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ACCESS TO HIGHER EDUCATION FOR SOCIAL AND ECONOMICALLY DISADVANTAGED GROUPS: LAW SCHOOLS OF PUERTO RICO

ALEXANDER G. REYNOSO-VÁZQUEZ*

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*People who live in difficult circumstances
need to know that happy endings exist.*

—Sonia Sotomayor¹

INTRODUCTION

The purpose of this Article is to demonstrate and persuade through empirical and quantitative data three primary findings: first, that the international and United States tendency in higher education admissions policies is to prefer methods that favor the democratization of knowledge and take into account educational inequalities experienced by poor or marginalized groups over pure and rigid meritocracy, which is limited to formal standardized test scores without consideration of socioeconomic disadvantages, aptitude, character, motivation, and commitment of the applicant, among other considerations. Second, this Article provides warning about the great income inequality gap that exists in Puerto Rico, which limits most of the population's access to a quality education at the primary levels that increases the chances of gaining access to institutions of social prestige, such as the law schools of Puerto Rico. Third, this Article shows that access to justice for the majority of poor Puerto Ricans depends on law schools assuming responsibility to the country and creating affirmative action policies that do justice to social and economically disadvantaged groups by providing access to higher education, not as a populist measure, but as one that promotes the socioeconomic development of Puerto Rico.

This Article posits that access to higher education for disadvantaged groups is the emblematic challenge of the 21st century for any country wishing for improved economic development and better quality of life for its citizens. Despite the many challenges of providing access to higher education (for example, technological hurdles and financial difficulties, in the improvement of staff training, and in the quality of teaching, among others),² this research focused on equal access conditions (admission)

¹ SONIA SOTOMAYOR, *MI MUNDO ADORADO VIII* (2013).

² United Nations Educational, Scientific and Cultural Organization, World declaration on higher education for the twenty-first century: vision and action, Preamble, WORLD CONFERENCE ON HIGHER EDUCATION (Oct. 9, 1998), http://www.unesco.org/education/educprog/wche/declaration_eng.htm.

Everywhere higher education is faced with great challenges and difficulties related to financing, equity of conditions at access into and during the course

and success (graduation) in higher education for socioeconomically disadvantaged groups and their manifestation in Puerto Rican law schools. This research addressed the socialization aspects typical of groups with low socioeconomic level (SEL) and how these are reflected in the future academic aspirations of these groups. The research analyzed international as well as domestic organizations and statutes that have taken steps forward to reduce the access gap for these groups. Additionally, the poverty incidence of Puerto Rico was examined in contrast to that of the United States using data collected by official entities, such as the United States Census Bureau and the Puerto Rico Statistics Institute. Likewise, an essential part of this Article analyzes federal and Puerto Rican judicial opinions that have addressed the issue of inequality of minority representation in higher education institutions and the implemented solutions, such as affirmative action programs based on race.

Finally, the situation of access to the law schools of Puerto Rico, whereby the great majority of law students are from the most socioeconomically privileged spheres, was presented to us. We proposed—according to the Constitutions of the United States and Puerto Rico and some additional laws—that an affirmative action program based on a low socioeconomic level be implemented in order to increase the number of admissions of socioeconomically disadvantaged students. In addition to the current indicators in admission programs, we suggest the use of additional indicators in the admission process, such as: (1) public school of origin; (2) geographical area where the applicant resides; (3) family wealth; (4) level and quality of education of the applicant's family nucleus; (5) the creation of a Student Recruitment Committee for students with low SEL, and (6) some types of conditioned admissions. This is a possible solution to achieve greater access, equity and representation of poor groups in higher and prestigious educational entities, specifically in the country's law schools.

of studies, improved staff development, skills-based training, enhancement and preservation of quality in teaching, research and services, relevance of programs, employability of graduates, establishment of efficient co-operation agreements and equitable access to the benefits of international cooperation. At the same time, higher education is being challenged by new opportunities relating to technologies that are improving the ways in which knowledge can be produced, managed, disseminated, accessed and controlled. Equitable access to these technologies should be ensured at all levels of education systems.

I. SOCIALIZATION, POVERTY, AND SCHOOL PERFORMANCE

The Real Academia Española defines socialization as the “[a]ction and effect of socializing,”³ and socializing, in turn, is defined as: “[p]romoting the social conditions in human beings that, independent of the relationships with the State, favor the integral development of their person.”⁴ In the same way, other students of the subject have suggested that there are two aspects of socialization, the psychological and the anthropological. The psychological aspects of socialization involve:

[T]he evolutionary aspects of the individual’s behavior that appear in the course of their interaction with one or more people, that is, in a social context. The differential effects produced by the infant’s first experiences, the different ways of raising the child, the peer group’s influences, or by any of the factors that shape the web of behaviors we call personality . . .⁵

The anthropological aspects are defined as “the description of the incorporation of a new person into the group and the person’s transformation into an adult capable of responding to society’s traditional expectations for a person of their age and sex.”⁶

Experts in sociology have expressed that socialization is composed of dialectical processes between the nature and the culture of an individual. In these processes, certain factors are generally relevant, such as the child’s first interactions with their mother or father, as well as the acquisition of a system of symbols and language that later serves as an instrument for the emancipation from a dependent relationship with their relatives, in turn stimulating processes of social interaction.⁷ Socialization is not an automatic process; rather, “it is a process in which neither the forms of interaction nor the symbols of language are superimposed on the child as something finished, but rather always constitute a ‘dialectical process’ whose lateral products are protosymbols.”⁸

In this relationship between the ways culture is acquired, there is an overlap between sociocultural inheritance and the implicit education

³ REAL ACADEMIA ESPAÑOLA, *DICCIONARIO DE LA LENGUA ESPAÑOLA* 2080 (22nd ed. 2001).

⁴ *Id.*

⁵ 10 DAVID L. SILLS, *ENCICLOPEDIA INTERNACIONAL DE LAS CIENCIAS SOCIALES* 7 (1977).

⁶ *Id.* at 16.

⁷ See ALFRED LORENZER, *BASES PARA UNA TEORÍA DE SOCIALIZACIÓN* (1976).

⁸ *Id.* at 108.

passed on by the family.⁹ In other words, “from their birth, the child immerses himself in a world of experiences that defines the framework of their primary socialization. The child assimilates *codes* and *classification schemes* that belong to the symbolic and cultural universe recognized and practiced by the family.”¹⁰ The socioeconomic level of their family substantially influences the child’s socialization processes through the capital they possess and thus the social class to which they belong. This is what Pierre Bourdieu called cultural capital, which refers to “the informal social skills, habits, linguistic styles, and tastes that a person cultivates as a result of their economic resources.”¹¹

A. *Distinct Socioeconomic Levels*

In addition to social class, modern sociologists and psychologists use different variables to analyze individuals’ economic differences.¹² These professionals “combine variations of wealth, power, resource control, and prestige in an index called socioeconomic level or SEL.”¹³ The SEL is the “relative position in society based on income, power, origins and prestige.”¹⁴ Although no variable is an exact measure of SEL, researchers have identified four levels: upper class, middle class (upper middle or lower middle), working class, and lower class. Each level indicates particular characteristics regarding income, occupation, education, ownership of property, health coverage, type of neighborhood in which the group resides, capacity to pay for children’s university and the degree of political power they possess.¹⁵

This research has uncovered the following characteristics of people belonging to the upper class according to their SEL: they had incomes equal to or greater than \$160,000; were businessmen, professionals or obtained income from their families’ wealth; went to prestigious universities and professional schools; were owners of at least one house; enjoyed full health coverage; lived in exclusive or affluent neighborhoods; easily

⁹ See JEAN-PIERRE POURROIS & HUGUETTE DESMET, *LA EDUCACIÓN IMPLÍCITA: SOCIALIZACIÓN E INDIVIDUALIZACIÓN* 9 (2006).

¹⁰ *Id.*

¹¹ WILLIAM MANN DOBRINER, *SOCIAL STRUCTURES AND SYSTEMS: A SOCIOLOGICAL OVERVIEW* 178 (1969).

¹² ANITA WOOLFOLK, *PSICOLOGÍA EDUCATIVA* 163 (11th ed. 2010).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* (citing J.J. MACIONIS, *SOCIOLOGY* 276–80 (9th ed. 2003)).

paid for the university education of their children, and possessed political power at the national, state or local level.¹⁶

The characteristics of people belonging to the middle class, as per our research, included: they had incomes between \$80,000 and \$160,000 (upper middle class) and \$40,000 and \$80,000 (lower middle class); were engaged in occupations involving offices and skilled labor; received a high school, university or professional school education; usually owned their home; regularly had health coverage; resided in well-off neighborhoods; generally had the capacity to pay for their children's university studies, and had political power at the state or local level.¹⁷

On the other hand, people belonging to the working class: had incomes between \$25,000 and \$40,000; were laborers; held high school degrees; owed half the mortgage payment on their house; had limited health coverage; lived in modest neighborhoods; rarely could pay the university of their children, and had limited political power.¹⁸

As for the members of the lower class: they received incomes under \$25,000; were engaged in unskilled labor, earned minimum wage; had education at the high school level or lower; did not own their home; did not have health insurance; lived in deteriorated neighborhoods; did not have the capacity to pay for their children's university, and did not possess any political power.¹⁹

In our opinion, these data are important to establish that both the culture acquired in the early stages of life and the social class to which a child is linked through their socialization are determining factors for many individuals at the moment of establishing what will be their academic aspirations and the level of higher education they wish to achieve.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

TABLE 1: Characteristics of the Different Socioeconomic Levels²⁰

Characteristics	Upper Class	Middle Class	Working Class	Lower Class
Income	\$160,000 or more	\$80,000 to \$160,000 \$40,000 to \$80,000	\$25,000 to \$40,000	Under \$25,000
Occupation	Businessmen, professionals, family wealth	Office worker, skilled labor	Laborer	Unskilled labor with a minimum wage salary
Education	Degree from prestigious universities or professional school	High school, university or professional school degree	High School Degree	High School degree or lower
Property Ownership	At least one house	Generally owns a home	Still owes half his or her mortgage	None
Health Coverage	Full Health Coverage	Generally full health coverage	Limited health coverage	None
Neighborhood of residence	Exclusive or comfortable	Comfortable	Modest	Deteriorated Neighborhood
Capacity to pay for children's university	Can easily afford children's education	Generally yes	Rarely	None
Political Power	National, state, or local level	State or local level	Limited	None

B. Socioeconomic Level and School Performance

According to investigations and reports published between 1990 and 2000, a moderate correlation exists (around 0.30) between SEL and school performance.²¹ Generally, “students of a high SEL, across all ethnic groups, show on average higher test performance and stay in school longer than students with low SEL.”²² Many children who live in poverty have at least double the chances of falling behind in school compared to those who live in different conditions.²³ Thus, the longer they live in

²⁰ *Id.* (citing J.J. MACONIS, *SOCIOLOGY* 276–80 (9th ed. 2003)).

²¹ *Id.* at 164 (citing S.R. Sirin, *Socioeconomic Status and Academic Achievement: A Meta-analytic Review of Research*, 75 *REVIEW OF EDUCATIONAL RESEARCH* 417–53 (2005)).

²² *Id.* (citing D.C. Berliner, *Our Impoverished View of Educational Reform*, 108 *THE TEACHERS COLLEGE RECORD* 949–95 (2005); L.M. Gutman, A. Sameroff & R. Cole, *Academic Growth Curve Trajectories from 1st grade to 12th grade: Effects of Multiple Social Risk Factor and Pre-school Child Factors*, 39 *DEVELOPMENTAL PSYCHOLOGY* 777–90 (2003)).

²³ *Id.*

poverty the greater the effect on their academic performance.²⁴ Additionally, the probability of repeating a school year or being placed in a special education class rises to 2 percent or 3 percent for each year the child lives in poverty.²⁵

It is impossible to point to one sole cause to explain the low school performance of low SEL students.²⁶ Families that do not have adequate access to health services or nutrition services can transfer the effects of life in poverty to their children even before birth.²⁷ These effects stem from the lack of prenatal care, premature births, legal and illegal drug consumption before birth,²⁸ higher levels of stress hormones that “could interfere with blood flow to the brain and development of synoptic connections,”²⁹ air and water contamination,³⁰ lead poisoning “associated with lower school performance and long-term neurological deterioration,”³¹ and the “lack of nutrition, cuts to basic public service, crammed or bad-quality housing, or lack of a stove or refrigerator.”³² These are only some of the common factors in the lives of poor children that provoke cognitive and learning problems and, consequently, low school performance.³³

It is also important to consider the psychological and sociological phenomena that some low SEL children face that impact their academic performance. Generally, many of these children are less familiar with school activities and books, use old clothes or speak in dialects, are underestimated by their professors and classmates, and can come to be thought of as not intelligent.³⁴ Teachers likely do not encourage their

²⁴ *Id.*

²⁵ *Id.* (citing P.L. Ackerman & M. O. Boyie, *Working Memory and Intelligence: The Same or Different Constructs?*, 131 *PSYCHOLOGICAL BULLETIN* 30–60 (2005); U. BRONFENBRENNER ET AL., *THE STATE OF AMERICANS: THIS GENERATION AND THE NEXT* (1996)).

