

Fairness and Affirmative Action

This talk is intended to help inform you about the issues behind the presence of Proposition 16 on this November's ballot.

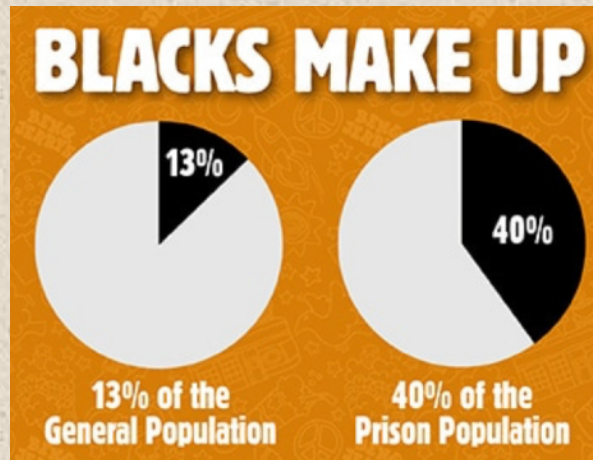
You may not have heard much about it, or you may find the ballot description confusing, or you may not know why it has even been proposed.

I present this talk from my prior experience as the founding Vice Chancellor for Equity and Inclusion at UC Berkeley (I am now retired). It presents purely my personal perspective and has no institutional endorsement.

I will primarily talk about the Black/White dichotomy in higher education, but much of the reasoning applies to the other areas that the law affects, including gender and other disparities, and arenas like contracting and business.

Our society isn't exactly colorblind...

The effects of systemic racism are broad, deep, and well documented.



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**BLACK STUDENTS ARE
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TO BE SUSPENDED
FOR THE SAME INFRACTIONS.**

