
Preferential Admissions in Higher Education

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THE HISTORICAL and legal development of racial preferences in higher education, as well as their impact, have been extensively analyzed.¹ This essay approaches the issue from a somewhat different vantage point, exploring how race-based preferences operate as they are actually administered in a university setting. Universities are little affected by Supreme Court decisions, the state of race relations generally, or broad public opinion about “affirmative action” and the extent of discrimination in the larger society. On campus, the leading players are the presidents, chancellors, deans, department chairmen, and the affirmative action bureaucracy that has emerged in response to the need to implement various affirmative action laws and regulations. In describing the picture inside the academy, I draw chiefly on material gathered in the course of watching the dramatic events surrounding the public policies affecting university admissions in California since July 1995, when the University of California Board of Regents voted to prohibit the use of race or ethnicity in admissions and appointments.

It is important to note that the issue of racial preferences in admissions

to universities and colleges arises only in those institutions that have more applicants than they can admit. This group includes no more than a hundred or so out of the 3,700 colleges and universities in the United States, but it consists of the leading research universities, both public and private, as well as a few dozen elite private liberal arts colleges that function as feeder institutions for graduate and professional schools. The private research universities—Yale, for example—and elite colleges like Amherst and Swarthmore typically choose their students for admission largely on the basis of academic performance and promise, although decisions are made on a case-by-case basis. To secure greater “diversity,” they look with special favor on applicants from certain “underrepresented” racial and ethnic groups. By contrast, the big public research universities admit most undergraduates according to general criteria and formulas. In seeking to secure a racially and ethnically diverse student body, they must specify exactly how much weight is to be given to racial and ethnic considerations.

Admissions Procedures at the University of California

The baseline formula for admission to the University of California has been prescribed by the state’s Master Plan for higher education, virtually unchanged since it was drawn up in the 1950s. It defines “eligibility” for admission to the university as ranking in the top 12.5 percent in academic achievement of graduates of California public high schools. The top 12.5 percent is identified by a formula that combines the student’s high school grade point average and his or her combined math and verbal SAT scores. In addition, the Regents have allowed each of the eight campuses that make up the system to admit up to 6 percent of their entering classes without regard for the 12.5 percent standard. This arrangement for admission by “special action” permitted many athletes who were not top students to enter, as well as students with unusual forms of preparation or talent—for example, outstanding musicians and those who were educated at home or abroad. Before the statewide ban on racial preferences in admissions,

many of these discretionary places were used to admit students from “underrepresented” racial and ethnic groups who failed to qualify under the regular requirements.

In the 1980s and early 1990s, a number of the UC’s eight “general campuses” found that they had more, and in some cases many more, eligible applicants than they could admit. The solution was to allow each individual school to adopt a policy somewhat independent of the statewide criteria, out of which came explicitly preferential policies. The formulas differed on the several campuses. With the approval of the Regents, Berkeley decided to admit half the entering class on the basis of their scores on the combined SAT/GPA. In filling the other half, *all* eligible minority applicants were automatically admitted. But critics charged the school with having adopted a quota or “set-aside” for minority applicants, and in 1989 it abandoned the guarantee of admission for all eligible applicants from minority groups. Yet it continued to give a huge advantage to black and Hispanic applicants. The average black student admitted, for example, had SAT scores 250–300 points lower than his or her white and Asian classmates and a substantially weaker high school grade record as well.

These students were not necessarily “disadvantaged” by any nonracial criteria. Berkeley, for example, was especially attractive to the sons and daughters of the new black middle class; in 1995, 30 percent of black undergraduates came from families earning over \$70,000. It was a troubling fact. Admissions decisions, especially in public institutions, must appear as legitimate to those not admitted to their campus of choice, the parents of future applicants, and the general public. The legitimacy of the institution, supported by taxpayer dollars, depends on criteria for entrance that are perceived as fair. And yet most Americans do not believe in judging citizens on the basis of the color of their skin.

Those convictions have prevailed in California. The Regents’ vote to ban preferences in 1995 and the passage of Proposition 209 a year later brought a halt to all race-based admission procedures. Today, UC Berkeley is developing a selection policy based on a reading of all applicant files

rather than a statistical formula, a more individualized system like those used by private universities.

