



A Critical Look at the 2019 College Admissions Scandal?

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In the end, Operation Varsity Blues will produce little of enduring value beyond increasing media advertising revenue and advancing a few political careers.

As the college admissions scandal (Operation Varsity Blues) story evolved over the past year, the reporting covering it has reached a level of absurdity that is breathtaking. My breaking point came a few days ago, so I decided to try to contextualize the narrative. Here is a humble reality check for those who were misled into believing that this story is newsworthy.

Let me begin with a disclaimer: I am making no legal excuses for the participants in the current scandal. I am only offering contextual background that places it in the broader academic, cultural, and political perspective required for understanding. It is only the most recent installment of a well-worn narrative: the controlling elite make their own

rules and live by them, if they can get away with it. Unfortunately, some of the participants, who are either serving or facing jail time, didn't know to not go into a gunfight with a sharp stick. Money alone is not enough to avoid prosecution for fraud: you need political clout. The best protection a defendant can have is a prosecutor who fears political reprisal.

Compare how the Koch brothers escaped prosecution for stealing millions of oil dollars from Native American tribes^{1,2} with the fate of actresses Lori Loughlin and Felicity Huffman, who, at the time of this writing, face jail time for paying bribes to get their children into good universities.^{3,4} In the former case, the federal prosecutor who dared to empanel a grand jury to get at the truth was fired for cause, which put a quick end to the prosecution. In the latter case, the prosecutors pushed for jail terms and public admonishment with the zeal of Oliver Cromwell.

There you have it: stealing oil from Native Americans versus trying to bribe your kids into a great university. Where is the greater crime? Admittedly, these actresses and their cohorts are likely to serve their time at "Camp Cupcake," but to me even that seems like an injustice since they engaged in behavior that (with one exception) has been widely practiced for generations, by those whose mantra is "before honesty, the right fork."



THE PLAYERS

The story began in 2018 when Morrie Tobin, a security fraudster, implicated Rudolph Meredith, a women's soccer coach at Yale University, in a college bribery scheme. To gain court favor before his sentencing hearing for his pump-and-dump security fraud scheme, Tobin wore a wire to help the Federal Bureau of Investigation (FBI) entrap Meredith, who was accepting a bribe to ensure college admission for Tobin's daughter.⁵ Meredith, in turn, cooperated with the FBI and implicated William Singer, the alleged organizer of the admissions scheme, who in turn disclosed all of his patrons/customers/victims (depending on perspective) to reduce his penalty. FBI agent Laura Smith then provided an affidavit⁶ supporting the criminal complaint of mail and honest services fraud against the financial beneficiaries of the racketeering⁷ and the patrons of the conspiracy.⁸ Singer laundered the bribes through Key Worldwide Foundation, a nonprofit under his control that provided a veil to obscure the intent of the bribe^{9, 10} while also allowing the contributors to write the bribes off on their tax returns.¹¹

Singer's charge sheet seems to be the most extensive, including racketeering, money laundering, conspiracy to defraud the United States, obstruction of justice, and two forfeiture allegations.¹² Singer cooperated with the government in exchange for a plea deal¹³ with Judge Rya Zobel (appointed by President Carter). Meredith accepted a plea deal that involved money and asset forfeiture,¹¹ negotiated through the court of U.S. Attorney Andrew Lelling (appointed by President Trump). *The New York Times* provides a worthy summary of the details of the scandal, including bribery, false claims of learning disabilities, stand-ins for SAT or ACT exams, the use of fake handwriting, photoshopping applicant faces onto athletes' bodies, false claims of athletic abilities, and tax cheating—all in the quest to

gain admission to premiere universities for children of privilege who would not normally qualify on the basis of their academic record.¹³ The remaining details have been painfully documented by the commercial media outlets.¹⁴

Morrie Tobin's case is worthy of additional comment. According to the most recent U.S. Securities and Exchange Commission complaint,¹⁵ Tobin and his fellow defendants attempted to defraud investors through a pump-and-dump investment scheme. This was prior to his involvement in the admissions scandal and his motivation for entrapping Meredith and starting the investigation. One recent report estimates that the broader scheme generated more than US\$165 million in illegal sales of stock in at least 50 microcap companies.¹⁶ Such being the case, it seems remarkable that District Court Judge Nathaniel Gorton (appointed by President George H.W. Bush) would limit the government's forfeiture claim to US\$4 million.¹⁷ I am no expert on U.S. federal sentencing guidelines but, based on the previous two references I cited, it would appear that this scheme was so profitable to Tobin, even after taking the federal forfeiture into account, that it takes on an aura of moral hazard. I leave consideration of whether his penalty relief seems proportional to the upside of his fraud to the readers.

