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Indiana Law Journal

Volume 85 | Issue 4 Article 1

Fall 2010

# Brilliant Disguise: An Empirical Analysis of a Social Experiment Banning Affirmative Action

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Bowen, Deirdre M. (2010) "Brilliant Disguise: An Empirical Analysis of a Social Experiment Banning Affirmative Action," *Indiana Law Journal*: Vol. 85: Iss. 4, Article 1.
Available at: https://www.repository.law.indiana.edu/ilj/vol85/iss4/1

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# Brilliant Disguise: An Empirical Analysis of a Social Experiment Banning Affirmative Action†

DEIRDRE M. BOWEN*

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## INTRODUCTION

Maybe Justice Thomas was correct when he wrote,

> "[D]iversity" . . . is more a fashionable catchphrase than it is a useful term, especially when something as serious as racial discrimination is at issue. . . . [T]he 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.[1]

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* J.D., Ph.D. Associate Professor of Lawyering Skills, Seattle University School of Law. This study was funded in part from grant number U54 DE14254 from the National Institute of Dental and Craniofacial Research, National Institutes of Health. The Article that follows exists because of the support, energy, and wisdom of many people. I owe a huge debt of gratitude to Dr. Peter Milgrom from the University of Washington School of Dentistry. His never-ending support, advocacy, and intellect made this project a reality. Second, I must thank my dedicated research assistant, Sasha Craft, for her terrific work during data collection, as well as my other research assistants Jana Oswald and John Earling. Thank you to Richard Delgado and Bob Chang for reading later drafts of the Article. And finally, many thanks to andré douglas pond cummings, who read the first draft and saw what was possible.

1. Grutter v. Bollinger, 539 U.S. 306, 354 n.3 (2003) (Thomas, J., concurring in part and dissenting in part).

> . . . And the aestheticists will never address the real problems facing "underrepresented minorities," instead continuing their social experiments on other people's children.[2]

Maybe affirmative action is hypocrisy that allows liberal, white,[3] elite institutions to feel good about their educational goals without really coming to terms with how they and other social institutions contribute to the social ills of underrepresented racial minorities. Maybe affirmative action is also a social experiment. If so, however, then the decision to *ban* affirmative action must also be considered a social experiment on other people's children.

The color-blind ideal has three basic premises behind the argument that affirmative action is no longer needed. The first premise is that affirmative action is not an appropriate mechanism to combat lingering racism.[4] It may, in fact, engender it. The second premise is that minority students who are admitted into higher education under race-based admissions will feel stigmatized both externally and internally. Specifically, minority students will experience internal stigma because they will always doubt their abilities and their merit. In addition, minority students will experience external stigma because other students will assume that they were admitted based on their race and not on their merit.[5] Therefore, these students will always question underrepresented minorities' presence on campus. The third premise is attendant to the second premise in that nonminority students will exhibit greater resentment and hostility toward minority students whom they believe got into school because of their race and without the necessary qualifications. In other words, the perception of "reverse discrimination" leads to greater resentment and hostility from whites toward certain racial groups.[6]

Therefore, one would anticipate that underrepresented minority students attending school in the states that are participating in the experiment of *banning* race-based admissions would suffer lower rates of internal and external stigma as well as less

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2. *Id.* at 372 (Thomas, J., concurring in part and dissenting in part) (footnote omitted).

3. In this Article, I concur with Tim Wise's assessment of "white":

> I am referring to those persons . . . who are able, by virtue of skin color or perhaps natural origin and cultures, to be perceived as "white," as members of the dominant group. I do not consider the white race to be a real thing, in biological terms . . . . But the white race certainly has meaning in social terms, and it is in that sense that I use the concept here.

TIM WISE, WHITE LIKE ME: REFLECTIONS ON RACE FROM A PRIVILEGED SON, at ix (2005).

4. I suspect that some anti–affirmative action activists would assert that racism is no longer prevalent in the same way it may have been at the time President Kennedy developed affirmative action policies. Many of these activists would be further bolstered by the election of our first black president as the strongest evidence yet that affirmative action is outdated.

5. Justice Thomas is a great fan of this argument. *See* Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 243 (1995) (Thomas, J., concurring); *see also* Terry Eastland, *The Case Against Affirmative Action*, 34 WM. & MARY L. REV. 33, 41–42 (1992). *But see* Angela Onwuachi-Willig, Emily Houh & Mary Campbell, *Cracking the Egg: Which Came First—Stigma or Affirmative Action?*, 96 CAL. L. REV. 1299, 1325–26 (2008) (analyzing data from seven law schools demonstrating no difference in internal and external stigma between students attending schools with affirmative action and those attending schools without it).

6. *See* THOMAS SOWELL, CIVIL RIGHTS: RHETORIC OR REALITY? 118–19 (1984).

hostility in the form of racism from nonminority students. Actually, the results of this study demonstrate that these presuppositions have not come to fruition.

In fact, the opposite is true. Underrepresented minority students in states that *permit* affirmative action encounter far less hostility and internal and external stigma than students in anti–affirmative action states. Moreover, the data from this study reveal that affirmative action—as a social experiment—may be working.

One of the key arguments in support of affirmative action is that it can create a critical mass of minority students who are viewed not as a token aesthetic, but first and foremost as legitimate citizens of the classroom to be engaged with on their own terms.[7] This research suggests that critical mass is more likely to occur in university settings that use race-based admissions and those students are the ones least likely to report stigma or overt racism.

Conversely, those underrepresented minority students who are racially isolated bear the greatest burden of overt racism and external and internal stigma. Furthermore, they are most likely to be found in states that have adopted *anti*–affirmative action policies.

Therefore, this Article argues that based upon the results of this research, we should reconsider which social experiment is worth continuing. Just as the Supreme Court in *Brown v. Board of Education*[8] considered empirical evidence as it contemplated which social experiment should be adopted—integration or segregation—this study offers legislators and courts alike the opportunity to take the bold step of breathing new life into affirmative action. Affirmative action is but one brick in the institutional reconstruction needed to undo the grip of the dominant group's privilege.

The debate over whether affirmative action[9] is an appropriate admissions policy in

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7. Grutter v. Bollinger, 539 U.S. 306, 330 (2003) (discussing the testimony of Erica Munzel). "Critical mass" in an educational context refers to the concentration of a "meaningful" number of underrepresented students necessary to create an environment in which such students can fully engage in the classroom as individuals rather than feeling like they have to be a spokesperson for their race or defy stereotypes. *Id.*; *see also* Adeno Addis, *The Concept of Critical Mass in Legal Discourse*, 29 CARDOZO L. REV. 97, 97–100 (2007). The Supreme Court used this concept in a number of cases prior to *Grutter*, but it was the University of Michigan Law School faculty committee's use of the term to rationalize its race-based admission policies that captured the imagination of the Justices and academics alike. *Id.* The Law School used empirical studies to demonstrate the importance of critical mass. *See* ANGELO N. ANCHETA, THE CIVIL RIGHTS PROJECT, HARVARD UNIV., REVISITING *BAKKE* AND DIVERSITY-BASED ADMISSIONS: CONSTITUTIONAL LAW, SOCIAL SCIENCE RESEARCH, AND THE UNIVERSITY OF MICHIGAN AFFIRMATIVE ACTION CASES (2003), *available at* http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/1a/e5/39.pdf; Roxane Harvey Gudeman, *Faculty Experience with Diversity: A Case Study of Macalester College*, *in* DIVERSITY CHALLENGED: EVIDENCE ON THE IMPACT OF AFFIRMATIVE ACTION 251–76 (Gary Orfield & Michal Kurlaender eds., 2001).

8. 347 U.S. 483 (1954).

9. President Kennedy used the term affirmative action in an executive order designed to promote the integration of minorities in the workforce. Exec. Order No. 10,925, 26 Fed. Reg. 1977 (Mar. 8, 1961). He stated that federally funded contractors should take affirmative action to hire and treat all employees the same regardless of race. *Id.* The concept received further attention in a speech given by President Johnson at Howard University, in which he pointed out that it was not enough to simply state that an oppressed racial group could now compete equally. President Lyndon B. Johnson, Commencement Address at Howard University: To Fulfill These

higher education[10] continues to rage in academic,[11] activist,[12] judicial,[13] and

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Rights (June 4, 1965), *available at* http://www.lbjlib.utexas.edu/johnson/archives.hom/speeches.hom/650604.asp. In 1964, Congress enacted Title VII of the Civil Rights Act, which banned employment discrimination and created the Equal Employment Opportunity Commission. Civil Rights Act of 1964, Pub. L. No. 88-352, tit. VII, 78 Stat. 241, 253–66 (codified as amended at 42 U.S.C. § 2000e (2006)); *see also* Nat'l Archives, Teaching with Documents: The Civil Rights Act of 1964 and the Equal Employment Opportunity Commission, http://www.archives.gov/education/lessons/civil-rights-act/. This agency became central in enforcing affirmative action policies in employment cases. Nat'l Archives, *supra*. Congress enlarged the scope of Title VII with the Equal Opportunity Act of 1972 to include colleges and universities. *See generally* Paul Finkelman, *The Color of Law*, 87 NW. U. L. REV. 937 (1993) (reviewing ANDREW KULL, THE COLORBLIND CONSTITUTION (1992)); Paul Finkelman, *The Rise of the New Racism*, 15 YALE L. & POL'Y REV. 245 (1996).

10. The University of Michigan used an index with points added for various academic and nonacademic factors. Statement by University of Michigan President Mary Sue Coleman to U-M Board of Regents (Jan. 16, 2003), http://www.ns.umich.edu/Releases/2003/Jan03/r011603a.html. Racial minorities could receive a +20 score under this scheme. University of Michigan Admissions Lawsuits, Q&A re University of Michigan Former Admissions Policies (Feb. 19, 2003), http://www.vpcomm.umich.edu/admissions/archivedocs/q&a.html. The University of Texas School of Law applied lower admissions standards to underrepresented minorities so that it could achieve its admissions goal of enrolling a certain percentage of students from particular minority groups. HOUSE RESEARCH ORG., TEXAS HOUSE OF REPRESENTATIVES, FOCUS REPORT: SHOULD TEXAS CHANGE THE TOP 10 PERCENT LAW? 3 (2005), *available at* http://www.hro.house.state.tx.us/focus/topten79-7.pdf. Other schools use a holistic approach in which race is one amongst many factors the admissions committee considers in deciding whether to accept a student. *See* Lisa W. Foderaro, *The Whole Applicant*, N.Y. TIMES, Nov. 1, 2009, at ED25. Finally, percent plans are also in use. *See* James C. McKinley Jr., *Texas Vote Curbs a College Admission Guarantee Meant to Bolster Diversity*, N.Y. TIMES, May 31, 2009, at A25 (describing a former Texas plan to give students in the top ten percent of their high school classes automatic admission to state universities). Florida, for example, used a "Talented 20" program in which the top twenty percent of each high school's graduates were guaranteed admission to Florida's state schools. Blair S. Walker, *Two States, Two Stories*, DIVERSE: ISSUES HIGHER EDUC., Mar. 22, 2007, at 15, 15.

11. *See, e.g.*, Susan Sturm & Lani Guinier, *The Future of Affirmative Action*, *in* WHO'S QUALIFIED? 3 (Lani Guinier & Susan Sturm eds., 2001); Ian Ayres & Richard Brooks, *Does Affirmative Action Reduce the Number of Black Lawyers?*, 57 STAN. L. REV. 1807 (2005); David L. Chambers, Timothy T. Clydesdale, William C. Kidder & Richard O. Lempert, *The Real Impact of Eliminating Affirmative Action in American Law Schools*, 57 STAN. L. REV. 1855 (2005); Sumi K. Cho, *Multiple Consciousness and the Diversity Dilemma*, 68 U. COLO. L. REV. 1035 (1997); Richard Delgado, *1998 Hugo L. Black Lecture: Ten Arguments Against Affirmative Action—How Valid?*, 50 ALA. L. REV. 135 (1998); Eastland, *supra* note 5; Kevin R. Johnson & Angela Onwuachi-Willig, *Cry Me a River: The Limits of "A Systematic Analysis of Affirmative Action in American Law Schools,"* 7 AFR.-AM. L. & POL'Y REP. 1 (2005); D. Marvin Jones, Plessy*'s Ghost:* Grutter, Seattle *and the Quiet Reversal of* Brown, 35 PEPP. L. REV. 583 (2008); Richard H. Sander, *A Systematic Analysis of Affirmative Action in American Law Schools*, 57 STAN. L. REV. 367 (2004); Lauren Arms, Comment, *It's Not All Black and White: Race-Based Admissions Purport to Achieve a Critical Mass of Diversity, but in Reality Merely Mask a Pre-Determined Quota of the Ideal Integrated Society*, 49 S. TEX. L. REV. 205 (2007).

12. *See, e.g.*, Khaled Ali Beydoun, *Without Color of Law: The Losing* Race *Against Colorblindness in Michigan*, 12 MICH. J. RACE & L. 465 (2007).

13. *See, e.g.*, Antonin Scalia, Commentary, *The Disease as Cure: "In Order to Get Beyond*

citizenry[14] circles. From its origins in *Regents of the University of California v. Bakke*,[15] to the successful propositions[16] and lawsuits[17] against such a policy in the last ten years, a significant amount of academic discourse has been devoted to the benefits[18] and harms[19] of affirmative action in higher education. However, a disturbing erosion of access to and experience in higher education for underrepresented minorities has begun with considerable inroads made by anti–affirmative action activists.[20] Using both political and judicial arenas to put forth a reactionary "color-blindness"[21]

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*Racism, We Must First Take Account of Race,"* 1979 WASH. U. L.Q. 147; Timothy Goldsmith & Morris B. Hoffman, *Bench Versus Trench: A Judge and an Academic Debate the Affirmative Action Cases* (Gruter Inst. Working Papers on Law, Econ. & Evolutionary Biology, vol. 3, art. 1, 2004), *available at* http://www.bepress.com/giwp/default/vol3/iss1/art1/.

14. *See, e.g.*, andré douglas pond cummings, Grutter v. Bollinger, *Clarence Thomas, Affirmative Action and the Treachery of Originalism: "The Sun Don't Shine Here in This Part of Town,"* 21 HARV. BLACKLETTER L.J. 1, 2–9, nn.5 & 19 (2005).

15. 438 U.S. 265 (1978).

16. In 1996, Californians voted to ban the use of affirmative action in admissions decisions at all state institutions of higher education in Proposition 209. *See* CAL. CONST. art. I, § 31. Washington State voters followed suit with Initiative 200 in 1998. *See* WASH. REV. CODE ANN. § 49.60.400 (West 2008). Finally, Michigan voters decided to adopt the same policy with Proposition 2 in 2006. *See* MICH. CONST. art. I, § 26. "There was a possibility that, following the November 2008 elections, more than 30 percent of Americans would live in states where racial preferences in public higher education had been outlawed." THOMAS J. ESPENSHADE & ALEXANDRIA WALTON RADFORD, NO LONGER SEPARATE, NOT YET EQUAL: RACE AND CLASS IN ELITE COLLEGE ADMISSION AND CAMPUS LIFE 5 (2009).

17. *See, e.g.*, Grutter v. Bollinger, 539 U.S. 306 (2003); Gratz v. Bollinger, 539 U.S. 244 (2003); Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996); Smith v. Univ. of Wash. Law Sch., 2 F. Supp. 2d 1324 (W.D. Wash. 1998).

18. *See* WILLIAM G. BOWEN & DEREK BOK, THE SHAPE OF THE RIVER: LONG-TERM CONSEQUENCES OF CONSIDERING RACE IN COLLEGE AND UNIVERSITY ADMISSIONS (1998) (detailing the long-term benefits of race-based affirmative action in higher-education admissions); Kenneth R. Davis, *Wheel of Fortune: A Critique of the "Manifest Imbalance" Requirement for Race-Conscious Affirmative Action Under Title VII*, 43 GA. L. REV. 993 (2009); Kimberly West-Faulcon, *The River Runs Dry: When Title VI Trumps State Anti–Affirmative Action Laws*, 157 U. PA. L. REV. 1075 (2009); Joshua M. Levine, Comment, *Stigma's Opening:* Grutter*'s Diversity Interest(s) and the New Calculus for Affirmative Action in Higher Education*, 94 CAL. L. REV. 457, 461–75 (2006) (examining the benefits of diversity in higher education for society and educational institutions alike). Summarizing a wealth of empirical studies, Terry Anderson concludes that affirmative action has resulted in educational benefits to minorities, more minority-owned businesses, and, not surprisingly, higher rates of minority employment among institutions practicing affirmative action. *See* TERRY H. ANDERSON, THE PURSUIT OF FAIRNESS: A HISTORY OF AFFIRMATIVE ACTION 278–80 (2004).

19. *See, e.g.*, TERRY EASTLAND, ENDING AFFIRMATIVE ACTION: THE CASE FOR COLORBLIND JUSTICE (1996) (arguing that affirmative action causes reverse discrimination against white men particularly and that social engineering causes resentment); FREDERICK R. LYNCH, INVISIBLE VICTIMS: WHITE MALES AND THE CRISIS OF AFFIRMATIVE ACTION (1991) (arguing that white males are victims of discrimination for a policy that is ill advised and creates resentment); Robert J. Corry, *Affirmative Action: An Innocent Generation's Equality Sacrificed*, 22 OHIO N.U. L. REV. 1177 (1996); Sander, *supra* note 11.

20. *See infra* notes 23–25 (discussing reductions in applications, admissions, and enrollments).

21. The language of color blindness came originally from Justice Harlan's dissent in *Plessy*

discourse, the anti–affirmative action movement has captured the imagination of the courts and public in convincing them that race[22] no longer matters—and, therefore, affirmative action is no longer necessary.

In the aftermath of Proposition 209 in California, Initiative 200 in Washington, and Proposition 2 in Michigan, which banned affirmative action in admissions decisions at state universities, dire predictions and results were tracked regarding the decreased applications,[23] admissions,[24] and enrollment[25] of underrepresented minorities. In all

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*v. Ferguson* in which he stated, "Our constitution is color-blind, and neither knows nor tolerates classes among citizens." 163 U.S. 537, 559 (1896) (Harlan, J., dissenting). In the context of *Plessy*, color blindness is asserted as a lofty goal toward which United States society should work: racial distinctions should be eliminated in the hopes of remedying racial oppression. *Id.* However, the use of this concept has now been invoked to question the legitimacy of race-based remedies to amend race-based discrimination. Ian F. Haney López, *"A Nation of Minorities": Race, Ethnicity, and Reactionary Colorblindness*, 59 STAN. L. REV. 985, 988 (2007). Ian F. Haney López uses the term "reactionary colorblindness" specifically to discuss "an anticlassification understanding of the Equal Protection Clause that accords race-conscious remedies and racial subjugation the same level of constitutional hostility." *Id.* Moreover, Justice Thomas writes in *Parents Involved in Community Schools v. Seattle School District No. 1*, "The dissent attempts to marginalize the notion of a color-blind Constitution by consigning it to me and Members of today's plurality. But I am quite comfortable in the company I keep. My view of the Constitution is Justice Harlan's view in *Plessy*. . . ." 551 U.S. 701, 772 (2007) (Thomas, J., concurring) (citations omitted) (footnote omitted).

