Richard D. Kahlenberg, editor

Affirmative Action for the Rich

Legacy Preferences in College Admissions

A Century Foundation Book

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Affirmative Action for the Rich

Foreword

American history does not reveal an unbroken pattern of increasing democratization and shared prosperity. Rather, progress has come in fits and starts. The long-term trend, however, generally has reflected forward movement, with growing expansion of political participation and economic well-being. Importantly, each generation has embraced the comforting and realistic belief that things would be even better for their children. Though buffeted by tumultuous periods of war, social change, and economic dislocation, the nation rightly was seen as a global model producing considerable advances in prosperity for the vast majority of its citizens.

In the post–World War II period, for example, income and wealth inequality narrowed, helped along by a progressive federal income tax rate on top earners, strong union leadership on economic issues, and rapidly growing wages and benefits for most workers. At the same time, the Civil Rights movement and the influx of women in the workplace clearly led to greater opportunities for more Americans. For twenty years after victory in World War II, the nation enjoyed a period of relentless advance toward fairness and shared prosperity. America reveled in this upward mobility, a country where hard work could overcome any obstacle and move one from the lowliest origins to the top of the society. College attendance, one of the keys to "getting ahead," vastly expanded from what once was a small slice of the population. The GI Bill alone sent 8 million veterans to post-secondary training. By the 1960s, the continued democratization of higher education seemed inevitable.

This golden age came to an abrupt halt in the 1970s. With the nation already increasingly split over involvement in the Vietnam War, and the ecumenical nature of the Civil Rights movement breaking down as sharp divisions emerged between mainstream rights organizations and the more radical elements, American society began to suffer further fractures along the lines of income and wealth. As the decade progressed, a much-heralded part of the American experience—continuing income growth—began to disappear for a majority of workers. There was a shift from rapidly growing incomes (not surprisingly, accompanied by fairly generous inclinations of the increasingly middle class majority) to wage stagnation for a vast segment of the American workforce. Over time, as workers struggled to maintain middle-class lives, that stagnation would lead to declining household savings as well as mounting levels of personal debt through the use of credits cards, second mortgages, sub-prime loans, and other devices that simply had not existed previously.

The patterns that surfaced in the 1970s have become a long-term trend, exacerbated by policy choices that have propelled us to the historically high level of wealth and income inequality that exist today. On a range of issues, there has been a backlash against the postwar pattern of social change and worker rights. Perhaps retrenchment was inevitable, given the scope and scale of the changes in society. There has been widespread resistance to affirmative action programs, including those intended to diversify college populations. For decades, these programs have come under relentless political and legal attack and seem very fragile. Taxes on the wealthy have been slashed several times, to a third of what they had been, and upward mobility now seems more of an empty slogan than a realistic possibility.

This virtual dismantling of the American Dream has had concrete results. The Pew Economic Mobility Project reports, for example, that the "best available evidence indicates that the United States stands out as having less, not more, relative mobility from one generation to the next." Furthermore, many industrialized nations now have more relative mobility than the United States—that is, children in other nations are more likely than American children to have their future economic success determined by merit, rather than by birth. Absent such economic mobility, Americans increasingly will have their futures determined by the economic class into which they were born.

At The Century Foundation, understanding the causes and cures of inequality is perhaps our central preoccupation and has been for nearly a century. Several of our recent publications outline an education reform agenda designed to reverse the trend toward inequality and to bring about greater opportunity for the vast majority of Americans. In higher education, the books include *Rewarding Strivers: Helping Low-Income Students Succeed in College* (2010), and *America's Untapped Resource: Low Income Students in Higher Education* (2004). Both volumes were edited by Century Foundation senior fellow Richard Kahlenberg.

