

Some Legal and Political Controversies about Affirmative Action in the United States

Discussion Group on Affirmative Action Policies
Institute for Advanced Study in Toulouse
Glenn C. Loury, October 12, 2018

- Two Topics for Today's Discussion:
- (1) The 'Mismatch' Hypothesis
 - (2) The Harvard-Asian Americans Law Suit

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(2) Sorting and Matching Issues:

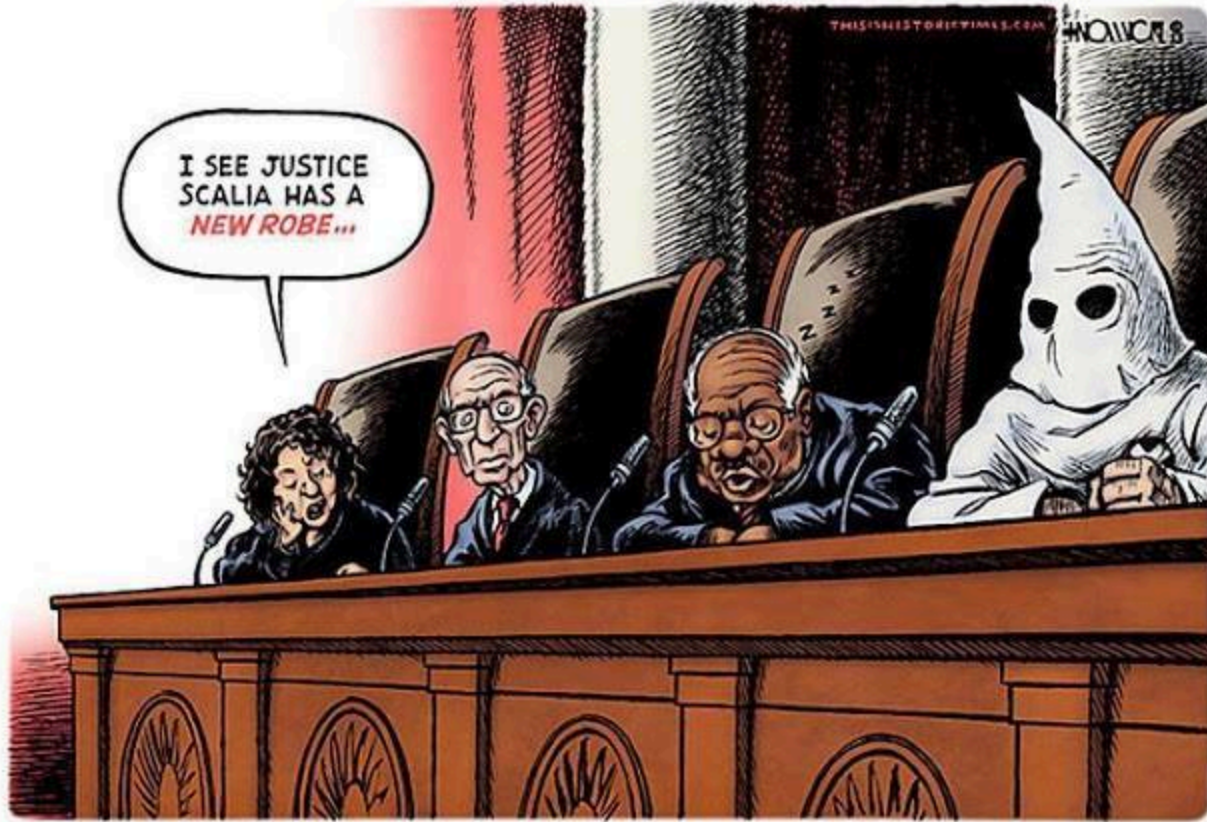
(Empirics) If complementarities exist between individual and organizational traits (eg. between a person's abilities and those of his/her classmates), AA may distort the allocation of persons across organizations so as to disadvantage its beneficiaries'. (Arciadicono and Lovenheim, 2016) **This concern has been VERY controversial in the US context! (And yet, there is good reason on the evidence at hand to take it seriously.)**

With Remarks in Affirmative Action Case, Scalia Steps Into 'Mismatch' Debate (from the New York Times, Dec. 10, 2015)

“In an awkward exchange in Wednesday’s potentially game-changing Supreme Court arguments on affirmative action, Justice Antonin Scalia hesitantly asked whether it might be better for black students to go to “a slower-track school where they do well” than to go to a highly selective college, like the University of Texas, through some form of racial preference.

“I don’t think,” Mr. Scalia said, “it stands to reason that it’s a good thing for the University of Texas to admit as many blacks as possible.” He was addressing Gregory G. Garre, the lawyer defending the University of Texas at Austin’s affirmative action policy, which supplements the automatic admission of top-ranking students from all high schools across the state with the use of race as one factor in a “holistic” approach to admissions.

In asking such a pointed question, Mr. Scalia was stepping into a long debate over what has been called the mismatch theory of college admissions.”



This cartoon circulated in 2015 after Justice Scalia's tough questioning of defense counsel in Texas AA case on whether AA was necessarily good for Black students

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Consider the survey by Arcidiacono and Lovenheim: “The Quality-Fit Tradeoff”

(Published in the Journal of Economic Literature, March 2016)

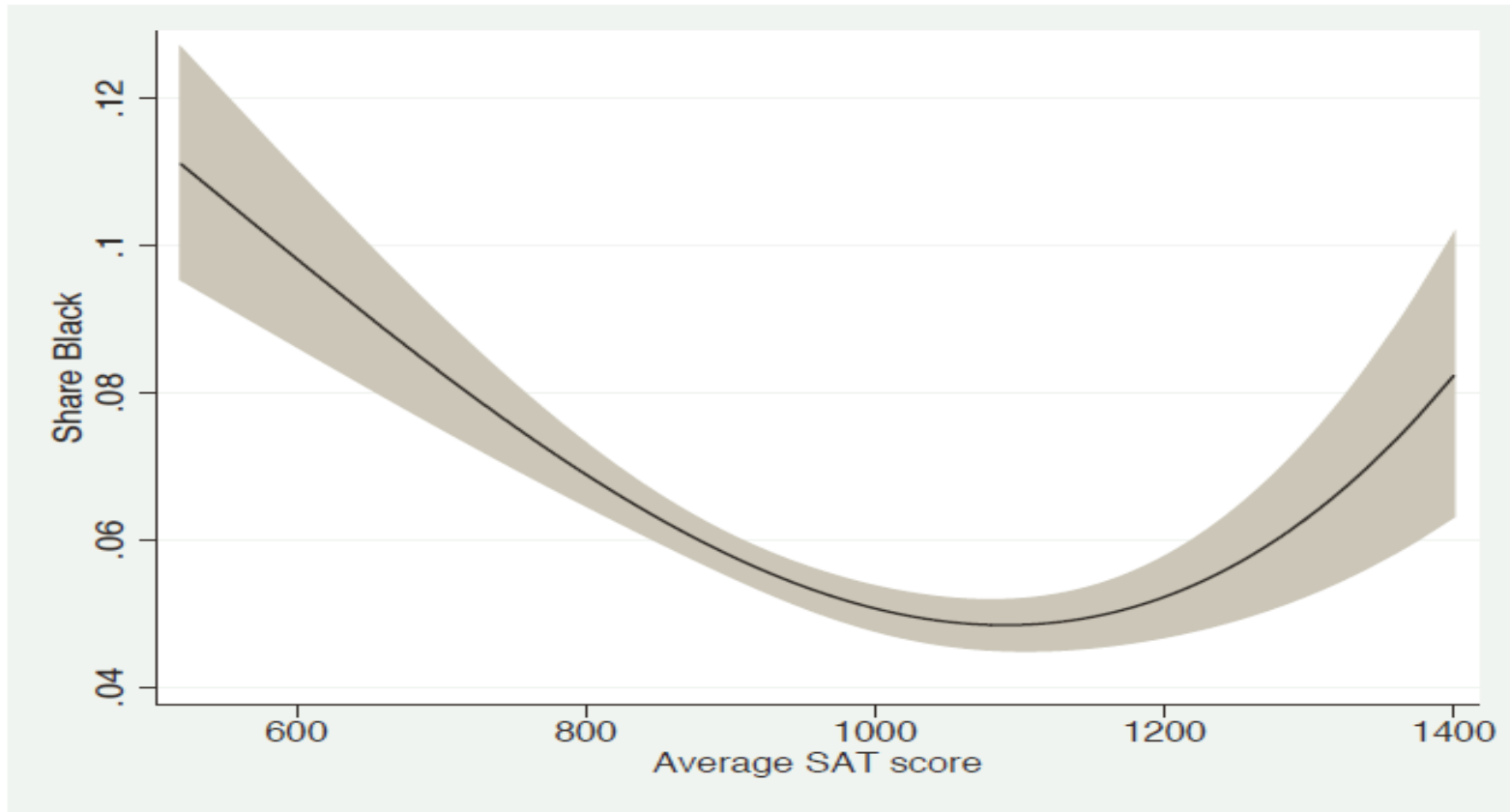
Affirmative Action and the Quality–Fit Trade-off[†]

