
Deirdre M Bowen

Available at: https://works.bepress.com/deirdre_bowen/6/
Grutter’s Regrets: An Empirical Investigation of How Affirmative Action is(n’t) Working

Deirdre M. Bowen†

Abstract:

This exploratory empirical work examines whether students of color enjoy the benefits articulated by the U.S. Supreme Court in the Grutter decision that rationalized the continuation of affirmative action based on diversity interests. Specifically, the Court stated that affirmative action was permissible because students of all backgrounds would increase their racial understanding and decrease their racial stereotyping of minorities. Supporters and opponents were skeptical that such benefits would really materialize for students of color. Supporters argued that minority students would merely be tokens in which only white students would benefit from a diverse classroom. Opponents argued that this diversity rationale was a thinly disguised quota system.

Using survey data of over 370 under-represented minority students from twenty eight states majoring in the sciences, I provide insight into whether: 1. students of color increase their racial understanding; and 2. students of color experience a decrease in stigma associated racial stereotyping. The first part of the study asks whether these benefits exist when students are simply in a diverse environment learning with others from different racial or ethnic backgrounds. The second part of the study analyzes whether these same benefits exist when students are in a diverse environment in which other members of their same racial and ethnic background are also present in the classroom. The study seeks to determine if different benefits emerge depending on whether critical mass may be present in the classroom and whether students are in affirmative action versus anti-affirmative action institutions.

†Deirdre M. Bowen is an associate professor of law at Seattle University. This article was supported in part by Grant No. U54 DE019346 from the National Institute of Dental and Craniofacial Research, NIH. Many people deserve thanks in assisting me with this work. The top of the list is my social science research assistant Sasha Craft for her excellent data collection skills and my legal research assistant Jes Erickson for her patience and dedication in managing the many revisions. Thanks to Richard Delgado and André Douglas Pond Cummings for reading earlier drafts. A debt of gratitude goes to Roberta Furst, Sarah Gallagher, and Patricia Sully for their assistance. Finally, a huge thank you to the students who were willing to share their thoughts on the survey and trust that I would do the right thing.
The results are encouraging in that most students report experiencing an increase in racial understanding when learning in a diverse environment generally. Unfortunately, less than a third of students report a decrease in stigma associated with the second benefit of decreased racial stereotyping. However, students in affirmative action states were more likely to report decreased stigma from racial stereotyping than students in anti-affirmative action states. But with an important caveat: the diversity had to create meaningful critical mass. The Court viewed critical mass, a concentration of students from a particular racial background, as crucial to achieving the benefits of diversity. The results raise questions about what kind of racial understanding is achieved when racial stereotyping does not decrease? How can we understand diversity while operating in a colorblind environment?

The paper explores possible explanations for these troubling results and makes recommendations to institutions of higher learning to reconcile the paradox of diversity in a colorblind world. We must work to ensure students of color are not just the producers of diversity but also its beneficiaries.

I. INTRODUCTION

“The desire for a racially diverse community, particularly a diverse school community, is, like the desire for romance, attractive to consider in the abstract…[However,] [r]eality is the enemy of romance.”

In an episode of the hugely popular television show Glee\(^3\) about a group of high school students who perform in a choir, the cheerleading coach beckons students to her “anti-racist choir” by referring to them with their stereotyped traits: “Santana! Wheels! Gay Kid! Come on move it! Asian! Other Asian! Aretha! Shaft!”\(^3\) Once the group of students decides that they don’t like being part of the coach’s minority choir and return to the original choir run by Mr. Shuester, he comforts the entire chorus by asserting, “You’re all minorities.” He goes on to point out the challenges faced by the white kids too.

The comment “You’re all minorities” is emblematic of the discourse adopted by the anti-affirmative action movement in the late

---

1960s. Those in the anti-affirmative action camp argued that everyone in the U.S. is an ethnic minority with struggles. Thus, affirmative action favors a few and unnecessarily so. Similarly, in Glee, Mr. Schuester is arguing that all members of choir face life challenges, while ignoring the unique historical and structural trials minority students endure. Ironically, the show’s main narrative device is the high school social caste system in which chorus members find themselves at the bottom of the heap—steeped in stereotypes associated with that group membership.

Interestingly, the show has been heralded for the diverse cast it employs, even winning the Diversity Award from the Multicultural Motion Picture Association. However, thus far, the show seems to develop plot lines around the white students while retaining the “diverse” cast members for stereotypical jokes.

The show offers an effective metaphor of our current state of affirmative action in higher education. We can celebrate diversity, we can congratulate ourselves on letting diversity in, but we are unwilling to explore how diversity works for those not in the main plot lines. Moreover, institutions of higher learning are resistant to understanding why we need affirmative action beyond creating diversity as a learning tool. For example, numerous schools tout diversity in their admissions packets, but further examination of the materials and/or the actual percentage of minorities in the campus population does little to reveal why diversity is prioritized at the school.

The new affirmative action paradigm focuses on the benefits of diversity for all, rather than redressing past discrimination. After all, the
Submission

Grutter Court held that the University of Michigan Law School had a compelling state interest in preparing its students for an increasingly diverse work force and society by promoting cross-racial understanding and breaking down racial stereotypes. However, both proponents and opponents of affirmative action viewed with skepticism the Court’s adoption of the affirmative action diversity paradigm. Opponents and supporters of diversity articulated dire predictions about what student diversity via affirmative action would offer. Opponents asserted diversity affirmative action would be thinly disguised quotas and supporters worried tokenism. The question remains, though, how a diverse student body rationale benefits or harms students who are the diversity—i.e. students of color. I seek to answer that question in this article.

My research presents the first examination of the post-Grutter cohorts’ perceptions of diversity and its supposed benefits. I hope to provide insight into how students of color—a group for whom both opponents and proponents profess concern for in the affirmative action debate—fare under the Grutter Court’s race neutral model of diversity. My goal is to factually interrogate some of the predictions that opponents and proponents made in the wake of the diversity model of affirmative action.

This study adds insight to the debate about the appropriateness of diversity as a rationale for maintaining affirmative action. Seven years have passed since the Supreme Court issued its twin decisions of Grutter and Gratz and five years since institutions of higher learning have adjusted their admissions plans to comport with the new “forward looking” diversity model of affirmative action—long enough for a university’s student population’s transformation to reflect the alleged harms and benefits of diversity. Using empirical data collected in November 2009 from a national sample of 372 under-represented minority undergraduate students majoring in the sciences, this Article offers a first look at how affirmative action as a diversity model operates for the population of students defined as diverse.

10. See infra Section IV. C. for a full discussion.
11. By using “race neutral,” I am referring to the types of benefits that all racial groups should enjoy, allegedly, such as increased learning, motivation, greater understanding of other racial groups, and increased contact with other students from different racial/ethnic groups.
13. As the Supreme Court issued these decisions in July of 2003, one can presume that college admissions offices did not make changes in their policies until the incoming class of 2004, who would have graduated between June 2008-2010. It takes most students an average of four to six years to complete a college degree. See Carol Frey, Different Paths to College Degrees in U.S. News & World Reports August 19, 2009 available at http://www.usnews.com/articles/education/ best-colleges/2009/08/19/different-paths-to-a-college-degree.html (last checked March 16, 2010).
Specifically, it seeks to answer Justice O’Connor’s recent call for more research. The paper examines whether affirmative action achieves the benefits set out in the Grutter opinion: do students of color enjoy the benefits of increased cross racial understanding and do students of color experience a decrease in racial stereotyping by attending school in a diverse classroom created under affirmative action? In short, the majority of under-represented students of color do report increased racial understanding in a diverse classroom. However, increased racial understanding does not necessarily translate into achieving Grutter’s second goal of decreased racial stereotyping. Why? Because less than a third of minority students in this study report a decrease in the stigma associated with racial stereotyping.

The story, however, is more complex when examining what role affirmative action may play for those students who report both a decrease in stigma associated with racial stereotyping and an increase in racial understanding. First, students of color, regardless of where they attend school, are more likely to find themselves in a diverse classroom. Thus, under-represented students of color are in classrooms that can consistently provide the opportunity to improve their own racial understanding. However, such settings do not guarantee that white students in the class will increase their cross racial understanding of minority students.

That’s where affirmative action could play a role. Students in affirmative action states were more likely to report decreased stigma from racial stereotyping than students in anti-affirmative action states. But with an important caveat: the diversity had to create meaningful critical mass. As the Michigan Law School argued in Grutter, a key ingredient for affirmative action’s effectiveness is critical mass. Thus, it is possible that students in affirmative action states are experiencing decreased stigma at greater rates than their counterparts in anti-affirmative action states because the affirmative action states don’t just create diversity, but


15. As Patricia Gurin found in her study used in the Grutter case, minority students tended to have greater cross racial understanding than white students because such students are more likely to be in a diverse classroom throughout their educational careers compared to white students. See Grutter v. Bollinger, 539 U.S. 330 (2003) (Erica Munzel testimony).

16. The caveat is extremely important. As noted earlier, only about one third of students report experiencing the benefit of decreased stigma most likely because they do not find themselves in classrooms that create a critical mass of diverse students.

17. Id.
Critical mass diversity refers to a concentration of students of a particular ethnic or racial background in the classroom such that others are able to see the variety of experiences and viewpoints that students in that racial or ethnic group hold. In addition, critical mass offers students in that racial group an opportunity to get beyond tokenism where they feel like they are present in the classroom to act as the spokesperson for their race or ethnicity.

On the other hand, when under-represented students of color are asked about the benefits of diversity without critical mass, affirmative action does not appear to be correlated with whether students report experiencing these benefits. Such an outcome is logical. It is not affirmative action in and of itself that creates the benefits. It is a specific type of classroom diversity, i.e. meaningful critical mass that creates benefits. Affirmative action simply creates the opportunity for critical mass to occur in the classroom. However, embedded in critical mass is the idea that it creates functional diversity.

A quick read of the results can lead to a dangerous conclusion that affirmative action makes no difference for the majority of students of color in terms of achieving Grutter benefits. While the anti-affirmative action camp may embrace this short sighted inference in support of its notion that diversity is at best, window dressing, and at worst, a vaguely disguised quota system in violation of the Equal Protection Clause, such a claim ignores what may be possible with affirmative action. On the other hand, supporters of affirmative action must also examine the limits of such a program and ask institutions what more they can do to bring to fruition the benefits of diversity.

A diversity model of affirmative action can achieve more than a diverse student body. It can realize the benefits articulated in Grutter not just for non-minority students, but for students of color too. The cautionary tale in this study is that the diversity model of affirmative action is still a work in progress. The results reveal that institutions of higher learning must continue to work aggressively to transform diversity into critical mass. In reaching critical mass, affirmative action can play an

---

17. See Deirdre M. Bowen, Brilliant Disguise: An Empirical Analysis of a Social Experiment Banning Affirmative Action 85 ILJ 1197 (2010) (finding that students in affirmative action states were much less racially isolated and much less likely to experience stigma and racial hostility.)

19. This type of meaningful critical mass adopts Carbado and Gulati’s paradigm of creating diversity that is functional. See Devon W. Carbado & Mitu Gulati, What Exactly is Racial Diversity? 91 CAL. L. REV. 1149 (2002).

20. Functional diversity allows for "(1) inclusion; (2) social meaning; (3) citizenship; (4) belonging; (5) colorblindness; (6) speech; and (7) institutional culture. Each function derives from the relationship between race and social experiences." Id. at 1154.

20. Recall that these benefits are twofold: increased racial understanding and decreased racial stereotyping. Grutter v. Bollinger, 539 U.S. 330, 342 (2003).
essential role in setting the stage to transform the mindset of the consumers of diversity. In other words, institutions must work to make diversity functional: to create a kind of racial understanding that eliminates stigma and racial stereotyping.

Part II of this Article touches on an oft-overlooked element of the diversity debate: how racial and ethnic diversity differs from other types of diversity, generally, because it is socially constructed. This section plays a central role in confronting the two competing but misguided paradigms of race—either that race is simply a fact devoid of contextual meaning or that race is simply a variable mediating something else like socio-economic status.

Part III briefly examines how affirmative action policy transformed from one of remediation to our current model of diversification in the wake of colorblindness. Likewise, this section offers important insight by setting the stage for contextualizing the results of the study. In other words, the results of the study are to be expected when the law creates what Calmore calls “oxymoronic social justice.” Part IV explores the legal and social scientific definitions, criticisms, and benefits of the diversity paradigm. Part V explains the methodology employed to conduct this study. Part VI examines the results for the entire population and then compares affirmative action schools with anti-affirmative action schools to reveal the results to two questions: (1) Do under-represented minority students receive the benefits of being in a diverse classroom that the Grutter Court hoped for? (2) Do under-represented minority students receive the benefits of being in a diverse classroom that approaches critical mass that the Grutter Court articu-

22. Delgado warned long ago that the greatest danger for minorities was the dominant group’s mindset. Richard Delgado, Storytelling for Oppositionists and Others: A Plea for Narrative, 87 Mich. L. Rev. 2411, 2413–14, 2441 (1989). In the current context, the dominant group demands that students of color rationalize their presence on campus enhancing the current curriculum of the dominant group. Yet, the dominant group’s presence on campus is taken for granted. Requiring students of color to justify their existence reinforces the mindset.

23. I caution the reader at the outset that this study is exploratory in nature. Therefore, it seeks to provide some insight but it also raises more questions via theoretical explanations than definitive answers.

24. Diversity based on race and ethnicity carries a legacy that permeates every aspect of an individual’s life. Race and ethnicity are a form of master status that cannot be switched on and off for the benefit of the individual or classmates. See GoFman, infra note 22 and accompanying text. Students of color do not choose their form of diversity, but they must certainly carry the burdens associated with it. Thus, treating a person’s skin color as an educational enhancement for all has significant import compared with other forms of diversity that may enhance higher education curriculum.


26. Id. at 79 (arguing that colorblindness must apply when people of color seek to remedy their harms because of Whites’ behavior in securing and maintaining their group position). Thus, in the current model of diversity, under Grutter we expect increased racial understanding without actually acknowledging the socio-political underpinnings of race, including defining Whites as a racial group.
lated? The first part of this section examines the results associated with diversity generally, while the second part looks at the benefits that may emerge from critical mass.

Part VII discusses the implications of these results in light of the criticisms, concerns, and predictions raised about the role of the diversity paradigm in affirmative action. I specifically argue the diversity model of affirmative action is a work in progress. It is not yet meaningful for a majority of students of color. One key ingredient is for affirmative action schools to create critical mass. However, critical mass only sets the stage for the essential part of the challenge. Institutions of higher learning must reconcile the paradox of creating a diverse classroom while students are told to operate in a colorblind society. Such a declaration renders the goals of diversity dysfunctional. Confronting the social construction of race and its attendant consequences is necessary in order to understand how race operates. I also explain why the implications matter to all of us, and finally, I offer recommendations for the future of diversity in higher education. Part VIII concludes.

II. THE SOCIAL CONSTRUCTION OF RACE

Any conversation about racial and ethnic diversity must first begin with a discussion of what is and is not included in the definition of race. Unlike other types of diverse characteristics that universities may value in their student body, race and ethnicity are socially constructed. They carry unique social meanings. While most individuals will claim that race can be defined as a biological classification based on shared genetic traits and physical attributes, in fact, no definitive, distinctive and apparent racial characteristics exist. Furthermore, no one has discovered a “race gene” that is completely distinctive to one racial group. Thus, the classification of the human population into particular racial groups is largely arbitrary. Instead, race is defined by the shared experience of

27. See infra Carbado and Gulati note 95.
28. The attempt to classify human races in any sort of definitive manner appears to meet with little agreement. In fact, most social scientists will agree only to the conclusion that any race classification system that exists is based on the eye of the beholder. RUTH BENEDICT, RACE: SCIENCE AND POLITICS (1959).
29. Not only is there no pure race, but differences within alleged racial groups outnumber those found across racial groups. THE SOCIAL CONSTRUCTION OF RACE AND ETHNICITY IN THE UNITED STATES (Joan Ferrante & Prince Brown, Jr., eds., 1998). While it is certainly true that we can statistically identify certain phenotypes associated with certain groups, as well as certain diseases that seem more prevalent in one group than another, these phenotypes and diseases are never exclusive to a group. DAVID M. NEWMAN, IDENTITIES AND INEQUALITIES: EXPLORING THE INTERSECTIONS OF RACE, CLASS, GENDER AND SEXUALITY 40–41 (2005).
30. For example, Brazil’s social construction of who is defined as Black differs dramatically from the United State’s construction. Id.
being placed in one particular racial group, not the perceived physical characteristics of that racial group.\textsuperscript{31}

Race is defined by human interactions. At the societal level, we come to a collective agreement as to the meaning of a particular race, as it has no innate connection to culture or institutions.\textsuperscript{32} In fact, the meaning of race has changed dramatically over time and between societies.\textsuperscript{33} In other words, race is in a constant state of social construction.

