

Piercing the Brilliant Veil: Two Stories of American Racism

DEBORAH JONES MERRITT*

There are two stories about racism in America. In the first story, we have moved far beyond our early sins of slavery and segregation. Students of color attend elite colleges and professional schools. They serve as doctors, lawyers, nonprofit leaders, and captains of industry. Signs no longer proclaim “whites only,” and children of all races compete equally in integrated classrooms. A democratic majority elected an African American President, and his black family romps on the White House lawn. In this America, racism is isolated, sporadic, and anachronistic. A few misguided individuals occasionally show some racial prejudice, but everyone else abhors racism. We treat people of all colors equally, so we no longer have to think about race.

In the second story, forty percent of black infants and toddlers live in poverty¹ and one-third of young Hispanics fare as poorly.² Racial slurs, hostility, and disdain for minority students permeate elementary and secondary schools.³ High school graduation rates for whites far outstrip those for black or Hispanic students.⁴ Hispanic men are two times more likely than whites to serve time in prison; black men are six times more

* John Deaver Drinko/Baker & Hostetler Chair in Law, Moritz College of Law, The Ohio State University. My thanks to Andrew and Daniel Merritt for insightful suggestions on this Commentary.

1. U.S. Census Bureau, *POV34: Single Year of Age—Poverty Status: 2008*, in CURRENT POPULATION SURVEY: 2009 ANNUAL SOCIAL AND ECONOMIC SUPPLEMENT (2009), http://www.census.gov/hhes/www/cpstables/032009/pov/new34_100_06.htm (last modified Nov. 10, 2009) (41.1% of black infants, 41.7% of black one-year-olds, 41.0% of black two-year-olds, and 39.8% of black three-year-olds lived below the poverty line).

2. *Id.* at http://www.census.gov/hhes/www/cpstables/032009/pov/new34_100_09.htm (34.7% of Hispanic infants, 34.5% of Hispanic one-year-olds, 30.7% of Hispanic two-year-olds, and 31.4% of Hispanic three-year-olds lived below the poverty line). The comparable percentages for non-Hispanic white children living below the poverty line are 12.6% of infants, 12.4% of one-year-olds, 12.2% of two-year-olds, and 11.0% of three-year-olds. *Id.* at http://www.census.gov/hhes/www/cpstables/032009/pov/new34_100_04.htm.

Throughout this Commentary, I focus primarily on the experiences of black and Hispanic students rather than on minority students of other races. That focus complements the population surveyed in Professor Bowen’s study. Deirdre M. Bowen, *Brilliant Disguise: An Empirical Analysis of a Social Experiment Banning Affirmative Action*, 85 IND. L.J. 1197, 1220 tbl.1 (2010).

3. See generally ANNIE S. BARNES, EVERYDAY RACISM 30–64 (2000); Angelina E. Castagno, “I Don’t Want To Hear That!”: Legitimizing Whiteness Through Silence in Schools, 39 ANTHROPOLOGY & EDUC. Q. 314 (2008); Kathryn Bell McKenzie, *Emotional Abuse of Students of Color: The Hidden Inhumanity in Our Schools*, 22 INT’L J. QUALITATIVE STUD. EDUC. 129 (2009).

4. James J. Heckman & Paul A. LaFontaine, *The American High School Graduation Rate: Trends and Levels* 29 (Inst. for the Study of Labor, Discussion Paper No. 3216, 2007), available at <http://ftp.iza.org/dp3216.pdf>. After reconciling discrepancies among government reports of graduation rates, Heckman and LaFontaine estimate that white students enjoyed a graduation rate of approximately 83% in 2005. *Id.* at fig.VII. The graduation rate for Hispanic students was about 72%, while for blacks it was just 65%. *Id.*

likely than whites to do so.⁵ Through both good times and bad, unemployment rates for black and Hispanic workers exceed those for whites.⁶ And well-controlled studies confirm that employers favor white workers, even when minorities possess identical credentials.⁷

This second story acknowledges the structural, systemic nature of white privilege in America. Black and Hispanic children are born into families and neighborhoods marked by discrimination. In schools and workplaces, these minority children face differential treatment that deepens their disadvantage. Both locally and nationally, their society responds to the problems of white people more readily than to the needs of minorities. Teachers work harder to help struggling white students succeed;⁸ the government sends tax dollars to subsidize farms in white Iowa rather than to fix levees in black Louisiana.⁹ Whites are blind both to these societal differences and to their own personal prejudices.

