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ENDARCH

Journal of Black Political Research

Articles

Riots and Rebirth: The Role of Policy Sciences in Addressing Disparities in Health Care

Samuel L. Brown and RaJade M. Berry-James

A Dream Deferred: The Politics of Race in America

Dewey Clayton

East Asian Discrimination in Supreme Court Cases: How Yesterday's Biases Affect Race Relations Today

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A Publication of the Clark Atlanta
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Editorial Remarks

Alecia D. Hoffman

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Fall 2008

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A Journal of Black Political Research

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Riots and Rebirth: The Role of Policy Sciences in Addressing Disparities in Health Care

Samuel L. Brown and RaJade Berry-James

In the past 40 years, there has been considerable progress in approaching social equity in civil rights, housing, education, and income, but health care inequalities persist. In this paper we take the position that policy sciences, as developed by Harold D. Lasswell and his colleagues, offers both hope and promise of achieving social equity in health for African Americans. A broader approach, incorporating multiple disciplines, is needed to bridge the gap over the original vision of this discipline and the actual practice over the past 50 years. Policies designed to address health care disparities would benefit from both rational and less-rational approaches to describe and motivate provider behavior.

A Dream Deferred: The Politics of Race in America

Dewey Clayton

In 1968, the Kerner Commission concluded that "our nation is moving toward two societies: one black, one white, separate and unequal. Subsequent efforts to improve race relations in this country have had mixed results. Opposition to busing has caused the re-segregation of our public schools. There is a growing economic rift that exists today not just among blacks and whites but also between upwardly mobile blacks and indigent blacks.

East Asian Discrimination in Supreme Court Cases: How Yesterday's Biases Affect Race Relations Today

Frank Fuller

The Supreme Court often combats racial discrimination, with shifting groups being targeted as the scapegoat. East Asians have encountered discrimination during the 19th and 20th century, especially with the passage of the 1882 Chinese Exclusion Act. A Japanese American by the name of Ozawa challenged the "whiteness" notion, while another, Yasui, fought involuntary detainment. Present parallels exist towards the treatment of African Americans; discrimination poisons America's psyche.

Statement of Purpose

In decades characterized by the complete atrophy of all struggle from the sixties and the defection of most of the former participants, the principal questions must be why? What has happened consistently to denature and distort incipiently progressive impulses that appear among black people?

Endarch, as its name would suggest, identifies with motion. Not any haphazard or desultory movement, but movement that is conscious of its origins and destinations. As an embodiment of aggregate but mutually consistent perspectives, this journal seeks to reflect, analyze, and generate activity, which will ultimately lead toward the expansion, clarification, and solidification of black political thought.

The conscious nature of movement is derived from a clear social and analytic methodology. An approach, which views the world as a totality, but also diaphanously understands that the components comprising this world are not of equal importance. With this in mind, and given black people's historical grounding in oppression and exploitation, Endarch sees of paramount importance those phenomena and groups of phenomena which operate in a system of oppression and exploitation. Recognition of such phenomena must lead to a discernment of those vital elements, the crucial essences of which define and condition the world. Our purpose is to expose those essences and through this explication illuminate the totality from the vantage point of a specific oppressed people. Such is the task of a conscious and critical black political thought imbued with the task of defining the black experience in politics. It is toward this goal that we aim.

Editor's Remarks

The Fall 2008 issue of *Endarch: Journal of Black Political Research* is the continuation of a long tradition of the scholarly publication, which began with the commencement of the doctoral program in the Department of Political Science at Atlanta University, now, Clark Atlanta University.

This publication is a vehicle that was created and has been maintained by the faculty and students of the Department of Political Science. Its goal is to examine, critique, and analyze issues that affect individuals of the African Diaspora. Moreover, *Endarch* provides a space for the intellectual assessment of pertinent questions, which have been overlooked, though not intentionally, in the traditional mainstream scholarly publications.

The Fall 2008 edition of *Endarch* contains articles that reflect on the theme of the 40th anniversary of the 1968 Kerner Commission Report. The Kerner Report was a document released after a seven month long investigation, conducted by the National Advisory Commission on Civil Disorders, which was appointed under the administration of President Lyndon Baines Johnson. The commission was charged with the responsibility of investigating the rash of urban riots, which plagued America's urban centers, beginning in 1965. Furthermore, the committee analyzed the instigating factors that led to the disturbances and the deteriorating racial climate of that decade. Of important note, were the locales in which these disturbances took place; predominantly African-American sectors of Los Angeles, California; Chicago, Illinois; and Newark, New Jersey. The findings of the report indicated that there were indeed underlying racial divisions in the country that warranted correction through the implementation of federal initiatives that would improve the areas of education, employment and public services, and housing for African Americans in urban areas throughout the United States. One of the famous statements of the report was, the country "was moving towards two societies, one black one white—separate and unequal."

The findings of the Kerner Report are now forty years old and the articles contained in this issue of *Endarch* reflect on the major questions raised by the original conclusions of the Kerner Report of 1968. As the name *Endarch* identifies with motion, so too did the analyses and findings of the Kerner Commission in its investigation of the disturbances in urban centers of America. The investigative analysis offered by the committee was one that traced the movement of the riots from the provenience to the prescriptions. Just as the name *Endarch* describes movement that is conscious of its originations and destinations, the articles contained herein seek to analyze the implications of the Kerner Commission Report at its 40th anniversary.

"Riots and Rebirth: The Role of Policy Sciences in Addressing Disparities in Health Care," authored by Samuel L. Brown and RaJade M. Berry-James, examines areas that were overlooked by the initial report issued by the Kerner Commission. Although the Kerner Commission Report provided prescriptions for inequalities in housing, public services and education, the dissimilitude in the provision of adequate healthcare is still pervasive in American society. The authors critique the writings of well-known scholars in the field of policy sciences and a variety of other disciplines and offer prescriptions to address the health care crisis in the United States.

"A Dream Deferred: The Politics of Race in America," penned by Dewey Clayton, offers insight into how the race divide is not just between blacks and whites as once seen in decades past but, now between lower income blacks and upwardly mobile blacks. He also examines the shift from

integration to segregation in America's school system, a problem once addressed with the passage of Civil Rights legislation during the 1960s, now re-emerging in the 21st century.

Frank Fuller offers a timely and interesting examination of Supreme Court cases and their relative impact on race relations in America. In his article, "East Asian Discrimination in Supreme Court Cases: How Yesterday's Biases Affect Race Relations Today," an analysis is given of United States legislation and decisions handed down from cases heard by the United States Supreme Court throughout the 19th and 20th centuries. In his article, Mr. Fuller offers interesting parallels between African Americans and Asian Americans in their struggle for equal rights in the United States. Moreover, he examines the cyclical patterns in American history relative to discrimination and how various ethnic groups have been targeted during different epochs.

The authors' contributions to this issue are greatly appreciated and we would like to thank you, the reader, for taking the time to enjoy and gain insight from this publication. In addition we would like to thank the staff of the Robert Woodruff Library at the Atlanta University Center for all of their hard work and assistance in making this revival of *Endarch* possible and bringing us into the 21st century digital communications. Special thanks are in order to Ms. Elizabeth Gail McClenney, Deputy Director of the Robert Woodruff Library, for her time, vision and suggestions of making this project a digital one; Ms. Trashinda Wright and Ms. Suteera Apichatabutra of the Robert Woodruff Library for their time, suggestions, and scanning of the final document and preparing it for upload to the World Wide Web; Berkley Electronic Press; Mr. Kwasi Obeng for offering and providing assistance with the reading of manuscripts; various professors and department chairs around the country who advertised the Call for Papers for *Endarch* at their respective institutions; previous editors and staff of *Endarch*, who provided the vision and perpetuity for this publication; and the and graduate students within the department of political science who answered queries about the journal from interested callers.

Alecia D. Hoffman

Alecia D. Hoffman

Endarch: Journal of Black Political Research

About the Authors

Riots and Rebirth: The Role of Policy Sciences in Addressing Disparities in Health Care

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A Dream Deferred: The Politics of Race in America

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East Asian Discrimination in Supreme Court Cases: How Yesterday's Biases Affect Race Relations Today

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Riots and Rebirth: The Role of Policy Sciences in Addressing Disparities in Health Care

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“Of all forms of inequality, injustice in health care is the most shocking and inhumane”
Martin Luther King, Jr.

Introduction

Among African Americans, health and health care disparities are exacerbated by the complexity of the U.S. health care system and the design of policy models used to craft health policy. Health policy analysis plays a central role in the health care delivery system because it serves as the mechanism through which public resources are allocated, which in turn determines the priorities of medical research, the supply of health care providers, and the distribution of medical care.

In the United States, the government plays an important role in planning, directing, and financing health care services. Public programs account for nearly 40 percent of the nation’s personal health expenditures. Over 50 percent of all health and research development funds are provided by the government through programs such as Medicare and Medicaid. With this being said, the government finances the training of most physicians and other health care personnel, and most community-based and university hospitals rely on government expenditures for a significant share of their revenues.¹

¹ Katharine Levit *et al.* “Inflation Spurs Health Spending in 2000.” *Health Affairs* 21, no. 2 (2002): 172-181.

The current cadre of health policies and programs of the U.S. government evolved incrementally in response to clearly defined market imperfections that resulted in unmet needs. In the health delivery system, the role of government has historically been one of support to the private sector, rather than that of a direct provider of health care services. This role presents an interesting puzzle, which has baffled health policy analysts over the years. As a result, the United States has not pursued a comprehensive resolution to the national crisis that has emerged due to the rising costs of health care, racial and ethnic disparities in health and health care, or the issues surrounding the quality of health care.

This paper examines the origins of health disparities in the United States and the persistence of racial disparities in health care. It begins with a descriptive review of the health care of African Americans as it compares to that of Anglo Americans. This section is followed with a discussion of the dimension of policy development in health. The next section discusses more specific policies and programs that developed or expanded over the past thirty years, which were aimed at health inequalities. The fourth and final section offers suggestions for improving policies to eliminate racial disparities in health care.

The challenge with contemporary health public policy is that it has strayed too far from the original aims of the field of policy sciences. This aim was fastened on a broader socioeconomic approach to multi-faceted problem solving.² Instead, in the past 40 years we have witnessed the crowning of the rationality theorem as articulated in the discipline of economics.

Traditional policy analysis in health is dominated by the proposition that we can resolve health care controversies in the health care sphere through traditional economic reasoning. Under classic welfare economics, it is argued that the systematic rationalization of medical and health-policy decision making is possible when medical services are valued and weighed against the enhancement of

² Harold Lasswell, *A Preview of the Policy Science* (New York: American Elsevier, 1971).

biological functioning so as to maximize society's collective welfare.³ This view has been intensively criticized and its efficacy has been challenged on the grounds of effectiveness and policy direction.

The traditional policy analysis approach, with its emphasis on the welfare economics model and its positivist foundations, is inadequate to improve policy decisions that address health care disparities. This framework lacks the tools to analyze this problem because of its complexity. The classic welfare economics framework is designed to identify efficient solutions at the expense of fairness and human dignity. Brown has argued that such models are incapable of incorporating the full complexity of people's thoughts about health policy issues⁴. For example, as a society we lack a consensus on how to value benefits and harms of therapeutic intervention. There are vast differences over what types of benefits and harms should be factored into a cost/benefit calculation. It remains unclear how such costs and benefits should be measured, and how society's competing demands for social welfare should be mediated (i.e., how do we balance the maximization of social welfare and provide the level of health care that individuals desire without regard to cost?). As a result, the model envisioned by classic welfare economics is beyond our cognitive and moral reach.

The traditional policy analysis approach is argued to be antiquated because it does not accurately reflect the contemporary practice of medicine. We know little about the efficacy of most of medicine, and the complexity and variability of patients' illnesses make large advances in this knowledge unlikely in the foreseeable future. In light of this medical uncertainty, the cognitive constraints of individual physicians, the emotional needs of individual patients, and the persistent moral disagreements about the value of medical interventions make policy analysts question whether the model is robust enough to capture the complexities involved in the practice of medicine. Traditional policy analysis approach reflects a Newtonian/positivist worldview with a focus on

³ Richard A. Epstein, "A Managed Care Under Siege," *Journal of Medicine and Philosophy* 24, no. 5 (1999): 434.

⁴ Steven Brown, *Political Subjectivity: Applications of Q-Methodology in Political Science* (New Haven, CT: Yale University Press, 1980).

empiricism.⁵ This view has been discredited by research in the fields of quantum mechanics, chaos theory, and cognitive science.⁶ Fischer has made a similar argument and suggested that policy analysis in general needs to take into account the new realities of science.⁷

The weight of the evidence of racial health care disparities in the medical literature is overwhelming.⁸ There are health care disparities in both preventive services and therapeutic treatment. In studies where researchers control for income, education, and health insurance status, significant differences are found in the preventative services and therapeutic treatment that African Americans and white Americans receive for life threatening diseases such as breast cancer,⁹ heart disease,¹⁰ HIV-AIDS,¹¹ liver disease,¹² and lung cancer.¹³ Even more troubling is the fact that there is

⁵ Maarten Hajer and Hendrick Wagenaar, *Deliberative Policy Analysis: Understanding Governance in a Network Society* (Cambridge: Cambridge University Press, 2003).

⁶ Goktu Morcol, *A New Mind for Policy Analysis: Toward a Post-Newtonian and Postpositivist Epistemology and Methodology* (Westport: Praeger, 2002).

⁷ Frank Fischer, *Evaluating Public Policy* (Chicago: Nelson-Hall Publisher, 1995).

⁸ Morehouse Medical Treatment and Effectiveness Center, *A Synthesis of the Literature: Racial and Ethnic Differences in Access to Medical Care*. (October 1999), <http://www.kff.org/minorityhealth/1526-index.cfm> (accessed on April 5, 2008).

⁹ Marian E. Gornick, *Vulnerable Populations and Medicare Services: Why do Disparities Exist?* (New York: The Century Foundation Press, 2000).

¹⁰ Richard Gillum, Brenda S. Gillum, and Charles K. Francis, "Coronary Revascularization and Cardiac Catheterization in the United States: Trends in Racial Differences," *Journal of the American College of Cardiology* 29, no. 7 (1997): 1557.

¹¹ Martin F. Shapiro *et al.* "Variations in the Care of HIV-Infected Adults in the United States: Results from the HIV Cost and Services Utilization Study," *Journal of the American Medical Association* 281 (1999): 2305.

¹² Caleb G. Alexander and Ashwini R. Sehgal, "Barriers to Cadaveric Renal Transplantation Among Blacks, Women, and the Poor," *The Journal of the American Medical Association* 280, no. 13 (October 7, 1998), <http://jama.ama-assn.org/cgi/content/abstract/280/13/1148> (accessed April 3, 2008).

¹³ Peter Bach, Laura D. Cramer, Joan L. Warren, and Colin B. Begg, "Racial Differences in the Treatment of Early-Stage Lung Cancer," *New England Journal of Medicine* 341, no. 16 (October 14, 1999), <http://content.nejm.org/cgi/content/short/341/16/1198> (accessed April 3, 2008).

a substantial body of literature that reports significant racial disparities in the general treatment of pain.¹⁴

Causes and Explanations for Racial Disparities in Health Care

The previous section of this article detailed the fact that race is closely associated with the provision of health care in the United States. On almost every major health access measure (mortality, morbidity, and disability), African Americans have less access to health care than their white counterparts.¹⁵ According to the Center for Health Equity Research and Promotion, disparities in health and health care often result from four factors: social and environmental factors, system and policy factors, individual factors, and provider factors; however, provider factors, such as the knowledge, attitudes, practice patterns, communication and the cultural competence of doctors, nurses and treatment staff affect the major health access measures and functional status.¹⁶ Further widening the gap, the lack of health insurance coverage is often cited as a reason for the racial disparity in access to care. Data from the National Health Interview Survey show that African Americans are more likely to be uninsured than Anglo Americans.¹⁷

A second potential explanation for disparities in utilization of health care is the type of insurance. Given the propensity of managed care to restrict access to care through utilization management techniques, some African-American health care advocates have been concerned. The

¹⁴ Caleb G. Alexander and Ashwini R. Sehgal, "Barriers to Cadaveric Renal Transplantation Among Blacks, Women, and the Poor," *Journal of the American Medical Association* 280, no. 13 (1998): 1148.

