

### 3 The Case for Diversity

As a high school senior from Texas, Abigail Fisher applied to the University of Texas at Austin for admission to its undergraduate program. In 2008, the university denied her admission. Fisher, in turn, sued the university for violating her constitutional rights. Among other things, she argued that the university owed her a duty under the Equal Protection Clause that it did not uphold by admitting minority students who had performed less well than she had on tests and in school. This violation, Fisher argued, arose as a result of the university's use of race as one of the criteria by which it reached its admissions decisions. Fisher claimed that she and other similarly situated white applicants had suffered harm as a consequence of this policy, which should be deemed unconstitutional.<sup>1</sup>

The legal battle that ensued took eight years and several levels of courts to bring to a close. The university prevailed at more or less every turn. The first court to take up Fisher's claim, a federal court in Texas, found that the university was permitted to use race as a criterion for admission in the way that it had. Fisher appealed all the way up to the U.S. Supreme Court. The justices agreed to hear her case.

In 2013, in the first of two rulings—called *Fisher I* for short—the Supreme Court again supported the decision, but sent it back to the lower court for further consideration under a tougher standard: “strict scrutiny.” After the lower court reaffirmed the previous decision, Fisher’s case made it back up to the U.S. Supreme Court. In 2016, the Court—in a decision called *Fisher II*—again affirmed the university’s right to use race as a criterion in admissions. Eight years into the dispute, and well after Fisher had graduated from another college, the Supreme Court squarely affirmed the use of race as a criterion in college admissions.<sup>2</sup>

The *Fisher* case is important on many levels. It is an important counterpart to *Brown v. Board of Education* in 1954, which cleared the way for integration of the public school system in America.<sup>3</sup> *Fisher* built on previous Supreme Court cases, in particular the twin matters of *Grutter v. Bollinger* and *Gratz v. Bollinger*, which pertained to the University of Michigan’s affirmative action policies in admissions.<sup>4</sup> Together, these holdings by the Supreme Court established a firm legal basis for the use of race as a factor in college admissions processes, so long as the universities follow a series of steps in doing so.

The *Fisher* case is also important because it prompted public consideration of the merits of diversity in education. Looked at from that angle, the case was about whether the University of Texas at Austin had articulated sound enough educational reasons to favor the kind of diversity it sought—in this case, to admit a certain number of otherwise qualified minority students even if those students did not have academic qualifications that were, on their face, higher than those of all other applicants, including Fisher.

A powerful case for the merits of diversity in education is embedded in the many arguments that the courts heard over

those several years. Much of this case for diversity can be found in the courts' written opinions. In particular, the collection of more than 100 amicus briefs filed in the Fisher cases is an extraordinary source of data and powerful argumentation about why diversity matters and how it connects to the learning process.

Though the legal process took many twists and turns over eight years, all the courts fundamentally agreed on one thing: diversity is good for learning and good for democracy in the long run. The Supreme Court summarized the reasons that it found compelling: "e.g., ending stereotypes, promoting 'cross-racial understanding,' preparing students for 'an increasingly diverse workforce and society,' and cultivating leaders with 'legitimacy in the eyes of the citizenry.'" These reasons, among others, amounted to a sufficiently strong rationale for the use of race by the university in its admissions process. Let's start with these four reasons as core to the case for diversity in education.

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The first compelling argument for diversity: ending stereotypes. All humans grow up with biases. Regardless of our race or ethnicity, our faith or our gender, we are biased toward and against other human beings. The body of research on this topic is so strong as to be incontrovertible. As Mahzarin Banaji and Anthony Greenwald describe in their book *Blindspot: Hidden Biases of Good People*, we all harbor what they call implicit biases, no matter who we are. (If you are still skeptical on this score, there is a test you can take online that may well convince you: <https://implicit.harvard.edu/implicit>.) These biases derive from many sources, including our upbringing and the stereotypes we encounter through our everyday lives—in the media, among our friends and family, and in our schools and workplaces.<sup>5</sup>

One legitimate goal of the educational process is to end stereotypes, which are harmful in multiple respects. They hurt those who suffer from the bias of others. Stereotypes also limit the understanding of those of us (which is to say all of us) who harbor them. Stereotyping means that we do not see the essential humanity in one another, fail to connect with those different from us, and lose out on the many advantages of mutual understanding across the lines of difference.