PETER ARCIDIACONO AND MICHAEL LOVENHEIM*

This paper reviews the literature on affirmative action in undergraduate education and law schools, focusing especially on the trade-off between institutional quality and the fit between a school and a student. We discuss the conditions under which affirmative action for underrepresented minorities (URM) could help or harm their educational outcomes. We provide descriptive evidence on the extent of affirmative action in law schools, as well as a critical review of the contentious literature on how affirmative action affects URM law-school student performance. Our review then discusses affirmative action in undergraduate admissions, focusing on the effects such admissions preferences have on college quality, graduation rates, college major, and earnings. We conclude by examining the evidence on “percent plans” as a replacement for affirmative action. (JEL I23, I26, I28, J15, J31, J44, K10)

Which Colleges (by Quality) Enjoy Most of the Benefits of Diversity?

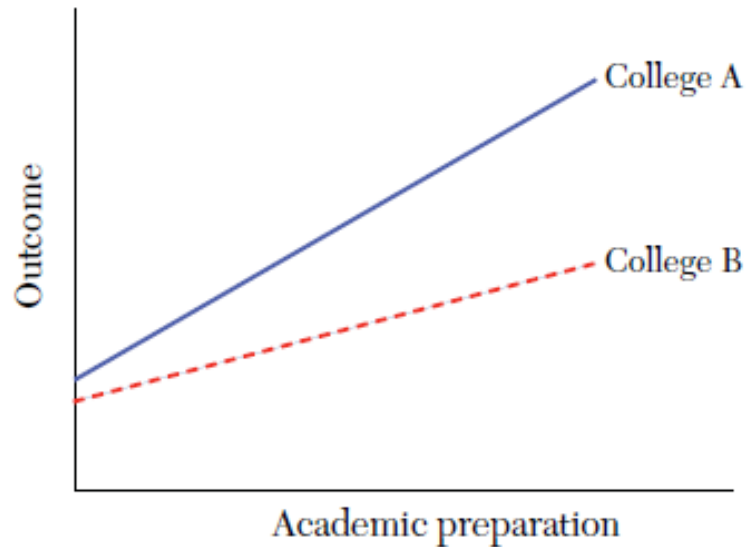
Figure 5: College percent Black as a function of average SAT score



Data Source: America's Best Colleges produced by U.S. News & World Report for 1991

How the (mis)Assignment of Students to Colleges Could Matter

Panel A. College A dominates College B for all levels of academic preparation



Panel B. College A dominates College B for the most academically prepared, College B dominates College A for the least academically prepared

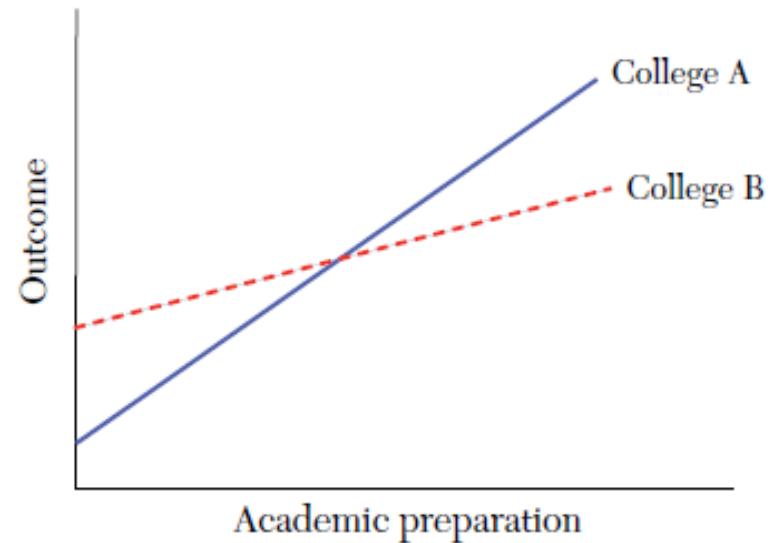


Figure 1. Heterogeneity in College Benefits

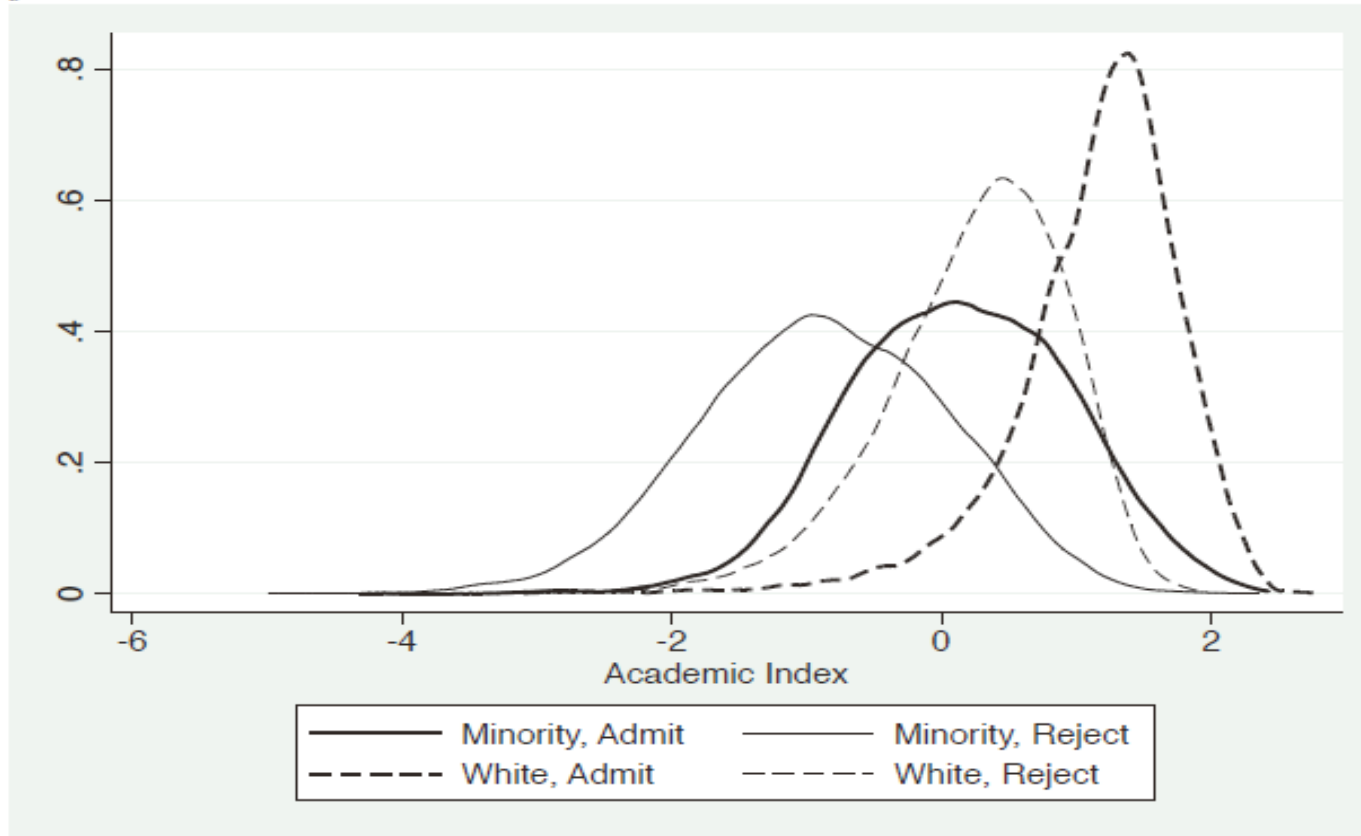
The question is: Which of these two scenarios actually obtains?

