REFLECTIONS ON *THE SHAPE OF THE RIVER*

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The debate over race-conscious admissions to selective colleges and universities has taken a new turn. The emotionally fraught moral argument continues, but facts—long largely hidden from public view—are now in the mix.

The much-celebrated work by William G. Bowen and Derek Bok, The Shape of the River, *adds to our store of data and is thus a welcome addition to the literature. But in this Book Review, Stephan and Abigail Thernstrom conclude that the evidence upon which this brief for racial preferences relies does not withstand close scrutiny.*

Bowen and Bok contend that the weight given to race in the admissions process at highly selective colleges and universities is slight, and that preferentially admitted students do well both in school and beyond. Their own numbers, however, paint quite a different picture, the Thernstroms find. Preferences are truly preferential, and black students admitted under racial double standards do not fare well academically. Other data on law and medical schools tell much the same story: Heavy racial preferences are coupled with high failure rates relative to those of whites and Asians.

Race-conscious admissions to elite schools have, according to Bowen and Bok, created the backbone of the black and Hispanic middle class, but their book contains data on neither Hispanics nor Asians, a serious omission. More importantly, the Thernstroms argue that admissions officers at elite institutions do not in general determine the socioeconomic fabric of African-American life. Throughout, Bowen and Bok's argument is marred by ahistorical reasoning, lapses in logic, methodological flaws, missing information, and missed opportunities to gather or further interpret important data.

Bowen and Bok are militant advocates of "diversity," and yet they provide no definition of the term and thus no standard against which

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diversity policies can be assessed. Moreover, they fail to engage the serious moral arguments of those who oppose all race-conscious policies. The Thernstroms conclude that critics of preferential policies are right to believe that sorting Americans into arbitrary racial categories perpetuates terrible habits of mind deeply at odds with the nation's unrealized egalitarian dream.

INTRODUCTION

Since the late 1960s, leading American colleges and universities have used racial and ethnic criteria to select a significant fraction of their entering classes. From the beginning, critics attacked such policies as morally wrong and constitutionally suspect. Until fairly recently, however, little was known about how the process actually worked. Exactly how much weight was given to racial and ethnic considerations in admissions decisions?

The official line was "not much." Race was just one factor among many. But no data were ever provided to establish either how

substantial that factor was, or what happened to preferentially admitted minority students during and after college. Although higher education officials aggressively defended their policies, they were never willing to release the pertinent facts and stand by them. Secrecy suggesting a lack of moral confidence enveloped rhetoric couched in high moral tones.

In 1991, a corner of the veil was lifted when Timothy Maguire stumbled on the truth at the Georgetown University Law Center, where he was a student. Working part time in the registrar's office, he found that the college grades and LSAT scores of blacks admitted to Georgetown were dramatically lower than those of their white peers. Race was not just one of many possible "plus" factors being considered by the admissions committee; it was the only consideration that could have explained the acceptance of most black students.[1]

When Maguire went public with his findings, Georgetown's defenders mounted a fierce counterattack. In a *Washington Post* Op-Ed piece, a group of Georgetown law graduates charged Maguire with providing only "[i]ncomplete and distorted information," perpetuating the "intellectually dishonest myth" that black students are "less qualified than their white counterparts to compete in school."[2] Maguire was in no position to study the matter more systematically, the school's administrators were unwilling to release any pertinent data, and the matter rested there.

The ability to keep the files under lock and key began to come to an end, however, with the *Hopwood*[3] litigation that resulted in the 1996 finding by the Fifth Circuit Court of Appeals that the University of Texas School of Law (UT) had engaged in racial discrimination against whites; with the fight in California that ended in the passage of Proposition 209,[4] forbidding racial preferences in the public sector, including higher education; with a similar initiative in the state of Washington;[5] and with a number of freedom of information lawsuits. Tantalizing fragments of evidence have trickled out, all suggesting that the weight given to racial and

1. *See* Timothy Maguire, *My Bout with Affirmative Action*, COMMENTARY, Apr. 1992, at 50.
2. *See* Anthony T. Pierce et al., Op-Ed, *Degrees of Success: With Law School, Graduating Is the Test*, WASH. POST, May 8, 1991, at A31.
3. Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996).
4. CAL. CONST. art. I, § 31.
5. Washington State Civil Rights Act, WASH. REV. CODE ANN. § 49.60 (West Supp. 1999).

ethnic considerations was in fact extremely substantial, amounting in most cases to a flagrant double standard.[6]

Thus, the *Hopwood* case, for example, revealed that white students accepted to UT had been "overwhelmingly drawn from the very top of the national pool," but that to obtain more than a handful of African Americans, the school had been forced to reach down "well into the bottom half of the national pool."[7] Preference advocates had always claimed that minority candidates with weak academic qualifications nevertheless performed well at UT. But the effect of using such "radically different admission standards," according to the associate dean, was that "few of our Black students have been able to finish above the bottom quarter or third of the class in terms of law school grades."[8] Worse yet, while some 90% of UT's "non-minority students" passed the bar examination on their first try, the figure for blacks was "consistently under 50%."[9] Furthermore, half of the minority graduates who failed the bar exam flunked "again upon retaking."[10] Many preferentially admitted students who had devoted three years to studying the law, often going deeply in debt in order to do so, never developed the skills necessary to qualify for their chosen profession.

In the debate over preferences in higher education, opponents remained greatly disadvantaged as long as they were denied access to the facts. But once critics began to accumulate evidence that preferences did not work as advertised, supporters needed empirical information of their own. The gathering of such data was precisely the aim of *The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions*, by William G. Bowen and Derek Bok.[11] With preferences on trial, Bowen and Bok have written a brief on their behalf—designed not only to establish the

6. The relevant evidence available through the end of 1996 is summarized and evaluated in STEPHAN THERNSTROM & ABIGAIL THERNSTROM, AMERICA IN BLACK AND WHITE: ONE NATION, INDIVISIBLE 386–422 (1997). *See also* sources cited *infra* note 51.

7. Draft letter from Mark G. Yudof, Dean, University of Texas School of Law, to Clara Meek 3 (May 18, 1988) (on file with authors) (written by Guy Wellborn, Associate Dean). The associate dean was much more candid than his boss. Dean Yudof made a great many changes in the draft, all of them designed to obscure the painful truths set forth in the draft version.

8. *Id.*

9. *See id.* at 4.

10. *See id.*

11. WILLIAM G. BOWEN & DEREK BOK, THE SHAPE OF THE RIVER: LONG-TERM CONSEQUENCES OF CONSIDERING RACE IN COLLEGE AND UNIVERSITY ADMISSIONS (1998).

facts, but to lift the flagging spirits of preference advocates in the post-*Hopwood*, post–Proposition 209 era as well.

That the mood of preference advocates had indeed become dispirited was evident in the sigh of relief that greeted the book's publication. Although it is written in grey bureaucratic prose and is crammed with 147 tables and graphs, it has been treated as a major news event. Editorial writers and columnists in leading newspapers and magazines, as well as CBS, CNN, and NPR have hailed it with uncritical enthusiasm.[12] The *New York Review of Books* printed a lengthy two-part review by Ronald Dworkin that read like a publisher's press release.[13] The *New York Times* was not content with simply running a full-page news story and reprinting excerpts from the work itself. It also ringingly endorsed its conclusions in an editorial that claimed the study "provides striking confirmation of the success of affirmative action in opening opportunities and creating a whole generation of black professionals."[14]

Bowen and Bok do provide extensive new statistical information about the admissions preferences given to blacks in elite schools, their educational performance, and their subsequent career patterns.[15] Their findings do significantly advance the debate. Alas, however, the book is not an even-handed scholarly study. An assessment of the evidence upon which its authors base their main conclusions reveals many critical flaws.

I. BOWEN AND BOK: THE MAIN POINTS

In the preface to *The Shape of the River*, Bowen and Bok express their desire to "discover the facts . . . . It was important . . . to try to understand and come to terms with any disappointing results as

12. *See, e.g.*, Editorial, *Affirmative Action Works*, SEATTLE TIMES, Sept. 20, 1998, at B10; Mark Clayton, *A Case for Race-Sensitive Admissions*, CHRISTIAN SCI. MONITOR, Oct. 13, 1998, at 10; Mary Beth Marklein, *Black Grads Achieve More*, USA TODAY, Sept. 10, 1998, at 10D; Mary Beth Marklein, *Shaping an Argument for Race-Sensitive College Admissions*, USA TODAY, Sept. 24, 1998, at 8D; Rob Morse, *Firm Facts on Affirmative Action*, S.F. EXAMINER, Sept. 11, 1998, at A2; Clarence Page, *A Reassuring Voice in the Race Debate*, CHI. TRIB., Sept. 16, 1998, § 1, at 17; William Raspberry, *New Light on "Diversity,"* WASH. POST, Oct. 2, 1998, at A27; Garry Wills, *The Results of Affirmative Action*, PLAIN DEALER (Cleveland), Sept. 11, 1998, at 11B.

13. Ronald Dworkin, *Affirming Affirmative Action*, N.Y. REV. BOOKS, Oct. 22, 1998, at 91 (book review); Ronald Dworkin, *Is Affirmative Action Doomed?*, N.Y. REV. BOOKS, Nov. 5, 1998, at 56 (book review).

14. Editorial, *The Facts About Affirmative Action*, N.Y. TIMES, Sept. 14, 1998, at A32; *see also* Ethan Bronner, *Study Strongly Supports Affirmative Action in Admissions to Elite Colleges*, N.Y. TIMES, Sept. 9, 1998, at B10; Brent Staples, *When a Law Firm Is Like a Baseball Team*, N.Y. TIMES, Nov. 27, 1998, at A1.

15. *See* BOWEN & BOK, *supra* note 11.

well as to learn from positive outcomes."[16] And in the end, they discovered "an educational process that . . . turned out to be even more subtle and complicated than [they] had imagined it to be when [they] began [their] research."[17]

Happily it was a "subtle and complicated" educational process that yielded no "disappointing results" with which they had to come to terms.[18] None of the arguments advanced by the many critics of racial preferences proved to have any merit at all. What they call "racially sensitive" admissions policies were an unqualified success.[19]

The minority students accepted at elite institutions were well qualified, they argue. Race was only one of a great many factors that admissions officers quite properly took into account. On the other hand, if these schools had used race-blind admissions procedures, black enrollments would have declined precipitously and diversity would have disappeared. The preferences were more modest than many had claimed, but many black students needed them to survive the final cut.

Most preferentially admitted students collected diplomas, and were thus academically successful, the authors conclude. They found no evidence that black undergraduates felt stigmatized by the racial double standards used to admit them. They were happy with the schools they had chosen. An impressive proportion went on to do graduate work and to enter well-paying occupations. Furthermore, they became unusually active in civic affairs and played key leadership roles both within the black community and in the larger society. Indeed, the economic success and social commitment they owed to their elite educations made them "the backbone of the emergent black and Hispanic middle class."[20]

Preferential policies are not only indispensable to the advancement of African Americans, Bowen and Bok contend. They also have a highly positive effect on all students, as shown by the number of friendships across racial lines and the high level of white support for diversity policies.

16. *Id.* at xxv.
17. *Id.*
18. *See id.* at 275–90.
19. We will return to the question of terminology below. *See infra* Part III.
20. BOWEN & BOK, *supra* note 11, at 116.

If true, these are important contentions. It may be correct that this "massive defense of race preferences in university admissions . . . will become a primary source in every debate and lawsuit involving affirmative action for the next decade, and maybe longer."[21] Thus, it will be useful to subject to careful scrutiny the evidence and reasoning the authors offer in defense of each of these propositions.

II. The Politics of Access

If you are inclined to believe that policies are best evaluated by those who design and implement them, Bowen and Bok are superbly qualified for the task they set themselves. They were present at the beginning of preferential policies a generation ago and presided over their implementation in two schools that rank at the very top of the prestige ladder. William Bowen was provost at Princeton University from 1967 to 1972 and then president until 1988, when he became head of The Andrew W. Mellon Foundation. Derek Bok served as dean of the Harvard Law School from 1968 to 1971 and then as president of Harvard University for twenty years.

In *The Shape of the River*, they evaluate the effectiveness of the preferential policies for which they were primarily responsible at the two institutions they governed.[22] The authors concede that they both had "worked hard, over more than three decades, to enroll and educate more diverse student bodies."[23] Nevertheless, they say, they "were far from certain what the data would reveal" when they began their study.[24]

Perhaps. But it must have occurred to them that it would have been acutely embarrassing if their evidence had revealed that racially preferential admissions policies had not achieved their objectives or had produced unanticipated negative consequences. Critics would have legitimately asked why they had never studied the matter before. At any time in the many years they spent in charge of two fabulously wealthy universities, either one could have commissioned a careful analysis to assess precisely how race-conscious admissions had worked at their own institutions. They did

21. Peter Schrag, *Muddy Waters*, AM. PROSPECT, Mar.–Apr. 1999, at 82, 82.
22. *See* BOWEN & BOK, *supra* note 11, at xxiii–xxvii.
23. *Id.* at xxiv.
24. *Id.* at xxv.

not do so, however, and were thus left with the strongest incentive for giving high marks to a vital part of their own legacy as leaders in American higher education.

The authors had unique advantages that other scholars are unlikely to have in the future. The deep pockets of the Mellon Foundation provided virtually unlimited financial resources. Even more important was their access to student records that schools have never made available to investigators before. Why did these institutions cooperate with Bowen and Bok in the project? It is reasonable to surmise that university administrators agreed to contribute to the foundation's "restricted access database" because they knew preferential policies had come under serious attack, and were confident that the authors could be trusted to view the evidence in the most favorable possible light.

In doing research for our book, *America in Black and White*, we had quite a different experience. We knew that SAT scores broken down by race at many of the nation's leading colleges and universities were in the possession of the Consortium on Financing Higher Education. In theory, the Consortium's data are available for research by faculty members at any member school. Although one of us is a professor at Harvard, a member institution, our request was flatly denied.

That the data upon which *The Shape of the River* rests are apparently available only to totally trusted insiders obviously compromises the search for truth.[25] If the only medical records available to determine whether cigarette smoking causes lung cancer had been controlled by the tobacco companies, and if the companies had given access only to scholars who doubted the link, scientific progress in resolving the issue would surely have been impeded. Furthermore, it is common for scholars involved in large-scale social science research projects to make the data available for reanalysis by other scholars. A classic example is James S. Coleman's 1966 report on educational achievement, which spawned many other publications that utilized his raw material to draw quite different conclusions.[26] *The*

25. This criticism is well developed in Robert Lerner's *The Empire Strikes Back*, *in* THREE VIEWS OF THE RIVER 3, 22–23 (Center for Equal Opportunity ed., 1998).

26. JAMES S. COLEMAN, U.S. DEP'T OF HEALTH, EDUC., AND WELFARE, EQUALITY OF EDUCATIONAL OPPORTUNITY (1966). For some of the reanalysis, see ON EQUALITY OF EDUCATIONAL OPPORTUNITY (Frederick Mosteller & Daniel P. Moynihan eds., 1972). Another example is Robert William Fogel and Stanley L. Engerman's study of slavery. *See* ROBERT WILLIAM FOGEL & STANLEY L. ENGERMAN, TIME ON THE CROSS: THE ECONOMICS OF AMERICAN NEGRO SLAVERY (1974). The Fogel-Engerman data set was the source of a large critical literature; for a

Shape of the River, with its "restricted access database,"[27] cannot be subjected to searching critical scrutiny of this kind. As a result, critics of the work are limited to the information the authors have chosen to put forward, and must work with the categories that they employ.[28]

III. EUPHEMISM 101: "RACIALLY SENSITIVE" POLICIES

The Shape of the River's title is drawn from a well-known passage in Mark Twain's *Life on the Mississippi*, which notes that the river's steamboat pilots needed to understand "all the million trifling variations of shape in the banks of this interminable river as well

sampling, see PAUL A. DAVID ET AL., RECKONING WITH SLAVERY: A CRITICAL STUDY IN THE QUANTITATIVE HISTORY OF AMERICAN NEGRO SLAVERY (1976).

