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## After the Demise of Affirmative Action, Ensuring Equitable Access to Educational Opportunities

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# After the Demise of Affirmative Action, Ensuring Equitable Access to Educational Opportunities

ANNA GORMAN-HUANG\* & PETER HENRY HUANG\*\*

## ABSTRACT

*On June 29, 2023, the United States Supreme Court held in two related cases that race-based affirmative action in college admissions is unconstitutional, because it violates the Equal Protection Clause of the 14th Amendment. What is next in (higher) education after the Supreme Court's rulings in two related cases brought by Students for Fair Admissions? The decisions may dramatically transform college admissions and even how universities think about allocating their resources and about their role in a democratic society. Even now, the Court's holdings are rippling past highly selective college campuses to corporate boardrooms, non-profits, and state legislatures.*

*Despite the Court banning race-based affirmative action in college admissions, new empirical analysis of a novel big data set demonstrates that Asian American applicants to highly selective colleges are 28% less likely to be admitted than white students with similar standardized test scores, high school GPAs, and extracurricular activities. This Asian American admissions penalty is primarily due to legacy admissions and preferences for geographical balance. This Essay advocates that highly selective colleges end legacy admissions to diversify America's economic, political, and social leadership. This Essay also advocates ending the recruiting of athletes in such elite sports as fencing, rowing, sailing, and water polo. This Essay suggests ending the practice of early decision. This Essay also endorses effectively cloning highly selective colleges. Finally, this Essay offers practical and pragmatic answers to questions about how to change education for the better.*

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\*Middle School Student, Buckingham Browne & Nichols. Thanks to my dad and my co-author.

\*\*Retired professor. Thanks to my co-author and brothers.

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## INTRODUCTION

Both of this Essay’s authors are Asian Americans. In fact, we are both American Born Chinese (ABC). Our common cultural background means that we share the same set of Confucian values, including filial piety and respect for our elders. We also differ in that Anna is only 11 years old, while Peter is 64 years old. Anna will start in a couple of weeks the seventh grade of middle school at BBN (Buckingham Browne & Nichols).<sup>1</sup> Peter recently retired from having been a chaired professor in business law and wrote a book about disrupting racism.<sup>2</sup>

We share an interest about education’s goals and purposes. This Essay results from our many hours of discussions and conversations about legacy admissions, highly selective admissions, and education. “Huang” is a very common Chinese surname, meaning yellow, as in the Yellow River (Huang

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1. MIDDLE SCH. ACAD., *Buckingham Browne & Nichols School*, <https://www.bbns.org/academics/middle-school/> (last visited Nov. 9, 2023).

2. PETER H. HUANG, *DISRUPTING RACISM: ESSAYS BY AN ASIAN AMERICAN PRODIGY PROFESSOR* (2023), <https://www.peterhenryhuang.com/mybook>, personal book website.

He, the second-longest river in China, after the Yangtze River, and the sixth-longest river system in the world at an estimated length of 3,395 miles) and the Yellow Emperor (Huangdi).

This Essay's legal origins are judicial opinions from June 29, 2023, in a related pair of landmark cases.<sup>3</sup> The United States Supreme Court decided that race-based affirmative action in college admissions is unconstitutional under the 14th Amendment's Equal Protection Clause.<sup>4</sup> These judicial decisions about whether and how to achieve racial and ethnic diversity revived the debate about achieving diversity in terms of socioeconomic status and parental income or wealth. There is a long history, legal and social, of educational discrimination against Asian Americans.<sup>5</sup>

This Essay asks and answers a pair of foundational and related questions: what can and should be the purpose of education? How a society answers this pair of a positive question, and a normative question affects many aspects of that society, including its rate of development, rate of economic growth, educational system, parenting norms, and social progress.<sup>6</sup>

## I. AFTER THE DEMISE OF AFFIRMATIVE ACTION

Professor of Education and Human Development Jin Li, of the Annenberg Institute for School Reform and Department of Education at Brown University,<sup>7</sup> analyzes fundamental differences in the cultural orientations that exist between European-American and East Asian attitudes towards learning.<sup>8</sup> These differences persist despite both cultures having similar educational content in their K-12 systems and valuing the goal of learning. In a European-American model of learning stemming from a Western intellectual tradition of Socrates, the goal of education is to cultivate the mind to expand the depth of knowledge about our world. European-

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3. *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 143 S. Ct. 46 (2022); *Students for Fair Admissions, Inc. v. Univ. of N.C.*, 143 S. Ct. 46 (2022).

4. U.S. Const. amend. XIV, § 1.

5. Denny Chin & Kathy Hirata Chin, *"Kung Flu": A History of Hostility and Violence Against Asian Americans*, 90 FORDHAM L. REV. 1889 (2022); Center on Asian Americans and the Law, *"Kung Flu": A History of Hostility and Violence Against AAPIs*, Fordham Law School, Mar. 14, 2024, <https://go.activecalendar.com/FordhamUniversity/site/law/event/reenactment-kung-flu-a-history-of-hostility-and-violence-against-aapis/>; Eduardo M. Peñalver, President, Seattle University, Denny Chin, Sr. Circuit Judge, U.S. Court of Appeals for 2nd Circuit, Thomas H. Lee, Leitner Family Professor of International Law, Ryan Park, Solicitor General, Speakers at Fordham Law School Center on Asian Americans and the Law: The Past, Present, and Future of AAPIs and Education (Oct. 5, 2023).

6. JOSEPH E. STIGLITZ & BRUCE C. GREENWALD, *CREATING A LEARNING SOCIETY: A NEW APPROACH TO GROWTH, DEVELOPMENT AND SOCIAL PROGRESS* (2014).

7. Jin Li, BROWN UNIV., <https://vivo.brown.edu/display/jili> (last visited Nov. 11, 2023); Jin Li, ANNEBERG INST. – BROWN UNIV., <https://annenberg.brown.edu/people/jin-li> (last visited Nov. 11, 2023).

8. JIN LI, *CULTURAL FOUNDATIONS OF LEARNING: EAST AND WEST* (2012).

American learning focuses on developing these four essential pursuits: active engagement, critical thinking, exploration, and self-expression. In an East Asian model of learning arising from an Eastern intellectual tradition of Confucius, education focuses on developing ethical character and personal excellence. East Asian learning focuses on five key virtues aimed at perfecting the moral self: concentration, diligence, endurance, perseverance, and sincerity.

These two different models of learning inform the mindsets of students, parents, and teachers. These two different views about learning also influence and permeate different associated cultural notions of education and parenting. There are costs and benefits to any educational method and parenting style. A law professor wrote about how helicopter (law) professors may, like helicopter parents, unintentionally end up harming pedagogically, personally, and professionally their (law) students.<sup>9</sup>

Evaluating different ways of teaching (and parenting) presupposes a normative criterion or criteria by which to measure flourishing, progress, or success. Happiness or subjective well-being provides one such natural metric. Martin Seligman, a founder of the field of positive psychology, suggested these five components of happiness and well-being summarized by the mnemonic acronym PERMA: Positive emotion, Engagement, Relationships, Meaning, and Accomplishment. How do law students and lawyers in the United States fare in terms of PERMA? The good news is that most law students and lawyers do not have a mental health or substance use disorder. The bad news is that this does not mean most law students and lawyers are flourishing. Many law students and lawyers report experiencing anxiety, depression, and chronic stress. Unfortunately, many law students also report engaging in high levels of substance abuse to self-medicate and cope with anxiety and depression, while few sought out help for mental health issues or alcohol and drug abuse, with many expressing concerns over seeking help being a potential threat to bar admission or employment. Peter has first-hand experience feeling anxious, depressed, and stressed in the first year of law school. Unhappy, unhealthy law students graduate to become zombie lawyers.<sup>10</sup> Many lawyers report feeling a “profound ambivalence” over the meaning and nature of the work they do to make a living.<sup>11</sup>

Daniel Kahneman, 2002 economics Nobel Laureate, and labor economist Alan Krueger, led a team of psychologists in proposing adoption of National Time Accounting (NTA) to survey how much time people spend experiencing positive feelings versus negative ones. Several social scientists have advocated that NTA, and other subjective well-being measures, can and

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9. Emily Grant, *Helicopter Professors*, 53 GONZ. L. REV. 2, (2017) (discussing the evolution of a law professor’s role in legal education).

10. Peter H. Huang & Corie Rosen Felder, *The Zombie Lawyer Apocalypse*, 42 PEPP. L. REV. 727 (2015) (addressing common ills of the legal profession).

11. *Id.*

should complement such more traditional and well-known national income measures as the Gross Domestic Product (GDP) of a country. For example, in the last chapter entitled *The Politics and Economics of Well-Being*, of Professor Seligman's book about flourishing, he proposed that policymakers evaluate policies via a common metric of well-being in terms of its five components PERMA. Such recent proposals to measure aggregate happiness echo ideas that Senator Robert Kennedy advocated in a speech on March 18, 1968, at the University of Kansas, challenging the prevailing orthodoxy of how governments measure progress and well-being.<sup>12</sup>

Bhutan uses a measure of Gross National Happiness to determine its national priorities and specific policies. England's Office of National Statistics collects national well-being data that measure anxiousness, happiness, life satisfaction, and meaning. In October 2011, China Central Television's financial channel, the National Statistics Bureau, and the China Postal Group Corporation conducted their sixth annual survey of people's economic situation and their sense of happiness that covers 100,000 families in 31 autonomous regions, municipalities, and provinces in China. One of the richest provinces in China, Guangdong, became the first to measure happiness when it released on October 11, 2011, a happiness index system to measure objective and subjective indicia of well-being among 6,900 people aged 16 to 65 who have resided there for at least one year. On October 12, 2011, the OECD (Organization for Economic Co-operation and Development) published a report assessing for 40 OECD countries eleven aspects of people's lives: civic engagement and governance, education and skills, environmental quality, health status, housing conditions, income and wealth, jobs and earnings, personal security, social connections, subjective well-being, and work-life balance. This publication is part of a Better Life Initiative the OECD launched to promote better policies for better lives. An interactive composite well-being index designed to involve people in a debate about social progress is another part of that same initiative.

### A. Asian American Admissions Penalty Remains

The National Bureau of Economic Research issued in August of 2023, the working paper 31527, which is titled, *The Disparate Impacts of College Admissions Policies on Asian American Applicants*.<sup>13</sup> The lead author, Josh D. Grossman, is a Ph.D. candidate in Computational Social Science at Stanford University's Department of Management Science & Engineering.<sup>14</sup> The other three co-authors are Sabina Tomkins, Assistant Professor of

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12. Andy Wong, *Robert F. Kennedy – University of Kansas Address*, YOUTUBE, [https://www.youtube.com/watch?v=z7-G3PC\\_868](https://www.youtube.com/watch?v=z7-G3PC_868).

