost and the issue of what constitutes a “tolerable administrative expense.”³⁶ If a class-based affirmative action program were able to produce similar amounts of racial diversity using economic status rather than race but proved more expensive because it drove up financial aid costs, would that make the alternative unworkable? Coleman and Taylor note that there is little case law explaining the phrase “tolerable administrative expense,” and that the Supreme Court has often rejected cost as a rationale for abrogating rights when applying the strict scrutiny test. In *Saenz v. Roe* (1999), for example, the Court rejected the argument that California could impinge on the right to travel by reducing welfare benefits to those who were new to the state. The state said the rule saved taxpayers \$10 million per year, but the Court ruled: “the State’s legitimate interest in saving money provides no justification for its decision to discriminate among equally eligible citizens.”³⁷ Coleman and Taylor write: “an institution should not assume that cost savings alone can justify the ongoing use of a race-conscious policy.”³⁸

Third, how does a university “demonstrate” that no workable race-neutral alternatives are available? Coleman and Taylor say that universities do not have to actually try out alternatives for a few years to see them fail; instead, the institution “must have a sound basis for a decision not to pursue a particular neutral strategy that is anchored in evidence and informed by the institution’s experience and expertise.”³⁹ Under *Fisher*, Coleman and Taylor say, “an institution does not have to try every [race-] neutral strategy imaginable, but should review every strategy that could have some possible utility.”⁴⁰

Clearly, the bar has been raised on what universities must do, and it would be foolish not to begin the analysis now. Greytak concludes: “While many in higher education believe that pursuing racial and ethnic

diversity is a beneficial and just endeavor, they nevertheless serve their community best when they make preparations for the worst.”⁴¹ Many worry that universities are being too complacent. “In the wake of the *Fisher* decision,” Kane and Ryan write, “few universities and colleges are preparing to answer the questions that courts will soon be asking. If they fail to prepare convincing answers, they will lose. And, having been put on notice, responsibility for that loss will be with our college and university leaders, not the courts.”⁴²

What are the most promising race neutral strategies that universities should examine? In the 1978 *Bakke* case, little was known about race-neutral approaches and universities said, in the words of Justice Harry Blackmun, that there was “no other way” to achieve racial diversity short of using race. Since then, however, several states—educating 29 percent of the national high school population—have banned racial affirmative action and have indeed found other ways to produce diversity.⁴³

State Experiences with Race-Neutral Strategies

Part III of the book examines these states’ experiences and what can be learned from them. The section begins with an overview in Chapter 6 written by Century Foundation policy associate Halley Potter. She examines ten states where the use of race was eliminated by voter initiative or other means at leading universities. In these states, several steps that have been taken:

- Six states have spent money to create new partnerships with disadvantaged schools to improve the pipeline of low-income and minority students.
- Eight states have provided new admissions preferences to low-income and working-class students of all races.
- Eight states have expanded financial-aid budgets to support the needs of economically disadvantaged students.
- In three states, individual universities have dropped legacy preferences for the generally privileged—and disproportionately white—children of alumni.
- In three states, colleges created policies to admit students who graduated at the top of their high-school classes.
- In two states, stronger programs have been created to facilitate transfer from community colleges to four-year institutions.

Have these universities done everything they could to promote racial and ethnic diversity indirectly? No. The University of Michigan, for example, still has only 15 percent of students eligible for Pell Grants, so presumably it could pursue class-based affirmative action more vigorously than it has.⁴⁴ But as Potter notes, the states provide a “useful roadmap” for universities nationwide which are seeking racial diversity in a race-neutral manner.⁴⁵

How effective were these strategies in promoting racial and ethnic diversity indirectly? Potter finds that at seven of the ten flagship universities where alternatives were put in place, institutions were able to match or exceed both black and Latino representation levels that had been achieved in the past using race.⁴⁶ Research in other countries, such as Israel, has likewise found that race neutral strategies such as economic affirmative action can produce substantial racial and ethnic diversity.⁴⁷

Potter’s overview sets the stage for more detailed discussions of race-neutral strategies in some of the states that have been grappling with alternatives for more than a decade—Texas, California, Washington, and Georgia.

In 1996, the Fifth Circuit struck down the use of racial preferences in higher education in the case of *Hopwood v. University of Texas*. In chapter 7, Princeton University professor Marta Tienda, who has spent many years studying Texas’s response, provides a powerful analysis of the state’s race-neutral programs. To its credit, Texas did not simply give up on racial diversity after the ruling but instead created a number of new strategies. It provided an admissions break for economically disadvantaged students of all races, increased financial aid, and adopted the Top 10 Percent plan, which provides automatic admissions to the University of Texas (including the flagship Austin campus) to students who rank highest in their high school class, irrespective of standardized test scores. The law, Tienda writes, has been supported by “a bipartisan coalition of liberal urban minority legislators and conservative rural lawmakers,” whose constituents benefit.⁴⁸

How effective were the race-neutral programs? The Supreme Court’s *Fisher* opinion noted that in absolute terms, in 2004, the race-neutral programs achieved slightly more racial diversity (4.5 percent African American and 16.9 percent Hispanic) than had been achieved using race in 1996 (4.1 percent African American and 14.5 percent Hispanic).⁴⁹ The Top 10 Percent plan also increases socioeconomic diversity. Roughly three-quarters of students are admitted through the plan,

and one-quarter through discretionary admissions (which, after 2004, began to include race again). As Tienda points out, in 2011, 9 percent of students admitted under the plan came from families making less than \$20,000 a year, compared with 3 percent of those admitted under discretionary admissions. At the other end of the spectrum, just 13 percent of those admitted under the plan were from families making more than \$200,000 a year, compared with 29 percent of those admitted through the discretionary program.⁵⁰

Moreover, Tienda notes, despite initial skepticism about admitting students irrespective of SAT and ACT scores, the Top 10 Percent students have performed well. In a study conducted with Sunny Niu, Tienda found that between 1999 and 2003, minority students admitted through the plan “consistently perform as well or better” than white students ranked at or below the third decline.⁵¹

Still, Tienda expresses deep concerns that the Top 10 Percent plan has not kept up with changing demographics in Texas. Simply meeting the 1996 proportions for black and Hispanic students is insufficient in a state where the nonwhite population among Texas high school graduates is growing by leaps and bounds.⁵² Although as a legal matter, the U.S. Supreme Court has rejected the idea that universities may employ race to achieve state-wide proportional representation, as a policy matter, surely the large gap between minority high school proportions and representation at a flagship university should be deeply troubling. One step in particular that Tienda recommends is better programs to ensure that minority students who qualify for the Top 10 Percent plan actually apply and enroll at University of Texas at Austin. Tienda reports that while half of Asian and more than one-third of white Top 10 Percent graduates enroll at one of the public flagships, “only one-in-four similarly qualified black and Hispanic students” do.⁵³

While Texas was coming up with an array of alternatives, California was busy doing the same in response to a 1996 referendum banning racial preferences at public institutions. As Richard Sander of UCLA Law School explains in Chapter 8, California took a number of steps both at UCLA Law School (where Sander devised an economic affirmative action plan) and system-wide to promote diversity without using race *per se*. California adopted a modified percentage plan like Texas, but what was particularly striking, Sander writes, is the “jump in the interest of administrators and many faculty members in the use of socioeconomic status (SES) metrics as an alternative to race in pursuing campus diversity.”⁵⁴

At UCLA Law School, administrators developed a set of sophisticated and quantitative measures of socioeconomic disadvantage at the family level (parental education, income, and net worth) as well as the neighborhood level (percentage of families headed by single parent households, proportion of families on public assistance, and percentage who had not graduated from high school). This more detailed rendering of socioeconomic status was meant to get at a wide array of disadvantages, some of which are known to particularly affect black and Hispanic students (who would therefore disproportionately benefit from inclusion in the metric). While income correlates modestly with race, the broader measures of socioeconomic disadvantage essentially doubled the correlation.⁵⁵ Compared to the racial preferences employed in the past, the socioeconomic preferences were broader (applying to more students) but more shallow (providing a smaller admissions boost).

How effective was the program in promoting racial, ethnic, and socioeconomic diversity as well as student outcomes? Sander reports substantial gains in socioeconomic diversity, as the proportion of students who were the first in their families to attend college roughly tripled.⁵⁶ Black and Hispanic admissions fell substantially, however, a sobering development that Sander attributes in part to the tilted playing field UCLA faced in recruiting underrepresented minorities. Virtually all of UCLA's competitors could continue to use racial preferences, and often provided race-based scholarships as well so they could scoop up talented minority students who might otherwise attend UCLA.⁵⁷ Still, in a recent year (2011), the socioeconomic program continued to benefit minority students disproportionately. African Americans were 11.3 times as likely to be admitted under the socioeconomic program as all other programs, and Hispanics were 2.3 times as likely to be admitted.⁵⁸ And after adoption of the socioeconomic program, with its smaller, broader preferences, UCLA's California bar exam passage rate rose to an all-time high.⁵⁹

At the undergraduate level, a variety of race-neutral measures were put in place on different University of California campuses. Some elite campuses saw declines in minority admissions, but Sander reports that on the issue of bottom-line concern—total graduation of minority students—the number of bachelor's degrees awarded to African Americans in the California system actually rose after the affirmative action ban and the adoption of race-neutral strategies, from an average of 802 in the cohorts that entered in last years of racial preferences to 926 more recently. Sander says degrees awarded to Hispanics also rose.⁶⁰

After banning racial preferences in California, opponents of affirmative action moved to another “blue” coastal state, Washington, and succeeded in passing a similar initiative in 1998. Richard McCormick was president of the University of Washington at the time and spoke out strongly against the referendum. He bemoaned the fact that the proportion of black, Hispanic, and Native American students at the University dropped in the first year after implementation of the ban, from one in eleven to one in eighteen.⁶¹

But, as McCormick notes in chapter 9, he and others began to craft new approaches to create diversity. “Key constituencies within the UW community—including the Board of Regents, the university administration, faculty leaders, and student leaders—came together to design a wide range of measure for promoting student diversity and a plan for ensuring their success.”⁶² New efforts of recruitment at predominantly minority high schools—including a “student ambassador” program—were launched. Financial aid was expanded, and the university began considering such factors as “personal adversity” and “economic disadvantage.”⁶³ The good news, McCormick writes, is that “together these efforts were successful.” Within five years of the initial drop in minority enrollment, “the racial and ethnic diversity of the UW’s first-year class had returned to its pre-1999 levels,” when race was still considered in admissions. Moreover, McCormick notes, “the economic diversity of the UW’s undergraduate student body also increased—as indicated by the university’s growing number of federal Pell grant recipients.”⁶⁴

In fact, when McCormick later moved to lead Rutgers University in New Jersey, he took some of the lessons from the University of Washington with him. Rutgers enjoyed racial diversity among its students, but its minority students were “mostly suburban,” and the university failed to reach urban minority high schools. In 2008, Rutgers adopted a race-neutral Future Scholars Program that was aimed at cities such as Newark, New Brunswick, and Camden, with almost all of the beneficiaries being low-income African American or Hispanic students.⁶⁵

Meanwhile, in 2000, the University of Georgia, faced with an Eleventh Circuit ruling striking down the use of race in admissions, began shifting emphasis to a number of race-neutral strategies. As Nancy McDuff, associate vice president for admissions and enrollment management at the University of Georgia, explains in Chapter 10 (coauthored by Century’s Halley Potter), the university added to admissions a number of socioeconomic consideration (such as parental education and high school

environment). The university also began admitting the valedictorian and salutatorian from every high school class and dropped legacy admissions, which disproportionately benefitted white and wealthy students. Although the latter move was opposed by alumni, the university “has not encountered noticeable fundraising challenges as a result of the change,” McDuff and Potter write.⁶⁶ The university also stepped up recruitment efforts, particularly at high schools with high percentages of low-income students, and has strengthened partnerships with K–12 schools to boost readiness of underrepresented students.

Minority enrollment initially dropped after the ban on using race in admission, but it has since moved upward and the retention of African American students is even higher than the University of Georgia’s overall average. Whereas it used to be called the “University of North Atlanta,” because of the large numbers of white upper-middle class students from that area, today, the campus has become more diverse socioeconomically and geographically.⁶⁷ Overall, McDuff and Potter write, “the years since 2000 have shown the university moving in the right direction, toward increased racial, ethnic, socioeconomic, linguistic, and geographic diversity on campus.”⁶⁸

States such as Texas, California, Washington, and Georgia have been able use race neutral strategies to boost racial diversity—in many cases, matching or succeeding representation of blacks and Hispanics achieved using race in the past—but could they do even better given the right tools? That is the question we take up in Part IV of the volume, drawing upon an array of the country’s top researchers on promising strategies.

Here we return to the distinction between law and policy. In narrow legal terms, the success of states where race considerations were banned by referendum in creating “sufficient” diversity through race-neutral strategies is likely to render the continued use of race legally vulnerable in other states. As a recent article in the *Harvard Law Review* notes, as more universities pursue successful race-neutral strategies, “the bar will continue to rise on what it means to demonstrate that ‘no workable race-neutral alternatives’ are available. A university will have increasing difficulty claiming that no workable race-neutral alternatives exist if peer institutions have developed and successfully demonstrated such alternatives.”⁶⁹ But what is considered “sufficient” by the Supreme Court as a legal matter might be very different from what we desire as a matter of public policy.

As Marta Tienda and others point out, as a policy matter, we should not be satisfied, given growing diversity among high school graduates,

with simply replicating past levels of university diversity. Many would like race-neutral strategies to be even more effective than they are today so as to better reach minority proportions in the general population. What does research suggest could improve these programs?

Research on Promising Race-Neutral Strategies

The research in Part IV elucidates three strategy buckets: (1) better outreach and recruitment of low-income and minority students; (2) admissions plans that employ variations on Texas's Top 10 Percent plan by reducing the reliance on test scores and/or emphasizing geographic diversity; and (3) affirmative action in admissions that benefits economically disadvantaged students of all races.

Perhaps the least controversial way to boost racial, ethnic, and economic diversity—involving no preferences—is to get talented minority and disadvantaged students to apply to selective colleges in greater numbers. One major reason that low-income and minority students are underrepresented at selective colleges is that such students disproportionately “undermatch,” failing to apply to selective schools at which they would likely be admitted and succeed, instead attending less selective institutions or none at all.

As Alexandria Walton Radford of RTI International and Jessica Howell of the College Board note in Chapter 11, “undermatch is pervasive, especially among low-income, underrepresented minorities, and first-generation college-goers.”⁷⁰ Looking at national research, as well as research from North Carolina and Chicago, Radford and Howell note that 43 percent of students who are academically qualified to gain admission to a very selective college undermatch, and that Hispanics and African Americans are especially likely to undermatch.⁷¹ In raw numbers, that translates into 4,000 Hispanic and 2,000 African American students who score above 1200 on the math and verbal portions of the SAT yet do not attend a very selective school.⁷² Caroline Hoxby of Stanford and Christopher Avery of Harvard, likewise, find considerable undermatching among low-income high achievers, an important subset of whom are black and Hispanic.⁷³ Hoxby and Avery find that 35,000 low-income students are very high achieving—placing them in the top 4% of high school students nationally—and that only one-third apply to one of the country's 238 most selective colleges. Of those low-income high-achieving students who score above 1300 on the SAT or the ACT equivalent, roughly 2,000

are African American and 2,700 Hispanic. To put these numbers in context, at Barron's top tier of selective schools (about 80 institutions), there are currently only 5,400 black freshmen and 9,700 Hispanic freshman from all economic backgrounds. This research suggests there is enormous potential to increase socioeconomic and racial diversity without in any way sacrificing academic quality by simply getting more underrepresented minority and low-income students to apply, and, when admitted, enroll.

Why do these students undermatch? Radford's important new research among valedictorians finds that lack of understanding about need-based financial aid and poor guidance counseling are contributing factors to undermatching.⁷⁴ The good news is that this diagnosis suggests some relatively straight forward and inexpensive interventions may be possible. In an experiment Hoxby conducted with the University of Virginia's Sarah Turner's, a \$6 per application intervention providing more information about colleges and financial aid was found to significantly raise application rates.⁷⁵ As Radford and Howell note, the College Board is now taking steps to scale the Hoxby/Turner intervention through its Expanding College Opportunities program for high-achieving, low-income students who took the PSAT or SAT.⁷⁶ The authors conclude, "As institutions of higher education seek new ways to increase socioeconomic and racial diversity, addressing the issue of undermatch may prove to be a fruitful avenue for reaching those goals—and, more generally, for helping all students to fulfill their potential."⁷⁷

Of course, getting minority and low-income students to apply is a critical first step; but then universities need to admit them, so the rest of the chapters in this section address questions of university admission.

Admissions plans that seek to more broadly apply lessons from the Texas Top 10 Percent plan are the subject of Chapters 12 and 13. The Texas plan worked to produce racial and ethnic diversity for two distinct reasons. First, it enhanced geographic diversity, and leveraged the unfortunate reality of residential and high school segregation by race and class for a positive purpose, to promote integration in higher education. Second, the Top 10 Percent plan focused exclusively on class rank by high school GPA, effectively eliminating reliance on SAT and ACT test scores, which disproportionately screen out black and Latino candidates. But how would elements of the Top 10 Percent plan apply to public or private colleges that have a national, rather than state-wide pool of applicants?

In Chapter 12, Danielle Allen of the Institute for Advanced Study in Princeton proposes using geographic diversity and zip codes as a way

of promoting racial, ethnic, and economic diversity. “Geographic-based structures for seeking talent are tried and true,” she writes, noting that universities pride themselves on having students from all states, and National Merit and Rhodes scholars are chosen on the basis of regional competitions.⁷⁸ She suggests that universities select students at least in part based on academic accomplishments within their ZIP codes, or possibly census tracts. Given the well-documented existence of economic, racial, ethnic, and ideological segregation by ZIP code, this method of admission would likely yield diversity on all of those fronts, she contends.⁷⁹ “At selective colleges and universities a stronger orientation toward geographic diversity could well support diversification of student populations by ethnicity, thereby permitting us to slip free of the contested terrain of affirmative action.”⁸⁰ The enhanced geographic diversity could be a bonus, Allen writes, noting that Athenian democracy thrived by bringing together citizens from urban, rural, and coastal areas to generate knowledge and make decisions.⁸¹

In Chapter 13, John Brittain, of the University of the District of Columbia Law School and former chief counsel of the Lawyers Committee for Civil Rights, and his coauthor Benjamin Landy, an editor at MSNBC, suggest applying more widely the other aspect of the Texas Top 10 Percent plan: reduced reliance on standardized tests.

Brittain and Landy note that standardized tests like the SAT were born with egalitarian intentions, to help colleges “identify talented students from unknown schools and unspectacular backgrounds,” thereby replacing “the old boys club” that dominated selective colleges with a meritocracy.⁸² But in practice, the SAT and ACT have come to exclude large numbers of low-income and minority students, who score lower on average on tests which carry with them very high stakes. “A good score can open the doors to some of the world’s most elite institutions, wealthy alumni networks and prestigious job opportunities,” Brittain and Landy say. “A low score threatens to close those doors forever.”⁸³

The authors note that high school grades are a better predictor of college performance than SAT scores, and have a much less discriminatory impact against minority students. Yet reliance on test scores by universities admissions officers has actually increased in recent years. In part, the authors blame *U.S. News & World Report* college rankings, which favor schools with high student test scores. In addition, civil rights groups, Brittain and Landy suggest, have made a “Faustian bargain” with universities in which civil rights advocates have not challenged the racially

discriminatory impact of the SAT so long as universities provide affirmative action. “Historically,” the authors write, “there appears to have been a ‘gentleman’s agreement’ between civil rights groups and colleges,” which “has no parallel in the employment context, where there have been numerous legal challenges to the discriminatory impact of testing.”⁸⁴

If affirmative action is further constrained, the authors suggest the reticence to litigate the SAT may change. Even in the absence of litigation, the authors recommend that universities reduce their reliance on tests like the SAT. Despite variation in grading standards among high schools, Brittain and Landy contend that a heavier reliance on high school grades would not result in the admission of unqualified students. Nearly 850 colleges and universities have already gone “test-optional,” Brittain and Landy note, including leading institutions such as Bowdoin, Smith, Bates, and Wake Forest. At Wake Forest, retention rates remain very high under the test-optional approach, and diversity has blossomed. Both the proportion of students eligible for Pell grants and the percentage of blacks and Hispanics increased significantly.⁸⁵ The authors conclude that in the coming years, reducing the over-reliance on test scores could be an important avenue to increase racial, ethnic, and economic diversity and “would make our college admissions system fairer for everyone.”⁸⁶

The third bucket of race-neutral strategies involves policies providing a leg up in admissions to economically disadvantaged students of all races. The very early research on the issue suggested that preferences for low-income students would not produce much racial and ethnic diversity because low-income white students outnumber low-income black and Hispanic students, particularly among high-achievers.⁸⁷ But more recent research—which defines socioeconomic status in more nuanced ways—suggests that this strategy can produce considerable racial and ethnic diversity.

In chapter 14, Matthew Gaertner, a research scientist at the Center for College and Career Success at Pearson, describes the results of an experiment in class-based affirmative action at the University of Colorado at Boulder. In 2008, the university, fearing that a state anti-affirmative action referendum banning considerations of race would pass, turned to Gaertner to help devise a race-neutral alternative that provided a leg up to socioeconomically disadvantaged students of all races. In the event, the referendum narrowly failed, but the university developed a wealth of information about class-based efforts, and it ended up implementing a version of the policy, while continuing to use race as a factor in admissions.

Based on national research, the University of Colorado at Boulder devised an index of socioeconomic disadvantage that looked at a number of factors, including: “the applicant’s native language, single-parent status, parents’ education level, family income level, the number of dependents in the family, whether the applicant attended a rural high school, the percentage of students from the applicant’s high school eligible for free or reduced-price lunch (FRL), the school-wide student-to-teacher ratio, and the size of the twelfth-grade class.”⁸⁸ Under the program, socioeconomically disadvantaged students received a preference in admissions that was larger than what black and Hispanic students had been provided in the past.

When simulations were run, socioeconomic diversity increased, as expected, but surprisingly, the acceptance rates of underrepresented minority applicants also increased, from 56 percent under race-based admissions to 65 percent under class-based admissions. The size of the preference seems to explain the result, Gaertner suggests.⁸⁹

But did the sizable socioeconomic boost create a new academic mismatch problem by admitting too many unprepared students? Gaertner found that the class-based admits were less likely to graduate in six years (53 percent versus 66 percent for the general population), but notes that this is in line with the historical performance of underrepresented minorities at Colorado, who have six-year graduation rates averaging 55 percent.⁹⁰ The university has not seen the lower graduation rates of disadvantaged students as inevitable or as reason to discontinue the program but rather has moved to beef up academic supports for such students.⁹¹

If Colorado—a moderately selective school—was able to devise a class-based affirmative action that boosted racial diversity, how would such a program work nationally at the most selective colleges and universities? In chapter 15, Anthony Carnevale, Stephen Rose, and Jeff Strohl of Georgetown University take a groundbreaking look at how socioeconomic affirmative action programs, percentage plans, or a combination of the two, could work at the nation’s most selective 193 institutions. What would the socioeconomic, racial, and ethnic outcomes of various admissions strategies be? And what level of academic quality (measured by mean SAT score) would various strategies produce?

Currently, under a system of race-based affirmative action, legacy preferences, athletic preference, and the like, African Americans represent 4 percent of students at the most selective 193 colleges and universities, and Hispanics represent 7 percent, for a combined 11 percent representation, according to the authors. The bottom socioeconomic half has a

14 percent representation. If we moved to a system of admissions strictly based on test scores, the representation of the bottom socioeconomic half would inch up slightly, to 15 percent, but racial and ethnic diversity would suffer dramatically. The proportion of African Americans would drop to just 1 percent and Hispanics to 4 percent, for a combined representation of 5 percent. This would clearly represent an unacceptable step backward for racial and ethnic diversity.

But would race-neutral alternatives like economic affirmative action and percentage plans see a similar fall in racial and ethnic diversity? No, the authors find. To the contrary, combined black and Hispanic representation actually *rise* under both scenarios.

The authors begin by examining what would happen if students were admitted based on test scores that also factored in socioeconomic disadvantages overcome.⁹² Applying a variety of socioeconomic obstacles (for example, family factors such as parental education, income, and savings—a proxy for wealth—and neighborhood factors such as school poverty concentrations), the authors find that the combined underrepresented minority population would rise from 5 percent (under pure merit admissions) and 11 percent (under the current system of race-based affirmative action, legacy preferences, and so on) to 13 percent. Hispanics would benefit (moving from 7 percent to 10 percent) and blacks would lose some representation (from 4 percent to 3 percent). The representation of the bottom socioeconomic half would rise dramatically, from 14 percent today to 46 percent. Mean SAT scores would rise from 1230 today to 1322 under socioeconomic affirmative action.

Under a merit-based simulation, in which the top 10 percent of test takers in every high school are among the pool admitted, African Americans and Hispanics both do better than under the status quo of race-based affirmative action, legacy preference, and the like. African American representation goes from 4 percent today to 6 percent, and Hispanic representation from 7 percent today to 11 percent. The bottom socioeconomic half would jump from 14 percent today to 31 percent. Mean SAT scores rise slightly, from 1230 to 1254.

Taken separately, both the socioeconomic and percentage plans are able to boost combined black and Hispanic representation and socioeconomic diversity, and raise test scores. Merging the two approaches—a top 10 percent plan with a socioeconomic affirmative action plan—provides a yet bigger diversity boost, to 9 percent African American and 14 percent Hispanic, and 53 percent representation for the bottom economic

half. But mean SAT scores would fall to 1160, so predicted graduation rates would fall as well.⁹³

Could socioeconomic affirmative action be refined further to improve its fairness and its racial dividend beyond the levels outlined in Carnevale, Rose, and Strohl's research? In the past, Carnevale and Strohl have noted that their simulations use a proxy for wealth (savings) that is not ideal.⁹⁴ In Chapter 16, Dalton Conley of New York University makes a powerful case that using wealth and parental education would provide an eminently fair basis for admissions preferences while also producing substantial racial and ethnic diversity.

Using the Panel Study of Income Dynamics, the world's longest running longitudinal survey of families, Conley is able to measure, through regression analysis, which factors most powerfully predict college completion. What emerged were not race or income but rather parental education and wealth.⁹⁵ Having educated parents (of whatever race) provides significant educational advantages in life. And wealth matters more than income, Conley notes, because "the structuring of educational opportunity does not happen on a paycheck to paycheck basis. Rather educational advantages are acquired through major capital investments and decisions," such as purchasing a home in a neighborhood with good public schools.⁹⁶

If using wealth is the fair and right thing to do, it will also indirectly promote racial diversity far more powerfully than income, Conley notes, because it is a better proxy for racial disadvantage. While blacks typically have 70 percent of the income of whites, they have just 10 percent of the wealth. The gap is much wider, Conley suggests, probably because of ongoing racial discrimination in the housing market, and also because wealth, which is handed down through generations, "does a better job than any other measure of socioeconomic background" of capturing "the legacy of historical inequalities of opportunity."⁹⁷

Would the class-based affirmative action programs discussed by Gaertner, Carnevale, Rose, Strohl, and Conley be subject to the same legal and political concerns that racial affirmative action has faced? That seems highly unlikely. Whereas the use of race is subject to "strict scrutiny," classifying individuals by socioeconomic status must only meet the more relaxed "rational basis" legal test.⁹⁸ Moreover, even the most conservative U.S. Supreme Court justices, Antonin Scalia and Clarence Thomas, have explicitly endorsed class-based affirmative action programs.⁹⁹ And polling suggests that economic affirmative action programs enjoy support by a two-to-one margin.¹⁰⁰

Public Policy Proposals

As a practical matter, if universities are going to move to new race-neutral strategies, they will need support from the government and from philanthropic foundations. There is a reason that in the past universities have employed racial criterion to achieve diversity directly, often by recruiting well-off students of color. It is cheaper and easier. In Part V of the volume, two chapters lay out suggestions for how foundations and the government can ease the path for universities.

In chapter 17, Richard Sander calls for the government or foundations to support the creation of better data sets and software to enable universities to more easily identify and connect with students who will promote socioeconomic, racial, and ethnic diversity and are academically prepared to succeed. A national educational organization, Sander says, could create the database and software to make it possible for admissions officers to specify a desired academic threshold coupled with socioeconomic profiles that would generate a pool of admissible students.

Sander also takes on the critical issue of financing. Boosting application rates and addressing admissions gets us only two-thirds of the way to creating successful race-neutral alternatives. Also required are public policies that provide sufficient financial aid and support to students once in college.

Increasingly, universities are diverting scarce financial aid resources to non-need merit aid, Sander notes. This disturbing trend may have been inadvertently accelerated by a Justice Department anti-trust investigation that resulted in a 1991 consent decree preventing colleges from cooperating on financial aid decisions. The 1991 settlement needs revisiting, says Sander, to allow universities to take collective action to promote need-based aid. Moreover, to encourage financial aid based on genuine need, Sander advocates the creation of a federal “need-based-aid incentive program.”

In Chapter 18, Catharine Hill, the president of Vassar College (and an economist who has spent many years researching higher education), suggests three sets of public policies that would support universities in adopting race-neutral social mobility programs.

Hill begins by noting that socioeconomic stratification in higher education is the direct result of increasing economic inequality in the larger society. The increase in wealth among high-income families puts pressure on universities to increase services; yet the increase in poverty rates and

stagnating wages among working-class families on the other end puts pressure on universities to increase financial aid. Unsurprisingly, universities tend to listen to the needs of the first group more than the second and thereby reflect, rather than combat, growing inequality. She suggests the adoption of an array of policies to reduce economic inequality, from increasing the minimum wage and investing more in education to increasing taxes on wealthier Americans. She writes, “the higher education sector, given the current incentives that institutions face, cannot address rising income inequality in America on its own.”¹⁰¹

Second, government policies should provide strong incentives for colleges to promote socioeconomic diversity. Currently, all the incentives point against recruiting more low-income students of all races because ranking systems like *U.S. News & World Report* give no credit for institutions that provide greater access. To the contrary, providing financial aid for low-income students “diverts” funds from things that will increase an institution’s rankings (merit aid, higher faculty salaries, bigger libraries, and so on). To counter this, federal and state monies should flow to universities that provide greater access (a principle that the Obama administration rating system seems to endorse). Like Sander, Hill recommends modifying anti-trust policies that prevent universities from cooperating to focus aid on need rather than non-need merit aid. And she would require universities to disclose both their net prices and their share of students by income quartile each year. “Reporting these data,” she notes, would “put pressure on schools to live up to their mission statements.”¹⁰²

Third, the government should adopt policies that encourage low-income students to attend more selective colleges. Loans should be contingent on income, which would make the risk of taking on debt less daunting, particularly for students from low-income families.¹⁰³ And high-ability, low-income students should receive better information about the benefits of attending selective colleges and the financial aid that might be available. At the same time, Hill says, “it is important to combine such efforts with greater incentives for schools to allocate resources to financial aid. Otherwise, increased applications will not translate into greater low-income access at these schools.”¹⁰⁴

Conclusion

As the chapters in this volume make clear, the future of affirmative action is likely to be quite different than the policies we have come to know over

the past half century. The experiences in several states where racial considerations have been banned suggest that it is possible, with creativity and commitment, to construct new paths to racial, ethnic, and economic diversity. The good news, then, is that the constraints imposed by the Supreme Court in *Fisher v. University of Texas* do not have to mean the end of affirmative action, but rather could spawn the creation of new approaches.

This is not to suggest that the path ahead is easy. Universities will need to experiment with a number of approaches, learning from the benefits and the pitfalls of the strategies outlined in this volume. New paths to diversity may be more expensive than old ones. But in states where race has been discontinued as a factor in admissions, political forces have rallied around a variety of approaches—including substantial increases in financial aid—to make race-neutral strategies work.¹⁰⁵

Even conservative opponents of affirmative action recognize that while Americans may not like counting race in college admissions, they do not want to see higher education re-segregate, either. Liberals, too, often are more comfortable advocating for race-neutral programs that generate broad public support. The Obama administration's January 2014 White House conference designed to boost the representation of low-income students of all races, is a recent example.¹⁰⁶ *Fisher v. University of Texas* presents new challenges for universities, but it could also lead to an even broader and richer conception of diversity based fully on race, ethnicity and socioeconomic status.

PART

I

The Stakes:
Why Racial Diversity Matters
and Why Socioeconomic
Diversity Matters

2

Defining the Stakes

Why We Cannot Leave the Nation's Diverse Talent Pool Behind and Thrive

NANCY CANTOR and PETER ENGLOT

The stakes for earning a post-secondary degree are extremely high for individuals and for all of us collectively. Report after report reiterates that, despite the sometimes heated rhetoric questioning the value of going to college, higher education remains a crucial road to individual prosperity, a return that may actually be even more essential as we recover from the worst financial disaster in nearly a century. But the reality is that access and opportunity via higher education are more skewed than ever. Income inequality is at an all-time high, and trends indicate that this is likely to intensify because the gap between rich and poor in school performance is growing, social mobility in America is near the bottom of nations belonging to the Organisation for Economic Co-operation and Development, and the present generation is the first in American history to be less well-educated than the preceding.¹ And, conversely, as Stanford sociologist of education Sean Reardon argues powerfully in his opinion piece, “No Rich Child Left Behind,” the wealthy in this country are wasting no time

in capitalizing on their advantage, pouring resources into preparation for their children that boosts the chances of entering selective institutions.²

Compounding this alarming situation are inexorable demographic trends. The Brookings Institution has reported that California, Texas, Florida, and New York are among the fourteen states where the toddler population already is majority minority, and the rest of the nation will follow at a faster than predicted pace.³ We also know that minority groups are disproportionately poor and disadvantaged, so more children of color are being left behind more often, as they tend to be stuck in under-resourced school systems and deeply challenged neighborhoods. Moreover, there are race disparities in educational achievement all across the income distribution (on SATs; in terms of teacher expectations for and advice to minority students) that also constrain the likelihood of students from historically under-represented racial and ethnic minority groups entering selective institutions where they could—and do—flourish.⁴

So, the hourglass has been flipped and the sands of time are running out for us to do something about this: if we do not dramatically expand college access and opportunity for poor students generally and minority students specifically, we are headed for a catastrophe. And the stakes are raised even higher when we consider access to selective institutions, because we know that these colleges and universities still predominate as the pathway to leadership in our country.⁵ We cannot make progress on the challenges facing large metropolitan communities without legitimately engaging the predominance of their residents—this next diverse generation of talent.⁶

This argument from the position of economics has equally compelling analogs from the positions of social well-being and cohesion. All assertions to the contrary, America has not become either “post-racial” or “color blind” in the decade between the *Grutter* and *Fisher* U.S. Supreme Court decisions.⁷ Racial and socioeconomic diversity *still do* matter in lived experience every day and in every way. They define the landscape of opportunity.⁸ They matter together and they each matter separately. They matter in powerfully negative ways when they define, as they do, disparities in practically everything that ensures individual well-being in our society. They matter in potentially positive ways when they coincide with richly diverse life experiences that in turn can strongly enrich the quality, creativity, and complexity of group thinking and problem-solving in organizations, firms, communities, policy settings and schools, as University of Michigan social scientist Scott Page demonstrates.⁹ They

matter now, but they also matter for our future if our children can learn better than we have to think outside the box of stereotypes with the skills of moving facily and not simplistically across the many dimensions of difference.¹⁰

This is why access to higher education matters so significantly and why it needs to be as richly inclusive as possible, for example, to overcome the reductionism that dooms and short-changes us all when we assume that “all blacks are poor, all whites rich and all Latino students speak Spanish,” as president and director-counsel of the NAACP Legal Defense and Educational Fund, Inc. and University of Maryland professor of law Sherrilyn Ifill reminds us.¹¹ That is why achieving “critical mass” *within* racial, ethnic, socioeconomic and other identity groups on college campuses—defined by the variety of experiences a student can have with a rich assortment of individuals from within each and every social identity category and their intersection—is so critical to leveraging the full educational benefits of diversity. It not only makes for stronger social bonds, but it makes for better decision making and societal problem solving. Indeed, in research conducted by Page—an expert on complex systems—groups composed of individuals who had diverse perspectives (often reflecting their diverse identities) outperformed groups characterized by strong individual performers in problem solving because diverse groups increase the number of approaches to finding solutions to thorny problems. Page also found that diverse groups tend to be more innovative, growing out of the likelihood that among people bringing different life experiences to an organization one is likelier to find people who see the possibility for improvement in a process or product.¹² In turn diversity generates leaders and citizens equipped to work together to build resilient, healthier communities.

Prioritizing the Public Good

Taken together, what we really have is an argument from the position of the public good. We simply cannot afford to waste all of the talent that is the key to individual prosperity, economic competitiveness, social well-being and cohesion. Yet the difficult task of leveraging diversity intensifies every year, as we leave disproportionately more poor and black and brown children behind (evident in persistently pernicious disparities in AP course taking, teacher expectations, school discipline, incarceration rates, graduation rates), and as we doom them at best to access to wildly

under-funded community colleges—places that *can* be superb stepping stones on the pathway to social mobility, if adequately funded and connected to opportunities at four-year institutions.¹³

As the Brookings Institution has shown compellingly, the challenges we face in leveraging diversity increasingly are concentrated in our metropolitan areas.¹⁴ But the stakes for the public good make it *everyone's business* to work together on solutions, whether we are urban, suburban, or rural dwellers, rich or poor, majority or minority. As Roland Anglin, of the Cornwall Center for Metropolitan Studies at Rutgers University-Newark, recently reflected on the challenges facing his city and state, following the passing of one of the world's greatest champions for diversity:

Nelson Mandela would say that we need to cement the public will on all sides to make change, not just people in urban areas—that's a doomed strategy. It is in no one's interest to have a poor, under-fed class of people who don't have access to opportunity. It is in everyone's interest that they participate in the public life and economic life of this state and country.¹⁵

If we leave so many behind (and conversely give access to so few) we risk the trust of our fastest growing populations in the legitimacy of pathways to leadership in our democracy; we risk losing the very talent that can rebuild our communities and create civic renewal; and, critically, we risk the disintegration of the proving ground of our metropolitan areas, which are ideal environments for learning how to work and learn and live across difference—a prerequisite to a vibrant democracy.¹⁶

Reaching Diverse Talent or Succumbing to the Dating Game

As higher education contemplates how not to leave so much talent behind, we confront the irony of our own norms and practices. We have come to define merit in such narrow terms, relying on proxies for quality that are highly correlated with the very disparities we strive to overcome, and that at the same time, doom us to miss the complexity of how talent is bundled at the intersection of so many aspects of identity and life experience that could do so well to define a rich and diverse student body. We overinvest in so-called objective test scores, imbuing point differentials with predictive utility and validity well beyond reason, as is obvious when one tries to tease out the differences in life achievement for students all clustered in the middle of an already above-average test range. We

embrace and reward strategies for selection that do more to exclude than include, never mind cultivate, talent. In this regard, the process of college admissions often resembles a “dating game”—and one that risks all of the same anomalous matches and lost opportunities.¹⁷ With each new legal opinion, more and more of what defines a prospective student’s critical life experiences (including but not limited to race and ethnicity) is cloaked behind a screen, with admissions professionals forced to use proxy questions to tease out these life-defining characteristics. And as we perfect this fundamentally reductionist tack, we not only leave behind more and more of our talent pool—our potential game-changers in business, politics, and even law—but we also relinquish some of our power as educators, cultivators of talent, and community- and nation-builders. Under the glare of strict scrutiny, it becomes an imposing task indeed to compose a class with all of the rich variety necessary to reap the full educational and societal benefits of diversity.

Nonetheless, that is our most pressing higher education task, and so more and more attention is being paid to reaching talented students in “geographies of opportunity” all across this country, and similarly, we are all stepping up our efforts to make those metro areas that hold the next diverse generation of talented students into real places of educational opportunity.¹⁸

Efforts such as those being tested by the College Board and ACT, drawing on the work of Stanford economist Caroline Hoxby and University of Virginia economist Sarah Turner, are promising. Taking what we will call a “person-based” approach, they advocate reaching out into communities, aggressively recruiting and assisting the already “high-achieving,” low-income and minority students who are exceptional in the context of under-achieving schools to enter the maze of the admissions and financial aid process at those selective institutions in which they can certainly thrive and break the mold. Bringing these exceptional students to the dating game is critically important, but so too will it be necessary to reach deeper and more broadly to find the more hidden talent. This effort should involve engagement with community colleges, where so much first-generation talent initially lands, and building hybrid models with selective institutions, as the recent task force report from the Century Foundation suggests.¹⁹ It must encompass all those geographies of opportunity that have so much to lose if students languish and so much to gain if the talent can instead be cultivated from the earliest ages possible. This goes hand in hand with adopting a broader vision of

academic potential, such as the holistic approach employed by the Posse Foundation.²⁰ Together, these person-based recruitment strategies focus on uncovering and leveraging diverse talent pools, and making it possible for these next-generation leaders to make their way to the selective institutions that disproportionately define social mobility in this country.

Changing the Reality of Educational Opportunity

Additionally, we all should look to place- or community-based approaches, where colleges and universities work comprehensively and deeply through partnerships with government and community-based organizations and foundations to build their communities, tackling the challenges of metropolitan America at scale, working across a district or neighborhood, especially in places on the opportunity map that need it most and that have clusters of anchor institutions primed to bring their expertise to the table. Lumina's Cities Initiative is a prime recent exemplar of this approach, as are the city-wide initiatives undertaken recently in Syracuse and Buffalo by the Say Yes to Education Foundation, and the work in many metros by STRIVE.

This community-based approach is not unlike what Major League Baseball does when it sponsors farm teams in communities across America, creating a system that develops a deep and broad talent pool that ultimately benefits all of Major League Baseball, beyond the particular team sponsor. The analogy to farm teams is relevant on many levels to what higher education needs to do, working in its local geographies of opportunity with K–12 systems and community-based organizations to improve educational attainment and support sending those students on to institutions (“teams”) across America, thereby cultivating new generations of talent and simultaneously committing economic development investments within the “home town” communities. In Syracuse, New York, for example, Say Yes to Education Syracuse has built a higher education compact of forty-five private colleges and universities (both near and far from this city in Central New York) and the New York State public systems, each of whom pledges to provide tuition scholarships to any student from the Syracuse City School District who graduates and gains admissions to their institution. The Say Yes model includes comprehensive academic, social, health, and legal services to families of students in the district, engages the full spectrum of higher education anchor institutions in the region, and makes the case for educational

opportunity as economic development. Indeed, the Central New York Regional Economic Development Council, formed by Governor Andrew Cuomo, included Say Yes as one of its transformative economic development initiatives in its five-year strategic plan. A few years back, the Obama administration started down this road with a multi-agency initiative led by HUD;²¹ we need to see more of that kind of broad thinking from government.

As the national think tank CEO for Cities has persuasively shown, increasing educational attainment by even a few percentage points in struggling urban centers across this country translates into substantial increments in aggregate annual income in these critical metros, and cities such as Syracuse and Buffalo are working to make this happen.²² Further, engaging college students in these initiatives within the communities to which their institutions are anchored ensures a new generation of citizens, professionals, and leaders with firsthand experience at cultivating talent across generations and on the front lines of America. This kind of experiential, engaged learning sharpens all of our skills at working across difference, leveraging diversity to everyone's advantage and fine-tuning appreciation for the complexity of social identities and the variety of ways that potential shows itself. Just as we work on inter-group dialogue on our campuses, so must we put it into action within the communities of which we, as anchor institutions, are a part.²³ As one member of the first class of Say Yes students to graduate from Syracuse University announced at commencement: "Now I'm ready to give back to my community what was given to me, and possibly more."

We Cannot Put Our Heads in the Sand

As we consider these outward-looking strategies, policies, and approaches for expanding access and reaping the full public benefits of diversity in higher education, it is hard not to be side-tracked by more inward-focused attempts at "race neutrality" tailored to meet the legal tests of strict scrutiny. And yet, it is perhaps worth a moment of questioning as to whether the commonly embraced alternatives on the table really are race-neutral at all, as they are consciously constructed to get at race without referring to race. Indeed, members of the court have mused on this as an absurdity. Justice David Souter wrote in dissenting from the majority in *Gratz* that trying to ignore race in such circumstances "suffers from a serious disadvantage. It is the disadvantage of deliberate obfuscation."²⁴ More

pointedly, Justice Ruth Bader Ginsburg wrote in her dissenting opinion in *Fisher*: “I have said before and reiterate here that only an ostrich could regard the supposedly neutral alternatives as race unconscious.”²⁵ Our world is not constructed in anything that resembles a race-neutral landscape, nor are the educational benefits of diversity color blind—so why not take positive advantage of what it means to educate our future leaders in a richly diverse environment that simultaneously breaks down the confines of stereotypic thinking and teaches the sorely needed skills of working and living in the world we actually confront every day?

If we owe it to ourselves to be honest about our purposes in crafting policies and building the architecture of inclusion to address issues of race, we owe even more to the diverse generation of students rising before us.²⁶ After all, the future belongs to them. As assuredly as the road to individual and collective prosperity leads through higher education, and the road to leadership through our selective colleges and universities, we ignore their diversity at our—and their—peril.

3

Promoting Economic Diversity for College Affordability

SARA GOLDRICK-RAB

Despite decades of spending on financial aid and numerous political pronouncements about the importance of ensuring that college opportunities are distributed based on individual merit rather than family background, American higher education remains largely economically homogeneous. Globally, it also stands out as remarkably expensive, particularly relative to real family incomes, which have been declining for several years.¹

The usual explanation for these dual characteristics of today's colleges and universities—economically elite and unaffordable—is that the former is a function of the latter. In other words, it is nearly a truism that higher education is the domain of wealthier families *because* it costs so much. Certainly, given that growth in need-based financial aid has never kept pace with the growth in costs of college attendance, the increasing net price of college is a key factor limiting the college enrollment and completion rates of students from moderate and low-income families. But that is not the only reason why

economic homogeneity and high prices go together at American colleges and universities.

In fact, the two phenomena mutually reinforce each other through a dynamic process in which wealthier students demand a distinctive, “high-quality” experience that helps preserve their social status—an experience they believe can only be provided at very high costs—and colleges and universities acquiesce, or even cater, to those desires. In other words, higher education is expensive *because* it is the domain of the wealthy. As the current trend-setters and “thought leaders” in higher education skew toward the economically elite, their institutions face strong incentives to keep the price of attendance high while distributing just enough financial aid to claim that they are accessible. They are able to do this while spending relatively little on financial aid because they maintain admission standards that exclude most students coming from less-advantaged communities around the country. It is possible for colleges to promise every family earning less than \$100,000 a year a debt-free college education if, at the same time, their admissions officers turn away all applicants lacking the very highest test scores. Classes of predominately elite students voice far louder demands than any working-class student union on campus ever could, and once they graduate, the networks of powerful and wealthy alumni—and the college foundations that cater to them—actively resist the efforts of future generations or policymakers to create change.

Given this dynamic, making college affordable and more economically diverse will require actions to contain college costs and shift the burden for financing college from the backs of individuals onto the shoulders of communities. But it will also require changing admissions processes; this could be accomplished most directly by mandating that institutions receiving Title IV financial aid serve a significant number of students receiving need-based aid. Accomplishing this is no small task: these are not only economic policy changes but also political ones as well, and thus they require the influence of supportive constituencies. Absent this sort of push, college administrators, trustees, and state legislators can continue to claim they are simply responding to market demand by raising college prices and limiting financial aid. Since their most vocal constituents possess the resources to continue voting with their feet, enrolling in higher education no matter what the price, they have little reason to act otherwise. Without direct and strong intervention, higher education will remain stuck in the cycle of becoming even more economically segregated, and ever more expensive.

Economic Segregation in Higher Education Reflects Economic Inequality

While the lives of working families are sometimes measured in terms of absolute levels of their resources, they are perhaps more frequently marked by their relative status and deprivation. These social divides are reinforced by constant comparisons drawn to assess who is “ahead” and who is “behind” in schooling, employment, and any number of measures of human flourishing. Right now, America is more divided by income and wealth than it has been at any point since before the Great Depression.² For students, learning to cope, and perhaps adapt, but at the very least to survive in this environment requires that they interact across social class backgrounds. Unfortunately, higher education rarely provides such opportunities.

Colleges and universities are highly segregated communities, with the wealthiest students far outnumbering the poorest at highly selective, private schools and public flagship universities.³ Students with the fewest financial resources disproportionately attend the country’s community colleges and for-profit institutions, where the number of financial aid recipients often outstrips the number of unaided students. But even among community colleges, wealth inequities persist. In a recent analysis, my colleague and I found that most community colleges either have very high proportions of Pell Grant recipients, or very low proportions.⁴ Rarely is there balance in terms of economic diversity.

This disjuncture—between the need for students to learn in socioeconomically diverse environments and the dearth of such environments at the postsecondary level—has consequences beyond those accruing to current undergraduates. The politics and practices of higher education institutions are being reified and sometimes reshaped to further emphasize a focus on the needs of the wealthy over the needs of the working class. And in this way, higher education is perpetually acting as an “engine of inequality” rather than an “engine of opportunity.”

Social Class Dynamics Affect College Life

Led by powerful families seeking to secure continuing advantages for their children, actively engaging college administrators with promises of donations and other forms of support, and backed by an industry of businesses profiting from this use of higher education, the effort to

drive up college costs has been under way for some time. (Or, at the very least, efforts to keep costs low and college affordable have been actively resisted.) Meanwhile, families that struggle with ambitions for social mobility often believe advancement requires the kind of “high-quality” education so commonly conflated with a high-priced education. In falling prey to this fallacy, the middle class serves the interest of the upper class, leaving the interests of working-class families unrecognized and unaddressed.

Sociologists Elizabeth Armstrong and Laura Hamilton provided insights into these processes as they occur on college campuses in a recent ethnography, *Paying for the Party: How College Maintains Inequality*. Following fifty undergraduate women for five years, the authors studied how women who began life together in a single freshman dorm ended up years later. They found that at the Midwestern university where the research was sited, students navigate college through several pathways, including the “party,” “professional,” and “mobility” pathways. For upper-middle-class party students (55 percent of the study’s sample), college is treated as a pathway to social reproduction; it is possible for these women to coast through college with little cost to their life ambitions, even if they treat the university as a “playground for the young.” In contrast, less-privileged students depending on college to provide a route to upward mobility and professionalism really need administrators and professors to provide an accessible, affordable college education with genuine intellectual engagement and strong workforce connections.⁵

But these needs, more often than not, appear to compete. The authors argue that dominant culture at colleges (and particularly universities) indulges preferences for the “party” pathway, effectively limiting prospects for social mobility for other students. One reason this happens is that the burden of “paying for the party” requires institutional spending on consumptive amenities (e.g. fitness and student centers, big-time sports teams, sororities and fraternities), adding substantially to rising tuition costs that rest on the shoulders of all students. While students who take pathways of emphasizing learning over socializing often receive some financial aid, it is rarely sufficient to offset those added costs, and thus they are left picking up the party tab—often with loans. By driving up costs and financial strain, and raising the standards for participation in college life, campus cultures focused on indulging upper-middle-class students may adversely affect the chances of college success for less-privileged students counting on higher education to propel them into

stable, happy lives. And this is especially likely to happen when the more elite students are in the clear majority.

These social class dynamics also affect the way that colleges and universities organize themselves to serve students and their parents. For example, consider the widespread discussions about “helicopter parents” who are intrusively engaged in their students’ lives, and the strategies that college administrators use to try to keep them at arms’ length. Contrast this with the needs of students like the Pell Grant recipients I have been following for the past five years as part of the Wisconsin Scholars Longitudinal Study, whose parents are at best supportive and needy (financially and emotionally), and at worst disabled and/or estranged. These groups of parents require very different forms of outreach from colleges in order to help their undergraduate children succeed—the former may need to be counseled to give their students space, while the latter may need information about how to obtain additional public benefits support to survive while their student works and attends to school. Insufficient campus diversity provides little incentive for institutions to think in this way.

College professors are similarly affected. They set terms of academic engagement that prioritize non-working students, holding classes and office hours at times convenient for the teacher, not the student. These in-person activities are labor intensive and therefore expensive. While working students might prefer online advising, at elite institutions it is not commonly offered.

Finally, students themselves perpetuate a lack of economic diversity and drive up college costs through their own role in campus life. The ability to take on leadership positions in student government is often predicated on full-time campus enrollment or grades, and of course students must have the time to participate. Student organizations with power are often elite spaces, and their governments sometimes play an active part in determining how resources—especially student fees—are spent on campus. When wealthy students lead governments and pursue the creation of additional amenities and expensive programs, they leave behind a legacy not merely of activism but also of increasing costs.

A Vicious Cycle

In theory, programs such as the federal Pell Grant were intended to increase economic heterogeneity on college campuses. At institutions where Pell recipients were not well treated, the theory went that students

would simply not continue to enroll. Given the choice, these consumers would shop elsewhere. The problem with this theory is that these consumers have very little power, controlling a minor fraction of resources flowing to the most influential colleges and universities. Admission standards and costs combine to construct large gates that preclude significant enrollment by moderate to low-income students, and in their absence, current students and their parents help to build even bigger walls by perpetuating a trend toward making college even more unaffordable.

Only by reversing this pattern and deliberately bringing economic heterogeneity to campus life can we stem the tide. Leveraging both financial aid programs and admissions protocols to accomplish this could serve to create more vibrant learning environments and more affordable ones—and that is a cost-effective approach to rethinking higher education.

PART



The Legal Challenge:
The Meaning of *Fisher v.*
University of Texas

4

Emphasis Added

Fisher v. University of Texas and Its Practical Implications for Institutions of Higher Education

ARTHUR L. COLEMAN and TERESA E. TAYLOR

The year 2013 was a year of galvanizing focus on higher education diversity, with all eyes again on the U.S. Supreme Court, this time with the highly anticipated decision in *Fisher v. University of Texas*.¹ For those who anticipated that the Court would materially reverse course from its landmark decisions in 2003 (and its unanimous affirmation of a core principle underpinning those decisions in 2007), the Court's decision failed to meet the mark. While not the blockbuster typical of past Court pronouncements in higher education admissions (*Bakke*, 1978; *Grutter/Gratz*, 2003), Justice Anthony Kennedy's opinion on behalf of seven members of the Court² was indisputably consequential. While

This essay draws from the authors' work on behalf of the College Board's Access and Diversity Collaborative, including "Understanding *Fisher v. the University of Texas*: Policy Implications of What the U.S. Supreme Court Did (and Didn't) Say About Diversity and the Use of Race and Ethnicity in College Admissions," July 9, 2013, <http://diversitycollaborative.collegeboard.org>.

preserving the core principles and legal framework relevant to race- and ethnicity-conscious student admission practices (which apply to other enrollment practices),³ Justice Kennedy also amplified the Court's prior pronouncements on key points associated with race-conscious means of achieving diversity goals, with particular emphasis on the consideration of race-neutral alternatives to race-conscious practices. At the same time, when compared to Justice Sandra Day O'Connor's 2003 *Grutter* opinion, Justice Kennedy's opinion reflects a more subtle but no less pronounced shift in tone throughout all facets of his decision—suggesting at the margins, at least, a heightened evidentiary rigor applicable to the Court's review of race-conscious means pursued to achieve diversity goals.

Without question, the Court's 2013 ruling should be a point of focus for all institutions of higher education (IHEs) that include race-conscious policies in their portfolio of enrollment policies and practices designed to achieve diversity goals. As IHEs undertake their review of this important decision in light of their policies and practices, it is essential that they read *Fisher* as addressing a key element of a larger legal regime of relevance, and, correspondingly, neither over nor under react to the Court's edict. (Indeed, higher education leaders must avoid the pitfalls that often plague the press and public in the wake of Court decisions on highly polarizing issues, such as those raised in this case, where headlines rushed to judgment in declaring victory for Abigail Fisher, a win for the University of Texas [UT], and for everyone in between.) As Justice O'Connor reminded us in *Grutter*, "context matters"—and *Fisher* can only be fully understood within the larger legal story that started nearly forty years ago.

In 1978, in an opinion that no other justice joined but that was viewed as a melding of the more stark views of the other eight justices expressed in differing opinions, Justice Lewis F. Powell articulated the view in *Regents of California v. Bakke* that the educational benefits of diversity could justify race-conscious admissions policies in appropriate cases.⁴ Twenty-five years later, a majority of the Court in *Grutter v. Bollinger* and *Gratz v. Bollinger* built on this core principle with the articulation of a clear, operational framework to guide IHEs when developing and pursuing race-conscious enrollment practices, with a particular focus on the kinds of diversity-focused admissions policies that could withstand strict scrutiny.⁵ A decade after that, in 2013, *Fisher* preserved the *Grutter* framework, with two major points of emphasis and refinement: (1) amplification on key principles and questions associated with the need for race-conscious policies and practices in light of race-neutral

alternatives; and (2) the corresponding need to evaluate the actual effects of policy implementation—policies *and practices*—with care.

We titled this essay “Emphasis Added” not only to call attention to the Court’s amplification of key elements from prior cases, as well as its shift in tone, but also to ensure that the *Fisher* decision (one that some have perceived to be a “dud”⁶) is understood as a decision of consequence. Said differently, the fact that the decision was not the expected blockbuster does not mean that it was not a case with important implications for the higher education community. To provide useful guidance regarding those implications, this essay includes a discussion of key policy and legal contextual points, the *Fisher* decision itself, and practical implications of that decision.

The Policy Context Associated with Institutional Diversity Goals: The True Starting Point

Although key legal issues associated with race-conscious enrollment policies and practices are integral in their development and implementation, the importance of the relevant legal inquiries does *not* mean that the law should be the exclusive point of focus with respect to those policies, or, for that matter, that the Supreme Court’s legal framework should be the starting point for an analysis of institutions’ diversity policies. To the contrary, the most central questions to be addressed (and on which, to be sure, answers to legal inquiries depend) are the educational policy and practice questions that are at the core of enrollment decisions made by IHE leaders. Said differently, educationally sound—and, correspondingly, legally sustainable—policies should, in the first instance, be developed with a focus on the institution’s mission and accompanying diversity goals. It is only in that context—with clarity around core educational aims and benchmarks of success in achieving those aims—that essential legal considerations associated with risk/return judgments and assessments of likely compliance should (robustly) enter the process. Thus, even though *Fisher* can serve as a forcing event for many institutions, it is important to keep in mind that the exercise associated with policy and practice development, implementation, evaluation, and change over time should not be solely focused on legal compliance, as vital as that inquiry is.⁷

Grutter, in fact, continues to remind us that institutional mission is the key driving force that underlies legal compliance judgments associated with student diversity. Indeed, the requirements of the *Grutter*

framework that remain as guideposts in the wake of *Fisher*—well-defined, mission-aligned goals accompanied by strategies that are effective, flexible, and regularly reviewed—map with the primary elements of good policy development.

Additionally, as recognized by the *Grutter* majority, the achievement of diversity goals does not end with the admissions office. Faculty members, among others, have a vital hand in ensuring that the benefits of diversity are embraced as mission central and, correspondingly, that they actually accrue to students. In this vein, the role of researchers is indisputably central, as well—particularly as issues of program design and impact surface and as questions are posed about what programs and policies are working to assure and enhance the quality of education, and why.

The Legal Context Associated with Race- and Ethnicity-Conscious Practices: Key Rules and Inquiries

Under the Fourteenth Amendment to the U.S. Constitution and Title VI of the Civil Rights Act of 1964, classifications based on race or ethnicity are inherently suspect, disfavored by courts, and, therefore, subject to “strict scrutiny”—the most rigorous standard of judicial review.⁸ Strict scrutiny requires that public institutions of higher education and private institutions receiving federal funding only use race as a factor in conferring benefits or opportunities to individual students in instances where they can establish that such race-conscious policies or practices serve a “compelling interest” and are “narrowly tailored” to serve that interest.

A compelling interest is the end that must be established as a foundation for maintaining lawful consideration of race and ethnicity when conferring benefits and opportunities. Federal courts have expressly recognized two distinct interests as compelling: a remedial interest (correcting for the present effects of past discrimination) and university’s mission-based interest in promoting the educational benefits of diversity among its students—the focus of this essay.⁹ Importantly, the Court’s recognition of these interests, as a matter of law, does not categorically confer a badge of compliance on any institution pursuing diversity goals through race-conscious means. Instead, that recognition merely sets the stage for an IHE to “make the case” regarding its *particular* compelling interest associated with diversity. Reflecting this point, the University of Michigan in *Grutter* established that diversity (including racial and ethnic diversity) was essential to its success in achieving its institutional mission; the evidence presented persuaded

the Court that, in the words of Justice O'Connor, the benefits of diversity were, for the University of Michigan, "substantial" and "real."

Narrow tailoring reflects the requirement that any race- or ethnicity-conscious means used to achieve the compelling interest must "fit" that interest precisely, with race or ethnicity considered only in the most limited manner possible to achieve those goals (though this limited consideration of race or ethnicity should also produce a material benefit to the institution). Federal courts examine several interrelated criteria in determining whether a given program is narrowly tailored, including:

1. **Necessity:** the necessity of using race or ethnicity to achieve goals in the first place (a prerequisite, of sorts, for all other components of the narrow tailoring analysis, meaning that an institution must be able to show that the use of race-conscious policies is needed to meet its diversity goals; this is where questions about race-neutral alternatives most often surface);
2. **Flexibility and Burden:** the flexibility of the policy with respect to its consideration of race and the corresponding burden imposed on non-beneficiaries (illustrated in the University of Michigan cases where the "individualized holistic review" of each law school applicant passed legal muster and the "mechanical" and "rigid" undergraduate point system pursuant to which each underrepresented minority applicant was awarded 20 points out of a possible total of 150 merely because of his or her minority status did not); and
3. **Review and Evaluation:** whether the race-conscious policy is subject to periodic review and refinement, as appropriate, with an end point in mind.

In addition, although not clearly established as precedent in a higher education setting, the positive material impact of a race-conscious policy in the achievement of compelling interests is likely germane—and may well be integral in the future—to any narrow tailoring inquiry. Complementary of the necessity analysis, the demonstrated material impact was a decisive element in a decision by the Court in 2007 related to race-conscious elementary and secondary student assignment policies.¹⁰ In that case, the Court rejected the challenged student assignment policies at issue, in part because they only affected a very small number or proportion of students and, therefore, did not yield (in the Court's view) material diversity benefits. Notably, in reaching that judgment, the Court contrasted its *Grutter* precedent, where the University of Michigan law school policy had led

to a significant increase in underrepresented minority students at the law school—from 4.5 percent of the total student body to 14 percent.¹¹

The *Fisher* Decision . . . and a Postscript

With a 7–1 vote tally and short (at least by Supreme Court standards) seven-page opinion, the *Fisher* decision surprised most Court watchers. Justice Kennedy’s majority opinion preserved the *Grutter* strict scrutiny framework (described above) and declined to rule on the merits of the UT admissions policy, remanding the case to the Fifth Circuit for further action.

So, what do we know?

After *Fisher*, a number of federal nondiscrimination principles and standards remain the same. First, *Grutter* remains good law and its overarching strict scrutiny framework has been preserved. Second, and as importantly, the educational benefits of diversity after *Fisher* remain a compelling interest that can justify appropriately developed and implemented race-conscious practices. And, third, given academic freedom interests long recognized in higher education contexts by the U.S. Supreme Court, IHEs continue to merit limited deference from federal courts regarding their mission-focused diversity goals that are associated with their race- and ethnicity-conscious policies and practices.

At the same time, Justice Kennedy’s decision in *Fisher* placed new emphasis on a number of legal principles and inquiries. Within the narrow tailoring analysis, the *Fisher* Court refined or amplified elements of legal principles in three key areas:

1. The Court made it clear that, though a court may give some deference to an institution’s judgment related to its mission-driven diversity *goals*, an institution will not receive any deference in the design and implementation of the *means* to achieve those goals. (Justice O’Connor’s majority opinion in *Grutter* on that point was ambiguous, but Justice Kennedy’s dissent in *Grutter* drew the precise distinction that he has now clearly reflected in Court’s opinion in *Fisher*.¹²)
2. With its strong emphasis on the question of necessity of considering race, the Court reverted to older, non-admissions precedent to articulate more rigorously the thresholds that must be met in a court’s review. Context still matters in a strict scrutiny analysis, but

an institution's good faith judgment regarding the necessity of its race-conscious policies and practices is not, standing alone, enough to meet the strict scrutiny standard. Specifically, the Court placed a new emphasis on race-neutral strategies in an institution's process of policy development, with Justice Kennedy instructing that "[c]onsideration by the university is of course necessary, but is not sufficient to satisfy strict scrutiny" and that the university has the "ultimate burden of demonstrating, before turning to racial classifications, that available, workable race-neutral alternatives do not suffice."¹³ Relevant factors in this analysis include whether a race-neutral approach "could promote the substantial interest about as well [as the race-conscious approach] and at tolerable administrative expense"—notably considered in the context of the institution's "experience and expertise in adopting or rejecting certain admissions processes."¹⁴

3. Under *Fisher*, a reviewing court must examine the institution's "assertion that its admissions process uses race in a permissive way"—and give "close analysis to the evidence of how the process works in practice."¹⁵ This inquiry will likely encompass the degree to which a race-conscious policy has been implemented faithfully to its intended purpose and design as well as the actual impact or effects the policy has on the institution's achievement of its mission-based diversity goals.

Correspondingly, the tone of the *Fisher* decision is manifestly different than in *Grutter*. A number of reasons may account for the difference. One is that the principal critique from the Court related to a lower court's failure to rigorously apply strict scrutiny principles (not present in *Grutter*) and that the Court was, at core, focused on and admonishing lower courts.¹⁶ Another reason involves the makeup of the group of Justices who joined the majority opinion: the seven justices in the *Fisher* majority included conservative, moderate, and liberal members of the Court—a marked contrast to the five in *Grutter*, made up of the swing vote Justice O'Connor and the four more liberal justices at the time.¹⁷

That said, the points of substantive emphasis and amplification noted above (all in a more "conservative" direction) make it difficult to conclude that that is the only basis for the shift in tone, especially in light of the stark divide in the *Grutter* and *Fisher* majority opinions' discussion of the narrow tailoring inquiry. Making this point most glaringly, Justice

O'Connor wrote that institutions must undertake "serious, good faith consideration of workable race-neutral alternatives"—but this "does not require exhaustion of every conceivable race-neutral alternative. Nor does it require a university to choose between maintaining a reputation for excellence or fulfilling a commitment to provide educational opportunities to members of all racial groups."¹⁸ Justice Kennedy selectively quoted and added emphasis to this language: "Although '[n]arrow tailoring does not require exhaustion of every *conceivable* race-neutral alternative' [emphasis added], strict scrutiny does require a court to examine with care, and not defer to, a university's 'serious, good faith consideration of workable race-neutral alternatives.'"¹⁹ This indicates that an institution does not have to try every neutral strategy imaginable, but should review every strategy that could have some possible utility—arguably, a more demanding threshold than in *Grutter*.²⁰

A postscript to the Supreme Court's decision: shortly after the *Fisher* decision was issued, the U.S. Departments of Education and Justice released a new guidance document related to *Fisher*.²¹ The document does not provide new substantive guidance, nor does it offer detailed commentary on the case beyond an affirmation that the *Grutter* framework continues to rule the day. It does, however, reflect the departments' support for institutions' diversity efforts and explicitly confirms the continuing viability of the departments' 2011 postsecondary, as well as elementary and secondary guidance, regarding the federal government's enforcement of Title VI of the Civil Rights Act of 1964. That document also reaffirms the viability of the Department of Education's 1994 Federal Register guidance (also under Title VI) on financial aid and scholarships.²²

Practical Implications of the Fisher Decision

A Gift of Time . . . to Reexamine Processes and Foundations for Race-Conscious Policies

Institutions should consider the *Fisher* decision to have conferred a gift of time. Rather than materially disrupting the current legal landscape, the Court fundamentally affirmed, with respect to core principles, a "business as usual" message—albeit one with express requirements and implicit suggestions of more rigor in analysis and justification of race-conscious policies related to the commonly accepted framework of "strict scrutiny" analysis.

Moreover, even though the case itself was not the blockbuster expected, interest and energy generated by *Fisher* provides an opportunity to engage with leadership and stakeholders across the institution to re-examine mission-based diversity goals and the policies and practices to attain them in light of the current context and future development.

A Strong Reminder of the Need to Assess Viable Race-Neutral Strategies Fully

As a matter of principle, *Fisher* reminds institutions seeking to achieve the educational benefits of diversity that they should focus as deliberately on race-neutral practices as they do on race-conscious practices. Most institutions that pursue race-conscious strategies already include a broad array of race-neutral approaches in their enrollment efforts. *Fisher's* significance perhaps is greatest in its stark reminder about the need to evaluate and understand fully the relationships among the full panoply of viable race-neutral and race-conscious policies and practices and how they can, in the right combination, optimally support mission-driven diversity goals.

Operationally, as well, race-neutral strategies are the focus of what is perhaps the most important passage in *Fisher*: “[S]trict scrutiny imposes on the university the ultimate burden of demonstrating, before turning to racial classifications, that available, workable race-neutral alternatives do not suffice.”²³ And, if a race-neutral approach “could promote the substantial interest about as well [as the race-conscious approach] and at tolerable administrative expense,” the institution may not use the race-conscious policy.²⁴ Unfortunately, the Court did not provide any greater definition of these key terms and phrases. Given that previous precedent provides little meaningful guidance, IHEs are left to assess the practical meaning of this language, and chart their own course.

