Exploring affirmative action through different theoretical practices

Nina Marian King

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ABSTRACT

Currently numerous voices call for the dismantling of affirmative action policies. This thesis was undertaken to explore the different affirmative action policies enacted at the time of the turn of the 20th century and again in the 21st century. The thesis outlines the history from which affirmative action theory and policy stem. It also explores the purported need for affirmative action over time and takes a closer look at the areas the policies were meant to target.

The thesis will focus on the target areas outlined by the Urban League, which every year since its inception, disseminates a publication entitled “The State of Black America.” Along with the US census, statistics from the Urban League Reports are used to look at the relative status of black-white equality in the areas of education, economics, health, civic engagement, and social justice.

The field of social work may benefit from understanding the history of the phenomenon, the different theories and policies enacted to equalize opportunity between whites and blacks, and aspects of the current state of racial equality. This knowledge may be useful in clinical social work, where the culturally competent clinician is encouraged to assess clients from a biopsychosocial perspective, taking into account people’s social history and present day realities. Furthermore, the knowledge may be helpful at the macro level, where social workers may be involved in systemic interventions, assessing and forming affirmative action policy.
Exploring Affirmative Action through Different Theoretical Practices

A project based upon an independent investigation, submitted in partial fulfillment of the requirements for the degree of Master of Social Work.

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CHAPTER I
INTRODUCTION

Since its inception, the United States has been faced with what was long-termed, “the Negro problem.” The phrase has meant many different things over time but generally has referred to the problems that were associated with a history of slavery, segregation, civil rights infringements and other forms of oppression against African-Americans. The policies to address these issues are what we now call affirmative action.

This theoretical thesis was undertaken to explore affirmative action through different theoretical practices. The thesis will explore affirmative action policies from 2 different eras: the turn of the 20th century and the beginning of the 21st century.

The exploration of past and present affirmative action policies may hold implications for culturally competent clinical social work as well as macro-level systemic work undertaken by social workers. The policies related to African-Americans are relevant because social work operates by a code of ethics comprised of six core values. There exists for any nation a moral imperative to seek increased (1) integrity by providing (2) service[s] that address existing inequality in a (3) commitment to social justice. The measures taken should, according to the code of ethics, be carried out with (4) competence and should seek to respect the (5) dignity and worth of [every] person. Finally, the code calls for the promotion of the (6) importance of human relationships (NASW, 2008). The field of social work concerns itself with strengthening communities so they can thrive and offer to the country and the world as many healthy, happy, and productive human beings possible.
CHAPTER II
CONCEPTUALIZATION AND METHODOLOGY

To begin with, this thesis will explore several affirmative action policies from the turn of the 20th century, as well as the state of black America at that time. W.E. B. Du Bois’ extraordinary research in Philadelphia, Pennsylvania and Albany, Georgia confirms the findings of the 12th census of the United States conducted in 1900 (United States Government, 1903) and provides a glimpse of the well-being of African-Americans during that time period.

Secondly, the thesis will explore affirmative action policies from the beginning of the 21st century, as well as the more current state of African-Americans. Every year The Urban League issues *The State of Black America (SBA)* which compiles census and other government data about the relative state of black Americans compared to their white compatriots. The Urban League’s Equality Index measures black-white equality in five different domains: economics, health, education, social justice (equality under the law), and civic engagement.

Finally, I will give an overview of current debate and resistance to debate over what may be needed to bridge any racial gap. This overview will include viewpoints from proponents of the redress movement such as Congressman John Conyers, opponents such as Shelby Steele, researchers such as Bittker and Brooks who studied the constitutionality of monetary reparations, and spiritual teachers such as Marianne Williamson who, in *The Healing of America*, talks about the centrality of spirituality or good will in reconciling black and white Americans.
CHAPTER III
PHENOMENON:
RELATIONS IN THE UNITED STATES

The original racial divide between blacks and whites in the United States is rooted in centuries of oppressive social policy towards black Americans. The adoption of the United States Constitution in 1787 was made possible by several compromises, one of which was the “three-fifths” compromise. Southern states wanted slaves to count as whole persons for the purpose of increased state representation in government. To avoid the breakdown of the Constitutional Convention, northern states agreed to count blacks as three-fifths of a person. Where the slave trade itself was concerned, representatives from free states again chose to compromise to avoid an impasse; Congress would have the authority to outlaw the slave trade entirely but not before twenty years had elapsed (Samad, 2005). These terms were acceptable to the southern states and the Constitution was ratified.

It is important to note the precedent that these terms set. From the outset and at the federal level, blacks were permitted to be bought, sold, and considered as only three-fifths of a human being. Samad (2005) noted that this “set the political, social and economic baseline for both unequal and preferential treatment of groups of people from which America would never retreat, and for which America, particularly African Americans, have yet to recover” (p. 7).

Blacks first arrived in America in 1619 and though their enslavement was protected by law, even in the north, some historians believe abolitionist opposition to slavery can be verified as early as 1636 in Massachusetts (Brooks, 1999). Still, this same state was home to merchants who “were the most vigorous slave traders in the New World” (p. 318). But despite the lucrative nature of the business, blacks in the north were generally not deprived of the right to appeal to the courts to argue against their enslavement. Because of this, as well as
the fact that slavery did not constitute the entire basis of the northern economy, more and
more slaves gained freedom, education, and association with an increasing number of
abolitionists (Brooks, 1999).

In 1780 in fact, the Massachusetts Supreme Court outlawed slavery in the colony. Even though slavery continued, the judgment was a declaration that there would be no state-sponsored slavery. Furthermore, the decision gave blacks even more authority on which to base their demand for freedom. Brooks (1999) noted that the political atmosphere in the north, perhaps more imbued with the revolutionary spirit which won the country’s freedom from Great Britain, was one reason why so many blacks and Native Americans obtained freedom through manumission or victory in court.

