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# THE RISE AND FALL OF AFFIRMATIVE ACTION

ANTHONY M. PLATT\*

On November 5, 1996 some 56% of California voters decided to endorse Proposition 209, the so-called "California Civil Rights Initiative," which if upheld by the courts, will eliminate what is left of state-based affirmative action policies. The day after the elections, Mario Savio died. The two events are quite interrelated, not only because Mario's last effort was to co-write with his son Nadav a defense of affirmative action and a critique of Proposition 209, but also because his life of activism corresponded with an extraordinary period of U.S. history.<sup>1</sup> Future historians might very well note 1954, the year of *Brown v. Board of Education*,<sup>2</sup> and 1996 as the markers of the rise and fall of the post-World War II civil rights movement. In order to understand the significance of Proposition 209, which in my view represents the end of a particular phase of the struggle for social equality, it is important to place its significance in historical context.

In this paper, I will first argue for a reconsideration of the way in which "affirmative action" is typically associated with issues of racial equality. A brief history suggests that affirmative action has a much longer association with class-based policies of redistribution. Secondly, I will examine the varied ways in which affirmative action policy operated in the aftermath of the civil rights movement, with special attention to its uses in higher education. Finally, I will comment on the likely impact of current political attacks on affirmative action.

## HISTORICAL CONTEXT

Affirmative action is typically associated with the civil rights legislation of the 1960s and the struggle of African Americans to break through the barriers of segregation and exclusion. But as a government policy, it has much deeper roots, going back in name to the 1935 Wagner Act which authorized the National Labor Relations Board to correct unfair labor practices. In one sense, affirmative action of the 1960s continued a long tradition

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1. NADAV SAVIO & MARIO SAVIO, IN DEFENSE OF AFFIRMATIVE ACTION: THE CASE AGAINST PROPOSITION 209 (1996).

2. 347 U.S. 483 (1954).

of Progressive Era and New Deal regulatory commissions, from the 1915 Federal Trade Commission to New York's 1945 State Commission Against Discrimination.<sup>3</sup> Today's critics of affirmative action, who represent this policy primarily in racialized terms, tend to forget this aspect of its history.<sup>4</sup>

By affirmative action, I am referring to government-initiated interventions to stop injustices against individuals or groups whose suffering is not self-inflicted; to correct the injustices caused by systemic discrimination; and to prevent its recurrence. This broad definition encompasses people who by virtue of their birth into a particular class, ethnicity, racial designation, gender, or sexuality are excluded or denied rights and entitlements that would typically be theirs if they were born white, male, and middle or upper class.

As a result of the institutional weaknesses of the labor movement and the lack of a sustained tradition of third parties, the modern United States of the last 150 years has the greatest class polarization and economic disparities of any comparable Western nation.<sup>5</sup> As Gary Wills has noted, wealth in the United States is "concentrated in fewer hands than at any time in our past — and in fewer hands than any other modern democracy tolerates."<sup>6</sup> However, during the last century, we can find several examples of class-based entitlement programs that used the power of government to open doors to previously excluded groups and to redistribute resources, jobs, and tax benefits. The affirmative action policies of the 1960s owe a great deal to the legacy of struggle over social insurance, public assistance, and the politics of entitlement. But prior to the successes of the modern civil rights movement, the limited beneficiaries of these programs were typically a small sector of white, working class and lower middle class men, as the following examples suggest.<sup>7</sup>

The first significant entitlement was forged between the Civil War and the Progressive Era when post-war pensions evolved from a restricted program for disabled veterans and the dependents of soldiers killed in military service into "an open-

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3. Hugh Davis Graham, *The Origins of Affirmative Action: Civil Rights and the Regulatory State*, 523 ANNALS AM. ACAD. POL. & SOC. SCI. 50 (1992).

4. See RICHARD J. HERRNSTEIN & CHARLES MURRAY, *THE BELL CURVE: INTELLIGENCE AND CLASS STRUCTURE IN AMERICAN LIFE* 447-77 (1994).

