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## Academic Admissions at Elite Universities and at Specialized Public High Schools: Déjà Vu All over Again?

Maimon Schwarzschild  
*University of San Diego*

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# ACADEMIC ADMISSIONS AT ELITE UNIVERSITIES AND AT SPECIALIZED PUBLIC HIGH SCHOOLS: DÉJÀ VU ALL OVER AGAIN?

*Maimon Schwarzschild\**

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## INTRODUCTION

Admissions policies at American universities and colleges, especially at the most prestigious ones, have had a checkered history over the past century and more. Many of the issues and controversies surrounding higher education in the early twentieth century — and the interests and prejudices at stake — reverberate strongly today, with implications for tests and admissions standards at the secondary school level as well, particularly for specialized and selective public high schools. Ethnic and racial politics were prominent a century ago, and they are prominent today in the debates over admissions to academic secondary schools as well as to colleges and universities. Admissions policies at elite universities today thus raise some of the same issues that arise for secondary schools, although there are important differences between the two. This Essay will suggest that the case for straightforward academic standards for admission to specialized academic high schools may be even stronger than for university or college admissions.

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\* Professor of Law, University of San Diego. Many thanks to the editors of the *Fordham Urban Law Journal*.

In the 1910s, and especially in the 1920s, America's elite colleges and universities turned away from their earlier practice of offering admission straightforwardly to applicants who passed an academic test. There were various reasons for this, but the predominant, if not overwhelming, reason was that Jewish applicants — especially the children of recent and impoverished Jewish immigrants from eastern Europe — were doing well on the exams, and elite colleges and universities did not want many, if any, of them. (Some of the colleges were more willing to tolerate a modest number of more assimilated German Jews, whose families were not recent arrivals in America.) Leading universities therefore adopted a new approach to admissions, with the idea that admissions would not be based on academic criteria alone. This idea became institutionalized and prevails to this day in the admissions policies of prestigious and selective universities.<sup>1</sup>

The new admissions priority at leading universities, roughly a century ago, was said to be the quality of an applicant's "character" — a quality deemed to be lacking among Jews but (as one recent author wryly puts it) "present in abundance among high-status Protestants."<sup>2</sup> For several decades, beginning in the 1920s and in some cases earlier, there were implicit but firm discriminatory quotas for Jews at leading universities and colleges. Discrimination against Jewish applicants diminished or ceased, for the most part, in the years after the Second World War. But Asian-American applicants now face discrimination at prestigious campuses that is remarkably reminiscent of past discrimination against Jews. Today's admissions policies are commonly said to be "holistic." With these policies, universities and colleges have much wider discretion about whom to admit — and whom to reject — than they would have if admissions were based on examination results or academic criteria alone. These admissions policies are also far less transparent to applicants, to their families, and to the public than straightforward academic criteria would be.

A brief review of how and why these admissions policies developed at leading universities in the twentieth century may cast some light — and offer a caution — for the debates over academic secondary schools and their admissions policies today.

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1. *See generally* JEROME KARABEL, *THE CHOSEN: THE HIDDEN HISTORY OF ADMISSION AND EXCLUSION AT HARVARD, YALE, AND PRINCETON* (2005) (giving a detailed and well-documented history of these universities' admissions policies in the twentieth century); MARCIA GRAHAM SYNNOTT, *THE HALF-OPENED DOOR: DISCRIMINATION AND ADMISSIONS AT HARVARD, YALE, AND PRINCETON, 1900–1970* (1979).

2. *See* KARABEL, *supra* note 1, at 2.

### I. ELITE UNIVERSITY ADMISSIONS IN THE TWENTIETH CENTURY

At the beginning of the twentieth century, the most prestigious American universities, such as Harvard and Yale, and a few elite liberal arts colleges like Amherst and Williams, each administered an entrance examination of its own, and offered admission to applicants who passed the exam.<sup>3</sup> These exams were oriented to the curricula of fashionable private preparatory schools, and some of them included classical Greek — which was rarely, if ever, taught in American public high schools — as well as Latin.<sup>4</sup> In 1905, Harvard replaced its own exam with the College Entrance Examination Board's exams — the “College Boards” — making Harvard more accessible to public high school graduates.<sup>5</sup> Yale likewise dropped its Greek requirement for admission in 1904, and announced in 1907 that it would accept the College Boards for admission.<sup>6</sup> Harvard and its peers still drew a majority or near-majority of their undergraduates from exclusive prep schools, although by 1913 public high school graduates slightly outnumbered those coming from private schools at Harvard, while public high school graduates continued to be in the minority — a diminishing minority in some years — at Yale and Princeton.<sup>7</sup>

Nonetheless, academically talented high school students had more opportunity to succeed on admissions exams like the College Boards. The decades just before and after the turn of the twentieth century were also an era of large-scale immigration, including substantial numbers of impoverished Jewish immigrants from the Czarist empire and elsewhere in eastern Europe.<sup>8</sup> Many of these immigrant families put great emphasis on education, and children of such families, especially in urban areas like New York City, Boston, and Philadelphia, took and passed the college entrance exams.<sup>9</sup> At Harvard, for example, Jews were 7% of freshmen in 1900, more than 21% in 1922, and more than 27% in 1925.<sup>10</sup> Some 2% of Yale upperclassmen were Jewish in 1901, and more than 13% in Yale's class of 1925.<sup>11</sup> At Columbia, the proportion of Jewish students grew to 40% or more

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3. *See id.* at 21–22, 128–29.

