

Affirmative Action: The U.S. Still Struggles To Bridge The Achievement Gap In Higher Education

by Jutta Kern

The U.S. will need another twenty-five years to eliminate race as a significant factor in higher education participation – at least according to a recent ruling by the U.S. Supreme Court. In this decision, the Justices, while upholding “affirmative action”, tied its further use to an uncommon expiration date: the Court ruling allows public and private universities to continue using race as a factor in their student admissions for another 25 years. The higher-education community anxiously awaited the ruling all summer of 2003. The impact of the decision was expected to reach far beyond university life, since the issue touches upon highly sensible areas of U.S.-American society.

What's Behind Affirmative Action?

Affirmative action is the attempt to create good policy to countervail against racial discrimination in the U.S.. It unfolded before the background of discrimination against black Americans and was later expanded to other minorities and women. Policies to systematically help the socially disadvantaged people developed only over the last 30 years in the U.S.. Affirmative Action was implemented to deal with systematical discrimination, whether in hiring policies, in career opportunities or universities' admission policies.

To meet the American dream of an open society the U.S. still needs to cultivate a more ethnically diverse leadership body within its institutions, as Justice Sandra O'Connor argued in the Supreme Court's ruling.

How Does Affirmative Action Work?

Despite the fact that most of the influential positions aren't filled by ivy-league graduates, graduating from elite schools does boost the likelihood of taking up a position of leadership in the U.S. enormously. Admission to top-notch universities is based on academic achievements and/or test scores. Interestingly, students of color and of economically disadvantaged background show lesser academic achievements than their white and/or wealthy counterparts. This phenomenon is described by the term “achievement gap”.

The Education Commission of the States, a research based, non-partisan non-profit organization working to involve key leaders from all levels of the education system, determined that “black and Hispanic students are much more likely than white students to fall behind in school and drop out, and much less likely to graduate from high school, to acquire a college or advanced degree, or to earn a middle-class living” (Education Commission of the States: Closing the Achievement Gap). A variety of factors account for

this disparity: peer influences, access to high-quality schools, students' racial and/or economic background, as well as their parents' education.

The achievement gap starts at the cradle – for the ones left behind as well as for the more advantaged ones: Ivy League universities such as Harvard are far more likely to accept children of alumni than non-legacy applicants. The Wall Street Journal reports that while about 40 % of the applicants who are children of alumni are successfully admitted to Harvard University, the general acceptance rate is only 11 % (Admissions Preferences For Alums' Kids Draw Fire. By Daniel Golden in The Wall Street Journal Online). The choice for top schools is to a large portion driven by family traditions – a fact that is reflected by the admission policies. Known as the “legacy preference”, a lot of universities favor children of alumni in their admission systems. An overall of 10 % to 15 % of students at most Ivy League schools are sons and daughters of graduates – and this group of children of Alumni of top universities is disproportionately white. Thus it is even harder to make these “blockbusters of excellence” in higher education accessible to aspiring social groups.

It was Clarence Thomas, the only African-American Supreme Court Justice, who not only voted against affirmative action but also strongly denounced the whole measure as “the faddish slogan of the cognoscenti” that “does nothing for those too poor or uneducated to participate in elite higher education” (Washington Post, June 25, 2003: In Court's Ruling, a Nod to Notion of a Broader Elite), a position which is underlined by a statement of Terry W. Hartle, senior vice president for government and public affairs at the Congress's Advisory Committee on Student Financial Assistance (ACE). For the Los Angeles Times he summed up recent findings with the words that “smart poor kids go to college at the same rate as stupid rich kids, and that's a tragedy” (Stuart Silverstein; Los Angeles Times; Jun 27, 2002). While race significantly affects social inequality in the U.S.-society, the achievement gap seems to be largely determined by socio-economic factors.

In fact, affirmative action is not relevant at most colleges. Bowen and Bok, two former Ivy League presidents, report in their book *'The Shape of the River'* that “the vast majority of undergraduate institutions accept all qualified candidates and thus do not award special status to any group of applicants, defined by race or on the basis of any other criteria.”

Affirmative Action is “mere aesthetics” - in the view of Justice Clarence Thomas - because it focuses on admission policies of a few elite schools that are not representative for the higher education system in the U.S.. Nevertheless, although neither chosen nor changeable, and whether indicator or reason, dimensions like gender and race can most seriously hamper access to good education. Academic achievements are regarded as paramount for the access to leadership positions in a society. Affirmative action to favor black and minority students in universities' admissions was upheld by the Supreme Court as one way to ethnically diversify the group of people who hold influential positions in the U.S. society.

Proponents' and Opponents' Stances

Affirmative action has always been controversial. The debates surrounding it become especially complex because the dividing line between opponents and proponents does not necessarily reflect partisan or racial borders.

Justice Clarence Thomas is joined in his objection to the Supreme Court's majority opinion by large parts of the affluent African-American community. Astoundingly enough, the strongest opposition to affirmative action comes from this side. Rather than regarding affirmative action as an appropriate measure for achieving equality, this community conversely claims that affirmative action inhibits their possibilities to take part in the academic competition as equal partners.

