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NORTH CAROLINA LAW REVIEW

Volume 79 | Number 4

Article 5

5-1-2001

Meritocratic Values and Racial Outcomes: Defending Class-Based College Admissions

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MERITOCRATIC VALUES AND RACIAL OUTCOMES: DEFENDING CLASS-BASED COLLEGE ADMISSIONS

R. RICHARD BANKS*

This Article defends class-based admissions practices against the two criticisms most frequently directed at such policies. The merit critique contends that admissions policies that take account of applicants' socioeconomic status undermine the goals and values of meritocratic admissions. The racial diversity critique asserts that class-based policies are woefully inadequate to the task of producing a racially diverse group of admitted students. Each of these critiques is misguided. Class-based admissions policies comport with the underlying values of meritocratic admissions as fully as, if not more so than, policies that do not consider applicants' socioeconomic status. Class-based policies may also produce a much more racially diverse group of admitted applicants than such policies' critics recognize.

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INTRODUCTION

The propriety of admissions policies that take account of applicants' socioeconomic status has become an important aspect of the school admissions controversy.¹ Numerous schools now consider applicants' socioeconomic status² either directly³ or through a proxy

1. See, e.g., Richard H. Fallon, Jr., *Affirmative Action Based on Economic Disadvantage*, 43 UCLA L. REV. 1913, 1914 (1996) (describing the controversy regarding class-based admissions approaches and evaluating the various rationales for such policies). Indeed, class-based policies have drawn notable support. One of the earliest defenses of class-based admissions is found in Justice Douglas's dissenting opinion in *DeFunis v. Odegaard*, 416 U.S. 312, 331 (1974) (Douglas, J., dissenting) (advocating consideration in the admissions process of "barriers that [an applicant] had overcome"). Prior to taking the bench, Justice Thomas also voiced support for class-based policies. Clarence Thomas, *Affirmative Action Goals and Timetables: Too Tough? Not Tough Enough!*, 5 YALE L. & POL'Y REV. 402, 410-11 (1987) (arguing that preferences should be on the basis of "obstacles that have been unfairly placed in individuals' paths, rather than on the basis of race or gender"). For the most comprehensive defense of class-based policies in education and employment, see RICHARD KAHLENBERG, *THE REMEDY: RACE, CLASS, AND AFFIRMATIVE ACTION passim* (1996).

2. In this Article, I use the terms "socioeconomic status" and "class" interchangeably.

3. See Richard H. Sander, *Experimenting with Class-Based Affirmative Action*, 47 J. LEGAL EDUC. 472, 472 (1997) (describing the class-based admissions program implemented at the UCLA law school); Michael W. Kirst, *New Criteria for College*

such as geographic location.⁴ Other class-based admissions approaches have been recently proposed.⁵ Both scholarly and popular debate have proliferated.⁶

Class-based admissions policies, although increasingly popular, have been subject to two criticisms: the merit critique and the racial diversity critique.⁷ The merit critique faults class-based policies as deviations from merit-based criteria that inevitably undermines the meritocratic principles that college admissions should embody.⁸ The

Admissions, EDUC. WK., Apr. 21, 1999, at 48, http://www.edweek.org/ew/ew_printstory.cfm?slug=32kirst.h18 (on file with the North Carolina Law Review) (noting that a number of University of California campuses consider class-related characteristics such as whether an applicant is a first generation college student).

4. The public university systems in Texas and California have adopted percentage plans under which applicants in the top ten percent and four percent, respectively, of their high school class are automatically admitted. See J. Phillip Thompson & Sarah Tobias, *The Texas Ten Percent Plan*, 43 AM. BEHAV. SCIENTIST 1121, 1121 (2000) (arguing that although no evidence suggests that the Texas "ten percent" plan will be as successful as affirmative action, it could potentially increase the proportion of minority and low-income students admitted to Texas public universities); Danielle Holley & Delia Spencer, Note, *The Texas Ten Percent Plan*, 34 HARV. C.R.-C.L. L. REV. 245, 245 (1998) (describing the Texas "ten percent" plan and characterizing it as ineffective); Jeffrey Selingo, *What States Aren't Saying About the "X-Percent Solution,"* CHRON. HIGHER EDUC., June 2, 2000, at A31 (criticizing geographic percentage admissions plans in California, Florida, and Texas); Kenneth R. Weiss, *UC Board Expected to OK Davis Plan to Admit Top 4%*, L.A. TIMES, Mar. 19, 1999, at A1 (describing the California plan); Jodi Wilgoren, *Rights Panel Criticizes Shift in College Admissions Plans*, N.Y. TIMES, Apr. 9, 2000, at 14 (describing the United States Commission on Civil Rights's critique of the plans).

5. For example, the Educational Testing Service considered designating as "strivers" those students who scored substantially above the average for the reference group. E.g., Linda Chavez, *"Striving" for Relevant SATs*, DENVER POST, Sept. 12, 1999, at K2; Ben Gose, *More Points for "Strivers": The New Affirmative Action?*, CHRON. HIGHER EDUC., Sept. 17, 1999, at A55; Richard D. Kahlenberg, *The Colleges, the Poor, and the SAT's*, WASH. POST, Sept. 21, 1999, at A19; Amy D. Marcus, *New Weights Can Alter SAT Scores: Family is Factor in Determining Who's a "Striver,"* WALL ST. J., Aug. 31, 1999, at B1; Clarence Page, *More Factors Come to Fore in Test Scores*, ARIZ. REPUBLIC, Sept. 9, 1999, at B7. For another class-based affirmative action proposal, see KAHLENBERG, *supra* note 1, at 156-57.

6. E.g., Holley & Spencer, *supra* note 4, at 277-78; Selingo, *supra* note 4; Wilgoren, *supra* note 4.

7. The increasing popularity of class-based policies is remarkable given that class distinctions have historically garnered little scholarly attention, nor produced class-oriented social movements or policy. See, e.g., Jennifer M. Russell, *The Race/Class Conundrum and the Pursuit of Individualism in the Making of Social Policy*, 46 HASTINGS L.J. 1353, 1366-68 (1995) (noting the lack of class consciousness in American society and the historical paucity of class-based movements or social policy).

8. See, e.g., Tung Yin, *A Carboic Smoke Ball for the Nineties: Class-Based Affirmative Action*, 31 LOY. L.A. L. REV. 213, 215 (1997) (contending that class-based affirmative action is "actually worse" than race-based affirmative action); Christopher Caldwell, *The Meritocracy Dodge*, WKLY. STANDARD, July 14, 1997, at 23 (arguing that

merit critique portrays class-based policies as contrary to meritocratic principles insofar as they do not admit the highest-achieving applicants. The racial diversity critique characterizes class-based policies as unable to admit a racially diverse group of students because such policies elide the significance of race.⁹

This Article defends class-based admissions policies against both of these criticisms.¹⁰ It demonstrates that class-based admissions

although embraced by some conservatives, class-based affirmative action undermines merit just as race-based affirmative action does); *cf.* Fallon, *supra* note 1, at 1928–36 (recognizing the possibility of class-based policies consistent with merit, but concluding that class-based admissions policies generally sacrifice merit). The view that class-based admissions policies sacrifice merit is implicit in many arguments against affirmative action. *See, e.g., What the Deserving Deserve and Whether They Get It*, N.Y. TIMES, Oct. 23, 1999, at B11 (reporting the position of Linda Chavez, president of the Center for Equal Opportunity, that universities should continue to determine merit based upon measures of intellectual ability and conscientious determination); James Traub, *The Class of Prop. 209*, N.Y. TIMES, May 2, 1999, § 6 (Magazine), at 78 (arguing that admissions standards based upon merit are preferable to affirmative action).

9. *See, e.g.,* Jerome Karabel, *No Alternative: The Effects of Colorblind Admissions in California*, in CHILLING ADMISSIONS: THE AFFIRMATIVE ACTION CRISIS AND THE SEARCH FOR ALTERNATIVES 33, 37–38 (Gary Orfield & Edward Miller eds., 1988) [hereinafter CHILLING ADMISSIONS] (arguing that consideration of applicants' socioeconomic status would produce minimal racial diversity); Deborah C. Malamud, *Class-Based Affirmative Action: Lessons and Caveats*, 74 TEX. L. REV. 1847, 1898 (1996) [hereinafter Malamud, *Lessons and Caveats*] (cautioning that the use of a "simple metric" in measuring economic status for the purpose of class-based affirmative action would overestimate the economic status of minorities and women); Linda F. Wightman, *The Threat to Diversity in Legal Education: An Empirical Analysis of the Consequences of Abandoning Race as a Factor in Law School Admission Decisions*, 72 N.Y.U. L. REV. 1, 40 (1997) (examining the consequences of not using race as a law school admissions standard); Fredrick A. Morton, Jr., Note, *Class-Based Affirmative Action: Another Illustration of America Denying the Impact of Race*, 45 RUTGERS L. REV. 1089, 1089–90 (1993) (characterizing class-based admissions policies as suppressing the importance of race). *See generally* Russell, *supra* note 7 (arguing that class-based policy proposals reflect a notion of individualism that denies the significance of race). Deborah Malamud has stated that the idea that racial diversity will be significantly increased with class-based affirmative action is a misconception because, while the poverty rates of minorities are indeed disproportionately high, the number of poor white individuals surpasses that of poor black and Latino individuals. Deborah C. Malamud, *Assessing Class-Based Affirmative Action*, 47 J. LEGAL EDUC. 452, 465 (1997) [hereinafter Malamud, *Assessing Class-Based Affirmative Action*]. Thus, most of the poverty-based affirmative action slots will go to whites, and minorities admission will not increase dramatically. Slots intended for them will instead go to white individuals, defeating the attempts to increase racial diversity through class-based admission programs. *Id.*

10. The arguments developed in this Article might also apply to secondary school admissions, about which there has also been considerable controversy. *See, e.g.,* Wessman v. Gittens, 160 F.3d 790, 791 (1st Cir. 1998) (striking down Boston Latin School's affirmative action program); *Race Quota "Suspect" in Boston*, NEWSDAY (New York), Apr. 8, 1996, at A15, LEXIS, News Library, Newsday File (explaining a federal judge's order that a white student be admitted to Boston Latin School pending the resolution of the student's legal challenge to the school's race-based admissions program).

policies are as consistent with meritocratic values and goals as policies that do not consider applicants' socioeconomic status and that such policies may produce a more racially diverse group of admitted students than typically recognized by critics.¹¹ Beyond simply defending existing policies, I recommend that the consideration of applicants' socioeconomic status be more central to the admissions processes of elite universities.

Elite universities should consider the socioeconomic status of every applicant (rather than only those applicants below some threshold of disadvantage) and should employ a broad (rather than narrow) measure of class. I describe this form of class-based admissions as the relative achievement approach. It entails a broad formulation of socioeconomic status because its purpose is partly to account for the effect of differential access to achievement-related resources. Such a broad formulation of socioeconomic status would also likely substantially enhance the racial diversity of the group of admitted applicants. The relative achievement approach would adjust upward the grades and test scores of applicants with less than maximum access to achievement-related resources.¹² Implementation of the relative achievement approach would create student bodies less rigidly stratified by socioeconomic status and absolute achievement level across schools, an outcome that would further *both* meritocratic values and racial inclusion.¹³

Beyond the college admissions controversy, I seek to undermine two common tendencies in discussions of racial inequality and merit. First, I want to dispel the assumption that only policies formally

11. For arguments that class-based programs lead to minimal racial diversity, see Malamud, *Lessons and Caveats*, *supra* note 9, at 1852; Linda F. Wightman, *Are Other Things Essentially Equal? An Empirical Investigation of the Consequences of Including Race as a Factor in Law School Admission*, 28 SW. U. L. REV. 1, 42 (1998); Wightman, *supra* note 9, at 40; Fred L. Pincus, *Higher Segregation*, NATION, Dec. 14, 1998, at 39, 39 (reviewing CHILLING ADMISSIONS: THE AFFIRMATIVE ACTION CRISIS AND THE SEARCH FOR ALTERNATIVES (Gary Orfield & Edward Miller eds., 1988)).

12. This Article does not attempt to pass judgment on the ability of grades, test scores, or other traditional measures of achievement to predict future success. Criticism of standardized tests as measures of intelligence is well known. *E.g.*, STEPHEN JAY GOULD, *THE MISMEASURE OF MAN* 9-29 (1981). My position is that whatever standardized indicators of achievement admissions officers use (and I believe there must be some), the indicators should be evaluated in the context of the family and environmental variables that are known to affect the achievement level of high school students.

13. In other words, the relative achievement approach introduces no trade-off between equality and efficiency. For a description of the tension between the policy goals of equity and efficiency, see generally ARTHUR M. OKUN, *EQUALITY AND EFFICIENCY: THE BIG TRADE-OFF* (1975).

framed in terms of race can promote racial equality and inclusion. Race-blind measures may significantly further racial equality goals. The relative achievement approach furthers racial inclusion without formal consideration of race and does so in a manner that may mute the stereotypes and stigma that depress the academic performance of some racial minority students.¹⁴ Second, I counter the vision of merit as akin to a “thing” residing in people. Merit is a functional concept—no quality or characteristic is inherently meritorious. Merit is necessarily defined with respect to particular contexts, goals, and values.

Part I of this Article disentangles the two substantive rationales of meritocracy—one efficiency-oriented, the other individualist.¹⁵ Part II examines more closely the individualist rationale. Part III then considers whether the absolute or relative achievement standard better promotes the meritocratic goal of productive efficiency. Finally, Part IV sketches the components of a broad formulation of socioeconomic status and explains why it could produce a more racially diverse group of admitted students than commonly thought.

I. DISAGGREGATING MERIT

There are three rationales for meritocratic college admissions—two substantive and one procedural.¹⁶ The common intuition is that each of these rationales is best furthered by admitting the highest-achieving applicants—a perspective I describe as the absolute achievement approach. The admissions process of nearly every

14. See, e.g., Claude M. Steele, *Stereotype Threat and the Intellectual Test Performance of African Americans*, 69 J. PERS. SOC. PSYCH. 797, 797 (1995); Jeff Howard & Ray Hammond, *Rumors of Inferiority*, NEW REPUBLIC, Sept. 1985, at 17, 17; Claude M. Steele, *Race and the Schooling of Black Americans*, ATLANTIC MONTHLY, Apr. 1992, at 68, 68.

