Revolutionary Wishes in *The Bluest Eye* and *Sula*: Toni Morrison's Developing Anti-Capitalist Vision

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This essay uses the theoretical construct of Marxist theorist Fredric Jameson to contend that Toni Morrison's *The Bluest Eye* and *Sula* unveil Morrison's developing anti-capitalist and Utopian visions. Although characters in these aforementioned first two novels of Morrison are situated in impossible conditions, they still engage in imagining alternatives to their capitalist realities. This essay seeks to evince what is possible when we engage in Utopian thought, even when postmodern conditions attempt to place barriers on our ability to exercise Utopian thought. *Sula* is revealed to be the novel with the greatest Utopian potential of all of Morrison's novels, and Sula Peace, the protagonist, is the character with the most Utopian potential of all of Morrison's characters.

An Analysis of One State's Use of Race Neutral Policies to Achieve Diversity

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This research sought to determine whether Florida has been successful in achieving greater racial diversity in its public colleges and universities without the use of racial preferences in the years after it implemented the One Florida Initiative (OFI) and opened two Minority Serving Institution (MSI) law schools. The study looked at enrollment in the state's public law schools, historically one of the more stubborn of all professional schools nationally when it comes to attempts to enroll a more racially diverse student body in order to increase diversity in America's law firms. The objective was to determine what impact the OFI and the addition of two MSI law schools, which coincided with but occurred separately from the OFI, might have had on diversity in Florida's law schools and ultimately its legal profession. The concept of Critical Race Theory was utilized to examine its role in relation to affirmative action and desegregation case law. Quantitative methodology was employed within this research. Secondary data sets from the State University System of Florida, Florida Board of Governors and the Florida Bar Association were analyzed. The data compiled included average Law School Admission Test scores and statistics on the number of students that applied, were admitted, enrolled, and ultimately graduated from Florida's public law schools between 1998 and 2006. This research was conducted using a *Z*-test of proportion and one-way analysis of variance using SPSS. The quantitative aspect of the research revealed that minority representation in Florida's legal profession improved after the two events studied. And, while further improvement is warranted, this study concluded that minorities were also represented in larger numbers in Florida's public law schools.

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An Analysis of One State's Use of Race Neutral Policies to Achieve Diversity

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The legal profession in the United States has been involved for many years in programs it claims are intended to increase minority representation, meeting with only minimal success (Glater, 2001). Minorities are significantly underrepresented in the legal profession, according to Barker (2005), who indicated that Blacks and Hispanics accounted for slightly more than five percent of lawyers in the top 250 grossing law firms in the country. The failure to make significant strides toward more racial diversity in the legal profession can be traced back to the classroom. Sadly, the nation's law schools continue to be woefully lacking in the enrollment of minorities, especially African Americans ("Among the," 2007).

In Florida's legal profession, the landscape is similar to the nation as a whole, with minorities underrepresented as a result of a lack of access, enrollment, and production of minorities from publicly supported law schools (Herbert, 1999). For example, the Florida Bar Association (FBA) (2004) reported that there are 74,125 members of the Florida Bar, of whom 43,007 reported their race, and of that number, minorities made up less than ten percent. Put into context, minorities represented more than 20% of Florida's population during this period (U.S. Census, 2000). The statistics are not very different in Florida's public law schools as well with Blacks (308) lagging behind Whites (1,808) and about 25% fewer in number than Hispanics (405) during 2006. Broken down by schools, the number of Black law students in Florida's public law schools is down in every school except the two Minority Serving Institutions (MSIs), Florida Agricultural and Mechanical University (FAMU) and Florida International University (FIU), while the number of Hispanic law school students has increased almost across the board. Whites enjoyed the largest increase in Florida law school enrollment, followed by Hispanics, Blacks, Asians, and finally Native Americans (FBA, 2004).

The problem is not new and has been pointed out in previous studies. The National Center for Higher Education Management Systems (NCHEMS) (1993) study of minority participation in the FBA, an analysis of current legal education conditions and options, found that the most effective method to improve the underrepresentation of minorities in Florida's legal profession is to provide additional scholarships and expand part-time options for students. The research provided that there were 7.4 percent of Hispanics and 2.6 percent of African Americans in Florida's legal profession.

