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SPECIAL THEME ISSUE

THE UTILITY OF AFFIRMATIVE ACTION FOR LATINAS/OS:

TOWARD A NEW POLICY AND ACCION MODEL

Guest Editors:

María C. Ledesma

Enrique Alemán Jr.

Brenda G. Valles

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Editors' Message

We are pleased to publish the 2015 invited issue focused on Latinas/os and affirmative action. We would like to personally thank the four co-guest editors, María C. Ledesma, Enrique Alemán Jr., Brenda G. Valles, and María E. Fránquiz, who bring a wealth of experience from the fields of higher education, policy, and Latina/o education. Their efforts and dedication brought together a collection of timely and relevant articles from an impressive set of authors from across the U.S. The articles in this issue fill a void in the scholarly literature regarding the role and impact of affirmative action on Latina/o educational attainment. Many of us educators and academics believe that during the past 40 years, affirmative action policies and practices have improved the educational attainment of Latinas/os. However, the growing attacks on affirmative action could inhibit and erode Latinas/os' educational success—despite the demographic increase in the college-age Latina/o population who manages to enroll in college against tremendous odds. Educational practitioners, researchers, and policymakers will find important analyses and recommendations in this issue that can ultimately influence the policy arena and the “court of public opinion” regarding affirmative action and Latina/o students.

We also want to publicly thank Oscar Jiménez-Castellanos who has been at the helm of the *AMAE Journal* these past 8 years. He is transitioning to the *AMAE Journal's* Editorial Advisory Board as part of the move of the *Journal*—which went from being housed at Arizona State University to the University of Texas at San Antonio this past academic year. Oscar has played an invaluable role in continuing AMAE's mission of promoting research and practice that improves the educational attainment of Mexican-American/Latino children and families. ¡Muchísimas gracias, Oscar!

We also thank the newly-minted, Dr. Carolina Ramos, who has served as the Managing Editor of the *AMAE Journal* during 2014-2015. During her last year as a doctoral student, she provided excellent assistance in setting up the *Journal's* new website, copyediting, and successfully getting three issues to press. We wish her all the best on the next chapter of her academic journey.

Juntos logramos más,

Patricia Sánchez, Co-Editor
Oscar Jiménez-Castellanos, Co-Editor
Antonio Camacho, Co-Editor

Introduction: Reflections on Latinas/os, Affirmative Action, and Education

María C. Ledesma

María E. Fránquiz

University of Utah

“Neither we, nor the University, argue that affirmative action programs should continue forever; however, as long as these discriminatory consequences linger, as long as these consequences translate into a lack of adequate service for these segments of the society- segments which the University has a duty to serve-then the University and indeed all governmental agencies must be permitted to maintain programs such as these.”

Brief of *Amici Curiae* Mexican American Legal Defense and Educational Fund, La Raza National Lawyers Assn., County of Santa Clara, Calif., League of United Latin American Citizens, G.I. Forum, National Council of La Raza, Los Angeles MEChA Central, Image, National Association for Equal Educational Opportunity, **Association of Mexican American Educators**, et al in Support of Petitioner, 1977.

“We take the Law School at its word that it would “like nothing better than to find a race-neutral admissions formula” and will terminate its race-conscious admissions program as soon as practicable...It has been 25 years since Justice Powell first approved the use of race to further an interest in student body diversity in the context of public higher education. Since that time, the number of minority applicants with high grades and test scores has indeed increased...We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.”

Associate Justice Sandra Day O'Connor, *Grutter v. Bollinger*, 2003, p. 343

“The way to stop discrimination on the basis of race is to speak openly and candidly on the subject of race, and to apply the Constitution with eyes open to the unfortunate effects of centuries of racial discrimination. As members of the judiciary tasked with intervening to carry out the guarantee of equal protection; we ought not sit back and wish away, rather than confront, the racial inequality that exists in our society. It is this view that works harm, by perpetuating the facile notion that what makes race matter is acknowledging the simple truth that race does matter.”

Associate Justice Sonia Sotomayor, dissenting in *Schuetz v. Coalition to Defend Affirmative Action* 2014, slip opinion p. 46.

Introduction

In 1977 the Association of Mexican American Educators was one among many Latina/o affiliated organizations to add their name to an *amicus curiae*, or friend of the court, brief filed in support of race-conscious affirmative action in *Regents of the University of California v. Bakke* (1978). The brief spearheaded by the Mexican American Legal Defense and Education Fund (MALDEF) argued in part that Chicanos/Latinos, just like African Americans, encountered disadvantage in preparing for and seeking postsecondary opportunities. The brief also emphasized how persistent residential segregation, high poverty rates, disparate educational opportunities, high incarceration rates, and language issues, all worked together to complicate access to higher education for all students of color, but especially for Latina/o students. Close to four decades after *Bakke* many of the challenges identified in MALDEF's brief continue to impede Latina/o students from reaching their higher education aspirations.

Since *Bakke*, the legality of affirmative action has been challenged at the Supreme Court level multiple times. In the University of Michigan's undergraduate and law school cases, *Gratz v. Bollinger* (2003) and *Grutter v. Bollinger* (2003), the Supreme Court upheld the law school's holistic admissions practices while at the same time striking down the university's point-driven undergraduate admissions system. More recently in *Fisher v. University of Texas* (2013), the High Court upheld the University of Texas' limited use of race in university admissions but not before stipulating that institutions of higher education must exhaust all race-neutral alternatives before

relying on race-conscious practices.

In the wake of *Bakke* and its progeny, the argument has been made that the time has come to abandon *all* race-conscious practices. Indeed, guided by Justice O'Connor's "sunset clause" in *Grutter*, highlighted as an epigraph to this chapter, critics of race-conscious affirmative action contend that the time has come to cease all affirmative action policies and practices. And while up to now, affirmative action has managed to withstand legal scrutiny, opponents of the policy have been relentless in seeking to terminate race conscious practices. The Supreme Court's recent decision in *Schuette v. Coalition to Defend Affirmative Action* (2014), which grants states permission to overturn race-conscious practices via ballot initiative or state referenda, is set to radically alter the future of affirmative action, as well as impact the lives of countless under-represented students who have relied upon this policy to gain entry into the nation's top colleges and universities.

The conventional wisdom among educators is that during the past 40 years, affirmative action policies and practices have generally enhanced the educational attainment of Latinas/os¹. There is clear evidence, for example, that among some highly selective elite universities, Latinas/os who qualify for admission have a greater likelihood of attaining their degree than Latinas/os who attend less prestigious public institutions, where the impact of affirmative action is muted and indirect (Bowen & Bok, 1998; Carnevale & Strohl, 2013). However, there is also evidence to suggest that the increase in enrollment rates among Latinas/os in public higher education is not necessarily due to the success of Latina/o-centered affirmative action practices, but rather to the demographic increase in the college-age Latina/o population who, despite tremendous odds, manage to enroll in college (Delgado-Bernal, 2002; Smith, 2009; Villalpando, 2010; Yosso, 2005). Irrespective of conclusive evidence, educational practitioners, researchers, and policymakers generally accept the notion that the loss of affirmative action practice has, and will continue to inhibit and erode Latinas/os' educational success.

Despite decades of scholarly work on affirmative action in higher education, little research exists that specifically addresses the role and impact of affirmative action on Latina/o educational attainment. As noted by Gándara (2010) Latinas/os experience "triple segregation"—racial, socioeconomic, and linguistic—all of which complicate their educational pathways into higher education (Gándara & Contreras, 2010; Solorzano & Yosso, 2000). Latinas/os remain underrepresented in selective and elite universities, and overrepresented in open-access two-year colleges, and four-year comprehensive colleges designated as Hispanic Serving Institutions (Chronicle of Higher Education Almanac, 2014; Carnevale & Strohl, 2013; Santiago, 2013). Racialized policies and practices, including academic tracking (Oakes 2005; Solorzano & Ornelas, 2002), continue to impair Latinas/os educational progress by funneling Latina/o students away from college preparatory curricula. And, despite Latina/o students' resiliency in overcoming a host of inequitable educational practices, we still find only a dismal and disproportionate number of Latina/o students attaining their educational dreams and aspirations (Solorzano, Villalpando, & Oseguera, 2005; Solorzano & Yosso, 2002).

Some have argued that affirmative action has yet to fulfill its intended purpose because, since its inception, the policy has been co-opted and consistently redefined by the courts, politicians, and educational policymakers seeking to ameliorate, or at least placate, future challenges (Brent & Oshige, 1995). Others contend that affirmative action's original purpose and intent was only meant to address the needs and unique experiences of African Americans (O'Neill, 1985; Patterson, 2005). For example, Brent and Oshige (1995) have suggested that affirmative action in education was initially conceptualized and enacted with a narrow focus on African Americans, and was never intended to address the educational exclusion of any of the other "equally marginalized" racial and ethnic communities. Consequently, the argument goes, most of the benefit of affirmative action has been diluted for African Americans since its original purpose has been repeatedly broadened to include characteristics (such as gender, language, and immigration) and other educational conditions and life experiences (such as economic class and geographic diversity) that are not necessarily associated with the historical racial exclusion of African Americans. This position naturally highlights the irony behind white women being affirmative action's greatest "unintended" beneficiaries (Cho, 2002; Crenshaw, 2007).

In this special issue we focus on Latinas/os, education, and affirmative action; we take up the central premise raised by those who argue that affirmative action was not intended to benefit *all* excluded racial and

1. Latinas/os include women and men of Mexican, Central American, South American, Cuban, and Puerto Rican origin, regardless of birthplace, immigration, or generational status (Villalpando, 2010).

ethnic communities. We proposed to explore this proposition and its ancillary explanations of why affirmative action in higher education has lacked a consistently positive, broad and proportional impact among Latinas/os. In light of the reactionary and neoliberal *post-racial* forces that permeate U.S. education (Goldberg, 2009; St. John, Duan-Barnett, & Moronski-Chapman, 2013), and the ever-changing social and legal landscape surrounding affirmative action as a race-conscious policy, this Special Issue problematizes the utility of affirmative action for Latinas/os.

Purpose

As guest editors, we were most interested in exploring the role of affirmative action in advancing and expanding educational access and opportunity for Latina/o students. Our approach to this work led us to conceptualize the term “*acción*.” While *acción* is a literal Spanish translation for the word “action,” we also envision “*acción*” as a richer, more complex term. We take *acción* to represent a model of hope. Such a model is dynamic, changing, flexible, and always being constructed. By adapting the word *acción* we also recognize that the term “affirmative action” for good or bad, is laden with baggage. For critics of affirmative action the term itself is shorthand for unjust preferences and reverse discrimination. For proponents of race-conscious policy, the term affirmative action represents an as of yet unmet promise, an ideal conceptualized but not yet actualized. Indeed, it is curious to recognize that in her extraordinary opinion in *Schuetz* (2014) Justice Sotomayor, the first Latina Justice on the Supreme Court of the United States opts to use the phrase “race-sensitive admissions policies” (p. 2) rather than “affirmative action” beginning on page 2 of her 58-page dissent. And while we do not mean to suggest that the time has come to abandon the affirmative action nomenclature, we hope that the papers in this special issue help spark new conversations about the future of race-conscious policies, especially for a steadily growing Latina/o population. We posit that an *acción* model recognizes that policy is not enough. Indeed, while affirmative action has existed for fifty-four years, it has become the imperfect tool we depend on rather than the ideal tool we need. However, we hope that the papers to follow help get us thinking in new directions.

As we embark further into the twenty-first century we stand on the cusp of new possibilities. In *Fisher v. University of Texas* (2013) the Supreme Court left untouched its ruling in *Grutter v. Bollinger* (2003), wherein the Court’s majority affirmed Justice Lewis Powell’s declaration in *The Regents of the University of California v. Bakke* (1978) that student body diversity constitutes a compelling interest in support of affirmative action policies and practices. The Supreme Court’s decision to uphold the limited use of race-conscious affirmative action policy in *Fisher* (2013) coupled with reports and projections confirming the rapid and expanding growth of the Latina/o population (Census.org; Fry & Taylor, 2013) across the U.S. present a timely opportunity to delve deeper into exploring Latinas/os’ educational success (or lack thereof). Indeed, the rapid and steady growth of Latina/o populations across the Nation’s most populous states, including California, Florida, New York, and Texas—along with the population explosion of Latinas/os in Georgia, South Carolina, Illinois and the Northeast corridor—signal an urgent need to understand how to best serve a growing Latina/o student body. This urgency is further compounded by the fact that Latina/o demographic growth is no longer confined to coastal and metropolitan states. Latina/o demographic growth in new places, like Alabama and Tennessee, further intensify the need to address issues of educational access and equity.

Even as we take time to examine the state of Latinas/os, education, and affirmative action, new challenges against race-conscious practices are already on the horizon and on the legal docket. Next term the Supreme Court of the United States will again hear arguments in *Fisher v. University of Texas*. At issue once again will be the future of race-conscious university admissions plans. At the same time, the Center for Fair Representation and Students for Fair Admissions, spearheaded by their founder Edward Blum, have brought suit against Harvard University, the University of North Carolina, and the University of Wisconsin, Madison, alleging that these universities unduly burden Asian American students in the college admissions process. The insinuation here being that unlike other racial/ethnic groups, including Latinas/os, Asian American students are expected to excel academically (including earning above average SAT scores) and are penalized for doing so. As we await the outcome of these latest challenges to affirmative action, it is worth noting the troublesome messages implied in these new lawsuits. First, that students of color, including Latinas/os, are displacing “more qualified” racial/ethnic

minority students in admissions to selective universities. And secondly, the fact that Blum's organizations, which are responsible for taking both *Fisher* and *Schuetz* to the Supreme Court, have seized on the opportunity to exploit the Asian model minority myth to pit racial/ethnic minority students against one another in his ultimate quest to finally overthrow all affirmative action practices.

Critical legal scholar Kimberlé Crenshaw (2007) has rightly observed, "What most people think they know about affirmative action isn't right, and what is right about affirmative action most people don't know" (p. 131). Our hope is that the five papers contained in this special issue will contribute to the conversation around race, civil rights, epistemic justice, Latinas/os and affirmative action.

Range of Scholarship

Enrique Alemán, Jr., Dolores Delgado Bernal, and Edén Cortez are the authors of the first article in the themed issue. These scholars envision affirmative action as a broader positive action rather than the traditional policies that address discriminatory practices in employment, housing, and access to higher education. With an emphasis in access to higher education, they call for the inclusion of student, parent/family, and community voices as a condition for supplementing affirmative action. In their article, *A Chican@ Pathways Model of Acción: Affirming the Racial, Cultural and Academic Assets of Students, Families and Communities*, they provide three premises that are necessary for effective realization of affirmative action for Latin@s/Chican@s. First, effective affirmative action must be based on Chicana/o K-12 experiences. Second, students and their families must be incorporated into equity efforts from the earliest educational stage. Finally, an effective affirmative action model must cultivate action by and with families and communities. Together, these premises inform analysis of data collected in K-12 classrooms for more than a decade in the state of Utah. The Westside Pathways Project is centered on college awareness and access, fostering academic leadership and academic enrichment and affirming the racial and cultural identities of students and their families. It is a model of *acción* that incorporates the perspectives of students, families and communities who would otherwise experience inequitable schooling along the educational pathway to higher education.

Leslie D. Gonzales conceptualizes a model of *acción* for Hispanic Serving Institutions (HSIs) in the second article. She presents potential scenarios for application when a comprehensive take up of affirmative action is taken up by HSIs. An argument is made in, *An Acción Approach to Affirmative Action: Hispanic-Serving Institutions as Spaces of Epistemic Justice*, for employing funds of knowledge theory and method in order to foster epistemic justice in HSIs and beyond. The epistemic justice perspective positions the Latina/o community as possessing epistemic riches and important ways of knowing that can inform the daily work, practices and policies in HSIs, specifically when these institutions are intent on providing more relevant and empowering spaces for students. The model is conceived as a pathway for leadership in HSIs to apply at three distinct levels: 1) leaders and administrators, 2) student service professionals, and 3) the professoriate. She states, "The start point for leaders must be a willingness to ask themselves and others what it means to carry a Hispanic-Serving designation, and to hold themselves, their programs, and staff responsible for fulfilling what should be a distinctive mission." In this way, a call for affirmative action is not limited to a policy to ensure equitable admission practices. Instead, a call is made to challenge the relations of power that restrict the legitimization of the funds of knowledge from Latina/o communities.

Moving from HSIs to research-intensive universities, Michelle M. Espino, in her article, *Sacrificing a Latina/o Presence in the Professoriate: An Analysis of Affirmative Action as Racial Remedy and Silent Covenant*, investigates the lived experiences of 22 Mexican-American faculty and post-doctoral fellows. The article explores how affirmative action policies reflect a silent covenant among policymakers and universities to promote racial/ethnic diversity while limiting the presence of Latina/o faculty. Using Derrick Bell's (2004) concept of the silent covenant, Espino, argues that remedies to address racial injustice in higher education reflect symbolic encouragement that discrimination can be overcome. In her analysis she shows interest convergence since the benefits of limited diversity does not diminish the entitlement of Whites in research-intensive institutions. The narratives presented provide strong justification for the maintenance of race-conscious admissions policies to higher education for Mexican American students including summer bridge programs from high school to college, undergraduate

“minority” programs, and graduate student “minority” fellowships. Unfortunately, despite their successes a majority of participants felt constantly interrogated and held under suspicion because they supposedly had not “earned the right” to be in college and graduate school. As Target of Opportunity hires in the professoriate, racism and backlash from a number of faculty peers was also felt. Accordingly, Espino concludes, “Based on the findings, affirmative action policies are beneficial to Latinas/os students and faculty, and are also beneficial to maintaining the stability of White power structures.”

In her article, *Public Discourse versus Public Policy: Latinas/os, Affirmative Action, and the Court of Public Opinion*, María C. Ledesma proposes that critics of affirmative action use truncated and/or deceptive narratives in their quest to end race-conscious policies. Using the case of California, she argues that popular discourse has the power to limit educational access and opportunity for historically marginalized students, especially Latinas/os of Mexican decent. She traces a historical pattern of reliance on media that frames the popular discourse with inaccurate language, strategic language manipulations, and ahistorical and acontextualized narratives. These discourse strategies contribute to a landscape for Latinas/os that not only constrains race-conscious policies but also creates an anti-immigrant rhetoric with dangerous ebbs and flows. The passage in California of Propositions 187, 209, and 227 strengthened the language of initiatives in six additional states. The result on Latina/o admissions into the University of California system is that to date pre-209 enrollment figures have not been attained. Ledesma concedes that the power of popular discourse on similar public policies undermines access to higher education and educational outcomes for Latinas/os across the United States, particularly in light of the recent *Schuetz v. Coalition To Defend Affirmative Action* (2014). While this decision grants states permission to curtail and/or terminate the use of race-conscious policy via ballot initiative, Ledesma points us to Justice Sonia Sotomayor’s dissent as a point for dialogue to strengthen the language used by advocates for communicating to the populace that affirmative action matters.

As shown across the articles in this special issue, race-conscious admissions policies at selective postsecondary institutions remain a critical factor for the educational opportunities of Latinas/os in the 21st century. For this reason Liliana M. Garces analyzes and discusses a significant affirmative action case in her article, *University of Texas, at Austin’s Defense of Affirmative Action in Fisher v University of Texas: Lessons for Institutional Policies and Practices*. In *Fisher*, the U.S. Supreme Court recognized the right of universities to pursue a mission-centered or compelling interest in the educational benefits of student body diversity. At the same time, there are limited ways in which race can be considered in admissions policies. She points out that post-*Fisher* it is important for institutions of higher education to pay attention to race-conscious admissions practices that further their mission but also cautions, “numbers alone do not produce educational benefits; what institutions do during a student’s years of education matters in terms of generating the educational benefits of diversity.” In this way, affirmative action is not just about access. Garces highlights that it is also about providing admissions to students across a wide range of social dimensions, engaging in productive cross-racial experiences, assuring a safe racial campus, maintaining a positive racial climate, among other important ways to advance an affirming sense of belonging and success in institutions of higher education.

The collection of articles in this special issue provide an expanded landscape for situating Latinas/or within conversations about where affirmative action has been, where it is now, and where it could be. The editors and authors contend that affirmative action matters for the educational success of Latinas/os from the earliest educational age. Together, students, families and communities can create models of *acción* amidst the local and national vision of advancing racial equity and access to higher education for all.

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A Chican@ Pathways Model of Acción: Affirming the Racial, Cultural and Academic Assets of Students, Families and Communities

Enrique Alemán, Jr.
Dolores Delgado Bernal

Eden Cortez
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Abstract

This article presents our conceptualization, initial creation and implementation of a university-school-community partnership, the Westside Pathways Project. We introduce our work in developing and sustaining this K-16 educational pathways partnership as one way of broadening the affirmative action discussion. By describing a model of *acción* that addresses college access starting at the earliest educational stage in which students and families interact with public institutions of education, we pivot from traditional notions of affirmative action research. In delineating our partnership, we argue for affirming Chicana/o students culturally and academically while simultaneously taking action to create awareness of and access to higher education across educational settings, with students of varying ages, together with families and community members.

Introduction

Throughout South Texas and South Central Texas, Mexican origin women helped establish and operate private *escuelitas* to offer Tejano children the opportunity to study academic subjects and to maintain their culture and language... Teachers could set up an *escuelita* in a room in their homes. They used simple equipment and supplies, making do with what they could obtain... *Escuelita* teachers used a bilingual-bicultural curriculum in language, social studies, science, mathematics, geography and physical education. They also offered classes in music and drama... While the *escuelitas* educated a number of Tejanos who entered the professions, they likewise provided the children of the poor the opportunity to learn... [One student] recalled that she learned almost nothing at the ranch school, where the students were predominantly Anglo and classes were conducted in English. In addition, Anglo students regularly harassed the Mexican students... In contrast, she recalled with relish her success during her brief attendance at the *escuelita* in Crystal City, where her family moved when they left Loma Vista. There, in the company of other Mexican children and under the tutelage of a Mexican teacher, she learned to read and write sufficient Spanish to serve her throughout her adulthood. (Acosta & Winegarten, 2003, pp. 152-155)

The first of the *escuelitas* opened in 1897 in Hebbronville, Texas, and represented parents' dedication to struggling against the inequitable opportunities their children faced in public, rural schools (Acosta & Winegarten, 2003). These parents, both Mexican and Mexican American, possessed a deep understanding of the racist schooling their children would experience. Seeking to counter the lack of access to equal opportunity and knowing that a caring teacher with high expectations and a culturally additive perspective could best prepare students, the *escuelita* movement in Texas served thousands of children in the early to mid-20th century (Salinas, 2000). Lessons were taught in Spanish and included Mexican history. Teachers very often were strict, but they cared about their pupils and understood their families (Acosta & Winegarten, 2003; Montejano, 1987; San Miguel & Valencia, 1998).

This early Chicana/o history informs our conceptualization and the initial creation of the university-school-community partnership, the Westside Pathways Project, that we co-direct. Guided by our desire to

counter the ways in which many children have been made to feel less than in K-12 schools, we are ever cognizant of the pervasive inequitable schooling conditions that educational systems produce for students of color and Chicana/o students specifically. While *escuelitas* sought to affirm Mexican American students for who they were and where they came from, they were not necessarily designed to create an avenue toward universities and colleges. The Westside Pathways Project is a contemporary example and an educational progeny of the *escuelita* movement, but with an explicit goal of creating educational pathways to higher education. It is a response to the historical neglect (Delgado Bernal, 1999; San Miguel & Valencia, 1998) and current state of educational inequity for Chicanas/os. Drop out rates for Chicana/os – or as we call them “push-out” rates – are among the highest of all student groups (Gándara & Contreras, 2009; Rumberger & Rodríguez, 2002). While parents and families continue to be viewed as deficient and uncaring by those who make policy, implement programs, and lead classrooms (Garcia & Guerra, 2004), the Spanish language, as has been historically (San Miguel, 2004), remains characterized as a detriment to student success (Solórzano & Yosso, 2001; Trujillo, 2005). Access to colleges and universities remains challenging for the large majority of Chicana/o students (López & Moreno, 2014; Solórzano, Villalpando, & Oseguera, 2005). In fact, the school to prison pipeline, particularly for Chicana/os, is more solidified than the school to college pipeline (Valles & Villalpando, 2013). Scholars like Solórzano and Yosso (2001) have demonstrated how these leaks in the school to college educational pipeline begin at the earliest educational stages and are systemic and pervasive at all levels.

It is with these understandings that we enter the discussion about and around affirmative action in higher education, especially as the conversation relates to Chicana/o students, families, and communities. The debate consistently incites conflict and tension among practitioners and policy makers, while garnering a significant amount of rigorous research and commanding the attention of the courts. We understand that policymakers continue to legislate and appropriate funds that neglect equity across K-12 systems (Alemán, 2007; Darling-Hammond, 2007), and while often these same policymakers and educational leaders influence decisions and propose policy changes on affirmative action, the fastest growing and youngest of the student groups remains underserved both in public K-12 and higher educational contexts (Gándara & Contreras, 2009). Rather than center our article on the judicial aspects or institutional policies that often surround affirmative action scholarship, we instead introduce our work in developing and sustaining a K-16 educational pathways partnership as one way of broadening the affirmative action discussion. By describing a model of *acción* that addresses college access starting at the earliest educational stage in which students and families interact with public institutions of education, we pivot from traditional notions of affirmative action research. In delineating our Westside Pathways Project, we argue to **affirm** Chicana/o students culturally and academically – as was endeavored by teachers and parents of the *escuelita* movement – while simultaneously taking **action** to create awareness of and access to higher education across educational settings, with students of varying ages, together with families and community members.

In the section that follows, we first outline our rationale for inserting a K-16, community-based model into the affirmative action debate. Next, we situate the development of our *acción* model in sociopolitical context that includes fiercely anti-immigrant and anti-Latina/o forces in one of the most conservative states in the U.S. Then, we describe our foundational principles and outline the three partnership programs that form the Westside Pathways Project. We highlight strategies for creating a culture of higher educational awareness and expectation and propose our Westside Pathways Project as one model of *acción* that works across K-12 and higher educational institutions from within and among communities and families of color. Finally, by sharing two examples of affirmation and action that resulted from our partnership work, we conclude by illustrating how any future affirmative action literature and discussion would benefit from including the voices and experiences of students, families and historically underrepresented communities along the educational pathways.

Our Premise for Models of Acción: Racial Realism in K-16 Pathways

In the spring of 1961, President John F. Kennedy first put forth the term “affirmative action” with his issuing of Executive Order 10925. Meant to address the continuing inequalities that existed in employment and housing practices, his administration actively sought to provide redress for the centuries of discriminatory acts

directed against people of color and women in the U.S. In his issuing of the Emancipation Proclamation almost one hundred years earlier in January 1863, President Abraham Lincoln also leveraged the weight of the federal government behind the “freeing of the slaves,” and in a sense began to re-frame the debate on human rights, the morality of holding persons in bondage, by re-centering foundational tenets of the U.S. Constitution². Almost a half-century after the issuance of President Kennedy’s executive order, Abigail Noel Fisher, a white female and recent Texas high school graduate, was denied admission to the state flagship university, the University of Texas at Austin (UT-Austin). Challenging the university’s narrowly written affirmative action policy, she sued UT-Austin for violating her rights under the equal protection clause of the fourteenth amendment. Characterizing the university’s affirmative action policy as one that gave unfair preference to – as she and her lawyer’s claimed – underachieving students of color over high-achieving White students like herself, they argued that the university’s race-conscious admissions process gave preference to racial minorities while specifically discriminating against Whites. Although race continued to be a factor in the university’s calculation of admissions index scores, it was not the primary, sole, or overriding factor used in determining admission. Stated plainly, the university did not assign a specific numeric value based on an applicant’s race during review of applications. Abigail Fisher was not disadvantaged for being White, she was denied because all the factors considered for admission were evaluated and her academic record did not meet the necessary cutoff score.

