
A Personal Odyssey Toward a Theme: Race and Equality in the United States: 1948–2009

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This 2009 Law & Society Association presidential address combines the personal and political to address issues relating to race relations in the United States. Combining narrative methods and quantitative data the article traces the roots of the author's commitment to racial equality and evaluates the degree to which over the past 60 years anti-black prejudice has diminished and black-white equality increased. The conclusion is that important progress toward black-white equality has occurred and prejudice is less of a barrier than it once was, but large gaps remain, and the progress achieved is fragile. Moreover, the greatest progress is in areas where the government has most strongly intervened, meaning that the racial jurisprudence of the current Supreme Court and conservative economic policies may present major impediments to further closing black-white gaps. Law and society scholars are urged to attend more to racial equality issues than they have in the past.

As President Barack Obama has by now learned, being president does not mean having everything one's own way, but some matters a president can influence. As LSA president, I suggested the theme of the 2009 Meeting: Law, Power, and Inequality in the Twenty-First Century.

They say that the personal is the political. In this talk I shall combine the personal and political with social science. I shall begin,

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In opening my Presidential Address I thanked numbers of people for they help they gave me and for their service to the Association. These include our Executive Office staff: Ron Pipkin, Lissa Ganter, Mary McClintock, and Judy Rose; the co-chairs of the Program Committees during my two-year term: Annie Bunting, Marie Provine, Nancy Reichman, and Joyce Sterling; past Presidents Malcolm Feeley and Howie Erlanger; *Review* editor Carroll Seron, new editor search committee chair Joe Sanders, and all those who served as LSA Committee chairs or Trustees during my term as president. I thank you all again.

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if you will indulge me, by sharing aspects of my life that shaped my commitment to racial equality—especially black-white equality—and ultimately motivated my choice of theme. I will then revert to my sociologist persona and say more about racial inequality, its persistence in the age of Obama, and the challenges continued inequality pose for law and society scholarship.

A Bit of Biography

My odyssey toward this theme begins, in a way, in 1935, when my parents were married in the midst of the Great Depression. For reasons I need not go into, my mother was from the start the family's principal breadwinner. She had a steady if low-paying job throughout the 1930s, while my father contributed commissions he received from cartoonists who used his ideas in their drawings.¹ In 1940, however, as the nation began to move to a war footing, he saw an opportunity to use his high school mechanical drawing to secure work as a draftsman, and he was invited to interview at New Jersey's Curtis-Wright Corporation. He left New York with high hopes but did not return home until midnight, having spent six hours wandering the city streets, feeling too devastated to tell my mother what had happened. The interview with the foreman had gone well, and my father was offered the job. But while they were completing the formal hiring process, the foreman, making small talk, asked my dad where his family was from. When my father said "Poland," the foreman asked if he was Russian Orthodox. "No," said my father, "I'm Jewish." Immediately, the job offer was withdrawn. "My men," said the foreman, "won't work with a Jew."

Fast forward some seven or eight years. I am five years old, and we are choosing sides in a game, playing eeny, meeny, minee, mo. It is not a tiger we are catching by the toe. The word was *nigger*. *Nigger* conjured up the image of a bogeyman in my mind, but the image was white. I must have heard the "N" word used; hence my association with a scary person, but how, circa 1948, could the image be white? This was possible because I had no experiences associating black people with the epithet. I do not recall ever hearing my father or mother use the "N" word,² and the town I grew up in was entirely white.

There are only two black people I recall from my early childhood. One is a woman we called Mame, a name that I now realize

¹ For example, a couple showing off their new baby says, "We named him 'Owen' after the bills." "Owen," coincidentally, is my middle name.

² Jews used a Yiddish term to refer to blacks, *schwartz*, but I don't recall hearing my parents use this term either, although I did hear it in extended family gatherings. But this term too had no racial association when I was young.

we probably gave her. She cleaned house, but I expect she was mainly hired to watch over me and my sister after school when my parents were working. I liked Mame, but the memory that sticks is that she listened to soap operas as she cleaned; and at six and seven I was an interested follower of *As the World Turns* and *The Young Dr. Malone*. One other memory remains vivid. One year, so she could give her son, who was about my age, a birthday party, my mother told Mame that after school she could take me to her home. The apartment was a flat, one floor up, perhaps above a store, and dimly lit. Entering I saw perhaps a dozen children sitting on the floor around the room's perimeter, all neatly dressed and all black. Although I was not made to feel unwelcome and participated in the birthday games, I felt I did not belong and knew I was there on sufferance. Surely being the only white in a group of black children was in large measure the reason, but I have had similar feelings as an adult when introduced into a group of white strangers with whom I have had little in common. The power of race is that it alone can suggest that one has little in common.

My family had little money, but even as a six- or seven-year-old I sensed that Mame's family was far worse off. Only in retrospect do I realize that she was leaving her own children to earn money caring for me.

The other black person I knew as a child was a Liberian graduate student who spent about 10 days one Christmas sleeping in our living room. The name I recall is Emmett Harmon. If, as I believe, he was the Emmett Harmon I Googled, he was one of two black students who graduated from Harvard Law School in 1950 and among the first blacks ever to graduate from HLS. I liked him a lot, and I felt he liked me. We talked about how some day he would be President of Liberia and I would be President of the United States. He probably knew what I didn't—that my dream job was then, and may still be today, an impossibility for a Jew.³

What I didn't know at the time was how Emmett Harmon came to stay with us. He had been invited by my uncle, who owned the furniture store where my mother worked, apparently as a favor owed some business associate. My uncle then asked my mother to host him because, he said, his neighbors in Nutley, New Jersey, would never stand for a black man, even temporarily, living among them. So Emmett never enjoyed my uncle's big house and large lot but had to decamp on the living room couch of

³ Emmett may have come close to realizing our mutual aspirations, for the Emmett Harmon who graduated from Harvard Law School became politically prominent in Liberia, although he is today best known as the chair of the election commission that corruptly threw an election to the brutal Samuel Doe.

our first-floor walk-up since our small apartment had only two bedrooms.

These were the only two black people I knew personally until I went away to college. I was, however, from about age 10 on, an avid reader of news, and the 1950s were a time of headline-grabbing racial ferment and liberation. I followed the stories on *Brown v. Board of Education* (1954), the Montgomery bus boycott, the Emmitt Till murder, and the troops sent to Little Rock. I am sure these stories helped shape my racial values.

I expect that growing up in the working- (aspiring middle-) class community of North Arlington, New Jersey, did as well. In my school the tough guys who were the disciplinary problems and who occasionally assaulted nerds like me were Italian Catholics. Our town, which was only a 15-minute bus ride from Newark and 25 minutes from New York City, had no black residents? This was no accident. When I was a senior in high school, it was rumored that a black family was going to move to our town, but the house they bought burned down before they could move in. When the editorial staff of our high school paper wanted to write an editorial deploring what had happened, our teacher advisers (or perhaps it was the school's principal) would not allow publication.

I will skip over most of the rest of my story except to say that my views on race were cemented at Oberlin, where, with Vietnam not yet an issue, the black struggle for integration was a (no dissent allowed) campus commitment. Perhaps because I graduated Oberlin not only before the Gulf of Tonkin incident, but also before the Watts (and subsequent) riots and the separatist appeal of the Black Power Movement, I left Oberlin a committed integrationist. I remain such to this day. Neither black nor white separatism contemplates a world I want to live in.

As a Michigan Law School faculty member I also had to confront race. Michigan began its affirmative action program in 1968, the year I joined the law faculty. I recall receiving exams during my early years on the faculty that led me to wonder if the writer should be allowed to graduate. Almost always the writer turned out to be a black student. But quite often the exam writer was a student whose class performance showed considerable lawyerly ability. I recall agonizing before I raised one student's grade from a low D to a C or C+. In a class of about 100, his exam was among the two or three worst I received, but his class performance placed him in the top 10 percent of all my students. As a young professor I questioned whether raising his grade to a passing level was legitimate. Today I think I probably didn't raise it enough.⁴

⁴ After about 1980, even when black students (and later Hispanic and Native American) turned in exams toward the bottom of the class curve, the exams were seldom of a

In the early 1990s I chaired a law school committee charged with rewriting the law school's affirmative action rules to ensure they were *Bakke*-compliant. This led a decade later to one of my most treasured career experiences, being a lead witness in *Grutter v. Bollinger* (2003), the ultimately unsuccessful suit brought to declare affirmative action in higher education unconstitutional. Equally satisfying was my involvement in a research project that David Chambers and Terry Adams had launched shortly before *Grutter* was filed. This project followed 27 cohorts of Michigan Law School graduates. Analysis indicated that, controlling for time since graduation, Michigan's black students, along with other affirmative action-eligible students of color, were every bit as successful in their careers as the school's white students despite their lower law school grades (Lempert et al. 2000). For reasons I never fully understood, the law school's defense counsel were not interested in presenting our findings to the trial court, but a group of student interveners were. I was thus the only person who testified for both the law school and the interveners.

