Considerations of Race in Admissions

The Case of SFFA v. Harvard University

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Paper Outline

Background, Research Question and Thesis Statement

Known for its ability to attract the best talent in the world, the elite Harvard University has been under heavy criticism by those who see its race-conscious admissions program as discriminatory against Asian American applicants. A criticism that evolved to legal action in a 2014 lawsuit. This topic is important for anyone attempting to understand affirmative action (AA) and its role in promoting diversity and inclusion, as well as to understand critique against AA and the use of race in admissions in its current form. An understanding of roles and risks can help future higher education policymakers articulate evaluated affirmative action policies that best achieve diversity and inclusion goals.

Research Question

This research paper attempts to identify why was Harvard University criticized for its admissions policy around racial considerations, how balanced is Harvard in using race v. the whole person in its admissions, and how can the university use race flexibly and contextually in admitting a talented and diverse incoming class.

Thesis Statement

Universities should consider race in university admissions to make up for inequities caused by historic imbalances in racial integration within higher education. The social role of universities provides a basis for the responsibility that universities must contribute to ensuring racial diversity, inclusion and integration in attempts to compensate for decades of historical racial injustices that minorities and underserved student categories had to tolerate. Affirmative action policies however must exclude racial injustices or discrimination. Race must be used contextually as part of the whole person in admissions, any sole use of race in admissions is a repeated practice of discriminatory policies that led to the same dilemma AA emerged to solve.

Introduction

For years now, affirmative action in higher education has been advocated for highlighting the educational value of diversity that fosters learning and encourages social and academic integration. In this context, universities are permitted to use race and ethnic considerations in their admissions processes to ensure diversity and affirmative action. The call for racial considerations in admissions was derived from the need to increase diversity in higher education by admitting underrepresented student demographics. In November 2014, a lawsuit was filed against Harvard University by a group of Asian American students who referred to themselves as Students for Fair Admissions (SFFA). SFFA claimed Harvard used "racially discriminatory policies in administering undergraduate admissions" (JUNG, 2018). Specifically, "the suit alleges that Harvard's use of race in its admissions process holds Asian American applicants to a higher standard, that Harvard engages in "racial balancing," using race as a dominant factor in its admissions decisions, and that it overlooks race-neutral alternatives" (AAUP, 2019). Harvard consistently denied the allegations that it has engaged in any sort of ethnic discrimination or suppressing any admission application based on race solely. On May 17th, 2021 Harvard asked the U.S. Supreme Court to deny the request by Students for Fair Admissions (Mitchell, 2021). Instead, Harvard highlighted that a consideration of the "whole person" in the sense of reviewing every aspect of the applicant's experience and background to achieve diversity amongst its student body. Harvard's motion for summary judgment explained that while Harvard considers race flexibly and contextually in pursuit of its goal to assemble a talented, diverse incoming class, the University also uses many race-neutral means to pursue diversity and that its notion of diversity is far broader than race-alone (Brief of Amici Curiae American Council on Education, 2018). A non-jury trial was held in October 2018, and post-trial parties completed post-trial submissions to the court in early 2019. According to the ACE (2018) brief, "the appeals court found that Harvard's "limited use of race" in admissions decisions "survives strict scrutiny" that legal standard required". Gerstmann (2019) argues that Harvard must do better and that the students should have won the case. The argument here is that Harvard puts both Asian and White students through the same evaluation and expect both to perform at the same level. Grestmann argues that it is harder for Asian Americans to get into Harvard because their "personal ratings" (a subjective evaluation of personal qualities) are, on average, significantly lower than for white applicants. The question remains here whether Harvard's response was in line with their commitment to affirmative action, or did they just take the easy way out. It is certainly hard to consider the "whole person" in evaluation, but Harvard would need to prove that its evaluation system is fair.

