

Political science thesis

Law, Criminal Justice



Affirmative Action and Minority Employment in California Higher Education

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Chapter 4: Results and Discussion

Based from the data gathered from the use of individual data from the available Public Use Microdata Samples of the Census of Population or PUMS data for the years 1880, 1900, 1910 and 1940-1990, the unemployment rate between white men and black men are almost totally similar prior to the Great Depression. However, the 1940s and 1950s showed signs of growing disparity among unemployment rates of white men and black men at an approximate of 11 percent and 9 percent for black men and white men, respectively, in 1940 and 7 percent and 4 percent for black men and white men, respectively, in 1950 as shown in Figure 1 below.

As observed, at the national level, racial gaps in unemployment were insignificant by 1880 to 1910. However, a small racial gap started to open up by 1940 and has continued to widen significantly by 1960. The gap continued to widen significantly from 1960 onwards with the present unemployment rate of 6.6 percent in general and a 12.1 percent unemployment rate for the African American population for January 2014. According to the Current Population Survey conducted by the US Bureau of Census, though the gap between unemployed black and white Americans are slowly growing, the share of Black Americans in teaching for Higher Education in 1995 significantly grew to 6.2 percent from the share of 4.4 percent in 1983. This can be traced back to the affirmative action efforts of the government and the compliance of industries to the provision in the late

1960s (Bureau of Labor Statistics, 1996). The statistics even rose in 2011 with the black population taking up 10.7 percent of the education services sector and is expected to grow annually by 2.3 percent from 2010 to 2020. Education services industry has the second to the largest growth in terms of opportunities for blacks with 10.7 percent and topped by health and social assistance with 16 percent (Bureau of Labor Statistics, 2012).

As observed, there was no abrupt significant change in terms of increased opportunities for African American in the Higher Education sector or for any other industry in the first ten years of the implementation of affirmative action in California and other major states in the US. This can be mainly attributed to the critical issues arising from resistances to change and lapses in terms of court decisions and existing legislations. However, the growing role of African Americans in the educational sector is seen in the following decades thus proving the quantifiable benefit of affirmative action in the long run. Though such growth is seen, it is still surpassed by the growing gap of economic opportunities which needs to be carefully addressed in aid of the legislation on affirmative action.

President Lyndon Johnson signed the Civil Rights Act and the Executive Order 11246 which furthered the prohibition of all kinds of biases and discrimination based on color, religion, race, gender and national origin.

President Lyndon Johnson emphasized that the issue of removing biases and discrimination is not just to give equal freedom but equal opportunity as well. “ You do not wipe away the scars of centuries by saying: 'now, you are free to go where you want, do as you desire, and choose the leaders you please.' You do not take a man who for years has been hobbled by chains,

liberate him, bring him to the starting line of a race, saying, 'you are free to compete with all the others,' and still justly believe you have been completely fair . . . This is the next and more profound stage of the battle for civil rights. We seek not just freedom but opportunity—not just legal equity but human ability—not just equality as a right and a theory, but equality as a fact and as a result” (Johnson, 1965).

On the fronts of the changes is the U. S. Supreme Court which has portrayed the role of the guard of minority rights since the late 1930s. With its rulings regarding civil rights and school desegregation cases, the Supreme Court guided the evolution of affirmative action holding the influence of keeping equal protection under the law.

One of the cases prior to affirmative action was the case of *Abbington v. Board of Education of Louisville* in 1940. The National Association for the Advancement of Colored People or NAACP filed a suit for Dudley Abbington who receives 15 percent less salary than her white teacher colleagues. The School Board agreed to remove discrimination in salaries only if Abbington will drop the lawsuit. After the lawsuit was dropped, the salaries of teachers in Louisville are no longer varied on the basis of race (University of Kentucky Libraries, 2014). However, salaries in major states of the United States still experience unresolved issues of salary discrimination based on race.

The most popular among civil rights cases is the *Brown v. Board of Education* case in 1954. The court decision has contributed heavily into the ending of school desegregation. According to Moen (2001), the case of *Brown* formulated the Civil Rights Act of 1964 which, in turn, served as the foundation of the legal basis for affirmative action in the succeeding cases

until the present time.

The case of Griggs v. Duke Power Co in 1971 was the first Supreme Court case in the entire United States to address affirmative action. After the passage of the Civil Rights Act in 1964, Duke Power Co removed its racial restriction but instead retained the high school diploma requirement together with the additional IQ test requirement with the belief that African Americans will score lower than White Americans in an IQ test resulting into the less likelihood to be hired. However, it was found out that white people at the firm continued to work in the firm without complying with neither of the two requirements.

In a landslide decision, the Supreme Court decided against Duke Power Co. It stood firm on the stance of Title VII of the Civil Rights Act of 1964 that describes the case as “ proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation.” The Supreme Court further emphasized that Title VII does not prohibit the testing or requiring of diplomas for hiring or promotions if they were properly used and developed. The Congress commanded that tests should be used to measure the suitability of the person for the job and not the person itself. The Supreme Court therefore concluded that since the employment practices of Duke Power Company operate to implicitly exclude African-Americans or other racial minorities, the practice is prohibited unless otherwise proven, with employer showing evidence that the qualification and screening procedures fulfill an unpretentious business need and is a legal measure of an applicant’s capability to perform or practice the job. This proves that the practices of Duke Power Company failed to meet these standards

(Leadership Conference on Civil Rights Education Fund, 2001).

