

Getting What You Don't Deserve

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Published online: 2 December 2011
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Whatever happened to the old American belief that people be evaluated on their individual merits or, as Martin Luther King Jr. put it, on the content of their character? If it's wrong to discriminate against people because of their race, religion, ethnicity, or sex, why isn't wrong to favor them because of their group identity?

Wasn't that distinction which prompted Civil Service Reform, Fair Employment Acts, anti-Discrimination laws, the Race Revolution, and the Civil Rights Acts of the 1960s? Up to the latter time, an absence or under-representation of a religious, racial, or ethnic group was seen as a clear or probable sign of discrimination. Similarly, an over-representation was seen as a sign of nepotism, cronyism, favoritism, or racial, religious, or ethnic favoritism, particularly when those excluded were more qualified than those included.

Still, the burden of proving discrimination was on the excluded, who had to show they had been intentionally excluded because of their group identity. The emphasis began changing as anti-discrimination laws increased and as group consciousness, group representation, group proportionality, group reparations, group diversity, and group comparison to other groups replaced individual ability, qualifications, and merit. Now the excluders had the burden of proving they weren't practicing illegal discrimination.

A variety of justifications were given for the switch. It was a just, long-overdue, and democratic rectification for prior prejudicial exclusions. Even if it were ethnically wrong, some positive discrimination was necessary to overcome the negative discrimination that for so long

existed. After all, all people were alike in potential, and they just have to be given an equal opportunity to perform, and, in the case of some minority members, such as Blacks and women, a preferential chance to succeed. Secondly, any statistical disparity between a group's national or local population and the number of its members in a national or local enterprise or institution was seen as an intentional, unconscious, or systemic act or result of prejudice.

Such thinking was reinforced by the courts. In 1971, the Supreme Court decided in *Griggs v. Duke Power Company* that the company's testing procedures violated Title VII of the 1964 Civil Rights Act, which not only proscribed overt discrimination, but also "practices that are fair in form, but discriminatory in operation...[G]ood intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as 'built-in headwinds' for minority groups and are unrelated to measuring job capability."¹

"Diversity" and "multiculturalism" became benign synonyms for a democratic society and for special or preferential treatment. Because America was "diverse" and "multicultural," all major institutions in it should be so. That such ideals belied the prior ideals of blind-folded justice, equal opportunity, objective testing, and individualism mattered not. They were believed as being better and faster in ending bigotry and in establishing an actual or more democratic society. Ergo, the alacrity with which some minority members proclaim (and sometimes exaggerate) their numbers and percentages of the total population.

Any statistical difference between groups in employment, income, job promotion, school attendance, skills,

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¹ "HR Guide to the Internet: EEO: Disparate Impact," www.hr-guide.com.

health, job dismissal, teenage pregnancy, drug dependency, insurance coverage, housing, business loans, school attendance or expulsions, political appointments, prison sentences, age, height or weight requirements, or governmental benefits could be considered *prima facie* evidence of discrimination—or the result of discrimination—even though other factors may be involved or have greater impact. At the very least, employers not having a diverse workforce or proportional representation of a group were vulnerable to the charge of being prejudiced.

Hiring and promotion tests which didn't result in a more diverse workforce—or in proportional representation for some groups—were increasingly challenged in the courts. Some cities gave up written tests altogether, believing them flawed, not the best way of evaluating a person's actual or potential skills, and not resulting in diversity. Instead, they began holding individual interviews to assess a candidate.

When the Katrina hurricane struck Louisiana in 2005, some Blacks and Whites claimed the relief efforts were racist because Black residents were not helped as much or as quickly as White residents were. Comedian and social activist Dick Gregory saw an anti-Black conspiracy at work, and Black rapper Kanye West said, “America is set up to help the poor, the black people, the less well-off, as slow as possible.”²

Earlier in 2005, the Gay and Lesbian Alliance Against Discrimination (GLAAD), criticized the major broadcast networks for a “misrepresentation of reality and of the audience watching [their] programs.” GLAAD said that less than 2% of the characters broadcast were gays, lesbians, bisexuals or transvestites—and that male characters outnumbered female ones, 57% to 43%.³

In mid-2006, a coalition of more than three dozen Hispanic organizations accused the federal government's Office of Personnel Management of not hiring more Hispanics, arguing that they were only 7.4% of federal work force, though 13.5% of the national work force. “These intolerable levels of under-representation are nothing short of systemic, institutional discrimination,” said one coalition leader.⁴ At the very least, statistical inequities are presented as evidence of unconscious or implicit bigotry, wherein it is argued that a person's, group's, or institution's behavior is a reflection of their invidious values and expectations. For example, after analyzing some 600,000

basketball game fouls from 1991 through 2004, found that white referees called fouls at a much greater rate against Black players than against White ones—and that Black referees called fouls against White players to a lesser rate than against Black players.

