

comparison to the middle and upper middle classes to be worthy beneficiaries of affirmative action programs.

Race-based affirmative action was never much help to the minority poor. The basic principles of affirmative action explain why this is so. Minority-group status may in general correlate with economic disadvantage but not all members of minority groups suffer equal economic disadvantage. If the only eligibility criterion for affirmative action is being a member of a minority group, institutions will select the highest-scoring minority candidates, who will also tend to be those candidates who are the better-off economically. The principle of the close swap means that the least economically advantaged whites have a reasonable basis for believing that affirmative action disproportionately disadvantages them.

Class-based affirmative action could not succeed where race-based affirmative action failed for two reasons. First, minorities are minorities: there are more white poor people than black and Latino poor people, even though white poverty rates are lower than black and Latino poverty rates. Most of the poverty-based affirmative action slots will go to whites, by simple force of numbers. Second, the principle of the top of the bottom operates: it will be the best-off people in the eligible group (here, the poor) who will be in the position to benefit from affirmative action. To the extent that minorities are dually disadvantaged by their poverty and race, they are the bottom of the bottom and are thus likely to be underrepresented as beneficiaries of poverty-based affirmative action. The beneficiaries of poverty-based affirmative action will be disproportionately white.

Experimenting with class-based affirmative action

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47 *J Legal Educ* 4, 1997, pp 472–503

In recent years the question of whether 'class' should replace or supplement 'race' in affirmative action programs has gathered increasing national attention. Almost all of the discussion of alternatives, however, has occurred in an empirical vacuum. There is relatively little careful analysis of the workings of race-based affirmative action, especially in higher education, and none at all in class-based programs. The UCLA School of Law incorporated extensive class-based preferences into its admissions system last year.

Class-based preferences are substantially more complex than race-based preferences. The UCLA experience suggests, however, that the complexity can be managed successfully. This system used multiple, complementing measures of disadvantage, was not plagued by fraud and was not terribly expensive to administer. The conceptual and administrative challenges of class-based affirmative action are not trivial, but they are solvable.

Our class preference system dramatically increased the socioeconomic diversity of the student body. The proportion of students from poor families increased fourfold; the proportion of students from low-income neighbourhoods probably tripled. The law school's first-year class is almost certainly the only group of students at any 'national' school that reasonably reflects the economic diversity of the general population.

UCLA's class-based preferences had only mixed success in preserving racial diversity at the law school. The enrolment of blacks and American Indians fell by more than 70 percent

from the levels typically achieved under the old race-based preference system. Minority groups benefited disproportionately from the class-based preferences. What varied was the size of the old racial preference. The greater the traditional preference, the less effectively class worked as a 'substitute' for race. How the class-for-race tradeoffs would operate in other schools or other contexts, then, would depend on the magnitude of current racial preferences in those settings.

In order to factor socioeconomic status into admissions in a systematic way, six elements would be particularly important. First, take into account the neighbourhood as well as the family background of applicants. A dominant trend in the sociology literature of the past decade has been a growing array of findings pointing to the large role neighbourhood and school environments play in shaping the life chances of children and teenagers.

Second, make the index multidimensional. Any enterprise aimed at gauging someone's socioeconomic status is intrinsically faulty, since no perfect measure of a person's true material, social and intellectual environment exists. The best way to deal with this problem is to use multiple factors in evaluation.

Third, create a quantitative index. If one is going to use multiple bits of socioeconomic information to evaluate a large number of applicants, it is essential to systematise the data into a systemised index; otherwise, the heuristics of applying the background data fairly and consistently are simply overwhelming. This in turn implies that one should adopt some uniform system of assigning weightings to the various components, and some method of comparing the socioeconomic data with other, academic data.

Four, keep considerations of socioeconomic status as a supplement to academic qualifications, not an 'alternative' to them. Any system that treats an academic index and a socioeconomic index as alternative admission yardsticks will not efficiently conserve the academic potential of the prospective class.

Five, target disadvantage. Every admissions decision that turns on an applicant's socioeconomic disadvantage imposes a potential cost on the academic strength of the student body, so if one is trying to maximise both the need of the students helped by the system and the overall academic qualifications of the enrolled students, it follows that one should target the admission system's socioeconomic boost on those in the applicant pool with the greatest need. The degree of favour should be individualised and should be triggered by some significant level of disadvantage. Six, recognise the diminishing returns of an SES boost and set an explicit academic cost you are willing to bear.

Seven, develop a method of verifying socioeconomic status. If applicants learn that a poor background significantly improves one's chances of admission, they may well be tempted to commit fraud. It seems obvious that false information provided by an applicant about socioeconomic background is not as easy to detect as false information about race or academic record.

Whether such systems improve the pedagogical environment of the school or increase the legitimacy of the legal profession are rather intangible questions that will take a long time to answer, if they can be answered at all. Such a system is operationally feasible, and its results, if it is done in a reasonably sophisticated way, can be consistent with its goals. It does produce genuine socioeco-

nomic diversity of a kind that is utterly lacking in most elite law schools.

A class-based system is not a substitute for a race-based system. Each type of system produces diversity, but the diversities do not duplicate one another; they merely overlap. If some kind of coherent consensus on the relative role of race and class could be developed and enter the public debate, we might develop preference systems that modestly recognise both class and race in a way that has both internal logic and social legitimacy.

Reaffirming merit in affirmative action

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47 *J Legal Educ* 4, 1997, pp 514–523

Since the implementation of affirmative action, opponents have argued that affirmative action is 'negative' action, inconsistent with meritocracy, because it lets in 'unqualified' people purely on the basis of race and gender. In the battle around affirmative action, the liberal response that affirmative action serves social justice by remedying past and present discrimination appears to be losing. What is necessary to counter the anti-affirmative action argument is to unpackage the assumptions behind merit to reaffirm that affirmative action in education is selection on the merits. In the educational context, we need to recognise the limitations of the present narrow definition of merit, largely based on grades and standardised testing.

The central argument against affirmative action is that it is a 'quota system' that confers automatic preferences to women and racial or ethnic minorities regardless of their qualifications. According to this line of argument, affirmative action means having to choose an unqualified person to meet rigid quotas, and therefore affirmative action compromises merit and lowers standards. In response, the

proponents of affirmative action have pointed to its original 'remedial' justification. Race and gender disparities and discrimination still exist, they say, and without affirmative action doors will remain closed for racial minorities and women. The goal is distributive justice.

Class-based affirmative action — the idea of giving consideration to the economically disadvantaged — is a recently suggested alternative to race-based affirmative action. Class-based affirmative action may run into the same cultural and social resistance as that facing race-based affirmative action. In the absence of any 'remedial' justification, the core justification for class-based affirmative action is simply an argument for redistribution. As we have seen in the recent backlash against welfare, the American public is not embracing redistribution on either class or race grounds.

In addition to the diversity and social justice arguments, then, we need more ammunition in support of affirmative action, whether based on race or class. We need to argue the individual merits of the beneficiaries of affirmative action programs, and we need to attack the present concept of 'merit' head on.

Since the foes of affirmative action have essentially framed the debate as merit versus race, we need to reclaim 'merit' so that we can change the dialogue and engage in a real debate rather than talking past each other. Supporters of meritocracy maintain that it is individual achievement that matters and merit does not refer to inherited characteristics such as race or gender. They also believe, in varying degrees, in the reliability of numerical indicia of merit.

While inherited characteristics of race and gender may not be determinative of individual worth, they can