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Branch Rickey, Affirmative Action and “Merit” in Baseball and Education

Evan H. Caminker

I am completely color-blind.... America ... is more interested in the grace of a man's swing, in the dexterity of his cutting a base, and his speed afoot, in his scientific body control, in his excellence as a competitor on the field America ... will become instantly more interested in those marvelous, beautiful qualities than they are in the pigmentation of a man's skin Men are coming to be regarded of value based upon their merits.

—Branch Rickey, banquet address in Atlanta, 1956¹

When General Manager Wesley Branch Rickey broke Organized Baseball's longstanding color barrier on October 23, 1945, by signing Jackie Robinson to a contract to play for the Montreal Royals, a minor league affiliate of the Brooklyn Dodgers, Rickey catalyzed the movement for racial justice. Millions of people saw, heard, and read about black and white men playing side-by-side. Integrating the national pastime helped challenge segregationist norms across the land, facilitating the integration of military troops and public schools soon thereafter.

Rickey's stirring call in his 1956 Atlanta address to judge people on their merits rather than their pigmentation still resonates for leaders of another revered American institution—higher education. For the past half-century, universities have considered whether, why, and how race ought to play a role in selective admissions processes. The argument has moved past ending and redressing the wrongs of excluding racial minorities to focus on the benefits of including them, with universities arguing that racially diverse student bodies advance their educational missions.

I was dean-in-waiting of Rickey's alma mater, the University of Michigan Law School,² when a legal challenge to our race-conscious admissions policy went all the way to the Supreme Court. In *Grutter v. Bollinger*,³ the Court upheld our policy, concluding that racially diverse student bodies both help students to learn more from each other and help prepare them to succeed in a multicultural world so they can better serve the needs of society.

Of course, *Grutter* didn't settle the debate. Reasonable people can and do reasonably disagree about the legality and wisdom of affirmative action in higher education. In my subsequent decade as dean, I had many spirited conversations with alumni whose children were denied admission, as well as with others who opposed race-consciousness. They raised a variety of concerns, some of which I found persuasive and others less so.⁴

I was particularly struck by how often I heard an objection that seemed way off-base. Critics repeatedly claimed that race-conscious admissions violate a fundamental principle of meritocracy—that because the Law School took race into account, we were not fairly judging all applicants “based upon their merits.”

More specifically, critics made two claims. First, admission is properly considered a matter of entitlement or desert. For each seat in an entering class, they said, the school should rank the applicants from best to worst based on their merits, and the top-ranked person deserves to be offered that seat. And if instead she is passed over for someone else, she has been treated unfairly—a principle defended with special zeal if the alumni believed their child might have been next in line (which, not surprisingly, many did).⁵

Second, the critics said, when ranking applicants the Law School may consider only skills acquired, talents developed, and accomplishments achieved through personal effort. This reflects a perceived moral distinction between attributes an applicant *develops* for herself, by honing her own skills and talents, and qualities that she happened to be *born-into*, over which by definition she has no control. Developed qualities are merit-related, the argument runs, while born-into qualities (such as race) are not.

In sum: critics claim that race-conscious admissions give some minority applicants a boost based on an arbitrary factor and excludes others who truly deserve admission according to merit-based criteria. This argument, which I'll call the anti-merit objection, is commonly reflected in mainstream discourse. Pundits and pollsters routinely ask whether students should be selected based on merit *rather* than race, as if they are inherently conflicting concepts. And social commentators reference the “quintessentially American ideal” that “no one's prospects in life should be determined by the conditions of his or her birth, and that individuals should advance strictly on their merit and not because of any other external advantage.”⁶

I find this particular anti-merit objection completely misplaced, aligning

myself with some extraordinary jurisprudential scholars.⁷ But in my experience, few alumni critics were interested in examining the deep philosophical foundations for their intuitive beliefs. Rather, I found that the best way to persuade protesting alumni to abandon this argument was to invoke General Manager Branch Rickey, using his career to draw an analogy between how the Law School admits applicants and how Rickey recruited players for his ball teams.

When evaluating ballplayers' skills and attributes for purposes of building a team, Rickey viewed himself as assessing their "value based upon their merits."⁸ Alumni easily agreed with Rickey that professional baseball recruiting follows meritocratic principles.

But baseball teams routinely violate the two principles of merit that are supposedly so sacrosanct in the admissions context. General managers don't rank potential recruits in the abstract from best to worst, and then always recruit the top player on the list. Instead, general managers ask "which recruit would best help the team win games?" even though that sometimes means choosing a lower-ranked over a higher-ranked prospect. Moreover, teams routinely select players based on features largely or entirely beyond their current control, such as position, height, or handedness. Yet no one protests that the ballplayers who are passed over for such reasons are treated unfairly because they "deserved" a place on the team. So, what gives?

Exploring the analogy helpfully reveals a powerful counterargument. First, there are two relevant but different conceptions of meritocracy: desert-driven and mission-driven. Second, baseball recruiting properly invokes the mission-driven conception, according to which valuing players "based upon their merits" simply means selecting candidates based on whatever factors best predict who will promote the mission. Under this view, desert plays no role and birth-related qualities are fair game. Third, admitting a law school class is similar in relevant respects to putting together a baseball roster. Fourth, the mission-based conception of merit that applies to baseball recruiting also properly applies to selective admissions. Finally, the payoff pitch: this definition of merit is perfectly compatible with race-conscious admissions.

