# DIVERSITY ENTITLEMENT: DOES DIVERSITY-BENEFITS IDEOLOGY UNDERMINE INCLUSION?

*Kyneshawau Hurd & Victoria C. Plaut*

**ABSTRACT**—Ideologies are most successful (or most dangerous) when they become common sense—when they become widely accepted, taken-for-granted truths—because these truths subsequently provide implicit guidelines and expectations about what is moral, legitimate, and necessary in our society. In *Regents of University of California v. Bakke*, the Court, without a majority opinion, considered and dismissed all but one of several "common-sense" rationales for affirmative action in admissions. While eschewing rationales that focused on addressing discrimination and underrepresentation, the Court found that allowing all students to *obtain the educational benefits that flow from diversity* was a compelling rationale—essential, even, for a quality education. Although ostensibly pro-diversity, this rationale positioned diversity as conditional on the educational benefit to the student body as a whole, including white students. Armed with social science evidence, subsequent affirmative action jurisprudence in *Grutter* and *Fisher* reinforced this rationale. While these cases proved favorable to affirmative action, the reasoning surrounding the benefits of diversity may prove deleterious to inclusion efforts in the long run.

In this Essay, we first review the intellectual history of "diversity-benefits" ideology in these key affirmative action cases, focusing on the recruitment of social science by litigants, amici, and the Court. We focus on how these legal actors have used social science to construct a view of diversity as a benefit to all, including dominant groups. In contrast, we note that the impact of discrimination and lack of diversity on historically marginalized groups has been largely, though not entirely, absent from this social science literature. We then examine the interracial contact framework that pervades the diversity-benefits literature, arguing that this approach is psychologically one-sided in that it focuses more on the benefits Whites receive from diversity than on how nondominant groups experience diversity. Moreover, because diversity-benefits ideology positions Whites as key beneficiaries, it could create a sense of entitlement to diversity. We explain that while it appeals to egalitarian sensibilities, it can simultaneously appeal to Whites' psychological desires to maintain their position at the top

of the social hierarchy. Finally, we discuss an experiment we conducted to examine how four rationales based on those in *Bakke* affect policy support. Preliminary results suggest that diversity-benefits language may lead Whites to support policies that center benefits to white students more than policies tailored for nondominant racial groups. Furthermore, the study provides initial support for the role that egalitarianism and preference for racial hierarchy together can play in cultivating a common-sense entitlement to diversity.

INTRODUCTION

Not long ago, the authors of this Essay learned of a white student at a large university who expressed his disappointment that his classes lacked African American students. What made this student's stance stand out was not that he had noticed the drastic underrepresentation of African American students or even his dismay, but rather his explanation: that he had paid for and expected the diversity that an education at this particular institution had promised.

On the one hand, this response may seem surprising to those who recognize that students don't actually pay for, nor are they entitled to, exposure to peers of a certain race. On the other hand, if viewed through the prism of diversity ideology, the student's sentiment is common sense. Ideologies are most successful (or most dangerous) when they become common sense—when they become widely accepted, taken-for-granted truths—because these truths subsequently provide implicit guidelines and expectations about what is moral, legitimate, and even necessary in our society. In this case, the student's sentiment comports with the "common sense" constructed over several decades by Supreme Court rulings on affirmative action, institutions of higher learning enacting diversity policies, and social sciences insisting that diversity is a benefit that enriches the education of all students, and sometimes even especially white students. The student's statement also reflects how people often experience diversity along the dimensions of race and ethnicity; moreover, the focus on African Americans reflects the common association between the concept of diversity and certain racial groups.[1]

We are certainly not the first to draw attention to the commodification of racial identity[2] or the critique of the diversity rationale for affirmative

---

[1] *See, e.g.*, Joyce M. Bell & Douglas Hartmann, *Diversity in Everyday Discourse: The Cultural Ambiguities and Consequences of "Happy Talk"*, 72 AM. SOC. REV. 895, 903–05 (2007) (finding in a four-city study of diversity discourse that "respondents typically define diversity in broad and inclusive terms, but when asked to describe personal experiences with difference, their responses are almost exclusively tied to race"). For a review, see Victoria C. Plaut et al., *New Frontiers in Diversity Research: Conceptions of Diversity and Their Theoretical and Practical Implications*, *in* 1 APA HANDBOOK OF PERSONALITY AND SOCIAL PSYCHOLOGY: ATTITUDES AND SOCIAL COGNITION 593 (Mario Mikulincer & Phillip R. Shaver eds., 2015); Miguel Unzueta & Kevin R. Binning, *Which Racial Groups Are Associated with Diversity?*, 16 CULTURAL DIVERSITY & ETHNIC MINORITY PSYCHOL. 443, 445 (2010) (finding that African Americans and Latinos are most commonly associated with diversity).

[2] *See, e.g.*, Bell & Hartmann, *supra* note 1, at 909 (finding that respondents, and perhaps especially white respondents, understand the benefits of diversity through the lens of cultural consumption and expanded choice and from a white normative center, and highlighting the way in which diversity discourse frames people of color as contributors "to the enrichment of a presumably neutral 'us'"); Nancy Leong, *Racial Capitalism*, 126 HARV. L. REV. 2151 (2013).

action on the basis that it appears to benefit white students.[3] Professor Nancy Leong, for example, has identified a system of racial capitalism, which is spurred in part by affirmative action doctrine, whereby non-Whites are used for their social and economic value.[4] Additionally, Professor Daria Roithmayr has argued that the decision in the affirmative action case *Grutter v. Bollinger* "privileges white interests,"[5] in part because it "focuses on the value" brought by students of color to the classroom.[6]

Our project uses this previous work as a point of departure and asks what the law and psychology together can tell us about the development of the intuition informing the student's expectation of diversity in education—what we call the "common sense" entitlement to diversity, or *diversity entitlement*. In the first part of the Essay, we summarize affirmative action jurisprudence that has promoted a diversity-benefits rationale for the use of race in admissions while eschewing others that acknowledge racial inequality and open the door to remediating discrimination. We turn our lens to social science, uncovering how psychology itself has helped to nourish diversity-benefits ideology. We examine how psychological research has been enshrined in attorneys' arguments, expert testimony of psychologists and other scholars, and amicus briefs submitted by social scientists, including psychologists. At the same time, we acknowledge that social science has also offered up plenty of empirical justification for the very rationales that the Court has systematically dismissed.

In the second part of the Essay, we dive into the psychological and related literatures to describe more fully the burgeoning research that identifies the benefits of diversity and to explain the hegemonic assumptions that have prevailed in this work, namely that contact between groups is experienced in the same way by people of different groups. We stipulate that an analysis is needed of the ways in which ideologies about diversity reflect certain expectations about who will benefit from diversity. We then theorize the psychological mechanisms that animate the diversity entitlement expressed by historically privileged groups (e.g., Whites) who believe they are egalitarian, but still harbor a desire for hierarchy.

In the third part of the Essay, we present a study that represents an initial attempt to empirically capture the effect of diversity-benefits ideology on

---

[3] *See, e.g.*, Daria Roithmayr, *Tacking Left: A Radical Critique of* Grutter, 21 CONST. COMMENT. 191 (2004); David Kow, *The (Un)compelling Interest for Underrepresented Minority Students: Enhancing the Education of White Students Underexposed to Racial Diversity*, 20 BERKELEY LA RAZA L.J. 157 (2010).

[4] Leong, *supra* note 2, at 2153–55.

[5] Roithmayr, *supra* note 3, at 194.

[6] *Id.* at 211.

inclusion-related policy support. We suggest that this preliminary study demonstrates that diversity-benefits ideology can undermine inclusion.

Our Essay illuminates how social science and the Court's use of that social science contributes to certain ideological understandings of diversity. Of course, the Court has not always been friendly to social science. For example, in *McCleskey v. Kemp*, the Court discounted empirical evidence of racial bias in the criminal justice system.[7] In this Essay we examine social science that the Court has weighed more heavily, specifically in its rationale for affirmative action.[8] This research—on the benefits of diversity in higher education—differs from that in *McCleskey* in that it does not focus on discrimination at all. But, as we conclude, the Court's elevation of a diversity-benefits rationale over remedially focused ones is itself symptomatic of the retreat from addressing discrimination and "a fear of too much justice" that plague opinions such as *McCleskey*.[9]

## I. Social Science and Diversity Jurisprudence

In this Part, we trace an intellectual history of the nature of the diversity-benefits ideology in key affirmative action cases in higher education—*Bakke*, *Grutter*, and *Fisher*—in an effort to excavate the Court's vision of diversity and how social science helped construct this vision. Of particular interest to us here are the ways in which social science has figured into advocates' legal strategy, appeared in the Court's reasoning about the purpose of diversity, or represented and perpetuated particular narratives about diversity through amicus briefs.

---

[7] 481 U.S. 279 (1987). For example, the Court argued that empirical evidence presented by Professor David Baldus showing racial disparities was "insufficient to support an inference that . . . decisionmakers . . . acted with discriminatory purpose," *id.* at 297, and suggested that it "[a]t most . . . indicates a discrepancy that appears to correlate with race," *id.* at 312. For further discussion of the Court's use of social science evidence in *McCleskey*, see Russell K. Robinson & David M. Frost, *"Playing It Safe" with Empirical Evidence: Selective Use of Social Science in Supreme Court Cases About Racial Justice and Marriage Equality*, 112 Nw. U. L. Rev. 1565, 1570–72 (2018).

[8] For example, see discussion of the use of social science in *Grutter* in Section I.C., *infra*.