Kennedy’s executive order, Lincoln’s proclamation, and Fisher’s suit are instructive in that they help us to historicize the ongoing struggle to provide equal rights and equal access for persons in the U.S. The legal decisions made and policies implemented because of their actions are innately political. A struggle to live up to Lincoln and Kennedy’s calls for equality and for ending discrimination continues today. We specifically mention *Fisher* because its ruling, although settled in the courts, has not ceased to impact and influence development and implementation of institutional affirmative action policies across the country. Similar to what President Kennedy first called for in seeking to “affirm” and “act” on behalf of persons of color who “have often been unjustly denied the opportunity to work for the government or for government contractors,” we have developed Westside Pathways Project to create spaces where students and families can be affirmed as people and have the opportunities to act against their disempowered positions.

While we stand with scholars of affirmative action who continue to argue for creating equal opportunities and with those who struggle to make equal educational opportunity more of a reality, we also argue here that our thinking and praxis on creating more effective affirmative action must be broader than what the conventional thinking on this issue has been. Calling for the inclusion of student, parent/family, and community voices as a way of supplementing how affirmative action is often thought and talked about, we call for an approach that centers Chicana/o schooling histories, affirms Chicana/o educational realities, and cultivates spaces for action where Chicanas/os are positioned to advocate and struggle against their neglected educational predicament.

An expansion of this dialogue and inclusion of Chicana/o students, parents, and community perspectives and voices along the K-16 pathway is necessary because we understand that public schools are not necessarily “broken” as some in legislative and media circles might characterize them (Paul, 2013; Siquefield, 2013). Rather, we argue that systems of education are actually structured to disadvantage students and communities of color. As several Chicana/o educational scholars have comprehensively documented, these histories of racism and oppression (Blanton, 2004; Delgado Bernal, 1999; Donato, 1997; San Miguel, 2004; Valencia, 2005) have been foundational to the ways public schools have operated. Because public schools – where the majority of Chicana/o students continue to be educated – remain inequitably funded (Alemán, 2007; Carey, 2004), provide little access to advanced coursework (Ford, Harris, Tyson, & Trotman, 2002; Solórzano & Ornelas, 2004), and shortchange Chicana/o students’ rights to quality, caring, and rigorous teachers (Nieto, 2003), having a discussion of effective affirmative action programs or policies without basing the discussion on Chicana/o K-12 experiences does not serve the debate well.

Our second premise for creating more opportunities for student, parent, and community perspectives in the affirmative action debate is that we also believe that any model of action must begin by incorporating students and their families at the earliest possible educational stage. In Utah – as is the case for many states in

2. We understand that the actions of these Presidents and their administrations were not motivated solely by a pursuit of equity and social justice. The interest convergence (Bell, 1995) that led to these actions is beyond the scope of this article.

the Union – disadvantaging of youth of color, lowering expectations and denying educational opportunity begins very early in their educational pathway (See Alemán, 2009; Alemán & Rorrer, 2006; Perlich, 2008). Coupled with a lack of rigorous academic programming, discipline policies exacerbate negative schooling experiences for Utah students of color. As Chiang's (2014) recent school-to-prison pipeline report demonstrates, the priming of young children for the criminal justice system has tragic effects on the so-called drop-out rates of Chicanas/os and other students of color. These practices begin with very young students and continue along the educational pathway. Deficit thinking and practices unfortunately continue to hinder the inculcation of higher educational aspirations so that rather than prepping students for higher education, they are being prepped for the criminal justice system (Garcia & Guerra, 2004; Solórzano & Yosso, 2001). An *acción* model has to start at the earliest point in which students and families interact with institutions of education. Beginning this work with students in middle or high school is too late.

Finally, we contend that any affirmative action model must cultivate “action” by and with parents and communities. The literature on “parent involvement” is voluminous (Epstein, 2007; Sanders, 2008), and we too believe in the important roles that parents can and do play in supporting the educational success of their children. But what about students who do not come from so-called traditional family units? What of those parents and families who must contend with immigration status, with school personnel who do not have the language capacities to work with persons who speak languages other than English, or with single-parent or same-sex family structures? Our belief and the strategies that we utilize include affirming all family structures. Affirmative action is necessary but cannot work without a relevant model of *acción* that includes students, families and communities of color. Working with students only is not enough (López, Scribner, & Mahitivanichcha, 2001; Olivos, 2007), just as working in an English-only environment is not enough. (Fránquiz & Salinas, 2013).

A Majoritarian Context: Xenophobia and the Pipeline to Prison in the New West

The Office of Civil Rights Education Data (CRDC) reports 20,153 disciplinary actions in Utah schools in 2011. Based on the total student population, we found that American Indian, Black, and Hispanic students all faced discipline at disproportionately higher rates. American Indians were disciplined three and a half times more often than expected, Black students were disciplined three times more often than expected, and Hispanic students were disciplined one and a half times more often than expected. (Chiang, 2014, p. 10)

Tragic as it may be, it unfortunately comes as no surprise for those of us working in the Utah public schools that the “school-to-prison pipeline in Utah starts with children in elementary school, ranging in age from five to twelve years old” (Chiang, 2014, p. 6). With disproportionate rates of punishment – including in-school suspensions and expulsions – students of color face consistent surveillance and inequitable disciplinary action, even while in elementary school. The political landscape, long known for mirroring the conservative values of the predominant faith, the Church of Jesus Christ of Latter Day Saints (otherwise known as the Mormon Church), is one that ironically promotes family and children on one hand, but passes anti-immigrant and anti-Latina/o legislation³ and largely ignores the multiple educational achievement gaps that negatively impact Utah Latina/o students (Alemán & Rorrer, 2006). The drop-out rates in Utah, like in other states, has been masked by ineffective data collection and an ever-changing formula for calculating those that are pushed out of the public school system. Chiang's (2014) policy report found what many community leaders know from their advocacy with communities of color, that in Utah “over half of students learning English as a second language (52%) dropped out...[and that] nearly 70% of those incarcerated in state prisons did not complete high school” (p. 10). Latina/os make up 12% of the total state population and 14.4% of K-12 student population, however the state of Utah continues to fail to provide equal educational access and opportunities for students of color, and Latina/o and Chicana/o students in particular (Alemán & Rorrer, 2006; Sanderson, 2005).

In the urban district in which our pathways partnerships are located, 40% of the total student enrollment

3. Utah's Illegal Immigration Enforcement Act (HB 497) is a far-reaching enforcement-only bill that copied several provisions virtually outright from Arizona's controversial SB 1070. While Utah's law is not quite as extreme or draconian, the core provisions remain in tact and have the same goal of driving Latinas/os from the state.

is Latina/o. It is one of the largest and most diverse districts in the state and provides a window into what the future of Utah school districts will encompass. Exhibiting segregation along geographic lines, Eastside schools in the district are disproportionately White and have the largest numbers of students categorized as high socioeconomic status. Westside schools, on the other hand, are mostly made up of students of color and families are disproportionately classified as low socioeconomic status. In regards to access to rigorous and specialized academic programming, magnet programs and those developed as college preparatory programs are mostly located in Eastside schools. The only program not located in an Eastside school – the district’s high school international baccalaureate (IB) program – is located in a school that is 60% students of color and 42% Latina/o. Despite being located in this school, within school segregation is evident in that 73% of students in the IB program are identified as White and only 8% are Latina/o.

With this racial segregation and inaccessibility to specialized, enrichment, or college preparatory curriculum as a backdrop, it was clear that some form of affirmative action to address the existing racial inequalities was needed. We specifically sought to engage in community-based *acción* in Westside neighborhoods. The neighborhoods and its students have for generations been denied opportunities afforded by the state’s flagship higher educational institution. Our goal was to work with these communities in neighborhoods and communities often portrayed as overrun by gangs, where students are thought to come from families that pass on their so-called cultural disadvantages. Unlike this perception, we see a community with untapped knowledges and families with cultural assets not always valued and/or utilized by traditional manners of schooling.

Because research supports the idea that if students have good academic preparation and are well grounded culturally they can succeed wherever they go in higher education (McLaughlin & Blank, 2004; Solórzano et al., 2005; Yosso, 2005), a conscious choice was made to form our partnerships with schools and with students from these communities. Although the students we work with are predominantly Latina/o and Chicana/o, we also work with students from various communities of color and those classified as first-generation college students.

Westside Pathways Project: Our Model for K-16 Acción

In the ten years since founding *Adelante*, our first university-community partnership, and with our most recent organization and formation of the Westside Pathways Project, we have attempted to remain steadfast to foundational principles that value reciprocal, community-engaged scholarship (Guajardo, Guajardo, & Del Carmen Casaperalta, 2008); culturally relevant and assets-based reform and practice (Solórzano & Yosso, 2001); parents and students as holders and creators of knowledge (Delgado Bernal, 2002); and, academic enrichment and racial identity formation activities for youth (Flores & Benmayor, 1997; Pizarro, 2005; Romero, Arce, & Cammarota, 2009). Although we have remained keenly aware that the systems and institutions in which we work are foundationally racist (Bell, 1995), our intent in working within them long-term has been strategic, political and pragmatic. By linking our three partnerships to form the Westside Pathways Project we have sought to create transformative educational spaces – or as Duncan-Andrade (2009) refers to them, those “cracks in the concrete” that when nurtured allow “roses to grow” – that would affirm students’ racial, cultural and academic identities while fostering possibilities for action and transformation. The Westside Pathways Project, therefore, is organized around increasing college awareness and access and the fostering of educational leadership and academic enrichment, but centrally it is meant to affirm the racial and cultural identities that the youth and families with whom we work carry within them, as a means of developing their educational, social, and political tools.

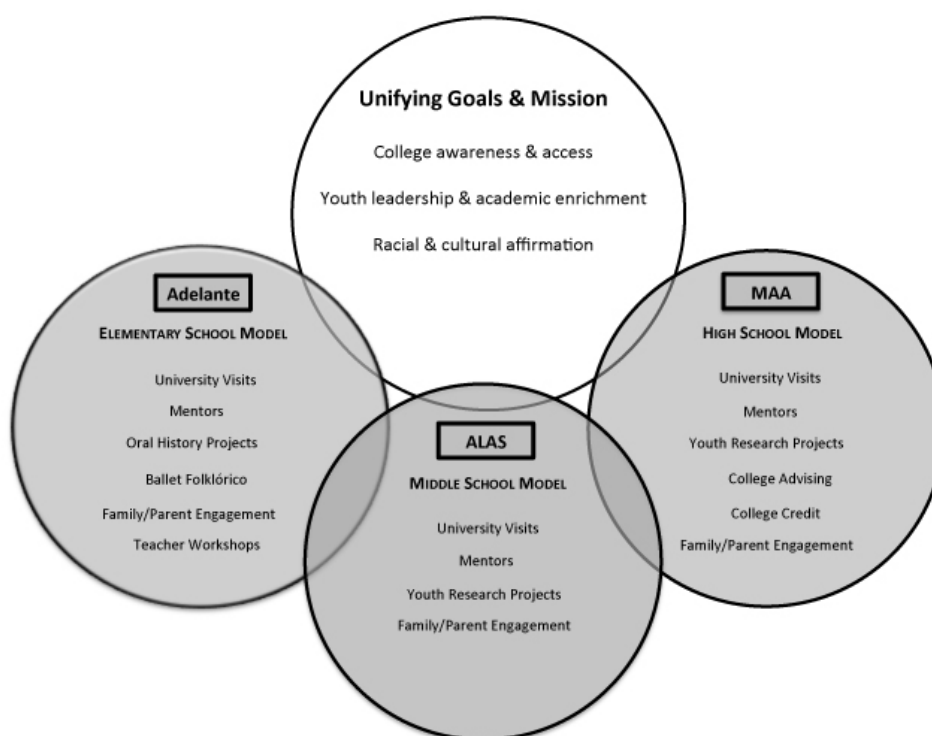


Figure 1: Overview of the Westside Pathways Project

The Westside Pathways Project came into existence in Fall 2013, when Drs. Delgado Bernal and Alemán merged, expanded upon, and directly linked up three college-access, university-community partnerships with which they had been working to develop independently. The merging of these partnerships involved parents, teachers, educational leaders, community members, university partners, undergraduate student mentors, and nearly 50 graduate students, mostly students of color from the College of Education, who have served as graduate research assistants or volunteers with *Adelante*, *ALAS* or *MAA* partnerships over the last ten years. What follows is our description of the three partnerships, each in different stages of development, along with brief discussions of the overarching goals that link them all under the umbrella of the Westside Pathways Project.

***Adelante* Partnership: The Elementary School Model**

Adelante, founded in 2005, is a K-6 model premised on the belief that all young people, including students of color and students from lower-socioeconomic families should be expected and prepared to enroll and succeed in college, and that college preparation must emphasize students' intellectual development in relation to community, culture and pedagogies of the home (Flores Carmona & Delgado Bernal, 2012). *Adelante* provides higher educational experiences to elementary school students and fosters a college going culture in the school. By providing university visits, science camps, and college students of color mentors who work in the classrooms, students at this elementary school are exposed to hands-on enrichment activities, but also get university role models throughout their time in elementary school. The most developed and longest standing of the three partnerships, *Adelante's* programmatic activities also include support for teachers and parents. Over the years parents have participated and initiated activities ranging from group dialogues with teachers and “*Día de los Niños*” celebrations to managing a community garden and having bi-monthly meetings to talk about school and community issues (Alemán, Perez, & Oliva, 2013). Their activism and leadership was particularly visible when they wrote a letter to the university president in support of *Adelante* after threats to its stability were made by a former principal.⁴

4. This event is discussed below and is used as an example of affirming parent perspectives and providing spaces for action to occur in a public school setting.

There is a need for establishing culturally relevant partnerships in urban settings that will help in the development of academic achievement, cultural competence, and critical/sociopolitical consciousness (Ladson-Billings, 1995). To address this need and to support teachers in this area, *Adelante* has reinforced teacher efforts by providing professional developments related to culturally relevant pedagogy and teacher assumptions and expectations of their students. In one professional development, we shared some of our preliminary findings about the school culture and teacher perceptions--some of which were very deficit oriented-- from a survey teachers completed. During the professional development, teachers spent time watching video narratives of the educational journeys of college students of color. These narratives pointed to the challenges in their journey including being placed in lower-track courses and teachers who held low expectations of them. Teachers spent time reflecting on these narratives and did some collaborative thinking and talking about what it means that some teachers believe a college-going culture is too lofty of a goal for *Adelante*. Though it was a difficult discussion, it was certainly a small step in the right direction toward developing teacher leaders and a more culturally relevant partnership.

Delgado Bernal and Alemán's research finds that after ten years of partnership work, the elementary school, its faculty, parents and students, is one that now promotes a college-going culture and creates awareness. Their research also points to how the original cohort of kindergarteners, who are now ninth graders at the local high school, articulate their desire to go to college, what they need to do to get there, and their concerns about how to pay for college (Delgado Bernal, Alemán, & Flores Carmona, 2008; Delgado Bernal, Alemán, & Garavito, 2009; Alemán, Delgado Bernal, & Mendoza, 2013).

Activists, Leaders & Scholars (ALAS) Partnership: The Middle School Model

ALAS has been in development since fall of 2012 when the first of the elementary school student cohorts who participated in the *Adelante* partnership began to attend middle school. Most of these students attended one middle school so we strategically began to build a relationship with this school's principal and faculty. This partnership seeks to maintain contact with students as they transition and progress through the middle school years. Similar to *Adelante*, programming includes mentoring from undergraduate students of color and university visits throughout the academic year, however, we have also begun to develop programming that includes college access workshops and youth-based research projects that explore cultural, ethnic and racial identities. In summer 2014, ALAS piloted the first overnight university camp where students transitioning to high school were provided the opportunity to consider college options, stay in college dorms, and attend a college class.

The ALAS middle school students (as well as the elementary school students in *Adelante* and high school students in MAA) regularly interact with university students of color as mentors and role models at their school or in the community. Since ALAS' inception, 75 college students have served as mentors at the middle school and some have served for consecutive years. In 2007-2008, we began to partner with two campus entities (Ethnic Studies Program and Center for Ethnic Student Affairs) to develop and institutionalize an Ethnic Studies service-learning course that serves as a cohort class for the Diversity Scholars Program, a first-year program serving first-generation college students and students of color (Delgado Bernal et al., 2009). Each year between 90 and 120 freshmen students of color participate in the Scholars Program and by extension serve as mentors in *Adelante*, ALAS, or MAA and receive service-learning credit. Teachers consistently cited the significance of the undergraduate mentors of color as influencing the school culture. These undergraduate students of color embody the goals of Westside Pathways Project, and their physical presence in classrooms signified college awareness for the teachers and the younger students. While the daily presence of college students of color has contributed to a college going culture, our research also demonstrates that the retention rates of the mostly first-generation college students has been positively associated with their mentoring experience (Delgado Bernal, Alemán, & Garavito, 2009).

ALAS is clearly our least developed partnership, as we have not had as long a relationship with the middle school's faculty and school leadership. Currently, we are building trust with the school's new principal and assistant principals, the second school administrative team since 2012. Three other elementary schools feed into this school and we are challenged with issues related to funding coordinators, sustaining relationships

with the student cohorts, and working with new families that, although are very similar demographically, have not had the chance to work with us. What has remained consistent is our commitment to creating spaces for transformation, where students and their families are affirmed for who they are and encouraged to act upon the access to higher education expectations that we can help facilitate.

Mestizo Arts & Activism (MAA) Youth Collective: The High School/Youth Model

MAA, founded in 2007 by university professors who specialize in youth studies, urban education and participatory action research methodologies (Cahill, 2010; Cahill, Quijada Cerecer, & Bradley, 2010), is a youth of color collective that exposes high school students to participatory action research, civic engagement, and college readiness. MAA youth are predominately Chicana/o Latina/o students who attend local high schools and live in Westside neighborhoods. The collective meets after school twice a week at a community-based art gallery. Programming engages youth in participatory action research with their college student mentors and partnership staff and allies. MAA's emphasis on academic enrichment and college readiness is achieved through "research and personal experiences as a way of promoting social justice and of making youth voices heard."⁵ Because youth are addressing sociopolitical issues in their communities and personal lives, the curriculum includes the use of media, spoken word, and dialogue to introduce students to a range of ideas that can be helpful in understanding their own racialized, gendered, or classed experiences. For example, listening to and interacting with award-winning poet Joaquin Zihuatanejo talk about his love for the Spanish language, all that he learned from his grandfather, or the 'isms he experienced growing up, allows youth to critically think about their individual and collective experiences as Latina/o youth.

MAA youth take leadership positions in directing their research projects, conducting community needs assessments, co-facilitating group dialogues, and presenting their work to others. Over the last seven years, they have produced a body of work that articulates concerns related to issues such as immigration, child abuse, educational inequities, legislative policies, and body image. They have distributed their community-based research via blogs, websites, videos, digital stories, and via community talks and about a dozen national and local conferences. Simultaneously, within this community learning space, the students receive college access information including assistance with the college application and admissions processes, as well as information and support for those seeking scholarship/financial aid. Most importantly, in terms of the educational pipeline, in the last four years approximately 90% of the seniors have applied to and attended college after graduating from high school. The majority of these students are first-generation college students, demonstrating that MAA is contributing to a strong foundation for creating college access for underrepresented students.

We completed our educational pathways K-12 link when we partnered with the MAA collective in 2013. At the time, MAA had undergone several transitions in faculty leadership. In the early years, the collective was guided by three professors, Dr. David Quijada, Dr. Caitlan Cayhill, and Dr. Mathew Bradley. However, after two of them accepted faculty positions at other universities, and Dr. Bradley lost his life in a tragic accident, the youth were left without any full-time faculty advisors/mentors. We⁶ had collaborated with MAA faculty in the development of *Adelante* and our community-based scholarship, and we had presented to MAA youth researchers in the past so we had a deep familiarity with the youth leaders and the philosophy behind the work. Because we were seeking to make further linkages to the K-16 pathways work we had been developing, our conversations with MAA youth and other concerned faculty at the university led to our accepting an invitation to work with the youth into the future. MAA remains solid programmatically, and the *Adelante* students with whom we have worked with since 2005, now have access to youth research and leadership programming at the MAA site. Nonetheless, the last two years have been a time of organizational transition, trust building, and solidifying the goals and mission of the program.

5. See <http://maacollective.org/about-us/maa-staff/> for the Collective's youth-authored mission statement and youth project examples.

6. Delgado Bernal and Alemán were university faculty colleagues of Drs. Cahill (Urban Studies), Quijada Cerecer (Education) and Bradley (Honors), and had participated with them as a part of community-engaged scholars collaborative sponsored by the University Neighborhood Partners at the University of Utah.

Affirming Identities and Fostering Action for and with Chicana/o Students, Families and Communities

Each of our partnership sites commenced at different times and we continue to serve students of varying ages and grade levels. The challenges of implementing these programs remain – sustainability, logistics, funding, and the building of trust with educational leaders, each with fluctuating levels of commitment to social justice and transformation. As in the case of the *escuelitas*, the partnerships have caring mentors throughout and the programming validates the rich knowledges, cultures, histories, and personal experiences that the students, youth, and families bring with them to these spaces. Students, youth, and families are not only situated to access information and the expectation of higher education, but they are fundamentally affirmed for who they are. Spaces are facilitated so that action is sparked and transformation occurs via the acknowledgement, validation, and celebration of the cultural, racial and academic identities that students, youth and families have. In the following section, we highlight two examples of affirmation and action that were cultivated in these educational spaces.

Parents Creating Spaces of Transformation

When we first developed *Adelante* and began working with kindergarteners and their parents, an educational leader told us, that Latina/o parents at the school did not participate in their children's education. She said, "I don't know how many you will actually get involved. My Hispanic parent involvement at this school is pretty low. They don't value it. I can't get anyone here on a Family Math Night even though I offer to feed them." Fast forward a few years later, and parents (mostly immigrant Spanish speaking mothers) gathered together in a series of Community Advocate workshops to discuss the needs of the community and formulate recommendations for improving the education of their children. Following the workshops, parents stayed engaged in the school in a variety of ways including a parent group called, *Segunda taza de café*. More recently, that group of parents transformed into *Padres en acción*, a school-based advocacy group, which provides a forum for parents to advocate and support their children's education. The account⁷ below describes their *acción* on behalf of their children when a number of issues related to a problematic discipline policy that had their children sitting on the hot pavement during recess and a possible cut to the Spanish dual immersion program came to the forefront. We believe it demonstrates one of the ways in which parents, in particular, are creating spaces of transformation.

It was the first time this group of mothers had decided to take a concern to the district office. There had been numerous meetings with the principal, but this time she had insulted them to the point that they felt they needed to speak to someone at the district office. On one occasion, an educational leader, Mrs. Diaz⁸, stated within earshot of a mother, "The mothers involved with the school's parent group are a bunch of vigilantes. They're just starting trouble in the school and not making my job any easier." On this morning, parents had decided to take their concerns directly to a district leader who had direct supervision over the school. Parents had made a list of talking points they wanted to discuss with the district, and as we waited in the school parking lot for everyone to show up they organized the caravan. Delgado Bernal, Alemán, Neri, the graduate student working with the parents, and one of the parents drove the group of 12 to the district office only a few miles away, but what seemed a world apart from the school's neighborhood. When we all exited the cars, the mothers led the way through the front door where a receptionist was sitting at a desk. The receptionist looked up from her computer when she realized that there was a group of people right in front of her. "How may I help you?" she asked with a surprised look on her face. "We are looking for Mrs. Jones," replied one of the mothers. "Do you have an appointment?" asked the receptionist. "No, but we would still like to speak with Mrs. Jones." The receptionist told us what floor and room Mrs.

7. The account is written based primarily on the field notes of Nereida Oliva, a doctoral student studying Latina parental leadership who has been involved with the partnership for nearly six years and has close relationships with many of the parents, and on the field notes of Delgado Bernal and Alemán.

8. Persons other than the authors and graduate students cited within these examples are pseudonyms.

Jones was located.

We all took the stairs up to the third floor. The office was located to the right of the stairway. Delgado Bernal and Alemán were the first to walk into the small office. The administrative assistant immediately greeted the group and asked what he could do to help us. Delgado Bernal began to explain to the receptionist why we were there when Mrs. Jones, an older White woman who had been working for the district for almost thirty years, walked out of her office. “Ms. Jones. This group is here to talk to you,” the receptionist said. Ms. Jones was taken aback to see such a large group of mothers in her office and very quickly stated that she was busy, and “I don’t have time to meet with anyone today. In fact, I have a meeting in a few minutes. You can’t just come in here and expect to meet with me.” Neri translated for the mothers. “Tell her that we are here to discuss serious issues and concerns,” one of the moms said to Neri in Spanish. Neri communicated that to Mrs. Jones, but Mrs. Jones abruptly stated, “I understand, but you can’t just come in and expect to be able to talk to me. You need to schedule an appointment first.” Delgado Bernal and Alemán told her they would like to schedule an appointment and she motioned them, but not the group of mothers, into her office. She proposed a meeting in two days, and Delgado Bernal stepped out of the office to confirm with the mothers waiting in the reception area with Neri that the day and time worked for most of them. Once the meeting was confirmed, Mrs. Jones stepped out of her office and walked past the group of mothers without saying anything to them. As she was leaving out the door, Mrs. Hanson, an African American district leader who has been an educator for 40 years, entered from a back hallway. She greeted all the mothers, and Alemán briefly told her why they were there and that Mrs. Jones could not meet with the parents today. Mrs. Hanson quickly invited the parents to a very small conference room down the hall, apologizing that she didn’t have a larger space to meet at the moment. During an hour-long meeting, Mrs. Hanson listened, asked questions, and took notes as the parents expressed their concerns in Spanish and explained why they had come to the district office on this day. Neri translated for Mrs. Hanson. She made no promises and took no action, but she expressed concern and informed the parents that she would be present at the meeting in two days with Mrs. Jones. As we exited the small conference room the parents all thanked her and shook her hand goodbye.

As we walked outside the building, the mothers started speaking in Spanish and one of the mothers asked, “So what are we going to do now?” We all stopped to talk outside of the main entrance. Responding to the question, but also speaking to the rest of the group, another mother said, “We are all going to come to the meeting. We have two days to notify more parents about the meeting. Hopefully more parents can come.” The mothers nodded in agreement. “We can ask those that can’t come to the meeting to write a letter stating their concerns and experiences at the school,” suggested a third often very quiet mother. Someone offered to begin making phone calls to other parents. And someone else suggested that some of them talk to parents and families as they are picking up their kids today and tomorrow. Before walking to the cars, the mothers confirmed their action plan to prepare for their meeting.

The mothers’ action in taking their concerns to the district and in preparing for the next steps clearly contrasts the views held by the dominant discourses that frame them as “uninvolved” parents. They approached the district specifically because school policies and practices (unlike the *escuelitas* of the early 1900s) were not affirming their children’s learning, and unfortunately it was their brown bodies that were so disrespected when they first entered the district space. The mothers expressed frustration with the way they were initially treated at the district. Yet, they were appreciative of the district administrator who listened to them, seemed satisfied with the preliminary outcome, and were hopeful that their voices would be heard. Their collective actions are illustrative of the ways in which parents come together to create spaces of possibility for educational transformation.

“Roses That Grow from Concrete” via Ethnic Studies for Fifth and Sixth Graders

Similar to the *escuelitas* of the early 1900s, and as response to the historical neglect and current state

of educational inequity for Chicanas/os, *Adelante* offers an ethnic studies after school “college class” to fifth and sixth graders. The class, taught from a Chicana feminist perspective by two of our graduate research assistants, offers a curriculum and pedagogy that allow students to think and analyze their lives critically. Although the course is held on school grounds, we argue that it provides an alternative relational space in which students use theoretical ideas to meaningfully discuss issues such as borderlands, gender, immigration, and stereotyping. The account⁹ below is from a fall afternoon when the fifth and sixth graders watched a four-minute clip of *Family Guy*, a show all of the students are familiar with. The clip highlights interactions Consuela, the family maid, has with others on the show. Using a familiar show/media source, the purpose was to begin a critical examination of stereotypes and deficit thinking. We believe the Chicana/o studies class is just one example of the Westside Pathways Project cultivating transformative spaces in which to grow roses from concrete (Andrade, 2009).