Affirmative Action and Asian Americans

There is no such thing as yellow privilege and there is a general census that Asian-Americans had no active role in the discriminatory practices of the past. Yet, they are now confronting a form of discrimination disguised as a rule for equality. Today, Asian Americans[1] form an engaged minority through contributions to all sectors including higher education, despite being subject to all forms of racial discrimination. It is argued that the fact that they are a minority makes them expendable in discussions around affirmative action instead of being a focus of affirmative action programs and structure. In numerous publications, and most evidently in his 1995 book "*Race and Culture: A World View*", Thomas Sowell articulates a position around Asian Americans progress through hard work of their own as opposed to State assistance or programming (Sowell, 1995). Under the context of affirmative action, "*racial preferences benefit some blacks and Hispanics but harm a larger segment, some of whom are minorities*" (D'Souza, 1995). Affirmative action and Asian victimizing are two terms that are being used often together, and the view of Asians as "friends" of whites and "foes" of African Americans fuels this construct. In his article "The Cruel Compassion of Affirmative Action", Danish D'Souza (1995) highlights a key observation and asks an important question; he mentions that despite Asian Americans have played no part in any of the historical crimes that affirmative action was designed to remedy, members of the Asian American minority group have experienced both "*de facto"* and "*de jure"* discrimination. D'Souza's "*de jure*" discrimination is embodied in his question as to "why should the burden of preferential policies be placed on historically innocent parties" (D'Souza, 1995). In the hegemonic bipolar model of race into black/ color and whites, Asians are miscategorized with whites, especially as their academic achievements are not congruent with historically deprived and underserved Black and Hispanic communities. In a daring statement, Michael Omi and Dana Takagi (1996) raised the issue of Asian Americans victimizing with a social construct that "*Preferential policies in admissions victimized Asian Americans more than, whites*" (Omi & Takagi, 1996). Affirmative action by intention is meant to integrate minorities and ensure representation, especially when education gaps exist. It seems that not only Asian Americans are left out of conversations about students of color, but their participation rates in higher

[1] The term Asian Americans is used in this paper to denote to the larger category of Asian American and Pacific Islanders (AAPI) comprised of greatly variant ethnic groups including Chinese, Asian Indians, Filipino as the largest three ethnic groups together comprising approximately 61% of the Asian American population. In addition, AAPI includes other East Asian groups like Korean, Japanese, Vietnamese, Bermese, Hmong, Cambodian, and Laotian groups along with native Hawaiian and Pacific Islanders (PNPI, 2020).

education may be adversely affected by affirmative action policies. The latest 2020 data from the National Center for Education Statistics (NCES) allows us to notice an upward trend of participation amongst high school completers from Black and Hispanic minorities in colleges and universities. But we also see the percentage of Asian Americans in higher education remained static over the past 20 years with a dip in 2018. In 1990, merely half of the high school completers from Black and Hispanic ethnicities enrolled in college at 46%, 42% respectively jumping to 64%, 65% in 2018, while Asian Americans remained stagnant at 80-81% over 20 years. The 2018 dip is smoothened using a 3-year moving average showing stagnant Asian American enrollment percentages at 81.4% in 1990, 81.3% in 2000, and 82.1% in 2018 (National Center for Education Statistics, 2020).

Year	**Percentage of recent high school completers enrolled in college (annual data)**			
	White	Black	Hispanic	Asian
1990	63	46.8	42.7	81.7
2000	65.7	54.9	52.9	81.0
2013*	68.8	56.7	59.8	80.1
2018	70.9	64.5	65.4	73.6
2019	68.0	49.8	63.4	89.8

Table 1. Percentage of High School Completers in the US Enrolled in College / University by Ethnicity.

Source*: National Center for Education Statistics, 2020); *NCES Data for 2013 highlighted as the year preceding the 2014 Harvard vs. SFFA litigation.*

In the context of this paper, the Espenshade study with Chang Chung is relevant to our discussion as (a) it looks specifically at elite selective colleges, and (b) the study highlights what would happen if race/ ethnicity were eliminated from admissions considerations. The study found out that by eliminating affirmative action, the share of African Americans would drop by two thirds (33.7% to 12.4%), and cut by half for Hispanics (26.8% to 12.4%). While the percentage of whites would not witness a significant change (23.8% to 23.5%), the acceptance rate for Asian applicants would gain the most (17.6% actual admissions to 24.8% admitted if "race" is removed from admissions consideration). Espenshade and Chung (2005) identify that "*Asians would occupy four out of five seats created by accepting fewer African-American and Hispanic students*" (p. 304). If we examine this notion, it is flawed in that it establishes a zero-sum approach that forces a choice of one ethnicity at the expense of another. A study by the Georgetown University Center on Education and The Workforce (2021) indicates that Asian Americans

are a benefactor of holistic admissions and "In a test-only admissions system, 21% of Asian American students would lose their seats in the most selective colleges (Carnevale & Quinn, 2021).

