

RACE AND ETHNICITY

June 11, 2014

Is the “post-racial society” dream dead?

Race continues to be an undercurrent in American society. African-Americans have made economic and educational progress, but continue to lag behind whites in jobs and wealth. The Supreme Court has ruled that voters may decide whether state universities can apply affirmative action policies during the admissions process. Researchers say public schools are more segregated now than before integration, and blacks are incarcerated at a rate double their share of the population. Attorney General Eric H. Holder Jr. believes shorter sentences for minor, nonviolent crimes could help rectify the incarceration imbalance, but some say that would threaten public safety. Civil rights activists say increasingly common “stand your ground” laws are racially biased. As the 2014 midterm elections approach, some states are enacting election laws critics say discriminate against minorities and the poor, while other states are making it easier for all to vote. Meanwhile, public reaction to racially offensive remarks indicates the debate over racial discrimination isn't over.

Long-standing university affirmative action practices took a blow on April 22, when the Supreme Court ruled that state schools cannot use race as a factor in admissions if voters oppose it. The decision dealt with a successful Michigan state ballot initiative banning racial preferences in university admissions. Justice Anthony Kennedy wrote in the majority opinion that the decision did not apply to the constitutionality or merits of schools' race-conscious admissions policies, but rather to whether a state's voters may choose to prohibit consideration of those preferences.

“This case is not about how the debate about racial preferences should be resolved. It is about who may resolve it,” Kennedy wrote. “Here Michigan voters acted in concert and statewide to seek consensus and adopt a policy on a difficult subject against a historical background of race in America that has been a source of tragedy and persisting injustice.”

In a strong dissent, Justice Sonia Sotomayor wrote, “The Constitution does not protect racial minorities from political defeat. But neither does it give the majority free rein to erect selective barriers against racial minorities.”

“(T)he view that we should leave race out of the picture entirely and let the voters sort it out ... is a sentiment out of touch with reality,” Sotomayor wrote. “The way to stop discrimination on the basis of race is ... to apply the Constitution with eyes open to the unfortunate effects of centuries of racial discrimination.”

Chief Justice John Roberts responded to Sotomayor's dissent, writing, “it is not ‘out of touch with reality’ to conclude that racial preferences may themselves ... do more harm than good.”¹

University of California, Los Angeles law professor Richard Sander and legal journalist Stuart Taylor have written that affirmative action programs can actually hurt minorities because they “often place students in environments where they can neither learn nor compete effectively — even though these same students would thrive had they gone to less competitive but still quite good schools.” This “mismatch,” they wrote, “often stigmatizes minorities, reinforces pernicious stereotypes and undermines the self-confidence of beneficiaries, rather than creating the diverse racial utopias so often advertised in college campus brochures.”²

But Harvard University law professor Randall Kennedy has argued that affirmative action is necessary because it “partially redresses debilitating social wrongs ... usefully integrates marginalized groups ... and [facilitates] the creation of environments in which, aided by racial diversity, enriched learning and wiser decision-making ensue.” He continued, “Constitutional color blindness threatens policies that are assisting to create a multiracial polity in which previously oppressed peoples participate as productive, equal actors in every sphere of American life.”³

Since the Michigan voter-approved ban on affirmative action went into effect in 2008, African-American first-year student enrollment at the University of Michigan dropped from 6.1 percent of the student body to 4.5 percent in 2012; Hispanic enrollment went from 4.8 percent to 4.0 percent, according to Department of Education figures.⁴

Nine states including Michigan currently ban affirmative action in college admission decisions.⁵



Los Angeles Clippers owner Donald Sterling triggered a national debate about racism this spring when he made offensive remarks about African-Americans in a secretly-recorded conversation with his girlfriend. The National Basketball Association banned Sterling for life for his remarks and fined him \$2.5 million. Sterling has since decided to sell the team. (AFP/Getty Images/Robyn Beck)

A Pew Research Center survey conducted in February-March 2014 (before the Supreme Court decision) found that 63 percent of Americans — 55 percent of whites and 84 percent of blacks — believe affirmative action is “a good thing.”⁶

Are Schools ‘Resegregating’?

Sixty years after the Supreme Court’s landmark decision in *Brown vs. Board of Education* outlawed racial segregation in schools, some researchers recently have said schools are “resegregating.” A months-long study by the independent investigative news organization *ProPublica* declared, “black children across the South now attend majority-black schools at levels not seen in four decades.” *ProPublica* attributes the trend to court decisions since 2000 that “have released hundreds of school districts ... from court-enforced integration,” with many of those districts taking the path back toward segregation.⁷ And some blame it on the growing popularity of charter schools.