5. See, e.g., MARTIN CARNOY, *FADED DREAMS: THE POLITICS AND ECONOMICS OF RACE IN AMERICA* (1994).

6. Garry Wills, *Hating Hillary*, N.Y. REV. BOOKS, Nov. 14, 1996, at 12, 13.

7. See also, Troy Duster, *Individual Fairness, Group Preferences, and the California Strategy*, 53 REPRESENTATIONS, Summer 1996, at 41, 58.

ended system of disability, old-age, and survivors' benefits. . . .<sup>8</sup> But it was primarily white, male, northern veterans who benefited from these relatively generous pension rights gained after the Civil War. Women were excluded as non-combatants and most African Americans were denied pensions, either because they lived in the South or because of Jim Crow practices that prevailed throughout the country.<sup>9</sup>

A similar double-standard of racist and sexist practices for veterans was imposed after World War II when the 1944 GI Bill enabled some 7.8 million, mostly white, male veterans to afford higher education with the help of free tuition and supplies, a living subsidy (including additional payments for children), and low-interest loans for housing.<sup>10</sup> The GI bill, as former University of California President Clark Kerr noted, was a "new entitlement"<sup>11</sup> that heralded the "great age of federal initiatives."<sup>12</sup> By 1947, veterans accounted for almost 50% of all U.S. college enrollments, thus setting the stage for the upward mobility of Irish and other ethnic Americans into stable working class and public sector jobs, and Jews into academia and other professions. According to social historian Karen Brodtkin Sacks, "educational and occupational GI benefits really constituted affirmative action programs for white males because they were decidedly not extended to African Americans or to women of any race."<sup>13</sup> The few thousand African Americans who used the GI Bill to go to college were mostly tracked into segregated, inferior colleges. But when African Americans, Latinos and women entered the military in large numbers during and after the Vietnam War, this kind of preferential entitlement was drastically reduced, leaving the majority of servicemen and servicewomen close to the poverty line, with little possibility of upward mobility.<sup>14</sup>

The history of welfare policy in the United States is also characterized by class, racial, and gender distinctions that elevate

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8. THEDA SKOCPOL, *PROTECTING SOLDIERS AND MOTHERS: THE POLITICAL ORIGINS OF SOCIAL POLICY IN THE UNITED STATES* 102 (1992).

9. *Id.* at 138.

10. Michael Bennett, *The Law That Worked*, 75 *EDUC. REC.*, Fall 1994, at 7; Keith W. Olson, *The Astonishing Story: Veterans Make Good on the Nation's Promise*, 75 *EDUC. REC.*, Fall 1994, at 16.

11. Clark Kerr, *Expanding Access and Changing Missions: The Federal Role in U.S. Higher Education*, 75 *EDUC. REC.*, Fall 1994, at 29, 31.

12. *Id.* at 31.

13. Karen Brodtkin Sacks, *How Did Jews Become White Folks?*, in *RACE* 90-91 (Steven Gregory & Roger Sanjek eds., 1994).

14. Some 45% of enlisted men and women in the Army and 46% in the Marines currently earn less than \$20,000 per year. See Eric Schmitt, *As Military Pay Slips Behind, Poverty Invades the Ranks*, *N.Y. TIMES*, June 12, 1994, at A1, A24.

some programs (such as Social Security) into "rights and deserved benefits that increase a citizen's self-esteem and feeling of entitlement," while disparaging others (such as Aid to Families with Dependent Children) as parasitical and undeserved.<sup>15</sup> Typically, most women and most families of color either have been denied welfare benefits or provided with benefits that are both stingy and humiliating. For example, "mothers' aid" programs, established by state and local governments between 1910 and 1920 for single mothers with children, not only conditioned aid on the moral propriety of recipients, but also used a racialized means test: whites regularly received more money than blacks; and Mexican Americans in California were excluded as undeserving.<sup>16</sup>

While the New Deal was the first national policy of social insurance, designed to protect individuals against the vicissitudes of a chaotic labor market, Roosevelt's program contained no specific, anti-racism measures, other than the promise that economic renewal would benefit everybody.<sup>17</sup> In practice, however, the New Deal's "universal" policies reinforced the racial divide by functioning, in the words of Norman Birnbaum, as a "gigantic affirmative action program" for white working and lower middle class men, especially Jews and Catholics, to get a leg up into the professions and better paying jobs.<sup>18</sup> The Social Security Act of 1935, for example, de facto excluded African Americans and Latinos by denying benefits to servants and agricultural workers. During the 1930s, 90% of black women worked in these two occupations. Only about 10% of employed black women "derived any direct benefit from the new federal policies relat[ing] to minimum wages, maximum hours, unemployment compensation, and social security."<sup>19</sup> Race and sex discrimination in wel-