[9] *McCleskey*, 481 U.S. at 339 (Brennan, J., dissenting). The Court's slippery slope argument in *McCleskey* involved a concern that, should McCleskey prevail, discrimination claims would surface for other punishments, and any number of minority groups could claim discrimination. *Id.* at 315–16 (Powell, J., opinion of the Court). It bears noting that Justice Lewis Powell, who had previously penned a key affirmative action opinion, *Bakke*, discussed *infra* Section I.A., cited that opinion's notion of a "nation of minorities" in making the slippery slope argument: "[i]n [*Bakke*], we recognized that the national 'majority' 'is composed of various minority groups, most of which can lay claim to a history of prior discrimination at the hands of the State and private individuals.'" 481 U.S. at 316 n.39. Pointing to the "fear of too much justice" across affirmative action, criminal justice, and marriage equality cases, Robinson and Frost highlight "the Court's preference for affirming civil rights only when doing so will not dismantle entrenched social hierarchies." Robinson & Frost, *supra* note 7, at 1569.

*A.* Bakke

In *Regents of University of California v. Bakke*, Justice Lewis Powell considered and dismissed all but one of several common-sense rationales for using a racial classification in admissions.[10] In his opinion stating the judgment of the Court, Powell entertained the following purposes advanced by the university: 1) "reducing the historic deficit of traditionally disfavored minorities in medical schools and in the medical profession"; 2) "countering the effects of societal discrimination"; 3) "increasing the number of physicians who will practice in communities currently underserved"; and 4) "obtaining the educational benefits that flow from an ethnically diverse student body."[11] In a footnote, Powell also entertained a fifth purpose not advanced by the university: the "fair appraisal of each individual's academic promise in the light of some cultural bias in grading or testing procedures."[12]

Interpreting the purpose of addressing historical underrepresentation of people of color in the field as a preferential scheme, Powell rejected the first rationale on the basis that it was "discrimination for its own sake" and constitutionally forbidden.[13] Although he saw a legitimate interest in remediating discrimination, Powell rejected the second rationale as well on the basis that there had been no "findings of constitutional or statutory violations."[14] Further, he described societal discrimination as "an amorphous concept of injury that may be ageless in its reach into the past."[15] Powell found the third rationale, facilitating health care in underserved communities, to be compelling, but he argued that the university had not proved that racial preference was required to achieve this goal.[16] Regarding the fifth rationale, the one identified by Powell himself, he pointed out that the university had not suggested that its quantitative admissions metrics were biased or that the affirmative action program was designed to address such bias.[17]

Powell did, however, find the attainment of a diverse student body to be a compelling rationale[18]—essential, even, for a quality education.[19] And although each other rationale was ostensibly pro-diversity, only this one

---

[10] 438 U.S. 265 (1978) (Powell, J., opinion announcing the judgment of the Court).

[11] *Id.* at 306 (internal citations and quotation marks omitted).

[12] *Id.* at 306 n.43.

[13] *Id.* at 307.

[14] *Id.* at 307–09 (citations and footnotes omitted).

[15] *Id.* at 307.

[16] *Id.* at 310–11.

[17] *Id.* at 306 n.43.

[18] *Id.* at 311–12.

[19] *Id.* at 312.

positioned diversity as conditional on the educational benefit to the student body as a whole, presumably including the white students who comprised the majority of the student body. Powell's argument rested on the notion that a diverse student body promoted an "atmosphere of 'speculation, experiment and creation'—so essential to the quality of higher education" and that "the 'nation's future depends upon leaders trained through wide exposure' to the ideas and mores of students as diverse as this Nation of many peoples."[20] The diversity rationale appeared to be premised on the value that students of certain backgrounds would bring to the education of the rest of the student body: "An otherwise qualified medical student with a particular background—whether it be ethnic, geographic, culturally advantaged or disadvantaged—may bring to a professional school of medicine experiences, outlooks, and ideas that enrich the training of its student body . . . ."[21] Quoting language from the Harvard College Admissions Program appended to the amicus brief authored by Harvard and other universities and to his opinion, Powell suggested, quite explicitly, that certain students offered something to the college that others could not: "A farm boy from Idaho can bring something to Harvard College that a Bostonian cannot offer. Similarly, a black student can usually bring something that a white person cannot offer . . . ."[22] Further, the Harvard program directly linked educational quality with the presence of these different backgrounds, asserting that "[t]he quality of the educational experience of all the students in Harvard College depends in part on these differences in the background and outlook that students bring with them."[23]

The amicus brief, authored by Columbia University, Harvard University, Stanford University, and the University of Pennsylvania, went even further in its explicit characterization of diversity as serving the interests of white students:

> A policy of increasing the number of students from minority groups is, in our judgment, the best choice for all of our students because it is the best way to achieve a diverse student body. A primary value of liberal education should be exposure to new and provocative points of view, at a time in the student's life when he or she has recently left home and is eager for new intellectual

---

[20]  *Id.* at 312–13.

[21]  *Id.* at 314.

[22]  *Id.* at 316, app. at 323; Brief of Columbia University, Harvard University, Stanford University and the University of Pennsylvania as Amici Curiae app. at *2, *Bakke*, 438 U.S. 265 (No. 76-811), 1977 WL 188007.

[23]  Brief of Columbia University, Harvard University, Stanford University and the University of Pennsylvania as Amici Curiae app. at *2, *supra* note 22.

experiences. Minority students add such points of view, both in the classroom and in the larger university community.[24]

This excerpt implies that the role of students of color in the university setting is to enrich the educational experience of the sheltered white student. Indeed, the brief asserted that "the purpose [of the special treatment of minorities in university admissions] is not only or even primarily to confer benefits upon members of minorities" but includes improving "the quality of teaching and learning for majority" students.[25]

Fifty-seven amicus briefs were submitted in *Bakke*, of which forty-one were in support of the university.[26] To our knowledge these did not include any briefs of social scientists per se; however, social science does appear in the arguments of amici curiae. For example, the amicus brief of the American Association of University Professors specifically argued that the entire class, and indeed society as a whole, benefits from student diversity.[27] Grounding their argument in sociological work, they claimed that this benefit is gained in part by "bringing the rather special experiences of members of otherwise significantly under-represented groups to bear in the give-and-take of class discussion and other collaborative academic work."[28] Once again, the introduction of historically underrepresented groups for the sake of improving educational quality for others lay at the heart of the argument for the benefits of diversity.

## B. Grutter

Social science, and psychology in particular, figure more prominently in *Grutter v. Bollinger*.[29] In *Grutter*, the Court once again relied on the diversity rationale to uphold the use of race in university admissions.[30] Specifically, it reasserted diversity as a compelling interest in finding the University of Michigan Law School's admissions program—in which race

---

[24]  *Id.* at *12–13.

[25]  *Id.* at *27. Similarly, the brief states: "By our admissions programs, we are not merely contributing to the cause of increasing the numbers of minority leaders and public servants-although of course we wish very much to do that. We are also broadening the perceptions of our majority students, and we believe that this will be reflected in qualities that they will retain for the rest of their lives." *Id.* at *14.

[26]  William Claiborne, *577 Law Briefs on Bakke*, WASH. POST (Sept. 17, 1977), https://www.washingtonpost.com/archive/politics/1977/09/17/57-law-briefs-on-bakke/b3cb7c7c-b70e-4008-adc1-964886cbd552 [https://perma.cc/UJH6-UF8H].

[27]  Brief of the American Association of University Professors, Amicus Curiae, at *2, *14, *Bakke*, 438 U.S. 265 (No. 76-811), 1977 WL 188010.

[28]  *Id.* at *7.

[29]  539 U.S. 306 (2003).

[30]  *Id.* at 327–33.

comprised one of many factors—to be constitutional.[31] Writing for the majority, Justice Sandra Day O'Connor referenced amicus briefs from the military and from corporations to support the claim that diversity serves a "real" benefit.[32] But she also relied on social science findings regarding diversity benefits:

> The Law School's claim of a compelling interest is further bolstered by its *amici*, who point to the educational benefits that flow from student body diversity. In addition to the expert studies and reports entered into evidence at trial, numerous studies show that student body diversity promotes learning outcomes, and "better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals."[33]

The bulk of this research suggests the benefits of diversity for improved racial understanding and cross-racial interaction, democratic citizenship and civic engagement, active and complex thinking, academic engagement and motivation, and intellectual and academic skills.[34]

In fact, as the case made its way to the Supreme Court, the university itself relied heavily on this social science research, including research from one of its experts, psychologist and University of Michigan professor Patricia Gurin. Professor Gurin's report detailed analyses from three large higher education datasets, one from the University of Michigan and others from universities around the country.[35] Specifically, the university referenced her findings that experiencing racial and ethnic diversity in the classroom and in informal interactions was beneficial to students' educational outcomes: "students who experienced the most racial and ethnic diversity in classroom settings and in informal interactions with other students showed the greatest engagement in active thinking processes, growth in intellectual engagement and motivation, and improvement in a range of academic and intellectual skills."[36] Notably, in prefacing Gurin's research, the university argued that "expert testimony submitted by the Law School in this case

---

[31] *Id.*

[32] *Id.* at 330–31.

[33] *Id.* at 330 (citing Brief of the American Educational Research Ass'n et al. as *Amici Curiae* in Support of Respondents, *Grutter*, 539 U.S. 306 (No. 02-241); William G. Bowen & Derek Bok, THE SHAPE OF THE RIVER (1998); DIVERSITY CHALLENGED: EVIDENCE ON THE IMPACT OF AFFIRMATIVE ACTION (Gary Orfield & Michal Kurlaender eds., 2001); COMPELLING INTEREST: EXAMINING THE EVIDENCE ON RACIAL DYNAMICS IN COLLEGES AND UNIVERSITIES (Mitchell J. Chang et al. eds., 2003)).

