

CHAPTER FIVE

NEEDED: A NEW DEFINITION OF “MERIT”?

[W]e had hoped that if we lived and were good, God would permit us to be pirates.

Life on the Mississippi (page 64)

Alas, we became college professors. Does that mean we were bad?

Anonymous retired professors

Apart from arguing the benefits of “diversity,” a portion of Bowen’s and Bok’s effort in *THE SHAPE OF THE RIVER* seems devoted to convincing the reader that a college applicant’s race is relevant in determining who “merits” admission. They suggest this is so with this puzzling comment (about which I will have more to say in Chapter Eight):

[T]aking account of race helps institutions . . . identify[] individuals of high potential, . . .¹

Again, we begin with a common definition:

merit (mer’ it) n. 1. Value, excellence, or superior quality. 2. An aspect of a person’s character or behavior deserving approval or disapproval: *to each according to his merits.*²

The authors correctly assert early in their book that the meaning of “merit” can take on very different connotations depending on the context and the speaker.³ Judging those who are best able to

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throw or catch a football, or to play a cello, or to solve a calculus problem invoke dramatically different criteria. Recognizing this, and the difficulties presented by the concept of “merit” in the context of college admissions, Bowen and Bok reach two important conclusions. The first, implicit throughout their work, is this:

[Merit] is still an important and potentially valuable concept because it reminds us that we certainly do not want institutions to admit candidates who *lack* merit, however the term is defined.”⁴

The second is that:

[T]he meaning of “merit” in the admissions process must be articulated more clearly, . . .⁵

Unfortunately, a more clear articulation of “merit” never appears in their book. We know, however, from an independent review of the admissions policies of the schools which were part of their database,⁶ as well as from the authors themselves, that “merit” is routinely determined by a broad range of factors.

[G]rades and [standardized] test scores are undoubtedly of critical importance. They . . . provide the most useful measures available to predict which students will achieve the highest academic record if admitted. . .

* * *

[Yet] admissions officers in virtually all selective colleges and professional schools look well beyond grades and test scores. Almost invariably, such institutions ask for personal statements, letters of recom-

mendation from teachers or other close acquaintances, evidence of successful participation in extracurricular activities [including athletics, music, and the arts], employment histories, and other experiences that can shed light on the accomplishments and potential of the applicant.⁷

Thus, while test scores and high school records are important and, depending upon the school, may be the two most heavily weighted factors, they rarely if ever are dispositive, particularly at the schools the authors studied and others like them.⁸

In fact, several colleges which fit comfortably within the most selective category contained within the authors’ database, schools which Bowen and Bok would categorize as “SEL-1,”⁹ no longer require applicants to submit standardized test scores as part of the admissions process. Bates College is one example. Yet this development goes unmentioned in their book.¹⁰

Major flagship universities such as the University of Texas and, more recently, the Universities of Massachusetts and Florida have adopted the same policy for a portion of their applicants. The University of California also is considering such an approach.¹¹

A COMMITMENT TO INDIVIDUAL MERIT

Perhaps no institution in recent years, and certainly none since the Supreme Court’s decision in *Grutter*, has appeared more principled than Texas A&M University when it comes to expressing a meaningful commitment to evaluate each applicant based on his or her individual merit while at the same time firmly eschewing race as a criterion. Coming on the heels of *Grutter*, A&M’s position was expressed in a December 3, 2003 statement by its then-President, Robert Gates. At a time, post-*Grutter*, when many schools were suggesting their intention to continue or return to the use of race as a factor in admissions,¹² Dr. Gates took a markedly different stand. While conceding that A&M, like many flagship universities, needed to do a better job in “attracting and enrolling minorities,” A&M’s

president stated that “students at Texas A&M should be admitted as individuals, on personal merit—and on no other basis.”¹³ Texas A&M’s commitment under President Gates is founded on a promise to be completely open to all students irrespective of race, supported by a significant commitment of tangible assets to expand its outreach to, and opportunities for, students from communities which historically have found it difficult to compete for a spot at A&M:

Texas A&M will make new and significant efforts to encourage minority students to apply for admission to the University. We want them to know of our interest in having them consider Texas A&M as the place to continue their education. For those minority students we admit, we will undertake new and significant efforts to encourage them to actually enroll, to become a part of the Aggie family, and eventually to wear the Aggie ring. However, apart from quantitative admissions decisions (e.g., the top 10% law), the decision on whether to admit a student will be made on an individual basis, taking into account personal achievement, merit and leadership potential. Every student who is at Texas A&M must know, now and in the future, that he or she and all students here have been admitted on personal merit.¹⁴

It was a decision which received strong reactions from many, but perhaps none more heartening than this one from A&M’s president of the African American Student Coalition:

Diversity is about more than color. It’s about more than race. . . Overall, we just want the best and brightest individuals here.¹⁵

Dr. Gates backed up this commitment to admit students on individual merit with a controversial, but courageous, recommendation a few weeks later to eliminate “legacy” status as a plus factor in A&M’s admissions.¹⁶ Dr. Gates acknowledged the important contribution made by students whose family members had also attended the university, the same contribution which Bowen and Bok cite as the reason they continue to support legacy admissions.¹⁷ However, to underline the importance Dr. Gates was placing on individual merit, he stated that “prior affiliation with Texas A&M should not be a criterion [in admissions].”

