

Myths and Facts About...

affirmative action

BY RICHARD LEMPert,
DAVID CHAMBERS
AND TERRY ADAMS

The case against affirmative action in admissions to institutions of higher education is based on the moral attractiveness of colorblind decision making and buttressed by a sense that such programs are not just unfair but pointless. Their intended beneficiaries, the argument goes, are put in situations in which they are unable to compete with whites and not only perform poorly but are destructively demoralized in the process. Common to arguments against affirmative action in admissions is a belief that minorities advantaged by it displace whites who are more deserving of admission because they have accomplished more, can better benefit from the education they seek and will perform better after graduation.

We surveyed more than 1,100 minority and white alumni who graduated from the University of Michigan Law School between 1970 and 1996. We compared admittees with black, Hispanic and Native American heritages, most of whom benefited from affirmative action at the admissions stage, with white alumni from these same classes, and we found that at least with these graduates, empirical claims used to buttress the case against affirmative action are, for the most part, myths. People of good will believe them, but the facts are not what people think.

MYTH: Affirmative Action Only Benefits Minorities (Diversity is a Sham).

Universities often justify their affirmative action programs by claiming that the diver-



sity they bring benefits all students. Opponents argue that diversity is a sham, trumpeted by colleges and universities only because Justice Powell's swing opinion in the *Bakke* case (see story on p. 22 for a discussion of *Bakke*) identified diversity as the only constitutionally permissible basis for affirmative action in higher education.

Our data indicate that ethnic diversity benefits not just minority students but many in the white majority as well. Many white Michigan alumni (about half of those graduating between 1990 and 1996 and about a quarter of those graduating in earlier decades) looking back at their time in law school believe that racial diversity contributed substantially to the value of their *classroom* education. The overwhelming majority of whites in all decades believe that racial and ethnic diversity made at least some educational contribution.

Data show that white women graduates of all decades look much like minority graduates in the value they place on ethnic diversity. But the educational value that white

male alumni place on diversity increases markedly over time. We believe this is because the number of non-white and female students increased over time to the point where white males were no longer a demographic majority of Michigan's students, making the school far more diverse from the perspective of these students. White women, on the other hand, have always been a demographic minority and perhaps for this reason were always more sensitive to the educational benefits that other minority perspectives provided. Moreover, when white women were present at Michigan in relatively small numbers, they allied themselves with minority students in supporting candidates for student government, and minority women along with whites were active in the women's law student association. Most white men did not have these kinds of occasions for close interaction with minorities until the number of minority students in law school increased to the point where close interaction with some minorities was inevitable.

MYTH: Minorities Are Not Only Preferentially Admitted to Law School, But They Also Get Financial Support Unjustified by Their Needs While Whites Have to Pay or Make Do With Loans.

Another myth is that minorities admitted through affirmative action get far more financial aid: Needy minorities receive scholarships; needy whites must make do with loans.

This perception is starkly contradicted by the numbers. In every decade, minorities at Michigan are more likely than whites to have graduated with educational debt and, if in debt, to owe substantially more than indebted whites, both in dollars and relative to first-year incomes. In our 1990-1996 sample, 96 percent of minority alumni but "only" 71 percent of white alumni graduated with educational debt. Among those with debt, the average minority graduate owed \$59,651 at graduation, and the average white graduate owed \$48,404. Far from getting a free ride, Michigan's minority students are literally mortgaging their futures

on their legal educations.

Myth: Admitting Minority Students With LSAT Scores and College Grades Below Those of White Applicants Wastes Educational Resources, as Minorities Who Require Affirmative Action for Admission Can't Hack It In Law School.

In general, it is true that historically disadvantaged minorities, except for Asian Americans, perform, on average, less well than whites on the Law School Admissions Test and have lower undergraduate grades, and these tests correlate positively with first-year law school grades. But this does not mean that minority law students cannot meet the academic demands of highly competitive law schools. Virtually all minority students who attend Michigan graduate, and the few who leave without graduating almost all leave in good academic standing. Almost all of Michigan's minority graduates pass at least one bar exam; substantial proportions (almost one in five from the classes graduating from 1990 through 1996) are chosen for judicial clerkships. Differences in graduation rates, bar passage rates and clerkship rates between Michigan's minority and white students are small and almost always statistically insignificant.