Key Question: Can there sometimes be a conflict between colleges' desire to increase their ethnic/racial diversity among students, on the one hand, and the educational interests of minority students, on the other hand?

for example, higher graduation rates. Thus, policies that sort minority students into more selective schools, which is what affirmative action aims to do, may lead to better educational outcomes for these students. But, is increasing college quality always beneficial? As a result of affirmative action, under-represented minorities, and in particular African Americans, are placed in schools where their academic preparation is significantly below that of their white counterparts. The *mismatch hypothesis* argues that many of the beneficiaries of preferences are so misplaced academically that they would actually be better off in the absence of affirmative action. Although its antecedents arose much earlier, this hypothesis was popularized in academia by Sander (2004) and in the mainstream by Sander and Taylor's 2012 book *Mismatch: How Affirmative Action Hurts Students It's Intended to Help, and Why Universities Won't Admit It*. While Sander's original article focuses on law school students, his work with Taylor examines the evidence for the mismatch hypothesis for undergraduates as well.

Racial Preferences in Undergraduate Admissions Are Quite Extensive

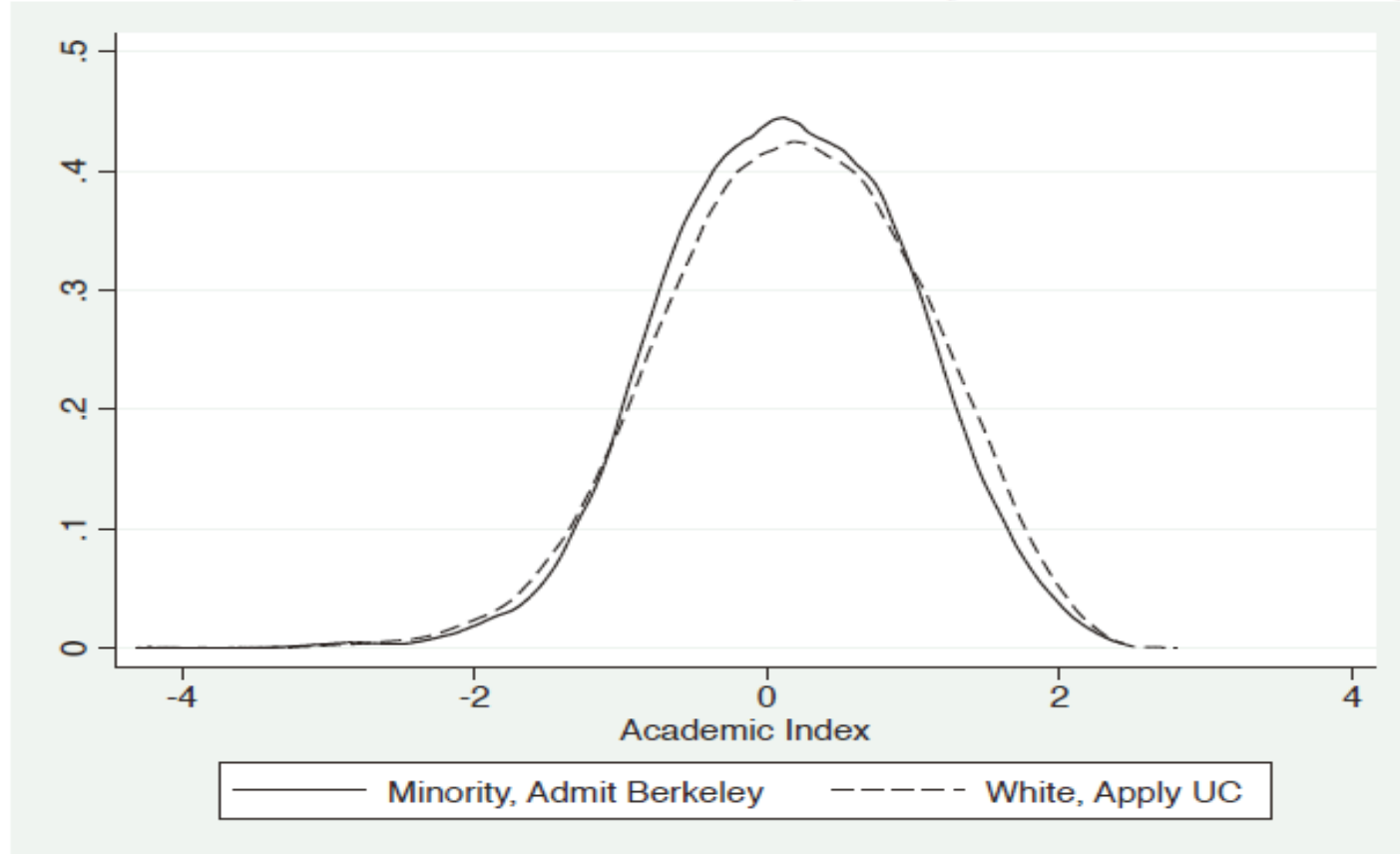
Figure 3: Distribution of Academic Indexes for Applicants to UC Berkeley by Minority and Accept/Reject Status



Data source: UCOP, years 1995-1997. Academic index is a weighted average of the student's SAT score and high school GPA and is normalized to be mean zero and standard deviation one for the population of applicants.