THE EXERCISE OF PRIVILEGE

It is reasonable that the people who organized this scandal, or sought to benefit from it financially, were prosecuted. But how about the others—entertainers, business leaders, and so on—who were indicted for federal program bribery? That's where the prosecutorial aggression becomes questionable in my view, not because I endorse bribing universities to obtain college admission for children of privilege (usually this sort of thing falls under the rubric of quid pro quo) but because

it has gone on unimpeded for many years. In a very real sense, the current crop of favor-seekers is not doing anything very different from what the privileged elite has been doing for generations. My feeling is that the prosecutors diminished their credibility by going after the lowest hanging fruit on the quid pro quo tree. If they really wanted to stop this activity, the targets should be the people who are donating libraries, endowed chaired professorships, and new athletic fields in exchange for favorable consideration for their relatives. If the latest bribers are to be faulted, it is for their naivety, lack of legal acumen, and willful ignorance of the darker side of college admissions and the unsavory characters who serve these interests.

That they should have known better is an understatement. Singer's claim to fame, such that it was, is for a coauthored and self-published series of truly undistinguishable books on gaming the college admissions process (still available on Amazon at this writing).¹⁸ His coauthor/ghostwriter, Rebekah Hendershot, seems to share some interest in serving a quasi-scholastic academic student community with Singer through her company, although she distances herself from the felonious dimension of Singer's activities of racketeering, money laundering, tax evasion, coach-bribing, test-rigging, and so on.^{10,19} It should be emphasized that such resources are widely available and not isolated examples. A cottage industry to improve the chances of the admissions-challenged college applicants among us, and to elevate their grades once admitted, has existed for many years. These days, US\$50 can get a "premium quality" undergraduate research paper delivered electronically in six hours (<https://www.college-paper.org/prices.html>). In such an environment, it should surprise no one that US\$500,000 should be

able to buy quite a bit more than a term paper. Unpraiseworthy college aids surpassed Cliffs Notes several presidential impeachment hearings ago.

No matter how reprehensible we find Singer's and others' situational ethics, they must be contextualized to understand the scandal. Is it really the act of bribery that drives the prosecution? Or could it be the visibility and profile of the cases, with concomitant public relations value for the prosecutors and politicians who champion the prosecution?

In the United States (and presumably most other economically advanced countries), prestige universities are really two schools in one that share a name: a larger one that serves the scholastically prepared and academically meritorious student and a much smaller, though in some ways more important, university that serves the students of economically and politically well-connected families. Look up "gentleman's C" (perhaps "gentleman's B—" with today's grade inflation) in your preferred urban dictionary. The phrase does not apply to students who attend class in top hat and tails. It describes a mechanism to align the quid pro quo system of the development office with the registrar's academic grading and student-retention policy. After all, we cannot admit the children of privilege only to flunk them out. While prestige universities advance scholarship magnificently, they also advance class interests by acknowledging and recognizing pedigree.

From the scholastic point of view, students who graduate from prestige universities enjoy exposure to the best and brightest scholars and scientists in the world. However, the children of wealth and privilege may well have experienced different admissions standards and participated in different classes, majors, and university programs, in which the primary value was more a product of social networking and political connections than acquaintance with the Mensa set. Operation Varsity Blues is best seen as a reminder of a system that has been in place since the United States was

founded: refer back to the Federalist/Anti-Federalist debates to understand how many of the power elite in the 18th century viewed the proper role of education. It had little to do with improving the masses then and not much more by some accounts today.

So then, what new insights can be drawn from the recent college admissions scandal?

AFFIRMATIVE ACTION BY ANOTHER NAME?

