THE USE OF RACE-BASED AFFIRMATIVE ACTION BY ELITE COLLEGES AND UNIVERSITIES: CREATING ALTERNATIVES

A Thesis
submitted to the Faculty of
The School of Continuing Studies
and of
The Graduate School of Arts and Sciences
in partial fulfillment of the requirements for the
degree of
Doctor of Liberal Studies

By

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Washington, D.C.
December 1, 2015
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ABSTRACT

The practice of using race-based affirmative action to admit underrepresented ethnic minorities who, when comparing standardized test scores and grade point averages, are considered less qualified than Whites draws contentious public debate. Racial preferences remain unpopular, in large part, because most people realize that getting into a selective college often generates many advantages for the student. For instance, less selective colleges spend approximately $12,000 per student while the most selective universities expend approximately $92,000 per student. Employment wages are estimated to be 5 percent to 20 percent higher for graduates of selective colleges, and extensive research has shown that 54 percent of America’s corporate leaders and 42 percent of high government officials are graduates of just 12 of the top universities in the country.

My thesis proffers, through an inferential and comparative analysis of several bodies of literature on the topic, that using race-based affirmative action in higher education, generally, and among selective colleges and universities, specifically, to bring about social equality is contrary to the policy’s original intended purpose. Moreover, affirmative action policy, as is currently used by selective colleges, causes greater harm than good. This is not to say that its application in the admissions process among selective college admissions is unnecessary, since
racism still exists in the United States. Rather, I argue that the current application of affirmative action policies by selective colleges causes a diminution of the policy’s true effectiveness. I further argue that because most inner-city elementary and secondary schools are bankrupt educationally, elite colleges and universities seeking to recruit well qualified minority candidates to their institutions would be better off investing resources to help uplift the academic performance of students in these inferior schools. In so doing, a larger pool of academically well prepared minority and poor students will be created. These better prepared students will then be able to effectively compete for entry into these elite colleges and universities based solely on their academic record.

I examine the most common arguments used by proponents and opponents of affirmative action in college admissions and analyze and critique them in relations to the case law established by the Supreme Court cases in *Bakke* and *Gratz* and *Grutter*. Additionally, in my analysis, I use a “training for a race” metaphor to determine the cogency of the arguments advanced by proponents and opponents of racial affirmative action in relation to my thesis’ assertions that (1) affirmative action currently used by selective colleges in their admissions process is contrary to the policy’s initial intent; (2) although affirmative action is still needed to address discriminatory actions against Blacks in the admissions process, the top-down approach will not bring about social equality; (3) a bottom-up approach is needed to ensure a larger pool of Black students receive a quality education; and (4) race-based admissions will no longer be needed once Blacks are given the opportunity to compete effectively during the admission process.

My thesis is entirely literature-based. It is a critical, theoretical analysis of the pertinent works extracted from the voluminous body of research dealing with race-based affirmative
action in higher education among selective colleges and universities. Since the study is a liberal arts work that traverses many different disciplines, the methodological approach used to construct the doctoral thesis differs from any of the traditional, single-discipline methodology that is generally used to put together its findings. Where quantitative data is relied upon for an examination of social trends or policy implications regarding race-based affirmative action in higher education admissions, the research of William Bowen and Derek Bok, Jerome Karabel, Daniel Golden, Richard D. Kahlenberg, Anthony Carneval and Stephen J. Rose, Terry H. Anderson, and others are used to inform the study’s assertions.
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INTRODUCTION

This interdisciplinary doctoral thesis examines whether the use of race-based affirmative action by selective colleges and universities during the admissions process is justifiable. The thesis also examines whether there are any viable alternatives to the use of racial affirmative action. Although the current use of race-based affirmative action is primarily aimed at creating greater diversity on college campuses, secondarily, it hopes to bring about greater social equality between Blacks and Whites. With conservatives and disgruntled citizens attacking the policy’s use, school administrators must ultimately convince nine Supreme Court Justices that there are no other solutions available that can ensure student diversity at their schools.

Today, diversity is used to camouflage affirmative action’s original intent of creating greater equality for African Americans – its intended beneficiaries. Advocates of the policy argue that using race-based affirmative action is a means to provide compensation to Blacks for past wrongs stemming from slavery and Jim Crow. Detractors of the affirmative action counter that the policy is divisive, discriminates in favor of one group over another, stigmatizes its beneficiaries, and lowers educational standards in elite schools.

Although both advocates and detractors of racial affirmative action offer equally compelling arguments, I contend that they both miss the point relative to the creation of greater educational opportunities for African Americans. Through the works of notable scholars like Jonathan Kozol, William Bowen, Derek Bok, Terry Anderson, and others, I argue that the use of race-based affirmative action by elite colleges and universities, though necessary, is insufficient in helping to bring about greater equality of educational opportunity for African Americans in this country.
I contend that if the educational playing field is to be truly levelled, the need for a bottom-up approach is required. A bottom-up approach will augment the top-down approach currently practiced and argued for by proponents who support the use of race-based affirmative action. The bottom-up approach, I further argue, will create a larger pool of academically well-prepared African-American students who will be able to effectively compete with their more privileged peers for college seats at elite schools on their own “merit” without needing a leg-up. Once a larger pool of academically well prepared Black students is created, the need for race-based affirmative action could be eliminated in a generation or two.

**Contextualizing the Study**

The story of affirmative action specifically, and civil rights generally, is one that begins with the new nation’s acceptance of slavery. It is a tragic story that, as it unfolds, illuminates a shameful past where human relations gave rise to racist social constructs born, at least in part, out of the need to maintain an economy dependent on human bondage.\(^1\) It is a story of ambition and greed overpowering justice and human decency. It is a story about the redress of injustice and the difficulties in eliminating entrenched discriminatory practices based on race and gender. And so, it is also a story of perseverance, human resilience, and triumph.

At the time Thomas Jefferson penned the dictum that we hold these truths to be self-evident that all men are created equal and are endowed with certain inalienable rights, these rights applied to only free white males with property. Today it is difficult to imagine the right to life, liberty, and the pursuit of happiness applying to only a select few in our country. In 1776, however, there was nothing wrong with, or morally reprehensible about, legally allowing some to pursue these inalienable rights while limiting or denying such pursuits to others. Negros had

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no rights, for the most part, and the Constitution made it clear that they were little more than a head count in the numbers game for political power. Accordingly, 70 years following the ratification of the United States Constitution, the Supreme Court declared in *Dred Scott v. Sanford* that the Negro race had no rights that the White man ought to respect; that the Negro was unfit to associate with Whites; and that the Negro is rightly and justly reduced to chattel property for the benefit of serving Whites.

The nation plunged into Civil War four years after the Supreme Court’s decision. At its conclusion, Abraham Lincoln issued the Emancipation Proclamation and Congress, over a seven-year period, passed the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution in an effort to bestow full citizenship to Negroes. Almost immediately following the issuance of the Emancipation Proclamation, riots erupted and secret terroristic organizations proliferated in southern states. Whites who subscribed to the belief that Negroes should be kept subordinated to the White race reacted vehemently toward the newly freed people. Southern legislators enacted Jim Crow laws to deny Negroes any opportunity to advance their social standing, and with the often sanctioned assistance of organizations like the Ku Klux Klan, Whites intimidated Blacks who attempted to assert their rights by whipping, maiming, and even

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3 *Dred Scott v. Sanford*, 60 U.S. 393 (1857).

lynching them.\footnote{The first decade following the Civil War, though, saw dramatic challenges by freed blacks to white supremacy. White supremacists, eager to regain their political power and control over the emancipated slaves, sought to use any means necessary to intimidate them back into their place. Rioting was one of the principle methods as it allowed mobs to attack entire black communities and not just individuals. See Gunnar Myrdal, An American Dilemma: The Negro Problem and Modern Democracy (New York, NY: Harper and Brothers Publishers, 1944), 566 – 569 and John Hope Franklin’s From Slavery to Freedom, 274 – 280.}

Still, Congress continued to pass legislation to try and help Blacks attain the same legal and social standing as Whites. In 1875, Congress passed the Civil Rights Act that allowed African Americans equal access to inns, public conveyances, theaters, and other places as Whites.\footnote{Thomas J. Davis, Race Relations in America, 108.} Not surprisingly, Whites continually challenged the constitutionality of the legislation. In 1883, the Supreme Court declared the 1875 Civil Rights Act unconstitutional and life under Jim Crow continued whereby the two races were required to use separate but equal facilities.\footnote{See http://www.law.cornell.edu/supct/html/historics/USSC_CR_0109_0003_ZD.html. See also The Civil Rights Cases, 109 U.S. 3 (1883), Justice Harlan’s dissent. The case brought before the Supreme Court consisted of five cases: two consisted of indictments against two individuals who denied persons of color accommodations and privileges at an inn; two cases were lodged against individuals who denied others the privileges of equal accommodations at Maguire Theatre in San Francisco and the Grand Opera House in New York; and one case involved the Memphis and Charleston Railroad Company heard in the Western District of Tennessee where the plaintiff sought to recover $500 because the conductor disallowed a person of color to right to ride in the ladies’ car.}

Separate but equal was formally legalized as a result of the Court’s landmark declaration in \textit{Plessy v. Ferguson} in 1896.\footnote{See http://www.law.cornell.edu/supct/html/historics/USSC_CR_0163_0537_ZS.html, Plessy v. Ferguson, 163 U.S. 537 (1896). Homer Adolph Plessy was a businessman living in Baton Rouge, Louisiana. Being one-eighth black – defined by Louisiana’s law as an “octaroon” – and acting on behalf of a committee that had been formed to challenge Jim Crow laws, he intentionally broke the law in order to initiate a case that required segregation of the races. Returning by rail from New Orleans to Baton Rouge, railroad officials asked Plessy to sit in the segregated area of the train. He refused. Arrested and charged, Plessy petitioned the Louisiana State Supreme Court for a writ against Ferguson, requesting the trial court judge to stop the criminal proceedings against him for violation of the State law. When the Louisiana State Supreme Court refused, convicted and fined him, Plessy appealed to the Supreme Court of the United States.} In 1954, a unanimous Court overturned the separate but equal doctrine, making it illegal for Blacks to be denied equal access to public facilities.\footnote{\textit{Brown v. Board of Education}, 347 U.S. 483 (1954).} Between the years 1896 to 1954, various Presidents of the United States worked, to varying degrees, to help
facilitate bringing Blacks into full citizenship. Under Franklin D. Roosevelt, Executive Order 8802 prohibited racial discrimination in the national defense industry and establish the Fair Employment Practices Committee.10 President Harry Truman issued executive order 9981, requiring equality of treatment and opportunity to all persons in the armed services regardless of race, color, religion, or national origin.11 Other presidents issued similar orders that took the previous predecessor’s initiative a little further forward in providing Blacks the same opportunities afforded Whites under law. In 1964, Congress enacted the most sweeping legislation since Reconstruction and the legal wall that often barred African Americans from the enjoyment of full citizenship began to finally crumble.

Since the birth of the nation, Negroes were not only denied the rights to citizenship and all the opportunities thereof, but they were also denied basic educational opportunities. Educating slaves, many White southerners felt, was a dangerous undertaking. As Gunnar Myrdal pointed out, it was dangerous because education was thought to corrupt the slave, giving him a high opinion of himself and access to such noble ideas as those expressed in the Declaration of Independence. Keeping the Negro ignorant about his plight meant no regular schooling and the instituting of certain laws “forbade the teaching of slaves to read and write.”12 Moreover, “white people did not, and could not in a slave society, accept them as equals.”13 Just as with their quest, first for freedom and then civil rights, Blacks had to fight for the right to learn to read and write.

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Ushering a New Era: The Birth of Affirmative Action

When John F. Kennedy signed Executive Order (EO) 10925 into law in March 1961, he did not intend for the order to set quotas or specific numeric goals in the hiring of African Americans. He simply directed in his order that government contractors “take affirmative action to ensure that applicants are employed . . . without regard to race, creed, color, or national origin.”\(^{14}\) The order sought to arrest, relative to employment hiring practices in the United States, much of the overt racial discrimination that plagued the nation and tarred its image abroad. In 1963, the president superseded his previous mandate with EO 11114. The order declared that it is the “policy of the United States to encourage by affirmative action the elimination of discrimination” in all spheres of governmental contracts where “grants, loans, and other forms of financial assistance” are given to state and local governments.\(^{15}\)

Lyndon B. Johnson, following Kennedy’s assassination, introduced Executive Order 11246 in September 1965. It superseded all previous orders addressing affirmative action; established the Office of Federal Contract Compliance (OFCC) and commanded the Equal Employment Opportunity Commission (EEOC) to investigate and end racial and, eventually, gender\(^{16}\) discrimination in private employment; and it was far more comprehensive and controversial than Kennedy’s. Under the Johnson Administration, the Labor Department, in

\(^{14}\) See the Executive Order 10925 at http://www.thecre.com/fedlaw/legal6/eo10925.htm. See also John Fleming, Gerald Gill, and David Swinton, The Case for Affirmative Action for Blacks in Higher Education (Washington, D.C.: Howard University Press, 1978), 325 – 333. See also Terry H. Anderson, The Pursuit of Fairness: A History of Affirmative Action (Oxford: Oxford University Press, 2004), wherein he informs that a black Texan lawyer named Hobart Taylor, Jr., working with Arthur Goldberg and Abe Fortas, at the behest of newly elected Vice-President Lyndon B. Johnson, coined the term “affirmative action” when the men sat to draft the executive order. As reported by Anderson, Taylor recalled “I was searching for something that would give a sense of positiveness to performance under the executive order and I was torn between the words ‘positive action’ and ‘affirmative action’…. And I took ‘affirmative’ because it was alliterative.” 61.

\(^{15}\) See Executive Order 11114 at http://www.thecre.com/fedlaw/legal6/eo11114.htm

\(^{16}\) President Lyndon B. Johnson amended Executive Order 11246 with 11375 on October 1967 that included employment prohibition of discrimination on the basis of sex.
May 1968, issued a regulation that required contractors and unions doing federally financed work to have affirmative action plans that had schedules and target dates for correcting deficiencies in their minority employment and promotion practices.\textsuperscript{17} Essentially, the administration threatened to cut off federal funds if contractors did not establish affirmative action programs. The president asked Congress for $2 billion and sought the help of major businesses to hire and train “people living in the slums of the 50 largest cities.”\textsuperscript{18} By the time Johnson departed the White House, the words affirmative action would take on a meaning of its own and evolve into a controversial, contentious policy.

At the inception of his Administration, President Richard Nixon charged Secretary of Labor, George Schultz, and his assistant, African American Arthur Fletcher, to revise the Johnson Administration’s affirmative action plan. Schultz and Fletcher soon reintroduced the Philadelphia Plan\textsuperscript{19}, an affirmative action initiative first introduced by the Johnson administration to facilitate the hiring of minorities by contractors. Fletcher asserted that since the United States had a long history of discrimination, “We must set goals, targets, and timetables” to fulfill the aim of affirmative action.\textsuperscript{20} Introduced to the House, critics of the plan claimed it called for quotas, which were illegal. Moreover, opponents argued, the plan required contractors to take race into consideration in the hiring process, which was expressly prohibited by EO 11246.

\textsuperscript{17} Terry H. Anderson, \textit{In Pursuit of Fairness}, 105.

\textsuperscript{18} Ibid., 106.

\textsuperscript{19} The Labor Department, under the Johnson Administration, first introduced the Philadelphia Plan in an attempt to combat discriminatory hiring practices in the industrial and craft unions which served the building industry in Philadelphia. The Comptroller General found the plan illegal in 1967. In 1969 the Department of Labor, in an initiative from President Richard M. Nixon utilizing the powers established by his predecessor’s Executive Order 11246, reintroduced a revised version of the same plan. The plan required federal contractors to meet certain goals in hiring African American employees by specific dates in order to combat institutionalized discriminatory hiring practices by specific skilled building trade unions.

\textsuperscript{20} Anderson, \textit{In Pursuit of Fairness}, 117.
Despite protests from unions and members of Congress, on December 22, 1969, the Legislative Branch approved Nixon’s Philadelphia Plan and affirmative action was then defined as racial goals and timetables, not quotas.\(^\text{21}\) Although several lawsuits followed Congress’ reluctant mandate, in 1971 the Supreme Court finally addressed the matter.

In *Griggs v. Duke Power Company*, the Court ruled that Title VII of the Civil Rights Act of 1964 did not order that a person be hired because he or she is the subject of discrimination or a member of a minority group, but rather, “practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to freeze the status quo of prior discriminatory employment practices.”\(^\text{22}\) In the Court’s opinion, Congress aimed to rectify past hiring practices, which meant showing results through the use of goals and timetables. Affirmative action, as the Court opined, meant a de-emphasis on Title VII’s mandate of “hiring without regard to race” and more of an interest in hiring “with regard to race.”\(^\text{23}\)

Relative to higher education during the same 1961 to 1971 decade, President Kennedy, in 1962, summoned the leaders of five selective universities, including Harvard and Yale, to the White House.\(^\text{24}\) Amid race riots in all the major cities, Kennedy told the university presidents, “I want you to make a difference . . . .” He asked them, “Until you do, who will?”\(^\text{25}\) In 1969, the number of Black students at the Ivies rose to a record 89 percent.\(^\text{26}\) According to Jerome Karabel, although the federal government sought to create greater educational opportunities for

\(^{21}\) Ibid., 124.

\(^{22}\) Ibid., 128.

\(^{23}\) Ibid., 129.


\(^{25}\) Ibid., 381.

\(^{26}\) Ibid., 407.
Blacks, the mobilization of Black students on elite college campuses also played a major role in increasing the enrollment of minority students. Pressured by militant Black students in the wake of the race riots, particularly after Martin Luther King, Jr.’s assassination, Harvard and Yale joined Princeton in altering their admissions criteria for African Americans. Harvard’s enrollment of Black students increased 101 percent while Yale’s increased 121 percent.27

Jerome Karabel notes that 224 Blacks matriculated at the Harvard, Yale, and Princeton in the fall of 1969, – “a remarkable 386 percent increase over the 58 who enrolled in 1964.”28

Selective colleges and universities, seeking to increase the enrollment of underrepresented groups to their campuses, began establishing admissions programs that had strict numerical targets for minority students. Such an admission policy resulted, for instance, in “Harvard’s all-white male classes in the 1950s becoming over 40 percent female, eight percent Black, six percent Asian, and five percent Hispanic by the late 1970s.”29

In 1978, like many of the employment programs, policies, or mandates using affirmative action to remedy past discriminatory practices, the University of California, Davis became the target of a law suit claiming its admissions program violated Title VI of Civil Rights Act of 1964 and the Fourteenth Amendment. Although the Supreme Court found that the university violated the Act and the Fourteenth Amendment because the admissions program operated too much like a quota system, the Court declared that using race as one factor among several other factors in the admission process was constitutionally permissible. Thereafter, selective colleges and

27 Ibid., 407.

28 Ibid.

29 Anderson, In Pursuit of Fairness 151. See also Karabel’s, The Chosen, wherein he notes that, because “special consideration was being deployed in a systematic and vigorous way on behalf of the historically excluded, [it marked] in this specific sense the institutionalization of preferential treatment for African Americans . . . .” p. 407.
universities began using the word “diversity” to justify, at least in part, their use of affirmative action in their admissions programs.

Under the auspices of “diversity” in higher education, these schools sought to level the educational playing field between Blacks and Whites with the hope of bringing about social equality. Although their admissions practices might arguably be considered necessary because racism still exists in the United States, it is somewhat unclear just how useful it might be in terms of facilitating social equality. William Bowen and Derek Bok, in their comprehensive study on race-sensitive admissions among selective colleges and universities, stated that one of their aims was to determine the extent to which affirmative action policy has worked “to fill some part of what is widely seen as a national ‘deficit’ by preparing large numbers of talented minority students for positions of responsibility in the professions, the business world, academia, government, and every other sector of American life.”

Because Blacks (and other minorities) have been discriminated against politically, legally, socially, economically, and educationally for centuries, affirmative action policies applied by these elite schools attempt to level the academic playing field between Blacks and Whites. Consequentially, in an effort to forge some semblance of social equality between the two groups, administrators frequently select Blacks who are less qualified academically than their White counterparts. The practice of admitting Blacks who, based on standardized test scores and grade point averages, appear less qualified than Whites is what draws contentious public debate over the use of this kind of affirmative action.


31 “This kind of affirmative action” refers to preferential treatment based on race. Other “forms” of affirmative action are class-based and economically disadvantage-based.
Can selecting a handful of Black high school students from around the country who may or may not be well prepared to compete in the rigorous educational arena at selective colleges and universities be sufficient in bringing about social equality in our country? As Jonathan Kozol has pointed out for almost five decades, thousands of Black students throughout the country are huddled into inner-city primary and secondary schools. These schools offer a mediocre education, at best, and their students are often underprepared to attend most of the highly selective colleges and universities in the country.

**About the Study**

My study builds on the premise that attending an elite college or university is one of the most efficacious means whereby Blacks in the United States can improve their social standing. The elite colleges and universities central to my analysis will be the Ivy League institutions and the top 40 schools in the United States. In essence, the study addresses only the tier one schools as classified by *Newsweek*. The rationale for using the top tier schools is because it is a commonly held belief grounded in reality that attending an elite school could open many doors (social, economic, political) to its graduates, doors that otherwise remain closed if students attended a ‘lesser’ school. As one author states, “An Ivy League diploma does not mean you received a fine education or you will be successful. What it does represent is a big head start in the rat race – a fact Harvard will be the first to tell you.”

I argue that the use of race-based affirmative action cannot, in its limited scope, attain the sort of social equality it seeks to bring about by giving a handful of Blacks a leg up during the admissions process at selective colleges and universities. For one thing, the practice of selecting a handful of individuals from a small group of minority students who might (or might not)

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32 See *Debating Affirmative Action*, 251.
deserve a chance at an Ivy League education will take far too long to help bring about social equality between Blacks and Whites – something that proponents of the policy seemingly hope will eventually happen.  

I proffer in my study that a larger pool of educated Blacks needs to be created so that well qualified candidates to these selective colleges can effectively compete for seats in a freshman class without the need for affirmative action. To accomplish the goal, attention must be focused on elementary and secondary school education in urban centers. Utilizing research that spotlights the apparent lack of scholarly academic qualities in most inner-city elementary and secondary schools, I proffer that our nation’s education resources would be better invested uplifting the academic performance of the economically deprived Black students throughout the country. When inner-city elementary and secondary schools are made academically as sound as most suburban elementary and secondary schools, there will be greater numbers of qualified minorities who are able to compete effectively with their White (and Asian) peers who, for the most part, enter elite colleges solely on their academic record.

Chapter One provides a critical, inferential analysis of affirmative action policy through an examination of some of the legislative decrees and executive orders that helped African Americans attain legal equality. Relative to education, I discuss the three major Supreme Court cases that dictate how race-based affirmative action is applied to college admissions: Regents of the University of California v. Bakke, Gratz v. Bollinger et al, and Grutter v. Bollinger et al court rulings. Further, I point out some of the competing values implicitly and explicitly expressed in the selected executive orders, legislative acts, and judicial rulings, addressing how these values

33 A major goal of affirmative action in higher education admissions among selective colleges and universities is to level the educational playing field between Blacks and Whites. It is a top-down strategy meant to level the field for those who are capable of taking advantage of opportunities denied them because of their gender or ethnicity. See Bowen and Bok, The Shape of the River, 171.
impact the affirmative action debate in race-based college admissions. I show that, despite the court’s ruling in *Brown v. Board of Education*, it took almost 10 years thereafter for Blacks, particularly in the South, to actually begin to be treated with some modicum of dignity. What transpired during those 10 years was transformative for African Americans in their quest to attain social equality and gain entry into elite colleges and universities.

Despite our historical record on race, race-based affirmative action is sometimes presented by its opponents as abstract ideas outside its social context. In Chapter Two, drawing from the work of Charles R. Lawrence, III and Mari J. Matsuda, I place the debate over race-based affirmative action in what I believe is a suitable context for the discussion that follows. I examine some of the major arguments advanced by advocates and critics in the race-based affirmative action debate, providing a critical analysis of the arguments advanced by some of the more notable members on each side of the debate. Conceding that both proponents and opponents offer equally compelling arguments for their respective positions, I contend they both miss the mark about how race-based affirmative action policy should be used in helping assure African Americans are fully integrated into American society. I assert that a larger pool of qualified Black students is needed in order to bring about social equality and, hence, the eventual elimination of race-based affirmative action. How to create that larger pool of Black students is where both proponents and opponents of the race-based policy seem to miss the point.

In Chapter Three, I examine the conditions of inner-city elementary and secondary schools through the eyes of Jonathan Kozol. I present Kozol’s findings of the educational inequities he discovers in urban schools in East St. Louis, the south side of Chicago, New Jersey, New York, and other urban centers. I also conduct a critical analysis of Kozol’s findings using
the work of other scholars to assess where and how an inner-city public school education (as part of the education pipeline) fits into the debate on race-based college admissions.

Chapter Four explores the idea behind the race for freshmen seats at selective colleges and universities building on the race-metaphor used by then-President Lyndon B. Johnson in part of his 1965 commencement speech to a graduating class at Howard University. In the chapter, I proffer that the acquisition of knowledge through formal education is not a sprint, as so many seem to think, but a marathon that starts off in kindergarten, continues through to primary and secondary school, and extends well beyond the gates of elite colleges and universities.

Contending that the use of race-based affirmative action by elite colleges and universities, though necessary, is insufficient in helping to bring about greater equality in this country, I argue that improving inner-city public schools is a means by which the so-called playing field can be truly levelled. I proffer that the country needs to invest in a bottom-up approach – as opposed to the top-down one preferred by proponents of race-based affirmative action – if educational equality for Blacks is to be realized.

Chapter Five utilizes the works of Frank C. Worrell, Sheryll Cashin, Jonathan Kozol, Linda Darling-Hammond, James Moore, Chance Lewis, and others to address the topic of improving primary and secondary schools. I contend that improving the education pipeline in the Pre-K through 12 grades is imperative if race-based affirmative action in college admissions is to be eliminated. Looking at the elementary schools Cashin describes, I identify some of the more important variables that seemingly comprise a quality education. I compare those variables in the schools Cashin describes with the ones Jonathan Kozol identifies to indicate where intervention is needed if the quality of education in urban schools is to improve. Two variables – early childhood education and school segregation – will be discussed separately. Last, in
bringing my study full circle, I conclude with a rejoinder to the race-based affirmative action debate regarding elite college admissions.

Author’s Note

This study is concerned almost exclusively with race-based affirmative action as it is used by elite colleges and universities during the admissions process. Except as otherwise noted, the study focuses on affirmative action’s primary intended beneficiaries – African Americans. I use the words African Americans, Blacks, and Negroes interchangeably. When I use the word “Negro,” it is to denote a specific period in our history. Also, it must be noted that there is no reference(s) to the role historically Black colleges and universities (HBCU) play in the affirmative action debate. Although discussion of HBCUs would have undoubtedly brought an added dimension to my study, I believe the discussion will best be suited as a stand-alone thesis.
CHAPTER ONE
EXECUTIVE, LEGISLATIVE, JUDICIARY, AND CIVIL UNREST

The Supreme Court’s decision in *Brown v. Board of Education* signaled a major milestone for Blacks seeking to secure the same opportunities as Whites in receiving a quality public school education. The decision for many Southerners, on the other hand, marked the preliminary demise of Jim Crow and the dismantling of a well-established caste system premised on the notion of White supremacy. Desperate to hold on to what had been a customary way of life for almost two centuries, southern White backlash was swift, often violent, and stonewalling became the order of the day as Southerners closed ranks in defiance of the Court’s ruling.

Partly in response to pressure from civil rights organizations at home, Soviet propaganda abroad, and a decade of race riots in cities throughout the nation, the Executive and Legislative branches of government began taking bolder steps to curtail racial and gender discrimination by helping Blacks and women obtain jobs and secure admissions to institutions of higher learning. A series of executive orders, court rulings, and legislative acts in the 1960s and 1970s served to address America’s history of racism and discriminatory practices, including the use of court-ordered busing to end de facto segregation in schools.¹

President John F. Kennedy in March, 1961, issued Executive Order 10925 requiring government contractors to act affirmatively to combat racial discrimination.² The Order simply directed that government contractors “take affirmative action to ensure that applicants are

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employed . . . without regard to race, creed, color, or national origin.”

The order sought to arrest, relative to employment hiring practices in the United States, much of the overt racial discrimination that plagued the nation and tarred its image abroad. Current affirmative action policy is premised on the belief that government has a responsibility to remedy the effects of past and current discrimination, as well as prevent future discrimination or exclusion of groups from active participation in all facets of economic, political, and educational life. Hence, affirmative action policy is usually seen as a matter of giving preferences to minorities with respect to employment, government contracts, or education.

