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A Failed Policy

Mismatch: How Affirmative Action Hurts Students It's Intended to Help, and Why Universities Won't Admit It, by Richard H. Sander and Stuart Taylor Jr. (Basic, 368 pp., \$28.99)

By Abigail Thernstrom & Stephan Thernstrom

The moral arguments against racial preferences in higher education — racial double standards in admissions — have been made once too often. They're powerful, but we all know them inside out: Affirmative action violates the central principle that all of us should be treated not as members of racial groups, but as individuals, judged by the content of our character. It has long been time to move on, which is precisely what Richard H. Sander and Stuart Taylor Jr. have done in their remarkable new book. They have shifted the focus of the entire debate. Bypassing the standard arguments about core principles, their extensive research focuses on the actual effects of racial preferences on the students they were intended to benefit. Drawing upon data never before available to independent-minded scholars, they find, to their dismay, that such policies actually do more harm than good to black and Hispanic students. From now on, it will be impossible to have a serious debate on this subject without extensive reference to the evidence provided in this volume.

The data are culled from Sander's research over the past 15 years, and from other recent scholarly investigations. The subtitle conveniently gives us the bottom line: Institutions of higher education admit black and Hispanic students using criteria very different from those applied to white and Asian applicants, and have been killing the former with kindness. These students are thrilled to have been admitted to a highly selective school but quickly discover they cannot cope with the competition from their better-prepared classmates. Thus, they generally do poorly. If their math skills are primitive, they cannot follow a tough economics course. Those who weren't taught much science in high school are not ready for rigorous pre-med instruction.

These students have plenty of potential for intellectual growth *in institutions that are right for them*. But a great many of them, alas, are at the wrong schools — “mismatched.” Preferential admissions have enabled them to attend academically rigorous schools for which they are marginally qualified at best. Not only do they fare badly in the classroom at the outset, they fall farther behind with each passing college year. In selective colleges across the land, about half of all black students rank in the bottom fifth of their class. And the gap between them and their white and Asian classmates grows wider over successive years.

The data the authors were able to obtain are particularly rich for law schools. Nearly every American law school, they demonstrate, uses very strong racial preferences in admitting students. Law-school authorities maintain that the weak entering qualifications of the students don't matter; they will catch up quickly. But it doesn't happen: Half of the African-Americans pursuing law degrees rank in the bottom tenth of their class, and

about 70 percent are in the bottom fifth. At the UCLA law school, where Sander has taught for more than 20 years, 94 percent of whites earned higher grades than the *median* black student, and only one black student in ten ranked in the top half of the class.

Defenders of preferences respond that law-school grades are irrelevant. If you end up with a diploma, who cares about your rank in class? But in legal education there is a final exam of sorts, and its significance is enormous. You need to pass a bar exam in order to practice law. But blacks are four times as likely as whites to fail their bar exams.

The problem is not that they are being excluded from the really good law schools; it is precisely the opposite. Sander's data allowed him to identify a large number of minority law students who did not blindly choose to attend the "best" school they could get into — for one reason or another, they opted for a less prestigious school at which their qualifications were about average. These students — ones who were *not* mismatched — passed the bar exams at a substantially higher rate than those with the same college GPAs and LSAT scores who attended more eminent law schools. Sander noticed how many black and Hispanic students were floundering at the highly selective and competitive UCLA law school, and suspected that they were being set up for failure by being lured into a setting in which few would flourish. This hunch has now been verified. It may not be long before some minority students admitted with huge preferences sue an elite law school for consumer fraud, since it failed to deliver on an implied promise of good preparation for a career in the law.

Sander and Taylor say a "code of silence" keeps university administrators and civil-rights advocates from confronting the evidence that preferential policies have harmed black and Hispanic students. When racial preferences are challenged, the academy invariably sounds the alarm. After the 1996 passage of California's Proposition 209, which banned racial preferences in public universities, affirmative-action proponents predicted a disaster. They warned that the University of California would become "segregated," UCLA and Berkeley would become "lily white," and UC Riverside would turn into a "Jim Crow" school. They also predicted a "chilling effect," as black and Hispanic applicants to the UC system would refuse to accept offers of admission to campuses that were perceived as unwelcoming.

Sander and Taylor provide a detailed and surprising analysis of what actually happened: There was a "warming effect," as race-blind admissions led to a remarkable surge of black and Hispanic applicants to Berkeley and UCLA, the flagship schools. And those who accepted admission had substantially higher grades and graduation rates than their preferentially admitted predecessors. The total number of black and Hispanic students attending the UC campuses did not decline at all. And the numbers actually graduating rose considerably, because there was so much less mismatch: Fewer blacks and Hispanics attended Berkeley and UCLA; more "cascaded" down to the less selective UC campuses, where they were more likely to thrive academically. Regrettably, the UC's experiment with race-blind admissions was short-lived. After a few years, the diversocrats who managed the UC system began to cheat, and no one blew the whistle on them. As racial preferences increasingly shaped admissions decisions, mismatch reappeared with all its

unfortunate consequences.