Fair Criteria

Racial and ethnic preferences, where they are employed, rest on the assumption that color is the central feature of a person's identity—that character, intelligence, energy, initiative, socioeconomic circumstance, and other qualities are all less important. And thus in California both economically privileged and low-income black and Hispanic students were equally eligible for preferential treatment, whereas an Asian immigrant struggling with the language and trying to support indigent parents got no break for “disadvantage.” Similarly, whereas a white youngster from a single-parent, low-income household was treated as a privileged Anglo, neither the son of a ruling family in a South American country nor the student whose remote ancestors came from Spain was asked to meet regular academic criteria. The whole Hispanic category as defining identity was particularly troubling. For inexplicable reasons, European Spaniards obviously count. But does the term also include Portuguese and Brazilians?

Hispanic was not the only troubling category. The term Asian covers a wide variety of groups with little in common: old and new Chinese immigrations, Japanese, Thai, Vietnamese of various kinds, Indonesians, Koreans, among others. Crudely lumped together they outnumber whites at UCLA and Berkeley—the most selective campuses—raising questions about their “overrepresentation.” In April 1995, in Sacramento, President Clinton warned that “there are universities in California that could fill their entire freshman classes with nothing but Asian Americans.”² The Asians had become yesterday's Jews: an allegedly too-ambitious group eligible for exclusion on the basis of their national origins. Ironically, some of the “Asians” who were kept out in order to make room in the university for more blacks and Hispanics were the grandsons and granddaughters of the Japanese Americans who were confined to relocation camps during World War II.

Preferential admissions policies have a powerful and inherent tendency to reduce people in all their variety and complexity to their racial or ethnic identity. And yet higher education is supposed to enhance our sense of individuality, to encourage and educate distinctive qualities of mind and character. Intelligence and creativity, if allowed, burst through the constraints of social origin; nurtured by our origins, we transcend them. In our private lives we may choose to honor and celebrate the culture of a group to which we feel we belong. Or we may reject that identification. People differ, and must be allowed to differ, but the choices they make should be matters of private, not public, policy.

Counting the “Disadvantaged”

The policy of group preferences forces impossible choices on the rapidly growing number of Americans from multiracial backgrounds. The university, in effect, says to students of mixed race, choose between your mother and your father. If you decide to identify yourself as a member of a preferred group, you increase your chances of being admitted and of receiving substantial financial support. If you identify yourself as Asian, even though your father is black, you are less likely to get in. If you choose to check the box labeled “other” or refuse to choose at all, we will simply treat you as if you were white. Which parent are you prepared to reject?

There is an additional problem: the whole process invites fraud—difficult to discern by large impersonal institutions like the University of California. One anecdote illustrates the form it takes. A university officer observed a student filling out his application form and checking the box labeled “Hispanic.” “Oh, you’re Hispanic,” he said, trying to make friendly conversation. “No,” came the reply. “Actually I’m Iranian, but my teacher told me to check Hispanic if I wanted to get into Berkeley.”

Although no one knows how often such advice was given, such stories were frequently told with a cynical chuckle when the University of California was still giving preferences. They led to a general cynicism about the fairness of admissions procedures and to a broader sense that the whole

enterprise was a racket. I once asked an admissions officer about the problem. "We are not in the business of enforcing Nuremberg Laws," he said indignantly. The university (rightly) was unwilling to decide whether a student one-eighth black was indeed "black" and who would determine, and by what means, just how large the fraction actually was. But without clear criteria and a settled process for determining fraud, no penalties for false representation could be imposed. And UC was certainly not prepared to set such criteria and procedures. But without the danger of identification or penalty, a "victimless crime" that carried substantial benefits was increasingly attractive, at least to high school teachers and counselors.

How Much Preference Is Enough? The Case of Boalt Hall

Racial preferences are ubiquitous in selective institutions of higher education, except where they have been banned, as in California, Texas, and the state of Washington. But no one ever defines precisely the point at which "diversity" has been reached. How large a preference should be given to reach what goal? Here again some evidence from the University of California may be enlightening, this time from a professional school.

