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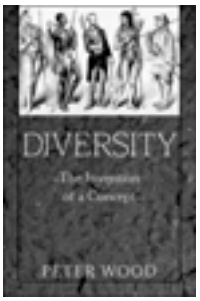
Diversity Decisions

by Peter T. Ittig, Feature Editor



Diversity: The Invention of a Concept
by Peter Wood
360 pages
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AS THIS ARTICLE IS BEING WRITTEN, the U.S. Supreme Court is considering two cases concerning the University of Michigan that will have a substantial impact on colleges and universities. The cases are Gratz v. Bollinger (undergraduate) and Grutter v. Bollinger (law school). These cases will determine the extent to which a university may use racial criteria in admissions decisions. The cases hinge on an argument about the educational benefits of diversity. The consequences for academia are substantial and it may seem puzzling that these should hinge on a relatively modern and peculiar argument. This article reviews a timely new book, *Diversity: The Invention of a Concept*, by Peter Wood, that explains how we got here. Dr. Wood is an associate professor of anthropology at Boston University. His analysis of the diversity notion is insightful and thought provoking. Wood considers the history of the diversity movement as well as how this has played out in law, academia, and business. This book will be interesting summer reading on a topic of some importance to those of us who work in American colleges and universities.

The first few chapters of Wood's book discuss the history of the diversity notion prior to 1978. Chapter 5 discusses the pivotal Bakke decision of the U.S. Supreme Court in 1978 (Regents of the University of California v. Bakke). The medical school of the University of California at Davis had rejected Alan Bakke in favor of candidates with lesser qualifications who had been admitted under a minority quota program. The Court was badly divided between one group of four justices who appeared to wish to prohibit the use of racial criteria in admissions decisions (Burger, Stevens, Stewart, and Rehnquist) and another group of four (Brennan, White, Marshall, and Blackmun) who appeared to wish to authorize the consideration of race and allow affirmative action with quotas. The outcome was muddled when Powell sided with each group in differing partial decisions. Powell sided with Chief Justice Burger's group to admit Alan Bakke and to strike down the quota system then used by the UC Davis medical school. However, Powell sided with the other group to reverse the decision of the California Court to prohibit any consideration of race in admissions decisions. That second group, plus Powell, agreed that "the courts below failed to recognize that the State has a substantial interest that legitimately may be served by a properly devised admissions program involving the competitive consideration of race and ethnic origin." Thus, some unspecified consideration of race was to be permitted. In his separate unsupported opinion, Powell gave life to the use of the diversity argument for preferences in the racial and ethnic composition of universities. In his separate opinion, Powell said that "The file of a particular black applicant may be examined for his potential contribution to diversity without the factor of race being decisive when compared with that of an applicant identified as Italian-American if the latter is thought to exhibit qualities more likely to promote **beneficial educational pluralism** . . . . In such an admission program, race or ethnic background may be deemed a '**plus**' in a particular applicant's file, yet it does not insulate the individual from comparison with all other candidates for the available seats" (emphasis added). The interpretation widely given to this confusing result was that quotas were illegal, but race may be a plus-factor and an individual may receive extra points for this factor to obtain the

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educational benefit of diversity, though this interpretation was never endorsed by a majority of the Supreme Court.

Americans have never been comfortable with the use of race in admission or hiring decisions, as has been shown in numerous polls. One recent national poll reported in June 2003 that 80 percent of all Americans and 64 percent of minorities oppose race-conscious admissions policies (see http://www.maristpoll.marist.edu/). In 1996, California prohibited consideration of race in admissions decisions in a public referendum. The state of Washington did something similar in 1998. In 1996 and in 2000 the Federal Appeals Court for the Fifth Circuit ruled that any consideration of race in admissions decisions is unconstitutional and determined that "the government cannot constitutionally use racial preferences for the purpose of fostering student body diversity" (Hopwood v. Texas). The U.S. Supreme Court declined to review that decision.

In the University of Michigan undergraduate case now being considered by the Court, a point system was used to make the admissions decision. In that system, 20 points were awarded to applicants in certain minority groups ("African-American," "Hispanic," or "Native American"), while a maximum of 12 points were awarded for a high SAT score. The 20-point increase was also equivalent to an increase of one letter grade in a student grade point average (an additional 1.0 on a 4.0 scale). In the law school case, race was worth over one full letter grade in undergraduate grade point average and a 20 percent boost on the LSAT. The U.S. Sixth Circuit Court upheld the law school scheme in a split 5-4 decision in May 2002 that is now being reviewed by the U.S. Supreme Court.

From a decision sciences' perspective, the two devices, quotas and plus-factors, are essentially equivalent. In a paper that I published in 1977, I presented an optimization model that was designed to assist a college admission process by maximizing the expected academic quality of the entering freshmen class, subject to some constraints or quotas on characteristics of the admitted class of students (see: "A University Admissions System", *Socio-Economic Planning Sciences*, Vol. 11, 1977, pp. 31-36). Following the Bakke decision in 1978, the use of that model was thought to be illegal because of the quota constraint for race, and it was necessary to modify the model slightly. The modification involved replacing the prohibited quota constraint with weights or points in the objective function. Generally, in an optimization model, a constraint may be moved into the objective function to obtain a similar model (without the constraint), by using a weight equal to the shadow price (or dual variable or Lagrange multiplier) for the original constraint. The number of points needed in the objective to achieve the original quota is obtained as a byproduct of solving the original optimization problem with the quota or constraint. Thus, the shadow prices provide the point values needed to obtain essentially the same result without the use of quotas. Alternately, you may simply increase the number of points awarded for a characteristic until the desired quota is achieved. The University of Michigan is accused of doing something similar in order to achieve a "critical mass" of minority students. This may be considered to be a hidden quota. One reason that a free market economy works well is that it is possible to express resource limitations in prices rather than constraints. For an excellent discussion of the interpretation of shadow prices, dual variables, and Lagrange multipliers, refer to the classic book E*conomic Theory and Operations Analysis* by William Baumol, Prentice-Hall (out of print, but probably in your library in editions from 1961 to 1977). Unfortunately, lawyers and judges do not often read such texts.