Most of my generation were introduced to the notion of affirmative action through presidential executive orders issued since the early 1960s,²⁰ through which federal government agencies were directed to prevent employment discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin. These executive orders, as well as the more expansive 1964 Civil Rights bills, were not universally popular in Congress. The final Senate version was approved by a 73–27 margin after considerable delays, filibustering, and a rare cloture vote. That this legislation was unpopular in the southern states is beyond dispute, and it has been revisited by the courts continuously since passing. One reason for this resistance was the belief that these federal initiatives challenged the remnants of a social order that grew out of the slavery economics and conservative religious dogma prevalent since the founding of the United States.

One of the most important components of this social order was, and continues to be, belief in the entitlement of privilege, based on wealth, political power, religious order, inheritance, and so on—and that's where this resistance with the current college admissions scandal ties in. Bribery, the activity that the parents were involved in, has been present since the founding of the United States. Universal entitlement to education (like universal suffrage and the right to privacy) was not a constitutional guarantee by design. The earliest statement of a universal entitlement to education that I know of appeared in 1948

as Article 26 of the United Nations' Universal Declaration of Human Rights.²¹ In fact, prior to the Age of Enlightenment, education was considered to be a parental or ecclesiastic responsibility, and the notion that the U.S. government bore any responsibility to educate all children remained unchallenged by any administration until Franklin Roosevelt's Second Bill of Rights speech in 1944 (http://www.fdrlibrary.marist.edu/archives/address_text.html).

I emphasize that the exercise of privilege, such as by the parents involved in the current college admissions scandal, was actually considered normal throughout most U.S. history. Under a broader interpretation of affirmative action (that is, a positive step to ensure the access of opportunity to a protected group, in this case privileged children), parents using whatever resources they have to give their children an advantage should be understood to be affirmative action for the country club set. The notion that affirmative action should be a government program to ensure fairness and equal opportunities to economically, socially, or politically marginalized populations is a relatively recent idea. It remains unpopular with large segments of the population, as does the question of what constitutes an acceptable curriculum, for that matter. This opposition comes from several sources, such as postmodernists, religious and cultural conservatives, authoritarians, and so on; adherents of enlightened education are usually people who have partaken of it.

Therefore, the practice of using influence to obtain admission to select schools has always been part of the social-political landscape as has the use of money to influence such purposes. This is well documented by the Pulitzer Prize-winning *The Wall Street Journal* reporter Daniel Golden in his book *The Price of Admission*,²² which is highly recommended to everyone who was even moderately surprised by the recent college admissions scandal. What I describe here applies to the "other"

prestige university discussed previously: the smaller, shadow university that serves the privileged elite. First, we cast the broadest net. Admissions preferences are routinely extended to two basic categories. Group 1 includes

- › legacies
- › children of faculty and staff
- › Title IX applicants
- › minority applicants
- › recruited athletes in major competitive sports.

Group 2 is composed of

- › recruited athletes in patrician sports such as equestrian studies and water polo
- › celebrities' relatives and friends
- › politicians' relatives and friends
- › benefactors' relatives and friends
- › children of privilege
- › development office admissions
- › future influential high-potential students.

I've broken this preferential treatment into two categories for a reason. The treatment to Group 1 is more common and less controversial. After all, the elite schools argue, we are a family, a community, so showing preference to children of graduates and employees falls under the rubric of community enhancement and empowerment. It's all about kith and kin. I do not judge the merit of this position; I am just reporting it as a widespread practice. It must be admitted that there are financial rewards downstream, from family estates that are bonded to the universities through the matriculation of generations of family members. It goes without saying that the preference given to Title IX and minority applicants is motivated by federal affirmative action legislation and, in many minds, is the right thing to do. The goodness-of-fit for recruited athletes within this group is the most tenuous.

Group 2, however, is no longer about kith and kin and helping marginalized and disadvantaged populations; this

group is crony capitalism at its best. These admissions are not an investment in education but, rather, are crass attempts to attract future capital, prestige, power, and influence. In this case, the students are not expected to contribute to the scholarly ambitions of the university and will not advance the educational prestige of the franchise. Their value to the brand is measured in economic terms (new buildings, extensions to the library, endowments, and so on) or future influence by graduates. In these cases, it is expected that the applicant's economic contribution will far exceed tuition and fees.