27. BOWEN & BOK, *supra* note 11, at xxviii.

28. In theory, the data are now available for use by some scholars. But the Mellon Foundation's guidelines spelling out the application procedures to be followed by interested researchers lead us to expect that any applicant with our views would receive the same negative reception we got from the Consortium on Financing Higher Education. *See* Andrew W. Mellon Foundation, Policies Concerning the College and Beyond Database (Aug. 27, 1998) (on file with authors).

The foundation stresses that "the data were obtained from the participating institutions and the surveyed individuals under conditions of strictest confidentiality," *id.* at 1, and spells out detailed security procedures that would seem more appropriate for the Manhattan Project than for studies of contemporary college life. If those who stand at the helm of our elite institutions of higher education today are as proud as they claim to be of the preferential policies they pursue, why are they so obsessed with preserving confidentiality? For all of their rhetoric about their invaluable contribution to public life, they are remarkably secretive about how they select their students.

The guidelines specify that investigators "must be persons of the highest integrity," whose research will be "of the highest quality." *Id.* at 1, 3. One wonders if there is a political test one must pass to measure up to these subjective standards.

The foundation will provide access only when the research in question "promises to bring substantial 'added value' to other research that has been done or is in progress," so that "all research done with the College and Beyond (C&B) database will form a research agenda that is at least broadly coordinated." *Id.* at 3. Translation: If you want to lay your hands on this evidence, you better get with the program. Would research by investigators critical of preferential policies be deemed likely to bring enough added value, and to fit properly in the foundation's research agenda?

Perhaps most striking, the guidelines say that

> Requests for access to the data for the purpose of replicating results developed by other researchers [that is to say, Bowen and Bok] must go beyond a general desire to recheck results; they should instead offer sound reasons for believing that there is a likelihood of error or misinterpretation in the work of others, or that the . . . result of one researcher contradicts the result of another, or that certain results are so counterintuitive as to be in need of further verification and/or clarification.

Id. at 3–4. Would an application that sought to evaluate some of the criticisms of *The Shape of the River* set forth in the present article be judged inappropriate as motivated by nothing more than a general desire to recheck results? That would seem to be the import of the guideline.

Researchers who sought access to the James C. Coleman and the Fogel-Engerman data mentioned *supra* note 26 did not have to penetrate an Iron Curtain like this one. Robert Lerner, a sociologist who has frequently worked with highly confidential data in the possession of the federal government, informs us that he has never encountered a body of evidence held under such highly restrictive control.

as [they knew] the shape of the front hall at home."[29] Evidently, higher education is a tricky river that students navigate with the guidance of "pilots" who seem to be "the parents of prospective students, the high school counselors, college admissions officers, faculty members, and administrators, trustees, and regents responsible for setting policies."[30]

The analogy is impenetrable (is each student a boat on which all these pilots stand?), but the basic point seems clear. Like a river, "[t]he college admissions process and the educational experience that follows it are . . . complex."[31] Those who adhere to "[t]he myth of pure merit," and who believe that the best schools should only accept "book smart, test smart" students, are trying to turn tricky waters into a smooth and straight stream.[32] Those who have never stood at the helm of a great paddle-wheeler naively think that the nation's future leaders can be selected by "a series of formulaic calculations" based on test scores and high school grades.[33] In fact, each bend in the educational river is a little different from all the others; admitting students, they tell us, is "an eclectic and interpretive art" that requires "judgment, experience, and perhaps even accumulated wisdom."[34]

College admissions may be an "art," but Bowen and Bok do not argue for an individualized process that gives less weight to the measurable academic achievement of applicants—if those applicants are white or Asian. Unlike many current defenders of racial preferences, they do not favor junking the SATs altogether. They simply want different standards for different students, depending on the color of their skin.

They do not say so candidly, however. It is revealing and regrettable that Bowen and Bok cannot bring themselves to describe the policies they favor as racial preferences. It is very important, they write, to avoid such "highly charged words" as "preference," "merit," and "achievement."[35] Instead, they delicately describe the

29. BOWEN & BOK, *supra* note 11, at v.
30. *Id.* at xxii.
31. *Id.* at xxi.
32. *See id.* at 51.
33. *See id.* at 52.
34. *See id.* Roger Clegg's essay, *Old Man Quota*, *in* THREE VIEWS OF THE RIVER, *supra* note 25, at 29, 29, also questions the metaphor. But it nicely illuminates, he says, the "fatal conceit [of the academic elite] that it can know and manage everything. . . . Through the college admissions process, Bowen and Bok see themselves as engineering lives and even society itself." *Id.*
35. *See* BOWEN & BOK, *supra* note 11, at xxiii.

process they advocate as "racially sensitive." "Preference" suggests unfair double standards, but who can deny the need for sensitivity?

It is a blatantly evasive strategy. When varsity athletes or the children of alumni are given preferences by admissions officers, no one talks about "alumni-sensitive" or "sports-sensitive" policies. Most selective private colleges in the United States once had Jewish quotas, but at least no one argued that to admit white Anglo-Saxon Protestants and Jews by different academic standards was "religiously sensitive."[36] Racial preferences, too, call for straight talk. Serious scholarly discourse demands no less.

IV. The Missing Context

The core of the Bowen and Bok study is information gleaned from a database that they call "College and Beyond" or "C&B." Assembled by the Mellon Foundation in the years 1995 to 1997, it contains data on approximately 30,000 students who began their studies at one of twenty-eight leading colleges and universities in 1976, and more than 32,000 who did likewise in 1989. Data were also gathered about freshmen entering these schools in 1951, to which little reference is made.[37] Twenty-four of the twenty-eight institutions were private, just four of them public. The authors divide the schools into three classes on the basis of their selectivity (SEL), as measured by the mean combined SAT scores of their matriculants.[38]

The most selective schools—SEL-1, they call them—include Princeton, Stanford, Williams, and Yale. (Harvard is not included in the study for unspecified reasons.) The SEL-2 group consists of schools like Columbia, Northwestern, the University of Pennsylvania, and Tufts. Only at the SEL-3 level do we find any public institutions—the University of North Carolina at Chapel Hill, the Ann Arbor campus of

36. *See* Marcia Graham Synnott, The Half-Opened Door: Discrimination and Admissions at Harvard, Yale, and Princeton, 1900–1970, at 225–31 (1979).

37. As Lerner points out, the choice of the three dates is somewhat odd. The first group of students for whom Bowen and Bok have data entered college before *Brown v. Board of Education*, 347 U.S. 483 (1954), was decided, and before the mobilization of the civil rights movement that culminated in the 1964 Civil Rights Act and the 1965 Voting Rights Act. A more sensible starting point might have been 1966, when black college enrollment was surging but before the advent of race-conscious admissions. The authors might then have been better able to assess the impact of racial preferences. *See* Lerner, *supra* note 25, at 5.

38. It is curious that, despite the authors' dismissive comments about selecting students by means of "formulaic calculations," Bowen & Bok, *supra* note 11, at 52, their sole basis for determining which schools qualified as SEL-1, -2, or -3 was the average SAT scores of their students.

the University of Michigan, Pennsylvania State, and Miami University of Ohio.[39]

The twenty-eight schools are presumed to be typical of selective colleges and universities, but the sample is heavily weighted towards the most highly selective, SEL-1 and -2 institutions. More than half of the freshmen in the study's 1976 sample attended schools in the top two categories, even though such schools, by the authors' own calculations, represented only 18% of total enrollment in selective colleges in the nation as a whole.[40] (Moreover, because there are over 3700 institutions of higher education in the United States, most of which require nothing of applicants but a high school diploma and the ability to pay the tuition, the selective colleges are themselves but a tiny fraction of a very large universe.)[41] The generalizations offered about the effects of preferential policies in selective schools are thus heavily skewed towards the most difficult to get into, almost all of them wealthy and private. In fact, large and impersonal SEL-3 state institutions like the University of Michigan and Penn State educate more than four times as many students as SEL-1 and -2 schools like Yale, Swarthmore, and Wesleyan.

Furthermore, although twenty-eight schools provided data for this study, the statistical base is even narrower at key points. For reasons not adequately explained, much of the detailed analysis of admissions decisions is based upon records from just five of these schools. The authors say they could not identify the specific schools because they had promised confidentiality, but maintain that the five were "roughly representative" of the twenty-eight schools that made up the C&B database.[42] Very roughly at best, we would say, because not one of them was a public institution. It is not even clear if any were in the SEL-3 category.

The authors do not claim that the universe they examine is the whole of higher education or anything like it. But running through their work is the assumption, perhaps not surprising from two former presidents of Ivy League colleges, that it is only the elite schools, chiefly the elite private schools, that really matter. One would not know from reading this book that in 1989, the year of their latest

39. The full list of schools in each category is supplied in BOWEN & BOK, *supra* note 11, at 339 tbl.B.1.

40. *See id.* at 295 tbl.A.2.

41. *See* BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 191 tbl.306 (1998) (indicating that in 1995, there were 2244 four-year institutions of higher education and another 1462 two-year schools in the United States, for a total of 3706).

42. *See* BOWEN & BOK, *supra* note 11, at 17 & n.4.

sample, just 14% of all American college students, and a mere 9% of all those who were black, were enrolled in *any* private four-year college or university.[43] Furthermore, even the small fraction of African Americans attending private schools were mostly at institutions with minimal admissions requirements and hence no need for preferential policies at all.[44] Substantial numbers were enrolled in the approximately 100 historically black colleges and universities (HBCs) in the nation, most of which accept practically all applicants.[45] As we will note later, Bowen and Bok ignore—indeed, deliberately neglect—these important historically black schools.[46]

The extremely narrow focus of their study is also apparent from a National Center for Education Statistics study of 1982 high school graduates. It found that only 10.1% of all college-bound seniors enrolled in a selective school; for blacks the figure was just 5.3%, for Hispanics 7.7%.[47] Elite institutions are certainly worth careful study, but we should not mistake this small tributary for the entire river.[48] Bowen and Bok exaggerate their importance in American society as a whole, and in the lives of black Americans, specifically.

The primary focus on elite private institutions results in another serious limitation. The authors barely mention Hispanics, a minority group that has grown so rapidly that it now outnumbers the

43. 1 THE AFRICAN AMERICAN EDUCATION DATA BOOK: HIGHER AND ADULT EDUCATION 184 (Michael T. Nettles ed., 1997) [hereinafter THE AFRICAN AMERICAN EDUCATION DATA BOOK].

44. *See* Clifford Adelman, *The Rest of the River*, U. BUS., Jan.–Feb. 1999, at 42, 44–45. In 1995, four out of ten American colleges were two-year institutions, essentially open to all who wished to enroll. *See* BUREAU OF THE CENSUS, *supra* note 41, at 191 tbl.306. Of the remaining 2200, 800 were unaccredited and had the most minimal admissions requirements. The remaining 1600 were ranked by *U.S. News & World Report* from most to least selective, based on the test scores, high school ranking of their students, their acceptance rate, and their yield. *See Directory of Colleges and Universities*, U.S. NEWS & WORLD REP.: AMERICA'S BEST COLLEGES, 1998, at 113, 114, 115–280. *U.S. News & World Report* does not tabulate how many schools fall into each category, but browsing through random pages indicates what a very small fraction of the education universe is considered in *The Shape of the River*.

45. In the 1989–90 academic year 24,616 black students began their freshmen year at a historically black college or university (HBC), more than 11 times as many as entered any of the Bowen and Bok elite schools. The HBCs accounted for 11.2% of total African-American college enrollment, and fully 25% of enrollments by those who planned to obtain a bachelor's degree. *See* THE AFRICAN AMERICAN EDUCATION DATA BOOK, *supra* note 43, at 186. The low level of selectivity of the HBCs may be gauged from *U.S. News & World Report*. *See Directory of Colleges and Universities*, *supra* note 44. In 1998, no HBC in the country ranked in either of the top two selectivity categories, "more selective" and "most selective." For further discussion of this point, see *infra* note 124.

46. *See infra* Part XI.

47. *See* Adelman, *supra* note 44, at 44.

48. An analogy is perhaps useful. Private elementary and secondary schools educate 11.1% of all pupils in the nation. *See* BUREAU OF THE CENSUS, *supra* note 41, at 161 tbl.250. They are significant in American educational life, but a study of elementary and secondary education that focused exclusively on them would not reveal much about the system as a whole. For another critic who finds Bowen and Bok's book "parochial," see Martin Trow, *California After Racial Preferences*, PUB. INTEREST, Spring 1999, at 64, 65.

African-American population among those of school age.[49] Bowen and Bok doubtless believe that preferential policies were initiated to remedy problems rooted in the historic oppression of African Americans, and that the real test of their efficacy is their impact on black students. But the policies they recommend are not restricted to blacks, and they do not advocate that they should be. That Latinos are missing from their account perhaps reflects the East Coast insularity of the authors. They look at only two schools (Rice and Stanford) in the region in which two-thirds of all Hispanic Americans live.

Whatever the failings of the American educational system, opportunities for higher education are more widely available here than in any other place in the world. Today, six out of seven African Americans graduate from high school, a rate nearly identical to that for whites, and a little over half of all black high school graduates go on to college. The comparable proportion for whites is about two-thirds, a relatively modest difference given the huge racial gap in academic achievement among high school seniors.[50] Decisions made in admissions offices at places like Princeton, Wellesley, Oberlin, and other selective institutions of the kind Bowen and Bok study do little to shape the overall structure of opportunity in higher education. It is regrettable that Bowen and Bok make so little attempt to place the institutions they study in the national context.

V. THE WEIGHT GIVEN TO RACE

How much of an edge is given to black applicants to selective schools because of their race? Diversity advocates have long claimed that schools use race as only one of many factors—that they give

49. The Census Bureau projects that in the year 2000 there will be some 11,033,000 Hispanic Americans age 17 or younger, as compared with 10,605,000 African Americans age 17 or younger. *See* BUREAU OF THE CENSUS, *supra* note 41, at 26 tbl.25.

50. According to a 1997 Current Population Survey, 86.2% of African Americans age 25–29 were high school graduates, as compared with 87.6% of whites. Some 54.2% of the black high school graduates in that age group had attended college, as compared with 66.2% of whites. For the data on which these calculations were based, see U.S. BUREAU OF THE CENSUS, NO. PPL-87, EDUCATIONAL ATTAINMENT IN THE UNITED STATES: MARCH 1997, at 2 tbl.1 (1998). Because the National Assessment of Educational Progress (NAEP) studies regularly show black 17-year-olds performing on the average at the same level as whites and Asians in the eighth grade, it is impressive that the black college attendance rate is as high as it is. Racial disparities in NAEP scores through 1994 are analyzed in THERNSTROM & THERNSTROM, *supra* note 6, at 348–85. For more recent data, see NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEP'T OF EDUC., NAEP 1996 TRENDS IN ACADEMIC PROGRESS 352 (1998). *See also* THE BLACK-WHITE TEST SCORE GAP (Christopher Jencks & Meredith Phillips eds., 1998).

black applicants only a small boost in the competition for admission. Critics of preferential policies, on the other hand, maintain that race is of decisive importance, and point out that the combined verbal and math SAT scores of black students admitted to selective schools are often 150 or more points below those of their white and Asian peers.[51]

How significant is that gap? Bowen and Bok argue that average black and white SAT scores are "poor indicators of the degree of preference given to minority students."[52] Because black scores are concentrated in the lower ranges, even a school with race-neutral admissions will have a substantial racial gap. A high proportion of the admitted black students will have met only the minimal academic requirements, and few will be in the upper reaches of the distribution. As a consequence, the impact of preferences has not been nearly as great as the racial difference in average SAT scores might make us think.[53] Whatever the formula for admission, there would be a racial gap in those scores—given the fact that the median score for the two groups differs dramatically.

