Grutter v. Bollinger
(2003)

A brief overview of the case: *Barbara Grutter applied to law school at the University of Michigan. She was rejected, even though her grades were higher than some of the minority candidates who were admitted. In Grutter v. Bollinger, the US Supreme Court decided that the University of Michigan had acted lawfully. Racial diversity at law school was an important goal. Do you agree? Was the decision just or unjust?*

GRUTTER v. BOLLINGER et al.

Supreme Court of United States.

Decided June 23, 2003.

Justice O'Connor delivered the opinion of the Court.

This case requires us to decide whether the use of race as a factor in student admissions by the University of Michigan Law School (Law School) is unlawful.

The Law School ranks among the Nation's top law schools. It receives more than 3,500 applications each year for a class of around 350 students. Seeking to "admit a group of students who individually and collectively are among the most capable," the Law School looks for individuals with "substantial promise for success in law school" and "a strong likelihood of succeeding in the practice of law and contributing in diverse ways to the well-being of others." App. 110. More broadly, the Law School seeks "a mix of students with varying backgrounds and experiences who will respect and learn from each other." ...

The hallmark of that policy is its focus on academic ability coupled with a flexible assessment of applicants' talents, experiences, and potential "to contribute to the learning of those around them." ... The policy aspires to "achieve that diversity which has the potential to enrich everyone's education and thus make a law school class stronger than the sum of its parts." Id., at 118. The policy does not restrict the types of diversity contributions eligible for "substantial weight" in the admissions process, but instead recognizes "many possible bases for diversity admissions." Id., at 118, 120. The policy does, however, reaffirm the Law School's longstanding commitment to "one particular type of diversity," that is, "racial and ethnic diversity with special reference to the inclusion of students from groups which have been historically discriminated against, like African-Americans, Hispanics and Native Americans, who without this commitment might not be represented in our student body in meaningful numbers." Id., at 120. By enrolling a "`critical mass' of [underrepresented] minority students," the Law School seeks to "ensur[e] their ability to make unique contributions to the character of the Law School." Id., at 120-121.

Petitioner Barbara Grutter is a white Michigan resident who applied to the Law School in 1996 with

a 3.8 GPA and 161 LSAT score. The Law School initially placed petitioner on a waiting list, but subsequently rejected her application. In December 1997, petitioner filed suit [alleging] that respondents discriminated against her on the basis of race in violation of the Fourteenth Amendment. ...

Before this Court, as they have throughout this litigation, respondents assert only one justification for their use of race in the admissions process: obtaining "the educational benefits that flow from a diverse student body." In other words, the Law School asks us to recognize, in the context of higher education, a compelling state interest in student body diversity.

Today, we hold that the Law School has a compelling interest in attaining a diverse student body.

The Law School's educational judgment that such diversity is essential to its educational mission is one to which we defer. The Law School's assessment that diversity will, in fact, yield educational benefits is substantiated by respondents and their amici. Our scrutiny of the interest asserted by the Law School is no less strict for taking into account complex educational judgments in an area that lies primarily within the expertise of the university. Our holding today is in keeping with our tradition of giving a degree of deference to a university's academic decisions, within constitutionally prescribed limits. ...

As part of its goal of "assembling a class that is both exceptionally academically qualified and broadly diverse," the Law School seeks to "enroll a `critical mass' of minority students." Brief for Respondent Bollinger et al. 13. The Law School's interest is not simply "to assure within its student body some specified percentage of a particular group merely because of its race or ethnic origin." Bakke, 438 U. S., at 307 (opinion of Powell, J.). That would amount to outright racial balancing, which is patently unconstitutional. Ibid.; Freeman v. Pitts, 503 U. S. 467, 494 (1992) ("Racial balance is not to be achieved for its own sake"); Richmond v. J. A. Croson Co., 488 U. S., at 507. Rather, the Law School's concept of critical mass is defined by reference to the educational benefits that diversity is designed to produce.