Nationally, the American Bar Association has found that the percentage of minorities enrolled in law schools has decreased in the past two years (Mallory, 2005). The percentage of minority law school students has diminished "from 20.6 percent in 2001-20002 to 20.3 percent in 2003-2004" (Chambliss, 2004, p. 2). The "Miles to Go" study conducted by the ABA's Commission on Racial and Ethnic Diversity found that African American representation in law

is less than in other professions. Chambliss (2004) described the reduction of minority enrollment in the profession "extremely troubling." "In 2000, African Americans made up only 3.9 percent of all lawyers, compared to 4.4 percent of all physicians, 5.6 percent of college and university professors, 7.8 percent of computer scientists, and 7.0 percent of accountants and auditors" (Mallory, 2005, p. 5).

From data provided by the ABA, Blacks make up approximately 4 percent of the nation's lawyers even though Blacks represent 13 percent of the population of the United States. This lack of representation has far-reaching effects in the distrust of the legal system by racial minorities because of the lack of lawyers and judges who look like them (Randall, 2004). Kim Keenan, President of the National Bar Association, indicated that as a result of the underrepresentation of African Americans in the law profession, individuals of color will not be able to find lawyers of color (Mallory, 2005).

Critical Race Theory (CRT), upon which this study is based, would suggest that encouraging more racial diversity in the legal profession is important nationally, and especially so for states like Florida, California, Texas and others referenced in U.S. Census Bureau data as among states with the fastest growing minority populations during the last decade. It is a trend that is projected to continue but at an even faster pace for at least the next two to three decades in what might reasonably be called a population explosion. Florida is predicted to surpass New York as the third most populated state by the year 2011 (Bernstein, 2005), with minorities responsible for most of the increase (Hispanics and Blacks).

Florida's institutions of higher education must be prepared for a more diverse society in order to adequately equip its students for the challenges of the social, political, and economic changes that are inevitable. Yet, Florida and a few other states could face problems based on decisions and policies implemented during the early part of this decade. Florida is among the states that moved away from the use of traditionally defined affirmative action, such as quotas and preferential treatment, to help minorities overcome past discrimination.

In Florida, affirmative action was redefined by the One Florida Initiative (OFI), which was conceived by the state's former Governor, John Ellis "Jeb" Bush. The OFI is an Executive Order (EO) established by Governor Bush to redefine affirmative action programs in the state of Florida. This EO seeks to increase diversity in education and contracting within the state by revising agendas for tests, race-based admission practices, and contract set-asides. At about the same time as implementation of the OFI, Florida's legislature opened two MSI law schools, the new FIU College of Law and re-opened FAMU College of Law.

Purpose of the Study

The purpose of this study was to examine the impact of the OFI and the addition of two MSI law schools on racial diversity in Florida's public law schools and legal profession through the lens of CRT, which analyzes laws that support the status quo of White authority and Black subordination. This study sought to determine what, if any, impact these two events have had on recruitment, admissions, enrollment, and graduation rates in Florida's public schools of law and racial diversity within the state's legal profession. Florida is significant here because, like California, Washington, Texas, and Michigan, it is part of a growing national trend toward dilution of conventional affirmative action's race-based policies. We are already seeing more states falling into line behind these states, poised to take similar action, specifically Colorado, Arizona, Missouri, and Nebraska. This research was expected to shed much needed light on the

issue of achieving greater diversity and on the continuing debate over programs and policies that alter the traditional concepts of affirmative action.

Very few studies have examined the impact of the OFI, and the creation of two MSI law schools, which occurred independently of the OFI, on increasing diversity in Florida's law schools. While the OFI has promised greater diversity within the State University System (SUS) of Florida, the evidence and data have demonstrated that schools are more segregated following the OFI (Marin & Lee, 2003). There is little research concerning the impact of these changes on access, enrollment, and production of minorities for Florida's legal profession. Consequently, this study is important because it contributes to the availability of pertinent research on the impact of policies based on affirmative action as traditionally defined.

Significance of the Study

The outcome of this study, which investigated the effects of a public policy change in the state of Florida through implementation of the OFI, is of interest to higher education in America and to current and future public policy as it relates to affirmative action and diversity. As a result of the OFI in Florida and other ballot initiatives (Proposition 209 in California, Initiative 200 in Washington), American colleges and universities have been encouraged to revisit their admission and recruitment practices in order to ensure their commitment to diversity would be maintained. The research presented serves as an initial study for others to report findings in the future as well as provide valuable information to the institutions to effectively diversify their law school.

