AFFIRMATIVE ACTION AND THE WHITE BACKLASH NOTES:
FROM A CHILD OF APTHERID

Luke Charles Harris

MY YOUNGER BROTHER, LARRY, AND I CAME OF AGE IN THE 1950S AND 60S AS American-style apartheid, Jim Crow, was disappearing. As my brother and I stood before the camera for this photograph, however, we did not realize that the era of the second great Reconstruction for African Americans was in progress. Like the first Reconstruction, almost a century earlier, it would prove to be a brilliant social movement but would be thwarted when the African American quest for full citizenship was confronted immediately by a vitriolic political backlash emanating from the white community.

The photo of the white demonstrators (see p. 114), some of them carrying placards proclaiming that "Whites Have Rights Too," reflects this backlash. It represents the reality that many whites view people like my brother and me as undeserving interlopers on their terrain, as people who seek to usurp their vested rights. But who do we—my brother and I—truly symbolize in this photograph? I think we represent the children of apartheid. Although even as young boys we had already been touched by racism, we had absolutely no idea how deep the antipathy to our participation in mainstream American society ran. We were part of a whole generation of blacks raised to see America as a land where everyone could compete fairly on a level playing field, even as we lived lives that reflected the experiences of the despised "other," lives cruelly circumscribed because we were black.

Affirmative action programs were supposed to help make the myth of the level playing field a reality. They were defined by one commentator as a range of public and private programs that were "designed to equalize hiring and admissions opportunities for [the members of] historically disadvantaged groups by taking into account those very characteristics which [had] been used to deny them equal treatment." In my case, growing up as a beneficiary of affirmative action programs created an intellectual hunger to explore the meaning of equality and full citizenship—a hunger to examine what it means to count as a full member of our society.

My exploration of these concerns has led me to believe that African Americans must confront the white backlash to affirmative action head-on, with no misgivings whatsoever. There is an urgent need for us to reconceptualize what "equality" and "full citizenship" mean in the latter part of the twentieth century and to wrestle their meaning away from problematic notions of "reverse discrimination" developed by the opponents of affirmative action. To accomplish this goal, we must discern what it means to include blacks within our society after centuries of outright exclusion; and we must ensure that our legal theories as well as our public policies address the pattern of racial exclusion that began with the birth of the United States and which continues today. We speak, after all, of concerns that were a threshold problem at the point of our nation's creation, concerns that relate to the fact that our Constitution at first failed to embrace African Americans as citizens.
Post-apartheid America was an era of great hope, and an era in which many of us refashioned our lives. But its parallels to the first Reconstruction, which occurred after the Civil War, are startling. Our ancestors had hoped that the first Reconstruction would transform their former lives as slaves and marginalized freedmen into lives as full-fledged citizens able to participate in all aspects of American life. Our foremothers and fathers spoke then of "forty acres and a mule" and momentarily basked in the glory of emancipation and the promise of the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution, which seemed to reflect a national commitment to full citizenship for all Americans. They had dreams of liberty, dignity, and equality. But they saw their dreams of opportunity transformed into America's homegrown nightmare of apartheid.

The second Reconstruction grew out of the civil rights movement, the Black Power movement, the assassinations of John F. Kennedy, Malcolm X, Robert F. Kennedy, Martin Luther King, Jr., and others and in the wake of spectacular urban rebellions across the nation. Formal apartheid—imposed by law and sanctioned by custom—had, in fact, begun to crumble in 1954 as a result of Thurgood Marshall's extra-ordinary victory before the Supreme Court in the Brown case, the passing of the great Civil Rights Acts of 1964, 1965, and 1968, and the birth of nationwide affirmative action initiatives in the late 1960s. Once again African Americans felt that they were on the edge of full membership in American society. But again their hopes were dashed by an immediate white backlash to their efforts.

It came, at first, in the form of a deep hostility toward desegregation, as reflected in this 1972 photograph of a rally of about eight thousand people in South Boston who were protesting the busing (for purposes of racial desegregation) of Boston public school students. The resistance to desegregation quickly developed into often disingenuous and deeply hypocritical cries of "reverse discrimination" made by traditional conservatives, confused liberals, and some self-righteous black neo-conservatives. Ultimately, this backlash became a dominant theme of American national politics between 1968 and 1992 and a prominent feature of the reactionary Republican regimes of presidents Nixon, Reagan, and Bush, all of whom exploited, in different ways, the racial tensions that resulted from the meaningful efforts to treat blacks and other victims of discrimination as full citizens.