These benefits are substantial. As the District Court emphasized, the Law School's admissions policy promotes "cross-racial understanding," helps to break down racial stereotypes, and "enables [students] to better understand persons of different races." App. to Pet. for Cert. 246a. These benefits are "important and laudable," because "classroom discussion is livelier, more spirited, and simply more enlightening and interesting" when the students have "the greatest possible variety of backgrounds." Id., at 246a, 244a.

The Law School's claim of a compelling interest is further bolstered by its amici, who point to the educational benefits that flow from student body diversity. In addition to the expert studies and reports entered into evidence at trial, numerous studies show that student body diversity promotes learning outcomes, and "better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals." ...

These benefits are not theoretical but real, as major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints. Brief for 3M et al. as Amici Curiae 5; Brief for

General Motors Corp. as Amicus Curiae 3-4. What is more, high-ranking retired officers and civilian leaders of the United States military assert that, "[b]ased on [their] decades of experience," a "highly qualified, racially diverse officer corps . . . is essential to the military's ability to fulfill its principle mission to provide national security." Brief for Julius W. Becton, Jr., et al. as Amici Curiae 5. The primary sources for the Nation's officer corps are the service academies and the Reserve Officers Training Corps (ROTC), the latter comprising students already admitted to participating colleges and universities. Ibid. At present, "the military cannot achieve an officer corps that is both highly qualified and racially diverse unless the service academies and the ROTC used limited race-conscious recruiting and admissions policies." Ibid. (emphasis in original). To fulfill its mission, the military "must be selective in admissions for training and education for the officer corps, and it must train and educate a highly qualified, racially diverse officer corps in a racially diverse educational setting." Id., at 29 (emphasis in original). We agree that "[i]t requires only a small step from this analysis to conclude that our country's other most selective institutions must remain both diverse and selective." ...

Moreover, universities, and in particular, law schools, represent the training ground for a large number of our Nation's leaders. Sweatt v. Painter, 339 U. S. 629, 634 (1950) (describing law school as a "proving ground for legal learning and practice"). Individuals with law degrees occupy roughly half the state governorships, more than half the seats in the United States Senate, and more than a third of the seats in the United States House of Representatives. See Brief for Association of American Law Schools as Amicus Curiae 5-6. The pattern is even more striking when it comes to highly selective law schools. A handful of these schools accounts for 25 of the 100 United States Senators, 74 United States Courts of Appeals judges, and nearly 200 of the more than 600 United States District Court judges. Id., at 6.

In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. All members of our heterogeneous society must have confidence in the openness and integrity of the educational institutions that provide this training. As we have recognized, law schools "cannot be effective in isolation from the individuals and institutions with which the law interacts." See Sweatt v. Painter, supra, at 634. Access to legal education (and thus the legal profession) must be inclusive of talented and qualified individuals of every race and ethnicity, so that all members of our heterogeneous society may participate in the educational institutions that provide the training and education necessary to succeed in America.

The Law School does not premise its need for critical mass on "any belief that minority students always (or even consistently) express some characteristic minority viewpoint on any issue." Brief for Respondent Bollinger et al. 30. To the contrary, diminishing the force of such stereotypes is both a crucial part of the Law School's mission, and one that it cannot accomplish with only token numbers of minority students. Just as growing up in a particular region or having particular professional experiences is likely to affect an individual's views, so too is one's own, unique experience of being a racial minority in a society, like our own, in which race unfortunately still matters. The Law School has determined, based on its experience and expertise, that a "critical mass" of underrepresented minorities is necessary to further its compelling interest in securing the educational benefits of a diverse student body.

Even in the limited circumstance when drawing racial distinctions is permissible to further a compelling state interest, government is still "constrained in how it may pursue that end: [T]he means chosen to accomplish the [government's] asserted purpose must be specifically and narrowly framed to accomplish that purpose." ...

We find that the Law School's admissions program bears the hallmarks of a narrowly tailored plan. As Justice Powell made clear in Bakke, truly individualized consideration demands that race be used in a flexible, nonmechanical way. It follows from this mandate that universities cannot establish quotas for members of certain racial groups or put members of those groups on separate admissions tracks. See id., at 315-316. Nor can universities insulate applicants who belong to certain racial or ethnic groups from the competition for admission. Ibid. Universities can, however, consider race or ethnicity more flexibly as a "plus" factor in the context of individualized consideration of each and every applicant. Ibid.