This study is important for several reasons; not least among them is the benefit to others who are interested in the subject of diversity in higher education. It may also encourage other researchers to look further into the impact that implementation of non-traditional affirmative action policies might have on other communities considering implementing similar initiatives. This study, therefore, can be very helpful to those interested in developing policies that seek to increase diversity as well as those seeking to make informed decisions about policies affecting the use of conventional affirmative action. It was anticipated that the findings of this study would (a) contribute to the literature on affirmative action in Florida, and (b) assist the SUS in improving policies that relate to affirmative action. The dearth of existing research in the literature about this subject inhibits the ability of many citizens and lawmakers to reach rational and educated conclusions when faced with decisions about affirmative action.

This study is meant to give a greater sense of meaning to the scholarly research available to investigators and the public. It is also intended to provide the power of speech to those who are being silenced by the lack of adequate information in the literature on this subject. By advancing the outcomes found by this study in the state of Florida to further research in other states, the wealth of knowledge available about this issue will be improved, which is expected to lead to better policies and practices to achieve diversity in America.

Research Questions

Based on the purpose and the significance of the study, this research examined the impact of the OFI and the addition of two MSI law schools on diversity by providing specific changes in various student and post-graduate quantitative data. In order to fully assess the impact of the two events, this research sought to determine whether the OFI affected student applications,

admissions, enrollment, and Law School Admission Test (LSAT) scores. The study also asked if the OFI brought about a more diverse legal profession in Florida. In addition, the researcher was interested in learning whether the creation of two MSI law schools influenced diversity in student applications, admissions, enrollment and LSAT scores, and separately, how the creation of the two MSI law schools might have affected diversity in Florida's legal profession, graduates and those admitted to the Florida Bar.

Examining these issues through the lens of CRT is helpful to researchers who seek answers to the questions that are concerned with racial diversity within colleges and universities and affirmative action policy. Crenshaw, Gotanda, Peller, & Thomas (1995) expressed the position that CRT represents a racial analysis, intervention, and critique of traditional civil rights theory, on one hand, and critical legal studies, on the other.

Critical race theorists have long been interested in minorities' access to higher education, particularly their lack of access to predominately White institutions (PWIs) as a means of maintaining White superiority to other races. It was this lack of access to PWIs that led to the establishment of MSIs and, later, MSI graduate and professional schools. Enrollment of minorities in colleges and universities in America has historically been a problem for a number of reasons and the same can be said about Blacks in graduate and professional schools. Access and equal opportunity are the *raison d'etre* for many of this country's MSIs (Rivers, 2000; Swygert, 2004). The mission of these institutions did not change when some of them began opening graduate and professional schools.

Literature Review

The first Black law school, Howard University Law Department, opened its doors on January 6, 1869 under the leadership of Professor John Mercer Langston (Howard University Press, 2006). Blacks at that time were in need of prepared lawyers who were committed to help Black Americans defend their newly established rights. The Howard University School of Law was conceived to provide a legal education for Americans, mainly Blacks and other minorities who had been excluded from the profession of law. Similarly, the law school at North Carolina Central University, established in 1940, was given a mission by North Carolina lawmakers of providing legal education opportunities for Blacks (North Carolina Central University, 2007).

A number of MSI law schools, such as the FAMU College of Law, were born as a result of lawsuits. "In April 1949, Virgil Darnell Hawkins, a Black school teacher from Daytona Beach, Florida, applied for admission to the Whites-only University of Florida (UF) College of Law in Gainesville" (Rivers, 2000, p. 15). The UF College of Law was founded in 1909 as the only publicly supported law school in Florida. In an effort to maintain segregated schools, Florida officials refused to grant Hawkins access to the UF College of Law.

Not to be deterred, Hawkins filed a mandamus action to the Supreme Court of Florida against the UF governing body claiming his civil rights were being violated. Hawkins' lawsuit charged that, since UF's College of Law was the only tax-supported institution of its type in the state, "the denial of his application on the basis of race violated his civil rights under the equal protection clause of the Fourteenth Amendment to the U.S. Constitution" (Rivers, 2000, p. 16). Gannon (1996) indicated that four other Black students joined Hawkins in the suit, all of them seeking admission into UF's law, pharmacy, agriculture, and engineering programs on the same premise.

