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Sally Coleman Selden
Lynchburg College

A Solution in Search of a Problem? Discrimination, Affirmative Action, and the New Public Service

One of the defining challenges of the ongoing transition from government-centered to multisectoral models of new governance in the 21st century is maintaining the values that one cherishes in a democracy. One value that historically has been pursued in the administrative state is attaining a workforce that "looks like America." For some, this means having a public workforce that reflects America's diversity (passive representation), with less concern about whether that representation influences the substantive policy outputs of public agencies (active representation). To others, looking like America is important so that all groups—especially historically underrepresented or excluded groups—can actively promote and implement public policies that reflect the needs, values, and aspirations of the groups they represent.

Passive representation is viewed as a worthwhile aim of public policy because the public service has always been a vehicle of social mobility for groups that historically have been disadvantaged in the labor market, and it implies a symbolic commitment

to equal access to power. Furthermore, the bureaucracy is more reflective than elected officials of the economic stature of most Americans. Moreover, it should be because of the bureaucracy's role in the policy process. Additionally, in a global economy—and with a foreign policy premised on human rights and dignity—lacking a diverse workforce is embarrassing to the United States, undermines its credibility, and hurts its business success in dealing with other nations. Meanwhile, active representation is valued because the operations and policies of a demographically diverse agency will look very different from what they would be if the agency's workforce were homogeneous.

To these ends, for over a half-century, the United States has pursued a more diverse workforce, first through an emphasis on equal employment opportunity and later through affirmative action policies. These efforts have come through an amalgam of federal and state legislation, executive orders, administrative rules, and judicial decisions. With the exception of the abortion is-

sue, this morphing from equal employment opportunity to an affirmative action approach to representation has ignited one of the most heated and divisive controversies over social policy that this nation has endured in the 20th century. The battle has been led by both passionate advocates and opponents (Holzer and Neumark 2000a; Jones 2005; Sabbagh 2003).

To some proponents, moving away from affirmative action as the primary tool for bringing about both passive and active representation in the United States would violate the nation's constitutional covenant with its citizens. It is misguided, they argue, to ignore the fact that stubborn remnants of race, ethnicity, and gender discrimination remain in hiring, promotion, and retention decisions in the public, private, and non-profit sectors of this nation. Thus, relaxing affirmative action pressures would only undermine the progress made over the past four decades in these areas. Moreover, given the movement from government-centered to multisectoral models of governance that has taken place in recent years, some worry that private and nonprofit organizations may be less focused on promoting diversity in their workforces, thereby compromising the nation's aspirations toward equal opportunity for all Americans.

To opponents, however, affirmative action is an equally divisive form of reverse discrimination that is not needed precisely because of the progress that has been made in the anti-discrimination area. They are joined by less ideological and perhaps more pragmatic critics who argue that affirmative action, at least on the basis of race and ethnicity, makes little sense given the changing racial-ethnic composition of today's (and likely tomorrow's) population. To others, the continued migration of workers from around the world into the United States, coupled with

the demographic projections of the U.S. labor force by race and ethnicity, suggest we will no longer be able to classify U.S. workers using the five traditional racial and ethnic groups. Others in this "beyond affirmative action" camp argue that recruitment is not the problem (i.e., the recruitment "pipeline" is full); rather, the problem is the retention of diverse workers. Diversity management, therefore, is the key to growing, nurturing, and empowering a heterogeneous and multicultural workforce.

Has affirmative action's time passed, either politically, substantively, or in impact? A complete review of the host of questions that must be answered to inform such an inquiry would be impractical. Consequently, this article focuses on what prior research tells us about four important dimensions of this question that beg understanding before an informed answer can be given. First, what does prior research tell us about where the public stands on affirmative action? Second, what does it tell us about where affirmative action presently stands in terms of state legislatures, the courts, and civil society? Third, as a guide to arguing the merits and demerits of affirmative action in the future, what does prior research tell us about what affirmative action has accomplished so far in light of its passive and active representation goals? Finally, in an era of new governance, does a movement from government-centered to multisectoral workforces compromise the aims of affirmative action if it is dismantled?

Reviewing a robust and still growing body of research related to these questions, and offering in the process a brief overview of the history of affirmative action, this article culls eight general lessons related to affirmative action that practitioners and researchers should ponder as they work with or study the future of affirmative action in the new

governance era. Perhaps the most important lesson for society more broadly is that affirmative action is not a solution that is chasing a problem from a bygone era. Today's residual problems will likely require redefinition and new solutions—a refocus that will affect public, private, and nonprofit organizations as the United States moves from a government-centered to a multisector model of public service.

Toward Affirmative Action

Table 1 presents an overview of key equal employment opportunity and affirmative action executive orders, statutes, and referenda in the United States, beginning with the 1954 landmark case, *Oliver Brown et al. v. the Board of Education of Topeka (KS) et al.*¹ This case marked the end of the legalization of segregated public educational settings and the start of mass social reforms in

Table 1 Influential Equal Employment Opportunity and Affirmative Action Executive Orders, Statutes, and Referenda in the United States

Expanding Equal Employment Opportunity and Affirmative Action	Year	Limiting Affirmative Action
<i>Brown v. Board of Education</i>	1954	
Executive Order 10925	1961	
Title VII of the Civil Rights Act	1964	
Executive Order 11246	1965	
Executive Order 11478	1969	
Department of Labor, Order Number 4	1970	
<i>Griggs v. Duke Power Company</i>	1971	
Equal Employment Opportunity Act Executive Order 11625	1972	
<i>Regents of University of California v. Bakke</i>	1977	<i>Regents of University of California v. Bakke</i>
Civil Service Reform Act	1978	
<i>United Steelworkers of America, AFL-CIO-CLC v. Weber</i>	1979	
<i>Fullilove v. Klutznick</i>	1980	Ronald Reagan elected president
	1984	<i>Firefighters Local Union Number 1784 v. Stotts</i>
<i>Local 28 of the Sheet Metal Workers' International Assoc. v. EEOC</i>	1986	<i>Wygant v. Jackson Board of Education</i>
<i>Johnson v. Transportation Agency, Santa Clara County</i> <i>United States v. Paradise</i>	1987	
	1989	<i>Richmond v. J.A. Croson Company</i>
<i>Metro Broadcasting, Inc. v. FCC</i>	1990	
<i>United States v. Fordice</i>	1992	
	1994	<i>Adarand Constructors, Inc. v. Peña</i> <i>Podberesky v. Kirwan</i>
	1996	<i>Hopwood v. University of Texas</i> California Proposition 209
	1998	Washington Initiative 200
	1999	"One Florida" (EO 99-201)
<i>Grutter v. Bollinger</i>	2003	<i>Gratz v. Bollinger</i>
	2006	Michigan Civil Rights Initiative

the United States. The ruling also served as a catalyst for launching the Civil Rights Movement, which resulted in new laws, policies, and practices prohibiting and correcting for discrimination in educational and employment institutions (Sugrue 2001).

The concept of affirmative action was formally introduced by President John F. Kennedy in Executive Order 10925. Kennedy's order required government contractors to take affirmative action in their hiring and employment practices (Kellough 1992). Next, the Civil Rights Act (CRA) of 1964 created a legislative basis for prohibiting discrimination on the basis of race, color, religion, sex, or national origin in public accommodations, education, and employment.² According to John Skrentny, the CRA of 1964 "institutionalized a moral standard in the United States that discrimination was wrong" (2001, 3). Title VII of the CRA empowered persons to file charges of discrimination with the Equal Employment Opportunity Commission (EEOC), which would then investigate and resolve formal complaints of discrimination.

A year after the CRA was passed, President Lyndon Johnson voiced his opinion in a speech at Howard University that federal legislation was not enough to eradicate the discrimination felt by many people in this country:

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 just to open the gates of opportunity. All our citizens must have the ability to walk through those gates (1965).

As Table 1 also demonstrates, most legislative and judicial actions from the 1960s through most of the 1980s expanded and supported equal employment and affirmative action. Additional statutes, executive orders, and regulations expanded the concept of equal opportunity set forth in the 1964 CRA "to stop existing discrimination and to prevent its recurrence" (Stephanopoulos and Edley 1995). Further changes in equal employment opportunity policy were premised on the belief that a policy that merely reacted to discrimination charges and processed those complaints would not fully address the underlying problem (Kellough, Selden, and Legge 1997).