4. *See id.* at 22.

5. *See id.* at 44.

6. *See id.* at 56–57.

7. *See id.* at 50, 57, 241.

8. *See generally* Charles Hirschman, *Immigration and the American Century*, 42 *DEMOGRAPHY* 595 (2005).

9. *See, e.g.*, Selma C. Berrol, *Education and Economic Mobility: The Jewish Experience in New York City 1880-1920*, 65 *AM. JEWISH HISTORICAL Q.* 257, 270 (1976) (analyzing the role of public education in the economic prospects of Jewish immigrant families, and noting that “most Jewish parents strongly valued education as a vocational tool”).

10. *See* SYNNOTT, *supra* note 1, at 19.

11. *See id.*

before Columbia imposed a quota in 1922.<sup>12</sup> The presidents, deans, and other leaders of these universities became determined to cut down the numbers of their Jewish students.<sup>13</sup> It is not easy — or perhaps very important — to calibrate to what extent this was out of concern that the presence of Jewish students would make their campuses less attractive to wealthier and better-connected non-Jewish students, and to what extent it was driven by their own distaste for Jewish students.

Harvard provides a particularly vivid and well-documented example of how and why a more discretionary, less transparent, and less academically-based admissions policy came into force in the 1920s. In 1922, Harvard's president, A. Lawrence Lowell, made it known that he favored an explicit limitation of about 15% on Jewish enrollment.<sup>14</sup> It was not that the Jewish undergraduates were failing to do well academically at Harvard. Between 1912 and 1918, proportionately more than twice as many Jewish students graduated with honors at Harvard than did their non-Jewish classmates.<sup>15</sup> The problem for President Lowell, and for many others of like mind at Harvard and elsewhere, was precisely that Jewish applicants were doing so well on the academic entrance examinations and continuing to do well in their studies once admitted.

Lowell's initial impulse was to impose a restrictive quota, without much euphemism or polite disguise of his intentions. He wrote to a Harvard faculty member:

The summer hotel that is ruined by admitting Jews meets its fate, not because the Jews it admits are of bad character, but because they drive away the Gentiles, and then after the Gentiles have left, they leave also. This happened to a friend of mine with a school in New York, who thought, on principle, that he ought to admit Jews, but who discovered in a few years that he had no school at all. A similar thing has happened in the case of Columbia College; and in all these cases it is not because Jews of bad character have come; but the result follows from the coming in large numbers of Jews of any kind, save those few who mingle readily with the rest of the undergraduate body. Therefore any tests of character in the ordinary sense of the word afford no remedy.<sup>16</sup>

But Lowell anticipated — correctly as it turned out — that:

[T]he Faculty, and probably the Governing Boards, would prefer to make a rule whose motive was less obvious on its face, by giving to the

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12. *See id.* at 18.

13. *See id.* at 14–20 (describing changes in admissions to Harvard, Yale, and Princeton, among other schools).

14. *See* KARABEL, *supra* note 1, at 89.

15. *See* SYNNOTT, *supra* note 1, at 98.

16. KARABEL, *supra* note 1, at 88.

Committee on Admission authority to refuse admittance to persons who possessed qualities described with more or less distinctness and believed to be characteristic of the Jews.<sup>17</sup>

Lowell nonetheless insisted that:

[T]he Faculty should understand perfectly well what they are doing, and that any vote passed with the intent of limiting the number of Jews should not be supposed by anyone to be passed as a measurement of character really applicable to Jews and Gentiles alike.<sup>18</sup>

Lowell's predecessor as president of Harvard, Charles W. Eliot, then 90 years old, vigorously opposed the proposed quota, and after considerable wrangling, the Harvard faculty voted to reject an explicit quota limitation on Jewish students.<sup>19</sup> Instead, in early 1926, the Harvard faculty voted to rely less on the academic admissions exams, to give the Admissions Committee more discretion, and to lay greater emphasis on selection based on "character and fitness and the promise of the greatest usefulness in the future as a result of a Harvard education."<sup>20</sup> Later that year, the dean of Yale College learned from the Harvard's admissions Chairman that Harvard was "going to reduce their 25% Hebrew total to 15% or less by simply rejecting without detailed explanation," and that "[t]hey are giving no details to any candidate any longer."<sup>21</sup> From then on, and through the 1930s, the Jewish quota fluctuated between 10% and 16% of each freshman class at Harvard.<sup>22</sup>

Similar subjective admissions standards were adopted by the other leading American universities and colleges during this era, although generally with less publicity and less public controversy than at Harvard.<sup>23</sup> Yale's freshman classes maintained a steady limit on Jewish students "averaging around 10 percent" through the 1930s.<sup>24</sup> Yale kept itself informed of the measures taken to reduce Jewish enrollment at Brown, Columbia, Dartmouth, Princeton, Williams, and elsewhere, notably by increasing the weight given to subjective "character" screening in the admissions process.<sup>25</sup>

A. Lawrence Lowell was succeeded by James Bryant Conant as president of Harvard in 1933.<sup>26</sup> Conant's educational ideals were more meritocratic:

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17. *Id.* at 89.