To say that race is socially constructed\textsuperscript{34} is to suggest that society defines the reality of race, and thereafter reproduces it daily through interpersonal exchanges as well as interactions with institutions. Early on, as individuals are socialized into a specific society, they learn about the boundaries of group membership and otherness, group position,\textsuperscript{35} and the cultural significance of a particular group status.\textsuperscript{36} In giving meaning to a particular race, society assigns that racial group a social standing, or status, in relation to others.\textsuperscript{37} In turn, members of a particular group come to experience the world—social relationships, rankings, and access to resources through the eyes of how others perceive their group’s status.\textsuperscript{38} Interactions with members of other groups as well as individuals within a group serve to create and reinforce a racial status.\textsuperscript{39} Race is embedded in social relations. Coded interpretations are used to set up the rules of inter-

\begin{thebibliography}{99}
\item Adrian Piper, \textit{Passing for White, Passing for Black}, 58 TRANSITION 4 (1992). According to one prominent sociologist, “What makes a society multiracial is not the presence of physical differences between groups, but the attribution of social significance to such physical differences that may exist.” \textsc{Pierre van den Berghe}, \textit{Race and Ethnicity: Essays in Comparative Sociology} 10 (1970).
\item According to Matthew Jacobson, “... entire races have disappeared from view, from public discussion and from modern memory, though their flesh-and-blood members still walk the earth.” Matthew Frye Jacobson, \textit{Whiteness of a Different Color: European Immigrants and the Alchemy of Race} 2 (1998). In addition, from one geographical location to the next, the members of a racial group vary. For example the race classifications of the United States and Brazil vary so greatly that a person classified as Black in the United States may be considered White in Brazil. \textsc{see Pierre van den Berghe}, \textit{Race and Racism: A Comparative Perspective} (1967).
\item Social scientists assert that race is socially constructed. By that they mean values and ideas about race are created and reproduced through social situations. As David Montejano so aptly put it, “Although race situations generally involve people of color, it is not color that makes a situation a racial one... the race question... represents an arena of struggle and accommodation... [t] comes into being when ideas and sentiments are publicly articulated and institutionalized.” \textsc{David Montejano}, \textit{Anglos and Mexicans in the Making of Texas 1836-1986} 4-5 (1987).
\item Newman, \textit{supra} note 11.
\item Cornell & Hartmann, \textit{supra} note 16.
\end{thebibliography}
teraction with others. Society then uses obvious physical characteristics, or phenotypes, associated with a particular race as a way of explaining differences in human nature.\footnote{Omni and Winant refer to this process as “amateur biology,” in which racial ideology suggests that one’s abilities like athleticism, intelligence, and personality can be presumed from discernable physical characteristics associated with race. \textit{Id.}}

Because certain societies decide racial group membership based on certain physical traits, these traits become the primary identifiers of one’s social status. Goffman referred to this primary identifier—the characteristic of a person that overrides all other features of that person’s identity, in this case, race—as one’s master status.\footnote{See \textsc{Erving Goffman}, \textsc{The Presentation of Self in Everyday Life} (1959). This master status becomes the lens through with all others view an individual regardless of the situation or setting. Perhaps more significant, every master status has a set of auxiliary traits. An individual interacting with a person of a particular master status will assume that person possesses these traits and will react accordingly. \textsc{Patricia A. Adler & Peter Adler}, \textsc{Constructions of Deviance: Social Power, Context, and Interaction} 222 (2006). In the case of race, a set of stereotypical traits are imputed on students of color because one’s racial or ethnic status overrides all other statuses an individual may possess. These auxiliary traits then inform how others will interact with that student.}

One’s master status has a significant impact on one’s sense of self. Cooley articulates this concept as the “looking glass self.”\footnote{See \textsc{Charles H. Cooley}, \textsc{Human Nature and the Social Order} (1902); \textsc{George H. Mead}, \textsc{Mind, Self & Society from the Standpoint of a Social Behaviorist} (1934).} Specifically, Cooley and other symbolic interactionists asserted that one’s self-perception is the effect of interactions with others in social settings. For under-represented minorities, social interactions serve as a daily reminder of their status in the hierarchy of race.\footnote{See, e.g., \textsc{Goffman, supra note 22, at 127. White normativity is the standard by which all other racial groups are measured. Both institutionally and individually, ‘white norms’ are the determinant of what is acceptable, appropriate and merit-worthy. Albert Murray, \textsc{White Norms, Black Deviation}, in \textsc{The Death of White Sociology: Essays on Raced and Culture} (J. Landers ed., 1998). In the colorblind discourse, “whiteness [is] the unacknowledged dominant set of norms, aesthetics, and values from which all others are defined and judged.” Black Hawk Hancock, \textsc{Put a Little Color on That!}, 51 \textsc{Sociological Perspectives} 783 (2008).}

Particularly significant to this concept of looking glass self is the awareness of “significant” others. That is, certain individuals in society will have more influence over others in the development of one’s self-conception. Goffman asserts that individuals, aware of their master status, will engage in impression management\footnote{Goffman asserts that actors engage in a day to day dramaturgy anytime they interact with others. Often the goal in any interaction is to create a “front” that idealizes the actor’s persona to conform with the socially approved norms of the particular situation the actor finds him/herself in and de-emphasize those traits that are considered aberrant. In order to establish these social identities, individuals will attempt, not always successfully, to control communication and information about themselves through performance. The performance in social interaction is known as impression management. \textit{See Goffman supra note 22, at 208. The difficulty with impression management is that an individual can only control so much of the other actors’ perceptions. For example, a minority student may dress, speak, exhibit body language and facial expressions that are all socially exempt--}} with those who have
influence over their access to resources.\textsuperscript{45} Put another way, an under-represented minority student is aware of his or her racial group membership and the culturally defined expectations that are associated with it. A student may thus engage in impression management in an attempt to influence the perceptions of her peers and professors as she navigates her educational career. The unique status of under-represented minority group membership creates a significant cost—the daily burden\textsuperscript{46} of engaging in impression management at institutions of higher learning.\textsuperscript{47}

As will be seen, employing a diversity model of affirmative action while operating in the social fiction of colorblindness has serious consequences.\textsuperscript{48} First the benefits of diversity are mediated differently for students, but there is little she can do to overcome the pre-conceived notions that the other actors hold about that individual based on the color of her skin, i.e., their auxiliary traits. The result, as Goffman points out, is that one’s master status, in this case, race, can be a stigma. In other words, “Any scientist can disprove all its facts and still leave the belief untouched.”\textsuperscript{49} Benedict, supra note 10, at 99.

45. GOFFMAN, supra note 22, at 208.

47. Minority students must continually combat the stereotypes that others hold regarding racial groups. This is particularly acute for under-represented minority students who attend colleges and universities with student bodies who have little to no interaction with individuals outside their own racial background. Unfortunately, these populations receive most of their information about other racial groups from media portrayals that reify stereotypes of racial minorities. One of the most significant casualties of under-represented minority students’ management of stereotypes is the negative effect such stereotypes have on a student’s performance. Claude Steele’s stereotype threat theory demonstrates that otherwise successful minority students, who are faced with a stereotype that the dominant group may use to explain their performance, will often not perform as well, or simply avoid an attempt at achieving success for fear of confirming that stereotype. Claude M. Steele, A Threat in the Air: How Stereotypes Shape Intellectual Identity and Performance, 52 AM. PSYCH. 601 (1997). For example, Professor Steele found that in giving students the same achievement test but in one group telling them it was a problem solving exercise, while telling the other group it was a diagnostic test of intelligence, White and Black students’ average score was virtually identical for in the former setting. However, Blacks performed half as well in the latter setting when faced with a stereotype threat. The results were even more profound when Professor Steele gave the same test to both groups, but in one group asked all students for their racial background but not in the other. Once again, black and white students’ average score was alike when the test did not ask for racial identity, but black students performed at a rate of 60% less than white students when the test queried students’ racial background. Such is the power and burden of racial stereotypes. Id.

48. Colorblindness refers to a paradigm of thinking where one believes that looking past race or simply not acknowledging a person’s racial or ethnic identity is the best way to interact with
students, depending on their racial and ethnic background, precisely because race and ethnicity are socially constructed. Students of color may increase their own cross racial understanding because they are always in the position of interacting with other racial groups. However, eliminating stereotypes and entitlement is difficult to achieve without recognizing the social construction of racial hierarchies. Frank discussion is required in order for all students to comprehend what it means to not occupy a space of privilege. College campuses with affirmative action may have begun the journey of achieving diversity but are at risk of losing their way without meaningful critical mass that leads to authentic colorblindness.49

Let us examine how anti-affirmative action activists and the judiciary manipulated the discourse of race and inequality to construct colorblindness over the last thirty years. In other words, we explore how they created a construct with considerable traction that asserts race is irrelevant in a diverse “nation of ethnic groups.”50 Colorblind supporters decontextualize the nature by ignoring socially constructed racial hierarchies that put students of color on the lower rungs of the ladder. However, these hierarchies are entrenched. Having diversity operate within a university that espouses colorblindness undermines the very purpose of creating a diverse student body: racial enlightenment and racial stereotype elimination.51 If institutions of higher learning fail to acknowledge the contextualized nature of race and specifically, the need for critical mass, we cannot achieve functional diversity. Thus, the limits of the diversity model of affirmative action emerge.

III: THE ETHNICITY MODEL, REACTIONARY COLORBLINDNESS, AND “FORWARD-LOOKING DIVERSITY”

The fortitude of the anti-affirmative action movement can be attributed to the slow moving, but effective perfect storm of three factors: the social scientific paradigm shifting away from race based discourse to ethnic based discourse; the judiciary’s application of so-called colorblindness in the name of equality for all; and finally the manipulation of Martin Luther King’s ideas to suggest that he aspired for a colorblind ideal based on white normative notions of meritocracy.52 The success of

---

49. Colorblindness is possible. However, it is a colorblindness that emerges only when diversity is functioning appropriately. See Carbado & Gulati, infra note 95.


52. It is not the idea of meritocracy in of itself that is objectionable. It is the institutional application of a meritocracy that has and continues to benefit the privileged elite. See e.g., Charles R.
this approach, and essentially the eye of the storm, appears in the disaggregation of the saliency of race from its social setting. This next section discusses how the use of the ethnicity model and the colorblind ideal led us to the diversity paradigm, where affirmative action survives on life support for the next nineteen years with a “Do Not Resuscitate” order.53

A. The Emergence of the Ethnicity Model

Ethnicity stems from a sense of “peoplehood.”54 A group perceives or believes they share ancestry, similar language, customs, religion, and often a political community.55 Like race, ethnicity is a social phenomenon, not necessarily a biological one.56 Tremendous changes in life course, ethnic identities, as well as changing generational allegiances, intermarriage, and transformed social categories suggest that ethnic groups are not as clearly defined by blood lineage as members may believe. 57 The characteristics that define an ethnic group are flexible. But they do emerge from a sense of cultural heritage—the artifacts of that heritage create inclusionary and exclusionary boundaries.58

Yet, the very essence of the “the melting pot”59 was that Europeans would shed the cloth of the old country and adorn the quilt of America. A new American identity formed from the patchwork of many different


54. GORDON, supra note 13.

55. Ethnic groups are often accorded specific cultural traits that set them apart into a sub-culture within a larger cultural and social system. Melvin Tumin, Ethnic Group, in DICTIONARY OF THE SOCIAL SCIENCES 243 (Julius Gould & William L. Kolb eds. 1964).


57. Sociologists Helen and Everett Hughes see the social creation of ethnic differences in this way: “[A]n ethnic group is not one because of the degree of measurable or observable differences from other ethnic groups; it is an ethnic group, on the contrary, because the people in it and the people out of it know that it is one; because both ins and outs talk, feel, and act as if it were a separate group.” EVERETT AND HELEN HUGHES, WHERE PEOPLES MEET: RACIAL AND ETHNIC FRONTIERS 156 (1952).

58. Id.

59. Israel Zangwill introduced this phrase in the title to his play, which opened in Washington, D.C. in 1908. He penned the play during the largest wave of immigration the U.S. had experienced. The immigrants were overwhelmingly Irish, Germans, Italians, and Eastern Europeans. See ISRAEL ZANGWILL, THE MELTING POT: A DRAMA IN FOUR ACTS (1911).
such was the power of transformation that particular groups’ identities could change from a non-white racial group to that of a white euro-ethnic group. Thus, the melting pot became a metaphor for a nation of ethnic groups that had assimilated into American culture and reaped the rewards of economic and political opportunity.

This idea of a nation of ethnicities rather than races may have begun with the transformation of Southern and Eastern European races into ethnicities, but its broader application to other racial groups, most particularly African Americans, began with Nathan Glazer and Patrick Moynihan. To devastating effect, they argued that the ethnicity model should cross a (darker) color line (i.e. non-Whites). However, the ethnicity model was not used to welcome African Americans or Puerto Ricans into the pool of economic or political opportunities, or to celebrate the cultural traditions they could add to the melting pot. Instead, the dominant group applied ethnicity to explain the lack of economic success of these groups. African American and Puerto Rican culture was at the root of these groups’ plight, according to Glazer and Moynihan, to the “complete exclusion of structural factors.”

By extension, if cultural pathology rather than structural factors lay at the root of African American subordination, then race based structural remedies like affirmative action would not solve the problems of that

60. For example, Italian, Polish, Irish, Greek and Jewish immigrants experienced significant hostility by the native-born Anglo-Saxon race who viewed themselves as ‘real’ Americans. Mary C. Waters, Optional Ethnicities: For Whites Only?, in ORIGINS AND DESTINIES (S. Pedraza & R. Rumbaut eds. 1996). However, as subsequent generations have successfully moved up the economic ladder due to educational and economic opportunities not afforded to non-European racial minorities, Euro-ethnic groups previously “racialized” as not White, and therefore inferior, beginning with the Irish in the mid 1800s, began to be included in the American social construct of Whiteness. Karen Brodkin, How Jews Became White Folks and What That Says about Race in America 25 (1998). What was once a non-White inferior racial group of European descent now became an ethnic group within the White race.

61. As Haney Lopez points out this transformation was intended to apply only to those boundaries that divided people who could be clearly classified as Whites, i.e. Southern and Eastern Europeans often of Jewish descent. HANEY LOPEZ, supra note 18, at 1007-08. See DAVID R. ROEDIGER, WORKING TOWARDS WHITENESS: HOW AMERICA’S IMMIGRANTS BECAME WHITE: THE STRANGE JOURNEY FROM ELLIS ISLAND TO THE SUBURBS 22 (2005).


63. In this article, I capitalize “Whites” to describe Caucasians when used as a noun. When used as an adjective, “white” is not capitalized.

64. HANEY LOPEZ supra note 18, at 1010.
community. Using ethnicity theory, Glazer and Moynihan argued that affirmative action was simply interest group politics—yet another ethnic group competing for resources. As Haney Lopez writes:

> By dropping structural inequality and entrenched racial hierarchy from the ethnic account, Glazer and Moynihan stripped the clarity of history from the claims for race-conscious remedies. Such demands no longer seemed to call on the nation to repair gross injustice; instead, they sounded like special pleading by yet another pressure group, effectively shifting the moral register of affirmative action from an impassioned appeal to political pulling.

The application of ethnicity theory to African Americans as an instrument of blame came as a tragic backlash against the short-lived legal and political system’s coming to terms with the causes of African Americans’ post-World War II subordination. With the slow adoption of Myrdal’s *An American Dilemma* in *Brown v. Board of Education*, liberal race theory briefly took hold amongst the liberal elite. It began as some viewed prejudice as irrational.

Initially, the liberal elite acknowledged the prejudice endured by and the subordination of African Americans. The first response led to an individualized cure. Americans needed to stop engaging in their bigoted practices on a day to day level. However, as the status of African Americans did not change in the face of the alleged transformation of individual white attitudes towards African Americans, political leader-

---

67. HANEY LOPEZ, supra note 18, at 1012.
68. GUNNAR MYRDAL, *AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY* (1944).
70. Liberal race theory, developed in the early 1900s, rejected the notion that physical characteristics could determine one’s talents and abilities. Specifically, this theory sought to dispel the idea that nature aligned racial groups into an indisputable hierarchy. Physical characteristics associated with race were nothing more than physiognomy. HANEY LOPEZ, supra note 18, at 997.
71. But see Derrick Bell, *The Space Traders, in Faces at the Bottom of the Well: The Permanence of Racism* 158–94 (1992) (arguing that the decision in *Brown* was motivated by white self interest, not white self awareness of its contribution to structural racism).
72. MYRDAL, supra note 45.
73. In fact, three forces made clear that structural, not individual racism needed to be addressed. First, New York Times best selling “paperback”, the National Advisory Commission on Civil Disorders, issued its report in 1968 outlining the grim realities and effects of every aspect of African American life from overt discrimination to appalling housing conditions, substandard schools, blocked access to health care and employment, police abuses, and police harassment. The Commission issued the report, known as the Kerner Report, in the hopes of explaining the wave of riots that took hold in urban areas throughout the United States. The report made clear that the poverty and overall punishing existence of African Americans lay definitively in the hands of white society. NAT’L ADVISORY COMM’N ON CIVIL DISORDERS, REPORT OF THE NATIONAL COMMISSION ON CIVIL DISORDERS (1968). See HANEY LOPEZ, supra note 18, at 1005. The report validated the
ship looked to redress the effects of racism embedded in virtually every institution in the United States. That leadership understood what the courts had slowly come to comprehend: structural change using race based means was necessary to loosen the bondage of three hundred years of oppression.  