Sander and Taylor display admirable courage in daring to examine the actual effects of racially preferential admissions. No other subject is as far beyond the realm of permissible debate on campus, in the mainstream media, even in the boardroom. Scholarly work on the mismatch problem is the “elephant in the room,” they write. Hardly anyone is willing to talk about it; the personal cost of touching the third rail — namely, race — is seen as intolerably high. Sander provides a chilling personal account of his experiences after he broke the code and began to publish findings that challenged the prevailing orthodoxy.

Preference defenders still spin the most ridiculous tales without the slightest interest in their veracity. For instance, the president of the University of Texas has recently argued that a diverse classroom enriches discussion, providing valuable insights and offering a deeper learning experience than students would get without preferences. Unfortunately, the Supreme Court in 2003 accepted this argument, despite the total lack of evidence to support the proposition. The mere fact that having more minorities on campus increases contact between students of different races does not magically improve race relations among students. As we suggest in an amicus brief submitted to the Supreme Court in the current Fisher case, preferential policies have had observable negative effects on the racial climate at universities.

Part of the problem is the underlying assumption that students need to attend elite schools to do well in life. As Sander and Taylor make clear, our world is filled with highly successful people who did not go to Harvard or Yale. It’s not the prestige of the school that counts, but how much the students learn and how well they perform academically, wherever they go.

All of this would seem to lead to the conclusion that the only solution is a nationwide Proposition 209, with a much more muscular enforcement mechanism, or a relentless effort against race preferences by the federal courts comparable to *Brown v. Board of Education* and subsequent Supreme Court decisions. Sander and Taylor are not willing to go that far: They fear that “abolition might produce an alarmingly sudden and drastic plunge in black and Hispanic presence at our selective schools.” Well, yes, but since they have demonstrated that that mismatch amounts to killing with kindness, it is hard to see why the interests of these students should be sacrificed for the cosmetic purpose of making elite schools look more “like America.”

Sander and Taylor also argue that a requirement that admissions be race-blind could provoke either a powerful campaign of “massive resistance” by higher-education officials or a more secret and subtle effort to circumvent the law. Roger Clegg, president of the Center for Equal Opportunity and the nation’s most tireless advocate for the classic liberal position, which opposes all benefits on the basis of skin color, provides a compelling answer. “No legal prohibition is 100 percent effective,” Clegg says. “The question is, will we be better off with a ban than without one? With a ban, the California data tell us, there will be some evasion but much less discrimination. . . . It makes no

sense to allow the stubbornness of race-discriminators to defeat the law.”

Although Sander and Taylor would not ban race from consideration, they would cut back on racial preferences by mandating that they be no larger than those given to students from families with low socioeconomic status (SES). They are disturbed that our most selective colleges and universities are overwhelmingly populated by students from affluent, highly educated families. “A very elite, very rich school that produces good outcomes for nearly all its students could continue using substantial racial preferences as long as its SES preferences were just as substantial,” the authors write.

We do not have the space to spell out here our many doubts about this proposal. Suffice it to say that the dangers of mismatch for whites and Asians on the lower rungs of the class ladder are just as real as they are for “underrepresented minorities.” Furthermore, schools such as Harvard and Yale have endowments huge enough to admit a good many students who require full financial support, but the vast majority of institutions do not. As the authors show, schools are so eager to attract blacks that they often provide generous aid to those from the upper ranges of the income distribution. At law schools, blacks from well-to-do families receive four times as much scholarship money as whites from low-income families. Unless a great many schools suddenly become much flusher than they are now, more money for low-income whites would have to be taken away from middle-class blacks.

Sander and Taylor also want better parenting practices, two-parent families, and much better teachers so that black students would not be entering K–12 so disadvantaged. Good luck. We haven’t a clue how to attain the first two goals, and even the third has been elusive. In any case, we seem to be far from the day when we will stop obsessing about the distribution of racial and ethnic groups. We keep counting, and where the numbers of blacks and Hispanics are disproportionately low, we want a remedy. Or a pseudo-remedy, such as racial double standards, which do nothing to create real equality.

Mismatch was published the week the Supreme Court heard *Fisher v. University of Texas*, the first case in nine years that addresses preferences in institutions of higher education. Will the Court take a hard look at policies that have become more entrenched with each passing year? If the justices read Sander and Taylor and feel mugged by reality, the book will turn out to be a turning point in a national debate on affirmative action that has ground on, quite unchanged, for four decades. Putting race-conscious policies behind us would be a big step in the direction of setting aside the often ugly issue of race. At last.

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