It appeared that no one was quite sure how to promote equality in America. For example, no one had sorted out the ways in which American institutional norms and practices would have to be recast to pro-nome equality for all. Yet hope was in the air, and despite the fact that problems seemed to swirl around my own family with a bewildering persistence, by the time I was a teenager, in the late 1960s, I had come to believe that I could reshape my life and transcend all racial obstacles in the atmosphere of this new era. I thought that American society had at last come to grips with the reality that it must pay special attention to the needs and rights of its most disenfranchised members. Little did I know that for countless millions of white Americans, "reverse discrimination" (that is, "discrimination" against whites) would emerge as the great moral issue of the day at precisely the moment when our society should have been redoubling its efforts to comprehend the meaning of equality and full citizenship for those of us whose lives had been shaped by circumstances that are categorically different from those of our white counterparts.
In his widely acclaimed study of black education in the South, Henry Alien Bullock cogently illuminates the backdrop of injustice that served to separate blacks and whites, and which gave rise to the second era of Reconstruction: Jim Crow was a way of life to which [African Americans] were exposed for the purpose of perpetuating their caste condition.... [Blacks] were to be kept socially isolated by means of a rigid system of residential segregation; they were to be limited to special occupational pursuits by means of job restrictions; they were to be tailored in "Negro ways" through a rigid code of interracial etiquette; and they were to be reinforced in their obedience to caste rules through formal schooling.2

It is a cruel paradox, however, that white Americans, such as the demonstrators pictured here, seem blind to the injustices perpetrated in the past and refuse to concede that the barriers placed in the paths of blacks have seriously undermined our efforts to participate in what is now considered an open, egalitarian society. Without belaboring the point, it is essential to note that blacks still have a disproportionately large number of poor, female-headed families; that blacks still have fewer years of education than whites; that black income is still a fraction of white income; that black unemployment is still twice the rate of white unemployment; that blacks are still grossly overrepresented in low-paying, low-status occupations (and correlatively underrepresented in responsible jobs in government, business, academia, and the traditional professions); and, finally, that blacks can still expect fewer years of life than their white counterparts. Rather than blaming the victims, we must come to recognize that collectively these problems are inextricably linked to the centuries-old struggle for racial equality in America. John Hope Franklin, a historian addressing these harsh truths in the mid-1970s, observed that: "Racial violence continues to stalk the land. Inequalities of infinite varieties and complexities persist. Racial injustice ... pervades the nation... [and its] linkage to the sins of our fathers of the eighteenth and nineteenth centuries is clear."3

Even the so-called middle-class black fails to escape the effects of race, since American racism also marks the lives of our bourgeoisie. For instance, in addition to confronting the psychological ramifications of racism, middle-class blacks in the late 19605—who were among the initial beneficiaries of affirmative action policies—were faced with two serious hurdles: (1) as a general rule, they were materially less well off than mainstream whites; and (2) for the most part, they had in no way experienced social, educational, and occupational backgrounds similar to their white counterparts—backgrounds that would have allowed them to offer their children advantages directly comparable to those available to the offspring of privileged whites. Rather, they had grown up in a Jim Crow America that was absolutely committed, except in a few token cases, to denying them and their children the opportunity to participate on an equal footing with whites in all spheres of life.

Today, middle-class blacks and whites still confront markedly different realities. According to the Bureau of Labor Statistics, as recently as 1979 even the more privileged black families in America found it difficult to achieve an income level sufficient for an urban family of four to maintain a stable existence. This should come as no surprise: black men with four years of college earn only 80 percent of the salaries received by their white counterparts; and only a few dollars more than white male high school graduates. The 1980 census indicated that over the lifetime of their careers, the average white male college graduate will earn approximately
$450,000 more than a black male college graduate. Even when black and white middle-class families have comparable incomes, their net worth or wealth (i.e., total assets minus total debts) is drastically different. Thus, in 1984, "black householders had a median net worth of $3,397 and white households $39,135, so for every $1 of wealth in the median white household, the median black household had nine cents.]" 4

