Minority Admission in New Jersey’s Universities and Colleges:
Does Race Need to be Considered to Achieve a Critical-Mass?

Sheldon D. Channer

Professor Marilyn Tayler

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Statement of Research Issue

Research Question:
Are race-neutral alternatives sufficient for New Jersey universities and colleges to enroll a critical mass of under-represented minority students?

Hypothesis:
It is hypothesized that if race-neutral alternatives were used as the basis for enrollment in New Jersey universities and colleges, a critical mass of minority students would be enrolled.

Terms Defined:
Race-neutral: does not consider race in the decision making process.
Critical-mass: a number of students that is equal to or very close in number to the percentage representation of that student’s minority group in the population of New Jersey.
Minority: any racial, ethnic, religious, or social group that has traditionally been under-represented in the economic, social, or political life of New Jersey.

Research Plan:
This research will be conducted by presenting arguments for and against the above hypothesis published in books, academic journals, magazines, online journals, newspapers and magazines, and on CNN.com’s “Law Center”. The goal is to present arguments from sources published within the last 5 years. The Bakke case: race, education, and affirmative action, by Howard Ball, and Race and College Admission, by Jamillan Moore, will be key sources.

Expected Conclusion:
Race-neutral alternatives are in fact sufficient for enrolling a critical-mass of minority students in New Jersey universities and colleges.
Outline

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I. Introduction

The issue of race is no small matter in America. Fifty-two years after the decision in Brown v. Board of Education, there is still a major debate over the role of race in education in this country. The primary debate on the agenda these days is the argument over affirmative action and its place in higher education. On one side of the debate are people like Ward Connerly, who assert that race and racial consideration has no place in college admissions and is in fact unlawful and a perpetuation of racism\(^1\). On the other side of the debate are people like Jamillah Moore, who argue that unless race is considered as one of the factors in higher education, we cannot guarantee admission of a critical-mass of minority students on the campuses of our most selective institutions of higher education\(^2\).

At the heart of the matter is the subject of diversity. Those in favor of the use of race as a factor in college admissions argue that unless the campus of an institution of higher education reflects the diversity of the nation, the knowledge and training provided on these campuses will not sufficiently prepare students to live and work adequately in the real world\(^3\). Those opposed to affirmative action and the consideration of race in college admissions assert their support for diversity on college campuses, but argue that we cannot disregard the rights of others and the provisions of our laws and statutes in our attempts to redress past wrongs. They purport the disregard for race and the use of race-neutral factors in the quest for diversity\(^4\).

In the pages that follow an attempt will be made to evaluate the state of affairs in New Jersey with regard to this issue. The evidence on both sides will be presented and the question: if

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\(^4\) Connerly
race-neutral alternatives were used as the basis for enrollment in New Jersey’s colleges and universities would a critical mass of minority students be enrolled? will be answered.

II. Laws Relating to Race and College Admission

1. Enacted Laws

In the debate over the use of race as a factor in college admissions, there are two enacted laws that seem to be at the center of the debate; Section 1 of the Fourteenth Amendment to the US Constitution and Title VI of the Civil Rights Act of 1964. Section 1 of the Fourteenth Amendment guarantees all citizens and legal residents of the US equal protection under the law. The amendment states:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title VI states:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Despite the 14th Amendment and the Civil Rights Act, during the mid 1960s, under the leadership of President Lyndon B. Johnson, America “[T]urn[ed] to the transitory affirmative action remedy to create equal opportunity for disadvantaged racial and ethnic minorities.” With Executive Order 11246, Johnson renewed the affirmative action requirements of President Kennedy’s EO 10925 and thus informally legitimated the use of race as a factor in college

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5 Connerley, 6
6 US Constitution,
7 Civil Rights Act of 1964,
admissions.9 However, over the past 10 years, a handful of state legislatures such as California and Washington have enacted statues that have made it against the law for universities and colleges to consider race in admission decisions.10

2. Case Law

The main case law at the heart of this issue is Regents of the University of California v. Bakke.11 In this landmark 1978 case, a majority of the Court – five justices held that the consideration of race as a plus factor in college and university admissions was lawful12. Justice Powell, the author of the controlling opinion of the Court stated, “[T]he State has a substantial interest that legitimately may be served by the …consideration of race and ethnic origin.”13 This law has been challenged several times since 1978, but reminds the law of the land.