**ONE STUDY FOUND THAT
67%
OF DOCTORS
HAVE A BIAS AGAINST
AFRICAN-AMERICAN PATIENTS.**

Health Disparities

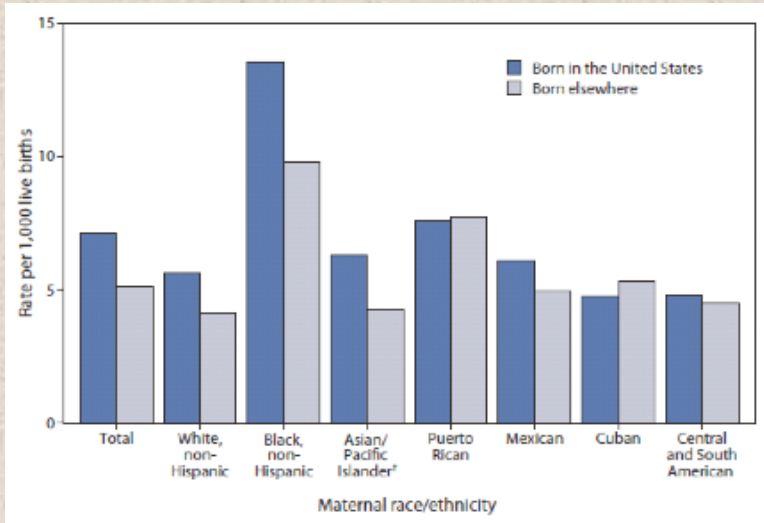
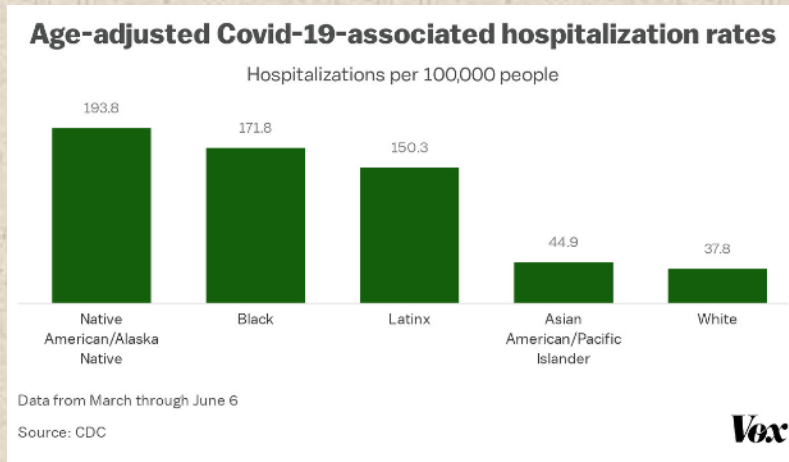
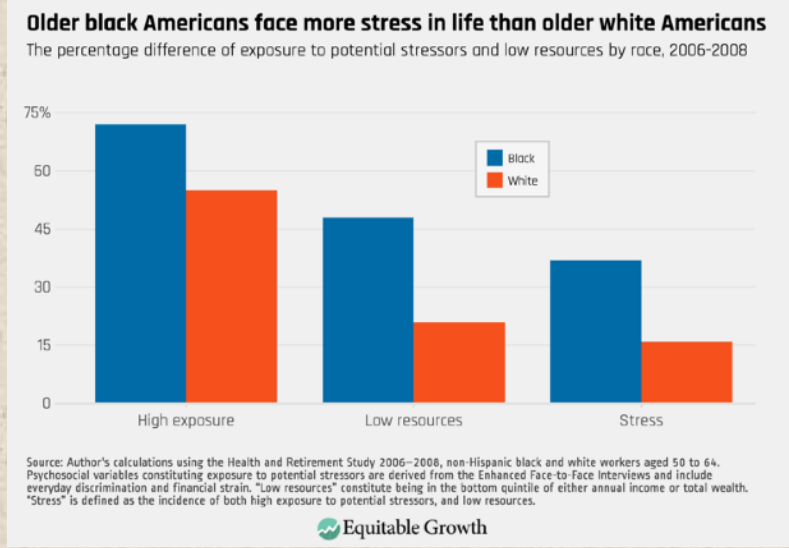
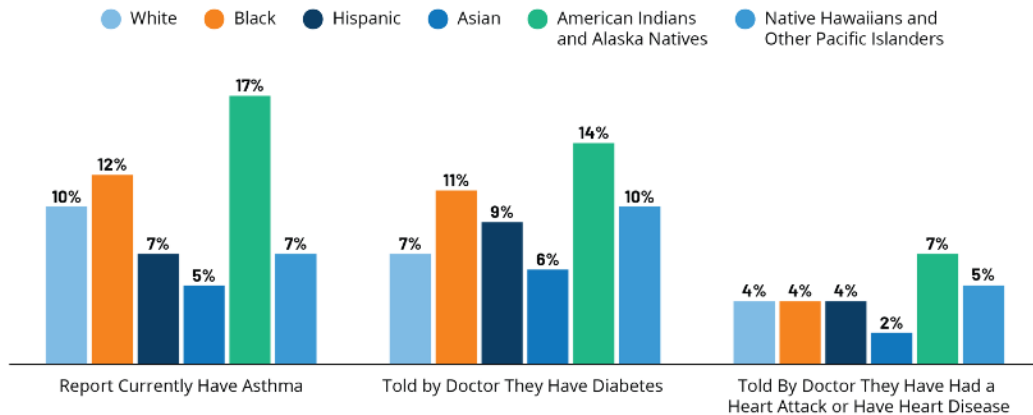


Figure 1. Infant Mortality Statistics From the 2009 Period. National Vital Statistics Reports; Vol. 61, No. 8. National Centers for Health Statistics, 2013.

