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REJOINDER

*Terrance Sandalow**

In *The Shape of the River*, presidents Bowen and Bok pronounce the race-sensitive admission policies adopted by selective undergraduate schools a resounding success. The evidence they adduce in support of that conclusion primarily concerns the performance of African-American students in and after college. But not all African-American students in those institutions were admitted in consequence of minority preference policies. Some, perhaps many, would have been admitted under race-neutral policies. I argued at several points in my review that since these students might be expected to be academically more successful than those admitted because of their race, the evidence on which Bowen and Bok rely provides a potentially distorted view of the latter's performance, almost certainly suggesting a greater level of success than those students actually achieved.

Bowen and Bok respond that distinguishing between African-American students who would have been admitted under race-neutral policies and those whose admission was attributable to their race "would require a method of analysis . . . that is beyond the capability of our database."¹ Indeed, they go further, arguing that a determination of which students were admitted because of their race is impossible in principle. The decision whether or not to admit an applicant, they contend, "depends upon all the attributes of a candidate *together*," so that even an experienced admissions officer reports that "even with all the information he has . . . he himself could not say who was and who was not admitted because of the candidate's race."² These responses bring to mind the familiar story of the social scientist who was observed searching for his keys under a lamppost some distance from the spot where they had been dropped. When questioned by a passerby, he explained that the light was better under the lamppost.

I accept, of course, Bowen and Bok's description of the limitations of their database, and I am willing to assume *arguendo* that

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1. William G. Bowen & Derek Bok, *Response to Review by Terrance Sandalow*, 97 MICH. L. REV. 1917, 1919 n.5 (1999).

2. *Id.* at 1918-19.

they accurately characterize admission decisions.³ Nothing that I wrote in calling attention to their failure to address the performance of “specially admitted” students suggests the need to identify the “particular students who were admitted because of race-sensitive admissions policies.”⁴ To the contrary, I explicitly acknowledged that because of “the multiplicity of considerations that enter into admission decisions, it is impossible to determine how many African Americans would have been admitted under race-neutral policies without reexamining the applications of the entire applicant pool.”⁵ Even if the individuals cannot be identified, however, it is common ground that half or more of all African Americans attending selective colleges owe their admission to minority preference policies. The question is whether some way can be found to estimate which students are in that group and to assess their performance.

Bowen and Bok concede both the possibility and the importance of doing so when they assert that, by various measures, estimates of the performance of “retrospectively rejected” black matriculants are so similar to the performance of all African-American matriculants “that no significant differences can be noted.”⁶ In the absence of such projections, their reliance upon data for all African-American matriculants would put them in a position analogous to that of the social scientist referred to above.

My claim that data for all African-American students convey a misleading impression of the achievements of those admitted because of preferential admission policies was made at three points — with respect to graduation rates, the attainment of advanced degrees, and class rank. The first two of these are among the measures referred to in the previous paragraph, those for which Bowen and Bok find “no significant differences” in the performance all African-American students and those who were “special admits.” I

3. In fact, I think their claim is considerably overstated. It is, of course, true that no applicant is admitted solely because of his race or any other single factor. The decision rests upon a number of considerations — illustratively, that the candidate is an African American, has acceptable SAT scores and creditable grades from an excellent high school, and has evidenced an interest in continuing his participation in amateur theater. Were his SAT scores or high school grades much lower, or were his grades earned at a less demanding high school, he might well not have been admitted even though he is an African American interested in theater. In that sense, the admission decision of course depends upon “all the attributes of a candidate *together*.” At the margins, moreover, it may at times be impossible to say whether race played a decisive role. In view of the weight given to predictors of academic success in admission decisions and the gulf that separates the academic credentials of blacks and other admittees, however, it blinks reality to claim that admissions officers are generally unaware whether race has played a decisive role in a decision to admit a black applicant.

4. Bowen & Bok, *supra* note 1, at 1918.

5. Terrance Sandalow, *Minority Preferences Reconsidered*, 97 MICH. L. REV. 1874, 1881-82 (1999).

6. Bowen & Bok, *supra* note 1, at 1920.

shall comment on each of these in turn and then consider the issue of class rank.

1. As best I can determine, Bowen's and Bok's claim that graduation rates are the same for all African-American students and for the subset who owe their admission to race-sensitive policies appears for the first time in their response to my review. At least, I can find no mention of it in their book. The book does report, however, that the graduation rates of African-American students are positively correlated with SAT scores, though weakly so in the higher ranges (p. 60). Since SAT scores are the only measure Bowen and Bok employ to distinguish between those students who would and would not have been admitted under race-neutral admission policies, it is not clear how both these findings can be true.