13. Joshua Grossman et. al., *The Disparate Impacts of College Admissions Policies on Asian American Applicants*, Nat'l Bur. of Economic Research, Working Paper No. 31527, (2023).

14. *About Josh D. Grossman*, <https://jdgrossman.com/> (last visited Feb. 11, 2024).

Information, University of Michigan's School of Information;<sup>15</sup> Lindsay C. Page, Annenberg Associate Professor of Education Policy, Brown University's Department of Education;<sup>16</sup> and Sharad Goel, Professor of Public Policy at Harvard's Kennedy School.<sup>17</sup> This working paper led to an Op-Ed in *The Boston Globe*,<sup>18</sup> extended coverage in *The Journalist's Resource*,<sup>19</sup> and additional coverage at Twitter,<sup>20</sup> *Inside Higher Ed*,<sup>21</sup> *Marginal Revolution*,<sup>22</sup> *Insight Into Diversity*,<sup>23</sup> *Washington Examiner*,<sup>24</sup> and *Diverse: Issues in Higher Education*.<sup>25</sup>

The study analyzed 685,709 college applications from 292,795 white and Asian students to a subset of selective colleges over these five application cycles: 2015–2016 to 2019–2020.<sup>26</sup> The researchers found that admissions at selective colleges rewarded disproportionately white privileged applicants. They estimated that the odds that Asian American applicants were admitted to at least one of the highly selective colleges the researchers were considering was 28% lower than the odds for white students having comparable standardized test scores, grade-point averages, and

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15. SCH. OF INFO., UNIV. OF MICHIGAN, *About Sabina Tomkins*, <https://www.si.umich.edu/people/sabina-tomkins> (last visited Feb. 11, 2024).

16. BROWN UNIV., EDUC. DEP'T, *Lindsay Page Overview*, <https://vivo.brown.edu/display/lpage2#all> (last visited Feb. 11, 2024).

17. HARV. UNIV., KENNEDY SCH., *Shared Goel*, <https://Sharad.com/> last visited Feb. 11, 2024).

18. Joshua Grossman et al., Opinion, *Harvard isn't Hogwarts. Merit, not parentage, should be key to admission*, BOS. GLOBE (Aug. 8, 2023), <https://www.bostonglobe.com/2023/08/08/opinion/harvard-legacy-admission-merit/>.

19. Denise-Marie Ordway, *Selective colleges often pick white students over similarly qualified Asian Americans, analysis suggests*, THE JOURNALIST'S RES. (Aug. 13, 2023), <https://journalistsresource.org/home/selective-colleges-asian-americans-students-legacy>.

20. Sharad Goel (@5harad), X (Aug. 17, 2023, 4:24 AM), <https://twitter.com/5harad/status/168511446529830912>.

21. Liam Knox, *Report: Admissions Gap Between White and Asian Applicants*, INSIDE HIGHER ED (Aug. 8, 2023), <https://www.insidehighered.com/news/quick-takes/2023/08/08/data-show-admissions-gap-between-white-and-asian-applicants>

22. Tyler Cowen, *The Disparate Impacts of College Admissions Policies on Asian American Applicants*, THE MARGINAL REVOLUTION (Aug. 8, 2023, 12:47 AM), <https://marginalrevolution.com/marginalrevolution/2023/08/the-disparate-impacts-of-college-admissions-policies-on-asian-american-applicants.html>

23. Insight Staff, *Asian Americans Less Likely to be Accepted to Selective Colleges than White Students*, INSIGHT INTO DIVERSITY (Aug. 9, 2023), <https://www.insightintodiversity.com/asian-americans-28-percent-less-likely-to-be-accepted-to-college-than-white-students/>.

24. Jeremiah Poff, *White students outpaced Asian Americans in college admissions by 28%: Study*, WASH. EXAMINER (Aug. 9, 2023, 3:00 AM), <https://www.washingtonexaminer.com/policy/education/white-students-asians-similar-qualifications-college-admissions>.

25. Arrman Kyaw, *Working Paper: Asian Americans Face Lower Admissions Odds to Selective Schools than White Students*, DIVERSE ISSUES IN HIGHER EDUC. (Aug. 10, 2023), <https://www.diverseeducation.com/reports-data/article/15544081/working-paper-asian-americans-face-lower-admissions-odds-to-selective-schools-than-white-students>.

26. Joshua Grossman et al., *supra* note 13.

extracurricular activities. Josh D. Grossman explains how their research identifies two factors causing this Asian penalty, namely legacy admissions, and preference for geographical/regional balance of students.<sup>27</sup>

### B. Whither Legacy Admissions?

On July 3, 2023, the Chica Project, the African Community Economic Development of New England (ACEDONE), and the Greater Boston Latino Network (GBLN) filed a complaint (No. 01-23-2231) with the United States Department of Education's (DOE) Office for Civil Rights (OCR) challenging the practice of giving preferential treatment in the admissions process to applicants with familial ties to wealthy donors and alumni (so-called legacy applicants). On July 24, 2023, the U.S. DOE opened a civil rights investigation into preferences for legacy applicants in undergraduate admissions decisions.<sup>28</sup>

One rationale advanced in favor of the preferential treatments for legacy applicants is that such practices increase donations by (wealthy) alumni providing financial resources that can be used to increase “the diversity and excellence of the College’s student body.”<sup>29</sup> Jeremiah Quinlan, the dean of undergraduate admissions at Yale, offered two other arguments in favor of legacy admissions in written testimony: academic freedom and his personal skepticism banning legacy admissions “would have any ‘material effect’ on the number of low-income students or those from underrepresented groups.”<sup>30</sup>

This Essay also advocates ending the recruiting of athletes in such elite sports as fencing, rowing, sailing, and water polo. Athletes in such sports tend predominantly to have rich parents and be white. Such recruiting was part of the infamous varsity blues scandal,<sup>31</sup> and remains even today ripe for

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27. Fabiola Cineas, *The Asian Penalty in College Admissions is Still Here — Even Without Affirmative Action*, VOX (Aug. 24, 2023, 6:00 AM), <https://www.vox.com/platform/amp/23842764/legacy-admissions-asia>.

28. Michael D. Shear, *Education Dept. Opens Civil Rights Inquiry into Harvard’s Legacy Admissions*, N.Y. TIMES (July 25, 2023), <https://www.nytimes.com/2023/07/25/us/politics/harvard-admissions-civil-rights-inquiry.html>.

29. Vimal Patel, *Why Legacy Admissions Are at the Center of a Dispute in Higher Education*, N.Y. TIMES (July 26, 2023), <https://www.nytimes.com/2023/07/26/us/legacy-admissions-colleges-universities.html> (quoting Report of the Committee to Study Race-Neutral Alternatives, Harvard University, Apr. 2018).

30. *Id.* (quoting statement of Jeremiah Quinlan, Dean of Admissions, Yale University, concerning HB 5034, “An Act Prohibiting an Institution of Higher Education from Considering Legacy Preferences in the Admissions Process”).

31. See MELISSA KORN & JENNIFER LEVITZ, UNACCEPTABLE: PRIVILEGE, DECEIT & THE MAKING OF THE COLLEGE ADMISSIONS SCANDAL (2020); NICOLE LAPORTE, GUILTY ADMISSIONS: THE BRIBES, FAVORS, AND PHONIES BEHIND THE COLLEGE CHEATING SCANDAL (2021).



potential abuse.<sup>32</sup> This Essay finally suggests ending the practice of early decision, which predominantly favor wealthy and white families.<sup>33</sup>

### C. Cloning Stanford University?

In February 2021, the Stanford University Faculty Senate adopted two policies intended to de-emphasize wealth in undergraduate admissions.<sup>34</sup> The first policy was “to devote resources to improving data collection by modifying Stanford’s application to require applicants to list those who advised or read their application, and to describe their relationship with those people.”<sup>35</sup> Stanford’s Faculty Senate also wanted “an improved data system to evaluate the effect of admissions on philanthropic support to the university and to initiate surveys to track the distribution of income and wealth levels for parents and undergraduates.”<sup>36</sup> The Faculty Senate further called for “improved communication that will enhance Stanford’s efforts to publicly describe and demystify the admission process and to reduce disparities among those who can or cannot afford, for instance, private counseling.”<sup>37</sup>

In response, David Kirp, Professor of the Graduate School, University of California at Berkeley, Emeritus Professor of Public Policy, proposed in a *New York Times* op-ed, that elite colleges can and should effectively clone themselves by opening up remote campuses in cities across the United States.<sup>38</sup> We believe that his proposal has a lot of merit. Zoom classes during spring of 2020 and the 2020-21 academic year demonstrated the feasibility of distance learning. Critics may argue that learning by Zoom is not as good

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32. See Sean Gregory, *The Varsity Blues Trials Have Started. Here’s What’s Changed—And What Hasn’t—In College Sports Admissions*, TIME (Sept. 27, 2021, 2:13 PM), <https://time.com/6100715/varsity-blues-trial-college-sports/>.

33. See Abril Castro, *Early Decision Harms Students of Color and Low-Income Students*, CTR. FOR AM. PROGRESS (Nov. 4, 2019), <https://www.americanprogress.org/article/early-decision-harms-students-color-low-income-students/>; Evan Mandery & Michael Dannenberg, *Early Decision Programs Openly Stack the College Admissions Deck*, CNN (Dec. 15, 2022), <https://www.cnn.com/2022/12/15/opinions/end-early-decision-college-admission-mandery-dannenberg/index.html>; James S. Murphy, *Colleges Don’t Want You to Know that ‘Early Decision’ Is Actually a Rigged Game*, BUS. INSIDER (Oct. 2, 2022), <https://www.businessinsider.com/early-decision-college-university-admissions-rigged-game-2022-9?op=1>; Rick Seltzer, *Early Decision: For the Privileged?*, INSIDE HIGHER EDUC. (Oct. 13, 2019), <https://www.insidehighered.com/admissions/article/2019/10/14/panel-examines-who-benefits-early-decision>.

34. Scott Jaschik, *Is Stanford Letting in Too Many Wealthy Students?*, INSIDE HIGHER EDUC. (Feb. 15, 2021), <https://www.insidehighered.com/admissions/article/2021/02/16/faculty-want-know-stanford-letting-too-many-wealthy-students>.

35. *Id.*

36. *Id.*

37. *Id.*

38. David Kirp, *Why Stanford Should Clone Itself*, N.Y. TIMES (Apr. 6, 2021), <https://www.nytimes.com/2021/04/06/opinion/stanford-admissions-campus.html>.

as learning in person. That depends on many factors and more importantly, learning by Zoom is better than not being able to learn at all.

