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Affirmative Action

Is It Time to End Racial Preferences?

Peter Katel

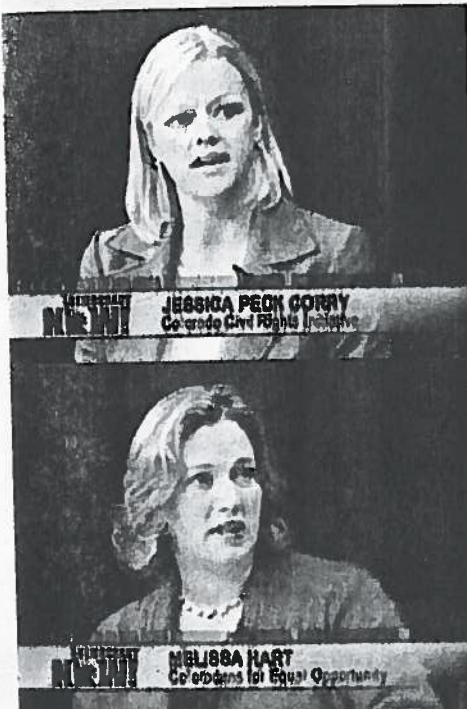
No white politician could have gotten the question George Stephanopoulos of ABC News asked Sen. Barack Obama. "You said . . . that affluent African-Americans, like your daughters, should probably be treated as pretty advantaged when they apply to college," he began. "How specifically would you recommend changing affirmative action policies so that affluent African-Americans are not given advantages and poor, less affluent whites are?"¹

The Democratic presidential nominee, speaking during a primary election debate in April, said his daughters' advantages should weigh more than their skin color. "You know, Malia and Sasha, they've had a pretty good deal."²

But a white applicant who has overcome big odds to pursue an education should have those circumstances taken into account, Obama said. "I still believe in affirmative action as a means of overcoming both historic and potentially current discrimination," Obama said, "but I think that it can't be a quota system and it can't be something that is simply applied without looking at the whole person, whether that person is black, or white or Hispanic, male or female."³

Supporting affirmative action on the one hand, objecting to quotas on the other — Obama seemed to know he was threading his way through a minefield. Decades after it began, affirmative action is seen by many whites as nothing but a fancy term for racial quotas designed to give minorities an unfair break. Majority black opinion remains strongly pro-affirmative action, on the grounds that the legacy of racial discrimination lives on. Whites and blacks are 30 percentage points apart on the issue, according to a 2007 national survey by the nonpartisan Pew Research Center.⁴

TV screenshot courtesy "DemocracyNow"



Law student Jessica Peck Corry, executive director of the Colorado Civil Rights Initiative, supports Constitutional Amendment 46, which would prohibit all government entities in Colorado from discriminating for or against anyone because of race, ethnicity or gender. Attorney Melissa Hart counters that the amendment would end programs designed to reach minority groups.

From CQ Researcher,
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* Race in Law
* Affirmative Action
* Add Little Bit
* Group vs. Individual
* U.S. vs. Racial

U.S. vs. Racial

Americans Support Boost for Disadvantaged

A majority of Americans believe that individuals born into poverty can overcome their disadvantages and that society should be giving them special help (top poll). Fewer, however, endorse race-based affirmative action as the way to help (bottom).

	Agree	Disagree
We should help people who are working hard to overcome disadvantages and succeed in life	93%	6
People who start out with little and work their way up are the real success stories	91	7
Some people are born poor, and there's nothing we can do about that	26	72
We shouldn't give special help at all, even to those who started out with more disadvantages than most	16	81

If there is only one seat available, which student would you admit to college, the high-income student or the low-income student?		
	Percentage selecting:	
	Low-income student	High-income student
If both students get the same admissions test score?	63%	3%
If low-income student gets a slightly lower test score?	33	84
If the low-income student is also black and the high-income student is white?	36	39
If the low-income student is also Hispanic, and the high-income student is not Hispanic?	33	45

Source: Anthony P. Carnevale and Stephen J. Rose, "Socioeconomic Status, Race/Ethnicity, and Selective College Admissions," The Century Foundation, March 2003

Now, with the candidacy of Columbia University and Harvard Law School graduate Obama turning up the volume on the debate, voters in two states will be deciding in November whether preferences should remain in effect in state government hiring and state college admissions.