This chapter provides a critical, inferential analysis of affirmative action policy vis-à-vis some of the legislative decrees and executive orders that brought Blacks into mainstream American society, highlights some of the disruptive protests and demonstrations that forced educators to re-think college admissions policy, and discusses the Bakke, Gratz, and Grutter court rulings. Further, the chapter, referencing some of the competing values implicitly and explicitly expressed in the selected executive orders, legislative acts, and judicial rulings, addresses how these values impact the affirmative action debate in race-based college admissions. Before proceeding, the chapter provides a contextualization within which to place the discussion of affirmative action by briefly re-visiting the Supreme Court’s decision in Brown v. Board of Education and examining the nation’s social climate during its aftermath. Despite the Supreme Court’s ruling that held separate but equal in contempt, it took almost 10 years thereafter for Blacks, particularly in the South, to actually begin to be treated with some

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4 George M. Frederickson, “Still Separate and Unequal,” The New York Review of Books 52, No. 18, 1. Several other experts report that the giving of preferences to minorities with respect to employment, government contracts, or education is the policy’s intent.
modicum of dignity. What transpired during those 10 years was transformative for African Americans in their quest to attain social equality and gain entry into elite colleges and universities.

**Brown and Its Aftermath**

*Brown v. Board of Education*\(^5\) ushered in a new period in United States history where opportunities, once earmarked for Whites only, were now cautiously being presented to African Americans. On May 17, 1954, after almost two years of conferences between the Justices, a unanimous Supreme Court ruling invalidated racial segregation in public schools. Despite their unanimous opinion on school segregation, the Justices “were deeply divided” over legal, political, and social issues concerning desegregation of public schools, particularly in the South.\(^6\) Aside from the, albeit, highly charged legal issues, some of the members on the High Court expressed concern over White Southern backlash if desegregation of public schools became law. For instance, Justices Clark and Black believed violence would erupt in the South if the Court

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\(^5\) This landmark case combined five school desegregation cases into what came to be known as *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954). See Chapter One, footnote 93.

\(^6\) Michael J. Klarman presents an excellent summary of the internal deliberations of the Court as they contemplated the constitutionality of public school segregation in *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (Oxford: Oxford University Press, 2004), 292 – 312. Therein, Klarman advises that Chief Justice Vinson believed that Congress did not outlaw segregation because, up until that time, there was a long history of law supporting separate but equal “that cannot be ignored.” Vinson, in the Court’s first conference, drew attention to the fact that when Congress wrote the Fourteenth Amendment and was responsible for its enforcement, schools in the District of Columbia had been segregated and remained so for almost one hundred years. Similarly, Reed argued there was no legislative history suggesting that segregation was unconstitutional, and felt *Plessy* was “good law.” Justices Clark and Frankfurter remained undecided, with Frankfurter contending that the intent of Fourteenth Amendment might mean “the abolition of segregation.” The other four Justices – Black, Douglas, Burton, and Minton – believed segregation was unconstitutional. See also Del Dickson, editor, *The Supreme Court in Conference (1940 – 1985): The Private Discussions Behind Nearly 300 Supreme Court Decisions* (Oxford: Oxford University Press, 2001), 645 – 670. Therein, Dickson’s research over the Court’s divided stance on *Brown* supports Klarman’s findings.
outlawed the segregation of schools.\(^7\) And, not surprisingly, they were right. But what happened between December 1952 and May 17, 1954 that led the Court to hand down its unanimous decision, despite the Justices’ apparent disagreements over the legal aspects of the cases and their concern over the eruption of violence in the South?\(^8\)

The works of two scholars, in tandem, provide a fairly comprehensive answer. Peter Lau, commenting on the two *Brown* decisions writes, “But *Brown* was much more than a legal decision. It was also a social, political, and cultural event that presented – as it still does today – a powerful symbol of the possibilities and limitations of American democracy and a reference point for ongoing battles over questions of segregation, schools, and equality.”\(^9\) Retired Supreme Court Justice, David Souter, illuminates Lau’s comments even more. Contending that Supreme Court decisions often involve more than just a “fair reading” of the law, he proffers that contemporary social circumstances can sometimes “force” the court to consider factors not

\(^7\) On page 655 of *The Supreme Court in Conference (1940 – 1985)*, Justice Douglas informs that Justice Black could not visit his home state of Alabama for over a decade following the *Brown* decision. Accordingly, local reaction to the case was so hostile that Black lost most of his friends in Alabama, the citizens drove his son out of his Montgomery law practice and the state, and his alma mater refused to send him an invitation to attend his fiftieth law school class reunion at the University of Alabama. Needless to say, violence erupted in several of the southern states. Other Justices expressed concerns that southerners would react violently to the ruling. *See Dickson, 644 – 660. See also* Daniel Aldridge, *Becoming American: The African American Quest for Civil Rights*, 221. Aldridge states, “[Justices Black and Douglas] believed that an aggressive attempt to enforce desegregation would stimulate a violent white backlash in the South.”

\(^8\) For one thing, by the time the cases came for re-argument in the 1953 Term Chief Justice Vinson died suddenly of a heart attack. President Eisenhower picked Earl Warren to replace Vinson as Chief Justice. According to the memorandum written by Douglas, “Chief Justice Warren was very clearly of the view that segregation in public schools was unconstitutional.” With Justices Black, Burton, Minton, Douglas, and the Chief Justice in favor of desegregation, the Court now had a bare majority favoring the unconstitutionality of segregated public schools. Justices Reed, Frankfurter, Clark, and Jackson looked to the Fourteenth Amendment and found the legislative history lacking definitiveness on the issue of abolishing segregation. Of the four Justices, Reed and Frankfurter seemed to indicate more clearly than the others what caused them to change their minds. Reed discloses in the 1953 Conference that “I also recognize that this is a dynamic Constitution, and what was current in *Plessy* might not be current now.”

explicitly contained in the Constitution to decide cases.\textsuperscript{10} He aptly points out, comparing the 
Plessy and Brown decisions, that “The language of the Constitution’s guarantee of equal 
protection of laws did not change between 1896 and 1954, and it would be hard to say that the 
obvious facts on which Plessy was based had changed either.” What accounted for the divergent 
results in both cases, according to Souter, is time: “the dates they were decided.” Accordingly, 
the members of the Court in Plessy remembered when the relegation of Blacks to chattel was the 
law of the land. “To that generation,” asserts Justice Souter, “the formal equality of an identical 
railroad car meant progress.” He adds that the Court in 1954 “looked at enforced separation 
without the revolting background of slavery… and found a meaning in segregating the races by 
law that the majority of their predecessors in 1896 did not see.”\textsuperscript{11} Simply stated, the separation 
of the races in 1954, though arguably legal, was socially and morally repulsive compared to its 
social acceptability in 1896. Still, whatever the exact reason for the Court’s decision that 
separate but equal was unconstitutional in 1954, what was undeniable was the violence that 
followed the Court’s decision.

\textsuperscript{10} Constitutional judging is not a straightforward exercise of reading a case fairly and viewing facts 
objectively. Justice David Souter offered a criticism to what he termed “the fair reading model,” which calls for an 
analysis of the Constitution that is grounded in the language of the Constitution at the expense of a more nuanced 
analysis that considers the contemporary values and outlooks that can shape judicial decisions. The fair reading 
model, Souter noted, fails because the Constitution must be “read as a whole, and when it is, other values crop up in 
potential conflict with an unfettered right” that is explicitly expressed in the Constitution. For instance, liberty and 
equality can clash and when they do, a court is forced to choose between them. “The court has to decide which of 
our approved [values] has the better claim, right here, right now, and a court has to read fairly when it makes this 
kind of choice.” Souter points out that the Constitution “is a pantheon of values” that not only clash but are often in 
tension with each other. It provides no clear answers that fit all conflicts. See Text of Justice David Souter’s 
Speech: Harvard Commencement Remarks, at http://news.harvard.edu/gazette/story/2010/05/text-of-justice-david-
souters-speech/.

\textsuperscript{11} See Text of Justice David Souter’s Speech: Harvard Commencement Remarks, at 
Separation between Blacks and Whites in almost every aspect of life had been codified in law for 58 years. Moreover, following emancipation, race relations between Blacks and Whites had been quite tenuous, particularly in the South. Scholars, informing on the condition of race-relations following the Brown decision, invariably reference the brutal murder of Emmett Till and the Southern Manifesto to illustrate some of the extreme measures many Southerners took to keep Blacks in their conventionally crafted subordinate role to Whites. With very little White House intervention, racist southerners became increasingly intransigent in their resolve to stymie desegregation efforts in schools. Throughout the mid-1950s and 1960s it was not uncommon for

12 It is a curious thing, even if only coincidental, that the court handed down its ruling in Plessy on May 18, 1896 and its ruling in Brown on May 17, 1954. Dickson points out that “someone” suggested delaying the decision until May 24, 1954, but it was decided “to get them down on May 17, to prevent any leaks or advance information or tip-offs or rumors about the opinion.” See Dickson, The Supreme Court in Conference (1940 – 1985), 661.

13 Emmett Till, from Chicago, Illinois, was visiting relatives in Mississippi during the summer of 1955. On the afternoon of August 24, he and some of his cousins went to a grocery store owned by a White couple, Roy and Carolyn Bryant. Allegedly, Carolyn was quite attractive and Emmitt’s cousins dared him to say something to Mrs. Bryant. Acting on his cousins’ dare, Emmett allegedly made a sexually suggestive remark to her and was subsequently chased from the store. When Carolyn later told her husband about the incident, Mr. Bryant and his half-brother vowed to teach Emmitt a lesson. They drove to Emmitt’s uncle’s house, demanded to see him, put him into a waiting car, and took him to an abandoned mill where they tied him up and proceeded to beat him. When Emmitt supposedly showed no fear and shouted back: “You bastards. I’m not afraid of you. I’m as good as you are. I’ve had white women,” the men gouged out his eyes, tied barbed wire around his neck, took him to a nearby river, shot him in the head, and dumped his body. An all-White male jury acquitted the men after one-half hour of deliberation. See Daniel W. Aldridge, III, Becoming American, 221 – 222. See also Dennis W. Johnson, The Laws that Shaped America: Fifteen Acts of Congress and their Lasting Impact (New York: Routledge, 2009), 299; and Michael L. Levine, African Americans and Civil Rights from 1619 to Present (Arizona: Oryx Press, 1996), 180.

14 In March 1956, 101 of 128 southerners in Congress signed a “Southern Manifesto” charging that the Warren Court had no legal basis for overturning the separate-but-equal doctrine. The Manifesto declared that the high court had clearly abused their judicial power by substituting their personal and social views for the law of the land. They vowed to employ all lawful means reverse a decision that was contrary to the Constitution. See Dennis W. Johnson, The Laws that Shaped America: Fifteen Acts of Congress and their Lasting Impact (New York: Routledge, 2009), 300. See also, Michael L. Levine, African Americans and Civil Rights, 180; and Daniel W. Aldridge, III, Becoming American, 223.
students who entered all-White schools to be pelted, spat on, heckled, and mobbed. It was only in the 1960s, with the advent of national media broadcasting showing many of the violent clashes between civil rights activists and southern White racists, that social and educational conditions for Blacks began to improve.

**Blacks Protests Sweep the Nation:**
**President, Congress, and the Ivies Intervene**

The early 1960s saw a new wave of protests by young, Black college students who grew tired of slow-moving social reforms. On February 1, 1960, four students from North Carolina Agricultural and Technical University staged a sit-in protest at a Woolworth’s Whites-only lunch counter in Greensboro. Expecting to be arrested or accosted, the students were “surprise[d] the White customers at the store and the White waitresses ignored them and pretended [they] were not sitting there.” Although the waitresses never served them, the students returned the next day. Local newspapers and television stations covered the sit-ins and, five days later, students from other nearby colleges, including some Whites, joined the protestors. With the situation gaining national media attention, managers of Woolworth and city officials “diffused the crisis”

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15 Dennis Johnson, Michael Levine, and Daniel Aldridge point out in their respective books (see note 13 above) that Little Rock Central High became a national outcry against atrocities aimed at nine Black children who were admitted to the school as a result of the *Brown* decision. Reportedly, on September 23, 1957, the angry mob who gathered outside the school building the morning the children sought to enroll, shouted racial slurs, barred them from entering the school, and was left at the mercy of the local police who did nothing to curtail the mob’s activities. Although President Eisenhower visited Governor Orval Faubus and asked him to allow the children to enroll in the school, the Governor denied the President’s request. It was only until President Eisenhower sent in U.S. Army troops and federalized Arkansas national-guard that the children were able to attend the High School. Whites continued to harass the children until Governor Faubus closed the school in the fall of 1958, only to re-open it by federal court order in 1959. The authors also brought attention to the case of Atherine Lucy who, in 1956, enrolled in the University of Alabama. When she attempted to step onto campus, she was pelted with rotten eggs, was called nigger whore, and blocked by White protestors from entering the university. See Johnson, *The Laws that Shaped America*, 300; Levine, *African Americans and Civil Rights*, 180; and Aldridge, *Becoming American*, 224 - 225.

by “ending lunch counter segregation.” The Greensboro protest sparked other sit-ins throughout the South and by mid-April “every southern state” had been hit by Black protestors demanding the right to be served at the same eating-counters as Whites.

As the struggle for civil rights intensified in the late 1950s, it became clear to the White House that racial problems at home could undermine the position of the United States in the Cold War. The Soviet Union’s use of incidents such as Governor Orval Faubu’s use of the National Guard in Little Rock, Arkansas, to keep Black children out of school was particularly helpful in their propaganda efforts “to portray the United States as a citadel of racial oppression.” Jerome Karabel writes,

The international situation was a central backdrop to the growing debate over the race question; even Secretary of State, John Foster Dulles (Princeton ’08), though hardly a liberal, recognized the harm discrimination was causing U.S. foreign relations and urged support for civil rights legislation. . . . In 1957, the Eisenhower administration finally passed a civil rights bill, its provisions watered down by powerful southern members of Congress. Another civil rights bill followed in 1960, but it too fell far short of a serious commitment to transform America’s racial order.

While the Soviet Union sought to undermine the credibility of the United States abroad by pointing to its apartheid system, the rise of student protests throughout the country and pressure from civil right leaders and activists finally forced America to pay more than lip service

17 Aldridge, Becoming American, 230.
18 Ibid., 231.
19 See note 13 above. See also Karabel, The Chosen, 379.
20 Karabel, The Chosen, 379.
21 Ibid., 379.
to its shameful racial problems. John F. Kennedy’s Executive Order 10925, Lyndon B. Johnson’s Executive Order 11246, the passing of the Civil Rights Act of 1964 and the Voting Rights Act of 1965 finally gave Blacks a modicum of control over their own destiny. No longer was it legal to discriminate in hiring workers and Blacks could now vote without fear of violent white reprisal from Southerners. Perhaps, one of the most riveting moments recorded at the time is President Lyndon B. Johnson’s speech to the graduating class of 1965 at Howard University. Howard Ball writes,

In a memorable speech to the graduating class at Howard University, broadcast to the nation in June 1965, President Lyndon B. Johnson defended the need for affirmative action. He said that affirmative action is necessary because “you do not wipe away the scars of centuries by saying, ‘Now you are free to go where you want, do as you desire, and choose the leaders you please.’ You do not take a man who for years have been hobbled by chains, liberate him, bring him to the starting line of a race, say ‘you are free to compete with all the others,’ and still justly believe you have been completely fair.”

22 Executive Order 10925. An African American Texan lawyer named Hobart Taylor, Jr., working with Arthur Goldberg and Abe Fortas, at the behest of newly elected Vice-President Lyndon B. Johnson, coined the term “affirmative action” when the men sat to draft the executive order. The order meant for employers to take affirmative action to assure everyone an equal opportunity and to end discrimination against groups that had historically been discriminated against with regard to employment.

23 By the mid to late 1960s, affirmative action called for greater efforts on the part of employers and university admissions officials to implement policies that gave preference in the form of extra weight in a selection process to under-represented groups. The “extra weight” usually resulted in set-aside quotas and, as such, resulted in a form of discrimination in favor of under-represented groups. The policy thus ran counter to Kennedy’s original intent where he called for all forms of discrimination to be abolished. As Thomas Weisskopf correctly points out, Johnson issued executive order 11246 to reinforce the provisions of Titles VI and VII of the Civil Rights Act of 1964 wherein the order directed government contractors to actively seek out Black candidates for jobs and called for colleges and universities to recruit students and faculty members without treating them differently when making actual decisions. However, it is in this “active recruitment” of Blacks in employment and institutions of higher learning that unintentionally creates the contentiousness by which affirmative action is debated.

Just five days after President Johnson signed the voting rights act into law, a five-day riot, sparked by a White police-officer’s arrest of a Black motorist, broke out in Watts, California. Charging police brutality, thousands of Blacks rallied behind the arrestee. During the course of the riots, an angry mob of some 30,000 people destroyed $35 million worth of property; 4,000 people were arrested; more than 1,000 people were injured, most of them Black; thirty-four people died; and many White-owned stores looted and burned. The Watts riot would pale in comparison to the race riots that soon followed. Jerome Karabel discloses,

In the summer of 1967, an unprecedented wave of race riots shook the nation and, by year’s end, 82 racial disturbances had erupted in 71 different cities. One of the most notorious riots took place in Newark, New Jersey on July 12. It lasted 6 days, claimed 23 lives, and took 3,000 troops to quell. Ironically, in the immediate aftermath of the riot, William Lichten, a physics professor at Yale, wrote to President Brewster noting the shift among northern Negroes from “apathy . . . to peaceful protests and demonstrations to . . . riots and violence” and pointing to the rapid growth of New Haven’s Black population, which raised the prospect of Yale becoming “a white island in a black sea.” As a matter of both elementary justice and institutional self-interest, Yale, he argued, had to do more. Just days after Lichten’s letter arrived, an even bigger race riot exploded in Detroit. In eight days, 43 people died, 2,500 stores were looted, burned, or destroyed, and 7,200 people were arrested . . .

In the wake of the Newark and Detroit riots, President Johnson appointed an elite group to the National Advisory Committee on Civil Disorders to address the causes of the riots. The committee issued what became known as the Kerner Report wherein the commission warned that “our nation is moving toward two societies, one Black and one White – separate and unequal. Discrimination and segregation have long permeated much of American life; they now threaten the future of every American.” The report insisted that “White racism is essentially responsible


for the explosive mixture which has been accumulating in our cities since the end of World War II.”

On April 4, 1968, Martin Luther King, Jr., was murdered. Riots erupted throughout the country almost immediately. In Washington, D.C., White-owned stores in Black neighborhoods were destroyed. Property damage throughout the country was estimated at over $100 million. Militant students threatened the status quo, mainly on a few prestigious university campuses. At Columbia University, following a six-day protest, more than 100 police officers were injured and 692 people arrested. The most violent riot to date, the protest received enormously wide publicity. A few of the protests rivaled Columbia’s, notably a demonstration at Cornell where students brandished guns to force concessions from the university administration.

Relative to admission into highly selective colleges and universities, Harvard, Yale, and Princeton Universities began enrolling “a critical mass of Blacks” as well as Latinos, Native Americans, and Asian Americans into their schools. Practically absent on the respective campuses in earlier years, Blacks and other minorities were now serving as members of, and as student recruiters for, colleges that had begun to embrace “racial diversity as a critical component of institutional excellence.” According to Karabel, three major reasons accounted for the increased recruitment of minorities: the civil rights movement, the mobilization of the few Blacks on each of the campuses, and the many urban riots that preceded the increased

28 Karabel, The Chosen, 386-387. See also Patterson, Grand Expectations, 664.

29 Patterson points out that the academic year, 1968-1969, brought about over 150 violent demonstrations on college campuses, “including many of the most prestigious ones.” 687. See also Karabel, 388. According to Karabel, just as Yale completed selection of its most racially diverse group of students into its freshmen class for 1968, “an unprecedented outbreak of riots shook the nation’s cities – resulting in 39 deaths and some 20,000 arrests” as a result of Martin Luther King, Jr.,’s assassination.

30 Karabel, The Chosen, 405.

31 Ibid., 405.
enrollment of Blacks in the mid-to-late 1960s. Of the three major reasons cited by Karabel for
the increase in Black-student recruitment at the Ivies, the last two seemed to have more of a
direct impact on increasing the presence of Blacks on these prestigious college campuses than
the civil rights movement.  

Even before King’s murder, Princeton moved to increase Black student enrollment at its
university. Shaken by the riots in Newark and Plainfield, New Jersey, the school’s leadership
explained in its 1967-1968 annual report that “the events of last summer nationally . . . made it
imperative that we move off . . . [the] plateau [of 15 or so Black matriculants annually].”
Accordingly, “Princeton more than tripled the number of Blacks in the entering class of 1968,
enrolling a record 44 [students].”

Harvard and Yale followed Princeton. To accomplish their
goal of rapidly increasing Black-student enrollment, the Big Three modified their definition of
merit in the admissions process. Instead of looking solely at standardized test scores and grade-
point-averages, they now made concessions for the historically excluded by giving preferential
treatment to Blacks.

One of the most profound and far reaching impacts Blacks made in their struggle for
racial justice came by way of tearing down the barriers of long standing college admissions

32 This is not to say that the civil rights movement did not encourage selective colleges and universities to
seek out academically talented blacks to attend their schools. Harvard had admitted such men for years. Rather, as
Karabel aptly points out, “the civil rights movement, morally compelling though it was, had not in and of itself been
enough to fundamentally alter the admissions practices of Harvard, Yale, and Princeton.” In fact, in 1964, these
three universities had less than two percent Black students on their respective campuses. See Karabel, 406. What
the civil rights movement did was to motivate leaders, and, in some instances “forced” them to issue executive
orders and draft legislation that would provide Blacks an even playing field as Whites. In essence, the movement
provided blacks legal equality to fight for equal opportunity in education, jobs, housing, and politics. As James
Patterson points out, relative to political leadership in the 1960s, Robert Weaver became the first Black person to
hold a cabinet position – Housing and Urban Development – in 1965; Richard Hatcher the mayor of Gary, Indiana
in 1967 and Carl Stokes, the mayor of Cleveland, Ohio the same year; Thurgood Marshall, also in the same year,
became the first Black to be confirmed to the Supreme Court. Accordingly, “a significant Black middle class was
coming into being.” See Patterson, Grand Expectations, 653.

practices that favored the privileged. In a charged atmosphere of turbulence, elite colleges and universities could no longer justify policies “that favored WASPs over Jews, prep school students over high-school students, and the affluent over those who needed scholarship assistance.” As Karabel points out, groups traditionally discriminated against – Jews, graduates of public high schools, scholarship applicants, and women – came to be treated more equitably during the admissions process. He notes that applicants, with the exception of alumni sons, “that had long been given preference in the admissions process saw their privileges considerably eroded in the 1960s.” Paradoxically, with privilege alone no longer being the premiere factor in the admissions process, “the Black struggle for inclusion – often thought to be in fundamental conflict with the logic of meritocracy – contributed to the emergence of admissions policies at Harvard, Yale, and Princeton that were far more meritocratic in 1970 than in 1960.

**Current Law:**

_Bakke and Grutter and Gratz_

Affirmative action programs, relative to higher education admissions, have been defended on three principal grounds: to offset past discrimination, to counteract present unfairness, and to achieve future equality. The first seeks to provide “compensation” and serves a remedial purpose. The second attempts to “level the playing field,” and is tied to the first by proponents who argue that America has not always provided the same opportunities

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34 Ibid., 409.

35 Ibid. Karabel claims that alumni sons remained an exception because Harvard, Princeton, and Yale deemed them “essential to their vital institutional interests.”

36 Ibid.

37 Ibid.
educationally, politically, and economically to all groups. The third uses the rationale of “diversity” as an umbrella to promote racial and gender inclusiveness in higher education during the admissions process. Diversity and race are usually intertwined or used interchangeably.

The issue over affirmative action in higher education came to a head in the case, Regents of the University of California v. Bakke. Allan Bakke, twice an applicant (1972 and 1973) to the University of California, Davis’ (UC Davis) Medical School, claimed he had been wrongfully excluded from admission to the school despite the fact that minority applicants with significantly lower scores were accepted. The school had two separate admissions program, one for standard applicants and the other for special applicants. The admissions program for special applicants included those who were either economically or educationally disadvantaged and those who identified themselves as African American, Mexican American, Asian American, or American-Indian. Moreover, the medical dean had another “special admissions” program, one in which he reserved as many as five places every year for the children of important state politicians or children whose parents provided substantial financial contributions to the university.


39 Anderson, The Pursuit of Fairness, 152. Anderson writes, “With the help of a sympathetic admissions officer, and throughout the long trial, Bakke learned some significant facts about the 1972 admissions process. Medical schools did not like to admit applicants over the age of 30.” Anderson further points out, relative to UC Davis’ admissions policy for ‘disadvantaged students,’ the special applicant group had an average grade-point average of 2.88 versus 3.49 for the regular pool of applicants. Additionally, all Whites with GPA’s of 2.5 or below were automatically rejected, and while there was no minimum for the special group, at least one minority was admitted with a GPA of 2.1. Bakke had far superior grades and MCAT scores. Opponents of affirmative action policy argue, as is discussed later in the essay, that when someone with lower grades is accepted over someone with superior grades and test scores, it destroys merit. Herein lies one of the reasons the policy is so contentious.

40 Ibid.
Although Whites could theoretically be evaluated under the special admissions plan, no White disadvantaged applicant was ever admitted under the policy. The School reserved 16 of the 100 seats for the special admissions candidates. When the School rejected Bakke, he sued UC Davis asserting the School’s affirmative action policy denied him the guarantee of equal protection under the Fourteenth Amendment, violated a provision of the California Constitution, and violated [Section] 601 of Title VI of the Civil Rights Act of 1964.41 “Unlike previous individuals in the civil rights era who sued, Bakke was White, and soon his grievance was labeled the “reverse discrimination” case.”42 Both the lower court and the California Supreme Court agreed with Bakke, and when UC Davis appealed their rulings, the Supreme Court accepted the case.

In June 1978, a deeply divided U.S. Supreme Court issued its decision. Three of the Justices (Stevens, Rehnquist, and Stewart) and Chief Justice Burger believed the allotment of 16 seats and the use of race as a positive factor in the admissions process violated the Fourteenth Amendment and Title VI of the Civil Rights Act. Four other Justices (Brennan, Blackmun, Marshall, and White) believed the university’s admissions program served to overcome the effects of past discrimination, and hence, was constitutionally permissible. Justice Lewis Powell’s decision provided the pivotal vote in deciding the case and he delivered the opinion for the majority.

In his opinion in Bakke, Justice Powell concluded that “racial and ethnic classifications of any sort are inherently suspect and thus calls for the most exacting judicial scrutiny.”43 However

41 Regents of the University of California v. Bakke, 438 U.S. at 266.
43 Bakke, 438 U.S. at 266.
he, as well as a majority of the Court, believed that it was constitutionally permissible to take race into account when making university admissions decisions providing the institution could demonstrate that the practice was necessary to promote a substantial interest.44

Relative to factors constituting a sufficiently substantial interest, Justice Powell rejected several arguments advanced by UC Davis. The only argument he found persuasive was the notion that racial diversity enhances “the total educational environment of an institution, as well as the education of all its members.”46 As a result, Powell would find “the interest of diversity [to be] compelling in the context of a university’s admissions program.”47 Powell emphasized that classroom diversity facilitated both the exchange of ideas and students’ exposure to the mores of fellow students who are “as diverse as this Nation of many people;” variables crucial for the Nation’s future.48

Since the Bakke ruling, selective universities and colleges throughout the nation have relied on Powell’s opinion in justifying their diversity-based admissions policies. Twenty-five years after the Bakke holding, two University of Michigan cases brought the question of the use of race in the admissions process to a head. Both cases, like the Bakke suit, concerned reverse discrimination. The first case involved a White high school graduate, Jennifer Gratz, who had a grade point average (GPA) of 3.76, excellent Scholastic Aptitude Test (SAT) scores, and an outstanding extra-curricular portfolio. The second case involved a mother of two who, in her 40s, applied to the university’s law school. Barbara Grutter, a White female, had a 3.8 GPA and

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46 Ibid., 35.

47 Ibid.

48 Ibid.
a Law School Aptitude Test (LSAT) score of 161. In both cases, the White applicants were not admitted to the undergraduate and law school programs, respectively, in favor of minority applicants with lower GPAs and standardized test scores. The cases came to be known as *Gratz v. Bollinger* and *Grutter v. Bollinger*, respectively. Although each case was filed with the lower courts at different times, the Supreme Court decided both cases in June 2003.

Chief Justice William H. Rehnquist delivered the two-thirds majority opinion for the Supreme Court in the *Gratz* decision. Although the Court rejected the petitioners’ argument that diversity cannot constitute a compelling state interest, they found that the automatic distribution of 20 points to every single underrepresented minority applicant based solely on race was not narrowly tailored to achieve educational diversity. The Court reasoned that the University’s admissions program ran counter to the individualized consideration Justice Powell contemplated 25 years earlier in *Bakke* where, in considering race or ethnic background a plus, it was important to consider each particular applicant as an individual, assess all of the qualities that that individual possess, and evaluate that individual’s ability to contribute to the unique setting of higher education. In the Court’s view, the admissions process in *Gratz* did not give enough consideration to individual attributes and as such was in violation of the Fourteenth Amendment. Chief Justice Rehnquist thus wrote, “because the University’s use of race in its current freshman admissions policy is not narrowly tailored to achieve respondents’ asserted compelling interest in diversity, the admissions policy violates the Equal Protection Clause.” In short, the Court found that the undergraduate admissions policies operated too much like a quota system and was therefore unconstitutional.