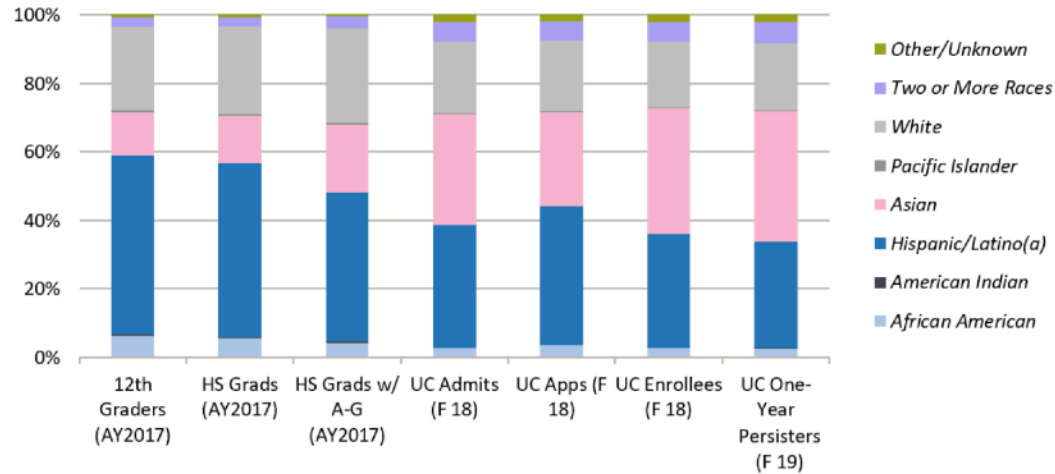


Percent of Nonelderly Adults with Selected Health Conditions by Race/Ethnicity, 2018

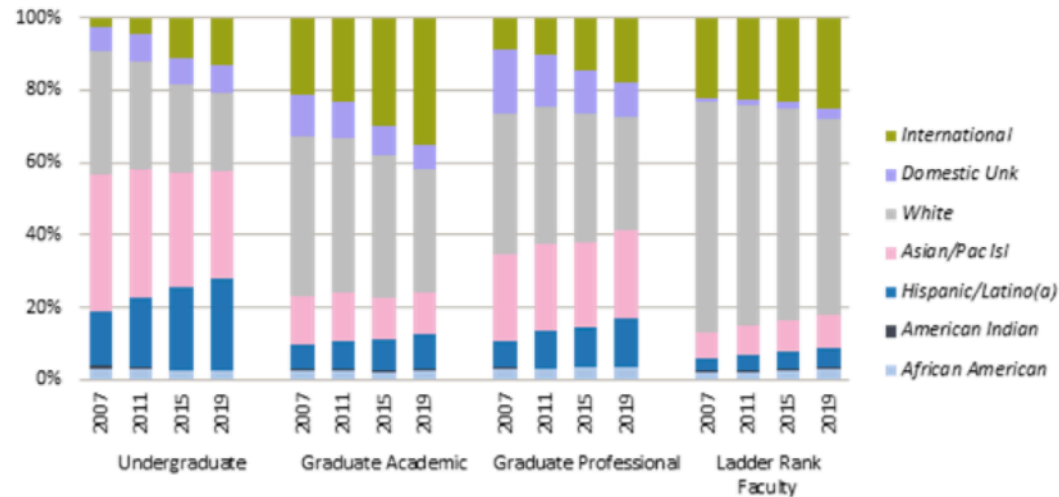


Diversity: Pools to UC; Students to Faculty

7.1.1 Racial/ethnic distribution of the UC undergraduate pipeline, Universitywide, Fall 2018 new freshman cohort from California public high schools



Sources: California Department of Education; College Board; UC Information Center Data Warehouse



Fairness and Affirmative Action

Proposition 209: “The California Civil Rights Initiative”

The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

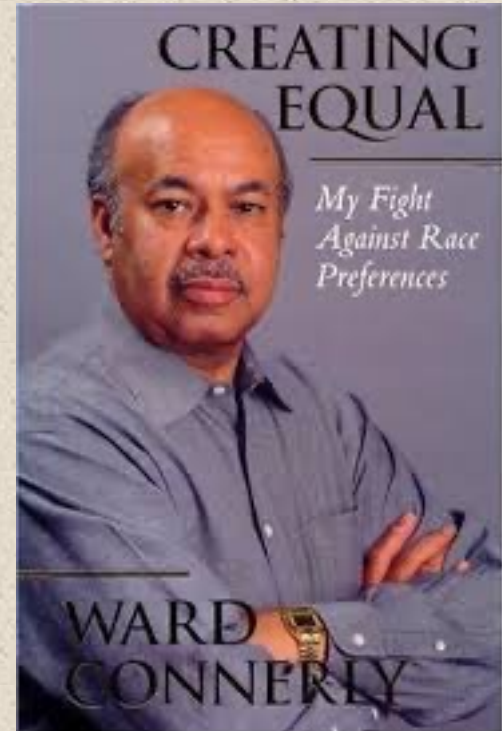
This proposition was followed by Prop 57, which forbid the collection of data on race and ethnicity altogether. This “Hide Racism” idea was defeated.