Slavery in the south was an entirely different institution. It was critical to the southern economy and the slave codes ensured its survival. In 1705, Virginia passed the first of its laws pertaining to blacks which legalized their inferior status. In many subsequent revisions, there are many examples of the inhumane treatment meted out to blacks and not whites. Black men, for example, could lawfully be castrated for attempting to or in fact raping a white woman while there was no such law applicable to white men (Brooks, 1999). In Georgia, a 1750 law permitted slavery but a 1775 law was even more explicit:

[A]ll Negroes Indians (free Indians in Amity with this Government and Negroes Mulatos or Mestizos who are now free Excepted) Mulatos or Mestizos who now are or shall hereafter be in this Province and all their Issue and offsprings Born or to be Born shall be and they are hereby declared to be and remain for ever hereafter absolute Slaves and shall follow the Condition of the Mother and shall be deemed in Law to be Chattels personal in the Hands of their Owners and possessors and their Executors Administrators and Assigns to all intents and purposes whatsoever. (Brooks, 1999, p.319)

Although it is not the purpose of this paper to detail the horrors of slavery, at least a few lines need to be dedicated to the matter because slavery, along with segregation and other methods of discrimination against black Americans, formed the moral and judicial foundation
upon which conciliatory measures such as integration and affirmative action would be taken. In addition to the excerpt from the 1775 Georgia Act above, an excerpt taken from a highly acclaimed speech by Frederick Douglass, a freed slave, intellectual and ardent abolitionist, will be more than adequate to illustrate the point. He traveled to Glasgow in Great Britain to kindly detail for the residents there the true nature of American slavery. Many abroad had been led to believe, mainly by American slaveholders, that slavery was largely “benevolent,” at worst, something like indentured servitude (Brooks, 2005). Douglass came to tell the truth; that American slavery was not any slavery they had ever seen or imagined - American slavery, was indeed “peculiar”- in its cruelty, as it were. He is quoted as saying that, “there is not a nation of savages, there is not a nation on the earth guilty of practices more shocking and bloody than are the people of the United States at this very hour (Douglass, 1845).” To the audience in Glasgow in 1846 he said the following:

[Slavery] was to be bought and sold in the market: it was to be a being indeed, having all the powers of mind of a man, capable of enjoying himself in time and eternity—it was to take such a man, and make property of him. Having the physical power of a man, he may not exercise it,—having an intellect, he may not use it,—having a soul, he may not call it his own. The slaveholder decided for him when he should eat, when he should drink, when he should speak, and when he should be silent—what he should work at, and what he should work for, and by whom he should be punished. He had no voice whatever in his destiny. This was a slave. Had they any such here? If they had such a system here it ought to be abolished, and he would raise his voice in favour of its abolition. (Applause.) (para. 10)

The slave may not decide who he should marry, when he should marry, how long the marriage contract should last, nor what may be the cause of its dissolution. The bloody-minded slaveholder might separate man and wife, sending the one any distance from the other. He might take the child from its mother, hurling it in one direction, and her in another, never to meet again. Those were the peculiarities of American slavery. There was no such thing here. Even the beggar on the street in this country could get what the law allowed him. The poorest mother in the land could clasp her infant to her bosom, and the most lordly aristocrat dared not lay hands on such a being. (Applause.) (para. 11)

…The American people had taken away from three millions of men and women all the rights of citizens—all the rights of Christians—and all the rights of humanity were denied to them. While the ministers of the gospel were telling them from Sabbath to Sabbath to obey God's laws, it was a crime to take the means of acquiring a knowledge of these laws. While they were telling them this is a land of civil and
religious liberty, there were three millions of people denied the privilege of learning to read the name of the God who made them. (Cries of “Shame.”) The slave-mother, for teaching her child the letters which composed the Lord's prayer, could be hung up by the neck till she was dead. (Sensabon.) The punishment of death was the penalty for a slave-mother teaching her child to read the Lord's prayer in Christian, democratic America. (para. 15)

This was American slavery; so contradictory in a country where “all men are created equal” that many, especially in legislative bodies where the word ‘slavery’ was considered improper and the actual act unlawful in some states (Brooks, 1999), referred to it simply by the euphemism: the “peculiar institution” (Stephens, 1886). Samad (2005) has expounded upon the euphemism:

The flaw in the American experiment [of democracy] was its engagement in the Trans-Atlantic Slave Trade…[which] turned unto one of the most vile and abusive forms of permanent slavery-an institution almost wholly made in America-as other countries had abolished their forms of slavery by the start of the 19th Century, and the Trans-Atlantic Slave Trade ended in 1808. America, on the other hand, transitioned…to a home-bred institution that became almost exclusively African, categorized humans as property, and stripped enslaved persons of the rights and privileges for the duration of their lives. This is where America’s legacy of inequality began. (introduction, para. 1)

In the past, dealing with racial strife was met by models of affirmative action with less than noble aims. Burin (2005) has talked about the “peculiar solution,” whereby some 560 slave masters sent about 6,000 slaves to the American Colonization Society’s colony in Liberia between 1820 and 1860 (p. 2). The Missouri Compromise of 1820, was an attempt to reconcile conflict between anti and pro-slavery factions within the Union by regulating slavery mainly in the western territories and outlawing it north of the 36°30’ parallel. As Forbes (2007) has explained, this reconciliation served mainly to prevent the spread of slavery in the country, not to eliminate it.