As noted, there are other reasonable arguments against affirmative action. So why is it important to strike out the anti-merit objection? Because how we speak about difficult problems matters. Meritocracy is such a bedrock American principle that the common soundbite "race-consciousness is anti-meritocratic" can easily shut down rather than invite thoughtful dialogue. Our national conversation about affirmative action is complicated enough under the best of circumstances. Banishing this misplaced invective might help us focus on more weighty arguments, and perhaps reach agreement, or compromise, or at least respect each other's views.

I don't pretend to know what Branch Rickey himself would say today

about affirmative action in higher education or elsewhere. While he aggressively recruited and signed Jackie Robinson based on his race, much has transpired in the intervening seven decades.

But this much is clear: if Rickey would have reservations today, his approach to baseball recruiting shows why the charge of subverting meritocracy would *not* be one of them.

Two Conceptions of Merit-Based Selection

The conventional alumni approach to merit-based decision-making, focusing on what candidates *deserve*, is a perfectly respectable way of understanding the principle of meritocracy. But it is not the only way. Merit-based decision-making can also properly focus on what candidates *will contribute to a defined, forward-looking mission*, which may at times turn in part on born-into personal traits. Both perspectives make sense—in different contexts.

The key is that merit is a functional rather than free-floating concept; its proper meaning depends on the kind of decision being made. Imagine the U.S. Olympics Hall of Fame asks you to name the greatest American Olympic swimmers of all time. You'd come up with some backward-looking criteria such as races won, records set, level of competition beaten, and duration of dominance. Names such as Michael Phelps, Mark Spitz, Natalie Coughlin, Jenny Thompson, and Missy Franklin would likely come to mind. But if instead the U.S. Olympic Committee asks you to select swimmers for the next team, you'd try to project who will be swimming the fastest whenever the next Games are scheduled. None (perhaps save Franklin) of the arguable GOATs would make your list.

These questions show that such inquiries fall into two general categories that I'll call *desert-driven appraisals* and *mission-driven appraisals*. A desert-driven appraisal selects someone for an honor or benefit for the purpose of acknowledging and valuing something she's already accomplished. The selection criteria are therefore backward-looking, and merit identifies "who has done the most to earn the award."

By contrast, a mission-driven appraisal selects someone based upon expected future performance, in order to contribute to some future mission or further a policy objective. The selection criteria are therefore forward-looking, and merit identifies "who will best advance the mission in the future."

This distinction matters here. Born-into personal qualities are generally irrelevant when conducting a desert-driven appraisal—a (thankfully increasingly rare) exception might include physical attractiveness in a traditional beauty pageant. By contrast, born-into qualities are often relevant when choosing who can best serve a future mission—such as height, when assigning a department store employee to stock the top shelf.

Both ways of valuing people “based upon their merits” have a proper place in our society.⁹ But it’s important to apply the right conception to the task at hand.

In both baseball and education, there are many examples of backward-looking, desert-driven appraisals. Consider baseball’s Most Valuable Player and Rookie of the Year awards. For these annual selections, we naturally focus on prior accomplishments on the field, and we feel comfortable debating who “deserves” to win. For education, consider class grades and graduation honors. Here we similarly focus on prior performance, and we determine who earned an A in each class and the overall honor of Valedictorian. In making these decisions, we naturally ignore born-into qualities. For these purposes it doesn’t and shouldn’t matter who is tall or short, rich or poor, black or white. And we can create a ranking of who we think most deserves to be MVP or Valedictorian. If the person at the top of our list is suddenly declared ineligible, we’d skip to the next person in the queue and say she “deserves” the honor instead.

But deciding whom to recruit for the Dodgers, or whom to admit to a law school class (or other university department), are fundamentally different enterprises. For both, as I’m about to illustrate, the proper question is how will any prospective applicant contribute to the goals of the team or school—a mission-driven appraisal with its peculiar standard of merit.

How Would General Manager Rickey Recruit Ballplayers to Assemble a Baseball Team?

When assembling a team (by signing rookies or free agents or through trades), General Manager Branch Rickey would evaluate each potential recruit—imagine a contemporary Babe Ruth—along two dimensions. First, what personal skills and attributes would Babe bring to the team? And second, how would Babe’s skills and attributes interact with those of his teammates?

BABE’S INDIVIDUAL SKILLS AND ATTRIBUTES

Rickey’s 1956 Atlanta address highlighted the “grace of a man’s swing,” his “speed afoot,” and his “scientific body control.”¹⁰ The ideal ballplayer would also possess many other physical skills and attributes. With respect to hitting, consider making contact, controlling direction, hitting with power, and bunting. For baserunning, consider quick reacting, effective sliding, and reading pitchers. For fielding, consider reading the ball, gauging position, catching, reading baserunners, and throwing. And for pitching, consider throwing with speed, movement, control, and pitch variety, as well as reading batters. General

physical attributes include strength, stamina, and quick healing. A complete list would go on and on.