However, just because a correlation is made and a disparity found doesn't necessarily mean that they are valid, reliable, agreed to by all observers or members of a victimized group—or that the disparity was caused by conscious or unconscious prejudice and discrimination.⁵ For example, in the above basketball case, some black and white players and owners disagreed with the findings. Deneen Borelli, of the National Center for Public Policy Research, said, “Racism continues to generate headlines regardless of its plausibility. The only thing this study proves is that if you shout racism you can get national media attention.” In another case, while some black leaders saw the poor Katrina hurricane relief efforts as a matter of race, black columnist Armstrong Williams rejected the charge entirely, pointing out that while Blacks were 67.2% of the pre-hurricane New Orleans population, they were 50.9% of the fatal victims; and that while Whites were 28% of the population, they were but 45.6% of the fatal victims, at least as of the first week in January 2006.⁶

Minority group members and their advocates regularly blame the poor school test scores of their young on discrimination of one sort or another. Since 1976, when racial breakdowns were first noted on college entrance Scholastic Aptitude Tests (SATs), Whites and Asians have scored significantly higher than Blacks and Hispanics. American-born Whites and Asians aged 25 to 29 also have higher college graduation rates than their Hispanic counterparts: 62% for Asians, 34% for Whites, and only 16% for Hispanics. Similar differences exist among different Pacific Islanders and between them and non-Hispanic Whites and Asians. For example, Native Hawaiians and Guamanians have higher percentages of college graduates and attendees than Samoans, Tongans, and Fijians, but compared to non-Hispanic Whites and Asians, Pacific Islanders have lower percentages and are similar to African Americans.⁷

At times, the value of diversity conflicts with the value of talent, wherein in the name of diversity, group quotas and proportional representation are unofficially imposed, and people with lesser records of achievement are included

² Armstrong Williams, “Most media got Katrina wrong,” 9 January 2006, www.Townhall.com; Juan Williams, *Enough* (New York: Crown, 2006), 177.

³ “Where We Are On TV: GLAAD's 10th Annual Study Examines Diversity of 2005–2006 Primetime Television Season,” media release, 29 August 2005, www.glaad.org.

⁴ Stephen Barr, “Group Says OPM Must Do More to Recruit, Retain Hispanics,” 2 August 2006, www.washingtonpost.com/wp-dyn/content/article/2006/08/01/AR2006080101432_pf.

⁵ Alan Schwarz, “Study of N.B.A. Sees Racial Bias in Calling Fouls,” *New York Times*, 2 May 2007, www.nytimes.com.

⁶ “Referee Racism in Pro Basketball?” National Center for Public Policy Research, 4 May 2007, www.nationalcenter.org; Williams, “Most media got Katrina wrong,” *op. cit.*

⁷ “Pacific Islanders Lagging Behind in Higher Educational Attainment,” *CrossCurrents* 20, No. 1 (2007–2008): 13; Ginger Thompson, “Where Education and Assimilation Collide,” *New York Times*, 15 March 2009, www.nytimes.com.

in a school, project, or enterprise. Or the opposite is done—individuals of achievement are by-passed or rejected in order to admit poor and/or discriminated minority members of possible or actual lesser merit.

For example, the conflict erupted in 2007 in the Los Angeles County High School for the Arts, where many parents and school officials believed the school should reflect the county's student diversity, which was more than 50% Hispanic and 11% White, while the school itself was 47% White, 20% Latino, 15% Asian American, and 14% Black. Diversity doesn't "mean we don't take kids who have talent," said one county school official. "But it means we don't say 'no' to kids because they haven't had private lessons,"⁸

While multiple factors undoubtedly play a role in creating educational gaps between groups, the gaps will remain, barring a major change in some groups' attitudes and behaviors towards education, as well as a major overhaul in the education of minorities, especially in our inner cities. No single, simple solution exists, at least one that works for large numbers of underachieving students.