Following the Compromise, almost all inter and intra-state conflict regarded slavery, America’s “peculiar institution (Freeman, 2011, p. 3).” The conflicts were sometimes violent, as in the Kansas chambers of Congress, where congressmen fought over the decision to be
admitted to the Union as a free or slave state (Freeman, 2011). There were numerous compromises, acts and codes that sought to quell the tension but the Dread Scott decision was a victory for slave states and set the country on a sure path toward war. The Supreme Court decision in *Dred Scott v. Sandford* (1857) ruled that blacks were not citizens, could not sue in federal courts, and that relocation to a free state did not emancipate a slave, which effectively permitted slavery throughout the nation. The Albany, New York, Evening Journal, in two articles, summed up the 1857 ruling:

> It is no novelty to find the Supreme Court following the lead of the Slavery Extension party, to which most of its members belong. Five of the Judges are slaveholders... (para. 3)

> ...human Slavery is not a local thing, but pursues its victims to free soil, clings to them wherever they go, and returns with them — that the American Congress has no power to prevent the enslavement of men in the National Territories — that the inhabitants themselves of the Territories have no power to exclude human bondage from their midst — and that men of color can not be suitors for justice in the Courts of the United States! (para. 2)

By the time the Civil War started, most states south of the parallel sided with the Confederates while the states north of the parallel sided with the Union (Forbes, 2007). In his book, Samad (2005) quoted Frederick Douglass who underscored the centrality of slavery to the war: “...slavery is not only the cause of the beginning of the war, but slavery is the sole support of the rebel cause. It is, so to speak, the very stomach of this rebellion” (p. 37).

Thus, after the Union victory, racial inequality was met with reconstruction or reconciliation initiatives which included three constitutional amendments. The thirteenth abolished slavery; the fourteenth guaranteed all American-born persons citizenship and equal protection under the law; and the fifteenth lifted many of the voting restrictions previously imposed on blacks and poor whites (Samad, 2005).

In 1865, Major General William Tecumseh Sherman issued Field Order No. 15, from which the phrase “forty acres and a mule” originated. Sherman, with the authority of the
President, ordered that the “Georgia Sea Islands and a strip of South Carolina rice country [be designated as] black settlements” (Samad, 2005, p.367). Furthermore, freedmen had the right to a complimentary lot of forty acres of tillable land as well as “assistance (a mule, for example) to establish a peaceable agricultural settlement” (p.366).

The 1865 Civil Rights Bill was passed and the Freedman’s Bureau was established, providing public school education, medical care, work contracts, banking, and other services (Samad, 2005). In the south, there arose a voting block comprised of free blacks, northern transplants who moved south to take advantage of land homesteads, and whites sympathetic to black equality. This block voted republican and represented a majority in many southern states. When many white Democrats boycotted elections and black turnout often neared 80%, members of this block were swept into power, creating what some historians call “Alien Republican Party governments” in the south (Samad, 2005, p. 76).

Indeed, for the first time in the history of the country blacks participated in government. Of 1,000 state convention delegates, 265 were black. Between 1869 and 1901, two black U.S. senators and twenty black U.S. congressmen were elected to the federal government. Hundreds more were elected to state governments, as congressman, lieutenant governors, and superintendents of education. Blacks held a majority in the lower house in South Carolina and were nearly equal to the number of whites in the Louisiana legislature (Samad, 2005). Reconstruction was in effect a regime change in the south that heralded a new day for black Americans who were beginning to see the possibilities freedom had to offer and, with the support of the federal government, began to reap the benefits of citizenship.

The 1877 presidential election marked the beginning of a period that some historians call “Redemption” (Samad, 2005), referring to the redemption of the south and white southerners. In an undocumented but widely acknowledged event known as “the Bargain of
1877” (p. 97), a constitutional crisis was averted in favor of the south. In a close race, Republicans contested certain southern states where blacks reportedly had been denied the right to vote. After a bi-partisan commission of legislators and Supreme Court judges ruled in favor of the Republican candidate, Democrats threatened to block the final electoral vote count. Their anger was so intense that they threatened to take up arms and begin another civil war. But as Samad (2005) noted, “Hayes met with Democratic leaders to work out a deal that would allow Hayes to become President, but would also free the South of the last remnants of reconstruction, the presence of federal troops” (p.97). One of the effects of this presidential election was immediate and decidedly radical; in a matter of months, all federal troops were withdrawn from the south, ending reconstruction and ushering in an era of immense oppression and segregation known as Jim Crow.
In 1870, Congress passed the 15th Amendment, required for states’ readmission to the Union, declaring that, “the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color or previous condition of servitude (Samad, 2005, p.75).” Though later declared unconstitutional, The Civil Rights Act of 1875 stated that “all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations of inns, public conveyances on land or water, theaters and other places of public amusement…and applicable alike to citizens of every race or color” (Samad, 2005).

By the time President Hayes came to office (1877), blacks’ land rights had long since been trampled. After about 40,000 freed slaves received their 40 acres, President Andrew Johnson (1865-69) repealed Sherman’s order and former land owners were allowed to force black settlers off the land (Samad, 2005). There had long since arisen among many southern whites resentment at blacks’ newfound freedom and stature. The calculated withdrawal of federal troops gave southerners tacit permission to subjugate blacks once again. Samad (2005) observes that to avoid federal repercussions for attempts to completely shut blacks out southern society, they attempted to separate them from white society as thoroughly as possible.

Despite these concerted efforts in the south to maintain segregation, blacks experienced renewed hope for equality after the election of 1888, when Republicans gained control of both the executive and legislative branches of governments. Several pieces of legislation, which we would today call affirmative action policies, were passed in the
Congress. Because blacks were largely poor and uneducated, the Blair Bill funded and purportedly equalized public schools. Other policy, such as the Force Bill, sought to protect blacks’ voting rights by providing oversight to ensure the legitimacy of federal elections.