²⁶ *Id.* (citing G.W. Evans, *The Environment of Childhood Poverty*, 59 *AMERICAN PSYCHOLOGIST* 77–92 (2004)).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* (citing J.P. Shonkoff, *A Promising Opportunity for Developmental and Behavioral Pediatrics at the Interface of Neuroscience, Psychology, and Social Policy: Remarks on Receiving the 2005 C. Anderson Aldrich Award*, 118 *PEDIATRICS* 2187–91 (2006)).

³⁰ *Id.* (citing G.W. Evans, *The Environment of Childhood Poverty*, 59 *AMERICAN PSYCHOLOGIST* 77–92 (2004)).

³¹ *Id.* (citing V.C. McLoyd, *Economic Disadvantage and Child Development*, 53 *AMERICAN PSYCHOLOGIST* 185–204 (1998)).

³² *Id.* (citing CHILDREN’S DEFENSE FUND, *CHILD POVERTY* 2005).

³³ *Id.*

³⁴ *Id.* at 165 (citing G.D. Borman & L.T. Overman, *Academic Resilience in Mathematics*

participation so as to protect them from the embarrassment of giving incorrect answers; in this way, low expectations become institutionalized.³⁵ Together with lower quality education, this institutionalization could generate learned helplessness in youth with low SEL. As a result, they might believe it impossible to achieve academic success since many of their friends and family could not, and so it might seem normal that they too drop out of school.³⁶

Likewise, at least one-fourth of low-income children that leave school (school dropout)³⁷ are convinced that it is difficult or impossible to move up in the established order through academic success.³⁸ In the same manner, they form part of a resistance culture in which, to maintain their identity and status inside the group, they feel compelled to avoid behavior that might make them succeed in school (for example, studying, cooperating with teachers, going to class) since acting like the dominant class would constitute a betrayal.³⁹ On the other hand, when they are placed in lower level classes for students with low school performance (for example, classes for low ability, general requirements, practicums, or vocational education), they are prone to be taught to memorize and be passive, but not to think critically or to be creative.⁴⁰ “When students with low SEL receive a lower quality education, their academic abilities are lower and their life opportunities are limited, starting with the fact that they are not prepared for *higher education*.”⁴¹ They also face the “stereotype threat [which] is the fear of confirming the stereotype.”⁴² “The basic idea consists in when stereotyped individuals find themselves

Among Poor and Minority Students, 104 THE ELEMENTARY SCHOOL JOURNAL 177–95 (2004)).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* (citing C.I. BENNETT, COMPREHENSIVE MULTICULTURAL EDUCATION: THEORY AND PRACTICE (3rd ed. 1995)).

³⁸ *Id.*

³⁹ *Id.* (citing C.I. BENNETT, COMPREHENSIVE MULTICULTURAL EDUCATION: THEORY AND PRACTICE (3rd ed. 1995); J. U. OGBU, UNDERSTANDING THE SCHOOL PERFORMANCE OF URBAN BLACKS: SOME ESSENTIAL BACKGROUND KNOWLEDGE, CHILDREN AND YOUTH: INTERDISCIPLINARY PERSPECTIVES 190–240 (1997); J. U. Ogbu, *Variability in Minority School Performance; A Problem in Search of an Explanation*, 18 ANTHRO. & EDU. Q. 312–34 (1987)).

⁴⁰ *Id.* at 167.

⁴¹ *Id.* (emphasis added) (citing J. Anyon, *Social Class and the Hidden Curriculum of Work*, 162 J. OF EDU. 67–92 (1980); M. S. KNAPP & S. WOOLVERTON, SOCIAL CLASS AND SCHOOLING, HANDBOOK OF RESEARCH ON MULTICULTURAL EDUCATION (2003)).

⁴² *Id.* at 172 (citing J. ARONSON, STEREOTYPE THREAT: CONTENDING AND COPING WITH UNNERVING EXPECTATIONS 279–301 (2002)).

in situations where a stereotype applies, they carry an additional emotional and cognitive burden. This burden is the possibility of confirming the stereotype, whether it is in [front of] others' eyes or to themselves."⁴³ Specifically, because of the perception that students with low SEL are not intelligent, they carry a heavy emotional burden when they find themselves in situations that confront those stereotypes, like standardized tests for university admission.⁴⁴

Another national study explains that the lack of emotional support and cognitive stimulation at home is responsible for either one-third or half of the disadvantages in language skills, reading, and mathematics for children living in poverty.⁴⁵ However, although SEL is a good indicator of children's academic performance, it is not always determinative. The key lies in the commitment of families of any SEL level to offering an environment that fosters their children's education. Reading to them, giving them educational books and toys, taking them to the library, and making time and space for learning fosters such an environment. In this way, children tend to become enthusiastic students and better readers.⁴⁶

II. ORGANIZATIONS AND STATUTES THAT PROMOTE ACCESS TO HIGHER EDUCATION INTERNATIONALLY

The right to higher education for all has been recognized since 1948 under Article 26 of the Universal Declaration of Human Rights.⁴⁷ Although the aforementioned article conditions access to higher education on the merits of the applicant, throughout the years nations have grown conscious that many disadvantaged groups face multiple obstacles as a result of their uncertain economic situation, a factor that causes them to not be able to obtain the merits necessary to access higher education. Ever since, many nations have explored proactive measure to improve the participation of these groups in higher education.

⁴³ *Id.*

⁴⁴ *Id.* at 172–74.

⁴⁵ *Id.* at 165 (citing S. Korenman, J. Miller & J. Sjaastad, *Long-term Poverty and Child Development in the United States: Results from the NLSY*, 17 CHILD. & YOUTH SERVICES REV. 127–55 (1995)).

⁴⁶ *Id.* (citing L. M. Morrow, *Home and School Correlates of Early Interest in Literature*, 76 J. OF EDUC. RES. 221–30 (1983); P. Shields, J. Gordon & D. Dupree, *Influence of Parent Practices upon the Reading Achievement of Good and Poor Readers*, 52 J. NEGRO EDUC. 436–45 (1983)).

⁴⁷ Universal Declaration of Human Rights Art. 26., G.A. Res 217th, U.N. GAOR, 3d Sess., 1st plen. Mtg., U.N. Doc. A/108 (Dec. 12, 1948).

In 1950, the International Association of Universities (IAU) was created, an international organization with the goal of “improving international comprehension and cooperation . . . and contributing to the development of a quality higher education around the world.”⁴⁸ Today the IAU is composed of more than 630 institutions and organizations from approximately 150 countries, and promotes:

[The] universities’ and other higher education institutions’ obligation to serve as social institutions to drive, through teaching, investigation and other services, the principles of liberty and justice, human dignity and solidarity; and contribute, through international cooperation, to the development of material and moral assistance for the strengthening of higher education.⁴⁹

In 2008, the IAU issued a declaration on its view of higher education titled *Equitable Access, Success and Quality in Higher Education*. In its preamble, the IAU expressed their “belief that equal access to a quality education contributes significantly to workforce progress at an international level and promotes social justice”⁵⁰ They outline the following key principles:

- Access to higher learning should be made possible to all regardless of race, ethnicity, gender, *economic or social class*
- *Targeted strategies and policies designed specifically to elicit the students’ full potential are required so as to increase access to, and success in higher education by individuals who are traditionally under-represented because of their social background, economic status, . . . [or] low quality of prior schooling or for other reasons.*⁵¹

At the same time, the IAU made recommendations to higher education institutions to “[d]evelop or strengthen admission policies and practices that emphasize the potential of each applicant and address equity of access and successful participation by offering a variety of flexible

⁴⁸ Juan Ramón de la Fuente, *El rol de la Asociación Internacional de Universidades en el desarrollo de la educación superior*, IESALC INFORMA DE EDUCACIÓN SUPERIOR.

⁴⁹ *Id.*

⁵⁰ INTERNATIONAL ASSOCIATION OF UNIVERSITIES, *EQUITABLE ACCESS, SUCCESS AND QUALITY IN HIGHER EDUCATION: A POLICY STATEMENT BY THE INTERNATIONAL ASSOCIATION OF UNIVERSITIES 1* (2008).

⁵¹ *Id.* at 1–2 (emphasis added).

learning pathways for entry and exit.”⁵² The IAU also gave recommendations for national governments to:

- Initiate targeted policies and programs to eliminate academic and other non financial barriers to access and successful participation in higher education.
- *Consider the educational system in a holistic manner, developing coherent policies and strategies that build effective links with prior levels of education and allow for flexible and seamless pathways for entry to and exit from higher education for all learners.*⁵³

In the last decade of the 20th century, the European Council included access to higher education as part of its agenda. In the Parma Conference of October 1992, the following was expressed in relation to higher education:

A path opened to its careful consideration, in reaction to the concerns of member states, each day more conscious of the importance of higher education for the economic future of their communities. *The objective was directed towards the increase in lack of participation from groups whose presence in higher education was shortfall.*⁵⁴

The United Kingdom, with the *Dearing Report*, published July 23, 1997, acknowledged that the country would only be able to economically compete and flourish if it adequately educated its workforce, from the beginning and for all of one’s life.⁵⁵ “The Report claimed better participation results in higher education the more interactions there were between universities and pre-university systems.”⁵⁶ Since the 1990s, Australia has upheld that its student population would reflect the social formation of the country.⁵⁷ On the other hand, China warned that despite seeing better access to higher education, much was left to do to reduce the gap.⁵⁸

⁵² *Id.* at 3 (emphasis added).

⁵³ *Id.* at 4 (emphasis added).

⁵⁴ ANTONIO GARCÍA PADILLA, *LA UNIVERSIDAD Y EL PAÍS: ESCENARIOS DEL SIGLO 21*, 86 (2012) (citing *Joint Conference on Access to Higher Education in Europe* (1992)) (emphasis added).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* (citing X. Ding, *Expansion and Equality of Access to Higher Education in China*, 2 *FRONTIERS OF EDUCATION IN CHINA* 151 (2007); Shen Hong, *Access to Higher Education for Disadvantaged Groups in China: A Summary Report*, 37 *CHINESE EDUC. & SOC.* 3, 54 (2004)).

In 1998, the United Nations Education, Science, and Culture Organization (UNESCO), in its Global Declaration regarding Higher Education in the twenty-first century, defined higher education as “all types of studies, training or training for research at the post-secondary level, provided by universities or other educational establishments that are approved as institutions of higher education by the competent State authorities.”⁵⁹

The Global Declaration stated that higher education is fundamental for sociocultural and economic progress and the future development of newer generations.⁶⁰ Article 1(b) reaffirmed that higher education principles must promote, as part of progressing towards human rights, the creation of “opportunity for individual development and social mobility in order to educate for citizenship and for active participation in society, with a worldwide vision . . .”⁶¹ Also in regards to equal access, Article 3(a) stated that:

In keeping with Article 26.1 of the Universal Declaration of Human Rights, admission to higher education should be based on the merit, *capacity, efforts, perseverance and devotion, showed by those seeking access to it*, and can take place in a lifelong scheme, at any time, with due recognition of previously acquired skills. *As a consequence, no discrimination can be accepted in granting access to higher education on grounds of race, gender, language or religion, or economic, cultural or social distinctions*, or physical disabilities.⁶²

Even though it is mentioned repeatedly that access to higher education will be based on merits by virtue of Article 3(d), nations have promised to take measures to facilitate access to historically underrepresented groups:

Access to higher education for members of some special target groups, such as indigenous peoples, cultural and linguistic minorities, *disadvantaged groups*, peoples living under occupation and those who suffer from disabilities, must be actively

⁵⁹ United Nations Educational, Scientific and Cultural Organization, World declaration on higher education for the twenty-first century: vision and action, Preamble, WORLD CONFERENCE ON HIGHER EDUCATION (October 9, 1998), http://www.unesco.org/education/educprog/wche/declaration_eng.htm.

⁶⁰ *Id.*

⁶¹ *Id.* at Art. 1(b) (emphasis added).