Not only are there gaps between groups, but also within some of them, though the over-all number of minority students in college increased 50% to 5 million. According to a 2008 American Council on Education study, Hispanic and Native American young adults had a lower percentage of post-secondary education degrees than their elders; for Blacks, the gap remained the same; but for Asian Americans and non-Hispanic Whites, the younger generation surpassed their elders. Gaps between groups were more pronounced. In 2006, 61% of Asian Americans aged 18 to 24 were in college, compared to 44% of Whites, 32% of Blacks, and 25% of Hispanics. Sexually, too, women surpassed men in college enrollments. Some experts believe that the racial gaps may well increase in the next few decades because of the arrival of Asian immigrant professionals and the continued high test scores by Whites.⁹

Though many disadvantaged minority groups support affirmative action and proportional representation, as well as deplore over-representation of other groups, they say little or nothing about reducing minority over-representation in some fields. For example, though Blacks are 12% of the population, they constitute almost 23% of social workers, 20% of licensed practical nurses, 22.9% of telephone

operators, 32.4% of postal clerks, and, in sports, 65% of professional football players, 80% of professional basketball players, and 33% of major league baseball players.¹⁰

Among Blacks themselves, there are large statistical gender differences. Nationally, in 2005, 37% of young Black women, aged 18 to 24, were college enrolled, compared to 28% for young Black men. At historically Black colleges and universities, the ratios of women are much higher than for men. At Howard University, Black women are 64% of the student body; at Hampton University, they are 61%; and at Florida A & M, they are 57%.¹¹

Ditto for women generally. In 1998, women aged 25 to 29 had higher percentages of high school and college graduates than men—90% had at least a high school degree and 29% had a bachelor's or more, compared to 87% and 26% respectively for males. By 2000, according to the National Science Foundation, more women than men were receiving bachelor's degrees in science and engineering. No less striking have been the increases in women receiving professional degrees. In the early 1970s, women received less than 10% of all graduate degrees in law, medicine, dentistry and veterinary medicine, as well as less than 20% in pharmacy. But by 2000, they were receiving about 33% in dentistry, 40% in medicine, 50% in law, and 66% in veterinary medicine. Their receipt of business master's degrees also soared from 3.6% in 1970 to 41.1% in 2002.¹²

By 2005, some 43% of young women were college enrolled, compared to 35% of young men. Christina Hoff Sommers, formerly of Clark University, points out that women earn 57% of B.A. degrees, 59% of M.A. degrees, and more Ph.Ds than men in education, life sciences, humanities, and social sciences. Even in academic areas where women are allegedly or actually discriminated against progress is clear: in 2004, women earned 13% of the new doctorates in physics, but gained 18% of the new junior faculty positions; in mathematics, women earned 31% of the new doctorates, and gained 28% of new academic junior positions; and in engineering, in 2005, they

⁸ Sandy Banks, "Racial, economic rift opens at Arts High School," *Los Angeles Times*, 20 June 2007, B6.

⁹ Robin Chen Delos, "Students Are No Longer Surpassing Parents' Educational Achievement," *Diverse Online*, 9 October 2008, www.diverseeducation.com; Patrick Healy, "Justice's 'deadline' confounds colleges," *Boston Globe*, 29 June 2003, A1; Justin Pope, "More minorities in college, but gaps remain," *SFGate.com*, 9 October 2008, www.sfgate.com.

¹⁰ Bureau of Labor Statistics, <ftp://ftp.bls.gov/pub/special.requests/lf/aat11.txt>; Jon Entine, *Taboo - Why Black Athletes Dominate Sports and Why We're Afraid to Talk About It* (New York: BBS Public Affairs, 2000), 19.

¹¹ "Women's College Enrollment Rates Exceed Those of Men," *2007 U.S. Population Data Sheet* (Washington, DC: Population Reference Bureau, 2007), www.prb.org; Anthony B. Bradley, "Does 'Black History Have a Future?'" Acton Institute, 22 February 2006, www.acton.org/ppolicy/comment/print.php?id=311.

¹² "Women's History Month," 23 February 1999, www.census.gov; Amanda Ripley, "Who Says a Woman Can't Be Einstein," *Time* (7 March 2005): 53; W. Michael Cox and Richard Alm, "Scientists Are Made, Not Born," *New York Times*, 28 February 2005, A25.

earned 17 to 18% of the doctorates, and held 17% of the tenure-track assistant professorships.¹³

In some professions, according to the 2000 Census, the percentages are much higher, with women constituting 97.5% of preschool and kindergarten teachers, 97.3% of dental technicians, 96.1% of dietitians, 93.6% of speech-language therapists, and 90.6% of registered nurses. Women's pay in more than 80 fields is greater than that of men, even as financial analysts, engineering managers, sales engineers, statisticians, surveying and mapping technicians, agricultural and food scientists, and aerospace engineers. Also, in 2003, Asian and Black women with bachelor's degrees earned more than white women—\$43,700 and \$41,000 respectively compared to \$37,800.¹⁴