15. See, e.g., Amartya Sen, *Merit and Justice*, in MERITOCRACY AND ECONOMIC INEQUALITY 5, 8 (Kenneth Arrow et al. eds., 2000) (describing two different conceptions of merit: one concerned with outcomes and instructional usefulness, the other with the character of actions irrespective of instrumental considerations); Richard H. Fallon, Jr., *To Each According to His Ability, From None According to His Race: The Concept of Merit in the Law of Antidiscrimination*, 60 B.U. L. REV. 815, 823–25 (1980) (noting both backward-looking and forward-looking conceptions of merit).

16. Of course, some plausible admissions schemes are wholly ameritocratic, for example, admissions by lottery. For a discussion of this alternative, see JAMES S. FISHKIN, JUSTICE, EQUAL OPPORTUNITY AND THE FAMILY 110–13 (1983); Fallon, *supra* note 15, at 864–77; Susan Sturm & Lani Guinier, *The Future of Affirmative Action: Reclaiming the Innovative Ideal*, 84 CAL. L. REV. 953, 1008–29 (1996).

selective college and university embodies the absolute achievement approach.¹⁷

In this Part, I briefly address the procedural rationale and then distinguish the substantive rationales so that they may be more fully examined in Parts II and III. Although the absolute achievement criterion no more furthers these three distinct rationales for meritocracy than does the relative achievement approach, the merit critique reinforces the view that class-based policies, as an adjunct to the normal admissions process, violate meritocratic principles.¹⁸

A. *Procedural Virtue*

The procedural virtue of merit stems from the impersonal and objective nature of meritocratic criteria. To the extent that merit criteria are objective, they are less prone to arbitrariness or intentional misuse than subjective standards that vest significant discretion in the official applying the standard.¹⁹ The impersonal nature of merit criteria generally prohibits selection on the basis of ascription.²⁰ These procedural virtues are perhaps especially meaningful in the context of college admissions where for many generations applicants were excluded based on their ascriptive

17. For example, in the early 1990s, the University of Texas Law School based its admissions decision in part upon the so-called "Texas Index" number, a composite of an applicant's undergraduate GPA and LSAT score. The Texas system was challenged because it applied different ranges of acceptable index numbers to applicants of different races. *Hopwood v. Texas*, 78 F.3d 932, 936 (5th Cir. 1996). At the time of *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978), the University of California at Davis admitted students to its medical school based on ratings assigned to undergraduate GPA, an interview, MCAT scores, and other criteria combined in a "benchmark" score. *Id.* at 273-74. During the same period, the University of Washington combined college grades and LSAT scores into a "Predicted First Year Average." *DeFunis v. Odegaard*, 416 U.S. 312, 321 (1974) (Douglas, J., dissenting); see also Michael A. Olivas, *Higher Education Admissions and the Search for One Important Thing*, 21 U. ARK. LITTLE ROCK L. REV. 993, 995 (1999) (observing that graduate and professional school "admissions committees overwhelmingly rely upon previous cumulative GPAs and standardized test scores to make their admissions decisions").

18. See, e.g., Paul Brest & Miranda Oshige, *Affirmative Action for Whom?*, 47 STAN. L. REV. 855, 856 (1995) (describing affirmative action as a deviation from the normal procedures of selection); Caldwell, *supra* note 8, at 23 (stating that class-based affirmative action undermines merit); Fallon, *supra* note 1, at 1916 (noting that affirmative action, whether based on race or socioeconomic status, "is generally viewed as a supplement to or modification of . . . an institution's 'normal' scheme for distributing competitively sought after opportunities, such as education or jobs").

19. Fallon, *supra* note 15, at 838-39 (noting that the objective nature of meritocratic criteria tends to preclude individual acts of illicit discrimination).

20. *Id.* at 837 (observing that "merit distribution has been considered . . . a diametric alternative to selection on the basis of race").

identity²¹ and where selective colleges need some means of quickly and reliably sorting thousands of applicants.²²

I do not examine this procedural or formal virtue at length because it provides little basis for choosing between the absolute and relative achievement approaches. Both can be reduced to objective formulas that minimize arbitrariness and subjectivity.²³ Both can readily sort along a single metric the variety of applicants that selective colleges must evaluate,²⁴ and neither formally relies on ascriptive categories such as race or gender.

B. Substantive Values

Merit-based school admissions might be justified on either or both of two substantive values, individual desert²⁵ and productive efficiency. Both are fundamental to American culture and society.²⁶ Meritocracy is individualist insofar as it seeks to distribute opportunities and resources on the basis of the conduct or attributes of individuals. It is productivity-oriented to the extent that it distributes opportunities and resources based on predictions of future performance that will enhance societal well-being.²⁷ Thus,

21. See generally NICHOLAS LEMANN, *THE BIG TEST: THE SECRET HISTORY OF THE MERITOCRACY* (1999) (recounting the rise of standardized testing for college admission in the mid-twentieth century and describing the then-prevailing view that such testing was fairer than earlier, more ascriptive standards); Jacques Steinberg, *For Gatekeepers at Colleges, a Daunting Task of Sorting*, N.Y. TIMES, Feb. 27, 2000, at 1 (noting that for the class of 2004, Wesleyan University had 6849 applications and only 715 available admissions spots).

22. For example, in 1999 Stanford University received 18,888 applications for undergraduate admission; Harvard received 16,818; and Yale received 11,947. THE COLLEGE BOARD, *THE COLLEGE HANDBOOK* 124, 171, 449 (2000).

23. See Sander, *supra* note 3, at 481–87 (discussing the implementation of the admissions index used in the class-based admissions program at the UCLA law school).

24. The class-based admissions policy implemented at the UCLA law school, for example, generates an index for each applicant that incorporates achievement measures, as well as socioeconomic status measures. For a description of that program, see generally *id.*

25. Throughout this Article, I use a variety of terms to refer to the individualist rationale: desert, deservingness, and reward.

26. DANIEL BELL, *THE CULTURAL CONTRADICTIONS OF CAPITALISM* 257 (1976) (observing that in classical liberal thought, the individual is the primary unit of society); Paul Brest, *In Defense of the Anti-Discrimination Principle*, 90 HARV. L. REV. 1, 49 (1976) (“If a society can be said to have an underlying political theory, ours has not been a theory of organic groups but of liberalism, focusing on the rights of individuals.”).

27. See, e.g., Norman Daniels, *Merit and Meritocracy*, 7 PHIL. & PUB. AFF. 206, 207 (1978) (“Claims of merit . . . are derived from considerations of efficiency or productivity.”); Fallon, *supra* note 15, at 838–39 (justifying merit-based distribution through reference to the norm of productive efficiency and explaining that productive efficiency is an important value associated with distributional merit); Sen, *supra* note 15,

meritocracy both affirms the primacy of the individual and promotes social productivity. In affirming the primacy of the individual, merit gives individuals what they deserve;²⁸ in promoting efficiency, merit gives society what it needs.²⁹

C. *Merit in College Admissions*

The notion that college admissions *should* be meritocratic is widely endorsed,³⁰ even by many opponents of conventional meritocratic standards who refrain from condemning the principle

at 9 (observing that “the economic justification of rewarding merit tends to be grounded in consequences”).

28. The relation between moral desert, equality of opportunity, and merit is subject to debate, as different analysts formulate the relation differently. Merit, equated with actual performance, could be viewed as one formulation of equal opportunity. That is, merit-based distribution by itself would satisfy the demands of equality of opportunity. See, e.g., FISHKIN, *supra* note 16, at 22–30; David A. Strauss, *The Illusory Distinction Between Equality of Opportunity and Equality of Result*, 34 WM. & MARY L. REV. 171, 173–74 (1992). Alternatively, equal opportunity might be viewed as a precondition to the fairness of meritocratic allocation of opportunity. Similarly, desert might be viewed as distinct from merit, rather than a component of it. See, e.g., Louis P. Pojman, *Introduction to WHAT DO WE DESERVE?* 1, 6–7 (Louis P. Pojman & Owen McLeod eds., 1999) (distinguishing merit and desert as distinct concepts). Merit could be a basis for desert or desert could be a form of merit. In my framework, different conceptions of equal opportunity and desert represent different formulations of individual reward.

29. See Sen, *supra* note 15, at 5 (describing “the concept of ‘merit’ . . . [as] deeply contingent on our views of a good society”). Criticisms of merit abound. See, e.g., PATRICIA A. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 99 (1991) (describing meritocratic standards as “concrete monuments to socially accepted subjective preference”); Richard Delgado, *Rodrigo’s Tenth Chronicle: Merit and Affirmative Action*, 83 GEO. L.J. 1711, 1715–47 (1995) (describing merit-based decisions as one form of racism); cf. Fallon, *supra* note 1, at 1939–44 (describing the background justification for meritocratic distribution of opportunities as “broadly utilitarian,” but also noting that fairness considerations are relevant to the evaluation of admissions policies).

30. See DANIEL BELL, *THE COMING OF POST-INDUSTRIAL SOCIETY* 409 (1973) (“The post-industrial society, in its initial logic, is a meritocracy.”); MICKEY KAUS, *THE END OF EQUALITY* 40 (1992) (describing college admissions as “a crucial meritocratic moment”); ROBERT KLITGAARD, *CHOOSING ELITES* 81 (1985) (“[A]mong all the allocative mechanisms found in society, selection policies for universities . . . are perhaps the most extreme example of allocation on the basis of ‘worthiness.’”). See generally DANIEL A. FARBER & SUZANNA SHERRY, *BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW* (1997) (defending meritocratic evaluation both in principle and as a practice).

Not everyone endorses the idea of merit, however. See, e.g., DAVID OWEN, *NONE OF THE ABOVE: BEHIND THE MYTH OF SCHOLASTIC APTITUDE* 198–99 (1985) (concluding that merit is usually little more than a camouflage for class and that meritocracy is eugenics by other means); WILLIAMS, *supra* note 29, at 103 (describing standards as “nothing more than structured preferences”); IRIS MARION YOUNG, *JUSTICE AND THE POLITICS OF DIFFERENCE* 202 (1990) (stating that objective and unbiased merit criteria are impossible to formulate).

itself and choose instead to criticize its application.³¹ Merit-based criteria pervade actual admission practices.³² Although rarely constituting the entire admission process, merit-based criteria—typically standardized test scores and grades (and sometimes class rank as well)—determine the initial sorting and ranking of applicants at nearly all selective universities.³³

Merit-based distribution of educational opportunities embodies both values of meritocracy. The individualist rationale treats admissions slots as rewards for prior performance. The productive efficiency approach, in contrast, distributes admissions slots on the basis of expected future performance.³⁴ Individual desert affirms the primacy and moral status of the individual,³⁵ treating the individual as an end. Productivity conceptually subordinates the claims of the individual to the needs of society, treating the individual as a means to the end of societal productivity.³⁶

The individualist reward and productive efficiency rationales for merit-based admissions might be embraced in varying degrees by

31. See, e.g., GERTRUDE EZORSKY, *RACISM AND JUSTICE: THE CASE FOR AFFIRMATIVE ACTION* 92 (1991) (observing that in practice “merit selection is not . . . the currently accepted rule” for filling jobs); YOUNG, *supra* note 30, at 202–13 (rejecting meritocratic selection because its ideal of impartiality can never be attained); Ira Glasser, *Affirmative Action and the Legacy of Racial Injustice*, in *ELIMINATING RACISM* 341, 350 (Phyllis A. Katz & Dalmas A. Taylor eds., 1988) (noting that “factors extrinsic to merit often and routinely determine who gets particular jobs”).

32. See *supra* note 17.

33. There are alternatives to meritocratic admissions. One non-merit-based alternative would be admissions by lottery. For a discussion of this alternative, see FISHKIN, *supra* note 16, at 110–13; Fallon, *supra* note 15, at 864–77; Sturm & Guinier, *supra* note 16, at 1008–29.

34. See, e.g., GEORGE SHER, *DESERT* 10 (1987) (“[U]tility and desert do seem to face in opposite temporal directions. . . . [A]n action’s utility is determined by the future benefits it will bring, while what a person deserves ordinarily depends on his past or present actions or characteristics.”); John Kleinig, *The Concept of Desert*, in *WHAT DO WE DESERVE?*, *supra* note 28, at 84, 88, (distinguishing between desert and utilitarian considerations); cf. Jeremy Waldron, *The Wisdom of the Multitude*, 23 *POL. THEORY* 563, 563–84 (1995) (drawing a similar distinction between conceptions of merit that are backward-looking and those that are forward-looking).

35. See, e.g., Owen McLeod, *Introduction to WHAT DO WE DESERVE?*, *supra* note 28, at 61, 63–65 (explaining that desert is usually linked with moral responsibility).

36. See, e.g., WILLIAM G. BOWEN & DEREK BOK, *THE SHAPE OF THE RIVER: LONG-TERM CONSEQUENCES OF CONSIDERING RACE IN COLLEGE AND UNIVERSITY ADMISSIONS* 53–117 (1998) (assessing various outcomes of admissions processes); KLITGAARD, *supra* note 30, at 61–71 (discussing the admissions objective of admitting students based on their likely future success and the social benefits that would likely result). See generally Sen, *supra* note 15 (treating meritocracy as instrumentally promoting productive efficiency).

different readers.³⁷ Some readers of this Article might be more inclined toward the individualist reward rationale; others might favor the productivity approach. I do not offer any view as to the proper balance of these two values in selective college admissions, but I do believe that our ideals of selective college admissions reflect both individualist and efficiency concerns and that these concerns are distinct.

The productivity rationale relies upon a form of utilitarian calculus, whereas the reward rationale implicitly invokes rights-based claims. If the reward rationale were primarily future performance-oriented, it would be vulnerable to being weighed against other sorts of consequentialist considerations, including the societal benefits of racial integration, and would cease to function as a potential trump.³⁸ It is only a trump to the extent it is understood as rights-based, as deriving from something other than a utilitarian calculus.