G. William Domhoff suggests that even the middle-class black graduates of the most prestigious prep schools in the nation face "an elite world permeated by overt and covert...forms of discrimination." He contends that these students confront...the "modern," more subtle racism prevalent at higher levels of elite bureaucracies [that] is now beginning to discourage [them] as well as black executives studied by other investigators. These young men and women have gone more than halfway to meet the demands of white culture, changing in ways that the white power structure in effect demanded of them. But the power structure has changed little to meet them and it continues to exclude them. It remains a structure that institutionalizes the values and practices of upper-class white males. 5

Thus, although not all blacks are victims of poverty, all blacks may well have suffered the lingering burdens of racial bigotry. In short, even relatively privileged African Americans don't compete with whites on a level playing field. They may be better off than their working-class and poor black counterparts, but, in general, they do not enjoy the same opportunities as their white peers.

Certainly this was true in the case of my brother Larry and me. The Brown decision changed little for us. We grew up on welfare in southern New Jersey, and we confronted northern apartheid at every turn. Our natural mother was a New York City prostitute. Crippled by alcohol and drug addiction, she abandoned all seven of her children, leaving us in different welfare shelters. We never got to really know her or our five other brothers and sisters. Nor were we ever certain of our father's identity. Born in 1950, I was the oldest child. Larry, my brother, was a year younger, and we were the first to be set adrift. But without question, we were the lucky ones, for we were adopted as infants by a great-aunt, Mrs. Eva B. Cox, who became our real mother. Mrs. Cox, who worked as a domestic for over half a century, had migrated to New Jersey from Florida as a young woman. Although her formal education didn't go beyond the fifth grade, she was a deeply religious person with a boundless capacity for nurturing others; and her love and devotion for us throughout her life would serve as a spiritual shield against all the problems that seemed to envelop our extended family. The photograph of Larry and me shows us standing in the front yard of the Cox family home. Immaculate and demure, we followed Mrs. Cox's ground rules, rules that she felt would lead us to success. Propriety, the church, decency, good manners, hard work, selflessness, being seen and not heard, were the values she attempted to instill in us.

We grew up, however, surrounded by people who had seen their dreams of equality die in the midst of Jim Crow in the 1920s, '30s, and '40s. Refugees from poverty and a broken family, we endured the limited resources of our segregated neighborhood in Merchantville, a small town a few miles outside of Camden, New Jersey. We went to an elementary school with severely limited resources while our white counterparts went to schools with resources we could only imagine. By the time we were in junior high school, we had entered the antiquated public school system of Camden, a system that bombarded us with extremely negative messages about our
abilities and prospects. For instance, in my case, the ninth-grade counselor told me in no uncertain terms that college was not for me. In his opinion, I was not the kind of person who was ever going to learn how to master subjects like algebra, chemistry, and physics. At the time, although I had never before heard of algebra, chemistry, and physics, I knew they were important. So his vision of me hurt: it was profoundly unsettling. By the tenth grade I was no longer taking a full load of college-prep courses. I was on my way to nowhere fast. But fate intervened.

Just before my senior year of high school, in 1967, I was training for the upcoming cross-country season in a park near my home when an older white runner, a man I didn't know, jogged up alongside me and struck up a conversation. At first I wondered: "What's up with this white guy? Who is he to be talking to me?" But after he identified him-self as a former All-American cross-country runner and the author of a book on distance running, I was suitably impressed and wanted to get to know him. This was Tom Osier, and he gave me a copy of his book. Later I asked him to help me train, which he generously agreed to do. Every Saturday we would go on long runs of fifteen to eighteen miles, during which we would talk about life and about my future. One day he suggested that I go to college. He was a mathematics professor at Saint Joseph's University in Philadelphia, and planted and nurtured in me the idea that I could transcend the expectations of my high school guidance counselors. (Years later, after college and just before I was to head off to Yale Law School, I would find out that my mom, Mrs. Cox, had privately asked him to encourage me in this direction.)

But how was I going to overcome my high school record and my Scholastic Aptitude Test scores which were at best mediocre? These results were "written in stone" and clearly suggested that, all things being equal, I did not "merit" the opportunity to go to a decent college. Luckily, I had the good fortune to reach college age at the dawning of the creation of affirmative action programs. It was 1968, a year of tremendous social and political upheaval across America. One direct result of this turmoil was that affirmative action initiatives were put in place in colleges and universities throughout the country in an attempt to address, among other things, the old problem of black exclusion. Still, I had too few college-prep credits to be accepted at a liberal arts college directly from high school. But after a year at a New Jersey teacher's college, I was able to transfer, with Tom Osier's recommendation, to Saint Joseph's, under its affirmative action program.

