

## Affirmative Action: Race or Class?

Douglas N. Harris  
University of Wisconsin at Madison  
(with assistance from Carl Frederick)

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*"My daughters should probably be treated by any admissions officer as folks who are pretty advantaged . . . I think that we should take into account white kids who have been disadvantaged and have grown up in poverty and shown themselves to have what it takes to succeed."*

*President Barack Obama, May 14, 2007<sup>1</sup>*

On January 20, 2009, America witnessed the swearing-in of its first black president, Barack Obama. His wife, First Lady Michelle Obama, is the great-great-granddaughter of slaves, and grew up during a century in which the major problem in the United States was "the problem of the color-line."<sup>2</sup> Even following the abolition of slavery, the nation struggled with the growth of the Ku Klux Klan, lynchings, segregation of schools and other public facilities, the assassination of Dr. Martin Luther King and other civil rights leaders, and the stubborn persistence of unequal access to education, income, and wealth. While the civil rights movement of the 1960s led to considerable progress—President Obama's election is a case in point—progress of late has been slow and uneven. The time is ripe for a fresh debate about how the nation defines and achieves equality of opportunity.

For the past half century, one of the primary tools for addressing racial (and ethnic) inequality has been "affirmative action" policies. First used in this country by President John F. Kennedy, the term affirmative action now refers to a complex set of policies made by Congress and state legislatures, executive orders by Presidents and governors, language in the U.S. Constitution and state constitutions, and legal interpretations by courts. These policies attempt to improve opportunities for minorities by giving them preference in admissions to higher education, government and private-sector jobs, and government contracts. Race is not intended to be the only factor in these decisions, but enters as one of many factors intended to "tip the balance" toward racial minorities with somewhat weaker qualifications.<sup>3</sup> Many other countries such as Brazil, Canada, Finland, India, Japan, and South Africa use affirmative action in similar ways.

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<sup>1</sup> Television interview with George Stephanopoulos on ABC News.

<sup>2</sup> W.E.B. DuBois. *Souls of Black Folk*, 1903.

<sup>3</sup> Affirmative action has also been used to increase opportunities for women, but this topic is not covered in this paper. Also, much of the history, arguments, and relevant evidence discussed here are similar with regard to school desegregation policies, but this topic is omitted from the present paper.

There is wide agreement that discrimination, and of course slavery and segregation, are morally wrong. There is also little dispute that, while opportunities for blacks and other minorities have improved significantly in the last half century, racial minorities still experience social and economic disadvantages. But there is considerable disagreement about what to do about it, and in particular, what role affirmative action should play.

### *Choices*

One policy option—and the primary topic of this paper—is to change affirmative action so that it gives preference to people based not on race or ethnicity, but on class.<sup>4</sup> Class refers to the social and economic resources available within families, typically measured by parents’ income, wealth, and education. These factors, especially income, are already used to determine eligibility for Social Security benefits, college financial aid, government-supported health insurance, welfare, and other government programs. In this sense, the U.S. already has a class-based affirmative action program to go along with the race-based one.

But recent changes in our society lead us to some important questions: If we are going to have affirmative action, then what role should race and class play? Should the use of race and class vary across different aspects of public policy such as education and employment? For example, should affirmative action focus on class in higher education admissions but focus on race in employment decisions? These are the questions this paper attempts to address.

Supporters of the shift from race to class argue that society has changed in ways that make race-based affirmative action inappropriate and outdated. Race is not as strong a predictor of life success as it was in the past. Yet it is still true that people—including whites—who grow up in lower-class families simply do less well in life. So, why not give preferences to people based on class instead? Also, by the year 2042, the total number of racial minorities living in the United States will exceed the number of whites, and it is not clear that a policy aimed at helping “minorities” would make sense when the minorities are in the majority.<sup>5</sup> Further, while race-based affirmative action was originally intended to benefit blacks, a rapidly increasing number of minorities are Hispanic and come with very different histories and backgrounds than blacks—yet both groups benefit from current affirmative action policies in similar ways.

President Obama’s election, while it does not change the basic facts, does change the conversation. For supporters of affirmative action, the President’s election can be seen as

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<sup>4</sup> I refer only to race throughout the remainder of this document, though race and ethnicity are somewhat different concepts. I also use the term “minority” to refer to all non-whites.

<sup>5</sup> U.S. Census Bureau (2008) downloaded February 1, 2009 from: [www.census.gov/Press-Release/www/releases/archives/population/012496.html](http://www.census.gov/Press-Release/www/releases/archives/population/012496.html).

evidence that affirmative action works. Opponents, in contrast, say it means the historical roots and current sources of racial inequality have been sufficiently resolved. Whichever way we view his election, the President’s own views on affirmative action suggest that a change in federal law may be coming.

After providing a brief history of affirmative action and the arguments of supporters and opponents, I consider evidence about how effective these policies have been at increasing opportunities for blacks (there is much less evidence for other minority groups). In the fourth section, I discuss the current state of racial inequality today, providing statistics about racial differences in income, wealth, and education. Finally, I use the history, arguments, and evidence to address the key policy questions and lay out the key issues involved in a potential shift in affirmative action from race to class.