In Chapter 8, Wood discusses the impact of the diversity movement on business. A significant amount of the impact appears to have been based upon bad statistics in a widely cited 1987 report by Packer & Johnston for the Hudson Institute, Workforce 2000. That report suggested that there would be a rapid decline in the number of white males in the U.S. workforce by 2000. Wood credits these bad numbers for creating a sense of crisis, urgency, and purpose for the diversity movement. Wood reports census data showing that the portion of the U.S. workforce consisting of white males actually declined only slightly from 47 percent in 1987 to 45.6 percent in 2000.

In Chapter 9, "Diversity on Campus," Wood explores the flowering of the diversity movement in colleges and universities as it influenced faculty hiring decisions, course requirements, student recruiting, and dilution of academic standards. Wood's view is not favorable. He believes that "Diversity is, after all, an ideology based on rejection of some of America's oldest and most enduring ideals" including "equality, freedom, justice and liberty." Those looking for a more favorable view of diversity might read a book cited by Wood, *Cultivating Humanity: A Classical Defense of Reform in Liberal Education*, by Martha Nussbaum, Harvard University Press, 1997.

On my campus at UMass, the benefits of diversity were used to justify a "Diversity Course Requirement" that some faculty members consider to be a form of compulsory political indoctrination. To fulfill the diversity requirement, each student must take courses "that touch on a range of human diversity including race, gender, class, sexual orientation, culture, age, and disability." Further, the diversity argument was used to gain approval for a "Guaranteed Admissions Program" that provides guaranteed admission to the university, without SAT scores, for graduates of some of the least reputable high schools in Boston.

This is a highly readable book on an important subject. It will help you to digest the news reports about the decision of the U.S. Supreme Court on this matter this summer.

Diversity Decisions Update June 30, 2003

The U.S. Supreme Court issued its long awaited decisions on the University of Michigan cases on June 23, 2003. The full text is available on the Web site of the Supreme Court in pdf format (see http://www.supremecourtus.gov/). In the undergraduate case, the Michigan admissions process was struck down with a 6 to 3 vote. However, in a separate 5 to 4 vote on the law school case, the admissions system was upheld. That decision provided a majority of the Supreme Court for the first time in support of the diversity argument that Justice Powell made alone in the Bakke case in 1978! The five supporting votes were those of Justices Breyer, Ginsburg, O'Connor, Souter, and Stevens. The decision also described the kinds of racial preferences that

will be permitted by the Court. Quotas are still out. What is new is that automated schemes that award points for race are also out. Justices Breyer and O'Connor supported the law school plan but rejected the undergraduate scheme, calling it "a nonindividualized, mechanical one." This was considered a key distinction between the undergraduate and law school admission schemes. In dissenting opinions, Justices Thomas and Scalia agreed that, "Every time the government places citizens on racial registers and makes race relevant to the provision of burdens or benefits, it demeans us all." Chief Justice Rehnquist, in his dissenting opinion said, "Stripped of its 'critical mass' veil, the Law School's program is revealed as a naked effort to achieve racial balancing."

Major consequences of the new Court decision for colleges and universities appear to be:

1. Admissions processes may use lower academic standards for minority students, with some restrictions.
2. The permitted schemes for applying lower academic standards are pointless! That is, schemes using points are prohibited.
3. The use of quotas continues to be prohibited, though it is OK to target a "critical mass" for some minorities. It is important to avoid specifying the size of the "critical mass" or it might be misconstrued as a quota. However, the "critical mass" may be different for different minority groups. Chief Justice Rehnquist presented statistical tables in his dissent showing that the "critical mass" in the Michigan Law School was approximately 7-9 percent for African-Americans, 4-5 percent for Hispanics, and 1 percent for Native Americans.
4. Permitted schemes must be truly individualized and not mechanical. Winks and nods may be OK—formulas are not. Computer programs are hazardous. Future lawsuits may challenge whether admissions programs using racial criteria include "enough evaluation of the applicant as an individual," as noted by Justice Scalia.
5. The permitted schemes for using racial criteria may be difficult and very expensive to implement for institutions with large undergraduate programs. For example, the UMass Amherst campus reviews about 21,000 applications per year using only eight readers. The UMass General Counsel was quoted by the Boston Globe (6/24/2003) as saying, "Given our budgetary constraints, it'll be a real challenge to continue considering race in admissions. But at least the court says we can."

In delivering the majority opinion of the Court, Justice O'Connor said, "It has been 25 years since Justice Powell first approved the use of race to further an interest in student body diversity in the context of public higher education . . . .We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today." It has been 40 years since Dr. Martin Luther King, Jr. said, "I have a dream that my four 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. I have a dream today." ■

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