22. Race, in this context, is code for inequality amongst subordinate groups. The dominant group uses the language of "race no longer matters" to suggest that inequality is no longer an issue in society. Although anti–affirmative action activists have co-opted the ethnicity model to suggest that the United States does not need solutions to racial stratification, this is a misuse of the model. While some sociologists have long argued that the ethnicity model may give a more accurate portrayal of the social and historical context of groups in U.S. society than a race model whose origin comes from a history of mistaken science regarding the innate inferiority of certain groups, this model in no way suggests that inequality is no longer problematic. *See* Mario Barrera, *Are Latinos a Racialized Minority?*, 51 SOC. PERSP. 305, 321 (2008). Although some have argued that racial discourse should be used to describe an ethnic group victimized by systematic discrimination, sociologists advocating for the ethnicity model make clear that the use of this model does not "preclude [examination of ethnic] relations of superordination-subordination and exploitation that are so readily identified with 'race' in the United States." *Id.* at 320; *see also* Fredrik Barth, *Introduction* to ETHNIC GROUPS AND BOUNDARIES: THE SOCIAL ORGANIZATION OF CULTURAL DIFFERENCE 27 (Fredrik Barth ed., Waveland Press, Inc. 1998) (1969). In other words, the desire to replace ethnicity discourse with racial discourse does not do away with the still fundamental problem of stratification in the United States.

23. For example, in 1995, after the Board of Regents for California eliminated race-based admissions, 21.5% of University of California system (UC) applicants were underrepresented minorities while they represented 38.3% of California's high school graduates. Symposium, *From Proposition 209 to Proposal 2: Examining the Effects of Anti–Affirmative Action Voter Initiatives*, 13 MICH. J. RACE & L. 461, 474 (2008) [hereinafter *From Proposition 209 to Proposal 2*] (remarks of Mark Rosenbaum, Legal Director, ACLU, Los Angeles). Three years later, the percentage of underrepresented minority UC applicants had dropped to 17.5%. *Id.*

24. In 2002, 17% of UC freshmen were from underrepresented groups despite making up 41.6% of California's high school graduates. *Id.* More specifically, African American enrollment dropped from 7.8% to 3.9%, and Latino enrollment dropped from 14.6% to 10.8%. *Id.* at 475. At the elite schools, the enrollment statistics were even more dire. One year after Proposition 209 took effect, UCLA's entering class of 5000 students included only ninety-eight

three phases of college entrance, underrepresented minorities were affected.[26] Perhaps the starkest difference came in applications, which, in turn, ultimately impacted enrollments, but not necessarily admissions.[27] For example, in Washington State, minority students simply chose not to apply to schools that no longer considered race.[28]

In response, many colleges and universities in anti–affirmative action states developed programs[29] to help ensure support of underrepresented minorities in their pursuit of higher education.

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African Americans, forty-nine of whom were athletes. *Id.* at 474. During that same time period, UC Berkeley's underrepresented minorities decreased from 22% to 12%. *Id.* at 474–75. Likewise, Washington State encountered precipitous drops in its applications of minority students. *See* Florangela Davila & Justin Mayo, *I-200 Didn't Erase Color on Campus: Minority Enrollment Dropped Initially, but Colleges Found Ways To Blunt Effects*, SEATTLE TIMES, Nov. 24, 2002, at A1. Four years later, however, due to aggressive recruitment efforts, the state saw enrollment increase to levels higher than the previous decade, prior to a ban on race-based admissions policies. *Id.* Eight percent of incoming freshman came from underrepresented groups; in Washington, that includes African Americans, Latinos, and Native Americans. Regrettably, this number is still below the 12% of high school graduates that underrepresented minorities account for each year. *Id.*

25. *See From Proposition 209 to Proposal 2*, *supra* note 23, at 474–75. In 2006, only ninety-six of the 4852 entering freshmen at UCLA were black, representing 2% of the freshman class and the lowest number since 1973. Rebecca Trounson, *A Startling Statistic at UCLA: At a School Whose Alumni Include Jackie Robinson and Tom Bradley, Only 96 Blacks Are Expected in This Fall's Freshman Class*, L.A. TIMES, June 3, 2006, at A1.

26. *See* Student Academic Servs., Univ. of Cal. Office of the President, University of California Application, Admissions and Enrollment of California Resident Freshman for Fall 1995 Through 2003, http://www.ucop.edu/news/factsheets/flowfrc9503.pdf.

27. *See supra* note 24 (discussing underrepresented minority student applications). While law school enrollments dropped "precipitously" after California and Texas banned race-based admissions, medical school and graduate science schools admissions rates did not. Marcia Barinaga, *Affirmative Action: Ban Has Mixed Impact on Texas, California Grad Schools*, 277 SCIENCE 633, 633 (1997). Texas has since reinstituted race as a consideration in admitting students to higher education. *See* Michael C. Dorf, *Universities Adjust to State Affirmative Action Bans: Are the New Programs Legal? Are They a Good Idea?*, FINDLAW, Jan. 29, 2007, http://writ.news.findlaw.com/dorf/20070129.html. While the most competitive programs saw "significant drops," some programs saw the admissions rates for minority students increase. Barinaga, *supra* at 633. On the other hand, at the University of Michigan, underrepresented minority student admissions dropped 43% after the ban on affirmative action took effect. Walter Nowinski, *Minority Admissions Plummet*, MICH. DAILY, Feb. 19, 2007, *available at* http://www.michigandaily.com/content/minority-admissions-plummet.

28. *See* Susan K. Brown & Charles Hirschman, *The End of Affirmative Action in Washington State and Its Impact on the Transition from High School to College*, 79 SOC. EDUC. 106, 125–26 (2006). In their empirical study on the impact of Washington State's ban on affirmative action, Brown and Hirschman concluded that the decrease in minority high school students attending college had more to do with fewer minority applicants than fewer minority admits. *Id.* They also asserted that affirmative action programs can neutralize an otherwise intimidating institution. *Id.*

29. *See* Daniel N. Lipson, *Embracing Diversity: The Institutionalization of Affirmative Action as Diversity Management at UC-Berkeley, UT-Austin, and UW-Madison*, 32 LAW & SOC. INQUIRY 985, 1014–15 (2007); *see also* Univ. of Cal. Office of Strategic Commc'ns, Facts About the University of California (2001), http://www.ucop.edu/news/factsheets/2001/admissionsoverview.pdf (describing in detail the programs undertaken to attract minority

But what of the underrepresented minority[30] students who continue to attend institutions in these states? Does race no longer matter from their point of view? Very little research has examined the experiences and perceptions of students who attended colleges and universities in a post–anti–affirmative action world.[31] This Article seeks to consider students' experiences on a national scale and examine both the students who attend institutions of higher education where affirmative action policies are still applied with those where the policy is no longer in force. In addition, the Article examines the experiences of two other groups of students: those who attend *all* their classes with at least some other minority students[32] and those students who attend or have attended at least one class in which they are the sole minority student in the class.[33]

The goal of this Article is to scrutinize what happens when the judiciary and anti–affirmative action activist groups exploit color blindness[34] to rationalize away

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student applications and their impact).

30. "Underrepresented minority" refers to a racial or ethnic group whose proportional makeup of the enrolled student population is less than the proportional makeup of that group's population in the U.S. population. *Cf.* Ass'n Am. Med. Colls., Underrepresented in Medicine Definition (Mar. 19, 2004), http://www.aamc.org/meded/urm/start.htm ("Underrepresented in medicine means those racial and ethnic populations that are underrepresented in the medical profession relative to their numbers in the general population."). For example, while Asian Americans are considered a minority group in the U.S. population, this group is not considered underrepresented in the context of institutions of higher education because, typically, a higher percentage of Asian American students are enrolled in a university compared to their proportion of the U.S. population. *Cf.* U.S. Census Bureau, Asian/Pacific American Heritage Month: May 2010 (March 2, 2010), http://www.census.gov/Press-Release/www/releases/archives/facts_for_features_special_editions/014602.html (stating that in 2008, 50% of single-race Asians twenty-five or older had a bachelor's degree or higher level of education, compared to 28% of all Americans twenty-five or older). On the other hand, Pacific Islanders are considered underrepresented in higher education compared to their proportional representation in the U.S. population. *Cf. id.* (stating that in 2008, 15% of single-race Native Hawaiians and other Pacific Islanders 25 or older had a bachelor's degree or higher level of education, compared to 28% of all Americans 25 or older).

31. *See, e.g.*, Walter R. Allen & Daniel Solórzano, *Affirmative Action, Educational Equity and Campus Racial Climate: A Case Study of the University of Michigan Law School*, 12 BERKELEY LA RAZA L.J. 237 (2001); Linda Hamilton Krieger, *Civil Rights Perestroika: Intergroup Relations After Affirmative Action*, 86 CAL. L. REV. 1251 (1998); Onwuachi-Willig et al., *supra* note 5; Daniel Solórzano, Walter R. Allen & Grace Carroll, *Keeping Race in Place: Racial Microaggressions and Campus Racial Climate at the University of California, Berkeley*, 23 CHICANO-LATINO L. REV. 15 (2002).

32. The other minority students with whom the respondents attended class were not necessarily members of the respondents' minority or ethnic group.

33. The purpose of studying these two groups of students is to examine the impact of two concepts that are frequently discussed in the literature: First, I wanted to explore how racial isolation in even one class affects students' college experiences. Second, I wanted to investigate the role of the critical mass on students' college experiences.

34. Recall that the definition of color blindness changes significantly based on context. As used in its original meaning, it was a normative goal to eliminate color distinctions on the basis of race. However, color blindness has become the blunt tool of those seeking to protect the status quo. While it was once a heralded concept used by Thurgood Marshall and others seeking to eradicate those laws that ensured racial subjugation, those resisting race-conscious remedies

affirmative action admissions policies. My research, unfortunately, demonstrates that as soon as the dominant group[35] in society, and institutions of higher education in particular, convinces itself that race no longer matters, it gives itself permission to ignore the "other,"[36] in this case underrepresented minorities. By engaging in the comfortable ways of white privilege,[37] indirect institutionalized racism,[38] as well as

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needed to remediate racial subordination hypocritically cloaked themselves in the term attempting to redefine the moral high ground. *See* Haney López, *supra* note 21, at 1004.

35. "Dominant group" can be defined as "that collectivity within a society which has preeminent authority to function both as guardians and sustainers of the controlling value system, and as prime allocators of rewards in the society." R.A. SCHERMERHORN, COMPARATIVE ETHNIC RELATIONS: A FRAMEWORK FOR THEORY AND RESEARCH 12–13 (1970). It is not defined by numbers, but rather, by power.

36. "Other" in sociology refers to the out-group or individuals who are not members of our ethnic group. MARTIN N. MARGER, RACE AND ETHNIC RELATIONS: AMERICAN AND GLOBAL PERSPECTIVES 14 (2000). Individuals tend to normalize the standards and values adopted by their ethnic group and judge other groups by these standards. *Id.* With every ethnic group there is a notion of distinction between "them" and "us." *See id.* The danger is when a dominant group garners a sense of superiority by judging other groups according to a set of "correct" or "natural" values and sentiments that may not apply to other groups. *Id.* at 13–14. "Ethnicity is a communalistic form of social affiliation, depending, first, upon an assumption of a special bond among people of like origins, and, second, . . . a disdain for people of dissimilar origins." EDNA BONACICH & JOHN MODELL, THE ECONOMIC BASIS OF ETHNIC SOLIDARITY: SMALL BUSINESS IN THE JAPANESE AMERICAN COMMUNITY 1 (1980). In institutions of higher learning, the dominant group is that of whites in which all others are judged by white normativity.

37. Peggy McIntosh defines "white privilege" as an invisible package of unearned assets about which most white Americans are unaware. Peggy McIntosh, *White Privilege and Male Privilege: A Personal Account of Coming To See Correspondences Through Work in Women's Studies* 1–2 (Ctr. for Research on Women, Wellesley Coll., Working Paper No. 189, 1988), *available at* http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/23/1e/8c.pdf. Because most white Americans believe that their mode of operating is normative, they do not see how their lives are filled with taken-for-granted benefits. *Id.* at 4. McIntosh developed a list of fifty daily effects that are attached to skin color. Some examples include:

> 1. I can if I wish arrange to be in the company of people of my race most of the time.
> 2. I can avoid spending time with people who I was trained to mistrust and who have learned to mistrust my kind or me.
> . . . .
> 5. I can go shopping alone most of the time, pretty well assured that I will not be followed or harassed.
> 6. I can turn on the television or open the front page of the paper and see people of my race widely represented.
> . . . .
> 16. I can be pretty sure that my children's teachers and employers will tolerate them if they fit school and workplace norms . . . .
> . . . .
> 21. I am never asked to speak for all the people of my racial group.
> . . . .
> 24. I can be pretty sure that if I ask to talk to "the person in charge," I will be facing a person of my race.

"quiet bias"[39] emerges. On the other hand, critical mass not only promotes the positive goals others have articulated,[40] such as sociological legitimacy,[41] role modeling, enriching and transforming the educational experience,[42] and remedying past

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25. If a traffic cop pulls me over or if the IRS audits my tax return, I can be sure I haven't been singled out because of my race.

26. I can easily buy posters, post-cards, picture books, greeting cards, dolls, toys, and children's magazines featuring people of my race.

. . . .

32. My culture gives me little fear about ignoring the perspectives and powers of people of other races.

*Id.* at 5–9.

38. "Indirect institutionalized discrimination" is the cumulative effect of a set of practices carried out without the intent to harm a particular group, but with the actual effect of doing so. Joe R. Feagin, *Indirect Institutional Discrimination: A Typological and Policy Analysis*, 5 AM. POL. Q. 177, 186 (1977). For example, within the world of higher education, legacy admits were created to give the offspring of alumni preferential treatment in the admissions process. *See* Marybeth Gasman & Julie Vultaggio, *A "Legacy" of Racial Injustice in American Higher Education*, DIVERSE: ISSUES HIGHER EDUC., Jan. 22, 2008, at 24. This preference program can account for a large percentage of a freshman class. For example, in recent years legacy students have made up between thirteen and sixteen percent of Yale's incoming classes. *See* Alice Gomstyn, *Top Colleges Mum on Legacy Admissions*, ABCNEWS.COM, Apr. 11, 2008, http://abcnews.go.com/Business/IndustryInfo/story?id=4626882&page=1. While the program was not designed to negatively affect underrepresented minority groups, it does, because students whose relatives did not attend college cannot take advantage of this program by applying to their relative's alma mater. In fact, William G. Bowen, former Princeton University President, and Derek Bok, former Harvard University President, found that "[t]he overall admission rate for legacies was almost twice that for all other candidates." BOWEN & BOK, *supra* note 18, at 35. Yet no one has raised the issue of whether these students deserve to be admitted or whether they suffer stigma of not being admitted entirely on their own merits. Indeed, there is cause for worry with legacy students. In a recent study, when compared with other students whose parents had college degrees, legacy students had a mean SAT score 12 points lower and a first semester mean GPA 0.1 point lower. *See* Nathan D. Martin & Kenneth I. Spenner, *A Social Portrait of Legacies at an Elite University* (paper presented at the American Sociological Association Annual Meeting, Sheraton Boston and the Boston Marriott Copley Place, Boston, Mass., July 31, 2008), *available at* http://www.allacademic.com/meta/p240777_index.html.

39. Quiet bias refers to the subtle, uneasily detected acts of discrimination that are rarely overt. *Cf.* Roel W. Meertens & Thomas F. Pettigrew, *Is Subtle Prejudice Really Prejudice?*, 61 PUB. OPINION Q. 54, 54 (1997). Meertens and Pettigrew refer to this type of discrimination as "cool, distant, and indirect" in contrast to the "hot, close, and direct" experience of blatant discrimination. *Id.* Peggy C. Davis introduced the concept of microaggression, which is closely connected to quiet bias, as "an instance of 'incessant, often gratuitous and subtle offenses.'" Peggy C. Davis, *Law as Microaggression*, 98 YALE L.J. 1559, 1560 (1989) (citation omitted).

40. *See* Addis, *supra* note 7, at 113–24.

41. "Sociological legitimacy" refers to a student's ability to move beyond isolation, avoid the stereotypes associated with their race or ethnicity, and do more than act as a spokesperson for their race. *See id.* at 118–19.

42. The code word for achieving enrichment is now diversity. While Derrick Bell and Charles Lawrence critique this model, Kenneth Nunn acknowledged that it does have the potential to enrich minority students' experiences as well. *Compare* DERRICK A. BELL, JR., FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM 197–200 (1992), *and* Charles R. Lawrence III, *Two Views of the River: A Critique of the Liberal Defense of Affirmative*

discrimination,[43] it puts others on notice that race is contextualized,[44] that all of us have fundamentally different racialized experiences, and affirmative action can start to remediate *current* racial discrimination.[45]

Part I offers a concise discussion of the current anti–affirmative action movement's use of color blindness and the co-opting of civil rights discourse to argue that race no longer matters in who has access to college, and, in fact, that the continued use of affirmative action only serves to stigmatize the very individuals it was intended to help. Part II describes the methodology employed to empirically examine whether race no longer matters for the underrepresented minorities who attend institutions of higher learning in both states with anti–affirmative action admissions policies and states with affirmative action admissions policies. Part III explores the results from this national study, revealing that regardless of a school's policy on affirmative action, race always matters, particularly for students who attend schools with anti–affirmative action policies.[46] Specifically, I demonstrate how the results undermine anti–affirmative action proponents' key arguments: affirmative action causes underrepresented minority students to experience stigma and hostility. In fact, the data here suggest quite the opposite—higher rates of hostility and stigma persist in schools located in anti–affirmative action states. Part IV argues that these outcomes represent more than the reification of a racialized status hierarchy;[47] they demonstrate the damage done—racialized stigma—when the dominant group's color-blind value misapplies "symbolic

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*Action*, 101 COLUM. L. REV. 928, 952–56 (2001), *with* Kenneth B. Nunn, *Diversity as a Dead-End*, 35 PEPP. L. REV. 705 (2008). However, as currently framed, diversity does not aim to focus on that goal, but rather on how white students will benefit from a racially diverse classroom. Nunn, *supra* at 724.