[34] For research cited by Justice O'Connor, see *supra* note 33 and accompanying text.

[35] Expert Witness Report of Patricia Y. Gurin at 3–5, Gratz v. Bollinger, 353 F. Supp. 2d 929 (E.D. Mich. 2005) (No. 97-75231) [hereinafter Gurin Report].

[36] Defendant's Motion for Summary Judgment at 12, Grutter v. Bollinger, 137 F. Supp. 2d 821 (E.D. Mich. 2001) (No. 97-75928).

provides unrebut[t]ed empirical proof for the common sense judgment that racial and ethnic diversity improves education."[37]

In addition to Professor Gurin's report, the university also collected expert reports focusing on past discrimination and the effects of stereotypes on the performance of underrepresented groups. One of these reports, by historian Albert Camarillo, detailed the history of discrimination against Latinos in the United States and its long-term effects, including deficits in educational, employment, and housing opportunities.[38] However, the university used Professor Camarillo's report to set the context of segregation patterns—it argued, based on the report, for the necessity of bringing people of different groups together in higher education. It did not use the report to make an argument about the discrimination itself.[39] Similarly, Professor Thomas Sugrue outlined the persistence of residential, educational, and socioeconomic color lines (and their discriminatory roots) and argued that "deep divisions" between racial groups "are a consequence of a troubled and still unresolved past."[40] He used these divisions to highlight the persistence of stereotypes that limit access to opportunity for African Americans, Latinos, and American Indians, and the continued lack of understanding between groups. Yet, the university focused primarily on the issues of intergroup contact and misperceptions in Sugrue's report.[41] Psychologist Claude Steele's report testified to the influence of negative stereotypes on the performance of African American students;[42] however, this contribution does not appear in the university's motion for summary judgment in district court.[43]

In contrast, the student defendant-intervenors in *Grutter* and its companion case, *Gratz v. Bollinger*, relied on social science experts in portraying the discrimination and hostile racial climate faced by underrepresented students,[44] perhaps because they felt less constrained to do

---

[37] *Id.*

[38] Expert Report of Albert M. Camarillo, *Gratz*, 353 F. Supp. 2d 929 (No. 97-75231).

[39] Defendant's Motion for Summary Judgment, *supra* note 36, at 13. The university similarly used the expert testimony of Professor Eric Foner on historical patterns of racial subordination to discuss present-day segregation. *Id.*

[40] Expert Witness Report of Thomas J. Sugrue at 67, *Gratz*, 353 F. Supp. 2d 929 (No. 97-75231).

[41] Defendant's Motion for Summary Judgment, *supra* note 36, at 13.

[42] Report of Expert Testimony of Claude M. Steele, *Gratz*, 353 F. Supp. 2d 929 (No. 97-75231) [hereinafter Steele Report].

[43] The university cited the Steele report in a footnote, but only with respect to the general relationship between test scores and grades. Defendant's Motion for Summary Judgment, *supra* note 36, at 19 n.11.

[44] *See, e.g.*, Brief for Respondents Kimberly James et al. at 43, 46, Grutter v. Bollinger, 539 U.S. 306 (2003) (No. 02-241), 2003 WL 716302; Brief for the Patterson Respondents at 13–15, Gratz v. Bollinger, 539 U.S. 244 (2003) (No. 02-516), 2003 WL 367216.

so than the university.[45] For example, Professor Walter Allen, who testified at trial in *Grutter*, and his colleague, Professor Daniel Solórzano, submitted an expert report on behalf of the student intervenors in *Grutter* and *Gratz*. The report detailed the results of a multi-method study on racial climate at the University of Michigan Law School and four of its feeder schools and found "persistent, extensive, debilitating discrimination against women and students of color" and that these groups "experience these campuses as hostile environments, places where they are either not welcome or are welcome only in clearly delimited, subordinate status."[46] The student intervenors' brief in *Grutter* also cites Claude Steele's expert report and deposition as well as the burgeoning literature on stereotype threat.[47] The student brief used Allen and Steele's testimony to argue that "grades do not have the same meaning across race."[48]

The University of Michigan received a substantial amount of support in the form of approximately 83 out of 102 amicus briefs submitted in *Grutter* and *Gratz*.[49] Several of these were from organizations focusing on social science or education research. The American Psychological Association (APA) brief recognized the structural effects of discrimination and its implications for the opportunities available to students of color.[50] It also suggested that although explicit bias may have waned, unconscious bias remains and may further limit opportunities for people of color and the effectiveness of diverse workgroups.[51] In addition, the APA suggested that diversity "promotes harmonious and productive intergroup relations."[52] A significant portion of the brief was devoted to reiterating[53] and defending the

---

[45] Brief for the Patterson Respondents at 3, *supra* note 44 ("For understandable reasons, the University is reluctant to acknowledge that history, but Intervenors (whom Plaintiffs ignore in their presentation to this Court) have placed it in the record and argue its significance in this Brief." (footnote omitted)).

[46] Walter R. Allen & Daniel Solórzano, *Affirmative Action, Educational Equity and Campus Racial Climate: A Case Study of the University of Michigan Law School*, 12 BERKELEY LA RAZA L.J. 237, 301 (2001).

[47] Brief for Respondents Kimberly James et al., *supra* note 44, at 43 & n. 29 (arguing that stereotype threat "depresses minority students' performance on tests thought to measure intellectual ability" and their "general academic performance"). Stereotype threat is the fear of being "judged or treated in terms of [a negative] stereotype, or that one could inadvertently do something that would confirm [the stereotype]." Steele Report, *supra* note 42, at 7.

[48] Brief for Respondents Kimberly James et al., *supra* note 44, at 46.

[49] Neal Devins, *Explaining* Grutter v. Bollinger, 152 U. PA. L. REV. 347, 366 (2003).

[50] Brief Amicus Curiae of the American Psychological Association in Support of Respondents at 5, 11, Grutter v. Bollinger, 539 U.S. 306 (2003) (No. 02-241), and *Gratz*, 539 U.S. 244 (No. 02-516), 2003 WL 398321.

[51] *Id.* at 5–6.

[52] *Id.* at 4.

[53] *Id.* at 15–19.

main findings of Professor Gurin's research on the educational benefits of diversity and supporting its methodology.[54] A brief from the American Educational Research Association, cited by Justice O'Connor, focused squarely on the Gurin Report and the educational benefits of diversity.[55] The brief of the American Sociological Association focused on residential and school segregation, economic disadvantage, and stigma and their impacts on unequal access to resources.[56] Notably, the brief used this context to argue for the importance of diversity in higher education. For example, it stated that "[e]ach student has the potential to enhance the educational experience for others, and universities have a compelling interest in identifying applicants who will contribute the most to that mix."[57] Taken together, even though two of the amicus briefs focused to a certain extent on discrimination and structural inequalities, the educational benefits of diversity remained the underlying theme of these briefs.

## C. Fisher

In the *Fisher v. University of Texas* cases, the Court continued to rely on the notion of "educational benefits that flow from student body diversity,"[58] and ultimately ruled a University of Texas race-conscious admissions program constitutional.[59] Ninety-two amicus briefs were submitted in *Fisher I*, including seventy-three in support of the University of Texas, and nearly that number in *Fisher II.* About a half-dozen briefs were submitted on behalf of groups of social scientists (e.g., "823 Social Scientists," "American Social Science Researchers," "Empirical Scholars," "Experimental Psychologists," and "Social and Organizational Psychologists"), and professional associations such as the American Psychological Association and the American Education Research Association.[60] Because these social science briefs were fairly similar across

---

[54] *Id.* at 18–19 (defending Gurin's research from the critiques made in the Brief from the National Association of Scholars).

[55] Brief of the American Educational Research Association et al. as Amici Curiae in Support of Respondents, *Grutter*, 539 U.S. 306 (No. 02-241), 2003 WL 398292.

[56] Brief of the American Sociological Association et al., as Amici Curiae in Support of Respondents, *Grutter*, 539 U.S. 306 (No. 02-241), 2003 WL 398313.

[57] *Id.* at 21.

[58] *See, e.g.*, Fisher v. Univ. of Tex., 136 S. Ct. 2198, 2208, 2010 (2016) [hereinafter *Fisher II*]; Fisher v. Univ. of Tex., 570 U.S. 297, 309 (2013) [hereinafter *Fisher I*].

[59] *Fisher II*, 136 S. Ct. at 2202.

[60] In full disclosure, one of the authors was directly involved in two of these briefs. Victoria Plaut acted as a contributor to and signatory in the amicus brief of Social and Organizational Psychologists and as a contributor to the amicus brief submitted by the American Psychological Association.

the two cases, we discuss them interchangeably, except where relevant.[61] By our count, in total, over 1,300 social scientists signed on to these briefs. A number of other briefs also presented social science research, including, for example, those submitted by the National Education Association, the Harvard Graduate School of Education Students for Diversity, the National Black Law Students Association, and the Black Student Alliance at the University of Texas at Austin.[62]

The social science briefs capture pre- and post-*Grutter* literature which continues the diversity-benefits thread from *Grutter*, arguing that diversity brings "increased cross-racial interaction among students, reduced prejudice, improved cognitive abilities, critical thinking skills and self-confidence, greater civic engagement, and improved leadership and workplace skills."[63] But these briefs also represent a shift in focus compared to the social science briefs in *Grutter*. While most of the social science briefs—as in *Grutter*—cited evidence for the benefits of diversity to all students, including to nonminority students, the briefs in the *Fisher* cases highlighted a wider range of benefits, including the mitigating effects of diversity on racial isolation, stereotype threat, social identity threat, and feelings of tokenism, as well as the ameliorating effects on social belonging.[64]

---

[61] Of the seven groups mentioned here, five submitted amicus briefs in both cases, and one submitted a brief in *Fisher I* and then submitted a brief from an expanded and renamed group in *Fisher II* (the 444 social scientists represented in the Brief of American Social Science Researchers became "823 Social Scientists").