Martin Luther King, Jr.

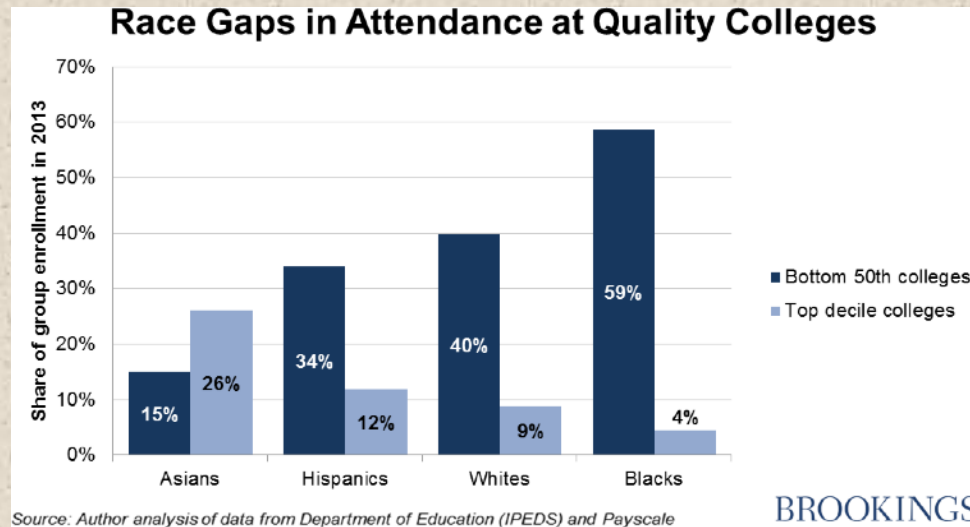
You are supposed to think that these two individuals pursue the same goals of racial justice.

You would be VERY wrong about that! Why?

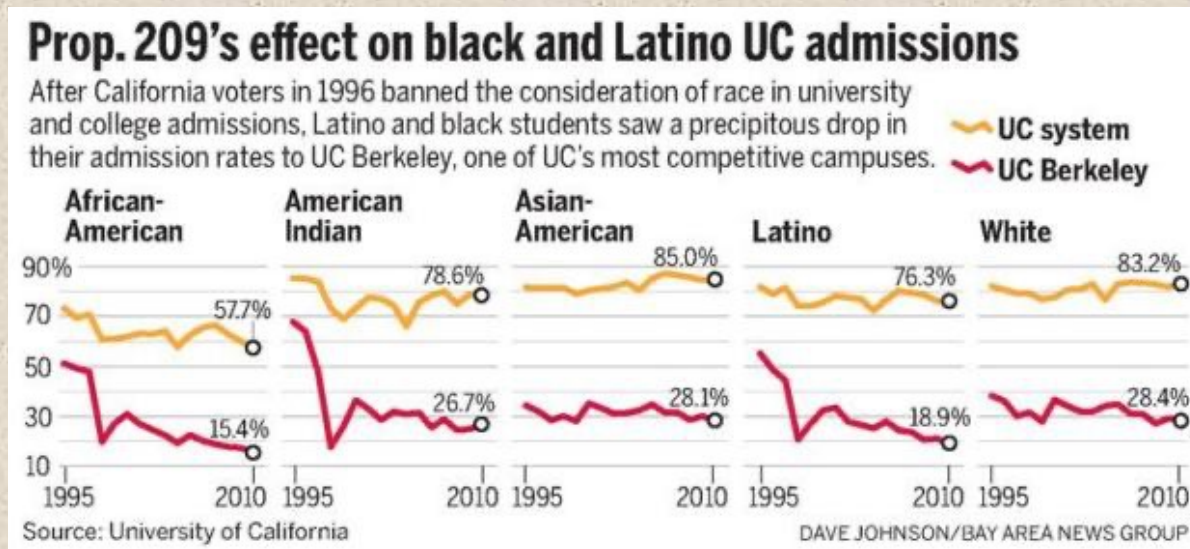


Fairness and Affirmative Action

This is what affirmative action was meant to address...