Studies have found that, “for blacks, school desegregation significantly increased educational attainment and adult earnings, reduced the probability of incarceration, and improved adult health status” with “no effects on whites across each of these outcomes.”⁸

But with parents concerned about the poor performance of many American public schools, some communities have turned to charter schools, which receive public funding and do not charge tuition, but operate independently of the public school system. Backers see these schools as a way to boost educational standards. Forty-two states and the District of Columbia permit charter schools, with nearly 2.6 million students enrolled.⁹



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Joe, a sophomore at Western Michigan University, leads a demonstration in support of affirmative action outside the U.S. Supreme Court on Oct. 15, 2013. In April the court ruled that state colleges cannot use race as a factor in admissions if voters oppose it. (Getty Images/Andrew Burton)

Charters’ curricula can be more flexible than those of traditional public schools, according to the National Alliance for Public Charter Schools (NAPCS). Some specialize in areas such as science and technology, the arts, or language study in addition to offering core academic subjects.¹⁰

Secretary of Education Arne Duncan has praised the charter movement as “one of the most profound changes in American education, bringing new options to underserved communities and introducing competition and innovation into the education system.”¹¹

However, Iris Rotberg, research professor of education policy at The George Washington University in Washington, believes charters carry the risk of “increasing segregation based on race, ethnicity, and income.” Her research shows that “a growing number of charter schools target specific racial or ethnic groups and therefore lead directly to increased segregation, Rotberg wrote. “Charter schools also choose where to locate which, in turn, influences enrollment options.” Moreover, Rotberg noted, “Some charter schools also exclude students from consideration because their parents can’t meet

the demanding parent involvement requirements, or they expel students who haven’t met the school’s academic or behavioral requirements.”¹²

Evans Moore, education manager for the National Association for the Advancement of Colored People (NAACP), said, “Charter schools ... can pick and choose the students they want. We have to be careful that we aren’t working with a double standard, where charter schools, which are public schools, have the option to pick students, (while) other public schools have to take the students they are assigned.”¹³

But Matthew Chingos, a fellow at the Brown Center on Education Policy at the Brookings Institution in Washington, said his research showed that, in general, “it is unlikely that charter schools ... are making [segregation] worse.... Conversely, perhaps carefully designed choice policies can play a role in lessening the segregation of schools by race and class.”¹⁴

Crime and Unequal Punishment?

African-Americans constitute 43 percent of the U.S. prison population — even though they represent only 13 percent of the population as a whole. “African Americans are incarcerated at nearly six times the rate of whites,” according to the NAACP. “If current trends continue, one in three black males born today can expect to spend time in prison during his lifetime.”¹⁵

The Sentencing Project, a Washington, D.C.-based organization that supports prison reform, says the nation's "war on drugs" is partly to blame. From 1999 to 2005, African-Americans constituted about 13 percent of drug users but made up about 46 percent of those convicted for drug offenses, the organization reported.¹⁶

"Crack" is a smokeable form of cocaine commonly associated with use by African-Americans; the inhalable powdered form of cocaine is mostly used by whites. Minimum sentencing guidelines enacted in 1986 set penalties for possession of crack 100 times stiffer than those for powder cocaine. In other words, someone caught with 5 grams of crack received the same penalty as someone with 500 grams of powder cocaine. Legislation signed by Obama in 2010 reduced the disparity ratio to 18-1.¹⁷

In April, the Department of Justice announced new clemency criteria for some federal inmates imprisoned for crack cocaine violations under the older minimum sentencing requirements. To qualify, inmates must be serving long sentences for relatively minor offenses and demonstrate they meet certain criteria, such as good conduct and freedom from violence.¹⁸

Describing the plans to retroactively correct crack sentencing disparities, Attorney General Eric H. Holder Jr. told the American Bar Association that "people of color often face harsher punishments than their peers ... this isn't just unacceptable — it is shameful."