Let's be perfectly clear: group 2 negotiations are never conducted in the open, but it is folly to deny that they exist. All parties demand discretion. While the connection between the quid and the quo is not exposed to daylight, it is ever present. In the academy there is even a name for the beneficiaries' recipients: "business office musts."²² They are not very difficult to detect: large contributions by sources connected to an otherwise unqualified applicant that precede his or her admission is the clue. The patterns are unmistakable: academic achievement that does not meet an institution's announced standards and rather obvious financial, political, or social benefit to the institution (either by cash, pledge, or other potential downstream advantages).

According to Golden, that is what happened with Jared Kushner after his parent, Charles, pledged US\$2.5 million to Harvard.²³ In fact, that pattern was repeated several times, since Charles Kushner made large donations to universities including Harvard and New York University Law prior to his children's acceptances. Let's face it: prestige universities do not build up their endowments on the backs of the underprivileged and marginalized among us. The number of whites enjoying preference far outweighs the number of minorities aided by affirmative action. As Golden explains,

At least one-third of the students of elite universities... are flagged

for preferential treatment in the admissions process. While minorities make up 10–15% of a typical student body, affluent whites dominate other preferred groups: recruited athletes (10–25% of students); alumni children, also known as legacies (10–25%); development cases (2–5%); children of celebrities and politicians (1–2%), and children of faculty members (1–3%).²²

A chancellor of one of the Public Ivies (the University of California, Berkeley; the University of Michigan; and the University of Virginia) reported to Golden that he estimates that "students without any nonacademic preference are vying for only 40% of the slots."²²

Quid pro quo college admissions operate in much the same way as the offering of ambassadorships to large political donors to presidential campaigns: merit has little or nothing to do with "fast track" appointments or admissions. That is not the way the system works.

As I mentioned earlier, there is one way in which the present college admissions scandal differs from the time-worn tradition of rewarding the controlling elite: the money is passed through middlemen or brokers. That is not unusual, although the country club set would likely use a more sophisticated approach through less imperfect vehicles like Singer. Rather, the difference is that in Operation Varsity Blues, the money ultimately found its way to university employees and not the university itself. While institutional bribes to the university foundation are common and acceptable to the elites, bribing the water polo or fencing coach is considered *de classe*. But that is a moral distinction without a difference, certainly as far as the briber is concerned.

The entertainers and businesspeople who were recently caught just did not know how this game is played. In some cases, the money reportedly involved would have been adequate to achieve

the desired result had it gone through normal channels, to the university's business office or foundation. Using Singer as a vehicle to bribe coaches is like using Rudy Giuliani to conduct foreign policy; it produces maximal risk with minimal expected benefit. So, in the end, the prosecuted parents just did not understand that how quid pro quos with elite universities work; bribes to coaches are fraught with difficulties, whereas bribes to business offices can work splendidly. Of course, Lori and Felicity might be expected to treat such a difference as a nuance.

The publicity and media attention given to the current scandal is misplaced. The newsworthy part (and it is not very newsworthy at that) involves the criminal behavior of agents such as Singer, Tobin, and Meredith. If responsible editors and publishers were at work, these stories would appear in the back pages beneath the fold. In the world of corruption, wire fraud, and so on, this story is insignificant. Yet, it achieved notoriety on a par with the Panama Papers, which revealed a genuine scandal of global proportions and huge economic impact. In a very real sense, a case could be made that the celebrity and business bribers were just small-time versions of the billionaires mentioned in Golden's book, people who just didn't know the drill.

While I readily agree that the world would be better off if university admissions procedures were based on merit and purged of quid pro quo arrangements, the controlling elite will never relinquish this category of privilege. To try to require merit of silver spoon applicants would have the same effect as trying to limit tax deductions for donations of fine art to the contributor's basis in the donation; the beneficiaries have too much to lose to allow politicians that long of a leash. It should surprise no one that ethical egoism is now, and forever will be, a constant companion to the power elite?

That said, let not your faith in the value of higher education be diminished

but only your faith in the value of a diploma. A diploma should be seen as a hunting license: it certifies that the recipient has satisfied some minimal requirements. Your own diplomas may actually use that very wording.

(I would be remiss if I failed to mention that Golden mentions three reputable universities that flourish without providing special preferences for the children of privilege: California Institute of Technology, Cooper Union, and Berea College!) ■

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Digital Object Identifier 10.1109/MC.2019.2959872