Asian Americans are a wide category including members from different nations, some of those qualify as underrepresented and underserved student categories by the higher education system and therefore must be recognized as minorities. Universities need to pay attention to underserved student groups as they are identified, especially as we move past addressing inequities to a more conclusive model. The Postsecondary National Policy Institute (2020) reported that 64% of AAPI adults over the age of 24 have completed an associate degree or higher, yet we there are clear disparities in degree attainment within the AAPI student categories highlighted below.

Degree Attainment %	Bhutanese[2]	Laotians	Burmese	Cambodian	Pacific Islanders	Japanese	Korean	Asian Indian	Chinese[3]
	15%	26%	22%	27%	28%	64%	65%	80%	55%

Table 2. Degree Attainment within Asian American and Pacific Islanders Student Categories

[2] According to data from the Pew Research Center (2021) by (Budiman & Ruiz, 2021), Bhutanese are the least likely Asian origin group to have a college degree

[3] According to NCES 2019 data by (de Brey, et al., 2019)

Race-Conscious University Admissions

The initial introduction of race in university admissions came to remedy past injustices and "to help underprivileged minorities who had been the victims of generational oppression" (Kang, 2019). In its argument for the use of race in admissions, the US district court stated that "Race conscious admissions will always penalize to some extent the groups that are not being advantaged by the process, but this is justified by the compelling interest in diversity and all the benefits that flow from a diverse college population" (Findings of Fact and Conclusion of Law, 2019). Without race in admissions, past injustices would create an uneven playing field for underserved students in higher education admissions in unfair competition for seats against peers who are either far better prepared, or more accustomed to the requirements of an admissions process. A review of the Supreme Court cases (Fischer v. UT 2016, Grutter 2003, Bakke 1978) show the direction of law justifying the use of race to ensure "critical mass" of a diversity of perspectives serving an educational purpose. The Court did not want to, neither could it create a measurable standard for using race and rather based it on "good faith", which was accepted in the fifth district in Fischer v. UT. There is also a very thin line between using race to ensure diverse pedagogical discourse and establishing race-based quotas. One may argue that a quota is indeed required to ensure representation but that alone is a slippery slope. In Bakke 1978, Judge Burroughs defended that "it was not yet time to look beyond race in college admissions" (Hartocollis, 2019). There will be a day where race-conscious admission decisions are completely independent of our past, and when we reach that goal, we must be able to establish admissions where the race factor benefits all races irrespective of past underrepresentations in education. Till then, even if the Court refuses to admit, universities not only should consider race in admissions to rectify past injustices, but also allocate resources to design race-targeted programs that support the academic integration of underserved students and lessen racial isolation beyond admissions. "Race" will remain a relevant factor in admissions till past injustices and gaps are addressed. However, using race in admissions is the reason for past injustices, universities will need to ensure the validity of their race-conscious admissions process to achieve the educational benefit of diversity. This is proving to be complex. In *Regents of the University of California v. Bakke*, the Supreme Court held that "attainment of a diverse student body is a constitutionally permissible goal for institutions of higher education," and that affirmative action is subject to "strict scrutiny" which means that a higher education institution would have to demonstrate that its affirmative action measures are no more extensive than necessary to advance a compelling interest of achieving educational diversity (Regents of Univ. of