18. *Id.*

19. *See id.* at 101.

20. *Id.* at 108.

21. *See id.* at 109.

22. *See id.* at 172–73.

23. *See, e.g., id.* at 207 ("Yale had moved much more quietly than Harvard to restrict the number of Jewish students . . .").

24. *See* SYNNOTT, *supra* note 1, at 156.

25. *See id.* at 151.

26. *See History of the Presidency*, HARV., <https://www.harvard.edu/president/history/> [<https://perma.cc/VRL9-T4PX>] (last visited Sept. 8, 2022).

he put a high priority on academic excellence, encouraged the development and use of the Scholastic Aptitude Test (SAT), and reformed the Harvard scholarship system on behalf of academically talented students who would not otherwise have had the means to attend.<sup>27</sup> Yet, as James Karabel writes, Conant “inherited an admissions machinery brilliantly constructed to manage the ‘Jewish problem.’”<sup>28</sup>

Conant’s task was to modernize this machinery while keeping Jewish enrollment below the level that would provoke “WASP flight.”<sup>29</sup> His solution — an innovative synthesis of the policies of Eliot and Lowell that combined a shift toward greater meritocracy with the jealous guarding of the discretion that permitted the admissions office to continue to limit the number of “undesirables” — was to leave a permanent imprint on the admissions practices of the elite colleges.<sup>30</sup>

The barriers against Jews began to come down after the Second World War, perhaps not coincidentally after the full horrors of the Nazi regime were revealed. The proportion of Jews at Harvard rose to about 25% in 1952; fewer proportionately than 25 years earlier, but still a “major improvement in the fortunes of Jewish applicants” under President Conant.<sup>31</sup> At Yale the process was slower. In the 1950s, Yale admissions officers avoided recruiting at “Brooklyn Tech or Bronx Science or Stuyvesant [high schools in New York City] because those schools were where the Jews were.”<sup>32</sup> In the five years from 1950 to 1954, only seven students came to Yale from Bronx Science, while 275 came from Andover, just one of the fashionable prep schools from which Yale drew many of its undergraduates.<sup>33</sup> Yale’s unofficial restrictive quota kept Jewish students to about 12% of the undergraduates until 1962, when Yale embarked on a variety of academic reforms, including fundamental changes in its admissions policies.<sup>34</sup> These new policies not only put a heightened priority on academic talent, they also loosened Yale’s ties to socially elite prep schools, increased the availability of scholarship, aid and adopted “need-blind” admissions, with the idea that ability to pay should no longer affect admissions decisions.<sup>35</sup> By 1966, Yale’s freshman class was approximately 30% Jewish.<sup>36</sup> The same trend,

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27. See KARABEL, *supra* note 1, at 136–41.

28. *Id.* at 136.

29. *Id.* (“Conant’s task was to modernize this machinery while keeping Jewish enrollment below the level that would provoke ‘WASP flight.’”).

30. *See id.*

31. *Id.* at 246.

32. *Id.* at 331.

33. *See id.* at 330.

34. *See id.* at 335–37.

35. *See id.* at 372–73.

36. *See id.* at 364.

away from restrictions on the numbers of Jewish students, prevailed by then at selective universities and colleges throughout the country.<sup>37</sup>

The original reason for abandoning academic exams as the exclusive or almost exclusive criterion for admissions, namely the desire to limit Jewish enrollment, was therefore no longer operative. But the idea that there should be a variety of criteria for admissions, with inevitable discretion for admissions officers in weighing and applying these criteria, was now entrenched and institutionalized at America's selective universities and colleges.<sup>38</sup> Institutional inertia must have played a part in this. Once admissions offices and admissions committees were created or their powers augmented, and admissions administrators employed to staff them, it would have been contentious to cut these back. It is surely a rule of institutional life, after all, that discretionary powers once granted are reluctantly given up.

## II. "HOLISTIC" UNIVERSITY ADMISSIONS TODAY

There are policy reasons as well — albeit in many respects controversial ones — for discretionary admissions at elite universities today. From the late 1960s onward, selective colleges and universities have increasingly been devoted to “affirmative action” and racial and ethnic “diversity.” “Holistic” admissions, with diminished emphasis on academic entrance exams, has become strongly associated with “diversity” admissions, especially in the wake of Supreme Court opinions which seemed to bless “taking race into account” in a “holistic” admissions process while discountenancing forthright racial preferences or quotas.<sup>39</sup>

Universities and colleges have other admissions priorities as well, moreover, that are served by discretionary, “holistic” admissions, with lesser reliance on academic criteria. Recruiting athletes is one such priority. Academic standards are also compromised with the grant of admissions preferences for the children of faculty and staff, and especially for “legacies,” the children of alumni, and for applicants or families that are

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37. See *id.* at 197 (noting “the political and legal pressures of the postwar years”).