We start the clip. This particular clip highlights Consuela’s “English accent”. Consuela becomes the butt of the joke because of her lack of “English proficiency” which creates miscommunication between her and Peter. At the same time that she can’t understand him, she also manages to be “smart enough” to steal from him and the family. The students instantly recognize Family Guy as many of them shared that they watch it at home. They are excited because they consider it a funny show, and they anticipate laughing throughout the clip. Some are even fidgeting in their chair from excitement when they see what we are planning to show them.

At the beginning of the clip, most of the students are laughing. In exchanges between Consuela and Peter, it is clear that Consuela’s lack of understanding English is a funny and laughable thing they are picking up on. As co-instructors, the two of us exchange glances as they laugh, but we do not say anything. We allow the clip to play. As the clip progresses, we notice that the students are not laughing as loud as they were at the beginning. The four-minute clip is a constant repetition of the ways that Consuela is portrayed stereotypically. At some point towards the end of the clip, Consuela is seen crossing the border to meet with an estranged man that she seeks to have relations with. This image, combined with her job, accent, and skin tone on the show, forms a clear picture of the way that society generally thinks of Latinas/os and in particular Mexicanas/os. As the clip comes to the end of its four-minute run, the students have become more quiet than loud. Their initial excitement and energy had changed into quiet stares, and inaudible small talk.

When the clip stops, we flick the lights back on and see the students staring at us, each other, and the projector screen. Based on their body language, it seems apparent that the repetitive nature of Consuela’s behavior has communicated something to them about not only her, but perhaps even about themselves. What they at first found to be hilariously funny, turned into something more serious and perhaps even disturbing. As we open up the discussion, Socorro [the co-instructor] shares that her mother has been working many years in the housekeeping department at a hospital, cleaning beds and rooms. This conversation sparks some students to share their own stories, where two of them share that they also have mothers who clean houses and take care of children. After having opened up the conversation through sharing information that is personal to us, we then ask the students “What are some of the stereotypes associated with Consuela?”

The first student to make a comment about this question is Emma who says that Consuela “is dumb.” We follow up with “Why do you think that?” This time, not only does Emma respond but other students chime in as well, shouting over one another that Consuela is seen as dumb because she knows limited English,

9. The account is written based on the field notes of Socorro Morales and Sylvia Mendoza, doctoral students studying student engagement in the ethnic studies class. Each have been involved with the partnership for over five years and have close relationships with many of the students. See also Morales, S., Mendoza, S., and Delgado Bernal, D. (2014). Education in Nepantla: A Chicana Feminist Approach to Engaging Latina/o Elementary Youth in Ethnic Studies. Unpublished manuscript.

has an accent, attempts to steal things when no one is looking, and does not have common etiquette such as not going into a restroom when someone is using it. We discuss these actions as being a stereotype because they are widely held perceptions that people have about Latinas/os, rather than actual things that Latinas/os do in practice. The two students who shared about their mothers earlier then begin sharing that their mothers have a tough job because their bosses treat them unfairly. In particular, Emma shares how Americans (but really she means white people) treat her mother unfairly because she gets underpaid for the amount and type of work that she performs. They also both share they have sometimes gone to help their mothers at work and know that their mothers receive less pay than they should compared to other workers who are white.

In sharing these aspects about their families, we then move to asking them the question of why do they think that school is important? Socorro shares that her mother always told her education was important because her mother did not want her working labor jobs where Socorro would be underpaid, like her mother was. This comment once again sparks discussion among all the students who unanimously had experiences with their parents telling them to stay in school. They all knew school and education is an important means to not being treated the way that their parents were being treated in their jobs. They understood that without an education, it would be more difficult for them to be able to defend themselves in the world of work and they would have less access to jobs that are less labor intensive. As these conversational threads end, the students start to take up topics that are tangential to the discussion and we decide to break for recess.

Like the *escuelitas*, this class is founded on a deep understanding of how these fifth and sixth graders have been made to feel less than in schools and society and of the racism they face on a daily basis. Cultivating a space of affirmation for young people and stressing the importance of schooling, the ethnic studies course explicitly articulates a healing pedagogy that combines critical thinking and sophisticated discourse analysis in a space that validates the students and their material realities in order to allow roses to grow from concrete.

Concluding Thoughts

The affirmative action debate must more fully incorporate the perspectives of students, families and communities who experience unequal and inequitable schooling along the educational pathway to higher education. Our Westside Pathways Project is but one example of how educational spaces – both in and out of educational institutions – may be fostered. The two scenarios that we share can also provide some insight into affirming Chicana/o identities as one way of preparing students and their families for the challenges they will face prior to matriculating into higher educational institutions. They also provide a view of how sites of action can provide transformational moments not only for individuals but also for the collective. In fostering strong partnerships and building relationships long-term from kindergarten through high school, we see this project as one that can be organized to inform educational policy and practice. We believe that our long-term growth and sustainability – and our potential for contributing to the dialogue on affirmative action – will hinge on our ability to create spaces where “roses can grow” in the spirit of *escuelitas* that sought to welcome, care, and love their students from the onset of their educational journey.

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An Acción Approach to Affirmative Action: Hispanic-Serving Institutions as Spaces for Fostering Epistemic Justice

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Abstract

In this article, readers are asked to suspend conventional notions of affirmative action as a policy that ensures equitable admissions practices to the nation's most elite post secondary institutions, and instead to consider how affirmative action might be understood as a way to challenge the relations of power that govern the legitimization of knowledge and knowers within academia. Specifically, I present a model where Hispanic-Serving Institutions employ funds of knowledge work in order to foster epistemic justice: spaces where Latina and Latino students and the broader communities from which they come are positioned as thinkers, knowers, problem-solvers, and theorists in their own right.

Introduction

Perhaps more than ever before, the attainment of a post-secondary education is essential to socioeconomic security and general quality of life. However, researchers have shown that all college degrees are not viewed as equal. Specifically, students who attend elite, well-resourced institutions are likely to experience “greater access to graduate and professional schools...substantial labor market advantages, including... and access to professional and managerial elite jobs, as well as careers that bring personal and social empowerment” (Carneval & Strohl, 2013). For these reasons, Civil Rights and equity advocates have fought to ensure that underrepresented students of color have equal access to these elite institutions. A key tool in this advocacy work has been Affirmative Action, which originated as part of the *Civil Rights Act of 1964*. Specifically, Civil Rights attorneys, legal and social science scholars as well as public activists, argue that colleges and universities have a legal responsibility to ensure equity in the college selection process, just as employers have the responsibility to ensure equity during the hiring process. Smartly, advocates argue that if colleges and universities fail to secure equity in the admissions process, then they fail to provide the most robust and challenging teaching and learning dynamic, overall (Chang, Denson, Saénz, & Misa, 2006; Garces & Jayakumar, 2014; Hurtado, Milem, Clayton-Pederson, & Allen, 1998; Smith, 2009).

Clearly, the fight to ensure that underrepresented students have equal access to the kind of elite institutions described above is imperative, but in this paper, I ask readers to suspend this conventional application of affirmative action, and to consider alternative approaches to affirmative action. Specifically, the goal of this paper is to argue that Hispanic-Serving Institutions (HSIs) — institutions whose student enrollment is at least 25 percent Hispanic¹⁰ — have the opportunity to employ affirmative action in ways that explicitly challenge the construction, recognition, and dissemination of knowledge within U.S. higher education. I argue that given the critical mass of Latinos that are already enrolled in HSIs, these institutions have surpassed what I consider to be an insufficient focus on access/admission and are onto the possible achievement of epistemic justice (Frank, 2013). Defined, epistemic justice is a state where individuals, from all backgrounds, but especially marginalized backgrounds, have the opportunity to leave impressions on old and new knowledge, and especially to articulate knowledges that have long been silenced. To this end, I take Frank's argument concerning epistemic justice and frame it as the ultimate form of affirmative action, and one that Hispanic-Serving Institutions are well

10. Typically, I use the identifiers “Latina,” “Latino,” or “Latin@” to refer to the panethnic group of people that the government generally refers to as Hispanic. When appropriate, I might reference the specific ethnic group (e.g., Cuban, Mexican, Puerto Rican). I only use the identifier Hispanic when using legal/governmental references or technical definitions.

positioned to implement.¹¹ In this way, I also intentionally position HSI as places from which predominantly White institutions can — and should — learn.

To illustrate my argument, I present a model (see page 9) informed by a “funds of knowledge” (Moll, Amanti, Neff, & Gonzalez, 1992) perspective, which addresses practice and policy at three key levels: HSI administration/formal leadership, student service professionals, and the professoriate. A theory and a methodology, funds of knowledge assumes that all individuals and communities hold and produce knowledge that is relevant and valuable, although mainstream institutions, including educational institutions, may not always recognize such knowledge (Moll, Amanti, Neff, & Gonzalez, 1992; Rios-Aguilar, Marquez Kiyama, Gravitt, & Moll, 2011). Thus, taken together, I argue that HSIs, if informed by funds of knowledge theory and method, are poised to foster epistemic justice — spaces where Latina and Latino students and the broader communities from which they come are positioned as thinkers, knowers, problem-solvers, and theorists in their own right. To set up the paper, I present a brief history of HSIs and then a deeper discussion of both funds of knowledge and epistemic justice.

Literature Review: Hispanic-Serving Institutions

Defined, HSIs are degree-granting, non-profit postsecondary institutions whose undergraduate student enrollment is comprised of at least 25 percent or more Hispanic students. Unlike the intentionality behind the development of Tribal Colleges and Universities and Historically Black Colleges and Universities, there was no purposeful development of HSIs. Instead, HSIs evolved as sizeable numbers of Latinas and Latinos enrolled in affordable two and four-year institutions close to home, a pattern uncovered in the late 1980s, which led advocates within the Latino community to form the Hispanic Association of Colleges and Universities (HACU). The key goals for HACU was to highlight how just a few institutions were providing access and opportunity to the Latino community. Eventually, due to HACU’s efforts, Hispanic-Serving Institutions were named under Title III in the *1992 Reauthorization of the Higher Education Act*. However, today, HSI matters fall under *Title V* of the *HEA* (Calderón Galdeano, Flores, & Moder 2012).

In order to officially become designated as a Hispanic-Serving Institution, a college or university must submit an application that documents eligibility and commitment to serve Latino students to the U.S. Department of Education. Once an institution earns the designation, it becomes eligible for “special purpose” funding via *Title V*. This funding is intended to assist Hispanic-Serving Institutions in the development of programming and infrastructure to serve their student populations, which tend to not only be Latino, but also first-generation, working class, and “non-traditional” in terms of age, working, and familial responsibilities (Nuñez & Elizondo, 2012). It is important to note that although HSIs are eligible for such set-aside funding, historically, they receive and spend substantially fewer resources per student when compared to similar institutions (Hurtado & Ruiz, 2012).

Today, there are 409 HSIs located across the United States and Puerto Rico, a number that has exponentially increased in recent years, and that will only continue to grow in the near future (Excelencia, 2014). Together, these 409 HSIs enroll almost 56 percent of the total Latino college-going population (Excelencia, 2014). A recent degree-of-origin analysis indicated that HSIs matriculate the majority of Hispanics who hold an associate and baccalaureate degree, and HSIs also produce about 25 percent of doctorates held by Hispanics (Santiago & Soliz, 2012). Clearly, HSIs have been and will continue to be key to the educational advancement of Latinos and Latinas (Hurtado & Ruiz, 2012; Laden, 2004).

It is important to note that despite the success that HSIs have had in terms of enrolling and graduating substantial numbers of Latinos, some scholars have been frustrated to find that HSIs do not necessarily embrace or extoll a Hispanic-Serving identity (Contreras, Malcom, & Bensimon, 2008; Greene & Oesterreich, 2012; Torres & Zerquera, 2012). To this end, Contreras, Malcom, and Bensimon (2008) argued that although there is a

11. It should be made clear that my work is not intended as an argument *against* affirmative action; instead, it should be understood as another way to advance equity and diversity, particularly in relation to the construction of knowledge and intellectual work. In short, I believe that to stake the struggle for diversity on so few institutions narrows the fight in unnecessary ways. Additionally, conventional approaches to affirmative action suggest that only a small pocket of institutions can provide a quality education while ignoring the contributions that Minority-Serving Institutions, like HSIs, have made for many years now.

technical, enrollment based definition of HSIs, it is unclear as to what it means educationally, experientially, and culturally to enact a *Hispanic-Serving* mission (also see Cole, 2011; Dayton, Gonzalez-Vasquez, Martinez, & Plum, 2004; Greene & Osterreich, 2012; Hubbard & Stage, 2009; Murphy, Araiza, Cardenas, & Garza, 2013; Torres & Zerquera, 2012).

Alternatively, other scholars like Murakami-Ramalho, Núñez, and Cuero (2010) and Cuellar (2014) provide evidence that HSI faculty members and staff are especially committed to the advancement of undeserved populations, including Latinas and Latinos (also see Ek, Cerecer, Alanís, & Rodríguez, 2010; Gonzales, 2014). To this point, Hurtado and Ruiz (2012) argue that, given their young age, HSIs have an incredible opportunity to go beyond the requisite enrollment criteria and to define what it means to be “Hispanic-Serving” (p. 5). The model that I propose is built on the premise of this incredible opportunity, and the theoretical foundations for this model are described next.

Theoretical Foundations: Funds of Knowledge and Epistemic Justice

This work is founded on and advances the assumption that there are multiple ways of knowing, and that ways of knowing are inevitably tied to one’s location in broader social and structural systems, to one’s familial and communal ties, and experiences that stem from those ties. Here, I summarize the theoretical foundations that inform the model, presented below.

Funds of Knowledge

Molls, Amanti, Neff, & Gonzalez (1992) introduced funds of knowledge based on their ethnography of Mexican communities in the Southwestern part of the U.S. There were two major goals for the Moll et al., project. First, the researchers aimed to document the knowledge that exists in Mexican communities as a result of their cultural, labor, and im/migration histories. Second, the researchers aimed to inform education policy and practice by implementing the documented funds of knowledge inside classrooms and in the school community, at large. By developing a curriculum and context steeped in the histories, traditions, and worldviews of their home communities, Moll et al., argued that Mexican youth would find schooling to be a more relevant and validating experience. Taken together, funds of knowledge work can inform education practice and policy in many ways and to different degrees. For example, teachers might include communal and culturally relevant cooking or labor-based knowledge into science and/or civic lessons. Furthermore, schools and communities might nurture a reciprocal teaching and learning relationship that is deployed to inform reforms with a potential impact on either party.

Given its genesis, most funds of knowledge work has been conducted and implemented in the context of K-12 school-community relationships. However, higher education researchers have recently argued that the funds of knowledge approach (and similar perspectives) can help post-secondary institutions build more inclusive teaching and learning experiences for underrepresented and underserved communities (Rios-Aguilar, Kiyama, Gravitt, & Moll, 2011). For example, Yosso (2006), who was influenced by Moll et al. (1992), funds of knowledge scholarship and critical race theory built a model entitled “community cultural wealth.” Yosso highlighted how Chicano families and communities instill their youth with numerous forms of capital, including cultural, familial, aspirational, resistant, navigational, and linguistic capital. Additionally and importantly, Yosso showed how students usefully deployed these forms of capital throughout their student experience. Moving one step further, Rios-Aguilar, Kiyama, Gravitt, & Moll (2011) argued that the cultural capital and knowledges that are honed within Latino (and other underrepresented) communities should be understood in relation to key higher education outcomes. In other words, Rios-Aguilar et al., not only urge higher education professionals to acknowledge the capital that underrepresented communities bring to post-secondary education, but to position these forms of capital as indicators of success. In sum, funds of knowledge work compels one to uncover, acknowledge, and then apply culturally relevant knowledge, capital, and histories to education policy and practice, and for these reasons, it is a viable theory and method that can be used to defeat epistemic injustice and foster epistemic justice (Frank, 2013).

Epistemic Justice

Frank (2013) argued that epistemic diversity — a concept quite similar to funds of knowledge — falls short in terms of ensuring equity and legitimacy in the knowledge production processes within post-secondary education (e.g., researching, teaching, publishing). Frank defined epistemic diversity with the following two ideas: “(1) there are multiple ways of approaching a problem,” especially in terms of producing knowledge, and (2) “there are multiple epistemologies [which suggests that] there is no way of adjudicating between them” (p. 363). It is evident that epistemic diversity and funds of knowledge share some key parallels (e.g., recognition that there are numerous ways of seeing the world, developing knowledge, solving problems). Thus, initially, it may seem odd to adopt Frank’s argument as a complement to the funds of knowledge premise described above. However, Frank was legitimately concerned that epistemic diversity risks a relativistic view of knowledge, which allows major structural barriers and unequal relations of power to escape firm critique or dissolution.

Therefore, Frank focuses on the role that researchers and education researchers, especially, can have in fostering space for underrepresented, long-marginalized peoples to create and disseminate knowledge, and to ensure that the truths that they have to tell are allowed to be spoken/written/expressed. Thus, when Frank writes about the defeat of epistemic injustice and the fostering of epistemic justice, he is arguing for more inclusive epistemological practices (e.g., how research is conducted and shared) where multiple ways of knowing, seeing the world, solving problems, and articulating truths are embraced. Frank’s central rationale is that securing epistemic justice is absolutely critical to developing a fuller, more robust, more precise view of the world. Frank described how, in a state of epistemic injustice:

...those with power often determine what perspectives are important and worth listening to [which means that many] in our social world go unheard [leaving] our collective epistemic resources...less robust than they otherwise would be....Those without power are silenced [leading] to an incomplete and inaccurate vision of the social world.... The truth of our social world will elude us until we learn what it means to hear across the social spectrum (p. 365).

Frank argued that post-secondary institutions and education researchers have a special obligation to advance epistemic justice. In the next sections, I depict how HSIs’ leaders, student service professionals, and faculty members can, indeed, employ funds of knowledge work in order to foster epistemic justice [See figure on page 9].

An Acción Approach to Affirmative Actions: Hispanic-Serving Institutions as Spaces for Fostering Epistemic Justice

This model, presented below, is intended as a radical approach to affirmative action. Rather than focus on admissions processes alone or what Witham and Bensimon (2012) call “functional fixes,” (p. 1), which allow post-secondary institutions to largely maintain the status quo, this model illustrates how HSI leadership, student service professionals, and faculty can employ “funds of knowledge” theory and method and foster epistemic justice. The primary or most influential level of the model is the Latino community in which the HSI is situated. The Latino community is positioned as holding many epistemic riches and important knowledges that can and should inform the daily work, practices, and policies within HSIs in order to present as more relevant and empowering spaces to Latino and Latina students. The HSI, itself, is positioned as a learning organization that employs funds of knowledge theory and method at three distinct levels: (1) positional leaders/administration; (2) student service professionals; and (3) the professoriate.

Model 1. Hispanic-Serving Institutions as Spaces for Fostering Epistemic Justice



HSI Leadership: Committing to a Culture of Inquiry via Funds of Knowledge

To foster epistemic justice via a funds of knowledge approach will require a fundamental shift about how one views the responsibility of higher education providers, especially in relation to undeserved and underrepresented communities, like Latino communities. Specifically, HSI leaders must begin from the perspective that U.S. higher education in its majoritarian form and function does not present itself as a culturally relevant or friendly place for underrepresented communities, including Latinos (Rendón, 1994, 2002). With this in mind, the start point for leaders must be a willingness to ask themselves and others what it means to carry a Hispanic-Serving designation, and to hold themselves, their programs, and staff responsible for fulfilling what should be a distinctive mission.

Upon reflection of such questions, HSI leaders must be willing to act as institutional agents: individuals who not only possess, but who are willing to deploy key resources in order to advance groups that have historically been marginalized or underserved in higher education (also see Bensimon, Dowd, Chase, Sawatzky, Shieh, Rall, & Jones, 2012; Stanton-Salazar, 2011). One of the first measures that HSI leaders could implement is a culture of inquiry. This culture of inquiry should stress the continual professional development and growth of HSI administrators, staff, and faculty, organizational learning, as a whole, and it should be anchored by funds of knowledge thinking. One of the easiest ways to energize a culture of inquiry is to form and support the development of reading groups or workshops where HSI faculty, administrators, and staff read literature on Latino and Latina students. Because conventional theories of student development are based on majoritarian populations (White, middle-class males), many higher education professionals and much of higher education programming and tradition prescribes activities and engagement that do not reflect the needs or lives of Latinos (e.g., on-campus living, minimal and preferably on-campus employment, integration). Yet, the research on Latino and Latina college students reveals a fairly different portrait of behaviors and orientations. For example, according to Torres and Zerquera (2012), Hurtado and Ponjuan (2005), and Yosso (2006), Latin@ students draw heavily on family connectedness as a source of support and can do quite well while living at home. Moreover, while there is great diversity in the socio-economic backgrounds of the Latino population, most work by necessity, and many take pride in the work ethic instilled by their families (Gonzales, 2012). Additionally, researchers have found that significant portions of the Latino community are hesitant to acquire student debt in order to finance their studies (Cejda et al., 2008; Cunningham & Brown, 2008). Finally, Espino (2014) recently demonstrated how Mexican American students deployed community cultural wealth and capital in order to persevere through their graduate programs. All of these insights are incredibly enlightening, and could help professionals within HSIs to reshape their work.

However, a funds of knowledge approach requires that institutional agents go beyond learning from literature, and pay close attention to the assets and knowledge within the Latino community. For example, HSI leaders should make concerted efforts to recruit, hire, and retain faculty, administrators and staff of color, particularly from Latino backgrounds. Although it is not fair to assume that all Latinos want to serve as role

models to Latino students or even to give them this charge (Espino, 2014), students benefit from their presence on campus as they will see themselves in the professionals who teach, administer, and serve on campus. There are a few exemplary cases where HSIs are making such strategic hiring investments, which might be of interest to other HSI leaders. For example Murakami-Ramallo, Núñez, & Cuero (2010) documented the critical mass of Latina and Latino faculty that have been recruited at the University of Texas San Antonio (see Gonzales, 2015 for a description of faculty demographics at HSIs).

In seeking to engender a culture of inquiry that is committed to equity and inclusiveness, Bensimon and Bishop (2012) offer HSI leaders another simple but powerful starting point: ask different kinds of questions, seek different kinds of data, and look at data in very intentional ways. For example, rather than ask “why Latino students lag behind in graduation rates,” which is true even within HSI settings (Contreras et al., 2008; Murphy, 2013), a better question is “how might we, as institution, better serve Latinas and Latinos in order to advance them towards graduation?” Continuing with this example, and drawing from funds of knowledge principles, if institutional researchers discover that graduation rates are lower among students who work off-campus, HSI leaders must act as institutional agents and consider what kind of innovative services or programming might better serve this student demographic. Rather than promote the idea that “students shouldn’t work so much,” as college students are often advised, HSI leaders could develop a campaign that highlights the resilience and commitment of their students, and reach out to city and county officials to develop citywide campaigns that ask local employers to support their working college students through flexible scheduling or helpful benefits. Employers could be invited as signatories to such commitments. Even symbolic activities like these demonstrate that HSI leaders are investing time and energy to serve their students and validate their lives. Most importantly, such efforts avoid deficit assumptions about students who might have to prioritize or balance work with school, as researchers have shown that many Latino students have no choice, given the current parameters for student aid, but to work while in college (Cejda, Casparis, Rhodes, Seal-Nyman, 2008).

In keeping with the graduation rates scenario, HSIs should seek and leverage knowledge held among the immediate community. Community organizations, including faith-based entities and social service agencies, hold an extraordinary amount of knowledge about local community conditions, and formal and informal leaders within the community. Community based organizations as well as leaders could be asked to serve as “cultural brokers” that further the partnerships with HSIs, businesses, and local government. For example, Cooper (2014) recently described how various organizations and actors served as “cultural brokers” that helped immigrant students access higher education and form a college-going identity.

Finally, HSI leaders must commit to disaggregating data according to identity markers that hold particular significance among that respective Latino community. Nuñez’s (2014) recently published intersectionality framework can provide HSI leaders and institutional researchers with key insights about how to organize and disaggregate data in ways that are relevant to Latino populations. In this framework, Nuñez highlights the importance of immigrant status, linguistic background, and high school background in addition to other common identity markers (e.g., gender, race). By accounting for the intersection of multiple identities that seem to matter to student success, HSI leaders commit to holding themselves and their programs accountable.

Up until now, the suggestions for HSI leaders have circulated around the need to challenge conventional views on the obligations that higher education has to local communities, asking critical questions, and establishing rapport with the community/community organizations. However, to facilitate a funds of knowledge approach and move towards epistemic justice, HSI leaders must deploy resources that support intense institutional research inspired by funds of knowledge methods. Following the funds of knowledge work, institutional leaders could provide educational, physical, and fiscal resources so that faculty members, graduate students, student support services, as well as institutional researchers engage in community-based inquiry. The goal of such institutional research is simple, but powerful: build a teaching and learning relationship of reciprocity with the local community, and uncover the assets that exist within the community in order to thread such insights into the campus culture and curriculum. An institutional research team could collect narrative and oral histories from local community members in order to develop a special feature within the campus library. This team might document the labor skills within the local community, and promote homegrown businesses in campus activities. Additionally, as funds of knowledge scholars would advocate, this team could also provide support to a community, if needed.

For example, if a city is developing new housing, professors of anthropology or architecture could ensure that the community has a voice in the process. Through such community based, funds of knowledge research, HSIs would clearly position the local community as a source of knowledge and instruction, while also making available to that community the skills of higher education professionals. Gina Núñez (2014) recently wrote about the development and maintenance of an almost decade-old community based research project that HSI leaders can consult for further direction.

Student Services: Funds of Knowledge, Continual Learning for Practice

As noted earlier, student affairs professionals in the U.S. typically adhere rather closely to dominant ideas and idealizations of what it takes to be a successful student. These ideas were developed from research on White, majoritarian, male experiences (Astin, 1985; Tinto, 1993). However, in an HSI led by leaders who have committed to funds of knowledge and epistemic justice, student service professionals must be offered the opportunity to expand their academic and professional repertoire.

Thus, one step for student service professionals is to participate in the reading groups and praxis workshops suggested above. Key readings for student service professionals should include Rendón's validation theory (1994, 2002), which was developed when Rendón determined that the dominant theories of student development did not seem to make sense to the lives, experiences, or perspectives of many underrepresented students, including students of color, students from working class backgrounds, and/or first-generation college students. Accordingly, very much like funds of knowledge work, validation theory and research establishes an understanding of the history, needs, and strengths of underrepresented and underserved communities. Although Rendón (1994) suggests that any member of a university community can validate students, her work holds particular relevance for student service professionals, such as those individuals that administer clubs and organizations, orientation and advising sessions, leadership, professional, and career development; and/or related on-campus programming.

Student service professionals can also benefit from reading research on the college decision-making processes for Latinos. For example, Cejda et al. (2008) and Torres and Zerquera (2012) found that Latino and Latina students tend to use personal and familial contacts — instead of school counselors — to inform their college enrollment choices. Additionally, Latino students seem to consider proximity to home/family in their decision-making processes, and Núñez and Bowers (2011) noted that these factors even impact the choices of the most academically competitive students. Based on these readings, student affairs professionals have reason to develop programs where students identify key individuals from their personal and familial networks, who most inspired or influenced their college going process. Student services could invite these individuals to attend important (beyond orientation) events that provide insight into college life, time commitments, and critical deadlines. If agreeable to both the student and the individual, the individual could be kept apprised of the student's college progress and milestones through a variety of formats (e.g., email, letter, phone calls). Additionally, these influential individuals could receive early alerts about absenteeism or missed exams. These practices, which are typically referred to as "intrusive advising" (Falconer, Geissler, Majewski, & Trifilio, 2014; Jones & Hansen, 2014), have repeatedly been found to have a positive impact on student retention and performance. Jones and Hansen (2014) as well as Falconer et al., (2014) both provide examples of intrusive advising. Finally, Espino (2014) recently illuminated the many forms of cultural wealth that Mexican American PhD students leveraged throughout their doctoral studies; the insights in this study could inform graduate student advising and programming.

