

Your Spot or Mine? Affirmative Action in Education

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“In the end, arguing about affirmative action in selective colleges is like arguing about the size of a spigot while ignoring the pool and the pipeline that feed it. Slots at Duke and Princeton and Cal are finite.” Eric Liu

Introduction

Three years ago when I first began to teach sociology at our high school I was at a loss. It had been a long time since I had engaged in the content...longer still since I had been 17 years old like my students! Over and over that first year, I began to understand that my students' vocabulary surrounding sociology was more limited than I had thought. Words and concepts that I believed to be common – not just in sociology, but life in general – actually were not common knowledge for my students. On one occasion, which sparked the idea for this unit, I showed a video clip of President Obama speaking about Affirmative Action (one of four short videos about various “racial” issues that we were viewing for that particular lesson). He spoke to the idea that it should not be based solely on racial identity but also on economic need – those who may be economically disadvantaged. I asked the students to consider three questions regarding this particular video: *What was Obama's main point? Was this fair/just? Why or why not?* and *How does this (affirmative action) relate to our current unit?* I thought myself prepared for what I presumed would be a lively discussion about race with a diverse group of students. However, I was unprepared for the first thing they asked – What's affirmative action?

Rationale

Conrad Schools of Science (CSS) is a school that has finally completed its transition, changing into a science/biotechnology magnet school serving over close to 1200 students in grades 6 – 12. It is considered an urban school, situated on the outskirts of Wilmington, Delaware, the most populous city in the state. CSS students come from all over our state's largest county. The school's increasing popularity is obvious as many families complete the *Choice* application process seeking admission to our school.

At the high school level, students can choose to focus on a variety of learning “*strands*” such as biotechnology, nursing, and veterinary science. Additionally, a variety of Advanced Placement (AP) courses are offered as well as four courses that are taught in conjunction with our local community college. I am the teacher of one of these courses, *Sociology*. This is a dual-enrollment course in which students (juniors and seniors) are enrolled at the local community college and receive credit from that institution upon successful completion of the course with me on the high school campus. These students must complete and pass a basic literacy test given by the local community college to gain entrance. Additionally, their families must pay a reduced tuition fee. This ensures that if they complete the work and pass with a predetermined grade average, they will receive community college credit. Last year there were a total of fourteen students who completed the course – nine at my school and five at the sister school site to which

this course is broadcast. These students varied in all aspects – race, ethnicity, work ethic, and skills set. Moreover, it is a *distance learning course* in that some of my students are at my school while others are at a sister school in our district. The course happens real-time – at the different locations – same teacher (me!), curriculum, activities, etc.

This will be my third year teaching in this manner. I am still trying to master this type of teaching/learning environment as well as the Sociology content that I had not interacted with in many, many years. The journey continues this year with still some additional apprehension since an additional school in our district has been added to the distance learning broadcast. This, of course, brings back anxiety from our first year in which equipment and techniques were being adjusted! Now, again, we are faced with new glitches by adding on another site – connections failing at one or two sites, noise level/microphone sensitivity, student' behavior, amongst others. Adding a third school brings more students into the mix. Keeping thirty-five or so young adults engaged in learning is a top priority especially when you can only be in one place at a time!

Although my undergraduate degree is in Sociology, it had been many years since I had read texts and engaged in the content. Through my involvement with Yale National Initiative (YNI)/Delaware Teacher Institute (DTI), I have produced three units to date to use with this course – one on the sociological perspectives, another on research methods and the third on race. These units have been very helpful for my students. They have assisted students to better comprehend in-depth concepts/themes. They have also aided in engaging students in the content on a much deeper level. Through my readings, research, and participation in this particular seminar, *Civil Rights in the United States: Origins, Movements, and Legacies*, I will now have a fourth unit – one that will supplement my YNI Race unit, *Our Understanding of the Meaning of Race: A Sociological Critical Lens*. The reason for writing the YNI race unit was because of the many student misconceptions I ascertained from their written and oral comments. They were unaware of many things including what is ethnicity versus race, the differences between prejudice and discrimination, and the meaning of affirmative action, amongst other things. I believe that the unit does a good job with the first two parts of this – the defining of race and ethnicity as well as how people are classified by race and the consequences of this practice. However, I did not address affirmative action. The unit became too big to do so. Now with this unit I want to investigate what is affirmative action – the history and its evolution and a few court cases that will help students to better understand the reasons and aspirations for affirmative action and how this concept may be related to them and their lives. Specifically, I will focus on affirmative action in regard to college admissions because this is a subject very close to my students. All of them are focused on where they will be going to school either next year or the following one and getting into a school of their choice is a major concern for them.

Objectives

The *College Wide Core Course (CCC) Performance Objective* that I follow (based on the local community college) for this unit is: *Analyze social stratification and the causes and consequences of classifying people by race, ethnicity, and gender*. Students need to be able to: define the concept of stratification and its application to human differences; illustrate the connection between social stratification and life chances; and list two major kinds of criteria societies use to categorize people. This directly relates to affirmative action. After reviewing the CCC

Performance Objectives for the course, I also believe that this unit will address another one: *Analyze personal reactions to sociological concepts, principles and processes examined in this course.* Students will be able to summarize a concept into their own words (Affirmative Action) and describe the applicability of this concept to their own life (in regard to college admissions).