Simply put, this quandary presents both a challenge and an opportunity for institutions to define these terms for themselves within their own unique context—a seemingly appropriate exercise given the centrality of institutional mission in the legal framework *and* the Court’s explicit recognition of the value of “a university’s experience and expertise . . . in adopting or rejecting certain admissions processes,” which courts can consider.²⁵ Practical perspectives that may help inform those institutional efforts include the following:

- “*Demonstrate.*” An institution does not necessarily have to try out a neutral strategy or conduct a full-fledged study to make a proper

showing for purposes of strict scrutiny, but it must have a sound basis for a decision not to pursue a particular neutral strategy that is anchored in evidence and informed by the institution's experience and expertise.²⁶ That foundation should be documented as part of the "periodic review and evaluation" effort associated with the Court's narrow tailoring rules. Notably, general social science research and studies of programs at other institutions may well factor into an institution's analysis, but the institution's decision to adopt or not to adopt a neutral strategy should be anchored in its own context.²⁷

- "*Available and workable.*" Not all strategies are appropriate for use at every institution, and any neutral strategy will need to be designed and implemented in light of an institution's unique mission and context. If the adoption of a neutral strategy would diminish the mission, conception of diversity, understanding or determination of merit, or other central component of its institutional identity—or if a strategy is simply out of reach (for example, a percent plan for a small private liberal arts school)—a college or university has no legal obligation to pursue it.²⁸
- "*About as well.*" Guided by its mission and related diversity goals, an institution should be able to articulate why its goals are or are not being met by its current policies and practices (both race-conscious and race-neutral). Within this context, the institution should be able to articulate the kinds of trade-offs associated with the replacement of a race-conscious strategy with one that is neutral and whether those trade-offs are acceptable to the institution so that it can continue to fulfill its mission and meet its diversity goals. Courts are not principally in the business of weighing the benefits and costs of such institution-specific judgments—or substituting an institution's well-founded judgment with their own—but they will look closely at the institution's justification and sources of information (including the processes pursued to arrive at its judgment) in the context of the legal admonitions described above. Institutions thus remain free to make these judgments for themselves, but should be prepared, in educational terms, to "show their work" in the event of a legal challenge.
- "*At tolerable administrative expense.*" Race-neutral strategies can require significant investments of time and resources to be designed and implemented effectively, and institutions appear not to be

required to absorb an undue added cost to adopt a neutral strategy. At the same time, an institution should not assume that cost savings alone can justify the ongoing use of a race-conscious policy. In sum, cost should be considered along with a wide range of other factors in an institution's analysis of whether a neutral strategy should be adopted.²⁹ Again, the institution should be prepared to show the reasoning behind its decision as it continues its periodic review of race-conscious policies and practices.

Silence on Critical Mass . . . With More to Come

Despite being a major issue in the case that was extensively briefed by the parties and amici, the concept of critical mass was completely bypassed by the Supreme Court's *Fisher* opinion, leaving Justice O'Connor's very brief discussion (and acceptance) of the concept in *Grutter* as the only Court pronouncement on this topic in a student enrollment context. Thus, critical mass remains a viable contextual benchmark of success under federal law—even as more robust, practice-oriented research and program evaluation should be pursued.³⁰

In that vein, the Fifth Circuit judges hearing the *Fisher* case on remand from the Supreme Court included important questions about critical mass in framing the issues for the next stage of litigation, including: (1) Is UT due any deference in its decision that critical mass has not been achieved? (2) Has the University achieved critical mass? If so, when? And, if not, when is it likely to be achieved?

In response, the parties articulated significantly different conceptions of the term.

Abigail Fisher's counsel conveyed a limited focus squarely on the quantitative nature of critical mass. For example:

UT's use of race is unconstitutional because UT will have failed to demonstrate "with clarity" that it is short of critical mass. Given the substantial number of minority students admitted through UT's pre-2004 race neutral admissions system, UT effectively achieved critical mass no later than 2003, the last year it employed its race neutral admissions plan, and certainly would have achieved critical mass without the use of racial preferences by 2007, the year before Ms. Fisher applied for admission.³¹

UT responded by emphasizing both the qualitative and quantitative nature of critical mass. Building on "several data points," UT asserted,

“As *Bakke*, *Grutter*, and *Fisher* recognize, the constitutional diversity objective is a more nuanced concept—and one that is inherently bound up with educational judgments as well. That interest simply does not lend itself to the kind of numerical precision or bright-line targets that *Fisher* has in mind.”³²

To be sure, while critical mass implicates important numbers-focused inquiries in any particular institutional context, a position that critical mass begins and ends with a head count is simply wrong. Again, return to *Grutter*. In that case, the critical mass that Justice O’Connor accepted, was (as a matter of court record) the law school’s objective of achieving a range of somewhere between 11 percent and 17 percent of underrepresented minority students (African-American, Hispanic, Native American at the Law School).³³ That range, without a hard and fast floor or ceiling, was inextricably linked to an evidence-based view about the educational benefits of diversity that would emanate from a critical mass of underrepresented minorities.³⁴ In short, critical mass, as approved in *Grutter*, reflected a contextualized blend—recognizing the inextricable link between the “substantial” and “real” educational goals associated with student diversity and the need for a sufficient presence of underrepresented minorities in a particular setting.³⁵

The Fifth Circuit’s treatment of the thorny question of what, precisely, critical mass can or should look like in light of *Grutter*’s holding (and with an eye on four dissenters including Justice Kennedy who voiced emphatic objections regarding the University of Michigan’s application of the theory) will likely have implications beyond the *Fisher* case itself related to key foundations of IHEs’ diversity policies (What is success? How do you know?) as well as a new generation of issues associated with changing demographics (including an increasingly diverse population of students).

The Work Ahead . . . on Diversity and More

Though not the game changer that many expected, *Fisher* nonetheless presents an important opportunity (and challenge) as colleges and universities reexamine their diversity policies and practices in light of efforts to gather supporting information and evidence, identify questions that need to be answered by practitioners and researchers, refine policies as appropriate, and build the processes and relationships necessary to maintain a continuous improvement cycle. Perfection is not the legal standard,

but institutions should be prepared to invest time and resources in the development of well-articulated and crafted policies—particularly race-conscious policies that, after all, must serve “compelling” goals. Stated differently, maintaining the status quo of the past decade (even for institutions with effective diversity policies) may not be enough to meet the economic, demographic, political, and legal demands in years to come.

The good news? While challenging, to be sure, the achievement of these goals—educationally and legally—is an attainable goal. (The University of Michigan prevailed in *Grutter*, after all.) As with other vital educational interests and objectives, the effort requires conviction, commitment, engagement, and resources, as well as a fair amount of “roll up your sleeves” effort. Thus, in the bigger picture, the pursuit of diversity goals is fundamentally no different than those that are correspondingly important in achieving other (often related) mission-driven goals. Moreover, using limited institutional resources effectively—including not taking significant legal risks for ineffective strategies—simply makes good sense.

Notably, the achievement of institution-specific diversity goals—essential not only for the fulfillment of institutional mission but also for the future economic, social, and civic future of our country—cannot be accomplished solely in a courtroom or by institutions acting alone. The higher education community at large must rally around key shared values and beliefs, and work to build broad-based public understanding and support of those efforts.

(Michigan illustrates that the court of public opinion, after all, is as important as a court of law. Its victory in *Grutter* proved pyrrhic, after a successful voter initiative in Michigan two years later led to a state law that forbade the consideration of race and ethnicity when conferring benefits at public institutions in the state.)

Moving forward, as institutions work to better articulate the mission-related goals, objectives against which success is gauged, and the logic and rationale of supporting enrollment strategies, there is yet more to do. Institutions should ensure that the complementary (but distinct) set of issues related to *access* in higher education are fully incorporated into a broader dialogue with all key stakeholders, and that they find their way into policies and programs that are strategically targeted toward this set of goals.

To achieve core access goals, institutions will need to measure success differently than they do for diversity goals. Not every student that an institution touches with an access policy will be admitted or choose to

enroll in that institution—but, as the pool of admissible students grows, it will lift up the higher education community (not to mention the country as a whole). This means that institutions should act collaboratively, particularly to build pathways in and through degree programs; to share best practices; and to strengthen relationships among themselves, as well as with K–12 systems, college counselors, and community-based organizations, among others.³⁶

Finally, we should not lose sight of fact that the ongoing dialogue surrounding twenty-first-century knowledge and skills is occurring at a pivotal moment in time, when colleges and universities focused on diversity goals are uniquely positioned to lead. Their efforts to admit a broadly diverse group of students and encourage interactions among them have been studied and repeatedly documented as leading to better critical thinking, enhanced understanding and acceptance of difference, breaking down stereotypes, effective leadership development, and other critical educational benefits.³⁷ Notably, these benefits are the underpinnings of much that surrounds the twenty-first-century knowledge and skills agenda, which can be effectively leveraged and aligned with diversity-related efforts as all key stakeholders work to achieve world class educational excellence associated with a robustly diverse higher education environment. The result? Engaged citizens, community leaders, and productive workers to carry out the promise of the twenty-first century.³⁸

5

New Rules for Affirmative Action in Higher Education

A Practical Guide to *Fisher v. University of Texas* for Colleges and Universities

SCOTT GREYTAK

In May 2005, the University of Texas at Austin (UT) hired Greg Vincent as the first-ever “vice provost for inclusion and cross-cultural effectiveness.”¹ His primary responsibilities were to attract students and faculty of color, and to make enrolled students of color feel more welcome.²

Vincent predicted that by 2015, the student body and faculty roster at UT would look “dramatically different.”³ And for a university plagued by headline-making acts of racial violence—from the dropping of bleach-filled water balloons on black and Asian students,⁴ to the egging and defacing of a Martin Luther King Jr. statue,⁵ to the “Affirmative Action Bake Sale” and proposed “Catch an Illegal Immigrant” game in 2013,⁶ among many others⁷—Vincent certainly had his work cut out for him. Unfortunately, it is my belief that Vincent’s efforts, along with the efforts of all other similarly situated vice provosts, vice presidents, committees on diversity, and admissions offices across the country,

have been made significantly more difficult by the July 2013 U.S. Supreme Court decision *Fisher v. University of Texas*.⁸

In July 2012, nearly one year before the Court decided *Fisher*, Philip T. K. Daniel and I endeavored to predict the outcome of the case in our article *Requiem for Affirmative Action in Higher Education*.⁹ As the title suggests, we anticipated that the Court might use *Fisher* to “clarify” the rules of affirmative action in higher education as established in the 2003 decision *Grutter v. Bollinger*, and then remand the case back to Texas and the U.S. Court of Appeals for the Fifth Circuit, which would then be asked to apply this “clarified” standard. Should the Supreme Court elect to do this, we wrote, it would be forced to choose between two sets of rules, or standards of review—one conservative,¹⁰ the other moderate,¹¹ but both known as “strict scrutiny”—because “the pronouncements of the strict scrutiny standard that exist across *Gratz*, *Grutter*, and [*PICS*],”—three formative Court decisions on affirmative action—are “seemingly incompatible.”¹² Thus the Court would be forced to choose, and choose it did. As anticipated, the incompatibility across *Gratz*, *Grutter*, and *PICS* was resolved by Justice Anthony Kennedy, who articulated a more nuanced, more detailed, and ultimately more conservative set of new rules for affirmative action. Ultimately, his new standard of review presents a far more consequential legal framework for colleges and universities, one through which opponents of affirmative action have acquired new legal mechanisms for challenging traditional, race-conscious affirmative action admissions plans on a court-by-court, state-by-state basis. As Judge Higginbotham, Senior Judge on the Fifth Circuit Court of Appeals, pointed out during *Fisher*’s rehearing on November 13th, 2013:

What is the unfairness of letting [UT] go forward under the [*Fisher*] standard? We obviously—the district court and this court—were seriously mistaken in not following the dissent in *Grutter*, by not having anticipated that it would become [the rule]. Going forward, in fairness perhaps, [UT] ought to be allowed to meet the standard [in *Fisher*]. One can say, “Well that’s always the standard.” Well, of course strict scrutiny was always the standard, *but it was strict scrutiny as stated by Justice O’Connor [and] to which Justice Kennedy dissented* [in *Grutter*.]

In response to *Fisher*, this chapter serves three purposes. First, it recognizes the considerable evolution of the Court’s affirmative action jurisprudence between *Grutter* and *Fisher*, and details *Fisher*’s new rules for

race-conscious admissions plans. Second, it offers practical, easy-to-apply guidance to colleges and universities seeking to comply with these rules. Finally, and most importantly, it informs those committed to social justice and substantive equality that we are on notice: *Fisher* represents a deliberate and measured step forward on the path to colorblindness. It is a blueprint for destabilizing race-conscious admissions plans. This is our warning, and we must react accordingly.

One final point: While *Fisher* introduces real, measurable setbacks for social justice and diversity advocates, it also offers an opportunity to transform our complacent, “check the box” affirmative action admissions plans into results-oriented, truly inclusive mechanisms of social mobility. By now it is clear that traditional affirmative action admissions plans, in operation, disproportionately benefit upper-middle-class and middle-class applicants of color. As a result, these programs are not only failing to help those most in need, but are handing those colleges and universities that would use it a brochure-ready pretext for the continuation of long-running, well-known, and irrefutably well-evidenced admissions plans that discriminate against low-income applicants.

At the same time, other chapters in this volume discuss an admissions system based on socioeconomic status (SES) known as “class-based affirmative action,” which, by design, does not include race as a factor in admissions. While such an admissions plan would most likely be immune to even the most exacting judicial review, and while I firmly believe that colleges and universities should supplement their existing admissions plans—race-conscious or not—with SES indicia in order to better identify, target, and recruit disadvantaged applicants, I do not support an admissions system that purges race from the admissions process in the name of political expediency. While “class-based affirmative action” is a praiseworthy contingency plan for a world where race-conscious affirmative action has been outlawed, I believe it exists today as an unfortunate byproduct of our lingering inability to comprehend America’s ongoing struggle with racism.

A Decade of Deference: From *Grutter* to *Fisher*

Picture the debate over race-conscious admissions plans as Watson and Crick’s famed double helix, a doctrinal wrapping of sorts, with competing ideological strands bound together in structural symmetry. The University of Texas’s admissions policies, so intractable from the jurisprudential

Timeline of Significant Cases Impacting Affirmative Action

Bakke v. Regents of the University of California (1978)

Adarand v. Peña (1995)

Hopwood v. Texas (5th Circuit) (1996)

Grutter v. Bollinger (6th Circuit) (2002)

Grutter v. Bollinger, Gratz v. Bollinger (2003)

Parents Involved in Community Schools v. Seattle School District No. 1 (2007)

code behind the debate over affirmative action, could probably account for no less than one full helix. Esteemed royalty, it would seem, in the house of perpetual controversy.

Involvement in precedent-setting Supreme Court decisions is nothing new for UT—the law school’s admissions policies were infamously deemed unconstitutional in perhaps the most significant desegregation case¹³ for civil rights advocates on the road to *Brown v. Board of Education*¹⁴—so it comes as little surprise to followers of Supreme Court jurisprudence that UT’s admissions policies are again tied up in the Supreme Court’s prevailing wisdom on affirmative action.

While UT holds the record, the Court’s initial brush with race-conscious admissions plans came in the form of *Regents of the University of California v. Bakke*,¹⁵ a 1978 case announcing that race could be considered in admissions plans so long as it was “necessary to promote a substantial state interest.”¹⁶ Some seventeen years later, the Court introduced a modern phrasing of this standard of review, known as “strict scrutiny,” which was to be applied to any state action involving racial classifications, including affirmative action.¹⁷ Strict scrutiny, requiring that any racial classifications be “narrowly tailored” to achieve a “compelling state interest,” presented a new challenge for affirmative action in general, and for diversity in particular, as opponents of affirmative action regularly asserted that diversity itself did not constitute a compelling state interest.

After conflicting decisions on diversity emerged between the Fifth Circuit Court of Appeals (in the form of *Hopwood v. Texas*, involving none other than UT) and the Sixth Circuit Court of Appeals (in the form of *Grutter v. Bollinger*), the Court elected to resolve the division by hearing *Grutter v. Bollinger* in 2003.

I coin two terms in discussing how the Court approaches its diversity cases. The first is *mission deference*, which refers to the amount of deference a court will give a college or university with regard to its initial choice to pursue diversity. In other words, if a college or university elects to make diversity a part of its mission or a specific goal, how much will a reviewing court pry into that decision, and how thorough of an explanation will the college or university be required to provide?

The second term I use is *admission deference*, which refers to the amount of deference a court will give a college or university's chosen means of effectuating its diversity goals. In other words, if a college or university crafts race-conscious admissions policies designed to foster a "critical mass of minority students," how much will a court pry into those policies, and how thorough of an explanation will the college or university be required to provide?

Affirming Diversity: Grutter v. Bollinger

Background: The *Grutter* case concerned Barbara Grutter, a white, female Michigan resident who applied to the University of Michigan Law School in 1996. The school, seeking to enroll a "critical mass" of students of color, employed a race-conscious admissions plan at the time she applied. Grutter was rejected, and claimed that the admissions plan discriminated against her on the basis of her race. In response, she sued the school for allegedly violating her right to equal protection of the laws under the Fourteenth Amendment.¹⁸

Decision: In a modern-day expression of *Bakke*'s central holding, the *Grutter* Court announced without qualification that diversity in higher education was a compelling state interest, and that strict scrutiny was the appropriate standard of review. Where *Bakke* had offered colleges and universities little direction in the area, the *Grutter* Court strived to flesh out the features of a legally sound, race-conscious admissions plan.

With regard to mission deference, the Court stated that "[t]he Law School's educational judgment that such diversity is essential to its education mission is one to which we defer," because:

- a. the Law School and its amici provided evidence that diversity would yield educational benefits;
- b. the Court would offer similar deference to other "complex educational judgments in an area that lies primarily within the expertise of the university"; and

- c. the Court had a “tradition of giving a degree of deference to a university’s academic decisions, within constitutionally prescribed limits.”

With regard to admission deference, the Court established that a college or university’s race-conscious admissions plan would be constitutional if it:

- a. provided individualized review of each applicant;
- b. did not amount to a quota;
- c. did not use race as a determinative factor in the admissions system;
- d. did not unduly harm members of any racial group;
- e. gave serious, good faith consideration of workable race-neutral alternatives to achieving student body diversity;
- f. was limited in time; and
- g. was reviewed periodically.

Strict scrutiny, Justice Sandra Day O’Connor wrote for the Court, “does not require exhaustion of every conceivable race-neutral alternative.” But it does require “serious, good faith consideration of workable race-neutral alternatives that will achieve the diversity the university seeks.”

Justice Kennedy’s Dissent: While accepting that diversity in higher education is a compelling state interest and that strict scrutiny is the appropriate standard of review, Justice Kennedy claimed that Justice O’Connor had watered down the “real and accepted meaning” of strict scrutiny in order to approve the law school’s policy, and therefore had not *really* applied strict scrutiny.¹⁹ In the shape of things to come in *Fisher*, Justice Kennedy made clear that he would prefer race-neutral alternatives to the law school’s race-conscious plan, and lamented how the Court had refused to employ true strict scrutiny, which would have pressured universities to “seriously explore race-neutral alternatives.”²⁰

Gratz v. Bollinger

Decided the same day as *Grutter*, *Gratz v. Bollinger* served to install additional constitutional guardrails on *Grutter*’s endorsement of race-conscious admissions plans. Unlike the law school’s plan in *Grutter*, the undergraduate admissions plan at issue in *Gratz* automatically allocated 20 points to applicants who claimed to be underrepresented or ethnic minorities. The *Gratz* Court ultimately found this formula to be unconstitutional, as it made “‘the factor of race . . . decisive’ for virtually every minimally qualified underrepresented minority applicant.”²¹ In practice, *Gratz* provided colleges and universities with a clear message: admissions plans that quantify race are essentially unconstitutional-on-arrival.

More Limits on Diversity: Parents Involved in Community Schools v. Seattle School District No. 1

Background: *Parents Involved in Community Schools*, or *PICS*, tested whether the diversity interest could prevail in the K–12 setting. Two public school districts—Seattle, Washington and Jefferson County, Kentucky—had voluntarily adopted race-conscious student assignment plans aimed at ensuring that the racial composition of the participating schools fell within particular ranges. Because the assignment plans relied on race in rare, tiebreaking situations, some students were denied their first-choice schools on the basis of race.

Decision: Authored by Justice Kennedy, the controlling opinion in *PICS* held that the plans failed strict scrutiny review because the schools had used a “mechanical formula” that relied on “crude measurements,” and because race-neutral means of achieving the schools’ goals had not been thoroughly explored before the districts resorted to racial classifications. In the shape of things to come in *Fisher*, Kennedy stated that in the K–12 setting, “individual racial classifications may be considered only if they are a last resort to achieve a compelling interest.” Those contending that “there is no other way,” he wrote, must “provide the necessary support for that proposition.”

Strict Scrutiny, Evolved: Fisher v. University of Texas

Background: The year after Justice Kennedy emphasized the role of race-neutral alternatives in *PICS*, Abigail Fisher, a white, female Texas resident, applied to the undergraduate program at UT. Had she graduated in the top 10 percent of her high school class, she would have received automatic admission to UT under a state law known as the Top 10 Percent plan. The Top 10 Percent plan was adopted by the Texas Legislature in 1997 in response to the Fifth Circuit’s decision in *Hopwood v. Texas*, which, in spite of *Bakke*’s green-lighting of race-conscious plans, prohibited the use of all race-based criteria in admissions decisions.²² Abigail Fisher did not qualify for Top 10 Percent plan admission, and also did not qualify for admission under UT’s regular, race-conscious admissions plan. Believing that the latter plan’s consideration of her race violated the Fourteenth Amendment, she brought suit against UT.

Decision: In an opinion by Justice Kennedy, the Court held that the Fifth Circuit had misapplied the strict scrutiny standard articulated in *Grutter*. The Court “clarified” the rules from *Grutter* and remanded the case back to the Fifth Circuit.

- With regard to mission deference, Kennedy instructed that a college or university's choice to pursue diversity is "an academic judgment to which some, but not complete, judicial deference is proper." This choice must be accompanied by a "reasoned [and] principled" explanation.
- With regard to admission deference, Kennedy held that "the University receives no deference" on the question of whether race-neutral alternatives might suffice. Instead, while restating that strict scrutiny "does not require exhaustion of every conceivable race-neutral alternative," it does require that colleges and universities "demonstrate, before turning to racial classifications, that available, workable race-neutral alternatives do not suffice."²³

Continuities and Changes between Grutter and Fisher

Philip T. K. Daniel and I suggested in July 2012 that if the *Fisher* Court chose to "clarify" the strict scrutiny standard from *Grutter*, "it could choose to adopt either Justice Kennedy's articulation of strict scrutiny" from *PICS*, that is, "individual racial classifications . . . may be considered only if they are a last resort to achieve a compelling interest," or it could retain Justice O'Connor's qualification in *Grutter*, that is, "[n]arrow tailoring does not require exhaustion of every conceivable race-neutral alternative[.]" But importantly, we concluded, "the pronunciations of the strict scrutiny standard that exist across *Gratz*, *Grutter*, and [*PICS*]," are "seemingly incompatible."²⁴

Though Justice Kennedy preserves plenty of language from the *Grutter* decision in *Fisher*, including Justice O'Connor's upper limit, "exhaustion" qualification, his resolution of the *Gratz-Grutter-PICS* inconsistency most closely resembles the "last resort" language he introduced in *PICS*. Table 5.1 provides a side-by-side comparison of the *Grutter* and *Fisher* decisions.

Altogether, Justice Kennedy's modifications have either tightened the *Grutter* vice, or established an entirely new standard of review. While Justice Kennedy's mission deference sounds like a restatement—and a toothless one—of an already ineffectual rule, the qualifications he appends to his admission deference standard are far more consequential, likely requiring more searching reviews from courts and more thoughtful explanations from colleges and universities. At a minimum, this new rule essentially tasks colleges and universities with *verifying the necessity* of their plans; and at a maximum, it could require them to demonstrate that their race-conscious admissions plans produce more, or more

Table 5.1. The *Grutter* and *Fisher* Decisions

	<i>Grutter</i>	<i>Fisher</i>
State Interest	Educational diversity is a compelling state interest.	Educational diversity is a compelling state interest.
Standard of Review	Strict scrutiny, which must not be “strict in theory, but fatal in fact.” ^a	Strict scrutiny, with the new admonition, “strict scrutiny must not be strict in theory but feeble in fact.” ^b
Mission Deference	“The Law School’s educational judgment that such diversity is essential to its educational mission is one to which we defer.”	<ul style="list-style-type: none"> • The choice to pursue diversity is “an academic judgment to which some, but not complete, judicial deference is proper.” • This choice must be accompanied by a “reasoned [and] principled explanation.”
Admission Deference	<ul style="list-style-type: none"> • Strict scrutiny requires that a university give “serious, good faith consideration of workable race-neutral alternatives that will achieve the diversity the university seeks.” • Strict scrutiny “does not require exhaustion of every conceivable race-neutral alternative.” • The law school was essentially taken at its word that no workable race-neutral alternatives existed. • Universities do not have to sacrifice selectivity or the individualized review process in order to successfully have met the race-neutral test. 	<ul style="list-style-type: none"> • Strict scrutiny requires that a university “demonstrate, before turning to racial classifications, that available, workable race-neutral alternatives do not suffice.” • Strict scrutiny “does not require exhaustion of every conceivable race-neutral alternative.” • “[T]he University receives no deference” when claiming that race-neutral strategies will not suffice. • No mention of whether universities have to sacrifice selectivity or the individualized review process in order to successfully meet the race-neutral test.^c

a. *Grutter*, 539 U.S. at 326 (quoting *Adarand*, 515 U.S. at 237).

b. *Fisher*, S. Ct. 133 at 2421.

c. In her dissent, Justice Ginsburg suggests that the new *Fisher* test articulated by Justice Kennedy does not mean that universities now have to pursue race-neutral plans even when they endanger selectivity or the individualized review process. The Department of Justice has agreed that colleges and universities do not have to adopt methods that compromise other, critical university values like academic standards. The majority opinion was silent on this issue.

cost-efficient, diversity than any available race-neutral plans that would require comparable administrative resources. Following this logic, race-conscious plans that produce only minimal impact²⁵ (a point raised by Justice Kennedy in *PICS*) could also be subject to fatal review. Yet regardless of how far this rule could reach in application, it no doubt raises the bar for those colleges and universities employing race-conscious plans.

Arthur Coleman’s analysis in “Understanding *Fisher v. the University of Texas*” similarly highlights the complications introduced by Kennedy’s focus on race-neutral alternatives. Yet he nevertheless concludes that the Court “did not upset the legal framework described in *Grutter*.”²⁶ This interpretation would come as a surprise to Judge Higginbotham from the Fifth Circuit, not to mention Justice Ruth Bader Ginsburg, who offers a similar riposte with her observation “[The majority opinion] stops short of reaching the conclusion [the *Grutter* framework] warrants.”²⁷ More concerning, though, is Coleman’s bottled pacification that all colleges and universities currently in compliance with *Grutter* remain “on safe ground in the wake of *Fisher*,”²⁸ an assurance that, at the least, fails to reflect the complexity of *Fisher*’s variable applicability across states. Such quieting counsel might also surprise those colleges and universities operating race-conscious admissions plans in states where race-neutral alternatives are garnering more and more attention, such as Colorado.²⁹ Overall, Coleman’s placated approach to *Fisher* serves to dilute the potency of interpretations that urge more precautionary and risk-averse responses to the decision.

A Practical Guide to Complying with *Fisher*

Unfortunately, the constitutionally sound admissions plans imagined, designed, or forecasted by the *Fisher* Court lack clear or easily reproducible legal architecture. In light of this, and being mindful of the fact that *Fisher* provides opponents of affirmative action with a new, potentially disruptive framework, my strongest piece of advice to colleges and universities using or anticipating the use of a race-conscious admissions plan is to either comprehensively reexamine, or completely reconstruct, your existing admissions plans. These efforts, though formidable, will fuel institutional confidence during subsequent admissions cycles.

When the time comes for executing a full review, keep in mind the following three “North Star” guidelines:

1. **Show your work throughout the entire process.** This includes maintaining a chronological, written record of your diversity goals, the benefits you believe diversity will offer, and the race-neutral alternatives that you considered.³⁰
2. **Incorporate evidence as available,** including demographic trends, your past experiences with previous goals, plans and alternatives, and anecdotal student and faculty experiences.

3. **Apply exacting, comparative analyses throughout**, drawing from internal and external resources. To this extent, consider engaging an outside contractor or a trusted advisor to lead or review your process. Experienced consultants should be able to provide objective, vetted expertise, along with guidance informed by best practices. On balance, they should be able to review all available, workable, race-neutral options to see if your college or university can achieve critical mass without resorting to race-conscious policies.

Reexamine Your Mission Goals

The mission goals of your college or university should be reexamined in light of *Fisher*'s new, albeit relatively toothless, rules on mission deference. Recall that under *Fisher*, a college or university's initial choice to pursue diversity must be accompanied by a "reasoned [and] principled" explanation.

One would be hard-pressed to find a college or university mission devoid of reason and principle. Instead, consider how you could seamlessly integrate your diversity goals—discussed below—into your broader mission. In order to make space for this integration, consider disassembling your mission into its component parts, rearticulating those parts with your diversity goals in mind, and then combining those parts again to form a more fluid and thematically congruent directional structure.

If Diversity is among Your Mission Goals, Reexamine All Critical Mass Goals

At *Fisher*'s rehearing before the Fifth Circuit Court of Appeals, the leadoff question from the bench concerned whether the parties would still be in front of the court in the absence of Texas's Top 10 Percent plan. In other words, could *Fisher* also test universities' straightforward application of the *Grutter* standard, regardless of any existing, race-neutral plans like the Top 10 Percent plan?³¹ "[W]e might well be here today," the attorney for Abigail Fisher responded, "if [the university] were unable to establish a critical mass goal and demonstrate how the tools they were using were fit to that goal." Thus even those race-conscious admissions plans faithful to *Grutter*—or as Justice Ginsburg wrote in *Fisher*, "trained on the Court's . . . *Grutter* pathmarker"—might nevertheless now be legally insufficient.³²

Establishing a diversity goal—almost always *critical mass*—and approaches to measuring this diversity goal—known as *indicia of critical*

mass—is thus essential. If the logic behind critical mass seems circular or confusing, it should. This dual goal/measurement tool is one unfortunate consequence of the 1978 *Bakke* decision, which commenced the rolling of the Court’s anti-quantification snowball.³³ Twenty-five years later, the *Gratz* decision provided the death blow that essentially outlawed all admissions plans that attempted to quantify race. In the wake of these obstacles, proponents of affirmative action have pivoted from hard numbers to qualitative, social sciences concepts, which are often based on feedback from students and faculty.

Some indicia that a college or university has achieved critical mass that have been approved by the Court in *Grutter* and that were stressed in *Fisher* include:

- a racial climate in which all students benefit from the lively exchange of different viewpoints and perspectives including from different racial perspectives,
- a racial climate in which all students are prepared for inclusive civic engagement and leadership,
- beneficial learning outcomes due to a decrease in racial anxiety,
- the elimination of stereotypes,
- the reduction of racial isolation, and
- a racial climate in which minorities do not feel like spokespersons for their race.³⁴

In addition, most legal experts, *amicus curiae*, participants in *Fisher*’s oral arguments, and affirmative action realists accept that other logical—perhaps inevitable—guidelines include:

- the college or university’s history of discrimination,³⁵
- the college or university’s previous levels of diversity, and
- the racial composition of the state in which the college or university operates (though the Supreme Court has never explicitly invoked statewide demographics as a guideline for critical mass).

It remains unclear whether critical mass demands not just overall student body diversity, but also diversity in individual classrooms (known as diversity-within-diversity), and whether *all* racial or ethnic groups must be well-represented.

Keep in mind that the burden is always on the college or university to define and defend its critical mass goals, its critical mass indicia, and its means of achieving these indicia. And whereas *Grutter* was more

deferential to a college or university's conception of critical mass, *Fisher* clearly states that colleges and universities will receive zero deference with regard their critical mass goals, indicia, or methods of attainment. (In *Fisher*, there was nothing in the record reflecting whether UT's critical mass goals or indicia had been achieved since the implementation of its race-conscious plan, an approach Judge Garza disparagingly described as "know[ing] it when you see it.") In light of this, opponents of affirmative action may now strive to show that available, workable race-neutral plans are able to achieve a college or university's critical mass goal at tolerable administrative expense. But what is "workable," and what is "tolerable administrative expense"?

Explore All Available, Workable Plans for Achieving Critical Mass at Tolerable Administrative Expense

By grafting his opinion from *PICS* onto the higher education landscape through *Fisher*, Justice Kennedy seems interested in pressuring colleges and universities to revisit their race-conscious admissions plans and to experiment with race-neutral plans as well. Thus, while the term "workable" no doubt measures the effectiveness of the alternative in producing the college or university's critical mass, it surely cannot require that the alternative be *as efficient* as the use of race. Simply put, if a college or university's goal is to enroll a certain proportion of black or Latino students, there is simply no more efficient way to achieve this goal than to use race-conscious admissions. A strict efficiency standard, therefore, would render all race-neutral strategies unworkable.

Indeed, Justice Kennedy specifically endorsed a number of less efficient means of producing racial diversity at the K–12 level in *PICS* (including drawing school attendance zones with a general recognition of neighborhood demographics, strategically selecting new school sites, recruiting students and faculty in a targeted fashion, and tracking enrollments, performance, and other statistics by race). But, as Thomas Kane and James Ryan of Harvard have asked, is a race-neutral strategy "workable" in creating "sufficient" diversity if it produces, say, 60 percent as many minority students as race-conscious policies do? What about 90 percent?

And finally, at what price in academic selectivity does a race-neutral alternative become "unworkable"? Would a 50-point decline in median SAT scores be a reasonable price, whereas a 200-point decline would be unworkable? We await further clarification on these issues.

Finally, race-neutral alternatives, unlike race-conscious plans, are allowed to represent effectiveness with hard numbers, and this competitive advantage is the driving force behind Justice Kennedy's strongest emphasis on reevaluation and experimentation: the phrase *at tolerable administrative expense*. At a minimum, this language compels colleges and universities to measure the cost-effectiveness of both their existing race-conscious plans and any available, workable race-neutral plans, where "available"—a term absent in *Grutter*³⁶—means existing race-neutral plans. The ability of a college or university to tolerate the expenses of race-neutral alternatives thus creates space for and incentivizes experimentation; "tolerable" most likely means that the alternative could be *somewhat* more expensive to administer than existing race-conscious plans, yet still must be pursued under *Fisher*'s mandate.

What Does "The Burden Of Demonstrating" Mean?

The most defensible race-conscious admissions plans will be those prepared in the shadow of *Fisher*'s elevated burden of proof: that colleges and universities employing race-conscious plans *demonstrate*, by "offer[ing] sufficient evidence,"³⁷ that they gave good faith, serious consideration of all available, workable race-neutral plans that achieve sufficient diversity at tolerable administrative expense. While the ceiling for judicial satisfaction comes in the form of Justice Kennedy's affirmation that "narrow tailoring does not require exhaustion of every conceivable race-neutral alternative,"³⁸ it can no longer be assumed that *Grutter*—in which the law school offered zero evidence that it seriously considered race-neutral alternatives—provides a corresponding floor.

Instead, colleges and universities now need to go above and beyond the *Grutter* protocol. While *Fisher* permits a reviewing court to "take account of a university's experience and expertise in adopting or rejecting certain admissions processes,"³⁹ "[s]imple . . . assurances of good intention"⁴⁰ are insufficient. Thus, in light of *Fisher*'s new edict to "demonstrate," and considering that potential plaintiffs no doubt will demand materials evidencing fidelity to this edict in the course of discovery, colleges and universities now need to be able to *show something on paper*. This anticipatory necessity has received near-universal endorsement, including by the Department of Justice.⁴¹

Finally, I have put together a range of strategies available to colleges and universities in response to this new obligation to demonstrate. Yet importantly, an airtight strategy (short of exhausting every conceivable

race-neutral alternative) remains elusive: UT claimed that it experimented with race-neutral alternatives for seven years, and even incorporated SES factors into their admissions calculations.⁴² UT also devoted a year to reviewing these policies before adopting its race-conscious plan.⁴³ Nevertheless, at *Fisher's* rehearing, the attorney for Abigail Fisher insisted on more. "Where's the study?" he asked.

Regardless, one possible scale of preventative measures, from least burdensome to most burdensome, is as follows.

1. University presents no evidence concerning the efficacy of race-neutral alternatives (*Grutter*).
2. University relies on or conducts a study, or refers to the experience of a similarly situated university:
 - a) University relies on *existing* study concerning the efficacy of race-neutral alternatives *at similar colleges and universities*.
 - b) University relies on *existing* study concerning the efficacy of race-neutral alternatives *at university*.
 - c) University refers to the experience of a similarly situated university's *simulation* of admissions cycle using race-neutral alternatives.
 - d) University refers to the experience of a similarly situated university's *implementation* of race-neutral alternatives for admissions cycle.
 - e) University contributes to/relies on *new* study concerning the efficacy of race-neutral alternatives *at similar colleges and universities*.
 - f) University conducts *new* study concerning the efficacy of race-neutral alternatives *at university (Fisher)*.⁴⁴
3. University runs a simulation of admissions cycle using race-neutral alternatives.
4. University implements race-neutral alternatives for admissions cycle.
5. University exhausts every conceivable race-neutral alternative (not required under *Grutter* or *Fisher*).

Conclusion

Though *Fisher's* full impact remains to be seen, it has introduced a novel, and potentially viable, means of dismantling race-conscious admissions

policies through its quiet reformation of the *Grutter* standard. Colleges and universities, cognizant of this evolved landscape, should respond in kind by reexamining—or reconstructing—their missions, their diversity goals, and their approaches to actualizing these ambitions. For while many in higher education believe that pursuing racial and ethnic diversity is a beneficial and just endeavor, they nevertheless serve their communities best when they make preparations for the worst.

PART



State Experiences with Race-Neutral Strategies

6

Transitioning to Race-Neutral Admissions

An Overview of Experiences in States
Where Affirmative Action Has Been Banned

HALLEY POTTER

The U.S. Supreme Court's recent decision in *Fisher v. University of Texas* narrowed universities' options for considering race and ethnicity in admissions. For university leaders and admissions officers who have relied on the consideration of race or ethnicity as the primary tool for creating a diverse student body, the winnowing of race-conscious strategies may seem a frightening prospect that threatens to unravel the tapestries of diverse enrollment that they have been able to weave over the years.

However, a number of states have already banned race- and ethnicity-based affirmative action or ended the practice at leading public universities. Eight states (California, Washington, Florida, Michigan, Nebraska, Arizona, New Hampshire, and Oklahoma) currently ban the consideration of race or ethnicity in admissions at all public institutions, and two others (Georgia and Texas) have restrictions on the practice at leading public universities.

Together, the eight states with complete bans educate 29 percent of all high school students in the United

States.¹ A good portion of the country is already faced with a reality in which the consideration of race or ethnicity is not an option in college admissions. The universities in these states provide the rest of the nation with a glimpse of the challenges posed by this limitation as well as strategies that can be used to overcome them.

In a 2012 report for The Century Foundation, my colleague Richard Kahlenberg and I examined practices and outcomes at the public flagship universities in states where affirmative action has been curtailed.² This chapter draws from that research, expanding it to include the most recent state to ban affirmative action, Oklahoma. This analysis provides an overview of the different methods that institutions have used to encourage racial, ethnic, and socioeconomic diversity under race-neutral admissions and reviews changes in student body demographics since the bans. (See Table 6.1 for a summary of state bans, diversity policies, and demographic outcomes.) The chapters that follow provide a more detailed look at experiences in select states.

Universities in the ten states where affirmative action has been limited have taken a variety of approaches to building diversity without the explicit consideration of race or ethnicity in admissions. In transitioning to race-neutral admissions, states and institutions created plans to encourage geographic diversity or give a leg up to socioeconomically disadvantaged students. Many bolstered financial aid policies, creating programs that could attract disadvantaged students from underrepresented demographics with the promise of financial support once enrolled. Universities also increased efforts to recruit and support low-income, minority, and first-generation students while building partnerships with K–12 schools to increase the pool of college-ready applicants down the line.

A majority of the flagship universities in these states have been able to regain previous levels of enrollment of underrepresented minorities—defined in this chapter as black and Hispanic students—under race-neutral admissions. These institutions still have a long way to go in terms of enrolling student bodies that reflect the full racial, ethnic, socioeconomic, and geographic diversity of the population in their state. However, they demonstrate that it is possible to compensate for the loss of race- or ethnicity-based affirmative action with a diversity strategy that considers a variety of demographic and geographic factors. Furthermore, the multifaceted plans universities adopted may have the added benefit of increasing the variety of socioeconomic backgrounds and geographic regions represented on campus in addition to helping foster racial and ethnic diversity.

TABLE 6.1. States in Which Affirmative Action Has Been Banned

State Year Method of Ban	Diversity Policies under the Ban	Has percentage of minority undergrads at flagship under the ban met or exceeded pre-ban percentage?	
		Black	Hispanic
Public Flagship University Texas 1996 Lower court order (Reversed in 2003 by U.S. Supreme Court ruling in <i>Grutter v. Bollinger</i>) UT Austin & Texas A&M	Admissions <ul style="list-style-type: none"> • Top 10 Percent Plan • Socioeconomic factors added • Legacy preferences dropped at Texas A&M Financial Aid <ul style="list-style-type: none"> • Two statewide programs created by legislature: TEXAS Grant and the Top 10 Percent Scholarship Program • Two programs at UT Austin: the Presidential Achievement Scholarship and the Longhorn Opportunity Scholarship Recruitment, Outreach, and Support <ul style="list-style-type: none"> • Regional admissions centers • Recruitment weekends targeting underrepresented regions and high schools • K–12 partnerships for college prep and dual credit 	UT Austin Yes	Yes
California 1996 Voter referendum UC-Berkeley & UCLA	Admissions <ul style="list-style-type: none"> • Percent plans based on class rank statewide and within each high school • “Comprehensive Review” process at each campus including socioeconomic factors • Legacy preferences dropped across UC system Financial Aid <ul style="list-style-type: none"> • UC grant program: Blue and Gold Opportunity Plan Recruitment, Outreach, and Support <ul style="list-style-type: none"> • Commitment to increase community college transfers 	UC-Berkeley No	No UCLA Yes
Washington 1998 Voter referendum University of Washington-Seattle	Admissions <ul style="list-style-type: none"> • Holistic review considering socioeconomic factors Financial Aid <ul style="list-style-type: none"> • Privately funded scholarships for targeted minorities Recruitment, Outreach, and Support <ul style="list-style-type: none"> • Increased recruitment targeting minority applicants • K–12 Partnerships with Native American tribes and students in foster care • Educational Opportunity Program to support enrolled underrepresented minorities, economically disadvantaged students, and first-generation college students 	Yes	Yes

(continued)

TABLE 6.1. States in Which Affirmative Action Has Been Banned (*continued*)

State Year Method of Ban Public Flagship University	Diversity Policies under the Ban	Has percentage of minority undergrads at flagship under the ban met or exceeded pre-ban percentage?	
		Black	Hispanic
Florida 1999 Executive order University of Florida	Admissions <ul style="list-style-type: none"> Talented 20 (percent plan) Profile Assessment provided alternate admissions path that considers socioeconomic factors Financial Aid <ul style="list-style-type: none"> Florida Student Assistance Grant (state-wide program) Florida Opportunity Scholar Fund at University of Florida Recruitment, Outreach, and Support <ul style="list-style-type: none"> Increased recruitment and support programs targeting minorities Center for Academic Retention and Enhancement at Florida State University providing outreach and support for low-income and first-generation students 	Yes	Yes
Georgia 2000 Lower court order University of Georgia	Admissions <ul style="list-style-type: none"> Broader admissions criteria considering some socioeconomic factors Legacy preferences ended at University of Georgia Financial Aid <ul style="list-style-type: none"> One UGA Scholarship targeting students who provide diversity (defined broadly) Recruitment, Outreach, and Support <ul style="list-style-type: none"> Office of Institutional Diversity created to help recruit students from historically underrepresented populations 	Yes	Yes
Michigan 2006 Voter referendum University of Michigan-Ann Arbor	Admissions <ul style="list-style-type: none"> New socioeconomic factors added to admissions process Financial Aid <ul style="list-style-type: none"> Continued reliance on M-PACT institutional financial aid program Community college transfer scholarships created Scholarship criteria shifted to rely on geography as a proxy for demographics Recruitment, Outreach, and Support <ul style="list-style-type: none"> Center for Educational Outreach created to coordinate K–12 partnerships Additional recruitment and support for community college transfer students 	No	No

State	Year	Method of Ban	Public Flagship University	Diversity Policies under the Ban	Has percentage of minority undergrads at flagship under the ban met or exceeded pre-ban percentage?		
						Black	Hispanic
Nebraska	2008	Voter referendum	University of Nebraska-Lincoln	<p><i>Note:</i> The University of Nebraska-Lincoln voluntarily stopped considering race/ethnicity in admissions back in 2005, before the ban.</p> <p>Financial Aid</p> <ul style="list-style-type: none"> Expanded Collegebound Nebraska, a university system-wide financial aid program <p>Recruitment, Outreach, and Support</p> <ul style="list-style-type: none"> Expanded K–12 partnerships 	Yes	Yes	
Arizona	2010	Voter referendum	University of Arizona	<p>Admissions</p> <ul style="list-style-type: none"> Additional socioeconomic factors considered in some graduate school admissions <p>Financial Aid</p> <ul style="list-style-type: none"> Graduate school scholarship selection criteria shifted to socioeconomic factors Increased reliance on Arizona Assurance Scholars Program at the University of Arizona <p>Recruitment, Outreach, and Support</p> <ul style="list-style-type: none"> Continuation of New Start Summer Program to help transition incoming freshmen 	Yes	Yes	
New Hampshire	2011	Legislation	University of New Hampshire	<p><i>Note:</i> Officials at the University of New Hampshire stated that race/ethnicity was already not a consideration in university admissions prior to the ban.^a However, according to the university’s institutional reporting, racial/ethnic status was a consideration in undergraduate admissions as of 2012–2013, the most recent data available.^b</p> <p><i>No evidence of new diversity policies under the ban on affirmative action</i></p>	No	Yes	
Oklahoma	2012	Voter referendum	University of Oklahoma Norman Campus	<p><i>Note:</i> According to the University of Oklahoma, race/ethnicity was already not a consideration in admissions or in state-funded scholarships prior to the ban.^c</p> <p>Admissions</p> <ul style="list-style-type: none"> Holistic admissions process implemented, to go into effect fully in fall 2016^d 	Data not yet available		

(continued)

TABLE 6.1. States in Which Affirmative Action Has Been Banned (*continued*)

Source: Richard D. Kahlenberg and Halley Potter, *A Better Affirmative Action: State Universities that Created Alternatives to Racial Preferences* (New York: The Century Foundation, 2012), <http://tcf.org/assets/downloads/tcf-abaa.pdf>.

With the exception of statistics on two universities, data on minority representation are from the U.S. Department of Education, National Center for Education Statistics, Integrated Postsecondary Education Data System (IPEDS), <http://nces.ed.gov/ipeds/datacenter/>.

Demographic enrollment data on the University of Arizona is from "Students by Ethnicity and Gender 2010–11," *The University of Arizona Fact Book 2010–11*, <http://factbook.arizona.edu/2010-11/students/demographics>, and "Students by Ethnicity and Gender 2011–12," *The University of Arizona Fact Book 2011–12*, <http://factbook.arizona.edu/2011-12/students/demogra01phics>.

Demographic enrollment data on the University of New Hampshire is from "Enrollment Summary of Degree & Non-degree Minority Students, University of New Hampshire," The University of New Hampshire, 2013, http://www.unh.edu/institutional-research/sites/unh.edu.institutional-research/files/1990-2013%20minority%20counts_0.pdf

a. Peter Schmidt, "New Hampshire Ends Affirmative-Action Preferences at Colleges," *Chronicle of Higher Education*, January 4, 2012, <http://chronicle.com/article/New-Hampshire-Ends/130196/>.

b. University of New Hampshire, Common Data Set 2011–2012, <http://unh.edu/institutional-research/sites/unh.edu.institutional-research/files/CDS%202011-2012.pdf>.

c. Silas Allen, "Oklahoma Colleges, Universities Prepare for Changes Following Affirmative Action Ban," *NewsOK*, November 7, 2012, <http://newsok.com/oklahoma-colleges-universities-prepare-for-changes-following-affirmative-action-ban/article/3726480>.

d. *Policy and Procedures Manual*, Oklahoma State Regents for Higher Education, <http://www.okhighered.org/state-system/policy-procedures/>.

State Bans on Affirmative Action

States have banned the consideration of race or ethnicity in university admissions through a variety of means, with action stemming from judicial, legislative, and executive powers as well as directly from voters.

Lower Court Decisions

Two states (Texas and Georgia) faced decisions from lower courts that ended the consideration of race at one or more universities in the state. Texas was the first state with a ban on affirmative action. In 1996, the Fifth Circuit Court of Appeals ruled in *Hopwood v. Texas* that the state's colleges and universities could not use race- or ethnicity-based admission policies.³ However, in 2003, in response to the U.S. Supreme Court's ruling in *Grutter v. Bollinger*, the University of Texas system reopened the possibility of using racial or ethnic preferences in admissions.⁴ The University of Texas at Austin (UT Austin), the flagship of the University of Texas system, began considering race again in 2005; however, Texas A&M University, the state's other flagship, retained the race-neutral admissions system it had adopted after *Hopwood*.⁵

In Georgia, a lower court decision resulted in an end to the consideration of race in 2000; however, unlike in the other states, the decision

applied only to one university, and the decision to drop the consideration of race completely was a voluntary act by the University of Georgia. A U.S. District Judge ruled in 2000 that the University of Georgia (UGA), Georgia's flagship public university, could not continue its current consideration of race/ethnicity in admissions.⁶ The University appealed the decision, but in 2001, the Court of Appeals for the Eleventh Circuit found in *Johnson v. Board of Regents of the University of Georgia* that UGA's particular admissions policy was unconstitutional because the use of race was not narrowly tailored.⁷ Fearing continued legal battles, UGA opted to drop affirmative action completely in 2000.⁸

Voter Referenda

Six states banned affirmative action as the result of voter referenda. California was first, with voters enacting Proposition 209 in November 1996. The new amendment to the state's constitution held that "The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting."⁹ After California, five more states passed similar referenda amending their constitutions. Washington followed suit in 1998, Michigan in 2006, Nebraska in 2008, Arizona in 2010, and Oklahoma in 2012.

Executive Orders

In Florida, an executive order banned affirmative action, in part as an effort to preempt a voter referendum on the issue. In November 1999, Governor Jeb Bush announced the "One Florida Initiative," ending the use of race, ethnicity or gender in the state's employment, contracting, and higher education admission decisions. The higher education portion of the ban affected only admissions in the State University System (SUS), and the consideration of race and ethnicity was still permitted in scholarships, outreach, and targeted programs at SUS schools.¹⁰

Legislation

In 2011, New Hampshire's state legislature passed House Bill 623, prohibiting "preferences in recruiting, hiring, promotion, or admission by state agencies, the university system, the community college system, and the postsecondary education commission" on the basis of "race, sex, national origin, religion, or sexual orientation."¹¹

Diversity Policies under the Bans

Most of the public flagship universities in states affected by affirmative action bans pursued new ways to encourage diverse enrollment at their institutions. No longer able to consider race in admissions, many began considering socioeconomic factors. Some universities increased financial aid programs, thereby encouraging low-income students to apply and making it possible for them to attend. Universities also increased recruitment of under-represented populations, outreach to under-resourced schools, and support for at-risk and minority students once enrolled.

Admissions

States and universities adopted a variety of new race-neutral admissions policies to help encourage diversity. Some capitalized on segregation in K–12 schools to use geographic diversity as a proxy for racial, ethnic, and socioeconomic diversity. Others addressed socioeconomic factors directly, giving a leg up to disadvantaged applicants and removing legacy preferences, which indirectly hurt admissions chances for low-income and minority applicants.

Percent Plans. Texas, California, and Florida adopted statewide “Percent Plans” that guarantee admission to state universities for top graduates from each high school in the state. At their most basic level, these plans encourage geographic diversity, drawing students from high schools that may never before have sent students to the state’s leading universities. However, because of high levels of socioeconomic and racial/ethnic segregation in K–12 schools, the plans also have the effect of opening the door to many low-income and minority students who may not have been competitive applicants before—or who may simply not have applied because they assumed they would not get in. The focus on high school GPA rather than SAT/ACT scores may also improve the chances of minority applicants.¹²

Thanks to its prominence in recent Supreme Court arguments, Texas’s Top 10 Percent plan is probably the best known of these plans, admitting students in the top 10 percent of their graduating high school class to the Texas public university of their choice.¹³ Plans in California and Florida also offer admission to a top slice of students from each high school class—the top 9 percent in California and the top 20 percent in Florida. However, these two states do not guarantee that students will

be admitted to the campus of their choice, only that at least one campus will offer them a spot.

In Florida, for example, Governor Jeb Bush created the “Talented 20” program at the same time that he issued the executive order banning the consideration of race and ethnicity in admissions as an explicit strategy to help ensure diverse admissions.¹⁴ Under Talented 20, graduates of Florida public high schools who complete required classes, rank in the top 20 percent of the graduating class at their high school, and submit an ACT or SAT score (the score itself is not considered, but it must be submitted) are guaranteed admission to the State University System, though not necessarily to their school of choice.¹⁵

Adding Socioeconomic Factors. Many of the universities affected by affirmative action bans added or increased emphasis on socioeconomic factors in admissions. Institutions sometimes used these factors—such as family income, wealth, single parent status, neighborhood demographics, high school performance, and parent education level—as proxies for race or ethnicity. However, they also expanded their definitions of diversity and merit to consider diversity of life experiences and the merit of overcoming obstacles.

In Florida, for example, socioeconomic factors were introduced to replace a race-based affirmative action program. Bush’s One Florida Initiative ended the state university system’s alternative admissions program, which was originally adopted to increase the number of black students by considering special circumstances, including racial background, to admit students who did not meet the regular admissions criteria.¹⁶ Under the replacement program, Profile Assessment, a maximum of 10 percent of the incoming class across the state university system may be admitted under an alternative set of criteria that considers socioeconomic factors such as parental education and high school performance, in addition to grades and test scores.¹⁷

In Oklahoma, socioeconomic factors were introduced in admissions considerations for all applicants and represented a system-wide shift in attitudes about diversity and merit. According to the University of Oklahoma, race and ethnicity were already not considerations in admissions or in state-funded scholarships prior to the ban.¹⁸ However, faced with an upcoming vote on affirmative action, the University of Oklahoma adopted a new “holistic” system for undergraduate admissions in spring 2012, to go into full effect in 2016.¹⁹ Previously, the university admitted

undergraduates using an automatic calculation based on ACT, GPA, and class rank.²⁰ Under the new holistic admissions, students will be required to submit an essay and recommendation, and one of the criteria used to evaluate applications will be “recognition of benefits of a culturally and intellectually diverse academic community.”²¹

Dropping Legacy Preferences. Several universities also dropped legacy preferences for children of alumni in response to the loss of race-based affirmative action. Because children of alumni are less likely to be low-income or members of racial/ethnic minorities, these programs indirectly hurt the admissions chances of some disadvantaged applicants while overwhelmingly privileging white, wealthy students.²² In California, the Board of Regents voted to eliminate the practice across the university system back in 1996 in response to Proposition 209, the voter initiative that banned race-based affirmative action.²³ In the early 2000s, the University of Georgia also chose to end legacy preferences in response to the loss of affirmative action, based on the recommendations of a faculty committee.²⁴ At Texas A&M University, president Robert M. Gates ended legacy preferences in 2003 in response to public outcry; Texans charged the university with hypocrisy for allowing one factor of ancestry (alumni relation) that favors privileged students to be considered while simultaneously opting not to consider other ancestral factors (race and ethnicity) that might be associated with disadvantage.²⁵

Financial Aid

In addition to changing admissions plans, public universities also reassessed financial aid programs as tools for encouraging campus diversity. Adequate financial aid is a crucial ingredient in supporting low-income students once enrolled, and comparing aid packages can be an important factor in students’ decisions where to enroll. Furthermore, clearly communicated financial aid promises can encourage low-income students to apply by giving them a reasonable expectation of their cost of attendance, and targeted scholarships can help recruit individual low-income and minority students to campus.

Clear Financial Aid Promises. Six of the twelve leading public universities examined for this research created or expanded financial aid programs that provide significant support to low-income students based on clearly communicated criteria. From a recruitment perspective, these

programs served as a promise to low-income students that helped encourage them to apply.

In Nebraska, for example, during the same year that voters banned affirmative action, the Board of Regents of Nebraska implemented a newly expanded financial aid program, Collegebound Nebraska, to be offered at all four University of Nebraska campuses.²⁶ Collegebound Nebraska offers free tuition for all Nebraska residents who are Pell Grant recipients (as well as some from families just outside Pell eligibility) and maintain a full-time course schedule with a minimum GPA of 2.5.²⁷

The University of California has a similar program, the Blue and Gold Opportunity Plan, which was created by the Board of Regents in 2009.²⁸ For the 2011–12 academic year, the program fully covered system-wide tuition and fees for students from families with incomes below \$80,000.²⁹ No separate application is required for the program—students simply fill out the FAFSA and the University of California’s standard financial aid application.

Other universities offer programs that fall short of meeting the full financial need of all eligible applicants but still help increase access for a number of low-income students. For example, the University of Florida runs the Florida Opportunity Scholar Fund, started in 2006, offering full scholarships to first-generation freshmen from low-income families, allowing students to graduate without loans.³⁰ And since 2005, the University of Michigan has offered M-PACT, a financial aid program that provides need-based grants to low-income Michigan residents, helping to reduce loans for more than 2,900 undergraduates in its first year.³¹

Targeted Scholarships. In addition to broad financial aid programs, universities also introduced scholarships to target specific underrepresented populations. In some states, universities worked around bans on awarding public aid based on race/ethnicity by setting up private scholarship funds to support minority students. The University of Washington started a privately funded Diversity Scholars program in 2001, and within the first two years, the program raised over \$7 million to provide scholarships for 200 students who met the criteria of being underrepresented minorities with exemplary academic records and demonstrated financial need.³²

The University of Michigan, on the other hand, chose to rework scholarships that had previously considered race and ethnicity by adding geography as a factor. Starting with the 2007–08 admissions cycle, the

university began using a special tool that looks at data for a student's neighborhood and high school to determine scholarship eligibility.³³ The tool, Descriptor PLUS, identifies "academic, socioeconomic and student-interest characteristics according to geodemography, a system based on the concept that people with similar backgrounds and perspectives cluster in communities."³⁴

The University of Michigan also created a scholarship specifically targeted at community college transfer students, who are more likely to be low-income and members of underrepresented minority groups than applicants who are first-time college students.³⁵

Recruitment, Outreach, and Support

In addition to changing admissions and financial aid policies, universities affected by bans on affirmative action implemented aggressive recruitment plans to target underrepresented students. They partnered with K–12 schools to help increase the pool of qualified applicants, and they created programs to ensure that at-risk students are supported to be successful once enrolled.

Recruiting Disadvantaged and Underrepresented Students. Where allowed, some state universities increased recruitment of underrepresented minority students. The executive order that banned affirmative action in Florida, for example, allowed for the continued consideration of race and ethnicity in recruitment. The University of Florida increased its racially conscious outreach, recruitment, and support programs in order to compensate for the loss of racial or ethnic considerations in admissions.³⁶ Their admissions office runs a number of programs for minority high school and community college students, including student recruitment conferences for African-American students and Hispanic-Latino students.³⁷

Other universities targeted recruitment efforts designed to increase diversity of the student body using race-neutral criteria. UT Austin created a number of programs to recruit students from underrepresented regions and high schools. The university has seven regional admissions centers throughout the state of Texas, allowing UT representatives to attend college fairs, visit high schools, and provide information sessions for high school students in their area.³⁸ The admissions office also holds weekend recruitment events to target underrepresented populations, such as "Longhorn Game Weekends," which focus on specific geographic

regions, and “Longhorn for a Day,” which reaches out to students from underrepresented high schools.³⁹

A couple of universities also emphasized increasing community college transfer as a way to enroll underrepresented populations. In 1997, in the wake of the state’s affirmative action ban, the University of California (UC) signed a memorandum of understanding with the State of California pledging to increase community college transfer enrollment at UC campuses by a third, and in 1999 UC increased the commitment to a 50 percent increase.⁴⁰ By 2008–09, 26.3 percent of new students enrolling in the UC system were transfers from California community colleges.⁴¹

Likewise, the University of Michigan (UM) used funding from the Jack Kent Cooke Foundation to expand programs and services for transfer students and funded a study to better understand the characteristics of community college transfer students targeted by UM.⁴² The university increased recruitment, pre-admission support, application help, and post-admission support for community college transfer students.⁴³

Building the K–12 Pipeline through Outreach. In addition to reaching out to high school juniors and seniors, universities have also taken a longer term approach to increasing campus diversity by forming partnerships with K–12 schools to help grow the pool of qualified applicants, focusing on economically disadvantaged students and members of racial/ethnic minorities. As a result of a task force to create race-neutral diversity solutions in the wake of the state’s referendum banning affirmative action, the University of Michigan opened the Center for Educational Outreach to coordinate programs that link the university with K–12 schools in the state. The CEO Scholars Program, for example, awards scholarships to middle and high school students to support participation in UM summer programs. The center’s College 101 program offers a three-day, overnight program for rising tenth grade students to expose them to the college experience, with UM students serving as mentors during the program. Similarly, the Michigan College Advising Corp trains recent UM grads to work for up to two years as college advisers in traditionally underserved high schools across the state.⁴⁴

The University of Nebraska at Lincoln (UNL) has also been a leader in these efforts to reach secondary students early. The Nebraska College Preparatory Academy, run by UNL, works with high school students at two schools in Nebraska, providing them academic support, counseling, summer courses, and science camps. Students from the program who are

admitted to UNL or a partnering community college receive full scholarships with no loans.⁴⁵

Supporting At-risk Students. A number of universities also increased support programs for minority, low-income, and first-generation students as part of their diversity plans. At the University of Washington, for example, the Educational Opportunity Program (EOP), which from 1968 to 1997 was an alternative admissions route for low-income and minority students, was reinvented as a support program for students who are underrepresented minorities, economically disadvantaged, or first-generation college students. EOP provides academic counseling services and also helps students navigate financial aid, housing, and other personal matters.⁴⁶ Florida State University (FSU) took a similar route, replacing two older programs that aimed to increase minority student retention with a new socioeconomically targeted program, CARE (Center for Academic Retention and Enhancement).⁴⁷ CARE provides outreach to high school students and academic support for enrolled students, all targeted at first-generation college students or those facing particular educational or economic challenges.⁴⁸

Providing support for students during the transition to college is another strategy to improve retention and graduation of low-income and other at-risk students. A number of universities, including Florida State University and the University of Arizona, offer “summer bridge” programs that bring low-income, minority, or first-generation students to campus early for extra orientation sessions.⁴⁹

Changes in Campus Demographics

As more states have banned the consideration of race in college admissions, many public universities have feared that this policy change would be devastating to racial and ethnic diversity on their campus. However, for the most part, this has not been the case. Out of 11 flagship public universities in nine states where the use of race in admissions has at one time been eliminated, seven were able, at some point under race-neutral admissions, to meet or exceed the level of enrollment of underrepresented minority students (defined here as black and Hispanic students) seen in the year prior to the ban taking effect.⁵⁰ (See Table 6.1.)

Several factors stand out among the four schools where racial and ethnic diversity did not recover previous levels. Three of these

universities—UCLA, UC–Berkeley, and the University of Michigan–Ann Arbor—are more selective than the other public flagship universities affected by affirmative action bans. Selective colleges have a smaller pool of qualified applicants to begin with, and these applicants are more likely to be considering a variety of in- and out-of-state college options. As a result, selective colleges may face greater challenges in terms of recruiting additional applicants from underrepresented demographics.⁵¹ Selective schools are gatekeepers for positions of economic and political power in our country, and they produce better outcomes than less selective colleges, on average, for equally qualified students.⁵² Therefore, identifying effective diversity strategies for selective campuses under race-neutral admissions is an important area for future research.

The fourth school, the University of New Hampshire, is something of an outlier in that it has very low levels of racial diversity to begin with, serving a population that is 92 percent white.⁵³ Furthermore, university officials asserted that race and ethnicity were already not considerations in university admissions prior to the ban on affirmative action in the state, and there is no evidence that the ban prompted changes to university policy.⁵⁴ The University of New Hampshire appears to have had paid relatively little attention to racial and ethnic diversity before the state’s legislature banned affirmative action, and this attitude appears to have continued afterwards.

At seven schools—UT Austin, Texas A&M, the University of Washington, the University of Florida, the University of Georgia, the University of Nebraska-Lincoln, and the University of Arizona—black and Hispanic representation did recover its pre-ban levels. However, even at these institutions, there is progress to be made. At some of these schools, minority representation was already on a downward slide before the bans on affirmative action took effect. For example, the University of Georgia saw the enrollment of black students fall throughout the mid-1990s as the university switched from a formula-based affirmative action program with two admissions tracks to a single admissions track for all applicants. In addition, negative press surrounding legal challenges to the use of race at the university precipitated a drop in applications from black students even before race-neutral admissions took effect.⁵⁵

Furthermore, in many of these states, the percentage of black and Hispanic high school students has increased since the ban on affirmative action took effect. In terms of providing equitable access to students of all backgrounds, therefore, the bar is rising. Universities that keep

enrollment of underrepresented minorities steady may actually be providing less access over time, proportionally, as black and Hispanic students represent an increasing share of the K–12 population.⁵⁶ Colleges should instead strive to provide access proportional to the demographics of the state’s school-age population—which may require dramatically increasing minority representation.

However, the results at these institutions do show that race-neutral admissions and increased financial aid, recruitment, and support programs can produce similar levels of racial and ethnic diversity as admissions plans that consider these factors outright. Concerns that eliminating the consideration of race and ethnicity in admissions will dramatically reduce underrepresented minority enrollment may be overblown.

Furthermore, in addition to creating similar levels of racial and ethnic diversity as traditional affirmative action plans, these alternative diversity strategies also have the potential to increase campus diversity across a number of other measures, including socioeconomic status, geography, home language, and life experience. Data on these factors is difficult to obtain and compare across institutions, but we know from case studies that it is possible, for example, for a socioeconomic affirmative action plan to create as much racial and ethnic diversity as a race-based plan while also increasing representation of low-income students on campus.⁵⁷

Conclusion

Perhaps the most encouraging trend among public universities where race and ethnicity are no longer factors in admission is that, in nearly all cases, universities have been proactive in pursuing diversity on campus. As restrictions on the use of race and ethnicity in admissions are likely to spread, and as achievement gaps at the K–12 level and in higher education persist, colleges must be more active and creative in encouraging diverse enrollment. The strategies developed by universities which have been forced to end affirmative action programs offer a useful roadmap for other institutions looking to expand the set of tools used to recruit, admit, and enroll students of all backgrounds.

7

Striving for Neutrality

Lessons from Texas in the Aftermath
of *Hopwood* and *Fisher*

MARTA TIENDA

Since the early 1990s, the University of Texas at Austin has been sued twice over its admissions decisions. In the first case, which was filed in 1992, Cheryl Hopwood alleged that she was the victim of reverse discrimination because the law school rejected her application while admitting several minority applicants with lower test scores. After being denied in the lower court, her claim was supported on appeal to the Fifth Circuit Court, whose March 1996 *Hopwood v. Texas*¹ ruling banned the use of race in college admissions. In an effort to preserve diversity at the flagship institutions, the following year the Texas legislature passed House Bill 588, which guaranteed admission to any in-state public university to all high school students who graduated in the top 10 percent of their class.² Building on evidence that high school grades are reliable predictors of college success and the philosophical principle of equal access, the bill's sponsors sought to represent the state's demographic, geographic and socioeconomic diversity at its public postsecondary institutions.³ With a few

exceptions, however, most assessments of the Top 10 Percent law focus on its success in maintaining ethno-racial diversity.

The initial plan was deceptively simple: it required using a uniform measure of merit, namely class rank, across all high schools with a minimum of ten seniors in their graduating class.⁴ To qualify for automatic admission, students would be ranked on academic performance relative to that of their *same school* classmates. Political support for HB 588 derived from its adherence to race-neutral admission criteria that were applied consistently to all high schools, irrespective of size, wealth, or location.⁵ Modifications to the admission criteria specified in HB 588 require further legislative action, which has proven difficult because a bipartisan coalition of liberal urban minority legislators and conservative rural lawmakers seek to preserve slots for students from their districts.

Following the 2003 *Grutter* decision,⁶ which upheld the legal basis of narrowly tailored affirmative action in college admissions, the president of the University of Texas at Austin, Larry Faulkner, announced that the university would modify its admissions procedures to comply with the ruling. Graduate and professional programs for which there was no viable alternative to explicit consideration of race would be given priority; however, Faulkner also reported that the university would implement “procedures at the undergraduate level that *combine the benefits of the Top 10 Percent Law with affirmative action programs that can produce even greater diversity.*”⁷

This declaration is relevant for the second time the university was sued: Abigail Fisher’s lawsuit alleging that she was the victim of reverse discrimination because the university denied her admission in 2008 while allegedly admitting students with weaker credentials.⁸ According to the lawsuit, racial preferences were unnecessary both because a race-neutral alternative was available—that is, the Top 10 Percent plan—and because the share of enrolled black and Latino students enrolled at the Austin campus was higher than the percentage enrolled under affirmative action. Undergirding these claims is the presumption that the percentage plan is race neutral in practice and that the change in admission regimes from affirmative action to the Top 10 Percent plan is responsible for the increased diversity of the Austin campus. My research has proven both premises false.

Lessons from the Texas Higher Education Opportunity Project

Fisher’s claim that increases in diversity at the University of Texas are due to the Top 10 Percent law is problematic because it assumes

that the level of diversity achieved in 1996 was appropriate in light of the composition of the state, and also because it assumes that the pool of students qualified for college admission also did not change. Both assumptions are incorrect. Not only did Texas's population of high school graduates grow faster than the national average, but its pace of diversification also exceeded the national average. Texas became a majority-minority state in 2005, but the college-age population did so earlier. In 1994—when the *Hopwood* litigation was underway—56 percent of all Texas high school graduates were non-Hispanic whites; by 2004, this share had dropped to 48 percent. During this period, the absolute number of high school graduates increased 50 percent,⁹ but college enrollment expanded only 20 percent—mostly in two-year institutions. These demographic trends provide context for dissatisfaction with all admission regimes charged with rationing scarce seats. That the Texas higher education system failed to keep pace with the growth of the college-eligible population created a “college squeeze,” as demand for access to higher education grew much faster than the supply of post-secondary opportunities. Demographic growth intensified competition for access to the public flagships.