Originally, conflict over affirmative action focused on hiring. But during the past two decades, the debate has shifted to whether preference should be given in admissions to top-tier state schools, such as the University of California at Los Angeles (UCLA) based on race, gender or ethnic background. Graduating from such schools is

seen as an affordable ticket to the good life, but there aren't enough places at these schools for all applicants, so many qualified applicants are rejected.

Resentment over the notion that some applicants got an advantage because of their ancestry led California voters in 1996 to ban affirmative action in college admissions. Four years later, the Florida legislature, at the urging of then-Gov. Jeb Bush, effectively eliminated using race as an admission standard for colleges and universities. And initiatives similar to the California referendum were later passed in Washington state and then in Michigan, in 2006.

Race is central to the affirmative action debate because the doctrine grew out of the civil rights movement and the Civil Rights Act of 1964, which outlawed discrimination based on race, ethnicity or gender. The loosely defined term generally is used as a synonym for advantages — "preferences" — that employers and schools extend to members of a particular race, national origin or gender. *Class vs. Race*

"The time has come to pull the plug on race-based decision-making," says Ward Connerly, a Sacramento, Calif.-based businessman who is the lead organizer of the Colorado and Nebraska ballot initiative campaigns, as well as earlier ones elsewhere. "The Civil Rights Act of 1964 talks about treating people equally without regard to race, color or national origin.

When you talk about civil rights, they don't just belong to black people."

Connerly, who is black, supports extending preferences of some kind to low-income applicants for jobs — as long as the beneficiaries aren't classified by race or gender.

But affirmative action supporters say that approach ignores reality. "If there are any preferences in operation in our society, they're preferences given to people with white skin and who are men and who have financial and other advantages that come with that," says Nicole Kief, New York-based state strategist for the American Civil

→ 10. wrong & unfair

Liberties Union's racial justice program, which is opposing the Connerly-organized ballot initiative campaigns.

Yet, of the 38 million Americans classified as poor, whites make up the biggest share; 17 million people. Blacks account for slightly more than 9 million and Hispanics slightly less. Some 576,000 Native Americans are considered poor. Looking beyond the simple numbers, however, reveals that far greater percentages of African-Americans and Hispanics are likely to be poor: 25 percent of African-Americans and 20 percent of Hispanics live below the poverty line, but only 10 percent of whites are poor.⁵

In 2000, according to statistics compiled by *Chronicle of Higher Education* Deputy Editor Peter Schmidt, the average white elementary school student attended a school that was 78 percent white, 9 percent black, 8 percent Hispanic, 3 percent Asian and 30 percent poor. Black or Hispanic children attended a school in which 57 percent of the student body shared their race or ethnicity and about two-thirds of the students were poor.⁶

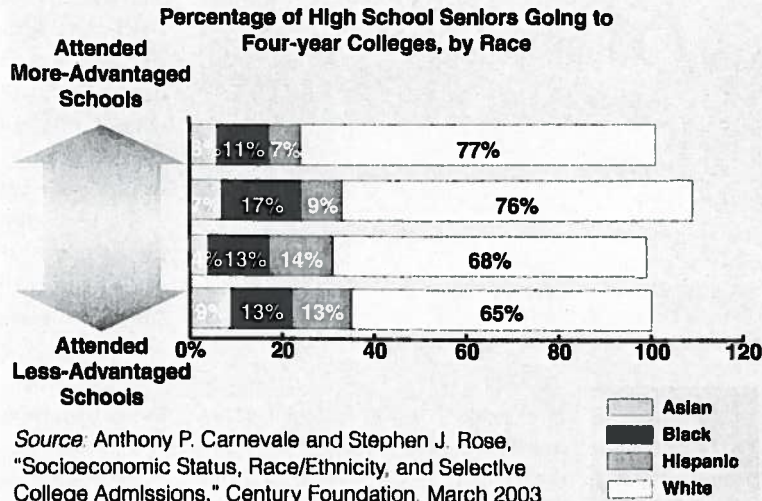
These conditions directly affect college admissions, according to The Century Foundation. The liberal think tank reported in 2003 that white students account for 77 percent of the students at high schools in which the greatest majority of students go on to college. Black students account for only 11 percent of the population at these schools, and Hispanics 7 percent.⁷