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15. LINDA GORDON, PITIED BUT NOT ENTITLED: SINGLE MOTHERS AND THE HISTORY OF WELFARE 302-03 (1994) [hereinafter PITIED BUT NOT ENTITLED]. See also, JILL QUADAGNO, THE COLOR OF WELFARE: HOW RACISM UNDERMINED THE WAR ON POVERTY (1994); Gwendolyn Mink, *The Lady and the Tramp: Gender, Race, and the Origins of the American Welfare State*, in WOMEN, THE STATE, AND WELFARE 92-122 (Linda Gordon ed., 1990).

16. PITIED BUT NOT ENTITLED, *supra* note 15, at 37-64.

17. Ira Katznelson, *Was the Great Society a Lost Opportunity?*, in THE RISE AND FALL OF THE NEW DEAL ORDER, 1930-1980 at 185, 199 (Steve Fraser & Gary Gerstle eds., 1989). See also, Barton J. Bernstein, *The New Deal: The Conservative Achievements of Liberal Reform*, in TOWARDS A NEW PAST: DISSENTING ESSAYS IN AMERICAN HISTORY 263 (Barton J. Bernstein ed., 1969).

18. *Race and Racism: American Dilemmas Revisited*, SALMAGUNDI at 4, 17 (1994) (Statement of Norman Birnbaum).

19. JACQUELINE JONES, LABOR OF LOVE, LABOR OF SORROW: BLACK WOMEN, WORK, AND THE FAMILY FROM SLAVERY TO THE PRESENT 199 (1985). See also, MICHAEL B. KATZ, IN THE SHADOW OF THE POORHOUSE: A SOCIAL HISTORY OF

fare policies often operated together, notes Linda Gordon. For example, "New Mexico relief workers rationalized discrimination against Hispanic women by arguing that they, unlike Anglo women, needed to stay in their homes to care for families because of their cultural traditions."<sup>20</sup>

Similarly, the New Deal's public works programs, which provided millions of jobs for the unemployed, primarily benefited white men. Of the 1.6 million collecting work relief in 1934, only 11% were women. Women who managed to get hired were typically assigned to "stereotyped, tedious, low-wage jobs," like sewing factories,<sup>21</sup> while African American women and Latinas were lucky if they could find janitorial work. In some areas of the country, local functionaries in the Works Progress Administration laid off women and men when there was a demand for domestic servants or agricultural workers. And in the 1930s, thousands of Chicanos were forcibly "repatriated" to Mexico in order to save welfare costs.<sup>22</sup>

Other New Deal legislation and subsequent amendments, operated within the assumptions of gender and racial discrimination. The 1935 Wagner Act<sup>23</sup> was in effect "the Magna Carta of white labor" because it permitted racial exclusion in labor contracts, a policy that continued well into the 1970s.<sup>24</sup> Similarly, the 1934 National Housing Act<sup>25</sup> created social policies that justified and perpetuated segregated and inferior residential patterns. A later act of 1949<sup>26</sup> and the policies of the Federal Housing Authority from the 1930s through the 1950s, backed up by "red-lining" banking practices, ensured that residential segregation was enforced and whites only benefited from suburban subsidies and tax breaks.<sup>27</sup> Public housing policies in the 1960s further

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WELFARE IN AMERICA 244-45 (1986); JOHN H. EHRENREICH, *THE ALTRUISTIC IMAGINATION* 100 (1985).

20. PITIED BUT NOT ENTITLED, *supra* note 15, at 198.

21. *Id.* at 194.

22. *Id.* at 192-99; BONNIE FOX SCHWARTZ, *THE CIVIL WORKS ADMINISTRATION, 1933-1934*, at 216-17 (1984); MIMI ABRAMOWITZ, *REGULATING THE LIVES OF WOMEN* 283-87 (1988).