Princeton sociologist Angel Harris and I¹⁰ disproved Fisher's claim that the Top 10 Percent law restored diversity to the Texas flagships. Using administrative data for both public flagships, we compared changes in application, admission, and enrollment rates of black, Hispanic, Asian, and white students over a ten-year period representing three admission regimes: affirmative action (five years); no preferences (one year); and the Top 10 Percent plan prior to the re-adoption of race-sensitive criteria (four years). We simulated gains and losses of minority students attributable to changes in application, admission, and enrollment rates over the three admission regimes, taking into account changes in the size, demographic composition, and graduation rates of high schools.

We found that changes in the ethno-racial *composition* of high school graduation cohorts, not changes in admission rates, were largely responsible for restoring diversity at the Texas public flagships after affirmative action was judicially banned in 1996. For example, although the absolute number of minority applicants rose over time, black and Hispanic application rates to both flagship campuses dropped because the number of minority high school graduates increased more. Thus, black and Hispanic application rates actually worsen under the Top 10 Percent regime that guaranteed admission to qualified students compared with the period when race preferences were allowed.

To illustrate how changes in application behavior reverberate through the admission and enrollment outcomes, we also simulated gains and losses in admitted and enrolled students that consider changes in both the size of high school graduation cohorts and institutional carrying capacity. Analyses reveal that while the Top 10 Percent law was able in 2004 to bring black and Latino representation to levels achieved using race in 1996, the program failed to reflect the rapidly changing demographics of the state's high school population. More importantly, our simulations suggest that representation of black and Hispanic students at the public flagships would have been higher had both groups retained their admission shares under the original affirmative action regime.

As for Fisher's second allegation—that the Top 10 Percent plan is race neutral—several analysts have noted that the admission regime was crafted on a highly stratified and segregated K–12 education system.¹¹ In an early analysis, Sunny Niu and I¹² demonstrated that high levels of residential and school segregation facilitates minority enrollment at selective public institutions under the Top 10 Percent law precisely because most black and Hispanic students who achieve top 10 percent rank hail from highly segregated schools. Nevertheless, we also demonstrate that, contrary to the integration ideal sought by the landmark *Brown* decision,¹³ black and Hispanic students who attend integrated schools are *less* likely than white and Asian students at these schools to qualify for the admissions guarantee. Moreover, conditional on qualifying for the admission guarantee, black and Hispanic students who qualified for the admission guarantee were significantly less likely than either whites or Asians to enroll in college. For example, over half of Asian and just over one-third of white top 10 percent graduates enrolled at one of the public flagships, compared with only one-in-four similarly qualified black and Hispanic students.

We also show that whites and Asians who attended schools where over 80 percent of students are black and Hispanic have a higher chance of qualifying for the admission guarantee than the numerically dominant minority groups. Economic disparities along racial lines largely explain why black and Hispanic students are less likely than whites to qualify for the admission guarantee in *both* integrated and majority-minority high schools, which reflects within-school segregation along economic lines. My research with Princeton research associate Sunny Niu and University of Virginia president Teresa Sullivan¹⁴ shows that, among students who attended segregated schools and also aspired to attend college, minority top 10 percent graduates were significantly less likely than their white rank classmates both to know about the admission guarantee and

to enroll in college after graduation. That socioeconomic status was a major barrier to college attendance for minority students who qualified for automatic admission underscores the salience of class *in addition to* race in determining college aspirations and attendance.

This theme is echoed in a study that evaluated whether the Top 10 Percent law altered high school sending patterns to the public flagships, and in particular, whether the applicant pools became more geographically and socioeconomically diverse after the admission guarantee was in force. A study I did with Mark Long and Victor Saenz¹⁵ hypothesized that the transparency of the Top 10 Percent admission policy would increase the share of schools that were represented in the applicant pools of the public flagships as well as the socioeconomic and geographic diversity of the applicant pools. We showed that the Top 10 Percent law increased the number of high schools represented and the geographic diversity of the applicant pool to the University of Texas at Austin, but not Texas A&M University.

Although the Top 10 Percent admission regime was unsuccessful in diversifying the socioeconomic composition of the applicant pools to fully represent the state at either public flagship during the first four years of operation, economic diversification of students eligible for automatic admission increased over time. In 2011, for example, 9 percent of admitted students who graduated in the top 8 percent of their high school class were from families with annual household incomes below \$20,000 compared with just 3 percent of discretionary admits. However, among admitted students with family incomes greater than \$200,000, 13 percent qualified for the admission guarantee while 29 percent were discretionary admits.¹⁶

These trends are important because social class has been tendered as a viable race-neutral alternative to diversify college campuses, partly because of the persisting association between race and economic status.¹⁷ Arguing that class-based preferences cannot serve as a proxy for race-sensitive admissions, William G. Bowen and Derek Bok¹⁸ showed that minority enrollments at nineteen selective colleges would drop by half if income preferences were used in lieu of race preferences as a strategy to diversify campuses.¹⁹ Partly because of shortfalls in financial aid and partly because of skyrocketing college costs, strategies that privilege high-achieving students from low-income families are generally more successful at attracting white and Asian students than black and Hispanic students to selective institutions.

I have no quibble with the value of campus economic diversity as a principle of fairness in access to college; rather, two realities temper my enthusiasm for class-based strategies to achieve ethno-racial diversity. One

is that low-income minority students qualified for the admission guarantee are less likely than their statistical counterparts to enroll in a postsecondary institution because of inadequate financial aid packages.²⁰ The other is that low-income students, particularly those qualified automatic admission, are much less likely to submit applications to selective institutions compared with their rank counterparts from advantaged backgrounds. This reflects partly their attendance at schools with low college-going traditions and partly their inability to enroll without generous financial aid packages. I develop these arguments by focusing on application behavior, which has generally received less attention than admission and enrollment.

Class-based Affirmative Action: Broaden the Applicant Pool

The continuing legal controversy about affirmative action following the *Fisher* decision neglects two individual choices that precede and follow institutional admissions decisions, namely individual students' application and enrollment decisions. For low- to moderate-income students, financial considerations weigh heavily in the timing and location of enrollment, but except for the fees associated with submitting test scores to several institutions (which can be waived for low-income students), financial considerations should be less salient constraints on application decisions. Even as research interest in social class barriers to college attainment rises, scholarly preoccupation with admission regimes and enrollment trends has given short shrift to application behavior in general, and as a conduit to both racial and socioeconomic diversity in particular.

I maintain that application behavior should be an important focus of strategies to diversify college campuses because larger pools provide the needed variation for crafting diverse classes along multiple dimensions. Susan K. Brown and Charles Hirschman²¹ similarly emphasized the importance of increasing applicant pools after voters in Washington State passed Initiative 200, a 1998 state ballot initiative that eliminated affirmative action in college admissions. They conclude that the decline in minority representation at the state's flagship institution resulted mainly from the drop in applications from students who perceive the university as unwelcoming, if not outright intimidating.

Low-income students face three hurdles on the way to college attendance: (1) achieving the credentials that qualify them for admission, (2) actually graduating from high school, and (3) applying for admission. By focusing on students who overcome the first two hurdles, namely high school graduates who qualify for automatic admission under the Top 10

Percent law, Princeton statistician Dawn Koffman and I²² use a best-case scenario to evaluate social class variation in high school level application rates under the Top 10 Percent admission regime. Not surprisingly, we show that top-ranked students from affluent high schools were significantly more likely than their rank counterparts who attended poor schools to seek admission at one of the public flagships. More important is our finding that the socioeconomic composition of applicant pools is remarkably resistant to change, that the admission guarantee did little to raise application rates from poor high schools to the two public flagships, and that it was graduates from the most affluent high schools who drove the surge in applications among top-ranked graduates at the Austin campus.²³ By contrast, Texas A&M witnessed lower application rates from students eligible for automatic admission, and particularly those who attended high schools populated by poor students.

Our findings reinforce the need to target recruitment efforts for talented students who attend resource-poor high schools, where minorities are disproportionately represented and where the college-going traditions are less deeply entrenched, but only if adequate financial aid offers accompany recruitment initiatives. Although we did not investigate the adequacy of financial aid, it is highly likely that the financial incentives provided by UT's Longhorn Fellowships and the Texas A&M Century Scholars program were instrumental in raising application rates of high-achieving, low-income minority students who attend under-resourced schools.

While some on the political right might recoil at the idea of increasing outreach to low-income and minority students, fearing that such students are academically unprepared, my research with Sunny Niu suggests that minority students admitted through the Top 10 Percent plan have performed quite well. Looking at data from 1990 to 2003, we concluded, "Compared with White students ranked at or below the third decile, top 10% Black and Hispanic enrollees arrive with lower average test scores yet consistently perform as well or better in grades, 1st-year persistence, and 4-year graduation likelihood."²⁴

Conclusions

Despite being upheld in recent court decisions, consideration of race in college admissions remains highly controversial because the stakes keep growing as the demand for seats at the selective institutions rises, as the college-age population becomes more diverse, and as well-endowed groups opposed to affirmative action continue to orchestrate legal

challenges. By eliminating the test score filter for students who graduate in the top 10 percent of their high school class, the Texas Top 10 Percent law eliminates a key barrier confronted by low-income and minority students and theoretically broadens college access while also potentially diversifying the state's public institutions. But, one of the major lessons from the Texas Top 10 Percent law is that the admission guarantee cannot, *ipso facto*, ensure either that rank-qualified students apply, much less enroll in a post-secondary institution even if they would like to do so. In heterogeneous high schools, white and Asian as well as affluent students are more likely than blacks and Hispanics to qualify for an admission guarantee based on class rank, however the minimum threshold is set.

The Texas Higher Education Opportunity Project²⁵ was a decade-long initiative that evaluated the myriad consequences of the Top 10 Percent law, including whether it achieved geographic, socioeconomic, and demographic diversity, as its architects intended. There is consensus that the biggest impact was geographic—at least at the Austin campus, where the number and geographic location of sending schools is consistent with broadened access. There is also consensus that affirmative action is a more efficient strategy to achieve campus diversity than offering admission guarantees that capitalize on segregation while producing numerous unintended consequences such as taxing the carrying capacity of the public flagships.

Full-file review allows for narrowly tailored consideration of race in admissions decisions, but the costs can be formidable as the size of the applicant pools surge as they have in Texas. Perhaps the biggest lesson is that statutory solutions for college admissions are not advisable because they are nearly impossible to modify, much less reverse, even as circumstances change. My work with Angel Harris²⁶ suggests that the Texas flagship campuses would be more diverse had the judicial ban not been imposed and the Top 10 Percent law not been passed, both because of the growing diversification of the college-eligible population and because affirmative action was more efficient in diversifying the admit pool.

Ironically, there has been less attention to diversification of graduate and professional schools, even though the *Hopwood* and *Grutter* complaints were based on denied admission to law schools. As former University of Texas at Austin president Faulkner acknowledged, percentage plans are irrelevant for diversifying graduate and professional school enrollment, and they are also irrelevant for private institutions that draw their students from national pools. Consideration of race in admissions decisions is the most efficient solution to achieving ethno-racial campus diversity.

8

The Use of Socioeconomic Affirmative Action at the University of California

RICHARD SANDER

For the past fifteen years, the University of California (UC) has operated under statewide policies that formally require race neutrality in university admissions and other operations. In the years leading up to 1997–98—when the race-neutral policies went into effect—many parts of the university had been unusually aggressive in using race to increase the campus presence of under-represented minorities (URMs, comprising African Americans, Latinos, and American Indians). Because of this sharp shift in policy, because of the sheer size of the university, and because its eight principal campuses vary significantly in their academic eliteness, UC presents a rich opportunity to study the effects of a preferences ban.

One of the most striking effects of formal race neutrality across the UC system was a jump in the interest of administrators and many faculty members in the use of socioeconomic status (SES) metrics as an alternative to race in pursuing campus diversity. This chapter will give a brief but substantive overview of how the SES alternative played out. First, I will examine these efforts

at the undergraduate level from 1997–2001; second, I will discuss a particularly ambitious program at the University of California, Los Angeles (UCLA) Law School (which I helped develop); and third, I will consider some key changes in undergraduate admissions since 2001.

Undergraduates (1997–2001)

Even before the arrival of the ban on racial preferences, the undergraduate campuses at the University of California had unusually high levels of socioeconomic diversity. At elite private colleges in the 1990s, generally no more than 10 percent of students came from households in the bottom half of the socioeconomic distribution, and even at elite public universities, like the University of Virginia or the University of Michigan, representation of the “bottom half” appears to have been less than 15 percent.¹ At Berkeley and UCLA—the two most elite UC campuses—the comparable number in the mid-1990s seems to have been in the 25 percent to 30 percent range.² There were a few reasons for this. The UC system had very low tuition and did an unusually good job of providing grants and loans to students with financial need. California had (and has) a large Asian immigrant population, many of whose teenagers had both low SES and relatively strong academic performance. And the presence in California of a very large and often low-income Hispanic population—many of whom were also recent immigrants—meant that racial preferences in the UC system tended to more effectively reach low-SES households than do racial preferences in most of the United States, where they often disproportionately benefit relatively affluent blacks.³

Formal race neutrality nonetheless pushed UC much further in this direction. Indeed, at the same July 1995 meeting at which the UC Regents launched the race-neutral mandate, it established an Outreach Task Force to identify methods through which the university would remain “accessible to students of diverse backgrounds.” After the task force reported back in 1997, the university set in motion a series of outreach strategies aimed at helping high school students “to overcome educational disadvantages” and attract to UC a “student body broadly representative of the state.”⁴ Various UC campuses established partnerships with struggling high schools and feeder junior high schools; UC expanded pilot programs aimed at preparing students for UC entry in general and STEM careers in particular; and the university created new information strategies aimed at making students more aware of the curricular steps they would need to take to qualify for admission.⁵

Nearly all UC campuses also modified their admissions policies to increase student diversity. An analysis by economists Kate Antonovics and Ben Backes compared freshman admissions at the eight undergraduate UC campuses in the three years before and the nine years after the ban on racial preferences went into effect in 1998.⁶ They found that every UC campus significantly changed its admissions process in the race-neutral era, and that every observable change had the effect of cushioning the drop in minority admissions. Some of these changes were academic: most of the eight campuses decreased the weight given in admissions to standardized test scores (for example, the SAT I) and increased the weight given to high school GPA.⁷ Others were socioeconomic: six of the eight UC campuses increased the admissions weight given to parental education (those whose parents had less formal education received a boost) and five of the campuses increased the weight given to students with lower-income parents.

These initial efforts came without any change to the university's basic underlying admissions rule: California students who finished in the top eighth of California seniors (as measured by a combination of test scores and high school grades) were guaranteed admission to at least one UC undergraduate program. Racial preferences had been used to create "special admissions" for several hundred URM students each year, but that pipeline essentially disappeared with the arrival of race neutrality in 1997–98.

Remarkably, however, the university managed this multi-faceted shift—eliminating special minority admissions and very large racial preferences while de-emphasizing test scores and substantially expanding socioeconomic preferences—without either a large decrease in overall minority enrollments or a decline in the academic credentials of students. Systemwide, black freshman enrollment fell from 917 in 1997 to 832 in 2000 (a drop of just under 10 percent) and Latino freshman enrollment rose from 3,131 to 3,479 (a rise of just over 10 percent).⁸ Meanwhile, median SAT scores held steady and high school GPA levels went up significantly at every campus.⁹ There seem to be five explanations for this successful balancing act:

1. Applications from students of all races increased sharply after the adoption of formal race neutrality. The largest year-to-year increase in freshman applications in UC history (up to that point) occurred in 1998, the first year of race neutrality, and overall the number of unique UC applicants was nearly 20 percent higher in 1998–2000

than in 1995–97.¹⁰ This meant that UC schools could be less academically selective while still maintaining very high-credentialed freshman classes.

2. Enrollment rates (that is, the percentage of admitted students who accepted) jumped sharply for URMs with the arrival of race neutrality. The jump was as great as 15 percent for campuses, like Berkeley and UCLA, which had used particularly large racial preferences until 1998.¹¹ The most plausible interpretation is that students of all races—and especially URMs—were attracted to schools that had abandoned aggressive affirmative action.
3. The shift in admissions criteria, according to the Antonovics and Backes calculations, blunted the racial impact of race neutrality by about one-third.¹² It is important to note, for purposes of this volume, that SES preferences alone—especially the simple preferences used by the UC campuses during this period that looked at factors like parental income and education, not neighborhood poverty concentrations and wealth—would, by themselves, have only done a little to offset the loss of racial minorities from the shift in racial preferences.
4. The UC structure—with eight campuses of significantly varying eliteness—also helped blunt the effect of race neutrality. During the era of large racial preferences, Berkeley and UCLA had lured a disproportionate number of black and Hispanic admits to those campuses; after 1998, many of these students “cascaded” to less elite campuses. This did not produce a concentration of minorities at the least elite campuses, but rather evened-out the distribution of URMs across the eight campuses.¹³
5. Though it is difficult to prove, there is reason to think that many UC campuses continued to surreptitiously rely on race or racial markers in making decisions.¹⁴ The use of race undoubtedly fell dramatically after 1997, but in regression analyses predicting admissions, race continued to be a significant factor.

These various changes at UC were accompanied by a surge in student graduation rates, especially for URM students. All the UC campuses awarded an average of 802 bachelor degrees to African Americans from 1997 through 2003; these were in general the last cohorts admitted with large racial preferences. From 2004 through 2009, in contrast, the UC campuses awarded an average of 926 bachelor degrees to African

Americans, despite the initial post-209 drop in black enrollment. Moreover, many more of these students were completing their degrees in four years. Latinos experienced even larger gains. According to the most comprehensive study of these effects, some of this sharp improvement (especially in the sciences) occurred because URM students were better academically matched at the campuses they attended.¹⁵ But part was due to an apparently greater focus by the colleges on assisting students, by providing better counseling, offering more sections of needed courses, and so on. The implication of this latter finding is that administrators pay more attention to minority success when it is harder to achieve the desired racial balance simply through the use of racial admissions preferences.

Over time, the outreach efforts launched at UC campuses also had an important effect in expanding both racial and socioeconomic diversity. The number of California high school applicants to UC from low-or-moderate-income families more than doubled between 1995–97 and 2003–05, even though this was a time when the UC budget was in turmoil and tuitions were rising sharply.

These were the major short-term effects of race neutrality and the university's greater focus on SES disadvantage. After 2001, the university's strategy shifted in significant ways—a story I will return to in Part III.

UCLA Law School

Meanwhile, the various graduate schools and departments in the UC system were making their own accommodations to official race-neutrality. UCLA Law School (UCLAW) was unique in developing an experimental program in class-based affirmative action that was comprehensive, based on social science research, and rigorously evaluated.¹⁶ The program was inaugurated in 1997 (for a variety of administrative reasons, only undergraduate admissions were permitted to wait until 1998 to be subject to race-neutral rules) and arose after long faculty debate over how to modify its admissions policy (which were, like those of nearly all law schools, heavily race-conscious) to comply with the new regime. In the new program, UCLAW sought to create a purely “objective” method of assigning weight to student applicants based on their level of SES disadvantage.

The school asked students eight optional questions about their background: the educational level of each parent, their parents' income and net worth, the applicant's home address during elementary and high school, and the location of the applicant's chief elementary and high

school. The first four questions pertained to the applicant's family SES; the last four aimed to measure the SES of the applicant's neighborhood and school environment. The school questions proved impractical to use; although one could get good data on the socioeconomic composition of California public schools, about half of the law school's applicants came from outside California or had attended private high schools. The question about home location during elementary school was not used because only 72 percent of the applicants answered it, compared with 88 percent reporting their home address during high school. These addresses were fed through a program that matched them to unique census tracts, the small geographic units for which the census reports detailed neighborhood data. Drawing on the census, UCLAW assigned to each applicant three measures of neighborhood SES: the proportion of neighborhood families headed by single parents, the proportion of neighborhood families receiving welfare, and the proportion of neighborhood adults who had not graduated from high school.

There was nothing especially magical about the particular neighborhood factors used in UCLAW's system, but there was a clear general rationale for the system. A good deal of social science research suggested that "neighborhood" as well as "family" disadvantage affected life chances; family conditions counted for somewhat more, but not a lot.¹⁷ The three neighborhood factors mentioned, along with the four family measures, each had been used by various social scientists as ways of showing the effect of disadvantage on the later outcomes of young people growing up. Giving some weight to each of these factors seemed both reasonable and objectively justifiable. The law school faculty was also very cognizant of the racial dividends of using broad rather than narrow measures of SES. The correlation between family income and being African-American, in a typical pool of college applicants, is under 0.2; but blacks with middle-class occupations and incomes tend to have significantly fewer assets than do otherwise similar whites,¹⁸ and because of housing segregation, they tend to live in significantly less affluent neighborhoods and have more poor neighbors.¹⁹ The correlation between race and a broader measure of socioeconomic status is thus substantially higher (closer to 0.4), and it makes sense on both opportunity and diversity grounds to measure SES more comprehensively.²⁰

UCLAW thus ended up with seven distinct SES measures used in "scoring" applicant backgrounds. For each measure, the school calculated the mean and standard deviation of the applicant values. Applicants were

eligible for a fifteen-point boost if they placed in the most disadvantaged sixth of applicants on any measure—that is, about one standard deviation below the mean on measures like income, or one standard deviation above the mean on measures of neighborhood distress. The boost on any measure could go as high as forty-five points for an applicant in the most disadvantaged 0.3 percent (that is, three standard deviations from the mean). The maximum number of “SES” points any student could receive was just under 200.

UCLAW had used for some years an academic index scaled from 0 to 1000, which gave roughly equal weight to LSAT scores and a student’s “national grade” (college grades adjusted for both the difficulty of an applicant’s college and the degree of grade inflation at the college). An academic index of around 800 was sufficient to gain admission to the school; the median number of SES points received by an applicant for whom they made a difference was about 40; such an applicant had an LSAT score only a couple of points below the class median.

UCLAW’s socioeconomic preferences were, in size and scale, quite different from its old, racial regime. Racial preferences had generally been used for 20 percent of the class or less, but the typical beneficiary of racial preferences received a boost equivalent to 7 or 8 LSAT points (the difference between a ninetieth percentile score and a seventy-fifth percentile score). SES preferences, in contrast, were used for slightly over half of the 1997 first-year class, but, as noted, tended to be much smaller. Race preferences had been narrow but deep; SES preferences were broader and generally shallower.

But although the SES preferences tended to be modest, they were targeted at students who were substantively quite different from the typical elite law school student. Nationally, elite law schools (then and now) draw only about one-tenth of their students from the bottom half of the national SES distribution, but from 50 percent to over 80 percent of UCLAW’s SES preference beneficiaries came from the bottom half of the national SES distribution (depending on which metric is used).²¹ As a result, the impact on the school’s demographics was profound. The median family income of first-year students fell from (in 2013 dollars) roughly \$140,000 to about \$75,000; the proportion of students who were the first in their families to attend college roughly tripled.

A different way of putting this—and a useful way for schools to measure the degree to which they achieve socioeconomic diversity—is to use the *index of dissimilarity* to compare the distribution of student SES with

the national distribution. The index of dissimilarity is often used to measure how different two distributions are, and was originally developed to measure levels of housing segregation. If we were comparing the income distribution of two groups, a measure of 1.0 would indicate there was *no* overlap in the income of the groups, while a measure of 0 would indicate that two groups had an identical distribution. The income dissimilarity between UCLAW students and the national population fell with the introduction of SES preferences, from about 0.35 to about 0.12; the index of educational dissimilarity fell from about 0.45 to about 0.15.

The racial effects of UCLAW's socioeconomic preferences were sobering but not surprising. Black enrollment at the school fell by nearly 50 percent from 1996 to 1997; Hispanic enrollment fell by about 15 percent.²² Asian enrollment slightly increased, so the first-year class was over one-third nonwhite. As with UC generally, the fall was cushioned by a significant increase in yield rates among URMs—suggesting, again, that many minority applicants preferred to attend a school that did not award them a racial preference.²³

These declines were not surprising because of the nature of the dilemma facing any highly ranked graduate program. To an overwhelming degree, UCLAW's competitors for students were other "top 25" law schools around the country, all but two of which (UC Berkeley and University of Texas) were free to continue using racial preferences even as they were eliminated at UCLAW. This meant that any black student admitted by UCLAW strictly on academic credentials would also have offers at far more elite law schools (such as Harvard, Yale, and Stanford), and these offers would often come with generous race-based scholarships. This had been true throughout the era of racial preferences at UCLAW, and continued to be true in 1997—but now UCLAW was admitting many fewer blacks with low academic credentials. Thus, even though the school's black yield rate went up, it still lost most of its strongest admits to schools using racial preferences. These same dilemmas affected Latino admissions, though the negative effects were smaller with Latinos because the size of racial preferences had long been smaller and a larger proportion of Latino applicants came from low-SES backgrounds. Note here the important contrast with UC's undergraduate admissions: the key competitors of these colleges were the other seven UC campuses, who were under the same ban on racial preferences. Given the uneven playing field UCLAW faced, with competitors using large preferences, the decline in minority enrollments would have been greater without its class-based affirmative action.

The socioeconomic effects of the 1997 experiment were, then, outstanding, and the racial dividends were substantial. The experiment performed well under other criteria as well. Academically, the students receiving SES preferences performed at the level predicted by their entering credentials, and with “smaller, broader” preferences, the number of students in academic difficulty fell sharply. UCLAW had its historically highest California bar passage—90 percent—from the “class of ’97” compared to rates of 82–87 percent during the preceding years, when the school used racial preferences. The law school also found the financial aid challenge quite manageable, partly due to other favorable developments. Prior to 1994, much of UCLAW’s financial aid had been distributed by lottery to anyone who applied. But in that year, the UC began to allow its professional schools to charge a higher tuition than applied to undergraduates. This “differential fee” was initially quite modest (\$6,000 in the late 1990s), but from the outset, schools were required to devote a full third of the fee to financial aid. UCLAW consequently overhauled its financial aid policies and fully implemented a predominantly need-based system by 1995. The revenues from the fee were enough to provide significant aid; and this helped propel a more general increase in yield rates when SES preferences arrived in 1997.

The Second Phase

A very striking characteristic of UC’s academic environment in the Prop 209 era has been an extraordinary administrative distaste for race neutrality, and a tendency to see the consequences of race neutrality as unabashedly negative. Even as UC administrators were overseeing significant increases in socioeconomic diversity, and dramatic improvements in the academic outcomes of students during the 1998–2000 period, they did not publicly acknowledging these achievements and, instead, generally focused official commentary on the declines of URM enrollment at the system’s most elite campuses. The unwillingness of campus administrators to concede any positive effect from race neutrality greatly chilled thoughtful discourse about the extraordinary experiments underway.

Under a steady drumbeat of administrative pressure to increase racial diversity among freshman admits, UC campuses implemented several initiatives starting in 2001. For example, in that year, on the recommendation of UC’s senior administrators, the UC Regents adopted Eligibility in the Local Context (ELC), a new path to UC eligibility quite similar to the Top 10 Percent plan adopted in Texas during the *Hopwood* years

(see Marta Tienda's chapter in this volume). Under ELC, students at any California public school who ranked in the top 4 percent of their class were UC eligible; in 2011, this was expanded to include the top 9 percent. Of course, at an average high school, the top 4 percent of the class would already be UC eligible under the existing policy of admitting the top eighth of California seniors; so the plan as a practical matter was a race-neutral way of capturing more Hispanic and black students attending inner-city schools whose graduates were underrepresented at UC. It clearly had this effect, and those expanding the pool were also more likely to come from low-to-moderate SES backgrounds.²⁴

Meanwhile, some undergraduate campuses were moving beyond simple metrics such as parental income and education in assessing socioeconomic disadvantage. UCLA, for example, was assigning to each applicant a "Life Challenges" score based on an overall assessment of a student's file, including both objective and subjective factors. We do not know if this measure did a better job of capturing true disadvantage, but we do know that it was more highly correlated with race than the old measures had been.

Finally, many campuses and programs—especially those at the most elite campuses—adopted new admissions practices that were hard to distinguish from racial preferences. UC Berkeley Law School (also known as Boalt Law School) announced in 1998 a new policy of evaluating applicant disadvantage, but it was open secret within and beyond the school that faculty committees were effectively conferring racial preferences—often quite large ones.²⁵ At UCLAW, many faculty members were dissatisfied with the decline in black and Hispanic enrollment from the 1997–SES experiment. In 1998, the school introduced a more discretionary approach to evaluating SES, but this produced an even larger decline in black enrollment. Then, in 2001, UCLAW created a special admissions track for students interested in Critical Race Studies. The very nature of the program implied a subterfuge, and available data from the initial years of this program suggests dramatic discrimination against white applicants.²⁶

UC Berkeley's undergraduate program adopted a "holistic" admissions process in 2002, which hired special readers to assess all aspects of applicants in a single score that, in the eyes of some involved in the process, encouraged racial preferences (and was documented to have a mildly pro-black effect).²⁷ In 2006, in the wake of protests at UCLA over the absence of more blacks in the freshman class, that campus developed

its own version of holistic admissions, which included a “supplemental review” process that had a dramatic disparate effect in admitting more African-Americans.²⁸ In 2011, in response to incidents at a couple of campuses indicative of racial tensions, UC-wide policy committees directed all the undergraduate campuses to adopt something like UCLA’s version of holistic admissions.

Concurrent with all these shifts, however, were signs that UC’s late 1990s strategy of improving high school outreach and partnering with troubled high schools was paying dividends. The rate of high school completion for young adults in California rose sharply from 2000 to 2010,²⁹ as did the rate at which high school graduates completed the core courses required for UC admission.³⁰ Both trends had a powerful effect—far greater than the use of race-conscious subterfuges—in fueling a near-doubling of Hispanic freshman enrollment on UC campuses over these years.

The UC experience thus illustrates a few different themes. One is that a formal ban on racial preferences prompts experimentation in the use of socioeconomic preferences. This experimentation produced immediate, substantive changes at UC campuses, of which probably the most dramatic and best-documented was the UCLAW experiment. A second theme is that these policies did increase and enhance socioeconomic diversity, produced significant racial dividends, and were consistently accompanied by improved student outcomes. Looking at the UC undergraduate campuses as a whole, the racial effects seemed particularly appealing—URM students cascaded to campuses where they were better matched, while outreach programs increased URM applications and other curricular efforts contributed to the boost in graduation rates. As noted earlier, the UC system was producing many more black and Hispanic graduates, in more challenging majors, during the early years of race neutrality than it ever had before.

A third theme is that race-neutral policies are not self-executing. Implementation and enforcement mechanisms matter. More transparency in admissions and about student outcomes is important for creating accountability. In many university environments, discussions of diversity begin and end with a mere nose count of black and Hispanic numbers in the freshman class; it should not be surprising that university administrators respond to the simple incentives of a one-dimensional standard of success. Making the conversation about university diversity embrace class as well as race, outcomes as well as entering numbers, is vital in creating a culture where innovative admissions policies can flourish.

9

Converging Perils to College Access for Racial Minorities

Examples of Responses that Work from Washington State and New Jersey

RICHARD L. McCORMICK

In the decades after World War II, thanks to an unprecedented confluence of supportive circumstances, the number and diversity of Americans attending college grew dramatically. Popular attitudes favored higher education, and economic trends rewarded it. Sweeping social changes reduced the barriers for men and women whose college attendance had previously been discouraged, and government at every level contributed to expanding opportunities for them to enroll. The outcomes of this relatively recent explosion of access to higher education were wide and deep and highly favorable—for the individuals who went to college, for their families and communities, and for the well-being of the nation. Other countries around the world emulated the experience of the United States, with predictably positive results.

Few observers would forecast, much less encourage, a return to the state of affairs before World War II, when the great majority of college and university students were affluent white males. The demands of the

economy and the dreams of millions of individuals, to name just two factors, will not permit the clock to be turned back to the 1930s or 1940s. But the truth is, we live in a perilous time for higher education access and opportunity. The availability and the reputation of higher education attendance are at greater risk today than they have been for decades, and the situation is particularly hazardous for ethnic and racial minorities.

The Postwar Path toward Higher Education Becomes Undermined

The circumstances that converged to expand higher education enrollment following World War II were unprecedented. From the federal government came the GI bill and successor measures of financial assistance for middle-class and low-income students who could not otherwise have afforded to attend college. Beginning in the late 1940s and especially in the 1950s, 1960s, and 1970s, these students did so in far greater numbers than ever before, because they correctly perceived higher education as a pathway to economic and social advancement. The states, too, created new programs of need-based financial aid for students, while, at the same time, they greatly enlarged the enrollment capacity of their colleges and universities, both in traditional four-year institutions and in newly established two-year institutions, commonly called community colleges. By the 1960s, social and political movements, especially for the civil rights of African Americans and the rights of women, encouraged college attendance by vastly greater numbers from within those previously underrepresented groups.

In sheer quantitative terms, the outcomes of these entwined trends were dramatic. During the quarter-century from 1950 to the mid-1970s, overall higher education enrollment increased by approximately 500 percent, to nearly 12 million students; college attendance by women grew equal to that of men (and soon would surpass it), while the enrollment of African Americans and Hispanic Americans doubled and doubled again. Inevitably, the pace of change declined following several decades of remarkable, indeed world-historic, growth, but the basic characteristics of college enrollment, in its numbers and its diversity, were firmly established by the trends that emerged after World War II.¹ Particularly noteworthy is that minority participation in higher education continued to grow. From 1995 to 2009, African American enrollment increased by 73 percent and Hispanic American enrollment rose by 107 percent (compared to white enrollment growth of 15 percent).²

In the face of the facts just cited and at the risk of seeming alarmist, I want to call attention to some current and converging trends that may seriously endanger the continuation of higher education enrollment growth, especially for racial and ethnic minorities and perhaps most especially for African Americans. Some of the threats to college attendance have been in the making for decades, while others have quite recent origins. Some of the perils potentially affect all students (with the possible exception of a small elite composed of the wealthiest and best prepared young men and women), while others mainly endanger minority students. I then want to suggest possible responses to some of these perils and to cite, in particular, successful programs that were developed at two universities where I worked, the University of Washington and Rutgers University.

Among the factors threatening college attendance today, the most pervasive is the decline of government support for higher education and the resulting increases in both tuition and student debt. Beginning in the early 1990s, virtually all the American states began reducing their support for public colleges and universities, and the trend continues to the present day.³ In response, the institutions steadily raised tuition and fees. A quarter century ago, a typical in-state student attending a public college or university probably paid about a third of the cost of his or her education, while state appropriations covered the rest; today the proportions are reversed, and such students are expected to pay most of the cost of their own education.⁴ Across the same decades, federal financial aid increasingly came in the form of loans rather than grants. Together these developments deterred some students from attending college altogether and increased the burden of debt borne by many who did enroll. Behind these shifts in financing for higher education lay a fateful transformation in the way Americans looked at college. Formerly regarded as a “public good” deserving of taxpayer support because the whole society benefited when more people became educated, college enrollment is now increasingly perceived as an individual asset that boosts the career prospects and earning power of those who receive the education. The implication is clear: the people who obtain the benefits should bear the cost.

More recently, several emerging trends are further discouraging college attendance, at least in its traditional forms. The great recession of 2008 and its long lasting residue of unemployment and underemployment have emboldened the critics of higher education who assert that college is not worth what it costs, meaning that a postsecondary degree provides no guarantee of a well-paying job. Sadly that is literally true.

Fast receding in public consciousness is the sense that a college education is valuable in its own right because it prepares men and women for lifetimes of productive activity in forms that cannot possibly be foreseen at the moment of graduation. Another emerging trend, namely the maturation of online learning, is also serving to discourage attendance in college classrooms. Why pay to sit there when everything you want to know is available wherever you can find a computer terminal? These doubts about the value of college only deepen the erosion of government support for higher education.

Each of the enrollment-dampening developments I have cited to this point potentially affects all prospective college students, but the impacts of these trends are scarcely shared evenly among them. Those harmed the most are economically disadvantaged students who cannot afford the rising costs of college and who are reluctant to take on large debts to pay for an asset of questionable economic value. Every racial and ethnic group includes people in poverty, but not in the same proportions, and the high cost of attending college deters relatively more minority students than whites. Besides the financial barriers, moreover, there are other discouraging factors that particularly impair the chances for higher education among racial and ethnic minorities. Perhaps the most important among these is the continuing inferiority of the education that is provided within America's big urban school systems, the very districts that largely serve African American and Hispanic students. Despite decades of hand-wringing and of political wrangling over pupil testing, teacher tenure, charter schools, and the achievement gap, boys and girls in our big city schools remain overwhelmingly less well prepared for college than their suburban counterparts, most of whom are white. The schools, of course, do not bear the blame alone; poverty, crime, and social dysfunction provide the tragic setting in which poor educational outcomes become highly likely. The situation is particularly desperate for African American men, who are more likely to spend time in prison during their lifetime than to graduate from college.⁵ Most students trapped in big city schools would not be ready for higher education, even if it was ready and affordable for them.

Anthony P. Carnevale and Jeff Stohl of the Georgetown University Center on Education and the Workforce have recently brought forth striking evidence of the disadvantages and inequalities faced by racial and ethnic minorities in higher education.⁶ Although as noted above, college attendance by African Americans and Hispanics has continued to grow, Carnevale and Stohl show that minority students are "disproportionately

tracked into crowded and underfunded two-year colleges and open-access four-year colleges,” rather than into the wealthier and more selective institutions where white students continue to occupy far more than their share of the seats. Higher education, they say, thus “mimics and magnifies” the inequalities “it inherits from the K–12 system.” At the more selective colleges, resources per student, completion rates, graduate school attendance, and prospects for high-income employment are all far greater than at the “inexpensive, resource starved” colleges attended by most minority students. The subtitle of their study expresses its authors’ depressing conclusion: “How Higher Education Reinforces the Intergenerational Reproduction of White Racial Privilege.” Long acclaimed as pathways of upward mobility, our colleges and universities may actually be contributing to racial and ethnic inequality rather than reducing it.

All the perils to higher education access and opportunity for minority students will be intensified if affirmative action—that is, the use of race as a plus factor in college admissions decisions—is deemed by the courts to be unconstitutional, which it may be at some point in the years ahead. Originally developed as a means of advancing social justice and remedying the historic effects of racial discrimination, the case for affirmative action now rests upon the educational benefits that diversity confers upon students. Widely advanced by educators and accepted, at least for now, by the Supreme Court, is the argument that all students receive a better education and all will become more fully prepared for life and work in a multicultural society if they study and learn with members of diverse racial and ethnic groups. Justice Lewis F. Powell Jr. affirmed that rationale in his 1978 opinion in *Regents of the University of California v. Bakke*, as did Justice Sandra Day O’Connor in her 2003 opinion in *Grutter v. Bollinger*.⁷ More recently, in *Fisher v. University of Texas*, the Court recognized the educational argument for affirmative action but declared that universities wishing to employ race as a factor in admissions decisions must show that they could not assemble a diverse student body through race-neutral means.

Some observers of the Court and many college educators fear that affirmative action will be entirely struck down before long. In eight states, it already has been struck down—not by the courts but by voter referendum, executive order, or legislative action—and admissions officers everywhere are going back to the drawing boards to try to figure out how they could preserve and even increase the racial diversity of their institutions without the benefit of affirmative action.⁸ They know that

goal will be difficult to achieve, not only because the law will not be on their side anymore, but also because *so many* trends in America today are discouraging minority enrollment in colleges and universities.

Restoring Equality and Social Justice to Higher Education

Before leaving aside the law of affirmative action and turning to practical methods for boosting student diversity, it is worth remembering that for many educators, and especially for many college and university presidents, the challenge is not only about increasing the numbers of minority students, although the numbers certainly do matter. Even more important, however, is positioning our institutions to do what is right, to take whatever actions they legitimately can take to promote equality in a world of inequality, and to advance social justice. Some thoughtful educators regret the Supreme Court's jettisoning of the original arguments for affirmative action, arguments based on the heritage of racial injustice and past discrimination—in other words on the very ideals that inspired *Brown v. Board of Education* in 1954. Columbia University president Lee Bollinger, for one, sees in the trajectory from *Brown* to *Bakke* to *Grutter* to *Fisher* evidence of “a long, slow drift from racial justice” and laments “the failure to renew a conversation about racial justice as the civil-rights era recedes further and further into the past.”⁹ Rutgers–Newark chancellor Nancy Cantor observes that “Race still matters, every day, in so many ways, large and small, and significantly in the map of educational opportunity.”¹⁰ Bollinger and Cantor are uncommonly eloquent and passionate, but they are not alone. Many university presidents seek every available opportunity to affirm that, whatever the courts may say, there are *two* indispensable arguments for affirmative action and for racial inclusion more generally: social justice *and* educational quality. Supreme Court justices may doubt that universities are capable of attempting to remedy centuries of racial discrimination—and it is surely true that their capabilities and their powers to do so are limited—but they must try to do what they can.¹¹

That is exactly the spirit in which many selective colleges and universities have been approaching the goal of maintaining and increasing the racial and ethnic diversity of their student bodies. At the heart of the challenge is searching aggressively for minority students who can succeed in college, preparing them to gain admission, and providing the resources they need to graduate. These are not easy undertakings. They

demand time and labor, they must be carefully devised to meet local circumstances, and they are expensive. But highly ranked institutions around the country have not been deterred by these difficulties, and some common themes are discernable in their efforts: outreach to communities where minority students live, collaboration with K–12 schools, creation of programs to prepare students for college, holistic reviews of applicants for admission, and provision of financial aid for needy students. Endeavors like these are enabling many selective institutions to enroll and graduate far more African American, Hispanic, and Native American students than they otherwise would—in defiance of the trends now imperiling higher education for minorities. At their best, these efforts can succeed *whether or not* race is used as a plus factor in the admissions process. The recent experiences of the University of Washington and Rutgers University illustrate the point.

The University of Washington

Like many of its peers around the country, the University of Washington (UW) became actively engaged in recruiting and educating an ethnically and racially diverse student body in the late 1960s. Citing both educational quality and social justice as reasons for advancing the diversity of their institution, UW leaders established the Educational Opportunity Program (EOP) to recruit and admit low-income and minority students and to provide them with the support they needed once they enrolled at the university. Until 1997, EOP operated its own separate admissions track using race and ethnicity, among other factors, in that process. That year, EOP was merged with regular admissions, but the UW continued to employ affirmative action in its decisions. The university community showed a broad and deep commitment to racial diversity. Thanks to decades of effort, and to affirmative action, the representation of African Americans, Hispanics, and Native Americans within the UW student body was not far from their proportions in the state’s population.¹²

In 1998, several years into my presidency of the UW, the voters of Washington were asked to consider Initiative 200, which would prohibit government entities, including public universities, from giving preferential treatment based on race, sex, color, ethnicity, or national origin. I spoke out against the initiative, at least to the extent the university’s lawyers would let me, by pointing with pride to the UW’s multicultural student body and to the educational benefits of diversity for everyone who studied there. Looking southward to the experience of California, whose

voters had adopted a nearly identical referendum two years earlier, we knew that passage of Initiative 200 would significantly reduce minority enrollment at the UW. The voters of the state overwhelmingly approved it, however, and just as we had anticipated, the results for student diversity were bad. If you had entered the UW as a first-year student in the fall of 1998, immediately prior to passage of Initiative 200, approximately one in eleven of your classmates would have been African American, Hispanic, or Native American. By the very next year, that ratio had dropped to only one in eighteen.

Forced to abandon the consideration of race in admissions decisions, the university mustered an aggressive, multi-pronged strategy for restoring and, if possible, enhancing the racial and ethnic diversity of the student body. Key constituencies within the UW community—including the Board of Regents, the university administration, faculty leaders, and student leaders—came together to design a wide range of measures for promoting student diversity and a plan for ensuring their success. First, the admissions process was revised to give applicants an opportunity to describe their personal experiences with diversity and adversity (experiences that people of any color can have). The application offered students several options for doing that, including answering the following question: “The University of Washington seeks to create a community of students richly diverse in cultural backgrounds, experiences, and viewpoints. How would you contribute to this community?” During the succeeding years, the holistic admissions review process was closely watched and amended, consistent with the new law, to enable applicants to demonstrate their multicultural awareness.

Next, the UW massively expanded its existing programs of outreach and targeted recruitment. Faculty, students, and alumni fanned out across the state to talk with students in community colleges, high schools, and middle schools where minority students were concentrated. We invited many of them to campus, often for overnight visits, and showed them the exciting educational opportunities they would have if they enrolled at the UW. Financial aid officers explained to the visiting students how they could obtain the resources they would need to attend college. In collaboration with high schools in several of the state’s cities, especially Seattle and Tacoma, the university placed counselors there who worked with students, advised them on taking the college preparatory courses that would qualify them for admission, and, when the time came, assisted them in applying for both admission and financial aid. As president, I

sent letters to high-achieving minority students throughout the western United States and encouraged them to consider the UW. Among the most important participants in these outreach programs were UW students themselves. With funding from my office, they established the student ambassador program and travelled around the state meeting with minority high school students and, through the example of their own experiences at the UW, encouraging the younger students to believe a college education was possible for them.

The last element of the university's response to Initiative 200 was obtaining money from private sources for scholarships that would be targeted for underrepresented minority students. Carefully crafted by lawyers, financial aid officers, and fund raisers, the Diversity Scholars Program raised more than seven million dollars in private funds in its first two years and awarded them to needy minority students who had demonstrated significant academic potential.

Together these efforts were successful. Within five years after the post-Initiative 200 nadir of minority enrollment, the racial and ethnic diversity of the UW's first-year class had returned to its pre-1999 levels. In subsequent years, by dint of hard work on the part of many university constituencies (I was now gone as UW president), the enrollment of underrepresented minorities, especially Hispanics and Native Americans but less so African Americans, continued to rise. Notably, too, the economic diversity of the UW's undergraduate student body also increased—as indicated by the university's growing numbers of federal Pell grant recipients.¹³ All this occurred within the bounds of an admissions process that no longer awarded “plus factors” for race but which admittedly relied upon racially minded surrogates, such as carefully drafted admissions questions, targeted outreach and recruitment, and directed fundraising for minority scholarships. Whether and to what extent the new system would have succeeded in restoring racial and ethnic diversity to its pre-Initiative 200 levels without these surrogates is unknown.¹⁴

Rutgers University

Like the University of Washington, Rutgers University, whose president I became in 2002, began significant efforts to enroll and educate minority students in the late 1960s.¹⁵ Owing to the racial and ethnic heterogeneity of New Jersey's population, to decades of strenuous outreach and recruitment, and to affirmative action, Rutgers achieved a high ranking among top-tier state universities for the large numbers of African Americans and

Hispanics within its student body and an enviable reputation as a welcoming place for minority students. Indeed, diversity became a signature value for Rutgers, inseparable from its academic character. Countless campus conversations, as well as surveys of faculty, students, and alumni, reveal how highly people at Rutgers prize the racial and ethnic diversity of the university community and how strongly they feel that everyone gets a better education in a diverse environment.¹⁶

For all that, however, Rutgers's diversity is mostly suburban. The towns of Edison, West Windsor, and Cherry Hill send many students of color to the university, but the cities of Newark, New Brunswick, Camden, Paterson, Jersey City, Elizabeth, Trenton, and Atlantic City send far fewer compared to their populations. This point was driven home when the Reverend M. William Howard Jr., a member of the Rutgers Board of Governors and pastor of the Bethany Baptist Church in Newark, observed that he could foresee the day when not a single child who was educated in the public schools of Newark would even be qualified to attend Rutgers. He was reflecting, of course, upon the quality of the schools and of life in Newark, but he could have made the same observation with almost equal accuracy about the other two older industrial cities where Rutgers is located, New Brunswick and Camden. His remarks got the board's attention and helped inspire creation of the Rutgers Future Scholars Program in 2008.

Working closely with the four school districts where Rutgers is located (the three cities plus suburban Piscataway), the university's admissions officers identified approximately fifty rising eighth graders from each community who would comprise the first class of Future Scholars. All of the boys and girls were academically promising and had been recommended by their teachers, but most came from backgrounds that were challenged by poverty and social disorder. Hardly any of them had a parent who had gone to college, and almost all of the scholars from Newark, New Brunswick, and Camden were African Americans or Hispanics. Race was not used as a factor in selecting the members of the program, but it did not have to be used because three of the four communities, the three cities, have largely minority populations. Since 2008, Rutgers has identified and recruited similar classes of Future Scholars every year.

Bringing them on board, we issued a challenge and a promise to the students. The challenge was to prepare themselves for college, hopefully Rutgers. And the promise was this: the university would provide tutoring and mentoring as they continued their education in grades eight through

twelve and would guide them in selecting their courses and monitor their progress so they stayed on track for college; we would bring them to programs on a Rutgers campus, probably the campus nearest where they lived, during the academic year and also every summer for a college preparatory experience; and—the big promise—if as high school seniors they were admitted to Rutgers and chose to attend, they would pay nothing in tuition and fees.

The program is succeeding just as we hoped it would. In the spring of 2013, 170 out of the 183 members of the first class of Rutgers Future Scholars graduated from their high schools in Newark, New Brunswick, Piscataway, and Camden. Their graduation rate was far above the predicted levels based on the students' social and economic backgrounds. Even more gratifying is that 163 of them were admitted to college, including 99 who enrolled at Rutgers and 64 who entered other four-year institutions or community colleges. As promised, the Rutgers students are paying no tuition or fees. In spite of these successes and the enormous needs that are being met through this program, it will be challenging to keep it up, much less to expand it. Although most of these scholars are eligible for financial aid from the federal and state governments, the undocumented among them are not, and the full cost of their education will have to be borne by Rutgers or whatever college they attend. The most expensive part of the program, however, is not their college education, but rather all the nurturing support they received during their high school years to get them ready for college. That is the biggest miracle of the Rutgers Future Scholars Program—and it will be worth whatever it takes to maintain it.

Conclusion

Although each institution had spent decades boosting the enrollment of minority students, the UW and Rutgers, each in its own way, recognized threats to the realization of that objective and responded aggressively and seemingly successfully. The UW took action to undo the effects of a voter referendum abolishing affirmative action, while Rutgers established a program to support college readiness and enrollment for young men and women in the older cities where its campuses are located. Both universities knew they could not wait for the K–12 schools to fix themselves but had to reach out and, in partnership with the schools, identify students whom they could nurture and prepare for higher education. The

programs undertaken by the UW and Rutgers did not rely on affirmative action as it is typically understood—that is, on using race as a plus factor in admissions decisions. But both universities employed proxies for race, most notably, geographically targeted outreach and recruitment. Such approaches may or may not stand the test of time.

These are just two stories out of many that could be told about how the nation's selective colleges and universities are trying to promote the enrollment and education of underrepresented minorities. Many institutions are experimenting with new and hopeful methods for expanding minority access, including affirmative action for economically disadvantaged students of all races. But the current and converging perils to minority enrollment are acute, and much more will have to be done to combat them. Whatever measures colleges and universities may take to promote access to higher education, their leaders must convince a wavering nation that everyone should have educational opportunity because they deserve it and because we cannot afford to waste the talents of anyone.

10

Ensuring Diversity under Race-Neutral Admissions at the University of Georgia

NANCY G. McDUFF and HALLEY POTTER

The University of Georgia (UGA) is the oldest state-chartered public university in the country, founded in 1785. Located in Athens, Georgia, an hour outside Atlanta, the school has grown in both size and selectivity in recent years. UGA enrolls more than 26,000 undergraduates and 9,000 graduate and professional students in seventeen different colleges and schools. Approximately 85 percent of freshmen are residents of Georgia, and the academic competitiveness of the students has grown in each of the past twenty years. UGA now admits about 56 percent of its roughly 20,000 applicants each year, down from 75 percent in 2003, and enrolls almost half of those to whom it makes offers of admission.¹

Ensuring that students of all backgrounds have access to this leading public university and securing the educational benefits of a diverse student body have been persistent challenges at UGA. After more than a century as a white-only institution, the university was legally desegregated in the early 1960s and began enrolling an increasing proportion of African American students

over the next three decades under a federally mandated affirmative action plan. In 2000, however, legal challenges to the university's consideration of race led UGA to adopt race-neutral admissions.

The loss of race-based affirmative action in admissions was an obstacle to achieving UGA's diversity goals, to be sure. But in the decade following this transition, the University of Georgia developed new strategies for recruiting a diverse student body and enhanced the variety of factors considered when thinking about diversity. While UGA continues to assess and improve the strategies it uses to prepare, recruit, and enroll students, the years since 2000 have shown the university moving in the right direction, toward increased racial, ethnic, socioeconomic, linguistic, and geographic diversity on campus.

A History of Diversity at UGA

Like many Southern institutions, the University of Georgia has a checkered past in terms of promoting diversity. UGA was created as a white-only, male-only institution, providing education to the sons of the state's white planters. Women were not admitted until the early 1900s. And the university did not enroll its first black students until after nearly 180 years of serving only white students. Hamilton Holmes and Charlayne Hunter, distinguished top graduates from an all-black high school in Atlanta, enrolled at UGA in 1961. A federal judge had ordered them to be admitted, a decision that followed nearly a decade of legal battles to enroll black students at the university. Holmes and Hunter entered campus amid students chanting, "Two-four-six-eight! We don't want to integrate!" Mobs throwing bottles and bricks had to be dispersed with police force and tear gas.²

Following this rocky desegregation, UGA operated for three decades with a federally mandated two-tiered admissions program. Black and white students were admitted through separate admissions processes, with lower academic requirements in the admissions pathway for black students. This two-tiered process was quite successful at increasing black enrollment on campus. By 1995, a record 12 percent of the enrolling freshman class was African American. And attitudes toward desegregation at the university had shifted sharply. In 1988, the university invited Charlayne Hunter to campus to give the commencement address.³

After federal desegregation requirements had been met, UGA began in the mid-1990s to look at replacing the court-ordered two-tiered

admissions standard with a single admissions program that would still take race into consideration. In 1996, UGA adopted the Total Student Index, an admissions formula which included race as a factor.⁴ Admissions staff felt that a formula-based system was the most efficient way to meet the university's diversity goals with a small crew of admissions officers.

The formula-based plan, however, quickly faced numerous legal challenges. The university signed a consent decree to drop the consideration of race in scholarships, settling some of the complaints that had been raised about their aid policies. And in July 2000, U.S. District Judge Avant B. Edenfield ruled that UGA's formula-based plan was unconstitutional.⁵ A 2001 appellate decision upheld the ruling, finding that UGA's particular admissions policy was unconstitutional because the use of race/ethnicity was not narrowly tailored.⁶ The judges wrote: "A policy that mechanically awards an arbitrary 'diversity' bonus to each and every non-white applicant at a decisive stage in the admissions process, and severely limits the range of other factors relevant to diversity that may be considered at that stage, fails strict scrutiny and violates the Equal Protection Clause of the Fourteenth Amendment."⁷

In response to these challenges, UGA voluntarily dropped the consideration of race, ethnicity, and gender in admissions in 2000 and decided in 2006 to make race-neutral admissions a permanent policy. Despite some discussion about reinstating consideration of race and ethnicity after the U.S. Supreme Court decision in *Grutter* and *Gratz* in 2003, the university ultimately decided to continue with race- and ethnicity-neutral admissions, fearing further legal challenges.

Diversity Policies under Race-Neutral Admissions

Since 2000, UGA has worked to develop a number of race-neutral methods to promote diversity on campus. Finding new strategies has not been easy, and there is no silver bullet. But the university has pursued a variety of complementary strategies that together have helped encourage diverse enrollment.

Broadening the Definition of Diversity

One of the first steps in crafting race-neutral diversity strategies at UGA was to launch discussions among faculty and staff about the definition and value of diversity. The university's attitude towards racial and ethnic diversity has evolved as Georgia's population has changed. During the

era of desegregation at UGA, diversity was viewed as a black-and-white issue, and the university focused its efforts on increasing the representation of African-American students on campus. In the past two decades, however, the state's Hispanic population has grown, and international immigration has increased. UGA has strengthened its efforts to attract students from these minority groups.

In addition, conversations that grew out of the transition to race-neutral admissions led faculty at UGA to broaden their view of diverse enrollment to include factors such as geography, home language, and life experiences. Accordingly, while the university has continued to stress providing access to African-American students, UGA has also launched a number of efforts to increase diversity across other demographics, beginning by increasing the non-academic factors considered in admission, while still remaining race-neutral.

Revising Admissions Criteria

As the University of Georgia switched to race-neutral admissions, faculty and staff reassessed admissions policies. UGA added a number of socioeconomic considerations, created an admissions pathway for top graduates from across the state to encourage geographic diversity, and removed the consideration of alumni relation.

Starting with the class enrolling in fall 2004, UGA implemented a new admissions policy that contained a longer application form, more space for essays, and a new teacher recommendation requirement. Under the new process, 75 percent to 80 percent of students would be admitted based on academics alone, but the rest of the class would be admitted with additional socioeconomic and non-academic factors, such as parents' educational background, job and family responsibilities, high school environment, "exceptional circumstances," "intellectual curiosity, integrity, personal maturity, creativity, commitment to service and citizenship, ability to overcome hardship and respect for cultural differences."⁸ These additional factors have allowed admissions officers to give a leg up to students who are from low-socioeconomic backgrounds or have faced other challenging life circumstances, in recognition of the obstacles those students have overcome on the road to academic success.

Starting in 2000, UGA also began guaranteeing admission for the valedictorian and salutatorian from each fully accredited high school in Georgia.⁹ This policy encourages geographic diversity and helps recruit talented students from under-resourced high schools.

In addition, after switching to race-neutral admissions, UGA decided that legacy status for relatives of alumni should also no longer be a factor. By definition, such preferences indirectly disadvantage first-generation college students, and, given the history of segregation at UGA, comparatively few students of color benefitted from the program. Acting on the advice of a faculty committee, university president Michael F. Adams eliminated legacy preferences in 2002.¹⁰ The decision was opposed by many among the university's more than a quarter of a million living alumni; however, UGA has stuck by this decision as an important part of its commitment to equitable access and has not encountered noticeable fundraising challenges as a result of the change.

Increasing Recruitment

After dropping the consideration of race/ethnicity in admissions, UGA increased targeted recruitment of underrepresented minorities and low-income students through a number of initiatives. In 2001–02, the university created the Office of Institutional Diversity and opened a new satellite recruitment office to help recruit students from historically underrepresented populations. A second satellite recruitment office opened the following year.¹¹ In 2004, the admissions office purchased recruiting lists for over nine thousand “multicultural high school students” to aid with recruitment.¹² Admissions counselors also increased their work at college fairs and offered weekend information sessions.¹³

UGA has also targeted specific high schools in order to boost recruitment of underrepresented populations. Through the Georgia Incentive Schools program, UGA provides special recruitment events for students at a set of about fifty public high schools across the state identified as having high percentages of students receiving free or reduced-price lunch and low rates of students applying to UGA. The university also offers limited scholarships for students admitted from these schools.

Strengthening the Pipeline of Applicants

Bolstered recruitment is an important tool for reaching academically competitive disadvantaged students who might not be aware of their college options; however, large achievement gaps at the K–12 level remain a central challenge to diversifying enrollment. Academic factors such as students' grades, rigor of curriculum, and test scores continue to be major admissions considerations that limit the pool of competitive applicants. For example, the twenty-fifth to seventy-fifth percentile range of combined math and verbal SAT scores at UGA is 1200 to 1450, and

students who score below 1000 are at risk of failing to meet the University of Georgia System's required cutoffs for remediation. However, out of about 30,000 African American graduates from Georgia high schools, only 20,000 take the SAT. Out of those, only about 20 percent score above 1000 on the math and verbal portions of the exam. Thus, as admissions officers work to build a freshman class of over 5,000 students, there are only about 4,000 African American graduates across the state meeting this particular baseline qualification—and many of these students are considering multiple college options.

Propelled by these sobering statistics, the University of Georgia has pledged to increase the number of Georgia high school students who will be competitive applicants at a research university. To achieve this goal, UGA has begun forming partnerships with K–12 schools long before the senior year of high school.

Through the Gear Up for College program, partially funded by The Goizueta Foundation, UGA brings middle school students from targeted school systems to campus. Admissions officers highlight different aspects of campus life and research, building excitement about college, and explaining the steps needed to climb the path to freshman year. A second program, Road to College, sends UGA staff into middle schools across the state that the university has identified based on their diverse student populations. UGA representatives lead parent programs and offer leadership training for students at the schools, making a special effort to reach non-English-speaking families. The university hopes that efforts like these will help increase the number of Georgia students ready for competitive colleges like UGA.

UGA alumni have also proven to be a valuable resource in promoting college readiness among the state's secondary students. As part of the National College Advising Corp, UGA places recent graduates in targeted high schools to act as college advisors to the students. Low-income students may not be planning on taking required standardized tests and applying to college. Recent alumni can encourage them by sharing their first-hand experiences and making them aware of the resources available to low-income students, such as fee waivers for testing and college applications.

Ensuring Financial Support

UGA is also conscious of the role that financial aid plays in recruiting low-income students to campus and encouraging their success once enrolled. Georgia's statewide lottery-funded scholarship program has served as a useful hook for attracting disadvantaged students to the University of

Georgia. Since 1993, the state of Georgia has offered the HOPE Scholarship for all graduates of Georgia high schools with a B average or better, and it recently added a second scholarship, the Zell Miller. HOPE and Zell Miller provide generous funding toward tuition at both public and private colleges in the state. More than 97 percent of in-state freshmen at UGA arrive on campus funded by these scholarships, which cover a large percentage of the tuition costs. The HOPE and Zell Miller scholarships are not means tested, serving as strong incentives for students of all incomes to attend college in state. However, they send a particularly strong message to low-income students, who might otherwise be deterred from applying to UGA because of the cost of attendance.

Although facing tight budget constraints, the University of Georgia has also introduced scholarships to attract and support underrepresented populations. In 2006, the university started the One UGA Scholarship, awarded each year to thirty-five to forty students who “provide diversity to UGA based on the University’s broad definition of diversity.” The award is \$1,500 per year and is renewable.¹⁴ In addition, in 2012 UGA launched the Gateway to Georgia Scholarship Campaign to raise endowment funds for need-based as well as academic scholarships, in order to help with recruitment efforts.

Results

After a rocky start, the University of Georgia has seen some success over the past decade in increasing diversity on campus across a variety of measures.

Increasing African-American representation has been challenging. The percentage of African-American students at UGA began to drop in the mid-1990s with the transition away from two-track admissions. Negative media coverage of the legal challenges to UGA’s use of race in admissions also contributed to a decrease in applications from African-American students and a lower yield of admitted applicants deciding to attend. From a high of 12 percent in 1995, the percentage of new African American students enrolling at UGA reached a low of less than 5 percent in 2001. While the percentage of African American students on campus is still lower than it was at its peak, the university is moving in the right direction. About 9 percent of the freshmen that enrolled in fall 2011 were African American. Furthermore, it is an important accomplishment that the absolute numbers of African-American students on campus have grown at the same time that academic standards for admission have risen. UGA’s freshman class has grown from about 3,700 students

in 1995 to 5,200 students in 2013, while average SAT math and verbal scores have risen from 1190 to 1282, and average GPA has increased from 3.55 to 3.94. Equally important, the university has had impressive results encouraging the success of its African American students. For ten of the past fifteen years, the first-year retention rate for African American students on campus has outpaced UGA's overall average, which was an impressive 94 percent as of 2012.¹⁵ While six-year graduation rates for African American students are currently below the university's overall average of 83.1 percent, they have risen considerably over the past decade, from 67 percent for the cohort starting in 1998 to 76.1 percent for the 2007 cohort.

Enrollment and success rates for other racial or ethnic minority groups have also increased in the past decade. As the state of Georgia's Hispanic population has increased, so has the percentage of Hispanic students on UGA's campus, growing from less than 1 percent in the mid-1990s to over 5 percent in 2012.¹⁶ First-year retention rates for Hispanic students have been above 90 percent since 2008, and the six-year graduation rate for Hispanic students is 81.4 percent for the 2007 cohort, close to the university's overall average of 83.1 percent. And while UGA's freshman class was 86 percent White in 2001, that figure had dropped to 73 percent in 2012.¹⁷

Furthermore, with a broader definition of diversity and a variety of admissions and recruitment strategies, UGA's campus has become more diverse in terms of socioeconomic status, home language, geography, and cultural origin. As of fall 2013, 7 percent of enrolling freshmen were non-native English speakers, and 6 percent were the first in their family to attend college. Whereas UGA was in the past sometimes referred to as the "University of North Atlanta" because of the predominance of white upper-middle-class students, today the university is more reflective of the state population economically and geographically. To take one measure, the number of Georgia high schools represented in the freshman class at UGA has increased by more than 30 percent, from 347 high schools in 2002 to 457 in 2012.¹⁸

Conclusion

Faculty and administration at the University of Georgia remain committed to pursuing diversity on campus through a variety of different routes, strengthening the strategies already identified and working to find new ways to build the pipeline of applicants and reach qualified

students of all backgrounds. The transition to race-neutral admissions has been challenging, and increasing representation of African-American students remains an area of focus. However, the transition has also pushed the university toward a broader understanding of diversity and a more proactive approach to ensuring equitable access and creating a rich learning environment.

Meanwhile, alongside the admissions office's targeted efforts, some of the most effective tools for continuing to increase campus diversity are the informal, word-of-mouth testimonials of UGA's satisfied students and alumni. As more students of color, low-income and first-generation students, non-native English speakers, and students from underrepresented high schools enroll at UGA and have positive experiences, the stories that they share with family, friends, and classmates help draw more students to campus. These include some students who may never before have seen UGA in their future.

PART

IV

Research on Promising Race-Neutral Strategies

Addressing Undermatch

Creating Opportunity and Social Mobility

ALEXANDRIA WALTON RADFORD
and JESSICA HOWELL

Students deserve to attend a postsecondary institution that matches their academic accomplishments, regardless of their background. This is important not just for meritocratic reasons. Students' lifetime opportunities and the country's economic competitiveness also depend on individuals fulfilling their potential. As we describe in more detail below, research suggests that students are more likely to complete college degrees and fare well in the labor market when they attend a college that matches their level of academic preparation.

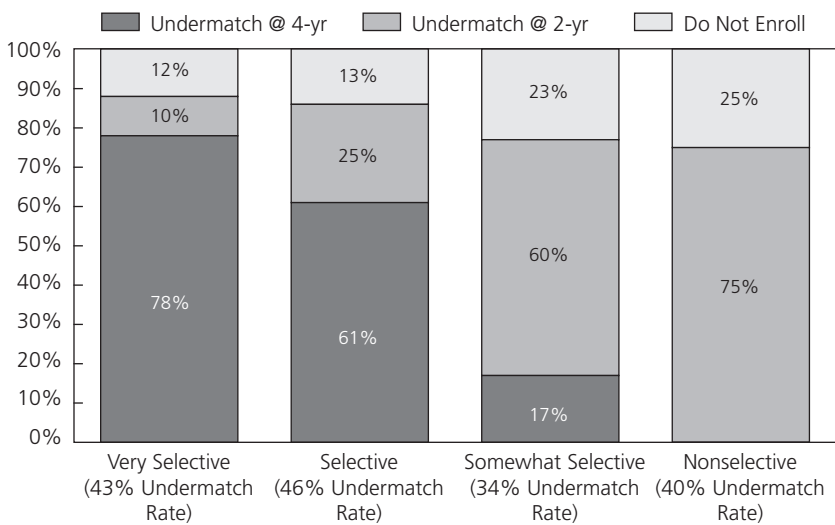
There has been a lot of media, political, and legal attention paid to the role of college admissions in determining where students ultimately enroll. Yet research shows that there are other key points in the transition to college that also shape where students attend. Since the ability of colleges to intervene in the admissions stage has become increasingly restricted by courts or voters, it is important to explore policies and practices that can be implemented during other stages of student decision-making that might help students attend institutions where they can fulfill their potential.

When students' academic credentials give them access to a college or university that is more selective than the postsecondary alternative that they actually choose, that is known as academic *undermatch*.¹ This chapter will report the extent to which undermatch occurs for different populations, the consequences of undermatch for student outcomes, what a new mixed-methods study of high achievers indicates about when and why undermatch occurs, and promising strategies for reducing undermatch and its deleterious effects on student success.

The Extent of Undermatch

Recent research shows that undermatch is pervasive, especially among low-income, underrepresented minorities, and first-generation collegegoers. Nationally representative data from the 2004 high school senior cohort reveal that 41 percent of students undermatch.² This estimate is roughly consistent with several region-specific estimates of undermatch that apply the same operational definition to specific subpopulations of students. In North Carolina, for example, 40 percent of students who were highly qualified to attend a selective college in 1999 did not enroll in one.³ In the Chicago Public Schools, about two-thirds of the 2005 high school graduating class undermatched.⁴

These estimates of the prevalence of undermatch mask important differences across students by measured academic ability as well as the severity or type of undermatch observed. Analyzing SAT takers who graduated from high school in 2010 reveals substantial variation along these dimensions. Figure 11.1 shows that 43 percent of students with academic credentials that make them likely to gain admission to a “very selective” college undermatch, but that most of those students (78 percent) still enroll at a four-year institution, just with a lower selectivity level. This 43 percent undermatch rate among SAT takers with the strongest academic credentials represents approximately 80,000 students in the high school class of 2010, composed predominantly of white students, but also roughly 4,000 Latinos, 2,000 African Americans, 10,000 Asians, and 3,000 students who list “other race” or do not report race/ethnicity.⁵ By contrast, 34 percent of students with predicted access to a “somewhat selective” college undermatch, and the vast majority of these students with more modest academic credentials (60 percent) undermatch at a two-year institution. Finally, a quarter of the students with academic credentials to gain access to a “nonselective” four-year

FIGURE 11.1. Type of Undermatch, by College Selectivity Category Accessible to Student

Most selective category of four-year colleges to which students are likely admissible

Source: Based on the authors' calculations using the population of SAT takers who graduated from high school in the spring of 2010 and matched with National Student Clearinghouse records of college enrollment through 2013. A student is "undermatched" if her SAT score (critical reading + math) is above the median of a college's selectivity category and she instead enrolls at a college in a lower selectivity category. The four selectivity categories are condensed Barron's categories as defined in Jonathan Smith, Matea Pender, and Jessica Howell, "The Full Extent of Academic Undermatch," *Economics of Education Review* 32 (February 2013): 247–61.

institution do not enroll in any postsecondary institution within three years of high school graduation.