The ***Enduring Understandings*** are taken from the Core Concepts of our textbook's chapters on Social Stratification and Race and Ethnicity. After the unit, students will understand that when sociologists study systems of social stratification, they seek to understand *how people are ranked on a scale of social worth and how that ranking affects life chances*, that *dramatic inequalities exist across countries and within countries*, that *the concepts of race and ethnicity cannot be understood apart from systems of racial and ethnic classification*, *governments and other powerful groups have created illogical racial and ethnic categories and have worked so hard to present them as logical is one measure of their social importance*, and that *the racial and ethnic categories to which people belong are a product of three interrelated factors: chance, context, and choice*. Affirmative action is based on how people are classified – race, ethnicity, and gender. Having students understand that idea coupled with *how* people are classified will help them to begin to recognize the why of affirmative action. They will focus on the ***Guiding Questions***: *What is affirmative action (definition), its history and evolution? How and why is affirmative action related to the concept of race? and How is affirmative action applicable to your own life?*

Additionally, I want to follow the Common Core Standards. Delaware has adopted these and, although I have had minimal professional development regarding their introduction into the social sciences, I am determined to include them in units that I develop from now on. From my attendance at a district meeting this past summer, I know that this is the major thrust of our district these upcoming school years. We will receive professional development geared towards just this. We are also encouraged to talk about/use our Professional Learning Community (PLC) time to collaboratively deconstruct the Common Core Standards (CSS) and apply them to our current social studies lessons. In this unit, students will focus on the Literacy RI. 11-12.7 Standard. It highlights the integration of knowledge and ideas. It states that students will be able to integrate and evaluate multiple sources of information presented in different media or formats as well as in words in order to address a question or solve a problem. Students will closely read a number of texts including Supreme Court documents that they will analyze and synthesize to answer the Guiding Questions.

Content

When I first began thinking about this unit I had determined that I would finish up with the third aspect of my unit on race – affirmative action. However, since the seminar's readings focused on a bigger picture – Civil Rights Movement – I found myself reading about the historical component/beginnings of the Civil Rights Movement and the major events and peoples who made up the Movement. I made a common mistake as many do when they first create a unit – I began to take on too much. I wondered how was I going to tone this down...how could I make this more manageable for my students and I? How could I make this so-seemed foreign concept of affirmative action more relatable to/for them? It did not occur to me what/how I could do this until our seventh seminar when Dr. Leland Ware came to speak about "The Road to *Brown*".

Looking at affirmative action through the lens of higher-level education (university level) admissions would be a way that my students would better be able to understand this important and controversial topic. His talk was the focus I needed! I want to concentrate on the following: the definition of affirmative action, its' history, the reasons for and against affirmative action, and four major Supreme Court Cases (Regents of the California vs. Bakke – 1978, Gratz v. Bollinger and Grutter vs. Bollinger – 2003 and Fisher vs. University of Texas at Austin – 2012).

In the many readings I completed over time, I was particularly struck by the story of James Meredith. I thought I would begin by using his story as an introduction to college admissions not so long ago. As an Air Force veteran in 1961, he was enrolled at the college of Jackson State (a black college). However, he believed that he had a “ ‘ divine responsibility’ to crack the color line at Ole Miss by forcing a national crisis.”¹ Even though the Brown v. Board of Education (1954) had mandated the end of segregated schools not one black person had attended a white college in Mississippi. This southern state had steered clear of racial equality. Meredith believed that he was to do this – go to Ole Miss – and pave the way for others. He inquired about admission but never stated his race. After the registrar’s office found out that he was black, the institution did what it could to delay his acceptance. He was told many things over a time period – he was late to apply, that Jackson State did not have the same accreditation as Ole Miss (regarding his credits), he needed multiple recommendation letters from alumni that he was unable to provide, amongst others. Meredith began to realize he was not going to make this happen alone. So, he asked for help from the NACCP. In court, at the end of the “charade of a trial”, Judge Sidney Mize, a believer in genetically fixed racial differences,² concluded that race was not the reason why Meredith had been excluded from Ole Miss – dismissing the case. In 1962, in the federal court, the decision was reversed finally giving Meredith the right to attend Ole Miss. Despite this ruling, the governor blocked him from entering campus. Although the Kennedy administration had kept a low profile on issues within the Civil Rights Movement because it did not want to isolate a region whose support the President needed politically nor did he want further bloodshed that would bring up memories of the Civil War and Reconstruction,³ Kennedy finally ordered that Meredith be allowed to enter onto campus and attend classes. The battle escalated; the governor defiantly going against the President’s orders, on-campus riots, and violence ensued ending in people being killed. When Meredith was finally admitted over “five hundred soldiers and marshals...stayed with him until he graduated with a political science degree a year later 1963.”⁴

I would like my students to reflect on this moment in history. By reading historical and personal accounts, I will have them think about Meredith’s experience – about why he was excluded from admission to Ole Miss, how the integration was accomplished, how this compares to what occurs today, who is able to attend a university/college and why, and how this relates to sociological concepts *the racial and ethnic categories to which people belong are a product of three interrelated factors: chance, context, and choice*. I imagine that students will speak to the idea that anyone can attend any college/university they choose no matter their race. This will be a thought that I will have them keep on the “back burner” until later in the unit when we get to the court cases that show a different fact.

New Deal Programs

Each time that I take a seminar I realize how little I remember about what I learned or that I did not make the connections between facts and their effect on people. This reminds me of what I need to be doing for my students – so that they will remember what they have read, what they have learned. When I read Jacquelyn Dowd Hall’s article entitled, Civil Rights and the Political Uses of the Past, for seminar I saw this concept in action again. I never learned about the impact the New Deal programs had on African Americans – or, at least, that’s not something that I remember learning. I believe that a basic understanding of historical implications is important for students to know. Hall reminds us that supposedly well-intentioned policies that were established to help people in poverty, in fact, sought to ostracize/leave the African Americans out. Although the New Deal Programs were designed to help people in need, they actually “helped to erect those racial barriers”⁵ since they were “built in racial and gender inequality.”⁶ They aided in creating more inequalities of who was served or not served. At the basis of the program was the “two-track welfare system rooted in a ‘family wage’ ideal that figured the worker as a full-time breadwinner who supported children and a dependent, non-wage-earning wife at home – an ideal from which most people of color were excluded.”⁷ In most African American families, both male and female worked outside of the home – males in agriculture or service fields and females in other people’s homes. This excluded them from assistance. Additionally, unemployment insurance did not include agriculture or domestic workers. “As a result, 55 percent of all African American workers and 87 percent of all wage-earning African American women were excluded from”⁸ receiving this benefit. “African Americans, already burdened by the social and economic deprivations of slavery and Jim Crow, found themselves disadvantaged by employment practices and state policies that amounted to affirmative action for whites.”⁹ I found this particularly interesting as it is far from what people know or think about when they hear or see the words affirmative action.