In addition to reading and applying the insights learned from published research, student service professionals must also implement the knowledge and insights gained from the funds of knowledge inspired institutional research described above. A very good example of how student service professionals might implement or draw from funds of knowledge research can be found in the work of Guajardo, Alvarez, Guajardo, Garcia, Guajardo, and Marquez (2014). In this paper, Guajardo et al. (2014) described a funds of knowledge research project developed largely by faculty and students, and then suggested that student service professionals could build off of the results in various ways. Film screenings, book clubs, and campus activities could be built

around discoveries made in funds of knowledge research. In order to deeply integrate funds of knowledge discoveries in this way, however, structures that enable university-wide collaboration and communication must be developed and supported. An office of community engagement or a modernized version of extension services might be the sort of structural arrangement that could offer necessary support.

If student service professionals find themselves in an HSI that is without the kind of resources suggested above, they can consider a number of exemplary programs already in operation, which reflect funds of knowledge ideals (even if they explicitly do not espouse them). Student service professionals can turn to advocacy agencies like *Excelencia* to identify such model programs or Martinez and Gonzales (2015) identified several programs housed at HSIs, which demonstrated culturally informed student programming. Using content analysis of programmatic websites and documents, Martinez and Gonzales highlighted ten programs that seek to understand and honor students and the larger communities from which they come. One of the programs that Martinez and Gonzales described is titled *Grow Your Own Teachers* (GYO). Housed at Northeastern Illinois University, GYO aims to “develop aspiring teachers from communities of color in order to support their educational goals...[and] is based in the assumption that these communities have much knowledge and ability to serve” (Schultz, Gillette, & Hill, 2011, p. 5). GYO program administrators explain that the program’s efforts were informed by early studies into the lives of their participants. Based on the results of this inquiry, administrators realized that in order for them to have the best chance at success, the program would have to dedicate resources to create wide family supports, child care options, financial aid, and career/transition to teaching counseling.

Another example from the Martinez and Gonzales paper was the *Transitional Bilingual Learning Community*, established in 2002 at Harry S. Truman College in Chicago, Illinois. The stated goal of this learning community is to serve “students who, because of limited skills in English and limited financial resources, would otherwise not be attending college on a full-time basis” (TBLC, n.d., para 1). In this particular Hispanic community, the college sees promising students with much to contribute to learning and society, including their bilingual skills. To this end, the program offers extensive translation services along with bilingual learning environments for students as they make the early transition into college life. Student affairs administrators within HSIs might want to consider these two examples — as well as the other efforts documented by Martinez and Gonzales — to revise or complement current approaches to student outreach and retention.

The Professoriate: Acknowledging, Producing, and Disseminating Knowledge

Recall that Frank (2013) began from the assumption that the production and legitimation of knowledge within academia has historically been in a state of “epistemic injustice,” where underserved and underrepresented populations have been kept out, and generally not given equal access to platforms where knowledge is advanced (e.g., the canon, the curriculum, publication). Indeed, many scholars, particularly those who utilize a critical lens in their work, have long described how academia, the teaching and learning process, and related knowledge production processes have historically centered White, Western, male, scientific/positivistic ways of knowing (Delgado-Bernal & Villalpando, 2002; Gonzales & Núñez, 2014; Gutierrez y Muhs, Flores Niehmann, González, & Harris, 2012; Pasque, Carducci, Kuntz, & Gildersleeve, 2012; Smith, 1987; Stanley, 2007).

With this in mind, it seems that faculty members have the most experience with the epistemic injustice that Frank described, as well as the most opportunity to foster space of epistemic justice. The culture of inquiry, anchored in funds of knowledge, and the actual funds of knowledge institutional research described above provide faculty members with a foundation for epistemic justice work. Based on the roles and responsibilities of faculty, I argue that faculty have at least three avenues to carry out such efforts; these avenues include (1) the academic curriculum/teaching and learning context; (2) their own research and publication practices; and (3) the development of students into scholars.

First, in terms of (re)shaping academic curriculum and experiences based on funds of knowledge, one simple step is to incorporate scholarship produced by Latinas and Latinos or concerning Latino communities (e.g., books, articles, performances) into their course work. Although this might seem to be a minor adjustment, Cole’s (2011) analysis of university course catalogs revealed that among Historically Black Colleges and

Universities, Tribal Colleges and Universities, and Hispanic-Serving Institutions, HSIs offered the fewest number of race/ethnic centered and culturally oriented courses. In other words, HBCUs and TCUs successfully threaded more racially, ethnically, and culturally relevant courses and elements into their undergraduate curriculum. The inclusion of scholarship by Latino scholars, and/or scholarship about Latino communities is something that faculty in the sciences, social sciences, humanities, and applied fields can easily accommodate.

If faculty members are unsure where to begin with such work, there are several free and easy-to-access tools on the Internet (e.g., YouTube, CUNY Latinas in History Project), National Public Radio, The Public Broadcasting system, or the Pew Research Center. In fact, this is an area of potential investment for institutional leaders/agents. A position could be created for the sole purpose of building this academic catalogue, and helping faculty to identify relevant sources for their field/topic. On this note, it is important that HSI faculty members remain aware of the diversity within the Latino population, meaning that if an HSI has a predominant Afro-Latino student population, efforts should be made to include scholars/scholarship from this particular subgroup. One potential reference that could provide Latina students from various backgrounds a chance to see themselves in the curriculum is Jennifer De Leon's (2014) recent edited collection on Latina access and experience in higher education. However, the book is limited to women, and so it would be important for faculty to find additional sources featuring Latino males.

In terms of shaping the academic curriculum, and essentially changing the teaching and learning context, faculty can actually employ funds of knowledge practices by asking students to draw from their histories in relation to the course materials. For example, a science professor can ask students to describe if and how they/their family members have ever worked with certain materials/chemicals/processes. If a student described a grandmother who is a savvy gardener, a father with an expertise for building and carpentry, or a sister who works in design, the professor can make references to those activities in relation to the course material. Indeed, these are the very kinds of curricular innovations that Moll et al. (1992), prescribed for teachers in the initial funds of knowledge project. However, Alvarez and Martínez (2014) provide solid examples of how faculty can incorporate funds of knowledge work into the curriculum at a post-secondary level. Specifically, Alvarez and Martínez described a classroom experiment in which they invited the late Puerto Rican poet, Tato Laviera, into a composition class in their Texas-based HSI. Recounting the experience, Alvarez and Martínez wrote:

It was a rare occasion in which the institution acknowledged and gave credit to students for the knowledge they possessed while still assisting in the further development of their education.... We were not certain what would come from the course but our selfish hopes were that Laviera... could help students understand the tremendous importance of their work — and that of their families — to the well being of our nation. We believed that if students could come to an understanding of the importance of their stories, there would be no telling how far their new *conciencia* could take them (p. 208).

Alvarez and Martínez (2014) go on to describe how students were positioned as knowledge carriers and storytellers throughout this classroom experiment. Alvarez and Martínez's lesson could be replicated in many disciplines with special lecturers that possess content knowledge on the given topic. Professional development for faculty would probably be necessary, and is yet another way that leaders can act as institutional agents: by providing resources for faculty to learn about funds of knowledge work and how to implement such activities.

As alluded to earlier, faculty also have the opportunity to shape their own research around funds of knowledge ideals. The most obvious opportunity would be for faculty members, who have an interest, to become involved in the funds of knowledge institutional research being conducted at the institutional level. Professors can immerse themselves in the community to understand its riches, to build bridges and share knowledge across those bridges, and to inform institutional practices, such as student support services, the intentional data disaggregation, and overall programming described earlier. HSI faculty might want to consult Núñez's (2014) recent paper, where she outlined several benefits and best practices developed from her community-based scholarship. As a scholar at an HSI, Núñez has developed multi-layered community engaged research project that allows students to see the assets in their communities in radical new ways. In describing the impact of participating in community-engaged scholarship, one of Núñez's students said, "I have changed the way I think about the community. I used to take everything for granted and now I appreciate what I see" (Núñez, 2014, p.

94). The work of Rios-Aguilar, Kiyama, Gravitt, and Moll (2011) provides additional guidance as to how faculty can develop funds of knowledge research projects in connection with the assessment of important student learning outcomes.

Following the conduct of scholarship, professors are expected to disseminate their work. In line with the praxis orientation of funds of knowledge work, HSI scholars should be prepared to diversify their dissemination strategy. Specifically, in addition to academic journal publications, funds of knowledge scholars typically share their work via radio broadcasts, policy and practice briefs, evaluative or technical reports prepared for community partners, or short online videos, like the one created by Guajardo et al., (2014). However, if HSI faculty members partake in the funds of knowledge approach and apply it in their teaching, research, and dissemination practices, it is critical that faculty colleagues involved in the tenure and promotion process as well as key administrative leaders (e.g., chairs, provosts) support them. Tenure and promotion committees should consider reading studies by Bernal and Villalpando (2002), Gonzales and Núñez (2014), and Stanley (2007) to understand how bias insidiously operates in the evaluation of scholars and scholarship — a bias that almost inevitably marginalizes action research, local and cultural knowledge and language, and critical scholarship, overall. An additional practical resource for tailoring evaluation systems to recognize community-based, arts, and other “non-traditional” scholarly work is the *Imagining America* website. Clearly, faculty members engaged in funds of knowledge work, who aim to share it widely as to highlight local forms of knowledge and position Latino communities and students as knowers, thinkers, and problem solvers cannot foster epistemic justice alone; institutions must ensure that space as well. Therefore, tenure and promotion guidelines, and other evaluative schema, should be devised so as to reflect the goal of epistemic justice.

Faculty members have many platforms and tools with which they can engender epistemic justice. They can provide space in their curriculum, they can explicitly employ funds of knowledge research themselves, and finally, they can work to develop the scholarly potential in students. Fostering epistemic justice mandates not only that culturally relevant knowledge are acknowledged and threaded into the teaching and learning dynamic, which is largely achieved via funds of knowledge, but it is also about ensuring that others are given the tools to further create knowledge and articulate knowledge within academia as well. In this way, HSI faculty members should consider how they can best prepare and support their Latino students to carry out scholarly work. Such preparation must not only focus on the mechanics of research, but also on the politics of publication. Workshops for graduate students, then, might include readings like Stanley’s (2007) essay on the publication process as well as general frank conversations about coping with manuscript rejections or how to identify suitable outlets for various types of work. Such explicit preparation for academia is rare, but underrepresented scholars suggest that this is the very kind of information that they believe future faculty can benefit from as described by Montgomery, Johnson, and Dodson (2014).

Before closing, it is important to acknowledge that not all faculty members, or all course work, or even an entire course must be steeped in funds of knowledge work, Latino scholars, or Latino communities; indeed, some individuals will not see value in this goal (Murphy, Araiza, Cardenas, & Garza, 2013). However, faculty members can practice funds of knowledge principles to the degree that they are appropriate and comfortable. In other words, the assurance of space for those who commit to funds of knowledge work and the creation of knowledge in new, critical and different ways is far more important than a uniform application, overall.

Conclusion

In this paper, I argued that HSIs have the opportunity to offer a radically new application of affirmative action. Specifically, I argued that by deploying resources and intentionally committing to organizational learning and inquiry anchored in the funds of knowledge approach, HSIs have the opportunity to serve as spaces for epistemic justice. This model, of course, requires that formal as well as informal leaders act as critical, institutional agents in the ways that Bensimon and colleagues (2011) suggest, and it requires that student service professionals retool their professional repertoires with culturally-relevant practices and theories in the ways that Cuellar (2014) and Martinez and Gonzales (2015) describe. It also, of course, demands that faculty employ any or all of their platforms to honor and advance multiple ways of knowing and producing knowledge, so as to assist Latina and Latino students to see themselves and their communities as valid, valuable, and indeed legitimate knowers, as has been described in the work of Rios-Aguilar and colleagues (2011).

Working towards epistemic justice is, I believe, the ultimate form of affirmative action that colleges and universities can commit to as it advances equity beyond structural or numerical counts, and instead commits to equity in terms of the core purposes of higher education: teaching, learning, and the production of knowledge. Given the current position that HSIs hold in the field of higher education, they have the unique opportunity to demonstrate how colleges and universities can be spaces that serve towards democracy, justice and equity by honoring diverse epistemologies, knowledges, and assets in the production of knowledge.

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Sacrificing a Latina/o Presence in the Professoriate: An Analysis of Affirmative Action as Racial Remedy and Silent Covenant

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Abstract

This article focuses on the extent to which affirmative action policies and practices as remedies for racial injustice in higher education reflect a silent covenant that sacrifices the cultivation and presence of Latina/o faculty. Drawing upon the lived experiences of 22 Mexican American faculty and post-doctoral fellows, the author argues that, by invoking affirmative action policies and practices, institutions of higher education can promote the value of racial/ethnic diversity while still limiting the presence of Latina/o faculty. Meanwhile, the few Latina/o faculty who manage to gain access to research-intensive universities are commodified and sacrificed within hostile department cultures and through oppressive institutional practices.

Introduction

Racial justice...when it comes, arrives on the wings of racial fortuity rather than hard-earned entitlement. Its departure, when conditions change, is preordained. (Bell, 2004, p. 9)

Affirmative action policies were intended to promote, at the very least, the illusion of equity in higher education for racial/ethnic minorities throughout the educational pipeline, including the professoriate (Ledesma, 2004). Substantive racial remedy is not yet realized. Legal challenges continue to slowly erode race-conscious admissions policies at the most selective universities in the country (i.e., *Hopwood v. State of Texas*, 1996; *Fisher v. University of Texas*, 2011), while the constitutionality of voter referenda (*Schuette v. Coalition to Defend Affirmative Action*, 2014) has been upheld to challenge these policies. Rulings from these landmark cases confirm what many have feared since the impetus of affirmative action policies: the erosion of even “legal lip service to the material trappings of equality” (Holmes, 2007, p. 36) while ignoring the current and historical racial injuries experienced by, in this instance, Latina/o students and faculty through structures that perpetuate White supremacy.

This article draws from the lived experiences of 22 Mexican American¹² faculty and post-doctoral fellows to uncover the complex interpretations of affirmative action policies as racial remedy and silent covenant. According to Bell (2004), “a silent covenant” is a compromise in which “policymakers who approve policy do so with the knowledge...that they or those who follow them stand ready to modify or even withdraw the reforms where adverse reaction or changed circumstances threaten” the comfort and stability of White power structures (p. 5). In this case, research-intensive universities leverage affirmative action policies as a proclamation of their commitment to diversity while, in practice, provide limited access to highly qualified Latina/o students and faculty. I focus on research-intensive universities because they often garner the highest levels of prestige, funding, and resources; have the lowest rates of Latina/o faculty representation; and are the key legally contested spaces where affirmative action is practiced. The purpose of this article is two-fold; first I will demonstrate the benefits of affirmative action programs in cultivating a presence of Latinas/os along educational pathways to the professoriate. Second, I will explore how interpretations of affirmative action policies reflect a silent covenant among policymakers, universities, and external funding agencies that allow research-intensive universities to promote the value of racial/ethnic diversity while in actuality limiting the presence of Latina/o faculty.

12. The term *Mexican American* is defined as individuals of Mexican descent living in the United States. I employ racial/ethnic identifiers ascribed by the participants as well as terms cited in studies to describe Mexican American communities (e.g., Hispanic, Chicana/o, or Latina/o).

Latina/o Pathways to the Professoriate

Although Latinas/os enter higher education at higher rates than Whites, they are less likely to enroll full-time in a four-year college and complete a bachelor's degree (Fry & Taylor, 2013). In addition, they only represent eight percent of the total graduate student population in contrast to Whites who represent 62.2%. It has taken at least a decade for Latinas/os to double in proportion with regard to doctoral degree attainment, moving from 3.3% in 1992 to a mere 6.5% in 2012 (National Science Foundation [NSF], 2014). This slow increase demonstrates that the Latina/o share of doctoral degrees is miniscule, even as the number of Latina/o undergraduates and graduate students has increased (Lopez & Fry, 2013).

The dismantling of affirmative action policies has resulted in detrimental effects for Communities of Color along educational pathways. The "average proportion of graduate students who are students of color across all the fields of graduate study" has dropped by 12% in states with affirmative action bans (i.e., Texas, California, Washington, and Florida; Garces, 2012b, p. 4). The decline in graduate school enrollment is indicative of the challenges Latina/o students encounter requisite to accessing undergraduate education and preparing future Latina/o faculty. In 2011, Latinas/os represented only three percent of full-time professors, in contrast to 84% White (National Center for Education Statistics [NCES], 2013). Latinas/os are "saturated at the bottom levels of the academic prestige hierarchy," as evidenced by their concentration in non-tenure track positions at Hispanic-Serving Institutions and two-year colleges (Delgado-Romero, Flores, Gloria, Arredondo, & Castellanos, 2003, p. 259). The lack of Latina/o faculty representation is startling, especially with a growing Latina/o student body which serves as the wellspring of the Latina/o pipeline to the professoriate.

Theoretical Framework

I employ critical race theory (CRT) as the primary scholarly tool for understanding how race and racism inform and affect the experiences of people of color in U.S. society. Five tenets of CRT (Solórzano & Yosso, 2001) informed this study: the centrality of race and racism and their intersectionality with other forms of subordination; the challenge to dominant ideology; the commitment to social justice; the centrality of experiential knowledge; and the transdisciplinary perspective. Educational researchers utilize CRT as "a set of...perspectives, methods, and pedagogy that seeks to identify, analyze, and transform those structural, cultural, and interpersonal aspects of education that maintain the subordination of [students] of color" (Solórzano, 1998, p. 123).

For the purposes of this article, I also incorporate two critical race concepts not yet fully explicated in educational research: interest convergence and racial fortuity. According to Bell (2004), interest convergence occurs only when "policymakers recognize and act to remedy racial injustices [and] perceive that such action will benefit the nation's interest without significantly diminishing Whites' sense of entitlement" (p. 9). The intent is centered on Whites, therefore, any benefits to Communities of Color are a "racial fortuity;" happenstance that can easily be taken away because Communities of Color are not entitled to indirect benefits (Bell, 2004). For example, Bell (1980) argued that the ruling of *Brown v. Board of Education* (1954) only occurred because the racial remedies of desegregation would "secure, advance, or at least not harm societal interests deemed important by middle and upper class Whites" (p. 523). African Americans were not central to the decision; rather, they were fortuitous beneficiaries of a legal decision predicated on defeating communism. As Bell (2004) asserted, Communities of Color were more likely to "focus with gratitude on the relief obtained" rather than interrogate White "self-interest factors without which no relief might have been gained" (p. 56).

A contemporary example of interest convergence involves the initial argument for upholding affirmative action in the *Regents of the University of California v. Bakke* (1978), *Gratz v. Bollinger* (2003), and *Grutter v. Bollinger* (2003) cases. The defendants in these cases claimed that racial diversity would lead to positive learning outcomes for White students, which ostensibly normalized and centered Whiteness while excluding from the discourse any possible educational benefits for students of color (Yosso, Parker, Solórzano, & Lynn, 2004). The underpinnings of affirmative action policies in education have centered on the benefits of "a racially and ethnically diverse learning environment" for White students in particular (Garces, 2012a, p. 123). Unfortunately, the distinct arguments that frame the importance of race-conscious admissions policies such as "institutions' educational

autonomy...diversity as fundamental to competing in a global marketplace” as well as the historical legacy and permanence of racism are not always sufficient to legally challenge “normative ideologies, which have historically been shaped by Whiteness and White supremacy...” (Ledesma, 2013, pp. 230-231).

Of greater importance was the inclusion of students of color at predominately White institutions as a value-added outcome for Whites rather than a remedy for historical exclusion and marginalization of students of color (Bell, 1979). In fact, the educational outcomes outlined in defense of affirmative action acknowledged that the primary benefit that students of color would receive was access to an education, rather than the “*enhanced educational benefit*” (original emphasis) that Whites would obtain (Kow, 2010, p. 163). White students were positioned within the arguments as the central beneficiaries of affirmative action policies at the commodification (Leong, 2013) of qualified students of color who would earn “access to an education in exchange for serving as a source of enrichment to fellow students” (Kow, 2010, p. 163). At the initial development of affirmative action, policymakers were willing to accommodate more supposedly equitable educational opportunities for students of color because the benefits to White students would be significant (Hurtado, Milem, Clayton-Pederson, & Allen, 1999). These actions signal racial fortuity, or as Bell (2004) explains, “the two-sided coin, with involuntary racial sacrifice on the one side and interest-convergent remedies on the other...” (p. 69). The effectiveness of affirmative action policies, albeit nominal rates of increase for Communities of Color completing college and graduate school, led to an infringement in the extent to which Whiteness is protected in educational institutions. Once the outcomes of the policy hit a “tipping point” (Urrieta & Villenas, 2013, p. 530) whereby students of color were admitted under the guise of benevolent paternalism to a certain point before it became too much of an infringement on White entitlement, racial remedy and social reform regressed.

As a result, one might wonder if there is a compelling interest in increasing Latina/o faculty representation at selective institutions. To date, there are no studies that have analyzed how Latina/o faculty may enhance the diverse learning environment for White students specifically, but studies have claimed that “Latino faculty members benefit higher education by uniquely engaging students in the classroom, improving Latino students’ higher education retention and degree completion rates, [and] enhancing campus pluralism” (Ponjuan, 2011, p. 100). It is reasonable to assert that the main beneficiaries of Latina/o faculty representation at research-intensive universities would be Latina/o students. Therefore, I argue that the presence of Latina/o faculty at research-intensive universities will remain sparse until postsecondary institutions recognize and embrace an investment in Latina/o students as a compelling interest. The silent covenant is further illustrated in Aguirre’s (2010) research on the extent to which diversity is coopted as a measurable outcome and as a commodity that can be distributed throughout the curriculum. Because any faculty member can now teach “diversity,” institutions can dismantle racial/ethnic-specific departments while other departments reap the financial rewards of offering diversity courses and obtaining additional resources such as new faculty lines (Aguirre, 2010; Mayhew & Grunwald, 2006). In addition, institutions can claim that there is no need for minority faculty to specifically teach these courses, which moves “minority academics farther to the periphery in academia” (Aguirre, 2010, p. 767). The content area is neutralized and the presence of Latina/o faculty can be maintained at lower rates.

Without a core commitment, financial and otherwise, to the increased presence of Latina/o and minority faculty, the racial reality reflects inclusive and race-conscious hiring practices that merely exhibit “symbolic encouragement” and empty promises (Bell, 2004, p. 5). Although difficult to digest, Bell encourages Communities of Color to adopt a mind-set he terms “racial realism” and recognize that Communities of Color “will never gain full equality in this country” because of the permanence of racism and the permanence of White supremacy (Delgado & Stefancic, 2005). By clearly stating and accepting racial realities, Bell believed that “people of color [would] be able to envision strategies outside of the civil rights incremental model that [had] more promise to alleviate the injustices that endure” (Alemán & Alemán, 2010, p. 4).

Similar to other legal cases that veiled White interests in arguments for rectifying systemic racism (Kow, 2010), affirmative action is a short-lived panacea relying on “legal advocacy as the explicit and sanctioned remedy to racism” (Holmes, 2007, p. 35). The intent of affirmative action, although noble in its moral proclamations and vital to establishing and maintaining a Latina/o presence in higher education, was planted in infertile ground.

Methodological Approach

This article is part of a larger study that analyzed the life narratives of 33 Mexican American Ph.D.s along their journeys to the doctorate (Espino, 2008). I employed narrative analysis, which “takes as its object of investigation the story itself” and analyzes how the story is ordered (Riessman, 1993, p. 1). Context is especially important because it involves the “historical moment of the telling; the race, class, and gender systems the [participants] manipulate to survive and within which their talk has to be interpreted” (Riessman, 1993, p. 21). This approach dispels dominant cultural assumptions and encourages reflexive relationships between the researcher and participants (Auerbach, 2002).

Participants

The participant sample extracted for this article consisted of 16 females and six males of Mexican descent who successfully completed their doctorates at 12 different U.S. universities. The participants’ occupations ranged from post-doctoral fellow to full professor, with the majority working as tenure-track assistant professors (12 participants). I categorized participants’ doctoral disciplines based on the National Research Council’s (2006) taxonomy of doctoral fields: Arts and Humanities (3); Education (3); Life Sciences (1); Physical Sciences, Math, and Engineering (3); and Social and Behavioral Sciences (12). As a means to respect how the participants identify themselves, their chosen racial/ethnic identities were included in their quotes.

Table 1. Participant Demographics (n=22)

Self-Identified Race/Ethnicity	Gender	Discipline	
Bi-racial (White and Mexican) (3) Mexican American, Chicana/o, Hispanic (19)	Female (16) Male (6)	Education (3) Humanities (3) Life Sciences Physical Sciences, Math, & Engineering (3)	Social and Behavioral Sciences (12)
Faculty Rank	Doctoral Institutions		
Visiting Professor Lecturer Assistant Professor (12) Associate Professor Full Professor Head Librarian University Archivist Post-Doctoral Fellow (4)	Arizona State University (5) California State University-Sacramento Ohio University Stanford University University of Arizona (2) University of California-Berkeley (2) University of California-Los Angeles University of Michigan University of New Mexico University of Southern California University of South Florida University of Texas (5)		

University and External Agency Fellowships

University Recruitment/Dissertation Fellowship (4)
 American Psychological Association
 American Sociological Association Minority Mental Health Fellowship
 Chicano Foundation of Northern California
 Consortium for a Strong Minority Presence
 Ford Foundation (5)
 Hispanic Scholarship Fund
 National Academy of Sciences Internship
 National Aeronautics and Space Administration
 National Institutes of Health
 National Institute of Mental Health Internship
 National Science Foundation
 Smithsonian Institute
 Social Science Research Council (2)

I conducted all of the semi-structured interviews via telephone with the exception of two participants I interviewed in person while attending two separate education conferences. The interview protocol focused on participants' family histories, educational experiences, and the mechanisms they employed to successfully complete the doctorate. Each audio-recorded interview lasted at least 1.5 hours, and participants were interviewed at least twice to ensure that the interview protocol questions were answered.

Data Analysis

By using a narrative analysis perspective, my role was to (re)present participants' stories and (re)interpretations, considering five levels of representation. Participants first think about their experiences and decide how they will share those experiences with others. The telling of those experiences are then recorded by the researcher and (re)presented in text. The researcher critically interprets the transcribed experiences based on the theoretical framework employed; and, finally, participants and external readers encounter the written work and provide feedback on how the narratives are (re)presented (Riessman, 1993).

The data from the larger study were analyzed as "verbal action...explaining, informing, defending, complaining, and confirming or challenging the status quo" (Chase, 2005, p. 657). For this article, I focused on any stories pertaining to experiences with affirmative action in college, graduate school, and work. The narratives shared and analyzed were (re)presentations of the realities experienced and remembered by the participants at particular moments in time.

Trustworthiness

Member checks are critical analytic tools (Jones, Torres, & Arminio, 2006). When asked to provide feedback on the transcription drafts, participants added new narratives, requested edits to their responses in order to protect themselves when referencing racist interactions with colleagues and faculty, and one returned the actual transcriptions with corrections. I utilized the finalized transcripts when interpreting the data. I felt an obligation to (re)present the participants' narratives in a responsible manner. Many of these participants are the only Mexican Americans or faculty of color in their departments and may be easily recognizable depending on their discipline and social identities. To protect their anonymity, I do not connect the participants to institutions attended, graduation dates, or ages and only describe self-identified race/ethnicity, faculty/researcher position at the time of the interview, doctoral discipline, and general geographic location, if necessary, within the context of the narratives.

Limitations

This study illuminates the experiences of a small group of Mexican American Ph.D.s who successfully navigated through educational systems and cannot necessarily be generalized to the entire population of current Mexican American Ph.D.s or those who aspire to earn the doctorate. Despite these limitations, I understood the power I had as an interviewer and my role as a narrator, weaving together participants' recollections into a larger story about the role of affirmative action in the educational pathways of Mexican American Ph.D.s and the responsibility for (re)presenting these narratives with care and respect.