[62] *See, e.g.*, Brief of *Amicus Curiae* Harvard Graduate School of Education Students for Diversity in Support of Respondents, *Fisher I*, 570 U.S. 297 (No. 11-345), 2012 WL 3308201.

[63] Liliana M. Garces, *The Legal Context and Social Science Evidence in* Fisher v. University of Texas, *in* Affirmative Action and Racial Equity: Considering the *Fisher* Case to Forge the Path Ahead 3, 11 (Uma M. Jayakumar et al. eds., 1st ed. 2015).

[64] *See, e.g.*, Brief of *Amicus Curiae* the American Psychological Association in Support of Respondents, *Fisher II*, 136 S. Ct. 2198 (2016) (No. 14-981), 2015 WL 6735840 (describing the effects of stereotype threat on cognitive performance, well-being, and persistence, and how stereotype threat can be reduced by increasing representation of underrepresented groups, thus mitigating racial isolation and the likelihood of underrepresented students being perceived as tokens); Brief of Experimental Psychologists as *Amici Curiae* in Support of Respondents, *Fisher II*, 136 S. Ct. 2198 (No. 14-981), 2015 WL 6774020 (providing an overview of the effects of stereotype threat on performance and psychological well-being, as well as how the experience of racial isolation and tokenism amplifies the effect of stereotype threat on underrepresented groups); Brief of Social and Organizational Psychologists as Amici Curiae Supporting Respondents, *Fisher II*, 136 S. Ct. 2198 (No. 14-981), 2015 WL 6774561 (detailing in one section of the brief how campus diversity can reduce racial isolation and solo status and thereby lessen the effects of stereotype threat and increase feelings of social belonging); Brief of 823 Social Scientists as Amici Curiae in Support of Respondents, *Fisher II*, 136 S. Ct. 2198 (No. 14-981), 2015 WL 6754975 (highlighting the importance of creating an academic environment that fosters social belonging in order to lessen the effects of racial isolation and tokenism); Brief of *Amicus Curiae* the American Psychological Association in Support of Respondents, *Fisher I*, 570 U.S. 297 (2013) (No. 11-345), 2012 WL 3527855 (same as in *Fisher II* brief); Brief of American Social Science Researchers as *Amici Curiae* in Support of Respondents at 7, *Fisher I*, 570 U.S. 297 (No.11-345), 2012 WL 3308200

For example, the amicus brief of experimental psychologists argued that "[s]tereotype threat in college depresses the performance of many minority students"[65] and "because of the phenomenon of stereotype threat, a college will have to take race into account if it wishes to admit the best students and to ensure that all students perform as well as they are capable."[66] It further argued that "efforts to reduce stereotype threat" required "remedy[ing] the experience of racial isolation and tokenism that renews and amplifies stereotype threat" and that it was therefore "important to complement these strategies with mechanisms to promote diversity in college classes."[67] The amicus brief of 823 social scientists cited research on underrepresented students' perceptions of racial climate, experiences of discrimination and stereotyping, and belonging on university campuses.[68] Another example is the amicus brief of social and organizational psychologists: in addition to discussing diversity-benefits research, this brief also focused on diversity's ability to reduce the harms of racial isolation and stereotype threat, as well as the importance of institutional-belonging signals for underrepresented students.[69] By highlighting these topics, the briefs explicitly addressed ways in which a lack of diversity and other harmful features of the environment were experienced by and impacted historically marginalized groups.

This dual approach may signal an enduring tension, expressed in jurisprudence and bolstered by research in social psychology and related fields, over where the focus of diversity impact should lie when adjudicating affirmative action cases.[70] The tension between focusing on the impact of a lack of diversity on historically marginalized groups and focusing on the ways in which diversity benefits historically privileged groups in particular may present unique challenges to inclusion and inclusive practices.[71] In the

---

(highlighting the importance of diversity in lessening the effects of stereotype threat and the subsequent positive effects this can have on underrepresented students' performance; also arguing that diversity decreases racial isolation by providing more than a "token" presence in classrooms); Brief of Experimental Psychologists as Amici Curiae in Support of Respondents, *Fisher I*, 570 U.S. 297 (No. 11-345), 2012 WL 3540405 (same as in *Fisher II* brief); Brief of Social and Organizational Psychologists as Amici Curiae Supporting Respondents, *Fisher I*, 570 U.S. 297 (No. 11-345), 2012 WL 3308291 (same as in *Fisher II* brief).

[65] Brief of Experimental Psychologists, *supra* note 64, at 25.

[66] *Id.* at 31.

[67] *Id.*

[68] Brief of 823 Social Scientists, *supra* note 64, at 35–38.

[69] Brief of Social and Organizational Psychologists, *supra* note 64 at 9–17.

[70] For scholarship on the cost and distraction of focusing on diversity, see, e.g., Eboni S. Nelson, *Examining the Costs of Diversity*, 63 U. MIAMI L. REV. 577, 592–98 (2009); Derrick Bell, *Diversity's Distractions*, 103 COLUM. L. REV. 1622, 1622 (2003).

[71] Scholars have also highlighted that "diversity," especially as conceptualized by Whites, typically omits issues of power and inequality, Bell & Hartmann, *supra* note 1, at 905–907, and has shifted focus

next section, we explore more deeply the social psychological research that nourishes this tension and uncover psychological mechanisms that may animate a diversity entitlement that leads people to choose one focus over another.

## II.   THE PSYCHOLOGICAL FOUNDATIONS OF DIVERSITY ENTITLEMENT

Social science offers insight into the complicated set of processes that undergird the supremacy the diversity rationale has enjoyed in affirmative action jurisprudence. Further, psychological research specifically can uncover ways in which the rationale may actually serve to foster a sense of entitlement to diversity that adversely impacts inclusive efforts. This Part discusses the foundations of individual psychological orientations that allow the diversity rationale a psychological platform to cultivate diversity entitlement. To do this, we first survey the literature that demonstrates the psychological benefits dominant group members can derive from diversity— literature that was used to bolster the diversity rationale's use in affirmative action jurisprudence. We then turn to the psychological literature on diversity ideologies, or shared understandings about how to approach diversity. Here we discuss how diversity benefits, when examined through an ideological lens, may have psychological consequences that psychological research has yet to fully investigate. Finally, we discuss two psychological orientations that may animate mechanisms operating within the diversity-benefits ideology to facilitate an entitlement to diversity and harm inclusion in higher education. This examination of the psychological underpinnings of diversity-benefits ideology gives us insight into the influence it may have on the psychological experience and institutional practices of inclusion in higher education.

### A.   *Diversity Benefits in Psychological Research*

Social psychological research, along with research in other social sciences, catalogues a robust set of physiological, psychological, and interpersonal benefits derived from diversity. Diversity, this research suggests, can ease racial anxiety and threat. Interactions among people from different identity groups (e.g., racial, gender, or sexual-orientation groups)

---

away from "discrimination, injustice, and historical disenfranchisement" in organizations, Lauren B. Edelman, Sally Riggs Fuller & Iona Mara-Drita, *Diversity Rhetoric and the Managerialization of Law*, 106 AM. J. SOC. 1589, 1632 (2001). For an examination of the shift from the legal to business case for diversity in organizations, see also Jamillah Bowman Williams, *Breaking Down Bias: Legal Mandates vs. Corporate Interests*, 92 WASH. L. REV. 1473, 1480–87 (2017).

are plagued by anxiety, stress, and tension.[72] This tension manifests not only psychologically,[73] but also physiologically in cardiovascular reactivity, increased cortisol production, and changes in heart rate and breathing.[74] Research shows that experience with diverse groups of people can improve physiological regulation of cardiovascular threat responses to someone of a stigmatized race,[75] result in faster cessation of cortisol production,[76] and result in faster return to regular heart rate.[77] The physiological regulation resulting from increased interracial contact facilitates long-term cardiovascular health.[78] Benefits of diversity, according to this literature, also extend to prejudice reduction. For example, studies examining the effects of interracial roommate assignments in college generally find improved racial attitudes.[79]

In addition to improved physiological reactions, lower anxiety levels, and prejudice reduction, social science research demonstrates that interracial contact improves cognitive processing,[80] critical thinking,[81] and problem-solving.[82] Comparing racially homogeneous and racially heterogeneous discussion groups, one study showed that the presence of racial minorities increased the complexity with which students—especially students from the racial majority—approach a given issue.[83] Members from homogeneous

---

[72] Jim Blascovich et al., *Perceiver Threat in Social Interactions with Stigmatized Others*, 80 J. PERSONALITY & SOC. PSYCHOL. 253, 266 (2001).

[73] Jennifer A. Richeson, Sophie Trawalter & J. Nicole Shelton, *African Americans' Implicit Racial Attitudes and the Depletion of Executive Function After Interracial Interactions*, 23 SOC. COGNITION 336, 337 (2005).

[74] Blascovich et al., *supra* note 72, at 266; Elizabeth Page-Gould et al., *Intergroup Contact Facilitates Physiological Recovery Following Stressful Intergroup Interactions*, 46 J. EXPERIMENTAL SOC. PSYCHOL. 854, 856 (2010).