## History of Affirmative Action<sup>6</sup>

### *Early History of Affirmative Action Policies in Employment and Contracting*

The earliest government equal opportunity efforts were taken up by the federal government and aimed at opportunities in employment. In 1942,<sup>7</sup> President Franklin Roosevelt issued an executive order prohibiting racial discrimination in the federal service and shortly afterwards Congress passed legislation with similar language.<sup>7</sup> Soon afterwards, President Roosevelt also took more aggressive action, creating the President’s Committee on Fair Employment Practice (FEPC) to investigate allegations of discrimination in federal employment and contracting. The creation of the FEPC marked a “new era with respect to the federal government’s concern with civil rights” because this was the first time since the post-Civil War Reconstruction that a federal agency had been created with the sole purpose of addressing the problems of minorities. Still, without money, the FEPC could not conduct investigations, and rules against discrimination were merely symbolic. Even when it had money, the FEPC had little power to punish wrong-doers, and victims of discrimination had little incentive to come forward.

The beginning of the 1960s saw a marked increase in efforts to promote equal opportunity. President Kennedy was the first to sign an executive order that required federal government agencies and their private contractors to take “affirmative action” to ensure that employment and contracting were not racially discriminatory. This was a significant departure because in addition to the previous laws intended to *prevent discrimination*, Kennedy’s executive order required that employers take a variety of specific steps to *actively promote equal opportunity*.

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<sup>6</sup> The discussion in this section relies heavily on the excellent book: J. Edward Kellough, *Understanding Affirmative Action: Politics, Discrimination, and the Search for Justice*, 2006. Washington, D.C., Georgetown University Press.

<sup>7</sup> Presidents and Governors are considered the “executives” of government and have authority to issue executive orders that apply to the employees of executive agencies (i.e., most government departments).

However, it is important to emphasize that the specific affirmative action he had in mind did not involve explicitly considering race in employment or other decisions. Instead, he focused on recruiting minority graduates of local high schools and colleges to apply for jobs, offering training programs to provide skills for potential minority candidates, and reevaluating job qualifications to make sure that minorities were not being excluded for reasons unrelated to job performance. Federal government contractors, such as those who produced military equipment, were required to submit compliance reports and faced sanctions if they failed to comply.

President Lyndon Johnson went even further through his advocacy for the Civil Rights Act of 1964, creating the Equal Employment Opportunity Commission (EEOC). The EEOC was the first agency authorized by Congress to promote equal opportunity, and it continues to carry out this work today. Perhaps the more significant impact of Johnson’s efforts, however, was to create an incentive for contractors and employers to set specific goals and timetables—often called “quotas” by affirmative action opponents. For example, one company bidding on a federal government contract included in its bid the specific number of minority employees it would hire if given the contract. Such numbers were not required, but given the federal government’s drive to increase minority hiring, contractors used this to get a leg up on the competition. Johnson did not intend to create quotas, and in fact opposed the idea, but his policies did lead to practices that looked very much like quotas.

President Richard Nixon took the quota idea a step further by directing government agencies to provide potential contractors with information about the percentages of minorities in each local labor market. While not explicitly required, those contractors who proposed hiring a percentage of minorities consistent with these federally determined figures were given an advantage in the bidding process. In 1972, federal anti-discrimination and affirmative action laws were extended to state and local governments and subject to federal EEOC oversight. These policies marked the beginning of a debate, still raging today, about the use of numeric goals and quotas.

Then came the very important role of courts in determining the constitutionality of these policies, especially whether they are consistent with the Fourteenth Amendment promising “equal protection of the laws.” One of the U.S. Supreme Court’s most significant rulings was in *Griggs v. Duke Power Company* in 1971. The company, which had previously discriminated against blacks, responded to anti-discrimination laws by requiring workers to have a high school diploma and/or pass an intelligence test to get jobs doing manual labor, such as shoveling coal. The Supreme Court ruled that, because there was no evidence that a diploma or test was related to performance of manual labor, this practice had a “disparate impact” on minorities and was therefore illegal. This was a significant ruling because it meant that even indirect or unintentional discrimination was illegal.