California v. Bakke, 1978). In Grutter v. Bollinger (2003), the Supreme Court reiterated its statement that enrolling a diverse student body "promotes cross-racial understanding, helps to break down racial stereotypes" and that "student body diversity better prepares students for an increasingly diverse workforce and society."; the Court highlighted the illegality of "ethnic quotas" by stating that "enrolling a "critical mass" of minority students … as a specified percentage of a particular group merely because of its race or ethnic origin would be patently unconstitutional" (Grutter v. Bollinger, 2003). In Fischer v. UT (2016), the court stated that non-racial alternatives, as well as race, must be narrowly tailored to achieve the university's permissible admission goals, and "they must be sufficiently measurable to permit judicial scrutiny of the policies adopted to reach them" (Fisher v. Univ. of Tex. at Austin, 2016). But how clearly can we define the compelling goal of diversity? How significant should race be in college admissions? Are universities obliged to be transparent about their use of race in admissions? Professor of Law, David Strauss of the University of Chicago (2016) highlights one central principle of the Court's cases that universities do not need to be transparent about their affirmative action policies; he argues that as it has developed in court decisions, the law governing affirmative action demands a means-end fit between "ends that cannot be clearly defined, and means that cannot be openly avowed" (Strauss, 2017).

Students for Fair Admissions v. Harvard University

Procedural History – In November 2014, a lawsuit was filed against Harvard University by a group of Asian American students who referred to themselves as Students for Fair Admissions (SFFA). SFFA claimed Harvard used "racially discriminatory policies in administering undergraduate admissions" (JUNG, 2018). A request to investigate addressed to the Obama administration was dismissed due to the ongoing lawsuit (Kennedy, 2017), the request was later pursued by the Trump administration in 2017 (Carapezza, 2017). In September of 2017, Harvard was formally notified by the Department of Justice that the college was under investigation "for its use of race in its admissions policies" and for not "complying with its Title VI access requirements[4] (Chiu, 2019, p. 465). From October to November 2018, Judge Burroughs heard oral arguments on four counts from SFFA and Harvard (Foussianes, 2018). Both the U.S. District Court and the 1st Circuit Court of Appeals in Boston ruled that Harvard does not discriminate against Asian Americans and that their race-conscious admissions practices pass "constitutional muster" in that it "satisfies the dictates of strict scrutiny" (Harvard College v. Students for Fair Admissions, 2019). Judge Allison Burroughs of the U.S. District Court concluded her trial stating that the court "found no evidence of a pattern of stereotyping Asian American applicants or that Harvard used race as anything more than a "plus" factor in its admissions decisions" and does not establish racial quotas, hence accepting Harvard's analysis that "that no workable, race-neutral alternative could maintain the same level of diversity" (MIT, 2019). In her conclusion, Judge Allison wrote that "the students who are admitted to Harvard and choose to attend will live and learn surrounded by all sorts of people, with all sorts of experiences, beliefs and talents. They will have the opportunity to know and understand one another beyond race, as whole individuals with unique histories and experiences". After six and a half years of litigation earlier in 2021, the lawsuit escalated when SFFA petitioned the US Supreme Court to grant "a writ of certiorari" seeking judicial review (Lu, 2021). In December 2021, the Biden administration shared a brief urging the Supreme Court to deny the petition arguing it adds no sound reason to take up the litigation, on the basis that SFFA conflates two claims with each other, one of "intentional discrimination against Asian Americans", and another that "challenges Harvard's acknowledged use of race in admissions" (Brief For The United States as Amicus Curiae, 2021).

[4] Title VI prohibits discrimination on the basis of race, color, or national origin in any program or activity that receives Federal funds or other Federal financial assistance. As a receipient of Federal funds, Harvard must adhere to Title VI.

SFFA's Claims v. Harvard's Response & Court Conclusions

SFFA's main argument was that more Asian Americans should be admitted at Harvard and that the school "intentionally" discriminates between admission applicants based on race and ethnicity only without review of non-racial factors (Chiu, 2019, p. 466). SFFA did not opt to voice out any grievances by Asian American students but presented their argument using statistical inferences to prove a "statistically significant Asian penalty" (Biskupic, 2018). This is where SFFA claims that there is a statistical consistency where Asian Americans were scored lower in aspects related to likability, courage, and integrity. Former prosecutor and CNN legal analyst Shan Wu described that this goes to the heart of the definition of racism when you "imply" personality characteristics to a person's physical appearance (Wu, 2018). SFFA side argument was that "Harvard had favored black and Hispanic applicants at the expense of another minority group" (Hartocollis, 2019). Specifically, "the suit alleges that Harvard's use of race in its admissions process holds Asian American applicants to a higher standard to justify "racial balancing," using race as a dominant factor in its admissions decisions (AAUP, 2019). SFFA's four interrelated claims are:

Claim I - Intentional Discrimination

The group argues that Harvard's holistic admissions review process is being used to intentionally discriminate against Asian Americans by holding them to a higher standard which is lowering the admission rate of Asian Americans. The US District Court reiterated – specific to this issue – that "there is no evidence of racial aminus, nor is there evidence that any particular admissions decision was negatively affected by Asian American identity." (Findings of Fact and Conclusion of Law, 2019). SFFA failed to show discriminatory practices that were motivated and intentional against Asian Americans.

