

# Why Opportunity Isn't Enough: Restrictive v. Expansive Views of Equality, Texas Top Ten Percent Policy, and Race Liberalism

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This conceptual paper analyzes persistent challenges to racially diversify higher education in Texas, paying special attention to trends at this Southern state's most selective flagship—University of Texas at Austin. We apply critical race theorist Kimberlè Crenshaw's frame of race liberalism and her view of equality as either expansive or restrictive to analyze race-neutral approaches intended to remedy longstanding issues of racial diversity. Specifically, we focus on the Texas Top Ten Percent Policy, tracing its trajectory from affirmative action through the recent Abigail Fisher case. This examination clarifies the race-evasive basis of policies designed to improve enduring issues of racial exclusion in higher education.

*Keywords:* higher education, critical race theory, Texas Top Ten Percent Policy, liberalism

## Introduction

In higher education, problems related to racial inequity center on institutions' struggle to adequately recruit, enroll, and retain underrepresented minoritized students (UMS), a group that includes Native American Indian, Black, and Latinx/a/o students. The insufficient support available for these populations is perhaps most evident in states with robust populations of Color, namely those in the South. For example, flagship universities often fail to reflect student demographics within their broader state's Black and Latinx population (Lumpkin et al., 2021; Nichols, 2020). Some higher education institutions have attempted to remedy these enduring disparities with legislation or policy. Depending on the political climate, however, many of these efforts have circumvented race in working to improve race-based issues (Goldstein Hode & Meisenbach, 2017; Maramba et al., 2015). In doing so, im-

provements in the population of UMS tend to emphasize enrollment rather than completion rates, which may represent a more comprehensive measure of equality. The state of Texas offers one of the most compelling examples of these trends, especially regarding its Black students.

The purpose of this conceptual paper is to examine the incompatibility between race-conscious and race-evasive methods of racial redress in a Texas higher education policy through the experiences and outcomes of UMS broadly and Black student specifically. We emphasize the plight of Black students given their status as one of the most persistently underserved and underrepresented groups in higher education (Anderson, 1988; Patton, 2006) while acknowledging how white supremacy oppresses people of Color (POC) more generally. The role of white supremacy in this analysis is pronounced. We define white supremacy as an ideological paradigm of racialization that penetrates a society's social, "political, economic, and cultural systems" to dominate and subjugate POC, whom it harms across individual, interpersonal and institutional levels (Harris, 1993, p. 1714). We trace Texas' history of higher education policies designed to address racial representation disparities, using critical race theory (CRT) to critique such policies. We rely on critical race theorist's Crenshaw's (2017) frame of race liberalism, a perspective that draws on race-evasion to deny racial discrimination. Additionally, we utilize equality as either expansive (seeking to eliminate past wrongdoings) or restrictive (seeking to address future wrongdoings) (Cren-

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shaw, 1988). These concepts help clarify key differences between equality of opportunity and equality of outcome, key considerations in higher education policies and lawsuits.

The Texas Top Ten Percent Policy (TTTPP) represents the first state-wide attempt to “effectively leverage de facto segregation in high schools and diversify their college campuses by automatically admitting the top students from each high school in its state;” that is, schools admit students who ranked in the top decile of their graduating high school class (Long & Bateman, 2020, p. 190). A race liberalism and equality lens reveals that university administrators, policymakers, and legislators have deliberately evaded race in designing such policies, exacerbating racial exclusion and representation issues, bolstering white supremacy. The Fisher vs. University of Texas at Austin case (2009) demonstrates a relatively recent instance of the TTTPP’s significance vis-à-vis these topics. The plaintiff Abigail Fisher, a white 2008 high school graduate from a suburb of Houston, Texas, graduated in the bottom 90% of her class, placing her in a pool of more than 16,000 applicants competing for 15% of the spots available to in-state, incoming freshmen (Brodin, 2014). UT-Austin denied Fisher’s admission due to her 3.59 GPA and 1080/1600 SAT score, which was not competitive compared to other applicants (Fisher v. University of Texas at Austin, 2015; Hannah-Jones, 2016). In response, and in part due to her status as a would-be legacy student whose father attended UT-Austin, Fisher filed suit against the school because according to her “there were people in my class with lower grades who weren’t in all the activities I was in, who were being accepted into UT, and the only other difference between us was the color of our skin” (Hannah-Jones, 2016).

