Mending the Fabric: How a Change in Affirmative Action Policy Can Lead to Greater Social Welfare for Every American

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Policy directed at development of early education will prevent many of the problems caused by affirmative action policy, including misallocations of labor resources, wage disparities for equally trained individuals, and the pervasive questioning of the accomplishments of minorities by society.

Affirmative action is the source of some of the most highly charged debates in the United States today. The dubious effectiveness of current affirmative action policy has lead many to believe that such policy should be eliminated. While the goals of affirmative action have not been met, elimination of such policy does not correct current racial disparities. A more pertinent question is whether affirmative action could be used in a more effective manner to increase social welfare for both minorities and nonminorities.

The Supreme Court decision of Brown v. Board of Education declared that segregation in education deprived individuals of the equal protection under the law guaranteed by the Fourteenth Amendment. As a result of this decision, the "separate but equal" doctrine of Plessy v. Ferguson was found "inherently unequal." For the next thirty years, the Supreme Court favored policies that fostered corrections to the social injustices caused by slavery and discriminatory practices. Affirmative action represents a collection of policies used by the government to assist in creating equality for minorities. In general, affirmative action policy focuses on providing equal market and educational opportunities for minorities and women. Much of this policy was federally legislated through acts of Congress and executive orders. While

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the shift in the Court's decisions from the doctrine of Plessy to that of Brown was necessary, there were problems inherent in addressing equality through social policy. Booker T. Washington elaborated on these problems when he said,

> It is a mistake to assume that the Negro, who had been a slave for two hundred and fifty years, gained his freedom by the signing, on a certain date, of a certain paper by the President of the United States. It is a mistake to assume that one man can, in any true sense, give freedom to another. Freedom, in the larger and higher sense, every man must gain for himself.7

Washington understood that equality is not gained by one piece of legislation. Ubiquitous equality cannot exist unless it is taught to both the oppressed and the oppressor.

Thus, while affirmative action policy may have superficially accelerated equality for minorities, its effects are problematic. From an economic perspective, affirmative action policy is costly to net social welfare. From a social perspective, affirmative action causes racial tensions and increases feelings of inferiority. To correct these problems, affirmative action policy must be redirected toward prevention of inequalities before minority individuals enter the marketplace. Prevention is most effectively achieved by pointing affirmative action policy at elementary and secondary education. Policy directed at development of early education will prevent many of the problems caused by affirmative action policy including misallocations of labor resources, wage disparities for equally trained individuals, and the pervasive questioning of the accomplishments of minorities by both non-minorities and minorities themselves.8

### Affirmative Action and Misallocation of Comparative Advantage

While select individuals may benefit from affirmative action, on the aggregate it is economically debilitating. From David Ricardo's *Treatise on the Principles of Political Economy and Taxation*, we gain insight into the problems of current affirmative action policy. Ricardo proposes that individuals and nations possessing talents or skills are comparatively better at than others. In economics this idea is called comparative advantage. The market will direct individuals, through profits and failure, to that area of the economy wherein the individuals possess a personal comparative advantage. As individuals specialize in areas of comparative advantage, the economy as a whole moves towards maximum efficiency.9 Simply put, suppose Gilligan is comparatively better at gathering coconuts than the Skipper, and the Skipper is comparatively better at fixing holes in boats. Maximization in this economy would be obtained if Gilligan spent all his time gathering and sharing coconuts with the Skipper, while the Skipper shared his advantage in fixing boats. This may seem like a relatively simple example, but it demonstrates the market inefficiencies created by current affirmative action policy. While affirmative action ostensibly corrects the debilitating effects of slavery and discriminatory practices, it allocates individuals and the labor resources they possess to areas of the economy without regard to comparative advantage. Thus, the aggregate economy is worse off. If individuals do not specialize in

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2. *Plessy v. Ferguson* 163 US 537, 41 L. Ed 256, 16 S Ct 1138; 41 L. Ed 256; (1896).
3. See footnote 1.
4. *Taxman v. Board of Education of the Township of Piscataway* 91 F.3d 1547, 1557 [3d Cir. 1996] the purpose of Title VII is to "remedy the segregation and under-representation of minorities that discrimination has caused in our Nation's work force."
6. Executive Order 11246, Lyndon B. Johnson, 24 September 1965, enforces affirmative action for the first time. While affirmative action was proposed, in 1961, affirmative action policy would not truly be enforced until this executive order in 1965.
9. David Ricardo, Chapter 7: On Foreign Trade, "On The Principles of Political Economy and Taxation," 1817 "Under a system of perfectly free commerce, each country naturally devotes its capital and labour to such employments as are most beneficial to each. This pursuit of individual advantage is admirably connected with the universal good of the whole . . . It distributes labour most effectively and most economically: while, by increasing the general mass of productions, it diffuses general benefit, and binds together by one common tie of interest and intercourse, the universal society of nations throughout the civilized world."
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disciplines where they possess a comparative advantage, they rob society of great talents and allocate scarce resources to areas of the economy where those resources are not fully utilized.\(^{10}\)