Ruling the Civil Rights Act of 1875 unconstitutional, however, led to a growing number of “restrictive covenants” which sought to exclude blacks from white society. Samad (2005) references the first genuine “Jim Crow” law that originated in Florida in 1887. It required blacks traveling by rail to sit in separate cars or behind partitions. By 1892, eight other states had followed suit. “Jim Crow politics built a white supremacy infrastructure that preserved the old master/slave system...[it] eventually [developed] into the full force of statutory law, making Jim Crow ‘law’ synonymous with what it meant to be from the South, and in the South” p. 103.

On July 10, 1890, the Governor of Louisiana passed a bill, the “Act to provide equal but separate accommodations for the white and colored races” (Samad 2005). In response, a group of blacks and creoles from New Orleans created a group called, the Citizens’ Committee to Test the Constitutionality of the Separate Car Act. In what would become one of the most infamous Supreme Court decisions ever, the court ruled on May 18th 1896 that racial segregation was constitutional. Writing for the majority, Justice Brown upheld Louisiana’s right to express “the common usages, customs and traditions of the people,” that race was “a fact of life and of law” which “must always exist as long as white men were distinguished from the other race by color” Samad (2005) relates one of the most memorable claims from the case made by Justice Brown:

Plessy’s claims only assumes that the legal separation of the two races “stamps the colored race with a badge of inferiority”, that nothing in the act reflects such designation, and that such assumption solely exists “because the colored race chose to put that construction upon it...Legislation of powerless to eradicate racial instincts or to abolish distinctions based upon physical differences...If the civil and political
rights of both races be equal, one cannot be inferior to the other civilly or politically. If one race be inferior socially, the Constitution of the United States cannot put them upon the same plane (p. 120).”

Out of the Plessy decision did come one ray of light which much of the country would later look back on with great respect. Supreme Court Justice John Marshall Harlan, who served a total of 33 years on the court, wrote the only dissenting opinion. It was an opinion that was almost as long as the majority opinion, that would become one of the most famous issued by a member of the Court, and one that would influence the Court’s decision in the Brown case 56 years later (Samad, 2005).

Harlan adhered to theory and policy that served to equally protect the civil and political rights of all citizens and as such, supported these principles by writing several dissents, esteemed for their legal expertise, eloquence, and courage in support of equal rights (Harlan dissented in the Civil Rights Cases of 1883, where the Court struck down the Civil Rights Act of 1975; in Plessy (1896), where the Court upheld segregation by supporting the ‘separate but equal’ doctrine; in Giles v. Harris (1903) upheld the grandfather clause, restricting blacks’ right to vote; and in the Insular or island-related Cases (1901), affirmed the country was not required to grant civil rights to native residents of overseas territories such as Guam, Puerto Rico and Hawaii among others. In his dissent in the Plessy case (1896), he wrote of the absurdity that Asians, not even accorded citizenship at the time, were afforded rights that blacks had to fight to protect:

…by the statute in question, a Chinaman can ride in the same passenger coach with white citizens of the United States, while citizens of the black race…, many of whom, perhaps, risked their lives for the preservation of the Union…and who have all the legal rights that belong to white citizens, are yet declared to be criminals, liable to imprisonment…

[The 13th and 14th Amendments] were welcomed by the friends of liberty throughout the world. They removed the race line from our governmental systems. They declared, in legal effect, this court has further said, ‘that the law in the states shall be the same for the black as for the white…’ We also said: ‘The words of the
amendment… contain a necessary implication… the right to exemption from unfriendly legislation against them distinctively as colored; exemption from legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy; and discriminations which are steps towards reducing them to the condition of a subject race…

It was said in argument that the statute… does not discriminate against either race, but prescribes a rule applicable alike to white and colored citizens. But this argument does not meet the difficulty. Every one knows that the statute in question had its origin in the purpose, not so much to exclude white persons from railroad cars occupied by blacks, as to exclude colored people from coaches occupied by or assigned to white(s)…

[I]n view of the constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful…

In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the Dred Scott Case…

The arbitrary separation of citizens, on the basis of race, while they are on a public highway, is a badge of servitude wholly inconsistent with the civil freedom and the equality before the law established by the constitution. It cannot be justified upon any legal grounds…

We boast of the freedom enjoyed by our people above all other peoples. But it is difficult to reconcile that boast with a state of the law which, practically, puts the brand of servitude and degradation upon a large class of our fellow citizens, -our equals before the law. The thin disguise of ’equal’ accommodations for passengers in railroad coaches will not mislead any one, nor atone for the wrong this day done.

Plessy is considered a landmark case because it gave an unequivocal answer to the question of whether segregation would be protected under federal law. Indeed it would, for another 56 years, until the Brown decision (1952) was handed down-333 years after the first blacks arrived in shackles on the shores of America.
Near the end of the 20th century, W.E. B. Du Bois conducted studies that illustrated the relative state of black Americans. At the time he was writing, nearly all the affirmative action policies enacted during and after the reconstruction period had been either severely limited or altogether eliminated. His studies are noteworthy because of the incredible amount of data he acquired as well as the eloquent sociological commentary, placing otherwise tedious statistics into what he considered to be their proper socio-historical context.

Du Bois did an exhaustive study of the state of the black community in Philadelphia and in particular, a study that compared that community to comparable white communities. He conducted a similar study in south west Georgia, employing commendable academic rigor, adherence to the most thorough data collection process, and a sophisticated sociological commentary that together exceed the needs of any researcher seeking a snapshot of the black and white communities at that time.

In 1899, Du Bois published, *The Philadelphia Negro: A Social Study*. His hope was that his work would help provide an accurate picture of the state of black people in the country as a whole and to that end, noted that studies similar to his in Philadelphia would also need to be conducted in “Boston to the East, Chicago and perhaps Kansas City in the West, and Atlanta, New Orleans and Galveston in the South (p. 4).” The Albany, Georgia study was presented in his famous book, *The Souls of Black Folk* (1903).