[75] Blascovich et al., *supra* note 72, at 266.

[76] Page-Gould et al., *supra* note 74, at 857.

[77] *Id.* at 854–56.

[78] *Id.*

[79] Natalie J. Shook & Russell H. Fazio, *Interracial Roommate Relationships: An Experimental Field Test of the Contact Hypothesis*, 19 PSYCHOL. SCI. 717, 721 (2008); Colette Van Laar et al., *The Effect of University Roommate Contact on Ethnic Attitudes and Behavior*, 41 J. EXPERIMENTAL SOC. PSYCHOL. 329, 329 (2005).

[80] Samuel R. Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations*, 90 J. PERSONALITY & SOC. PSYCHOL. 597, 604–05 (2006); Samuel R. Sommers, Lindsey S. Warp & Corrine C. Mahoney, *Cognitive Effects of Racial Diversity: White Individuals' Information Processing in Heterogeneous Groups,* 44 J. EXPERIMENTAL SOC. PSYCHOL. 1129, 1129 (2008).

[81] Anthony Lising Antonio et al., *Effects of Racial Diversity on Complex Thinking in College Students*, 15 PSYCHOL. SCI. 507, 509 (2004).

[82] Nida Denson & Shirley Zhang, *The Impact of Student Experiences with Diversity on Developing Graduate Attributes*, 35 STUD. HIGHER EDUC. 529, 529 (2010).

[83] Antonio et al., *supra* note 81, at 509.

groups exhibited no such cognitive stimulation.[84] Some research suggests that interracial contact fosters such improved critical thinking not just because of what racial minorities have to say, but because of how Whites cognitively categorize them. In other words, when people of different races engage each other, they often are confronted with surprising attributes or opinions that challenge existing stereotypes. Processing these unexpected category combinations requires deeper and more creative thinking than simply relying on preconceived stereotypes.[85]

Prejudice has long been a central concern of social psychological research.[86] Given the sordid history of racial and other types of oppression in the United States, it comes as no surprise that research demonstrates persisting anxiety, tension, prejudice, and stereotypes that plague intergroup interactions. Social psychology has also developed a large body of literature devoted to fostering harmonious intergroup relations, primarily through the reduction of prejudice, characterized as antipathy towards other groups. In fact, social psychology's investment in mitigating negative feelings about historically oppressed groups through prejudice reduction represents a substantial portion of research on diversity benefits.[87] Dixon and colleagues, in their research on prejudice-reduction models of social change, characterize the phenomenon nicely when they say: "If negative evaluation of the disadvantaged is defined as the problem, then the emotional and cognitive rehabilitation of the advantaged becomes the solution."[88]

Researchers prioritized intergroup contact, particularly interracial contact, as a primary means of reducing prejudice. Indeed, a meta-analysis of over 515 studies found that contact between racial and ethnic groups reduces prejudice.[89] Moreover, interracial interaction appears to reduce implicit and explicit prejudices in the development of interpersonal relationships. One meta-analysis of eighty-one studies spanning forty years of research found that, initially, participants engaging in interracial interactions report more negative emotions (e.g., anxiety) than participants

---

[84] *Id.*

[85] Richard J. Crisp & Rhiannon N. Turner, *Cognitive Adaptation to the Experience of Social and Cultural Diversity*, 137 PSYCHOL. BULL. 242, 242 (2011).

[86] *See generally* GORDON W. ALLPORT, THE NATURE OF PREJUDICE (1954).

[87] *Id.*; Rupert Brown & Miles Hewstone, *An Integrative Theory of Intergroup Contact, in* 37 ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY 255, 258 (Mark P. Zanna ed., 2005); Thomas F. Pettigrew & Linda R. Tropp, *A Meta-Analytic Test of Intergroup Contact Theory*, 90 J. PERSONALITY & SOC. PSYCHOL. 751, 751 (2006).

[88] John Dixon et al., *Beyond Prejudice: Are Negative Evaluations the Problem and Is Getting Us to Like One Another More the Solution?*, 35 BEHAV. BRAIN SCI. 411, 417 (2012).

[89] Pettigrew & Tropp, *supra* note 87, at 751.

in same-race interactions.[90] However, over time, repeated interracial interactions produced more positive emotional experiences.[91] The aforementioned research on college roommates also suggests benefits of interracial contact. In one study, racial attitudes of white students randomly assigned to room with a black student became more positive toward black people, whereas the racial attitudes of white students in same-race roommate assignments did not change.[92] Whites in interracial rooms also reported decreased intergroup anxiety toward black people.[93] In another study, both when roommate assignments were random and when they were voluntary, interracial assignments tended to decrease prejudice (with some exceptions).[94]

The literature on diversity benefits highlights the myriad benefits of interracial contact. However, the prejudice-reduction framework that pervades this literature asserts a hegemony of psychological experience in intergroup contact—a portrayal of contact that is psychologically one-sided and primarily focused on Whites. In other words, by focusing primarily on remediating the negative feelings of the historically oppressive group, it assumes that historically oppressed groups experience contact in the same way as their counterparts. Additionally, although it is reasonable to assume that prejudice reduction has indirect benefits for the historical targets of prejudice, the focus of this approach is on the direct benefits to Whites. In sum, the outcomes and the psychological experiences of interracial contact are often portrayed as uniformly positive and equitable for all racial groups. The potential consequence of this portrayal is an ideological belief about diversity that positions the psychologically hegemonic benefits of interracial contact as supreme.

What is the other side of the psychological story? Do people similarly experience and benefit from interracial encounters? Some research suggests that students benefit differentially from interactional diversity depending on their backgrounds. In one study, compared with students of color, white students benefited more in critical thinking development from exposure to

---

[90] Negin R. Toosi et al., *Dyadic Interracial Interactions: A Meta-Analysis*, 138 PSYCHOL. BULL. 1, 7, 12 (2012).

[91] *Id.* at 20.

[92] Shook & Fazio, *supra* note 79, at 721.

[93] *Id.*

[94] Van Laar et al., *supra* note 79, at 329. Researchers found several exceptions for contact with Asian American roommates. Whether randomly assigned or voluntary, contact with Asian Americans tended to make attitudes towards other groups more negative. *Id.* at 339. Furthermore, exposure to white roommates also increased symbolic racism among black respondents, and decreased Latinx students' sense of competence interacting with students of other ethnicities. *Id.* at 337–38.

people from diverse backgrounds.[95] Similarly, another study found that white students generally had larger gains from their diversity experiences than did students of color on many outcome measures, including general education, science and technology, and diversity competence.[96] Meta-analytic research examining the relationship between greater contact and decreased prejudice also finds a stronger relationship for "majority status" groups than for "minority status" groups.[97] A closer look at the roommate literature also calls into question whether the benefits of contact extend equally across groups.[98] And even the pivotal research by Patricia Gurin used in *Grutter* suggests potentially differential effects of diversity for different groups. For example, for African American students, some of the benefits of diversity derived not from other-race interaction but from same-race interaction and friendships.[99]

The affirmative action jurisprudence, which relies on the diversity rationale, takes for granted that there are benefits to diverse contact. However, the aforementioned research suggests that we should be asking whether certain groups (e.g., Whites) may benefit more than others from interracial contact. Perhaps a diversity-benefits ideology acts as a façade but is not actually the reality, or at least not the whole picture, as it relates to diversity and inclusion. In addition, could a diversity-benefits ideology that positions students with marginalized identities (e.g., students of color) as vehicles for dominant (e.g., Whites) students' growth, as opposed to equally positioned students poised to learn, undermine inclusion? Could it even create a sense of entitlement to diversity among white students?

## B.  *Diversity Ideology*

Existing research on diversity ideologies,[100] across a variety of fields, excavates the influence these ideologies have in undermining or fostering

---

[95] Ernest T. Pascarella et al., *Do Diversity Experiences Influence the Development of Critical Thinking?*, 42 J.C. STUDENT DEV. 257, 264–68 (2001).

[96] Shouping Hu & George D. Kuh, *Diversity Experiences and College Student Learning and Personal Development*, 44 J.C. STUDENT DEV. 320, 329 (2003).

[97] *See* Linda R. Tropp & Thomas F. Pettigrew, *Relationships Between Intergroup Contact and Prejudice Among Minority and Majority Status Groups*, 16 PSYCHOL. SCI. 951, 954 (2005).

[98] *See* Van Laar et al., *supra* note 79, at 329.

[99] Gurin Report, *supra* note 35, at 37.

[100] Diversity ideologies, or models of diversity, are "shared understandings and practices of how groups come together or should come together, relate to one another, and include and accommodate one another in light of the differences associated with group identity." Victoria C. Plaut, *Cultural Models of Diversity in America: The Psychology of Difference and Inclusion, in* ENGAGING CULTURAL DIFFERENCES: THE MULTICULTURAL CHALLENGE IN LIBERAL DEMOCRACIES 365, 368 (Richard Shweder, Martha Minow & Hazel Rose Markus eds., 2002).

inclusion.[101] Much of the diversity-ideologies literature within psychology has pitted identity-blindness (e.g., colorblindness) against identity-consciousness (e.g., multiculturalism), though their definitions vary.[102] Generally, colorblindness minimizes the use and significance of racial identity and suggests that race should not and does not matter.[103] According to multiculturalism, group membership matters and should be acknowledged, respected, and even valued.[104] Each ideology includes a set of normative beliefs that serves as a framework for institutional policies and practices and assumptions about how people should interact in diverse settings. The ideological orientations that people have toward diversity have real consequences and exert real influence on inclusion and inclusive practices.