In the *Hawkins v. Board of Control* case, Hawkins moved for issuance of a peremptory writ of mandamus, which would compel the Board of Control to admit him to the all-White, state-funded law school. This action was based on the Board's refusal to accept his application for admission, claiming it amounted to an arbitrary and illegal denial of his constitutional right to equal protection under the law. In an effort to maintain a segregated UF College of Law, the Board on Control on December 21, 1949, established graduate level schools of law, mechanical engineering, agriculture, and pharmacy at Florida Agricultural and Mechanical College for Negroes (*Hawkins v. Board of Control*, 1949). The UF Law School became integrated in 1958 (Klink, 2003).

Following the late 1960s, court rulings made it apparent that schools were not going to be to able to remain segregated as the inevitability of integration swept across the country (Cohen, 1998). Lawmakers throughout the South began to question the need for special schools for African Americans and other minorities since they were free to attend already existing majority institution law schools. This ultimately led to the demise of FAMU College of Law. The law school was closed in 1968 after the Florida legislature stopped funding the institution and created a new law school at Florida State University (FSU), a predominately White institution not far from FAMU's School of Law. "The last class of FAMU College of Law entered in 1965 and graduated in 1968" (Klink, 2003, p. 14).

Klink (2003) examined the reestablishment of FAMU College of Law, once the state had reduced its support for affirmative action policies. The question of how the FAMU College of Law was reestablished is intimately tied to how the FIU College of Law was established in Senate Bill 68, during the 2000 Legislative Session. Klink (2003) found that the OFI, an EO by Governor Bush that dismantled traditional affirmative action policies in the state, also served to instigate the birth of FIU and the reestablishment of FAMU Colleges of Law.

The College of Law at FIU is located in Miami, Florida, and was founded in August 2002. The institution had worked since 1986 to create one of Florida's public law schools. President Modesto A. Maidique (of FIU) met with the Florida Board of Regents (BOR), which, at the time, was filled with a significant number of graduates from other Florida law schools. Consequently, members of the BOR resisted the opening of new public law schools; however, the Florida legislature voted to support the plan. These schools were created to encourage minority students to pursue the law profession and today both are accredited by the ABA (FBA, 2004).

Emergence of Affirmative Action

MSIs were established to assist minorities to gain access to post-secondary education, including graduate and professional schools and they succeeded. There was also the larger goal for minorities, which was to achieve greater access to the nation's PWIs and despite court rulings such as *Brown v. Board*, more was required to erase the past mistreatment of minorities in the United States. President Lyndon B. Johnson attempted to do that when he implemented a policy he called "affirmative action" on July 2, 1964. Affirmative action is a policy that attempts to remedy current and past inequities by ensuring that women and minorities are fairly represented in employment, education, and business.

President Johnson's EO 11246 (1965), and later EO 11748 (1969), mandated that federal government offices and companies doing business with the federal government promote equality and ensure that minorities and women are more integrated in government jobs at the federal,

state, and local levels. The mandate forces employers to prove that they have taken affirmative steps to promote opportunities for minorities and women (Starling, 2002, p. 48).

Affirmative action programs at the federal level apparently succeeded in increasing the representation of women and male Hispanics in certain managerial positions. "Hispanics and women have decreased their pay gaps with non-Hispanic White male public employees" (Reskin, 1998, p. 50). "Because of affirmative action, women and minority men hold bigger percentages of White-collar jobs in government than in the workforce as a whole" (Laurent, 1999, p. 26).

For many, affirmative action provides opportunities, allowing underrepresented groups a better chance for fair and equitable treatment. The policy includes outreach programs targeted to specific groups that have been historically subordinated and still underrepresented to notify them of employment and contracting opportunities. When these policies were implemented in higher education, government agencies, and corporate America, however, the result was litigation in the nation's courts.

Affirmative Action Under Attack

The first landmark educational test of affirmative action was 1978 in the case of *University of California Regents v. Bakke* (1978). Bakke's suit claimed that the University of California at Davis (UCD) Medical School practiced a dual admissions program, one for regular admits, in keeping with the school's normal requirements, and another for minority or 'disadvantaged' students. The plaintiff in this case (Bakke, who was a White male) had twice been turned away from UCD's medial school despite having a high qualification score. In each case, according to the suit, students in the 'disadvantaged' or minority group were admitted with lower overall scores than he. Bakke sued claiming a violation of his constitutional right to equal protection under the law. He prevailed and was eventually granted admission to the school.