Unfortunately, as Haney Lopez observed, “[T]he window for fundamental change opened just slightly before blowing shut again in the face of a quickly gathering backlash.”

B. The Judiciary’s Use of Colorblindness

The backlash took the form of calls of “reverse discrimination” in the face of an ethnicity model where certain “innocent victims” were suffering at the hands of government policies favoring particular racial groups. The United States Supreme Court responded with a conception of anti-classification that put racial subjugation and race conscious remedies in the same pool. Thus, when faced with its first affirmation action case in 1978, the Court began its march to apply strict scrutiny in decid-

work of Stokely Carmichael and Charles Hamilton in which they asserted that the stark conditions in the African American Community were a direct function of institutional racism. STOKELY CARMICHAEL & CHARLES V. HAMILTON, BLACK POWER: THE POLITICS OF LIBERATION IN AMERICA (1967). Finally, the need to address structural racism came even earlier in 1965 with Dr. Martin Luther King’s assessment that “[a]t the root of the difficulty in Negro life is pervasive and persistent economic want. To grow from within the Negro needs only fair opportunity for jobs, education, housing and access to culture. To be strengthened from the outside requires protection from the grim exploitation that has haunted it for 300 years.” Martin Luther King, Jr., Address at Abbott House, Westchester County, New York (Oct 29, 1965) available at http://www.directblackaction.com/museum/shmuseum/MLKJR.htm.

74. In 1964, Congress passed the Civil Rights Act that banned discrimination in public places, schools, and employment. Congress also passed the Voting Rights Act in 1965 to prevent barriers to minorities voting. In addition, Congress passed the Civil Rights Act of 1968 to eliminate discrimination in the sale or rental of housing. Similarly, courts found that the Constitution required the use of race conscious means to undo discrimination embedded in social institutions. Indeed, in N.C. State Bd. of Educ. v. Swann, the unanimous Court stated: “Just as the race of students must be considered in determining whether a constitutional violation has occurred, so also must race be considered in formulating a remedy.” 402 U.S. 43, 45–46 (1971).

75. HANEY LOPEZ, supra note 18, at 1004.

76. Hodding Carter, Jr. used the term in the December 17, 1955, edition of the Saturday Evening Post, accusing the NAACP of “reverse racism” in response to the Brown v. Board of Education ruling.

77. The innocent victim discourse is used consistently in court opinions to ensure any classification systems based on race do not harm individuals who will not receive the benefits of affirmative action. See, e.g., University of California Regents v. Bakke, 438 U.S. 265, 298, Grutter 539 U.S. at 325. See also HANEY LOPEZ, supra note 18, at 988 (pointing out that reactionary colorblindness finds the evils of invidious discrimination interchangeable with benign discrimination).

78. Marshall responded vehemently to this argument. He vigorously pointed out that the centuries of legal oppression endured by Blacks that was unique to Blacks prevented the majority from situating Blacks as just another ethnic group to add to the melting pot. Indeed, Blacks never entered the stew. Any harm Whites experienced because of Affirmative Action could hardly be weighed against the centuries of structural racism and concurrent racial subjugation endured by Blacks. Bakke, 438 U.S. at 388–401 (Marshall, J. concurring in the judgment in part and dissenting in part).

79. HANEY LOPEZ, supra note 18, at 988.
ing that racial classifications should be banned.\footnote{It should be noted, however, that the level of scrutiny was not decided in Bakke, but rather the debate began there. Powell argued that all racial classifications should be reviewed at the strict scrutiny level while the four Justices in favor of racial classifications argued the lesser standard of “intermediate” level of review. University of California Regents v. Bakke, 438 U.S. 265 (1978).} With the Bakke decision, the Court took a dramatic turn away from its long history of rejecting a racial anti-classification scheme that those seeking to maintain the racial hierarchy supported.\footnote{See Kenneth B. Nunn, Post-Grutter: What Does Diversity Mean in Legal Education and Beyond? Diversity as a Dead-End, 35 PEPP. L. REV. 705, 706 (2008).} Bakke specifically embraced a view of the nation as one of ethnic equality.\footnote{Bakke, 438 U.S. at 334.} Justice Brennan lamented that the Court sought to disaggregate race from its social and historical context.\footnote{Bakke, 438 U.S. at 328–56 (Brennan, J., concurring in the judgment in part and dissenting in part).} He chastised the majority, stating, “color blindness [will] become myopia which masks the reality that many ‘created equal’ have been treated within our lifetimes as inferior both by the law and by their fellow citizens.”\footnote{Id.} Furthermore, Justice Blackmun tersely warned his colleagues that racism can only be confronted with race consciousness.\footnote{Id. at 407 (Blackmun, J., concurring in the judgment in part and dissenting in part).}

Such pleas for color-cognizant remedies were firmly rejected in subsequent judicial cases\footnote{In a series of affirmative action cases involving employment, the Court applied the strict scrutiny standard in evaluating race conscious government measures. See Wygant v. Jackson Board of Education, 476 U.S. 267 (1986); City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989); Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995).} as well as in the political arena.\footnote{In the political arena, Ward Connerly and others had captured the imagination of both California and Washington by using the color blind rhetoric to persuade voters to pass propositions banning affirmative action. Khaled Ali Beydoun, Without Color of Law: The Losing Race Against Colorblindness in Michigan, 12 MICH. J. RACE & L. 465 (2007).} By the time the Court returned to affirmative action twenty-five years later in Grutter and Gratz, the Court, as well as anti-affirmative action advocates, fully embraced the colorblind ideal.\footnote{As Nunn observes, “The upshot of the Court’s efforts to establish strict scrutiny as the standard of review in affirmative action cases was to frustrate governmental efforts to address pre-existing inequalities through remedial cases.” Nunn, supra note 58, at 710.} While Powell set the stage for this approach in Bakke by proclaiming the United States as a nation without majority, in Grutter, colorblindness took center stage.\footnote{In Grutter, Justice O’Connor declares, “[T]he diffusion of knowledge and opportunity through public institutions of higher education must be accessible to all individuals regardless of race or ethnicity.” Grutter, 539 U.S. at 331 (emphasis added). As Cedric Merlin Powell observed, “[M]oving from a substantive, non-neutral conception of the Fourteenth Amendment in its early race decisions, the Court now emphasizes neutrality by focusing almost exclusively on minimizing the impact on white privilege if race conscious remedies are permitted, or on the marketplace paradigm of the First Amendment as a substitute for the anti-caste and anti-subjugation principles.” Cedric Merlin Powell, Rhetorical Neutrality: Colorblindness, Frederick Douglas, and Inverted Critical Race Theory, 56 CLEV. ST. L. REV. 823 (2008).} Indeed, the Su-
preme Court granted certiorari in Grutter only on the diversity question.\textsuperscript{90}

Within this context, proponents of affirmative action had to make a strategic decision to abandon the “backward looking” model\textsuperscript{91} of affirmative action in favor of a new approach focusing on the benefits of diversity for all.\textsuperscript{92} So, with Grutter, affirmative action advocates made a conscious decision to advance affirmative action as the implementation of a higher education policy designed to enhance the market place of ideas.\textsuperscript{93} But in doing so, they took a risk that students of color would pay a price for their affirmative action diversity admission.\textsuperscript{94} The consequences of this approach are explored here.

IV. THE SOCIAL AND LEGAL DEFINITIONS AND CRITICISMS OF DIVERSITY

While those on the front line of the affirmative action battle made a calculated decision to embrace diversity\textsuperscript{95} as a way to hold on to oppor-

---

\textsuperscript{90} The remedial issue, justifying affirmative action based on past discrimination, was raised by student intervenors, but the Supreme Court denied their attorneys the opportunity to present oral arguments. See, Rachel F. Moran, Of Doubt and Diversity: The Future of Affirmative Action in Higher Education, 67 OHIO ST. L.J. 201, 216 (2006). By the time the Court heard the Grutter case, a long series of affirmative action cases had solidified the notion that affirmative action could not be used to remediate past discrimination. Lee C. Bollinger, A Comment on Grutter and Gratz v. Bollinger, 103 Colum. L. Rev. 1589, 1590 (2003).

\textsuperscript{91} The backward looking model of Affirmative Action argued that such an admissions approach was needed to not only make up for past discrimination minorities endured, but present discrimination, structural and otherwise, that minorities still endured. Indeed, the focus was on reparations for a society that had not yet finished the job of elimination discrimination. Charles R. Lawrence III, Two Views of the River: A Critique of the Liberal Defense of Affirmative Action, 101 COLUM. L. REV. 928, 928 (2001).

\textsuperscript{92} See Nunn, supra note 58, at 710 (noting that some civil rights advocates abandoned the remedial model in favor of the diversity model in light of the political and legal hostility towards race based remedies). HANEY LOPEZ supra note 18, at 1004 (arguing that the contemporary color-blindness movement was not born out of civil rights advocacy, but by defenders of white supremacy in the racial hierarchy).

\textsuperscript{93} See Grutter v. Bollinger, 539 U.S. 306, 327–28 (2003). “Before this Court, as they have throughout this litigation, respondents assert only one justification for their use of race in the admissions process: obtaining ‘the educational benefits that flow from a diverse student body.’” (quoting Brief of Respondents at 1, Grutter, 539 U.S. 306 (no. 02-241) (2003)).

\textsuperscript{94} The risk of employing the diversity model of affirmative action in which everyone benefits is that in fact, only white students actually benefit from exposure to minority students, but not vice versa. In other words, students of color must act as tokens in the classroom to educate their white counterparts. It is unclear whether the opposite is true. Kenneth Nunn, Diversity as a Dead End 35 PEPP. L. REV. 705, 724 (2008).

\textsuperscript{95} At the time the University of Michigan Law School’s lawyers were contemplating how best to frame their legal argument, they not only evaluated Patricia Gurin’s research on diversity, but also examined Claude Steele’s extensive body of work on Stereotype Threat Theory. While Steele prepared a report on the challenges with merit-based testing for admission, the legal team chose to use the benefits of diversity for all students model. University of Michigan, Admissions Lawsuits, http://www.vpcomm.umich.edu/admissions/research/ (last visited Feb. 22, 2010). Relying on challenging the structural model of admissions that benefits Whites (mostly) would be a tacti-
tunities to redress the structural inequality both past and present, those in the social scientific community believed that diversity might possibly offer a more effective solution to addressing current societal ills.  

A. Social Scientific Definition of Diversity

Gottfredson et al., in reflecting on Hurtado’s comments that diversity could develop skills in students that would help them address social inequality, wrote that “if diversifying student bodies across the country creates better citizens in the way Hurtado described, then focusing on academic outcomes for all students may alleviate more social problems than affirmative action intended solely for the purposes of proportional representation.” This pragmatic approach appears in much of the social scientific work on diversity. Specifically, social scientists spend less time worrying about the appropriateness of affirmative action from a legal standpoint and more time on how best to make diversity an effective tool in creating social good.

In contemplating how best to achieve the benefits of diversity, Allport identified two important conditions to lower prejudice in diverse groups. The dominant group must be exposed to the “out” group in casual situations in which the “out” group has equal social status with the dominant group. In addition, the interactions should occur in a cooperative environment with the support and encouragement of a person in authority. These suppositions served as the basis for Contact Theory, which became the guiding influence for recent notions of how to define and measure the benefits of diversity.

Specifically, two types of diversity have emerged in the social scientific community as they relate to higher education. The first is known...
as “contact diversity.”

Under this construct, researchers measure the frequency and sometimes quality and valence of contact between individuals from different racial, ethnic, gender, religious, or class backgrounds to evaluate outcomes associated with these types of contacts.

Some of the benefits measured from contact diversity include reducing prejudice, increasing positive attitudes towards the out-group, and generalizing those attitudes to other out-groups. Other benefits include the ability to think critically and with open-mindedness, participate in civic engagement as a citizen concerned for the public good, be willingness to engage in perspective taking with integrative complexity.

The second type of diversity is defined as “classroom diversity” but for clarity purposes, I will call it “content diversity.” In this situation, social scientists observe student exposure to diverse minority and cultural issues in a formal academic setting. Researchers examine more narrowly the benefits for students taking required courses in multicultural issues. The benefits include reduced racist attitudes and stereotypes. It appears these were just the types of benefits the Grutter Court found as palatable reasons to preserve affirmative action. Yet, as will be seen below, legal conceptions of diversity focus solely on contact diversity. Content diversity seems to be missing from the equation.

102. Gottfredson et al, supra note 71.
104. Pettigrew, supra note 75.
105. Id.
106. Id.
107. Hurtado, supra note 75.
108. Id.
109. Id.
110. Gurin, supra note 75.
111. This concept measures the ability to comprehend and internalize different perspectives into one’s own point of view. Antonio, supra note 75.
112. Gottfredson et al., supra note 71.
B. Legal Definitions of Diversity and its Benefits in the Court and Academy

These were certainly the benefits Justice O’Connor had in mind when she crafted the Grutter opinion. She adopted a careful set of linguistics in describing what diversity is. She used the term as both a noun and an adjective when she wrote, “[t]he policy does not define diversity solely in terms of racial and ethnic status and does not restrict the types of diversity contributions eligible for ‘substantial weight.’”\(^ {114} \) She used the word as a noun in the first part of the sentence to explain that it certainly includes race and ethnicity but is not limited to that definition. In the second part of the sentence, she used diversity as an adjective to suggest that one’s race or ethnicity is a characteristic that can enhance a “Law School’s character. . . .”\(^ {115} \) This classification is important because an object, a person of a particular race or ethnicity is suddenly transformed into a modifier—an educational enhancement for an institution. Minority racial identity becomes the justification for a student’s presence on campus. Race is a salient feature.\(^ {116} \) In other words, a person with a particular master status\(^ {117} \) is defined as benefitting the institution or not.

While neither O’Connor nor Michigan Law School defines the other types of diversity, one can imagine that prior work experience, particular artistic talent, or even athletic abilities also may be considered diverse contributions. The problem is that no other type of diversity contribution is also a master status.\(^ {118} \) For O’Connor, race is at once salient for educational advantages, but impervious to structural inequalities.\(^ {119} \)

\(^ {115} \) Id.
\(^ {116} \) In this sense, Grutter adopts a view of race as an empirical fact. See Calmore, supra note 24.
\(^ {117} \) Goffman, supra note 22.
\(^ {118} \) Stephanie Wildman, in describing how difficult it is to teach by analogy using a person’s master status (my words, not hers), observed that she could not find a meaningful comparison for Anglo students to understand racial oppression. A colleague suggested that she use the example of being wrongfully thought of being gay or a lesbian. She writes, “Comparing oppressions may lead to a false sense of understanding. The lesson about subordination would come at the expense of implicitly validating oppression on the basis of sexual orientation.” Stephanie Wildman, Privilege and Liberalism in Legal Education: Teaching and Learning in a Diverse Environment, 10 Berkeley Women’s L.J. 88–90 (1995). However, the same danger occurs when comparing one’s racial status as a diverse contribution in the same way as non-master status characteristics would be diversity contributions. While all of these characteristics are used to enhance the student body’s educational experience, these characteristics will enhance in different ways. Understanding a musician or baseball player, or community health worker’s view is very different from understanding what oppression is like for an individual who cannot choose when to reveal his or her educational enhancing characteristic, i.e. her race or ethnicity or gender and knows no rewards come from possessing these master statuses.
\(^ {119} \) O’Connor wishes to acknowledge that race has some meaning in society in that it shapes how individuals interact with each other in corporations and the military, but she doesn’t want to acknowledge the structural consequences of the long history of racial interactions. Marvin Jones, What Does Diversity Mean in Legal Education and Beyond? Plessy’s Ghost: Grutter, Seattle
other words, O’Connor decontextualizes race, framing it as just another interesting attribute a person can bring into the classroom. Yet, the master status of race carries with it a social narrative unlike any other type of “diverse” characteristic.

However, diversity alone does not present the full picture. The University of Michigan Law School carefully laid out its desire to create an unquantifiable concentration of under-represented minorities in each class so that these students could contribute in a meaningful way without feeling isolated. The law school referred to this additional conception of diversity as “critical mass.”

The Court seemed to understand that in order to achieve the three benefits the Law School’s expert witnesses articulated, and that O’Connor embraced as “substantial,” this particular definition of diversity, one that creates meaningful representation of under-represented minority students, was important. The supposed benefits articulated include the promotion of racial understanding, better preparation of students entering an increasingly diverse workforce and society, and dismantling racial stereotypes.