⁶² *Id.* at Art. 3(a) (emphasis added).

facilitated, *since these groups as collectivities and as individuals may have both experience and talent that can be of great value for the development of societies and nations. Special material help and educational solutions can help overcome the obstacles that these groups face, both in accessing and in continuing higher education.*⁶³

At the regional level, the International Institution for Higher Education in Latin America and the Caribbean (IESALC) is a body of UNESCO that contributes to the promotion, development, transformation and implementation of further educational programs of member countries in Latin America and Caribbean. This, with the goal of achieving “a culture of peace that permits to make viable—in an era of globalization—the development of human sustainability based on justice, equality, liberty, solidarity, democracy, and respect for human rights.”⁶⁴

Lastly, we examined the National Association of System Heads (NASH), whose existence traces backs to 1979. NASH is composed of the presidents of fifty-two colleges and universities of the higher education public systems in the United States and Puerto Rico. The entity serves more than two million undergraduate students, one-third of whom belong to underrepresented minority groups or are low-income students in higher education.⁶⁵ NASH made as a goal in 2015 that its universities reduce by 50 percent the gap in access to education and graduation of students from economically disadvantaged groups compared to their advantaged counterparts.⁶⁶ This is the first time that institutions of such caliber will measure graduation rates in terms of family income, gender, and disadvantaged sectors.⁶⁷

III. INCOME, POVERTY AND SOCIAL MOBILITY IN PUERTO RICO

Currently, the United States Department of Health and Human Services defines poverty as living with an annual income of \$23,550 for a family of four.⁶⁸ In other words, every family with at least four members and with a family income of \$23,550 or less lives in poverty.

⁶³ *Id.* at Art. 3(d) (emphasis added).

⁶⁴ INSTITUTO INTERNACIONAL PARA LA EDUCACIÓN SUPERIOR EN AMÉRICA LATINA Y EL CARIBE, <http://ess.iesalc.unesco.org.ve/ess3/index.php/ess/about>.

⁶⁵ GARCÍA PADILLA, *supra* note 54, at 88.

⁶⁶ *Id.*

⁶⁷ *Id.* at 89.

⁶⁸ Office of the Assistant Secretary of Planning and Evaluation, *2013 Poverty Guidelines*,

The data compiled in 2010 and 2011 by the United States Census Office reflect that the medium household income in Puerto Rico was \$19,370 in 2010, and continued to descend to \$18,660 in 2011. These numbers make Puerto Rico the poorest territory in comparison to the rest of the United States.⁶⁹ In contrast, Mississippi was the state with the lowest household income in the United States, at \$36,919 in 2011.⁷⁰ This is almost double the household income of Puerto Rican citizens. If we compare the numbers from 2011, an average Mississippi resident has \$18,259 in additional income compared to a Puerto Rican resident. Now in comparing the average income in the United States, which in 2011 was \$50,502,⁷¹ to Puerto Rico's \$18,660, we conclude that the average United States resident possesses \$31,842 more annually than a Puerto Rican on the island. Therefore, a United States citizen is 171 percent more wealthy, on average, than a Puerto Rican resident. These data undoubtedly show that the economic situation for habitants of the island is much more difficult and complex than for United States residents.

The Census Office utilizes an indicator known as Gini Index to measure wealth inequality. The scale of Gini Index varies from zero to one, zero indicating perfect equality and one indicating perfect inequality.⁷² In 2011, Puerto Rico's Gini Index was 0.531, whereas for the same date the United States' index was 0.475.⁷³ According to experts, these factors—among others—demonstrate that Puerto Rico is an underdeveloped country.⁷⁴ The unequal distribution of wealth is just as bad in the United States as in Puerto Rico, where only 1 percent of the population is made up of people with abundant economic resources.⁷⁵ For more evidence of the rampant inequality in Puerto Rico, while the medium household income in Puerto Rico was \$18,660 in 2011, a report from

U.S. DEPT. OF HEALTH & HUM. SERVICES, <https://aspe.hhs.gov/2013-poverty-guidelines>.

⁶⁹ Amanda Noss, *House Hold Incomes for States: 2010 and 2011*, *American Community Survey Briefs*, U.S. CENSUS BUREAU 5 (2012), <https://www.census.gov/prod/2012pubs/acs-br11-02.pdf?cssp=SERP>.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* at 1.

⁷³ *Id.* at 5.

⁷⁴ Ely Acevedo Denis, *¿Es Puerto Rico un país subdesarrollado?*, NOTICEL (Mar. 31, 2013, 9:19AM), <http://www.noticel.com/noticia/139467/es-puerto-rico-un-pais-subdesarrollado-1era-parte.html>.

⁷⁵ Ely Acevedo Denis, *Crece la desigualdad social puertorriqueña en la última década*, NOTICEL (Apr. 7, 2013, 7:02PM), <http://noticel.com/noticia/139472/crece-la-desigualdad-social-puertorriqueña-en-la-última-decada.html>.

the *Caribbean Business* established that in the same year Puerto Rico business profited \$26.5 billion, an increase of \$1.3 billion in profits compared to 2010.⁷⁶

“In the 1970s, the poverty rate on the Island was 62.8 percent, and in the subsequent two decades it dropped to 59.8 percent and 57.3 percent respectively. In 2000, it dropped to 48 percent and, in 2010, dropped to 45.5 percent.”⁷⁷ Statistics demonstrate there has been no significant change in the poverty rate during the last forty-three years, and the few noticeable changes are due in large measure to the massive exodus of citizens and social benefit programs that are mostly funded by federal money.⁷⁸

Doctor Linda Colón, ex-director of the Office of Special Communities, expressed the following regarding popular opinion on who is considered rich in Puerto Rico:

If you look at the 2010 Census in 40 municipalities no one has incomes greater than \$100,000 The majority of the Island is made up of middle class or low income, and in small towns, the perception is that a rich person is someone who has an income of \$60,000 (annually)⁷⁹

Additionally, Doctor Colón, concerned after analyzing the inequality and lack of formal employment that prevails within the Island, declared the following:

To the extent that alternative economic measures are not created for the sector of the population in poverty, a part of this sector has four years of high school but close to 40% has not completed high school. And that is a group for whom the possibilities of employment in the economic sector are completely restricted and closed. In that sense, I think that one of

⁷⁶ José L. Carmona, *Total Revenue of \$26.5 billion in 2011, up \$1.3 billion from 2000; Direct Employment of 142,835 people*, CARIBBEAN BUSINESS (Nov. 8, 2012), [http://www.caribbeanbusinesspr.com/prnt-ed/total-revenue-of-\\$26.51billion-in-201-up-\\$1.3-billion-from-2010-direct-employmentof-142835-people-7787.html](http://www.caribbeanbusinesspr.com/prnt-ed/total-revenue-of-$26.51billion-in-201-up-$1.3-billion-from-2010-direct-employmentof-142835-people-7787.html).

⁷⁷ Ely Acevedo Denis, *Hace 43 años no cambia la pobreza puertorriqueña*, NOTICEL (Apr. 9, 2013, 8:00PM), <http://www.noticel.com/noticia/139469/hace-43-anos-no-cambia-la-pobrezapuertorriquena.html>.

⁷⁸ *Id.*

⁷⁹ Ely Acevedo Denis, *Crece la desigualdad social puertorriqueña en la última década (Social inequality in Puerto Rico grows in the last decade)*, NOTICEL (April 7, 2013), <http://noticel.com/noticia/139472/crece-la-desigualdad-social-puertorriquena-en-la-ultima-decada.html>.

the factors to keep in mind is what is the social project we have and what is the long-term goal that is going to be implemented to eradicate a problem such as this . . . ⁸⁰

She suggested that to combat poverty in Puerto Rico, the priority is to implement a national plan that eradicates long-term poverty, something that has never been done in the country.⁸¹

To eradicate the poverty that plagues this country, it is of utmost importance we analyze the realistic possibilities of social mobility for Puerto Ricans. This analysis will serve to predict the type of society and opportunities that socially and economically disadvantaged groups will have to obtain a better quality of life through higher education. Social mobility is defined as “the ease with which a person can go up or down the socioeconomic ladder of a country.”⁸² Also, “it refers to the changes a person experiences when compared to other individuals in the socioeconomic ladder in their country.”⁸³ Within this framework, there are two types of societies: mobile and not mobile. The first are made up of countries that take advantage of human capital and allow their citizens to reach their maximum potential, with the fundamental factor being personal merit.⁸⁴ The second refers to “a society that does not reward effort or penalizes laziness, that does not offer opportunities to advance. It is a society where our destiny is predetermined by our parents’ economic position.”⁸⁵

What are the effects of economic inequality in accessing higher education for low-income and disadvantaged groups? What effects does this inequality have on the possibilities of social mobility of Puerto Rican citizens? What type of society (mobile or immobile) reflects a country with a high poverty and economic inequality index that has not changed significantly for forty-three years? I do not have an empirical answer to these questions, but I speculate that Puerto Rican society is getting closer, through the years, to falling under the social immobility definition

⁸⁰ Ely Acevedo Denis, *Hace 43 años no cambia la pobreza puertorriqueña*, NOTICEL (Apr. 9, 2013, 8:00PM), <http://www.noticel.com/noticia/139469/hace-43-anos-no-cambia-la-pobrezapuertorriquena.html>.

⁸¹ *Id.*

⁸² Fundación Espinosa Rugarcía, MOVILIDAD SOC., <http://www.movilidadesocial.org/content/%C2%BFque-es-movilidad-social>.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

and of an underdeveloped country; and, unfortunately, we refuse to take off the veil of pride or ignorance that impedes us from recognizing and attacking the problem at the root.

IV. NEXUS BETWEEN INCOME AND LEVEL OF EDUCATION IN PUERTO RICO

“Quality higher education is the primary mechanism of mobility in contemporary society.”⁸⁶ A narrow gap exists between Puerto Ricans’ level of education and obtainable income. According to the data from a report issued from the Census Office, a higher education obtained by Puerto Ricans means more obtainable income.⁸⁷ Adults twenty-five years old or older that did not have a high school diploma had an average income of \$9,500 annually. The average income of an adult with a high school diploma was \$12,200 annually. Those with a bachelor’s degree doubled their income compared to those with a high school diploma, reaching \$24,600, while those with a master’s, professional or doctorate degrees had an average income of \$35,600.⁸⁸

However, these numbers do not reflect the reduction in income that different groups from 1997 to 2007 have experienced, with the exception of those who have a master’s or higher. In other words, when the individual has a lower education level, there has been a decrease in income. For individuals with less than an eleventh grade education, income decreased by 4.4 percent between 1997 and 2007. For individuals with a high school diploma, it decreased 3.16 percent. This reduction was not as prominent for those with a bachelor’s degree, who experienced a decrease of 0.47 percent. Meanwhile, those with a master’s or higher saw a substantial increase of 7.69 percent in their income.⁸⁹ These numbers undoubtedly demonstrate the grand social value and economic benefit in obtaining an education at the highest levels (master’s, professional schools, and doctorates) in Puerto Rico.

V. ACCESS TO THE UNIVERSITY IN PUERTO RICO

The debate over access to education has two aspects. For some, democratization of access to education must prevail, while for others

⁸⁶ GARCÍA PADILLA, *supra* note 54, at 72.

⁸⁷ U.S. Census Bureau, *More Education Means Higher Wages In Puerto Rico; More Women Than Men Have a Bachelor’s Degree*, (Mar. 3, 2007).

⁸⁸ *Id.*

⁸⁹ Walter Díaz, *Clase social y logro educativo en Puerto Rico, Proyecto Carvajal para la democratización del conocimiento*, 2 CUADERNOS DE TRABAJO CARVAJAL 22 (2013). <https://academic.uprm.edu/cisa/Walter%20Diaz%20Universidad%20y%20Capital%20Humano.pdf>.

the most important thing is to guarantee the quality of the student body without ulterior considerations.⁹⁰ This debate comes down to greater access to education versus the integrity of the quality of education and the student body. In our judgment, in many cases this debate does not take into consideration the multiple difficulties that confront different disadvantaged social and economic groups who do not possess the best qualifications to thrive in the standard predetermined point system (merits). These groups deserve the opportunity for their university application to be evaluated holistically, taking into account the fact that they did not have available the same economic resources in their academic preparation as their high level SEL counterparts. In turn, it is important to take into consideration the low SEL of admission applicants to create more democratic institutions that reflect the social composition of Puerto Rico and at the same time open up real possibilities of social mobility.

The concept of social mobility has always permeated the University of Puerto Rico's (UPR) objectives. Since its conception in 1903, "the concept of social mobility applied to education was critical in efforts, projects and cultural/institutional inventories since the nineteenth century."⁹¹ The graduation rate of admitted students to bachelor programs . . . in or before 2006 was 52 percent for students without economic need (according to the Beca Pell opinion) and 48 percent for students with economic need."⁹² In 2009, UPR admitted 14,279 students and 9,381 students graduated. In both the admission rate (access) and the graduation rate (success), 59 percent of students came from public schools.