I have other racially charged memories as well. One dark night, walking along a canal in Amsterdam during the Association's first international meeting. I saw two young black men, perhaps in their twenties, walking toward me. I had by then learned America's racial lessons too well and felt involuntarily fearful. Still, I was surprised when from about 10 feet away, one of them said, "Give me all your money or we'll kill you." Realizing they could not immediately grab me and thinking this was Holland and they would not have guns, I turned and ran. They laughed. I doubt, however, if this experience can explain my score on the IAT,⁵ nor will I reveal it. I will simply say that as a good liberal, I should be ashamed of what the test seems to say about my innermost attitudes on race, or at least I should be if seeming were reality.

quality that caused me to doubt a student's fitness for law practice. But I continued to see a disjunction, sometimes a huge one, between how well some black students performed in class and the exams they turned in. Stereotype threat, a phenomenon I once doubted, strikes me as at least part of the explanation (Steele et al. 2002).

⁵ The IAT or Implicit Association Test seeks to measure underlying attitudes by examining response times to paired stimuli under the theory that response times will be quicker when stimuli pairs are attitude congruent than when they are incongruent. Thus, it is hypothesized that a white person with underlying anti-black prejudice will take longer to respond when asked to link positively valenced adjectives with a black face and negatively valenced adjectives with a white face than when asked to link positives to whites and negatives to blacks. Responses to the IAT have been shown to correlate with other attitudes and behaviors that denigrate or disadvantage blacks, but the correlation is far from perfect. Although the most publicized use of the IAT has been to measure racial attitudes, it has been used to measure attitudes of many different sorts. To learn more about the IAT and to take the test go to <https://implicit.harvard.edu/>.

Speculations on Jews and Blacks

I believe that my commitment to racial equality is largely explained by four factors: my parents' lack of racism, growing up when and where I did, my experiences at Oberlin, and growing up Jewish. Among white Americans, Jews in the 1950s and 1960s were the most supportive of racial equality. Some died for this commitment.⁶ Growing up when I did, it seemed obvious that American Jews so strongly supported the civil rights movement because memories of the Nazi Holocaust and the experience of American anti-Semitism were ever-present. The Jewish worldview, colored by family tales of horror and injustice, created empathy for the condition of black people and overwhelming support of their struggle for freedom and equality. There was in my family only one right way to think about the black struggle. The Jewish commitment to racial equality and the empathy Jews had for blacks was genuine. If a people can be credited for collective virtue on an issue, I think that when the issue is American racism, Jews should be so credited.

But growing up, I also sensed a less pure motivation. I felt then and still do that the viciousness of anti-Semitism not only created empathy for a people seen as oppressed but also drove a commitment to black civil rights grounded in the need for self-protection. Jews of my parents' generation saw that no matter how prejudiced some Christians were against Jews and no matter how they disvalued Jewishness or sought to exclude Jews from the elite spheres of public life, Jews were not Negroes. Jewish people, they felt, would always be above black people in the social pecking order. Thus in supporting and even fighting for the rights of black people, Jews were insulating themselves from prejudice. The more rights black people had and the further they penetrated into white society, the more secure the rights of Jews would be and the greater their acceptance by white Christians.

This, I believe, is why in the late 1960s and early 1970s some Jews reacted so strongly and with such hostility—breaking long-standing commitments and coalitions—to the arguably, and in some instances clearly, anti-Semitic comments of a minority of self-appointed black spokespeople. This visceral response was not, in

⁶ Despite highly publicized statements and incidents that have stoked Jewish-black tensions, even today research indicates that Jews tend to be more supportive of equal rights for blacks and other minorities than other easily identifiable groups of whites. For example, Green (2004), examining survey data available at four-year intervals from 1992 to 2004, reports that at every survey point respondents identifying themselves as Jewish were more likely to support governmental action to aid minorities than were white Catholics, mainline Protestants, or evangelical Protestants. Indeed, except in 2000, the proportion of Jews supporting governmental affirmative action was closer to the proportion of black respondents supporting affirmative action than it was to the proportion of white respondents in any of the mainstream religions.

my view, a reaction to either the amount or virulence of perceived black anti-Semitism, nor was it solely a reaction to perceived ingratitude to a people who had been in the forefront of whites supporting the black freedom movement. Rather, or additionally, it stemmed from a sense that blacks were seeking to reverse the lower rungs of the ascribed social hierarchy. They were attempting to raise themselves from the bottom rung by supporting the anti-Semitic case for placing Jews there. It wasn't indignation that this perceived effort raised among Jews; it was a deep latent fear.⁷

Why was I not affected—two reasons I think. I grew up not just post-Holocaust but at a time when the Holocaust experience was so recent and so frightening that it was seldom discussed, at least not in front of the kids. Moreover, I never in my life have felt victimized by anti-Semitism. I also think it helped to be both a natural and trained sociologist. The sociological perspective distances one a bit from the emotion of social phenomena, as it feeds attempts to understand rather than to praise or condemn.

Possible Lessons Learned

I have used in my work both qualitative/narrative and quantitative methods, but will admit a slight bias toward the quantitative. Nevertheless, I think my story may have value beyond what it says about me, a subject few are likely to be interested in. If I can generalize from my experience, our deepest values are often shaped by childhood and growing-up experiences. Attempts to explain them through rational choice models that assume self-interest are not likely to take us far. Moreover, we cannot assume that situations we might deplore, like an all-white town that in some measure maintained its whiteness extralegally, will necessarily lead to behaviors and attitudes we deplore. Had the bullies in my school been black and not Italian Catholics, perhaps my attitudes would be different.⁸

My history is also consistent with research in psychology and cognitive neuroscience which suggests that apparently small causes may have large effects (Thaler & Sunstein 2008). I don't know if Emmett Harmon's brief visit profoundly affected my attitudes toward blacks, but I would not be surprised if it did. My sociological

⁷ I wish to be clear that the view I am presenting here is my view of the situation as I lived through it. If there is social science support for what I write, I am unaware of it, I have no confidence that my analysis is correct, but it is how I saw and see things.

⁸ We should also refrain from concluding that prejudice will not be fostered in children growing up in all-white communities. When I was a teenager, my peers occasionally used the "N" word or other racial references as insult or in degrading jokes. With no blacks present and with few blacks portrayed in the media, I think peer and family attitudes and ways of speech can strongly affect beliefs about black people.

biases lead me to think that unless President Obama can work a far larger change in the structure of social power and privilege than seems possible, his presidency will do little in the long run to alleviate racial prejudice or give blacks confidence that they can succeed. But I have begun to question these biases in the light of studies like those cited in *Nudge* (Thaler & Sunstein 2008) and the work of Steele and his colleagues on stereotype threat (Steele et al. 2002). Sociology may ignore important aspects of the human psyche that in the aggregate have important macro effects.

My story also tells me that there may be something to be said for “speech policing” of the kind that is condemned as PC (political correctness). For all I know, I encountered unspoken anti-Semitism or was cursed as a Jew behind my back, and it is even possible that I was, like my father, denied opportunities because I was a Jew. But my life was unaffected by any hate hidden from me, nor can I identify any opportunity foreclosed because of my religion. If people suppressed bigoted speech because it was not PC, I am grateful for what I never had to face.

This does not lead me to argue for interpretations of the First Amendment that would allow the state to ban racially or ethnically offensive speech without more,⁹ but I think a strong case can be made for the *social* enforcement of conventions like those that condemn use of the “N” word or seek to suppress expressions of prejudice on campuses, in the workplace, and in political life. The social condemnation of bigoted statements may not only make bigoted thinking less likely, but it also protects members of denigrated groups from the corrosive effects of feeling hated and the anger that accompanies mistreatment because of one’s race.