A comprehensive 2004 study by the Urban Institute, a nonpartisan think tank, found that only about half of black and Hispanic high school students graduate, compared to 75 and 77 percent, respectively, of whites and Asians.⁸

Politically conservative affirmative action critics cite these statistics to argue that focusing on college admissions and hiring practices rather than school reform was a big mistake. The critics get some support from liberals who want to keep affirmative action — as long as it's

Elite Schools Graduate Fewest Minorities

Among college-bound blacks and Hispanics, larger percentages graduated from "less advantaged" high schools than from the "most advantaged" schools.



based on socioeconomic status instead of race. "Affirmative action based on race was always kind of a cheap and quick fix that bypassed the hard work of trying to develop the talents of low-income minority students generally," says Richard D. Kahlenberg, a senior fellow at The Century Foundation.

Basing affirmative action on class instead of race wouldn't exclude racial and ethnic minorities, Kahlenberg argues, because race and class are so closely intertwined.

President Lyndon B. Johnson noted that connection in a major speech that laid the philosophical foundations for affirmative action programs. These weren't set up for another five years, a reflection of how big a change they represented in traditional hiring and promotion practices, where affirmative action began. "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," Johnson said in "To Fulfill These Rights," his 1965 commencement speech at Howard University in Washington, D.C., one of the country's top historically black institutions.⁹



Liaison/Lara Joe Regan

Asian-American enrollment at the University of California at Berkeley rose dramatically after California voters in 1996 approved Proposition 209, a ballot initiative that banned affirmative action at all state institutions. Enrollment of African-American, Hispanic and Native American students, however, plunged.

By the late 1970s, a long string of U.S. Supreme Court decisions began setting boundaries on affirmative action, partly in response to white job and school applicants who sued over “reverse discrimination.” The court’s bottom line: Schools and employers could take race into account, but not as a sole criterion. Setting quotas based on race, ethnicity or gender was prohibited. (The prohibition of gender discrimination effectively ended the chances for passage of the proposed Equal Rights Amendment [ERA], which feminist organizations had been promoting since 1923. The Civil Rights Act, along with other legislation and court decisions, made many supporters of women’s rights “lukewarm” about the proposed amendment, Roberta W. Francis, then chair of the National Council of Women’s Organizations’ ERA task force, wrote in 2001.)¹⁰

The high court’s support for affirmative action has been weakening through the years. Since 1991 the court has included Justice Clarence Thomas, the lone black member and a bitter foe of affirmative action. In his 2007 autobiography, Thomas wrote that his Yale Law School degree set him up for rejection by major law firm interviewers. “Many asked pointed questions unsobly suggesting that they doubted I was as smart as my grades indicated,” he wrote. “Now I knew what a law degree from Yale was worth when it bore the taint of racial preference.”¹¹

Some of Thomas’ black classmates dispute his view of a Yale diploma’s worth. “Had he not gone to a school like

Yale, he would not be sitting on the Supreme Court,” said William Coleman III, a Philadelphia attorney who was general counsel to the U.S. Army in the Clinton administration.¹²

But that argument does not seem to impress Thomas, who was in a 5-4 minority in the high court’s most recent affirmative action ruling, in which the justices upheld the use of race in law-school admissions at the University of Michigan. But even Justice Sandra Day O’Connor, who wrote the majority opinion, signaled unease with her position. In 25 years, she wrote, affirmative action would “no longer be necessary.”¹³

Paradoxically, an Obama victory on Nov. 4 might be the most effective anti-affirmative action event of all.

“The primary rationale for affirmative action is that America is institutionally racist and institutionally sexist.” Connerly, an Obama foe, told The Associated Press. “That rationale is undercut in a major way when you look at the success of Sen. [Hillary Rodham] Clinton and Sen. Obama.”

Asked to respond to Connerly’s remarks, Obama appeared to draw some limits of his own on affirmative action. “Affirmative action is not going to be the long-term solution to the problems of race in America,” he told a July convention of minority journalists, “because, frankly, if you’ve got 50 percent of African-American or Latino kids dropping out of high school, it doesn’t really matter what you do in terms of affirmative action; those kids are not getting into college.”¹⁴

As critics and supporters discuss the future of affirmative action, here are some of the questions being debated:

Has affirmative action outlived its usefulness?

