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## **The New Affirmative Action**

By David Leonhardt

In another time, it wouldn't have been too hard to guess where Frances Harris would have ended up going to college. She has managed to do very well in very difficult circumstances, and she is African-American. Her high school, in the Oak Park neighborhood of Sacramento, was shut down as an irremediable failure the spring before her freshman year, then reopened months later as a charter school. Midway through high school, her father developed heart problems and became an irritable fixture around the home. She also discovered that he was not actually her biological father. That was a man named Leroy who, when her mother took Harris to see him, simply said his name was George and waited for her to leave. In Harris's senior year, her mother lost her job at a nursing home and the family filed for bankruptcy.

Harris somehow stayed focused on teenage life. She earned an A-minus average and she distinguished herself as a debater. Her basketball teammates

sometimes teased her for using big words, but they also elected her co-captain. As she led me on a tour of her school and her neighborhood one day this summer, she introduced me around with an assured ease that most adults can't manage, even if her sentences are peppered with "like," "you know" and "Oh, my God." Her bedroom in the bungalow she shares with her parents is a masterpiece of teenage energy, the walls covered with her prom-queen tiara, her purple-and-white basketball jersey (No. 3) and photos of her friends. "The hardest part of high school," she says, "was to be smart and cool at the same time." She decided her dream college was the University of California, Los Angeles.

Ten or 20 years ago, Frances Harris almost certainly would have been admitted. Her excellent grades might not have even been necessary, because Berkeley and U.C.L.A. — the jewels in the U.C. system — accepted almost all of the African-Americans who met the basic application requirements. To an admissions officer, Harris would have seemed like gold: diversity and achievement, wrapped up in a single kid.

But in the early 1990s, the elite campuses began to pull back from their aggressive affirmative-action policies, and in 1996, California voters passed the California Civil Rights Initiative, also known as Proposition 209. After that, race could no longer be a factor in government hiring or public-university admissions. The number of black students at both Berkeley and U.C.L.A. plummeted, and at U.C.L.A. the declines continued throughout the next decade. The reasons weren't entirely clear, but they seemed to include some combination of the admissions office taking Proposition 209 to heart and black students falling further behind in the academic arms race. (Harris, for instance, scored a 22 on the ACT test — slightly above the national average and well below the U.C.L.A. average.) The changes on U.C.L.A.'s campus were hard to miss. In 1997, the freshman class included 221 black students; last fall it had only 100. In the region with easily the largest black population

west of the Mississippi River, the top public university had a freshman class in which barely 1 in 50 students was black.

A U.C.L.A. graduate named Peter Taylor, a 49-year-old managing director at Lehman Brothers in Los Angeles, remembers picking up *The Los Angeles Times* outside his house on a Saturday morning in June of last year and reading that piece of news. Taylor, who is black, is a third-generation native of the city and one of U.C.L.A.'s most active alumni. Within days of reading about the latest decline in the number of black students, he began a campaign to reverse it. At a reception to honor U.C.L.A.'s new acting chancellor, a law professor named Norm Abrams, he greeted Abrams with a big smile and said, "Well, Norm, you're stepping right into it, and you've got to deal with it." Abrams soon named Taylor to lead a task force of students, faculty, alumni and outsiders from places like the Urban League and the First A.M.E. Church. It spent the next year trying to get more black students to apply, more black applicants to be admitted and more black admits to enroll. In essence, Taylor's group was trying to figure out how to bring a student like Frances Harris to U.C.L.A. without breaking the law — or at least without getting caught. What they have achieved may well show us the future of affirmative action.

Peter Taylor's office on the 25th floor of the MGM Building in Century City looks out over the Fox movie lot and a golf course; in the distance downtown Los Angeles rises. Taylor has lived in an artsy neighborhood of Los Angeles called Silver Lake since he was a child. In the aftermath of the Watts riots, his father, then a school administrator and one of the few black men to hold such a job, became the principal of Locke High School in South-Central Los Angeles. Taylor himself went on from U.C.L.A. to earn a master's degree in public policy and work for Bill Clinton's 1992 campaign before joining Lehman Brothers. When we were talking in his office, he apologetically interrupted our conversation and spent 10 minutes on the phone trying to persuade the

person on the other end not to make any changes in a coming bond offering. There was, he kept saying, no point in doing something that might upset the market. But Taylor's cautious, corporate style can be deceiving. He doesn't mind a good fight. "Prop. 209 has made things more challenging," he said. "It has created a new paradigm. But there are still things that can be done." I asked him whether those things might include civil disobedience, and Taylor surprised me by replying: "Exactly when you cross over into civil disobedience is not always clear. And I probably come down on the side of pushing the outer limits. I'm much more of the attitude of, 'So what if someone sues?' If you lose, you at least define the line a little more clearly. You say, 'Mea culpa,' and you don't do it anymore."