Claim II - Racial Balancing

SFFA contends that Harvard's stable admission percentages across races over the years despite application change in application rates are proof that Harvard is engaged in racial balancing through an "informal quota system." (Chiu, 2019, p. 469). The Center on Education and the Workforce at Georgetown University pinpointed that "The enrollment share of AAPI first-time students at the most selective colleges (including Harvard) has kept pace with their population share growth at all four-year colleges." (Carnevale & Quinn, 2021). Despite changes in admission rates, "the proportion of AAPI students at Harvard grew from 22 to 24 percent between 1999 and 2018." (Carnevale & Quinn, 2021). Looking at the heightened competition for admissions between 2000 and 2018 the likelihood of any racial group to attend Harvard decreased from 11.4%

in 2000 to 5.8% in 2018 in line with the fact that Harvard admissions process has become "increasingly competitive." (Avi-Yonah & McCafferty, 2018). But not all racial categories witnessed the same drop in admissions rate: two racial groups saw the African-American (by 12.4 percentage points) and Hispanic-American applicants (by 8.9 percentage points) over the period 2000-2018, mainly due to larger numbers of these categories applying to Harvard as a fruit of their "Undergraduate Minority Recruitment Program" in the perusal of diversity in education. Admission rates for White applicants fell by 5.3 percentage points, and Asian-American applicants saw the smallest decrease where their rate fell by 3.6 percentage points during the same period despite their number of applications increased by 94% compared to 63% of white applicants in the period between 1994-2014. (Avi-Yonah & McCafferty, 2018).

Claim III - That Harvard Used Race As A Predominant Factor

SFFA alleges that Harvard fails to use race merely as a "plus factor" in Admissions Decisions and that it stereotypes Asian Americans as one dimensional, shy and book smart without regard to race-neutral factors (Carapezza, 2017). The group claims that "based solely on the quantifiable aspects of admissions" and if personal ratings of Asian Americans were not depressed, Asian Americans should be admitted at an even higher rate (Findings of Fact and Conclusion of Law, 2019). Harvard has demonstrated that it uses race as a factor alongside all "pertinent elements of diversity" when evaluating each applicant and places them "on the same footing" although "not necessarily weighed the same." (Grutter v. Bollinger, 2003). In reviewing the third claim, the District Court found out that "the magnitude of race-based tips as indicated by the relative academic qualifications of admitted minority students at Harvard is modest", and is not "disproportionate to the magnitude of other tips applicants may receive" (Findings of Fact and Conclusion of Law, 2019). The court emphasized that unlawful use of race in admissions tends to lead to the creation of "a quota system" or "assigns some specified value to applicants' racial identity", and that Harvard does neither in a sense that it "uses race on an individualized, context-dependent basis for each applicant and not as the "defining feature" of any application." (Bolotnikova, 2019).

Claim V - The Existence of Race-Neutral Alternatives

In their last argument, SFFA claims that Harvard has considered race without exploring race-neutral alternatives that the school could use to achieve student body diversity (Chiu, 2019, p. 473). They argue that Harvard should implement an admissions policy that creates diversity by emphasizing "socioeconomic factors, including parental education and wealth", factors that the group sees are not necessarily linked to race and can yield the educational goals Harvard aims at achieving from diversity (Students for Fair Admissions, Inc. v. President & Fellows of Harvard, 2018). This is debunked by the work of the Smith Committee (2017) which concluded that "Harvard could not both achieve its diverse interests and achieve other equally important educational outcomes" without affirmative action and the consideration of race in their holistic admissions review. The committee's final report evaluated the current need for race-conscious admission reviews stating that "the percentage of admitted students with the highest academic ratings on the admissions office's internal scale "would be expected to drop from 76% to 66%," if a race-neutral alternative was implemented." (Chaidez & McCafferty, 2018). The Court concluded that "A race-conscious admissions program allows Harvard to achieve a level of robust diversity that would not otherwise be possible." (Findings of Fact and Conclusion of Law, 2019).