While diversity, critical mass, and its benefits took center stage in the *Grutter* case, these terms garnered the legal academy’s attention twenty-five years earlier when Powell introduced the diversity idea in *Bakke*. The terms returned to prominence more recently, as the backlash against affirmative action gained full steam. However, as Carbado and Gulati observed, a lot of diversity literature exhibits the same deficiencies. It does not define the term “diversity.” Perhaps the omission occurred because, as Carbado and Gulati theorize, Powell did not clearly articulate the term in *Bakke*. Regardless, the authors create a useful taxonomy of diversity that situates the definition within its normative

---

121. *Id.*
122. *Id.* at 331.
126. *Id.* at 1150.
function as it relates to higher education. Specifically, they define racial diversity as “a relationship that exists between race and social experiences on the one hand, and knowledge and practices, on the other. Central to racial diversity is the notion that how we experience, think about, and conduct ourselves in society is shaped, though not determined, by our race.”\textsuperscript{127} It is precisely this point that higher education has not fully achieved in the current configuration of diversity on a colorblind campus.

While Carbado and Gulati’s taxonomy includes seven functional categories, I believe the nomenclature can be reduced into two modalities—institutional and individual utilities for our purposes here. These modalities create a space for a fully engaged citizenry that provides rich content and expansive paradigms of thought.\textsuperscript{128} Furthermore, as the results demonstrate below, institutions of higher learning may be capable of creating functional diversity and achieving the Grutter goals, but they have only just begun the task.

The same criticism regarding the clarity of meaning also applies to the term “critical mass.” Addis points out that “[w]hile there is a degree of certainty as to what the phrase means in the scientific realm, there does not seem to be such clarity in relation to the application of the phrase in the social and political world. Indeed, the term’s clarity has not matched its popularity.”\textsuperscript{129} In the legal domain, within higher education and affirmative action discourse, Addis argues that the term finds use as both an analogy and a metaphor without clear definition.\textsuperscript{130}

While the terms may elude a specific meaning, diversity, at least, has not escaped a more specialized taxonomy. Perhaps borrowing from the social science literature, the law has conjured up three additional types of diversity: structural diversity, which refers to the percent of nonwhite students at a university; classroom diversity, which examines a student’s exposure to knowledge about race and ethnicity in the classroom setting; and informal interactional diversity, which measures the extent to which students interact outside of the classroom with peers of different racial or ethnic backgrounds.\textsuperscript{131}

Perhaps because the terms resist clarity, they suffer scathing criticism from both sides of the affirmative action fence. However, much of

\textsuperscript{127} Id. at 1153.
\textsuperscript{128} The functions are inclusion, social meaning, citizenship, belonging, colorblindness, speech, and institutional culture. Id. at 1154.
\textsuperscript{130} Id. at 111. The analogy is drawn to the scientific realm where mass refers to numbers and “critical” refers to “meaningful.” As a metaphor, it simply means an idea. Id.
\textsuperscript{131} Dorothy Brown, Taking Grutter Seriously, 43 Hous. l. REV. 1 (2006).
that criticism is resting on a set of assumptions without empirical support. This paper hopes to start filling in that gap.

C. Criticisms of the Diversity Model

Broadly speaking, four main criticisms weigh against diversity. Some proponents of affirmative action view the diversity model as a weak and colorblind betrayal of the original goal of affirmative action: to redress structural racism and open opportunities to minority groups historically and currently not afforded them. Moreover, proponents worry whether the contemplated advantages of diversity benefit only white students rather than all students. In addition, both sides question whether empirical research supports these alleged benefits. Finally, opponents ask whether student diversity offers any educational benefits at all. Or instead, does it merely disguise a thinly veiled attempt to remediate past racial wrongs using quotas? I begin with the proponents of affirmative action criticisms and follow with the opponents’ assessment.

1. Affirmative Action Proponents’ Critique of the Diversity Model

Some proponents of affirmative action saw the Grutter rationale as definitively embracing the diversity model and, consequently, breathing new life into affirmative action. Over time, others saw the diversity


134. Derrick Darby, Educational Inequality and the Science of Diversity in Grutter: A Lesson for the Reparations Debate in the Age of Obama, 57 U. KAN. L. REV. 755, 779 (2009) (arguing that relying on empirical findings as the authority for the majority opinion leaves the position open to attack when contrary findings reveal themselves); ANGELO ANCHETA, SCIENTIFIC EVIDENCE AND EQUAL PROTECTION OF THE LAW 6 (2006) (observing that “[m]any judges may lack the technical expertise in science and mathematics that would enable them to become the types of ‘amateur scientists’ who could be truly effective gatekeepers”); Brian N. Lizotte, The Diversity Rationale: Unprovable, Uncompelling, 11 Mich. J. RACE & LAW 625 (2006) (provides a scathing critique of the theory, methodologies, and logic of the studies the Court relied on to support the compelling interest of student diversity).

135. “This, of course, is not an educational benefit . . . . For it is a lesson of life rather than law—essentially taught the same lesson taught to . . . people three feet shorter and 20 years younger than the full-grown adults at the University of Michigan Law School . . . .” Grutter, 539 U.S. at 347 (Scalia, J., dissenting).

136. See Grutter, 539 U. S. at 374 (Thomas, J. concurring in part and dissenting in part) (observing that Equal Protection Clause demands the elimination of racial barriers not their creation to achieve a particular social order).

model as a firm and final rejection of affirmative action’s deployment as a remedial tool of past and present discrimination. As Nunn writes,

When the Supreme Court first issued its decision in Grutter, there was some hope among social justice advocates that the decades-long judicial retraction of tools needed to provide true equality of opportunity had ended. However, close examination of the Court’s Grutter decision and subsequent decision in Parents Involved show these hopes were misplaced. Diversity is not a tool for social justice, and to the extent that diversity was seen as providing an alternative to the already-threatened remedial rationale for race-conscious remedies, diversity has turned out to be a dead end.

Even prior to Grutter, scholars warned against the employment of diversity as a means of keeping affirmative action alive. Lawrence warned that the diversity paradigm would protect white privilege rather than redress the structural and institutional barriers of discrimination in higher education.

Bell reaffirmed these warnings and charged that the diversity paradigm amounted to a betrayal of affirmative action’s original purpose. He observed that the diversity strategy invites more litigation, gives credence to standardized “merit”-based admission profiles that advantage

UCLA L. REV. 1613,1626 (2006) (pointing out the Grutter court focused more heavily on the benefits of affirmative action to democratic institutions and the military institutions in reducing the arrayo between privileged whites and disfavored minorities by opening up opportunities for the latter in the higher ranks of citizenry engagement). More recently, Hutchinson wrote that it was possible, but difficult to prove, that perhaps in Grutter, O’Connor changed her mind about using race-conscious remedies to redress the legacy of past discrimination, but could not expressly articulate her new position in the face of her prior decisions. Instead, by allowing evidence of acceptable strategies of installing race into the lexicon of higher educational goals, O’Connor recognized in Grutter that societal discrimination can be adequately demarcated. See Harry G. Hutchinson, Moving Forward? Diversity as a Paradox? A Critical Race View, 57 CATH. U. L. REV. 1059, 1079 (2008). See also Lynette Clemetson, N.A.A.C.P. Legal Defense Fund Chief Retires, N.Y. TIMES, Jan. 16, 2004, at A10 (noting the Director Counsel’s willingness to retire after the Supreme Court’s decision upholding affirmative action in Grutter v. Bollinger); David Savage, Court Affirms Use of Race in University Admissions, L.A. TIMES, June 24, 2003, at 1 (noting that for the first time in recent history, civil rights leaders celebrated a major victory).

138. Juan Perea, Buscando America: Why Integration and Equal Protection Fail to Protect Latinos, 117 HARV. L. REV. 1420, 1452 (2003) (arguing that in rejecting the remedial purpose of affirmative action, the Court rationalizes the utilitarian effects of diversity for Whites).


140. Nunn, supra note 58, at 720.


142. Id.; see also, Richard Delgado, Affirmative Action as a Majoritarian Device: Do You Really Want to Be a Role Model?, 89 MICH. L. REV. 1222, 1224 (1991) (arguing that affirmative action is a homeostat in which institutions admit enough students of color to maintain stabilization without infringing on the privileged group).
privileged white applicants, and distracts from addressing the root causes of inequality—poverty and discrimination.\textsuperscript{143}

Furthermore, Brown-Nagin observed that in some ways, Justice Thomas recognized and advocated for the structural reformulation of admissions to create equal access to higher education, which the majority ignored.\textsuperscript{144} Specifically, while the majority abandoned the intervenor’s argument that the university needed race-conscious criteria to compensate for its biased credentials-based admissions profile, in his dissent Thomas, like Bell, confronted this issue, but Thomas disagreed that affirmative action would be the panacea.\textsuperscript{145}

While Thomas criticized universities and law schools for employing diversity as mere window dressing,\textsuperscript{146} proponents of affirmative action criticized the model as benefitting only white students at the cost of their minority counterparts.\textsuperscript{147} Advocates expressed their major concern of tokenism,\textsuperscript{148} which creates two main issues. First, students of color learn that resources are delineated based on race and that they must perform according to white normative expectations of race. In other words, these students must “perform their ethnicity for admissions officers.”\textsuperscript{149} Second, the risk of stereotype threat follows from these recitals, as students may soon learn the classroom environment requires more performance. As mere tokens, students of color must confront the stereotype associated with their racial or ethnic background or gender\textsuperscript{150} and consistently demonstrate that they do not fit it.\textsuperscript{151}

On the one hand, minority students can feel the stress of tokenism. By being one of too few; but, on the other hand, minority students can also feel the stress of being one of too many. “As racial and ethnic minorities increase on campus, the salience of racial and ethnic differences

\textsuperscript{143} Derek Bell, \textit{Diversity’s Distractions} 103 COLUM. L. REV. 1622 (2003).
\textsuperscript{145} \textit{Id}.
\textsuperscript{146} Grutter, 539 U.S. at 372–73 (Thomas, J. concurring in part and dissenting in part).
\textsuperscript{147} In the law school context, Dorothy Brown asked, “Are . . . schools ‘working’ diversity?” because she is concerned to what extent diversity is used to effect one of the benefits articulated in \textit{Grutter}, namely the breaking down of racial stereotypes. Dorothy Brown, \textit{Taking Grutter Seriously: Getting Beyond the Numbers} 43 HOUSTON L. REV. 1 (2006).
\textsuperscript{148} Nunn, supra note 58, at 722–23.
\textsuperscript{151} As Claude Steele points out, the stress of having to ensure that the stereotype does not attach can significantly impact student performance. Steele, supra note 28, at 614.
grows. The resulting sense of Balkanization may harm the academic performance of students of color by making them feel isolated. . . .”

Critics conveyed a related concern that while universities professed to desire critical mass, a high risk of tokenism and/or Balkanization may occur because of who controls definitions of diversity on campus (not the students of color). Meaningful numbers, the phrase adopted by the University of Michigan Law School as best explaining critical mass—“are controlled by the educational institution and are outside the influence of the minority communities within them.” Ultimately, the criticisms of the diversity model can be summed up as a way to enhance the curriculum of white students without sacrificing their elite status. But students of color bear the burden (a criticism not too far removed from that of Justice Thomas’ observations).

2. Affirmative Action Opponents’ Critique of the Diversity Model

Those who oppose affirmative action employ the same critiques generally to affirmative action that they apply to the diversity theory of affirmative action. These criticisms fall into four main categories. First, they accuse affirmative action supporters of embracing diversity for aesthetic reasons with no meaningful benefits for minorities. Second, the diversity model simply provides a mask for implementing a quota system. Third, affirmative action, for whatever reason, creates the risk of stigma and resentment. Finally, affirmative action could create entitlement that will resist change.

Justice Thomas warned in his Grutter dissent that universities and law schools employed diversity as a methodological tool to achieve educational benefits, but that diversity could not be an end in itself. However, he was skeptical that this approach could accomplish the law school’s educational goals. Instead, he chastised the majority for not seeing the diversity model for what it was: nothing more than a classroom aesthetic. He wrote,

---

152. Moran, supra note 121, at 2264. Balkanization occurs when students withdraw from the larger campus community into factions based on racial or ethnic group status, and each group resists interaction with each other. Id.
153. Nunn, supra note 58, at 723.
154. Bowen refers to this rationale of enhancing the curriculum through racial diversity as “diversity curriculum” in which students of color are present in the classroom primarily as an educational tool for white students. Deirdre M. Bowen, Brilliant Disguise: An Empirical Assessment of a Social Experiment Banning Affirmative Action 85 Ind. L.J. (forthcoming 2010).
155. Deborah Jones Merritt observes that “selective colleges have just the ‘right’ mix of white and minority students, enough African American and Latino students to give the campus an urbane, cosmopolitan air without threatening the white campus majority.” Deborah Jones Merritt, Brown’s Legacy: The Promises and Pitfalls of Judicial Relief, 56 NEGRO EDUC. REV. 51, 53 (2005).
“[D]iversity,” for all of its devotees, is more a fashionable catchphrase than it is a useful term, especially when something as serious as racial discrimination is at issue. Because the Equal Protection Clause renders the color of one’s skin constitutionally irrelevant to the Law School’s mission, I refer to the Law School’s interest as an “aesthetic.” That is, the Law School wants to have a certain appearance, from the shape of the desks and tables in its classrooms to the color of the students sitting at them.\textsuperscript{156}

Thomas also asserted that the majority used the end goal of diversity and the methodological approach of diversity interchangeably.

The interchangeability of these terms reveals that a quota system is at play according to Thomas.\textsuperscript{157} In \textit{Grutter}, Rehnquist accuses the majority of relying on diversity as a means to educational benefits as merely a ruse to achieve racial balancing.\textsuperscript{158} In fact, Scalia agrees and proclaims, “I join the opinion of the Chief Justice. As he demonstrates, the University of Michigan Law School’s mystical ‘critical mass’ justification for its discrimination by race challenges even the most gullible mind. The admissions statistics show it to be a sham to cover a scheme of racially proportionate admissions.”\textsuperscript{159} Outside of the law, Ward Connerly, the individual behind the many anti-affirmative action referenda passed in California,\textsuperscript{160} Washington,\textsuperscript{161} Michigan,\textsuperscript{162} and Nebraska,\textsuperscript{163} as well as the media coverage devoted to this topic, effectively communicated affirmative action as reverse discrimination through the use of quotas.\textsuperscript{164} Be-

\textsuperscript{156} \textit{Grutter}, 539 U.S. at 355 n.3 (Thomas, J., concurring in part and dissenting in part).

\textsuperscript{157} Id.; Sumi Cho, \textit{From Massive Resistance, to Passive Resistance, to Righteous Resistance Understanding the Culture Wars from Brown to Grutter}, 7 U. PA. J. CONST. L. 809, 831 (2005); see also Bakke, 438 U.S. at 319 (the quota system tells applicants who are not Negro, Asian, or Chucano that they are totally excluded from a specific percentage of the seats in an entering class).

\textsuperscript{158} However, we don’t frame the legacy admissions program as a quota system that tells applicants who are first generation college applicants that they are totally excluded from a specific percentage of the seats in an entering class.

\textsuperscript{159} Id. at 347–48. See also Lauren Arms, \textit{It’s Not All Black and White: Race-Based Admissions Purport to Achieve a Critical Mass of Diversity, but in Reality Merely Mask a Predetermined Quota of the Ideal Integrated Society}, 49 S. TEX. L. REV. 205 (2007); Joshua Levine, \textit{Stigma’s Opening: Grutter’s Diversity Interests(s) and the New Calculus for Affirmative Action in Higher Education}, 94 CAL. L. REV. 457 (2006). But see Alex M. Johnson, \textit{Defending the Use of Quotas in Affirmative Action: Attacking Racism in the Nineties}, 1992 U. ILL. L. REV. 1043, 1060 (1992) (arguing that quotas are an acceptable and necessary tool for higher education admissions when a pool of qualified candidates is available to achieve a class of students reflective of the demographics in society).

\textsuperscript{160} California Proposition 209 (1996).

\textsuperscript{161} Washington Initiative 200 (1998).

\textsuperscript{162} Michigan Proposition 2 (2006).

\textsuperscript{163} Nebraska Initiative 424 (2008).