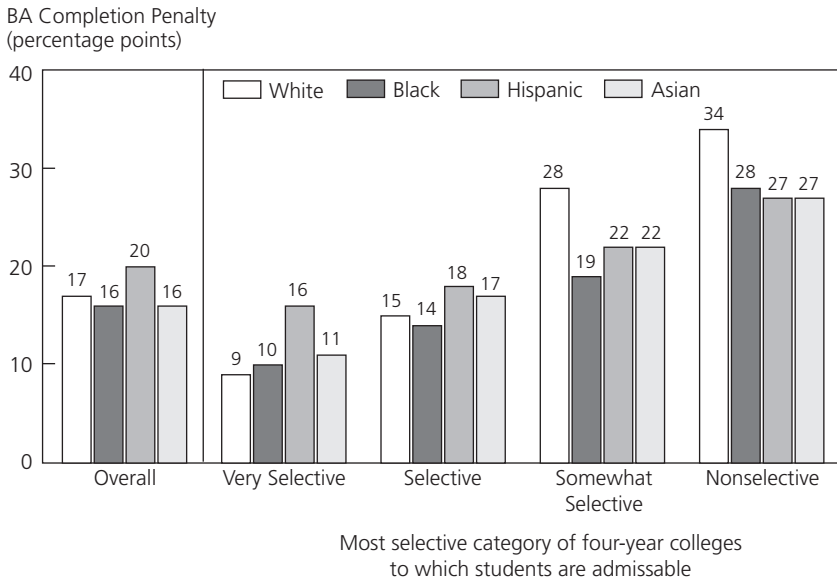
Studies show different rates of undermatch by demographic characteristics as well. In the Chicago Public Schools, Latino students were the most likely to academically undermatch, with 44 percent enrolling in colleges far below what their academic credentials would indicate, compared with 36 percent of whites, 28 percent of African Americans, and 31 percent of Asians.⁶ Academic undermatch in North Carolina was more common among African-American than white students, and was also strongly correlated with family income and parental education. Specifically, 59 percent of students in the lowest income quartile undermatched, compared with only 27 percent in the top quartile. And 64 percent of first-generation students undermatched, compared with 31 percent of

students who had parents with graduate degrees.⁷ A nationally representative sample similarly revealed that students in the lower half of the socioeconomic status (SES) distribution had a fifteen-percentage-point higher rate of undermatch than their peers from higher-SES families. It also showed that students in rural high schools were more likely to undermatch.⁸ Despite the obvious potential influence of school effects on undermatch (through school resources, academic culture, school counseling, etc.), observable high school attributes actually explain only about half of the across-school variation in undermatch rates.⁹ High schools that look nearly identical by many quantitative measures may have vastly different rates of undermatch among their graduating seniors, which makes qualitative analyses by Melissa Roderick and colleagues and by Alexandria Walton Radford so compelling and useful for understanding the role of students' high school context.¹⁰

Consequences of Undermatch

Over the past decade, researchers have begun to investigate academic undermatch as a potential source of stagnant college completion rates in the United States. Ohio State University economist Audrey Light and Texas A&M economist Wayne Strayer find that students of all academic ability levels have a higher probability of completing a degree if the selectivity level of the college they attend matches their measured academic skill level.¹¹ Why might this be the case? Some colleges are better at graduating some—or even all—students because of services offered, support systems, peers, and/or expenditures. In fact, consistent with this story, Chicago Public School students with similar high school GPAs had higher graduation rates at more selective Illinois colleges.¹² Among high-achieving students in North Carolina, 81 percent of matched students compared with 66 percent of undermatched students complete a bachelor's degree within six years—a fifteen-percentage-point completion penalty.¹³

Figure 11.2 shows that the consequences of undermatch for bachelor's degree completion are not the same for students of all academic ability levels or all racial/ethnic backgrounds. Analyses of the population of SAT takers who graduated from high school in the spring of 2004 reveals fairly small differences by race/ethnicity overall (see left-most panel of Figure 11.2), but larger differences by race/ethnicity within broad academic ability categories. Among students with the strongest academic credentials (those likely to be admissible to “very selective” institutions),

FIGURE 11.2. Bachelor's Degree Completion Penalty of Undermatch, by Race/Ethnicity and Predicted College Selectivity Access

Source: Based on the authors' calculations using the population of SAT takers who graduated from high school in the spring of 2004 and matched with National Student Clearinghouse records of college enrollment through 2011. A student is "undermatched" if her SAT score (critical reading + math) is above the median of a college's selectivity category and she instead enrolls at a college in a lower selectivity category. The four selectivity categories are condensed Barron's categories as defined in Jonathan Smith, Matea Pender, and Jessica Howell, "The Full Extent of Academic Undermatch," *Economics of Education Review* 32 (February 2013): 247–61. Students self-report race/ethnicity when they register for the SAT.

Hispanic students who undermatch are sixteen percentage points less likely to complete a bachelor's within six years, but the undermatch penalty among their similarly able white peers was only about half as large. This pattern reverses somewhat among students with more modest academic credentials; among students with access to "somewhat selective" and "nonselective" four-year institutions, white students faced steeper penalties associated with undermatch than their similarly able peers in any other racial/ethnic group.

We also know that individuals with higher levels of educational attainment benefit in multiple ways including having higher wages, lower unemployment rates, better health insurance and pensions, greater satisfaction

with their jobs, and healthier lifestyles, so there are labor market and general quality-of-life consequences associated with undermatch.¹⁴ Students who attend relatively selective colleges are not only more likely to complete a bachelor's degree, but they also enjoy greater success in the labor market, with estimated 5 percent to 20 percent wage premiums for attending a more selective college.¹⁵

When Undermatch Occurs

In order to develop appropriate interventions for addressing undermatch, we must better understand when in the student decision-making process it occurs. To address this question, Radford studied public high school valedictorians from five states who graduated between 2003 and 2006.¹⁶ These valedictorians were high achievers not just based on their class rank, but on standardized test scores and performance in rigorous coursework too.¹⁷ They thus had an excellent chance of admission and success at the seventy-two public and private colleges rated “most selective” by *U.S. News & World Report*.¹⁸ Yet when their college choice was disaggregated by socioeconomic status (SES), only 43 percent of low-SES and 47 percent of middle-SES valedictorians attended a “most selective” institution, compared with 84 percent of high-SES valedictorians. This ultimate enrollment gap can mostly be attributed to high-SES valedictorians being more likely to apply.¹⁹ All SES groups were similarly likely to receive an offer of admission from at least one “most selective” public or “most selective” private institution if they applied to at least one. And when admitted, most groups enrolled in these institutions at similar rates as well. The one exception was middle-SES valedictorians at most selective private colleges.²⁰ But even in that case, four-fifths of the final enrollment gap between middle-SES and high-SES valedictorians could be attributed to the former's lower application rate.

Research on students with a broader range of academic preparation also underscores the importance of the application and enrollment stages. Examining a nationally representative sample of 2004 high school graduates, Jonathan Smith, Matea Pender, and Jessica Howell of the College Board found that 61 percent of all undermatched students were fated to undermatch by the end of the application stage, precisely because these students did not even apply to a single match college.²¹ Other studies also indicate that the reason students from less affluent backgrounds are more likely to undermatch is that they are less likely to apply and enroll

in selective colleges or in any college at all.²² Thus, research suggests that efforts to tackle undermatch should concentrate on changing students' application behavior and, to a lesser extent, enrollment decisions.

Why Undermatch Occurs by the Application Stage

In order to develop appropriate interventions, it is critical to determine why students do not apply to match colleges, thereby putting themselves on track to undermatch. Radford's research on valedictorians suggests the first contributing factor is a lack of understanding about need-based financial aid and net college costs. Families are not sufficiently informed about the existence of need-based financial aid and the range of incomes that can qualify, causing some that could have received aid to not even apply.²³ Even families who do apply for financial aid do not understand the impact it is likely to have on their ultimate college costs. Among valedictorians who applied for aid, 59 percent believed that they—and 53 percent felt that their parents—did not have a strong understanding of the financial aid process by the fall of their senior year of high school.

Lack of guidance from high school counselors about match colleges is a second factor during the application stage that contributes to undermatch. Valedictorians reported that college information was generally provided to them and their classmates en masse and thus focused on the public in-state colleges that average students from their high school were most likely to attend. Even when valedictorians managed to arrange a one-on-one meeting, counselors rarely volunteered that the high achiever in front of them might consider more selective, private, or out-of-state institutions, or that these universities might provide better student outcomes. And when valedictorians took the initiative to ask about these types of colleges specifically, counselors were still uninformed about options and the admissions process. One valedictorian explained that his counselor "just couldn't give me . . . the information. . . . There weren't many students from my school [who] ever went out of state. So when I started having questions about out-of-state [and private] colleges, [the counselor] was just generally unsure." Some counselors even tried to steer students back to the public in-state colleges with which they were more familiar. Another valedictorian related that when students would express interest in exploring private colleges, the counselor would respond, "Oh. OK. Well, have you looked at [in-state public university x, in-state public university y]?"

The third contributing factor is that, in the absence of sufficient information about need-based aid, college costs, and match colleges from high school advisors or other outside sources, students are forced to rely on themselves, their families, and their social networks. Valedictorians followed two main approaches in identifying potential colleges: (1) setting a few parameters and only exploring colleges that met them, and (2) investigating only institutions already known to them.²⁴

In the first method, valedictorians searched based on key characteristics, but the criteria they selected differ by social class. Low-SES families, lacking personal college experience, often saw colleges as offering similar benefits. One first-generation college student described her parents' attitude as, "It's a school. You'll get a degree." Even when poorer families suspected college quality might vary, they had difficulty assessing it and so they focused on sticker price. And poorer and middle-SES families were often so scared off by sticker price that they did not allow themselves to explore match colleges as options. As one middle-SES valedictorian explained, private colleges "were thrown right out, right in the beginning."²⁵ Low-SES and middle-SES valedictorians also placed greater value on proximity to home, often expressing the need to be within a few hours' drive of home in case of emergencies. More affluent families, on the other hand, were much more attuned to colleges' reputations and were willing to pay more and travel farther in order to access universities with greater prestige.

The second method that valedictorians used to explore college options was investigating only those colleges that were already familiar to them. One such student described his search process as sitting in front of the computer and asking himself, "Uhhh, what are the universities I know?" and then looking at those colleges' websites. Valedictorians of all social class backgrounds knew local colleges because they were integrated into community life. Their sports were covered in the local news and their facilities were sometimes used for high school competitions. Teachers and other community members were often graduates of these local colleges as well.

But familiarity with more selective colleges differed by social class. More affluent valedictorians were often introduced to these colleges through their family or social network. Less affluent valedictorians, on the other hand, often only came into contact with more selective colleges if the colleges reached out to them or were nearby. Familiarity with a greater number of most selective colleges becomes important in avoiding

undermatch when students limit their search to only familiar institutions. Those who are aware of more match colleges are more likely to find ones that are also a good fit on other dimensions and apply. For time and cost reasons, however, colleges focus on locations that are likely to have a critical mass of students with the academic and social class background that make them likely applicants.²⁶ In fact, Vassar College president Catharine B. Hill and Williams college political economist Gordon C. Winston argue that low-income, high-ability students are underrepresented at selective colleges in part due to geographical biases in the spread of information during the college recruitment process, and this is borne out in the recent analyses by Stanford University economist Caroline M. Hoxby and Harvard University professor of public policy Christopher Avery.²⁷

A final factor in the application stage that contributes to the undermatch of high achievers is concerns about the academic and social environment of America's top institutions. As one valedictorian put it, "I wanted to go to a quality school without wanting to kill myself. I want to get a good education but . . . I want to mix it with a social life. You know what I mean?" Valedictorians with these apprehensions tended not to know anyone who had attended an elite institution. In contrast, those with someone in their social network who had attended a top university were much more likely to feel confident they could survive academically and enjoy themselves socially. Less affluent students, however, were far less likely to know a student or alumnus from a leading college.

How Undermatch Occurs in the Enrollment Stage

While perceptions about financial aid and price of attendance can contribute to undermatch by shaping application behavior, the actual price of attendance can result in undermatch by influencing enrollment choices. Both social class and academic preparation determine the role that these final costs play in students' choices. Ultimate college prices are less of a factor in undermatch for affluent students, regardless of their preparation, because their families' greater resources make them less sensitive to price differences.²⁸ Low-income students who are high achievers and apply to match colleges also are less likely to undermatch because of final college costs. This is because the top institutions to which they match typically offer generous need-based financial aid packages, making attendance cheaper or comparable to any undermatch college options they may have.

The choice is less straightforward for others. For middle-income high achievers, net costs at match colleges are sometimes higher than at undermatch colleges because undermatch colleges frequently offer merit aid to entice these top students to enroll and raise the academic credentials of the entering class. For low-SES and middle-SES students whose academic preparation does not enable them to secure offers of admission at wealthy elite institutions, match colleges can be more expensive than undermatch colleges as well. In these cases, families must weigh the benefits of attending a match college with the lower costs of an undermatch college.²⁹

Strategies for Addressing Undermatch

In an effort to reduce undermatch and create greater opportunity for less affluent students, different actors usually have focused either on information barriers prior to the application stage or on cost hurdles in the enrollment stage. Top colleges with larger endowments have tended to concentrate on the latter. At some elite colleges, all matriculates are able to attend without ever taking out a student loan, and even families earning up to \$200,000 a year can qualify for need-based aid.³⁰ Moreover, at an even greater number of top colleges, families with annual incomes of up to \$65,000 pay nothing at all.³¹ That said, when Harvard first offered free tuition to low-income students, the number of entering students with annual incomes of less than \$40,000 increased by only twenty.³²

Other initiatives have focused on addressing information barriers that academically strong students encounter before they make their college application decisions. For example, Caroline Hoxby and University of Virginia economist Sarah Turner designed an information-based intervention for very-high-achieving, low-income students, which they then tested with a randomized control methodology. Students in the treatment group received mailings that included guidance about college application strategies that mimic the advice provided by a good school counselor, as well as semi-customized net price information on five colleges and eight college application fee waivers accepted by a large number of selective institutions. The project's materials were very inexpensive yet very successful at increasing treatment students' applications to more "reach" institutions and, as a result, the fraction of students who enrolled in a college or university that was on par with their own academic credentials.³³ The intervention designed by Hoxby and Turner was intended to be implemented at scale by a third-party organization that could act as

a credible and neutral source of information for students.³⁴ The College Board scaled the Expanding College Opportunities intervention in 2013 for all high-achieving, low-income students who took the PSAT or SAT, and is committed to continued evaluation, improvement, and broadening of this evidence-based direct-to-student outreach.³⁵

Other programs have sought to provide better college information to students in person. For example, the University of Maryland Ascent Program engages directly with qualified Baltimore high school students about the college application, admission, and financial aid process at the University of Maryland and other institutions that would match students' academic credentials.³⁶ The College Prep program at Franklin and Marshall College is a direct institutional response to undermatch. It is a three-week residential program that brings together rising high school seniors from underserved communities around the country and offers them the affective experience of college with substantive liberal arts courses taught by college professors.³⁷ Researchers at MDRC targeted students in eight Chicago public high schools with more of a near-peer advising model.³⁸ In the first year of the pilot, which was not administered using a randomized framework, participating schools witnessed substantial increases in selective college enrollment and lower rates of enrollment in proprietary colleges, community colleges, or no college at all compared to pre-pilot years. Yet the program also found that, for these solid students who were not necessarily the country's highest achievers, the cost of attending a match college could still be a barrier.³⁹

Other programs are trying to tackle both informational barriers during the application stage and cost barriers at the enrollment stage. Rutgers University's Future Scholars Program, for example, reaches out to low-income and first-generation middle school students in towns surrounding campus by providing five years of college guidance as well as a scholarship to cover the full cost of attendance.⁴⁰ A rigorous evaluation of this program has not yet been done.

Moving Forward

The problem of undermatch has only recently been diagnosed. Thus far, efforts to improve match in the college application stage have primarily targeted the country's academically stronger students. Efforts to address undermatch in the enrollment stage by reducing cost barriers have mainly been pursued by the nation's top private institutions and public flagships,

which have the greatest resources. Combining tactics may be most likely to yield strong results, but greater evaluation of the effectiveness of a blended strategy is needed.

It is also critical that we look beyond our brightest students and examine which of these approaches can be employed to help students of average and lower academic preparation as well. The institutions that are matches for students with more modest achievement typically have fewer resources, which can make affordability a bigger obstacle in the enrollment stage, even if information barriers in the application stage are properly addressed. Determining how colleges can better serve students who do undermatch, whatever the reason, may be an important complementary strategy in ensuring students receive the opportunities their academic preparation warrants. The authors are in the process of pursuing such an investigation.

As institutions of higher education seek new ways to increase socioeconomic and racial diversity, addressing the issue of undermatch may prove to be a fruitful avenue for reaching those goals—and, more generally, for helping all students fulfill their potential.

12

Talent Is Everywhere

Using ZIP Codes and Merit to Enhance Diversity

DANIELLE ALLEN

A distinguishing feature of American society has long been its commitment to education as the pathway that might enable anyone, starting from any point on our social map, to achieve social success. We have depended not on aristocratic titles or hereditary privilege to determine who might play a leadership role in society. We have looked instead to see who has made the most of the project of personal development, both intellectually and socially.

We have great respect for those remarkable individuals who have excelled at self-cultivation and achieved great things without the advantages of formal education, or with very little of it—for instance, Benjamin Franklin, Abraham Lincoln, Frederick Douglass, and Susan B. Anthony. Yet as a people we have also worked hard to build a comprehensive network of institutions—schools, colleges, and universities—that can provide a platform for success for the very many of us who do not have the same capacity for self-creation as our eighteenth- and nineteenth-century ancestors.

We have sought to build colleges and universities that can bring to true maturity the cognitive, emotional, and inter-personal capacities that individuals use for the ongoing work of unleashing their human potential. One of the hardest parts of building these institutions has been to settle on the appropriate means for identifying talent. Who should get the opportunity presented by a college or university—and particularly by an elite, selective one—to acquire, in their best form, the invaluable keys to unlocking one’s potential?

The history of American education contains many moments when people have set a radical course in search of talent. In the 1830s, Oberlin College in Ohio decided to admit women and African Americans, making it the first college in the country to pursue coeducation and a racially integrated student body. In 1855, Berea College did the same for the South. In the period of the 1860s and 1870s, coeducation spread dramatically through the landscape of higher education.

The 1930s brought another radical change in how America’s colleges and universities spotted talent. James Conant, president of Harvard, wanted to open his university to students from a wider array of social backgrounds. This meant developing new admissions procedures to replace the historical reliance on exams held at Harvard, College Board-administered essay tests, and close ties to a small set of elite schools. His advisors brought to his attention the SAT, or the “Scholastic Aptitude Test” as it was then known. (Now, because the test has been shown not to succeed as an “intelligence test,” the letters “SAT” no longer stand for anything.) Conant worked to prove that such a test could be administered nationally and to establish the organization that could administer it (today’s Educational Testing Service). This transformed American admissions processes.¹

In the 1960s and 1970s, further changes to the admissions process emerged under the banner of affirmative action. Because those practices have varied considerably from institution to institution, a single account of their content is not possible. Their general goal, however, has been to increase the ethnic diversity of student populations at the country’s selective colleges and universities. In the past decade and a half, some institutions have added socioeconomic diversity as a parallel concern to ethnic diversity.²

The question of how elite institutions can best and most fairly identify talent continues to be one of the hardest and most important questions in higher education policy. In this chapter, I propose a novel technique

for selective college and university admissions, the purpose of which is to make good on the idea that talent is everywhere.

A Proposal: Why Not Increase Geographic Diversity?

For decades, colleges and universities have pursued geographic diversity in their student bodies. Web pages proudly trumpet that this year the college has students “from all 50 states and from over 80 countries” (Harvard) or that “the students come from throughout the United States and the world” (Stanford).³ Even public universities use these formulations. At the University of Michigan in 2011, students came from “81 of 83 Michigan counties, all 50 states, and 54 countries.”⁴ And Rhodes and Marshall Scholarships, those pinnacles of leadership and academic excellence, are awarded on the basis of regional competitions.

Geographically based structures for seeking talent are tried and true.⁵ Perhaps we should consider whether selective colleges and universities could make more of them. My suggestion is that the pursuit of geographic diversity in admissions is our best hope of merging the goals of diversity and excellence. This could and should be taken to the level of ZIP codes and, in particular, to the level of the ZIP+4 system, which divides the United States into geographic units as small as a city block or group of apartments. Given current residential patterns—with their extremely high degree of socioeconomic, racial, ethnic and ideological segregation, well-described in Bill Bishop’s book, *The Big Sort*, among others—geographic diversity at the level of ZIP+4 address codes should bring other sorts of valuable diversity along with it.⁶

Moreover, prioritizing geographic diversity is fully compatible with pursuing excellence. To embrace geographic diversity most fully, a college would have only to determine the combination of SAT score and GPA that would constitute its entrance threshold; then, it could admit students out of those in its applicant pool above the threshold in such a way as to maximize geographic diversity, both in that cohort and over time. The entrance threshold should be determined on the basis of the college’s knowledge about the level of preparation students need to thrive on its campus. Within any given ZIP code, the highest performing applicants would be chosen first. Whereas Texas chooses the top 10 percent from each high school, each selective college or university would choose from each ZIP code in its applicant pool the top “x-percent” of applicants over its threshold that will yield a full class.⁷ Data science is now

sufficiently powerful that this could be easily done. In an appendix (see page 157), the computer scientist Tina Eliassi-Rad and the philosopher Branden Fitelson, both at Rutgers, provide a formal analysis and algorithm (for implementation in software) to show how.

While I here propose a full-fledged system of admissions based on academic credentials sorted by ZIP code, variations on this basic approach are also possible. First, there is the question of the policy goal elected. Universities and colleges could, for instance, retain discretion for a certain subset of spots in the first-year class and admit the balance of students with the geographic diversity formula I suggest. Or they could review the cohort identified by the geographic diversity algorithm and review the identified admits, case-by-case, confirming or disconfirming selection. Public universities would, of course, reasonably weight decisions toward ZIP codes in their state, and all institutions would also need a separate but complementary strategy for international admissions. Then, there is the matter of methodology. Methodologies for formalizing the selection process could be developed that would be different from the one proposed in the appendix. Or one might want to use census tracts, instead of ZIP codes. In other words, a wide degree of variation in practice might flow out of a collective commitment to geographic diversity. My central goal in this chapter is simply this: to propose a plausible alternative to current practice that is sufficiently concrete to provoke fresh thought.

This novel approach of employing academic criteria sorted by ZIP code would, I will argue, establish a method of admissions that (1) would better embody an equal access ideal than present practice; (2) would more honestly acknowledge what we can and cannot tell about talent, or excellence, on the basis of SATs and GPAs; (3) would increase campus diversity along multiple dimensions, thereby enhancing the educational environment; and (4) would permit the transfer of resources from the labor-intensive process of handpicking a relatively small number of individuals from large application pools to the similarly labor-intensive process of recruiting talented individuals into those pools in the first place.

Justification

In the United States, we have a higher education system that includes, as its summit, a set of highly selective institutions, both private and public, that offer matriculants an extraordinary opportunity not only for intellectual development but also for social advancement. The most selective

institutions provide the highest economic returns to their graduates.⁸ The number of places at such institutions is very small in comparison to the relative size of the national population. The number of seats in the Ivy League is barely two-thirds the number of those in the University of Texas system.⁹ If anything, the relative number of seats has shrunk in the past few decades, since growth at most elite colleges and universities has not kept pace with population increases. To take Harvard as an example, the College enrolled 6,555 students in 1980; in 2010, it enrolled 6,641.¹⁰ The question, then, of how these opportunities might be fairly awarded is necessarily heated and contentious.

Consensus reigns, however, around one point: the seats should go to the most talented. But how exactly are we to measure talent? The SATs, which were introduced initially as a measure of aptitude—that is, as a quasi-IQ test—fail at that. The reasons are legion. Students with financial resources take test prep courses, sit the exam multiple times, and thereby achieve higher scores.¹¹ The tests themselves have been shown to have implicit cultural biases.¹² They also trigger stereotype threat effects that lower the performance of students from populations vulnerable to stereotype threat.¹³

The SATs and other such tests are not, however, altogether useless. Other than socioeconomic background, what the SATs do seem to report with some accuracy is level of preparation for college. They predict reasonably well how people perform in their first year of college, although not over the course of all four years.¹⁴ For that, GPAs are a better predictor.¹⁵ A combination of SAT and GPA would, therefore, seem to serve as a rough predictor of the likelihood a student will thrive in a particular environment.

We must recognize, though, that this combination of SAT and GPA cannot offer a fine-grained instrument, for all the same reasons that the test itself fails as an aptitude test. The results of differential access to test preparation and of stereotype threat are enough on their own to generate 100+ point advantages to those in the advantaged position.¹⁶ In other words, we cannot assume that the difference between scores of 2100 and 2200 is terribly meaningful. Because of their indubitable imprecision, therefore, these scores are best used not as the basis for a rank ordering of individuals but as thresholds, dividing an applicant pool into those above and those below a line that is roughly predictive of likelihood of success.¹⁷

Indeed, even as thresholds, combinations of SAT and GPA are so far from succeeding as fine-grained distinguishers of talent that, for any

given school, identification of the threshold over which students can be expected to succeed typically leaves at least twice as many individuals above that threshold as there are places. Or so, at least, we have reason to believe given the admissions officer's common lament that he or she could fill the class twice over with equally qualified admits.¹⁸ The current response to this predicament, which arises from the inadequacy of our measures, is to commit significant resources to poring over essays and hand-picking, person by person, the individuals who will constitute the admitted group. It is not at all clear that this hand-picking can be considered a fairer method than the geographic lottery, described above.

Legally, a full embrace of geographic diversity would be equivalent to the Top 10 Percent program used for admission to the University of Texas system, which guarantees admission to a public college or university in the state to students who are in the top 10 percent of their graduating high school class. The Texas method did not come in for criticism in *Fisher v. University of Texas*, the anti-affirmative-action lawsuit that the U.S. Supreme Court decided in June 2013. Michigan's attention to the number of counties from which it recruits students is a similarly fine-grained geographical approach, also without the controversy that has surrounded its other diversity initiatives. Moreover, the law of association, particularly the Court's rulings on private clubs, suggests that some adjustment of college and university admissions practices, in the direction of a geographical lottery among qualified applicants, might even be commendable.

When the Supreme Court ruled in its 1987 case *Rotary International* that Rotary clubs, despite being private, could not exclude women from membership, they endorsed "the State's compelling interests" "in assuring . . . equal access to public accommodations."¹⁹ They then defined that equal access to public accommodations thus: "The latter interest extends to the acquisition of leadership skills and business contacts, as well as tangible goods and services."²⁰ Rotary Clubs self-consciously provided social capital to their members; for this reason, women had an equal access right to membership. In its ruling, the Court in effect identified an equal access right to the social capital produced when organizations set about to cultivate leadership skills and business contacts, which is just what colleges and universities most frequently claim they do these days.

In response to public pressure to explain their value, colleges and universities increasingly make social capital arguments to justify themselves. They cite the economic return of their degrees, the very valuable social

networks represented by their alumni clubs, and so on.²¹ There is clearly an equal access right at stake here and, while there is no longer an issue of the formal exclusion of women or minorities from selective colleges and universities, we are not generally providing that equal access. As Amy Gutmann, president of the University of Pennsylvania, points out:

36 percent of all highly qualified seniors (with high grades and combined SATs over 1200) come from the top 20 percent [of the income distribution] while 57 percent of selective university students come from this group. The wealthiest 20 percent of American families are overrepresented on our campuses by a margin of 21 percent.²²

Socioeconomic groups are not among the categories protected by equal access jurisprudence, but that jurisprudence nonetheless establishes a useful framework for a moral consideration of what it would take to establish that we had achieved equal access. Admissions procedures that maximize geographic diversity by selecting for such diversity from a pool of applicants above the entrance threshold would be far stronger contenders for meeting an equal access bar than current practice.

Let me conclude this elaboration of a geographic diversity strategy by being explicit about the approach to talent it represents. My title, “Talent Is Everywhere,” conveys my starting point. Academic talent and leadership potential, like physical beauty, can appear anywhere: in individuals of all races and ethnicities, sexes, socioeconomic status, and cultures. If one grants that talent is everywhere, then another point must follow: an actually successful mechanism for identifying academic and leadership potential should result in a student body rich in ethnic, socioeconomic, and cultural diversity. My suggestion is that, in order to spot the talent that is everywhere, one needs to identify those who, above all others, have made the most of the resources available to them in their immediate surroundings. It is reasonable to consider achievement contextually as a means of assessing potential. If universities were to conduct their talent searches by attending more comprehensively to excellence in local contexts, they would do a better job of identifying the individuals most likely to metabolize fully their campus’s intellectual resources.

Anticipating Objections

Objections to this proposal will immediately spring to mind. The first, perhaps, would be a concern about what it would mean to turn away

from the careful work of crafting a class. A second, following close after, would involve concern about what would happen to applicants who are children of alumni. And a third, different in kind, would be that people might game the system by moving strategically to ZIP codes that have been under-represented historically at their school of choice.

First, I will address the consequences of abandoning an effort to craft a class. As leaders of admissions offices of elite colleges and universities will tell you, they shape their classes with care. Perhaps the orchestra needs more horn players. They will pursue that special talent in their selections. Perhaps the dance program needs more male dancers. Applications reviewers will keep their eyes out. Or perhaps the football team needs a few more running backs. The goal is to produce a class that is well-balanced, year after year, with regard to that school's vision of its ideal community; often that vision includes a serious investment in athletics. Our selective colleges and universities really are cities on a hill, where residents are handpicked at great expense to constitute the perfect community, and they come with football teams. This, in the first instance, presents a political problem. Those hand-selected communities develop committed constituencies to defend them. (This is something I understand personally, since Princeton's head of admissions in the late 1980s, Fred Hargadon, still has a special place in my heart.) And this helps explain the nature of the politics surrounding collegiate athletics. A turn to geographic diversity would certainly return us to amateurism in college sports, and the prospect of that would generate a firestorm.

But would a turn away from this careful handpicking also present an educational problem? What would we lose educationally if we turned to a quick algorithm for decision-making? One can argue that a college or university that cannot maintain its symphony or that sees its classics major headed toward obsolescence is indeed permitting a degradation of its intellectual environment. But on the other hand, that might not be so. Perhaps there are other forms of community, equally compelling, that would emerge from a relaxation of an effort to match the applicants to a pre-existing social ideal.

Social scientists have long distinguished between "bonding ties," which connect people who share similar backgrounds, and "bridging ties," which link people who come from different social spaces. Since the 1970s, scholars have been aware that bridging ties are especially powerful for generating knowledge transmission; more recently, scholars have argued that teams and communities that emphasize bridging ties

and learn how to communicate across their differences outperform more homogenous teams and communities in the development and deployment of useful knowledge.²³ Historian Josiah Ober, for instance, makes a powerful case that the decision to organize ancient Athens by routinely bringing together citizens from urban, rural, and coastal areas in teams for knowledge-generation and decision-making was a major source of that democracy's strength.²⁴ Geographic diversity is a sure way of maximizing the role of bridging ties within a campus community. The odds are good, as George Washington thought, that this approach would enhance the campus educational experience, not diminish it. He sought to build a national university that would ensure "the common education of a portion of our youth from every quarter."²⁵ His purpose was to prepare potential democratic leaders for their jobs and in the process "to counteract the evils arising from Geographical discriminations."²⁶ He wrote: "prejudices are beginning to revive again, and never will be eradicated so effectually by any other means as the intimate intercourse of characters early in life, who, in all probability, will be at the head of the councils of this country in a more advanced stage of it."²⁷

Then, second, there is the question of alumni loyalty, and what is required to nurture it. Selective colleges and universities seek to enroll within each class a reasonably sizable proportion of the children of alumni—let us put it at 10 percent to 15 percent.²⁸ The stakes of those alumni admissions are great. We have an educational system that depends significantly on private resources to sustain the highest peaks of excellence. Selective institutions, not only private ones but even some public ones, require the regular philanthropic contributions of their alumni in order to sustain the highly enriched education they offer.

Here one must concede that a switch to maximizing geographic diversity would indeed present a challenge. Development offices would have to learn to function with a very different kind of alumni community. Yet that community would be bigger and broader. In it, there should be many people for whom the life-changing opportunity to attend the relevant school inspires the will to repay the gifts, but whether fundraising could be as successful on this model as in the current model is a matter that could be determined only by trying. Some evidence suggests that the link between alumni generosity and legacy preferences is much weaker than is commonly assumed. Indeed, a number of institutions, from Caltech to Texas A&M, are able to generate enthusiastic alumni support in the absence of legacy preferences.²⁹ The necessary transformation of the

development model would take time, and there would no doubt be a significant period of transition before institutions surmounted an initial hit to fundraising.

A third immediately apparent objection has to do with the likelihood that people would seek to game the system. Perhaps the geographic diversity approach would lead the well-to-do to move strategically into neighborhoods with marginally less good provision of schooling, thereby displacing, as the likely beneficiaries of particular ZIP code slots, those who are currently at more of a disadvantage in the college sweepstakes. Indeed, researchers have documented such a phenomenon in Texas since the Top 10 Percent program was introduced. A 2011 paper written for the National Bureau of Economic Research analyzed Texas school transitions between eighth and tenth grade and found, “Among the subset of students with both motive and opportunity for strategic high school choice, as many as 25 percent enroll in a different high school to improve the chances of being in the top ten percent. Strategic students tend to choose the neighborhood high school in lieu of more competitive magnet schools.”³⁰

But that, I would counter, is not bad news at all. Just as bridging ties are beneficial on college campuses, they are also valuable in schools and neighborhoods. As Richard Rothstein of the Economic Policy Institute argued in a recent paper, ongoing racial residential segregation is one of the most important causes of low achievement in the public schools that serve disadvantaged children.³¹ Other scholars, including Annette Lareau at the University of Pennsylvania, have made similar points about socioeconomic residential segregation.³² Just as getting students with more family and social resources back into neighborhood schools should help those schools, getting those families back into somewhat less advantaged neighborhoods should help those neighborhoods.

That there are major political landmines along the path that I propose goes almost without saying. Yet, with regard to our current practice of crafting a class and the question of strategic moving, we have as much to gain as it presently looks as there may be to lose. This may also be true with fundraising, although this is a harder case to assess up front.

The Open Questions

Finally, there are several other, extremely important questions that cannot be answered without further research.

First, what would be the actual impact of an effort to equalize the geographic distribution of a college's student body on the profile of that student body, with regard to the overall distribution of pre-collegiate SATs and GPAs? Will sufficient numbers of the overall top-scorers still get in? Any admissions process that proposes to admit the "top p percent" from each of a set of geographically correlated units (for example, the Top 10 Percent program used for admission to the University of Texas system) will have to face this general question.

A more specific version of this general question arises in connection with the present proposal. Owing to the need to round percentages to integers, in order to identify the number of students to be admitted when allotting the "top p percent" of each ZIP code, it may happen that the total number of admissions slots is filled before we get to the end of the list of ZIP codes. The algorithm proposed in the appendix handles this rounding problem by sorting the ZIP codes. The historically least-represented ZIP codes are allotted first; and the historically best-represented ZIP codes are allotted last. This raises the following more specific question. Would such an admissions process, moving down the list of ZIP codes, from least-represented historically to best-represented, require a college to make multiple passes through the list of available ZIP codes or would it routinely fill all of its slots before it got to, for example, Palo Alto? According to the current proposal, if Palo Alto goes unselected in one year, then it will become a higher priority ZIP code in the subsequent year. More importantly, however, both the general and the specific questions depend on how a college sets its entrance threshold, as well as its target number of admits for generating an adequately sized class of matriculants.

The second major question not yet answered here is this: What would be the impact of this method on ethnic and socioeconomic diversity on campus? This is a matter of how the geographic diversity method would interact with current applicant pools, and also of how its introduction might even shift the very constitution of the applicant pool.

With regard to ethnic diversity, we know that the number of "ethnic census tracts," in which African American, Hispanic, or Asian residents are more than 25 percent of the tract population, increased between 1990 and 2000, from approximately 25 percent to 31 percent of all tracts. These tracts are of varying socioeconomic status.³³ In the remaining 69 percent of tracts, the average presence of minorities was 20 percent in 2000, with "sharp declines in all-white neighborhoods since 1970."³⁴

One might indeed expect, then, that at selective colleges and universities a stronger orientation toward geographic diversity could well support diversification of student populations by ethnicity, thereby permitting us to slip free of the contested terrain of affirmative action.

With regard to low-income students, we know that students who live in the fifteen metropolitan areas that receive the most attention from admissions offices are far more likely to apply to selective colleges than students who live elsewhere; we also know that a great number of high achieving low-income students tend to live in that “elsewhere,” namely rural areas and towns.³⁵ There, in rural areas and towns, the concentration of high achievers is insufficiently dense to justify the costly hands-on attention of admissions officers.³⁶ Would a prominent national campaign about the effort of colleges and universities to draw applications from new ZIP codes help recruit those high-achieving low-income students who live “elsewhere” into the applicant pool? This is an intriguing possibility.

While current degrees of ethnic, socioeconomic, and ideological residential segregation as well as rural/urban differences give us reason to believe that an emphasis on geographic diversity should increase all three kinds of diversity on selective college and university campuses, this question, like the one about fairness to Palo Alto, is testable. One would want to see the algorithm in action—to answer both these questions—before one could confirm that what, as a matter of policy, looks like a reasonable approach to equal access is in reality a reasonable approach. This research can easily be done. The algorithm is efficient, and these questions could be tested on historical data. Before any given institution or even the educational ecosystem as a whole should undertake a move in this direction, one would want to do that testing. For that, we need only a volunteer, an institution willing to let its historical data be analyzed in this way.

The prospects for uniting diversity and excellence are great enough along this path that I do hope to find that volunteer. Given our persistent failure to find equitable ways of providing access to seats at selective colleges and universities, as is evidenced powerfully by the problems with our current use of SATs for rank-ordering, the under-representation of low- and middle-income students at selective institutions, and the relative failure of selective institutions to find ways of drawing rural populations into their applicant pools, it is time for a radical change, again, in how our selective colleges and universities spot talent. Is anyone willing to step up?

Appendix. A Proposal for Decreasing Geographical Inequality in College Admissions

Tina Eliassi-Rad and Branden Fitelson

Here is an oversimplified description of a typical college admissions process (as it now stands). In a given year (y), a given school (s) receives applications from N_{ys} qualified³⁷ applicants. From this pool of N_{ys} qualified applicants, some “top tier” is ultimately admitted.³⁸ We will denote the number of applicants admitted by school s in year y as A_{ys} .

We will subdivide the set of N_{ys} qualified applicants into n geographical sub-groups—one for each zip+4 code z in the United States.³⁹ That is, the sub-group of qualified applicants from a given zip+4 code z will contain N_{ys}^z qualified applicants. Thus, the sum of the list of numbers $\{N_{ys}^z\}$ will be equal to N_{ys} (i.e., $\sum_z N_{ys}^z = N_{ys}$).

Similarly, we will sub-divide the set of A_{ys} admitted applicants into n geographical sub-groups—one for each zip+4 code z in the United States. That is, the sub-group of admitted applicants from a given zip+4 code z will contain A_{ys}^z qualified applicants. Thus, the sum of the list of numbers $\{A_{ys}^z\}$ will be equal to A_{ys} (i.e., $\sum_z A_{ys}^z = A_{ys}$).

Now, we can describe the *degree of geographical inequality* (DOGI_{ys}) of an admissions process (in a given year y at a given school s) as a function of A_{ys}^z and N_{ys}^z . One quick-and-dirty way to gauge DOGI_{ys} would be to use some measure of the degree of inequality of the list of geographical admission rates, where the admission rate of a zip+4 code z is given by $R_{ys}^z = \text{df } A_{ys}^z/N_{ys}^z$. That is, R_{ys}^z is the *proportion of qualified applicants from zip+4 code z who were admitted* (in year y at school s). There are various ways of measuring the degree of inequality of such a list of admission rates $\{R_{ys}^z\}$. We will, for the sake of the current simple proposal, adopt the *Gini coefficient* $G(\{R_{ys}^z\})$ as our inequality measure.⁴⁰

Typically, DOGI_{ys} —as measured by $G(\{R_{ys}^z\})$ —will be *high* for present-day admissions processes. This is because the “top tier” of qualified applicants tends to be *geographically correlated/clustered*. So, if we seek to decrease the degree of geographical inequality of an admissions process (i.e., to decrease the value of DOGI_{ys}), then one way to go about this would be to try to decrease the value of $G(\{R_{ys}^z\})$.

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Thus, a natural strategy for decreasing DOGI_{ys} would be to *minimize* the value of $G(\{R_{ys}^z\})$. To be more precise, this would involve *choosing numbers of admitted students* A_{ys}^z so as to *minimize the value of* $G(\{R_{ys}^z\})$. Of course, initially (i.e., in $y = 2014$), we won't be able to select our A_{ys}^z values so as to ensure that $G(\{R_{ys}^z\})$ is *zero*. But, as the years go by, one can reasonably hope to make $G(\{R_{ys}^z\})$ smaller and smaller.

Directly minimizing $G(\{R_{ys}^z\})$ as described above is likely to be infeasible for admissions offices.⁴¹ However, there is a very efficient way of *approximating* this optimal allocation of admission slots.

1. Decide the total number of students we want to admit in a given year: A_{ys} . This initial choice will also determine the *overall proportion* of the total number of qualified applicants who are admitted: $R_{ys} = A_{ys}/N_{ys}$.
2. Calculate the *historical popularity* of zip+4 codes z at school s over some set of m years Y . We define historical popularity of a zip+4 code z as the following weighted average of the acceptance rates $\{R_{ys}^z\}$:

$$\text{Historical popularity of zip+4 code } z = \text{df } w_z \frac{\sum_{ys} R_{ys}^z}{m}$$

The weights (w_z) used in this average decay exponentially, so as to favor zip+4 codes that have been popular in the more distant past over those that have been popular in the more recent past. These decaying weights (w_z) are computed via Algorithm 1. Finally, sort the zip+4 codes—in increasing order—based on their historical popularities. This step produces an ordered set of zip+4 codes $Z = \text{df } (z_1, \dots, z_n)$, where z_1 is the least historically popular zip+4 code and z_n is the most historically popular zip+4 code.

3. For each zip+4 code z in the ordered set Z , *admit the “top $R_{ys}\%$ ”* of z . That is, pass through the ordered set Z and allocate (approximately)

$$A_{ys}^z = \text{df } R_{ys} \times N_{ys}^z$$

students from zip+4 code z , for each of the zip+4 codes, in order. This (initial) allocation will be approximate, because of *rounding errors* (A_{ys}^z is rounded to the nearest integer). On the one hand, rounding errors may cause us to initially allocate all of the A_{ys} slots before the end of Z is reached. But, because we have (in Step 2) sorted the zip+4 codes in increasing order of historical popularity, we can rest assured that historically unpopular (i.e., under-represented) zip+4 codes will not be short-changed. On the other

hand, rounding errors could result in there being some leftover admission slots after our first pass through Z . In this case, performing a second pass over the set Z will ensure a complete allocation. And, because the historically under-represented zip+4 codes occur at the beginning of our ordered list of zip+4 codes, they will be the first to receive any leftovers from our first pass.

The result of the above algorithm will be an allocation of the A_{ys} admission slots, which is (approximately) evenly spread across the zip+4 codes (and any errors in this approximation caused by rounding will tend to favor the historically under-represented zip+4 codes). That is, each of the zip+4 codes will contribute (approximately) its “top $R_{ys}\%$ ” to the admitted class.

Algorithm 1 Calculating weights w_z for the weighted average of the $\{R_{ys}^z\}$.

1: $c := 10^{-6}$	Set exponentially decaying constant.
2: for $z = 1$ to n do	
3: $w_z := 0$	Initialize popularity weight w_z of zip+4 code z .
4: end for	
5: for $y = 1$ to m do	Consider data from the past m years.
6: for $z = 1$ to n do	Iterate over all the zip+4 codes.
7: if $(w_z = 0)$ and $(R_{ys}^z > 0)$ then	$R_{ys}^z > 0$ presently but not previously.
8: $w_z := 1$	
9: else if $(w_z > 0)$ and $(R_{ys}^z = 0)$ then	$R_{ys}^z > 0$ previously but not presently.
10: $w_z := ((1 - c) \times w_z)$	
11: else if $(w_z > 0)$ and $(R_{ys}^z > 0)$ then	$R_{ys}^z > 0$ previously and presently.
12: $w_z := ((1 - c) \times w_z) + 1$	
13: end if	
14: end for	
15: end for	
16: for $z = 1$ to n do	
17: $w_z := \frac{w_z}{\max(\{w_z\})}$	Normalize weights such that $w_z \in [0, 1]$.
18: end for	

13

Reducing Reliance on Testing to Promote Diversity

JOHN BRITTAIN and BENJAMIN LANDY

Standardized tests, particularly the SAT, have long occupied a privileged position in the American education system. Despite persistent and growing challenges to the SAT's credibility, nearly every prominent college and university requires the four-hour exam, or its equivalent, the ACT.¹ The stakes are incredibly high: For high-achieving students, a good score can open the doors to some of the world's most elite institutions, wealthy alumni networks and prestigious job opportunities. A low score threatens to close those doors forever.

The modern meritocracy is heavily invested in the belief that this system for picking talent works. After all, it worked for them. But after decades of research, the evidence against standardized testing is overwhelming: High school grades are a better predictor of college outcomes, regardless of variation in schools' quality or grading standards.² What the SAT really excels at is predicting how much money students' parents make and their level of education. The more colleges emphasize the SAT, the richer and whiter their matriculating class.³

Although the College Board routinely obfuscates these points in the press, their own research proves the

SAT is as much correlated with socioeconomic status (SES) as undergraduate outcomes, and that SAT scores add little predictive validity (the ability of a test to predict some future outcome) beyond what students' high school records already predict. According to the most recent College Board study, high school grades have a correlation of 0.36 with grades in the first year of college—meaning high school GPA explains about 13 percent (the square of the correlation coefficient) of the variance in first-year undergraduate GPA—compared with 0.35 (explaining about 12 percent of variance) for the latest version of the SAT. Together, high school GPA and SAT scores have a combined predictive validity of 0.46, a small improvement over either indicator alone that nonetheless leaves the majority of the variance in students' undergraduate performance unexplained.⁴ Independent studies, however, often find the SAT even less predictive, adding as little as two percentage points in explanatory power. “For a billion-dollar industry,” notes *SAT Wars* author Joseph Soares, “this is pretty pathetic value added for the money.”⁵

More troubling is the fact that standardized testing, while facially neutral, is discriminatory in effect, with a disproportionate adverse impact on black and Hispanic students, as well as students of all races from low-income families.⁶ The unregulated, \$4 billion-a-year testing industry has responded by working diligently to neutralize intimations of class or racial prejudice, eliminating questions with cultural bias (for example, “runner” is to “marathon” as “oarsman” is to “regatta”) and even going so far as to change the name of the test, twice, in order to purge the uncomfortable memory of the SAT's origins as an IQ test. (The SAT, once an acronym for the Scholastic Aptitude Test, now stands for nothing at all.)⁷ In March 2014, the College Board announced that it would make changes to the SAT, such as eliminating questions on arcane vocabulary, focusing its math questions on key areas, and removing the penalty for wrong answers. It also pledged to undertake initiatives such as providing college application fee waivers for income-eligible students and free test preparation material—all with an eye toward increasing opportunity.

Unfortunately, even with these changes, it is likely that the test's design will continue to result in a racial and socioeconomic gap not reflective of either students' high school achievement or predicted undergraduate success, barring thousands of otherwise qualified minority and low-income students from joining the ranks of the nation's educational elite. This is tolerated, in part, because defenders of affirmative action made a Faustian bargain. “Affirmative action was developed to compensate for the

deficiencies of the new meritocracy,” writes Lani Guinier. Instead of challenging the underlying assumption that there is anything intelligent about administering a seventeen-year-old an IQ test, educators turned to racial preferences as a technocratic fix, obscuring “serious flaws in the meritocracy’s claims of democratic opportunity.”⁸

That may change in the near future. As the recent *Fisher v. University of Texas*⁹ decision hinted, the U.S. Supreme Court may want universities to pursue racial diversity by employing race-neutral methods where they are as effective as race-conscious measures. This need not mean an end to the mutualistic relationship between “testocracy” and affirmative action; class-based preferences, which employ academic criteria such as the SAT in the context of what socioeconomic obstacles a student has overcome, can boost racial diversity indirectly, given the overlap between race and class in American society.¹⁰ Although the use of race in affirmative action survived, *Fisher* is a warning shot across its bow, and presents an opportunity for defenders of affirmative action to renegotiate their tacit support for testing, if they so wish. Historically, there appears to have been a “gentleman’s agreement” between civil rights groups and colleges—the former would not contest the legality of the SAT under Title VI of the Civil Rights Act as long as colleges provided affirmative action for minority students—that has no parallel in the employment context, where there have been numerous legal challenges to the discriminatory impact of testing.¹¹ In the post-*Fisher* legal environment, that agreement may be coming to an end. A recent civil rights complaint challenging the use of testing at selective New York City high schools such as Stuyvesant and the Bronx School of Science may be a harbinger of things to come to the extent that affirmative action programs are limited further by the courts.¹²

A Brief History of the SAT

The SAT was founded in the early twentieth century by educators with noble ambition, as a way for colleges to identify talented students from unknown schools and unspectacular backgrounds. At the time, the Ivy League had become little more than finishing schools for the sons of America’s wealthy, largely Protestant aristocracy.¹³ For self-proclaimed radicals like Harvard president James Bryan Conant, standardized testing represented an opportunity to replace the old boys club with an ever-changing meritocratic elite.¹⁴

That the SAT originated as an IQ test suited Conant just fine. “He was never a card-carrying member of the eugenics movement,” says Nicholas

Lemann, author of *The Big Test: The Secret History of the American Meritocracy*. But Conant did believe, like most academics of his time, that intelligence was an innate, measurable quality.¹⁵ Testing an abstract concept like scholastic aptitude, as opposed to demonstrated achievement, was key to creating the level playing field from which a “natural” aristocracy would rise.¹⁶ By cultivating a meritocratic elite, higher education would be preparing the best and brightest to serve the larger democratic society.

The SAT expanded rapidly after World War II as millions of returning servicemen flooded America’s colleges. Many came from outside the private preparatory school system, and may never have had the opportunity to attend college if not for the GI Bill. Standardized testing offered admissions staff a fair, practical, and seemingly scientific way to evaluate a growing volume of candidates from a wider range of socioeconomic and geographic backgrounds.¹⁷

Minority enrollment, however, did not increase noticeably until the late 1960s and early 1970s, when a series of civil rights victories, including *Brown v. Board of Education* in 1954 and the Civil Rights Act of 1964, forced institutions to address their systemic lack of racial diversity. Elite colleges responded by implementing “need-blind” admissions policies in the mid-1960s, and, by the end of the decade, affirmative action for minorities and women. System-wide, the number of black college students increased more than 275 percent between 1966 and 1976, from just 4.6 percent of the postsecondary school population (including two-year institutions) to 10.7 percent.¹⁸ Although the pace of black enrollment slowed after that initial burst—falling to 9.6 percent in 1990 before continuing its upward climb to 13.9 percent in 2008—other minority groups experienced sizable gains. Hispanic enrollment nearly tripled between 1976 and 2008, rising from 3.7 percent of the total postsecondary student population to 12.9 percent, while Asians surged from 1.8 percent to 6.8 percent.¹⁹

As the number of minority applicants grew, tensions emerged between Americans’ meritocratic ideology and their commitment to compensatory justice.²⁰ In 1996, the Fifth Circuit banned the use of racial preferences in college admissions in *Hopwood v. Texas*, the first successful legal challenge to affirmative action since *Bakke v. the Board of Regents of California* in 1978.²¹ The Texas State Legislature responded by creating the Top 10 Percent plan, guaranteeing that any Texas student graduating in the top 10 percent of their high school class (irrespective of SAT or ACT scores) could attend a state-funded university. Although *Hopwood* was

reversed in 2003 by the Supreme Court's ruling in *Grutter v. Bollinger*, which created the current legal standard for the use of race-conscious affirmative action, the success of Texas's alternative approach proved that it was possible to maintain considerable diversity without the explicit use of racial preferences.

Hopwood brought the academic debate over the meaning and definition of merit out of the shadows and into the mainstream. "The form of the complaint, the court's response to it, and the media's representation of the court's decision [implied] that test scores and grades are the overriding determinants of who is 'entitled' to the limited resources in higher education," writes Linda Wightman.²² But *Hopwood* also galvanized critics of standardized testing, especially those who saw in the Top 10 Percent plan a viable alternative.

The backlash against testing intensified in the late 1990s after Californians voted by a nine-point margin to end affirmative action at all state-funded institutions, immediately causing a significant drop in black and Hispanic enrollment at the University of California (UC). The UC system responded by undertaking "a sweeping review of its admissions policies," according to former UC president Richard Atkinson. "What we found challenged many established beliefs about the SAT. Far from promoting equity and access in college admissions, we found that—compared with traditional indicators of academic achievement—the SAT had a more adverse impact on low-income and minority applicants."²³

Previous research had come to similar conclusions. But Atkinson's findings were nevertheless groundbreaking, coming from the largest university system in the United States. When he called for ending the SAT requirement for UC schools, in a now famous 2001 speech before the American Council of Education, educators and policymakers around the country took note. With political and legal support for affirmative action on ever-weaker footing, the experience of states like Texas and California would prove instructive.

The Reality of Disparate Impact

Today, opposition to standardized testing has grown to encompass criticism from a wide range of sources, including public intellectuals as diverse as civil rights activist Lani Guinier and *The Bell Curve* author Charles Murray.²⁴ Testing agencies like The College Board, ACT, and the Law School Admissions Council (the organization that administers the LSAT) are more forthcoming about the limitations of testing, emphasizing that

while tests offer improved predictive validity over high school grades alone, colleges should not “overuse” test results that may disproportionately impact certain groups.²⁵ According to the National Center for Fair and Open Testing (also known as FairTest), nearly 850 colleges have gone “test-optional,” including notable liberal arts colleges such as Bowdoin, Smith, and Bates College; and national universities such as Wake Forest and Worcester Polytechnic Institute.²⁶

Despite mounting criticism, standardized tests remain the status quo among highly selective colleges, including all eight Ivy League schools, Stanford, the University of Chicago, and every other top-twenty national university.²⁷ Few top-tier colleges have reduced their reliance on the SAT or ACT, and not one accredited law school has dropped their LSAT requirement. While a growing number of scholars recommend colleges adopt a more holistic approach to admissions, surveys suggest colleges have actually increased their reliance on testing over time, with the percentage of institutions labeling test scores “very important” or of “considerable importance” rising steadily between 1979 and 2006.²⁸

Status anxiety is one explanation for this change. “Colleges fear that dropping their ACT/ SAT requirements might signal potential applicants and other important stakeholders that they are lowering academic standards,” writes FairTest’s Robert Schaeffer. “College rankings, particularly those from *U.S. News & World Report* magazine, which include average test scores in their calculations, help reinforce this concern.” In fact, test scores count for less than 10 percent of the *U.S. News*’ ranking formula, and schools that have gone test-optional have seen no drop in their rankings. But pressure from political and alumni interests to increase test scores—considered a symbol of exclusivity and prestige—can be overwhelming, particularly at public institutions where “raising average test scores is a cheap way of creating the impression that universities are raising academic standards.”²⁹

Competition has also increased between students, as an ever-larger applicant pool competes for a fixed number of seats at the nation’s highest-ranked institutions. “At elite universities like Harvard, Stanford, and Yale, applicants outnumber available spaces by more than twelve to one,” notes education scholar Rebecca Zwick. “The hard truth is that granting one candidate a seat at these institutions means keeping another one out, and some mechanism is needed for selecting among the candidates.” Standardized testing accomplishes this goal at no cost to colleges by shifting the financial and psychological burden of the screening process to students and their families.³⁰ White and affluent students, who

TABLE 13.1. Correlation of Admissions Factors with Socioeconomic Status

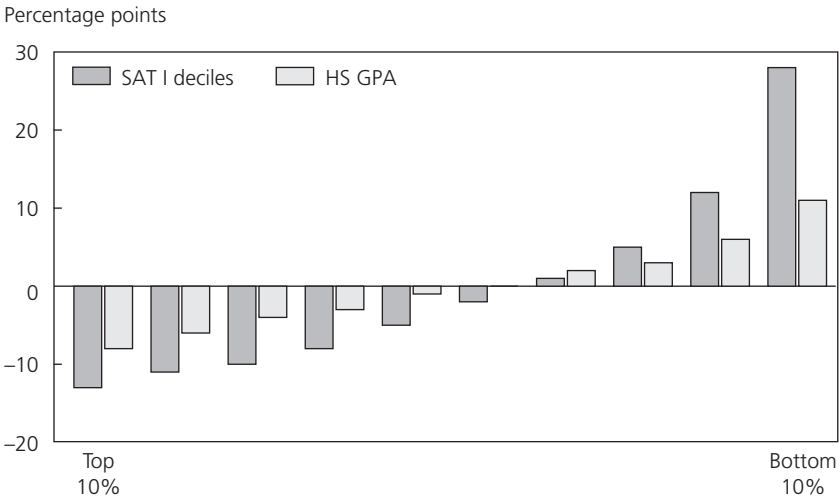
	<i>Family income</i>	<i>Parents' education</i>	<i>School API decile</i>
SAT I verbal	0.32	0.39	0.32
SAT I math	0.24	0.32	0.39
High school GPA	0.04	0.06	0.01

Source: Saul Geiser and Maria Veronica Santelices, "Validity of High-School Grades in Predicting Student Success Beyond the Freshman Year: High-School Record vs. Standardized Tests as Indicators of Four-Year College Outcomes," Research and Occupational Paper Series, Center for Studies in Higher Education, June 2007.

have better access to educational opportunities and expensive test prep services, typically win at this game. High-achieving minorities and low-income students, many of whom live in areas of concentrated poverty and with less-educated parents, are its primary casualties.

This need not be the case. Although the SAT was originally conceived as a way to level the playing field, studies suggests high school grades are a more equitable measure of academic achievement, despite variations between school districts. The best data on this point come from Berkeley's Saul Geiser and Maria Santelices, who examined nearly 80,000 students admitted to the University of California system between 1996 and 1999. In their research, they found a higher degree of correlation between applicants' SAT verbal scores and their family income (0.32), as well as their parents' level of education (0.39) and their high school's academic performance index (API) ranking (0.32). The results were similar for the math section of the SAT. However, applicants' high school GPA had comparatively little correlation with their family income (0.04) or parents' education (0.06), and close to zero correlation with their high schools' API (0.01).³¹ (See Table 13.1.)

Because minority students come disproportionately from poor socioeconomic backgrounds, sorting students by their SAT scores produces a much higher degree of racial stratification than high school grades. When Geiser and Santelices ranked their University of California students by high school grades, disadvantaged minorities (17 percent of the sample) were slightly overrepresented in the bottom half of the distribution, and slightly underrepresented in the top half. When they used SAT scores, racial stratification intensified significantly, producing twice as many minorities in the bottom decile, and 5 percentage points fewer at the top.³² (See Figure 13.1.)

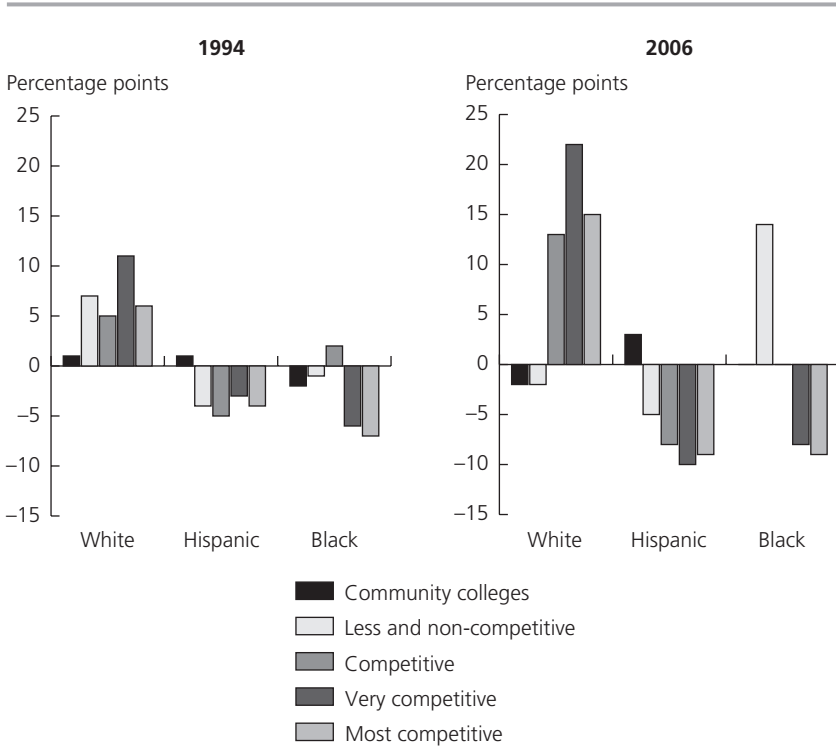
FIGURE 13.1. Over- and Under-representation of Minority Students by SAT and High School GPA Deciles

Source: Authors' calculations from data in Saul Geiser and Maria Veronica Santelices, "Validity of High-School Grades in Predicting Student Success Beyond the Freshman Year: High-School Record vs. Standardized Tests as Indicators of Four-Year College Outcomes," Research and Occupational Paper Series, Center for Studies in Higher Education, June 2007.

Despite their disparate impact on minorities, colleges have continued to rely on standardized testing, further stratifying American higher education along racial and socioeconomic lines. A "rising tide of college enrollments" has lifted all boats, Anthony Carnevale and Jeff Strohl of the Georgetown Center on Education and the Workforce write—but it has not lifted all equally. Over the last two decades, "white students from more-affluent families have moved up, concentrating in the top tiers of selectivity, while minorities and lower-income students have improved access but have become increasingly concentrated in the least selective four-year colleges and community colleges."³³

This bifurcation is partially a function of high schools' changing demography: between 1994 and 2006, the share of black and Hispanic high school students increased by a combined 8 percentage points, while the white population fell 12 points. At the same time, black and Hispanic students saw essentially no gain in enrollment at elite colleges, representing a significant decrease in relative terms between 1994 and 2006. White

FIGURE 13.2. Over- and Under-representation of Racial Groups in Higher Education, by Percentage Points, Relative to the Population Share of Those Groups among 18-year-olds in High School



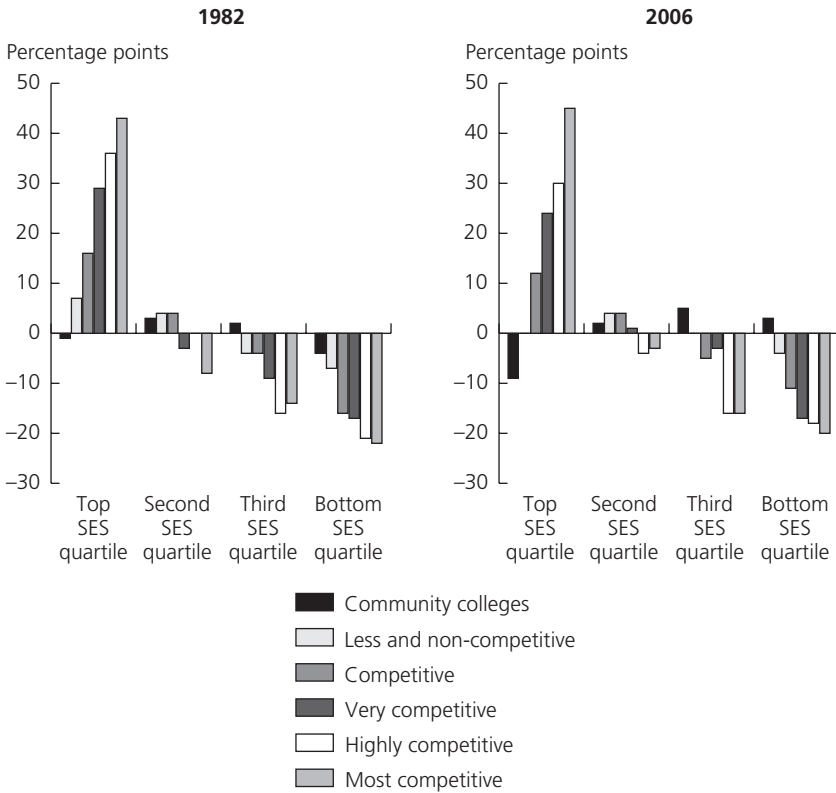
Source: Authors' calculations from Anthony P. Carnevale and Jeff Strohl, "How Increasing College Access Is Increasing Inequality, and What to Do about It," in *Rewarding Strivers: Helping Low-Income Students Succeed in College* (New York: Century Foundation Press, 2010).

Note: Missing bars means no difference.

enrollment at elite colleges declined slightly in absolute terms, but relative to their shrinking share of the high school population, their percentage over-representation more than doubled.³⁴ (See Figure 13.2.)

The changing demographic makeup of the college population by institutional competitiveness has followed a similar pattern for socioeconomic status, with rising enrollment across the income spectrum offset by growing polarization. For example, while the number of students from the bottom half of the SES distribution increased significantly in higher education between 1982 and 2006, their rising share of enrollments was

FIGURE 13.3. Over- and Under-representation of Income Groups in Higher Education, by Percentage Points



Source: Authors' calculations from Anthony P. Carnevale and Jeff Strohl, "How Increasing College Access Is Increasing Inequality, and What to Do about It," in *Rewarding Strivers: Helping Low-Income Students Succeed in College* (New York: Century Foundation Press, 2010).

Note: Missing bars means no difference.

almost entirely the result of gains at community colleges and less- or non-competitive four-year colleges. Students from the top half of the SES distribution, meanwhile, shifted out of bottom-tier schools and into colleges in the "highly competitive" or "most competitive" categories, where they currently outnumber students in the bottom half by a six-to-one ratio.³⁵

This stratification is further intensified "when observed through a demographic lens," note Carnevale and Strohl. (Figure 13.3) Relative to their population share, the top SES quartile in 2006 remained overrepresented

in every category of institutional selectivity except noncompetitive colleges and community colleges. Although their demographic dominance declined somewhat at most schools relative to their share in 1982, when fewer working-class students had access to higher education, the number of top SES quartile students attending the most competitive and elite colleges rose significantly in both relative and absolute terms.³⁶

Reducing Reliance on Testing without Sacrificing Academic Quality

The reality of socioeconomic and racial stratification in higher education raises a number of questions for testing's critics. Most serious, given the persistent inequality in students' test scores and the types of institutions to which they are admitted, is whether it is possible for colleges to reduce reliance on test scores without sacrificing their academic quality. Underlying this question is another: To what degree do standardized tests predict undergraduate success? If high-achieving minority and low-income students score lower on the SAT and ACT, can they still succeed in a more competitive educational environment?

Numerous high-profile studies have investigated the relationship between standardized testing, socioeconomic status, high school grades, and undergraduate performance. In nearly every case, the evidence suggests that reducing reliance on testing would have little or no impact on students' college GPA or graduation rate.

In one such study, Princeton University researchers Sunny X. Niu and Marta Tienda examined Texas's Top 10 Percent policy, which focuses solely on high school grades rather than standardized test scores and capitalizes on preexistent residential segregation to promote racial and ethnic diversity. Contrary to what some critics predicted, black and Hispanic Top 10 Percent enrollees performed "as well or better in grades, 1st-year perseverance, and 4-year graduation likelihood" than white students ranked at or below the third decile, despite having lower average test scores.³⁷

Geiser and Santelices come to similar conclusions in their 2007 analysis of UC data. Using a multivariate regression model that controlled for the effect of socioeconomic status, which can otherwise obscure the "predictive superiority" of high school GPA, they were able to determine the relative contribution of each individual admission factor in predicting students' first-year GPA, cumulative four-year GPA, and four-year graduation rate.³⁸ In all three cases, high school GPA was found to be the best single predictor of undergraduate success. In fact, the predictive power of

high school GPA actually *increased* after the freshman year—something Geiser and Santelices had not expected. As in other studies, Geiser and Santelices find that supplementing high school GPA with standardized tests yields “a small, but statistically significant improvement in predicting long-term college outcomes.” But they stress that even with the combined predictive power of high school grades, SES status, SAT I and SAT II scores, more than 70 percent of the total variance in undergraduate success remains unexplained.³⁹

Even if Geiser and Santelices are correct that high school GPA is a better predictor of undergraduate success than SAT scores, is there a point at which less reliance on testing creates a tradeoff between increased racial and socioeconomic diversity and reduced academic quality? To answer that question, Princeton University researchers Thomas J. Espenshade and Chang Young Chung created a statistical model to predict the effects of colleges’ adopting a test-optional admissions policy (in which students can choose whether to submit test scores) or a “Don’t Ask, Don’t Tell” (DADT) policy, under which test scores are disregarded entirely. The model included separate simulations for public and private schools and incorporated the predicted effect of weighting students with either low test scores or specific demographic characteristics. Their results “show unambiguously that increased racial and socioeconomic diversity can be achieved by switching to test-optional admission policies.” In every scenario Espenshade and Chang tested, the proportion of accepted minority and low-income students increased when colleges deemphasized standardized testing, with the greatest increase in diversity resulting from a DADT policy. And although SAT I scores fell across the board, with declines ranging from about 8 to 25 points under a test-optional policy to as much as 60 points under DADT, colleges’ overall academic quality remained much the same. At both private and public selective universities, test-optional policies resulted in higher average SAT II (subject test) scores, as well as higher high school GPA and class rank among the admitted class. The simulation results were more varied when colleges disregarded test scores altogether, with DADT producing mixed results at public universities (large drops in SAT II scores offset by large gains in average high school GPA and class rank) and significant declines at private universities. While this suggests that “at some point a tradeoff emerges between diversity and college preparedness,” most undergraduate institutions likely have plenty of room to increase diversity without lowering expectations.⁴⁰ (See Table 13.2.)