It truly will be an historic day in American higher education when the leaders at all of our nation’s flagship institutions make the same commitments, morally and financially, made by Dr. Gates and Texas A&M. The evidence strongly suggests it is working.¹⁸

TRADITIONAL MEASURES OF “MERIT”:
QUESTIONS SURROUNDING STANDARDIZED TESTS

One of the most controversial measures of merit in the race-conscious admissions debate is the widespread reliance on standardized testing. Yet, for all of the criticisms leveled against these tests, including allegations that they are biased against minority students, which the authors flatly reject,¹⁹ Bowen and Bok remain strongly committed to their use.²⁰ They pretend not to like them, but their pretending is unpersuasive. As they do throughout their analysis, the average combined SAT score is the sole criterion upon which Bowen and Bok measure the relative “elite” status of each of the C&B schools.

More interesting is the authors’ suggestion that the retention of standardized test scores, even under a race-neutral system, may not significantly impact black enrollment at selective schools. For example, they write:

By simulating the effects of a race-neutral policy, . . . we can separate black matriculants into two groups—those who would have been retained under a race-neutral system and those who would have been

rejected. When we compare the SAT scores of these two groups, we obtain a surprising result: *there is very little difference.*²¹

Their analysis, on the surface, appears to be at odds with the large and demonstrable test score gaps which persist between black and other students. By the same token, their “surprising result,” which really should surprise no one, demonstrates that much more than tests scores go into the decision as to which applicants are offered admission.

Nowhere do Bowen and Bok seriously suggest moving away from the traditional factors (academic achievement in high school and/or undergraduate school, standardized test scores, and involvement in extracurricular activities) which continue to be the factors most heavily considered by admissions committees at most selective schools. Educational institutions are, of course, free to decide what their respective admissions criteria should be. However, once these criteria are selected, they should be applied equally to each applicant without regard to race.²²

The authors’ unwillingness to offer a redefinition of “merit,” assuming one is even required, or to engage in a meaningful discussion of the consequences (and potential for success) of using various race-neutral alternatives²³ to achieve racial diversity on elite campuses, is among the most disappointing of their numerous failures in *THE SHAPE OF THE RIVER*.

Perhaps their failure is simply due to a silent but deeply shared conviction that no different definition of “merit” is required beyond the measures each utilized and relied upon while leading two of the most prominent universities in the world.

One thing is certain: So long as schools are permitted to use racial preferences as an explicit part of the admissions process, no serious effort to analyze and, perhaps, to redefine “merit” will ever be required.

¹ TSR at 278.

² *THE AMERICAN HERITAGE DICTIONARY, SECOND COLLEGE EDITION* (1982).

³ TSR at xxiii.

⁴ TSR at 276 (emphasis in original).

⁵ *Id.*

⁶ A complete description of the C&B database is found in THE SHAPE OF THE RIVER at Appendix A. TSR at 291 *et seq.*

⁷ TSR at 25.

⁸ Published admissions criteria for Williams College, one of the most highly selective C&B institutions, are representative: “The Committee on Admission is looking for evidence of intellectual curiosity and documented high academic achievement. . . . The committee [also] looks for students who have shown an extended commitment to and involvement in school, community, and personal activities or employment and whose participation has led to some leadership, honor, or recognition of their talents and abilities. . . .” *See, e.g.*, PETERSON’S GUIDE TO FOUR-YEAR COLLEGES 1996.

⁹ *See* definitions of school “selectivity,” TSR at 337.

¹⁰ A listing of some of the selective schools which, as of the fall of 2000, no longer required an applicant to submit (or, even if submitted, do not consider for admissions purposes) an SAT or ACT score is found in THE JOURNAL OF BLACKS IN HIGHER EDUCATION (Autumn 2000) at 99-100.

¹¹ Editorial, “Admitting Error,” THE NEW REPUBLIC ONLINE (Dec. 27, 1999).

¹² Sarah Kleiner, “Texas A&M not using race in admission,” THE DAILY TEXAN (12/05/2003), citing a proposal to the University of Texas System recommending a return to the use of race as a factor in admissions following *Grutter*.

¹³ *See Statement by Texas A&M President Robert M. Gates* (Dec. 3, 2003).

¹⁴ *Id.*

¹⁵ Kleiner, *supra* note 12, citing the comments of Texas A&M student Cedrick Bates, president of the African American Student Coalition.

