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Striving for Neutrality

Lessons from Texas in the Aftermath of *Hopwood* and *Fisher*

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Since the early 1990s, the University of Texas at Austin has been sued twice over its admissions decisions. In the first case, which was filed in 1992, Cheryl Hopwood alleged that she was the victim of reverse discrimination because the law school rejected her application while admitting several minority applicants with lower test scores. After being denied in the lower court, her claim was supported on appeal to the Fifth Circuit Court, whose March 1996 *Hopwood v. Texas*[1] ruling banned the use of race in college admissions. In an effort to preserve diversity at the flagship institutions, the following year the Texas legislature passed House Bill 588, which guaranteed admission to any in-state public university to all high school students who graduated in the top 10 percent of their class.[2] Building on evidence that high school grades are reliable predictors of college success and the philosophical principle of equal access, the bill's sponsors sought to represent the state's demographic, geographic and socioeconomic diversity at its public postsecondary institutions.[3] With a few

exceptions, however, most assessments of the Top 10 Percent law focus on its success in maintaining ethno-racial diversity.

The initial plan was deceptively simple: it required using a uniform measure of merit, namely class rank, across all high schools with a minimum of ten seniors in their graduating class.[4] To qualify for automatic admission, students would be ranked on academic performance relative to that of their *same school* classmates. Political support for HB 588 derived from its adherence to race-neutral admission criteria that were applied consistently to all high schools, irrespective of size, wealth, or location.[5] Modifications to the admission criteria specified in HB 588 require further legislative action, which has proven difficult because a bipartisan coalition of liberal urban minority legislators and conservative rural lawmakers seek to preserve slots for students from their districts.

Following the 2003 *Grutter* decision,[6] which upheld the legal basis of narrowly tailored affirmative action in college admissions, the president of the University of Texas at Austin, Larry Faulkner, announced that the university would modify its admissions procedures to comply with the ruling. Graduate and professional programs for which there was no viable alternative to explicit consideration of race would be given priority; however, Faulkner also reported that the university would implement "procedures at the undergraduate level that *combine the benefits of the Top 10 Percent Law with affirmative action programs that can produce even greater diversity*."[7]

This declaration is relevant for the second time the university was sued: Abigail Fisher's lawsuit alleging that she was the victim of reverse discrimination because the university denied her admission in 2008 while allegedly admitting students with weaker credentials.[8] According to the lawsuit, racial preferences were unnecessary both because a race-neutral alternative was available—that is, the Top 10 Percent plan—and because the share of enrolled black and Latino students enrolled at the Austin campus was higher than the percentage enrolled under affirmative action. Undergirding these claims is the presumption that the percentage plan is race neutral in practice and that the change in admission regimes from affirmative action to the Top 10 Percent plan is responsible for the increased diversity of the Austin campus. My research has proven both premises false.

Lessons from the Texas Higher Education Opportunity Project

Fisher's claim that increases in diversity at the University of Texas are due to the Top 10 Percent law is problematic because it assumes

that the level of diversity achieved in 1996 was appropriate in light of the composition of the state, and also because it assumes that the pool of students qualified for college admission also did not change. Both assumptions are incorrect. Not only did Texas's population of high school graduates grow faster than the national average, but its pace of diversification also exceeded the national average. Texas became a majority-minority state in 2005, but the college-age population did so earlier. In 1994—when the *Hopwood* litigation was underway—56 percent of all Texas high school graduates were non-Hispanic whites; by 2004, this share had dropped to 48 percent. During this period, the absolute number of high school graduates increased 50 percent,[9] but college enrollment expanded only 20 percent—mostly in two-year institutions. These demographic trends provide context for dissatisfaction with all admission regimes charged with rationing scarce seats. That the Texas higher education system failed to keep pace with the growth of the college-eligible population created a "college squeeze," as demand for access to higher education grew much faster than the supply of post-secondary opportunities. Demographic growth intensified competition for access to the public flagships.

Princeton sociologist Angel Harris and I[10] disproved Fisher's claim that the Top 10 Percent law restored diversity to the Texas flagships. Using administrative data for both public flagships, we compared changes in application, admission, and enrollment rates of black, Hispanic, Asian, and white students over a ten-year period representing three admission regimes: affirmative action (five years); no preferences (one year); and the Top 10 Percent plan prior to the re-adoption of race-sensitive criteria (four years). We simulated gains and losses of minority students attributable to changes in application, admission, and enrollment rates over the three admission regimes, taking into account changes in the size, demographic composition, and graduation rates of high schools.

We found that changes in the ethno-racial *composition* of high school graduation cohorts, not changes in admission rates, were largely responsible for restoring diversity at the Texas public flagships after affirmative action was judicially banned in 1996. For example, although the absolute number of minority applicants rose over time, black and Hispanic application rates to both flagship campuses dropped because the number of minority high school graduates increased more. Thus, black and Hispanic application rates actually worsen under the Top 10 Percent regime that guaranteed admission to qualified students compared with the period when race preferences were allowed.