¹⁵ Morehouse Medical Treatment and Effectiveness Center, "A Synthesis of the Literature."

¹⁶ Center for Health Equity Research and Promotion (CHERP), "Introduction the Health Disparities Primer, 2007," Office of Veteran Affairs. <http://www.cherp.research.med.va.gov/primer.php> (accessed February 11, 2007).

¹⁷ Hanyu Ni and Robin Cohen, "Trends in Health Insurance Coverage by Race/Ethnicity Among Persons Under 65 Years of Age: United States, 1997-2001" <http://www.cdc.gov/nchs/products/pubs/pubd/hestats/healthinsur.htm#table%201> (Accessed on September 10, 2008).

concern is that as the nation moved toward the adoption of managed care as the solution to the health care cost crisis, African-American health consumers would be disproportionately harmed. Others have argued just the opposite, that HMOs and managed care plans are better for African-American health consumers because they are more inclined to promote health and disease prevention through preventive services.¹⁸ The fact remains that regardless of the type of health insurance, African Americans experience differences in the level and type of health care they receive.

Third, there are some studies that attempt to show that biological/genetic differences between black and white persons could explain most of the disparities found in health and health care. According to Gornick, when six major risk factors are studied—smoking, systolic blood pressure, cholesterol level, body-mass index, alcohol intake, and diabetes—only 31 percent of the excess mortality between black and white adults could be explained; another 38 percent was explained by income differences.¹⁹ This analysis leaves almost one-third of the excess mortality unexplained.

A fourth explanation for the continued disparities in health and health care can be traced to race-based discrimination in health care. Given that integration in the provision of health services is a relatively recent event in the United States, it should come as no surprise that systematic discrimination still exists in some pockets of the health care system. Some of the current levels of racial disparities can be explained by personal discrimination on the part of providers; however, the vast majority of the race-based discrimination in health care takes place at the societal level.²⁰ According to Williams and Rucker, societal discrimination has changed over time from the in your

¹⁸ Donald L. Libby, Zijun Zhou, and David A. Kindig, "Will Minority Physician Supply Meet U.S. needs?" *Health Affairs* 16, no 4(1997): 205.

¹⁹ Marian E. Gornick, *Vulnerable Populations and Medicare Services*. 2000.

²⁰ David R. Williams and Toni D. Rucker, "Understanding and Addressing Racial Disparities in Health Care," *Health Care Financing Review*, 21, no. 4, (2000): 75.

face “Jim Crow Racism” to the more faint “laissez-faire racism.”²¹ Smedley et al., found that racial and ethnic minorities tend to receive low quality health care when compared to non-minorities. This is true even when access-related factors, such as a patient’s insurance status and income, are the same or similar.²² Provider prejudice and stereotyping often affect clinical decision making, particularly because some physicians still view minority consumers, African-Americans in particular, as “less intelligent, less educated, less likely to comply with their advice, and more likely to have problems with alcohol and drugs.”²³ Clinical encounters that involve stereotyping, biases, and uncertainty, on the part of health care providers, contribute to the health care gap between racial/ethnic groups in the United States.²⁴ The link between provider care and patient outcomes among racial/ethnic groups continues to be a significant one.

The various causes of racial disparities in health and health care provide insight into the possible solutions or policy options to address this persistent issue. The more knowledge that can be brought to bear in the policymaking process, the more refined and informed the resulting public policy will be. The next section frames the problem of racial disparity as one of bias in clinical judgments as it relates to similarly situated patients who differ by race in an attempt to offer some insight into how health policy can be developed to address the fourth explanation described above.

There is some promising research in the discipline of psychology, which helps to shed some light on the attempt to account for the reported racial disparities in medical treatment. These studies have identified the influences of the internal psychological factors of patient and doctor attitudes. It is

²¹ Ibid.

²² Brian D. Smedley, Adrienne Y. Stith, and Alan R. Nelson, *Unequal Treatment: Confronting Racial and Ethnic Disparities in Health Care* (Washington, DC: National Academies Press, 2003), 1.

²³ Michelle Van Ryan and Jane Burke, “The Effect of Patient Race and Socioeconomic Status on Physician’s Perceptions of Patients,” *Social Science and Medicine* 50, no. 6 (March 2000): 813-828.

²⁴ Brian D. Smedley, Adrienne Y. Stith, and Alan R. Nelson, *Unequal Treatment: Confronting Racial and Ethnic Disparities in Health Care* (Washington, DC: National Academies Press, 2003), 1.

conceivable that some racial disparities in health care might result in part from differences in patient preferences: minority patients might receive certain medical treatments less frequently because they choose not to accept the treatment. Oddone provides some evidence that suggests that African-American patients generally are more averse to surgery than are white patients.²⁵

However, the mindset of patients is a less significant factor in the medical care equation than clinical discretion of physicians. The attitudes of health care providers may play a crucial role in producing disparate treatment decisions because their clinical discretion has remained unconstrained.

In an attempt to account for the shift in the practice and patterns of racial cognitive bias in recent years, researchers have increasingly focused their attention on individual-centered psychological variables. The question of whether (and to what extent has) the attitudes and beliefs of caregivers influenced medical decision-making is the focus of this work.

One recent study served as the “triggering event” to frame the issue of health care disparities as a cognitive bias issue and to place the matter of racial disparities in medical care on the American public policy agenda. In 1999, Kevin Schulman and his colleagues reported significant differences in physician responses to identical heart disease symptoms presented by black and white actors portraying patients. In this study of 720 physician-subjects, patients were matched on sex, stratified by race, and controlled for dress, insurance, occupation, and for the presentation of their clinical symptoms according to a standard script.²⁶ Using videotaped interviews of hypothetical patients and given additional clinical information, the physicians were asked to provide clinical recommendations for cardiac catheterization, a costly, state of the art diagnostic measure.²⁷ After controlling for the

²⁵ Eugene Z. Oddone, *et al.*, “Understanding Racial Variation in the Use of Carotid Endarterectomy: The Role of Aversion to Surgery.” *Journal of National Medicine Association* 90, no. 1 (1998): 25-33.

²⁶ Kevin A. Schulman, *et al.*, “The Effects of Race and Sex on Physicians’ Recommendations for Cardiac Catheterization,” *New England Journal of Medicine* 340 (1999): 618.

²⁷ *Ibid.*

physicians' subjective impression of disease likelihood and severity, this study showed that the physicians referred lower proportions of black than white patients for cardiac catheterization.

While there are hundreds of studies, which provide evidence of racial disparities in health and health care, the findings of this study seemed to ring clear to the media and policymakers alike. The result was a general acceptance of the conclusion that one significant cause of racial disparities in medical care is racial bias on the part of the medical caregiver. As Schulman and his colleagues observed, this bias likely resides beyond the reach of our current policy analytical frameworks: "Bias may represent overt prejudice on the part of physicians or, more likely, could be the result of subconscious perceptions rather than deliberate actions or thoughts."²⁸ This new understanding of racial bias on the part of the medical caregiver has fueled research, which connects racial disparities to interventions in healthcare.

Since the civil rights movement of the 1960s, it has become socially unacceptable to express overt racial prejudice. As a result, there has been a marked decrease in reporting overt prejudice against racial and ethnic groups among Anglo Americans.²⁹ In fact, when asked in the form of a survey, Anglo Americans are more likely to endorse social equity goals in schools, housing, employment, and politics³⁰ Nevertheless, contemporary theorists of psychology have failed to dismiss the notion that prejudice is a thing of the past. Instead, they have developed new models of prejudice to uncover the new form in which racial prejudice now appears. One group of researchers observes:

²⁸ Ibid., 624-625.

²⁹ Patricia G. Devine, Ashby E. Plant, and Irene V. Blair, "Classic and Contemporary Analysis of Racial Prejudice," In *Blackwell Handbook of Social Psychology Intergroup Processes vol. 4*, ed. Rupert J. Brown and Samuel L. Gaertner (Oxford: Blackwell Publishers, 2001), 198.

³⁰ John F. Dovidio, Kerry Kawakami, and K. Beach, "Implicit and Explicit Attitudes: Examination of the Relationship between Measures of Intergroup Processes," In *Blackwell Handbook of Social Psychology: Intergroup Processes*, ed. Rupert J. Brown and Samuel L. Gaertner (Oxford: Blackwell Publishers, 2001), 176-177.

A cornerstone of many recent models of prejudice is the assumption that, in response to normative expectations, there have been fundamental changes in the nature of people's attitudes. Specifically, people's attitudes have shifted from predominantly reflecting negativity to being more mixed or ambivalent in nature. A theme common in contemporary theories of prejudice is that whites experience a conflict between two competing tendencies in their reaction towards blacks. One tendency encourages positive or non-prejudiced responses; the other encourages negative or prejudiced responses. In some cases, theorists argue that, in response to normative prescriptions against overt bias, prejudice has gone underground or that it has been transformed into subtle and increasingly covert expressions of prejudice.³¹

In light of the fact that current law and custom has eliminated many of the overt forms of prejudice, contemporary prejudice models have distinguished explicit, overt forms of prejudice from subtle, implicit forms. As a result of this new research focus, there have been substantial empirical findings indicating that implicit prejudice remains widespread even in individuals who, on an explicit level, are genuinely unprejudiced.³² According to Devine, implicit prejudice can be found principally within two main cognitive domains: attitudes and stereotypes.³³

Greenwald and Banaji define attitudes as positive or negative dispositions toward objects in one's social environment. While pre-civil rights movement researchers have traditionally focused on attitudes that are consciously accessible, more recently there is a growing recognition that attitudes can be implicit as well as explicit. Implicit attitudes can be thought of as "introspectively unidentified (or inaccurately identified) traces of past experience that mediate favorable or unfavorable feeling, thought, or action toward social objects."³⁴ Thus, implicit attitudes, by explanation, are unconscious. Moreover, they are activated habitually by the mere presence of the attitude object.

³¹ Patricia G. Devine, "Classic and Contemporary Analysis of Racial Prejudice," 201.

³² Ibid.

³³ Ibid.

³⁴ Anthony G. Greenwald and Mahzin R. Banaji, "Implicit Social Cognition: Attitudes, Self-Esteem, and Stereotypes," *Psychology Review* 102, no. 1 (January 1995): 8.

Implicit stereotypes, though related to implicit attitudes, are theoretically, a distinct subset of implicit bias.³⁵ As reflected above, attitudes are dispositions toward social objects; stereotypes, on the other hand, are beliefs about particular groups.³⁶ Greenwald and Banaji define implicit stereotypes as "the introspectively unidentified (or inaccurately identified) traces of past experience that mediate attributions of qualities of a social category."³⁷ Kunda describes implicit stereotypes as subconscious mental representations of social categories-representations, which involve knowledge, beliefs, and expectations about social groups.³⁸

When one considers the substantial amount of clinical discretion available to physicians in the practice of medicine in conjunction with the prevalence of implicit cognitive bias, it seems more likely than not that racial disparity in clinical judgment will endure. Van Ryan and Burke provide evidence in support of the claim that implicit stereotypes are pervasive within the medical community. Using a focus group discussion survey, Van Ryan and Burke reported the following examples of racial and ethnic stereotypes from hospital administrators: "Asians won't discuss complaints;" "obtaining medical history information from immigrants is impossible;" "Native Americans don't show emotion;" and "Hispanics and African Americans won't lose weight or eat healthy diets."³⁹ Kunda found that some physicians were inclined to believe that African-American patients are less like to

³⁵ Patricia G. Devine, "Classic and Contemporary Analysis of Racial Prejudice," 201.

³⁶ Ibid.

³⁷ Anthony G. Greenwald and Mahzin R. Banaji, "Implicit Social Cognition: Attitudes, Self-Esteem, and Stereotypes," *Psychology Review* 102, no. 1 (January 1995): 15.

³⁸ Ziva Kunda, *Social Cognition: Making Sense of People* (Boston: MIT Press, 1999).

³⁹ Michelle Van Ryan and Jane Burke, "The Effect of Patient Race and Socioeconomic Status on Physician's Perceptions of Patients," *Social Science and Medicine* 50, no. 6 (March 2000): 813-828.

comply with treatment and more like to engage in unhealthy behaviors (such as substance abuse) that interfere with medical treatment.⁴⁰

In as much as health and healthcare disparities are pervasive in our health care system, the National Health Care Disparities Report suggests that these differences in provider treatment and patient outcomes represent a national crisis for the United States of America. Health care disparities carry a significant “personal and societal price,” including loss productivity, needless disability, and early death.⁴¹ The National Healthcare Disparities Report indicated that health care disparities for minorities were worsening when compared to whites. Specifically, the National Health Care Disparities Report data showed worsening quality of health care for African Americans and Hispanics that needed substance abuse care.⁴² When quality of care was examined in relation to issues of cultural competence, the data showed higher proportions of African American and Hispanic parents/guardians of adolescent clients reported that health care providers “sometimes or never” listened carefully to them, “sometimes or never” explained things clearly to them, “sometimes or never” respected what the adult had to say, and “sometimes or never” spent enough time with them. One clear explanation for disparate outcomes in medical treatment is a situation where a physician exercises the discretion to withhold care because of a belief that the patient would not comply with treatment recommendations.⁴³

⁴⁰ Ziva Kunda, *Social Cognition: Making Sense of People* (Boston: MIT Press, 1999), 346-351.

⁴¹ *National Healthcare Disparities Report, (2003)*, Agency for Healthcare Research and Quality, Rockville, MD. <http://www.ahrq.gov/qual/nhdr03/nhdr03.htm> (accessed on May 20, 2007).

⁴² *National Healthcare Disparities Report, (2005)*, Agency for Healthcare Research and Quality, Rockville, MD. <http://www.ahrq.gov/qual/nhdr05/nhdr05.htm>. (accessed on May 20, 2007).

⁴³ National Healthcare Disparities Report (2003).

The Character of Health Policy Making in the United States

One challenge to eliminating disparities in access to and provision of quality of health care is the ethical dilemma posed by the expectations placed upon the current health care delivery system. Williams and Rucker argue that the current health care inequalities go against the American egalitarian principles, which dictate that all health care consumers be treated equally. While this may be true, it does not reflect this society's commitment to individual liberties. The fact is that there is no single overriding social value that is superior to all other values. Consumers may have rights, but providers have rights too. We as a nation have not decided whether the rights of one group are subordinate to the rights of another.

In searching for an enduring theory of justice, health economists like Uwe Reinhard pose the question, "To what extent should the individual liberties of health care providers be curtailed in the name of justice within the realm of health care?" The answer to such a question would make it possible to rank alternative ways to distribute economic privileges such as health care.⁴⁴

Dimension of Policy Development in Health

The current U.S. health care system is the only system in the western industrialized nation that attempts to pursue an egalitarian distribution of health care from a libertarian system of delivery. Reinhardt reminds us that libertarian philosophers argue that individual liberty is the overriding social value to which all other values are subordinate.⁴⁵ Hence, in the libertarian credo, health care providers have the right to determine whom to serve and whom not to serve, and what price should be charged for providing services.

⁴⁴ Uwe Reinhardt, "Uncompensated Hospital Care," In *Uncompensated Hospital Care: Rights and Responsibilities*, ed. Frank Sloan, James F. Blumstein and James Perrin (Baltimore: Johns Hopkins Press, 1986), 7.

⁴⁵ Ibid.

At the opposite end of the extreme are the various theories of distributive justice, championed by egalitarian philosophers. These philosophers argue that “equal respect for individuals” or “equality of opportunity” should serve as the overriding values of a just society, and that individual liberty should be subordinate. This philosophical view requires that at the very minimum, all members of a society should have equal access to certain basic commodities such as health care.