Even Lesbians are over-represented in some areas, particularly when compared to women. In 1990, the average income and wages of Lesbians was significantly greater than for all women—\$23,000 compared to \$17,000, and 7% of Lesbians reported having served in the military, compared to 2% for all women.¹⁵

Asian Americans are strikingly over-represented in our finest universities, based solely on their educational standing. Though some 4% of the total American population, Asian undergraduates in 2005 were estimated at 25% at Stanford, 17% at Harvard, 14% at Columbia, 13% at Yale, 12% at Princeton, and 10% at Georgetown. After California outlawed race-based preferences in 1996, Asian student enrollment at the University of California, Berkeley, zoomed from 34.6% to 42% by late 2006; and after Washington state passed similar legislation in 1998, Asian student enrollment at the University of Washington rose from 22.1% to 25.4% by late 2004.¹⁶

Politically, debate has grown over the benefits of making a minority into a majority in a given election district, that is, over whether or not to gerrymander on order to insure a majority of minority voters. Those “out” of political power want “in,” and those “in” want to keep others “out.” In recent years, such redistricting has been questioned as being harmful to the Democratic Party and helpful to the Republican one, because it confines Black voters to a few

areas, thereby allowing Republicans to dominate in many others. In 2006, Rep. Rahm Emanuel, a liberal Democrat in Illinois, questioned whether a 70% minority district is really needed to elect a minority legislator, suggesting that a 45% or 50% district would insure a Black victor and enable more Democrats to win office in nearby Republican areas. Most Blacks, however, were and are leery, if not critical, of any dilution of a procedure which allows them sure victory.¹⁷

Some rather long established religious groups are also statistically over-represented in certain areas, like Episcopalians, Presbyterians, and Jews in corporate institutions and Supreme Court. While the “Protestant establishment” is not as exclusive as it was, “If you stepped into a board meeting of a business giant,” said James D. Davidson, of Purdue University, in 1995, “you still would find several Episcopalians, a few Presbyterians, probably a Jew and a Catholic, and no Baptists.” Another study two years earlier of executive officers, directors, and vice presidents of America's 500 leading companies found that Episcopalians were almost eight times as likely to hold such top positions as their numbers in the total population would suggest. Right behind them were Presbyterians, who were 3.08 times as likely. Jews, who in a 1950 study, were previously underrepresented were now over-represented by a ratio of 2.76.¹⁸

In the history of the Supreme Court, Episcopalians comprised 32.4% of the justices, though 1.7% of in 2000. Similarly over-represented were Presbyterians, who were 17.6% of the justices though 2.8% of the population, and Unitarians who were 9.3% of the justices though 0.2% of the population. Totally missing are Pentecostals, Jehovah's Witnesses, Mennonites, Mormons, Muslims, Buddhists, and Eastern Orthodox.¹⁹

Should all over-represented religious group members be barred from high executive office? What about the Supreme Court in 2009, where there were six Catholic Justices—or some 67%—though Catholics were but some 24% of the national population? Should the Swedish Academy awarders of the Nobel Prize adopt a *numerus clausus* or *numerus null* for Jews because thus far they represent some 20% of the awardees though they are a mere fraction of 1% of the world population?

There are other troubling examples. In major league baseball teams, 12% of the players are Dominicans and 6% for Venezuelans, though they are less than 1% of the

¹³ Christina Hoff Sommers, “Why Can't a Woman Be More Like a Man?” *The American* (March/April 2008): 28; John Leo, “A Wage Gap?” *Townhall.com*, 14 March 2005, www.townhall.com; Patricia Hausman, “Feminizing Science: The Alchemy of Title IX,” *Academic Questions* (Fall 2008): 395.

¹⁴ Daniel H. Weinberg, “Evidence From Census 2000 About Earnings by Detailed Occupation for Men and Women,” U. S. Census Bureau, May 2004, 11; “Census: college-educated white women earning less,” *USA Today*, 28 March 2005, www.usatoday.com.

¹⁵ Allison Tarmann, “Out of the Closet and Onto the Census Long Form,” *Population Today* (May/June 2002): 6.

¹⁶ Jay Matthews, “Learning to Stand Out Among the Standouts,” *Washington Post*, 22 March 2005, A10; Larry Elder, “What if the NBA had quotas?” *Townhall.com*, 14 December 2006, www.townhall.com.

¹⁷ Joseph Williams, “Voting act overshadows race debate,” *Boston Globe*, 31 July 2006, A2.

¹⁸ “Religious affiliation still key to success,” *USA Today* (Society for the Advancement of Education), April 1995, www.findarticles.com; Richard Zweigenhaft and G. William Domhoff, *Diversity in the Power Elite* (New Haven: Yale University Press, 1998), 21.