### ***Push Back Against Race-Based Affirmative Action***

After two decades of more aggressive affirmative action policies, opponents began to push back. In 1987, President Ronald Reagan eliminated the requirement that federal agencies use goals and timetables. Courts also began to raise questions. In its 1995 decision in *Adarand Contractors v. Peña*, the U.S. Supreme Court ruled that affirmative action policies had to be subjected to a high “strict scrutiny” standard. This means that the apparent victims have to show that the state has a “compelling interest” in taking into account an individual’s race and that the justification for that interest is necessary or “narrowly tailored” to address it. The strict scrutiny standard made it more difficult for plaintiffs to win their cases.<sup>8</sup>

There was also a political backlash against affirmative action at about the same time as *Adarand*. In 1996, voters in California approved Proposition 209, a state constitutional amendment banning affirmative action involving minorities (and women) in state employment, contracting, and university admissions. During 1997–98, 11 additional states held public referenda on constitutional amendments and 13 governors signed executive orders on the topic. Legislation was also taken up in 22 states. The push back against affirmative action was only moderately successful, however. Not one of 22 states passed any new law against affirmative action. In the immediate aftermath of Proposition 209 in California, only two of the 11 state referenda passed (Michigan and Washington state) and only three of the 13 executive orders were intended to limit affirmative action (California, Florida, and Louisiana). More recently, referenda against affirmative action have passed in Colorado and Nebraska.

### *History of Affirmative Action in Higher Education*

Unlike employment, affirmative action in higher education was not initiated by federal government. Rather, universities sought to create racial diversity on their campuses and adopted affirmative action to meet their own goals. As with the employment cases, however, the courts continued to have a significant impact on how affirmative action policies in higher education were designed.

In the Supreme Court’s 1978 decision in *Regents of the University of California v. Bakke*, the Court considered the constitutionality of the admissions process of a medical school that used separate admissions selection processes for different racial groups. As in the employment affirmative action cases above, the Court ruled that the use of race warranted a standard of strict scrutiny. The Court, in a 5-to-4 decision, ruled that the medical school had not met this standard and therefore that its admissions process violated the Fourteenth Amendment.

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<sup>8</sup> There was a brief period during which the Griggs decision was overturned. In 1989, the Supreme Court essentially reversed itself in *Ward’s Cove Packing Company v. Antonio*. But President George H.W. Bush soon after signed the Civil Rights Act of 1991, which embraced the rules embodied in the original *Griggs* case and returned the law roughly back to where it was under *Griggs*.

The specific legal reasoning is important because it explains why, despite rejecting this particular affirmative action program, the Court decision nevertheless facilitated a broad expansion of affirmative action in college admissions. The Court agreed with the medical school that attracting a diverse student body was an important goal—in legal terms, it served a compelling interest. In particular, universities had legitimate right to academic freedom, supported by the First Amendment, which meant that colleges had a right to choose their student bodies and to do so in way that promoted diversity. But, according to the Court, the medical school failed to show that its approach was necessary (narrowly tailored) to serve this compelling interest.

This was not the end of the story, however. While rejecting the University of California’s program, the majority of the Court went further and outlined an admissions process that it believed was constitutional. Specifically, it pointed to the process then used at Harvard in which race could be considered as one among many factors to tip the balance in favor of a particular applicant. So, while ruling against the medical school’s affirmative action program, the Court provided a clear path for other, perhaps less aggressive, affirmative action programs to continue. As a result, colleges across the nation greatly expanded affirmative action programs.

In 2003, the Supreme Court took up two cases against the University of Michigan, *Gratz v. Bollinger*, which involved the college’s undergraduate admissions, and *Grutter v. Bollinger*, which focused on the university’s law school admissions.<sup>9</sup> (Bollinger, at the time, was the president of the university.) Justice Sandra Day O’Connor was the swing vote in both decisions, though her decision was not the same for the two cases. She agreed with the previous legal precedent that diversity was a compelling interest, but did not agree that the undergraduate system was narrowly tailored. While both programs involved the same university, the university’s undergraduate admissions program was judged to be too mechanical and gave so many points for being minority that, in effect, all minimally qualified minorities were admitted—that is, the system did much more than just tip the balance. For this reason, the Court deemed it unconstitutional. The law school’s system considered the “whole person” and was less mechanical in consideration of race and the Court upheld it. Broadly speaking, the reasoning in the *Bakke* case, and the focus on diversity as a compelling interest, remained intact. The majority in the *Grutter* decision also held, however, that affirmative action should be a temporary measure, and specifically, that it expected that the need for affirmative action would no longer exist in 25 years (the year 2028). While the idea that affirmative action is a temporary measure is widely held even among supporters, no rationale was given for the 2028 deadline. It is unclear whether future Courts will consider this somewhat arbitrary deadline to be binding in future affirmative action cases. What is clear is the trend toward increasing skepticism among

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<sup>9</sup> While the judgment that diversity was a compelling interest was briefly in question following a lower court’s ruling in *Hopwood v. Texas*, any ambiguity was eliminated by the Supreme Court’s decisions in *Grutter* and *Gratz*.

judges toward race-based affirmative action. While affirmative action remains pervasive today, the push back is likely to continue.

## Arguments For and Against Affirmative Action

Why is there so much controversy about affirmative action? To answer this question it is necessary to understand the positions taken by both supporters and opponents.

The legal arguments above highlight some of the key goals that affirmative action intends to achieve. Richard Kahlenberg, a proponent of class-based affirmative action, discussed four such goals: “genuine equality of opportunity,” “long-run color-blindness,” “reduced prejudice and greater social harmony [including diversity],” and “compensation for historical wrongs.”<sup>10</sup> Of course, the four are not mutually exclusive—for example, compensation for past wrongs may be necessary to achieve equality of opportunity.