The dilemma posed by the attempt to accommodate simultaneously both the egalitarian and libertarian theories of justice is partially responsible for the failure to develop strategies to eradicate inequities in medical care. The ethical confusion generated by the extreme opposing views of justice prevents the development of policy on any level to address the racial disparity issue in health care. At some point, America will have to decide whether it wants a health care system which distributes health care as a business, or one which distributes it via some other more socially oriented mechanism.

A second dimension of the public policy process that contributes to the challenges of eliminating the race disparities in health is the distribution of authority within a federal system of government. The concept of federalism has evolved since the founding of the United States more than two centuries ago. In its infancy, federalism was a legal concept that defined the balance of power between the federal government and the states as outlined in the constitution. This division initially stressed the independence of each level of government from the other, while integrating the notion that some functions, such as national defense, were the exclusive territory of central government, while other functions, such as education, police protection, and health care were the responsibility of state and local governments.

As the concept of federalism has evolved, the responsibilities assigned to each level of government have shifted. Lee and Benjamin suggest that such shifts do not pose a serious problem for health policy, provided two conditions are met: (1) regulatory boundaries and fiscal accountability are

compatible, and (2) the various levels of government possess the administrative infrastructures, management techniques, and capabilities to assume the responsibilities assigned to them.⁴⁶

The prime example of the shared relationship between the federal government and the states in the realm of health policy is the Medicaid program. Medicaid is ostensibly the public program designed to address the health care needs of the poor. As such, it does not directly address the issue of race disparities in health because it targets income and not race as its eligibility criteria. Beyond this particular issue, are the dysfunctional outcomes produced by the multiple, yet uncoordinated, federal-state programs and, the corresponding impacts of the failure of one level of government to meet the conditions, as outlined by Lee and Benjamin.⁴⁷ They offer the example of the case where Medicaid cutbacks at the state level leave the federal government paralyzed in its attempts to shield the poor from the adverse effects on access to care. Such situations has led to the argument that what matters most in the structure of the relationship within federalism is not so much the distribution of power, but the relationships among levels of government.⁴⁸

A third dimension to eliminating racial disparities through public policy is the politics of interest groups, which influence the function of democratic governments. Political theorists argue that the number and diversity of interest groups prevent any one group from having undue influence on the political system. This view has been heavily criticized by well-recognized political scientist such as Bachrach⁴⁹ and Schattscheider.⁵⁰ If the interest group model works as effectively as some political theorist argue, then there should be no racial disparities in health because the appropriate interest

⁴⁶ Philip R. Lee, and Albert E. Benjamin, "Health Policy and the Politics of Health Care," In *Introduction to Health Services* 6th ed. Ed. Stephen J. Williams, and Paul R. Torrens (Albany: Delmar Publishers, 2001), 352.

⁴⁷ Ibid.

⁴⁸ Bruce C. Vladeck, "The Design of Failure: Health Policy and the Structure of Federalism," *Journal of Health Politics, Policy and Law* 4, no. 3 (Fall 1979): 522.

⁴⁹ Peter Bachrach, *The Theory of Democratic Elitism: A Critique* (Boston: Little, Brown, 1967).

⁵⁰ Elmer E. Schattschneider, *The Semi sovereign People* (New York: Holt, Rinehart & Winston, 1960).

group (NAACP, Urban League, etc.) would have influenced both federal and state laws to effectively address this issue.

Instead, many have come to realize what Ginzberg has identified as the four power centers in the health care industry that influence the environment of health care and the function of government: (1) physicians, (2) large insurance organizations, (3) hospitals, and (4) a highly diversified group of participants in the profit-making activities within the health care arena.⁵¹

It comes as no surprise that while the interest of big business tends to be well served by health policy in the United States, the interest of minority consumers are too often ignored. Medical politics is the term often used by Silver⁵² and Marmor, Whittman & Heagy⁵³ to describe the imbalanced market, where some participants have unequal power; and those with the lion's share of power have the greatest investment in the effects of policy. As a result, cost containment has dominated the health care policy debates for the last 40 years while access issues have received less attention than it deserved.

The fourth dimension to eliminating racial disparities in health at this level is policy implementation. It has been persuasively argued that the nature of the health care system is determined by the balance of power among political actors, and also by the relationships of such interest groups to government actors.⁵⁴ Public policy observers recognized that policy making travels through at least three stages: (1) agenda setting-the fluid process through which issues are debated in public and subsequently placed on the agenda for government action; (2) policy adoption-the process of compromise and trade-offs required of legislatures, executives, and bureaucracies to define broad

⁵¹ Eli Ginzberg, *Regionalization and Health Policy* (Washington, DC: U.S. Government Printing Office, 1977).

⁵² George A. Silver, *A Spy in the House of Medicine* (Germantown, MD: Aspen Systems Corporation, 1976b).

⁵³ Theodore R. Marmor, Donald A. Wittman, and Thomas C. Heagy, "The Politics of Medical Inflation," *Journal of Health Politics, Policy and Law* 1 (1976): 69-84.

⁵⁴ Judith M. Feder, *The Politics of Federal Hospital Insurance* (Lexington, MA: Lexington Books, 1977).

outlines of policy from the alternatives available for consideration; and (3) policy implementation-the process by which agency administrators develop policy by addressing the issues required to carry out policy adopted by legislation.⁵⁵

Over the past 20 years, there have been a few policies adopted by Congress to address the racial health disparities issue. The challenge with much of this legislation is not unlike that of most legislation: statutory ambiguity. Creative evolution is fostered in the implementation phase of the policy process when Congress fails to draft its legislation in a fashion that provides clear direction to the agencies charged with implementing a specific law.

The context of health policy implementation is influenced to a great extent by the technological changes in the provision of health care. It becomes more difficult to design specific statutes to address the health disparity issue when the practice of medicine changes at a rapid pace. For example, knowledge of which specific health care procedures produce quality outcomes is in a constant state of flux. Therefore, a health care law that precisely establishes a minimal level of access to a specific type of care would be destined for rapid obsolescence.

The end result is that regulatory agencies tend to have a great deal of discretion in implementing laws promulgated by the Congress, particularly when the bureaucracy faces an environment relatively free of interest groups in opposition to the program; to the extent that the interests of the minority are not represented by senior administrators within governmental structures, then we can not expect issues, such as racial disparities in health, to receive the attention it deserves at the policy implementation stage. For example, while there may be laws against discrimination on the basis of race in the provision of health care, in the absence of regulatory enforcement, health care providers are more likely to go unpunished for failing to provide equal access to services.

⁵⁵ Carroll L. Estes, *The Aging Enterprise* (San Francisco: Jossey-Bass, 1980); Paul A. Sabatier and Daniel A. Mazamania, "The Conditions of Effective Implementation," *Policy Analysis* 5, (1979): 481-504.

Incrementalism poses yet another challenge to eliminating health disparities. The nature of the public policy process in American government is such that many small steps are preferred to one large step. This process is best described by Lindblom as the incremental decision model.⁵⁶ In its most basic form, this model posits that policy is made in small increments and that policy is rarely modified in significant ways. Policymakers prefer reform in incremental steps because the consequences of policy change are difficult to model, and such unpredictability makes for uncalculated risk in the political market.

The implication of the incremental process to policy development and adoption for the racial health disparities issue is that a complete solution should not be expected in a given policy term. Rather, one should expect that any change should emerge over time in a series of small steps. This approach is not without critics. Researchers such as Estes have examined the institutional and class basis of public policy.⁵⁷ This research lends some support to the view that defects such as racial health disparities are rooted deeply in the structure of a class society, and that the only appropriate solution is a radical transformation in the current health care system, creating a national health service. Those who hold this view are not convinced that tinkering with the health care system itself will achieve outcomes such as the elimination of health disparities.

Given a policy process characterized by limited government roles, federalism, pluralism, administrative bargaining, and incrementalism, prospects remain relatively dim for a public policy solution to the racial health disparity problem. Given the current state of racial politics in the United States, a race-based policy option is completely beyond the consideration of policymakers.

⁵⁶ Charles E. Lindblom, "The Science of 'Muddling Through,'" *Public Administration Review* 10 (1959): 79.

⁵⁷ David B. Smith, "Addressing Racial Inequities in Health Care: Civil Rights Monitoring and Report Cards," *Journal of Health Politics, Policy and Law* 23, no. 1 (1998): 75.

Policies and Programs Aimed at Addressing Health Inequalities

One of the most straightforward remedies to the racial health disparity issue is to renew the government's commitment to enforcing existing legal mandates and federal regulations, which deal with discrimination in medicine. Smith reminds us, given the history of overt discrimination in medical care, it is clear that such mandates and regulations were ineffective until the institutional commitment and capacity to enforce them was created.⁵⁸ Legal scholars, such as Noah, argue that existing statutes such as Title VI of the Civil Rights Act of 1964 offers promise, but is not currently being enforced.⁵⁹ Title VI prohibits health care institutions that receive Federal financial assistance from discriminating on the basis of race in providing goods or services. Given that Medicare and Medicaid are forms of federal financial assistance, this law and the corresponding regulations extends to nearly all hospitals, nursing homes, and other health care facilities in the United States. According to Noah, the courts have held that Title VI prohibits both intentional and disproportionate adverse impact, thereby making the documentation of adverse impact a powerful strategy for addressing and correcting discrimination in health care.⁶⁰

At the federal level, the Office of Minority Health (OMH) has been instrumental in keeping the nation focused on reducing health disparities by facilitating conversations with health care organizations to embrace holistic approaches like cultural competence as a standard for health care.⁶¹ The National Standards for Culturally and Linguistically Appropriate Services (CLAS) in Health Care emphasize the importance of cultural competence in health care. However, the CLAS standards fall

⁵⁸ Ibid.

⁵⁹ Barbara A. Noah, "Racial Disparities in the Delivery of Health Care," *San Diego Law Review* 35 (1998): 135.

⁶⁰ Ibid.

⁶¹ U. S. Department of Health and Human Services. "National Standards for Culturally and Linguistically Appropriate Services in Health Care: Executive Summary" (March 2001), Office of Minority Health (OPHS)[A](http://www.omhrc.gov/assets/pdf/checked/executive.pdf)
<http://www.omhrc.gov/assets/pdf/checked/executive.pdf> (accessed on April 5, 2008).

short in that the organizations are only mandated to provide language access services – demanding culturally competent care for all citizens and requiring organizational support for cultural competence are suggested to providers in the form of guidelines and recommendations that managed care organizations are encouraged to adopt.

One would be remiss to avoid the unique role that judicial activism could bring to bear in resolving the challenges of the racial disparities in health. This is a form of public policy where the third arm of government, the judicial branch, has asserted itself in a position to address the problems of disadvantaged groups. Some examples include the Supreme Court's 1954 *Brown v. Topeka Board of Education* Decision, which reversed the governmentally sanctioned "separate but equal" discrimination embodied in Jim Crow Laws; and the 1989 *Richmond v. Croson* decision, where the Supreme Court struck down a municipal affirmative action system for construction contracts. Some of the more extreme forms of judicial activism include instances where lower courts have effectively taken over the day-to-day operations of schools, prisons and hospitals in the name of racial representation.

To date, the courts have not asserted their power in the policy arena to address the racial health disparity issue. There are relatively very few discrimination cases pursued in the courts under Title VI of the Civil Rights Act of 1964. Most of the cases heard by the courts have centered on the potential adverse impacts of hospital closures on communities of color, and not on cases involving individual patients and providers. The lack of lawsuits in this arena is most likely the result of the exemption of individual providers from the anti-discrimination policy embodied in Title VI of the Civil Rights Act of 1964. This is clearly a case where the individual rights of physicians, who choose patients in the interest of their business, supersedes the individual rights of citizens to be seen by the physician of their choice.

Discrimination in health care has been a constant for African-Americans. The segregation/integration dichotomy has not offered the insight needed to eliminate disparities in health and health care. African Americans ultimately need better health and better access to health care when appropriate. Whether this care is provided by white physicians, in integrated facilities, or black providers, in segregated ones, is irrelevant. To the extent that the courts can assume a more active role in addressing the issues involved in eliminating racial disparities in health and health care, their participation should be embraced.

A second remedy needed to eliminate racial disparities in health and health care is intensive educational campaigns about the problem. The medical community is the appropriate place to start, although the general public and other professional communities should be included in such efforts. As with any successful campaign or program, such an effort should begin with research aimed at identifying the most effective ways to raise awareness of, and increase sensitivity to, the issues of race in the practice of medicine. For example, in the case of increasing the awareness of the benefits of the flu shot among elderly African-American Medicare beneficiaries, the Health Care Financing Administration found that involving church leadership in educational campaigns proved to be most effective.⁶² In the case of raising sensitivity towards race issues, medical school curriculums should clearly be targeted.⁶³ Researchers such as Geiger have called for educating every physician about the “. . . dilemmas associated with race and health care . . .”⁶⁴ State mandates, which require physicians to demonstrate formal (recent) training in cultural competency prior to receiving a medical license,

⁶² Health Care Financing Administration, *Evidence Report and Evidence-Based Recommendations: Interventions that Increase the Utilization of Medicare-Funded Preventive Services for Persons Age 65 and Older*, Publication No. HCFA-02151 (Prepared by Southern California Evidence-based Practice Center/RAND, 1999).

⁶³ Jack H. Geiger, “Race and Health Care – An American Dilemma?” *New England Journal of Medicine* 335, no. 11 (1996): 815.

⁶⁴ *Ibid.*, 816.

would be an innovative approach that could be implemented to ensure that racial/ethnic health and healthcare disparities would be reduced.

Another educational and training goal needed to ensure that progress is made toward the elimination of racial disparities in health and healthcare access is to increase African-American health professionals. Research has informed us that African-American physicians are significantly more likely than other physicians to care for vulnerable patient populations such as African-Americans.⁶⁵ In their recent research findings, Libby, Zhou, and Kindig reported that in order to reach racial and ethnic population parity, with the supply of physicians, the United States needs to triple the number of Native-American residents and double the number of African-American and Hispanic residents.⁶⁶

From a policy perspective, it is important to mention that affirmative action programs in the medical school admission processes have been successful in recruiting and retaining physicians from disadvantaged backgrounds. Nickens and Cohen have defended such affirmative action programs on multiple grounds, including societal obligations to ensure that the health needs of all citizens are met.⁶⁷ Other reports provide estimates that indicate that affirmative action is responsible for nearly 40 percent of all U.S.-trained physicians from disadvantaged backgrounds.⁶⁸

Improving Policies to Eliminate Racial Disparities

Williams and Rucker point out that society's efforts to address racial bias in the medical arena require systematic and routine analysis based on racial/ethnic group. They cite differences among

⁶⁵ Miriam Komaromy *et al.*, "The Role of Black and Hispanic Physicians in Providing Health Care for Underserved Populations," *New England Journal of Medicine* 334, no. 20 (May 1996): 1305-1310.

⁶⁶ Donald L. Libby, Zijun Zhou, and David A. Kindig, "Will Minority Physician Supply Meet U.S. Needs?" *Health Affairs* 16, no 4(1997): 205.

⁶⁷ Herbert W. Nickens and Jordan J. Cohen, "On Affirmative Action [Policy Perspectives]," *Journal of the American Medical Association* 275, no. 7: (1996): 572-574.

⁶⁸ Editorial, "Affirmative Action," *Lancet* 353 (9146): (1999): 1.

groups of Hispanics, as a particular example of how socioeconomic status serves as an intervening variable when the influences of ethnicity are examined among Mexicans, mainland Puerto Ricans, and Cubans.⁶⁹

Given the widespread nature of discrimination in health care, it is clear that racial data are needed for every medical encounter. The collection of data on racial differences could also aid in the efforts to enforce civil rights laws. Such data could also assist medical facilities such as hospitals, nursing homes, and home health agencies in designing unique programs to address disparities at the provider level.