Affirmative Action Takes Shape

The first time that Affirmative Action was introduced was on March 6, 1961, by John F. Kennedy in Executive Order 10825. This Order established the President’s Committee on Equal Employment Opportunity and stated that there should be no discrimination in government employment practices (“SEC. 203. The policy expressed in Executive Order No. 10590 of January 18, 1955 (20 F.R. 409) with respect to the exclusion and prohibition of discrimination against any employee or applicant for employment in the Federal Government because of race, color, religion, or national origin is hereby reaffirmed.”),¹⁰ and that projects receiving federal funding must “take affirmative action” in hiring practices.¹¹ The hope was that this would help with the discrimination that still persisted despite the activities of the Civil Rights Movement. Four years later on September 24, 1965, President Johnson’s Executive Order 11246 enforced affirmative action for the first time. The Order mandated that contractors needed to take “specific measures to ensure equity in hiring and must document these efforts.”¹²

Previously, that same year, in Johnson’s commencement speech to the graduating class of the historically black institution of Howard University, he acknowledged that *civil rights* weren’t enough – that affirmative *action* was also necessary. The Merriam Webster dictionary defines Affirmative Action as “the practice of improving the educational and job opportunities of members of groups that have not been treated fairly in the past because of their race, sex, etc.” The definition is expanded upon to include “an active effort to improve the employment or

educational opportunities of members of minority groups and women”; and to further state, “a similar effort to promote the rights or progress of other disadvantaged persons.”¹³ These multiple meanings match well to Johnson’s commencement speech.

“You do not wipe away the scars of the centuries by saying: ‘now, you are free to go where you want, do as you desire, and choose the leaders you please.’ You do not take a man who for years has been hobbled by chains, liberate him, bring him to the starting line of a race, saying, ‘you are free to compete with all the others,’ and still justly believe you have been completely fair... This is the next and more profound stage of the battle for civil rights. We seek not just freedom but opportunity – not just legal equity but human ability-not just equality as a right and a theory, but equality as a fact and as a result.”¹⁴

The idea of trying to “level the playing field” or equalizing educational, employment, and – ultimately – the economic situation of certain peoples was a major idea of affirmative action. This *temporary* action was to help to eliminate the stark differences between the minority and majority. It was also to ensure that institutions (educational and professional) were representative of those they served – the whole population.

Pachon states, in Affirmative Action Should Not Be Eliminated, that people must have a true understanding of what affirmative action may mean. According to him, there are five meanings spanning a wide spectrum. These include: (1) nondiscrimination, (2) special efforts to recruit/reach out to particular groups, (3) fairness in that “special circumstances of individuals are taken into account” (4) preference is given to the targeted group if all things are equal, and (5) quotas in which these people/groups would be selected over more qualified applicants.¹⁵ Understanding the differences regarding definitions and/or meanings makes for a better understanding of policies implemented in the pro/con argument of affirmative action.

Both Sides

Affirmative action is a controversial subject. The idea of these programs and/or policies giving preferential treatment to one group or another is a heated issue. Who gets what is a critical question. Most, when asked about fairness would state that all people are deserving of equal opportunities, resources, etc. However, when it means that you or your child would not get something versus another it becomes a more personal issue. When debating the issue, there are many reasons for and against affirmative action.

Some claim that diversity is important. The world is comprised of many different peoples. To be able to relate to, work with, and understand those different than us is a very valuable skill for all people – those in the minority as well as the majority.¹⁶ Until attending college, many students are in segregated groups. Since this skill of relating to others different from oneself is so important, it is necessary to ensure that diversity does occur at the college level. Gerald Gurin’s article, Affirmative Action Encourages Educational Diversity, speaks to three different types of

diversity that students are exposed to while in a college/university setting that is comprised of various different people: (1) structural diversity – in which students attend universities and colleges where there are people of different races/ethnicities; (2) informal interaction diversity – people of these differences interact with each other at the dining halls, residence halls and at activities on campus; (3) classroom diversity that “includes learning about diverse people (content knowledge) and gaining experience with diverse peers in the classroom.”¹⁷

Another argument for affirmative action is that students starting at a disadvantage need a boost. Many minority students come from low Socio-Economic Status (SES) families. This could mean that they have had fewer advantages due to where they live and/or fewer opportunities. Including their schools. Many of them have inexperienced teaching staff and fewer resources. “Moreover, poor urban schools, where black and Latino students attend disproportionately, have been detrimental to their educational progress.”¹⁸ Colleges and universities look for high Scholastic Aptitude Test (SAT) scores and a Grade Point Average (GPA). Although this is the case, many students may not have a high SAT score and their GPAs might be lower. This can be attributed to the fact that they may attend schools that do not offer many Advanced Placement (AP) courses or none at all. These students are at a disadvantage in that their classes are not valued as high when computing a GPA. Polyne writes,

“Although I agree that affirmative action is a temporary measure, the time has not yet come to eliminate it. Educational opportunities vary dramatically in U.S. public schools. The inner-city student can find illegal drugs more readily than computer labs and after-school enrichment courses. In contrast, the more affluent suburban student is hooked into the Internet, enrolled in honor classes, and looking forward to summer instruction. Given this reality, it is fair and equitable to consider race and ethnicity as one factor among many—including test scores and grade-point averages—in admitting qualified youths to highly competitive universities. Such an approach remains the most effective way to make sure America does not turn into a two-tiered society of permanent haves and have-nots.”¹⁹