In *The Souls of Black Folks* (1903) he said: In Philadelphia meanwhile, the black population had ballooned between the years 1870 and 1880. Most certainly the emancipation of slaves from 1862-1865, the realization by southern blacks that labor, education, and thus life in the south would not take an extraordinarily different character than life in the antebellum south, caused many to emigrate northward. Du Bois continued his excellence in sociology in his study in Philadelphia. He spent an incredible amount of time gathering and
compiling data that he presented in his book (1899). In Georgia, he criticized the indebted nature of sharecropping to which a large number of ex-slaves had turned for survival. Data that he used were either gathered on his own or came from sources such as the census bureau. Based on the findings of his study, Du Bois made conclusions about the state of black people, the links to slavery and segregation, and offered ideas about what the country needed to do to eliminate racial disparity.

Having already noted some of the affirmative action policies effected at the time, data revealing the state of the black community relative to the white becomes interesting. The Urban League’s Equality Index measures black-white equality in five different domains: economics, health, education, social justice (equality under the law), and civic engagement. Du Bois’ extraordinary research in Philadelphia and Albany confirms the findings of the 12th census of the United States conducted in 1900 (United States Government, 1903). Data for the indicators below, each falling within one of the five domains used by the Urban League, are drawn from all three sources; Du Bois two studies and the census data.

EDUCATION

In the education domain, the 1900 census measured several indicators including school attendance, ability to speak English, and illiteracy. These show a clear gap between the black and white populations in the United States.

School Attendance: “For the mainland of the United States…[of] the total number of persons attending school during any portion of the census year ending June 1, 1900,” 91.5 percent were white, and 8.2 per cent negro. The difference between the sexes was minimal in both cases (United States Government, 1903, p.77).
Illiteracy: Illiteracy among native white males was 4.6% in 1900 and for native white females in the same period, 4.7%. Negro males, however, had an illiteracy rate of 43.1%, females, 45.8%. Of the 25 “principle” or major cities with at least a 10% illiteracy rate, nineteen were located in the south, with Montgomery, Augusta, Mobile, Birmingham, and Savannah leading the bunch. “In all these cities,” the census reports says, “the proportion of illiterates among the colored element is very large – from 40 to 45 percent in the cities in Alabama and from 30 to 40 per cent in the cities in Georgia” (United States Government Publication, 103, p. 107, p.83).

ECONOMICS:

W.E.B. Du Bois’ study in Philadelphia (1899) is a those sources of great use. Du Bois concentrated his study in Philadelphia’s 7th Ward where there was a high concentration of black people. At the time, Philadelphia, a city of some 40,000 blacks, had a concentration of black residents rivaled only by the cities of Washington, Baltimore and New Orleans. It was his hope that this work would be a piece of a larger study of the black American experience, more thoroughly investigated by the completion of similar studies in other American cities. Among others, one of his research aides was a graduate of Smith College, Isabel Eaton, who used the study in partial fulfillment of her masters of art degree from Columbia University (Du Bois, 1899).

Poverty

To summarize, Du Bois’ careful research exposed a disproportionately higher percentage of poverty in the black community relative to whites. Accompanied by case studies, his statistical survey led him to conclude that rife poverty in the 7th Ward was symptomatic of a much larger problem. Katz (2000) remarked:
… “sickness and misfortune,” “lack of steady employment,” “laziness, improvidence and intemperate drink,” and “crime”—[are each] artificial single categories that, he (Du Bois) knew, masked the complex nature of poverty's etiology: "crime causes sickness and misfortune; lack of employment causes crime; laziness causes lack of work, etc. (Katz, p.112)

Employment

Earning a living or the question of economic survival, Du Bois said, was the most pressing of all issues for black people at the time. The situation for blacks was indeed grim. On the one hand, he notes that black people were at a disadvantage because as former slaves or the children of former slaves, their mentality was often slave-like. That is to say, that although they tried to “better [their] condition” by gaining adequate employment, their training as slaves and later as newly-freed slaves or close descendants of such, resulted in being less efficient and reliable in work as even immigrant workers. “…this [was] without doubt to be expected,” he said, “in a people who for generations have been trained to shirk work (Du Bois, ps. 97-98)…”

Du Bois also notes that the lack of training and employment opportunities was often due simply to racism. “Every one knows that in a city like Philadelphia a Negro does not have the same chance to exercise his ability or secure work according to his talents as a white man.” Blacks then were “not only restricted by their own lack of training but also by discrimination against them on account of their race.” (Du Bois, 1899 ps. 128-129)

Occupations: In a comparison of “males of all colors” in Philadelphia to black males in Philadelphia’s 7th Ward, Du Bois found, for example, that while 17.3% of all men were engaged in domestic and personal services, 61.5% of black men in the 7th Ward were so engaged. Employment in the manufacturing and mechanical industry also showed remarkable
disparity: 47.4% of all men to 7.7% of black men in the 7th Ward being so engaged. Of the five occupations detailed in Du Bois’ table, only the “trade and transportation industry” showed some equity, with 29.5% of all men in the city so engaged compared to 28% of black, male residents of the 7th Ward (Du Bois, 1899).

The occupational gulf between black and white women in the city was even larger. Of the total number of “women of all color” in Philadelphia, 37.9% were employed as domestics or personal servants. On the other hand, 88% of black women in the 7th Ward were so employed. Likewise, 45.8% of all women were in the manufacturing and mechanical industries while only 8.8% of black women of the 7th Ward were. Countering the trend, Du Bois found that in the trade and transportation industry, total female employment was 11.4% but 88% among black women in the 7th Ward. He also makes a special point to note that black youth worked in far larger numbers than white youth (Du Bois, 1899).