Large or small, the effects of stereotyping reach far beyond school and university walls to national and international policy matters. Claude Steele, a prominent sociologist, points to various forms of stereotype threat.<sup>6</sup> In his book *Whistling Vivaldi: And Other Clues to How Stereotypes Affect Us*, Steele describes the experience of Brent Staples, then a graduate student at the University of Chicago. Staples discovered that he was treated very differently depending on whether he whistled Vivaldi while walking in the evening through the Hyde Park neighborhood of Chicago where he lived. When he did not, white passersby often crossed to the other side of the street or otherwise acted afraid; when he did, he was instead occasionally met with smiles.<sup>7</sup> This same stereotyping leads to more serious harms when applied to groups of people within a population. For instance, the disproportionate number of African Americans stopped for certain infractions, incarcerated in the United States, or harmed through police violence, can be traced both to structural inequities in the nation's history and to implicit bias on the part of those involved in the justice system (while acknowledging those very many law enforcement officers who have every good intention in carrying out their public duties).<sup>8</sup>

Diversity in an educational setting is one means of ending stereotypes and reversing the effects of this implicit bias across

society. A young person who grows up in a completely homogeneous environment, attends a homogeneous school, and plays in homogeneous groups will have little opportunity to examine or test their understanding of ingrained biases and stereotypes. Research shows that when diverse groups of students work in teams to solve problems, their collaboration can help reduce stereotyping. This problem-solving approach can work even better than programs focused on talking across differences. Schools and universities are ideal places for these problem-solving environments to thrive and serve our students.<sup>9</sup> A well-structured, diverse educational environment provides the opportunity to address the negative effects of bias and stereotyping locally on campuses and in society at large.

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The second compelling argument for diversity: promoting cross-racial understanding. The national discord that followed a series of deaths of African Americans, leading to the establishment of the #BlackLivesMatter movement and the #SayHerName movement, has made plain the deep need for sustained work toward cross-racial harmony in the United States.<sup>10</sup> In 2016, 70 percent of Americans reported that “race relations are generally bad,” among the highest levels of race-based discord in decades.<sup>11</sup> The need for improved cross-racial understanding, in America and around the world, is urgent, especially in the context of the 2016 presidential election between Donald Trump and Hillary Clinton that has put a spotlight on racial differences in the United States.<sup>12</sup>

Race is not the only form of difference that matters; the frame adopted by the Supreme Court might reasonably be extended to include ethnicity, faith, gender, and sexual orientation, among other differences. Better interfaith understanding, connections

across lines of gender and sexuality, and other forms of bridging are needed just as badly on a global scale.

Campuses have long been the site of discussion about race and difference. Cross-racial discussion can take multiple forms. It can be enormously fruitful and educationally valuable, but if structured poorly, it can result in divisions among students and faculty. Campuses can develop climates that are positive and supportive of all community members; campuses can also take a negative turn, dividing community members and dissuading prospective applicants from joining the community. In a campus environment, educators can help to structure spaces in which students rub elbows with people of many different backgrounds and are able to share ideas in a way that can be less natural at other stages of life. Those who have lived in campus dormitories, for instance, often reflect on the enduring power of “late-night bull sessions” in which young people of different backgrounds bat around the ideas of the day. These times—perhaps to the detriment of getting their homework done—can help build life-long bonds and empathy between people who might otherwise never meet.

The strongest educational communities are ones where participants choose a path grounded in mutual understanding, inclusivity, and respect. Students and faculty can learn by truly listening to one another, learning about one another’s background, and finding common ground across differences. In a simpler sense, cross-racial understanding can lead to friendships and connections that may be enormously valuable on a person-to-person level.