TABLE 13.2. Simulated Effects of Alternative College Admission Policies on Minority and Low-Income Enrollment and Academic Quality at Selective Institutions

	<i>Selective private institutions</i>		<i>Selective public institutions</i>	
	<i>SAT-optional</i>	<i>Disregard scores</i>	<i>SAT-optional</i>	<i>Disregard scores</i>
Race (%)				
White	-5.1	-6.1	-2.3	-4.2
Black	3	5.5	2.1	3.5
Hispanic	2.7	4.1	0.4	0.7
Asian	-0.6	-3.5	-0.2	0
Social class (%)				
Upper	-0.7	0	0	-0.2
Upper-middle	-4	-6.6	0.3	-1.4
Middle	1.3	0.4	-1.9	-2.2
Working	2.5	5.1	1.4	3.6
Lower	0.8	1	0.1	0.2
SAT II score (%)				
750 and above	-0.5	-3.1	0	0
650-749	-1.6	-6.1	-0.4	-2.7
Below 650	1.2	9.3	0.4	2.7
HS GPA (%)				
A+	1.5	-2.3	1.4	1.9
A	-0.3	-0.6	-0.5	0.8
A-	-0.9	2	-0.1	0.7
B+ or lower	-0.4	0.8	-0.7	-3.4
HS class rank (%)				
Top 10%	0.6	-4	0.6	3.7
Next 10%	0	2.9	0.5	-0.6
Bottom 80%	-0.6	1.1	-1	-3.1

Note: Assumes that applicants who are black, Hispanic, or from lower- or working-class backgrounds will increase 30 percent.

Source: Thomas J. Espenshade and Chang Young Chung, "Standardized Admissions Tests, College Performance, and Campus Diversity," Office of Population Research, Princeton University, January 2010.

Standardized Testing and the Future of Affirmative Action

In May 2008, Wake Forest University became one of the few top-ranked national universities to adopt a test-optional admissions policy, resulting in an immediate upsurge in minority and low-income applications and enrollment. Wake Forest professor Joseph Soares, writing four years later, documents the results in *SAT Wars*:

Our applicant pool, even in the worst economic year in recent history, went up by 16%; our minority applicants went up by 70%. As reported in the *Journal of Blacks in Higher Education*, 6% of Wake Forest's senior cohort were minorities of color before the policy change; in the two [now three] cohorts admitted thus far as test-optional, the percentage of Black and Hispanic has gone up to 23. Asian student numbers have increased to 11%. First-generation youths, where neither parent went to college, jumped to 11%; Pell Grant youths, whose families earn near the poverty line, nearly doubled to 11%.⁴¹

Perhaps most importantly for the test-optional movement, Wake Forest's academic quality was as high as ever, just as Espenshade and Chang's model predicted. With the exception of one cohort of students from a particular region—left anonymous in Soares' account—Wake Forest's grade point average saw no change after the test-optional policy was implemented, and its retention rate was unmoved at 94 percent. The percentage of Wake Forest students matriculating from the top 10 percent of their high school class jumped from 65 percent in 2008, the last year before the new policy, to 75 percent in 2009 and 81 percent in 2010.⁴²

Wake Forest is just one of many colleges and universities that are leading the way in proving that reduced reliance on standardized testing can increase diversity without sacrificing academic quality. They are also helping to redefine merit as based on years of achievement in the classroom, not innate (or coached) aptitude for a single, four-hour test. In the world of law school admissions, scholarly organizations like the Society of American Law Professors (SALT) are promoting the creation of a progressive set of measures to achieve fairness and equality in the admission process, or, if all else fails, entirely abandoning the LSAT “in the best interest of legal education.”⁴³

What comes next for the test-optional movement depends in part on the Supreme Court, which emphasized in remanding *Fisher* to the Fifth Circuit that the judiciary “must ultimately be satisfied that no workable race-neutral alternatives would produce the educational benefits of diversity.”⁴⁴ As other authors in this volume have noted, a holistic admissions program including class-based affirmative action is one such alternative. If, as many expect, the Supreme Court continues to narrow the ability of colleges to employ racial preferences, administrators will be under pressure to find new ways to maintain current levels of diversity in higher

education. In this context, reducing reliance on standardized test scores and other admissions criteria that disproportionately impact minorities may become an important strategy for boosting diversity.

Legal challenges to standardized testing could also be in the offing. As the Supreme Court ruled in *Griggs v. Duke Power Co.* in 1971, Title VII of the Civil Rights Act “proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation.” While this does not preclude the use of testing, the Court emphasized that “giving these devices and mechanisms controlling force” is forbidden “unless they are demonstrably a reasonable measure of job performance.”⁴⁵

Following the logic of this argument, civil rights groups could pursue litigation alleging that test scores’ predictive validity is likewise insufficient to justify their disparate impact on minority groups. Invoking Title VI of the Civil Rights Act, which governs public and private educational institutions receiving federal funding, the NAACP Legal Defense Fund has already filed a federal civil rights complaint along these lines for eight specialized New York City high schools, including Stuyvesant and the Bronx School of Science, which employ a standardized multiple-choice test in admissions. If the complaint succeeds, this approach may lead to similar legal challenges in higher education.

Whether or not litigation ensues, the *Fisher* decision should prompt universities to engage in a healthy reexamination of their reliance on standardized testing in admissions. Critics are rightfully concerned that an increasing focus on students’ performance on a single exam appears to be driven more by superficial rankings and institutional prestige than educational considerations. Diverting some of the energy and resources spent on testing into promoting a more holistic admissions process—one that emphasizes demonstrated achievement in high school—would not only increase racial, ethnic and economic diversity; it would make our college admissions system fairer for everyone.

14

Advancing College Access with Class-Based Affirmative Action

The Colorado Case

MATTHEW N. GAERTNER

In November 2008, Amendment 46 arrived on Colorado ballots. This voter referendum, popularly known as the “Colorado Civil Rights Initiative,” sought to prohibit the consideration of race in public education, public contracting, and employment decisions. In short, Amendment 46 aimed to outlaw race-based affirmative action at public universities in Colorado. In the past two decades, likeminded initiatives have passed by wide margins in every state (California, Washington, Michigan, Nebraska, Arizona, and Oklahoma) where they have reached the ballot.¹

Colorado’s Amendment 46—and the successful track record of similar initiatives that came before it—generated serious concern among admissions officers at the state’s flagship school, the University of Colorado Boulder (CU). It is the policy of CU to recruit and admit students who have overcome significant adversity, and the school is committed to building a

racially and socioeconomically diverse student body. With the passage of Amendment 46, CU feared it would lose a critical admissions tool for accomplishing these goals. As such, in anticipation of the vote, CU's Office of Admissions developed a race-neutral, class-based affirmative action system that would serve the university's interest in enrolling a diverse class while complying with the proposed ban on race-conscious admissions. This chapter gives an overview of the development and implementation of CU's class-based system, devoting particular attention to controlled experiments designed to forecast the impact of putting the system into practice.

Devising Class-Based Admissions Measures

When affirmative action is threatened, universities begin thinking seriously about admissions preferences based on socioeconomic status (SES), rather than race.² This response to external pressure is understandable. Universities have long sought racial and ethnic diversity,³ and admissions departments may be able to support it via race-neutral means by capitalizing on the large overlap between socioeconomic hardship and minority status.⁴ The Colorado case is no exception. Amendment 46 posed an existential threat to race-conscious admissions, and in turn catalyzed CU's implementation of class-based affirmative action.

Still, it should be self-evident that principled class-based admissions policies should focus on socioeconomic class; while they do contribute substantially toward racial diversity, they should not be contorted into elaborate proxies for race. To that end, I offer five questions that may be instructive for universities seeking to develop class-conscious admissions policies. These questions are intentionally generic; they are meant to speak to the purpose of any preference in college admissions. In the context of class-based affirmative action, they may help a university shape a policy that suits its goals and reflects its social purpose.

1. What is your university's mission?
2. How does your admissions policy support your mission?
3. What applicant traits do you value?
4. How will you measure those traits and incorporate those measures in admissions decisions?
5. What are your intended outcomes, and to what extent do you achieve them?

The design of CU's class-based admission system was guided by the five questions above and grounded in the university's mission, as articulated by the Office of Diversity, Equity, and Community Engagement:

We envision a campus that addresses the special needs of groups and individuals who historically have faced institutional barriers, where the quality of education is enhanced and enriched by a diverse campus community, and where the entire campus benefits from participation in a multicultural community.⁵

In service of this vision, CU sought to grant special consideration to academically qualified⁶ applicants who had faced substantial socioeconomic disadvantage and had persevered despite difficult circumstances. Of course, to reward these traits, CU first had to measure them. To do so, two metrics were developed—the Disadvantage Index and the Overachievement Index. In this chapter, I describe CU's class-conscious admissions indexes conceptually. For a more technical treatment of the statistical models and empirical data that underlie these measures, readers should consult my work with CU law professor Melissa Hart.⁷

The Disadvantage Index quantifies the socioeconomic obstacles applicants have faced. It flags students whose socioeconomic characteristics have reduced the probability they will enroll in college. The Overachievement Index, on the other hand, quantifies the extent to which students have overcome the obstacles they have faced. Building on the work of education policy analyst Roger Studley,⁸ it flags applicants whose academic credentials—high school GPA (HSGPA), ACT, or SAT scores—far exceed those of students from similar socioeconomic backgrounds.

Each index is based on a statistical model relating applicants' socioeconomic characteristics to either their high school academic credentials (the Overachievement Index) or their likelihood of college enrollment (the Disadvantage Index). Socioeconomic characteristics were measured at both the student and high school level, and included the applicant's native language, single-parent status, parents' education level, family income level, the number of dependents in the family, whether the applicant attended a rural high school, the percentage of students from the applicant's high school eligible for free or reduced-price lunch (FRL), the school-wide student-to-teacher ratio, and the size of the twelfth-grade class. Estimating these models required a nationally representative longitudinal dataset.⁹ For this purpose the university used the Education Longitudinal Study of 2002,¹⁰ which provided the most comprehensive

TABLE 14.1. Identification Categories under the Disadvantage and Overachievement Indexes

<i>Disadvantage Index</i>		<i>Overachievement Index (SAT)</i>	
No Disadvantage	Greater than –6.3%	No Overachievement	Less than 151
Moderate Disadvantage	–6.3% to –19.0%	High Overachievement	151 to 273
Severe Disadvantage	–19.0% or Less	Extraordinary Overachievement	273 or Greater
<i>Overachievement Index (HSGPA)</i>		<i>Overachievement Index (ACT)</i>	
No Overachievement	Less than 0.57	No Overachievement	Less than 3.9
High Overachievement	0.57 to 1.06	High Overachievement	3.9 to 7.5
Extraordinary Overachievement	1.06 or Greater	Extraordinary Overachievement	7.5 or Greater

data available for estimating the relationships between SES, high school academic achievement, and college access.¹¹

Before the indexes could be applied in admissions decisions, thresholds were established along each index’s scale to form successive categories of disadvantage (none/moderate/severe) and overachievement (none/high/extraordinary). This step was taken because the indexes’ scales were unfamiliar to CU admissions officers, and defining categories helped users understand which values represented substantial disadvantage or overachievement. The thresholds were set in consultation with senior admissions officers familiar with the socioeconomic makeup of the CU applicant pool, and the resulting categories are presented in Table 14.1.

Applicants identified by the Disadvantage or Overachievement Indexes are granted additional consideration (that is, a boost) in the admissions process. The size of the boost depends on the level of disadvantage or overachievement. In some cases, identification by the indexes can constitute a *primary factor* for admission (on par with high school grades and course-taking patterns). When an applicant exhibits only high overachievement or moderate disadvantage, the admissions boost constitutes a *secondary factor* (on par with minority or legacy status). Table 14.2 details these decision rules.

Given sufficient disadvantage, overachievement, or both, the class-based admissions boost can be quite substantial. For example, holding constant HSGPA and standardized test scores, applicants identified in any way by the Indexes are 2.2 times more likely to be admitted as those

TABLE 14.2. Using the Disadvantage and Overachievement Indexes in Admissions Decisions

	<i>No Overachievement</i>	<i>High Overachievement</i>	<i>Extraordinary Overachievement</i>
No Disadvantage	No Boost	Secondary Factor Boost	Primary Factor Boost
Moderate Disadvantage	Secondary Factor Boost	Primary Factor Boost	Primary Factor Boost
Severe Disadvantage	Primary Factor Boost	Primary Factor Boost	Primary Factor Boost

Note: “High Overachievement” and “Extraordinary Overachievement” refer to any of the Overachievement Index values (GPA or test scores). An applicant need only overachieve on one of these measures to earn an admissions boost.

not identified. Applicants identified for *primary factor* consideration are 5.7 times more likely to be admitted. By contrast, under CU’s race-based policy, underrepresented minority applicants (URMs)¹² are 1.4 times more likely than non-URMs to be admitted.¹³ The significant admissions weight placed on CU’s class-based indexes is important for understanding the system’s effects on campus diversity; I will return to this point in subsequent sections.

Before we turn attention to the effects of putting this system into practice, it may help to discuss two hypothetical applicants—one disadvantaged, one overachieving—to more clearly illustrate the sort of students these indexes flag. To that end, let us first consider James. James’s parents make between \$15,000 and \$35,000 per year. He is a native English speaker, and there are three dependents in his family. Both of James’s parents finished high school and attended some college, but neither graduated. Seventy percent of the students at his high school are FRL-eligible. James attends a rural high school, with one hundred students in the twelfth-grade class and a school-wide student-to-teacher ratio of fifteen to one. His HSGPA is 2.7, and he scored 20 on the ACT. Relative to the average CU applicant, James’s socioeconomic characteristics have reduced his probability of enrolling in college by 24.5 percentage points. James therefore exhibits “severe disadvantage.” He would be located in the left-hand column, bottom row of Table 14.2.¹⁴

Next we consider Sandra. Her mother makes between \$35,000 and \$60,000 annually. Sandra is a native English speaker, and she is an only child living with a single parent. Her mother attended some college, but

did not graduate. Sandra attends an urban high school where 40 percent of the students are eligible for free or reduced-price lunch. There are five hundred students in her twelfth-grade class, and the school-wide student-to-teacher ratio is fifteen to one. Sandra has earned a 3.1 GPA in high school and scored 1170 on the SAT. Based on the average performance of students with similar socioeconomic backgrounds, Sandra scored 282 points higher on the SAT than we would have predicted. She has thus demonstrated “extraordinary overachievement,” and would be located in the right-hand column, first row of Table 14.2. Both Sandra and James therefore earn primary factor boosts through identification by CU’s class-based indexes, which will considerably increase their chances of admission.

Putting Class-Based Affirmative Action into Practice: Effects on Diversity

In 2008, Colorado became the first (and still the only) state to defeat an anti-affirmative-action ballot initiative. Voters’ rejection of Amendment 46 afforded CU the opportunity to further “beta-test” its class-based system before using it in all official admissions decisions. To forecast the impact of implementing class-based affirmative action, CU conducted two experiments. The experiments differ in terms of their aims and design, so I will describe each separately.

Replacing Race with Class

The first experiment focused on CU’s class-based admissions system was conducted in 2009. It was designed to estimate the impact of replacing race-based affirmative action with class-based affirmative action, in terms of acceptance rates for both low-SES and URM applicants.¹⁵ Five hundred applications were randomly sampled from the full applicant pool and then reviewed twice—once using race only (traditional affirmative action), and again using class only (the Disadvantage and Overachievement Indices, with all race identifiers removed from the applications). Results are presented in Table 14.3.

The results in Table 14.3 suggest replacing race with class in college admissions can improve acceptance rates for low-SES applicants. While this may be a worthwhile goal on its own merits for schools seeking to increase socioeconomic diversity, it is not surprising in the CU context, because the Disadvantage and Overachievement Indexes were designed to

TABLE 14.3. Acceptance Rates under Class-Based and Race-Based Affirmative Action

<i>Applicant Type</i>	<i>N</i>	<i>Acceptance Rate</i>		
		<i>Class-Based</i>	<i>Race-Based</i>	<i>Difference</i>
Low SES	156	82%	70%	12%**
URM	48	65%	56%	9%

* $p < 0.05$; ** $p < 0.01$.

flag low-SES applicants for additional consideration. The URM results, however, seem to contradict prevailing research on affirmative action, which suggests class-based systems will produce less racial diversity than the race-based policies they replace.¹⁶ The results for URMs actually underscore the importance of the boost, or the size of the preference, attached to class-based admissions metrics. In the Colorado case, the Disadvantage and Overachievement Indexes by design can be more influential in an admissions decision than an applicant's race. In this sense, CU's class-based measures are privileged relative to race. The interpretation of the URM result is therefore fairly straightforward: Although not every URM applicant is identified by the indexes, those that are identified usually receive a bigger boost than they would have received under race-based affirmative action. This finding is of course limited to the Colorado context, but it suggests that an end to race-based affirmative action need not be devastating for campus racial diversity.

Using Class and Race

While it is important to consider the impact of replacing race with class in college admissions, it is also important to acknowledge that may not be the most interesting research question for many university admissions departments. In Colorado and in most other states, race-conscious admissions policies remain legal. A more relevant near-term question, therefore, might focus on the impact of *adding* class to an existing race-based policy. This was the rationale for a second experiment at CU, conducted in 2010, which compares race-based and "class-plus-race" affirmative action. In this iteration, 2,000 applications were randomly sampled from the full applicant pool, and each was randomly assigned to either race-based or class-plus-race affirmative action (that is, traditional race-based affirmative action plus the Disadvantage and Overachievement Indexes). Results are presented in Table 14.4.

TABLE 14.4. Acceptance Rates under Class-Plus-Race and Race-Based Affirmative Action

<i>Applicant Type</i>	<i>N</i>	<i>Acceptance Rate</i>			
		<i>Class-Plus-Race</i>	<i>N</i>	<i>Race-Based</i>	<i>Difference</i>
Low SES	266	58%	250	48%	10%*
URM	118	62%	118	45%	17%**

* $p < 0.05$; ** $p < 0.01$.

As expected, acceptance rates for low-SES applicants increase under class-plus-race affirmative action, relative to a race-only alternative. In addition, acceptance rates for URM applicants increase under a class-plus-race policy. In and of itself, the direction of the class-plus-race effect for URMs was unsurprising. Prior research suggests adding class-based considerations to a race-based admissions policy will boost acceptance rates for URMs.¹⁷ The magnitude, however (17 percentage points), was larger than anticipated.¹⁸ Again, two features of CU's class-based system may help explain these results. First, the measures: the Disadvantage and Overachievement Indexes utilize multiple applicant- and high-school-level variables such as parental education, native language, and single-parent status, whereas other heavily researched class-based systems do not.¹⁹ More importantly, the boost: Class-based affirmative action at CU is not an afterthought. When students exhibit severe disadvantage or extraordinary overachievement, they earn a significant leg up in the admissions process. This point bears emphasis: intuitively, for a class-conscious admissions policy to have a noticeable effect, it must be taken seriously by the admissions officers who implement it.

College Outcomes for Class-Based Admits

At this juncture it may be useful to return to the guiding questions for universities seeking to implement class-based affirmative action. Specifically, the final question focuses on intended outcomes, and the extent to which they are realized. Results thus far suggest CU's class-based policy holds promise for two of its intended outcomes—boosting socioeconomic diversity and cushioning racial diversity against the blow of an affirmative action ban. There is another question, however, that will inevitably confront the architects of class-based policies: How well can we expect the beneficiaries of these policies to perform in college? Quite simply, it is

TABLE 14.5. College Outcomes for Historical Surrogates

<i>Group</i>	<i>N</i>	<i>Cumulative GPA</i>	<i>Credit Hours Earned</i>	<i>% Graduating 4 Years</i>	<i>% Graduating 5 Years</i>	<i>% Graduating 6 Years</i>
Surrogates	2,704	2.50 (0.76)	25.9 (9.9)	28.3%	44.3%	52.9%
Baseline	18,422	2.83 (0.77)	31.6 (12)	39.8%	61.4%	66.0%

insufficient to design admissions preferences for disadvantaged students without considering whether those students are ready to handle college-level work.

The 2009 experiment was critical for gauging the college prospects for beneficiaries of class-based affirmative action. Recall that under that experimental framework, applications were reviewed twice—once using race only, and once again using class only. Thirty-one applicants were accepted under the class-based policy but *not* under the race-based policy. These are the students I call “class-based admits.” They would not have been admitted without class-based affirmative action, and their predicted college outcomes are the focus of this section.

Class-based admits from the 2009 experiment were statistically matched²⁰ on the basis of high school academic preparation and socioeconomic characteristics to the 21,126 students who enrolled at CU between 2003 and 2007. The historical matches are termed “surrogates,” because they fit the socioeconomic and academic profile of class-based admits, and therefore represent the best available prediction of college outcomes for the beneficiaries of class-based admissions preferences.²¹ Table 14.5 presents college outcomes for this group, including grades, credit hours earned, and graduation rates. Outcomes are also presented for everyone in the historical data *not* identified as a surrogate, to establish a baseline for comparison. Standard deviations are included parenthetically.

Table 14.5 suggests that on average, class-based admits can be expected to perform worse in college than typical undergraduates. Their GPAs, earned credit hours, and graduation rates lag behind those of typical peers. These patterns should not be terribly surprising, given that class-based admits are “borderline” applicants—students on the cusp of admission whose academic credentials are not stellar, and whose personal qualities weigh more heavily in an admissions decision. In fact,

TABLE 14.6. College Outcomes for Historical Surrogates, by Index Classification

<i>Group</i>	<i>N</i>	<i>Cumulative GPA</i>	<i>Credit Hours Earned</i>	<i>% Graduating 4 Years</i>	<i>% Graduating 5 Years</i>	<i>% Graduating 6 Years</i>
Surrogates (Overachievers)	601	2.95 (0.72)	32.7 (10.4)	44.9%	66.4%	70.0%
Surrogates (Disadvantaged)	1,352	2.25 (0.73)	22.3 (9.1)	18.2%	30.9%	42.6%
Baseline	18,422	2.83 (0.77)	31.6 (12)	39.8%	61.4%	66.0%

universities regularly admit students whose projected college performance is below average,²² because their personal qualities represent valuable additions to the campus environment. For example, first-generation college students and URMs have historically performed below average at CU, with cumulative GPAs (2.58 for first-generation students; 2.55 for URMs) and six-year graduation rates (54 percent for first-generation students; 55 percent for URMs) lower than those of typical undergraduates. Colorado nonetheless recruits and admits these students (and supports their academic progress in college) to achieve the educational benefits of racial, ethnic, and socioeconomic diversity.

It is also important to point out that not all class-based admits perform the same in college. Their outcomes may vary depending upon how they were identified by the indexes. Specifically, those identified only by the Overachievement Index may demonstrate strong academic performance in college, while those identified only by the Disadvantage Index are more likely to struggle. Table 14.6 presents these disaggregated outcomes.

Table 14.6 reveals important information about who can be expected to thrive in college, and who will need support to succeed. Across outcomes, strictly overachieving class-based admits can be expected to perform quite well—better, in fact, than typical undergraduates. The forecasts for strictly disadvantaged admits, however, are not as encouraging. Their GPAs, graduation rates, and earned credit hours lag far behind the baseline. This said, given additional time in college, disadvantaged admits' graduation rates accelerate comparatively quickly, more than doubling between four years (18.2 percent) and six years (42.6 percent), thereby narrowing the graduation gap. It is also worth noting that as of

2011, students identified by the Disadvantage Index and admitted to CU are immediately referred to the McNeill Academic Program—CU’s structured academic and social support system for disadvantaged students.

To sum, analysis of college outcomes for historical surrogates suggest college success for class-based admits is possible, but it is far from guaranteed. The implementation of class-based affirmative action will introduce a new cohort of students to the college ranks. Those students’ odds of success may hinge on whether colleges identify them, support their academic development, and track their progress toward graduation.

Implications and Future Directions

Research from the University of Colorado Boulder reveals some key lessons about the prospects for class-based affirmative action in selective university admissions. First, CU’s experience suggests forecasting the impact of class-based systems is not difficult with adequate planning. Colorado conducted two controlled experiments and an analysis of historical student records to determine what effect its indexes might have on campus diversity, and how well the system’s beneficiaries would perform in college. Of course, the successes and failures of class-conscious admissions will ultimately be judged on the basis of enrollment numbers, not experiments. In that respect, trends at CU are promising. Colorado’s class-plus-race system was implemented for official admissions decisions in 2011. In the fall of that year, CU enrolled the most diverse freshman class in its history.²³

Preliminary analysis of college outcomes for current students admitted under CU’s policy suggest similar patterns to those observed in historical data: class-based admits identified by the Overachievement Index are keeping pace with typical undergraduates, and those identified by the Disadvantage Index have lower grades and persistence rates.²⁴ The present data tell an incomplete story, of course, because CU’s class-based admits have only been in college for two full years. Subsequent analyses will examine not only their progress toward graduation, but also the effectiveness of academic support programs in keeping severely disadvantaged students on a path toward degree attainment. Future research will also consider the feasibility of adding new socioeconomic variables to the indexes. For example, multiple studies have shown that wealth in assets, above and beyond annual income, is an important determinant of educational opportunity and upward mobility.²⁵ Information about applicants’

wealth is difficult to collect through a national dataset such as ELS, but as more detailed longitudinal socioeconomic data become widely available, an applicant's family wealth may become an important component of CU's class-based indices.

Final Thoughts

Politically and methodologically, class-based affirmative action is complex. Best practices in the field are not widely documented, because college admissions policies tend to be closely guarded secrets. This is understandable, given the high stakes and controversy that attend admissions preferences. However, if class-based admissions policies are to have a meaningful impact on college access for disadvantaged students, we can no longer afford to work in an empirical vacuum. It is my hope that as class-conscious college admission becomes more commonly accepted, this body of research will expand.

To that end, it is unfortunate that only when race-based affirmative action comes under attack do we contemplate admissions preferences for socioeconomically disadvantaged students. First, this approach to admissions policymaking ensures that class-based systems will come into existence hurriedly and haphazardly, primarily under the threat of legal action. Second, it positions class-based affirmative action as an enemy of racial justice. In fact, there are good reasons not to think of class solely as a replacement for race in college admissions. The challenges associated with the two are not identical. Affirmative action need not be an either-or proposition; CU's experiments show that using class and race jointly can substantially boost racial and socioeconomic diversity.

The U.S. Supreme Court, however, may one day shut the door on race. Alternatively, more statewide bans could further limit the practice. In either case, class-based affirmative action may have to serve as the best available substitute. Whatever the courts or individual states decide, this research demonstrates the promise for class-conscious admissions to open pathways to higher education to students of all races who have faced social, economic, and institutional barriers.

Achieving Racial and Economic Diversity with Race-Blind Admissions Policy

ANTHONY P. CARNEVALE, STEPHEN J. ROSE,
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Race-based affirmative action in selective college admissions is under legal attack, as the chapters written by Arthur Coleman and Teresa Taylor, and by Scott Greytak, in this volume both make clear. In *Fisher v. University of Texas* (2013), the U.S. Supreme Court pushed universities to adopt race-neutral strategies (proxies) to achieve the compelling interest of promoting racial and ethnic diversity. In the opinion's key passage, the Court ruled that universities bear "the ultimate burden of demonstrating, before turning to racial classifications, that available, workable race-neutral alternatives do not suffice." What are the leading alternatives, and how workable are they? What benefits and costs do they entail?

Diversity with and without the Use of Race

We simulate various admissions models at the top-rated 193 colleges primarily because the dialogue about affirmative action often implies that it is access to these

schools and the opportunities they provide in business, social, and career advancement that truly matters. Using SAT/ACT scores, we build merit-based affirmative action programs on a foundation of college success; not just access. We took this approach because we believe that college access without college completion is an unfulfilled promise. Also, as framed by the Court's pointed aim of beneficial educational diversity, we believe a merit-based approach is appropriately aimed toward beneficial diversity and away from merely racial balancing. In the extreme, we start with a purely race-blind, merit-based admissions model that has no special admissions. Here, we simulate an admissions queue of students ranked by SAT/ACT test score and fill the 250,000 freshman seats at the most elite 193 universities, starting with the highest-scoring students. This has a significant negative impact on the racial distribution of the incoming freshman class. We follow this pure-merit model with one giving some consideration to high-scoring disadvantaged students—what we call an admissions boost based on socioeconomic status (SES)—while still queuing students starting with the highest scores. In this simulation, we calculate the effect of each individual's disadvantage on their test scores and use this adjustment to move them ahead in the queue. In other words, once we control for high test scores, this adjustment ensures we admit students with the most disadvantage before the student with the least disadvantage. We believe admitting students in this way—controlling for readiness while adjusting for disadvantage—will prove educationally beneficial. The difference in median test score between the pure-merit and the adjusted simulation is minor.

The best models for producing racial, ethnic, and socioeconomic diversity are 10 percent models in which the criterion is relative performance in each of the nation's high schools. These models all outperform their companion pure-merit and adjusted models, but with a decline in average test scores. The last of these 10 percent models is the only one in which we use race, after considering class rank and socioeconomic status; this simulation is the top performer in terms of racial diversity.

In the end, we find that “race-blind” and “race-conscious” (giving an added boost to underserved minorities) forms of affirmative action can substitute for the use of “race alone” in college admissions. But these alternatives are only available if elite colleges are willing to risk lower average test scores (in the case of two of our five simulations, one estimate is higher but not statistically different) and thereby lower graduation rates.

In our admissions simulations, a plan that uses test scores in combination with SES-based affirmative action can produce high levels of SES diversity and moderate levels of racial diversity. (We use SES-based and income-based interchangeably below.)¹ By contrast, an approach that combines class rank with SES-based affirmative action results in a rich mix of both race and SES diversity. Finally, using relative-merit (10 percent plan), SES- and race-based admissions standards together increases the race mix the most, but with only modest increases in the SES or class mix.

Our analyses demonstrate that alternative admissions policies can substantially improve racial and socioeconomic diversity at the 193 “Most” and “Highly” selective colleges as listed in *Barron’s Profiles of American Colleges*, without appreciably lowering college-wide test scores and thereby graduation rates. But we also find that the extent of access and graduation for minorities and low-income students in elite colleges is ultimately limited by poor K–12 preparation. If, for example, we apply our selection models to create racial diversity in the top 468 colleges, the top three tiers in *Barron’s* ranking, we would run out of qualified minorities, especially African Americans. Ultimately, our ability to find a “critical mass” of qualified minorities and low-income students hits a statistical wall imposed by unequal preparation in K–12 education. Simply stated, the pool of qualified (scoring 1000+ on the old SAT/ACT) underserved minorities, African Americans in particular, runs out before any admissions boost can have full effect. Increases in college readiness among disadvantaged populations would increase the effectiveness of all race-blind selection by raising the likelihood of obtaining racial diversity when not using race as a selection criteria.

The enormous social and political stresses that engulf the ongoing fight over race-based affirmative action have produced a thriving empirical market in alternatives. In our own research, we find that, in the main, Americans prefer access to selective colleges to be based entirely on merit, as measured by test scores and other academic achievements. But the public is more willing to affirm those cases in which individuals overcome economic or social disadvantage along the way to high achievement.² In addition, the public is wary of using group characteristics, such as race, as evidence of disadvantage or deservedness, with the notable exceptions of groups such as veterans and the disabled. As a result, the public’s view is that low-income students in general and, to a lesser extent, low-income minorities are more appropriate than racial minorities alone as targets for

affirmative action. The most optimistic view is that class-based affirmative action will produce both race and class diversity because of the high concentration of racial minorities among low-income households.

The failings of race-blind selection are articulated by analysts who are skeptical of income-based affirmative action as a good proxy for achieving racial diversity. They point out that, although the share of low-income (SES) high school seniors among whites is substantially lower than among minorities, because the share of whites in the general population is larger, there are many more white youths than minority youths at the bottom of the income ladder. As a result, many studies find that there are as many as five low-income white students for every minority student who would meet minimum standards for admission at selective colleges.³ Because our model recognizes that income alone does not fully represent the relative economic disadvantages that typical minority families face compared to whites of the same income (on measures such as wealth and living in poverty-concentrated neighborhoods), it avoids a purely income-based definition of socioeconomic status.

Because of the prominence of class-based admissions criteria as an alternative to race-based admissions criteria, our simulations (aside from the pure-merit benchmark in simulation 1) include disadvantage factors—those used to create our SES-based admissions boost⁴—either directly (simulations 2, 4, 5) or indirectly (simulation 3). Simulation 5 also uses race to augment the SES-based admissions boost. In all instances, we find that both perspectives on the use of class-based admissions criteria hold up:

- Class-based criteria can deliver on racial diversity, especially for Hispanics.
- Class-based criteria are especially effective at promoting diversity when combined with class rank and/or race variables.

But the skeptics are also correct that in order to get substantial increases in African-American and Hispanic admissions in selective colleges, especially if admissions are race blind, the colleges will have to admit many more lower-SES students to obtain modest increases among African Americans and Hispanics. For example, if admissions were conditioned on merit, top 10 percent of the high school class, and SES (simulation 4), African-American and Hispanic enrollments would increase, but Asian enrollments would decline, and the share of students from the top income quartile would drop from 65 percent to 45 percent.

An Overview of What We Did and What We Found

In our simulations, we employed four “race-blind” admissions strategies and a single “race-conscious” strategy that used race in the context of class rank and socioeconomic status.⁵ In all cases, we compared our results to the diversity in the current system (see Table 15.1), and also compared to the pure-merit baseline results. (Our base simulation is a pure-merit model based solely on test scores with no affirmative action consideration, legacies, or other type of special admissions.) Here are our bottom-line results. (See Tables 15. 1 and 15.2 for a summary.)

Simulation 1. Race-blind Pure Test-Based Merit

- Method: A pure-merit benchmark based on test scores alone in which all legacy and all affirmative action considerations are absent.
- Effect: Reduces African-American enrollments from 4 percent to 1 percent, Hispanic enrollments from 7 percent to 4 percent and holds low-SES enrollments constant at 5 percent.

Simulation 2. Race-blind Merit with SES-based Admissions Boost

- Method: Test-based merit with a race-blind preference for socioeconomic status.
- Effect: Improves Hispanic access but reduces African-American and Asian access below current levels; increases income-based diversity from the bottom SES quartile from 5 percent to 16 percent.

Simulation 3. Race-blind Relative Merit—Top 10 Percent of the High School Class

- Method: Test-based merit with guaranteed admission for the top 10 percent of the high school class based on standardized test scores (rather than high school grades).
- Effect: Holds white enrollments constant, reduces Asian enrollments, significantly increases enrollments for Hispanics and low-SES students while enrollment share for African Americans increases slightly.

Simulation 4. Race-blind Relative Merit—Top 10 Percent of High School Class with SES-based Admissions Boost

- Method: Test-based merit with guaranteed admission for the top 10 percent of the high school class with an added “SES-based plus factor.”

TABLE 15.1. Effect of Simulations on Student Race, Ethnicity, and Test Scores

There are race-blind and race-conscious forms of affirmative action that can substitute for the use of race alone in college admissions if elite colleges are willing to risk slightly lower average test scores and graduation rates.

	Status Quo	Simulation 1	Simulation 2	Simulation 3	Simulation 4	Simulation 5	High School
<i>Race/ethnicity</i>	<i>Current Share of Seats at Top 193 Colleges</i>	<i>Pure Merit: Admission by Test Scores</i>	<i>Pure Merit Plus SES</i>	<i>Merit Top 10% of High School Class</i>	<i>Merit Top 10% and SES</i>	<i>Merit Top 10%, Race, and SES</i>	<i>High School Class</i>
White	74%	83%	77%	74%	69%	59%	62%
African American	4%	1%	3%	6%	9%	14%	14%
Hispanic	7%	4%	10%	11%	14%	18%	15%
Asian	15%	12%	10%	10%	9%	9%	9%
	100%	100%	100%	100%	100%	100%	100%
Mean SAT/ACT score	1230	1362	1322	1254	1160	1149	

TABLE 15.2. Impact of Our Simulations on Student Body Socioeconomic Diversity and Test Scores

Using test scores in combination with income-based affirmative action produces the most income diversity, but combining class rank with economic affirmative action results in the richest mix of race and income diversity.

	Status Quo	Simulation 1	Simulation 2	Simulation 3	Simulation 4	Simulation 5
<i>Socioeconomic Status</i>	<i>Current Share of Seats at Top 193 Colleges</i>	<i>Pure Merit: Admission by Test Scores</i>	<i>Pure Merit Plus SES</i>	<i>Merit Top 10% of High School Class</i>	<i>Merit Top 10%, and SES</i>	<i>Merit Top 10%, Race, and SES</i>
Top quartile	65%	65%	32%	45%	26%	24%
Second quartile	20%	21%	21%	24%	21%	21%
Third quartile	9%	10%	30%	18%	33%	32%
Bottom quartile	5%	5%	16%	13%	20%	22%
	100%	100%	100%	100%	100%	100%
Mean SAT/ACT score	1230	1362	1322	1254	1160	1149

- Effect: Reduces white and Asian enrollments; more than doubles African-American enrollments; almost triples Hispanic enrollments, and increases lower-income student enrollments substantially; method produces large improvements compared to using the top 10 percent alone and creates roughly proportional enrollment distribution by income quartiles.

Simulation 5. Race-conscious Admissions with Relative Merit and Race and SES-based Admissions Boost

- Method: A top 10 percent–based admissions approach with SES and race “plus factors” in the admissions model.
- Effect: Decreases the level of white enrollments to 59 percent, roughly the white youth population share, increases Hispanic share slightly above Hispanic youth population share, and increases African-American share just below African-American population share; increases income-based diversity from the bottom SES quartile from 5 percent to 22 percent.

Data and Creating “Plus Factors”

To generate our simulations, we used data from the Educational Longitudinal Study of 2002. This study followed a nationally representative class of tenth graders (2002) and twelfth graders (2004) and tracked their college enrollment status to their first post-secondary institution as of 2006. Our analysis is representative of early college-going outcomes for the high school class of 2004. This is not fully reflective of the incoming freshman class of that year; the weighted sample of these high school seniors is approximately 93–94 percent of the freshman admissions in the top 193 schools. Hence, our “searching analyses” can be understood as presenting potential affirmative action models covering an eligible pool of high school students, and the diversity results if used on the next class of high school students.⁶

All of our simulations are based on a merit queue in which students are lined up from highest to lowest SAT/ACT score. Admissions start from the top until all seats are filled. “Plus factors” are a way to nudge high-scoring students ahead in the queue based on their individual, not general, disadvantage. We create “plus factors” by first building a regression model to estimate how identifiable disadvantage correlates with SAT/ACT scores.⁷ Some of the factors are completely outside a student’s control, including family factors such as parental income, education, and occupation, and neighborhood factors such as neighborhood education level and school poverty concentrations. Other factors are within a student’s constrained or environmental choice set, such as taking an

Advanced Placement (AP) course or obtaining an or International Baccalaureate (IB) diploma (which can be a matter of individual choice, but is obviously more difficult in schools where few such courses or degrees are offered). Our primary models create SES “plus factors” by inverting these disadvantages (not having AP/IB available or not having taken them, not having peers attending college, being the first generation to attend college, and so on) and “adding” these to an applicant’s score (the median add or addition is 100 points). In this way, the admissions consideration is based primarily on a high score with a “boost”⁸ given for disadvantage. SES factors combined with race as a “plus factor” are calculated in the same fashion: each individual is considered primarily based on his or her test score, with a boost given to reflect any disadvantages shown to have a measurable effect on test results.

A note of caution: this “boost” does not indicate an expectation of higher academic performance, but rather reflects how the individual student would have scored had he or she not been disadvantaged (for example, had he or she had access to AP/IB options).

The Status Quo

In 2006, African Americans represented about 14 percent of the nation’s high school senior class, and Hispanics represented 15 percent, for a total of 29 percent. So, compared to the demographics of the high school senior class—the prime-age group for college enrollment—only about a third of African Americans’ and Hispanics’ proportional share are enrolled at the top colleges.

Students with low socioeconomic status are underrepresented at the top colleges at twice the rate of racial minorities. Students from the bottom SES quartile represent just 5 percent of freshmen students enrolled in the top 193 colleges, compared with an 11 percent combined participation rate for African Americans and Hispanics.⁹ In comparison, the white share of freshman students at the top colleges (74 percent) is much higher than the share of the white high school senior class population (62 percent).

A Deeper Look at Our Simulations

Simulation 1: Race-blind Pure Test-Based Merit

Pure test-based selection strips out every other kind of special admission—affirmative action based on legacies, geography, special talents such as sports and music as well as specialized subject matter interests.

This model, for instance, pays no heed to the debate team, the football team, or the need to get a certain number of likely classics majors to fill a tenured classics professor’s classes. An admission procedure based purely on test scores increases white dominance at selective colleges and reduces access for African Americans and Hispanics. At the same time, the use of a pure test-based merit approach shifts elite college enrollments in the middle SES tiers but has no effect at the top or bottom SES quartiles. In this pure merit-based model, the average SAT/ACT score (on the math and verbal sections) increases from the current 1230 to 1362.

Our simulation of pure test-based merit:

- increased white enrollment shares from the current level of 74 percent to 83 percent;
- reduced the African-American share from the current level of 4 percent to 1 percent;
- reduced the Hispanic share from the current level of 7 percent to 4 percent;
- decreased the Asian share from the current level of 15 percent to 12 percent;
- held the bottom SES quartile constant at 5 percent; and
- increased average test scores from the current level 1230 to 1362.

TABLE 15.3. Simulation 1: Comparison of Status Quo and Pure-Merit Admissions

	<i>Race/Ethnicity</i>			
	<i>White</i>	<i>African American</i>	<i>Hispanic</i>	<i>Asian and Other</i>
Current share of seats at top 193 colleges	74%	4%	7%	15%
Pure merit: admission by test scores	83%	1%	4%	12%
High school class	62%	14%	15%	9%

	<i>Socioeconomic Status</i>				<i>Mean SAT</i>
	<i>Top quartile</i>	<i>Second quartile</i>	<i>Third quartile</i>	<i>Bottom quartile</i>	
Current share of seats at top 193 colleges	65%	20%	9%	5%	1230
Pure merit: admission by test scores	65%	21%	10%	5%	1362

Simulation 2: Race-blind Test-Based Merit with SES “Plus Factors”

We simulated an affirmative action alternative using admissions criteria based on test scores with a boost based on relative disadvantage that we label SES “plus-factors.”¹⁰ These SES plus-factors boost Hispanics, low-SES students, and African Americans compared to pure test-based merit. Compared to the status quo, Hispanics and low-SES students gained, while African Americans lost shares in selective colleges.

Our simulation using test-based merit with SES plus factors:

- increased the level of white enrollments from the current level of 74 percent to 77 percent;
- increased Hispanic admissions above the current level of 7 percent to 10 percent;
- decreased African-American enrollments from the current level of 4 percent to 3 percent;
- decreased Asian and other access from 15 percent to 10 percent;
- increased economic affirmative action from 5 percent to 16 percent of the bottom quartile of SES, with a total of 46 percent coming from the bottom half of the income distribution; and
- raised the average test scores from the current level of 1230 to 1322.

TABLE 15.4. Simulation 2: Comparison of Status Quo and Pure Merit Plus SES

	<i>Race/Ethnicity</i>				
	<i>White</i>	<i>African American</i>	<i>Hispanic</i>	<i>Asian and Other</i>	
Current share of seats at top 193 colleges	74%	4%	7%	15%	
Pure merit plus SES simulation	77%	3%	10%	10%	
High school class	62%	14%	15%	9%	
	<i>Socioeconomic Status</i>				
	<i>Top quartile</i>	<i>Second quartile</i>	<i>Third quartile</i>	<i>Bottom quartile</i>	<i>Mean SAT Score</i>
Current share of seats at top 193 colleges	65%	20%	9%	5%	1230
Pure merit plus SES simulation	32%	21%	30%	16%	1322

Simulation 3: Race-blind Test-based Relative Merit—Modified Top 10 Percent Plan Applied to All U.S. High Schools

This metric makes high school class rank by test scores (rather than high school grades)¹¹ a powerful factor in the allocation of seats at selective colleges. Using this relative merit approach holds white enrollments at their current levels and increases access for African Americans and Hispanics above current levels in which universities employ race-based affirmative action. It increases diversity by race and SES. This approach works because Americans are segregated into neighborhoods that are relatively homogenous by race and by family income. In our simulations, this alternative adds greater racial diversity than the use of test-based merit nationally, even combined with SES plus factors. This does not produce as much SES diversity as the SES approach, but it does produce greater socioeconomic diversity than the status quo of race-based affirmative action. The average test score in the top 193 colleges increases slightly from 1230 to 1254.

Our simulation using merit and the top 10 percent of the high school class:

- held white enrollments constant at 74 percent;
- increased Hispanic admissions above the current level of 7 percent to 11 percent;
- increased African-American enrollments from the current level of 4 percent to 6 percent;
- decreased Asian access from the current level of 15 percent to 10 percent;
- increased income diversity from the bottom quartile from 5 percent to 13 percent; and
- increased average test scores just slightly from the current level of 1230 to 1254.

Simulation 4: Race-blind Relative Merit— A Modified Top 10 Percent Plan for All U.S. High Schools with the Inclusion of SES “Plus Factors”

This approach provides the biggest increase in enrollments in the top 193 colleges for minorities, especially African Americans, reflecting both the income and racial segregation of individual high school catchment areas. It reduces the access of the top SES quartile students dramatically, almost to the “expected” 25 percent population share. The average SAT/ACT score drops at the most selective colleges.

TABLE 15.5. Simulation 3: Comparison of Status Quo and Merit Plus Modified Top 10 Percent

	<i>Race/Ethnicity</i>				
	<i>White</i>	<i>African American</i>	<i>Hispanic</i>	<i>Asian</i>	
Current share of seats at top 193 colleges	74%	4%	7%	15%	
Merit top 10% of high school class	74%	6%	11%	10%	
High school class	62%	14%	15%	9%	
	<i>Socioeconomic Status</i>				<i>Mean SAT Score</i>
	<i>Top quartile</i>	<i>Second quartile</i>	<i>Third quartile</i>	<i>Bottom quartile</i>	
Current share of seats at top 193 colleges	65%	20%	9%	5%	1230
Merit top 10% of high school class	45%	24%	18%	13%	1254

TABLE 15.6. Simulation 4: Comparison of Status Quo and Merit, Modified Top 10 Percent, and SES

	<i>Race/Ethnicity</i>				
	<i>White</i>	<i>African American</i>	<i>Hispanic</i>	<i>Asian</i>	
Current share of seats at top 193 Colleges	74%	4%	7%	15%	
Merit, top 10% of high school class and SES Plus Factors	69%	9%	14%	9%	
High school class	62%	14%	15%	9%	
	<i>Socioeconomic Status</i>				<i>Mean SAT Score</i>
	<i>Top quartile</i>	<i>Second quartile</i>	<i>Third quartile</i>	<i>Bottom quartile</i>	
Current share of seats at top 193 colleges	65%	20%	9%	5%	1230
Merit, top 10% of high school class, SES plus factors	26%	21%	33%	20%	1160

This simulation:

- reduced the level of white enrollments from the current level of 74 percent to 69 percent;
- doubled Hispanic admissions above the current level of 7 percent to 14 percent;
- almost tripled African-American enrollments from the current level of 4 percent to 11 percent;
- decreased Asian access from the current level of 15 percent to 9 percent;
- created a roughly proportional enrollment distribution between the top and bottom half of SES (47 percent versus 53 percent); and
- caused a decline in average test scores from the current level of 1230 to 1160.

*Simulation 5: Relative Merit with Race Consciousness—
A Modified Top 10 Percent Plan for All U.S. High Schools
with the Inclusion of SES “Plus Factors” and Race*

In our final model we investigate the impact of using race as a final consideration in admissions. This plan builds on the relative merit, or 10 percent plan, with SES plus factor boosting by including race as a plus factor for African Americans and Hispanics. As might be expected, the

TABLE 15.7. Simulation 5: Comparison of Current Enrollments at the Top 193 Colleges with Admissions on Relative Merit and Race and SES Plus Factors

	<i>Race/Ethnicity</i>				
	<i>White</i>	<i>African American</i>	<i>Hispanic</i>	<i>Asian</i>	
Current share of seats at top 193 colleges	74%	4%	7%	15%	
Merit, top 10%, race, and SES	59%	14%	18%	9%	
High school class	62%	14%	15%	9%	

	<i>Socioeconomic Status</i>				<i>Mean SAT Score</i>
	<i>Top quartile</i>	<i>Second quartile</i>	<i>Third quartile</i>	<i>Bottom quartile</i>	
Current share of seats at top 193 colleges	65%	20%	9%	5%	1230
Merit, top 10%, race, and SES	24%	21%	32%	22%	1149

addition of race as an admissions factor leads to higher levels of inclusion of underserved minorities; in fact, this model leads to slight underrepresentation of whites, 59 percent, compared to the high school pool. On the other hand, African-American and Asian enrollment shares are equal to their shares of the high school senior class at 14 percent and 9 percent, respectively. This relative merit race-conscious model leads to overrepresentation of Hispanics whose share increases to 18 percent. The average test score drops from 1230 to 1149 in this simulation, the largest drop of any of the five options.

How Do We Choose?

Our simulations show that, at least in theory, it is possible to achieve both racial and economic diversity in selective colleges without using race per se as an admissions criterion. All of our simulations have merit-based components. The first was pure test-based merit; the second was test-based merit with an SES-based admissions boost; the next two were relative-merit or top 10 percent models, and the final model added consideration of race. We find that race-blind selection models can move the needle on both racial and SES diversity, that relative merit (10 percent models) do better than a national (absolute) merit queue, and that, if you want to boost racial diversity far above what we have today, race needs to be a criterion. Because the models we utilize in this chapter factor in college readiness, we believe they are consistent with the Court's opinion that affirmative action models ought to promote racial diversity as an educational benefit instead of promoting racial diversity for its own sake.

This focus on merit—or college readiness—has led to one interesting finding. Our data suggests that selective colleges are not taking full advantage of the talent pool of minorities. Currently, a large share of minority students admitted to selective colleges have below-average test scores, while a substantial number of minority students with above-average test scores do not go to selective colleges. One clear benefit of a merit-based selection criterion is the potential for better matching between top-scoring students and top schools. (Other work that we have done finds that, annually, nearly 600,000 college students who scored in the top half of their high school class drop out of college.)¹²

Our research also shows that all of these affirmative action plans present a tradeoff between individual and group gains, between overall system outcomes and outcomes at selective colleges. The first two models, both

national merit queues, result in higher SAT/ACT scores at the schools, so we would predict higher graduation rates for selective colleges. Given that neither model leads to higher representation of underserved minorities, and that both displace high-SES students, we expect little to no impact on graduation rates for these students. This follows research¹³ and our own unpublished analysis¹⁴ that show high-SES students tend not to get a big outcome boost by going to the most selective schools.

Our other models are less clear. First, we know that they lower the average test score at the selective institutions, which will lead to lower predicted graduation rates.¹⁵ Second, we know that the disadvantaged students will get large boosts from attending the top, highly resourced schools—more than advantaged students will be penalized by going to a good, but not top, school. At best, the displacement (shift of students) caused by these plans would result in better graduation rates for underserved minorities and low-SES students, while causing slight declines in top schools. Overall, system graduation rates could be expected to increase (marginally) if the minority gains are larger than declines among displaced students; graduation rates at the top schools would decline unless these schools use the information on student disadvantage to improve supports.

We find that there is substantial racial and economic diversity that can be achieved with merit-based admissions criteria, depending on the willingness of higher education institutions to take risks on graduation rates, to discount tuition, and to fund supportive services. In theory, increasing access to selective colleges by race and class might reduce graduation rates at the top colleges, but graduation rates would still be high. For example, while graduation rates at top colleges are often over 90 percent, even the most generous affirmative action programs would be unlikely to drop overall graduation rates below 80 percent. In addition, lower graduation rates can be minimized by increasing supportive services targeting less advantaged students. Moreover, while graduation rates might decline in the most selective colleges, they likely would increase for the affected minorities and the overall postsecondary system.

In closing, we offer two findings that are somewhat outside the parameters of the above analysis. First, we find that our merit-based approach combined with race and class admissions factors requires substantial disruption in the admissions practices and enrollments of selective colleges. The disruption in the profile of selective colleges could be minimized and the number of minority and low-income students increased

if greater access for minorities and lower-income students were treated as an add-on rather than a substitute for the current admissions process. Moreover, additional diversity would be easier to achieve if the government would provide funding directly to selective colleges to defray the preparation, search costs, educational costs, and supportive services for less-advantaged minority and low-income students. It would also help if the institutional performance in providing access and success for those students were measured and rewarded separately for purposes of public funding and institutional rankings.

While there are substantial numbers of minority and low-income students who can benefit from admission to selective colleges, K–12 preparation presents barriers that cannot be overcome by admissions policy. While we were successful in finding substantial numbers of minority and low-income students who could benefit from access to the top 193 selective colleges, this matching comes at a cost. Schools in the next tier (ranked 194 to 468 in selectivity) would have to dig deeper into the SAT pool in order to attract minority students. The good news is that preparation levels by race are not an immutable fact of life and can be addressed with stronger elementary and secondary programs. Ultimately, affirmative action policies of any kind are a poor substitute for providing genuine equality of opportunity at the K–12 level.

16

The Why, What, and How of Class-Based Admissions Policy

DALTON CONLEY

Why (Now)?

Whether or not traditional, race-based affirmative action policy in college admissions survives decisions like *Fisher v. University of Texas*, an increasing number of scholars have been calling—as of late—for policies to promote socioeconomic diversity on college campuses. The push for class-based affirmative action (for lack of a better term) is only partly a response to the looming threat of an end to the legality of race-based policy (which was predicted to have a twenty-five-year life expectancy by Justice Sandra Day O’Connor back in 2003). A cry for economic considerations in the admission process also arises from mounting evidence that class has become an increasingly salient driver of academic opportunity (and success).

The statistics about increasing class stratification on American campuses are alarming: “The college-completion rate among children from high-income families has grown sharply in the last few decades, whereas

the completion rate for students from low-income families has barely moved.”¹ Moreover, high-income students make up an increasing share of the enrollment at the most selective colleges and universities²—even when compared with low-income students with similar test scores and academic records.³

Class-based admissions policies, then, offer a way to redress this unequal access to selective institutions of higher education while also indirectly tackling racial disparities in attendance and completion in the process. Additionally, class-based policies, if well-designed, can help address some of the criticisms of traditional, race-based affirmative action.

One of the most common criticisms of race-based affirmative action is that, as currently designed, such admissions policies most typically help those minorities who least need it. While prior to the 1970s, race was seen to trump class in determining the life chances for success for the vast majority of African Americans, today it is the reverse pattern that predominates.⁴ Back in 1967, sociologists Peter Blau and Otis Dudley Duncan described the process of stratification in the United States in their landmark book, *The American Occupational Structure*.⁵ In this study, they found that class background mattered little for African Americans vis-à-vis whites. Instead, they described a dynamic called “perverse equality”: no matter what the occupation of the father of a black man (this was a period of low labor force participation for women overall, even if black women did work at significant rates), he himself was most likely to end up in the lower, manual sector of the labor market. Meanwhile, in each generation a small, new cadre of professional blacks would emerge seemingly randomly through a dynamic they described as “tokenism”—that is, family background mattered little in predicting who emerged into the small, black professional class.

By the mid-1970s, however, this dynamic had changed. In 1978, sociologist William Julius Wilson described a black community where class stratification was increasingly rearing its head.⁶ Later work confirmed inter-generationally what Wilson observed cross-sectionally: there were increasing class divisions within the black (and Latino) communities and class background was an increasingly salient predictor of economic success not just for whites, but for minorities as well.⁷

Stanford sociologist Sean Reardon goes so far as to argue that class disparities have eclipsed racial ones, at least in terms of achievement:

The black-white achievement gap was considerably larger than the income achievement gap among cohorts born in the 1950s and

1960s, but now it is considerably smaller than the income achievement gap. This change is the result of both the substantial progress made in reducing racial inequality in the 1960s and 1970s and the sharp increase in economic inequality in education outcomes in more recent decades.⁸

Harvard economist Roland Fryer sums this up nicely in writing that “relative to the 20th century, the significance of discrimination as an explanation for racial inequality across economic and social indicators has declined.”⁹

In short, while there are increasing class divisions within historically underrepresented minority groups, the identity group policies held over from the 1960s treat disadvantaged groups uniformly. The result of an admissions policy that has such a homogenized approach is that the most disadvantaged minorities are not helped, and intra-racial stratification is enhanced. Thus, either in lieu of, or in combination with race-based policies, class-based affirmative action could address these inequalities within minority (and majority) communities.

What Is the What?

Even in light of the compelling reasons for SES-based affirmative action, in order for class-based admissions to address the factors that matter in predicting college attendance and completion while also promoting racial diversity on campus, such policies must be designed correctly. Typically, differences in college going—overall or by institutional selectivity—are shown broken down by income levels. However, this is misleading, since in a fully specified statistical model, income ends up not being significantly predictive. In other words, when scholars or journalists show sizable gaps between income quantiles in rates of college attendance and completion, those income categories are really acting as proxies for the factors about a student’s class background that really matter: parental education and parental wealth.

The Panel Study of Income Dynamics (PSID) is the world’s longest running longitudinal survey of families in the world. It began in 1968, when researchers at the University of Michigan interviewed 5,000 nationally representative families. They then followed—to the extent possible—these families, and the new households formed by split-offs from these original units every year (and as of the late 1990s, every other year). This study, then, offers a unique opportunity to ask how conditions of childhood

predict success in school and beyond. Notably, in 1984, the PSID started asking families not just about their earnings and employment patterns, but also about their assets, debts, savings, and investment patterns.

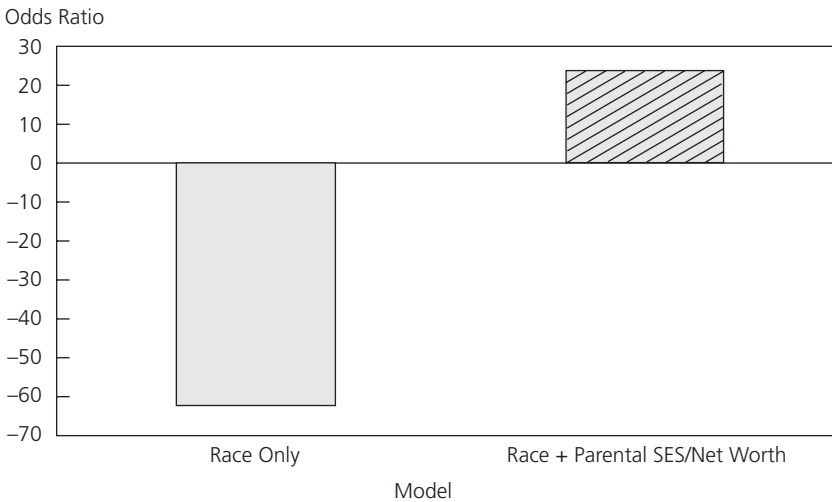
As a result, by following individuals who were children in their parents' households in 1984 as they grow up, finish school, and become adults, we can compare the various factors that predict success in college (and beyond). Further, this generation of offspring is perfectly timed to assess the impact of the Civil Rights triumphs of the 1960s, since they were born shortly after the enactment of those landmark pieces of legislation.

We know that even today black students are much less likely to complete college, but what is driving this? Is it race, parental income, parental education, or wealth? Using a statistical technique called multiple regression, which allows for the comparison of the unique impact of many measured factors while holding constant the others, I found that—surprisingly—parental household income has no net effect on college completion. (I was unable to look at the selectivity of institutions attended, though other researchers are currently addressing this lacuna.) Neither did race, itself, matter (see Figure 16.1); nor did the occupation of either parent. This was amazing, since these were the very same class-background factors typically studied by sociologists of education. It turned out, however, that these variables were merely acting as proxies for what really drove stratification in higher education: parental education and parental net worth.

It is worth pausing to reflect upon exactly what the finding that race per se does not matter to college completion means. It does not suggest that racial discrimination has been vanquished in American society. As I discuss below, the effects of past and current discrimination in the housing market, for example, may well explain why there is a very large racial gap in wealth in the United States. The finding instead suggests that once one accounts for wealth and parental education, the race effect disappears. Race matters for educational outcomes, but it matters indirectly, through its association with wealth levels. Asset inequality is the primary locus of racial stratification, and this equity inequity has ripple effects in other domains critical to opportunity—such as the schooling system.

It should not come as a surprise that—by far—the most important factor in predicting individual academic success is the education of a parent.¹⁰ The advantages of having an educated parent reach all the way back to prenatal conditions,¹¹ on up through early childhood (as measured by the number of words to which children are exposed),¹² all the

FIGURE 16.1. Chances of Completing a Bachelor Degree for Blacks Relative to Whites, Conditional on Finishing High School



Source: Dalton Conley, *Being Black, Living in the Red: Race, Wealth, and Social Policy in America* (Berkeley, CA: University of California Press, 1999).

way to college completion (first generation college students are the most likely to drop out).¹³ That said, upon reflection, it should also not come as a surprise that the only economic factor that mattered was parental net worth (that is, wealth) and not income.

After all, income is, by definition, financial resources that flow into a household or family unit. Most families spend weekly, monthly, or annual income on expenses, consumption, and so on. The structuring of educational opportunity does not happen on a paycheck to paycheck basis. Rather, educational advantages are acquired through major capital investments and decisions. These include, for example, where to purchase a primary residence. Even in the aftermath of the housing crash, equity in the family home (that is, primary residence) still represents the modal form of wealth for American households.¹⁴ Not only does this form of wealth smooth consumption by fixing housing payments (since the typical method of financing in the United States is a fixed rate mortgage),¹⁵ it also correlates highly with local school quality. In fact, school quality is intimately related to housing values, since public schools are financed,

to a great extent, by local property taxes. Second, evidence suggests that parents weigh school quality heavily when choosing where to live (and buy) a home. Indeed, the borders of school districts and catchment areas form sharp discontinuities in housing prices.¹⁶ Finally, the equity amassed in a family home can be accessed in order to finance the higher education expenses of offspring through deployment of a second mortgage, HELOC, or other credit mechanism.¹⁷ Indeed, when, in my analysis, I break out wealth into its component parts (primary home equity, business equity, stocks/bonds, vehicles, and other), I find that primary home equity is what best predicts educational outcomes.¹⁸

In an attempt to parse out when and how wealth is associated with academic success, sociologist Wei-Jun Jean Yeung and I looked at young children's test scores. If the social-psychological, consumptive, and school district effects of wealth were what mattered most, we might see this reflected in test scores. But if it is the educational financing effect that predominates, there should be little to no effect of wealth on these measures of cognitive achievement. When we performed this analysis, we found that indeed wealth predicted math scores among school-aged children (but not reading scores, and not for children before they attended school). "Liquid assets, particularly holdings in stocks or mutual funds, were positively associated with school-aged children's test scores. Family wealth was associated with a higher quality home environment, better parenting behavior, and children's private school attendance."¹⁹ It should also be noted that in this study, there was no net effect of race on test scores. (Though, to be fair, the race gap was eliminated just by controlling for parental education; it was not even necessary to statistically eliminate the racial wealth gap.) Future scholars should assess whether—as we expect—wealth effects on achievement strengthen as children age through the school system.

While parental education is a substantially more powerful predictor than parental wealth (and much cleaner to measure) for both educational achievement (that is, test scores) and attainment (that is, years of completed schooling), it is still worth incorporating parental wealth into any measure of student class background for admissions purposes for at least two, related reasons.

First, to the extent that class-based policies are meant to do double duty as colorblind but racial-diversity-enhancing admissions criteria, wealth does a better job than any other measure of socioeconomic background of serving as a proxy for historically underrepresented minority

status.²⁰ While the income gaps between, for example, blacks and whites, are substantial (on the order of 70 cents to the dollar for family income), they are dwarfed by equity inequity. Today, the typical (median) African American family holds 10 cents to the dollar of wealth compared to the median white family.²¹ Looking at this gap within income categories attenuates it, but it does not come close to eliminating it (income explains about half the race gap in wealth).²² Further, while the income gap between blacks (and other minority groups) has narrowed slightly since the civil rights triumphs of the 1960s, the wealth gap has arguably widened.²³ This may be partly a result of ongoing discrimination in the credit and housing markets,²⁴ but it is also due to the simple fact that wealth does a better job than any other socioeconomic measure in capturing historical legacies. Economists Laurence J. Kotlikoff and Lawrence H. Summers, for example, estimate that up to 80 percent of lifetime wealth accumulation can be attributed to past generations directly (through transfers and inheritance) or indirectly (through the advantages wealth confers or, for example, the fact that those with wealthy parents may not have to go into debt as greatly to finance their educations).²⁵ A more conservative definition of transfers puts the figure at 20 percent;²⁶ splitting the difference leaves us at half.²⁷ Further, through access to more lucrative investment vehicles, the ability to rely on wealth as a buffer to smooth consumption, and the magic of compounding, those with greater wealth to begin with may be able to redouble their advantage over the course of years or decades.

This is indeed the second reason for including wealth: even though its intergenerational correlation is not substantially different than that for income, wealth conceptually captures the legacy of historical inequalities of opportunity better than aspects of class that cannot be literally transferred directly from one generation to the next by signing a check (or a deed or a will).

How? Implementing Affirmative Asset Policies

If one were to decide to design a class-based admissions policy using parental education and parental wealth as the key class measures, how would one operationalize such a scheme? There are significant considerations to both increase administrative efficiency and minimize perverse incentives.

Parental education is easy to record through self-report, the way many social science surveys do. A typical question asks how far a respondent

(or her parent) progressed in school and then assigns numerical values to those categories. For example, a high school graduate with no additional education would receive a score of 12 for having completed grades one through twelve. Someone who was a high school dropout would typically receive a 10. Someone with some college education (including an associate degree) but no bachelor degree would receive a 14, a bachelor or equivalent gets a 16, and graduate education can be coded any number of ways, usually maxing out at 20 (no matter how long the individual actually took to complete their graduate training). Similarly, wealth could be assessed using the same series of questions that are asked in surveys like the PSID or the Survey of Consumer Finances or the Survey of Income and Program Participation. (These questions go through asset classes to prompt recall of various specific holdings rather than asking for an overall figure that may be estimated with more error.)

While a survey-based approach to assessing class background may be useful—and indeed a version of this approach is being applied by the University of California presently—it opens up significant opportunities for malfeasance as well as perverse incentives to hide or minimize assets. The nice aspect of income is that not only is the information being collected by the college financial aid offices, it is also being collected by the Internal Revenue Service, and thus any misrepresentation would not just be to the college but to the government as well, since most colleges require tax forms as a means of income verification. There exists no similar verification system for claims about parental education or parental wealth (or, important to note, for race, which has been taken on faith as accurately and honestly self-reported in the college admissions process). One way to address the education verification question would be to conduct random audits with stiff penalties (such as expulsion) for fraudulent reporting. The probability of audit could be weighted by the parents' income and occupation (as proxies for education) as reported on the included tax returns.

Another concern is that by providing advantages to individuals from families with low education or wealth levels, we might be creating perverse incentives at the parental level since—unlike race—these are not fixed characteristics of parents but can be altered. Parental education has the nice quality that it is most often completed well before offspring are approaching college age and has such a major impact on the lives and opportunities of parents that it is not something that parents might alter in response to incentives from their children's college admissions processes. That is, it is highly unlikely that (future) parents would

substantially cut back on their own schooling in order to provide a marginal advantage to their offspring during their educational careers. This is not inconceivable, however. One way to minimize (though not eliminate) any incentives for parents to forsake schooling would be to measure their education levels at the time of the birth of the child. (Though this, in turn, creates the incentive for individuals to complete their fertility before their education—another outcome that most would agree is not desirable.)

Parental wealth, meanwhile, faces an even greater problem of potential gaming and perverse incentives against savings. For example, since Medicaid has strict asset limits, many families shift assets from one individual to another (or even get divorced) in anticipation of needing Medicaid's long-term care insurance component. Similar shell games may emerge in response to offspring approaching their senior year of high school. However, for parental wealth, we can infer a lot based on a few factors that are less apt to be gamed.

First, we can measure the median housing value of a community in which a student was raised. This has been shown to be a very good proxy for individual wealth level. If it were measured for all years from birth, the incentive to move to a poor value neighborhood just during the period preceding college applications would be minimized. Second, other forms of wealth can be ascertained or imputed through property tax records, estate tax records, and schedules A through D of the Federal Income Tax return. While these individual-level measures could theoretically be gamed, to the extent that they are measured over multiple years (as with the address of the applicant) this minimizes such potential threats; and when combined with the neighborhood level measures, such a risk is further minimized.

Wherefore? Concluding Thoughts

From a strictly scientific perspective, we cannot know for sure whether parental wealth—or income or education, for that matter—are actually causal in determining children's educational outcomes. The studies that show income gaps in college attendance and completion, or those (including my own), that show parental education and wealth as strongly associated with offspring attainment are all based on observational—not experimental—data. There is no good natural experiment (that is, instrumental variable or regression discontinuity) to assess the true causal effects of wealth in the United States (though there is some evidence that

parental education is truly causal thanks to studies of compulsory schooling law changes). This limitation should not stop us from rethinking admissions policies, however.

If the goal is give a leg up to certain groups who tend to have poorer education outcomes, we want to use the measures of disadvantage that are most strongly associated with inferior educational careers—regardless of whether the mechanism driving that correlation is causal or if it is merely reflecting unobserved heterogeneity. If the mechanisms described above are truly causal then we can expect a bigger bang for our buck, so to speak. That is, if parental education, for instance, does *cause* offspring attainment, then boosting the most educationally disadvantaged students of one generation will indeed translated into positive gains for their children as well, thereby reducing the “work” need to be done in the next generation. But if, instead, education level is merely acting as a proxy for other, unobserved factors, we will need to keep applying preferential admissions to rectify whatever that unobserved factor is anew each generation. That is, we gain more efficiency and longer-term effects in our policies by getting the causal story right.