Homeownership: The 1900 census data show the following statistics for home ownership by race: 49.6% for whites, 21.9% for Negros (1900 US Census p. 48) The 1900 census includes numerous tables including the total number of people, “10 years of age and over engaged in gainful occupations (p. 503).” The information is classified by type of occupation, sex, state, and territory. It does not include a classification by race. We are compelled, therefore, to look elsewhere for information about the occupations of black people at the time. While there are several publications that include information about the occupations of black people, for our purposed we are able to pull from but a few sources.

Undoubtedly, the lives of blacks varied among the different regions of the nation but what is sure, is that the black population at this time was concentrated in the south of the country and their professional options were further limited. The data cited above originate from two sources. One is the United States Census from which nation-wide, average
percentages were gathered. The second cited source is Du Bois’ study in Philadelphia, which provides one with a closer view of the lives of blacks in the urban, northern region of the country. The national census statistics are already inclusive of information about blacks in the south and elsewhere in the nation. Du Bois however, a Massachusetts-born, Harvard scholar, went further. Similar to his journey to Philadelphia, he ventured into the deep south, studying the rural, black population of Albany, Georgia. In his 1903 book, *The Souls of Black Folks*, throughout the book, he is both sorrowful and sharply critical of the indebted nature of sharecropping to which large numbers of ex-slaves had turned for survival.

How strange that Georgia, the world-heralded refuge of poor debtors, should bind her own to sloth and misfortune as ruthlessly as ever England did! The poor land groans with its birthpains, and brings forth scarcely a hundred pounds of cotton to the acre, where fifty years ago it yielded eight times as much. Of this meagre yield the tenant pays from a quarter to a third in rent, and most of the rest in interest on food and supplies bought on credit. (Du Bois, 1903 p. 127)

CIVIC ENGAGEMENT:

Starting in 1895, most southern states had instituted some type of reform to discourage black from voting. One such reform was the poll tax, only selectively applied. Requirements that voters be literate, “understand,” the legislation, possess good character, all kept blacks from voting. If they couldn’t vote in the primaries but could in the general election, the choices presented them were none in which they’d had any say (Samad, 2005).

While blacks were elected into the U.S. House and Senate in record numbers during Reconstruction, after the Plessy decision their numbers started to dwindle, as voter intimidation and infringements meant there was no one to vote for them. In 1877, when the Federal troops retreated from the south, there were seven U.S. congressmen, one senator, and many black representatives in local government. In 1897, when the Plessy decision blessed the “separate but equal” doctrine, there was only one black federal representative. When his seat was taken, there would be no blacks in Congress from 1901 to 1929. The south would not see another black congressman until 1971 (Samad, 2005)
SOCIAL JUSTICE:

The census has been tracking statistics on incarceration since 1850. The data though, was not included in the census report but in a separate, biannual, publication entitled *Prisoners in State and Federal Institutions*. With this publication and numerous other sources originating from within and outside of government, Margaret Werner Cahalan was able to publish for the United States Justice Department in 1986, *Historical corrections statistics of the United States, 1850-1984*. It is a thorough 251 pages but for our purposes we will consider just a few pieces of data. One of the first tables presented in Cahalan’s report happens to be on the subject of illegal lynchings per decade.

**Illegal lynchings**

The statistics range by decade from the 1880’s to the 1960’s. The 1900-1910 decade has the second highest number of illegal lynchings reported, preceded only by the 1890’s in which there was a total of 1,111 lynchings, 72% of them of black people. After 1900, the percentage of blacks lynched compared to the white population never dipped below 75% for the rest of the century; 91% in the 1910’s, 89% in the 1920’s.

In the decade that concerns us, 1900-1910, there were a total of 895 reported, illegal lynchings of which 791 or 89% were black persons. The top three offenses cited were homicide, 278 in number, attempted rape, 99, and rape, 88. These offenses were followed in number by the following: 160 due to “all other causes”; 56 for felonious assaults; 33 for theft; 11 for insult to white persons.

**Death penalty**

The total percentage of the non-white population in the Unites States was only 12% in 1900, of which the near totality, .115%, was black (US Census, 1900). Cahalan (1986)
reports the percentage of execution of non-white persons in this year to be 33%. Of these non-white executions, 74% of them occurred in the south where the black population was most concentrated (US Census, 1900).

*Average length of stay*

The average length of a prison sentence for all offenses was reportedly 16.19 days for native whites, 16.66 days for foreign-born whites and 18.77 days for blacks. The sentences in the north were decidedly more punitive all around but were remarkably lengthier for blacks, all offenses averaging 24.75 days for blacks and only 17.23 days for whites. There, whites averaged 17.23 days for all offenses while blacks averaged 24.75 days (Cahalan, 1986).

Blacks received the harshest punishment for burglary, larceny (except auto theft), embezzlement and fraud, and “other assault”: 94.11 days for whites to 111.60 days for blacks, 32.24 to 38.02 days, 32.29 to 38.1, and 23.15 to 27.16 respectively.

*HEALTH:*

*Life Expectancy*

The 1900 census did not calculate life expectancy or a host of other indicators that came into existence over time. Scholars have been able, however, to use various scientific methods to use the census data to make estimates. Haines and Preston (1996) studied the Glover life tables (1921), which were estimates of certain vital statistics drawn from the 1900 and 1910 censuses. Haines and Preston concluded that Glover’s estimates, which were commonly referenced, were inaccurate. At the time of the 1900 census vital statistics did not cover the whole of the United States and the Death Registration Area (DRA), from which Glover draws his data, was not instituted everywhere until 1933. Indeed, in 1900 it was comprised of only a few states located primarily in the northeast and Washington D.C.
Glover’s figures then, were drawn from a small portion (26%) of the American population that was far more urban (66%) than the nation truly was (40%). The DRA included a disproportionately higher number of immigrants (22% to the 13.6 national average), and most pertinent to us, counted less than 5% of black Americans and deemed most of them (82-83%) city-dwellers. In truth, urban blacks comprised only 20% in 1900 while the rest lived in rural communities.