A small group of scholars have used CRT to examine the TTTPP (Goldstein Hode & Meisenbach, 2017; Maramba et al., 2015) and related lawsuits (Donnor, 2015; Tran, 2017). We build on this work by using other facets of the theory to provide a theoretical explanation for why such race-evasive policies fail to improve racial diversity in higher education. Furthermore, we engaged scholarship that framed the TTTPP, its history, its practice, and its shortcomings in mainly racial terms. While our focus on race is pronounced, we engage both race and ethnicity as concepts rooted in one’s ancestral heritage that have significant implications for group access to educational resources and educational outcomes (Gay, 2014).

We proceed by explicating key terms, concepts and the theory that inform this discussion. Beginning with

CRT, we highlight its critique of liberalism and describe the ways covert forms of restrictive equality routinely and institutionally manifest racism. The next section applies the concept of liberalism to explore the trajectory of recent higher education cases and policies in Texas. Thereafter, the paper examines the TTTPP through a critical lens of equality to underline some of its shortcomings. We demonstrate that these limitations stem largely from approaching issues of equality through a framework that upholds opportunity as the panacea for inequality—a restrictive view—rather than one in which the result of modifications looks to outcomes in order to measure improvement—an expansive view (Crenshaw, 1988). Subsequently, we analyze the aforementioned 2009 Fisher vs. UT-Austin case in terms of race liberalism and equality, and we end with implications of this analysis for higher education.

## Theory, Concepts, and Terminology

### Critical Race Theory

CRT is a lens that examines “how a regime of white supremacy and its subordination of people of [C]olor have been created and maintained in America” for the purposes of social redress (Crenshaw et al., 1995, xiii). With roots in Critical Legal Studies, CRT evolved in the 1970s and 1980s from a group of critical legal scholars, who had grown dissatisfied with the theoretical insufficiency of extant legal analyses of race, compelling them to begin building a frame to critique racial injustice; these scholars also sought to better understand why the Civil Rights Movement had failed to eradicate racism (Crenshaw et al., 1995; Tate, 1997; Yosso, 2005). Through theory and methodological innovation, CRT scholars have utilized the framework to interrogate racism, white supremacy, and racial power as they intersect with interlocking systems of oppression (Bell 1992; Crenshaw et al. 1995; DeCuir & Dixon, 2004; Ladson-Billings & Tate, 1997; Tate, 1997; Yosso, 2005).

The mid-1990s saw Ladson-Billings and Tate (1995) introduce the field of education to CRT, outlining its utility in helping the field more precisely theorize racism. In their pioneering article, Ladson-Billings and Tate noted the historical foundations of racism in education. Educational researchers have since used CRT to explore how racism operates to enhance understanding of the experiences of student of Color (SoC) and challenge manifestations of racism in higher education specifically (Harper, 2009; Patton, 2006; Patton,

2016; Patton, et al., 2014, Patton, 2015; Solórzano et al., 2000; Yosso et al., 2009).

Although the tenets of CRT are not fixed (Crenshaw et al., 1995; Gillborn 2015), the theory follows a set of common propositions, which include: recognizing racism as a permanent and normal feature of U.S. society (Bell, 1992); elevating the experiences of POC to debunk white supremacy (Delgado, 1988; Matsuda, 1995; Solórzano & Yosso, 2001); viewing race-neutrality as a farce (Crenshaw, 1988, 2017; DeCuir & Dixson, 2004); historicizing laws, policies, and other institutional structures as key to racial redress (Bell, 1992; Tate, 1997); framing racial oppression as intersectional (Crenshaw, 1989); and accepting interdisciplinary analyses as necessary to challenge racial oppression (Dixson & Rousseau-Anderson, 2018; Matsuda et al., 1993). Higher education and education policy scholars have used this lens to examine the persistence of racism in various dimensions of education.

### **Race Liberalism**

Race liberalism represents a challenge to improving issues of racial diversity on university campuses (Crenshaw, 2017). Critical race theorists identify “race liberalism [as] an ideology that ultimately embodies a color-blind model of racial justice that seeks to eliminate discrimination” (p. 2298). Rooted in individual freedom, this race-evasive justice project is resistant to claims of discrimination based on group categorization. CRT rejects race liberalism because U.S. institutions (e.g., law, education, healthcare) have systematically privileged white people to the detriment of PoC (Crenshaw, 2017; Crenshaw, 1988; Harris; 1993). This argument dismisses the current conditions of U.S. society, which were founded on and continue to exist under white supremacy. For more meaningful change, Crenshaw (1988) argues that stakeholders must “focus...on the distribution of racial power, a perspective requiring the very race consciousness that race liberals saw as the evil that reform aimed to transcend” (p. 2298). These differences can be understood as bolstering equality in either an expansive or restrictive fashion (Crenshaw, 1988), and this framework aptly reflects U.S. educational policies intended to increase the low rate of UMS such as the TTTTP.

