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Affirmative Distraction

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THIRTY years ago last week, the Supreme Court handed down its Bakke decision, hoping to end the argument over the constitutionality of affirmative action in college admission. But with hindsight, it's clear that the justices mainly helped hasten the end of serious discussion about racial justice in America. As they set the stage for a lasting argument over who should get into college, the wound of race continued to fester, unhealed, and our politics moved on.

The ruling in *Regents of the University of California v. Bakke* was the court's disorderly attempt in 1978 to bring some order to racially conscious admissions programs. The medical school of the University of California at Davis had set aside 16 spots for members of groups described as having been subjected to past discrimination.

The program was not unusual. Worried about lagging minority enrollments and prodded by the federal government, colleges across the country, having once taken race into account to keep certain groups out, had begun considering it as a factor in order to help members of those groups get in. A rejected applicant, Allan P. Bakke, argued that the program at Davis discriminated against him because he was white.

The Supreme Court was unable to make up its collective mind. Four of the justices would have upheld nearly all college affirmative action programs, and four others would have struck nearly all of them down. Justice Lewis F. Powell Jr.'s lone opinion therefore controlled the result.

Justice Powell proposed that university administrators could consider an applicant's race — sometimes, anyway — as long as they did not establish any racial quota, a term he inexactly defined. Baffled colleges consulted baffled lawyers. Justice Powell's laudable effort at compromise had sown confusion. Eventually, college administrators worked out their response: They would pay attention to the Bakke decision when it suited them — the rest of the time they would ignore it.

In the ensuing years, America has come to treat racial injustice the same way. Having failed miserably in our efforts to undo the damage wrought by two centuries of slavery and another of Jim Crow, we threw up our hands and moved on. We still fight over affirmative action and pretend it means we're fighting over racial justice. We debate its pros and cons in order to avoid coming to grips with more fundamental challenges.

Those who suffer most from the legacy of racial oppression are not competing for spaces in the entering classes of the nation's most selective colleges. Millions of them are not finishing high school. We countenance vast disparities in education in America, in where children start and where they come out. And we do not even want to talk about it.

It was not always this way. From the early years of the nation's founding through somewhere in the mid-1970s, racial injustice was the fundamental moral question of American politics. Through wars and depressions, through scandals and disasters, the attention of the American people was repeatedly yanked back — at times forcefully — to the divide between black and white.

America fought over slavery. America fretted about Jim Crow and finally put a stop to it. During the 1960s, the nation tried out various remedies for its horrific history, including school integration and, especially during the Nixon administration, minority hiring programs. But by 1978, the nation's attention was slipping to other pressing moral questions — abortion and the environment, for instance — and has never quite slipped back.

It's true that, nowadays, some of the data on racial progress are rosy, and deserving of celebration. In the past decade alone, according to the Census Bureau, the number of black adults with advanced degrees has nearly doubled. More than half a million more black students are in college today than in the early 1990s. Since 1989, the median income of black families has increased more than 16 percent in constant dollars. In the years since the passage of the No Child Left Behind Act, the black-white gap in test scores has narrowed, and is now smaller than it has ever been. The black middle class has never been larger.

For the first time, a major party is going to nominate an African-American candidate for president.

But it's also true that income stratification among African-Americans has increased, and the gap between the well-off and the poor is growing. One in three black students fails to finish high school, and nearly all of those who don't graduate are poor. Rates of violent crime are falling nationally, but the murder rate among young black men has risen sharply. America has two black communities, really, and one of them is falling further and further behind.

Alas, the structure of our politics makes it increasingly difficult to address the plight of those for whom race and poverty have become inexorably intertwined. For example, even though we know that children of married parents are significantly less likely to have trouble in school or to wind up poor or in prison, politicians on the left continue to oppose programs to encourage marriage.

Critics like to claim that other forces — poverty, for example, or discrimination — discourage marriage. No doubt they do. But marriage rates among African-Americans were significantly higher when segregation was everywhere and poverty rampant. The poverty rate among African-Americans has declined by a quarter since Bakke was decided, but the marriage rate has plummeted, and life for the children of the inner city is often nasty, brutish and short.

What about education? According to data from the Harvard Civil Rights Project, schools are significantly more segregated in the Northeast than in the South. The reason might be not overt racism, but the fact that affluent blue-state families are likely to move to the suburbs or send their children to private school. One obvious response would be to give poor families in the inner cities the money they need to purchase private education for their children. But this the Democratic Party steadfastly opposes.

For its part, the Republican Party, last seen fighting tooth and claw against efforts to extend the Voting Rights Act, continues to oppose what activists like to call throwing money at the problem of poverty. For both parties, affirmative action represents a way to pretend to be doing something — what I have long called

racial justice on the cheap.

Cheap is what we like. When political consultants say, “Programs for the poor are poor programs,” what they mean is that poverty plays poorly on the stump. Even John Edwards, in trying to focus the nation’s attention on poverty during his presidential campaign, proposed strategies like raising the minimum wage, which, while admirable, do nothing to help the poor and may, at the margins, even harm them.

University affirmative action programs, whatever their benefits, are no remedy for the problems of the black poor. Perhaps this is why Barack Obama has questioned publicly whether his children should benefit from them and also why leading voices on the black left — Cornel West comes to mind — have proposed that college admissions programs give preferential consideration based on economic class.

But restructuring affirmative action programs, although perhaps a good idea, would in the end, like the Bakke decision, amount to more tinkering around the edges. Unless racial justice once again becomes the centerpiece of American politics, with both parties willing to rethink their positions, those who are suffering most from our legacy of racial oppression will continue to fall further behind.

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