23. National Labor Relations Act of 1935, Pub. L. No. 74-198, 49 Stat. 449 (1935) (codified as amended at 29 U.S.C. §§ 151-69 (1994)).

24. Duster, *supra* note 7, at 46.

25. National Housing Act of 1934, Pub. L. No. 73-479, 48 Stat. 1246 (1934) (codified as amended at 12 U.S.C. §§ 1701-1750(g) (1994)).

26. Housing Act of 1949, Pub. L. No. 87-171, 63 Stat. 413 (1949) (codified as amended at 42 U.S.C. §§ 1441-1490 (1994)).

27. Duster, *supra* note 7, at 46-47; Sacks, *supra* note 13, at 92-97.

reinforced segregation by locating projects within ghettos and barrios, and by refusing to enforce integration.<sup>28</sup>

### EXPANSION AND CONTRACTION

Affirmative action as we know it today — “any measure,” to quote the 1977 U.S. Commission on Civil Rights, “beyond simple termination of a discriminatory practice, adopted to correct or compensate for past or present discrimination or to prevent discrimination from recurring in the future”<sup>29</sup> — has its roots in the civil rights and feminist struggles that were sustained on many fronts from the early 1950s to the mid-1970s. Rather than initiating affirmative action, this movement expanded its beneficiaries and toughened its enforcement policies.<sup>30</sup> For the first time in sixteen generations (with the brief exception of Reconstruction), African Americans no longer were required to live in slavery or enforced legal segregation,<sup>31</sup> and for the first time in U.S. history, particularly as a result of Title IX of the 1972 educational amendments to the Civil Rights Act, women’s right to equal opportunity was backed up by the power of the federal government and law.<sup>32</sup>

Affirmative action is a complex interrelation of policies involving Supreme Court decisions, executive orders, and administrative regulations that transformed social convictions into government action. Part symbolic, part very practical, affirmative action stands for the recognition that racism and sexism are systemic inequalities, requiring sustained, long-term, ongoing policy initiatives if they are to be alleviated. Affirmative action was a hard won redistributive measure based (like virtually all government entitlements or subsidies) on preferential group policies. Its landmark components include the 1954 Supreme Court case of *Brown v. Board of Education*,<sup>33</sup> which reversed the 1896 case of *Plessy v. Ferguson*<sup>34</sup> and the doctrine of “separate but equal”; President Kennedy’s 1961 Executive Order 10925,<sup>35</sup> which for the first

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28. DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID* (1993); ROBERT D. BULLARD ET AL., *RESIDENTIAL APARTHEID: THE AMERICAN LEGACY* (1994).

29. U.S. Comm’n on Civil Rights, Statement of Affirmative Action 2 (1977), William L. Taylor & Susan M. Liss, *Affirmative Action in the 1990s: Staying the Course*, 523 ANNALS AM. ACAD. POL. & SOC. SCI. 30, 31 n.1 (1992).

30. Taylor & Liss, *supra* note 29, at 30; Graham, *supra* note 3, at 50.

31. JANE LAZARRE, *BEYOND THE WHITENESS OF WHITENESS* 103 (1996).

32. Graham, *supra* note 3, at 61.

33. 347 U.S. 483 (1954).

34. 163 U.S. 537 (1896).

35. 26 Fed. Reg. 1977 (1961) (Executive Order 10925).

time linked the phrase "affirmative action" to civil rights enforcement policy; the 1964 Civil Rights Act, the 1965 Voting Rights Act, and subsequent civil rights legislation; and the establishment of regulatory hiring goals and timetables in the 1970s during the Nixon administration. During this period, the Supreme Court ordered tough remedies in cases involving even non-intentional but institutionalized patterns of discrimination, and the federal government did more than ever before to ensure active, vigilant enforcement by regulatory agencies of civil rights laws.<sup>36</sup>

Affirmative action, as it was developed and implemented after President Kennedy's Executive Order, had a rather brief existence. The high point, I would argue, lasted at most 14 years, from the 1964 Civil Rights Act to the 1978 *Bakke* case,<sup>37</sup> though its consequences were felt well into the 1980s. In this period, we should not underestimate the profound changes that took place in one generation of race and gender relations. What made affirmative action effective was not the policies alone, but the political and social pressures that forced the various branches of government to live up to their commitment to end institutionalized racism and sexism. The civil rights and women's movements educated millions about the history and consequences of inequality and mobilized the powerless to make the most of their newly won rights; moreover, they brought many activists into the machinery of government to ensure that affirmative action policies were put into practice.