**Wage and Ability Gap Disparities**

Market misallocations of comparative advantage may be bad for the aggregate economy, but affirmative action also leads to micro-level economic injustices including wage and ability gaps in a nation’s population. Racism causes individuals of minority backgrounds to expect future discrimination in the labor market. Such expectations, especially when formed early in life, produce gaps in learning and skill abilities. Because ability and productivity are positively related to wages, society can expect differences in wages (known as wage-gaps) between white males and minorities.\(^{11}\)

Furthermore, ability and wage-gaps occur when lower performance expectations, whether in the workplace or in university admittance practices, are taken into consideration.\(^{12}\) In summation, discrimination in the labor market reduces incentives for children to acquire abilities, leading to lower wages, causing individuals to become dependent on government intervention\(^{12}\) and influencing the kind of social environment in which the individual’s children are raised.\(^{14}\)

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10 Ibid. “Instead of employing a great part of her capital and industry in the production of wines, with which she purchases for her own use the cloth and hardware of other countries, she would be obliged to devote a part of that capital to the manufacture of those commodities, which she would thus obtain probably inferior in quality as well as quantity.”

11 **Labor Market Discrimination and Racial Differences in Pre-Market Factors**, Pedro Carneiro, James J. Heckman, Dimitry V. Masterov, NBER Working Paper No. 10068, October 2003. “If skills are not rewarded fairly, the incentive to acquire them is diminished for those subject to prejudicial treatment.”

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**Questioning Progression and Merit**

Additional negative externalities caused by affirmative action policy include increased negative effects of racism and the belief that the achievements of minorities are not as deserved as the achievements of whites.\(^{15}\) Glenn C. Loury, Boston University’s Director on Race and Social Division, explained:

Affirmative action also introduces uncertainty into the process by which individuals make inferences about their own abilities. Black men and women promoted to positions of unusual responsibility in a “mainstream” institution today must ask themselves, “Would I have been offered this position if I were not black?” In turn, this limits the extent to which the personal success of any one black can be a source of inspiration guiding the behavior of other blacks. It is virtually unheard of today for blacks to say, I made it on my own, through hard work, self-application, and native ability. And so can you. The universality of affirmative action as a vehicle for advancing black achievement puts even the “best and brightest” African-Americans in the position of being the benefactors of benevolent whites. Ultimately, this way of thinking is destructive of black self-esteem.\(^{16}\)

While the belief that one race has an absolute advantage over others is archaic, affirmative action revitalizes this belief among minorities and non-minority individuals. When it is common knowledge that a lower threshold is used for the hiring of minority workers, and if job performance is related to the criteria of selection, then it is sensible to expect lower average job performance from people in the group that has been preferentially favored. The use of race as one of the criteria of selection in employment creates incentives for co-workers, customers, and others to use race as a basis for forecasting an employee’s performance in the workplace.” Furthermore, employers may incorrectly believe that they must sacrifice profits so they may utilize the grandiose social label, “equal opportunity employer.” Thus, to assume that every instance of differential performance between racial groups is remediable through affirmative action destroys the possibility of

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genuine equality of status for minority Americans. As minority Americans lose the hope of gaining equal status on their own, cycles of poverty and inequality will continue. A change must be made. As former president Ronald Reagan stated, "We must not allow the noble concept of equal opportunity to be distorted into federal guidelines or quotas which require race, ethnicity, or sex—rather than ability and qualifications—to be the principal factor in hiring or education."\(^{16}\)

**Solution: Elementary and Secondary Education**

The Supreme Court has long understood the positive correlation between opportunities for education and racial equality. The Supreme Court’s opinion in *Brown* discussed the need for equal educational opportunities.\(^{19}\) Additionally, the State of Wisconsin, in *Wisconsin v. Yoder*, argued, "Education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence. Education prepares individuals to be self-reliant and self-sufficient participants in society."\(^{20}\) Affirmative action policy and acknowledgment of the importance of education in creating equality are further evidence that a policy change is needed.\(^{21}\) As President Johnson affirmed, you do not take a person who, for years, has been hobbled by chains, and liberate him, bring him up to the starting line of a race and then say, "You are free to compete with all the others," and still justly believe that you have been completely fair.\(^{22}\)

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\(^{19}\) *Brown v. Board of Education*, 347 U.S. 483, 493, 98 L. Ed. 873, 74 S. Ct. 686 (1954), "education . . . is the very foundation of good citizenship."