Until the Regents acted to end race-driven admissions, the policies adopted by UC schools were said to be guided by the Supreme Court's 1978 decision in *University of California v. Bakke*, which outlawed quotas but permitted institutions to consider race as "one factor in admissions." What did this mean, exactly? Some schools read the Court's majority as having said, "other things being equal," race could be a basis for selection at the margin. Most, though, saw the decision as a license to achieve diversity by giving heavy weight to race and ethnicity.

Berkeley's Law School, Boalt Hall, was among those that interpreted *Bakke* permissively. Unlike most other graduate departments and professional schools, the admissions process used a formula that placed applicants into one of four "Ability Ranges," A through D, on the basis of undergraduate GPAs and LSAT scores. In 1996, only 855 students were admitted to

Boalt, out of 4,684 who applied, but the rate of acceptance for black and Hispanic students in every “Ability Range” below the top one A was much higher than that for whites and Asians.

For example, eighteen applicants from the preferred groups fell into the top two ranges, and all but one of them were accepted. Almost all applicants from all ethnic groups in the A range were admitted, but among those who fell in the B range, 69 percent of Asians, 62 percent of whites, and 94 percent of blacks and Hispanics were admitted. Looking at range C, only 19 percent of Asians and 17 percent of whites were admitted, while 77 percent of the blacks and Hispanics got in. In the lowest range, the disparities were even greater.

When we look at specific ethnic groups, the differences are even more striking. Of applicants in Ability Range C, ten were students of Japanese origin, and ten were black. All the blacks and none of the Japanese were accepted. In range D, a significant number of blacks but no students of Chinese origin were admitted.

These disparities were the consequence of highly race-conscious admissions processes, and when Boalt Hall’s freedom to engage in race-based admissions was curtailed, the drop in blacks admitted was dramatic. Just one black student would be entering the first-year class in 1997, the media widely reported, and that student had deferred admission after having been accepted previously, when preferences were still permissible. The end of preferences, it was said despairingly, meant the virtual end of African American students at the University of California’s top law school.

The figures for Boalt were reported before those for other professional and graduate programs had been made available, and the press presented them as the sign of things to come. In fact, Boalt Hall, together with other UC law and medical schools, was distinctive. The proportion of blacks and Hispanics entering Berkeley’s graduate programs in general was little changed by the change in admissions policy—news that was basically ignored in the media.

Between 1996 and 1997—before and after preferences—the number of African Americans in UC graduate schools increased by 2 percent,

while the “other” and “declined to state” categories increased by 25 percent, the Office of the President reported. (Those figures excluded the professional schools.) One might have imagined that the UC administration would be eager to spread the good news, but there were no press conferences or statements by senior administrative officers calling attention to these surprising figures. Instead, they gave the Boalt Hall story maximum publicity.

Boalt was different from most other graduate and professional programs in one important respect: it was competing for the most academically able black and Hispanic applicants with other leading law schools, especially those at the top private research universities. Unfortunately, however, it had never been very successful in that competition. Long before the Regents’ vote and Proposition 209, Boalt had consistently lost all or almost all its best-qualified non-Asian minority applicants to Harvard, Yale, Stanford, and other law schools that were both more prestigious and could offer more financial support and more attractive job prospects upon graduation. But when no minority students enrolled in Boalt’s 1997 entering class, public statements by administrators inside and outside the school blamed the results on the change in admissions criteria.

The end of race preferences at UC had dramatic effects on Boalt, in other words, because the school had gone very far down the road of racial double standards in an effort to compensate for a competitive disadvantage against more prestigious and affluent schools. But in 1997,³ it could no longer take large numbers of poorly qualified minority students over white and Asian students with higher GPAs and LSATs. By contrast, most other graduate and professional programs within the university system had not had to change their admissions criteria and practice so drastically after preferences were abolished, and their black and Hispanic enrollment was almost unaffected.