For example, Professor Alexander Astin surveyed 25,000 students in 217 four-year colleges, assessing attitudes, values, beliefs, career plans, achievement, and degree completion. He found that emphasis on diversity is associated with "widespread beneficial effects on a student's cognitive and affective development." "[T]he weight of the empirical evidence," he concluded, "shows that the actual effects on student development of emphasizing diversity and of student participation in diversity activities are overwhelmingly positive." Professor Astin's research also demonstrates that students who interact more with students of different backgrounds tend to be more successful in college, and that students' direct experiences with diversity are positively associated with many measures of academic development and achievement.²⁰ Diversity enhances learning, fosters personal development, and encourages democracy and active thinking.²¹

Another rationale for affirmative action is the idea that those who benefit by being given the

opportunity may be drawn to areas of study and work that they may have never considered otherwise. Since people are not aware of a profession or an educational opportunity they cannot take part in it.²² The rationale is that they will return to their communities to serve as doctors, lawyers, teachers, etc. improving services/what's available within the community.

Some stereotypes – whether gender, racial, or otherwise – may never be broken without affirmative action. Many have lower expectations regarding certain groups of people. When given a chance, this gives people an opportunity to prove themselves.²³ This would also include the idea that the people serving should be representative of our country's population. This is yet to be the case. As noted in Hector Flores's article, Affirmative Action Allows Minorities to Compete Fairly, although the general population consists of 51.2% women, 12.4% African American, and 9.5% Latinos, the workforce does not statistically represent the population:

- “69% of all doctors are white men, 22% are white women, 4% are Black, and only 5% are Latino.
- 70% of all lawyers are white men, 24% are white women, 3% are Black, and 3% are Latino.
- 80% of all architects are white men, 16% are white women, 1% are Black, and 1% are Latino.
- 85% of all engineers are white men, 8% are white women, 4% are Black, and 3% are Latino.”²⁴

Lastly, affirmative action is needed to compensate minorities for centuries of slavery or oppression. In this last argument, minorities suffered mistreatment and injustice for many, many years. They were treated as property not humans. Their basic rights were denied including literacy – the right to read and write, the right to marry, have children, and raise them in a family unit. They were used for centuries of unpaid labor and underwent brutal punishments. This policy tries to begin to help with some of this by compensating their descendants.²⁵

Those not in favor have a number of arguments. One, affirmative action leads to reverse discrimination. This argument is based on merit. More deserving whites whose Grade Point Average (GPA), test scores, etc. are passed over to minorities who are given those spots to fill quotas. This was seen in the Regents of California v. Bakke in which sixteen spots were used solely for minorities/special admissions. White candidates who surpassed the minorities/special admissions candidates in their ranking were not admitted since the other 84 spots had already been filled.

Those who are not in favor, argue that whites who are capable and in need are overpassed for minorities that may be less qualified and in less need. There is a fear that the truly deserving – those impoverished – will not benefit from this policy.

“There is also an obvious pitfall with the second, remedial rationale: discrimination in favor of today's individuals in group X does nothing to help the different individuals in group X who suffered discrimination in the past. The justification, then, must argue that the very individuals who

suffered discrimination against them are the ones who now will be receiving discrimination in their favor, or that the discrimination suffered in the past has had discriminatory results still being felt by those in group X.”²⁶

Another con in the debate is that affirmative action lowers standards of accountability needed to push students to perform better. If we lower the standard for admission into a school, we – in turn – lower our standard for what we want from people. This has a negative impact not only on individuals but for the society as well. Students admitted on this basis are often ill equipped to handle the schools to which they've been admitted. This means that some students are admitted under the policy of affirmative action are truly not ready to deal with the challenge of the rigorous academics. In turn, this can lead which to a higher attrition rate (dropping out of college) – not being successful. Richard Sander describes this as the “mismatch effect”. Students enter an institution in which they are not ready for the rigor of the coursework. This discourages minorities and leads to them suffering from higher rates of failure – contrary to a goal of affirmative action – success for those who have been denied. Clarence Thomas spoke to this in the *Gratz v. Bollinger* case by stating:

“Indeed, the very existence of racial discrimination of the type practiced by the Law School may impede the narrowing of the LSAT testing gap. An applicant's LSAT score can improve dramatically with preparation, but such preparation is a cost, and there must be sufficient benefits attached to an improved score to justify additional study. Whites scoring between 163 and 167 on the LSAT are routinely rejected by the Law School, and thus whites aspiring to admission at the Law School have every incentive to improve their score to levels above that range.... Blacks, on the other hand, are nearly guaranteed admission if they score above 155.... As admission prospects approach certainty, there is no incentive for the black applicant to continue to prepare for the LSAT once he is reasonably assured of achieving the requisite score. It is far from certain that the LSAT test-taker's behavior is responsive to the Law School's admissions policies.”²⁷

Lowering the standards for some people means that the entire group will be considered “weaker.” “Since the standards for the selection of minorities are, by hypothesis, lower, because they were diluted by considerations of color, sex, or nationality, it is a certainty that, overall, the average performance of those in that group will be weaker—not because of their ethnicity, of course, but because many among them were selected on grounds having no bearing on the work or study to be pursued. Preference thus creates a link between the minority preferred and inferior performance.”²⁸ This, in turn, helps to promote negative stereotypes of the particular group.

Affirmative action demeans true minority achievement; i.e. success is labeled as result of affirmative action rather than hard work and ability. It is condescending to minorities to say they need affirmative action to succeed. This confirms that there is a belief that minorities are unable

to make it on their own – to be successful.²⁹ This also leads people to believe that any success a minority has is due to affirmative action NOT the person's ability and/or hard work.