### **Restrictive and Expansive Equality**

Crenshaw (1988) operationalized equality as expansive or restrictive. Her conceptualization situates the current TTTTP as a form of restrictive equality because

it focuses on equality of opportunity (i.e., everyone receives a chance to attend), not equality of outcome (i.e., everyone who attends graduates). An expansive view of equality

stresses equality as a result, and looks to real consequences for African-Americans. It interprets the objective of [educational policies] as the eradication of the substantive conditions of Black subordination and attempts to enlist the institutional power of [schools] to further the national goal of eradicating the effects of racial oppression (p. 1341).

From this perspective, racial equality is achieved when institutional leaders engage the lived experiences of historically marginalized and underserved racial groups to inform policies that seek to eliminate racial subjugation. Crenshaw pragmatically underscored that liberal reforms such as the TTTTP may represent useful possibilities but must be approached with caution. She stressed that “African-American people must ... [seek] to minimize the costs of liberal reform while maximizing its utility” (p. 1385). Therefore, it is important to examine how such liberal reform has unfolded in higher education given its longstanding status as a battleground for racial equality (Anderson, 1988).

### **Affirmative Action in Higher Education**

In the U.S., affirmative action, encompasses a form of “corrective justice used to compensate members of a deprived group for prior losses and for gains unfairly achieved by others that resulted from prior governmental action” (Katznelson, 2005, p. 149). It was a highly contentious policy upon its introduction in the 1960s by liberally minded administrators (Stulberg & Chen, 2014). Affirmative action’s implementation in higher education sought in part to increase racially diverse student bodies; broadly, however, it also looked to diversify these campuses by enhancing other categories of social difference, such as gender, which saw the most significant gains (Crenshaw, 2007). Following the systematic destruction of such policies at the university level in states like Texas, Michigan, California, and Arizona, state lawmakers created alternatives to address these longstanding issues that have proven ineffective at ameliorating racial diversity (Cortes & Klasik, 2019; Long & Bateman, 2020; Winkle-Wagner et al., 2014).

Before making American “schools and workplaces more diverse” in terms of race and gender, social policies had historically afforded unearned privileges to white Americans (Crenshaw, 2007; Katznelson, 2005). Admittedly inadequate to rectify “the historical plight

of [B]lack Americans,” some scholars maintain that affirmative action “has been the most important tool that the federal government has endorsed and used...to promote a more equitable society” (Katznelson, 2005, p. 149). With the Civil Rights Act of 1964, the U.S. took its first step toward diversifying its occupational forces and educational systems (Brown, 2001; Boykin & Palmer, 2016; Stefkovich & Leas, 1994). This Act laid the groundwork for Executive Orders 11246 and 11375, implemented by President Lyndon B. Johnson, and the federal government built upon them to establish subsequent affirmative action policies (Boykin & Palmer, 2016; Mayer & Price, 2002).

Since its inception, allegedly aggrieved individuals have regularly fought affirmative action’s constitutionality via the U.S. court system. Examples of such challenges are demonstrated by higher education cases such as: *Hopwood v. Texas*, 1996; *Davis v. Halpern*, 1991; *DeRonde v. Regents of the University of California*, 1981; *McDonald v. Hogness*, 1979; *University of California v. Bakke*, 1978; *DeFunis v. Odegaard*, 1974, *Grutter v. Bollinger*, 2003; and *Gratz v. Bollinger*, 2003 (Boykin & Palmer, 2016; Crenshaw, 2007). These legal battles illustrate how individuals, who are often racialized as white and gendered as men, have regularly mounted legal battles to challenge affirmative action because they feel it gives POC and women unfair advantages over them. These protestations deny that affirmative action makes access to higher education fair for all applicants.

### Texas Top Ten Percent Policy

For university admission, the TTTTP uses students’ high schools as a proxy for their socio-economic status, instead of race or ethnicity (Long & Bateman, 2020), a point that illuminates the way it circumvents race to address a racial issue. A response to Texas’ 1996 judicial ban of affirmative action in higher education, the TTTTP requires public institutions of higher education to admit high school graduates of any racial background who ranked in the top decile of their class (Cortes, 2010). Through this process, the state intends to offer all students an opportunity to attend public institutions of higher education (Harris & Tienda, 2010). The TTTTP represents an attempt to improve the ethnic and racial diversity of Texas’ public universities, particularly its prestigious flagships. The policy was unable to achieve its goal of fostering sizeable racial diversity on higher education campuses (Bateman & Long, 2020; Cortes & Klasik, 2019; Winkle-Wagner et al., 2014) given its focus on enhancing opportunity and access

without attending to institutional equality: that is, equality of outcome versus equality of opportunity for UMS in the state of Texas. The case of the University of Texas, Austin (UT-Austin) supplies an illustrative example.