Bowen and Bok are partially right. Given the difference in average SAT scores, the racial gap at the elite schools would not entirely disappear with race-neutral admissions. Nonetheless, that very large gap at their C&B schools cannot be dismissed as a statistical artifact. Race-based admissions clearly widen the disparity significantly.[54] Consider the five private schools Bowen and Bok studied intensively. Among applicants for admission in 1989

51. *See* THERNSTROM & THERNSTROM, *supra* note 6, at 408 tbl.9 (showing the scores for 1992 freshmen at 13 selective institutions). Such evidence is closely guarded and is very difficult to obtain. However, the Center for Equal Opportunity (CEO) has been using state freedom of information laws to obtain the data from public institutions in several states. Eight reports are now available, examining Virginia, Washington, North Carolina, Michigan, Colorado, the U.S. service academies at West Point and Annapolis, the University of California at Berkeley, and the University of California at San Diego. Racial double standards of this order of magnitude have turned up everywhere that the CEO has looked. At the University of Colorado at Boulder, for example, the average black freshman had an SAT score 205 points below that of his or her white classmates. CEO reports are available at Center for Equal Opportunity, *Publications* (visited Apr. 20, 1999) <http://www.ceous.org/racepub.html>.

52. BOWEN & BOK, *supra* note 11, at 17.

53. *See id.* at 18–23.

54. Lerner offers an excellent discussion of this point in *The Empire Strikes Back*. *See* Lerner, *supra* note 25, at 9–11. The size of the black-white difference in mean scores, he argues, is itself a useful indicator of the extent of racial preferences, even if it is imperfect. Common sense tells us that the larger the difference, the more likely that racial preferences played a part in admissions because such preferences lower the average black score and grade point average (GPA) from what they would have been under a race-neutral system. "When racial preferences are removed, the differences in test scores and grades may not vanish totally but they will decline substantially." *Id.* at 9. All statistical studies of discrimination have a common problem: the somewhat arbitrary nature of the decision that X difference in mean scores provides strong evidence of preferential treatment (i.e., discrimination).

with SAT scores from 1200 to 1249, 19% of whites and 60% of blacks were admitted; in the next bracket up (1250–1299), 24% of whites and 75% of blacks were accepted.[55] Among applicants with near-perfect scores (1500 or better), over a third of whites were turned down, but every single black got in. Indeed, black students with scores of 1200–1249 were nearly as likely to be accepted at Bowen and Bok's five institutions as whites with scores of 1500 or better! Under race-neutral admissions, clearly the picture would be quite different.

Indeed, any company that hired or promoted *whites* over blacks in proportions like these would be inviting a discrimination suit that the plaintiffs would find easy to win.[56] But what impresses the authors, oddly enough, is not the magnitude of the racial disparity. Instead, they note that neither all whites nor all blacks (except those in the 1500-and-up bracket) got in, and conclude that many factors in addition to race entered into the admissions decisions.[57] But if race was not a very big part of the story, then what is the explanation for a black acceptance rate triple that for whites in the 1200–1249 and 1250–1299 SAT brackets? Justice Powell in *Bakke* had sanctioned the use of race as one of many considerations—little more than a tie-breaker.[58] These schools clearly do not conform to the *Bakke* standard; for many black students, race is *the* controlling factor that decides their admission.

Although their own evidence reveals that black students gained entry to elite educational institutions with much weaker academic records than many whites and Asians who were turned down, the authors insist that these preferred students nevertheless possessed "strong academic credentials" and were not "deficient by any national standard."[59] The problem, they say, is not a paucity of well-qualified African-American students, but rather the abundance of superqualified whites and Asians—students who are so "spectacularly well qualified," so "extraordinary" that even very strong black applicants would lose out if judged by the same strict standard.[60]

It is hard to take this argument seriously. Words like "strong" and "deficient" are obviously relative terms; whether you are a strong or a deficient student depends entirely upon the frame of reference.

55. *See* BOWEN & BOK, *supra* note 11, at 27 fig.2.5.
56. *See* FARRELL BLOCH, ANTIDISCRIMINATION LAW AND MINORITY EMPLOYMENT *passim* (1994).
57. *See* BOWEN & BOK, *supra* note 11, at 26–27.
58. *See* Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 317–18 (1978).
59. BOWEN & BOK, *supra* note 11, at 256–57.
60. *See id.* at 19, 257.

An academically strong student in one context will nonetheless be deficient in academic skills in another.

Bowen and Bok do agree that context is important, but suggest that critics of preferences use the wrong frame of reference. African-American students admitted to elite institutions in 1989, they note, had SAT scores slightly higher than the average for all students who enrolled in these schools *back in 1951*, when they were almost entirely white.[61] Therefore, they say, graduates of that vintage "should have no reason to question the qualifications of the black students of today!"[62]

But unless you make the manifestly erroneous assumption that the competition for entry into these schools has not increased since 1951, their conclusion does not follow. Applicants in 1989 were not competing with those who sought admission in 1951, when the elite colleges drew their students from a limited social stratum, did little national recruiting, and had dramatically lower admissions standards. Today, the academic skills required to be a serious contender for admission to such schools must be much stronger. We doubt that Bowen and Bok believe that a high school runner would be a superbly qualified candidate for the college track team today if his best time would have assured him a place on the varsity in 1951.

The authors make a second point with respect to context that is equally strained. To show that preferentially admitted students are not "deficient by any national standard," they note that three-quarters of the African Americans applying to the highly selective schools in 1989 had higher SAT scores than the *national average* for all white test takers that year.[63] But again, the comparison is utterly irrelevant. These are not schools for students with academic skills that are only a bit above average. Rather, they are among the most highly selective and competitive campuses in the country. Their white applicants in 1989 had average SAT scores in the top 8% of all test takers on the verbals and the top 9% in math. In fact, the whites and Asians they actually accepted ranked in the top 3% to 4%.[64] Black students with SATs at the seventy-fifth percentile who get into schools at which the average white or Asian is at the ninety-sixth

61. *See id.* at 30 fig.2.6.

62. *Id.* at 30. The review that appeared in *The Nation* unaccountably found this comparison "very clever." *See* David Karen, *Go to the Head of the Class*, NATION, Nov. 16, 1998, at 46, 47–48 (book review).

63. *See* BOWEN & BOK, *supra* note 11, at 18-19.

64. *See id* at 375 tbl.D.2.1, 350 tbl.B.4.

percentile or above are fairly strong students by a "national standard," but they are indisputably weak by the standards of the school they will be attending.

VI. RACE-NEUTRAL STANDARDS AND THE RACIAL MIX

Bowen and Bok minimize the magnitude of racial preferences at the highly selective schools. At the same time, however, they stress the calamitous reductions in minority enrollments that would result from a race-blind process. The two arguments are simply incompatible.

Removing race as a consideration in admissions would have an impact on enrollment at elite colleges, especially at the very top schools, although it would have no effect on the vast majority of African-American students who do not attend such selective institutions. But even with respect to the C&B schools, Bowen and Bok exaggerate the potential impact of race-neutral policies. They estimate that if students had been admitted in 1989 to SEL-1 schools simply on the basis of SAT scores, 73% fewer blacks would have been enrolled. At SEL-2 institutions, the drop would have been 52%, and at SEL-3 schools, 32%.[65]

These dire enrollment estimates are of little relevance to the current debate, however, because they depend on a peculiar and indefensible definition of a "race-neutral" policy as one that admits students purely on the basis of their standardized test scores. No proponent of race-neutral or color-blind admissions advocates this. Neither the *Hopwood* decision nor Proposition 209 or Initiative 200 bars admissions officials from taking social class and other extra-academic variables into account, even when those variables are correlated with race and disproportionately benefit African-American applicants.

In fact, it is odd that the authors suddenly should have made such an assumption. In a separate discussion, when they sought to minimize the extent of racial preferences involved in current admissions policies, they acknowledged the importance of other criteria in the

65. *See id.* at 41 fig.2.11. Although the discussion in the text does not make it clear, these estimates are based on *verbal* SAT scores alone. The appendix table in which the calculations appear, *see id.* at 350 tbl.B.4, indicates that if *math* SAT scores were used instead, the drop in black enrollments would be appreciably higher—58.5% rather than 49.3% for the entire sample, and 80.0% rather than 73.2% at SEL-1 schools. Because it is sometimes asserted that verbal tests are culturally biased against minorities, it is interesting to note that African Americans are even less well represented at the top of the distribution of the math SATs than they are among top scorers on the verbal portion of the exam. Presumably mathematics questions are more culture free than ones designed to test verbal skills.

admissions process—athletic and musical ability, for instance, as well as socioeconomic disadvantage and leadership skills.[66] The assumption that elite schools rely on more than just test scores and grades in making admissions decisions is obviously correct. Bowen and Bok thus mislead the reader when they rely solely on SAT scores to estimate changes in enrollment in the absence of racial preferences.

Nevertheless, using race-neutral academic criteria would undoubtedly mean a substantial decline in black admissions at the elite undergraduate schools. How substantial? At the five schools they look at closely, the authors predict a drop in black enrollment of 49% if admissions officers are allowed to accept students on the basis of athletic ability (and other race-correlated qualities) but cannot make racial identity the determining factor.[67] The calculation is not necessarily reliable. The authors are unable to demonstrate that these five institutions are representative of the large group of twenty-eight schools, much less of the still larger universe of selective colleges. To the extent that the 49% is indeed accurate,

66. *See id.* at 42–44. Although the typical black students attending C&B schools came from middle-class homes, the authors demonstrate, they were still more likely than whites to benefit from any breaks given on the basis of socioeconomic disadvantage. *See id.* at 341 tbl.B.2. Perhaps more important is the strong correlation between athletic ability and race in the applicant pool of selective institutions. They employ markedly lower admissions standards in judging varsity athletes and provide them with full financial support. It happens that blacks get a highly disproportionate share of these slots. At Stanford, Duke, Northwestern, and seven other C&B schools for which published data are available for 1997, African Americans held 19.6% of the athletic scholarships even though they were just 6.2% of the total student body. Students on athletic scholarships accounted for nearly a tenth of total black enrollments at these schools. *See* NAT'L COLLEGIATE ATHLETIC ASS'N, 1997 NCAA DIVISION I GRADUATION-RATES REPORT (Marty Benson ed., 1997).

The substantial presence of black athletes on campus may be an important part of the reason that Bowen and Bok estimated that eliminating race as a factor in admissions but continuing to use extra-academic criteria would do little to narrow the racial gap in SAT scores. The average score of those who would have been rejected would be only 36 points lower than the score of those accepted, they calculate. *See* BOWEN & BOK, *supra* note 11, at 42. Putting athletes with very weak academic records into the category of those who would have been admitted under race-neutral standards pulls down the average score of the group, and minimizes the difference between the accepted and rejected groups.

Bowen and Bok admit that if they had followed their earlier method and estimated the SAT gap by assuming admissions based on test scores alone, the gain in the average score of admitted blacks would have been "much greater." *See id.* at 43. Their failure to specify precisely how much greater makes it more likely that readers will miss the changed meaning they give to "race-neutral" at this point.

The authors equate race-neutral standards with SAT-determined standards in projecting the decline of black enrollment. But when they seek to counter the argument that applying higher academic standards to black applicants will improve their average quality and narrow the racial gap on campus, they redefine race-neutral standards so as to allow the continued enrollment of large numbers of black students with marginal academic qualifications but other strengths. *Compare id.* at 41 *with id.* at 42–43. They try to have it both ways by playing fast and loose with definitions. For evidence that the use of race-neutral standards at the University of California at Berkeley has closed the racial gap in SAT scores far more than Bowen and Bok's estimates, see *infra* note 168.

67. *See* BOWEN & BOK, *supra* note 11, at 42.

however, Bowen and Bok confirm precisely what critics have always maintained: Preferences really are preferential.

VII. THE MINORITY MISMATCH THEORY

Except in the publicly funded institutions of higher education in California, Texas, and Washington, racial preferences are ubiquitous. Bowen and Bok argue that they are fair (only well-qualified black students benefit), necessary (the alternative is a calamitous drop in black admissions), and efficacious. That is, they work. Once admitted, black students with weaker academic records do well. The authors see nothing "disappointing" in the academic performance of students whose race made the difference between acceptance and rejection.[68] Not many flunk out. Almost eight out of ten of the black students in the C&B schools graduated, double the national average for African Americans. At the elite within this elite, the SEL-1 colleges, nearly nine out of ten collected diplomas.[69]

Opponents of racial preferences, however, have long argued that racial double standards "mismatch" minority students with institutions, placing them in competitive academic settings for which they are ill-prepared.[70] Bowen and Bok's findings would seem to challenge that

68. *See id.* at 256.

69. *See id.* at 376 tbl.D.3.1, 378 tbl.D.3.2.

70. For a classic statement of the theory, focused on law school admissions, see Clyde W. Summers, *Preferential Admissions: An Unreal Solution to a Real Problem*, 1970 U. TOL. L. REV. 377. Summers notes that it does not increase the supply of black attorneys for the Harvard and Yale law schools to admit African Americans under distinctly lower standards.

> The minority students given such preference would meet the normal admissions standards at Illinois, Rutgers or Texas. Similarly, minority students given preference at Pennsylvania would meet normal standards at Pittsburgh; those given preference at Duke would meet normal standards at North Carolina, and those given preference at Vanderbilt would meet normal standards at Kentucky, Mississippi and West Virginia. . . . In sum, the policy of preferential admission has a pervasive shifting effect, causing large numbers of minority students to attend law schools whose normal admission standards they do not meet, instead of attending other law schools whose normal standards they do meet.

Id. at 384. There are heavy costs to such shifting, Summers argues, most of them paid by the beneficiaries of preferences. Many minority students, he notes, have "social and psychological problems" that are "acute" in the law school environment "even under the best of circumstances. Those problems are multiplied if the student is not prepared to compete academically on even terms with other students because society has cheated him in his educational and cultural opportunities." *Id.* at 385. Summers further spells out the costs to minority students. *See id.* at 395–97. For an equally incisive and prescient statement from the same perspective, see THOMAS SOWELL, BLACK EDUCATION: MYTHS AND TRAGEDIES (1972), particularly Part II, *Black Students in White Colleges*. More recent accounts stressing the costs of preferential policies, based partly upon the personal experiences of the authors, include STEPHEN L. CARTER, REFLECTIONS OF AN AFFIRMATIVE ACTION BABY (1991), SHELBY STEELE, THE CONTENT OF OUR CHARACTER: A NEW VISION OF RACE IN AMERICA (1990), and SHELBY STEELE, A DREAM DEFERRED: THE SECOND BETRAYAL OF BLACK FREEDOM IN AMERICA (1998). Statistical evidence supporting this position is provided in THERNSTROM & THERNSTROM, *supra* note 6, at 386–422.

argument. If the preferentially admitted students were indeed mismatched, the dropout rate for blacks should be higher at Yale than at a less selective school. And yet, the authors show, the top schools in fact do best at retaining their students.