This is what Prop 209 accomplished...



The legal meaning of “discrimination”

The American legal system (a major player in systemic racism) allows a particular interpretation of words and practices to make what seems like a fair set of rules operate in an unfair manner.

If a white student with a higher SAT score is not admitted while a black student with a lower SAT is, that **IS** taken as evidence of discrimination based on race (against whites).

One is not supposed to take account of the fact that admission is not based solely or even mainly on SAT scores, nor make note of the fact that other white students with lower SATs were also admitted. Indeed, the “merit” argument sees the use of SATs as essential to its evaluation. The public universities are forced to defend against such cases over and over in court. It is in this context that Prop 209 successfully caused minority participation in California higher education to plummet.

On the other hand, it **IS NOT** evidence of discrimination based on race that severely underfunded public schools are filled with students of color, or that the percentage of black students in universities is much lower over decades, or that black families have a tenth the wealth of white families.

The legal system demands that you prove that there was discriminatory intent by finding direct evidence of clear intent (meaning you catch them on tape, not that it is obvious what was intended to happen).

The legal meaning of “preferences”

The American legal system (a major player in systemic racism) allows a particular interpretation of words and practices to make what seems like a fair set of rules operate in an unfair manner.

The following examples **ARE** taken as evidence of preferences based on race (for blacks). If a white student with a higher SAT score is not admitted while a black student with a lower SAT is. If the percentage of black students chosen out of a pool of applicants that is pre-selected to meet all the qualifications for admission rises after admission methods are changed. It is in this context that Prop 209 successfully caused minority participation in California higher education to plummet.

On the other hand, it **IS NOT** evidence of preferences based on race if extra admission points are given to children of alumni, or to children of larger donors to the institution. Or if weight is given in admissions to activities that only the affluent can afford much more easily (or at all). The fact that deciding committees are often composed largely of white men is also **NOT** evidence that preferences based on race or gender might occur. Such preferences may not have bad intent – we all prefer the familiar – but they are preferences nonetheless, and reflect the history of systemic discrimination.

Why not deal with racism using proxies?

The UC system has tried to compensate for the effects of systemic racism while obeying Prop 209 by leveraging some of the other effects of systemic racism as proxies, like lower socio-economic status, or admitting the top x% of each high school class.

These proved not fully effective as remedies for societal inequities, as explained in detail in an amicus brief for the Supreme Court in the Texas case.

Furthermore the public universities in California are hampered by Prop 209, but not the private California colleges or many other colleges across the country (which cost a lot more), making it even harder for the world's premier public university system to properly serve the people of California.

The Fallacy of “Taking my Spot”

The cases on affirmative action that have reached the Supreme Court have all had in common an accusation from a white applicant who was not admitted that they “lost their spot” because of affirmative action.

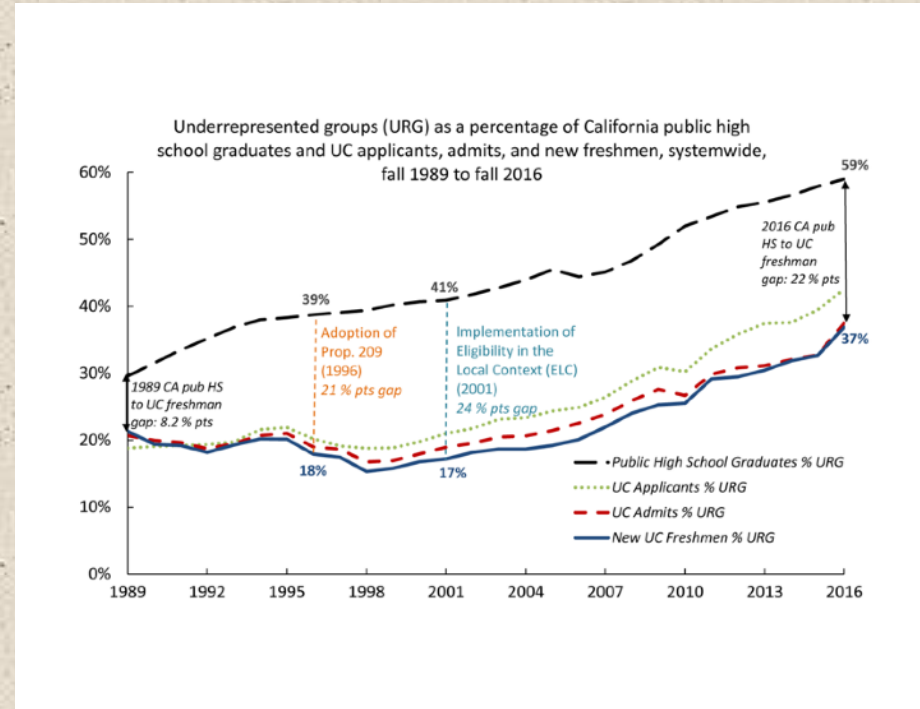
It is interesting that they think they “lost their spot” to a person of color because of a program to address the effects of systemic racism, rather than:

- because another white student got in (who may have had lower scores)
- because the university wanted students interested in humanism rather than their field
- because the university wanted students interested in STEM fields rather than their field
- because the university wanted athletes who could win in a variety of sports
- because the university wanted musicians for the orchestra
- because the university wanted rural as well as urban students
- because the university felt it already had enough students who were like them, and wanted a diverse group of students on many dimensions

News Flash: nobody “has a spot”. Each class gets composed of qualified individuals after taking into account a wide variety of constraints.

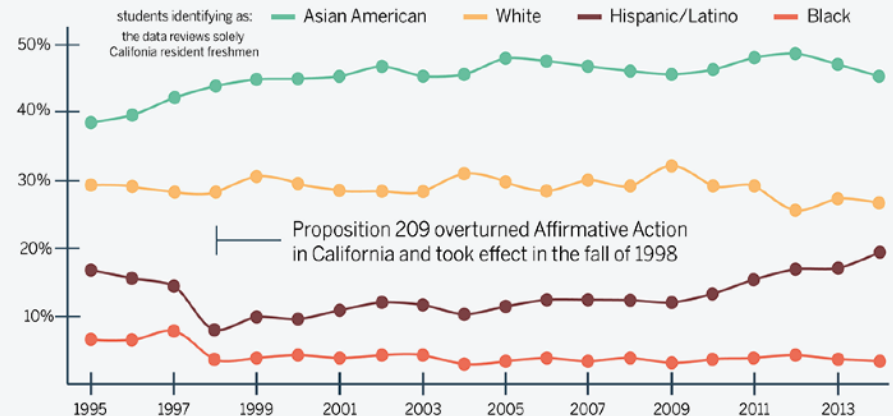
The UC Undergraduate Composition

The number of students applying to UC has been increasing steadily and dramatically. The percentage of Black/Latinx students dropped by a factor of 2 after Prop 209. The percentage of Black students stayed low until recently, while the percentage of Latinx students has recovered. However the percentage of Latinx high school graduates has actually doubled, so their representation at UC is actually worse than ever.

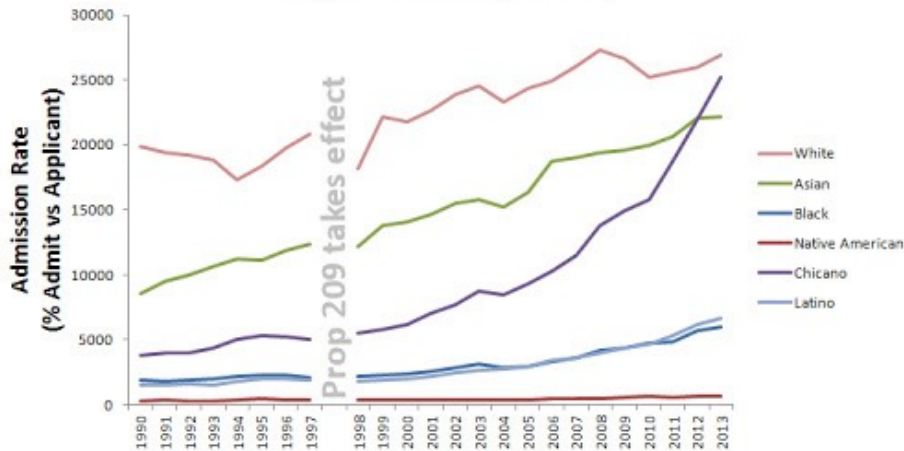


Affirming Enrollment

trend of freshmen enrollment between 1995 and 2014



Application Rate (Total UC)