Since admissions to high-ranking universities and colleges are very competitive on the basis of test-scores, favoring students for reasons other than personal achievements (such as affirmative action) is extremely controversial to both those who gain an advantage and those who don't.

The Supreme Court decided on affirmative action because of two lawsuits (*Grutter vs Bollinger*; *Gratz/Hamacher vs Bollinger*) filed against the University of Michigan challenging its admission system. The undergraduate admission system granted an advantage of 20 points out of the 150 points "selection index" to underrepresented minorities, economically disadvantaged, athletes, or graduates of a predominantly minority high school.

The University of Michigan's law school, the defendant in the second case, does not utilize an overall score system in its admissions. Instead, it uses a base-score that is weighed by "soft" factors, an approach to achieving ethnical and social diversity among qualified students that – although holistic - lacks transparency (Admissions policy of the University of Michigan). Both models, however, favored students of color or minority status over others. Thus the lawsuits were framed on the grounds of reverse discrimination.

On June 23rd, 2003, the Supreme Court struck down the undergraduate admission system as too mechanistic but affirmed the one used by the law school. Critics claim that this ruling – by upholding the less transparent admissions system - makes it even more complicated to determine how race influences admissions.

Both, proponents and opponents, have presented their cases with strong arguments. Finding conservatives like Norman Schwartzkopf, the General leading the first U.S.-war on Iraq, amongst affirmative action's most fervent supporters, is as astonishing as identifying African-Americans as some of its strongest opponents. Schwartzkopf claims that the U.S. military depends on affirmative action to increase diversity in its officers-cadre. During the Vietnam War the morale of the troops was seriously jeopardized by the asymmetric ethnic distribution of leadership, when entire minority-fed battalions were commanded by Whites. Thus affirmative action is even referred to as crucial to national security.

Those in favor of affirmative action recall many years of discrimination that benefited Whites and therefore say that granting advantages to minorities is still much needed and more than fair. Nevertheless, in the view of the opposing community the goal of granting equal rights has already been achieved. "Fairness" seems to be a crucial term to the understanding of the whole matter. Still, it doesn't make things easier.

For the individual high-achieving black student raised in an affluent community, it appears to be unfair that his personal academic achievements seem to have an "affirmative action"-tag permanently attached – simply because everybody tacitly assumes that he or she owes

the the achievements to affirmative action. On the other hand there is “fairness” on the larger scale of the U.S.-American society and its institutions. This is the context, in which the Supreme Court’s ruling was set. The decision encourages systematic measures that allow less achieving social groups to keep up with the more advantaged ones. In other words, the rule supports affirmative action as a way to take the society to the point, where only individual merits will be taken into consideration when judging academic achievements. With the recent ruling, the Supreme Court no longer bases the case for affirmative action on grounds of past discrimination but rather tries to shape the future.

Until the recent decision on affirmative action the Supreme Court’s “Bakke decision” of 1978 created binding precedence for race-conscious admissions to universities, which declared the use of quotas for minority admissions as unlawful. At the same time, however, race could still be considered as a factor for achieving diversity in hiring decisions by U.S. universities.

Ways to Bridge the Achievement Gap

Affirmative action is only one way of several ways of fostering diversity in academic programs. As a measure that primarily helps with admission to elite-universities it does little to close the achievement gap. Thus, this kind of affirmative action seems to somewhat put the cart before the horse. However, affirmative action isn’t restricted to race-consciousness but can focus on different aspects.

The U.S. Department of Education’s Office for Civil Rights lists models that target socio-economic factors as race-neutral alternatives in the 2003-report “Race-Neutral Alternatives in Postsecondary Education”. Thus they crosscut through the race-bias by aiming at low-income students.

One of the most established alternative models to affirmative action is the “**10-percent-plan**” practiced in Texas. Implemented when President Bush was still governor of Texas, this plan guarantees admission to the state university of their choice to the top 10 percent students of each graduating high school class in Texas. Thus it avoids explicitly addressing racial matters. Nevertheless, the plan achieves racial diversity since the student body is fed by racially segregated high schools. As a side effect this policy also assists economically disadvantaged white students from predominantly rural areas.

Florida, governed by Jeb Bush, the President’s brother, uses a similar plan with its “**Talented 20 Program**”: All public high school seniors graduating within the top 20 percent of their class are guaranteed admission to a state university.

California eliminated race-preferential programs in response to a state referendum (Proposition 209 effective November 6, 1996) and currently uses a complicated mixture of class ranking and “eligibility” scores. This ethnically most diverse state recently launched the discussion to implement the “**colorblind society**”, a concept that would stop the collection of any race-related data. Furthermore, according to demographic estimates Hispanics will become the majority by 2030, and they will compete with African-Americans for influential positions. Critics of this concept claim that the social inequality determined by race and ethnic heritage won’t just vanish by not looking at it anymore.