Current Status and Change of SFFA. Claims

In their appeal to the Supreme Court, SFFA seems to have shifted their focus from suing Harvard for "intentional discrimination against Asian Americans", to the use of race in admissions, SFFA lawyers in their petition to SCOTUS argue against Grutter 2003 reaffirmation that "student body diversity" can "justify the use of race in university admissions", SFFA described Grutter as "grievously wrong" because "it violates the Equal Protection Clause under the Fourteenth Amendment" (Lu & Tsotsong, 2021).

Minority Admissions at Selective Colleges/ Universities

One of the key findings of the 2019 Race and Ethnicity Report by the American Council on Education was that "the share of low-income Asian students who were enrolled in very selective institutions was four times the share of low-income Black students enrolled at these institutions," and among students from the highest income families, Asian students were more than twice as likely as Black students to enroll in very selective institutions" (Espinosa, et al., 2019, pp. 36-38). "Asian American adults are just 6 percent of the college-age population, but constitute 18 percent of enrollment at the most selective colleges and a quarter of enrollment at Harvard." (Carnevale & Quinn, 2021). According to the U.S. Department of Education on enrollment rates at selective American public/ private non-profit schools, Asian Americans had the highest rate in 2015-2016.

Ethnicity	**Admission Rate**
Asian	39.3%
Black	12.9%
Hispanic	17.2%
Native Hawaiian or other Pacific Islander	9.7%
White	19.0%

Table 3. Undergraduate Enrollment Across Selective 4-Year Private/ Public Non-Profit Institutions by Race and Ethnicity: 2015–16

The current student headcount by ethnicity at Harvard reflects their admissions practices over the past 4-6 years of various college program duration.

Harvard Student Headcount (2020)	White	African-American	Hispanic-Latino	Asian
	8,601	1,575	2,045	3,356

Table 4. Current 2020 Student Headcount at Harvard College by Ethnicity as per (Harvard University Office of Institutional Research, 2020)

Data for the last 10 classes admitted by Harvard prove that "Harvard has one of the consistently highest yields in the country." (Jaschik, 2019). Harvard's class 2025 admission figures show Asian Americans as the highest category amongst minorities at 25.9% (Harvard College, 2021).

Harvard Admitted Class of	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
% of Asian Americans	18.2%	17.8%	20.7%	19.9%	19.7%	21.0%	22.1%	22.2%	22.7%	25.4%

Ethical Considerations for Race-Conscious Admission Reviews

Higher education institutions are established to educate the ideals of a community for all members of that community. Universities have a significant social role in (a) bringing justice for victims of historic inequities and discrimination, and (b) promoting diversity and social integration through educations. In the United States, "the attention to diversity is mandated by a recognition of fundamental inequities." (Keenan, 2015, p.150). Diversity has "significant implications for American higher education in the 21st century, and that "It is not only shaping higher education but higher education's role in society." (Smith, 2016). The rulings of the U.S. Supreme Court in Bakke and Grutter, as well as the U.S. District Court and Court of Appeal in Harvard v. SFFA, explained, "permitted use of race-based admissions policies without violating the Equal Protection Clause of the US Constitution." (Gutierrez & Green, 2004). The use of race is a slippery slope that raises important ethical questions for universities that employs race-conscious admissions reviews. Those are bettwe understood through a framework of five dimensions developed by Gutierrez and Green (2004):

The ethic of justice – and fairness of rules, law, and policies and the "rights of individuals v. the greater good of the community."(Shapiro and Stefkovich, 2001, pp.12-13). From a justice perspective, race-conscious admissions policies must be "narrowly-tailored" to satisfy either of two interests: "classroom diversity, and elimination of past discriminations." (Gutierrez & Green, 2004, p.242). From a social justice perspective, we need to "erase the differences that are embedded in the nation's social fabric."(Nivet, 2012).