Hold SAT scores constant, and the point is clear. Among the 1989 black freshmen with combined SAT scores under 1000, for example, 88% of those in SEL-1 schools earned diplomas, as compared with 75% of those at SEL-2 schools and 65% of those at SEL-3 schools. Black students with academic skills that were barely above the national average for all SAT takers were more likely to make it through Williams College than through Tulane or Penn State.[71]

The discovery that the black graduation rate is highest at the most competitive schools only marginally modifies the minority-mismatch theory (which the authors call the "fit" hypothesis). Again Bowen and Bok have ignored a simple truth: It is hard to flunk out of Princeton. Most students at all the elite schools finish, and the very best schools do best. They are wealthy, with ample resources for tutoring and counseling designed to keep every student in school. In addition, grade inflation has turned a D into a B–, and the grading gets easier the higher one goes in the academic hierarchy.[72] At Stanford a few years ago the median grade was reportedly an A–![73]

It is important to note, as well, that only the SEL-3 category includes any of the large, bureaucratic, public universities (Michigan, Chapel Hill, Penn State, Miami University) that have

71. *See* BOWEN & BOK, *supra* note 11, at 61 fig.3.3. The mean combined SAT score for all college-bound seniors in 1989 was 903. *See* BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 154 (1991). It should also be noted that Bowen and Bok draw large conclusions here on the basis of very few cases. Their tables regrettably do not provide the numbers from which the percentages were calculated, but buried in an appendix is the information that just 67 black students entering the eight SEL-1 schools in 1989, a mere 10% of the total, had math scores below 500. And only 105, or 16% of the total, scored that poorly on the verbals. *See* BOWEN & BOK, *supra* note 11, at 350 tbl.B.4. The number whose combined SAT fell below 1000 was thus likely in the 70–80 range.

Not only are the numbers from which they generalize very small. We also cannot assume that these few students were indistinguishable from those who had comparably low SAT scores, but attended less selective institutions. How many of them were star athletes, who made it through with a little help from an armada of tutors employed by an athletic department desperately eager to keep up the eligibility of anyone who might help win The Game? Others doubtless had something else special going for them, which is precisely why they were admitted to such highly competitive schools despite having test scores that would seem to disqualify them.

72. The median GPA of the college students who had graduated from high school in 1982 was 3.14 in highly selective schools, 2.97 in less selective institutions, and 2.86 in schools that were not selective at all. *See* Adelman, *supra* note 44, at 46. For the suggestion that one cause of grade inflation at elite schools is the reluctance of faculty members to give discouragingly low grades to black students, see Terrance Sandalow, *Minority Preferences Reconsidered*, 97 MICH. L. REV. (forthcoming May 1999) (reviewing WILLIAM G. BOWEN & DEREK BOK, THE SHAPE OF THE RIVER (1998)).

73. *See* Editorial, *Making the Grade for Real*, CHI. TRIB., June 14, 1994, § 1, at 22.

limited resources with which to

help students in academic trouble. Throughout their volume Bowen and Bok gloss over the glaring differences between public institutions and rich private schools like those they once governed.[74]

Students from relatively affluent black families tend, in general, to have higher graduation rates, and those at the richest private schools may arrive most advantaged. Socioeconomic status surely accounts in part for the generally high rates of completion at all C&B schools. Although the authors pass over the information hastily, it is startling to find that fully 64% of the African Americans in their 1989 sample had at least one parent who had graduated from college, nearly *six times* the proportion among all black college-age youths. Perhaps even more striking, a mere *14%* of the blacks attending elite colleges were from families of low socioeconomic status, defined as those earning less than $22,000 annually and in which neither parent had a college degree. Half of all blacks of college age in the nation fall into that category.[75] And yet preferences in higher education are often justified by reference to the high proportion of black children living in poverty. Most of the black students attending Haverford, Duke, Northwestern, and Emory are privileged, and wherever they went to school, they would likely graduate at much higher rates than their less affluent peers. And the fact that the most selective schools of all also have the highest graduation rates for African Americans could also simply reflect the higher social status of the black students who attend them. Bowen and Bok unfortunately fail to provide the detailed evidence necessary to confirm or disprove this hunch, though they could easily have done so.[76]

Eight out of ten black students at C&B schools collect their diplomas[77]—by national standards, a high figure, suggesting less of a mismatch between student and institution than is sometimes suggested. But there is another and more sobering way of looking at the same data. The converse of the graduate rate is the dropout rate. It is the other

74. As Lerner notes, the authors present their analysis "at an extremely high level of aggregation, thus ignoring all individual differences among these colleges and universities. . . . Yet, the authors include neither college or university averages nor measures of institutional variability. Except for measures of school quality, there is little discussion of regional or other differences." Lerner, *supra* note 25, at 6.

75. *See* BOWEN & BOK, *supra* note 11, at 49 fig.2.12, 341 tbl.B.2.

76. In a book that is so packed with detail on many points, it is odd that this interesting information on the socioeconomic background of black students at C&B schools is not broken down by levels of school selectivity. Impressionistic evidence suggests that black students at SEL-1 schools are overwhelmingly from upper-middle-class families.

77. *See* BOWEN & BOK, *supra* note 11, at 376 tbl.D.3.1.

side of the coin—although the picture is not so pretty. In Bowen and Bok's 1989 sample, only 6.3% of the whites failed to get a bachelor's degree (from any school), as compared with 20.8% of the African Americans.[78] Hence, the black dropout rate was 3.3 times the white rate, a much larger differential than the overall national gap.[79] Furthermore, the racial difference widened as the selectivity of the school increased, just as the mismatch theory would suggest. The ratio of black to white dropout rates was 2.8 at SEL-3 colleges, 3.6 at those ranked SEL-2, and 4.2 at the SEL-1 level.[80]

To focus on the graduation numbers and ignore the dropout picture is like looking at black employment—rather than *un*employment—rates. In December 1997, 90.1% of the African Americans who were in the labor force were employed, as compared with 96.1% of whites.[81] The racial gap in the employment rate was just six percentage points, which seems a quite modest differential. The other side of the same coin, though, is that the black unemployment rate was 9.9%, versus only 3.9% for whites. Blacks were thus 2.5 as times as likely as whites to be jobless—and joblessness is the important social issue. Likewise, the dropout numbers alert us to an educational problem we cannot ignore.

What would the college completion rates have looked like without race-conscious admissions? Bowen and Bok could have answered this crucial question by classifying the black students in their samples

78. *See id.* Bowen and Bok calculate two graduation rates—a "first-school" rate for those who took a degree at the college they first entered, and an overall rate, which includes those who dropped out of their first school but did graduate from some institution. *See id.* We use the latter figure in this discussion.

79. National data on graduation rates broken down by race are scanty. Perhaps the best are from the National Collegiate Athletic Association (NCAA), which publishes an annual report on this subject. Unfortunately, only large schools with a major commitment to intercollegiate athletics are included. The latest such report indicates that 40% of the black freshmen who enrolled in an NCAA Division I school in 1991–92 had earned a bachelor's degree by 1998. The figure for whites was 58%. Hence the white dropout rate was 42%, while the black rate was 60% or 43% higher. *See* NAT'L COLLEGIATE ATHLETIC ASS'N, 1998 NCAA DIVISION I GRADUATION-RATES REPORT 626 (Marty Benson ed., 1998).

80. *See* BOWEN & BOK, *supra* note 11, at 376 tbl.D.3.1.

81. *See* ECONOMIC REPORT OF THE PRESIDENT, H.R. DOC. NO. 105-176, at 331 tbl.B-43 (1998). Professor Russ Nieli disagrees with our emphasis on dropout *rates*, raising an interesting question. Whatever the rate, he says, if the black student with a high school GPA of A– and an SAT score of 1275 is more likely to graduate from Princeton than Rutgers, why isn't he better off at the more selective school? *See* Russ Nieli, Letter, COMMENTARY, May 1999, at 18, 18.

In fact, it is impossible to know whether the high-scoring black youngster admitted to Princeton has a better chance of getting a B.A. than he would have had at a lesser school. Quite the opposite might be the case. Almost 21% of Bowen and Bok's 1989 sample failed to graduate. All the black students admitted to the highly selective schools had much more going for them than solid grades and scores. Other qualities—intangibles like "leadership," extraordinary personal discipline, and the like—singled them out. With a proper control group, we might find that 100% of such students graduate from schools like Rutgers, whereas the figure is only 80% for Bowen and Bok's elite institutions.

into preferential and regular admits. The authors do provide such breakdowns when they estimate how much black enrollment would have declined at the five schools they examined intensively. In discussing other matters, in a nifty bit of legerdemain, they let the unwary reader think that all the blacks whose achievements are celebrated were attending the elite schools as a consequence of racial double standards. That is far from the case.

VIII. BLACK "UNDERPERFORMANCE" IN THE CLASSROOM

Graduation rates are an extremely crude and minimal measure of how well a group is faring in college. Bowen and Bok make much of graduation rates, nothing of dropout rates, and little of actual classroom performance. But they do feel compelled to admit a startling and depressing fact: The cumulative grade point averages (GPAs) of the black students at their twenty-eight schools put them at the twenty-third percentile of the class—in the bottom quarter, that is.[82]

Even the twenty-third percentile figure is deceptively rosy, because it includes many students who met the regular academic requirements for admission and received no racial preference—about half of the black undergraduates at C&B schools, the authors estimate.[83] If Bowen and Bok had examined the classroom performance of the half of the black student population that had been

82. *See* BOWEN & BOK, *supra* note 11, at 72. The authors refer to this fact as "sobering" and devote 15 pages to a discussion of what they term the "underperformance" of black students. *See id.* at 72–86. Their treatment of this issue, though, is extremely bland and low-keyed, and they seem to forget about the matter altogether when they sum up the broad conclusions of their work. Thus they conclude in the penultimate chapter that "[t]he data assembled in this volume should dispel any impression that the abilities and performance of the minority students admitted to selective colleges and universities have been disappointing." *Id.* at 256. So their evidence about the academic performance of preferentially admitted students is somehow sobering but not disappointing. It is instructive to compare *The Shape of the River* on this point with a chapter written by Bowen and a collaborator for another volume. *See* Frederick E. Vars & William G. Bowen, *Scholastic Aptitude Test Scores, Race, and Academic Performance in Selective Colleges and Universities*, *in* THE BLACK-WHITE TEST SCORE GAP, *supra* note 50, at 457. Vars and Bowen call black underperformance an issue that "is crucial to face," sounding a note of alarm notably missing from the complacent pages of *The Shape of the River*. *See id.* at 476. Attempting to persuade a broad audience of the merits of preferential policies, Bowen and Bok put a much more benign spin on the same findings.

83. *See* BOWEN & BOK, *supra* note 11, at 350 tbl.B.4. (estimating that 1101 of the 2171 black students entering C&B institutions in 1989 would have been accepted if verbal SAT scores had been the only criterion used, resulting in a decline of 49%). Strangely, they also estimate that black enrollment would decline by precisely 49% at the five schools they studied in detail if race-neutral policies, but not SAT-driven policies, were implemented. *See id.* at 42. That suggests that the five are not representative of the 28 C&B schools, because depending upon SAT scores alone would have produced a much bigger drop than race-neutral polices that allowed other nonacademic factors to operate, for reasons explained *supra* Part VI.

preferentially admitted, the picture would doubtless have looked worse. We are not given such a breakdown, despite its obvious relevance to the central issue in the book. They credit every academic achievement of African Americans who attended elite colleges to the preferential policies that affected only *half of them*.[84]

Nor are we told how many African-American students ranked in the top quarter or the top tenth of their class, graduated with honors, or made Phi Beta Kappa. If the mean is at the twenty-third percentile, however, not many could have been near the top. This is another instance of the failure of the authors to supply relevant detail when it might have pointed to conclusions hard to square with their general argument.

Bowen and Bok never ask whether poorly prepared black students show any signs of catching up with their peers over the course of four years, as preference proponents have often claimed. Does the stimulating environment of a first-class school make up for years of inadequate preparation? The authors ignore an important recent study of four Ivy League schools that found no "late-bloomer" effect at all for black students, no tendency towards convergence in black and white GPAs over the four college years.[85]

Preferentially admitted students clearly had comparatively poor academic records, but as the authors acknowledge, the fact that black matriculants entered the C&B colleges unequally prepared for the competition does not entirely explain the black-white gap in class ranking.

The average rank in class for black students is appreciably lower than the average rank in class for white students *within each SAT interval*. . . . It is one strong indication of a troubling phenomenon often called "underperformance." Black students with the same SAT scores as whites tend to earn lower grades.[86]

The authors devote a good many inconclusive pages to possible explanations for black underperformance without considering a peer

84. At a later point, the authors do divide their 1976 cohort into those who would have been rejected and those who would have been accepted under a "race-neutral" standard. *See* BOWEN & BOK, *supra* note 11, at 281. Here they are again using the term loosely to mean admissions based purely on SAT scores. Why do they offer no consideration of differences in the academic performance of the two groups of black students?

85. *See* Rogers Elliott et al., *The Role of Ethnicity in Choosing and Leaving Science in Highly Selective Institutions*, 37 RES. HIGHER EDUC. 681, 695–96 (1996). This is a study of four Ivy League schools that are not named. Judging from the acknowledgments, it would appear that three of the four were Dartmouth, Cornell, and Brown. *See id.* at 707.

86. BOWEN & BOK, *supra* note 11, at 77.

culture problem to which a number of scholars have pointed. African-American students who arrive with marginal academic qualifications may form an alternative subculture that discourages academic achievement as a white and Asian thing. And perhaps the best-prepared black students, who require no preferences, are inhibited by peer group pressures from doing as well as they otherwise might. If so, the critical mass of black students that preference advocates want may carry a high cost.

Ronald Ferguson's review of the literature on racial differences in performance at the secondary-school level finds evidence pointing to precisely this phenomenon—black students forming "peer groups that disengage from academic competition."[87] Group members "may secretly want to *be* 'smart,'" Ferguson writes, but "resent any effort by black peers to defect from group norms by *acting* smart."[88] Perhaps something similar is dragging down the performance of even the best-prepared African-American students at elite colleges today, who may be studying less hard than they otherwise might.

This hypothesis could have been explored with the C&B database. They have data for the entering class of 1951 at some schools, and could have determined whether the very small numbers of African Americans admitted in the pre-preference era also underperformed. A marked change in the era of racial preferences would be suggestive.

The self-segregation of African Americans that is a prominent feature of much campus life today may be related to black underperformance and the formation of "peer groups that disengage from academic competition."[89] Bowen and Bok dismiss the significance of self-segregation by noting that 88% of the black students in elite colleges said that they "knew" two or more of their white classmates "well."[90] This survey question has little bearing on the existence of self-segregation and is too superficial to tap into feelings that are undoubtedly painful and complex.

A glance at the scene at Wesleyan University, one of Bowen and Bok's twenty-eight schools, might have shaken the authors' complacency. Priding itself on being "Diversity University," Wesleyan allows its students the choice of living in houses called

87. Ronald F. Ferguson, *Teachers' Perceptions and Expectations and the Black-White Test Score Gap*, *in* THE BLACK-WHITE TEST SCORE GAP, *supra* note 50, at 300, 300.

88. *Id.*

89. *Id.*

90. *See* BOWEN & BOK, *supra* note 11, at 267.

