

# ADDRESSING THE GAP: SOME THOUGHTS ON THE GOVERNMENT'S ROLE

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I would like to suggest an outline supporting the proposition that there is a role for government in addressing the socio-economic gap between whites and minorities—specifically the gap between African-Americans and whites. To my mind, the general topic raises three subsidiary questions: (1) Should the government do anything? (2) If the government should do something, is it able to? (3) If the government should and can do something, what are the specific things that it should consider doing?

With respect to the first question, it is clear to me that yes, the government should do something. There is a moral as well as a practical obligation to do so. Furthermore, I believe that government *can* do something. The government may not be able to do everything, but there are specific things that it has done in the past that have helped to address these problems, and there are things that it can do in the future that will continue to help. Because the solutions are not simply legal mechanisms, I wish to answer the third question, what should the government do, by listing some possible policies that the government can adopt that have been suggested by specialists who bring to this topic a broader understanding than that of a lawyer.

Before discussing the case for the government's duty and ability to address the socio-economic gap between African-Americans and whites, I wish to make two things clear. First, what I am clearly not saying, and what I believe no reasonable person considering this situation says, is that government has sole or even primary responsibility for addressing the gap. It is clearly incumbent upon private organizations, individuals, and African-Americans and other minorities as groups to address the fact that there is a socio-economic gap between minorities and whites. These groups, private organizations, and the affected individuals can address many issues that the government cannot. By the same token, these non-governmental entities

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can neither perform some of the tasks nor create some of the programs that are necessary if the socio-economic gap is to be narrowed.

Second, I want to specify what I mean by the socio-economic gap between African-Americans and whites. Most commonly, that gap is framed in terms of economics; we look at economic factors in defining the socio-economic gap, considering differences of income among various groups and such factors as labor market participation. In short, we look at the set of problems that are commonly used to define the "black underclass," a term that I will use here for convenience but, as a matter of principle, refuse to adopt.<sup>1</sup>

These economic problems, I submit, constitute only part of the gap between African-Americans and other minorities and whites in this society. Indeed, other matters are equally important. For example, even as one moves up the economic ladder, segregation remains pervasive in this country.<sup>2</sup> Even after accounting for differences in income level, a cursory observation of the Washington, D.C., area, with which I am most familiar, will show African-Americans living with other African-Americans, and whites living with other whites. When one takes a survey to learn why this is so, one finds that an African-American who conducts a relatively modest search for housing by going to three separate apartment complexes faces a greater than sixty-percent chance of facing discrimination.<sup>3</sup> An increase in the number of visits to seven increases the probability of discrimination to ninety percent.<sup>4</sup> The African-American is typically quoted different terms or conditions, or is given different information concerning the availability of a house from that given a similarly situated white person.

When we speak about the gap between African-Americans and whites, we should consider not only economic factors but

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1. I believe that by adopting the term "underclass," one is both deceptively incorrect and wrongly accepting the problems as permanent, leading to apathy about working for change.

2. See generally J. KUSHNER, *APARTHEID IN AMERICA: AN HISTORICAL AND LEGAL ANALYSIS OF CONTEMPORARY RACIAL SEGREGATION IN THE UNITED STATES* (1980).

3. See U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, *GUIDE TO FAIR HOUSING LAW ENFORCEMENT* 55 (1979). Evidence from the housing market is available because housing is one area in which studies controlling for economics have been performed. One persona is created for two people, one African-American and one white, who are sent out to meet rental agents or apartment managers. Accordingly, in these studies the different results for African-Americans and whites are attributable to race alone.

4. See *id.*

also the blatant racism that expresses itself in hostility on the streets, in the form of racially motivated killings and other assaults. This same racism unfortunately expresses itself with increasing frequency on college campuses.<sup>5</sup> This trend is particularly disturbing given the populace at colleges—the “educated”—and their supposed purpose for being there—to obtain an education.

Finally, I present what is probably a trivial, but I submit enlightening, example of the kinds of racism and discrimination that are undeniable elements of the gap between whites and African-Americans. After dark in Washington, D.C., to hail a taxicab, I have to ask one of my white colleagues to flag down a taxi, because the taxi drivers refuse to stop for me. The purpose of offering all these examples is to point out that the gap consists of more than mere economics. Accordingly, when we consider whether there is a role for government in closing the socio-economic gap, we need to address these non-economic realities as well.

