

Introduction

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Good learning is always catholic and generous. It welcomes the humblest votary of science and bids him kindle his lamp freely at the common shrine. It frowns on caste and bigotry. It spurns the artificial distinctions of conventional society. It greets all comers whose intellectual gifts entitle them to admission to the goodly fellowship of cultivated minds. It is essentially democratic in the best sense of that term. . . . Let not a misapplication of the laissez-faire doctrine in political economy, which has its proper place, lead us to the fatal mistake of building up a pedantic aristocracy.

JAMES B. ANGELL,
president of the University of Michigan,
commencement address, June 25, 1879

One cannot sanction the desire for unity which seeks the complete fusion of individuals, racial strains, religious sections, social classes, national groups, or geographical areas—the elimination of their differences and the standardization of their character. . . . Under such circumstances, life would be impoverished; self-expression would be restrained; curiosity would be stifled; spontaneous experimentation would cease; the irrepressible yearning for progress would be repressed; conditions of status would displace the onward march of mind and hand and heart; the creative spark whereby men are moved to strive ever forward and upward would be dimmed if not

extinguished; drab monotony would prevail. True unity is a matter of inward spirit rather than outward manifestation. It involves respect for differences rather than their elimination. . . . The road to such unity is understanding. The surest way to understanding is open-mindedness.

LEO SHARFMAN,
*chair of the Department of Economics,
University of Michigan, speaking to Men's Club,
Temple Beth El, November 15, 1927*

Universities rise in their places in the social landscape as affirmative expressions of our faith in the cumulative wisdom of the ages. . . . A university has a special responsibility for the guardianship of this heritage. But a university also has another responsibility. It must attempt to interpret the times in which it lives in order to meet the developing needs of the society which it serves. This means that it must be a comprehending observer of the present and, in so far as possible, a vehicle of understanding for the future. This is the great social mission of education in a free society. In the language of Disraeli, "A university should be a place of light, of liberty, and of learning."

JAMES P. ADAMS,
*provost of the University of Michigan,
speech at the All-Class Dinner in commencement week,
June 15, 1950*

My roommate and I roomed blind. I had no idea whom I would end up with. In mid-August I found out all about her. She was from Detroit and black. This didn't bother me one bit. So far we have gotten along great. . . . Here is one thing that I found funny. . . . My roommate has a flat iron that she uses to straighten AND curl her hair with. She had been bugging me for a while to let her try it on my hair. This one Friday night I decided to let her give it a try. . . . So she reached for my hair with her hand so that she could grab a chunk to brush. "Eeeee," she shrieked. "What is that?" . . . "No, nothing is wrong. I just can't believe what your hair feels like!" . . . "I've never felt any white girl's hair before," she said. "I had no idea it was so different." We spent the next hour discussing how we take care of our hair, how much it costs to get it done, and we also argued about what a

perm is. This isn't a great educational story, but now I feel a little more "worldly" and not as sheltered as I had before. It's the little things like this that make impacts on my life. Small but nonetheless important. Diversity helps to make the world a little smaller.

UNIVERSITY OF MICHIGAN UNDERGRADUATE
*responding in 1997 to an email request to all students from the
President of the Michigan Student Assembly to describe the
impact, positive or negative, of diversity in their life*



The need to defend diversity came naturally and appropriately to the gates of the University of Michigan on October 14, 1997, when the papers for *Gratz v. Bollinger* were served, challenging affirmative action in undergraduate admissions. A second suit, *Grutter v. Bollinger*, was filed December 3, 1997, to challenge affirmative action in law school admissions.

It certainly was no coincidence that the Center for Individual Rights (CIR), the organization behind the lawsuits, chose as its target the University of Michigan, a great public research university, home to a long and storied history of political activism. Nestled near Detroit's Big Three factories in the middle of America, it also commanded the attention of its neighbors east and west. A victory at Michigan would certainly gain attention nationwide.

The CIR probably did not reckon fully either with the appropriateness or the consequences of suing the University of Michigan. The university's history has been extraordinarily rich in dialogues on diversity. Its distinguished alumni of all races, including former President Gerald Ford, stood ready to defend affirmative action and to bring to court the voices of America's corporate and military leadership. Michigan had much scholarly firepower, culti-

vated during more than fifty years of eminence in social science research, and diversity was ingrained as a primary value.

