

Bakke Bites Back

Racial profiling only the Ivy League could love

BY JEREMY RABKIN

Back when kings were kings, few gifts were so welcome as some exotic new species of bird or bear for the palace grounds.

Today's aristocrats maintain their manicured lawns on academic campuses, but they are just as keen on achieving what they call "diversity." Having student specimens of varied races is considered a great mark of distinction. So top universities now insist the Constitution must bend to accommodate the acquisition requirements of their collections.

This is pretty much the level to which the debate on affirmative action in college admissions has sunk. Advocates of racial preference hardly bother any more to claim that they seek to help the disadvantaged. Now they argue more honestly that they treat minority applicants differently in order to benefit the institution itself.

The University of Michigan, which has been the target of two major law suits, has probably spent more than \$10 million to defend its race-conscious admissions process, including studies purporting to demonstrate that racial diversity contributes to the learning of non-minority students. As a devastating critique by the National Association of Scholars has shown, the main study by psychology professor Patricia Gurin rests on a limited survey of students in ethnic studies courses, and asks only whether they now recognize greater "complexity" in thinking about "issues." It does not even compare students who did or did not experience racially diverse classrooms.

With "scientific studies" like this, anecdotes might be more compelling. In a much-discussed article in the May 14 issue of the *New Republic*, Jeffrey Rosen acknowledges the Michigan studies don't prove anything and touts, instead, his own personal experience as a law teacher. When

black students in his class talked about their humiliating encounters with police, other students changed their views on racial profiling. (We are not told whether Professor Rosen turned to black students to offer distinctive black perspectives on the intricacies of, say, the *mens rea* doctrine or the rest of his curriculum.)

To his credit, Rosen seems uncomfortable with the implications of his argument. One of his "most committed conservative students," he takes care to mention, was an African-American woman who "bitterly resented the claim that African Americans think and vote alike."

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Still, he notes, "her position, too, contributed to the diversity of the class." So racial set-asides can benefit other students by exposing them to spokesmen for the distinctive black perspective—and also by reminding other students that there is no distinctive black perspective.

But then Rosen betrays his real concern when he writes: "the political demand for racial diversity is too great to be resisted." Abandoning affirmative action will actually "undermine meritocracy" as elite schools abandon objective admission criteria, like grades and test scores, to maintain racial quotas. In order to remain elite and yet admit minority students, universities must be allowed to set lower admission standards for certain races.

Are courts really going to swallow this reasoning? The Supreme Court hasn't addressed university admissions since its confusing 1978 *Bakke* decision. Four justices in *Bakke* held that racial preferences that favor minorities are sometimes unlawful, while four justices held they are always unlawful.

Justice Powell's undecided deciding opinion split the difference by banning race quotas but allowing race to be considered "as one factor" for the sake of "diversity."

Lower courts are all over the map. Last December, the Fifth Circuit Court of Appeals reaffirmed its 1996 ruling in *Hopwood v. University of Texas* that a "diversity" rationale did not permit a state law school to prefer some applicants over others on the basis of race. Only two weeks earlier, however, in *Smith v. University of Washington*, the Ninth Circuit endorsed a racial admissions preference at the Washington Law School—on the grounds that Powell's opinion does permit racial preferences, but not quotas.

In *Gratz v. Michigan*, also decided last December, federal District Judge Patrick Duggan ruled that the pre-1999 undergraduate admissions system at the

University of Michigan violated Powell's *Bakke* standard, by explicitly reserving special places for minority applicants. But the new admissions system, which first assigns a huge point bonus to minority applicants and then purports to judge all applicants based on "the same" system of point totals, was just fine, he ruled. Even though the university itself conceded the new admissions system is functionally equivalent to its predecessor, the judge was satisfied by the subterfuge.

In a separate case against the Michigan Law School (*Grutter v. Michigan*) last March, however, federal District Judge Bernard Friedman struck down Michigan's law school admissions procedures for establishing a two-track racial admissions process (where minority applicants are almost automatically admitted with GPA and standardized test scores that would spell automatic rejection for a non-minority applicant).

Both rulings are now on appeal. Terry Pell, CEO of the Center for Individual

Rights, which has organized both law suits, says Judge Duggan's ruling is "so confused" and Judge Friedman's ruling is such "a blockbuster" that even a liberal panel of judges on the Court of Appeals would have trouble making a convincing case to uphold the former and overturn the latter.