Social conventions may, however, be enforced with an excess of zeal, and this has characterized some promoters of anti-racist speech.¹⁰ By the same token, those most prone to hurl accusations of political correctness against people and institutions that seek to limit derogatory racial, gender, and religious speech can protest too much. Particularly in communal contexts like college cam-

⁹ Speech that is intended to harass specific individuals, or is so pervasive that it creates a hostile workplace or educational environment, or incites to violence can and should be barred, consistent with the First Amendment.

¹⁰ Efforts to eliminate Mark Twain’s *The Adventures of Huckleberry Finn* from school reading lists because the word *nigger* appears throughout is an example that should remind us of how mindless we can be when we fetishize words with offensive connotations. Anyone who reads *Huck Finn* should know that Twain was using the vernacular of the day and realize that the slave Jim was far from degraded by it. Not only is he a heroic figure, but Finn realizes and responds to Jim’s character, losing, as he saw it, but winning, in the reader’s eyes, his struggle with his received racialized view of the world. I also deplore instances where critics have sought to define a person’s racial attitudes or overall character because of a few statements, or even words, he has uttered when numerous actions contradict the attribution made.

puses, norms seen as enforcing political correctness are often more correctly perceived as norms of civility. One learns from childhood on that some things may be thought but should not be said to avoid harm or embarrassment to others. Enforced civility on campuses, in the press and elsewhere makes people uncomfortable, and it should make people uncomfortable, because it limits how we can think. Yet in the long run we, including those who would be uncivil, are likely to be better off if bigoted speech, and symbols of bigotry like the “N” word, are in most circumstances socially suppressed.¹¹

A Sociological Perspective

The many studies that trace apparently small psychic causes to much larger effects suggest that the election of Barack Obama as president may have ramifications for racial equality beyond any structural changes and wealth redistribution his administration might bring about. But I have not so far abandoned my sociological side as to think structural variables are irrelevant or that we will see a sea change in the position of blacks due to the election of a black

¹¹ Lest I be misunderstood, let me say that even without a First Amendment, I would oppose state action to enforce many of the norms that I think appropriate for informal communal enforcement. The danger that segments of society would capture the state and enforce their preferences is too great, and the sanctions available to the state are too severe for the uncertain good that might be done. Also I distinguish sharply between offensive epithets and bigoted remarks on the one hand, which I see as relating to civility, hurting people, and poisoning intergroup relationships while adding little of substantive value, and the search for or assertion of facts regarding race-linked performance and capacities, even though the latter may similarly hurt people or poison group relationships. I oppose, for example, social as well as legal sanctions for those who seek to determine empirically whether racial or religious groups differ on such sensitive matters as intelligence and violence proneness; nor, if differences were shown, would I reject testing hypotheses linking differences to genetic variables. It is not that no good may come from suppressing such research. Society might well be better off not knowing of certain group differences, particularly if they have genetic roots. For me the dangers from suppressing areas of inquiry, even the most sensitive, outweigh the hypothetical benefits of ignorance. I do, however, think that researchers exploring issues of racial inequality labor under a special burden to be sensitive to the harm that findings of differences, including the misinterpretation of valid results, can bring. This requires a commitment to doing the best possible science and a commitment to avoid overemphasizing or feeding those who would overemphasize the purport and immutability of discovered race-linked differences. Researchers should take particular care to distinguish between aggregate differences across races and the implications of these differences for individuals within races. The history of the social sciences extending back more than a century is replete with examples of research that reinforced notions of racial inequality but could not withstand scientific scrutiny. Many of these studies were done in the first half of the last century, but they continue, with some of the analyses and interpretations in Herrnstein's and Murray's *The Bell Curve* (1994) being the most prominent recent example. For a sample of criticisms, see Jacoby and Glauber (1995), Fisher et al. (1996), and Devlin et al. (1997). Perhaps the most fundamental failing of *The Bell Curve* and similar efforts is that even if their claimed results were unassailable, which they are not, they fail adequately to convey what differences identified imply at the individual level. The answer is “not much.” Almost regardless of the measure, variance within races is substantially greater than average differences across races.

president. The possibility that the movement toward racial equality will be thwarted by hard-to-eradicate inequalities is a clear and present danger.¹²

Elaborating on this theme, I shall turn from telling stories about the personal to a less idiosyncratic description of the political—the situation of black people in America today as visible in research and in statistics. (I could tell a similar story about members of other minority groups, but I think the issues relating to poverty and discrimination as they confront America today are best seen through the lens of the black experience.)

Visible Progress

In the United States today, blacks, as a group, are far better off than they were 62 years ago when President Harry S. Truman ordered the desegregation of the United States armed forces, the act that for me marks the beginning of the post–World War II movement toward racial equality. By any measure, whether it be income, wealth, education, job penetration, political office holding, or social acceptance, the situation of black people has improved dramatically over this period, both absolutely and relative to white persons. Perhaps the most dramatic recent sign of change is not the election of Barack Obama but the 2009 mayoral election in Philadelphia, Mississippi, the town made notorious in 1964 by the brutal slayings of James Chaney, Andrew Goodman, and Michael Schwerner. In that election, Philadelphia, Mississippi, chose its first black mayor. By itself this is not news; in many Mississippi towns black majorities have elected black mayors. What makes this news and a true marker of progress is that Philadelphia remains a majority white town.

The election of Barack Obama is, of course, the most visible marker, of how far we, as a nation, have come. But this does not mean that antiblack attitudes swayed no votes. Many who voted for Senator John McCain might have voted Democratic had race not been an issue. But if this happened, I expect it was more than offset by racially motivated black voter turnout. I see no other way to explain the outcomes in North Carolina and Virginia, for example.

The good news for me in President Obama's election is not that we have reached a point where black ethnic pride and loyalty (or

¹² As I read galleys more than a year after this address was given, I cannot help but think that in some quarters, race has been a factor fueling criticism of President Obama. If President Obama was not black, I wonder if we would be hearing so much about the “socialist” tendencies of this man who has alienated some liberals by his efforts to save and build capitalism or if the “birther” or “he’s not a Christian” fictions would have attracted so many adherents or lasted so long.

antiwhite sentiments) can counterbalance white ethnic pride and loyalty (or antiblack sentiments). Racially polarized voting has been with us for decades, and while it is a reality we must recognize, I don't like it no matter whom it favors. Rather, the good news in the election, as I see it, is that for many people, including people who harbor racial prejudices, race, even if it matters, is no longer a deal breaker, nor does it prevent seeing the racial other as a person. I don't see President Obama's success among blue-collar whites in Pennsylvania as signaling a revolution in racial attitudes such that other things being equal white blue-collar workers are as likely to vote for a black candidate as a white one. Rather, I see it as a sign that race did not obscure for many whites the fact that other things were not equal. In Pennsylvania, as in other states, the tide turned decisively in President Obama's favor only when the economy started to collapse. At this point, racially motivated voting was a luxury many whites did not think they could afford. Rather, they tried to determine which candidate would be better able to revive the economy and save their jobs, and they voted for that person.¹³

The Fragility of Progress

I not only feel good about 60 years of racial progress but I am also pleased by recent events, some of which would have been unthinkable even a few decades ago. Still, I am uncomfortable with the metaphor commonly used to describe and extrapolate from this progress: that "we have come a long way down the road to freedom and equality, although we still have a ways to go." This metaphor misleads in suggesting that achieving racial equality is now just a matter of continuing on a well-marked path, inevitably reaching the long-sought-after end. It downplays the degree to which progress toward equality has come in fits and starts, the role that law and policy have played, the danger that law may not just cease to be a force for progress but may actually impede it, the fact that progress has been experienced unevenly within black communities, and the potential fragility of much that has been gained should resource and job shortages come to characterize the next decades of the twenty-first century.

¹³ Senator John McCain deserves substantial credit for the limited impact of latent racism on the election. He never engaged in race baiting, nor did he allow his campaign to go far in this direction. He stayed on the racial high ground even after he must have known that his only hope for victory was to convert the election into a referendum on race and even though ammunition provided by the Reverend Jeremiah Wright might have made this a successful strategy.