This Article disaggregates these two distinct rationales in order to better appreciate the implications of each. The attractiveness of any particular formulation of merit in selective college admissions is likely to turn in part on how well it embodies our intuitions about individual desert *and* furthers productive efficiency.³⁹

D. *Merit and the Absolute Achievement Model*

The prevailing intuition is that the absolute achievement approach better furthers both productivity and individual reward than would the relative achievement approach.⁴⁰ Individuals should

37. Often the individualist and productivity rationales are intertwined. See, e.g., *What the Deserving Deserve and Whether They Get It*, *supra* note 8 (collecting views of deservingness that embody individualist and productivity concerns).

38. For analyses balancing future performance against other sorts of future benefits, see, e.g., Kenneth L. Karst & Harold W. Horowitz, *Affirmative Action and Equal Protection*, 60 VA. L. REV. 955, 961–66 (1974); Randall Kennedy, *Persuasion and Distrust: A Comment on the Affirmative Action Debate*, 99 HARV. L. REV. 1327, 1331–33 (1986).

39. Conceptually, the two are linked through incentives. As a reward, slots are granted in recognition of valued autonomous choice. As a matter of social productivity, slots are granted on the basis of expected future performance. Social efficiency must take account of incentives, and the possibility of the effectiveness of incentives presupposes a realm of autonomous choice integral to individual desert. For a discussion of the relation of incentives and admission policies, see Stephen Coate & Glenn C. Loury, *Will Affirmative-Action Policies Eliminate Negative Stereotypes?*, 83 AM. ECON. REV. 1220, 1220–39 (1993).

40. The idea is that current achievement serves as a proxy for likely future performance. Thus, the highest current achievers will be the best future performers. See, e.g., Fallon, *supra* note 15, at 823–24 (“Prior achievements are often considered a reliable index to present ability; persons who succeed in one position may be thought to ‘have what it takes’ to succeed in others.”). Intuition regarding college admissions is one

be rewarded on the basis of their achievements, the thinking goes, and their achievements presage their future performance. According to this logic, the admission of those students evidencing the highest level of early academic achievement will both properly reward individuals and promote productive efficiency.⁴¹

The reflexive equation of merit in college admissions with the highest level of absolute achievement bypasses fundamental inquiries with respect to both individual deservingness and productive efficiency. The need for these inquiries may be obscured by the tendency to treat merit as a unitary entity that resides within people, rather than as a means of furthering distinct values and goals.

The intuition that the absolute achievement criterion is justifiable because it best rewards individuals assumes, perhaps wrongly, that an individual can be deserving in the deep sense necessary to justify a social arrangement. That one may be said to be deserving of admission to a selective college does not necessarily mean that one is deserving in the sense necessary to justify particular admissions criteria.⁴² Putting aside this fundamental question, it is unclear whether the relative or absolute achievement model better comports with notions of deservingness.

The equating of the absolute achievement standard with productive efficiency similarly rests on unexamined normative and empirical assumptions. Defining productive efficiency with respect to selective college admissions requires the resolution of two normative questions. The first, and most fundamental, concerns the level of analysis. Does productive efficiency entail maximization of the performance outcomes of the student population of an individual school *or* maximization of the performance outcomes produced by selective college admissions as a system?⁴³ The second concerns the type of performance outcomes with respect to which admissions policies should be evaluated. Should one consider primarily in-school performance or post-schooling professional performance?

expression of a more general view concerning the inferences that may be drawn from high achievement.

41. The adoption of a relative achievement standard, in contrast, would presumably undermine productive efficiency and fail to reward the most deserving applicants.

42. *See infra* Part II.

43. The analysis of this issue draws heavily from Norman Daniels, B. Alden Thresher, and Michael McPherson and Morton Shapiro. *See generally* S. MICHAEL MCPHERSON & MORTON OWEN SHAPIRO, *SELECTIVE ADMISSION AND THE PUBLIC INTEREST* (1990) (applying the macro-productivity principle to school admissions); B. ALDEN THRESHER, *COLLEGE ADMISSIONS AND THE PUBLIC INTEREST* (1966) (same); Daniels, *supra* note 27 (applying the macro-productivity principle to hiring practices).

Although essential to evaluating the productive efficiency of school admissions, these questions, especially the first, are rarely squarely addressed. Because these normative questions are not addressed, the appropriate empirical inquiries are even less frequently identified.

In sum, admitting the highest-achieving students does not further individual desert and productive efficiency with as much certainty as the primacy of the absolute achievement approach would suggest.⁴⁴ Individual desert raises difficult questions concerning the possibility and nature of deservingness and the requirements of fairness and equal opportunity.⁴⁵ The goal of productivity highlights complex issues of prediction and measurement and, most fundamentally, the normative question of the definition of “efficiency” in selective college admissions.⁴⁶

II. MERIT-AS-REWARD

In this Part, I demonstrate that the individual desert rationale for meritocratic admissions does not compel the absolute achievement approach. A relative achievement approach that corrects for environment, but not for ability, comports with notions of reward as well as, if not better than, the absolute achievement approach.

There are at least two problems with the claim that recognizing individual desert compels the absolute achievement criterion. The first problem is that there is no account of deservingness sufficient to compel *any* particular admissions criteria. Putting aside this fundamental question of whether deservingness may justify any admissions policy, deciding that admissions slots are to be allocated on the basis of deservingness says little about whether deservingness is better captured by a relative or absolute achievement criterion.⁴⁷

A. *Modes of Deservingness*

The widespread intuition that the highest-achieving applicants to an elite college deserve to be admitted over less high-achieving applicants might rely upon one of three distinct conceptions of deservingness:⁴⁸ the institutional practices conception,⁴⁹ the

44. See *infra* Parts II, III.

45. See *infra* Part II.

46. See *infra* Part III.

47. For some of the most useful works on desert, see JOEL FEINBERG, *DOING AND DESERVING: ESSAYS IN THE THEORY OF RESPONSIBILITY* *passim* (1970); SHER, *supra* note 34, *passim*; WHAT DO WE DESERVE?, *supra* note 28, *passim*.

48. I do not intend this discussion as a comprehensive account of the ways in which

performance-contribution rationale,⁵⁰ or the choice-responsibility approach.⁵¹ Only under the choice-responsibility approach may deservingness even theoretically provide the basis for formulating an admissions policy, but that conception of deservingness is no better furthered by an absolute rather than relative achievement approach.

1. Institutional Practices

The institutional practices conception of deservingness focuses on the legitimate expectations engendered by prevailing institutional policy and practice.⁵² Individuals expect to be treated consistent with prevailing practices. Failure to confer such treatment violates reasonable expectations. In the admissions context, if a selective university has established the practice of evaluating applicants on the basis of their absolute level of academic achievement, then applicants deserve to be evaluated on that basis, and the highest-achieving applicants deserve to be admitted before lower achieving applicants. The highest-achieving applicants have fulfilled the admissions requirements as formulated by the elite university to a greater extent than have less high-achieving applicants. The highest-achieving applicants should be admitted because the existing rules dictate their selection.⁵³

The problem with the institutional practices approach is that while practices may engender expectations, those expectations

one might be deserving. Rather, the three conceptions that I discuss seem to be the most plausible and useful formulations of desert in selective college admissions. Philosophers have generated numerous systems for cataloguing desert. *E.g.*, FEINBERG, *supra* note 47, at 62 (identifying five categories of deserved treatment: "(1) awards of prizes, (2) assignments of grades, (3) rewards and punishments, (4) praise and blame, and (5) reparation, liability, and other modes of compensation"); Bruce N. Waller, *Just and Nonjust Deserts*, 25 S. J. PHIL. 229, 229-31 (1987) (distinguishing between four senses of desert: act-deserving, talent-deserving, effort-deserving, and justice-deserving).

49. See JOHN RAWLS, *A THEORY OF JUSTICE* 311 (1971) (noting that "as persons and groups take part in just arrangements, they acquire claims on one another defined by the publicly recognized rules").

50. SHER, *supra* note 34, at 121 (positing that "selecting by merit is a way of taking seriously the potential agency of both the successful and unsuccessful applicants").

51. RAWLS, *supra* note 49, at 311-12 (linking moral deservingness to responsibility for the traits on the basis of which one might be deserving).

52. See, *e.g.*, FEINBERG, *supra* note 47, at 85-87 (discussing institutional desert, as opposed to pre-institutional desert); RAWLS, *supra* note 49, at 103-04 (same); SHER, *supra* note 34, at 119 (discussing the institutional conception of desert); Kleinig, *supra* note 34, at 88-89 (distinguishing between raw desert and institutional desert and describing the latter as entitlement and not desert); *id.* at 88 ("Desert . . . is not created by satisfying the conditions laid down in a system of . . . rules . . .").

53. RAWLS, *supra* note 49, at 311.

cannot then be offered to justify the indefinite continuation of those practices.⁵⁴ This form of deservingness derives from existing institutional policies; it does not justify them. The highest-achieving student might deserve to be admitted over a less high-achieving student because established practice dictates that she should be, but the highest-achieving student would *not* deserve to have had the institution enact a policy of admission based largely on past achievement.

The institutional practices approach limits the range of admissions criteria *given a particular set of institutional practices and policies*. This approach is of undeniably limited usefulness when it is those very policies that are at issue.⁵⁵ Another sort of argument is needed to justify those institutional policies in the first instance.

2. Performance-Contribution Approach

The performance-contribution account of deservingness represents an attempt at one such argument. This approach ties one's deservingness to the contribution to social productivity represented by one's performance.⁵⁶ Deservingness corresponds to, and arises from, one's contribution. In this view, those who will perform the best in the future are the most deserving of the benefit of selective college admission now.⁵⁷

The problem with this view of deservingness is that it ultimately collapses into one of the alternative justifications for an admissions scheme.⁵⁸ To say that performance or contribution grounds desert, one must say *why* desert derives from performance. Answering that question almost inevitably leads back to either the institutional practices or choice-responsibility conceptions of deservingness or to the consequentialist analysis more typical of the productive efficiency approach. An account of individual deservingness that, at bottom, reflects a productive efficiency argument or a claim about the expectations engendered by prevailing institutional practices is insufficient to justify the absolute achievement approach.

54. *See id.*

55. *See* FEINBERG, *supra* note 47, at 85–87; RAWLS, *supra* note 49, at 103–04.

56. *See* SHER, *supra* note 34, at 121; *cf.* David Miller, *Distributive Justice: What People Think*, 102 *ETHICS* 555, 562–63 (1992) (describing lay views of desert as deriving from contribution or performance).

57. *See* SHER, *supra* note 34, at 121.

58. *See id.* at 122.

3. Choice-Responsibility Conception

An account of deservingness sufficient to compel the absolute achievement approach must rely upon the notion of individual moral desert.⁵⁹ The notion of individual moral desert embodies the view that one should be rewarded on the basis of attributes or characteristics for which one is responsible. Moral desert affirms the moral salience of responsibility and autonomous choice.⁶⁰ One may feel pride and elicit praise on the basis of one's choices for which one bears moral responsibility, but not on the basis of characteristics over which the individual has no control and for which the individual therefore should not be held morally accountable.⁶¹ The claim that some opportunities should be distributed on the basis of moral desert has attracted some measure of support in philosophical circles.⁶²

The adoption of moral desert as a basis for the distribution of admissions slots raises a number of difficult issues, however. The goal of desert-based distribution of admissions slots is to recognize those relevant individual attributes or achievements reflective of one's autonomous will and agency.⁶³ But how might one separate the chosen from the unchosen? One chooses neither one's environment, nor one's ability.⁶⁴ Indeed, all apparently chosen actions might be redescribed as determined by the confluence of unchosen, contingent

59. For the most extended analyses of moral desert, see generally FEINBERG, *supra* note 47; SHER, *supra* note 34; WHAT DO WE DESERVE, *supra* note 28.

60. One may "deserve" to receive some societal resource or opportunity for any of a number of reasons. Norms of distribution differ across contexts depending on the particular resource in question. See, e.g., FEINBERG, *supra* note 47, at 55-94 (cataloguing the different meanings of desert and the different types of treatment with respect to which one may be deserving); Waller, *supra* note 48, at 229-31 (describing four different bases on which one might deserve something). One might also be said to deserve particular treatment on the basis of some characteristic of one's self, as distinguished from one's past conduct. See FEINBERG, *supra* note 47, at 58-61.

61. Not all philosophers agree with this claim. Some would contend that in order to deserve particular treatment one need not deserve, in any deep sense, all of the aspects of the self that would serve as the basis for that particular deserved treatment. See, e.g., ROBERT NOZICK, ANARCHY, STATE, AND UTOPIA 224-27 (1974).

62. See FEINBERG, *supra* note 47, at 55-87 (discussing the relation between desert and justice and concluding that "[d]esert is always an important consideration . . . but it is not the only consideration and is rarely a sufficient one"); SHER, *supra* note 34, at 17-20 (appealing to intuitions about deservingness to support the claim that desert is an important and defensible moral concept).

63. See FEINBERG, *supra* note 47, at 59 (claiming that the only desert bases are characteristics of the individual); SHER, *supra* note 34, at 150-62 (arguing that desert affirms the expression of individual agency).

64. See RAWLS, *supra* note 49, at 311 (noting that "no one deserves his place in the distribution of natural assets any more than he deserves his initial starting place in society").

factors.⁶⁵ As a coherent philosophical concept, the notion of moral desert thus founders on the social determinism conundrum.⁶⁶

In part for these reasons, moral desert has been largely rejected as a criterion of justice by most philosophers.⁶⁷ These philosophers generally conclude that no one can be deserving in the deep sense necessary to justify particular institutional arrangements.⁶⁸

B. *Deservingness as Fairness*

The question of deservingness might be better framed not in terms of choice and responsibility, but in terms of fairness.⁶⁹ A decision to give individuals “what they deserve” entails either an explicit or implicit determination of what is fair.⁷⁰

The fairness question is most commonly addressed through the familiar concept of equality of opportunity.⁷¹ Notwithstanding almost universal support for the concept, its meaning remains contested.⁷² Is

65. See *id.* at 312.

66. Not all scholars support the demise of desert. See, e.g., Pojman, *supra* note 28, at 6 (“[T]he idea of *justice as desert*, a thesis held for centuries as constitutive of sound moral and political theory, is in our day rejected out of hand by the dominant political philosophy. Desert . . . now suffers as a pariah in an age cynical about individual responsibility.”).