In recent years, The Century Foundation also has published several books on elementary and secondary education, including Richard Rothstein's *The Way We Were? Myths and Realities of America's Student Achievement* (1998); Kahlenberg's *All Together Now: Creating Middle-Class Schools through Public School Choice* (2001); Joan Lombardi's *Time to Care: Redesigning Child Care to Promote Education, Support Families, and Build Communities* (2002); Jeffrey Henig's *Spin Cycle: How Research Is Used in Policy Debates—The Case of Charter Schools* (2008); and Gordon MacInnes's *In Plain Sight: Simple, Difficult Lessons from New Jersey's Expensive Efforts to Close the Achievement Gap* (2009). In addition, we have supported several volumes of essays on education edited by Kahlenberg, including *A Notion at Risk: Preserving Education as an Engine for Social Mobility* (2000); *Public School Choice vs. Private School Vouchers* (2003); and *Improving on No Child Left Behind: Getting Education Reform Back on Track* (2008). The Century Foundation also sponsored a task force, chaired by former Connecticut governor Lowell Weicker, Jr., that issued a report, *Divided We Fail: Coming Together through Public School Choice* (2002).

It is not surprising, in this context, that we would look at college admissions, particularly those at the elite institutions where entry and graduation is a ticket to higher incomes, greater wealth, and perhaps even longer life. Research shows that it not only matters whether you go to college, but where you go to college, and that if admission standards are loaded in your favor, you enjoy a substantial advantage over other applicants or aspirants. One aspect of this differential is the extent to which colleges take into consideration whether an applicant comes from a family that includes alumni of the institution. There is plenty of evidence that such a "legacy" attribute is a positive factor in college admissions. Legacy preferences turn out to be understudied causal factor in admissions, limiting opportunity for immigrant and minority groups and enhancing the life chances of those who come from families whose parents graduated from select institutions.

The contributions in this volume examine a range of issues related to this phenomenon and offer compelling arguments for why it should be addressed and reformed. Richard Kahlenberg again has assembled a group of researchers and writers who bring extraordinary credentials and insights to the questions of fairness and the implications for opportunity embodied in legacy preferences. The ten essays in this book offer a comprehensive picture of the way legacy preferences work in practice and of their impact on applicants. Taken together, the authors make a powerful case for change. This work and others like it deserve to become a call to action for those who seek to enhance fairness in college opportunities and the nation as a whole.

On behalf of the Trustees of The Century Foundation, I thank Richard Kahlenberg and his colleagues for this important contribution to our understanding of this important topic.

Richard C. Leone, President
The Century Foundation

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Introduction

Richard D. Kahlenberg

The use of race-based affirmative action in higher education has given rise to hundreds of books and law review articles, numerous court decisions, and several state initiatives to ban the practice. By contrast, surprisingly little has been said or written or done to challenge a larger, longstanding "affirmative action" program that tends to benefit wealthy whites: legacy preferences for children of alumni.[1] Like racial preferences, preferences for legacies can be criticized for being based on ancestry rather than individual merit, yet they offer none of the countervailing benefits of affirmative action, such as remedying past discrimination or promoting educational diversity. (Nor, it turns out, do they boost college fundraising substantially.)[2] The evidence suggests, in fact, that in the early twentieth century, legacy preferences were born of anti-immigrant and anti-Jewish discriminatory impulses.[3]

Legacy preferences also are widespread. Among elite national institutions, almost three-quarters of research universities and virtually all liberal arts colleges grant legacy preferences.[4] While some colleges and universities try to downplay the impact of legacy preferences, calling them "tie breakers" in very close admission calls, the research suggests that their weight is significant. Princeton scholar Thomas Espenshade and colleagues find that, among applicants to elite colleges, legacy status is worth the equivalent of scoring 160 points higher on the SAT (on a 400–1600 point scale).[5]

To date, however, there have been no state ballot initiatives, only one lower court case, and not a single book-length treatment of the issue.[6] This volume of essays is an effort to begin to remedy the gap in the scholarly literature. Drawing upon a wide range of academics, journalists, and legal practitioners, this book sketches the origins of legacy preferences, examines the philosophical issues they raise, outlines the extent of their use today, studies their impact on university fund-raising, and reviews their implications for civil rights. In addition, the book outlines two new theories challenging the legality of legacy preferences, examines how a judge might review those claims, and assesses public policy options for curtailing alumni preferences.