Income

Data suggest the fragility and unevenness of progress. From 1970 until 1988, the median black household income in constant dollars actually fell by \$475, while white household income rose by \$1,044 (U.S. Bureau of the Census 1990: Table 717).¹⁴ Many black households became not just poorer relative to whites, as best we can measure the relationship, but also poorer in absolute terms. Medians, however, hide important movement. Examining earnings by race we see changes at both ends of the income distribution. At one extreme, the proportion of white households with incomes of less than \$5,000 (in constant 1988 dollars) dropped by 24 percent (from 6.6 to 5.0 percent) between 1970 and 1988, while the proportion of black households in this lowest income range increased by 11.6 percent (from 13.8 to 14.4 percent). At the other extreme of those earning more than \$50,000, the proportion of white households rose by 40 percent (from 15.8 to 22.1 percent) from 1970 to 1988, but the proportion of black households rose by 73.7 percent (from 5.7 to 9.9 percent) (U.S. Bureau of the Census 1990: Table 716). To put this another way, in 1970, the typical black household was about twice as likely as the typical white family to be earning less than \$5,000. By 1988, black households were more than three times as likely as white households to be in this bottom group. At the same time, in 1970, the highest earning black households were a little more than a third as likely as white households (36 percent) to have incomes above \$50,000. By 1988, they were about 45 percent as likely to be in this top bracket.

The overall picture for the years 1970–1988 thus indicates that the relationship between the income levels of white and black households within races and relative to each other were almost stagnant, and to the extent there was movement it was in the direction of increased inequality. But the overall pattern obscures differences in how segments of the white and black communities fared relative to each other. There is in these data a glimmer of the rise of a black upper-middle class, but this brings with it increased distance between the best- and worst-off black households.

When we look at more recent data, which tracks income changes between 1990 and 2006, a somewhat different picture emerges. In 1990, the median black household income in constant 2006 dollars was 59.8 percent of the median white household income (\$25,076 vs. \$46,705) (U.S. Bureau of the Census 2009: Table

¹⁴ In percentage terms, the median black household income in 1970 was 60.8 percent of the white median, while in 1988 it was 57.0 percent (U.S. Bureau of the Census 1990: Table 717).

669).¹⁵ Over the next 16 years median black household income rose by about 14.5 percent while median white household income rose by 8.5 percent, so that by 2006, black median household income was 63.1 percent of median white household income. However, in constant dollars, the gap between the median household incomes of whites and blacks had diminished by only \$72, enough perhaps for a dinner at the Olive Garden for a family of four.

Within these data there is, however another story—a story that testifies to the importance of government policy and the way economic growth is happening. Had the data ended in the year 2000, before President Clinton had been replaced by President Bush, black progress both absolutely and relative to whites would have been substantially greater. The median black household income in 2000 was 67.6 rather than 63.1 percent of white household income, and the earned dollar difference between the median white and black households at the turn of the millennium was not \$72.00 closer than it had been in 1990 but \$2,093. Moreover, both white and black households were better off than they were six years later, although during these six years the economy had seemingly continued to boom. In short, although it seems that between 1990 and in 2008 the gap between white and black household income was narrowing, that movement in fact reversed itself after 2000, and at least until 2006 it has been income inequality that is increasing.

The data also suggest the growth of a prosperous black upper-middle class. The proportion of black families earning \$100,000 or more in constant 2006 dollars rose by 59.6 percent between 1990 and 2006 (from 5.7 to 9.1 percent), and the proportion earning more than \$75,000 rose by 43.6 percent (11.7 to 16.8 percent). White households with more than \$100,000 in earnings also increased dramatically between 1990 and 2006, as the proportion in this bracket rose by 46.9 percent (from 13 to 19.1 percent). There was, however, only a 25 percent increase in the number of white households earning more than \$75,000 because there was no change in the proportion of white households in the \$75,000–\$99,000 range. (It was 11.3 percent in both 1990 and 2006.) At the other end of the scale there was a drop of 23 percent (from 31.7 to 24.4 percent) in the proportion of black households in the lowest income bracket—below \$15,000 in constant 2006 dollars. This decrease appears associated with the Clinton administration since there was a 4.9 percent increase

¹⁵ The figures in this paragraph and the next are taken from or calculated on the basis of information in Table 669, Statistical Abstracts of the United States (U.S. Bureau of the Census 2009). The data in this table are not quite comparable either internally or with the 1988 data because beginning with the 2002 data the white category represents only those people who reported their race as white and did not report any other race category, while the category labeled as black consists of only those who said they were black without listing any other race category.

in the proportion of black households in this lowest income bracket (from 22.3 to 24.4 percent) between 2000 and 2006. The proportion of white households in the lowest bracket also fell, but the drop was only 12.4 percent (from 14.3 to 13.4 percent), apparently limited by floor effects. As with black households the entire drop appears associated with the Clinton years, but unlike blacks the proportion of white households at the bottom did not increase between 2000 and 2006 (U.S. Bureau of the Census 2009: Table 668).¹⁶ So again we see signs of the importance of government policy and the potential fragility of black income gains both absolutely and relative to whites.

Finally, we see a picture indicating substantial progress, then stagnation, then more progress when we look at people below 125 percent of the poverty level. In 1959, 55 percent of all black households were classified as at or below 125 percent of the poverty level. By 1969, this percentage had diminished dramatically to 32.2 percent. In 1988, it was essentially the same—31.6 percent (U.S. Bureau of the Census 1990: Table 743).¹⁷ Beginning in 1994, however, the proportion of black households at or near the poverty level began to fall, reaching a low of 22.5 percent before rising, as noted above, to 24.3 percent in 2006.¹⁸ This is progress, but nearly one in four black households still had earnings at or below the poverty level even as the economy was booming for others in 2006, and the diminution of this proportion seems to have ceased and begun to reverse coincident with the beginning of the Bush administration.

¹⁶ The figures in this paragraph and the next are taken from or calculated on the basis of information in Table 668 from the Statistical Abstracts of the United States (U.S. Bureau of the Census 2009). The data in this table are not quite comparable either internally or with the 1988 data because beginning with the 2002 data the white category represents only those people who reported their race as white and did not report any other race category, while the category labeled as black consists of only those who said they were black without listing any other race category.

¹⁷ Table 743, 716, from the Statistical Abstracts of the United States (U.S. Bureau of the Census 1990). The figure for whites at or below 125 percent of the poverty rate fell from 18.1 percent in 1959 to 9.5 percent 10 years later. In 1988 it was 10.1 percent. In both cases a large part of the precipitous drop between 1959 and 1969 seems the result of migration from rural to urban areas and the implications this had for income.

¹⁸ Table 689, U.S. Census Bureau (2009). The data in this table are not quite comparable either internally or with the 1988 data because beginning with the 2002 data the white category represents only those people who reported their race as white and did not report any other race category, while the category labeled as black consists of only those who said they were black without listing any other race category. Also, and maybe more important, the coding of income was changed in 1994, coincident with falling rates of poverty level and near-poverty level persons. The figures for whites also reached their low (9.5 percent) in 2000 and then rose to 10.3 percent in 2006. Thus the proportion of whites who are poor by this measure has been virtually unchanged since 1969.

Wealth

If the income gap between whites and blacks is large, it is not nearly so large as the gap in wealth, a distinction highlighted by Oliver and Shapiro (1997) in their seminal work, *Black Wealth/White Wealth: A New Perspective on Racial Inequality*. Updating their figures, we find that in 2004 the average black household's wealth was only 19 percent of the white average, the same as it had been in 1983 (Mishel et al. 2006).¹⁹ Median figures show even larger disparities, as the median black household in 2004 had accumulated only 10 percent as much wealth as the median white household, a dismal proportion although up from 7 percent in 1983. Moreover, in 2004, 29.4 percent of black households had zero or negative wealth compared to 13 percent of their white counterparts. In dollars, the median wealth of black households in 2004 was \$11,800. The median wealth of white households was \$118,300. Looking just at liquid and semi-liquid assets, differences are starker still. The median black household's liquid financial wealth was \$300, while the median white family had a bit more than \$36,000 it could draw on (Mishel et al. 2006).