#### D. Diversifying America's Leaders

Many Americans (in the past and currently) believe in the American dream in which (higher) education is a route to upward economic and social mobility, especially for non-white people. That quintessentially American dream is much less likely to be true today than it once had been.<sup>39</sup> American higher education institutions have many disparate and often conflicting stakeholders, including professors, students, alumni, staff, administrators, local communities, and society-at-large. The sticker price (before scholarships and other student financial aid) of American college degrees has outpaced inflation!

Criticisms of American higher education institutions include their elitism and seemingly being out of touch with the rest of American society.<sup>40</sup> Part of that disconnect between American higher education institutions and their neighboring or surrounding local communities is merely a consequence of the geographical layout of the uniquely American concept of a campus,<sup>41</sup> a word which originated in the late 1700s and used to describe Princeton University.<sup>42</sup> Will Bunch, a Pulitzer Prize-winning journalist and *Philadelphia Inquirer* national opinion columnist, even argues that debt, disillusionment, and other problems with American higher education spawned America's current deep cultural, economic, and political divisions.<sup>43</sup>

Education, especially, elite higher education allocates opportunities, also known as real options in the language of modern corporate finance,<sup>44</sup> to

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39. See Ron Lieber, *Some Colleges Don't Produce Big Earners. Are They Worth It?*, N.Y. TIMES (Aug. 24, 2022), <https://www.nytimes.com/2022/08/20/your-money/college-graduate-earnings.html>.

40. Nick Burns, *Elite Universities Are Out of Touch. Blame the Campus*, N.Y. TIMES (Aug. 2, 2022), <https://www.nytimes.com/2022/08/02/opinion/elite-universities-campus.html>.

41. See Steven J. Diner, *Why American College Campuses Were Built to Get Students Out of Cities*, TIME (May 19, 2017), <https://time.com/4751301/universities-colleges-history/>; see also STEVEN J. DINER, *UNIVERSITIES AND THEIR CITIES: URBAN HIGHER EDUCATION IN AMERICA* (2017).

42. *Id.*

43. WILL BUNCH, *AFTER THE IVORY TOWER FALLS: HOW COLLEGE BROKE THE AMERICAN DREAM AND BLEW UP OUR POLITICS—AND HOW TO FIX IT* (2022); Kevin Carey, *Why Is America Fractured? Blame College, a New Book Argues*, N.Y. TIMES (Aug. 2, 2022), <https://www.nytimes.com/2022/08/02/books/review/will-bunch-after-the-ivory-tower-falls.html> (reviewing the book). See also Nate Cohn, *How Educational Differences Are Widening America's Political Rift*, N.Y. TIMES (Sept. 8, 2021), <https://www.nytimes.com/2021/09/08/us/politics/how-college-graduates-vote.html>; Adam Harris, *America is Divided by Education*, ATLANTIC (Nov. 7, 2018), <https://www.theatlantic.com/education/archive/2018/11/education-gap-explains-american-politics/575113/>.

44. Timothy A. Luehrman, *Strategy as a Portfolio of Real Options*, HARV. BUS. REV. (Sept.-Oct. 1998), <https://hbr.org/1998/09/strategy-as-a-portfolio-of-real-options>.

careers, power, prestige, professions, resources, status, and upward economic and social mobility. Education has unfortunately become a dominant mechanism to reproduce male dominated hierarchies, existing power imbalances, and structural inequities. Education can and should not be driven by traditions of dead generations, the past, precedent for its own sake, and nostalgia for pre-COVID times. Each of these alleged rationales for education to be a certain way exemplifies tyranny of dead past relatives and strangers on current and yet unborn future generations. Instead, education can and should be more thoughtful and evidence-based, as well as less traumatic and not as stressful.

On July 24, 2023, three economists, two at Harvard University and one at Brown University released a novel empirical analysis of a new, anonymized, detailed, and large set of data.<sup>45</sup> All three are also at the National Bureau of Economic Research and at *Opportunity Insights*, which is a non-partisan, non-profit organization of researchers and policy analysts conducting research about improving opportunities and upward economic mobility.<sup>46</sup> They found that a set of highly selective private colleges, they call Ivy-Plus colleges (the Ivy League, Stanford University, Massachusetts Institute of Technology, the University of Chicago, and Duke University), currently “perpetuate intergenerational transfer of wealth and opportunity”<sup>47</sup> and “quantifies for the first time the extent to which being very rich is its own qualification in selective college admissions.”<sup>48</sup>

The researchers found that applicants having the same SAT or ACT scores, children of parents whose income ranked in the top 1 percent were 34 percent more likely to be admitted than average applicants, and those whose parents whose income ranked in the top 0.1 percent were more than twice as likely to get in.<sup>49</sup> Effectively, this research demonstrates there is effectively affirmative action for the children of parents whose income ranked in the top the 1 percent, meaning parents who earn more than \$611,000 a year.<sup>50</sup> The research raises the questions of whether Ivy-Plus colleges are admitting children from very high-income, influential families and basically perpetuating incomes of the next generation?<sup>51</sup> and might we diversify who

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45. Raj Chetty et al., *Diversifying Society's Leaders? The Determinants and Causal Effects of Admission to Highly Selective Private Colleges* (Nat'l Bureau of Econ. Rsch., Working Paper No. 31492 (2023)), [https://www.nber.org/system/files/working\\_papers/w31492/w31492.pdf](https://www.nber.org/system/files/working_papers/w31492/w31492.pdf); Raj Chetty et al., *Diversifying Society's Leaders? The Determinants and Consequences of Admission to Highly Selective Colleges*, OPPORTUNITY INSIGHTS (Oct. 2023) (Non-Technical Research Summary), [https://opportunityinsights.org/wp-content/uploads/2023/07/CollegeAdmissions\\_Nontech.pdf](https://opportunityinsights.org/wp-content/uploads/2023/07/CollegeAdmissions_Nontech.pdf).

46. OPPORTUNITY INSIGHTS, <https://opportunityinsights.org/> (last visited Oct. 22, 2023).

47. The Learning Network, *What's Going On in This Graph? | College Admissions*, N.Y. TIMES (Feb. 1, 2024), <https://www.nytimes.com/2024/01/25/learning/whats-going-on-in-this-graph-jan-31-2024.html>.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

is in a position of leadership in our country by changing who is admitted to elite schools?<sup>52</sup> The researchers found the answers to both of these questions to be yes. In particular, the researchers found that ending legacy admissions diversifies the socioeconomic backgrounds of America's leaders.<sup>53</sup> While less than 1% of American college students attend Ivy-plus institutions, 12% of Fortune 500 chief executives, 25% of U.S. senators, and 13% of the top 0.1 percent of earners attended Ivy-plus colleges.

Education in the United States has now become like health care in the United States in these four problematic aspects: lack of price transparency, layered in bureaucracy, overly bloated administratively, and more of a for-profit business than a noble profession. Market forces and consumer mindsets have taken hold where there once was trust, professional norms of behavior, and professional codes of ethics. Education and medicine are both examples of what economists term credence goods as opposed to search goods or experience goods. In the parlance of information economics, product quality may be observable before purchase (search goods), after purchase (experience goods), or not even after purchase (credence goods). Students and patients may never know the quality of education and medicine because there is joint production of outcomes, noisy learning, and often largely variable individual differences.

Some American citizens and politicians worry that China will overtake the United States in terms of economic growth and technological development.<sup>54</sup> Some prestigious colleges with race-blind admissions have double the percentage of Asians as Ivy League colleges. For example, the California Institute of Technology, a private university with race-blind admissions, is about one-third Asian. The University of California, Berkeley is forbidden by California state law to consider race in admissions and is more than 40 percent Asian, which is double that before that law passed. As a reference point, 13 percent of California residents have Asian heritage. There is bona fide white anxiety<sup>55</sup> over the gap in Asian American and white high school student standardized test scores that has only grown from 100 points in 2018 to 127 points in 2021 on the well-known SAT.<sup>56</sup>

An incident which received national media coverage occurred when Ed Rendell, then Pennsylvania governor, appeared on a sports radio station 97.5 interview show in which he criticized the National Football League (NFL) for its decision at noon before any snow had yet accumulated to postpone for

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52. *Id.*

53. *Who gets into college and why does it matter?*, BROOKINGS INST. (July 26, 2023, 2:00 PM – 3:30 PM), <https://www.brookings.edu/events/who-gets-into-college-and-why-does-it-matter/>.

54. *See generally* KENNY XU, AN INCONVENIENT MINORITY: THE ATTACK ON ASIAN AMERICAN EXCELLENCE AND THE FIGHT FOR MERITOCRACY (2021).

55. *See generally* NATASHA WARIKOO, RACE AT THE TOP: ASIAN AMERICANS AND WHITES IN PURSUIT OF THE AMERICAN DREAM IN SUBURBAN SCHOOLS (2022).

56. Jay Kasper, *Asian American Student Success Isn't A Problem*, N.Y. TIMES (July 14, 2022), <https://www.nytimes.com/2022/07/14/opinion/asian-american-student-success.html>.

two days a Philadelphia Eagles' home game versus the Minnesota Vikings one Sunday evening.<sup>57</sup> The NFL cited public safety concerns due to a Nor'easter winter storm that ultimately dumped a foot of snow on Philadelphia, even though only less than five inches of snow fell before the scheduled kickoff time of 8:20 p.m. Rendell said that his "biggest beef is that this is part of what's happened in this country. We've become a nation of wusses. The Chinese are kicking our butt in everything. If this was in China, do you think the Chinese would have called off the game? People would have been marching down to the stadium, they would have walked, and they would have been doing calculus on the way down."<sup>58</sup> The size of the intersection in a Venn diagram of those who do calculus and those who are American football fans is unclear.

Even the mostly positive media coverage of the unexpected success of New York Knicks basketball player Jeremy Lin included some racial slurs, soft racism, and racist Asian stereotypes. An episode of NBC's Saturday Night Live even spoofed the racist aspects of the mostly feel-good "Linsanity" craze.

Some Americans are anxious about our economy's ability to compete in an increasingly complex, global, and technologically sophisticated marketplace. A related concern is that of China overtaking the United States in the science, technology, engineering, and mathematics (STEM) fields. The STEM education coalition supports STEM education programs of the National Science Foundation, the U.S. Department of Education, and other federal agencies.