\textsuperscript{164} Beydoun, reflecting on how the Michigan Civil Right Initiative passed, observed that in focus groups conducted by the Racial Justice Working Group, “Participants enter the discussion of affirmative action with misinformation about the extent of the reach of affirmative action programs. Few offer examples beyond quotas for minorities in college admissions and hiring . . . .”
cause the Supreme Court clearly rejected racial balancing as unconstitutional, and the political and media climate equated affirmative action with reverse discrimination, a reference to quota became code for not only impermissible legal goals but also all socially offensive preconceptions associated with affirmative action.165

While opponents argued that ‘quotas’ may harm those who do not benefit from affirmative action, they also expressed equal concern for the harm the policy may likewise cause its beneficiaries.166 Of all these arguments, the risk of stigma best captures the collective imagination.167 Richard Sander received applause for his empirical study outlining the mismatch of students of color in institutions of higher learning through the use of affirmative action and its consequences.168 Stigma results


165. Cho, supra note 128. Specifically, among these offensive preconceptions are that certain groups would get a leg up in admissions to school or employment opportunities and thus deny more deserving people these opportunities. People, who naturally, believed they were entitled to these opportunities based on “merit.”

166. For example, Justice Powell rejected employing affirmative action as a tool for remedying past discrimination when innocent parties would be burdened. Likewise, O’Connor was mindful of the same concern. See Bakke, 438 U.S. at 310; Grutter, 539 U.S. at 341.

167. Perhaps because this argument deflects focus from the self-interest of opponents of affirmative action. It is so compelling. Instead, the opponent is recreated as altruistic in his or her concern for the groups long oppressed and “misguided” in their belief that redress can be found in affirmative action.

when schools admit students of color who are not qualified to attend, so the story goes. In his Grutter dissent, Thomas wrote bitterly, “These programs stamp minorities with a badge of inferiority.”

Thomas also raised the final argument against affirmative action. He warned that such programs would create dependence and a sense of entitlement for their beneficiaries. However, others pioneered the argument prior to Thomas’s dissent in Grutter. Relying on data collected in other countries that applied affirmative action policies, Sowell concluded, among other things, that beneficiaries lacked incentive to perform at their best. Bloom expounds further and predicts in his analysis of Grutter, “It may cement racial preferences into the social structure as a fundamental entitlement immune from removal regardless of any change in circumstances.”

While the debate between the benefits and risks associated with affirmative action has played on for decades, the Supreme Court revisited the topic in Grutter, giving deference to empirical data in the search for answers to these competing assertions. The use of empirical data came with its own costs. A number of legal commentators raised concerns

---


171. Grutter, 539 U.S. at 373.

172. Id.

173. THOMAS SOWELL, AFFIRMATIVE ACTION AROUND THE WORLD: AN EMPIRICAL STUDY (2004). However, Sowell was later critiqued for data selection choices that yielded a desired outcome. See, e.g. Harris & Kidder, supra note 138.

about the reliance on social scientific data, but one such critique deserves special attention.175

D. The Social Science of Diversity and its Limitations

Gurin’s expert opinion report played a central role in the argument the University of Michigan Law School put forth to argue the state’s compelling interest in affirmative action.176 However, Gurin’s study, as well as other studies on the benefits of diversity had limitations in its applicability. Lizzotte discusses Gurin’s study as well as others in detail.177

Gurin operationalized the concept of “diversity” in a different way than the Court contemplated it in its rationale. Gurin relied on structural diversity, which can only measure the percentage of students of color on a college campus. Lizzotte argues that structural diversity might provide some insight into the potential for the kinds of benefits Gurin discusses, but it cannot be correlated with benefits that most often emerge through classroom contact. Indeed, even Gurin warns that structural diversity is not enough.178

Lizzotte observed that conversely, those studies measuring the benefits of diversity by counting those students enrolled in ethnic studies courses serve as too narrow a measure of the association between diversity and its benefits at the campus level. In other words, benefits that accumulate for students enrolled in courses designed to address issues related to diversity are not generalizable to the population of students at large.179 As Lizzotte pointed out, it is difficult to measure whether racial diversity on campus or in just certain types of classes is a good measure of the type of diversity Grutter sought campus wide.180

---

175. See e.g., Derrick Darby, Educational Inequality and the Science of Diversity in Grutter: A Lesson for the Reparations Debate in the Age of Obama 57 U. KAN. L. REV. 755 (2009); Roslyn Mickelson, Twenty-First Century Social Science on School Racial Diversity and Educational Outcomes, 69 OHIO ST. L. J. 1173, 1175 (2008); see also, Moran, supra note 121 (summarizing the contrasting studies of the benefits and risks associated with a diverse campus climate).

176. Lizzotte, supra note 105.


178. Gurin’s study found that diversity can create both “learning” and “democracy” outcomes in which students in the most diverse classrooms were more likely to engage in perspective taking rather than stereotyped thinking and were engaged citizens interacting with diverse others. Id. at 365–66.

179. “Although structural diversity increases the probability that students will encounter others of diverse backgrounds, given the U.S. history of race relations, simply attending an ethnically diverse college does not guarantee that students will have the meaningful intergroup interactions that . . . are important for the reduction of racial prejudice.” Peter Schmidt, “Intergroup Dialogue” Promoted as Using Racial Tension to Teach, Chron. Higher Educ., July 16, 2008.

180. Id. at 648–49.

181. Id.
One additional study adds insight to Gurin’s important work. A recently published study of data collected in 2004 provides a nuanced look at what differently operationalized types of diversity can offer.182

Gottfredson, et al. conducted two studies using national samples of undergraduates and law students and found the following results regarding diversity and its attendant benefits. First, content diversity183 yielded moderate effects on students’ ability to engage new perspectives before forming their own opinions. Similarly, contact diversity184 provided small effects.185 Moreover, only content diversity seemed to increase students’ cultural awareness and ability to recognize instances of social inequality.186

These results are important because, as discussed in the previous section, skeptics have often warned that diversity would result in nothing more than window dressing. These studies suggest that the benefits the Grutter Court envisioned result when students are engaged in conversations about race in a constructive manner within a racially diverse classroom. However, an important caveat is that the researchers collected this data prior to the reconfigured definitions of affirmative action.

This study offers the first exploration of the post-Grutter cohorts’ perceptions of diversity and its supposed benefits in all types of classrooms on campus. By examining under-represented minority students majoring in the sciences, we can evaluate more broadly how diversity benefits present themselves in classes that may not include a curriculum on issues of race.

V. METHODS

The data analyzed in this study originated from a survey187 distributed at the Annual Biomedical Research Conference for Minority Students188 held in Phoenix, Arizona from November 4th through the No-

182. Gottfredson et al., supra note 71.
183. Recall that content or classroom diversity refers to student engagement with diversity topics as part of the curriculum of the course. Gottfredson et al., supra note 71, at 82.
184. Contact diversity refers to the ability of students to interact and engage with students from different racial/ethnic groups than the one to which they belong. See id. at 82.
185. However, it should be noted that classroom diversity and contact diversity are moderately correlated, which means that students in diverse classrooms may also receive increased opportunities to engage with students different than themselves outside of the classroom. Id. at 93.
186. Gottfredson et al., supra note 71. But see, Thomas J. Espenshade & Alexandria Walton Radford, NO LONGER SEPARATE, NOT YET EQUAL: RACE AND CLASS IN ELITE COLLEGE ADMISSIONS AND CAMPUS LIFE (2009) (finding that students reported the most gains in racial understanding from informal activities like socializing and not formal activities. Diversity training proved less effective.).
187. The survey is attached in Appendix A.
188. The ABRCMS is the largest professional conference for biomedical students for minority students. It is designed to encourage under-represented minority students to pursue advanced training in the biomedical and behavioral sciences. It also provides resources for these students’
Grutter’s Regrets

November 9th, 2009. I gained access to the conference through the approval and support of Clifton Poodry (Director of Minority Opportunities in Research Division, National Institute of General Medical Sciences, National Institute of Health) and Dr. Cliff Houston from the University of Texas.

189. I chose to collect data on under-represented minority students in the hard sciences because these students may well take elective courses in ethnic studies, but most likely do not converge in their classes about race and ethnicity issues. You will recall that one of the criticisms of other work on diversity is that the sample involves students in ethnic studies courses, which are too narrow to generalize, or base results on campus-wide diversity, which lacks the necessary connection to what occurs in the classroom. Thus, understanding how students of color benefit from diversity in a wide variety of courses outside of the ethnic studies curriculum offers a more meaningful way to examine its effect. Furthermore, while a significant amount of work has been done writing about minority students in undergraduate education generally, see Corinne E. Anderson, A Current Perspective: The Erosion of Affirmative Action in University Admissions, 32 A.KRON. L. REV. 181 (1999); Margally Armstrong & Stephanie M. Wildman, Teaching Race/Teaching Whiteness: Transforming Colorblindness to Color Insight, 86 N.C. L. REV. 635 (2008); Michael J. Kaufman, (Still) Constitutional School Desegregation Strategies: Teaching Racial Literacy to Secondary School Students and Preferencing Racially-Literate Applicants to Higher Education, 13 MICH. J. RACE & L. 147 (2007); Angela Onwuachi-Willig, The Admission of Legacy Blacks, 60 VAND. L. REV. 1141 (2007); Alfreda A. Sellers Diamond, Serving the Educational Interests of African-American Students at Brown Plus Fifty: The Historically Black College or University and Affirmative Action Programs, 78 TUL. L. REV. 1877 (2004), and in legal education and affirmative action, see Alma Clayton-Pedersen & Sonja Clayton-Pedersen, Post-Grutter: What Does Diversity Mean in Legal Education and Beyond? “Making Excellence Inclusive” in Education and Beyond, 35 PEPP. L. REV. 611 (2008); D. Marvin Jones, Post-Grutter: What Does Diversity Mean in Legal Education and Beyond? Plessy’s Ghost: Grutter, Seattle and the Quiet Reversal of Brown, 35 PEPP. L. REV. 583 (2008); Numm, supra note 58; Adrien Katherine Wing, Race-Based Affirmative Action in American Legal Education, 51 J. LEGAL EDUC. 443 (2001), very little has been written regarding diversity for students in the hard sciences. See Barbara A. Noah, A Prescription for Racial Equality in Medicine, 40 CONN. L. REV. 675 (2008); Susan Welch & John Gruhl, Bakke in the Admissions Office and the Courts: Does Bakke Matter? Affirmative Action and Minority Enrollments in Medical and Law Schools, 59 OHIO ST. L.J. 697 (1998). Disparate life expectancies and access to health care remains dramatic between Whites and minority groups. Having minority students in medical school and as doctors, researchers, and health care professionals will have a life-altering impact on these populations. Yet, under-represented minorities’ under enrollment in the hard sciences in colleges, graduate schools, and professional schools is more significant than in any other fields of study. Understanding how diversity does or does not benefit these particular students becomes crucial. See generally, National Science Foundation, Women, Minorities, and Persons with Disabilities in Science and Engineering, http://www/nsf.gov/statistics/wmpd/ (last visited March 15, 2010).
I collected the survey data from noon until 4 p.m. on the first day of registration. My research assistant and I approached students after they checked in at the conference’s registration center. I asked if they would like to participate in the study, briefly described its goals, and, if they consented, I asked them to read about the goals and confidentiality assurances before they filled out the survey. In the end, 372 students completed the survey. The goal of the survey was to have students identify whether the two key benefits the Grutter Court imagined—increased racial understanding, and destruction of stereotypes—had come to fruition in a diverse classroom.

I separated the survey into three sections because I sought to distinguish three themes within the study. In the first section, I attempted to identify how students conceived of diversity in their own words, prior to seeing the rest of the survey questions. In addition, I asked what benefits they imagined could result from diversity, and finally, the nature of their experiences (if any) in a diverse classroom environment. The next section was devoted to gathering demographic data about the respondents. These data included questions on gender, race, year in school, class (as measured by parents’ educational attainment), and the type and location of school they attended.

The last section asked students to describe their typical classroom population based on race and gender diversity and their ideal classroom population based on race and gender diversity. In addition, I asked students to rate twenty statements on a scale of one to six, with a rating of one meaning “strongly disagree” and a rating of six meaning “strongly agree.” Ten of the statements asked students to contemplate the benefits of being in a classroom with students of a different racial or ethnic background than their own to simply measure a diverse classroom. The next

---

192. Per the terms of the ABCRMS.org agreement for me to conduct the study, I had to complete data collection before the actual conference events began at 4:30 p.m.
193. This study was approved by the Human Subjects Review Board. I was given a certificate of exemption. It is on file with the author.
194. It is important to note that this is not a random sample. Furthermore, it is impossible to calculate a true response rate, as all students did not have access to the survey. I can say, however, that of the 400 students who we did approach, only 28 declined to participate—thus 93% of the students chose to respond to the survey. I cannot say with confidence that no bias exists in the sample. Of those that chose not to participate, most stated that they were under time constraints. As stated earlier, the sample size is adequate as an exploratory study, but cannot be generalized the population at large.

Furthermore, readers may have additional questions about the demographics of general population of conference attendees or the type of school the respondents attended. The ABCRMS does not keep this level of data. In addition, the human subjects review board limited the type of questions I could ask on the survey. For example, I could not ask the name of the school the respondent attended. Without a doubt, these results demand that additional research be conducted. What we can say about the sample is that these are high achieving students being mentored to continue their academic careers in public and private, HBCUs and traditionally white schools in twenty states, two territories and Mexico.
ten statements asked students to contemplate the benefits of being in a classroom with students of the same racial or ethnic background as their own in order to measure critical mass.\footnote{195}

I chose to gather data on the structural diversity within a classroom, as opposed to on the campus at large because classroom diversity offers a more accurate measure of the correlation between the benefits a student might encounter from learning in a classroom rather than the benefits a student more generally enjoys as a result of the campus population. In doing so, I hope to identify possible clear connections between a diverse classroom and the \emph{Grutter} objectives. Furthermore, by focusing on students not majoring in subject areas that specifically deal with race and ethnicity issues, I can better examine the impact of diversity across courses that typically do not address these issues.\footnote{196} Thus, these methodological strategies are designed to address specifically the benefits associated with contact diversity.

I operationalized the benefits of diversity by categorizing the statements into three groups: the benefits associated with cognitive successes, the benefits associated with increased racial understanding, and the removal or decrease of stigma. The first two categories are designed to answer the question of whether students of color increase their racial understanding by either being in a diverse classroom or a critical mass classroom or both. The last category is designed to answer the question of whether diversity functions to achieve the second \emph{Grutter} goal of dismantling the effects of racial stereotyping by being in a diverse or critical mass classroom.

In addition, I also drafted statements to ask students to reflect not only on their own experiences but also on those of others in class. Finally, I attempted to mitigate the effects of response bias in a number of ways. First, students filled out the survey in a space of their choosing away from others, thus, avoiding the subconscious influence of nearby peers in a classroom setting. Students sat anywhere they chose in an anonymous lobby. I further reduced response bias by allowing students to simply drop completed surveys in a box, rather than hand them back to me or my research assistant. In addition, I asked students if they valued

\footnote{195. These statements drew on the benefits articulated in Gurin’s work, the expert witness for the law school in \emph{Grutter}, as well as the arguments that the law school and others have articulated regarding the benefits of diversity. The complete survey is in Appendix A. Diversity is defined simply as being in a classroom with people who are of a different racial or ethnic background than the respondent. The critical mass measure is defined simply as being in a classroom with more than one other individual who is of the same racial or ethnic background as the respondent.}

\footnote{196. However, Espenshade et al. supra note 163 found that forty percent of students at the ten most selective institutions in the country attending school between 1980 and the late 1990s took at least one ethnic studies class.}
diversity. This variable acted as a control to determine whether students who valued diversity answered other questions differently from those who viewed diversity as less important.

I coded and analyzed all data using the Statistical Program for the Social Sciences to examine relationships between variables.

VI. RESULTS

In this section of the paper, the results of the analysis follow. Recall that the goals of this study were to determine whether the current post-Grutter configuration of affirmative action creates the benefits of cross-racial understanding and the elimination of racial stereotyping and its stigmatic effects for students of color.

The first table indicates the demographics of the sample. Females comprise the majority of the sample. African American and Latina/os also dominate the sample. Similarly, juniors and seniors represent two-thirds of the group. Most of the sample attends state schools. In fact, all students who attended school in an anti-affirmative action state attended a public institution, and nearly 40% of the students attend HBCUs. Parents of slightly more than half of the students obtained at least a college degree. Finally, three-quarters of the students attend school in affirmative action states.

A. The Benefits of Affirmative Action in a Diverse Classroom

The next table reveals the benefits students of color perceive that they receive from being in a diverse classroom, but not necessarily one that achieves critical mass. In this sense, students are asked to reflect on interacting with people from other racial or ethnic groups than their own. The table provides data for the whole sample as well as by racial or ethnic group. Although variables measure different types of benefits, the results appear in descending order based on the percentage of students in the entire sample agreeing or strongly agreeing with a particular statement.