Myth: The "Hard Credentials" (LSAT Scores and College Grades) That Figure Prominently in Law School Admissions Predict Well Who Will Succeed After Law School.

Because minority students who benefit from affirmative action usually have lower LSAT scores and/or lower college grades than most white admittees, some people feel that whites, when they graduate, will be more fit than minority graduates for the practice of law. In this sense, high LSAT scores and college grades are seen as merit-based criteria of admission because they presumably sort those more likely to succeed in the practice of law from those less likely to succeed. For some, this justifies the substantial negative impact that consideration of these measures, in the absence of affirmative action, would have on the admission of minorities to law schools.

To check the factual basis for the belief

that LSAT scores and college grades predict post-law school success, we created three measures of such success: earned income, self-reported assessments of success and serving the community. We find that LSAT scores and college grades have no relation to any of those measures, if merit is defined not as doing well on tests but as fitness for law practice. This is true whether we consider white and minority graduates together or look separately at each group. To exclude minorities from top law schools because their LSAT scores and college grades are lower than those of white applicants—which is what has happened in Texas and California after affirmative action was banned—is to allocate positions in law schools using measures that eliminate minorities who could be as successful as whites if they were allowed access to the same high-quality legal education.

Myth: Over Their Careers, Minority Law Graduates Admitted in Part Because of Affirmative Action Are Less Successful Professionally Than Whites.

Virtually all of Michigan's minority graduates find legal practice or other law-related jobs. Although minority graduates are less likely than white graduates to take jobs with the nation's largest law firms (100 or more attorneys) more than half the minority graduates in the last cohort we examined (1990–1996) secured such jobs.

Once in practice, minority advancement to positions of responsibility and supervising attorney positions parallels that of whites. And there is no significant difference between the earnings of whites and minorities after controlling for time since graduation. Indeed, income is another indicator of the success of Michigan's minority graduates. Among those in private practice, in 1997, the median minority graduate of the 1970s was earning \$120,000 (mean \$168,000), the median minority graduate of the 1980s was earning \$95,000 (mean \$125,000) and the median minority graduate of the 1990s was earning \$70,000 (mean \$74,000). Michigan's typical minority graduates, whatever their niche, do quite well financially by national standards.

Income is not the only possible measure of career success. When we look at self-reported career satisfaction, we see that a large majority of both white and minority alumni are well satisfied with their careers.

Finally, one may measure success in giving back to the community, and we see a slight tendency for minorities to do more service than whites. When we combine these dimensions with mentoring and other kinds of service and community involvement, we find a significant difference in the tendency of whites and minorities to serve their communities—minorities do more service. The difference is small, but it is there.

More pronounced are differences in service to minority clients. On average, Michigan's African American graduates report that more than half of their individual clients and a quarter of their contacts at organizational clients were also African American, a much higher proportion than that reported by the school's other graduates. In the same way, the Latino graduates disproportionately serve Latino clients, Asians serve Asians, Native Americans serve Native Americans and Whites serve Whites.

In a colorblind nation, such matching by race would not occur, but we live in a world in which lawyers, like others, often locate their offices and seek business among fellow ethnics, and clients seek out as lawyers persons with whom they expect to be comfortable. Michigan's minority graduates are thus bringing a high quality of legal services to persons whom the school's white graduates, we are confident, would not be serving to anywhere near the same extent. ▀

Richard Lempert and David Chambers are Professors at the University of Michigan Law School. Terry Adams is a Senior Research Associate at the University of Michigan Law School and a Senior Survey Specialist at the Institute for Social Research.

Copyright Richard Lempert, David Chambers and Terry Adams.

The data are from a study with considerably more detail that appeared in the Spring 2000 issue of LAW AND SOCIAL INQUIRY titled "Michigan's Minority Graduates in Practice: The River Runs Through Law School."