These educational gains in understanding one another across difference—racial and otherwise—cannot happen consistently without a diverse student and faculty body. One of the key

issues before the Court in the *Fisher* case turned on this question of what it meant, exactly, to have a diverse community: what a critical mass might look like in terms of people from different backgrounds. The university argued, successfully in the end, that it had sufficiently defined what it meant to have a “diverse” community, while Fisher’s lawyers argued that the university was too vague in this respect. The Court ultimately sided with the university, which argued that its admissions office had a good and sufficient sense of what it meant to have the kind of diversity on campus that drives educational benefits. Scholars have also argued that there is such a thing as communities that are *too* diverse, so it may be that the question is not how much diversity is “enough” but rather how much is “optimal.”<sup>13</sup>

The ability to talk to one another and to live with one another despite our differences is one of the most important skills people can learn in schools and universities. It is itself a form of excellence that students need to develop. Schools cannot pursue this form of excellence without an intentionally diverse community in which students and faculty are educating one another across differences.

Competency in diversity is essential to humans thriving in an increasingly global, interconnected world. Disputes, big and small, have been fought over racial, ethnic, and faith-based misunderstandings throughout history. The rancor in America on topics related to race in 2016, during the political season and on campuses, is but one example that demonstrates the importance of this work. Whether in the long-running struggle over territory in the Middle East and North Africa that extends to the present day, the Holocaust in the middle of the twentieth century, or countless sectarian disputes around the world, an absence of cross-racial harmony and understanding leads to atrocities and

unmeasurable harms. Empathy across difference, brought about through diversity in education, offers the promise of saving lives by reducing armed conflict, within and across states.

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The third compelling argument for diversity: preparing students for an increasingly diverse workforce and society. Education is in part about preparing young people to succeed in their professional and civic lives. Our schools ought to ensure that students are prepared to thrive in jobs available to them when they graduate. Educators also strive to ensure that our graduates are well prepared to serve as good citizens who can help our society thrive as a whole. In the twenty-first century, diversity is an essential element in both of these respects.

The workforce that our young graduates are entering is more complex, more diverse, and more interconnected at a global scale than ever before. On the most obvious level, students who have experienced only a homogeneous school environment will find themselves unprepared when they reach a workplace vastly more diverse than the communities in which they have grown up. A student who has only interacted with those of a certain gender, for instance, might find it challenging to work alongside those of another gender. Diversity in schools makes possible interaction with those who have a different perspective before entering the workforce and learning these lessons on the job.

The workers of the twenty-first century will also need to be more skilled in collaboration than workers in the past. Economies around the world are switching away from manufacturing and agriculture toward services and knowledge work. The types of jobs that are growing quickly tend to require knowledge workers, almost always organized in teams. Unlike the manual labor of the past, these knowledge-oriented jobs call for a high level



of interaction among people to accomplish their assigned tasks. Schools and universities have responded to these changes by emphasizing work in teams, project-based assignments, and collaborative forms of assessment. The late-night informal engagement between students in residence halls may pay off in this respect, too.

Diversity in schools and universities helps students work well in teams. Some of these gains come in diverse classroom settings or in purposefully designed diversity workshops and forums. The gains often come from informal, unplanned interactions in diverse environments. Students playing on a sports team with classmates from different backgrounds come to appreciate the strengths of their teammates. Musicians who play instruments or sing in a chorus or musical with those of different race or faith backgrounds gain new skills. It may well be that those skills, developed on the court or in the auditorium, will prove to be among the most valuable abilities learned during a student's education when it comes to preparing for the workforce. Our schools, at every level, ought to make this type of learning central to their work.