Recognizing this, civil rights advocates lobbied for programs that were more proactive, and the national political leadership responded. In 1965, President Johnson's Executive Order 11246 required that federal contractors take affirmative action to end discrimination against minorities and women and to ensure equality in the hiring and employment of all persons.³ The order created the Office of Federal Compliance (renamed the Office of Federal Compliance Programs during President Jimmy Carter's administration) in the Department of Labor to implement and enforce its provisions. In 1970, the Department of Labor issued Order Number 4 requiring goals and timetables for federal construction contractors to increase employment of minorities and women. However, according to a 1976 U.S. General Accounting Office (GAO) report, enforcement of affirmative action lagged under Executive Order 11246 and Title VII of the CRA of 1964. Nonetheless, Jonathan Leonard (1990) later found that the incidences of debarment of contractors and back-pay awards due to violations of Executive Order 11246 increased during the period from 1973 to 1980.

In 1969, the protections provided to groups covered by the CRA of 1964 were extended to federal workers by Executive Order 11478. In 1970, the Civil Service Commission issued a memo outlining the federal government's strategy for achieving equal employment opportunity (Rosenbloom 1977).⁴ It stated that "the establishment of goals and timetables is a useful management concept and should be used where they will contribute to the resolution of equal employment opportunity" in the federal workforce (Rosenbloom 1977, 103). At this point, the political sentiment at the federal level was that affirmative action programs without measurable results would have little impact on employment practices (GAO 1976; Leonard 1990).

In 1972, Congress enacted the Equal Employment Opportunity Act. This law granted additional enforcement power to the EEOC by authorizing the agency to file suit in federal courts against employers when charges of discrimination could not be settled. The EEOC also could initiate action against employers believed to be engaged in a pattern of employment discrimination (GAO 1976). Moreover, the law provided a legislative basis for civil rights protections, under the provisions of Title VII of the CRA of 1964, for federal government employees (GAO 2005; Kellough, Selden, and Legge 1997) and required "each federal department and agency to prepare plans to maintain an affirmative program of equal employment opportunity" (GAO 2005, 7). The statute afforded the Civil Service Commission responsibility for enforcement of the federal workforce provisions; those responsibilities were transferred to the EEOC in 1978 (GAO 2005). Taking the federal government's lead and with a strong legal basis, many states adopted affirmative action programs, including goals and timetables (Kellough, Selden, and Legge 1997).

Also in 1978, the U.S. Congress strengthened its commitment to equal employment opportunity in the Civil Service Reform Act (CSRA). In an effort to create a federal workforce reflective of the nation's diversity, the CSRA established two of nine merit principles related to equal employment opportunity. Moreover, the statute established the Federal Equal Employment Opportunity Recruitment Program to overcome the underrepresentation of minorities in the federal workforce (GAO 2005).

Through the late 1970s and 1980s, the use of affirmative action in the employment process stabilized. Federal contractors whose minority and gender representation did not reflect the labor market implemented affirmative action plans to address the imbalances (Graham 2000). Likewise, federal agencies advanced recruiting programs to attract minorities and women to federal service. However, the election of Ronald Reagan as president in 1980 marked the start of the anti-affirmative action movement, just over a decade after the implementation of affirmative action began.

Opposed to affirmative action, President Reagan directed his administration to cut enforcement of affirmative action programs (Gutman 1993; Kelly and Dobbin 2001; Leonard 1984c, 1985a, 1985b). The federal contract compliance program used to enforce Executive Order 11246 also stalled (Leonard 1990). Leonard found, for example, that "after 1980, fewer administrative complaints were filed, back-pay awards were phased out, and the...penalty of debarment became an endangered species" (1990, 58).

Also during this period, the Justice Department filed a number of amicus briefs on behalf of challengers to affirmative action plans (Kelly and Dobbin 2001). In addition,

President Reagan appointed federal judges "opposed to regulation in general and affirmative action in particular" (Kelly and Dobbin 2001, 95). Despite Reagan's efforts, however, many employers retained their equal employment programs and mechanisms (Kelly and Dobbin 2001). Moreover, they began to shift their language and affirmative action programs toward diversity management (see Tables 1 and 2; Dodge 1997; Kellough, Selden, and Legge 1997; Kelly and Dobbin 2001; Selden 1997; Selden and Selden 2000). Thus, the aims of President Reagan's assault on affirmative action were not immediately realized. However, as illustrated later in this article by judicial decisions rendered during Reagan's presidency, the seeds of change had been planted. Before viewing that legal legacy, however, it is important to appreciate the political context that helped to spawn and nourish it, most especially in the arena of public opinion in the 1990s and beyond.

Divided It Falls?

Public Opinion in Analytical Perspective

Where do Americans stand politically on affirmative action? Neither practitioners nor

scholars will be surprised to learn that public opinion is highly divided on this issue. But the real questions are how consistent are these polls, whether citizens are more or less divided in light of the broader discussions they have heard in the media over the years, and whether opinion is fixed or has shifted over time. Prior research indicates that the durability of affirmative action rests on a precarious and declining base of public support in the United States, with racial gaps in perceptions that are real, enduring, and divisive.

Lesson 1: Citizens remain conflicted about affirmative action, support for affirmative action varies slightly across time and polls, and the results vary across time and by race. As illustrated in Figures 1, 2, and 3, polling results indicate that support for affirmative action varies slightly across time and opinion polls (Jones 2005). A comparison of public opinion polls administered by CBS News and the Gallup Organization demonstrate this fluctuation. Compared to 2003 polling data, the results of a January 2006 CBS poll suggest that the American people are growing impatient with affirma-

Table 2 Definitions of Equal Employment Opportunity, Affirmative Employment, and Workforce Diversity

Terms	Definition
Equal Employment Opportunity	The policy embodied in law that requires that employment actions be free from prohibited discrimination, including discrimination on the basis of race, color, religion, gender, national origin, age, disability, and retaliation for filing discrimination claims or other protected activity.
Affirmative Employment	A program designed to identify and eliminate discriminatory practices and policies and to ensure equal employment opportunity. In the federal sector, affirmative employment includes actions by federal departments/agencies to identify and eliminate barriers to equal opportunity employment in accordance with the policies of the Equal Employment Opportunity Commission and the Office of Personnel Management.
Workforce Diversity	This indicates the extent to which people in a workforce are similar and different from each other, including characteristics protected by law; i.e., race, color, religion, gender, national origin, age, and disability. Workforce diversity also may take into account other factors, such as background, education, work roles, and personality.

Source: GAO 2005

tive action programs (CBS News 2006). The level of support for continuing affirmative action programs has decreased substantially over the past three years. In 2003, the polling organization found that 54 percent of people surveyed believed that affirmative action programs should be continued (CBS News 2003). In 2006, however, 12 percent of persons surveyed indicated that affirmative action should be ended, 33 percent believed affirmative action programs should be phased out, and 19 percent were not sure what should happen to affirmative action programs. Moreover, only 36 percent of persons surveyed believed that affirmative action should be continued, a decrease of 17 percentage points from 2003 (CBS News 2006).

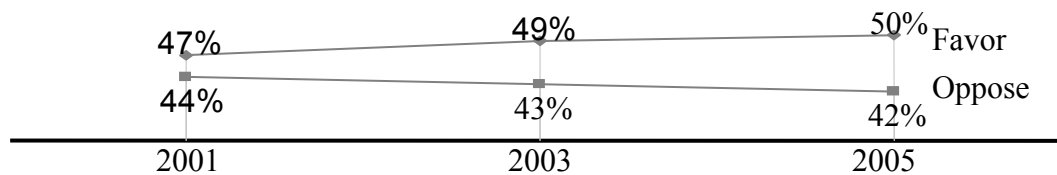
In contrast, and as shown in Figure 1, respondents to Gallup's annual survey of minority rights and relations in 2005 were slightly more supportive of affirmative action programs for racial minorities (50 percent) than opposed to such programs (42 percent) (Gallup 2005). Moreover, between 2001 and 2005, the percentage of people opposed to affirmative action programs actually decreased, albeit marginally, from 44 percent to 42 percent (Jones 2005). Figure 2 presents information on the percentage of

survey respondents who would like to see a decrease in affirmative action programs. Because the percentage fell from 37 percent in 1995 to 26 percent in 2003, Jack Ludwig, director of research for Gallup Poll Social Audits, argued that the public was warming to affirmative action (Ludwig 2003).