Ideally, Babe would also possess many mental and character attributes. “[E]xcellence as a competitor on the field”¹¹ might encompass performing well under pressure, avoiding mental slumps, focusing to overcome “bad breaks” of the game and putting in effort to create good ones,¹² and playing through pain or fatigue. The “yen to win” is paramount, as Rickey explained:

[W]here you’ve got a person with physical ability, who is dominated by a great desire to do the job, oh, if you get a coterie of that kind of men together, you’ve got 25 men who are pretty hard to beat. They may not be able to run faster than anybody, or hit the ball farther, or field it better, or throw it harder, but they’ll win.¹³

Indeed, Rickey selected Robinson as his first black recruit in large part for reasons of character. Among the pool of physically talented black ballplayers, Robinson possessed the temperament Rickey famously demanded—feisty and proud, yet having “guts enough not to fight back”¹⁴ and the “exceptional intelligence ... to grasp and control the responsibilities of himself to his race and ... carry the load”¹⁵ while facing significant hostility.

BABE’S INFLUENCE ON GROUP DYNAMICS

Baseball games are won through interactive team performance rather than by summing individual performances. In deciding how to field the best team, General Manager Rickey would consider at least four aspects of team dynamics.

First, Rickey would recruit players with different skills for different roles. For batters, Rickey would want some sluggers, some sprayers, and some speedsters. He’d choose some fielders with particularly strong throwing arms (outfield and catcher), some with great mobility (middle infielders), and some who can dig out bad throws (first base and catcher). On the mound, he’d want some starters, some middle relievers, and some closers; each group would contain both righties and lefties with varying strengths such as blazing speed or great ball movement.

Second, Rickey would recruit players whose strengths complement those of their teammates. Babe’s baserunning skills will create more runs if the batters behind him reliably make contact. Babe’s defensive prowess at second will generate more double plays if the shortstop is similarly skilled. Babe’s knuckleball pitch will be more effective if the catcher frames the plate well.

Third, Rickey would recruit players who enhance rather than diminish their teammates’ performance. Intentionally or not, Babe might make his teammates play better ... or worse. Babe might mentor younger teammates, demon-

strate leadership skills, provide infectious energy, or model healthy behavior. On the other hand, Babe might loaf, pick fights with teammates, or create off-the-field distractions. Team chemistry matters.

Fourth, General Manager Rickey would recruit players who fit particular team strategies. Rickey would consider each potential recruit in light of a strategic judgment about how best to build a winning team. He might build a team to play "long ball," relying on power while sacrificing average. Or he might build a team to play "small ball," valuing speedsters and contact hitters over sluggers. Or he might prioritize defense, relying on strong pitching and fielding to overcome weaker hitting. He might even consider strategic goals beyond winning games, such as recruiting high-profile foreign players to enhance an international brand. Such strategic considerations would obviously influence his recruiting.



Given these various group-dynamic effects, a recruit who is less skilled in the abstract might do more than a higher-ranked recruit to help the team win. The University of Michigan's head football coach Jim Harbaugh concurred that "[t]he best quarterback isn't always the guy with the most talent, but the guy who can fit in well with the other guys on the team and play the team game."¹⁶ And in such circumstances General Manager Rickey would take the lower-ranked player every time. His mission is building a successful team, not amassing talent.

How Would Admissions Officer Rickey Admit Applicants to Assemble a Student Body?

If Branch Rickey were admitting students to the University of Michigan Law School, he'd pursue an analogous inquiry. He'd strive to assemble a cohort of (1) extremely talented and well-credentialed individual students who (2) collectively possess an optimally diverse set of skills, interests, and experiences so as to (3) produce the desired educational outcomes.

Imagine if Rickey reviewed the application of a present-day Clarence Darrow, perhaps Michigan Law's most well-known former student.¹⁷

DARROW'S INDIVIDUAL SKILLS AND ATTRIBUTES

Admissions Director Rickey would start with Darrow's intellectual prowess. For example, ideally Darrow could reason analytically and analogically, learn and recall vast amounts of information, read and comprehend complex texts, solve problems creatively and efficiently, and exercise practical judgment.

Rickey would also assess Darrow's personality attributes. Among other things, ideally Darrow would be diligent, self-disciplined, competitive, open-minded, entrepreneurial, resilient, and ethical. He'd manage stress well and be able to de-personalize passionate disagreement.

And Rickey would assess Darrow's professional skills. Ideally, Darrow would be an outstanding communicator, with expert abilities to write, speak, advocate, question, listen, negotiate, and counsel. He'd effectively manage time and multi-task. He'd be both a natural people-person and a policy wonk. And as above, so much more.

DARROW'S INFLUENCE ON GROUP DYNAMICS

Michigan Law's admissions policy declares "we are always thinking about the mix of people we are assembling, not merely making a series of discrete decisions on individual applicants."¹⁸ Accordingly, "we look for individuals with intriguingly different backgrounds, experiences, goals, and perspectives."¹⁹ Here are some exemplary ways.

First, Admissions Officer Rickey would recruit students who likely would improve the learning environment for their peers. As Justice Lewis Powell famously proclaimed in the landmark decision *Regents of the University of California v. Bakke*,²⁰ "[t]he atmosphere of 'speculation, experiment and creation'—so essential to the quality of higher education—is widely believed to be promoted by a diverse student body"²¹ in several important respects.