UPR was incorporated into the *National Association of System Heads* (NASH), together with another twenty public university systems of the United States. These university systems share the goal to reduce the gap in access and graduation rate of underrepresented groups by 50 percent by 2015.⁹³ During 2006 to 2009, the graduation rate (success) in Puerto Rico did not seem to be affected by the socioeconomic level of its students because, once admitted, UPR provided the necessary support for students to graduate, regardless of SEL. The problem instead resided in the admission rates (access).⁹⁴ Professor Antonio García Padilla,

⁹⁰ GARCÍA PADILLA, *supra* note 54, at 72.

⁹¹ *Id.*

⁹² *Id.* at 81.

⁹³ *Id.* at 88.

⁹⁴ *Id.* at 89.

ex-president of UPR and Emeritus Dean of UPR Law School, expressed the following in respect to this matter:

Studies show that students that come from families with an annual household income of \$7,500 or less tend to qualify for less than 25 percent of the University programs. In contrast, students from families with a household income of \$50,000 or more tend to qualify for admission to more than 90 percent of the programs available. These differences are not obviously ascribable to individual attributes. There are underlying structural problems.⁹⁵

In expressing his opinion on how to confront these underlying structural problems, Professor García Padilla concluded the following:

In our country, our goal in terms of access is distinct and in a certain sense more complex. *It has to do with the differences in academic opportunities offered in K–12 to the different sectors of our population, differences that are prejudiced toward students that come from socially economically disadvantaged families. These differences have to do with social networking support that, together with academic support, are critical to assure that every student, regardless of their background, has the opportunity to succeed in higher education.* In general, students from these groups do not see with the same intensity as others with better economic backgrounds the importance of education to succeed in life, nor do they situate themselves with the same level of urgency their expectations and aspirations for higher education or focus on the required preparation to face university if they finally decide to pursue it.⁹⁶

However, a country newspaper recently reported that access to URP by public school students has decreased dramatically over the past five years. During the period between 2009 and 2013, information compiled by Celeste Freytes, Vice President of Academic Affairs of UPR, demonstrates that the applications to UPR from public school students

⁹⁵ *Id.* at 91 (emphasis added).

⁹⁶ *Id.* at 90 (citing Mandy Savitz-Romer, Joie Jager-Hyman & Ann Coles, *Removing Roadblocks to Rigor: Linking Academic and Social Supports to Ensure College Readiness and Success*, INST. HIGHER EDUC. POL'Y (Apr. 2009), [http://www.ihep.org/assets/files/programs/pcn/Road blocks.pdf](http://www.ihep.org/assets/files/programs/pcn/Road%20blocks.pdf) (emphasis added)).

declined by 22.5 percent (11,237 in 2009 to 8,708 in 2013). Meanwhile, applications from private school students only decreased by 5 percent during that same period.⁹⁷

The situation at the time was similar in regards to admission. “Meanwhile the number of UPR admitted public school students decreased 19.4 percent between 2009 and 2013, from 8,434 to 6,793. Its private school counterpart only reduced 2.4 percent over the same period.”⁹⁸ At the same time, the Rio Piedras Campus (where UPR’s law school is located) is the facility with the most students coming from private school. In 2013, the facility reported that 64 percent of admitted students were from private schools, representing a 5 percent increase compared to 2009.⁹⁹ As we will see later, the situation in Rio Piedras Campus appears to be an exact reflection of what has occurred in UPR Law School from 2009 to the present.

VI. PUBLIC SCHOOLS IN PUERTO RICO

As we previously expressed, our analysis proposes utilizing, along with other factors, one’s public school background as a measure of economic necessity. According to studies, the type of school (public or private), is a reasonable measure of a student’s family’s economic solvency.¹⁰⁰ This is a criterion we propose should be utilized in creating solutions to the problems of access and graduation rates in law school in Puerto Rico for low SEL groups.

To comprehend the necessity of taking into consideration the type of school the student comes from, it is necessary to have a general mark of the number of private and public schools that exist in Puerto Rico and their enrollment rates. The Statistical Institute of Puerto Rico counted for the academic year 2009–2010 1,143 private schools and 1,509 public schools, for a total of 2,652 schools.¹⁰¹ For that same time period, there

⁹⁷ Cindy Burgos, *Menos estudiantes del sistema público en la UPR*, METRO (Aug. 26, 2013), <http://www.metro.pr/locales/menos-estudiantes-del-sistema-public-en-la-upr/pGXmhZl7HB-cFp5szryRU>.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.* (citing Bob Birrell, Ángel Calderón, Ian R. Dobson & T. Fred Smith, *Equity in Access to Higher Education Revisited*, 8 PEOPLE & PLACE 50 (2000)).

¹⁰¹ Orville M. Disdier & Mario Marazzi, *Perfil de Escuelas Públicas y Privadas: Año Escolar 2009–2010*, INST. DE ESTADÍSTICAS DE PR 8 (2011), <http://www.estadisticas.gobierno.pr/iepr/LinkClick.aspx?-fileticket=Xoaji44tkYU%3D&tabid=165>.

were a total of 493,393 students who enrolled in public schools,¹⁰² from which 38,851 were enrolled in twelfth grade in high school. Of all twelfth grade students, 24 percent—some 9,477 students—studied in private schools,¹⁰³ while the rest of the 76 percent—some 29,374 students—studied in public schools.¹⁰⁴ Only one in four public school students—25 percent—applies to UPR. On the other hand, three out of four private school students—75 percent—apply for admission.¹⁰⁵

Similarly, in 2007, of the 185 public high schools of the country, only 5.4 percent were able to place more than 60 percent of their fourth-year graduates in UPR.¹⁰⁶ This means the rest of the 94.6 percent of public high schools—175 public high schools—did not well facilitate their graduates' admissions or applications to UPR. Meanwhile, 48.2 percent of the 220 private high schools were able to allocate 60 percent of their graduates into UPR. This means that out of a total of 220 private high schools, only 113 did not achieve success in access and applications.¹⁰⁷

Certainly, the problem at the university level is the lack of applicants from many of the public schools of the country. For the applicants, this is perhaps due to the lack of cultural identification with public higher education, poor orientation, demotivation or misinformation. Perhaps many students, during their childhoods had not been instilled with a passion for learning or the vision that education could allow them to achieve a better quality of life. This situation cannot be excused. We as a society must take measures to correct the unequal representation of students from public schools in the UPR and in other higher education institutions in Puerto Rico.

VII. ACCESS TO HIGHER EDUCATION IN THE UNITED STATES AND PUERTO RICO

A. *United States*

In the United States, the problem of access to higher education for disadvantaged groups has been confronted by providing support to historically discriminated racial or ethnic minorities. In 2004, 65 percent of Hispanics in the United States who pursued higher education did so

¹⁰² *Id.* at 11–12.

¹⁰³ *Id.* at 22.

¹⁰⁴ *Id.* at 19.

¹⁰⁵ GARCÍA PADILLA, *supra* note 54, at 84–85.

¹⁰⁶ *Id.* at 85.

¹⁰⁷ *Id.*

through vocational programs, short careers, community colleges (institutions with careers of two years or less), while 55 percent of the white population who pursued higher education did so at universities with four-year programs.¹⁰⁸ Evidently, despite the lack of access for under-represented groups, when they do gain access it is through vocational programs and not through universities, professional schools, or doctorate programs socially recognized for their prestige.

To remedy the aforementioned phenomena, affirmative action¹⁰⁹ programs have been created to improve university access for historically discriminated minorities. “Affirmative action means positive steps taken to increase the representation of women and minorities in areas of employment, education, and culture from which they have been historically excluded.”¹¹⁰ The origin of these steps trace back to the concept of *equality* from the Thirteenth, Fourteenth, and Fifteenth Amendments of the United States Constitution and from the Reconstruction-era, post-Civil War of the United States.¹¹¹ In general terms, affirmative action programs are covered by the Equal Protection Clause of the Federal Constitution that states: “*No state shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws.*”¹¹² The term *affirmative action* was coined for the first time during the civil rights movements in favor of race-neutral laws and policy.¹¹³ However, it was then-President Lyndon B. Johnson—during his term between 1963 and 1969—who adopted the modern vision of *affirmative action* as a mechanism that privileged results and provided preferential treatment to minorities in work places (positive discrimination).¹¹⁴ Some of the most famous phrases President Johnson said in respect to *affirmative action* were:

¹⁰⁸ *Id.* at 82.

¹⁰⁹ For an analysis on affirmative action programs based in various theories of justice, see Isa Mabel Santori Rodríguez, *Programas de acción afirmativa en los procesos de admisión universitaria: Un acercamiento desde las Teorías de Justicia*, 82 REV. JUR. UPR 195 (2013).

¹¹⁰ STAN. ENCYCLOPEDIA OF PHIL., <http://plato.stanford.edu/entries/affirmative-action/index.html#note-1>.

¹¹¹ Neil Goldsmith, *Class-Based Affirmative Action: Creating a New Model of Diversity in Higher Education*, 34 WASH. U. J.L. & POL'Y 313 (2010) (citing Kent Kostka, *Higher Education, Hopwood, and Homogeneity: Preserving Affirmative Action and Diversity in a Scrutinizing Society*, 74 DENV. U.L. REV. 265, 268 (1996)).

¹¹² U.S. CONST. amend. XIV, § 1 (emphasis added).

¹¹³ Goldsmith, *supra* note 111, at 313.

¹¹⁴ *Id.*

You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, 'you are free to compete with all others,' and still justly believe that you have been completely fair.

....

... [A]bility is not just the product of birth. Ability is stretched or stunted by the family that you live with, and the neighborhood you live in—by the school you go to and the *poverty or the richness of your surroundings*. It is the product of a hundred unseen forces playing upon that little infant, the child, and finally the man . . . ”¹¹⁵

The United States Supreme Court decided the normative jurisprudence relating to affirmative action programs in *Regents of University of California v. Bakke*,¹¹⁶ *Gratz v. Bollinger*,¹¹⁷ and *Grutter v. Bollinger*.¹¹⁸ Recently, the Supreme Court resolved the case *Fisher v. University of Texas*¹¹⁹ by reiterating and modifying in part the previously adopted norm. However, these cases are about affirmative action plans based on race and not low socioeconomic level.

In *Regents of University of California*, a white youth denied admission to a state medical school (University of California Davis Medical School) brought a legal action questioning the institution's special program. Under said program, sixteen of the one hundred spots were reserved for racially disadvantaged minority students, who were evaluated by an admission criterion different from the general one.¹²⁰ The lower court held that the program violated the California Constitution, Title VI of the Civil Rights Act of 1964¹²¹ as well as the Equal Protection Clause of the Fourteenth Amendment. Regardless, the court did not order the plaintiff's admittance for lack of evidence that indicated that he would have been admitted if the special program did not exist. The California Supreme Court, applying strict scrutiny, invalidated the

¹¹⁵ Lyndon B. Johnson, *Commencement Address at Howard University: "To Fulfill These Rights,"* 2 PUB. PAPERS 635, 636 (1965) (emphasis added).

¹¹⁶ *Regents of University of California v. Bakke*, 438 U.S. 265 (1978).

¹¹⁷ *Gratz v. Bollinger*, 539 U.S. 244 (2003).

¹¹⁸ *Grutter v. Bollinger*, 539 U.S. 306 (2003).

¹¹⁹ *Fisher v. University of Texas*, 133 S. Ct. 2411 (2013).

¹²⁰ *Regents of University of California*, 438 U.S. at 274.

¹²¹ Title VI of the Civil Rights Act of 1964 § 601, 42 U.S.C. § 2000d (2006).

special admission program because it violated the Equal Protection Clause. In addition, the court invalidated it because it did not consider the method utilized to be the least onerous one to achieve the compelling state interest of a more diverse medical profession. Likewise, the Supreme Court applied strict scrutiny and, despite holding that achieving greater diversity in university admissions was a compelling interest, invalidated the program because it was not narrowly tailored to achieve its goal. Relevantly, the Court expressed, “[a]s the interest of diversity is compelling in the context of a university’s admissions program, the question remains whether the program’s racial classification is necessary to promote this interest.”¹²² Additionally, the Supreme Court held that the university’s method violated the rights guaranteed by the Fourteenth Amendment because by establishing a quota without regard to the usual qualifications of the applicant, it did not provide the opportunity to compete for the reserved seats.