In fact, the University of California has an advantage over most other universities in being a system of eight universities whose central office keeps records of their enrollments year by year and by the old ethnic-race categories. What those records show is that after the passage of 209 the

non-Asian minority students who had applied but had not been admitted to Berkeley and other UC campuses that had been using race and ethnicity as criteria for admission tended to enroll in one of the other UC campuses, which were admitting all applicants who were academically qualified for admission to the university. The result of this process of “cascading” is that by 1999, only two years after the first class was admitted color blind, the University of California as a whole showed a decline of only 3 percent in the numbers of non-Asian minority freshmen enrollees. Even that figure overestimates the decline because it does not count the minority students who refused to give their race or ethnicity now that it no longer affected their admission to the university. But 3 percent is a far cry from the predictions of the effects of Proposition 209 on minority enrollments in the University of California. By 2000, the number of non-Asian minorities newly admitted to UC was already higher than in the last year that preferences were still in effect. The numbers admitted who refused to give their ethnicity had also risen.

Consensus and Coercion

Senior administrators in the academy are solidly behind racial preferences, and they are the seemingly united voice of almost every university. But in fact there is considerable division among members of the faculty. A 1995 Roper poll asked voting members of the University of California Academic Senate which they favored: granting preferences to women and certain racial and ethnic groups, or promoting equal opportunity without regard to an individual’s race, sex, or ethnicity. A wide plurality (48 percent) chose the latter policy; only 31 percent supported preferences.⁴ Another survey, of a national sample of college teachers, came up with much the same result.⁵

These findings are consistent with American public opinion in general, which has been deeply divided on the issue for three decades. What explains this curious combination of outward consensus and internal division in the academy? A mixture of principle and pragmatism—sincere belief cou-

pled with a keen sense of who on or around campus can make trouble—explains the unanimity among university administrators. The officials who administered UC's large affirmative action bureaucracies were appointed on the understanding that they would support the preferential regime, and most of them probably did so genuinely. But they also know that those who are opposed to race-conscious admissions will seldom speak out and will never lead marches or sit-ins, whereas those who profit from preferences are combatants. In part, the silence on the part of opponents is a consequence of intimidation. Very few academics wish to offend both the senior administrators who govern their careers and budgets and the well-organized affirmative action pressure groups that will quickly stereotype faculty members as “racists” or, at very least, “right-wingers.”

A distinguished federal judge who is familiar with academia has summarized the scene well:

Groups holding considerable power in the university loathe speech with the wrong content about topics important to them, and . . . those who say the wrong things will have little peer or institutional protection. . . . Many ideas may not be expressed, many subjects may not be discussed, and any discussion on matters of political salience has to avoid defending groups powerful in the university.⁶

The problem at the University of California went beyond a lack of institutional protection for dissenting voices. Like other universities, UC over the years developed not only a strong climate but also an organizational structure in support of preferences from the president's office down. Every campus had administrative offices and academic senate committees to plan and enforce preferential policies; every department had an “affirmative action” officer to monitor its behavior. Needless to say, there was no equivalent organization of people and energy inside the university devoted to criticizing the preference policies or trying to reform them.

The pattern of consensual coercion brands dissenting points of view as illegitimate and deprives those who hold them of protection. Students and other faculty members need not read or listen to their arguments.

Already discredited, opponents of racial preferences are then demonized. They are not merely mistaken; they are evil—and fair game for late-night calls and hate mail. But coercion does not need to reach the point of anonymous name-calling to be effective. The administrative unanimity behind the policy can itself have a chilling effect that is enough to stifle debate.

What Proposition 209 Hath Wrought

The Regents' actions and Proposition 209 are slowly liberating UC campuses from the atmosphere of coercion. Although the president and the chancellors and their senior staffs may not have changed their views, it is now possible, indeed even necessary, for people to talk about how to admit students in ways that might preserve and enhance diversity without allowing race and ethnicity to drive admissions decisions.

California voters and the Regents have forced important reforms. The university has had to abandon its categorical formulas and admit students by inspecting their folders rather than simply their scores and race. Some students have always been admitted on the basis of their individual qualities and promise, but the process has now been extended more broadly.