In the United States of the late 1960s and ’70s, even some outright opponents of race-based affirmative action conceded that it represented an attempt to deal with the consequences of longstanding, systematic racial discrimination, which had legally ended only shortly before.

But ever since opposition to affirmative action began growing in the 1980s, its opponents themselves have invoked the very principles that the civil rights movement had embraced in its fight to end discrimination. Taking a job or school applicant’s race or ethnicity into account is immoral, opponents argue, even for supposedly benign purposes. And a policy of racial/ethnic

preferences, by definition, cannot lead to equality.

In today's United States, critics say, minority applicants don't face any danger that their skin color or ethnic heritage will hold them back. Instead, affirmative-action beneficiaries face continuing skepticism from others — and even from themselves, that they somehow were given an advantage that their academic work didn't entitle them to receive.

Meanwhile, opponents and supporters readily acknowledge that a disproportionate share of black and Latino students receive substandard educations, starting in and lasting through high school. Affirmative action hasn't eliminated the link between race/ethnicity and poverty and academic deprivation, they agree.

Critics of race preferences, however, say they haven't narrowed the divide that helped to trigger affirmative action in the first place. Affirmative action advocates favor significantly reforming K-12 education while simultaneously giving a leg up to minorities who managed to overcome their odds at inadequate public schools.

And some supporters say affirmative action is important for other reasons, which transcend America's racial history. Affirmative action helps to ensure continuation of a democratic political culture, says James E. Coleman Jr., a professor at Duke University Law School.

"It's not just about discrimination or past discrimination," says Coleman, who attended all-black schools when growing up and then graduated from Harvard College and Columbia Law School in the early 1970s, during the early days of affirmative action. "It's in our self-interest. We want leaders of all different backgrounds, all different races; we ought to educate them together."

But Connerly, the California businessman behind anti-affirmative action ballot initiatives, says that race and gender preferences are the wrong tool with which to promote diversity, because they effectively erode

Few Poor Students Attend Top Schools

Nearly three-quarters of students entering tier 1 colleges and universities come from the wealthiest families, but only 3 percent of students from the bottom quartile enter top schools. Far more students from poorer backgrounds enroll in less prestigious schools, and even more in community colleges.

Socioeconomic Status of Entering College Classes

School prestige level	First quartile (lowest)	Second quartile	Third quartile	Fourth quartile (highest)
Tier 1	3%	6%	17%	74%
Tier 2	7	18	29	46
Tier 3	10	19	36	35
Tier 4	16	21	28	35
Community Colleges	21	30	27	22

Source: Anthony P. Carnevale and Stephen J. Rose, "Socioeconomic Status, Race/Ethnicity, and Selective College Admissions," The Century Foundation, March 2003

academic standards. "Excellence can be achieved by any group of people," says Connerly, a former member of the University of California Board of Regents. "So we will keep the standards where they ought to be, and we will expect people to meet those standards."

But legislators interested in a "quick fix" have found it simpler to mandate diversity than to devise ways to improve schools. "There are times when someone has to say, 'This isn't right. We're going to do something about it,'" Connerly says. "But in the legislative process, I can find no evidence of leadership anywhere."

Like others, Connerly also cites the extraordinary academic achievements of Asian-American students — who haven't benefited from affirmative action. Affirmative action supporters don't try to dispute that point. "At the University of California at Berkeley, 40 percent of the students are Asian," says Terry H. Anderson, a history professor at Texas A&M University in College Station. "What does that say about family structure? It makes a big statement. Family structure is so important, and it's something that affirmative action can't help at all."

But if encouraging minority-group enrollment at universities doesn't serve as a social and educational cure-all, says Anderson, who has written a history of affirmative

Few Poor Students Score High on SAT

Two-thirds of students who scored at least 1300 on the SAT came from families ranking in the highest quartile of socioeconomic status, compared with only 3 percent of students from the lowest-income group. Moreover, more than one-fifth of those scoring under 1000 — and 37 percent of non-test-takers — come from the poorest families.