We are satisfied that the Law School's admissions program, like the Harvard plan described by Justice Powell, does not operate as a quota. ... Here, the Law School engages in a highly individualized, holistic review of each applicant's file, giving serious consideration to all the ways an applicant might contribute to a diverse educational environment. The Law School affords this individualized consideration to applicants of all races. There is no policy, either de jure or de facto, of automatic acceptance or rejection based on any single "soft" variable. ... We also find that, like the Harvard plan Justice Powell referenced in Bakke, the Law School's race-conscious admissions program adequately ensures that all factors that may contribute to student body diversity are meaningfully considered alongside race in admissions decisions. With respect to the use of race itself, all underrepresented minority students admitted by the Law School have been deemed qualified. By virtue of our Nation's struggle with racial inequality, such students are both likely to have experiences of particular importance to the Law School's mission, and less likely to be admitted in meaningful numbers on criteria that ignore those experiences. See App. 120.

We are mindful, however, that "[a] core purpose of the Fourteenth Amendment was to do away with all governmentally imposed discrimination based on race." Palmore v. Sidoti, 466 U. S. 429, 432 (1984). Accordingly, race-conscious admissions policies must be limited in time. This requirement reflects that racial classifications, however compelling their goals, are potentially so dangerous that they may be employed no more broadly than the interest demands. Enshrining a permanent justification for racial preferences would offend this fundamental equal protection principle. We see no reason to exempt race-conscious admissions programs from the requirement that all governmental use of race must have a logical end point.

We take the Law School at its word that it would "like nothing better than to find a race-neutral admissions formula" and will terminate its race-conscious admissions program as soon as practicable. ... 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. Since that time, the number of minority applicants with high grades and test scores has indeed increased. See Tr. of Oral Arg. 43. We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.

In summary, the Equal Protection Clause does not prohibit the Law School's narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body. ...

JUSTICE THOMAS, with whom JUSTICE SCALIA joins as to Parts I-VII, concurring in part and dissenting in part.

Frederick Douglass, speaking to a group of abolitionists almost 140 years ago, delivered a message lost on today's majority:

"[I]n regard to the colored people, there is always more that is benevolent, I perceive, than just, manifested towards us. What I ask for the negro is not benevolence, not pity, not sympathy, but simply justice. The American people have always been anxious to know what they shall do with us. . . . I have had but one answer from the beginning. Do nothing with us! Your doing with us has already played the mischief with us. Do nothing with us! If the apples will not remain on the tree of their own strength, if they are worm-eaten at the core, if they are early ripe and disposed to fall, let them fall! . . . And if the negro cannot stand on his own legs, let him fall also. All I ask is, give him a chance to stand on his own legs! Let him alone! . . . [Y]our interference is doing him positive injury." What the Black Man Wants: An Address Delivered in Boston, Massachusetts, on 26 January 1865, reprinted in 4 The Frederick Douglass Papers 59, 68 (J. Blassingame & J. McKivigan eds. 1991) (emphasis in original).

Like Douglass, I believe blacks can achieve in every avenue of American life without the meddling of university administrators. Because I wish to see all students succeed whatever their color, I share, in some respect, the sympathies of those who sponsor the type of discrimination advanced by the University of Michigan Law School (Law School). The Constitution does not, however, tolerate institutional devotion to the status quo in admissions policies when such devotion ripens into racial discrimination. Nor does the Constitution countenance the unprecedented deference the Court gives to the Law School, an approach inconsistent with the very concept of "strict scrutiny."

The Constitution abhors classifications based on race, not only because those classifications can harm favored races or are based on illegitimate motives, but also because every time the government places citizens on racial registers and makes race relevant to the provision of burdens or benefits, it demeans us all. ...

Unlike the majority, I seek to define with precision the interest being asserted by the Law School before determining whether that interest is so compelling as to justify racial discrimination. The Law School maintains that it wishes to obtain "educational benefits that flow from student body diversity," Brief for Respondent Bollinger et al. 14. This statement must be evaluated carefully, because it implies that both "diversity" and "educational benefits" are components of the Law School's compelling state interest. Additionally, the Law School's refusal to entertain certain changes in its admissions process and status indicates that the compelling state interest it seeks to validate is actually broader than might appear at first glance. ...