The ethic of community – implies that "campuses that can embrace diversity, can become communities". From this perspective, it also translates into a commitment to work with others in the society to provide a foundation that nurtures a community – "a product of interaction amongst all members."(Fried, 2003, p.4).

The ethic of professions – from a professional perspective, education leaders are expected to make decisions in the best interest of their students. Education leaders must respect the "narrowly defined" purpose of using race in admissions to "heed anti-discriminatory practices." (Gutierrez & Green, 2004, p.243).

The ethic of critique – this is paramount as it requires universities to continually question their admission policies to "determine their soundness."Id. The continually changing social composition of the American population and anticipated change in demographics necessitates an ethic of critique.

The ethic of care – "in the context of university admissions policies, the element of care encourages education leaders and institutions to look out of the window overlooking its society, understand and take in the social layers and composition of it, and foster an environment that "embraces different others and viewpoints through programs and curriculum." (Gutierrez & Green, 2004, p.246).

Conclusion

Justified by an endeavour to create richer academic experiences and reap the academic benefits of diversity, Harvard developed a holistic model of admission evaluations relying on a mix of Academic Index (AI) factors as well as Personal Achievement Index (PAI) factors. The school managed to provide a narrowly defined use of race into its assessments with no unified weight nor specified quotas. As a result, its use of race as a consideration in its admissions did not violate the 14th amendment and is compliant with Title VI of access requirements. Harvard's admissions program has been upheld by the District Court and The Court of Appeals. All four SFFA claims against Harvard have not been proven and the court established that Harvard's use of race in admissions passes judicial scrutiny. The U.S. Court in Bakke, (2003) established that the admissions program then utilized by Harvard College as an example of a constitutionally permissible race-conscious admissions program." (Kiracofe, 2020, p.36) quoting Justice Powell in (Bakke, 2003). Harvard's holistic admissions program escapes the thin line between using and misusing race in admissions in that it weighs race differently considering the whole person. Harvard successfully managed to capture the whole person by factoring in various elements in a Personal Achievement Index (PAI). Those elements include "leadership, activities, awards, work experience, community service, family's economic status, school status, family responsibilities, single-parent home, languages other than English spoken at home, SAT score relative to school's average, and race occasionally." (Fisher v. University of Texas, 2015). In doing so, Harvard steps away from assigning a fixed weight to race in their process or establishing racial quotas. All of those arguments are evident by diverse class admissions over the years and a growing number and percentage of Asian Americans attending Harvard to other selective colleges and universities. Harvard uses a matrix of socioeconomic, cultural and race-aware factors that helps the school capture a diverse class each year. Based on the arguments and statistics at hand, Asian Americans and Pacific Islanders (AAPI) comprise several ethnicities with huge disparities in representation in higher education. Analysing those disparities leaves us with a conclusion that some of those ethnicities cannot qualify as a minority in the sense that their representation in colleges and universities reflects their population. Harvard can continue through their "Undergraduate Minority Recruitment Program UMRP" to analyse the society it serves and ensure capturing a diverse class moving forward. In doing so, Harvard would be aware of its social role as a higher education institution in promoting racial integration and social mobility.

The Future of Race in Affirmative Action

Margaret Woo (1997, p. 514) establishes that the main challenge is to reclaim merit or affirmative action by highlighting the consistency of AA with meritocracy. Woo makes a ccompelling argument stating that it is the responsibility of higher education to educate the public about the limitations of the narrow definition of merit based on AP5 factors like grading and standardized testing. Woo also looks into alternatives to race-based affirmative action, e.g. class-based affirmative action – "the idea of considering the economically disadvantaged", which she explains isn't a satisfactory substitute as it "may run into the same cultural and social resistance as that facing race-based affirmative action" in the sense that it could be seen as an "argument for welfare and redistribution", something the American public does not embrace (Woo, 1997).

In her decision, Judge Burroughs defended the benefits of diversity, saying it was not yet time to look beyond race in college admissions. "Diversity," she wrote, "will foster the tolerance, acceptance and understanding that will ultimately make race-conscious admissions obsolete." (Hartocollis, 2019). It is also good for universities moving forward that currently established historic definitions of race are no longer reliable in addressing social injustices. Society is moving fast and minorities are reshaping.

[5] AP for advanced placement standardized tests referring to admission placement tests.

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