However, in 1996, the Hopwood V. State of Texas made it unlawful to give any consideration to race as a factor in college and university admission in the state of Texas.14 Since then there have only been two other major cases on the issue, and both cases brought the matter before the US Supreme Court. In 2003, Grutter V. Bollinger and Gratz V. Bollinger were heard by the US Supreme Court.15 In both cases, the petitioners contended that the law allowing the consideration of race as a factor in college admissions was unconstitutional. In both cases, the Court ruled that if the admission policy that considers race as a plus factor meets the five guidelines for “Narrow Tailoring” then it was within the law. Today, Regents of the University

9 Mitchell Chang. et al.eds. Compelling Interests, 16
Ball, 189
10 Moore 74, Chang, 22, Ball, 190
11 Bakke V. California
12 Chang, 42
13 Bakke
14 Moore, 89
15 Grutter V. Bollinger and Gratz V. Bollinger
of California v. Bakke is still the prevailing law of the land for more than 40 of the 50 States of the Union.

III. Race and College Admission

Ever since California v. Bakke there has been a dynamic debate in the hallways of power, as much as, on the street corners of America over affirmative action policies. At the heart of this debate is the question of what is right and good for the people and future of American.

1. Arguments Against

   a. Reverse Racism

      According to Connerley, “the American people are quite content with the old civil-rights movement which embraced equal treatment under the law, not preferences based on race.”

According to Ball, opponents of race as a factor in college and university admissions argue that the use of race in college and university admissions policies is nothing more than bureaucratized reverse racism. Their argument has three main premises. The first and most sharply presented is the issue of the unconstitutional nature of the practice. They argue that the Civil Rights Act of 1964 makes it against the law to use race in the distribution of access to federally funded programs and the constitution safe guards the rights of Americans both citizens and residents to equal protection of the law. Giving an individual access to a program that uses federal funds based on race or ethnicity is a breach of the Civil Rights Act and the establishment of a preference which is against the provision of the US Constitution.

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17 Ball, 7
18 Ball, 13 - 15
b. Psychological Implications

Secondly, Those opposed to the use of race as a factor in college admissions argue that preference has a negative psychological effect on those who benefit. In his article for Townhall.com, “On Flattering Minorities,” Jeff Jacoby argues that admissions policies that given consideration to race are reinforcing the stereotype that minorities are intellectually inferior to whites.\textsuperscript{19} As a result, even the top achieving minority will be looked upon as someone who would not have achieved if preferences were not extended to them. The third premise is that the practice allows inferior students to gain access to higher education at the expense of more qualified applicants\textsuperscript{20}. Supporters of the above argument claim that in the long run, considering race as a factor in college admission negatively impacts everyone.

Moore states that supports of the above view further argue that race-neutral factors suggest as “percentages” or the reliance on social and economic disadvantage as oppose to racial group affiliation are perfectly legitimate factors that have the potential to enroll a critical-mass of minority students.\textsuperscript{21} Percentages refer to the system of automatic admission to state colleges and universities for the in-state high school students who graduate in the top 10\% or 20\% of their graduating class. Both Texas and Florida use this system. Former Texas Governor, George W. Bush, implemented the policy after the Hopwood holding of 1996, while his brother, Florida Governor, Jed Bush, implemented the policy after the Florida legislature made it illegal to consider race in college and university admissions.\textsuperscript{22}

\textsuperscript{20} Ball Moore
\textsuperscript{21} Connerley. Creating Equal
\textsuperscript{22} Moore, 49
2. Arguments in Favor