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The fourth compelling argument for diversity: cultivating leaders with legitimacy in the eyes of the citizenry. We educate young people in part to prepare them to take on positions of leadership in adulthood. The Supreme Court considered the need to cultivate leaders deemed "legitimate" in the eyes of the citizenry one of the values of a diverse student body. According to the University of Texas at Austin, the educational goals of diversity include the "acquisition of competencies required of future leaders."<sup>14</sup>

Leadership takes many forms. The leaders of a democratic state ought to reflect the racial, ethnic, gender, faith-based, and

sexual composition of the people at large. A truly equitable and inclusive state would involve leaders who have different levels of ability in various respects, including the inability to see, hear, read, and so forth. Few states have ever truly managed to create this particular form of legitimacy. If members of a particular group are systematically denied key educational opportunities, then it is unlikely that they will make it through the gauntlet between the time they leave school and the time they try to assume senior leadership positions. The point is not that it is impossible for members of that group to succeed in leadership, but rather that it is less likely to the extent that they have been excluded from the most selective educational institutions. For instance, up through the 2016 election, candidates who were white, male, heterosexual, and Christian were more likely to be elected president of the United States than those who were not. It was possible for a mixed-race man to be elected, as Barack Obama was in 2008 and again in 2012, but he was the exception to the rule. The same is true outside of civic leadership—the skills gained in good educational institutions help in climbing the corporate ladder, too, and in attaining a leadership position in a for-profit or nonprofit organization.

In these respects, race and ethnicity are important elements of diversity, though far from the only ones. Consider, for instance, people who have served in the military or come from military families. If those who have served, or have parents who have served, are less likely to be admitted to highly selective educational institutions, they may be less likely to attain positions of leadership outside the military itself. Legitimacy in the eyes of the citizenry would surely be served by the inclusion of young people from military families in positions of civic leadership, regardless of their race, gender, or sexuality.

This fourth reason invoked by the Supreme Court in *Fisher II* links the educational benefits of diversity directly to civic and political life. If educational institutions do their job in educating a diverse array of students, the state as a whole will benefit when those students graduate and assume the mantle of leadership over time. To the extent that all groups in the state see themselves represented in positions of leadership across all facets of society, the polity at large stands to benefit from the strength of those ties and the engagement in civic life that can flow from it. This final point links the educational benefits of diversity to the civic and economic benefits that diversity can bring to a society.

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The Supreme Court in *Fisher II* mentioned only a handful of the possible arguments in favor of diversity. One can almost hear the justices and their clerks, writing for the majority, leave off that section of their opinion with “and so forth” after describing the first four reasons. The several arguments that the Court seized on fall into the category of functional reasons for diversity. These reasons are not wrong; they are, however, an incomplete catalog of all the possible rationales for diversity in education, not to mention in workplaces, on sports teams, and in society at large. While logically compelling, this list of reasons has a bit of a clinical, bloodless feel to it.

The Court focused largely on educational outcomes for all students, including those in the majority (including, prospectively, *Fisher* herself) in its reasoning. An additional rationale for diversity is that it enables better educational outcomes for a subset of students, in particular those who come from communities historically underrepresented in elite educational institutions. Common sense suggests that having a critical mass of minority students lessens the alienation and loneliness that can

lead to poorer educational outcomes among students from those groups. Social science research backs up this claim. These cognitive benefits, even if enjoyed primarily by a subset of students, matter to individuals, groups, and society as a whole.

Diversity is linked to the positive development of social and emotional growth, as well as cognitive gains. One way to see this growth is through the connection between diversity and the development of a sense of “voice” in young people. Mina Huang, writing of the power of diversity in her educational experience as a student at Wilfrid Laurier University in 2015, said: “Diversity gives people a voice. Diversity empowers people to be expressive without feeling outnumbered. It allows us to raise a hand in disagreement with a majority of our peers while presenting the opportunity to see things from a different perspective.”<sup>15</sup> As young people grow and develop a sense of their personal and social identities, the diversity in their learning community matters to their social and emotional well-being.