Affirmative action, to me, represented hope, encouragement, and an opportunity to discover, develop, and exercise my potential. It created an opportunity for me to engage in an extremely difficult and yet liberating process of personal growth and transformation. In so doing, it off-set an array of "standardized" admissions criteria at institutions of higher education that had obscured the human promise of people of color (myself included) for generations. The traditional criteria, after all, had been developed without a view toward ferreting out promise among the children of apartheid. They had simply not been designed to focus with precision upon the intellectual gifts and the professional promise of the dispossessed.

In this respect, affirmative action was, and is, much more than a "remedy for the racism of the past" or a tool to diversify certain environments. Rather, affirmative action has the effect of leveling the playing field, context by context, institution by institution—at least for some of us.
For it seeks, above all else, to redress discriminatory hiring, promotion, and admissions practices that are still alive today. President Kennedy signed Executive Order 10925 and Lyndon Johnson signed Executive Order 11246 not to combat slavery, but to combat institutionalized forms of discrimination that had been, and continue to be, deeply woven into the texture and fabric of late-twentieth-century American life.

The idea of institutional racism was first articulated by Stokely Carmichael and Charles Hamilton. They argued that the norms and practices of some institutions were based on Eurocentric attitudes and assumptions that served, unintentionally yet systematically, to exclude blacks. Ann Dunnett, an astute observer of race relations, concludes that Racism as a social reality is a characteristic of a whole society. A racist society has institutions which effectively maintain inequality between the members of different groups in such a way that the open expression of racist doctrine is unnecessary or where it occurs, superfluous.... Racist institutions, even if operated partly by individuals who are not themselves racist in their beliefs, still have the effect of making and perpetuating inequalities....

Institutionalized racism warps and breaks self-confidence, the sense of identity, the self-respect and independence of black people while simultaneously distorting the nature of white people, stimulating their aggressions, feeding their resentments and fears, warping their judgments, and encouraging them in self-deception.... But institutional racism works quietly: its effects might shout loud to black people, but they are obscure whispers in the ear of the white population.6 The self-deception of whites described by Ann Dunnett helps explain the raw anger on the face of the middle-aged white woman in the fore-ground of the photograph of the white demonstrators. Lacking a framework for understanding the implications of racism (and the white privilege that goes along with it) she can only view herself as a casualty when confronted with programs that seek to dismantle apartheid. But she is not alone. Many traditional white liberals and progressives also harbor antipathy toward affirmative action, not unlike their neo-conservative and conservative counterparts. And there is an alarming ambivalence, even a growing hostility, toward it on the part of black intellectuals, policy makers, and professionals who lack a cogent alternative vision.7

To my mind, however, affirmative action represents a daring set of programs that center on the identifiable, ugly, and ever-present problems of institutional racism in modern America—problems which, although they are invisible to most whites, continue to reflect a major obstacle to black mobility. Thus, while many whites felt that their rights were shrinking in the late 1960s and early '70s, I felt that my rights were being fully realized for the first time through an array of programs that focused upon the relevant distinctions between my experiences and those of white Americans.

In other words, to avoid discriminating against blacks, and other people of color, American institutions had to be prodded and encouraged to pay attention to certain group experiences. For example, admission officials in academia had to be persuaded to create special programs to account for the distinct background experiences, training, and culture that are in varying degrees an element in the lives of all blacks. And this was good for America. For such officials were called upon to reconceptualize their admissions criteria so that academic excellence was not defined in a way that masked the capabilities of our citizens of color.
Indeed, we must all transcend a false concept of discrimination that confuses non-differentiation with nondiscrimination, while implicitly assuming that whites and blacks are somehow, as if by magic, similarly situated for the purposes of public policy decisions; and that, as a result, they can now be evaluated in exactly the same fashion. In short, we must learn to distinguish between "rational differentiations" and the confused notion of "reverse discrimination." Rational differentiations (that is, those made between people who are in demonstrably different situations) offer no award of personal privilege to blacks; nor do they discriminate against whites. For such distinctions, in theory, allow for no more special assistance to blacks than is required to offset a range of supposedly neutral institutional procedures that, in fact, unfairly privilege whites and arbitrarily exclude blacks for reasons unrelated to a genuine conception of meritocracy.

