

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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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

be a starting point to assess a person's history and development, which must be taken into account in any measurement of individual merit. Numerical indicia do not tell us much about the character and worth of persons who must face and overcome societal obstacles such as racial or gender discrimination. Someone who starts from behind and makes significant progress has demonstrated enormous talent and hence merit. Such progress can be more revealing of intelligence and ability than the numerical education-based measurements of present achievement alone.

Under this view of merit, then, present-day race-based affirmative action is merit-based because it takes into account societal obstacles that might otherwise skew objective criteria of individual merit. And if lower-scoring minority applicants can be recognised as 'meritorious' in this way, then the later uses of diversity to fill a class with representative groups may not be so objectionable. At that point, admissions officers are filling the class with diverse and 'meritorious' applicants of different racial groups, in much the same way as they choose among qualified applicants on the basis of geography. Diversity preferences for racial minorities can no longer be attacked as letting in 'unqualified' people.

A merit selection based on overcoming obstacles can be used not only as a principled basis for existing race-based affirmative action criteria; it can also serve as a distinct race-neutral selection category to support affirmative action for other groups facing social discrimination on such grounds as gender, class, sexual orientation, or physical disability.

For an educational institution truly devoted to the ideals of diversity, the category of overcoming obstacles

seems a more intellectually coherent way of ensuring diversity. By requiring an assessment and articulation of a person's experience of overcoming obstacles, the category avoids the problem of essentialism. This emphasis can help us to focus more acutely on the underlying social conditions of oppression. The word 'obstacles' continues to remind us of the harm society has done to individuals, particularly in the form of group-based discrimination. If we are required to consider group-based harm in our admissions process, we as a society may be more sensitised to the discrimination that still exists and all the negative ramifications that may entail.

A broader recognition of merit, beyond grades and statistics, can include race as a part of a person's social and cultural history and a starting point to discuss an individual applicant. This broadened merit may also support an umbrella category of diversity: people who have faced and overcome group-based discrimination. Admission will depend on the application's individual merit, demonstrated by the efforts exerted to overcome these obstacles.

What do the latest anti-affirmative action developments mean for educators? For one, educators need to reassess the goals of education and the goals of affirmative action both nationally and, more specifically, in our particular institutions. This means that we must cast off the false distinction between affirmative action and merit, and point out that selection through affirmative action is selection on the merits. Certainly, one way of appreciating the individual merits of minority applicants is to understand the progress and potential demonstrated by their overcoming the obstacles of discrimination.

GENDER ISSUES

Women legal academics — a new research agenda?

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It is a truth almost universally acknowledged that there is very little research which examines the position of British women academics. One reaction might be that this is unsurprising, because such research is of little interest or value. There are a number of reasons why this view is mistaken. Most fundamentally, there is the Aristotelian view that the search for knowledge is part of being human but there are many other reasons for pursuing research in this area. Information about legal academics is important in terms of the development of the university as an institution.

In the same way, the behaviour, attitudes, and values of legal academics have implications for the future development of the discipline of law. Members of the academic tribe which inhabits the territory of law will have a profound effect on the research which is carried out and valued, the subjects which are taught and the people who are influential in this sphere.

A common theme among commentators when writing about women academics is that they, of all women, should in theory have the best possible chance of succeeding in their career to the same extent as male academics. However, there is plenty of evidence that the position of women in academia is far from equal to that of men, and that the higher one goes up the academic ladder, the fewer women one will encounter. In 1994/95, of all full-time academic staff in the UK, women made up 7 percent of professors, 15 percent of senior lecturers, 10 percent of lecturers and 32