43. Addis, *supra* note 7, at 101.

44. The decontextualization of race both historically and culturally is central to the color-blind ideal. *See* DAVID A. ROEDIGER, COLORED WHITE: TRANSCENDING THE RACIAL PAST 7–12 (2002). Bourdieu refers to this as symbolic violence in which the dominant group dehistoricizes our taken for granted modes of thought that reinforce the dominant social order. PIERRE BOURDIEU, PASCALIAN MEDITATIONS 170 (1991). Furthermore, symbolic power, the dominant group's ability to define the ways in which we conceive of social relationships (i.e., race relations) creates this symbolic violence in which the dominant group's invested understandings of the social world order materialize as universal in nature. *See id.*

45. *See* BELL, *supra* note 42, at 197–200.

46. A particularly poignant piece of data from the study is the effect of the color-blind ideal on students who were admitted to school based on the normative white meritocracy criteria. The spirit injury is acute in this group. As Patricia Williams observed, spirit injury refers to the "'disregard for others whose lives qualitatively depend on our regard.'" Patricia J. Williams, *Spirit-Murdering the Messenger: The Discourse of Fingerpointing as the Law's Response to Racism*, 42 U. MIAMI L. REV. 127, 151 (1987) (observing that racism is "spirit-murder"); *see also* Adrien Katherine Wing & Sylke Merchan, *Rape, Ethnicity, and Culture: Spirit Injury from Bosnia to Black America*, 25 COLUM. HUM. RTS. L. REV. 1, 2 (1993).

47. Charles Lawrence points out that university admissions policies, whether they embrace affirmative action or not, use a measure of merit that replicates racial privilege and preserves the status quo. Lawrence, *supra* note 42, at 932. Moreover, by using the diversity defense to preserve affirmative action, that is, the benefits to white people of having people of color in the classroom, the university does not acknowledge its own past (or current) discriminatory practices. *Id.* at 953. "This denial concurs in and reiterates 'the big lie,' the anti–affirmative action argument that pretends white supremacy is extinct and presupposes a color-blind world, a world in which race-conscious remedies become invidious discrimination." *Id.* at 953–54.

ethnicity"[48] to race, as part of the larger paradigm of symbolic violence,[49] which naturally emerges from the "taken-for-grantedness"[50] of white privilege. In essence, these results are to be expected when race is decontextualized. Finally, I make some recommendations of how to address these issues within the milieu of the diversity and critical mass discourse.

## I. THE EMERGENCE OF REACTIONARY COLOR BLINDNESS

Affirmative action arose as a response to the recognition that racism has more compelling roots than just individual actions. Racism could be found in the very social structures of society. However, as cases arose challenging the appropriateness of this solution, the legal response to affirmative action was to adopt the use of the ethnicity model, created by Nathan Glazer and Daniel Moynihan,[51] despite the fact that the

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48. "Symbolic ethnicity" refers to the individualistic nature of identifying with a particular ethnic group, which has little social cost to the individual. MARY C. WATERS, ETHNIC OPTIONS: CHOOSING IDENTITIES IN AMERICA 7–8 (1990). In general, symbolic ethnicity is articulated through leisure activities in which individuals choose to partake in those ethnic traditions that have some personal or enjoyable attribute to them. *Id.* These activities are undertaken on a voluntary basis and give a feeling of specialness to the participant. *Id.* Ethnicity does not permeate their day-to-day lives, but is engaged with on an a la carte basis. *Id.* For example, being white and of Irish and Sicilian ancestry, I call the third week in March my high holidays because I choose to celebrate St. Patrick's Day and St. Joseph's Day. There is no social cost to me for celebrating these holidays. In fact, on St. Patrick's Day, I tend to have a feeling of specialness because my name and looks give me credibility in laying claim to my father's roots. This is part of my white privilege to choose to participate in these holidays with no social stigma. *See* HERBERT J. GANS, *Symbolic Ethnicity: The Future of Ethnic Groups and Cultures in America*, *in* MAKING SENSE OF AMERICA: SOCIOLOGICAL ANALYSES AND ESSAYS 167, 177 (1999).

49. *See* BOURDIEU, *supra* note 44, at 170.

50. "Taken-for-grantedness" is a status of being in a place of privilege and not being aware of it. *See* MARGER, *supra* note 36, at 46–49. One does not question one's status because it is viewed as normal or natural. *Id.* Specifically, members of the privileged group are treated differently, receiving greater access to wealth, power, and prestige to which they come to feel entitled. *Id.* This entitlement occurs because the inequality is reproduced through society's institutions generationally. *Id.* Individuals who enjoy this place of privilege generally are not aware of it until it is taken away. *Id.* Discourse that exemplifies taken-for-grantedness includes phrases like "I didn't ask for any special favors just because . . . ." The point is, if you have a particular status of privilege, you don't ever *have* to ask for special favors because they are structurally reproduced as part of the culture of that institution. *See* BOURDIEU, *supra* note 44.

51. One of Moynihan's most effective and ruinous works argued that the structural remedies advocated for by the civil rights movement would offer no solution to African American families because "the present tangle of [black family] pathology is capable of perpetuating itself without assistance from the white world." OFFICE OF POLICY, PLANNING & RESEARCH, U.S. DEP'T OF LABOR, THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION 47 (1965). As Haney López points out, "Moynihan's report helped derail attention from the structural components of racism into a bitter, poisonous fight over the health of Black family life. It also helped to sidetrack the Johnson Administration's War on Poverty, shifting it from a broadly redistributive effort to one focused on minority pathologies." Haney López, *supra* note 21, at 1010; *see also* JILL QUADAGNO, THE COLOR OF WELFARE: HOW RACISM UNDERMINED THE WAR ON POVERTY 28–31 (1994).

government understood racism's root causes to lay in social structures and perceived affirmative action as a necessary solution to address structural racism.[52] However, as the effects of affirmative action took hold, whites who felt displaced from their throne of entitlement began to push back. As Ian F. Haney López observed, "[T]he window for fundamental change opened just slightly before blowing shut again in the face of a quickly gathering backlash."[53]

In order to employ an anticlassification[54] model, in the hopes of eliminating race-conscious institutional remedies, legal scholars began to craft arguments asserting that affirmative action was as invidious as racial discrimination.[55] They also reconceptualized race as ethnicity.[56] The seeds of the color-blind ideal emerged from a reverse discrimination discourse in certain ethnic groups of a particular color who were privileged precisely because of the skin color associated with their ethnicity.

Glazer was perhaps most effective in laying the groundwork for the color-blind ideal. In *Affirmative Discrimination: Ethnic Inequality and Public Policy*,[57] Glazer argued that the legal system had betrayed the principle of color blindness in developing race-based remedies that served to favor one ethnic group over another.[58] Central to his argument was the idea that our nation is made up of competing ethnic groups with divergent cultural interests.[59] Glazer reiterated Moynihan's view that minorities were not victims of structural racism but rather just another hue on the color spectrum of ethnicity.[60] If African Americans were still suffering the effects of past discrimination, they had only their culture to blame.[61]

Glazer's final move was to rally against the use of race-conscious remedies.[62] He asserted that whites, as members of different ethnic groups, were the victims of reverse

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52. *See* Haney López, *supra* note 21, at 1004.

53. *Id.*

54. Anticlassification was the basis of Thurgood Marshall's argument in *Brown*, stating that classifications that the state made based on race violated the Fourteenth Amendment and created psychological injury in black people who experience their inferior status in society on a daily basis. *See* RICHARD KLUGER, SIMPLE JUSTICE: THE HISTORY OF *BROWN V. BOARD OF EDUCATION* AND BLACK AMERICA'S STRUGGLE FOR EQUALITY 574–75 (1976).

55. *See* Alan David Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049 (1978).

56. Richard Posner offered the boldest advance of this ideology. *See* Richard A. Posner, *The* DeFunis *Case and the Constitutionality of Preferential Treatment of Racial Minorities*, 1974 SUP. CT. REV. 1, 25. For a full critique of this rational choice theory of racism, see Ian F. Haney López, *Institutional Racism: Judicial Conduct and a New Theory of Racial Discrimination*, 109 YALE L.J. 1717, 1761–69 (2000).

57. NATHAN GLAZER, AFFIRMATIVE DISCRIMINATION: ETHNIC INEQUALITY AND PUBLIC POLICY (1975).

58. *Id.* at 31.

59. *Id.* at 187–89.

60. Nathan Glazer, *Negroes & Jews: The New Challenge to Pluralism*, COMMENTARY, Dec. 1964, at 29.

61. *See* NATHAN GLAZER & DANIEL PATRICK MOYNIHAN, BEYOND THE MELTING POT: THE NEGROES, PUERTO RICANS, JEWS, ITALIANS, AND IRISH OF NEW YORK CITY 50 (1963). For a critique of Glazer's thesis, see Haney López, *supra* note 21, at 1021–29.

62. Glazer's book appeared to be a call to arms, so to speak, against the civil rights remedial

discrimination who had to bear the burden of paying for the sins of a problem that had dissipated.[63] Any racial hostility that may exist was understandably due to white ethnic groups' frustration from not receiving preferential treatment.[64] In concert with Moynihan, Glazer combined ethnicity theory with New Deal policies barring racial categories to call for a rebuke of structural reform.[65] The only solution was a return to the color-blind ideal and an anticlassification regime. The power of Glazer's ideas and rhetoric soon found their way into the United States Supreme Court's opinions.[66]

Justice Powell articulated the color-blind ideal in his decision in *Regents of University of California v. Bakke*.[67] He invoked the ethnicity model of discourse in claiming that the United States had become a "Nation of minorities" in the twentieth century.[68] Furthermore, Powell effectively eradicated racial hierarchy by asserting that all ethnic groups had experienced discrimination at some point but had overcome it.[69] So too would African Americans. Having situated all ethnic groups in the same experience, Powell determined that all deserved the same level of treatment.[70] Unleashing the African American social and historical experience from its moorings, Powell rationalized the need "for strict constitutional hostility toward race-conscious remedies."[71] He began his analysis by asking whether a constitutionally significant difference existed between the notions of racial oppression and affirmative action.[72] Powell determined that the Fourteenth Amendment demanded that any state-based racial classifications should receive strict scrutiny.[73] He based his analysis on an ethnicity paradigm.[74]

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jurisprudence of the early 1970s. Glazer took particular offense to the case law that emerged after adoption of the Civil Rights Act. This point seems to be the precipice from which the nation fell far from the color-blind ideal first articulated in Justice Harlan's *Plessy v. Ferguson* dissent. He writes contemptuously of the law's misconstruing of social realities based on racial animus instead of competing ethnicities. *See* Haney López, *supra* note 21, at 1022.

63. *See* GLAZER, *supra* note 57, at 200–01.

64. *See id.* In allowing for the possibility of racial hostility, but placing blame on the victim, Glazer may have sown the seeds of the stigma argument that has so much traction today.

65. Haney López observes that Glazer and Moynihan's goal was to return to a national policy of color blindness. The two articulated the themes of ethnicity theory and antidiscrimination law to bring about this notion. However, Haney López states, "These two ideas were not logically connected to each other at this point, but from the beginning they appeared together in ethnicity-based critiques of structural reform." Haney López, *supra* note 21, at 1012.

66. *See id.* at 1026.

67. 438 U.S. 265 (1978).

68. *Id.* at 292.

69. *Id.*

70. *Id.*

71. Haney López, *supra* note 21, at 1043. As Haney López points out, central to Powell's success in using ethnicity theory to ensure that race-conscious remedies were viewed with antagonism, was creating the view that a United States racial hierarchy had vanished. *See id.* at 1042–43.

72. *Bakke*, 438 U.S. at 287–92.

73. *Id.* at 291.

74. Powell embraced the ethnicity model by relying on a series of cases in which varying ethnic groups had sought protection from state oppression and observed:

> [T]he United States had become a Nation of minorities. Each had to struggle—and to some extent struggles still—to overcome the prejudices not of a monolithic

Powell went further: he also rationalized this need by constructing a version of ethnicity in which whites were minorities and vulnerable.[75] While Powell did not dismantle remedial rationalizations for affirmative action, he certainly put the first nail in the coffin.[76] According to Powell, the burden of identifying which ethnic groups were receiving greater societal hostility, and therefore merited special protection, proved impossible; all groups deserved the same level of judicial scrutiny.[77] Alan Freeman sums up Powell's dual discourse of diversity and pluralistic discrimination effectively:

> Powell invoked the most rigid rhetoric of colorblindness, with its premise of ethnic fungibility, and rejected the notion that race could be employed in the admissions process for reasons having anything to do with securing racial justice or remedying past discrimination (absent proof of a "violation"). Nevertheless, he decided that an academic concern for the "diversity" of student populations was so compelling as a competing constitutional value, rooted in first amendment academic freedom, as to trump the equal protection challenge of those charging reverse discrimination. Thus, in the name of a diversity that equates race with being a "farm boy from Idaho," admissions programs could continue to admit students on the basis of race. Powell's facile assumption of equivalence becomes questionable, however, when one recognizes that the reason for focusing on race as a relevant characteristic is our specific historical record of discrimination.[78]

With *Bakke*, the tone was set within the legal discourse: race was irrelevant in an era of civil rights.[79] Moreover, the Supreme Court gave cultural legitimacy to a political movement that saw the Civil Rights Movement as having done its job. Any lack of access to institutions that provided educational or economic advantage lay at the feet of those who had been privileged under affirmative action—people of color.[80]

This theme, that the Civil Rights era had completed its job, continued in other Supreme Court affirmative action cases. Justice Sandra Day O'Connor's "civil rights" language in *City of Richmond v. J.A. Croson Co.*[81] became the rallying cry for the anti–affirmative action activist movement in both California and Washington in 1996 and 1998, respectively.[82] Indeed, the pamphlet accompanying Proposition 209 in

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> majority, but of a "majority" composed of various minority groups of whom it was said—perhaps unfairly in many cases—that a shared characteristic was a willingness to disadvantage other groups.

*Id.* at 292 (footnotes omitted); *see also* Haney López, *supra* note 21, at 1035.

75. *See Bakke*, 438 U.S. at 292. "[I]n the logical jujitsu of reactionary colorblindness, proclaiming that minorities no longer faced race-specific structural impediments was not enough; instead, flipping the status of whites and blacks proved the key move." Haney López, *supra* note 21, at 1027–28.

76. *See* Nunn, *supra* note 42, at 711. Nunn notes that Powell became successful in achieving plurality support for a strict-scrutiny standard for all racial classifications in *Wygant v. Jackson Board of Education*, 476 U.S. 267, 269 (1986). Nunn, *supra* note 42, at 711–12.

77. *See Bakke*, 438 U.S. at 295–96.

78. Alan Freeman, *Antidiscrimination Law: The View from 1989*, 64 TUL. L. REV. 1407, 1425 (1989).

79. *See id.*

80. *See id.* at 1408.

81. 488 U.S. 469 (1989).

82. Justice O'Connor wrote:

California, titled the *Civil Rights Initiative*, completely co-opted the language of the racial reconstruction era it sought to undermine. It said, "A generation ago, we did it right. We passed civil rights laws to prohibit discrimination. But special interests hijacked the civil rights movement. Instead of equality, governments imposed quotas, preferences, and set-asides."[83] Implicit in this language is that the Civil Rights era achieved racial equality, rendering racial oppression discourse obsolete. Also festering in this fiction of competing ethnic interests was the complete denial of white privilege.

The continued success in Michigan of the anti–affirmative action movement in 2006,[84] in the aftermath of *Grutter v. Bollinger*[85] and *Gratz v. Bollinger*,[86] came about, in part, because of the deceptive use of language. Ward Connerly,[87] the key proponent of these anti–affirmative action initiatives, artfully enshrouds himself in the words of Dr. Martin Luther King, Jr.[88] Connerly, an African American, frequently invokes King's "I Have a Dream" speech[89] to create confusion amongst both African American

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> To accept Richmond's claim that past societal discrimination alone can serve as the basis for rigid racial preferences would be to open the door to competing claims for "remedial relief" for every disadvantaged group. The dream of a Nation of equal citizens in a society where *race is irrelevant* to personal opportunity and achievement would be lost in a mosaic of shifting preferences based on inherently unmeasurable claims of past wrongs.

*J.A. Croson Co.*, 488 U.S. at 505–06 (emphasis added). Similar language can be found in *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995), and *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996).

83. Ronald Turner, *The Too-Many-Minorities and Racegoating Dynamics of the Anti-Affirmative-Action Position: From* Bakke *to* Grutter *and Beyond*, 30 HASTINGS CONST. L.Q. 445, 497 (2003) (quoting ballot pamphlet).

84. Haney López noted that the affirmative discrimination litigated in *Bakke* had to be situated within the larger cultural shift in the United States from a white monolithic to a resurgent pride in ethnic identity. Haney López, *supra* note 21, at 1044–45. In the center of this shift the movie *Rocky* was released, in which a working class Italian-American, Rocky Balboa, becomes the underdog in a boxing match against a privileged African American boxing champion, Apollo Creed. *Id.* Similarly, after a 16-year hiatus, Rocky Balboa reappears in 2006 as the underdog who is challenged to a match against the undeserving upstart champion, Mason "the Line" Dixon. ROCKY BALBOA (Metro-Goldwyn-Mayer Studios Inc. 2006). The name certainly has interesting connotations for this African American boxer, but what is most intriguing in the context of the anti–affirmative action litigation and referendum occurring during the same period is the description of Dixon's character. The boxer is losing respect because it is believed that his wins were carefully manipulated by his corporation rather than won by his own hard work and inner drive. *See id.*

85. 539 U.S. 306 (2003).

86. 539 U.S. 244 (2003).

87. Mr. Connerly has run successful anti–affirmative action referenda, that he calls Civil Rights Initiatives, in California, Washington, and Michigan. Welcome to the American Civil Rights Institute, http://www.acri.org/ward_bio.html. He attempted, but failed, to get similar initiatives on the ballot in Arizona, Oklahoma, and Missouri. *Id.* Recently, his initiative passed in Nebraska, but failed in Colorado. *Id.*

88. *See* Beydoun, *supra* note 12, at 474–75.