In *Grutter*, Justice Sandra Day O’Connor delivered the opinion of a 5 to 4 Court holding, as one of the top law schools in the nation, she noted the University of Michigan’s Law School selects a class of approximately 350 students from the more than 3,500 applications it receives each year. In assembling the class of 350, the Law School strives to “admit a group of students who individually and collectively are among the most capable…[by selecting students] with substantial promise for success in law school and a strong likelihood of succeeding in the practice of law and contributing in diverse ways to the well-being of others.”

Relative to the diversity issue, O’Connor noted that during the admissions process the admissions official “engages in a highly individualized, holistic review of each applicant’s file” so that “serious consideration” is given to “all the ways an applicant might contribute to a diverse educational environment.” The Justice further noted that, unlike the program at issue in *Gratz*, “the Law School awards no mechanical, predetermined diversity ‘bonuses’ based on race or ethnicity.”

She added the following:

All applicants have the opportunity to highlight their own potential diversity contributions through the submission of a personal statement, letters of recommendations, and an essay describing the ways in which the applicant will contribute to the life of diversity of the Law School. What is more, the Law School actually gives substantial weight to diversity factors besides race. The Law School frequently accepts nonminority applicants with grades and test scores lower than underrepresented minority applicants (and other nonminority applicants) who are rejected.

In her dissent from the Court’s holding in *Gratz*, Justice Ginsburg emphasized the relevance of the social and historical context of the university’s admissions policy as well as the

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52 Ibid., at 335.

53 Ibid.

54 Ibid., at 336.
nation’s history of institutionalized racial and discrimination to the case. She pointed out that the nation is not far removed from “an overtly discriminatory past” and the effects of centuries of law-sanctioned inequalities in schools. As such, she argued, “decision-makers may properly distinguish between policies and exclusion and inclusion.” Still, despite the nation’s overtly discriminatory past and its covertly discriminatory present, attempts at including those who have, for centuries, been excluded from elite college campuses remain debatably contentious.

Values Pertinent to the Debate

Numerous values are explicitly and implicitly inherent on both sides of the affirmative action in higher education admissions debate. Among the important values explicitly inherent in the debate include economic and educational freedom, fairness, achievement and success, diversity, merit, democracy, equality, equity, and justice. Those that are implicitly inherent in the debate include distributive justice, individuality, and rights versus privilege in access to higher education. Hidden among the values are issues of mistrust between proponents and the opponents of affirmative action who say they want the same thing for all Americans, political and social power, and control of wealth.56

Affirmative action began with one group in mind – African Americans – but expanded to address the concerns of other groups as well.57 The federal affirmative action policy that is contentiously debated today started mainly as outreach programs designed to attract minority


56 See J. Edward Kellough, *Understanding Affirmative Action: Politics, Discrimination, and the Search for Justice* (Washington, D.C.: Georgetown University Press, 2006), 5. Kellough writes that, “Affirmative action, regardless of its specific form, is primarily a policy intended to promote the redistribution of opportunity.” He goes further to state that “readers should remember that the policy is essentially about who wins and who loses in the distribution of valued resources, and that reality is frequently what motivates those who press the debate most vociferously.” I believe, at bottom of the policy, are hidden issues of power and control; something the leaders obsessed about since the nation’s birth.

candidates for jobs, contract grants, and college admission.\textsuperscript{58} Thereafter, it was transformed into a far-reaching policy of applying race, ethnic, gender preferences and other considerations in decisions impacting many facets of everyday life.\textsuperscript{59} “The transition was designed to improve the lot of historically disadvantaged minorities and women; but it came at the cost of widespread, often legitimate, popular resentment.”\textsuperscript{60} Still, one must ask why, after centuries of exclusion, are so many Americans against race-based affirmative action in higher education admission programs?

Randall Kennedy acknowledges although much has been written on the issue, “there remains a disturbing lacuna in the scholarly debate.”\textsuperscript{61} He asserts that what is virtually absent from many of the leading articles in the growing opposition to affirmative action is a failure to address the question of whether racism is partly responsible.\textsuperscript{62} He states that, “These articles typically portray the conflict over affirmative action as occurring in the context of an overriding commitment to racial fairness and equality shared by \textit{all} the important participants in the debate.”\textsuperscript{63} Kennedy posits that the articles written by many of the detractors against affirmative action thus:

\begin{quote}
\textbf{[O]bscures the emotions that color the affirmative action debate and underestimates the alienation that separates antagonists. It ignores those who}
\end{quote}


\textsuperscript{59} The authors list employment, government procurement of services and supplies, legislative districting, K-12 student attendance policies, English Language instruction, university admissions, and - in a limiting fashion - housing, 223.

\textsuperscript{60} Ibid., 223.


\textsuperscript{62} Ibid.

\textsuperscript{63} Ibid.
believe that much of the campaign against affirmative action is merely the latest in a long series of White reactions against efforts to elevate the status of Blacks in American society. These observers perceive critics of affirmative action not merely as opponents but as enemies. They perceive ostensibly non-racist objections to affirmative action as rationalizations of White supremacy. They fear that the campaign against affirmative action is simply the opening wedge of a broader effort to recapture territory “lost” in the Civil Rights Revolution in the 1960s. And it is precisely this apprehension that explains the bitterness and desperation with which they wage the affirmative action struggle – emotions that are simply inexplicable in terms of the picture of race relations portrayed by conventional analyses. The conventional portrait also implicitly excludes from consideration those whose opposition to affirmative action stems from racism. It concedes the presence of prejudice “out there” in the workday world of ordinary citizens. But it assumes that “in here” – in the realm of scholarly discourse and the creation of public policy – [racial] prejudice plays no role.\textsuperscript{64}

Kennedy warns:

Those who have ignored racism as an important element of the affirmative action controversy should consider SPONGE (The Society for the Prevention of Niggers Getting Everything), an organization of disaffected Whites in the Canarsie section of Brooklyn, New York, whose arresting title is more revealing of at least part of the opposition to affirmative action than many commentators are willing to acknowledge.\textsuperscript{65}

Indeed, encapsulated within the affirmative action debate generally, and higher education admissions specifically, is a partial history of race relations in the United States: a history fraught with trials and tribulations ever since the nation’s birth. If education, as Bok and Bowen have adequately shown and many agree, can serve to bring Blacks, women, people of color, and other underrepresented groups into mainstream America, why not allow it to take place with all deliberate speed? After all, an educated society benefits everyone.

**Conclusion**

The *Brown v. Board of Education* Supreme Court decision signaled a major milestone for Blacks in their quest to secure the same rights as Whites to a quality public school education.

\textsuperscript{64} Ibid., 59-60.

\textsuperscript{65} Ibid., 66.
The decision for many Southerners marked the onset of Jim Crow’s demise and the dismantling of a well-established, two-tier social system premised on the notion of White supremacy. Desperate to hold on to what had been a customary way of life for over a century, southern White backlash was swift, often violent, and stonewalling became the order of the day as Southerners closed ranks in defiance of the Court’s ruling.

Separation between Blacks and Whites in almost every aspect of life had been codified in law for 58 years. Moreover, following emancipation, race relations between Blacks and Whites had been quite tenuous, particularly in the South. Scholars, informing on the condition of race relations following the Brown decision, invariably reference the brutal murder of Emmitt Till and the Southern Manifesto to illustrate some of the extreme measures many Southerners took to keep Blacks in their conventionally crafted subordinate role to Whites. With very little White House intervention, racist southerners became increasingly intransigent in their resolve to stymie desegregation efforts in schools. Throughout the mid-1950s and 1960s it was not uncommon for students who entered all-White schools to be pelted, spat on, heckled, and mobbed. It was only until the 1960s, with the national media broadcasting of many of the violent clashes between civil rights activists and southern White racists, did social and educational conditions for Blacks begin to improve rapidly.

Although new legislative and executive orders following the Brown decision sought to bring, once again, African Americans into full citizenship, Bakke threatened to push the hands of time backward – at least in the realm of higher education. At issue in Bakke was the constitutionality of the admissions program at the University of California, Davis’ Medical School. The school implemented two admissions programs, one called the regular program and the other called the special program. The special program tailored its admissions for
economically and educationally disadvantaged applicants as well as minorities. Allan Bakke, who, after twice being rejected admission, sued the school on grounds that the admissions process violated the Equal Protection Clause of the Fourteenth Amendment, a section of the California Constitution, and Section 601 of the Civil Rights Act of 1964.

Four of the justices believed that neither the special admissions program nor the use of race by UC Davis was unconstitutional. Four of the other justices, including Chief Justice Burger believed the opposite. Justice Powell, believing that the use of race was permissible within the meaning of the Constitution, became the swing vote on the Bench. Powell ruled that the use of race was constitutional as long as its aim served a compelling interest, namely, the creation of a diverse student body. The justice held that the educational benefits that flow from an ethnically diverse student body is a compelling enough state interest to warrant its use.

Twenty-five years following the Bakke decision, the Supreme Court reaffirmed in Grutter that the use of race, absent quotas or set-asides, could serve a compelling state interest. Sandra Day O’Connor, delivering the opinion for a slim majority, found that Michigan’s law school admissions program attempts to admit diverse students with substantial promise, a strong likelihood of succeeding in the practice of law, and who will contribute in diverse ways to the well-being of others. Relative to the diversity issue, O’Connor noted that Michigan’s admissions officials conducted a holistic review of each applicant’s file so as to determine all the ways an applicant might contribute to a diverse educational environment.

If the educational reasons for diversifying college campuses are compelling, the economic arguments for sustaining it are equally strong. No nation can afford to throw away or ignore the talents of a large segment of its population. The nation, in its infancy, attempted to ignore the talents of its African-American population by relegating them to servitude. After
almost two centuries of harsh and cruel treatment, and with the passage of the Civil Rights Act of 1964, Blacks were finally given the chance to step into mainstream America. Now that they have entered, and in the words of President Lyndon B. Johnson, “You do not take a man who for years have been hobbled by chains, liberate him, bring him to the starting line of a race, say ‘you are free to compete with all the others, and still justly believe you have been completely fair.”
CHAPTER TWO

THE AFFIRMATIVE ACTION DEBATE

The policy of race-based affirmative action evolved out of our history that seemingly made it a moral imperative for the nation. As Chapter One illustrates, the idea of affirmative action was born out of an historic struggle – a struggle to bring African Americans from slavery into full citizenship in a nation that embraced principles that placed a high value on life, liberty, and the pursuit of one’s happiness. As history would have it though, some were free to pursue their dreams while others were forced sadly into subordination. Life, liberty, and the pursuit of happiness meant, in practice, that only White men with property were created with the inalienable rights touted by the Founders.

Despite our historical record, race-based affirmative action is sometimes presented by its opponents as an abstract idea outside its social context. For instance, as will be shown below, the concept of “colorblindness” is discussed painfully by some without reference to our history of racism; “preference” is discussed often outside the context of the widening class division by others; and, still, “merit” is discussed frequently without reference to privilege.

First drawing from the work of Charles R. Lawrence, III, and Mari J. Matsuda, I place the debate over race-based affirmative action in what I believe is a suitable context for the discussion that follows. In the ensuing discussion, I examine some of the major arguments advanced by advocates and critics in the debate over the use of race-based affirmative action in the admissions process by selective colleges and universities. Next, I provide a critical analysis of the arguments advanced by some of the more notable members on each side of the debate. Finally, conceding that both proponents and opponents offer equally compelling arguments for their respective positions, I contend they both miss the mark about how race-based affirmative action
policy should be used in helping assure African Americans are fully integrated into American society. My contention is premised on the belief that the creation of a larger pool of qualified Blacks, who can successfully compete with Whites and Asians seeking admissions to highly selective colleges and universities, is in part, piece of the solution – among many other pieces – to the problem of social equality and the eventual elimination of race-based affirmative action. How to create that larger pool of Black students is where both proponents and opponents of race-based policies seem to miss the point.

**Contextualizing the Debate**

In a book copyrighted in 1997 by Charles R. Lawrence, III and Mari J. Matsuda, they state that one impetus for writing their manuscript resulted from their frustration with the rhetoric infusing the affirmative action debate. The authors assert that whether proponents or opponents in the debate supported or rejected “affirmative action as a remedy for racial and gender subordination, most people define it as taking from one to give to another.”¹ Lawrence and Matsuda disagree and see affirmative action as a policy that benefits all Americans and is an affirmation of democratic values.²

The authors attest that they watched, “with mounting dismay, as opponents and proponents of affirmative action [spoke] past one another” at a congressional hearing on a bill to end affirmative action in the federal government.³ As they listened to the debate, they concluded that the arguments made “were so disjunctive in premise and belief that [the arguments] seemed

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² Ibid.

to come from unrelated planets.”

Explaining how they derived at their conclusion, the authors write:

Representative Susan Molinari attacked affirmative action as “a program to confer special benefits on designated groups to achieve not equal opportunity but equal results. Kingsley Browne, a law professor from Wayne State, argued that affirmative action “shifted the focus of decision-making from the relevant criterion of merit to the irrelevant criteria of race, sex, and ethnicity.”

A philosophy professor from the University of Michigan warns that “preferential affirmative action on campus (as on many campuses around the nation) has driven race relations among us to a point lower than it has ever been. The story is long and complicated and has many variants, but the short of it is this: give preferences by race and you create hostility by race. And for that we Americans are paying, and we will pay a dreadful price.”

Pro-affirmative action testimony focused on the reality of discrimination. Marcia Greenberger, from the National Women’s Law Center, was armed with statistics: “95 to 96 percent of the senior managers of Fortune 1000 and Fortune 500 companies are male. Women physicians earned 53.9 percent of the wages of male physicians. Women received only 9.6 percent of doctorate degrees in engineering. 65 percent of working women earn less than $20,000 annually, and 38 percent earn less than $10,000.

They point out the following:

In the popular mythology surrounding affirmative action, we hear a different story from the one Ms. Greenberger attempted to portray with statistics. Early on, opponents of affirmative action knew their best tactic was to convince white men that affirmative action was taking their jobs, their educational opportunities, their life chances.

In disclosing their apparent pro-stance on affirmative action, Lawrence and Matusda agree that affirmative action brings about a clash in values and disagreement in viewpoints that

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4 Ibid., 2. Howard Ball notes that the affirmative action debate invariably creates a tension and division, “often quite irrational and very emotional, among generally reasonable people.” See Ball, *The Bakke Case*, xi.

5 Lawrence, III and Matsuda, *We Won’t Go Back*, 2.

6 Ibid., 6.

7 Ibid., 2.

8 Ibid.
often create tension between the actors in the debate. But they contend that ending affirmative action would return us to “a segregated world” that, contrary to opponents’ belief, “will do nothing to erase racial tension or to resolve our lack of mutual understanding.” The authors add that what people think and believe, the language they use, and the thoughts and actions they aim to evoke are potent forces in the affirmative action debate. The authors, in laying out their book’s framework, state as follows:

We hear many arguments against affirmative action: it stigmatizes beneficiaries, it causes resentment, it disadvantages “successful” minorities, it is discriminating against white men.

They pointedly ask the question:

What would a person have to know and believe about the world in order to make these arguments? Under what world view do they make sense? Who believes that, but for affirmative action, jobs, places at the university, government contracts, and other goodies are handed out according to merit? Why do we need to believe this?

In the presentation that follows, the reader should keep the above by Lawrence and Matsuda in mind. Many of the thematic arguments for and against race-based affirmative action pre-date those highlighted above and are the same today as they were then – perhaps just coined and packaged differently. It is to those arguments that I now turn.

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9 Ibid., 4-5.

10 Ibid., 6.

11 Ibid.

12 Ibid.

13 In the above, when Lawrence and Matsuda quoted a philosophy professor from the University of Michigan at the Congressional Hearing who warned that “we Americans are paying, and we will pay a dreadful price” for embracing race-based affirmative action in university admissions, they were referring to Carl Cohen. Cohen advances the same argument in a book he co-authored and copyrighted in 2003.
Arguments by Proponents of Race-Based Affirmative Action

As pointed out previously, race-based affirmative action policy, when used in the admissions process by selective colleges and universities, has been defended on three principal grounds: to offset past and current discrimination, to counteract present unfairness, and to achieve future equality. The first seeks to provide compensation and serves a remedial purpose. The second attempts to level the playing field, and is tied to the first by proponents who similarly argue that America has not always provided the same opportunities educationally, politically, and economically to all groups. The third uses the rationale of diversity as an umbrella to promote racial and gender inclusiveness in higher education during the admissions process.14

J. Edward Kellough, a commentator on affirmative action, states that some advocates see affirmative action as a policy stemming from our nation’s historic struggle to combat racial and gender discrimination.15 He notes that since Whites historically discriminated against African Americans and other minorities, these advocates invoke the notion of compensatory justice as a means to remedy past discriminatory practices.

Another commentator, Thomas E. Weisskopf, agrees with Kellough and adds that, relative to employment and education, race-based affirmative action is seen as compensating for the mistreatment and discrimination inflicted by Whites against Blacks and other minorities.16 Weisskopf further points out that the compensation proponents believe that compensation, using


race-and-gender preferential treatment, serves to offset the effects of past victimization which, they contend, remain significant today for contemporary underrepresented groups.

Commenting further on the effects of victimization, Weisskopf points out that past discrimination manifests in several ways today. These effects include relative socio-economic deprivation due in part to lower rates of accumulated capital and from “deeply entrenched social exclusion, invidious stereotyping, and stigmatization.”

To remedy its effects, these advocates believe that underrepresented groups “are deserving of some preferential treatment when it comes to access to higher education at a [selective] university or a desirable and well-paying job.”

Weisskopf points out some advocates who favor preferential treatment for underrepresented groups in admissions to elite schools and in high-paying jobs argue that it is necessary to assure equal opportunity is made available to those groups previously excluded from such educational and economic resources.

And, Zoya Hasan and Martha C. Nussbaum write that “the predominant US view of affirmative action is that government must ensure equal opportunity for all individuals through the removal of barriers to equal treatment.” Weisskopf notes that advocates of affirmative action who argue for assurances of true equality claim that in the United States, even today, selection to elite schools and high-paying jobs “are inherently

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17 Ibid., 42.

18 Ibid. See also Kellough, Understanding Affirmative Action, 77.


biased against African Americans in a way that simply cannot be over-come by an appeal to color-blindness on the part of decision-makers or anti-discrimination laws.”\footnote{21} In order to truly level the playing field, it is necessary to give preferences to Blacks and other minorities seeking admission to elite school and high paying jobs. These advocates thus call for a redistribution of opportunity “so that those who have been excluded in the past or those who are currently excluded will be fully included.”\footnote{22}

Along the same line of argument as Weisskopf and Hasan and Nussbaum, Howard Ball points out that “contemporary affirmative action policy was aimed at overcoming the consequences of the Court’s legitimization of a color-conscious Constitution.”\footnote{23} Like many of his fellow affirmative action advocates, Ball contends the policy was introduced to give Blacks equal opportunity to tap into America’s economic and educational resources; resources that Whites, for the most part, could pursue unencumbered if they chose. \footnote{24}

Howard Ball informs on the genesis of the idea of preferential treatment for historically discriminated groups in the United States. He points out that in 1965, “The controversial concept of occupational and educational proportionality emerged as the key element in preferential affirmative action programs.”\footnote{25} The author explains that the concept emerged because although “formal equality for African Americans was finally reached in the 1960s,” substantively, Blacks were still being excluded from the “privileges and immunities of [full]
citizenship.”26 Ball adds that defenders of affirmative action argue the implementation of an affirmative action plan was justified on two grounds. The first was to remedy past centuries of discrimination against racial minority groups in America. The second was to effectively promote inclusiveness.27 The author astutely asserts that it is this fundamental characteristic of an affirmative action program – benefiting persons on the basis of membership in a discriminated class – that brings about the clash of values over affirmative action policy because membership in a designated protected group came to mean compensatory preferential treatment of its members for past societal discrimination.28

To buttress the above arguments, scholars like William Bowen and Derek Bok supporting the inclusiveness contention, especially with respect to higher education and high-status jobs, assert that “in the absence of such preferences decision-makers in professional, business, and political circles would likely remain overwhelmingly White.”29 Weisskopf adds that a related argument used by other scholars with similar convictions is that everyone has the right to improve one’s own lot in life if they are so motivated. Because Blacks and other minority groups lag behind their White counter-parts through virtually all socio-economic indicators – per capita income, health, education, housing – by opening opportunities previously unavailable to them “can improve the odds that [their] efforts will pay off through hard work and determination.”30

Two additional arguments supporting preferential affirmative action for minorities seeking college admissions have been advanced. The first involves the idea of student diversity

26 Ibid.
27 Ibid., 12.
28 Ibid., 12.
29 Bowen and Box, The Shape of the River; See also Weisskopf, 26.
30 Weisskopf, Affirmative Action in the United States and India, 26-27.
in the classroom. Proffered by Neil Rudenstein, the argument contends that “the most fundamental rationale for student diversity in higher education [is] its educational value. Students benefit in countless ways from the opportunity to live and learn among peers whose perspective and experiences differ from their own.” In fact, Rudenstein contends that “diversity is the substance from which human learning, understanding, and wisdom derive.” He believes that it is one of the most powerful ways through which greater knowledge, tolerance, and mutual respect essential to the maintenance of our civic society issues. The second, related argument writes Weisskopf, holds that “a quality, higher educational experience augments both a student’s human capital as well as social capital.” He further notes that adherents to this argument contend that “Members of an under-represented minority group are particularly likely to lack such social capital … [and] affirmative action helps to spread social capital more broadly throughout a society.”

31 Kellough, refers to the diversity argument as “utilitarian.” See Kellough, Understanding Affirmative Action, 78.


33 Rudenstein, “Student Diversity and Higher Learning,” 45.

34 Weisskopf, Affirmative Action in the United States and India, 27.

35 See, for example, Bowen, Kurzweil, and Tobin, Equity and Excellence and Bowen and Box, The Shape of the River.

36 Weisskopf, Affirmative Action in the United States and India, 27.
Arguments by
Opponents of Affirmative Action

One of the most common arguments raised against affirmative action involves the notion of fairness. Opponents argue that not only does affirmative action undermine fairness, but it is unconstitutional and constitutes reverse discrimination; a claim made in the Bakke case.\(^{37}\) Kellough notes, as the argument goes, race preference affirmative action, through the exercise of compensatory justice, victimizes nonminority men because it places an undue burden on people who had nothing to do with prior societal discriminatory practices.\(^{38}\) Nonetheless White men, instead of being allowed to compete fairly for coveted employment positions or freshmen seats, “suffer the disadvantage of competing with those who receive preferential consideration.”\(^{39}\) Adherents to this argument, such as Carl Cohen, argue that Constitutional commitment to equality of treatment of individuals, reinforced by the Civil Rights Act of 1964 that bans any form of discrimination, requires the elimination of negative discrimination such as the use of racial and gender preferences.\(^{40}\)

Like Carl Cohen, critics like Thomas Sowell hold that the policy is poorly tailored in that it does not help the most disadvantaged in our society.\(^{41}\) Advocates for this argument contend that affirmative action preferences benefit individual members of the underrepresented groups who are better off than the socio-economic deprived of the same group, the very group


\(^{38}\) J. Edward Kellough, Understanding Affirmative Action, 88.

\(^{39}\) Ibid., 88.


affirmative action targets. As Weisskopf correctly points out, these critics support their contention with the assertion that because “affirmative action preferences are applied mainly in the selection of candidates for high-status positions and high-quality institutions,” those selected from the underrepresented group are “most likely to be the relatively well-off in the group and, as such, would have received adequate prior education and sufficient preparation to meet even the minimum needed qualifications.” Several of these critics thus call for class-based rather than group-based affirmative action policies.

Some critics like Shelby Steele, Ward Connerly, and Carl Cohen assert that the policy is divisive and undermines the very people it is intended to help. These opponents argue that not only does it generate conflict and weaken the structure of democracy, it causes “resentment among members of the dominant group(s) which makes it all the more difficult to sustain efforts to help members of underrepresented groups.” Moreover, critics like Cohen believe race-preference affirmative action “is deeply divisive, hindering the quest for a society in which racial segregation has been overcome and racial hostilities healed. It damages and corrupts the institutions in which it is practiced, especially the universities. And worst of all, it undermines, seriously and cruelly, the minorities it purports to assist.”

Weisskopf informs that other critics argue that affirmative action policies “generate allocational inefficiency because they result in the deliberate selection of less qualified [candidates],”

42 See, for instance, Cohen and Sterba, Affirmative Action and Racial Preference, 299.

43 Weisskopf, Affirmative Action in the United States and India, 32.


45 Weisskopf, Affirmative Action in the United States and India, 32.

candidates over better qualified ones."\textsuperscript{47} As the argument goes, these affirmative action beneficiaries will be prone to failure in highly selective colleges and universities and they would be better served by enrolling in a school that is academically less competitive. The critics using this argument, writes Weisskopf, proffer “that preferences, [which enable] members of underrepresented groups to enter high[er]-quality colleges and universities than those which would have admitted them without preferences, result in a mismatch between students and educational institution.”\textsuperscript{48} According to one such advocate, Thomas Sowell, the mismatching of students with high quality universities has a trickle-down effect, leaving students mismatched with institutions from top down. He wrote, “Once begun at the top, the mismatching process continues down the line.”\textsuperscript{49}

Adherents to the mismatch theory, such as Thomas Sowell, Richard Sander, and Stuart Taylor, Jr., believe that the theory largely explains why Blacks, who are given race-based preferential admissions to selective colleges and universities, “will usually get much lower grades, rank toward the bottom of the class, and far more often drop out” of school than will Whites.\textsuperscript{50} Accordingly, Richard Sander and Stuart Taylor, Jr., for example, contend that mismatch also explains why there are so few Blacks and Hispanics with science, engineering, or doctorate degrees in any field and why Black law graduates fail bar exams at more than four times the rate of Whites.\textsuperscript{51} They state,

\textsuperscript{47} Weisskopf, Affirmative Action in the United States and India, 32.

\textsuperscript{48} Ibid., 33.

\textsuperscript{49} Ibid. See also, Sowell, Affirmative Action Around the World, 145-146.

It is not lack of talent or innate ability that drives these students to drop out of school, flee rigorous courses, or abandon aspirations to be scientists or scholars; it is, rather, an unintended side effect of large racial preferences, which systematically put minority students in academic environments where they feel overwhelmed. Because of the mismatch effect as well as the related role of racial preferences in fueling pernicious stereotypes of Black intellectual inferiority, we argue that the biggest problem for minorities in higher education is no longer race, but rather racial preferences.\textsuperscript{52}

Underscoring the belief that mismatching inevitably results when a student is selected to attend a college for which she is not academically suited, Sander and Taylor draw a hypothetical scenario using Wake Forest, University of Richmond, and Duke to illustrate their claim. According to the authors, when an elite university extends to a student “a large admissions preference,” the student will likely find herself in a class where she is less academically prepared than most of her classmates. Illustrating what the outcome might be for the student, they hypothesize that while the student would flourish at Wake Forest or the University of Richmond, she would have a rather difficult time at Duke. Her difficulty arises since professors at Duke will be teaching at an exceedingly fast pace that will be challenging even to the best-prepared student. The less prepared student thus falls behind her class from the start and becomes increasingly lost as the professor and her classmates race ahead. Her grades on exams and papers, early on, put her at the bottom of the class, and “worse, the experience may well induce pains and self-doubt, making learning even harder.”\textsuperscript{53}

\textsuperscript{51} Sander and Taylor, Jr., \textit{Mismatch}, 4.

\textsuperscript{52} Ibid., 4.

\textsuperscript{53} Ibid. Also, William Bowen and Derek Bok, in a comprehensive study using the records of more than 80,000 undergraduate students who matriculated at 28 academically selective colleges and universities from three cohorts in the years 1951, 1976, and 1989 found that, when data on test scores, school selectivity, and graduation rates are combined, there is no evidence to support the mismatch theory (Bowen and Bok refers to the mismatch theory as the “fit” hypothesis). The researchers state that, to the contrary, the data show even those Black students with low SAT scores graduated with higher rates the more selective the school they attended. See Bowen and Bok, \textit{The Shape of the River}, lv, lvi, and 61.
Likewise Thomas Sowell, holding similar convictions as Sanders and Taylor, contends that affirmative action sets up its beneficiaries for failure by corrupting personal achievement of Blacks and reinforcing stereotypes for Whites. Moreover, he claims, preferential treatment policies have put some Blacks in settings where their chances for success are reduced greatly, a fact ignored by affirmative action advocates.\(^{54}\) “He argues that the costs of affirmative action are as seldom scrutinized as to the benefits or alleged benefits; [and], among the costs are lowered standards of performance in order to get numerical results.”\(^{55}\) Sowell attests that “these standards are sometimes lowered for all, in order to avoid the political embarrassment or legal liability of obvious double standards for favored groups.”\(^{56}\) Accordingly, the appearance of double standards creates hostility between groups. In addition to the hostilities created or exacerbated by preferences and quotas,

affirmative action has made Blacks, who largely lifted themselves out of poverty, look like people who owe their rise to affirmative action and other government programs. Moreover, [the perception that Blacks cannot make it on their own is not confined to Whites]. It has been carefully cultivated by Black politicians and civil rights leaders who seek to claim credit [for] the progress so as to solidify a constituency conditioned to be dependent on them as well as on government.\(^{57}\)

Opponents of affirmative action thus often argue that preferential programs actually harm those it is intended to help by stigmatizing its beneficiaries, a consequence Justice Powell addressed in *Bakke*.\(^{58}\) The message that emanates from affirmative action programs to recipients is that “you are not good enough to make it on your own; you are not good enough to compete on


\(^{55}\) Ibid., 163.