“This problem of stigma does not depend on determinacy as to whether those stigmatized are actually the ‘beneficiaries’ of racial discrimination. When blacks take positions in the highest places of government, industry, or academia, it is an open question today whether their skin color played a part in their advancement. The question itself is the stigma—because either racial discrimination did play a role, in which case the person may be deemed “otherwise unqualified,” or it did not, in which case asking the question itself unfairly marks those blacks who would succeed without discrimination.”³⁰

Lastly, once enacted, affirmative action programs are tough to remove, even after the underlying discrimination has been eliminated. I believe that it is hard to argue that all discrimination has been “eliminated,” times have changed but the policy has not. When and how can/will these change to reflect the changes in our society?³¹ Many believe that it actually increases racial tension – not really righting the wrongs. Carl Cohen in Affirmative Action in Admissions Harms College Students posits that although it is true that minorities have suffered in our history it is wrong to continue to provide preferential treatment to them for those earlier wrongs. This, in reality, means that groups have rights (right to preferential treatment). However, he states that these rights are truly possessed by *all* individuals not groups. To try and right the wrongs that were done to a group in the past is not to entitle individuals now – it “misconceives the relation between wrongs and remedies.”³²

Supreme Court Cases

There are four key cases that reflect the question of considering race as a factor in admitting students to universities. These Supreme Court cases are an important part of understanding the importance of our nation's stance on Affirmative Action as it pertains to the law – to our Constitution. After reviewing these documents, synthesizing the information, and presenting and/or listening to others – students will be able to better understand the *why* of the decisions in accordance to our law.

Regents of the California vs. Bakke (1978)

The University of California's Medical School at Davis had established two admissions programs – regular and special for the 100 spaces available. For the regular admissions students there were 84 spaces while sixteen were reserved for the special admissions candidates. In the regular admissions program, students were first rated on the Grade Point Average (GPA). If it fell below a 2.5 out of 4, they were automatically rejected. If not, they were rated according to a variety of criteria – overall GPA, science courses average, Medical College Admissions Test (MCAT) scores, letters of recommendation, extracurricular activities, and biographical information that was compiled to total a “benchmark score.”³³ For the special admissions program, students asked to be considered either “economically and/or educationally

disadvantaged” or a member of a minority group.³⁴ These “special candidates, however, did not have to meet the 2.5 grade point cutoff and were not ranked against candidates in the general admissions process.”³⁵ After reviewing their criteria, candidates would be invited to interview. The special admissions committee (comprised of solely minorities) would recommend candidates to the general admissions committee (which could deny admission of these recommended candidates) until all sixteen spots were filled.

Allan Bakke was a 35-year-old white man, a former Marine and, at the time, working as an engineer who was denied admission twice to the University of California’s Medical School at Davis. In 1973, he applied late, receiving a 468 out of 500 rating. In 1974 he received a 549 out of 600 rating. He was rejected both times he applied. Bakke’s scores were higher than those who were admitted under the special admissions program. He brought the case to court stating that his denial of admissions was solely because of race, violating the U.S. and California constitutions and the Title VI of the Civil Rights Act. In the Superior Court of California, it was determined that the medical school should re-consider his admission under a “race-free system.” Both sides appealed the case – Bakke due to the fact that he was still denied admission. The Supreme Court of California upheld the decision, ordering the university to not use race in the decision-making process for admissions. Additionally, when the university could not provide evidence that Bakke would have not be admitted in this case, the court ordered him to be admitted.

At the U.S. Supreme Court level, the Justices contemplated the question “*Did the University of California violate the Fourteenth Amendment’s equal protection clause, and the Civil Rights Act of 1964, by practicing an affirmative action policy that resulted in the repeated rejection of Bakke’s application for admission to its medical school?*”³⁶

The split-decision was announced in June of 1978. Five members concluded that Bakke must be admitted to the medical school. The decision included the fact that any racial quota in a state supported program did violate the Fourteenth Amendment’s equal protection clause and the Civil Rights Act of 1964. However, they also stated that the use of race as a criterion did not, meaning that it could be considered an additional factor to consider.³⁷ Justice Powell stated that quotas were unconstitutional as they assured a certain number of seats for specific groups while denying others, no matter how qualified, the opportunity to vie for them. “Preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake. This the Constitution forbids.”³⁸ However, he also stated that a university may have specific and good reasons for considering race in admissions such as countering discrimination, providing people to work in underserved areas, enhancing diversity on campus as well as to mirror the population.³⁹ In the end, for Bakke, this meant that he should be admitted to the program.

Gratz v. Bollinger and Grutter vs. Bollinger (2003)

In two cases decided in 2003, the Supreme Court considered the constitutionality of two admissions policies at the University of Michigan. The first case involved the *use of racial preferences in undergraduate admissions*.⁴⁰ Jennifer Gratz, a Caucasian undergraduate candidate, applied to the University of Michigan’s College of Literature, Science, and the Arts (LSA) Program in 1995. In 1997, Patrick Hamacher applied. Both were denied admissions to the competitive program. Together, they filed a lawsuit that claimed “the University admits that it

uses race as a factor in making admissions decisions because it serves a ‘compelling interest in achieving diversity among its student body.’” The point system used gave students a certain number of points per criterion – artistic abilities equals five points, perfect SAT score equals twelve points. Race was a criterion in which students from minority groups received twenty points towards their overall score. In these years, all qualified students from underrepresented/minority groups were accepted while whites who were well qualified were not.⁴¹

In the *Gratz* decision, which was announced in June, 2003, the Court stated that the goal of increasing the numbers of the under-represented groups on campus did not have such a “compelling state interest” that justified giving one-fifth of the points needed for admission solely due to race. The Supreme Court decided (6-3) that this practice did not provide individualized consideration of each candidate.⁴² Chief Justice Rehnquist wrote, “because the University's use of race in its current freshman admissions policy is not narrowly tailored to achieve respondents' asserted compelling interest in diversity, the admissions policy violates the Equal Protection Clause.”⁴³