89. Dr. Martin Luther King, Jr., Address at March on Washington for Jobs and Freedom (August 28, 1963). The key language manipulated by Connerly is "I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character."

and white voters.[90] As Beydoun points out, "Connerly and his handlers, not short on political savvy and chicanery, knew that manipulating King, inarguably the primary icon of the Civil Rights Movement and with his most remembered proclamation, in their favor would confuse minority voters and also woo White voters."[91]

However, the manipulation of an icon's civil rights language was only the first step in creating a color-blind ideal that captured the hearts and minds of voters. The essence of the color-blind ideal requires not only the uniform application of laws, regardless of the color of one's skin, but also the notion of meritocracy.[92] Duncan Kennedy calls this paradigm of thought "color-blind meritocratic fundamentalism."[93] The daily social experience of minorities is immaterial to who deserves access to higher education.[94] Instead, relying purely on individual achievement as the way to get ahead could mean only one thing: affirmative action is unfair preferential treatment handed out to undeserving minority groups.[95]

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90. Beydoun, *supra* note 12, at 474–75.

91. *Id.* at 475.

92. White normative notions of meritocracy in the context of college admissions means relying on GPA and SAT scores. *See* Cho, *supra* note 11, at 1061 (observing that merit, within the affirmative action context, embraces a "white baseline of experience").

93. Duncan Kennedy, *A Cultural Pluralist Case for Affirmative Action in Legal Academia*, 1990 DUKE L.J. 705, 709–10 (citing Randall Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745 (1989)).

94. *See id.* Those who espouse the color-blind ideal do not see, or choose not to see, the fundamentally different experience minority students living in the United States encounter on a daily basis. As Erving Goffman observes, "The routines of social intercourse in established settings allow us to deal with anticipated others without special attention or thought. . . . [F]irst appearances are likely to enable us to anticipate [one's] category and attributes, [one's] 'social identity.'" ERVING GOFFMAN, STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY 2 (1st Touchstone ed., Simon & Schuster, Inc. 1986) (1963). Certain attributes, such as being a member of a particular racial group, create stigma. *Id.* at 2–3. Stigma results in the individual being treated as part of an "out group." *See id.* Goffman emphasizes that it is not the attribute that determines stigma, but rather, central to stigma are social relations that define it as such. *Id.* Thus, race is socially constructed and defined as stigma. Goffman notes the effect as follows:

> By definition, of course, we believe the person with a stigma is not quite human. On this assumption we exercise varieties of discrimination, through which we effectively, if often unthinkingly, reduce his life chances. We construct a stigma-theory, an ideology to explain his inferiority . . . . We tend to impute a wide range of imperfections on the basis of the original one.

*Id.* at 5. In the case of minority students, a host of imperfections are attributed to them on the basis of race, which discredits them daily in the world at large, and specifically in the academic arena. Persons stigmatized based on race soon find that any response they take to these discrediting interactions are then, in turn, used against them. Goffman explains, "Further, we may perceive his defensive response to his situation as a direct expression of his [stigma] and then see both [stigma] and response as just retribution . . . and hence a justification of the way we treat him." *Id.* at 6. For a particularly disturbing account of the impact of racial stigma and its accompanying attributes, see Devah Pager, *The Mark of a Criminal Record*, 108 AM. J. SOC. 5 (2003), which describes an experimental study design in which black and white job applicants were matched on all features except criminal background and found whites *with* a criminal background were more likely to receive a call back than blacks *without* criminal records.

95. *See* Kennedy, *supra* note 93. Reva Siegel points out that the color-blind meritocracy is

This Article examines the social experiments of both affirmative action and anti–affirmative action for underrepresented minority students. It explores college experiences against a backdrop where white privilege and preferences are taken for granted, underrepresented minority students' access to higher education is questioned, and the social context in which these students must navigate their educational careers is ignored.[96]

## II. METHODOLOGY

The data analyzed in this study came from a survey[97] distributed at the Annual Biomedical Research Conference for Minority Students (ABRCMS)[98] held in

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to be expected, given that the legal system serves to maintain hierarchical status relationships. *See* Reva Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action*, 49 STAN. L. REV. 1111 (1997). This latest iteration is part of the ongoing process she describes as "preservation-through-transformation" in which "liberal and capitalist systems of social organization did not result in the dismantlement of status relationships, but instead precipitated their evolution into new forms." *Id.* at 1113, 1116.

96. For years I taught an introductory sociology survey course. Inevitably, when we explored the topic of stratification, in terms of class, gender, sexual orientation, religion, and race, it was only when we broached the subject of race that some white student would state, "If we just stopped talking about race, it wouldn't be a problem any more." Such a pronouncement frees privileged students from examining the ways in which institutions and individual norms have benefited them and removes the burden of examining how these same institutions and norms create barriers for others. Roithmayr explains how these pre-existing institutional norms have created "locked-in racial inequality" because of educational monopoly cartels that have left minorities on the sidelines. Daria Roithmayr, *Tacking Left: A Radical Critique of* Grutter, 21 CONST. COMMENT. 191, 197 (2004).

> [T]he white monopoly advantage in education produced by these cartels may have become institutionally self-reinforcing over time. Historical segregation produced geographic pockets of people with better tax bases. Neighborhoods with more educational resources have produced neighbors with more wealth. In turn, neighbors with more wealth have produced neighborhoods with more educational resources. In this way, white advantages in education reproduce themselves over time.

*Id.* at 201.

97. The survey is attached in Appendix A.

98. The ABRCMS is the largest professional conference for minority biomedical students. ABRCMS.ORG, General Information, http://www.abrcms.org/page01a.html. "[It] is designed to encourage underrepresented minority students to pursue advanced training in the biomedical and behavioral sciences." *Id.* It also provides resources for these students' mentors. *See id.* Students compete in poster sessions, meet with graduate school representatives, meet with scientific agencies regarding summer internships, and learn how to be socialized into the academy. *Id.* The conference attracts approximately 2800 individuals, including 1500 undergraduate students, 300 graduate and postdoctoral students, and 1000 faculty and administrators. *Id.* Students come from over 285 U.S. colleges and universities. *Id.* Thus, students who tend to be highly motivated, domain attached, and have mentors to encourage them to pursue graduate school are more likely to attend this conference. *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).

Anaheim, California, from November 8 through November 10, 2006.[99] This particular venue was chosen because it provided access to 1233 undergraduate students and over 300 graduate students[100] who happen to be underrepresented minority students in their respective scientific field of study.[101] Students were first notified of the study in the conference's program, which was distributed via the ABRCMS website once students registered.

I collected the survey data on three different occasions. First, I approached students on the first day of the conference as they checked in at the conference's registration center. I asked them if they would like to participate in the study, briefly described its

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99. I gained access to the conference through a two-year negotiation process facilitated between Peter Milgrom (from the School of Dentistry and the Society for the Advancement of Chicanos and Native Americans), the American Society of Microbiologists, and Clifton Poodry (Director of Minority Opportunities in Research Division, National Institute of General Medical Sciences, National Institutes of Health). The project came about because of Dr. Milgrom's concern that the number of minority applicants to graduate school in the health sciences seemed to be dropping in the aftermath of passage of Washington State's Initiative 200 that banned affirmative action. *See supra* note 24.

100. The conference website posts the specific number of registrants for each year's conference. *See* ABRCMS.ORG, Highlights, http://www.abrcms.org/page01b.html.

101. I chose to study underrepresented minority students in the hard sciences because, 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 AKRON L. REV. 181 (1999); Margalynne J. 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); cummings, *supra* note 14; Jones, *supra* note 11; Nunn, *supra* note 42; Adrien Katherine Wing, *Race-Based Affirmative Action in American Legal Education*, 51 J. LEGAL EDUC. 443 (2001), very little has been written regarding affirmative action and 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. Noah, *supra* at 678. Having minority students in medical school and as doctors, researchers, and health care professionals will have a life-altering impact on these populations. *Id.* Yet, underrepresented minorities' *underenrollment* in the hard sciences in colleges, graduate schools, and professional schools is more significant than in any other fields of study. *See generally* DIV. OF SCI. RES. STATISTICS, NAT'L SCI. FOUND., PUB. NO. 07–315, WOMEN, MINORITIES, AND PERSONS WITH DISABILITIES IN SCIENCE AND ENGINEERING: 2007 (2007), *available at* http://www.nsf.gov/statistics/wmpd/pdf/nsf07315.pdf.

goals, and, if they consented,[102] I had the students read about the goals and confidentiality assurances before they filled out the survey at the tables provided. Next, during the student poster board sessions, my research assistant and I continued to approach students and ask them if they would like to participate in the survey, confirming that they had not filled it out on the previous day. Finally, we distributed the survey on the third day at a Professional Development Session on applying to graduate school.[103] Once again, I introduced the students to the survey, explained the goals of the study, and told them that filling out the survey was completely optional. In addition to filling out the survey, students were invited to provide contact information on a separate sheet, which also included a disclosure and consent form, for follow-up interviews. In the end, 332 students completed the surveys, and twenty-two students agreed to be contacted for interviews.[104]

The survey had four sections because I sought to identify four themes within the study. In the first section, I attempted to identify students' educational history, their families' educational attainment, their level of awareness of affirmative action at the time they considered applying to schools, and the level of influence the policy had on their decisions to apply to particular colleges and universities. The next section was devoted to understanding their educational experience as minority students in connection with faculty, other students, and their university's admissions policies. The third section explored their desire to attend graduate school, whether affirmative action policies would influence their decision, and their thoughts about the need for affirmative action policies. Finally, the last section recorded basic demographic

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102. This study was approved by the Human Subjects Review Board. I was given a certificate of exemption that lasts until October 9, 2011. It is on file with the author.

103. Special thanks to Cecilio Barrera, Ph.D., for allowing us to distribute the survey during his session.

104. 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 354 students who we did approach, only twenty-two declined to fill out the survey—thus 94% of the students chose to respond to the survey. I cannot say with confidence that no bias exists in the sample. However, I do feel the data captures more than those students who are motivated by an emotional response to report their experiences in higher education as so many of the students chose to fill out the survey when approached.

Furthermore, readers may have additional questions about the demographics of the general population of conference attendees or the type of school the respondents attended. The ABRCMS 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. Due to the sensitive nature of the subject, the Board did not want questions that would identify the school a respondent attended beyond the state in which it was located. Thus, information on whether the students attended a historically black college or university or whether they attended a public or private institution is not available. These variables most certainly would have provided a more nuanced story. While the results of the study are not generalizable to all underrepresented minority students—it is perhaps shocking to have such disclosure made by a social scientist before even discussing the results—as an exploratory study, the results do offer a definitive and disturbing picture of what other underrepresented students may be navigating beyond the respondents in this sample. 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. Please see Appendix B for a more complete discussion of the methodology.

information, including the state where they attended school and how many classes they had taken in which they were the sole minority student. All data were coded and analyzed using the Statistical Program for the Social Sciences[105] to examine relationships between variables.

In addition to the survey, I conducted telephone interviews with the twenty-two individuals who consented to be contacted after the conference. I developed the interview questions based on the trends that emerged from the survey results that needed further examination. The questions served as a general guideline, but I did not ask all questions to all interviewees, and I sometimes added follow-up questions not on the list, depending on the answers provided. Each interview lasted between forty-five and sixty minutes. Although I did not record the interviews, I took detailed notes on respondents' answers to my questions.[106] In analyzing the data, I looked for similar themes in answers.[107] Recall that the focus of the study included two main questions: (1) Are there differences in the experiences of underrepresented minority students who attend schools in states with affirmative action policies and those who attend schools that bar affirmative action?; and (2) Are there differences in the experiences of underrepresented minorities who attend all their classes with one or more other minority students and those who have attended at least one class in which they were the sole minority student? The results are described in the next Part.

## III. THE RESULTS

In this Part, I report the results of my analysis. Part III.A describes the samples and compares the results of student responses between those students who attend school in states that permit race-based admissions compared to those states that bar race-based admissions. Part III.B explores the samples and compares the results from student responses between the group of students who have taken all their classes with some other minority students in attendance and the group of students who have taken at least one class in which they were the sole minority student.

### *A. Affirmative Action School Sample vs. Anti–Affirmative Action School Sample*

The first question I sought to answer was whether differences in college experiences exist for students who attend schools in states that ban affirmative action compared to students who attend schools in states that permit it. Four states, California,[108] Washington,[109] Florida,[110] and Michigan,[111] are included in the sample[112] for the

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105. This software allows for a social scientist to create a database of variables and run rather complex statistical analyses on these variables.

106. The questions were driven by my desire to get a more detailed understanding of the story that emerged from the statistical analysis.

107. The excerpts from the answers to the interview questions are used only to provide concrete insight to the story that the numbers reveal. Again, a detailed demographic description of the interview respondents is not available. The Human Subjects Review Board wanted the interviews to retain the character of confidentiality, if not actually anonymity, to the extent possible.

108. California passed Proposition 209 in 1996. *See supra* note 16.

109. Washington State passed Initiative 200 in 1998. *See supra* note 16.

analysis of students who attend schools in geographical locations that have banned race-based admissions.[113] The remaining twenty-three states[114] and two territories[115] are included in the sample for geographical regions that do allow for race-based admissions. Only those states represented in my sample, obviously, are included in the sample.

I began my analysis by examining whether any statistically significant differences separated the samples based on demographic and academic characteristics. Table 1 shows these results. While slight differences do emerge between the two groups, none of these differences is statistically significant.[116] However, some data points across the

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110. Florida's governor, Jeb Bush, issued the One Florida Initiative, which ended the use of affirmative action in education in 2000. *See* Walker, *supra* note 10. Instead, the initiative created a Talented 20 plan that guarantees college admission to the top 20% of the state's public high school graduates. *Id.*

111. Although Michigan passed Proposal 2 only the day before this survey was taken, *see supra* note 16, Michigan is included in this sample because of the ongoing anti–affirmative action atmosphere in which students have operated since 1998, when both Gratz and Grutter filed suit in the Eastern District of Michigan challenging the race-based admission policies at the university and law school respectively. Shortly after the Supreme Court issued its decision in *Grutter*, Ward Connerly began his anti–affirmative action initiative in January 2004, although he announced plans to do so a day after the Court decided *Grutter*. Leadership Conference on Civil & Human Rights, Connerly Announces Campaign to Ban Affirmative Action in Michigan (July 8, 2003), http://www.civilrights.org/equal-opportunity/michigan/connerly-announces-campaign-to-ban-affirmative-action-in-michigan.html.

112. Given that the sample for these states has an n=55, one should consider these results as a pilot study rather than generalizable to the populations as whole. Sample sizes of less than 50, which occurred as each variable has missing data, can underestimate the strength of relationships between variables and thus not achieve statistical significance even when such relationships between variables do exist within the population. *See* JOSEPH F. HAIR, JR., ROLPH E. ANDERSON, RONALD L. TATHAM & WILLIAM C. BLACK, MULTIVARIATE DATA ANALYSIS 226–27 (3d ed. 1992). Therefore, these results should be reviewed as telling a story for the students in this sample.

113. While *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996), created a seven-year ban on race-based admission in Texas, the state reintroduced race-based policies in 2003 when the Supreme Court issued *Grutter*. *See* Dorf, *supra* note 27. These policies are used in tandem with their top ten percent plan. *See id.*

114. Alabama, Arizona, Connecticut, Delaware, Georgia, Hawaii, Illinois, Louisiana, Maryland, Massachusetts, Mississippi, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, and Virginia. Six respondents who attend school outside the United States were excluded from the sample.

115. Puerto Rico and Washington, D.C.

116. A p-value $\leq .05$ indicates statistical significance. By convention, a probability level that says there is a greater than 5% probability that the results occurred by chance is considered not to be statistically significant. *See* Michael Cowels & Caroline Davis, *On the Origins of the .05 Level of Statistical Significance*, 37 AM. PSYCHOLOGIST 553 (1982). Statistical differences between the two groups on these demographic variables would dictate that those variables should be included as control variables in the bivariate analysis of the variables of interest: state attended school and stigma measures. As these variables are not normally distributed along the normal curve, they are considered nonparametric. Mark Plonsky, Psychological Statistics: Nonparametric Statistics, http://www.uwsp.edu/psych/Stat/14/nonparm.htm. Under those circumstances, chi square remains the appropriate statistical test to determine whether differences among the variables are statistically significant, and therefore generalizable, and phi

samples are worth noting. First, the respondents are disproportionately female, making up two thirds of both groups. Second, both groups are overwhelmingly made up of African American and Hispanic respondents.

The data also reveals the high level of academic achievement obtained by the respondents as well as their parents. For example, the vast majority of students possess a high school GPA in the 3.5–4.0 range. The mean SAT score for students in anti–affirmative action states is 980, while students in affirmative action states have a mean score of 1028. Moreover, well over half of the respondents in both groups report their high school class rank in the top ten percent. Their success has continued in college. Students from anti–affirmative states have a mean college GPA of 3.46, while students from affirmative action states have a mean college GPA of 3.49. In addition, almost the entire sample is considering applying to graduate school. Furthermore, over 25% of respondents from both groups identify at least one parent with a graduate degree.

Within the broader question of differential experiences between the two samples, I wanted to examine the three color-blind corollaries articulated above: (1) the disappearance of racism; (2) the presence of stigma; and (3) the presence of hostility based on perceived reverse discrimination. In addition, I wanted to measure student responses to their college experience as they contemplated applying to graduate school. Specifically, I wanted to know whether and how affirmative action may inform their decision of where to apply to graduate school.

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is the appropriate test to measure the strength of the relationship. AcaStat Software, Coefficients for Measuring Association, http://acastat.com/Statbook/chisqassoc.htm.