In the 2018 Programme for International Student Assessment (PISA), an international and well-respected examination in mathematics, reading, and science, 15-year-olds from China's economic area of Beijing, Shanghai, Jiangsu, and Zhejiang earned the highest scores in all categories among 85 countries and school systems. The first-time mainland Chinese students had ever taken PISA was 2009. The purpose of PISA is to measure whether students not only know basic facts, but also can apply such factual knowledge to solve problems in real-world situations.

A pair of economists concluded that relatively small improvements in the cognitive skills of a country's population would have massive impacts upon their future well-being. These researchers calculated that under plausible assumptions if U.S. educational policy reforms could increase the

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57. Adam Lazarus, *Ed Rendell Video: Hear Governor's Comments About Eagles-Vikings Postponement*, BLEACHER REPT. (Dec. 28, 2010); *Ed Rendell Video: Hear Governor's Comments About Eagles-Vikings Postponement* | News, Scores, Highlights, Stats, and Rumors | BLEACHER REPT.

58. NESN Staff, *Pennsylvania Governor Edward Rendell Calls Americans 'Wusses,' Says Chinese Would Do Calculus on Way to Snowy Football Game*, NESN (Dec. 28, 2010), <https://nesn.com/2010/12/pennsylvania-governor-edward-rendell-calls-americans-wusses-says-chinese-would-do-calculus-on-way-to/>.

average PISA scores of students by only 25 points (on a scale in which 500 is always the international average) that alone would raise America's gross domestic product by \$45 trillion over the lifespan of children born when those reforms began in 2010.

Psychologists Richard Nisbett and Heidi Grant Halvorson have separately explained the consistent achievement gap between American and Asian students in mathematics and science primarily in terms of Asian and Asian American students being more persistent and harder working in the face of initial academic setbacks. Asian and Asian-American students persist at and work harder on their studies when they do not initially excel academically because of systematic cultural differences in the beliefs of American versus Asian parents, children, and educators over whether natural ability or effort respectively primarily accounts for (academic) success and failure. Psychologist Carol Dweck explains why parents and teachers should praise hard work and persistent effort instead of the intellectual abilities and innate talents of children and students. Psychologist Roy Baumeister and journalist John Tierney explain how an emphasis on the importance of delayed gratification and self-control by Asian and Asian-American cultures, parents, and schools account for why Asian-Americans comprise just 4% of the American population, yet are 25% of the students at such elite universities as Columbia, Cornell, and Stanford; are likelier than other ethnic groups to earn a college degree; and receive salaries that are 25% above the United States norm.<sup>59</sup>

It is a far too well-known truism that K-12 teachers in the United States are paid less and less respected than K-12 teachers in many countries, where only the best and brightest are K-12 teachers. As Whitney Houston famously (and perhaps a bit tautologically) sang, "*The children are our future*" in her best-selling single, *The Greatest Love of All*). Improving education in the United States requires investing federal government resources in cognitive infrastructure, universally funded higher education, universal emotional, health, happiness, personal financial, political, and scientific literacy, and universal numeracy and risk or statistical literacy. These investments can and should be from the federal government because of the positive externalities and public good spillover effects of higher education to American society. Higher education is not just a credential and market signal having private returns. Higher education is also a human and social capital investment having public returns in terms of a knowledgeable public, savvy consumers, able investors, and discerning voters.

Education is not just merely the memorization of knowledge that now can be obtained by searching the internet. Education, at its best, informs and transforms people to become better versions of themselves. Better in terms

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59. ROY F. BAUMEISTER & JOHN TIERNEY, *WILLPOWER: REDISCOVERING THE GREATEST HUMAN STRENGTH* 193–97 (2011).

of being more caring, empathetic, and humble. Knowledge is vast and multidimensional. Being educated means being able to solve problems to help society. Being educated means being discerning. Being educated means being able to think for yourself. Being educated means being able to practice sound decision-making skills. Being educated means being able to learn more and grow. Being educated means being a part of humankind, so being human and being kind.

A Stanford University economics graduate student friend once asked Peter if Peter wondered about who was smarter. Peter answered no because that is not a well-defined question. What did he mean by smartness — intelligence, knowledge, or wisdom? Intelligence is multidimensional, so not able to be ranked on a single dimension. Knowledge is easily looked up on computers, including smartphones. Wisdom has multiple attributes, characteristics, and components, thus is also unable to be ranked along just one dimension. He thought Peter was merely deflecting and humble bragging until he, his then girlfriend (another Stanford University economics graduate student, later wife, and later ex-wife) and Peter watched the movie, *On Golden Pond*. After the screening, Peter asked them why Henry Fonda's character picked up strawberries from the ground, instead of the strawberry trees. Peter's Stanford University economics graduate student friend exclaimed in shock that strawberries grow on vines on the ground instead of trees. He asked in what physical environments had Peter seen strawberries. Peter answered in soymilk shakes, soy cheesecakes, and covered in dark chocolate.

It is fascinating how and why some people learn the same material or skill better, easier, and quicker than others. People's heterogeneity in learning costs, effectiveness, efficiency, and speed presumably result in part from differences in ability, attention, discipline, effort, environment, genetics, identity, mindset, motivation, resilience, and time.

Peter and many people that Peter knows experienced anxiety, depression, and chronic stress in law school and law practice. It is natural that all of us will feel down, lost, and overwhelmed at various points in our personal and professional lives. Law students and lawyers often are overly critical of others and themselves. Practicing mindfulness provides a helpful sense of perspective, compassion, and self-compassion. Peter still vividly remembers feeling anxious, depressed, and chronically stressed at various times as a child, adolescent, first-year law student, and law professor.

A large and still growing body of neuroscience and psychology research empirically shows that practicing mindfulness can help individuals handle anxiety, depression, and chronic stress. Peter's maternal grandmother introduced him as a child to practicing mindfulness, through her example of a daily meditative practice with a set of mala beads. Developing and sustaining a mindfulness practice has helped Peter cope with and manage anxiety, depression, and chronic stress. Mindfulness provides a way to

achieve and sustain calmness, compassion, confidence, equanimity, happiness, meaning, peace, and tranquility.

There are currently many arguments, controversies, debates, disagreements, and opinions about what K-12 and higher education should be in the United States. COVID-19 has only exacerbated a reevaluation of what are the objectives that American education can or should accomplish.

What is the purpose of education? A cynic may say that education is a form of childcare, indoctrination, and obedience training. An idealist might say that education enables people to develop, flourish, and realize their potential. A pragmatist might say that education helps to reduce the inequality of people's opportunity sets inherited from the genetic lottery of their parents. Applying real options theory to people, consider the idea of human labor having potential value, instead of exchange value and use value, two familiar concepts from neoclassical microeconomics. A natural idea is that education maximizes an individual's potential value in the sense of what financial economics terms real options value.

## II. EDUCATION CAN AND SHOULD BE . . .

This Essay proposes that a way of improving education is teaching people to develop helpful and pragmatic life skills. These core and practical competencies include conflict resolution, decision-making, emotional and social intelligence, leadership, negotiation, personal finance, problem-solving, quantitative, and scientific literacy, and self-care. We also would add cooking, grocery shopping, and nutrition.

More generally, people should recognize their personal cognitive biases<sup>60</sup> and know how they can mitigate them if that is possible. People should learn to become savvy consumers, able investors, and discerning voters. An informed electorate is critical for the maintenance and sustenance of our fragile democracy. In today's age of social media disinformation and misinformation, learning to be more discerning about what is and can be true is an important skill with individual private and social public benefits.

### A. Applicable, Practical, and Relevant

We advocate teaching happiness, stress management, mindfulness, and cognitive reframing to K-12 and college students. The federal government can and should enact laws and public policies to help the United States encourage all individuals to think about what life priorities they have, preserve what financial economics terms real options, foster life-long curiosity and self-directed learning, improve decision-making processes via

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60. Elon Musk (@elonmusk), *50 Cognitive Biases*, TWITTER (Dec. 19, 2021, 2:17 PM), <https://twitter.com/SystemSunday/status/1526539607604600832?lang=en>.



cognitive apps, boosts, thinking tools, and mindfulness, be more compassionate, be humbler, and be kinder.<sup>61</sup>

Much of K-12 and college education is misguided in emphasizing memorization, rote learning, and subjects no longer as relevant as they were once. For example, why are all high school students required to take trigonometry? Former Harvard University President, former economist, and former U.S. Treasury Secretary Lawrence Summers argued that for “an earlier era when many people were involved in surveying land, it made sense to require that almost every student entering a top college know something of trigonometry. Today, a basic grounding in probability, statistics, and decision analysis makes far more sense.”<sup>62</sup>

Decision-making, numeracy, and risk literacy are more relevant in today’s world than is trigonometry. Algorithmic, computational, discrete, finite, and recursive mathematics are also more relevant in today’s computational world than other areas of mathematics, such as trigonometry. Similarly, nonlinearity, exponential growth, and chaotic dynamics are more relevant in today’s complex world than in the past.

## B. Fostering Friendships Across SES Levels

Friendships across class, or what is more technically known as socio-economic status (SES), are more important than education quality, family structure, job market conditions, community unity, and any other demographic variable in fostering economic mobility.<sup>63</sup> This is according to a recent massive study analyzing 21 billion friendships from Facebook of 72 million individuals, which is 84 percent of U.S. adults aged 25 to 44.<sup>64</sup> The study found that upward income mobility (defined in terms of the average income in adulthood of children growing up in low-income families) is highly associated with economic connectedness, which the study authors define as the extent to which individuals with low SES and high SES are friends. To be more precise, this “study found that if poor children grew up in neighborhoods where 70 percent of their friends were wealthy — the typical rate of friendship for higher-income children — it would increase

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61. Peter H. Huang, *Boost: Improving Mindfulness, Thinking, and Diversity*, 10 WM. & MARY BUS. L. REV. 139 (2018).

62. Lawrence H. Summers, *What You (Really) Need to Know*, N.Y. TIMES (Jan. 20, 2012), <https://www.nytimes.com/2012/01/22/education/edlife/the-21st-century-education.html>.

63. Noam Angrist & Bruce Saxerdote, *The Social Connections that Shape Economic Prospect*, 608 NATURE 37–38 (2022), <https://www.nature.com/articles/d41586-022-01843-4>; David Leonhardt, *Friendship Bias*, N.Y. TIMES (Aug. 1, 2022), <https://www.nytimes.com/2022/08/01/briefing/economic-ladder-rich-poor-americans.html>.