The heart of California's higher-education problem, according to Taylor, is that Proposition 209 created a patently impossible situation. The law says that universities can't consider race, even though race has an enormous effect on the lives of applicants. California's best high schools offer so many A.P. and honors classes — which confer bonus points on a student's G.P.A. — that the average G.P.A. of white and Asian freshmen at U.C.L.A. is now 4.2. At many of the largely black high schools around Los Angeles, it is sometimes impossible to do much better than a 4.0, because of the relative lack of A.P. classes. Black students at better high schools have a much easier time, but it's not as if they are keeping up with their peers. Even if U.C.L.A. tried to get around Proposition 209 by giving a big leg up to low-income applicants, it wouldn't increase its black population very much. At every rung of the socioeconomic ladder, the academic record of black students is worse than that of other groups. As Taylor says: "There is a great deal of pressure to look for a proxy for race. There is no proxy for race."

He and many other defenders of affirmative action consider this to be a self-evident fact, but there has also been a good deal of social science to support the view that the specific problems surrounding race —

including discrimination — endure. One illustrative study found that resumes with typically black names are less likely to lead to job interviews than those with typically white names. Other recent studies have looked at intelligence testing. There have long been two uncomfortable facts in this area: Intelligence, indisputably, is in part genetic; and every intelligence test shows a gap between black Americans and others. For a long time, scientific research wasn't very good at explaining this gap. But it has gotten better lately. For one thing, the gap between white and black adults has narrowed significantly since 1970, according to work by the noted researchers William Dickens and James Flynn. Four decades is too short a time period for the gene pool to change, but it's not too short for environment to improve. Most intriguing, Roland Fryer and Steven D. Levitt, two economists (the latter is one of this magazine's Freakonomics columnists), have found there to be essentially no gap between 1-year-old white and black children of the same socioeconomic status.

There are still vigorous debates about all this work — intelligence tests of 1-year-olds are iffy, for instance — but it points in one direction. Innate intelligence may be partly genetic, but it doesn't seem to vary by race. So while race may not be the only source of disadvantage in today's society, it is certainly one of them.

Since affirmative action began in the mid-1960s, it has had both an explicit role and an implicit one in American life. Explicitly, it has been about race and, to a lesser degree, sex — a policy to make up for centuries of oppression and to ensure diversity. But there has always been a broader notion to affirmative action as well. It has been the most serious effort of any kind to ensure equality of opportunity, without regard to wealth or poverty. When all else failed — the War on Poverty, welfare, public schools — affirmative action would be there to help less-fortunate Americans overcome the circumstances of their origins. “Ability is not just the product of birth,” Lyndon Johnson said when he effectively created

affirmative action during a graduation speech at Howard University in 1965. “Ability is stretched or stunted by the family that you live with and the neighborhood you live in — by the school you go to and the poverty or the richness of your surroundings. It is the product of a hundred unseen forces playing upon the little infant, the child and, finally, the man.”

The more expansive idea of affirmative action as a counterweight to those “unseen forces” has become tightly linked to the self-image of American universities. Above all else, they are supposed to be meritocracies. To be truly meritocratic, a college must be diverse — or else accept that some groups in society have less merit than others and their underrepresentation can't be helped. University administrators clearly reject this second view, and as a result the best colleges are now filled with students of both sexes and every imaginable race and religion. If you were to ask admissions officers whether they also gave special consideration to low-income applicants — whether they gave them credit for overcoming Johnson's unseen forces — the officers would say that, absolutely, they did.

In truth, however, they did not. Three years ago, William Bowen (the former president of Princeton) and two other researchers discovered what was really going on. They persuaded 19 elite colleges — including Harvard, Middlebury and Virginia — to let them analyze their admissions records. The easiest way to understand the results is to imagine a group of students who each have the same SAT scores. Holding that equal, a recruited athlete was 30 percentage points more likely to be admitted than a nonathlete. A black, Latino or Native American student was 28 percentage points more likely to be admitted than a white or Asian student. A legacy received a 20-percentage-point boost over someone whose parents hadn't attended that college. And low-income students? They received no advantage whatsoever. A poor white kid from upstate New York would be treated no differently from a white kid in

Chappaqua. Frances Harris would get no more of a leg up than the black daughter of corporate lawyers.