Reviews of this literature suggest that identity-conscious ideologies such as multiculturalism have mixed outcomes for inclusion, while colorblindness has somewhat, but not exclusively, negative outcomes.[105] For example, colorblindness as a well-intentioned interaction strategy on the part of Whites can backfire in interracial interactions.[106] It can also be used to justify current inequality.[107] For instance, in one study, when threatened,

---

[101] *See generally*, *e.g.*, Eduardo Bonilla-Silva, *The Structure of Racism in Color-Blind, "Post-Racial" America*, 59 AM. BEHAV. SCIENTIST 1358 (2015) (arguing that the racial ideology of color-blindness is used as a more civil way of maintaining white racial dominance through a facially nonracial mechanism—making inequality more difficult to address); Angélica S. Gutiérrez & Miguel M. Unzueta, *The Effect of Interethnic Ideologies on the Likability of Stereotypic vs. Counterstereotypic Minority Targets*, 46 J. EXPERIMENTAL SOC. PSYCHOL. 775 (2010) (finding that interethnic ideologies (e.g., multiculturalism vs. colorblindness) have different effects on the perceived likability of a man of color to the extent that he either conforms to stereotypical caricatures of his group or is counter-stereotypic); Ian F. Haney-López, *Post-Racial Racism: Racial Stratification and Mass Incarceration in the Age of Obama,* 98 CALIF. L. REV. 1023 (2010) (arguing that colorblind ideology contributes to the mass incarceration epidemic); Eric D. Knowles et al., *On the Malleability of Ideology: Motivated Construals of Color Blindness*, 96 J. PERSONALITY & SOC. PSYCHOL. 857 (2009) (arguing that individuals' intergroup motivations to maintain or undermine the status quo can shift their construal of colorblindness); Valerie Purdie-Vaughns et al., *Social Identity Contingencies: How Diversity Cues Signal Threat or Safety for African Americans in Mainstream Institutions*, 94 J. PERSONALITY & SOC. PSYCHOL. 615 (2008) (finding that diversity ideologies work in tandem with cues regarding organizational demographics to signal to underrepresented groups how they may be treated within an organization).

[102] See Plaut et al., *supra* note 1, for a review.

[103] *Id.* at 604–06.

[104] *Id.* at 600–04

[105] Victoria C. Plaut et al., *Do Color Blindness and Multiculturalism Remedy or Foster Discrimination and Racism?*, CURRENT DIRECTIONS PSYCHOL. SCI., May 14, 2018, at 1.

[106] Evan P. Apfelbaum, Samuel R. Sommers & Michael I. Norton, *Seeing Race and Seeming Racist? Evaluating Strategic Colorblindness in Social Interaction*, 95 J. PERSONALITY & SOC. PSYCHOL. 918, 922 (2008).

[107] *See* EDUARDO BONILLA-SILVA, RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN AMERICA 25–53 (4th ed. 2014); Tamar Saguy, John F. Dovidio

Whites who preferred group-based hierarchy used colorblindness to defend the status quo.[108] Conversely, multiculturalism has been shown to have positive implications for interracial interaction, engagement, and inclusion. In one large field study, employees of color working in departments where white peers hold more multicultural attitudes (e.g., supporting organizational diversity) felt more psychologically engaged and perceived less bias.[109] Among college students, exposure to a multicultural university statement (stressing strength in and embracing diversity) led to better performance for women of color than a colorblind statement (stressing similarity and that race, ethnicity, gender, and religion are immaterial).[110] Relatedly, organizational diversity policies that stress differences (rather than similarities) foster leadership self-perceptions and goals among minorities.[111]

However, multiculturalism is by no means a silver bullet among the arsenal of ideological approaches. Research suggests a variety of negative implications of multiculturalism—or an emphasis on valuing diversity— when portrayed in a particular way or under certain circumstances. Multiculturalism can be harmful if it leads to pigeonholing—placing people into limited socially conscribed roles where they are valued mostly for their social identity.[112] In one study, researchers examined the effects of priming multiculturalism (vs. colorblindness) on how likable white participants perceived a man of color who displayed stereotype-consistent or inconsistent extracurricular interests (e.g., a Latino who likes Salsa vs. Hip-Hop).[113] When exposed to multiculturalism, participants liked the stereotypical target more than the counterstereotypic target, suggesting that multiculturalism constrains racial and ethnic minorities' identity expression.[114] Thus, while multiculturalism is an ostensibly pro-diversity ideology, research observes negative effects for inclusion. It is possible then that pro-diversity/egalitarian ideological approaches can still undermine inclusion.

---

& Felicia Pratto, *Beyond Contact: Intergroup Contact in the Context of Power Relations*, 34 PERSONALITY & SOC. PSYCHOL. BULL. 432, 442–44 (2008).

[108]  Knowles et al., *supra* note 101, at 860.

[109]  Victoria C. Plaut, Kecia M. Thomas & Matt J. Goren, *Is Multiculturalism or Color Blindness Better for Minorities?*, 20 PSYCHOL. SCI. 444, 444–45 (2009).

[110]  Leigh S. Wilton et al., *Communicating More than Diversity: The Effect of Institutional Diversity Statements on Expectations and Performance as a Function of Race and Gender*, 21 CULTURAL DIVERSITY & ETHNIC MINORITY PSYCHOL. 315, 315 (2015).

[111]  Seval Gündemir et al., *The Impact of Organizational Diversity Policies on Minority Employees' Leadership Self-Perceptions and Goals*, 24 J. LEADERSHIP & ORGANIZATIONAL STUD. 172, 172 (2017).

[112]  *See* Robin J. Ely & David A. Thomas, *Cultural Diversity at Work: The Effects of Diversity Perspectives on Work Group Processes and Outcomes*, 46 ADMIN. SCI. Q. 229 (2001).

[113]  Gutiérrez & Unzueta, *supra* note 101.

[114]  *Id.* at 777–79.

The literature on diversity ideologies provides insight into the role ideologies play in inclusion practices. The research explicitly examines the beliefs operating within these ideologies about how people are supposed to relate to one another. It does not, however, examine expectations about who is supposed to benefit when they do. Here we attempt to identify a consequence of a diversity-benefits ideology normalized in social psychological research: *diversity entitlement*. Why might an ideology that can facilitate entitlement enjoy such ubiquity in modern jurisprudence, organizations, and culture? We argue that the explicit hegemonic belief that diversity benefits everyone, while ostensibly pro-diversity and appealing to egalitarian sensibilities, belies very real racial differences in the way people psychologically experience interracial contact. As such, we hypothesize that an ideology that minimizes that reality may fall prey to and facilitate a psychological expectation or entitlement among dominant groups to the benefits enumerated within the literature.

### C. Modern Egalitarianism

Values, or the commonly accepted standards of the goal-directed behaviors of human existence, shape people's attitudes toward different groups in society.[115] A common American value orientation is egalitarianism[116]—an adherence to democratic ideals of equality.[117] Considering the conception of prejudice as a negative orientation towards another group, and the proliferation of intergroup contact as the primary antidote for such antipathy, intergroup contact, diversity, and intergroup harmony appeal to self-identified egalitarians. Prior research has documented various correlates of egalitarianism. For example, egalitarians report lower levels of prejudice, greater political liberalism, and greater support for redistributive policies such as social welfare and affirmative action.[118]

Although egalitarianism can have positive implications for intergroup relations, egalitarianism can be a double-edged sword. First, egalitarianism

---

[115] *See, e.g.*, Irwin Katz & R. Glen Hass, *Racial Ambivalence and American Value Conflict: Correlational and Priming Studies of Dual Cognitive Structures,* 55 J. PERSONALITY & SOC. PSYCHOL. 893, 894 (1988).

[116] *See generally* JAMES R. KLUEGEL & ELIOT R. SMITH, BELIEFS ABOUT INEQUALITY: AMERICANS' VIEWS OF WHAT IS AND WHAT OUGHT TO BE (1986); HOWARD SCHUMAN, CHARLOTTE STEEH, LAWRENCE BOBO & MARIA KRYSAN, RACIAL ATTITUDES IN AMERICA: TRENDS AND INTERPRETATIONS (rev. ed. 1997).

[117] Katz & Hass, *supra* note 115.

[118] Arnold K. Ho et al., *The Nature of Social Dominance Orientation: Theorizing and Measuring Preferences for Intergroup Inequality Using the New SDO$_7$ Scale*, 109 J. PERSONALITY & SOC. PSYCHOL. 1003, 1021 (2015).

does not exist in a psychological vacuum. Research suggests that in the absence of strong antidiscrimination norms, or when they have a race-neutral justification for doing so, people with an egalitarian self-image may still discriminate.[119] Indeed, a large literature on "aversive racism" suggests possessing an egalitarian self-image can coexist with implicit negative attitudes towards disadvantaged groups.[120] These implicit biases can have deleterious implications for intergroup dynamics,[121] racial minorities' educational achievement,[122] and juror decision-making,[123] just to name a few. In other words, racially disparate outcomes can persist despite explicit claims of egalitarianism expressed by the perpetrators of bias. Egalitarianism may mask individuals' conscious awareness of implicit biases that they may hold. Thus, egalitarians can often be blissfully unaware of the ways in which they contribute to and perpetuate discrimination.

Secondly, egalitarianism can serve ego-protective functions that preclude achieving professed egalitarian goals. Research demonstrates that being part of a group commonly associated with racism (e.g., Whites) threatens the group members' identity as individuals and as part of the broader racial group.[124] This threat may represent a fear that they will be perceived as prejudiced, or an understanding that they are part of a morally suspect group and their successes are not fully earned due to historical privileges.[125] Because of these threats, maintaining or displaying an egalitarian self-concept may serve important psychologically protective functions for Whites. They might, for example, be motivated to demonstrate

---

[119] *See* John F. Dovidio & Samuel L. Gaertner, *Aversive Racism and Selection Decisions: 1989 and 1999*, 11 PSYCHOL. SCI. 315, 318 (2000).