64. Raj Chetty et al., *Social Capital I: Measurement and Associations with Economic Mobility*, 608 NATURE 108–21 (2022), <https://www.nature.com/articles/s41586-022-04996-4>; Raj Chetty et al., *Social Capital II: Determinants of Economic Connectedness*, 608 NATURE 122–34 (2022), <https://www.nature.com/articles/s41586-022-04997-3>.

their future incomes by 20 percent, on average.”<sup>65</sup> Why this is true is less clear and not explained by the big data set. Speculative possibilities include friendships, change in connections, information, networks, norms, beliefs, expectations, perceptions, and preferences.<sup>66</sup> Friendships change our future selves by, in the language of modern finance, changing our real options.<sup>67</sup> Education can and should be designed so that it fosters students making friends with students from different levels of SES.

### C. Fun

Ways of improving education include developing lessons that are engaging, fun, interactive, and story-driven online and mobile apps featuring serious games and virtual simulations for different ages and stages of the human life cycle. People can learn when they play because of the dopamine rush from winning. Video game simulations can teach empathy, compassion, and cooperation. People learn when they have fun and enjoy the learning experiential process. For example, learning math can and should be fun.<sup>68</sup>

Financial literacy has been achieved by the audience members of a primetime television soap opera in South Africa. This program, which is appropriately titled *Scandal!* included scripted, targeted financial lessons about debt management and gambling. A financial storyline over two consecutive months had a leading character borrowing excessively and irresponsibly, gambling, and falling into a debt trap; and eventually seeking help to responsibly manage her debt. *Scandal!* viewers had significantly greater financial knowledge about financial concepts and issues discussed in the program's storyline, especially messages which the lead character delivered; were less likely to take on retail credit or gamble; and were more likely to borrow from banks and for productive purposes than viewers of *Muvhango*, a similar soap opera lacking financial messages. A key factor in motivating financial behavior change among viewers of *Scandal!* was the importance of emotional connections with audience members of *Scandal!* had with its lead character. This edutainment programming story exemplifies how entertainment mass media can provide very accessible and cost-effective ways to deliver financial literacy lessons that resonate with millions of viewers.

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65. Claire Cain Miller et al., *Vast New Study Shows a Key to Reducing Poverty: More Friendships Between Rich and Poor*, N.Y. TIMES (Aug. 1, 2022), <https://www.nytimes.com/interactive/2022/08/01/upshot/rich-poor-friendships.html>.

66. David Brooks, *What Is It About Friendships That Is So Powerful?*, N.Y. TIMES (Aug. 4, 2022), <https://www.nytimes.com/2022/08/04/opinion/friendships-economic-mobility-class.html>.

67. David Henreckson, *Venturing Ourselves: On the Risks and Perils of Friendship*, COMMENT (July 7, 2022), <https://comment.org/venturing-our-selves/>.

68. EUGENIA CHENG, IS MATH REAL? HOW SIMPLE QUESTIONS LEAD US TO MATHEMATICS' DEEPEST TRUTHS 87 (2023).

Recent psychological research suggests “that a predictive processing framework (PP) may provide elements for a proximate model of play in children and adults.”<sup>69</sup> This research proposes “that play is a behavior in which the agent, in contexts of freedom from the demands of certain competing cognitive systems, deliberately seeks out or creates surprising situations that gravitate toward sweet-spots of relative complexity with the goal of resolving surprise.”<sup>70</sup> The researchers Marc Andersen, Julian Kiverstein, Mark Miller, and Andreas Roepstorff “further propose that play is experientially associated with a feel-good quality because the agent is reducing significant levels of prediction error (i.e., surprise) faster than expected.”<sup>71</sup> They “argue that this framework can unify a range of well-established findings in play and developmental research that highlights the role of play in learning, and that casts children as Bayesian learners. The theory integrates the role of positive valence in play (i.e., explaining why play is fun); and what it is to be in a playful mood. Central to the account is the idea that playful agents may create and establish an environment tailored to the generation and further resolution of surprise and uncertainty. Play emerges here as a variety of niche construction where the organism modulates its physical and social environment in order to maximize the productive potential of surprise.”<sup>72</sup>

#### D. Game-Changing

A critical and essential part of life is making decisions, including choices about debt, food, health care, physical activity, savings, sleep, spending, and retirement planning. Thus, the skill of decision-making is an important one to learn and teach. If we assume that people are maximizing or minimizing an objective function, the mathematics of constrained optimization applies. In addition to one-person decision theory, a related subject is multi-person decision theory, which is more commonly known as game theory or strategic thinking.

Common and ubiquitous examples of games include bargaining, negotiation, and conflict resolution. When Peter’s partner’s youngest sister’s oldest child was in first grade and quarreling with her younger brother one time in a car, Peter’s partner said to her that she must learn conflict resolution. She replied she had already learned in school about conflict resolution. Ever curious, Peter asked her exactly what she learned in school about conflict resolution. She explained, suppose I want A, and my brother wants B. Then, conflict resolution means that we both get C, where C does not equal A or B.

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69. Marc Malmdorf Andersen et al., *Play in Predictive Minds: A Cognitive Theory of Play*, 130 PSYCHOL. REV. 462 (2022).

70. *Id.*

71. *Id.*

72. *Id.*

A feature of standard western game-theoretic models is that there are exogenously fixed and given games. Asymmetric information games, including signaling games, assume the game is common knowledge among players, and that a player's type is private information. Nonetheless, the set of possible types and the probability distribution of types is assumed to be common knowledge among players. This framework allows the formalization of bluffing, screening, and signaling. In the (in)famous Beer Quiche game,<sup>73</sup> Player 1 can be of two possible types: a so-called real man or a wimp. Player 1 chooses whether to drink beer or eat quiche. Player 2 observes player 1's choice of breakfast and then chooses whether to fight him or not. Player 2's goal is to fight a wimp and not fight a real man. While player 1's goal is to avoid fighting, his two possible types differ in their breakfast preferences: real men prefer beer, and wimps prefer quiche. If you think this is a strange game, its origins date back to a popular trade book titled *Real Men Don't Eat Quiche*, which satirizes masculinity.

In many films and television programs, and much of popular culture, characters often do not accept being dealt a bad hand and playing it out. Instead, the dramatic tension often revolves around how to play a different and related game by changing or creating different actual or perceived payoffs, rules, or available strategic options. Precommitment strategies exemplify this kind of behavior. For example, Cortez burned his own ships so that his soldiers had no means of retreat.

The idea of changing the game you face or must play is not studied or taught at all or enough, especially if you are presented with a no-win situation, as in the *Kobayashi Maru* scenario. The original Star Trek's fictional Captain James Tiberius Kirk was the first and only Starfleet Academy cadet to beat the no-win scenario by secretly reprogramming the computer to allow him to win the scenario. Instead of being penalized for cheating, Kirk even received a commendation for his so-called "original thinking."

Sometimes a player is better off by not playing a game than playing any strategy in the game, such as that of global thermonuclear war as in the movie, *Wargames*, or a game of escalation, as in an auction for one hundred dollars where the rules of the game specify that the second highest (or equivalently, the highest losing) bidder must also pay the auctioneer, as does of course, the auction's winner (or equivalently, the highest bidder).

At other times, players might be playing the wrong game. Yale University sociologist Scott A. Borman, while he was still a teenager, wrote a book, *A Protracted Game: A Wei-Chi Interpretation of Maoist Revolutionary Strategy*. Borman analyzed how the United States intervened in Vietnam to conclude that the United States thought it was playing in a

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73. In-Koo Cho & David Kreps, *Signaling Games and Stable Equilibria*, 102 Q.J. OF ECON. 179, 183–87 figure I (1987) (presenting the beer quiche game).

game of chess, when in fact the game China played was go. Borman methodically demonstrates the similarity between the military strategies of Chinese Communist guerilla warfare insurgency and the Chinese board game of go. Boorman also argues that go analysis of a strategic system offers a more flexible and refined form of game theory than standard western models of strategic choice.

Changing the rules of the games that firms, investors, and other regulated parties face is literally what governments and regulators do when they pass legislation and regulations. In many relationships, the parties involved try changing the rules of the games they play. Such relationships include couples, children and parents, employees and employers, principals and agents, students and teachers, leaders and followers, and siblings. Entrepreneurs, innovators, and inventors effectively create new games in which they can play and excel. Many of the lessons in Sun Tzu's classic, *The Art of War* entail changing the games being fought.

### E. Neurodiverse

Peter appreciates the craving, desire, and rush of some to return to pre-pandemic teaching methods.<sup>74</sup> Let us also appreciate that not every student flourished under pre-pandemic instructional methods. There is much to be recommended about asynchronous learning for neuro-diverse students. The pivot from in-person, synchronous learning to virtual and possibly asynchronous learning illustrated that education is not one size fits all.

Unless exclusivity instead of inclusivity is the point of highly selective admissions, students and countries are better off if every capable student can study at any school of their choice. Some may object by saying that a winner-take-all phenomenon will result in market concentration and monopolistic competition. That already exists with the wastes of inefficiency. Having virtual educational options increases competition and efficiency.

A possible future world of education<sup>75</sup> involves virtual augmented and simulated reality environments that are real-life versions of the holodecks found aboard spaceships on *Star Trek*, *The Next Generation*, *The Orville*, and *The Orville: New Horizons*. NYU is building a holodeck "linking facilities at the Future Reality Lab (FRL) in Washington Square, and Media and Games Network (MAGNET) in Brooklyn to create a networked collaboration that can be readily and broadly extended and disseminated to national and

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74. Peter H. Huang & Debra S. Austin, *Unsafe at Any Campus: Don't Let Colleges Become the Next Cruise Ships, Nursing Homes, and Food Processing Plants*, 96 IND. L.J. SUPPLEMENT 25–65 (2020).

75. Hans Taparia, *The Future of College Is Online, and It's Cheaper*, N.Y. TIMES (May 25, 2020), <https://www.nytimes.com/2020/05/25/opinion/online-college-coronavirus.html>.

international research and educational communities.”<sup>76</sup> Moot court will take on a new meaning as experiential learning for law students. Simulated conflict resolution, mediation, and negotiation can happen in real-time with infinite variations and scenarios, like the *Kobayashi Maru* no-win training exercise part of the curriculum for command-track cadets of *Starfleet Academy*.