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\(^{22}\) Lyndon B. Johnson at Howard University, "To Fulfill These Rights," June 4, 1965.

Thus, the reality of a student obtaining an undergraduate or graduate degree begins with a good elementary and secondary education.\(^{23}\) As stated in *Comfort v. Lynn School Committee*,

To say that school officials in the K-12 grades, acting in good faith, cannot take steps to remedy the extraordinary problems of de facto segregation and promote multiracial learning, is to go further than ever before to disappoint the promise of *Brown*.\(^{24}\)

The Supreme Court’s simultaneous hope for an eventual end to affirmative action policy and acknowledgment of the importance of education in creating equality are further evidence that a policy change is needed.\(^{25}\) Addressing socioeconomic differences caused by racial discrimination at the elementary and secondary level will increase the likelihood of giving equal opportunities of attaining this higher skill set to all individuals in the economy. Global competition has increased through information sharing and the elimination of trade barriers. This shift from the U.S.-centric latter half of the twentieth century has created the need for U.S. workers to gain a higher skill set. Federal Reserve Chair Alan Greenspan explained the necessity of a change to our elementary and secondary education:

In a democratic society, such a stark bifurcation of wealth and income trends among large segments of the population can fuel resentment and political polarization. These social developments can lead to political clashes and misguided economic policies that work to the detriment of the economy and society as a whole. As I have noted on previous occasions, strengthening elementary and

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\(^{25}\) *Grutter v. Bollinger*, 539 U.S. 306; 123 S. Ct. 2325; 156 L. Ed. 2d 304 (2003). "One might hope, but not firmly forecast, that over the next generation’s span, progress toward nondiscrimination and genuinely equal opportunity would make it safe to sunset affirmative action. . . . We have repeatedly acknowledged the overriding importance of preparing students for work and citizenship, describing education as pivotal to ‘sustaining our political and cultural heritage’ with a fundamental role in maintaining the fabric of society."
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secondary schooling in the United States—especially in the core disciplines of math, science, and written and verbal communications—is one crucial element in avoiding such outcomes.

Directing affirmative action policy at elementary and secondary education corrects market misallocation, reduces wage-gap disparities, and creates truly equal opportunities for minorities and whites alike.

**Corrections to Market Misallocation**

A strong and equal primary and secondary education allows individuals to acquire computation and conceptual skills that will help them maximize their personal comparative advantage. As cited earlier in this paper, David Ricardo proposed that as individuals specialize in the area of the economy wherein they possess a comparative advantage of labor, the economy as a whole moves towards maximum efficiency. Using the previous example, helping the Skipper find that he has a talent for fixing holes in boats will allow him to not only receive a higher reward, but will also allow Gilligan to specialize in collecting coconuts. This correct allocation of comparative advantage will allow their island economy to flourish and lead to greater social welfare than they would have if some ostensibly omnipotent intercedent created policy that told the Skipper that he deserved to collect coconuts. As all individuals specialize in their areas of comparative advantage, the economy becomes perfectly interdependent. This means that all individuals in the economy need everyone else. Such interdependency will ultimately lead to wage parity within specific areas of labor regardless of race or background.

**Corrections to Wage-Gap Disparities**

Beneficial wage-gap corrections will also occur when affirmative action policy focuses on K–12 schooling. A recent study conducted by the National Bureau of Economic Research explains the importance of fostering early learning:

If persons of identical skill are treated differently on the basis of race or ethnicity, a more vigorous enforcement of civil rights and affirmative action in the marketplace may be warranted. If the gaps are due to unmeasured abilities and skills that people bring to the labor market, then a redirection of policy towards fostering skills should be emphasized as opposed to a policy of ferreting out discrimination in the workplace.

Current affirmative action policy focuses on legislating “catch up” programs for abilities not acquired in the early developmental stages of youth. Additionally, the minority-white ability gap widens as children get older and obtain more schooling, but the contribution of formal education to the widening of the gap is small when compared to the size of the initial gap. This evidence suggests that strengthened civil rights and affirmative action policies targeted at the labor market are unlikely to have much effect on racial and ethnic wage gaps. Policies that focus on fostering comparative advantage, mostly through early developmental programs, have much greater promise. Thus, policies directed at equal K–12 opportunities will significantly reduce the problems associated with gaps in ability, simultaneously reducing disparities in wages.