**Table 1: Demographics for Students in Affirmative Action and Anti–Affirmative Action States**

| Gender | Affirmative Action | | Anti–Affirmative Action | |
|---|---|---|---|---|
| Female | 65.4% | (161) | 66.7% | (36) |
| Male | 34.6% | (85) | 33.3% | (18) |
| **Race** | | | | |
| Bi/Multi-Racial | 7.8% | (18) | 11.3% | (6) |
| African American | 63.2% | (146) | 37.7% | (20) |
| Asian American | 4.3% | (10) | 3.8% | (2) |
| Hispanic | 22.5% | (52) | 34.0% | (18) |
| Middle Eastern | 0.4% | (1) | 0.0% | (0) |
| Native American | 0.9% | (2) | 3.8% | (2) |
| Pacific Islander | 0.4% | (1) | 9.4% | (5) |
| **Age-Mean** | 21.64 | | 21.38 | |
| **Class** | | | | |
| Freshman | 1.6% | (4) | 1.8% | (1) |
| Sophmore | 15.9% | (40) | 25.5% | (14) |
| Junior | 27.4% | (69) | 29.1% | (16) |
| Senior | 41.7% | (105) | 29.1% | (16) |
| Graduate Student | 12.3% | (31) | 14.5% | (8) |
| **Highest Level of Education of a Parent** | | | | |
| High School | 1% | (4) | 20.0% | (11) |
| Associate's | 3.6% | (9) | 14.5% | (8) |
| Bachelor's | 25.9% | (65) | 14.5% | (8) |
| Master's | 18.7% | (47) | 14.5% | (8) |
| Ph.D/J.D. | 12.0% | (30) | 10.9% | (6) |
| Unsure | 23.5% | (59) | 25.5% | (14) |
| **High School Class Rank** | | | | |
| Top 5% | 36.9% | (93) | 41.8% | (23) |
| Top 10% | 23.8% | (60) | 23.6% | (13) |
| Top 25% | 15.5% | (39) | 14.5% | (8) |
| Top 50% | 6.0% | (15) | 5.5% | (3) |
| Top 75% | 2.8% | (7) | 0.0% | (0) |
| N/A – don't recall | 13.5% | (34) | 10.9% | (6) |
| **High School GPA** | | | | |
| 3.5-4.0 | 68.3% | (172) | 72.7% | (40) |
| 3.0 – 3.4 | 21.8% | (55) | 16.4% | (9) |
| 2.5-2.9 | 5.6% | (14) | 5.5% | (3) |
| 2.0 – 2.4 | 0.4% | (1) | 1.8% | (1) |
| 1.5 – 1.9 | 0.4% | (1) | 0.0% | (0) |
| SAT Score–Mean | 1028 | | 980 | |
| College GPA–Mean | 3.49 | | 3.46 | |
| | | | | |

### 1. Racism

While it would be absurd to assume that racism in both its overt and subtle forms has completely disappeared, under the color-blind ideal, one could hypothesize that in those states that had passed an anti–affirmative action referendum, the rate of overt racism would be lower than in those states that had not. Under corollary three, one would anticipate lower rates of hostility expressed through racism in states that had done away with affirmative action. Specifically, if underrepresented minority students were admitted into colleges and universities under a merit-based model in which race

were not considered, the entire student body would feel confident that all members deserved to be there. Accordingly, the dominant-group students would have no cause to feel and act out the resentment that comes with the perception of reverse discrimination.

The data in Table 2 demonstrate otherwise. When asked whether students had encountered overt acts of racism[117] from other students, students attending school in the states that ban affirmative action experienced overt racism at nearly twice the rate as students in those states that permit affirmative action. The fact that 43% of students in anti–affirmative action states report experiencing overt racism from other students, and that this number is statistically different from those students in states that permit affirmative action, suggests that the color-blind corollary on disappearing racism is doubtful.[118] On the other hand, students in both groups reported much lower rates of overt racism from faculty,[119] and these rates were remarkably similar across both groups.

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117. I did not define overt acts of racism for the respondents because, as W.I. Thomas observed, "[i]f men define situations as real, they are real in their consequences." SOCIAL BEHAVIOR AND PERSONALITY: CONTRIBUTIONS OF W.I. THOMAS TO THEORY AND SOCIAL RESEARCH 14 (Edmund H. Volkart ed., 1951) (quoting W.I. THOMAS & DOROTHY S. THOMAS, THE CHILD IN AMERICA 572 (1932)). However, in interviews, students provided some examples of overt racism that they had experienced:

a) "students refusing to acknowledge me in my dorm or class"
b) "people avoiding walking near me on campus at night"
c) "some students will make an excuse not to be my lab partner"
d) "people mutter the N word or shout it at parties when they're drunk"
e) "white students think it is funny to dress 'ghetto' for parties"
f) "people trying to fight me at parties or bars"
g) "racial slur graffiti on our dorm floor"
h) "drunk people yelling racial slurs at me and my friends like quota queen or token head"
i) "someone joked you are smarter than you look"
j) "I get asked if I can speak and write English all the time"
h) "I've received hostile emails in a discussion group for class because of the opinion I gave on race."

118. These results have a phi of .2, which indicates a small relationship. However, the difference between the two groups is statistically significant at the $p \leq .001$ indicating that there is less than one one-thousandths probability that these results occurred by chance. Phi provides a coefficient that measures the strength of a relationship in which zero represents no relationship and 1 represents a perfectly correlated relationship. *See* AcaStat, *supra* note 116. It is worth noting that statistical significance is easier to achieve with a larger sample. PPA 696 Research Methods, Tests for Significance, http://www.csulb.edu/~msaintg/ppa696/696stsig.htm. Thus, the fact that the statistical significance was achieved in a small sample *combined* with the phi of .2 gives these results practical significance too. As a rule with using chi square, an effect size, as measured in phi, of .1 is considered small, .3 medium, and .5 large. JACOB COHEN, STATISTICAL POWER ANALYSIS FOR THE BEHAVIORAL SCIENCES 224–27 (2d ed. 1988). The larger the effects the more worthwhile reporting they are. *See generally* Joe W. Kotrlik & Heather A. Williams, *The Incorporation of Effect Size in Information Technology, Learning, and Performance Research*, INFO. TECH., LEARNING, & PERFORMANCE J., Spring 2003, at 1, 2–3.

119. Examples of overt racism from faculty included:

a) "speaking rudely to me, but joking around with white students"

**Table 2: Comparison of Measures on Racism and Stigma for Students in Affirmative Action and Anti-Affirmative Action States**

| | Phi | Affirmative Action | Anti-Affirmative Action |
|---|---|---|---|
| **Racism** | | | |
| Overt racism displayed by students | .2*** | 20.9% | 43.4% |
| Overt racism displayed by faculty | | 13.0% | 15.7% |
| **Internal Stigma** | | | |
| Ability to succeed rated as high | | 81.1% | 81.1% |
| Fit into college population | | 80.7% | 72.2% |
| Pressure to prove themselves academically because of race | .258*** | 40.5% | 74.1% |
| Is race-based admissions necessary for the academic advancement of minority students? | | | |
| Yes | | 31.3% | 55.2% |
| No | | 20.5% | 10.3% |
| Sometimes | | 48.2% | 34.5% |
| **External Stigma** | | | |
| Questioned Qualifications | .175** | 25.5% | 46.3% |
| Faculty had lower expectations | .115* | 19.2% | 31.5% |
| School's policy on race affected how the students & faculty perceived their abilities | | | |
| Yes | | 18.9% | 32.1% |
| No | | 52.7% | 37.7% |
| Don't know the policy | | 28.4% | 30.2% |
| Do you think faculty and students believe minority students can only get admitted into college because of affirmative action? | | | |
| Both faculty & student | | 29.8% | 37.7% |
| Few faculty & students | | 28.6% | 32.1% |
| Mostly students | | 10.5% | 15.1% |
| Few students | | 10.1% | 11.3% |
| Neither faculty nor students | | 21.0% | 3.8% |
| Mentor also a member of minority group | | 64.0% | 64.8% |
| Faculty encourages them to speak about aspirations | | 85.6% | 80.0% |

*$p \leq .05$ **$p \leq .01$ ***$p \leq .001$ Phi is the measure of the strength of the relationship between the two variables.

b) "looks at me when I raise my hand but always refusing to call on me"
c) "calling me by the name of another Latina girl in class"
d) "won't give me an extension, but gave my white friend one"
e) "saying [he] didn't have time to write me a letter of recommendation because he already had too many things to do"
f) "asked for verification of medical emergency when I had to miss class but never asked anyone else to do that"
g) "tries to talk 'Black' whenever he addresses me"
h) "called on me only once in class when we were talking about illegal immigrants"
i) "will never, ever look me in the eye when I contribute to class conversations"

### 2. Stigma

The second corollary of the color-blind ideal urges that if racism is disappearing,[120] then affirmative action acts as an unnecessary privileging tool that stigmatizes its beneficiaries. Under this assumption, I hypothesized that the students attending school in affirmative action states would encounter higher rates of stigma, both internally and externally, based on the following measures.

#### i. Internal Stigma

From the point of view of internal stigma, where students would doubt their own abilities, I asked four questions. First, I asked them to rate their ability to succeed. Students in both groups reported at almost identical rates that their ability to succeed was high. Second, I asked students whether they felt that they fit into their college population. While more students reported fitting in with their college population in states that *allowed* affirmative action—the opposite of what one would expect if students were experiencing internal stigma—there was no statistical difference between the two groups.

The third question the students answered was whether they felt pressure to prove themselves academically because of their race.[121] Students experiencing internal stigma are more likely to answer "yes" to this question.[122] Under the color-blind ideal corollary, one would anticipate a larger portion of students in the affirmative action states sample to answer in the affirmative. In fact, Table 2 reveals that the opposite occurred. Almost three-fourths of students in states that *bar* race-based admissions reported feeling pressure to prove themselves because of their racial group membership compared to less than half of students who attend schools with race-based admissions. Indeed, the difference between these two groups' responses is statistically significant.[123]

Finally, I asked the students whether they believed race-based admissions were necessary for the academic advancement of minority students. Applying the internal stigma supposition, I hypothesized that students who were experiencing internal stigma would be more likely to answer "yes" to this question. Furthermore, under the color-blind ideal corollary, more students in race-based admissions states would respond

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120. To be precise, the argument may be that racism no longer exists in a form today that mirrors the racism that may have been present at the time affirmative action policies were enacted.

121. One student commented on the pressure to prove herself based on race this way: "Every single day in a thousand different ways, I am reminded by my peers that they some how are waiting for me to slip. They are suspicious of me whether they say so or not."

122. *See* Steele, *supra* note 98, at 614. Steele points out that negative stereotypes exist for African Americans on important academic abilities. *Id.* Thus, African Americans mindful of these stereotypes will be acutely aware of their threat. *Id.*

123. The responses of students in anti–affirmative action states to both this question and the next question reveal that these students are experiencing greater stigma in states where they were admitted entirely on their merit. This shows impression management fatigue that comes from the stigma associated with minority group membership. A small to moderate relationship between where one attends school and the pressure to succeed is present with a phi of .258.

positively to this query. Again, the results demonstrate otherwise. Over one-half of the students attending school where race-based admissions are *banned* answered "yes" to this question compared to one-third of students at schools that allow race-based admissions.[124] The results from these four questions establish that underrepresented minority students do not experience internal stigma or "stigma of dependence"[125] at a greater rate at schools with affirmative action. However, the results do suggest that students attending schools in states that ban affirmative action may be experiencing higher rates of internal stigma.

ii. External Stigma

Similarly, startling results emerge when examining external stigma. I measured external stigma with four questions. First, when asked if nonminority students had questioned their qualifications to be at the school,[126] surprisingly, only about one-quarter of students at affirmative action schools responded affirmatively to this question, while almost one-half of students who were admitted without race considerations answered "yes." Not only are the differences in these results statistically significant, the responses are in direct contradiction with the external stigma hypothesis. Specifically, one would anticipate that affirmative action schools would have more white students questioning the qualifications of their minority colleagues.[127]

Second, I asked students if they felt that their faculty and/or advisors in their department had lower expectations of them compared to their white peers. The external stigma hypothesis would predict that higher rates of students attending schools with affirmative action might answer "yes" to this question than students attending schools where race was not considered in admissions. Once again, the differences in responses are statistically significant and not in the direction anticipated. One-third of students attending schools in states that ban race-based admissions answered "yes" while only one-fifth of students in affirmative action states answered affirmatively.

Next, students responded to the question of whether the school's admissions policy on race influenced the way other students and faculty perceived their academic abilities. Remarkably, one-third of students in both categories were not aware of their

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124. There is a moderate relationship between these two variables. In other words, there is a relationship between where one attends school and whether one believes race-based admissions are necessary. However, this result is marginally statistically significant at $p \leq .06$.

125. Onwuachi-Willig et al., *supra* note 5, at 1322 (quoting Christopher A. Bracey, *The Cul de Sac of Race Preference Discourse*, 79 S. CAL. L. REV. 1231, 1275 (2006)).

126. Examples of having their qualifications questioned were articulated in the following ways:

a) "So, just how did you get in here?"
b) "Did you get in based on some athletic program?"
c) "Well, what's your GPA? Where'd you go to high school? What'd you get on your SATs?"
d) "Have you actually taken an AP course?"
e) "Did you have to be in a special program to get up to speed first?"

127. It is quite possible that students attending school in affirmative action states do privately question their minority peers' qualifications, yet do not feel comfortable directly confronting them in the same manner as white students do in schools located in states that ban affirmative action.

school's policy on admissions. Even more surprising, half of students who attend schools that permit race-based admissions answered "no" while one-third of students who attend schools barring affirmative action answered "yes."

Finally, I asked students whether they believed faculty and students on campus thought minority students could only get admitted to college because of affirmative action. As in the other responses, a similar story emerges in which the external stigma hypothesis is turned on its head. Students who attend schools with affirmative action were five and one-half times more likely to respond that people do not think along those lines any more compared to students attending schools where race-based admissions are barred.[128]

The results demonstrate a clear trend in which the divergent responses suggest that students experience far *more* stigma at schools without affirmative action, contrary to what color-blind idealists would argue. Furthermore, as students attending schools in states without race-based admissions are experiencing stigma at greater rates than their colleagues attending schools in states with race-based admissions, it is likely that they are experiencing the stigma associated with their master status of race or ethnicity and the auxiliary traits that are associated with it. On the other hand, affirmative action seems to be associated with reduced levels of racial stigma, both external and internal, for underrepresented minority students. As discussed below, affirmative action encourages greater minority enrollments, which leads to concentrations of minority students in classes and reduces the risk of racial isolation.

### 2. Affirmative Action and Students' Graduate School Strategies

Given the huge toll that race and affirmative action appear to play in the lives of underrepresented minority students, I wanted to examine whether students would change their application strategies for graduate school in any direct way. I began by finding out how many students were aware, generally, of affirmative action policies at the time they applied to their undergraduate institutions. Table 3 reveals that a statistically significant difference surfaces between the two groups in which only one-third of students attending schools with race-based admissions were aware of affirmative action compared to almost one-half of students who attend schools that ban affirmative action.

Furthermore, the survey results show a statistically significant difference between students attending schools *without* affirmative action compared to students attending schools *with* affirmative action when pursuing graduate school admission policies on race. Students in anti–affirmative action states plan to seek out admissions policies on race at twice the rate as students in affirmative action states. Moreover, two-thirds of students who were admitted to college without the benefit of affirmative action say it would be more difficult or impossible to get into graduate school without affirmative action. On the other hand, just over one-half of students who attend school with race-based admissions agreed with the statement that it would be more difficult or impossible to get into graduate school without affirmative action.

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128. These results are marginally statistically significant.

**Table 3: Comparisons between Affirmative Action Students and Anti–Affirmative Action Students on Affirmative Action and Graduate School**

| | Phi | Affirmative Action | Anti–Affirmative Action |
|---|---|---|---|
| Aware of affirmative action policy at the time of application to college | .13* | 29.8% | 45.3% |
| When applying to graduate school, the student plans to investigate admissions policies on race | .16** | 21.9% | 40.0% |
| It is more difficult or impossible to get into graduate school without affirmative action | .15 | 54.4% | 66.7% |

*p ≤ .05 **p ≤ .01 ***p ≤ .001
Phi is the measure of the strength of the relationship between the two variables.

Such results raise the following question: Why are students who have a proven track record of succeeding without the benefit of affirmative action more inclined to seek it out than other students? The survey results suggest that students who have endured years of hostility on campuses that espouse a color-blind ideal are searching for racially friendly campus climates. Many students affirmed this supposition in interviews. One respondent attending school in California put it this way:

> *Respondent:* I know graduate school is going to be very challenging. I just don't want to have to put up with all the psychological bullshit that comes with being the token minority on campus. The questioning looks, the avoidance, the snickering, the eye rolls, the sighs, the muttering under the breath, just to name a few of the daily issues . . . I need to be where I am welcome. I don't want white people paying me a compliment anymore by saying "Wow. I can't believe you're that smart!"[129]
>
> *Interviewer:* Why do you say "token"?
>
> *Respondent:* [long sigh] Just because we don't have affirmative action doesn't mean they think I should be here. They're always looking for the loophole of how I got here. And for those who see what I've achieved? Well, I'm just the exception, never the rule.

Thus, students in anti–affirmative action states appear to be experiencing far greater stigma associated with their race than with affirmative action per se. The next Part offers additional insight as to why students in anti–affirmative action states experience greater hostility.

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129. This quote also offers insight into some of the microaggressions that underrepresented minority students experience in addition to overt racism.

*B. Sole Minority Class Attendees: Sample vs. No Sole Minority Class Attendees*

Due to the increased hostility experienced by students attending schools without affirmative action, I explored the extent to which racial isolation contributed to this hostility.[130] To do that, I measured the same variables articulated above, but I compared students who had taken at least one class in college in which they were the sole minority with students who had never taken a class in which they were the only minority.

Students who attended schools in anti–affirmative action states were disproportionately more likely to be in a class in which they were the lone minority. However, students in affirmative action states were also racially isolated in classes, but at a lower rate. Less than one-half of underrepresented minority students in affirmative action states found themselves as the exclusive minority in a class, as Table 4 exemplifies.[131]

**Table 4: Cross Tab for Students in Anti–Affirmative and Affirmative Action States by Students in No/Sole Minority Student Classes**

| | Affirmative Action States | Anti–Affirmative Action States |
|---|---|---|
| No Classes as Sole Minority | 57.9% (140) | 31.4% (16) |
| One or More Classes As Sole Minority | 42.1% (102) | 68.6% (35) |

n=293 Chi Square 11.863 p≥ .001 phi .201

Table 5 shows a comparison of the demographic characteristics between the groups. There are no statistically significant differences between the two groups on demographic variables. Similarly, high school and college GPA, class rank, SAT scores, and the distribution for their year in school are remarkably similar. Furthermore, no differences emerge with regard to either the number of students who have at least one parent with a graduate degree or the number of students considering applying to graduate school. When it comes to the racism and stigma corollaries, however, significant differences do materialize between students who have taken at least one class as the sole minority and students who have not taken any classes as the sole minority.

130. As enrollments of minority students decreased significantly after the passage of these initiatives, *see supra* note 23–28 and accompanying text, I surmised that there might be a greater likelihood of racial isolation for students in anti–affirmative action states.

131. An important consideration to note is that a moderate relationship (phi .227, significance level of .01) exists between students who have no classes in which they are the sole minority versus those who have at least one in which they are the sole minority and whether students attend school in a state with or without affirmative action.