¹⁹ “Religious Affiliations of the U.S. Supreme Court,” www.adherents.com/adh_sc.html.

American population.²⁰ In New Orleans, when Eddie Jordan became the city's first Black District Attorney in 2003, he fired some three dozen White employees, who immediately filed suit, claiming racial discrimination. Two years later, a federal jury agreed and awarded them 3.7 million dollars, which the city, state, and district attorney's office agreed to pay.²¹

In California, in the 1990s, a perceived over-representation of minorities and women led some state agencies to establish hiring "goals" and "timetables" for Whites and males, such as the Franchise Tax Board's desire to hire 45 Whites and 95 male typists. According to Michael Lynch, of the Pacific Research Institute, if true proportional representation were instituted in California, more than 7,300 Blacks would lose their jobs.²²

In recent decades, problems of racial balance and discrimination surfaced at some of the country's historically black colleges, where the number of white students rose from 21,000 to 35,000, because of the financial needs of the schools, court-ordered desegregation, or white student interest in the programs offered. The number of Hispanic students, though small, soared, going from 3,442 in 1976 to 6,665 in 2001. Some colleges made special recruitment appeals to Hispanic students, such as Grambling State University in Louisiana, Central State University in Ohio, and North Carolina A & T. In Alabama, to correct a Black-White imbalance, two historically Black colleges adopted a scholarship program exclusively for Whites. In Mississippi, because not enough local white students were applying, Alcorn State University began recruiting white students abroad. Some Black students expressed fear that such inclusion would cost them admission spaces and scholarships, and would change the purpose of Black colleges. Right now, said one black student at Morgan State University, "we can speak freely. We learn about how things are different for us as black people...The focus is on us." In contrast, Texas Southern University, Hispanics students, which constitute about 5% of the student body, are aggressively recruited. "By 2015 they'll be the majority in the state and in Houston, and we're in the growth business," said Hasan Jamil, assistant vice president for enrollment services at Texas Southern University.²³

²⁰ Charles Murray, "Jewish Genius," *Commentary* (April 2007): 30; League of Nations, "Baseball 2007," *New York Times*, 1 April 2007, 3.

²¹ Adam Nossiter, "Deal Is Reached in New Orleans Bias Case," *New York Times*, 21 November 2007, www.nytimes.com.

²² Michael Lynch, "Reverse Discrimination Works Both Ways," *The Wall Street Journal*, 3 October 1996.

²³ Clarence Page, "Affirmative Reaction," *Dallas Morning News*, 13 October 1999; Avis Thomas-Lester, "Whites are a growing minority on black campuses," *Boston Globe*, 7 November 2004, A28; Dana Calvo, "Black colleges find new market in appeal to Latino students," *Boston Globe*, 26 November 2004, A29; Catherine Skipp and Arian Campo-Flores, "Color Blind At Schools That Aren't," *Newsweek*, 21 April 2008, 12.

However well-intentioned, attempts to end statistical disparities frequently create new problems. Which disparities are to be made illegal or unconstitutional? Who is to decide and by what criteria? Should the same mathematical solutions be used for all under-represented groups? And will they work?

For example, according to a federal government study, armed forces enlistees aged 18 to 24 in 2002 from the Northeast states were not only a lesser percent than civilians of their age in their region, but they were far less a percent of the military than their counterparts from the South—14% versus 41.4%. According to another study, most of the soldiers and Marines killed and wounded as of May 2005 in our war in Iraq were white. Though 67% of our military forces, Whites suffered 71% of the fatalities, compared to Blacks who were 17% of the forces, but suffered 9% of the fatalities and Hispanics who were 9% of the forces, but suffered 10% of the deaths. Only Asian Americans and Pacific Islanders had their percent of the armed forces equal their death rate of 3%.²⁴

From such statistical under- or over-representation, should one say that enlistees from the South are being given preferences or that those from the Northeast are being discriminated against? Or should one say that in the battleground itself, White and Hispanic military personnel are being discriminated against, Blacks favored, and only Asian Americans and Pacific Islanders treated fairly?

Even in cases where racial parity was achieved because of court-ordered affirmative action policies, minority group leaders insist the latter continue. In Boston, when eight police department candidates with perfect scores on the Civil Service exam were not hired, though Black and Hispanic candidates with lower scores were, they sued. Since both the fire and police departments had achieved racial parity, with the percentage of Black and Hispanic police and firemen equaling their percentage in the city, a federal district court judge ruled in 2004 that the white candidates be hired and that the affirmative action program be ended. Some minority group leaders objected, claiming that without the preferential hiring policy, the police and fire departments would revert to being predominantly White and that while racial parity existed among "the rank and file" in the departments, it did not among "the people who make the decisions that guide them."²⁵

Intergroup envies also surfaced as some ethnic minority group members who had previously ignored, downplayed, or forsaken their identity now asserted it. It was a way of

²⁴ Bernard D. Rostker, "Steady Under Fire," *Rand Review* (Fall 2005): 14; "Whites among majority of troops killed, wounded," *Boston Globe*, 25 September 2005, A6.