So we must ask ourselves anew: How do we redefine our collective identity and recreate our political community so that it embraces the formerly excluded as full citizens? What group differences must we recognize? What group differences should we foster, celebrate, and protect? What group differences should we seek to diminish or eradicate? To resolve such questions, we must, as Duncan Kennedy suggests, develop a method...to talk about the political and the cultural relations of the various groups that compose our society without falling into racialism or essentialism.... We need to conceptualize groups in a "post-modern" way, recognizing their reality in our lives without losing sight of the partial, unstable, contradictory character of group existence.

Thus, affirmative action programs represent public policies sculpted to the contours of our national experience. They are, in fact, "the only policy initiative since the abolition of slavery that constitutes a frontal assault on a system of occupational apartheid that had its origin in slavery itself." Despite the heated public debate that surrounds such programs, they are really nothing more than social experiments designed to play a role in transforming patterns of human oppression that have undermined and masked the capabilities of people of color in this society for generations. Yet affirmative action programs are in no sense a panacea for the plight of the poor and those victimized by racial and other forms of bigotry; nor were they ever supposed to be. Such programs must be linked to meaningful economic reform and new patterns of social organization or else their impact will be limited. Nonetheless, affirmative action initiatives still represent a huge step in the right direction.

In my case, affirmative action made it possible for me to grow and to reshape myself in a hostile world. I got the chance to go to college, where I did quite well. Later I studied law at Yale, became a Fulbright Scholar, a law clerk to a prominent judge, a litigator at a top New York City law firm, and a professor at a major liberal arts college. But, much more importantly, my personal success is part of a larger legacy. Affirmative action has made it possible for an entire generation of African Americans, poor and working class as well as middle-class (the children of domestic workers, educators, laborers, prostitutes, and doctors), to begin to break through the unwarranted institutional roadblocks to our participation in all segments of the American workplace for the first time in our nation's history.

Another story unfolds from my childhood photograph. My brother Larry fared much differently than I. Though Larry had been a better student than I in high school, he was also more consumed
by the difficult circumstances of our younger lives. He lacked the confidence to pursue the path of education which, through unique circumstances, I had been encouraged to follow. My brother became a mail-room clerk in a Philadelphia bank and dreamed of continuing his education until his life was cut short at age thirty by congenital heart failure.

Although my brother and I fared quite differently in our lives, in the realization of our potentials, we both received opportunities that protected us from some of the more disastrous circumstances facing young people growing up in and around Camden, New Jersey, and other inner-cities today. The erosion of a base of working-class manufacturing jobs in the post-Civil Rights era combined with the proliferation of deadly drugs in our neighborhoods has turned many urban communities into war zones. The need for special programs designed to offset the social inequities faced by blacks is therefore needed now even more urgently than ever before.

Yet bewildered by and insensitive to the subtleties of contemporary American racism, we seem as a nation unable to confront the monstrous consequences of our collective past where African Americans are concerned. Indeed, paradoxically some whites now use the tactics of the civil rights movement of the 1950s and '60s, publicly demonstrating against affirmative action initiatives to symbolize their belief that they are the principal victims of racial discrimination in post-apartheid America, whereas nothing could be further from the truth. We must, therefore, transcend the paralysis of a superficial analysis that suggests that blacks and whites are similarly situated in modern America, and learn to distinguish rational differentiation from reverse discrimination. Perhaps then white Americans now blind to the circumstances of the children of apartheid can be made to recognize that we are a nation haunted by our history of slavery, apartheid, and contemporary de facto segregation. And perhaps then we can envision a future free of the white backlash to affirmative action.