While some states continued to debate the pros and cons of affirmative action, more cases were being heard before the U.S. Supreme Court such as *Gratz v. Bollinger* and *Grutter v. Bollinger*, both suing the University of Michigan, decided in 2003. In these cases, the plaintiffs claimed the University of Michigan extended unfair advantages to Blacks and other minorities over Whites with regard to the school's admission practices. In the *Gratz v. Bollinger* case, the Court ruled that the use of race in making undergraduate admission decisions was a violation of the equal protection clause and Title VI of the Constitution. In the *Grutter v. Bollinger* case, however, the Court's decision allowed the law school to continue using race in its admission decisions because of what the Court termed a compelling interest in diversifying its student body for educational purposes.

The courts were not alone in deciding the fate of affirmative action policies on the national stage. The policy has also been placed on the ballots of an increasing number of states for their voters to decide. When affirmative action, or that which by any other name accomplished the same result, was put to a vote in several states, the policy was abolished (e.g.; in California, Michigan, and Washington). "The voters of California supported Proposition 209, by a 54-46 percent margin, a referendum abolishing preferential hiring based on gender or race in public hiring, contracting" (Milakovich and Gordon, 2001, p. 117). The voters of California turned away from long-established affirmative action practices and, after the decision was upheld by the federal appeals court, the backlash against affirmative action moved to other states. A

similar measure was passed by voters in the state of Washington. "Initiative 2000" resulted in the revocation of conventional affirmative action programs in that state.

In light of the fact that more states were facing court challenges or voter referenda because of their policies regarding affirmative action, leaders in some states began looking for ways to avoid costly litigation and ballot initiatives. In some cases, state leaders looked for ways to implement policies that avoided the use of racial preferences and quotas. This meant the end of affirmative action policies, as traditionally defined, in some states.

Emergence of One Florida Initiative

Florida's Governor Bush and former Lt. Governor Frank Brogan responded to the movement toward race neutral policies by creating the OFI on November 9, 1999 (Office of the Governor, 1999). Florida's experience is not unlike that of other states trying to increase diversity without the use of conventional affirmative action. The consequence of the OFI has been a decrease in minority representation at most universities within the SUS of Florida.

The OFI, a plan to ensure diversity and equal access to state contracts and higher education, seems to make sense. To help more of the state's African American and other minority students gain access to a college education, the plan offers various programs in order to better prepare students for college. The plan provides, for example, additional funding for tutoring, need-based financial aid, and college outreach efforts, as well as wider access to the Preliminary Scholastic Assessment Test and advanced placement courses at poorly performing public schools. Questions remain, however, about the effectiveness and sustainability of a plan that does not include provisions for race in admission practices, given Florida's historic lack of diversity in its public law schools.

The debate leading up to and immediately after implementation of the OFI and the opening of two MSI law schools was dominated by promises from proponents about the benefits of the two events, as well as dire predictions of failure from opponents (Office of the Governor, 1999). The prediction from Gov. Bush and supporters in the State legislature was that the OFI, when coupled with the addition of two MSI law schools, would improve minority access and success in Florida's public institutions. Although data was widely available showing a clear need for improving racial diversity in the SUS of Florida, neither side presented any evidence to support their claim.

The largest group of minorities and therefore largest pool of potential students in the United States is African American, followed by Hispanics (United States Census Bureau, 2001). These two ethnic minorities, however, are largely underrepresented in many specialized fields, including the legal profession. The plight of Blacks and other minorities, their lack of representation and their relegation to second and third class societal status, whether by policy or legislation, is the lens through which a critical race theorist views the world. CRT creates a unique perspective of issues related to race and policies that pre-determine certain outcomes because of racial origins.

Theoretical Framework

This study utilized Critical Race Theory (CRT) as the theoretical framework. The history of affirmative action is important to CRT because critical race theorists analyze laws that support the status quo of White authority and Black subordination. Delgado (1995) indicated that CRT

originated in the early seventies as a result of the civil rights movement's legal strategy to achieve racial justice. Researchers consider CRT to be one of the most significant legal developments on issues of race and ethnicity since 1975 (Crenshaw, Gotanda, Peller, & Thomas, 1995). Harris (2002) promotes the idea that CRT "coheres in the drive together to excavate the relationship between the law, legal doctrine, ideology and racial power but the motivation of CRT is not merely to understand this vexed bond between law and white racial power but to change it" (p. 1218).