Report Cards and Monitoring the Behavior of Providers

Smith argues that as a result of structural changes in the organization of health care, there are new opportunities to monitor the way in which medical care is delivered. As a result, there has been a shift in power from individual providers to large health plans and major purchasers of care.⁷⁰ These changes were coupled with a shift in the methods of payment from fee-for-service arrangements to managed care and risk-sharing agreements, thereby resulting in a greater need for external monitoring of provider behavior. As individual providers responded to these changes, physicians, hospitals, and other service providers began to standardize and integrate their clinical and financial information. Herein lies the opportunity for a new type of monitoring called “report cards,” which could be used to enhance civil rights monitoring of health care delivery system.⁷¹

Smith indicates that a modification of the existing data systems with the Office of Management and Budget’s (OMB) common racial classification scheme would facilitate report cards that could be used

⁶⁹ David R. Williams and Toni D. Rucker, “Understanding and Addressing Racial Disparities in Health Care,” *Health Care Financing Review*, 21, no. 4, (2000): 75.

⁷⁰ David B. Smith, “Addressing Racial Inequities in Health Care: Civil Rights Monitoring and Report Cards,” *Journal of Health Politics, Policy and Law* 23, no. 1 (1998): 75.

⁷¹ *Ibid.*

to monitor disparities in health plans, health care institutions, and communities. Some examples include broadly accepted indicators of health and health care delivery (such as breast cancer death rates and specific preventive measures) that have evolved from the efforts of private-public professional partnerships over several decades.

Multi-disciplinary Models in Health Policy

The traditional policy analysis, with its positivist perspective, has long served as the lodestar for health policy in the United States. The challenge with using this rational approach to health policy is that it is incongruent with the practice of medicine that results in the health care disparities. To start, we have demonstrated in the review and analysis above that discretion plays a significant role as a source of disparities in health care. The evidence in support of the claim that a scientific model is at work in the practice of medicine is weak, as most medical decisions are not empirically based. There is an astonishing amount of clinical practice variation around the multiple diagnostic and therapeutic procedures.⁷² There is a lack of consensus among medical providers about the appropriateness of diagnostic and therapeutic measures primarily because of the lack of scientific evidence. The dearth of scientific support for most medical decisions results in such wide variability in clinical practice so as to render the notion of reaching evidenced-based conclusions about the appropriateness of practice variations beyond our current human capacity. The result is a practice of medicine that is more idiosyncratic because of the heavy reliance on physician discretion. In other words, in far too many cases, the practice of medicine relies on the kind of art like qualities of intuition and insight, which leaves physicians unable to rationally justify their medical decisions.⁷³ At best, it can be considered to

⁷² John E. Wennberg, "Understanding Geographic Variations in Health Care Delivery," *New England Journal of Medicine* 340, no. 1 (January 1999): 52.

⁷³ Claude Bernard, *An Introduction to the Study of Experimental Medicine* (New York: Schulman, 1949); Rick J. Carlson, *The End of Medicine* (New York: Wiley, 1975).

be a blend of scientific elements with trial and error, as are other science-based professional bodies of knowledge.⁷⁴ If the practice of medicine, as we know it, does not proceed solely from rationalistic assumptions, should our public policies, which are designed to regulate this activity, emanate from these assumptions?

It seems evident that the highly analytic character of health policy making, with its over-reliance on the assumptions of economics, proves to be unrealistic in the search for empiricism.⁷⁵ The major difficulty here is the over-reliance on one discipline to address the complexity of an issue such as health care disparities. Economics, as a discipline, tends to side step the muddy issues that arise when political, social, and psychic factors are considered. Such factors do not lend themselves to the kind of quantitative analysis demanded in the quest for mathematical elegance in the field of economics.

If we are to develop more sound health policies to address health care disparities, we need to go back to the original aims of the discipline as outlined by Lasswell. He envisioned three main characteristics of the policy sciences: multidisciplinary, problem oriented, and contextual working in concert to promote democracy.⁷⁶

Lasswell argued that all disciplines—social and physical sciences—were needed in the field of policy sciences to help resolve the current issues of a global society. This multidisciplinary perspective

⁷⁴ Alvin R. Feinstein, *Clinical Judgment* (Baltimore: William and Wilkins, 1967); Kenneth Schaffner, “Reduction, Reductionism, Values, and Progress in the Biomedical Sciences,” In *Logic, Laws and Life: Some Philosophical Complication* ed. Robert Colodny (Pittsburgh: University of Pittsburgh Press, 1977).

⁷⁵ Donald A. Schon, *The Reflective Practitioner: How Professionals Think in Action* (New York: Basic Books, 1983).

⁷⁶ Harold Lasswell, “The Policy Orientation,” In *The Policy Sciences* ed. David Lerner and Harold Lasswell (Stanford: Stanford University Press, 1951).

was demonstrated with his selection of a sociologist, an anthropologist, and an economist as contributors to his book, the *Policy Sciences*.⁷⁷

In his conceptualization of policy sciences, Lasswell proposed that it should be policy- relevant as opposed to theory when advancing a particular discipline. As such, the aim of this field was to permit the state-of-the-art of usable knowledge to be brought to bear on world issues. He wrote:

The basic emphasis of the policy approach...is upon the fundamental problems of man in society rather than topical issues of the moment...The point is that all the resources of our expanding social science need to be directed toward the basic conflicts in our civilization which are so vividly described by the application of the scientific method to the study of personality and culture.⁷⁸

Lasswell was clearing his belief that policy issues needed to be situated in specific contexts, and that policy sciences should provide usable knowledge on issues with respect to time and location. This view is in contrast to the hypothesis testing of propositions to advance social and political theory. Instead, he suggested that “[t]he policy frame of reference makes it necessary to take into account the entire context of significant events (past, present, and prospective) in which the scientist is living.”⁷⁹

At the highest level, Lasswell expected that policy sciences would be used to promote democracy. He envisioned that the usable knowledge function of this field would lead to the development of policies that promoted human dignity “in theory and fact.” Towards that end he wrote the following:

The dominant American Tradition affirms the dignity of man, not the superiority of one set of men. Hence it is to be foreseen that the emphasis will be upon the development of knowledge pertinent to the fuller realization of human dignity. Let us for convenience call this the evolution of the “policy sciences of democracy.”⁸⁰

⁷⁷ Ibid.

⁷⁸ Ibid, 8.

⁷⁹ Ibid, 14.

⁸⁰ Ibid, 10.

The ability of physicians, nurses, and treatment providers to provide effective treatment to racial/ethnic minorities is multidimensional and complex, even when cultural and linguistic barriers do not exist. Health care providers must possess the knowledge, skills, and abilities, which are essential to providing effective health care.⁸¹ In addition, health care providers must be able to communicate effectively with patients by developing a rapport and trust, by demonstrating that they have the ability to assess relevant cultural factors within the patients' health history (socioeconomic influences, educational attainment, family structure and dynamics, cultural beliefs and practices, ethnic origin and identification, and language preferences), by understanding the patient's perspective on their health problems, and by recognizing any cultural misunderstandings.⁸²

Conclusion

This paper presents a positive trend in access to care for African Americans over the decade of the 1990s. The federal government is perhaps responsible for the lion's share of this improvement with the implementation of a broad range of health policies across a number of agencies, including the U.S. Department of Health and Human Services, the Civil Rights Division of the Department of Justice, and several innovative, proactive states such as Washington State. In spite of these gains, racial disparities on the major indicators of health status and access to care persist. These disparities are greatest for African Americans who are very young, uninsured, low income, and aged. The U.S. health care system is comprised of fragmented, non-comprehensive programs, duplicative and confusing administrative structures, and uncoordinated multiple programs, serving similar populations. These

⁸¹ Miguel D. Tirado, *Monitoring the Managed Care of Culturally Linguistically Diverse Populations* (Washington, DC: Center for Managed Care, Health Resources and Services Administration, 1998).

⁸² Melissa Fleming and Kelley Towey, *Delivering Cultural Effective Health Care to Adolescents: A Guide for Primary Health Care Providers* (Chicago, IL: Journal of the American Medical Association, 2003), <http://www.ama-assn.org/ama1/pub/upload/mm/39/culturallyeffective.pdf> (accessed May 18, 2007).

characteristics foster the development of independent interest groups that may impede the implementation of a comprehensive solution to the problem of racial disparities in health.

The federal government has responded to the persistent racial disparities in health and health care with a number of policies and initiatives ranging from programs that target specific segments of the African-American population (such as Medicare and Medicaid beneficiaries) to an increase in funding for research and education activities. While it is perhaps premature to assess the impact of many of these of initiatives, there have been some notable gains reported by the National Center for Health Statistics. Keppel and colleagues reported that all racial and ethnic groups experienced improvements for 10 (including prenatal care, infant mortality, teen births, death rates for heart disease, homicide, motor vehicle crashes, and work-related injuries, tuberculosis case rate, syphilis case rate, and poor air quality) of 17 health status indicators developed as an objective of Healthy People 2000.⁸³ These indicators provide a means to quantify and assess the progress of the Healthy People 2010 objective to eliminate disparities in health among population groups. The indicators reflect various aspects of health and include infant mortality, teen births, prenatal care, as well as death rates for all causes. It also includes indicators for heart disease, stroke, lung and breast cancer, suicide, and work-related injuries.

There is still a great deal more that needs to be done to eliminate racial disparities in health and health care. We need the courageous and moral leadership of both public and private actors. The United States health care system is a complex arrangement of individuals and institutions from the private sector. It is time for private-sector actors to meet at the table with public-sector actors to work in partnership to achieve the goals of Healthy People 2010. Smith reminds us that we have the

⁸³ Kenneth G. Keppel, Jeffrey N. Percy, and Diane K. Wagener, "Trends in Racial and Ethnic-Specific Rates for Health Status Indicators: United States, 1990-98," *Healthy People Statistical notes*, no. 23 (January 2002) [Available from http://www.cdc.gov/NCHS/data/statnt/statnt23.pdf](http://www.cdc.gov/NCHS/data/statnt/statnt23.pdf) (accessed April 3, 2008).

technological capacity to address the racial disparities in health issues, now all we need is a commitment from both the public and private sectors to make the possibility a reality.⁸⁴

⁸⁴ David B. Smith, "Addressing Racial Inequities in Health Care: Civil Rights Monitoring and Report Cards," *Journal of Health Politics, Policy and Law* 23, no. 1 (1998): 75-105.

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Dream Deferred: The Politics of Race in America

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A Dream Deferred: The Politics of Race in America

At the end of World War II, the struggle for equal rights for African Americans took on a renewed emphasis in the United States. African-American soldiers had fought and died to make the world safe for democracy, only to return home to conditions of segregation, which were manifested through inferior neighborhoods, schools, and public accommodations. Many were determined to no longer endure second-class citizenship. The modern day civil rights movement of the 1950s and 1960s began with the *Brown v. Board of Education of Topeka, Kansas* (1954)¹ Supreme Court decision, which outlawed segregated public schools. This decision overturned the *Plessy v. Ferguson* (1896) doctrine of separate but equal.²

The decision of *Brown v. Board of Education*, culminated with the passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965. The Civil Rights Act of 1964 did the following: barred discrimination in public accommodations, such as hotels and restaurants, which have a substantial relation to interstate commerce; authorized the national government to bring suits to desegregate public facilities and schools; provided for the withholding of federal funds from programs administered in a discriminatory manner; established the Equal Employment Opportunity Commission; and outlawed discrimination based on race, color, religion, national origin, and in the case of employment, sex.³ The second landmark policy, the Voting Rights Act of 1965, sought to

¹ *Brown v. Board of Education of Topeka* 347 U.S. 483 (1954).

² *Plessy v. Ferguson*, 163 U.S. 537 (1896).

³ Jack C. Plano and Milton Greenberg, *The American Political Dictionary* 9th ed. (Fort Worth: Harcourt Brace Jovanovich College Publishers, 1993), 363.

eliminate restrictions on voting that had been used to discriminate against blacks. A major provision of the Voting Rights Act suspended the use of literacy tests.⁴ The discriminatory legal vestiges of Jim Crow had finally been dismantled. Blacks now had achieved the right to use all public accommodations, and they had gained the full realization of the right to vote. For African Americans had indeed gained the right to vote with passage of the 15th amendment in 1870, however, after Reconstruction many southern states had adopted Jim Crow laws and policies to effectively deny African Americans their basic civil rights.

The genius of Martin Luther King, Jr., and the modern-day civil rights movement is that it was inclusive in its struggle for freedom. The movement appealed to the consciousness of all of American society. As a social movement, it required the political mobilization of black and white America. King would remark with each triumph in the movement that it was not a victory for the black man, nor a victory for the white man, but a victory for all of mankind. Black Americans wanted to be included in American society and they wanted the principles of the Declaration of Independence and the U.S. Constitution to apply to all Americans. It was a majestic argument and, its leader, Martin Luther King, Jr., was a majestic messenger.

By the time King delivered his famous “I Have a Dream” speech to a black and white audience at the March on Washington for Jobs and Freedom in August 1963, many whites had come to believe the system of racial apartheid in America was wrong and should be ended. King remarked in his speech, “I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.”⁵ A year later, King was awarded the Nobel Peace Prize for his utilization of nonviolent civil disobedience. King’s use of

⁴ Ibid., 117.

⁵ Martin Luther King, Jr., “I Have a Dream” (Speech presented at the Lincoln Memorial, Washington, D.C., August 28, 1963).

nonviolence to end racial discrimination and segregation in the American South was vindication for the movement. His methods had gained the support of the world community.

“We Shall Overcome” had become the slogan of the movement, “black and white together.” These aforementioned slogans were not just empty rhetoric. The next year, in response to “Bloody Sunday” in Selma, Alabama, President Lyndon Johnson called on Congress to pass a Voting Rights Act. In that speech, Johnson proclaimed, “Their cause must be our cause too. Because it is not just Negroes, but really it is all of us, who must overcome the crippling legacy of bigotry and injustice. And we shall overcome.”⁶ Johnson had a majority of Democrats in both houses of Congress and he knew that this was the best time to get a voting rights bill passed by Congress.

Literature Review

Since the urban riots across America’s cities and college campuses in the late 1960s, there have been vast arrays of books written that examine the politics of race. The scholarly examples put forth within this review are a sample of the literature and focus on race from a socio-economic perspective and in a post-civil rights era. In *Blaming the Victim*, William Ryan articulates that poverty-stricken individuals are blamed by conservatives in society for their circumstances.⁷ His views rejected the Moynihan Report and placed blame at the doorstep of systematic social and economic factors. (See page seven for a discussion of the Moynihan Report.) In *The Declining Significance of Race*, William Julius Wilson argues that class, not race, has become the primary indicator (metric) that drives “social mobility” in the post-World War II United States. “[T]he life chances of individual blacks have more to do with their economic class position than with their day-to-day encounters with whites,” writes

⁶ Lyndon Baines Johnson, “Long Steps on a Long Trail” (Speech presented at a Joint Session of Congress U.S. Capitol, Washington, D.C., March 1965).

⁷ William Ryan, *Blaming the Victim* (New York: Pantheon Books, 1971).

Wilson.⁸ He ascribes credit to the industrial economy of the 1970s for the advancement of blacks into the middle class.

Lawrence Mead, in *Beyond Entitlement*, offers a neo-conservative viewpoint with respect to the issue of race.⁹ He faults the “narrow economic” policies of the Great Society Program instituted by President Johnson in the 1960s as the cause for modern-day welfare ills. Before the implementation of the Republican-backed *Contract with America* policies (1995), work requirements for Aid to Families with Dependent Children (AFDC) or welfare beneficiaries were less stringent than they currently are for Temporary Assistance for Needy Families (TANF), which requires individuals to move off of welfare and into work programs.