What has been consistent over the years, however, is an enduring racial gap in perceptions of affirmative action, with minorities supporting affirmative action by a margin of at least 20 percentage points in five annual CBS and Gallup surveys (see Figures 2 and 3; CBS News 2006; Jones 2005; Ludwig 2003). For example, a 2003 Gallup Poll revealed that African Americans and Hispanics were significantly more supportive of affirmative action programs than non-Hispanic whites (Gallup 2003b). In that survey, 70 percent of African-American and 63 percent of Hispanic respondents favored affirmative action, compared to 44 percent of white respondents.

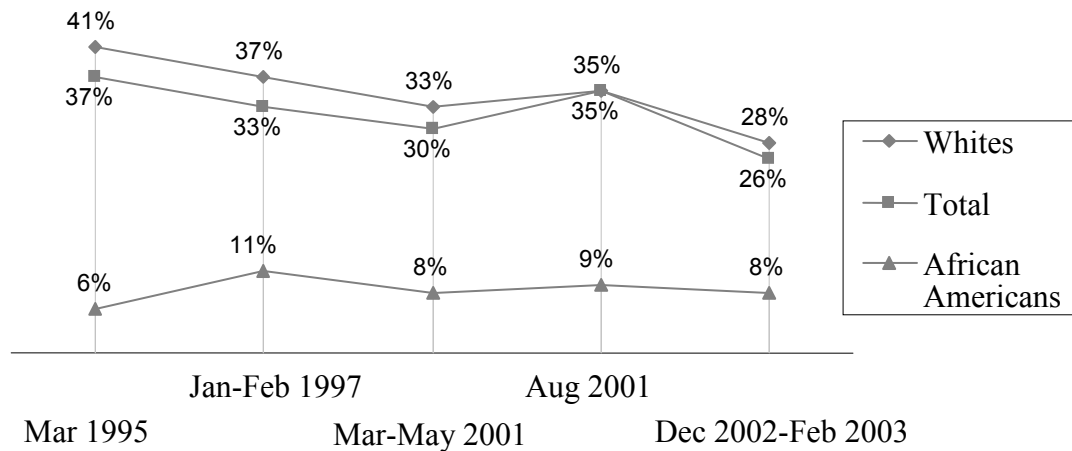
More in-depth exploration of this perceptual gap has led some to conclude that the differences between African-Americans' and whites' perceptions of affirmative action programs "likely stem from the belief among a majority of whites (59 percent) that

Figure 1 Opinion of Affirmative Action Programs for Racial Minorities



Source: Jones 2005

Figure 2 Percentage of Respondents by Race Who Would Like a "Decrease" in Affirmative Action Programs

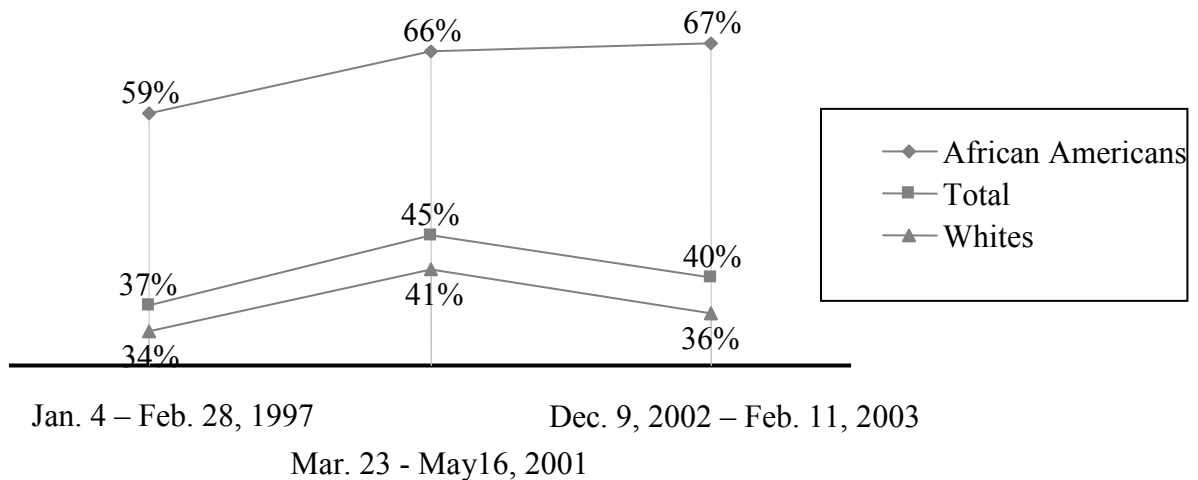


Source: Ludwig 2003

blacks in this country have equal job opportunities with whites, while only 23 percent of blacks agree. Roughly three in four blacks believe that they do not have equal job opportunities in this country" (Jones 2005, 2). Moreover, the percentage of African Americans who believe that the government should make every effort to help them and

other minorities increased from 59 percent to 67 percent between 1997 and 2003 (see Figure 3). The trend for white respondents in the CBS and Gallup polls differed slightly, however, with the percentage supporting federal government efforts increasing from 34 percent in 1997 to 41 percent in 2001, but decreasing to 36 percent in 2003.

Figure 3 Percent of Respondents Who Agree that the Government Should Make Every Effort to Help African Americans and Other Minorities



Source: Gallup Poll 2003a

**Affirmative Action on the Defensive:
The View from the Courts, State
Legislatures, and Governors' Offices**

Against this leitmotif of eroding support for affirmative action among large segments of the American public, and perhaps helping to coalesce it, recent years have seen a sustained attack on affirmative action in Washington, in the states, and in the courts. In the process, affirmative action has seen limitations placed on its scope, with narrow tailoring of its application—part of the test that public managers must anticipate as they work in this area. Collectively, these developments do not bode well for the future of affirmative action as we know it.

Lesson 2: A narrowing of affirmative action by the courts has been underway since the late 1980s, though with some protections added in higher education. At the federal level, the seeds of President Reagan's efforts to appoint federal judges "opposed to regulation in general and affirmative action in particular" (Kelly and Dobbin 2001, 95) blossomed after Reagan left office (Kellough 1989; Naff 2004). Before then—although many of the decisions were split—affirmative action typically received (with few exceptions) the support of the U.S. Supreme Court (Kellough 1989, 2006; Naff 2004).⁵ For example, the Court ruled that colleges and universities were permitted to use race or ethnicity as a flexible factor in its admissions decisions. Likewise, public and private employers could voluntarily employ affirmative action programs to address racial, ethnic, or gender imbalances in their workforces. Moreover, the U.S. Congress could require affirmative action programs from employers receiving federal funding.

Since then, however, affirmative action has largely been on the defensive in the federal

courts. The Supreme Court's first major decision in this regard challenged the legal standing of affirmative action programs at the state and local levels by requiring programs to pass a more demanding and stringent level of scrutiny by the courts. More precisely, in *Richmond v. J. A. Croson Co.* (488 U.S. 469 [1989]), the Court ruled that the city of Richmond's 30 percent set-aside program for minority-owned construction firms was "an unyielding racial quota." The Court established that affirmative action programs at the state and local levels should be subject to strict scrutiny.

In *Metro Broadcasting, Inc. v. FCC* (497 U.S. 547 [1990]), Justice William J. Brennan, in his majority decision, held that the minority preference policies of the Federal Communications Commission did not violate the equal protection clause of the Fifth Amendment. Moreover, unlike the *Croson* decision, which focused on a local government's use of preferences, the Court even found that affirmative action plans adopted by Congress are not subject to strict scrutiny. But the justices' support for legislatively mandated affirmative action programs was temporary.

In *Adarand Constructors, Inc. v. Peña* (515 U.S. 200 [1995]), the Supreme Court actually struck down its *Metro Broadcasting* decision and ruled that the strict standards established in *Croson* were the proper standards for examining federal set-aside programs. Although the Court found that federal affirmative action programs need to serve "a compelling governmental interest," the majority decision affirmed that the use of affirmative action may be justified in particular instances, such as when systematic discrimination exists. Importantly, the aforementioned rulings do not preclude lo-

cal, state, or federal governments from using affirmative action programs. However, the decisions do "raise the standards for their legal justification" (Holzer and Neumark 2000a, 491).

In the aftermath of these decisions, the Clinton administration responded quickly, recognizing that "federal HRM [human resource management] affirmative action for minorities had become constitutionally questionable" (Naylor and Rosenbloom 2004, 151). And although the Adarand decision pertained only to government contracting, the administration instructed all federal agencies and departments to apply the decision to both contracting and employment (Naff 2004; Naylor and Rosenbloom 2004). Moreover, and at about the same time, two important circuit court decisions involving institutions of higher learning called affirmative action into question.