5. THOMAS P. BONCZAR, U.S. DEP'T OF JUSTICE, PREVALENCE OF IMPRISONMENT IN THE U.S. POPULATION, 1974–2001, at 1 (2003), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/piusp01.pdf>. Similar estimates suggest that just 5.9% of white men enter prison during their lifetimes. *Id.*

6. In November 2009, white Americans faced a seasonally adjusted unemployment rate of 9.3%. News Release, Bureau of Labor Statistics, U.S. Dep't of Labor, Employment Situation—November 2009 tbl.A–2 (Dec. 4, 2009), available at http://www.bls.gov/news.release/archives/empsit_12042009.pdf. For Hispanic Americans, the rate was 12.7%. *Id.* at tbl.A–3. For blacks, it was 15.6%. *Id.* at tbl.A–2. Similar statistics from November 2006, before the current recession, show unemployment rates of 3.7% among white Americans, 5.0% among Hispanics, and 8.4% among blacks. News Release, Bureau of Labor Statistics, U.S. Dep't of Labor, Employment Situation: November 2006 tbls.A–2, A–3 (Dec. 8, 2006), available at http://www.bls.gov/news.release/archives/empsit_12082006.pdf.

7. See, e.g., Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Greg More Employable Than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination*, 94 AM. ECON. REV. 991 (2004) (describing a field study of employers' reactions to résumés submitted by ostensibly black and white candidates, showing significant preference for white candidates over black candidates with identical credentials); Sharon L. Segrest Purkiss, Pamela L. Perrewé, Treana L. Gillespie, Bronston T. Mayes & Gerald R. Ferris, *Implicit Sources of Bias in Employment Interview Judgments and Decisions*, 101 ORG. BEHAV. & HUM. DECISION PROCESSES 152 (2006) (showing that in laboratory study, management students rated applicant with Hispanic name and accent less favorably than white applicant); see also Michael Luo, *In Job Hunt, Even a College Degree Can't Close the Racial Gap*, N.Y. TIMES, Dec. 1, 2009, at A1 (stating that 8.4% of black male college graduates were unemployed in 2009, compared to 4.4% of white men with college degrees).

8. See, e.g., John B. Diamond, Antonia Randolph & James P. Spillane, *Teachers' Expectations and Sense of Responsibility for Student Learning: The Importance of Race, Class, and Organizational Habitus*, 35 ANTHROPOLOGY & EDUC. Q. 75 (2004).

9. See Sidney Blumenthal, "No One Can Say They Didn't See It Coming," SALON.COM, Aug. 31, 2005, http://www.salon.com/opinion/blumenthal/2005/08/31/disaster_preparation/ (discussing lack of funding for New Orleans levees before Hurricane Katrina); Jessica Hoffman, *Farm Subsidies Overwhelmingly Support White Farmers*, COLORLINES, Jan/Feb 2009, <http://colorlines.com/article.php?ID=480&p=1> (discussing extent of federal subsidies for white farmers). See generally IRA KATZNELSON, *WHEN AFFIRMATIVE ACTION WAS WHITE: AN UNTOLD HISTORY OF RACIAL INEQUALITY IN TWENTIETH-CENTURY AMERICA* (2005) (documenting New Deal policies that consciously favored white workers and families over black ones).

Some Americans endorse the first of these stories; some subscribe to the second. Many, like me, believe that both stories say something true about our nation. We have changed substantially as a society during the last fifty years, and we dream of progressing further. The first story recognizes our commitment to change. At the same time, however, race continues to condition every aspect of our lives. The second story recognizes that black and Hispanic children born today in America face different educational, employment, and health odds than white children. Those differences are not incidental or ephemeral; they are stark disparities rooted in a society that has always given white children more opportunities than children of other races.¹⁰

Why do these stories matter? They shape our personal interactions and guide our social policies. If racism has ended, as the first story proclaims, then continuing affirmative action programs could harm both minorities and whites. In an otherwise color-blind society, racial preferences might well stigmatize one race while provoking hostility among members of other races.¹¹ But if our society continues to favor whites, as the second story suggests, then affirmative action has fewer costs and more benefits: it acknowledges the disadvantages that minorities experience daily, offers some redress for that disadvantage, and reminds whites of our commitment to overcome racism.

Professor Bowen offers two key insights for this ongoing debate over affirmative action.¹² First, she persuasively demonstrates that black and Hispanic students experience more self doubt, stigma, and hostility when attending colleges in states that have banned affirmative action than in states that support those programs. Whatever the mechanism producing this outcome, the finding deserves weight in policy debates. In particular, as Professor Bowen argues, policy makers should be wary of opposing affirmative action on the ground that it harms minority students. On the contrary, statewide *bans* on affirmative action correlate with increased stigma, overt racism, and other negative outcomes for black and Hispanic students.

Professor Bowen suggests several plausible explanations for this result, focusing particularly on the racial isolation of minority students attending colleges in anti-affirmative action states. But the result itself matters, even if researchers cannot fully trace its roots. Social systems are complex, with feedback loops and causal connections that defy simple models. Professor Bowen's research is telling precisely because she measures effects in active social systems. She cannot control inputs in those systems, but her findings offer genuine policy guidance. The reactions of real minority students attending real colleges are at least as informative as *a priori* assumptions about how different policies "must" affect students.