\(^{56}\) Ibid.

\(^{57}\) Ibid., 164.

the same playing field with whites." Affirmative action, the argument goes, undermines the achievement of minorities and women by making it look as if those achievements were handouts from White male benefactors.

Most, if not all, critics of affirmative action contend that higher education admissions officials should base their admissions decisions on one standard: merit review of all individuals as individuals, not as a member of a group. The quality of an individual’s academic record should determine whether that applicant would be admitted or rejected. Standardized admissions test scores, high school or undergraduate GPA, extracurricular work record, and the quality of the high school or undergraduate institution should be the key factors in determining whether a student gains admission into a selective university. Race and ethnicity are neutral factors; they are not relevant in a university admissions process.

Critical Analysis of the Debate
And Some of the Variables Embedded Therein

In the Bakke, Gratz, and Grutter cases brought against affirmative action, one of the reasons for each plaintiff’s lawsuit involved the issue of meritorious, superior test scores. As pointed out above, most defenders of affirmative action programs maintain that a color-blind (race-neutral) admissions process incorporating an applicant’s college GPA, LSAT, and other race-neutral factors does not produce an accurate estimate of the quality of the minority

59 Lawrence III and Matsuda, We Won’t Go Back, 124. Shelby Steele and Justice Clarence Thomas subscribe to this belief.

60 Ibid., 124. Famous Black advocates subscribing to this argument include Justice Clarence Thomas, Conservative activist Shelby Steele, and Economist Thomas Sowell.


candidate. William Bowen and Derek Bok, for instance, point out that there is widespread misconception that test scores and grades alone connote merit.\textsuperscript{63}

Bowen and Bok assert that although grades and test scores provide the most useful measure available to predict which students will successfully complete a course of study, test scores and grades “still predict academic performance imperfectly….Moreover, such measures play an even smaller role in determining which applicants will contribute to the development of their fellow students or which will go on to be leaders in their chosen field of endeavor.”\textsuperscript{64} The authors added that much of the literature on standardized tests clearly show that those tests are not perfect predictors of future student success.\textsuperscript{65} In their study of three cohorts of students, after conducting a predictive regression analysis, found that grades and test scores collectively predicted “only 15-20 percent of the variance among all students in academic performance and a smaller percentage among Black students.”\textsuperscript{66}

Despite the findings of Bowen and Bok, critics of affirmative action argue just the opposite. As stated above, critics like Carl Cohen and Ward Connerly contend that higher education admissions officials should base their admissions decisions on one standard: merit.

\textsuperscript{63} From their study, William Bowen and Derek Bok conclude, in part, that the word, “merit,” must be clearly articulated in the college admissions process. They add, however, that anyone believing considerations of merit should drive the admissions process is to pose questions and not find answers. “There are no magical ways of automatically identifying those who merit admission on the basis of intrinsic qualities that distinguish them from all others.” Further, they concede that while test scores and grades are useful measures of ability to do good work, they are far from infallible indicators of other qualities intrinsic to high academic achievement. See Bowen and Bok, \textit{The Shape of the River}, 277.

\textsuperscript{64} Bowen and Bok, \textit{The Shape of the River}, 24-25. Case in point: President George W. Bush, did not have superior standardized test scores prior to entering Yale University. While there, he maintained a 77 or C average. He graduated near the bottom of his graduating class from Yale and attended Harvard’s business school where he obtained an MBA. John Kerry also maintained a C average while at Yale. Both are high profile leaders in government. Conversely, the Unabomber, Theodore John Kaczynski, had superior test scores when he entered Harvard for his undergraduate studies in mathematics and Michigan for his Ph.D. He turned out to be a murderer. Could SATs, GPAs, and GREs have predicted which individual would become President, which would become a Senator, and which would become a murderer?

\textsuperscript{65} Ibid., Chapters 9 and 10.

\textsuperscript{66} Ibid., 277.
review of all individuals as individuals, not as a member of a group. Moreover, they argue, it is unfair to use personal characteristics such as race and ethnicity rather than merit and personal character as criteria for college admissions. Cohen, after asserting that the “predictive power of the SATs is very great,” contends that “[a]dvocates of preference, hoping to eliminate tests, call attention to the variability of success within the narrower range of scores of those accepted – betraying their failure to grasp their principal, filtering function.” He jabs that “[a]bandoning such tests completely would result in a very different set of acceptances.” These critics also insist that the use of preferential programs to overcome serious educational disadvantages of minority students will destroy the quality of higher education in America. But what about the use of preferential programs that benefit non-minority students who, perhaps advantaged all their lives, receive a leg up during the admissions process? Will the quality of higher education be destroyed as a result? The critics of race-based affirmative action are mostly silent when it comes to the preferential treatment legacies and athletes receive during the admissions process at elite colleges and universities.

William Bowen, Martin Kurzweil, and Eugene Tobin, in a study on equity and excellence in higher education, discuss, in part, the rationale for elite schools of higher learning giving


68 Ibid., 140.

69 Cohen and Sterba, *Affirmative Action and Racial Preference*, 4, 139, 143-145. Cohen argues that race-based affirmative action “damages and corrupts the institution in which it is practiced, especially the universities.” To the extent universities ignore using grade point averages, class ranks, and standardized tests to determine who gets into elite colleges and universities, “the integrity of the admission process is compromised.” Cohen warns that “when the intellectual quality of entering students is deliberately lowered, the adverse impact on the institution is serious; when that lowering is sharp and obvious, the impact can prove catastrophic.” To illustrate, he explains that the City University of New York was once an institution of higher learning that prided itself in the brilliance of the students it admitted prior to 1970. After 1970, admission standards “were drastically reduced, and, with sickening speed that great institution sank from high distinction to low mediocrity. Some graduates of the new CUNY were nearly illiterate.”
preferences to legacies. Writing that, to the extent that earlier legacy cohorts in the study “were almost entirely wealthy and white and current cohorts are mostly wealthy and white,” the authors unabashedly state “legacy preferences serve to reproduce the high-income/high-education/white profile that is characteristic of these [elite] schools.” In addition, because elite school relies heavily on donations, the rejection of a reasonably well-qualified legacy applicant can lead parents to withhold donations from the school. As one former president of Middlebury College pointed out, “If a handful of slots go to deserving applicants whose families can at least have the potential to improve in dramatic ways the quality of education at Middlebury College, we would not be fair to our successors or predecessors if we were to overlook that reality.”

Moreover, what legacies bring to the admissions table at elite colleges and universities is money – lots of it. Take for example Harrison Frist, ex-United States Senator, Bill Frist’s son. An alma mater of Princeton and Harvard, he, Bill Frist, opposed affirmative action for minorities in college admissions. Yet, despite his opposition to affirmative action for minorities, when his son applied to Princeton under its early decision program in the fall of 2001, his grades and test scores were well below the university’s standards. Daniel Golden notes that “On Princeton’s 1 (best) to 5 (worst) academic scaling for applicants, he, [Harrison Frist] was rated a 5 [overall].” He further discloses that Senator Frist’s family “had committed $25 million in 1997 to renovate a

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71 Ibid., 167.
72 Ibid.
73 Ibid., 169.
75 Ibid., 12.
former physics building into the Frist Campus Center.”76 When Harrison applied to the school, the then president, Shirley Tilghman, “advised her admissions staff that Harrison’s acceptance was a high priority.”77 With the $25 million donated to the school, how many students do you imagine benefited from the use of the physics laboratory contained within the building?

Commenting about admission preferences given to athletes at elite colleges and universities, Jerome Karabel notes that it is “one of the strangest features” in the admissions process. 78 Slots are reserved for potential team members and coaches get to select those who “meet the college’s minimum academic standard.”79 Derek Bok notes, however, that the grades of athletes “tend to be much worse than those of their fellow students.”80 He adds that athletes “remain academically eligible only because they receive special tutoring at the university’s expense, take the easiest courses, or choose a major specially created to provide an undemanding path to graduation (or at least to continued eligibility).”81

Bok asserts there are several dubious reasons that justify athletic preferences: athletes display unusual leadership abilities, they are likely to become active in alumni affairs, and good teams attract a large pool of applicants which in turn increases alumni contributions to the university.82 He notes, though, that “Careful studies by several scholars have not found any of

76 Ibid., 12.
77 Ibid.
78 See Jerome Karabel, The Chosen, 552.
79 Ibid., 552.
81 Ibid., 128.
82 Ibid., 129.
these rationalizations to be well supported by facts.”

So why keep athletics around? Bok states:

In the end, there is little to be said in defense of athletic preferences. As with so much else in big-time intercollegiate athletics, the treatment accorded to prospective athletes has become more and more embarrassing and difficult to justify. The real reason for continuing the practice is simply the cost of abandoning a high-profile sport – in both practical and political terms – is now too great for the colleges involved to contemplate.

Despite his claim, Bok is not entirely accurate in his report on the condition of athletics in elite colleges and universities. Athletes fill stadiums and the National Collegiate Athletic Association (NCAA) donates considerable financial resources to the athletes’ colleges and universities. Moreover, if they are successful after they graduate, many athletes return large donations to their alma maters. For instance, in 2011, Ndamukong Suh of the Detroit Lions donated $2 million to his alma mater, the University of Nebraska at Lincoln. Additionally, he donated another $600,000 in scholarship funding for their College of Engineering. Another National Football League player, Eli Manning, donated $1 million to the University of Mississippi for scholarships. Donations by athletes who have made it onto the world-stage of professional sports are not uncommon; and, many participate in fund-raising activities on behalf of numerous charities. Moreover, because only 20 schools of the more than 1,100 member

83 Ibid., 129.

84 Ibid.


86 Ibid.

87 Ibid.
colleges and universities in the NCAA make more money than they spend each year on sports, it is reported that more than 90 percent of the NCAA’s revenue goes to support student-athletes.  

Legacies and athletes share some common features relative to admissions to elite colleges and universities. Each group is given an advantage over other applicants during the admissions process; each group serves the interests of trustees and alumni; and each group is expected to generate financial resources for the university. Given the preferential treatment bestowed on legacies and athletes, the overarching question might be posed: if we can accept preferences for legacies and athletes, why do we have such a difficult time accepting race-based preferences for African Americans during the admissions process at elite colleges and universities? Moreover, given our unlovely racial past, it is perhaps terribly disturbing that the policy is so fervently contested.

Students, who apply to elite colleges and universities, count on the notion of fairness in the admissions process. When the principle of fairness appears to be absent from the process, a rejection letter may bring on litigation as was seen in the Bakke, Gratz, and Grutter cases. But, what if all else is equal between two candidates? Is it fair for the applicant whose father went to Harvard, for example, to be admitted over someone’s parent who did not? And should a gifted athlete or musician with low test scores be given preference over someone with a sound academic record? Should religion, gender, or race play a role in one’s admissions prospects? Indeed, should anything other than individual academic merit count?


Undoubtedly one of the most important American values pertinent to both advocates and critics of race-based affirmative action in higher education admissions involves issues of fairness. Wayne Camara and Ernest Kimmel state that “a subtext of the debate over how universities make admissions decisions is a concern for fairness.”\textsuperscript{90} They add, however, “there is no consensus among the debaters over the meaning of fairness in the distribution of educational opportunity.”\textsuperscript{91}

The authors point out there are some in the college admissions, affirmative action debate who argue that fairness requires giving members of certain groups access to educational opportunities in proportion to their representation in the general population. There are others who contend fairness means judging an applicant on his or her abilities or past achievements in comparison to all others in the applicant pool without regard to personal characteristics such as race, gender, or ethnicity. Still others argue that, because higher educational institutions have a wide variety of needs, they have the right to choose the students they feel best meet the institutions’ needs. Some of these needs might give preferences to athletes, musicians, legacies, children of major contributors, or applicants with unique talents or experiences that help create a diverse freshmen class.\textsuperscript{92}

Addressing the argument that preferential affirmative action programs are inherently unfair because they deny admissions to students with high-test scores and grades in favor of students with less impressive objective records, Neil Rudenstine, for instance, agrees the potential for unfairness exists. He points out, though, that admissions officers must give


\textsuperscript{91} Ibid., vii.

\textsuperscript{92} Ibid., vii – viii.
“considerable weight” to a wide array of individual “qualities and capacities” in order to “serve the goal of fairness to individual candidates in admissions.”93 He warns that failure to adequately weigh individual factors other than numeric measures in the admissions process will not serve “the fundamental purposes of education.” He writes:

The more narrow and numerical the definition of qualifications, the more likely we are to pass over (or discount) applicants – of many different backgrounds- who possess exceptional talents, attributes, and evidence of promise that are not well measured by standardized tests. Second, a college or university is responsible first and foremost to the applicants it chooses to admit. This means it must create the best possible environment for them. A major consideration in the achievement of this goal is the composition of the entering class – and the entire student body. Admissions decisions are not isolated, atomistic events. They focus on individuals, but each decision is made in the context of others, where the pattern of the whole is also taken into account.94

Rudenstein is correct in stating that the narrower and more numerical the definition of merit (qualifications), the more likely educational institutions of higher learning will overlook applicants whose exceptional talents cannot be measured by standardized tests.95 Without affirmative action programs, individuals like Harrison Frist, George Bush, and John Kerry should not have been admitted to Princeton, Yale, and Harvard if high test-scores were the only


94 Ibid., 43.

95 Ibid., 43.
weighed consideration given to their respective college applications. Yet, these individuals probably were admitted – in addition to their family background, wealth, and connections – because of “talents, attributes, and evidence of promise that are not well measured by [a] standardized test.” Moreover, their admittance – something that the Ivies have done for years for the rich and famous – did not, and has not yet, destroyed the quality of the highly selective institutions.

Bob Laird, like Neil Rudenstein, asserts that, “the university admissions process is an art form, not a ranking of test scores and grades.” Universities seek to build classes that reflect a rich mix of students: the intellectually curious, those who have overcome adversity, musicians, dancers, artists, mathematicians, and science maestros. Wealthy legacies often gain a leg up because no university is blind to ensuing financial support. Athletes, who can fill thousand-seat stadiums, are given entry into elite colleges because of the potential income the athlete could generate for the school. Merit thus viewed in this way cannot be defined by a singular categorization: test scores. It encompasses much more than opponents are willing to concede or emphasize in their arguments.

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96 See Golden, *The Price of Admissions*, pp 11, 12, 234, 235. According to Golden, Senator Bill Frist, who opposes affirmative action, got his son, Harrison, into Princeton because his family committed $25 million to renovate a physics building on Princeton’s campus. Harrison was a mediocre student at his high school, St. Albans. Further, when he applied to Princeton in the fall of 2001, admissions officers were taken aback because his grades and test scores fell far below university standards at Princeton. On their scale of 1 (best) to 5 (worst), Harrison was rated 5. Similarly, George W. Bush, who also opposes affirmative action, coasted through prep school with mediocre grades and scored 566 on the verbal portion of his SAT. As third generation legacy, he applied to Yale, reportedly graduated with a 77 average, and, during his 2001 commencement speech to a Yale’s graduating class, stated: “To those of you who received honors, awards, and distinctions, I say, well done. And to the C students, I say you too can be president of the United States.” Like Bush, John Kerry graduated from Yale with a C average and received four D’s in his freshman year. He joked in an interview with the Boston Globe in 2005 that “I always told my dad that D stood for distinction.” See “Bush Beats Kerry by One Point at Yale” at [www.npr.org](http://www.npr.org), June 07, 2005.


98 Ibid.
Rudenstine also attacks critics’ claim that affirmative action programs already fulfilled their purpose by creating a greater equality of opportunity and leveling the playing field because racial discrimination in American society has been reduced significantly. He appropriately points out that although there have been increased opportunities for members of historically underrepresented groups in colleges during the past four decades, “positive steps of this kind are, however, relatively recent and far from secure.”

Arguments advanced by some advocates of race-based affirmative action contend, then, that it is necessary to assure equal opportunity to all applicants because discrimination against Blacks and other underrepresented groups relative to admission to elite colleges and universities still exists. They further assert that entrenched discrimination – indeed, entrenched racism – cannot “be overcome simply by appeal to color blindness on the part of decision makers or recourse to anti-discrimination laws.”

But, critics like Shelby Steele argue that race-based college admissions programs lower standards to increase Black representation, offering entitlements rather than development of its underrepresented students while doing nothing to stop the real discrimination that Blacks may

99 Rudenstine points out that in 1964, only 4 percent of African Americans 25 years or older had completed at least four years of college compared to 10 percent of Whites in the same age group. By 1998, the figure had risen to 14.7 percent for African Americans, 25 percent for whites, and 11 percent for Hispanics. The percentage for Asians in that age group with college degrees was 42. In 1975, African Americans received 1,000 of the 26,000 doctoral degrees earned. In 1996, the same group received 1,600 of the 45,000 degrees awarded at that level. Similar statistics hold true for professional degrees covering the same periods, with slight increases over time. See Neil L. Rudenstein, “Student Diversity and Higher Learning,” 40.

100 Weisskopf, Affirmative Action in the United States and India, 25.

101 Ibid., 25.
encounter. In fact, Steele believes Blacks “stand to lose more from [race-based affirmative action] than they gain.”\textsuperscript{102} He writes:

By making black the color of preference, these mandates have re-burdened society with the very marriage of color and preference (in reverse) that we set out to eradicate. The old sin is reaffirmed in a new guise... [and] it does very little to truly uplift blacks.\textsuperscript{103}

Steele, like many of the Black critics of the use of race-based affirmative action in the selection of students by elite colleges and universities, believes that, because of “the lowering of normal [admissions] standards to increase black representation,” it places African Americans in a quandary of self-doubt “that undermines their ability to perform, especially in integrated situations.”\textsuperscript{104}

Bowen and Bok point out that if preferential treatment does in fact undermine Blacks’ ability to perform and create self-doubt as Steele claims, then one would expect Blacks “would be less likely than Whites to succeed in graduate and professional schools, less likely to appreciate their college experience, and less inclined to report they benefited intellectually by having attended a selective school.”\textsuperscript{105} They found just the opposite to be true in their study. Indeed other scholars such as Terry H. Anderson, Bob Laird, and Neil Rudenstein, presumably after reviewing the study by Bowen and Bok independently, conclude the same thing.\textsuperscript{106} These

\textsuperscript{102} Steele, \textit{The Content of Our Character}, 113. Shelby Steele is not the only Black American who believes affirmative action causes more harm than good. Other notable figures such as Justice Clarence Thomas, Ward Connerly, and economist Thomas Sowell hold similar, if not identical, beliefs.

\textsuperscript{103} Ibid., 115.

\textsuperscript{104} Ibid., 117-118.

\textsuperscript{105} Bowen and Bok, \textit{The Shape of the River}, 261.

experts hold that such an assertion withers in light of the data presented in William Bowen and Derek Bok’s *Shape of the River*.  

The data from Bowen and Bok provide compelling evidence that showed, far from being stigmatized and harmed, minority students admitted to selective college under race-sensitive admissions policies performed very well. Indeed, the data found that the more selective the colleges and universities Blacks attended, “the more likely they were to graduate and earn advanced degrees, the happier they said they were with their college experience, and the more successful they have been in their careers (judged by their earnings).”

Supporters of affirmative action programs generally believe that, in order for democracy to flourish, college students have to be able to interact with other students who are different from them, whether in race, color, national origin, religion, or gender. Public colleges and universities should be places where people from all walks of life and diverse backgrounds come together to talk, to learn from, and to teach each other. William Bowen and Derek Bok point out that some educators, for more than 150 years, have stressed the value of diversity in higher education. They state:

Originally, diversity was thought of mainly in terms of differences in ideas or points of view, but these were rarely seen as disembodied abstractions. Direct association with dissimilar individuals was deemed essential to learning. The

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107 Terry H. Anderson points out that, in a review of over 200 academic studies including the Bowen/Bok’s, it is concluded that affirmative action had produced tangible benefits for women, minority businessmen, students, and the economy. Anderson informs that unions in 1965 were almost entirely White; and, 30 years later, unions were about 15 percent African American; between 1970 and 1990, the number of Black electricians nationwide had tripled; in 1970 there were roughly 24,000 Black policemen and 20 years later there were 65,000; Blacks between 25 and 29 years old with college degrees went from 5 percent in 1970 to 17 percent in 2000. Similarly, Neil L. Rudenstein, echoing the findings of Anderson, informs that “the Bok/Bowen data explode the notion that black students who enter selective colleges and universities with lower high school grades and SAT scores than many of their classmates suffer academically and psychologically because they are mismatched with their surroundings.” See Anderson, *The Pursuit of Fairness*, 278-280 and Rudenstein, “Student Diversity and Higher Learning,” 43.


109 Bowen and Bok, *The Shape of the River*, xxxi-xxxii.
dimensions of diversity subsequently expanded to include geography, religion, nation of birth, upbringing, wealth, gender, and race.\textsuperscript{110}

In short, proponents of the philosophy of diversity in higher education believe that a student’s learning is enhanced because each student’s unique background and sets of life experiences bring great educative benefits to classroom instruction. And, as stated aptly by Neil Rudenstein, “[i]n a debate that is too often framed by competing interests, it is all the more important [to] remember the most fundamental rationale for student diversity in higher education is its educational value.”\textsuperscript{111}

Before concluding my analysis, one additional observation is noteworthy here. One of the biggest insults in the affirmative action debate, relative to the use of race in college admissions, involves the issue over children of alumni. As pointed out above, the children of alumni – legacies – often receive a leg up into elite institutions of higher learning over non-alumni applicants.\textsuperscript{112} How much of a leg up? In an article by \textit{Business Insider}, it is disclosed that in a 2011 study of 30 elite institutions, researchers found that these children were, on an average, more than 45.1 percent likely to be accepted over non-alumni applicants.\textsuperscript{113} The same article noted that in an earlier study by then Princeton’s Thomas Espenshade, he found that the legacy advantage was equivalent to a 160-point swing on an SAT score.\textsuperscript{114} The article also noted that “legacy applicants tend to be White and wealthy.”

\textsuperscript{110} Bowen and Bok, 218.

\textsuperscript{111} Rudenstein, “Student Diversity and Higher Learning,” 31.

\textsuperscript{112} See note 43.


\textsuperscript{114} Ibid.
Lawrence and Matsuda, perhaps illuminating the power of wealth, sarcastically pen remarks that “the opposite of merit is privilege” and privilege is a “matter of course not exception.” Not surprisingly, privilege trumps merit. Elaborating, they inform that in the 1980s the Asian community noticed, although highly qualified Asians applied to the nation’s best universities, the Asian student population at those schools did not increase. The Asians’ first expressed fear, informed the authors, was that “affirmative action for other minorities did indeed have the effect of placing a quota on Asians.” Reportedly, what really explained their low populations on premier university campuses was the presence of White legacies and athletes who, with lower test scores and GPAs, gained admissions ahead of them.

Another author, Joseph Soares, playfully resounds that unless one believes that only rich people can be smart, we have a staggering distance to travel to achieve a fair and equal opportunity for all seeking entry into elite colleges and universities. This conclusion is perhaps fairly evident, he informs, considering 74 percent of our undergraduates who enter our most prestigious colleges and universities come from families in the top income quartile. When rich, Whites, legacies, and athletes gain admissions to elite colleges and universities we, as a society, seem to do and say little or nothing. Yet, when a person of color gets accepted into an elite school over a White person as a result of race-based affirmative action, it is bitterly – indeed so – viciously contested. Why, is the question Soares seems to pose. An answer to Soares’

115 Lawrence and Matsuda, We Won’t Go Back, 96.
116 Ibid., 96.
117 Ibid.
118 Ibid.
question is proffered later, but for now, let us turn to another matter in the perplexing topics of discrimination and schools.

**Missing the Mark: Creating a Larger Group Of Competitive Black Students**

At the beginning of this chapter, I conceded that both proponents and opponents to race-based affirmative action offer compelling arguments for their respective positions. Despite their arguments, I contend they both miss the mark about how race-based affirmative action policy should be used to help assure African Americans gain the same equality of educational opportunity as Whites at elite universities. My contention is premised on the belief that both proponents and opponents focus on the wrong issue – the issue of a few Blacks being in elite colleges and universities over Whites who are there in multitudes anyway.

And when you look at the conditions of many of our primary and secondary schools in urban cities, it should be even more embarrassing given their mostly poor educational health. Primary and secondary schools feed our postsecondary schools, elite or otherwise. If we were to view our education from elementary and secondary school to college and graduate or professional schools as a journey, the journey could be figuratively said to start and end through a pipeline. If students start out their journey in a pipeline that is defective, what kind of students would you expect to come out of that pipeline? And what sort of conditions would you expect to find in defective pipelines? Would you expect those same students, given the pipeline’s condition, to be able to effectively compete educationally with any other student who has never been socially shackled and has had a quality education all throughout early life? Would you say the competition is fair?

Perhaps, one of the ways social equality (equality of opportunity) might be realized in elite college admissions – in addition to honest dialogue between proponents and opponents – is
through the creation of a larger pool of exceptionally, well-qualified Blacks who can successfully compete with Whites and Asians seeking admissions to elite schools without a leg up. I’m not here saying that I know how to fix the broken pipeline. What I am saying, though, is that debaters in the race-based affirmative action dialogue should focus their energies on ways to fix that pipeline, as I discuss in Chapters Four and Five. For now, though, I first conclude this chapter and then turn my focus on the condition of inner-city primary and secondary schools in the next chapter.

**Conclusion**

The idea of affirmative action was born out of an historic struggle that sought to bring African Americans from slavery into full citizenship in a nation that touted belief in the principles of freedom and equality for all. As history would have it though, some were free to pursue their dreams while others were forced into a subordinated group with no rights. Life, liberty, and pursuit of happiness meant, in practice, that only [White] men were created equal and endowed with the inalienable rights. In the mid-1960s and early 1970s, governmental reforms sought to end the overt discriminatory practices that were historically levelled against subordinated groups. One of the measures, intended specifically for African Americans, made it a moral imperative to use preferential treatment in hiring practices and admissions to elite colleges and universities.

Critics of race-based affirmative action, especially when it involves an underrepresented applicant’s admission to an elite university or high-paying job, have attacked the policy on several grounds. They maintain that it is wrong for universities to exclude White applicants with high grades and impressive test scores over minorities with lower numerical qualifications. They further argue that admissions officers sometimes accept minority applicants who are not
disadvantaged but come from wealthier, more privilege homes and better schools than some less affluent applicants who are rejected despite being economically disadvantaged. Additionally, they claim that the policy heighten racial differences, amplify prejudice, and hamper progress toward a color-blind society. Asserting that admitting less qualified minority applicants stigmatizes and demoralizes the very students the policy attempts to help, they contend that it forces them to compete with classmates of greater academic ability.

Defenders of race-sensitive admissions insist that such policies are justified to atone for a history of oppression and to make up for continuing discrimination in our society. They point out, as in the case of legacies, athletes, and children of the rich and famous, that admissions officers have long deviated from standardized test scores and prior grades to favor these applicants who are deemed desirable. Further, defenders argue that universities seek to build classes that reflect a rich mix of students: the intellectually curious, those who have overcome adversity, musicians, dancers, artists, mathematicians, and science maestros. They believe the most fundamental rationale for student diversity in higher education is its educational value. Students, they assert, benefit in countless ways from the opportunity to live and learn among peers whose perspective and experiences differ from their own.

Although both critics and defenders of race-based affirmative action offer equally compelling arguments for their respective positions, they both miss the mark about how race-based affirmative action policy should be used to help assure African Americans gain the same equality of educational opportunity as Whites at elite universities. Preparing to attend a selective college or university does not start at the very moment a student submits his application package. Preparation begins at elementary – maybe even kindergarten – schooling and continues through to high school and beyond. Viewed this way, schooling from elementary school to college is a
pipeline that feeds colleges and universities seeking to admit a diverse mix of students. But, as alluded in the above, the pipeline is defective. It is to this examination the study now turns.
CHAPTER THREE
UNEQUAL SCHOOLING

It is stated at the conclusion of Chapter Two that one of the ways social equality (equality of opportunity) might be realized in elite college admissions is through the creation of a larger pool of exceptionally, well-qualified Blacks who can successfully compete with Whites and Asians seeking admissions to elite schools without needing a leg up. Indeed, William G. Bowen and Derek Bok contend that it is possible “to hasten the day when race no longer needs to be considered in the selection of candidates to elite colleges and universities” if, with vigorous efforts, the academic preparation of minority students at all stages of the pre-collegiate educational process can be improved. But improving the academic preparation of minority students at the elementary and secondary school levels will require much more than vigorous efforts. It will need genuine commitment by policy makers.

