



Affirmative Action in Postsecondary Educational Settings: The Historic Nexus of Meritocracy and Access in US Higher Education

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Access to American colleges and universities remains one of the most important issues in education. Current research and policy address the concepts of diversity, participation, and achievement in postsecondary settings. Affirmative action has become a flashpoint in this context and investigations. This article examines the intersection of this policy/practice with educational attainment based on meritorious achievement. The article also highlights the confluence of affirmative action and educational mobility for graduating high school students. The aims of this article is three-fold: (1) to frame conceptions of diversity from a historical perspective; (2) to address diversity in relation to educational, social, and economic mobility of a multi-ethnic student populace; and (3) to determine the relation between how students transition from high school to college.

Higher Education Policy (2003) 16, 27–38. doi:10.1057/palgrave.hep.8300004

Keywords: affirmative action; educational opportunity; meritocracy; equality; access; policy

Background

Judicial and legislative actions (e.g. Civil Rights Act of 1964, Title IX, Section 504 of the Rehabilitation Act of 1973, and American with Disabilities Act) prohibiting discrimination on the basis of race/ethnicity, national origin, gender, and disability were enacted as American postsecondary institutions were traditionally homogenous and lacked diversity relative to its participants. While access to American colleges and universities was historically reserved for white middle-class males, in 1965 Executive Order 11246 ratified affirmative action, which has since developed into one of the perennial debates of contemporary times. At the core of the debate remains the age-old question of who should have access to college. Over time, the lack of consensus regarding affirmative action has spanned from whether higher learning should be



available to the sons of non-landowners during colonial times, to the merits of educating women and freed slaves, as well as centering on immigrants, international students, and those from poverty-stricken families. At present, the discourse is squarely centered on how to best affirm diversity and encourage greater participation among underrepresented collegiate populations in lieu of divergent opinions about affirmative action.

Affirmative action is a government policy that seeks to remedy longstanding discrimination directed against specific racial/ethnic minorities and women. To this end, affirmative action sets out procedures and guidelines so that eligible and interested citizens receive equal opportunity to consideration for participation. However, as the discontents of diversity continue, marginal progress has been made in renegotiating and affirming cultural pluralism in American schools. As public conversation surrounding affirmative action has depicted such policy and programming efforts as preferential treatment, this review of the extant literature seeks to examine the ideological conflicts that permeate the dialogue as it pertains to framing affirmative action as undue favoring of racial/ethnic minorities *vis á vis* other forms of nepotism and access. Hence, this paper addresses the importance of affirmative action as an anti-discrimination measure for enhancing educational mobility and postsecondary opportunities for graduating high school students.

Like society itself, education within the United States too must respond to the swelling population of students from myriad backgrounds and experiences. Consequently, the educational structure must also face the complex nuances of multiple cultures, languages, and contexts within the classroom, and within higher education on the college campus. At the postsecondary level, the multiplicity of these nuances requires particular attention as it relates to who gets into college and how well they perform academically. One of the daunting challenges facing postsecondary education in the United States are attempts to marry educational opportunity with educational outcomes while being inclusive of all students.

As the continued ambiguity surrounding affirmative action calls for further study of unexplored, unanswered, and under-investigated questions in better facilitating diversity in American postsecondary institutions, the purpose of this review is to synthesize research into affirmative action as it has been framed historically, legally, and within the sociopolitical context of education. More specifically, the chief aims of this paper are as follows: (1) to highlight historical and legal perspectives of ethnic diversity; (2) to review legislative actions affecting affirmative action at postsecondary institutions; (3) to address whether diversity is a compelling interest relative to the educational, social, and economic mobility of a multiethnic student populace; and (4) to consider the how students from marginalized groups move from secondary school to college during an era when affirmative action has been sent back.

Historical and Legislative Origins of Diversity Efforts

Antecedents to the modern-day discussions of affirmative action as a means to affirm and achieve diversity date back to legal challenges waged prior to the early 1970s implementation of affirmative action programming. Although the use of race in granting educational access has continually been questioned, the 1950s laid the groundwork for what became equal educational opportunity. In *Brown v. the Board of Education, Topeka, Kansas* (1954) the Supreme Court maintained that the precedent of 'separate but equal' set in *Plessy v. Ferguson* (1896) was no longer constitutional. As a result of the *Brown* verdict, it was assumed that educational institutions would no longer resist the enrollment of African Americans. In *Florida ex. rel. Hawkins v. the Board of Control* (1956), the unconstitutionality of 'separate but equal' was extended beyond elementary and secondary schools to enforce higher education desegregation.