Academia, which for so long had been a white, old boys' club (with the occasional presence of an extraordinary Anglo woman and segregated, inferior black colleges for African American intellectuals), was especially impacted by affirmative action. Graduate programs in the mid-1960s, like the one at Berkeley where I did my doctoral degree, were still almost exclusively white and predominately male. But the next decade of activism and government intervention made quite a difference: for example, between 1970 and 1990, the number of African American college graduates more than doubled; between 1964 and 1994, the number of female Ph.D.'s increased more than ten-fold; and with the ensuing diversification of the faculty, the canon was opened up to new ideas and, in some disciplines at least, the uni-

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36. Taylor & Liss, *supra* note 29; Graham, *supra* note 3; David B. Oppenheimer, *Understanding Affirmative Action*, 23 HASTINGS CONST. L.Q. 178 (1996).

37. *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978).



versity began to approximate what it is supposed to be: a marketplace of ideas.<sup>38</sup>

At its best, affirmative action was a democratizing process in academia, used not only to “compensate for past wrongs,” but also to make university life into a “public site of cultural exchange, one in which the practice of equality is brought to bear on intellectual work.”<sup>39</sup> What I have called the high point of affirmative action (1964-1978) involved broadly inclusive policies and programs that played an important role in beginning to transform academia from a guild-like club (exclusive, selective, hierarchical and nepotistic) into a much more democratic institution. These changes were made possible by four kinds of affirmative action programs, most of which have long ceased to exist.

First, for the first time in U.S. history, class-based entitlement and welfare programs associated with the “war on poverty” included as direct beneficiaries African Americans, Latinos, poor women of all colors, and other under-represented groups. Government funding of public education, health and nutrition programs, as well as community development programs for inner cities, made it possible for previously excluded populations to make it through high school and into higher education and/or better paid working class jobs. During this 1964-1978 period, affirmative action did not only benefit more privileged African Americans, Latinos and women, as Orlando Patterson has suggested.<sup>40</sup> Jobs and possibilities also opened up in unions, the public sector and other areas that a decade earlier had been off limits to all but white men.<sup>41</sup> Since 1980 at least, these programs have been gutted, making it all but impossible for millions of members of what is sometimes referred to as the “underclass” to achieve any kind of upward mobility. Over twenty years of roll-backs in public health, welfare, and education programs have made sure that affirmative action is no longer linked to class-based, economic entitlements. The “war on poverty” has been replaced by a “war on the poor” that condemns more and more

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38. Anthony M. Platt, *Beyond the Canon, With Great Difficulty*, 20 SOC. JUST., Spring-Summer 1993, at 72; DEBORAH J. CARTER AND REGINALD WILSON, *MINORITIES IN HIGHER EDUCATION* (1994); LAWRENCE L. LEVINE, *THE OPENING OF THE AMERICAN MIND: CANONS, CULTURE, AND HISTORY* (1996).

39. Judith Butler, *An Affirmative View*, 53 REPRESENTATIONS, Summer 1996, at 74, 78.

40. Orlando Patterson, *Affirmative Action, on the Merit System*, N. Y. TIMES, Aug. 7, 1995, at A2.

41. QUADAGNO, *supra* note 15, at 69, 86-87; Duster, *supra* note 7, at 56.

poor people to jail, prison, the illegal economy, part-time work, or a mostly dead-end career in the military.<sup>42</sup>

Secondly, at its high point affirmative action provided opportunity and support for previously excluded groups to apply to and move into formerly hostile institutions. In higher education, this took the form of aggressive outreach and recruitment, "bridge" and remedial programs, and other programs that provided psychological, cultural and technical encouragement. Some universities, for example, developed summer workshops to prepare under-represented students for the social and educational pressures ahead. Many of these programs also recognized that intelligence is multi-faceted, flexible, and deeply affected by social and economic contexts; that a capacity to do well in a university can not always be judged by past educational performance in standardized tests or grades, especially when local schools lack the will or resources to bring out the best in students.<sup>43</sup>