As the above data indicate, nonliquid assets account for the bulk of the overall white-black wealth disparity. These are mainly family-owned homes (U.S. Bureau of the Census 2001).²⁰ In 2005, 72.7 percent of white families owned their own home (up from 68.4 percent in 1979), but only 48.2 percent (up from 44.4 percent in 1979) of black families were homeowners (U.S. Bureau of the Census 2001). This difference is not entirely attributable to the lower incomes of black households. As numerous studies have shown, blacks have faced more difficulty in securing mortgages than whites with similar earnings and credit histories, and when mortgages were available interest rates or other loan conditions were often more onerous than what similarly situated whites received. Thus the equity blacks had in their housing grew more slowly than it did for whites (Hunter 1995; Munnell et al. 1996; Ross & Yinger 2003; Urban Institute 1999). Moreover, blacks were often steered to housing in black or "changing" neighborhoods where housing values were lower and increased at slower rates (Rusk 2001). Nor is costly discrimination a thing of the past. Although the definitive studies remain to be done, it appears that during the housing and refinancing boom that kicked off the

¹⁹ These data and the data on home ownership below were compiled by Mishel and his coauthors from a variety of sources, and their figures may differ from figures in sources that calculate wealth somewhat differently. But no matter what the source, the pictures told by the data look much the same.

²⁰ The U.S. Bureau of the Census has estimated that as of 1995, about 44 percent of American household net wealth resides in housing equity (2001:vii). The other large contributor to nonliquid wealth is automobiles.

twenty-first century, black homebuyers were more likely than similarly creditworthy white buyers to have been steered toward sub-prime loans, and the wealth losses attributable to steering threaten to be catastrophic (Oliver & Shapiro 2008).

Wealth differences by race create inequalities that are not easy to overcome. Recent data indicate that 24 percent of white households inherit money compared to only 11 percent of black households. Moreover, the average white heir inherits almost four times as much as the average black heir (\$115,000 vs. \$32,000; Wolff 2000). Thus the differences that discrimination in housing markets has created tend to perpetuate themselves not just due to differences in what wealth allows families to buy (e.g., better schooling) but also in direct wealth transfer across generations.

Differences in wealth are not the only differences between blacks and whites that affect prospects for racial equality, although they are correlated with and almost certainly contribute to (but do not entirely explain) other inequalities. In 2007, for example, 70.8 percent of non-Hispanic whites under 65 had employer-provided health insurance, compared to 51.6 percent of blacks (Mishel et al. 2009).²¹ These insurance differences contribute to other differences, including black infant mortality rates that were 234 times higher than white rates in 2004 (Mishel et al. 2009). Indeed, evidence is accumulating that stresses associated with racism contribute directly to poor health outcomes among blacks (Drexler 2007; LaVeist 2000; Wyatt et al. 2003).

Crime

Crime is another area where black-white inequality persists. Not only are blacks disproportionately likely to be arrested and imprisoned, but they are also disproportionately likely to be victims of crime. The Bureau of Justice Statistics found that as of 2001, 16.6 percent of all black males had spent at least some time in a state or federal prison. The comparable figure for white males is 2.6 percent (Bonczar 2003: Table 5).²² Although these ever-incarcerated rates are almost double what they had been 27 years before, the ratio of blacks to whites with prison experience is virtually unchanged from what it had been in 1974 or in 1991, for that matter. The ever-incarcerated rate for black females is far lower, 1.7 percent, but this is still many times the white female rate of 0.3 percent. Breaking incarceration rates down by age, the proportion of males ever imprisoned peaks in the 35- to 44-year-old group, where more than one in five black males (22 percent) has spent

²¹ Both figures were about 5 percent lower in 2007 than they had been in 2000.

²² The figure for Hispanic males is 7.7 percent.

time in prison (Bonczar 2003: Table 7). Perhaps not coincidentally, people of this age were entering or in the peak years of initial crime involvement at the time the Reagan administration was beginning its war on drugs.

The picture is similar if we look at a recent point-in-time snapshot. As of December 31, 2007, 3.1 percent of black males ages 18 and older were under state or federal jurisdiction for having committed a crime. The figure for white males is 0.5 percent. For women the rates are 0.15 percent for blacks and 0.05 percent for whites (West & Sabol 2009: Appendix, Table 8). Moreover, about 7.5 percent of black men in the 25- to 34-year-old age group were either incarcerated or, if in the community, under state or federal authority. This proportion is more than six times the figure for white males (West & Sabol 2009: Table 11). Numerically, as recently as 1990, there were more whites than blacks under state or federal jurisdiction, but by 1995 this situation was reversed for both men and women.²³

Do the imprisonment data suggest that discrimination exists in our criminal justice system? Discrimination is hard to prove, but it is difficult not to reach this conclusion. In every year from 1970 through 2007, the FBI reports that between about two-thirds and three-quarters of all those arrested for crimes reported to the FBI are white. In most years fewer than 30 percent of those arrested are black (FBI 2008: Tables 32–43a).²⁴ Although the black arrest figures for gambling offenses, homicides, and robbery are higher than white arrest figures, in most years differences tend to be numerically small and, except for the first five years of the time series, white violent crime arrests exceed black arrests, in the most recent years by more than 150,000. If discrimination accounts for at least some of the disparity between the black and white arrest and incarceration figures, it could be located in prosecutorial decisions, in the quality of counsel, in bail-setting and meeting bail requirements, or in sentencing, among other areas. I leave the task of identifying the source(s) to others.

²³ For women the numbers are very close, and whites under supervision were in the majority (by 300 people) in 1997. If we just look at inmates being held in state or federal prisons or local jails from 2000 through 2008, black males outnumbered white males by more than 100,000 prisoners in all years but one. Black female prisoners outnumbered white females by a few thousand in 2000 and 2001, but then white females pulled ahead and outnumbered black female prisoners by about 27,000 by 2008 (West & Sabol 2009: Table 16).

²⁴ The FBI reports, unlike the prison data, do not separate Hispanic from non-Hispanic whites, though they do include separate categories for Asians and Pacific Islanders and Native Americans. Presumably most arrested Hispanics would be classified as white, but the data are such that there could not be enough white Hispanic arrestees to account for the black-white imprisonment difference.

In examining victimization, we see that blacks are more likely than whites to be victims of violent crime, though interracial differences in victimization rates are far smaller than differences in the rates at which people are arrested and punished. Although blacks are, relatively speaking, considerably more likely than whites to be victims of violent crimes, the absolute difference in rates in recent years has been below 1 percent, down somewhat from the still small differences that characterized most years before 2000 (Maston 2010).²⁵ The similarity in violent crime experience no doubt reflects the fact that most violent crime is intraracial, and when it is not blacks are more likely to victimize whites than vice versa. It may also reflect a differential willingness to report crime.

Employment

Turning to employment, the pattern of black disadvantage persists. Black unemployment rates rise and fall with white unemployment rates, but in every year from 1972 through 2007, black unemployment rates were not just higher than white unemployment rates, they were more than double.²⁶ Thus in 2000, when unemployment was at a 35-year low, the white unemployment rate stood at 3.5 percent and the black unemployment rate was 7.6 percent. In 1982, the worst year for white unemployment, 8.8 percent of whites were looking for work, an uncomfortably high proportion but far less than the 18.9 percent of blacks who were similarly searching (Bureau of Labor Statistics 2008: Table 9).²⁷ These ratios do not vary much controlling for gender. Moreover, although blacks in 2007 made up only about 12 percent of the civilian labor force, they accounted for a much higher share of marginally attached workers (25 percent) and discouraged workers (33 percent; Bureau of Labor Statistics 2008: Table 9).²⁸ Belying the stereotype of black women who have children in order to live off welfare, in every year from 1996 through 2006,

²⁵ For example, the National Crime Victimization Survey indicates that in 2007, the victimization rate for whites was about 2 percent and for blacks about 2.4 percent (Bureau of Justice Statistics (2008), Table 4). In 2006, the figures were 2.3 and 3.2 percent, respectively (Bureau of Justice Statistics (2008), Table 4). In 2005, they were 2 and 2.7 percent (Bureau of Justice Statistics (2008) Table 5).

²⁶ Massey (2007) makes the point that the estimates of black unemployment that follow are downward biased both absolutely and in comparison to whites, because they are confined to those in the civilian work force, thereby excluding imprisoned blacks. Massey also points out that the black unemployment rates are in part inflated because of the special difficulties that job seekers face when they have prison records.

²⁷ The worst year for black unemployment was not 1982 but 1983, when 19.5 percent of blacks in the labor force were seeking work. The comparable figure for whites that year was 8.6 percent (Bureau of Labor Statistics 2008: Table 9).