SAT Scores by Family Socioeconomic Status*

Score	First Quartile (lowest)	Second Quartile	Third Quartile	Fourth Quartile (highest)
>1300	3%	10%	22%	66%
1200–1300	4	14	23	58
1100–1200	6	17	29	47
1000–1100	8	24	32	36
<1000	21	25	30	24
Non-taker	37	30	22	10

* The maximum score is 1600.

Note: Percentages do not add to 100 due to rounding.

Source: Anthony P. Carnevale and Stephen J. Rose, "Socioeconomic Status, Race/Ethnicity, and Selective College Admissions," The Century Foundation, March 2003.

action, the policy still serves a valuable purpose. "It's become part of our culture. On this campus, it's been 'out' to be racist for years and years. I'm looking at kids born in 1990; they just don't feel self-conscious about race or gender, they just expect to be treated equally."

Standing between the supporters and the enemies of affirmative action's racial/ethnic preferences are the affirmative action reformers. "I don't think it's time to completely abolish all forms of affirmative action," says the Century Foundation's Kahlenberg. "But it's clear there are strong legal, moral and political problems with relying solely on race."

And at the practical level, race isn't the only gauge of hardship that some students must overcome, even to be capable of competing for admission to a top-tier school. "There are students from low-income backgrounds," Kahlenberg says, "who aren't given the same opportunities as wealthier students are given, and they deserve a leg up in admissions. Someone's test scores and grades are a reflection not only of how hard they work and how talented they are, but what sorts of opportunities they've had."

Does race-based affirmative action still face powerful public opposition?

At the state and federal level, affirmative action has generated enormous conflict over the decades, played out in a long chain of lawsuits and Supreme Court decisions, as well as the hard-fought ballot initiatives this year in Arizona, Missouri and Oklahoma — all three of which ended in defeat for race, ethnic and gender preferences.

But today's political agenda — dominated by the global financial crisis, the continuing downward slide of real estate prices, the continuing conflict in Iraq and escalated combat in Afghanistan — would seem to leave little space for a reignited affirmative action conflict.

Nevertheless, supporters and opponents of affirmative action fought hard in five states over pro-

posed ballot initiatives, two of which will go before voters in November.

Nationally, the nonpartisan Pew Research Center reported last year that black and white Americans are divided by a considerable margin on whether minority group members should get preferential treatment. Among blacks, 57 answered yes, but only 27 percent of whites agreed. That gap was somewhat bigger in 1991, when 68 percent of blacks and only 17 percent of whites favored preferences.¹⁵

Obama's statement to ABC News' Stephanopoulos that his daughters shouldn't benefit from affirmative action reflected awareness of majority sentiment against race preference.¹⁶

Still, the exchange led to some predictions that it would resurface. "The issue of affirmative action is likely to dog Sen. Obama on the campaign trail as he seeks to win over white, blue-collar voters in battleground states like Michigan," *The Wall Street Journal* predicted in June.¹⁷

Just two and a half weeks before the election, that forecast hadn't come to pass. However, earlier in the year interest remained strong enough that campaigners for

No, Yes, before

state ballot initiatives were able to gather 136,589 signatures in Nebraska and about 130,000 in Colorado to require that the issue be put before voters in those states.

Meanwhile, the initiative efforts in Arizona, Missouri and Oklahoma were doomed after the validity of petition signatures was challenged in those states. Connerly, the chief organizer of the initiatives, blames opponents' tactics and, in Oklahoma, an unusually short, 90-day window during which signatures must be collected. But once initiatives get on ballots, he says, voters approve them. "There is something about the principle of fairness that most people understand."

Without congressional legislation prohibiting preferences, Connerly says, the initiatives are designed to force state governments "to abide by the moral principle that racial discrimination — whether against a white or black or Latino or Native American — is just wrong."

But reality can present immoral circumstances as well, affirmative action defenders argue. "Racial discrimination and gender discrimination continue to present obstacles to people of color and women," says the American Civil Liberties Union's (ACLU) Kief. "Affirmative action is a way to chip away at some of these obstacles."

Kief says the fact that Connerly has played a central role in all of the initiatives indicates that true grassroots opposition to affirmative action is weak in states where initiatives have passed or are about to be voted on.