67. Desert is disfavored for other reasons as well. For one, the concept seems to assume that certain qualities are inherently virtuous or not. For another, a complex, interdependent social and economic system could hardly base distributive decisions on some abstract analysis of “what people deserve.”

68. See RAWLS, *supra* note 49, at 104 (arguing that no one deserves the advantages that his character, abilities, or environment make possible because no one is responsible for his character, abilities, or the environment into which he is born); *id.* at 313 (“For a society to organize itself with the aim of rewarding moral desert as a first principle would be like having the institution of property in order to punish thieves.”); Galen Strawson, *The Impossibility of Moral Responsibility*, in WHAT DO WE DESERVE, *supra* note 28, at 114, 115–16 (arguing against the possibility of moral responsibility for the self).

69. Notwithstanding its philosophical rejection, the concept of desert as fairness undeniably resonates with the lay public. See Miller, *supra* note 56, at 559–63 (demonstrating that desert is central to how most people think about justice); *id.* at 590 (concluding that “popular opinion gives a central place to desert in thinking about justice, and this presents a marked contrast to most recent theoretical work on that topic”).

70. See generally Julian Lamont, *The Concept of Desert in Distributive Justice*, in WHAT DO WE DESERVE?, *supra* note 28, at 101, 101–04 (claiming that desert constitutes a non-utilitarian criterion of justice); Samuel Scheffler, *Responsibility, Reactive Attitudes, and Liberalism in Philosophy and Politics*, 21 PHIL. & PUB. AFF. 299, 299–33 (1992) (arguing that desert plays an important role in people’s attitudes toward particular public policies).

71. See, e.g., FISHKIN *supra* note 16, at 44–105 (discussing the importance of equality of opportunity); RICHARD TAWNEY, *EQUALITY* 100–01 (1964) (same).

72. One of the most concise and insightful discussions of the various potential meanings of equal educational opportunity can be found in Christopher Jencks, *Whom Must We Treat Equally for Educational Opportunity to be Equal?*, 98 ETHICS 518, 519–33

the ideal of equality of opportunity satisfied by a competition formally open to all? Or does the notion entail some adjustment for environmental disparities in resources and opportunities for which the individual is not responsible, but which may influence subsequent individual performance? If environmental disparities are to be corrected for insofar as they are unchosen, then why not compensate for equally unchosen differences in ability? These are difficult questions to which the relative and absolute achievement approaches represent alternative responses.

The absolute achievement approach conceives of equal opportunity as a race open to all and grants the prize of admission on the basis of performance, without formal reference to background or status characteristics.⁷³ The relative achievement approach, in contrast,⁷⁴ suggests that the ideal of equal opportunity might entail taking account of resource disparities that influence performance and that reflect no fault or virtue of the individual.⁷⁵ American society permits gross disparities among groups in the opportunities and resources that promote achievement. Rewards go to those who have achieved, but in the open-race model, achievement is undeniably linked to the very accidents of birth thought to be displaced by the implementation of equal opportunity.⁷⁶

(1988). For other extremely useful treatments of the meaning of equal opportunity, see generally FISHKIN, *supra* note 16; DOUGLAS RAE ET AL., *EQUALITIES* (1981); JOHN E. ROEMER, *EQUALITY OF OPPORTUNITY* (1998).

73. Christopher Jencks describes this version of equal opportunity as utilitarian. See Jencks, *supra* note 72, at 528–31.

74. Debates about college admissions reflect both the vision of a race open to all and the compensatory view. Recent criticism of race-based affirmative action, for example, can be read as a plea for a race whose outcome is not formally rigged by ascriptive characteristics. Calls that genuinely disadvantaged applicants to college should receive some form of preference in an admissions process encounter little opposition. These alternative accounts of equal opportunity and desert are not necessarily superior to those consistent with the absolute achievement approach.

75. Cf. Fallon, *supra* note 1, at 1942 (noting the possibility that inequalities in opportunity may be redressed through class-based admissions schemes, for example, but concluding that such inequalities are best addressed through “requiring that everyone receive the basic prerequisites of physical and intellectual development”). Of course, my analysis should not be taken to suggest that inequalities in the “prerequisites of physical and intellectual development” should be deemed acceptable. My claim is simply that as long as such inequalities in resources persist, compensating for them through approaches such as class-based admissions is permissible.

76. See, e.g., Herbert Spiegelberg, *An Argument for Equality from Compensatory Desert*, in *WHAT DO WE DESERVE?*, *supra* note 28, at 109, 152.

C. *The Relative Achievement Conception of Fairness*

In the relative achievement model, an admissions criterion is fair insofar as it equalizes the likelihood of admission of groups with differential access to achievement-related resources.⁷⁷ The relative achievement approach corrects achievement to account for environmental disparities, but not for ability differences.⁷⁸

Either of two rationales might justify correcting for one but not the other. First, the state might be thought more accountable for differences in environment than for differences in ability. While there is dispute about how best to address or remedy environmental disparities, there is less disagreement as to the basic unfairness of such disparities. At the same time, few would find fault with an individual being denied opportunities on the basis of substantially below average inherited mental ability. Many feel more strongly that one should not bear the costs of a deficient environment than that one should not bear the consequences of a deficient intellect.⁷⁹

Second, ability seems more integral to the self than does the environment.⁸⁰ One is more fundamentally constituted by one's genetic inheritance than by one's environment. In this view, whether one "deserves" one's ability more than one's social environment is simply irrelevant. The issue is not which arbitrary outcomes one may take credit for, but the centrality of outcomes to the self.⁸¹ In light of the culturally contingent nature of individual identity, to say that

77. This is a common characterization of the meaning of equality of opportunity. See, e.g., FISHKIN, *supra* note 16, at 30–35 (describing the view of equality of opportunity as the substantive notion of equality of life chance); Spiegelberg, *supra* note 76, at 155 (concluding that individuals should not be made unequal as a result of the "chance of birth"); see also Jencks, *supra* note 72, at 521–25 (discussing various meanings of equal opportunity); Strauss, *supra* note 28, at 172–78 (describing equality of opportunity as the removal of all morally arbitrary influences on achievement).

78. Many philosophers draw no distinction between the moral status of environmental disparities and ability differences. I am assuming that native ability is randomly distributed among individuals of different socioeconomic levels. If ability were not evenly distributed across socioeconomic groups, then correcting for socioeconomic status would, in fact, partly be correcting for ability.

79. Cf. Thomas, *supra* note 1, at 410–11 ("Any preference given should be directly related to the obstacles that have been unfairly placed in individuals' paths, rather than on the basis of race or gender, or on other characteristics that are often poor proxies for true disadvantage.").

80. Cf. SHER, *supra* note 34, at 157–59 (arguing that one may be deserving on the basis of characteristics that constitute the person, even though the person is not responsible for possessing those characteristics); Strauss, *supra* note 28, at 179 (rejecting the argument that "talents and abilities are different [from environment] because they are essential, rather than incidental, to the individual").

81. See, e.g., McLeod, *supra* note 35, at 194.

ability is more constitutive of the self than environment is not to say that such is the case for all societies, throughout all time, merely that it is so in our society, in this time.⁸² The answer that the relative achievement approach offers to the fairness dilemma is not the only plausible answer, but it is a perfectly reasonable one.

III. MERIT AS PRODUCTIVE EFFICIENCY

In this Part, I consider whether the relative or absolute achievement approach better furthers productive efficiency. The ambiguity and indeterminacy of the ostensibly straightforward goal of productive efficiency becomes apparent when one attempts to establish a more precise specification and actual application to selective college admissions.⁸³ One must confront difficult normative questions concerning the measure of productive efficiency and complex empirical questions concerning the link between admissions policies and productive efficiency. Surprisingly perhaps, the core normative issue remains largely ignored, and as a result, the appropriate empirical inquiries are rarely framed. My argument, in short, is that productive efficiency would be enhanced if college student bodies were less stratified by students' socioeconomic status and absolute level of academic achievement.⁸⁴ There is some support for the relative achievement approach, and little justification for the absolute achievement criterion.

A. *The Normative Issue: Maximization of What?*

Defining productive efficiency in selective college admissions requires resolution of two distinct normative questions. The first, and most fundamental, question concerns the level of analysis. Should productive efficiency be defined at the level of the *individual*

82. David Strauss, for example, embraces this criticism. See Strauss, *supra* note 28, at 179–80 (“Some societies regard race as the central constituent of a person’s identity. . . . Historically, some societies regarded social class as far more central to one’s identity than talents or abilities as we define them. Race is as unalterable as ability, and in some cultures, social class is no more easily alterable.”).

83. See, e.g., Robert M. Hauser et al., *Occupational Status, Education & Social Mobility in the Meritocracy*, in MERITOCRACY AND ECONOMIC INEQUALITY, *supra* note 15, at 179, 207–09 (discussing a study of high school seniors).

84. Cf. HENRY HANSMANN, HIGHER EDUCATION AS AN ASSOCIATIVE GOOD 8–9 (Yale Law Sch. Program for Studies in Law, Econ. & Pub. Pol’y, Working Paper No. 99-15, 1999), http://papers.ssrn.com/paper.taf?abstract_id+192576 (on file with the North Carolina Law Review) (discussing the “unfortunate consequences” of stratification, including a reduction in the aggregate effectiveness and average efficiency of higher education attributable to decreased competition among universities in admitting students).

school or in terms of the *system* of selective college admissions?⁸⁵ I term school-level analysis micro-productivity, and system-level analysis macro-productivity.⁸⁶ The second normative question concerns the performance outcomes with respect to which meritocratic admissions should be evaluated. Does productivity refer to scholastic performance or to post-schooling professional performance?

1. Micro- or Macro-productivity

Whereas micro-productivity focuses on the likely future performance of applicants admitted to a particular school, macro-productivity considers the optimal allocation of applicants across institutions of differential status and quality.⁸⁷ Imagine a society with two universities, one ultra-selective and elite (School A), the other less selective and less elite (School B). All students who attend college will attend one or the other of these schools, and all applicants would prefer to attend School A, which is known as the better school and whose graduates usually fare better professionally than those of School B. Applicants not admitted to School A will attend School B. Applicants differ in terms of both socioeconomic status and absolute achievement level, and across the applicant pool, achievement and socioeconomic status are somewhat correlated.⁸⁸

Let us focus on School A, whose admissions decisions largely determine the distribution of students between Schools A and B. If School A seeks to maximize micro-productivity, it will admit those applicants predicted to perform the best in the future. To maximize macro-productivity, School A would take account of the fact that the

85. See MCPHERSON & SHAPIRO, *supra* note 43, at 1–3; THRESHER, *supra* note 43, at 66–76.

86. I borrow these terms from Daniels, *supra* note 27, at 210–11.

87. MCPHERSON & SHAPIRO, *supra* note 43, at 1–3; THRESHER, *supra* note 43, at 66–76; see also KLITGAARD, *supra* note 30, at 121–29 (describing various measures of professional attainment).

88. There is overwhelming empirical evidence that low socioeconomic status depresses early academic achievement. See, e.g., Martin E. Orland, *Demographics of Disadvantage: Intensity of Childhood Poverty and Its Relationship to Educational Achievement*, in ACCESS TO KNOWLEDGE: AN AGENDA FOR OUR NATION'S SCHOOLS 43, 54–55 (John I. Goodlad & Pamela Keating eds., 1990) (finding various links between childhood poverty and low educational growth); David J. Armor, *Why is Black Educational Achievement Rising?*, 108 PUB. INT. 65, 79–80 (1992) (arguing that rising black academic achievement results from the improved socioeconomic status of black families); Karl R. White, *The Relation Between Socioeconomic Status and Academic Achievement*, 91 PSYCH. BULL. 461, 461 (1982) (measuring socioeconomic status as a function of income, education, and/or occupation).

applicants it declines to admit will likely attend School B. Under the macro-productivity approach, School A would admit *not* to maximize the future performance of its own students or graduates, but to maximize the aggregate future performance of the student populations of both schools.

To maximize macro-productivity, School A would thus focus on the change in individuals' performance attributable to attending School A *rather than School B*. The school would admit those applicants who would gain the most from School A and reject those applicants who would lose the least from attending School B.⁸⁹ This approach treats the investment of elite college education like other investments: evaluating it on the basis of its return.⁹⁰

Micro- and macro-productivity analyses lead to identical admissions policies only if the highest future achievers also lose the most by attending School B rather than School A. Alternatively, if the highest future performers do not reap the greatest gains from attending School A, then a micro-productivity-oriented policy will not further macro-productivity.⁹¹

Most analyses of college admissions implicitly adopt the micro-productivity approach,⁹² examining scholastic or professional performance as a function of ability, prior academic preparation, or socioeconomic background.⁹³ Rarely are analyses framed in terms of macro-productivity. The micro-productivity approach predominates in part because it best reflects schools' own understanding of their interests and values. As with most institutions, elite colleges are primarily concerned with their own stability and performance, and only secondarily concerned with the functioning of the broader system of which they are a part.

89. Stated differently, to promote macro-productivity, School A would admit those applicants who would lose the most by attending School B, and reject those applicants who would gain the least from attending School A.

90. Robert Klitgaard refers to this goal as the social value added approach to admissions. That is, admissions slots should be allocated in the manner that will generate the most social value. See KLITGAARD, *supra* note 30, at 61-71 (discussing the benefits of and objections to the social value added approach).

91. See MCPHERSON & SHAPIRO, *supra* note 43, at 1-3; THRESHER, *supra* note 43, at 66-76.

92. See, e.g., MCPHERSON & SHAPIRO, *supra* note 43, at 1-3; THRESHER, *supra* note 43, at 66-76.

93. See, e.g., BOWEN & BOK, *supra* note 36, at 118-54; Sanders Korenman & Christopher Winship, *A Reanalysis of the Bell Curve: Intelligence, Schooling and Family Background*, in MERITOCRACY AND ECONOMIC INEQUALITY, *supra* note 15, at 137, 137-78.