²⁸ Marginally attached workers are those who have looked for a job sometime within the preceding year but not within the preceding month. Discouraged workers are workers not looking for work because they believe no suitable work is available.

black women with children were more likely to be in the labor force than white women with similarly aged children. This difference is especially pronounced, often exceeding 10 percent, when children are under 6 years old (Bureau of Labor Statistics 2008: Table 8). Only when women have no children or children older than 18 are employment rates for black and white women more or less identical.

When unemployed blacks looked for jobs, it took them in 2007 about half again as long as it took whites to find work: 11.1 weeks versus 7.9 weeks (Bureau of Labor Statistics 2008: Table 8). When blacks did find work, they disproportionately had to settle for low-skill, low-paying jobs. Although blacks accounted for about 11 percent of workers in 2007, they constituted 34 percent of those working as nursing aides, 30 percent of those working as security guards and bus drivers, and 24 percent of those working as corrections officers. Moreover, only 21.4 percent of black teenagers ages 16 to 19 held jobs, compared to 38 percent of white youth (Bureau of Labor Statistics 2008:1). At the other extreme, 22.3 percent of black men were in relatively high-skill, high-paying, professional management and related occupations, but this was only two-thirds of the proportion of white men with such jobs,²⁹ and blacks in these positions earned on average substantially less than whites.³⁰ Among women there is greater interracial parity, as 31.2 percent of black women working in 2007 were in professional, managerial, and related positions compared to 39.5 percent of white women (Bureau of Labor Statistics 2008: Table 4).

Although a racial gap persists, the figures on professional and managerial employment reveal substantial progress. In 1972, only 10.4 percent of black men held such positions compared to 28.3 percent of whites, and although their employment in these areas increased at a faster rate than that of whites, these positions constituted only 13.8 percent of black male jobs in 1980 compared to 31.4 percent for whites (Westcott 1982: n.p.). The proportion of white males in professional managerial jobs remained at about 1980 levels in 2007, but the proportion of black male workers in such positions had increased by almost 62

²⁹ The exact figure for whites was 33.2 percent (Bureau of Labor Statistics 2008: Table 4).

³⁰ Overall, blacks in these positions had weekly earnings that were about 75 percent of the earnings of whites. The data do not indicate whether this is because of seniority/experience effects or the kinds of jobs blacks held within these larger job categories, or for other reasons. Job type no doubt plays some role because the job category in which average black earnings are closest to those of the average white (86 percent) is community and social service occupations, which is also the lowest-paying job category. But generally speaking, wage differences that approximate the overall difference persist regardless of job category (Bureau of Labor Statistics 2008: Table 14).

percent (Bureau of Labor Statistics 2008: Table 4).³¹ For black women, the proportion in professional, managerial, and related positions increased from 12.7 percent in 1972 to 17.2 percent in 1980, while the proportion of white working women with such jobs went from 19.7 percent to 24.4 percent (Westcott 1982: n.p.). By 2007, the proportion of women of both races in such positions had increased dramatically, but the proportionate increase was somewhat higher for black women (Bureau of Labor Statistics 2008: Table 4).

Education

Evidence of far greater progress toward equality can be found when we examine changes in education over time. In 1960, only 20 percent of blacks in the United States who were 25 years old or older had finished high school. In 2007, that figure stood at 82.3 percent (U.S. Bureau of the Census 2009: Table 221).³² Moreover, in 1960, whites were more than twice as likely as blacks to have completed high school. Today high school graduation rates are almost identical.³³ There has, however, been minimal improvement among both whites and blacks since 2000, attributable most likely to the dying out of cohorts of poorly educated people who had lowered graduation rates in the earlier years.

Black education rates through college graduation and beyond have had an even steeper trajectory, growing from 3.1 percent in 1960, or 38 percent of the white college education rate, to 18.5 percent in 2007, or 64 percent of the white rate (U.S. Bureau of the Census 2009:145, Table 225).³⁴ Moreover, the proportion of advanced degrees granted to blacks has been steadily rising, even since 1990, while the proportion of advanced degrees attained by whites has fallen dramatically.³⁵ These black educational advances

³¹ The absolute increase was 8.5 percent (Bureau of Labor Statistics 2008: Table 4).

³² These figures and the ones that immediately follow are taken from the U.S. Bureau of the Census (2009:145, Table 221).

³³ The figure for whites in 2007 was 86.2 percent. For neither whites nor blacks do the figures vary greatly with gender (U.S. Bureau of the Census 2009: Table 222).

³⁴ For blacks, gender differences in education through college and beyond were slight in all sampled years. For whites, disparities between men and women were large in the early years and did not fall below 5 percent until 2000. The persistence of this disparity is probably in large measure a legacy of a time when white males were sent to college but their sisters were not. For blacks, going to college was a rare achievement, and capable black women seem to have been as likely to attend college as capable black men.

³⁵ In 1990, blacks received 4.7 percent of all master's degrees awarded, 3 percent of all doctoral degrees, and 4.8 percent of all first professional degrees. For 2006, these figures were 9.9, 5.6, and 7.1 percent, respectively. Whites on the other hand received 78.4 percent of awarded master's degrees in 1990 and 66.2 percent of master's degrees in 2006, 68.3 percent of doctoral degrees in 1990 and 56.4 percent of such degrees in 2006, and 85.2 percent of first professional degrees in 1990, diminishing to 72.5 percent in 2006. The drop in the proportion of whites receiving advanced degrees over this 16-year period reflects a dramatic increase in the proportion of degrees going to Asians and, to a lesser

are a major reason why blacks have become increasingly likely to find work in the professional and managerial sector.

Political Office

There has also been a substantial increase in the number of blacks elected to office over time. In 1970, the Joint Center for Political and Economic Studies counted 1,469 black elected officials nationwide, of whom 179 were in state legislatures or the Congress and 715 in city and county offices. By 1980, the total number had increased to 4,890 and by 1990 to 7,335. In 2002, the last year for which I have data, there were 9,430 black elected officials. Of these, 636 were in state legislatures or the Congress and 5,753 in city and county offices (U.S. Bureau of the Census 2009:251, Table 398).³⁶

Attitudes

Finally, when we look for progress, we can see substantial attitude change, of which the election of Barack Obama as president is but one manifestation. Reported disapproval of racial intermarriage fell from a substantial majority of the population in the 1950s to 33 percent in the mid-1990s, and only a little more than a third of the disapprovers (13 percent of all respondents) would have made racial intermarriage illegal. Moreover, by the 1990s only 4 percent of the U.S. population still advocated school segregation. In addition, when asked their preferences about neighborhood composition, a large majority of Americans advocated residential integration. Although 25 percent of respondents said their ideal neighborhoods would contain no blacks and 13 percent thought there should be a legal right to live in segregated neighborhoods, these numbers are, no doubt, far lower than they were at the start of the civil rights movement (Galster 1990; Schuman et al. 1998; as cited in Massey 2007).

Despite progress in attitudes, education, and other areas, between whites and blacks substantial inequality remains. It has deep structural roots, and it is not going to go away simply because the nation has elected its first black president. Indeed, for those concerned with racial equality the situation is worse than it might appear. If all we had to confront were the materialistic disadvantages that are the legacy of 200 years of slavery and 100 years of segregation, we might be confident that given time we would reach a point where race did not affect life chances. In a discrimination-

extent, to Hispanics. Blacks more than held their own with respect to the increased tendency of other ethnic groups to continue their studies beyond college graduation. Whites did not (U.S. Bureau of the Census 2009: Table 289).

³⁶ The total figures given in the text include, in addition to elected city, county, state, and federal officials, blacks elected to law enforcement or educational positions.

free world, even if economic inequality remained, no disadvantage would attach per se to being black. In such a world reparations or greater tax progressivity might be all that was needed to jump-start the final push toward racial equality.

But this is not the world we live in. Study after study reveals that blacks are disadvantaged not just because of their educational status or educational accomplishments and/or greater likelihood of criminal convictions. Rather, they are disadvantaged because they are black, or perhaps, given that we must understand the exceptions made for the Barack Obamas, the Oprah Winfreys, and (when I spoke) the Tiger Woods of the world, because of the economic status, educational attainments, work status, and criminal involvement associated in white minds with blacks in general.³⁷

Behavior

Massey, in his book *Categorically Unequal* (2007), describes numerous well-designed studies that demonstrate the persistence of discrimination. The most convincing of these studies involve so-called audits in which people are observed reacting to similarly situated white and black testers or to identical documents apparently associated with white or black people. These studies, involving a variety of behaviors, often show costs to being black. One investigation examining the mundane activity of hailing a taxi in the District of Columbia found that 20 percent of black auditors trying to get a cab were passed by compared to 3 percent of their white counterparts (Ridley et al. 1989).³⁸ Another found that blacks posing as potential car buyers could not get as good a deal as white testers, despite using the same negotiation strategies. Black men received “best deals” that were \$1,100 more than what was demanded of whites. Black women were offered deals that were \$410 worse than the white males’ deals and \$318 worse than what female whites could negotiate (Ayres & Siegelman 1995).