Diverse ways of thinking: Some people tend to think abstractly, others more pragmatically. Some are dreamers, others more task-oriented. Some are creative and entrepreneurial, others more by-the-book. Some are problem-identifiers, others more problem-solvers. Hanging around and learning alongside people with different mental approaches can spur new ways of thinking and approaching challenges. And social science demonstrates that teams comprised of people with diverse ways of thinking generally solve problems better than do teams comprised of like-thinking people, even if the latter are better at solving problems on their own.²²

Diverse substantive perspectives: Students learn more when surrounded by classmates with different political outlooks, moral views, cultural or religious perspectives, etc. Such diversity can stimulate conversation and exploration, sometimes even opening minds and refining views.

Diverse backgrounds and experiences: Students can learn important academic and life lessons from classmates who came from different geographical regions, or grew up significantly richer or poorer, or benefited from different work experiences. Such exposure also tends over time to break down preexisting stereotypes. For example, many New York City-bred alumni have recounted vivid stories about how being paired with a first-year roommate

from rural Montana or the deep South or Santa Barbara or Tokyo meaningfully influenced the way they viewed and interacted with others. Diversity can also challenge stereotypes based on people’s interests (engineers aren’t all geeks, poets aren’t all dreamers) and disciplines (math isn’t irrelevant, philosophy isn’t always divorced from reality).²³

Immersion within a student body that is diverse along all three of these dimensions both enriches the educational experience and helps prepare students to succeed after graduation when they will interact with a diverse set of clients, co-workers, and adversaries.

Second, Admissions Officer Rickey would recruit students to serve a diverse array of postgraduate careers. Just as teams recruit players to play different positions on the field, most university departments want to recruit students who will populate different career paths. For example, Michigan Law hopes to produce lawyers focused on a wide variety of substantive legal areas (e.g., bankruptcy, tax, criminal law) using a wide variety of practice skills (e.g., trial lawyers, business advisors, mediators) for different workplaces (e.g., private law firms, public interest firms, government service, solo practice, academia). So the Law School admits individuals with a range of personal interests and goals, expecting the admittees to populate these various curricular and career paths. Other law schools might specialize in certain fields such as environmental or clinical law and select applicants accordingly. Other professional, graduate, and undergraduate schools and departments will obviously favor different sets of career paths, some across broad spectrums (theoretical research to vocational training) and others across narrower ones (violinists to drummers).



In sum: law schools (and other professional, graduate, and undergraduate schools) strive to admit smart, talented, and accomplished applicants who collectively will enhance the educational process and become impactful graduates.

How Might Race Be Relevant to a University’s Mission?

In *Grutter v. Bollinger*,²⁴ the Supreme Court articulated several ways in which racial diversity can promote these common admissions goals.

IMPROVING THE EDUCATIONAL EXPERIENCE

As the Supreme Court put it, the educational benefits of racial diversity “are ‘important and laudable,’ because ‘classroom discussion is livelier, more

spirited, and simply more enlightening and interesting’ when the students have ‘the greatest possible variety of backgrounds.’”²⁵ And in our society, race often informs (though does not determine) one’s views and perspectives on a wide range of issues. “Just as growing up in a particular region or having particular professional experiences is likely to affect an individual’s views, so too is one’s own, unique experience of being a racial minority in a society, like our own, in which race unfortunately still matters.”²⁶ Surely racial background and experiences likely influence a student’s views and perspectives at least as much as does growing up in poverty, or on a farm, or overseas, or in any number of situations for which society readily sees and accepts diversity’s value.

COMBATTING RACIAL STEREOTYPES TO HELP PREPARE STUDENTS FOR A MULTICULTURAL WORKPLACE

Stereotypes pose substantial barriers to learning—if we assume we already know someone’s views based simply on who she is or what she looks like, we tend not to listen closely to or learn from her. Persistent intermingling coupled with positive experiences tends to promote open-mindedness and negate subconscious biases. As the Court explained in *Grutter*, “the Law School’s admissions policy promotes ‘cross-racial understanding,’ helps to break down racial stereotypes, and ‘enables [students] to better understand persons of different races.’”²⁷

Branch Rickey shared his own powerful story involving Clay Hopper, Jackie Robinson’s first minor league manager. While Rickey and Hopper stood together watching Robinson play during preseason practice, Hopper made a deeply racist comment about Robinson, asking “do you really think that a “n**er” is a human being, Mr. Rickey?” Six months later, Hopper came to Rickey, apologized for his racist remark, and asked Rickey to let Robinson continue playing on his team if Robinson stayed in the minors. Pontificated Rickey: “Proximity. Proximity ... will solve this thing if you can have enough of it.”²⁸

Writing for the Court in *Grutter*, Justice Sandra Day O’Connor emphasized that a racially diverse student body “better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals.”²⁹ She affirmed these are “not theoretical but real” benefits, as “the skills needed in today’s increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints.”³⁰

DIVERSIFYING PROFESSIONAL AND CIVIC LEADERSHIP

The Court also recognized that law schools “represent the training ground for a large number of our Nation’s leaders,” including members of Congress

and judges. In order to “cultivate a set of leaders with legitimacy in the eyes of the citizenry,” the Court explained, access to legal education and the legal profession “must be inclusive of talented and qualified individuals of every race and ethnicity . . .” More generally, the Court observed that “[e]ffective participation by members of all racial and ethnic groups in the civic life of our Nation is essential if the dream of one Nation, indivisible, is to be realized.”³¹

For all of these reasons, race can be a relevant factor in creating positive group dynamics.