My analysis embodies the macro-productivity principle because it comports best with the productivity-oriented rationale for meritocratic admissions.⁹⁴ Allocating admissions slots on the basis of micro-productivity might serve the narrow interests of a particular school, but at the expense of the social productivity that justifies meritocratic admissions, as a system, in the first place.⁹⁵

2. Schooling vs. Professional Performance Outcomes

The second normative question concerns the performance outcomes with respect to which meritocratic admissions should be evaluated: scholastic performance or professional performance. One might plausibly view academic excellence as a valued social outcome in its own right.⁹⁶ Elite colleges might understandably define merit as academic excellence, reflecting such universities' understanding of their mission and role.⁹⁷ Alternatively, one might view education as a means to the end of professional accomplishment.⁹⁸

In what follows, I analyze macro-productivity with respect to professional performance outcomes, in part because I believe that professional performance better accords with the productive efficiency rationale, and in part because the available empirical evidence better suits the analysis of professional performance outcomes. (I suspect, however, that a focus on scholastic performance outcomes would fit with the substance of the analysis.)

Focusing on professional performance raises the question of measurement. There is no transcendent metric, after all, enabling

94. See Daniels, *supra* note 27, at 212.

95. MCPHERSON & SHAPIRO, *supra* note 43, at 1-3; THRESHER, *supra* note 43, at 66-76. Micro-productivity might deserve deference simply because it represents individual schools' views of their own interests. But if respect for institutional autonomy is what supports such an approach to admissions, then given that rationale, schools should be granted leeway to pursue their own institutional missions in all sorts of ways. The merit critique of class-based admissions would thus become inapplicable.

96. See, e.g., BOWEN & BOK, *supra* note 36, at 53-117 (examining grades, class rank, and graduation rates). Prior grades and test scores are useful admissions tools, in this view, insofar as they predict academic performance. College grades and test scores, in turn, are useful insofar as they predict graduate or professional school performance. See *id.* at 724-26 (examining class rank and standardized test scores); COLLEGE BOARD, COMMON SENSE ABOUT SAT SCORE DIFFERENCES AND TEST VALIDITY 3-4 (1997) (research notes). See generally LINDA F. WIGHTMAN, LAW SCHOOL ADMISSION COUNCIL, PREDICTIVE VALIDITY OF THE LSAT: A NATIONAL SUMMARY OF THE 1990-1992 CORRELATION STUDIES (1993) (finding that undergraduate GPA and LSAT scores combined predicted first year grade average in law school).

97. This view conceives of education as an end in itself rather than a means to some other end. See KLITGAARD, *supra* note 30, at 116-31.

98. See, e.g., BOWEN & BOK, *supra* note 36, at 118-54.

assessment of the contribution of various types and levels of professional performance to social well-being or societal productivity.⁹⁹ Most researchers assess professional outcomes in dollar terms, as income from wages.¹⁰⁰ This approach has an obvious problem. Various professions might be over- or under-compensated relative to their social contributions.¹⁰¹ Nonetheless, wages arguably represent the best available proxy for social productivity. The fact that wages may not accurately capture the relative social worth of different professional outcomes would likely not bias an analysis of the return to elite versus non-elite college education. The occupation contribution-compensation discrepancy would bias analysis of the elite college education pay-off only to the extent that college status systematically influences the distribution of students among over-versus under-compensated occupations. Any bias would operate primarily across occupations, not across institutions.

B. Admissions Policies and Macro-productivity

Which better furthers macro-productivity, the absolute or relative achievement approach? The inquiry might be framed in two steps. Recall our two-college society. School A, the more elite and selective of the two schools, must choose between two well qualified applicants for the last spot in its entering class. The applicants differ both in terms of socioeconomic status and achievement. Applicant One is extremely high-achieving and of high socioeconomic status. Applicant Two is a bit less high-achieving and of substantially lower socioeconomic status. Which applicant should School A choose in order to promote macro-productivity? The absolute achievement approach dictates Applicant One, the relative achievement approach dictates Applicant Two.

A further question arises. The choice between the relative and absolute achievement approaches determines not only who fills that last spot in the class, but who fills all the other spots in the class. Who fills those other spots may influence who should fill that last

99. This analysis should not be taken to deny or minimize the importance of the non-economic benefits of education. For a discussion of the non-economic benefits of education, see ELCHANAN COHN & TERRY G. GESKE, *THE ECONOMICS OF EDUCATION* 34–68 (3d ed. 1990).

100. See, e.g., Theodore W. Schultz, *Investment in Human Capital*, in *THE STRUCTURE OF SCHOOLING* 46, 46–47 (Richard Arum & Irene R. Beattie eds., 2000) (describing the investment in human capital and the returns to that investment in terms of wages).

101. See KLITGAARD, *supra* note 30, at 90 (noting the incompleteness and unreliability of the typical measures of performance contributions).

spot. The first step of the analysis takes the class composition as a given. The second step considers the effect of the choice of admissions criterion on class composition. With respect to either step, evaluating the macro-productivity consequences of the relative and absolute achievement approaches is quite complicated—far more complex than reflexive adherence to the absolute achievement criterion would suggest.¹⁰² The inquiry requires resort to the available empirical evidence. There is, of course, no direct empirical evidence of which admissions criterion better furthers aggregate productivity.¹⁰³ There is empirical data on the individual earnings outcomes of elite college education.¹⁰⁴ The link between that individual level data and aggregate productivity is far from straightforward, however. To sketch the potential aggregate productivity consequences of a relative versus absolute achievement criterion requires the evaluation of alternative theoretical accounts of the link between elite college education and individual earnings¹⁰⁵ and between individual earnings and aggregate productivity.

1. Empirical Findings

A variety of empirical studies, relying on various data sets, have established a positive relationship between education and earnings.¹⁰⁶

102. In what follows, I simplify the analysis by not addressing many theoretical or institutional factors that likely influence actual admissions policies. For example, I do not consider faculty or alumni interests, or the possible competition among the most elite schools.

103. See e.g., Henry M. Levin, *Educational Performance Standards and the Economy*, EDUC. RES., May 1998, at 4, 4–5 (1998) (noting the difficulty of determining the link, if any, between national changes in test scores and economic productivity).

104. See *infra* notes 106–117 and accompanying text.

105. For a useful overview of differing explanations of the education-earnings relationship, see COHN & GESKE, *supra* note 99, at 7–8.

106. There is an enormous body of empirical research examining the returns to education. See generally, e.g., ORLEY ASHENFELTER & CECILIA ROUSE, *SCHOOLING, INTELLIGENCE, AND INCOME IN AMERICA: CRACKS IN THE BELL CURVE* (Nat'l Bureau of Econ. Res., Working Paper No. 6902, 1999) (summarizing empirical evidence of the relationship between income and education); CLAUDIA GOLDIN & LAWRENCE F. KATZ, *THE RETURNS TO SKILL IN THE UNITED STATES ACROSS THE TWENTIETH CENTURY* (Nat'l Bureau Econ. Res., Working Paper No. 7126, 1999) (discussing skill premiums, dispersion of wage structure, and returns to formal schooling in the twentieth century); John Cawley et al., *Understanding the Role of Cognitive Ability in Accounting for the Recent Rise in the Economic Return to Education*, in MERITOCRACY AND ECONOMIC INEQUALITY, *supra* note 15, at 230 (discussing the components of the apparent return to education); Christopher Jencks & Meredith Phillips, *Aptitude or Achievement: Why Do Test Scores Predict Educational Attainment and Earnings?*, in EARNING & LEARNING: HOW SCHOOLS MATTER 15 (Susan E. Mayer & Paul E. Peterson eds., 1999) (presenting data on the relationship between schooling and income); Susan E. Mayer, *From Learning*

Recently, a number of researchers, motivated in part by rising tuition costs at our nation's most selective universities, have investigated whether economic returns to college education differ on the basis of school quality (defined in terms of how elite a school is and the selectivity of its admissions process).¹⁰⁷ Early research found a quite substantial payoff to college quality.¹⁰⁸ These studies sought to measure the contribution to earnings of elite college education by controlling for a variety of student characteristics.¹⁰⁹

More recent studies suggest that prior results overstated the return to elite college education by insufficiently controlling for student characteristics that might influence subsequent earnings.¹¹⁰ Specifically, the early studies failed to control for productivity-related

to *Earning*, in EARNING & LEARNING: HOW SCHOOLS MATTER, *supra*, at 3 (describing the models advanced to account for the correlation between education and income); Chinhui Juhn et al., *Wage Inequality and the Rise in Returns to Skill*, 101 J. POL. ECON. 410 (1993) (examining educational returns); Richard J. Murnane et al., *The Growing Importance of Cognitive Skills in Wage Determination*, 77 REV. ECON. & STAT. 251 (1995) (examining the relationship between education, cognitive skill, and wages).

107. The concept of school quality is, of course, notoriously difficult to define. Most researchers have defined quality as selectivity in admissions, as reflected in the average SAT score of the student body. See, e.g., JOSEPH G. ALTONJI & THOMAS A. DUNN, THE EFFECTS OF SCHOOL AND FAMILY CHARACTERISTICS ON THE RETURN TO EDUCATION 1 (Nat'l Bureau Econ. Res., Working Paper No. 5072, 1995); JERE R. BEHRMAN ET AL., THE IMPACT OF COLLEGE QUALITY ON WAGES: ARE THERE DIFFERENCES AMONG DEMOGRAPHIC GROUPS? 9-12, 16-18 (Williams Project on the Econ. of Higher Educ., Discussion Paper No. 38, 1996); DAVID CARD & ALAN B. KRUEGER, LABOR MARKET EFFECTS OF SCHOOL QUALITY: THEORY AND EVIDENCE 1 (Nat'l Bureau Econ. Res., Working Paper No. 5450, 1996); STACY BERG DALE & ALAN B. KRUEGER, ESTIMATING THE PAYOFF TO ATTENDING A MORE SELECTIVE COLLEGE: AN APPLICATION OF SELECTION ON OBSERVABLES AND UNOBSERVABLES 1-3, 17-23 (Nat'l Bureau Econ. Res., Working Paper 7322, 1999); Eric Eide et al., *Does It Pay to Attend an Elite Private College?: Evidence on the Effects of Undergraduate College Quality on Graduate School Attendance*, 17 ECON. EDUC. REV. 371, 375-75 (1998); Linda Datcher Loury & David Garman, *College Selectivity & Earnings*, 13 J. LAB. ECON. 289, 291-95 (1995).

108. CARD & KRUEGER, *supra* note 107, at 11-19 (reviewing early studies relating college quality to earnings); DOMINIC BREWER & RONALD EHRENBERG, DOES IT PAY TO ATTEND AN ELITE PRIVATE COLLEGE? EVIDENCE FROM THE SENIOR HIGH CLASS OF 1980, at 238-71 (Nat'l Bureau Econ. Res., Working Paper No. 5613, 1996) (reviewing early studies relating college quality to earnings); Thomas J. Kane, *Racial and Ethnic Preferences in College Admissions*, in THE BLACK-WHITE TEST SCORE GAP 431, 447 (Christopher Jencks & Meredith Phillips eds., 1998) (finding that attending a college with a higher average SAT score is associated with increased earnings later in life).

109. See, e.g., Kane, *supra* note 108, at 433-51 (controlling for parental education, family income, SAT scores, high school grade point average, and gender in a study of the economic return to college quality).

110. See, e.g., *id.* at 447 (finding a substantial college quality payoff, but noting that the results might overstate the actual return because of the possibility that elite colleges select applicants on the basis of productivity-related characteristics that are unobservable to the researcher).

characteristics apparent to the schools but not to researchers. If the most elite schools admitted students partly based on such characteristics, then ostensibly similar groups of students from highly selective and less selective colleges might, in fact, differ significantly.¹¹¹ Subsequent research that attempted to control for previously uncontrolled differences in student characteristics found substantially diminished, but not non-existent, returns to college quality.¹¹²

The study that best controls for individual differences unobservable to researchers constructed a data set of students admitted to both more and less selective colleges.¹¹³ Some students chose to attend the more selective school, other students the less selective one.¹¹⁴ This study found an inverse relation between student socioeconomic status and returns to elite college education. Lower socioeconomic status students reaped greater earnings benefits than higher socioeconomic status students from attending high status colleges.¹¹⁵

The differential return to elite college education does not mean that low socioeconomic status students professionally outperform high socioeconomic status students.¹¹⁶ Rather, the differential return

111. This is one example of the fundamental difficulty in the research literature that examines the causes of the positive relationship between education and earnings. In its simplest form, the issue is whether increased earnings are actually caused by skills imparted by education or whether earnings are the result of relatively stable ability, with which educational achievement is typically correlated. *See, e.g.*, Cawley et al., *supra* note 106, at 230; Korenman & Winship, *supra* note 93, at 49.

112. For studies that attempt to control for productivity-related student characteristics not directly observable by researchers, but on the basis of which schools might admit applicants, see BEHRMAN ET AL., *supra* note 107, at 9–12, 16–18; BREWER & EHRENBERG, *supra* note 108, *passim*; Jere R. Behram et al., *College Choice and Wages: Estimates using Data on Female Twins*, 78 REV. ECON. & STAT. 672, 672–73 (1996).

113. DALE & KRUEGER, *supra* note 107, at 2 (explaining that the sample consisted of students similar in observable characteristics that were both accepted and rejected by a comparable set of colleges).

114. *Id.* at 1–3, 17–23.

115. *Id.* at 23 (concluding that there is “a higher payoff to attending a more selective college for children from lower income households”); *id.* (noting that “the interaction term [for socioeconomic status and college quality payoff] is statistically significant and generally has a sizeable magnitude”). Some other researchers have also found evidence of an inverse relationship between socioeconomic status and the return to education. *See e.g.*, ASHENFELTER & ROUSE, *supra* note 106, at 17–18 (discussing evidence that suggests that the economic return to additional years of schooling is inversely related to parents’ educational level).