Nevertheless, the Supreme Court affirmed that race or ethnic origin could be considered in admission as a *plus* factor, as long as those applicants still compete in the general pool of applicants for available seats. The ruling from this case would constitutionally sustain an *affirmative action* program for socioeconomic reasons, as long as the state institution considers it a compelling interest, the criterion is considered as a *plus* factor, and there are no established quotas. The Supreme Court expressed the following:

Ethnic diversity, however, is only one element in a range of factors a university properly may consider in attaining the goal of a heterogeneous student body. Although a university must have wide discretion in making the sensitive judgments as to who should be admitted, constitutional limitations protecting individual rights may not be disregarded.¹²³

In *Gratz*, several white youths brought suit against the University of Michigan questioning the undergraduate admission policy that was guided by a race-based affirmative action program. The admissions office considered academic grades (GPA) combined with other factors like the applicant’s race and minority group and give them a second score. Based on the point system, a table guide would determine if the

¹²² *Regents*, 438 U.S. at 314–15.

¹²³ *Id.* at 314 (emphasis added).

student would be admitted or rejected. Students with the same points were categorized into different tables based on the minority group to which they belonged. Students belonging to minority groups were given twenty automatic points. These twenty points represented 20 percent of the necessary points needed to obtain admission. The Supreme Court reiterated that the public university has a compelling interest to address diversity in admission in higher education, but the plan utilized by the admission office was not narrowly tailored to achieve that goal. The Court held that giving automatic points to a racial group, without individual considerations, would not survive strict scrutiny.

In *Grutter*, a white youth challenged the constitutionality of the University of Michigan Law School's admissions process, which involved an affirmative action program also based on race. The Supreme Court held that law schools have a compelling interest in addressing student body diversity. Michigan Law School evaluators would first check each student's GPA and Law School Admission Test (LSAT) score as important predictors of academic success, as the Law School would not want to admit students who could not handle serious academic challenges. The policy acknowledged that high grades do not guarantee admission and low grades do not deny admission. At the same time, the policy required admission officers to look beyond grades, to look at soft variables such as: the enthusiasm from the recommendation, the quality of the undergraduate institution, the applicant's essay quality, the applicant's area of specialty, the difficulty of degree, and other factors.

The policy aimed to achieve diversity that would enrich the educational experience of everyone. It did not commit to a particular type of diversity, but rather acknowledged diversity as all types. However, the University of Michigan Law School reaffirmed that it had a duty to include students who had been historically disadvantaged. Therefore, the institution wished to matriculate a critical mass of underrepresented minority students, taking into consideration the possible contributions that diversity could make inside the institution.

The admissions office did not establish quotas for minority groups, but rather established a goal to achieve a critical mass of underrepresented minority students. This approach sought to motivate minority students to participate more in classrooms and diminish both isolation and racial stereotypes. The office determined that establishing admissions quotas was unconstitutional; instead, the evaluation of all applications was to

be done holistically and individually, seriously considering all the ways the applicant can contribute to the goal of a more diverse university. In reference to this affirmative action in the law schools, the Supreme Court indicated the following:

The Law School engages in a highly individualized, *holistic* review of *each* applicant's file, giving serious consideration to *all* the ways an applicant might contribute to a diverse educational environment. There is no policy, either *de jure* or *de facto*, of automatic acceptance or rejection based on any single *soft* variable.¹²⁴

Recently, *Fisher* reiterated *Grutter's* norm, but modified its interpretation of how strict scrutiny should be applied to affirmative action. In this case, a young white female was again denied admission to a university, this time the University of Texas School of Law. The rejected youth sued the school officials alleging that its affirmative action program violated the Equal Protection Clause. The District Court granted summary judgment in favor of the university. The Court of Appeals for the Fifth Circuit affirmed summary judgment and gave substantial deferential treatment to the definition adopted by the university regarding its legitimate interest in diversity, such as in the determination that its plan was narrowly tailored to achieve that objective. The Supreme Court upheld *Grutter* and said that strict scrutiny must be applied to all admission programs that used racial categories or classifications.¹²⁵ The Court indicated, in turn, that the university enjoyed deference to its definition of its legitimate interest in diversity, but not in determining that its plan was narrowly tailored to achieve that objective. Even if the university establishes that its diversity objective is narrowly tailored, there will always exist the possibility of a subsequent judicial ruling analyzing the admission process.¹²⁶ Specifically, the Supreme Court declared that “[s]trict scrutiny does not permit a court to accept a school’s assertion that its admissions process uses race in a permissible way without a court giving close analysis to the evidence of how the process works in practice.”¹²⁷

Finally, the Supreme Court overruled the Court of Appeals and remanded the case back to the district court for the university to prove

¹²⁴ *Grutter v. Bollinger*, 539 U.S. 306, 309 (2003) (emphasis added).

¹²⁵ *Fisher v. University of Texas*, 133 S. Ct. 2411 (2013).

¹²⁶ *Id.* at 10.

¹²⁷ *Id.* at 12.

that its admission program was narrowly tailored to achieve the benefits of diversity in education.¹²⁸

B. Puerto Rico

However, in Puerto Rico the discussion addressing the lack of representation in higher education has to be posed in a different manner, that is, taking into account socioeconomic level. According to the 2010 Census, the total population of Puerto Rico is 3,725,789 people.¹²⁹ The Census has shown that when it comes to measuring population by race, on the Island, there is a dichotomy between the daily perception of Puerto Ricans and the population figures collected. Unlike the United States where racial differences are marked, in Puerto Rico, where the majority of the population is clearly mestizo or black, only 3 percent of the population—122,246 inhabitants—understands that they belong to two or more races; 8 percent—289,905 inhabitants—claim to belong to other categories; 12 percent—461,498 inhabitants—identify themselves as black; and the overwhelming majority, 76 percent—825,100 inhabitants—indicated being white.¹³⁰ Certainly, if we combine efforts in Puerto Rico to create affirmative action plans based on race so that racial groups discriminated throughout the history of Puerto Rico (mestizos, blacks, etc.) can gain access to higher education, we could suspect that the majority of the efforts would be received by only the 23 percent or 24 percent of the population that does not identify as white. In Puerto Rico, the process of determining who is white, black, mestizo, among other races, would be confused, scrutinized, and presumably be seen as unconstitutional.¹³¹

If race-based affirmative action programs in essence seek to assist historically discriminated racial groups in achieving access to higher education institutions—an access they have not reached due to the academic lags that are a consequence of racial or ethnic discrimination and the social marginalization of which they have been victims—this method could be applicable in the same way to the socially and economically disadvantaged sectors of Puerto Rico, which have also been discriminated against and marginalized historically, not so much because of the color of their skin or ethnicity, but because of the lack of economic

¹²⁸ *Id.* at 13.

¹²⁹ UNITED STATES CENSUS BUREAU, <http://www.census.gov/popfinder/?s=72>.

¹³⁰ *Id.*

¹³¹ It would take us back to the times in which we quantified the percentage of black or white in an individual's blood. See *Plessy v. Ferguson*, 163 U.S. 537 (1896).

resources that would enable a high-quality primary education and the acquisition of the necessary academic skills to later achieve the required merits to access higher education. As we have already seen, in Puerto Rico inequality and economic need affect the majority of the population. For this reason, as part of the efforts to increase disadvantaged groups' access to higher education, low socioeconomic level should be taken into consideration, with special emphasis on the public school the individual attended. When identifying students from disadvantaged sectors, these factors could have a more direct link and promote the integration of discriminated and marginalized groups into prestigious professions.

It should be noted that the Puerto Rican legal heritage has constantly ensured that it does not discriminate on the grounds of origin or social status and that it seeks to provide support to economically disadvantaged groups. During Puerto Rico's Constitutional Convention, Jaime Benítez articulated, to the best of his understanding, what the term "social origin" meant:

[N]o matter the person's origin, their economic situation, or their condition in the community, all Puerto Ricans and all persons subject to the laws of Puerto Rico are equal before our laws if this provision is approved, and any attempt to discriminate in favor or against one of them is illegal.¹³²

Likewise, in the Bill of Rights Commission, the following was said regarding the establishment of the right to a public education:

The establishment of a free public education system that is entirely non-sectarian is a natural consequence of the previous postulates. A democratic society has the obligation to provide for new generations the knowledge, values, techniques, skills, and the aptitudes that centuries of continued effort have translated into the heritage of civilized life. Already in the first section there was reference to the system of public education whose base is the responsibility to educate on the principles of essential human equality. There is, of course, an intimate relation between culture and the law. The vital guidelines contained in a constitution derive substantial part of their efficacy through the appreciation citizens have for them. *The public school has been one of the greatest forces of*

¹³² II DIARIO DE SESIONES DE LA CONVENCION CONTITUYENTE 1382 (1952).

*democracy, of collective unity and opportunity that are open to the people of Puerto Rico. Men and women of all social classes, religions, political groups, and races have been educated in the public-school classroom. In it they have learned equality, tolerance, and a strong work ethic. It must continue and amplify this responsibility and trajectory.*¹³³

Shortly thereafter, the Constitution of the Commonwealth of Puerto Rico adopted what was expressed in the Constitutional Convention and in the Bill of Rights Commission. The following clauses were also incorporated into the Constitution:

- The dignity of the human being is inviolable. All men are equal before the law. *No discrimination shall be made because of . . . social origin or condition. . . . Both the laws and the system of public instruction shall embody these principles of essential human equality.*¹³⁴
- *Everyone has the right to an education that leads to the full development of their personality and the strengthening of respect for the rights of man and fundamental freedoms. There shall be a system of public education that will be entirely free and non-sectarian.*¹³⁵

Several years later, in 1954, then-Chancellor of UPR Jaime Benitez recognized his commitment to economically disfavored groups:

Since its inception, the University is the first channel open to young Puerto Ricans to develop their natural aptitudes and contribute their talents, *independently of chance or destiny*. Until then, aside from the well-off youth who attend cultural centers overseas and the hard working self-taught, *the fate of the country's financially strained child was to be a store dependent or a professional's assistant. The University is here to change that destiny.*¹³⁶

Subsequently, in 1966, the *Law of the University of Puerto Rico* was approved, one of whose main objectives specified the intellectual

¹³³ IV DIARIO DE SESIONES DE LA CONVENCION CONSTITUYENTE 2561-62, 2564 (1952) (emphasis added).

¹³⁴ CONST. PR ART. II, § I (emphasis added).

¹³⁵ *Id.* § 5 (emphasis added).

¹³⁶ GARCÍA PADILLA, *supra* note 54, at 113 n.16 (citing Jaime Benitez, *Valores y problemas de la Universidad de Puerto Rico*, in JUNTO A LA TORRE: JORNADAS DE UN PROGRAMA UNIVERSITARIO 109, 116 (1962)).

development of people with limited economic resources.¹³⁷ The law specified its purpose as:

To fully develop the intellectual and spiritual wealth latent in our people, so that the values of intelligence and the exceptional personalities that arise from *every social sector, especially the least favored in economic resources*, can be put to the service of Puerto Rican society.¹³⁸

With respect to affirmative action policies, the closest we have seen in Puerto Rico was the holding issued in *Vicéns v. UPR*¹³⁹ in 1986. The petitioner alleged that the admission policies to the *Escuela Elemental*, a primary school sponsored by Universidad de Puerto Rico, were discriminatory and unconstitutional for granting five additional points solely to the children of professors employed by the institution. The plaintiff's children were denied admission and requested an injunction from Puerto Rico's lowest court, the Court of First Instance, which denied the request. The plaintiff then filed a petition for writ of certiorari to the Supreme Court of Puerto Rico, which denied them an appeal. Associate Justice Negrón García issued a dissenting opinion stating that granting those five points was a suspicious classification under the Constitution of the Commonwealth of Puerto Rico, and, therefore, that certiorari should have been granted and analyzed under strict scrutiny. Justice Negrón García articulated that:

This case revives in our soil the platonic conception—abandoned in the course of the history of civilization—that only the philosopher kings are the most apt to govern and educate. *The voices that hold today that the philosopher kings' sons are better able to study, and therefore are per se entitled to the privileges of access to a selective public education, forget that, in our democratic design, equality is the main component in the ideal of justice that constantly beats in the Constitution.*¹⁴⁰

In Puerto Rico, the right to an education and its real access is not just another incidental appendix to our property rights,

¹³⁷ Law of the University of Puerto Rico, Law Num. 1 of Jan. 20, 1966, 18 LPRA §§ 601–614 (2011 & Supl. 2012).

¹³⁸ *Id.* § 601 (b)(4) (emphasis added).

¹³⁹ *Vicéns v. UPR*, 117 DPR 771 (1986).

¹⁴⁰ *Id.* at 772 (emphasis added).

protected only by the due process principles of the law. It is autonomous. It holds a high seat on the scale of community values. In harmony with this principle, in Pagán Hernández v. U.P.R.,¹⁴¹ we characterized education as a vested constitutional right of great importance in contemporary society.¹⁴²

Subsequently, the plaintiff requested reconsideration. Using the grounds in Justice Negrón García's dissenting opinion, the Supreme Court of Puerto Rico later granted certiorari and ordered the requested injunction.