distribution

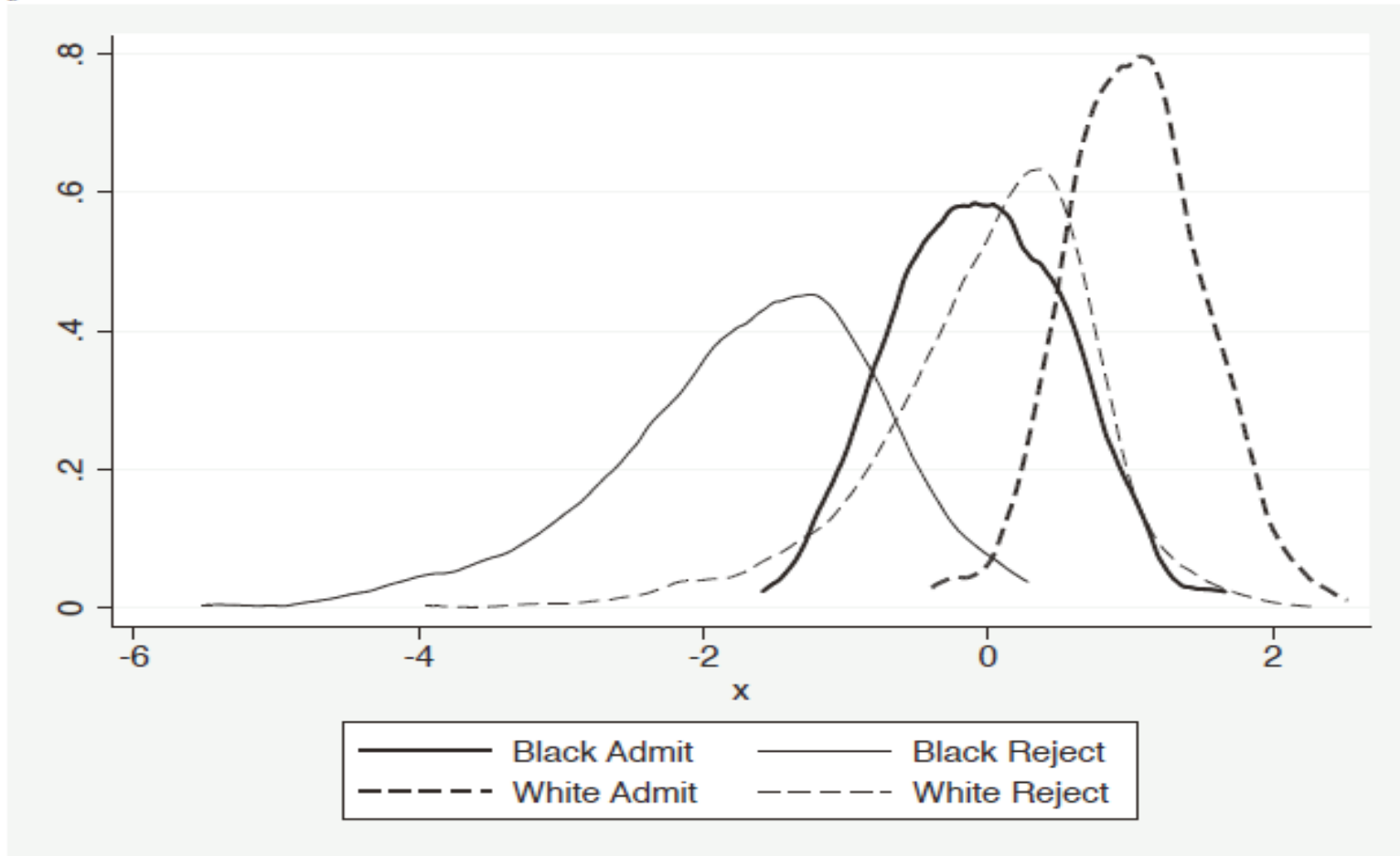
Figure 4: Distribution of Academic Indexes for Minority Berkeley Admits and White UC Applicants



Data source: UCOP, years 1995-1997. Academic index is a weighted average of the student's SAT score and high school GPA and is normalized to be mean zero and standard deviation one for the population of applicants.

How Extensive Are Racial Preferences in Law School Admissions?

Figure 2: Distribution of Academic Indexes for Applicants to Michigan Law by Race and Accept/Reject Status



Data from 2002. Academic index is a weighted average of the applicant's LSAT score and undergraduate GPA and is normalized to be mean zero and standard deviation one for the population of applicants.

Key Questions Considered by A-L:

1. Under what conditions can affirmative action actually be bad for its beneficiaries? What are the relevant outcome measures in this case?
2. How can we make the empirical specification flexible enough to allow for the possibility that increasing school quality could be welfare-enhancing for some individuals but not for others?
3. How extensive are race-based preferences?
4. What can we learn from the debate over mismatch in law schools? Does it matter for law school grades, bar passage, future earnings, or some combination thereof?
5. For undergraduates, on what margins does affirmative action matter? The extensive margin (whether individuals attend college at all) or the intensive margin (where individuals enroll)?
6. How does affirmative action affect graduation rates, choice of college major, and earnings?
7. Are “percent plans,” which provide automatic admission to public universities for students above a given percentile in class or state rank, a viable alternative to affirmative action?

Impact of Affirmative Action on completion of study in STEM fields (at Duke):

Since affirmative action results in minority students being relatively less-prepared than their non-minority counterparts within a given school, differences in expectations across fields can result in minorities shifting away from the sciences over the course of their college career. Using data on Duke students, Arcidiacono, Aucejo, and Spenner (2012) showed that, conditional on gender, African Americans were more likely than white students to have an initial major in the sciences. However, their probability of finishing a major in the sciences was much lower. For example, of those who expressed an initial interest in the sciences, 54% of African American males finished in the humanities or social sciences compared to 8% of white males. Arcidiacono, Aucejo, and Spenner show that this entire racial gap can be accounted for by controlling for academic background: there are no differences in major switching patterns across races once one accounts for differences in academic background.

Other work supports conclusion that mismatch reduces minority degree completion in STEM fields:

- (1) What the Arcidiacono, Aucejo, and Spenner study cannot do is say whether the African American students at Duke would have been more likely to persist in science majors had they attended a less-selective school. That is, is it relative preparation or absolute preparation that matters for obtaining a science degree? Smyth and McArdle (2004) use the College and Beyond data⁶³ and estimate models of graduating in a science field, controlling both for the difference between the individual's SAT math score and the average SAT score of their school as well as the average SAT score of the school itself.⁶⁴ Smyth and McArdle (2004) find support for relative preparation mattering for attaining a STEM degree: the total effect of college quality (the direct effect and the effect through relative preparation) on STEM attainment is negative.

Other work supports conclusion that mismatch reduces minority degree completion in STEM fields:

- (2) Graduating in the sciences with a low SAT score is difficult at UC Berkeley, but would these same students have a higher probability of graduating in the sciences from a school like UC Riverside? The answer appears to be yes. Denote the median SAT score for minorities at Berkeley as A . The minority students below this score who are interested in the sciences have a five-year graduation rate in the sciences of 13%. Now consider minority students at Riverside, again with an initial interest in the sciences, who have SAT scores below A .⁶⁶ Their five-year graduation rate in the sciences is 20%, despite likely having lower SAT scores overall and likely having a worse academic record.⁶⁷

Arcidiacono-Lovenheim's Mixed Conclusions:

The evidence suggests that racial preferences are so aggressive that reshuffling some African American students to less-selective schools would improve some outcomes due to match effects dominating quality effects. The existing evidence indicates that such match effects may be particularly relevant for first-time bar passage and among undergraduates majoring in STEM fields. However, shifting minority undergraduates to low-resource non-selective schools ultimately may undo any gains from higher match quality, and shifting minorities out of law schools altogether could lead to worse labor market outcomes among these students than had they been admitted to some law school. Alternatively, schools that wish to practice extensive affirmative action could provide targeted services to these students in order to overcome any mismatch induced by their admission policies, such as offering tutoring and remedial classes. While the evidence on targeted college services is scant,⁸³ it is plausible such interventions could be successful in mitigating any negative match effects. The extent to which schools can successfully target services to less-academically-prepared students is an important question for future research.