It may be argued that an emphasis on education will allow firms to shift back to the old racist “business as usual.” In reality, discrimination is costly.

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27 Beth V. and Robert M. Yarbrough, *The World Economy: Sixth Addition* Chapter 4: Trade, Distribution, and Welfare, 2003, 88. This idea was originally proposed as part of the Stolper-Samuelson model of factor-price equalization. While it applies mostly to trade with regard to abundant and scarce resources, this can also be applied to specialization within an economy when industries are being equally exploited.

28 Labor Market Discrimination and Racial Differences in Pre-Market Factors, Pedro Carneiro, James J. Heckman, Dimitry V. Masterov, NBER Working Paper No. 10068, October 2003. The effect of schooling at test date on AFQT scores for individuals in different demographic groups in the NLSY, using a version of the nonparametric method developed in Hansen, Heckman and Mullen (2003). Their method isolates the causal effect of schooling attained at the test date on test scores controlling for unobserved factors that lead to selective differences in schooling attainment.

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Even if some employers are incapable of changing their minds, the marketplace is not incapable of changing which individuals continue to survive as employers. If two equally productive groups are paid significantly different wages for doing the same job, then employers who hire the lower-paid group stand to make more profit and will eventually displace their business rivals who have imposed higher labor costs on themselves by discriminatory hiring practices. Given that businessmen are in business to make money, rather than to promote particular social views, employers seldom persist in this costly kind of discrimination.

Additionally, other benefits flow from diversity in the workplace. As stated in *Affirmative Action, A Reference Handbook*:

Even some employers who oppose affirmative action see reasons to support programs that enhance diversity. They want schools and work to reflect the diversity among American citizens, but they believe affirmative action laws or policies are unnecessary. Business leaders are realizing that the workers and consumers of American products and markets abroad are increasingly non-white. For example, Robert M. Teeter, a Republican pollster who is a member of the board at UPS, suggested that "diversity isn't a slogan, it's a reality when you're hiring people everywhere... You could abolish affirmative action tomorrow and not much would change." The CEOs of major companies in a poll conducted by *Fortune Magazine* agreed: 96% insist that their companies would not change their affirmative action efforts even if all Federal enforcement were abolished.

Those who do not discriminate find they possess an economic advantage over those who persist in discriminatory hiring practices. Non-discrimination, in time, becomes a barrier to market entry to firms who wish to discriminate.

**Decreasing Discrimination, Increasing Inclusion**

Perhaps the greatest benefit resulting from a change in current affirmative action policy would be an increasingly colorblind society. By changing the policy focus towards our elementary and secondary schools, society would teach individuals from the commencement of their lives that they are equal. In *Regents of the University of California v. Bakke*, Justice Powell's statement on cultivating effective leaders directly applies to the role of K-12 schools in cultivating tolerant and fair-minded citizens. In *Grutter v. Bollinger*, the Court recognized that diversity "promotes cross-racial understanding, helps to break down racial stereotypes, and enables [students] to better understand persons of different races." If the Court emphasized the lifelong effects of a diverse higher educational experience, and that it truly is "diminishing the force of [racial] stereotypes" then it can only be more so in elementary and secondary schools—the very premise of *Grutter's* diversity rationale is that students enter higher education having had too few opportunities in earlier grades to study and learn alongside peers from other racial groups. Additionally, it has been recognized by the Court that such opportunities for diversity will help in the ultimate goal of qualified and talented individuals on every level of every profession, regardless of race.

**Conclusion**

Elementary and secondary schools are not solely or even primarily in the business of training future lawyers or physicians. But they are responsible for preparing students for the workforce. Justice Powell's observation that "physicians serve a heterogeneous population" is readily extended to a broad set of occupations today. The Supreme Court has continually encouraged diversity in education, stating most recently that it "better prepares students for an increasingly diverse workforce and society" and that "major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to..."

### Notes

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Even if some employers are incapable of changing their minds, the marketplace is not incapable of changing which individuals continue to survive as employers.\(^8\) If two equally productive groups are paid significantly different wages for doing the same job, then employers who hire the lower-paid group stand to make more profit and will eventually displace their business rivals who have imposed higher labor costs on themselves by discriminatory hiring practices. Given that businessmen are in business to make money, rather than to promote particular social views, employers seldom persist in this costly kind of discrimination.\(^9\)

Additionally, other benefits flow from diversity in the workplace. As stated in *Affirmative Action, A Reference Handbook*:

> Even some employers who oppose affirmative action see reasons to support programs that enhance diversity. They want schools and work to reflect the diversity among American citizens, but they believe affirmative action laws or policies are unnecessary. Business leaders are realizing that the workers and consumers of American products and markets abroad are increasingly non-white. For example, Robert M. Teeter, a Republican pollster who is a member of the board at UPS, suggested that "diversity isn't a slogan, it's a reality when you're hiring people everywhere... You could abolish affirmative action tomorrow and not much would change." The CEOs of major companies in a poll conducted by *Fortune Magazine* agreed: 96% insist that their companies would not change their affirmative action efforts even if all Federal enforcement were abolished.\(^9\)

Those who do not discriminate find they possess an economic advantage over those who persist in discriminatory hiring practices. Non-discrimination, in time, becomes a barrier to market entry to firms who wish to discriminate.

### Decreasing Discrimination, Increasing Inclusion

Perhaps the greatest benefit resulting from a change in current affirmative action policy would be an increasingly colorblind society. By changing the policy focus towards our elementary and secondary schools, society would teach individuals from the commencement of their lives that they are equal. In *Regents of the University of California v. Bakke*, Justice Powell's statement on cultivating effective leaders directly applies to the role of K–12 schools in cultivating tolerant and fair-minded citizens.\(^10\) In *Grutter v. Bollinger*, the Court recognized that diversity "promotes cross-racial understanding, helps to break down racial stereotypes, and enables [students] to better understand persons of different races."\(^11\) If the Court emphasized the lifelong effects of a diverse educational experience, and that it truly is "diminishing the force of [racial] stereotypes" then it can only be more so in elementary and secondary schools—the very premise of *Grutter's* diversity rationale is that students enter higher education having had too few opportunities in earlier grades to study and learn alongside peers from other racial groups.\(^12\) Additionally, it has been recognized by the Court that such opportunities for diversity will help in the ultimate goal of qualified and talented individuals on every level of every profession, regardless of race.

### Conclusion

Elementary and secondary schools are not solely or even primarily in the business of training future lawyers or physicians. But they are responsible for preparing students for the workforce. Justice Powell's observation that "physicians serve a heterogeneous population" is readily extended to a broad set of occupations today. The Supreme Court has continually encouraged diversity in education, stating most recently that it "better prepares students for an increasingly diverse workforce and society" and that "major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to...

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\(^{9}\) Ibid., 89.


\(^{12}\) Ibid., 89.

\(^{13}\) Ibid., 89.

\(^{14}\) Ibid.

\(^{15}\) Ibid.
widely diverse people, cultures, ideas, and viewpoints.” Grutter framed diversity’s value to professional competence in general terms applicable to the basic workforce preparation function of elementary and secondary schools. It is not necessary to abolish affirmative action; indeed, this policy has allowed many thousands of individuals to overcome the debilitating effects of the “peculiar institution” called slavery. Instead, if affirmative action policy is to work, it must be policy directed toward economic and social equality for all. Such redirection can increase social welfare by correcting misallocations of labor resources, decreasing wage disparities, and increasing color-blindness in merit attained. This redirection is achieved by fostering endowments through early education and giving all an equal start. As stated by Robert Woodson,

Rather than demanding concessions and special exemptions from standards, we should return to a focus on practice, performance, and personal responsibility. “Affirmative action” should no longer be equated with demands for special treatment. Instead, it should refer to strategies that are employed to equip our young people to meet and exceed the highest standards of performance.

It is truly a time for mending, not ending.

Affirmative action was initially developed to help Americans. Since that time, other minority groups have demanded similar treatment, thereby weakening the effectiveness of affirmative action. Contemporary action must return to narrow tailoring toward African Americans in order to accomplish its original purpose.

Seen as a way to give African Americans equal opportunity in education and employment, affirmative action was first implemented in response to the Civil Rights Movement of the 1960s. Initially, affirmative action was developed to help a specific group. Over time, however, other minority groups demanded that compensatory action be applied to them. Consequently, affirmative action plans began losing their legitimacy. Yet, some political observers have contended that the original purpose for affirmative action was to create diversity, rather than to help African Americans. The upshot of this rationalization has been the misapplication of affirmative action in higher education. Such missteps have served to weaken contemporary affirmative actions, and in order to reverse this trend, affirmative action plans must return to narrow tailoring towards African Americans. Without narrow tailoring, African Americans will continue to experience the negative effects of past discrimination.

African Americans have a unique history in America when compared to other minorities. Specifically, African Americans were the only group brought to the United States unwillingly on slave ships. Afterwards, the majority of them were traded and sold, and their enslavement was ultimately written into formal law. Not surprisingly, after the abolishment of slavery, the supposed

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