¹⁹ African-Americans make up nearly 82 percent of defendants sentenced in federal court for dealing crack. According to the U.S. Sentencing Commission, a U.S. Government Agency that establishes sentencing policies and practices for federal courts, in 2013 about 83 percent of crack offenders were African-American, 10 percent were Hispanic and 5.8 percent were white.²⁰

But some in law enforcement oppose the move to correct the sentencing disparities. Scott Burns, former executive director of the National District Attorneys Association, has said, "Prosecutors [fear] that our record low level of serious crime in America will begin to rise.... Bottom line: If it ain't broke, why fix it?"²¹

Stand Your Ground Laws

In recent years, shootings of African-American youths by whites who said they were exercising their right of self-defense have led to accusations that the shootings in fact were racially motivated. In November 2012, Michael Dunn, then a 46-year-old computer programmer and software developer, confronted a group of teenagers playing loud rap music in a car in Jacksonville, Fla. Dunn told the youths to lower the volume; in the confrontation that ensued, Dunn fired 10 shots at the vehicle, killing 17-year-old Jordan Davis. Dunn said he thought Davis had threatened him with a gun; a police search found no weapon.²²

On Feb. 15, a Florida jury found Dunn guilty on three counts of attempted second-degree murder and a fourth charge of illegal shooting. However, the jury could not agree on a verdict on the most serious charge — first-degree murder. The date for the retrial on the murder charge has not yet been set; sentencing was delayed until the retrial has been concluded, but Davis already faces up to 60 years in prison for the four convictions.²³

A study by John K. Roman, senior fellow at the Justice Policy Center of the Urban Institute, a Washington think tank, found considerable racial disparity in justifiable homicide verdicts when accused and victim were of different races. Reviewing 2005-2010 FBI statistics from "stand your ground" states, Roman found that when the perpetrator was white and the victim black ("white on black" homicides), 16.8 percent of the cases were ruled justified. When the victim was white and the perpetrator black, courts found only 1.4 percent of the homicides justified. (In non-stand-your-ground states, Roman reported, white-on-black homicides were ruled justified in 9.51 percent of the cases; black-on-white homicides were found justified 1.13 percent of the time.)²⁴

Attorney General Holder told the NAACP that "stand your ground" laws "senselessly expand the concept of self-defense and sow dangerous conflict in our neighborhoods."²⁵

But John Lott, president of the Colorado-based Crime Prevention Research Center, which supports "stand your ground" laws, told a Senate Judiciary subcommittee that "poor blacks who live in high-crime urban areas are not only the most likely victims of crime, they are the ones who benefit the most from stand your ground laws (which) make it easier to protect themselves when the police cannot (respond) fast enough."²⁶

Twenty-three states have "stand your ground" laws.²⁷

Voting Rights

The Supreme Court's April affirmative action ruling came less than a year after the court decided in June 2013 to effectively eliminate a key provision of the landmark Voting Rights Act of 1965, often described as the civil rights movement's crowning achievement. The court had found that the racial environment in the country has changed enough that the provision, known as Section 5, is now an

unnecessary burden. Under the provision, jurisdictions with a history of racial discrimination in voting practices — mostly in the South — had to obtain Justice Department approval before changing their voting procedures. Defenders of the law maintain that repealing Section 5 could endanger minority enfranchisement.

Since the Supreme Court effectively loosened federal supervision of state voting laws, 19 states have initiated measures making it harder to vote, such as adopting stricter voter identification laws, making registration more difficult or reducing early voting opportunities, according to New York University's Brennan Center for Justice.²⁸ Proponents of stricter laws maintain they prevent voter fraud and improve voter confidence in the election process; opponents argue there is no evidence of widespread voter fraud and that such laws are designed to discourage voting by minorities and the poor.

Wendy Weiser, head of the Brennan Center's Democracy Program, says, "We see an ongoing effort to make it more difficult for persons to vote. This is especially concentrated in places that have a history of voting discrimination." She adds, "The focus is shifting from the legislatures to the courts — that's where the battles are going to be fought."

On April 29 a federal judge ruled that a Wisconsin voter photo ID law violated the Voting Rights Act and the Constitution. An Arkansas judge on April 24 invalidated that state's voter ID law for requiring proof of identity that wasn't required by the state constitution (the state supreme court has stayed the decision, pending appeal). In January a state judge struck down Pennsylvania's photo ID law, a judgment he reaffirmed on April 30.²⁹

Meanwhile, according to the Brennan Center, as of this Feb. 6, at least 31 states had passed or were considering a total of 190 bills to expand voting access by, among other things, modernizing registration systems, expanding early and by-mail voting opportunities and relaxing voter ID laws.³⁰ "We're seeing moves to improve access to voting," Weiser says. "It's a backlash against unfair attempts to restrict voter access to the system." But she doesn't expect to see much more legislation before the 2014 elections, in part, "because the election season is already underway, and that is not a time when you see a huge amount of thoughtful voting legislation happen."