Malcolm X, Women of Color, Asian/ Asian-American, La Casa, and even one designated Open, which is the "queer and queer-positive special interest house."[91] When an unexpectedly large freshman class arrived in 1996, the university decided to fill nine empty spaces at Malcolm X house with whites, but backed down when black students objected to living with anyone of another race. The problem was solved by consigning several white students to the basement of the philosophy building.[92]

Are the black students who reside at Wesleyan's Malcolm X or Women of Color houses more likely to underperform than those at other schools that do not allow such racial and ethnic clustering? It would not have been hard to find out with the data the authors had at their disposal. Yale assigns students to residential units without giving them a choice. Harvard recently departed from tradition and started to make random housing assignments in order to break up the pronounced concentration of African Americans that had occurred when the choice was left to students.[93] Do different college policies on this matter have any discernible educational effects? Bowen and Bok should have explored the issue.[94]

IX. DOUBLE STANDARDS AND RACIAL STIGMA

The combination of significantly higher dropout rates and underachievement surely perpetuates stigmatizing myths about black academic talent. When few Jews could get into Ivy League schools, and Jewish students had to be superqualified to gain admission, a Jewish stereotype was created: Jews are smart. Admitting black students by *lower* standards has precisely the opposite effect: It reinforces the pernicious notion that blacks are not academically talented.

At one point Bowen and Bok do seem to concede that black students may be unfairly stigmatized as a consequence of preferences. "[S]elective institutions have been reluctant to talk about the

91. *See* Michael Shumsky, *Wesleyan's Example Proves Harvard's Wisdom*, HARV. SALIENT, Oct. 26, 1998, at 7 (quoting the University Office of Residential Life).

92. *See id.*

93. *See Taking Steps to Curtail Black Student Self-Segregation at Harvard College*, J. BLACKS HIGHER EDUC., Spring 1997, at 14, 14.

94. Although they agreed not to identify individual schools from their sample, they could have referred to College X and College Y, for example. But throughout the book the only distinctions they make among C&B schools are between SEL-1, SEL-2, and SEL-3 institutions.

degree of preference given black students," they admit, because they fear that "the standing of black students in the eyes of white classmates would be lowered if differences in test scores and high school grades were publicized."[95]

It is indeed awkward to let out the truth about double standards, though it is remarkable that administrators think that the students will not make invidious comparisons if the statistics are kept under wraps. The authors call this one of the "costs" of preferential policies, but nonetheless deny that the seeming stigmatization and demoralization of black students is worrisome. The people in the best position to know whether this is true, they say, are the black students themselves, who have said they felt fine. Most were "very satisfied" with the schools they attended.[96]

But the conclusion does not follow from the question asked. As noted earlier, none of the items in the C&B survey was designed to tap personal feelings of stigmatization. Nine out of ten of all the students who attended one of these schools professed considerable satisfaction with their choice.[97] These campuses are unquestionably very nice places at which to spend four years, with many amenities that are lacking at less selective and less wealthy institutions and plenty of bright classmates. Students can say, "Yes, we are pleased we had the opportunity to attend Kenyon College," while at the same time harboring doubts about their own academic abilities.[98]

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95. BOWEN & BOK, *supra* note 11, at 265. Moreover,

> [m]ore than a few black students unquestionably suffer some degree of discomfort from being beneficiaries of the admissions process . . . . It is for this reason that many high-achieving black graduates continue to seek reassurance that they have "made it on their own" and why they complain when job interviewers presume that even the most outstanding black student may well have been helped in this way.

Id. One wonders why Bowen and Bok do not take this damning admission more seriously. It is never mentioned in their conclusion.

96. *See id.*

97. *See id.* at 196 fig.7.1.

98. In *Reflections of an Affirmative Action Baby*, Stephen Carter reports that he applied to the Harvard Law School in the late 1970s and received a form letter rejecting him. A few days later, though, he was called by two different officials of the school and by a professor as well, all of whom assured him that the negative decision had been an "error" and apologized profusely for the mistake. They had refused him admission initially, he was told, because "we assumed from your record that you were white." *See* CARTER, *supra* note 70, at 15. He felt "insulted by this miracle. Stephen Carter, the white male, was not good enough for the Harvard Law School; Stephen Carter, the black male, not only was good enough but rated agonized telephone calls urging him to attend." *Id.* at 16. We see nothing in the C&B survey questions, reprinted in BOWEN & BOK, *supra* note 11, at 315–35, that would have given respondents the opportunity to register the feelings that Carter describes here. It is not clear how Harvard Law School officials missed the fact that Carter was an African American in the first place, because the university has been as zealous as others in gathering racial and ethnic data about applicants. Until it abandoned the practice a few years ago out of fear of litigation, the Harvard Graduate School of Arts and Sciences inserted a special green form in each application from candidates identified as being black, Mexican American, Puerto Rican, or American Indian. The form advised departments that the

X. PREFERENCES AND PROFESSIONAL SUCCESS

Bowen and Bok report with pride that elite colleges send a high proportion of their African-American graduates to "top-rated professional schools," a point central to their argument that preferences work.[99] Some 40% of those in the 1976 entering class obtained professional or doctoral degrees, actually a little higher than the figure for whites from the same schools (37%), and dramatically higher than the 8% for all black college graduates.[100] Furthermore, blacks from elite colleges are far more likely than their white classmates to attend the most selective and prestigious "top-tier" law, medical, and business schools.[101]

The comparison with black college graduates as a whole proves nothing, of course. Neither black nor white undergraduates at Columbia University are in the least representative of the nation's students in general. They differ both in the academic skills they bring with them to college and in their social-class background. Nor is the contrast between black and white graduates of, say, Northwestern telling. Northwestern's black students go on to professional schools that also have highly race-conscious admissions policies. Surely the success of racial preferences in college cannot be measured by how many of the beneficiaries go on to win admission to graduate schools that use precisely the same racial double standards.

Bowen and Bok admit that "race-sensitive admissions policies" at the graduate level contribute to the success they find so gratifying, but they maintain that credit must also go to the splendid training that such students received as undergraduates.[102] What is the evidence, however, that the elite colleges have done so much to develop the talent of their black undergraduates? In a massive study of more than 27,000 students who entered 163 American Bar Association (ABA) approved law schools in the fall of 1991, Linda F. Wightman calculated that a total of only *twenty-four* African Americans would have been admitted to any of the top eighteen law schools if the decisions had been made purely on the basis of college grades and

student in question would receive full financial support if judged admissible at all, and that the aid would not be charged to the department's fellowship budget. *See* Elena Neuman, *Harvard's Sins of Admission*, WKLY. STANDARD, Oct. 9, 1995, at 22.

99. *See* BOWEN & BOK, *supra* note 11, at 99–100.

100. *See id.* at 98 fig.4.2.

101. *See id.* at 102 fig.4.4.

102. *See id.* at 103.

LSAT scores.[103] But, thanks to preferences, 420 black students got in, a stunning 17.5 times as many.[104]

Compare this with Bowen and Bok's calculation that SEL-1 colleges enrolled 3.7 times as many black students as they would have with admissions based solely on academic qualifications.[105] The law school equivalents to SEL-1 colleges had to put an even heavier thumb—a much heavier thumb—on the scale to obtain significant African-American enrollments.[106] Are Tufts, Rice, Oberlin, Vanderbilt, and the rest really doing such a great job training African-American undergraduates? If so, it is hard to see why their black students who apply to graduate programs cannot meet the same standards as whites and Asians.

Moreover, disproportionate numbers of African-American graduates fail the bar examinations, which are graded on a color-blind basis. For example, 57% of the blacks taking the California bar exam for the first time in 1997 failed, 2.5 times the proportion among whites (23%). The disparity was even wider in New York in 1992—63% of

103. *See* Linda F. Wightman, *The Threat to Diversity in Legal Education: An Empirical Analysis of the Consequences of Abandoning Race as a Factor in Law School Admission Decisions*, 72 N.Y.U. L. REV. 1, 30 tbl.6 (1997). For an extended critique of this paper that argues that the author has badly misinterpreted the valuable statistical data she provides, see Stephan Thernstrom, *Diversity and Meritocracy in Legal Education: A Critical Evaluation of Linda F. Wightman's "The Threat to Diversity in Legal Education,"* 15 CONST. COMMENTARY 11, 13–39 (1998). Linda Wightman's top-tier schools, which she designates as "Cluster 1," are 18 of the 163 American Bar Association (ABA) approved law schools included in her study that were most selective and had the highest mean LSAT scores and undergraduate GPAs in their entering classes. *See* Wightman, *supra*, at 23–24.

104. Wightman's data are several years old, but more recent evidence is equally disheartening. In the national applicant pool of approximately 70,000 students who applied to law school for the class entering in the fall of 1997, there were just *16* blacks who scored 164 or better on the LSAT (92.3 percentile) and had a college GPA of at least 3.50. Some 2646 white applicants, *165* times as many, had academic credentials that were that strong. *See* John E. Morris, *Boalt Hall's Affirmative Action Dilemma*, AM. LAW., Nov. 1997, at 7. This level of achievement is high, but not spectacular. At the law schools ranked as the top six by *U.S. News and World Report*, a student with an LSAT score of 164 would have been in the bottom quartile. *See Schools of Law*, U.S. NEWS & WORLD REP.: BEST GRADUATE SCHOOLS, 1998, at 47, 47. The highest-ranked school at which the average student had scored below 164 was number 15 on the list, the University of Southern California. *See id.*

105. *See* BOWEN & BOK, *supra* note 11, at 41 fig.2.11. Of course there are many more freshmen at elite colleges than first-year students at top law schools, but the point still stands. Many black students from the very best colleges do apply to law school.

106. In an article on law schools written since their book was published, Bowen and Bok allude to Wightman's study (without naming it) in support of their claim that race is merely "one factor in making admissions decisions." *See* Derek Bok & William G. Bowen, *Access to Success*, A.B.A. J., Feb. 1999, at 62, 62–63. If preferential admissions serve to multiply the number of black applicants accepted at top law schools more than 17-fold, calling race "one factor" seems a considerable understatement. It is telling that this special issue on race in law schools includes a Research USA poll indicating that 48.0% of white lawyers in the United States oppose legally mandated affirmative action and 42.6% favor it. *See* Gilda R. Williams, *Key Words for Equality*, A.B.A. J., Feb. 1999, at 64, 65. Despite widespread negative opinions on the subject by ABA members, the editors failed to include a single contribution from any critic of preferential policies.

African Americans flunked, more than triple the white figure (18%).[107] In the first section of this article, we cited blunt remarks about this uncomfortable fact in a confidential memo written by the associate dean of UT, a memo that came to light as a result of the *Hopwood* litigation. Not a word about bar exams appears in *The Shape of the River*, even though one of its authors is a former law school dean who must have been aware of the issue. Furthermore, the authors repeatedly cite a paper by Wightman, while omitting any mention of her detailed discussion of racial differences in bar examination pass rates.[108]

The explanation may be that Wightman's findings on this matter are inconsistent with the rosy picture painted by the authors. She distinguishes black law students who owed their admission to racial preferences from those who did not, and found that more than a fifth of the former failed to graduate.[109] Even worse, 27% of those who got through school were unable to pass a bar exam within three years of graduation, a failure rate nearly triple that for African Americans who were admitted under regular standards and almost seven times the white failure rate.[110] Fully 43% of the black students admitted to law school on the basis of race fell by the wayside, either dropping out without a degree or failing to pass a bar examination.[111] These students must be counted among the casualties of preferential policies.

Bowen and Bok also overlook troubling information about how preferences are working in medical schools. They regard it as a triumph that about seventy preferentially admitted black students

107. *See* Thernstrom, *supra* note 103, at 32.

108. Wightman's paper is cited no fewer than seven times in *The Shape of the River*. In a more recent article written specifically for a legal audience, Bowen and Bok allude to Wightman's estimate that black law school enrollments would drop sharply in the absence of preferential admissions but again ignore entirely the disappointing performance of preferentially admitted black students on the bar examinations. *See* Bowen & Bok, *supra* note 106, at 63.

109. *See* Wightman, *supra* note 103, at 36 tbl.7. In her interpretation of the data, Wightman argued that it was "impressive" that preferentially admitted African-American students were nearly as likely to graduate as those whose academic records were strong enough to merit their admission without regard to their race, with rates of 77.9% and 80.5% respectively, not significantly different. *See id.* at 35–37. The difference is indeed surprisingly small. But what impresses us is not how *well* preferentially admitted blacks did but how *badly* those who were not preferentially admitted performed on this count. Almost a fifth of them (19.5%) failed to graduate, as compared with less than a tenth (9.7%) of whites. *See id.* at 36 tbl.7. This is another instance of "black underperformance." A possible explanation is that many law schools today also have black peer groups with an oppositional culture that is not conducive to academic success. Perhaps, though, the reason is that a high proportion of the blacks who did not owe their admission to racial preferences were just above the cutoff line and were not as strong academically as the average white admitted.

110. *See id.* at 38 tbl.8.

111. *See* Thernstrom, *supra* note 103, at 40 tbl. 5. Evidence is supplied from Wightman, *supra* note 103, at 36 tbl.7, 38 tbl.8.

from their 1976 sample went on to become doctors.[112] They fail, though, to consider the disturbing results of other relevant studies. A paper in the *Journal of the American Medical Association* reports that in 1988 an appalling 51.1% of black medical students failed the required Part I exam given by the National Board of Medical Examiners.[113] The white failure rate was a mere 12.3%.[114] This glaring disparity, the investigators discovered, was almost entirely attributable to preferential admissions policies. Black students with strong academic credentials were as likely to pass as whites; unfortunately, a high proportion of African Americans entered medical school without strong credentials, thanks to racial double standards in admissions.

Dismayingly large racial disparities also show up in National Board of Medical Examiners tests measuring the competence of physicians in their field of specialization. That was revealed in a RAND Corporation study of a national sample of the medical school graduating class of 1975, including 715 graduates who were classified as minorities, 80.2% of them African Americans.[115] Bowen and Bok are familiar with this research, because they cite it as evidence that minority physicians are more likely than others to "work in locations designated as health manpower shortage areas by the federal government."[116] They fail to mention the disturbing and more significant fact that the study also found that only 48% of minority physicians were able to qualify as board-certified in their specialty within seven years of graduation, as compared with 80% of whites and Asians.[117]

112. *See* BOWEN & BOK, *supra* note 11, at 281.

113. *See* Beth Dawson et al., *Performance on the National Board of Medical Examiners Part I Examination by Men and Women of Different Race and Ethnicity*, 272 JAMA 674, 675 & tbl.1 (1994). Many of those who fail the Part I exam apparently retake it until they eventually pass; we have been unable to find any figures on the exact proportion. In any event, it is reasonable to wonder if physicians who had to work long and hard just to scrape by after several attempts will be capable of keeping up with the rapid accumulation of knowledge in their specialty in the future. For a sobering personal account of the controversy over lowering academic standards at a leading medical school in the 1970s in order to keep preferentially admitted students from flunking out, see BERNARD D. DAVIS, *Affirmative Action and Veritas at Harvard Medical School*, *in* STORM OVER BIOLOGY: ESSAYS ON SCIENCE, SENTIMENT, AND PUBLIC POLICY 171 (1986).

114. *See* Dawson et al., *supra* note 113, at 675 & tbl.1.

115. *See* STEVEN N. KEITH ET AL., ASSESSING THE OUTCOME OF AFFIRMATIVE ACTION IN MEDICAL SCHOOLS: A STUDY OF THE CLASS OF 1975 (RAND Corp. Series No. R-3481-CWF, 1987). The "minority" category in the study consisted of African Americans, Hispanics, and American Indians. Asian Americans were not considered members of a minority group.

116. BOWEN & BOK, *supra* note 11, at 13 & n.56.

117. *See* KEITH ET AL., *supra* note 115, at 36 tbl.27.