According to Grutter, minority students interacting in a classroom with individuals of different racial and ethnic membership will increase racial understanding. The results prove true for the most part. Further, under Grutter, students of color in a diverse class would find less racial stereotyping and decreased stigma. Unfortunately, the results reveal less than half of the students agree with this supposition.
Table 1: Demographics

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Gender</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>36.6%</td>
<td>(135)</td>
</tr>
<tr>
<td>Female</td>
<td>63.1%</td>
<td>(233)</td>
</tr>
<tr>
<td><strong>Race/Ethnic Group</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>African American</td>
<td>51.8%</td>
<td>(190)</td>
</tr>
<tr>
<td>Latina/o Hispanic</td>
<td>28.6%</td>
<td>(105)</td>
</tr>
<tr>
<td>Two or more races</td>
<td>10.9%</td>
<td>(40)</td>
</tr>
<tr>
<td>Asian/Pacific Islander</td>
<td>5.2%</td>
<td>(19)</td>
</tr>
<tr>
<td>Middle Eastern</td>
<td>.5%</td>
<td>(2)</td>
</tr>
<tr>
<td>Native American</td>
<td>.3%</td>
<td>(1)</td>
</tr>
<tr>
<td>East Indian</td>
<td>.3%</td>
<td>(1)</td>
</tr>
<tr>
<td>West Indian</td>
<td>.3%</td>
<td>(1)</td>
</tr>
<tr>
<td>African</td>
<td>.3%</td>
<td>(1)</td>
</tr>
<tr>
<td><strong>Age</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mean</td>
<td>22 yrs.</td>
<td></td>
</tr>
<tr>
<td><strong>Year in School</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Freshman</td>
<td>5.2%</td>
<td>(19)</td>
</tr>
<tr>
<td>Sophomore</td>
<td>12.6%</td>
<td>(46)</td>
</tr>
<tr>
<td>Junior</td>
<td>29.5%</td>
<td>(108)</td>
</tr>
<tr>
<td>Senior</td>
<td>35.8%</td>
<td>(131)</td>
</tr>
<tr>
<td>Graduate</td>
<td>14.2%</td>
<td>(52)</td>
</tr>
<tr>
<td><strong>Type of School</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private</td>
<td>26.8%</td>
<td>(99)</td>
</tr>
<tr>
<td>Public</td>
<td>73.2%</td>
<td>(271)</td>
</tr>
<tr>
<td><strong>Attend HBC/U</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>38.0%</td>
<td>(140)</td>
</tr>
<tr>
<td>No</td>
<td>62.0%</td>
<td>(228)</td>
</tr>
<tr>
<td><strong>Parent Education as a Measure of Class</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Less than four-year degree</td>
<td>46.9%</td>
<td>(172)</td>
</tr>
<tr>
<td>College or graduate degree</td>
<td>53.1%</td>
<td>(195)</td>
</tr>
<tr>
<td><strong>Attend School in Affirmative Action State</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Affirmative action state</td>
<td>77.7%</td>
<td>(286)</td>
</tr>
<tr>
<td>Anti-affirmative action state</td>
<td>22.3%</td>
<td>(82)</td>
</tr>
</tbody>
</table>
1. The Entire Sample

First, let us examine the importance of racial diversity to the student of color. Indeed, slightly over half (56%) agreed or strongly agreed that it was important. The next series of variables are designed to measure the benefits associated with racial understanding. Notably, the data revealed that most respondents (77.7%) agreed or strongly agreed that classroom diversity led them to a greater understanding of others’ viewpoints. Thus, racial diversity may lend itself to exposure and understanding of diverse viewpoints.

Further, over two-thirds of the students believed that diversity in the classroom led to positive interracial experiences. Finally, slightly over half (56.5%) believed that in-class diversity could lead to positive contact diversity. All the other benefits, however, captured less than half of the students’ affirmation.

Slightly less than half of the students felt that diversity in the classroom increased their learning in class (46%) or increased their motivation (44%). Furthermore, when asked specifically about diversity increasing the ability of white students to engage in perspective taking less than 40% of the students agreed.

The next set of variables examines the benefits associated with eliminating racial stereotyping and reducing stigma through a diverse classroom. Specifically, I explore how this second Grutter goal operates regarding racial climate, and internal and external stigma. Overall, just under half (46.7%) of the respondents felt that classroom diversity led them to feel more welcome on campus. Similarly, I examined whether a diverse student classroom might improve interactions with professors.

195. The table reveals that students of varying racial and ethnic backgrounds respond differently to the benefits of diversity. While the sample size is too small to show statistically significant differences, these differences will be discussed in the next section.

198. The variable whether “diversity is important to student” is the strongest and only significant predictor of all other diversity benefits reported. The significance of the “diversity is important to student” variable will be explored in the Part VII.

199. Contact diversity refers to the ability of students to have quality and plentiful connections with students from other racial backgrounds.

200. Recall, perspective taking, as described by Gottfredson et al, is the ability of a student to take on other perspectives before reaching conclusions about the complexities of a new situation. Gottfredson et al., supra note 71. In other words, increasing cognitive openness allows students to engage in new points of view.

201. Currently, a significant percentage of science professors in the United States are foreign born, and do not have a sophisticated understanding of the nature of race relations in this country. For example in 2008, 33% of faculty in computer sciences, 26% in engineering, 33% in math, and 22% in physical sciences were from other countries. CONGRESSIONAL RESEARCH SERVICES, REPORT FOR CONGRESS FOREIGN SCIENCE AND ENGINEERING PRESENCE IN THE U.S. INSTITUTIONS AND LABOR FORCE (2008); see also, Julie J. Park & Nida Denson, Attitudes and Advocacy: Understanding Faculty Views on Racial/Ethnic Diversity, 80 J. OF HIGHER ED. 415 (2009) (asserting that faculty in engineering were least likely to score high on the diversity advocacy measure and faculty in math and sciences were most likely to fall low on the diversity advocacy scale).
### Table 2: Percent Responding Agree or Strong Agree to Benefits of Being in a Diverse Classroom by Race/Ethnic Group

<table>
<thead>
<tr>
<th></th>
<th>All</th>
<th>Afr. Am.</th>
<th>Latino/a</th>
<th>Asian Am.</th>
<th>Multiracial</th>
</tr>
</thead>
<tbody>
<tr>
<td>Led to greater understanding</td>
<td>77.7%</td>
<td>76.7%</td>
<td>78.7%</td>
<td>77.1%</td>
<td>84.7%</td>
</tr>
<tr>
<td>Promoted positive interracial experiences for student in and out of class</td>
<td>68.3</td>
<td>62.3</td>
<td>69.7</td>
<td>63.2</td>
<td>74.4</td>
</tr>
<tr>
<td>Importance to student</td>
<td>56.5</td>
<td>54.6</td>
<td>53.1</td>
<td>52.7</td>
<td>65.0</td>
</tr>
<tr>
<td>Led to positive interracial experiences for other students</td>
<td>56.4</td>
<td>46.4</td>
<td>63.6</td>
<td>68.4</td>
<td>63.2</td>
</tr>
<tr>
<td>Felt more welcome on campus</td>
<td>46.7</td>
<td>41.3</td>
<td>53.0</td>
<td>63.1</td>
<td>41.0</td>
</tr>
<tr>
<td>Student learns more in classes</td>
<td>46.0</td>
<td>43.2</td>
<td>50.0</td>
<td>42.1</td>
<td>42.5</td>
</tr>
<tr>
<td>Student became more motivated</td>
<td>44.0</td>
<td>43.2</td>
<td>45.5</td>
<td>47.4</td>
<td>38.4</td>
</tr>
<tr>
<td>Decreased overt racism</td>
<td>43.4</td>
<td>35.1</td>
<td>53.1</td>
<td>47.4</td>
<td>51.3</td>
</tr>
<tr>
<td>Led to white students’ perspective taking</td>
<td>39.3</td>
<td>28.5</td>
<td>44.6</td>
<td>42.2</td>
<td>55.2</td>
</tr>
<tr>
<td>Led to more positive interactions with professor</td>
<td>39.1</td>
<td>37.5</td>
<td>38.5</td>
<td>26.3</td>
<td>47.5</td>
</tr>
<tr>
<td>Decreased rate of qualifications questioned</td>
<td>33.6</td>
<td>30.1</td>
<td>40.6</td>
<td>26.3</td>
<td>42.5</td>
</tr>
<tr>
<td>Decreased students’ pressure to prove themselves because of race/ethnicity</td>
<td>31.1</td>
<td>29.1</td>
<td>39.1</td>
<td>33.3</td>
<td>45.0</td>
</tr>
</tbody>
</table>
Less than 40% agreed that diverse students in the class led to more positive interactions with professors. Moreover, only 43.4% felt that diversity in the classroom decreased overt racism.\textsuperscript{202}

Similarly perplexing results arose from the stigma variables where one would anticipate decreased racial stereotyping. For the external stigma variable—the extent to which students feel stigmatized by others—one-third of the students agreed or strongly agreed that a diverse classroom decreased the rate at which others questioned their qualifications. Furthermore, less than a third of students believed that diverse environments decreased internal stigma—the extent to which students internalize doubts surrounding their ability or right to attend school. I asked whether diversity decreased the pressure students felt to prove themselves based on race or ethnicity.\textsuperscript{203}

2. Diversity Benefits in Affirmative Action vs. Anti-Affirmative Action States

Table Three shows the same results regarding the benefits of diversity but compares responses based on whether a student attends school in an affirmative action or anti-affirmative action state.\textsuperscript{204} Under the logic of \textit{Grutter}, affirmative action states would produce more students experiencing the benefits of diversity. The numbers reveal some surprising results.

Again, it is important to examine whether a relationship exists between the affirmative action policy of the students’ schools and whether they view classroom diversity as important. In fact, regardless of where students attend, the same distribution occurs between students who are ambivalent, disagree, or strongly disagree on the importance of a diverse classroom. In other words, whether one attends school in an anti-affirmative action state or an affirmative action state does not correlate with whether a student views diversity as important.

\textsuperscript{200} Students were free to define overt racism as they saw fit. I did not provide examples or define it for them in the survey.

\textsuperscript{203} I chose to measure stigma using these two variables as they proved to be salient and statistically significant in my prior work examining stigma. Specifically, these variables operationalize the typical effects of racial stereotypes in an educational setting. Bowen, supra note 125.

\textsuperscript{204} While ordinarily it would make sense to examine not only whether students attended school in an affirmative action state or not as well as whether they attended a public or private school in anti-affirmative action state in particular, our sample of students attending schools in anti-affirmative action states exclusively attended public institutions.
Table 3: Variables for Being in a Diverse Classroom by Affirmative Action States or Not

<table>
<thead>
<tr>
<th></th>
<th>Anti-Affirmative Action State</th>
<th>Affirmative Action State</th>
</tr>
</thead>
<tbody>
<tr>
<td>Led to greater understanding</td>
<td>77.6%</td>
<td>77.7%</td>
</tr>
<tr>
<td>Promoted positive interracial experiences for student in and out of class</td>
<td>60.7</td>
<td>71.5</td>
</tr>
<tr>
<td>Important to student</td>
<td>56.8</td>
<td>57.6</td>
</tr>
<tr>
<td>Led to positive interracial experiences for other students inside of class</td>
<td>52.7</td>
<td>54.3</td>
</tr>
<tr>
<td>Felt more welcome on campus</td>
<td>52.5</td>
<td>57.2</td>
</tr>
<tr>
<td>Student learns more in classes</td>
<td>49.4</td>
<td>51.5</td>
</tr>
<tr>
<td>Student became more motivated</td>
<td>41.8</td>
<td>44.7</td>
</tr>
<tr>
<td>Decreased overt racism</td>
<td>48.1</td>
<td>44.7</td>
</tr>
<tr>
<td>Led to white students’ perspective taking</td>
<td>34.6</td>
<td>38.6</td>
</tr>
<tr>
<td>Led to more positive interactions with professor</td>
<td>38.4</td>
<td>41.8</td>
</tr>
<tr>
<td>Decreased rate of qualifications questioned</td>
<td>36.3</td>
<td>32.3</td>
</tr>
<tr>
<td>Decreased students’ pressure to prove themselves because of race or ethnicity</td>
<td>30.5</td>
<td>32.1</td>
</tr>
</tbody>
</table>

While small differences do mark the two groups, none of these differences denote any statistical consequence. This lack of statistical significance suggests that no relationship exists between whether students attend schools with affirmative action and the Grutter benefits they enjoy from learning in a diverse classroom—specifically students from other racial or ethnic groups than their own. In other words, affirmative action does not appear to be associated with whether students of color enjoy the benefits of interacting with individuals of different races.

The results might seem counterintuitive, but they are, in fact, not surprising. As students of color are consistently in the minority in the college classroom regardless of where they attend school, they are always in a position to encounter diversity and its potential benefits.  

205. HBCUs may offer the one exception in which minorities make up the majority of students. Emma L. Carew, Diversity Increases at Public Historically Black Colleges Chronicle of Higher Education September 15th, 2009.
Thus far, I have reported the results answering the question of whether students of color obtain the Grutter benefits of increased racial understanding and reduced racial stereotyping by interacting with individuals from different racial backgrounds than their own. Recall, the Grutter Court found the University of Michigan Law School’s goal of creating a classroom mixed with students of varying racial and ethnic backgrounds laudable. However, these results do not consider whether the diversity in the classroom created a critical mass of students from a respondent’s own racial background.

But the law school argued that affirmative action would allow not just diversity, but also critical mass. Moreover, the law school asserted that critical mass required representation of students of the same racial or ethnic background. Critical mass benefits accrue, Michigan believed, more directly to students of color. Specifically, critical mass seems to be a necessary but not sufficient corollary to achieving the second Grutter goal of breaking down racial stereotypes. The University of Michigan Law School argued that only with a sufficient number of students of a particular race in the classroom would students from that background feel comfortable contributing in the classroom without fear of being stereotyped. Nonminority students would learn that no minority viewpoint existed but rather a myriad of minority student viewpoints could be expressed.

B. The Benefits of a Diverse Classroom That May Have Critical Mass

I operationalized critical mass by asking students about the benefits of participating in the classroom with students that shared their racial or ethnic background. I did not articulate a specific numerical threshold. However, I did ask students to provide a racial and ethnic demographic breakdown of a typical classroom population that they encounter.

Because the Grutter Court saw diversity and critical mass as essential to achieving the twin goals of increased racial understanding and the eradication of racial stereotypes, the same set of benefits are analyzed. Therefore, the organizational presentation of the variables also mirrors the presentation in the previous section. I begin with the first Grutter goal of increased racial understanding and the related cognitive benefits. Next, I examine the second Grutter goal of the dissipation of racial stereotypes and the campus climate and stigma benefits associated with

207. Id. at 316.
209. Addis, supra note 99, at 123.
it. In addition, I added one more variable measuring social legitimation—increased self-confidence.211 One might anticipate that more students would report achieving the Grutter benefits because critical mass diversity might be present in the classroom.

1. The Entire Sample

Table Four presents the results. Only 40% of students in the sample stated that attending class with students of the same racial or ethnic background was important to them.212 More students ranked diversity as more important than racial similarity in the classroom.

Substantially fewer students reported that the presence of students of the same racial background achieved the first Grutter goal of increased racial understanding. For example, only one-quarter of the sample felt that the admission of more students of the same racial background increased positive interracial experiences for them inside and outside of the classroom. Similarly, increased positive cross-racial experiences for other students seemed true for only 26% of the respondents.

The cognitive variables associated with increased racial understanding results show limited enthusiasm as well. While only about one-quarter of the students reported that attending class with students of the same background led them to learn more, close to 40% of the students said that it increased their motivation. Moreover, a mere one-fifth of the students believed the presence of students of their same race in the classroom led white students to engage in perspective taking.

With regard to the campus climate variables associated with the second Grutter objective, less racial stereotyping and a decrease in stigma, only one measure exceeded the 50% mark for agree or strongly agree. Over half of the students felt more welcome on campus when students of their racial background attended their class. Slightly more than one-third of students perceived better interactions with their professors. Similarly, slightly less than one-third of students believed that the pres-

---

211. If a critical mass of students allows for minority students to move beyond their stereotype, one might predict that they would have increased confidence at school. See Nunn, supra note 60.

212. Whether a student views being in a class with student of the same race as important is statistically significantly correlated with whether a respondent views same racial background classmates as providing any of the benefits articulated above. However, how one values critical mass did not lead students to self select into states that allow or ban affirmative action. No correlation exists between where one attends school and their preference for similar racial background students. Furthermore, no correlation exists between whether one attends an HBC/U or a PWI and how important a student view having students of the same racial background in his or her class. Thus, it is difficult to establish causation between these two variables. One may encounter the benefits of diversity and critical mass and then decide these features are important. Conversely, one may decide that diversity and critical mass are important and then be readily disposed to find their benefits.
ence of students of the same background in their classroom decreased overt racism.

While the benefit of participating in a class with students who share a racial background appears to be associated with a decrease in stigma for only about one-third of the students, it does appear to increase self confidence for 40% of students.\textsuperscript{213} Less than one-third of students saw a decrease in internal stigma—i.e. the pressure to prove themselves because of their race. A little more than one-third of students stated that similarly raced students in the classroom decreased external stigma—i.e., other students questioning their qualifications.\textsuperscript{214}

\textsuperscript{213} This variable measures whether experiencing critical mass allows a student to identify as an individual who can participate freely in class and overcome stereotypes associated with his or her race.