A Brief Note About Stigma

By (re)presenting participants' experiences with affirmative action policies and programs, I recognize that the findings could be misconstrued as stigmas of inferiority to fuel a long-standing argument against affirmative action (Bracey, 2007; Kow, 2010). Some participants did not necessarily want to acknowledge the overt and covert forms of racism found within their interactions with White classmates and colleagues. Rather, the distancing they expressed may have been more of a coping mechanism than internalizing stigma of inferiority, especially as these individuals were highly qualified in their graduate programs and accomplished scholars. Similar to the work of Cuádriz (2006), this article is not intended to tout these participants as the exception to the rule and applaud their individual efforts. Stories such as the ones illustrated in this article are often used within social policies to focus solely on individual achievement rather than transforming institutional structures that could further increase rates of Latina/o educational attainment. These arguments detract from the institutional culpability and the "encounters with everyday racism" (Kow, 2010, p. 186) across campus.

Fulfilling the Intent of Affirmative Action

Within the anti-affirmative action discourse, discussions about merit and affirmative action seem to blend together, implying that Mexican Americans who enter college, graduate school, and the professoriate do not deserve to have access to highly selective institutions. What is often ignored are the ways in which affirmative action programs enable Mexican Americans to access educational opportunities and networks that are not readily available to them. Some Mexican American communities have limited access to hidden knowledge and social networks that are prized by the dominant culture that make educational opportunities for White, affluent communities more readily available. I contend that these are consequences not of affirmative action, but of institutionalized racism that is pervasive in practice and throughout the educational pipeline. The findings below depict the value of affirmative action programs in ushering Mexican American students from college to the professoriate. In each section, I provide an in-depth narrative that is illustrative of a majority of participants' experiences.

Minority Undergraduate Outreach Programs

Many of the participants disclosed that they participated in various under-represented minority student programs. Some participants credited affirmative action policies for providing access to college and graduate education while other participants distanced themselves from those connections because of prior racist interactions with peers and faculty who questioned their presence in well-regarded programs and selective institutions. All of the stories shared provide a strong justification for the maintenance of race-conscious admissions policies and college programs that can sustain Mexican American students as they navigate hostile educational environments.

Prior to entering college, several participants were involved in summer bridge programs sponsored through equal opportunity initiatives and utilized campus centers dedicated to serving students of color, which were often funded through Equal Opportunity Program (EOP) offices. Minority undergraduate research programs provided seven participants with research experiences and funding that encouraged them to aspire to graduate school. Victoria (Mexican American/Bi-Racial, Assistant Professor, Physical Sciences) was admitted into

an undergraduate program for students in the physical sciences at a West Coast research-intensive university. The program was “developed because [the university] found that the minority students were isolated in their classes and because so many of them had to overcome...obstacles to get there, they were less likely to ask for help when they needed it.” The program included a summer bridge program for freshman students prior to their first semester with “extra discussion sessions for all the preliminary classes [and] free tutoring for any class you needed,” especially for courses that enrolled over 1500 students such as Chemistry. Victoria characterized her physical sciences major as,

...a weeder program...because it is the top [program] in the state....[T]hey have to have a certain number of slots available by junior year for the transfer students. The only way to do that is to get rid of the students that are there...and so...it's a very demoralizing experience...especially [for] people that were good students in high school. I've never witnessed it to the extent that I did at [research-intensive university], and I've seen some of the top, most brilliant students that I ever met have their ego just totally broken down by the experience.

The undergraduate minority program was focused on uplifting students and providing them with hidden knowledge and critical resources to complete their degrees such as sitting in the front row during class, collaborating on research projects, obtaining research internships within industry, networking, and completing graduate school applications. These resources could not always stem the challenges of a rigorous program. Out of the 60 students who were part of her undergraduate cohort, 10 completed their degrees within five years. Without the program, the completion rates within Victoria's major would have been significantly lower.

Minority Fellowships

Opportunities to network with fellow doctoral students of color and more seasoned faculty of color mentors were available through annual meetings sponsored by minority fellowship programs, many of which were developed as a way to “invest [corporate] resources on increasing the numbers of the most underrepresented minority groups in the teaching and research faculties of higher education” (Solórzano, 1998, p. 126). Twelve participants received pre-doctoral, dissertation, and/or post-doctoral fellowships through the Ford Foundation, the National Institutes of Health, the American Sociological Association, and the American Psychological Association, to name a few (see Table 1). The participants who received these fellowships were relieved that they could concentrate on their research because of external funding and, most importantly, they were able to build social networks with emerging and established faculty of color from across the country as noted by Lynn (Mexican-American/Chicana, Visiting Professor, Social and Behavioral Sciences),

[Minority Fellowship] has been instrumental in me finishing, not just because of their deadlines but because of the support that you get when you go to these conferences. [I]t's just so amazing to be in this rather large group of academics of color and you can share everything that you've gone through, they've gone through. It's an amazing group of people.

As a result of developing these networks, participants connected with potential employment and publishing opportunities after graduate school. These fellowships also lessened the pressures of contending with graduate socialization processes, hostile departmental cultures, and competitive peers.

Earning these fellowships also translated into the commodification of Mexican American graduate students. Nieves (Chicano, Assistant Professor, Humanities) provides an interesting narrative about how prestigious, funded research opportunities could serve as capital within highly selective academic spaces. On his second attempt to apply to doctoral programs, he was accepted into a master's program and applied to a doctoral program for a third time. His diligence was marked by a commitment to apply to the most prestigious programs and pre-doctoral fellowships during his second year in the master's program,

[T]he second time around, I got them all. So I kicked butt and...I incidentally got, not the minority one...I got the straight up [federal fellowship], the ones for scientists [and] lawmakers. I got into the best Ph.D program—the one I wanted. And I got rejections, too, but it was just not psychologically damaging.

Nieves's narrative depicts the extent to which, after the third time applying for doctoral programs, he understood how to navigate a system rooted in prestige and hierarchy. Although he seems to distance himself from the "minority fellowships" and celebrates his ability to obtain the "one for scientists and lawmakers," Nieves saw the fellowship as a strategic tool for being admitted to the top humanities program in the country as evidenced in his story of visiting a West Coast research-intensive institution,

When I was at [the university], they had a two-day thing. They invited...all the people they were trying to accept, or the main people. Some people didn't get invited.....It was totally a tiered thing. I felt kind of shy, you know, and [the other students] were just better talkers and better students. This is where I realized their academic training earlier was good, while I was just playing catch-up as a master's student.

On the first day, Nieves was ignored by the professors and most of the prospective students "who were fast talkers and playing smart." On the second day of his visit, Nieves was informed that he received the fellowship, which was announced by one of his friends who was also in attendance,

[T]he next thing you know, I was the center of attention because at the time I was only the second person in [Humanities] ever to have received the pre-doc in itself. People get [private fellowship], but again, this wasn't the affirmative action grant; this was the White competition grant. So then everyone wanted to be my friend.

Nieves perceived that he was a strong candidate, but the department seemed to think otherwise until a non-minority fellowship, as a White standard of value inherent in perceptions of prestige, transformed him into a person of interest, "I thought that was a good example, like how people ignored me Day 1, but then wanted to be my friend Day 2." Nieves thought, "This is crap, but I'll take it," because admission into this particular program would garner greater recognition for him in the future.

His narrative reflects how external funding transforms Mexican American students into valuable commodities for graduate programs whose interests converge with the institution's quest for prestige. It is unknown whether Nieves would have received similar treatment had he received a minority-based fellowship, but his story depicts how distancing oneself from the intent of affirmative action maintains White power structures. The department's decision was an example of interest convergence: by admitting one Mexican American doctoral student, Nieves's prestigious non-minority fellowship would garner more prestige and national attention to their program. As an added incentive, they did not have to financially invest in Nieves due to external funding.

Involvement in programs centered on increasing the number of women in the sciences along the educational pipeline inspired the three female participants who were scientists; especially Darcy (Hispanic, Post-Doctoral Fellow, Physical Sciences). Her encounter with a White male peer who claimed the "reverse discrimination" argument was one of the most striking examples of confronting overt racism in graduate school. The White male often stated that he was "oppressed because all the fellowships go to the minorities" and engaged Darcy in heated debates about affirmative action. Darcy explained in her narrative that all graduate students in her department were fully funded as teaching or research assistants, but she recognized that there were some fellowships designed to assist students of color and women in the sciences. As the three women scientists asserted, regardless of how they were admitted to their programs or funded throughout graduate school, they still had to produce "good science" and felt that they exceeded the minimum standards for all graduate students in general. Nevertheless, Darcy noted a tone in the discussions with her White male colleague that implied, "I worked very hard to get to where I am today and you just got stuff handed to you."

The affirmative action programs that supported increasing the representation of women and people of color in underrepresented fields had complex outcomes. These programs were, in many instances, the only mechanisms that helped female participants enter science fields, despite their academic achievement, yet these programs could not necessarily protect the participants from hostile environments perpetrated by White men. White men, who represent 51% of all scientists and engineers working in the U.S., still vastly out-rank and outnumber any advantage women and people of color have gained (NSF, 2013). Despite their success in college and graduate school, a majority of participants felt constantly interrogated about their intelligence and held under suspicion because they supposedly had not "earned the right" to be in college and graduate school.

It is clear how fellowships funded through external agencies are beneficial but limit the accountability

of institutions to intentionally recruit students of color. These prestigious fellowships awarded to outstanding minority students have already sorted out the “highly qualified” minority candidates, those who are most worthy of investment, those who can be commodified to serve institutional interests by earning access to the most selective programs in the country.

Target of Opportunity Programs

Various interventions have been created to address the paucity of Latina/o faculty at research-intensive institutions, such as the Target of Opportunity (TOP) program. The official purpose of a Target of Opportunity program is to encourage departments to hire outstanding, “highly qualified” minority applicants and diverge from traditional hiring protocol that seems to lean toward hiring White applicants. The unstated purpose is to provide examples of the institution’s commitment to diversity, even when a faculty of color is not hired due to bureaucratic processes that are conducted outside of the department at the Provost level (Aguirre, 2000). Departments that hire faculty of color are rewarded with an additional faculty line for a White person; an example of the extent to which institutional policies reify Whiteness. Therefore, in the event that the search fails or the hired faculty of color does not earn tenure, the department retains the new White faculty line in their budgets. Aztlán (Chicano, Full Professor, Life Sciences) explains that this signaled to departments,

“Don’t worry, you’re not gonna sacrifice a White FTE for a minority FTE.” So what did they do? Oh, they invited what they thought were [the best] Chicanos and Blacks to interview. And it didn’t matter as far as they were concerned what you were doing. They were just gonna pick the best one. But you have to realize that’s not the way it works. What they also did was [say], “Oh, by the way, if that minority doesn’t get tenure, guess what? You can turn that into a White FTE.” You see? These are the little games that these predominant White males [are] playing.

Rhonda (Chicana/Bi-Racial, Head Librarian, Social & Behavioral Sciences) provided the most extensive discussion of being a target of opportunity hire at a West Coast university. At the time of the hiring, Rhonda was not aware that she was a target of opportunity and she “encounter[ed] people telling you, ‘The only reason you got this position was because you’re a person of color,’ and...they’re implying that you’re not qualified.” Based on her experiential knowledge of witnessing “the racism that my mother and my *tias* [aunts] faced,” Rhonda rejected the label of stigma. However, at the onset of her hiring, the racism and “backlash from a number of faculty” caused Rhonda to question not whether she *belonged* on the campus, but whether she wanted to *stay* at her institution, “Is this important for me to be here in this fight? I mean, this fight is critical, but who is going to help me?”

Rhonda experienced the prevalence of racism on her campus and fought “for more open ways to recruit incoming faculty of color.” Her quest was often met with the response, “‘Well, why do you need to do that?’ or, ‘[T]here just isn’t anyone out there.’ [T]hat is totally untrue.” Rhonda gathered colleagues who also believed in diversifying the faculty and administrators on her campus and understood the importance of institutional leadership in creating that change,

[Y]ou have to maintain an institutional commitment that goes all the way to the top; from the faculty to your dean to your chairs, to your provost and the president to...fight that institutional racism encountered and to really identify and recruit a very motivated, talented, and diverse faculty.

In a similar vein, Aztlán shared his perspective on the dearth of Latina/o faculty and research scientists at the most elite universities,

[I]t’s the worst times for our people, partly because...the attacks on affirmative action, and the comfort that the ruling majority White [males] and now White female[s] [have]. Cannot discount the White female...because they sure as hell aren’t advocating for Latinas in science—that I can assure you. That really causes a lot of concern, but also, outrage in me that we have allowed it to get to this point. [C]learly racism is very much alive. [The university will] be jumping up and down for White guys...knowing good and well that we are Chicanos and Chicanas [and] we’re also damn good scholars....We will impact the community. That’s what you learn when you’re a

minority faculty member: you are not a White faculty. Don't forget that.

As Bell (2004) contends, within White power structures, "each Black or Hispanic or Asian that is hired for a tenure-line position makes it that much harder for any subsequent minority applicant" (p. 46). Minority faculty often contend with being the "first and only" faculty of color in departments and are often confronted with suspicion, especially if they excel at their job (Urrieta & Villenas, 2013). If more faculty of color are hired, White academic spaces are threatened and any potential discomfort experienced by White faculty leads to a "tipping point." "As long as a faculty has one minority person, the pressure is off and the recruitment priority simply disappears" (Delgado & Stefancic, 2005, p. 187). Target of Opportunity programs provide the cover to channel underrepresented minority faculty candidates into a separate hiring process while also maintaining the status quo by hiring a White faculty member. When the TOP process fails, the focus turns to the purported failings of the minority candidate rather than a separate but equal hiring process that placates to White entitlement. Incentivizing the hiring of minority faculty by generating an additional line (TOP and FTE) is highly problematic as it sorts minority faculty into one option (the TOP line) rather than a candidate who is entitled to compete for the FTE position (Aguirre, 2010). Therefore, the department is able to shift the blame to high-level administrators and bureaucratic processes while still claiming to be open to diversity hires.

Fulfilling the Silent Covenant within Affirmative Action

Most striking of the arguments against affirmative action policies and interventions that support race-conscious admissions into college and graduate school and race-conscious hiring practices, is that stigma is invoked. Little research focuses on whether "de facto affirmative action for wealthy and well-connected White students, in legacy-, celebrity-, and donor-based preferential admissions" (Kow, 2010, p. 160) results in stigma for their preferential treatment. As noted in Aztlán's observations of faculty hiring practices at Ivy League institutions, the unspoken agreement via social networks rarely is critiqued for its support of the "buddy system" for White faculty.

These practices and unspoken rules that garner access and opportunity for some but not for Latina/o students and faculty is an illustration of the silent covenant. By touting diversity and a public commitment to affirmative action, institutions participate in "non-action. For the university to declare racism and promote 'diversity,' is to simultaneously declare the university as non-racist..." (Urrieta & Villenas, 2013, pp. 530-531). The silent covenant is a compromise between the institution and White power structures, a sacrifice of Latina/o rights and access to higher education. Latinas/os are the "fortuitous beneficiaries" of affirmative action, but the unspoken rules that maintain affirmative action for Whites is the compromise that must be made in order to protect White interests. This is a far better option than dismantling the racist structures and policies that prohibit minority applicants from enrolling in and working at research-intensive institutions.

Discussion

Although posters calling for the exclusion of Mexican Americans are no longer posted in restaurants and businesses, the message rings clear when considering the academic and career trajectories of Mexican Americans at research-intensive institutions. Mexican Americans, representing 63% of the Latina/o population, have the lowest levels of educational attainment in the aggregate, but are considered the future of the U.S. workforce (Ennis, Rios-Vargas, & Albert, 2011). As of 2010, only 57.4% of Mexican Americans over the age of 25 have graduated from high school and 10.6% over the age of 25 have obtained college degrees (U.S. Census Bureau, 2012). In some instances, depending on the field, the proportion of doctoral production would need to increase by 3 to 17 times for Mexican American men and women to reach parity (Solórzano, 1993). The purported causes of these disparities are rooted in historical contexts such as discriminatory educational policies that segregated Mexican children and "Americanization" programs that attempted to enforce "American" values and proper hygiene (Delgado Bernal, 2000). In addition, deficit-centered and culturally determinist theoretical models were employed to perpetuate negative cultural stereotypes (Solórzano & Solórzano, 1995) that continue to inform how educational policies are developed and the extent to which they truly serve as a racial remedy

for Latinas/os.

As evidenced by a majority of the participants, affirmative action programs are essential to establishing and maintaining a Latina/o presence in higher education. The participants' involvement in these programs further solidified their commitment to completing their degrees, gaining vital research experiences and national networks. The necessity of equal opportunity programs and minority fellowships is apparent when considering the strong academic and social foundations they provide for Mexican American students and faculty on hostile college campuses. Based on the participants' narratives, external funding was essential to their survival and was often used as a protective layer against competitive, unsupportive, and politically charged departments. As a matter of interest convergence, I argue that the external funding also provided a protective layer allowing research-intensive universities to claim "diversity" in their graduate student population without needing to transform their environments. By relying on external funding groups, these institutions did not necessarily need to hold faculty and administrators accountable for creating support mechanisms that would lead to success for all students, especially Latina/o students and faculty.

The implementation of affirmative action becomes mere lip service, a symbolic offering that has little bearing on the daily practices that perpetuate dominant ideologies. The contentious discourse regarding affirmative action reflects the concerns about the application of race-conscious admissions and hiring policies at the most selective, research-intensive universities in the country. White entitlement to earning doctoral degrees and tenure-track faculty lines becomes marred when creating more inclusive and racially just mechanisms for increasing the Latina/o presence in higher education. Although the hope was that a legal intervention such as affirmative action would serve as a racial remedy and lead to social reform, the effects of the practice reveal the silent covenant. Our racial reality proves that the effects of affirmative action practices may have a shelf-life, unless, in keeping with Bell's (2004) charge, we divert our attention outside of the law and commit to building the infrastructure for supporting Latinas/os along the pathway to the professoriate on our own. To paraphrase Ledesma (2004), can we truly arrive at diverse institutions of higher education that reflect the changing demographics of this country without race-conscious admissions policies and hiring practices? When considering historical and existing educational inequities, Latina/o racial realities reveal that our communities cannot rely heavily on the law to alleviate racial injustice, just as we cannot depend on our educational system to provide quality education nor an equal opportunity to learn and teach (Oakes, 1990 as cited in Ledesma, 2004). We cannot wait for the benevolence and empty promises of Whites to push for educational reform. Coalitions among Communities of Color must recognize that the law is constructed to serve White power structures and will never be the right tool to dismantle oppression.

The interpretation and implementation of affirmative action policies and programs reflects a silent covenant that deflects the racial realities of hiring Latina/o faculty and enrolling Latina/o doctoral students; shifting the institution's responsibility for creating inclusive, supportive environments and cultivating the next generation of Latina/o scholars to external agencies and to the Latina/o community itself. The silent covenant becomes a waiting game: waiting for the retirement of the original recipients of racial fortuity via affirmative action policies in the 1970s; many of whom were the first Mexican Americans in their fields, and sadly, some of the only Mexican American faculty at the most elite and selective institutions. Based on the findings, affirmative action policies are beneficial to Latina/o students and faculty, and are also beneficial to maintaining the stability of White power structures.

Since the introduction of the concept of interest convergence (Bell 1980), critical race theorists have been encouraged to present solutions that converge with the dominant culture's interests and are perceived to not disrupt "a normal way of life for the majority of Whites" yet create positive change for marginalized communities (DeCuir & Dixson, 2004, p. 28). Numerous recommendations abound that adhere to Bell's (2004) call for relying less on judicial decisions and "more on tactics, actions, and even attitudes that challenge the continuing assumptions of White dominance" (p. 9). Communities of Color and White allies need to think differently about bolstering the intent of affirmative action, especially if, as current trends indicate, going through the court system is slowly eroding affirmative action's promise. Based on historical context, however, it seems that there is limited incentive to make such a commitment when the focus is and will remain on the benefits and entitlements that White students and faculty receive from diversity that does not necessarily need to include

Latinas/os. That lack of interest is a mistake for the future of U.S. society. Latinas/os are now a majority in secondary schools and are a political power that will assert its interests over education, policy, and industry, regardless of White interests. To stem possible racial strife and so-called White discomfort, maintaining affirmative action programs is common sense. Latina/o communities are slowly becoming the cornerstone of this country, yet the threat that these communities bring to traditionally White academic environments is, at this point in time, a greater concern. As a result, Latina/o students and faculty at research-intensive universities will continue to be sacrificed.

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Public Discourse versus Public Policy: Latinas/os, Affirmative Action, and the Court of Public Opinion

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Abstract

The purpose of this article is to highlight the power of popular discourse in shaping public policy debates concerning educational access and opportunity for historically marginalized and minoritized students, especially for Latinas/os. I argue that proponents of race-conscious policies would do well to challenge the elimination of affirmative action by employing a more critical approach to discourse consumption, one which interrogates, historicizes, and contextualizes the often truncated and/or deceptive narratives relied upon by critics of affirmative action, to call for the end of all race-conscious social policy.

Introduction

The future of affirmative action in higher education for historically underrepresented students, including Latinas/os, may well hinge on how critically scholars, policymakers, practitioners, as well as the general public interrogate public discourses and public narratives framing educational policy-making decisions. Even as the Supreme Court's majority opinion in the University of Michigan's Law School case *Grutter v. Bollinger* (2003) continues to uphold the limited use of race in university admissions, the High Court's plurality decision in *Schuette v. Coalition to Defend Affirmative Action* (2014) is poised to open the door for critics of affirmative action to launch focused, frequently misleading, attacks on these policies with the end goal of eliminating all race-conscious practices. *Schuette* (2014) grants states permission to curtail and/or terminate the use of race-conscious policy via ballot initiative and/or constitutional amendment. This strategy, to use the political process of voter approved ballot initiatives and/or constitutional amendments, to legislate the end of race-conscious affirmative action policies, serves to showcase the importance of the court of public opinion.

The purpose of this article is to highlight the power of popular discourse in shaping public policy debates concerning educational access and opportunity for historically marginalized and minoritized students, especially for Latinas/os. Revisiting California's anti-immigrant and anti-Latina/o propositions of the 1990s provides one example to showcase how public discourse manipulation, informed by racist nativism, helped sideline educational opportunities for Latina/o students within a state that houses the largest Latina/o population in the nation (Brown & Lopez, 2013). Studying Supreme Court Justice Sonia Sotomayor's nomination and confirmation process provides another example of how the power of public narrative shapes perceptions about Latinas/os and educational attainment. Finally, in the wake of a resurgent movement towards colorblindness, I review how new narratives around educational opportunity in California and elsewhere, have worked to pit historically marginalized communities against one-another while at the same time deflecting attention away from the real problem of white supremacy. In the end I argue that proponents of race-conscious policies would do well to challenge the elimination of affirmative action by employing a more critical approach to discourse consumption, one which interrogates, historicizes, and contextualizes the often truncated and/or deceptive narratives relied upon by critics of affirmative action, to call for the end of all race-conscious social policy. I began this examination by addressing the importance of a critical discourse analysis approach when reviewing, debating, and deciding race-conscious public policy.

Critical Discourse Analysis, Framing, and Reading Race

Discourse scholars (Fairclough, 2013; Fairclough & Fairclough, 2012; Lemke, 1995; van Dijk, 1993) have observed that a key function of analyzing language and studying discourse is to uncover, name, and confront social

inequities. Discourse analysts also posit that the use of language is always strategic. As Lemke (1995) explains, language does not operate in isolation; rather, we give language meaning in contexts and social expectations by the manner in which we use it. Consequently, texts take meaning and convey power. The textual is always political. Per Lemke (1995),

Discourses do not just function ideologically as identity kits or to obtain 'goods.' They also function to legitimate, naturalize or disguise the inequities they sustain. They function to get us thinking along particular lines, the lines of a common sense, which are not as likely to lead to subversive conclusions as using some other discourses might. (p. 13)

In summary, as Gee (2011) succinctly points out, "discourse analysis is the study of language-in-use" (p. 8). And while there are different approaches to discourse analysis, they all suggest that the use of language is *always purposeful*, especially in public forums and public debates. Indeed, even in the most benign of circumstances language may be considered a powerful weapon. However, in the case of addressing highly politicized and controversial topics, such as race-conscious affirmative action, understanding how language is deployed and operationalized becomes just as important as understanding the issue(s) being addressed.

Early on, Bolinger (1980) pointed out that "political propaganda is a battleground of good- and bad-naming" (p. 119). He added, "The struggle between the haves and the have-nots brings a new confrontation of word-images in every generation" (Bolinger, 1980). Bolinger's observations, rooted in history, are reflected in the founding of this nation where poor, marginalized, and otherwise disempowered and minoritized communities, especially Latinas/os, have always been subjected to *othering* (Zinn, 2011). As an example, we may look to the perennial immigration debate, in which undocumented persons are labeled, and in the process dehumanized, by the application of the term "illegal." As Lakoff and Ferguson (2006) explain, the reliance on the term illegal is deliberate and meant to evoke specific frames. They contend, "Illegal," used as an adjective in "illegal immigrants" and "illegal aliens," or simply as a noun in "illegals" defines the immigrants as criminals, as if they were inherently bad people. In conservative doctrine, those who break laws must be punished—or all law and order will break down. Failure to punish is immoral (Lakoff & Ferguson, 2006, p. 3).

Fairclough (2013) also clarifies, "Discourse types and orders of discourse vary across cultures. But in such gatekeeping encounters [such as immigration and education policy decisions], white middle-class gatekeepers are likely to constrain the discourse types which can be drawn upon to those of the dominant cultural grouping" (p. 40). In other words, the use of specific trigger words and imagery is not accidental in debates addressing highly politicized and controversial topics. And those that hold power are often in the position to frame and shape these narratives. For example, while promoting his party's ticket during the 2012 Presidential race, Republican Vice-Presidential Candidate Paul Ryan drew fire upon presenting his budgetary proposal. Critiquing the supposed growth of financial "entitlement" programs, including welfare subsidies, Ryan declared, "We're going to a majority of takers versus makers" (Chait, 2013, para 5).¹³ Commentators contended that Ryan's phrasing, implying an "us" versus "them" mentality, was laced with racial innuendo and suggested the need to protect financial entitlements for those who truly deserve them (Corn, 2014). Likewise, in the debate over admissions into the nation's most elite and selective institutions, critics of affirmative action have sought to differentiate between those students (i.e. students of color, including Latinas/os) who are perceived to "take away" admissions opportunities from those students (i.e. white students) who "deserve admissions" (read, rightfully earned) admissions.

Lakoff's (2004) explorations into the power of language and framing are particularly relevant in debates over affirmative action. As Lakoff (2004) explains, "Framing is about getting language that fits your worldview. It is not just language. The ideas are primary—and language carries those ideas, evokes those ideas" (p. 4). In the case of a policy like affirmative action, opponents have come to rely upon ahistorical and acontextual narrative framings, which in turn often serve to elicit heightened visceral responses (Ledesma, 2013). Indeed, as numerous scholars (Armour, 1997; Crenshaw, 2007; Haney López, 2014) have uncovered, narratives around affirmative action are too often presented utilizing color-blind frames. Such frames strategically bypass any significant analysis of the legacy of race and racism that has necessitated the need for affirmative action programs

13. Ryan stated, "Right now about 60 percent of the American people get more benefits in dollar value from the federal government than they pay back in taxes. So we're going to a majority of takers versus makers" (Chait, 2013).

in the first place; ignoring the need for corrective action, critics of affirmative action can focus on casting affirmative action policies as nothing more than “unmeritocratic” “preferences” for “underqualified” students of color. Another common anti-affirmative action trope relies on positioning African-American, American Indian, and Latina/o students as “preferred minorities” while casting white and Asian-American students as “victims” of race-conscious practices (Thernstrom & Thernstrom, 1997). This trope is problematic on multiple levels, not the least of which is the tendency to essentialize racial minority groups into monoliths, ignoring how unique ethnic and/or cultural differences distinguish students’ educational opportunities and trajectories. For instance, despite sharing the label “Latinas/os,” a first-generation Chicana/o student is very likely to have a distinctly different educational experience from a second- or third-generation Cuban student. Likewise, in spite of falling under the same “Asian American” veil, a Chinese student’s educational experience will almost certainly differ from those of a Vietnamese or Hmong student. However, an additional criticism of this strategy rests on the fact that by pitting students of color against each other, dominant issues of structural racism and white supremacy are obfuscated.