Charles Murray inspired Mead and several other Reagan-era conservatives. His book attacks liberal social policies by tracking the welfare system from 1950-1980. According to Murray in *Losing Ground*, young blacks lost ground to young whites in the area of unemployment; federal help (money) was thrown at the situation, but the situation worsened nonetheless.¹⁰ In Murray’s view, welfare systems that began with Kennedy--in the 1960s--do not work and should be abandoned, thus allowing the market, family, and/or charity to aid the poor. Manhattan Institute Senior Fellows, Stephan Thernstrom and Abigail Thernstrom, presented a scathing rebuttal of the Kerner Commission report in their coauthored 1997 book, *America in Black and White*. They concluded that the situation for blacks was improving, that greater racial equality, more racial integration, rising educational levels, and

⁸ William J. Wilson, *The Declining Significance of Race: Blacks and Changing American Institutions* (Chicago: University of Chicago Press, 1978), 1.

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⁹ Lawrence M. Mead, *Beyond Entitlement: The Social Obligations of Citizenship* (New York: Free Press, 1986).

¹⁰ Charles A. Murray, *Losing Ground: American Social Policy, 1950-1980* (New York: Basic Books, 1984), 74.

increased African American homeownership rates were “enormous changes” that benefited blacks in the postwar era.¹¹

On the opposite spectrum of the ever-continuing ideological debate on the politics of race, there exists a plethora of intellectuals who argue that because of the continuing legacy of racism in American society, government intervention and programs are needed in order for blacks to gain full access to equal opportunity in American society.

In *The Truly Disadvantaged*, Wilson directed more attention to the plight of the underclass within the black community. It is his contention that concentrated poverty within the inner city will not improve. According to Wilson, blacks born into dire conditions will continue to stay within the same social class because forces such as gang activity, infidelity, or drug use will dictate the direction of their life.¹² To improve mobility he advocates the implementation of government programs; however support from Americans as a whole, including middle class whites, is needed to combat the problem.

Another publication titled, *When Work Disappears: The New World of the Urban Poor*, also authored by William J. Wilson, offers further insightful strategies to reverse the destructive state of affairs that are prevalent within the lower class socio-economic strata.¹³ *Black Politics in Conservative America* by Marcus Pohlman asserts, blacks have had an absence of influence on the allocation of resources in the post-industrial economy.¹⁴ In the realm of the social class, wealth is in

¹¹ Stephan Thernstrom and Abigail M. Thernstrom, *America in Black and White: One Nation, Indivisible* (New York: Simon & Schuster, 1997), 204.

¹² William J. Wilson, *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy* (Chicago: University of Chicago Press, 1987).

¹³ William J. Wilson, *When Work Disappears: The World of the New Urban Poor* (New York: Knopf: Distributed by Random House, Inc., 1996).

¹⁴ Marcus D. Pohlmann, *Black Politics in Conservative America* (Cornwall-on-Hudson, NY: Sloan Pub., 2008).

the hands of the few. Moreover, blacks hold only a fraction of the wealth of whites and have little wealth to pass down from generation to generation.

Cornel West identifies “nihilism” and lack of black leadership as the central threats to the black community in his book *Race Matters*.¹⁵ West declares, life without meaning, hope, and love breeds a mean-spirited outlook that destroys the individual. In the publication *The Future of Race*, Henry Louis Gates and Cornel West cast themselves as indirect pupils of W.E.B. DuBois’ doctrine of “The Talented Tenth.”¹⁶ Their separate reflections provide an outlook on their lives and solutions for the improvement of African Americans.

In the book *Tragic Failure: Racial Integration in America*, Tom Wicker scolds the conservative movement due to their actions against progressive integration measures.¹⁷ He critiques those, including the Democratic Clinton Administration, who failed to step up to the plate and fully support minority interests. Wicker joined West’s general premise in support of economic parity and the practice of affirmative action.¹⁸

Come On, People, a publication by Actor Bill Cosby and Psychiatrist Alvin Poussaint, offers the latest prescriptive measures for healing the scars that have plagued many in the black population.¹⁹ The authors criticize how Hip-Hop culture glamorizes ghetto life and unwed teenage mothers, and that being smart in school is not cool and equivalent to “acting white.” They also take aim at perceived poor personal choices in the areas of diet, parenting, sexual promiscuity, and substance abuse—things that seemingly can be controlled by the individual.

¹⁵ Cornel West, *Race Matters* (New York: Vintage Books, 1994), 66.

¹⁶ Henry Louis Gates and Cornel West, *The Future of the Race* (New York: A.A. Knopf: Distributed by Random House, 1996).

¹⁷ Tom Wicker, *Tragic Failure: Racial Integration in America* (New York: Morrow, 1996).

¹⁸ West, *Race Matters*.

¹⁹ Bill Cosby and Alvin F. Poussaint, *Come on, People: On the Path from Victims to Victors* (Nashville, Tenn.: Thomas Nelson, 2007).

The Moynihan Report

By the 1960s, blacks had begun making significant economic progress in this country. About half of all blacks moved to middle class status by the mid-sixties; however, this progress began to decline. The progress blacks made relative to whites in income began to decline dramatically. Fewer blacks were gainfully employed in 1964 than were in 1954. As economic conditions began to deteriorate, blacks began to riot in Harlem, New York and Paterson, New Jersey in 1964. The problems of the Northern ghettos seemed to be more intractable than the racism of the Jim Crow South. Months before the Watts riots in Los Angeles, California, in 1965, Daniel P. Moynihan, an official in the Department of Labor, issued a report titled: *The Negro Family: The Case for National Action*. According to Journalist Kay Hymowitz's examination and analysis of the report, Moynihan explained a disturbing new trend in the black community:

Instead of rates of black male unemployment and welfare unemployment running parallel as they always had, in 1962, they started to diverge . . . In the past, policymakers had assumed that if the male heads of households had jobs, women and children would be provided for. This no longer seemed true.²⁰

Moreover, asserted Hymowitz, "Even while more black men were getting jobs, more black women were going on welfare."²¹ Moynihan saw this as a threat to the stability of the black family and the black revolution for equality. With this observation, he made several specific comments in his report: 1) single-parent families were on the rise in the ghetto; 2) the rise in single-mother families was not due to a lack of jobs but rather to a destructive vein in ghetto culture that could be traced back to slavery and Jim Crow discrimination. He identified through charts and graphs, the emergence of a

²⁰ Kay S. Hymowitz, "The Black Family: 40 Years of Lies," *City Journal* (2005), http://www.city-journal.org/html/15_3_black_family.html (accessed March 28, 2008).

²¹ Ibid.

“tangle of pathology,” (borrowing a phrase from psychologist Kenneth Clark), including delinquency, joblessness, school failure, crime, and fatherlessness that characterized ghetto behavior.²² Moynihan concluded that these behavioral traits created a threat to “the basic socializing unit” of the family. In June 1965, President Johnson delivered the commencement address at Howard University in Washington, D.C. Johnson stated in his speech that the freedom recently extended to blacks was not sufficient to equip them with tools needed to avail themselves of all that America had to offer.

Johnson noted that it was:

. . . not enough just to open the gates of opportunity; it was necessary to make sure that all had the ability to walk through those gates. The goal was not just equality as a right and a theory but equality as a fact and a result.²³

Additionally, Johnson exhorted:

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 the others,’ and still justly believe that you have been completely fair.²⁴

Johnson was laying the groundwork for the next stage of the civil rights movement. He went beyond condemning inequality and he touched on problems of the Negro family in his speech. Johnson stated that Negro poverty is not white poverty. Moreover, he described the breakdown of the Negro family structure, which he noted was “the consequence of ancient brutality, past injustice, and present prejudice.”²⁵ Johnson concluded by saying, “When the family collapses . . . on a massive

²² Ibid.

²³ Stephan Thernstrom et al., “The Kerner Commission Report and the Failed Legacy of Liberal Social Policy,” *Heritage Foundation* (1998), <http://www.heritage.org/Research/PoliticalPhilosophy/hl619.cfm> (accessed March 26, 2008).

²⁴ Ibid.

²⁵ Hymowitz.

scale, the community itself is crippled”.²⁶ These ideas laid the foundation for remedial efforts by the government to go beyond just allowing blacks the opportunity to compete but also for allowing equal outcomes.

Ironically, Johnson considered the speech as his greatest civil rights speech. Others felt differently. By the summer of 1965, the Moynihan Report was being attacked on all sides: civil servants, academics, and civil rights leaders found discrepancies in the report. In August 1965, Los Angeles’ Watts ghetto, located in the south central portion of the city, erupted in violence. Some surmised that the “tangle of pathology” was the administration’s explanation for urban riots, a view that differed from civil rights leaders who believed the violence was a response to black despair over white racism. Black civil rights leaders rejected the report’s conclusions. For instance, Floyd McKissick, the Director of Congress of Racial Equality (CORE), scoffed that rather than just the family, “it’s the whole damn system that needs changing.”²⁷ Whitney Young, Executive Director of the National Urban League, proclaimed, “Family instability is a peripheral issue . . . the problem is discrimination.”²⁸ The remarks receiving the most attention came from William Ryan, a noted psychologist and a member of CORE, who described the report as a “highly sophomoric treatment of illegitimacy’ and insisted that ‘whites’ broader access to abortion, contraception, and adoption hid the fact that they were no less ‘promiscuous’ than blacks.”²⁹ Moreover, Ryan accused Moynihan of ‘blaming the victim’ (a term he would use as the title of a book). Journalist Kay Hymowitz quipped that:

no one would grapple seriously for months, years, or even decades to come with the basic cultural insight contained in

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

the report: that ghetto families were at risk of raising generations of children unable to seize the opportunity that the civil rights movement had opened up for them.³⁰

President Johnson would abandon any White House initiatives on the topic. Moynihan would later remark:

“This was a moment when we had the resources, the leadership, and the will to make a total commitment to the cause of Negro equality. Instead the nation had disastrously decided to punt on Johnson’s next and more profound stage in the battle for civil rights.”³¹

Kerner Commission Report

Urban rioting by blacks in Newark and Detroit erupted in 1968. As a response, President Johnson created the National Advisory Commission on Civil Disorders to determine the causes. The Commission, also referred to as the Kerner Commission, after its chairman Illinois Governor Otto Kerner, concluded that “Our nation is moving toward two societies, one black, one white, separate and unequal.”³² The report largely blamed the urban riots on “. . . the devastating poverty and hopelessness endemic in the inner cities in the 1960s.”³³ The report also saw the black/white racial divide as an economic divide in addition to being a social one. The findings issued by the Commission were eye-opening and painted a bleak picture of African American life:

One in five blacks lived in squalor and deprivation in ghetto neighborhoods. The unemployment rate was double for blacks, as compared to whites. Whole communities had been ignored by their government,

³⁰ Ibid.

³¹ Ibid.

³² United States, National Advisory Commission on Civil Disorders, *Report of the National Advisory Commission on Civil Disorders* (Washington: U.S. Govt. Print. Off., 1968).

³³ "Our Nation Is Moving toward Two Societies, One Black, One White—Separate and Unequal": Excerpts from the Kerner Report," *History Matters*, <http://historymatters.gmu.edu/d/6545> (accessed March 26, 2008).

wracked with crime, and traumatized by police brutality.
Disproportionate rates of infant mortality – black children
dying at triple the rate of white children.³⁴

The Commission laid the blame for many of these social ills on white racism. It stated, “what white Americans have never fully understood--but what the Negroes can never forget--is that white society is deeply implicated in the ghetto. White institutions created it, white institutions maintain it, and white society condones it.”³⁵ The report also highlighted the institutional racism that exists in American society: white people live in all white neighborhoods, send their children to all white schools, work where their associates are white and think nothing of it. The report blamed white society for isolating and neglecting blacks and urged a specific set of economic solutions to address the problem.

The Commission noted that the federal government was the only institution with the moral authority and resources to create change at a scale equal to the dimensions of the problem. It proposed the creation of two million public and private sector jobs, subsidized on-the-job training for the chronically unemployed, federal assistance to all schools that worked to end *de facto* segregation, compensatory education programs serving disadvantaged children, six million new and renovated units of affordable housing, and a uniform national welfare standard to bring everyone’s income up to the poverty line. Of note, it urged legislation to promote racial integration and to enrich slums through the creation of jobs, job training programs, and adequate housing.³⁶ President Johnson, who had commissioned the study, rejected its recommendations. In April 1968, shortly after the release of the

³⁴ Fred Harris interviewed by Bill Moyers. “Kerner Commission Report Forty Years After,” <http://www.nathanielturner.com/kernercommissionreportfortyyearsafter.htm> (accessed April 25, 2008).

³⁵ “Our Nation Is Moving toward Two Societies, One Black, One White—Separate and Unequal”: Excerpts from the Kerner Report,” *History Matters*, <http://historymatters.gmu.edu/d/6545> (accessed March 26, 2008).

³⁶ *Ibid.*

Kerner Report, rioting broke out in more than 100 cities following the assassination of Martin Luther King, Jr.

Efforts at School Desegregation and White Flight

The rioting across America had a devastating impact on black white relations. It accelerated white flight: the fleeing of whites from the inner cities to the surrounding urban areas or suburbs. Around the same time, white opposition to school desegregation was mounting. School desegregation became a major issue in the presidential election of 1968 won by Richard Nixon. Nixon, a Republican, had been accused of running a campaign that implied that he would be opposed to busing.³⁷ According to legal scholar Derrick Bell, the Nixon Administration adopted policies that halted the federal government's aggressive school desegregation posture.

Sociologist James Coleman directed a highly controversial study in 1966 known as the "Equality of Educational Opportunity Study (EEOS)," or simply "the Coleman Report" after its director. The study, commissioned by the U.S. Department of Health, Education, and Welfare, assessed the equality of educational opportunities for children of different races, color, religions, and national origins. It was undertaken in response to the Civil Rights Act of 1964. The EEOS consisted of test scores and questionnaire responses obtained from students of various grade levels and questionnaire responses from teachers and principals obtained from a national sample of schools in the United States.³⁸

Coleman noted that the most significant findings of the study were as follows:

First, it showed that variations in school quality (as indexed by the usual measures such as per pupil expenditure, size of school library,

³⁷ Derrick A. Bell, *Race, Racism, and American Law* (New York: Aspen Publishers, 2004), 158.

³⁸ U.S. Department of Health, Education, and Welfare. Office of Education. National Center for Educational Statistics. *Equality of Educational Opportunity Study (EEOS)* (1966), *ICPSR: Inter-University Consortium for Political and Social Research*. <http://www.icpsr.umich.edu/cocoon/ICPSR/STUDY/06389.xml> (accessed November 6, 2008).

and so on) showed little association with levels of educational attainment, when students of comparable social backgrounds were compared across schools. (Differences in students' family backgrounds, by comparison, showed a substantial association with achievement.) Second, a student's educational attainment was not only related to his or her own family background, but also (less strongly) to the backgrounds of the other students in the school.³⁹

The study provided the impetus for desegregating public schools and using busing as a means of transporting black students to integrated schools. Coleman, who supported school integration, subsequently published a 1975 report that blamed white flight on court-ordered busing.⁴⁰ He concluded that white parents moved their children out of these integrated schools in large numbers. Since black students would only benefit from integrated schools if there were a majority of white students in the classroom, busing as a result, had failed.

In a landmark case, *Swann v. Charlotte-Mecklenburg Co. Board of Education* (1971),⁴¹ the Supreme Court outlined several remedies federal courts could use to comply with the 1954 *Brown* decision.⁴² Those remedies included busing, racial quotas, and the pairing of noncontiguous school zones. The *Swann* decision represented the high water mark of judicial support for desegregation of the public schools. In the aftermath of *Brown* (1954), white children began exiting public schools and moving to the suburbs in alarming numbers.⁴³ Bell noted that in the cities where white flight occurred; a tipping point was witnessed, which was achieved when roughly 25 to 50 percent of the student body

³⁹ "History of the Coleman Report," *Encyclopedia.com: Dictionary of Sociology. HighBeam Encyclopedia*, HighBeam Research, Inc. <http://www.encyclopedia.com/doc/1O88-ColemanReport.html> (accessed November 8, 2008).