116. *See, e.g.*, BOWEN & BOK, *supra* note 36, at 136 (finding that high socioeconomic status students tend to professionally outperform low socioeconomic status students, holding academic achievement constant).

reflects the fact that low socioeconomic status students would perform substantially less well *without* the elite education than would higher socioeconomic status students. The low socioeconomic students gained more from attending the elite school than the high socioeconomic students would have lost by attending the less elite school.¹¹⁷ Whether this finding supports the relative achievement approach depends on the theoretical model that accounts for the relationship between education and individual earnings, and between individual earnings and social productivity.

2. Mechanisms Linking Education, Earnings, and Social Productivity

There are three models that singly or in combination might explain the education-earnings relationship: the human capital model,¹¹⁸ the signaling-filtering model,¹¹⁹ and the social capital-networking model.¹²⁰ In the human capital model, education boosts individual, and hence societal, productivity. The earnings gains from education represent enhanced individual productivity.

In the signaling-filtering model, by contrast, schools do not enhance individuals' actual productivity, so much as sort on the basis of ability, the presumed determinant of market rewards.¹²¹ In this view, the link between education and earnings largely reflects the correlation of education and ability.¹²² Higher ability students seek more education, and universities select and differentiate students on

117. Relatedly, there is also evidence that black students experience a greater economic return to college quality than white students. BOWEN & BOK, *supra* note 36, at 128.

118. For an overview of the human capital model, including criticisms, see GARY S. BECKER, *HUMAN CAPITAL passim* (3d ed., Univ. of Chicago Press 1993) (1964); Mayer, *supra* note 106, at 4–5; Schultz, *supra* note 100, at 46.

119. Kenneth Arrow and Michael Spence were two earlier proponents of the signaling-filtering model. See A. MICHAEL SPENCE, *MARKET SIGNALING: INFORMATIONAL TRANSFER IN HIRING AND RELATED SCREENING PROCESSES passim* (1974) [hereinafter SPENCE, *MARKET SIGNALING*]; Kenneth J. Arrow, *Higher Education as a Filter*, 2 J. PUB. ECON. 193, *passim* (1973); Michael Spence, *Job Market Signaling*, 87 Q.J. ECON. 355, *passim* (1973). For an overview of the signaling-screening model, including a discussion of relevant empirical findings, see COHN & GESKE, *supra* note 99, at 58–68; Hiroshi Ishida et al., *Educational Credentials and Promotion Chances in Japanese-American Organizations*, 62 AM. SOC. REV. 866, 866–68 (1997); Mayer, *supra* note 106, at 6.

120. See James Coleman & Thomas Hoffer, *Schools, Families, and Communities, in THE STRUCTURE OF SCHOOLING*, *supra* note 100, at 69, *passim* (discussing social capital).

121. See, e.g., SPENCE, *MARKET SIGNALING*, *supra* note 119, at 14; Arrow, *supra* note 119, at 193–95; Spence, *supra* note 119, at 358.

122. See, e.g., Arrow, *supra* note 119, at 193–95.

the basis of ability.¹²³ Employers inexpensively rely on the signal education provides, avoiding the substantial cost and inconvenience of directly assessing individuals' abilities.¹²⁴ Productive efficiency depends in part on the efficiency or precision of the education signal.¹²⁵ "Messy" signals may diminish productive efficiency; accurate signals may enhance it.

The social capital-networking model supposes that schools do change productivity, but not by enhancing cognitive skills.¹²⁶ Productivity gains result instead from social networking with classmates and alumni or the transmission of informal cultural knowledge.¹²⁷ Thus, a school benefits its students simply by assembling a particular group of students.

The socioeconomic status differential in the elite college payoff empirically supports the relative achievement approach under either the human capital or social capital-networking model. Under the signaling-filtering model, in contrast, the empirical finding constitutes an argument neither for nor against the relative achievement approach. None of the models supports the absolute achievement approach.

3. Changes in Student Populations

What of the effects of the admissions criterion on the composition of the student population? The relative achievement approach might produce two distinct changes in the student populations of elite schools. It would lower students' aggregate socioeconomic status, and because socioeconomic status and academic achievement are positively related, it would lower students' aggregate absolute academic achievement. These changes might diminish the socioeconomic differential in the payoff to elite college

123. *Id.*

124. *Id.*; see SPENCE, MARKET SIGNALING, *supra* note 119, at 14.

125. See Arrow, *supra* note 119, at 194, 202–04. Based on Arrow's analysis, higher education, as a whole, may be inefficient from the standpoint of social productivity. *Id.* at 199–202. Given the existence of a system of higher education, the implication of Arrow's analysis is that the more accurate the filter, the better.

126. *Id.* at 193–94 (discussing the socialization view of education as analogous to the human capital approach in that both boost individual productivity). Admittedly, a fuller account of the social capital-networking model would be more complicated than the version I offer here. For example, the social capital-networking account might be decomposed into either human capital or signaling components.

127. See generally Pierre Bourdieu, *Cultural Reproduction and Social Reproduction, in THE STRUCTURE OF SCHOOLING*, *supra* note 100, at 56 (discussing the distribution of cultural capital through education); Coleman & Hoffer, *supra* note 120, at 69 (discussing social capital in the family, school, and community, and its effects on education).

education (which is significant under the human capital and social capital-networking models) or they might lessen the efficiency of the signal (which matters under the signaling-filtering model).¹²⁸

a. Human Capital

If education augments human capital by enhancing cognitive skills,¹²⁹ the lower socioeconomic status profile of a student population would not undermine the education-earnings relationship.¹³⁰ But a lowered absolute achievement profile might undermine the education-earnings relationship. Students learn from their classmates; the lower aggregate level of student achievement means that one's classmates would constitute less of a resource. Lower achieving students might stand to benefit more than higher achieving students,¹³¹ but the larger the proportion of the student population comprised of lower achieving students, the less valuable the collective resource represented by the student population.¹³²

Implementation of a relative achievement approach might also affect productivity by influencing incentives to acquire human capital.¹³³ Incentives are a non-linear function of the likelihood of obtaining admission.¹³⁴ Incentives are not maximized if receipt of the

128. A number of studies have found that peer group influences affect student outcomes. See, e.g., Judith K. Ide et al., *Peer Group Influence on Educational Outcomes: A Quantitative Synthesis*, 73 J. EDUC. PSYCH. 472, 483 (1981) (concluding, based on meta-analysis of a variety of studies, that "peer influence is a strong, consistent determinant of a wide range of educational outcomes for elementary and high school students").

129. See Samuel Bowles & Herbert Gintis, *Does Schooling Raise Earnings by Making People Smarter*, in MERITOCRACY AND ECONOMIC INEQUALITY, *supra* note 15, at 118, 118-124; Schultz, *supra* note 100, at 313.

130. In the following Sections, references to the education-earnings relationship should be understood to refer to the differential payoff of elite college education by student socioeconomic status.

131. JEANNIE OAKES, KEEPING TRACK: HOW SCHOOLS STRUCTURE INEQUALITY 7-8 (1985). For other treatments of tracking, see, e.g., TOM LOVELESS, THE TRACKING AND ABILITY GROUPING DEBATE *passim* (Thomas B. Fordham Found., Fordham Report No. 8, 1998), <http://www.edexcellence.net/library/track.html> (on file with the North Carolina Law Review); Susan A. Olsen, *Detracking Helps At-Risk Students*, EDUC. WK., June 11, 1997, http://www.edweek.org/ew/ew_printstory.cfm?slug=37olsen.h16 (on file with the North Carolina Law Review); Debra Viadero, *On the Wrong Track?*, EDUC. WK., Sept. 23, 1998, at 27, http://www.edweek.org/ew/ew_printstory.cfm?slug=07track.h18 (on file with the North Carolina Law Review).

132. BECKER, *supra* note 118, at 7-21; JACOB MINCER, SCHOOLING, EXPERIENCE, AND EARNINGS 101-02 (1974); Bowles & Gintis, *supra* note 129, at 118-124; see *infra* note 139 (reviewing the conclusion that subsequent performance of higher-achieving students is not significantly diminished in a heterogeneous groups, but the performance of initially lower-achieving students is substantially improved in such groups).

133. See, e.g., Sen, *supra* note 15, at 7-8.

134. For a discussion of the relation of incentives and admissions policies, see Coate &

reward is *either* too likely *or* too unlikely.¹³⁵ Thus, the incentive effects of a relative, as opposed to absolute, achievement criterion is difficult to estimate in the abstract. The incentive effects are indeterminate for low and high socioeconomic status students alike. For example, a relative achievement approach might undermine incentives for some high socioeconomic status students (e.g., the lower-achieving members of the group) and enhance incentives for others (e.g., the highest-achieving students). I think it most likely, however, that the relative achievement approach would, on the whole, enhance incentives for low socioeconomic status students and undermine incentives for higher socioeconomic status students. Yet, it is difficult to estimate the comparative magnitudes of these two shifts.

b. Signaling-Filtering

In the signaling-filtering model, productive efficiency depends on the extent to which schools sort on the basis of what employers value.¹³⁶ A change in the socioeconomic profile of the student population would have no effect on the accuracy of the signal, but a change in the achievement level might. The magnitude of the loss of accuracy would depend on the composition of the signal. A decrement in the achievement profile of the student population might weaken the correspondence between admissions criteria and what employers value, lessening the efficiency of the sorting process.

Two factors, however, weigh against this conclusion and suggest that the signal may be less sensitive to changes in the admissions process. First, even the most selective colleges seek to further a variety of goals through the admissions process and admit students on numerous bases other than probable future performance.¹³⁷ The high value of diplomas from such schools suggests that the process

Loury, *supra* note 39, at 1225 (noting that decisions regarding human capital investment depend on the value of the reward and the change in probability of receiving the reward as a result of the investment).

135. *See id.* at 1231.

136. The effect on the absolute achievement level of admitted students, rather than their socioeconomic status, is relevant here, as most employers likely seek employees with particular skills and use educational attainment as a proxy for possession of those skills. The relative achievement approach's lowering of socioeconomic status is probably irrelevant to this model, except to the extent that an employer's profile of a desired employee involves traits associated with socioeconomic class rather than cognitive abilities or technical skills, and the extent to which cognitive ability is a function of class.

137. *See, e.g.,* DEREK BOK, HIGHER LEARNING 4-7 (1986) (describing several values and functions of the university).

can tolerate a fair amount of noise before the signal becomes impaired. Second, the signal results not only from the admissions decision, but also from the student's academic performance and other activities during college.¹³⁸ Employers use grades as a means of comparing students within any given institution.¹³⁹ Overall, it is not clear that there would be any net loss in the strength of the signal provided by both admissions policies and grading processes.¹⁴⁰

c. Social Capital-Networking

Under the social capital-networking model, a change in the absolute achievement profile of the student population would not affect the education-earnings relationship. A lowered aggregate achievement level would have no effect on the education-earnings relationship because the benefits of a selective university stem largely from the socioeconomic characteristics of the school's student population and alumni.

The social capital benefit to an individual student would be inversely related to the student's socioeconomic status. But the low status students who stand to benefit most would also diminish the value of the benefit available for others. Lower socioeconomic status students would benefit the most individually, but an entire class of low socioeconomic status students would have the least benefit to offer.

* * * * *

Although there is empirical evidence tending to support each of these three models,¹⁴¹ the human capital model represents the

138. For evidence that college grades are positively related to earnings outcome, see generally DALE & KRUEGER, *supra* note 107 (finding that class rank correlates to future earnings); Lounsbury & Garman, *supra* note 107 (finding a positive correlation between college grade point average and later earnings); see also Arrow, *supra* note 119, at 195 (noting that "colleges serve really as a double filter, once in selecting entrants, and once in passing or failing students").

139. There is, of course, no direct evidence of the effect of alternative absolute achievement profiles of a student population on aggregate subsequent achievement. The same sort of issue, however, has been studied in the context of primary and secondary schools, in the form of an analysis of the effects of ability tracking. Ability tracking groups students by achievement level; the alternative, de-tracking or non-tracking, creates heterogeneous achievement groupings. While not all researchers agree, the general finding of this literature is that the subsequent performance of higher-achieving students is not significantly diminished by heterogeneous grouping, while the performance of initially lower-achieving students is substantially improved. The groundbreaking work in the field was undertaken by Jeannie Oakes. See OAKES, *supra* note 131, *passim*.

140. Arrow, *supra* note 119, at 195-98.

141. See Mayer, *supra* note 106, at 4-12; see also David Jaeger & Marianne Page,

dominant approach and has attracted the most empirical support.¹⁴² The human capital model also best reflects universities' understandings of the effect of elite college education on students' subsequent earnings and societal productivity.

Under any of the models, however, there is a reasonably strong case for some of the relative achievement approach. It is difficult to say what degree of change in class composition would be necessary to constitute a persuasive case against the relative achievement approach. Most importantly, none of the models offers much justification for rigid adherence to the absolute achievement criterion.

IV. RACIAL OUTCOMES OF CLASS-BASED ADMISSIONS

In this Part, I first sketch the sort of variables that the relative achievement approach might incorporate and then explain why that formulation of socioeconomic status would likely produce a significant amount of racial diversity among admitted students. I do not describe the relative achievement approach or its likely outcomes in great detail. The goal, rather, is to frame the inquiry.

A. *Socioeconomic Status as Resource Availability*

The justifications for class-based admissions, particularly the deservingness rationale, suggest that socioeconomic status should be formulated broadly so as to account for environmental disparities that might influence early academic achievement.¹⁴³ Because the

Degrees Matter: New Evidence on Sheepskin Effects in the Returns to Education, 78 REV. EDUC. STAT. 733, 738 (1996) (concluding, based on statistical analysis of census data, that degree receipt influences subsequent earnings—a finding that supports the signaling theory of the education-earnings relationship). For an earlier study, with a similar finding, see Thomas Hungerford & Gary Solon, *Sheepskin Effects in the Returns to Education*, 69 REV. EDUC. STAT. 175, 175–77 (1987). The currently available studies do not unequivocally support either of the alternative explanations of the education-earnings relationship. The methodological challenges of such analyses are immense. One challenge is to disentangle individual versus institutional contributions to outcomes. Higher ability students are concentrated at higher status schools, which are perceived to offer higher quality education. The difficulties of separating out school effects and individual effects are further complicated by the lack of reliable independently valid measures of school quality, individual ability, or other performance-related individual characteristics.