VIII. PUERTO RICO LAW SCHOOLS¹⁴³

A. *School of Origin of Those Admitted to the Law Schools of Puerto Rico*

Currently, according to their own statistics, some of the law schools in Puerto Rico seem to benefit students from private schools and those with a presumably high socioeconomic status. It was possible to obtain the statistics from the Interamerican University of Puerto Rico School of Law (INTER Law) and from the University of Puerto Rico School of Law (UPR Law). Although we did not manage to obtain the admissions information from INTER Law for the year 2009, we did obtain such information from UPR Law. That year, admissions to UPR Law reflected a total of 203 admitted students: 24 percent—fifty-nine students—from public schools in the country and 76 percent—154 students—graduates of private schools.

In 2010, INTER Law provided admission to a total of 249 students, of which 29 percent—seventy-one students—obtained their 12th grade diploma in a public school, while 71 percent—178 students—were from some private school. For the same year, UPR Law admitted a total of 202 students. Their enrollment was divided into 23 percent—forty-seven students—who were public schools graduates and 77 percent—155 students—private school graduates.

¹⁴¹ Pagan Hernandez v. UPR, 107 DPR 720 (1978).

¹⁴² Vicens, 117 DPR at 779 (citing Pagan Hernandez v. UPR, 107 DPR 720, 738 (1978) (emphasis added)).

¹⁴³ After several attempts to obtain the statistics reflecting the public or private school origin of the students that obtained admission to the different schools of law in Puerto Rico between 2010 and 2013, respectively, it was not possible to obtain data from Eugenio Maria de Hostos Law School (Hostos) nor the data from the Pontificia Universidad Católica Law School (PUCPR), because at that time they did not keep statistics of this type.

For the year 2011, only 38 percent—ninety-three students—of a total enrollment of 246 students came from public schools at INTER Law, while 62 percent—153 students—came from private schools.¹⁴⁴ For the same year, UPR Law reported a total enrollment of 215 students, of which only 34 percent—seventy-four students—came from public schools and the other 66 percent—141 students—from private schools.¹⁴⁵

In 2012, INTER Law reported a total enrollment of 128 new students, of which 38 percent—forty-nine students—had completed their previous studies in public schools, while 62 percent—seventy-nine students—had completed their previous studies in private schools.¹⁴⁶ In 2012, UPR Law reported a decrease of 11 percent—20 student less—in the number of admitted public school students, compared to the previous year. That is, by 2012, their total new enrollment was equal to 215 new admissions, where only the smallest 25 percent—fifty-four students—graduated from public schools while the overwhelming majority of 75 percent—161 students—came from private schools.¹⁴⁷

Unfortunately, the lack of representation of students from public schools continued in admissions in 2013, both at INTER Law and UPR Law. In 2013, INTER Law admitted a total of 217 students, of which a minority of 35 percent—seventy-seven students—came from the public system, while 65 percent—140 students—had completed their studies in private institutions. In the same year, UPR Law admitted 31 percent—sixty-four students—from public schools and 69 percent—142 students—from private schools, for a total of 206 students enrolled.

The final of unequal representation of public school students is clear in both schools. The percentages increased and decreased, but the gap continued and the percentage of public school students never exceeded 39 percent. The data does not lie. These statistics intensify the need to take action to address this issue.

¹⁴⁴ According to information provided by the Admissions Office at the Universidad Interamericana de Puerto Rico Law School on September 11, 2013.

¹⁴⁵ According to information provided by the Admissions Office at the Universidad de Puerto Rico Law School on October 24, 2013.

¹⁴⁶ According to information provided by the Admissions Office at the Universidad Interamericana de Puerto Rico Law School on September 11, 2013.

¹⁴⁷ According to information provided by the Admissions Office at the Universidad de Puerto Rico Law School on October 24, 2013.

TABLE 2: List of Students Admitted to Inter American University of Puerto Rico School of Law (INTER Law) from Public or Private Schools.¹⁴⁸

INTER Law			
Years	Total Number of Students Admitted	Students from Public School	Students from Private School
2010	249	71 (29%)	178 (71%)
2011	246	93 (38%)	153 (62%)
2012	128	49 (38%)	79 (62%)
2013	217	77 (35%)	140 (65%)
2010–2013	840	290 (35%)	550 (65%)

TABLE 3: List of Students Admitted to University of Puerto Rico School of Law (UPR Law) from Public or Private Schools.¹⁴⁹

UPR Law			
Years	Total Number of Students Admitted	Students from Public School	Students from Private School
2009	203	49 (24%)	154 (76%)
2010	202	47 (23%)	155 (71%)
2011	215	74 (34%)	141 (66%)
2012	215	54 (25%)	161 (75%)
2013	206	64 (31%)	142 (69%)
2009–2013	1,041	288 (28%)	753 (72%)

B. Law School Costs in Puerto Rico

With the purpose of demonstrating the need to implement an institutional mechanism that provides assistance to groups with low socioeconomic status in access and success to the Puerto Rico's law schools, it is important to present the costs of enrollment in each of these institutions. Tuition costs can be decisive for disadvantaged groups, first, in deciding whether to pursue a law degree and, second, in continuing studying for the three or four years necessary to complete the degree.

¹⁴⁸ According to information provided by the Admissions Office at the Universidad Interamericana de Puerto Rico Law School on September 11, 2013.

¹⁴⁹ According to information provided by the Admissions Office at the Universidad de Puerto Rico Law School on October 24, 2013.

The reality is that tuition costs are disproportionate among private law schools, namely: Eugenio María de Hostos Law School (FDEMh), Pontifical Catholic University of Puerto Rico School of Law (PUCPR), Inter American University of Puerto Rico Law School (INTER Law) and the only public school of law, University of Puerto Rico School of Law (UPR Law). This analysis takes into account only tuition costs, excluding annual increments, quota costs, required medical insurance, books and materials, housing costs, food, transportation, among others.

For the years 2006–2007, the cost per credit at FDEMh was \$400.00.¹⁵⁰ At the time, students needed to complete a program of 100 credits in order to graduate. If the cost per credit was multiplied by the total number of credits required to graduate, completing a law degree at the FDEMh had a total cost of \$40,000.00.

The cost per credit at PUCPR was \$450.00,¹⁵¹ which, multiplied by the amount of credits needed to obtain a Juris Doctor degree, which is ninety-four credits,¹⁵² totaled \$42,300.00 in costs of registration to complete a law degree.

INTER Law is the school with the highest cost per credit in the country. The cost per credit was \$457.00 during the 2012–2013 academic year.¹⁵³ If the previous amount is multiplied by the amount of credits required to graduate, which totaled about ninety-two credits, the cost to get a Juris Doctor at INTER Law was about \$42,044.00.

On the other hand, UPR Law has the lowest tuition costs in Puerto Rico. The cost per credit was approximately \$127.00 and it was subject to an annual increase of 6 percent.¹⁵⁴ The amount of credits required to apply for graduation and obtain the title of Juris Doctor is ninety-two credits.¹⁵⁵ Multiplying the cost of each credit by the amount of credits required, the

¹⁵⁰ FAC. DE DERECHO EUGENIA MARÍA DE HOSTOS. The Supreme Court of Puerto Rico recently removed FDEMh's accreditation. To know more about this particular issue see: *In re Fund. de Hostos*, 182 DPR 435 (2011); *In re Fund. de Hostos I*, 161 DPR 359 (2004); *In re Fund. de Hostos*, 159 DPR 707 (2003); *In re Fund. E. Ma. de Hostos II*, 158 DPR 786 (2003); *In re Fund. E. Ma. de Hostos I*, 158 DPR 784 (2003); *In re Fund. Fac. Der. E. Ma. de Hostos II*, 150 DPR 508 (2000); *In re Fund. Fac. Der. E. Ma. de Hostos I*, 150 DPR 315 (2000); *In re Fund. Fac. Der. E. Ma. de Hostos*, 145 DPR 217 (1998); *In re Fund. Fac. Der. E. Ma. de Hostos I*, 143 DPR 818 (1997); *In re Fund. Fac. Der. E. Ma. de Hostos*, 142 DPR 176 (1996); *In re Fund. Fac. Der. Eugenio Ma. de Hostos*, 141 DPR 663 (1996).

¹⁵¹ PONTIFICIA U. CAT. PR, ESCUELA DE DERECHO.

¹⁵² PONTIFICA U. CAT. PR, ESCUELA DE DERECHO CATÁLOGO 2011–2012, 11 (2012).

¹⁵³ BIBLIOTECA DE DOCUMENTOS DE LA U. INTER. PR.

¹⁵⁴ ESCUELA DE DERECHO DE LA UPR.

¹⁵⁵ *Id.*

cost to complete a career at UPR Law is significantly lower, since it would only cost about \$11,684.00. In other words, studying at UPR Law versus any of the other private schools clearly represents a substantial financial advantage, since studying in private schools increases the cost of enrollment significantly: the costs are an additional \$28,316.00 (242 percent more expensive) at FDEMH; \$30,616.00 (262 percent more) at PUCPR, and about \$ 30,360.00 (260 percent more) at INTER Law.

It is irrefutable that the mere fact of gaining access to the UPR Law represents an economic advantage as compared to private institutions. Therefore, these data further strengthen our position that affirmative action programs based on socioeconomic level are essential so that talented young people are not deterred from their aspirations to study law only and exclusively because of the costs involved. The challenge of inclusion is greater at UPR Law because it is the only public law school in Puerto Rico. UPR Law has assumed the responsibility of achieving greater access for disadvantaged groups, as established in its own laws.¹⁵⁶ Because it is the only school subsidized with funds from the treasury, which are collected from every socioeconomic sector in the country, all sectors deserve to be represented in its student body.

TABLE 4: Tuition Costs of Puerto Rican Law Schools¹⁵⁷

Law School	Cost per Credit	Credits Needed to Graduate	Total Tuition Cost	Additional cost compared to Tuition at UPR Law
FDEMH	\$400	100	\$40,000	\$28,316 (242% more costly)
PUCPR	\$450	94	\$42,300	\$30,616 (262% more costly)
INTER Law	\$457	92	\$42,044	\$30,360 (260% more costly)
UPR Law	\$127	92	\$11,684	-

¹⁵⁶ Law of the University of Puerto Rico, Law Num. 1 of Jan. 20, 1966, 18 LPRA §§ 601–604 (2011 & Supl. 2012).

To fully develop the intellectual and spiritual wealth latent in our people, so that the values of intelligence and the spirit of the exceptional personalities that arise from all social sectors, especially those less favored in economic resources, can be put at the service of the Puerto Rican society. *Id.* § 601(b)(4) (emphasis added).

¹⁵⁷ See FAC. DERECHO EUGENIO MARÍA DE HOSTOS; PONTIFICIA U. CAT. PR, ESCUELA DE DERECHO; PONTIFICIA U. CAT. PR, ESCUELA DE DERECHO CATÁLOGO 2011–2012, (2012); BIBLIOTECA DE DOCUMENTOS DE LA U. INTER. PR; ESCUELA DE DERECHO DE LA UPR.

C. ABA's Accreditation Standards for Law Schools in Puerto Rico

In Puerto Rico, there are only three law schools accredited by the Supreme Court of Puerto Rico and the American Bar Association (ABA), two of them relatively expensive and one with low costs. Graduating from a law school accredited by the ABA or by the Supreme Court of Puerto Rico is a requirement to practice law and notary in Puerto Rico.¹⁵⁸ Therefore, receiving accreditation from the ABA is indispensable for any law school in Puerto Rico. This accreditation, in addition to representing a requirement of admission to the legal profession, is also a requirement for admission to multiple institutions in the United States for Master of Law (LL.M.) programs.

The ABA imposes many requirements for law schools that wish to maintain their accreditation. The requirements that concern us are those addressing equal opportunity of access and student diversity that are included in Standard 212. Equal Opportunity and Diversity, which reads as follows:

(a) Consistent with sound legal education policy and the Standards, a law school shall demonstrate by *concrete action a commitment to providing full opportunities for the study of law and entry into the profession by members of underrepresented groups*, particularly racial and ethnic minorities, and a commitment to having a student body that is diverse with respect to gender, race, and ethnicity.

...

Interpretation 212-1

The requirement of a constitutional provision or statute that purports to prohibit consideration of gender, race, ethnicity or national origin in admissions or employment decisions is not a justification for a school's non-compliance with Standard 212. A law school that is subject to such constitutional or statutory provisions would have to demonstrate the commitment required by Standard 212 by means other than those prohibited by the applicable constitutional or statutory provisions.

