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AFFIRMATIVE ACTION AT SCHOOL AND ON THE JOB

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■ **Abstract** Affirmative action (AA) addresses individuals' exclusion from opportunities based on group membership by taking into account race, sex, ethnicity, and other characteristics. This chapter reviews sociological, economic, historical, and legal scholarship on AA. We first consider the emergence of group-based remedies, how protected groups are defined, and proportional representation as a standard for inclusion. We then summarize the research on AA in education (including busing) and in employment. The concluding section reviews societal responses to AA, including attitudes, challenges, and political responses. As public and judicial support for AA has waned, employers and educators have increasingly turned toward diversity as a rationale for including underrepresented groups. Despite this change, many employers and educators continue to take positive steps to include minorities and women.

INTRODUCTION

In the 1960s and 1970s, policy makers responded to the Civil Rights movement and the pervasive race discrimination that had produced it by implementing programs to foster minorities' inclusion in major U.S. institutions. In K-12 schools, these included court-ordered busing and magnet schools. Selective public and private colleges and universities voluntarily implemented race-based outreach, explicitly considering race in admission and funding decisions. Governments at the city, state, and federal levels set aside a proportion of public contracts for minority- and female-run firms. Executive orders (EOs) required government contractors and government agencies to assess and address minorities' and women's underrepresentation. Some employers not covered by these regulations voluntarily undertook positive steps to make jobs accessible to a wider range of workers. Restrictions on congressional redistricting sought to end practices that had excluded blacks from the political process. Although these activities involved different actors operating in different societal spheres using different tactics and under the auspices of different regulatory bodies, all represented positive actions to promote racial and gender inclusion. In short, all constitute affirmative actions.

Affirmative action (AA) involves the "remedial consideration of race, ethnicity, or sex as a factor. . .in decision making. . ." to integrate institutions (Leiter & Leiter 2002, p. 1). Organizations pursue AA by changing how they distribute scarce opportunities, sometimes directly redistributing those opportunities in part on the basis of membership in an underrepresented group. Observers distinguish between "hard" and "soft" AA. The former directly considers group membership in allocating opportunities; the latter increases inclusion without taking race or sex into account (Malamud 2001). A more useful classification by Oppenheimer (1989) better reflects the range of affirmative activities. At one extreme are strict quotas that make race or sex a deciding factor. At the other are affirmative commitments not to discriminate. Between these are preference systems that give minorities or women some edge over white men; self-examination activities in which organizations review whether and why minorities or women are underrepresented in certain slots, and if they are, how to achieve a more balanced representation; and outreach plans that increase minorities' and women's representation in the pool from which applicants are chosen. AA activities are also classified by whether they were mandated or voluntarily implemented and whether the organization is a public or private entity—distinctions with implications for which practices are permissible.

This chapter reviews sociological, economic, historical, and legal scholarship on AA.[1] We begin by considering the emergence of group-based remedies, and conclude with societal-level responses to AA. In between we summarize research on AA in education and employment, the two largest AA efforts in the United States.

Although AA in both education and employment aims to foster minorities' and women's inclusion in domains that had been closed to them, they differ in fundamental ways. AA in education resulted from the initiative of institutions of higher education whose leaders recognized that AA was a necessary part of their mission, and it relied primarily on race-conscious preferences. In contrast, AA in employment slipped into American life through the back door as the result of a series of politically motivated presidential EOs. Over time it has been shaped by federal statutes, judicial rulings, and administrative decisions and evolved into a variety of activities that rely primarily on race-neutral practices.

PROHIBITED CHARACTERISTICS AND PROTECTED GROUPS

Like antidiscrimination laws, AA aims to end discriminatory exclusion. The logic and implementation of the two approaches differ sharply, however. Legislators passed the 1964 Civil Rights Act (CRA) to end discrimination that "violate[s]

[1]Government agencies have also used AA in granting broadcast licenses, selecting juries, legislative redistricting, and other programs. For additional information, see Leiter & Leiter (2002), Skrentny (1996), and Swain (2001, pp. 325–27).

clear and uncontroversial norms of fairness and formal equality" (Sturm 2001). Antidiscrimination law provides a mechanism for recompensing individual victims and changing the behavior of discriminating organizations. It is enforced primarily through complaints by persons who believe they have suffered discrimination based on a prohibited characteristic, usually race, color, national origin, religion, sex, or disability (Reskin 2001, p. 580). Although law makers understood that the law's object was to end discrimination against people of color, the CRA's injunction against discrimination made discrimination against a white person or a black person on the basis of race equally illegal.

Shortly after Congress passed the CRA, President Lyndon Johnson issued an EO to ensure nondiscrimination against minorities by federal contractors. The enforcement agency interpreted Johnson's order as requiring contractors to take active steps to prevent discrimination. The EO obliged contractors to act preemptively to identify and eliminate discriminatory barriers (Graham 1992). Thus, whereas antidiscrimination laws offer redress to individuals after they experienced discrimination, AA regulations aim to protect members of groups vulnerable to exclusion, thereby preventing discrimination from occurring.