Why Legacy Preferences Are Vulnerable and Why They Matter

One threshold question for a volume such as this is whether a policy that has been around for almost a hundred years—no matter how unfair—is ever going to change. The evidence in this book suggests that legacy preferences are in fact vulnerable. Over the past decade or so, sixteen leading institutions (including Texas A&M; the University of Arizona; the University of California, Berkeley; the University of California, Los Angeles; and the University of Georgia) have abandoned legacy preferences, joining institutions such as the California Institute of Technology (Caltech) and Cooper Union, which never employed them. Moreover, in the past year or so, plans have begun to challenge legacy preferences in federal court.[7] A serious legal challenge based on new claims has a very real possibility of succeeding on the merits, for the reasons outlined in Chapters 7, 8, and 9 of this book. At a minimum, litigation will produce, through the legal discovery process, greater understanding of the workings of legacy preferences, illuminating a practice that already is deeply unpopular with the American public. (One poll found Americans oppose legacy preferences by 75 percent to 23 percent).[8] Opposition to legacy preferences over the years has spanned the political spectrum, from

Senators Ted Kennedy and John Edwards and Representative George Miller on the left, to George W. Bush and Senators Charles Grassley and Bob Dole on the right.[9] A court case shining light on the issue could provide a political catalyst, particularly in a moment of profound populist anger in the country toward practices that unfairly advantage elites.

A parallel set of legal and political developments involving affirmative action further threatens the future of legacy preferences in university admissions. Race-based affirmative action policies are under attack from both popular initiatives and the courts. Justice Anthony Kennedy, who dissented in the Supreme Court's 2003 case, *Grutter* v. *Bollinger*, which affirmed the use of race in law school admissions at the University of Michigan, is the new swing vote on the Court. A new case challenging racial preferences at the University of Texas very well could provide the U.S. Supreme Court an opportunity to cut back on racial preferences significantly.[10] If this happens, legacy preferences will come under new pressure as well. Recent history suggests that preferences for the children of wealthy alumni are vulnerable in a post-affirmative action environment. After California banned racial preferences by voter referendum, for example, it soon moved to eliminate legacy preferences in the University of California system.[11] The same was true at other institutions. If change comes to affirmative action programs, legacy preferences may well be swept aside too.[12]

Another threshold question is whether legacy preferences matter. Preferences for the children of alumni are concentrated in selective institutions and may determine whether students are accepted at particular institutions, but not whether they will attend college at all. So how much does it matter if a given student goes to a more or less elite school?

The evidence suggests that going to a selective college or university does in fact provide considerable advantages. For one thing, wealthy selective colleges tend to spend a great deal more on students' education. Research finds that the least selective colleges spend about $12,000 per student, compared with $92,000 per student at the most selective schools.[13] In addition, wealthy selective institutions provide much greater subsidies for families. At the wealthiest 10 percent of institutions, students pay, on average, just 20 cents in fees for every dollar the school spends on them, while at the poorest 10 percent of institutions, students pay 78 cents for every dollar spent on them.[14] Furthermore, selective colleges are quite a bit better at retention. If a more-selective school and a less-selective school enroll two equally qualified students, the more-selective institution is much more likely to graduate its student.[15] Moreover, future earnings are, on average, 45 percent higher for students who graduated from more-selective institutions than for those from less-selective ones, and the difference in earnings is widest among low-income students. [16] And according to research by political scientist Thomas Dye, 54 percent of America's top corporate leaders and 42 percent of governmental leaders are graduates of just twelve institutions.[17] For all these reasons, legacy preferences matter.

The Shape of Legacy Preferences in the United States

This book begins with a philosophical discussion by Michael Lind of the New America Foundation outlining the ways in which legacy preferences are in direct conflict with bedrock principles of the nation's founding as a democratic republic. As Lind notes in Chapter 2, Thomas Jefferson sought to promote a "natural aristocracy" based on "virtue and talent," rather than an "artificial aristocracy" based on wealth.

In particular, Jefferson envisioned a society in which hereditary privileges of the Old World—in politics, the economy, and in education—were abolished in favor of structures that support merit and talent. In the political realm, he outlined plans to set up an elected Senate very different from the hereditary House of Lords. In the economic sphere, he advocated abolishing British practices of primogeniture and entails, which were designed to keep estates intact. And in education, Jefferson called for universal common schools and founded the publicly funded University of Virginia as an institution to draw upon the most talented students from all walks of life.