¹⁵⁸ Graduating from a law school accredited by the ABA or by the Supreme Court of Puerto Rico is a requirement for admission to practice law in Puerto Rico. See Reglamento para la Admisión de Aspirantes al Ejercicio de la Abogacía y la Notaría, 4 LPRA Ap. XVII-B, R. 4.1.1.(b) (1998).

Interpretation 212-2

Consistent with the U.S. Supreme Court's decision in *Grutter v. Bollinger*, 529 U.S. 306 (2003), a law school may use race and ethnicity in its admissions process to promote equal opportunity and *diversity*. Through its admissions policies and practices, a law school shall take *concrete actions to enroll a diverse student body that promotes cross-cultural understanding, helps break down racial and ethnic stereotypes, and enables students to better understand persons of different races, ethnic groups and backgrounds.*

Interpretation 212-3

*This Standard does not specify the forms of concrete actions a law school must take to satisfy its equal and diversity obligations. The determination of a law school's satisfaction of such obligations is based on the totality of the law school's actions and the results achieved. The commitment to providing full educational opportunities for members of underrepresented groups typically includes a special concern for determining the potential of these applicants through the admission process, special recruitment efforts, and programs that assist in meeting the academic and financial needs of many of these students and that create a more favorable environment for students from underrepresented groups.*¹⁵⁹

Undoubtedly, the ABA is one of the many organizations worldwide that has become aware of the lack of access to higher education for underrepresented groups. To enjoy the accreditation of a prestigious institution such as the ABA it is essential that PUCPR, INTER Law, and UPR Law reconceptualize their admission policies to be consistent with the goal of achieving greater access to justice through the democratization of the Puerto Rican legal profession.

UPR Law has a great challenge and a great responsibility to the poorest sectors of the country since it is the most cost-effective law

¹⁵⁹ 2013-2014 A.B.A. STANDARDS & RULES OF PROC. FOR APPROVAL OF L. SCH. 16 (2013), https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_final_aba_standards_and_rules_of_procedure_for_approval_of_law_schools_body.pdf.

school on the Island. The institution determines the admission of its incoming classes in the following way:

Admission is determined on the basis of a numerical range of academic excellence tabulated from the combined percentiles of the three basic criteria of admission: the cumulative general academic index of baccalaureate studies, as computed by the Law School Data Assembly Service (LSDAS), LSAT test score, and the EXADEP score. *All three criteria receive the same weight in the tabulation of the numerical range. Out of the entire universe of applicants, the Law School offers admission to applicants with the best indices or numerical ranges of admission.*

Additionally, admission is offered to *fifteen additional students, at the recommendation of the Admissions Committee*, whose members evaluate the files of the applicants *who placed in the sixty positions following those admitted*. In this process, the Committee reviews the student's personal statement, as well as any written work presented. *It also considers elements such as socio-economic disadvantages of the applicant, characteristics of the applicant that would contribute to the diversity of the student body, his or her academic achievements, graduate studies completed in other discipline(s), trends in his or her academic progress, talents, publications, extracurricular activities, and any other applicant traits pertinent to the study of law.*¹⁶⁰

This means, according to the data presented previously in Table 3, that on average UPR Law admits 208 students every year, of which only fifteen would go through the holistic analysis of the Admissions Committee. *That is, of the 100 percent of those admitted, only 7 percent of these would enjoy a holistic analysis of their application for admission that would take into consideration socioeconomic disadvantages.* This reaffirms the need for UPR Law to adopt affirmative action policies in order to increase the socioeconomic diversity of its student body through the holistic evaluation of all applications received. They must consider socioeconomic disadvantage, but not only for the fifteen students within the universe of sixty students who were also listed according to their numerical range when evaluating the academic index (GPA), Admission

¹⁶⁰ ESCUELA DE DERECHO DE LA UPR (emphasis added).

Examination to Graduate Studies (EXADEP) and Law School Admission Test (LSAT). This type of evaluation is antiquated, undemocratic and does not take into consideration the aptitude, motivation, character and commitment of the applicant. It does not address the socioeconomic disadvantages that prevent poor applicants from obtaining previous academic preparation that would assist them in obtaining the required scores for admission as compared to their economically favored counterparts.¹⁶¹ In failing to consider socioeconomic factors in all the applications for admission received, UPR Law is unconsciously forcing disadvantaged students who truly want to pursue a career in law—ignoring that those with the drive and determination used to overcome poverty perform well in the academic field—to enter one of the private law schools, which have slightly more democratic admission criteria but often turn out to be too expensive.¹⁶² Ironically, this system imposes on students with less economic resources the burden of a greater financial sacrifice by enrolling in private institutions. This situation could even have the negative repercussion of inducing these groups to renounce their aspiration to pursue a legal career, perpetuating the norm that the Puerto Rican legal profession is constituted, in its immense majority, of privileged socioeconomic groups and is not representative of the social composition of the rest of the country.

Precisely, this is the call made by the decisions of the Supreme Court of the United States in *Regents of University of California, Gratz, Grutter*, and *Fisher*, as well as the ABA's Standard 212. That is to say, once the educational institution establishes a policy to increase the diversity of its student body, it cannot implement quotas and must evaluate all its applications in a holistic way, trying to create a critical mass of

¹⁶¹ *Id.*

¹⁶² See Richard H. Fallon, Jr., *Affirmative Action Based on Economic Disadvantage*, 43 UCLA L. REV. 1913, 1929 (1996). The Harvard Law School professor provides us with an illustration:

Such tests would underpredict the actual performance capacity of the poor, for whom some corrective steps might be warranted. In addition, there may be contexts in which the fact that someone comes from an economically disadvantaged background—although ignored by an institution's normal criteria for the award of jobs or educational opportunities—actually bears on her likely capacity to perform a relevant, socially valuable function. To cite just one possible example, the drive and determination needed to overcome disadvantages associated with poverty might predictably help someone succeed in academic or professional work. *Id.*

underrepresented students so that they do not feel isolated or marginalized and can contribute their experiences to the greater socioeconomic diversity of every student.

CONCLUSION

When it comes to access to higher education, we must emphasize that it is time for people who give more importance to figures that supposedly predict academic excellence to become aware that by thinking in this way they are submerging in the suburbs of poverty, misery and unhappiness a great number of potential and extraordinary talents, who have seen limited opportunities to progress in life due to lack of economic resources. The debate must move towards the search for greater access to justice through greater access, inclusion and democratization in higher education.¹⁶³ According to professor García Padilla:

As we can see, the dichotomy between excellence and the democratization of higher education is false . . . It is time for Puerto Rico to discard this dichotomy and all of its derivations. It is true, for example, that we need to summon more young people to the trades and to the so-called technical careers . . . What is not certain is that those called to these trades must be students from public schools, while those from private schools are invited to look at universities. It is true that true success and ineffable happiness in life do not necessarily require a university education. What is not correct is that some socio-economic sectors of the community must and can pursue success and happiness with the help of university education, while other sectors must embark on this search without it.¹⁶⁴

This mission has been welcomed by organizations such as the Center for University Access at the University of Puerto Rico of Mayagüez,¹⁶⁵ with its Carvajal Project for the Democratization of Knowledge, and the pro bono ENLACE with the public schools associated with UPR School of Law.¹⁶⁶ The former works with underprivileged students who

¹⁶³ GARCÍA PADILLA, *supra* note 54, at 101.

¹⁶⁴ *Id.*

¹⁶⁵ See CENTRO UNIVERSITARIO PARA EL ACCESO DEL RECINTO UNIVERSITARIO DE MAYAGÜEZ, http://www.cua.uprm.edu/public_main/index.php.

¹⁶⁶ See DERECHO UPR ENLACE CON ESCUELAS PÚBLICAS, <http://www.enlacederecho.org>.

live in public housing projects in the town of Mayagüez, offering tutoring, talks and tours so that they can envision for themselves admission into the Mayagüez University Campus of the University of Puerto Rico. In the latter, teachers, students and alumni summon public school students from everywhere in the Island to be part of their organization for a semester. Efforts are coordinated to offer Saturday workshops, tours and talks by lawyers and judges, among other personalities of the legal world. These efforts all share the purpose of:

[E]nriching the country's legal community through the promotion of the need to incorporate students from public schools into the Island's law classrooms, in order to obtain a guild that is more diverse and sensitive to the access to justice problems that afflict Puerto Rico.¹⁶⁷

However, it is our opinion that although philanthropic work is necessary, it is insufficient. Many people agree that poor sectors should have access to law schools; the problem arises in how we create effective mechanisms to achieve that access. Some think that this problem must be worked out in other spheres outside law schools. We understand that correcting this problem will require a combination of external and internal efforts. Since solving the issues of poverty and poor quality of education in some public schools is a task that is not within our reach, we have a duty to proactively address the situations that are within our reach, such as making the admissions process a more democratic one. The inequality between students from public schools versus those from private schools in competing in the current meritocracy is palpable, and this is reflected in the admissions statistics. We must remove our veil¹⁶⁸ from our eyes and take affirmative measures to solve this situation; excuses as to the lack of merits must be left in the past, as reflected by institutions of higher education at the international level. Now is the historical moment in which the people who control admission policies of educational institutions must discard their prejudices, transmute their evaluative conceptions towards a "multi-dimensional approach"¹⁶⁹ to equality, and accept the reality that is supported by data.

¹⁶⁷ *Id.*

¹⁶⁸ Analogy taken from veil metaphor by the sociologist W.E.B. Du Bois. See W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* (1903).

¹⁶⁹ See Efrén Rivera Ramos, *La Igualdad: Una visión plural*, 69 REV. JUR. UPR 1, 25–26 (2000). The author expresses the following:

It is through this transformation that the mission to benefit individuals who otherwise would not have gained access becomes viable. It is only necessary to leave aside prejudices, to see the virtues of increasing the poor's access to a legal education, to have commitment and will, and to accept the challenge.

Economically disadvantaged groups' lack of access to professions that enjoy great value and reputation "when it comes to obtaining positions of influence and good remuneration"¹⁷⁰ not only occurs in medical or engineering schools;¹⁷¹ rather, it is evident that law also suffers from this problem. The data mentioned above clearly show that students from public schools in Puerto Rico—most of them with greater economic need—are not being represented fairly in Puerto Rico's schools of law. Implementing affirmative action programs based on a low socioeconomic level is urgent in order to promote a socioeconomically diverse environment representative of Puerto Rican society both in law schools and in the legal profession. We owe it to our society as defenders of access to justice in all of its manifestations. Solutions to this structural problem must be multisectoral. First, children's initial socialization is the responsibility of their parents or guardians, regardless of the socioeconomic level of the family. As for parents, mothers or caregivers with low socioeconomic level, they have the duty to strengthen the self-esteem of their children; provide them with support and a rigorous education; encourage love for reading; eliminate the myths and psychological, sociological and

To address, in a multidimensional way, the problem that the real differences of people pose to normative systems, we will have to resort to actions and decisions of various kinds. Sometimes it will be necessary to eliminate legal barriers: other times, obstacles of another kind. *It may be necessary to provide the resources, protection or services necessary for equality to become real and not remain a mere promise of the system. At times, active intervention will be required to level asymmetric and oppressive power relations.* The latter is particularly crucial in the context of relationships based on referents such as race, sex, sexual orientation, and *social class*.

....

Finally, this multi-dimensional approach will always require an effort to contextualize our examination. The historical, social, economic, political, cultural and institutional context in which a certain phenomenon develops, the type of social relations and the practices and meanings of which it is a part, *as well as experiences, perceptions, suffering, dreams, aspirations, frustrations, and hopes of the concrete people affected will have to be part of the analysis.* *Id.* (emphasis added).

¹⁷⁰ GARCÍA PADILLA, *supra* note 54, at 82.

¹⁷¹ *Id.*

cultural barriers that may hinder their academic performance; and instill the idea that higher education is the best alternative to achieve social mobility and higher quality of life.

Second, the government must implement measures so that the educational quality of public schools is one of excellence and competitiveness at the national and international levels. All teacher-training programs must be improved and accredited, both at UPR¹⁷² and at other private institutions. Eliminating the financial barriers imposed by some of the admission requirements of higher education institutions, such as administering the College Board exam free of charge and to all public high school students, is imperative.¹⁷³ Correcting this situation is exactly what Senate Bill 759 intends, to establish the Equality of Opportunities and Access to Higher Education Act. Under this law, the cost of taking the College Board exam will be paid for the first two times for public school students who are in their third and fourth year of high school. The government's high interest in improving access to higher education for socioeconomically disadvantaged groups derives from its explanatory statement. Its project states the following:

The Commonwealth of Puerto Rico has the challenge of establishing a clear and defined public policy that recognizes education as a top priority and that creates equal opportunities for all our students. This challenge necessarily involves qualitatively improving the Public Education System in order to have a positive impact on the country's quality of life. It is through quality education that we really address the issues behind violence, crime, unemployment, poor quality of life, and most mental health problems.