An examination of policies such as affirmative action and the OFI, including why they are used and whether they are effective, are well-suited to the concept of CRT. The framework for CRT is predicated on historical court decisions and laws such as the *Dred Scot decision, the Naturalization Act* of 1790, *Ozawa v. United States* 1922, and *Scott v. Sandford* 1856 (Cooper, 2002). Critical race theorists such as Delgado, Crenshaw, and Bell concentrated on legal, constitutional, and civil rights concerns, which also included affirmative action. The historical origins of CRT provide the context for understanding contemporary legal debates concerning issues such as affirmative action, minority set-asides, and the ways in which civil rights tactics were used to improve the quality of life for many citizens.

Methods

In addition to a theoretical framework that involves CRT, this research also employed a design that utilized quantitative methodology. Secondary data sets provided by the SUS of Florida and the FBA were used to determine the impact of the OFI and the addition of two MSI law schools. The enrollment data compiled by the SUS of Florida consisted of data by race or ethnic make up and by institution from 1998-2006. In addition, the research utilized data from the FBA, which included the percentage of minority attorneys in Florida's legal profession from 1998-2006. Quantitative data lends itself to analyses using both descriptive and inferential statistics. The types of statistics that were assembled include frequencies and percents.

Procedure

Institutional Review Board (IRB) approval from Morgan State University was granted in the Fall of 2006, prior to the pilot study being conducted. Following the IRB approval, the SUS of Florida law schools' IRB committees were contacted with a letter indicating the particulars about the research being examined. IRB approval was requested and granted by those institutions.

This segment explains how the secondary data was obtained from the SUS of Florida and the FBA. The secondary data sets compiled within the study were received from the SUS of Florida and the FBA office. These offices assisted with the compilation of the data needed for this study as well as the dissemination of the data to the researcher. The central office of the SUS of Florida is located in that state's capital city, Tallahassee. The office was contacted by mail, email, and follow up telephone calls to request any and all data in their possession that included statistics on the number of applicants for law school in Florida's public colleges and universities between 1998–2006; the number of students admitted to these schools during those years; the number of students that enrolled; as well as the number of students that graduated. The SUS of Florida was also asked to provide its data in aggregate form, broken down by racial and ethnic background and by individual school.

The headquarters for the FBA is situated in Tallahassee, Florida. This office was contacted by mail, email, and by follow up telephone calls by the researcher to request data in their possession related to this study. The requested data included statistics on the number of bar certified attorneys in Florida between 1998-2006. This was done in an effort to determine, as accurately as possible, the number of lawyers practicing in the state of Florida. All data was requested in aggregate form, broken down by racial and ethnic background. The quantitative data was gathered in Microsoft Excel and later analyzed using an Excel spreadsheet and the quantitative data analysis software, SPSS.

Data Analysis

After the receipt of the secondary quantitative data sets from the SUS of Florida and the FBA, the information was analyzed with two types of analyses, descriptive and inferential. Descriptive statistics describe the essential characteristics of data in a study. The descriptive statistics within this study consisted of frequencies, percents, means, and standard deviations. Inferential statistics are used to draw inferences about a population from a sample.

The independent variable distinguished within this research was the timeframe before and after the OFI and the timeframe before and after the addition of the MSI law schools. The dependent variables were: a) percentage of minority applicants; b) percentage of minorities admitted; c) percentage of minorities enrolled; d) LSAT scores; e) percentage of minority graduates; and f) percentage of minority law school graduates sitting for the bar. This research was conducted using a *Z*-test of proportion because the independent variable was categorical and the dependent variable was a proportion. The difference in the average LSAT scores of the public law schools prior to and following the implementation of the OFI and the addition of the two MSI law schools were evaluated using a one-way analysis of variance because the independent variable was categorical (year) and the dependent variable was interval (LSAT score). The level of significance for rejecting the hypotheses was $a = 0.05$.