Haley and Sidanius (2006) make clear that “past research has repeatedly shown that the popularity of affirmative action programs can radically rise or decline depending on how the term ‘affirmative action’ is framed and/or what specific policy is under consideration” (p. 657). In the debate over the future of affirmative action, proponents of the policy support its continuance by citing frames such as inequality, fairness, and opportunity, while opponents rely on frames that describe the policy using terms like mis-match, reverse discrimination, preference or/and stigma (Ledesma, 2015). Unfortunately, when it comes to a policy as controversial as affirmative action, critics of the policy most often depend on incomplete and/or inaccurate language, including ahistorical and acontextual narratives, to criticize the policy and call for its end (Crenshaw, 2007; Ledesma, 2013; Kennedy, 1986).

Long ago, Kennedy (1986) emphasized the importance of acknowledging the use of both overt and covert discourse in affirmative action debates. He emphasized that,

...the affirmative action debate cannot be understood without acknowledging simultaneously the force of the openly stated arguments for and against preferential treatment and the submerged intuitions that disguise themselves in these arguments. To disregard either of these features of the debate is to ignore an essential aspect of the controversy. To appreciate both is to recognize the frustrating complexity of our racial situation. (Kennedy, 1986, p. 1328)

Close to three decades after Kennedy’s original observation, the frustrating complexity surrounding affirmative action has only intensified. All of which contribute to what Crenshaw (2007) has come to describe as the “distorted discourse around affirmative action” (p. 129). For scholars, educational leaders, policymakers, and practitioners, as well as the general public, concerned with educational equity and social justice, deciphering this distorted discourse, in both its overt and covert forms, is absolutely imperative if we ever hope to have an honest conversation addressing educational equity and social justice. To emphasize this point, I revisit how discourse helped reshape the educational landscape for Latinas/os in California, an effect we are still living with today.

Public Discourse vs. Public Policy: California as a Case Study

The reliance on discourse manipulation as a force to drive public policy initiatives is nothing new. In California, a decade of nativist rhetoric helped produce social policies which would come to redefine issues of access and equity in public education, especially for Latina/o students. In the 1990s, California passed the first in a series of what some viewed as seemingly “progressive” propositions, which sought to uphold and protect individual rights. Beginning in 1994, voters passed Proposition 187, otherwise known as “The Save Our State Initiative,” or “S.O.S.” for short. Proponents of Proposition 187 sought to restrict social services for undocumented immigrants residing in the state, aiming their attack on California’s Mexican immigrant population. Resorting to divisive politics and discourse manipulation, anti-immigration pundits characterized undocumented immigrants as “criminal” and “unlawful” by airing sensationalized television ads, which portrayed Mexican immigrant *hordes* swarming across the border (Santa Ana, 2002). In his study of newspaper articles

covering the Proposition 187 campaign, Santa Ana (2002) observed how “the metaphorization of the immigrant in public discourse” (p.68) was dominated by textual and visual narratives of Mexican immigrants “flooding” into and “invading” California. These narratives depicted Mexican immigrants in one-dimensional fashion, as devious law-breakers.

Indeed, media coverage leading up to and after President Barack Obama’s 2014 proposed executive action on immigration confirms Lakoff and Ferguson’s observations.¹⁴ Contemporary immigration debates continue to stir-up resurgent anti-immigrant, anti-Latina/o narratives, framing Latina/o immigrants as unlawful perpetual foreigners. For example, as community leaders, politicians, education and health professionals attempted to respond to the humanitarian crisis, which in the summer of 2014 saw tens of thousands of Latina/o children crossing the U.S. border to seek asylum from the war-torn and poverty ridden conditions in their Central American homelands, critics contended that these children were nothing more than criminals. As detailed by Santana (2014), conservative Republicans seized this opportunity to paint “Latino immigrants as Ebola carriers to fan the anti-immigration reform movement” (para 1). Citing a letter written by Georgia Republican, and medical doctor, Phil Gingrey, Santana recounts how Gingrey cautioned the Director of the Center for Disease Control and Prevention about ‘Reports of illegal migrants carrying deadly diseases such as swine flu, dengue fever, Ebola virus and tuberculosis’ (Santana, 2014, para 10). This “Ebolification of immigration reform” (Santana, 2014), in turn, served to perpetuate anti-immigrant sentiments and stereotypes. And while the most outspoken responses have quelled, they have not disappeared entirely. More recently, Alabama Republican Mo Brooks speculated that “illegal immigrants” might be to blame for a high-profile measles outbreak in California. Brooks declared, “I don’t think there is any health care professional who has examined the facts who could honestly say that Americans have not died because the disease is brought into America by illegal aliens who are not properly health case screened, as lawful immigrants are...” (Reilly, 2015, para 3). This anti-immigrant rhetoric ebbs and flows, but it is never too far away from discussions around public policy.

Just two years after passage of the anti-immigrant Proposition 187, California voters approved Proposition 209, “The California Civil Rights Initiative,” which brought an end to race-conscious affirmative action in public hiring, public contracting, and public higher education. The *California Civil Rights Initiative’s* title alone served to confuse many would-be affirmative action supporters into voting against the policy. And while Proposition 209 was not exclusively targeting Californian’s Latina/o population, since its passage in 1996 it has worked to chill the aspirations of a great number of students of color seeking admission into the University of California system (Kidder, 2013). In 1998, Proposition 227, “The English for the Children Initiative,” followed with the intent to do away with bilingual education. Proposition 227 specifically targeted Spanish and bilingual education, and aimed to finalize the unfinished work of Proposition 187, which by this time found itself in legal limbo.

In each case, the authors of these propositions used strategic language and discourse manipulation to help sway public opinion in support of their initiatives. As Bowler, Nicholson, and Segura (2006) observed, “Voting for the initiatives had strong racial and partisan dimensions, further underscoring their salience and widespread voter understanding” (p. 149). Despite the fact that the authors of these propositions hailed overwhelmingly from conservative backgrounds, they strategically worded the proposals borrowing from traditional civil rights discourse. As a result, recounting the passage of Proposition 209, Chávez (1998) explains:

When voters walked into the booth in November 1996, they wouldn’t be asked to dump affirmative action. They would be asked to support an initiative that prohibited the state from ‘discriminating against, or granting preferential treatment to, any individual or group, on the basis of race or gender. Who could disagree with such an exalted principle? The proposal sounded as if it had been written by Martin Luther King Jr. himself. (p. 80)

Chávez’s analysis exemplifies the power of discourse manipulation. Opponents of affirmative action intentionally relied on traditional civil rights language to call for the end of race-conscious policies.

14. In November 2014, President Obama announced executive actions on immigration, wherein he expanded the population eligible for the Deferred Action for Childhood Arrivals (DACA); made allowances for parents of U.S. citizens and permanent residents to request deferred action and authorization for employment through a new Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA); expanded the use of provisional waivers to allow for the presence of “unlawful” spouses and children of lawful permanent residents and U.S. citizens; modernized and improved the immigrant/non-immigrant visa programs; and, promoted citizenship education and public awareness for lawful permanent residents (see <http://www.uscis.gov/immigrationaction>).

The successful passage of Propositions 187, 209, and 227, across a span of less than five years was due to a constellation of factors, including a rise in anti-immigrant discord and a pushback against race-conscious social policies, such as bilingual education and affirmative action, perceived to favor a growing racial “minority” population. However, it is also true that the coded language used to frame and couch these initiatives helped convince voters that they were voting in favor of a more democratic society. As explained by Santa Ana (2002),

For the privileged, the status quo [was] better left unnoticed; for the disadvantaged, pointing out the injustice [opened] up the possibility of change. Accordingly, this neoconservative discourse stratagem calling for an indefinite moratorium on discussions of racism [maintained] the comfort zone for white Americans. (p. 146)

Banks (1981) explained the rise of neoconservatism, or the “back to basics movement,” (p.12) as a movement driven by leaders who tired of the efforts focused on advancing a “national commitment to equality for excluded groups,” and who pine for the “good old days” in which there was little, if any, “attention devoted to the problems and promises of ethnic group life in the United States” (Banks, 1981). While the successful passage of Proposition 209, and its predecessors, may have been led or spearheaded by neoconservatives, ironically, exit poll results found that some voters, confused by how the propositions were framed and worded, voted in support of proposals they did not favor (Chávez, 1998; Moses & Saenz, 2008). For instance, with respect to Proposition 209, Chávez (1998) explains that “the problem was that most people reading the language of the initiatives had no idea that it would result in wiping out most current affirmative action programs” (p. 99). Voters voted against “discrimination” and “preferences” despite being in favor of affirmative action, a term strategically omitted from the language describing the proposition.

Public Discourse vs. Public Policy: Other States Follow Suit

The fallout from the passage of Proposition 209 has not been contained to California. Close to two decades after California voters endorsed the passage of the California Civil Rights Initiative, similar initiatives have been enacted in six additional states, all borrowing from Proposition 209’s original language.¹⁵ In Arizona (Proposition 107 passed in 2010), Michigan (Proposal 2 passed in 2006), Nebraska (Initiative 424 passed in 2008), Oklahoma (State Question 759 passed in 2012), and Washington State (aka Initiative 2000 passed in 1998), voters have prohibited the use of race and ethnicity in university admissions decisions under their own versions of Proposition 209. What is more, California itself is still recovering from the passage of Proposition 209 and no group has been more hampered than Latinas/os. Even while the population of Latina/o students has grown to become the majority of the K-12 enrollment in the state, Latina/o admission into the University of California system at both the undergraduate and graduate levels has yet to fully recover to its pre-209 figures (Garces, 2012; Grosky & Kurlaender, 2010; Kidder, 2013).

At a national level the battle over the future of affirmative action has also ushered in a new type of sophisticated first-hand involvement by right-wing conservative think tanks and organizations, skilled in discourse manipulation and intent on dismantling affirmative action. As Cokorinos (2003) points out, “an intensive outburst of strategic planning at the beginning of the 1990s, leading to the implementation of another, even more destructive phase of right-wing capacity building through the creation of the groups” (p. 21) that would lead this new anti-affirmative action revolution proved to be on the horizon. As explained by Cokorinos (2003),

Opponents of affirmative action have long recognized that their campaign to overturn decades of progress in civil rights would be made easier if the public faces of their operations were African Americans, Latinos, and women. They have also recognized that in order to erode the hard-won but solid support for civil rights among the American people, they have to strike at the very heart of the message of racial and gender equity. They have done this by developing a beguiling and confusing vocabulary in which carefully selected ‘victims’ of the correct race and sex pose as defenders of civil rights, when they are in fact fronting for its deadliest enemies. (p. 31)

15. The text of Proposition 209 read as follows, “Prohibits the state, local governments, districts, public universities, colleges, and schools, and other government instrumentalities from discriminating against or giving preferential treatment to any individual or group in public employment, public education, or public contracting on the basis of race, sex, color, ethnicity, or national origin.” (Retrieved from <http://vote96.sos.ca.gov/Vote96/html/BP/209.htm> on May 26, 2014).

In the University of Michigan's affirmative action cases, *Grutter v. Bollinger* (2003) and *Gratz v. Bollinger* (2003), as well as in the more recent *Fisher v. University of Texas* (2013), there was an opportunity to follow this script at the highest level. Each of these cases provided an opportunity for the architects in charge of dismantling affirmative action to cast white females as victims of race-conscious education policy. Even while white women represent the largest group of affirmative action beneficiaries (Cho, 2002), affirmative action detractors continue to rely on casting them as victims in order to protest the policy's continuance.

The use of morality has also been a strategy used by critics of affirmative action to call for its end. As described by Morrison (1993) "...the habit of ignoring race is understood to be a graceful, even generous, liberal gesture" (pp. 9-10). Correspondingly, detractors of affirmative action have learned to couch their opposition to affirmative action in morality laced frames, implying that the policy too often "mis-matches" and/or "stigmatizes," the very students it tries to help (Sander & Taylor, 2012; Thernstrom & Thernstrom, 1997). While the mis-match and stigma frames are frequently relied upon by anti-affirmative action advocates (Ledesma, 2013); too often these frames are presented in incomplete fashion, without accounting for how racism and white supremacy are primarily responsible for shaping cognition in the first place (Steele & Aronson, 1995). Nevertheless, the stigma and mis-match tropes allow affirmative action critics to frame their opposition to the policy as an altruistic one; one in which they are looking out for the physical, psychological, and economic interests of under-represented students of color, including Latinas/os. Through these frames, disapproval of affirmative action is cloaked in a veil of morality, which in turn serves to conceal how opposition to race-conscious policies protects the normative majority's sense of entitlement into those predominantly white institutions that practice affirmative action.

Ironically, even when affirmative action has proven to be successful and its beneficiaries embrace and claim the policy as instrumental in their own success, critics are quick to discredit such successes as nothing more than racial gamesmanship. The insinuation here being that no accomplishment is real if it is attained in the shadow of affirmative action. To follow, I revisit Supreme Court Justice Sonia Sotomayor's nomination and confirmation process, including the rhetoric used to speak about her and her qualifications. I argue that beyond being a media spectacle, Justice Sotomayor's nomination and confirmation hearings showcase how demonizing affirmative action, and those that dare proclaim its benefits, has proven to be much easier than honestly confronting why a corrective program like affirmative action remains necessary in the first place.

A Wise Latina on the Supreme Court

Roughly five months into his first term in office, President Barack Obama selected Judge Sonia Sotomayor for appointment as the one hundred and eleventh Justice on the Supreme Court of the United States. In his nomination speech, President Obama praised Judge Sotomayor's academic and professional credentials, including degrees from Princeton and Yale Law School, and service on both the U.S. District Court and the Federal Court of Appeals. In his speech, President Obama took time to explain that "walking in the door, [Justice Sotomayor] would bring more experience on the bench, and more varied experience on the bench, than anyone currently serving on the United States Supreme Court when they were appointed" (The White House, Office of the Press Secretary, 2009, para 9). President Obama also made clear to point out that the decision to nominate Justice Sotomayor had been rigorous and exhaustive, including consultation with governmental bodies and agencies as well as with advocacy organizations and bar associations "representing an array of interests and opinions" (President Obama, 2009, para 6). In short, the nation's first African-American President stressed that the decision to appoint the nation's first Latina Justice had been an arduous and comprehensive one, not one made in the flight of fancy.

Still, in spite of the President's deliberate approach towards her nomination, and irrespective of Justice Sotomayor's hard won qualifications, to many, Justice Sotomayor's nomination was an affront to the American principle of meritocracy. Critics sneered at the fact that Justice Sotomayor had had the audacity to credit affirmative action with providing her the opportunity to attain success. During her confirmation process, politicians and conservative commentators alike lambasted Justice Sotomayor for past speeches and decisions she had previously rendered. Critics zeroed in on an address delivered to a student symposium at the University of California (UC) Berkeley School of Law in October 2001, a speech entitled "A Latina Judge's Voice," wherein

Justice Sotomayor spoke candidly about her experience in the legal profession. Her reflections on that day included sharing with attendees the importance of having diverse voices and perspectives on the bench. Justice Sotomayor (2002) declared:

Each day on the bench I learn something new about the judicial process and about being a professional Latina woman in a world that sometimes looks at me with suspicion. I am reminded each day that I render decisions that affect people concretely and that I owe them constant and complete vigilance in checking my assumptions, presumptions and perspectives and ensuring that to the extent that my limited abilities and capabilities permit me, that I reevaluate them and change as circumstances and cases before me requires. (p. 93)

Unfortunately, even while Justice Sotomayor acknowledged that *all* judges are influenced by their personal histories and experiences, and that, “No one person, judge or nominee will speak in a female or people of color voice” (Sotomayor, 2002, p. 91), she was vilified for her candor. Critics pounced on Justice Sotomayor’s every word, most famously of which was her reflections to aspiring Latina/o law students with whom she shared, “I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn’t lived that life” (Sotomayor, 2002, p. 92). Under the confirmation spotlight, conservative critics, among them politicians and media analysts, attacked then Nominee Sotomayor. They implied that she was unqualified and undeserving of an appointment to the highest court in the land. To her critics, Justice Sotomayor’s self-identification as a “wise Latina” coupled with her admission to benefitting from affirmative action, was proof enough to suggest that she had not earned her impressive professional accomplishments. These actions were enough to sully her entire career and to label her as a “reverse racist” and “bigot” in the eyes of right-leaning conservative pundits.

The most vocal opposition to Justice Sotomayor came from far right conservative politicians and pundits. Linda Chavez, director of the conservative think-tank Center for Equal Opportunity, known for opposing affirmative action of Sotomayor’s record, opined “that she has drunk deep from the well of identity politics”¹⁶—implying that it was impossible for Sotomayor to be a fair judge. More pointed commentary came from figures like Rush Limbaugh who labeled Justice Sotomayor a “reverse racist” (Hananoki, 2009) and Lou Dobbs who accused her of “pandering to the Hispanics” (Hananoki, 2009, emphasis added). In the end, claims accusing Justice Sotomayor of “blatant racism” (Hananoki, 2009) because of her “wise Latina” comment were hard to quell but not enough to sideline her appointment to the Supreme Court. Nevertheless, discourse and narrative framings used to scrutinize Nominee Sotomayor’s credentials highlight how a legacy of racism and white supremacy continues to inform popular discourse, even in the face of stellar academic and professional credentials. To her critics, Justice Sotomayor’s acknowledgement of the role that affirmative action had played in shaping her educational career was enough to invalidate all of her earned accomplishments.

Justice Sotomayor’s nomination and confirmation hearings can be seen as a type of allegory concerning the nation’s enduring struggle with affirmative action. As Justice Sotomayor herself explained to students during her highly scrutinized Berkeley speech,

America has a deeply confused image of itself that is in perpetual tension. We are a nation that takes pride in our ethnic diversity, recognizing its importance in shaping our society and in adding richness to its existence. Yet, we simultaneously insist that we can and must function and live in a race- and color-blind way that ignore [sic] these very differences that in other contexts we laud. (Sotomayor, 2002, p. 88)

Justice Sotomayor’s observations continue to remain prescient. As Culp (1994) observed, “Myths are often created to fill a necessary psychological space” (p. 165). And “Colorblindness has been [such a myth, one] created to help us get over the difficulty of race in a society where race is particularly powerful” (Culp, 1994, p. 165). Ironically, so long as colorblindness and post-racialism continue to be championed, we continue to be in need of serious and honest dialogues about the history and future of affirmative action, including candid talk about how race, racism, and white supremacy continue to mitigate and impede equitable opportunities, educational, and otherwise (Ladson-Billings, 2007; Liu, 2003). It is only through such dialogues that we might begin to understand that the act of slandering the accomplishments of the highest-ranking Latina in the U.S.

16. See <http://www.cnn.com/2009/POLITICS/07/16/sotomayor.hearing/index.html?iref=24hours>

government was about more than critiquing personal politics and ideologies. Following, I speak to the changing national demographics, driven primarily by Latina/o population growth, and how this reality presents a unique opportunity to (re)frame educational access and opportunity for Latina/o students. I also suggest that we need to be more skilled at identifying and combating narratives that pit disempowered communities against one another while deflecting attention away from the problems of racism and white supremacy. I posit that an important way to challenge these tropes is by pressing for more critical discourse consumption.

Framing Affirmative Action in the Twenty-first Century: Why it Matters to Latinas/os

The twenty-first century has ushered in a new racial landscape to the United States. As of 2012, Latinas/os comprise the largest share of the population in California and Texas (Brown & Lopez, 2013). These demographic shifts are momentous for several reasons, not the least of which is the fact that two of the most populous states in the Union are now majority “minority,” and that majority is Latina/o. The demographic tipping points in California and Texas signal a larger trend, one in which Latinas/os are steadily growing across the nation. According to the U.S. Census Bureau in 2012, for the first time ever Latina/o births surpassed white births. And while the “browning” of America is occurring in expected places, like the Southwest (i.e., Arizona, Nevada, and New Mexico are now majority Latina/o), what is more surprising is that Latinas/os are the fastest growing populations in states like Alabama, Arkansas, Georgia, Kentucky, South Carolina, and Tennessee, just to name a few (Brown & Lopez, 2013). This newfound visibility has proven to be a double-edged sword. On the one-hand, (re)newed attention has been focused on Latinas/os core issues, such as immigration and education. On the other hand, Latinas/os have become prime targets for politicians, pundits, and the general public who are at odds with the nation’s new and projected demographic destiny.

Amongst the aforementioned backdrop, Latinas/os have come under attack in the form of policies and governmental programs. For instance, nationally, under the Obama Administration, the deportation or “removal” of Latina/o immigrants has vastly outpaced emigration into the United States (United States Department of Homeland Security [USDHS], 2013), making immigration a particularly sensitive topic for many Latinas/os. In the South and West, Georgia and Arizona spearheaded sweeping anti-immigrant campaigns against undocumented communities, zeroing in especially on Mexican immigrants.

While morally reprehensible, a historical retrospective reminds us that the maltreatment and scapegoating of traditionally marginalized and oppressed peoples, especially Latina/o immigrants, is nothing new (Acuña, 1988; Haney López, 1996; Santa Ana, 2002). After all, history has proven that the present-day United States was built upon a system of racial stratification where white supremacy has reigned (Bonilla-Silva, 2001, 2014; Feagin, 2013; Omi & Winant, 2015). However, whereas past racial narratives were more overt, today’s racial discourse is subtler and trickier, but equally as pernicious. As explained by Haney López (2014),

The new racial politics presents itself as steadfastly opposed to racism and ever ready to condemn those who publicly use racial profanity... Meanwhile, though, the new racial discourse keeps a steady drumbeat of subliminal racial grievances and appeals to color-coded solidarity... The new racism rips through society, inaudible and also easily defended insofar as it fails to whoop in the tones of the old racism, yet booming in its racial meaning and provoking predictable responses among those who immediately hear the racial undertones of references to the undeserving poor, [and] illegal aliens... (pp.3-4).

Ironically, the election and re-election of the nation’s first African-American President complicated rather than simplified today’s racial discourse.¹⁷ As Coates (2012) revealed in his detailed exposé of the Obama presidency, “After Obama won, the longed-for post-racial moment did not arrive; on the contrary, racism intensified” (para 44). These developments while not all together surprising are the latest manifestations of what

17. Shortly after his confirmation, Attorney General Eric Holder, the first African American to hold this post, delivered a national address commemorating Black History Month in which he observed the Nation’s recalcitrance in speaking about race. Holder stated, “Though this nation has proudly thought of itself as an ethnic melting pot, in things racial we have always been and continue to be, in too many ways, essentially a *nation of cowards*. Though race related issues continue to occupy a significant portion of our political discussion, and though there remain many unresolved racial issues in this nation, we, average Americans, simply do not talk enough with each other about race” (2009, para 2: emphasis added). Holder’s speech drew ire, especially from Fox News and affiliated pundits, who among other things, accused the Attorney General of playing the race card.

Feagin (2013) has termed “the white racial frame.” Feagin (2013) explains that the white racial frame operates by integrating cognitive elements, with visual and auditory elements, and feelings, among other elements, to perpetuate whiteness and white supremacy (p. 10). Feagin (2013) suggests that

central to the dominant racial frame are several “big picture” narratives that connect the frame elements into historically oriented stories with morals that are especially important to white Americans. These emotion-laden scenarios include stories about white conquest, superiority, hard work, and achievement. They make powerful use of stereotypes, images, and other elements from the overachieving frame. (p. 13)

As Feagin details, once the frame is used it works to activate additional frames and sub-frames. Still, while the white racial frame is deeply embedded in society, contemporary attempts to maintain the racial status quo are now often cleverly cloaked in pseudo-altruistic tropes and coded discourse. For example, with respect to affirmative action, critiques have shifted away from maintaining the racial status quo to “protecting” the policy’s intended beneficiaries, who it is argued are likely to be mis-matched and hurt and stigmatized by the very policy that intends to help them (Sander & Taylor, 2012; Thernstrom & Thernstrom, 1997). Research has suggested that arguments against affirmative action very often rely on ahistorical and acontextual framing (Crenshaw, 2007; Ledesma, 2013; Kennedy, 1986). They also suggest that the practice of discourse manipulation is very real and very powerful. As cited in Fairclough and Fairclough (2012), Van Eemeren explains that

manipulation of discourse boils down to intentionally deceiving one’s addressees by persuading them of something that is foremost in one’s own interest through the covert use of communicative devices that are not in agreement with generally acknowledged critical standards of reasonableness. (p. 95)

Fairclough and Fairclough (2012) further emphasize that discourse manipulation is “always intentional and always covert” (p. 95).

The rhetorical and legal battle over the future of affirmative action has become more important than ever, despite the fact that the limited use of race in university admissions continues to be legal; the Supreme Court’s majority opinion in *Schuette v. Coalition to Defend Affirmative Action* (2014) is set to adversely impact the educational futures of many historically under-represented students of color, especially Latinas/os, who aspire to attend the nation’s most selective colleges and universities. In *Schuette* (2014) a majority of six justices approved the constitutionality of allowing voters to enact “policies as an exercise of democratic self-government” (*Schuette*, 2014, slip opinion, p. 13). Justice Anthony Kennedy, writing for the Court’s majority, emphasized that the case was *not* about the constitutionality or merits of affirmative action. He stated that the key issue in *Schuette* concerned “...in what manner, voters in the States may choose to prohibit the consideration of racial preferences in governmental decisions, in particular with respect to school admissions” (*Schuette*, 2014, slip opinion, p. 4). Justice Kennedy also emphasized that the “holding in the instant case is simply that the courts may not disempower the voters from choosing which path to follow” (*Schuette*, 2014, slip opinion, p. 13). However as noted by Justice Sotomayor (*Schuette*, 2014, Sotomayor dissenting, slip opinion), the Court’s ahistorical majority decision, while democratic in theory, failed to account for the fact that in light of the nation’s “long and lamentable record of stymieing the right of racial minorities to participate in the political process” (*Schuette*, 2014, Sotomayor dissenting, slip opinion, p. 1), not all voters are equally empowered.

Moses and Saenz (2012) have suggested that ballot initiative processes necessitate robust and in depth analysis, especially when initiatives are concerned with the production and implementation of education policy. They stipulate:

...whereas in the past these policies were determined by “experts” assumed to possess deep knowledge of the issues—policymakers and political representatives—citizens now hold the power (and responsibility). This shift in policymaking responsibility from experts to citizens means that in order to promote fair and equitable policy decisions, voters should have access to meaningful information about the policy. (Moses & Saenz 2012, p. 114)

Crenshaw (2007) adds another dimension to the analysis of deliberate democracy. Employing a critical race analysis, Crenshaw suggests the need to interrogate “the people have voted” stratagem. Unfortunately, the strategic use of narrative to manipulate and influence the political process of voter approved ballot initiatives and/or

constitutional amendments has proven to be very real and very detrimental to historically disenfranchised groups. And as Crenshaw (2007) recounts, part of the problem with initiatives like Proposition 209, and its progeny, has been that these invite majority voters to join a “mythical past wherein equal treatment and nondiscrimination ruled the day” (p. 128). What is more, these ahistorical and acontextual framings serve to amplify the false beliefs that racism, discrimination, and inequality are passé (Crenshaw, 2007), thereby complicating and contradicting calls for the continuation of race-conscious policies, like affirmative action.

In *Grutter v. Bollinger* (2003) Justice Sandra Day O’Connor writing for the Court’s majority declared, “Context matters when reviewing race-based governmental action...” (p. 327). O’Connor’s directive is apropos for all types of race-based legislative action, but it is especially important when reviewing race-conscious policies. After all, although an imperfect tool, affirmative action has been primarily responsible for opening the doors of opportunity to students of color, including Latinas/os, to gain access into the nation’s most elite and selective institutions. Justice Sotomayor herself has remarked, “Affirmative action for me was permission to get to the start of a race that I did not even know existed” (personal communication, January 27, 2015).