## F. Non-Lethal

Peter remains disappointed, dismayed, and saddened that colleges and universities were all too eager and financially motivated to return to in-person classes during the ongoing COVID-19 global pandemic. Some higher education administrators, such as Brown University’s president and labor economist, Christina Paxson, said that colleges and universities have a duty to reopen campuses as soon as possible for the sake of students and local economies.<sup>77</sup> Maggie Levantovskaya who is a writer, editor, and contingent faculty member at Santa Clara University, wrote cogently, “Paxson, for example, waxes nostalgic about “the fierce intellectual debates that just aren’t the same on Zoom.” Believe me, I miss the dynamism of the classroom, too. But is it worth risking my life over? Hell, no! In a global pandemic, fierce in-person intellectual debates cannot take priority over safety and health. What good is winning a debate if you’re ill, or dead?”<sup>78</sup>

Levantovskaya observes that “by pushing for a return to campus in the midst of a pandemic, these institutions are sending a clear message to the chronically ill and disabled: Finances and prestige are more important than the safety of those who are most vulnerable.”<sup>79</sup> Peter will put it even more bluntly, by requiring in-person classes, higher education institutions are saying very effectively to professors and students: drop dead, you are replaceable, and we care more about money than your lives. My reply is bye, I’m done. There is no in-person class, in-person committee meeting, in-person faculty meeting, or in-person school event for which I am willing to die. COVID19 demonstrated empirically that virtual meetings are possible, cheaper, and safer.

Peter’s partner knows of a physician who had four children: a boy and girl pair of twins, and a younger daughter. One of her sons applied to all eight schools in the Ivy League, and only those schools. He refused to apply to any

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76. NYU HOLODECK: A SIMULATED REALITY ENVIRONMENT, <https://holodeck.nyu.edu/> (last visited Jan. 5, 2024).

77. Christina Paxson, *College Campuses Must Reopen in the Fall. Here’s How We Do It.*, N.Y. TIMES (Apr. 26, 2020), [https://www.nytimes.com/2020/04/26/opinion/coronavirus-colleges-universities.html%20\[https://perma.cc/3BVJ-VS27](https://www.nytimes.com/2020/04/26/opinion/coronavirus-colleges-universities.html%20[https://perma.cc/3BVJ-VS27).

78. Maggie Levantovskaya, *Faculty Are Not Cannon Fodder*, CHRON. OF HIGHER EDUC. (May 30, 2020), [https://www.chronicle.com/article/Faculty-Are-Not-Cannon-Fodder/248879?cid=wsinglestory\\_40\\_1%20](https://www.chronicle.com/article/Faculty-Are-Not-Cannon-Fodder/248879?cid=wsinglestory_40_1%20).

79. *Id.*

so-called safety school because he had excellent credentials. Well, all eight Ivy League educational institutions rejected him. His parents were divorcing, and while he visited his dad's home, where there were guns, he committed suicide. This is obviously a sad tragedy, that is unfortunately all too common. Too many children today have embraced the false belief that they must get into a particular school or set of schools, and that not doing so constitutes failure. The reality is that getting into any school does not guarantee happiness or well-being. Some attendees of highly selective educational institutions only experience unhappiness and sustained ill-being. Most people do not attend any highly selective educational institution and achieve happiness and sustained well-being.

The human costs in terms of emotional trauma, suicides, and suicide attempts by students who are grieving and inconsolable upon being rejected from the all too highly selective admissions processes of educational institutions is avoidable and inexcusable. Rejection is a part of life some young people may not yet have learned how to handle. Almost by definition, high selectivity is rated highly by rankings of educational institutions. Tautologically, as the number of applicants has increased much faster than the growth of entering class sizes, educational institutions become more selective over time. Predictably, having a game of musical chairs in our culture's winner-take-all-mentality leads to many applicants feeling as if they are losers. Problematically, such feelings can lead to emotional harms, mental pain, and psychological scarring. Unfortunately, this *Hunger Games* type of situation is wholly unnecessary. Paradoxically, any highly selective educational institution receives more applicants next year. The current broken scenario for admissions to highly selective educational institutions is due to artificial restraints of market supply in the face of growing demand. The federal government can effectively "clone" the "best" schools. Otherwise, the tragedy of some of "the best and the brightest" attempting suicide will only become worse.

### **G. Non-Zero-Sum**

*Try Harder!* is Debbie Lum's moving and riveting 2021 documentary, viscerally depicting how some Asian American teenagers internalize the anxieties and pressures of being admitted into highly selective colleges. *Try Harder!* follows the daily vicissitudes in the academic and emotional lives of a few students at Lowell High School, a public magnet school in San Francisco that was then approximately half Asian American. Similarly, *Dream School: A Journey to Higher Ed* is a 2023 WGPU PBS & NPR documentary showing the daily pressures, stresses, and struggles that six high school students face as they pursue admission to their dream college. It is available free, at [https://youtu.be/WjWLbt12C\\_s?si=HB4kuhqoP-xHKfSd](https://youtu.be/WjWLbt12C_s?si=HB4kuhqoP-xHKfSd).

The competition, comradery, heartbreaks, and pathos of pursuing false notions of academic success is also shown in Vicki Abeles' related 2009 documentary, *Race to Nowhere: The Dark Side of America's Achievement Culture*. This documentary is part of a movement among some parents, educators, and policy makers to rethink how America's high-school educational system can and should help young adults be more engaged, happier, healthier, inspired, and resilient.

When he was at Horace Mann School, Peter's mother asked him why he was happy to have received 3 A+ and 2 A grades instead of 5 A+ grades on a trimester report card. She reminded him of how expensive the tuition was at Horace Mann. Peter replied that other parents also pay the same tuition and some of their kids received no A+ grades. She was not amused.

In the documentary *Try Harder!* Alvin who was a charismatic Lowell senior with a wonderful sense of humor, was rejected by all eight Ivy League schools, waitlisted at UC Berkeley, and got into UC San Diego. After he gets into Berkeley during the summer, his tiger mom chooses Berkeley for him due to Berkeley's reputation and graduation rates, despite a Lowell science teacher advising them that UC San Diego has great researchers in neuroscience, the subject Alvin intends to study.

Sophia was another fascinating Lowell senior, who also was captain of the Lowell tennis team, co-president of a Lowell club, editor of the school newspaper, vice president of Girls who Code, and worked at an ice cream shop. She applied to these very prestigious eleven colleges: Stanford, U.C. Berkeley, UCLA, Yale, Princeton, Harvard, Brown, Duke, Columbia, Penn, and Washington University, in St. Louis. She was waitlisted at Harvard, Columbia, Brown, rejected from Penn, Yale, Princeton, and got into Berkeley and UCLA. She chose to attend UCLA. Her choice is perhaps enigmatic because Berkeley is more highly regarded academically than UCLA. Nonetheless, having taught economics at both Berkeley and UCLA, Peter thinks that she would likely enjoy being a student at UCLA more than at Berkeley. It would be interesting to follow up with all the students in *Try Harder!* today and find out how happy they are now.

Peter's partner's youngest sister's oldest child asked Peter when she was nine years old which college she should attend. Peter replied by asking her what she wanted in college. She answered these two things: a place to learn things, and a place to have fun. Peter observed that she would learn things at all colleges and what she thought was fun would almost surely change between the ages of nine and eighteen. Peter thought a bit more and said to her to choose a college as she would choose a shoe. She looked puzzled and asked Peter what he meant by that. Peter explained that she should select a college that she feels comfortable in every day, just like a pair of comfy shoes to wear daily, rather than shoes that others regard highly, even if those shoes hurt and cause pain to her constantly. She had experience choosing Ugg knockoffs over Uggs. She asked Peter if the University of Colorado, Boulder



was fun, and Peter replied perhaps too much so. She has just finished one semester early being a pre-med at SUNY Binghamton

## H. Transformative

Education at its best fundamentally changes students in terms of their attitudes, beliefs, characters, mindsets, perspectives, and values. Education is not just about learning the so-called right answers. Education is more about learning diverse and novel ways of thinking and problem-solving. Education tends towards learning awe, compassion, curiosity, discernment, empathy, humility, kindness, and tolerance.

Education can and should not be about rote memorization of mere information or knowledge. Most of us today carry smartphones containing computers, which have more computational power than the one on the Apollo 13 command module. We can easily and almost instantaneously look up any desired information at our fingertips. Education should help us learn how to think and feel about facts, data, and figures. An excess of information leads to a shortage of attention.

Education literally changes the neural connections, networks, and pathways in the brains of students. Those changes are inevitable and natural consequences of education. Education is not merely informative. At its best, education helps people become more creative, entrepreneurial, and imaginative.

Parents and teachers can and should help students develop and nourish an intrinsic love of and passion for learning. Parents and educators can and should make learning less depressing and stressful, more enjoyable, and entertaining. Parents and teachers can and should reframe learning as an activity that can produce flow and play. In summing up how and why Supreme Court Justice Elena Kagan was able as the dean of Harvard Law School to change its culture from one of student alienation to “a happy and engaged community focused on student learning,” a legal scholar described Harvard Law School as “a richer and happier community” that for “a legal academic, now feels like an academic version of Disneyland, fun and playful with many different types of entertainment.”<sup>80</sup>

## I. About Social Emotional Learning

An educational theory known as Social Emotional Learning (SEL) aims to foster social and emotional skills within school curricula. SEL focuses on social and emotional skills to the same degree and extent as other subjects, such as mathematics, reading, and science. SEL started in the 1960s at the

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80. Kevin K. Washburn, *Elena Kagan and the Miracle at Harvard*, 61 J. LEGAL EDUC. 67, 69–74 (2011).

Yale School of Medicine in its Child Study Center. Professor James Comer started the Comer School Development Program to focus on the education systems of low-income African American communities, specifically the New Haven, Connecticut elementary schools. The Comer Development School implemented SEL programs in New Haven public schools as the charter for SEL because of their proximity to Yale University.

The main source of information about SEL is the Collaborative for Academic, Social, and Emotional Learning (CASEL). CASEL defines what it calls the best methods for implementing SEL at different levels, including classrooms, schools, caregivers and families, and communities. CASEL defines these five main components of SEL as the CASEL5:

(1) Self-Awareness: the skill of having knowledge about one's own emotions and developing a positive self-concept.

(2) Self-Management: the ability to regulate one's own emotions and monitor one's own behaviors, including intrinsic motivation and setting personal goals.

(3) Social Awareness: the ability to be aware of the emotions and social situations of others.

(4) Relationship skills: the skill to foster relationships and communicate in them.

(5) Responsible decision-making: the ability to solve problems and hold oneself accountable. In 2019, the concept of Transformative Social and Emotional Learning (Transformative SEL, TSEL or T-SEL) was introduced to guide students to "critically examine root causes of inequity, and to develop collaborative solutions that lead to personal, community, and societal well-being" according to the CASEL website. Transformative SEL lists among its goals "interrogating social norms, disrupting and resisting inequities, and co-constructing equitable and just solutions."