As was the case with the pattern of failure on Part I of the medical boards, the likelihood that minority physicians would have passed the specialty boards depended largely upon their academic records before they reached medical school. A solid 83% of those in the top category on an "undergraduate performance index" based on college grades and MCAT scores passed Part II; in the second category, 75% became board-certified; in the third, 56%; in the fourth, 47%; and in the lowest group, a mere 32% qualified.[118] Minority students with weak undergraduate records who had been given a big boost in the admissions process were still conspicuously behind more than a decade after leaving college.

The findings of these careful but little-known inquiries contradict the claims made in a much-ballyhooed 1997 study of graduates of the University of California at Davis School of Medicine, published in the *Journal of the American Medical Association*.[119] This study is so badly flawed, however, that it does not call into question the conclusions cited above.[120] Thus, in both law and medicine, an alarmingly high proportion of students who benefited from racial preferences in admissions to college and professional

118. *See id.* It might be argued that this pattern only shows that minority physicians are not specializing in fields like dermatology and are instead serving their communities by engaging in general practice. Thus board certification in a specialty is irrelevant to them. Because one field in which board certification is available is family medicine, this argument does not hold up. *See id.* at 34 tbl.25.

119. Robert C. Davidson & Ernest L. Lewis, *Affirmative Action and Other Special Consideration Admissions at the University of California, Davis, School of Medicine*, 278 JAMA 1153 (1997).

120. Among its many glaring flaws, the most important is that the University of California at Davis study does not in fact examine students admitted to medical school as a result of racial preferences—which is, of course, the issue of public concern. It reports on the performance of *all* students admitted to the school for extra-academic reasons. Only 43% of the students so classified belonged to an "underrepresented" racial group, and the authors fail to provide any numerical breakdowns by race. *See id.* at 1155–56, 1156 fig.2. We cannot assume that the same preferences were given to the two groups—those admitted on racial grounds and those admitted for other "special" reasons—nor can we assume that they performed similarly. Wightman's study shows that whites in the category "not admissible" on academic grounds were not at all comparable to African Americans or other racial minorities in that category. *See* Wightman, *supra* note 103, at 36 tbl.7, 38 tbl.8. Wightman's findings about law school completion and bar exam passage rates strongly suggest that "not admissible" blacks were much weaker academically than "not admissible" whites. The failure of the authors of the Davis study to distinguish racial groups within the "special considerations admissions" category renders their study completely irrelevant to current policy debates.

Furthermore, even if we accepted the highly dubious assumption that students admitted to medical school as a result of racial preferences did not differ from those admitted for other reasons under the "special considerations" category, the performance of special admits at Davis was much less impressive than the authors would have us believe. These students had much lower grades in medical school than those regularly admitted, were only a third as likely to be selected for the medical honors society, and were six times as likely to fail Part I of the medical boards. *See* Davidson & Lewis, *supra* note 119, at 1156. Even the claim of the authors that "special considerations" students performed as well as regular admits in their residencies is questionable; we are not told enough about the rating process to be confident that this is true. For these and other criticisms, see Gail Heriot, Editorial, *Doctored Affirmative Action Data*, WALL ST. J., Oct. 15, 1997, at A22.

school stumbled when that crutch was taken away and they had to pass tough tests that did not take their race into account.

XI. THE HISTORICALLY BLACK COLLEGES: MISSING IN ACTION

Bowen and Bok certainly do demonstrate in great detail that most of the African Americans who attended the schools included in their study did graduate and fare quite well subsequently. Yet again, the conclusion that race-conscious admissions are to be credited does not inexorably follow. The graduates of Yale undoubtedly tend to be much more successful than the graduates of the University of Bridgeport, but did attending Yale make all the difference? There is some brand-name advantage, especially (and perhaps only) when students are looking for their first job. Many other factors influence even short-run outcomes, however. Yale students arrive in New Haven with assets that very few students at the University of Bridgeport possess—good high school educations, high test scores, and prosperous and well-connected parents.

Bowen and Bok have both spent their entire academic careers at Ivy League institutions, and have given countless fund-raising speeches about the importance of Princeton and Harvard in training the nation's future leaders. Undoubtedly, they were terrific salesmen. Yet if they really wanted to know precisely how handsomely attending the "best" schools paid off, they needed to use less selective (or unselective) schools as a control group. Although they were aware of the problem, and indeed commissioned a "control group study" to deal with it, the effort added little and is barely mentioned in their analysis.[121]

121. The investigators commissioned the National Opinion Research Center (NORC) to conduct a national survey of persons who had been 18 years of age in either 1951 or 1976, to parallel the C&B survey of matriculants. *See* BOWEN & BOK, *supra* note 11, at 310–12. For reasons unspecified, no attempt was made to create a similar control group to employ in analyzing the survey of 1989 matriculants. Remarkably little use is made of the NORC information. The results appear at only two points in the book. To support their claim that the 1976 C&B cohort had high earnings, they compare it with income figures from the NORC sample. *See id.* at 127. But no information about SAT scores was available for the latter, and the authors could only hold academic quality constant by making the assumption that students in the NORC sample who attended four-year schools and reported having earned "mostly A's" were the academic equivalent of the average student at a C&B school. The higher earnings of C&B matriculants may indeed be attributable to having attended an elite institution, as they maintain. But it is also possible that they only indicate that students with "mostly As" at mediocre schools were not "similarly talented." The second place at which the NORC sample is used as a control group with equally questionable results is in the analysis of patterns of civic participation, discussed *infra* Part XIII.

They unaccountably missed a tantalizing analytical opportunity by failing to examine a control group readily available to them. The original database collected by the Mellon Foundation included records from thirty-four, not twenty-eight, institutions. Two were excluded from the study because of missing data. The other four were Howard University, Morehouse College, Spelman College, and Xavier University of Louisiana—all HBCs. These four institutions alone enroll approximately 50% more African-American students than do all twenty-eight in the C&B sample, but the authors chose not to examine the records of those who attended them—even though the evidence was already on hand.[122] It is particularly strange, arguably even insensitive, to have dismissed these schools from consideration when evidence indicates that many African Americans hold them in very high regard and believe they offer their children a better education than the colleges and universities Bowen and Bok assume to be the best for everyone. A recent survey of African Americans in higher education commissioned by the magazine *Black Enterprise* confirms that point strikingly. Nine of the top ten best-for-blacks schools were HBCs.[123]

The four for which Bowen and Bok already had data are among the most prestigious of the nation's several dozen HBCs, but they are not very selective by national standards. They accept a majority of their applicants and have median SAT scores that put them at or only

122. *See* BOWEN & BOK, *supra* note 11, at 291 & n.2. The only explanation offered for dropping the HBCs from the study is that examining them "was beyond the scope of this study, which is concerned only with colleges and universities that enroll substantial numbers of white students as well as minority students." *Id.* This assumes that it would not be of analytical interest to find out how much of a difference it makes to attend an elite white school as opposed to one of the best predominantly black colleges, holding all other factors (family status, SAT scores, and the like) constant.

123. *Black Enterprise* commissioned the survey to develop a list of the "Top Fifty Colleges for African Americans." *See* Thomas LaVeist & Marjorie Whigham-Désir, *Top 50 Colleges for African Americans*, BLACK ENTERPRISE, Jan. 1999, at 71. It asked 1077 African-American professionals in higher education to rate the colleges they thought offered the best education to young black men and women and received 506 responses. *See id.* at 77. Spelman, Morehouse, Howard, and Xavier of New Orleans, the schools that Bowen and Bok chose not to examine, ranked first, second, fifth, and sixth respectively. *See id.* at 74–75. Of the C&B schools, only Stanford was ranked in the top ten, and it was number 10. *See id.* Just five Ivy League schools, interestingly, even made it into the top 50. Columbia was number 15. Harvard was number 28, just behind Bethune-Cookman College of Daytona Beach, Florida. The University of Pennsylvania was number 34. Yale was number 41, trailing Jackson State and Grambling State. Cornell was number 50. Princeton did not rate among the top 50. *See id.* at 74–77. We certainly do not offer this as evidence as to what colleges are truly best for blacks, or as an argument for reviving the notion of "separate but equal." Just who these black educators were and what they knew about American higher education across the nation is open to question. We doubt that the question—which school is best for blacks?—even makes sense. In our view, no one college is best for all students or for all students of a particular race. But this study does at least suggest that Bowen and Bok's method for picking the best schools—on the basis of their mean combined SAT scores—is far from the only way to do so. None of the HBCs stands out by that measure, as the data described *infra* note 124 indicate.

slightly above the national average.[124] What happened to the students who chose to attend Howard, although they had qualifications very much like those who went to Duke or Michigan? Bowen and Bok missed the opportunity to explore this vital question.

It happens that the Reverend Martin Luther King, Jr. was an earlier graduate of one of the schools Bowen and Bok did not deign to look at—Morehouse College. Bowen and Bok mention him (but not his college) only to support their argument that quantitative measures of academic skills do not help much in predicting "which applicants will contribute most in later life to their professions and their communities."[125] Dr. King, they say, became "one of the great orators of this century," despite having scored in the bottom half of all test takers on the verbal portion of the GRE. Yes, indeed—and without having gone to Princeton. If a regime of preferences had been established a few decades earlier, perhaps he would have attended an elite college and then the Yale Divinity School. Would an Ivy League education have helped him play a more prominent historical role?

XII. The Backbone of the Black Middle Class?

Bowen and Bok come close to suggesting that the black middle class owes its very existence to the race-conscious policies implemented by benevolent white educators over the past three decades.[126] Bowen and Bok make this claim about the Hispanic middle class, it should be noted, even though their book does not contain a shred of evidence about the impact of preferential polices upon Hispanics. "The C&B

124. We could not locate a similar guide for 1989, but *U.S. News and World Report: America's Best Colleges* indicates that Spelman, ranked number one in the *Black Enterprise* survey, accepted 54% of its applicants in 1997–98, and that the combined SAT score for a freshman at the seventy-fifth percentile of the class was only 1170. *See Directory of Colleges and Universities*, *supra* note 44, at 144. (These scores, incidentally, are not exactly comparable to those that appear in *The Shape of the River*. In 1995 the College Board "recentered" the SAT scores, which boosted the average combined SAT score by roughly 100 points.) Yale, by contrast, accepted only 18% of applicants, and a student at the twenty-fifth percentile had a 1360 SAT, almost 200 points above those at the seventy-fifth percentile at Spelman. *See id.* at 135. Morehouse, number two according to *Black Enterprise*, accepted 68% of applicants and had SAT scores about the same as those at Spelman. *See id.* at 143. Only 40% of its freshmen placed in the top tenth of their high school graduating class, as compared with 95% at Yale. *See id.* at 135, 143. Even the best of the HBCs rank far below Bowen and Bok's SEL-3 schools in terms of acceptance rates, SAT scores, and high school grade averages. That could have been a reason for excluding them from the study, though it is not mentioned by the authors. But it is not a good enough reason. The best-prepared black students at these institutions have credentials comparable to those of many blacks who attended C&B schools, and a comparative analysis could have been extremely illuminating.

125. *See* BOWEN & BOK, *supra* note 11, at 277 & n.1.

126. *Cf. id.* at 6–11.

minority graduates with advanced degrees are the backbone of the emergent black and Hispanic middle class."[127] Presumably one could not have a middle class that lacked a "backbone."

And yet the numbers simply do not add up. Only 13,784 African Americans were among the 300,000-plus students who entered any SEL-1, -2, or -3 four-year college in the United States in 1976. It can be estimated that just 8800 of these black students actually graduated, a majority of whom would have been admitted to these schools without any racial preferences.[128] Even if we were to make the absurd assumption that the 4000 or so graduates who had been preferentially admitted would never have gone on to college at all but for the existence of racial double standards in admissions at elite schools, we are talking about a group too minuscule to form the "backbone" of a black middle class that by any reasonable definition includes more than ten million people.[129]

Nor is it correct to claim, as the authors do, that the elite schools are providing African-American students with the skills to rise from lowly origins into the middle class. Their own evidence shows clearly that they are educating young men and women who are generally already economically quite well off. The products of these schools may typically attain higher socioeconomic rank than their parents, but it was their parents who made it into the middle class in the first place, and very few of them did it by going to a highly selective school.

The arguments on this point in *The Shape of the River* are flawed on other grounds as well. In the first chapter Bowen and Bok chronicle the social and economic advances of African Americans since World War II without noticing that much of the progress was made before the institution of preferential policies.[130] Further, to assume that preferences account for subsequent gains is a classic instance

127. *See id.* at 116.

128. Bowen and Bok provide the 1976 numbers for all SEL-1, -2, and -3 schools in the nation, *see id.* at 295 tbl.A.2, and give the overall graduation rate for those cohorts at the C&B schools, *see id.* at 378 tbl.D.3.2. Unfortunately, the authors do not supply detailed estimates of how many of these 1976 students would have been admitted if academic credentials had been the only criterion. But they do provide such estimates for the 1989 C&B schools. *See id.* at 350 tbl.B.4. For want of anything better, we used the 1989 calculations in developing the estimate in the text.

129. For different ways of estimating the size of the black middle class, see THERNSTROM & THERNSTROM, *supra* note 6, at 183–202. One possible criterion is having attended college; in 1995 some 37.5% of blacks age 25 or older had gone to college, and of those age 25 to 29, 44.9% had gone to college. *See id.* at 192, 391. These results square pretty well with the finding that 44% of African Americans identified themselves as "middle class" in a 1994 national survey, and 41% of those in a 1996 survey did the same. *See id.* at 200.

130. *See* BOWEN & BOK, *supra* note 11, at 1–3.

of the *post hoc* fallacy. They tell us that the number of African Americans in Congress rose from four to forty-one between 1965 and 1995.[131] Great news, but what did the Oberlin admissions office have to do with it? A glance at the biographies of African-American members of Congress in *The Almanac of American Politics* reveals that many were educated at little-known schools, and very few attended elite institutions.[132]

This is not an isolated example. A list of the top fifty African-American federal officials recently compiled by the *Journal of Blacks in Higher Education* shows that only a handful went to a college that Bowen and Bok would define as elite.[133] A similar list of the thirty-three blacks President Clinton has appointed to the federal judiciary looks much the same; 40% of them were graduates of HBCs.[134] A 1996 survey of black officers in the U.S. Army did not distinguish elite institutions from others, but did show that the historically black schools had produced 39% of the officers, although they account for only a sixth of total college enrollment for blacks.[135]

The contribution of elite schools to the undergraduate training of black academics is even less impressive. A 1996 report by the National Research Council lists the undergraduate institutions that trained the largest numbers of African Americans who earned Ph.D.s between 1992 and 1996.[136] Nine of the ten schools that topped the list were HBCs; the tenth was Wayne State, also a heavily black school. Three out of the next eight that completed the list were also predominantly black, and only one—the SEL-3 University of Michigan—ranked anywhere in the Bowen and Bok elite.

This pattern fits the mismatch theory nicely. Getting a doctorate requires enormous commitment and confidence in one's academic ability; those who are inspired to do so are likely to come from colleges where they were academic stars. Students attending schools that gave them a big boost in admissions because of their race are not likely to shine in their studies, as Bowen and Bok's own data show clearly.

131. *See id.* at 10.

132. *See* MICHAEL BARONE & GRANT UJIFUSA, THE ALMANAC OF AMERICAN POLITICS 1998 (1998).

133. *See The Higher Education of African Americans in Senior Posts in the U.S. Executive Branch*, J. BLACKS HIGHER EDUC., Spring 1998, at 58, 58–59.

134. *See The Higher Education of President Clinton's Black Judges*, J. BLACKS HIGHER EDUC., Autumn 1996, at 29, 29.