To illustrate how changes in application behavior reverberate through the admission and enrollment outcomes, we also simulated gains and losses in admitted and enrolled students that consider changes in both the size of high school graduation cohorts and institutional carrying capacity. Analyses reveal that while the Top 10 Percent law was able in 2004 to bring black and Latino representation to levels achieved using race in 1996, the program failed to reflect the rapidly changing demographics of the state's high school population. More importantly, our simulations suggest that representation of black and Hispanic students at the public flagships would have been higher had both groups retained their admission shares under the original affirmative action regime.

As for Fisher's second allegation—that the Top 10 Percent plan is race neutral—several analysts have noted that the admission regime was crafted on a highly stratified and segregated K–12 education system.[11] In an early analysis, Sunny Niu and I[12] demonstrated that high levels of residential and school segregation facilitates minority enrollment at selective public institutions under the Top 10 Percent law precisely because most black and Hispanic students who achieve top 10 percent rank hail from highly segregated schools. Nevertheless, we also demonstrate that, contrary to the integration ideal sought by the landmark *Brown* decision,[13] black and Hispanic students who attend integrated schools are *less* likely than white and Asian students at these schools to qualify for the admissions guarantee. Moreover, conditional on qualifying for the admission guarantee, black and Hispanic students who qualified for the admission guarantee were significantly less likely than either whites or Asians to enroll in college. For example, over half of Asian and just over one-third of white top 10 percent graduates enrolled at one of the public flagships, compared with only one-in-four similarly qualified black and Hispanic students.

We also show that whites and Asians who attended schools where over 80 percent of students are black and Hispanic have a higher chance of qualifying for the admission guarantee than the numerically dominant minority groups. Economic disparities along racial lines largely explain why black and Hispanic students are less likely than whites to qualify for the admission guarantee in *both* integrated and majority-minority high schools, which reflects within-school segregation along economic lines. My research with Princeton research associate Sunny Niu and University of Virginia president Teresa Sullivan[14] shows that, among students who attended segregated schools and also aspired to attend college, minority top 10 percent graduates were significantly less likely than their white rank classmates both to know about the admission guarantee and

to enroll in college after graduation. That socioeconomic status was a major barrier to college attendance for minority students who qualified for automatic admission underscores the salience of class *in addition to* race in determining college aspirations and attendance.

This theme is echoed in a study that evaluated whether the Top 10 Percent law altered high school sending patterns to the public flagships, and in particular, whether the applicant pools became more geographically and socioeconomically diverse after the admission guarantee was in force. A study I did with Mark Long and Victor Saenz[15] hypothesized that the transparency of the Top 10 Percent admission policy would increase the share of schools that were represented in the applicant pools of the public flagships as well as the socioeconomic and geographic diversity of the applicant pools. We showed that the Top 10 Percent law increased the number of high schools represented and the geographic diversity of the applicant pool to the University of Texas at Austin, but not Texas A&M University.

Although the Top 10 Percent admission regime was unsuccessful in diversifying the socioeconomic composition of the applicant pools to fully represent the state at either public flagship during the first four years of operation, economic diversification of students eligible for automatic admission increased over time. In 2011, for example, 9 percent of admitted students who graduated in the top 8 percent of their high school class were from families with annual household incomes below $20,000 compared with just 3 percent of discretionary admits. However, among admitted students with family incomes greater than $200,000, 13 percent qualified for the admission guarantee while 29 percent were discretionary admits.[16]

These trends are important because social class has been tendered as a viable race-neutral alternative to diversify college campuses, partly because of the persisting association between race and economic status.[17] Arguing that class-based preferences cannot serve as a proxy for race-sensitive admissions, William G. Bowen and Derek Bok[18] showed that minority enrollments at nineteen selective colleges would drop by half if income preferences were used in lieu of race preferences as a strategy to diversify campuses.[19] Partly because of shortfalls in financial aid and partly because of skyrocketing college costs, strategies that privilege high-achieving students from low-income families are generally more successful at attracting white and Asian students than black and Hispanic students to selective institutions.

I have no quibble with the value of campus economic diversity as a principle of fairness in access to college; rather, two realities temper my enthusiasm for class-based strategies to achieve ethno-racial diversity. One

is that low-income minority students qualified for the admission guarantee are less likely than their statistical counterparts to enroll in a postsecondary institution because of inadequate financial aid packages.[20] The other is that low-income students, particularly those qualified automatic admission, are much less likely to submit applications to selective institutions compared with their rank counterparts from advantaged backgrounds. This reflects partly their attendance at schools with low college-going traditions and partly their inability to enroll without generous financial aid packages. I develop these arguments by focusing on application behavior, which has generally received less attention than admission and enrollment.

Class-based Affirmative Action: Broaden the Applicant Pool

The continuing legal controversy about affirmative action following the *Fisher* decision neglects two individual choices that precede and follow institutional admissions decisions, namely individual students' application and enrollment decisions. For low- to moderate-income students, financial considerations weigh heavily in the timing and location of enrollment, but except for the fees associated with submitting test scores to several institutions (which can be waived for low-income students), financial considerations should be less salient constraints on application decisions. Even as research interest in social class barriers to college attainment rises, scholarly preoccupation with admission regimes and enrollment trends has given short shrift to application behavior in general, and as a conduit to both racial and socioeconomic diversity in particular.