### Liberalism and the Trajectory of Recent Texas Higher Education Race-Conscious Cases and Policies

CRT helps clarify the pernicious role of liberalism within higher education, particularly when institutions privilege opportunities over outcomes. CRT’s critique of liberalism clarifies shortcomings in approaching issues of equality through a restrictive framework that bolsters the status quo (Crenshaw, 1988). Furthermore, a CRT perspective clarifies that the TTTTP and related legal cases well demonstrate key machinations of injustice veiled as steps toward racial equity. Reflecting on Texas higher education, Bell (2004), one of CRT’s founders, highlighted how race-neutrality functioned in this context, noting

In *Hopwood vs. Texas* ... a panel of the Fifth Circuit court found that considering race or ethnicity in admissions decisions is always unconstitutional, even when intended to combat perceived effects of a hostile environment, to remedy past discrimination, or to promote diversity (p. 145).

As the 1996 *Hopwood* case necessitated, the TTTTP embraced a race liberal approach. In doing so, Bell acknowledged, *Hopwood* helped to sustain the racial oppression of historically underserved groups.

Concentrating on liberalism in its relationship to opportunity, CRT analyses have expanded understanding of mechanisms undergirding racial injustice. Crenshaw (1988) emphasized the importance of recognizing the limitations of civil rights reforms, colorblind rhetoric, antidiscrimination law, and the persistence of Black people’s material subordination. She and colleagues (1995) noted three specific liberal ideologies CRT opposes: race-evasiveness (i.e., color-blindness), the neutrality of law, and incremental change. Bringing these concepts together to explain liberalism’s principles, DeCuir and Dixson (2004), critical race theorists in education, underscored the role of opportunity in this configuration. They argued that liberalism represents

desirable goals to pursue to the extent that in the abstract, colorblindness and neutrality allow for equal opportunity for all; however, given the history of racism in the U.S. whereby rights and opportunities were both conferred and withheld based almost exclusively on race, the idea that the law is indeed colorblind and neutral is insufficient (and many

would argue disingenuous) to redress its deleterious effects (p. 29).

Focused on incremental change and individual responsibility, liberalism represents a challenge to improving issues of racial diversity on university campuses at virtually every level from recruitment to admission to matriculation to graduation.

TTTPP effectively replaced affirmative action in higher education in Texas, warranting further discussion of affirmative action. Higher education scholars have argued that affirmative action policies are crucial to create racially diverse campuses and to help create optimal learning environments for students of all racial groups (Bowen & Bok, 2016; Chun & Evans, 2015; Gurin et al., 2004). These prevailing claims hold that a racially diverse campus affords a wealth of perspectives that broaden and deepen students' worldviews. Although increasing racial diversity on college campuses is important, it is paramount that leaders institutionalize diversity related programs to create an inclusive campus environment, where students learn to work through racial conflict and differences.

Through the lens of race liberalism (Crenshaw, 1988), affirmative action did more to facilitate marginalized groups' access to higher education because it emphasized increased opportunity—admitting more diverse (e.g., POC, women) students—than it did to advance optimal outcomes of such admittance—supporting more diverse groups' completion. Increased access, nevertheless, represents a small yet insufficient improvement. CRT reminds us that affirmative action is inadequate on its own to eradicate racial inequity within higher education because racism is an endemic feature of the U.S. (Bell, 1992). Hence, because racism is normal and permanent, opportunity alone cannot be credited with adequately eradicating racial oppression. Additionally, affirmative action has been used by the white “dominant culture to rid itself of guilt and responsibility for its inhumane and criminal actions” (Nan, 1994, p. 571). Therefore, scholars, practitioners, and policymakers must strive to create policies that address racism at its root rather than policies that foster an illusion of inclusion.

Since the late 1990s, policymakers and legislators have made efforts to open access and opportunity to more racially marginalized students. In 1998, Texas implemented the TTTPP, and this policy has unfolded in various iterations. Winkle-Wagner and colleagues (2014) explained that the TTTPP sought to expand opportunity to all Texas public high school students by “guaranteeing college admission to high school graduates from the top 10% of their classes” (p. 516). As