Creating Protected Groups

Although the primary objective of AA was to protect African Americans, Johnson's EO followed Title VII in creating other "official minorities" (i.e., protected groups). Thus, the CRA and the 1965 and 1967 EOs listed race, color, national origin, creed, and sex. Of course, these characteristics define groups that have been included (e.g., men) as well as excluded (e.g., women). Because the goal of the EO was to require federal contractors to actively protect members of groups that had customarily been excluded, the EO in effect protected Asians, but not whites; Mexican Americans, but not Italian Americans; women, but not men (Leiter & Leiter 2002). Groups' inclusion depended on whether they were "analogous to blacks" (Skrentny 2002, p. 90). This operationalization of the EO has precipitated resentment toward AA. First, AA challenged entitlements of members of groups that had been automatic (Brown et al. 2003). Second, "presumptively equat[ing]" membership in certain groups with disadvantage conferred AA benefits on all members of protected groups, regardless of whether they had personally been excluded (LaNoue & Sullivan 2001, p. 72). This presumption of disadvantage gave protected-group status to Hispanic and Asian immigrants who arrived after Congress had theoretically ended discrimination (Graham 2001). Thus, group-based AA among heterogeneous groups produced overly inclusive categories (Leiter & Leiter 2002, p. 3). In addition, some have argued that AA has largely benefited the most advantaged members of protected groups (or members of the most advantaged groups), persons who can succeed without AA (Wilson 1996). For example, Malamud (2001) claimed that selective colleges admit the best-prepared members of protected groups to diversify their student bodies with the minimal impact on academic standards. Few empirical studies have assessed this supposition (but see Leonard 1990; Brown et al. 2003, p. 25). Nonetheless,

concern exists that "when all members of minority groups are equally eligible for affirmative action, the best-off among them will prevail—and. . .African Americans will [probably] lose out" (Malamud 2001, p. 321). Certainly the proliferation of protected groups has enabled organizations to diversify while still excluding African Americans, the group for whom AA was designed (Skrentny 2002, chapter 4).

The growing number of protected groups has also contributed to charges of overinclusiveness (LaNoue & Sullivan 2001). Over time, Johnson's EO was amended to include the disabled and Vietnam veterans (Graham 2001). Scores of educational institutions and small government AA programs chose which groups to protect. For example, the Small Business Administration's (SBA) minority set-aside program included persons whose ethnic ancestry was Asian Indian and Indonesian, but excluded Afghans, Iranians, Jews, women, and disabled veterans. Although decisions reflect "racial and ethnic presumptions of. . .disadvantage" (LaNoue & Sullivan 2001), they are also influenced by bureaucratic convenience, political considerations, and advocacy-group pressure (LaNoue & Sullivan 2001, p. 73; Robinson 2001). Lobbying, however, is not sufficient. Jews, Poles, and Italians, as well as umbrella organizations for white ethnic groups, have actively sought official minority status, but gatekeepers have concluded that they were less disadvantaged than blacks, Hispanics, and women. Given AA's dichotomous framing of the included and the excluded, "national policy racialized ethnics as privileged whites" (Skrentny 2002, p. 314). People who resemble protected groups in their degree of disadvantage but are excluded from AA have been a significant source of opposition to AA (Malamud 2001, p. 320).

Assessing Exclusion

To quantify the extent of exclusion, researchers and administrators compare the proportion of a group included in a position or institution with its share of the eligible population. AA enforcement agencies often monitor the sex, race, and ethnic composition of organizations' members and encourage organizations to use this monitoring practice to assess any imbalance. In the early years of AA, the enforcement agency investigators viewed underrepresentation as indicating exclusionary practices and encouraged contractors to establish informal hiring quotas (Skrentny 2001, p. 89), although the Supreme Court banned the use of race-based quotas except under extraordinary circumstances (see Defining the Boundaries of Affirmative Action, below). However, the courts have upheld the use of disproportional representation as a standard to assess sex-based exclusion because it holds distinctions based on sex to a lower level of scrutiny. Thus, the courts have interpreted Title IX of the 1972 Education Act as permitting proportional representation as a standard for whether universities' athletic programs are free of sex discrimination (Leiter & Leiter 2002, p. 229). Proportional parity is problematic as a standard of exclusion, however, when the entities under examination are small because disparities can result by chance (Malamud 2001).

AFFIRMATIVE ACTION IN EDUCATION

Primary and Secondary Education

AA in education first appeared as busing. The Supreme Court's 1954 decision in *Brown v. Board of Education* struck down government-mandated, race-based school segregation. After years of foot dragging, the high court ruled in 1968 that school districts that had operated segregated schools had an "affirmative duty to take what[ever] steps" were needed to end racial discrimination (*Green v. County School Board*).[2] This decision led to busing children on the basis of their race to integrate schools. [Some districts implemented magnet schools, another form of AA (Leiter & Leiter 2002, p. 111).]

Although many school districts in both the South and the North obeyed desegregation orders by busing black students to predominantly white schools, and sometimes the reverse (Graham 2001, p. 66), busing was not popular. In 1974, the Supreme Court ruled that Detroit could not bus students across district lines to integrate its schools (*Milliken v. Bradley*). Within-district busing survived longer, but by the 1990s the courts ended court-ordered busing (Epps 2002; Orfield & Eaton 1996, p. 19–21) (see, for example, *Riddick v. School Board of City of Norfolk* 1996; *Board of Education of Oklahoma City v. Dowell* 1991; *Freeman v. Pitts* 1992; *Missouri v. Jenkins* 1995), and some courts banned racial preferences in admissions to elite or magnet schools (Freedberg 1997). Busing had reduced black students' concentration in predominantly minority schools (Thernstrom & Thernstrom 1997, pp. 323–28). However, desegregation efforts have now all but disappeared, and school segregation has returned to its pre-AA levels (Farkas 2003, pp. 1128–29; Orfield 2001, p. 32, table 9). Minorities have given up on trying to integrate public schools and now focus on increasing funding for predominantly minority schools (Van Slyke et al. 1994).