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There are other types of arguments for diversity beyond the functional reasons favored by the Supreme Court in the *Fisher II* majority opinion. Some of these reasons are aspirational, such as fulfillment of the promise—yet unrealized—of the American dream for all citizens. As every schoolchild in America knows, the basis for the founding of the United States includes soaring rhetoric along these lines: “We hold these truths to be self-evident, that all men are created equal.” (The Declaration of Independence, drafted by the slaveholder Thomas Jefferson, is hardly a model of inclusivity, of course; one has to set aside the part about the “men” and the later references to “merciless Indian Savages” to celebrate the message about equality.)<sup>16</sup> That shared aspiration, of a state in which all people are in fact treated

equally, relies on a commitment to diversity in education as a part of the process.

Other arguments are moral and ethical. Given the way certain groups of people have been treated historically, programs that favor diversity are a moral necessity. These moral and ethical arguments rest on the structural effects of inequality in the past. Today's society, in turn, should respond with the ambitious diversification of educational institutions as one in a series of efforts to reverse the effects of systemic injustice over time.

Most of the well-established, elite educational institutions in the United States admitted predominantly white, male applicants of Anglo-Saxon heritage for generations. Over the course of the twentieth century, that pattern changed, slowly and in fits and starts, and admission was extended to women, people of Jewish ancestry, people of color, and people who were openly members of the LBGTQIA+ community. Those in the majority have a moral obligation to render homogeneous institutions more diverse and inclusive over time, much as the Supreme Court told public schools in 1954, in *Brown v. Board of Education*, that they must no longer remain segregated. The *Fisher* case pointed to that dispute more than fifty years later by showing exactly how to accomplish equality in this respect.

Diversity in education is a powerful means of addressing these aspirational and moral claims. One need not agree with all these arguments for diversity in order to support it; in fact, the case for diversity might require only one of the many plausible rationales, and any of them is strong enough to overcome the counterpoint to diversity, namely the argument in favor of homophily. In focusing on education one invests in the future, in the human potential of our young people. The best way to overcome the structural racism and other-ism of the past is to

invest in those who will lead the society's institutions into the future.

The case for diversity extends far beyond the realm of education. Diversity can enhance the work of for-profit and not-for-profit firms of most types imaginable, which is a reason why many firms pursue diversity in a variety of dimensions. At the level of complex systems, diversity is a driver of innovation and productivity. Diversity can render such systems—including, importantly, cities—more robust over time.

The case for diversity in education stops with neither diversity alone nor education alone. Diversity in the numerical sense is necessary but not sufficient—the educational process works well only when leaders throughout the community build on and drive a diverse community toward meaningful levels of equity and inclusion. This distinction pulls apart the *structural diversity* of having certain numbers of community members who self-identify in different ways—often a first phase of work—and the *interaction diversity* that occurs among people on the campus in positive and enriching contexts. Diversity in education is even stronger when connected to diversity outside the classroom walls, when it is deeply connected to diversity in the workplace and in civic life.

Diversity without a meaningful effort to make something valuable out of it—to ensure that the people and institutions benefit from it—will not do much of anything other than perhaps cause resentment. Some point to the limits of diversity in educational institutions and argue that it is inadequate to the task. The journalist Ta-Nehisi Coates, for instance, has extended the moral argument beyond the need for diversity in institutions to a call for reparations.<sup>17</sup> Others state that the United States can only move forward after confronting and addressing the debts

of slavery, Jim Crow, and additional harms to African Americans and the Native Americans who predated European settlers in the United States. The case for diversity is in fact a case for much bigger changes to the structure of our institutions.