[120] *See id.* at 317; Katz & Hass, *supra* note 115, at 895; Eric Luis Uhlmann, Victoria L. Brescoll & Elizabeth Levy Paluck, *Are Members of Low Status Groups Perceived as Bad, or Badly Off? Egalitarian Negative Associations and Automatic Prejudice*, 42 J. EXPERIMENTAL SOC. PSYCHOL. 491, 496–98 (2006).

[121] *See, e.g.*, Nilanjana Dasgupta, *Implicit Ingroup Favoritism, Outgroup Favoritism, and Their Behavioral Manifestations*, 17 SOC. JUST. RES. 143 (2004).

[122] *See, e.g.*, Drew S. Jacoby-Senghor, Stacey Sinclair & J. Nicole Shelton, *A Lesson in Bias: The Relationship Between Implicit Racial Bias and Performance in Pedagogical Contexts*, 63 J. EXPERIMENTAL SOC. PSYCHOL. 50, 53 (2016).

[123] *See, e.g.*, Samuel R. Sommers, *Race and the Decision Making of Juries*, 12 LEGAL CRIMINOLOGICAL PSYCHOL. 171, 183 (2007).

[124] *See, e.g.*, Eric D. Knowles et al., *Deny, Distance, or Dismantle? How White Americans Manage a Privileged Identity*, 9 PERSP. ON PSYCHOL. SCI. 594, 601–02 (2014); Margaret Shih, Maia J. Young & Amy Bucher, *Working to Reduce the Effects of Discrimination: Identity Management Strategies in Organizations*, 68 AM. PSYCHOL. 145, 157 (2013).

[125] Knowles et al., *supra* note 124, at 602–04; Brian S. Lowery et al., *Concern for the In-Group and Opposition to Affirmative Action*, 90 J. PERSONALITY & SOC. PSYCHOL. 961, 971–72 (2006).

their nonprejudiced attitudes[126] or even attempt to "dismantle" their privilege by supporting inclusive policies.[127] However, doing so may not necessarily subvert the existing hierarchy, but rather may help to maintain an appearance of rejecting the hierarchy. While this egalitarian approach acknowledges marginalized groups' disadvantage, it focuses on Whites' ego needs and feelings as opposed to harms experienced by disadvantaged groups—thus leaving their psychological place in the social hierarchy untouched. This focus on protecting the ego as opposed to actually subverting racial hierarchies maintains the status quo by focusing on Whites' feelings as opposed to mitigating marginalized groups' disadvantage.

White egalitarians who experience a threat against their identity and feel the need to manage their egalitarian self-concept may find diversity-benefits ideology especially appealing. Endorsing the diversity-benefits ideology may mitigate the psychological threat white egalitarians experience, because it allows them to "dismantle" systems of privilege (symbolically) by endorsing an ostensibly pro-diversity belief. It deflects the perception that they might be prejudiced and it helps them distance themselves from a morally suspect group. Moreover, reinforcing an egalitarian self-concept also allows one to feel "morally credentialed."[128] In other words, embracing diversity-benefits ideology may actually have the pernicious effect of making someone feel like they are egalitarian even if their behavior creates outcomes that are not. People who endorse diversity-benefits ideology may genuinely believe it to be a culturally appropriate, sensitive, and egalitarian approach toward diversity, but they might be insulated from explicitly understanding the ways in which diversity-benefits ideology also reinforces the status quo. As we discuss in the next section, egalitarianism may also insulate Whites from recognizing their own desire for occupying the top of the hierarchy and reaping the benefits that status confers.

### D. Dominance, Hierarchy, and Diversity Entitlement

Social Dominance Theory postulates that societies are organized into group-based hierarchies in which the distribution of limited resources favors dominant groups at the expense of subordinated groups.[129] As such, dominant

---

[126] *See, e.g.*, Apfelbaum, Sommers & Norton, *supra* note 106, at 918; Hillary B. Bergsieker, J. Nicole Shelton & Jennifer A. Richeson, *To Be Liked Versus Respected: Divergent Goals in Interracial Interactions*, 99 J. PERSONALITY & SOC. PSYCHOL. 248, 261 (2010).

[127] Knowles et al., *supra* note 124, at 602–03.

[128] *See* Benoît Monin & Dale T. Miller, *Moral Credentials and the Expression of Prejudice*, 81 J. PERSONALITY & SOC. PSYCHOL. 33, 34 (2001).

[129] JIM SIDANIUS & FELICIA PRATTO, SOCIAL DOMINANCE: AN INTERGROUP THEORY OF SOCIAL HIERARCHY AND OPPRESSION 31–32 (1999).

groups derive psychological and material benefits from the privileges they receive in the social hierarchy. This benefit gives dominant groups the psychological motive to maintain the status quo—a social dominance orientation (SDO). Prior research documents attitudes that correlate with SDO. For example, those high in SDO report higher levels of prejudice, greater political conservatism, and decreased support for redistributive policies such as social welfare and affirmative action.[130]

The theory also postulates that the hierarchical organization of societies results from processes, such as individuals' decisions and behavior, socio-cultural practices, and institutional actions. Each of these processes is shaped by legitimizing myths—or consensually held values, attitudes, beliefs, stereotypes, and cultural ideologies.[131] These myths can be hierarchy-enhancing, organizing society in ways that sustain dominant group hierarchy, or hierarchy-attenuating, countering group-based dominance.[132] For example, racism, meritocracy, and sexism are all hierarchy-legitimizing myths. Conversely, egalitarianism is a hierarchy-attenuating myth. The force of these myths in bolstering the hierarchy is largely propelled by their consensus across groups.[133] That is, the more widely accepted these myths, the more impactful they are at maintaining or attenuating the hierarchy.

Diversity-benefits ideology may serve as a legitimizing myth operating in legal reasoning and social scientific practices to maintain White dominance. This hierarchy-enhancing legitimizing myth may be particularly pernicious because it is facially egalitarian and appeals to widely held beliefs about the value of diversity. Diversity-benefits ideology encompasses a belief in the hegemonic benefits of diversity. That is, the ideology professes a uniformly equitable experience of diversity for different groups. As mentioned earlier, this appeals to egalitarianism—a consensual value in American society. Yet the ideology actually positions white students as key beneficiaries of diversity, mimicking existing hierarchies where Whites are on top. Thus, for Whites who possess a strong orientation toward social

---

[130] *See* P.J. Henry et al., *Social Dominance Orientation, Authoritarianism, and Support for Intergroup Violence Between the Middle East and America*, 26 POL. PSYCHOL. 569, 577–78 (2005); Shana Levin et al., S*ocial Dominance Orientation and Intergroup Bias: The Legitimation of Favoritism for High-Status Groups*, 28 PERSONALITY & SOC. PSYCHOL. BULL. 144, 153 (2002); Felicia Pratto et al., *Social Dominance Orientation: A Personality Variable Predicting Social and Political Attitudes*, 67 J. PERSONALITY & SOC. PSYCHOL. 741, 742–43 (1994).

[131] *See* Felicia Pratto, Jim Sidanius & Shana Levin, *Social Dominance Theory and the Dynamics of Intergroup Relations: Taking Stock and Looking Forward*, 17 EUR. REV. SOC. PSYCHOL. 271, 275–76 (2006).

[132] Jim Sidanius et al., *Social Dominance Orientation, Hierarchy Attenuators and Hierarchy Enhancers: Social Dominance Theory and the Criminal Justice System*, 24 J. APPLIED SOC. PSYCHOL. 338, 340 (1994).

[133] SIDANIUS & PRATTO, *supra* note 129, at 46–47.

dominance, diversity-benefits ideology may not only appeal to their dominant desires, but because of its egalitarian façade, may also nurture an expectation they may not consciously know is there.

Egalitarianism and social dominance seem orthogonal with respect to their implications for inclusion. After all, people high in SDO tend to disfavor redistributive policies whereas egalitarians usually favor them.[134] How can such disparate ideals be represented within a person? Moreover, how can these ideas operate in tandem to negatively influence inclusive policy support? As discussed earlier, egalitarianism can coexist with seemingly disparate biases. Further, SDO may not only manifest explicitly. Although no studies have examined implicit forms of SDO, implicit bias research and research on social dominance can together provide us with the tools to make an informed hypothesis about how implicit orientations towards social dominance may foster an entitlement towards the perceived benefits of diversity to the detriment of inclusion.

### E. A Psychological Cocktail

Research in social psychology treats egalitarianism and social dominance as psychologically dissonant.[135] However, these constructs may coalesce in ways that are integral to the way people interpret diversity-benefits ideology and succumb to diversity entitlement. Diversity-benefits ideology appeals to egalitarian sensibilities, but the uninterrogated, implicit understanding within the ideology (that Whites are the primary beneficiaries of diversity) may appeal to implicit social dominance sensibilities. Though there is some work to suggest that desire for hierarchy can operate at unconscious levels,[136] this has not been rigorously investigated. Our future work will begin to construct measures of implicit social dominance. Presently, however, our preliminary empirical work discussed in the next Part begins unpacking the role explicit preferences for group-based dominance and egalitarianism play in cultivating entitlement to diversity. This study explores a conservative test of our hypothesis by examining the relationship between egalitarianism and explicit SDO and support of inclusive policies.

---

[134] *See* Pratto, Sidanius & Levin, *supra* note 131, at 283.