38. See Frank Dobbin, *The Chosen: The Hidden History of Admission and Exclusion at Harvard, Yale, and Princeton*, 51 ADMIN. SCI. Q. 652, 654 (2006) (describing how colleges “together institutionalized much of the complex admissions system we know today”); see also Sara Harberson, *The Truth about ‘Holistic’ College Admissions*, L.A. TIMES (June 9, 2015), <https://www.latimes.com/opinion/op-ed/la-oe-harberson-asian-american-admission-rates-20150609-story.html> [https://perma.cc/7WEH-HMW3].

39. See *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 316–19 (1978) (Powell J., concurring) (opining in dictum, in a Section of J. Powell’s opinion joined by no other Justice, that there might be a compelling state interest in diversity justifying race as a plus factor among various non-objective factors in an admissions “program [which] treats each applicant as an individual”); see also *Grutter v. Bollinger*, 539 U.S. 306, 324–25 (2003) (endorsing Justice Powell’s opinion in *Bakke*).



potential or actual financial donors to the institutions.<sup>40</sup> Universities and colleges are understandably reluctant to be too explicit publicly about these preferences, and about the weight attached to them, and “holistic admissions” are a convenient way to veil them, and also to maintain flexibility about how much favoritism to bestow in any particular case.

To what extent the commitment of elite higher education to “holistic” admissions is driven by the oft-reiterated commitment to “diversity,” and to what extent it reflects other interests, may be impossible to discern. At least one author maintains — in an article about the University of Texas that might conceivably have been written about other selective colleges — that “It’s Not About Race: The True Purpose of the University of Texas’ Holistic-Admissions System is to Give Preferences to Well-Connected White Applicants, Not to Disadvantaged Minorities.”<sup>41</sup> On the other hand, universities have certainly defended “holistic” admissions before the Supreme Court of the United States as necessary to achieve “diversity.”<sup>42</sup>

What is clear is that “holistic” admissions policies are consistent with stark differences among admitted students’ average performance on academic tests like the SAT depending on the students’ race and ethnicity, with similar gaps in average high school grades, again depending on race and ethnicity. Such differences are now commonplace at elite and selective universities and colleges.<sup>43</sup>

Given the limited number of places at any given institution, preferences for members of some racial and ethnic groups inevitably put applicants from other groups at a relative disadvantage. There is strong evidence that Asian-American applicants receive the least favorable consideration at many prestigious universities, although when challenged, the universities deny that they engage in unlawful discrimination.

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40. See, e.g., Sara Todd, *A New Statistic Reveals the Startling Privilege of White Kids Admitted to Harvard*, QUARTZ (July 20, 2022), <https://qz.com/1713033/at-harvard-43-percent-of-white-students-are-legacies-or-athletes/> [https://perma.cc/KMV3-6XL8] (reporting on a study revealing that 43% of white students admitted to Harvard from 2014 to 2019 were recruited athletes, legacies, children of faculty or staff, or children of donors).

41. See Jonathan R. Zell, *It’s Not about Race: The True Purpose of the University of Texas’ Holistic-Admissions System Is to Give Preferences to Well-Connected White Applicants, Not to Disadvantaged Minorities*, 24 U. MIA. BUS. L. REV. 35, 39–40 (2016).

42. See *Bakke*, 438 U.S. at 316–19; see also *Grutter*, 539 U.S. at 327–30.

43. See e.g., Gail Heriot, *A Dubious Expediency*, in A DUBIOUS EXPEDIENCY: HOW RACE PREFERENCES DAMAGE HIGHER EDUCATION 19, 51–54 (Gail Heriot & Maimon Schwarzschild eds., 2021) (detailing the large gaps in SAT scores and high school GPAs, depending upon race and ethnicity, among admitted students at several universities, with similar gaps in credentials among students admitted to law and medical schools).

### III. ASIAN-AMERICANS AND THE ADMISSIONS SWEEPSTAKES AT ELITE UNIVERSITIES

In January 2022, the Supreme Court granted certiorari in *Students for Fair Admissions Inc. v. President and Fellows of Harvard College*, a lawsuit brought on behalf of Asian-American applicants who had been rejected at Harvard.<sup>44</sup> The plaintiffs charged that Harvard maintains an implicit quota limiting Asian-American enrollment, and that Harvard’s admissions officers enforce the quota by consistently rating Asian-American applicants lower than others on character traits like “personality” “likability,” “courage,” and “being widely respected,” despite the fact that Asian-American applicants score higher, on average, than applicants of all other racial or ethnic groups on academic measures such as test scores and secondary school grades, and on extracurricular activities as well. Peter Arcidiacono, a Duke University professor of economics, conducted extensive empirical study of Harvard admissions and testified as an expert witness on behalf of the plaintiffs. He reported to the court that Asian-American applicants “as a whole are stronger on many objective measures than any other racial/ethnic group” and “also have the highest academic index — Harvard’s combined score for standardized testing and high-school performance.”<sup>45</sup> Yet he found:

Race plays a significant role in admissions decisions. Consider the example of an Asian-American applicant who is male, is not disadvantaged, and has other characteristics that result in a 25% chance of admission. Simply changing the race of this applicant to white — and leaving all his other characteristics the same — would increase his chance of admission to 36%. Changing his race to Hispanic (and leaving all other characteristics the same) would increase his chance of admission to 77%. Changing his race to African-American (again, leaving all other characteristics the same) would increase his chance of admission to 95%.<sup>46</sup>

Harvard disputed Arcidiacono’s findings, and the US District Court and First Circuit Court of Appeals gave judgment for Harvard.<sup>47</sup> Nonetheless, Harvard’s own Office of Institutional Research, in a report prepared a year before the lawsuit was filed, found that Asian-American applicants, on average, had better academic qualifications than other applicants, and would

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44. *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.*, 980 F.3d 157 (1st Cir. 2020), *cert. granted*, 142 S. Ct. 895 (2022).

45. Expert Report of Peter Arcidiacono at 2–4, *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.*, 397 F. Supp. 3d 126 (D. Mass. 2019), <https://samv91khoyt2i553a2t1s05i-wpengine.netdna-ssl.com/wp-content/uploads/2018/06/Doc-415-1-Arcidiacono-Expert-Report.pdf> [<https://perma.cc/GNS8-R9ZW>].

46. *Id.* at 3.

47. *Students for Fair Admissions*, 397 F. Supp. 3d at 204–06, *aff’d* 980 F.3d 157 (1st Cir. 2020), *cert. granted*, 142 S. Ct. 895 (2022).

make up 43% of the admitted class based simply on academic credentials.<sup>48</sup> In fact, Harvard's admitted class was less than 20% Asian-American over the course of many years from the early 1990s on, despite growing numbers of Asian-American applicants during the years in question.<sup>49</sup> The evidence of discrimination at Harvard is at least strong enough to have elicited certiorari review of the lower court decisions in the Supreme Court.

Harvard is not unique in facing serious claims of discrimination against Asian-American applicants. After lengthy investigation, the United States Department of Justice found in 2020 that Yale University was in violation of federal civil rights law "by discriminating on the basis of race and national origin . . . in its undergraduate admissions."<sup>50</sup> This discrimination, particularly against Asian American and white applicants, was found to be "long-standing and ongoing."<sup>51</sup> The Justice Department threatened to file suit if Yale failed either to reform its admissions practices or to demonstrate that its policy to consider race or national origin "is narrowly tailored as required by law."<sup>52</sup> The Biden Administration quickly dropped the proceedings against Yale, but Yale's own admissions data establish that Asian-American applicants have lower chances of admission than other racial groups, even when these Asian-Americans have higher academic scores than others who are admitted.<sup>53</sup>

Just as Jewish enrollment was restricted at Harvard and elsewhere from the 1920s on by ostensible judgments of "character," so Harvard's "personal ratings" reduce Asian-American admissions in recent years to a statistically significant degree.<sup>54</sup> The District Court, although it ruled for Harvard, acknowledged in *Students for Fair Admissions* that it could not "clearly say what accounts for" these lower personal ratings, and could not rule out "overt discrimination or implicit bias" as the cause.<sup>55</sup> Negative admissions decisions on such grounds are now sufficiently well known that a leading

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48. See Expert Report of Peter Arcidiacono, *supra* note 45, at 9–10.

49. See Complaint at 53–55, *Students for Fair Admissions*, No. 1:14-CV-14176-DJC (D. Mass. filed Nov. 7, 2014); see also ROBERT VERBRUGGEN, RACIAL PREFERENCES ON CAMPUS: TRENDS IN ASIAN ENROLLMENT AT U.S. COLLEGES 11 (2022), <https://media4.manhattan-institute.org/sites/default/files/verbruggen-trends-in-asian-enrollment-at-us-colleges.pdf> [<https://perma.cc/EF6B-4LEF>].

50. Letter from Eric S. Dreiband, Assistant Att'y Gen., C.R. Div., U.S. Dep't of Just., to Peter S. Spivack, Partner, Hogan Lovells U.S. LLP 1 (Aug. 13, 2020), <https://www.justice.gov/opa/press-release/file/1304591/download> [<https://perma.cc/GVL9-7PAX>].

51. See *id.*

52. *Id.* at 4.