These causality concerns aside, we must be cognizant that, as we implement these policies, the very predictors on which they were based may change. That is, if we implement SES-based admissions policies, the effect of parental SES may then vanish. This is the point and goal, of course. But it also means that race may assert reassert itself through other channels. After all, this is the America that replaced slavery with Jim Crow, and Jim Crow with a number of other racially oppressive policies—all the way up to the mass incarceration system of today. Even if we do not solve the race question forever, constant fiddling with efforts to address it is still well worth the effort.

PART

V

Public Policy Proposals

A Collective Path Upward

Working Smarter and Cooperatively to Improve Opportunity and Outcomes

RICHARD SANDER

Even within the contentious field of affirmative action, there is broad agreement in higher education about fundamental goals. College should endeavor to be a pathway to social and economic mobility, rather than a hindrance to it. Both racial and socioeconomic status (SES) diversity on campuses are highly desirable, especially if this diversity broadens friendships and social capital across groups that, before college, have not interacted much. Colleges should also strive to place students in environments that maximize their potential to grow and have the best chance of achieving their career goals. While explicit consideration of race in admissions is still legal through most of the country, prudent universities should begin planning for the day when it may no longer be possible to use race in pursuing campus diversity.

These basic principles command wide support. And while it is true that the devil is in the details, and that there are sharp empirical clashes about both the nature and effect of many current college practices, I will argue in this chapter that there is enough consensus to support

some significant reforms in how colleges gather and use information in the admissions process. After briefly elaborating on some of the key challenges selective colleges face, I will outline three specific initiatives that could significantly enhance the ability of both university leaders and college applicants to surmount those challenges.

Where We Are Now

America's most elite colleges and professional schools have high levels of racial diversity, which is attained using large and fairly mechanical racial preferences.¹ Some of these schools have also made significant strides over the past decade in expanding socioeconomic diversity, through more aggressive financial aid initiatives and better outreach.² Low-SES students are nonetheless still relatively scarce at most selective colleges, whether public or private.³

At second- and third-tier schools, which are still elite but not at the very top of the rankings, there is significantly less racial diversity in student bodies. Partly because so many talented minority students are captured by the top tier, the colleges next in line find they must choose between using even larger racial preferences, or settling for a student body that is, say, 7 percent rather than 9 percent black.⁴ These schools also find themselves in tight competition for rankings, and thus tend to use (their relatively scarcer) scholarship dollars on merit aid or race-based scholarships rather than open-ended guarantees that they will cover all costs for low-and-moderate income students. Their low-SES student numbers are thus often worse than those at the top tier.

Into this mix comes the U.S. Supreme Court decision in *Fisher v. University of Texas*, urging campuses to use racial preferences as a last resort, rather than a first resort, for achieving diversity. An increasing number of states and state university systems (ten at last count) have prohibited the use of race altogether as a factor in admissions.⁵ These bans seem to produce reductions, but usually not an elimination of racial preferences; and there is not much evidence that other universities have thus far treated Supreme Court jurisprudence as a serious constraint on their freedom of action.⁶ Moreover, as the chapters in Part II of this volume suggest, legal observers sharply disagree over whether *Fisher* itself signals a significant tightening in judicial oversight over university admissions (and, implicitly, whether the seeming consensus in *Fisher* might disappear if the composition of the Supreme Court changed slightly).

Finally, a widening drumbeat of research suggests that higher education is neglectful in monitoring many types of student outcomes, and often fails to match students with the academic environments that are most likely to foster their success. A great many talented low-SES students are “undermatched”—attending community colleges or low-tier state colleges where a variety of factors conspire to keep bachelor-degree-attainment rates depressingly low.⁷ And while some observers continue to insist that “overmatching” is not a problem in affirmative action programs, there is a growing consensus that at least sometimes in some areas, the overmatching problem is real and serious.⁸ In particular, the battery of studies finding evidence of science mismatch, academic mismatch, and social mismatch effects is quite powerful and unrebutted by contrary studies. The social mismatch findings are in one respect particularly important, because they tend to find that overly large racial preferences can directly undermine the degree and utility of social interaction across racial lines—and thus themselves conflict with a central rationale and legal justification for race-conscious programs.⁹

University leaders tend to feel that they have very little freedom of action; one small step to ameliorate Problem A (for example, the scarcity of low-SES students) immediately exacerbates Problem B (for example, finding funds for merit aid, to recruit top students and keep the university’s ranking up). Addressing poor academic outcomes among students admitted with preferences can—by acknowledging that a problem exists—undermine efforts to recruit new minority students. The strategies we need, then, are ones that can enlarge the scope for creative action, and initiatives that give us win-win possibilities for both students and institutions, instead of zero-sum or negative-sum alternatives.

The Applicant Pool

As more than one recent study has shown, elite schools are leaving a lot of diversity on the table. Only a small fraction of the brightest low-SES high school students—of all races—end up attending or even applying to highly elite colleges. The numbers involved are not small; there are over twenty thousand high school seniors each year who have SES backgrounds that put them in the bottom half of the American population and who are qualified for admission to top-tier institutions yet do not apply to those institutions.¹⁰ Economists Caroline Hoxby and Christopher Avery show that admissions officers at selective colleges greatly

underestimate the number of low-to-moderate income but high-achieving students. “What the admissions staff see are eight to fifteen high-income applicants for every low-income applicant. However, the ratio of high-income high achievers to low-income high achievers is only about two-to-one in the population.”¹¹ As former President Derek Bok of Harvard has noted, his school’s creation of generous financial aid programs was not, by itself, enough to significantly increase the presence of low-SES students at the school; Harvard also had to develop new and better outreach programs to have a meaningful impact.¹²

Given these missed opportunities—for both schools and students—it seems there are several sensible things we in higher education ought to be doing. An important first step is to help university administrators and admissions officers to better understand the “admissible pool.” Most colleges have some informal threshold of academic credentials that makes an applicant “admissible” if she has other sought-after traits. A college may also have a geographic focus (if it is a state institution) or at least a geographic pattern (if it is a selective but somewhat regional college). High school seniors having a combination of the right geography and “admissible” levels of academic achievement form the potential pool from which colleges make selections.

As noted above, a basic finding of the research by Hoxby and Avery is that the applicant pools of most selective colleges do not come close to reflecting the pools of eligible candidates; indeed, most schools probably have not even attempted to measure the disparity. In one current project, I am collecting admissions data from dozens of selective public universities around the country. It is striking to observe what a large majority of these institutions do not even ask applicants for information about family income, parental education, or other measures of socioeconomic status. Private colleges probably do a better job of at least putting such questions on their applications, but I suspect few, if any schools have organized that data and compared it with the potential pool that exists in the field. And even schools interested in this question probably rely on data created by the College Board, which is itself limited to considering students who have taken the SAT. But many “diamonds in the rough” end up attending local community colleges that do not require the SAT, so they may escape measurement altogether.

It would thus make eminent sense for national education organizations to create accessible and comprehensive software that would allow any admissions officer at any institution to compare her existing student

body with the admissible pool. Valuable source data for this software exists in a variety of national longitudinal studies of high school and college students that are undertaken by the federal government, such as the Educational Longitudinal Study (ELS) conducted by the Department of Education. ELS and other studies track large samples of young people from their early teenage years into their mid-twenties. They gather extensive data on the academic skills and preparation of these students, as well as on their families' socioeconomic status and financial condition. As some of our contributors have noted, it is helpful in measuring "disadvantage" to consider not only family characteristics, but also characteristics of one's school and neighborhood. Data of this type is available in some of these databases, and where it is not, it can be imputed into a merged database that covers a wide range of student characteristics.

Just as important as the data itself would be a software interface that makes it easy for admissions officers to pose questions about the admissible pool. Ideally, one should be able to specify a series of academic thresholds, select a geographic focus (or a "national pool" option), and then choose from a menu of socioeconomic profiles (for example, "comprehensive SES," "family based SES"). The program would then generate an analysis of the actual pool of admissible students, stratified by the chosen SES measure, in (a) the general population, (b) the school's applicant pool, and among (c) the school's enrolled students. More detailed information on the gap between the general population and the actual applicant pool would then help officers see the nature and characteristics of the gap.

It would not be difficult to incorporate into this data-software package the type of information that would let admissions officers also project the financial aid needs of a class that better reflects the socioeconomic makeup of the admissible pool.¹³

Of course, being aware of the potential pool is different from actually locating and admitting its members. The database outlined here is valuable as a planning and consciousness-raising tool, but not as a method of directly contacting potential students. How do we turn identification into recruitment?

Hoxby and Avery point out that many of the diamonds in the rough are isolated; that is, they attend high schools where few or none of their peers are academically competitive or actively considering selective schools. It is hard for such students to find role models; it is hard for counselors at those schools to develop enough expertise about selective

colleges either to identify the promising student or to give her helpful guidance. It is also hard for individual colleges to cost-effectively reach such schools; the vast majority of most colleges' students come from a relative handful of feeder schools, and that is where most current outreach is concentrated.

One solution is for colleges to develop a consortium approach, under which individual institutions make a modest contribution to a collective outreach effort. Outreach officers working for the consortium use available data to provide training and liaisons to counselors at every high school, and make direct contact with promising students identified in a whole variety of ways. What the consortium's officers learn is shared with all participating colleges, so that individual institutions can easily piggyback on the consortium's work.

The outreach experience of University of California (UC), briefly discussed in Chapter 8 of this volume, provides a useful model for the potential effect of such measures. Within California, the University is sufficiently large (both in sheer size and in market share) to enable it to capture a large share of any "pool expansion" it achieves. After the state adopted formal race neutrality in the late 1990s, the university launched substantial outreach efforts, funded annually in the tens of millions of dollars. In the aggregate, these programs substantially increased the low-and-moderate SES pool on which UC schools could draw; and at least some of these efforts have been evaluated and credibly shown to have made a real difference.¹⁴

An evaluation component is important in any major new effort. Ideally, collective efforts sponsored by a large number of colleges and universities would take on several different forms, and perhaps be operated by different entities in different parts of the country, so that an element of competition would exist and there would be analytic grist for comparative evaluation efforts. Through careful assessment, universities would learn a good deal in a relatively few years about the most effective ways to bring "diamonds in the rough" into the applicant pool.

Facilitating Cooperation

In May 1991, officials from all eight of the colleges that comprise the Ivy League signed a consent decree with the Department of Justice (DoJ), agreeing to end practices that, according to the DoJ, violated American antitrust laws.¹⁵ Over a couple of decades, the Ivy League and a dozen

other elite colleges had developed an increasingly close collaboration around the provision and award of financial aid. Two key goals of the schools were, first, to base financial aid decisions strictly on need, and second, to provide sufficient aid so that, the college leaders hoped, no student would be prevented by a lack of resources from attending those schools. By the time DoJ began to investigate their practices, the schools were holding annual meetings in which they directly compared, and brought into alignment, financial aid offers made to students admitted to more than one member of the group. Students interested in attending a college within this group could not easily lure them into a bidding war; admittees would in essence face a uniform price at all the schools.

From the perspective of DoJ lawyers (who also believed the colleges were cooperating in the setting of tuition levels) the schools' behavior was clearly anti-competitive. But there was, of course, quite another way of viewing the matter. The colleges' cooperation was a way of making sure that each member of the group used their financial aid dollars in a way that furthered a social objective (making college affordable to those in need) rather than the individual objective of each college (attracting the most formidable student body possible). Without some type of collective cooperation, it would be difficult for any but the richest colleges to base aid only on need and be willing to forego any bidding effort for top students that could raise a school's profile.

The generation that has passed since the 1991 consent decree has given us ample time to see the effects of a college pricing regime based solely on competition. The full-ticket price for one year of college at an elite private institution has nearly doubled (in inflation-adjusted dollars) to nearly \$60,000 in 2013–14. Only a few dozen colleges still limit financial aid to those students in need.¹⁶ The rest use a wide array of merit scholarships to compete for the most academically talented students, athletes, and, to a lesser extent, desired racial minorities. Both the recruited high-credential students and the recruited minorities tend to come from very affluent families. Merit aid quadrupled (in constant dollars) in the decade after the DoJ settlement; by 2010, according to one industry source, the average student admitted to a private college received a 40 percent discount on tuition, and most of that discount was based on academic considerations rather than financial need.¹⁷ A major deterrent to the adoption of stronger efforts to admit and recruit low-SES students is the concern among college administrators that they will simply be unable to afford the cost.

With even the limited permitted forms of college cooperation on need-based aid policies set to expire in 2015, this is a ripe time to rethink federal policy. One can imagine a scenario in which the government's role is not to hunt down and halt cooperative practices among colleges,¹⁸ but instead lead them and try to keep them channeled in the most benign way. The principal form of federal grants to college students—the Pell Grants program—is, of course, based almost entirely on the financial need of the recipient. But Pell Grants are capped at less than \$6,000 per year—enough to enable many students to attend public institutions, but hardly enough to make a private college affordable. What if the federal government actively encouraged to the extent that it can, private institutions to channel the bulk of their financial aid toward students in need? It seems hard to imagine any step that could more significantly advance that goal than reducing the “arms race” among colleges to compete against one another with merit scholarships.

As a step toward that goal, one could imagine the Department of Education (DoE) creating a “need-based-aid incentive program” with several components. First, DoE could enroll colleges in a voluntary program in which they commit to adopt one of a menu of “best practices” in allocating financial aid among admitted students. These practices could all have the general purpose of aiding those with genuine economic need, while allowing institutions the flexibility to design policies that fit their own idea of optimal aid. Second, DoE could maintain a public registry of schools that participate in the program, and audit the programs sufficiently to provide a meaningful assurance that the institution actually complies with its announced practices. Third, DoE could give preferment to participating institutions in awarding other need-based aid. Fourth, the government could provide modest additional need-based aid subsidies to colleges that can demonstrate they award less merit-based aid than other schools in their competitive cohort. Such a policy would recognize that only the most affluent colleges can afford to enjoin themselves from all merit-based aid, while providing incentives for schools to break from the “merit competition/higher tuition cycle” to a virtuous cycle in which schools lead the way toward less merit aid, lower tuitions, and more need-based aid.

Some combination of these policies would provide even greater and broader benefits than the old Ivy League consortium, and would avoid the aura of price-fixing that brought the old system down. And it would complement well the Obama administration's recent focus on creating competitive accountability in higher education.

Improving Matching

The values I have discussed in the previous two sections—improving information, transparency, evaluation, and intercollegiate cooperation in the social enterprise of improving college access—apply to another goal: maximizing beneficial college *outcomes*. Almost all conversations about college diversity begin and end with a focus on the number of underrepresented minority faces in the freshman class at each college. Colleges are expected to achieve goals of rough racial proportionality on their own, and they do so primarily through admissions preferences. What if we instead move to a regime that emphasizes a collective responsibility in higher education to maximize social mobility outcomes for underrepresented populations?

The single most important way that colleges and universities can change the conversation from diversity toward mobility is through the sort of information they create and their willingness to share this information with one another and with applicants. The principal data available from colleges today concern the entering credentials of freshman, the school's racial demography, and graduation rates. What we would like to know, and need to know, are learning outcomes. What sets of skills are students acquiring at college? How far do they progress beyond their high school levels of achievement? With what success do they persist in their chosen fields? Efforts such as the Collegiate Learning Assessment are flawed but valuable steps towards a focus on what students learn, and toward greater accountability in higher education. If colleges develop better information about how students within their community learn, and share this information collectively, there will be both more incentive for internal improvements and a greater likelihood that students will end up at institutions where they are well matched.

Consider, as an example, the problem of science mismatch. Although as high school seniors, African Americans are more likely than whites to aspire to careers in science, technology, engineering, and math (STEM), they are far less likely to secure bachelor degrees in these fields, and only one-seventh as likely as whites to secure a STEM doctorate. Moreover, a disproportionate number of blacks who do achieve STEM doctorates attend historically black colleges. As several studies have documented, black students often fall off the STEM track because they receive preferences into highly competitive colleges where they are poorly matched in first-year science courses; learning little and getting poor grades, they transfer to less demanding majors.¹⁹

Dozens of programs across the country try to identify promising minority high school students and mentor them toward science careers. A number of leaders in these programs, distressed by the evidence of science mismatch, are rethinking traditional strategies of equating success for their students with winning admission for them at the most elite college possible. Increasingly, they recognize the importance of tracking long-term outcomes and considering match alongside selectivity in mentoring students towards a successful path.

Imagine a consortium in which these high school mentoring programs share data with colleges and graduate programs on the longitudinal outcomes of both minority students and low-SES students interested in STEM careers. The cooperative developing and sharing of data would, before long, greatly aid both students and mentors in evaluating optimal paths toward science careers. It would also help colleges share information on ways of providing academic support, and evaluate particularly successful methods that participating schools have developed for keeping promising students on the paths they have set out to follow.

A different but not unrelated problem is posed by the task of maximizing the benefits of diversity on college campuses. Alongside the social mobility goals of affirmative action programs is the broad aim of binding together a diverse society, by increasing levels of interracial and interclass communication, understanding, and friendship. Yet, as most college administrators can confirm, campuses are often marked as much (or more) by segregation and isolation as by interracial networking. And several important (and so far as I know, unrebutted) studies have found that very large preferences can directly undermine the goal of diverse interaction.²⁰ An ethnic group whose members have a disproportionate rate of academic struggle and attrition on campus are likely to be alienated and turn inward; in general, students are far more likely to form friendships on campus with students who have similar academic accomplishments. It follows—and has been shown empirically in at least one study—that the level of cross-racial interaction would increase substantially if the most elite schools used somewhat smaller racial preferences, and some blacks and Hispanics currently attending super-elite schools instead attended schools that were merely elite.²¹

Here again selective colleges and universities could greatly improve their collective success by developing better information on social interactions and integration on campus, sharing this information, and focusing more heavily on optimizing the aggregate outcomes of disadvantaged

students rather than competing directly with one another to maximize particular—and particularly superficial—measures of diversity.

Conclusion

There are unquestionably some very big, challenging things we need to do in American society to improve social mobility. But this chapter has sought to point out that there are some comparatively easy things that higher education leaders can do that would very substantially further the broad goals we share. The common theme of these suggestions lies in doing a smarter job—through greater transparency, better information, and cross-institutional cooperation—of finding the talented pool and successfully channeling that talent. The legal and administrative environment in the United States today is ideally primed for making these reforms. Let us seize the opportunity.

Increasing Socioeconomic Diversity in American Higher Education

CATHARINE HILL

Access to higher education is important to America because it contributes to economic growth and to social and economic mobility, core values of our society. Over the past decade or so, the deterioration in aggregate growth of real incomes has been a challenge for institutions of higher education, putting downward pressure on tuition revenue growth, increasing demands for financial aid, and reducing public sector support for higher education due to constrained tax revenues.¹ The distribution of income across families also matters for colleges and universities, and over the past several decades, income inequality has significantly increased in the United States.² Greater access to higher education for low-income students would help moderate the increase in income inequality because of the economic returns to education beyond high school. But increasing income inequality itself is in fact exacerbating the challenges facing colleges and universities, making it more difficult for institutions of higher education to combat it.

The coincidence of these two trends—the decline in aggregate growth of real incomes and the increase in

income inequality—presents an extremely tough challenge for higher education. As we recover from the Great Recession that resulted from the financial crisis of 2008, some of the pressures facing American higher education will moderate, but if income inequality continues to increase, colleges will face continuing challenges, and will not be able to contribute effectively to reversing the negative economic trends of the past forty years.

If we are truly committed to economic and social mobility in America, changes in policies to encourage greater access on the part of low- and middle-income students to higher education are needed. A variety of policies could contribute to a more socioeconomically diverse group of students making it to college and university and graduating.

These policies can be grouped into several categories. First, because increased income inequality has contributed to the current challenges, directly addressing income inequality would help ameliorate the situation. Also, government policies could be better targeted at encouraging institutions to increase the representation of low- and middle-income students at their schools. In addition, policies targeted to changing the choices low-income students make as they decide whether and where to go to college would also help.

In the end, the economic success of our country depends on increasing access to higher education. In addition, our core values as a nation depend on equal opportunity, and greater access to higher education is central to this.

Policies to Address Increasing Income Inequality

Real income growth that is skewed toward high-income families creates challenges for higher education. High-income families are willing and able to pay higher tuitions, desiring the services that those high sticker prices make possible. At the same time, low-income families' resources lag further behind, increasing the need for financial aid. As a result, greater income inequality increases the demand for services at one end of the income distribution at the same time that it increases the need for financial aid at the other end, putting colleges and universities in a difficult position. If they want to attract students from across the income distribution, colleges and university face pressures to increase spending on facilities and services to please students from wealthier families while at the same time increasing financial aid to attract low-income students. These are trends that many suggest are not sustainable. To the extent that financial aid does not keep up because of these pressures, higher

education access for low-income students will deteriorate. With increasing income inequality, the opportunity cost of taking a low-income student increases for institutions.

The higher education sector, given the current incentives that institutions face, cannot address rising income inequality in America on its own. The government could help, either by addressing income inequality directly, or by targeting policies to encourage institutions to increase the socioeconomic diversity of their student bodies. A variety of policies would contribute to this.

Policies to directly affect income inequality include tax, expenditure, and regulatory policies. Federal policies could make it easier for individuals to organize into labor unions to bargain for better wages and benefits. The minimum wage could be increased a reasonable amount, and the Earned Income Tax Credit for low-income families could be expanded. Likewise, greater expenditure could be devoted to improving pre-school and K–12 education, particularly in disadvantaged communities. And tax increases could contribute to greater income equality while also addressing our fiscal deficit concerns.

At this moment of constrained federal and state budgets, and concerns about the role of government in our society, it seems unlikely that major progress will be made in these areas. But in the long run, these issues deserve thoughtful exploration. One can believe in the importance of relying on the private sector and markets, but still believe that there is a role for the government to play in the distribution of the benefits of our market economy across all members of our society. When the implications of increasing income inequality are considered by enough of our society to be detrimental to economic growth and to our commitment to equal opportunity, perhaps policies at this level will start to change.

Improving Policies Targeted at Institutions

Target Public Subsidies More Effectively

Despite declining public sector support for higher education, both state and federal governments continue to spend significant resources there. Historically, the state and federal governments have trusted higher education institutions to use these resources wisely in service of their educational missions. That trust has eroded, for a variety of reasons, including rising costs. Rather than reducing support, a preferred response is for the

government to target their interventions more specifically toward the goals considered in the public interest. Recent proposals by the Obama administration to develop a rating system hope to accomplish this, although concerns about what would actually be included in such a rating system, and its possible unintended consequences, are currently being discussed.

A simpler and more targeted intervention might prove more effective. If the government's policies are meant to increase access on the part of all families regardless of their incomes, then access to some federal and state monies could be tied to accomplishing this. Institutions receiving large subsidies, either through direct grants or tax advantages, could be required to demonstrate success in this area to maintain access to those resources.

Many government policies increase the resources available to colleges and universities, and these resources can be used to increase quality (by adding programs, faculty, and other expenditures on academic and extracurricular programs, all increasing costs).³ Or, they can hold down tuition for all students, as was the case historically at most public institutions. Or, they can use the resources to reduce the net price for families depending on their incomes, through need-based financial aid policies. If the government really wants to encourage greater access, government policies need to create incentives for schools to use resources for the third option on the margin relative to the first two.

Anti-trust Policies: Encourage Cooperation in Service of Mission

In the 1990s, the Justice Department accused a group of selective institutions of colluding on financial aid awards. The results of these actions have included less cooperation and greater competition for students, through pricing and financial aid awards. But much of this competition has in fact benefited high-income students through greater merit aid.⁴ If the resources necessary to finance increasing merit aid came from reducing expenditures on academic and extracurricular programs, this in fact would be a change that reduced costs and price at the same time. But, it is likely that the resources for merit aid instead have come from financial aid for needier students. Allowing institutions committed to socioeconomic diversity to cooperate on limiting merit aid in service of mission would actually contribute to institutions fulfilling the objectives of many of the government's programs aimed at increasing access. To spend significant government resources on Pell grants and loans for low- and middle-income students, and then create incentives for institutions to offer merit aid rather than need-based financial aid, seems counterproductive.

This is an issue not just for selective, private nonprofits, but also for public institutions. With declining support from state governments, the public institutions are starting to behave increasingly like the privates. For example, they spend significant amounts on merit aid and recruit out-of-state and international students who pay higher tuitions. All of this reduces spaces for low-income students at institutions with limited capacity.

Allowing schools to cooperate to avoid the “arms race” in spending generally could help to keep costs lower across the board. At the moment, it is difficult to know whether all schools could accomplish this. Spending that is considered an extra amenity at some schools might be thought to be important to mission at other institutions.

Encourage Three-year Degrees

Each institution determines its requirements for graduation. Many institutions are committed to a four-year program, believing that this is necessary to maintain the integrity and quality of the degree. But, one of the major costs of going to college is the opportunity cost of not being in the work force. This is a bigger hurdle for low-income students, who are more price sensitive than their high-income peers. Working toward a three-year option that does not jeopardize quality (or not by much) could contribute to increased low-income access. Schools could either be encouraged to offer summer options, or to allow greater transfer of credits from other schools. Wesleyan University is experimenting in this area. Institutions should have the ability to vet courses at other institutions to determine if their standards are similar, but blanket prohibitions on credits should be discouraged (for example against credits earned at community colleges or online), and greater flexibility in options could be encouraged.

Of course, many colleges and universities, particularly public institutions, do not have a strong record of graduating students in four years, or even six years. Increasing the share of students who go to college who actually graduate with a degree in four to six years would significantly improve matters. A variety of interventions could improve graduation rates.⁵

Improve Our Methods of Ranking Institutions

Ranking are here to stay. In fact, the government is getting into the business. The ranking with the most influence among the more selective private, nonprofit and public colleges and universities is the one done by *U.S. News and World Report*. The rankings include many variables, but nothing that directly measures diversity of the student body. Many

schools, through their mission statements and through their financial aid policies, state that they are committed to attracting a socioeconomically diverse student body. They do this in service of equal opportunity and fairness, as well as to improve the quality of the education they offer by having students on campus with differences in background and life experiences. Students learn from difference, and will be entering a society that is increasingly diverse; college is seen as the place to learn about how to navigate and succeed in such a world.

If *U.S. News and World Report* included some measures of diversity in their rankings, it would increase the incentives for schools to allocate resources to accomplishing this. At the moment, the rankings give almost no credit to a school that makes a decision to reallocate resources to financial aid from other expenditures. In fact, this is likely to reduce one's ranking, since many of the other items in the rankings are measured by resources spent on these items.

Even for those who believe a single ranking makes no sense (including this author), making this information part of the ranking would make it more easily available to everyone. This would help lower- and middle-income students decide among schools, in terms of the likelihood of their finding a place at a particular school.

Because socioeconomic diversity of the student body at an institution is related to the selectivity of the school and the academic credentials of the students, *U.S. News and World Report* would have to take this into account, in much the same way it does with expected graduation rates. But, this challenge is not insurmountable, and proposals exist for doing this.

U.S. News and World Report has been approached to make such changes, but has not done so. One option would be for all those schools that include socioeconomic diversity in their mission statements to refuse to participate until such a change is made, but this seems an unlikely path for a variety of reasons. An alternative would be for the administration, including the president, to recommend such a change. Another option would be for a third party to replicate as closely as possible the *U.S. News and World Report* rankings each year, and then report how they would change with these variables added.

Increase Data Availability

Another option to increase accountability for socioeconomic diversity would be for schools to report more data, including both the net price and the share of students by income quintile each year. This would give

families a very easy way to see whether those schools that state that they are committed to socioeconomic diversity actually are accomplishing what they claim.

The last reauthorization of the Higher Education Act required schools to make available net price calculators for families, and there are current proposals to simplify the calculators, reducing the amount of data needed to generate a projected net price for a particular family.

Making the actual data available has advantages over such an approach. First, it is relatively inexpensive. Institutions have these data, and it would just be a matter of reporting them annually. These data, plus the share of students receiving Pell grants, would give families a very good sense of the socioeconomic diversity of the student body.

Also, net price calculators do not give students and families any idea about the likelihood of being admitted and actually offered the net price calculated. Only about sixty of the private, nonprofit colleges and universities with the largest endowments are need blind and meet full need, so that the net price calculated is not all students need to know. In fact, high need might work against them getting admitted if the school is need-sensitive in the admissions process. Or, they might not be offered the net price, if schools do not meet the full need of all admitted students. Net price calculators do not report whether the school is need blind or meets full need, and this information is not generally made clear on schools' websites, unless need blind or committed to meeting full need. The actual share of students by income levels at a particular school gives families some sense of how many students at each income level schools are actually admitting.

Reporting these data would also put pressure on schools to live up to their mission statements. These data could also be used by *U.S. News and World Report*, as proposed above, in a ranking that included socioeconomic diversity.

Improving Policies Targeted at Students

Student Loans

There has been much concern about debt burdens of students. In fact, the average loan burdens are not excessive, especially given the expected benefits of attaining a college degree.⁶ Lifetime earnings are significantly higher and unemployment rates are significantly lower for those with a

college degree. Stories of recent graduates with high debt levels and no job prospects are not borne out by the data. While some individuals may be jobless with large debt burdens, anecdotal stories do not reflect the experience of most college graduates and should not drive policy.

Given that the public sector is moving away from supporting investments in higher education and that individual students and their families are being expected to contribute more of the cost, it is vital that access to loans be maintained. Low- and middle-income families face liquidity constraints and market failures that prevent them from borrowing in the private market to finance worthwhile investments in education. Access to federal loans, which address these market failures, is vital to maintaining access to higher education for these families.

There are a variety of proposals currently being discussed to increase the income contingency characteristics of student loans, as well as other aspects of the program.⁷ These would improve the federal loan program, since investment in higher education is of course uncertain for any one individual. Income contingent programs in other countries, including the United Kingdom and Australia, can be used to inform changes in our programs.⁸

Historically, education was considered an important public good and supported more aggressively by state governments. With the shift toward reduced public support, a robust loan program with income contingent repayment options would help make access available to financially constrained families, and also maintain the progressivity of government involvement in supporting higher education. Those with lower incomes in the future in some circumstances would be expected to pay back less, just as under past support through state tax revenues, lower-income families through the progressive tax system contributed less to supporting public expenditures on higher education.

Improve Information for Low- and Middle-Income Students

High-ability, low-income students are underrepresented at the selective private, nonprofit institutions.⁹ Getting greater information to such students about their options can increase their application rates to more selective schools than they would otherwise consider.¹⁰ The College Board is currently working to increase access to information so that more talented lower-income students apply to more selective colleges and universities than they would otherwise. It is important to combine such efforts with greater incentives for schools to allocate resources to financial aid.

Otherwise, increased applications will not translate into greater lower-income access at these schools. With very few of these schools committed to need-blind admissions and meeting full need, and some of these schools on the verge of moving away from these policies for financial reasons (Grinnell, Wesleyan), without policies that encourage greater commitment to allocating resources to financial aid, increased applications may result in more talented (as opposed to more) low-income students attending selective schools (improved matching), but overall access will not improve.

Conclusions

Socioeconomic diversity, like racial diversity, is of critical importance in higher education. Concerns about legal challenges to affirmative action policies have increased the salience of socioeconomic diversity policies to indirectly promote racial diversity. But both types of diversity are important in and of themselves and we should not have to choose between them. Attention should now turn to policies that effectively focus on class and income, as a complement to, rather than a substitute for, race. As this chapter suggests, there is a great more we could do to address background income inequality outside of higher education; promote policies to encourage institutions to prioritize socioeconomic diversity; and give all students the information and resources necessary to go as far as their talents will take them.

Notes

Chapter 1

1. *Fisher v. University of Texas*, 113 S.Ct. 2411, at 2420 (2013).
2. 113 S.Ct., at 2420.
3. *Regents of the University of California v. Bakke*, 438 U.S. 265, 287 (1978).
4. See, for example, Thomas Kane and James E. Ryan, “Why ‘Fisher’ Means More Work for Colleges,” *Chronicle of Higher Education*, July 29, 2013 (“the court’s emphasis on the exploration of race-neutral alternatives represents a subtle but potentially significant shift”); Note, “Fisher v. University of Texas at Austin,” *Harvard Law Review* 127, no. 1 (2013), at 258, (“this case may prove to be the inflection point in the overt use of race in university admissions”); at 262 (“The resulting framework—in which courts apply a more stringent form of strict scrutiny to public-university affirmative action programs—is likely to place additional pressure on universities to develop, test, and implement new race-neutral alternatives”); and 263 (“there is a doctrinal shift here, one squarely in tension with the *Fisher* majority’s statement that *Bakke*, *Grutter* and *Gratz* were ‘take[n] . . . as given for purposes of deciding this case’”).
5. William G. Bowen and Derek Bok, *The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions* (Princeton, NJ: Princeton University Press, 1998), 341, Table B.2.
6. William G. Bowen, Martin A. Kurzweil, and Eugene M. Tobin, *Equity and Excellence in American Higher Education* (Charlotte: University of Virginia Press, 2005), 105, Table 5.1.
7. Beckie Supiano, “7 in 10 Undergraduates Get Financial Aid, New Data From a Major Federal Study Show,” *Chronicle of Higher Education*, August 20, 2013.

8. *Washington Monthly*, September /October 2013, 60–61.
9. Anthony P. Carnevale and Jeff Strohl, *Separate and Unequal: How Higher Education Reinforces the Intergenerational Reproduction of White Racial Privilege* (Washington, D.C.: Georgetown Center on Education and the Workforce, 2013), 12.
10. Catharine Hill, “Improving Socioeconomic Diversity at Top Colleges and Universities,” *Huffington Post*, April 5, 2013. See also Beckie Supiano and Andrea Fuller, “Elite Colleges Fail to Gain More Students on Pell Grants,” *Chronicle of Higher Education*, March 27, 2011. (In 2008–09, 15 percent of students at the wealthiest fifty colleges received Pell Grants, a figure similar to 2004–05.)
11. Chapter 2, 28.
12. Chapter 2, 30.
13. Chapter 2, 28.
14. Chapter 2, 30.
15. Chapter 2, 30.
16. Thomas R. Dye, *Who’s Running America?* (Upper Saddle River, NJ: Prentice Hall, 2002), 148.
17. Richard D. Kahlenberg, “Who Benefits Most From Attending Top Colleges?” *Chronicle of Higher Education*, March 10, 2011.
18. “Feeling the Heat: the 2013 Survey of College and University Admissions Directors,” *Inside Higher Ed*, September 18, 2013.
19. Chapter 4, 45.
20. Chapter 5, 59.
21. Chapter 4, 240, n. 17.
22. *Gutter v. Bollinger*, 539 U.S.306, at 394.
23. Chapter 5, 59.
24. 113 S. Ct., at 2421.
25. Chapter 5, 63.
26. Chapter 4, 49.
27. Chapter 5, 58.
28. Chapter 4, 51 (calling this “perhaps the most important passage in *Fisher*.”)
29. Chapter 4, 51.
30. Chapter 5, 69.
31. Chapter 4, 53–54.
32. *Gutter v. Bollinger*, 539 U.S. 306, at 330.
33. Kane and Ryan, “Why ‘Fisher’ Means More Work for Colleges.”
34. Chapter 4, 47.
35. See citations in Richard D. Kahlenberg, “Why Liberals Should Embrace *Fisher v. Texas*,” The Century Foundation, August 2, 2013, <http://tcf.org/work/education/detail/why-liberals-should-embrace-fisher-v.-texas>.
36. 113 S. Ct., at 2420.
37. Chapter 4, 241, n. 29.
38. Chapter 4, 52.
39. Chapter 4, 51.
40. Chapter 4, 50.
41. Chapter 5, 72.
42. Kane and Ryan, “Why ‘Fisher’ Means More Work for Colleges.”
43. Chapter 6, 75–76.
44. Richard D. Kahlenberg, “A Fresh Chance to Reign in Racial Preferences,” *Wall Street Journal*, October 13, 2013.
45. Chapter 6, 90.

46. At an eleventh institution, the University of New Hampshire, there is no evidence that race-neutral alternatives were put in place.

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51. Chapter 7, 97.

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55. Chapter 8, 104.

56. Chapter 8, 105.

57. Chapter 8, 106.

58. Richard D. Kahlenberg and Halley Potter, “A Better Affirmative Action: State Universities that Created Alternatives to Racial Preferences,” The Century Foundation, October 2012, 13.

59. Chapter 8, 107.

60. Chapter 8, 102–03.

61. Chapter 9, 117.

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63. Chapter 9, 117–18; Kahlenberg and Potter, “A Better Affirmative Action,” 40.

64. Chapter 9, 118.

65. Chapter 9, 119.

66. Chapter 10, 126.

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68. Chapter 10, 123.

69. Note, “Fisher v. University of Texas at Austin,” 266–67.

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77. Chapter 11, 144.

78. Chapter 12, 147.

79. Chapter 12, 155–56.

80. Chapter 12, 156.

81. Chapter 12, 153.

82. Chapter 13, 162.

83. Chapter 13, 160.

84. Chapter 13, 161–62.

85. Chapter 13, 173.

86. Chapter 13, 174.
87. Thomas J. Kane, “Racial and Ethnic Preferences in College Admissions,” in *The Black-White Test Score Gap*, ed. Christopher Jencks and Meredith Phillips (Washington, DC: Brookings Institution Press, 1998), 448–51.
88. Chapter 14, 177.
89. Chapter 14, 181, Table 14.3.
90. Chapter 14, 183–84.
91. Chapter 14, 185.
92. For a table of disadvantages, see Anthony P. Carnevale and Jeff Strohl, “How Increasing College Access Is Increasing Inequality, and What to Do about It,” in *Rewarding Strivers: Helping Low-Income Students Succeed in College*, ed. Richard D. Kahlenberg (New York: Century Foundation Press, 2010), 170, Table 3.7
93. Chapter 15, 189, Tables 15.1 and 15.2.
94. Carnevale and Strohl, “How Increasing College Access Is Increasing Inequality,” 165.
95. Chapter 16, 206.
96. Chapter 16, 207.
97. Chapter 16, 208–09.
98. See, for example, *Gratz v. Bollinger*, 539 U.S. 244, 270 (2003) (all racial classifications are subject to strict scrutiny) and *James v. Valteirra*, 402 U.S. 137, 141 (1971) (wealth classifications are not subject to strict scrutiny).
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103. Chapter 18, 233.
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Chapter 2

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3. William H. Frey, “Shift to a majority-minority population in the U.S. happening faster than expected,” Brookings Institution, June 19, 2013, www.brookings.edu/blogs/up-front/posts/2013/06/19-us-majority-minority-population-census-frey.

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14. Brookings Institution Metropolitan Policy Program, *The State of Metropolitan America: On the Front Lines of Demographic Transformation* (Washington, DC: Brookings Institution, 2010).

15. Quoted in Mark Bonamo, “Memories of Mandela, South Africa’s Anti-apartheid Warrior, Highlight New Jersey’s De Facto Segregation,” December 10, 2013, www.politickernj.com/70100/memories-mandela-south-africas-anti-apartheid-warrior-highlight-new-jerseys-de-facto-segregati.

16. See Gurin et al., *Dialogue Across Difference*.

17. This analogy was suggested in a personal communication from Kevin C. Quinn, senior vice president for public affairs at Syracuse University.

18. The Social Science Research Council collaborates with the nonprofit Opportunity Nation to produce a multidimensional “Opportunity Index” for every county in the United States. See <http://opportunityindex.org>.

19. See *Bridging the Higher Education Divide*.

20. The Posse Foundation is a nonprofit organization that has established an impressive track record in identifying high-capacity students through intensive examination of their academic capabilities, employing a range of measures that reach well beyond traditional indicators such as test scores and GPA. Their model for placing cohorts of students in a nationwide network of colleges and universities and seeing them through to graduation is equally impressive. For a full description of their model, see <http://www.possefoundation.org>.

21. At the dawn of the first Obama administration, the Netter Center for Community Partnerships and the Penn Institute for Urban Research, both at the University of Pennsylvania, and the Rockefeller Foundation sponsored a report for the U.S. Department of Housing and Urban Development advocating new forms of interagency cooperation in the federal government. See *Retooling HUD for a Catalytic Federal Government: A Report to Secretary Shaun Donovan* (Philadelphia: The University of Pennsylvania, February 2009).

22. Joe Cortright, *The City Dividends: How Cities Gain by Making Small Improvements in Metropolitan Performance* (Chicago: CEOs for Cities, 2008); and Robert Bifulco and Ross Rubenstein, “The Effect of the Syracuse Say Yes City-wide Turn-around Strategy on Public School Enrollments: A Report on Initial Trends,” Maxwell School of Citizenship and Public Affairs, Syracuse University, 2011.

23. See Gurin et al., *Dialogue Across Difference*, and Harry C. Boyte, *Civic Agency and the Cult of the Expert* (Dayton, OH: The Kettering Foundation, 2009).

24. See dissent by Souter, D. in *Gratz v. Bollinger*, 539 U.S. 244 (2003).

25. See dissent by Ginsburg, R.B. in *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013).

26. Susan Sturm describes in compelling terms an approach to building sustainable organizational structures for tapping diversity, which she calls “the architecture of inclusion.” See Susan P. Sturm, “The Architecture of Inclusion: Interdisciplinary Insights on Pursuing Institutional Citizenship,” *Harvard Journal of Law and Gender* 30 (2006): 248–334.

Chapter 3

1. Adam Taylor, “Here’s What College Education Costs Students around the World,” *Business Insider*, Jun. 8, 2012, <http://www.businessinsider.com/tuition-costs-by-country-college-higher-education-2012-6?op=1>; Arthur M. Hauptman and Young Kim, “Cost, Commitment, and Attainment in Higher Education: An International Comparison,” *Jobs for the Future*, 2009, <http://files.eric.ed.gov/fulltext/ED505346.pdf>.

2. Emmanuel Saez, “Striking It Richer: The Evolution of Top Incomes in the United States,” 2012, <http://elsa.berkeley.edu/~saez/saez-UStopincomes-2012.pdf>.

3. Richard Kahlenberg, “Left Behind: Unequal Opportunity in Education,” *The Century Foundation*, 2004, <http://tcf.org/assets/downloads/tcf-leftbehindrc.pdf>.

4. Sara Goldrick-Rab and Peter Kinsley, “School Integration and the Open Door Philosophy: Rethinking the Economic and Racial Composition of Community Colleges” in *Bridging the Higher Education Divide: Strengthening Community Colleges and Restoring the American Dream* (New York: The Century Foundation Press, 2013), 109–36.

5. Elizabeth A. Armstrong and Laura T. Hamilton, *Paying for the Party: How College Maintains Inequality* (Cambridge, MA: Harvard University Press), 2013.

Chapter 4

1. *Fisher v. University of Texas at Austin*, 133 S.Ct. 2411 (2013).

2. Only eight Justices participated in the decision because Justice Elena Kagan recused herself due to her involvement as Solicitor General in the Fifth Circuit’s original *Fisher* hearing.

3. The terms *race* and *ethnicity*, despite their different meanings, are used interchangeably in this chapter given that the strict scrutiny analysis required by federal nondiscrimination law, discussed below, treats them the same. Also, strict scrutiny principles under federal law extend beyond admissions to other enrollment practices, including financial aid, scholarships, recruitment and outreach. Thus, the framing of this discussion is generally cast in terms of enrollment practices. See notes 21 and 22 below for resources that provide additional information on these points.

4. *Regents of the University of California v. Bakke*, 438 U.S. 265, 312–15 (1978).

5. *Gratz* struck down the University of Michigan’s undergraduate policy of automatically awarding 20 points (of 150 total) to students from a racial or ethnic minority group, while *Grutter* approved the Law School’s individualized system of holistic review that considered race and ethnicity as one factor among many. *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003); *Gratz v. Bollinger*, 539 U.S. 344 (2003).

6. See, for example, Tony Mauro, “Supreme Court Compromises in Affirmative Action Case,” *National Law Journal*, June 24, 2013, http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202608162079&Supreme_Court_Compromises_in_Affirmative_Action_Case (“The long-awaited decision was quickly labeled a ‘dud’ or a ‘punt,’ and was far from the definitive ruling slamming the door on affirmative action that some were hoping for and others were fearing.”).

7. See Nancy Cantor, “Diversity and Higher Education: Our Communities Need More Than ‘Narrowly Tailored’ Solutions,” *Huffington Post*, August 2, 2013, http://www.huffingtonpost.com/nancy-cantor/diversity-higher-education_b_3695503.html (“As we survey the environment following this summer’s affirmative action ruling by the Supreme Court in *Fisher v. Texas*, we must not lose sight of the fact that as important as legal theorizing and statistical projections may be to navigating the societal landscape, there are real lives at stake every day—in communities large and small all across our nation.”)

8. The Fourteenth Amendment prohibits any state actor, including public institutions of higher education, from denying “any person within its jurisdiction the equal protection of the laws.” U.S. Constitution, amend. 14, sec. 1. Title VI, applicable to virtually all public and private institutions, prohibits discrimination on the basis of race or ethnicity “under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. See also *Bakke*, 438 U.S. at 291 (“Racial and ethnic distinctions of any sort are inherently suspect, and thus call for the most exacting judicial examination.”).

9. Remedial interests typically have been grounded in race-conscious practices referred to as “affirmative action.” By contrast, forward-looking, mission-driven, educationally focused goals are not appropriately (or optimally) viewed through an “affirmative action” lens. See College Board and EducationCounsel, *Access & Diversity Toolkit*, 2009, http://diversitycollaborative.collegeboard.org/sites/default/files/document-library/09b_588_diversitytoolkit_web_091123.pdf. But see *Fisher*, 133 S.Ct. at 2420 (making the majority opinion’s single reference to a race-conscious policy as “affirmative action”).

10. *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007).

11. In Seattle for the 2000–01 school year, 307 students were affected by the student assignment policy—only 52 in a negative way. In Louisville, the race-conscious guidelines only affected an estimated three percent of assignments. Chief Justice John Roberts concluded, “While we do not suggest that *greater* use of race would be preferable, the minimal impact of the districts’ racial classifications on school enrollment casts doubt on the necessity of using racial classifications. In *Grutter*, the consideration of race was viewed as indispensable in more than tripling minority representation at the law school—from 4 to 14.5 percent.” *Ibid.* at 733–35.

12. *Fisher*, 133 S.Ct. at 2420 (“The University must prove that the means chosen by the University to attain diversity are narrowly tailored to that goal. On this point, the University receives no deference.”).

13. *Ibid.*

14. *Ibid.*

15. *Ibid.* at 2421.

16. In its discussion of the narrow tailoring prong of the strict scrutiny analysis, Justice Kennedy’s majority opinion in *Fisher* refers to the actions of “courts,” “the Judiciary,” “Court,” or “reviewing court” nearly a dozen times in under two pages. *Ibid.* at 2420–21.

17. Justice Breyer, perceived to be part of the Court’s liberal wing, is the only justice who joined the majority opinions in both *Grutter* and *Fisher*, as three of the *Grutter* majority have retired and Justice Ruth Bader Ginsburg dissented in *Fisher*. The more conservative Justices Anthony Kennedy, Antonin Scalia, and Clarence Thomas dissented in *Grutter*, but were in the majority in *Fisher*. It is worth noting that our use the terms *conservative* and *liberal* are based on the general use and common understanding of the justices’ inclinations, as flawed as those characterizations may be.

18. *Grutter*, 539 U.S. at 339.

19. *Fisher*, 133 S.Ct. at 2420.

20. Note, as well, that in her discussion the compelling interest analysis, Justice O’Connor wrote in *Grutter* that the educational benefits of diversity are “substantial,” “important and laudable,” and “not theoretical but real.” *Grutter*, 539 U.S. at 330. Justice Kennedy in *Fisher*, on the other hand, agreed that such benefits “[serve] values beyond race alone” and are worthy of some deference—but he also noted “disagreement [among Justices] about whether *Grutter* was consistent with the principles of equal protection in approving this compelling interest in diversity.” *Fisher*, 133 S.Ct. at 2418, 2419.

21. U.S. Departments of Education and Justice, Questions and Answers about *Fisher v. University of Texas at Austin*, <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-qa-201309.pdf>.

22. *Ibid.* See also Robert Burgoyne et al., *Handbook on Diversity and the Law: Navigating a Complex Landscape to Foster Greater Faculty and Student Diversity in Higher Education* (Washington, D.C.: American Association for the Advancement of Science, 2008), <http://php.aaas.org/programs/centers/capacity/publications/complex-landscape/PDFs/LawDiversityBook.pdf>; Arthur Coleman and Scott Palmer, *Admissions and Diversity After Michigan: The Next Generation of Legal and Policy Issues* (New York: College Board 2006), http://diversitycollaborative.collegeboard.org/sites/default/files/document-library/acc-div_next-generation.pdf.

23. *Fisher*, 133 S.Ct. at 2420.

24. *Ibid.*

25. *Ibid.*

26. *Black's Law Dictionary* has defined “demonstrate” as “[t]o show or prove value or merits by operation, reasoning, or evidence.” *Black's Law Dictionary*, 5th ed. (St. Paul, MN: West Publishing Co., 1979), 389. See *Fisher*, 133 S.Ct. at 2420 (“[A] court can take account of a university’s experience and expertise in adopting or rejecting certain admissions processes.”); see also *Grutter*, 539 U.S. at 339–40 (“even assuming [percent] plans are race-neutral, they may preclude the university from conducting the individualized assessments necessary to assemble a student body that is not just racially diverse, but diverse along all the qualities valued by the university. We are satisfied that the Law School adequately considered race-neutral alternatives currently capable of producing a critical mass without forcing the Law School to abandon the academic selectivity that is the cornerstone of its educational mission.”).

27. See *Grutter* at 330–31 (accepting the application of general social science research to support the University of Michigan Law School’s institution-specific conclusions).

28. Support for this position can be found in Justice O’Connor’s *Grutter* opinion: “Narrow tailoring does not require exhaustion of every conceivable race-neutral alternative. Nor does it require a university to choose between maintaining a reputation for excellence or fulfilling a commitment to provide educational opportunities to members of all racial groups.” *Grutter*, 539 U.S. at 309. Notably, though Justice Kennedy did not quote this language from *Grutter* in the *Fisher* majority opinion, Justice Ginsburg did in her dissent to conclude that the majority’s silence simply meant that it remains relevant to the strict scrutiny analysis. *Fisher*, 133 S.Ct. at 2432 n.3 (Ginsburg, J., dissenting).

29. *Black's Law Dictionary* has defined “tolerate” as “the act or practice of allowing something in a way that does not hinder.” *Black's Law Dictionary*, 9th ed. (St. Paul, MN: West Publishing Co., 2009). The phrase “tolerable administrative expense” first appeared in a *Columbia Law Review* article published in 1975. Kent Greenawalt, “Judicial Scrutiny of ‘Benign’ Racial Preference in Law School Admissions,” *Columbia Law Review* 75, no. 3 (1975): 559, 578. Though the article was cited in *Bakke*, the language about expense was not cited until the Court’s 1986 decision in *Wygant*, where the Court simply cited the language in a footnote without comment. *Wygant v. Jackson Board of Education*, 476 U.S. 267, 280 n.6 (1986). Justice O’Connor picked up the same language in *Grutter*, but also failed to discuss the Court’s intended meaning of this phrase. In another context, the Court has rejected the notion that expense can be a driving force in the strict scrutiny framework. In its 1999 decision in *Saenz v. Roe*, the Court observed that “the State’s legitimate interest in saving money provides no justification for its decision to discriminate among equally eligible citizens.” Using the strict scrutiny standard, the Court held that a California statute was unconstitutional because of the limitations it placed on a person’s right to travel (a right that flows from the Fourteenth Amendment and, therefore, receives strict scrutiny treatment). The California statute required that those residing within the state for less than twelve months be paid no more under the state’s Temporary Assistance to Needy Families program than they would have received in their prior state of residence. The state defended its law by noting that the law would save the state \$10.9 million each year. It is worth noting the unusual group of Justices made up the majority for *Saenz*: Justices Breyer, Ginsburg, Kennedy, and Scalia joined Justice Stevens’ opinion. *Saenz v. Roe*, 526 U.S. 489 (1999).

30. For example, Justice Kennedy, in his *Grutter* dissent, questioned whether critical mass can have different meanings for different subgroups, and chastised the University of Michigan Law School for “simply emphasiz[ing] the importance of achieving ‘critical mass,’ without any explanation of why that concept is applied differently

among the three underrepresented minority groups [African-Americans, Hispanics, and Native Americans] . . . [and] why significantly more individuals from one underrepresented minority group are needed in order to achieve ‘critical mass’ or further student body diversity. “ *Grutter*, 539 U.S. at 381–83 (Kennedy, J., dissenting).

31. Supplemental Brief for Plaintiff-Appellee, *Fisher v. Univ. of Texas at Austin* (No. 09-50822), 2013 WL 5603455, at *22.

32. Supplemental Brief for Appellees, *Fisher v. University of Texas at Austin* (No. 09-50822), 2013 WL 5885633, at *40. UT also continued to raise the prospect that critical mass may be considered not just in terms of the university as a whole, but also in terms of classroom size. Citing a UT classroom diversity study that showed that “African-American and Hispanic students were nearly non-existent in thousands of classes,” UT explained that, though it “never pursued classroom diversity as a discrete interest or endpoint . . . this palpable lack of diversity in the classrooms—one of many factors UT considered—underscored that UT had not yet fully realized the educational benefits of diversity.” This was particularly true for UT, as a large campus where the classroom serves as a principal venue for groups of diverse students to interact with each other. *Ibid.* at *46.

33. See Arthur Coleman and Scott Palmer, *Admissions and Diversity after Michigan: The Next Generation of Legal and Policy Issues* (New York: College Board 2006), 34.

34. *Ibid.*

35. Under the *Grutter* Court’s ruling, critical mass was sanctioned as neither a rigid quota nor so amorphous or open-ended an objective that success could be defined under an “I know it when I see it” lens. (Either would likely be fatal under federal law.) See *Grutter*, 539 U.S. at 335–36.

36. See Arthur L. Coleman, Katherine E. Lipper, Jamie Lewis Keith, Daryl E. Chubin, and Teresa E. Taylor, *The Smart Grid for Institutions of Higher Education and the Students They Serve: Developing and Using Collaborative Agreements to Bring More Students into STEM* (Washington, DC: American Association for the Advancement of Science, 2012), <http://www.aaas.org/sites/default/files/SmartGrid.pdf>.

37. Jeff Milem, “The Educational Benefits of Diversity: Evidence from Multiple Sectors,” *Compelling Interest: Examining the Evidence on Racial Dynamics in Higher Education*, ed. Mitchell Chang, Daria Witt, James Jones, and Kenji Hakuta (Redwood City, CA: Stanford University Press, 2003), 126–69.

38. See Partnership for 21st Century Skills, “Framework for 21st Century Learning,” <http://www.p21.org/our-work/p21-framework>.

Chapter 5

1. See “Dr. Gregory Vincent Appointed Vice Provost for Inclusion and Cross-Cultural Effectiveness at the University of Texas at Austin,” University of Texas at Austin, May 16, 2005, http://www.utexas.edu/news/2005/05/16/vice_provost/.

2. See “Flagship University of Texas Seeks to Boost Diversity,” *Washington Times*, October 2, 2005, <http://www.washingtontimes.com/news/2005/oct/2/20051002-103300-6882r/?page=all>.

3. See *ibid.*

4. See *ibid.*

5. See Erin O’Connor, “Egging On Racism at Texas,” *Critical Mass*, January 23, 2003, http://www.erinocannon.org/archives/2003/01/egging_on_racis.html.

6 See Kelsey McKinney, “How a Game of Tag Turned a Texas Campus into Immigration’s Ground Zero,” *Daily Beast*, November 21, 2013, <http://www.thedailybeast.com/articles/2013/11/21/how-a-game-of-tag-turned-a-texas-campus-into-immigration-s-ground-zero.html>. There is also an ongoing blog, *UT WATCH*, devoted to “expos[ing] tweets and posts from haters”: <http://racistatx.tumblr.com/>.

7. See Jen Wang, “The University of Texas at Austin Has Race Problems, but Affirmative Action Ain’t One,” *Disgrasian*, October 11, 2012, <http://disgrasian.com/2012/10/the-university-of-texas-at-austin-has-race-problems-but-affirmative-action-aint-one/>. UT’s history of racial violence is described in the Advancement Project’s *amicus curiae* brief in *Fisher*, http://b3cdn.net/advancement/9cf02b5250bcc9a4c9_3gm6b4y72.pdf (“UT is still viewed as a campus that has not ‘honestly dealt with its past’ and that still does not ‘welcome’ Latinos and blacks.”)

8. *Fisher v. University of Texas at Austin*, 133 S.Ct. 2411 (2013).

9. Scott Greytak and Philip T. K. Daniel, “Requiem for Affirmative Action in Higher Education,” *West’s Education Law Reporter* 279 (July 7, 2012): 539.

10. Either Justice Anthony Kennedy’s statement in *PICS* that “individual racial classifications . . . may be considered only if they are a last resort to achieve a compelling interest,” *PICS*, 551 U.S. 701, 789 (2007) (Kennedy, J., concurring) (quoting *City of Richmond v. J. A. Croson Co.*, 488 U.S. 469, 519) (1989)—or Judge Emilio Garza of the Fifth Circuit’s qualification that “the failure to consider available race-neutral alternatives and employ them if efficacious would cause a program to fail strict scrutiny.” *Fisher v. University of Texas*, 631 F.3d 213, 249 (5th Cir. 2011) (citing *Wygant v. Jackson*, 476 U.S. 267, 280 n.6) (Garza, J., concurring).

11. Justice Sandra Day O’Connor’s formulation in *Grutter* that “[n]arrow tailoring does not require exhaustion of every conceivable race-neutral alternative[.]” *Grutter v. Bollinger*, 539 U.S. 306, 339 (2003).

12. Greytak and Daniel, “Requiem for Affirmative Action in Higher Education.”

13. See *Painter v. Sweatt*, 339 U.S. 629 (1950).

14. *Brown v. Board of Education*, 347 U.S. 483 (1954).

15. In *Bakke*, Justice Lewis Powell held that the University of California’s fourth and final state interest, that of “obtaining the educational benefits that flow from an ethnically diverse student body,” constituted a “substantial interest that legitimately may be served by a properly devised admissions program.” *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 320 (1978). Ironically, the group that challenged the University of California’s policies, the Pacific Legal Foundation, was created from discussions between Justice Powell and members of the U.S. Chamber of Commerce in 1971. See Oliver A. Houck, “With Charity for All,” *Yale Law Journal* 93 (1984): 1415.

16. *Bakke*, 438 U.S. at 320.

17. *Adarand v. Peña*, 515 U.S. 200 (1995) (“[R]acial classifications . . . must serve a compelling governmental interest, and must be narrowly tailored to further that interest.”)

18. Keep in mind that the authors of the Fourteenth Amendment would be shocked to see the situation in *Fisher* falling under the amendment’s purview. As Paul Burka urges: “We need to acknowledge that the Fourteenth Amendment’s guarantee of the equal protection of the laws was never intended to apply to cases like *Fisher*, which, if decided in the plaintiff’s favor, would protect the more privileged at the expense of the less privileged—the exact opposite result from that originally intended by the amendment’s authors.” Paul Burka, “General Admission,” *Texas Monthly*, April 2012, <http://www.texasmonthly.com/story/general-admission?fullpage=1>. Indeed, as Justice Oliver Wendell Holmes wrote for a unanimous Supreme Court in *Nixon v. Herndon*,

the Fourteenth Amendment, while it “applies to all,” was “passed, as we know, with a special intent to protect the blacks from discrimination against them.” 273 U.S. 536, 541 (1927). Five years later, in *Nixon v. Condon*, Justice Benjamin Cardozo also emphasized that “The Fourteenth Amendment, adopted as it was with special solicitude for the equal protection of members of the Negro race, lays a duty upon the court to level by its judgment these barriers of color.” 286 U.S. 73, 89 (1932). See also *Gratz*, 539 U.S. at 301 (“Actions designed to burden groups long denied full citizenship stature are not sensibly ranked with measures taken to hasten the day when entrenched discrimination and its aftereffects have been extirpated.”) (Ginsburg, J., dissenting). Only recently has the amendment been used to advance a colorblind agenda. See Greytak and Daniel, “Requiem for Affirmative Action in Higher Education,” note xi, at 571 (“The *Fisher* case provides an opportunity to start a national conversation about privilege and equality, and to reexamine the “colorblind” anti-classification jurisprudence that threatens to negate the very essence of *Brown v. Board of Education*.”)

19. Justice Kennedy determined that Justice O’Connor’s interpretation of Justice Powell’s use of deference was “antithetical to strict scrutiny, not consistent with it.” *Grutter*, 539 U.S. at 394 (Kennedy, J., dissenting).

20. Kennedy also pointed out that “model” admissions programs “do exist,” which are more “effective in bringing about the harmony and mutual respect among all citizens,” yet the Court “defaults by not demanding [them].” *Ibid.* at 394–95.

21. *Gratz v. Bollinger*, 539 U.S. 244, 272 (2003).

22. *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996).

23. Justice Ginsburg’s dissent repeated her belief that the TTP plan is race-conscious, and thus just as objectionable as UT’s holistic, explicitly race-conscious admissions plan. *Fisher v. University of Texas*, 133 S. Ct. 2411, 2433 (2013) (“I have said before and reiterate here that only an ostrich could regard the supposedly neutral alternatives as race unconscious.” Indeed, the purpose of the law was to “ensure a highly qualified pool of students each year in the state’s higher education system” . . . while promoting diversity among the applicant pool so “that a large well qualified pool of minority students [was] admitted to Texas universities.” *Fisher*, 645 F.Supp.2d 587, 592-93 (WD Tex. 2009)

24. Greytak and Daniel, *Requiem for Affirmative Action in Higher Education*.

25. This idea that “minimal impact” is insufficient to justify race-conscious policies was highlighted by Abigail Fisher’s attorney at the Fifth Circuit rehearing of *Fisher*.

26. Art Coleman, Scott Palmer, Terri Taylor and Jamie Lewis Keith, “Understanding *Fisher v. the University of Texas*: Policy Implications of What the U.S. Supreme Court Did (and Didn’t) Say About Diversity and the Use of Race and Ethnicity in College Admissions,” The College Board and Education Counsel, July 9, 2013, 5, <https://diversitycollaborative.collegeboard.org/sites/default/files/document-library/diversity-collaborative-understanding-fisher.pdf>.

27. *Fisher*, S. Ct. at 2434.

28. Coleman, “Understanding *Fisher v. the University of Texas*,” 2.

29. *Fisher* might be especially disruptive in states where existing, race-neutral alternatives might be presented as sufficient. For example, see Matthew Gaertner and Melissa Hart’s findings on the impact of class-based affirmative action policies at the University of Colorado at Boulder (“[I]n marked contrast to previous simulations and empirical studies, CU’s admissions boost based on class had significant positive impact on both socioeconomic and racial diversity of admitted students.”). Matthew Gaertner & Melissa Hart, *Considering Class: College Access and Diversity*, Vol. 7, No. 2 Harv. L. & Pol’y Rev. 369–70 (Summer 2013).

30. The Department of Justice agrees: when considering a race-conscious admissions plan, “it is helpful to document all your thinking about this. . . . This will help your policies be legally sound and help ensure that they pass muster.”

31. See *Fisher*, 645 F. Supp. 2d at 609 (“[T]he parties agree [that the University’s] policy was based on the [admissions] policy [upheld in *Grutter*].”).

32. *Fisher*, S. Ct. 133 at 2434.

33. *Bakke* is the progenitor of two legal errors that have confounded the issue of affirmative action in higher education. First is the politically-expedient conclusion that using quotas to remedy effects of racial discrimination is a clear violation of the Fourteenth Amendment. The second, and accompanying, error is the assertion that a qualitative assessment of race is entirely distinguishable from a quota. (If universities cannot explicitly use quotas, they may instinctively “resort to camouflage” to “maintain their minority enrollment.” *Gratz*, 539 U. S., at 304 (Ginsburg, J., dissenting)).

34. Evidence of these indicia is available in *Fisher*’s record, and is provided in multiple amicus briefs.

35. Though muted in some fora, this factor was discussed openly in *Fisher* (“I have several times explained why government actors, including state universities, need not be blind to the lingering effects of ‘an overtly discriminatory past,’ the legacy of ‘centuries of law-sanctioned inequality.’ *Fisher*, 133 S. Ct. at 2433 (Ginsburg, J., dissenting)).

36. “Narrow tailoring . . . require[s] serious, good faith consideration of workable race-neutral alternatives that will achieve the diversity the university seeks.” *Grutter*, 539 U.S. at 339.

37. *Fisher*, S. Ct. 133 at 2421.

38. The Department of Justice has echoed Kennedy’s statement that a university does not have to try out every race-neutral alternative before settling on a race-conscious admissions plan.

39. *Fisher*, S. Ct. 133 at 2420.

40. *Id.* at 2421 (quoting *Crosby*, 488 U.S. at 500).

41. This advice was absent Arthur Coleman’s assessment that *Fisher* “allows race-conscious policies only if their necessity is demonstrated (e.g., by evidence of the inadequacy of alternatives alone),” which hesitates to identify the new burden associated with “demonstrate[ing]” the necessity of race-conscious policies “by evidence.” Coleman, “Understanding *Fisher v. University of Texas*,” 2.

42. Yet during this time, UT’s diversity numbers were, arguably, on the backslide.

43. See *Fisher*, 133 S. Ct. at 2434.

44. The results of the UT study that led, in part, to the reintroduction of a race-conscious admissions plan were described as “shocking,” thus providing strong support for reform.

Chapter 6

1. U.S. Department of Education, National Center for Education Statistics, Common Core of Data, “Public Elementary/Secondary School Universe Survey,” 2009–10, v. 1a, <http://nces.ed.gov/ccd/>.

2. See Richard D. Kahlenberg and Halley Potter, *A Better Affirmative Action: State Universities that Created Alternatives to Racial Preferences* (New York: The Century Foundation, 2012), <http://tcf.org/assets/downloads/tcf-abaa.pdf>. Portions of this chapter have been drawn from that report.

3. Mark C. Long and Marta Tienda, “Winners and Losers: Changes in Texas University Admissions Post-Hopwood,” *Educational Evaluation and Policy Analysis* 30, no. 3 (September 2008): 256.

4. Angel L. Harris and Marta Tienda, “Hispanics in Higher Education and the Texas Top 10% Law,” *Race and Social Problems* 4, no. 1 (2012): 2; and The University of Texas System, “Rules and Regulations of the Board of Regents: Rule: 40304,” <http://www.utsystem.edu/bor/rules/40000Series/40304.pdf>.

5. Brief for Petitioner in *Abigail Noel Fisher v. University of Texas at Austin, et al.*, <http://www.projectonfairrepresentation.org/wp-content/uploads/2008/08/Brief-for-Petitioner-Fisher-v-Univ-of-Texas.pdf> p. 7

6. Kenneth J. Cooper, “‘A Certain Distance’ from 1960s in Georgia: Leaders in a State That Once Fought Civil Rights Movement Rise to Defend University’s Approach to Affirmative Action,” *Washington Post*, January 3, 2001, http://desegregation.uga.edu/media/A_Certain_Distance_From_1960s_GA_Washington_Post.pdf.

7. Mark C. Long, “Affirmative Action and Its Alternatives in Public Universities: What Do We Know?” *Public Administration Review* 67, no. 2 (2007): 317.

8. *Ibid.*, 316.

9. “Proposition 209: Text of Proposed Law,” California Secretary of State, <http://vote96.sos.ca.gov/bp/209text.htm>

10. Patricia Marin and Edgar K. Lee, *Appearance and Reality in the Sunshine State: The Talented 20 Program in Florida* (Cambridge, MA: The Civil Rights Project at Harvard University, 2003), 10, <http://civilrightsproject.ucla.edu/research/college-access/admissions/appearance-and-reality-in-the-sunshine-state-the-talented-20-program-in-florida/marine-appearance-reality-sunshine-2003.pdf>. Although One Florida did not limit the use of race in financial aid, following the Court of Appeals for the Eleventh Circuit 2001 decision in *Johnson v. Board of Regents of the University of Georgia*, the University of Florida announced that it was eliminating over fifty minority scholarships. Michael C. Dorf, “The University of Georgia Affirmative Action Ruling Poses a Fundamental Question: What Is Binding Precedent?” September 5, 2001, <http://writ.news.findlaw.com/dorf/20010905.html>.

11. House Bill 623, State of New Hampshire, <http://www.gencourt.state.nh.us/legislation/2011/HB0623.html>.

12. See discussion in Chapter 13.

13. See discussion in Chapter 7.

14. There is debate about how much the Talented 20 program actually changed admission decisions in Florida’s State University System (SUS). Researchers from the Civil Rights Project found that most Talented 20 students would have been admitted to SUS based on grades and test scores alone, without relying on the Talented 20 guarantee. In addition, the program is not administered centrally, so the burden of ensuring admission for Talented 20 students falls onto high school guidance counselors and the students themselves. (See Marin and Lee, *Appearance and Reality in the Sunshine State*, 20–21.) Still, even if the effect on actual admissions decisions is minimal, as it may be in Florida, percent plans can have a positive effect on diversity by encouraging applications from students who might not previously have seen college as an option, by guaranteeing their admission.

15. “Talented Twenty: What Is the Talented Twenty Program?” Florida Department of Education, <http://www.fldoe.org/Talented20/default.asp>.

16. Jon Marcus, “Plan for Blacks Used for Whites Universities Failing to Meet Minority Enrollment Quotas,” *Sun Sentinel*, July 1, 1990, <http://articles.sun-sentinel.com>

com/1990-07-01/news/9001160591_1_black-enrollment-predominantly-white-universities-black-students.

17. Marin and Lee, *Appearance and Reality in the Sunshine State*, 19–20; “Colleges and Universities—What Are the Criteria for Admission?” Florida Department of Education, <http://www.fldoe.org/faq/default.asp?Dept=154&ID=93>; and “6.002 Admission of Undergraduate First-Time-in-College, Degree-Seeking Freshmen,” State University System of Florida Board of Governors, http://www.flbog.edu/documents_regulations/regulations/6%20002%20Admission%20of%20Undergraduate%20FTIC%20Freshmen%20%28mv%20edits%29.pdf.