142. See, e.g., BOWEN & BOK, *supra* note 36, at 55 (discussing diploma/sheepskin effects); Cawley et al., *supra* note 106, at 230 (describing the empirical support for the human capital model); Mayer, *supra* note 106, at 4–5 (same).

143. The deservingness and productivity rationales might produce different sorts of admissions policies. Whereas deservingness might weigh in favor of a policy that takes account of all environmental factors that depressed achievement, the productivity

category of achievement-related resources encompasses far more than parental income, the relative achievement approach relies on a broad rather than narrow conception of socioeconomic status.¹⁴⁴ Differential access to achievement-related resources may occur at the level of a child's family, school, or neighborhood.

The relative achievement formulation of socioeconomic status would encompass family characteristics such as parental income, education, occupation, and wealth.¹⁴⁵ A variety of studies have demonstrated positive relationships between early academic achievement and parental income, education, and occupation.¹⁴⁶ Wealth, a relatively recent addition to the lexicon of inequality, has

rationale would warrant consideration of those factors that depress performance only to the extent that the depressed performance could be remediated by elite college education. The extent to which depressed performance is remediable by elite college education may depend on the environmental cause of the diminished performance. In this analysis I do not consider this distinction, primarily because I would have no basis on which to apply it intelligently.

144. Cf. Fallon, *supra* note 15, at 817-18 (noting the argument that merit systems should compensate for inequality in social distribution of benefits and opportunities); Malamud, *Lessons and Caveats*, *supra* note 9, at 1898-900 (recommending the development of a complex metric to measure economic status for the purpose of class-based affirmative action).

145. A number of scholars have focused on wealth as a measure of inequality. See, e.g., ANDREW HACKER, *MONEY: WHO HAS HOW MUCH AND WHY* 145-72 (1997); Martha E. Gimenez et al., *Considerations on Wealth, Class, and Race*, 23 *CRIT. SOC.* 105, 114-16 (1997); S.M. Miller, *Ill Fares the Land: The Wealth of a Nation*, 29 *SOC. POL'Y* 47, 51-52 (1999); John C. Weicher, *The Rich and the Poor: Demographics of the U.S. Wealth Distribution*, FED. RESERVE BANK ST. LOUIS REV., July-Aug. 1997, at 25, 25. Richard Kahlenberg considers these factors as part of his formulation of class. See KAHLENBERG, *supra* note 1, at 83-152.

146. June Axinn et al., *The Effects of Parents' Income, Wealth, and Attitudes on Children's Completed Schooling and Self-Esteem*, in *CONSEQUENCES OF GROWING UP POOR* 518, 538-39 (Greg J. Duncan & Jeanne Brooks-Gunn eds., 1997); Martha S. Hill & Greg J. Duncan, *Parental Family Income and Socioeconomic Attainment of Children*, 16 *SOC. SCI. RES.* 39, 39-66 (1987); Martin E. Orland, *Demographics of Disadvantage: Intensity of Childhood Poverty and its Relation to Educational Achievement*, in *ACCESS TO KNOWLEDGE* 43, 50-54 (John I. Goodlad & Pamela Keating eds., 1990). Not all researchers agree that parental income, education, or occupation are the causal influences on children's achievement. E.g., SUSAN E. MAYER, *WHAT MONEY CAN'T BUY* 2-3 (1997) (arguing that parental income is not as important for children's outcome as commonly thought, and that parental income *appears* to matter because it correlates with other characteristics that do matter). Some researchers contend that parental characteristics and children's achievement correlate because they result from innate ability or some inborn quality that parents transmit to children. See generally RICHARD J. HERRNSTEIN & CHARLES MURRAY, *THE BELL CURVE: INTELLIGENCE AND CLASS STRUCTURE IN AMERICAN LIFE* (1994) (claiming that racial group disparities in innate ability account for observed racial group differences in academic performance).

not been studied as extensively as the more traditional indicators of economic status.¹⁴⁷

Conceptually, wealth might bear a contradictory relation to early academic achievement. On one hand, wealth's dependence on inter-generational transfer might represent the accumulation of achievement-related resources not otherwise reflected in traditional indicators of socioeconomic status. On the other hand, wealth might constitute forgone opportunities to invest in a child's education and intellectual growth, as parents choose to develop one sort of capital rather than another. Recent studies suggest, however, that parental wealth might positively influence children's educational outcomes net of the effect of parental income, education, or occupation.¹⁴⁸

The same type of characteristics considered at the family level would also be considered at the school and neighborhood levels. A variety of empirical studies confirm that neighborhood socioeconomic characteristics,¹⁴⁹ as well as peer characteristics and school composition, influence early academic achievement.¹⁵⁰ Other school and community characteristics may be relevant as well.¹⁵¹

147. See Lee A. Lillard, *Inequality: Earnings vs. Human Wealth*, 67 AM. ECON. REV. 42, 42-52 (1977) (noting that income inequality has been an issue of continuing interest to economists, while researchers have begun to examine wealth inequality more recently).

148. See DALTON CONLEY, BEING BLACK, LIVING IN THE RED: RACE, WEALTH, AND SOCIAL POLICY IN AMERICA 57-65 (1999) (describing the variety of ways in which wealth might influence educational outcomes, net of the effect of parental income, education, or occupation).

149. See, e.g., Jeanne Brooks-Gunn et al., *Do Neighborhoods Influence Child and Adolescent Development?*, 99 AM. J. SOC. 353, 374-77 (1993) (finding that after adjusting for family economic status, children's IQ and other attributes are affected by neighborhood characteristics, particularly affluent neighbors); Mary Corcoran et al., *Association Between Men's Economic Status and Their Family and Community Origins*, 27 J. HUM. RESOURCES 575, 575-77 (1992) (finding that men's economic outcomes are influenced by family and community variables); Linda Datcher, *Effects of Community and Family Background on Achievement*, 64 REV. ED. STAT. 32, 32 (1982) (finding that achievement is positively related to family background and community resources); Sanford Dornbusch, *Community Influences on the Relation of Family Statuses to Adolescent School Performance: Differences Between African-Americans and Non-Hispanic Whites*, 99 AM. J. EDUC. 543, 543 (1991) (finding that community socioeconomic status was the only factor related to grade point average for both blacks and whites in a study of high school students); Catherine L. Garner & Stephen W. Raudenbush, *Neighborhood Effects on Educational Attainment: A Multilevel Analysis*, 64 SOC. EDUC. 251, 260 (1996) (stating that neighborhoods shape achievement, even when controlling for individual and family variables).

150. See, e.g., Stephen J. Caldas & Carl Bankston III, *Effect of School Population Socioeconomic Status on Individual Academic Achievement*, 90 J. EDUC. RES. 269, 274-75 (1997) (finding that peer family social status has a substantive effect on academic achievement); Nancy A. Gonzales et al., *Family, Peer, and Neighborhood Influences On Academic Achievement Among African-American Adolescents: One-Year Prospective*

This brief discussion of components of the relative achievement approach highlights a conceptual as well as practical difficulty. The goal of accounting for achievement-related resource disparities warrants consideration of variables far beyond the typical components of socioeconomic status. But how far should this consideration extend? Indeed, a dazzling array of variables might conceivably be incorporated.¹⁵² What of the neglected child of affluent, well educated parents? Or the child caught in his divorced parents' tug-of-war? Should such circumstances, which do likely influence early academic achievement, enter the relative achievement calculus?

Where and how to draw the line is a difficult question. The conceptual problem reintroduces the social determinism conundrum from Part II. If enough environmental factors are considered then, at the extreme, each applicant will belong to a category of one. Individual differences will fade into the melange of environmental influences.

I think at least two practical considerations are relevant to that determination. First is the issue of measurability. Objective variables are preferable to subjective variables. Second is the issue of manipulability. Some factors are more prone to applicant manipulation or misrepresentation than others.¹⁵³ For example, an applicant might more readily claim (falsely) that his parents

Effects, 24 AM. J. COMM. PSYCH. 365, 366 (1996) (suggesting that peer and neighborhood context are more powerful determinants of school performance for African-American adolescents than the immediate family); Esther Ho Sui-Cho & J. Douglas Willms, *Effects of Parental Involvement on Eighth-Grade Achievement*, 69 SOC. EDUC. 126, 138 (1996) (concluding that findings from a study of middle school students "suggest the SES of a school had an effect on achievement that was comparable to the effects associated with the SES of a family").

151. For example the prevalence of receipt of Aid to Families with Dependent Children, the percentage of single parent families, and the percentage of residents who own their own homes may contribute to a fuller measure of resource availability.

152. The effect of various environmental factors on academic achievement is the subject of substantial scholarly inquiry. See, e.g., Duane F. Alwin, *Family Size and Achievement*, SCIENCE, July 1998, at 199, 199-200 (linking low achievement to family size, which is in turn related to socioeconomic disadvantage); Carol S. Cash et al., *Environment Tied to Successful Learning*, 36 SCH. PLAN. & MGMT. 12, 12-13 (1997) (linking poor academic achievement to substandard school building condition).

153. See, e.g., Kenneth R. Weiss, *Making an Art of the Sob Story*, L.A. TIMES, Dec. 16, 1999, at A1 (discussing the personal tragedies recounted in application essays for University of California campuses as applicants attempt to gain points for having surmounted obstacles); see also Tom Hayden & Connie Rice, *California Cracks its Mortarboards*, NATION, Sept. 18, 1995, at 264, 265 (opining that the focus on disadvantage will cause applicants to "parade . . . 'dysfunctions' in an effort to be considered for campuses they are fully qualified to attend").

neglected him than (also falsely) that his school did not offer advanced placement courses or that his parents worked blue-collar jobs. These two practical concerns—measurability and manipulability—should guide selection of variables, but there will be many variables with respect to which there is no single sensible resolution.

Whatever the variables embodied in the relative achievement approach, socioeconomic considerations should apply to the entire applicant pool. The rationale for the relative achievement approach is that environmental factors may influence the early academic achievement of the entire range of applicants, not simply those below some socioeconomic threshold.

B. Racial Diversity and Class-Based Admissions

A number of scholars have characterized class-based admissions policies as incapable of producing substantial racial diversity among admitted students.¹⁵⁴ The common form of the racial diversity critique is that class-based approaches produce minimal racial diversity because even though black applicants, for example, are more likely than white applicants to be low-income, there are many more low-income white applicants than black applicants.¹⁵⁵ Moreover, because academic achievement differs by race even among low-income students, a disproportionately small percentage of high-achieving low-income students are black.¹⁵⁶ Thus, one analyst concludes, under a class-based admissions policy, for each low-

154. Gary Orfield, *Campus Resegregation and its Alternatives*, in CHILLING ADMISSIONS, *supra* note 9, at 7–16 (emphasizing that class-based policies cannot substitute for race-based affirmative action); Malamud, *Assessing Class-Based Affirmative Action*, *supra* note 9, at 465 (cautioning that whites will be the likely beneficiaries of class-based affirmative action).

155. Orfield, *supra* note 154, at 9 (observing that “[m]ost poor people in the United States are neither black nor Latino” and explaining that “a ranking of students below the poverty line by their test scores would result in a pool of favored applicants that was mostly Asian and white”); Wightman, *supra* note 9, at 39–45 (concluding empirically that socioeconomic status is an inadequate surrogate for race because it creates problems of academic preparedness and perceived fairness among minority applicants). Malamud, *Assessing Class-Based Affirmative Action*, *supra* note 9, at 465 (observing that “[m]ost of the poverty-based affirmative action slots will go to whites, by simple force of numbers”).

156. Thomas J. Kane, *Misconceptions in the Debate over Affirmative Action in College Admissions*, in CHILLING ADMISSIONS, *supra* note 9, at 17, 24–26; Karabel, *supra* note 9, at 37–38; see also Michael T. Nettles et al., *Race and Testing in College Admissions*, in CHILLING ADMISSIONS, *supra* note 9, at 97, 105 (observing that “a smaller percentage of African Americans and Hispanics fall into the high end of the [standardized test] score distribution than of whites and Asians”).

income black student admitted, a school would need to admit as many as six low-income white students.¹⁵⁷

This argument sensibly rebuts the simplistic view that because blacks, for example, are disproportionately low-income, an income-based admissions policy would disproportionately benefit blacks, perhaps to the point of substituting for race-based affirmative action. As Jerome Karabel astutely observes: “[R]acial and ethnic differences remain large, even controlling for income. Indeed, a careful look at the SAT data reveals that racial differences are actually larger among the low-income students who would be the primary targets of a policy emphasizing class.”¹⁵⁸ Karabel then describes the drastic declines in racial diversity among entering law and medical school classes at the University of California campuses after the prohibition of affirmative action.¹⁵⁹

This critique, however, overlooks the significance of both the formulation and the application of the socioeconomic status factor. While narrow formulations of socioeconomic status (e.g., income) that are narrowly applied (i.e., to only a small subset of students below some income threshold) will admittedly produce minimal racial diversity, the relative achievement approach’s broad measure of socioeconomic status applied to the entire applicant pool would produce substantial racial diversity.

The broad measure of socioeconomic status would significantly alter the relative rankings of students from different racial groups because it would more fully capture the resource disparities associated with race than would an income-based conception of socioeconomic status. The group of high-scoring, low socioeconomic status students is overwhelmingly white, but only when socioeconomic status is defined in terms of income—a common measure of socioeconomic status,¹⁶⁰ but an inadequately narrow one

157. Kane, *supra* note 156, at 24–25.

158. Karabel, *supra* note 9, at 37–38.

159. *Id.* at 40–45; see also Deborah C. Malamud, *A Response to Professor Sander*, 47 J. LEGAL EDUC. 504, 504 (1997) (pointing out the drastic decrease in black enrollment at UCLA after it replaced race-based affirmative action with a class-based program). Karabel charts the decline in racial diversity without considering the potential effect of class-based admissions or the fact that after the prohibition of affirmative action, the University of California campuses became extremely unattractive to prospective applicants compared to other schools that continued to rely on race-based affirmative action. Thus, the racial diversity effect of ending affirmative in the University of California system, while maintaining it in private schools as well as in many public universities in other states, probably overstates the loss of diversity if affirmative action were prohibited nationwide.