In January a bipartisan measure was introduced in both the U.S. House of Representatives and the Senate that would restore some of the Voting Rights provisions nullified by the Supreme Court. Sen. Patrick Leahy, D-Vt., who sponsored the Senate bill, said, "Our sole focus [in developing the legislation] was to ensure that no American would be denied his or her constitutional right to vote because of discrimination on the basis of race or color."³¹

Roger Clegg, president of the Center for Equal Opportunity, which opposes racial preference laws, complained that the proposed legislation "features racial classifications and offers protections for 'minority voters' that it withholds from 'nonminority' voters."³²

Most civil rights organizations support the legislation, though some wish it were stronger. Wade Henderson, president of The Leadership Conference on Civil and Human Rights, said the bill "does not go far enough in protecting language minorities or voters living in states with restrictive voter ID laws."³³

Neither the House nor the Senate has yet scheduled a vote on the legislation.

Despite Progress, Gaps Persist

This year marks the 50th anniversary of the signing by President Lyndon B. Johnson of the Civil Rights Act, which outlawed discrimination on the basis of race, sex, religion or national origin in schools, at the workplace and in public accommodations. Since then, *USA Today* reported, African-Americans have seen significant economic and social gains: Median family income (in inflation-adjusted dollars) is up from \$22,000 in 1963 to more than \$40,000 today. In the 1960s, 40 percent of blacks lived below the poverty level; that number is now 27 percent.³⁴

Similarly, in 1964 about 25 percent of black adults had graduated from high school; in 2014, the number is 85 percent. The percentage of blacks with a college degree has risen from 4 percent to more than 21 percent. This represents "breathtaking and unimaginable" progress, said civil rights lawyer Ted Shaw, a professor at Columbia University's law school. But it "doesn't mean that all these systemic issues of racial inequality have disappeared."

Despite the gains, blacks still lag substantially behind whites in key economic areas, according to recent studies. The National Urban League's 2014 "State of Black America" report said the nationwide unemployment rate for blacks was 13.1 percent compared with 6.5 percent for whites, while the median household income for blacks is about 60 percent that of whites.³⁵ The Pew Research Center said the black-white gap in median household income has increased from \$19,360 in the late 1960s to \$27,414 in 2012.³⁶

A March CBS News poll found that 59 percent of Americans — 60 percent of whites and 55 percent of blacks — considered U.S. race relations to be generally good. But respondents were more divided about the possibility of eliminating racial discrimination: About half

(52 percent) thought there was real hope of ending discrimination altogether; 46 percent said “there will always be a lot of prejudice and discrimination.” And 61 percent of blacks said discrimination will always exist, compared with 44 percent of whites.³⁷

Meanwhile, the public debate over the state of America’s race relations continues to flare up from time to time. Cliven Bundy, a Nevada rancher, touched off a firestorm in April when he told *The New York Times* that he wondered whether African-Americans weren’t “better off as slaves, picking cotton and having a family life and doing things, or are they better off under government subsidy? They didn’t get no more freedom [when slavery ended]. They got less freedom.”³⁸ Republican senators, who had at first supported Bundy in a battle with federal authorities over cattle grazing rights, immediately distanced themselves from his remarks on race, with a spokesperson for Sen. Dean Heller, R-Nev., calling them “appalling and racist” and Sen. Rand Paul, R- Ky., labeling them “offensive.”³⁹

Accusations of racism also made it into the sports headlines. Daniel Snyder, owner of the Washington Redskins professional football team, has come under pressure to change his team’s name, which Native American activists and political leaders say has racist connotations. Suzan Shown Harjo, a Cheyenne and Hodulgee Muscogee and former executive director of the National Council of American Indians advocacy organization, said “redskin” is “the worst name we can be called in the English language.”⁴⁰ Senate Majority Leader Harry Reid (D-Nev.) and 49 other Democratic senators signed a May 21 letter to National Football League (NFL) Commissioner Roger Goodell urging a name change, declaring, “The NFL can no longer ignore this and perpetuate the use of this name as anything but what it is: a racial slur.”⁴¹