Together, the 1950s and 1960s saw the notion of racial diversification and policy implementation become a national priority. However, segregation, prejudice, and discrimination continued. The promotion of equality for all was not widely accepted. Numerous African American students enrolled at historically black colleges and universities or Northern colleges prior to national efforts to equalize educational opportunities (Brown, 1999; Aragon and Zamani, 2002). When affirmative action was first initiated, President Lydon B. Johnson enacted this social policy as a means to an end; affirmative action was held to be the means of ending discrimination and fostering full participation by racial/ethnic minorities and women (Edley, 1996).

Having advanced from Title VI of the Civil Rights Act of 1964, affirmative action extended equal protection for United States citizens. Still, many educational institutions continued to reflect *de facto* segregation even though Title VI made it unlawful for American institutions to discriminate against any individual on the basis of race, color, religion, sex, or national origin (Fleming *et al.*, 1978; Howard, 1997; Trent, 1991). Despite the intentions and original purposes of Title VI, postsecondary institutions face the immense task of defending any and all affirmative action activities in an attempt to be inclusive of the underrepresented and disadvantaged.

Drawing up affirmative action plans and programs was not required at American postsecondary institutions in 1971 (Fleming *et al.*, 1978). In particular, predominately White institutions were targets of initiatives to diversify college campuses. During this period, affirmative action was as its infancy in addressing the needs of African American students in respect to access, recruitment, and support services. Although initially established to redress previous discrimination against African Americans and to discourage racial intolerance, over time affirmative action focused on increasing the participation and representation of other racial/ethnic groups (i.e., Asian American, Hispanic American and Native



American). In addressing inequality more broadly, similarly, affirmative action has additionally sought to address the concerns of women and the poor who have not customarily been treated without bias and/or barriers to educational, financial, and social upward mobility.

From the onset, various forms of affirmative action in postsecondary education have been challenged. A common misconception that many (i.e., White Americans) hold is that strategies of this kind (e.g., race-specific and/or gender-based affirmative action programming) are a form of tokenism, and preferential treatment (Kluegel and Smith, 1986; Feinberg, 1996; Sears *et al.*, 2000). Rather, student affirmative action is seen as advocating equal educational opportunities directed toward African Americans, Hispanic Americans, Native Americans, and women to increase the number of underrepresented students in the pool of applicant (Trent, 1991). Student affirmative action programs eliminate barriers to educational attainment for women and students of color by seeking to right historical discrimination as well as the present-day effects of past inequities (Trent, 1991; Crosby, 1994).

Legal Challenges to Affirmative Action in Postsecondary Settings

From the start, affirmative action has met resistance. The earliest challenge to the use of affirmative action involved the appropriateness of race in admission to higher education. The court found the University of Washington Law School's use of race in admissions to be unconstitutional in the case of *DeFunis v. Odegaard* (1973). The law school was accused of having separate admissions procedures for students of color by giving less weight to their predicted first-year averages. As such, DeFunis argued that under-qualified students of color had been accepted under affirmative action programs to the disadvantage of White students. This case set the precedent for considerations of race when enrolling more racially and ethnically diverse students. The Washington State Supreme Court's decision to overturn the ruling on appeal argued that it was in the state's interest to promote a racially balanced student body and to incumbent upon the state to address the shortage of African American and Hispanic attorneys.

Five years after *DeFunis v. Odegaard*, another dispute regarding affirmative action involved the *Regents of the University of California v. Bakke* (1978). Alan Bakke sued the university on the grounds of reverse discrimination after being twice refused admission to the University of California at Davis medical school. The Supreme Court ruled that Bakke's civil rights had been violated in the use of strict set-asides. The court further held that numerical quotas were not admissible in higher education admissions. More important, the court also ruled that the use of race as one factor among many for the purpose of



increasing diversity was constitutional, given the legacy of historical discrimination and its continuing present-day effects.