In *Podberesky v. Kirwan* (38 F.3d 147 [1994]), the U.S. Court of Appeals for the Fourth Circuit ruled that the University of Maryland's Banneker scholarship program, which was limited to African Americans, was unconstitutional. Two years later, the Fifth Circuit Court of Appeals' decision in *Hopwood v. University of Texas* (78 F.3d 932 [1996]) prohibited consideration of race or ethnicity in admissions decisions, even for the express purpose of creating a diverse student body. According to the court, diversity in higher education did not represent a compelling state interest (American Association of University Professors 2005). The Fifth Circuit Court of Appeals held in its conclusion that "the University of Texas School of Law may not use race as a factor in deciding which applicants to admit in order to achieve a diverse student body, to combat the perceived effects of a hostile environment at the law school, to alleviate the law school's poor reputation in the minority

community, or to eliminate any present effects of past discrimination by actors other than the law school" (*Hopwood v. University of Texas*, 78 F.3d 932 [1996]).

Subsequently, the Supreme Court let the Hopwood decision stand without review. More recently, however, the Court ruled more positively on the application of affirmative action to higher education in *Gratz v. Bollinger* (539 U.S. 244 [2003]) and *Grutter v. Bollinger* (539 U.S. 306 [2003]). It did so, however, in ways that are decidedly more constraining than during the pre-Reagan era. The Supreme Court, for example, ruled in favor of the University of Michigan in *Grutter*, indicating that the Equal Protection Clause of the Fourteenth Amendment did not bar consideration of race in higher education admissions. However, while the Court upheld in this fashion its earlier *Bakke* decision in *Grutter*, it set limits for affirmative action programs in its *Gratz* decision.

According to the Court, treating "race" as a plus factor in an effort to enroll a "critical mass" of students from underrepresented minorities was sufficiently narrow and did not create a "quota system." However, in his majority opinion, Chief Justice William H. Rehnquist wrote: "We find that the University's policy, which automatically distributes 20 points, or one-fifth of the points needed to guarantee admission, to every single 'underrepresented minority' applicant solely because of race, is not narrowly tailored to achieve the interest in educational diversity that respondents claim justifies their program." As such, it violates the Equal Protection Clause of the Fourteenth Amendment.

Lesson 3: Grassroots legislative actions, ballot initiatives, and executive orders threaten affirmative action, but state legislators and governors are not without the

tools to hold its demise at bay. Prompted especially by the Fifth Circuit Court's decision, grassroots anti-affirmative action movements began growing in some states and were quickly joined by legislative and gubernatorial initiatives. Some residents and elected officials, for example, have taken action at the state level to curb affirmative action through legislation, ballot initiatives, and executive orders (Americans for a Fair Chance 2005). Two states, California (Proposition 209) and Washington (I-200), passed citizen initiatives in 1996 and 1998, respectively, prohibiting state and local governments from discriminating against or granting preferential treatment to any individual or group based on race, sex, color, ethnicity, or national origin. Again, however, racial and ethnic disparities in voting patterns were readily apparent. Overall, California voters approved Proposition 209 by a 10-point margin (55 percent supported the measure and 45 percent opposed it). But polling results suggest that 61 percent of white voters supported Proposition 209, compared to only 25 percent of African-American and 28 percent of Hispanic voters (Hardy-Fanta 2000).

The Michigan Civil Rights Initiative (MCRI) is on the November 2006 ballot. Michigan is a particularly interesting case, given the aforementioned 2003 Supreme Court rulings on the University of Michigan's undergraduate and law school admissions policies. If passed, the MCRI will establish a more stringent non-discrimination standard for state educational institutions, public employers, and public contractors than required by the 2003 Supreme Court rulings. Michigan institutions of higher education could no longer argue that diversity in higher education represents a sufficiently compelling governmental interest. [Editors'

Note: Check back on this site to get an update on the results of this ballot initiative, and those mentioned below, after the November election.]

While to date citizen initiatives have been successful in only two ballot initiative campaigns led by Ward Connerly, a former member of the California Board of Regents and the leader of Proposition 209, other victories may be forthcoming this year in Arizona, Colorado, Missouri, and New Hampshire (Americans for a Fair Chance 2005). Moreover, even when citizen initiatives have failed or have not reached the ballot, some governors have taken unilateral action to end, limit, or redefine affirmative action. In Florida, for example, Governor Jeb Bush (R) ended affirmative action in the state's employment, contracting, and education systems by issuing Executive Order 99-201, titled the "One Florida Initiative" (U.S. Commission on Civil Rights 2000). Still, since 2000, Florida is the only state that has eliminated the use of affirmative action through executive order.

By the same token, however, legislative supporters of affirmative action can work with sympathetic governors to limit the impact of anti-affirmative action campaigns and court decisions. Governor Ruth Ann Minner (D) issued an executive order in 2001 supporting the use of affirmative action programs in Delaware, while Oregon governor Ted Kulongoski (D) made his support of affirmative action clear in his 2005 State of the State address and by executive order. Likewise, in response to the dismantling of affirmative action in higher education admissions by the courts, legislatures in California, Florida, and Texas adopted a new tool of public action, "percentage plans," to address equal educational oppor-

tunity (see Table 3, Appendix A). Though these plans differ somewhat, they all grant top graduating high school students admission to the state university system.

Adopted in response to the *Hopwood* decision, for example, Texas's "Ten Percent Plan" allows students who graduate in the top 10 percent of their class admission to the University of Texas system. Similarly, but more narrowly, California adopted a plan to guarantee the top 4 percent of students graduating from California's public schools admission to the University of California system (American Association for University Professors 2005). Meanwhile, Florida's "Talented 20 Program" allows the top 20 percent of graduating seniors from Florida high schools admission to one of the University of Florida's public institutions (American Association for University Professors 2005).

The implementation of percentage plans, however, has not been without controversy (Elliott and Ewoh 2005; Horn and Flores 2003; U.S. Commission on Civil Rights 2000, 2002). The U.S. Commission on Civil Rights (2002), for example, concluded that percentage plans do not improve diversity in college enrollments in the short term. Moreover, they "will only have their desired effect if affirmative action and other supplemental recruitment, admissions, and academic support programs remain in place" (U.S. Commission on Civil Rights 2002, 1).

While a careful review of each of these percentage plans is beyond the scope of this article, Catherine Horn and Stella Flores (2003) provide three important observations. First, while necessary, admission is not a sufficient condition for increasing student diversity on college campuses. For example, while a minority student may be admitted to a flagship state institution under the percent-

age plan, the prospective student may not be able to afford to attend or may be concerned about the campus climate and therefore may elect not to attend that college. Second, Horn and Flores also found that percentage plans had the least impact on the most competitive college campuses in California and Florida. Finally, they found that in states where affirmative action was prohibited, colleges and universities were utilizing other strategies to reach students from diverse backgrounds.

Realizing the limits of Texas's percentage plan, and given the Supreme Court's decisions in 2003, the University of Texas expanded its admissions policy to include race and ethnicity as one of seven special circumstances considered in its holistic approach to admissions for the entering class of 2005. It did so while maintaining its mandated automatic admission of the top 10 percent (University of Texas at Austin Office of Admissions 2005). The Texas State Legislature also sought to address shortcomings in the legislation in 2005, but was unable to resolve differences in House and Senate bills.

Has Affirmative Action Reached Its Equity Goals?

Amid these offensives and counteroffensives, what has affirmative action actually accomplished after 30 years of implementation? Although the majority of empirical research demonstrates the positive impact of affirmative action policies on educational and employment opportunities for minorities and women (Chay 1998; GAO 1991; Goldstein and Smith 1976; Holzer and Neumark 2000a, 2000b; Kellough 1990a, 1990b; Leonard 1990; Naff 2001; Naylor and Rosenbloom 2004; Rodgers and Spriggs 1996), some studies have raised questions about its true benefits (Bowen and Bok 1998; Datcher, Garman, and Garman 1993,

1995; Davidson and Lewis 1997; Kane 1998; Sander 2004; Vars and Bowen 1998). Overall, one finds research support for progress on the critical pipeline dimension of educational opportunity. However, there is decidedly less significant advancement when it comes to other major goals, such as hiring, equal pay, and the elimination of discrimination once minorities and women are hired. Therefore, it seems that future progress still requires the kind of "pressure of court decisions, legislation, executive action, and the power of examples in the public and private sector" that was so essential to the progress made since the 1960s (Clinton 1995).