noted, this policy represents a direct response to the *Hopwood v. Texas* case of 1996, which outlawed race-based quotas or race-conscious initiatives in the higher education admissions process throughout Texas, striking down the use of affirmative action (Winkle-Wagner et al., 2014). Researchers (Maramba et al., 2015; Torres, 2003) have contended that Black and Latinx state legislators proposed the TTTPP to diminish ramifications of the *Hopwood* decision. Thus, the TTTPP replaced a race-conscious policy and would, in theory, extend higher education access to students attending any Texas public high school. Some scholars have critiqued this approach, however, positing that it capitalizes on persistent school segregation patterns (Tienda & Niu, 2006a, 2006b). This critical view recognizes that the TTTPP promises to extend students from any school an “equal” opportunity to attend a selective public university, a scheme that proponents argue may well advantage gifted students in under-resourced schools. Research (Niu et al., 2006) found that few Black and Latinx students recognize such selectivity status and therefore fail to take advantage of this policy. This opportunity structure gives cities or districts little incentive to desegregate their schools because the TTTPP grants all students a chance at success, making the issue of segregation moot if all public school students can theoretically access the same caliber of higher education despite the material quality of their K-12 school or education. Although tweaks were and continue to be made to account for various types of schools (e.g., rural schools and small schools), UMS, notably Black students, persist as underrepresented at one of the state's flagship universities, the UT-Austin (Donnor, 2015; University of Texas System, 2020a).

After five years of implementation, the U.S. Supreme Court's decision in the *Grutter v. Bollinger* case of 2003 reversed the *Hopwood* decision by re-establishing the constitutionality of using race in college admissions, enabling the use of affirmative action yet again (Winkle-Wagner et al., 2014). Despite these changes, Texas continued to deploy the TTTPP to enhance the racial diversity of students in higher education. However, in 2009, the Texas Senate passed Bill 175, which shifted the Plan by allowing only 75% of an institution's enrollment to be filled by the top decile of high school graduates from within the state. Beforehand, 100% of a school's population could be comprised of students whom it granted admission given their top decile rank in their graduating public high school class.

In large part, Senate Bill 175 intended to ease student composition tensions at UT-Austin. Due to its selective status, each academic year, UT-Austin's freshmen class had been increasingly comprised of top decile graduates such that its entire composition was made up of TTTTP students (Maramba et al., 2015). Out-of-state students and those who did not rank in the top 10% of their high school class found it nearly impossible to gain admission. The state legislature acknowledged that in practice, the allegedly inclusive policy excluded a number of students, whose individual circumstances made it difficult for them to out-perform 90% of their high school class. For example, students who attended a well-resourced, highly competitive high school or those who took advanced courses found it increasingly unfeasible to break into the top decile.

In response, Bill 175 provided higher education campuses state-wide the option to cap their top decile admitted students at 75% (Maramba et al., 2015). This limit reserved 10% of remaining spots for out-of-state students, leaving the final 15% for students who were unable to secure admission through another channel. Since 2009, the top decile requirement has grown more stringent for students hoping to attend UT-Austin. Thus, the university has steadily ratcheted-up this requirement, necessitating that as of July 26, 2021, high school graduates rank in the top 6% of their graduating class (University of Texas at Austin, 2021). This more demanding requirement, however, does not change the mechanisms of or name used to refer to the TTTTP.

### **Texas Top Ten Percent Policy as Restrictive Equality & Race Liberalism**

In theory, the TTTTP affords opportunity to UMS because all Texas' public high school students have a chance to gain admission, whereby their access rests on a race-neutral process (Winkle-Wagner et al., 2014). This method of redress seeks to rectify racial inequity going forward, doing little to mend systemic problems retroactively; it also elevates the motivations of the TTTTP—to racially diversify the student body—above the actual consequences of the TTTTP, which have yet to achieve its objective of proportionate racial diversity (Long & Bateman, 2020). Thus, the TTTTP qualifies as a restrictive form of equality because, as CRT argues, it is untenable to assume one can remedy with race-neutrality issues of racial exclusivity (i.e., historically prohibiting Black students due to their racial identity; see Goldstone, 2006; Shabazz, 2004).

An emphasis on outcomes looks beyond admission. Underlying factors, such as access to college preparatory curricula and socioeconomic status, help predict the likelihood that UMS will successfully confer degrees (Bowen & Bok, 2016). Therefore, in Texas offering increased opportunity in the form of admission to its public universities, Black students meet a presumed panacea for the institutional barriers that have systemically and historically precluded them from higher education (Anderson, 1988; Goldstone, 2006; Shabazz, 2004). Unable to resolve these historical wrongs, the TTTTP fails to provide redress for systemic inequities and, once again, relegates Black students' educational needs.