The second Michigan case involved admissions to the University of Michigan law school. Barbara Grutter, a white Michigan resident, applied to the University of Michigan’s Law School in 1997. She had a GPA of 3.8 and a LSAT score of 161. She was denied admission. The law school did not use a point system like the undergraduate admissions program, but it did consider “subjective criteria,” including race, in addition to undergraduate GPA and LSAT scores. The court’s decision (5-4) stated that the law school did not violate the 14th Amendment or the Civil Rights Act. Since each candidate was given a case-by-case consideration and the law school did not employ a quota, the policy could withstand strict scrutiny. “[T]he school construed membership in a minority race as merely a ‘plus’ factor among many weighed in the admissions decision.”⁴⁴ Justice O'Connor further wrote, “in the context of its individualized inquiry into the possible diversity contributions of all applicants, the Law School's race- conscious admissions program does not unduly harm nonminority applicants.”⁴⁵

Taken together, the Grutter and Gratz cases took the position that “the use of affirmative action in school admission is constitutional if it treats race as one factor among many, its purpose is to achieve a “diverse” class, and it does not substitute for individualized review of applicant, but is unconstitutional if it automatically increases an applicant's chances over others simply because of his or her race.”

Fisher vs. University of Texas at Austin (2012)

In 1997, the Texas Legislature mandated by law that the top ten percent of each high school in Texas complying with certain standards should be admitted into the school. This is known as the Top Ten Percent Law. Race would be a consideration for the remainder of the spots available to that class. In 2004, the university began to ask students to classify themselves racially into five categories. These are not assigned a value but it is a “meaningful” factor. Abigail Fisher graduated in the top twelve percent of her high school’s class that did not qualify her for entrance to the University of Texas at Austin. She was “1 of 29,501 applicants. From this group 12, 843 were admitted, and 6,715 accepted and enrolled.”⁴⁶ She filed a suit stating that the “University

of Texas' use of race as a consideration in admission decisions was in violation of the equal protection clause of the Fourteenth Amendment and a violation of 42 U.S.C. Section 1983.⁴⁷ Her grades and SAT scores were higher than many minorities admitted to the institution.

The question the Supreme Court deliberated was *Does the Equal Protection Clause of the Fourteenth Amendment permit the consideration of race in undergraduate admissions decisions?* In June of 2013, the Supreme Court ruled in Fisher's favor 7-1. The rationale of the Court was dependent upon the idea of Strict Scrutiny

“Strict scrutiny is the most rigorous form of judicial review. The Supreme Court has identified the right to vote, the right to travel, and the right to privacy as fundamental rights worthy of protection by strict scrutiny. In addition, laws and policies that discriminate on the basis of race are categorized as *suspect classifications* that are presumptively impermissible and subject to strict scrutiny.”⁴⁸ “Once a court determines that strict scrutiny must be applied, it is presumed that the law or policy is unconstitutional. The government has the burden of proving that its challenged policy is constitutional. To withstand strict scrutiny, the government must show that its policy is necessary to achieve a compelling state interest. If this is proved, the state must then demonstrate that the legislation is narrowly tailored to achieve the intended result.”⁴⁹

Because affirmative action cases involve suspect classifications such as race and gender, they are reviewable under the Fourteenth Amendment. In such cases a court must employ the a standard of strict scrutiny to determine whether the policies are “precisely tailored to serve a compelling governmental interest.” “If the policy does not meet this standard, race may not be considered in the admissions process.”⁵⁰

In Fisher's case, the Supreme Court found that the lower court had not conducted the required strict scrutiny analysis. Specifically, “it was the duty of the reviewing court to “verify” that the University policy in question was necessary to achieve the benefits of diversity and that no race-neutral alternative would provide the same benefits.” Because the lower courts had not engaged in a sufficient strict scrutiny review, the Supreme Court sent the case back to the lower court for further findings.⁵¹

Strategies

Students come into our Distance Learning Laboratory with varying skills – technological, conversational, writing, and reading. All of these skills are essential to their academic success in our classroom and beyond. I need to employ teaching strategies that work towards strengthening these skills throughout the school year. One can talk with a number of my school colleagues or Yale Fellows to know that while my conversational, reading, and writing skills were strong I still needed to improve upon my technological skills! Immersing myself in this Distance Laboratory helped me to improve upon these skills. I searched out multiple opportunities to learn from my colleagues, call in district personnel, and spend numerous hours working with different types of practices such as Video Chat or Google Docs. My ultimate goal is to ready these students for the 21st century learning that will be expected of them when they leave high school to pursue higher education or enter the workforce.

Document Analysis

I find that my students seem to want activities in which they are to read a piece of text – not too difficult – and answer some questions. The idea of having difficulty, needing to think, and not knowing if they are “thinking correctly” – meaning, getting the right answer--is something that I am constantly battling. Students complain, get upset, and all too often give up. I know that students are expected, when they go to college, to read and comprehend multiple, difficult texts, analyze them, and use these for application purposes. Therefore I know that I need to help them do this, especially since they will most likely be doing these things on their own.

The Common Core supports these skills. It asks that social studies teachers to assist in teaching students how to read texts. The reading for the informational text section highlights a variety of things that we should be doing with our students. Regarding *Key Ideas and Details*, we should help them to: cite specific textual evidence from sources, connect insights to better understand text, determine the central ideas or information from a source, and provide a comprehensive summary with key ideas and details to support them.

To help with this the National Archives has a variety of document analysis guides for students to use when they read and analyze a document. I will modify the Written Document form for my students to use so that it also reflects the above Common Core standards that I want them to achieve. Additionally, there will be a section that reflects/has them write down what they want to share with others in the class as I am also trying to have them develop their speaking skills.