Nevertheless, I now believe that the graduation rate of "special admits" is likely to be very similar to that of the full cohort of African-American students, though I reach that conclusion by a route somewhat different from the one followed by Bowen and Bok. According to their estimate, approximately 50% of black students admitted to selective schools would have been rejected under race-neutral criteria. For the reasons I have already discussed, I believe they have underestimated, perhaps significantly, the percentage of students whose admission was attributable to minority preferences.⁷ The more they have done so, the less likely it is that the graduation rate for all black students will differ from that of the subset of "specially admitted" students. In fact, the underestimation need not be very great to bring the graduation rates of the two groups very close together.⁸

2. Bowen and Bok report that there are "no significant differences" in "patterns of advanced degree attainment" between all African-American students and those admitted because of minority preferences. More specifically, they state that 225 of the 700 black matriculants who would have been "retrospectively rejected" under race-neutral admission policies went on to attain professional degrees or doctorates, a percentage nearly identical with that of all black matriculants.⁹ They do not explain how these findings are to be reconciled with their finding that SAT scores "play a substantial

7. See Sandalow, *supra* note 5, at 1882-84.

8. To illustrate: assume a cohort of 100 black students, 60% of whom were admitted because of a minority preference policy. If the attrition rate of 25% were proportionately divided between the "special admits" and the remaining students, 15 of the former and 10 of the latter would fail to graduate. To account for the modest correlation between the various predictors of academic success and graduation rates, assume that 16 of the former and only 9 of the latter fail to graduate. The overall graduation rate would, of course, remain at 75%, while that of the "specially admitted" students would be slightly over 73% (44/60), a negligible difference.

9. See Bowen & Bok, *supra* note 1, at 1920.

role in predicting which undergraduates go on to attain higher degrees even after we take account of interrelationships with high school grades, socioeconomic status, and school selectivity" (p. 107).

Whatever the rate at which "specially admitted" black students earn advanced degrees, care should be exercised not to put too much weight upon that achievement as a measure of the success of minority preference policies in undergraduate schools. As studies of law school admissions demonstrate, "minority preference programs at the undergraduate level are 'successful' mainly in the sense that they enable many black students to gain admission to graduate schools that also have preferential admission policies."¹⁰ Even that "success" may not be attributable to the race-sensitive admission policies of selective undergraduate schools. The data afford no basis for a judgment about whether, or the extent to which, the impressive rate at which the black graduates of those schools earn advanced degrees is attributable to "value added" by the schools or to their ability to identify and attract students whose personal qualities would have led them to earn such degrees even if they had attended other undergraduate institutions.¹¹

3. The rates at which "specially admitted" African-American students graduate and earn advanced degrees are not satisfactory measures of the academic success of minority preference policies because both are influenced by the existence of such policies. The class rank achieved by those students is, therefore, a more revealing measure of their academic performance. Bowen and Bok found that the mean class rank of all African-American students in the C&B sample was at the twenty-third percentile. My review points out that the average class rank of those black students admitted because of their race is likely to be even lower.¹² Although Bowen and Bok do not dispute that claim, I should take this opportunity to address an argument that might be directed against it.

As noted above, I think that Bowen and Bok have underestimated the percentage of African-American students whose admission was attributable to minority preference policies. The more they have done so, the more likely it is that the mean class rank of all black students does not differ significantly from that of "specially admitted" black students. However, unless the underestimation is so extreme that nearly all African-American students owe their admission to minority preference policies a significant likelihood exists that the mean class rank of "specially admitted" black students is markedly lower than that for all black students. As the

10. Sandalow, *supra* note 5, at 1894.

11. *See id.* at 1898.

12. *See id.* at 1886-88.

illustration in footnote 25 of my review demonstrates, a small percentage of students, perhaps no more than 10 or 20%, who have a relatively (but not absolutely) high class rank may be responsible for achieving even that distressingly low average. Although Bowen and Bok do not reveal the distribution of ranks that make up the average, the strong positive correlation between class rank and the most important predictors of academic success (p. 383), makes it highly probable that the class ranks achieved by those black students with relatively high SAT scores and high school grades — that is, those likely to have been admitted under race-neutral admission criteria — significantly raise the average. A quick calculation reveals, illustratively, that eliminating the one student (among nine) who ranked in the top half of the class would lower the mean class rank of the remaining students from the twenty-third to the seventeenth percentile.¹³

The colleges and universities with which *The Shape of the River* is concerned confront the enviable, but exceedingly difficult, task of selecting from among many more applicants than they can admit. Bowen and Bok's response closes with a plea for the avoidance of rigidly defined metrics — presumably undue reliance upon test scores and academic records — in deciding among the applicants and a recognition of the value of human, albeit fallible, judgment. I would add to their statement only that judgment requires a willingness to attend to the costs as well as the benefits of the policies by which individual judgments are guided.

13. See *id.* at 1887 n.25 (138/8 = 17.25)