Now that we’ve seen how General Manager Rickey assembled a baseball roster and Admissions Officer Rickey would assemble a student body, let’s return to assess the notion of merit-based decision-making that best fits each enterprise.

What Does Merit Mean for Assembling a Baseball Roster?

Recall the earlier conclusion that merit criteria can serve different functions depending on context: backward-looking and desert-driven when deciding who deserves some honor or benefit for prior achievement; and forward-looking and mission-driven when deciding who can best contribute to some future mission or further a policy objective.

By now it’s clear that when building a baseball team’s roster, Branch Rickey embraced a forward-looking, mission-based approach. When deciding whether to sign a left-handed reliever or a defensive-minded shortstop or a veteran leader and mentor, Rickey would not simply ask “who is the best ballplayer?” based on some acontextual assessment of skills and attributes. Rather, Rickey would ask “who will best help us win?” by evaluating players’ individual and group-interactive qualities, predicting how they will perform to further the team’s goal, and recruiting accordingly. No more, and no less.

Every alumnus I spoke with was comfortable describing this recruiting process as one that values recruits, in Rickey’s own words, “based upon their merits.”³² This is so, even though this process violates the norms that some alumni assert must govern selective admissions.

SOME DESIRED ATTRIBUTES ARE BIRTH-RELATED
RATHER THAN (OR IN ADDITION TO) DEVELOPED

Many relevant skills reflect, in whole or substantial part, physical characteristics primarily determined at birth. For example, all else being equal,

left-handed and taller first basemen are more effective fielders than are right-handed and shorter players. Handedness is generally determined by birth and is exceedingly difficult to switch. And (perhaps more frequently heard in basketball circles) “you can’t teach height.” Other birth-related attributes such as extraordinary eyesight, large and fast-twitch muscles, lung capacity, and cardiac capacity are largely determined by genetics. Indeed, “[c]urrent evidence suggests that a favorable genetic profile, when combined with the appropriate training, is advantageous, if not critical, for the achievement of elite athletic status.”³³ Yet prioritizing these born-into features doesn’t raise my alumni critics’ eyebrows.

POTENTIAL RECRUITS CAN’T PERSUASIVELY CLAIM
TO DESERVE THE NEXT AVAILABLE ROSTER SPOT

Recently devised sabermetrics such as “wins above replacement” (WAR) make it easier to rank players today than back when Rickey relied on his legendary ability to spot talent “from the window of a moving train.”³⁴ I think WAR and similar sabermetric assessments still have significant limitations, leaving room for judgment or educated guesswork.³⁵

Even if one could confidently rank athletes according to individual talent, however, the relevance of group dynamics undermines any notion of an entitlement to join the team. Mike Trout might be the best available player in the abstract. But Rickey would sign Clayton Kershaw over Trout if the Dodgers needed a starting pitcher more than a productive hitter. And if his first baseman suddenly retires, Rickey might change his mind and recruit Miguel Cabrera instead. Trout and Kershaw now have hard-luck stories to tell their grandchildren and bartenders. However, they cannot legitimately complain that Rickey *wronged* or *mistreated* them by ignoring their merit. As the gruff Mr. Rickey would surely affirm, “there’s no crying in baseball.”³⁶

*What Does Merit Mean for Assembling
an Entering Class?*

Equally for admitting a student body, meritocratic criteria are those that determine who will best advance the group’s mission. As the Law School’s admissions policy forthrightly explains:

[O]ur assessment is forward-looking, not backward-looking. * * * We are not rewarding past performance, but assessing the likelihood of outstanding engagement with the School and with whatever career follows. Past performance is of course the basis of our assessment and we look for a record of impressive accomplishments. But strictly

speaking no one deserves or is entitled to admission on the basis of that performance, however impressive.³⁷

This conclusion follows because in higher education as in baseball, merit-based decision-making is functionally forward-looking and mission-driven. The school seeks to develop students' intellectual and other capacities, train great lawyers and leaders, and serve society's need for different kinds of legal professionals. Selecting applicants "based upon their merits" simply means using whatever criteria best predict which students are most likely to advance these goals. If racial diversity will likely do that, then race serves rather than subverts merit.

JUST AS IN BASEBALL, MERIT-BASED CRITERIA
MAY INCLUDE SOME BORN-INTO QUALITIES

As described above, many preferred attributes of university applicants directly reflect conditions of birth, rather than the applicants' own hard work and self-development. Schools often consider such factors as growing up in poverty, being the first-in-family to attend college, being born in an under-represented location (perhaps a foreign country, sparsely populated state, or a rural area), and speaking English as a second language. These and similar factors are no more within an applicant's control than is her race, and yet no alumni ever complained to me that considering these attributes is anti-meritocratic.