But equality of opportunity means different things to different people. Supporters of affirmative action argue that the only way to offset the disadvantages faced by minorities—historical or otherwise—and provide genuine equality of opportunity is to provide some advantage to offset it. This “evens the playing field.” The problem is that past discrimination has been passed on from generation to generation, so the effects of discrimination even in the distant past can linger for decades or centuries. For example, the fact that slaves were not allowed to learn to read, and freed slaves were not provided adequate schools, meant that their children also read less well than whites. When those children became adults, that disadvantage was passed on to their children, and so on down the line—all the way to today. Parents play such a crucial role in the life success of their children that even a century of freedom may not be enough to make up for the legacy of slavery.

Discrimination also inflicts a psychological toll on its victims and their descendants. Today’s high school students have grandparents who were probably raised when schools, bathrooms, and other public facilities were still segregated by race, and their great-grandparents were raised when blacks were lynched and perpetrators were rarely pursued or prosecuted. Blacks and other minorities today know that their loved ones were subject to severe discrimination and that discrimination continues today. Given those conditions, it is unsurprising that some distrust the system and question whether they really have a “fair” shot at the American dream. Race-based affirmative action may be necessary to counteract these harmful effects.

Supporters also argue that race-based affirmative action is good for society as a whole, even for whites. As Dr. Martin Luther King put it in his famous “I Have A Dream” speech, “Many of our white brothers . . . have come to realize that their destiny is tied up with our destiny.” There are

<sup>10</sup> Richard K. Kahlenberg, *The Remedy: Class, Race and Affirmative Action* 2006, New York: Basic Books.

many practical ways in which this shared destiny arises. First, in the case of education, some argue that diversity itself improves learning opportunities because students are exposed to a wider range of ideas and perspectives and therefore challenged to expand their knowledge. There is also some evidence that more diverse organizations make better decisions, perhaps because they force organizations to consider a wider variety of options when making decisions. Finally, because the United States is so much more diverse than other nations, supporters argue that it is important to make sure that each group interacts with and understands other groups, to create a strong and cohesive citizenry. In short, diversity is good for everyone and supporters argue it is therefore necessary to take proactive or “affirmative” steps to create it. These arguments roughly correspond to Kahlenberg’s “greater social harmony.”

Opponents of affirmative action of course have a very different view. While generally agreeing that discrimination against blacks is wrong, they believe that affirmative action as a solution is worse than the problem it attempts to solve and may even make the problem worse. Affirmative action, they argue, is itself a form of discrimination—reverse discrimination against whites. This conflicts with the idea of a color-blind society where decisions are made based on “merit” alone. For example, in the history of discrimination, I explained how federal contracts were typically given to the lowest bidder (one definition of merit) and affirmative action changed that by giving an advantage to bidders with higher prices but who were more aggressive in hiring minority workers.

Affirmative action is also seen as counter-productive because it stigmatizes blacks. This is especially true of blacks who would have succeeded in today’s society even in the absence of the affirmative action. For example, there is a raging debate about whether affirmative action policies played a role in President Obama’s being admitted to Occidental College, Columbia University, and Harvard University. There is no clear evidence either way, but if the perception is that affirmative action did play a role, then President Obama might not be given due credit for his accomplishments as a politician and statesman because of this perceived special treatment. This would be unfair to him and devalue his incredible accomplishments. In addition, affirmative action may be counter-productive by putting minorities into situations where they are likely to fail (the “mismatch” hypothesis) and by encouraging minorities to view themselves as “victims,” preventing them from reaching their full potential.

Finally, if the goal of affirmative action is to compensate for historical discrimination, then reverse discrimination is also unfair because it punishes whites today for the crimes of their ancestors. To the degree that affirmative action is intended to address ongoing discrimination, anti-discrimination laws are seen as adequate tools.



Today, promoting diversity is the reason most supporters give for their advocacy of affirmative action.<sup>11</sup> One reason, as I showed in the previous section, is that the courts have held that diversity is a “compelling interest” in some situations. Diversity also avoids legal and moral concerns about trying to remedy past discrimination. Finally, diversity does not imply favor toward any particular group. It is therefore more credible to argue that affirmative action is good for everyone.<sup>12</sup> In addition to higher education, the diversity argument is common in the business world, where workforce diversity is seen as a prerequisite for serving a diverse base of customers.

Opponents respond to this by arguing that race is only one aspect of diversity. Especially in higher education, where the focus is on diversity of beliefs, opponents argue that race is only loosely related to the opinions that people hold. Racial diversity does little to guarantee intellectual diversity. But for supporters, it is less about diversity of opinions as diversity of perspectives and experiences. Even if political and social beliefs are the same, the central role of race in society means that minorities bring a unique perspective to the classroom and campus life.