Lesson 4: Substantial and important progress is being made in the critical area of educational opportunities, but the retention and academic performance measures of some minority students are disappointing and suggest that additional or different efforts are needed. The impact of affirmative action on educational opportunity has been researched extensively, and the result is clear: more women and minorities are represented on college campuses and in professional programs today than prior to the use of affirmative action (Stephanopoulos and Edley 1995). Studies examining the link between affirmative action and student performance, however, are less positive for minorities; on average, minority students do not perform as well as white students. On the other hand, women perform better academically than men (Berkner, Cuccaro-Alamin, and McCormick 1996; Bierman 2006; Clune, Nuñez, and Choy 2001; National Center for Education Statistics [NCES] 1999). Between 1960 and 2003, the percentage of men enrolling in college after graduating from high school increased by 7.2 points, from 54 percent to 61.2 percent. During this same period, the percentage of women going to college after high school

grew more rapidly. In 1960, about 38 percent of women graduating from high school went to college, compared to 66.5 percent of women in 2003 (NCES 2004a, 2004b).

At the same time, a U.S. Department of Education study (NCES 2004a) shows a larger percentage of graduating high school students across racial and ethnic groups going to college between 1974 and 2003. Specifically, although white enrollment rose from 47.8 percent to 66.2 percent of the available pool during that period, African-American enrollment rose from 32.5 percent to 57.5 percent. Hispanic enrollment improved only marginally, from 54.1 percent to 58.6 percent. Thus, the news—though positive in terms of affirmative action goals on this dimension—is not all good. For example, over a 30-year period, there was a slightly higher rate of growth of African Americans going to college (25.0 percent) than for white students (18.4 percent) (with the latter, of course, starting from a higher base, making percentage increases more difficult to attain). But the rate of growth for Hispanics going to college during this same period was significantly lower (4.5 percent) than the growth rate for whites and African Americans. Still, these data indicate that minority students constitute a much higher percentage of college and university students today. In 2002, 30.7 percent of undergraduate students were minorities, compared to 16.3 percent in 1976 (NCES 2004d).

Prior research also finds that women and minorities have increased their representation in graduate and professional schools during the last 25 years (NCES 2004c, 2004d). In 1969, women represented 38 percent of graduate school enrollments, compared to 58 percent in 2002 (NCES 2004c). Between 1976 and 1977, whites received 91.4 percent of first professional degrees awarded; African Americans received 4 per-

cent, Hispanics 1.7 percent, Asians 1.6 percent, and Native Americans 0.3 percent. By 2002-03, however, minorities were receiving a larger share of first professional degrees conferred: African Americans received 7.1 percent, Hispanics received 5.1 percent, Asians received 12.1 percent, and Native Americans received 0.7 percent (NCES 2004e).

The progress of women in professional programs has been even more impressive. Whereas women received 18.7 percent of first professional degrees issued in 1976-77, they received 48.2 percent of first professional degrees awarded in 2002-03 (NCES 2004e). Likewise, in 1955-56, women received only 1.1 percent, 5.1 percent, and 3.5 percent of dental, medical, and law degrees conferred, respectively. In 2002-03, however, women received 38.9 percent, 45.3 percent, and 49 percent of dental, medical, and law degrees awarded, respectively (NCES 2004f).

Prior research also reveals, however, a controversy over what these otherwise impressive gains mean in terms of academic performance (e.g., Bowen and Bok 1998; Datcher, Garman, and Garman 1993, 1995; Davidson and Lewis 1997; Kane 1998; Sander 2004; Vars and Bowen 1998). For example, a recent article by Richard Sander (2004) raises and validates a concern of many affirmative action critics: affirmative action, they allege, results in minority applicants who are less qualified being accepted to more elite universities. Assessing grade-point averages and graduation rates, Sander argues that many African-American students struggle in law school academically and fail at higher rates than they would if preferences had not been awarded.

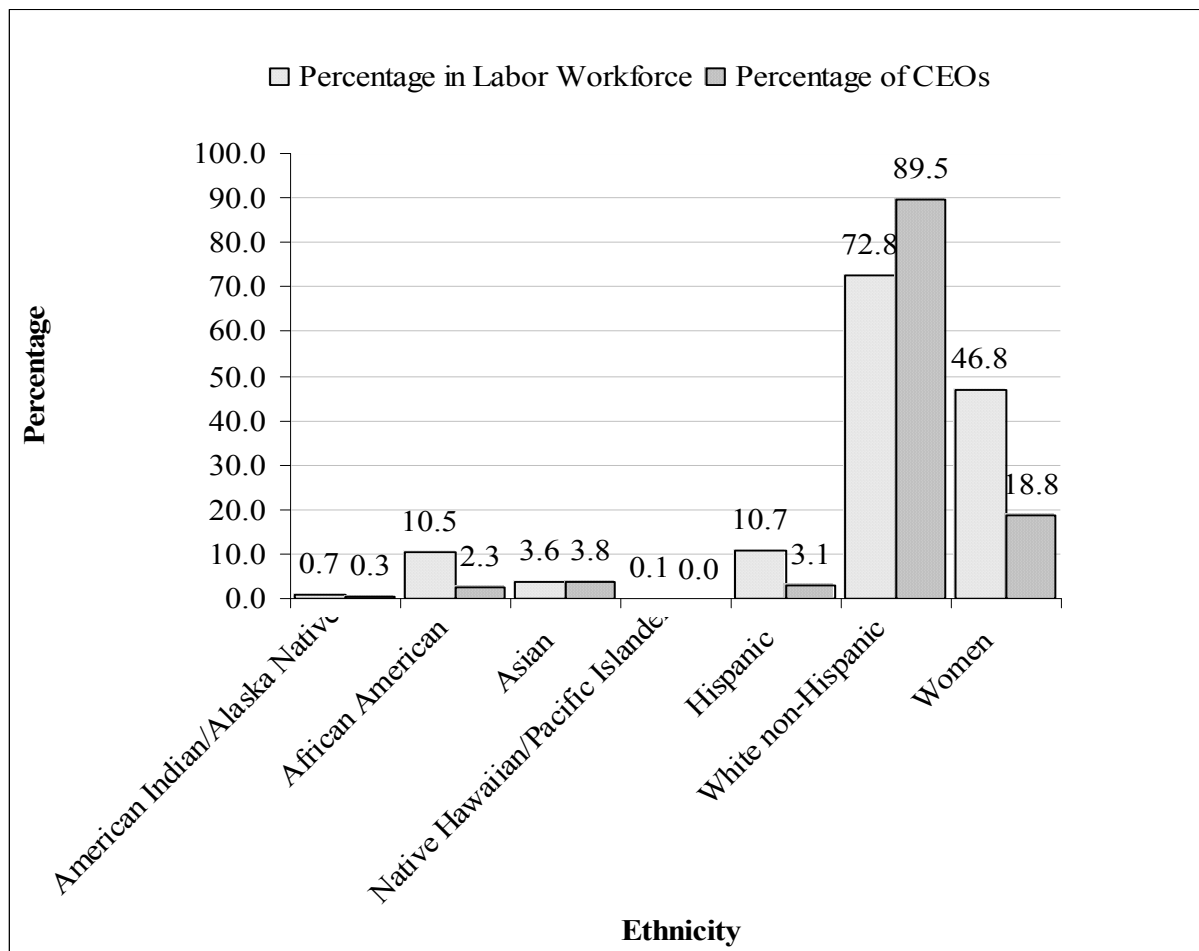
Without affirmative action, Sander contends, African-American law students would likely perform better because they would be admitted to less selective programs that better fit their entry credentials (e.g., grade-point averages, LSAT scores). In turn, better academic performance would likely lead to better job placement, as many law firms weight a law student's class ranking heavily in the interview process (Sander 2004). Similarly, in a study of undergraduate performance and earnings, Loury Datcher, Linda Garman, and David Garman (1995) found that African Americans had lower grade-point averages and graduation rates. However, they also found that African Americans were not necessarily worse off because they attended more selective institutions. Still, they argue that the gains from attending more selective colleges were not as significant as those observed for white students.

Lesson 5: The pipeline arguments of affirmative action opponents are not as compelling as they suggest and may not survive a relaxation of pressure on public and private employers to hire a diverse workforce. Still, there is some promising news from the private sector. A number of studies have examined the effect of affirmative action on the employment of minorities and women across different sectors (Ashenfelter and Heckman 1976; Chay 1998; GAO 1991; Goldstein and Smith 1976; Holzer and Neumark 2000a, 2000b; Kellough 1990a, 1990b; Leonard 1984a, 1984b, 1990; Naff 2001; Naylor and Rosenbloom 2004; Rodgers and Spriggs 1996; Stephanopoulos and Edley 1995). The studies are varied and transcend disciplines. Important enough in their own right, these sector-based studies take on added significance in light of the contemporary networked state.