Findings

There are areas in which implementation of the OFI seems to have had a significant impact, including the percentage of minorities applying and being admitted to Florida's public law schools. With but a few years when there were non-significant declines in the percentage of minority law school applicants, there was an overall increase each year since 1999 when the OFI was implemented, and that increase continued through 2006. Moreover, the percentage of minority students admitted to the four public law schools rose immediately after the OFI and has increased in most years since, from nearly 28% in the 1999-2000 academic year to more than 31% in 2005-2006. In addition, there was a significant and similar increase in the percentage of minorities who ultimately enrolled in Florida's public law schools. These significant increases, however, proved to be inconclusive and may simply be the result that would be expected with the addition of two MSI law schools. In fact, these two minority-serving law schools accounted for much of the overall increase in the percentage of minorities applying and ultimately enrolling in Florida's public law schools. Based on the findings of the study of minority representation in Florida's public law schools before and after the OFI, and the addition of two MSI law schools in the state during roughly the same period, it appears that minorities fared better following both events. The data suggests, however, that much of the increase in minority representation can be

attributed to a combination of the two factors, and that each without the other would have resulted in less significant improvement.

This study found there to be a non-significant difference in median LSAT scores of students who attended public law schools in Florida prior to and following implementation of the OFI and the creation of the MSI law schools. Likewise, a non-significant difference was discovered in the percentage of minority graduates from these institutions before or after the OFI and the creation of two MSI law schools. The researcher was not able to ascertain whether there were any differences in the percentage of minority law school graduates sitting for the Florida Bar Exam before and after implementation of the OFI or before and after creation of the two minority-serving law schools in the state. The FBA advised the researcher that it was unable to release the requested data.

Summary of Findings

This research and the results it produced can be used to assist lawmakers, policy makers, higher education administrators, and others to gain a better understanding of the impact of policies that seek to enhance diversity, such as the OFI, at the local, state, and national levels. Citizens and legislatures in states that may be considering introducing or passing laws that redefine affirmative action are strongly urged to review and examine this study very closely. An analysis of this research can be helpful in anticipating the results that might be expected from any efforts to legislate changes to affirmative action policies. Likewise, individuals who are advocates for policies that seek to encourage greater diversity will find this study of assistance to them when asking their communities to make informed decisions.

Recommendations

Based on the findings of the study, recommendations were made in the areas of policy, practice, and further research. Each of these areas is discussed below.

Policy

The researcher, by extension, assumes that affirmative action is also of benefit to increasing diversity in all graduate and professional schools. Based on this study, it is apparently not the only policy that has proven effective in diversifying America's law schools and the practice of law. The recommendation to communities around the country, as a result of this study, is to resist the temptation to pass legislation that might have the effect of inhibiting the growth of diversity. It seems as if communities may want to consider more carefully the impact of such policies because of the possibility of further damaging minority growth in higher education, damage that could take years to repair.

Practice

This study suggests but does not prove the kinds of results that might be expected with implementation of laws and policies similar to the OFI in other states. The limitations of this study prevent expanding its results to other states; however, it does call into question whether similar results might be anticipated. For this reason, and because several states are considering initiatives similar to the OFI, the researcher recommends further research into the impact of policies that are intended to redefine affirmative action in other states. Even more intriguing is

the likelihood of determining what effects these policies might produce with respect to minority access to higher education in these states. Given what we have seen in this study, it is anticipated that such policies implemented in other states would yield similar results, minorities gaining improved access to specialized graduate and professional programs offered in higher education institutions.

Further Research

While this study examined the impact of the OFI in Florida and the addition of two MSI law schools, the researcher believes that further study is warranted in this area. One might also consider replicating this study in the future to include data gathered from private law schools in the state of Florida. Private law schools in the state that have not been studied include St. Thomas University, University of Miami, Stetson University, Barry University, Nova Southeastern University Shepard Broad Law Center, and Florida Coastal School of Law. This study may also be replicated in other specialized fields where minorities are underrepresented, such as science, engineering, and others. Furthermore, it is conceivable that this study be expanded to other states, such as Texas, California, Washington State, and Michigan, where similar initiatives or proposals have been implemented to redefine affirmative action. The results of those studies can then be compared with the results from this research in Florida to determine if there are any similarities of outcomes.