One must also consider the Law School's refusal to entertain changes to its current admissions system that might produce the same educational benefits. The Law School adamantly disclaims any race-neutral alternative that would reduce "academic selectivity," which would in turn "require the Law School to become a very different institution, and to sacrifice a core part of its educational mission." Brief for Respondent Bollinger et al. 33-36. In other words, the Law School seeks to improve marginally the education it offers without sacrificing too much of its exclusivity and elite status.4
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The proffered interest that the majority vindicates today, then, is not simply "diversity." Instead the Court upholds the use of racial discrimination as a tool to advance the Law School's interest in offering a marginally superior education while maintaining an elite institution. ... Under the proper standard, there is no pressing public necessity in maintaining a public law school at all and, it follows, certainly not an elite law school. Likewise, marginal improvements in legal education do not qualify as a compelling state interest.

As the foregoing makes clear, Michigan has no compelling interest in having a law school at all, much less an elite one. ... The interest in remaining elite and exclusive that the majority thinks so obviously critical requires the use of admissions "standards" that, in turn, create the Law School's "need" to discriminate on the basis of race. ... The Court never explicitly holds that the Law School's desire to retain the status quo in "academic selectivity" is itself a compelling state interest, and, as I have demonstrated, it is not. See Part III-B, supra. Therefore, the Law School should be forced to choose between its classroom aesthetic and its exclusionary admissions system—it cannot have it both ways.

With the adoption of different admissions methods, such as accepting all students who meet minimum qualifications, see Brief for United States as Amicus Curiae 13-14, the Law School could achieve its vision of the racially aesthetic student body without the use of racial discrimination. The Law School concedes this, but the Court holds, implicitly and under the guise of narrow tailoring, that the Law School has a compelling state interest in doing what it wants to do. I cannot agree. ...

Putting aside the absence of any legal support for the majority's reflexive deference, there is much to be said for the view that the use of tests and other measures to "predict" academic performance is a poor substitute for a system that gives every applicant a chance to prove he can succeed in the study of law. The rallying cry that in the absence of racial discrimination in admissions there would be a true meritocracy ignores the fact that the entire process is poisoned by numerous exceptions to "merit." For example, in the national debate on racial discrimination in higher education admissions, much has been made of the fact that elite institutions utilize a so-called "legacy" preference to give the children of alumni an advantage in admissions. This, and other, exceptions to a "true" meritocracy give the lie to protestations that merit admissions are in fact the order of the day at the Nation's universities. The Equal Protection Clause does not, however, prohibit the use of unseemly legacy preferences or many other kinds of arbitrary admissions procedures. What the Equal Protection Clause does prohibit are classifications made on the basis of race. So while legacy preferences can stand under the Constitution, racial discrimination cannot.10 I will not twist the

Constitution to invalidate legacy preferences or otherwise impose my vision of higher education admissions on the Nation. The majority should similarly stay its impulse to validate faddish racial discrimination the Constitution clearly forbids.

In any event, there is nothing ancient, honorable, or constitutionally protected about "selective" admissions. The University of Michigan should be well aware that alternative methods have historically been used for the admission of students, for it brought to this country the German certificate system in the late-19th century. See H. Wechsler, The Qualified Student 16-39 (1977) (hereinafter Qualified Student). Under this system, a secondary school was certified by a university so that any graduate who completed the course offered by the school was offered admission to the university. The certification regime supplemented, and later virtually replaced (at least in the Midwest), the prior regime of rigorous subject-matter entrance examinations. Id., at 57-58. The facially race-neutral "percent plans" now used in Texas, California, and Florida, see ante, at 340, are in many ways the descendents of the certificate system. ...