A number of studies use the Employer Information Report (EEO-1) survey data collected by the EEOC to examine the impact of affirmative action (as established by Executive Order 11246) on minority and female employment shares among federal contractors and non-contractors in the private sector. For example, Leonard (1990) finds that affirmative action has been effective because employment gains among women and minorities for the period 1974-80 rose more significantly for federal contractors than for non-contractors. He also found, however, that the most important predictor of employment gains for minorities and women is enforcement or compliance reviews.

Overall, studies using EEO-1 data have shown that affirmative action has significantly and positively influenced the minority employment share in the private sector, particularly in unskilled positions. Minorities and women, however, still are substantially underrepresented in chief executive officer (CEO) posts compared to their participation in the civilian labor force (see Figure 4), with the gap highest for women, African Americans, and Hispanics. According to *Fortune* magazine, in 2006, only six of the Fortune 500 companies, or about 1 percent, were led by African-American CEOs (*Fortune* 2006). What might account for this? Among a variety of explanations, prior re-

Figure 4 Minorities and Women in the Civilian Labor Force and as Chief Executive Officers



Source: U.S. Census Bureau, Census 2000 Special Tabulation

search suggests that a lack of representation of minorities and women on boards of directors does not help the situation. In a recent study of Fortune 100 companies, researchers found that women held 16.9 percent of board seats and minorities held 14.9 percent (Alliance for Board Diversity 2005). Hispanics were particularly underrepresented on corporate boards, holding 3.9 percent of board seats. Therefore, one possibility for remedying the situation is to move aggressively to diversify corporate boards so that they might engage in the active representation that is needed to foster diversity at all levels of these organizations.

A number of studies also have examined the demographic composition of local, state, and federal workforces (e.g., Cayer and Sigelman 1980; Dometrius 1984; GAO 1991; Gibson and Yeager 1975; Grabosky and Rosenbloom 1975; Hellriegel and Short 1972; Kellough 1990a; Kim 1993; Lewis 1988; McCabe and Stream 2000; Nachmias and Rosenbloom 1973; OPM 2006; Page 1994; Rose and Chia 1978). Unlike studies of federal contractors and non-contractors, however, studies of public organizations cannot isolate the effects of affirmative action from broader civil rights enforcement on the representation of minorities and women. Still, one can discern important trends that indirectly shed light on its effects. Unfortunately, these trends are not as persistently promising in showing the kinds of impact that proponents of affirmative action would hope. They tend to show that the importance of strong political pressures from Washington may be a necessary, but hardly sufficient, condition for sustained progress on diversity.

Although earlier studies suggest that African-American representation improved significantly in the 1960s and 1970s (Grabosky

and Rosenbloom 1975; Hellriegel and Short 1972), other studies indicate that progress slowed at all governmental levels in the 1980s during the Reagan administration (Page 1994). Women and some minorities are better represented today in terms of their overall presence in public organizations, but many studies have found that they are over-represented in the lower echelons of bureaucracies and underrepresented in the managerial and executive ranks (Baldwin 1996; Dometrius 1984; GAO 1991; Greene, Selden, and Brewer 2001; Kim 1993; OPM 2006).

In 2006, however, the U.S. Office of Personnel Management reported that minorities are now better represented in the federal than in the civilian labor force. The only exception was the representation of Hispanics. This finding is similar to research on state governments, where studies have found that Hispanics are grossly underrepresented in state bureaucracies (Greene, Selden, and Brewer 2001). Moreover, the disparity between the presence of minorities and women in management and non-management positions in the federal government still remains (see Table 4), with the degree of representation decreasing dramatically with increases in grade or rank.

Harry Holzer and David Neumark (2000b) employ a different methodology in their examination of the impact of affirmative action in the private sector. Instead of relying on EEO-1 data or public sector workforce statistics, they surveyed an array of firms regarding their use of different affirmative action practices, focusing on the pipeline activities of recruiting and hiring. Their study of 3,200 employers in four metropolitan areas found that 56 percent of employers used affirmative action in recruiting, compared to 42 percent in hiring. Moreover, they found

Table 4 Minorities and Women as a Percent of Related (GSR) Grade Groups, Non-GSR, and Senior Pay

Pay Plan	Women	African Americans	Hispanics	Asians	Native Americans
GSR 1-4	68.5%	27.5%	8.6%	5.9%	5.1%
GSR 5-8	64.9%	26.0%	8.9%	4.2%	2.9%
GSR 9-12	46.1%	15.9%	8.0%	4.8%	1.7%
GSR 13-15	34.1%	11.3%	4.6%	5.4%	1.0%
Non-GSR	46.3%	15.4%	8.3%	6.1%	1.1%
Senior Pay	26.5%	7.0%	3.5%	2.7%	0.9%

Source: OPM 2006, 14, 20, 26, 32, 52

that employers using affirmative action "recruit[ed] applicants much more extensively and screen[ed] them more intensively; rel[ied] more heavily on formal rather than informal means of evaluation (both before and after a worker is hired); and [were] more likely to provide training to candidates they do hire" (Holzer and Neumark 2000b, 269). Firms using affirmative action also received more applications from women and minorities and hired more women and minorities than firms that did not use affirmative action as part of their recruitment process. As opponents of affirmative action often tout, their research also shows that qualifications traditionally considered in the hiring process, such as education, were lower for minorities hired than for whites hired. Yet supportive of the arguments of proponents, Holzer and Neumark (2000b) found that the performance of women and minorities in firms using affirmative action was as high as that of similar workers in firms that did not use affirmative action.

There is also some additional and promising news for affirmative action proponents emanating from the private sector, especially when it comes to the largest corporations in America (but see Lesson 7 below). Because of the changing demographics of the labor pool and the globalization of business, Fortune 500 companies and other large employers in the United States understand the business necessity of diversity, and they are

developing programs accordingly (Day 2001; Wright et al. 1995). Thus, despite ongoing debates about the fairness, impact, and legality of affirmative action, many employers are shifting their focus to workforce diversity. Some organizations, such as Avon, Genworth Financial, IBM, and Proctor and Gamble (as well as the State of New Jersey in the public sector), have committed extensive resources to creating cultures that value and encourage diversity. Using diversity management, these companies have introduced new practices such as awareness training, diversity councils, cultural audits, and networking groups to identify internal barriers that inhibit diversity (Thomas 1990).

Lesson 6: The durability of intentional and unintentional pay discrimination remains high, despite progress in this area. A number of studies have examined the wages, earnings, and salaries of women and minorities (e.g., Aher and Popkin 1984; Barbezat 1989; Blau 1998; Blau and Kahn 1997; GAO 2003; Holzer and Neumark 2000a; Katz, Stern, and Fader 2005; Lewis 1998; Stanley and Jarrell 1998; Stephanopoulos and Edley 1995; Willoughby 1991). The consensus across these studies is that although wages have improved, the wage gap between white males and both minorities and women persists, although it is lower in the public sector than in the private sector (Blau 1998; Blau and Kahn 1997; Holzer

and Neumark 2000b; Lewis 1996; Smith 1976; Sorensen 1989; Stanley and Jarrell 1998; Stephanopoulos and Edley 1995).

For example, in 2004, women working full time earned 76.5 percent (median salary \$31,223) of the annual wages earned by men (median salary \$40,798) (Institute for Women's Policy Research 2006). Not surprisingly to many, Jane Waldfogel (1998) found that the most significant wage gap exists between men and women with children. It must be said that although wage gaps are often interpreted as a form of discrimination, some labor economists suggest that the omission of such factors as unobserved skills may account for some of the disparities (e.g., Becker 1985; GAO 2003).⁶ And though Gregory Lewis (1985) found that a significant portion of the wage gap between women and men in the federal service could be explained by occupational segregation, the GAO (2003) found that it was unable to explain all of the earnings differences between men and women, even when controlling for work patterns. Might performance explain these differentials? Not if a wage study of manufacturing employees by Judith Hellerstein, David Neumark, and Kenneth Troske (1999) is considered. They found that female employees earned lower wages compared to their male counterparts, but exhibited comparable levels of productivity. Still other research concludes that "employer discrimination continues to play a role in generating different labor market outcomes by race and sex" (Holzer and Neumark 2000a, 499).