A system of legacy preferences, Lind writes, "is at odds with the fundamental design of a democratic republic such as the United

States of America."[18] In politics, legacy preferences artificially aid alumni children of lesser talents, undermining the "natural aristocracy" that Jefferson hoped would lead the nation. Given the importance of higher education in today's economy, legacy preferences undermine Jefferson's efforts in the agricultural economy of his day to prevent a "hereditary landed aristocracy." And in the realm of education, legacy preferences—including at Jefferson's beloved University of Virginia—directly undercut the meritocracy Jefferson sought to construct. "By reserving places on campus for members of the pseudo-aristocracy of 'wealth and birth,'" Lind writes, "legacy preferences introduce an aristocratic snake into the democratic republican Garden of Eden."[19] In a profound sense, by disrupting the ideal that "each generation starts life afresh," legacy preferences can truly be considered un-American.

This book then turns in Chapter 3 to a history of legacy preferences and privilege written by Peter Schmidt, a veteran reporter at the *Chronicle of Higher Education*. Schmidt, who is also the author of *Color and Money: How Rich White Kids Are Winning the War over College Affirmative Action*, cites the ugly origins of legacy preferences following World War I as a reaction to an influx of immigrant students, particularly Jews, into America's selective colleges. As Jews often out-competed traditional constituencies on standard meritocractic criteria at selective institutions, universities adopted Jewish quotas. When explicit quotas became hard to defend, universities began to use more indirect means to limit Jewish enrollment, including considerations of "character," geographic diversity, and legacy status.[20]

Legacy preferences took firmer root during the Great Depression, as universities believed that favoring alumni children might boost revenues.[21] Efforts to favor legacies came under attack in the 1960s and 1970s at places such as Yale University, which were seeking to democratize admissions, opening the doors to women, people of color, and financially needy students. But alumni ire from the likes of conservative writer William F. Buckley, Jr., effectively ended Yale's efforts to curtail legacy preferences.[22]

The advent of the influential *U.S. News & World Report* university rankings in the 1980s further solidified the place of alumni preferences, Schmidt contends, by considering the share of alumni who donate as a factor in the rankings.[23] Likewise, reductions in state financial support to public universities may have placed pressure on selective public institutions to adopt alumni preferences in the belief that doing so would raise further revenue.[24]

The biggest threats to legacy preferences, Schmidt argues, have come where affirmative action was banned. "Many minority lawmakers and civil-rights activists who had been willing to tolerate legacy preferences so long as colleges also used affirmative action would become staunchly opposed to legacy preferences where affirmative action was ended," he notes.[25] Legacy preferences were eliminated, Schmidt observes, following bans on affirmative action not only at the University of California, but also at the University of Georgia and Texas A&M.[26]

In Chapter 4, Daniel Golden, of Bloomberg News, provides an analytic survey of legacy preferences today. Golden won a Pulitzer Prize for his groundbreaking series of *Wall Street Journal* articles on legacy preferences and other advantages provided to privileged college applicants. He later elaborated on those articles in a 2006 book, *The Price of Admission*. Here, Golden extends that research and updates it.

If, as Lind argues, legacy preferences are in some sense un-American, Golden points out that they are also uniquely, and ironically, American. Universities in other nations, for the most part, do not provide legacy preferences in college admissions. Legacy preferences are "virtually unknown in the rest of the world"; they are "an almost exclusively American custom."[27]

In the United States, Golden finds, legacy preferences are pervasive—used by almost 90 percent of top universities.[28] And they make a real difference in admissions. William Bowen of the Mellon Foundation and colleagues found that, within a given SAT score range, being a legacy increased one's chances of admission to a selective institution by 19.7 percentage points.[29] That is to say, a given student whose academic record gave her a 40 percent chance of admission would have nearly a 60 percent chance if she were a legacy. Universities are quite open about the advantages provided to legacies. An admissions officer at the University of Miami told Golden, "Everybody gets the red carpet treatment when they come through admissions; for a legacy student, we'll vacuum the carpet, we'll get down and pick up the lint."[30]