In the absence of affirmative action programs, colleges and universities—especially those that have historically relied upon race-conscious practices to admit and enroll historically under-represented students—have found their job severely constrained. In California, the wellspring of anti-affirmative legislation, the profound effects of the passage of Proposition 209 continue to reverberate across the University of California system even close to two decades after ending the practice of affirmative action. As detailed in their *amicus curiae*, or friend of the court, brief in support of respondents in *Schuetz* (2014), the President and the Chancellors of the University of California explain that despite having implemented a number of race-neutral admissions initiatives—totaling over half a billion dollars since 1998—the University has yet to recover from the precipitous decline in student of color enrollment that occurred in the aftermath of Proposition 209 (Brief of the President and the Chancellors of the University of California, 2013). These results have been especially consequential for Latinas/os, who in spite of representing the majority of the state’s K-12 population still struggle to find placement within the UC’s most selective campuses (Brief of the President and the Chancellors of the University of California, 2013). Even outside of the UC system, in California and beyond, the truth is that students are more segregated now than pre-*Brown v. Board of Education* (1954) (Orfield & Frankenberg, 2014). In turn, these racial realities have had, and are projected to continue to have, real impacts on college accessibility and college choice for all students but especially for racially, geographically, and socio-economically isolated students, including Latinas/os (Hillman, 2014).

However, in the absence of critical narratives that account for the continued legacy of race, racism, and white supremacy, critics of affirmative action will most likely continue to be quick to embrace colorblindness and post-racialism. Haney López (2014) posits that in such instances, communities of color will continue to be pathologized. He explains:

Colorblindness answers by opportunistically switching to another understanding of race, frequently dropping race-as-blood to talk about racial groups as *ethnicities marked by distinct cultures* [emphasis in original]... Ethnicity provides a basis for blaming minorities for their inferior positions, since it faults their supposedly defective cultures; simultaneously, it exonerates whites, since racism is no longer to blame for inequality. This in turn answers the question of government help: such assistance is futile because only nonwhites can reform their inferior cultures and self-defeating behaviors. (Haney López, 2014, p.93)

While the Supreme Court’s decision in *Schuetz v. Coalition to Defend Affirmative Action* (2014), including Justice Sotomayor’s dissent, will be studied for years to come, *Schuetz*’s (2014) impact, granting states permission to curtail and/or terminate the use of race-conscious policy via ballot initiative and/or constitutional amendment, may be more immediate.

During the winter of 2014, California once again took center stage in the ongoing debates about the future of race-conscious social policy. During the state’s 2013-2014 legislative session, Senator Ed Hernandez introduced Senate Constitutional Amendment No. 5—better known as “SCA5.” The resolution proposed to amend Section 31 of Article I of the State’s Constitution, relating to public postsecondary education. In short, the resolution aimed to re-instate the legal use of race in university admissions by over-riding Proposition 209’s

prohibition of using race in public higher education. While similar resolutions had been introduced regularly throughout the course of the last few years, the most recent resolution unleashed a torrent of heated responses.

Unsurprisingly at the center of the ensuing debate are very racialized and politicized arguments about who is “helped” and/or “hurt” by overturning Proposition 209 and reinstating affirmative action. However, unlike previous debates, which have historically framed discussions concerning affirmative action as Black versus White, the SCA5 debate resulted in a complicated and very hyper-racialized discourse, one that pitted Black and Brown Californians against Asian Californians. And while to date there has been less overt vitriol framing the discourse associated with SCA5, the opposition to the constitutional amendment has been nonetheless layered with manipulated discourse and racial innuendo—including the exploitation of presumed minority on minority group tensions and the omission of the role of white supremacy on education policy making.¹⁸ Further complicating matters in California is the new post-209 racial landscape. In the almost twenty years since the passage of Proposition 209, California’s legislature as well as its K-12 enrollment has become majority Latina/o. In the same period of time, many of the University of California’s most selective campuses, those most contested for admission, have become predominantly Asian. The current SCA5 controversy has served to exploit an increasingly popular but nevertheless troubling wedge issue, one that perpetuates the myth of Asian Americans as model minorities and victims of affirmative action policy (Thernstrom & Thernstrom, 1997). As Park and Liu (2014) uncover, “the most appealing poster children for the anti-affirmative action movement” (p.36) have become Asian Americans.

Indeed, detractors of race-conscious affirmative action have become increasingly skilled at exploiting this narrative. It is this Asian American as victim frame which Edward Blum, the chief architect responsible for legal proceedings against the University of Texas in *Fisher* (2013), has continued to lean on to now file charges against Harvard University, the University of North Carolina, and the University of Wisconsin for their use of race-conscious admissions policies (Liptak, 2014). Under the guise of the anti-affirmative action non-profit “Students for Fair Admissions,” Blum is leading a new movement to dismantle all race-conscious policy. His argument is that even with stellar academic records, affirmative action policies adversely penalize Asian American students. Park (2015) explains that “the narrative that underlies the Students for Fair Admissions lawsuit—that Asian Americans need higher SAT scores to get into elite schools—is powerful. But it is also deeply misleading” (para 4). As Park and Liu (2014) posit, such narratives obscure the fact that there is widespread, and increasingly vocal support of affirmative action policies within and across Asian American communities. Nevertheless, clever politicians and anti-affirmative action pundits have seized on the popular Asian as model minority and victim of race-conscious policies trope to call for the end of affirmative action.

To follow I close by echoing Justice Sotomayor’s dissent in *Schuetz* (2014), wherein she argued that race and racism cannot be wished away. This reality coupled with the rising power and influence of the court of public opinion in public policy decision-making, I argue that as a growing sector of the U.S. populace, Latinas/os are in a prime position to help chart the future course of race-conscious affirmative action policy.

Conclusion

As we await developments in the latest affirmative action cases, including the Supreme Court’s rehearing of *Fisher v. University of Texas*, and the outcomes of litigation against Harvard University, the University of North Carolina, Chapel Hill, and the University of Wisconsin, Madison, it would be useful to heed the words of the one hundred and eleventh Justice on the Supreme Court of the United States, the first Latina to hold

18. For instance, anti-affirmative action advocates were quick to denounce SCA5. In one anti-SCA5 ad, the amendment’s acronym is re-appropriated. Within a backdrop that includes an image of Dr. Martin Luther King, “SCA” is presented to spell out the “Skin Color Act.” The phrase is crossed out alongside Dr. King’s image with an excerpt from his “I have a dream speech.” The excerpt reads, “I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character” (see http://www.saynosca5.com/?page_id=4). Another anti-SCA5 ad depicts a pensive Malala Yousafzai, the young Nobel Peace Prize recipient best known as the young Pakistani teen shot by the Taliban. Next to Malala’s image is a caption that reads, “The Taliban tried to stop her; SCA5 will stop American children.” The insinuation here being that reinstating the use of race in university admissions will result in the displacement of more deserving American children from California’s universities.

this post. Responding to the Court's majority decision in *Schuette* (2014), Justice Sotomayor (*Schuette*, 2014, Sotomayor dissenting, slip opinion) explained:

My colleagues are of the view that we should leave race out of the picture entirely and let the voters sort it out...It is sentiment out of touch with reality...While "[t]he enduring hope is that race should not matter[,] the reality is that too often it does." [R]acial discrimination is not ancient history...Race matters. Race matters in part because of the long history of racial minorities' being denied access to the political process...Race also matters because of persistent racial inequality in society—inequality that cannot be ignored and that has produced stark socioeconomic disparities...And race matters for reasons that really are only skin deep, that cannot be discussed any other way, and that cannot be wished away. (*Schuette*, 2014, Sotomayor dissenting, slip opinion, pp. 45-46: citations omitted)

So, if race cannot be "wished away," the question remains, "What are Latina/os to do in the face of anti-affirmative action discourse and the policies that emerge from it?" Justice Sonia Sotomayor's dissent in *Schuette* (2014), much like Justice Thurgood Marshall's dissent in *Regents of the University of California v. Bakke* (1978), provides a needed history lesson explaining why race and by extension affirmative action programs continue to matter.

Affirmative action matters for Latinas/os because in spite of their growing K-12 enrollment, Latina/o students still encounter great difficulties while trying to access the nation's most elite and selective campuses (Carnevale & Strohl, 2013). Affirmative action matters for Latinas/os because despite confronting a long history of deficit-oriented narratives, which argue that Latinas/os are "unmotivated" and/or "underprepared" for college enrollment and completion (Valencia, 2010), in truth Latina/o parents and students possess high aspirations to attend and complete college (Lopez, 2009). Affirmative action matters for Latinas/os even while critics of affirmative action profess that Latina/o students are "mis-matched" (read, academically underprepared) when they attempt to enroll in selective colleges and universities (Sander & Taylor, 2012; Thernstrom & Thernstrom, 1997); anti-affirmative action advocates are conspicuously silent on the concept of "under-matching," which suggests that Latino, low-income, and first-generation college students are "more likely to undermatch than their nonunderrepresented peers" (Rodriguez, 2013, p. 1). Rodriguez (2013) explains that historically underrepresented students in higher education, especially Latinas/os, who are eligible and capable of attending selective institutions of higher education are more likely to "under-match"—or attend less selective colleges and universities than their majoritarian peers.

However, in the end, narrative framing also matters because most all of these important arguments are glaringly absent in public discourse concerning the future of affirmative action policy. It is only by employing a more critical approach to discourse consumption, one which interrogates, historicizes, and contextualizes the often truncated and/or deceptive narratives relied upon by critics of affirmative action, to call for the end of all race-conscious social policy that we can even begin to prepare for what *Schuette* (2014) might usher in. Indeed, post-*Schuette*, the power of popular discourse in shaping public policy debates concerning educational access and opportunity for historically marginalized and minoritized students, especially for Latinas/os, will only intensify.

As we prepare for the next affirmative action challenge, we can look to Justice Sotomayor's *Schuette* dissent for guidance. As Fontana (2014) has observed, Justice Sotomayor's attention to discourse and language is just one of the many compelling features of her dissent. Commenting on what he calls the "Sotomayor Style," Fontana (2014) remarked, "She uses practical and therefore easily comprehensible language in her opinion. The usage of practical language is a judicial opinion which will reach regular citizens more because it gains more mass and social media attention" (para 8). As such, we might ask, How can this same type of "practical language" be adapted to address the still pertinent benefits, and necessity, of affirmative action policies for Latinas/os in the twenty-first century?

As one of the largest and fastest growing sectors of the U.S. populace, Latinas/os are in a prime position to help chart the future course of race-conscious affirmative action policy. However, in order to do so Latinas/os must pay much closer attention to how narratives are deployed, in both public and private spheres, when it comes to addressing issues of educational equity and social justice. In addition, Latina/o families, policy makers,

higher education researchers and practitioners, among others, must recognize that the future of race conscious policies has come to hinge as much on the court of public opinion as in the legal courtroom. The nation's demographic transformation has stirred-up old and new debates about power and entitlement, including, "Who has the right to gain access to and benefit from the nation's fountains of power?" If the answer includes Latinas/os, then these rationales must be fully explicated in national forums addressing both public discourse and public policy.

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The University of Texas at Austin's Defense of Affirmative Action in *Fisher v. University of Texas*: Lessons for Institutional Policies and Practices

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Abstract

In *Fisher v. University of Texas at Austin* (2013), the U.S. Supreme Court most recently recognized the right of universities to pursue a mission-centered interest in the educational benefits of student body diversity. The decision, however, also reminded institutions of the limited ways they are allowed to consider race in admissions policies to advance this goal. As institutions assess how to proceed in the aftermath of *Fisher*, it is important to consider any lessons learned from the case that can guide future efforts. In this article, I consider how the University of Texas at Austin's arguments in support of its policy can guide future efforts to support Latina/os in higher education. The university's arguments offer a more contextualized way to think of diversity-related policies, which can support the educational experiences of Latina/os more effectively and advance the long-term interests of this community and other underrepresented populations in higher education.

Introduction

The debate over affirmative action is frequently a central issue at highly selective undergraduate institutions and graduate and professional schools (see, Bowen & Bok, 1998).¹⁹ This is not surprising as these are the primary institutions that provide pathways to positions of power and influence in the United States. The college a student attends matters a good deal in terms of shaping their future opportunities, particularly for students of color. For example, research shows that students of color who attend selective institutions are more likely to graduate than their peers who attend less selective institutions (Bowen, Chingos, & McPherson, 2009; Carnevale & Strohl, 2013; Melguizo, 2008; Small & Winship, 2007), to have higher earnings (Dale & Kruger, 2002, 2014), to become leaders in their chosen professions and to initiate and lead activities that assist communities of color and contribute to the social and economic health of our nation (Bowen & Bok, 1998). For these reasons, race-conscious admissions policies at selective postsecondary institutions remain a critical factor in advancing the educational opportunities and interests of Latina/os across the nation. While the U.S. Supreme Court's decision in *Fisher v. University of Texas at Austin* (2013) recently recognized the right of universities to pursue a mission-centered (i.e., "compelling") interest in the educational benefits of student body diversity, it also reminded institutions of the limited ways they are permitted to consider race or ethnicity in that process. As institutions assess how to proceed in the aftermath of *Fisher*, it is important to consider lessons learned from the case that can guide future efforts.

Therefore in this article, I outline how the arguments the University of Texas at Austin (UT-Austin) and its supporting *amici curiae* (friends-of-court)—advanced in support of the university's race-conscious admissions policy—can inform institutional policies and practices aimed to support Latina/os in higher education.²⁰ The context within which UT-Austin sought to implement and defend its race-conscious admissions policy—in Texas—is particularly relevant for informing policies that seek to address educational inequities for Latina/os in the nation. In Texas, as in the nation as a whole, Latina/os are the largest minority

19. For the purpose of this article, I employ the terms "affirmative action," "race-conscious admissions policies," and "race-sensitive admissions policies" interchangeably; they refer to the consideration of race as one among many factors in admissions decisions.

20. These friend-of-the-court (*amicus curiae*) briefs are filed by individuals or organizations that are not direct parties in the lawsuit but have an interest in the outcome of the case. In this analysis, I focus primarily on an *amicus* brief filed by American Social Science Researchers in support of the university, as it was one of the primary briefs that summarized many of the research findings that supported the arguments by UT-Austin that are highlighted in this article.

group.²¹ Yet at UT-Austin (and at other selective institutions across the nation), they remain underrepresented in the student body (about 15% at UT-Austin) relative to their representation in the state (about 38% in Texas). In addition, the educational disparities for Latina/os in Texas reflect educational disparities for this population across the nation. In 2002, amongst 18 year olds in Texas, only 33% of Latina/os had a high school degree (compared to about 50% of whites) and 18% held a college degree (compared to 65% of whites) (NCHEMS). In 2010, amongst adults 25 years old and over in the U.S., only 63% of Latina/os had a high school degree (compared to about 88% of whites) and 14% held a college degree (compared to about 30% of whites) (U.S. Census Bureau, 2012). And as is the case in the U.S., pathways to leadership positions for Latina/os in the state are notably lacking. In Texas for instance, Latina/os make up 37.6% of the population (Ennis, Rios-Vargas, & Albert, 2011), but only 7.3% of the leadership in state and local government (Brief of National Latino Organizations, 2013). Considering these inequities and demographic realities in the state, UT-Austin implemented race-conscious admissions policies to further its mission of “preparing educated, productive citizens who can meet the rigorous challenges of an increasingly diverse society and an ever-changing global community”²² —a mission that closely matches those of other selective postsecondary institutions across the nation. The university’s defense of its policy in *Fisher*, thus, can offer important lessons for institutional policies that seek to increase access for Latina/os in higher education.

In my analysis, I argue that the university’s arguments in defense of affirmative action in *Fisher* call for a more contextualized understanding of diversity and its justifications in a manner that can more effectively advance the long-term interests of Latina/os and other underrepresented populations in higher education. This more contextualized understanding of diversity and its justifications can help guide institutional efforts post-*Fisher* in three main areas. First, as with UT-Austin, postsecondary institutions that seek to increase access to higher education for Latina/os and other underrepresented populations will not only need to pay attention to their admissions practices, but also to the learning environments on campus and to the conditions that are necessary to support a positive learning environment throughout their students’ educational journeys. Second, as the demographics of the nation shift and Latina/os represent a larger percentage of the population, institutions will need to consider how policies intended to further institutional missions need to change to address these changing demographics in a broader societal context within which racial and ethnic inequalities persist. Finally, as legal decisions restrict the consideration of race in admissions and reinforce a “color-blind” approach in education policy, institutions will need to craft policies and engage in practices that address the real ways in which race continues to operate to shape educational access and success.

Before I turn to UT-Austin’s arguments in *Fisher* and the lessons for institutional policies and practices, I first outline the legal background that led to *Fisher*, as it illuminates the contentious and complex legal terrain underlying the efforts selective institutions are making to implement race-conscious admissions practices in order to further their educational missions.

Legal Background: The Path toward *Fisher* in Texas

The Court of Appeals Prohibits Affirmative Action in *Hopwood*

In Texas, the controversy over the legality of affirmative action dates back to the now well-documented case of *Hopwood v. University of Texas Law School* (1996). In *Hopwood*, which took place two decades after the U.S. Supreme Court narrowly upheld the constitutionality of affirmative action in *Regents of the University of California v. Bakke* (1978), the Fifth Circuit departed from *Bakke*, finding that the consideration of race or ethnicity as a

21. By 2011, Latina/os made up the largest minority group among the nation’s four-year colleges and universities (Fry & Lopez, 2012). Texas registered the second largest number of Latina/os (after California) and third largest number of African Americans (after New York and Florida) [Ennis, Rios-Vargas, & Albert, 2011]. Indeed, by 2020, Latina/os and African-Americans will represent roughly half of the total population ages 25 to 64—with both populations projected to grow at much higher rates than whites (NCHEMS). By the year 2050, Latina/os will make up 30 percent of the U.S. population (U.S. Census, 2008).

22. See Mission Statement: The University of Texas System, available at <http://www.utsystem.edu/osm/mission.htm>

factor in admissions did not serve a compelling interest.²³ The case involved a challenge by Cheryl Hopwood and three other white students who had been denied admission to the University of Texas Law School in 1992. The law school based its admissions on the Texas Index Score, a composite of grade point average and standardized test scores, and an interpretation of the index score that took into consideration an applicant's race. Cheryl Hopwood argued that the admissions policy violated the Equal Protection Clause of the 14th Amendment because minority applicants who had lower Texas Index Scores than white applicants were admitted, and because the law school had separate admissions committees for white and minority applicants. The law school defended its policy on the grounds that it met the requirements of the Court's decision *Bakke*, which had endorsed a compelling interest in diversity.

The Fifth Circuit, however, disagreed, finding that the law school did not have a compelling interest in student body diversity. The Fifth Circuit rested its finding in part on the argument that *Bakke* had been a divided opinion, as Justice Powell was the only justice who recognized student body diversity as a compelling interest. Moreover, the sitting U.S. Supreme Court at the time was more conservative than the one that had decided *Bakke*, and it had fallen short of endorsing affirmative action in cases decided in the employment context (see, *Adarand Constructors, Inc. v. Peña*, 1995). These factors led to the unusual circumstance in which a lower court failed to apply an otherwise binding U.S. Supreme Court ruling to a case that raised a similar legal issue. In 1997, the Texas attorney general interpreted the *Hopwood* decision to apply to both public and private institutions in the state and to extend to admissions decisions, financial aid, scholarships, and recruitment and retention practices (Chapa et al., 1997).

Following *Hopwood*, higher education institutions in Texas, and those in Mississippi and Louisiana that were not under orders to desegregate, replaced the consideration of race with other criteria intended to increase the representation of students of color on their campuses. UT-Austin, for instance, began to use a Personal Achievement Index, which considered such factors as a student's socioeconomic status, whether the student spoke a language other than English at home, and whether the student lived in a single-family home. The Texas state legislature also adopted related initiatives and in 1997 passed the Top Ten Percent Plan (HB 588), which granted high school seniors in the top 10 percent of their class automatic admission to the state's universities, including their campus of choice, which generated a hyper-competitive admissions process at UT-Austin. The plan's creators noted that the law was not intended to become an alternative to affirmative action, nor was it likely to reverse the decline in racial and ethnic diversity at undergraduate institutions in the state following the prohibition of affirmative action under *Hopwood* (Brief of the Authors of the Texas Ten Percent Plan, 2003, p. 3).

In addition, the state's public flagship institutions, particularly UT-Austin, supplemented the Top Ten Percent Plan with targeted scholarships and retention programs intended to increase representation of students of color (Horn & Flores, 2003). During this time, UT-Austin was able to regain some of the losses in racial and ethnic diversity that had taken place after *Hopwood* banned the consideration of race as a factor in admissions, although not to the level it had achieved with its pre-*Hopwood* race-conscious policy (Long & Tienda, 2008).

The Court Overrules *Hopwood*: Another Challenge is Brought in Texas

In June 2003, six years after *Hopwood* went into effect, the U.S. Supreme Court again upheld the constitutionality of considering race in admissions, relying in part on research documenting the benefits of student body diversity (see, e.g., Chang, Witt, Jones, & Hakuta, 2003). The case, *Grutter v. Bollinger*, involved a challenge to a holistic admissions policy at the University of Michigan Law School that considered race, among

23. In considering the constitutionality of a policy under the 14th Amendment of the U.S. Constitution, a court will apply one of three standards of review: 1) rational basis, 2) intermediate scrutiny, or 3) strict scrutiny. Under a rational basis standard, the lowest level of review and easiest standard to satisfy, the Court will uphold the policy if the institution is pursuing a "legitimate" objective and there's a "rational relation" between the means chosen and the objective. Under intermediate scrutiny, the objective needs to be "important" and the means need to be "substantially related" to the objective. Strict scrutiny, which requires a "compelling" interest and means that are "narrowly tailored" to this objective, involves the Court's highest level of review and it is the hardest one to meet. The Court applies the strict scrutiny standard to "smoke out" illegitimate uses of race by assuring that the institution "is pursuing a goal important enough to warrant use of a highly suspect tool" (*Johnson v. California*, 543 U.S. 499, 506 (2005)). These requirements apply to any institution that receives federal funding, which include the majority, if not all, of the nation's private postsecondary institutions.

other factors, as a circumstance that could enhance an applicant's chances of admission. Barbara Grutter, a white female applicant who had been denied admission, argued that the policy violated the Equal Protection Clause of the 14th Amendment because a higher percentage of minority applicants were admitted than non-minority applicants with similar test scores, even though the minority applicants had lower grade point averages. The law school argued that the policy was needed to further a compelling interest in student body diversity, which required the enrollment of a "critical mass" of students of color (i.e., more than a token number of minority students to help diminish the threat of stereotypes²⁴) (see Garces & Jayakumar, 2014, for an extended analysis of the concept of critical mass). The law school also argued that the admissions process met the narrow tailoring requirements of strict scrutiny because it was based on individualized consideration of every applicant.

The U.S. Supreme Court agreed, in a 5-4 majority opinion authored by Justice O'Connor.²⁵ As Justice Powell had found in *Bakke*, the Court in *Grutter* found that universities had a compelling interest in student body diversity. Importantly, by acknowledging the broad implications of diversity for society and our democracy, the Court's decision also expanded the justification for affirmative action beyond the educational benefits of a diverse student body. The majority opinion emphasized the role of universities—professional schools such as law schools, in particular—in providing "the training ground for a large number of our Nation's leaders" (*Grutter*, 539 U.S. at 332). The Court also stressed the need for these institutions to be inclusive of individuals of all races and ethnicities so that all members of our society can have "confidence in the openness and integrity of the educational institutions that provide this training" (*Grutter*, 539 U.S. at 332). With this expanded rationale, the Court recognized the important role postsecondary institutions play in sustaining the health of our democracy by creating pathways to leadership for a racially diverse student body. *Grutter* thus overruled *Hopwood*, which allowed higher education institutions in Texas (as well as Louisiana and Mississippi) to again consider race as a factor in their admissions decisions in a narrowly tailored manner.²⁶

In 2005, after *Grutter* had lifted the prohibition on affirmative action policies at postsecondary institutions in Texas, UT-Austin reintroduced the consideration of race in admissions. It did so only after commissioning two studies that explored racial diversity in its classrooms and across its campus. One study showed that African-American and Latina/o students remained underrepresented in small to average-sized undergraduate classes, which offered the best opportunity for classroom discussion. The study found that "90% of undergraduate classes of the most common size at UT—sections with 10-24 students—enrolled zero or one African-American student in 2002, and nearly 40% of those classes enrolled zero or one [Latina/o] student" (Brief for Respondents, 2013, p. 10). UT-Austin also conducted a student survey, which revealed that minority students were feeling isolated and that a majority of all students felt there was "insufficient minority representation" in their classrooms for "the full benefits of diversity to occur." In light of these findings, UT-Austin concluded that it had yet to achieve "the critical mass" of underrepresented students necessary to obtain the full educational benefits of diversity under the Top Ten Percent Plan.

Following the implementation of the race-conscious policy in 2005, Abigail Fisher, a white female applicant who had been denied admission to UT-Austin sued the university, arguing that UT-Austin's policy did not follow the parameters of *Grutter*, and therefore, violated the Equal Protection Clause of the 14th Amendment. The main legal issues involved were not whether the educational benefits of diversity were a compelling interest, one of the primary legal issues in *Bakke*, *Hopwood*, and *Grutter*, but whether the individualized consideration of race

24. Steele (2010) defines stereotype threat as "a situational threat—a threat in the air—that, in general form, can affect the members of any group about whom a negative stereotype exists. Where bad stereotypes about these groups apply, members of these groups can fear being reduced to that stereotype. And for those who identify with the domain to which the stereotype is relevant, this predicament can be self-threatening" (p. 614).

25. A separate case involved a challenge to an admissions policy at the undergraduate College of Literature, Science, and the Arts, which awarded extra points to candidates on the basis of their race. In that case, *Gratz v. Bollinger* (2003), the Court issued a separate decision striking down the undergraduate admissions policy on the grounds that the policy's point system was not flexible enough to comply with the individualized consideration outlined in *Grutter*.

26. The Court has not articulated a fixed or singular measure for determining whether a policy is "narrowly tailored," but has instead outlined a number of relevant criteria, which are ultimately context-specific. These criteria include making sure that the policy: (a) does not operate as a quota; (b) is adopted after an institution's good faith consideration to workable race-neutral alternatives; (c) involves a flexible, individualized consideration of applicants so that race, while important, is only one of a number of factors being considered; (d) does not unduly burden disfavored groups; and (e) is limited in time or includes a periodic review to assess its continued necessity. In *Fisher*, the Court clarified that this narrow tailoring determination is one that courts need to make themselves, with great care, while taking account of a university's experience and expertise.

was necessary to attain the goal of diversity. Abigail Fisher argued that the university had reached an adequate level of racial and ethnic diversity through race-neutral means, the Texas Top Ten Percent Plan, so that the consideration of race as a factor in admissions decisions was not necessary and thereby unconstitutional. UT-Austin, on the other hand, argued that it needed the race-conscious policy so that it could attain a more racially and ethnically diverse student body than it had been able to attain under the Top Ten Percent Plan.

In the next section, I summarize the Court's decision in *Fisher* before considering these arguments in more detail and the lessons for institutional policies and practices.

The Court's Ruling in *Fisher*

After considering all the arguments in *Fisher*, the Court, in a 7-1 majority opinion written by Justice Kennedy, with Justice Kagan recused, endorsed the right of universities to pursue diversity as a compelling educational interest, leaving in place prior holdings in *Regents of the University of California v. Bakke* (1978) and *Grutter v. Bollinger* (2003). However, the Court also remanded the case back to the lower courts for further deliberation on whether the race-sensitive admissions policy is necessary to further that compelling interest—that is, whether the policy was narrowly tailored. It clarified that prior cases like *Bakke* and *Grutter* required closer examination to determine whether the university used race in a careful and limited manner to achieve a compelling interest in diversity. The Court was concerned that the lower court had reached this conclusion by relying primarily on the university's judgment without conducting its own independent assessment. The Court thus sent the case back to the lower court to undertake an independent review, guided by the expertise and experience of the university. On July 15, 2014, the Fifth Circuit Court of Appeals issued a ruling in the case affirming the lower court's ruling that UT Austin's plan met strict scrutiny requirements. Following the Fifth Circuit's decision, Abigail Fisher filed a petition for review by the full circuit (i.e., petition for en-banc review), which the Fifth Circuit denied. She and her legal team thereafter filed another request for the U.S. Supreme Court to hear the case (i.e., petition for certiorari), which the Court granted June 29, 2015.²⁷

Because *Fisher* resulted in a remand, there has been some disagreement as to whether the case established any new precedent. Some commentators have described the case as establishing a tighter narrow-tailoring requirement than the one articulated in *Grutter* (see, e.g., Somin, 2013). Conservative organizations have used this interpretation of *Fisher* to threaten institutions with future litigation. For example, the Center for Equal Opportunity (2013) issued a press release in response to the *Fisher* decision, stating that “we wish the Supreme Court itself had concluded that all racial preferences in university admissions are illegal, but it certainly has left the door open to that possibility in this case and future cases,” which means that the group “will continue to work toward that end.” The U.S. Department of Justice (2013), however, clarified that *Fisher* did not change the legal standards in *Grutter*.