NOTES

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My exploration of these concerns has led me to believe that African Americans must confront the white backlash to affirmative action head-on, with no misgivings whatsoever. There is an urgent need for us to reconceptualize what "equality" and "full citizenship" mean in the latter part of the twentieth century and to wrestle their meaning away from problematic notions of "reverse discrimination" developed by the opponents of affirmative action. To accomplish this goal, we must discern what it means to include blacks within our society after centuries of outright exclusion; and we must ensure that our legal theories as well as our public policies address the pattern of racial exclusion that began with the birth of the United States and which continues today. We speak, after all, of concerns that were a threshold problem at the point of our nation's creation, concerns that relate to the fact that our Constitution at first failed to embrace African Americans as citizens.
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G. William Domhoff suggests that even the middle-class black graduates of the most prestigious prep schools in the nation face "an elite world permeated by overt and covert...forms of discrimination." He contends that these students confront...the "modern," more subtle racism prevalent at higher levels of elite bureaucracies [that] is now beginning to discourage [them] as well as black executives studied by other investigators. These young men and women have gone more than halfway to meet the demands of white culture, changing in ways that the white power structure in effect demanded of them. But the power structure has changed little to meet them and it continues to exclude them. It remains a structure that institutionalizes the values and practices of upper-class white males.5

Thus, although not all blacks are victims of poverty, all blacks may well have suffered the lingering burdens of racial bigotry. In short, even relatively privileged African Americans don't compete with whites on a level playing field. They may be better off than their working-class and poor black counterparts, but, in general, they do not enjoy the same opportunities as their white peers.

Certainly this was true in the case of my brother Larry and me. The Brown decision changed little for us. We grew up on welfare in southern New Jersey, and we confronted northern apartheid at every turn. Our natural mother was a New York City prostitute. Crippled by alcohol and drug addiction, she abandoned all seven of her children, leaving us in different welfare shelters. We never got to really know her or our five other brothers and sisters. Nor were we ever certain of our father's identity. Born in 1950, I was the oldest child. Larry, my brother, was a year younger, and we were the first to be set adrift. But without question, we were the lucky ones, for were adopted as infants by a great-aunt, Mrs. Eva B. Cox, who became our real mother. Mrs. Cox, who worked as a domestic for over half a century, had migrated to New Jersey from Florida as a young woman. Although her formal education didn't go beyond the fifth grade, she was a deeply religious person with a boundless capacity for nurturing others; and her love and devotion for us throughout her life would serve as a spiritual shield against all the problems that seemed to envelop our extended family. The photograph of Larry and me shows us standing in the front yard of the Cox family home. Immaculate and demure, we followed Mrs. Cox's ground rules, rules that she felt would lead us to success. Propriety, the church, decency, good manners, hard work, selflessness, being seen and not heard, were the values she attempted to instill in us.

We grew up, however, surrounded by people who had seen their dreams of equality die in the midst of Jim Crow in the 1920s, '30s, and '40s. Refugees from poverty and a broken family, we endured the limited resources of our segregated neighborhood in Merchantville, a small town a few miles outside of Camden, New Jersey. We went to an elementary school with severely limited resources while our white counterparts went to schools with resources we could only imagine. By the time we were in junior high school, we had entered the antiquated public school system of Camden, a system that bombarded us with extremely negative messages about our
abilities and prospects. For instance, in my case, the ninth-grade counselor told me in no uncertain terms that college was not for me. In his opinion, I was not the kind of person who was ever going to learn how to master subjects like algebra, chemistry, and physics. At the time, although I had never before heard of algebra, chemistry, and physics, I knew they were important. So his vision of me hurt: it was profoundly unsettling. By the tenth grade I was no longer taking a full load of college-prep courses. I was on my way to nowhere fast. But fate intervened.

Just before my senior year of high school, in 1967, I was training for the upcoming cross-country season in a park near my home when an older white runner, a man I didn't know, jogged up alongside me and struck up a conversation. At first I wondered: "What's up with this white guy? Who is he to be talking to me?" But after he identified him-self as a former All-American cross-country runner and the author of a book on distance running, I was suitably impressed and wanted to get to know him. This was Tom Osier, and he gave me a copy of his book. Later I asked him to help me train, which he generously agreed to do. Every Saturday we would go on long runs of fifteen to eighteen miles, during which we would talk about life and about my future. One day he suggested that I go to college. He was a mathematics professor at Saint Joseph's University in Philadelphia, and planted and nurtured in me the idea that I could transcend the expectations of my high school guidance counselors. (Years later, after college and just before I was to head off to Yale Law School, I would find out that my mom, Mrs. Cox, had privately asked him to encourage me in this direction.)

