

## **Opportunity as Controversy: A Portrait of College Affirmative Action in the United States**

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The United States has a complicated love affair with the idea of “equal opportunity.” The average citizen acknowledges and aspires to the American Dream—the ideal that any resident of the United States, regardless of background, may succeed and prosper, and that their life, liberty, and property will be protected by the U.S. Constitution. Indeed, the Fourteenth Amendment declares that no state may “deprive any person of life, liberty, or property without due process of the law; nor deny to any person within its jurisdiction the equal protection of the laws.” Ratified in 1868, the amendment granted rights to newly freed slaves and expanded the individual rights of citizens within state jurisdictions. Today, the Fourteenth amendment has been used as a foundational argument in the controversy over college admissions and most directly how the use of race is used in these educational environments.

The legal chronology regarding the use of race in university admissions has broadly evolved from the U.S. Supreme Court case *Sweatt v. Painter* (1950) whereby the doctrine of “separate but equal” in a university context was successfully challenged reversing the legality of this principle from *Plessy v. Ferguson* (1896) and later solidified through *Brown v. Board of Education* (1954) to effectively eliminate legal segregation in all educational institutions. However, the broader consideration of race as an element of integration versus segregation thereby constituting an educational benefit of diversity for all students was not established until the *Bakke* (1978) decision, which was further substantiated in *Grutter v. Bollinger* (2003) and upheld in *Fisher v. Texas* (2013). While the role of diversity as an educational benefit has been noted by the court, and the use of race as one factor of consideration is constitutionally allowed with the exception of jurisdictions where state law or institutional leadership purposely

disqualifies this factor, considerable debate remains around why race should even still matter to American society. Indeed, the argument has turned its focus to a “more comfortable” form of inequality that is based on social and economic class. While this form of inequality has its own pervasive and harmful outcomes and shows no signs of decreasing soon (Reardon, 2011), changing the focus of admissions to class does not negate the issue of race in American society, which is still a significant problem as seen in the most recent events from Ferguson, Missouri (Kristof, 2014). Pervasive racial inequality can be seen most readily and relevantly through the quality and rigor of our public schools, the public’s trust in social institutions such as law enforcement, the concentration of poverty among certain racial and ethnic groups, and unequal access to the social and economic networks that lead to success in higher education and employment. There appear to be few greater litmus tests for how we as a country recognize and respond to the realities of racial differences than the policy of affirmative action.

What is the story of affirmative action policy in the U.S. as it specifically relates to *education*? One perspective is that race-based affirmative action should be eliminated from our legal and educational infrastructure because the policy divides society, and hurts minority students who benefit from these preferences (Khalenburg, 2012; Sanders, 2012; Thernstrom & Thernstrom, 1997). Others argue that we must keep using race in college admissions due to the documented educational benefits of diversity for all students (See Chang, 2011 for a review of social science literature on this topic). These include cognitive gains in college, increased global competitiveness, reduction of stereotypes and discrimination, and improved campus climate outcomes (Bowman, 2010; Chang, 2011; Gurin, Dey, Hurtado & Gurin, 2002; Hurtado et al., 200). Another approach has been to employ policy and program evaluation methodologies to evaluate whether affirmative action is indeed more effective than class-based policies or policies

deemed “race-neutral” in regard to increasing the levels of race and ethnic diversity in a student body (Blume & Long, 2014; Chan & Eyster, 2003; Kurlaender & Grodsky, 2013; Long & Tienda, 2008). Amongst these arguments and analyses one fact is clear. The portrait of the students currently attending America’s public schools does not nearly mirror the population of the nation’s most selective colleges and universities.

In this essay, I describe the role of college affirmative action through the following events: (1) the demographic transformation of the U.S. student body and the implications for not integrating this student body into the nation’s most relevant institutions; and (2) the varied and continuing challenges to affirmative action as well as substitutions for this policy and the outcomes from these policy changes. I end with a discussion of the role of rigorous policy analysis research in the interpretation of what these changes mean for not only the U.S. but also other national contexts considering educational policies for the purpose of mitigating inequality.

*-- Demography and its role in national security*

To say the demography of the United States has changed over time is an understatement. A more precise statement may be that state contexts and their educational infrastructure are facing the most dramatic demographic transformation documented since census documents were recorded in the U.S. The year 2011 marked a particularly critical year when the majority of all births in the United States were documented as non-white (Dougherty & Jordan, 2012). Other forms of the transformation include the fact that 14 states have a majority-minority child population and the number of states that have a total population of majority-minority individuals has grown to five with others soon to join this list (Frey, 2011). These combined demographic forces across the states set national records in 2013 when the U.S. Department of Education announced that the majority of all public school children in the U.S. are now non-white (Strauss, 2014).

Accompanying this transformation is the growing demographic strength of the Latino population. Latino-origin individuals comprise the largest group among the foreign-born, and now are the largest minority group in the nation's two and four-year postsecondary sectors (Fry & Lopez, 2012).