**Table 5: Demographics for Students Who Have Taken No Classes as the Sole Minority Student Compared with Students Who Have Taken One or More Classes in Which They Were the Sole Minority**

| **Gender** | No Sole Minority Classes | | | One/More Sole Minority Class | |
|---|---|---|---|---|---|
| Female | 68.7% | (112) | | 61.9% | (83) |
| Male | 31.3% | (51) | | 38.1% | (51) |
| **Race** | | | | | |
| Bi/Multi-Racial | 10.2% | (16) | | 7.2% | (9) |
| African American | 61.8% | (97) | | 57.6% | (72) |
| Asian American | 2.5% | (4) | | 5.6% | (7) |
| Hispanic | 22.3% | (35) | | 25.6% | (32) |
| Middle Eastern | 0.6% | (1) | | 0.0% | (0) |
| Native American | 1.3% | (2) | | 0.8% | (1) |
| Pacific Islander | 0.6% | (1) | | 3.2% | (4) |
| **Age-Mean** | 21.29 | | | 21.84 | |
| **Class** | | | | | |
| Freshman | 0.6% | (1) | | 2.8% | (4) |
| Sophomore | 13.2% | (23) | | 19.0% | (27) |
| Junior | 31.0% | (54) | | 26.8% | (38) |
| Senior | 40.8% | (71) | | 33.8% | (48) |
| Graduate Student | 9.8% | (17) | | 13.4% | (19) |
| **Highest Level of Education of a Parent** | | | | | |
| High School | 16.8% | (29) | | 19.7% | (28) |
| Associates | 4.6% | (8) | | 6.3% | (9) |
| Bachelors | 25.4% | (44) | | 17.6% | (25) |
| Masters | 18.5% | (32) | | 17.6% | (25) |
| Ph.D/J.D. | 12.7% | (22) | | 12.0% | (17) |
| Unsure | 22.0% | (38) | | 26.8% | (38) |
| **High School Class Rank** | | | | | |
| Top 5% | 34.5% | (60) | | 39.4% | (56) |
| Top 10% | 24.7% | (43) | | 23.9% | (34) |
| Top 25% | 16.1% | (28) | | 15.5% | (22) |
| Top 50% | 6.3% | (11) | | 7.0% | (10) |
| Top 75% | 3.4% | (6) | | 0.7% | (1) |
| N/A – don't recall | 13.2% | (23) | | 10.6% | (15) |
| **High School GPA** | | | | | |
| 3.5-4.0 | 67.2% | (117) | | 70.4% | (100) |
| 3.0 – 3.4 | 25.3% | (44) | | 17.6% | (25) |
| 2.5-2.9 | 4.6% | (8) | | 6.3% | (9) |
| 2.0 – 2.4 | 2.9% | (5) | | 1.4% | (2) |
| 1.5 – 1.9 | 0.0% | (0) | | 0.7% | (1) |
| **SAT Score – Mean** | 1004 | | | 1038 | |
| **Coll/U GPA Mean** | 3.49 | | | 3.49 | |

### 1. Racism

A statistically significant difference exists between students that have taken at least one class as the only minority and those who have not when it comes to overt racism. Table 6 shows that those students who have taken at least one class as the sole minority

encounter overt racism from other students at a rate almost four times as often as students who have taken no classes in which they were the lone minority.[132]

Perhaps even more disturbing is that students who were the exclusive minority in at least one class encountered racism from faculty at twice the rate of students who have never found themselves as the lone minority in the classroom, and what is more, at a rate greater than students in anti–affirmative action states.[133]

### 2. Stigma

The respondents who have taken at least one class as a sole minority show a much higher rate of internal stigma[134] across all measures than do their counterparts who have taken no classes in which they were the sole minority student. Table 6 illustrates these differences.[135] Students who have experienced being the lone minority in a course report the lowest percentage of students ranking their ability to succeed as high among all sample groups, including the anti–affirmative action states students. Conversely, students who have never been the lone minority in a class represent the highest percentage of students who assess their ability to succeed as high.[136] Moreover, students who have been the sole minority in a class are the least likely of any of the sample groups, even more so than students in the anti–affirmative action states, to reply that they fit into their college populations. On the other hand, students who have never been the sole minority are the most likely to report that they fit into their college population.[137]

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132. In addition to being statistically significant, a moderately strong relationship with a phi of .35 exists between these two variables.

133. This difference is not only statistically significant, but it represents the highest number across all groups, even the sample of students in anti-affirmative action states.

134. I must stress that the stigma these students encounter is not stigma that occurs because of affirmative action. This is stigma that is the result of being in the "out-group," that is, not being white. *See* GOFFMAN, *supra* note 94, at 116.

135. Remarkably, the differences between these two groups are statistically significant on every variable. Recall that statistical significance indicates the probability that the differences occurred by chance. In most cases, the probability is less than .001%.

136. However, only a small relationship exists between ability to succeed ratings and whether one has been the individual minority in a class with a phi of .169 and a statistical significance level of .05.

137. A moderate correlation exists between fitting in and whether a student has been the lone minority in a class with a phi of .316, which is statistically significant at the .001 level.

**Table 6: Comparison of Measures on Racism and Stigma for Students in No or Sole Minority in One or More Classes**

| | Phi | No Sole Minority | One/More Sole Minority Classes |
|---|---|---|---|
| **Racism** | | | |
| Overt racism displayed by students | .35*** | 10.8% | 38.5% |
| Overt racism displayed by faculty | .8*** | 9.5% | 21.7% |
| **Internal Stigma** | | | |
| Ability to succeed rated as high | .17** | 86.5% | 74.2% |
| Fit into college population | .32*** | 91.6% | 66.4% |
| Pressure to prove themselves academically because of race | .33*** | 31.8% | 61.7% |
| Are race-based admissions necessary for the academic advancement of minority students? | .224*** | | |
| Yes | | 29.0% | 41.5% |
| No | | 12.9% | 25.6% |
| Sometimes | | 58.1% | 33.8% |
| **External Stigma** | | | |
| Questioned Qualifications | .35*** | 15.8% | 43.1% |
| Faculty had lower expectations | .22*** | 13.4% | 29.8% |
| School's admission policy on race affected how the students & faculty perceived their abilities | .256*** | | |
| Yes | | 14.5% | 28.6% |
| No | | 61.8% | 36.5% |
| Don't know the policy | | 23.6% | 34.9% |
| Do you think faculty and students believe minority students can only get admitted in college because of affirmative action? | | | |
| Both faculty & students | | 29.0% | 31.5% |
| Few faculty & students | | 28.0% | 30.2% |
| Mostly students | | 9.3% | 12.8% |
| Few students | | 7.5% | 13.4% |
| Neither faculty nor students | | 26.1% | 12.1% |
| Mentor also a member of minority group | | 70.3% | 56.2% |
| Faculty encourages them to speak about aspirations | | 87.1% | 84.0% |

*p ≤ .05 **p ≤ .01 ***p ≤ .001
Phi is the measure of the strength of the relationship between the 2 variables.

A similar trend emerges with the variable pressure to prove oneself because of race. Two-thirds of students who have been the sole minority in a class feel this pressure compared to one-third of students who have never been the sole minority in a class.[138]

138. This moderate relationship between whether one has been a solitary minority in a class and pressure to prove has a phi of .334 with a significance level of .001.

Once again, students who have not experienced being the exclusive minority in a class are the least likely of any of the sample groups to feel the pressure to prove themselves academically because of their race. Furthermore, students in the former group are more likely than those in the latter group to state that race-based admissions are necessary for underrepresented minorities to get ahead academically. However, it is interesting to note that the "no classes as the lone minority" sample is more likely than any other group to respond "sometimes."

The external stigma measures also demonstrate the substantial effect racial isolation has on students. The results suggest the stigma encountered by students is not clearly associated with affirmative action, but is more definitively associated with being a member of a particular racial or ethnic group and being racially isolated. For example, substantially more students who have been in classes as the only minority student had their qualifications questioned by nonminority students than students who have not taken a class as the lone minority student—specifically, at a rate of almost three to one.[139] Furthermore, more than twice the number of students who had attended at least one class in which they were racially isolated reported that faculty had lower expectations of them compared to those who were not racially isolated.[140] In addition, twice as many students who attended at least one class as a sole minority felt that their schools' admissions policies on race influenced other students' perceptions of them.[141]

In response to the question whether faculty and students think minority students can only get admitted to college with affirmative action, the distribution of results are quite similar to the affirmative action/anti–affirmative action sample group, with one exception. Students who have never been the singular minority in a class are much more likely to state that neither faculty nor students believe this statement any longer.[142]

### 3. Affirmative Action and Students' Graduate School Strategies

No statistically significant difference exists between students based on racial isolation experiences with the variable of whether the students were aware of affirmative action policies at the time that they applied to a college or university. However, a statistically significant difference does divide students who had been the

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139. A phi of .353 and significance level of .001 shows that a moderately strong relationship exists between having one's qualifications questioned and having been the sole minority in a class.

140. A small to moderate relationship with a phi of .217 and a significance level of .001 is present between faculty expectations and whether a student has been racially isolated in a class. These same students who have never encountered being the solitary minority in a class are more likely than any other group to report having a mentor who is also a member of a minority group. In addition, they are more likely than any other group to state that faculty encouraged them to speak about their career aspirations.

141. The variables racial isolation experienced in class and admissions policy on race affecting perceptions have a small to moderate relationship of .256 with a significance level of .001.

142. The distribution differences between the two groups are statistically significant at the .01 level and demonstrate a small to moderate relationship between racial isolation and who students are likely to say still believe the statement with a phi of .226.

lone minority in a class and those who had not yet had that experience on the variable of seeking out graduate schools' admissions policies on race. Students in the former group were more likely—one-third of them versus one-fifth in the latter group—to seek out graduate schools' policies on race. On the other hand, no statistically significant difference emerged between the two groups on the question of whether it would be more difficult or impossible to get into graduate school without affirmative action. In both groups, slightly over half of respondents agreed with that statement.

**Table 7: Comparisons Between Students in No or Sole Minority in One or More Classes on Affirmative Action and Graduate School**

| | Phi | No Sole Minority | One/More Sole Minority Classes |
|---|---|---|---|
| Aware of affirmative action policy at the time application to college | -.06 | 31.8% | 38.4% |
| Sought out graduate admissions policies on race | .14* | 21.0% | 31.3% |
| It is more difficult or impossible to get into graduate school without affirmative action | .04 | 58.2% | 55.2% |

*p ≤ .05 **p ≤ .01 ***p ≤ .001
Phi is the measure of the strength of the relationship between the two variables.

The effect of being the sole minority in even one class is more severe on three key variables than it is for any of the other groups. While students who are the lone minority in a class experience overt racism and have their qualifications questioned at rates similar to students attending schools in anti–affirmative action states, they experience overt racism from faculty at a much greater rate than any other group. Not surprisingly, such open hostility led these students to report the lowest rates of "fitting in" and "ability to succeed" as high compared to any other group. Thus, their desire to investigate graduate schools' admissions policy on race represents a desire to seek refuge from hostility.

One student put it this way:

> Being in a class with no one else of color makes you invisible. You feel like everyone else will let you know when they want to hear from you, if ever—like if they need some information on being black or poor. I need to be somewhere where people are not looking at anyone but me to be their lab partner. Let me put it to you this way. When I am in a class with other minority students, I am a student. I have something to offer not because I'm the diversity person, but because I have ideas like everyone else.

On the other hand, students who took all their classes with at least some other minority students fared much better in the results. These students reported the lowest rates of racism and internal and external stigma than any other group. They also seemed to have a more positive outlook toward their white colleagues. A student from this group observed:

> You want to know what happens when white people are in class with a bunch of people that don't look like them? They actually shut up and listen. They get a view

> of the world that makes them realize that it's not the same for everyone. Like maybe, just maybe life's been a little bit fairer for them. I've actually made real friends with white students. But the best thing is that I am no longer a representative for my "people." I don't have to do the dirty work of saying "Well, actually . . ." and watch the eyes roll. You can almost, and I am saying "almost," feel like just another college student.

This quote suggests the power of creating critical mass and a diverse classroom, but it is important to note that while stigma and racism rates were low for these students, they were still present.

The results show some disquieting trends for underrepresented minority students generally, but more so for those students who have found themselves as the exclusive minority in a class, and particularly so for those students attending schools in states that have banned affirmative action. However, the data reveal that students attending schools in anti–affirmative action states who find themselves the sole minority student in a class disproportionately experience hostility and stigma on three measures. First, almost one-half of these students (47%) experience overt racism from other students, nearly double the rate of students in classes with other minority students. Second, two-thirds of students (66%) in anti–affirmative action states who are the sole minority in their class encounter external stigma by having their qualifications questioned. In fact, a strong relationship exists between these two variables for students in anti affirmative action states (r=.55***). What follows, not surprisingly, is that a staggering 89% of students in anti–affirmative action states who are the sole minority in their class suffer internal stigma through the pressure to prove themselves because of their race. These two variables are also strongly correlated (r=.42***). It is quite apparent that having one's qualifications questioned is strongly associated with the subsequent pressure one feels to prove oneself (r=.55***) for students in anti–affirmative action states.[143]

The next Part explores the implications of these outcomes and how these developments are articulated in the wake of legal and political discourse that declares race no longer matters.

## IV. DISCUSSION

If law is an expression of societal values, the harsh effects of a color-blind society are put into sharp relief in institutions of higher learning that allow admissions based on a so-called race-free "meritocracy." As Kenji Yoshino points out, by shifting the rhetoric to a progress narrative, which is what a color-blind discourse does, the racial hierarchy can continue to be legitimized.[144] Such rhetoric suggests that, in a color-blind society, we have moved beyond a place where race matters. Furthermore, such rhetoric warns against the dangers of affirmative action.[145] However, the results of this study suggest otherwise.

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143. Similar trends exist in affirmative action states, but to a smaller degree and with weaker correlations.

144. Kenji Yoshino, *Covering*, 111 YALE L.J. 769, 825 (2002).

145. These warnings come in the form of paternal concern, yet they reinforce the status quo. It is a form of symbolic violence in which the dominant group defines what is good or bad for the subordinate group, and in doing so ensures the power of the privileged.

Recall that proponents of eliminating affirmative action rely on three premises.[146] First, affirmative action is no longer an appropriate tool because whatever type of racism that minorities endured in the past does not exist today. Second, race-based admissions programs will lead underrepresented students to experience both internal and external stigma. Third, students from affirmative action programs based on race who are not privileged will resent those students who are privileged and react with hostility.[147]

None of these premises holds true. Students who attend schools in anti–affirmative action states find themselves engaged in an unfriendly environment. Despite being admitted on purely white, normative admissions standards, these students were more likely than any other group to encounter the exact opposite of the premises above: open hostility, internal stigma, and external stigma. As a result, they were more likely to seek refuge in graduate schools with affirmative action.

Recall, these are the students attending schools where stigma, "reverse discrimination," or "mismatch" is not supposed to be an issue, yet they fare far worse than other students who attend schools that allow race-based admissions. In fact, the assumptions under which anti–affirmative action advocates wring their hands with concern for race-based admitted students appear to be false. The data here show students in affirmative action states endure less hostility in the form of overt racism and less internal and external stigma than their counterparts in anti–affirmative action states. As discussed below, affirmative action is a key conduit for the powerful tool of critical mass.

On the other hand, underrepresented minority students in "meritocracy" states must endure silencing, imposition, and performing in white spaces at a far greater rate than their counterparts in race-based admissions states. Students going to school in these states come to school with a pre-existing condition, if you will, that is the focal point of stigma: not being white. Those states that champion a color-blind ideal are the same states that are complicit in producing whiteness,[148] not color blindness. The colleges

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146. *See supra* notes 4–6 and accompanying text.

147. Apparently, there is no fear that students who received "preferential" treatment because their families attended the school are in danger of this hostility. It is not surprising, as legacy programs ensure the funneling of resources from one privileged generation to the next. There also does not seem to be a concern that legacy students are much more likely to rely on their resource networks to find employment after graduation, rather than rely on their scholarly achievements. In this sense, both a raced and classed monopolization is protected. Legacy students are disproportionately white and wealthy, but not necessarily the highest achievers. *See supra* note 38.

148. However, the effect of producing whiteness is far more insidious than forcing the "other" to conform to normative modalities defined by the dominant group, as it eliminates access to resources. Students who may otherwise have been admitted to graduate school in anti–affirmative action states may self select an affirmative action state. Thus, an exodus of underrepresented minority students from anti–affirmative action states to affirmative action states protects the state's educational resources for the dominant group, while increasing the competition for resources in states that allow race-based admissions. Taken to its logical conclusion, highly qualified minority students who would be admitted under the "merit" model could find that they cannot be admitted under a "race-preferencing" model if the supply of seats becomes limited. In our current economic climate, such a scenario appears possible. On the other hand, legacy admits are less likely to encounter this situation because on average twice the

and universities within those states engage in norms and practices that code "whiteness as natural, logical, and right."[149]

In this Part, I discuss how these color-blind effects operate in institutions of higher learning through silencing, performing, imposition, and the discourse of curriculum, or eclectic diversity, and then I make some recommendations in the context of critical mass.

### *A. Silencing*

Underrepresented minority students encounter such hostility because they must navigate a sociopolitical environment in which the state's going mantra is "People should stop making such a big deal about race." As one student put it, "Here's their favorite line: If you'd stop talking about race it wouldn't be such a problem."[150] In other words, minorities create the problems they perceive. However, such a statement misinterprets the very nature of one's master status.[151] As a minority student, one cannot simply turn off race by not talking about it.

Kimberlé Crenshaw writes about this silencing in the context of the law school classroom, where students are taught to adopt the dominant view that legal analysis is objective.[152] Therefore, individual world views based on race or ethnicity, for example, have no place in the discussion of law.[153] She refers to this mode of thinking as perspectivelessness.[154] Perspectivelessness operates to protect a social structure in which whites dominate unchallenged. Armstrong and Wildman observe:

> This theoretically neutral lack of perspective . . . diverts students from examining how whiteness informs perspectivelessness. . . . [I]ssues of race are off limits because they pollute objectivity. White interests, served by white creators of legal

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number of seats are made available for alumni affirmative action programs than race-based affirmative action programs.

149. Jane Ward, *White Normativity: The Cultural Dimensions of Whiteness in a Racially Diverse LGBT Organization*, 51 SOC. PERSP. 563, 583 (2008).

150. While this quotation represents the most overt way students are silenced, students also reported a number of microaggressions in which they were silenced not only for talking about race but also for speaking up in general. They included:

1. loud sighing;
2. rolling of eyes;
3. snickering;
4. doodling;
5. puzzled facial expressions;
6. exasperated facial expressions;
7. bored facial expressions;
8. interruptions;
9. requests "to move on"; and
10. email requests to not talk so much in class.