Blogs/Discussion

Another technological feature used in this unit is the blog known as a Discussion on Edline (the on-line system that our district chooses to use). A blog is an interactive site in which posts occur usually on a daily basis. Using a question or statement, I can preview what will be discussed and/or looked at that day or review or clarify something from the previous day's lesson. For an instructor and the students, this is an invaluable tool. For the instructor, it enables you to see what students understand and may have misconceived in addition to what they think. I like to have them write about the why of what they think, helping me to better understand their viewpoints. This also enables them to think before they speak as we use their blog posts as a means of conversation as well. For students, they are able to see their written conversations and leave multiple comments as well as questions for each other. This is a great pre- and post-activity for the day's lesson in which the same question or statement is added to at the end of the day's lesson helping all parties to see individual and group progress in regard to comprehending a point or concept.

This year I am taking it further. Many college courses are now using this feature. Students post on-line outside of class and are scored/graded on the quality of their posts. I am working with the students to establish a rubric that will be used for them to be graded for their posts. With them, I have noticed that they need to cite the evidence within their work as compared to the rubric. They need to identify this evidence so that they can truly “see” it to understand why or why not they receive credit. As much as possible, I want to emulate what they will experience next or the following year at college.

Socratic Seminar

I have noticed that my students tend to talk before thinking and are more interested in hearing themselves than their fellow classmates. Being able to think critically about a text before discussing it and then listening to others are important skills necessary for academic success and life-long ability to understand better another person's viewpoint. The weight of the conversation is left to the participants – in this case the students. They must critically look at and read the texts before coming to class and be prepared with questions and comments they would like to focus on. This is vital to the conversation's success. I want them to experience what it is to be in college in a small seminar-type atmosphere. Additionally, I believe if they are made responsible for this it will help them to better comprehend the content of the text which they are expected to master and be able to do well on the exams mandated by the local community college will lead to the grade that will determine if they receive college credit or not.

Activities

Ole Miss

By reading historical and personal accounts, students will become aware of Meredith's experience – of how he was admitted into Old Miss, how this compares to what occurs today, who is able to attend a university/college and why, and how this relates to sociological concepts *the racial and ethnic categories to which people belong are a product of three interrelated factors: chance, context, and choice.*

To better understand this story, students will be exposed to a variety of texts – primary and secondary sources – for which they will use the National Archives document analysis guides. This will help students to closely read/listen to the document, following along, and answering the questions to help with their analysis of them. These include an Eyes on the Prize video segment, the Mississippi governor Ross Barnett's speech "No school in our state will be integrated..."⁵², a text from George Madison University's History Matters, and a few oral and written depictions of the events on NPR.

Students will reflect on Meredith's experience – about why he was excluded from admission to Ole Miss, how the integration was accomplished, how this compares to what occurs today, who is able to attend a university/college and why, and how this relates to sociological concepts *the racial and ethnic categories to which people belong are a product of three interrelated factors: chance, context, and choice.*

Opposing Viewpoints in Context

Opposing Viewpoints in Context is a database that provides rich texts about important topics from multiple perspectives. Students will be divided randomly and will closely read one of the two perspectives for Affirmative Action Programs Promote Equal Opportunity or Affirmative Action Programs Do Not Promote Equal Opportunity. They will pay particular attention to the guiding questions each of the texts has to help with the Socratic Seminar afterwards. Using these questions, students will closely read /re-read the text paying particular attention to the author's

message. Additionally, students will keep notes on a graphic organizer that will aid them in the discussion. After this warm-up to the subject and to the Socratic Seminar Method, students will again read one of the following texts: Colleges Should Not Use Race-Sensitive Admissions Policies, Race-Based College Admissions Policies Should Be Banned, Affirmative Action in College Admissions Is Discrimination, Affirmative Action Encourages Educational Diversity, Affirmative Action Should Not Be Eliminated, Affirmative Action in College Admissions Ensures Equality, or Affirmative Action in College Admissions Is Necessary. In this case, there will be fewer students who have read the articles because there are more choices. This means that students will need to speak up within the discussion, focusing on the points, questions, and comments they would like to focus on regarding the text they read. I believe this will help to foster the comparing and contrasting of the texts' main points which will aid them in their understanding before they begin to read the Supreme Court Cases.

Supreme Court Cases

This lesson gives students an opportunity to learn about what happens at the Supreme Court level regarding affirmative action by focusing on the guiding questions of the four court cases: Regents of the California vs. Bakke (1978), Gratz v. Bollinger and Grutter vs. Bollinger (2003), and Fisher vs. University of Texas at Austin (2012). Using a Classroom Blog, they will write a description of what they have learned so far – their understandings – in regard to affirmative action. Next, they will present what they have written and compare and contrast each other's responses having them pay attention to their prior knowledge – of what do they think and where do they think they learned this information. Afterwards, they will be divided into small groups and read multiple sources about one of the four Supreme Court cases. In these small groups using Google Docs, students will collaboratively take notes about their assigned court case. Afterwards, they will present their court case to the whole group – teaching everyone what they now know from their readings. Lastly, with this new information, students will return to their Blog entry and add details/update what they now know about Affirmative Action.

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Teacher Resources

<http://www.eeoc.gov/eeoc/history/35th/thelaw/eo-10925.html> This is a link to the Executive Order 10925.

<http://www.oyez.org> This project based out of the Chicago-Kent College of Law focuses on the work of the Supreme Court. There are multimedia resources.

<http://www.youtube.com/watch?v=vcfAuodA2x8> This is a video of President Johnson's Howard University Commencement Speech.

<http://www.lbjlib.utexas.edu/johnson/archives.hom/speeches.hom/650604.asp> This is a transcript of President Johnson's Howard University Commencement Speech.

<http://www.npr.org/2012/10/01/161573289/integrating-ole-miss-a-transformative-deadly-riot> Meredith's story in his own words.