Higher Education

Until the 1960s, most college students were white Protestants from middle- or upper-class families (Bowen & Bok 1998, Lemann 1999, Orfield 2001, p. 4). In 1960, only 2% of students in northern colleges and universities were black (Coleman 1966, p. 443), and of the 146,000 African American college students, over half attended all-black colleges (Thernstrom & Thernstrom 1997, p. 389). The more prestigious the school, the fewer blacks on campus (Thernstrom & Thernstrom 1997, p. 390). Twenty-two states legally mandated racially segregated education, and ending segregation at some schools took a decade-long legal struggle.

[2]Congress granted federal funds to states to finance public schools contingent on substantial desegregation as measured by the percentage of minority students in majority white schools (Thernstrom & Thernstrom 1997, p. 320).

By the late 1960s and early 1970s, however, many selective schools[3] had undertaken AA, voluntarily recruiting students from underrepresented groups (Astin & Oseguera 2004, p. 322). Accrediting organizations for professional programs such as the American Association of Medical Colleges also encouraged campus AA (Skrentny 2002, pp. 168–69). Skrentny (2002, pp. 165–68, 171) attributed these efforts to university leaders' "fear of violence" given "black discontent" in cities and on campuses.

Race-neutral efforts for racial inclusion were not sufficient for more than token integration, partly because selective colleges and universities had recently begun requiring SAT or ACT tests for admission (Lemann 1999, p. 173). Because white and Asian applicants tended to outscore blacks and Hispanics (Jencks & Phillips 1998), standardized tests reduced blacks' and Hispanics' chances of admission. To prevent this from undermining AA efforts, selective institutions started treating race as a "plus factor" in admissions or reserving some slots for minorities (Bowen & Bok 1998). The University of California (UC), for example, created "special action" admissions with lower cutoffs for minorities (Douglass 2001, Skrentny 2002, p. 166). By the 1970s, racial preferences were the norm in selective schools and existed for nonblack minorities. White women were not included in most of these programs (except for athletics); ending sex discrimination had been sufficient to end women's exclusion (Skrentny 2002, p. 168).

However, race-based preferences by public universities violated the Equal Protection Clause of the 14th Amendment as well as Title VI of the 1964 CRA, which barred educational institutions from discriminating. In 1978, the Supreme Court addressed this issue in *Bakke v. Regents of the University of California*, a challenge to admissions at the UC Davis Medical School by a white man. The Court ruled that a public school could not give categorical preferences on the basis of race except to remedy past discrimination (Davis's Medical School was new). Justice Powell opined that diversity was a "compelling state interest," signaling that states could use AA to foster diversity, as long as they assessed each application individually. *Bakke* told other universities that racial preferences were legal and even provided a legal rationale for them. Thereafter, the use of race preferences increased (Douglass 2001, pp. 123, 127; Welch & Gruhl 1998).

The turning point for AA in higher education came almost 20 years after *Bakke*, in 1995 when the UC regents barred UC from taking into account race, religion, sex, color, ethnicity, or national origin.[4] One year later, Californians passed a referendum abolishing the use of these characteristics in public education or employment. Washington State voters followed suit in 1998, and in 2000 Florida ended AA in higher education. Meanwhile, the Federal Appellate Court for the Fifth District overruled *Bakke* after the University of Texas Law School's

[3]Selective colleges and universities are defined as those in the top quintile of selectivity in admissions standards.

[4]By this time, Congress had endorsed AA in education by authorizing scholarships targeted to women and minorities (Stephanopoulus & Edley 1995, section 10.1).

separate admissions standards for whites and minorities were challenged (*Hopwood v. Texas* 1996). Subsequently, the Supreme Court clarified its stance on race-sensitive practices in two cases against the University of Michigan. In a case against Michigan's law school (*Grutter v. Bollinger* 2003), the Court reaffirmed *Bakke*, holding that diversity is a compelling state interest that warrants transgressing from the Equal Protection Clause. However, in *Gratz v. Bollinger* (2003), it struck down the undergraduate school's practice of automatically adding points to minorities' admission scores. Thus, universities may consider race to enhance diversity, but only as part of individualized assessments of each applicant. States barred from using race-sensitive AA have sought ways to maintain minority enrollment. California, Texas, Florida, and Colorado took advantage of high levels of secondary school segregation in implementing plans that guaranteed admission to a fixed percentage of top-ranked graduates from every high school.

Some have proposed using class-based AA to preserve racial and ethnic diversity (Kahlenberg 1996). Class-based AA is legal and in keeping with a tradition of considering class in admissions, either in needs-based financial aid, the consideration of economic disadvantage in recruiting or admissions, or legacy preferences (Carnevale & Rose 2003). Public support for class-based AA depends on how it is structured. Only a minority of Americans support preference for a low-income applicant whose scores are "slightly worse" than those of a high-income applicant (Carnevale & Rose 2003, table 3.8). Although class-based AA would broaden educational opportunity and increase economic diversity, the racial composition of the poor means that it could not maintain the levels of minority representation generated by race-based AA (Kane 1998b; Wilson 1999, pp. 97, 99).

Impact of Affirmative Action in Higher Education

AA has substantially increased the numbers of students of color in selective colleges and universities (Holzer & Neumark 2000a; Leiter & Leiter 2002, p. 140), and whites' share—but not their numbers—of slots has fallen (Kane 1998b, p. 438). Nonetheless, black and Hispanic students remain underrepresented in selective institutions, and whites increasingly outnumber minorities among college graduates (US Bur. Census 2004).

Some observers have suggested that AA puts minority students in competition with better prepared whites, raising minorities' dropout rate (Cole & Barber 2003; Thernstrom & Thernstrom 1997, p. 388). In fact, attending more selective schools raises minorities' graduation rates compared with their counterparts at nonselective schools (Bowen & Bok 1998; Brown et al. 2003, p. 116). Also, schools that implemented stronger forms of AA had higher minority retention rates than schools whose implementation was weaker (Hallinan 1998, p. 749). After graduating, AA beneficiaries get good jobs and serve their communities at similar rates as whites (Bowen & Bok 1998; Kane 1998a, pp. 19, 43; Kane 1998b, p. 445).