53. See *id.* at 3.

54. See Expert Report of Peter Arcidiacono, *supra* note 45, at 2–3.

55. See *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.*, 397 F. Supp. 3d 126, 194, 203 (D. Mass. 2019).

commercial guide to college admissions warns Asian-American students about how they present themselves:

Many Asian Americans have been extraordinarily successful academically, to the point where some colleges now worry that there are “too many” Asian Americans on their campuses. Being an Asian American can now actually be a distinct disadvantage in the admissions processes at some of the most selective schools in the country . . . If you are an Asian American – or even if you simply have an Asian or Asian-sounding surname – you need to be careful about what you do and don’t say in your application.<sup>56</sup>

In terms reminiscent of those with which Jewish applicants were disparaged a century ago, a former dean of admissions at the Massachusetts Institute of Technology described a Korean-American applicant to MIT as “yet another textureless math grind.”<sup>57</sup> Wesley Yang, author of *The Souls of Yellow Folk*, wrote in a New York Times op-ed that “Harvard admissions systematically denigrated [Asian Americans,] the highest achieving group of students in America[,]” rendering them “collateral damage in the university’s quest to sustain its paradoxical mission to grow its \$37 billion endowment and remain the world’s most exclusive institution — all while incessantly preaching egalitarian doctrines.”<sup>58</sup>

#### IV. FROM HIGHER EDUCATION TO ACADEMIC HIGH SCHOOLS

Admissions tests for specialized and academically selective secondary schools echo many of the issues, past and present, confronting higher education, although there are significant differences as well. There is now a movement against academic admissions exams for specialized high schools in many urban and suburban school districts across America, driven largely if not entirely by concern that test results interfere with affirmative action, equity, or diversity in these schools. The demographics differ from district to district, as do the specific proposals for new policies, whether for abandoning academic admissions tests entirely or merely for reducing their importance in favor of other criteria. But the debates over admissions testing have common themes almost everywhere, with supporters of the exams stressing that they maintain the academic quality of the schools, and opponents calling for greater racial and ethnic proportional representation in admissions. In many if not most locales, Asian-American families have been

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56. THE PRINCETON REV., CRACKING COLLEGE ADMISSIONS 173–75 (2004).

57. DANIEL GOLDEN, THE PRICE OF ADMISSION: HOW AMERICA’S RULING CLASS BUYS ITS WAY INTO ELITE COLLEGES – AND WHO GETS LEFT OUTSIDE THE GATES 201 (2007) (citations omitted).

58. Wesley Yang, *Harvard Is Wrong That Asians Have Terrible Personalities*, N.Y. TIMES (June 25, 2018), <https://www.nytimes.com/2018/06/25/opinion/harvard-asian-american-racism.html> [<https://perma.cc/A43U-J24L>].

prominent in supporting academic admissions testing, and criticizing the “equity” proposals as being directed against them and their children.<sup>59</sup>

The debates in recent years over admissions to New York City’s renowned specialized high schools follow this pattern. New York’s former Mayor de Blasio proposed to phase out the academic exam for admission to these schools – the Specialized High Schools Admissions Test (SHSAT).<sup>60</sup> Instead, the mayor’s proposal would have based admissions almost entirely on pupils’ grades in the city’s middle-schools.<sup>61</sup> The mayor’s administration was explicit that offers of admission to Black and Latino pupils would be greatly increased under the proposal, but offers to racially Asian pupils would be reduced from about 50% to about 30%.<sup>62</sup> The mayor failed to persuade the New York State legislature to change the law requiring selection to the schools by academic examination, in the face of vigorous protests by Asian-American and other parents’ groups.<sup>63</sup>

Schools such as Bronx High School of Science and Brooklyn Technical High School have earned national reputations for academic excellence over the course of many decades. During all this time, their admissions have been based on an academically rigorous exam like the SHSAT. The de Blasio administration asserted that its proposal would have maintained the rigor of the specialized high schools, but it is surely difficult to maintain plausibly that reducing academic standards for admission would not have any negative effect in the classroom, or on the academic demands that students could be held to in these schools.<sup>64</sup> A detailed recent study of New York City’s public

59. See Amy Tse, Yiatin Chu & Jean Hahn, *Asian Parents Defend Merit and Challenge Discrimination across the Country*, QUEENS CHRON. (Mar. 10, 2022), [https://www.qchron.com/opinion/columns/asian-parents-defend-merit-and-challenge-discrimination-across-the-country/article\\_cbeede2a-a09e-11ec-86cb-47a82ac30821.html](https://www.qchron.com/opinion/columns/asian-parents-defend-merit-and-challenge-discrimination-across-the-country/article_cbeede2a-a09e-11ec-86cb-47a82ac30821.html) [<https://perma.cc/9NZY-PBHW>].

60. See N.Y.C. DEP’T EDUC., SPECIALIZED HIGH SCHOOLS PROPOSAL: MAKING ADMISSIONS TO THE SPECIALIZED HIGH SCHOOLS MORE EQUITABLE FOR ALL STUDENTS 4–7 (2018), <https://www.schools.nyc.gov/docs/default-source/default-document-library/specialized-high-schools-proposal> [<https://perma.cc/PWT9-XBZ8>].

61. See *id.*

62. See *id.* at 12; see also N.Y.C. INDEP. BUDGET OFF., ADMISSIONS OVERHAUL: SIMULATING THE OUTCOME UNDER THE MAYOR’S PLAN FOR ADMISSIONS TO THE CITY’S SPECIALIZED HIGH SCHOOLS 1 (2019) <https://ibo.nyc.ny.us/iboreports/admissions-overhaul-simulating-the-outcome-under-the-mayors-plan-for-admissions-to-the-citys-specialized-high-schools-jan-2019.pdf> [<https://perma.cc/6Y6M-6LVS>] (“The number of Asian students . . . would have fallen by about half . . .”).