³⁷ When a black person can show through extraordinary and widely publicized accomplishment or through close personal relationships that he/she “is not like the rest,” the disadvantages of race may entirely, or almost entirely, disappear in settings where the person is known. This was the situation that Jews, the Irish, and other Americans of disvalued ethnicities once found themselves in. A difference is that higher-status whites often could not perceive the ethnic status of other whites at first glance or even upon shallow acquaintance. Thus disvalued white ethnics could enter many of the same social spaces their more valued counterparts occupied and once there could show they “were not like the rest.” Most blacks, however, are identifiable as black at first glance and so can be more easily excluded from opportunities (e.g., steered away from white housing) and even at initial and casual meetings will have prejudice to overcome.

³⁸ I can add an anecdote of my own. I once stood on a street corner in New York’s Upper East Side and watched cab after cab pass a well-dressed black woman by. I stuck out my arm, and the next cab stopped, which I then gave to her. The taxi driver did not seem pleased.

In the housing arena, HUD audits have consistently shown discrimination in both the rental and for sale markets (Turner et al. 2002). Having a black voice on the phone is another source of disadvantage. Black-sounding speakers in San Francisco were significantly less likely to receive appointments to see rental units than white-sounding speakers, an effect that was especially strong for units in largely white areas (Purnell et al. 1999).

A black name alone diminishes a person's job chances. When employers who had placed help wanted ads in Chicago papers received resumes that differed only in whether the applicant's name sounded black (Lakisha/Jamal) or white (Emily/Brandon), 12 percent of employers who received the resumes with Anglo-sounding names contacted the applicant compared to 7 percent of those who reviewed resumes identical in every respect except the name. Moreover, whites were more likely to be contacted when they applied for a more highly skilled job and had credentials to match than when they applied for a less highly skilled job (14 vs. 10 percent). For blacks the job sought made almost no difference (Bertrand & Mullainathan 2003).

Perhaps the most revealing studies are two done by Pager. She sent paired white and black testers to Milwaukee employers who had advertised positions that required only a high school education. In addition to race, she varied whether or not the applicant had been imprisoned for 18 months for selling cocaine. Pager found that 34 percent of the white testers with no prison record received callbacks regarding the job interviewed for, as did 17 percent of whites with prison records. Among black job applicants without records, 14 percent received callbacks, while among blacks with records only 5 percent did. Whites with prison records were, in other words, more likely to receive follow-up phone calls regarding their job applications than blacks with no records (Pager 2003). Later, working with Quillian and using a vignette methodology, she surveyed the companies she had audited and asked how they would treat white and black job applicants with prison records (Pager & Quillian 2005).³⁹ She was told by about 60 percent of those contacted that they were "very likely" or "somewhat likely" to hire the person described in the vignette and that the race of the applicant did not affect their willingness to hire.

Thus it appears that not only could the employers not anticipate their own behavior, but they also did not know that their

³⁹ The vignettes described people whose qualifications were much like those whom the employers had been exposed to in the audit, except that reported prison sentences were 12 months rather than 18 months to avoid arousing suspicion. Those who had dealt with white testers were given vignettes involving white ex-cons, and those who had been visited by black testers were given vignettes involving black ex-cons.

willingness to hire a convicted drug seller would be strongly influenced by the seller's race. It is possible that these employers were self-aware and chose to lie, but I think this unlikely. Rather, I expect that the employers honestly saw themselves as magnanimous and nondiscriminating. The absence of self-awareness is part, and perhaps an important part, of the problem. If whites honestly believe that they do not discriminate, then they are more likely to believe that others like them also do not discriminate, and they are less likely to attribute the disadvantages that blacks suffer, including their unemployment rates, their relatively low earnings and their lack of wealth, to discrimination.

A similar lesson may be drawn from research using the IAT (Lane et al. 2007).⁴⁰ Most whites and some blacks, including many people who do not consider themselves prejudiced, find it cognitively easier to draw links between positive concepts and white faces and between negative concepts and black faces than vice versa. This does not necessarily mean that people who respond this way hold antiblack attitudes or are invidiously prejudiced,⁴¹ but studies that link scores on the IAT with other attitudes or actions indicate that, as a statistical matter, the greater the IAT bias against blacks, the more likely a person is to hold views or take actions that also suggest a bias against black people. For example, a vignette study found that emergency room physicians with higher antiblack IAT scores were less likely to prescribe an indicated blood thinning procedure for blacks than for whites (Green et al. 2007). Another study found that greater implicit bias made it more likely that black faces but not white faces would be seen as showing hostility (Hugenberg & Bodenhausen 2003), and a third study found that white students randomly assigned black roommates at the start of the academic year were less likely to have the same roommates at the end of the year if their implicit attitudes toward blacks were strongly negative (Towles-Schwen et al. 2003). I expect that few if any of those whose actions suggested that they acted on antiblack

⁴⁰ The IAT presents two facially unvalenced concepts to a person, often in the form of photographs, and a series of valenced words to associate with them. The unvalenced concepts may involve age, gender, disability, or almost anything else, though in the studies relevant here race is the key variable. The subject then seeks to link as speedily as possible the valenced and unvalenced concepts. The lag in time required to make links and the tendency to err in making links are the dependent variables in IAT research. Someone who takes longer when instructed to link positively valenced concepts to black faces and negatively valenced concepts to white faces than vice versa or who makes more mistakes when making such linkages is arguably showing evidence of an implicit bias against blacks.

⁴¹ My IAT experience leads me to think that it may go astray in attributing different response lags to the race of the person viewed rather than to a complex of racial and other characteristics. I expect that with different pictures used to represent people of different races, relative lags could differ substantially.

prejudices would have recognized in themselves or in their behavior the prejudice that their IAT scores suggested.

In short, not only do blacks as a group suffer substantial structural disadvantages as compared to whites, but even when blacks are as well educated as whites or as financially well off, they may fare worse than whites because of low visibility prejudiced attitudes, and discriminatory behavior. Moreover, the motivational roots of discriminatory behavior are often hidden from those who discriminate, and many would *in all honesty* deny their implicit attitudes and actions based on them. Moreover, not only do people not recognize their own participation in patterns of discrimination, but they are also blind to it in others. Thus whites are far more likely than blacks to believe that discrimination is no longer a problem in American society, and that blacks who say it is and seek remedies for discrimination are demanding special, favored treatment.⁴²

Paths Forward

What can be done? In thinking about this question, it is helpful to reflect on the areas of greatest progress over the last half century. What stands out is that they are each areas in which the law and widely enforced public policies have played a major role in efforts to end discrimination. Perhaps the area in which blacks have progressed the most has been election to public office. Progress here seems to have been closely tied to the Voting Rights Act, its active support in Congress, and its enforcement by both Republican and Democratic administrations. The education data are also encouraging. At the post-secondary level this is at least in part due to widespread affirmative action programs that have encouraged and allowed numbers of black students to enter selective colleges and universities and contributed to their obtaining graduate and professional degrees (Bowen & Bok 1998; Lempert et al. 2000). This in turn has helped increase black incomes and expand a black upper-middle class. Affirmative action in employment has most likely accelerated black employment and income gains, and in the South at least, black employment appears to have been substan-

⁴² In an article on racial differences in judging responses to Hurricane Katrina, the Pew Foundation summarizes other recent survey results: For example, 77 percent of whites but only 56 percent of blacks agreed that the position of blacks in American society has improved in recent years. And while 63 percent of whites feel that blacks who can't get ahead are mostly responsible for their own condition, only 43 percent of blacks agree, a gap that has stayed virtually constant over the last decade (Pew Research Center for People and the Press 2005).

tially aided by the enactment and enforcement of antidiscrimination legislation (Heckman & Payner 1989).