One avenue for assessing the impact of AA is to examine the effect of eliminating it. After California and Washington voters ended race and sex preferences in

state-run education or employment, applications to UC and the University of Washington fell, apparently because the elimination of AA sent a negative signal to minorities regarding their welcome (Chambers et al. 2005, Wierzbicki & Hirschman 2002). Texas's post-*Hopwood* percentage plan lowered blacks' and Hispanics' share of admitted applicants 11 and 8 percentage points, respectively, despite substantial outreach. In addition, blacks' share and Hispanics' share of University of Texas enrollees fell by one fifth and one seventh, respectively (Tienda et al. 2003).

Two principal strategies have reduced the impact of banning racial preferences: expanding admissions criteria to incorporate applicants' personal challenges and background characteristics (Leiter & Leiter 2002, p. 155) and targeted recruiting. Both strategies are costly (as are individualized assessments of every application that *Gratz* requires). Leiter & Leiter (2002, p. 155) claim that universities have employed a third strategy: "deft fiddling." Sander (2003) hypothesizes that "back-door admission" allowed UC Berkeley to increase its number of minorities the year after California's ban on AA was implemented. Despite universities' back-door or front-door tactics, minority enrollments have fallen at schools that ended AA (Brown et al. 2003, p. 114; Leiter & Leiter 2002, pp. 155; Tienda et al. 2003).

Research on law schools indicates that AA has substantially increased minority representation in legal education and the legal profession (Lempert et al. 2000, Wightman 1997); that bar-exam passage does not differ for minorities admitted through AA and those accepted solely on the basis of their grades and LSAT scores (Leiter & Leiter 2002, p. 140; Alon & Tienda 2003); and that the post-law-school differences between these two groups are minor (Lempert et al. 2000). However, Sander (2004) claims that ending AA would increase the number of African American lawyers. Although fewer blacks would enter law school, he predicts that a higher proportion would pass the bar. Re-analysis of Sander's data led Chambers et al. (2005) to the opposite conclusion: Ending AA at elite law schools would reduce African Americans' representation from 7% to 1%–2% (lower if their application rates declined when they learned that they would be among a tiny minority). Chambers et al. (2005) project that if law schools stopped considering race in admissions, blacks would all but disappear not only from elite law schools but also from law faculty, federal law clerkships, and top law firms.

Affirmative Action in Higher Education and Diversity

In *Bakke* and *Grutter*, the Supreme Court concluded that states had a compelling interest in racial diversity in higher education. Corporate America, the military, and some academic associations submitted amicus briefs indicating their agreement. Of the little research that has examined the effects of diversity on students' educational experiences, some suggests that it benefits all students in their intergroup relations and ability to understand others' perspectives (Gurin 1999, Orfield & Whitla 2001, Whitla et al. 2003). According to a retrospective study of University of Michigan graduates, students who interacted with diverse peers had a greater sense of commonality with members of other ethnic groups, were more likely to have racially or ethnically integrated lives five years after graduating, and more

often reported that their undergraduate education had helped prepare them for their current job (Gurin 1999). The strongest evidence for the impact of diversity comes from an experiment in which white students were randomly assigned a white or minority roommate. Assignment to a minority roommate led to more contact and greater comfort with members of other races and more support for AA policies at the year's end (Duncan et al. 2003). These results are consistent with Allport's (1954) contact hypothesis, which holds that sustained, institutionally supported contact among people of different races reduces prejudice when these people are interdependent and of equal status. Diversity does not necessarily increase contact, however. Several observers have commented on racial segregation on campus, and a longitudinal survey of 159 schools indicates that increased minority presence on campus reduces white students' sense of community (Leiter & Leiter 2002, p. 151). In sum, although preliminary evidence suggests that diversity may affect students' attitudes, almost no rigorous evidence supports this conclusion (Holzer & Newmark 2000a).

AFFIRMATIVE ACTION IN EMPLOYMENT

Congress mounted an attack on race discrimination in 1964 when it passed the omnibus CRA. Title VII of the CRA prohibited discrimination on the basis of race, color, creed, or sex in all aspects of employment. The enactment of the CRA was acclaimed by the media as a huge victory for the Civil Rights movement, for Lyndon Johnson, and for African Americans (Graham 1990).

AA was created in a very different way, unheralded, and with few expectations. Since 1941, every president had banned race discrimination by federal (or defense) contractors through an EO, thereby repaying political debts to African Americans without a fight with Congress (Skrentny 1996). Johnson's 1965 EO followed this pattern; in fact, it simply copied a 1961 EO issued by Kennedy. Both orders required federal contractors to refrain from discriminating at every stage of the employment process and to take positive steps—that is, affirmative action—to ensure that they treated workers equally, regardless of their race.[5] Johnson's AA differed from Kennedy's in two important ways. First, in 1967, he amended his EO to include women as a protected group. Second, his administration established an enforcement agency—the Office of Federal Contract Compliance (OFCC, later OFCCP) that could debar contractors who failed to comply with AA requirements (although it rarely took such action).

AA is required of only a subset of employers. In the private sector, only large companies with substantial government contracts must practice AA; these employ about 30 million persons (Off. Fed. Contract Compliance 2002). [In comparison, Title VII applies to all employers with at least 15 employees, which covers an

[5]Kennedy also launched "Plans for Progress" to encourage employers to voluntarily pursue AA. The program's primary effect was to demonstrate that voluntary AA did not increase minorities' access to good jobs, at least in the early 1960s (Anderson 2004, pp. 64–65).

estimated 80 million employees (US EEOC 2004).] As is discussed below, many employers voluntarily practice some type of AA.