More fundamentally, an applicant may work hard to develop her talents and accomplish things, but her ability to do so depends in part on the nature and quality of her childhood environment—which of course lies beyond her control. All things equal, an applicant will likely end up with greater skills and accomplishments if she grew up in a middle-class-or-better home, in good health, in a physically safe environment, with caring parents and quality schoolteachers who encouraged learning. These (like race) are born-into rather than developed factors. Indeed, many of the attributes that affirmative action critics claim are proper indicia of merit actually reflect antecedent birth-related privilege.

JUST AS IN BASEBALL, APPLICANTS CANNOT PERSUASIVELY CLAIM
TO DESERVE THE NEXT AVAILABLE SPOT IN AN ENTERING CLASS

Perhaps more so than in baseball, it's difficult to imagine any objective way to rank all university applicants. The many desired skills, attributes, and accomplishments are largely incommensurable such that admissions decisions are always somewhat subjective. Ranking all applicants from best to worst based on individual merit is a fool's errand.³⁸

More significantly, as in baseball, group-dynamic effects means individual applicants must be viewed not in isolation but rather as part of a potential cohort. If a school cares about diversity, then the next student it will want to admit depends in part on the students it has previously admitted. A law school might marginally prefer more students interested in patent or criminal law, given new curricular programming or better job prospects. The school might favor low-income students if the current class is generally privileged, or favor foreign students to add international expertise. And in certain circumstances, the school might favor minority students if greater racial diversity will promote the mission-related goals endorsed by the Supreme Court.

In the end, a law school may deny Darrow admission either because it prefers another applicant's born-into trait (race or otherwise), or because the student body already has too many thisses or thats. In either case, merit is a functional concept, with the appropriate merit criteria determined by the task at hand. When you're trying to accomplish some forward-looking goal, whether to win baseball games or to educate and produce lawyers, meritocracy dictates that you select the candidates who can best promote that goal. If race or other birth-determined qualities would advance the mission, those qualities become relevant to a decision "based upon [the candidates'] merits."

Given the similarities between missions and processes for baseball recruiting and selective admissions, why did some Law School alumni cling so passionately to the notion that considering (certain) born-into qualities in the admissions process is anti-meritocratic? When challenged, they asserted several distinctions. But none persuade.

Should It Matter That So Many Other Education-Related Honors and Benefits Are Appropriately Based on Desert-Driven Appraisals? No. As discussed earlier, desert-driven assessments such as test grades, course grades, and various academic honors are found everywhere in law school and higher education. Perhaps this is why alumni so easily slip into habitual thinking that admissions must similarly reflect a desert-driven appraisal.

But this argument is truly a non-sequitur. What matters is whether the function of a *particular* selection makes it mission-driven or desert-driven, and not whether other selections serve similar purposes. A college might bestow desert-driven graduation awards upon some of its best and brightest students to recognize and reward their prior achievements. However, law schools admit some of those best and brightest students to advance the schools' educational missions, not to ratify previously earned accolades.

Should It Matter That Many Applicants Put in Years of Hard Work to Satisfy the School's Admissions Criteria? Also no. Perhaps Darrow worked extremely hard to earn high grades and test scores and excel at extracurricular activities, creating an impressive portfolio of attained qualities. His efforts might reflect a strong work ethic—which is surely a positive feature for pre-

dicting future performance, and Admissions Officer Rickey would credit him for such. But the fact that Darrow worked hard to develop his skills and accomplishments doesn’t make those skills uniquely relevant to the decision.

Back to baseball. Suppose Sandy Koufax has the best curveball, which comes naturally and easily to him. And suppose Nolan Ryan has the second-best curveball, which he developed by practicing thousands of pitches every day for many years. Unless General Manager Rickey thinks the future value of Ryan’s demonstrated work ethic is worth more than having the best curveball pitcher to start tomorrow’s game, Rickey will rightly call up Koufax, and Ryan has absolutely no grounds to complain.

Should It Matter That a Law School Education Is Itself an Important Credential, in Addition to Being an Educational Opportunity? I don’t see why. Admission to a selective school is surely a valued credential; that’s why parents brag when their child gets into Michigan Law. But of course, parents also brag when their kid cracks the Dodgers’ roster. Maybe—just maybe—more parents would prefer their child to study in the Michigan Law Quadrangle than to play in Dodger Stadium, reflecting a cultural judgment that education is more important than sports. But even so, what follows? Well, that it’s really important for Michigan Law to do its best to admit those students whom it believes will best serve its educational missions.

Should It Matter That Offering the Best and Brightest a Valuable Education and Credential Will Encourage Others to Strive to Become the Best and Brightest? Once again, no. Many college students want to attend a selective law school (for better or worse), and so they strive to develop whatever qualities they expect will be favored in the admissions process. If law schools reward students for having outstanding academic credentials, the argument runs, then more students will work hard to improve their academic credentials, which is good for society no matter whom is ultimately admitted.

But the fact that a selection process creates positive incentives to excel doesn’t mean it is or should be designed to do so. As just one counterexample, NASA selects astronauts based on who will best fulfill a particular mission, not based on how the selection process will best encourage youngsters to develop the relevant qualities to become future astronauts. Incentive creation is merely a byproduct—perhaps wonderfully so, but nonetheless not the point of the selection process. If a law school’s goal were to encourage the development of outstanding undergraduate students, then it would make sense for it to admit applicants by favoring the qualities it hopes future undergraduates would develop. But developing outstanding undergraduate students is the job of the undergraduate college; law schools aspire to other goals.