135. *See* THE AFRICAN AMERICAN EDUCATION DATA BOOK, *supra* note 43, at 193.

136. *See* NAT'L RESEARCH COUNCIL, SUMMARY REPORT 1996: DOCTORATE RECIPIENTS FROM UNITED STATES UNIVERSITIES 42 tbl.9 (1998).

An African-American student who scored 650 on the math SAT might well stand out as one of the best physics students at Morehouse, Spelman, or Wayne State while at the University of Chicago he or she is likely to be merely average at best.[137]

A similar picture emerges when we contemplate the educational backgrounds of African-American winners of MacArthur Foundation "genius" awards between 1981 and 1998.[138] Excluding those who never went to college, the forty-four black winners attended no fewer than forty different schools; three-quarters attended institutions that were basically nonselective, and 27% were trained at the HBCs that Bowen and Bok chose to ignore.[139]

We have been unable to locate any studies of the educational background of black business leaders, but Stanley Rothman's recent survey found that less than 20% of the nation's top entrepreneurs in the 1990s had attended elite colleges,[140] and it is hard to believe that the proportion would be notably higher if we could isolate the black members of this group.

Bowen and Bok assume that elite colleges and universities play the same role in American life that Oxbridge does in Britain, a fantasy commonly held by those accustomed to breathing the rarefied

137. Rogers Elliott notes that "of the top 21 undergraduate producers of black Ph.D.s [in science] during the period 1986–1993, 17 were [HBCs] and none were among the 30 or so most selective institutions that so successfully recruit the most talented black secondary school graduates." Elliott et al., *supra* note 85, at 700. He then proceeds to demonstrate, with data from 11 private colleges, that for students with comparatively low SAT math scores, the *less* selective the school the *more* likely it is that they will complete an undergraduate degree in science. *See id.* at 701–02. As the evidence in the preceding note suggests, this pattern seems to hold for doctorates in the humanities and social sciences as well. *See* NAT'L RESEARCH COUNCIL, *supra* note 136.

It should also be noted that Elliott's analysis of patterns of black concentration in science in four Ivy League schools raises questions about Bowen and Bok's finding that black students were about as likely as whites to major in physical science. *See* BOWEN & BOK, *supra* note 11, at 71, 382 tbl.D.3.5. Elliott found that a fairly high proportion of African Americans entered school planning on a science major, but that attrition took a very heavy toll. For one thing, 15% of the blacks intending on a science concentration dropped out of school altogether, more than triple the white dropout rate. *See* Elliott et al., *supra* note 85, at 692 tbl.2. Bowen and Bok missed all such cases because they only tabulated these figures for those who graduated, not for all who entered. Second, only 34% of the African Americans intending on majoring in science in the Elliott study actually did so; two-thirds of them shifted to a softer field of concentration. By contrast, 61% of the whites who began as science majors graduated with degrees in science. *See id.* We do not know if similar attrition happened at Bowen and Bok's schools as well because the authors only look at what field students ended up majoring in. All of the four schools in the Elliott study were SEL-1s; perhaps black students at SEL-2 and -3 schools are more successful in completing science majors. Bowen and Bok provide no breakdowns of this data by levels of institutional selectivity.

138. *See A Review of Blacks Who Have Received the Coveted MacArthur Genius Award*, J. BLACKS HIGHER EDUC., Summer 1998, at 30, 31.

139. *See id.*

140. *See* Stanley Rothman & Amy E. Black, *Who Rules Now? American Elites in the 1990s*, SOC'Y, Sept.–Oct. 1998, at 17, 18.

air of Cambridge and Princeton. But there are many more avenues to success than they seem to imagine in this huge, complex, and enormously fluid society.

XIII. Patterns of Civic Participation

Bowen and Bok contend that preferential admissions are responsible for a cadre of African Americans who are making an indispensable contribution to "civic and community endeavors." Almost 90% of the elite college students in their 1976 sample participated in one or more civic activities in 1995.[141] But this rate, as they concede, is almost identical to that found in their survey of a nationally representative control group of matriculants at four-year colleges.[142] The United States is a nation of joiners, and it does not appear that attending an elite school makes young people especially civic minded.

Compared to their white classmates, however, black students at elite schools do tend to be somewhat more active, both as participants and as leaders, Bowen and Bok find. Their survey asked whether respondents volunteered to work in or played a leadership role in one or more of thirteen types of activities, including youth organizations, professional associations, political clubs, religious activities, social service or social welfare work, and alumni organizations. Most blacks who attended C&B schools answered yes.[143] But how can we be sure they would have been any less active at a less selective college? The high level of participation Bowen and Bok discovered may simply reflect the fact that the admissions officers at the C&B schools placed a heavy premium on prior organizational activity, particularly for minority applicants whose academic

141. *See* Bowen & Bok, *supra* note 11, at 156.

142. *See id.* at 157.

143. The authors are especially impressed that black men at C&B schools were "appreciably more likely than white men to participate in the clusters of activities that include community, social service, youth, and elementary or secondary educational organizations." *Id.* at 158. They fail to notice that the table presented on the preceding page reveals that members of their national control group sample of matriculants at four-year colleges were also more active in these civic activities than whites from C&B schools. If C&B schools merit praise for encouraging black students to engage in these worthy endeavors, it would seem to follow that they deserve blame for the fact that their white matriculants are less active in these realms than the typical American of their age who attended a less prestigious college. Whites outnumber blacks by approximately twelve to one at C&B schools, *see id.* at 350 tbl.B.4, so the overall effect on American society in this respect is not salutary—if we agree with the very high valuation the authors place on civic participation.

credentials were weaker.[144] Schools that buy the best possible football players cannot claim credit when many of their former students end up in the National Football League; likewise, colleges that make a big effort to recruit students with leadership skills cannot claim credit for having made them into leaders. Moreover, while it may be desirable to keep the Little League, the Rotary clubs, and the Oberlin Alumni Association strong, participation in such groups seems a questionable way of judging the accomplishments of students from America's most high-powered colleges and universities.

XIV. A MODEL FOR RACE RELATIONS?

Bowen and Bok view the elite schools they studied as a model for race relations they hope the larger society will emulate, and maintain that racial double standards are essential to that mission. "Until now," they say, "there has been little hard evidence to confirm the belief of educators in the value of diversity,"[145] but their work has filled the void. Their survey data, they maintain, "throw new light on the extent of interaction occurring on campuses today" and reveal "how positively the great majority of students regard opportunities to learn from those with different points of view, backgrounds, and experiences."[146]

They offer as a key piece of evidence the seemingly high level of interracial friendships they found on elite campuses. For example, they report that 56% of the whites in their 1989 cohort said that they knew two or more black classmates "well," and that 88% of blacks knew at least two white classmates well.[147] They marvel that 56% of whites in elite schools have two or more black friends but are evidently unaware that fully 86% of all white adults in a 1997 national survey said they had black friends, and 54% of whites reported having five or more.[148] Nationally, 73% of whites surveyed in

144. One of us served on the Harvard College Admissions Committee for several years and was struck by the weight admissions officers gave to the extracurricular activities of applicants.

145. BOWEN & BOK, *supra* note 11, at 280.

146. *Id.*

147. *See id.* at 233 tbl.8.3.

148. *See Views on Race in America*, BOSTON GLOBE, Sept. 14, 1997, at A31 (presenting the results of a June 1997 poll by KRC Communications).

1994 said that they had "good friends" who were African American.[149] And the proportion of blacks with white friends is higher still on every one of these national surveys. The Bowen and Bok survey suggests that the elite campuses may be in the rear guard, not the vanguard.

Former students at C&B schools also said they appreciated studying in a racially diverse environment and wished their colleges placed even more emphasis on racial diversity. And yet it is hardly surprising that many of Bowen and Bok's respondents regarded diversity as a Good Thing; it has been strenuously celebrated on elite campuses over the past two decades. Nathan Glazer may have overstated the case in titling his recent book *We Are All Multiculturalists Now*, but it is indubitably true of the administrations and much of the faculty at the C&B schools.[150]

In fact, given the prevailing campus climate, it is remarkable that enthusiasm for diversity was as limited as it turned out to be. Bowen and Bok's survey posed an innocuous platitude in the form of a question. How important was the ability to "work effectively and get along well with people of different races/cultures"?[151] Only 42% of the white students in the 1976 cohort and 55% of the 1989 group said, "very important," while the figure for blacks was 74% in 1976, 76% in 1989.[152] Surely these figures do not suggest that elite campuses are a national race relations model.[153] Moreover, the authors never ask how

149. The figure has risen dramatically over the past generation; see the evidence summarized in THERNSTROM & THERNSTROM, *supra* note 6, at 520–22. Of course, having "friends," or "good friends," of another race is not identical to "knowing well" two or more classmates of another race. But they are not different enough to justify the authors' assumption that elite colleges lead the nation as a whole on this count. In addition, as Lerner points out, it is a "well-established principle that it is equal-status contact among persons of different races that reduces intergroup prejudice." Lerner, *supra* note 25, at 19. Admitting students under a racial double standard produces contact between students who arrive at college with *un*equal status.

150. *See* NATHAN GLAZER, WE ARE ALL MULTICULTURALISTS NOW 1–21 (1997).

151. BOWEN & BOK, *supra* note 11, at 224 tbl.8.1.

152. *See id.*

153. Another example of interpretations that go beyond the evidence is the authors' claim that many white students wish that their colleges had emphasized racial diversity even more than they did. Respondents in the survey were asked to rate their school's priorities on a scale from one to five, and then to specify how much emphasis they thought the institution *should* have given to various matters. For whites in the 1976 cohort, the difference between what was perceived as the school priority and what the respondent wished it had been was 0.8 points in favor of more emphasis on undergraduate teaching, 0.7 points for less emphasis on athletics, 0.5 points for less emphasis on faculty research, 0.4 points for both more attention to residential life and less to alumni concerns. Greater stress on racial diversity, by contrast, got a plus score of a mere 0.2 points. *See id.* at 242 fig.8.5. Blacks entering in 1976, not surprisingly, rated the need for greater emphasis on racial diversity at 1.8, more than double the level of their desire for other changes (more attention to undergraduate teaching was second, at 0.8 points). *See id.* at 246 fig.8.6. For whites in the 1989 entering class, greater stress on diversity scored 0.4 points, higher than for 1976 entrants but still below the level of support for changes in the priorities given to less faculty research, more intellectual freedom, more attention to the quality of

students who attended less selective schools would respond to such a question. The University of Illinois at Chicago may be a better model than Wesleyan.

In any case, generalized support for diversity does not mean that students strongly endorse the strategies currently being used to produce it. Do most believe in lowering admissions standards to ensure a certain percentage of black and Hispanic students on campus? No issue in higher education has generated more controversy in recent years; Bowen and Bok were writing a book about racial preferences in elite institutions of higher education. And yet their elaborate and expensive survey did not include any questions about admissions policies. Here is how one item might have read: "Your school achieved greater racial diversity by accepting substantial numbers of African Americans with much weaker academic qualifications. Do you approve of that policy?" Respondents could have been asked whether they thought such policies made many of their classmates skeptical about the ability of black students. Perhaps most students would say "No," but it is also possible that probing such delicate matters might have yielded some of the "disappointing results"[154] the authors never found.

XV. HOW MUCH DIVERSITY IS ENOUGH?

"Diversity" is Bowen and Bok's mantra. But they fail to provide a searching examination of this slippery and problematic concept. To begin with, there is the question of how much diversity is enough. The authors have decades of teaching and administrative experience that might have provided them with some wisdom on the matter, but they stick very close to their numbers, avoiding any conceptual and philosophical exploration of this difficult question.[155] The operational definition implicit in their work is clear and

residential life, and less emphasis on athletics. *See id.* at 444 tbl.D.8.4. These underwhelming numbers suggest to us that the authors impute to respondents more enthusiasm for diversity than the evidence reveals.

154. *Id.* at xxv.

155. For a provocative elaboration of the point that "[e]verybody talks about diversity, but no one knows what it means," see Jim Chen, *Diversity in a Different Dimension: Evolutionary Theory and Affirmative Action's Destiny*, 59 OHIO ST. L.J. 811, 815, 821–29 (1998). In striking down a race-based admissions system at the Boston Latin School, the First Circuit criticized the highly abstract and generalized use of the concept of diversity by school officials, and concluded that the policy under attack was, "at bottom, a mechanism for racial balancing," which it concluded was "almost always constitutionally forbidden." *See* Wessmann v. Gittens, 160 F.3d 790, 799 (1st Cir. 1998). Bowen and Bok are as casual and vague as the representatives of the Boston School Committee were in asserting that the race-based policies they favor are essential to making schools properly diverse.

excruciatingly simple: Diversity is the racial mix that exists at their elite schools today. Apparently, it is not a matter of degree. Schools do or do not have it. The C&B colleges get a clean bill of health, but without race-driven admissions policies they will be found wanting.

True diversity within a school is, in fact, inevitable. That is, individuals by definition are a diverse lot. But Bowen and Bok—and almost everyone else—fixate on race and ethnicity, thus trafficking in racial stereotypes. (All blacks think alike, as do all whites, all Asians, and all Hispanics; individuals are fungible members of the group to which they belong.) They do not ask whether there is a healthy political or religious mix at Haverford—one that includes evangelicals and libertarians as well as Catholics and Republicans. Of course, many Americans would feel uncomfortable about giving a preference to applicants on the basis of their religion or political affiliation, but then most are also opposed to picking students on the basis of their skin color.

And what about social class diversity? Although the authors at one point allude to "persistent gross inequities in wealth, privilege, and position" in American society, and note that "what people have achieved often depends on the families they have grown up in, the neighborhoods in which they have lived, and the schools they have attended," they are unable to conceive of the issue of class except in terms of the "racial divide."[156] It never occurs to them that the admission of a white working-class kid from Staten Island might bring more true diversity to an Ivy League campus than adding another Exeter-educated African American who grew up in Scarsdale. No observer of elite colleges today can fail to be struck by the homogeneously upper-middle-class backgrounds of their student bodies, a fact that arguably impoverishes the educational experience as much as racial homogeneity did in an earlier era.[157] The obliviousness of the authors to class inequality may explain their endorsement of admissions preferences for the children of alumni.[158] If it is important to make Princeton more diverse, how can we defend giving an

156. BOWEN & BOK, *supra* note 11, at xxii–xxiii.

157. For instance, a remarkable four out of ten students in the Harvard class of 1986 were the offspring of physicians, attorneys, or college professors, three groups that made up just 1.7% of the labor force. A mere 5.5% had parents who were manual workers or farmers, roughly half of the U.S. population. The little that the vast majority of Harvard students know about "how the other half lives" comes from reading a book. *See* Stephan Thernstrom, *"Poor but Hopeful Scholars," in* GLIMPSES OF THE HARVARD PAST 115, 125 (Bernard Bailyn et al. eds., 1986).

158. *See* BOWEN & BOK, *supra* note 11, at 24, 286 n.12.

edge in the admissions competition to the son or daughter of a stockbroker who happens to have been an old grad?

Even if we accept Bowen and Bok's constricted definition of diversity, it is not clear why we should believe these schools have arrived at the correct racial balance. African Americans, after all, were just 7.8% of the students entering Bowen and Bok's elite colleges in 1989, barely half their share in that year's high school graduating class.[159] In the Ivy League schools, the figure was a mere 6.1%.[160] By national standards, blacks thus remain woefully underrepresented. Bowen and Bok claim to have demonstrated that students with SATs under 1000 can do perfectly well at the most selective colleges in America; why, then, do the schools in their study reject four out of five black applicants with such low scores, and why don't the authors criticize them for doing so? A lower rejection rate would result in a higher diversity score. The answer may be the authors' unspoken acknowledgment that black students with 950 SATs who manage to graduate from Princeton are special cases. Derek Bok doubtless recalls that in the late 1960s Harvard conducted an ill-fated experiment when it admitted large numbers of academically unprepared African-American applicants from ghetto schools. Not surprisingly, many floundered.