In one of his studies on higher education in the United States, William G. Bowen and his associates observe that “poor and minority children frequently grow up in impoverished neighborhoods and attend primary and secondary schools that are far less well equipped to educate them than schools attended by their more privileged peers.” And making similar observations as Bowen and his associates, Richard D. Kahlenberg, in a separate study, notes “low-income twelfth-grade students read on an average at the level of middle-class eighth-

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1 Bowen and Bok, *The Shape of the River*, xliv.

graders.” Moreover, notes Kahlenberg, children of low-income households are twice as likely to drop out of high school as children from high-income families.

In this chapter I examine the conditions of inner-city elementary and secondary schools through the eyes of Jonathan Kozol. Since inner-city elementary and secondary schools constitute a part of the education pipeline that eventually provide colleges and universities with an applicant pool from which freshmen classes are comprised, I first provide a brief background of Kozol, his works, and my rationale for using a seemingly dated study by him to inform my discussion in this chapter. I then present Kozol’s findings of the educational inequities he discovered in urban schools in East St. Louis, the south side of Chicago, New Jersey, New York, and other urban centers. Next, I conduct a critical analysis of the findings using the work of other scholars to assess where and how an inner-city, public school education (as part of the education pipeline) fits into the debate on race-based college admissions. Last, I conclude the chapter with a brief insight into what can be expected in the chapter that follows.

**Brief Background of Kozol’s Work**

**And Rationale for Using *Savage Inequalities***

Jonathan Kozol studied the educational plight of children in inner-city schools for almost half a century. He documents in two important works – *Savage Inequalities: Children in America’s Schools* and *The Shame of the Nation: The Restoration of Apartheid Schooling in*
America – the kind of education children of color and poor children in urban centers could expect to receive in the United States. Richard Ognibene, commenting on the two works by Kozol, states they collectively offer valuable insights to and criticisms of a seemingly unfair education system. According to Ognibene, Kozol spotlights an educational system that seems, even if not intentionally, to separate students based on race and class and treat minority students so poorly that it reduces any possibility for them to improve their lives. Ognibene points out that the education systems Kozol observes are dual ones that fund education inequitably and produce harmful consequences for poor children. Accordingly, one system places poor children in school facilities that are dismal, presents them with a curriculum that is limited, and provides them novice teachers who accept jobs in their schools as a last resort and then leave as soon as they can."

In Savage Inequalities, which chronicles his two-year examination of public schools in the inner-cities of East St. Louis, the south side of Chicago, New York, New Jersey, Washington, D.C., and Texas during the period 1988 to 1990, Kozol depicts the abominable conditions found in the respective school systems. Similarly, in a later study, Shame of the Nation, he chronicles his three-year examination of 60 schools in 30 districts that covered 11 states from 2001 through 2004. In this later study, Kozol found that the quality of education in inner-city schools had grown worse, when compared to his earlier work, for the children who occupied these

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8 Ibid., xv.
classrooms. In both works Kozol informs on the poor quality of education these children receive as well as on the immediate social environment that impacts these urban centers. Although *Savage Inequalities* was published in 1991, many of Kozol’s findings as they relate to student dropout rates and children living in poor inner-city neighborhoods continue to be documented today.

A micro-snapshot of the data reported in 1991 by the National Center for Education Statistics reveals that the event dropout rate for students in grades 10 – 12 was four percent and comprised a total of 348,000 children. The event dropout rate was highest for children in low-income families. In 1989 and 1990, the event dropout totals were 403,000 and 347,000, respectively. It is further reported that students residing in central cities dropped out at a higher rate than students in suburban settings. For instance, in Washington, D.C., the dropout rate was 57 percent; Trenton, New Jersey, 59 percent; Camden, New Jersey, 61.4 percent; Baltimore, Maryland, 65.4 percent; Cleveland, Ohio, 65.9 percent; and Detroit, Michigan, 75.1 percent.

A number of negative outcomes to students result from dropout. In a book edited by Clive R. Belfield and Henry M. Levin, researchers contend that, in addition to individuals in low income households, dropouts make up disproportionately higher percentages of the nation’s institutionalized population. Additionally, the researchers estimate that the average high school

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9 Kozol, *The Shame of the Nation*.

10 The National Center for Education Statistics (NCES) lists three types of dropout rates. The event rates measure the proportion of students who drop out in any single year without completing school. It is an important measure because they reveal how many students are leaving high school each year. For purposes of brevity, I have chosen not to include the other two rates: status and cohort. Both rates show similarly high dropout rates, with 12.5 percent (or 3.9 million persons age 16 – 24 years old) for status dropouts in 1991 and 11.2 percent in 1990 (14 percent of 16 – 19 year-olds were dropouts in Washington, D.C. – one of the cities in Kozol’s study.


12 See “How the Public Education System Has Failed Black and Hispanic Students” at www.discoverthenetworks.org
dropout costs the economy approximately $250,000 over his or her lifetime in terms of lower tax contributions, higher reliance on Medicaid and Medicare, higher rates of criminal activity, and higher reliance on welfare.\(^{13}\)

In the discussion below, Kozol underscores the notion that without a high school diploma or equivalent certificate, the young people whom he writes about, already disadvantaged, face further disadvantages in an ever increasing, highly competitive, global economy. As will be illustrated through the selected works, Kozol shows that low-income and minority students receive a substandard education in inner-city schools. An ardent proponent for elementary and secondary school reform he suggests that unless we fix urban schools now, the educated in our society will continue to live in one world, the uneducated in another, and neither knowing each other.\(^{14}\) And, as he so aptly states, “I have believed for 40 years, and still believe today, that we would be an infinitely better nation if they knew each other now.”\(^{15}\) As we will now see through the lens of Kozol, the only people the vast majority of poor children will come to know in their life time is other poor children.

**Kozol’s Findings in *Savage Inequalities* And *Shame of the Nation***

In *Savage Inequalities*, Kozol highlights the enormous inequalities between urban schools and their surrounding suburban counterparts. Contending that much of the inequalities in the quality of education one receives grows out of a socio-political system that appears determined to keep poor children and poor schools poor and rich children and rich schools rich, Kozol attributes segregation, funding, and the local political machinery as mechanisms that


\(^{14}\) Kozol, *The Shame of the Nation*, 11.

\(^{15}\) Ibid.
support these ends. He contends that legislation requires poor children to attend poor schools, since they do not have the wealth to attend private schools, but refuses to require equity in an otherwise unequal educational system. Additionally, because poor urban schools are often adjacent to rich districts, he believes the “ever-present contrast adds a heightened bitterness to the experience of children.”

Furthermore, contends the author, the ugliness of racially segregated schools and the huge, noticeably stark contrast between urban and suburban schools, in combination, “renders life within these urban schools not merely grim but also desperate and often pathological. The fact of destitution is compounded by the sense of being viewed, as somehow, morally infected.”

In his more recent work, *Shame of the Nation*, Kozol tells how Black and Hispanic children continued to be concentrated in schools where they make up almost the entire student body. He points out that in the school year 2000 – 2001 in Chicago, 87 percent of its public schools enrollment was Black or Hispanic; in Washington, D.C., that percentage was 94; in St. Louis, 82 percent; Los Angeles, 84 percent; Detroit, 95 percent; and Baltimore, 88 percent.

Relaying an occasion where he once saw a White elementary school student at P.S. 65 in the South Bronx, Kozol asked the teacher “how many White kids she had taught in the South Bronx in her career.” Although the teacher had been at the school for 18 years, she replied, “This is the first White student I have ever taught.”

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16 Kozol, *Savage Inequalities*, 74.

17 Ibid.

18 Ibid., 8.

19 Ibid., 9.

20 Ibid., 9.
Focusing on the re-segregation of schools since the holding in *Brown v. Board of Education*, he attacks the disparity in education expenditures between inner-city schools and their suburban counterparts and provides examples of what money buys relative to curriculum content. In one example, where middle or upper-class students are required to take two courses in “technical arts,” classes consisted of “residential architecture, the designing of commercial structures, broadcast journalism, advanced computer graphics…or an honors course in engineering research and design.”21 At a nearby academically impoverished school, students there are more likely to be offered courses in hairdressing and sewing. The economically better-off school taught courses with “academic substance,” whereas the impoverished school taught “courses that were basically vocational.”22

Kozol also examines the increasing educational divide between the children of the privileged and the children of minorities in this more recent work. He illustrates, commenting on schools in New York, that the better school districts are accessible to knowledgeable, “savvy parents” who know applications “to a number of these schools…must be filled very early.” He comments that the parents seeking entrance for their children “are often asked to write or express their educational philosophy and also sign a contract to participate in certain forms of educational support the school expects a parent to provide.”23 Accordingly, competition to enter these acclaimed schools is fierce and entrance is usually determined, as Kozol points out, by skin color and connectedness to who’s who among the privileged.24

21 Ibid., 179.
22 Ibid.
23 Ibid., 135 – 136.
24 Ibid., 136 – 137.
In *Savage Inequalities*, prior to his examination of the public schools in East St. Louis, Kozol provides a detailed depiction of the environmental conditions of the inner-city itself. Pointing out that the city’s population is 98 percent Black, that the city has no obstetric services, no regular trash collection, few jobs, and families live on less than $7,500 a year, the author states the place “has one of the highest rates of child asthma in America.”25 Narrating on the deplorable living conditions of the residents of East St. Louis, Kozol states:

The sewage, which is flowing from collapsed pipes and dysfunctional pumping stations, has also flooded basements all over the city....Two million gallons of raw sewage lie outside the children's homes...Soil samples tested at residential sites in East St. Louis turn up disturbing quantities of arsenic, mercury and lead...By the time the poisoning becomes apparent in a child...it is too late to undo the permanent brain damage. The poison is chipping away at the learning potential of kids whose potential has already been chipped away by their environment.26

Moreover, the author states, problems endemic to the environment of East St. Louis literally spilled over into the public schools. Quoting from a local newspaper article published in the early spring of 1989, Kozol writes, “Martin Luther King Junior High School was evacuated on Friday afternoon after sewage flowed into the kitchen....The kitchen was closed and students were sent home....East St. Louis Senior High School was awash in sewage for the second time this year [and the backup] occurred in the food preparation areas.”27 Kozol further adds that while school resumed the following morning, a few days later the overflow recurred. The sewage backup’s recurrence on this noted occasion, states the author, affected the entire system “since the meals distributed to every student in the city are prepared in the two schools that have

26 Ibid., 10-11.
27 Ibid., 23.
been flooded.”\textsuperscript{28} Kozol then discloses that the result of the flooding caused school to be “called off for all 16,500 students in the district.”\textsuperscript{29}

In the same week the school flooded with sewage backup, the school district announced “the layoff of 280 teachers, 166 cooks and cafeteria workers, 25 teacher aides, 16 custodians and 18 painters, electricians, engineers and plumbers.”\textsuperscript{30} The school system, states Kozol, had been using more than 70 permanent substitute teachers who were paid only $10,000 yearly in an effort to save money.\textsuperscript{31} Further, he points out, in East St. Louis, “teachers are running out of chalk and paper, and their paychecks are arriving two weeks late. The city warns its teachers to expect a cut of half their pay until the fiscal crisis has been eased.”\textsuperscript{32} The poverty and economic depression endemic to the conditions of the city also appeared endemic to the urban school districts.

The science labs at East St. Louis High were outdated. The six lab stations in the physics lab, observed Kozol, had empty holes where water-pipes were once attached. The heating system within the lab had not worked correctly in 25 years, informs the physics teacher. In the biology lab, there were no laboratory tables, few dissecting kits (none of which were complete), and no microscopes. Although the chemistry lab was properly equipped, the lab was not utilized for safety reasons and problems associated with overcrowding. Educational materials at East St. Louis High were so scarce, disclosed another teacher, that teaching aids such as books, tapes, or magazines were paid for out of his own pocket. Even when he brought in his own VCR to use as

\textsuperscript{28} Ibid., 23.

\textsuperscript{29} Ibid.

\textsuperscript{30} Ibid., 24.

\textsuperscript{31} Ibid.

\textsuperscript{32} Ibid.
a teaching aid, he was usually pressured to not use the AV equipment in the dilapidated building.\textsuperscript{33}

Textbooks and classroom space were also scarce in the urban schools of East St. Louis. A mathematics class had 30 children packed into a room that may have been considered adequate for 15 kids. A history teacher at the Martin Luther King Junior High School informed Kozol that he had 110 students in four classes, but only 26 textbooks, some of which were missing the first 100 pages.\textsuperscript{34} Asking students in a social studies class at the school what they had learned about the Civil Rights campaign, a 14-year old student stated to Kozol, “We have a school in East St. Louis named for Dr. King. The school is full of sewer water and the doors are locked with chains. Every student in the school is Black. It’s like a terrible joke on history.”\textsuperscript{35}

In North Lawndale, Chicago, although Kozol depicts the environmental conditions as less horrific as that of East St. Louis, poverty and illness abounded nonetheless. Commenting on the environment in which one of the schools in North Lawndale operates, Kozol writes,

The school, whose students are among the poorest in the city, serves one of the neighborhoods in which the infant death rate is particularly high. Nearly 1,000 infants die within these very poor Chicago neighborhoods each year. An additional 3,000 infants are delivered with brain damage or with some other forms of neurological impairment.\textsuperscript{36}

In the school itself, which houses kids from kindergarten through eighth grade, students are kept in class for seven years and given a diploma if they make it to the eighth grade. “They can’t read,” a teacher announced, “but [we] give them the diploma” anyway.\textsuperscript{37}

\textsuperscript{33} Ibid., 27 - 29.
\textsuperscript{34} Ibid., 34 – 37.
\textsuperscript{35} Ibid., 34 – 35.
\textsuperscript{36} Ibid., 43.
Kozol believes that the problems inherent in the Chicago school districts are systemic. For example, teachers in their 30s are outnumbered by those over 60 by a two-to-one ratio in Chicago public schools. The exceedingly low salary range, he observed at the time he wrote his book, is what causes the city to rely on low-paid substitute teachers who represent more than 25 percent of teachers in Chicago. However, even substitute teachers “are quite frequently in short supply. On an average morning in Chicago,” reports the author, “5,700 children in 190 classrooms come to school to find they have no teacher.” More astounding is the fact that when spring arrives in Chicago, substitute teachers are even scarcer. “On Mondays and Fridays in early May, nearly 18,000 children - the equivalent of all the elementary students in [eight] suburban [schools] - are assigned to classes with no teachers.”

Kozol illustrates the lack of educational concerns of teachers for the students in Chicago’s public schools through the voices of two 15-year-old students at one of the city’s poorest secondary schools, Du Sable High. The first student states, “We have been in this class a whole semester and they still can’t find us a teacher.” The other student announces that he had been in an auto mechanics class for 16 weeks before he learned to change a tire. His first teacher quit at the beginning of the year, and the replacement teacher instructed the kids to keep the noise down if they were going to talk. The teacher would then go to sleep. “Let’s be real,” said the second student, “[m]ost of us ain’t going to college....We could have used a class like this.”

37 Ibid., 46.
38 Ibid., 51 – 52.
39 Ibid., 53 – 54.
40 Ibid., 52.
41 Ibid.
The exceptions to the horrific public schools that Kozol discovered in Chicago were the magnet or selective schools for children who could win admission. Quoting from the Chicago Tribune, Kozol states that the magnet system is considered “a private school system...operated in public schools. Those who the system chooses to save,” continued the Tribune, “are the brightest youngsters selected by race, income, and achievement [for] magnet schools where teachers are hand-picked and which operate much like private institutions.”

The system, comments Kozol, appears on the surface to be merit-based, but merit “is predetermined by conditions that are closely tied to class and race.” Kozol’s assertions are poignantly amplified when he writes,

Children who have had the benefits of preschool and one of the better elementary schools are at a greater advantage in achieving entrance to selective high schools; but an even more important factor seems to be the social class and education level of their parents. This is the case because the system rests on the initiative of parents. The poorest parents, often the product of inferior education, lack the information access and the skills of navigation in an often hostile and intimidating situation to channel their children to the better schools, obtain the applications, and (perhaps a little more important) help them to get ready for the necessary tests and then persuade their elementary schools to recommend them. So, even in black neighborhoods, it tends to be children of the less poor and better educated who are likely to break through the obstacles and win admission.

In addition to some of the social factors that most likely negatively impact student achievement, Kozol illustrates the profound, tangible inequalities between the inner-city schools and the magnet schools in Chicago. He writes,

While Du Sable is sited on one crowded city block, New Trier’s students have the use of 27 acres. While Du Sable’s science students have to settle for makeshift equipment, New Trier’s students have superior labs and up-to-date technology. One wing of the school, a physical education center that includes three separate

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42 Ibid., 59 - 60.
43 Ibid., 60.
44 Ibid.
gyms, also contains a fencing room, a wrestling room and studios for dance instruction. In all, the school has seven gyms as well as an Olympic pool.\textsuperscript{45}

Furthermore, continues the author, “It is impossible to read this without thinking of [an inner-city] school like Goudy, where there are no science labs, no music or art classes and no playground – and where the two bathrooms, lacking toilet paper, fill the building with their stench.”\textsuperscript{46}

Aside from the tangible inequalities evident in the schools, the author discusses other less tangible inequities between the magnet schools and the urban schools that could negatively impact a child’s education. For instance, the average number of students per class at New Trier was 24, with the slow learners’ classes containing no more than 15 students per class. Every freshman was assigned a faculty adviser who remained assigned to him or her through graduation and the faculty adviser usually had a reduced class schedule to allow him or her time to provide counseling to about two dozen students each. At Goudy, remedial classes had 39 children per class and at Du Sable, where the lack of staff prohibited reduction in class schedules, each guidance counselor advised 420 children.\textsuperscript{47} Moreover, while a suburban school library contained, on the average, 60,000 volumes, an urban school library was lucky to have 13,000 volumes.\textsuperscript{48}

Addressing the inequalities endemic to New York City’s public inner-city schools, Kozol writes,

\begin{quote}
\end{quote}

\textsuperscript{45} Ibid., 65.

\textsuperscript{46} Ibid.

\textsuperscript{47} Ibid., 66.

\textsuperscript{48} Ibid., 77.
Denial of “the means of competition” is perhaps the single most consistent outcome of education offered to poor children in the schools of our large cities; and nowhere is this pattern of denial more explicit or more absolute than in the public schools of New York.\textsuperscript{49}

In addition to the overcrowding in the school building, many of the public schools he visited had no windows, children had to share their social studies textbooks, the library in one of the schools maintained only 700 books with no reference materials or encyclopedias available, and that same school had 26 computers for its 1300 students.\textsuperscript{50} Still, in another public school, 1,300 children were cramped in a building suitable for 700 and the gym was transformed into makeshift classrooms.\textsuperscript{51} The ratio of counselors to students was 930 to one. As far as the quality of education received by children in the inner-city schools of New York, the reality might best be summed up with the following statement made to Kozol by one of the teachers:

There are five to seven levels in each grade. The highest level is equivalent to ‘gifted’ but it’s not a full-scale gifted program. We don’t have the funds. We have no science room. The science teachers carry their equipment with them.\textsuperscript{52}

Perhaps one of the most effective ways to illustrate the inequalities in education between urban and suburban schools is to follow the money. Expenditures per pupil per year for those attending the poorest to the richest public schools within the New York area for 1987 were as follows: “$5,590 for the children of the Bronx and Harlem, $6,340 for the nonwhite kids of Roosevelt, $6,400 for the black kids of Mount Vernon, $7,400 for the slightly better-off community of Yonkers, over $11,000 for the children of Manhasset, Jericho, and Great Neck.”\textsuperscript{53}

\textsuperscript{49} Ibid., 83.
\textsuperscript{50} Ibid., 86 – 87.
\textsuperscript{51} Ibid., 114.
\textsuperscript{52} Ibid., 89.
In 2002-2003, the expenditure gap per pupil in the poorest to the richest schools ranged from $11,627 to $22,311.\textsuperscript{54} Kozol comments that, “In an ethical society, where money was apportioned in accord with need, these scaling would run almost in precise reverse.”\textsuperscript{55} This pattern, it should be noted, was almost identical to what was observed by the writer regarding Chicago’s public schools and funding.

New York City, like Chicago, has within its public school system a number of high schools that have special programs and impressive up-to-date facilities. However, states Kozol, these schools “are intended to be enclaves of superior education, [but, like Chicago’s magnet schools, are] private schools essentially, within the public system.”\textsuperscript{56} And, again, these special or selective schools were better equipped with educational materials, had better facilities, and attracted the best teachers from the nearby communities.

Kozol comments that despite the huge inequities in resources allotted to the various districts in New York, educators told him “they are ‘mild’ in comparison to other situations in the city.”\textsuperscript{57} He reviewed a report by the Community Service Society that amplified what he was told. Accordingly, the report noted that some of the most stunning inequalities between districts resulted “from allocations granted by state legislators to school districts where they have political allies. The poorest districts get approximately 90 cents per pupil from these legislative grants, while the richer districts have been given $14 for each pupil.”\textsuperscript{58} Despite the report’s noting of

\textsuperscript{53} Ibid., 122 – 123.

\textsuperscript{54} Kozol, The Shame of the Nation, 324.

\textsuperscript{55} Kozol, Savage Inequalities, 123.

\textsuperscript{56} Ibid., 107.

\textsuperscript{57} Ibid., 98.
the huge education funding disparities, nothing is done to make funding distribution more equitable between districts.

Similarly, in Camden, New Jersey, Washington, D.C., and San Antonio, Texas, inequalities in all facets of education abounded. In Camden, for example, a principal from Woodrow Wilson High informed Kozol that they spend approximately $4,000 yearly on each student while the statewide average, at the time, was $5,000. Compared to suburban high schools such as Cherry Hill, Summit, and Princeton, which spends $6,000, $7,000, and over $8,000, respectively, per year per student, Woodrow Wilson High School in Camden, New Jersey, spends $4,000 annually per student. And, in Texas, from a sampling of 110 school districts, Kozol found “that the ten wealthiest districts spent an average of three times as much per pupil as the four poorest districts.”

The author illustrates the importance of money to schools after asking the question, “What does money buy in New Jersey?” For the track team at an inner-city school, the author states, “it buys a minimum of exercise but a good deal of pent-up energy and anger” because the team has no field and has to “do its running in the hallways of the school.” On the other hand, in mostly upper-middle-income Montclair, “it buys two recreation fields, four gyms, one dance room, wrestling room, weight room with universal gym, tennis courts, a track, and indoor areas for fencing. It also buys 13 full-time physical education teachers for its 1,900 high school

58 Ibid., 98.
59 Ibid., 149.
60 Ibid., 214.
61 Ibid., 157.
students.”62 Woodrow Wilson, on the other hand, “has four physical education teachers for 2,000 students, 99.9 percent of whom are Black.”63

After examining Kozol’s findings on the educational environment of inner-city elementary and secondary schools, as well as the pedagogy the students receive there, how can anyone claim, as critics of race-based affirmative action often do, the policy hinders the quest for a society in which racial segregation has been overcome and racial hostilities healed? Assuming a student is able to overcome all the adversities he or she faces in a public urban school setting, demonstrates promise of academic brilliance, and has desire to attend an elite institution of higher learning, how can anyone deny that student the opportunity to want to excel in life? Perhaps a more important question is why would anyone deny that student the opportunity and say it is fair?

Assessing Kozol’s Work: Where Do Inner-City Elementary and Secondary Schools Fit Into the Education Pipeline

As shown above, Blacks in inner-city elementary and secondary schools face insurmountable odds at succeeding educationally. In a report by David Horowitz that supports some of Kozol’s findings, he states that many students who attend schools in urban centers and are from low income families are most likely to drop out by the time they reach eighteen.64 The report points out that in America’s public schools, 45 percent of Black students and 43 percent of Hispanics (as compared to 22 percent of Whites) drop out of school before their classes

62 Ibid., 157.

63 Ibid.

64 David Horowitz, How the Public Education System has Failed Black and Hispanic Students at www.discoverthenetworks.org
Of the Black and Hispanic students who do manage to earn a diploma, it is reported that “a large percentage are functionally illiterate.” Moreover, according to the report, Black high school graduates generally perform at a level that is four academic years below that of their white counterparts. The report also found that, in terms of reading and math proficiency among graduates in the class of 2011, “just 13 percent of Blacks and 4 percent of Hispanics were proficient in reading (as opposed to 40 percent Whites) and only 11 percent of Blacks and 15 percent of Hispanics were proficient in math (as opposed to 42 percent of Whites).”

Commenting on the overall academic competency of “minority boys” in large, poor inner-city schools in the United States, Lydia Segal found the same dysfunctional education pointed out by Kozol in his works. She attests,

> It is in cities such as New York, Chicago, Los Angeles, Detroit, and Philadelphia where the largest number of children cannot read, write, and compute at acceptable levels and where racial gaps between Whites and Blacks and Latinos are widest. It is in large cities that minority boys in particular, trapped in poor schools, have the greatest chance of flunking out and getting sucked into the downward spiral of crime and prison.

Segal’s assertion is supported amply with data collected by the National Center for Education Statistics. Accordingly, the data support researchers’ contention that living in poverty during early childhood is associated with lower than average academic performance that begins in kindergarten and extends through elementary and high school. Furthermore, children living in poverty during early childhood are more likely to drop out of school and become part of the juvenile correction system. Moreover, Blacks are five times more likely than Whites and 14

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65 Ibid.

66 Ibid.

67 Ibid.

times more likely than Asians to be placed in residential correction facilities. In 2012, Black males made up 41 percent of all imprisoned young adults between the ages of 18 to 24 years old.69

Steve Suits, vice-president for the Southern Education Foundation, addressing the problems that seem endemic to poor children in poor schools, writes:

No longer can we consider the problems and needs of low income students simply a matter of fairness . . . Their success or failure in the public schools will determine the entire body of human capital and educational potential that the nation will possess in the future. Without improving the educational support that the nation provides its low income students – students with the largest needs and usually with the least support – the trends of the last decade will be a prologue for a nation, not at risk, but a nation in decline . . . 70

Suits’ warning that without improving the educational quality of poor children in poor schools could prove devastating for the nation; something Kozol had been saying for a number of years. The country’s failure to provide equal educational opportunity diminishes the quality and amount of human capital necessary for the United States to compete effectively in today’s global economy.

Like Suits, Kahlenberg and others point out the rise of global economies “has made the United States a direct competitor with international trading partners as at no other time and increasing reliance on technology puts a high premium on brains.”71 Yet, premium on “brains” among United States citizens seems to be gifted to the rich while the poor are dismissed as


seemingly unworthy, lacking what it takes to enter into a high-stakes game for freshmen seats at elite colleges and universities. Kahlenberg thus believes, “The hard truth is that educational advantage at the K-12 level accrues to affluent students.”

Evidently concerned about the blatant inequities between inner-city schools and their richer, suburban counterparts, Kozol calls for reforms that could bring about greater equality between the schools. According to Kathryn M. Neckerman, education reformers attack racial and class inequalities in public schools by demanding that they raise the level of educational attainment of all children “to a common standard of achievement.” Echoing similar sentiments as Suitts and Kahlenberg and charging that low-income and minority students have, for too many years, received a substandard education, Neckerman writes:

Fixing urban schools has become more critical now with recent changes in the job market. In our society, the educated stand on one side of a widening economic gap, the uneducated on the other. At a time when it is difficult to find a good [paying] job without a college degree, more than half of inner-city youth do not even graduate from high school. Those who do graduate are ill equipped to compete in the global economy. Poor schooling condemns them to permanent economic marginality.

Writing about inner-city schools in Chicago, Neckerman summarizes her work as a narrative that “begins in 1900” and traces the school officials struggles “with problems of politics, budgets, and personnel.” Accordingly, her narrative highlights how many of the

72 Ibid., 22.

73 Jonathan Kozol calls for the desegregation of schools throughout the nation. In large part, he attributes many of the problems in inner-city schools to segregation.

74 Kathryn M. Neckerman, Schools Betrayed: Roots of Failure in Inner-City Education (Chicago, IL: The University of Chicago Press, 2007), vii.

75 Ibid., vii.

76 Ibid., viii.
decisions by school officials negatively impacted the classroom and explains why those same decisions “were so damaging for inner-city teachers and students.”

She writes:

The history of inner-city schooling is, of course, also a history of race relations. The book shows how race came to matter in schools that had once been racially integrated. At the turn of the century, African Americans were a small and often overlooked minority in a city teeming with immigrant “races.” By 1960, the end of the period under study, almost half the city’s public school students were Black, the schools were highly segregated and unequal, and the system as a whole was characterized by bitter racial division.

If Neckerman’s characterization that Chicago’s schools had once been racially integrated, and, prior to becoming highly segregated and unequal, bitter racial division did not exist, what happened? The author contends that because of rising African American migration to Chicago at the turn of the Twentieth-Century, its population growing from 44,000 to 234,000, school officials began segregating schools and denying Black students equal educational resources. Indeed, educational inequality in Chicago grew substantially, starting in the early 1900s, and, almost simultaneously racial hostilities followed.