Lesson 7: The idea that public and business organizations will be more aggressive in pursuing diversity because of profits in global markets or for foreign policy reasons alone is belied by the extent to which employment discrimination still persists.

Although some encouraging news about public and private sector efforts has been reported, so have other disturbing trends. Consequently, no one should be sanguine about the prospects for continued progress in either the private or public sectors absent continued external pressures. In addition to the research that has already been mentioned in regard to labor market discrimination, a variety of other studies have documented evidence to that effect (e.g., see Darity and Mason 1998; Heckman 1998; Kolpin and Singell 1996; Naff 2001; Stephanopoulos and Edley 1995). Moreover, although the EEOC investigates charges of employment discrimination in public and private organizations and litigates cases that are not resolved or deferred to states according to state statutes, their reports—and research informed by them—may only be the tip of the iceberg.

The EEOC, after all, is often and rightly criticized as being slow in its processing of equal employment opportunity complaints (Dodge 1997; GAO 2005), mostly because its enforcement tasks have expanded without anywhere near a commensurate increase in investigative staff (Dodge 1997). Granted, between fiscal years 2001 and 2005, the total number of discrimination charges filed with the EEOC decreased from 80,840 to 75,428, or by 6.7 percent (EEOC 2006). However, staffing levels at the EEOC during this four-year period fell by 19 percent. Moreover, even if the number of complaints is declining, the EEOC still received 19,024 complaints against the federal government alleging employment discrimination (EEOC 2004). In the process, the number of national origin-based and sex-based discrimination charges increased between fiscal years 1992 and 2005, whereas the number of race-based discrimination charges dropped (see Table 5).

Table 5 Discrimination Charges FY 1992-FY 2005

Year	National Origins		Sex		Race	
	Receipts	Monetary Benefits (Millions)*	Receipts	Monetary Benefits (Millions)*	Receipts	Monetary Benefits (Millions)*
FY 1992	7,434	\$9.5	21,796	\$30.7	29,548	\$31.9
FY 1993	7,454	\$8.8	23,919	\$44.0	31,695	\$33.3
FY 1994	7,414	\$15.5	25,860	\$44.1	31,656	\$39.7
FY 1995	7,035	\$10.5	26,181	\$23.6	29,986	\$30.1
FY 1996	6,687	\$10.5	23,813	\$47.1	26,287	\$37.2
FY 1997	6,712	\$9.1	24,728	\$72.5	29,199	\$41.8
FY 1998	6,778	\$11.2	24,454	\$58.7	28,820	\$32.2
FY 1999	7,108	\$19.7	23,907	\$81.7	28,819	\$53.2
FY 2000	7,792	\$15.7	25,194	\$109.0	28,945	\$61.7
FY 2001	8,025	\$48.1	25,140	\$94.4	28,912	\$86.5
FY 2002	9,046	\$21.0	25,536	\$94.7	29,910	\$81.1
FY 2003	8,450	\$21.3	24,362	\$98.4	28,526	\$69.6
FY 2004	8,361	\$22.3	24,249	\$100.8	27,696	\$61.1
FY 2005	8,035	\$19.4	23,094	\$91.3	26,740	\$76.5

Source: EEOC 2006

*Does not include monetary benefits obtained through litigation.

A recent Gallup Poll also suggests that actual EEOC discrimination filings may underestimate the magnitude of the problem (EEOC 2005). In 2005, nearly 15 percent of U.S. workers surveyed perceived that they had faced some type of employment discrimination or had been treated unfairly. Again, the perceptions of discriminatory treatment at work varied by group. However, this time Asians and African Americans reported higher levels of perceived discrimination. Thirty-one percent of Asians surveyed reported incidents of discrimination, compared to 26 percent of African Americans, 18 percent of Hispanics, 22 percent of white women, and 3 percent of white men (EEOC 2005).

Lesson 8: Mixed evidence, especially regarding women, suggests that active representation is a byproduct of diversity in public agencies. Why does all this matter? As noted earlier, passive representation in pub-

lic, private, and nonprofit organizations is important as a ladder of opportunity and a symbol of career mobility. However, recent research affords growing evidence that active representation is an important—albeit controversial—byproduct of diversity (Lim 2006). Although the evidence is mixed, particularly for women, studies mostly show that passive representation in public organizations such as the EEOC, the Farmers Home Administration, and schools leads to policy outcomes that benefit represented groups (e.g., Hinderer 1993a, 1993b; Hinderer and Young 1998; Meier 1993; Meier and Stewart 1992; Selden 1997).

Some studies have shown that this type of representation is more likely to occur in the lower echelons of organizations, where the representation of those groups is higher (Meier 1993; Selden 1997). Research also has shown that representation of minorities makes a real difference in how services are

delivered and how program resources are allocated, but its ultimate impact on organizational performance is not as well documented (e.g., Andrews et al. 2005; Coleman 1999; Hinderer 1993a, 1993b; Hinderer and Young 1998; Meier 1993; Meier and Nicholson-Crotty 2006; Meier and Stewart 1992; Selden 1997). For example, Kenneth Meier and Joseph Stewart (1992) found that schools with more African-American teachers disciplined African Americans less often, placed fewer African-American students in "educable mentally retarded" classes, and identified more African-American students as gifted.

Although several other studies find no link between active and passive representation for women (Meier, Pennington, and Eller 2005; Selden 1997), Kenneth Meier and Jill Nicholson-Crotty (2006) also find evidence that police departments with more women police officers were more effective at getting women to report sexual assaults and at gaining convictions for those crimes. Prior research also suggests that an effective means of ensuring that the interests of minorities and women are represented in administrative decision-making processes is to employ minorities and women. Still, a recent study by Kenneth Meier, Michael Pennington, and Warren Eller (2005) is less positive; they found that active representation of African Americans within the EEOC itself is declining, with no evidence of a link between passive and active representation for women in that agency.

Why the variation in linkages between passive and active representation? Prior research suggests that the representation link is more likely under certain conditions, and that it is enabled by particular factors. These include, but are not limited to, institutional constraints, organizational socialization, perceived administrative roles, policy con-

text, and strategy (Andrews et al. 2005; Brudney, Hebert, and Wright 2000; Dolan 2002; Keiser, Wilkins, and Meier 2002; Kelly and Newman 2001; Saidel and Loscocco 2005; Selden 1997; Sowa and Selden 2003; Wilkins and Keiser 2006). Much remains to be done, however, before a clear understanding emerges of the link between passive and active representation in all types of organizations across sectors in the new governance era.

Conclusions

This review of prior public opinion, educational, employment, and discrimination research suggests that public, private, and nonprofit managers should expect that, despite the gains achieved by women and minorities since the early 1960s, the challenges of eradicating discrimination in the workplace remain. On the positive side, they should know that the educational pipeline for increasing diversity in their workforces is more robust than in the past. More negatively, however, the performance and graduation rates of minority students remain disappointing and require attention. Likewise, significant progress has been made in employment opportunities. Yet women, Hispanics, and African Americans lag behind white men in their ability to reach the highest ranks of public and private organizations, receive comparable wages, and work in a discrimination-free workplace.

Thus, to the extent that other research and many practitioners suggest that a multiracial, multiethnic, gendered, and talented workforce is needed for public, private, and nonprofit organizations to carry out the work of new governance models effectively in the 21st century, work still remains to be done. It is not likely that the controversy over affirmative action will soon, if ever, be resolved, because the issues it invariably raises are so contentious and emotionally

charged that resolution appears improbable, if not impossible.

Practitioners from all segments of the emerging multisector workforce, however, also need to know that what this "work" to advance diversity will look like is unclear. More precisely, changes in existing affirmative action programs to address the remaining vestiges of institutional disparities likely are inevitable, but they are still in need of precise formulation and testing for their effectiveness. Recent federal court decisions, the growth of a vibrant and enduring anti-affirmative action movement, and the divided opinion of the American public signal that the long-term viability of affirmative action policies as they are currently configured is limited.

Granted, state legislatures, governors, and the courts may try to stem the tide, and some have succeeded in doing so. Yet the sometimes tortured ways in which this has to be done—and the uncertainties that action will be taken or that it will be sufficient to joust effectively with affirmative action opponents—make such efforts and their success uncertain at best. Thus, experiments such as those with percentage plans and the push for diversity management are likely forerunners of efforts to promote racial, ethnic, and gender diversity more indirectly in the future without losing the aspirational goal of equity for all U.S. citizens.