²⁵ Shelly Murphy and Heather Allen, "End use of race in hiring, police told," *Boston Globe*, 24 November 2004, A1; Adrian Walker, "Affirmative policing," *Boston Globe*, 25 November 2004, B1.

qualifying for a “diversity” program or for getting the same benefits or preferences that members of other groups were receiving, particularly in employment, housing, public contracts, medical insurance, and small business loans.

For example, in Dearborn, Michigan, where the Arab population grew from some 7,000 in 1970 to 30,000 by 2000, Arab entrepreneurs called for being included in minority small-business loan programs, while others complained about Arab absence or under-representation in city department jobs. “We want to be police officers. We want to be firefighters,” said the editor of the *Arab American News*. In a case of American Bangladeshi, in New York City, in 1995, they complained that their businesses weren’t receiving city contracts from the Republican administration like they had under the previous Democratic one. In Glendale, California, where Armenians are 40% of the population and constituted a majority of the City Council in 2005, the Police Department was encouraged to hire more Armenian Americans. And in 2008, race car driver Jon Denning told how he had applied for admission to the diversity program of the National Association for Stock Car Racing (NASCAR), and was rejected, because the program was limited to Blacks, Hispanics, and women—and his being Jewish didn’t qualify him.²⁶

Many Asian-Americans resent being excluded from minority procurement programs, particularly from admissions to some elite colleges. Before becoming U.S. Secretary of Labor in 2001, Elaine Lan Chao said, “They are not considered to be minorities...and quota systems in the best universities in this land exclude qualified Asian-Americans.” In 2006, Jian Li, who had scored a perfect 2400 SAT score, filed a federal civil rights complaint against Princeton University, accusing it of discriminating against him because he’s Asian. Lots of factors should be considered beyond SAT scores, he said, “but I don’t think race should be one of them.”²⁷

The College Board (the organization responsible for the Scholastic Achievement Tests) and the American Association of Medical Colleges stopped considering “Asians” an eligible “minority” for affirmative action because of their over-representation in colleges and the medical world. To gain admission to the top colleges, many Asian American students believe that they must score much higher than other students on their SAT tests and GPAs (Grade Point

Average). “Chinese and all Asian Americans are penalized for their values on academic excellence by being required to have a higher level of achievement, academic and non-academic, than any other demographic group,” said Ed Chin, a New Jersey physician.²⁸

Some poor southeastern Asians and Pacific Islanders resent being classified as or with other Asians, especially Chinese and Japanese, because the latter are over-represented in many schools, while they themselves are under-represented and socio-economically worse off, particularly Cambodians, Hmongs, Laotians, Vietnamese, and Filipinos.

In California, where about 246,000 Pacific Islanders live, they are disproportionately poor and uneducated, with their youngsters more likely to be arrested and under the juvenile justice system, compared to other groups and Californians as a whole. For example, nearly 50% of Pacific Islanders in San Francisco County live in poverty. Also, while 34% of Californians have a college degree, 22% of Guamanians have one, 18% of Samoans, 16% of Fijians, and 11% of Tongans. “Right now [2005], I think we’re in our fourth generation here, and we’re worse off than when we first came,” said June Pouesi, of the Office of Samoan Affairs, in Carson.²⁹

Many Hawaiians, too, object to being categorized as “Asian/Pacific Islander” because the alignment with “Asian” distort their true economic problems and injure their chances of college admission. If not as “Native Hawaiians” then they want to be considered as “Native American,” together with American Indians and Alaskan Natives. And, indeed, in the 2000 census, they were reclassified under the rubric “Native Hawaiian and Other Pacific Islander.”³⁰

Five years later, a “Native Hawaiian” bill was introduced in the Senate seeking to rectify historic wrongs done to the original Hawaiians and proposing that relations between current native Hawaiians and the federal government be reorganized along the lines of those between native American Indians and the federal government. To the Bill’s opponents, the analogy was false and dangerous. “Hawaiians, whether they have pure, part, or no ‘aboriginal blood,’ all live in the same neighborhoods, go the same schools and churches, and participate in the same community life...Congress cannot

²⁶ Jodi Wilgoren, “Struggling to Be Both Arab and American,” *New York Times*, 4 November 2001, B1; Arati Rao, “Bridges Across Continents: South Asians in the United States,” in *The Politics of Minority Coalitions*, Wilbur C. Rich, ed. (Westport: Praeger, 1996), 121; Amanda Covarrubias, “New Era for Glendale Armenians,” *Los Angeles Times*, 8 August 2005, B1; “Nascar Driver’s Spiritual Struggle,” *Forward*, 18 January 2008, A2.

