Solutions to Segregation: Quotas v. Holistic Review

Ever since the monumental decision in Brown v. Board of Education, the problem of how to desegregate public education has rocked the country. Many cases have made their way to the Supreme Court with a petitioner arguing that they had been discriminated against by an educational institution. Interestingly, a large amount of the more recent cases have been brought to court by white applicants. While the universities have been cycling through the use of affirmative action, public K-12 schools have been trying other methods such as busing or quota systems. Lack of diversity in public schools has its roots in the problem of neighborhood segregation, with the makeup of school districts being predominantly minority students or predominantly white. White flight has not helped the issue. Given the fact that public school funding comes from property taxes, socioeconomic status of the districts affect the quality of the education and programs available to those students. The courts have been confronted by cases ranging from blatant violation of the precedent set in Brown v. Board, to the aftermath of various attempts at fixing the problem of segregation. By ruling the use of quota systems unconstitutional, while upholding the use of a holistic review, the courts have created a more balanced admissions process and must continue to do so until historical inequalities have been reconciled.

Ten years after Brown v. Board of Education, the Civil Rights Act of 1964 was passed. The majority of the Act is focused on race and employment, but Title IV examines the desegregation of public education. Though it proclaims that students cannot be discriminated against based on race, it also states that: "'desegregation' shall not mean the assignment of students to public schools in order to overcome racial imbalance" (*Civil Rights* Sec. 401). By

defining desegregation in relation to a denial of blatant quota systems, quotas had already met their metaphorical demise. However, that didn't stop the attempted use of them. In Regents of the University of California v. Bakke, the Supreme Court decided that race could be a factor in admissions, but Supreme Court Justice Powell went further, stating that the use of quotas went against the Equal Protection Clause of the fourteenth amendment (*Regents*). Thus was a holistic review process, utilizing race, and the denial of a quota system set to become precedents for later cases.

In 2003, two cases against the University of Michigan Admissions made their way to the Supreme Court, Gratz v. Bollinger and Grutter v. Bollinger. Gratz v. Bollinger ended in a 6-3 Supreme Court decision that the University of Michigan Medical School had violated the Equal Protection Clause and the Civil Rights Act of 1964, specifically the use of giving minority students more "points" towards being admitted (*Gratz)*. In her dissenting opinion, Supreme Court Justice Ginsburg stated that using race in the admissions process can show why a student is qualified to be accepted to the school (*Gratz*). Justice Ginsburg made a valid point, race can have a large impact on a students application and ignoring such an innate and unchangeable facet of their experience allows for further perpetration of historical inequality. However, the Universities' use of points awarded only towards minority students specifically pinpoints race as a predominant factor towards admissions rather than the holistic review decided upon in Regents v. Bakke. The use of holistic review can also be seen in Grutter v. Bollinger. The Supreme Court, in a 5-4 decision, stated that the University of Michigan Law School had not violated the Equal Protection Clause or the Civil Rights Act of 1964 due to its use of individualized review (*Grutter*). Supreme Court Justice O'Connor put it best by stating in the the majority opinion that:

"in the context of its individualized inquiry into the possible diversity contributions of all applicants, the Law School's race-conscious admissions program does not unduly harm nonminority applicants" (*Grutter*). Thus the court continued to support the holistic review precedent of Regents v. Bakke.

While the battle over affirmative action has waged in higher education, K-12 public schools have scrambled to come up with solutions for the segregation of their schools. One such solution is busing students of various races to other schools outside of their neighborhoods to try and create a semblance of diversity. Swann v. Charlotte-Mecklenburg Board of Education ended in a unanimous Supreme Court decision that if there was a direct instance of "state-imposed segregation" the court could order solutions, including busing (*Swann*). A few years later, the Supreme Court, in Milliken v. Bradley, ruled 5-4 that a Detroit district court's order to bus students was not justified due to lack of evidence towards intentional segregation (*Milliken*). While some may argue that the decision in Milliken v. Bradley means that busing is not a valid solution, it is important to note the distinction made in the case. The decision was not made on the basis that busing as a concept was bad, it was made based on the fact that there was no direct evidence, in that specific situation, of intentional segregation. However, any district using busing as a solution must take care not to fall into the problem of using quotas, especially with their use in higher education being banned. Parents Involved in Community Schools v. Seattle School District No.1 et al. is one example of a K-12 public educational institution falling into the quota trap. The Supreme Court came to a 5-4 decision that the District was not allowed to use race, and only race, as the reason to allow students to go to a specific school so as to create a 40% "white" and 60% "non-white" ratio (*Parents*). The Court stated that: "racial balancing is not transformed

from ‘patently unconstitutional’ to a compelling state interest simply by relabeling it ‘racial diversity’” (*Parents*).

It is hard to come up with a solution to a problem based on centuries of discrimination and inequalities. An examination of one of the recent solutions was Fisher v. University of Texas at Austin et al. in 2016. The Court ruled 4-3 in favor of the University of Texas’s Top Ten Percent Plan, the automatic admittance of students in the top ten percent of their class with the remaining spots being decided through holistic review (*Fisher*). By admitting the top ten percent of each graduating class, the University of Texas has increased diversity rates without having to set a quota system that would have been overturned, and the holistic review guarantees individualized attention towards the rest of the spots. However, the main problem with the plan is that it can only try to solve the diversity problem in higher education, and almost relies on segregation of K-12 schools to have worked as well as it has. Until the root of the problem, neighborhood segregation and socioeconomic imbalance, has been addressed, students may be forced to wait until college to experience diversity in their schooling. Students should be able to acknowledge their race in college applications, but if a college chooses them simply because of race based quotas, the student’s personality and accomplishments are devalued. By using holistic review instead of quotas, students are allowed to express their whole self in their application and can know that they got in through their own merit rather than the color of their skin.

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