For researchers, the implications of this review of prior research are multiple. First, present efforts to assess the factors that affect residual disparities on the hiring, promotion, and workplace discrimination fronts must continue. These gaps are real and disturbing, and they must not be neglected if a truly color-blind, gender-blind, and integrated society is to become a reality in the multisector public service. Researchers

should move beyond an episodic approach to discrimination and explore the cumulative effects of discrimination across education and labor markets (National Research Council 2004). Research should focus on disparities in access (e.g., admissions and hiring), treatment (e.g., grades, wages, and performance evaluation), movement through domain (e.g., graduation rates, retention, promotions, and layoffs), and the relationship between these areas (National Research Council 2004).

These efforts would shed greater insight into the cumulative effects of discrimination and foster a better understanding of the types of policy tools needed. However, merely focusing on and explaining racial, ethnic, and gender disparities are not sufficient; more study of the decision-making processes related to access, treatment, and movement is needed. For example, scholars should engage in both qualitative and quantitative studies of hiring and promotion decision processes. There is a need here to understand empirically the connection between traditional factors used to select and promote employees and the subsequent job performance of new hires. It is particularly important to explore the disparity that remains in top-level representation of women and minorities in both public and private organizations.

This line of inquiry will be easier in 2007 when the EEOC implements its revised ethnic and racial categories and selected job categories contained in the EEO-1 report. The EEOC has divided its job category for "Officials and Managers" into two tiers: (1) Executive/Senior Level Officials and Managers, and (2) First/Mid-Level Officials and Managers. This will allow the EEOC and other researchers to explore whether institutional barriers or "glass ceilings" exist that prevent women and minorities from ascend-

ing to the top of organizations. Moreover, the trend data should be used to determine the extent to which barriers for particular racial, ethnic, or multiracial groups are breaking down or becoming more entrenched from one year to the next.

Second, given the extent to which affirmative action is on the defense, and alternatives to it must be found, additional research is needed to inform these debates. What direct and indirect gains have different groups of students made because of affirmative action in both the short and long term? What are the social benefits of diverse educational and work environments to different groups? How effective is affirmative action in countering discrimination? What are the effects of affirmative action on academic, job, and organizational performance? Given the demographic changes and academic performance gaps emerging (between minorities and non-minorities, as well as women and men), what types of programs are and will be needed in the short and long term? Are other remedies, such as class-based and income-based preferences, needed? Given the continuing role of the courts in these decisions, this kind of research cannot only advance scholarly understanding of affirmative action impacts, but also play a key role in how future affirmative action disputes are debated and resolved.

Third, and given the shift from a government-centered to a multisector model of governance in the United States, greater attention must be paid to what is happening in the private and nonprofit sectors when it comes to diversity efforts, approaches, and results. Both sectors are viewed as critical partners of government agencies, and the latter historically has been a key avenue of social mobility for the disadvantaged. Future studies should explore whether the tools of diversity management (e.g., cultural audits,

diversity councils, and employee-resource groups) are more than old wine in new bottles, and what their impact has been on the hiring, promotion, performance, and retention of underrepresented groups. What are the conditions under which existing and emerging tools for advancing diversity in the public, private, and nonprofit sectors more or less likely to produce results?

Finally, there is a critical need to explore the link between levels of diversity and substantive policy outputs in different policy settings. If early indications from the research on the link between passive and active representation are correct, this question should be explored further—not only in the public sector, but also in the private and nonprofit sectors. Many of the studies of active representation reviewed in this article focused on settings where the conditions were primed for substantive effect. Given the important role that private and nonprofit organizations play as partners in delivering goods, services, and opportunities to citizens in need, exploring these links seems especially important in these understudied sectors.

In this vein, further study is warranted to identify and control for individual and organizational factors that may account for the linkage between demographic representation and substantive program benefits. Moreover, scholars need to grapple with the normative and empirical implications of the increasingly multiracial character of the U.S. population. In the near future, scholars and policy makers will have to consider which racial and ethnic groups should have a "protected" status and for how long that "protected" status should be granted. Given the social, economic, and political stakes involved, as well as our nascent and presently mixed understanding of this issue, any aspect of this agenda would be timely, informative, and important.

Notes

1. Nondiscrimination as a policy dates back to the 1940s, starting with the Ramspect Act of 1940 and President Franklin D. Roosevelt's Executive Order 8802, but these earlier efforts were extremely limited in scope (for a detailed discussion of the history, see Graham 1990; Kellough 1992; Rosenbloom 1977). These acts were voluntary and lack enforcement (Leonard 1990).
2. Over 20 states had a fair employment law prior to passage of the Civil Rights Act of 1964 (Dodge 1997). The CRA did not require states to have a fair employment law or to modify existing laws (Dodge 1997). Moreover, states were not required to establish an agency to enforce its provisions (Dodge 1997).
3. In 1968, President Johnson signed EO 11375, which amended EO 11246, adding gender to the factors prohibited from consideration when federal contractors make employment decisions.
4. The Civil Service Commission was renamed the Office of Personnel Management (OPM) during the Carter administration.
5. For a thorough discussion of how the Supreme Court has shaped affirmative action policy, please see Kellough (2006) and Naff (2004).
6. Skills often are grouped into two categories: observable and unobservable. Observable skills are characteristics, such as education, experience, tenure, and profession, that are discernible in the labor market. Factors that are not as easily detected often are referred to as unobserved skills.

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Sally Coleman Selden is an associate professor at Lynchburg College. Her current research focuses on strategic human resource management in state governments and the impact of collaboration on non-profit organizational effectiveness. She has published articles in the *American Journal of Political Science*, *Administration & Society*, *American Review of Public Administration*, *Review of Public Personnel Administration*, *Journal of Public Administration Education*, *Public Administration Review*, and *Journal of Public Administration Research and Theory*.

E-Mail: selden@lynchburg.edu

APPENDIX A

Table 3 Percent Plans in Texas, California, and Florida

	Texas	California	Florida
Who gains automatic admission through the percent plan?	<p>The top 10 percent of graduating students from each public or private high school in Texas.</p> <p>In addition, the state re-introduced affirmative action in 2005.</p>	<p>The top 4 percent of graduating students from each comprehensive public high school or private high school accredited by the Western Association of Schools and Colleges in California.</p>	<p>The top 20 percent of graduating students from each public high school in Florida.</p>
What criteria must "percent plan" candidates meet?	<p>Currently, there are no specific course requirements that a student must meet beyond those defined by the "minimum graduation criteria" for the percent plan. Legislation has been passed, however, that will require all eligible students to obtain a Recommended High School Diploma beginning with students entering the ninth grade in 2004-05 (House Bill 1144).</p> <p>Additionally, students must submit SAT or ACT scores and an application during the appropriate filing period.</p>	<p>Eleven units of specified high school coursework must be completed by the end of the junior year, including:</p> <ul style="list-style-type: none"> • 1 unit of history/social science • 3 units of college preparatory English • 3 units of math • 1 unit of lab science • 1 unit of language other than English • 2 units of other "a-g" required credits. <p>Additionally, qualified students must submit an undergraduate application during the appropriate filing period and complete the remaining eligibility requirements to enroll: 4 additional units of coursework; SAT I or the ACT; and 3 SAT II tests.</p>	<p>Completion of 19 college preparatory courses, including:</p> <ul style="list-style-type: none"> • 4 units of English • 3 units of math • 3 units of natural science • 3 units of social science • 2 units of foreign language • 4 additional academic electives from the above five subject areas. <p>Must be enrolled in a Florida public high school and graduate with a standard diploma.</p> <p>Additionally, students must submit SAT or ACT scores and an application during the appropriate filing period.</p>

	Texas	California	Florida
How is class rank calculated?	The Texas school or school district from which the student graduated or is expected to graduate calculates the rank based on standing at the end of the 11th grade, or at high school graduation, whichever is most recent at the application deadline.	Participating schools must submit students' transcripts; the UC system administrators then determine the top 4 percent of students based on GPA for UC-approved coursework completed in 10th and 11th grades. UC notifies students of their ELC status at the beginning of their senior year.	Two class rankings are calculated at the end of the 7th/14th semester; one ranking is for the magnet program and the other ranking is used for the traditional program; only students in the traditional program are eligible.
To what does the automatic admissions policy gain admission for the student?	The public Texas university of the student's choice.	A UC system campus, although not necessarily one of the student's choice.	Any of the 11 state universities, although not necessarily one of the student's choice.

Source: Updated table from Horn and Flores 2003