When any new policy is implemented, it requires and deserves the scrutiny of researchers who will spend years analyzing the impact of such policy changes to determine if the actual results bear any resemblance to that which was promised or intended. Additional studies on this subject would serve the interests of higher education and the underrepresented in America. If it is found that policies intended to redefine affirmative action are harming the pursuit of diversity, it then serves the public interest to learn as much about the topic area as possible.

Discussion

This study found the representation of minorities in Florida's legal profession improved after implementation of OFI and the addition of two MSI law schools. In addition, this study concluded that minorities were represented in larger numbers in Florida SUS law schools; however, Black representation among students in law schools in the SUS of Florida as well as around the country has failed to make the kinds of strides that either affirmative action or race neutral incentives have promised.

According to the U.S. Census Bureau, Blacks made up 12.7% of the population in 2002 but at only one of the 30 law schools that are ranked the highest nationally, were Blacks anywhere near that level of representation (U.S Census, 2002). Minorities are similarly represented in Florida's law schools and in the state's legal profession. Data from the SUS of Florida public law schools suggest admission and enrollment numbers that rank Whites in first place, well ahead of other ethnic groups, Hispanic students second, Blacks in third place, and Asians and Native Americans fourth. These numbers are not unlike those that are certified by the FBA for the current percentage of attorneys by race. As a critical race theorist, the researcher believes that, while the intent of the OFI and the creation of two MSI law schools were to improve diversity, Whites benefited most because their opportunities to attend law schools in the SUS of Florida were expanded.

In an article entitled, “Among the nation’s 30 top-rated law schools, Harvard has the highest percentage of Black students,” researchers found that Black students are still underrepresented in law schools when compared with their representation in the U.S. population as a whole (“Among the,” 2007). Just over 11% of Harvard’s law school population is Black (“Among the,” 2007). Duke University School of Law has the next highest number of Black students among the top rated schools, followed by Georgetown University and Emory University law schools, each with more than nine percent Black enrollment (“Among the,” 2007). Researchers also found that at three of the top-ranked law schools where race neutral admissions policies are mandated by state law, Black enrollment is less than five percent of the institutions’ total student population.

The highest concentration of Black law students can be found on the six campuses of HBCU law schools, but even there, they are less represented than one might think. In an article entitled, “African American students at historically Black law schools,” researchers found that Howard University’s school of law has the highest percentage of Black students, representing just under three-fourths of all students, followed by Southern University’s law school, where Blacks make up more than 55% of the total student population (“African American students,” 2007). According to the ABA, the nation’s six historically Black law schools have a total of 1,484 Black students, or just over 15% of all Black law school students in the country.

Black law school enrollment has continued to fluctuate around the country from one academic year to another. For example, the nation’s ABA-accredited law schools boasted an enrollment of 7.1% Black in 2000 and only 6.2% in the 2005-2006 academic year (“Black Student,” 2007). An article entitled, “Black student enrollments in law school inch higher,” indicated that the number of Blacks in law schools is increasing, albeit slowly, with a 3.6% rise in total enrollment or 9,529 Black students in 2006-2007 (“Black Student,” 2007).

By the weight of the evidence widely available, one can only conclude what this researcher has, which is that minorities continue to be vastly underrepresented in colleges of law and, by extension, in the legal profession. The plight of minorities in law school has evolved despite improvements brought about by the use of affirmative action and race conscious practices meant to enhance minority enrollment. It took more than 30 years for affirmative action to have the kind of meaningful impact that has led to perceptible progress, yet only a few years of limited use of affirmative action policies could conceivably erase much of that progress. It should be noted, however, that this study concludes that minority representation improved as a result of the OFI and as a result of adding two additional MSI law schools. It is apparent that opening the two MSI law schools in Florida did not encourage the predominately White law schools to withdraw their traditional support of minorities in gaining admittance to their programs.

While not very many are willing to predict what the future holds, the situation represents numerous opportunities for further research into such complex issues as: What impact Florida’s decision to abandon all but race neutral policies in its admissions practices in public law schools will have on the private law institutions? What is the actual long-term effect of Florida’s implementation of the OFI on the state’s minority law population? How can there be middle ground found between two such widely disparate points of view? And, what are the long-term implications for the minority population of states who do not have an adequate number of minority lawyers to satisfy the perceived need of the minority community? Clearly, there is a

need for additional research in this area and hopefully this study will lead to future discussion on this subject matter.

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