Haines and Preston attempt to correct the record by applying what they’ve termed, “indirect estimation” which they say “provides a reasonably accurate way to extend mortality analysis to areas not covered by vital statistics registration” (Haines, 1996 p.22). By this model, in 1900 the life expectancy for whites was 51.8 compared to 41.8 for blacks, 47% being the national average.

Mortality

“The federal censuses of 1900…asked questions of adult women on children ever born and children surviving which, when tabulated by age or marriage duration of women, can be used to estimate the probabilities of their children dying at various ages up to 25 (Preston and Haines, 1996 p.2).” In 1900, the overall infant mortality rate (infant deaths per 1000 live births) was about 110.8 among whites and a higher, 170.3, among blacks (Haines, 2010).

Conjugal condition

Data on the so called, conjugal condition, is of interest because we see here a dramatic difference between the black and white communities in the rate of widowhood, in particular. The census broke the information down into categories of race; for whites, blacks, Chinese, Japanese and Indians (Native Americans), and for sex as well. According to the census, black
women had one of the highest rates of widowhood; 9.3% of them were widows, second only
to Native American women of which 9.7% were widows. To compare, 5.7% of native white
women were widowed; a 48% difference. Black women’s husbands were dying far more
frequently than white women’s husbands.

Though we know from census data that white men lived roughly 20% longer than
black men, the census did not record cause of death. But after reading DuBois’ *Souls of Black
Folks*, it would not be unreasonable to simply wonder if black men were dying more
frequently and earlier than their white counterparts because of poorer health, working
conditions, more dangerous jobs, stress, and murder in cold blood or by decree.

Another particular conjugal condition in 1900 showed substantial differences between
the black and white communities which may further underscore the considerable difference in
the mortality rates. As then numbers below bear witness, the number of black widows is only
surpassed by Native American women: Native white females 5.7 widowed; Negro females
9.3 widowed; Chinese females 5.7; Japanese females 2.0; Indian females 9.7 (US Census,
1900 Table XLIV p.65).

Most of the affirmative action policies that affected black people at the turn of the
century were enacted during the reconstruction era. Monetary and land reparations, The
Freedman’s Bureau which sold land to blacks at a “fair” price, generous funding for black
school and colleges; all of these had been dismantled shortly after federal troops withdrew
from the south. The vestiges of affirmative action policy that did remain such as the Blair Bill
and the Force Bill, which allocated funds for lower-level education and sought to oversee free
and fair elections, as well as the 15th Amendment to the Constitution guaranteeing equal
citizenship rights to all regardless of race, were not respected or enforced after the
reinstatement of discriminatory practices, particularly in the south.
That affirmative action policies were not upheld in regard to blacks for the better part of the 20th century has been tacitly admitted by the United States Government which had to later pass more sweeping civil rights laws and at times, enforce them through the courts and even the use of federal troops which famously escorted black children into high school in 1957 amidst an angry mob of white southerners (Samad, 2005). The trampling of the affirmative action policies could also be evident in the state of black people at the time. Whether in the north or the south, Du Bois and the U.S. Census Bureau clearly documented the staggering inequality between black and white Americans.
CHAPTER V:
THEORY OF AFFIRMATIVE ACTION
NEAR THE TURN OF THE 21ST CENTURY

In the following excerpt from a speech made by President Lyndon B. Johnson at Howard University, one of the historically black colleges, he outlined the theoretical concept that underpins all affirmative action policies:

…freedom is not enough…You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, “You are free to compete with all the others,” and still justly believe that you have been completely fair. Thus it is not enough to open the gates of opportunity. All our citizens must have the ability to walk through those gates. (Johnson, 1965, pp.16-17)

Johnson, United States President from 1963 to 1969, led the country during a time when the majority of citizens remained relatively open to affirmative action policies. This can be seen in the 1961 passage of Executive Order 10925 by preceding President John F. Kennedy. This executive order contained the first official reference to the term “affirmative action,” and created the Committee on Equal Employment Opportunity, which allocated federal funds to ensure that employers “take affirmative action in their hiring practices” (Equal Employment Opportunity Commission, 1961, par. 22).

In 1964, the country saw the largest changes in Civil Rights legislation since Reconstruction. What is routinely referred to as the Civil Rights Act of 1964 has a much longer official title, which describes the measures dictated by law:

An act to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States of America to provide relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes. (Civil Rights Act of 1964, 1964, par. 1)
A complete summary of affirmative action policies during the 20th and 21st centuries is beyond the scope of this paper; however, one way to explore the current picture of affirmative is look at the realm of education. Since the adoption of federal affirmative action policies, institutions of higher education have begun also to adopt these policies in their admission practices (Wise, 2003).

In more recent times, the country has experienced a substantial and sustained backlash against affirmative action policies, particularly in education. In the controversial 2003 case in Michigan, the Supreme Court narrowly upheld the continued use of affirmative action admission practices. Justice Sandra Day O’Conner who authored the majority opinion in Grutter vs. Bollinger in 2003, upheld the University of Michigan Law School’s admission policy which was to ensure that there was a “critical mass” of minority students in the school body. Justice O’Conner said that the constitution “does not prohibit the law school’s narrowly tailored use of race in admission decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body” (US Supreme Court, 2003).