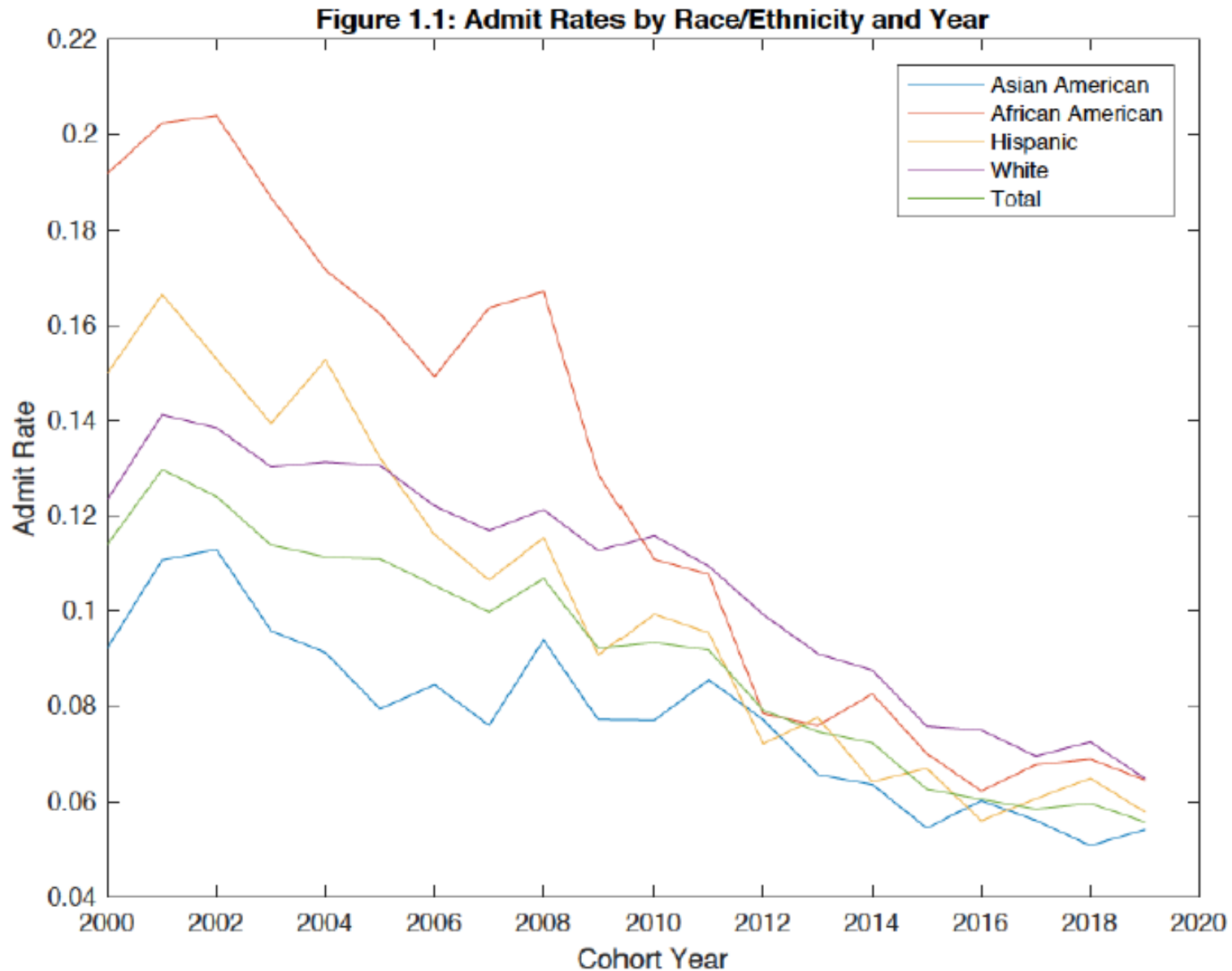
Arcidiacono-Lovenheim's Conclusion Regarding Mismatch Effects in Law Schools (first-time bar exam passage rates are the outcomes of interest):

The law school debate over Sander (2004) has been especially contentious. We find the evidence suggesting that shifting African Americans to less-selective schools would increase bar passage rates, particularly for first-time passage, to be fairly convincing. This is especially the case since the low quality of the data would tend to bias estimates away from finding mismatch. On the other hand, an argument could be made that the data are too noisy and provide sufficiently imprecise information on actual law school quality that they preclude one from drawing any concrete conclusions regarding mismatch. Regardless, the law school debate makes clear that this is a question that merits further attention, where more definitive answers could be answered with better data. Our hope is that better data sets soon will become available.³¹

The Asian-Americans vs Harvard Affirmative Action Lawsuit

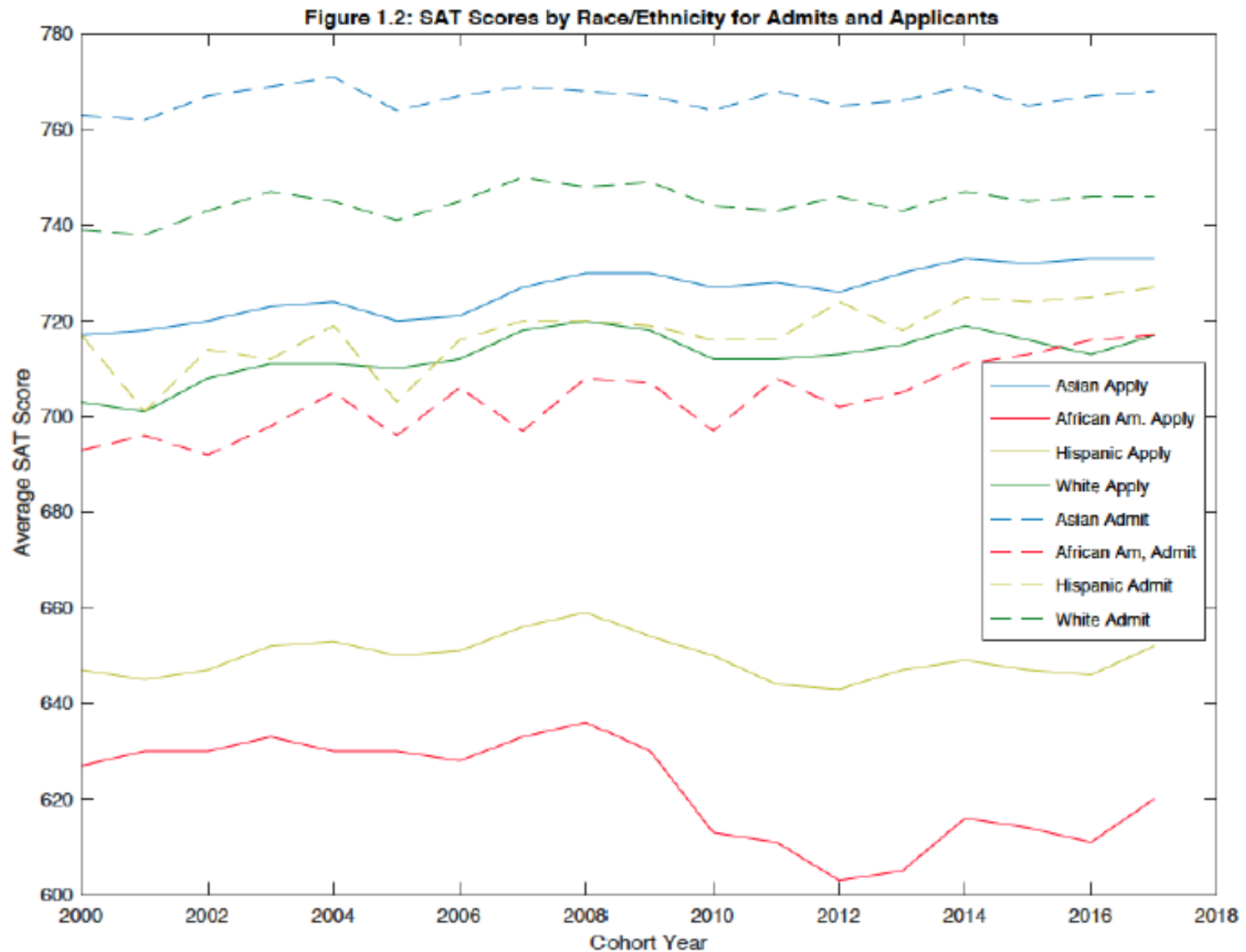
Economics experts Peter Arcidiacono (Duke) and David Card (Berkeley) provide testimony supporting the case of the plaintiffs and defendant, respectively