Even attitude change may have been substantially influenced by the law. Although I cannot prove it, it is likely that the large drop in public disapproval of interracial marriage is attributable in part to the Supreme Court's decision in *Loving v. Virginia* (1967) and the subsequent inability of states to prohibit interracial couples from getting married. Similarly changed white attitudes toward school segregation have their likely genesis in *Brown v. Board of Education* (1954) even if neither that case nor *Loving* resulted in an immediate sea change in how race relations were viewed. A further area of substantial progress, the movement of blacks into the officer ranks of the armed forces, also has its genesis in legal authority; in this case, the decision by Harry S. Truman to mandate desegregation of the military.

In short, those concerned with fighting prejudice and race-based inequalities were right to consider, and should still consider, how law and executive authority can be used to continue the work of the civil rights movement. Ironically, while the courts and the law were long a powerful force in the movement to promote racial equality, the apparent belief by many judges that racial discrimination is yesterday's problem and that today whites are as likely to be affected by racial discrimination as blacks threatens the viability of this crucial route in progress toward equality. It would be ironic if the nation's first black president turns out to have presided at a time when the power to use the law to counter discrimination is restricted rather than expanded. Yet in the Supreme Court, restricting the law as an instrument to promote equality has for some time been the order of the day. Affirmative action barely survived in the academic sphere and may not survive the next case that attacks it (*Grutter v. Bollinger* 2003; *Gratz v. Bollinger* 2003). In employment affirmative action has been effectively banned (*Ricci v. DeStefano* 2009), and a majority of the Court also attempted to make statutory actions for proven discrimination so unlikely to pay off that they would have been almost impossible to pursue (*Ledbetter v. Goodyear Tire & Rubber Co.* 2007), but this effort was reversed by Congress. Even maintaining integrated schools is, in many circumstances, no longer a constitutionally permissible goal (*Parents Involved in Community Schools v. Seattle School District No. 1* 2007), and there are hints that the reach of the Voting Rights Act, perhaps the most effective of the panoply of civil rights law, may soon be limited (*Northwest Austin Municipal Utility District Number One v. Holder* 2009). Moreover, unlike the 1970s decisions that dismantled school busing as a tool for integration, the Court in recent cases has not been responding to perhaps irresistible political forces. Rather, a majority of the Court, and usually the slimmest possible majority, has been out in front in interpreting statutes or

the Constitution in ways that threaten to retard and perhaps even roll back progress that blacks and other minorities have made toward equality.

I do not accuse the Court or any Justices on it of being racist. The allegation could not be proved, and the notoriety attendant upon making such an accusation would, by itself, put most people off. Yet it is hard to deny that the country's remaining racists have had much to cheer about in recent race-related Supreme Court decisions, and it is easy to wonder whether *Brown v. Board of Education* would have come out the same way had the current Court been then sitting. More important is that looking at the effects laws have, it is hard not to worry about the long-term implications for racial equality of recent Supreme Court decisions. Perhaps in some areas, like public office holding, we have come far enough and there is sufficient momentum that the law is no longer needed to promote nondiscrimination and equality. Yet as a review of the social science evidence bearing on racism today reveals, there are many ways in which discrimination is unwittingly harbored and still affects black people's lives. It is hard, even in the age of Obama, not to worry about the fragility and future of the movement toward racial equality that W. E. B. Dubois, Thurgood Marshall, Dr. Martin Luther King Jr., and so many others, white and black, gave so much for.

Law and Society Scholarship

Given the central role of law, norms, and legal institutions in the promotion or retarding of racial equality and given the obvious importance of the issue, one might think that racial justice and equality has been a central focus of our Association's scholarly attention. Yet to judge by what has appeared in the *Law & Society Review*, race has not been a central draw on our collective attention. Looking at article titles in the 10 most recent volumes for which I had easy electronic access (1994–2003), I found that with the exception of one year when six articles were published on race, the average number of articles with race as the apparent central focus is only a bit more than one. In a typical year only one of the *Review's* four issues has had an article in which matters relating to race and racial equality were directly addressed.⁴³ The situation was not much different during the Association's early years. Looking at the first 10 volumes of the *Review*, with

⁴³ I was not limiting myself to titles that mentioned race as an explicit focus but included articles, such as an article on inconsistencies in capital sentencing, where it appeared from the title that race would be a variable of special interest. I also included articles dealing explicitly with minorities other than blacks. I did not, however, include articles that focused on class or poverty, although the findings in these articles might relate closely to the situation of blacks and other discriminated-against minorities.

the exception of one year when 15 articles relating to race were published as a special issue, the average number of articles dealing with race was also close to one.⁴⁴

In closing, I want to encourage members of our community to look more closely and more frequently at the situation of discriminated-against minorities, and not just blacks but also Hispanics, Asians, Native Americans, and, more recently, gay and disabled people, before the law. The nation needs more work on how the law has worked and can work to ameliorate discrimination and also on how and why efforts to fight discrimination often only partially succeed and sometimes fail. Our community should also be empirically analyzing and critically examining the modern jurisprudence on race. What exactly are the drivers of the cases that have changed the equal protection and due process clauses from powerful weapons in the fight against discrimination to actual or potential brakes on what the law can accomplish? How has the concept of the color-blind Constitution, which too often means a Constitution blind to discrimination, achieved the power it seems today to have? Was there an inevitability to the current movement that seems aimed at ending our second reconstruction? Is the retreat from the use of law as a force for equality rooted in impossible-to-resist political forces or the demands of a consistent jurisprudence? Alternatively, is the recent (in)equality jurisprudence the fortuitous result of which presidents were able to fill Supreme Court vacancies?⁴⁵ To what extent are the Justices who have retreated on black equality issues been consistent and principled in their decisions and in accord with prior jurisprudence? Or can it be fairly said of some Justices that the only principle to be

⁴⁴ The special issue in which this essay appears changes, for the moment, this picture. I think and congratulate Carroll Seron and her co-editors for the service they have done in advocating for the special issue and in organizing the special issue and the conference that was the first step toward its development. It is a happy coincidence that the timing of my Presidential Address allowed for its publication here.

⁴⁵ Justice Thurgood Marshall is rumored to have said that he would put himself on life support before he would allow a Republican president to fill his seat. Yet burdened by illness he resigned, to be replaced by Justice Clarence Thomas, when the first President Bush had about a year remaining in his term. I have heard that his resignation was motivated not just by his physical condition but also by his belief when President Bush's popularity was sky-high immediately following the first Gulf War that Bush could not possibly fail in his reelection effort. Justice Marshall, without being on life support, could have served on the Court for one more term. Had he done so, President Clinton would almost certainly have been the one to appoint his successor, who very likely would have been a black lawyer or academic identified with the civil rights movement. Consider the difference this would have made in the current jurisprudence of the 14th Amendment and interpretations of federal law. Sociologists are trained to be suspicious of causal explanations that root change in the identities of individuals. But sometimes individual identity is the crucial variable.

discerned in their jurisprudence is, in the words of the old civil rights song, “If you’re black, stay back”?

Conclusion

The personal, the social science, and the political are for me closely linked. Had I not been raised as I was, I might read the social science literature differently, for I may not be sufficiently critical of work that indicates enduring racism. If social science findings were different, the values I was raised with might lead me to different political preferences.⁴⁶

Values are, of course, fundamental. Reflecting on mine, I would like to say that I support racial and ethnic equality simply as a matter of principle. But the roots of my concern go beyond that. I see societies around the world cleaving on racial, tribal, and religious lines, whether we are talking of Sudan or Somalia, the former Yugoslavia, Pakistan and India, Israel and Palestine, the Basques in Spain or Catholics in Northern Ireland. We like to say that that sort of violence and the repressive governments that often rise to put it down cannot happen here. I wonder. I fear that if we become a sufficiently unequal society, and if our health, education, wealth, and social divisions are exacerbated in parallel to our racial and ethnic divisions, such violence can happen. As the fight against terrorism has brought home, we have become an increasingly vulnerable society, but we are most vulnerable if terrorists rise from among our own people. Either we will destroy each other or we will sacrifice the liberty we treasure in order to stop physical destruction. Increased openness and equality are not just necessary because they are right; they are necessary if we are to live in peace with each other and enjoy the freedoms that peace allows. This is the point to which my life and scholarship have brought me.

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⁴⁶ I would, for example, not strongly support affirmative action if I thought black students were mostly harmed by it (Chambers et al. 2005).

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