Since the late 1940s, federal agencies have also been under EOs requiring active steps to ensure nondiscrimination. Federal agencies took AA more seriously only after Congress passed the 1972 Equal Employment Opportunity Act, which required AA (Kellough 1992). In 2000, approximately 3.5 million federal jobs were subject to this law (US Bur. Census 2000). Additionally, state EOs and statutes require many state agencies to practice AA.

Defining the Boundaries of Affirmative Action

Permissible AA practices vary by the type of employer (public or private) and the authority under which AA was enacted. The legality of some AA practices differs across spheres and depends on its basis (race or sex). For example, although the Supreme Court has accepted diversity as a rationale for race-based AA in higher education, it is not clear whether diversity can be used to justify race-based AA in employment (Malamud 2001).[6]

A number of judicial decisions have helped shape the boundaries of AA in employment, and the changing political slant of the federal judiciary has affected which practices are legal (Reskin 1998). For instance, the Court has restricted most uses of hard AA in employment. It has ruled that private employers may voluntarily implement hard AA without violating Title VII, provided that the preferences are temporary and do not interfere excessively with the rights of members of the majority (*United Steel Workers v. Weber* 1979). The Equal Protection Clause subjects similar AA efforts by public employers to a higher level of judicial scrutiny. To justify race-based preferences, the Court requires a compelling state interest and a narrowly tailored remedy. In contrast, it holds remedial sex-based preferences to an intermediate level of scrutiny (see *Johnson v. Santa Clara County Department of Transportation* 1987; Malamud 2001, pp. 314–29). The Supreme Court applied strict scrutiny to AA in federal contracting in *Adarand v. Pena* (1995), overruling the use of race in awarding government contracts.

Judicial enforcement of Title VII has created the most controversial form of AA—court-ordered hiring or promotion quotas to remedy blatant and long-standing discrimination. Although court-ordered quotas are rare (Burstein 1991), they draw considerable attention. The Supreme Court has upheld such quotas as long as they are narrowly tailored, serve a compelling state interest, and take into account the rights of members of the majority (Bruno 1995, p. 13).

The legislative branch has also stepped in periodically to define or limit acceptable AA. During the 1970s, Congress endorsed AA by designating Vietnam

[6]An appellate court ruled against a school district that laid off a white rather than a black employee to maintain diversity among staff in one department (*Taxman v. Piscataway* 1997). Piscataway settled the case with the assistance of a civil rights organization rather than risk Supreme Court review (Malamud 2001).

veterans and the handicapped as protected groups. In the latter case, AA goes beyond increased outreach and recruitment to require that employers provide "reasonable accommodations" for the functional limitations of disabled workers (US Dep. Labor, Off. Disabil. Employ. Policy 2003).

Employers' Practices

The extra efforts that AA has required of contractors vary, ranging from conducting utilization analyses, outreach and recruitment, and active monitoring of employment patterns to—for a brief period in the late 1960s—using quotas. Since 1971, the OFCCP has required large nonconstruction contractors to annually produce AA plans based on a utilization analysis of their employment of women and minorities relative to the relevant labor pool. The plans must include goals and timetables for addressing substantial disparities revealed in the analysis (Bruno 1995, p. 8). Companies are not required to meet their goals, but if audited they must be able to show they made a good faith effort to do so.

Apart from what the courts bar and the EO requires of federal contractors, we know little about the practices employers include in any AA efforts (for fuller discussions, see Holzer & Neumark 2000b, Reskin 1998). The OFCCP provides little concrete guidance on what practices employers may use to reach their goals. Moreover, although federal contractors are expected to address groups' underrepresentation through outreach and training, Title VII forbids contractors from discriminating in favor of members of protected groups when making hiring or promotion decisions.

Summarizing employers' practices is further complicated by the fact that many noncontractors have voluntarily implemented a variety of soft AA practices (Edelman & Petterson 1999). Many employers who are not federal contractors advertise openings broadly and have formalized personnel practices (Dobbin et al. 1993, Holzer & Neumark 2000b, Kelly & Dobbin 1998, Konrad & Linnehan 1995). These largely race- and gender-neutral practices address sources of exclusion. Broadly advertising job openings, for instance, can avoid exclusion that stems from network recruitment and hiring (Braddock & McPartland 1997, Lin 2000, Portes & Landolt 1996).

The intensity of employers' AA efforts has varied with the politics of AA. The number of firms with AA or equal employment opportunity (EEO) offices grew in the 1970s and early 1980s (Dobbin et al. 1993). With declining political support for AA and increasing attention to the diversity of the future workforce, many employers replaced voluntary AA programs with "diversity management" (Ryan et al. 2002), and by 1998 three quarters of Fortune 500 companies had diversity programs and 88% tried to "hire for diversity in some way" (Ryan et al. 2002). Although diversity initiatives ostensibly move beyond race and sex, recruitment efforts are most often targeted at blacks, Hispanics, and women, and less at older workers or persons for whom English is a second language (Ryan et al. 2002).

The Impact of Affirmative Action in Employment

The limited knowledge of which employers practice AA and what they are doing in its name hampers assessing the impact of AA in employment. Also, AA's effects may be confounded with those of antidiscrimination laws and with increasing human capital among minorities and women. The bulk of research on the impact of AA has been quantitative and cross-sectional, although a detailed ethnography of AA in the Army showed how one organization created an effective program (Moskos & Butler 1996). Additional ethnographic studies of how AA is practiced in other workplaces would be illuminating.