However, The Century Foundation's Kahlenberg points out that pro-affirmative action forces work hard to block ballot initiatives, because when such initiatives have gone before voters they have been approved. And the most recent successful ballot initiative, in Michigan in 2006, passed by a slightly bigger margin — 57 percent to 43 percent — than its California counterpart in 1996, which was approved by 54-46.¹⁸

Further evidence that anti-affirmative action initiatives are hard to fight surfaced this year in Colorado, where the group Coloradans for Equal Opportunity failed to round up enough signatures to put a pro-affirmative action initiative on the ballot.

Kahlenberg acknowledges that affirmative action politics can be tricky. Despite abiding public opposition to preferences, support among blacks is so strong that Republican presidential campaigns tend to downplay affirmative action, for fear of triggering a huge turnout among black voters, who vote overwhelmingly Democratic. In 1999,



AFP/Getty Images/Emmanuel Duzand

Democratic presidential candidate Sen. Barack Obama, speaking in Philadelphia on Oct. 11, 2008, represents the new face of affirmative action in the demographically changing United States: His father was Kenyan and a half-sister is half-Indonesian.

then-Florida Gov. Jeb Bush kept a Connerly-sponsored initiative out of that state largely in order to lessen the chances of a major black Democratic mobilization in the 2000 presidential election, in which his brother would be running.¹⁹

"When you have an initiative on the ballot," Kahlenberg says, "some Republicans think that it increases minority turnout, so they're not sure whether these initiatives play to their party or not." Republican opposition to affirmative action goes back to the Reagan administration. Reagan, however, passed up a chance to ban affirmative action programs throughout the federal government, displaying a degree of GOP ambivalence. However, Connerly is an outspoken Republican.²⁰

Nevertheless, an all-out Republican push against affirmative action during the past decade failed to catch on at the national level. In 1996, former Republican Senate Majority Leader Bob Dole of Kansas was running for president, and the affirmative action initiative was on the same ballot in California. "The initiative passed, but there was no trickle-down help for Bob Dole," says Daniel A. Smith, a political scientist at the University of Florida who has written on affirmative action politics.

This year, to be sure, anxieties growing out of the financial crisis and economic slowdown could rekindle passions over preferences. But Smith argues the economic environment makes finger-pointing at minorities less likely. "Whites are not losing jobs to African-Americans," he says. "Whites and African-Americans are losing jobs to the Asian subcontinent — they're going to

Partly public

Bangalore. The global economy makes it more difficult to have a convenient domestic scapegoat for lost jobs."

Has affirmative action diverted attention from the poor quality of K-12 education in low-income communities?

If there's one point on which everyone involved in the affirmative action debate agrees, it's that public schools attended by most low-income students are worsening.

"The educational achievement gap between racial groups began growing again in the 1990s," Gary Orfield, a professor of education and social policy at Harvard University, wrote. "Our public schools are becoming increasingly segregated by race and income, and the segregated schools are, on average, strikingly inferior in many important ways, including the quality and experience of teachers and the level of competition from other students. . . . It is clear that students of different races do not receive an equal chance for college."²¹

The decline in education quality has occurred at the same time various race-preference policies have governed admission to the nation's best colleges and universities. The policies were designed to provide an incentive for schools and students alike to do their best, by ensuring that a college education remains a possibility for all students who perform well academically.

But the results have not been encouraging. In California alone, only 36 percent of all high school students in 2001 had taken all the courses required for admission to the state university system, according to a study by the Civil Rights Project at Harvard University. Among black students, only 26 percent had taken the prerequisites, and only 24 percent of Hispanics. Meanwhile, 41 percent of white students and 54 percent of Asians had taken the necessary courses.²²

In large part as a result of deficient K-12 education, decades of race-preference affirmative action at top-tier colleges and universities have yielded only small percentages of black and Hispanic students. In 1995, according to an exhaustive 2003 study by The Century Foundation, these students accounted for 6 percent of admissions to the 146 top-tier institutions.²³

Socioeconomically, the picture is even less diverse. Seventy-four percent of students came from families in the wealthiest quarter of the socioeconomic scale; 3 percent came from families in the bottom quarter.²⁴

For race-preference opponents, the picture demonstrates that efforts at ensuring racial and ethnic diversity in higher education would have been better aimed at improving K-12 schools across the country.