<http://www.npr.org/2012/09/28/161953187/the-fight-to-desegregate-ole-miss-50-years-later> This site describes the fight to desegregate Ole Miss 50 Years Later.

<http://historymatters.gmu.edu/d/6326/> Meredith's "I Can't Fight Alone": James Meredith Calls on All Blacks to Participate in the Struggle for Racial Equality
This will provide a nice bridge between the school integration and using affirmative action to students.

Appendix A

In this unit I will be using the local community college's Performance Objective that my students must meet as well as a Common Core Literacy Standard that focuses on the integration of knowledge and ideas. The College Wide Core Course (CCC) Performance Objective that I follow is from the Core Concepts of our textbook's chapters on Social Stratification and Race and Ethnicity.

Analyze social stratification and the causes and consequences of classifying people by race, ethnicity, and gender. Students need to be able to: define the concept of stratification and its application to human differences; illustrate the connection between social stratification and life chances; and list two major kinds of criteria societies use to categorize people. Students will be able to define affirmative action, how it is related to social stratification, and explain its' consequences of classifying people by race.

Analyze personal reactions to sociological concepts, principles and processes examined in this course. Students will be able to summarize a concept into their own words (affirmative action) and describe the applicability of this concept to their own life (in regard to college admissions).

There are three Common Core Standards that I will address in this unit: One, CCSS.ELA-Literacy.RI.11-12.7 Standard that I want students to focus on is to *Integrate and evaluate multiple sources of information presented in different media or formats (e.g., visually, quantitatively) as well as in words in order to address a question or solve a problem.* Students will closely read a number of texts including Supreme Court documents that they will analyze and synthesize to answer the Guiding Questions. Two, CCSS.ELA-Literacy.RH.11-12.1 *Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.* Students will read their assigned texts (primary and secondary sources) specifying details that help with their understanding of the text as a whole. They will do this individually as well as in their small groups/Google Docs assignment. Three, CCSS.ELA-Literacy.RH.11-12.2 *Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes*

clear the relationships among the key details and ideas. Students will write a summary of the primary and secondary sources, indicating the key details and ideas.

¹ Bruce J. Kierenfield, *The Civil Rights Movement: Revised Edition*, 71.

² Ibid, 72.

³ Ibid,72.

⁴ Ibid, 76.

⁵ Jacquelyn Dowd Hall, *The Long Civil Rights Movement and the Political Uses of the Past*, 1240.

⁶ Ibid.

⁷ Ibid, 1241.

⁸ Ibid.

⁹ Ibid,1242.

¹⁰ <http://www.eeoc.gov/eeoc/history/35th/thelaw/eo-10925.html> (accessed on October 22, 2013).

¹¹ Ibid.

¹² <http://www.infoplease.com/spot/affirmative1.html> (accessed on October 20, 2013).

¹³ <http://www.merriam-webster.com/dictionary/affirmative%20action> (accessed on October 20, 2013).

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¹⁹ http://ic.galegroup.com.proxy.nss.udel.edu/ic/ovic/ViewpointsDetailsPage/ViewpointsDetailsWindow?failOverType=&query=&prodId=OVIC&>windowstate=normal&contentModules=&mode=view&displayGroupName=Viewpoints&limiter=&currPage=&disableHighlighting=true&displayGroups=&sortBy=&source=&search_within_results=&zid=&action=e&catId=&activityType=&scanId=&documentId=GALE%7CEJ3010125253&userGroupName=udel_main&jsid=6bdfa870e4200e4d2a951a5bee6ef317 (accessed October 20, 2013).

²⁰ <http://ic.galegroup.com.proxy.nss.udel.edu/ic/ovic/ViewpointsDetailsPage/ViewpointsDetailsWindow?failOverType=&query=&prodId=OVIC&>windowstate=normal&contentModules=&mode=view&displayGroupName=Viewpoints&limiter=&currPage=&disableHighlighting=true&dis>

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³⁵ http://www.law.ornell.edu/supct/html/historics/USSC_CR_0438_0265_ZS.html (accessed on 10/30/2013)

³⁶ http://www.oyez.org/cases/1970-1979/1977/1977_76_811)

³⁷ www.streetlaw.org/en/Page/620/Summary_of_the_Decision accessed on October 30, 2013.

³⁸ <http://www.etsu.edu/cas/history/documents/bakke.htm> (accessed November 15, 2013)

³⁹ <http://www.etsu.edu/cas/history/documents/bakke.htm> (accessed November 15, 2013)

⁴⁰ http://www.oyez.org/cases/2000-2009/2002/2002_02_516 (accessed December 7, 2013).

⁴¹ <http://www.casebriefs.com/blog/law/constitutional-law/constitutional-law-keyed-to-sullivan/equal-protection-constitutional-law-keyed-to-sullivan-constitutional-law-law/gratz-v-bollinger/> (accessed December 7, 2013).

⁴² http://www.pbs.org/wnet/supremecourt/future/landmark_grutter.html (accessed December 1, 2013).

⁴³ http://www.pbs.org/wnet/supremecourt/future/landmark_grutter.html (accessed December 1, 2013).

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⁴⁵ http://www.oyez.org/cases/2000-2009/2002/2002_02_241/ (accessed December 9, 2013).

⁴⁶ <http://supremecourt.gov> (accessed October 23, 2013).

⁴⁷ Ibid.

⁴⁸ <http://legal-dictionary.thefreedictionary.com/Strict+Scrutiny> (accessed December 1, 2013).

⁴⁹ <http://legal-dictionary.thefreedictionary.com/Strict+Scrutiny> (accessed December 1, 2013).

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⁵¹ http://www.oyez.org/cases/2010-2019/2012/2012_11_345 (December 1, 2013).

⁵² http://www.pbs.org/wgbh/amex/eyesontheprize/sources/ps_schools.html