The affirmative action policies regarding education have been intended to address the gap in privileges between white and black students. In 2008, the State of Black America reported that the college enrollment gap between whites and blacks has continued to be quite significant. For instance, in 2005, 73.2% of white high school graduates went to college compared with 55.7% of black high school graduates. Furthermore, fewer blacks tend to graduate from college. In 1999, 40% of blacks enrolled in college graduated from 4 year institutions, compared with 59% of whites (The Urban League, 2008). To complicate the picture, African-American achievement in high school has continued to be impeded. In 2008, 12th grade African-American students had reading and math skills almost equivalent to 8th grade white students (The Urban League, 2008).
Grutter vs. Bollinger (2003) was one of many challenges to affirmative action policies in the early 21st century. Particularly in education, where colleges and universities have attempted to maintain policies to increase minority representation, there have been many critics-among them parents of prospective students, students themselves, legislators and even the president who criticized the ruling in Bollinger-who believe affirmative action is no longer needed and in fact, unconstitutional (Wise, 2003). Such critics have called such admissions policies “reverse racism,” “special treatment,” and “preference” based on skin color (Wise p. 4).

Intolerance toward affirmative action policy is held by enough citizens that discussion of it has been relegated to the courts. Serious contenders for the presidency of the country do not freely offer opinions on it and affirmative action legislation is routinely rejected before making it out of committee for a vote (Brooks, 2003). In this era, there is enough consensus that affirmative action is no longer necessary; that African-American Americans have been given proper support by legislation such as the creation of the Equal Opportunity Employment Commission in 1961, the Civil Rights Act of 1964, and subsequent court rulings upholding affirmative action practices in college and university admissions.
CHAPTER VI:
DISCUSSION

In 1900, African-Americans experienced a severe backlash against affirmative action policies. During reconstruction, morale and hopes were high. With the clear presence of the federal government in the south, the country attempting to abide by the 14th and 15th Amendments, and a flurry of affirmative action legislation granting land, loans, occupational training, and funding for black schools, the situation for blacks seemed to be improving. The power of the vote and the ushering into Congress of black senators and congressmen interested in improving the lot of their people, heralded a new day for blacks.

The withdrawal of federal troops and the subsequent return to servitude and discrimination through the Black Codes and Jim Crow, meant that little was done through policy to help black people. What was done was not respected and required further enforcement in the mid-21st century. The discrimination reinstalled and widened the racial gap common during slavery. Blacks would find success difficult when meeting basic needs meant share-cropping and service to whites at compensation that only provided enough to make it until the next day. The racial gap in education, health, economics, social justice, and civic engagement would remain.

Those gaps still remain. Though recent affirmative action policies have made it possible for many blacks to further themselves from poverty, illiteracy, poor health, and discrimination in the courts, census data proves that the gap is still substantial. The United States Congress, three times now, has formally apologized for discrimination. In 1988 the Congress apologized to Japanese-Americans interned in World War II and offered reparations. In 1993, the Congress again apologized, this time to native Hawaiians, for the overthrow of their Kingdom and subsequent colonization. Finally, in 1990, Congress
officially apologized to uranium miners and their loved ones who were affected by nuclear tests in Nevada (Brooks, 2003). There has been no official apology for participation in the slave trade, the enslavement of African-Americans, and the segregation and discrimination that persisted thereafter.

The question of the apology is important because it may have implications for future action, such as affirmative action. When an apology is made, there is a moral imperative to right the wrong. In the case of affirmative action theory and policy, the apology has not been stated officially. It may be considered implicit in the action. But can the country claim to have atoned for the wrongs done to African-Americans, can it claim to have enacted the necessary measures for equality, can it properly assess the impact and success of the measures, without the apology?

Considering affirmative action without the context of the wretched history from which the theory was born and without the context of a Government which has formally apologized for the history which unfolded under its watch, is perhaps not sufficient. The country has certainly short-circuited the path to a solution by avoiding conscious and clear conversation about the depth of the injustice and without the apology for it. In fact, polls show that two-thirds of black respondents feel the U.S. Government should both apologize and pay money to “compensate for slavery.” Two-thirds of whites resisted the idea of a formal apology and 88% of them rejected monetary reparations (Brooks, 2003, p. 343).

I agree with Valls (2002), who talked about racial reconciliation in the United States. He believes that affirmative action policies are in fact reparations but that the enacting of policy is but one step in a larger process toward what he terms, “racial reconciliation (p.1).” He suggests that the United States ought to follow the example of modern day reconciliation processes that occur after regime change involving pervasive discrimination or violence.
Valls suggests that the reconstruction era that occurred after the end of the Civil War in the United States was in effect a regime change. Were a modern day post-conflict reconciliation process applied, the process would have been different, and in our opinion preferable. That it happened in the past does not preclude use of a modern-day model. And if that model can be applied and be successful and productive it would deserve consideration.

To start, a formal apology would be issued. Secondly, the reconstruction era affirmative action policies would have continued in vigor and would have been routinely assessed for efficacy. In such a model, the inequality gap that we have today would not be acceptable and thus not warrant the dismantling of affirmative action policies. If anything, such a process would reevaluate and re-model policies if necessary, until relative equity was established. In such a framework, there is no place for the cessation of affirmative action policy with the racial gap that still exists. In current models of reconciliation, an equality gap is largely attributed to past discriminatory policy that stunted the growth of a community. It is not attributed to a people’s constitutional inability to perform as well as the dominant culture. It is not attributed to a people not taking advantage of policies offered them in the past.

In modern day reconciliation models, failure – or what we view now as the persistence of a significant gap between the black and white communities in all five Urban League domains – is not an option. I think we should start from the beginning and we should start by using modern-day models such as those used in South Africa, the former Yugoslavia and other places. They are not perfect models and they must be adjusted for each nation. But like Valls (2002) I believe they provide a fuller framework in which to view affirmative action policy and ultimate reconciliation and equality.
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