Another affirmative action case arose in 1978 before the Supreme Court. The case of the University of California Regents v. Bakke resulted into the prohibition of fixed quota in its medical school since it violated the Title VI of the Civil Rights Act of 1964. The Medical School of the University of California at Davis had a special admission program wherein 16 of 100 slots in the class were reserved for disadvantaged minority students. In addition to the decision, Justice Powell released an opinion that affirmative action cases may be brought to the court not only on the basis of past discrimination but on the existence of the university's interest in attaining a diversified student body which results to loss of opportunity for individuals belonging to any race, gender or status (Leadership Conference on Civil Rights Education Fund, 2001).

However, while the case of Bakke resulted into the abolishment of strict quotas, the ruling of the Supreme Court pertaining to the case of Fullilove v. Klutznick showed that the existence of some modest quotas is constitutional. The Supreme Court defended the federal law which requires that 15 percent of the funds for public works should be set aside for competent contractors from the minority. The court mentioned that the narrowed focus of the affirmative action did not violate the fair rights of non-minority contractors since there was no present allocation of federal funding through inflexible percentages which are solely based on race or ethnicity (Brunner & Rowen, 2007).

In terms of employment discrimination, the case of Wygant v. Jackson Board of Education challenged the school board's rule of protecting minority

employees by allowing non-minority teachers to be laid off first even if the non-minority teachers had seniority. The Supreme Court upheld a decision against the Jackson Board of Education since the damages suffered by non-minority affected teachers cannot strongly justify its benefits to minorities. The Supreme Court further explains that preferential lay-off schemes create a burden and is considered discriminatory and damaging to innocent parties. The school's interest in diversity is not sufficient to justify a race-conscious solution as pertained to layoffs. Accordingly, the denial future employment opportunity is surely not as intrusive as the loss of an existing job (Leadership Conference on Civil Rights Education Fund, 2001).

The Supreme Court rulings on the case of the United States v. Paradise and Johnson v. Santa Clara County Transportation Agency further exemplify the Civil Rights Act's Title VII and plans for affirmative action.

In Paradise, the Supreme Court upheld the one-for-one promotion requirement which means that for every promotion or recommendation for promotion of a white candidate, an eligible African American should also be promoted or recommended for promotion in the Alabama Department of Public Safety. The decision was upheld since it is found to be narrowly tailored and is needed in order to eliminate the remnants and effects of the blatant and continuous discrimination for the longest time in the region (Brunner & Rowen, 2007).

The second case refers to the case of Johnson v. Santa Clara County Transportation Agency. Here, the Supreme Court supported the employer's affirmative action plan to allow gender as a positive factor consideration in choosing qualified candidates for tasks wherein women were extremely

underrepresented. The decision was formed when the employer's research found out that no women has been employed in any of the 238 skilled crafting jobs in the agency (Leadership Conference on Civil Rights Education Fund, 2001).

“ Both Paul Johnson (the male plaintiff claiming reverse discrimination) and Diane Joyce (the woman who ultimately received the promotion to road dispatcher) had the requisite four years' experience, although Ms. Joyce's experience was more recent and arguably more relevant. Mr. Johnson received a score of 75 to Ms. Joyce's 73 in the graded oral interview, where 70 was a passing score. The Court upheld the county's use of Ms. Joyce's gender as a positive factor in choosing between these similarly-qualified candidates -- especially since no woman had ever held the position of road dispatcher” (Leadership Conference on Civil Rights Education Fund, 2001). Since the case of Bakke in 1978, the arguments pertaining to diversity has strongly developed through the 1980s and 1990s into becoming the focal point in justifying affirmative action. However, the new challenge to this rationale was not present until the existence of the case of Grutter v. Bollinger and Gratz v. Bollinger in 2003 reached the Supreme Court. The cases in question tapped on the issue of whether race could be a consideration in school admission in order to maintain or achieve student diversity. In the case of Grutter v. Bollinger, the Supreme Court supported the decision that the prudently tailored affirmative action policies in higher education can be used to promote racial variety on campus. On the other hand, the Supreme Court decided to reject the use of race in a blunter and less personal manner in admission to campuses as raised in the case of

Gratz v. Bollinger. The decision made by the Supreme Court is inclined to the approach of Justice Powell in the case of University of California Regents v. Bakke. According to Justice O'Connor, colleges and universities may "consider an individual minority applicant's race as a plus factor, but a "mechanized selection" system is not justified. In other words, consideration of race in college admission is not mandatory, but they may do so (303, 304). This transformation means that the factor of race became increasingly downplayed. Thus, while the Supreme Court preserved affirmative action in higher education, the legal justification of the preferential programs took on more rhetorical and symbolic meanings" (Dong, 2008). All of the cases aforementioned feature the development of minority employment and representation in the Higher Education Sector. Though the development of affirmative action in the first decade of its implementation has been slow, the rulings of the Supreme Court and the improvement of legislations played an important role in shaping up the status of minority employment in the present. As it continue to gain momentum and is forecasted to grow at a faster rate than before, the issues being faced by affirmative action and efforts to counter discriminatory policies are becoming more complicated and abstract. As witnessed in the development of cases, the rulings have moved from the direct application and usage of present laws into conditional and flexible forms of ruling based on intent, past discriminatory exposure and effect. With the growth in the involvement of minorities in the Higher Education sector, whether for employment or admission, policies and laws should be further developed and improved in order to support the growing needs and complications of the population and further improve the presence

of minorities and non-discriminatory policies in the industries and the American society within and beyond California.

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