Team owner Snyder has said he will “never” change the team’s name.⁴² He cited the team’s long “tradition” and wrote that the Redskins name is a symbol of everything the team stands for: “strength, courage, pride and respect — the same values we know guide Native Americans and which are embedded throughout their rich history as the original Americans.”⁴³

Charges of racism also touched pro basketball in April when it was reported that Donald Sterling, owner of the Los Angeles Clippers, had made offensive remarks in a secretly-recorded conversation with his girlfriend, including criticizing her for “associating with black people.” The National Basketball Association (NBA) banned Sterling for life for his remarks and fined him \$2.5 million.⁴⁴

President Obama called Sterling’s remarks “incredibly offensive racist statements” and said that they demonstrate why “we constantly have to be on guard against racial attitudes that divide us rather than embracing our diversity as a strength.”

Obama added that, in a larger context, Sterling’s comments show how “the United States continues to wrestle with a legacy of race and slavery and segregation that’s still there — the vestiges of discrimination. We’ve made enormous strides, but you’re going to continue to see this percolate up every so often.”⁴⁵

Chronology

2011

May

The Census Bureau reports that, for the first time, most American babies younger than 1 are minorities.

2012

April

An election-year poll finds most Americans believe race relations have stagnated or deteriorated during President Obama’s first term.

June

Obama issues executive order allowing some 2 million children of undocumented immigrants to stay in the United States legally. To be eligible, they must be younger than 30 and must have arrived before turning 16.

October

U.S. Supreme Court hears arguments on whether the University of Texas affirmative action plan is discriminatory.

November

Obama is re-elected. Exit polls indicate minority voters provided a sizeable portion of the margin of victory.

December

A bipartisan group of senators — four Republicans, four Democrats — begins hammering

	<p>out immigration reform legislation. A Census Bureau report on Dec. 12 indicates the United States will be a “majority-minority” country by 2043, though non-Hispanic whites will remain the largest single demographic group.</p>
2013	
February	<p>The Supreme Court hears arguments on whether election jurisdictions with a history of discrimination must continue to be monitored by the Justice Department under provisions of the Voting Rights Act of 1965.</p>
March	<p>Acknowledging that the GOP needs to do more to appeal to minority voters, Republican National Committee Chairman Reince Priebus announces a campaign to get the party’s message to African-Americans, Asians and Hispanics. A Pew Research Center survey shows most Americans believe undocumented immigrants already in the United States should be allowed to stay. About half believe they should have a path to citizenship.</p>
May	<p>After considering more than 300 amendments to the bill, Senate Judiciary Committee votes to send immigration reform legislation to full Senate.</p>
June	<p>Senate begins debate on immigration bill (June 11)... Census Bureau reports Asians were fastest-growing racial or ethnic minority in the United States in 2012. Supreme Court imposed limits on affirmative action policies at universities and effectively eliminated a key provision of the Voting Rights Act of 1965 that required nine mostly Southern states and localities in several others to get preclearance from the Justice Department or a federal court in Washington before making any changes in voting or election procedures.</p>
July	<p>A Georgetown University study concludes that the U.S. postsecondary educational system perpetuates “white racial privilege” beginning with kindergarten and continuing through college.... Attorney General Eric H. Holder Jr. tells NAACP convention that “stand your ground” laws have an adverse effect on black communities.</p>
2014	
January	<p>Bipartisan legislation is introduced in the House and Senate to restore some provisions of the Voting Rights Act of 1965 struck down by the Supreme Court in June 2013.</p>
February	<p>A hung jury in Florida fails to convict a white man of murdering a black teenager, raising accusations of bias in state self-defense laws; a retrial date has not been scheduled.</p>
March	<p>A CBS News poll shows most Americans believe U.S. race relations are generally good, though a substantial minority say racial discrimination will always exist.... U.S. Department of Education reports that students of color are disproportionately subject to school disciplinary actions.... Pew survey finds most Americans support affirmative action programs for college admissions.</p>
April	<p>Supreme Court rules that voters may forbid state universities from using an applicant’s race as an admissions factor.... Justice Department announces new clemency criteria for federal prisoners sentenced for crack cocaine violations, a move that mostly affects African-American inmates.... Courts strike down voter photo ID laws in Arkansas, Wisconsin.... Widely publicized racially insensitive comments by a Nevada rancher and the owner of a pro basketball team are generally condemned, but seen as an illustration that racial intolerance remains a sensitive subject in the United States.</p>

Footnotes

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