The debate between supporters and opponents of affirmative action has been intense and often polarizing since its inception. This is unsurprising because the policy represents a clear tension between two bedrock values of American society: equality and liberty. Affirmative action is intended to increase equality of opportunity, but by making certain decisions in society, such as college admissions, based on factors unrelated to typical notions of merit, affirmative action addresses equality at the expense of liberty. Supporters place more weight on equality and opponents focus more on liberty.

There is a second important way that the two sides differ: While both sides adopt the general goal of “equality of opportunity,” supporters focus on evidence about societal *outcomes* such as education, income, and wealth while opponents focus more on the *process* by which decisions are made. For opponents, affirmative action is morally wrong regardless of what it might do to improve the equality of societal outcomes, while for supporters, the process is less important than the goal of more equitable outcomes. Equality of opportunity means different things to different people.

As I will show later, these same types of arguments are relevant to the policy decisions regarding whether and how to use race versus class in affirmative action.

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<sup>11</sup> Richard K. Kahlenberg, [1996, op cit.](#)~~1996, op cit. [[Fix this—no book by him has been referenced yet—not until p. 14]]~~

<sup>12</sup> Richard K. Kahlenberg, 1996, op cit.

## Has Affirmative Action Achieved Its Goals?

Much of the legal and political history of affirmative action discussed above, especially the arguments of opponents, revolves around the moral arguments about how affirmative action affects decisions in employment, contracting, and college admissions. In these next two sections, I consider evidence about how well affirmative action has reached its goals and about the state of inequality in America today.

Determining whether most of the goals are achieved is more a matter of logic and reasoning than about facts and figures. I showed in the previous section that the diversity arguments hinge mainly on the type of diversity that might be desired and philosophical debates about their importance. The same is true for compensation of historical wrongs. In theory, it would be helpful to know if race-based affirmative action has made the world more color-blind, but in reality it is really difficult to prove. Where evidence is most relevant, and where I focus my attention, is on whether race-based affirmative action promotes equality of opportunity, as measured by actual life outcomes.

There is some evidence from government reports that early affirmative action efforts did increase hiring of minorities.<sup>13</sup> More recent evidence suggests that affirmative action has led to meaningful occupational upgrading and reduction in racial gaps in wages<sup>14</sup> and that firms practicing affirmative action pay minorities wages and salaries more similar to white counterparts, compared with companies that do not use affirmative action.<sup>15</sup> Opponents express concern that considering race may mean that unqualified candidates are hired and this may reduce productivity and efficiency in the workplace. However, there is little evidence to suggest that this has occurred.<sup>16</sup>

Studies of affirmative action in college admissions consistently find minorities applying to selective undergraduate programs and graduate/professional programs are more likely to be admitted than whites with similar academic qualifications.<sup>17</sup> The advantage given to minorities at less selective undergraduate colleges is less clear, partly because much higher percentages of students, regardless of race, get into these colleges. Getting into college is, of course, not all that

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<sup>13</sup> David H. Rosenbloom, *Federal Equal Employment Opportunity: Politics and Public Personnel Administration*, 1977. New York, Praeger.

<sup>14</sup> James P. Smith. “Affirmative Action and the Racial Wage Gap.” *The American Economic Review*, 1993, Vol. 83(2): 79-84. Smith also argues that these effects were partly temporary and that the long-term effects have been smaller.

<sup>15</sup> Harry Holzer and David Neumark, “Are Affirmative Action Hires Less Qualified? Evidence from Employer-Employee Data on New Hires.” *Journal of Labor Economics*, 1999, Vol. 17(3): 534-569.

<sup>16</sup> Harry Holzer and David Neumark, “Affirmative Action: What Do We Know?” *Journal of Policy Analysis and Management*, 2006, Vol. 25(2): 463-490.

<sup>17</sup> Peter Arcidiacono, “Affirmative Action in Higher Education: How Do Admission and Financial Aid Rules Affect Future Earnings” *Econometrica*, 2005, Vol. 73(5): 1477-1524.

William G. Bowen and Derek C. Bok, *The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions*, 1998. Princeton, N.J., Princeton University Press.

matters. If students who were accepted to more competitive colleges were “in over their heads” and less likely to graduate, this would offset the benefits of being admitted. The evidence tends to contradict this argument, though the evidence is not completely consistent.<sup>18</sup>

Researchers have also examined the effects of alternatives to race-based affirmative action. In the wake of the Fifth Circuit Court’s *Hopwood* decision, the state of Texas replaced affirmative action with the “top 10% rule” that guaranteed admission to any public university in Texas to students who graduate in the top 10% of their high school class. One study estimates that eliminating affirmative action altogether would have reduced black and Hispanic enrollment numbers at the two flagship universities by about 20% and 10%, respectively.<sup>19</sup> Further, the top 10% rule did not bring enrollments back to their pre-affirmative action levels. Another study found that switching to a pure income-based system would, as expected, boost the numbers of lower-income applicants but drastically reduce the enrollment of minorities because there are many low-income whites who would take their places.<sup>20</sup>

While race-based affirmative action does appear to benefit minorities, it is clear that the greatest benefits go to the most advantaged among them. This is especially true in higher education, where affirmative action mainly affects students applying to the most elite institutions, who are not surprisingly the most well off. Likewise, in contracting decisions, the bidders are typically business owners who—minority or otherwise—are almost always well above the average income and often very wealthy. If the goal is to help minorities as a group, including providing role models for the less advantaged, then helping the most well off minorities may be appropriate. But if the goal is to directly help individuals who are disadvantaged, then helping middle- and upper-class minorities is a questionable strategy.