Fairness and Affirmative Action

A “Dickensian” story to illustrate the fairness question:

In a village long ago and far away, children in Group A are fed gruel and forced to work in sweat shops for long hours in addition to cleaning and cooking for everyone. Group B goes to school in preparation for taking over jobs and power, and gets full meals. This goes on for years; Group A remains uneducated and undernourished. Eventually the sweat shops are closed, and Group A begins to get tutoring once a week. But then some of them begin to complain about their food situation and are punished by being locked in tiny rooms.

One day those in charge decide that maybe they’ve been unfair in feeding Group A only gruel, and begin to serve them somewhat better meals (without dessert). This unfortunately means that Group B gets half as much meat as before (it being in limited supply). They are asked to show some generosity and many agree to do so. After a month, however, many in Group B begin to object to getting less meat than they used to. They point out that they already gave up half of “their” meat up for a month, and in any case it wasn’t them who had fed Group A poorly. Why should they “suffer” for Group A’s problems?

On which side does fairness lie? Should Group B receive as much meat as they used to (at the renewed expense of Group A)?

Or should Group B continue to be generous until Group A is reasonably nourished?

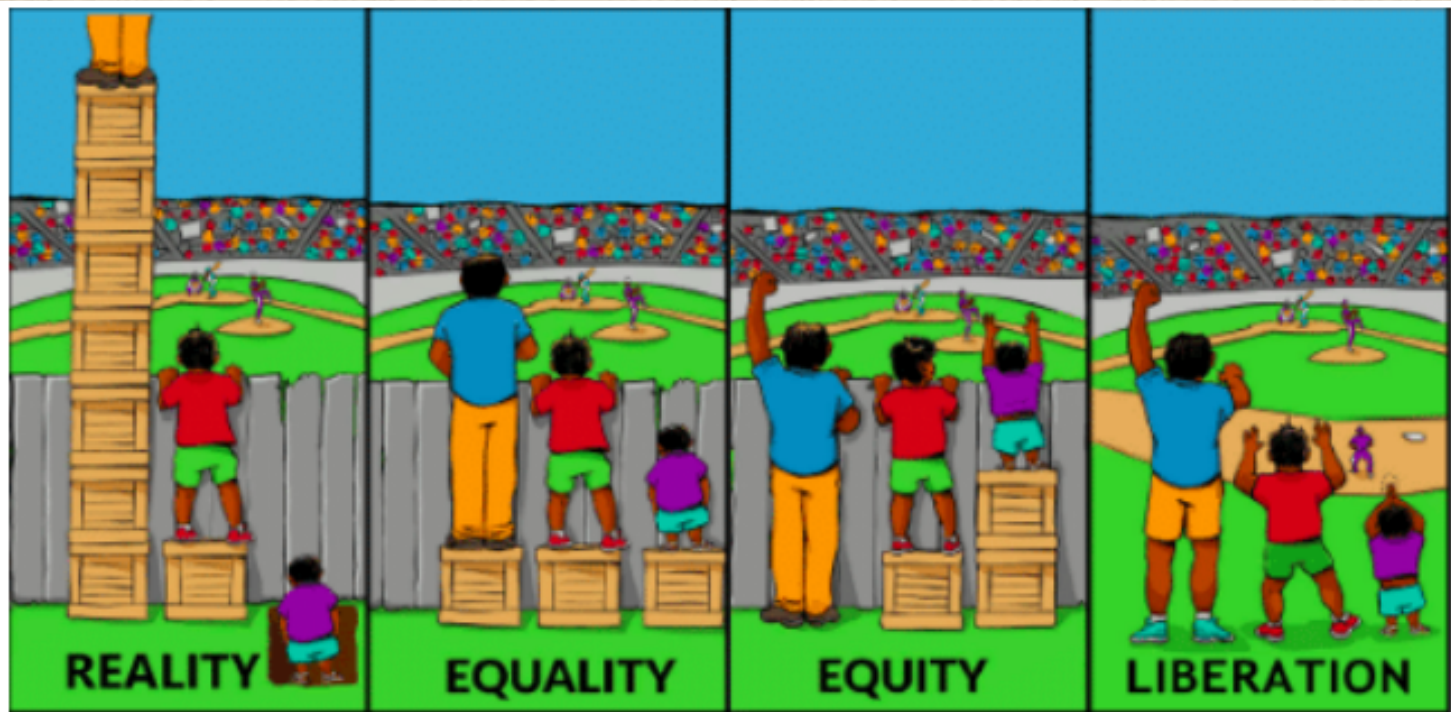
If Group B refuses to be generous, do they become complicit in inequity?