I maintain that application behavior should be an important focus of strategies to diversify college campuses because larger pools provide the needed variation for crafting diverse classes along multiple dimensions. Susan K. Brown and Charles Hirschman[21] similarly emphasized the importance of increasing applicant pools after voters in Washington State passed Initiative 200, a 1998 state ballot initiative that eliminated affirmative action in college admissions. They conclude that the decline in minority representation at the state's flagship institution resulted mainly from the drop in applications from students who perceive the university as unwelcoming, if not outright intimidating.

Low-income students face three hurdles on the way to college attendance: (1) achieving the credentials that qualify them for admission, (2) actually graduating from high school, and (3) applying for admission. By focusing on students who overcome the first two hurdles, namely high school graduates who qualify for automatic admission under the Top 10

Percent law, Princeton statistician Dawn Koffman and I[22] use a best-case scenario to evaluate social class variation in high school level application rates under the Top 10 Percent admission regime. Not surprisingly, we show that top-ranked students from affluent high schools were significantly more likely than their rank counterparts who attended poor schools to seek admission at one of the public flagships. More important is our finding that the socioeconomic composition of applicant pools is remarkably resistant to change, that the admission guarantee did little to raise application rates from poor high schools to the two public flagships, and that it was graduates from the most affluent high schools who drove the surge in applications among top-ranked graduates at the Austin campus.[23] By contrast, Texas A&M witnessed lower application rates from students eligible for automatic admission, and particularly those who attended high schools populated by poor students.

Our findings reinforce the need to target recruitment efforts for talented students who attend resource-poor high schools, where minorities are disproportionately represented and where the college-going traditions are less deeply entrenched, but only if adequate financial aid offers accompany recruitment initiatives. Although we did not investigate the adequacy of financial aid, it is highly likely that the financial incentives provided by UT's Longhorn Fellowships and the Texas A&M Century Scholars program were instrumental in raising application rates of high-achieving, low-income minority students who attend under-resourced schools.

While some on the political right might recoil at the idea of increasing outreach to low-income and minority students, fearing that such students are academically unprepared, my research with Sunny Niu suggests that minority students admitted through the Top 10 Percent plan have performed quite well. Looking at data from 1990 to 2003, we concluded, "Compared with White students ranked at or below the third decile, top 10% Black and Hispanic enrollees arrive with lower average test scores yet consistently perform as well or better in grades, 1st-year persistence, and 4-year graduation likelihood."[24]

Conclusions

Despite being upheld in recent court decisions, consideration of race in college admissions remains highly controversial because the stakes keep growing as the demand for seats at the selective institutions rises, as the college-age population becomes more diverse, and as well-endowed groups opposed to affirmative action continue to orchestrate legal

challenges. By eliminating the test score filter for students who graduate in the top 10 percent of their high school class, the Texas Top 10 Percent law eliminates a key barrier confronted by low-income and minority students and theoretically broadens college access while also potentially diversifying the state's public institutions. But, one of the major lessons from the Texas Top 10 Percent law is that the admission guarantee cannot, *ipso facto,* ensure either that rank-qualified students apply, much less enroll in a post-secondary institution even if they would like to do so. In heterogeneous high schools, white and Asian as well as affluent students are more likely than blacks and Hispanics to qualify for an admission guarantee based on class rank, however the minimum threshold is set.

The Texas Higher Education Opportunity Project[25] was a decade-long initiative that evaluated the myriad consequences of the Top 10 Percent law, including whether it achieved geographic, socioeconomic, and demographic diversity, as its architects intended. There is consensus that the biggest impact was geographic—at least at the Austin campus, where the number and geographic location of sending schools is consistent with broadened access. There is also consensus that affirmative action is a more efficient strategy to achieve campus diversity than offering admission guarantees that capitalize on segregation while producing numerous unintended consequences such as taxing the carrying capacity of the public flagships.

Full-file review allows for narrowly tailored consideration of race in admissions decisions, but the costs can be formidable as the size of the applicant pools surge as they have in Texas. Perhaps the biggest lesson is that statutory solutions for college admissions are not advisable because they are nearly impossible to modify, much less reverse, even as circumstances change. My work with Angel Harris[26] suggests that the Texas flagship campuses would be more diverse had the judicial ban not been imposed and the Top 10 Percent law not been passed, both because of the growing diversification of the college-eligible population and because affirmative action was more efficient in diversifying the admit pool.

Ironically, there has been less attention to diversification of graduate and professional schools, even though the *Hopwood* and *Grutter* complaints were based on denied admission to law schools. As former University of Texas at Austin president Faulkner acknowledged, percentage plans are irrelevant for diversifying graduate and professional school enrollment, and they are also irrelevant for private institutions that draw their students from national pools. Consideration of race in admissions decisions is the most efficient solution to achieving ethno-racial campus diversity.