"If you've tried to use race for 40-some years, and you still have this profound gap," Connerly says, "yet cling to the notion that you have given some affirmative action to black and Latino and American Indian students — though Asians, without it, are outstripping everybody — maybe the way we've been doing it wasn't the right way to do it."

Meanwhile, he says, making a point that echoes through black, conservative circles, "Historically black colleges and universities (HBCUs) — if you look at doctors and pharmacists across our nation, you'll find them coming from schools that are 90 percent black. These schools are not very diverse, but they put a premium on quality."

But not all HBCUs are in that class, affirmative action supporters point out. "A lot of people who come out with a degree in computer science from minority-serving institutions know absolutely no mathematics," says Richard Tapia, a mathematics professor at Rice University and director of the university's Center for Equity and Excellence in Education. "I once went to a historically black university and had lunch with a top student who was going to do graduate work at Purdue, but when I talked to her I realized that her knowledge of math was on a par with that of a Rice freshman. The gap is huge."

Tapia, who advocates better mentoring for promising minority students at top-flight institutions, argues that the effect of relegating minority students to a certain defined group of colleges and universities, including historically black institutions, limits their chances of advancement in society at large. "From the elite schools you're going to get leadership."

Still, a question remains as to whether focusing on preferential admissions has helped perpetuate the very conditions that give rise to preferences in the first place.

"At the K-12 level you could argue that affirmative action has led to stagnation," says Richard Sander, a professor of law at UCLA Law School. "There's very little forward movement, very little closing of the black-white gap of the past 20 to 30 years."

Coleman of Duke University agrees that public education for most low-income students needs help. But that issue has nothing to do with admissions to top-drawer

universities and professional schools, he says. "Look at minority students who get into places like that," he says. "For the most part, they haven't gone to the weakest high schools; they've often gone to the best."

Yet the affirmative action conflict focuses on black students, who are assumed to be academically under-qualified, Coleman says, while white students' place at the best schools isn't questioned. The classroom reality differs, he says. "We have a whole range of students with different abilities. All of the weak students are not minority students; all of the strong students are not white students."

BACKGROUND

Righting Wrongs

The civil rights revolution of the 1950s and '60s forced a new look at the policies that had locked one set of Americans out of most higher-education institutions and higher-paying jobs.

As early as 1962, the Congress of Racial Equality (CORE), one of the most active civil-rights organizations, advocated hiring practices that would make up for discrimination against black applicants. "We are approaching employers with the proposition that they have effectively excluded Negroes from their work force a long time, and they now have a responsibility and obligation to make up for their past sins," the organization said in a statement from its New York headquarters.²⁵

Facing CORE-organized boycotts, a handful of companies in New York, Denver, Detroit, Seattle and Baltimore changed their hiring procedures to favor black applicants.

In July 1964, President Lyndon B. Johnson pushed Congress to pass the landmark Civil Rights Act, which had been championed by President John F. Kennedy since his 1960 presidential election campaign.

The law's Title VII, which prohibits racial, religious or sexual discrimination in hiring, said judges enforcing the law could order "such affirmative action as may be appropriate" to correct violations.²⁶

Title VII didn't specify what kind of affirmative action could be decreed. But racial preferences were openly discussed in the political arena as a tool to equalize opportunities. Official working definitions of affirmative action didn't emerge until the end of the 1960s, under President Richard M. Nixon.

In 1969, the administration approved the "Philadelphia Plan," which set numerical goals for black and other minority employment on federally financed construction jobs. One year later, the plan was expanded to cover all businesses with 50 or more employees and federal contracts of at least \$50,000. The contracts were to set hiring goals and timetables designed to match up a firm's minority representation with the workforce demographics in its area. The specified minorities were: "Negro, Oriental, American Indian and Spanish Surnamed Americans."²⁷

The sudden change in the workplace environment prompted a wave of lawsuits. In the lead, a legal challenge by 13 black electric utility workers in North Carolina led to one of the most influential U.S. Supreme Court decisions on affirmative action, the 1971 Griggs v. Duke Power Co. case.²⁸

In a unanimous decision, the high court concluded that an aptitude test that was a condition of promotion for the workers violated the Civil Rights Act. Duke Power may not have intended the test to weed out black applicants, Chief Justice Warren E. Burger wrote in the decision. But, he added, "Congress directed the thrust of the Act to the consequences of employment practices, not simply the motivation."²⁹

If the point of the Civil Rights Act was to ensure that the consequences of institutions' decisions yielded balanced workforces, then goals and timetables to lead to that outcome were consistent with the law as well. In other words, eliminating racial discrimination could mean paying attention to race in hiring and promotions.