But how was I going to overcome my high school record and my Scholastic Aptitude Test scores which were at best mediocre? These results were "written in stone" and clearly suggested that, all things being equal, I did not "merit" the opportunity to go to a decent college. Luckily, I had the good fortune to reach college age at the dawning of the creation of affirmative action programs. It was 1968, a year of tremendous social and political upheaval across America. One direct result of this turmoil was that affirmative action initiatives were put in place in colleges and universities throughout the country in an attempt to address, among other things, the old problem of black exclusion. Still, I had too few college-prep credits to be accepted at a liberal arts college directly from high school. But after a year at a New Jersey teacher's college, I was able to transfer, with Tom Osier's recommendation, to Saint Joseph's, under its affirmative action program.

Affirmative action, to me, represented hope, encouragement, and an opportunity to discover, develop, and exercise my potential. It created an opportunity for me to engage in an extremely difficult and yet liberating process of personal growth and transformation. In so doing, it off-set an array of "standardized" admissions criteria at institutions of higher education that had obscured the human promise of people of color (myself included) for generations. The traditional criteria, after all, had been developed without a view toward ferreting out promise among the children of apartheid. They had simply not been designed to focus with precision upon the intellectual gifts and the professional promise of the dispossessed.

In this respect, affirmative action was, and is, much more than a "remedy for the racism of the past" or a tool to diversify certain environments. Rather, affirmative action has the effect of leveling the playing field, context by context, institution by institution—at least for some of us.
For it seeks, above all else, to redress discriminatory hiring, promotion, and admissions practices that are still alive today. President Kennedy signed Executive Order 10925 and Lyndon Johnson signed Executive Order 11246 not to combat slavery, but to combat institutionalized forms of discrimination that had been, and continue to be, deeply woven into the texture and fabric of late-twentieth-century American life.

The idea of institutional racism was first articulated by Stokely Carmichael and Charles Hamilton. They argued that the norms and practices of some institutions were based on Eurocentric attitudes and assumptions that served, unintentionally yet systematically, to exclude blacks. Ann Dummett, an astute observer of race relations, concludes that Racism as a social reality is a characteristic of a whole society. A racist society has institutions which effectively maintain inequality between the members of different groups in such a way that the open expression of racist doctrine is unnecessary or where it occurs, superfluous.... Racist institutions, even if operated partly by individuals who are not themselves racist in their beliefs, still have the effect of making and perpetuating inequalities....

Institutionalized racism warps and breaks self-confidence, the sense of identity, the self-respect and independence of black people while simultaneously distorting the nature of white people, stimulating their aggressions, feeding their resentments and fears, warping their judgments, and encouraging them in self-deception.... But institutional racism works quietly: its effects might shout loud to black people, but they are obscure whispers in the ear of the white population.6 The self-deception of whites described by Ann Dummett helps explain the raw anger on the face of the middle-aged white woman in the foreground of the photograph of the white demonstrators. Lacking a framework for understanding the implications of racism (and the white privilege that goes along with it) she can only view herself as a casualty when confronted with programs that seek to dismantle apartheid. But she is not alone. Many traditional white liberals and progressives also harbor antipathy toward affirmative action, not unlike their neo-conservative and conservative counterparts. And there is an alarming ambivalence, even a growing hostility, toward it on the part of black intellectuals, policy makers, and professionals who lack a cogent alternative vision.7

To my mind, however, affirmative action represents a daring set of programs that center on the identifiable, ugly, and ever-present problems of institutional racism in modern America—problems which, although they are invisible to most whites, continue to reflect a major obstacle to black mobility. Thus, while many whites felt that their rights were shrinking in the late 1960s and early '70s, I felt that my rights were being fully realized for the first time through an array of programs that focused upon the relevant distinctions between my experiences and those of white Americans.