¹⁶ *Office of the President, Texas A&M University*, “Statement on Legacy” (Jan. 9, 2004). It is worth noting University of Michigan Law School Professor Terrance Sandalow’s response to proponents of race preferences who, in an effort to justify the practice, often point to the wide-spread use of legacy preferences. He wrote that “the preference given to ‘legacies’ . . . is quite significantly less than that afforded African Americans.” Terrance Sandalow, *Minority Preferences Reconsidered*, 97 MICH. L. REV. 1874, 1880 (May 1999). In addition, the district court in *Grutter* suggested eliminating legacy preferences as another means to achieve diversity without considering race. *Grutter I, supra*, 137 F.Supp.2d at 853. The Plaintiff in *Grutter* had no objection to this suggestion.

¹⁷ TSR at 286-87, n. 12.

¹⁸ Peter Schmidt, “A New Route to Racial Diversity: Texas A&M raises minority enrollments without race-conscious admissions,” THE CHRONICLE OF HIGHER EDUCATION (Jan. 28, 2005) at A22: “While many other colleges, including some staunch advocates of race-conscious admissions, were suffering declines in their minority enrollment, Texas A&M’s numbers were way up.”

¹⁹ “What is clear is that the evidence cited here shows that, far from being biased *against* minority students, standardized admissions tests consistently predict higher levels of academic performance than most blacks actually achieve.” TSR at 262, n. 10 (emphasis in original).

²⁰ “The fact that SAT scores are helpful in predicting advanced degree attainment, as well as graduation rates and rank in class, is one reason why we believe that they should continue to be used in the admissions process.” TSR at 109.

²¹ TSR at 42 (emphasis in original).

²² In one highly regarded national poll, college students overwhelming agreed that racial preferences should not be used in the admissions process. A Zogby International poll conducted between January 8 and 24, 2000, found that 77.3 percent of students across all racial and political lines (including almost half of the black students polled) believe schools should not give minority students preferences in admission. Other important findings: 92.7% say colleges should strive toward fair enrollment rather than use racial preferences; 95.7% say diversity of ideas and high academic standards are more important to a quality education than achieving ethnic diversity; 86.4% say fairness in meeting academic standards is more important in admissions decisions than achieving ethnic diversity; and 78.9% say lowering entrance standards for some students regardless of the reason is unfair to the entire student body (a position with which black students agreed by a 3 to 2 margin). *See* “Report on Academic Life Survey,” submitted to the Foundation for Academic Standards & Traditions by Zogby International (Apr. 7, 2000). *See* discussion of this and other surveys in BRIEF FOR AMICUS CURIAE NATIONAL ASSOCIATION OF SCHOLARS IN SUPPORT OF PETITIONERS in *Grutter* (Jan. 2003) at 7-11.

²³ In addition to the Texas, Florida, and California plans mentioned, and the other “race-neutral” means mentioned by the district court in *Grutter* (noting that law schools might also consider ending family legacy and faculty-relationship “preferences” which are alleged to disproportionately benefit white students, or using a “lottery system for all qualified applicants,” *Grutter I, supra*, 137 F.Supp.2d at 853), other policies are being developed with the goal of maintaining racial diversity while removing race as an

explicit criterion in admissions screening. See, e.g., E.P. ST. JOHN, A.B. SIMMONS, AND G.D. MUSOBA, “Merit-Aware Admissions in Public Universities: Increasing Diversity,” *Indiana Education Policy Center at Indiana University*, POLICY BULLETIN NO. 25 (October 1999). An even more promising plan is being discussed whereby students who attend their local community college and successfully complete a specifically prescribed curriculum may thereafter be guaranteed admission to the state’s flagship university for completion of their undergraduate degree. Such a plan could have widespread applicability in several states (California, Washington and Florida among them where, *Grutter* notwithstanding, race is no longer permitted as a factor in university admissions as a result of changes in state law). Such plans likely would encourage and, one would hope, increase minority enrollment at virtually every major university in the nation, particularly in those states which already possess a well-developed community college system. In addition, just days before the *Grutter* case was argued before the Supreme Court, The U.S. Department of Education Office for Civil Rights produced a 40-page publication which outlined numerous race-neutral alternatives to the current scheme of racial preferences found at so many of our colleges and universities. See RACE-NEUTRAL ALTERNATIVES IN POSTSECONDARY EDUCATION: INNOVATIVE APPROACHES TO DIVERSITY (March 2003). Also see Anthony P. Carnevale and Stephen J. Rose, SOCIOECONOMIC STATUS, RACE/ETHNICITY, AND SELECTIVE COLLEGE ADMISSIONS, A Century Foundation Paper (March 2003). Richard D. Kahlenberg, senior fellow at The Century Foundation and author of THE REMEDY: CLASS, RACE, AND AFFIRMATIVE ACTION (1996), said that “Carnevale and Rose find that a race-blind economic affirmative action program would boost African American and Latino admissions from [an estimated] 4 percent (under a system of grades and test scores) to 10 percent, which is somewhat below the current 12 percent representation.” See Richard D. Kahlenberg, “Affirmative Action: There’s a Third Way,” WASHINGTONPOST.COM (Mar. 31, 2003) at A13. Kahlenberg also observed that “Americans have always been uncomfortable with racial preference schemes such as that used at Michigan, . . .” while overwhelmingly supportive of “affirmative action for low-income students of all races.” *Id.*