Whether affirmative action is achieving its goals therefore depends on what the main goals are and exactly how those goals are defined. If equality of opportunity means helping minorities as a group, then race-based affirmative action has generally been a success—a point that even supporters of class-based affirmative action acknowledge. But if the goal is really to help the most disadvantaged individuals, then it is a failure because class is a stronger determinant of life success than race and because the minorities who benefit the most from race-based affirmative are the ones who need it the least.

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<sup>18</sup> For example, one study finds that students admitted because of affirmative action fare no worse than other students at selective colleges: Thomas J. Kane, “Racial and Ethnic Preferences in College Admissions,” pp. 431-456 in *The Black-White Test Score Gap*, edited by Christopher Jencks and Meredith Phillips, 1998. Washington, D.C., The Brookings Institution. An example of a study finding the opposite is: Heather Rose, “The Effects of Affirmative Action Programs: Evidence from the University of California at San Diego,” *Educational Evaluation and Policy Analysis*, 2005, Vol. 27(3): 263-289.

<sup>19</sup> Mark C. Long and Marta Tienda, 2008, op cit.

<sup>20</sup> Harry Holzer and David Neumark, 2006, op cit.

## **Inequality and Discrimination in America Today**

Because equality of opportunity is one of the central goals of affirmative action, it is important to consider evidence on where the U.S. stands today. If people of different races or classes were equally likely to be successful in life, then this would certainly influence the goals and policies.

### *Inequality based on Race*

Current disparities by race/ethnicity in educational attainment, income, and wealth reveal a consistent pattern—blacks and Hispanics at the low end and whites and Asians at the high end. Blacks are twice as likely to drop out of school as whites, and Hispanics are six times as likely.<sup>21</sup> Likewise, over 33% of whites have at least a bachelor’s degree compared to 20% of blacks and only 13% of Hispanics. In short, there are vast racial inequalities in educational success.

Because education is so important in determining employment opportunities, the same patterns emerge with respect to income and wealth. Typical white households earn 1.6 times as much as typical black households and almost 1.4 times as much as typical Hispanic households. Similarly, the percentage of black and Hispanic people in poverty is twice that of whites and Asians. The disparities multiply when turning to measures of wealth, which are related to income but also reflect financial inheritance and other factors. Including all types of wealth, the median white household is worth almost 11 times as much as the median Hispanic household and almost 16 times as much as the median black household.

Many current inequalities can be traced to past inequalities. Data from the 1990s show that when we compare racial minorities and whites whose parents have similar levels of income and education, black and Hispanic students have similar or even higher chances of finishing high school<sup>22</sup> and blacks have higher chances of going to college<sup>23</sup>, compared with their white counterparts whose parents have similar levels of education. The key problem is that black and Hispanic parents typically have *lower* levels of education and this translates into less success for their children. Further, there is little reason to expect that these inequalities will be eliminated

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<sup>21</sup> This is partly because a large portion of the Hispanic population is comprised of recent immigrants who did not attend school in the United States.

<sup>22</sup> Krista M. Perreira, et al. “Making it in American: High School Completion by Immigrant and Native Youth” *Demography*, 2006, Vol. 43(3): 511-536.

Amy Lutz “Barriers to High-School Completion among Immigrant and Later-Generation Latinos in the USA—Language, Ethnicity and Socioeconomic Status,” *Ethnicities*, 2007, Vol. 7(3): 323-342.

<sup>23</sup> P.R. Bennett and Y Xie, “Revisiting Racial Differences in College Attendance: The Role of Historically Black Colleges and Universities.” *American Sociological Review*, 2003, Vol. 68(4): 567-580.

by 2028, the year the Supreme Court indicated that there should be no further need for affirmative action.<sup>24</sup>

### *Evidence of Continued Racial Discrimination*

How much of this gap is a consequence of current discrimination? Studies have found that discrimination has decreased since the Civil Rights Act of 1964 but it has not been eliminated.<sup>25</sup> Three recent reviews conclude that some race-ethnic differences in earnings are attributable to discrimination.<sup>26</sup> One recent study of job applicants found that white applicants with criminal records were more likely to be called for an interview than similarly qualified black applicants *without criminal records*.<sup>27</sup> There is also discrimination after workers are hired. For example, one recent study in 1997 found that minorities were very similar in terms of objective measures of performance, but that the workers’ supervisors still gave the minority workers lower ratings.<sup>28</sup>

Other commonly cited evidence relates to the banking industry and the mortgage loans people take out in order to buy homes. One study, using data from 1990, found that the approval rate on loan applications was 8% lower for blacks and Hispanics compared with similarly qualified whites. This probably also makes it less likely that minorities will bother to apply for loans, since they may fear the discrimination that these studies find. Supervisors and bank lenders might not even realize that they are discriminating, but this is cold comfort to the victims. Discrimination, while it has diminished in recent decades, remains alive and well.