The impact of AA in employment among federal contractors depends almost entirely on OFCCP's enforcement of the EO requiring AA. OFCCP enforcement has varied over the agency's lifetime, roughly coincident with presidential administrations. The effects of AA have also differed across protected groups. In the years from its birth to 1973, a period of weak enforcement, AA raised black men's—but not women's—employment in unskilled jobs in contractor firms relative to noncontractors (Heckman & Payner 1989, Leonard 1991, Smith & Welch 1984). Enforcement efforts escalated between 1974 and 1980, resulting in a rapid rise in the employment of black women by federal contractors (Welch 1989). Black men continued to be employed at higher rates by contractors than by noncontractors, and this difference showed up in white-collar and skilled craft jobs as well as blue-collar jobs (Leonard 1990, 1991). The wages of both black men and women rose in this period. Blacks' increased representation in white-collar and skilled craft jobs is consistent with AA's reduction in race and perhaps sex segregation. However, some employers have used race- and sex-based job assignments to cater to a minority or female market or clientele, creating occupational ghettos (Collins 1997, Durr & Logan 1997, Malamud 2001). This practice simultaneously opens jobs to the excluded and segregates them, ultimately limiting their opportunities (Frymer & Skrentny 2004, p. 722).

Further establishing that enforcement is necessary for effective AA, compliance reviews, explicit goals, and sanctions have been instrumental in increasing minority employment (Leonard 1990). Some employers have admitted that they would not have implemented programs "to increase fairness" without the risk of sanctions or the possibility of incentives (Hartmann 1996). With conservatives in the White House during the 1980s, enforcement declined, ending the advantage for minorities and women employed by federal contractors over those employed by noncontractors (Leonard 1990, Stephanopoulos & Edley 1995).

Underlying the strong effect of enforcement is the importance of organizational commitment to AA. Researchers have shown that the commitment of top leaders is a key determinant of AA outcomes (Baron et al. 1991). People in charge are positioned to alter organizational practices because they can influence the way things are done and obtain conformity through reward systems (Konrad & Linnehan 1995; N. DiTomaso, unpublished paper). Consider the Army's AA experience. The Army's commitment to racial equality throughout the ranks while maintaining

standards meant that it provided training to ensure that the persons it promoted were qualified. The dual commitment to standards and racial equality enabled the Army to achieve both, while winning acceptance of its AA efforts (Moskos & Butler 1996, pp. 71–72). In sum, AA has improved minorities' and women's positions in the labor market. Although the sources and estimated strengths of these effects have varied, they do not appear to have resulted from quotas (Leonard 1990) or come at the cost of lower productivity (Holzer & Neumark 2000a).

In addition to affecting workers' distribution across jobs, AA promoted changes in labor markets and employers' practices. Few employers changed their employment practices or implemented new structures in response to Title VII and AA until 1971, when the OFCCP imposed utilization analyses as a monitoring tool (Kelly & Dobbin 1998). Firms began to change after the OFCCP outlined how it would monitor contractors and the Supreme Court accepted the disparate-impact theory of discrimination in *Griggs v. Duke Power* (1972), which expanded the legal meaning of discrimination to include neutral employment practices with an unjustified and adverse impact on protected groups (Stryker 2001). They scrutinized personnel practices and created EEO and AA structures and practices. These included targeting recruitment and establishing special training programs for women and minorities (Kelly & Dobbin 1998). When government and judicial support for AA waned in the 1980s and 1990s, the structures remained initially because they rationalized employment decisions (Kelly & Dobbin 1998) and later because they served as tools to promote and manage diversity (Kelly & Dobbin 1998, Ryan et al. 2002). Importantly, as AA transformed organizations, it was increasingly "rooted in strategies to maximize the[ir] performance" (Frymer & Skrentny 2004, p. 721).

SOCIETAL RESPONSES TO AFFIRMATIVE ACTION

Attitudes About Affirmative Action

The creation of protected groups collided with the ideologies of equal opportunity and meritocracy (but see Berg 2001). As Patterson (1997, p. 148) puts it, many viewed AA as "collective remediation in a heterogeneous society traditionally accustomed to a highly individualistic ethic." Critics charge that in creating group rights, AA compromises the principle of merit-based allocation, discriminates against innocent persons, fosters inefficiency, harms its intended beneficiaries, and perpetuates racism by making color relevant (Leiter & Leiter 2002, p. 233; Thernstrom & Thernstrom 1997).

Levels of support for AA depend on the specific policy mentioned (Krysan 2000). Within employment, the degree of approval for race-conscious AA (i.e., racial preferences) is far lower than that for race-neutral AA (outreach, mentoring). Surveys that find little support for AA tend to ask about practices that are illegal and rare (Kravitz et al. 1997). For at least two decades, corporations have almost

universally supported AA because it protects them from discrimination lawsuits and because they see a need for a diverse workforce (Leiter & Leiter 2002, p. 86).

Because many white males are excluded from AA's benefits, we would expect racial differences in support for AA. Overall, whites are less supportive of AA than blacks. Support for racial preferences in hiring and promotion decisions is significantly higher among blacks than whites, and the race gap is even larger with respect to support for quotas in college admissions (Schuman et al. 1997). However, researchers have cautioned against exaggerating black-white differences in support for AA (Bobo 2001, Swain 2001, Wilson 1999). Disapproval of AA is not simply a matter of opposition to racial equality. The majority of Americans support racial equality, but support drops significantly if government intervention is involved (Schuman et al. 1997). However, Kinder & Sanders (1996) claim that the white-black gap in support for AA has widened. Contributing to the gap is the disparity in whites' and blacks' beliefs about how much blacks remain disadvantaged in American society (Davis & Smith 1996).