\textsuperscript{214} These results, however, raise interesting questions about how critical mass may affect a student’s psychological well being in terms of performance in school because of stereotype threat. In other words, does critical mass play a role in making race less salient in classroom performance? In future research I intend to examine how the sociological structure of the classroom may affect racial priming and in turn affect student performance. These results show increased self-confidence but that doesn’t necessarily translate into decreased stigma. See Claude M. Steele, A Threat in the Air: How Stereotypes Shape Intellectual Identity and Performance, 52 AM. PSYCHOLOGIST 613 (1997) (demonstrating that highly domain attached individuals are at most risk for the negative effects of stereotype threat).
Table 4: Variables for Attending Class with Students of the Same Racial/Ethnic Background by Race

<table>
<thead>
<tr>
<th></th>
<th>All</th>
<th>Afr. Am</th>
<th>Latino/a</th>
<th>Asian Am.</th>
<th>Multiracial</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Student felt more welcome on campus</strong></td>
<td>51.2%</td>
<td>56.7</td>
<td>44.9</td>
<td>36.9</td>
<td>43.2</td>
</tr>
<tr>
<td><strong>Increase of student’s self-confidence</strong></td>
<td>40.4</td>
<td>45.9</td>
<td>44.9</td>
<td>31.6</td>
<td>24.3</td>
</tr>
<tr>
<td><strong>Important to student</strong></td>
<td>40.1</td>
<td>45.6</td>
<td>32.2</td>
<td>36.8</td>
<td>36.8</td>
</tr>
<tr>
<td><strong>Student became more motivated</strong></td>
<td>37.1</td>
<td>40.9</td>
<td>32.8</td>
<td>31.6</td>
<td>24.3</td>
</tr>
<tr>
<td><strong>Led to positive interactions w/professor</strong></td>
<td>34.7</td>
<td>38.4</td>
<td>31.1</td>
<td>26.3</td>
<td>27.0</td>
</tr>
<tr>
<td><strong>Decreased students’ pressure to prove themselves because of race or ethnicity</strong></td>
<td>34.3</td>
<td>39.3</td>
<td>29.8</td>
<td>21.0</td>
<td>29.7</td>
</tr>
<tr>
<td><strong>Decreased overt racism</strong></td>
<td>31.6</td>
<td>38.2</td>
<td>27.6</td>
<td>15.8</td>
<td>33.4</td>
</tr>
<tr>
<td><strong>Decreased students’ qualifications being questioned</strong></td>
<td>31.5</td>
<td>39.5</td>
<td>28.0</td>
<td>10.5</td>
<td>24.3</td>
</tr>
<tr>
<td><strong>Increased positive cross-racial experience for student inside the classroom</strong></td>
<td>26.6</td>
<td>24.8</td>
<td>34.4</td>
<td>26.4</td>
<td>26.3</td>
</tr>
<tr>
<td><strong>Increased students’ learning ability</strong></td>
<td>26.0</td>
<td>26.4</td>
<td>27.2</td>
<td>36.9</td>
<td>18.4</td>
</tr>
<tr>
<td><strong>Led to positive inter-racial experiences for other students</strong></td>
<td>25.0</td>
<td>23.1</td>
<td>29.3</td>
<td>26.3</td>
<td>24.3</td>
</tr>
<tr>
<td><strong>Led to white students’ perspective taking</strong></td>
<td>20.3</td>
<td>19.2</td>
<td>22.8</td>
<td>31.6</td>
<td>22.2</td>
</tr>
</tbody>
</table>
2. Critical Mass Benefits in Affirmative Action vs. Anti-Affirmative Action States

Unlike the comparison between affirmative action and anti-affirmative action states on the benefits of diversity generally, statistically significant differences do emerge on the benefits of critical mass depending on a state’s policy on race-based admissions.

Table Five reveals the results. Under *Grutter*, affirmative action states would be more likely to achieve a critical mass of students. And as a consequence, more students in affirmative action states would report benefits associated with the presence of students of the same race or ethnic background in their classes. Indeed, a statistically significant but moderate correlation exists between the percentage of students in a class of the same race as a respondent and whether that respondent attends school in a state with race-based admissions.\(^{215}\) Conversely, a small, but statistically significant difference exists as to the percentage of white students that students of color will encounter in their class and the state where they attend school. Specifically, students in affirmative action states will likely see a smaller percentage of white students in their classes compared to students in anti-affirmative action states.\(^{216}\) These correlations suggest that any increase in the number of students reporting benefits in affirmative action states versus states that bar affirmative action might be attributable to affirmative action classroom settings achieving critical mass for certain students of color.\(^{217}\)

Regardless, the results still show weak enthusiasm around the *Grutter* benefits.

\(^{215}\) The Pearson’s R, the correlations coefficient that measures the association between two variables, is .320 with a statistical significance of p < .001.

\(^{216}\) The Pearson’s R is -.207 with a statistical significance at the p<=.01 level. The negative correlation exists because the race based admissions variable is a dummy variable in which anti affirmative action states were coded as “0” and affirmative action states were coded as “1.”

\(^{217}\) As a number of statistically significant associations are established between the critical mass benefits and affirmative action versus anti-affirmation action states, I thought it was valuable to determine if any of those relationships were spurious. In other words, was the relationship between these two variables masking another variable? In particular, because the variable “having students with the same racial background in my class is important to me” is so strongly correlated with each of the benefits, I controlled for it in running the correlations between the benefits and state where one attends school. The results show that where a relationship exists between a benefit and the state where one attends school, that relationship becomes even more pronounced when controlling for whether having similar racial backgrounds is important to a student. In other words, the importance variable does not hold sway over the relationship between affirmative action and the benefits of critical mass. The significance of these results will be explored in the Part VII.
Table 5: Variables for Attending Class with Students of the Same Racial/Ethnic Background by Affirmative Action States or Not

<table>
<thead>
<tr>
<th></th>
<th>Anti-Affirmative Action</th>
<th>Affirmative Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Student felt more welcome on campus</td>
<td>40.3%</td>
<td>51.6*</td>
</tr>
<tr>
<td>Increase of student’s self-confidence</td>
<td>29.0</td>
<td>40.2*</td>
</tr>
<tr>
<td>Important to student</td>
<td>35.1</td>
<td>37.1</td>
</tr>
<tr>
<td>Student became more motivated</td>
<td>29.0</td>
<td>40.2</td>
</tr>
<tr>
<td>Led to positive interactions with professor</td>
<td>29.0</td>
<td>34.0*</td>
</tr>
<tr>
<td>Decreased students’ pressure to prove themselves because of race or ethnicity</td>
<td>30.7</td>
<td>37.1*</td>
</tr>
<tr>
<td>Decreased overt racism</td>
<td>23.7</td>
<td>34.7*</td>
</tr>
<tr>
<td>Decreased students’ qualifications being questioned</td>
<td>22.4</td>
<td>33.6**</td>
</tr>
<tr>
<td>Increased positive cross-racial experience for student inside the classroom</td>
<td>18.6</td>
<td>35.8*</td>
</tr>
<tr>
<td>Increased students’ learning ability</td>
<td>26.0</td>
<td>23.7</td>
</tr>
<tr>
<td>Led to positive interracial experiences for other students</td>
<td>26.7</td>
<td>31.6</td>
</tr>
<tr>
<td>Led to white students’ perspective taking</td>
<td>27.7</td>
<td>33.1</td>
</tr>
</tbody>
</table>

* p<.05   ** p<.01   *** p<.001

In fact, beginning with the first Grutter objective, only one variable shows a statistically significant difference. Seventeen percent more students in affirmative action states report an increase in the positive cross-racial experiences inside the classroom when students of their same race are in their class.
None of the cognitive benefits revealed any statistically significant differences between students in affirmative action states and those in states that bar race-based admissions.

However, attending classes in which a respondent found students of the same race or ethnic background as him or herself had a statistically significant effect on the second Grutter aim of reducing racial stereotypes. Moreover, a reduction in racial stereotyping appeared to improve the campus climate experiences more so for students in states that allow race-based admissions. First, over half of affirmative-action-state students agreed or strongly agreed compared to 40% of anti-affirmative-action-state students that such a classroom environment made the student feel more welcome on campus. Furthermore, 34% of affirmative-action-state students compared with 29% of anti-affirmative-action state students reported that shared racial backgrounds in the classroom led to positive interactions with professors. Perhaps most striking is that this type of classroom environment decreased overt racism for 11% more students in affirmative action states than students in anti-affirmative-action states.

Similarly, attending class with students of the same race is associated with a statistically significant reduction in both of the stigma variables. Specifically, having people of the same race in their classrooms led students in affirmative action states to report a reduction in external stigma at a rate 11% higher than anti-affirmative-action-state students. Moreover, statistically significant differences emerge for students in affirmative action over anti-affirmative action states on the pressure to prove or internal stigma variable by 7%. Finally, 11% more students felt increased self-confidence in affirmative action states.

The results reveal a small glimmer of hope for under-represented minority science majors’ ability to achieve the Grutter goals in a diverse classroom. Unfortunately they are achievable for too few students. Institutions of higher learning must create a particular type of diversity—critical mass that allows for functional diversity—in order to have any hope of obtaining its attendant benefits. Now consider the import of these results in light of the criticisms and predictions made in the shadow of Grutter.

**VII. DISCUSSION**

The results necessitate consideration of four key questions. First, how do we reconcile the achievement of Grutter benefit one—increased racial understanding for most of the students of color with the achievement of Grutter benefit two—decreased stigma, for so few of the students? Second, why does affirmative action not appear to play a key role
in the benefits enjoyed in a diverse classroom? Third, although affirmative action seems to play a role in achieving critical mass benefits, why do they exist for so few students? Finally, where do we go from here?

A. Diversity Benefits

This study set out to answer the question of whether students of color enjoy the benefits of diversity as articulated in a post-Grutter model of affirmative action. Two major aspirations emerge when considering how diversity is supposed to affect higher education. First, a diverse classroom will promote cross-racial understanding. It is probably fair to say that this aim applies to both white students and students of color. Second, a diverse classroom will result in the “breaking down of stereotypes.” It is equally fair to say that students of color stand to gain from the breakdown of stereotypes. Let us examine whether either of these objectives were met for students of color.

It is heartening that regardless of whether one attends school in an affirmative action state or not, the majority of students perceive some benefits from diversity. In this sense, critics from both sides of the camp can feel some solace in knowing that diversity can play an important role in education.

These results suggest that both students of color and white students stand to benefit from interacting with diverse individuals in the classroom. Aside from Asian students, Whites, Latina/os and African American students find themselves increasingly segregated in elementary and secondary education.

I. How Do We Explain Increased Racial Understanding without Decreased Racial Stereotyping?

218. While Grutter articulated a third benefit of preparing students for an increasingly diverse workforce, this benefit seems to be a derivative of the first two. Grutter, 539 U.S. 306, 330 (2003).

219. Id. Yet, critics expressed concern that diversity is for the good of white students exclusively.


221. Grutter, 539 U.S. at 330.

222. See generally, Steele supra note 28.

223. See Frankenberg et al., supra note 190, at 23.
The concern as to whether students of color would experience the benefits of diversity may be alleviated by the results in this study for the first Grutter objective. However, the results certainly do not alleviate concerns respecting the second goal: the breaking down of stereotypes.\footnote{224} We would expect to see a reduction in external and internal stigma as high on the list of benefits students of color encounter in a diverse classroom. In fact, we might even anticipate that more students in states where the Grutter model of affirmative action is employed would report decreases in stigma as a benefit of diversity. Yet, we do not. Thus, how is one benefit achieved but not the other?

First, it is important to remember who is reporting the increased racial understanding. Students of color are gaining understanding of other racial or ethnic groups, but this report does not necessarily translate into other racial or ethnic groups understanding and transformation in their behavior.\footnote{225} For example, a review of the different racial group responses to these benefits reveals how varied students from different racial or ethnic groups experience diversity. Specifically, African Americans are least likely to report any benefits while Latina/os are more enthusiastic about these benefits.

Second, Gottfredson et al. found that the benefits of diversity are most apparent with content diversity.\footnote{226} Content diversity refers to course content that addresses issues related to race and ethnicity. As Gottfredson observed, “[M]ere compositional diversity is not sufficient (but is necessary) for reducing prejudice.”\footnote{227} Thus, if students of color find themselves in racial or ethnic isolation in a diverse classroom, the burden of tokenism becomes heavier. Putting students of varying racial or ethnic groups in a class with white students lacking the skills to interact with students of different backgrounds can lead to increased racial tension and stereotype threat.\footnote{228}

For example, Apfelbaum found that white individuals, particularly those concerned with not appearing prejudiced, engage in colorblind behavior even when recognition of race differences is appropriate.\footnote{229} The
result is that Whites intending to create a positive inter-racial interaction end up generating the opposite.\textsuperscript{230}

In the college classroom, white students may attempt to engage in colorblind behavior to avoid appearing biased, but in doing so, their behavior comes across as unfriendly and nonverbal. Students of color, particularly African American students, interpret these actions as evidence of prejudice.\textsuperscript{231} In turn, the colorblind behavior of white students, perceived as racism by students of color, heightens the threat of stereotype for minority students.\textsuperscript{232} Therefore, a diverse classroom, without content diversity and the attendant skills, does not necessarily lend itself to dissipating the pressure students of color feel because of their race.

Finally, the destruction of stereotypes requires that students take on and be open to other individuals’ perspectives. However, the results of the study reveal that only a slim minority of students of color believe that a diverse classroom leads to white students actually engaging in perspective taking. If students are not in classes that provide for that opportunity, students of color are more likely to remain producers of diversity without enjoying the benefits.

However, that opportunity has to be navigated very carefully. In fact, two studies reveal that diversity can result in negative racial effects in certain circumstances. Vorauer and Turpie found that white students, normally ranked as low on a prejudice scale, reacted negatively to stigmatized groups of color when the students believed they were being evaluated in terms of their privileged social position.\textsuperscript{233} In addition, Goff et al. found that when white students feared a stereotype threat of appearing racist, the engaged in more distance from their black counterparts.\textsuperscript{234} Thus, understanding how to navigate interactions in the classroom is essential.\textsuperscript{235}

2. Why Doesn’t Affirmative Action Appear to Matter in Diversity Benefits?

\textsuperscript{230} Id.
\textsuperscript{231} Id.
\textsuperscript{232} Steele, supra note 28.
\textsuperscript{233} J.D. Vorauer & C. A. Turpie, Disruptive Effects of Vigilance on Dominant Group Members’ Treatment of Out Group Members: Choking Versus Shining Under Pressure 87 J. OF PERS. & SOC. PSYCH. 384 (2004) (showing research that white students who felt that stigmatized groups were judging white student behavior because of the status and power in society were more likely to react negatively to stigmatized minorities).
\textsuperscript{234} Phillip Atiba Goff et al., The Space Between Us: Stereotype Threat and Distance in Interracial Contexts 94 J OF PERS. & SOC. PSYCH. 91 (2008).
\textsuperscript{235} As Calmore notes, Whites are raised to talk about race in such a way that maintains the status quo. Strategies are adopted so that Whites to not have to engage in the exercise of considering how they perpetuate a racial hierarchy that secures their position at the top. The strategies include semantic evasion and semantic infiltration. John Calmore, supra note 24, at 79.
Another vital question is why statistically significant differences do not emerge between students in affirmative action and anti-affirmative action states on the benefits of being in a classroom with diverse others. One might expect differences to appear because greater numbers of students of color are present in states that allow for race-based admissions. However, to confuse the concentration of diversity with the concentration of a student’s own racial group is to fall into the fallacy of the monochrome diversity paradigm. That is to say, a student of color can be racially isolated and be in a racially diverse classroom. Can that student expect to accrue benefits? Not necessarily.

An essential piece of this study suggests that to achieve the Grutter benefits of diversity, interaction with both other racial groups and with one’s same racial group is required. In other words, a critical mass of each “out group” creates the optimal classroom environment. Consider why attention to the critical mass of each racial/ethnic group is crucial.

Remember, race and ethnicity are socially constructed. Thus, different racial and ethnic groups each carry a different legacy around the status and power they possess in society. Society bequests an unwanted inheritance on students of color that mediates how students perceive diverse classroom benefits. Almost uniformly, statistically significant differences exist between African American students and Latino students regarding the perceived Grutter benefits. Consistently, Latina/o students report benefits at greater rates than the entire sample, and African American students report benefits as much lower rates than Latino students and lower rates than the entire sample.

These racial/ethnic differences echo the results in other studies. In fact, they may be explained by Ogbu’s comparative educational theory of minorities, and more recently McClelland’s work on the integration of minority students onto predominantly white campuses.

---

236. The data in this study suggests a correlation between affirmative action states and increased racial diversity.

237. In this case, “out group” refers to each of the racial and ethnic groups that do not hold positions of power and entitlement in institutions of higher learning. See Tajfel, supra note 72.