### **Is Now the Time for Class-Based Affirmative Action?**

At the beginning of this paper, I posed several questions: If we are going to have affirmative action, then what role should race and class play? Also, should the approach vary across employment, contracting, and higher education? Using the facts and arguments above, I outline the key issues involved in answering these questions.

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<sup>24</sup> Alan Krueger, Jesse Rothstein, and Sarah Turner, “Race, Income, and College in 25 Years: Evaluating Justice O’Connor’s Conjecture,” November, 2006, Research & Occasional Paper Series #19.06, Center for Studies in Higher Education, University of California at Berkeley.

<sup>25</sup> See the reviews by William A. Darity Jr. and Patrick L. Mason, “Evidence on Discrimination in Employment: Codes of Color, Codes of Gender,” *Journal of Economic Perspectives*, 1998, Vol. 12(2): 63-90; and Devah Pager and Hana Shepherd, “The Sociology of Discrimination in Employment, Housing, Credit, and Consumer Markets,” *Annual Review of Sociology*, 2008, Vol. 34: 191-209.

<sup>26</sup> Darity and Mason, 1998, op cit; Holzer and Neumark, 2000, op cit; Pager and Shepard, 2008, op cit.

<sup>27</sup> Devah Pager and Lincoln Quillian, “Walking the Talk? What Employers Say Versus What They Do,” *American Sociological Review*, 2005, Vol. 70(3): 355-380.

<sup>28</sup> Marta Elvira and Robert Town, “The Effects of Race and Worker Productivity on Performance Evaluations,” *Industrial Relations*, 2001, Vol. 40(4): 571-590

One of the key goals of affirmative action is to promote equality of opportunity. There is little debate that there are vast racial inequalities in life outcomes, which the evidence here bears out. However, for opponents, this evidence is unpersuasive because they are less concerned about the equality of outcomes than they are about how those outcomes arise—they are concerned about the means rather than the ends. Supporters counter that the inequality of outcomes is so great—the U.S. is one of the most unequal nations in the world on all sorts of educational and economic indicators—that society fails even the more process-oriented test of opportunity.

Also, while we are diverse on the whole, we live largely separate lives. People attend different schools and churches and live in different neighborhoods. The former black mayor of Detroit, Kwame Kilpatrick, once said that he went all the way through college without ever being in the same classroom with a white student. In addition, there is clear evidence of not only the historical roots of discrimination, passed down from generation to generation, but also the current discrimination in employment, banking, and other important social and economic activities.

Even if there were agreement about whether equality of opportunity and diversity are problems, it is important to consider whether race- or class-based affirmative action policies are the better solutions. Those who support changing affirmative action argue that, because of the “declining significance of race”<sup>29</sup> relative to class, giving preferences based on class would do more to equalize opportunities. This is partly why there is fairly widespread support for other public policies, such as Medicaid health insurance, where lower-income people are given greater benefits. Race-based affirmative action, in contrast, is much more controversial and enjoys much less support.<sup>30</sup>

But this also highlights the connection between the problems we are trying to fix and the solutions—that is, how the different arguments in favor of affirmative action imply very different types of policies. For example, if the goal is to compensate minorities for past discrimination, then it may not make sense to treat blacks the same as other minority groups in race-based affirmative action, since these groups have very different histories in the U.S. Yet, nearly all affirmative action policies treat blacks, Hispanics, and other non-whites the same way. Conversely, if the goal is racial diversity, then the current policies are more appropriate, but ill-suited for addressing historical and current discrimination against blacks.

Class-based affirmative action may partially resolve the conflict in goals: Because poor people are more likely to be racial minorities, it helps create racial diversity. Further, because class is a better indicator of disadvantage, it also does a better job of promoting equality of opportunity.

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<sup>29</sup> William Julius Wilson, *The Declining Significance of Race: Blacks and Changing American Institutions*, 1980, 2<sup>nd</sup> edition, Chicago, University of Chicago Press.

<sup>30</sup> Anthony P. Carnevale and Stephen J. Rose, “Socioeconomic Status, Race/Ethnicity and Selective College Admissions,” in Richard D. Kahlenberg (ed), *America’s Untapped Resource: Low-Income Students in Higher Education*, 2004. New York, Century Foundation Press.

While it might seem that class-based affirmative action would be worse for the one racial group that has seen the most severe discrimination—blacks—recall that current race-based policies are increasingly helping Hispanics and other minorities, not blacks. Nevertheless, while race-based affirmative action is less beneficial for blacks than it once was, the evidence is also fairly clear that class-based affirmative action would fail to help blacks and other minorities as much as race-based policies. A high percentage of minorities are poor, but most poor people are still white.