Although opponents frame their disapproval of AA in terms of fairness, survey data cast doubt on the claim that whites' opposition to AA stems from their commitment to meritocracy. The more committed whites are to the belief that hard work should be rewarded, the more positive their attitudes toward AA (Bobo 2001).[7] From analyzing social surveys, Bobo concludes that whites' opposition to AA resides in their sense of group-based entitlement. Group identification is consistent with the much greater support among blacks for AA for native-born blacks than for recent immigrants that Swain et al. (2001) observed in focus groups. Swain and colleagues also found that Latinos' level of support for AA was closer to blacks' and that Asian Americans' level was closer to whites'. As Patterson (1997, p. 159) argues, AA invokes the sense of group position for both excluded groups and groups that are already securely in: Both tend to support policies that will advantage them.

Others oppose preferences because they believe they harm beneficiaries (Steele 1991). Whether preferences reduce self-esteem depends on whether recipients of group-based preferences believe they were selected solely on the basis of their group membership. If they do, then beneficiaries' self-evaluations suffer. If beneficiaries believe they were selected on the basis of both personal merit and group membership, their self-esteem does not suffer (Major et al. 1994). Others, of course, may stigmatize individuals whom they believe are beneficiaries of preferences.

Although better information may not dispel the criticisms of many opponents, opposition to AA is based, at least in part, on several misconceptions. Most people are presumably unaware that different legal standards govern AA in higher education, federal contracting, and voluntary AA in employment. Across these spheres, the prevalence of race-conscious AA varies from considerable in higher education to minimal in employment. The visibility of race-conscious AA in higher education has probably led Americans to assume that AA in employment is also race

[7]Individuals who strongly supported meritocracy were less opposed to AA when there was evidence of discrimination (Son Hing et al. 2002).

conscious. The media and the public have largely ignored the differences between these various forms of AA (Duster 1998, Patterson 1997, Stryker et al. 1999), sometimes even equating AA and quotas (L. Bobo, personal communication).

The existence of open preferences for minorities has probably led whites to overstate AA's prevalence, to believe that AA limits their own opportunities, and to conclude that AA prioritizes minority group status over qualifications (Davis & Smith 1996, Reskin 1998, Royster 2003). Surveys show that Americans believe that minority preferences in employment are rampant (Davis & Smith 1996). This perception is not supported by either the law or the body of empirical evidence attesting to the persistence of race and sex discrimination in employment (Bertrand & Mullainathan 2004, Kirschenmann & Neckerman 1991, Pager 2003, Turner et al. 1991).

Public opinion can exert an important influence on political action (Burstein 1998). As we discuss below, politicians have manipulated public opinion and public misunderstanding about AA to further their interests.

Challenges to Affirmative Action

Opposition to AA has taken the form of legal activism, voice, and exit. Organized opposition, initiated by a small number of actors, has relied primarily on two tacks: judicial challenges and referenda to eliminate AA. Voter referenda ended AA in public employment and education in California and Washington but at the time of this writing have not succeeded in other states. Opponents have had some success in using the courts to challenge the explicit use of race in decision making by public agencies in apparent violation of the Equal Protection Clause. For example, the appellate court decision in *Hopwood* against the University of Texas and the more recent *Gratz* decision against the University of Michigan have been important precedents, influencing the admissions process at all public universities (Aldave 1999, p. 314). Indeed, in the wake of the *Gratz* decision, the threat of costly lawsuits prompted several public and private universities that had considered race for scholarships or academic enrichment programs to end such programs or open them to all comers (Malveaux 2004).

Organized opposition to AA should vary directly with its visibility and the number of people whom it has adversely affected. Consistent with this expectation, busing drew immediate and strong opposition. Relatively large numbers of people were affected, and opponents could literally see the policy in action. Cities implemented school busing without much protest except for Little Rock (where opposition was directed against integration per se) and Boston, which endured days of anti-busing demonstrations and violent protests (Lukas 1985, p. 259). More often, opponents mobilized, in the South, by transferring their children from public schools to "segregation academies," or, in the North, by moving to all-white suburban school districts. In addition, opponents began filing legal challenges shortly after busing's onset, some of which wended their way to the Supreme Court. Busing's ultimate demise in the 1990s resulted from whites' abandonment of urban schools for predominantly white school districts and from activist conservative

judges vacating earlier court-ordered busing, declaring districts unified (i.e., integrated; Orfield & Eaton 1996).

AA in university admissions did not produce many people who publicly identified themselves as having been harmed. Whites who had been rejected for admission faced the same problem that members of traditionally excluded groups encounter: not knowing whether their rejection was because others were better qualified or because of their race. Students apply to "safety schools" as insurance because they recognize that admissions at selective schools are highly competitive. Furthermore, because many majority students are admitted, protesting one's rejection is a public acknowledgment that one was not good enough. Finally, the number of majority group members displaced by AA is not large (Kane 1998b). Presumably for these reasons most legal challenges have been mounted by organizations rather than by individuals. The Center for Individual Rights (CIR), a conservative public interest organization, has filed most of the challenges to AA in academia, finding plaintiffs by advertising in campus newspapers and paying the litigation expenses (Stohr 2004; see also Zemans 1983, p. 700). CIR spokespersons indicate that they will scrutinize universities for deviations from full-file reviews. Given universities' commitment to preserve minority enrollments, further lawsuits seem likely.