The three main premises of the argument of those in favor of the use of race as a factor in college admission can be divided into three categories;

a. Historical
b. Logical
c. Practical

a. Historical

The historical argument is very simple. The history of America has been a history of exploitation and segregation of minorities and using race as a factor to provide opportunities for these disadvantage peoples is the right, just, and moral thing to do. According to Ball, “For over three centuries African Americans and other minorities... were excluded from the ‘privileges and immunities’ of citizenship”. Ball sees this fact as sufficient reason for the very factor that caused the oppression of minorities to become the factor that provides them with opportunities. Chang et. al. agrees with Ball, they argue that “The centuries of racism in this country have left a powerful legacy that permeates all levels of American life and that cannot and should not be ignored in college admissions.”

b. Logical

Unlike Ball, Moor and Chang et al., argue from a more logical point of view; although they agree with ball that the history of oppression is a good reason for the use of race, they assert that the quest for diversity is an even better reason. Moore argues that the use of race in college admission is vital to the achievement of diversity on college and university campuses. They

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23 Ball, 5
24 Ball
25 Chang, 17
present the idea that it is only logical that a college should be representative of the population. In keeping with this position Moore asserts:

Ensuring representation of underrepresented minority groups that is consistent or at parity with the demographics of the population…is vital to the achievement of diversity on college campuses…you cannot have racial diversity on a college campus without the use of race as a criterion in admission.²⁶

Chang shares this view. For Chang et al., there are few things more important in higher education than ensuring that the composition of the student body is representative of the wider population.

c. Practical

Chang et al, more than any of the other supports consulted for this research, presents the practical argument for the use of race. They argue that in order to achieve equality in this country, we have to look to the future. We must make every effort to do what we can and what we must today to ensure that all groups are represented in all aspects of the country in the future. If we do not have sufficient representation of all groups and in all facets of our country then we would not have achieved the goal of equality. To achieve this goal, one of the things that we must do is ensure that all groups are represented sufficiently in higher education. This is even more necessary at “highly-selective colleges and universities”. They assert:

Given the many tangible short-and long-term benefits gained from attending a selective college or university…decreased access [for minorities] to these institutions will not only negatively affect educational opportunities but will also exacerbate occupational, residential, and social segregation in the long run.²⁷

For both Moore and Chang et al, the results of research conducted in states that have made it unlawful to consider race as a factor in college and university admission - Texas,

²⁶ Moore, 46,49
²⁷ Chang et. al. 9
California, Louisiana, Washington, Florida, and Mississippi - are a vivid demonstration that the consideration of race is a must for the achievement of diversity on college campuses. These findings are supported by the research of Ann Springer. Springer’s studies of the effects of the laws in the above mentioned states, and the state of affirmative action in higher education in America, show that in states that do not consider race as a factor in college admissions, there is a struggle to enroll a critical-mass of underrepresented minority students. Her research further provides proof that as colleges attempt to meet the strict stipulations of the law with regard to the use of race, and in an attempt to prevent law suite against them, many colleges find it very hard, regardless of the “minority population density” of the state, to enroll a critical-mass of underrepresented minorities.

IV. Racial Diversity of New Jersey Colleges and Universities

In an Amicus Brief filed in US Supreme Court in the Grutz v. Bollinger case, the then attorney general of new Jersey, David Samson, and key members of his staff, argued that New Jersey fully supports the then current law of considering race as a plus factor in college admissions. Today, Bakke is still the law in New Jersey. And New Jersey colleges and universities routinely use race as a plus factor in their admissions process. The official website for the state of New Jersey, www.state.nj.us, even promotes New Jersey as “one of the most diverse states in the union.” Therefore, it is no wonder that New Jersey has been successful in ensuring that a critical- mass of underrepresented minorities are enrolled in colleges and universities in the state. In their 2004 publication of “Status of Minorities In New Jersey Higher

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28 Moore 22 – 45, Change et al., 21-31
29 Ann D. Springer. “Once step forward, two steps Bakke?”
Anna D. Springer. “Update on affirmative Action in Higher Education”
30 Samson et al.
Education,” New Jersey Commission on Higher Education, it was revealed that the state has achieved critical-mass enrollment for all historically underrepresented minority groups in the state. In a state that is made up of approximately 13.6% African Americans\textsuperscript{31}, in 2004, just fewer than 12% of state college and university students were African American.\textsuperscript{32}