Some of these programs remain, but most have been cut or abandoned, not so much as a result of changes in affirmative action policies, but rather as a result of economic cuts in the public sector and the increasing costs of higher education. What remains of these affirmative action programs is under threat with the passage of Proposition 209. Most public universities have less resources for anything that is considered experimental or incidental to the basic educational program. Moreover, these affirmative action programs are in serious jeopardy given the current politico-legal climate which is quite hostile to services that target special populations, such as tutoring programs for women and students of color in the sciences.

Thirdly, at its high point affirmative action put enormous political, legal and regulatory pressures on previously exclusive institutions to diversify their business contracts, admissions and promotions. Universities, for example, were forced to comply with affirmative action if they wanted to continue receiving direct and indirect economic support from the state and federal governments. This compliance was enforced by very concrete measures, such as quotas, set-asides, goals, and timelines. Without quotas (which I will use as shorthand for these measurable policies), I do not think that we would have made any significant progress in diversifying academia. Given that the old boys' club

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42. QUADAGNO, *supra* note 15, *passim*; FRANCES FOX PIVEN & RICHARD A. CLOWARD, *REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE* (1971); Anthony M. Platt, *The Politics of Law and Order*, 21 *SOC. JUST.*, Fall 1994, at 3.

43. *See, e.g.*, JONATHAN KOZOL, *DEATH AT AN EARLY AGE* (1967); JONATHAN KOZOL, *SAVAGE INEQUALITIES: CHILDREN IN AMERICA'S SCHOOLS* (1991).

had hardly changed in over a century, it would take more than goodwill and promises to make profound changes in the organizational culture of a previously racist, sexist, segregated, lily-white, male-dominated institution.<sup>44</sup> Remember it wasn't until after World War II that prestigious universities were forced to allow more than a token Jew on the faculty.

Quotas made it possible to track an institution's changes and effectiveness. Moreover, they required institutions to "go on the record" and publish their intentions, as well as respond to the demands of various constituencies. Administrators had to say how and when they planned to get from A to B. Promises had to be backed up with demonstrable results. To begin to change and integrate the institutional fabric of previously monolithic organizations would not have been possible without this kind of enforcement, exemplified by court-ordered sanctions and the withholding of government funds.

At least since the *Bakke* case in 1978, the Supreme Court and federal government have backed away from the kinds of proactive affirmative action policies that assume the existence of institutionalized racism and sexism, and put the burden of proof on institutions to concretely demonstrate that they are moving towards diversity and equality. We did not need Proposition 209 to get rid of enforced quotas. They are long gone.<sup>45</sup>

Fourthly, affirmative action has been used inside institutions to make them gender and color-friendly. In the university, for example, it has not been enough to begin to diversify the composition of the students and faculty. Much more is required to shake up ingrained customs in campus policies, programs, curricula, and relations. Universities that are serious about affirmative action have taken steps to establish affirmative action officers and procedures; to fund educational equity committees; to advocate and promote changes from a monocultural to multicultural curriculum; to establish and support departments and programs of Ethnic and Women's Studies; to diversify public space and cultural life, from food services to artistic representations and entertainment; to establish multicultural sites for mediating race/gender tensions and providing workshops and programs that educate the campus community about racism, sexism, homophobia, and other prejudices.

These kinds of affirmative action programs vary from campus to campus, depending on the commitment of each administration and the level of grassroots activism practiced by students,

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44. Platt, *supra* note 38, at 72-81.

45. Oppenheimer, *supra* note 36.

staff and faculty. In California's public universities and colleges, there has been a relatively strong commitment to this aspect of affirmative action. With passage of Proposition 209, these programs are now at grave risk because the legislature may withdraw funds from programs that target special populations and administrators may voluntarily eliminate such programs out of fear of "reverse discrimination" suits.