63. See Hecht-Calandra Act of 1972, N.Y. EDUC. LAW § 2590-h(1)(b) (McKinney 2022).

64. See, e.g., Ricardo Cano & Nanette Asimov, *New Data Shows Shift at Lowell High School: More Students Given Failing Grades after Admissions Change*, S.F. CHRON. (May 25, 2022), <https://www.sfchronicle.com/sf/article/Lowell-High-admissions-17196603.php> [<https://perma.cc/AUW3-Y6RS>] (reporting on the more-than-threefold increase in the number of low and failing grades at Lowell High School after the San Francisco school board abandoned merit-based admissions to the specialized high school in favor of a lottery system).

high schools, probing many of the system's problems and shortcomings, notes that "[u]nsurprisingly, the selective schools that screen entrants based solely on SHSAT scores outperform all others, on average. Their exemplary performance should strongly inform the ongoing debate about their admissions standards."<sup>65</sup>

If the questions at stake for selective high schools resemble the issues over "holistic" and discretionary admissions policies at elite universities, there are at least two important differences. One is that discretionary admissions, not bound by straightforwardly academic criteria, have been the rule at selective universities for nearly a century or more. It might not, as a practical matter, be easy to restore or to establish purely academic admissions standards at these colleges and universities. Specialized high schools, by contrast, have in many localities based their admissions on academic exams until now, or until very recently. This is certainly the case in New York City, and it was true, for example, at Thomas Jefferson High School in Alexandria — a specialized and highly respected math and science magnet school — until the Fairfax County School Board abandoned the admissions tests in 2020.<sup>66</sup> Parents' groups and others campaigning to maintain or to restore academic admissions exams have a realistic chance to prevail, whether through local political activism or by way of litigation.

A second significant difference is that specialized secondary schools are far more accessible to pupils whose families have limited means than are America's prestigious universities. Elite universities very disproportionately enroll students from wealthy families. It has been estimated that in the Ivy League, the University of Chicago, Stanford, MIT, and Duke, as a group,

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Perhaps ironically, Lowell High School is named for the 19<sup>th</sup> century poet James Russell Lowell, a member of the same Boston "Brahmin" family as Harvard's President, A. Lawrence Lowell. In February 2022, San Francisco voters recalled three members of the school board who were committed to the lottery system, and in June 2022, with the support of newly appointed members, the school board voted to restore merit-based admissions to Lowell High School. See Soumya Karlamangla, *Following Recall, San Francisco School Board Reverses Course*, N.Y. TIMES (June 24, 2022), <https://www.nytimes.com/2022/06/24/us/recall-san-francisco-school-board.html> [<https://perma.cc/7H6J-9TBZ>].

65. See RAY DOMANICO, MANHATTAN INST., *THE TRANSFORMATION OF PUBLIC HIGH SCHOOLS IN NEW YORK CITY* 13 (2022), [https://media4.manhattan-institute.org/sites/default/files/912-MI\\_Domanico\\_Report-v4.pdf](https://media4.manhattan-institute.org/sites/default/files/912-MI_Domanico_Report-v4.pdf) [<https://perma.cc/D9T4-VSHP>].

66. See *Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, No. 1:21-CV-00296, 2022 WL 579809, at \*1, \*11 (E.D. Va. Feb. 25, 2022) (granting summary judgment against Fairfax County's abandonment of academic admissions tests); *Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, No. 22-1280, 2022 WL 986994, at \*1 (4th Cir. Mar. 31, 2022) (staying the District Court's order pending appeal). See generally Amy Howe, *Court Allows Elite Virginia High School to Keep Admissions Policy While Legal Challenge Continues*, SCOTUSBLOG (Apr. 25, 2022), <https://www.scotusblog.com/2022/04/court-allows-elite-virginia-high-school-to-keep-admissions-policy-while-legal-challenge-continues/> [<https://perma.cc/293J-6532>].

“more students come from families in the top 1 percent of the income distribution than from the entire bottom half.”<sup>67</sup> By the time college applicants take a college entrance exam like the SAT, “[r]ich children now outscore middle-class children on the SAT by twice as much as middle-class children outscore children raised in poverty . . . . Only about one in two hundred children from the poorest third of households achieves SAT scores at Yale’s mean.”<sup>68</sup> Specialized public high schools, by contrast, enroll many more pupils from poor and working class families. Academic admissions exams for these high schools hence offer opportunity to talented but unprivileged young persons who may have few opportunities elsewhere, at an early enough point in their lives to prepare them to compete for admission at highly selective universities.

