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Book Review: Courtrooms and Classrooms: A Legal History of College Access, 1860-1960

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Book Review:

Courtrooms and Classrooms: *A Legal History of College Access, 1860-1960*



Reviewed by
Mark Addison (Brown University)

Issues of college access are increasingly met with resolutions within social and economic contexts. Models such as cost of production output, and race and socioeconomic-conscious strategies form the basis of such analyses (Jenkins & Rodriguez, 2013; Henriksen, 1995; Treager Huber, 2010; Schmidt, 2012). We can expect retooling and reinventing of such models with increasing college costs and changes in student demographics. One such model was the Personal Achievement Index (PAI) which was adopted by the University of Texas (UT) in response to the U.S. Court of Appeals' decision in *Hopwood v. Texas* (1996). The decision held that race-conscious admissions processes were unconstitutional (Heriot, 2012-2013). The PAI score considered a student's "socioeconomic background, single-parent/guardian status, and languages spoken at home other than English" (Heriot, 2012-2013, p. 79). *Hopwood* was repealed in 2003 by the Supreme Court during *Grutter v. Bollinger* and led UT, Austin to announce that it would resume direct consideration of race in admissions. So why would the U.S. Supreme Court annul *Hopwood*? What implications do judicial rulings have on

college access? A historical analysis of Supreme Court rulings of college access cases provides some understanding.

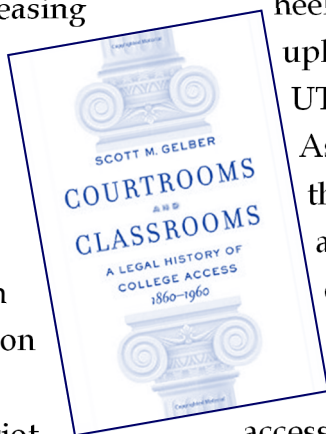
Scott Gelber's (2016) *Courtrooms and Classrooms*, impressively provided a historical analysis of college access through an indispensable legal lens. Gelber's work was important because its publication came on the heels of the Supreme Court's decision to uphold the Fifth Circuit's ruling in favor of UT in *Fischer v. University of Texas* (2016).

As an admissions case, the Court decided that universities may consider race, among other factors, in efforts to diversify student population.

Courtrooms traced judicial deference to higher education institutions in college access cases over a span of 100 years.

Throughout the century, judicial deference to colleges at the discretion of the Supreme Court took a wild path based on the contexts of American politics, historical events, and social change (Klarman, 2007). Creatively, Gelber reviewed the history of that deference within topics of admissions, desegregation, expulsion, tuition, and child support.

Gelber (2016) presented the nature of college admissions processes, during a fifty-year period (1860-1910), to have lacked



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“substantial admission requirements” due to a scarcity of well-prepared students in the common schools (p. 39). Requirements for admission became moderately standardized post-Civil War in basic subjects such as English grammar and composition, history, science, and math; yet, institutions struggled to uphold these moderate standards because of “conditional” enrollment of unqualified applicants (p. 39). Gelber recounted that even prominent institutions such as Harvard, Yale, Princeton, and Columbia accepted students conditionally until the turn of the new century. Most “conditional” applicants were whites who were non-degree seeking, part-time, and unqualified applicants invited to remediate certain courses. As a result, institutions were more likely to be under political or judicial scrutiny, as well as faced the challenge of maintaining sustainable student enrollment. It is critical to learn about this legal perspective of higher education which challenges the student affairs notion that students – often white males – who attended prestigious institutions, were presumably qualified.

Gelber’s (2016) research revealed that admissions in some state schools operated within statutes that restricted universities from accepting students from other regions. State statutes such as The Morrill Act (1862) did not guarantee women’s rights to attend land grant schools, and led to exclusion from extracurricular activities and science courses when those women gained initial access. The

post-Civil War political era also brought about renewed political forces to change education in general. For example, judicial oversight over college access in higher education increased after the war, as a result of statutes that pushed for desegregation in education.

The strength in Gelber’s (2016) analysis was his ability to weave the topics of the chapters to tell a story of educational jurisprudence, which in turn revealed an era of national political ‘tug of war’. He especially connected the chapters on admissions and desegregation impressively well. Gelber explained that these state mandates of college access that guided admissions were challenged by desegregation suits following Reconstruction Era. Tensions grew even more with the new vision that higher education was a privilege and not a right, which led to increased deference toward university administration’s access policies. This prompted challenges, on the other hand, from rejected whites who believed that “virtually all white applicants were entitled” to admission (p. 61). Gelber mentioned shared the caveat of this particular analysis to be that deference was given to colleges when it came to admissions; however, twentieth century courts referred to former rulings and federal laws which limited colleges when adjudicating desegregation suits.

College access is also linked to success and degree attainment. Gelber (2016) explored this

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link within the historical context of *success* as a byproduct of abiding by university policies. Colleges and universities historically reserved the right to determine the parameters of campus life during the period between the 1900s and early 1960s. University officials acted *in loco parentis* and expelled students who did not conform to university expectations and requirements (such as complete military science courses on the basis of religion). Some southern institutions prohibited students and administrators from participating in Civil Rights demonstrations and initiatives. This common university statute formed the basis for the landmark case of *Dixon v. Alabama State Board of Education* (1961). The case involved St. John Dixon (named appellant) and five other black students from Alabama State College who were expelled by the university without notification and a hearing. St. John Dixon, recounted his experience saying, “we found out about the expulsion in the newspaper” at the 2016 Gehring Academy in Berkeley, at which I was in attendance. The supreme court overturned the lower court’s decision to uphold the expulsions for violating then Alabama law of requesting service at a white-only restaurant. Gelber noted that *Dixon* became the beginning of due process (students’ rights) in universities.

A continuous revision of Gelber’s (2016) analysis of the chapters on tuition and child support cases revealed a weakness in his work, although admittedly, cannot be solely attributed to the author’s lacking. The two

chapters lacked some depth mainly due to the fact that the roles of institutions and the courts have mostly remained consistent regardless political forces. Gelber, in his conclusion, attributed the lack of depth to the fact that “tuition cases occupy a less prominent” place when it comes to judicial deference. The two chapters share a similar concept within college access with regard to higher education affordability. Gelber could have combined the two chapters and examined their relationship for a robust historical analysis throughout the book. Courts continue to defer to universities in tuition cases as long as they do not interfere with state laws. Remarkably, courts have required “increased responsibility for tuition within the private realm” by consistently ordering parents (especially divorced parents) to serve that economic role (p. 162). The recent political season saw the issue of rising college tuition cost as a topic at the forefront for Democratic candidates, Senator Bernie Sanders and Secretary Hillary Clinton. The candidates each referred to proposals that would render two-year community colleges and four-year public universities tuition-free. The topic of free tuition shall soon lose its vague notion of being apolitical, and potentially one that comes with great contention.

To conclude, Gelber’s (2016) work served as a document that has foreshadowed the future of college access and should prompt action especially in areas of admissions and tuition.

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His work provided admonition for college admissions officials to retool their approaches for recruiting and enrolling a diverse student body. It is important for a college to articulate the importance of a diverse student body in its academic exercise in order to avoid scrutiny of its policies in a judicial review. Judicial deference affects university goals and tactics to recruit, enroll, and provide access for all students. Hence, college officials must begin planning ways to continue providing quality access for students, in anticipation of how the issue of rising tuition may be resolved in the future. 

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