Bowen says he doesn't believe that admissions deans were lying when they said that their affirmative-action programs took social class into account. The colleges apparently put even more stock in the polish that comes with affluence — the well-edited essay, the summer trip to Guatemala, the Arabic language lessons. In any case, the poor lose.

There are some big problems with this approach to affirmative action. For one thing, it rests on a very rickety base of political support. Colleges often resort to huge preferences to create a racially diverse student body, especially if they haven't been giving any advantage to low-income applicants, who are of course disproportionately minorities. And many of the beneficiaries of the preferences end up being upper-middle-class minority students, since they tend to have better test scores than poor minorities. The helping hand that goes to these relatively well-off nonwhite students strikes many people as unjust. It makes it seem as if affirmative action isn't making good on its larger promise. Affirmative action becomes about mere diversity — and not even all forms of diversity — rather than fairness. Politically, that has made it weaker and weaker.

In the mid-1990s, a businessman in California named Ward Connerly began making some of these very criticisms. Connerly was born in Louisiana in 1939; his father left the family, and his mother died when he was a little boy. So he was sent West to Sacramento to be raised by his grandmother. He eventually began working for the state government, where he became friends with Pete Wilson, a young Republican legislator. After Wilson was elected governor in 1990, he named Connerly to the University of California's board of regents, and Connerly began pressuring the university to cut back on race-based preferences. His efforts culminated in Proposition 209.

Connerly, not least because he is black, was the politically perfect face of the anti-affirmative-action movement. He argued then, as he still does, that the patchwork of diverse campuses and workplaces created by affirmative action has deluded the country into thinking that it is solving its racial problems. In truth, he says, the policy has actually made it harder for blacks to close the achievement gap with whites. "It's not genetic, I'm convinced," he told me this summer. "So what is it? I think it's largely self-imposed by black people who don't put as much emphasis on academic achievement as they once did and as other groups do now." Connerly will tell you that he ended up going to college (at Sacramento State) because his grandmother pushed him to read books all the time.

Many people reject his argument as simplistic, if not worse. But whatever you think of his solution, it's hard not to find some truth in his critique of traditional affirmative action. Certainly, voters seem to feel this way. Last year, Michigan passed an initiative identical to Proposition 209, and, thanks to Connerly, several other states are likely to vote on such proposals next year. Soon, more universities may find themselves in the same situation as the University of California.

There is almost an iron law of higher education: the more selective a school is, the fewer low-income students it has. At Harvard and Yale, only about 10 percent of undergraduates receive federal Pell Grants. (Typically, students from the bottom 40 percent of the income distribution are eligible for the Pell.) Even at top public universities, the share is often 15 percent or less. The colleges that are filled with poor and middle-class students almost invariably have low graduation rates. So their graduates are more likely to end up on the wrong side of the 21st century's educational divide. A bachelor's degree seems out of reach to a large portion of the American population, and, as a result, other countries have closed the gap in educational attainment with the United States over the last generation.

There are really only two exceptions to the rule, two universities that are both elite and economically diverse: U.C.L.A. and Berkeley. A chart on U.S. News & World Report's Web site does a nice job of summarizing just how unusual they are. It lists the percentage of Pell Grant recipients at each university in the magazine's famous Top 25 ranking. U.C.L.A. tops the list, at 37 percent, and Berkeley comes next, at 31 percent. In third place is Columbia, with just 15 percent.

To be fair, the main explanation for this gap is demographic happenstance. California is filled with low-income immigrant families, especially from Asia and Latin America, with high-achieving children. But a set of deliberate policies also plays an important role. The University of California accepts far more transfer students, mainly from community colleges, than most colleges. At U.C.L.A., about one-third of the admitted students arrive as transfers instead of as freshmen. When I was on campus, I met a 27-year-old Mexican immigrant named Daniel Flores, who was admitted three years ago as a junior even though, as Flores told me, "I barely graduated high school." His first job after high school was in one of U.C.L.A.'s dining halls, where he realized that he would need more education if he ever wanted to make much more than minimum wage. He then enrolled in a community college in West Los Angeles and excelled there. When he was 18 years old — the only point in life when elite colleges usually consider candidates — no sane admissions officer would have let him in. By the time he was 23, it was clear he had mainly just lacked for good opportunities. Earlier this year, he graduated from U.C.L.A.; and there are hundreds of other students with life stories not so different from Flores's who are walking through the Italianate buildings on the university's lush campus.