160. See, e.g., Sammis B. White et al., *Socioeconomic Status and Achievement*

if the goal is to account for resource disparities that influence early achievement.

The components of a broader measure of socioeconomic status that would most increase racial diversity are family wealth¹⁶¹ and the socioeconomic characteristics of one's neighborhood and school¹⁶²—both of which differ dramatically by race, even when traditional measures of socioeconomic status such as family income and parental education are held constant.¹⁶³ Both factors do far more than simply compound the inequality manifested by family income or parental education.¹⁶⁴ Rather, analyses of both wealth-holding and

Revisited, 28 URB. EDUC. 328, 330–31 (1993) (listing definitions of “socioeconomic status” used in several earlier studies with family income as a common factor); White, *supra* note 88, at 461 (measuring socioeconomic status as a function of income, education, and occupation).

161. Racial differences in wealth are phenomenal, even controlling for other components of socioeconomic status. See CONLEY, *supra* note 148, *passim*; MELVIN L. OLIVER & THOMAS M. SHAPIRO, BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY *passim* (1995). Racial wealth differences aside, a number of scholars have recently begun to focus on wealth as a measure of inequality. See HACKER, *supra* note 145, at 145–72; Gimenez et al., *supra* note 145, at 114–16; Miller, *supra* note 145, at 47–49; Weicher, *supra* note 145, at 25.

162. Wealth and neighborhood characteristics would likely be correlated, but they are conceptually distinct. For example, part of the significance of racial segregation is that even blacks and whites of nearly comparable wealth holdings are likely to live in very different types of neighborhoods.

163. See CONLEY, *supra* note 148, at 1. Based on my review of the literature, the UCLA law school admissions program best analyzes the effect of both wealth and neighborhood characteristics on the racial composition of the rank order of applicants. The UCLA program takes account of neighborhood socioeconomic status through the use of census tract data, which is widely available and which represents a small enough unit of analysis to meaningfully capture neighborhood differences. Sander, *supra* note 3, at 482. As the experience under the UCLA admissions model indicates, the inclusion of neighborhood socioeconomic status variables alters the racial composition of the rank order of applicants. *Id.* at 473. Specifically, more racial minorities would likely be admitted with the consideration of neighborhood characteristics than without such consideration. UCLA's innovative and admirable admissions program comes closest to examining the racial effect of consideration of applicants' family wealth. *Id.* That is, the program designers chose a method of statistical representation that largely nullified differences in wealth. See *id.* at 486.

164. See Meredith Phillips et al., *Family Background, Parenting Practices, and the Black-White Test Score Gap*, in THE BLACK-WHITE TEST SCORE GAP, *supra* note 108, at 103, 130–31 (observing that “large racial differences in neighborhood poverty do suggest that traditional measures of socioeconomic status understate the difference between black and white children's environments”). Wealth certainly does exacerbate inequality as reflected in comparisons of family income and education levels. Wealth varies by income and educational level in the expected fashion for both whites and blacks. Those with higher incomes and more education typically also possess more wealth. See OLIVER & SHAPIRO, *supra* note 161, at 73–75 (exploring the general connection between wealth and income). Whites are more likely than blacks to have high income and educational levels. Thus, wealth reinforces the inequality manifested by racial disparities in income and

neighborhood (and school) characteristics reveal *a qualitatively different pattern of racial inequality*.

Controlling for income, education, and even family background, wealth is in large measure a function of race.¹⁶⁵ Differential wealth-holding by race is not an artifact of the differing demographic profiles of blacks and whites. For example, middle class blacks hold dramatically less wealth than whites with comparable education and income.¹⁶⁶ Low socioeconomic status whites, as measured by education and income, have a wealth-holding comparable to many middle class blacks.¹⁶⁷ Racial differences in wealth-holding even among ostensibly comparable socioeconomic groups are astoundingly large. The magnitude of the change in racial diversity produced by consideration of wealth could be substantial. Research has begun to demonstrate that racial differences in important educational outcomes such as high school graduation and college completion partially disappear when the analysis controls for wealth in addition to other socioeconomic factors.¹⁶⁸

As with wealth-holding, an examination of neighborhood and school characteristics reveals a distinct pattern of racial inequality that would be obscured by comparisons of family income and parental education alone.¹⁶⁹ As a consequence of racial segregation,

education. *Id.* at 110–11 (comparing the effect of education on the wealth of blacks and whites).

165. See, e.g., *Racial Wealth Gap Revealed*, OAKLAND POST (Cal.), Dec. 15, 1999, at 1, <http://www.softlineweb.com/softlineweb/ethnic.htm> (on file with the North Carolina Law Review) (describing a study detailing racial disparities in wealth holding).

166. OLIVER & SHAPIRO, *supra* note 161, at 110. Black families hold less than one-half the wealth of whites in similar income brackets. *Id.* Even at comparable education levels, black individuals possess less wealth than white individuals. *Id.* For example, blacks who have earned a baccalaureate degree possess only twenty-three cents of wealth for every dollar owned by similarly educated white individuals. *Id.*

167. See *id.* at 100 (stating that the black middle class owns fifteen cents for every dollar owned by the white middle class, placing the wealth of the blacks at this socioeconomic level closer to that of whites at lower levels); see also CHUCK COLLINS ET AL., *SHIFTING FORTUNES: THE PERILS OF THE GROWING AMERICAN WEALTH GAP* 55 (1999) (finding in 1995 that the typical wealth of white households was \$18,000, black households \$200, and Hispanic households \$0).

168. CONLEY, *supra* note 148, at 68–79 (explaining that commonly observed racial differences in educational outcomes stem largely from socioeconomic factors rather than from race per se); Phillips et al., *supra* note 164, at 138 (concluding that although traditional measures of socioeconomic status explain only one-third of the test score gap between black and white children, a broader index of family environment explains two-thirds of that gap).

169. If neighborhood socioeconomic status merely reflected a family's income and education, then neighborhood influences would compound disadvantage but would generate no distinct pattern of disadvantage. Poorly educated, low-income families, white

blacks and whites of comparable family characteristics neither live in comparable neighborhoods,¹⁷⁰ nor attend similar schools.¹⁷¹ Notwithstanding the demise of de jure racial segregation in education¹⁷² and the enactment of federal laws that proscribe a wide range of racially discriminatory housing practices,¹⁷³ both educational segregation¹⁷⁴ and residential segregation¹⁷⁵ are widespread. Racial segregation produces a segregation of achievement-related resources on the basis of race, even controlling for family income and education.¹⁷⁶ Racial segregation disadvantages blacks relative to whites at every level of income and education.¹⁷⁷

The racially redistributive effect of the relative achievement approach would be further enhanced by the application of the socioeconomic status factor to the entire applicant pool. Considering the socioeconomic status of only a small subset of applicants judged

or black, would be cumulatively disadvantaged by their resource-poor community. Well educated, affluent families, white or black, would be cumulatively advantaged by their resource-rich community. A measure of neighborhood socioeconomic status would primarily reveal differences in the *magnitude* of inequality among income- and education-defined socioeconomic classes and among races, but it would not reveal a distinctly racial pattern of inequality.

170. See DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* 151–53 (1993) (describing inequalities between black and white neighborhoods regardless of affluence); OLIVER & SHAPIRO, *supra* note 161, at 152 (stating that in comparison to affluent whites, affluent blacks are much more likely to live in neighborhoods where the percentage of births to unwed mothers are higher, median house values are lower, and the percentage of students scoring below the fifteenth percentile on achievement tests in local high schools are higher).

171. See generally CHILLING ADMISSIONS, *supra* note 9 (discussing issues involving race and education).

172. See *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954) (declaring de jure segregation unconstitutional).

173. See, e.g., Fair Housing Act, 42 U.S.C. §§ 3601–3631 (1994 & Supp. IV 1998) (prohibiting discrimination in a sale or lease of residential property).

174. See generally CHILLING ADMISSIONS, *supra* note 9 (examining how different factors affect race and education).

175. See generally MASSEY & DENTON, *supra* note 170, at 78–79 (describing the persistence of black residential segregation); OLIVER & SHAPIRO, *supra* note 161, at 91 (stating that residential segregation may be attributed to de facto segregation stemming from the reluctance of blacks to integrate themselves into predominantly white communities because of fear of violent racial crimes or harassment).

176. See, e.g., MASSEY & DENTON, *supra* note 170, at 152; Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1843, 1850–53 (1994).

177. MASSEY & DENTON, *supra* note 170, at viii (noting that “racial residential segregation is the principle structural feature of American society responsible for the perpetuation of urban poverty and represents a primary cause of racial inequality”).

to be “disadvantaged”¹⁷⁸ necessarily limits the effect of a class-based admissions policy. The grades and test scores of only a small number of students would be adjusted. In contrast, applying socioeconomic considerations to the entire applicant pool might readjust the grades and test scores of every applicant, except those at the very upper end of the socioeconomic distribution.

CONCLUSION

This Article has challenged and countered the prevailing assumption that class-based admissions policies both undermine meritocratic values and necessarily fail to produce racially diverse outcomes.¹⁷⁹ The relative achievement approach is as consistent with the meritocratic principles of individual desert and productive efficiency as is the prevailing absolute achievement standard. A sophisticated measure of socioeconomic status that is applied to an entire applicant pool may yield substantially more racial diversity than typically thought.

The implications of the argument extend beyond the admissions debate. Although race-blind, the relative achievement approach furthers racial equality goals. And it does so in a manner that exposes the pervasive race-linked inequalities concealed by facile comparisons of blacks and whites of comparable income and education levels. Inequalities on the basis of race are expressed through disparities in resources.¹⁸⁰ The relative achievement approach helps to reveal the extent and expression of racial inequality, if not the full range of its mechanisms.¹⁸¹

* * * * *

Debate about class-based admissions policies has arisen partly in response to the prohibition of race-based affirmative action.¹⁸² My

178. See, e.g., KAHLBERG, *supra* note 1, at 123–24 (favoring a class-based preference in school admissions for “economically disadvantaged” applicants).

179. For an analysis that similarly challenges widespread and uncritically accepted assumptions, albeit in a different context, see R. Richard Banks, *The Color of Desire: Fulfilling Adoptive Parents’ Racial Preferences Through Discriminatory State Action*, 107 YALE L.J. 875, 896–913 (1998).

180. CONLEY, *supra* note 148, at 68–79.

181. Analysis of the socioeconomic dimensions of racial inequality does not, of course, explain the origins of racial inequality. It provides no account of how race and socioeconomic inequality melded initially. There are a number of outstanding analyses of this issue. See, e.g., MASSEY & DENTON, *supra* note 170, *passim*; DAVID R. ROEDIGER, *THE WAGES OF WHITENESS: RACE AND THE MAKING OF THE AMERICAN WORKING CLASS* *passim* (1991).

182. See Kane, *supra* note 156, at 24 (noting that class based policies have arisen as the support for or permissibility of race-based affirmative action has declined); Orfield, *supra*

support of class-based policies is not conditional on the continued prohibition of race-based policies.¹⁸³ The relative achievement approach would be desirable, for the reasons put forth in this Article, irrespective of the permissibility of race-based affirmative action.

Yet the relative achievement approach bears a contradictory relationship to race-based affirmative action. Formally, the implementation of the relative achievement approach would neither preclude nor compel race-based affirmative action. Yet the relative achievement approach would make race-based affirmative action less necessary by partly realizing the goal of racial inclusion.¹⁸⁴ Paradoxically, the relative achievement approach also underscores the need for race-based affirmative action by dramatizing the extent and depth of racial inequality.¹⁸⁵ The potential racial outcomes of the relative achievement approach rebut the common criticism of race-based affirmative action as primarily aiding advantaged racial minorities. Black affirmative action beneficiaries, although perhaps relatively advantaged compared to other blacks, are likely not to be as socioeconomically advantaged as superficial indicators of socioeconomic status would indicate. In sum, the relative achievement approach builds the case for efforts to include disadvantaged racial minorities, even as it renders race-specific policies less essential to the furtherance of that goal. It both suggests the efficacy of class-based policies and affirms the need for attention to racial inequality.

note 154, at 4–9 (noting same); Kathleen M. Sullivan, *After Affirmative Action*, 59 OHIO ST. L.J. 1039, 1041–44 (1998) (considering the implications of eliminating race altogether as a preference in admission decisions).

183. Race-based admissions policies have been judicially invalidated in Texas and Michigan. *Hopwood v. Texas*, 78 F.3d 932, 934–35 (5th Cir. 1996); *Gratz v. Bollinger*, No. 97-CV-75231-DT, 2001 U.S. Dist. LEXIS 4457, at *34–35 (E.D. Mich. Feb. 26, 2001); *Grutter v. Bollinger*, No. 97-CV-75928-DT, 2001 U.S. Dist. LEXIS 3256, at *151–53 (E.D. Mich. Mar. 27, 2001), *stay granted*, 2001 FED App. 0103P, 2001 U.S. App. LEXIS 5606 (6th Cir. Apr. 5, 2001). Race-based affirmative action has been discontinued by ballot initiative in California, Washington, and Florida. See Sullivan, *supra* note 182, at 1041 (noting the approval of Proposition 209, which banned racial preferences in education and other public programs in California); Thomas J. Bray, *Initiative 200 Headed for Michigan?*, DETROIT NEWS, Nov. 18, 1998, at B11, <http://detnews.com/EDITPAGE/9811/15/bray/bray.htm> (on file with the North Carolina Law Review) (discussing the ballot initiative banning affirmative action in Washington).

184. The relative achievement approach, by potentially increasing the number of a school's racial minority students, may indirectly diminish the persuasiveness or urgency of calls for affirmative action. The less dire the racial consequences of not having race-based affirmative action, the less compelling the need for such a program may seem.

185. See *supra* Part IV.