In light of Neckerman’s research, and juxtaposed to Kozol’s work, how can opponents of race-based affirmative action rightly claim the policy, when applied to the pursuit of higher education, weakens the structure of democracy and causes divisiveness? Moreover, why would some of these same critics claim the policy hinders the quest for a society in which racial segregation has been overcome and racial hostilities healed? Perhaps it is because these critics choose to ignore our history and debate the efficacy of the policy as abstract ideas outside its

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77 Ibid.
78 Ibid.
79 Ibid., 84.
80 Ibid., 82-86.
social context. As stated in chapter two, and reiterated here, the concept of “colorblindness” is discussed by some, often without reference to our history of racism; “preference” is discussed by others outside the context of the widening class division; and “merit” is discussed frequently without reference to privilege.

Given our history and, in light of the works cited above, it is no wonder that Blacks and other minority groups lag behind their White counter-parts through virtually all socio-economic indicators – per capita income, health, education, and housing. And, as pointed out in chapter two, it is easy to see why proponents of race-based affirmative action policy, when applied to the admissions process by selective colleges and universities, defend it on three principal grounds: to offset past and current discrimination, to counteract present unfairness, and to achieve future equality.

It is perhaps worth noting here that the idea of equality in educational opportunity in America can be traced as far back as the late 1700s to early 1800s. Recognizing that some children are born to wealth with its concomitant privileges while others are less fortunate, Thomas Jefferson proposed (although it was not approved by the legislature) the implementing of a public education system designed to prepare the brightest and most capable students to take their rightful place in society. However, from the onset of its conceptualization it was clear that Jefferson’s system of education, though recognizing merit, would have been designed to accommodate and perpetuate a two-tier class system in society. To support my contention that Jefferson’s system of education was designed to perpetuate a two-tier class system, consider a letter to one of his nephews.

On September 7, 1814, the author of the Declaration of Independence wrote in a letter to one of his favorite nephews, Peter Carr, stating:
It is highly interesting to our country, and it is the duty of its functionaries, to provide that every citizen in it should receive an education proportioned to the condition and pursuits of his life. The mass of our citizens may be divided into two classes - the laboring and the learned. The laboring will need the first grade of education to qualify them for their pursuits and duties; the learned will need it as a foundation for further acquirements.\textsuperscript{81}

The conceptual structuring of Jefferson’s education system differentiating between the laborer and the learned was in keeping with his belief there was a natural aristocracy among men founded on virtue and talents. He also believed there was an artificial or Pseudo-aristocracy founded on wealth and birth but void of virtue and talents.\textsuperscript{82} Jefferson considered the natural aristocracy “the most precious gift of nature for the instruction, the trusts, and the governing of society.”\textsuperscript{83} Conversely, he believed that the artificial aristocracy, “whose ascendancy should be prevented, was a mischievous ingredient in government.”\textsuperscript{84} And showing his disdain for such members of society, Jefferson disclosed to John Adams:

At the first session of our legislature...we passed a law abolishing entails. And this was followed one abolishing the privilege of Primogeniture, and dividing the lands of intestates equally among all their children, or other representatives. These laws, drawn by myself, laid the axe to the root of Pseudo-aristocracy. And had another which I prepared been adopted by the legislature, our work would have been compleat. It was a Bill for the more general diffusion of learning...to establish in each ward a free school for reading, writing and common arithmetic.\textsuperscript{85}

Hence, the public education system that Jefferson had envisioned and wrote about would have been such that a visitor:

\begin{itemize}
\item \textsuperscript{81} Adrienne Koch and William Peden, eds., \textit{The Life and Selected Writings of Thomas Jefferson} (New York: Random House, Inc., 1944), 644.
\item \textsuperscript{83} Ibid., 26.
\item \textsuperscript{84} Ibid.
\item \textsuperscript{85} Ibid., 28.
\end{itemize}
[will annually] chuse the boy, of best genius in the school, of those whose parents are too poor to give them further education, and to send him forward to one of the grammar schools....Of the boys sent in any one year, trial is to be made at the grammar schools one or two years, and the best genius of the whole selected, and continued six years, and the residue dismissed. By this...the best geniuses will be raked from the rubbish annually, and be instructed at the public expence, . . . The general objects of this law are to provide an education adapted to the years, to the capacity, and the condition of everyone, and directed to their freedom and happiness.  

Although Jefferson evidently gave thought to the possibility that some of the brightest and most creative individuals could come from poor and working-class families who cannot afford an education for their children, central to his education philosophy was the idea of a natural aristocracy versus an aristocracy of wealth (Psuedo-aristocracy). According to Richard D. Kahlenberg, Jefferson believed a natural aristocracy to be “more just and efficient” than an aristocracy built on wealth.\(^87\) In proposing universal education, he hoped to select the “genius” from the “rubbish” so as to promote “talents which nature has sown so liberally among the poor as rich, but which perish without use, if not sought for and cultivated.”\(^88\)

**Conclusion**

Jonathan Kozol studied the educational plight of children in inner-city schools for almost half a century. He documents in two important works – *Savage Inequalities: Children in America’s Schools* and *The Shame of the Nation: The Restoration of Apartheid Schooling in America* - the kind of education children of color and poor children in urban centers could expect to receive in the United States. Kozol spotlights an educational system that seems, even if not intentionally, to separate students based on race and class and treat minority students so poorly


\(^{88}\) Ibid., 13.
that it reduces any possibility for them to improve their lives. Moreover, the primary and secondary schools Kozol observes are seen to fund education inequitably and produces harmful consequences for poor children. As Steve Suitts, vice-president for the Southern Education Foundation, contends, we can no longer consider the problems and needs of low income students simply a matter of fairness. Their success or failure in the public schools, he asserts, will determine the entire body of human capital and educational potential that the nation will possess in the future. Richard D. Khalenberg, Kathryn M. Neckerman, and, to a lesser degree, Lydia Segal all seem to agree.

In the chapter that follows, I will build upon President Lyndon B. Johnson’s speech to the graduating class of 1965 at Howard University where he stated affirmative action is necessary because “you do not take a man who for years have been hobbled by chains, liberate him, bring him to the starting line of a race, say ‘you are free to compete with all the others,’ and still justly believe you have been completely fair.” Building on the race metaphor, I argue that only when Blacks are provided the same high-quality primary and secondary school training as their wealthy peers can the race for freshmen seats in elite colleges and universities be said to be fair. Further, providing quality primary and secondary school education for all students will most likely create a large enough pool of qualified Black candidates who can effectively compete academically with Whites and Asians. The creation of a ready supply of Black students who are qualified academically to enter the race for freshmen seats at elite colleges and universities on their own accord can possibly facilitate the eventual elimination of race-based affirmative action.

89 Ibid., 12. Ball, The Bakke Case, 11. See also Richard D. Khalenberg, The Remedy, 3. It should be noted that Khalenberg believes affirmative action preferences should be based on class, not race or gender.
CHAPTER FOUR
KEEPING THE RACE RIGGED?

One of the arguments advanced by proponents on the use of race-based affirmative action policy during elite college and university admissions is that it offsets present unfairness. Critics counter that current race-based affirmative action used in the selection process of freshmen target the wrong group, which in turn perpetuates greater inequality. These critics contend that admission officers unfairly select, from among their applicant pool, minority students who are already economically advantaged but fail to meet the high academic standards expected from White and Asian students who enter these same schools on their own merit. As discussed, merit for these critics is denoted for the most part as numeric scores on standardized tests and stellar grade point averages.

Critics who advance the numeric-qualifiers argument would have a legitimate complaint if merit, so narrowly defined, applied to all applicants across the board. Arguably, if merit so defined were applied fairly, the faces of the majority of students occupying seats at these premiere institutions of higher learning will most likely be Asian.\(^1\) Although most Asian students who apply to elite colleges and universities generally have higher standardized test scores and grade point averages than all other racial groups, many are not offered admission. Indeed, as Daniel Golden attests, the admissions standard that Asians are held to is generally

\(^1\) Many researchers report findings that Asians generally outscore all other “races” on standardized test scores and have high GPAs as well. For instance, see Thomas J. Espenshade and Alexandria W. Radford, Race and Class in Elite College Admission and Campus Life (Princeton, NJ: Princeton University Press, 2009), 136. The authors write, “The racial gradient for SAT scores is similar to those of high school GPA and class rank. Asians are again the most likely to perform well, whites place second, then Hispanics, and finally blacks.” Relative to SATs scores alone, Asians are first and “the next closest competitors are whites...” See also Jerome Karabel, The Chosen, 502. Karabel informs that, relative to Asians, the Public Interest, a prestigious neoconservative policy journal, published an article that showed Asian-Americans had SAT scores of 112 points higher than Caucasians which showed they had to meet a different and higher standard than other applicants seeking admission to Harvard.
higher than the admission standards for all other groups.\footnote{2} Golden points out, based on the findings of researchers in a 2004 study on admissions to elite schools, that “an Asian American applicant [needs] to score 50 points higher on the SAT than other applicants just to have the same chance of admission to an elite university. (Being an alumni child, by contrast, confers a 160-point advantage).”\footnote{3} Needless to say, because there are many more applicants than there are available seats at elite colleges and universities, competition for admission is quite fierce. Who gets in and who stays out becomes a point of contention between those who argue for and those who argue against the use of race-based affirmative action during the admissions process. Issues of fairness generally issue and dominate the debate between proponents and opponents of affirmative action.

In this chapter, I explore the idea of fairness as it applies to the race for freshmen seats at selective colleges and universities. Building on the race-metaphor used by then-President Lyndon B. Johnson in part of his 1965 commencement speech to a graduating class at Howard University, I proffer that the acquisition of knowledge through formal education is not a sprint, as so many seem to think, but a marathon that starts in kindergarten, continues through to primary and secondary school, and extends well beyond the campus gates of elite colleges and universities. I then explain why I believe, given the abominable inequities faced by African Americans in our public inner-city elementary and secondary schools, the use of race-based affirmative action by elite colleges and universities, though necessary, is insufficient in helping to bring about greater equality in this country.

\footnote{2}{See Golden, \textit{The Price of Admission}, 203. Golden writes, “most elite universities have maintained a triple standard in college admissions, setting the bar highest for Asians…[so that] an Asian American applicant needs to score 50 points higher on the SAT than other applicants.”}

\footnote{3}{Ibid.}
Next, I argue that improving inner-city public schools is a means (one of many) by which the so-called playing field can be truly levelled. Closely related to this idea, as I contend, is the need for a bottom-up approach that will augment the top-down approach currently practiced and argued for by proponents who support the use of race-based affirmative action in college admissions. The bottom-up approach has an anticipated three-fold outcome. First, a larger pool of academically well-prepared African-American children will be created through a high-quality education. Second, these well-prepared students will be able to effectively compete academically with their more privileged peers for college seats at elite schools on their own “merit” without needing a leg-up. Third, with the creation of a larger pool of academically well-prepared African American students, the need for race-based affirmative action could be eliminated in a generation or two. Last, in concluding, I provide a glimpse of what the reader can expect in the final chapter of this study.

President Lyndon B. Johnson’s Commencement Speech at Howard University: Expanding on the Race Metaphor

On June 4, 1965, President Lyndon B. Johnson delivered a brilliantly crafted commencement speech to the graduating class at Howard University. He stated,

Freedom is the right to share, fully and equally, in American society – to vote, to hold a job, to enter a public place, to go to school. It is the right to be treated, in every part of our national life, as a man equal in dignity and promise to all others. But freedom is not enough. You do not wipe away the scars of centuries [of slavery] by saying: Now, you are free to go where you want, do as you desire, and choose the leaders you please. You do not take a man who, for years, has been hobbled by chains, liberate him, bring him to the starting line of a race, saying “you are free to compete with all others,” and still justly believe you have been completely fair. Thus, it is not enough to open the gates of opportunity. All our citizens must have the ability to walk through those gates . . . We seek not just freedom but opportunity . . . To this end equal opportunity is essential, but not enough. Men and women of all races are born with the same range of abilities. But ability . . . is stretched or stunted by the family you live with, and the neighborhood you live in – by the school you go to, and the poverty or richness of
your surroundings. It is the product of a hundred unseen forces playing upon the infant, the child, and the man.⁴

Many scholars⁵ usually reference the above cited section of Johnson’s commencement speech to underscore his belief that affirmative action was – indeed, it still is - necessary to help bring Blacks into mainstream America after centuries of racial and legal discrimination. For instance, Lani Gunier reminds us that following his commencement address, the President issued Executive Order 11246 requiring “contractors and universities to take affirmative action to promote the full realization of equal opportunities for women and people of color.”⁶ And Randall Kennedy asserts that two features in Johnson’s speech were of particular importance at the time: the President’s searing critique of the abominable mistreatment of Blacks in the United States and his declaration that freedom and equal opportunity were ineffective in helping Blacks to overcome the social and economic oppression resulting from the nation’s racist past.⁷ President Johnson proposed affirmative action policies as a means to help African Americans overcome slavery’s legacy and its concomitant institutionalized racism that stood as obstacles to their pursuit of happiness.

As pointed out by William Bowen and Derek Bok, Johnson advocated for “a vigorous affirmative effort [on the part of society as a whole] to provide opportunities for Black

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⁶ Lani Guinier, The Tyranny of the Meritocracy, 34.

⁷ Randall Kennedy, For Discrimination, 42-43.
Americans.”

Seen as the ideal beneficiaries for affirmative action, Thomas Espenshade and Alexandria Radford state the Johnson Administration began suggesting the nation had a responsibility “to open the doors of opportunity” to African-Americans. In prying open the doors of opportunity, Terry Anderson asserts that Johnson believed Blacks deserved help in the form of special programs that got them to the starting line on equal footing as other citizens who had not suffered the same legal or social oppression as African-Americans. Anderson adds, “The president never stated that all runners should end the race the same, in a tie, an equal result.” Rather, Johnson believed all Americans should have the same opportunity to pursue their dreams and “make the best out of their own lives.”

In 1960, over 3,000 students stepped onto the campuses of Harvard, Yale, and Princeton. Of the total number of freshmen, only 15 were Black. Jerome Karabel states that although President John F. Kennedy had summoned the presidents of five major universities in 1962, including Harvard and Yale, to ask them for help in assisting Blacks with their educational pursuits, it was not until the riots in the late 1960s that elite colleges began altering their admissions practices. According to Karabel, in the fall of 1969, the number of Black admits at


9 Espenshade and Radford, *No Longer Separate*, 305.


11 Ibid.

12 Ibid.


14 Ibid., 381-406.
Princeton, Harvard, and Yale, was 224 – “a remarkable 386 percent increase over the 58 who enrolled in 1964.”

Whereas in the 1960s and early 1970s many elite colleges and universities emphasized the recruitment of truly disadvantaged urban students, by the mid-1970s onward, as a result of myriad factors (oil crisis of the 1970s, stagflation, a growing Black middle-class), admissions officers began seeking more privileged Blacks for possible candidacy at their schools. As they had done for years with Whites, the Ivies were now favoring middle-class Blacks over poor, inner-city school children. As we have seen through the eyes of Jonathan Kozol, given the deplorable conditions of inner-city schools, how can these children compete with their socially advantaged peers – Black or White - for a seat at the country’s most prestigious colleges and universities? To underscore this question, let us extend Johnson’s race metaphor and detail, first, what is involved in the preparation of an actual foot-race at the national and international level.

Generally, when a child either discovers within herself or is observed by a coach to possess a special talent for running, the child – assuming she desires to develop her talent – constantly trains to improve on her athletic ability. As she develops and refines her talent, the runner may discover she is competitive enough to challenge other runners who seek a spot on the United States’ Olympic team. In training for an Olympic-level sprint event, an elite sprinter trains all year assisted by a coach. During the off-seasons, the athlete must dedicate a

15 Ibid., 407.

16 Bowen and Bok, The Shape of the River, 7-9.

17 One of the individuals I supervise actually was an Olympiad who represented Jamaica in his earlier years. The presentation of what is involved in preparation for an Olympic heat is based on my conversations with him and information obtained from Australian Institute of Sport (AIS) at www.ais.org/nutrition.
considerable amount of time to weight training in the gym. In addition, off-season training focuses on refining techniques with a combination of sessions on the track and drill work to improve racing aspects such as dynamic starts, leg speed, and plier metrics to enhance knee-lift. Stretching sessions, yoga, and Pilates are often included to enhance the body’s flexibility recovery period. As the competitive racing season approaches, track work intensifies. Workouts include more intervals and sprints, technique refinement, and weight training. Since power-to-weight ratios are important for sprinters, the athlete must train to maximize muscle mass while maintaining low body fat levels. Proper nutrition is crucial for maximizing training outcomes, maintaining appropriate body-fat levels, and ensuring desired competition results. Proper nutrition is particularly important during competitions or while travelling to engage in competitions. Elite sprinters are required to travel interstate and overseas regularly to compete in quality events. Additionally, the competitor must run qualifying heats at national competitions in order to make cuts for the Olympics. Once at the Olympics, sprinters compete with the best from other nations to qualify for a spot in the finals. The final heat comprises the best of the best competitors who compete for a medal at that point in the games.

In the above discussion, the gym is analogous to a school and the coach equated to a teacher. A gym will have good trainers, sufficient amount of weights of all kinds, offer classes such as yoga and Pilates, provide whirlpools for muscle relaxation, and all other amenities a sprinter will need to become an effective competitor. Additionally, the coach will introduce and ensure the sprinter is thoroughly familiar with proper nutritional requirements and other techniques that will enhance his racing abilities.

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18 Although I make reference to a sprint here, I believe the race is a marathon. Training for a marathon is much more involved, though weight training is much different for a marathoner than a sprinter. For brevity, I discuss only what is involved in preparing for a sprint.
Throughout elementary, middle, and secondary school, a student who intends to apply for admission to an elite college or university must have access to good teachers (coaches), be exposed to excellent educative materials that expands his or her knowledge (weights of all kinds), take advanced placement classes to increase his or her chances of acceptance (proper nutrition), be exposed to the ideas of other bright students (travelling for competition), develop and sharpen his or her analytical abilities and critical thinking skills (techniques to improve racing speeds and knee-lift efficiency), and engage in extracurricular activities that will boost his or her chances of acceptance.

As was shown in Chapter Three, inner-city public schools lack the proper equipment, coaching, and other amenities that comprise the components of a good gym. If primary and secondary schools, like the ones depicted by Jonathan Kozol, are so lacking in the proper accoutrements found in an excellent gym, how can these students compete effectively with students who have trained all their lives in a first-rate, fully equipped gym? Moreover, as then-President Johnson stated, how can anyone claim “you are free to compete with all others,” and still justly believe the race has been completely fair.\textsuperscript{19}

Indeed, Derek Bok points out the many disadvantages facing poor (and inner-city) students in the competition for freshmen seats at an elite college. He writes the following:

As things now stand, needy students have many disadvantages in competing for a place in a selective college against students from well-to-do families. They can seldom afford to enroll in a test-prep course to improve their College Board scores. They will not have the benefit of a high-priced private counselor to help them assemble a strong résumé or write a persuasive college essay. They rarely have the opportunity to attend the summer schools and other enrichment activities that so many upper-middle-class students enjoy. Their schools will typically be of lower quality with peer pressures that are much less supportive of academic achievement than those experienced by students in higher-income communities.

If one believes in the American Dream that all young people deserve an equal chance to fulfill their ambitions to the best of their ability, admissions officers may need to put a thumb on the scales for low-income applicants simply to compensate for the handicaps these students bear that currently put them at a serious disadvantage in the fierce competition [in the race] to enter selective colleges.\textsuperscript{20}

But the picture painted by Bok of economically needy students is only a small part of the story. As will be discussed in Chapter Five, there are thousands of high-achieving, low-income students who do not apply to elite colleges and universities because they generally believe it will be too expensive for them to attend. According to Caroline Hoxby and Christopher Avery, low-income students are typically unaware or uninformed that selective institutions will often pay their way through school once accepted.\textsuperscript{21} Moreover, these students typically “come from districts too small to support selective public high schools, are not in a critical mass of fellow high achievers, and are unlikely to encounter a teacher who attended a selective college.”\textsuperscript{22} The factors emphasized by Hoxby and Avery, and many more, contribute to their absence on elite college campuses.

\textbf{Why Applying Race-Based Affirmative Action at the College Level Is Insufficient in Helping to Bring About Greater Social Equality}

Race-based affirmative action is intended, first and foremost, to bring about greater equality of opportunity. It is a misconception held by some opponents of affirmative action that race-based affirmative action’s primary objective is to bring about social equality. For instance, Shelby Steele bitterly criticizes race-based affirmative action, stating that it is problematic and contending that it tries to function like a social program. “Rather than ask it to ensure equal

\textsuperscript{20} Bok, \textit{Higher Education in America}, 136-137.


\textsuperscript{22} Ibid.
opportunity, we have demanded that it create parity between the races.”

Although Steele is correct when he implies that the policy’s true objective ought to be the creation of greater opportunity for Blacks, especially those who are socioeconomically disadvantaged, he is incorrect concluding that its aim is to create parity between the races. As stated above, President Johnson never implied or intended to suggest that all runners were to end the race equally or in a tie. He correctly recognized that people of all races are born with abilities that could be stretched or stunted by the family, the community, schools, poverty, or riches. Indeed, as he astutely stated, ability and its development “is the product of a hundred unseen forces playing upon the infant, the child, and the man.”

That social equality or parity results from using race-based affirmative action during the admissions process at selective colleges and in high-paying jobs are but by-products of the policy’s use.

As pointed out in Chapter Two, several critics of race-based affirmative action rightly contend that the policy, when applied by admissions officers of elite colleges, targets racial minorities who are already privileged. But, as Randall Kennedy notes, “To be a candidate for admission to medical school or law school or merely college, one must first be a high school graduate.”

Pointing out that large numbers of minority youth fail to complete high school, he adds that among those who do manage to graduate, many fail to receive a high-quality education that equips them to be academically competitive for admissions to selective colleges or universities. Kennedy suggests that because large numbers of minority youths remain outside the scope of affirmative action, he correctly concludes that “Racial affirmative action in higher

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23 Steele, The Content of Our Character, 121.

24 See quote from President Johnson’s commencement address above.

25 Kennedy, For Discrimination, 89.

26 Ibid.
education, in short, has little direct bearing on the fate of most minority youth. But, as will be discussed below, thousands of well-qualified, poor African-American students do not have access to the opportunities affirmative action could provide.

Critics of race-based affirmative action are not the only ones who point out admissions officers at elite colleges target minorities who are privileged. Many scholars on the pro-affirmative-action band wagon have commented on the absence of students from low-income families on elite college campuses. Additionally, researchers have conducted studies to determine what impact, if any, linking race-based with class-based preferences will have on the admissions-process among elite colleges and universities.

Jerome Karabel, for example, commenting on the underrepresentation of poor Black students on elite campuses and noting one of the central arguments used by five leading private universities in the Grutter case, states the schools argued “that student diversity was essential to the fulfillment of their core educational mission.” Karabel observes, however, despite their claims that a diverse and inclusive education experience served a compelling pedagogical interest, “conspicuously lacking in significant representation” from Harvard, Yale, and Princeton were students from low-income households. According to him, just 3 percent of poor students attend elite institutions of higher learning. Karabel asserts,

The lack of class diversity at the nation’s leading universities reflects the relative powerlessness - indeed, the invisibility – of the American working class. Unlike black and brown students, students of working-class origin have never mounted a serious effort either on or off campus to demand a larger slice of the admissions pie. The paucity of working-class students at [Harvard, Yale, and Princeton] and

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27 Ibid.
28 Karabel, The Chosen, 553.
29 Ibid., 553.
30 Ibid., 554.
other selective institutions contradicts their professed commitment to both
diversity and equality of opportunity and threatens to undermine their legitimacy
by reinforcing their image as citadels of privilege. Nor do they receive the kind of
preference still accorded legacies and recruited athletes – groups that, according
to a study by William Bowen, are 30 and 20 percentage points more likely to be
admitted. . . . Indeed, contrary to the repeated claims of elite colleges, applicants
from low-socioeconomic backgrounds, whether defined by family income or
parental education, get essentially no break in the admissions process.31

Thomas J. Espenshade and Alexandria W. Radford conducted a study to determine, in
part, what impact class-based preferences connected to race-based affirmative action will have
on higher education admissions. As they point out, “low-income students are underrepresented
not only in higher education generally but also at the nation’s most selective institutions.”32
Drawing from the work of Anthony Carnevale and Stephen Rose, Espenshade and Radford
write,

At the 146 most competitive four year colleges and universities, 74 percent of
students come from the top quarter of the socioeconomic distribution (based on
family income and parental education and occupation), and 10 percent come from
the bottom half of the distribution. Only 3 percent of enrolled students at these
academically selective institutions come from the bottom quarter of the
socioeconomic distribution. Because it is commonly agreed that there are social
and economic benefits to attending college – benefits that are accentuated by
graduating from an elite institution – students who have fewer economic
advantages to begin with because of their family circumstances have
disproportionately less access to opportunity in their own generation.33

Evidently agreeing with the authors from whose work they draw, Epsenshade and
Radford conducted a mathematical simulation to determine the impact of three alternative
admission policies at private colleges and universities. From the observed baseline of those
admitted under current admission practices, the researchers first substituted Black and Hispanic

31 Ibid., 554.
32 Espenshade and Radford, No Longer Separate, Not Yet Equal, 348.
33 Ibid.
weights for lower and working class admissions consideration. In the second simulation, they substituted legacy weight for lower class. In the third, they substituted legacy weight for lower and working classes admits. They found that giving more weight to low-income applicants while keeping race-based affirmative action intact increases racial diversity only slightly: from 40 to 43 percent “with the principal gains accruing to Black and Hispanic students.”³⁴

Interestingly, Epsenshade and Radford also conducted simulations to determine whether class-based preferences will achieve more racial diversity than race-neutral policies as well as more socio-economic diversity than race-based affirmative action. They found that, class-based preferences will not achieve the same result as racial affirmative action.³⁵ They reiterated and emphasized, however, that “adding economic affirmative action on top of racial affirmative raises slightly the underrepresented minority share of admitted students.”³⁶ They attest that, because race-based preferences provide “such an important boost” for Blacks and Hispanics, removing such an admission policy will “drastically undercut minority students in the aggregate pool of accepted students.”³⁷

William G. Bowen, Martin A. Kurzweil, and Eugene M. Tobin, like Carnevale, Rose, Epsenshade, and Radford also examined ways elite colleges and universities could implement changes at the institutional level to change the admission outcomes associated with low socioeconomic status.³⁸ Like the other noted authors, Bowen and his colleagues contend the solution to addressing the disadvantages applicants from low socioeconomic backgrounds face

³⁴ Ibid., 349-350.
³⁵ Ibid., 356.
³⁶ Ibid.
³⁷ Ibid.
³⁸ Bowen, Kurzweil, and Tobin, Equity and Excellence, 161. See also, Espenshade and Radford, No Longer Separate, Not Yet Equal, 349.
during the admissions process “is to increase preferences for students from lower social classes while maintaining current admission practices regarding underrepresented minority groups.”\(^{39}\) They cite four reasons why they “favor giving preference to well-qualified applicants from modest backgrounds.”\(^{40}\) The researchers believe it is necessary to give more admission weight to low-income students because this group of students is substantially underrepresented at selective institutions, and, increasing their numbers would expand the educational benefits of diversity; it would promote mobility and opportunity; students who worked hard to overcome severe disadvantages and present themselves as credible candidates for admission deserve special recognition; and poor and working-class students perform very well academically.\(^{41}\)

It is worth noting, before concluding this section, Espenshade and Radford contend that despite claims of low-income students receiving superfluous consideration during the admissions process, they believe elite colleges and universities could admit far more students than they do. Referencing the work of Carnevale and Rose, Espenshade and Radford point out that “on average the top 146 colleges do not provide a systemic preference [to poor and working-class students] and could in fact admit far greater numbers of low-income students, including minority students, capable of handling the work.”\(^{42}\) Accordingly, Carnevale and Rose “estimate that there are perhaps as many as 300,000 such students with the ability to complete bachelor’s degree who do not attend a four-year college.”\(^{43}\) All four researchers believe that low-income students

\(^{39}\) Espenshade and Radford, No Longer Separate, 349. See also, Bowen, Kurzweil, and Tobin, Equity and Excellence, 184.

\(^{40}\) Bowen, Kurzweil, and Tobin, Equity and Excellence in American Higher Education, 176-177.

\(^{41}\) Ibid., 176-177. See also Espenshade and Radford, No Longer Separate, 349.

\(^{42}\) Ibid., 348.

\(^{43}\) Ibid., 349.
should be top priority in policies designed to increase socioeconomic diversity in four-year institutions. Still, despite the progress made and the efforts exerted to bring more African Americans into a reasonable modicum of social affluence, applying race-based affirmative action at the collegiate level is still not enough. Moreover, there are too many students left outside the affirmative action umbrella who may be viewed as more deserving than the handful of privileged Black kids who critics of race-based affirmative action so seemingly love to highlight.

**Improving Inner-City Public Schools to Level the Playing Field: A Bottom-Up Approach**

Glen Loury asserts that “the stakes for American higher education could not be greater.” The stakes are high according to Loury because university administrators at elite schools generally believe, in part, “that Blacks and Hispanics need to be present in meaningful numbers among the ranks of those being inducted by these institutions into the upper ranks of American society.” But why do these minorities need to be present on elite college campuses in meaningful numbers? Is the motivation behind giving Blacks a leg up about fairness; or, is it about something else?