If anything, Proposition 209 may have helped keep the U.C. campuses as economically diverse as they are. Desperate to maintain some racial diversity, university officials set up outreach programs in lower-income school districts, as James Traub

described in this magazine several years ago. One of them, run by U.C. Davis, which is outside of Sacramento, visited Frances Harris's elementary school. It was around this time that Harris first told her parents that she planned to go to college. Over the years, when things got tough, they both made a point of reminding her of her vow. "At times I got discouraged, and they said, 'You've said you're going to go to college, and you're going to go,'" she recalled. A framed "reservation for college" certificate from the Davis program still hangs in her bedroom.

After the initiative passed, the U.C. campuses also put more weight on students' socioeconomic backgrounds when they made admissions decisions. Richard Sander, a U.C.L.A. law professor who has become a critic of affirmative action, studied admissions data at Berkeley and found that, all else being equal, lower-income students had a better chance of getting in after 1997 than before. Together, these various class-based efforts have helped the share of Pell Grant students at both U.C.L.A. and Berkeley to hold steady over the last decade, even as it has declined at many similar colleges.

You can make an argument, in fact, that the single most impressive university in the country today is U.C.L.A. It receives more freshman applications than any other — 50,744 this year — and, unlike many of its peers, it can legitimately claim to be an engine of opportunity. About 90 percent of its students, whether they enter as freshmen or transfers, eventually graduate. What City College of New York was to the 20th century, U.C.L.A. is to the 21st.

And now, maybe, it is figuring out ways to solve its race problem.

One night in march of this year, Peter Taylor and three other U.C.L.A. alumni met in his office to go over a big stack of U.C.L.A. applications from students who had already been admitted. Over sandwiches, the four of them — none of whom was a university employee — helped determine how much financial aid each student would get. This was one of

the “bureaucratic cover-me exercises,” as Taylor puts it, at the heart of the new diversity push at U.C.L.A.

In the previous few months, Taylor and his group had raised \$1.7 million for scholarships, the plan being to offer virtually all of it, immediately, to admitted black students. The easiest thing to do would have been to hand over the money to the U.C.L.A. Foundation, which holds and invests the university’s endowment, and then allow financial-aid officers to give it away as they saw fit. But U.C.L.A.’s general counsel said that allowing the foundation to handle funds specifically set aside for black students might violate the law. And letting the financial-aid office disburse the money almost certainly would have done so, since Proposition 209 prohibited colleges from recruiting students and offering scholarships based on race. But it didn’t prevent student and alumni groups from doing so. In effect, Taylor and his task force began outsourcing work that normally would have been done by the university.

Students and alumni stepped up their recruiting efforts. They visited high schools and set up a phone bank, with the help of a sympathetic alumnus who owned a call center, to reach out to black high-school seniors. Southwest Airlines donated plane tickets, helping black students who had been admitted to visit the campus. (A survey in 2005 had shown that admitted students were far more likely to choose U.C.L.A. if they had visited it. If you’ve been to the campus, this won’t surprise you.) One program that greeted prospective black students, called Black by Popular Demand, was run by the African Student Union and the Black Alumni Association. Another program — Scholars Days — was aimed broadly at less-than-privileged students, and it was run by the university. The two were scheduled to overlap.

This outsourcing was the second part of the task force’s two-pronged strategy. The group also urged U.C.L.A.’s faculty senate last year to alter the admissions process. In the past, the admissions office divided every application between two readers: one

evaluated a student’s academic record, the other looked at extracurricular activities and “life challenges.” Berkeley, by contrast, had taken a more holistic approach, with a single reader judging an entire application, and Berkeley was attracting more black students than U.C.L.A. Why? Maybe the holistic approach takes better account of the subtle obstacles that black students face — or maybe the readers, when looking at a full application, ended up practicing a little under-the-table affirmative action.

Last fall, U.C.L.A. made the switch. Two applications readers I interviewed said that they had received clear, written instructions not to consider race and that they hadn’t. (There are 150 readers in all, a mix of university employees and paid outsiders.) On the other hand, applicants seemed to understand that something had changed. Daniel Fogg, a computer programmer in the admissions office and an application reader, told me that he noticed more students mentioning race in their essays this year.

Whatever the reasons, every phase of Taylor’s campaign turned out to be a success. More than 2,400 black students applied last spring, up 13 percent from the previous year. Their admission rate rose to 16.2 percent, from 11.5 percent. Of those who were admitted, slightly more than half said yes, up from 41 percent in 2006. In all, about 200 African-American freshmen started classes last week, double the number the year before.