⁴⁰ "New Coleman Report," *Time* (June 23, 1975), <http://www.time.com/time/magazine/article/0,9171,913200,00.html> (accessed March 28, 2008).

⁴¹ *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971).

⁴² *Brown v. Board of Education of Topeka* 347 U.S. 483 (1954).

⁴³ *Ibid.*

was black. When the aforementioned percentages were reached, white families began to flee to the suburbs.

In *Milliken v. Bradley* (1974), the Court signaled a major reversal in the trend to support all efforts at school desegregation.⁴⁴ The Court ruled that a federal court could not order busing of school children across district boundary lines to achieve racial integration unless each school district affected had been found to practice racial discrimination or that the school district lines had been deliberately drawn to provide for racially segregated schools. The *Milliken* decision essentially put an end to the likelihood of extensive integration of schools in major metropolitan areas where black students are concentrated in inner city schools and whites are aggregated in surrounding suburbs. In his critique of this decision, Bell noted:

Whites had every incentive to flee the inner city while racism and the perceived (and usually actual) inferiority of black schools keep white families from moving into predominantly black neighborhoods. Thus, courts' tolerance of residential school segregation created an inescapable cycle of racial separation.⁴⁵

Opposition to school desegregation began to mount on all sides. By the 1980s, it was black parents who became disillusioned with efforts to integrate public schools. Black students were shuffled in and out of predominantly white schools to take the places vacated by whites fleeing to outlying suburbs. Bell states that black children often met racism and a curriculum blind to their needs.⁴⁶ Moreover, young black children found themselves the subject of tracking wherein largely white students were placed in accelerated schools and programs while black students were put in the lower tracks. So, black students and white students, although attending the same desegregated

⁴⁴ *Milliken v. Bradley*, 418 U.S. 717 (1974).

⁴⁵ Bell, 156.

⁴⁶ *Ibid.*

schools, are often assigned to different classes and rarely come into contact or direct interaction with one another.

By the end of the 1980s, due to mounting political opposition, and socioeconomic trends, America's grand experiment with school desegregation had stalled. By the mid-1990s, civil rights advocates were criticizing a new and disturbing phenomenon: the re-segregation of black students in the South; (see Table 1).⁴⁷ Moreover, Gary Orfield, co-director of the Harvard Civil Rights Project, stated, "Despite decades of court-ordered school integration, more than one in six black children attends a school comprised of 99-100 percent minority students; by comparison, less than 1 percent of white public-school students attend such schools."⁴⁸

The Kerner Commission Update: Forty Years Later

The Kerner Commission Report has been updated every few years since it was first published in 1968. An update was prepared in 2008 on the fortieth anniversary of the initial report by the Eisenhower Foundation, a think tank in Washington, D.C. The updated findings were compiled through hearings in Detroit, Newark, and Washington, D.C., cities that experienced rioting during the 1960s. The report lamented that little progress had been made for blacks in areas such as poverty, racial injustice, education, and crime, since the urban riots of 1968 and the initial report. The report noted that despite an emerging black middle class, increases in black entrepreneurs, and black elected public officials, few of the goals of the 1968 report had been accomplished.⁴⁹ In reacting to the report, Arthur Johnson, former President of the Detroit branch of the National Association for the Advancement of Colored People (NAACP) proclaimed, "There is nothing I can point to in our present

⁴⁷ *Issues in Race and Ethnicity*, 3rd ed. (Washington, D.C.: CQ Press, 2007), 25.

⁴⁸ *Ibid.*, 26.

⁴⁹ Fred Harris interviewed by Bill Moyers. "Kerner Commission Report Forty Years After." <http://www.nathanielturner.com/kernercommissionreportfortyyearsafter.htm> (accessed April 25, 2008).

day experience that tells us that we are significantly better off today than we were then.”⁵⁰ However, not everyone agreed with the conclusions of the updated report. The Heritage Foundation, a conservative think tank in Washington, D.C., held a lecture series in June 1998. Historian Stephan Thernstrom, one of the panelists, remarked:

The commission was wildly mistaken in its claims that the socioeconomic condition of black America was deteriorating, and that the country was splitting into two societies, one black, one white, separate and unequal. Even more mistaken have been the pessimists who continue to claim, despite superabundant evidence to the contrary, that almost every problem defined by the Kerner Commission has become worse. To deny the dramatic progress in the status of African Americans and in race relations that has been achieved in the last 30 years is perverse and dangerous.⁵¹

Paradigm Shift

Fred Harris, a member of the Kerner Commission and the Eisenhower Foundation Update, stated that the original report laid much of the blame for many of the conditions of black America on “white racism, something that he said that white America has never fully understood . . . white society is deeply implicated in the ghetto.”⁵² Poverty is a key reason, noted Harris, that blacks have not made more progress. It has led to the breakdown of the black family. Moreover, Harris pointed out that white flight to the suburbs in the wake of the riots in the 1960s was quickly followed by middle class black flight. Furthermore, the urban poor today are fewer in number but more isolated not only from the white mainstream but also from upwardly mobile blacks.⁵³

⁵⁰ Darren A. Nichols, “Kerner Commission: Not Enough Progress Made on Poverty,” *The Detroit News*, February 28, 2008, <http://www.detnews.com/apps/pbcs.dll/article? AID=/20080228/METRO/802280460> (accessed March 26, 2008).

⁵¹ Thernstrom *et al.*

⁵² Fred Harris interviewed by Bill Moyers. “Kerner Commission Report Forty Years After.” <http://www.nathanielturner.com/kernercommissionreportfortyyearsafter.htm> (accessed April 25, 2008).

⁵³ *Ibid.*

Black Americans have suffered economically due to a disappearance of industrial jobs. Poor black residents of the nation's central cities have also been disadvantaged by the migration of jobs to the suburbs.⁵⁴ Harris said, "The new jobs are out in the suburbs, where it's hard for central-city people to get to and the ones in the city are low-paying service jobs."⁵⁵ Furthermore, Harris notes:

Technological changes have left many black Americans particularly ill-prepared for today's high wage jobs that require advanced education and a high level of skill. This has created a gap in America between people with high school or college educations and those without.⁵⁶

The social pathology that Moynihan warned of is a result of these factors. Urban poor blacks have become increasingly isolated from the rest of society. That isolation has meant fewer role models of stable two-parent families that raise a family and work on a regular basis. Moreover, as middle class blacks followed whites to the suburbs, property values decreased, and, as the tax base declined, so did the funding level for public education. The unemployment rate for young black men is over twice the rate for young white men (see Figure 2). Many inner city youth have joined gangs, which serve as a surrogate family. William Triplett notes that "Within the structure of the group the individual can develop such characteristics as loyalty, leadership and community responsibility . . ."⁵⁷ William Julius Wilson, a sociologist, and Cornel West, a theologian, have both written about this segment of inner city black Americans who are unemployed and no longer looking for employment. Those that are members of this group are now referred to as the underclass. West refers to this condition of hopelessness as nihilism, for many of them have grown fatalistic. A government loses its legitimacy when people feel powerless and begin to believe that the institution no longer addresses the

⁵⁴ Wilson, 1996.

⁵⁵ *Issues in Race, Ethnicity, and Gender: Selections from the CQ Researcher*, 2nd ed. (Washington, D.C.: CQ Press, 2005), 121.

⁵⁶ Ibid.

⁵⁷ *Issues in Race and Ethnicity*, 257.

needs of its citizens. These individuals often cease to be law-abiding citizens, engaging in lawless behavior. The value of life is lessened for them – both their own and anyone else’s. West laments in

Race Matters:

The exodus of stable industrial jobs from urban centers to cheaper labor markets here and abroad, housing policies that have created ‘chocolate cities and vanilla suburbs’ . . . white fear of black crime all have helped erode the tax base of American cities just as the federal government has cut its support and programs.⁵⁸

Outlook for the Future

Race relations in American society have shown significant progress since the Kerner Commission delivered its report in 1968. However, racism and discrimination still exist. The two aforementioned factors aren’t the biggest challenges facing black Americans today. There continues to be a huge wealth gap between blacks and whites. The typical white family has a net worth that is more than seven times its black counterpart. However, within the black community there is a growing economic rift. Robert Woodson, head of the National Center for Neighborhood Enterprise quipped:

. . . the number of black families earning between \$15,000 and \$70,000 annually doubled between 1970 and 1990, even though the number of black families earning less than \$15,000 more than doubled during the same time frame.⁵⁹

Serious gaps still exist between whites and blacks on income, wealth, wages, educational achievement, racial injustice, and crime.⁶⁰ However, blacks have made substantial advancement throughout all walks of American society. The number of black entrepreneurs has increased

⁵⁸ West, 1994, 5.

⁵⁹ Jonathan Karl and Kevin Smith, “30 Years after Kerner Report, Some Say Racial Divide Wider,” *CNN.com* (1998), <http://www.cnn.com/US/9803/01/kerner.commission> (accessed March 26, 2008).

⁶⁰ Fred Harris interviewed by Bill Moyers. “Kerner Commission Report Forty Years After.” <http://www.nathanielturner.com/kernercommissionreportfortyyearsafter.htm> (accessed April 25, 2008).

tremendously. A significant number of blacks have moved into the middle class in the 40 years since the Kerner Commission Report was originally issued. There are a large number of black state and local elected officials. The country currently has a black Secretary of State, two black governors, and 44 black members of the United States Congress.

Moreover, America has recently elected Senator Barack Obama to be its 44th president. Obama is the first African American to run for president as a major party candidate, and he is the first ever elected to the highest office in this land. His election sends a strong message that America has finally overcome a significant racial barrier. In a decisive victory, Obama attracted support from Americans of all racial and ethnic backgrounds. He offers a unifying message of hope and reconciliation that we can bridge the racial divide and come together for the good of all Americans. So, as Americans reflect on the 40 years after the Kerner Commission Report was issued in response to race riots throughout the country, Americans can take satisfaction in knowing that remarkable strides have been made by African Americans in terms of equality of opportunity, but in spite of this progress, there is still an abundance of work that remains to be done.

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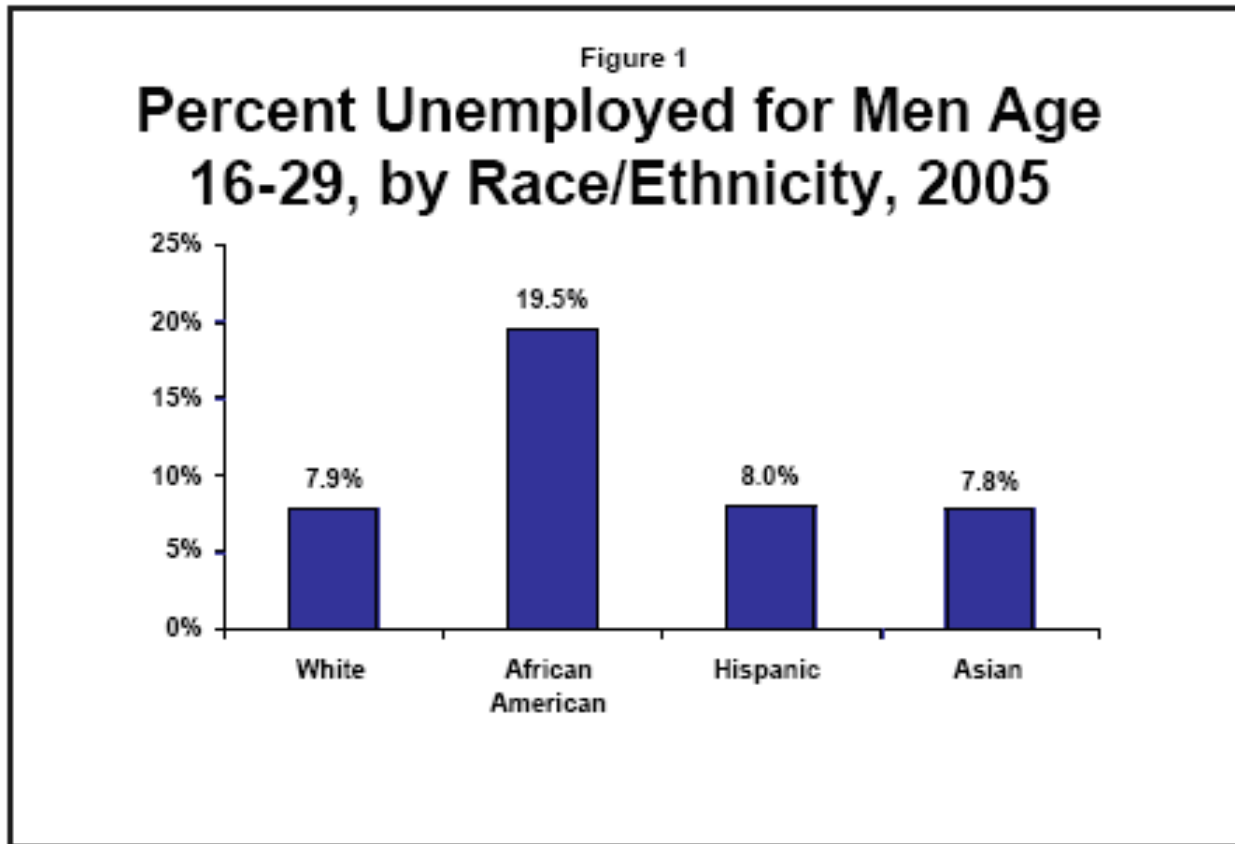
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Tables and Figures

Table 1
Change in Black Segregation in South, 1954-2005

Year	Percent of Black Students in Majority White Schools	
1954	0.001	(one in 100,000)
1960	0.1	(one in 1,000)
1964	2.3	
1967	13.9	
1968	23.4	
1970	33.1	(330 in 1,000)
1972	36.4	
1976	37.6	
1980	37.1	
1986	42.9	
1988	43.5	(435 in 1,000)
1991	39.2	
1994	36.6	
1996	34.7	
1998	32.7	
2000	31.0	
2001	30.2	
2005	27.0	(270 in 1,000)

Source: Southern Education Reporting Service in Reed Sarratt, *The Ordeal of Resegregation* (New York: Harper & Row, 1996): 362; HEW Press Release, May 17, 1968; OCR data tapes; 1992-3, 1994-5, 1996-7, 1998-9, 2005-6, NCES Common Core of Data



Source: Table 3. Employment Status of the Civilian Noninstitutional Population by age, sex, and race. Produced by the Bureau of Labor Statistics from the Current Population Survey [online]. (2006)[cited July 6, 2006]. Available from URL: <http://www.bls.gov/cps/home.htm#tables>.

East Asian Discrimination in Supreme Court Cases: How Yesterday's Biases Affect Race Relations Today

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Literature Review

The Supreme Court case rulings and exclusionary laws involving East Asians have shown a great deal of bias throughout American history. There has always been a group blamed for American ills in contemporary times, and East Asians were simply one more minority that received this negative attention and was oppressed throughout American history. East-Asians represent a significant minority group in the United States that continues to grow in population. Many of them came over during the early Gold Rush era, while others immigrated to the West Coast in search of jobs and an increased sense of freedom. They faced many hardships (not excluding “yellow peril” stereotypes) and prejudices against their heritage because of their physical differences, language barriers, religious, and cultural customs. A large majority of them first settled in San Francisco, and later migrated to other areas of the West Coast, before moving inland and dispersing throughout the country.

Many East Asians have been proud to express their heritage, yet the United States (U.S.) was not prepared to accommodate them and could not initially find a place for them. Often, other groups in the surrounding areas felt threatened by these new immigrants who looked and acted different from the previous émigrés to the U.S. The greatest threat felt by European Americans was the fear of job loss. Because the new immigrants were not European and did not assimilate as easily as other populations, laws were passed that restricted their freedoms. Their cultural identity was not only emphasized to a large degree, but several cases pointed to the fact that many did not want them around and felt that East Asians were simply un-American in nature and would never fit in. There were riots, discriminatory laws against them, and other restrictive measures; all designed to discourage them from settling in this country.