It is curious to consider if and how Black students might gain admission to this Southern state's most selective public institution of higher education if not for the TTTTP. In 2020, Black students, 5.5% of the undergraduate student body, made up 6.2% of the TTTTP students admitted to UT-Austin (University of Texas System, 2020a). Furthermore, since 2011, Black students have had the lowest non-top 10% acceptance rate of all racial and ethnic groups including white, Latinx, Asian, and international applicants (Satija & Torres, 2016). These figures are disconcerting in part because Black students made up nearly 13% of the state's high school graduates in 2020; yet, their white counterparts, who in 2020 made up 27% of Texas' high school graduates (Texas Education Agency, 2020), constituted 40% of the non-TTTTP students accepted to UT-Austin, compared to Black students' 6% (University of Texas System, 2020a). These data suggest that without the TTTTP, Black students may not be able to gain admission at all, a troubling observation that points back to the restrictive nature of inequality in this policy and its promotion of antiBlackness.

To be clear, the data portraying Black students' representation are unacceptable admissions figures based on those needed to make UT-Austin's student population reflective of the state's K-12 student population of 12.6% (Texas Education Agency, 2020). Moreover, the staggering graduation rate difference between Black and white students indicates the need for an instructive framework for policymakers, legislators, administrators, and researchers grappling with these issues. Fortunately, Crenshaw's (1988) lens offers such. Looking beyond admission to graduation, 2020 saw UT-Austin's highest four-year graduation rate: 72.2% (University of Texas at Austin, 2020). As of July 22, 2020, disaggregated data show Black students graduated at 65.7% while their white counterparts' rate stood at 77% (University of Texas System, 2020b). Of note is that in

2020, Black students comprised 5.5% of the undergraduate student body while the percentage of white students was 37.3% (University of Texas at Austin, 2020). Admittedly, these numbers do not distinguish between TTTTPP and non-TTTTPP students. Nevertheless, when the Black student average is compared to that of white students, the more than 11-point difference in graduation rates demonstrates significant inadequacies of the TTTTPP to remedy racial inequity.

More widely, attention to UMS is crucial for expansive equality to take hold in higher education, and a critical perspective on race liberalism stands tantamount to actualizing racial justice. One can view the TTTTPP as supporting UT-Austin in achieving Hispanic Serving Institution (HSI) eligibility because in 2020 77.8% of the university's Latinx population was comprised of Top 10 Percenters (University of Texas System, 2020b). Sizeable gains in Latinx undergraduate rates enabled UT-Austin to reach this HSI milestone, pending other requirements (Gamboa, 2021). Reaching 26.1% full-time "Hispanic" undergraduates in 2020, UT-Austin surpassed the 25% threshold. Critics scoffed at this alleged accomplishment given that the state boasts a 52.8% Latinx K-12 student population (Gamboa, 2021; Texas Education Agency, 2020). Although Asian Americans, SOC who are overrepresented in higher education, make up only 4.6% of the state's K-12 student population (Texas Education Agency, 2020), their undergraduate enrollment rates stand on par with those of Latinx students at 23.2% (University of Texas at Austin, 2020a). For comparison, at UT-Austin in 2020, Asian Americans' 75% 4-year graduate rate rivaled their white counterparts' rate of 77%, figures well above both Latinx (64%) and Black (65.7%) students' graduation rates (University of Texas System, 2020b). In concert, these figures exemplify the importance of racial equity considerations for university administrators and legislators invested in racial justice and the relatively few gains made for UMS.

The central goal of the TTTTPP initially sought to prolong race-based admissions despite the Hopwood verdict outlawing them, and state legislature elected to continue this policy after federal rulings rendered race-based admissions once again constitutional (Maramba et al., 2015). In doing so, the TTTTPP served to address de facto racial segregation and corresponding resource and funding disparities in K-12 education that constrained the academic achievement of underserved students, mainly Black and Latinx, across the state. These details implicate the state legislature, policymakers, and education administrators, raising questions about why these stakeholders overlooked structural issues in

Texas' K-12 education system (e.g., resource disparities) that directly contributed to the problems the TTTTPP was designed to address. Furthermore, research (Niu et al., 2008) has shown that low socioeconomic UMS from under-resourced high schools are less likely to acquire information about the TTTTPP at all, underlining the deep structural nature of this problem.

Opportunity's insufficiency becomes clearer when one views the systemic issues that determine which K-12 students end up constituting TTTTPP undergraduates. In this configuration, different high schools with drastically different resources supply their highest academic achievers to UT-Austin. Upon these students choosing to attend UT-Austin, one can view the institution as falsely assuming they enter with a similar knowledge base and comparable skills equipping them for academic success. This logic, however, is flawed when one considers the substantial resource disparities that plague underserved communities, especially those serving disproportionate numbers of Black and Latinx students (Carter & Welner, 2013). In many cases, these differences translate into greater hardship for UMS, who arrived to UT-Austin via the TTTTPP. These factors may well influence their difficulty in reaching graduation—a significant oversight made apparent by viewing this systemic issue through a critical equality lens centered on race liberalism (Crenshaw, 1988, 2017). That is, while all high-achieving students from across the state possess notable academic ability, the schooling contexts from which they come significantly influence how they are able to perform in a more competitive higher education setting. Thus, without equitable support, historically underserved UMS students continue to be underserved.