151. Goffman refers to a master status as that individual trait or characteristic that forms the identity by which all others judge an individual. GOFFMAN, *supra* note 94, at 6–7. Race is an example of a master status. *Id.*

152. Kimberlé Williams Crenshaw, *Foreword: Towards a Race-Conscious Pedagogy in Legal Education*, 4 S. CAL. REV. L. & WOMEN'S STUD. 33, 35 (1994).

153. *Id.*

154. *Id.*

> analysis, can never be unmasked. Critiquing the notion of perspectivelessness is crucial in talking with white students, who often do not believe they have a racialized perspective.[155]

This perspectivelessness paradigm also exists outside the law school classroom. As Doane notes, in society, generally, whiteness operates as the unrecognized touchstone against which all other races and ethnicities are assessed.[156] Perry observes, "these discourses remove white racial identity so that everyone else is raced except Whites themselves."[157] Norms are always racialized,[158] but in such a way that whites are never compelled to turn a reflexive gaze on themselves. Thus, within undergraduate institutions, silencing works like perspectivelessness, by not allowing underrepresented minority students' views to be heard, white norms are never critiqued.

Therefore, white students never examine the ways in which institutions and norms have privileged them. Furthermore, white students never confront the burden of examining how these same institutions and norms create barriers for minority students. To put it plainly, when minority students are silenced, white students never see how their race privileges them with "an invisible package of unearned assets,"[159] and even more significantly, "[t]he holder of this package remains oblivious to its presence yet can reliably depend on its contents."[160] Ultimately, white students can continue to believe that they are entitled to all they receive and entitled to regard all others with suspicion.

However, the student's comment above regarding his classmates' desires to have him not talk about race goes further than silencing, it also functions to promote a "blame the victim" discourse. Under the color-blind modality, racial universalism abounds, and those who critique the racial social order simply choose to make it a problem. It has nothing to do with white engagement in dominating social norms and institutions.[161] In fact, the discussion of racial differences only serves to undermine equality in this color-blind discourse. The notion of choice is central to how those in the color-blind ideal camp view race relations in the United States.

The belief that the problems of race (if they exist at all) lie at the feet of too vocal minorities represents the unquestioned privilege that white people possess regarding ethnicity. Unlike with race, white Americans, mostly of European ancestry, have a choice as to the ethnic groups with which they identify. White Americans can choose not to identify with any specific ancestry,[162] or they can choose from a menu of

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155. Armstrong & Wildman, *supra* note 101, at 664.

156. *See* Woody Doane, *Rethinking Whiteness Studies*, *in* WHITE OUT: THE CONTINUING SIGNIFICANCE OF RACISM 7–8 (Ashley W. Doane & Eduardo Bonilla-Silva eds., 2003).

157. Black Hawk Hancock, *"Put a Little Color on That!,"* 51 SOC. PERSP. 783, 788 (2008) (citing Pamela Perry, *White Means Never Having to Say You're Ethnic: White Youth and the Construction of "Cultureless" Identities*, 30 J. CONTEMP. ETHNOGRAPHY 56 (2001)).

158. Albert Murray, *White Norms, Black Deviation*, *in* THE DEATH OF WHITE SOCIOLOGY: ESSAYS ON RACE AND CULTURE 96 (Joyce A. Ladner ed., 1998).

159. McIntosh, *supra* note 37, at 23.

160. Armstrong & Wildman, *supra* note 101, at 672.

161. *See* Crenshaw, *supra* note 152.

162. Stanley Lieberson refers to these individuals as "unhyphenated Whites." Stanley Lieberson, *Unhyphenated Whites in the United States*, 8 ETHNIC & RACIAL STUD. 159 (1985).

ancestries to include in their presentation of identity, depending on the social context in which they find themselves. Essential to this choice is the significant amount of economic and political power that whites hold as the dominant group in the United States.[163] The long historical path of economic and political power in the hands of whites means over time, they take for granted the resources made available to them simply because of their dominant-group membership.[164]

When white students and faculty apply symbolic ethnicity[165] to people of color, they misrecognize how racial domination is reproduced and perpetuated in United States culture. Silencing is a particularly effective way of reinscribing the color-blind ideal through symbolic power because of "the complicity of those who do not want to know that . . . they themselves exercise it."[166] Students report that any discussion of racist acts ultimately results in white students responding: "It may have been poor judgment but that doesn't mean you have to assume it's racist." Again, the discourse on blaming the victim for choosing to interpret an interaction as racist terminates the dialogue of racial power and reinforces the status quo.

As the data demonstrate, when students of color are silenced, white students can continue unabated in their color-blind world view, confident that they are entitled to all they have "earned." Furthermore, white students are given permission to engage in the ways of color-blind racism—in both overt and subtle acts, as the data revealed. However, the silencing has effects beyond the vacuous discourse of racial universalism. Silencing expands its tentacles into the ways in which underrepresented minorities must perform in white spaces.

### *B. Performing in White Spaces*

Students of color are not only silenced by their white counterparts in and out of the classroom, but also by the very institutions that purport to welcome them. Minority students in anti–affirmative action schools report that they are often ushered into minority support programs ironically run by white staff members who work to ensure these students' success in higher education. Unfortunately, these programs often

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163. Mary C. Waters, *Optional Ethnicities: For Whites Only*, *in* THE SOCIAL CONSTRUCTION OF DIFFERENCE AND INEQUALITY: RACE, CLASS, GENDER, AND SEXUALITY 29, 30 (Tracy E. Ore ed., 4th ed. 2009).

164. Part of the reason whites are able to misrecognize the historical and cultural contexts of race and ethnicity for people of color is because they view their own ethnic or racial identity as a choice. *See* WATERS, *supra* note 48, at 18. When they choose to identify with a particular ethnic group, they do so with no social cost. *See id.* at 150–55. White people's ability to consume ethnicity on an optional basis decontextualized from its historical basis produces a view of the world in which racial and ethnic identity are a matter of choice with little social meaning. *Id.* Thus, one's membership in a given racial or ethnic group must have no social consequence for minorities too. *See id.* at 157. This de-historicizing of racial and ethnic narratives leads to racial amnesia in which the dominant group fails to recognize their master status as one filled with social rewards and minority groups' master status as one filled with social penalties—a social order that the dominant group constructs and reproduces to protect their power. *See id.* at 155–64.

165. *See* WATERS, *supra* note 48.

166. *See* BOURDIEU, *supra* note 44, at 164.

function to ensure that underrepresented minority students understand how to perform in white spaces.[167]

Naturally, the programs appear well-intentioned. Often, the goal is to provide underrepresented minority students with the same cultural capital[168] that most white students possess. However, the articulated guidance offered students serves to reify the dominant white mode of behavior, while undermining the students they purport to serve. When a student's minority student group wanted to protest an event occurring on campus, the minority affairs staff advised them to think of "less antagonistic ways of engaging in dialogue with the larger community. Otherwise we'd appear as the ones causing problems." Minority students are asked to assimilate to white codes of conduct. They are asked to examine their behavior for white conformity. By putting minority students on notice that only one mode of behavior is expected in the academy, minority students are reminded that they are the outsiders who must be socialized into the institution.

These programs also reinforce stereotype threat.[169] Underrepresented minority students may already feel a sense of intimidation that comes with attending schools in racial isolation.[170] If they are entering schools that offer instruction on how to perform academically in white normative ways, the students receive the message: We do not expect you to succeed—even if you did get in here on your own merit. One student remarked as such,

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167. *See* john a. powell, *Dreaming of a Self Beyond Whiteness and Isolation*, 18 WASH. U. J.L. & POL'Y 13, 36–37 (2005).

168. "Cultural capital" refers to specific attributes a person possesses in a given social context that will lead to some gain. The attributes can be physical traits, knowledge of types of behavior or language that is valued in a social setting, as well as social networks in that setting. Pierre Bourdieu, *The Forms of Capital*, *in* HANDBOOK OF THEORY AND RESEARCH FOR THE SOCIOLOGY OF EDUCATION 241, 243–48 (John G. Richardson, ed., 1986).

169. Minority students must continually combat the stereotypes that others hold regarding racial groups. This is particularly acute for underrepresented students who attend colleges and universities where students 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 acutely reify stereotypes of racial minorities. One of the most significant casualties of underrepresented 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. Steele, *supra* note 98, at 620–21. 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, the average score was virtually identical for white and black students in the former setting. *Id.* However, blacks performed half as well in the latter setting when faced with a stereotype threat. *Id.* 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. *Id.* Once again, the performance of black and white students was identical when race was not asked, but black students performed at a rate of 60% less than white students when they were asked to identify their race. Such is the power and burden of racial stereotypes. *Id.*

170. Brown & Hirschman, *supra* note 28.

> Right away I am in orientation, and they set up this special program for minority students. It was all about how to "survive" first semester. I am thinking I know all that! How do you think I got into this school in the first place? The next thing that happens: suspicion. My white roommate starts asking why I have to go to special programs.

According to stereotype threat theory, students who are highly successful academically and attached to their domain, in this case, higher education, will fear any failure that can be attributed to stereotypes based on their race.[171] Programs that are not critically examined for race-stereotyped messages may undermine the diversity recruitment and retention goals they are trying to achieve.[172] These programs may have a more dominant presence in anti–affirmative action states that must work harder to attract underrepresented minority applicants.[173]

But it is not just the orientation programs or minority support programs that pose the threat. As Professor Steele points out, students who are on the academic vanguard are most likely to feel the pressure of the stereotype.[174] He points out that these are the students who pay the "frontier tax."[175] In this study, it makes sense that students who

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171. Steele, *supra* note 98, at 614.

172. *See* Ben Gose, *Test Scores and Stereotypes*, CHRON. HIGHER EDUC. (Wash., D.C.), Aug. 18, 1995, at A31. When Steele applied his experiment results to a first year college transition program at Stanford, in which students participated in workshops on successful adjustment to college, black students got slightly higher grades than white students who were not in the program. *Id.*

173. For example, some schools in California, Washington, and Michigan have programs designed to support underrepresented minority students on campus. Minn. State Colls. & Univs., Academic and Student Affairs, A Summary of "Best Practices" for Recruitment and Retention of Students of Color, www.academicaffairs.mnscu.edu/studentaffairs/documents/BestPractices.pdf.

174. Interview by Frontline with Claude Steele, Professor of Social Psychology, Stanford Univ., http://www.pbs.org/wgbh/pages/frontline/shows/sats/interviews/steele.html [hereinafter Interview with Claude Steele].

175. *Id.* Professor Steele elaborates further:

> It happens whenever these students are in the domain where the stereotype is applicable. So [with] any kind of intellectual performance or interacting with professors or teaching assistants or other students in a classroom, this stereotype is relevant and constitutes a pressure on those behaviors.
>
> . . . .
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> . . . . It has become vividly clear . . . that the effects of the stereotype are poignantly most powerful for the students who are the strongest and the most motivated. For them, functioning at the frontier of their skills with this prospect of being seen, stereotypically, [to be] over their heads, they're the ones who experience a disruption and so forth.
>
> . . . . That it's the academic vanguard of the group . . . that is experiencing the threat . . . can be thought of as having to pay a sort of pioneer tax: . . . the black student who is really doing well and is sort of in a top flight, high pressure college or graduate program or professional program or something. That person, because they're having to deal with this threat and the prospect of it is paying a certain tax to be there that other students are not having to pay. This is not to make the

are attending schools without the benefit of affirmative action are entering a new frontier of merit-based admissions and feel the greatest pressure to succeed because of their race. Similarly, these students were more likely to perceive that faculty had lower expectations of them.[176] They are most keenly aware of the relevant stereotypes associated with their academic performance precisely because their admission was entirely "merit" based.

Furthermore, such programs may engender white students to question underrepresented minority students' presence on campus. As will be seen in the next Part, this questioning comes from a culture of imposition that exists more so on campuses that ban race-based admissions.

### *C. Imposition*

The data from this study shows, contrary to what the color-blind idealists argue, greater rates of imposition on those campuses that ban affirmative action. In other words, students who should not experience the hostility of imposing on white spaces because they earned their admission without affirmative action, actually do. Such results fly in the face of anti–affirmative action activists warning of "reverse discrimination" and the resentment that comes with it. On the other hand, when white students encounter fewer minority students, those students are more likely to conceptualize race in terms of stereotypes.

White students enter campus secure in the knowledge that they deserve to be there. On the other hand, informed by stereotypes, they may regard underrepresented minority students' presence on campus with suspicion—and interact with students in such a manner. Thus, it comes as no surprise that underrepresented minority students in anti–affirmative action states are the most likely to report overt racism from students and to report that their qualifications are questioned, and extremely unlikely to report that they think faculty and students no longer believe minority students can only get admitted to college because of affirmative action. This becomes a self-fulfilling prophecy. In essence, fewer students of color apply to schools that ban race-based admissions because of the hostility; thus, fewer students of color are admitted, and then fewer enroll. It confirms in the minds of some white students what they suspect: minority students are out of their element at "my school."[177]

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> journey of other students seem trivial or light because it isn't. It's just to argue that in addition, for students who are negatively stereotyped in this domain, there's this other tax to pay.

*Id.*

176. *See id.* This perception comes from the ambiguity students of color encounter when interacting with faculty. The feedback they receive from faculty cannot necessarily be taken at face value. Students of color have to question whether such feedback may be the result of "negative stereotypes," as Professor Steele calls them, or "auxiliary traits," as Irving Goffman calls them, associated with the student's ethnic or racial group membership. GOFFMAN, *supra* note 94, at 3.

177. I use the language "my school" because I believe a fair number of white students have a sense of entitlement and ownership when it comes to higher education. Many students feel confident that they are unquestionably deserving of their admissions because they earned it meritoriously. However, very few white students have the opportunity to critically examine what and who defines merit. See Lawrence, *supra* note 42, for a full discussion of the meaning of merit-based admissions.

Professor Steele reports that relationships allow students to move beyond the fear that they are being viewed through their race master status and the accompanying auxiliary traits.[178] However, students on campuses that ban affirmative action, as noted by the data, are more likely to find themselves racially isolated in class and find it more difficult to develop meaningful relationships with faculty[179] and students outside their ethnic and racial group membership. A student lamented: "I feel invisible. When people in class won't look at you, much less talk to you, when professors can't remember your name, how are you supposed to get friends? An advisor?"

Spirit injury is evidenced most profoundly in the students who are the most racially isolated.[180] It comes from the little regard received from the people who matter to an underrepresented minority student's identity as a successful academic, that is, peers and professors. Specifically, students who have been the lone minority in one or more classes are the least likely to report fitting into a college population and the least likely to rate their ability to succeed in school as high. In addition, their reports of overt racism from other students rival those of students in anti–affirmative action states, and their reports of overt racism from faculty are more than double the reported rates from students who have never been in a class as the only minority. These students are acutely aware that the diversity they bring to the classroom is regarded negatively.[181] Yet, Professor Steele advises diversity as a key tool to ensure that students of color feel safe from the judgment of stereotypes.[182]

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178. Professor Steele observed,

> I think relationships are very important. . . . [B]ecause if we have a relationship, I will almost by definition trust that you're not going to see me stereotypically. So when college students come in and they have a variety of relationships with people in their environment, then they become confident, relaxed that in this environment, although [they] know those stereotypes exist in society in general, in this environment [the student is] not affected by them . . . .

Interview with Claude Steele, *supra* note 174.

179. Students who had taken one or more class as the sole minority in that class reported encountering overt racism at twice the rate of students who had never been the lone minority in a class.

180. Adrien K. Wing, *Brief Reflections Toward a Multiplicative Theory and Praxis of Being*, 6 BERKELEY WOMEN'S L.J. 181, 186 (1991) (building on Patricia William's concept of spirit murder to explore the multitude of ways people of color suffer from oppression).

181. As Nunn points out, this kind of diversity is tokenism. It is an accommodation by the dominant group to allow a few representatives from outsider groups to join the institution. He writes, "As long as some people of color show up in the applicant pool and some—but not too many—are granted admission, then a university can claim that it is diverse. It matters not that this is token representation at best." Nunn, *supra* note 42, at 723. However, a negative reaction can occur when diversity rises beyond the desired token level. *See* Darnell M. Hunt, Editorial, *UCLA Rights a Wrong*, L.A. TIMES, Sept. 7, 2008, at A34 (reporting that UCLA admissions accused of illegal consideration of race in using a holistic approach to evaluate applicants when the number of minorities admitted doubled).

182. Interview with Claude Steele, *supra* note 174.

> If the leadership of the university expresses a value in diversity, that people from different backgrounds bring things to campuses that are of value to everybody here, that sends a clear message that the things about my group that are distinctive . . . will not result in negative judgments but will be valued in this environment. . . . Sometimes diversity is just seen as an empty piece of rhetoric. But it can send a

### D. Diversity Part 1

Current legal and academic discourse on diversity operates to support the paradigm of imposition. Under *Grutter*, advocates for race-based admissions found traction in the argument that diversity meets the compelling state interest of promoting learning and preparing students for a diverse society.[183] In doing so, they reinscribe the race master status of underrepresented minority students. Such an argument tells these students that they are admitted to serve a curriculum goal for white students.[184]

Fundamentally, it smacks of the same stigma that emerges from the racial logic whites have used to consume African American culture: "either a form of minstrelsy by which over-exaggerated derogatory stereotypes are enacted or a whitewashing by which cultural forms are deracialized and assimilated into white society."[185] Admitting minority students at tokenism rates for the purpose of exposing whites to people that they do not ordinarily encounter has led to a new form of minstrelsy. Whites still engage with race on their own terms in and out of the classroom: when it serves the pedagogical needs in the classroom, such as when a "minority" perspective might be useful for class discussion, or when it serves their entertainment needs outside of class.[186] Is it any wonder that higher rates of racism appear when diversity exists for white consumption?

Still, others have successfully argued that a broad definition of diversity is generally beneficial to a university environment.[187] They assert that race can be considered in the same way that a trumpet player from South Dakota who has been privileged enough to travel a lot can be considered—it might bring culturally interesting people together on campus.[188] However, this argument reproduces the second way in which whites consume minority culture: whitewashing—the decontextualization of the current social and historical narrative of what it means to have a master status defined by race or ethnicity. The use of eclectic or curriculum diversity, of which the Supreme Court approved, does not address the ongoing problems identified in this study, the overt

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> very important signal to people who are otherwise under the threat of stereotypes in a situation.