That effort would produce a term that captured the frustration and anger among white males who were competing with minority-group members for jobs, promotions or school admissions: "reverse discrimination."

The issue went national with a challenge by Allan Bakke, a white, medical school applicant, to the University of California. He'd been rejected two years in a row while minority-group members — for whom 16 slots in the 100-member class had been set aside — were admitted with lower qualifying scores.

After the case reached the Supreme Court, the justices in a 5-4 decision in 1978 ordered Bakke admitted and prohibited the use of racial quotas. But they allowed race to be considered along with other criteria. Representing the University of California was former Solicitor General Archibald Cox, the Watergate special prosecutor who was

CHRONOLOGY

1960s *Enactment of civil rights law opens national debate on discrimination.*

1964 Civil Rights Act of 1964 bars discrimination in employment and at federally funded colleges.

1965 President Lyndon B. Johnson calls for a massive national effort to create social and economic equality.

1969 Nixon administration approves "Philadelphia Plan" setting numerical goals for minority employment on all federally financed building projects.

1970s-1980s *Affirmative action expands throughout the country, prompting legal challenges and growing voter discontent, leading to new federal policy.*

1971 The U.S. Supreme Court's landmark *Griggs v. Duke Power Co.* decision, growing out of a challenge by 13 black electric utility workers in North Carolina, is seen as authorizing companies and institutions to set out goals and timetables for minority hiring.

1978 Supreme Court's decision in *University of California Regents v. Bakke*, arising from a medical-school admission case, rules out racial quotas but allows race to be considered with other factors.

1980 Ronald W. Reagan is elected president with strong support from white males who see affirmative action as a threat.

1981-1983 Reagan administration reduces affirmative action enforcement.

1985 Attorney General Edwin Meese III drafts executive order outlawing affirmative action in federal government; Reagan never signs it.

1987 Supreme Court upholds job promotion of a woman whose advancement was challenged by a male colleague claiming higher qualifications.

1990s *Ballot initiatives banning race and gender preferences prompt President Bill Clinton to acknowledge faults in affirmative action.*

1994 White voter discontent energizes the "Republican revolution" that topples Democrats from control of Congress.

1995 Supreme Court rules in *Adarand Constructors v. Peña* that affirmative action programs must be "narrowly tailored" for cases of extreme discrimination. . . . Clinton concedes that affirmative action foes have some valid points but concludes, "Mend it, but don't end it." . . . Senate votes down anti-affirmative action bill.

1996 California voters pass nation's first ballot initiative outlawing racial, ethnic and gender preferences. . . . 5th U.S. Circuit Court of Appeals rules that universities can't take race into account in evaluating applicants.

1998 Washington state voters pass ballot initiative identical to California's.

2000s *Affirmative action in university admissions stays on national agenda, leading to major Supreme Court ruling; Sen. Barack Obama's presidential candidacy focuses more attention on the issue.*

2003 Supreme Court's *Gratz v. Bollinger* ruling rejects University of Michigan undergraduate admission system for awarding extra points to minority applicants, but simultaneous *Grutter v. Bollinger* decision upholds UM law school admissions policy, which includes race as one factor among many. . . . Justice Sandra Day O'Connor writes in 5-4 majority opinion in *Grutter* that affirmative action won't be necessary in 25 years. . . . Century Foundation study finds strong linkage between socioeconomic status, race and chances of going to college.

2006 Michigan passes nation's third ballot initiative outlawing racial, ethnic and gender preferences.

2008 Opponents of affirmative action in Arizona, Missouri and Oklahoma fail to place anti-affirmative action initiatives on ballot, but similar campaigns succeed in Colorado and Nebraska. . . . U.S. Civil Rights Commission opens study of minority students majoring in science and math. . . . Saying his daughters are affluent and shouldn't benefit from race preferences, Obama endorses affirmative action for struggling, white college applicants.