Signs of prior gender bias in addition to racial intolerance may operate since historically American women had been discriminated against in education and industry. However, injustices along lines of race and gender are not necessarily parallel. The system of single-sex colleges in Mississippi was struck down in the early 1980s. The court denounced the justification of women's colleges based on remediation for past discrimination. It ruled that women's institutions were no longer justifiable in the case of *Mississippi University for Women v. Hogan* (1982). Furthermore, the court declared that remediation attempts to redress previous discrimination of women did not equate to the injustices of African Americans and other people of color (Caso and Corry, 1996). Shortly after affirmative action was enforced in American institutions, women in particular have benefited. College attendance rates have climbed. In some respect women are considered to have reached parity with their male counterparts in the workplace despite covert forms of differential treatment, the glass ceiling effect on promotions and the lack of equity in pay (Dutt, 1997; Hartmann and Whittaker, 1998; Hecker, 1998).

Legal developments related affirmative action in postsecondary education have not been limited to access and college admissions. In the case of *Podberesky v. Kirwan* (1994), the use of race-specific scholarships at the University of Maryland at College Park was questioned. The merit-based Benjamin Banneker Scholarship, earmarked for African American students, was closely scrutinized. The Banneker scholarship sought to compensate underrepresentation and to attract academically talented African American students to the university. Challenging the basis of the Banneker scholarship, Podberesky sued the university for providing full scholarships to high-achieving African Americans. *Podberesky v. Kirwan* is illustrative of the increasing difficulties postsecondary institutions face to designate a fellowship or scholarship specifically for racial/ethnic minorities (Jackson, 1990). A federal court ruled it was not permissible to maintain separate financial merit awards according to race (Shapiro, 1995). Interestingly, there is an intersection between race, notions of meritocracy, and perceived need in the case against the University of Maryland's affirmative action program being race-targeted and merit-based and taking the form of financial assistance.

Proposition 209 sought to ban affirmative action in the state of California. The Proposition, passed by voter referendum prohibited student affirmative action and the use of affirmative action in employment for both business and education. As a result, the University of California Board of Regents ruled that affirmative action (i.e. student admissions and merit-based, race-targeted scholarships) would no longer apply to any of the colleges and universities within the California system in 1995 (Jones, 1998). Following the passage of



Proposition 209, organized opposition in other states including Florida, Georgia, Texas, and Washington mounted against affirmative action policies and programs while several other states still hold this issue under consideration (Schmidt, 2002). Advocates of affirmative action sought to appeal against Proposition 209 and in November of 1997, the US Court of Appeals refused to lift the ban on affirmative action in admission and employment in California in view of the overall support for it in the state referendum. One of the unintended consequences of the assault on affirmative action has been the active search for alternatives since freshmen cohorts entering the University of California system and the homogeneity of entering students is greater than ever (Orfield, 1998; Ibarra, 2001).

Legislation against-affirmative action in California led to further attacks on affirmative action in postsecondary institutions around the country. *Adarand v. Peña* (1995) was contemporaneous with efforts to abolish affirmative action in California. The *Adarand* case did not concern education but rather the use of race in awarding construction contracts. Even so, it had far-reaching effects on implementing diversity initiatives in postsecondary education. Use of affirmative action at institutions of higher learning became more sensitive as a result of judicial scrutiny and rejection of federal set-aside programs. The *Adarand* verdict spurred a greater resistance to affirmative action, prompted a climate hostile to alter maturation and lead to a series of cases that have sought to dismantle it in higher education and in general (Amar and Katyal, 1996; Rosen, 1996; Schmidt, 2002).

Hopwood v. Texas (1996) was one such case; *Hopwood v. Texas* concerned four White students who filed suit against the University of Texas at Austin School of Law after being denied a place. The plaintiffs alleged that the university's law school operated separate admissions criteria for African American and Hispanic applicants. The Fifth Circuit Court ruled in the students favor. It prohibited the law school from using what the court deemed to be preferential treatment in diversifying the composition of the student body. In 1996, University of Texas officials appealed the decision of the Fifth Circuit Court. The Supreme Court upheld the lower court's ruling thereby continuing the ban on race and student affirmative action at Texas' public campuses (Chapa and Lazaro, 1998; Healy, 1998).