....

It is imperative that all students in public schools have access to admission tests to post-high school institutions irrespective of their economic situation. It is a social investment, for the future.¹⁷⁴

¹⁷² *Id.* at 93.

¹⁷³ *Id.* at 97–99; Rebecca Banuchi, *College Board será gratis para alumnos de escuela pública desde septiembre*, EL NUEVO DÍA (Apr. 4, 2013), <http://www.elnuevodia.com/college-board-seragratisparaalumnosdeescuelapublicadesdeseptiembre-484o75.htm>.

¹⁷⁴ P. del S. 759, 17ma Asam. Leg., 2da Ses. Ord (2013).

Third, Puerto Rico law schools have a moral and civic responsibility to promote access to justice through the implementation of affirmative action programs for the admission of socioeconomically disadvantaged students.¹⁷⁵ This method of admissions based on a low socioeconomic level has been implemented at the undergraduate level at multiple universities without being subject to lawsuits.¹⁷⁶ Some of the universities that have implemented these programs are: Harvard College,¹⁷⁷ University of Virginia,¹⁷⁸ University of California¹⁷⁹ and more than 500 universities in the United States and around the world, which use the university applications analysis services provided by The Common Application. The Common Application is a nonprofit organization that, for more than thirty-five years, has been committed to providing holistic and comprehensive selection processes that promote equality and access.¹⁸⁰ The process we suggest as an affirmative action program based on low

¹⁷⁵ For an analysis of the three types of affirmative action programs: those based on merit, transformative ones, and those not based on merit, see Fallon, Jr., *supra* note 162, at 1928–30.

¹⁷⁶ *Goldsmith, supra* note 111, at 336.

At a 2003 Department of Education Conference, then-Education Secretary Roderick Paige declared that “university doors have now opened to rural and low-income students who never before had a prayer of attending those schools. Where once students from a small number of high schools held the monopoly on elite colleges, students from low-income and low-performing schools are now winning admission” *Id.* at n. 143 (citation omitted) (emphasis added).

¹⁷⁷ “Harvard has used data estimating family income through ZIP codes in conjunction with student test scores to target prospective low-income students.” *Id.* (For policies implemented with the purpose of improving diversity by Harvard College, see HARVARD COLLEGE, <http://www.gsas.harvard.edu/prospective-students/diversity-at-gsas.php>).

¹⁷⁸ “The University of Virginia has increased information-sharing between financial aid and admissions for the purpose of recruiting more low-income students.” *Id.*

¹⁷⁹ “The University of California system has utilized a scheme whereby admissions officers take into account a student’s ‘life situation’, including such factors as ‘whether he or she lives in a high crime neighborhood, has been a shooting victim..., or comes from a single-parent home.’” *Id.*

¹⁸⁰ Specifically, the organization’s mission establishes:

The Common Application is a not-for-profit membership organization that, since its founding over 35 years ago, has been committed to providing reliable services that promote equity, access, and integrity in the college application process. We serve students, member institutions, and secondary schools by providing applications that students and school officials may submit to any of our over 500 members. Membership is open to colleges and universities that promote access by evaluating students using a holistic selection process. THE COMMON APPLICATION. <https://www.commonapp.org/Login#!PublicPages/Mission>.

socioeconomic level would be easy to implement and would require nothing more than the willingness to obtain better socioeconomic diversity. We now outline the procedures to follow:

- a. Initially, law schools in Puerto Rico must take a step forward and institutionally recognize that there is a gap in the representation of socioeconomically disadvantaged sectors in their enrollment and that this gap must be reduced. Then, law schools must make a declaration of institutional policy in which they adopt the objective to achieve greater socioeconomic diversity in the student body.
- b. Subsequently, they must institute an affirmative action program based on low socioeconomic level and pursue the objective of achieving a critical mass of students with low socioeconomic level, which will promote diversity in points of view and provide confidence to low socioeconomic level students to participate in their courses.
- c. Currently, Puerto Rico law schools evaluate an applicant's personal statement about their interest in studying law, the quality of the written work submitted, the student's GPA, the scores of the standardized tests EXADEP and LSAT. With respect to the LSAT, it is ironic and worrisome that the main exam required to obtain admission into the law schools of Puerto Rico is offered in the English language. This is true even when the 2011 Puerto Rico Community Survey showed that, out of the population of age five or older—totaling 3,489,898—of which about 3,318,530 spoke Spanish at home, a large majority of 2,795,593 spoke English less than very well.¹⁸¹ This means that 80 percent of Puerto Ricans do not master the English language. It would be interesting to research how many people from the remaining 20 percent, who said they have a good command of the English language, come from public schools or socioeconomically disadvantaged groups in Puerto Rico.¹⁸²

¹⁸¹ UNITED STATES CENSUS BUREAU, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11YRDPo2PR&prodType=table.

¹⁸² “As previously mentioned, some high schools simply do not offer enough advanced-level courses and extracurricular activities for an applicant to be competitive with students from other schools.” *Goldsmith, supra* note 111, at 343–44. Further, in note 173, the author makes

Applicants who have taken classes in private schools from the elementary school level on, where all education is provided in English, have an unquestionable advantage. These applicants think and reason in English; their mother tongue is English. Thus, when they take the LSAT, which measures analytical reasoning in English, these students far exceed the scores of other applicants who have studied in public school and that carry certain deficiencies, which possibly not even undergraduate university education can cure. The Law School Admission Council (LSAC) has become aware of this situation and will be offering the LSAT in the Spanish language exclusively in Puerto Rico starting February 8, 2014.¹⁸³ Now, it is the law schools' job to know that reality

reference to note 119 stating that:

For example, although the average high school GPA of an entering UCLA freshman is 4.2, some applicants from low-income areas in Los Angeles are incapable of earning higher than a 4.0 due to their schools' lack of Advanced Placement (AP) and Honors courses. Additionally, low-income students "too often do not receive information at school . . . about tests such as the SAT, or how to pursue financial aid or beef up a college application. *Id.* at 330–31 (citations omitted).

¹⁸³ See THE LSAT, <http://www.lsac.org/spanishlsat>, For more information about the LSAT in Spanish: INFORMATION ABOUT THE FEBRUARY 2014 SPANISH LSAT

1. Date: LSAC will offer the Spanish LSAT on February 8, 2014.
2. Locations: The Spanish LSAT will be offered only at LSAT test centers in Puerto Rico. The Spanish version of the test will not be available at any test centers in the 50 US states, in Canada, or in any other location outside of Puerto Rico.
3. Purpose of the Spanish LSAT score: The Spanish version of the test is valid for applying to law schools in Puerto Rico only. There are three ABA-approved law schools in Puerto Rico that will accept Spanish LSAT scores: Inter American University School of Law, Pontifical Catholic University of Puerto Rico School of Law, and University of Puerto Rico School of Law. LSAC will report scores from the Spanish LSAT only to those three law schools. LSAC will not report scores for the Spanish LSAT to any law school outside of Puerto Rico.
4. Scoring: The Spanish LSAT will be scored differently than the English version of the test. The Spanish LSAT will not be scored on the 120 to 180 scale used for the English version.
5. The Spanish LSAT is optional: While the Spanish LSAT score will be accepted by the law schools in Puerto Rico, it is optional for applicants to those schools. All three law schools in Puerto Rico will continue to accept the English version of the LSAT for applications to their programs. It is not necessary to take the Spanish LSAT in order to apply to any law school in Puerto Rico.
6. Law schools outside of Puerto Rico that currently require the LSAT will continue to require the LSAT in English: Because LSAC will not report scores on the Spanish LSAT to any law school outside of Puerto Rico, candidates who wish to

and accept the scores of the Spanish LSAT. In this regard, admission officers should carry out a holistic analysis of all the applications evaluating all of the previously mentioned factors, but they should also evaluate, in a complementary manner, the socioeconomic factors of the applicant, and consider the possibility of granting conditional admission. The following is a nonexhaustive list of the factors that could be considered:

1. Public school origin: School origin must be taken into consideration because it can be a very accurate indicator, although not absolute, of economic necessity.¹⁸⁴ young people from public schools as compared to those of private schools do not receive as many advanced and honors academic programs, which places them at a disadvantage when it comes to taking standardized tests.¹⁸⁵ Many of these young people do not receive the information or guidance necessary to gain access to higher education institutions, or regrettably believe that it is impossible to obtain admission to prestigious schools.¹⁸⁶ We have to break with those myths from the root.
2. Geographic area where the applicant resides: Here one must follow the Harvard College model in which the admission officers use ZIP code statistics to determine the applicant's socioeconomic status, in order to take it into consideration during the admission evaluation.¹⁸⁷
3. Family wealth: It has been suggested that wealth be defined as ownership of tangible assets in the family.

apply to law schools outside of Puerto Rico (in the 50 US states, in Canada, or elsewhere) that currently require the LSAT must take the LSAT in English. This will apply to all applicants in Puerto Rico who wish to apply to these law schools, even if they take the Spanish LSAT in order to apply to law school in Puerto Rico. The Spanish LSAT will not be valid for applying to any law school outside of Puerto Rico. *Id.*

¹⁸⁴ GARCÍA PADILLA, *supra* note 54, at 90; Orville M. Disdier & Mario Marazzi, *Perfil de Escuelas Públicas y Privadas: Año Escolar 2009–2010*, INST. DE ESTADÍSTICAS DE PR 10–11 (2011), <http://www.estadisticas.gobiern.pr/iepr/LinkClick.aspx?fileticket=XaJi44tkYU%3D&tabid=65>.

¹⁸⁵ GARCÍA PADILLA, *supra* note 54, at n.182.

¹⁸⁶ WOOLFOLK, *supra* note 12, at 165.

¹⁸⁷ Goldsmith, *supra* note 111, at 342.

Law schools will need to rely on and trust the information reported in the student's FAFSA applications used to request financial assistance along with a copy of their Income Tax Return filed.¹⁸⁸

4. Level and quality of education of the applicant's family nucleus: The level of education of the parents, guardians or spouse must be analyzed, not only taking into account the level of education attained, but also the prestige of the institution from which the academic degree was obtained. If the education attained was at a university that is not very prestigious, the interpersonal relations that this applicant would have with influential people are not the same as that of another person whose parents studied in the most prestigious schools in Puerto Rico.¹⁸⁹
5. Student with Low Socioeconomic Level Recruiting Committee: This committee will be composed of students who graduated from public schools who will examine the applicant's file, interview the candidates and recommend students for possible admission through affirmative action policies based on low socioeconomic level.
6. Conditional admission: Conditional admission may be offered to students who do not meet the required numerical standards, demanding, as a condition, that they take a remedial course in legal English or demonstrate academic achievement during the first year of law school.
- g. Finally, for affirmative action to pass constitutional muster, the admission process must carry out a holistic examination of all the factors that would contribute to the socioeconomic diversity of the institution, without establishing quotas, where low socioeconomic level is an additional factor (plus

¹⁸⁸ *Id.* at 343.

¹⁸⁹ *Id.*

For example, suppose Applicant A is the child of a Princeton graduate, while Applicant B is the child of a University of Phoenix Online graduate. The applicants should not be seen as part of the same socioeconomic class, as their respective parents' occupation, income potential, and social circle may be vastly different from the other's. *Id.*

factor) to be evaluated, without creating a different process of admission; taking into account that creating a representative group of socioeconomically disadvantaged students (critical mass) is desirable, the procedure must be strictly directed (narrowly tailored) to the achievement of a student body with greater socioeconomic diversity.

Following these simple steps would constitute a paradigm shift and a fairer, more equitable and more inclusive approach towards the democratization of Puerto Rican legal education. At the same time, it would represent a step toward access to justice for people with fewer economic resources, since we will create a more economically diverse legal guild, which is likely to be more sensitive to the needs of the poor. The aforementioned would be some of the benefits that would be achieved with the creation of mechanisms that guarantee access to higher education for disadvantaged groups in general. We can finally agree with the words of Professor García Padilla, who understands the importance of achieving greater access for disadvantaged groups as an exercise in economic development and democracy, concluding that:

It is not about compassionate populism, but about an imperative of any sensible strategy of economic development and industrialization, and a true democratic exercise based on the expansion of opportunities and the eradication of stereotypes and prejudices that collapse at the slightest imagination and social stimulus.¹⁹⁰

¹⁹⁰ GARCÍA PADILLA, *supra* note 54, at 101.