At any rate, the opponents of affirmative action did not take note of the University's historic commitments to diversity. James B. Angell, its third president, had entitled his 1879 commencement address "The Higher Education: A Plea for Making It Accessible to All." From its inception through the heyday of the Black Action Movement in the 1970s, the student newspaper, the *Michigan Daily*, had chronicled intergroup differences and conflicts. The campus had a deep familiarity with the subject. It had both expertise and hard-won tolerance. Michigan had a scholarly tradition of research on group dynamics that grew out of the anti-Semitism of the 1930s, 1940s, and 1950s. It was dedicated over many years to understanding intergroup relations, conflict, and community.

The opponents of affirmative action in admissions sorely underestimated the determination of the university, along with scores of peer institutions and professional societies, to defend its institutional mission. They also underestimated the fortitude of the students, scholars, alumni, and leaders they would confront. The plaintiffs in the case did not seem to realize that when General Motors spoke, the rest of corporate America would follow. To be truthful, it is fair to say that no one fully appreciated how a defense of diversity would resonate with corporate, military, and labor leaders or with members of the professions, who had come to see on a daily basis the need for—and benefits of—learning to live and work together. As Earl Lewis suggests in this volume, higher education—along with such training grounds as the military—is critical in this endeavor.

The Center for Individual Rights may also have underestimated the degree to which the nation's private universities would side with public universities in the struggle over affirmative action. Former presidents Derek Bok of Harvard and William G. Bowen of Princeton urged administrators and trustees, in their eloquent book *The Shape of the River*, to speak out loudly in its defense.

Scholars from Stanford's Center for Comparative Studies of Race and Ethnicity organized symposia as a call to action. Gary Orfield, Christopher Edley, Jr., and other members of Harvard's Civil Rights Project had documented the increasing segregation of the nation's high schools and brought into sharp focus the critical need to address the problem. Educational researchers at UCLA, Illinois, and Michigan could point to established national databases on the positive effects of integration.

As the many amicus briefs filed in the lawsuits showed, and as Justice O'Connor confirmed for the majority in *Grutter v. Bollinger*, the state has a weighty and compelling interest in making it possible for higher education to help write a positive story of race in America. Justice O'Connor wrote:

The Law School's claim is further bolstered by numerous expert studies and reports showing that such diversity promotes learning outcomes and better prepares students for an increasingly diverse workforce, for society, and for the legal profession. Major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints. High-ranking retired officers and civilian military leaders assert that a highly qualified, racially diverse officer corps is essential to national security. Moreover, because universities, and in particular, law schools represent the training ground for a large number of the Nation's leaders, *Sweatt v. Painter*, 339 U.S. 629, 634, the path to leadership must be visibly open to talented and qualified individuals of every race and ethnicity.¹

As the essays in this book suggest, opponents of affirmative action failed to foresee how well the educational and societal purposes of diversity would fit within the pragmatic legal frameworks articulated by the Supreme Court in *Brown v. Board of Education* and in *Regents of the University of California v. Bakke*.

Fortunately, the Supreme Court revealed on June 23, 2003, that it had listened to America more closely than had the Center for Individual Rights.

A Special Place in Defending Diversity

In his commencement address in 1879, James B. Angell argued that the university had a special responsibility to cultivate the talents and abilities of all, no matter what their origin, to ensure that learning does not give way to pedantry “displayed like the ribbons and orders of a petty German court.” It should also prepare to diffuse broadly across the land “men who are trained to be intelligent leaders of thought . . . to discharge the duties of citizenship.” He made his plea for economic and social diversity “not merely on account of the poor and gifted scholars themselves, but also for the good of society.”

Some 120 years later, his university structured its case for the compelling state interest of achieving diversity in higher education along strikingly similar lines.² The university documented persistent, though de facto, racial disparities in access to opportunity in virtually every aspect of American life, and took note of the entrenched patterns of segregation in housing, schooling, and employment. The university contended that higher education had a special role to play in engaging the potential for education and sharing its returns broadly. In doing so, it could stimulate critical thinking and creativity precisely because its students would encounter diversity unfamiliar to them. Such an education could prepare all kinds of future citizens to live and work across what President Angell in 1879 called “the artificial distinctions of conventional society.”

The university’s case for a compelling interest in diversity revolved around the special role that institutions of higher education must assume, as often the first and arguably the last opportu-

nity for students to become citizens, soldiers, and workers comfortable in a racially and ethnically diverse America and inspired by it. Such an environment would improve learning and train better, more productive, more empathetic citizens and leaders.