According to an independent education consultant, Ammar Al-Ghabbanm, SEL fosters compassion and empathy, and is crucial for a successful school that effectively supports the mental well-being of its staff and students. Molecular biologist John Medina stated that the more empathy training students and teachers receive, the better students' grades will become. Medina also stated that it is important to make the classroom feel like a safe place for students to learn. Implementing SEL programs is statistically associated with decreasing bullying of students with disabilities and reducing physical aggression, thus improving the social dynamics of schools. Implementing SEL programs in schools as early as kindergarten is associated with reducing the likelihood of students growing up to live in public housing, being involved with criminal activity, or spending time in a detention facility. SEL is also statistically linked with improving academic performance by 11 percentiles.

Advocates of SEL observe that SEL helps students to control and understand their emotions and learn to accept and understand their

classmates' emotions. SEL is important for teachers to understand and to demonstrate in their classrooms to make the learning process feel more natural for students. Such concepts as responsible decision-making, and positive relationship building are much easier for students to learn when they are constantly exposed to examples of such behavior. If SEL is woven into lessons and the school environment, students are more motivated to learn, understand the curriculum easier, and relate better to SEL content. Supporters of SEL note that SEL can also lead to students learning important skills for the workplace, such as communication skills, teamwork, and time management. Despite such compelling evidence, only these three states: Pennsylvania, Kansas, and Illinois have SEL standards in their K–12 curriculum.

United States House of Representative member from Ohio, Tim Ryan, introduced House Resolution 4626 - Social Emotional Learning for Families Act of 2019 (SELF Act) on October 18, 2019, in the 116th Congress. The purpose of the SELF Act was to create a grant program to support creation and implementation of a program in schools that helps to develop SEL habits. This bill was cosponsored only by Debbie Mucarsel-Powell, Ecuadorian-born American academic administrator who served as a United States House of Representative member for Florida's 26th congressional district from 2019 to 2021.

Since 2020, the application of SEL in public schools has become increasingly controversial and unfortunately politicized in the United States. For example, In February 2022, Oklahoma senator Shane Jett proposed a bill in the state legislature to prohibit public and charter schools from promoting or applying SEL concepts using public or private funds. For another example, the recent controversy about banning critical race theory in K-12 mathematics textbooks is about SEL. In April 2022, the Florida Department of Education (FDOE) published a list of mathematics instructional materials that aligned with the state's Benchmarks for Excellent Student Thinking (BEST) standards. The FDOE rejected 41% of the textbooks which were submitted for BEST review for a variety of reasons including the "unsolicited addition" of SEL in mathematics instruction. As Peter's friend Noshua Watson noted, SEL has become the new CRT (Critical Race Theory). What is ironic is that the current governor of Florida is conflating CRT with SEL.

Florida Governor Ron DeSantis and his associates in the Florida state legislature recently enacted executive orders, laws, and regulations banning CRT in K-12 mathematics textbooks. The Florida state department of education hired reviewers to reject math texts with CRT, meaning culturally responsive teaching, SEL, and social justice issues. DeSantis believes SEL concepts distract students from learning math, stating that math "is about

getting the right answer. It's not about how you feel about the problem."<sup>81</sup> As is often said, even a broken clock or watch tells the right time (at least) once a day. Rheta Rubenstein, a professor emerita of mathematics at the University of Michigan-Dearborn, cogently pointed out, "Mathematics learning is not only about 'getting the right answer,' as Mr. DeSantis claimed. It is about developing reasoning strategies for solving problems. It is about, among other things, developing curiosity, conjecturing, making assertions and defending them, following, and understanding others' ways of thinking, and, yes, making errors and being able to build from them to good solutions."<sup>82</sup> That SEL has become controversial and politicized in the U.S.A. is not based on education research or theory.

## J. About Happiness and Mindfulness

This Essay advocates teaching everyone about happiness and mindfulness because of the personal, professional, and social benefits of practicing happiness<sup>83</sup> and mindfulness.<sup>84</sup> Additionally, and pragmatically, it

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81. Dana Goldstein & Stephanie Saul, *A Look Inside the Textbooks That Florida Rejected*, N.Y. TIMES (Apr. 22, 2022), <https://www.nytimes.com/2022/04/22/us/florida-rejected-textbooks.html>; Dana Goldstein & Stephanie Saul, *Florida Releases Reviews That Led to Rejection of Math Textbooks*, N.Y. TIMES (May 7, 2022), <https://www.nytimes.com/2022/05/07/us/politics/florida-rejected-math-textbooks.html>.

82. Rheta Rubenstein, Letters to the Editor, *In Florida, Social-Emotional Learning + Math = Rejection*, N.Y. TIMES (May 2, 2022), <https://www.nytimes.com/2022/05/02/opinion/letters/florida-math-textbooks.html>.

83. Peter H. Huang, *Subjective Well-Being and the Law*, Chapter 56, HANDBOOK OF WELL-BEING (Ed Diener, Shige Oishi, & Louis Tay eds., 2018); Peter H. Huang, *Happiness 101 for Legal Scholars: Applying Happiness Research to Legal Policy, Ethics, Mindfulness, Negotiations, Legal Education, and Legal Practice*, RESEARCH HANDBOOK ON BEHAVIORAL LAW AND ECONOMICS 271, 271–293 (Joshua C. Teitelbaum & Kathryn Zeiler eds., 2018); Peter H. Huang et al., *Positive Institutions: Organizations, Laws, and Policies*, HANDBOOK OF POSITIVE PSYCHOLOGY (C.R. Synder et al., 3d ed. 2021); Peter H. Huang, *Happiness in Business or Law*, 12 TRANSACTIONS: TENN. J. OF BUS. L. 153, 153–72 (2011); Peter H. Huang, *Happiness Studies and Legal Policy*, 6 ANN. REV. OF L. & SOC. SCI. 405, 405–32 (2010); Peter H. Huang, *Authentic Happiness, Self-Knowledge, & Legal Policy*, 9 MINN. J. OF L., SCI., & TECH. 755, 755–83 (2008); Peter H. Huang & Rick Swedloff, *Authentic Happiness and Meaning at Law Firms*, 58 SYRACUSE L. REV. 335, 335–50 (2008); Peter H. Huang & Jeremy Blumenthal, *Positive Parentalism*, NAT'L L.J., Jan. 26, 2009, at 27; Jeremy Blumenthal & Peter H. Huang, *Positive Institutions, Law, and Policy*, HANDBOOK OF POSITIVE PSYCHOLOGY 587, 587–95 (Shane J. Lopez et al. eds., 2d ed. 2009); Jeremy A. Blumenthal & Peter H. Huang, *Positive Law and Policy*, ENCYCLOPEDIA OF POSITIVE PSYCHOLOGY 730, 730–33 (Shane J. Lopez ed., 2009).

84. Olivia Ash & Peter H. Huang, *Loneliness in COVID-19, Life, and the Law*, 32 HEALTH MATRIX: J. OF L.-MED. 55 (2022); Peter H. Huang, *Mindfulness in Legal Ethics and Professionalism*, 48 SW. L. REV. 401, 401–12 (2019); Peter H. Huang, *Boost: Improving Mindfulness, Thinking, and Diversity*, 10 WM. & MARY BUS. L. REV. 139, 139–97 (2018); Peter H. Huang, *Can Practicing Mindfulness Improve Lawyer Decision-Making, Ethics, and Leadership?* 55 HOUSTON L. REV. 63, 63–154 (2017); Peter H. Huang, *Meta-Mindfulness: A New Hope*, 19 RICHMOND J. OF L. AND THE PUB. INT. 303, 303–24 (2016); Peter H. Huang, *How Improving*

is politically difficult and problematic to be against happiness and mindfulness and be for unhappiness and mindlessness. If nothing else, Peter's personal experiences prove that being so-called academically advanced or precocious is no guarantee to achieving sustainable happiness or practicing mindfulness.

Peter's partner's youngest sister's oldest child often asked Peter to play the board game, *Life*, with her and one time, Peter told her that he would happily do so in a couple of minutes, after he finished up a train of thought he was working on in a paper he was writing. She incredulously and suspiciously asked why did he as a teacher still have to be writing papers instead of grading his students' papers? He told her that he was very happy to be writing this paper. She asked him why. He told her because it was about happiness and writing it offered him the opportunity to study and learn about happiness. She then asked, "shouldn't everyone be studying and learning about happiness?" He said yes, everyone should, and it is a shame and sad that is not already the case because a lot of people are unhappy and are not sure how to be happy, sustainably. Everyone also can and should be studying and learning about mindfulness because a lot of people are mindless and are not sure how to be mindful.

We believe that teaching students about happiness and mindfulness can help them personally, professionally, and socially. Peter's belief is based on seeing this happen, student feedback in person, on teaching evaluations, in heartfelt "thank you" cards, and grateful emails from former students, sometimes years after they graduated. If students acquire a taste for learning about happiness and mindfulness, then they may continue to learn about and practice happiness and mindfulness for the rest of their lives. Happy and mindful professors can teach and inspire their students to be happy and mindful, who in turn grow into and become happy and mindful people, who may help their families, friends, colleagues, and others to be happy and mindful, who in turn may help their communities and societies be happy and mindful. What a wonderful world that would be to help create, sustain, and in which to live, flourish, and thrive.

Professors can and should teach students about empirically validated and evidence-backed well-being mindsets, skills, strategies, techniques, and tools proven to mitigate the likelihood, duration, and severity of anxiety, depression, and chronic stress. In the rest of this section, Peter discusses his experiences teaching law students about happiness and mindfulness. Peter has taught thousands of law students about happiness and mindfulness in these courses (in alphabetical order): economic analysis of law; financial decision-making; law and human behavior; law, happiness, and neuroscience; law, happiness, and subjective well-being; legal ethics and

professionalism; business law issues; media, law, and popular culture; neuroscience and law; torts; and media, law, and popular culture.