Since the decision of the Supreme Court, more high-profile cases with conflicting rulings on affirmative action in American postsecondary institutions emerged. Two suits against University of Michigan were filed in 1997, *Gratz v. Bollinger* (2000) which challenges the procedure for undergraduate admissions as well as *Grutter v. Bollinger* (2001) which involves University of Michigan's law school policies (Schmidt, 2002). Recently, in the latter case, the US Sixth Circuit Court of Appeals overturned the lower court's decision that the use of race was inappropriately used. The decision has given the supporters



of affirmative action in graduate and professional school admissions new life both in Michigan and in Kentucky, Ohio and Tennessee. Although the ruling shows contradictory opinions over affirmative action, particularly race-specific forms, it clearly points to differing policy stances across federal courts of appeals by region (Schmidt, 2002).

Overall, 20 years have passed since the Supreme Court heard cases on affirmative action in higher education. Given this the University of Georgia has chosen not to appeal to the Supreme Court in light of Michigan's *Gratz v. Bollinger*. In 2001, its undergraduate admissions policy to promote diversity was not considered a 'compelling government interest' by the 11th Circuit Court and subsequently struck down (*Johnson v. Board of Regents of the University of Georgia*, 2000). Nonetheless, it is expected the plaintiffs in *Grutter v. Bollinger* will appeal to the Supreme Court. Finally, in *Smith v. University of Washington Law School* (2000) the Ninth Circuit Court fully sanctioned the precedent set in the *Bakke* ruling and the US Supreme Court refused to hear an appeal of the Ninth Circuit Court's decision.

Clearly, knowledge of the legal history of affirmative action is essential to understand the current debate in postsecondary education. Race-targeted forms of affirmative action in college admissions has been a contentious issue in American academia. Colleges and universities are faced with the task of implementing policies, creating programs, and carrying out practices that uphold social justice for students from all walks of life and which involve inclusionary procedures that ensure equal educational opportunities rather than racialized politics and public polarization.

Realities of a Changing Demography and Educational Participation

The United States of America is becoming increasingly diverse in the racial and ethnic background of its citizens. As Americans reflect greater racial/ethnic diversification in society, generally, so primary and secondary school enrolments mirror the rising multiethnic populace of the US. Enrollment trends project increases in public elementary and secondary pupils reaching roughly 47.2 million in 2001 with the West coast followed by the South experiencing the majority of this growth. Steady increases in elementary and secondary school enrollment are expected through 2005 (The Condition of Education, 2002). In contrast, between 2000 and 2010, enrollment in primary and secondary schools is expected to fall in Northeast and Midwest public schools.

Distribution of public school students by race and ethnicity

In 1972, approximately 20 percent US public school students were considered to be part of a racial/ethnic minority group in comparison to 38 percent by



1999 (The Condition of Education Statistics, 2002). Although there are regional differences in public school enrollment, overall the fastest growing student group in primary and secondary education is Hispanic students. The changes in the racial/ethnic composition of public elementary and secondary school have largely been attributed to growth in the proportion of Hispanic students. The redistributing of racial/ethnic enrollments has and will continue to shift school culture across the Nation's school system.

In addition to regional differences in the racial/ethnic composition of students, inequities in school systems are present as race and socioeconomic status collide. The American public education does not provide children from poor and from wealthy backgrounds with the same schooling. Children of African American and Hispanic background are disproportionately born into poverty in contrast to their White peers (Kozol, 1991). The differential effects of an American education as it intersects with such ascribed background characteristics as race/ethnicity, gender, income, parental education level further exasperates social policy for promoting equal opportunities. They are closely connected to disparities that continue at the postsecondary level.

Students' participation, achievement, and outcomes are often correlated with the educational attainment of their parents. For over 25 years, a gap exists between the percent of African American and White children whose parents have at least a high school education though the gap has narrowed over the past years (The Condition of Education, 2002). Disparities in parental educational attainment is more pronounced between Whites and Hispanics. A lower percentage of African American and Hispanic children in comparison to White children between the ages of 6 and 18 had parents with a high school education at minimum and/or at least a bachelor's degree.