### THE FUTURE

If you think that institutionalized racism, sexism and classism are no longer serious, structural problems in the United States, and that all that remains of these inequalities is individual prejudice, then you might argue that we no longer need policies of affirmative action.<sup>46</sup> The evidence, however, suggests otherwise. In the critically important areas of public housing, health and education, we are returning to a highly segregated, separate and unequal, racialized society. The devastating economic polarization of the last twenty years, aggravated by a malign neglect of the public sector, has hit hardest at employment, and public resources in African American, Puerto Rican, Chicano, Latino, Afro-Cuban, Haitian, American Indian, South-East Asian and poor white communities, and disproportionately at immigrants, women and children.<sup>47</sup>

When you look around at institutions of higher education, especially community and state colleges in California, you initially see considerable diversity. If you think that universities have done as much as is possible to diversify our students, faculty, curricula, and public discourse, then you might argue that affirmative action is no longer needed. What you see is accurate — California has the most diverse population, work force, and student body in the country. But look closer and you will find that this diversity generally stops as you climb the ladders of power. Walk on any campus these days and you will see a large number of employees of color, but over 80% of them work in clerical, support, or maintenance positions.<sup>48</sup>

We reached the high point of affirmative action in higher education some 15 years ago. To those who think that diversity is now the norm in academia, let me remind you that about 87% of

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46. See, e.g., DINESH D'SOUZA, *THE END OF RACISM: PRINCIPLES FOR A MULTICULTURAL SOCIETY* (1995).

47. Anthony M. Platt, *No Easy Road to Freedom: Remapping the Struggle for Racial Equality*, 22 SOC. JUST., Fall 1995, at 13-16.

48. DEBRA L. SCHULTZ, *TO RECLAIM A LEGACY: ANALYZING THE "POLITICAL CORRECTNESS" DEBATES IN HIGHER EDUCATION* 51-52 (1993).

all full-time faculty and some 90% of all full professors are Anglo. White males represent 59% of all full-time faculty and, in some departments, their over-representation is even greater —73% of Engineering, 71% of History, 82% of Philosophy, 70% of Economics. Close to 93% of all academics who have received Humanities doctorates since 1942 and are still active in their fields, are Anglos. Almost half of African American faculty still teach in historically black colleges. White females are still under-represented (28%) in full-time faculty and over-represented (40%) in part-time faculty; that of 57,000 tenured academics in the United States only 255 are Latinas; and that most curricula and textbooks have barely begun to diversify their contents.<sup>49</sup>

Affirmative action, as we knew it in the 1960s and 1970s, has virtually disappeared. Unless reversed by the courts, Proposition 209 will eliminate what remains of its government-endorsed policies in California and encourage advocates of “reverse discrimination” to sue any institution or administration that retains a voluntary commitment to equity and diversity. It will not be enough to reverse Proposition 209. To continue the long journey to equality that we began some thirty years ago will require the renewal of a civil rights movement that, at its best, fought simultaneously and inclusively for class, race and gender-based policies of affirmative action. But we will also need to develop new models of social change that take into account the profound shift to the right in the political climate; the unprecedented demographic transformation taking place in states like California; a much more complicated alignment of constituencies, criss-crossed by issues of race, class, gender, sexuality, and disability; and a struggle for racial equality that, more than ever before, involves multiple and diverse struggles not only over economic access and upward mobility, but also over immigration policies, citizen rights, language, and cultural diversity.

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49. CHRON. HIGHER EDUC., ALMANAC ISSUE (1996); LINDA INGRAM ET AL., HUMANITIES DOCTORATES IN THE UNITED STATES: 1993 PROFILE (1995); LEVINE, *supra* note 38; Beatriz M. Persquera & Denise A. Segura, *With Quill and Torch: A Chicana Perspective on the American Women's Movement and Feminist Theories*, in CHICANAS/CHICANOS AT THE CROSSROADS: SOCIAL, ECONOMIC, AND POLITICAL CHANGE 243 (David R. Maciel & Isidro D. Ortiz eds., 1996); LINDA J. ZIMBLER, FACULTY AND INSTRUCTIONAL STAFF: WHO ARE THEY AND WHAT DO THEY DO? (U.S. DEPT. OF EDUCATION 1994).