Challenges to AA in employment reach the courts (and the media) through a different path. They are initially filed as discrimination complaints under Title VII of the CRA or state antidiscrimination agencies. Even at the complaint stage, just a small minority of race discrimination charges come from whites—between 1991 and 2001, just 6% (Hirsh & Kornrich 2005), and the EEOC rejected the overwhelming majority of reverse-discrimination complaints as unfounded (Blumrosen 1996). The low prevalence of race discrimination complaints by whites is consistent with the small proportion of whites who report having been harmed by AA (Davis & Smith 1996). A few cases that have gone to court have had the support of a union or a men's rights group (Faludi 1991), but organized opposition to AA in employment has emerged primarily in the political sphere.

Politicization of Affirmative Action

AA's basis in group rights can easily be translated into a political tool. The political influence of various ascriptive groups has created opportunities for politicians, and politicians have regularly tried to exploit AA for political gain by supporting or opposing it (Skrentny 2002, p. 86). As noted above, politicians have responded to pressure from various constituencies to be included as protected groups under AA programs.

In several other instances, AA has been used to polarize voters. Political calculations regarding his prospects in the 1964 election contributed to Johnson's commitment to AA (Skrentny 1996). Nixon supported a scheme known as the "Philadelphia Plan" in part because he saw a political benefit in implementing what amounted to hiring quotas for blacks in white-run unions in an attempt to divide the traditional Democratic base (Anderson 2004, p. 138). The ensuing controversy delivered the union vote to Nixon. Reagan ran for office partly on the

basis of his opposition to AA. Although he did not end AA for federal contractors, his administration did not enforce AA regulations.

Public opinion can also exert an important influence on political action (Burstein 1998). As discussed above, public attitudes toward AA are based in part on misperceptions about the content of AA policies. Politicians have occasionally contributed to the confusion about what AA actually entails, as when Senator Orrin Hatch (1994) equated AA with quotas:

> I want to emphasize that affirmative action means quotas or it means nothing. It means discrimination on the basis of race or sex. It does not mean remedial education [or] special programs for the disadvantaged. . . . It has nothing to do with equality of opportunity. . . . Affirmation action is about equality of results, statistically measured. . . . All distinctions [between quotas and "goals," "targets," and "timetables"] dissolve in practice.

Quotas figured prominently in the congressional debate over the 1991 Civil Rights Act, with President George H.W. Bush characterizing the legislation as "quota bills" (Stryker et al. 1999). Although the 1991 Act addressed AA indirectly, his characterization may have strengthened the equation of AA and quotas in some people's minds, laying the groundwork for the challenges that AA faced in the following years (Stryker et al. 1999). Despite explicit opposition, politicians have not launched a concerted campaign to eliminate AA. Instead, Reagan and his successors created a federal judiciary that has chipped away at AA, invalidating group-based preferences in public contracting and employment and restricting them in education. A wealth of excellent scholarship has traced the political history of AA (see, e.g., Anderson 2004; Belz 1991; Blumrosen 1993; Graham 1990; Skrentny 2001, 2002; Stryker 2001).

CONCLUSIONS

Substantial disparities remain among whites, Asians, Hispanics, and African Americans in the quality of colleges they attend, the proportions who graduate, their labor force participation and unemployment rates, their distribution across neighborhoods and occupations, and their earnings (Darity & Mason 1998; Jaynes & Williams 1989; Massey & Denton 1993; Reskin 2001, 2002). Social scientists have debated whether group-based AA is the appropriate way to address these disparities. Commentary on both sides is readily available (Bergmann 1996, Crosby 2004, Glazer 1975, Orfield & Kurlaender 2001, Patterson 1997, Sowell 1972, Thernstrom & Thernstrom 1997, Tienda et al. 2003). Most of the supportive commentary emphasizes persistent or even growing disparities. Commentators who oppose AA acknowledge that disparities persist, but they support other remedies (often increasing minorities' human capital) or argue that in overriding meritocratic distribution AA's costs outweigh the benefits.

In the early years of AA, government decision makers and judicial decisions viewed it as temporary. As antidiscrimination regulations eradicated discrimination

from U.S. institutions, they expected the need for AA to disappear. As AA integrated organizations, network recruitment would maintain inclusion. Better jobs for minorities would produce more competitive minority college applicants in the next generation. Over time the effects of helping provide initial access into these institutions would multiply.

Research does not support these scenarios. Many AA efforts have succeeded in opening new opportunities to women and minorities in both education and employment. However, these gains have often been contingent on active enforcement and administrative support of AA, neither of which has been consistently present for AA. Public schools became more racially integrated during busing but have now returned to their pre-busing segregation levels. Minority college enrollments increased with hard AA, but fell in states that abolished AA. Federal contracting firms provided better opportunities for women and minorities than noncontractors only as long as the OFCCP enforced the EO. California public agencies whose budgets depended on greater integration became more integrated at the same time that nontargeted agencies became more segregated (Baron et al. 1991).

Meanwhile, the terms of the debate have literally changed. Declining support for AA has led employers and universities to pursue the more innocuous goal of diversity. Although diversity programs may or may not seek to provide access to members of protected groups, like AA they emphasize group membership. In this respect, the debate over AA reflects fundamental tensions about the relationship between underrepresentation and inequality.

The intense attention to AA in the United States has diverted scholars from other countries' efforts to include the formerly excluded.[8] Several nations have implemented some form of AA, although many differ radically from American AA. This diversity both over time and cross-nationally can be seen as an extended natural experiment with substantial variation across spheres, protected groups, implementation, and public and political responses. Despite this wealth of information, Hochschild's (1995) assessment still holds: "[T]he debate over the empirical consequences of affirmative action. . .is striking for its high ratio of claims to evidence" (p. 100). There is every reason to believe that AA will be topical for some time to come. Both social science and public policy stand to gain from additional scholarly analyses.

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[8]See Darity & Nembhard (2000), Sowell (2004), Teles (2004) for discussions of AA in other nations. Space limits prevent our discussing AA in other societies.

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