The Crux of Peter Arcidiacono's Argument against Harvard



(Asians had lower and African Americans higher than average admissions rates.)

The Crux of Peter Arcidiacono's Argument (continued)



(Asians had higher and African Americans lower than average SAT test scores.)

The Crux of Peter Arcidiacono's Argument (continued)

Share of Applicants by Race/Ethnicity and Academic Index Decile, Baseline Dataset

Academic Index Decile	Share of Applicants in each Decile				
	White	African American	Hispanic	Asian American	Total
1	4.98	38.85	20.47	3.92	10.55
2	7.58	22.76	20.52	5.11	10.23
3	11.01	15.2	17.15	7.14	11.12
4	10.32	7.52	11.29	7.16	9.12
5	12.11	5.46	9.29	8.97	10.03
6	12.6	3.84	7.12	10.8	10.31
7	12.19	2.68	5.09	11.23	9.85
8	11.14	1.89	4.37	13.08	9.85
9	9.75	1.17	2.76	15.85	9.76
10	8.31	0.64	1.94	16.73	9.18

(Asians had higher and African Americans lower overall academic indices.)

The Crux of Peter Arcidiacono's Argument (continued)

Table 5.2: Admit Rates by Race/Ethnicity and Academic Index Decile, Baseline Dataset

Academic Index Decile	African American			Asian	Total
	White	American	Hispanic	American	
1	0.00%	0.04%	0.00%	0.00%	0.01%
2	0.30%	0.80%	0.18%	0.21%	0.39%
3	0.48%	4.51%	1.83%	0.53%	1.45%
4	1.66%	10.60%	4.76%	0.84%	2.83%
5	2.25%	19.62%	7.80%	1.49%	3.91%
6	3.54%	26.28%	11.19%	2.42%	4.79%
7	3.91%	37.60%	15.76%	3.35%	5.62%
8	6.42%	41.48%	20.30%	4.00%	6.85%
9	9.32%	50.90%	22.27%	6.26%	8.77%
10	13.59%	49.45%	28.04%	9.36%	11.70%
Average	4.20%	6.46%	5.26%	3.96%	4.50%

The Crux of Peter Arcidiacono's Argument (continued)

Table 4.2: Admission and population shares by race and overall rating, baseline dataset

Score	White		African American		Hispanic		Asian American	
	Admit	Pop.	Admit	Pop.	Admit	Pop.	Admit	Pop.
	Share	Share	Share	Share	Share	Share	Share	Share
<i>Panel 1: Baseline Dataset</i>								
<3	0.02	43.74	0.02	66.57	0.01	58.74	0.01	39.50
3	1.93	39.61	5.97	21.24	4.06	28.65	1.70	43.07
3+	7.67	12.68	19.09	7.63	16.48	9.25	6.66	13.57
2	61.03	3.94	81.45	4.51	75.99	3.34	59.42	3.81
1	100.00	0.04	100.00	0.04	100.00	0.03	100.00	0.05

Admissions rates by race and Harvard's overall rating of applicants. (Note: African Americans have higher and Asians lower than white admit rate conditional on rating.)

The Crux of Peter Arcidiacono's Argument (continued)

Table 7.1: Probability of admission for an Asian American if treated like other races/ethnicities when base probability is 0.25

		Probability of admission			
		Baseline Dataset		Expanded Dataset	
		Preferred Model	+Overall and Personal	Preferred Model	+Overall and Personal
Asian/male/no disadvantage	African American	0.954	0.900	0.935	0.862
	Hispanic	0.774	0.687	0.738	0.644
	White	0.360	0.325	0.340	0.304
Asian/female/no disadvantage	African American	0.939	0.874	0.923	0.841
	Hispanic	0.742	0.641	0.705	0.604
	White	0.303	0.267	0.296	0.269
Asian/male/disadvantaged	African American	0.790	0.675	0.725	0.599
	Hispanic	0.622	0.527	0.591	0.504
	White	0.325	0.313	0.303	0.293
Asian/female/disadvantaged	African American	0.737	0.615	0.685	0.559
	Hispanic	0.580	0.475	0.551	0.462
	White	0.271	0.256	0.262	0.259
Asian/male/no disadvantage	White legacy			0.801	0.733
	White double legacy			0.881	0.838

(Simulated admit probabilities for Asian applicant with 0.25 chance of admission, using the estimated coefficients of a binomial logit regression with race dummies. Note: in every instance, Asian applicants would have a higher chance of admissions if treated as belonging to a different racial/ethnic group.)

The Crux of Peter Arcidiacono's Argument (continued)

Table 1.1: Single-Race African American v. Non-African American Admit Rates

Admission Cycle		Rate
2017	African-American	0.06399
	Non-African American	0.06424
	Difference	-0.00025
2018	African-American	0.06585
	Non-African American	0.06521
	Difference	0.00064
2019	African-American	0.06059
	Non-African American	0.06084
	Difference	-0.00025

(In recent years AA admit rates have tracked closely to non-AA admit rates, despite significant racial differences and year-to-year variability in applicants' test scores. Is this just a coincidence, or does Harvard maintain a "floor" under AA admissions?)

David Card's rebuttal of Peter Arcidiacono: Key questions

- Does statistical evidence support SFFA's claim that Harvard discriminates against Asian-American applicants in undergraduate admissions decisions?
- Does statistical evidence support SFFA's claim that race is the determinative factor in undergraduate admissions decisions for many applicants?
- Is there statistical evidence that Harvard has engaged in racial balancing in its undergraduate admissions process?
- How would the racial composition and other attributes of Harvard's admitted class be expected to change if Harvard stopped considering race and instead pursued a variety of race-neutral ways of seeking to increase the racial diversity of its admitted class?
- Are the analyses and conclusions offered by SFFA's experts reliable?

The Crux of David Card's Argument in Defense of Harvard

Card's basic argument is that non-academic factors play a significant role in admissions decisions at Harvard; that Peter Arcidiacono fails to take this sufficiently into account; and that, by over-emphasizing academic factors (where Asians do relatively well), while under-emphasizing personal qualities (where Asians do relatively poorly), Arcidiacono wrongly attributes observed disparities in admissions rates to racial discrimination.

2.2. Overview of report and summary of findings

9. SFFA's Complaint³ and expert reports claim that Harvard's undergraduate admissions decisions exhibit bias against Asian-American applicants, that race is a determinative factor in the Harvard admissions process for many applicants, and that Harvard can achieve its diversity goals without considering race by using a variety of race-neutral admissions practices.