18. Silas Allen, “Oklahoma Colleges, Universities Prepare for Changes Following Affirmative Action Ban,” *NewsOK*, November 7, 2012, <http://newsok.com/oklahoma-colleges-universities-prepare-for-changes-following-affirmative-action-ban/article/3726480>.

19. *Policy and Procedures Manual: Chapter 3—Academic Affairs*, Oklahoma State Regents for Higher Education, December 2012, 96–97, <http://www.okhighered.org/state-system/policy-procedures/2012/Chapter%203-December%202012.pdf>.

20. Chris Miller, “Board of Regents Approves Admission Process Measure,” *The Oklahoma Daily*, March 30, 2012, <http://www.oudaily.com/news/2012/mar/30/board-regents-approves-admission-process-measure/>.

21. “Freshman Admissions,” Admissions, the University of Oklahoma, http://www.ou.edu/content/admissions/home/requirements/undergraduate/freshman_admission.html.

22. See John Brittain and Eric L. Bloom, “Admitting the Truth: The Effect of Affirmative Action, Legacy Preferences, and the Meritocratic Ideal on Students of Color in College Admissions,” in *Affirmative Action for the Rich: Legacy Preferences in College Admission*, ed. Richard D. Kahlenberg (New York: Century Foundation Press, 2010), 127–29.

23. Peter Schmidt, “A History of Legacy Preferences and Privilege,” in *Affirmative Action for the Rich*, 64.

24. *Ibid.*

25. Brittain and Bloom, “Admitting the Truth,” 139–41. The information available in Texas A&M’s Common Data Set suggests that the status of alumni preferences was more complicated than Gates’ announcement made it sound. Through 2005–06, alumni relation is still marked as “considered” under the list of factors for freshman admission. Starting in 2006–07, the line is blank (rather than marked “not considered”), and for the most recent year available (2011–12), the line says, “per instructions from OAR—LEAVE BLANK.” See Common Data Set, Office of Institutional Studies and Planning, Texas A&M University, <http://www.tamu.edu/customers/oisp/common-data-set/>.

26. Alissa Skelton, “UNL to Tweak Diversity Scholarships in Wake of Initiative 424,” *Daily Nebraskan*, November 30, 2008, <http://www.dailynebraskan.com/news/unl-to-tweak-diversity-scholarships-in-wake-of-initiative-424-1.1041423#.UBk9I-T3FBk>.

27. “Do I Qualify for Nebraska Collegebound Aid?” Collegebound Nebraska, <http://collegeboundnebraska.com/qualify.htm>.

28. Ricardo Vázquez, “UC Regents Approve Policy Providing Minimum Aid for Lower-income Students,” UC Newsroom, University of California, February 5, 2009, <http://www.universityofcalifornia.edu/news/article/19471/>.

29. “Blue + Gold Opportunity Plan,” University of California, <http://www.universityofcalifornia.edu/admissions/paying-for-uc/financial-aid/grants/blue-gold/index.html>.

30. “Florida Opportunity Scholars Background: Bringing the Dream of a UF Education to First Generation College Students,” University of Florida Foundation, <http://www.uff.ufl.edu/scholarships/fos/>.

31. “Types of Grants,” University of Michigan Office of Financial Aid, <http://www.finaid.umich.edu/Home/TypesofAid/ScholarshipsGrants/TypesofGrants.aspx>.

32. “University of Washington Diversity Compact III Report,” University of Washington, <http://www.washington.edu/diversity/divCompactiii.html>; “UW Diversity Scholar Award,” The University of Washington Office of Admissions, <http://admit.washington.edu/Paying/FrScholarships>; and “Near-Record Enrollment for 2003–04 as Minority Percentages Rise,” *Columns: The University of Washington Alumni Magazine*, December 2003, http://www.washington.edu/alumni/columns/dec03/briefings_enrollment.html.

33. Mary Sue Coleman, “Setbacks, Strengths, and Strategy at the University of Michigan,” in *Equal Opportunity in Higher Education: The Past and Future of California’s Proposition 209*, ed. Eric Grodsky and Michal Kurlaender (Cambridge, MA: Harvard Education Press, 2010), 124.

34. Laurel Thomas Gnagey, “Admissions Diversity Efforts Aided by New Data,” *University Record Online*, University of Michigan, April 2, 2007, http://www.ur.umich.edu/0607/Apr02_07/00.shtml.

35. “University of Michigan, Ann Arbor,” Jack Kent Cooke Foundation, <http://www.jkcf.org/grants/community-college-transfer/grant-recipients/university-of-michigan-ann-arbor/>.

36. Marin and Lee, *Appearance and Reality in the Sunshine State*, 32.

37. “Minority Student Recruitment/Retention Resources,” University of Florida, 9, http://www.research.ufl.edu/research-program-development/research_program_development_docs/Minority_Student_Recruitment.pdf.

38. William Powers Jr., “The University of Texas at Austin: Report to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives on the Implementation of SB175,” December 31, 2011, 2.

39. Powers, “The University of Texas at Austin,” 14, 27.

40. “Undergraduate Access to the University of California after the Elimination of Race-Conscious Policies,” University of California, Office of the President, Student Academic Services, March 2003, 11, http://www.ucop.edu/sas/publish/aa_final2.pdf.

41. University of California StatFinder, <http://statfinder.ucop.edu/default.aspx>.

42. *Jack Kent Cooke Community College Transfer Initiative Final Report*, The University of Michigan Office of Academic Multicultural Initiatives, Fall 2009, 2, <http://www.oami.umich.edu/images/Jack%20Kent%20Cooke%20FINAL%20REPORT.pdf>.

43. “University of Michigan, Ann Arbor.”

44. *Center for Educational Outreach 2010–2011 Annual Report*, University of Michigan, p. 10, <http://www.ceo.umich.edu/2010.2011%20annual%20report.pdf>.

45. Joanna Chau, “To Guide First-Generation Students, U. of Nebraska Reaches Into High Schools,” *Chronicle of Higher Education*, February 26, 2012, <http://chronicle.com/article/To-Guide-First-Generation/130935/>; and Nebraska College Preparatory Academy, University of Nebraska-Lincoln, <http://ncpa.unl.edu/>.

46. “Educational Opportunity Program,” Office of Minority Affairs and Diversity, University of Washington, <http://depts.washington.edu/omadcs/eopl/>.

47. Marin and Lee, *Appearance and Reality in the Sunshine State*, 36.

48. The Center for Academic Retention and Enhancement, The Florida State University, <http://care.fsu.edu/>.

49. “Summer Bridge Program,” The Center for Academic Retention and Enhancement, The Florida State University, <http://care.fsu.edu/Summer-Bridge-Program>; “Fees

and Financial Support,” New Start Summer Program, University of Arizona, <http://newstart.arizona.edu/prospective/fees-financial-support>; and Nolan L. Cabrera and Jeffrey F. Milem, “New Start Summer Program: Incoming Student Comparative Analysis,” Center for the Study of Higher Education, College of Education, the University of Arizona, 2009, http://assessment.arizona.edu/sites/default/files/New%20Start%20-%20Comparative%20Descriptive%20Report%202009_0.pdf.

50. Data on the flagship university in a tenth state, Oklahoma, is not yet available.

51. See Kahlenberg and Potter, *A Better Affirmative Action*, 15.

52. See William G. Bowen, Matthew M. Chingos, and Michael S. McPherson, *Crossing the Finish Line: Completing College at America's Public Universities* (Princeton, NJ: Princeton University Press, 2009).

53. “Enrollment Summary of Degree & Non-degree Minority Students, University of New Hampshire,” The University of New Hampshire, 2013, http://www.unh.edu/institutional-research/sites/unh.edu/institutional-research/files/1990-2013%20minority%20counts_0.pdf.

54. Peter Schmidt, “New Hampshire Ends Affirmative-Action Preferences at Colleges,” *Chronicle of Higher Education*, January 4, 2012, <http://chronicle.com/article/New-Hampshire-Ends/130196/>.

55. See discussion in Chapter 10.

56. See discussion in Chapter 7.

57. See discussion in Chapter 14.

Chapter 7

1. *Hopwood v. Texas*, 78 F.3d 932 5th Cir. 1996, cert. denied, 518 U.S. 1033 (1996).

2. H.B. 588 is popularly referred to as the Top 10 Percent law or Top 10 Percent (admission) plan.

3. Mark C. Long and Marta Tienda, “Winners and Losers: Changes in Texas University Admissions post-Hopwood,” *Educational Evaluation and Policy Analysis* 30, no. 3 (2008): 255–80; Mark C. Long and Marta Tienda, “Changes in Texas Universities’ Applicant Pools after the *Hopwood* Decision,” *Social Science Research* 39 (2010): 48–66.

4. The original law did not stipulate that students had to complete a specific curriculum, but subsequent amendments imposed a college curriculum to prevent students from avoiding difficult classes in order to boost their rank.

5. Marta Tienda and Teresa A. Sullivan, “The Promise and Peril of The Texas Uniform Admission Law,” in *The Next Twenty-Five Years? Affirmative Action and Higher Education in the United States and South Africa*, ed. Martin Hall, Marvin Krislov and David L. Featherman (Ann Arbor: University of Michigan Press, 2009), 155–74.

6. *Grutter v. Bollinger*, 539 U.S. 306, 328 (2003).

7. Larry Faulkner, “The University of Texas at Austin Reacts to the Supreme Court’s Affirmative Action Decisions,” www.utexas.edu/news/2003/06/23/nr_affirmative_action/, June 23, 2003 (emphasis added). Following the *Grutter* decision, and in contrast with Faulkner’s stance, Texas A&M University President Gates indicated that TAMU would not consider group membership in college admissions decisions (Robert M. Gates, “Statement by Texas A&M President Robert M. Gates,” December 3, 2003.

8. *Fisher v. University of Texas at Austin*. 133.S.Ct. 2411 (2013).
9. Texas Education Agency, *Texas Public School Statistics, Pocket Edition, 1994–1995*, <http://ritter.tea.state.tx.us/perfreport/pocked/2005/pocked0405.pdf>, and *Texas Public School Statistics, Pocket Edition, 2004–05*, <http://ritter.tea.state.tx.us/perfreport/pocked/95/index.html>.
10. Angel Harris and Marta Tienda, “Minority Higher Education Pipeline: Consequences of Changes in College Admissions Policy in Texas,” *Annals of the American Academy of Political and Social Science* 627 (January 2010): 60–81.
11. Jonathan R. Alger, “A Supreme Challenge: Achieving the Educational and Societal Benefits of Diversity after the Supreme Court’s *Fisher* Decision,” *Journal of Diversity in Higher Education* 6, no. 3 (2013): 147–54; Mark C. Long, Victor Saenz, and Marta Tienda, “Policy Transparency and College Enrollment: Did the Texas Top 10% Law Broaden Access to the Public Flagships?” *Annals of the American Academy of Political and Social Science* 627 (January 2010): 82–105.
12. Marta Tienda and Sunny Niu, “Capitalizing on Segregation, Pretending Neutrality: College Admissions and the Texas Top 10% Law,” *American Law and Economics Review* 8 (2006): 312–46.
13. *Brown v. Board of Education*, 347 U.S. 483 (1954).
14. Sunny Xinchun Niu, Teresa A. Sullivan, and Marta Tienda, “Minority Talent Loss and the Texas Top 10% Law,” *Social Science Quarterly* 89, no. 4 (2008.): 831–45.
15. Long, Saenz, and Tienda, “Policy Transparency and College Enrollment.”
16. William Powers Jr., “Report to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives on the Implementation of SB 175,” The University of Texas at Austin, December 31, 2011, Table 4.3. http://www.utexas.edu/student/admissions/research/SB_175_Report_for_2011.pdf.
17. Richard D. Kahlenberg, *A Better Affirmative Action: State Universities that Created Alternatives to Racial Preferences* (New York: The Century Foundation, 2013), <http://tcf.org/assets/downloads/tcf-abaa.pdf>.
18. William G. Bowen and Derek Bok, *The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions* (Princeton, NJ: Princeton University Press, 1998).
19. Bowen and Bok reference research on income-based preferences rather than more broadly defined class preferences, that might consider wealth, residence in concentrated neighborhoods, parents’ educational attainment, which could potentially represent greater racial heterogeneity than income alone.
20. Reduced budgets for higher education in the aftermath of the Great Recession only intensified these challenges nationally.
21. Susan K. Brown and Charles Hirschman, “The End of Affirmative Action in Washington State and Its Impact on the Transition from High School to College,” *Sociology of Education* 79, no. 2 (2006): 106–30.
22. Dawn Koffman and Marta Tienda, “Admission Guarantees, High School Economic Composition and College Application Behavior,” Office of Population Research, Princeton University, September 30, 2010, <http://theop.princeton.edu/reports/wp/AdmissionGuarantees2010.pdf>.
23. In fact, the socioeconomic composition of the source schools to the public flagships was virtually identical to that of the two most prominent private universities in the state—Rice and Southern Methodist.
24. Sunny Xinchun Niu and Marta Tienda, “Minority Student Academic Performance under the Uniform Admission Law: Evidence from the University of Texas at Austin,” *Educational Evaluation and Policy Analysis* 32, no. 44 (2010): 44–69.

25. Texas Higher Education Opportunity Project, Office of Population Research, Princeton University, <http://www.texastop10.princeton.edu>.
26. Harris and Tienda, “Minority Higher Education Pipeline.”

Chapter 8

1. General data on the SES composition of selective colleges can be found in Anthony P. Carnevale and Stephen J. Rose, “Socioeconomic Status, Race/Ethnicity, and Selective College Admissions,” in *America’s Untapped Resource: Low-Income Students in Higher Education* ed. Richard D. Kahlenberg (New York: The Century Foundation Press, 2004). Carnevale and Rose find that 9 percent of students at “Tier 1” college in the early 1990s came from the bottom half of the national socioeconomic distribution. *U.S. News and World Report* has reported for some years, in its annual rankings of selective colleges, the proportion of students at these colleges receiving Pell Grants, which is a rough metric of the proportion of students from the bottom half of the income distribution. The numbers given here reflect the earliest years (the early 2000s) when such data was reported. In recent years, a number of these colleges have significantly increased their proportion of students receiving Pell Grants. See “Economic Diversity among the Top 25 Ranked Schools: National Universities,” *U.S. News and World Report*, <http://colleges.usnews.rankingsandreviews.com/best-colleges/rankings/national-universities/economic-diversity-among-top-ranked-schools?src=stats&int=4f0116>.

2. UCOP Database on Freshmen Admissions and Student Outcomes, 1992–2006, available from the author on request.

3. See, for example, Richard H. Sander, “Class in American Legal Education,” *Denver University Law Review* 88, no. 4 (2011): 631, 651 (showing that 66 percent of black law students at elite law schools have SES levels placing them in the top quarter of the American SES distribution).

4. Outreach Task Force for the Board of Regents of the University of California, “New Directions for Outreach: Report of the University of California Outreach Task Force” July 1997, 3.

5. Karl Pister, “UC Outreach: Systemwide Perspective and Strategic Plan,” presentation to the University of California Board of Regents, 1998.

6. Kate Antonovics and Ben Backes, “The Effect of Banning Affirmative Action on College Admissions Rules and Student Quality,” *Journal of Human Resources* 49 (Spring 2014).

7. UC calculates a “UC-adjusted HSGPA”, which uses grades only from a set of core high school courses required of all applicants (the so-called “a-g” requirements) and gives a set number of additional points for honors and AP classes. The adjusted HSGPA is far more effective in predicting the freshman GPA of enrolled UC students than is unadjusted HSGPA, and it is a somewhat stronger predictor than SAT I scores.

8. University of California Office of the President, *Application, Admissions and Enrollment of California Resident Freshmen for Fall 1989 through 2013*, <http://www.ucop.edu/news/studstaff.html>.

9. Antonovics and Backes, “The Effect of Banning Affirmative Action on College Admissions Rules and Student Quality.”

10. University of California Office of the President, *Application, Admissions and Enrollment of California Resident Freshmen for Fall 1989 through 2013*.

11. Kate Antonovics and Richard Sander, “Affirmative Action Bans and the ‘Chilling Effect,’” *American Law and Economics Review* 15, no. 1 (Spring 2013): 252–99.

12. Note that these preferences were much smaller than those used in the UCLAW experiment. Antonovics and Backes estimate that the typical effect of the family income preferences was to lower median family income by about \$3,500; the effect of parental education preferences was to increase the proportion of students whose parents had not attended college from by about 7 base points.

13. See Richard Sander and Stuart Taylor, Jr., *Mismatch: How Affirmative Action Hurts Students It's Intended to Help, and Why Universities Won't Admit It* (New York: Basic Books, 2012), 149.

14. The most detailed analysis of this question is in Marc Luppino, "Partial Compliance with Affirmative Action Bans: Evidence from University of California Admissions," working paper, October 29, 2013, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2347148. Luppino uses a variety of strategies to get at the degree to which race continued to be a factor in post-Proposition 209 decisions, and his most conservative estimates show race effects. Other scholars who have studied UC admissions before and after Prop 209 (Duke economist Peter Arcidiacono and his colleagues, as well as UC San Diego economist Kate Antonovics and Ben Backes at the American Institutes for Research) note the significant unexplained racial residuals in studying post-209 admissions patterns.

15. Peter Arcidiacono, Esteban Aucejo, and Joseph Hotz, "University Differences in the Graduation of Minorities in STEM Fields: Evidence from California," working paper under review at the *American Economic Review*, <http://public.econ.duke.edu/~psarcidi/stem.pdf>.

16. Much of the following account is drawn my contemporaneous analysis of the program: Sander, "Experimenting with Class-Based Affirmative Action," *Journal of Legal Education* 47, no. 4 (December 1997): 472–503.

17. See, for example, Christopher Jencks and Susan Mayer, "The Social Consequences of Growing Up in a Poor Neighborhood," in *Inner-city Poverty in the United States*, ed. Laurence E. Lynn and Michael G. H. McGeary (Washington, DC: National Academy Press, 1990).

18. Melvin Oliver and Thomas Shapiro, *Black Wealth/White Wealth: A New Perspective on Racial Inequality* (New York: Routledge, 1995).

19. Douglas S. Massey and Mitchell Eggers, "The Structural Determinants of Urban Poverty: A Comparison of Whites, Blacks, and Hispanics," *Social Science Research* 20 (1991): 217–55.

20. See Richard Sander and Aaron Danielson, "Thinking Hard about 'Race-Neutral' Admissions," 47 *Michigan Journal of Law Reform* (forthcoming, Spring 2014).

21. In 1997, the median income of families with a householder aged 45–54 (a group comparable to the parents of most applicants) was \$60,000; among applicants who received an SES preference and enrolled at UCLAW in 1997, 82 percent came from families with incomes below \$60,000 (and 40 percent came from families with incomes below \$25,000). Sander, "Experimenting with Class-Based Affirmative Action," 488; *Statistical Abstract of the United States: 1999* (Washington, DC: Bureau of the Census, 1999), Table 752. The high school neighborhoods of these students closely mirrored the general social distribution of neighborhood poverty levels, and the education of their parents closely mirrored the national distribution of educational attainment for parents with college-age children. Sander, "Experimenting with Class-Based Affirmative Action," 489, 490.

22. See Sander, "Experimenting with Class-Based Affirmative Action," 497; UCOP, "Law School Admissions Statistics" (2000).

23. Black admissions fell by 80 percent from 1996 to 1997, and Hispanic admissions fell by just over 30 percent.

24. Characteristically, university reports about ELC focused principally on the racial dividends, secondarily on geographic diversity, and not at all on socioeconomic diversity. See “Eligibility in the Local Context,” UC Office of Strategic Communications, October 2003, <http://www.ucop.edu/news/cr/factsheet.pdf>.

25. See Danny Yagan, “Law School Admissions under the UC Affirmative Action Ban,” working paper, December 2012. Yagan finds that blacks were admitted to Boalt after 1997 at half the rate they had been admitted before the formal ban on preferences, but were still admitted at four times the white rate. However, Yagan does not take SES characteristics into account. Stronger evidence comes from an analysis Sander and Danielson report in “Thinking Hard,” which shows that in 2002 African-American applicants to Boalt had admission rates in some credential ranges that were forty times as high as white rates—a difference that cannot be even remotely accounted for by SES preferences. Richard Sander and Stuart Taylor, Jr., *Mismatch: How Affirmative Action Hurts Students It’s Intended to Help, and Why Universities Won’t Admit It* (New York: Basic Books, 2012).

26. See Sander, *Mismatch*, Chapter 10. In the first full year of the CRS program, the white admission rate was 0 percent while the black admission rate was 23 percent overall and nearly 100% among black applicants with academic credentials comparable to those of the rejected white applicants..

27. Michael Hout, “Berkeley’s Comprehensive Review Method for Making Freshman Admissions Decisions: An Assessment,” report to the Committee on Admissions, Enrollment, and Preparatory Education and the associate vice chancellor for admissions and enrollment, University of California, Berkeley, May 2005.

28. See Sander and Danielson, “Thinking Hard about Race-Neutral Admissions.” Blacks were about ten times as likely to be admitted through the Supplemental Review program as were North Asians; since the main admissions process was “holistic,” considering all parts of an applicant’s file together, it is of course implausible to attribute the Supplemental Review outcomes to “soft” or subjective differences in applicants.

29. Author’s analysis of IPUMS data for California in 2000, and ACS data for California in 2008-12.

30. Data on completion of the A-G requirements is available at <http://www.cpec.ca.gov/StudentData/AttoGOptions.asp>. The rate at which Latino high school freshmen went on to complete the AG requirements rose (by year of high school graduation) from 9% among Latino men (in 1993-96) to 11% (2006-09), and from 13% among Latino women (in 1993-96) to 17.5% (2006-09).

Chapter 9

1. These generalizations about the transformation of American higher education are quite familiar within both the scholarly and popular literature on the subject. A fine and thoughtful compilation of trends and numbers may be found in Patricia J. Gumpert, Maria Iannozzi, Susan Shaman, and Robert Zemsky, “Trends in United States Higher Education from Massification to Post Massification,” National Center for Postsecondary Improvement, 1997.

2. Anthony P. Carnevale and Jeff Strohl, *Separate and Unequal: How Higher Education Reinforces the Intergenerational Reproduction of White Racial Privilege* (Washington, DC: Georgetown University Center on Education and the Workforce, 2013), 16.

3. *Postsecondary Education Opportunity*, a research newsletter published monthly in Oskaloosa, IA, provides comprehensive longitudinal data on decades of

disinvestment in higher education by the states, as well as on the other current trends in higher education financing and enrollment that are discussed in this essay.

4. In 1998, students at public research or master's institutions covered, on average, just over a third of the cost of their education through tuition, with state and local appropriations and other sources of revenue covering the rest. By 2010, that proportion had risen to over one-half. See Jane V. Wellman, Donna M. Desrochers, and Colleen M. Lenihan, *The Growing Imbalance: Recent Trends in U.S. Postsecondary Education Finance* (Washington, DC: Delta Cost Project, 2008), 33, Figure 21, <http://www.deltacostproject.org/resources/pdf/imbalance20080423.pdf>; and Steven Hurlburt and Rita J. Kirshstein, *Spending, Subsidies, and Tuition: Why Are Prices Going Up? What Are Tuitions Going to Pay for? A Delta Data Update, 2000–2010* (Washington, DC: Delta Cost Project, 2012), 4, Figure 2, <http://www.deltacostproject.org/resources/pdf/Delta-Subsidy-Trends-Production.pdf>.

5. Becky Pettit, *Invisible Men: Mass Incarceration and the Myth of Black Progress* (New York: Russell Sage Foundation, 2012), 18.

6. This paragraph is based on Carnevale and Strohl, *Separate and Unequal*. The quotations may be found on pages 8, 7, and 24.

7. Jonathan R. Alger, "From Desegregation to Diversity and Beyond: Our Evolving Legal Conversation on Race and Higher Education," *Journal of College and University Law* 36, no. 3 (2010): 983–1001.

8. Richard D. Kahlenberg, *A Better Affirmative Action: State Universities that Created Alternatives to Racial Preferences* (New York: The Century Foundation, 2012); Kahlenberg, "A New Kind of Affirmative Action Can Ensure Diversity," *Chronicle of Higher Education*, October 12, 2012.

9. Lee C. Bollinger, "A Long, Slow Drift from Racial Justice," *New York Times*, June 24, 2013; Bollinger, "To Move Forward, We Must Look Back," *Chronicle of Higher Education*, July 5, 2013.

10. Nancy Cantor, "Diversity and Higher Education: Our Communities Need More than 'Narrowly Tailored' Solutions," *Huffington Post*, August 2, 2013.

11. Justice Powell's opinion in *Bakke* expressed doubt that universities were capable of compensating for past injustices or societal discrimination.

12. In 1998, the population of Washington State was 3.5 percent black, 1.8 percent Native American, and 6.3 percent Hispanic. That same year, the University of Washington-Seattle Campus was 3.0 percent black, 1.2 percent Native American, and 4.6 percent Hispanic. See Kahlenberg, *A Better Affirmative Action*, p. 42, fig. WA-1; and U.S. Census Bureau, "Population Estimates for States by Race and Hispanic Origin: July 1, 1998," released August 30, 2000, <http://www.census.gov/popest/data/state/asrh/1990s/tables/srh98.txt>.

13. The percentage of students receiving Pell Grants nationwide and among public flagship universities also increased over this time. Some of this increase may reflect changes in the economy and eligibility criteria for the grants.

14. In addition to my memory, these paragraphs on the University of Washington rely heavily upon the work of Halley Potter in Kahlenberg, *A Better Affirmative Action*, 40–44. Relevant material may also be found in a document on the UW website, "Maintaining Diversity at the University of Washington After Initiative 200," <http://www.washington.edu/diversity/files/2013/04/mccormick142.pdf>.

15. Richard P. McCormick, *The Black Student Protest Movement at Rutgers* (New Brunswick, NJ: Rutgers University Press, 1990).

16. These paragraphs on Rutgers are drawn directly from Richard L. McCormick, *Raised at Rutgers: A President's Story* (New Brunswick, NJ: Rutgers University Press, 2014).

Chapter 10

1. The University of Georgia, *Fact Book 2012*, (Athens, GA: The University of Georgia, 2012), 12, http://oir.uga.edu/images/FB_Covers/FactBook2012Web.pdf.

2. “A Look Back: A Brief History of UGA’s Desegregation,” *Celebrating Courage: 50th Anniversary of Desegregation at UGA*, University of Georgia, <http://desegregation.uga.edu/history/>.

3. Ibid.

4. “UGA Unveils Altered Admissions Formula,” *Savannah Morning News*, December 1, 2001, <http://savannahnow.com/stories/120101/LOCadmissions.shtml>.

5. Kenneth J. Cooper, “‘A Certain Distance’ from 1960s in Georgia: Leaders in a State That Once Fought Civil Rights Movement Rise to Defend University’s Approach to Affirmative Action,” *Washington Post*, January 3, 2001, http://desegregation.uga.edu/media/A_Certain_Distance_From_1960s_GA_Washington_Post.pdf.

6. Mark C. Long, “Affirmative Action and Its Alternatives in Public Universities: What Do We Know?” *Public Administration Review* 67, no. 2 (2007): 317.

7. *Johnson v. Board of Regents of the University of Georgia* (2001), <http://case.law.findlaw.com/us-11th-circuit/1481394.html>.

8. “University of Georgia Continues to Retool Admissions Policy,” *Diverse Issues in Higher Education*, August 29, 2002, <http://diverseeducation.com/article/2373/>.

9. Sharron Hannon, “UGA Stands by Race-conscious Admissions Policy; Opportunity for All Is Fundamental, Says President Adams,” *Georgia Magazine*, December 1999, <http://www.uga.edu/gm/1299/FeatCry.html>.

10. Peter Schmidt, “A History of Legacy Preferences and Privilege,” in *Affirmative Action for the Rich: Legacy Preferences in College Admission*, ed. Richard D. Kahlenberg (New York: Century Foundation Press, 2010), 64.

11. *Annual Report of Institutional Progress 2001–02*, University of Georgia, 3, <http://www.oap.uga.edu/ar0102.pdf>.

12. Sharron Hannon, “Admissions Pressures,” *Georgia Magazine*, May 2003, <http://www.uga.edu/gm/artman/publish/0503admissions.html>.

13. Associated Press, “Affirmative Action Ban Hinders UGA,” *St. Petersburg Times*, June 6, 2003, http://www.sptimes.com/2003/06/06/Worldandnation/Affirmative_action_ba.shtml.

14. “Academic Scholarships at UGA,” The University of Georgia Undergraduate Admissions, <https://www.admissions.uga.edu/article/scholarships-at-uga.html>, and phone call to the University of Georgia Office of Financial Aid, August 22, 2012.

15. “A Closer Look: A Competitive Class,” The University of Georgia Undergraduate Admissions, <https://www.admissions.uga.edu/article/a-closer-look.html>.

16. The University of Georgia, *Fact Book 2012* (Athens, GA: The University of Georgia, 2012), 21, http://oir.uga.edu/images/FB_Covers/FactBook2012Web.pdf; and Richard D. Kahlenberg and Halley Potter, *A Better Affirmative Action: State Universities that Created Alternatives to Racial Preferences* (New York: The Century Foundation, 2012), 50, fig. GA-1, <http://tcf.org/assets/downloads/tcf-abaa.pdf>.

17. The University of Georgia, *Fact Book 2012*, 21; and The University of Georgia, *Fact Book 2001* (Athens, GA: The University of Georgia, 2001), 57, <http://oir.uga.edu/eFactbook/2001/FactBook2001.pdf>.

18. The University of Georgia, *Fact Book 2002* (Athens, GA: The University of Georgia, 2002), 36, <http://oir.uga.edu/eFactbook/2002/FactBook2002.pdf>; and The University of Georgia, *Fact Book 2012*, 14.

Chapter 11

1. The extent to which institutions meet other student needs, including financial and social requirements, are additional determinants of a broader measure of “fit” between students and postsecondary choices. A student may be academically undermatched to a college that is a good fit for other reasons.

2. Jonathan Smith, Matea Pender, and Jessica Howell, “The Full Extent of Academic Undermatch,” *Economics of Education Review*, 32 (2013): 247–61.

3. William G. Bowen, Matthew M. Chingos, and Michael S. McPherson, *Crossing the Finish Line: Completing College at America’s Public Universities* (Princeton, NJ: Princeton University Press, 2009).

4. Melissa Roderick, Jenny Nagaoka, Vanessa Coca, and Eliza Moeller, “From High School to the Future: Potholes on the Road to College,” Consortium on Chicago School Research, Chicago, March 2008.

5. These data are for SAT takers only and do not represent students who only take the ACT college entrance exam. Because the demographic composition of students in SAT- and ACT-dominant states differs and because some students take both exams, it is not appropriate to simply “double the numbers” in any race/ethnicity category or overall in order to approximate national totals. For an extensive view of national education trends disaggregated by race/ethnicity in 2010, see Susan Aud, Mary Ann Fox, and Angelinz KewalRamani, “Status and Trends in the Education of Racial and Ethnic Groups” (NCES 2010-015), U.S. Department of Education, National Center for Education Statistics, July 2010, http://www.air.org/files/AIR-NCESracial_stats_trends1.pdf.

6. Roderick, Nagaoka, Coca, and Moeller, “From High School to the Future.”

7. Bowen, Chingos, and McPherson *Crossing the Finish Line*.

8. Smith, Pender, and Howell, “The Full Extent of Academic Undermatch.”

9. Michael Hurwitz, Jessica Howell, Jonathan Smith, and Matea Pender, “The Role of High Schools in Students’ Postsecondary Choices,” Research Brief, The College Board Advocacy and Policy Center, October 2012.

10. Alexandria Walton Radford *Top Student, Top School? How Social Class Shapes Where Valedictorians Go to College* (Chicago, IL: University of Chicago Press, 2013); Roderick, Nagaoka, Coca, and Moeller, “From High School to the Future.”

11. Audrey Light and Wayne Strayer, “Determinants of College Completion: School Quality or Student Ability?” *Journal of Human Resources* 35, no. 2 (2000): 299–332.

12. Roderick, Nagaoka, Coca, and Moeller, “From High School to the Future.”

13. Bowen, Chingos, and McPherson *Crossing the Finish Line*. Note that there is also a small strand of causal research that does not explicitly focus on match, but rather, the benefits of attending a selective college. The results are similar. Mark C. Long, “College Quality and Early Adult Outcomes,” *Economics of Education Review* 27, no. 5 (2008): 588–602; Jonathan Smith, “Ova and Out: Using Twins to Estimate the Educational Returns to Attending a Selective College,” *Economics of Education Review* 36 (2012): 166–80; Sarah Rose Cohodes and Joshua Samuel Goodman, “First Degree Earns: The Impact of College Quality on College Completion Rates,” Faculty Research Working Paper Series, Kennedy School of Government, Harvard University, 2012.

14. Sandy Baum, Jennifer Ma, and Kathleen Payea, “Education Pays 2013: The Benefits for Higher Education for Individuals and Society,” The College Board, 2013.

15. Kermit Daniel, Dan Black, and Jeffrey Smith, “College Quality and the Wages of Young Men,” unpublished manuscript, University of Maryland, 1997; Caroline M.

Hoxby, “The Return to Attending a More Selective College: 1960 to the Present,” in *Forum Futures: Exploring the Future of Higher Education, 2000 Papers*, ed. Maureen Devlin and Joel Meyerson (San Francisco: Jossey-Bass, 2001); Thomas J. Kane, “Racial and Ethnic Preferences in College Admissions,” in *The Black-White Test Score Gap*, ed. Christopher Jencks and Meredith Phillips (Washington, DC: Brookings Institution Press, 1998), 431–56; Dominic J. Brewer, Eric R. Eide, and Ronald G. Ehrenberg, “Does It Pay to Attend an Elite Private College? Cross-Cohort Evidence on the Effects of College Type on Earnings,” *Journal of Human Resources* 34, no. 1 (1999): 104–23; James Monks, “The Returns to Individual and College Characteristics: Evidence from the National Longitudinal Survey of Youth,” *Economics of Education Review* 19, no. 3 (2000): 279–89; Dan A. Black and Jeffrey A. Smith, “Estimating the Returns to College Quality with Multiple Proxies for Quality,” *Journal of Labor Economics* 24, no. 3 (2006): 701–28; Long, “College Quality and Early Adult Outcomes”; Anthony P. Carnevale and Jeff Strohl, “How Increasing College Access Is Increasing Inequality, and What to Do About It,” in *Rewarding Strivers: Helping Low-Income Students Succeed in College*, ed. Richard D. Kahlenberg (New York: Century Foundation Press, 2010), 71–190.

16. Radford, *Top Student, Top School?*

17. Ninety percent scored in the top fifth of all 2006 college-bound senior test takers (earning a combined verbal and math SAT I score—or the ACT equivalent—of 1220 or above), 75 percent scored in the top decile (with a 1320 or above), and 56 percent scored in the top 5 percent (with a 1400 or above). And while 13 percent of all public high school graduates in 2004 passed an AP exam, 83 percent of these valedictorians passed at least one AP or IB exam at the college level, 55 percent passed five or more, and 31 percent passed seven or more. See College Board, “Advanced Placement Report to the Nation, 2005,” http://www.collegeboard.com/prod_downloads/about/news_info/ap/2005/ap-report-nation.pdf; “2006 College-Bound Seniors: Total Group Profile Report,” 2006, http://www.collegeboard.com/prod_downloads/about/news_info/cbsenior/yr2006/national-report.pdf; “SAT–ACT Score Comparisons,” 2007, http://www.collegeboard.com/prod_downloads/highered/ra/sat/satACT_concordance.pdf.

18. “*America’s Best Colleges 2007*,” *U.S. News & World Report, Special Report*, August 28, 2006. Note that other researchers analyzing broader student populations use Barron’s selectivity categories, which count a greater number of colleges as “most selective.”

19. Seventy-nine percent of high-SES valedictorians applied to a most selective private college compared to 58 percent of middle-SES and 50 percent of low-SES valedictorians. And 53 percent of high-SES valedictorians applied to a most selective public college compared with 41 percent of middle-SES and 34 percent of low-SES valedictorians. Researchers Caroline Hoxby and Christopher Avery also find large application differences by socioeconomic status studying a different sample of high achievers. See Caroline M. Hoxby and Christopher Avery, “The Missing ‘One-Offs’: The Hidden Supply of High-Achieving, Low Income Students,” NBER Working Paper no. 18586, December 2012.

20. Merit aid at other institutions likely lured these middle-SES high achievers to other institutions. For more on this, see Thomas J. Espenshade and Alexandria Walton Radford, *No Longer Separate, Not Yet Equal: Race and Class in Elite College Admission and Campus Life* (Princeton, NJ: Princeton University Press, 2009), 132–33.

21. Smith, Pender, and Howell, “The Full Extent of Academic Undermatch.”

22. Charles F. Manski and David A. Wise, *College Choice in America* (Cambridge: Harvard University Press, 1983); Amanda Pallais and Sarah Turner, “Opportunities for Low Income Students at Top Colleges and Universities: Policy Initiatives and the Distribution of Students,” *National Tax Journal* 59, no. 2 (2006): 357–86; Catharine B. Hill and Gordon C. Winston, “Low-Income Students and Highly Selective Private Colleges: Geography, Searching, and Recruiting,” *Economics of Education Review* 29 (2010): 485–503; Hoxby and Avery, “The Missing ‘One-Offs.’”

23. Other investigations show the same. In 2000, approximately 850,000 students that were eligible for federal financial aid did not complete the forms, and over half of those that did file the forms missed the deadline that makes them eligible for additional state and institutional aid (Jacqueline E. King, “Missed Opportunities: Students Who Do Not Apply for Financial Aid,” American Council on Education Issue Brief, October 2004). Another study found that 13 percent of families with earning less than \$35,000 a year and 18 percent of families earning between \$35,000 and \$100,000 a year did not apply for financial aid (“How America Pays for College 2011: Sallie Mae’s National Study of College Students and Parents,” Conducted by Ipsos Public Affairs for Sallie Mae, 2011, https://www.salliemae.com/assets/Core/how-America-pays/HowAmericaPaysforCollege_2011.pdf).

24. Much smaller percentages either performed expansive, open searches or settled upon one college early on and did not explore other options.

25. This is consistent with another study that found that 40 percent of parents eliminated *even considering* certain colleges because of concerns about costs, and that middle-income families were particularly likely to do so. “How America Pays for College: Sallie Mae’s National Study of College Students and Parents,” Conducted by Gallup for Sallie Mae, August 2008.

26. Hoxby and Avery, “The Missing ‘One-Offs’”; Chris Avery, Eric Bettinger, Caroline Hoxby, and Sarah Turner, “Reaching the Underrepresented: What the Evidence Reveals,” presentation given at the College Board Forum, New York, October 21–23, 2009; Daniel Golden, *The Price of Admission: How America’s Ruling Class Buys Its Way into Elite Colleges—And Who Gets Left Outside the Gates* (New York: Crown Publishers, 2006); Mitchell L. Stevens, *Creating a Class: College Admissions and the Education of Elites* (Cambridge, MA: Harvard University Press, 2007); Robert Zemsky and Penney Oedel, *The Structure of College Choice* (New York: College Entrance Examination Board, 1983).

27. Hill and Winston, “Low-Income Students and Highly Selective Private Colleges”; Hoxby and Avery, “The Missing ‘One-Offs.’”

28. Michael Hurwitz, “The Impact of Institutional Grant Aid on College Choice,” *Educational Evaluation and Policy Analysis* 34, no. 3 (2012): 344–63.

29. A number of studies indicate that low-SES students do not enroll in selective colleges, in part, because of the relatively high tuition. Hoxby and Avery, “The Missing ‘One-Offs’”; Wilbert van der Klaauw, “Estimating the Effect of Financial Aid Offers on College Enrollment: A Regression-Discontinuity Approach,” *International Economic Review* 43, no. 4 (2002):1249–87; Christopher Avery and Caroline M. Hoxby, “Do and Should Financial Aid Packages Affect Students’ College Choices?” in *College Choices: The Economics of Where to Go, When to Go, and How to Pay for It*, ed. Caroline M. Hoxby (Chicago: University of Chicago Press, 2004), 239–99; Eleanor Wiske Dillon and Jeffrey Andrew Smith, “The Determinants of Mismatch between Students and Colleges,” NBER Working Paper no. 19286, August 2013; Monks, “The Returns to Individual and College Characteristics: Evidence from the

National Longitudinal Survey of Youth”; Hurwitz, “The Impact of Institutional Grant Aid on College Choice.” The trade-off between price and outcomes, particularly for low-income students, is highlighted in Matea Pender, Mike Hurwitz, Jonathan Smith, and Jessica Howell, “College Choice: Informing Students’ Trade-offs between Institutional Price and College Completion,” Policy Brief, The College Board Advocacy and Policy Center, October 2012.

30. See Scott Jaschik, “Generous, but Not So Generous,” *Inside Higher Ed*, February 21, 2011, http://www.insidehighered.com/news/2011/02/21/yale_scales_back_financial_commitment_to_upper_income_aid_recipients.

31. See synthesis in Radford, *Top Student, Top School?* 234, fn36.

32. Christopher Avery, Caroline Hoxby, Clement Jackson, Kaitlin Burek, Glenn Pope, and Mridula Raman, “Cost Should Be No Barrier: An Evaluation of the First Year of Harvard’s Financial Aid Initiative,” NBER Working Paper no. 12029, February 2006.

33. Caroline Hoxby and Sarah Turner, “Expanding College Opportunities for High-Achieving, Low Income Students,” Stanford Institute for Economic Policy Research Discussion Paper no. 12-014, March 28, 2013.

34. Caroline M. Hoxby and Sarah Turner, “Informing Students about Their College Options: A Proposal for Broadening the Expanding College Opportunities Project,” The Hamilton Project, Brookings Institution, 2013.

35. The Expanding College Opportunities intervention targeted low-income, high-achieving students, which are defined by family income in the bottom quartile of the income distribution for families with a high school senior (below \$41,472), high school GPAs of A- or better and SAT/ACT score at or above the 90th percentile (which translates into a combined SAT math and critical reading scores of a 1300 or higher and an ACT composite score of 29 or higher) according to Hoxby and Avery, “The Missing ‘One-Offs.’” In the initial implementation of the intervention by the College Board, the organization has remained quite true to this definition of “high-achieving, low-income” in order to properly evaluate whether the results in Hoxby and Turner are replicated.

36. See Maryland Ascent Program, University of Maryland website, www.admissions.umd.edu/explore/MarylandAscentProgram.php.

37. See College Prep Program, Franklin and Marshall College website, <http://www.imfirst.org/franklin-marshall-college/#.UvTfSLTRqOZ>.

38. Jay Sherwin, “Make Me a Match: Helping Low-Income and First-Generation Students Make Good College Choices” MDRC, April 2012, http://www.mdrc.org/sites/default/files/policybrief_24.pdf. Also, although not explicitly focused on match, other research has demonstrated the positive impact of near-peer college advising models on a variety of student outcomes. For an evaluation of the National College Advising Corps, see Brent J. Evans, “An Experimental Analysis of the Effect of Near-Peer College Advising on High School Seniors,” unpublished dissertation, Stanford University, 2012. For an evaluation of Dartmouth’s near-peer advising program in New Hampshire, see Scott E. Carrell and Bruce Sacerdote, “Late Interventions Matter Too: The Case of College Coaching New Hampshire,” NBER Working Paper no. 19031, May 2013.

39. D. Crystal Byndloss and Chera Reid, “Promoting College Match for Low-Income Students: Lessons for Practitioners,” MDRC Policy Brief, September 2013, http://www.mdrc.org/sites/default/files/college_match_brief.pdf.

40. See Rutgers Future Scholars, Rutgers University website, <http://futurescholars.rutgers.edu/FutureScholars/aboutus.aspx>.

Chapter 12

1. For a full account of Conant's efforts on this front, see Nicholas Lemann, *The Big Test* (New York: Farrar, Straus and Giroux, 1999).

2. Take as one example, the April 2013 HuffingtonPost op ed by Catherine Hill, president of Vassar, arguing for a focus on socio-economic diversity: "Improving Socioeconomic Diversity at Top Colleges and Universities," April 5, 2013, http://www.huffingtonpost.com/catharine-hill/improving-socioeconomic-d_b_3015590.html.

3. "Student Life," Harvard University website, <http://www.harvard.edu/student-life/>; "Admission," Stanford University website, <http://www.stanford.edu/admission/>.

4. "Undergraduate Students: Admissions and Enrollment," *The Michigan Almanac*, December 2013, http://sitemaker.umich.edu/obpinfo/files/almanac_ch_2_012013.pdf (accessed 12.2.13).

5. Another example of the use of geographic structures for talent-spotting is the Miss America pageant—although the objective is very different, of course. Local pageants lead to the state pageant, which leads to the national pageant.

6. Bill Bishop, *The Big Sort* (New York: Houghton Mifflin Harcourt, 2008); also Thomas A. DiPrete, Andrew Gelman, Tyler McCormick, Julien Teitler, and Tian Zheng, "Segregation in Social Networks Based on Acquaintanceship and Trust," *American Journal of Sociology* 116, no. 4 (January 2011): 1234–83; Ming Wen, Diane S. Lauderdale, Namratha R. Kandula, "Ethnic Neighborhoods in Multi-Ethnic America, 1990–2000: Resurgent Ethnicity in the Ethnoburbs?" *Social Forces* 88, no. 1 (September 2009): 425–60; Camille Charles, "The Dynamics of Racial Residential Segregation," *Annual Review of Sociology* 29 (2003): 167–207.

7. Speaking technically, a college would have to determine not only (a) the combination of SAT score and GPA that would constitute its entrance threshold but also (b) the total number of admissions slots for the given year. With this information, a college can compute an overall acceptance ratio equal to the number of slots divided by the number of applicants above its entrance threshold. In any given year and for any given school, this ratio will come out to some percentage, p . Within any given ZIP code, the highest performing p percent of applicants above the entrance threshold would be the first to be chosen. See appendix for further detail, for instance, how rounding errors would need to be handled.

8. See, for instance, the PayScale alumni salary reports (for example, <http://www.payscale.com/college-salary-report-2014>) and the rankings of colleges and universities produced by Forbes magazine and the Center for College Affordability and Productivity; the methodology includes information about salaries of alumni: http://centerforcollegeaffordability.org/uploads/2012_Methodology.pdf. Also, Caroline Hoxby, "The Return to Attending a More Selective College: 1960 to the Present," in *Forum Futures: Exploring the Future of Higher Education*, 2000, vol. 3, ed. Maureen Devlin and Joel Myerson (San Francisco: Jossey-Bass, 2001). There is an opposing line of argumentation that, if one controls for unobserved features of student quality, this return on selectivity disappears, except in the case of low-income, African-American, and Hispanic-American graduates from selective schools. See, for instance, Stacy Dale and Alan Krueger, "Estimating the Return to College Selectivity over the Career Using Administrative Earnings Data," National Bureau of Economic Research Working Paper 17159, June 2011. Yet the proxy they use for these unobservable features of student quality is the average of the average SAT scores at the schools to which an applicant is applying; they also take into account the number of schools to which the student is applying. Given the evidence on the relationship between application patterns and

social network positionality (see Caroline Hoxby and Christopher Avery, “The Missing ‘One-Offs’: The Hidden Supply of High-Achieving, Low-Income Students,” *Brookings Papers on Economic Activity*, Spring 2013), this suggests that the better connected a student is before attending a selective institution, the less the impact of attendance on their earnings. This, conjoined with the uncontested benefit to low-income and minority students, confirms, rather than disconfirms, the value of the seats. Dale and Krueger are in fact controlling for social status, not unobservable applicant quality.

9. The University of Texas 2013 enrollment was 215,606 (*Fast Facts 2013*, University of Texas System, <http://www.utsystem.edu/documents/docs/facts-figures-and-data/fast-facts-2013>); for the Ivy League combined, it was approximately 140,000.

10. The figure for 1980 comes from *Report of the President of Harvard College and Reports of Departments*, Harvard University, July 2, 1982, 75, <http://pds.lib.harvard.edu/pds/view/2582287?n=19777>; the figure from 2010 comes from the *Harvard University Fact Book, 2011–12*, Office of the Provost, Harvard University, 2012, 4, http://www.provost.harvard.edu/institutional_research/harvard_fact_book_2011-12_final.pdf.

11. Gary L. Peltier, “Empowering Students to Improve Their College Admission Test Scores,” *The Clearing House* 63, no. 4 (December 1989): 163–66.

12. Fairtest Factsheet, “The SAT: Questions and Answers,” August 20, 2007, <http://www.fairtest.org/facts/satfact.htm>; Fairtest Factsheet, “SAT I: A Faulty Instrument for Predicting College Success,” August 20, 2007, <http://www.fairtest.org/satvalidity.html>.

13. Gregory M. Walton, “The Myth of Intelligence: Smartness Isn’t Like Height,” in *Education, Justice, and Democracy*, ed. D. Allen and R. Reich (Chicago: University of Chicago Press, 2013).

14. *Ibid.* See also Jennifer L. Kobrin, Brian F. Patterson, Emily J. Shaw, Krista D. Mattern, and Sandra M. Barbuti, “Validity of the SAT® for Predicting First-Year College Grade Point Average,” College Board Research Report No. 2008-5, 2008.

15. *Ibid.*

16. For African American and Hispanic Americans, stereotype threat generates effects in the range of 3941 SAT points (Walton, “The Myth of Intelligence,” 170). Test prep can raise scores 25 to 100+ points (Peltier, “Empowering Students to Improve Their College Admission Test Scores”).

17. For a qualified defense of this threshold idea, see Gregory M. Walton, Steven J. Spencer, Sam Erman, “Affirmative Meritocracy,” *Social Issues and Policy Review* 7, no. 1 (2013): 1–35.

18. Take, for instance, this comment from Princeton’s Dean of Undergraduate Admissions, Janet Rapelye, in the context of a decision process that resulted in approximately 2100 acceptance letters: “Every year we receive applications from thousands more qualified candidates than we can accept.” In Janet L. Rapelye, “Answers from Princeton’s Dean of Admissions,” *New York Times*, September 27, 2012. Or this one from the same series, “Our applicant pool is so large that we can admit only a fraction of the qualified candidates,” *New York Times*, September 24, 2012.

19. Board of Directors, *Rotary International v. Rotary Club of Duarte*, 481 U.S. 537 (1987).

20. 481 U.S. 537, 548–49.

21. See, for instance, Amy Gutmann, “What Makes a University Education Worthwhile? Keynote Address,” Spencer Foundation Conference, “Achieving the Aims of Higher Education: Problems of Morality and Justice,” October 5, 2011, <http://www.upenn.edu/president/meet-president/what-makes-university-education-worthwhile>. Similarly, the U.S. Department of Education is developing a college scorecard to rank

universities. One of the critical “outcomes” to be measured is “Outcomes, such as graduation and transfer rates, graduate earnings, and advanced degrees of college graduates,” in “FACT SHEET on the President’s Plan to Make College More Affordable: A Better Bargain for the Middle Class,” The White House, Washington, D.C., August 2013, <http://www.whitehouse.gov/the-press-office/2013/08/22/fact-sheet-president-s-plan-make-college-more-affordable-better-bargain->

22. Gutmann, “What Makes a University Education Worthwhile?”

23. Marc S. Granovetter, “The Strength of Weak Ties,” *American Journal of Sociology* 78 (1973): 1360–80; Scott Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies* (Princeton, NJ: Princeton University Press, 2007).

24. Josiah Ober, *Democracy and Knowledge: Innovation and Learning in Classical Athens* (Princeton, NJ: Princeton University Press, 2008).

25. George Washington, “Eighth Annual Message,” December 7, 1796, quoted in Jeffrey M. Montgomery, “Educating Citizens: George Washington’s Proposals for National Education,” MA thesis, submitted to University of Virginia, Department of Government, 2000, 38.

26. George Washington, “To Alexander Hamilton,” September 1, 1796, in William B. Allen, ed., *George Washington: A Collection* (Indianapolis: Liberty Fund, 1988), 650–51.

27. Ibid.

28. For instance, Harvard’s student paper, the *Harvard Crimson*, reported a rate of 12 percent to 13 percent in December 2011 (Elizabeth Bloom, “Privileging the Privileged,” December 9, 2011).

29. Chad Coffman, Tara O’Neil, and Brian Starr, “An Empirical Analysis of the Impact of Legacy Preferences on Alumni Giving at Top Universities,” in *Affirmative Action for the Rich: Legacy Preferences in College Admissions*, ed. Richard D. Kahlenberg (New York: The Century Foundation Press, 2010), 101–22.

30. Julie Berry Cullen, Mark C. Long, Randall Reback, “Jockeying for Position: Strategic High School Choice Under Texas’ Top Ten Percent Plan,” NBER Working Paper No. 16663, January 2011.

31. Richard Rothstein, “Racial Segregation and Black Student Achievement,” in *Education, Justice, and Democracy*, ed. D. Allen and R. Reich (Chicago: University of Chicago Press, 2013).

32. Annette Lareau, *Unequal Childhoods: Class, Race, and Family Life*, 2d ed. (Berkeley and Los Angeles: University of California Press, 2011).

33. Wen et al., “Ethnic Neighborhoods in Multi-Ethnic America, 1990–2000,” 435.

34. Charles, “The Dynamics of Racial Residential Segregation,” 175.

35. Hoxby and Avery, “The Missing ‘One-Offs.’”

36. Ibid.

37. What “qualified” means will typically depend both on the year y and the school s . We will assume that this “first cut” standard is (a) determined by the pair $[y, s]$, and (b) applied uniformly across all applicants to a given school s in a given year y .

38. As with the “first cut,” we will assume that this “final cut” is based on some standard, which is applied uniformly to all of the N_{ys} qualified applicants.

39. The United States has approximately 81.8K zip+4 codes.

40. Our Gini coefficient, which is a measure of the average of the pairwise differences between the $\{R_{ys}^z\}$, is defined as follows:

$$G(\{R_{ys}^z\}) = \frac{\text{df} \sum_{i=1}^n \sum_{j=1}^n |R_{ys}^i - R_{ys}^j|}{2n^2\mu}$$

Here, $\mu = \text{df} \sum_z R_{ys}^z / n$ is the average geographical admission rate for school s in year y (across the n zip+4 codes z in Z). Note that $G(\{R_{ys}^z\})$ is on a $[0, 1]$ scale. If $G(\{R_{ys}^z\}) = 0$, then all the geographical admission rates R_{ys}^z are *equal* (i.e., no geographical inequality among admission rates). If $G(\{R_{ys}^z\})$ is near 1 (it can't be *exactly* 1, since the set of zip+4 codes is finite), then there is a high degree of geographical inequality among admission rates.

41. Because there are over 80 thousand zip+4 codes, finding an exact allocation that minimizes $G(\{R_{ys}^z\})$ will (in general) be highly challenging, computationally. Moreover, as with our proposed algorithm, directly minimizing $G(\{R_{ys}^z\})$ may lead to an allocation that violates the *quota property*, which requires each geographical unit to receive either the upper or the lower integer rounding of its ideal fractional quota. See Daniele Pretolani, "Apportionments with Minimum Gini Index of Disproportionality: A Quadratic Knapsack Approach," *Annals of Operations Research* (April 2013): 1–11, for a useful recent discussion of these and other problems associated with computing exact allocations that minimize $G(\{R_{ys}^z\})$.

Chapter 13

1. Hereinafter, for the sake of simplicity we refer in this chapter only to the SAT, even though our argument and claims extend to the ACT, which is functionally identical to the SAT with a correlation of between 0.89 and 0.92 (*Concordance Between SAT® I and ACT™ Scores for Individual Students*, The College Board, 1999). Further, our critique applies to the Law School Aptitude Test (LSAT) used in law school admissions. For an analysis of the misuse and overreliance on the LSAT, see Phoebe A. Haddon and Deborah W. Post, "Misuse and Abuse of the LSAT: Making the Case for Alternative Evaluative Efforts and Redefinition of Merit," *Saint John's Law Review* 80, no. 41 (2006): 41–105.

2. Richard Atkinson and Saul Geiser, "Reflections on a Century of College Admissions Test," in *SAT Wars: The Case for Test-Optional College Admissions*, ed. Joseph Soares (New York: Teachers College Press, 2012).

3. Thomas J. Espenshade and Chang Young Chung, "Diversity outcomes of Test-Optional Policies," in *SAT Wars*.

4. Jennifer L. Kobrin et al., "Validity of the SAT® of Predicting First-Year College Grade Point Average," College Board, Research Report No. 2008-5, 2008, http://professionals.collegeboard.com/profdownload/Validity_of_the_SAT_for_Predicting_First_Year_College_Grade_Point_Average.pdf.

5. Joseph A. Soares, "For Tests that are Predictively Powerful and Without Social Prejudice," *Research and Practice in Assessment* 7 (Summer 2012): 5–11.

6. The test is facially discriminatory in the sense that, because black and Latino students receive lower average scores, reliance on testing disqualifies disproportionate numbers of minority students. There is conflicting evidence about whether the test is effectively biased against minority students. On the one hand, Claude Steele and Joshua Aronson find black students perform less well on assessments of "intelligence" because they suffer from "stereotype threat"—a concern that they will confirm negative stereotypes—and therefore underperform compared with their true abilities. See Claude Steele and Joshua Aronson, "Stereotype Threat and the Intellectual Test Performance of African Americans," *Journal of Personality and Social Psychology* 69, no. 5 (1995): 797–811. On the other hand, John Young finds differences in the predictive validity of the SAT between racial groups and genders, with scores under-

predicting female college outcomes and over-predicting male and minority (non-Asian) outcomes. See John W. Young and Jennifer L. Kobrin, “Differential Validity, Differential Prediction, and College Admission Testing: A Comprehensive Review and Analysis,” College Board, Research Report No. 2001-6, 2001, <http://research.collegeboard.org/sites/default/files/publications/2012/7/researchreport-2001-6-differential-validity-prediction-college-admission-testing-review.pdf>.

7. Charles Murray, “Abolishing the SAT,” in *SAT Wars*.

8. Lani Guinier, “Social Change and Democratic Values: Reconceptualizing Affirmative Action Policy,” *The Western Journal of Black Studies* 27, no. 1 (2003): 45–50.

9. 133 S. Ct. 2411 (2013). Both supporters and opponents of the use of race in admissions by colleges and universities anticipated yet another major ruling by the Supreme Court’s June 24, 2013, decision in *Fisher v. University of Texas at Austin*. Instead, the high court punted the case back to the lower courts on a legal technicality—deliberately sidestepping the constitutionality of affirmative action.

10. Richard D. Kahlenberg, *A Better Affirmative Action: State Universities that Created Alternatives to Racial Preferences* (New York: The Century Foundation, 2012).

11. See *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), wherein the Supreme Court ruled under Title VII of the Civil Rights Act of 1964 that any test used in hiring or a promotion that has a disproportionate adverse impact on ethnic minority groups must constitute a “reasonable measure of job performance,” regardless of discriminatory intent.

12. NAACP Legal Defense Fund, “New York City Specialized High School Complaint,” filed September 27, 2012, <http://www.naacpldf.org/case-issue/new-york-city-specialized-high-school-complaint>.

13. Nicholas Lemann, *Frontline* interview, <http://www.pbs.org/wgbh/pages/frontline/shows/sats/interviews/lemann.html>.

14. James Bryan Conant, “Wanted: American Radicals,” *The Atlantic Quarterly*, May 1943.

15. Stephen Jay Gould debunked the myth of innate intelligence in his classic book, *The Mismeasure of Man* (New York: W. W. Norton and Company, 1981).

16. Nicholas Lemann, *Frontline* interview.

17. Linda F. Wightman, “Standardized Testing and Equal Access: A Tutorial,” in *A Compelling Interest: Examining the Evidence on Racial Dynamics in Colleges*, ed. Mitchell J. Chang, Daria Vitt, James Jones, and Kenji Hakuta (Stanford, CA: Stanford University Press, 2003).

18. *Ibid.*

19. Susan Aud, Mary Ann Fox, and Angelina KewalRamani, “Status and Trends in the Education of Racial and Ethnic Groups,” National Center for Education Statistics, 2010.

20. Wightman, “Standardized Testing and Equal Access.”

21. *Hopwood v. Texas*, 78 F.3rd 932 (5th Cir. 1996); *Bakke v. Board of Regents of California*, 438 U.S. 265 (1978).

22. Wightman, “Standardized Testing and Equal Access.”

23. Atkinson and Geiser, “Reflections on a Century of College Admissions Tests.”

24. Rebecca Zwick, “College Admissions in Twenty-First-Century America: The Role of Grades, Tests, and Games of Chance,” *Harvard Educational Review* 77, no. 4 (Winter 2007): 419–29.

25. College Board, “Guidelines on the Uses of College Board Test Scores and Related Data,” 2011, <http://media.collegeboard.com/digitalServices/pdf/research/guidelines-on-uses-of-college-board-test-scores-and-data.pdf>.

26. The National Center for Fair and Open Testing (FairTest), “Schools That Do Not Use SAT or ACT Scores for Admitting Substantial Numbers of Students into Bachelor Degree Programs,” updated Winter 2013–2014, <http://fairtest.org/sites/default/files/OptionalPDFHardCopy.pdf>.

27. “National University Rankings,” *U.S. News and World Report*, 2014.

28. Hunter Breland et al., “Trends in College Admission 2000: A Report of a National Survey of Undergraduate Admission Policies, Practices, and Procedures,” 2002, http://www.semworks.net/about-us/resources/docs/trends_in_college_admission.pdf, accessed January 3, 2013; see also Rebecca Zwick, “College Admissions in Twenty-First-Century America.”

29. Robert Schaeffer, “Test Scores Do Not Equal Merit: Deemphasizing Standardized Tests in College Admissions,” in *SAT Wars*.

30. *Ibid.*

31. Saul Geiser and Maria Veronica Santelices, “Validity of High-School Grades in Predicting Student Success Beyond the Freshman Year: High-School Record vs. Standardized Tests as Indicators of Four-Year College Outcomes,” Research & Occupational Paper Series, Center for Studies in Higher Education, June 2007.

32. *Ibid.*

33. Anthony P. Carnevale and Jeff Strohl, “How Increasing College Access Is Increasing Inequality, and What to Do about It,” in *Rewarding Strivers: Helping Low-Income Students Succeed in College* (New York: Century Foundation Press, 2010), 122.

34. Anthony P. Carnevale and Stephen J. Rose, “Socioeconomic Status, Race/Ethnicity, and Selective College Admissions,” in *Rewarding Strivers: Low-Income Students in Higher Education*, ed. Richard D. Kahlenberg (New York: The Century Foundation Press, 2004).

35. *Ibid.*

36. *Ibid.*

37. Sunny X. Niu and Marta Tienda, “Minority Student Academic Performance Under the Uniform Admission Law: Evidence from the University of Texas at Austin,” *Educational Evaluation and Policy Analysis* 32, no. 1 (March 2010): 44–69.

38. Atkinson and Geiser, “Reflections on a Century of College Admissions Tests,” in *SAT Wars*.

39. Geiser and Santelices, “Validity of High-School Grades in Predicting Student Success Beyond the Freshman Year.”

40. Thomas J. Espenshade and Chang Young Chung, “Standardized Admissions Tests, College Performance, and Campus Diversity,” Office of Population Research, Princeton University, January 2010.

41. Joseph Soares, *SAT Wars*.

42. *Ibid.*

43. In a 2003 statement, SALT suggested that if all else fails, law schools should abandon the LSAT as a criterion for admission. “If law schools continue to compete for distinction through popular magazine rankings, where high LSAT scores determine success; if there remains an unwillingness to challenge the perception that standardized tests measure innate intelligence; if those who administer admission programs continue to rely on the LSAT even when there is no correlation between test scores and either the performance of their students or the professional contributions of their graduates; if budgetary constraints are such that a careful, ‘whole file’ review system is regarded as prohibitively expensive and time-consuming, then it may be in the best interests of legal education to entirely abandon the Law School Admission Test.” (Phoebe A. Haddon and Deborah W. Post, “Misuse and Abuse of the LSAT: Making the Case for

Alternative Evaluative Efforts and Redefinition of Merit,” *Saint John’s Law Review* 80, no. 41 [2006]: 104).

44. The Supreme Court of the United States, *Fisher v. University of Texas at Austin et al.*, Certiorari to the United States Court of Appeals for the Fifth Circuit, no. 11-345 (October 2012).

45. The Supreme Court of the United States, *Griggs v. Duke Power Co.*, Certiorari to the United States Court of Appeals for the Fourth Circuit, no. 124 (March 1971).

Chapter 14

1. Amy N. Farley, Matthew N. Gaertner, and Michele S. Moses, “Democracy under Fire: Voter Confusion and Influences in Colorado’s Anti-affirmative Action Initiative,” *Harvard Educational Review* 83, no. 3 (2013): 432–62.

2. Some policy advocates have responded similarly. Bill Keller and David Brooks of the *New York Times* each wrote opinion pieces advocating for class-based affirmative action in close proximity to U.S. Supreme Court’s ruling in *Fisher v. University of Texas*. See Bill Keller, “Affirmative Reaction,” *New York Times*, June 9, 2013, http://www.nytimes.com/2013/06/10/opinion/keller-affirmative-reaction.html?_r=0, and David Brooks, “Speed of Ascent,” *New York Times*, June 24, 2013, http://www.nytimes.com/2013/06/25/opinion/brooks-speed-of-ascent.html?ref=affirmativeaction&_r=0.

3. Bob Laird, *The Case for Affirmative Action in University Admissions* (Berkeley, CA: Bay Tree Publishing, 2006).

4. Paula S. Rothenberg, *Race, Class and Gender in the United States: An Integrated Study* (New York: St. Martin, 2006); Christine E. Sleeter, *Making Choices for Multicultural Education: Five Approaches to Race, Class, and Gender* (Columbus, OH: Merrill, 2003); and Jeanne Brooks-Gunn and Greg J. Duncan, “The Effects of Poverty on Children,” *The Future of Children* 7, (1997): 55–71.

5. “Vision Statement,” Office of Diversity, Equity, and Community Engagement, University of Colorado at Boulder, 2009, <http://www.colorado.edu/odece/about/index.html>.

6. Minimum academic qualifications focus on an applicant’s predicted freshman-year GPA (PGPA), which is based on the applicant’s high school grades and SAT or ACT scores. No student with a PGPA below 2.0 may be admitted to CU. The minimum is 2.0 because an undergraduate GPA below that triggers academic probation.

7. Matthew N. Gaertner and Melissa Hart, “Considering Class: College Access and Diversity,” *Harvard Law & Policy Review* 7, no. 2 (2013): 367–403.

8. Roger E. Studley, “Inequality, Student Achievement, and College Admissions: A Remedy for Underrepresentation,” paper CSHE1-03, Center for Studies in Higher Education, University of California, University of California–Berkeley, 2003, <http://repositories.cdlib.org/cshe/CSHE1-03>.

9. Nationally representative data were needed to reflect the composition of CU’s applicant pool, more than 60 percent of which comes from outside Colorado.

10. U.S. Department of Education, National Center for Education Statistics, *Education Longitudinal Study (ELS)*, 2002/06, Washington, D.C., 2006.

11. Data collection constraints placed some limits on the socioeconomic factors that could be included in the Indices. In order to be included, socioeconomic variables had to be (1) significant predictors of college enrollment or high school academic credentials, (2) available in ELS, and (3) available from CU’s application for admission

or from an otherwise reliable source (for example, high-school-level statistics were collected from the NCES Common Core of Data). These requirements eliminated some potentially useful variables from consideration, including status as a foster child (available from the CU application but not in ELS) and the historical percentage of students at an applicant's high school who go on to four-year colleges (available in ELS but not from the CU application or NCES Common Core of Data).

12. URM's are defined as black, Latino, or Native American students.

13. The "privileging" of class-based admissions metrics over their race-based counterparts at CU owes to affirmative action case law. Following the *Grutter v. Bollinger* decision in 2003, universities could only consider race in admissions decisions among a host of other factors. Race can therefore be a secondary, but not primary admissions consideration at CU. The Disadvantage and Overachievement Indexes, however, are race-neutral and incorporate high school academic performance, and therefore can be a primary factor.

14. Detailed steps for calculating James's Disadvantage Index value are provided in Gaertner and Hart, "Considering Class: College Access and Diversity."

15. The need for such an experiment did not diminish with the defeat of Amendment 46, because CU suspected the affirmative action debate—at both the state and federal level—was far from finished. For example, writing for the majority in *Grutter v. Bollinger*, Justice O'Connor suggested race-based affirmative action policies should no longer be necessary as of 2028; *Grutter v. Bollinger*, 539 U.S. 306 (2003).

16. Thomas J. Espenshade and Alexandria Walton Radford, *No Longer Separate, Not Yet Equal: Race and Class in Elite College Admissions and Campus Life* (Princeton, NJ: Princeton University Press, 2009); Anthony P. Carnevale and Stephen J. Rose, "Socioeconomic Status, Race/Ethnicity, and Selective College Admissions," in *America's Untapped Resource: Low-Income Students in Higher Education*, ed. Richard D. Kahlenberg (New York: The Century Foundation Press, 2004); William G. Bowen and Derek Bok, *The Shape of the River: Long-Term Consequences of Considering Race in College and University Admission* (Princeton, NJ: Princeton University Press, 1998); and Thomas J. Kane, "Misconceptions in the Debate over Affirmative Action in College Admissions," Harvard Education Publishing Group, Cambridge, MA, 1998.

17. Espenshade and Radford, *No Longer Separate, Not Yet Equal*.

18. Espenshade and Radford, *ibid.*, estimate via simulation that acceptance rates for blacks and Latinos under class-plus-race affirmative action should increase 1.2 percentage points, compared to a race-only policy.