Diminishing race as a factor of social inequality is the goal in the larger picture of the affirmative action ruling. The Supreme Court's decision strongly suggests that there is still much need to even out race-based inequalities. The message of the decision is that the United States has not yet arrived at the envisioned stage of a society offering equal opportunities for all citizens - certainly a judgment that doesn't fit with the notion of the American dream. Nevertheless, America strives on towards the fulfillment of this dream and will re-evaluate its progress in 25 years. ●



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Selected Resources for Further Information

People

- Lee Bollinger, President of the University of Michigan
- <http://www.columbia.edu/cu/president/biography.html>
- Barbara Grutter, Plaintiff http://www.cir-usa.org/articles/mich_client_bios.html
- Patrick Hamacher, Plaintiff http://www.cir-usa.org/articles/mich_client_bios.html
- Jennifer Gratz, Plaintiff http://www.cir-usa.org/articles/mich_client_bios.html
- Justice Sandra O'Connor <http://supct.law.cornell.edu/supct/justices/oconnor.bio.html>
- Justice Clarence Thomas <http://supct.law.cornell.edu/supct/justices/thomas.bio.html>

Selected Articles, Reports and Comments

- Is Race a Focus? by Robert W. Ethridge, President of the American Association for Affirmative Action www.affirmativeaction.org/UofM-Cases-2003.html
- "Affirmative Action: There is a third Way" by Richard D. Kahlenberg, Washington Post, March 31, 2003
- Race-Neutral Alternatives in Postsecondary Education: Innovative Approaches to Diversity. U.S. Department of Education, Office for Civil Rights. March 2003 <http://www.ed.gov/about/offices/list/ocr/edlite-raceneutralreport.html>
- The Biggest Barrier to College Isn't Race. By KERMIT L. HALL, The Chronicle of Higher Education, issue dated June 20, 2003 <http://chronicle.com/weekly/v49/i41/41b02001.htm>
- How affirmative action helped George W. By Michael Kinsley. Monday, January 20, 2003 www.time.com/time/magazine/story/0,9171,1101030127-409553,00.html
- Admissions Preferences For Alums' Kids Draw Fire. By DANIEL GOLDEN. The Wall Street Journal Online (www.wsj.com)
- Rising Costs Pricing Millions Out of College, Committee Says Education: Estimates are that more than 4 million qualified graduates this decade won't be able to go to four-year schools. STUART SILVERSTEIN; Los Angeles Times; Jun 27, 2002; pg. A.22

- Education Commission of the States: Closing the Achievement Gap
<http://www.ecs.org/html/issue.asp?issueID=194>

Legal Resources and History of Affirmative Action:

- The History of Affirmative Action Policies <http://www.inmotionmagazine.com/aahist.html>
- The Origins of Affirmative Action, by Marquita Sykes, NOW – National Organization for Women <http://www.now.org/nnt/08-95/affirmhs.html>
- Barbara Grutter, plaintiff vs Lee Bollinger, Jeffrey Lehmann, Regents of the University of Michigan, and the University of Michigan Law School, defendants No. CIV.A.97-CV-75928-DT, lodged the claim at the United States District Court, E.D. Michigan, Southern Division on Aug. 17th, 1998 <http://beta.oyez.org/oyez/resource/case/1541/resources>
- Jennifer Gratz and Patrick Hamacher, for themselves and all others similarly situated, plaintiffs, versus Lee Bollinger, James J. Duderstadt, The University of Michigan, and the University of Michigan College of Literature, Arts and Science, defendants, lodged the claim at the United States District Court for the Eastern District of Michigan <http://beta.oyez.org/oyez/resource/case/1540/abstract>
- The Bakke decision (Regents of the University of California versus Bakke, 438 U.S. 265 (1978) (USSC+): [http://www2.law.cornell.edu/cgi-bin/foioci.exe/historic/query=\[group+438+u!2Es!2E+265!3A\]^ \[group+citemenu!3A\]^ \[level+case+citation!3A\]^ \[group+notes!3A\]/doc/{@1}/hit_headings/words=4/hits_only](http://www2.law.cornell.edu/cgi-bin/foioci.exe/historic/query=[group+438+u!2Es!2E+265!3A]^ [group+citemenu!3A]^ [level+case+citation!3A]^ [group+notes!3A]/doc/{@1}/hit_headings/words=4/hits_only)

Other Resources of Interest

- U.S. Supreme Court <http://www.supremecourtus.gov/>
- U.S. Department of Education <http://www.ed.gov/index.jsp>
- U.S. Department of Education's Office for Civil Rights (<http://www.ed.gov/about/offices/list/ocr>)
- American Association for Affirmative Action
<http://www.affirmativeaction.org/leadership/index.html>
- William G. Bowen (Princeton University) and Derek Bok (Harvard University): The Shape of the River. Princeton University Press, 1998.
- The University of Michigan's admissions process:
<http://141.211.44.51/newsandinfo/lawsuit/admissionspolicy.pdf>
- Proposition 209 http://www.pacificlegal.org/prop209_OpEnds.asp
- Education Commission of the States <http://www.ecs.org>