10. SFFA's claim of discrimination against Asian-American applicants relies most fundamentally on the premise that Asian-American applicants are admitted at a lower rate than White applicants, while possessing higher academic credentials than White applicants on average. As I explain in this report, however, there is a critical flaw in SFFA's reasoning: as I understand from my review of the documents and testimony in this matter, and as my empirical analysis corroborates, Harvard's admissions process values many dimensions of excellence, not just prior academic achievement.

Crux of Card's Argument Defending Harvard (Continued)

11. As I detail in **Section 3** below, Harvard's applicant pool is full of students with outstanding academic credentials. More than 8,000 applicants for the class of 2019 had perfect GPA approximately 3,500 applicants had perfect SAT math scores, and nearly 1,000 applicants had perfect ACT and/or SAT composite scores. In that pool, having strong academic credentials is not sufficient to make an applicant a strong candidate for admission. The record in this case makes clear that it is often the non-academic aspects of a candidate's application that determine whether the candidate is admitted from this academically exceptional pool, that the evaluation of each candidate takes into account the full context of his or her life experiences, and that Harvard's ultimate goal is to admit a student body that exhibits excellence in a variety of forms and includes students with diverse experiences, backgrounds, skills, and interests. Harvard's admissions data are consistent with these

12. Prof. Arcidiacono reveals a significant misunderstanding of Harvard's admissions process by focusing so much of his analysis on academic achievement. For example, four of the six regression models that Prof. Arcidiacono offers do not include controls for the three non-academic ratings (extracurricular, personal, and athletic), which are central to Harvard's evaluation of candidates for admission. And Prof. Arcidiacono accounts in only a crude and limited way for considerations of high school quality and socioeconomic background that Harvard uses to place in context each applicant's prior academic achievement. Such analyses are fundamentally flawed and unreliable because they fail to account for the multi-dimensional evaluation Harvard employs when rendering its admissions decisions.

Crux of Card's Argument Defending Harvard (Continued)

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Crux of Card’s Argument Defending Harvard (Continued)

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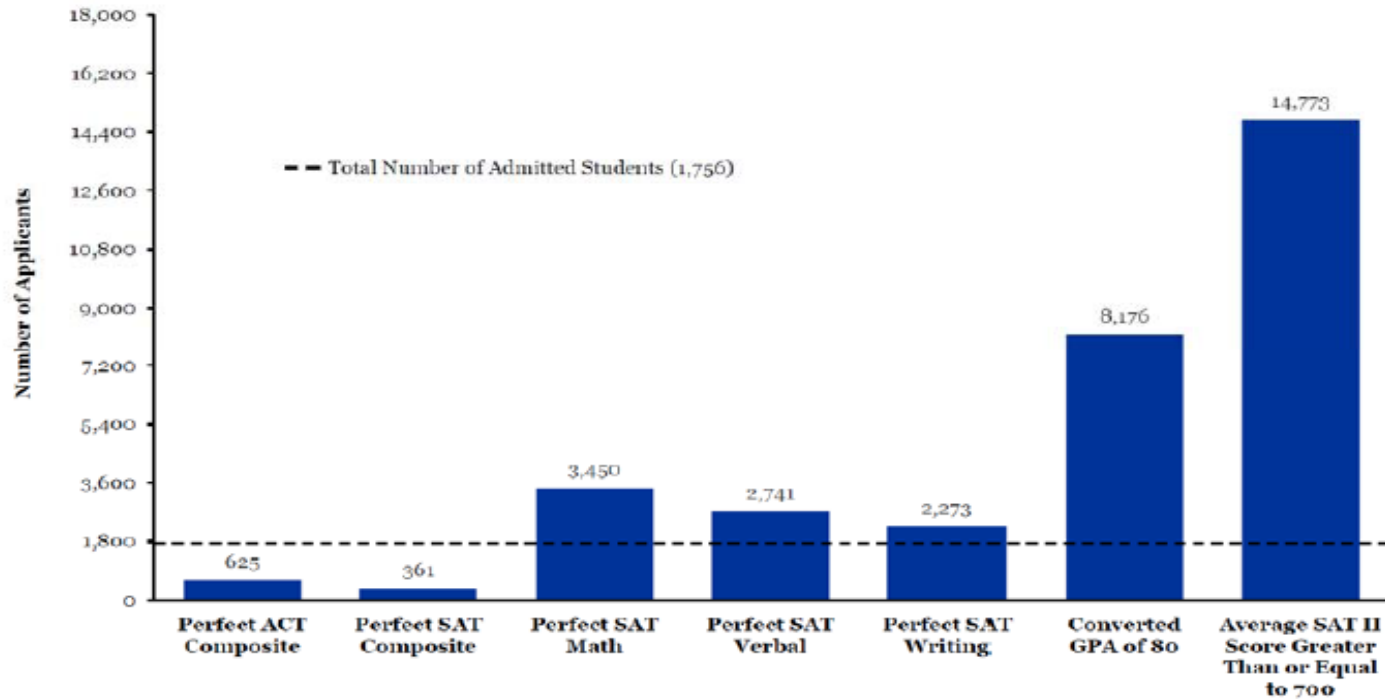
Crux of Card's Argument Defending Harvard (Continued)

13. As I explain in **Section 4**, Prof. Arcidiacono attempts to justify his focus on academics by presenting a variety of basic descriptive analyses that purport to show a broad correlation between Harvard's academic index and non-academic qualifications that Harvard considers. He then argues that it is reasonable to assume that Asian-American applicants are stronger than applicants of other races in non-academic respects (including factors he cannot measure and include in his model) because they are stronger on academic measures. That is a central assumption of his analysis—and, as I demonstrate in **Section 4**, it is wrong. A more careful examination of the data shows that White applicants are stronger than Asian-American applicants, in aggregate, across the three non-academic dimensions that Harvard rates (athletic, extracurricular, and personal), and that they are more likely to exhibit multi-dimensional excellence (i.e., receive high ratings in at least three of the four categories). In fact, Prof. Arcidiacono's own analysis shows that, across all of the non-academic variables he includes in his regression model, White applicants in aggregate are stronger than Asian-American applicants. Because non-academic factors are much harder to quantify than academic factors, and thus fewer of them are observable in the Harvard admissions database, there is a strong possibility that statistical models like those developed by Prof. Arcidiacono will exclude important non-academic factors, and will therefore be biased in favor of finding a race-based disparity in admissions between Asian-American and White applicants. That is, it is quite possible that if one could control more extensively for non-academic factors, those factors—and not race—would explain any disparity in the admission rate between Asian-American and White applicants.

Crux of Card's Argument Defending Harvard (Continued)

Exhibit 2

Many applicants to the class of 2019 had outstanding standardized test scores and grades



Source: Arcidiacono Data

Note: Data are from applicants to the class of 2019 using Professor Arcidiacono's expanded sample. Harvard converts applicant GPAs to a 35–80 scale.

(If academic qualifications were the only thing Harvard cared about in its admissions process, the University could easily compose its entire admitted class with students presenting perfect math or verbal test scores. Thus, other factors must be weighed)

Crux of Card's Argument Defending Harvard (Continued)

37. Harvard's assessment of each applicant's overall qualifications and distinguishing excellences takes into account the full context of the applicant's life experience. My understanding is that Harvard seeks to understand the opportunities and challenges each applicant has faced so that it can better evaluate each applicant's achievements and potential to contribute to Harvard. For example, William Fitzsimmons, Harvard's Dean of Admissions and Financial Aid, testified that the context of each *high school* is particularly important when evaluating the qualifications of any given applicant:

Given the fact that we want to understand as completely as possible what the ... applicant has accomplished both in school, out of school, you know, throughout his or her life, getting to know the school, the opportunities within the school, academically, extracurricularly, and in other ways, what they might learn from fellow students, all the usual things that you might look for in a college that would be of interest. And also is interesting for the—helpful for readers to understand which courses might be tougher than others, things of that sort, the full context.¹⁴

(Testimony of Harvard administrator on University's goals when selecting admits.)