Loury first postulates, “Elite education is the primary site in American life where access to influence and power is rationed.” He then adds that “[e]vidently if Blacks and Hispanics are to achieve anything approaching equality of influence and standing in this hierarchical society,

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44 Ibid., 349.


46 Ibid., 317.

47 Ibid.
they must gain access to its meritocratic institutions.”⁴⁸ Professor Loury makes it known why it is necessary for Blacks and Hispanics to breach the gates of elite institutions. He bluntly states,

Supporters of affirmative action recognize that the presence of more than a token number of Blacks and Hispanics at selective colleges and universities is necessary to ensure both the perception and the reality of fairness. In other words, the racial diversity of a society’s selective colleges and universities demonstrates the genuinely democratic character of the processes by which that society constructs its elite classes.⁴⁹

Professor Loury is not far from the truth when he states more than a token number of minorities are needed at elite institutions to present a perception of fairness, and, he is not alone in his opinion.

Because elite institutions of higher learning are generally thought to be the training ground for the power elites, Randall Kennedy notes that “individuals with law degrees occupy roughly half the state governorships, more than half the seats in the United States Senate, and more than a third of the seats in the United States House of Representatives.”⁵⁰ More astounding, Kennedy points out, is the educational background of the Justices who occupy the United States Supreme Court. As of 2012, “every member [of the Supreme Court] attended law school at either Harvard or Yale.”⁵¹

Despite evidence of the privileged reproducing its own through the selection process at elite colleges, critics like Shelby Steele vehemently protest the use of race-based affirmative action to construct or engineer an elite class of Blacks. Contending preferential treatment “passes out entitlement by color,” rather than teach skills or educate children, Steele sarcastically

⁴⁸ Ibid., 317.
⁴⁹ Ibid., 318.
⁵⁰ Randall Kennedy, For Discrimination, 14.
⁵¹ Ibid., 14.
remarks that “the social engineer’s assumption” is that whenever society demands more Black Ph.D.’s, the demand will inspire Blacks to want to earn Ph.D.’s. Steele rightly points out,

A Ph.D. must be developed from preschool on. He requires family and community support. He must acquire an entire system of values that enables him to work hard while delaying gratification. There are social programs, I believe, that can (and should) help blacks develop in all these areas, but entitlement by color is not a social program; it is a dubious reward for being black.

But, as compelling as his argument might be, Steele seems to ignore the harsh reality poor children in poor schools face on a daily basis. Moreover, poor children’s economic and social reality juxtaposed to “our unlovely racial past” makes it, I believe, a moral imperative that the government acts to help change their social trajectory. As Randall Kennedy astutely puts it,

To some extent, affirmative action privileging of better-off racial minorities stem from an accommodation between, on the one hand, demands for reparatory justice and, on the other hand, the present functional needs of institutions. The former counsels the providing of higher education to underrepresented racial minorities, even at the high cost of remedial instruction. The latter counsels making higher education available to racial minorities already prepared to take advantage of the opportunity. Affirmative action often represents a rough compromise between these two alternatives.

Whether the social advancement of African Americans evolves out of a compromise or through purposeful social engineering, race-based affirmative action applied to elite college admissions

52 Shelby Steele, *The Content of Our Character*, 121.

53 Ibid., 121-122.


55 To be clear, governments cannot raise children: parents, other family members, and guardians have that responsibility and they make the biggest impact on a child’s life. However, governments can make a huge difference in the lives of disadvantaged kids through social programs and supporting schools that provide excellent education.

56 Randall Kennedy, *For Discrimination*, 85.
inevitably stirs debate because, as Loury points out above, it is where access to influence and power is rationed.\textsuperscript{57}

Perhaps realizing the necessity of providing educational equal opportunity for Blacks, Justice Sandra Day O’Connor and Stewart J. Schwab stress that educators should not wait for the 25-year expectation extolled in \textit{Grutter} to expire before looking for alternative means to resolve the race-sensitive admissions issue.\textsuperscript{58} They recommend that educators should use the remaining years to evaluate the admissions dilemma because higher education, on its own, cannot resolve all of the problems facing Blacks since “it is powerless to alter the basic profile of its applicant pool.”\textsuperscript{59} Other commentators seem to agree with Justice O’Connor and Schwab.

Bowen, Kurzweil, and Tobin, asserting that “policy changes at the collegiate level alone will not tap fully the potential of disadvantaged students,” contend that “there is an even more fundamental need for larger better-prepared pools of applicants from low socioeconomic and minority backgrounds.”\textsuperscript{60} In an effort to improve the college preparedness of these groups of students, Bowen and his colleagues recommend a comprehensive approach, “with consideration given to the sources of the preparedness gap from birth through adolescence and to both schooling and the out-of-school environment.”\textsuperscript{61} Accomplishing this monumental task, according to these scholars, will require early interventions that could enhance the child’s cognitive

\textsuperscript{57} Loury, “Democracy and the Choosing of Elites,” 317.


\textsuperscript{59} Ibid., 63.

\textsuperscript{60} Bowen, Kurzweil, and Tobin, \textit{Equity and Excellence}, 224.

\textsuperscript{61} Ibid.
development at the “pre-primary stages, in-school programs that build on early gains, and finally, programs designed to narrow gaps in access to information so talented students from low-SES backgrounds can compete successfully with their more advantaged peers.”

Unless major changes are made in our K-12 education system, higher education, no matter how many years from now, will face the same conflict between educational talent and reparatory justice camouflaged as diversity. As shown in Chapter Two, attendance and achievement data on the K-12 system reveal troubling educational disparities along racial lines. Blacks are more likely than Whites to have poor attendance records and they drop out of high school at greater rates. Moreover, as James L Moore, III, and Chance W. Lewis point out, “it is widely recognized that the communities where these school systems are situated are often strapped for resources and opportunities.” Like Jonathan Kozol, these authors attest that urban schools “are commonly based in low-income segregated neighborhoods and are often funded at lower levels than suburban schools.” Yet, despite the high poverty, sub-standard medical care, lack of basic needs, and amplified crime rates, urban schools are expected to educate all their students, as well as prepare them for different postsecondary opportunities such as college, the military, or employment.

Urban schools across the country need to be fixed. They are part of a pipeline that, with improvements, could provide valuable human and social capital for our nation in today’s

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62 Ibid., 224.


64 Ibid.

65 Ibid.
competitive, global market. Some universities have begun to partner with community primary and secondary schools to enhance students’ education, generally, and their preparedness for college, specifically. For instance, at the University of Washington, staffers work with K-12 schools to identify and mentor talented minority students, raise their ambitions, counsel them to take college preparatory classes, and explain the value of higher education. Some of the methods employed to stir student interests in education “include tutorials by current college students, visits to campus, summer programs, and science contests.” Without a doubt, much more is needed to help urban schools become stellar institutions of learning, but the initiative taken by the University of Washington is a start in the right direction. The ultimate goal of the University’s program is to increase the number of academically talented minorities who apply to college.

Any reasonable person will agree that all schoolchildren in the United States should have a right to a good, quality primary and secondary school education. As Richard D. Kahlenberg states, “They may not have a right to middle-class parents, or a right to live in a middle-class neighborhood, or a right to a middle-class income and life-style. But every child in the United States – whether rich or poor, White or Black, Latino or Asian – should have access to the good education that is best guaranteed by the presence of a majority middle-class student body.” And why does Kahlenberg advocate for a majority middle-class student body? “Student

66 Moore, III and Lewis, eds., African American Students in Urban Schools, 3.


68 Ibid.

69 Ibid.

70 Kahlenberg, All Together Now, 1.
attainment,” Kahlenberg shows in his study, “rises in wealthier schools, in part because students in these schools have higher educational and occupational aspirations – which rub off on other students.”\(^71\) He thus suggests that wealth and a quality education are inextricably linked.

Randall Kennedy points out that many observers, over the years, have come to believe that it would be better to offer all children – especially those who are exposed to sub-standard education - excellent schooling from pre-kindergarten through high school, than to offer preferences to graduating racial minorities.\(^72\) He concurs with these observers, stating that he “would be willing immediately to trade university-level affirmative action for an ironclad guarantee, no matter what the expense, of excellent primary and secondary schooling throughout the country.”\(^73\) He sadly adds, however, that “the deal is unavailable.”\(^74\) And, evidently settling for a compromise, writes, “racial affirmative action, with all of its deficiencies,” is the best we have at the moment.\(^75\) The million-dollar question is, why is this so? I, like Kennedy, will settle for excellent schools from pre-kindergarten through high school and beyond for all our children. Indeed, I believe it is imperative the nation improves the quality of education urban school children generally receive in primary and secondary schools. These children are valuable resources that the country cannot afford to cast aside.

Sheryll Cashin echoes similar sentiments, taking her contention relative to affirmative action and college admissions a step further than Kennedy. First reminding us that the original

\(^{71}\) Ibid., 54.

\(^{72}\) Randall Kennedy, *For Discrimination*, 146.

\(^{73}\) Ibid.

\(^{74}\) Ibid.

\(^{75}\) Ibid.
impetus of affirmative action was to overcome the legacy of overt racism, she asserts that “anti-racist rationale of affirmative action has been superseded by a generalized pursuit of diversity for its own sake.”

She adds that class-and-income-based affirmative action is insufficient to overcome the huge educational inequalities in our society and advises that reforms must start at the K-12 point in the education pipeline. She writes the following:

Given our nation’s failure to live up to Brown, we have an obligation to acknowledge and ameliorate the injustice and damage of segregation – a moral imperative much more important than diversity itself. Class-based affirmative action plans are insufficient to this task. Mere consideration on income differences among college applicants would not adequately reflect the structure of geographic disadvantage in the United States. Reforms to the admission process should be designed to mitigate the inequality in the K-12 pipeline and to help create the social cohesion needed to improve the pipeline.

It is worth noting, before concluding this section, Anthony P. Carnevale and Jeff Strohl subscribe to a bottom-up approach as a means of improving the educative process relative to moving students to college. They state, “If we cannot move large numbers of less-advantaged students into quality programs at selective colleges, then we may need to move quality programs, and the money to pay for them, to the community colleges and less-selective four-year colleges where the least-advantaged half of American postsecondary students are currently enrolled.”

I agree with them that “improving quality from the bottom up is largely unexplored territory,” but disagree that intervention should be injected into the middle of the educative pipeline.

76 Sheryll Cashin, Place, not Race: A New Vision of Opportunity in America (Boston, MA: Beacon Press, 2014), 84.

77 Ibid., 84.


79 Ibid., 89
different from what we do now: we put a band aid on a problem that will not go away unless we address it by attacking the root cause of the problem. And, as stated, in the pipeline of the educative process, that line starts at the pre-kindergarten level.

**Conclusion**

In this chapter, I explored the idea behind the academic race for freshmen seats at selective colleges and universities by building on the race-metaphor used by then-President Lyndon B. Johnson in part of his 1965 commencement speech to a graduating class at Howard University. In building on the metaphor, I contended that the race starts in kindergarten (or even before) through to primary and secondary school and extends well beyond the campus gates of elite colleges and universities. I illustrated why I believe, given the abominable inequities faced by African Americans in our public inner-city elementary and secondary schools, using race-based affirmative action alone – during the admissions process by elite colleges and universities – is insufficient in helping to bring about greater equality in this country.

Arguing that improving inner-city public schools is one of means by which the so-called playing field can be truly levelled, I contended that debaters in the race-based college admissions saga need to focus on a bottom-up approach that will not only augment, but will eventually eliminate the top-down approach currently practiced and argued for by proponents. The bottom-up approach has an anticipated three-fold outcome, with the end result being a larger pool of well-qualified pool of African-American students from which to draw. Undoubtedly, as so many agree, urban schools across the country need to be fixed. They are part of a pipeline that, with improvements, could provide valuable human and social capital for our nation in today’s competitive, global market.
As pointed out, some universities have begun to partner with community primary and secondary schools to enhance students’ education, generally, and their preparedness for college, specifically. Some of the methods employed to stir student interests in education include tutorials by current college students, visits to campuses, summer programs, and science contests. Although it may not seem as much, the initiative taken is a start in the right direction as the ultimate goal of the program is to increase the number of academically talented minorities who apply to college. In the chapter that follows, I provide some recommendations with regard to improving inner-city public schools so that a larger pool of academically qualified African-Americans may be created. Additionally, I re-visit the debate on the use of race-based affirmative action by elite colleges and universities by way of a rejoinder in bringing my discussion full circle.
CHAPTER FIVE

LEVELLING THE EDUCATION PLAYING FIELD

Frank C. Worrell, writing on the topic of school and academic interventions, states the primary role of education and schooling is to assist students in developing, to the fullest extent possible, their intellectual abilities.\(^1\) Secondarily, although not required by law, schooling helps students develop their behavioral, social, and emotional competencies.\(^2\) Worrell avers that access to appropriate educational opportunities is crucial for a child’s development, and that the role of the teacher is vitally important in the child’s academic success.\(^3\) Since many primary and secondary schools are failing to have a positive impact on many of our children, he asserts that “in the response to intervention (RtI) movement that is sweeping our nation’s schools, quality education is seen as the first and most important intervention.”\(^4\)

Editors James Moore, III, and Chance Lewis contend that education is inextricably linked to our economy and our ability to produce skilled workers who can compete in today’s global market, in large part, is dependent on students receiving a quality education.\(^5\) But, as was illustrated in Chapter Three, thousands of urban school-aged children do not benefit from the public school system. Many of them generally start school more academically underprepared than their suburban peers because quality early childhood programs are simply not available to

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\(^2\) Ibid., 543.

\(^3\) Ibid., 544-547.

\(^4\) Ibid., 544.

\(^5\) Moore, III and Lewis, African American Students in Urban Schools, 3.
Moreover, the vast majority of the schools in urban centers are usually based in low-income segregated neighborhoods that trigger a series of other problems not conducive to healthy child development or intellectual growth. The myriad problems negatively impacting the educational outcomes of urban school children include “broken families, antisocial behavior, social networks that do not extend beyond the confines of the ghetto environment, and a lack of informal social control over the behavior and activities of children and adults in the neighborhood.”

In this chapter the works of Frank Worrell, Sheryll Cashin, Jonathan Kozol, Linda Darling-Hammond, James Moore, Chance Lewis, and others will be used to address the topic of improving primary and secondary schools. As argued, improving the education pipeline in Pre-K through Grade 12 is imperative if race-based affirmative action in college admissions is to be eliminated. Looking at the elementary schools Cashin describes, I identify some of the more important variables that comprise a quality education. I compare those variables in the schools Cashin describes with the ones Jonathan Kozol identifies in Chapter Three to indicate where intervention is needed if the quality of education in urban schools is to improve. Two variables – school segregation and early childhood education – will be discussed separately. Last, in bringing my study full circle, I conclude with a rejoinder to the race-based affirmative action debate regarding elite college admissions.

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6 Ibid., 4.
7 Ibid.
8 Ibid.
Identifying Places for Intervention:
A Look at Suburban and Inner-City Public Schools

Sheryll Cashin discloses in her book *Place, Not Race: A New Vision of Opportunity in America* that, prior to her children reaching elementary-school age, they attended a private school – Aidan Montessori – from age two. Between their ages of two and five, Cashin and her husband looked at possible schools her children might attend when they reached elementary-school age. Failing to win the lottery for her boys to attend an “exceptional public charter or west-of-the-park schools,” she and husband began taking a closer “look at Shepard [Elementary School in Washington, D.C.] and noticed marked differences from other schools on our wish list.”

Recalling observations made of the school over a three year-period she writes the following:

The number of kids on free and reduced lunch kept rising at Shepard. On tours of the school we noticed things in need of repair – a broken water fountain, a toilet that did not flush, loose door hinges, and a physical plant that looked like it had not been updated for several decades. Inside the classrooms, children were learning, but it gave us pause to see a clutch of eager children commanding a teacher’s attention at the front of one room and a smaller cadre of restless kids at the back not being engaged by anyone. This pattern was repeated in another classroom. There was much to offer a focused kid, but our cumulative impression was one of risk.

The author points out that although only 28 percent of the children who attend the elementary school actually live in Shepard Park, the school is 79 percent Black, nearly a third of the student population is on free and reduced lunch, and it offers a rigorous curriculum. She then compares Shepard to Janney Elementary, a public school west-of-the-park.

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9 Sheryll Cashin, *Place, Not Race*, 33. West-of-the-park schools, according to Cashin, refer to wealthier, whiter, private schools west of Rock Creek Park in Washington, D.C. Shepard Elementary is the school that serves the children who are residents of Shepard Park where Cashin resides.

10 Ibid.

11 Ibid.
Cashin first states the following:

We were shocked by the abundance of riches at Janney Elementary. Like all the other highest-performing schools in the district, Janney is located west of the Park, not far from American University. Janney’s $29 million renovation and expansion include a soaring atrium and a modern science lab, while Shepard and other schools have none. My husband was particularly impressed by Janney’s new library, which was outfitted with a computer lab holding a bank of Apple computers and an open reading area with plush pillows lit by floor-to-ceiling windows. Janney has an art studio with a pottery kiln, high-tech white boards and projectors in every classroom, a beautiful playground, and gardens the students work in as part of their science studies. The school also happens to be adjacent to a new, architecturally stunning public library with row upon row of books to capture a young person’s imagination.\(^{12}\)

And she then notes:

Janney also has a very different population than Shepard. Only 7 percent of its children are black and only 2 percent are poor. Over 90 percent of Janney’s students are from the surrounding neighborhood. Precious few out-of-boundary kids enjoy this magnificent public school. On the school tour, an electric sense of engagement wound through every student. My husband and I were impressed and considered moving to the Janney district. But after several months of visiting open houses we decided against paying the nearly seven figures for a smaller house and yard and few or no black neighbors.\(^{13}\)

On her fourth try, based on a tip from a friend, Cashin won a public school lottery for her children to attend Washington Yu Ying Public Charter School. Hinting about the quality of the school, she informs the reader as follows:

At Yu Ying, a Public Charter School, families willingly travel across geographic and cultural boundaries for a Mandarin-immersion international baccalaureate program that money cannot buy, at least not in this District. Any family residing in the city can apply and entrance is awarded solely by lottery. No high-stakes tests or interviews are required. The school is located in Northeast Washington in a majority-black zip code near Catholic University. Its dynamic principal is African-American. In 2012, the student population was 48 percent blacks, 27 percent white, 18 percent Asian/Pacific Islander, and 7 percent Latino.

\(^{12}\) Ibid., 34.

\(^{13}\) Ibid.
One-fifth of the children were low-income and 9 percent had special education needs.\footnote{Ibid., 36.}

After illustrating an example of the high-quality education Yu Ying provides its students, Cashin comments about some of the school’s aesthetic features:

Several parents testified on-line that they had left private schools for Yu Ying. One said that she could not believe such a wonderful school was free. They had come to immerse their child in an ancient language and culture that is not European. To enter diversity without fear, decoupled from where one lives, to obtain language and social skills that are rewarded in the global marketplace, Yu Ying offered the kind of radical integration that the \textit{Brown} decision hinted at. Most charter schools in the United States are racially and economically segregated and do not outperform traditional schools. The strong demand for Mandarin immersion seemed to have speared Yu Ying that fate. It helps that Yu Ying occupies a beautiful, renovated 1902 building on a three-acre lot that offers playgrounds, a sports field, and an outdoor neutral learning area. It is a public school that has drawn people with options back to the public square. And they are sharing their resources with less fortunate kids rather than hoarding them in neighborhoods and schools of their own.\footnote{Ibid., 37.}

The schools Cashin reports about are unlike the ones reported on by Jonathan Kozol.\footnote{See \textit{Chapter Three}.} In the schools Kozol examines, the students go to places without windows, without educational materials, without teachers, and without playgrounds. The urban schools he describes are woefully sad places where student learning potential slowly erodes, their aspirations – if they have any - slip away, and opportunities seem dismal. To illustrate, Kozol noted when speaking to a 14-year old student in an East St. Louis school about what she had learned about the Civil Rights campaign, she stated, “We have a school in East St. Louis named for Dr. King. The school is full of sewer water and the doors are locked with chains. Every student in the school is Black. It’s like a terrible joke on history.”\footnote{Kozol, \textit{Savage Inequalities}, 4 – 35.}
Other stark differences are noted between the schools Cashin tells about and the ones reported by Kozol. For instance, teacher turnover or the absence of teachers in the classroom was not noted by Cashin. In contrast, Kozol reported that on an average morning in Chicago, over “5,700 children in 190 classrooms come to school to find they have no teacher.” More astounding, because spring sees a decrease in substitute teachers, “On Mondays and Fridays in early May, nearly 18,000 children - the equivalent of all the elementary students in [eight] suburban [schools] - are assigned to classes with no teachers.”

Chicago, like Washington, D.C., is not without its premiere primary and secondary schools. Reporting on one of Chicago’s wealthy schools, Kozol notes that New Trier’s students have the use of 27 acres, superior labs and up-to-date technology, a physical education center that includes three separate gyms, a fencing room, a wrestling room, and studios for dance instruction. In all, the school has seven gyms as well as an Olympic-sized pool. By comparison, Kozol notes, “It is impossible to read this without thinking of [an inner-city] school like Goudy, where there are no science labs, no music or art classes and no playground - and where the two bathrooms, lacking toilet paper, fill the building with their stench.” Kozol comments that since poor urban schools are often adjacent to rich districts, he believes the “ever-present contrast adds a heightened bitterness to the experience of children.”

Furthermore, according to Kozol, the ugliness of racially segregated schools and the huge,

\[18\] Ibid., 51 – 52.

\[19\] Ibid., 53 – 54.

\[20\] Ibid., 65.

\[21\] Ibid.

\[22\] Ibid., 74.
noticeably stark contrast between urban and suburban schools render life desperate, often pathological, and destitute. As a result, students begin to view themselves as being somehow morally infected and undeserving.\textsuperscript{23} Given the stark contrast between New Trier and Goudy, it is not surprising that the children at Goudy experience a heightened bitterness toward their more privileged peers and, indeed, the world.

Two other comparisons between Kozol’s report and Cashin’s disclosures are noted: students on free or reduced lunches and the expectations of parents who enroll their children in high-quality schools. As pointed out above, Cashin notes in her book that Shepard Elementary is 79 percent Black and nearly a third of the student population is on free and reduced lunch. She quickly adds though, to its credit, Shepard “offers a rigorous International Baccalaureate curriculum” where Black students are doing “nearly as good” in reading and math as [Black students] in “sought-after west-of-the-park schools.”\textsuperscript{24} In the poor schools that Kozol examined, where high percentages of students were on free or reduced lunches, these schools were invariably of poor quality. Unlike Shepard, which offered a rigorous curriculum where Black students were doing well, in the inner-city schools Kozol discussed, students were doing poor academically. In essence, the inner-city schools examined by Kozol paled in comparison, academically, to the worst school Cashin noted.

Kozol also examines the increasing educational divide between the parents of privileged children and the parents of poor minorities. He illustrates, commenting on schools in New York, that the better school districts are accessible to knowledgeable, “savvy parents” who know

\textsuperscript{21} Ibid.

\textsuperscript{24} Sheryll Cashin, \textit{Place, Not Race}, 33.
applications “to a number of these schools…must be filled very early.”

He comments that the parents seeking entrance for their children “are often asked to write or express their educational philosophy and also sign a contract to participate in certain forms of educational support the school expects a parent to provide.”

Kozol noted, and Cashin confirms the reality, that the social class and education level of the students’ parents are crucial to them getting in quality schools, since the system, at least in part, rests on the initiative of parents. In addition to conducting research years ahead of her children’s eligibility for elementary schooling, Cashin won the public lottery for Yu Ying on her fourth try. In addition to her own industry, she notes her “odds [were] enhanced because another parent at an open house happened to mention that our dream school ordered its wait list based on the date on applied.”

She continued, “The on-line applications for the Washington Yu Ying Public Charter School opened at 8:30 a.m. on a Tuesday in October, and we hit the send button at 8:31.” As Kozol pointed out, the poorest parents often lack access to information and do not have the skills to navigate the obstacles in helping their children get into better schools. He thus remarks that “even in black neighborhoods, it tends to be children of the less poor and better educated who are likely to break through the obstacles and win admission.”

Cashin bluntly asserts that children whose parents cannot help them escape the poor-quality schools located in high-poverty areas are “stuck in segregated schools” that have now

25 Kozol, The Shame of the Nation, 179.

26 Ibid., 135 – 136.

27 Sheryll Cashin, Place, Not Race, 36.

28 Ibid.

29 Ibid.

30 Jonathan Kozol, Savage Inequalities, 60.
come to epitomize the meaning of *Brown v. Board of Education*. She writes, “Those who cannot [escape segregated schools] are relegated to less opportunity or, in some ghetto neighborhoods, no opportunity.” 31 And though she reminds us that “*Brown* did pay real dividends for students and society in the era when the Supreme Court and the federal government enforced it,” she quickly points out that, in *Parents Involved in Community Schools v. Seattle School District No. 1*, “the Court barred school districts from pursuing integration in a manner that takes the race of individual students into consideration.” 32 Cashin thus gives the following advice:

> If a community wants to create transformative integration in which all groups share in the benefits and burdens of diverse schooling, it must do so creatively, without using racial preferences and without much assistance or encouragement from the federal government. And it must buck a trend of geographic separation of the affluent and the poor. 33

From the above, factors identified that seemingly bear on African-American children’s education include the physical structure of the school, teacher turnover (not enough teachers or the absence of teachers in classrooms), educational material and resources, parent involvement in the child’s education, the education of the children’s parents, money, the community or school environment, integration/segregation level of the school, and early childhood education. I now turn to the last two factors: early childhood education and segregation.

**Early Childhood Education**

Linda Darling-Hammond, quoting from economist and Nobel Prize winner James Heckman, points out that a substantially large portion of American children is born to disadvantaged families. Lacking economic resources, these families are unable to invest in early


32 Ibid., 22.

33 Ibid.
childhood education and health care which, in turn, negatively affect later school success and adult outcomes.\textsuperscript{34} Darling-Hammond believes that early educational intervention in a child’s life can change a trajectory of destitution for the child. Continuing to quote James, Darling-Hammond states, “there is convincing evidence that if interventions occur early enough, they can improve children’s health, welfare, and learning significantly.”\textsuperscript{35} Like James, she believes that the earlier the intervention in a child’s life the greater the social returns:

Skills beget skills and capabilities foster future capabilities. All capabilities are built on a foundation of capacities that are developed earlier. Early learning confers value on acquired skills, which lead to (a) self-reinforcing motivation to learn more and (b) early mastery of a range of cognitive and emotional competencies making learning at late ages more efficient, and therefore easier and more likely to continue. . . . Early interventions promote economic efficiency and reduce lifetime inequality.\textsuperscript{36}

Although early schooling confers valuable benefits to the child, research shows that thousands of children are denied the benefits of an early, quality education.

Darling-Hammond points out that despite the recent growing enrollment of in pre-kindergarten schooling, low-income children participate in early education at a much lower rate than those from higher-income families.\textsuperscript{37} In 2000, there was a 21 percentage point difference in pre-kindergarten participation between children from high-income families and children from low-income households – 65 percent versus 44 percent.\textsuperscript{38} By the time these children enter into K-12 schooling, those who did not have the benefit of early childhood education present a

\textsuperscript{34} Linda Darling-Hammond, \textit{The Flat World and Education: How America’s Commitment to Equity Will Determine Our Future} (New York, NY: Teachers College, Columbia University Press, 2010), 33-34.

\textsuperscript{35} Ibid., 34.

\textsuperscript{36} Ibid.

\textsuperscript{37} Ibid.

\textsuperscript{38} Ibid.
challenge to teachers who must cater for the varied range of developed abilities. Darling-Hammond comments on the psycho-social impact educational disparities have on parents, teachers, and pupils:

The parents of those who have had high-quality preschool for several years and enriched home environments often demand a more academically accelerated curriculum while students without these advantages still need to learn their colors, numbers, and other basic concepts. These disparities can influence both teachers’ perceptions of the potential of less-prepared children and students’ own self-confidence and perceived abilities, all of which have cumulative effects on motivation and learning. In cases where teachers cannot manage this wide range, it can create a reverberating cycle of discouragement and failure for less experienced children who soon perceive that they are behind before they even begin.39

Frank C. Worrell and his colleagues contend that although early childhood education programs help narrow the gaps in academic skills associated with the kind of disparities between high-and-low-income groups that Darling-Hammond describes, access to early childhood programs – particularly high-quality ones – is limited.40 Moreover, according to Worrell and his colleagues, the programs that the children of low-income families attend are typically of lower quality than the ones attended by children of more affluent families. The disparity in quality creates an even wider academic gap between children from low-income versus high-income families. For instance, at four-years old, between 18 and 28 percent of Black, Latino, and American Indian children are proficient in letter recognition compared to 36 and 49 percent for White and Asian children. Proficiency in recognizing numbers and shapes are between 40 and

39 Ibid., 34–35. As a side note, Sheryll Cashin certainly seems to fit the profile of the kind of high-income parents Darling-Hammond describes.

