George W. Bush mounted his bully pulpit on Martin Luther King's birthday and took aim at the University of Michigan's affirmative-action policies, calling them "a quota system." He tried to soft-pedal his quota-slinging rhetoric with an "I strongly support diversity of all kinds" statement and then fired off several more rounds of anti-quota talk directed at the "method used by the University of Michigan to achieve this important goal." His sympathy for the goal but condemnation of the method harked back to the compassionate conservatism of white moderates in Birmingham in 1963, whose equivocations prompted Dr. King to write his "Letter from a Birmingham Jail." King posited that the Ku Klux Klaner and the White Citizens Councilers may not be "the Negro's great stumbling block." Instead, he decried "the white moderate ... who constantly says: 'I agree with you in the goal you seek, but I cannot agree with your methods.'"

We can have an honest disagreement about what constitutes a quota--or whether Michigan's approach is the most sensible one to achieve the school's laudable goals--but Bush's language and the dishonest characterization of Michigan's processes in the brief filed by his Solicitor General make such a conversation all but impossible. The strategy of the Administration brief is to "quotify" any aspect of the admissions process that dares notice the race of applicants. Even when the college admissions committee merely flags the files of underrepresented students of color for further review or the law school committee seeks--as a matter of informed educational policy--a critical mass of students of color to assure their participation in a robust exchange of views in the law school classroom, the Administration concludes that there is no meaningful distinction from strict numerical quotas. The bottom line in their judgment seems to be that any attention to race, whether it is a nuanced point system, as at the University of Michigan college, or a more flexible and individualized process, as at the Michigan law school, is simply a quota in disguise. And yet neither the Solicitor General nor the President offers any specific evidence that anyone at either the college or the law school was admitted or excluded "solely" or even primarily based on race.

Because race has a political, economic and social component, professor of psychology Patricia Gurin finds that when people who have lived on the darker side of our racial divide have access to our classrooms and our faculties, white and nonwhite students alike achieve better intellectual growth and improved capacity to participate in our multiracial democracy. The rhetoric of quotas shuts down the conversation about racially diverse classrooms and their relationship to the learning environment. It also diverts our attention from the real double-bind that distorts the face of higher education in America.
The first thread in the double bind is the artificial scarcity created by the overinvestment of state resources in prisons because of mandatory minimum sentences and three-strikes laws, which has starved educational budgets. As a result, many students who want to attend public institutions of higher education cannot, both because of rising tuition costs and because the competition for admission is fiercer than ever. And competition for the more selective public universities is especially tough, because the schools function less and less as educational greenhouses and more and more as status markers and gateways to elite networks.

The rising number of applications requires ever more efficient means of sorting candidates. This helps explain the second thread of the educational double-bind, our worship of simple, uniform measures of qualification, which I call "testocracy." The central problem is that Michigan, as is true of most elite educational institutions, has allowed its admissions standards to be driven by the rankings posted by a news magazine. No one wants to admit the dirty secret of higher education: In the name of merit as determined by U.S. News & World Report, the current system emphasizes efficiency and brand valuation over individualized assessments; test scores over initiative, persistence and creativity; and wealth over diversity.

The implicit message of Bush's statement and even more the brief filed by his Solicitor General is that attention to racial diversity, while laudable in the abstract, in practice subverts attention to qualifications based on merit. Yet their conception of merit is something of an optical illusion: High-stakes tests correlate well with socioeconomic status, but they are poor at predicting grades and totally unable to anticipate future career success. It was not affirmative action that kept the white plaintiffs out of Michigan; it was the mirage of merit (including commitments to social privilege and affluence) that was primarily responsible for their fate.

Bush himself was the beneficiary of this double standard, where we arbitrarily call something merit and thus it is so. In his day, merit was defined as "character," which gave a preference to white men of "good breeding" from what Nicholas Lemann calls the "Episcopacy." Today what we call merit is defined as scores on timed aptitude tests--creating the testocracy. And yet the testocracy fails to predict most of those who will perform well in college and afterward. Test scores are at best imperfect proxies for merit, since they correlate more strongly with grandparents' class status than with first-year college or law school grades. And what's more, at least in Bush's day, there was a certain self-consciousness that the privilege of admission should be accompanied by a need to serve--noblesse oblige. Today, our love affair with the testocracy grants its beneficiaries a false sense of entitlement. Students proceed as if a coveted slot in a selective school is their due reward, without any concomitant need to give back to the community that's subsidizing their education. As a result, a study of graduates at the Michigan law school found that those with the highest conventional entry scores were the least likely to become leaders in their community, to do public service or to mentor younger attorneys. At the same time, it was the black and Latino students who in fact were most successful in realizing all three elements of the law school's mission: financial satisfaction, career satisfaction and leadership in their community.
There are certainly alternatives to Michigan's process for assuring merit and diversity. There is much to recommend the Texas 10 Percent Plan--where the top 10 percent of the graduates of each high school in the state are automatically admitted to the two flagship public colleges. Black and Latino legislators, academics, advocates and activists who were genuinely committed to fairness and diversity initiated the plan. They succeeded in opening up access for blacks, Latinos and poor whites in numbers very close to their percentage under more traditional affirmative action. The plan is not only fair; it also promotes academic excellence. Those admitted under the plan outperform their counterparts who come in under the conventional testocracy. Whether white, black, Latino or Asian, the 10 percenters finish their first year of college with higher GPAs than other freshmen. The plan, however, does not apply at the graduate school level, a fact overlooked in the Administration's briefs. Liberal critics contend that the plan depends on segregated high schools to work. However, until the courts or state governments do something about segregated schools, this approach integrates one tier of the educational system, and if used at the elementary school level might integrate some magnet high schools as well.

But before we can have a meaningful conversation about alternative ways to achieve diversity, we first need to have an honest conversation about merit and opportunity. Test scores are not a fair or reliable way to distribute a scarce public resource, given the strength of their relationship to wealth rather than performance. Nor does the fictitious equation between test scores and merit actually fulfill the mission of public colleges to graduate students who go on to achieve individual goals, serve community needs and help society realize its democratic potential. With its incendiary use of the language of quotas, the Bush Administration shifts our attention from this long-overdue debate about the relationship of admissions standards across the board to the democratic mission of higher education in an increasingly multiracial and knowledge-based economy.

Lani Guinier, the Bennet Boskey Professor of Law at Harvard Law School, is the co-author of The Miner's Canary: Enlisting Race, Resisting Power, Transforming Democracy (Harvard).