This task was not to be assumed lightly. As scores of expert witnesses and hundreds of supporting amicus briefs reminded the Court, race still matters in profound ways in American society. Race still delineates the haves and the have-nots. Racial stereotypes and conflict undermine our productivity, security, and the harmony of our democracy. The words of the witnesses in these cases were resonant, and therefore haunting, echoes of those spoken by Governor Otto Kerner some thirty years earlier, as he summarized the results of his commission's investigation of race riots in over 150 American cities in one summer.

Our nation is moving toward two societies, one black, one white—separate and unequal. Discrimination and segregation have long permeated much of American life; they now threaten the future of every American.³

For race to stop mattering in destructive ways and start mattering in productive ways, we had to keep trying what President Angell had advocated way back in 1879. Of course we couldn't, nor could he, "take all comers." But universities had to start making choices where few had been made before. We had to include more of America's talent, training leaders who would carry their education "out into the land."

For this country to move together peacefully, it would not suffice to integrate the boot camps and not the military academies, the juror boxes and not the judiciary, the emergency room and not the operating theater, the factory and not the boardroom, the classroom and not the professoriate, the voting booth and not the Congress. Real integration cannot happen until Americans of all colors learn with and from each other in the best classrooms of this land.

Learning Together

Learning is hard work, best done in the company of others. The educational benefits of diversity, as any honest educator must acknowledge, come largely from the social infrastructure of the “classroom.” This is what Leo Sharfman knew in 1927 and what the Michigan roommates knew as they worked on their hair in 1997. It is also what lay at the heart of the two Supreme Court decisions that served as precedent in the Michigan cases.



[Separating black schoolchildren] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.

CHIEF JUSTICE WARREN,
1954, *Brown v. Board of Education*

It is not too much to say that the “nation’s future depends upon leaders trained through wide exposure” to the ideas and mores of students as diverse as this nation of many peoples.

JUSTICE POWELL
in *Regents of the University of California v. Bakke*,
citing Justice Brennan’s opinion in writing for the majority in
1967 in *Keyishian v. Board of Regents*

Brown and *Bakke* both drew on findings from social science, and both decisions saw intelligence and excellence from a fundamentally *social* perspective: that is, education and learning are socially shared activities that depend in large part on the quality and effectiveness of the mix of people and ideas in the environment.

The social science data used in these cases, as spearheaded by Gurin et al. in her expert testimony in both cases in the U.S. District Court and summarized in this volume, significantly extend

our understanding of just how *social* learning turns out to be. The quality of thinking, its vibrancy, and its resonance depend on whether the learner is challenged in his or her social environment—whether the ideas and voices in formal classes or in everyday campus life sound different enough to add discipline to our normal “mindless” habits. A new idea, a different way of saying the same thing, a question from left field; all enrich the learning environment.

Here, disequilibrium matters. It encourages us to pay attention, to see ourselves and the world in a slightly new light. To achieve this social disequilibrium, in which peers shed that new light, it helps to have diversity, in which the person in the next seat may well ask a question from a different perspective. That variation, in turn, will challenge others to notice and to think.

Why does race matter in this disequilibrium equation? It matters because, whether by design early in our history or through our failure to discard the legacy of Jim Crow, we are still largely segregated by race and ethnicity in our daily lives.⁴ It is those experiences, embedded in the rituals of living—in how we fix our hair, how we celebrate our birthdays and mourn at our funerals—that lay the groundwork for the rich tapestry of perspectives brought to the table when a diverse student body learns together. Race becomes a metaphor for crossing the sensibilities of alternative life experiences. Race is not the only metaphor, but it is an important one, historically and in our own times.

In maximizing the likelihood of students experiencing perspectives, voices, ideas, and passions, is race all that matters? Of course not. In 1879, President Angell made the same argument in favor of the different perspectives brought from different regions of the country and different socioeconomic sectors of society. Sharfman made it for religion in 1927. Ira Smith, Michigan’s registrar from 1925 to 1955, made it to defend the vigorous recruitment and support of veterans under the G.I. Bill. But while race and ethnicity are not the only sources of difference, it is also true that students of

color and white students from all walks of American life have experienced the world in such different ways that getting them together offers a rich range of educational possibilities that their heretofore separate lives have obscured from view.

Of course, creating the social conditions for the kind of expansive learning experiences we desire will not be easy, in view of the pervasiveness of stereotypes that threaten individuals' performance, as testified to by Claude Steele in his expert testimony in the lawsuits.⁵ But we can never hope to fully engage the talents of all Americans unless we try to build on what Steele refers to as "wise" learning environments—and these must be significantly welcoming and inclusive of our nation's multiracial and ethnically diverse population.