[135] *Id*. Egalitarianism and dominance comprise two subscales within the SDO measure used in social psychological research. However, the two constructs are seen as orthogonal and the individual items that constitute the measure only capture explicit expressions of dominance. *Id.* at 282–83.

[136] *See, e.g.*, Larissa Z. Tiedens, Miguel M. Unzueta & Maia J. Young, *An Unconscious Desire for Hierarchy? The Motivated Perception of Dominance Complementarity in Task Partners*, 93 J. PERSONALITY & SOC. PSYCHOL. 402 (2007).

III.  DIVERSITY RATIONALES AND INCLUSION: AN EXPERIMENTAL STUDY

*A.  Overview*

We conducted a study as a first step toward examining the effects of diversity-benefits ideology on inclusion.[137] In this preliminary study, we were interested in testing the effects of exposing white people to a diversity-benefits ideology modeled after the Court's diversity rationale. We were particularly interested in examining these effects among white people who thought of themselves as egalitarian but also expressed a desire to preserve the racial hierarchy. We predicted that when egalitarian Whites who were also high in social dominance viewed a diversity-benefits rationale for diversity, they would express less support for policies that emphasize the inclusion needs of historically marginalized groups (e.g., black students) compared to policies that emphasize the inclusion needs of historically privileged groups (e.g., white students). Four hundred and fifteen Amazon Mechanical Turk workers[138] participated in the study, of whom 289 were white, 203 were women, and 104 were students currently enrolled in a university.

*B.  Procedure*

The study instructed the participants to role-play being a program officer for a foundation that gives money to universities to help fund their diversity initiatives. In this position, they viewed policies that different universities from across the country planned to implement. We informed them that the name of each university had been removed for blind assessment.[139] They were instructed to evaluate policies by assigning points to each one. Further, we mentioned that the foundation would use their point allocations and general policy ratings to make final funding decisions. Participants were given a total of 100 points to allocate between all six policies. As part of the study, participants were randomly assigned to view one of four rationales for pursuing diversity before they began their task. Each condition represented a rationale considered in *Bakke*—reducing historic underrepresentation, redressing societal discrimination, benefiting minority communities, and diversity benefits. For example, participants in

---

[137]  Kyneshawau Hurd & Victoria C. Plaut, Diversity Entitlement: How the Language of Diversity Benefits Impacts Hierarchies of Inclusion (2017) (unpublished data) (on file with authors).

[138]  Amazon Mechanical Turk is a crowdsourcing Internet marketplace that enables individuals and organizations to coordinate the use of human intelligence to perform tasks such as surveys. *See* Gabriele Paolacci et al., *Running Experiments on Amazon Mechanical Turk,* 5 JUDGMENT & DECISION MAKING 411, 411–13 (2010).

[139]  Although policies in the study were based on policies currently used by universities all over the country, the universities and diversity initiatives in this study were fictitious.

the diversity-benefits condition saw the following statement: "One reason often given for pursuing these initiatives is that all students benefit from the experiences and perspectives that a diverse student body can provide."

After viewing their respective rationale, participants then saw six policies that represented two different policy categories. Three policies, which we label "isolation-focused," centered on mitigating underrepresented group members' sense of isolation and solo status. The other three policies, which we label "benefit-focused," centered on increasing the benefits of diversity by "equally distributing" students from underrepresented groups. Policies within each category were matched. For example, one benefit-focused policy instructed departments at the university to adopt mandatory study groups for first-year students that reflected the diversity of the first-year class and to "evenly distribute factors such as gender and ethnicity/race, enabling students to learn from one another." The corresponding isolation-focused policy also instructed departments at the university to adopt mandatory study groups for the first-year students but to structure the groups such that "no student from a traditionally underrepresented group is isolated as the only member of their gender and/or ethnicity/race," meaning some pods would contain clusters of underrepresented students and others might not. Participants gave each policy points, then rated how much they supported each policy and how effective they believed each policy to be.

## C. Measures

Participants completed a sixteen-item measure of SDO.[140] The scale has two subdimensions: SDO-Dominance (SDO-D) which constitutes support for the active maintenance of oppressive hierarchies in which high-status groups dominate and control the prerogatives of low-status groups, and SDO-Egalitarianism (SDO-E) which constitutes support for group equality and equal opportunity. We used responses to this scale to identify participants low and high in both dominance and egalitarianism. We interacted these subdimensions to explore how dominance and egalitarianism moderated the relationship between diversity-benefits ideology and support for inclusive policies. Participants also answered questions about their diversity-benefit expectations, such as "I have a right to benefit from diversity," and "My racial group should have the opportunity to benefit from diversity." Additionally, participants answered open-ended questions pertaining to why they believed in the pursuit of diversity, and whom they thought diversity policy should most serve. Answers to these open-ended questions were coded.

---

[140] Ho et al., *supra* note 118, at 1010–12 (providing the sixteen-item SDO scale).

### D. *Preliminary Results*

We found promising preliminary support for our hypotheses. Participants exposed to the diversity-benefits rationale supported benefit-focused policies over isolation-focused policies with marginally significant differences. This preference was moderated by egalitarianism (i.e., SDO-E) and dominance (i.e., SDO-D). That is, participants who reported high levels of egalitarianism and high levels of dominance particularly supported benefit-focused policies over isolation-focused policies. Moreover, the responses to our open-ended questions proved to be very rich. A large number of participants cited reasons for pursuing diversity that emphasized diversity benefits (e.g., prejudice reduction, learning outcomes). A much smaller but discernible set of participants cited more redistributive reasons for pursuing diversity (e.g., access to opportunity, redressing historical injustice). In response to the question "who should diversity policy most serve," those participants who cited more benefit-related reasons for pursuing diversity overwhelmingly mentioned that diversity policy should serve majority students as well. Conversely, participants who cited more redistributive reasons for pursuing diversity more often mentioned that diversity policy should serve minority student needs primarily. Notably, nearly all of the aforementioned participants supported diversity policy generally and saw diversity as something universities (and they themselves) should pursue. That is, nearly all of the participants were self-professed egalitarians, yet a divide in who the primary beneficiary of a perceived resource should be persisted. That divide corresponded to differences in endorsement of diversity-benefits ideology.

These data provide preliminary evidence for the sense of entitlement that diversity-benefits ideology can yield. Independent of condition, participants who freely prioritized diversity benefits were more likely to feel that diversity should most serve dominant group members in addition to nondominant group members. Further, when certain policies centered the needs of minorities, participants in the diversity-benefits condition rated those policies less favorably than policies that centered the benefits to dominant groups. Taken together, these data provide preliminary evidence for entitlement to diversity among majority groups who endorse diversity-benefits ideology.

### E. *Implications for Inclusion*

This study is among the first to examine the joint operation of egalitarianism and dominance in determining policy support. The normative claim here is not that diversity is bad or that wanting diversity is harmful. Rather, the focus on diversity benefits espoused in law may be constituted

by and contribute to psychological processes that actually undermine inclusion by cultivating a sense of entitlement among dominant (e.g., white) groups. The diversity rationale facilitates a diversity-benefits ideology that appeals to egalitarianism and dominance sensibilities such that it feels good, does not upset the status quo, and precludes policy makers from adopting institutional policies that may be better situated to insulate historically unrepresented students from the harms associated with being underrepresented.

Although the study does not measure implicit dominance, it provides initial support for the role dominance and egalitarianism together can play in cultivating an entitlement to diversity. The diversity-benefits ideology, though appealing, leads Whites to prioritize diversity policies that benefit them over diversity policies more directly tailored for racial minorities. The opportunity to benefit may lead those with a strong orientation toward social dominance to prefer policies that, while still pro-diversity, may not be as effective in addressing the particular inclusion needs of racial minorities. This approach toward inclusive policy may prove harmful to the achievement, well-being, and retention of racial minorities in the long run. Future research will examine these implications in greater depth.

CONCLUSION

In our Introduction, we mentioned a white student who expressed disappointment that his classes lacked African American students. The remarkable aspect of his stance was his claim that he had paid for and expected the diversity that an education at this particular institution had promised. Unfortunately, the student's entitlement fits squarely within the ideological framework of the time—a framework constructed through the decades-long interplay of Supreme Court rulings on affirmative action, universities' enactments of diversity policies, and social science data that has emphasized the benefits diversity provided to the education of all students, and sometimes especially white students. However, when one further unpacks the student's reasoning, what stands out about his stance is not just his entitlement to diversity, but that in possessing this entitlement, his imagination for what diversity could look like in educational spaces was limited. He did not lobby the university administration to increase the overall number of African American admissions; nor did he attempt to imagine alternative modes of engaging in intergroup contact. Rather, he sought to configure the educational space in a way that served his own perceived needs.

The student's educational imagination is not the only one truncated by a diversity-benefits ideology. While the numerous benefits of diversity

articulated by social science research are important, the focus on diversity's benefit to white students interacts with people's psychological desires to maintain the status quo that can ultimately cultivate an entitlement to diversity. When law sanctions that entitlement by positioning these benefits as necessary for the use of corrective strategies to achieve diversity in higher education, the court's imagination surrounding diversity in education is also limited. The preliminary research discussed in this Essay begins to demonstrate that this entitlement and subsequent conception of the educational setting can have potentially negative consequences for inclusion, particularly for racial minorities. Moreover, it suggests that the elevation of a diversity-benefits rationale relative to others may not only stem from but also entrench "a fear of too much justice"[141] and constrain efforts to address discrimination.

---

[141]   McCleskey v. Kemp, 481 U.S. 279, 339 (1987) (Brennan, J., dissenting).