Much of the literature focuses on those Supreme Court cases and policies that made a large impact on the communities and immigration rights of Asian Americans. The Chinese Exclusion Act is one of the specific policies that will be highlighted throughout this paper. Additionally, there is a plethora of literature that focuses on the biases that led to the internment of Japanese Americans during World War II. The early days of American history tends to be filled with a certain amount of anger towards Asians, as illustrated in Robert Chang's research. Asians were perceived as taking away American jobs, which somehow gave Americans of European background the idea that they would take over the country, make it corrupt, and change the face of it from what the founders originally intended.¹

The court cases cited during this time of paranoia and fear include the 1898 case of *United States v. Wong Kim Ark*, where an American-born citizen who made several trips to China was detained by U.S. immigration authorities (under the Chinese Exclusion Act) on the grounds that his parents were Chinese citizens and subjects of the Emperor of China thus making him a subject of the Emperor as well. This case was later overturned on the grounds that subjects born of parents who are permanently residing in the U.S. become citizens.² Likewise, Gabriel Chin explained the 1893 case of *Fong Yue Ting v. United States*, which involved the challenge of a federal statute, which specifically required that Chinese non-citizens register or risk being deported.³ Many of the cases involving Japanese citizens, such as *Kiyoshi Hirabayashi v. United States* (1943),⁴ *Ex Parte Mitsuye Endo*

¹ Chang, Robert S. "Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space." *California Law Review* 81, No. 5 (1993): 1252.

² Findlaw.com, "U.S. v. Wong Kim Ark, 169 U.S. 649 (1898)," Findlaw.com, <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=169&invol=649> (accessed Nov. 20, 2007).

³ Chin, Gabriel J. "Chae Chan Ping and Fong Yue Ting: The Origins of Plenary Power." In *Immigration Stories*, edited by David Martin and Peter Schuck. New York: Foundation Press, 2005, p. 7.

⁴ Findlaw.com, "Kiyoshi Hirabayashi v. United States, 320 U.S. 81 (1943)," Findlaw.com, <http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=CASE&court=US&vol=320&page=81> (accessed Nov. 20, 2007).

(1944),⁵ and *Toyosaburo Korematsu v. United States* (1944),⁶ addressed the concerns of East Asians as it pertained to the stereotypes of them as minorities unable to assimilate and, the perception that they are a threat to national security. It was feared that despite being Americanized for so long, perhaps they were more loyal to their home country. The failure to fully address East Asian needs in the U.S. is also seen in more recent cases, such as *Regents of the University of California v. Bakke* (1978), where quota systems on race were banned in college admissions while affirmative action systems were maintained. This inhibited many blacks and other minorities, such as East Asians, from opportunities of being admitted into colleges. Often the exclusion of certain groups in the college admissions process came with certain stereotypes about East Asians.

With the 40th anniversary of the Kerner Commission Report of 1968, one pertinent question would be: How have race relations improved since the initial publication of the report? Grace Tsuang has raised some legitimate issues regarding the fact there is still a long way to go in terms of improving the lot of minority peoples, particularly erasing the stereotypes of non-white ethnic groups, such as East Asians.⁷ Tsuang argues that college administrators claim that Asians focus greatly on the sciences, only seek highly selective colleges, are not as well-rounded, and do not do as well on non-academic levels. Tsuang further states that these conclusions are perhaps based on racial stereotypes. Often we see similar patterns on stereotyping other ethnic groups, such as African-Americans, which inhibits the promise of equality throughout our legal and economic systems.

There is a paucity of literature examining the question of East Asian discrimination and the link with African Americans struggle for equality. However, this does not mean it does not exist.

⁵ Findlaw.com, “Ex Parte Mitsuye Endo, 323 U.S. 283 (1944),” Findlaw.com, <http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=CASE&court=US&vol=323&page=283> (accessed Nov. 20, 2007).

⁶ Findlaw.com, “Toyosaburo Korematsu v. United States, 323 U.S. 214 (1944),” Findlaw.com, <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=323&invol=214> (accessed Nov. 20, 2007).

⁷ Tsuang, Grace W. “Assuring Equal Access of Asian Americans to Highly Selective Universities.” *The Yale Law Journal* 98, No. 3 (1989): 663.

Much of the literature that focuses on East Asian Americans and Supreme Court cases examines the challenge to erase the stereotype of the “model minority” myth and bring to light that not all Asians have the same kind of work ethic. Many Americans have un-leashed violence due to their fears of East Asians taking away their jobs and that somehow they are different from the average American. Robert Chang also covers this topic.⁸

To relate the struggles of Asian Americans with those of African Americans one needs to examine the Civil Rights struggle. Many African Americans, inspired by such visionaries as Marcus Garvey and later Malcolm X within the black power movement, chose more direct confrontational tactics as a means of dealing with the demand for greater equality in this country, especially against the Jim Crow-era laws in the South. Other black communities preferred the more non-violent tactics of King and Gandhi, who advocated peaceful protests as a way of combating an oppressive system. In a similar vein, Asians carried on the struggle as well, yet, in a different fashion. The tactics utilized by Asians are those that were closer to King and Gandhi. Quintard Taylor explains that while blacks focused on confrontational tactics for greater economic freedoms, many Asians, particularly Japanese, looked inward and instead decided to cause change through success in business and achieving high scholarly activity, hoping that mainstream America would accept them in some way.⁹

The “model minority” idea of the hardworking East Asian was a difficult stereotype to overcome and often an inhibitor of Asian success in conquering many pre-conceived notions that portrayed East Asians as overachievers.¹⁰ This myth was a result of their having to overcome many Americans’ early suspicions of Asians, with their non-European customs and way of

⁸ Chang, Robert S. “Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space.” *California Law Review* 81, No. 5 (1993): 1254.

⁹ Taylor, Quintard. “Blacks and Asians in a White City: Japanese Americans and African Americans in Seattle, 1890-1940.” *The Western Historical Quarterly* 22, No. 4 (1991): 403.

¹⁰ William Petersen devised the model minority idea in the 1960s, which explained that despite East Asians being a small minority group, they were still able to achieve success. The term was first quoted by Peterson in William Petersen, “Success Story: Japanese American Style.” *New York Times Magazine*, (9 January 1966), 20.

life and trying to fit in. Brest and Oshige note, the challenge of dispelling the “model minority” idea would help in ensuring that Asians also would benefit from affirmative action rulings handed down by the Supreme Court and would bring many Americans to an understanding that a number of Asians are, in fact, impoverished and in need of assistance for educational opportunities.¹¹ Brest and Oshige also note that including Asians in affirmative action admissions policies (as required by *Regents of the University of California v. Bakke*) would also be a plus, which is not under current Stanford Law School admissions criteria. The inclusion of Asians in affirmative action admission policies would help in promoting the idea that affirmative action is meant for all minorities, not only selected ones. Finally, Rhoda Howard-Hassmann explains that equal justice may also mean showing an apology for past ills through various measures, including a formal apology and some sort of subsidy for past wrongs; the Japanese were able to receive reparations much later after the war, as defined by the 1988 Civil Liberties Act, but the same should be said for African Americans as well, which is still forthcoming, even over 140 years after the end of slavery.¹²

East Asian Discrimination in Supreme Court Cases and Exclusionary Laws: A Lesson for All?

The Supreme Court has often dealt with shifting cycles of cases involving racial discrimination towards certain groups. These groups tend to shift with the changing times, as a new group is targeted at various intervals. There is always a scapegoat to blame in American history for the problems in this country. Frequently, we see issues such as the detention of Japanese Americans or those of African American descent as a result.¹³ Normally, these are in times of crisis or in the midst of a war that

¹¹ Brest, Paul, and Miranda Oshige. “Affirmative Action for Whom?” *Stanford Law Review* 47, No. 5 (1995): 855.

¹² Howard-Hassmann, Rhoda E. “Getting to Reparations: Japanese Americans and African Americans.” *Social Forces* 83, No. 2 (2004): 823.

includes members of the supposed group to blame. American history has been known to repeat itself in many ways. As patterns of cases emerge over time, involving certain ethnic groups, our willingness to compromise the rights of others are revealed. This pointing of fingers, out of frustration, prejudice, or anxiety, has been projected upon minorities for decades and, Asian Americans are no exception to this form of discrimination. This group was targeted since the first wave of immigrants came to the United States in the mid-19th century, and this phenomenon ended with the end of World War II.

Through the theoretical framework of dispelling common stereotypes, such as the “yellow peril” and the “model minority” myth, both attributed to East Asians, the study of several Supreme Court cases and related exclusionary laws will yield insight as to how the rights of many persons, including East Asian Americans, have continually been denied or targeted throughout history. In tune with the 40th anniversary of the Kerner Commission Report, it remains a mystery as to when this kind of behavior will decline, or, if the American people will cease to find a scapegoat to blame their ills.

Since the first Chinese settlers came on ships from China to California during the Gold Rush era, there have been many examples of acts of discrimination against the Asian railroad worker. The Chinese Exclusion Act can be documented as a prime example of this during the 1880s. Many American workers involved in heavy industry, such as mining and low-end labor, viewed rising Chinese immigration as a threat. These feelings were especially common during the Railroad expansion era. In fact, there were sporadic instances of violence as an outgrowth of this new wave of immigration. Robert Chang states:

...In 1877 in Chico, California...While attempting to burn down all of Chico's Chinatown, white arsonists murdered four Chinese by tying them up, dousing them with kerosene, and setting them on fire.

¹³ Findlaw.com, “Toyosaburo Korematsu v. United States, 323 U.S. 214 (1944),” Findlaw.com, <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=323&invol=214> (accessed Nov. 20, 2007).

The arsonists were members of a labor union associated with the Order of Caucasians, a white supremacist organization that was active throughout California. The Order of Caucasians blamed the Chinese for the economic woes suffered by all workers.¹⁴

This type of violence, though for different reasons other than immigration, was reminiscent of the kind of terror that blacks faced in the South from white racist groups after the Civil War throughout the Jim Crow era. Biases towards minorities of all types were rampant and visible in the legal system. During these early Railroad years, the “yellow peril” was in full effect.¹⁵ The case of *Chae Chan Ping v. United States* (1889) was a classic example, which demonstrated the prejudices that the Supreme Court held towards foreigners at the time. The opinion, expressed by Justice Field states:

The major...questions...were whether any nation can exclude foreigners, and whether the treaties...gave those before the Court a vested right to re-enter... Justice Field, writing for a unanimous court, first outlined the treaties between the United States and China concerning immigration, and, with...Chinese laborers... by these treaties, observed: “[T]hey remained strangers in the land, residing...by themselves, and adhering to the customs...of their own country. It seemed impossible for them to assimilate...The people...saw...great danger that...our country would be overrun by them unless prompt action was taken to restrict their immigration.” This is the genesis of the self-preservation theory as applied to the regulation of immigration-the theory of non-assimilable yellow hordes.¹⁶

Being inherently biased, any other types of immigrant applications had to get special permission from the Chinese government to enter the U.S. This shows the breadth of Chinese immigration at the time and the considerable impact this issue had on U.S.-China relations. Chinese who arrived after this time were considered permanent aliens and could not get full citizenship. Even Chinese living in the

¹⁴ Chang, 1252.

¹⁵ The term, “yellow peril,” originated from Kaiser Wilhelm around 1895 and was later adopted by Western journalists to refer to the immigration of Chinese laborers to Western countries. It was later attributed to the Japanese during their military expansion. For further reading see David Walker, *Anxious Nation: Australia and the Rise of Asia 1850-1939*. (Saint Lucia: University of Queensland Press, 1999), 30.

¹⁶ Hesse, Siegfried. “The Constitutional Status of the Lawfully Admitted Permanent Resident Alien: The Pre-1917 Cases.” *The Yale Law Journal* 68, No. 8 (1959): 1588.

U.S. had to get permission for re-entry if they ever left the country. The Chinese Exclusion Act of 1882 states:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the expiration of ninety days next after the passage of this act, and until the expiration of ten years next after the passage of this act, the coming of Chinese laborers to the United States be, and the same is hereby, suspended; and during such suspension it shall not be lawful for any Chinese laborer to come, or, having so come after the expiration of said ninety days, to remain within the United States.¹⁷

The 1893 Geary Act expanded the Chinese Exclusion Act and included more restrictions on Chinese Americans. A provision, such as carrying a resident permit at all times, was enacted and those violating this provision were met with harsh punishment involving labor or deportation. Despite there being three dissenting opinions, *Fong Yue Ting v. United States* (1893) upheld this act with Justice Gray delivering the opinion of the Court.¹⁸ Nevertheless, East Asian Americans faced a long road ahead, much like blacks did in the early days following the Civil War's end.

What is interesting about the Chinese population is that even Justice John Marshall Harlan, the dissenter in the *Plessy v. Ferguson* (1896) decision, raised questions about the importance of addressing the ambiguity of the Chinese citizenship issue during the 1800s, showing that defining minority rights were more than simply black and white matters and remained complex and hard to define for years to come. Justice Harlan explained the paradox of such a hypocritical policy of allowing Chinese some opportunities, yet excluding blacks in other situations. His dissenting opinion states:

There is a race so different from our own that we do not permit those belonging to it to become citizens of the United States. Persons belonging to it are, with few exceptions, absolutely excluded from our country. I allude to the Chinese race. But by the statute in question, a Chinaman

¹⁷ U.S. Congress. *Chinese Exclusion Act*, 47th Cong., 1st sess., 1882, chap. 126.

¹⁸ Chin 7.

can ride in the same passenger coach with white citizens of the United States, while citizens of the black race in Louisiana, many of whom, perhaps, risked their lives for the preservation of the Union, who are entitled, by law, to participate in the political control of the State and nation, who are not excluded, by law or by reason of their race, from public stations of any kind, and who have all the legal rights that belong to white citizens, are yet declared to be criminals, liable to imprisonment, if they ride in a public coach occupied by citizens of the white race.¹⁹

Such issues still remained puzzling for many persons trying to find a solution to the status of Chinese and other East Asians in this country. The customs, culture, religion, and way of life of the East Asian were so dramatically different from other populations residing in the country that it led to common misguided stereotypes. This made it easier to subject them to discriminatory laws, since they essentially remained an “other” to most people in this country at that time. This uncomfortable unfamiliarity permitted laws, such as the Chinese Exclusion Act, to pass without much objection. This occurred because the Chinese did not seem to “belong” in any sense to the ideal of American values.

One case that tested the strength of the Chinese Exclusion Act and citizenship was *US v. Wong Kim Ark* (1898). Wong Kim Ark was a U.S. citizen born in San Francisco, whose parents were from Taishan, China, and were not American citizens. During his childhood, his family moved back to China and, he traveled between the U.S. and China. During one occasion, upon a return to the U.S., he was detained in San Francisco and deemed not to be a citizen. The charges against him were that he and his parents were both subjects of the Chinese emperor. At the time, it was believed he should be denied entrance because he fell under the umbrella of the Chinese Exclusion Act, which forbade persons of Chinese ancestry from immigrating into the United States. Because of territorial disputes with China during that time period, the U.S. had took issue with allowing immigrants from enemy states into the country. In addition, many minority populations were discriminated against because of their outward appearance and differing customs and culture, which were distinct from

¹⁹ Christopher Waldrep Homepage, San Francisco State University, “Plessy v. Ferguson,” San Francisco State University, http://bss.sfsu.edu/waldrep/hist471/plessy_v.htm (accessed Nov. 20, 2007).