Meanwhile, advocates of preference schemes have taken heart from the Supreme Court's April ruling in *Hunt v. Cromartie*, in which the majority refused to overturn a North Carolina redistricting scheme, even though a lower court found it used race as the "predominant factor" in its drawing of lines. Justice O'Connor, who had previously condemned race-based districting schemes, shifted sides.

The rejoicing may be premature. Justice Breyer's majority opinion emphasized that the legislature's motives were not necessarily racial: boundary lines concentrating black voters in particular districts might well have aimed at maximizing the concentration of Democratic voters. And the Court has always granted wide latitude to states to divide their legislative districts along arbitrary, partisan lines. Anyway, in redistricting the state does not treat individual voters differently, but only gives plots of land new boundaries.

By contrast, Michigan and other state universities really are treating individual students differently on the basis of their race. University admissions offices can't claim race is just a proxy for some other, more relevant attribute—not when their claim that students of different races present "diverse" viewpoints is so little removed from the claim that students of different races are just, well, different.

If the Supreme Court tells university administrators to ignore race, many will still find ways to consider it surreptitiously. There is still value in driving demeaning racial stereotypes into furtive corners. A clear ruling against racial profiling in university admissions will do something valuable if it forces public university administrators to stop talking about students of different skin pigment as if they were specimens in a private menagerie. ➤

The Wealth Effect Is a Myth

Stocks react to the economy, not the other way around

BY BRIAN WESBURY

One of the most enduring, but misleading, myths about the U.S. economy is that a rising stock market boosts economic activity. The so-called "wealth effect" is blamed for overheating the economy in the late 1990s, while the "negative wealth effect" is blamed for creating a slowdown in 2001.

The theory is that rising stock prices and increased wealth cause consumers to spend more of what they earn. Spending thus rises faster than production, putting stress on the economy and ultimately creating inflation.

The theory is deeply flawed. There is no historical evidence of any long-term relationship between stock prices and spending or inflation.

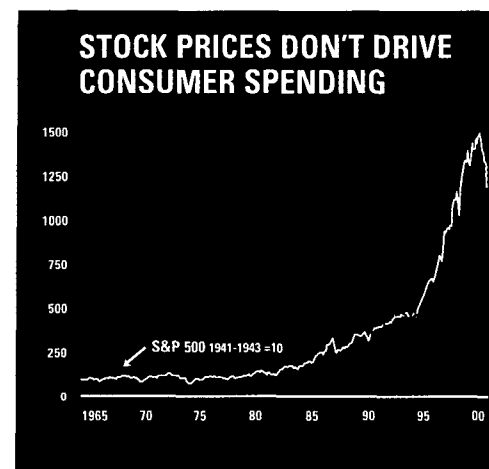
And it is misleading because instead of crediting the 20-year boom to innovation, creativity, and productivity—and the incentives that drive them—demand-side economists use the wealth effect to pass off the boom as a mirage caused by rising stock prices. Similarly, rather than blame the recession this year on bad policy, many blame it on weak stocks and the bursting of the so-called bubble.

The danger is that, as with all demand-side theory since Keynes, the wealth effect is used to excuse government efforts to fine-tune the economy, the most recent devastating example being Alan Greenspan's determination to bring down the Nasdaq by 40 percent.

BAD THEORY

A bad theory can often be spotted when it becomes circular, like arguing that a gasoline engine provides power because the pistons push the crankshaft and, in turn, the crankshaft moves the pistons.

Similarly, the "wealth effect" says that rising stock prices boost consumption. This excess spending, in turn, boosts corporate profits, employment, and then inflation. Higher profits send stock prices up and rising incomes increase the demand for stocks. Then rising stock prices increase consumption and the circle begins all over again in some theoretical perpetual motion machine.



A much better theory suggests that stock prices react to the economy, rather than the other way around. In this view of the world, entrepreneurial effort creates new and more productive technologies. Higher productivity boosts incomes, expected profits, and investment. This increases employment and economic growth and, at the same time, stock prices.

The spark plugs for this development are low taxes, stable money, respect for property rights, and free trade. Wherever these conditions exist, wealth is created at an amazing rate and the stock market performs well. It is no mystery.

THE SAVINGS PARADOX

Those who believe in the wealth effect often point to the diminished savings rate as a sign that consumers, feeling