Should it matter that group-dynamic effects are harder to associate with specific students in the applicant pool than with specific ballplayers in the recruitment pool? Finally, a claim with some potential to differentiate ... but still no.

Sure, it's generally easier to predict group-dynamic effects for Ruths than for Darrows. General Manager Rickey can fairly predict potential recruits' likely positions and general skillsets. Moreover, given small team rosters, he might sometimes predict positive and negative synergies with some confidence. By contrast, many student applicants haven't yet established clear long-term interests that confidently foretell their future career paths. And the admissions pool is typically too large and information too generalized to predict particular synergies from particular student combinations.

That said, some applications do provide strong bases for predicting certain group-dynamic effects. For example, before applying to Michigan Law, Darrow might have spent years working with child abuse victims and written a personal essay explaining his interest in a legal career continuing this work, or he might have an MBA and computer science Ph.D. and written about his interest in patent law. Letters of recommendation might offer specific reasons to believe Darrow will promote positive (or negative) chemistry among his classmates.

And in any event, schools still can predict that the more heterogeneous the student body, the more likely it will achieve the schools' group-dynamic goals. A first-year law school class containing some engineers, computer scientists, poets, and classicists will predictably broaden ways of thinking and approaching problems and finding solutions—even if we can't predict in advance the precise whos and hows. That's why, more generally, “[a]cademic majors, work experience, extracurricular activities, distinctive moral and political outlooks, socioeconomic background, time living or working abroad, and more inform our admissions decisions.”³⁹

More fundamentally, the fact that achieving desired group-dynamic effects involves more guesswork in education than in baseball doesn't somehow make it less meritocratic. There's also more guesswork involved in determining how troops will interact with a new military commander, or how orphaned children will flourish with a new foster parent, or how a particular car will fare for your child when she leaves for college. But these decisions are still merit-based in the forward-looking sense, even if one's selection is less clear.

In the end, each of these purported distinctions strikes out. In both baseball and education, some strong individual recruits don't make the team because they play an overstocked field position or come from an over-represented region, won't enhance team chemistry or group learning, or won't excel at small ball or public service. These Ruths and Darrows can rightly feel disappointed, frustrated, even angry. But they can't cry foul for a violation of merit.

Conclusion

The real Branch Rickey was optimistic that, over time, “proximity” due to the “intertwining” of people of different races, coupled with conditions of truly equal opportunity and the inevitable rise of successful minority role models, “will eventually break down prejudice, discrimination, in this country.”⁴⁰ Indeed, he opined, “posterity will look back [at racial strife] ... with incredulity and they’ll wonder what the issue was all about. I really think so. It’s solved in baseball; it’ll be solved educationally; it’ll be solved everywhere in the course of time.”⁴¹

Whether affirmative action is a proper way to help solve prejudice through educational proximity is hotly contested; Michigan Law alumni and others make reasonable and weighty arguments both for and against. But as Rickey’s own approach to assembling baseball teams demonstrates, the commonplace anti-merit objection with its all-too-easy “race violates merit” slogan just throws a curveball into our national conversation. We can umpire this controversy more impartially and thoughtfully once we recognize that meritocracy roots for neither side.

Notes

1. Branch Rickey, keynote address for One Hundred Percent Wrong Club Banquet in Atlanta, Georgia, 20 January 1956, Branch Rickey Papers, Manuscript Division, Library of Congress, <https://www.loc.gov/collections/jackie-robinson-baseball/articles-and-essays/baseball-the-color-line-and-jackie-robinson/one-hundred-percent-wrong-club-speech/> [hereafter cited as *1956 Atlanta address*].

2. Rickey graduated in the class of 1911, and he coached the University’s baseball team while a student. Richard D. Friedman, “Branch Rickey, ‘11: Much More than Pioneering Baseball Leader,” *Law Quadrangle Notes* 50, no. 1 (Fall 2007): 8, 10–12, <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1627&context=articles>.

Coincidentally, the very first black major leaguer (and among the last before Robinson) was also a Michigan Law alumnus—Moses Fleetwood Walker attended the school in 1881–82 and played for the “major league” Toledo Blue Stockings in 1884. “Michigan Law Helps Integrate Major League Baseball—Twice,” in Friedman, “Branch Rickey, ‘11,” 9.

3. 539 U.S. 306 (2003).

4. In my view, both sides have some strong arguments, and the issues are more difficult than many people admit in public debate. For a useful discussion, see Randall Kennedy, *For Discrimination: Race, Affirmative Action, and the Law* (New York: Random House, 2013) (canvassing arguments on both sides of the policy and constitutional debates).

5. Of course, almost all of them were wrong. I frequently asked alumni to picture themselves driving around and around a full parking lot along with ninety-nine other circling cars, repeatedly passing a single empty spot marked “delivery vehicles only.” Were the spot not reserved, only one driver would get to park in it, and the other ninety-nine would still be circling. But given the sign, all one hundred of the drivers wrongly think to themselves “if that spot weren’t reserved, I’d be shopping by now.”