#### CONCLUSION: A DUBIOUS PATH TO GENUINE EQUITY

The admissions policies, past and present, of elite universities and colleges should offer, in at least some ways, a caution rather than a model for specialized and selective secondary schools. When prestigious universities abandoned their prior practice of admissions based entirely or almost entirely on academic criteria early in the twentieth century, they did so in order to limit or exclude “undesirable” Jewish applicants. This was sometimes expressed at the time as giving a fairer shake to “old stock” Americans, said to be at risk of being crowded out by city-dwelling immigrants and their children. When the Harvard faculty recoiled at President Lowell’s initial suggestion of explicit quotas to limit the number of Jewish students, Harvard instead endowed its admissions officers with discretion to screen each applicant’s “character” and other personal characteristics, and to admit or reject without giving reasons to the applicant.<sup>69</sup> The same approach was adopted by other elite universities and colleges at about the same time.

This style of college admissions, which eventually came to be called “holistic”, persists to this day. Discrimination against Jewish applicants more or less dissolved after the Second World War, but there is mounting evidence of comparable discrimination against Asian-Americans today. When admissions hinge largely on academic qualifications, including strong performance on academic admissions exams, many Asian-American applicants do well — evidently too well for many elite or near-elite colleges

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67. See DANIEL MARKOVITS, *THE MERITOCRACY TRAP* 108 (2019) (“At elite colleges, rich students utterly dominate not just poor students but also students from the broad middle class . . .”).

68. *Id.* at 26.

69. See KARABEL, *supra* note 1, at 109.

and universities. It is notable that Harvard, for example, no longer requires SAT (or ACT) scores for admissions applications, which almost certainly means that the SAT has less weight with Harvard than it might have, and less than it used to have.<sup>70</sup>

Harvard and its peer institutions admit many children of alumni and other applicants from prominent families: not coincidentally, students or families who might be in a position — now or in the future — to give substantial donations to Harvard. But standardized testing can offer opportunities to talented applicants whose families are neither wealthy nor well connected. There is considerable evidence, however, that Harvard and many of its peers are far more interested in racial preferences than in seeking out talented but less privileged applicants regardless of race. Discounting standardized tests, or doing away with them entirely, is a convenient way now, as it was in the 1920s and 30s, to give admissions staff more discretion about whom to admit, under more opaque conditions, where the real criteria need not be disclosed to the public or to the applicants and their families.

Admissions tests for specialized secondary schools raise many — if not necessarily all — of the issues that confront higher education. There is a movement — which surely accounts, at least in part, for the present symposium — against academic admissions exams for such schools, in New York City as well as in other school districts around the country. This plainly reflects concern that test results interfere with diversity or racial and ethnic “balance” in admissions. There is good reason to suspect that a desire not to admit “too many” Asian-Americans is also a factor. There have been indiscreetly explicit statements to that effect from at least some public officials and activists opposed to admissions based on academic exams.

Yet academic admissions standards in the past, even in the fairly recent past, have not been inconsistent with a racially mixed student body. At Brooklyn Tech, one of New York City’s most selective specialized high schools, nearly two thirds of the students were Black and Hispanic in 1981, as a recent report in the *New York Times* noted; that percentage hovered at 50% for another decade thereafter.<sup>71</sup> At Bronx Science, perhaps the most competitive of the New York schools, Black and Hispanic students now

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70. See Preston Cooper, *Harvard’s Stance Against Standardized Testing Will Worsen Inequality*, NAT’L REV. (Jan. 5, 2022), <https://www.nationalreview.com/2022/01/harvards-stance-against-standardized-testing-will-worsen-inequality/> [<https://perma.cc/2L2J-NQHX>] (arguing that “SAT scores serve as a counterweight to other components of college applications that decidedly favor wealthier students . . . [such as] legacy students, who are admitted at five times the rate of typical applicants”).

71. See Michael Powell, *How It Feels to Be an Asian Student in an Elite Public School*, N.Y. TIMES (Jan. 25, 2022), <https://www.nytimes.com/2022/01/25/us/selective-high-schools-brooklyn-tech.html> [<https://perma.cc/3FQK-KMM3>].



account for about 10% of students, but that percentage was more than twice as high in the 1970s and 80s.<sup>72</sup> The Times report continues:

To understand this decline involves a trek back through decades of policy choices, as city officials, pushed by an anti-tracking movement, rolled back accelerated and honors programs and tried to reform gifted programs, particularly in nonwhite districts . . . . Black alumni of Brooklyn Tech argue that this progressive-minded movement handicapped precisely those Black and Latino students most likely to pass the test. Some poor, majority Black and Latino districts now lack a single gifted and talented program.<sup>73</sup>

Some of the high-schoolers at Brooklyn Tech, quoted in the New York Times story, see the parallels with President Lowell's era at Harvard:

These students voice a fear that harks back to earlier generations of working-class Jewish students who dealt with antisemitism. If officials toss the test and substitute portfolios, interviews and extracurricular accomplishments, it could be easier to dismiss Asians as faceless "grinds," the students said.<sup>74</sup>

Specialized high schools offer opportunity to talented pupils whose families have few if any advantages of wealth or privilege. To dilute or dissolve the academic qualifications required at these schools, and hence, almost inevitably, to dilute or dissolve the academic quality of such schools, would be to dilute or dissolve a unique opportunity for many of the most able students who have few, if any, comparable opportunities.

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72. *See id.*

73. *Id.*

74. *Id.*