Peter has learned many lessons from teaching law students about happiness and mindfulness, including these. First, it is important to explain that while one component of happiness is positive affect or positive emotion in the sense of feeling yippy-skippy, there are many other dimensions of happiness including the more cognitive notions of life satisfaction, meaning, and purpose. Second, regardless of the conception of happiness or subjective well-being being utilized, different people and societies may disagree over whether and how to trade off happiness with other desired goals. Third, empirical findings about the causes, correlates, and consequences of happiness and unhappiness usually arise from large cross-sectional studies, meaning that your mileage may vary. Fourth, correlation is not causation. Fifth, longitudinal studies are rarer than cross-sectional studies because of the much higher costs in time and money involved to conduct multi-year studies. Sixth, mindfulness is a concept with which students are familiar with in the sense that they must have been mindful to have gotten to where they are now. Seventh, the concept of mindfulness is not binary, zero or one; mindfulness has degrees along a continuum or spectrum. Eighth, students find it hard to believe that psychological and neuroscience research demonstrates that multitasking is an illusion and is serial single tasking with high switching costs. Ninth, there are people who believe the benefits of unhappiness and mindlessness always outweigh their costs. Tenth, being mindlessly mindful is still a form of mindlessness. Eleventh, people who learn about and study happiness and mindfulness can still be at times unhappy and mindless. Twelfth, happiness and mindfulness are skills that can be taught, learned, and improved through continual and regular practice. Thirteenth, happiness and mindfulness are habits and mindsets that can be acquired and maintained. Fourteenth, annoyances and frustrations offer opportunities to practice happiness and mindfulness. Fifteenth, practicing happiness and mindfulness reduce cognitive distortions and cognitive illusions. Sixteenth, practicing happiness and mindfulness thus improve decision-making and efficiency. Seventeenth, practicing happiness and mindfulness tend to foster creativity. Finally, it is important for students, professors, and people to experience mindfulness directly, first-hand, and for themselves, preferably during class, as soon as possible in discussing mindfulness through such three-minute guided meditations as these: the *Body Scan Meditation* and the *Body and Sound Meditation*. Both are from a free set of guided meditations, which the *UCLA Mindfulness Awareness Research Center* offers on its website, <https://www.uclahealth.org/programs/marc>.

Peter candidly and openly shares about how practicing mindfulness has helped him overcome professional and personal fears, setbacks, and struggles. Peter discloses to students how Peter and many people Peter knows experienced anxiety, depression, and chronic stress in law school and law

practice. Peter makes these disclosures to reassure students that having feelings of anxiousness, sadness, and being overwhelmed are okay. Peter reminds them how as law students and lawyers, we can be overly critical of ourselves and engage in unhelpful rumination. Peter tells them that a blind date once told him that he thinks too much. Peter asked her how much he should think and agreed that overthinking is an occupational hazard about which he must be mindful.

University of Missouri Kansas City law professors Nancy Levit and Douglas Linder co-authored a wonderful book about happiness for law students and lawyers,<sup>85</sup> for which they also created a webpage of course resource materials.<sup>86</sup> University of New Mexico law professor Nathalie Martin co-authored a book about yoga for lawyers,<sup>87</sup> and wrote a wonderful text for law students about how to craft professional identities through practicing mindfulness and emotional intelligence.<sup>88</sup> Brooklyn University director of legal writing and law professor Heidi K. Brown has written about applying positive psychology to legal education in order to help law students and lawyers flourish.<sup>89</sup>

### **K. About Thoughtful Leadership**

Anna participated in leadership training in grades 5 and 6. In 5th grade, Anna learned about what it means to be a leader, mainly to make sure that everybody's ideas are taken into account. In both 5th and 6th grade, Anna participated in the SDSC club. SDSC stands for Student DEIG (Diversity, Equity, Inclusion, Global Education) Steering Committee. It is a committee for students from 4th to 12th grade that meets twice a month on Tuesday mornings starting at 7:10. In the SDSC for the lower school, (4th to 6th grade) the students learned about different history months and events happening at the school. They lead the BIPOC leader assemblies for BIPOC Scientists. In 6th grade, Anna participated in GEBG (Global Education Benchmark Group) presentations about such topics as women's rights and universal access to global health care. The students who participated talked to different teachers and students from around the world. Exclusively in 6th grade, Anna participated in JEDI (Justice, Equity, Diversity, and Inclusion) Club. During the year, students collected almost 2,000 meals and sides from their uneaten

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85. NANCY LEVIT & DOUGLAS O. LINDER, *THE HAPPY LAWYER: MAKING A GOOD LIFE IN THE LAW* (2010).

86. Nancy Levit & Douglas Linder, *The Quest for A Satisfying Career in Law*, <http://www.law.umkc.edu/faculty/projects/ftrials/happylawyers/Questions.html> (2010).

87. HALLIE N. LOVE & NATHALIE MARTIN, *YOGA FOR LAWYERS: MIND-BODY TECHNIQUES TO FEEL BETTER ALL THE TIME* (2015).

88. NATHALIE MARTIN, *LAWYERING FROM THE INSIDE OUT: LEARNING PROFESSIONAL DEVELOPMENT THROUGH MINDFULNESS AND EMOTIONAL INTELLIGENCE* (2018).

89. HEIDI K. BROWN, *THE FLOURISHING LAWYER: A MULTI-DIMENSIONAL APPROACH TO PERFORMANCE AND WELL-BEING* (2022).

school lunches to donate to people in need. They also interviewed the owners of Hi-Rise Bakery to help by giving unsold food to JEDI Club at the end of the day.

Peter proposed in 2020 a new seminar about lawyers and leadership, and (remotely) taught it during the spring of 2021. The legal profession supplies the United States' largest share of leaders, including Chief Executive Officers (CEOs), general counsel, heads of government and nonprofit organizations, judges, law firm managing partners, legislators, politicians, prosecutors, and public defenders. In chairing community and charitable boards, or advising influential clients, lawyers are also "leaders of leaders." Even lawyers who do not occupy top positions frequently play leadership roles in commissions, practice areas, task forces, teams, and other group efforts. Many of the decision-making, ethical, interpersonal, and organizational skills critical for leadership are important for lawyers at all levels. Few law students learn about leadership. Nor do law students usually perceive that as problematic, which is itself problematic, given the leadership deficit public opinion polls report. Although lawyers' leadership responsibilities dominate law schools' alumni awards, commencement speeches, mission statements, and glossy public relations materials, lawyers and leadership are missing from the day-to-day teaching of most law schools.

Peter's seminar incorporated research about leadership from a wide range of disciplines, including law, decision sciences, economics, history, marketing, neuroscience, organizational behavior, philosophy, political science, psychology, and sociology. Peter's seminar started by asking why study leadership and considered challenges, qualities, and styles of leadership. Peter's seminar covered these topics: leaders as decision-makers, leaders as influencers: communication, conflict management, innovation, persuasion; organizational and social change; ethical and moral leadership; authority and accountability; limits of leadership; mindfulness in leadership; promoting diversity in leadership; leadership scandals: private lives and public responsibilities; lawyers as leaders; and social entrepreneurship. Peter's seminar also discussed examples of effective and ineffective leaders in film, television, and reality.

From the start of their careers, lawyers will occupy roles that call upon them to influence and persuade people, engage in difficult conversations, learn from mistakes, and interact effectively and equitably with people of different backgrounds, races, and identities. The COVID-19 crisis requires lawyers to navigate these everyday interactions in particularly challenging times that demand the ability to address problems under conditions of uncertainty, to navigate conflict and change, to strategize and innovate, and to find novel ways to connect with people (including virtually). These challenges require lawyers to cultivate presence, awareness, resilience, and racial literacy. The capacities required by the current crises add up to leadership as we define it: collaborating effectively in order to achieve



common goals. Peter's seminar aspired to cultivate participants' leadership capacities at intrapersonal, interpersonal, and systemic levels. Peter's seminar aimed to foster students' learning in the issues and problems that matter most to them. Students had an opportunity to develop and advance personal learning goals that will improve their capacity to interact effectively in groups, provide and receive feedback, build constructive work relationships, navigate new and challenging environments, achieve collective aims, and use their law degrees to have impact in diverse practice fields. Peter's seminar intended to equip students with tools and insights that they will practice in class and bring with them into any setting where they strive to have a positive impact; facilitate group interactions that supply concrete, real-time feedback about how students interact with themselves and with others; and provide them with skills prized by public and private employers alike, enabling students to hit the ground running.

Peter's seminar listed these learning objectives on the syllabus:

- Acquire the facility in ability to give and receive feedback, have difficult conversations, and interact effectively across individual differences.
- Appreciate the challenges and responsibilities of serving in leadership roles, with particular emphasis on how leaders can advance civil and human rights; foster diversity, equity, and inclusion; advance people's quality of life and well-being; and empower organizations and societies.
- Be able to build camaraderie, community, harmony, solidarity, and teams with others.
- Become more deliberative, impactful, and intentional.
- Develop your skills of communication, compassion, conflict management, creativity, decision-making, design thinking, dispute resolution, emotional intelligence, empathy, influence, innovation, negotiation, persuasion, resiliency, and systems thinking.
- Discover your character strengths, passions, and personality traits.
- Familiarize yourself with some current and historical examples of leaders.
- Improve your listening, public speaking, and presentation capabilities.
- Learn about high conflict personality theory, interpersonal and organizational dynamics, moral psychology, positive organizational scholarship, self-efficacy, and the psychology of human misjudgment.

- Practice cultural competence, gender bilingualism, mindfulness, reflective capacity, self-awareness, and situational awareness.
- Recognize affective biases, cognitive heuristics, unhelpful thinking, unintended consequences, and wicked problems.
- Strengthen your sense of humor, purpose, ethical focus, growth mindset, and values.
- Study alternative characteristics, models, styles, and theories of leadership.
- Understand the limitations, pitfalls, and scandals of leadership.

In preparing for teaching this course during a global pandemic, it was impossible to ignore how different leaders managed or mismanaged COVID-19. The most important lesson COVID-19 teaches is to put more women in charge. This lesson is based on dramatic evidence that some women were more successful than some men as leaders during COVID-19.<sup>90</sup>

## CONCLUSIONS

This Essay advocates that highly selective universities end legacy admissions to diversify America's economic, political, and social leadership. This Essay also advocates ending the recruiting of athletes in such elite sports as fencing, rowing, sailing, and water polo. This Essay suggests ending the practice of early decision. This Essay also endorses effectively cloning highly selective colleges. Finally, this Essay offers practical and pragmatic solutions to questions about how to change education for the better. Education provides individuals with real options in the form of opportunities to acquire careers, connections, power, prestige, professions, resources, status, and upward economic and social mobility. Education, especially in science, technology, engineering, and mathematics, is the basis of social progress.<sup>91</sup>

Education has the potential to be transformative and teach people life-long skills. Currently, that potential unfortunately remains unfulfilled. Education can teach people to be curious and want to be life-long learners. Education can offer individuals a path to upward economic and social mobility. Education can also help a country's technological and scientific progress. Education can improve people's lives, standards of living, and well-being. To realize its potential, education should be fun, engaging, interesting, and relevant to people's everyday lives. The best kind of education should combine East Asian and Western values and perspectives. It is our sincere

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90. See generally Peter H. Huang, *Put More Women in Charge and Other Leadership Lessons from COVID-19*, 15 FLA. INT'L UNIV. L. REV. 353, 353–419 (2021); Peter H. Huang, *Put Even More Women and Minorities in Charge*, 17 S.C. J. INT'L. L. & BUS. 47, 47–69 (2021).

91. See Stiglitz & Greenwald, *supra* note 6.

hope that this Essay helps policymakers and the public to realize the wonderful potential of education.