Consider, for example, the UCLA Law School, which uses class-based affirmative action programs for admissions. Research suggests that compared with race-based affirmative action, this program reduces racial diversity by half.<sup>31</sup> Even some advocates of the class-based approach such as Kahlenberg acknowledge this, but they argue that this is less of a problem than it seems because class diversity is arguably as important as race-based diversity. That point is more a matter of philosophy than evidence. However, it is also important to recognize the connection between diversity and equality of opportunity. Racial minorities are more likely to perceive that they have a fair chance at the American Dream if they see people who “look like them” having success. If they do not see such role models in their daily lives, then they are less likely to strive and it becomes increasingly unlikely that equality of opportunity will translate into anything resembling equality of outcomes.

There are also some fundamental differences between the ideas of race and class that influence the affirmative action debate. Skin color, a key aspect of race, is an observable and essentially permanent characteristic of a person. In contrast, the class of a person’s family is much harder to identify visually and is subject to change. This means, first, that class-based affirmative action could impose less of a stigma effect. Because a person’s class is harder to observe, it is unlikely that co-workers or college classmates would know that a person was given preferential treatment, and this would greatly reduce any stigma problem. The role modeling argument is also different with class. It is not that lower-class people do not need role models, but that class is a less visible characteristic with which to identify them. The fact that skin color is observable and permanent also means that racial discrimination might be harder to eliminate through other means and race is likely to remain central in how individuals see themselves and form their identities and social groups. Racial inequality is therefore a different type of problem from class-based inequality and may require different types of solutions.

How would a class-based affirmative action policy work? One issue is how to measure class, which changes over time. Income is the most likely measure, but whose income counts? For an 18-year-old, it might be reasonable to use the person’s parents’ income in college admissions. But what about for a 50-year-old person applying for a job? Would it be the income that person’s parents had when the person was growing up decades ago? Her parents’ current

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<sup>31</sup> Richard H. Sander, “Experimenting with Class-Based Affirmative Action,” *Journal of Legal Education*, December 1997: 472-503.

income? Perhaps at some age the measure would switch from family income to the person’s income, or a combination of the two. Parental education and wealth could also be used. In designing affirmative action programs, these details can matter a lot. Issues also arise in measuring race; for example, there are increasing numbers of mixed race Americans, but measuring race is arguably easier overall because it does not change over time in the same way that class does.

The details of affirmative action—even the use of race versus class—could vary across areas of public policy. Indeed, class is already a key factor in many areas of public policy such as Social Security. Supporters of race-based policies argue that these other policies are inadequate, and if the goal is to provide a hand up to lower classes, then improving and expanding these policies is the place to start, rather than eliminating race-based affirmative action. Improving class-based programs for children would also avoid the difficulty of measuring class among adults. Recall that measuring class for adults either requires using measures from when adults were children (for example, parents’ income from 50 years ago) or using current income measures, which is also problematic. If we used current income, it would be like selecting someone for the baseball team because the person has a *lower* batting average, which conflicts with any notion of merit.

The case for race-based affirmative action is in some ways stronger in the case of higher education. One of the main purposes of a university education, according to the universities themselves, is to expose students to a wide range of ideas and perspectives, and using race-based affirmative action arguably helps to accomplish that goal. In contrast, exposing people to a wide range of ideas is not a primary objective of the marketplace. Therefore, on this point, the argument for race-based policies is stronger than it is for employment and contracting.

If we are going to have affirmative action, then what role should race and class play? While the answer depends somewhat on one’s philosophy, several things are clear. First, times are changing. Race as a determinant of life success has generally been on the decline relative to class. Also, the racial make-up of the country is steadily shifting. This means the beneficiaries of race-based affirmative action, and the effectiveness of these policies in reaching their goals, are changing, too.

Second, affirmative action is a tool that can be designed to achieve different goals, and replacing race- with class-based affirmative action would achieve some goals, but run counter to others. Using race in these decisions creates more racial diversity, but contributes less to reducing class-based inequality, while class-based affirmative action naturally creates more class-based diversity, but does less well in creating racial equality of opportunity. Therefore, the appropriate policy change depends very much on what we hope to achieve.

Third, we already have a mixture of race- and class-based programs and the question is really whether we switch from a system that is already primarily class-based, but includes race in a few cases (employment, contracting, and higher education admissions), to one that eliminates



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race entirely as a factor in any important decisions. A middle ground would combine race and class within each of these decisions.

Times change, but often very slowly. We are nearly 150 years from the end of slavery and a half-century from the Civil Rights movement and yet the debate continues. This is because the underlying issues of affirmative action are so fundamental. Liberty versus equality. Means versus ends. These will always be worthy of a healthy debate and no less so with our new era of race relations, the changing make-up of the nation’s population, and the election of the nation’s first black President.