238. Espenshade and Walton found that interactions across were most likely to happen between Latina/os and Whites and least likely to happen between Whites and African Americans. Espenshade & Walton, supra note 163.


students from involuntary minority groups, meaning enslaved racial groups, compared to voluntary minority groups who immigrated to a host country by choice, viewed race relations more negatively than students from voluntary minority groups based on perceived white students’ attitudes. This point emphasizes the importance of treating racial and ethnic diversity differently than other types of diversity. The social meanings attached to one’s race carry significance in ways that simply do not compare to other types of diversity. A student does not “happen to be” African American in the same way that a student happens to be from Juneau, Alaska. Therefore, achieving the Grutter goals requires much more than “diversity.” It requires critical mass.

B. Critical Mass

Students express even less enthusiasm when asked about the benefits associated with learning in a classroom with at least some students of the same racial or ethnic background. While, statistically significant differences are apparent between students in affirmative action and anti-affirmative action states, but for virtually every measure, far less than the majority of students enjoyed these benefits.

These results may reflect some movement in achieving Grutter’s second goal of decreasing stereotypes. While this may be true, it is troubling how few respondents agree or strongly agree with the benefits that should emerge from being in the same class as students who share their racial background.

3. Why Do So Few Students Report Benefits Associate with Critical Mass?

The lack of enthusiasm regarding the benefits associated with having people of the same racial background in class may occur for two reasons. First, sameness does not equate with critical mass. The danger of creating diversity is in not also creating critical mass. Without critical mass, affirmative action supporters worry that students of color are nothing more than tokens, available to educate the white majority. Having to “perform” diversity is problematic. Even Justice Thomas expressed as much.242

Second, it is difficult to achieve critical mass if the individuals in need of the critical mass do not get to define it for themselves. As administrators, not students, make admissions decisions, it is quite possible that

242. Nunn, supra note 58, at 722–23; Rodriguez, supra note 120, at 6–7; Grutter, 539 U.S. at 372–73 (Thomas, J. concurring in part and dissenting in part).
even with the best of intentions, affirmative action states are not fully prepared to admit students of color at the rates required to achieve critical mass.\textsuperscript{243}

In this study, I asked students to describe their ideal classroom environment. Students provided a percentage breakdown of a variety of racial and ethnic groups that overwhelmingly looked like this: 20\% African American, 20\% Asian, 20\% Hispanic, 20\% Other,\textsuperscript{244} and 20\% White.\textsuperscript{245} Thus, a student of color’s perception of diversity looks radically different from how administrators of these elite institutions envision diversity.

Unlike the monochrome model of diversity—white students and non-white students—these students see equal concentrations of different ethnic groups as a pre-cursor to achieving a diverse classroom. White students are no longer in the majority. Minority students are no longer in the minority.

This conception is consistent with Contact Theory.\textsuperscript{246} The “out group”—in this case, students of color—must have equal social standing as the “in-group”—white students. However, it is difficult to achieve equal social standing between students of color and white students when we have socially constructed a paradigm of diversity that pits one group as the producers of diversity and the other group as the consumers of it. As Hutchinson wryly observes, it is one thing to do racial justice, it is another to self-portray racial justice such that it perpetuates the racial hierarchy.

It appears that society’s elites demand that encounters with race (particularly when encountering blacks and Hispanics) remain consistent with the notions of minority inferiority and elite privilege. The transmutation of diversity programs into a form of cosmopolitanism allows university administrators to trumpet their commitment to racial justice without revolutionizing their educational policies to reflect it.\textsuperscript{247}

How individuals prioritize diversity matters not only for college administrators, but also for the respondents in this study. Remarkably, the strongest and most consistent predictor of whether respondents agreed or strongly agreed that a benefit existed was whether having indi-

\textsuperscript{243} See Delgado, supra note 113 (arguing that affirmative action is a majoritarian device).

\textsuperscript{244} Some respondents did not use this category, but replaced it with Native Americans, East Indians, Middle Eastern, South East Asian, or some combination.

\textsuperscript{245} This demographic breakdown was consistent across race and ethnicity, gender, state where one attended school, and whether or not one attended an HBC/U.

\textsuperscript{246} ALLPORT, supra note 73; Pettigrew & Tropp, supra note 75.

\textsuperscript{247} Hutchinson, supra note 108, at 1086–87.
individuals of the same race or ethnicity was important to them. Therefore, it would be easy to suppose that affirmative action policies are not associated with the benefits one enjoys, but rather whether a student construes diversity as important. And one might further argue that one might view it as important based on whether one perceives any benefits from diversity.

However, the relationships between the benefits of being in a class with individuals who share a student’s racial background and a state’s affirmative action policy strengthened when I controlled for the variable “important to me.” Thus students in affirmative action states may be more likely to encounter such benefits and then define them as important. Furthermore, no relationship exists between whether one attends an HBC/U or TWI (“traditionally white institution”) or attends school in an affirmative action state and the variable “important to me.” Hence, students do not self-select into an environment that will increase their chances of encountering other students of the same race because diversity is important to them. Accordingly, it is possible that students who report having students of the same race in their class as important do so precisely because they have enjoyed the benefits of critical mass at some point in their educational careers. Perhaps they are more likely to encounter those benefits in affirmative action states. How unfortunate, then, that few students have experienced the advantages of critical mass.

C. Implications and Recommendations

This study challenges the assertions from both sides of the diversity debate regarding whether benefits exist and for whom. Clearly, students of color can benefit from diverse others in the classroom, but they do so at a significant cost. We have not yet achieved the second Grutter goal: decrease in stigma from racial stereotyping for the majority of students. We must fine tune our conception of critical mass. Under the current model of diversity, dissonance is apparent. The privileged have set up a structural paradigm demanding both white normative conceptions of merit as well as performance of race in a color-blind world. In doing so, the elite continue to regulate access. The barriers to educational and economic opportunities remain in place. These

248. Given the data on how students at HBC/Us definitively report the benefits of sharing their classrooms with students of the same race more so than those at TWIs, it would be easy to argue that minority students would be better off at HBC/Us. However, this argument ignores the other half of the story. Students at TWIs were much more likely to report the benefits of greater understanding and increased positive cross-racial experiences. As Allen observed, students’ of color lack of success in higher education is not “shrouded in mystery.” HBC/Us have figured out a model that works, yet we must ask why so much resistance persists in transferring this success to a broader expanse of institutions. Allen, supra note 177, at 42.
institutions never have to confront why they demand that students of color must perform race. As Bell notes the diversity model sidesteps the larger societal structural barriers that individuals must overcome before they ever arrive on campus. Allen warns:

Any attempt to address the problems faced by African American college students without considering the broader context of issues confronting Blacks as a discriminated minority in America is doomed to fail, for the experiences of Black students in higher education are in part products of larger systematic problems.

Second, it is incongruous to situate the diversity model, which is largely rationalized as a benefit to all, in a campus milieu that espouses colorblindness consciously or subconsciously. It reinforces the idea that neither the institution nor the individual actors within need concern themselves with race or its consequences. Wilson confesses that he used to espouse the strategy employed by the proponents of affirmative action under the diversity model. However, he has reversed his course precisely because such a strategy avoids the frank and necessary conversations about the barriers privileged members of society erect and protect against people of color.

Furthermore, diversity in a colorblind society creates invisibility. While it allows privileged members of an academic institution to occasionally engage in the classroom without disrupting their status, it also allows these students to disengage outside of the classroom. It creates a schizophrenic environment in which race is consumed for education but otherwise ignored. As this study shows, structural and content diversity does not translate into every classroom. Students need tools to properly understand diversity. The inclination for white students wanting to appear as unbiased is to ignore racial differences, but in doing so cause racial distance. Invisibility causes damage. Plaut et al. found that when Whites engage in colorblindness, it "reinforces majority dominance and minority marginalization."

249. Allen, supra note 177, at 42.
249. In fact, Richeson & Nussbaum found that when college students were primed for multiculturalism versus colorblind ideologies as ways to improve interethnic relations, students exhibited more bias in a colorblind ideological approach. Jennifer Richeson and Richard Nussbaum, The Impact of Multiculturalism Versus Color-Blindness on Racial Bias, 40 J. EXPERIMENTAL PSYCHOL. 417 (2003).
251. These results are consistent with other studies that have shown diversity alone cannot create meaningful educational outcomes. Campus climate and institutional support is also required. Gary Pike & George Kuh, 29 HIGHER EDUCATIONAL REVIEW 45 (2006).
West said it was nice that with the election of President Obama, Blacks had shattered the glass ceiling, but still too many are locked in the basement. Thus, we must acknowledge that the problems of minorities are the problems of our nation. To the extent that institutions of higher education that embrace affirmative action have adopted the diversity model, my recommendations are simple.

4. Where Should We Go from Here?

First, institutions should recognize that they must refine notions of critical mass and include students of color in the conversation. These institutions must respect and apply these new definitions even though they may threaten white entitlement.

Second, institutions must recognize that structural diversity does not translate into a critical mass classroom with functional diversity.

Third, institutions must adjust their curriculum to consider how a cultural transformation can take place where colorblindness is replaced with multiculturalism. Opportunities for conversations about race should occur throughout campus, with faculty and students feeling that they can learn but not feel evaluated. Without strategic use of classroom interactions, all students are damaged.

Fourth, institutions must study carefully how the social construction of race mediates how a student will engage with diversity at the structural and individual level. Thus, institutions must adopt a variety of approaches based on race and ethnicity in critical mass, institutional support, and admissions.

Fifth, institutions must resist rationalizations against new definitions of critical mass. Balkanization is an unfortunate fallout of critical mass, but understanding the circumstances in which group isolation emerges is central. It operates in a colorblind environment where students are ill-equipped to interact with a diverse student body. In addition, some argue that an increase in diverse student enrollment will require lowering merit-based admissions standards. However, such allegations ignore the effects of legacy admission programs. These programs

---


255. See Sturm, supra note 31; see also Plaut et al., What about Me? Perceptions of Non-minority Reactions to Multiculturalism (unpublished manuscript, on file with author) (finding that non-minorities view multiculturalism as exclusionary to them, but with institutional diversity efforts, non-minorities can come to view diversity as inclusionary).

256. See Apfelbaum et al., supra note 201.
create and reinforce structural privileging despite data showing that affirmative action admitted students outperform legacy admits.  

Make no mistake diversity, indeed, critical mass, can do so much more. Sumi Cho puts it:

We cannot abandon the salience of “societal” discrimination merely because the Court has deemed most forms of institutionalized racism to exist beyond the reach of racial remedies. We must revisit Bakke’s dissent. We need a discussion of not only the broader social conditions that make affirmative action necessary, but a broader discussion of how we need to act as a society to “do right” by those who have been historically and contemporarily mistreated.

The urgency of Cho’s call in light of this research comes in stark relief if for no other reason than the demographic changes facing the United States. By 2050, we will indeed be a nation of racial and ethnic groups. Our goal should be to embrace diversity in its most functional form in which all students find learning and not evaluation as its key goal.

**VIII. CONCLUSION**

Institutions of higher learning should respond to the call for social justice not out of a demographic sense of doom, but out of a sense of responsibility. The results of this study imply that while students of color may increase their understanding across racial groups, they are much less likely to see diversity as breaking down stereotypes or creating racial understanding amongst Whites. If that is the case, colleges and universities have not met the ‘laudable goal’ of preparing students to work in an increasingly diverse workforce. The results suggest that affirmative action can increase the chances of critical mass. But without critical mass, diversity, as an aesthetic preference, is not enough. “[A] school’s self-portrayal as [an] institution committed to racial justice amounts to little more than ‘an opportunity of self-important romance’ reminiscent of a ‘late-night fit of drunken sentimentality’” when the out-

---

257. See Massey & Moody, supra note 4.
258. Cho, supra note 128, at 831.
260. Although, I would argue that colleges and universities should do so much more than prepare students for the workforce. We should provide them with the tools to dismantle systems of dominance and rebuild social structures that create equality.
261. Delgado calls for narratives. For how else will the privileged come to understand their positions are by design and at a cost to others? Delgado, supra note 8.
group does not benefit from this self-portrayal. And reality is the enemy of romance. Affirmative action provides a potentially powerful tool to do right by students of color—to move beyond curriculum diversity into functional critical mass diversity.

In the end, colleges and universities must recognize that attributes of “diversity” do not operate in a vacuum. Institutions of higher learning would do well to partner with the objects of their desired diversity to create both critical mass and meaningful classroom experiences that equip students and faculty with the skills to interact in a beneficial way for all. A more honest form of affirmative action can lead the way.

262. See Hutchinson, supra note 108, at 1088 (quoting Steven D. Smith, Conciliating Hatred, 144 FIRST THINGS 17, 18 (2004)).
262. Bell supra note 1.
Survey on the Ideal Diverse Classroom and its Benefits:

Investigator: Deirdre Bowen, J.D., Ph.D. Email: dbowen@seattleu.edu

Instructions: This survey is 4 pages long. It will take approximately 10 minutes to fill out. The survey is completely confidential. You may stop the survey at any time or skip any questions you don’t wish to answer. Most of the questions ask you to check a box, but some questions ask you to fill out a written answer.

Part I: Creating a Diverse Classroom Environment

1. If you could waive your magic wand and create a diverse classroom population, please describe its make up.
   ___________________________________________________________
   ___________________________________________________________
   ___________________________________________________________
   ___________________________________________________________

2. Have you ever been in a classroom that had your ideal diverse environment?
   _____ Yes   _____ No

3. Please describe the benefits you received or you could imagine receiving from being in a diverse classroom environment.
   ___________________________________________________________
   ___________________________________________________________
   ___________________________________________________________
   ___________________________________________________________

Part II: Learning a Little Bit about You

4. What is your gender?
   ___ Male    ___ Female  ___ Other

5. What state do you attend college or university in?
   ___________________________________________________________

6. Do you attend: ___ Private School ___ State/Public School
7. Do you attend a historically Black college or university?
___Yes   ___No

8. What is the highest level of education **either of your parents** received?
___Less than high school   ___Associates Degree
___High school degree   ___Bachelors Degree (usually a four year degree)
___Some college   ___Graduate Degree (MA, Ph.D., J.D., M.Ed., MBA, M.S.)

9. How old are you? __________

10. What year are you in the program?
___Freshman   ___Senior
___Sophomore   ___Graduate Student
___Junior

11. With which racial/ethnic background do you identify?
___African American/Black 
___Asian/Pacific Islander 
___Middle Eastern 
___American Indian/Alaskan Native 
___Chicano/Latina/o/Hispanic 
___White/Caucasian 
___Two or more races

12. Are you an international student?
___Yes   ___No

**Part III. More on Diversity**

13. In **column A**, please give a percentage breakdown by gender and race (including your own) of what a typical classroom population currently looks like for you.

In **column B**, please give a percentage breakdown by gender and race of what an ideal classroom population would look like. Feel free to use any of the categories from question 11. *For example, you can write 45% (fill in gender or race/ethnic group), 25% (fill in gender or ethnic/racial group)*

A. Current classroom population   B. Ideal classroom population
___% _______________   ___% _______________
Please state whether you agree with any of the following statements, using a ranking system between one to six, 1 means that you do not agree at all and 6 means that you completely agree with the statement.

1----------------2-----------------3----------------4------------5--------------6
strongly disagree disagree somewhat disagree somewhat agree agree strongly agree

4. Being in a classroom with individuals who have a DIFFERENT racial or ethnic background or gender from my own:

a. led me to learn more in those classes. ____

b. promoted positive inter-racial experiences for me inside & outside of class ____

c. led me to greater understanding of others’ perspectives.____

d. led me to be a more motivated student.____

e. made me feel more welcome on campus.____

f. is important to me.____

g. led to white students understanding other racial/ethnic groups’ perspectives.____

h. led to positive inter-racial experiences for other students inside of class.____

i. decreased the amount of overt racism I encountered in class.____

j. decreased the number of times others questioned my qualifications in class.____

k. decreased the amount of pressure I felt to prove myself because of my race/ethnicity and/or gender in class.____

l. led to more positive interactions with the classroom professor.____
15. Being in a classroom with individuals who have the SAME racial or ethnic background or gender as my own:

a. is important to me. ____
b. increased my learning ability.____
c. increased positive cross-racial experiences for me inside the classroom.____
d. made me feel more welcome on campus.____
e. led me to be a more motivated student____
f. increased my self-confidence.____
g. led to white students understanding other racial/ethnic groups’ perspectives.____
h. led to positive inter-racial experiences for other students inside of class.____
i. decreased the amount of overt racism I encountered.____
j. decreased the number of times others questioned my qualifications.____
k. decreased the amount of pressure I felt to prove myself because of my race/ethnicity and/or gender.____
l. led to more positive interactions with the classroom professor.____

Thank you for taking this survey! Please place in envelope and drop in the box!

Appendix B