



given to each characteristic for each individual. However, the decision provides no clear description of the factors universities must consider, the weights they can attach to them, nor how courts should determine whether institutions are indeed tailoring their decisions to individual files.

The inflexibility of the undergraduate point system led a majority of the court to rule against it. However, one strength of that system, emphasized by Justices R. B. Ginsburg and D. H. Souter, was its transparency. When a university's admission policy consists of the aggregation of subjective decisions, it is much more difficult to know precisely what the policy is and whether it passes the constitutional test.

The Concept of "Critical Mass"

In its previous decisions, the court had prohibited the use of race simply for the purpose of racial balancing (15–17). In *Grutter v. Bollinger*, the court recognized the special pedagogical role of higher education institutions and allowed universities to use race when pursuing "the educational benefits that flow from a diverse student body." The primary beneficiaries are not supposed to be the minority students alone, but the whole class (18).

Under such a rationale, the challenge is to define how much diversity is "enough" to produce the educational benefits universities seek. The University of Michigan argued that to fully reap the pedagogical benefits of diversity, they needed a sufficient number of students from each group, to ensure that students felt comfortable expressing themselves honestly to their classmates. This concept of "critical mass" is understandably nebulous. To spell out a specific percentage would have invited charges that it was a surreptitious quota. However, the concept of critical mass will need to be clarified further to withstand future challenges. For instance, between 1995 and 2000, the University of Michigan Law School admitted a class that was 8, 4, and 1% African American, Hispanic, and Native American, respectively. If each of these groups constituted a critical mass, it is not clear why the critical mass required for African American youth was so much larger than the critical mass required for Latino or Native American youth. The question is important, because the university would have been able to achieve 1% African American and Latino enrollment without considering race.

The Handicapped Parking Analogy

As complicated as the legal issues may be, the political issues surrounding race-conscious admission policies are even more treacherous. Handicapped parking provides a useful analogy (12). Suppose that

there were one parking space reserved for disabled drivers in front of a popular restaurant. Eliminating the reserved space would have only a minuscule effect on the parking options for nondisabled drivers. But the sight of the open space may frustrate many passing nondisabled motorists looking for someplace to park.

With the uncertainties surrounding university admissions, it is difficult to identify which individuals are paying the cost of race-conscious admissions (12, 19). In the Spring of 2003, Harvard College accepted only one applicant in 10 (20). Many of the rejected applicants (and, potentially, many more of those who did not bother applying) have better grades and SAT scores than many of the minority applicants who are admitted. A large fraction of these may well believe that they would have been accepted if Harvard had no racial preferences. Yet only about 18% of Harvard's undergraduates are black or Hispanic. Even in the unlikely scenario that ending racial preferences forced all these students to surrender their seats to white and Asian-American students, acceptance rates for the remaining students would only increase from 10 to 12%. If more than 2% of those who were originally denied admission believe that they were the "next in line" and that they would have been admitted in the absence of racial preferences, then the perceived costs will overstate the true costs.

Ironically, the more informal use of race used by the University of Michigan Law School could exacerbate such misperceptions. With a mechanical, point-based system, those who are harmed by race-based policies are more readily identifiable. In the less explicit system endorsed by the court, the perceived costs may be less intense, but more widespread, since it would be more unclear who was the next person in line.

Is 25 Years Likely to Be Long Enough?

Although not imposing an explicit time-limit, the majority in *Grutter v. Bollinger* expressed an aspiration that "25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today." Given the legal rationale they used for endorsing race-based decisions, the court's desire for a deadline is somewhat puzzling. Deadlines are traditionally sought in discrimination cases, when the victims of past discrimination are no longer available to receive the remedy. But when racial considerations are based on the pedagogical value of diversity, a deadline makes less sense.

Is 25 years a realistic goal for closing the racial gap in test scores? The justices seem to have chosen the 25-year time period for no good reason other than that it has been 25

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years since they last took up the issue (15). In 1978, the gap in math scores between African American and white 13-year-olds on the National Assessment of Educational Progress was about 1.1 standard deviations (21). By 1986, the gap had shrunk to about 0.6 standard deviations. However, by 1999, the gap in mean scores by race had expanded to about 0.8 standard deviations. The reversal of progress makes the court's 25-year goal look overoptimistic, although recent progress achieved in a few states provides hints that more rapid progress may be possible.

The federal No Child Left Behind Act is designed to encourage all states to close the racial gap in performance. Whether or not efforts to close the racial gap will succeed remains to be seen. However, school districts around the country have no time to spare. Those who will be applying to college 25 years from now will be entering school in 12 years.

References and Notes

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