19. Much of the existing literature covering race-neutral alternatives (Mark C. Long and Marta Tienda, "Winners and Losers: Changes in Texas University Admissions Post-Hopwood," *Educational Evaluation and Policy Analysis* 30, no. 3 [2008]: 255–80; Catherine L. Horn and Stella M. Flores, "Percent Plans in College Admissions: A Comparative Analysis of Three States' Experiences," The Civil Rights Project at Harvard University, 2003) examines "Top X%" plans, whereby a sufficiently high class rank guarantees students a spot at a state university. As race-neutral tools to support racial diversity, these plans are relatively blunt instruments, because they consider only high-school-level information. As long as there is any racial heterogeneity within high schools, and that variation is statistically related to socioeconomic characteristics, measures that consider student-level SES will necessarily be more highly correlated with race than high-school-level measures.

20. Coarsened Exact Matching (Stefano M. Iacus, Gary King, and Giuseppe Porro, "Multivariate Matching Methods That Are Monotonic Imbalance Bounding," *Journal*

of the *American Statistical Association* 106, no. 493 [2011]: 345–61) was used to match 2009 class-based admits to historical CU students. For technical detail on the matching algorithm, see Matthew N. Gaertner, “Charles F. Elton Best Paper Award: Assessing a New Approach to Class-based Affirmative Action,” research presented at the annual forum of the Association for Institutional Research, New Orleans, Louisiana, June 2012, <http://forum.airweb.org/2012/Pages/Information/BestPaperAward.aspx>.

21. Historical matches were examined for two reasons. First, because the race-based condition in the 2009 experiment represented the official admissions decision, “class-based admits” from the 2009 experiment were not admitted to CU. It was therefore not possible to follow their progress in college. Second, using historical data enabled examination of more distal outcomes such as cumulative GPA and six-year graduation rates.

22. Jesse Rothstein and Albert H. Yoon, “Affirmative Action in Law School Admissions: What Do Racial Preferences Do?” NBER Working Paper No. 14276, National Bureau of Economic Research, Cambridge, Mass., 2008, <http://www.nber.org/papers/w14276.pdf>.

23. Brittany Anas, “CU-Boulder Sees 9% Increase in Students of Color,” *Daily Camera*, September 19, 2011, http://www.dailycamera.com/cu-news/ci_18931627.

24. Given these projected college outcomes, it may be tempting to use only the Overachievement Index to grant applicants additional consideration. This would likely diminish the racial dividends of CU’s class-based system. To wit, 18 percent of “strictly overachieving” class-based admits are URMs—roughly the same proportion as the overall CU student population. In contrast, 36 percent of “strictly disadvantaged” class-based admits are URMs.

25. Anthony P. Carnevale and Jeff Strohl, “Separate and Unequal: How Higher Education Reinforces the Intergenerational Reproduction of White Racial Privilege,” Georgetown University Center on Education and the Workforce, Washington, DC, 2013; W. Jean Yeung and Dalton Conley, “Black–White Achievement Gap and Family Wealth,” *Child Development* 79, no. 2 (2008): 303–24.

Chapter 15

1. Socioeconomic status (SES) is an equally weighted index consisting of family income, parental education, and Duncan occupational prestige. (See Anthony P. Carnevale and Jeff Strohl, “How Increasing College Access Is Increasing Inequality, and What to Do about It,” in *Rewarding Strivers: Helping Low-Income Students Succeed in College*, ed. Richard D. Kahlenberg [New York: Century Foundation Press, 2010] for more detail.) SES is preferred to income because it is more stable over time whereas “just-income” can have high degree of individual variation year-to-year.

2. Anthony P. Carnevale and Stephen J. Rose, “Socioeconomic Status, Race/Ethnicity, and Selective College Admissions,” in *Rewarding Strivers: Low-Income Students in Higher Education*, ed. Richard D. Kahlenberg (New York: The Century Foundation Press, 2004). There is a basic tension between individualism and the social sciences. In extreme form, individualism tends to assume free floating people untouched by economic and social context. Social science validates a more complex reality whether people are substantially formed by their environments. In social science research the effects of contextual forces also extend to groups with socially salient characteristics like race, ethnicity, and class.

3. Thomas J. Kane (*The Price of Admission: Rethinking How Americans Pay for College*, [Washington, D.C.: Brookings Institution, 1999]), for example, estimates that more than six times the current level of class-based admissions would be necessary to maintain the current racial mix in the most selective colleges. We found similar result in our own research using conventional data sources (Anthony P. Carnevale and Jeff Strohl, *Separate and Unequal: How Higher Education Reinforces the Intergenerational Reproduction of White Racial Privilege* [Washington, D.C.: Georgetown Center on Education and the Workforce, 2013]).

4. The statistically significant factors used in this index include low SES, female, being first time college going, working while in high school, going to a public school, geographic region, having had a drop-out spell, not taking AP or IB courses, not taking college prep classes or SAT/ACT prep, not having friends going to college, having a friend or relative die, and being in a school with high share of students receiving free or reduced price lunch.

5. Socioeconomic status is defined as an equally weighted combination of family income, parental education, and parental occupation (commonly that of the father). This metric provides a relatively stable measure of social position that can be used to look at social, educational, and economic mobility; among many things.

6. Every year a number of students defer entry to college or graduate early from high school and make the transition to college out of sequence compared to their high school class.

7. For details, see Carnevale and Strohl, “How Increasing College Access Is Increasing Inequality, and What to Do About It,” 170, Table 3.7.

8. The term “boost” is attributed to Matthew Gaertner and Melissa Hart’s analysis of affirmative action plans at Colorado University. (Matthew N. Gaertner and Melissa Hart, “Considering Class: College Access and Diversity,” *Harvard Law and Policy Review* 7, no. 2 [2013]: 367–403). Anthony Carnevale and Jeff Strohl (in *Rewarding Strivers*, 2010) introduced the concept of measuring disadvantage on SAT/ACT scores. Anthony P. Carnevale and Stephen P. Rose (in *America’s Untapped Resource: Low Income Students in Higher Education*, ed. Richard D. Kahlenberg [New York: Century Foundation Press, 2004]) provide the template for our walking through multiple simulations to better understand how variation in admission plans affect outcomes.

9. Representation for low-SES youth improves somewhat if we track the bottom half of SES distribution instead of the bottom quartile. Students from the bottom half of SES get 14 percent of the seats in the most selective 193 colleges, which still is woefully shy of their population share.

10. Explained in more detail above.

11. We rank students within high schools based on SAT/ACT scores which have been imputed using the ELS survey administered test for non-SAT/ACT test takers. We do not use other common class rank indicators. Note also: the ELS survey design is not representative of all schools because of nonrandom selection. If given, a nationally school representative longitudinal study might lead to slightly different results but would not be expected to change our general conclusions.

12. Analysis of the National Educational Longitudinal Study published in Carnevale and Strohl, *Separate and Unequal*, shows that annually 580,000 students from the top half of the nation’s high schools do not graduate from college within eight years. Of these, 252,000 are from the bottom half of the SES distribution and 111,000 are underserved minorities. Among the minorities, 62,000 are bottom half –SES.

13. Stacy Berg Dale and Alan B. Kreuger, “Estimating the Return to College Selectivity over the Career Using Administrative Earnings Data,” NBER Working Paper no. w17159, National Bureau of Economic Research, June 2011.

14. Unpublished analysis of National Educational Longitudinal Study (Georgetown, 2013).

15. See Carnevale and Strohl, “How Increasing College Access Is Increasing Inequality, and What to Do about It.”

Chapter 16

1. Martha J. Bailey and Susan M. Dynarski, “Inequality in Postsecondary Education,” in *Whither Opportunity? Rising Inequality, Schools, and Children’s Life Chances*, ed. Greg J. Duncan and Richard J. Murnane (New York: Russell Sage Foundation, 2011), 117–132.

2. Sean F. Reardon, Rachel Baker, and Daniel Klasik, “Race, Income, and Enrollment Patterns in Highly Selective Colleges, 1982–2004,” Center for Education Policy Analysis, Stanford University, August 3, 2012, [http://cepa.stanford.edu/sites/default/files/race income %26 selective college enrollment august 3 2012.pdf](http://cepa.stanford.edu/sites/default/files/race%20income%20selective%20college%20enrollment%20august%203%202012.pdf).

3. Bailey and Susan M. Dynarski, “Inequality in Postsecondary Education”; Philippe Belley and Lance Lochner, “The Changing Role of Family Income and Ability in Determining Educational Achievement,” NBER Working Paper no. 13527, October 2007, <http://www.nber.org/papers/w13527>; David Karen, “Changes in Access to Higher Education in the United States: 1980–1992,” *Sociology of Education* 75, no. 3 (July 2002): 191–210; Sean F. Reardon, “The Widening Income Achievement Gap,” *Educational Leadership* 70, no. 8 (May 2013): 10–16, <http://npspsd.fesdev.org/vimages/shared/vnews/stories/525d81ba96ee9/SI%20-%20The%20Widening%20Income%20Achievement%20Gap.pdf>.

4. Reardon, Baker, and Klasik, “Race, Income, and Enrollment Patterns in Highly Selective Colleges, 1982–2004.”

5. Peter M. Blau and Otis Dudley Duncan, *The American Occupational Structure* (New York: Wiley and Sons, 1967).

6. William Julius Wilson, *The Declining Significance of Race: Blacks and Changing American Institutions* (Chicago: University of Chicago Press, 1978).

7. Dalton Conley, *Being Black, Living in the Red: Race, Wealth, and Social Policy in America* (Santa Clara: University of California Press, 1999); Alexandra Killewald, “Return to *Being Black, Living in the Red*: A Race Gap in Wealth That Goes Beyond Social Origins,” *Demography* 50, no. 4 (August 2013): 1177–95, <http://link.springer.com/article/10.1007/s13524-012-0190-0>.

8. Reardon, “The Widening Income Achievement Gap.”

9. Roland G. Fryer, Jr., “Racial Inequality in the 21st Century: The Declining Significance of Discrimination,” NBER Working Paper No. 16256, August 2010, <http://www.nber.org/papers/w16256>.

10. Dalton Conley, “Capital for College: Parental Assets and Postsecondary Schooling,” *Sociology of Education* 74, no. 1 (January 2001): 59–72, <http://www.jstor.org/stable/10.2307/2673145>.

11. Dalton Conley, Kate Wetteroth Strully, Neil G. Bennett, *The Starting Gate: Birth Weight and Life Chances* (Santa Clara: University of California Press, 2003).

12. Betty Hart and Todd R. Risley, *Meaningful Differences in the Everyday Experience of Young American Children* (Baltimore, MD: Paul H. Brookes Publishing, 1995).

13. Belley and Lochner, “The Changing Role of Family Income and Ability in Determining Educational Achievement”; Reardon, Baker, and Klasik, “Race, Income, and Enrollment Patterns in Highly Selective Colleges, 1982–2004.”

14. Edward N. Wolff, “The Asset Price Meltdown and the Wealth of the Middle Class,” NBER Working Paper no. 18559, November 2012, <http://www.nber.org/papers/w18559>; Edward N. Wolff, “The Distribution of Wealth in the United States at the Start of the 21st Century,” in *The Economics of Inequality, Poverty, and Discrimination in the 21st Century*, ed. Robert S. Rycroft (New York: Praeger, 2013), 38–56.

15. Dalton Conley and Brian Gifford, “Home Ownership, Social Insurance, and the Welfare State,” *Sociological Forum* 21, no. 1 (March 2006): 55–82, <http://link.springer.com/article/10.1007/s11206-006-9003-9>; Jiri Slacalek, “What Drives Personal Consumption? The Role of Housing and Financial Wealth,” *The B.E. Journal of Macroeconomics* 9, no. 1 (October 2009), <http://www.degruyter.com/view/j/bejm.2009.9.1/bejm.2009.9.1.1555/bejm.2009.9.1.1555.xml>.

16. Sandra E. Black, “Do Better Schools Matter? Parental Valuation of Elementary Education,” *Quarterly Journal of Economics* 114, no. 2 (1999): 577–99, <http://qje.oxfordjournals.org/content/114/2/577.short>; Stephanie Riegg Cellini, Fernando Ferreira, and Jess Rothstein, “The Value of School Facility Investments: Evidence from a Dynamic Regression Discontinuity Design,” *Quarterly Journal of Economics* 125, no. 1 (2010): 215–261, <http://qje.oxfordjournals.org/content/125/1/215.short>; Thomas J. Kane, Douglas O. Staiger, Gavin Samms, Edward W. Hill, and David L. Weimer, “School Accountability Ratings and Housing Values,” *Brookings-Wharton Papers on Urban Affairs* (Washington, DC: Brookings Institution Press, 2003), 83–137, <http://www.jstor.org/stable/10.2307/25067396>.

17. Lance Lochner and Alexander Monge-Naranjo, “Credit Constraints in Education,” NBER Working Paper no. 17435, September 2011, <http://www.nber.org/papers/w17435>.

18. Conley, *Being Black, Living in the Red*.

19. W. Jean Yeung and Dalton Conley, “Black–White Achievement Gap and Family Wealth,” *Child Development* 79, no. 2 (2008): 303–24, <http://onlinelibrary.wiley.com/doi/10.1111/j.1467-8624.2007.01127.x/full>.

20. Melvin L. Oliver and Thomas M. Shapiro, *Black Wealth, White Wealth: A New Perspective on Racial Inequality* (New York: Routledge, 2006).

21. Ngina S. Chiteji and Frank P. Stafford, “Portfolio Choices of Parents and Their Children as Young Adults: Asset Accumulation by African-American Families,” *American Economic Review* 89, no. 2 (May, 1999): 377–80, <http://www.jstor.org/stable/10.2307/117139>.

22. Kerwin Kofi Charles, Erik Hurst, and Alexandra Killewald, “Marital Sorting and Parental Wealth,” *Demography* 50, no. 1 (February 2013): 51–70, <http://link.springer.com/article/10.1007/s13524-012-0144-6>; Kerwin Kofi Charles and Erik Hurst, “The Transition to Home Ownership and the Black-White Wealth Gap,” *Review of Economics and Statistics* 84, no. 2 (2002): 281–97, <http://www.mitpressjournals.org/doi/abs/10.1162/003465302317411532>; Erik Hurst and Annamaria Lusardi, “Do Household Savings Encourage Entrepreneurship? Household Wealth, Parental Wealth, and the Transition In and Out of Entrepreneurship,” NBER Working Paper Series, June 2006, <http://ssrn.com/abstract=908364>.

23. Maury Gittleman and Edward N. Wolff, “Racial Differences in Patterns of Wealth Accumulation,” *Journal of Human Resources* 34, no. 1 (Winter 2004): 193–227, <http://jhr.uwpress.org/content/XXXIX/1/193.short>.

24. Kerwin Kofi Charles, Erik Hurst and Melvin Stephens, "Rates for Vehicle Loans: Race and Loan Source," *American Economic Review* 98, no. 2 (May, 2008): 315–20 <http://www.jstor.org/stable/10.2307/29730040>.

25. Laurence J. Kotlikoff and Lawrence H. Summers, "The Role of Intergenerational Transfers in Aggregate Capital Accumulation," NBER Working Paper no. 445, February 1980, <http://www.nber.org/papers/w0445>.

26. Franco Modigliani, "The Role of Intergenerational Transfers and Life Cycle Saving in the Accumulation of Wealth," *Journal of Economic Perspectives* 2, no. 2 (Spring 1988): 15–40, <http://www.jstor.org/stable/10.2307/1942847>.

27. William G. Gale and John Karl Scholz, "Intergenerational Transfers and the Accumulation of Wealth," *Journal of Economic Perspectives* 8, no. 4 (Autumn 1994): 145–60, <http://www.jstor.org/stable/10.2307/2138343>; Laurence J. Kotlikoff and Lawrence H. Summers, "The Contribution of Intergenerational Transfers to Total Wealth: A Reply," NBER Working Paper no. 1827, December 1988, <http://www.nber.org/papers/w1827>.

Chapter 17

1. Richard Sander, "Why Strict Scrutiny Requires Transparency," in *New Directions in Judicial Politics*, ed. Kevin McGuire (New York: Routledge, 2012).

2. See a list of initiatives at "High Ranking Colleges and Universities Strengthen Financial Aid," *Journal of Blacks in Higher Education* (2008), at http://www.jbhe.com/news_views/59_financialaid.html. For an evaluation of the Harvard initiative see Christopher Avery et al., "Cost Should Be No Barrier: An Evaluation of the First Year of Harvard's Financial Aid Initiative," NBER Working Paper no. 12029, February 2006, <http://www.nber.org/papers/w12029>.

3. David Leonhardt, "Top Colleges, Largely for the Elite," *New York Times*, May 24, 2011, <http://www.nytimes.com/2011/05/25/business/economy/25leonhardt.html>.

4. See, for instance, the analysis and Table 1 in Peter Arcidiacono, Shakeeb Khan, and Jacob Vigdor, "Representation versus Assimilation: How Do Preferences in College Admissions Affect Social Interactions?" *Journal of Public Economics* 95, no. 1 (2011): 1–15.

5. Richard D. Kahlenberg, *A Better Affirmative Action: State Universities that Created Alternatives to Racial Preference* (New York: The Century Foundation, 2012), 4, lists five states that have banned preferences by initiative, two which have done so by executive or legislative action, and two leading state universities which have given up racial preferences directly or indirectly because of court decisions. More recently, Oklahoma passed a referendum banning racial preferences at public universities and other institutions.

6. Sander, "Why Strict Scrutiny Requires Transparency," note 2.

7. This idea is best developed in William Bowen, Matthew Chingos, and Michael McPherson, *Crossing the Finish Line: Completing College at America's Public Universities* (Princeton, NJ: Princeton University Press, 2009).

8. The *Journal of Economic Literature* and the *Annual Review of Economics* are both preparing to publish surveys of the literature on matching and overmatching, a strong sign that this work has become a recognized issue and concern among social scientists. And two of the leading journals in empirical legal studies have also recently published broad studies that find broad and strong evidence of mismatch problems in

legal education and minority avoidance of schools using aggressive racial preferences. See E. Douglass Williams, “Do Racial Preferences Affect Minority Learning in Law School?” *Journal of Empirical Legal Studies* 10, no. 2 (2013): 171; Kate L. Antonovics and Richard Sander, “Affirmative Action Bans and the ‘Chilling Effect,’” *American Law and Economics Review* 15, no. 1 (2013): 252.

9. See Arcidiacono et al., “Representation versus Assimilation,” note 3; Peter Arcidiacono, Esteban Aucejo, Andrew Hussey, and Kenneth Spenner, “Racial Segregation Patterns in Selective Universities,” London School of Economics, Centre for Economic Performance, May 2013.

10. Caroline Hoxby and Christopher Avery, “The Missing ‘One-Offs’: The Hidden Supply of High-Achieving, Low-Income Students,” *Brookings Papers on Economic Activity* (Washington, DC: Brookings Institution, 2013), http://www.brookings.edu/~media/projects/bpea/spring%202013/2013a_hoxby.pdf. Richard Sander, “Listening to the Debate on Reforming Law School Admissions Preferences,” *Denver University Law Review* 88, no. 4 (2011): 889.

11. Hoxby and Avery, “The Missing ‘One-Offs.’”

12. Derek Bok, *Higher Education in America* (Princeton, NJ: Princeton University Press, 2013). (See also discussion in Chapter 11 of this volume.)

13. In other words, algorithms in the database could generate estimates of the financial aid needed by individuals, given some choice of financial aid formula and data on the specific college’s “retail” costs.

14. Denise Quigley and Seth Leon, “EAOP and Its Impact on High School Students’ Completion of the UC Preparatory Coursework,” National Center for Research on Evaluation Standards and Student Testing, March 2002.

15. Anthony DePalma, “Ivy League Universities Deny Price-Fixing but Agree to Avoid It in the Future,” *New York Times*, May 23, 1991.

16. The Massachusetts Institute of Technology declined to join the 1991 settlement, and after three years of litigation reached a settlement with DoJ, aided by congressional passage of the “568 Rule” in 1994. This rule allowed institutions to agree on common principles for awarding financial aid so long as they agreed to completely need-blind admissions and eschewed merit aid. A 2001 extension of this policy also allowed participating colleges to use a common aid application form and to exchange student financial information through a third party. This act was extended in 2008 to 2015. As of 2010, there were twenty-six institutions in the “568 Group.” See Michael F. Urbanski et al., “Antitrust and Trade Regulation Law,” *University of Richmond Law Review* 38 (2003): 59; “568 Group,” http://en.wikipedia.org/wiki/568_Group; Sandy Baum and Michael McPherson, “Antitrust Restrictions and Need-Based Aid,” *Chronicle of Higher Education*, December 8, 2010, <http://www.cic.edu/News-and-Publications/Multimedia-Library/CICConferencePresentations/2011%20Presidents%20Institute/student-aid-policy1.pdf>.

17. Robert Tomsho, “Amid Rising Costs and Criticism, Some Colleges Cut Back Merit Aid,” *Wall Street Journal*, October 11, 2006, <http://online.wsj.com/news/articles/SB116052998822488903>; Daniel de Vise, “Tuition Discounting Reaches Record High,” *Washington Post*, May 23, 2011; Jennie H. Woo and Susan P. Choy, “Stats in Brief: Merit Aid for Undergraduates, Trends from 1995–96 to 2007–08,” National Center for Education Statistics, October 2011, <http://nces.ed.gov/pubs2012/2012160.pdf>.

18. As recently as the summer of 2013, the Justice Department launched an investigation into a “possible agreement” among colleges to reform their financial-aid policies.

The investigation ended a few months later, but not before having a significant chilling effect on any discussion of reform among college presidents. Eric Hoover, “U.S. Opens Antitrust Investigation Into Colleges’ Talk of Student-Aid Reform,” *Chronicle of Higher Education*, June 17, 2013, http://news.brookdalecc.edu/media_reference/u-s-opens-antitrust-investigation-into-colleges-talk-of-student-aid-reform/; Scott Jaschik, “Inquiry Into Aid Talks Ends,” *Inside Higher Ed*, August 8, 2013, <http://www.insidehighered.com/news/2013/08/08/justice-department-ends-probe-discussions-private-colleges-merit-aid#ixzz2rvCk8why>.

19. Elliott, Rogers, A. Christopher Strenta, Russell Adair, Michael Matier, and Jannah Scott, “The Role of Ethnicity in Choosing and Leaving Science in Highly Selective Institutions,” *Research in Higher Education* 37 (1996): 681; Frederick Smyth and John McArdle, “Ethnic and Gender Differences in Science Graduation at Selective Colleges with Implications for Admission Policy and College Choice,” *Research in Higher Education* 45 (2004): 353; Peter Arcidiacono, Esteban M. Aucejo, and Ken Spenner, “What Happens After Enrollment? An Analysis of the Time Path of Racial Differences in GPA and Major Choice,” *IZA Journal of Labor Economics* 1, no. 5 (2012).

20. Peter Arcidiacono, Esteban Aucejo, Andrew Hussey, and Ken Spenner, “Racial Segregation Patterns in Selective Universities,” forthcoming in the *Journal of Law and Economics*; Arcidiacono et al., “Representation versus Assimilation.”

21. See Arcidiacono et al., “Representation versus Assimilation,” note 15.

Chapter 18

1. See Moody’s Investors Service, “US Higher Education Outlook Negative in 2013,” January 16, 2013; “2014 Outlook—US Higher Education, Not-for-Profits and Independent Schools,” November 25, 2013.

2. See Emmuael Saez, “Striking It Richer: The Evolution of Top Incomes in the U.S.,” January 23, 2013 (update of Emmuael Saez, with Thomas Piketty, “Striking It Rich: The Evolution of Top Incomes in the U.S.,” *Pathways Magazine*, Stanford Center for the Study of Poverty and Inequality, Winter 2008).

3. Colleges and universities also undertake research, and much federal and state support directly funds these activities. Colleges and universities can also allocate general support to research. This chapter focuses on policies that support the educational enterprise, rather than research and knowledge creation.

4. See Richard D. Kahlenberg, “A Way Out of the Merit-Aid Madness?” *Chronicle of Higher Education*, October 24, 2011, <http://Chronicle.com/blogs/innovations/a-way-out-of-the-merit-aid-mess/30633>, and College Board, *Trends in Student Aid, 2013* (New York: The College Board Advisory and Policy Center, 2013).

5. William G. Bowen, Matthew M. Chingos, and Michael S. McPherson, *Crossing the Finish Line: Completing College at America’s Public Universities* (Princeton, NJ: Princeton University Press, 2009).

6. See College Board, *Education Pays, 2013* (New York: The College Board Advocacy and Policy Center, 2013).

7. See Susan Dynarski and Daniel Kreisman, “Loans for Educational Opportunity: Making Borrowing Work for Today’s Students,” The Hamilton Project, Discussion Paper 2013-05, The Brookings Institution, October 2013.

8. See “Government Student Loan Programs: An International Comparison, 2009,” The International Comparative Higher Education Finance and Accessibility

Project, State University of New York at Buffalo, 2009, http://gse.buffalo.edu/org/inthigheredfinance/files/student_loan_matrix.pdf.

9. See Anthony P. Carnevale and Stephen J. Rose, “Socioeconomic Status, Race/Ethnicity, and Selective College Admission” in *American’s Untapped Resource: Low-Income Students in Higher Education*, ed. Richard D. Kahlenberg (New York: Century Foundation Press, 2004); William G. Bowen, Martin A. Kurzweil, and Eugene M. Tobin, *Equity and Excellence in American Higher Education* (Charlotte: University of Virginia Press, 2006); Catharine B. Hill and Gordon C. Winston, “How Scarce are High-Ability, Low-Income Students?” in *College Access: Opportunity or Privilege?* ed. Michael S. McPherson and Morton Owen Schapiro (New York: The College Board, 2006); and Catharine B. Hill and Gordon C. Winston, “Low-Income Students and Highly Selective Private Colleges: Geography, Searching and Recruiting,” *Economics of Education Review* 29 (2010).

10. See Caroline Hoxby and Sarah Turner, “Expanding College Opportunities for High-Achieving Low Income Students,” SIEPR Discussion Paper No. 12-014, Stanford University, 2012.

Index

Page numbers followed by letters *f* and *t* refer to figures and tables, respectively.

- academic performance:
 - high-school grades vs. standardized test scores as predictor of, 17, 18, 91, 149, 160–61, 166, 167*f*, 170–71, 253*n*6;
 - parental education and, 206–7, 207*f*, 208, 212;
 - socioeconomic affirmative action and, 107, 182–85, 183*t*, 184*t*; wealth and, 206, 207–8, 207*f*, 211. *See also* graduation rates; undermatch
- access to higher education:
 - barriers to, 27–28, 35–36, 40, 112–13; community-based approaches to, 32–33; equal, admissions policies ensuring, 151; importance of, 28, 29, 226; at public institutions, decrease in, 230; responsibilities regarding, 55; after World War II, 110, 111
- Adams, Michael F., 126
- Adarand v. Pena*, 60, 245*n*17
- admission deference, 61; in *Fisher v. University of Texas*, 64–65; in *Grutter v. Bollinger*, 62
- affirmative action, 163, 241*n*9; and changes to admission process, 146; *Fisher* and new rules for, 24, 58, 70–71, 75; original arguments for, 114, 115; and standardized testing, 161–62; threats to, 114. *See also* bans on race-based affirmative action; race-conscious admissions policies; socioeconomic affirmative action

- African Americans: class stratification among, 204; income vs. wealth disparities affecting, 21, 209
- African American students: application rates under Top 10 Percent plan, 93; college attendance by, growth in, 111, 163; college attendance by, relative decrease in, 167, 168*f*; college completion rates for, factors influencing, 206, 207*f*; college readiness of, need to increase, 189; in high school, growth in numbers of, 167; merit-based admissions and, 20, 191, 192*t*, 195, 195*t*; merit-based admissions with SES “plus factor” and, 191, 192*t*, 196, 196*t*; percent plan based on test scores and, 20, 191, 192*t*, 197, 198*t*; percent plan with “plus factors” and, 20, 192*t*, 193, 197, 198*t*, 199, 199*t*, 200; SAT scores for, 126–27; science mismatch among, 223–24; undermatch among, 15–16, 135, 137*f*; underrepresentation in higher education, 19, 194; at University of California, graduation rates of, 102–3; at University of Georgia, 122–23, 125, 128–29
- Allen, Danielle, 16–17
- Anglin, Roland, 30
- Anthony, Susan B., 145
- anti-trust policies, in higher education, 22, 220–21, 229, 275*n*16; need to modify, 22, 23
- Antonovics, Kate, 101, 102, 254*n*13
- applicant pool, at selective colleges, 217–18; enlarging, 218–20
- application behavior: cost of college and, 140, 260*n*25; familiarity with selective colleges and, 140–41; socioeconomic status and, 96–97, 140, 259*n*19; strategies to diversify college campuses and, 96; and undermatch, 138–41
- Arcidiacono, Peter, 254*n*13
- Arizona, ban on race-based affirmative action in, 75, 79*t*, 81
- Armstrong, Elizabeth, 38
- Aronson, Joshua, 265*n*6
- Asian American students: college attendance by, growth in, 163; merit-based admissions and, 191, 192*t*, 195, 195*t*; merit-based admissions with SES “plus factor” and, 196, 196*t*; percent plan based on test scores and, 20, 191, 192*t*, 197, 198*t*; percent plan with “plus factors” and, 192*t*, 193, 198*t*, 199, 199*t*, 200; undermatch among, 137*f*
- Athenian democracy, 17, 153
- Atkinson, Richard, 164
- Avery, Christopher, 15, 141, 217–18, 219
- Backes, Ben, 101, 102, 254*n*13
- Bakke* case, 9, 60, 163; on educational benefits of diversity, 114, 245*n*15; *Grutter* compared to, 61; and indicia of critical mass, 67–68; legal errors in, 247*n*33
- bans on race-based affirmative action, 13, 75, 77*t*–79*t*, 80–81, 114, 175; campus demographics after, 77*t*–79*t*, 88–90, 117; diversity policies after, 13, 77*t*–79*t*, 82–88, 216; and socioeconomic preferences, experimentation with, 83–84, 109
- Berea College, 146
- Bishop, Bill, 147
- Blackmun, Harry, 9
- Blau, Peter, 204
- Bok, Derek, 3, 95, 218
- Bollinger, Lee, 115
- Bowen, William G., 3, 95
- Breyer, Stephen, 6, 242*n*17
- bridging ties, vs. bonding ties, 152–53
- Brittain, John, 17–18
- Brookings Institution, 30
- Brown, Susan K., 96
- Brown v. Board of Education*, 60, 115, 163; integration ideal of, vs. Top 10 Percent plan, 94
- Buffalo, New York, “Say Yes to Education” program in, 32, 33

- Burka, Paul, 245n18
 Bush, Jeb, 81, 83
- California: ban on race-based affirmative action in, 12–13, 75, 77*t*, 81, 164; demographic shift in, 4, 28; percent plan in, 82, 107–8; race-neutral admissions programs in, 11–12, 82. *See also* University of California
- Caltech, 153
- Cantor, Nancy, 4, 115
- Cardozo, Benjamin, 246n18
- CARE (Center for Academic Retention and Enhancement), 88
- Carnevale, Anthony, 3, 19–21, 113–14, 167, 169, 253n1
- Century Foundation, 2, 31
- CEO for Cities, 33
- CEO Scholars Program, 87
- Chicago public schools: and academic undermatch, 134, 135, 136; near-peer advising model at, 143
- Chung, Chang Young, 171, 173
- Civil Rights Act of 1964, 163; Title VI of, 2, 46, 50, 162, 174, 241n8; Title VII of, 174, 266n11
- class. *See* socioeconomic status (SES)
- class-based affirmative action. *See* socioeconomic affirmative action
- class rank. *See* high-school grades
- Coleman, Arthur, 5, 7, 8, 66, 70, 187
- College Board: Expanding College Opportunities program of, 16, 143, 261n35; and low-income students, access to information by, 143, 233
- Collegiate Learning Assessment, 223
- Colorado: Amendment 46 in, 175, 180, 269n15. *See also* University of Colorado at Boulder
- community colleges: engagement with, need for, 31; transfer students from, programs supporting, 86, 87; under-funding of, 30; wealth inequities among, 37; after World War II, 111
- compelling interest, of race-conscious policies, 46–47, 48, 60, 65*t*
- Conant, James Bryan, 146, 162–63
- Conley, Dalton, 21
- Cooke Foundation, 87
- cooperation among colleges: “568 Rule” and, 275n16; anti-trust laws preventing, 22, 220–21; need for, 22, 23, 55, 223–25, 229–30
- cost: of diversity considerations in college admissions, 8; of outreach programs, 120; of race-neutral admissions strategies, consideration of, 8, 22, 52, 69–70, 243n29
- cost of higher education in U.S., 35, 221; and application behavior, 140, 260n25; decline in government support and, 256n4; government policies needed to contain, 36; impact on low-income students, 35–36, 40, 221, 260n29; impact on minorities, 113; net price calculators for, 232; and undermatch, 139, 140, 141; wealthy interests and, 37–39
- “critical mass” of minority students: ambiguities surrounding, 68; barrier to, 189; defining, 7; *Fisher* opinion on, 52–53, 69; *Grutter* opinion on, 53–54, 243n30; importance of, 29; indicia of, 67–68; reexamining of goals regarding, 67–69; University of Texas on, 244n32
- Cuomo, Andrew, 33
- Dale, Stacey, 5
- Daniel, Philip T. K., 58
- data tools: to indicate campus diversity, 232; to support race-neutral strategies, 22, 86
- debt burden of students, 232–33. *See also* loans
- degrees, three-year, 230
- Department of Education: guidance document on *Fisher v. University of Texas*, 50; need-based-aid incentive program of, proposal for, 222

- Department of Justice: college anti-trust settlement with, 22, 220–21, 229, 275n16; guidance document on *Fisher v. University of Texas*, 50; guidance on race-conscious admissions plans, 247n30
- Descriptor PLUS, 86
- Disadvantage Index, 19, 177–80, 178t, 179t, 182; race neutrality of, 269n13; students identified by, academic performance of, 184–85, 184t
- dissimilarity, index of, 105–6
- diversity, in higher education: application behavior and, 96; *Bakke* on, 114, 245n15; bans on race-based affirmative action and, 13, 77t–79t, 82–90; benefits of, 4, 29–30, 46, 54, 114, 215, 242n20, 245n15; broadening of concept of, 3, 24, 124–25; challenges in leveraging, 29–30; and college preparedness, tradeoff between, 171; cost of college as barrier to, 35–36, 40; data on, sharing of, 230–32; faculty members' role in ensuring, 39, 45–46; goals vs. means of, 48; *Grutter* on, 46, 114; index of dissimilarity and, 105–6; K-12 preparation as barrier to, 202; legal vs. policy context of, 14–15, 45–47; maximizing benefits of, 224; measuring, 67–68; merit-based admissions and, 20, 201; mission goals and, 8, 20, 82, 191, 192t, 248n14; race-neutral admissions strategies and, 10–11, 12, 20, 76, 109, 188, 190, 191–93, 192t; at selective colleges, 3, 216; socioeconomic affirmative action and, 19, 20, 90, 95–96, 106, 109, 185; strict scrutiny as barrier to, 31; sufficient, defining, 7, 14–15; test-optional admissions policy and, 18, 171, 172–73, 172t; Top 10 Percent plan and, questioning of claims regarding, 11, 92–95, 98; at top-tier vs. second- and third-tier colleges, 216. *See also* “critical mass” of minority students; geographic diversity considerations; racial diversity; socioeconomic diversity
- Douglass, Frederick, 145
- Duke University, 3
- Duncan, Otis Dudley, 204
- Dye, Thomas, 5
- economic affirmative action. *See* socioeconomic affirmative action
- economic segregation, in higher education, 35–36; income inequality and, 22–23, 37–38
- Edenfield, Avant B., 124
- Educational Longitudinal Study (ELS) of 2002, 177, 193, 219
- Educational Testing Service, 146
- Eliassi-Rad, Tina, 148
- Englot, Peter, 4
- Espenshade, Thomas J., 171, 173
- Expanding College Opportunities program, 16, 143, 261n35
- faculty members, role in ensuring diversity, 39, 45–46
- Faulkner, Larry, 92, 98
- Fifth Circuit Court of Appeals: *Fisher* case and, 6, 53, 67, 241n2; *Hopwood v. University of Texas*, 10, 80, 91, 163
- financial aid: and college rankings, 23, 231; cooperation on, anti-trust laws preventing, 22, 220–21, 229, 275n16; cooperation on, need for, 222, 223–25, 229–30; exclusive admissions standards and barriers to, 36; federal, decline in, 112; increase in college costs and, 221; increase in income inequality and, 227–28; and low-income students, recruitment of, 127; need-based vs. merit, 22, 23, 229–30; vs. “party” pathway, added costs of, 38; policies encouraging greater

- commitment to, 233–34; race-neutral strategies and need for, 22; state bans on affirmative action and, 84–86; Top 10 Percent plan and need for, 96, 97; at UCLA Law School, 107; and undermatch, 139, 142; at University of Georgia, 127–28
- financial crisis of 2008, 112, 227, 252n20
- Fisher, Abigail, 44, 63, 92
- Fisher v. University of Texas*, 1–2, 43–44, 47–50, 63–64; admission deference in, 64–65, 65*t*; affirmative action after, 24, 58; background to, 44, 63, 92; conference on, 2; dissenting opinion in, 2, 6, 34; on educational argument for affirmative action, 114; Fifth Circuit Court and, 6, 53, 67, 241n2; *Grutter* compared to, 6, 44, 48, 49–50, 64–66, 65*t*, 69, 70, 242n20; guidance documents on, 50; implications for higher education, 5, 44–45, 48, 50–56, 66, 72, 75; mission deference in, 64, 65*t*; on narrow tailoring, 49–50, 64, 70, 243n28; opportunities presented by, 3, 24, 50, 54, 59; *PICS* opinion and, 69; practical guide to complying with, 66–71; and race-conscious admissions policies, elevated burden of proof for, 70–71, 75, 216; on race-neutral alternatives, 2, 6, 7, 10, 44, 48–52, 64, 65–66, 69–70, 162, 173, 187, 235n4; and standardized testing, 174; and strict scrutiny, 47–50, 51; university administrations' response to, 5, 8–9, 66
- Fitelson, Branden, 148
- Florida: ban on race-based affirmative action in, 75, 78*t*, 81, 86; financial aid program in, 85; majority minority population in, 4, 28; One Florida Initiative in, 81, 83, 248n10; outreach and recruitment of underrepresented students in, 86, 88; socioeconomic factors used in admissions in, 83; Talented 20 program in, 82, 83, 248n14. *See also*: Florida State University; University of Florida
- Florida State University, 88
- Fourteenth Amendment, 46, 241n8, 245n18
- Franklin, Benjamin, 145
- Franklin and Marshall College, 143
- Fryer, Roland, 205
- Gaertner, Matthew, 18, 246n29
- Garza, Emilio, 7, 69, 245n10
- Gates, Robert M., 84, 251n7
- Gear Up for College program, 127
- Geiser, Saul, 166, 170–71
- geographic diversity considerations, 16–17, 82, 147–56; algorithm for, 155, 157–59; and bridging ties, 153; percent plans and, 82, 150, 155; University of Georgia and, 125
- Georgia: lottery-funded scholarship program in, 127–28; restrictions on race-based affirmative action in, 75, 78*t*, 80–81. *See also* University of Georgia
- Georgia Incentive Schools program, 126
- Ginsburg, Ruth Bader: on *Fisher*, 2, 6, 34, 65*t*, 66, 242n17, 243n28; on *Grutter*, 6; on Top 10 Percent plan, 246n23
- Goizueta Foundation, 127
- Goldrick-Rab, Sara, 4
- government policies. *See* public policies
- graduate schools: diversity goals at, 98. *See also* UCLA Law School; University of Michigan Law School
- graduation rates: academic undermatch and, 136; factors influencing, 21, 206–8, 207*f*; for minority students at University of California, 102–3; for minority students at

- University of Georgia, 129; parental education and, 206–7, 207*f*; race-neutral admissions strategies and, 188, 201; at selective colleges, 137, 138; socioeconomic affirmative action and, 19, 21; wealth and, 206, 207–8, 207*f*
- Gratz v. Bollinger*, 33, 44, 60, 62, 68, 241n5
- Great Recession of 2008, 112, 227, 252n20
- Greytak, Scott, 5, 6, 8, 187
- Griggs v. Duke Power Co.*, 174
- Gutter, Barbara, 61
- Gutter v. Bollinger*, 5, 60, 80, 98, 164, 241n5; admission deference in, 62, 65*t*; *Bakke* compared to, 61; on critical mass, 53–54; on educational benefits of diversity, 46, 114, 242n20; *Fisher* compared to, 6, 44, 48, 49–50, 64–66, 65*t*, 69, 70, 242n20; on institutional mission, 45–46; Michigan voter initiative following, 55; mission deference in, 61–62, 65*t*; on narrow tailoring, 49–50, 64, 70, 92, 243n28, 245n11, 247n36; *PICS* compared to, 7, 47; on race considerations in admissions, 242n11, 269n13; on strict scrutiny, 6, 62, 65*t*
- Guinier, Lani, 161, 164
- Gutmann, Amy, 151
- Hamilton, Laura, 38
- Hargadon, Fred, 152
- Harris, Angel, 93, 98
- Hart, Melissa, 246n29
- Harvard Law Review*, 14
- Harvard University: financial aid at, 142; geographic diversity of students at, 147; low-income students at, 218
- Higginbotham, Leon, 6, 58, 66
- Higher Education Act, 232
- high-school grades (class rank), socioeconomic affirmative action combined with, 189, 190
- high-school grades, vs. standardized test scores: and diversity of student body, 82; as predictor of college performance, 17, 18, 91, 149, 160–61, 166, 167*f*, 170–71, 253n6; in University of California admissions, 101
- high-school guidance counselors, 139
- Hill, Catharine, 3, 22–23, 141
- Hirschman, Charles, 96
- Hispanics, class stratification among, 204
- Hispanic students: application rates under Top 10 Percent plan, 93; college attendance by, growth in, 111, 163; college attendance by, relative decrease in, 167, 168*f*; in high school, growth in numbers of, 167; merit-based admissions and, 20, 191, 192*t*, 195, 195*t*; merit-based admissions with SES “plus factor” and, 191, 192*t*, 196, 196*t*; percent plan based on test scores and, 20, 191, 192*t*, 197, 198*t*; percent plan with “plus factors” and, 20, 192*t*, 193, 198*t*, 199, 199*t*, 200; undermatch among, 15–16, 135, 137, 137*f*; underrepresentation in higher education, 19, 194; at University of Georgia, 129
- holistic admissions system: vs. reliance on standardized tests, 165, 174; at UC Berkeley, 108; at UCLA, 108–9; at University of Oklahoma, 83–84; at University of Washington, 117. *See also* test-optional admissions policy
- Holmes, Hamilton, 123
- Holmes, Oliver Wendell, 245n18
- home equity, and educational outcomes, 207–8
- HOPE Scholarship, 127–28
- Hopwood, Cheryl, 91
- Hopwood v. University of Texas*, 10, 60, 63, 80, 91, 98, 163–64
- Howard, M. William, Jr., 119
- Howell, Jessica, 15, 16, 138

- Hoxby, Caroline, 15, 16, 31, 141, 142, 217–18, 219
- Hunter, Charlayne, 123
- Ifill, Sherrilyn, 29
- income: educational attainment and, 5, 33; racial disparities in, 209; real, decline in, 226; vs. socioeconomic status, 270n1; student loans contingent on, proposal for, 23, 233. *See also* income inequality; income vs. wealth; socioeconomic status
- income inequality, increase in, 27, 226–27; and economic segregation in higher education, 22–23, 37–38; policies needed to address, 4, 23, 227–28. *See also* low-income students
- income vs. wealth: as predictor of college completion, 21, 205, 206, 207; race correlation of, 21, 104, 209; use in socioeconomic affirmative action, 185–86, 210, 211
- information barriers, initiatives to address, 142–43, 233
- Israel, race-neutral strategies used in, 10
- Jack Kent Cooke Foundation, 87
- Johnson v. Board of Regents of the University of Georgia*, 81, 248n10
- Justice Department. *See* Department of Justice
- K-12 schools: unequal preparation in, 189, 202; university partnerships with, 87–88, 100, 127; use of racial preference in, *PICS* opinion on, 6, 7, 63. *See also* high-school grades
- Kagan, Elena, 241n2
- Kahlenberg, Richard, 76
- Kane, Thomas, 7, 9, 69
- Kennedy, Anthony: *Fisher* opinion of, 6, 43, 44, 47–50, 58, 63–64, 69, 242n16; *Grutter* dissent of, 6, 48, 62, 243n30; *PICS* opinion of, 6, 63, 69, 245n10
- Koffman, Dawn, 97
- Kotlikoff, Laurence J., 209
- Krueger, Alan, 5
- Landy, Benjamin, 17–18
- Lareau, Annette, 154
- leadership class, selective colleges and, 4–5, 28, 89
- legacy preferences: vs. geographic diversity, in admissions policies, 153–54; removal of, 14, 82, 84, 126, 153
- Lemann, Nicholas, 162
- Light, Audrey, 136
- Lincoln, Abraham, 145
- loans, student: access to, 232–33; contingent on income, proposal for, 23, 233; “party” pathway in higher education and burden of, 38
- Long, Mark, 95
- low-income students: access to information for, improving, 23, 142–43, 233; barriers to college attendance by, 35–36, 40, 96, 221, 228; class-plus-race affirmative action and, 182, 182*t*; college rankings and incentives against recruiting, 23; cost of higher education and, 35–36, 40, 221, 260n29; financial aid and recruitment of, 127; geographic diversity method and, 156; merit-based admissions and representation of, 20, 191–93, 192*t*, 195, 195*t*; merit-based admissions with SES “plus factor” and, 191, 192*t*, 196, 196*t*; Obama administration’s support for, 24; outreach and recruitment of, 15, 127; percent plan based on test scores and, 20, 191, 192*t*, 197, 198*t*; percent plan with SES “plus factors” and, 20–21, 192*t*, 193, 198*t*, 199; at selective colleges, 3, 23, 216, 253n1; socioeconomic admissions considerations and, 20–21, 180, 181*t*, 192*t*, 193, 198*t*, 199; three-year degree option and, 230;

- undermatch among, 15–16, 136, 138–39, 141–42, 217–18; underrepresentation in higher education, 19–20, 168–69, 169*f*, 194, 204
- Lumina Foundation: Cities Initiative of, 32; conference supported by, 2
- Luppino, Marc, 254n13
- Mandela, Nelson, 30
- Marshall scholarship, 147
- McCormick, Richard, 13
- McDuff, Nancy, 13–14
- merit, definition of, 30
- merit aid: anti-trust policies and, 229; competition among colleges on, 222; increase in, 221; vs. need-based aid, 22, 23, 229–30
- merit-based admissions: combined with race and class considerations, 189, 192*t*, 193, 199–200, 199*t*, 201–2; combined with socioeconomic considerations, 20–21, 189, 191–93, 192*t*, 194, 196–200, 196*t*, 198*t*, 199*t*; and diversity, 20, 201; “plus factors” in, devising, 193–94; pure model of, simulation of, 20, 188, 191, 192*t*, 194–95, 195*t*; and undermatch, solution to, 200. *See also* percent plans
- Michigan: ban on race-based affirmative action in, 55, 75, 78*t*, 81. *See also* University of Michigan
- minority groups: academic undermatch among, 15–16; class divisions within, 204, 205; cost of higher education and, 113; demographic trends among, 4, 28; disparities in educational achievement, 28, 113–14; factors discouraging college attendance by, 113, 115; and socioeconomic disadvantage, 176. *See also* “critical mass” of minority students; *specific groups*
- mismatch of students, 217, 274n8; in science, 223–24. *See also* undermatch
- mission, institutional: and diversity goals, 45–46, 67; reexamining after *Fisher*, 67
- mission deference, 61; in *Fisher v. University of Texas*, 64, 65*t*; in *Grutter v. Bollinger*, 61–62, 65*t*
- Murray, Charles, 164
- NAACP Legal Defense Fund, 174
- narrow tailoring, of race-conscious policies, 46–47, 60, 242n12, 242n16; *Grutter vs. Fisher* on, 49–50, 64, 70, 92, 243n28, 245n11, 247n36; *Johnson v. Board of Regents of the University of Georgia* on, 81
- National Center for Fair and Open Testing, 165
- National College Advising Corp, 127
- Nebraska: ban on race-based affirmative action in, 75, 79*t*, 81; expanded financial aid program in, 85. *See also* University of Nebraska-Lincoln
- Nebraska College Preparatory Academy, 87–88
- need-based aid: vs. merit aid, 22, 23, 229–30; targeting public subsidies to, 229
- neighborhood factors, in measures of socioeconomic status, 104
- New Hampshire: ban on race-based affirmative action in, 75, 79*t*, 81. *See also* University of New Hampshire
- New York: demographic trends in, 4, 28; “Say Yes to Education” program in, 32–33
- Niu, Sunny, 11, 94, 97, 170
- Nixon v. Herndon*, 245n18
- North Carolina: academic undermatch in, 135; percent plan in, potential impact of, 8
- Obama administration: college ranking system endorsed by, 23, 229; and competitive accountability in

- higher education, 222; interagency cooperation under, 33; and low-income student representation, 24
- Ober, Josh, 153
- Oberlin College, 146
- O'Connor, Sandra Day, *Grutter* opinion of, 44, 46, 48, 53; on benefits of diversity, 46, 114, 242n20; on life expectancy of affirmative action, 203; on narrow tailoring, 49, 64, 243n28, 245n11; on strict scrutiny, 6, 62
- Oklahoma: ban on race-based affirmative action in, 75, 76, 79t, 81, 274n5; holistic admissions system in, 83–84
- One Florida Initiative, 81, 83, 248n10
- online learning, 113
- “Opportunity Index,” 239n18
- outreach and recruitment: after bans on affirmative action, 86–88, 117–20, 121; community-based approaches to, 32–33; consortium approach to, proposal for, 220; geographical biases in, 141; of low-income students, 15, 127; person-based approach to, 31–32; by Rutgers University, 119–20; by University of California, 100, 103, 109, 220; by University of Georgia, 126; by University of Washington, 117–18
- Overachievement Index, 177–80, 178t, 179t, 182; race neutrality of, 269n13; students identified by, academic performance of, 184, 184t, 185
- overmatch, problem of, 217
- Pacific Legal Foundation, 245n15
- Page, Scott, 28, 29
- Panel Study of Income Dynamics, 21, 205–6
- parental education: and academic success of children, 206–7, 207f, 208, 212; considering in socioeconomic affirmative action, 209–11
- Parents Involved in Community Schools v. Seattle School District No. 1 (PICS)*, 6, 7, 47, 60, 63, 242n11; and *Fisher* opinion, 69; vs. *Grutter* case, 7, 47; on strict scrutiny, 58, 64
- Paying for the Party* (Armstrong and Hamilton), 38
- Pell Grants, 222; growth in, 256n13; in theory vs. practice, 39–40; *U.S. News & World Report* on, 253n1
- Pender, Matea, 138
- percent plans, 15, 82, 269n19; based on test scores, simulation of, 20, 191, 192t, 197, 198t; based on test scores, with SES and race “plus factors,” 192t, 193, 199–200, 199t; based on test scores, with SES “plus factors,” 20, 191–93, 192t, 197–99, 198t; in California, 82, 107–8; in Florida, 82, 83, 248n14; impact on diversity, 8, 20, 82, 191, 192t, 248n14; socioeconomic affirmative action combined with, 20–21, 189, 190, 191–93, 192t, 197–99, 198t. *See also* Top 10 Percent plan (Texas)
- PICS*. *See Parents Involved in Community Schools v. Seattle School District No. 1*
- Posse Foundation, 32, 240n20
- Potter, Halley, 9, 10, 13–14
- Powell, Lewis F., 44, 114, 245n15
- private scholarships, for minority students, 85, 118
- problem solving, diverse groups and, 4, 29
- professional schools, diversity goals at, 98
- professors, role in ensuring diversity, 39, 45–46
- public good, college diversity as, 29–30
- public institutions, decreased access of low-income students to, 230
- public policies: and community-based approaches to diversity, 32; cost of

- higher education and, 36; decline in support for higher education, 112, 113, 255n3, 256n4; direct funding of selective colleges, proposal for, 202; and diversity in higher education, 14–15, 45–47; income inequality and, 4, 23, 227–28; and race-neutral admissions strategies, 22–23; targeted at institutions, improving, 228–32; targeted at students, improving, 232–34
- pure-merit model, simulation of, 20, 188, 191, 192*t*, 194–95, 195*t*
- Quinn, Kevin C., 239n17
- race: correlation with socioeconomic status, 21, 104, 209; as “plus factor” in merit-based admissions, 189, 192*t*, 193, 194, 199–200, 199*t*, 201–2; vs. socioeconomic disparities, 204–5; surreptitious use in admissions, 102, 108–9, 254n13; and wealth disparities, 21, 104, 209
- race-conscious admissions policies: combined with class-based policies, 181–82, 182*t*, 185, 186, 190, 234; compelling interest of, 46–47, 48, 60, 65*t*; criticism of, 204; extent of, impact on diverse interactions, 224; *Fisher* and elevated burden of proof for, 70–71, 75, 216; *Grutter* decision on, 242n11, 269n13; legal rulings on, 1–2, 44, 58, 59–66, 163–64, 203; outreach and recruitment as alternative to, 121; public opinion on, 1, 189–90; review of, recommendations for, 66–67, 247n30; vs. socioeconomic considerations, 93–95, 99, 179, 180–81, 181*t*, 186; state bans on, 13, 75, 77*t*–79*t*, 80–81; vs. Top 10 Percent plan, 93–94, 98. *See also* affirmative action; bans on race-based affirmative action; narrow tailoring; strict scrutiny
- race-neutral admissions strategies, 116; administrative distaste for, 107; bans on race-based affirmative action and, 13, 77*t*–79*t*, 82–88; and campus demographics, 77*t*–79*t*, 88–90; cost of, consideration of, 8, 22, 52, 69–70, 243n29; and diversity, impact on, 10–11, 12, 20, 76, 109, 188, 190, 191–93, 192*t*; and diversity, opportunity to broaden concept of, 3; exploration of, as preventative measure, 67, 71; failings of, 190; *Fisher v. University of Texas* on, 2, 6, 7, 10, 44, 48–52, 64, 65–66, 69–70, 162, 173, 187, 235n4; government and foundation support for, need for, 22–23; and graduation rates, 188, 201; *Grutter* dissent on, 6, 62; implementation and enforcement of, 109; *PICS* opinion on, 63, 69; promising, research on, 15–21; public support for, 24; questioning of neutrality of, 33–34; short-term effects of, 100–103; simulation of different models of, 188–200; socioeconomic considerations in, 125; state experiences with, 9–14; success of, and challenges to race-based affirmative action, 14; transition to, 76; at University of California, 99, 100–103, 108–9; at University of Georgia, 13–14, 78*t*, 84, 124–29; workability of, 7–8, 69. *See also* geographic diversity considerations; holistic admissions system; merit-based admissions; socioeconomic affirmative action
- racial diversity: geographic diversity method and, 155–56; importance of, 28–29; race-neutral admissions policies and, 190, 192*t*, 196, 196*t*; socioeconomic affirmative action and, 19, 106, 109, 181, 190, 271n3; vs. socioeconomic diversity, at selective colleges, 3, 216

- Radford, Alexandria Walton, 15, 16, 136, 138
- ranking of institutions: financial aid and, 23, 231; improving, 230–31. *See also U.S. News & World Report* college rankings
- Reardon, Sean, 27, 204
- recruitment. *See* outreach and recruitment
- Regents of the University of California v. Bakke*. *See* *Bakke* case
- Rhodes scholarship, 147
- Roderick, Melissa, 136
- Rose, Stephen, 19–21, 253n1
- Rotary International* case, 150
- Rothstein, Richard, 154
- Rutgers University, 118–20; diversity at, 13, 118–19; Future Scholars Program at, 13, 119–20, 143; outreach and recruitment at, 119–20
- Ryan, James, 7, 9, 69
- Saenz, Victor, 95
- Saenz v. Roe*, 8, 243n29
- Sander, Richard, 11–12, 22
- Santelices, Maria, 166, 170–71
- SAT: discriminatory effects of, 17–18, 161, 164, 166, 167*f*; failure at identifying talent, 149; origins of, 146, 161, 162–63. *See also* standardized tests
- Say Yes to Education Foundation, 32–33
- Scalia, Antonin, 6, 21, 242n17
- Schaeffer, Robert, 165
- scholarships: private, for minority students, 85, 118; targeted, 85–86, 127–28
- science mismatch, 223–24
- selective colleges: anti-trust settlement involving, 22, 220–21, 229, 275n16; applicant pool at, 217–18; applicant pool at, enlarging, 218–20; after bans on affirmative action, 88; cooperation among, need for, 220–22; direct funding to, proposal for, 202; economic returns of attending, 138, 148–49; familiarity with, and application behavior, 140–41; graduation rates at, 137, 138; and leadership class, 4–5, 28, 89; priority balancing by, need for, 4; racial vs. socioeconomic diversity at, 3, 216; socioeconomic diversity at, government policies needed to support, 23; underrepresentation of low-income and minority students at, 15, 19–20, 194, 204, 217–18
- The Shape of the River* (Bowen and Bok), 3
- Smith, Jonathan, 138
- Soares, Joseph, 161, 172
- social capital, college attendance and, 150–51
- social mobility: decline in, 27; education and, 145, 215, 223; vs. “party” pathway in higher education, 38; wealth vs. income as predictor of, 185–86
- socioeconomic affirmative action, 15, 18–21; and academic performance, 107, 182–85, 183*t*, 184*t*; combined with class rank, 189, 190; combined with percent plan, 20–21, 189, 190, 191–93, 192*t*, 197–99, 198*t*; combined with percent plan and racial considerations, 189, 192*t*, 193, 199–200, 199*t*; combined with race-based admissions policy, 181–82, 182*t*, 185, 186, 190; combined with test scores, 189, 191, 192*t*, 196, 196*t*; devising, 176–80; and diversity, 19, 20, 90, 95–96, 106, 109, 185, 190; early vs. more recent research on, 18–19; experiments with, 180–82, 188; and graduation rates, 19, 21; legal scrutiny of, likelihood of, 21; parental education and wealth considerations in, 209–11; promise of, 186; public support for, 21, 238n98; push for, reasons for, 203–5; vs. race-conscious admissions,

- 93–95, 99, 179, 180–81, 181*t*, 186; and racial diversity, 19, 106, 109, 181, 190, 271*n*3; and SAT scores, 20; shortcomings of, 59, 95–96, 190; state bans on race-based considerations and, 83–84, 109; Supreme Court on, 21; at UCLA Law School, 11, 12, 103–7; at University of Colorado at Boulder, 18–19, 176–85, 246*n*29; wealth vs. income considerations in, 185–86, 210, 211
- socioeconomic disadvantage: index of, 19, 177–80, 178*t*, 179*t*, 182; and minority status, overlap between, 176; vs. racial disparities, 204–5. *See also* low-income students
- socioeconomic diversity, in higher education: accountability for, need to increase, 230–32; geographic diversity method and, 155, 156; government policies promoting, proposal for, 23; importance of, 28–29, 234; merit-based admissions and, 20, 191–93, 192*t*, 195, 195*t*; merit-based admissions with SES “plus factor” and, 191, 192*t*, 196, 196*t*; vs. racial diversity, at selective colleges, 3, 216; at selective colleges, government policies needed to support, 23; Top 10 Percent plan and, 10–11, 95; at University of California, 100; at University of Michigan, 10, 100; at University of Virginia, 3, 100
- socioeconomic status (SES), 270*n*1, 271*n*5; and academic undermatch, 15–16, 136, 138–39, 141–42; and application behavior, 96–97, 140, 259*n*19; broad measures of, 18, 104, 108; and college aspirations and attendance, 95, 168–70, 169*f*; and college completion rates, 203–4; and enrollment choices, 141–42; index of dissimilarity for, 105–6; as “plus factor” in merit-based admissions, 189, 191–93, 192*t*, 194, 196*t*, 197–99, 198*t*; and race-neutral admissions strategies, 125; and standardized test scores, correlation of, 161, 166*t*; stratification of higher education by, 203–4; survey-based approach to assessing, 210. *See also* low-income students; socioeconomic disadvantage; wealth
- software, to support race-neutral strategies, 22, 218–19
- Souter, David, 33
- standardized tests: affirmative action supporters and, 161–62; criticism of, 164–70; discriminatory effects of, 17–18, 161, 164, 166, 167*f*, 265*n*6; vs. holistic admissions, 165, 174; origins of, 146, 161, 162–63; possible legal challenges to, 174; reduced reliance on, arguments for, 16, 17–18, 170–73, 172*t*; socioeconomic disadvantages factored in, diversity impact of, 20; staying power of, factors responsible for, 165. *See also* merit-based admissions; standardized test scores; test-optional admissions policy
- standardized test scores: vs. high-school grades, as predictor of college performance, 17, 18, 91, 101, 149, 160–61, 166, 167*f*, 170–71, 253*n*6; overinvestment in, 30; percent plan modified by, 20, 191, 192*t*, 197, 198*t*; reduced reliance on, and campus diversity, 17–18, 82; socioeconomic affirmative action and impact on, 20; socioeconomic affirmative action combined with, simulation of, 189; and socioeconomic status, correlation of, 161, 166*t*
- Stanford University, geographic diversity of students at, 147
- Steele, Claude, 265*n*6
- Strayer, Wayne, 136
- strict scrutiny, of race-conscious policies, 6, 46–47, 60; *Fisher* on,

- 47–50, 51, 65*t*; *Grutter* on, 6, 62, 65*t*; impact of, 31; incompatibility across *Gratz*, *Grutter*, and *PICS*, 58, 64; scope of, 241n3
- STRIVE, 32
- Strohl, Jeff, 3, 19–21, 113–14, 167, 169
- Studley, Roger, 177
- Sturm, Susan, 239n6, 240n26
- Sullivan, Teresa, 94
- summer bridge programs, 88
- Summers, Lawrence H., 209
- Supreme Court: argument for diversity and, 114; on *Fisher v. University of Texas*, 1–2, 10, 43–44; on *Gratz v. Bollinger*, 62; on *Griggs v. Duke Power Co.*, 174; on *Grutter v. Bollinger*, 5, 6, 61–62, 80, 164; mission deference by, 61–62; on *Parents Involved v. Seattle*, 6, 7, 63; on race-conscious admissions policies, 1–2, 60–66; on *Rotary International* case, 150; on *Saenz v. Roe*, 8, 243n29; on socioeconomic affirmative action, 21. *See also specific judges and cases*
- Syracuse, New York, “Say Yes to Education” program in, 32–33
- talent, identifying, 146, 149; geographically based approach to, 147–56
- Talented 20 program (Florida), 82, 83, 248n14
- tax returns, use in socioeconomic affirmative action, 210
- Taylor, Teresa, 5, 7, 8, 187
- test-optional admissions policy, 18, 165; diversity associated with, 171, 172–73, 172*t*
- Texas: demographic trends in, 4, 11, 28, 93; outreach and recruitment of underrepresented students in, 86; race-neutral admissions programs in, 10–11; restrictions on race-based affirmative action in, 75, 77*t*, 80. *See also* Texas A&M University; Top 10 Percent plan; University of Texas at Austin
- Texas A&M University: campus demographics after ban on affirmative action, 89; financial aid provided by, 97; after *Grutter*, 251n7; after *Hopwood*, 80; legacy preferences discontinued at, 84, 153; after restrictions on affirmative action, 77*t*; Top 10 Percent law and, 95, 97
- Texas Higher Education Opportunity Project, 98
- Thomas, Clarence, 6, 21, 242n17
- three-year degrees, 230
- Tienda, Marta, 10–11, 14, 170
- Title VI of Civil Rights Act, 2, 46, 50, 241n8; legality of SAT under, 162, 174
- Title VII of Civil Rights Act, 174, 266n11
- Top 10 Percent plan (Texas), 8, 10–11, 82; academic performance of students admitted through, 97, 170; and application behavior, 97; and campus diversity, questioning of claims regarding, 11, 92–95, 98; effectiveness of, 10–11, 16, 92, 98; and financial aid, need for, 96, 97; geographic diversity program compared to, 150, 155; *Hopwood v. Texas* and, 63; Justice Ginsburg on, 246n23; origins of, 91, 163; vs. race-conscious admissions policies, 93–94, 98; and socioeconomic diversity, 10–11, 95; vs. standardized testing, 164; and strategic high school choice, 154; unintended consequences of, 98; variations on, 15
- Turner, Sarah, 16, 31, 142
- UC-Berkeley: after ban on affirmative action, 77*t*, 89; holistic admissions system at, 108
- UC-Berkeley Law School, racial preferences at, 108

- UCLA: after ban on affirmative action, 77*t*, 89; holistic admissions system at, 108–9
- UCLA Law School: academic performance of students receiving SES preferences at, 107; Critical Race Studies program at, 108; financial aid at, 107; socioeconomic affirmative action plan at, 11, 12, 103–7; socioeconomic composition of students at, 254n20
- undermatch, 217, 218; application behavior and, 138–41; consequences of, 136–38; cost of college and, 139, 140, 141; definition of, 134; at enrollment stage, 141–42; extent of, 134–35, 135*f*; factors responsible for, 15–16, 135–36, 139–41; and graduation rates, 136; merit-based admissions policies as solution to, 200; socioeconomic status and, 15–16, 136, 138–39, 141–42, 217–18; strategies for addressing, 16, 142–43
- University of Arizona: after ban on affirmative action, 79*t*, 89; summer bridge program at, 88
- University of California: adoption of race-neutral policies and, 99, 100–103, 164; Blue and Gold Opportunity Plan at, 85; community college transfer enrollment at, 87; graduation rates for minority students at, 102–3; group challenging policies of, 245n15; holistic admissions system at, 108–9; legacy preferences discontinued by, 84; outreach and recruitment by, 100, 103, 109, 220; percent plan at, 107–8; socioeconomic diversity on campuses of, 100; survey-based approach to assessing class background, 210. *See also* UC-Berkeley; UCLA
- University of Colorado at Boulder: class-based affirmative action at, experiments with, 18–19, 176–85, 246n29; class-plus-race system at, 181–82, 182*t*, 185; commitment to diversity in, 175–76, 177; Disadvantage and Overachievement Indexes used at, 19, 177–80, 178*t*, 179*t*, 182; mission of, 177; support system for disadvantaged students at, 185
- University of Florida: after ban on affirmative action, 78*t*, 85, 86, 89; after *Johnson v. Board of Regents of the University of Georgia*, 248n10; outreach and recruitment of underrepresented students by, 86
- University of Georgia, 122–30; diversity at, 122–23, 125, 128–29; financial aid at, 127–28; formula-based admissions plan at, 124; graduation rates for minority students at, 129; history of diversity at, 122–24; legacy preferences discontinued by, 84, 126; legal challenges to admissions policies of, 124; partnership with K-12 schools, 127; race-neutral strategies used by, 13–14, 78*t*, 84, 124–29; after restrictions on affirmative action, 78*t*, 81, 89
- University of Maryland, Ascent Program at, 143
- University of Michigan: after ban on race-based affirmative action, 78*t*, 85–86, 88; financial aid program at, 85; geographic diversity of students at, 147; *Gratz* decision and, 241n5; institutional mission of, diversity in, 46; and Panel Study of Income Dynamics, 205; partnership with K-12 schools, 87; programs for transfer students at, 87; socioeconomic diversity at, 10, 100; targeted scholarships at, 85–86
- University of Michigan Law School: “critical mass” defined by, 7; *Grutter* decision and, 46, 54, 61–62, 241n5

- University of Nebraska-Lincoln: after ban on affirmative action, 79*t*, 85, 89; partnership with K-12 schools, 87–88
- University of New Hampshire, 237*n*43; attitude toward racial and ethnic diversity at, 89; after ban on affirmative action, 79*t*
- University of North Carolina at Chapel Hill, 8
- University of Oklahoma: ban on affirmative action and, 79*t*; holistic admissions system at, 83–84
- University of Texas at Austin: acts of racial violence at, 57; campus demographics after ban on affirmative action, 89; on “critical mass” of minority students, 244*n*32; financial aid provided by, 97; after *Grutter* decision, 80, 92; legal cases involving, 60, 91; outreach and recruitment of underrepresented students by, 86; race-neutral alternatives explored by, 71; after restrictions on affirmative action, 77*t*, 80; Top 10 Percent law and, 95, 97, 98; vice provost for inclusion and cross-cultural effectiveness at, 57. *See also* *Fisher v. University of Texas*; *Hopwood v. University of Texas*
- University of Virginia, socioeconomic diversity at, 3, 100
- University of Washington, 116–18; ban on race-based affirmative action and, 13, 77*t*, 85, 89, 117, 120; Diversity Scholars program at, 85, 118; Educational Opportunity Program at, 88, 116; holistic admissions system at, 117; outreach and recruitment by, 117–18
- U.S. News & World Report* college rankings, 230–31; diversity measures in, 230–31, 232; and low-income students, incentives against recruiting, 23; Pell Grants in, 253*n*1; test scores in, 17, 165
- Vincent, Greg, 57
- voter referenda, and bans on affirmative action, 81, 175
- Wake Forest University, test-optional admissions policy at, 18, 165, 172–73
- Washington, George, 153
- Washington state: ban on race-based affirmative action in, 13, 75, 77*t*, 81, 96, 116–17; race-neutral admissions strategies used in, 13. *See also* University of Washington
- wealth: and academic success, 206, 207–8, 207*f*, 211; historical legacies and, 209; measuring, 211; and “party” pathway, 38; racial disparities in, 21, 104, 209; use in socioeconomic affirmative action, 185–86, 210, 211
- wealth, vs. income: as determinant of educational opportunity and upward mobility, 185–86; as predictor of college completion, 21, 205, 206, 207
- wealthy interests, and cost of higher education, 37–39
- Wesleyan University, 230, 234
- Wightman, Linda, 164
- Wilson, William Julius, 204
- Winston, Gordon C., 141
- Wisconsin Scholars Longitudinal Study, 39
- women, in higher education, 146
- World War II, college attendance after, 110, 111
- Yeung, Wei-Jun Jean, 208
- Young, John, 265*n*6
- Zen Miller scholarship, 127
- ZIP codes, use in college admissions, 16–17, 147–48, 155
- Zwick, Rebecca, 165

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