54 percent for Blacks, Latinos, and American Indians and 73 and 81 percent for Whites and Asians.\(^41\)

Worrell and his colleagues point out that early childhood education programs, unlike K-12 schooling, are not entitlements for all families, are not obligatory for children of a certain age, are not regulated by state education departments, and are always publicly funded.\(^42\) As such, programs are varied, often of low quality, funding constraints often limit enrollment to children from low-income families, and, as a result, the programs are often racially segregated.\(^43\) Despite the drawbacks, results suggest that, in the short term, children who attend an early childhood education program are better prepared for K-12 education than those children who did not attend such a program. Indeed, early childhood education programs, according to Worrell and his colleagues, “have been found to narrow educational disparities associated with poverty.”\(^44\)

**Greater Intervening Possibilities Identified:**
**Integrating Segregated Urban Schools?**

Darling-Hammond contends that, in addition to the growing inequalities between low-income and high-income families, inequalities in resource allocations to schools are reinforced by the increasing re-segregation of schools.\(^45\) During the 1980s and 1990s, she explains, the federal government and courts largely abandoned desegregation policies and state governments generally followed suit. The abandonment of funding for federal desegregation assistance to schools in the 1980s, coupled with a spate of court decisions that ended judicial oversight of

\(^{41}\) Ibid., 14.

\(^{42}\) Ibid.

\(^{43}\) Ibid., 22-23.

\(^{44}\) Ibid., 23-28.

desegregating districts in the 1990s, diminished the counterbalancing of residential segregation.\textsuperscript{46} As a result, Darling-Hammond asserts, segregation across schools and classrooms increased. Moreover, she points out, classroom-based segregation increased as a result of the tracking strategy implemented by schools, a strategy that created largely segregated experiences for many students within “integrated” schools.\textsuperscript{47} Darling-Hammond is not alone in her assertion. For instance, Kathy L. Adams and Dale E. Adams state that “tracking based on test scores and teacher judgment still segregates minority and poor students once they are in non-segregated schools.”\textsuperscript{48}

With the waning of school desegregation, Darling-Hammond points out that by 2000, 72 percent of the nation’s Black students attended predominately minority schools and nearly 40 percent of African-American and Latino students attend schools with a minority enrollment of 90 to 100 percent.\textsuperscript{49} She pointedly remarks that, relative to school segregation, “America stood at the gateway to the 21st century almost exactly where it stood 30 years earlier – having lost in the giant tug-of-war much of the ground it gained during the 1970s.”\textsuperscript{50} And the re-segregation of public schools has continued to increase since the Supreme Court struck down the voluntary desegregation plans in Washington State’s schools – something noted by several scholars.\textsuperscript{51}

\textsuperscript{46} Ibid.

\textsuperscript{47} Ibid.


\textsuperscript{49} Linda Darling-Hammond, \textit{The Flat World and Education}, 35.

\textsuperscript{50} Ibid.

\textsuperscript{51} See for instance Linda Darling-Hammond, \textit{The Flat World and Education}, 36; Sheryll Cashin, \textit{Place, Not Race}, 22; James L. Moore, III and Chance W. Lewis, \textit{African American Students in Urban Schools}, 121.
In 2007, the Supreme Court ruled in *Parents Involved in Community Schools v. Seattle School District No.1*, that schools could not assign or deny placement to individuals based on race even if the intent was to integrate schools.\(^{52}\) In essence, the court’s decision reversed the 1954 *Brown v. Board of Education Topeka* ruling, which mandated the integration of schools. The court’s ruling triggered a response from more than 550 scholars who had signed onto a social science review.\(^{53}\) She reports that in the review that was filed as a brief, scholars summarized extensive bodies of research highlighting the educational and community benefits of integrated schools for both White and minority students and documented the persisting inequalities of segregated minority schools. Addressing the negative outcomes segregated schools brought to bear on education and learning, the scholars noted the following:

More often than not, segregated minority schools offer profoundly unequal educational opportunities. This inequality is manifested in many ways, including fewer qualified, experienced teachers, greater instability caused by rapid turnover of faculty, fewer educational resources, and limited exposure to peers who can positively influence academic learning. No doubt as a result of these disparities, measures of educational outcomes, such as scores on standardized achievement tests and high school graduation rates, are lower in schools with high percentages of nonwhite students.\(^{55}\)

Worrell and other researchers contend that there is a correlation between lower high school dropout rates and integrated schools.\(^{56}\) In support of his contention, he and his colleagues cite a study conducted by Jonathan Guryan who examined census data between 1970 and 1980 in 125 of the largest school districts in the country. Reportedly “Guryan found that as school integration increased in response to court mandates, Black dropout rates decreased – on average


\(^{55}\) Ibid.

about 2 to 3 percentage points but with larger decreases in districts that reported the most integration." More importantly, research on postsecondary outcomes also documents that students attending integrated primary and secondary schools were more likely to enroll in and graduate from four-year colleges.\textsuperscript{58}

Worrell and his colleagues point out that numerous other studies in the education literature document positive achievement gains for ethnic minority youth in racially diverse schools.\textsuperscript{59} For example, in a 2011 analysis examining early achievement as a function of racial composition of schools in a subsample from the early childhood longitudinal study (ECLS-K), researchers found academic performance declined the more segregated the school.\textsuperscript{60} The researchers found, in their multi-ethnic subsample that included 9,000 children attending almost 700 schools nationwide, that Black and Latino children gained fewer literacy skills and fewer math skills when they attended high minority enrollment schools.\textsuperscript{61} Because these young children were learning at a lower rate than their counterparts in more racially diverse schools, the researchers concluded that segregated schools have a negative impact on Blacks:

In the case of mathematic skill development, holding other student and school-level characteristics constant, a student attending a high minority school from kindergarten through sixth grade would be over five months behind a similar child who attended a non-minority school. Black students who attend high minority enrollment schools – as the majority in this nationally representative sample do – are doubly disadvantaged. Again controlling for student and school characteristics, a Black student in a high minority school would gain over 12

\textsuperscript{57} Ibid., 59.
\textsuperscript{58} Ibid., 59.
\textsuperscript{59} Ibid., 60.
\textsuperscript{60} Ibid.
\textsuperscript{61} Ibid. High minority enrollment schools was defined as schools where the minority student body was greater than 70 percent.
months fewer mathematical skills than her White peer in a non-high minority school – the equivalent of 1.25 academic years less cognitive development.62

Darling-Hammond informs about a similar study as the one pointed out above. In an experimental study of African-American high school students, some of the subjects were randomly placed in public housing in the Chicago suburbs rather than in the city. Researchers found that, compared to their inner-city placed peers, the students who attended better-funded, largely White suburban schools with higher-quality teachers and curriculum had better educational outcomes across several dimensions.63 For instance, “they were substantially more likely to have the opportunity to take challenging courses, receive additional academic help, graduate on time, attend college, and secure good jobs.”64

As is evident in the research highlighted above (including the work of Bowen and Bok), children of all races and incomes who attend integrated schools improved their critical thinking skills, are less apt to accept stereotypes as truth, lead more integrated lives as adults, and are more civically engaged. And, as Sheryll Cashin states, “Racial minorities in integrated schools also achieve at higher levels, with no detriment to the learning of white students.”65 Further, Worrell and colleagues ask, “Since the 1980s, what can [be] safely [concluded] about the relationships between the ethnic and diversity of the school and the achievement gap?” The group astutely replies, “The answer is simple. Diversity still matters.”66

62 Ibid., 61.


64 Ibid., 39.

65 Sheryll Cashin, Place, Not Race, 21.

A Rejoinder: K-16 Education and Raced-Based Affirmative Action in Elite College Admissions

As I have stated elsewhere, advocates and detractors of race-based affirmative action advance equally compelling arguments for and against the use of the policy in college admissions, but both miss the mark in offering a viable solution to the problem of using race-based affirmative action in higher education admissions. Affirmative action policy, in its original intent, sought to create greater employment and educational opportunities for African Americans. Under the Nixon administration, it sought to fulfill affirmative action’s objective of tangible, visible social progress by creating measurable goals and timetables for businesses and government contractors. In other words, businesses had to show a marked improvement in their employment practices where persons of color had been severely underrepresented. Elite colleges and universities, capitalizing on the call to demonstrate they now embraced an ideology of inclusion, began reserving coveted freshmen seats for Blacks and other minorities. Although the Supreme Court struck down the use of quotas by elite institutions of higher learning, it declared that the use of race is constitutionally permissible during the admissions process (as one factor among many others) in determining a student’s eligibility for acceptance.

Over the past 30 years, in order to maintain, in part, an appearance of fairness, these elite schools began recruiting token, advantaged Black (and Hispanic) students to populate their campuses. Through their recruitment practices, these schools are reproducing privilege—something they have done for years. Only now, instead of selecting privileged Whites to adorn their campuses, they have included privileged Blacks. Disadvantaged or low-income Blacks are invariably absent from these elite campuses, and when found, they are few. This reality begs the question: Where is the opportunity for the truly disadvantaged; affirmative action’s original intended subjects?
Proponents and opponents of race-based affirmative action quibble over a handful of privileged Blacks who gain admission to elite colleges and universities while ignoring the mass of poor, Black students who daily suffer the sort of degradation reported by Jonathan Kozol. To recap, he interviewed a student from East St. Louis’ Martin Luther King, Jr., High School. Reportedly, she poignantly stated to him, “We have a school in East St. Louis named for Dr. King. The school is full of sewer water and the doors are locked with chains. Every student in the school is Black. It’s like a terrible joke on history.” Proponents and opponents seem to ignore this reality, determined to pontificate on benefits created for a few while ignoring so many. They advance arguments that, in the end, fail to incorporate a prescription for true improvement on, and the creation of, greater equal opportunity. Proponents argue, and opponents seem to agree, that diversity is vital to learning on elite college campuses but seldom address, in any serious way, the separateness or rampant segregation at the primary and secondary school levels.

As Worrell and his colleagues point out, although the current K-12 population is exceedingly diverse, the typical White student attends schools that are often 80 percent White, and the typical African-American or Latino student attend schools where at least 66 percent of the students are from their own racial/ethnic group. In their report of findings, the researchers highlight some of the many variables that negatively impact learning for Blacks and, in turn, contribute to the widening achievement gap between them and their White counterparts:

Moreover, the great majority of highly segregated ethnic minority schools are located in urban pockets of concentrated poverty, which puts their students at greater risk for poor academic outcomes. High minority, low-income schools

67 See Chapter Three, 82.

have fewer resources, fewer credentialed teachers, higher student-teacher ratios, and larger class sizes, to name just a few factors that contribute to the achievement gap. By some estimations, the increases in high minority schools over the past 30 years account for as much as 60 percent increase in the Black-White mathematics achievement gap.69

Researchers have demonstrated for a number of years that racially segregated schools negatively impact achievement and, perhaps coincidently, segregated schools are almost always schools with high concentration of poverty. As Darling-Hammond points out, approximately 66 percent of African-American and Latino students attend schools where most students are eligible for free or reduced priced lunch; an indicator of poverty.70 She adds that students, whether poor or not, experience lower achievement outcomes in high poverty elementary schools. The educator writes, “Indeed, students who are not low-income have lower achievement in high poverty schools than low-income students attending more affluent schools. And a recent study of Southern high schools found that the socioeconomic status of students’ high schools had as much independent impact on their achievement growth as their own socioeconomic status.”71

A constellation of urban primary and elementary schools concentrated in high poverty areas epitomizes the inequalities that shape schooling in the United States for poor, Black children. These schools typically have less qualified and less experienced teachers, fewer learning resources, lower levels of peer group support and competition, limited curricula taught at less challenging levels, more serious health and safety problems, much more student and family mobility, and many other factors that seriously negatively impact academic

69 Ibid.
71 Ibid., 37.
Opponents of race-based affirmative action seem to either ignore this reality or settle for brushing it under the proverbial rug. Proponents, seeming to have an eye on the harsh reality of being poor and Black, settle for engaging opponents on a much more superficial level in their fight for equal opportunity for all. Both seem oblivious to the fact that the gap between the haves and have nots are expanding ever so greater. In the end, it is the children in urban educative centers that continue to be denied the benefits of affirmative action’s original intention – greater opportunity for the truly disadvantaged.

So where do we go from here? How can affirmative action, applied to education, be more effective in creating greater opportunity? More importantly, what can we do to improve the education pipeline so that race-based affirmative can be eliminated and still ensure equality of opportunity for African Americans? It is evident from the discussion above that primary and secondary schools, particularly those in the inner-cities and those with large Black populations need to be fixed. And, even though it may be exceedingly difficult and expensive to create excellent primary and secondary schooling in inner-cities – indeed, throughout the country - it is an undertaking with which we must engage. The Knowledge Is Power Program (KIPP) provides a good example of where we need to start.

KIPP is a network of charter schools that began with just two middle schools in 1994 and now boasts a nationwide network of 162 public schools in 20 states and serving approximately 60,000 students, most of whom are from low-income households. KIPP began with the idea to create an educational environment that helped children develop the knowledge, skills, character, and habits necessary to succeed in college and, indeed, in life. To meet these objectives, “KIPP

72 Ibid.

schools leverage strong student-behavior policies with rewards and sanctions; contracts between students, parents, and teachers; longer school days and school on Saturdays; substantial autonomy for principals; and close monitoring of school performance in terms of student achievement and college readiness. Twenty-one years since its founding, most of KIPP’s graduates attend some of the best colleges and universities in the nation. The program partners with schools like University of Texas at Austin, Duke University, Vanderbilt University, Brown, Davidson College, University of Pennsylvania, Georgetown University, and many others.

One thing that is striking about KIPP students is that most of them are minorities from low-income families – 87 percent are eligible for free or reduced lunch and 96 percent are African American or Latino. What the program clearly demonstrates is that, with the right environment, these children are quite capable of learning. That demonstration is supported though through different methods by the scholarship organization, A Better Chance (ABC). While KIPP serves children in the communities in which they live, ABC students are placed in select schools throughout the country, including boarding schools. Like KIPP, ABC’s graduates go on to attend some of the most selective colleges and universities in the country. If these programs can develop the academic capacities of low-income children, why are we not focusing on replicating their practices? I believe it is time we re-focus our attention to developing the human capital that we, as a nation, will so desperately need in the ever-increasingly global market.

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75 KIPP 2014 Report Card.

76 Ibid., 10.

Conclusion

In this chapter, I relied on the works of Frank Worrell, Sheryll Cashin, Jonathan Kozol, Linda Darling-Hammond, James Moore, Chance Lewis, and others to identify where in the educative pipeline primary and secondary schools might be improved if students are to receive a quality education. As argued, improving the education pipeline in the Pre-K through 12 grades is imperative if race-based affirmative action in college admissions is to be eliminated. Using the work of Cashin, I identified some of the more important variables that seemingly comprise a quality education. I compared those variables in the schools Cashin described with the ones Jonathan Kozol identified in Chapter Three to indicate where intervention is needed if the quality of education in urban schools is to improve. Last, in bringing my study full circle, I concluded with a rejoinder to the race-based affirmative action debate regarding elite college admissions. In this section I included a brief discussion of the Knowledge is Power Program and the scholarship organization, A Better Chance, to illustrate that inner-city children are capable of excelling academically and to recommend bringing these organizations’ successes to inner-city public schools.
CONCLUSION

The policy of affirmative action grew out of turbulent times and a history of overt racism that threatened to tarnish the country’s image abroad. Partly in response to pressure from civil rights organizations at home, Soviet propaganda abroad, and a decade of race riots in cities throughout the nation, the Executive and Legislative branches of government began taking bolder steps, following the Brown ruling, to curtail racial and gender discrimination by helping Blacks and women obtain jobs and secure admissions to institutions of higher learning. A series of executive orders, court rulings, and legislative acts in the 1960s and 1970s served to address America’s history of racism and discriminatory practices, including the use of court-ordered busing to end de facto segregation in schools.¹

In the early 1960s, then President John F. Kennedy signed Executive Order (EO) 10925 into law. In March 1961, when he signed the EO into law, he did not intend for the order to set quotas or specific numeric goals in the hiring of African Americans. He simply directed in his order that government contractors “take affirmative action to ensure that applicants are employed . . . without regard to race, creed, color, or national origin.”² The order sought to arrest, relative to employment hiring practices in the United States, much of the overt racial discrimination that plagued the nation and tarred its image abroad.

¹ Walter Feinberg, On Higher Ground, 7.

² See the Executive Order 10925 at http://www.thecre.com/fedlaw/legal6/eo10925.htm. See also John Fleming, Gerald Gill, and David Swinton, The Case for Affirmative Action for Blacks in Higher Education, (Washington, D.C.: Howard University Press, 1978), 325 – 333. See also Anderson, The Pursuit of Fairness, wherein he informs that a black Texan lawyer named Hobart Taylor, Jr., working with Arthur Goldberg and Abe Fortas, at the behest of newly elected Vice-President Lyndon B. Johnson, coined the term “affirmative action” when the men sat to draft the executive order. As reported by Anderson, Taylor recalled “I was searching for something that would give a sense of positiveness to performance under the executive order and I was torn between the words ‘positive action’ and ‘affirmative action’…. And I took ‘affirmative’ because it was alliterative.” 61.
Lyndon B. Johnson, following Kennedy’s assassination, introduced Executive Order 11246 in September 1965. EO 11246 superseded all previous orders addressing affirmative action. It established the Office of Federal Contract Compliance, commanded the Equal Employment Opportunity Commission to investigate and end racial and, eventually, gender
discrimination in private employment, and was far more comprehensive and controversial than Kennedy’s. Under the Johnson Administration, the Labor Department, in May 1968, issued a regulation that required contractors and unions doing federally financed work to have affirmative action plans that had schedules and target dates for correcting deficiencies in their minority employment and promotion practices. By the time Johnson departed the White House, “affirmative action” evolved into a policy that extended beyond the mere prohibition of overt racial discrimination in hiring practices.

At the inception of his administration, President Richard Nixon charged Secretary of Labor, George Schultz, and his assistant, African American Arthur Fletcher, to revise the Johnson Administration’s affirmative action plan. Schultz and Fletcher soon reintroduced the Philadelphia Plan, an affirmative action initiative first introduced by the Johnson administration to facilitate the hiring of minorities by contractors. Fletcher asserted that because the United States had a long history of discrimination the instituting of goals, targets, and timetables were

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3 President Lyndon B. Johnson amended Executive Order 11246 with 11375 on October 1967 that included employment prohibition of discrimination on the basis of sex.


5 The Labor Department, under the Johnson Administration, first introduced the Philadelphia Plan in an attempt to combat discriminatory hiring practices in the industrial and craft unions which served the building industry in Philadelphia. The Comptroller General found the plan illegal in 1967. In 1969 the Department of Labor, in an initiative from President Richard M. Nixon utilizing the powers established by his predecessor’s Executive Order 11246, reintroduced a revised version of the same plan. The plan required federal contractors to meet certain goals in hiring African American employees by specific dates in order to combat institutionalized discriminatory hiring practices by specific skilled building trade unions.
necessary to help fulfill the aim of affirmative action.\textsuperscript{6} Introduced to the House, critics of the plan claimed it called for quotas, which were illegal. Moreover, opponents argued, the plan required contractors to take race into consideration in the hiring process, which was expressly prohibited by EO 11246.

Despite protests from unions and some members of Congress, on December 22, 1969, the Legislative Branch approved Nixon’s Philadelphia Plan and affirmative action was then defined as racial goals and timetables, not quotas.\textsuperscript{7} Although several lawsuits followed Congress’ reluctant mandate, in 1971, the Supreme Court finally addressed the matter in \textit{Griggs v. Duke Power Company}.\textsuperscript{8} In their opinion, the Court ruled that Title VII of the Civil Rights Act of 1964 did not order that a person be hired because he or she is the subject of discrimination or a member of a minority group, but rather, Congress required “the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification.”\textsuperscript{9} To help facilitate their mandate, Congress specifically legislated that any “practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to freeze the status quo of prior discriminatory employment practices.”\textsuperscript{10} According to the Justices, Congress aimed to rectify past hiring practices, which meant showing results through the use of goals and

\textsuperscript{6} Anderson, \textit{In Pursuit of Fairness}, 117.

\textsuperscript{7} Ibid., 124.


\textsuperscript{9} 401 U.S. at 431.

\textsuperscript{10} 401 U.S. at 430. See also Anderson, \textit{In Pursuit of Fairness}, 128.
timetables. Affirmative action, as the Court opined, meant a de-emphasis on Title VII’s mandate of “hiring without regard to race” and more of an interest in hiring “with regard to race.”

Relative to higher education during the same 1961 to 1971 decade, President Kennedy, in 1962, summoned the leaders of five selective universities, including Harvard and Yale, to the White House. Amid race riots in all the major cities, Kennedy told the university presidents, “I want you to make a difference . . . .” He asked them, “Until you do, who will?” In 1969, Black enrollment at the Ivies increased by a record 89 percent. According to Jerome Karabel, although the federal government sought to create greater educational opportunities for Blacks, the mobilization of Black students on elite college campuses also played a major role in increasing the enrollment of minority students. Pressured by militant Black students in the wake of the race riots, particularly after Martin Luther King, Jr.’s assassination, Harvard and Yale joined Princeton in increasing the enrollment of Blacks and other underrepresented groups on their campuses.

In 1978, like many of the employment programs, policies, or mandates using affirmative action to remedy past discriminatory practices, the University of California, Davis became the target of a law suit claiming its admissions program violated Title VI of Civil Rights Act of 1964 and the Fourteenth Amendment in Regents of the University of California v. Bakke. Although the Supreme Court found that the university violated the Act and the Fourteenth Amendment because the admissions program operated too much like a quota system, the Court declared that

12 Karabel, The Chosen, 381.
13 Ibid.
14 Ibid., 407.
15 Ibid.
using race as one factor among several other factors in the admission process was constitutionally permissible. Thereafter, selective colleges and universities began using the word diversity to justify, at least in part, their use of affirmative action in their admissions programs. Twenty-five years following Bakke, the Supreme Court reaffirmed that quotas are constitutionally impermissible in Gratz et al v. Bollinger et al, but found in Grutter v. Bollinger et al, that race could be used as one factor among many in a school’s admissions process.

Under the auspices of diversity in higher education, these schools sought to level the educational playing field between Blacks and Whites with the hope of bringing about social equality. Because Blacks (and other minorities) have been discriminated against politically, legally, socially, economically, and educationally for centuries, affirmative action policies applied by these elite schools attempt to level the academic playing field between Blacks and Whites. Consequentially, in an effort to forge some semblance of social equality between the two groups, administrators frequently select Blacks who are less qualified academically than their White counterparts. The practice of admitting Blacks who, based on standardized test scores and grade point averages, appear less qualified than Whites is what draws contentious public debate over the use of race-based affirmative action.

But can selecting a handful of Black high school students from graduating classes around the country, who may or may not be well prepared to compete in the rigorous educational arena at selective colleges and universities, be sufficient in helping to bring about social equality in our country? William Bowen and Derek Bok, from their comprehensive study on race-sensitive admissions among selective colleges and universities, conclude that affirmative action policy has


17 “This kind of affirmative action” refers to preferential treatment based on race. Other “forms” of affirmative action are class-based and economically disadvantage-based.
worked “to fill some part of what is widely seen as a national ‘deficit’ by preparing large numbers of talented minority students for positions of responsibility in the professions, the business world, academia, government, and every other sector of American life.” However, as Jonathan Kozol pointed out for almost five decades, thousands of Black students throughout the country are clustered into inner-city primary and secondary schools. These schools offer a mediocre education, at best, and their students are often underprepared to attend most of the highly selective colleges and universities in the country. Several other education specialists such as Bowen, Khalenberg, Darling-Hammond, Worrell, and Moore and Lewis, report similar findings as Kozol, relative to the lack of educational quality in inner-city primary and secondary schools.

Bowen writes that poor and minority children grow up in impoverished neighborhoods, attending poor quality primary and secondary schools that do not equip them with the skills to compete with their more privileged peers. Similarly, Kahlenberg noted in a study of low-income students, that these twelfth-grade students read on an average at the level of middle-class eighth-graders. Moreover, according to Kahlenberg, children from low-income households are twice as likely to drop out of high school as children from high-income families. And, according to Darling-Hammond, Worrell, and Moore and Lewis, the dropout rate is exacerbated the less integrated the schools.

18 Bowen and Bok, The Shape of the River, xxxi.

19 Bowen, Equity and Excellence, 74.

20 Kahlenberg, All Together Now, 3.

Several educators contend that urban public schools are in a deplorable condition and many of the schools are written off as failures. They are written off as failures because of the plethora of problems confronting them – overcrowded classrooms, unmotivated students and teachers, low test scores, high drop-out rates and poor attendance, absence of certified teachers, lack of educational materials, dilapidated buildings, and a host of other variables that negatively impact education and schooling. Moreover, many urban schools are located in crime-ridden, drug infested, segregated neighborhoods that add to the hopelessness of the children attending them.

Fixing urban primary and secondary schools is a daunting task. If the above characterization of inner-city schools was limited to a few institutions, the challenge of fixing them may not seem so daunting. But, as Kozol and others point out, the problems facing urban schooling are endemic to most, if not all, large cities, such as New York, Philadelphia, Los Angeles, and Detroit. Even in smaller cities like East St. Louis and Camden, New Jersey, the deplorable conditions enumerated are not uncommon. Indeed, where ever poor people are concentrated and employment scarce, public schools are invariably educationally defunct.

Despite the deplorable conditions found in many urban schools, and despite the intractability of the myriad problems they face, these flawed institutions continue to serve millions of students. In most cases, the parents of these children enroll them in these schools because they neither have available options nor access to better schools. Quality schooling is simply not available to the children of these poor parents who may wish for them a better life. In essence, quality educational opportunity in these communities is absent for African Americans; something affirmative action sought to address over 50 years ago.
The idea of affirmative action was born out of our historic struggle to bring African Americans from slavery into full citizenship in a nation that claimed to believe in the principles of freedom and equality for all. As history would have it, some were free to pursue their dreams while others were forced into subordination for centuries. By the mid-twentieth century, a multitude of governmental reforms sought to end the overt discriminatory practices that stunted Blacks’ growth economically, educationally, and socially. One of the measures, affirmative action, made it a moral imperative to provide greater opportunity for Blacks particularly in hiring practices and admissions to elite colleges and universities.

Critics of race-based affirmative action, when used by administrators at elite colleges and universities, have attacked the policy on several grounds. They maintain that it is wrong for universities to exclude White applicants with high grades and impressive test scores over minorities with lower numerical qualifications. They rightly argue, though, that admissions officers sometimes accept minority applicants who are not disadvantaged but come from wealthier, more privileged homes and better schools than some less affluent applicants who are rejected despite being economically disadvantaged. Additionally, they claim that the policy heightens racial differences, amplify prejudice, and hamper progress toward a color-blind society. Asserting that admitting less qualified minority applicants stigmatizes and demoralizes the very students the policy attempts to help, school admission officers essentially forces them to compete with classmates of greater academic ability.

Defenders of race-sensitive admissions insist that such policies are justified to atone for a history of oppression and to make up for continuing discrimination in our society. They point out, as in the case of legacies, athletes, and children of the rich and famous, that admissions officers have long deviated from standardized test scores and high grades to favor these
applicants who are deemed desirable. Further, defenders argue that universities seek to build classes that reflect a rich mix of students: the intellectually curious, those who have overcome adversity, musicians, dancers, artists, mathematicians, and science maestros. They believe the most fundamental rationale for student diversity in higher education is its educational value. Students, they assert, benefit in countless ways from the opportunity to live and learn among peers whose perspective and experiences differ from their own.

Although both critics and defenders of race-based affirmative action offer equally compelling arguments for their respective positions, they both miss the mark about how race-based affirmative action policy should be used in helping to assure African Americans gain the same equality of educational opportunity as Whites. They either seem to ignore or gloss over the fact that millions of children will not go to even a community college, let alone an elite school, simply because they will never have an opportunity to do so. Aside from the low-quality education Black students in inner-city schools receive, if they do manage to graduate from high school, they are invariably underprepared to take on the rigors of college work.

I believe that because most inner-city elementary and secondary schools are bankrupt educationally, and that elite colleges and universities seek to recruit qualified minority candidates to their institutions, redirecting resources to help uplift the academic performance of students in these inferior schools as well as the schools themselves ought to be the focus among educators in the United States. With improvement in the quality of primary and secondary schools, particularly in the inner-cities, a larger pool of academically well prepared minority and poor students will be created in a couple of generations. These better prepared students will then be able to effectively compete for entry into these elite colleges and universities based solely on their academic record.
As proponents and opponents of race-based affirmative action quibble over a handful of privileged Blacks who gain admission to elite colleges and universities while ignoring the mass of poor, Black students who daily suffer the sort of degradation reported by Jonathan Kozol, I am reminded of the student from East St. Louis’ Martin Luther King, Jr., High School whom he interviewed. When asked what she thought of the education she was receiving at school, she poignantly stated to him, “We have a school in East St. Louis named for Dr. King. The school is full of sewer water and the doors are locked with chains. Every student in the school is Black. It’s like a terrible joke on history.” Proponents and opponents seem to ignore this reality, determined to pontificate on benefits created for a few while ignoring so many. They advance arguments that, in the end, fail to incorporate a prescription for the creation of greater educational opportunity.

\[22\] See Chapter Three, 82.
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