²⁷ Christopher Marquis, “Elaine Lan Chao,” *New York Times*, 12 January 2001, A15; Kate Carroll, “Rejected applicant alleges bias against Asians,” 13 November 2006, www.dailyprincetonian.com.

²⁸ Kevin Nguyen, “Law? What Law?” *The Egalitarian*, American Civil Rights Institute, September 2001, 2; Cindy Rodriguez, “Reclassified, Asians fear cuts in school assistance,” *Boston Globe*, 25 October 1999, A1; Cindy Rodriguez, “A minority opinion,” *Boston Globe*, 11 September 2000, A1; Jacques Steinberg, “Not All of Them Are Pre-Med Violinists,” *New York Times*, 2 February 2003, wk3; Jay Matthews, “Learning to Stand Out Among the Standouts,” *op. cit.*

²⁹ Jocelyn Y. Stewart, “New Picture of Islanders Is Emerging,” *Los Angeles Times*, 26 September 2005, B1.

³⁰ Michael Omi, “Counting in the Dark,” *ColorLines* (Spring 2001), 12–14.

create or recognize a tribe that never existed, or pretend that one exists based on sharing one drop of 'aboriginal' blood." A telephone poll found that 67% of all island residents opposed the bill, as did almost 48% of native Hawaiians. The following year, the bill failed to muster sufficient Senatorial support for passage.³¹

A number of Euro-ethnics have also expressed resentment at not being recognized by the government as a disadvantaged or discriminated-against minority group—or felt that Blacks wanted positions and preferences which threatened their neighborhoods or hard-won gains in labor unions. In Chicago, Polish and Italian leaders supported a study showing their under-representation in executive and governmental jobs.³²

Ironically, some groups and individuals with no history of being discriminated against in America are now eligible for some federal affirmative action programs because they are deemed economically or socially disadvantaged, such as immigrants from Pakistan, Bangladesh, Sri Lanka, Bhutan, Maldives, Nepal, Tonga, and Indonesia. Various states and cities adopted similar programs, granting preferential service and supplies contracts to such groups as Black and Hispanic Caribbean Islanders and South Americans in New York City, Armenian Americans in Pasadena, Appalachians in Cincinnati, and Portuguese in Massachusetts.³³

However, the Supreme Court case of the *City of Richmond v. J. A. Croson Co.*, in 1989, in a 6-to-3 decision ruled the city's affirmative action program unconstitutional because it was too broadly implemented. Groups were receiving benefits for which there was "absolutely no evidence" of past discrimination, said Justice O'Connor. "The random inclusion of racial groups that, as a practical matter, may never have suffered from discrimination in the construction industry in Richmond suggests that perhaps the city's purpose was not in fact to remedy past discrimination."³⁴

Somewhat less in agreement was the Supreme Court's 5-to-4 decision in 2009 in the New Haven case, *Ricci v. DeStefano*, alleging that the city racially discriminated

against White firemen seeking promotion to lieutenant and captain, because it had ignored the test results and suspended promoting any of them, because no Black firemen scored high enough to be considered. A majority of justices held, "The city was not entitled to disregard the tests based solely on the racial disparity in the results."³⁵

Diversity programs of one type or another nevertheless continue on many levels of society, even though some of the beneficiaries are not citizens, poor or discriminated against. For example, the University of Michigan's faculty affirmative action program led to the hiring of many foreign-born academics, so that 18.8% of the Black faculty were foreign-born, 23.3% of the Hispanic faculty, and 56.1% of the Asian faculty. In Florida, two Cuban multi-millionaires received huge minority business set-aside contracts, while retaining their Cuban citizenship. In Washington, D.C., Portuguese immigrant brothers and owners of three large construction companies received 60% of the city's minority set-aside contracts from 1986 to 1990.³⁶

Group desires for inclusion, preference and proportionality are of course not new. The "out's" have always wanted in, and the "in's" were always determined to stay in. In the years following the Civil War, the Black nationalist Major Martin Delany proposed that Blacks have an one-eighth presence in all aspects of political life. In the 1930s, in Brooklyn, Jews complained that though they were 47% of the population, they were only 11% of the borough's public officials. Similarly with Italians, who deplored that on Staten Island, N.Y., "All the judges were Irish. No judge was of Italian descent. No Italian-American was considered for public office, although the Italian-Americans constituted about 25% of the population." In fact, not until the 1950s did Tammany Hall, in New York City, appoint its first Italian leader and the Vatican appoint its first Italian bishop in America.³⁷

Of course, not all groups or members within each group support or oppose such programs or do so to the same degree. Blacks, followed by Hispanics, are most likely to support affirmative action programs, while Euro-ethnics, followed by Asians, are most likely to oppose them.