In implementing race-neutral policies, admissions officers need not be blind to inequalities in American society and their impact on academic performance and life prospects. California admissions officers can still give a break to students who, though their scores are a bit low, seem highly motivated and come from mediocre high schools. And they can pay special attention to the high school senior who shows academic promise, although he or she has been struggling with English as a second language. Weighing such disadvantages is quite different from racial and ethnic preferences. The process requires schools to look at individual qualities; they cannot make stereotypical assumptions about group characteristics. And, as a result, all students admitted to the University of California today know they have earned a place in their class under uniform standards. None needs to feel like a second-class citizen, brought in to keep the “diversity”

numbers up. Preference's burden of guilt and resentment has been lifted from UC students; one can feel it in a classroom.

But Proposition 209's greatest contribution has been its indirect impact on the lives of students before they apply to college. With racial preferences abolished, California residents can no longer ignore the problem of too few blacks and Hispanics academically prepared for seats in highly selective schools. Racial and ethnic preferences in higher education simply masked the inadequacies of California schools; elementary and secondary education must change, the university finally understands. In fact, with the help of a recent grant of \$40 million from the state legislature, each UC campus now has an opportunity to create a program for improving the quality of K–12 schooling. With better primary and secondary education, the number of black and Hispanic youth who are prepared and motivated to continue their education in colleges and universities should expand. And they will be going to colleges that have looked at their talents and aspirations, not at their skin color or national origin, in admitting them. By many criteria the abolition of preferences for admission to the University of California has been a success.⁷ The nature and extent of that success deserve to be studied and made more widely known in other parts of the country. We no longer have to merely speculate about the effects of ending racial preferences in higher education. Some results are in.

Notes

1. Portions of this essay are drawn from the author's "California After Racial Preferences," *Public Interest*, Spring 1999, pp. 64–85. For varying perspectives on racial preferences in higher education, see Stephan Thernstrom and Abigail Thernstrom, *America in Black and White: One Nation, Indivisible* (New York: Simon & Schuster, 1997), chap. 14; Shelby Steele, *A Dream Deferred* (New York: HarperCollins, 1998); William G. Bowen and Derek Bok, *The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions* (Princeton, N.J.: Princeton University Press, 1998). Although proponents of preferential policies have hailed the Bowen-Bok work as definitive, it has been subjected to serious methodological and substantive criticism. The fullest critiques are the author's "California After Racial

Preferences” and Stephan Thernstrom and Abigail Thernstrom, “Reflections on *The Shape of the River*,” *UCLA Law Review*, June 1999.

2. Quoted by Leo Rennert, *Sacramento Bee* Washington bureau chief, under the headline “President Embraces Minority Programs,” *Sacramento Bee* (Metro Final), April 7, 1995, p. A1. One might have imagined that the university would protest publicly that there was no such danger and, moreover, that that kind of invoking of the Yellow Peril was deplorable. Similar remarks from a Pat Buchanan, say, would likely have produced a flood of criticism. But no objection was forthcoming from university officials because the remarks were made by someone on their side of the preference issue.

3. The ban on preferences took effect in graduate and professional schools in 1997; undergraduate admissions were not affected until 1998.

4. The Roper Center Survey of Faculty Opinion About Affirmative Action at the University of California, October 1996, sponsored by the California Association of Scholars, at <http://www.calscholars.org/roper.html>.

5. This was an October 1996 survey of academics in colleges and universities all over the country. It found even higher proportions of respondents opposed to race-ethnic preferences in admissions and appointments than was found in the UC survey. See <http://www.nas.org/roper/exsum.htm>. A recent survey of undergraduates by Zogby International found that 79 percent said lowering the entrance requirements for some students, regardless of the reason, was unfair to other applicants. And 77 percent said it was not right to give preferential treatment to minority students if it meant denying admission to other students. Ben Gose, “Most Students Oppose Racial Preferences in Admissions, Survey Finds,” *Chronicle of Higher Education*, May 5, 2000, p. A52.

6. Andrew J. Kleinfeld, Circuit Judge on the United States Court of Appeals for the Ninth Circuit, in an essay, “Politicization: From the Law Schools to the Courts,” *Academic Questions*, Winter 1993–94, p. 17.

7. See Pamela Burdman, “After Affirmative Action,” *Crosstalk* 8, no. 1 (winter 2000): 7–8.