Crux of Card's Argument Defending Harvard (Continued)

38. Marlyn McGrath, Director of Admissions, also testified that the Admission Committee's assessment of the context of each applicant's family life and community is crucial to the evaluation of her achievements:

The most important thing to say is that when an applicant has applied, each applicant is really considered as an individual, including—whose candidacy will always include, generally include, many factors, family

background, which will include whatever we know of race, whatever else we know about family circumstances and education, whatever we can know about the nature of the school and the kind of community the student grew up in. Those context features, those features of the student's setting are always important to us in imagining how well he's achieved in the circumstances that he started with to us as a candidate.¹⁵

(More testimony of administrator on Harvard's goals when selecting admits.)

Crux of Card's Argument Defending Harvard (Continued)

3.3. Harvard's decision process is labor-intensive and seeks to understand the full context of each applicant's high school achievements

45. Based on my review of deposition testimony and documents produced in this matter, I understand that, to implement its whole-person assessment of each applicant, Harvard has implemented a multi-stage decision process with input from a large team of admissions officers.²² Dean Fitzsimmons has described this as a “rigorous comparative process.”²³

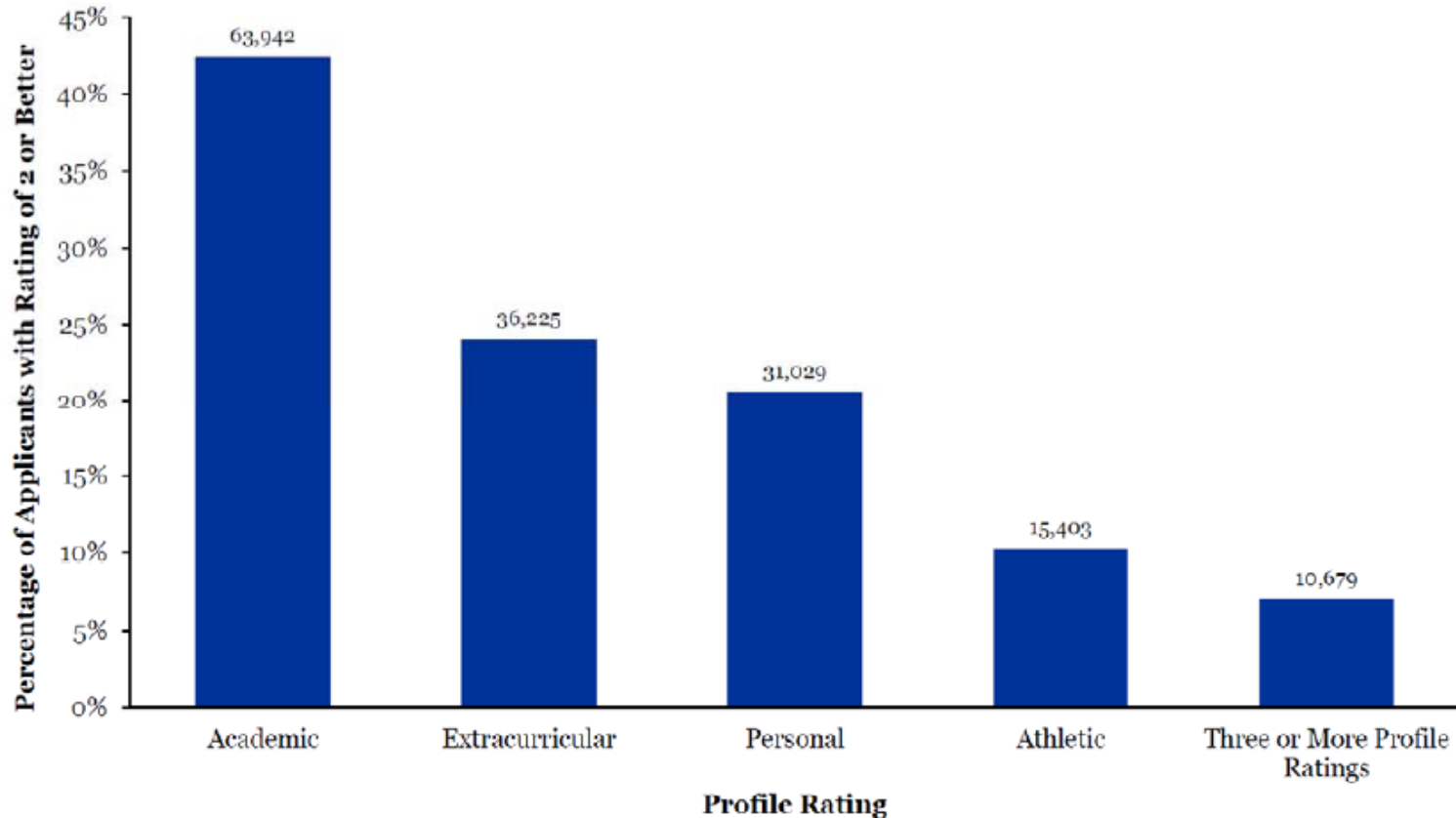
46. The Admissions Committee is divided by geographic region into twenty subcommittees, known as docket.²⁴ Each subcommittee normally includes four to five members and a chairperson, who are collectively responsible for the initial evaluation of all candidates from the geographic area.²⁵ Each member of a subcommittee is responsible for performing the initial read of all applications from a set of high schools on the docket. My understanding is that admissions officers often sit on multiple subcommittees. The admissions officer who conducts the first read of a given application (the “first

(Card's detailed discussion of Harvard's decision process, in the context of rebutting Arcidiacono's charge of discrimination against Asians, amounts to the claim that PA's logit regression models are wrongly specified because they omit difficult-to-measure personal qualities which, if included, could account for the racial group disparities.)

Crux of Card's Argument Defending Harvard (Continued)

Exhibit 5

Strong academic ratings are more common than strong extracurricular, athletic, and personal ratings



Source: Arcidiacono Data

Note: Data are from applicants to the classes of 2014 – 2019 using Professor Arcidiacono's expanded sample.

(Strong non-academic qualities matter to Harvard but are relatively rare in its applicant pool in comparison to strong academic qualities.)

Crux of Card's Argument Defending Harvard (Continued)

Exhibit 4

Specific combinations of Harvard's four profile ratings have a large effect on the admission rate

Ratings Combination	Number of Applicants	Admission Rate
<u>Candidates who Excel on One Dimension</u>		
1. Academic rating of 1, no other 1s	663	68%
2. Extracurricular rating of 1, no other 1s	453	48%
3. Personal rating of 1, no other 1s	41	66%
4. Athletic rating of 1, no other 1s	1,340	88%
<u>Multi-Dimensional Candidates</u>		
5. Three ratings of 2, one rating of 3 or 4	9,266	43%
6. Four ratings of 2	622	68%
<u>Weaker Candidates</u>		
7. No ratings of 1 or 2	55,981	0.1%

Source: Arcidiacono Data

Note: Data are from applicants to the classes of 2014 – 2019 using Professor Arcidiacono's expanded sample.

(Card shows with this table how highly Harvard values multi-dimensional candidates. Notice that applicants with the second highest rating along all four dimensions gain admission at the same rate [68%] as those whose only highest rating is academic.)