Putting aside the legal nuances of whether *Fisher* established a different standard than *Grutter*, however, the practical reality is that the decision reminded institutions of the importance of documenting the reasons *why* the consideration of race as one of many factors in admissions is necessary or justified on their specific campuses. This is because, as lower courts undertake an independent review of the need for such policies, they will be relying on evidence that supports the judgment of institutions within their specific contexts that the institutions themselves are in the best position to provide. The arguments that UT-Austin and *amici* advanced in support of race-sensitive admissions can help guide future efforts (see, e.g., Jayakumar & Garcés, 2015). These arguments also guide institutional policies and practices that can support the educational experiences of Latina/os more effectively and advance the long-term interests of this community and other underrepresented populations in higher education. Next, I outline these arguments in more detail before turning to the lessons for institutional policies and practices.

27. The case will be argued during the Court's 2015-2016 Term.

UT-Austin's Arguments in *Fisher*

To justify its policy, UT-Austin specifically highlighted the need to address students' feelings of racial isolation, the need to have more racially and ethnically diverse classrooms and broader diversity within racial groups, and the need to further its educational mission of training future leaders of the state. These arguments can be placed in three main categories: (1) the importance of attending to the conditions institutions need to leverage the educational benefits of diversity; (2) the need for institutional policies to account for the broader local and national demographic context in which they operate and for the lingering effects of historical discrimination; and (3) the limits of race-neutral policies in expanding access for underrepresented populations in a society where race continues to matter.

Attending to the Conditions Necessary to Obtain Educational Benefits of Diversity

At the time of the *Fisher* litigation, Latina/os made up about 15% of the student body at UT-Austin and African-American students made up about 5%.²⁸ Opponents of UT-Austin's efforts argued that these percentages indicated that the institution was sufficiently diverse so that the use of race-conscious admissions practices in addition to the Top Ten Percent Plan was not constitutionally permitted or justified. UT-Austin, however, pointed to the fact that despite their current level of representation, students of color reported feeling isolated on campus and that African-American and Latina/o students remained underrepresented in undergraduate classes that offered the best opportunity for classroom discussion. In its legal brief, UT-Austin argued that it was important to consider each group's representation on campus separately and highlighted the fact that African-American and Latina/o students who were admitted through the Top Ten Percent Plan possessed a different range of personal and educational experiences than other applicants. Thus, UT-Austin argued that it needed a higher level of diversity—as well as more diversity within each racial group—to further its institutional mission and obtain the educational benefits of diversity. With these arguments, UT-Austin put a renewed focus on the importance of furthering a positive racial climate on campus, on attending to students' experiences in the classroom, and on realizing the educational benefits of diversity by admitting individuals from each racial group who had a diverse range of experiences. I discuss each of these in turn below.

A positive/healthy racial climate. As noted previously, UT-Austin reintroduced the consideration of race as a factor in its holistic admissions process after learning that minority students reported feeling isolated on campus. With this argument, UT-Austin emphasized the importance of considering the campus racial climate to further the educational benefits of diversity. Racial climate is an important part of the institutional context and includes community members' perceptions of “issues of race, ethnicity, and diversity” (Hurtado, Alvarez, Guillermo-Wann, Cuellar, & Arellano, 2012). To support UT-Austin's argument, the American social scientists *amici* presented evidence that summarized the importance of a positive racial climate in obtaining the educational benefits of diversity and demonstrated how low levels of racial and ethnic diversity harmed a campus's racial climate, thereby impeding students' ability to benefit from diversity (Brief of American Social Science Researchers as *Amicus Curiae* in support of Respondent in *Fisher*, 2013; see also Elgart, Plaut, Hirsch, & Paterson, (2015); Garces & Jayakumar, 2014).

The *amicus* brief cited, for example, data from a survey of 31 institutions across the U.S. showing that a low level of racial and ethnic diversity at colleges (e.g., when underrepresented minorities make up 0% to 20% of the student body) reinforced stereotypes and discrimination, and thus had a detrimental effect on the campus climate (Hurtado & Ruiz, 2012). The findings from this survey showed that minority students were more likely to feel excluded from campus events and activities at institutions with this low level of racial diversity than they did at institutions with a higher level of underrepresented minorities (21%-35%) in the student population. The brief also highlighted the fact that institutions that were not able to consider race in their admissions policies, such as those in California where Proposition 209 banned affirmative action, experienced

28. These figures are below the representation of Latina/os and African-American high school graduates. In 2010, 38% and 13% of Texas' high school graduates were Latina/os and African Americans, respectively.

a more difficult racial climate than UT-Austin (Brief of American Social Science Researchers, 2013). The Brief of American Social Science Researchers (2013) cited national survey data demonstrating that the racial climate for underrepresented minority students at the University of California, which has not been able to consider race as a factor in admissions since Proposition 209 passed in 1996, was worse than at UT-Austin. “Only 62.2% of African-American students on eight of the University of California campuses reported feeling that students of their race are respected on campus, compared to 72.3% of African-American students at the University of Texas” (p. 37, referencing Appendix Figure B). The brief further noted that “the comparison for Latino students also reveals a more difficult racial climate when institutions are prohibited from considering race as a factor in admissions (77.2% for Latinos at the University of California, compared to 89.9% at the University)” (p. 37).

Classroom diversity. UT-Austin also sought to justify the consideration of race as a factor in its holistic admissions policy after learning that a majority of all students felt there was “insufficient minority representation” in the school’s classrooms for “the full benefits of diversity to occur,” and that African-American and Latina/o students remained underrepresented in undergraduate classes that offered the best opportunity for classroom discussion. With these arguments, UT-Austin introduced the importance of considering racial and ethnic diversity in learning spaces where cross-racial interactions can take place, such as the classroom. Before *Fisher*, arguments for diversity had focused on the importance of having a critical mass of students on college and university campuses, without necessarily giving specific attention to racial and ethnic diversity at the classroom level. In light of these arguments, the *amicus* brief of the American Social Science Researchers summarized research studies, noting that classroom diversity was essential in many instances to provide the educational benefits of diversity endorsed in *Grutter*.

Some of these findings demonstrated that racially diverse students’ presence and participation in the classroom enhanced curricular content (Milem et al., 2012), class discussions (Deo, 2011), and cross-racial understanding (Chang, Denson, Sáenz, & Misa, 2006; Gurin, Nagda, & Zúñiga, 2013; Saenz, Ngai, & Hurtado, 2007; Zúñiga, Williams, & Berger, 2005). The findings also showed that racial diversity at the classroom level improved the quality of solutions envisioned collectively for solving complex problems (Page, 2007) and helped avoid the harm caused by racial isolation and tokenism, which can prevent institutions from attaining the educational benefits of diversity (Hurtado et al., 2012; Steele, 2010). Studies also showed that students who reported having had negative racial experiences in the college classroom or elsewhere on campus were more likely to express overall dissatisfaction with their college experience (Harper & Hurtado, 2007; Hurtado, Han, Sáenz, Espinosa, Cabrera, & Cerna, 2007; Miller & Sujitparapitaya, 2010). Thus, these studies demonstrated that racial diversity in the classroom helped institutions retain minority students, improve graduation rates, and create a learning environment that improved white and minority students’ ability to gain the educational benefits of diversity (Jayakumar, 2008).²⁹

Diversity within racial groups to help break down stereotypes. In *Fisher*, UT-Austin also pointed to the fact that its holistic policy was needed to obtain diversity within racial groups, or what UT-Austin termed “diversity within diversity.” The university noted that the degree to which the Top Ten Percent Plan contributed to racial diversity at UT-Austin was primarily the result of de facto segregation throughout Texas high schools. Because this segregation produced clusters of overwhelmingly majority-minority schools, the plan yielded a large number of minority students from these schools who were eligible for admission to UT-Austin. These students clearly contributed to racial diversity at the university in important ways, but UT-Austin argued that admitting Latina/o and African-American students who had varied backgrounds and perspectives was necessary to promote cross-racial understanding and help break down stereotypes.

To support this argument, the social science researchers’ *amicus* brief explained that, due to factors beyond their control, such as tracking, African-American and Latina/o applicants from educationally demanding

29. Many of the briefs submitted in support of UT-Austin summarized the extensive body of research on the educational benefits of student body diversity that had accumulated since the Court’s 2003 ruling in *Grutter*. As had been documented by social science research in *Grutter*, this body of work continued to demonstrate that student body diversity leads to important educational benefits, including increased cross-racial interaction among students, reduced prejudice, improved cognitive abilities, critical thinking skills and self-confidence, greater civic engagement, and improved leadership and workplace skills (see, e.g., Brief of American Educational Research Association et al., 2013; Sturm & Johnson, 2015).

and racially integrated or largely white schools might not find themselves in the top 10 percent of their class (Card & Rothstein, 2007; Oakes, 2008; Schmidt, 2012; Venezia & Kirst, 2005). The brief argued that these students' presence in the classroom could help to dismantle stereotypes and bridge the gaps that exist between white and non-white students in racially isolated schools. These arguments brought a much more nuanced approach to the consideration of diversity in higher education, and they pointed to the need to consider each individual's personal, family, community, and academic histories to build truly diverse learning environments (Brief of American Social Science Researchers, 2013).

Aligning Policies with Societal and Institutional Contexts

In addition to focusing on students' experiences on campus and in the classroom, UT-Austin sought to implement a race-conscious admissions policy as a way to align its policies more fully with the broader context in which it sought to further its educational mission. For instance, the university sought to increase Latina/o representation to further its goal of producing "future educational, cultural, business and sociopolitical leaders" in a state where Latina/os make up 38% of the population but only 15% of the student body (Brief for Respondents, 2013), and where pathways to leadership positions for Latina/os were also notably lacking (Brief of National Latino Organizations, 2013).

UT-Austin was well aware that it was seeking to promote racial and ethnic diversity in a state that had legally enforced the racial segregation of students during the first 70-plus years of the university's existence. The first African-American student, Heman Sweatt, was not admitted to UT-Austin until 1950 after the U.S. Supreme Court held in *Sweatt v. Painter* (1950) that the university could not exclude him on the basis of his race. For decades after *Sweatt* and another landmark Court opinion, *Brown v. Board of Education* (1954), which outlawed legally enforced racial segregation in public schools, discrimination persisted against African Americans and Latina/os in Texas public schools. UT-Austin noted concerns over the lingering effects of state-mandated segregation policies that were in existence through 1969 and of the university's subsequent years of discriminatory practices against African Americans and Latina/os. The university stated in its brief that "UT is painfully aware of that history, and the lingering perception that '[UT] is largely closed to nonwhite applicants and does not provide a welcoming supportive environment to underrepresented minority students'" (Brief for Respondents, 2013, p. 4). By adopting a policy that considered race as one of many factors in admissions, UT-Austin sought to send a welcoming signal to students of color. These arguments highlight the importance of implementing admissions policies that account for past racially discriminatory practices and their ongoing effects in order to improve the educational experiences of students of color by helping them feel welcomed on campus (Brown-Nagin, Guinier, & Torres, 2015).³⁰

The Limits of Race-Neutral Policies when Race Continues to Matter

Another important line of argument that UT-Austin advanced highlighted the decline in racial and ethnic diversity that has taken place at institutions that are no longer allowed to consider race as a factor in admissions practices due to statewide bans on affirmative action policies, despite myriad efforts to implement "race-neutral" policies as a way to maintain racial diversity (see Brief of American Social Science Researchers, 2013). The arguments were presented to demonstrate that race-neutral policies have not been an effective alternative to race-sensitive admissions policies in maintaining a racially and ethnically diverse student body.

The Brief of American Social Science Researchers (2013), for example, demonstrated that bans on affirmative action led to a decline in the racial and ethnic diversity of student bodies at selective undergraduate

30. It is important to note that UT-Austin faced an uphill legal battle in justifying its policy based on the lingering effects of this history. This is because Justice Powell's opinion in *Bakke* invalidated past racial discrimination as a rationale for affirmative action policies. The arguments were nevertheless important to consider because the Court had also clarified that strict scrutiny review is a contextual determination. These arguments were relevant, therefore, because UT-Austin is seeking to promote the educational benefits of diversity in an environment in which students of color continue to experience racial and ethnic tensions that can be traced back to a history of racial discrimination. For a more detailed account of the ongoing racial and ethnic tensions on UT-Austin's campus and UT-Austin's history of racial discrimination, see Brown-Nagin, Guinier, & Torres (2015).

institutions, in the professions of law and medicine, and in other graduate programs critical to our nation's future economic success (see, e.g., Garces, 2012, 2013; Garces & Mickey-Pabello, 2015). The brief summarized some of this decline at selective university campuses in states with bans on the policy. At the University of Michigan, for instance, from 2006 (the year before Proposal 2, which banned affirmative action, could have affected enrollment) to 2010, the percentage of African-American students enrolled decreased from 6% to just over 4%, a relative decrease of more than 25%. In addition, the percentage of Latina/os enrolled at the University of Michigan in that period fell from more than 5% to just over 4%, nearly a 20% change (Yun, Moses, & Marin, 2012). The brief described a similar trend in California, where minority enrollment at the University of California's (UC) flagship campuses also declined after the use of affirmative action was banned. According to data from the UC president's office, "between 1997 and 1998, enrollments of African-American freshman at UC Berkeley declined by 53% and Latina/o enrollees fell by 45%. In the same period, African-American enrollments at UCLA dropped by 38%, while Latina/o enrollments declined by 30%" (Brief of American Social Science Researchers, 2013, p. 30) (see also Kurlaender, Friedmann, & Chang, 2015).

The Brief of American Social Science Researchers (2013) also highlighted the fact that bans on affirmative action have shifted student of color enrollment to less selective institutions, thereby harming the educational opportunities of these students, who are being denied the greater benefits associated with attending more selective institutions. The brief cited studies documenting these benefits, such as higher graduation rates, graduate or professional school attendance, and higher incomes and job success, particularly for Latina/o and African American students. In Texas specifically, one study showed that freshmen retention and the college graduation rates of minority students not in the top 10 percent of their class declined after *Hopwood* and during the implementation of the percent plan (Cortes, 2010). The study's author argued that lower-ranked minority students had lower admission rates to selective public colleges under the percent plan, thus they "cascaded down" and ended up attending less selective institutions after the plan was instituted.

The brief further argued that mechanistic "race-neutral" policies like percent plans do not yield the level of racial diversity that could be accomplished by race-sensitive admissions. For one, as the Court recognized in *Grutter*, percent plans are unsuitable for graduate and professional school admissions, which cannot rely on high school rankings. In addition, studies show, for example, that replacing a race-conscious policy with a top 10 percent plan nationwide would not successfully restore a comparable presence of students of color at the most selective four-year campuses (Espenshade, & Radford, 2009; Howell, 2010; Long, 2004). Moreover, these plans depend on a number of other policies for their success. For instance, it was not until UT-Austin complemented the percent plan with outreach, recruitment, and retention strategies that it began to see the increased enrollment of Latina/o and African-American students eligible for admission under the Top Ten Percent Plan (Domina, 2007).

Lessons of UT-Austin's Arguments in *Fisher* for Institutional Policies and Practices

UT-Austin's various arguments provide a helpful guide for institutional efforts going forward, as they highlight: (1) the need to consider students' educational experiences by attending to learning environments and diversity within racial groups; (2) the broader societal and institutional contexts that require aligning institutional missions with changing demographics; and (3) the importance of addressing the ways in which race continues to matter in shaping students' educational opportunities and their experiences once on campus.

Attending to Learning Environments and Diversity within Racial Groups

As with UT-Austin, postsecondary institutions that seek to increase access to higher education for Latina/os and other underrepresented populations will not only need to pay attention to their admissions practices but to support these students once they are on campus. Admissions decisions are important, as they can increase the number of students of color on a campus. And the number does matter, as it signals that diversity is valued, helps students of color feel welcome, and helps prevent tokenism and racial isolation, all of which lead to more positive learning experiences, participation, and engagement for students of color (see, e.g.,

Garces & Jayakumar, 2014). However, numbers alone do not produce educational benefits; what institutions do during a student's years of education matters in terms of generating the educational benefits of racial diversity. Practically speaking, this means that institutions should be conducting studies of their campus racial climate, of students' experiences, and of the opportunities students have to engage in productive cross-racial interactions (Garces & Jayakumar, 2014). These are some of the factors that Garces and Jayakumar (2014) call for to help generate "dynamic diversity," as they can provide evidence of the ongoing need to consider race as one of many factors in admissions decisions. Institutions can use tools from models such as The Culturally Engaging Campus Environments Project (Museus, 2014), which is intended to help administrators achieve environments in which students from all backgrounds can thrive.

Like UT-Austin, other institutions of higher education should seek ways to attain "diversity within diversity"; that is, to consider the diverse experiences of Latina/o students, which can range across various social dimensions, such as language, culture, social class, and citizenship or immigration status, among others. Having a meaningful representation of students across these dimensions can help break down racial stereotypes and contribute to students' sense of belonging and their college success (see, e.g., Garces & Jayakumar, 2014). Núñez's (2014) framework of intersectionality is particularly promising for helping institutions identify the complex ways in which identity, context, and systems of interlocking power and oppression shape individual experiences. The model is especially promising for understanding the experiences of an increasingly diverse Latina/o population. For example, by considering social dimensions of geography and history, institutions can better understand that the experiences of Latina/o immigrant students in California could be very different from those of their Latina/os counterparts who live in states that have seen more recent immigration of Latina/os, such as Georgia, North Carolina, Mississippi, South Dakota, Pennsylvania, Tennessee, Virginia, and Wisconsin (Núñez, 2014). By understanding the multiple dimensions across which Latina/os' experiences can vary, institutions can be better positioned to support students' educational experiences and promote productive cross-racial interactions on campus.

Considering the Broader Societal and Institutional Context

Postsecondary institutions can also learn from UT-Austin's efforts to align its institutional policies with its mission, a process that necessarily involves acknowledging the changing demographics in the state of Texas and the nation. Through its admissions policies, UT-Austin has sought to further its mission of "preparing educated, productive citizens who can meet the rigorous challenges of an increasingly diversity society and an ever-changing global community" (University of Texas System, 2014)—a mission that closely matches those of other selective postsecondary institutions across the nation.

Opponents of the university's admissions policy challenged the notion that Latina/os remained "underrepresented" at UT-Austin because they made up about 15% of the student body. However, as noted, UT-Austin's determination was made in a state/local context where Latina/os made up about 38% of the population, and where pathways to leadership positions for Latina/os are notably lacking (Brief of National Latino Organizations as *Amici Curiae*, 2013). The university, moreover, noted concerns over lingering effects of state-mandated segregation policies through 1969 and its subsequent years of discriminatory practices against Blacks and Latina/os (Brief for Respondents, 2013). These contextual factors can be considered to support a determination that the representation of Latina/os on campus is not sufficient. The determination may be different in another state, local, and institutional context—where pathways to leadership are visibly open (e.g., the presence of Latina/os in leadership roles is not grossly discrepant with state demographics) and ongoing effects of state-mandated segregation do not persist (Garces & Jayakumar, 2014).

UT-Austin's arguments thus demonstrate that, as Latina/os make up a growing percentage of the population in Texas, other states, and the nation, it will become increasingly important to consider their representation in different areas of leadership, as well as the role selective institutions, including graduate and professional schools, play in providing them with pathways to these positions. This is particularly important in light of the ruling in *Grutter*, which stressed the need for postsecondary institutions to be inclusive of individuals of all races and ethnicities so that members of our society can have "confidence in the openness and integrity of

the educational institutions that provide this training” (*Grutter*, 539 U.S. at 332). By examining the representation of Latina/os at selective institutions within a broader understanding of whether pathways to leadership remain visibly open for this population, institutions can make informed determinations as to whether this population remains underrepresented to justify the ongoing need for race-conscious admissions to further their institutional missions.

Addressing the Ways Race Continues to Matter

UT-Austin’s defense of its race-conscious policy also illuminates the challenges institutions will face as legal decisions like *Fisher* continue to restrict their ability to explicitly consider race in admissions policies and reinforce a “color-blind” approach toward education policy (Garces, 2014). Institutions that turn to “race-neutral” policies over race-conscious ones in order to satisfy the requirements of *Fisher* may experience a decline in the racial and ethnic diversity of their student bodies, as has been the case at institutions in states with bans on affirmative action. As scholars who focus on racial inequity have demonstrated (see, e.g., Bonilla-Silva, 2014; Lopez, 2007), a color-blind approach is an illusion, and obscures the ways in which race continues to matter in shaping students’ experiences, educational opportunities, and the mechanisms that advantage whites within and outside education in American society. This approach also ignores the persistent, stubborn link between historical racial and ethnic exclusion and contemporary reasons for racial and ethnic inequality.

Institutions will therefore need to consider and address the ways in which race continues to matter in shaping students’ educational opportunities and their experiences once on campus. As much as we aspire to a society where it does not, the reality is that race continues to matter (Orfield, 2014). Indeed, much of U.S. history is characterized by stratification on the basis of race in housing, education, and employment. These policies perpetuate racial inequalities and the salience of race in the lives of millions of Americans. Given that race/ethnic background can help predict key social outcomes, such as availability to health care (Institute of Medicine, 2002), education (Orfield, Losen, Wald, and Swanson, 2004), wealth (Shapiro, Meschede, & Osoro, 2013), poverty (Macartney, Bishaw, & Fontenot, 2013), quality of work (Mishel, Bernstein, & Allegreto, 2005), civic participation (Lien, 2000), and imprisonment rates (Alexander, 2012), members of racial minority groups can “feel the often negative impact of their racial background on their identities, life experiences, and outcomes, while majority group members continue to receive privileges on the basis of theirs” (Peery, 2011, citing McIntosh, 1989, p. 482). When racial inequities are properly understood to be a consequence of social and legal structures that perpetuate them, it becomes clear that the mere fact of stopping classifications on the basis of race will not address the many broader ways that race matters in U.S. society (e.g., Gross, 2008).

Addressing this reality requires an understanding of the complex and nuanced ways in which race can influence our everyday interactions, particularly in subconscious ways, and the lingering effects of past discrimination. Going forward, therefore, it will be important for institutions to consider ways that their institutional context (i.e., predominantly white institutions with a history of de jure or de facto segregation) may have lingering effects that shape the campus climate and students’ educational experiences (Garces & Jayakumar, 2014). To facilitate such efforts, higher education institutions might consider a critical framework or approach that places race at the center of discussions about social justice. One promising approach would be for these institutions to view their policies through a “critical race theory” perspective. Based on the assumption that race is a social construction that permeates all aspects of social life, the theory helps promote social justice and transformation by legitimizing the voice of marginalized communities and highlighting students’ multiple identities through the concept of intersectionality (e.g., Crenshaw, 1991; Delgado & Stefancic, 2001; Núñez, 2014; Solórzano & Yosso, 2002). Viewing institutional policies through this lens would highlight the salience of race and racism in students’ lives, and in certain aspects of institutional structures and actions that perpetuate racial inequities, even though they may not be intended to be racist or exclusionary (e.g., Bonilla-Silva, 2014).

Institutions could consider how to build in educational programs and structures that facilitate conversations around race, which are often difficult and can generate intense and uncomfortable emotions (Pollock, 2004). Students of color, for example, may become tired of reporting acts of racism and of not being believed by fellow white students or faculty, or by having to educate their peers on racial issues (Quaye, 2012). For white

individuals in particular, conversations around race can generate feelings of guilt, resistance to discussions of privilege and power, a lack of trust, and general avoidance of the topic (Singleton, 2013). For these reasons, discussions around race and racism are difficult to sustain. However, we can learn from strategies educators have employed to facilitate these conversations, including shifts in perspective from “educator” to “facilitator,” developing ground rules, considering students’ comfort and developmental readiness, and structuring racially/ethnically diverse groups (Quaye, 2012). Institutions, moreover, will need to consider how they can empower and support educators in engaging in these practices. These efforts require supportive protocols that provide a common language for discussing race and a shared understanding of systems of privilege that exacerbate inequities.

As Justice Sotomayor stated in her compelling dissent in *Schuetz v. Coalition to Defend Affirmative Action* (2014), the Court’s most recent decision evaluating the constitutionality of bans on affirmative action, “The way to stop discrimination on the basis of race is to speak openly and candidly on the subject of race” (p. 46). Institutions will need to implement policies and practices with “eyes open to the unfortunate effects of centuries of racial discrimination” (Schuetz, p. 46) and the ways race matters in shaping our experiences and identity in multifaceted ways.

While the effect of the Court’s decision in *Fisher* remains to be seen, UT-Austin’s defense of its race-conscious admissions policy in the case offers important lessons for institutional efforts that seek to expand access to Latina/os going forward. As the debate over affirmative action continues in the struggle for access to the resources selective institutions can provide, institutions will need to rise to the challenge if they are to advance the nation’s best interests in a society in which Latina/os constitute one of the largest and fastestgrowing population, yet face persistent inequities in educational opportunity and attainment.

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Dr. Leslie D. Gonzales is an Assistant Professor of Higher Education at Clemson University in the E.T. Moore School of Education in Clemson, South Carolina. Dr. Gonzales's research agenda concerns legitimization within academia and how faculty members (re)negotiate dominant conceptions of legitimacy. Dr. Gonzales is particularly concerned with how definitions and processes related to legitimacy impact underrepresented scholars within academia, and scholars serving in niche sectors, such as Hispanic-Serving Institutions, teaching-focused, and/or regional universities. Dr. Gonzales's work has been published in *The Journal of Higher Education*, *The Review of Higher Education*, *Higher Education*, and *Teacher's College Record*. In 2010, Dr. Gonzales is a Faculty Fellow for the American Association of Hispanics in Higher Education. Dr. Gonzales serves as Chair of the Education Team for the Hispanic Alliance in Greenville, SC where she works with a team of dedicated community and educational leaders to expand access and opportunity of the Hispanic population within South Carolina.

Dr. Liliana M. Garces is an Assistant Professor of Higher Education and a Research Associate in the Center for the Study of Higher Education at the College of Education, Pennsylvania State University. Her research works to understand and inform policies that can assist educators and policymakers address racial and ethnic inequities in postsecondary education. She focuses in the areas of access, equity and diversity in higher education, and the intersections between social science research and the law. The analysis and discussion in this article is informed by her work as counsel of record on a friend-of-the-court brief filed by 444 American social scientists in support of the University of Texas at Austin in *Fisher*.

Dr. Michelle M. Espino is Assistant Professor of Higher Education, Student Affairs and International Education Policy at the University of Maryland, College Park. Her research centers on understanding community contexts and institutional responses associated with educational achievement and outcomes along the academic life course for racial/ethnic minorities, with particular focus on the experiences of Latina/o students, college administrators, and faculty. She has published articles in *The American Educational Research Association Journal*, *The Review of Higher Education*, *Teachers College Record*, *Equity & Excellence in Education*, and *Qualitative Inquiry*. She is the 2015 recipient of the Early Career Scholar Award for the Hispanic Research Issues Special Interest Group (AERA), 2011 Faculty Fellow for the American Association of Hispanics in Higher Education, the 2008 recipient of the Bobby Wright Dissertation of the Year Award from the Association of the Study of Higher Education, and a 2007 Ford Foundation Dissertation Fellow.

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