Along these lines, critical race theorist Guinier (2003) admitted that initiatives like the TTTTPP are a step in the right direction, but much more is needed if substantive, expansive equality is the goal. Maramba and colleagues (2015) built on Guinier's point to posit that without a state mandated admission policy, there is no system in place to hold higher education institutions accountable for inequitable admission practices for historically marginalized student groups. A recent legal case well demonstrates these enduring issues.

*Texas Top Ten Percent Policy & Abigail Fisher*

Fisher's attempt at legal recourse was reminiscent of the 1996 Hopwood case that challenged the university's practice of affirmative action. This time, though, Fisher's allegations sought to vilify the consideration of race in evaluating non-TTTTPP undergraduate applicants (Donnor, 2015). To assess this applicant pool, UT-Austin used two disparate index measurements, the

Academic Index and the Personal Achievement Index. The latter calculation minimally considers race, as it “is treated as a categorical variable in the undergraduate admissions process” (Donnor, 2015, p. 354 quoting the University of Texas at Austin, 2011, p. 14). This issue is that which Fisher contested although white students regularly comprised the majority of non-top 10% students admitted to the university; for example, in 2016, they made up more than half of non-TTTPP students who were admitted, an overrepresentation given that they constituted little more than one third of the state’s high school graduates (Sajita & Torres, 2016). Fisher’s case also ignored that her rejection might be related to her Scholastic Aptitude Test score, which placed her below the 80th percentile and is a significant factor in calculating an applicant’s Academic Index (Brodin, 2014). Furthermore, While Fisher’s suit focused on reverse racism that she allegedly suffered given her white racial identity, it did not mention the 168 Black and Latinx students who did not gain admission to UT-Austin with the same or better grades and test scores. Fisher’s suit also neglected to mention the 42 white applicants with the same or better grades that did gain admission to UT Austin via TTTPP.

Rendering Fisher unsuccessful, the Supreme Court upheld UT-Austin’s use of race in admissions (Tran, 2017). Her case attempted to, once again, outlaw race-conscious admissions and uphold race-neutral policies. Fisher’s legal battle was premised on the belief that she was more deserving of a spot in the freshmen class of 2008 than the thousands of other students, particularly UMS, who received such. This display of entitlement and privilege is that to which Donnor (2015) refers as an example of “how [w]hites self-servingly distort reality” (p. 355). Similarly, Bonilla-Silva (2018) has described the various ways in which white people routinely depict POC as either underqualified or as the recipients of special treatment to validate abolishing policies that they perceive to disadvantage them. Such analyses demonstrate that many whites in the U.S. seek to preserve the systems, institutions, and corresponding practices that protect their cumulative benefits. Over generations, these amassed advantages preserve said privileges instead of working to more equitably redistribute access and material resources. These points elucidate how demands for equal opportunity actually “demand nothing...[because] society’s adoption of the ambivalent rhetoric of equality of opportunity” obscure longstanding issues of inequity and encourage victim-blaming (Crenshaw, 1988, p. 1347).

Even in situations when race-neutral policies bolster white supremacy, white people like Fisher have blamed

“reverse racism” for anti-white discrimination that allegedly disadvantages them. Donnor (2015) describes this

contemporary [w]hite opposition to diversity...[as] rooted within a collective subconscious imaginary and ideological terrain whereby the sumptuary policy arguments advanced are intended to lead to the policy’s dismantling, and the recapitulation of the racial-social status quo ante of separate and unequal (p. 355).

Thus, white people’s efforts to derail and annihilate affirmative action track with accusations against Black people’s accomplishments, such as admission into UT-Austin.

All too familiar with white supremacist challenges, in 2016, Black UT-Austin alumni responded to the Fisher case given Fisher’s premise that Black students and other UMS were not deserving of their place at UT-Austin. As a retort to her claims that UT-Austin’s consideration of race was what prevented her from attending the university, Black UT alumni engaged social media platforms such as Twitter, Facebook, and Instagram, coining the hashtag, Stay Mad, Abby (#staymadabby). Black UT alumni often coupled this hashtag with graduation photographs and comments that portrayed their stellar high school and college grade point averages. Their responses underscored the extent to which they deserved their positions and embodied academic excellence because of, not despite, their Blackness. They also signaled acknowledgement that Black UT alumni, who comprised a mere 4% of the student population in 2008 when Fisher intended to enter, were aware of their right to the education Fisher’s accusations suggested they stole from her.