Living Together

The social learning that can follow from a diverse student body goes even further than promoting cognitive challenges and stellar performances. We must help construct environments for intergroup relations that pave the way for racial integration—for living and working harmoniously together across the lines of race in America. This is an endeavor that takes hard work, including a willingness not to paper over discomfort, mistrust, fear, or even conflict. There is bound to be a wariness on all sides that comes both from the absence of experience with integration and from concerns about social identity. As Sharfman eloquently stated in his descriptions of intergroup relations and religious tensions on campus in 1927, for "unity" to be positive, it must engage genuine difference. This requires many individual acts of will, encouraged by a learning environment that places a premium on getting to know each other.

We all have a long way to go in getting to know each other, as

the following excerpt from expert testimony in the Michigan cases suggests:

Most Michigan residents live in neighborhoods that are not diverse racially or ethnically. . . . Blacks and whites seldom talk across the fence. They rarely meet casually on the streets. . . . They do not attend each other's birthday parties or belong to the same social clubs and churches or attend town meetings together. . . . As teenagers, they rarely hang out together in malls or go on camping trips together or date. . . . Chance events or rituals, profound moments of bonding, or everyday social interactions—these are the fabric of everyday life, the basis of relationships, of community, of commonality. Whites and non-whites are usually not part of each other's daily routines or witness to each other's life-changing events.⁶

But at their best, universities can be safe havens for the development of just such a community, based on intergroup dialogue, the civil airing of conflict among students who, as peers, perceive each other as equals. This develops a capacity for participating in democracy, for integration, and for social harmony. No one thinks this happens easily or automatically—after all, most of these students, like most of us, have precious little experience airing differences in integrated settings, and both students of color and white students naturally would prefer the ease and comfort afforded by familiarity and similarity. But it does happen, and even one or two such experiences can set a course for life, as Gurin et al. demonstrated in their expert report.⁷

The Michigan Student Study, as Gurin notes in this volume, repeatedly heard from students about this interweaving of experiences of conflict and of community as they navigated, often for the first time, a diverse living and learning environment. How could it be otherwise, with so little prior practice? Students, majority and minority, report experiencing racial tension and discord on campus

at the very same time they report having made one or more close friends, often for the first time, of another race/ethnicity. In fact, as seniors, 91 percent of white students, 94 percent of Asian American students, 79 percent of African American students, and 87 percent of Latino students in the study agreed that “my relationships with students of different ethnic/racial groups have been positive.”

These experiences set the stage for replacing unfair stereotypes, even the favorable ones, with something more individual and realistic. An exposure to group similarities and differences may well give students a more perceptive assessment of the variations they find within their own groups, as well as respect for students from different cultural, racial, or ethnic backgrounds. All of this tends to make the world “a little smaller,” as the anonymous student reported on the basis of doing her hair with her roommate.

Defending Affirmative Action

Our need to consider the nation’s compelling interest in affirmative action turned our attention squarely to its benefits, which include drawing on a full talent pool in ways that broaden the opportunities for social/economic mobility for more Americans. By bringing a more diverse group of students to campus, we are in the position to educate all students in an environment where they will be challenged to see new possibilities for themselves and their world because of the mix of voices and perspectives at the table. Hardest of all, but most significantly, these experiences will, as they become more numerous, ultimately prepare all students to live and work in harmony in a multiracial democracy.

Side by side with this story of the nation’s compelling interest in diversity runs a more negative story, anchored in the troubled history of race in America, in which race has been used as a weapon of discrimination against individuals. The Court addressed this story in *Brown*, in which it ruled that, under the Fourteenth Amend-

ment, children of color must be protected from the pernicious consequences of separate, and therefore, unequal treatment at the hands of institutions that hold the keys to the gates of opportunity. It is this second story that makes us leery of the direct consideration of race, as Lehman articulates in this volume, even as we know that we must directly confront race, and do so in ways that uncloak our prejudices and ignorance.

It is also the story behind the “strict scrutiny” test for race-conscious procedures, a test given form in Justice Powell’s narrow tailoring in *Bakke* of a “plus-factor” approach that minimizes the burden on majority applicants. Such an approach manages at once to be race-conscious but not overly explicit in its use of race as a factor, allowing race to be one factor among many in the individualized evaluation of all applicants.