In other words, to avoid discriminating against blacks, and other people of color, American institutions had to be prodded and encouraged to pay attention to certain group experiences. For example, admission officials in academia had to be persuaded to create special programs to account for the distinct background experiences, training, and culture that are in varying degrees an element in the lives of all blacks. And this was good for America. For such officials were called upon to reconceptualize their admissions criteria so that academic excellence was not defined in a way that masked the capabilities of our citizens of color.
Indeed, we must all transcend a false concept of discrimination that confuses non-differentiation with nondiscrimination, while implicitly assuming that whites and blacks are somehow, as if by magic, similarly situated for the purposes of public policy decisions; and that, as a result, they can now be evaluated in exactly the same fashion. In short, we must learn to distinguish between "rational differentiations" and the confused notion of "reverse discrimination." Rational differentiations (that is, those made between people who are in demonstrably different situations) offer no award of personal privilege to blacks; nor do they discriminate against whites. For such distinctions, in theory, allow for no more special assistance to blacks than is required to offset a range of supposedly neutral institutional procedures that, in fact, unfairly privilege whites and arbitrarily exclude blacks for reasons unrelated to a genuine conception of meritocracy.

So we must ask ourselves anew: How do we redefine our collective identity and recreate our political community so that it embraces the formerly excluded as full citizens? What group differences must we recognize? What group differences should we foster, celebrate, and protect? What group differences should we seek to diminish or eradicate? To resolve such questions, we must, as Duncan Kennedy suggests, develop a method...to talk about the political and the cultural relations of the various groups that compose our society without falling into racialism [or] essentialism.... We need to conceptualize groups in a "post-modern" way, recognizing their reality in our lives without losing sight of the partial, unstable, contradictory character of group existence.

Thus, affirmative action programs represent public policies sculpted to the contours of our national experience. They are, in fact, "the only policy initiative since the abolition of slavery that constitutes a frontal assault on [a] system of occupational apartheid that had its origin in slavery itself." Despite the heated public debate that surrounds such programs, they are really nothing more than social experiments designed to play a role in transforming patterns of human oppression that have undermined and masked the capabilities of people of color in this society for generations. Yet affirmative action programs are in no sense a panacea for the plight of the poor and those victimized by racial and other forms of bigotry; nor were they ever supposed to be. Such programs must be linked to meaningful economic reform and new patterns of social organization or else their impact will be limited. Nonetheless, affirmative action initiatives still represent a huge step in the right direction.

In my case, affirmative action made it possible for me to grow and to reshape myself in a hostile world. I got the chance to go to college, where I did quite well. Later I studied law at Yale, became a Fulbright Scholar, a law clerk to a prominent judge, a litigator at a top New York City law firm, and a professor at a major liberal arts college. But, much more importantly, my personal success is part of a larger legacy. Affirmative action has made it possible for an entire generation of African Americans, poor and working class as well as middle-class (the children of domestic workers, educators, laborers, prostitutes, and doctors), to begin to break through the unwarranted institutional roadblocks to our participation in all segments of the American workplace for the first time in our nation's history.

Another story unfolds from my childhood photograph. My brother Larry fared much differently than I. Though Larry had been a better student than I in high school, he was also more consumed
by the difficult circumstances of our younger lives. He lacked the confidence to pursue the path of education which, through unique circumstances, I had been encouraged to follow. My brother became a mail-room clerk in a Philadelphia bank and dreamed of continuing his education until his life was cut short at age thirty by congenital heart failure.

Although my brother and I fared quite differently in our lives, in the realization of our potentials, we both received opportunities that protected us from some of the more disastrous circumstances facing young people growing up in and around Camden, New Jersey, and other inner-cities today. The erosion of a base of working-class manufacturing jobs in the post-Civil Rights era combined with the proliferation of deadly drugs in our neighborhoods has turned many urban communities into war zones. The need for special programs designed to offset the social inequities faced by blacks is therefore needed now even more urgently than ever before.

Yet bewildered by and insensitive to the subtleties of contemporary American racism, we seem as a nation unable to confront the monstrous consequences of our collective past where African Americans are concerned. Indeed, paradoxically some whites now use the tactics of the civil rights movement of the 1950s and '60s, publicly demonstrating against affirmative action initiatives to symbolize their belief that they are the principal victims of racial discrimination in post-apartheid America, whereas nothing could be further from the truth. We must, therefore, transcend the paralysis of a superficial analysis that suggests that blacks and whites are similarly situated in modern America, and learn to distinguish rational differentiation from reverse discrimination. Perhaps then white Americans now blind to the circumstances of the children of apartheid can be made to recognize that we are a nation haunted by our history of slavery, apartheid, and contemporary de facto segregation. And perhaps then we can envision a future free of the white backlash to affirmative action.

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