### **Implications and Conclusions**

Black UT alumni’s acknowledgement of oppressive systems that seek to further disavow them exemplify ongoing issues many marginalized students continue to confront. As problems related to racial oppression unfold across U.S. higher education campuses, scholars stand compelled to more rigorously and carefully examine the historical trajectories of policies like the TTTPP. The academic livelihood of UMS depends largely on the extent to which states with histories of de jure segregation like Texas are willing to aggressively counter their historic practices of racial exclusion and discrimination—patterns with clear vestiges. These groups have suffered unconscionable harm, and racial redress is long overdue.



U.S. Supreme Court Justice Warren Burger agreed with Crenshaw's (1988) distinction between restrictive and expansive equality when he asserted "the consequences of employment practice, not simply the motivation" guiding them, mattered most for affirmative action (Anderson, 2004, p. 129). His acknowledgement underlined consequences aligned with results while motivation paralleled opportunity—and compelled those seeking justice to prioritize outcomes rather than a policy's intention. Going forward, it would prove prudent for researchers to use Crenshaw's framework of restrictive and expansive equality because it helps illuminate the ultimate aims and effects of policies seeking to enhance racial diversity. Moreover, stakeholders ought to assess attempts to thwart the expansion of diversity in higher education through a lens sensitive to historic and ongoing racial oppression, one that is wide yet nuanced enough to identify who is being served and who is being harmed by such mandates.

Applying Crenshaw's framework in higher education would move the system toward expansive practices of racial equality, which parallel equity given its emphasis on equality of outcome across student groups. Employing this framework, however, may prove difficult if and when campuses institute class-based initiatives intended to inherently address prevalent issues of racial representation. As of late, several major higher education institutions, including the University of Illinois and the University of Michigan, have instituted financial aid programs that reduce or eliminate tuition costs for students whose families earn below a certain income level. While class-based policies may improve economically marginalized peoples' access to higher education, indeed a needed intervention, the policies are still race-evasive; they fail to remedy the enduring issues caused by white supremacy in education, thus reproducing the racial order (Bell, 1992; Crenshaw et al., 1995). In part, this re-instantiation of the prevailing racial order (Mills, 1997), defined largely by endemic antiBlack racism (Bell, 1992), helps explain why the TTTTPP has yet to markedly increase the percentage of Black students at UT-Austin. Because class or merit-based admission policies do not address race exclusively, historically white institutions like UT-Austin will continue to see an underrepresentation of Black students and other UMS admitted to their campuses.

The use of race-evasive policies upholds white supremacy in higher education by denying the centuries-long pattern of antiBlack racism that has sustained the normalization of whiteness and the invisibility of white privilege (Anderson, 1988). Historically, many higher education institutions in the U.S. employed blatantly

race-conscious admissions programs that allowed white students to enroll while forcing enslaved Black people to construct these very institutions; simultaneously, these schools excluded them and their descendants (Wilder, 2013). As one example, in an assessment of segregation, NAACP attorney and future Supreme Court justice Thurgood Marshall observed this very trend, noting "the student body of the University of Texas includes all racial and ethnic groups except Negroes," a point Charles Thompson, Howard University professor, remarked on in his description of the school's student body as composed of "non-Negroes" with ancestry from nearly all parts of the world except Africa (Foley, 2010, pp. 118-119). This history alone renders insufficient race-evasive policies like the TTTTPP and income-based programs due to the racially deterministic mechanisms that historically prohibited African Americans. Stated plainly, such policies stand poised to perpetuate past racial inequalities in the present because original discriminatory practices' contemporary vestiges have yet to be addressed. Thus, we call for higher education institutions to implement race-conscious admission policies and practices alongside class-based programs to achieve the substantive racial redress CRT expects.

As many Black UT-Austin freshmen were unable to graduate, Crenshaw's distinction between expansive and restrictive forms of equality highlights the false security afforded when an institution prioritizes getting students into and not necessarily through college. Policies looking to right past wrongs would better serve the diversity and inclusion aims they seek, if they were "informed by the actual conditions of Black people" (Crenshaw 1988, p. 1387). Thus, higher education institutions must lean on an expansive view of equality to better understand the lived racial realities of Black students before, during and after college. To do so, higher education institutions, scholars and policymakers must work to understand how Black people experience and navigate antiBlackness. CRT is well-suited to aid in this charge. Although these steps are certainly inadequate to fully rectify the plethora of white supremacist issues in higher education, scholars, policymakers and practitioners adopting an expansive view of equality can serve as a starting point for redress of past racial injustices while striving to reduce them going forward.

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