Second, if we probe for explanations, then Professor Bowen's study implicitly supports the second story of American racism: her findings are much more consistent with that tale than with the first one. If racism has ended in America, then affirmative

10. For further discussion of these differences, see, for example, BARNES, *supra* note 3; MICHAEL K. BROWN, MARTIN CARNOY, ELLIOTT CURRIE, TROY DUSTER, DAVID B. OPPENHEIMER, MARJORIE M. SHULTZ & DAVID WELLMAN, *WHITEWASHING RACE: THE MYTH OF A COLOR-BLIND SOCIETY* (2003); THOMAS M. SHAPIRO, *THE HIDDEN COST OF BEING AFRICAN AMERICAN: HOW WEALTH PERPETUATES INEQUALITY* (2004).

11. Throughout much of our nation's history, of course, whites benefited from preferences without suffering any stigma. But those years were not color blind: a privileged race may accord itself preferences without experiencing stigma.

12. Bowen, *supra* note 2.

action programs probably would make black and Hispanic students uncomfortable. If minorities experience no discrimination before applying to college, then admission preferences cannot compensate for discriminatory disadvantage; instead, the preferences would seem to compensate for deficiencies in the minority students themselves. Under these circumstances, affirmative action programs might well produce self doubt in minority students. The programs would also be likely to provoke hostility among whites, who would yield college seats to students who had suffered no disadvantage.

Professor Bowen's findings contradict these predictions: hostility and stigma were higher at colleges that *lack* affirmative action programs, rather than at schools maintaining racial preferences. If racism has ended, as the first story asserts, what accounts for this result? Indeed, what explains the existence of *any* racial hostility or stigma on campuses that have banned affirmative action? If minority students encounter no discrimination before college, if their credentials match those of white students on the same campus, and if the college itself is color blind, then why do black and Hispanic students develop self doubt? Why do they report hostility from classmates and professors?

The second story of American racism easily explains these findings. That story acknowledges the racist environments that minority students experience before applying to college. If applicants have suffered from racism, then states that ban affirmative action deny the reality of minority applicants' lives. Students who have repeatedly suffered racial disadvantage are unlikely to feel comfortable on campuses that discredit their experiences. The dissonance between official dogma and personal experience could generate significant feelings of self doubt in minority students.

Disbanding affirmative action also sends a powerful message to white students. By prohibiting affirmative action, the state suggests that racism has ended; whites then have less incentive to examine their own acts for hidden bias. A white student who chooses a white lab partner over a black one can reassure herself that the choice contained no prejudice: "Our society has conquered racism; we all know that blacks and whites are equal. If I happened to choose a white partner rather than a black one, it's because of the students' personal qualities. The white student just seemed friendlier than the black one." Rationalizations like this can easily deepen into hostility that "just happens" to follow racial lines. This dynamic would help explain the increased hostility and overt racist acts that Bowen identified in anti-affirmative action states.

The second story also explains why minority students reported less stigma, self doubt, and hostility in states that maintain affirmative action programs. The colleges in these states acknowledge the racism that minority students suffer, and they offer some redress for that injustice. Minority students find those signals welcoming, and consequently attend college in greater numbers. At least some white students, meanwhile, deepen their understanding of the race-based disadvantages that persist in our society. By interacting with a larger number of minority classmates, and probing the reasons for their own college's affirmative action, some white students shed their social blinders; they see that our society is not as color blind as their early experience suggested. These white students may even examine their own attitudes. Sensitized to the persistence of prejudice, a white student might reflect: "My first impulse was to ask that white student to be my lab partner. But why did I feel that way? Maybe I just

assumed the white person was friendlier than the black one. I'll talk a little to both of them before deciding."¹³

Professor Bowen's study, in sum, undermines both a specific prediction about affirmative action ("preferences harm minority students") and a more general story about racism ("our society is color blind"). Her results point the way toward further study of both issues. Can other researchers replicate her results in other samples of minority students? Do minority students from anti-affirmative action states apply to graduate school at the same rates as students from affirmative action states? Do differences emerge in acceptance, matriculation, or graduation from graduate schools? Investigations of this nature would extend Professor Bowen's pathbreaking exploratory work.

Meanwhile, if policy makers ponder Professor Bowen's findings, we will make surer progress toward racial equity. To eliminate the second story of American racism, we must confront its persistence. Professor Bowen's study deepens our understanding of racism, as well as our understanding of possible remedies.

13. Critics of affirmative action sometimes assume that whites uniformly resent affirmative action and view its beneficiaries with suspicion. But, as with other social phenomena, reactions are more complex. At least some whites respond to affirmative action programs by reflecting on the need for those programs. That introspection can lead to a greater awareness of racial injustice, particularly if the white student has an opportunity to interact with peers who have experienced that unfairness.