Fairness and Affirmative Action

Below is a popular cartoon to illustrate the difference between equality and equity (if you don't like baseball, imagine something else you would really like to watch).

What do the boxes stand for? What does the fence stand for?

Extra Credit: What if the body height of each person was actually related to their level of nutrition in the last story?



What Does Prop 16 do?

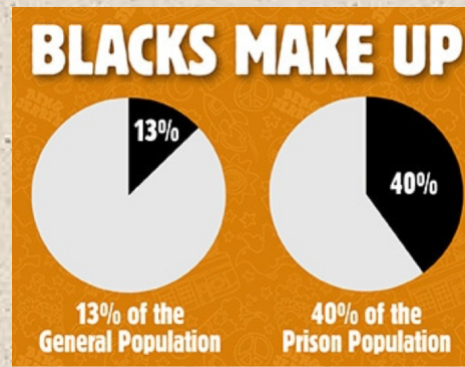
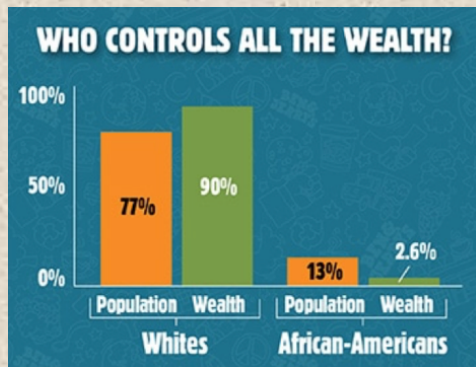
- Removes Prop 209 from the State constitution
- Allows, but does not mandate, the use of affirmative action to redress the effects of historical discrimination related to race, ethnicity, gender, or national origin

Something other things to think about:

- Prop 209 was passed by only one-third of registered voters in 1996 after a deceptive campaign.
- A fair society does not waste talent through bigotry or unequal privilege. We need everyone on board in this global era.
- Diverse professionals better serve diverse communities, and the US is becoming very diverse (California even more so).
- It has been shown in many settings that a diverse group is better at innovating and understanding broader perspectives.
- When opportunity is more equal, there can be less poverty, crime, and resentment, and more productivity and satisfaction.

When is Affirmative Action no longer needed?

That's easy. When the disparities caused by historical discrimination leveled against various groups becomes hard to detect in important measures of well-being for those groups relative to whites.



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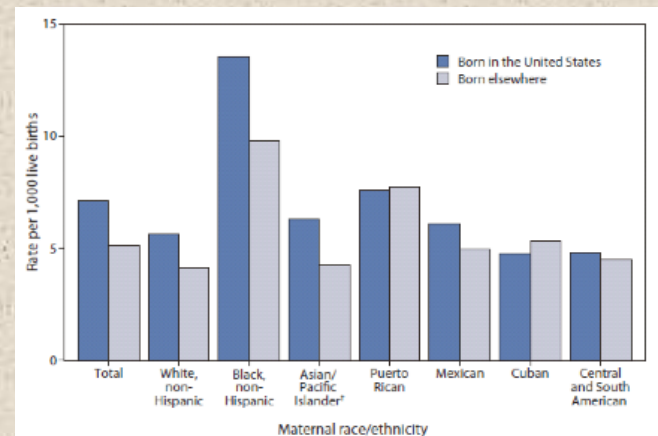


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Thanks for listening!