While most research points to the substantial educational and democratic benefits of diversity, it can also come with costs. Diversity can lead to additional conflicts among community members unused to interacting with people from different backgrounds. Initially, as communities become more diverse, concerns can arise over lower levels of trust among community members, self-segregation and isolation, or avoidance of opposing or critical viewpoints. Mere contact or exposure to persons from other backgrounds may not increase tolerance unless it happens in an environment with a positive campus climate. Schools and universities that do not have strong cultural norms of equity and cooperation between diverse groups—particularly across race, gender, and sexuality—often experience tension as their communities become more diverse. Knowledge of different groups and cultures, the opportunity to form friendships across racial, ethnic, and religious backgrounds, and seeing teachers supportive of cross-cultural and interethnic relationships can also increase empathy among students—but only when these activities are valued and supported. These potential drawbacks do not outweigh the manifold benefits of diversity, but academic leaders must take them seriously.<sup>18</sup>

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Diversity, equity, and inclusion work in education could not be more pressing than it is today, in the wake of a contentious election that broke down so sharply along racial and ethnic lines. A strong majority of white men favored a winning candidate (Donald J. Trump) who openly criticized Muslims and Mexican

Americans, while the losing candidate (Hillary R. Clinton) drew support from an overwhelming percentage of African-American and Hispanic voters (of all genders). The outcome of the election led to a spate of racial incidents on campuses and in other communities, which in turn have shone a spotlight on the massive gulfs separating groups of U.S. citizens.<sup>19</sup> Similar patterns have emerged in elections in Western Europe in recent years. It is incontrovertible that today's democratic systems are strained along the lines of racial and ethnic difference; given the demographic trends, we must take seriously our ability to address root causes of these strains.

The importance of diversity in our public life is only going to grow, not diminish, over time. The group of young people coming of age in the early twenty-first century is the "generation of diversity." A study by Brookings Institution senior fellow William Frey claims that "racial diversity will be the most defining and impactful characteristic of the millennial generation."<sup>20</sup> Educational institutions must not miss the challenges and opportunities posed by the demographic evolution of the United States, from a majority white country to one with no specific majority racial group by 2044.<sup>21</sup> Demographic trends also suggest that the changes will continue throughout this generation's lifetime, with, for instance, people of Asian descent surpassing those of Latin American descent by 2055 and with immigration from Africa growing sharply.<sup>22</sup>

Diversity on campuses from the standpoint of the *Fisher* decision did not explicitly include diversity of political opinion. I return to the topic of heterodox political communities in the conclusion to this book, but I believe that advocates of diversity—and I seek to be among them—would do well to consider the benefits of striving for a diversity of political views on



campus alongside other forms of diversity. Political viewpoints do fall into another category than, say, race; the former is plainly more easily malleable than the latter, for instance. They are also different insofar as certain underrepresented minorities have suffered the effects of structural racism for a long time, whereas those with most political views have not. I include the notion of a range of political viewpoints here not because the moral arguments are comparable, but because many of the same learning benefits can accrue from diversity of views as can accrue from diversity of other sorts. In a divided nation or culture, as we observe in the United States of 2016, the connection across political divides, among well-meaning people, would surely be valuable in certain ways to individuals and to the community at large.

Educational institutions are not the only places that need to focus on diversity and inclusion in times of dramatic demographic change, but they are important places to begin. Young people living in academic communities are likely to be highly effective in garnering the benefits of diversity. That does not mean that all efforts should focus on elite universities, such as the University of Texas at Austin in Fisher's case, or the University of Michigan Law School in those of Grutter and Gratz. The case for diversity extends across all forms of schooling in our society, in the spirit of what the *Brown v. Board of Education* decision told Americans in 1954 about the need for racial integration.

As crucial as it is, the case for diversity is not the sole topic of this book. There is a deep connection between the benefits to be gained through diversity in education and those resulting from a culture of free expression on campuses. As the University of Texas at Austin claimed in its defense to Fisher, and as

the Supreme Court agreed in its opinion in *Fisher II*, a central element of education—and of diversity in education—is to promote “a robust exchange of ideas.”<sup>23</sup> Diversity, in other words, is essential to freedom of expression. Pursued in concert, diversity and free expression both become stronger and more important. Together, diversity and freedom of expression offer the greatest promise of accomplishing our essential educational and civic goals as a democracy.