While including or employing members, or more members, of an under-represented group will result in a

³¹ "Legislation Details," 25 January 2005, www.Congress.org; Ed Meese and Todd Gaziano, "the 'Native Hawaiian' bill," 15 July 2005, www.townhall.com; "New Statewide Survey: 2 to 1 Oppose Akaka Bill," news release, 14 July 2005, www.grassrootinstitute.org.

³² John D. Skrentny, "Inventing race," *The Public Interest* (Winter 2002): 111.

³³ Perlmutter, *The Dynamics of American Ethnic, Religious, and Racial Group Life*, *op. cit.*, 124; Nancy Foner, *From Ellis Island to JFK* (New Haven: Yale University Press, 2000), 199; Ralph R. Reiland, "Affirmative Action or Equal Opportunity?" *Regulation*, Fall 1995.

³⁴ George R. La Noue and John C. Sullivan, "Deconstructing Affirmative Action Categories," in *Color Lines*, John David Skrentny, ed. (Chicago: University of Chicago, 2001), 75.

³⁵ Adam Liptak, "Supreme Court Finds Bias Against White Firefighters," *New York Times*, 30 June 2009, A13.

³⁶ John David Skrentny, ed., *Color Lines – Affirmative Action, Immigration, and Civil Rights Options for America* (Chicago: University of Chicago Press, 2001), 54; Graham, *Collision Course: The Strange Convergence of Affirmative Action and Immigration Policy in America*, *op. cit.*, 2.

³⁷ Rubio, *A History of Affirmative Action 1619-2000*, *op. cit.*, 38; Philip Perlmutter, *Legacy of Hate* (Armonk, NY: M.E. Sharpe, 1999), 181; Michael Barone, "Introduction," in *The American Catholic Voter*, George J. Marlin (South Bend: St. Augustine's Press, 2004), xvi.

mathematical balance, it doesn't provide answers to why some socio-edu-economic statistical inequities arise in the first place and doesn't insure quality or inequality of performance, societal trust and esteem, or political victory. There is no doubt that exclusion of minorities, particularly Blacks, was for many centuries based solely on prejudice, but there is also no doubt that some exclusions were based on lack of qualifications. Mediocre or incompetent students, teachers, workers, athletes, and politicians should not attend elite colleges, teach, drive buses, fly airplanes, run banks, perform surgical operations, construct homes, or hold public office.

Whatever the case, some haunting questions remain. Whatever happened to the Civil Service, Fair Employment, and Race Relations principle that a person be evaluated on their individual merits, regardless of their group identity? If it was wrong to exclude someone because of their racial, religious, or ethnic group identity, why is it now right to include someone because of that same identity? How can group diversity or proportional representation be created without employing group discrimination, invidious quotas, or group preferences of one sort or another?³⁸ What evidence exists that sans bigotry all people or countries would have the same motivations, aspirations, talents, and/or achievements? If statistical over-representation is unfair in some jobs and professions, why isn't it unfair when some minorities are

over-represented? In what democratic country does proportional representation exist without causing intergroup resentment and bigotry? What should be done about people of mixed heritage, such as golfer Tiger Woods? How are the sciences, literature, arts, or sports advanced by ignoring or belittling individual merit or by setting racial, religious, ethnic, sexual, or national quotas or proportions?

If ending statistical disparities and establishing proportional representation are needed to achieve a democratic society, why not include all groups that are disproportionately represented or excluded from various arenas because of race, religion, ethnicity, nationality, age, weight, disability, sex, sexual preference, height, and/or appearance? What should the reaction be of a youngster or adult when told that he or she can no longer aspire to entering a school, profession, or neighborhood because there are already too many of his or her group already there? And what happens to the dream, belief, or ideal that in America one's ability, hard work, education, determination, and luck should determine one's advancement—and not what one's religion, ethnicity, nationality, sex, or family lineage is?

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³⁸ Ben O'Neill, "The Antidiscrimination Paradigm," *The Independent Review* 13:4 (Spring 2009): 529–555.