Why should this matter to society? In preparation for the *Fisher v. Texas* (2013) case, state legislators from Texas, a highly dynamic demographic state and the location of the legal case in question, argued in a brief to the U.S. Supreme Court that the U.S. Constitution does not require for government officials to ignore demographic realities (Brief for *Fisher v. Univ. of Texas*, 2012a). Indeed, as members of the U.S. Senate, House of Representatives, and the Executive Branch argued in separate briefs, Congress and the Executive Branch have supported activities that have endorsed diversity in higher education as the benefits yielded from this diversity are critical for a career fields that are of national interest such as those in the military, science, law, medicine, finance and of course, education (Brief for *Fisher v. Univ. of Texas*, 2012,b-d). Such representation, members of Congress argued, is beyond civic responsibility and instead one of necessity for competition in a global economy evolving at an unprecedented rate (Brief for *Fisher v. Univ. of Texas*, 2012c). Indeed, in *Grutter v. Bollinger* (2003), the U.S. Supreme Court had already noted the arguments made by military leaders that diverse representation in the military was necessary for the essential operation of national security. The various briefs suggest that the production of a racially and ethnically diverse range of graduates who can enter these careers and positions of leadership is necessary for the purpose of a productive, effective, and secure society. Creating barriers to opportunities in the nation's most selective universities, from which a large percentage of this leadership is likely to come, both minority and non-minority, is likely to inhibit this societal goal.

*State policy and the Decline of representation of racially and ethnically diverse students*

Challenges to the use of affirmative action, or the use of race as one factor of consideration, were formally activated with Special Policy 1 (SP-1) policy instituted by the University of California Board of Regents to suspend the use of race in college admissions in 1996 (Horn & Flores, 2003). Further challenges were initiated through the federal courts (*Hopwood v. Texas*, 1996), and subsequently adopted through voter referenda, legislative constitutional amendments, and a gubernatorial decision in 7 additional states for a total of 8 state bans as of 2014 (CA, WA, MI, NE, AZ, OK, FL, NH) as the Texas ban was overturned via the *Grutter* decision. Some of these states and institutions in these states (CA, TX, and FL) have instead relied on perhaps the most popular of alternative admissions plans, the state mandated percent plans, policies that guarantee students admission to public colleges and universities if ranked within a certain percentile of their high school graduating class. These percent plans privilege high school ranking as the primary metric for admission and have wide appeal outside of the United States because of the additional consideration given to academic achievement regardless of or in addition to test scores which are often a more direct measure of wealth and privilege while performance on grades in school represent a more comprehensive set of achievement skills. We now have over fifteen years of research on the various percent plans (most of it on the Texas plan) with outcomes that are remarkably similar. In regard to restoring the level of race and ethnic diversity in a student body prior to the dissolution of affirmative action, percent plans do not achieve this outcome (Long & Tienda, 2008). Where there has been success on increases in the college-going population in Texas as a result of the percent plan, such increases occurred in high schools that were already sending high percentages of students to college. The locations in which the percent plan was intended to have the strongest effect on college enrollment, high poverty high schools

with concentrations of low-income and minority students, were not positively affected by this admissions plan (Daugherty, Martorell & McFarlin, 2014).

Finally, other research from economics has evaluated the general option of color-blind approaches to admission (Chan & Eyster, 2003; Fryer, Loury, & Yuret, 2009; Long, 2014). These authors have found that the use of these color-blind or race-neutral approaches have instead reduced the quality of the student body which they define as an overall loss of efficiency in regard to the process of choosing a qualified student body and the metrics that comprise quality for these institutions (e.g. academic preparation, test scores, and other characteristics desirable to selective institutions). Another recent story of applying alternative admissions plans has been on the level of student representation as a result of the affirmative action bans themselves (Flores & Oseguera, 2013). Previous work has found that states with bans on affirmative action has led to a significant decline in the presence of underrepresented students in the states with these restrictions, particularly for Black students (Blume & Long, 2014; Backes, 2012; Hinrichs, 2012; Howell, 2010). More recently, Blume & Long (2014) found that the bans also have a negative effect for minority students applying for from neighboring states where affirmative action has not been eliminated. The results, overall, indicate that these voter and institutional induced bans on affirmative action reduce college opportunity for minority students. These findings are particularly relevant when the pool of eligible students in the K-12 public sector has never been as large and diverse. This is where the most recent and arguably large-scale conflict of our conflicted love affair with equal opportunity in the United States is taking place: postsecondary institutions. While the conflict is jurisdictional, the implications are national and ultimately also of a global nature if we define educational opportunity as a key metric for a nation's success.

## *Conclusion*

On the matter of the use of race as a factor of consideration in college admissions, *rigorous* multidisciplinary social science has landed on the same page: there is no other more effective mechanism that leads to increased race and ethnic diversity. On the matter of whether class should also be considered as a factor of consideration, the message is also clearly supported by numerous scholars interested in the study of mitigating inequality. There should be a place for the consideration of class in the admissions equation and the use of race does not preclude this. To those in charge of public policy related to addressing inequality and promoting educational equity, I urge a reflective and deeper look at the methodological rigor of work that informs our policy decisions. This will take more time, but the educational fate of generations across many countries is at stake. What clearly has not worked in the U.S. may indeed have more fruitful outcomes on different disadvantaged populations in the other countries. However, the ways to decipher this responsibly is to consult rigorous research and not construct policies based on their value as a good slogan. We owe at least this much deliberation to the generations that will become the next leaders of our respective national contexts.

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