One of them was Frances Harris. Back at her high school in Sacramento this spring, a group of seniors decided to celebrate their school’s turnaround by photocopying their college acceptance letters and taping them to the walls. An entire hallway was filled with hundreds of letters. Until I stood in the hallway with Harris, I wasn’t sure it was possible to find any part of today’s college-application process inspiring. Eleven of the letters were hers, including ones from Pitzer College, Boston University, U.C.L.A. and U.C. Davis. (Berkeley rejected her.) She liked B.U., but it seemed too far away, especially from her mother’s perspective. So Harris’s decision came down to Pitzer,

which offered her nearly a full scholarship, and U.C.L.A. In the end, a \$1,000 scholarship from Taylor's group, a campus visit (flight courtesy of Southwest) and a phone call from U.C.L.A.'s director of financial aid — a combination of official recruiting and outsourced recruiting — pulled her toward U.C.L.A. "The biggest thing was seeing so many beautiful, intellectual black young students, being cool and having discussions about calculus," she said. "It was so pure. I was so impressed. It was amazing."

Harris's parents and her biological father all attended her high-school graduation. In late July, her parents drove her to Los Angeles so she could attend a six-week voluntary summer school that is officially open to incoming freshmen of all races but is dominated by black and Latino students. I saw Harris on campus in August, and she told me that she missed her friends from home but was happy to be a college student. On her first paper, in English composition, she got a B-plus, and on her second she got an A-minus. She's thinking about becoming a pre-med student. Next summer, she plans to go to Washington to work as an intern with the new chancellor of the school system there, Michelle Rhee, whom Harris met through her high school.

A few weeks after getting to U.C.L.A., Harris wrote an e-mail message to P. K. Diffenbaugh, one of her old teachers, telling him to send some of his current students to visit her soon, so they could get excited about college. "In my comparative English class we read a book a week. It goes superfast so encourage your students not to fall off," she wrote. "It's like the major leagues. . . . Academia!!!!"

The big question that hangs over U.C.L.A.'s success, of course, is whether the university broke the law. Looking at the numbers, it's hard not to conclude that race was a factor in this year's admissions decisions. The average SAT score for admitted African-American students fell 45 points this year, to 1,738. For Asian, Latino and white students, the averages were much more stable. "I'm quite confident that U.C. factors race in, in various ways," said

Sander, the U.C.L.A. law professor and affirmative-action critic. "There is no way to explain the disparities otherwise." He has filed a public-information request that would allow him to examine the data more closely.

In particular, U.C.L.A.'s experience suggests that some tension between race and class in the admissions process may be inevitable. Even as the number of low-income black freshmen soared this year, the overall number of low-income freshmen fell somewhat. The rise in low-income black students was accompanied by a fall in low-income Asian students — not a decline in well-off students. U.C.L.A. administrators say they don't fully understand why.

In a way, though, the question of whether race was a factor is itself misplaced. Proposition 209 forbids universities to consider race, but it doesn't stop them from considering disadvantage. So what if U.C.L.A. is somehow taking into account the disadvantages that black students face because of their race? Isn't that legal? And isn't it just? As Tom Lifka, a U.C.L.A. assistant vice chancellor who oversees admissions, said, "It's the fallacy of 209 that you can immediately move to a system that doesn't take account of race and that treats everybody fairly." Lifka said he was confident that U.C.L.A.'s current system could withstand legal scrutiny.

I asked these same questions about race and fairness of Connerly, who does favor preferences based on socioeconomic status (as do almost 85 percent of Americans, according to a 2005 New York Times poll). His first objection was constitutional: he believes the Supreme Court has given colleges very narrow instructions on when and how to consider race. Beyond that, he finds it hard to imagine that colleges would be able to strike the appropriate balance. "I suppose you could craft some kind of system that says, 'We're going to acknowledge that there has been and continues to be discrimination in our society,'" he said. "But I believe it is almost impossible to decide on the acceptable range — say, from 1 to 10 — to take race into account."

He may well be right. But it sure seems worth the effort. Somewhat accidentally, U.C.L.A. appears to have gotten much closer to the ideal answer than most American universities. Unlike those of other elite colleges, its student body isn't dominated merely by the best and brightest of the upper middle class. U.C.L.A. has also figured out how to do a bit better by the standard diversity benchmarks than it had been doing. Despite all the political heat that still surrounds the issue in California, its universities seem to be pointing to a better version of affirmative action — one that uses a little less race and a lot more class. “What would be nice is if we could craft a social compromise that could keep the best of the program while admitting some of its flaws,” says Sander, who supports the idea of affirmative action, despite his criticisms of the current system. “It's way beyond, ‘Mend it, don't end it.’ Let's fundamentally restructure this and be much more aware of class. If we did that, we'd build a much bigger consensus and take a lot of wind out of the sails of Ward Connerly.” Such a consensus might show us, finally, how to put the accomplishments of a student like Frances Harris into the right perspective.