Having decided to use the LSAT, the Law School must accept the constitutional burdens that come with this decision. The Law School may freely continue to employ the LSAT and other allegedly merit-based standards in whatever fashion it likes. What the Equal Protection Clause forbids, but the Court today allows, is the use of these standards hand-in-hand with racial discrimination. An infinite variety of admissions methods are available to the Law School. Considering all of the radical thinking that has historically occurred at this country's universities, the Law School's intractable approach toward admissions is striking.
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The Court will not even deign to make the Law School try other methods, however, preferring instead to grant a 25-year license to violate the Constitution. And the same Court that had the courage to order the desegregation of all public schools in the South now fears, on the basis of platitudes rather than principle, to force the Law School to abandon a decidedly imperfect admissions regime that provides the basis for racial discrimination. ...

I must contest the notion that the Law School's discrimination benefits those admitted as a result of it. ... The Law School tantalizes unprepared students with the promise of a University of Michigan degree and all of the opportunities that it offers. These overmatched students take the bait, only to find that they cannot succeed in the cauldron of competition. And this mismatch crisis is not restricted to elite institutions. See T. Sowell, Race and Culture 176-177 (1994) ("Even if most minority students are able to meet the normal standards at the `average' range of colleges and universities, the systematic mismatching of minority students begun at the top can mean that such students are generally overmatched throughout all levels of higher education"). Indeed, to cover the tracks of the aestheticists, this cruel farce of racial discrimination must continue— in selection for the Michigan Law Review, see University of Michigan Law School Student Handbook 2002-2003, pp. 39-40 (noting the presence of a "diversity plan" for admission to the review), and in hiring at law firms and for judicial clerkships—until the "beneficiaries" are no longer tolerated. While these students may graduate with law degrees, there is no evidence that they have received a qualitatively better legal education (or become better lawyers) than if they had gone to a less "elite" law school for which they were better prepared. ...

Beyond the harm the Law School's racial discrimination visits upon its test subjects, no social science has disproved the notion that this discrimination "engender[s] attitudes of superiority or, alternatively, provoke[s] resentment among those who believe that they have been wronged by the government's use of race." Adarand, 515 U. S., at 241 (THOMAS, J., concurring in part and concurring in judgment). "These programs stamp minorities with a badge of inferiority and may cause them to develop dependencies or to adopt an attitude that they are `entitled' to preferences." Ibid.

It is uncontested that each year, the Law School admits a handful of blacks who would be admitted in the absence of racial discrimination. See Brief for Respondent Bollinger et al. 6. Who can differentiate between those who belong and those who do not? The majority of blacks are admitted to the Law School because of discrimination, and because of this policy all are tarred as undeserving. 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. ...

The Court also holds that racial discrimination in admissions should be given another 25 years before it is deemed no longer narrowly tailored to the Law School's fabricated compelling state interest. Ante, at 343. While I agree that in 25 years the practices of the Law School will be illegal, they are, for the reasons I have given, illegal now. The majority does not and cannot rest its time limitation on any evidence that the gap in credentials between black and white students is shrinking or will be gone in that timeframe.13 In recent years there has been virtually no change, for example, in the proportion of law school applicants with LSAT scores of 165 and higher who are black.14 In 1993 blacks constituted 1.1% of law school applicants in that score range, though they represented 11.1% of all applicants. Law School Admission Council, National Statistical Report (1994) (hereinafter LSAC Statistical Report). In 2000 the comparable numbers were 1.0% and 11.3%. LSAC Statistical Report (2001). No one can seriously contend, and the Court does not, that the racial gap in academic credentials will disappear in 25 years. Nor is the Court's holding that racial discrimination will be unconstitutional in 25 years made contingent on the gap closing in that time. ...

For the immediate future, however, the majority has placed its imprimatur on a practice that can only weaken the principle of equality embodied in the Declaration of Independence and the Equal Protection Clause. "Our Constitution is color-blind, and neither knows nor tolerates classes among citizens." Plessy v. Ferguson, 163 U. S. 537, 559 (1896) (Harlan, J., dissenting). It has been nearly 140 years since Frederick Douglass asked the intellectual ancestors of the Law School to "[d]o nothing with us!" and the Nation adopted the Fourteenth Amendment. Now we must wait another 25 years to see this principle of equality vindicated. I therefore respectfully dissent from the remainder of the Court's opinion and the judgment.