Europeans. The Chinese Exclusion Act reflected this racial bias. However, the Court ruled 8-2 and based its decision on the 14th Amendment. The reasoning of the Court was, because Wong was born in the United States and was a citizen, he could be exempt from the conditions under the 1882 Act itself. Wong was still a citizen thereafter, and had to be granted access to the country. Justice Gray delivered the Court's opinion:

It is conceded that, if he is a citizen of the United States, the acts of congress known as the 'Chinese Exclusion Acts,' prohibiting persons of the Chinese race, and especially Chinese laborers, from coming into the United States, do not and cannot apply to him...The question presented by the record is whether a child born in the United States, of parents of Chinese descent, who at the time of his birth are subjects of the emperor of China, but have a permanent domicile and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the emperor of China, becomes at the time of his birth a citizen of the United States, by virtue of the first clause of the fourteenth amendment of the constitution: 'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.'²⁰

During an early part of Wong's life, his parents maintained and conducted business in the United States. This made him highly eligible for citizenship, yet discrimination towards East Asian Americans continued afterward. This is evident in the minority opinion expressed by Justice Fuller, which states: Chinese immigrants and their children cannot become U.S. citizens under the Fourteenth Amendment. This rationale was based on the precedent set by the previous case of case of *Fong Yue Ting v. U.S.* (1893), which stated that "large numbers of Chinese laborers, of a distinct race and religion, remaining strangers in the land, residing...by themselves,...adhering to the customs...of their...country," did not assimilate well and might "endanger good order, and be injurious to the public interests and that "according to...their native government and...this government, are and must remain aliens."²¹

²⁰ Findlaw.com, "U.S. v. Wong Kim Ark, 169 U.S. 649 (1898)," Findlaw.com, <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=169&invol=649> (accessed Nov. 20, 2007).

Based on this thinking, Wong Kim Ark never had citizenship rights and the district court's ruling was reversed.²²

In addition to Chinese Americans, Japanese Americans were also continually challenged in the exclusion of East Asian individuals. *Takao Ozawa v. United States* (1922) was heard on a writ of certiorari. The facts of this case involved a Japanese man who tried to challenge the Supreme Court on the basis of race. Ozawa tried to prove that Japanese were indeed Caucasian, thus allowing them access to becoming naturalized citizens. He actually filed for naturalization under the 1906 Naturalization Act, which allowed only Caucasians and persons of African descent to become naturalized. Instead of challenging the restrictions constitutionally, he merely sought to have the category Japanese classified as white. The Court rejected this argument and stated that Japanese were not Caucasian in any sense. Instead, the Court was of the opinion that Japanese were of an “unassimilable” race and did not qualify for anything under the Naturalization Act.²³ The case merely strengthened anti-East Asian bias to this group in the U.S., which confirmed more racist U.S. immigration laws. These laws extended to other East Asian groups as well. Paralleling the denial of civil rights to blacks, many East Asians had problems getting equal protection throughout the country, as was shown in Seattle between the years of 1890 to 1940, as Quintard Taylor explains:

...Each community held contrasting ideas of the appropriate responses to discrimination. African Americans voiced concern for economic opportunity and the end of formal discrimination—the “campaign for human dignity,” to use the typical NAACP characterization during the interwar years. Japanese Americans, while aware of discrimination and its impact on their economic progress, chose to wage their campaign for human dignity with entrepreneurial success and stellar academic achievement, and repudiated the confrontational tactics associated with African American civil rights organizations.²⁴

²¹ Chin, 7.

²² Ibid.

Japanese suppression occurred particularly during World War II, due to fear of collaboration with the enemy. The case of *Yasui v. United States* (1943) determined that curfews against citizens were permissible. This tactic was used to restrict the rights of Japanese Americans during World War II. Yasui was an American-born Japanese from Hood River, Oregon, who joined the U.S. Reserve and later worked for the Japanese Consulate. After 1941, he resigned from the consulate following the Pearl Harbor attack and was later reassigned to an internment camp. He decided to test a militarily imposed curfew for Japanese Americans on March 28, 1942. Yasui presented himself to a police station after eleven p.m. to deliberately challenge the constitutionality of this law. The lower court ruled that the curfew only applied to aliens, since martial law was not ordered in the area by the government. However, because he worked for the Japanese government through the consulate office, he automatically gave up his citizenship and was thus subject to the curfew restrictions and given a one-year sentence and a five-thousand-dollar fine:

After the Japanese bombed Pearl Harbor...Yasui resigned... to report for military duty. His services were refused nine times. In February 1942 Yasui set up a law firm in Portland to help Japanese Americans deal with legal problems the war created. Amid talk of internment, Yasui, the only Japanese American lawyer in Oregon, planned his legal challenge to the government's policies...His case was tried in district court. In November 1942 Judge James Fee agreed with Yasui's contention that the curfew was illegally applied to citizens but...stripped Yasui of...citizenship and sentenced him. In 1943 his case was sent...from district court to the...Supreme Court, which reversed Judge Fee's ruling that the curfew was unconstitutional, reinstated Yasui's citizenship, and reduced his sentence.²⁵

The case made it to the Supreme Court and was decided jointly with *Hirabayashi v.*

²³ Findlaw.com, "Takao Ozawa v. U S, 260 U.S. 178 (1922)," Findlaw.com, <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&vol=260&invol=178> (accessed Nov. 20, 2007).

²⁴ Taylor, 403.

²⁵ Oregon Historical Society, "Minoru Yasui," Oregon History Project, <http://www.ohs.org/education/oregonhistory/Oregon-Biographies-Minoru-Yasui.cfm> (accessed Nov. 20, 2007).

United States (1943), where the Court ordered that the curfew and special exclusions were legal.

This ruling thus concluded that Yasui's actions merited his citizenship status being taken away, and he was re-sentenced.

The parallel *Hirabayashi* case dealt with a similar issue of a ban on certain unauthorized persons entering military areas. This ban was immediately passed following the attack on Pearl Harbor. *Hirabayashi* was a student at the University of Washington who apparently violated a curfew and, after curfew, did not report for relocation, as was required of Japanese Americans at the time. The Court upheld the conviction, deciding that certain minorities could have militarily-imposed curfews in wartime. This was deemed necessary at times, particularly if the war involved the person's country of native origin. Justice Stone read the opinion of the court, which stated:

Distinctions between citizens...because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality. For that reason, legislative classification or discrimination based on race alone has often been held to be a denial of equal protection... We may assume that these considerations would be controlling here were it not...that the danger of espionage and sabotage, in time of war and of threatened invasion, calls upon the military authorities to scrutinize every relevant fact bearing on the loyalty of populations in the danger areas. Because racial discriminations are in most circumstances irrelevant and therefore prohibited, it...follows that, in dealing with the perils of war, Congress and the Executive are...precluded from taking into account those facts and circumstances which are relevant...for our national defense and for the successful prosecution of the war, and which may in fact place citizens of one ancestry in a different category from others...The adoption by Government, in...war and of threatened invasion, of measures for the public safety, based upon...facts and circumstances which indicate that a group of one national extraction may menace that safety more than others, is not...beyond the limits of the Constitution and...not...condemned merely because in other and in most circumstances racial distinctions are irrelevant.²⁶

This opinion of the court simply solidified the negative view of Americans towards persons of East Asian descent. In many ways, this could be compared to the illegal detainment of blacks in the South

²⁶ Findlaw.com, "Kiyoshi *Hirabayashi v. United States*, 320 U.S. 81 (1943)," Findlaw.com, <http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=CASE&court=US&vol=320&page=81> (accessed Nov. 20, 2007).

during the Civil Rights crusade.

The case of *Korematsu vs. United States* (1944) is another example, which shows the discrimination against the Japanese during World War II. Korematsu refused to report to one of the camps designated for Japanese Americans in World War II. The U.S. government feared that many Japanese Americans were collaborating with Japan, especially since the Pearl Harbor attack. A large population of Japanese-Americans resided in California and, because they were so close to the coast, they feared that this population was not properly assimilated and needed to be dealt with accordingly. Justice Black delivered the Court's opinion:

Like curfew, exclusion of those of Japanese origin was...necessary because of... disloyal members of the group, most of...whom...were loyal to this country. It was because we could not reject the...military authorities that it was impossible to bring...segregation of the disloyal from the loyal that we sustained the validity of the curfew...as applying to the whole...Temporary exclusion of the entire group was rested by the military on the same ground. The judgment that exclusion of the whole group was for the same reason a military imperative answers the contention that the exclusion was...group punishment based on antagonism to those of Japanese origin...There were members...who retained loyalties to Japan... Approximately five thousand...citizens of Japanese ancestry refused... unqualified allegiance to the United States and to renounce...the Japanese Emperor, and several thousand evacuees requested repatriation to Japan.²⁷

There was obvious bias against them because they were yellow-skinned and had small eyes, making them different from the majority American population. They could easily be identified and herded into camps with such distinguishing characteristics. During wartime, such restrictions were deemed valid because of the overall threat to national security. The Kerner Commission would conclude that this indeed was a gaping inequality that was not addressed until much later and, giving reparations to Japanese families more than forty years after the fact, with the passage of the Civil Rights Act of 1988, shows that the government still has a long way to go in addressing equal treatment of persons.

²⁷ Findlaw.com, "Toyosaburo Korematsu v. United States, 323 U.S. 214 (1944)," Findlaw.com, <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=323&invol=214> (accessed Nov. 20, 2007).

Rhoda Howard-Hassman asks the very question that if Japanese-Americans can receive some benefits, why have not African-Americans?

The horrors of slavery, the appalling segregation and violence of the Jim Crow era, and the continued discrimination since the 1964 Civil Rights Act are well known. One might ask why, if the facts are known, cannot African Americans received reparations? After all, Japanese Americans received reparations for their internment during the Second World War, a much shorter period of oppression with effects that, however tragic and immoral, affected far fewer people and to a much less harmful degree.²⁸

Another case that was decided towards the end of World War II was *Ex Parte Endo* (1944).

A Japanese American woman, Mitsuye Endo, was forced from Sacramento to a relocation camp and lost her job as a stenographer. She filed for habeas corpus to challenge her case. The court directly avoided the question of the constitutionality of her detention. Instead, the Court offered to release her outside of the West Coast area to avoid any conflict. Ms. Endo refused the offer and stayed confined for another two years while pursuing her case. The justices opined that Japanese could not be confined unless disloyalty was proven. The Court determined this issue to be more or less racist, and thousands of Japanese Americans were finally released. Justice Murphy provided a reasonable explanation in his concurring opinion, stating:

I join in the opinion of the Court, but I am of the view that detention in Relocation Centers of persons of Japanese ancestry regardless of loyalty is not only unauthorized by Congress or the Executive but is another example of the unconstitutional resort to racism inherent in the entire evacuation program. As stated more fully in my...dissenting opinion in *Fred Toyosaburo Korematsu v. United States*,...racial discrimination of this nature bears no reasonable relation to military necessity and is utterly foreign to the ideals and traditions of the American people.²⁹

²⁸ Howard-Hassmann, 823.

²⁹ Findlaw.com, "Ex Parte Mitsuye Endo, 323 U.S. 283 (1944)," Findlaw.com, <http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=CASE&court=US&vol=323&page=283> (accessed Nov. 20, 2007).

The aforementioned case involved a female and, furthermore, was deemed special because of her gender. Her case was heard as a result of questions relating to the 14th amendment and not directly from the detention itself. Unfortunately, releasing many Japanese after the fact could not make up for the suffering, losses, and other stresses faced by this population due to such discriminatory policies. The Court also did not help itself by waiting until the late 1980s to order the pay back of reparations to the affected families, as explained previously by Howard-Hassmann.³⁰

Moving from the “yellow peril” to the present-day idea of the “model minority,” this policy of targeting certain ethnic groups can be applied in recent times, and shows that the events of reconciling past ills (such as excluding certain groups) only happened after the fact and shows need for improvement. To illustrate the aforementioned statement, an examination of cases relating to college admissions is appropriate. In elite schools such as Stanford Law School, many East Asian families could not even be classified under affirmative action because of the stereotype of the “model minority” myth. As Brest and Oshige note:

Like many other law schools, Stanford seeks a student body that is both highly qualified and diverse in terms of culture, background, work and life experience, skills, and interests. In addition to using these amorphous criteria of diversity, the school has an affirmative action program that seeks to include the members of specified minority groups...Asian Americans are not included in the Law School’s affirmative action program. They account for about 9 percent of the student body, and the number seems on the increase.³¹

The problem remains that many preconceived stereotypes of East Asians exist under the model minority idea. These beliefs have been compounded by deep-seated racial prejudices that grew out of an early American psyche towards Asians as overachievers, which created the perception that East Asians were certainly not in need of any “assistance” in obtaining admission into schools. To

³⁰ Howard-Hassmann, 823.

³¹ Brest and Oshige, 855.

further complicate the issue was the 1978 *Regents of the University of California v. Bakke* case, where race quota systems were forbidden in college admissions while still maintaining a system of affirmative action. This inhibited many blacks and other minorities, such as East Asians, from opportunities of being admitted into colleges. Often the exclusion of certain groups from college admissions came with certain stereotypes about East Asians. Grace Tsuang notes here the common misconceptions presented about East Asians. Misconceptions, such as those held by college administrators, helped to contribute to such admissions criteria:

Some university officials argue that while Asian Americans score high on academic ratings, they perform less well on personal ratings. According to these administrators, Asian candidates tend to concentrate in the sciences or seek admissions to highly selective programs, are less well rounded, and generally score lower on non-academic qualifications. Each of these claims is based on questionable racial stereotypes.³²

Based on these difficulties, the Kerner Commission would truly be disappointed to know that today we still have such milestones to overcome, which include developing more inclusive affirmative action measures for all minority groups.

The Supreme Court has been tested over time, with a continuing evolution of cases, ushering in new challenges and unfamiliar populations that have not been addressed before. The country has historically made adjustments according to shifts in public opinion, with East Asians being no exception. No matter the time period, there will always be something amiss in the public eye, an issue that angers them and makes them wanton to target someone for their strife. America is a melting pot of sorts. However, when certain minority populations suddenly face the possibility of becoming targets because of historical events or unfortunate circumstances involving only a minute sample from similar religious sects or ethnic backgrounds, the rest of that group must bear the burden of possible unfair legislation. This is true, especially in times of war.

³² Tsuang, 663.

The exclusion of Chinese persons and the detention of Japanese Americans in World War II were merely a few examples in this paper, but, today we still face the struggle of correcting some of the wrongs we committed, not only to African Americans during the Civil Rights era and beyond, but now to the impending realization that companies have revealed evidence of justification for reparations involving insurance policies taken out by major corporations against former slaves.

Will we continue to deny due process to minority populations and simply cover up the past wrongdoings of politicians and justices in our legal system? Has the 40th anniversary of the Kerner Commission revealed improvements to our legal and economic system in promoting greater equality? Unfortunately, with such wide diversity of political opinion of the U.S. population, bigotry will continue to slip through the cracks in our legal system, and unfair targeting of minorities will continue as long as hate still survives in the country. Hasty decisions, for example, will still be driven to excess by ideologues in the heat of the moment, reducing some persons' rights, as issues regarding national security has shown. Hopefully, we can restrict any of these policies from developing into major Supreme Court cases or policies that must be overturned later, only after heartache and millions of dollars are delved out to impacted families as before. The major danger is that these restrictions have only repeated themselves over time and, there is no trend to continue finding legal loopholes or special ways of denying due process when it is felt to be necessary.

If America wants to become a true melting pot, it will find a way to incorporate the values of other societies, instead of just our own. The Kerner Commission's mission was to call for equal justice for all races, to discover the source of racial barriers, and to promote greater opportunity for all minority groups fairly. Realizing this dream of a melting pot will not stifle Americans, but will lead to growth and appreciation of other cultures for their diversity. This takes education on our part, but also willingness to work with concerned groups when major events do happen, before further damage can be done. Diversity councils can work with community groups and, in order for Americans to remain

sensitive to all persons, vision would assist this effort. In fact, if legal safety mechanisms are utilized to incorporate all persons and reduce the special wartime exemptions against restricting freedoms and those involving issues of national security, we may be able to begin to see the light at the end of the tunnel to true freedom on the other side.

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