Such an individualized evaluation assures that all who are admitted to the university will be qualified and prepared to succeed, avoiding the possibility of a cynical trade-off between diversity and excellence. No rigid quota, no separate and unequal process, may be employed. Nothing overly mechanistic may be employed. Therefore, there is no temptation to “overweight” race, perhaps by automatically assigning set numbers of points to everyone who fits a label, a practice the Court struck down in *Gratz v. Bollinger*. This is the flexible and largely subjective approach endorsed by Michigan’s law school in 1992 and supported by the majority of the Court in *Grutter v. Bollinger*.

Opponents of affirmative action may have underestimated just how reasonable the public would find this pragmatic compromise. Listen to the editorializing from the *Arizona Republic*, written before Justice O’Connor, herself an Arizonian, wrote her historic opinion in *Grutter*.

We believe that there is a compelling educational interest in ensuring diversity and that using race as one factor, not the only factor, not the single most important factor, is a legally accept-

able and socially responsible action in a country less than 40 years removed from poll taxes and literacy tests.⁸

Why was this approach so compelling? This version of “plus-factor” affirmative action satisfies both the legalists’ desire for subtlety when it comes to race, and the social scientists’ desire to bring a critical mass of well-qualified students of color prepared to succeed in selective institutions across our country.

Moreover, as scholars in the Harvard Civil Rights Project persuasively argued, there really are no effective alternative systems that achieve the goals of race-conscious policies.⁹ Percentage plans, in which the top 4, 10, or 20 percent, say, of any state high school is guaranteed a place at the state university, narrow the evaluation process to one quite imperfect measure, class rank, without an eye toward preparation. They only succeed if neighborhoods continue to be as segregated as they have been. Plans that rely solely on giving weight to socioeconomic disadvantage fail to provide for a racially diverse student body at selective institutions¹⁰ and give no attention to recruiting a critical mass of students of color with experiences from all walks of life.

But even more importantly, many Americans are committed to writing a positive story of race. They know it is critically important to pay direct attention to race so we can move beyond our history. As the social psychologists in the Michigan cases testified, we as a nation will find it very difficult, if not impossible, to counter the pernicious and automatic activation of stereotypes and intergroup fears—and the prejudice and discrimination that follow—unless we can talk directly and persistently about race. Proxies are not useful in this highly charged and contested arena.¹¹

The significance of the arguments about “critical mass” made in the Michigan cases is underscored by decades of social science research that shows the ameliorative effects of intergroup contact, especially when each group is itself represented by individuals with a wide range of life experiences.¹²

Many people believe that a necessary step—and a positive one—in moving beyond our troubled history is to do what we always do in admissions: to make choices between qualified students and to use scarce resources affirmatively with race and ethnicity in mind.

In fact, as Peter Irons suggests in his stunning volume *Jim Crow's Children: The Broken Promise of the Brown Decision*,¹³ there is legal precedent for this view in the opinions of Judge John Minor Wisdom in his 1966 opinion in *United States v. Jefferson County Board of Education*, and in Justice Harry Blackmun's concurring opinion in *Bakke* twelve years later.

The Constitution is both color blind and color conscious. To avoid conflict with the Equal Protection clause, a classification that denies a benefit, causes harm, or imposes a burden must not be based on race. In that sense, the Constitution is color blind. But the Constitution is color conscious to prevent discrimination being perpetuated and to undo the effects of past discrimination. The criterion is the relevance of color to a legitimate governmental purpose. (Judge John Minor Wisdom, 1966)¹⁴

In order to get beyond racism, we must first take account of race. There is no other way. (Justice Harry Blackmun, 1978)¹⁵

As supporters of affirmative action have argued, it is time for educators to lay their values out directly, to rewrite the American imagination about race. One way to begin is to send a powerful message in college and university admissions that we, as educators, *affirmatively value* the contributions of students of color and are therefore willing to use such scarce resources as the seats in our classes because we want them at the table.

We must get to know each other if we are to profit individually and collectively from our diverse talents. As those writing an amicus brief on behalf of the AFL-CIO suggested, “higher education represents a unique opportunity and, from the vantage point of the

workplace, the last opportunity, to foster interaction between diverse individuals.”¹⁶

That, more than anything, is what defending diversity in higher education is about. That, fortunately, is what the Supreme Court affirmed on June 23, 2003. This affirmation is a victory for America, raising our hopes that we can move from a troubled history to an integrated future.

Affirmative action alone won’t create that new future. Integration is hard work—harder than rocket science, to paraphrase Christopher Edley, Jr. Now is the time to redouble our efforts.