The children of alumni generally make up 10 percent to 25 percent of the student body at selective institutions, Golden finds, and the proportion often varies little, suggesting, he says, "an informal quota system." (By contrast, at Caltech, which lacks legacy preferences, only 1.5 percent of students are children of alumni.)[31] As competition for university admission has increased, the power of legacy preferences has had to increase in order to maintain legacy representation. For example, in 1992, Princeton accepted legacy applicants at 2.8 times the rate of other candidates, but by 2009, 42 percent of legacies were admitted, more than 4.5 times the rate of non-legacies.[32]

Given the break in admissions provided to legacies, it is not surprising that, once on campus, they perform less well than students of similar demographic backgrounds who do not receive preference. Golden reports that a study by Princeton's Douglas Massey and Margarita Mooney of twenty-eight selective colleges and universities found under-performance by legacy admits was particularly pronounced when the gap between legacy SAT and the institution's SAT average was wide. The authors also found that "in schools with a stronger commitment to legacy admissions, the children of alumni were more likely to drop out."[33]

But are legacy preferences justified as a necessary evil to raise financial resources for colleges and universities? As a percentage of private donations, alumni giving is indeed substantial, totaling $8.7 billion in fiscal year 2008, accounting for 27.5 percent of private giving and coming in just behind foundation giving (of $9.1 billion).[34] (As a percentage of overall university budgets, by contrast, alumni donations account for just 5.1 percent of total expenditures at leading universities.)[35] While in theory legacy preferences go to all alumni equally, most people assume that giving counts in the weight provided such preferences.[36] One official at a highly selective institution told Golden that the university grants a larger preference to alumni donors. Because the cost of educating a student exceeds tuition, all students can be thought of as "trough drinkers." He said, "Just because you drank at a trough that others filled does not entitle your child to drink at the same trough. There are trough-fillers and there are just drinkers. Those two people are treated differently."[37]

Having said that, the research connecting legacy preferences and alumni giving is remarkably thin, and new research in this volume raises serious questions about the link. Golden begins by noting that several colleges and universities that do not employ legacy preferences nevertheless do well financially. Caltech, for example, raised $71 million in alumni donations in 2008, almost as much as the Massachusetts Institute of Technology (MIT, $77 million), even though MIT, which does provide legacy preference, is five times the size and has many more alumni to tap.[38] Berea College, in Kentucky, favors low-income students, not alumni, yet has a larger endowment than Middlebury, Oberlin, Vassar, and Bowdoin colleges. And Cooper Union in New York City does not provide legacy preference, but has an endowment larger than that of Bucknell, Haverford, or Davidson.[39] In terms of school quality, it is intriguing to note that, among the top ten universities in the world in 2008, according to the widely cited Shanghai rankings, are four (Caltech, the University of California at Berkeley, Oxford, and Cambridge) that do not employ legacy preferences.[40]

One interesting study by Jonathan Meer of Stanford and Harvey S. Rosen of Princeton finds that giving at one unnamed private nonprofit university increased as children of alumni entered high school, but it also found that alumni giving "fell off a cliff" when a child was rejected.[41] The message sent—that even with a preference, your child was not good enough—may be particularly hard for alumni to take.[42] Indeed, they may be even more angered by rejection than would be the case had they not had their expectations raised by the existence of legacy preferences.[43] Significantly, as universities become increasingly selective, the proportion of alumni children rejected may increase, thereby angering donors. As a result, it is not clear that the net effect of legacy preferences on donations is positive, and Meer and Rosen make no claim that legacy preferences increase overall giving.[44]

To add to all this suggestive research, Chapter 5 includes a new rigorous study by Chad Coffman of Winnemac Consulting, LLC, and his coauthors Tara O'Neil and Brian Starr. They look at alumni giving from 1998 to 2007 at the top one hundred national universities as ranked by *U.S. News & World Report* to examine the relationship between giving and the existence of alumni preferences. Of those schools, roughly three-quarters provide legacy preferences.[45]

Coffman and his colleagues find that schools with preferences for children of alumni did have higher overall giving per alumni