*Id.*

183. Grutter v. Bollinger, 539 U.S. 306, 330 (2003).

184. *See* Derrick A. Bell, Jr., Brown v. Board of Education *and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980). Bell observed that whites would only accept affirmative action when it was seen as benefitting them. *Id.* Further, D. Marvin Jones writes, "Diversity is a concession from within the framework of 'imposition'; it allows blacks in but only to the extent it serves the goals of white privilege." *Jones*, *supra* note 11, at 602.

185. Hancock, *supra* note 157, at 788.

186. Engaging with race outside of the college classroom can come in some terribly disturbing ways. For example, a number of colleges have reports of white students holding "ghetto parties" in which white students dress in a stereotypical manner. Most recently, students at UC San Diego held a "Compton Cookout" to mock Black History month. Amina Khan, *San Diego Officials Meet with Students Angry About Off Campus 'Compton Cookout,'* Feb. 19, 2010, L.A. TIMES, http://latimesblogs.latimes.com/lanow/2010/02/uc-san-diego-officials-meet-with-students-angered-by-offcampus-compton-cookout-.html.

187. *Grutter*, 539 U.S. at 330.

188. *Id.*; *see also* Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701 (2007).

racism and stigma encountered disproportionately by students on campuses with token diversity, that is, states that ban race-based admissions.

### *E. Critical Mass/Diversity Part 2*

Diversity discourse of this variety is to be expected. When, with the best of intentions, we develop campaigns that "Teach Tolerance,"[189] we support the notion that groups different from the dominant one are simply to be "put up with."[190] Perhaps we need to revise the campaign with a new kind of alliteration: "Educate to Embrace,"[191] in which we encourage meaningful relationships that create understanding of both the social context and historical narrative of what it means to exist within but outside the dominant group's institutions. Toward that end, I recommend we discard the eclectic or curricular diversity discourse in favor of remedial discourse and that we work to achieve critical mass at our institutions of higher learning.

Until the institutions of higher learning, as well as other institutions that provide access to resources, reaffirm the original goals of affirmative action, we perpetuate the "big lie" that Charles Lawrence wrote about.[192] We must come to terms with the legacy of past racism and confront present racism. This can be achieved only when groups in power acknowledge the racial caste system in which all others must toil. The mindset of privileged victimhood and entitlement must give way to remediation and institutional reconstruction.

It seems schools that fully endorse affirmative action to a degree that creates critical mass have greater success at achieving this goal. Students in this study who are at schools that have a critical mass of underrepresented minority students such that these students never find themselves racially isolated in the classroom, are least likely to: (1) encounter overt racism from faculty and students; (2) have their qualifications questioned; (3) feel pressure to succeed because of race; and (4) feel faculty have lower expectations of them. And, moreover, they were most likely to: (1) believe that neither faculty nor students thought minority students got into college because of affirmative action; (2) say they fit into the college population (91.6%!); (3) rate their ability to succeed as high; and (4) feel encouraged to speak about their career aspirations.

Critical mass is a powerful tool at both the micro- and macro-level. In order to move toward a place where remediation diversity can be accepted, and social justice achieved, our gains will be at the micro-level first. As others have argued, critical mass can destabilize stereotypes[193] through color insight[194] and increase critical thinking, particularly amongst whites.[195] It can also create leaders who will produce the culture

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189. *See* Teaching Tolerance: A Project of the Southern Poverty Law Center, http://www.tolerance.org/index.jsp (offering lesson plans on how to discuss anti-bias).

190. The dictionary defines "tolerate" as such. MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1315 (11th ed. 2003).

191. "Embrace," a verb, is defined as "to take in or include as a part, item, or element of a more inclusive whole" or "to be equal or equivalent to." *Id.* at 406.

192. Lawrence, *supra* note 42, at 967.

193. *See* Addis, *supra* note 7, at 123.

194. cummings, *supra* note 14.

195. Debra Humphreys, *The Impact of Diversity on College Students: The Latest Research,*

of remediation diversity and social justice. To get there, however, schools must think carefully about how critical mass will operate at their institution. Who will decide when critical mass is achieved? Who will decide what needs to be addressed to make sure institutions of higher learning make underrepresented minority students feel safe not only from racism but from the threat of stigma and stereotypes? Who will examine the ways in which whiteness is reproduced as the dominant norm? And more importantly, who will listen?[196]

## CONCLUSION

When minorities are treated as "aesthetic"[197] and not as individuals with a contextualized historical and contemporary human experience, we forget why diversity is needed in higher education: to correct past and current discrimination in the academy and beyond.[198] The results of this study demonstrate that the color-blind ideal does not appear to exist. The results also reveal that the color-blind ideal is promoting a deeply flawed discourse that affirmative action causes stigma. It is apparent from this study that the only stigma underrepresented minority students encounter is the one created from racial isolation and dominant group hostility. Affirmative action provides but one important tool in the tool box of equitable education. It unmasks the brilliant disguise of the stigma fallacy and demonstrates the power of critical mass.

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*AAC&U for the Ford Foundation Campus Diversity Initiative* (1998), http://www.diversityweb.org/research_and_trends/research_evaluation_impact/benefits_of_diversity/impact_of_diversity.cfm (offering a detailed analysis of specific actions universities can take to meet the needs of underrepresented minority students).

196. Institutions of higher education must contemplate how the culture at large informs the culture of the institution. After all, organizations are racialized in relation to, but also apart from, the raced beings that inhabit them. It is not enough to create the aesthetic of diversity within an organization. Colleges and universities must continue to assess how dominant cultural norms may infiltrate and negatively impact students of color. *See* Ward, *supra* note 149, at 564.

197. Grutter v. Bollinger, 539 U.S. 306, 354 n.3 (2003) (Thomas, J., concurring in part and dissenting in part).

198. Ultimately, the goal is not just create equal access within education, it is to create equal access within all facets of society. When we come to terms with discrimination, a fully participating diverse society will benefit the lives of many. As we bask in the glow of our nation's first black president, it is easy for some to put race in the past. We would do well to remember what Barack Obama observes in his memoir, *Dreams from My Father*, "the past is never dead and buried—it isn't even past." BARACK OBAMA, DREAMS FROM MY FATHER: A STORY OF RACE AND INHERITANCE, at x (2004) (paraphrasing William Faulkner).

## APPENDIX A: AFFIRMATIVE ACTION AND STUDENT EXPERIENCES

*Affirmative Action Laws and Student Experiences Survey*

In this survey we are trying to determine how your educational experience may impact your future educational decisions. **We can assure you that your survey is completely anonymous. Completing this survey or any portion of it is completely optional.** Most questions will ask that you check the space to the left of the choice that best fits your answer. Depending on the question, the number of choices available may vary. In some cases, you will be asked to fill in the answer with your own words in the space provided. There are four sections to the survey. It will take 15 minutes to complete.

**Section I (Domain Attachment)**
*In this section we are interested in learning about your educational history in high school and that of your family.*

1. What is the state where you attended **high school**?

2. Do you recall your **high school** GPA?

3. If you took the Scholastic Aptitude Test (SAT), to the best of your recollection, what was you combined verbal and math score?

4. What was your typical class ranking in **high school**?

top 5% 0
top 10% 1
top 25% 2
top 50% 3
top 75% 4
not available or don't recall 5

5. Did you win any *academic* awards or scholarships in high school?

no 0
yes, please describe 1

6. Please list the highest level of educational attainment that your immediate family members have achieved. Example: Mother, B.A., Sister, currently in high school, Brother, Ph.D., etc.

7. Who encouraged you to think about attending **college**?
Check **ALL** those that apply.

Family members 0
Peers 1
Teachers 2
Guidance Counselors 3
Coaches 4
Others 5

8. Did anyone, anything, or an event *discourage* you from applying to college?

yes 1
no 0
Explain_____

9. How many colleges did you apply to?

10. Which of the following influenced your decision to apply to the college/universities you chose? (Please check **ALL** that apply.)

availability of financial aid 0
other friends attending same institution 1
diversity on campus 2
reputation of school and/or intended field of study 3
college admission's affirmation action policy 4
other 5

11. Were you aware of affirmative action policies for college admissions at *the time you applied* to college?

yes 0
no 1 (Please go directly on to Section II of the survey)

12. If you were aware of affirmative action policies for college admissions how did you learn about them? (Please check **ALL** that apply.)

guidance counselor 0
college admission recruiter 1
college brochures 2
college website 3
friends 4
newspaper, television or radio 5
other 6

13. What is or was the policy regarding race-based admissions at your college?

race is a permitted factor in an admissions decision 0
race is banned by law from consideration in an admissions decision 1
race can play a role in the admissions decision, but it is rarely considered 2
don't know 3

14. Did the admissions policy regarding race for the college/university you (did/do) attend impact your decision to go to that institution?

yes 0
no 1
don't know admissions policy on race 2

15. Do you believe that race-based admissions policies are necessary for the academic advancement of minorities?

yes, always 0
no, not at all 1
sometimes 2

**Section II (Negative Stereotype Threat/Self Relevancy)**
*In this section we would like to learn about your educational experience in college or university.*

17. Please estimate the percentage of classes in which you were or are the sole minority student at your university/college.

18. In your interactions with faculty and/or advisors in your department, did/do you perceive that they had/have lower expectations of you than Caucasian students?

__yes 0
__no 1

19. If any faculty members act(ed) as mentors to you, were they also a member of a minority group?

__yes 0
— no 1
__never had a faculty member mentor me 2

20. In your classes, did or do you feel pressure to prove yourself academically because of your racial background?

__yes 0
__no 1

21. On campus, did or do you feel that the non-minority students question your qualifications to be at the school?

__yes 0
__no 1

22. Did or Do you feel that you fit in with the population at your college or university?

__yes 0
__no 1

23. Give an estimate of the percentage of students who are or were members of your racial group in your department or major.

24. Have you experienced overt racism from **faculty members** at your college or university?

__yes 0
__no 1

25. Did faculty members encourage you to speak with them about your professional or educational aspirations?

___yes 0
___no 1

26. Have you experienced overt racism from **students** at your college or university?

___yes 0
___no 1

27. Please rate your ability to succeed academically at the **college or university** you attend(ed) in spite of barriers that you may have faced.

__low 0
__moderate 1
__high 2

28. Do you believe that the admissions policy regarding race at the institution you attend(ed) influenced the way students and/or faculty perceived your academic abilities on campus?

___yes 0
___no 1
___don't know policy 2

29. In general, do you think some students and/or faculty think minority students can only get admitted to college/university because of affirmative action?

___yes, but mostly students, not faculty 0
___yes, both students and faculty 1
___yes, but only a few students 2
___yes, but only a few students and only a few faculty 3
___no, people don't think along those lines anymore 4

**Section III (Outcome: Decision to apply to graduate school)**
*In this section, we would like to learn about your attitude towards attending graduate schools.*

30. Have you considered applying or are you in graduate school?

___yes 0
___no 1

31. Did/Would you ONLY apply to graduate programs that DO use race as a factor in its admissions policy?

___yes 0
___no 1

32. Would/Did you actively seek out information about a graduate school's admissions policy on race?

___yes 0
___no 1

33. If a minority student were to apply to a graduate school that did NOT consider race as a factor in its admission decisions, do you think it would be challenging for a minority student to be admitted?

___equal challenge compared to schools that do consider race 0
___less challenging compared to schools that do consider race 1
___more challenging compared to schools that do consider race 2
___virtually impossible to gain admission compared to schools that do consider race 3

34. How many graduate schools did you or do you plan to apply to?

35. Please list factors in order of importance that you considered when deciding whether to apply to graduate school.

36. Has anyone encouraged you to think about applying to graduate school? If so, please name their relationship to you (i.e parent, friend, professor, boss, etc).

37. Did anyone discourage you from applying to graduate school?

___no 0
___yes, what relationship did they have to you? 1

**Section IV (Demographics)** *Remember this is anonymous, but you may choose not to answer any question.*

38. In what state do you attend school currently?

39. What department are you studying in?

40. What is your year in the program?

__Freshman 0
__Sophomore 1
__Junior 2
__Senior 3
__Graduate student 4

41. Do you attend school on a _____ basis?

___Full time 0
___Part time 1

42. What is/was your **college** cumulative Grade Point Average?

43. How old are you?

44. What is your marital status?

___single, never married 0
___single, living with partner 1
___divorced or separated 2
___widowed 3
____married 4

45. Do you have dependents?

___no 0
____yes, how many? 1

46. With which racial/ethnic background do you identify?

__Bi/Multiracial 0
__African American 1
__Asian American 2
__Caucasian 3
__Hispanic 4
__Middle Eastern 5
__Native American 6
__Pacific Island 7
__Other 8

47. What is your employment status?

__Employed 0
__Unemployed 1

48. What is your gender?

__male 0
__female 1
__other 2

**THANK YOU! Please place in marked boxes!**
**Please consider signing up for a focus group at the conference. Go to sponsorship area and look for the table marked Anti-affirmative Action Study with ongoing interviews and sign up sheet!**
***If you would prefer to be interviewed after the conference by telephone, please provide contact information on the yellow sheets also located on these tables and place in marked boxes!***

## APPENDIX B: NOTES ON METHODOLOGY AND ANALYSIS

In conducting any research, there are constraints in what a researcher can do that lead to limitations on the conclusions drawn from the research and that lead to recommendations for future research. I note here both the limitations, questions, and rationales for some of the decisions made in conducting this research.

This sample is in no way representative of the general population of minority students attending college and university. It is an exploratory study of over three hundred underrepresented minority students from twenty-seven states majoring in the sciences. It offers some trends of how to think about the stigma arguments and the critical mass arguments offered by the opponents and proponents of affirmative action, respectively. Future research should include exploration of the following issues.

First, identifying whether a student attends a public or private university is important because affirmative action laws apply only to public institutions. It may be that students are affected differently within a state depending on the type of institution they attend. On the other hand, all students within a state may experience the same level of stigma or hostility because of the cultural norms that exist in the state generally around affirmative action. Students may not be aware of the different application of the law, or they may be aware but react consistently regardless of the application of the law.

Second, being able to identify the specific institution that a student attends would allow for analysis on the varying reaction to affirmative action policies based on the competitiveness of admissions at a particular school. Brown and Hirschman's work from 2006 in Washington State suggests that underrepresented student enrollment was most affected at the state's most competitive school, the University of Washington, but had virtually no effect at the state's other schools in the aftermath of the passage of a 1998 ban on race-based admissions.[199] In addition, knowing the specific institution would allow examination of the impact of recruitment or retention programs on student experiences, the impact of institutional cultural norms, the effect of urban, suburban, or rural locations, and the consequences of economic resources at the institution on stigma and hostility. In addition, whether a student attends a historically black college or university may be a significant role in their student experience on campus. Furthermore, methodologically, if a significant number of students attend the same school, nesting occurs, which could skew the results, because those students are reflecting the unique experiences of just one institution.

The small sample size also led to constraints in the nature of the type of analysis that was possible. In this study, I limited my statistical analysis to examining whether a relationship existed between the measures of stigma and hostility and the type of state where one attended school or whether one had been racially isolated in the classroom. Ideally, this would be just the first phase of a more complex study that would result in the development of a parsimonious model of predictors of whether one experiences stigma and hostility and under what conditions. However, as there were only fifty-five students in the sample of those attending school in anti–affirmative action states, and data was missing on every variable, statistical power would be rapidly lost making it

199. *See* Brown & Hirschman, *supra* note 28.

difficult to achieve statistical significance and detect effect size, otherwise known as the strength of the relationship between two variables.

On the one hand, the fact that so many relationships were identified with medium effect sizes *and* statistical significance with a relatively small sample suggests that these relationships have *substantive* significance too. In other words, the numerical trends tell a story worth noting in the social world. On the other hand, this relationship is bivariate in nature and therefore raises questions about whether the relationships would still be substantively significant if other variables were controlled. For example, in addition to the variables discussed above, variables like membership in a particular racial or ethnic group, gender, a state's political climate, background experience with whites, or living outside the United States may affect how one experiences stigma and hostility. Specifically, gender seems to play a role in how one interprets negative experiences. Females are more likely to interpret negative acts emotionally. They are likely to look inward and blame themselves.[200] Initial analysis in this study found that a small relationship (phi= .115 $p<.05$) divided men and women and their reports of overt racism by students. One-third of men versus one-fifth of women reported overt racism by other students. Moreover, students of color who are raised outside the United States may not recognize hostile acts as racist because they lack the social context in which to name the act as such.[201]

This study also raises questions about how stigma and hostility are mediated in states that permit race-based admissions generally and in classrooms that include a critical mass of students of color, specifically. While the results of this study demonstrate that students of color who have never been racially isolated encounter the lowest rates of hostility and stigma, and students in affirmative action states are more likely to not be racially isolated, Onwuachi-Willig's work on stigma in law schools reveals that students in states with affirmative action do report more negative attitudes about race-based admissions.[202] Thus, students may view affirmative action as reverse discrimination, but refrain from engaging in overt hostility or stigmatizing toward their minority peers. The recent passage of anti–affirmative policies in Nebraska presents a unique opportunity to evaluate how stigma and hostility adapt as spaces are formally mandated as color-blind. For example, do states that embrace anti–affirmative action policies have higher rates of stigma and hostility than other states that maintain a color-recognized space?

Alternatively, more research needs to be done to explore the nature of the hostility and stigma encountered by students of color in states that ban affirmative action. The key question is whether the hostility and external stigma encountered is associated with the mistaken belief that students of color at these schools did benefit from affirmative

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200. *See generally* Megan M. Kelly, Audrey R. Tyrka, Lawrence H. Price & Linda L. Carpenter, *Sex Differences in the Use of Coping Strategies: Indicators of Anxiety and Depressive Symptoms*, 25 DEPRESSION & ANXIETY 839 (2008) (noting women are more likely to engage in self-blame for negative stressful events).

201. *See generally* Martin D. Ruck & Scot Wortley, *Racial and Ethnic Minority High School Students' Perceptions of School Disciplinary Practices: A Look at Some Canadian Findings*, 31 J. YOUTH & ADOLESCENCE 185, 193 (2002) (arguing that increased perceptions of discrimination amongst students who immigrated at an early age compared to students who immigrated at an older age relates to time exposed to social mechanism of racism).

202. Onwuachi-Willig et al., *supra* note 5.

action (Onwuachi-Willig's work demonstrates that a contingency of such students do exist in the law school setting) or whether more complex reasons can explain the unbounded rates of racism and external stigma in color-blind spaces.

Finally, it is important to note that these results do not present causal connections. They reveal only associations between the state in which one attends school and rates of stigma. Ultimately, one must be cautious about spuriousness. While two variables may be associated with each other, other variables may actually cause the increase or decrease in stigma.