With that understanding in mind, I would like to outline briefly my views on why government should deal with the gap, the evidence that government can do so, and some programs that might be suggested. As to why government should, I start from the premise that, as a matter of morality, racism is one thing that is inherently evil, without regard to considerations of efficiency or any other principle. Therefore, government has an obligation, when it can, to eliminate racism. This is the case whether one views government as a social engineer attempting to achieve a particular ideal of the good society, or whether one views government as a neutral referee attempting to create a level playing field. It simply is not tolerable for that playing field to be skewed by racism. One could argue, and some have, that slavery is economically efficient. But no one would argue that it is right. The same holds true for apartheid.

Even if one does not accept a moral basis for stating that the government has a duty to combat racism, one will reach the same conclusion as a practical matter. The reality is that we live in a multi-ethnic society. African-Americans and other minorities make up an increasingly large part of our population.<sup>6</sup> If

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5. See generally France, *Hate Goes to College*, A.B.A. J., July 1990, at 44.

6. In 1960, African-Americans comprised 10.6 percent of the American population. By 1988, this figure had increased to 12.3 percent. During the same time period, other

this country wishes to move forward as a single society, differences that appear to be attributable to, or that can be explained on the basis of racial distinctions, simply cannot be allowed.

As to whether government can do anything to address the gap, if we compare our society in 1960 with our society today, even with all of our problems, we must conclude that government intervention has had a positive impact in bringing African-Americans and whites toward parity with each other. Professor Donohue's remarks regarding the economic effects of Title VII, for example, support that point of view.<sup>7</sup>

The types of programs that I would suggest fall into two categories. The first is aggressive enforcement of the existing antidiscrimination laws. That enforcement has two effects. First, it keeps the gap from growing. Second, the aggressive enforcement of these laws by the government sends a message that has a beneficial effect beyond what the government achieves directly by enforcement. Enforcement of antidiscrimination laws makes clear that racism will not be tolerated by our government.

The second set of programs that I suggest are social programs that are designed specifically to help the underclass to participate fully in the economy. Such programs need not be race-specific. I agree with the point sometimes made that the persons benefiting the most from some race-specific programs are those blacks, or other minorities, who are better off already. The programs we need in this area are ones geared toward the economically disadvantaged, regardless of race.

In this regard, I note in particular the programs outlined in a publication by the Joint Center for Political Studies entitled *Black Initiative and Governmental Responsibility*.<sup>8</sup> As I stated at the outset, program design is not my primary expertise, but among the things suggested in that document, and among the types of things that government should consider are redesigning public assistance programs to eliminate inappropriate interference

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non-white groups similarly grew from 0.9 percent of the American population to 3.4 percent. In the year 2000, the population is projected to include 13.1 percent African-Americans and 4.3 percent other non-whites. See U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 17 (110th ed. 1990).

7. See Donohue, *The Impact of Federal Civil Rights Policy on the Economic Status of Blacks*, 14 HARV. J.L. & PUB. POL'Y 41 (1991).

8. See JOINT CENTER FOR POLITICAL STUDIES, *BLACK INITIATIVE AND GOVERNMENTAL RESPONSIBILITY: A POLICY FRAMEWORK FOR RACIAL JUSTICE* (1987).

with two-parent families and to provide incentives for training, education, and employment. Similarly, the Head Start program,<sup>9</sup> which has been widely praised, could, and should, be expanded to serve all who qualify.

Turning to education, we should address the issue of financial aid in ways that encourage minority participation, and that of others who are economically disadvantaged, rather than discourage it. We should carefully consider the effects of program structure and incentives. We should avoid, for example, shifting to a program that issues loans instead of grants to student applicants, thereby inadvertently discouraging African-Americans and other minorities from participating in the program, because of their historically justified different perspectives on the real value to their investment in education. In short, programs must be carefully designed to ensure that they will produce the intended effects.

In conclusion, I wish to thank you for hearing me out and express my hope that we can draw on some of the positive suggestions offered by this panel to narrow the socio-economic gap between whites and African-Americans.

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9. See 42 U.S.C. §§ 9831-9852 (1988). The statute extends authority for the appropriation of funds for Project Head Start, "[i]n recognition of the role which [the program] has played in the effective delivery of comprehensive health, educational, nutritional, social, and other services to economically disadvantaged children and their families . . . ." 42 U.S.C. § 9831(a) (1988).