6. Wilfred M. McClay, “Higher Ed’s Dysfunctional Devotion to Meritocracy,” *The Chronicle Review*, December 3, 2017, <https://www.chronicle.com/article/Higher-Ed-s-Dysfunctional/241917>.

7. See, e.g., Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, MA: Harvard University Press, 2002), 401–4; Richard H. Fallon, Jr., “To Each According to His Ability, from None According to His Race: The Concept of Merit in the Law of Antidiscrimination,” *Boston University Law Review* 60 (1980): 815, 823–29, 840–43.

8. 1956 Atlanta address.

9. As do others as well. Sometimes we appropriately distribute benefits (or burdens) based on chance, or first-come-first-served, or alphabetical order, or other criteria that follow their own internal meritocratic logic in particular contexts.

10. 1956 Atlanta address.

11. *Ibid.*

12. This latter attribute reflects Rickey’s most famous aphorism, “luck is the residue of design.” John Monteleone, ed., *Branch Rickey’s Little Blue Book: Wit and Strategy from Baseball’s Last Wise Man* (Wilmington, DE: Sport Media Publishing Inc., 1995), 29.

13. Branch Rickey, “Part 2: Baseball—The Men,” interview by sportswriter Arthur Mann, *Heritage Public Affairs Series*, WQED TV, Pittsburgh, 1959 (DVD on file with author; audio, 0:54:28, 0:51:50) [hereafter cited as *Heritage Interview Series*].

14. Lee Lowenfish, *Branch Rickey: Baseball’s Ferocious Gentleman* (Lincoln: University of Nebraska Press, 2007), 375.

15. 1956 Atlanta address.

16. Brendan Quinn, “Jim Harbaugh’s shadow over Michigan QBs offers both a weight and reward,” MLive.com, September 1, 2015, http://www.mlive.com/wolverines/index.ssf/2015/09/earning_qb_job_at_michigan_sha.html.

17. Darrow studied law at the University from 1877 to 1878 before leaving to apprentice. See Geoffrey Cowan, *The People v. Clarence Darrow* (New York: Times Books, 1993), 17.

18. Admissions Policy, University of Michigan Law School, <http://www.law.umich.edu/prospectivestudents/admissions/Documents/admissionspolicy.pdf> [hereafter cited as *Admissions Policy*].

19. *Ibid.*

20. 438 U.S. 265 (1978).

21. *Id.* at 312.

22. See, e.g., the University of Michigan’s Scott E. Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools and Societies* (Princeton, NJ: Princeton University Press, 2007).

23. Rickey’s own application to Michigan Law would have been impressive, given his unusual background. As my colleague Rich Friedman has imagined, Rickey’s hypothetical application essay might well begin: “I have a combination of credentials that I suspect will make me unique not only in this year’s entering class, but among all the students you have ever admitted or ever will admit.” Friedman, “Branch Rickey, ‘11,” at 10 (referencing Rickey’s previous experience as a law student and teacher, college and professional athlete, university athletic director, temperance and political campaigner, and recovering tuberculosis patient).

24. 539 U.S. 306 (2003).

25. *Id.* at 330 (quoting the district court).

26. *Id.* at 333.

27. *Id.* at 330 (quoting the district court) (bracket in original).

28. 1956 Atlanta address (all quotations).

29. *Grutter*, 539 U.S. at 330 (internal citation omitted).

30. *Id.*

31. *Id.* at 332 (all quotations).

32. 1956 Atlanta address.

33. Lisa M. Guth and Stephen M. Roth, “Genetic Influence on Athletic Performance,” *Current Opinion in Pediatrics* 25, no.6 (December 2013): 653, 657; see generally David Epstein, *The Sports Gene: Inside the Science of Extraordinary Athletic Performance* (New York: Penguin Group, 2013).

34. Jim Murray, “He Brought Pirates and Fans Back,” *Los Angeles Times*, July 15, 1988, http://articles.latimes.com/1988-07-15/sports/sp-7072_1_syd-thrift.

35. Sheldon Hirsch and Alan Hirsch, *The Beauty of Short Hops: How Chance and Circumstance Confound the Moneyball Approach to Baseball* (Jefferson, NC: McFarland, 2011)

(arguing generally that sabermetrics’ contribution as a guide to evaluating player performance, assembling a team, and managing games is often overstated).

36. Tom Hanks, playing Manager Jimmy Dugan, in *A League of Their Own*, directed by Penny Marshall (July 1, 1992, Sony Pictures); see <https://www.youtube.com/watch?v=6-ZMO8jhbwg>.

37. *Admissions Policy*.

38. Consider this scenario: Mays scored in the 98th percentile on her LSAT, earned a 3.6 GPA from UCLA, was captain of UCLA’s championship chess team, was raised in a middle class home, and spent two years after college working as a barista. Mantle scored in the 95th percentile on her LSAT, earned a 3.8 GPA from Yale, was captain of Yale’s varsity volleyball team, was raised in a broken home, and spent three years after college teaching high school. If only one spot is available, should Admissions Officer Rickey admit Mays or Mantle?

39. *Admissions Policy*.

40. *Heritage Interview Series*, “Part 4: Baseball—Proving Ground for Liberty,” 1:28:30 (all quotations).

41. *Ibid.*, “Part 3: Baseball—Proving Ground for Civil Rights,” 1:22:30.