Their analysis is marred by another striking omission. The mean combined SAT scores of black students at the five schools for which they had detailed data rose by 90 points between 1976 and 1989, cutting the black/ white gap from 233 to 165 points.[161] It follows that in 1989 these schools must have rejected a good many black applicants who would have been accepted thirteen years before—a point Bowen and Bok fail to make. Elite colleges could have achieved substantially more diversity in 1989 had they been willing to maintain a racial gap of 233 points or so. Were the black students rejected in 1989 unqualified? They had scores that made them highly qualified in 1976; indeed, Bowen and Bok's entire analysis of the long-term success of black graduates from their twenty-eight schools rests upon the experience of the 1976 entering class—in the workplace for more than two decades. Moreover, they had argued elsewhere that

159. *See id.* at 41 fig.2.11.

160. Figures for all the Ivy League schools, including the four out of eight that were not in the C&B sample (Brown, Cornell, Dartmouth, and Harvard), were calculated from NCAA data. *See* NAT'L COLLEGIATE ATHLETIC ASS'N, *supra* note 66. We were unable to locate a similar report for 1989, but the 1997 figures cannot have been dramatically different.

161. *See* BOWEN & BOK, *supra* note 11, at 30 & fig.2.6.

African-American students who met the 1951 admissions standards were qualified in 1989; what, then, was wrong with the criteria used in 1976?

XVI. Diversity at Which Schools?

Most discussions of racially preferential admissions assume that race-neutral policies at elite institutions will mean fewer black students getting a college education. And yet clearly the use of racial double standards at the C&B schools did not increase the total number of African-American students enrolled in college. Every black student displaced as a result of race-neutral admissions will still have abundant opportunities for a college education at a less selective or entirely unselective institution. Every high school graduate in America can find a school to attend.

Recent developments at the University of California (UC) illustrate the point nicely. The UC system was compelled by its regents and the voters of the state to shift to race-neutral admissions for undergraduates entering in the 1998–99 academic year. The number of African Americans admitted to UC Berkeley and UC Los Angeles (UCLA) dropped sharply, producing a wave of criticism that diversity had been diminished. The UC system, it was even said, was becoming "lily white," a truly ludicrous characterization when more than 40% of entering students at both Berkeley and UCLA were Asian Americans, and more than 10% were black or Hispanic.[162] Bowen and Bok echo the "resegregation" complaint, and claim that those numbers clearly confirm their prediction that the abolition of preferences would drastically reduce campus diversity.[163]

Neither the authors nor most of the critics who hold forth in the press seem to recall that the UC system includes not just Berkeley and UCLA, but eight campuses. Although the number of black students who ended up in the freshman class under race-neutral admissions dropped 62.3% at Berkeley and 40.1% at UCLA, the pattern at other campuses was quite different. At the Davis campus, for example, the decline was a mere 2.8%. Moreover, black enrollments increased by 17.3% at the Santa Cruz campus, by 28.4% at Riverside, and by 29.0%

162. For a review of the University of California (UC) admissions numbers and an analysis of the highly slanted press coverage of the story, see Stephan Thernstrom, *Farewell to Preferences?*, PUB. INTEREST, Winter 1998, at 34. For more recent developments in California, see Trow, *supra* note 48.

163. *See* BOWEN & BOK, *supra* note 11, at 32–33.

at Irvine.[164] The net result was not a calamitous decline in diversity in the UC system but rather its *redistribution*, with fewer underrepresented minorities at Berkeley and UCLA and correspondingly more blacks and Hispanics at Irvine, Riverside, and Santa Cruz.[165]

Furthermore, not all public institutions of higher education in California are part of the UC system. There are state colleges such as San Francisco State and California State at Los Angeles. With the end of race-based admissions, the black presence at the eight UC schools dropped 24.0%; it is safe to say, however, that every one of the black students who remained eager for further schooling could find a place in a state college.

In fact, it is not even clear that the reduction in black enrollments in the UC system will mean a reduction in the number of African Americans who actually graduate. In the past, black students in the system have dropped out at a much higher rate than whites. Of those who started as freshmen at Berkeley in 1987, 1988, 1989, or 1990, 42% failed to graduate within six years, as compared with 16% for whites.[166] Now that the university has begun to accept only those black applicants who meet the same academic standards as other candidates, it is reasonable to expect that the glaring racial gap in dropout rates created by double standards will be narrowed. We have calculated that if the gap in dropout rates were eliminated altogether as a result of color-blind admissions, the number of black graduates of the UC system would actually *increase* by 17%, despite their reduced numbers in the freshman class.[167] Even if the gap is

164. *See* Kenneth R. Weiss, *Fewer Blacks and Latinos Enroll at UC*, L.A. TIMES, May 21, 1998, at A3. Because the freshman classes entering Berkeley and UCLA in the fall of 1998 are less than *one third* non-Hispanic white, in a state in which non-Hispanic whites are half of the total population, it is absurd to claim that the two campuses will be lacking in diversity as a result of the end of racial preferences.

165. It has even been suggested, by Alan Wolfe, that having a substantial black presence at schools like Irvine and Santa Cruz is *more* important than it is at elite schools like Berkeley, UCLA, and Bowen and Bok's 28 C&B institutions. *See* Alan Wolfe, *The Rest of the River: A Sociologist's Perspective*, U. BUS., Jan.–Feb. 1999, at 47, 47. White students at the latter, Wolfe points out, tend to be "children of privilege, precisely the kinds of students who tend to be more liberal in their views on race." *Id.* The benefits of diversity, he argues, "are really needed among those more likely to be prejudiced toward African Americans, and these students tend to be found in those institutions of higher learning that serve working-class and lower-middle-class students." *Id.* Thus, the current preferential system "guarantees diversity where it is needed least and detracts from diversity where it is needed most." *Id.*

166. *See* NAT'L COLLEGIATE ATHLETIC ASS'N, *supra* note 66, at 66.

167. *See* Stephan Thernstrom & Abigail Thernstrom, *The Consequences of Colorblindness*, WALL ST. J., Apr. 7, 1998, at A18. We calculated dropout rates by race for freshmen entering a UC school from 1987 to 1990. Data were available for only four of the eight campuses (Berkeley, Irvine, UCLA, and Santa Barbara), and we assumed the mean for these four applied to the system as a whole. We then took the numbers admitted in the fall of 1998 and calculated how many could be expected to graduate if (1) the black graduation rate rose to equal that for whites, and (2) the black rate rose enough to cut the racial gap in half. *See id.*

only cut in half, which seems a conservative estimate, the number of African Americans earning UC diplomas will still rise by 5%.[168] Racial double standards can promote diversity in the freshman class, but surely the goal should be diversity in the graduating class—a very different aim.

XVII. The Morality of Racial Double Standards

Race-neutral admissions are "unworthy of our country's ideals," Bowen and Bok state in the last chapter of the book.[169] They seem to believe that the sorting of American citizens along lines of race and ethnicity is what the framers of the Fourteenth Amendment had in mind. Judging citizens by the color of their skin is indeed as American as apple pie, but the civil rights warriors of the 1950s and 1960s did not put their lives on the line to perpetuate such terrible habits of mind.

Dr. King and the entire civil rights movement believed that the Constitution was color-blind.[170] It was thus the highest duty of the Supreme Court to read the nation's fundamentally egalitarian values—embodied in the Declaration of Independence—into law. But times have changed, and alas, all the empirical data in the world will not resolve the ultimate question of whether racially preferential admissions policies are morally defensible. Is it morally legitimate to distribute benefits to some individuals on the basis of their ascribed racial characteristics?

Bowen and Bok fervently endorse Justice Blackmun's dictum that "[i]n order to get beyond racism, we must first take account of

168. Reasons for optimism that the racial gap in graduation rates will be substantially narrowed as a result of the end of preferences may be found in recent experience at Berkeley. In the 1997 entering class, chosen with racial preferences, the median SAT score for black admits was 1130, 260 points below the white median. As a result of the abolition of racial double standards, the median black score rose by 135 points, cutting the racial gap for 1998 freshmen in half. *See* Jack Citrin, Draft of Report on the New Policy 1, Appendix tbls.3A, 3B (1999) (unpublished report, on file with authors). For further discussion, see Jack Citrin, *Desperately Seeking Diversity*, SACRAMENTO BEE, Mar. 28, 1999, at H1. *Cf.* BOWEN & BOK, *supra* note 11, at 42 (estimating that the racial gap would shrink by a mere 36 points with race-neutral admissions at five schools). Bowen and Bok's hypothetical calculations to the contrary notwithstanding, the quality of the black students attending Berkeley improved dramatically when preferences were eliminated. This is also evident from the rise in high school GPAs of admitted blacks from 3.75 to 4.18, which narrowed the racial gap from .45 to .09, an 80% decline. *See* Citrin, *supra*, at Appendix tbls.3A, 3B. The new admissions policy at Berkeley, it is important to note, did not entail admissions based strictly on academic criteria, which would inevitably shrink the SAT score gap even more. Factors like athletic talent and socioeconomic disadvantage were still taken into account.

169. *See* BOWEN & BOK, *supra* note 11, at 286.

170. This intellectual tradition is brilliantly analyzed in ANDREW KULL, THE COLOR-BLIND CONSTITUTION (1992).

race. . . . And in order to treat some persons equally, we must treat them differently."[171] Thus, they see no problem if a school "needs" more black students and can only fulfill that need by accepting merely qualified African Americans while turning down better-qualified whites and Asians. This is nothing new for elite colleges, of course, most of which once routinely rejected many superbly qualified Jewish students in favor of merely qualified Christian whites in order to preserve a desirable "ethnic balance" in the student body.[172]

Bowen and Bok argue that racial preferences do a great deal for their beneficiaries, but have only the slightest negative effect on any individual white. The gains are concentrated on a group that is small enough to feel the boost; the costs are paid by a group so large as to make the pain for any one of its members trivial. White resentment, they claim, is like the annoyance many drivers feel at "handicapped parking spaces."[173] Doing away with "the reserved space would have only a minuscule effect on parking options for non-disabled drivers," but many irrationally blame the policy when they have trouble finding a spot.[174] So too with spaces in the freshman class at Yale: Only a few more whites would get in if the university abolished racial preferences.

The analogy between black students and citizens in wheelchairs is deeply troubling. Furthermore, it is not only whites who are excluded when blacks and Hispanics are admitted to schools by racial double standards. Throughout the book Bowen and Bok avoid almost any mention of Asians, who are today a vital presence on elite campuses. Yet surely they know that in 1996–97 Asian Americans made up 25% of the undergraduate student body at Columbia, 24% at Stanford, 18% at Harvard, 17% at Yale, and 17% at Cornell—mighty impressive for a group that is less than 4% of the U.S. population.[175]

The cost of racial double standards in admissions is currently being paid by many Asian students. When preferences are eliminated, they derive the greatest benefit. Thus Asian-American enrollment at the UCLA School of Law jumped by 73% when race-neutral admissions went into effect.[176] By Bowen and Bok's logic, they are a group small enough to feel the gain from the end of preferences, while the costs

171. Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 407 (1978) (Blackmun, J., concurring).
172. *See* SYNNOTT, *supra* note 36, at 58–80.
173. *See* BOWEN & BOK, *supra* note 11, at 36.
174. *See id.* at 36–37. The quoted words are by Thomas Kane, from whom the authors borrowed this analogy.
175. *See* NAT'L COLLEGIATE ATHLETIC ASS'N, *supra* note 66.
176. *See* Thernstrom, *supra* note 162, at 42.

have been dispersed widely among blacks, who outnumber Asians more than three to one.[177]

In fact, the authors' argument can be used to defend any policy that benefits a minority at the expense of a majority. Approximately six out of seven elementary school teachers today are women.[178] Perhaps more male teachers are needed as role models. Why not cut the salaries of the female teachers, and transfer the money to males in the form of bonuses? The cost to any individual female teacher would be slight (given the size of the group), while the gain for each man would be great. This logic would also justify any policy that benefits the rich at the expense of the poor—a comparatively very large group.

The deeper problem with this entire way of thinking is that Bowen and Bok arbitrarily assign people to racial categories and then assume that it is legitimate to offer them different opportunities depending upon the category to which they have been assigned. It does not matter that a spectacular white applicant is rejected because the school has "too many" whites already; the young man or woman who is turned down should feel the consolation that the white race is very well represented at that school already. In actuality, it is individuals who suffer from discriminatory treatment, and it does not matter whether the class being discriminated against is a narrow or a broad one.

CONCLUSION

Bowen and Bok close their volume with an impassioned plea for "institutional autonomy" on these matters. The leaders of our institutions of higher education, those wise steamboat pilots, have a superior understanding of society's needs, and their schools should have complete freedom to select the students who will allow them to fulfill their "mission."[179] The plea, as Roger Clegg of the Center for Equal Opportunity has said, is disingenuous. Surely the authors do not favor the repeal of the Civil Rights Act of 1964, which withholds

177. It is interesting that the review in the liberal journal, *The American Prospect*, comments that "[i]f blacks are admitted to Berkeley or UCLA at demonstrably higher rates than are Chinese applicants with higher scores, even the most eloquent defense of an institution's larger social obligation may sound like a hollow rationale for yet another form of Asian exclusion." Schrag, *supra* note 21, at 87–88. We agree. But, unlike Peter Schrag, we suggest that the moral argument applies equally to Stanford.

178. *See* BUREAU OF THE CENSUS, *supra* note 41, at 417 tbl.672.

179. *See* BOWEN & BOK, *supra* note 11, at 286–87.

federal money from private institutions engaged in discrimination and thus curtails their autonomy. "More likely," Clegg notes, Bowen and Bok "favor a regime where discriminating against some groups (whites, Asians) is permissible, but discrimination against other groups (blacks, Hispanics) remains flatly prohibited."[180]

Perhaps the authors' most astounding argument is in their concluding warning. If colleges are forbidden to take race into account—as is now the case for public institutions in California, Texas, and Washington—they will refuse to accept the decline in black and Hispanic enrollment that will inevitably follow.[181] If barred from using racial double standards, they will be compelled to lower standards across the board in order to obtain enough non-Asian minorities. Setting the admissions bar very low and then accepting students more or less randomly from a very large pool defined as qualified will yield the desired racial mix. It will also lower the intellectual level of the student body as a whole, of course, but that is the choice that elite schools will make.[182] "[I]t is very difficult to stop people from finding a path toward a goal in which they firmly believe," and the goal they really believe in is diversity.[183] If forced to choose, today's educational leaders will see creating a certain racial mix on campus as more important than maintaining intellectual standards.[184]

Here we have a breathtakingly candid statement of the priorities of two of the most distinguished figures in higher education today—priorities that reflect those of the higher education establishment as a whole. Intellectual excellence should be sacrificed on the altar of diversity.

This repugnant tradeoff would not be necessary, of course, if we concentrated our efforts on closing the yawning racial gap in educational performance among elementary and secondary pupils. As long as the average black high school senior reads at the eighth-grade level, efforts to engineer parity in the legal and medical professions are doomed to failure. For a generation now, preferences in higher education have been a pernicious palliative that has deflected our attention from the real problem.

180. Clegg, *supra* note 34, at 30.
181. *See* BOWEN & BOK, *supra* note 11, at 286–89.
182. *See id.* at 288.
183. *Id.*
184. *See id.* at 288–89.