Transition to college

Much of the growth of college bound students during the 1970s and 1980s occurred in the 2-year college enrollments and among part-timer. However, future growth is expected for 4-year attendants, full-time enrollees, and female students (The Condition of Education, 2002). Women's enrollment has increased faster than men's since the 1970s despite fluxuations during the last two decades. Enrollment projections for women undergraduates are anticipated to reach a peak in the 21st century.

The majority of undergraduate students attend 4-year colleges and universities rather than 2-year institutions. Higher percentages of non-Asian students enroll in Associate of Arts Colleges/2-year institutions of higher learning. African American and Hispanic students, constitute the highest proportion of enrollment compared with other minority groups (Aragon and Zamani, 2002). At Research Universities I, Asians/Pacific Islanders comprise



the largest proportion of the minority undergraduate enrollment (11 percent). According to the National Center of Education Statistics, over the past 20 years growth among racial/ethnic minority enrollment is at the undergraduate level across institutional types. This rise was due primarily to the increased enrollment of Asian/Pacific Islander and Hispanic students. Attendance for both groups increased by 4 percent between 1976 and 1995 (The Condition of Education, 2002). During the same period undergraduate enrollments for African Americans increased only by 1 percent being 11 percent of the total college and university enrollment in fall 1995. American Indians/Alaskan Natives attendance remained unchanged at 1 percent.

Diversity as a Compelling Interest Through Objectionable Times

Affirmative action is often viewed as a burden imposed on present-day society to redress historic discrimination. Much of the conflict arises when present-day Americans feel no sense of obligation for previous discrimination (Zamani, 2002). Today's society did not introduce the institution of slavery, all modern-day citizens have benefited from it having supported and stabilized America's economy (Bonachich, 1975). Although women and racial minority groups were excluded from full participation in American society, opponents of affirmative action believe gender and race-based policies perpetuate group rights to the exclusion the rights of individuals (Kluegel and Smith, 1986; Sears *et al.*, 2000).

Perceptions of merit, policy stance, and the divide over access

Affirmative action has been questioned since it is commonly perceived by its opponents, to give preferential treatment at the expense of White males. A misunderstanding of affirmative action holds that it provides opportunities for the unqualified. Affirmative action seeks to establish fair competition and level the playing field for members of groups that still suffer from the effects of past discrimination.

Affirmative action was necessary because American institutions could not be trusted to voluntarily consider women and applicants of color. Race-based affirmative action asserts that the majority of African Americans and other underrepresented groups have not reached parity with Whites regarding educational and employment opportunities. Thus, race-based affirmative action is consistent with American ideas of fairness. It has brought more people of color to the awareness of employers and higher education admissions officers (Bowen and Bok, 1998). On the other hand, need-based supporters of affirmative action argue that fairness is more appropriately ensured by setting lower economic status as the criteria for program targeting though this may be



insufficient to right historic discrimination and modern failings in educational equality of opportunity (Feinberg, 1996; Kahlenberg, 1996).

In conclusion, educators should consider the legacy of mistreatment along racial lines and to be aware of the ties between race/ethnicity, gender, and income when examining the educationally disadvantages. As greater number of students of color enter American elementary and secondary schools, the extent to which diversity initiatives (i.e., affirmative action in higher education) are dismantled will have dire consequences for racially/ethnically diverse student flows from high school to college (Astone and Nunez-Wormack, 1990). Over the last 20 years, there has been a substantial increase in students' educational expectations and degree aspirations. The percentage of 12th grade students reporting plans to complete a bachelor's degree, increased from 36 to 55 percent. The percent planning to attend graduate or professional school nearly doubled — from 11 to 21 percent (The Condition of Education, 2002). Likewise, women's expectations and plans to go to college have increased more than men's (53 *vs* 43 percent). Research has shown that students of color have slightly higher educational aspirations (Zamani, 2001). Paradoxical however, is the unevenness of opportunities available to many students from disadvantaged backgrounds. Thus, it is imperative to take into account how the framing of affirmative action as a means of fostering diversity affects views on merit, divergent interpretations on social policy, and fuels public discord over the composition of students flowing into American postsecondary institutions.

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