However, if one takes a look at the break down of enrollment of minorities in New Jersey by individual college campuses, one would quickly realize that what is happening in New Jersey is a kind of educational segregation. A handful of schools account for the bulk of the minority enrollments, while three of the four “big’ schools in the state, Rutgers, Princeton and Seton Hall, are woefully under enrolling minority students. According to their 2004-2005 fact books, Rutgers only enrolled 8% African Americans and 5% Hispanic, Seton Hall enrolled fewer than 5% of each of these minority groups, while on Princeton’s campus, fewer than 25% of the students enrolled were minority of any kind. This means that in a state with a European American population of only 66%, Princeton is enrolling over 75% European American students. Montclair, the other top-four university in New Jersey, has the best record, with 18% Hispanic and 11% African American, which is over 2% below the State’s overall black population and over 7% above the State’s overall Hispanic population.\textsuperscript{33}

Conclusion

It was hypothesized that if race-neutral alternatives were used as the basis for enrollment in New Jersey universities and colleges a critical mass of minority students would be enrolled. The above argument seems to question the validity of this hypothesis. Ball, Moore and Chang all argue that race is a dynamic factor in America. We live in a society ripe with racial

\textsuperscript{31} www.state.nj.us
\textsuperscript{32} www.state.nj.us/highereducation
\textsuperscript{33} ibib
tension most of which is just under the surface. Yet, for the most part we are asked to ignore race. Chang has argued that it is hard to ignore race when race has played a part in our lives for over 300 years.

The results of the review of enrollment statistics for major universities and colleges indicate that despite the overall enrollment in the State of New Jersey, Jamillah Moore’s assertion that race is needed to ensure enrollment in highly selective undergraduate programs and graduate and professional programs seems to be validated. In New Jersey, the small, poorly funded and non-prestigious universities are the ones that are accounting for the majority of the minority enrollment in the state - Bloomfield College, one of the smallest colleges in the state, both in size and prestige- enrolls over 50% minorities each semester\(^\text{34}\).

Can New Jersey afford to ignore race as a factor in college and university admission? The short answer is no, not if they are interested in achieving a critical–mass of enrolled minority students. However, I believe that there will come a time when the consideration of race will no longer be necessary. New Jersey’s government has been investing and continues to invest a great many resources into the improvement and recruitment of potential minority candidates for enrollment in our states colleges and universities\(^\text{35}\). If this trend is continued and greatly increased over the next decade to include greater emphasis on preparing minority students at inner city public schools with the quality of education and educational opportunities provided to suburban public school students, then within the next 20 to 25 years, there will be no need to consider race in college admissions in New Jersey. Admissions staff will be able to rely simply on the academic statistics of applicants.

\(^\text{34}\) www.bloomfiled.edu  
\(^\text{35}\) Minority Report, 2004
The evidence indicates that the hypothesis, though correct in a general sense – the state does enroll a critical-mass of students in colleges and universities and without race as a factor, most colleges and universities in the state would still enroll a critical-mass of minority students – is incorrect in a narrow sense, selective, prestigious schools in the state would be hard pressed to enroll a critical-mass of minority students if they did not consider race in their admission decisions. If they are not achieving critical-mass now when race can be considered, why would we expect them to be able to do so if race could not be considered?

All things considered, I am most supportive of the views of Professor Robert Ibarra, on this issue. Ibarra argues that neither race neutral nor race positive policies are the solution; what is needed is a radical change in the mode of teaching and learning in America’s institutions of higher education. He asserts that until higher education implements and utilizes learning and teaching styles conducive to minorities, we will continue to struggle to enroll a critical-mass of minorities in institutions of higher education.36

Bibliography

U.S Constitution. amend. XIV, ¶ 1

Civil Rights Act. Title VI, § 601


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