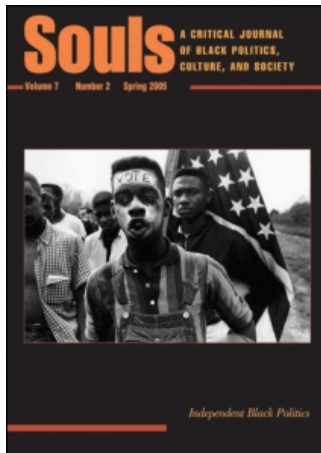


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Interrogating Race and Racism

Affirmative Action at the Crossroads

Colorblind Racism and the Decline of African Americans in Public Contracting

Monique W. Morris

In 1996, Proposition 209 eliminated affirmative action in public education, employment, and contracting. Called the California Civil Rights Initiative, this proposition ended race- and gender-conscious programs designed to increase participation and opportunity in public contracting. Fueled by public discourse on fairness and equal opportunity, Proposition 209 challenged the notion that affirmative action could correct a history of discrimination; and thereby challenged our common understanding of how to enforce a “colorblind” society in which all are free to compete. This article discusses the findings of a 2006 report by the Discrimination Research Center on Proposition 209 and the severe impact it had on the ability of African American businesses to compete for contracts in California’s construction industry.

Keywords: affirmative action, African Americans, civil rights, colorblind racism, construction, public contracting, proposition 209

We especially complain against the denial of equal opportunities to us in economic life . . . this amounts to peonage and virtual slavery . . . it tends to crush labor and small business enterprises; and everywhere American prejudice, helped often by iniquitous laws, is making it more difficult for Negro-Americans to earn a decent living.

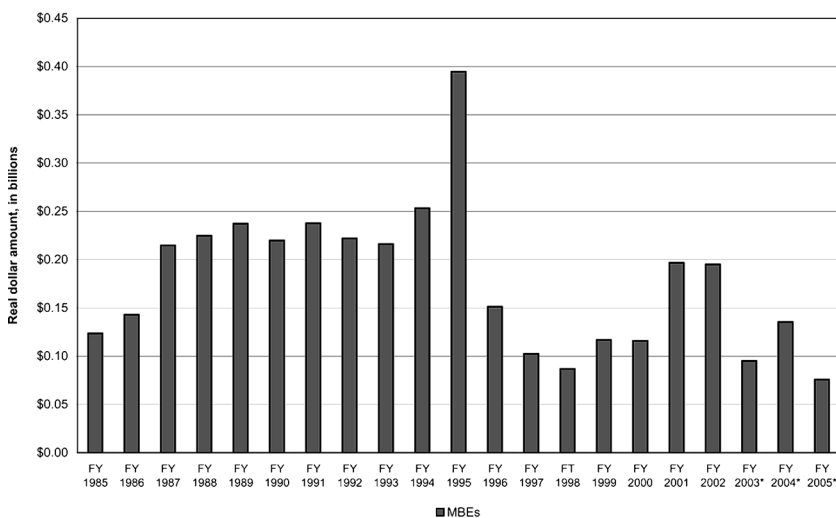
—Niagara Movement Declaration of Principles, 1905

African-American entrepreneurship in the construction industry has long been associated with job creation, often as a strategy to escape the racial discrimination that has historically exploited, segregated, or debased their skills. According to the 2004 Bureau of Labor Statistics, 15 percent of all African-American construction workers

are self-employed, compared to 1.7 percent of all construction workers.¹ These firms, like others in this industry, rely on public contracts to sustain and grow their businesses. However, as a result of continued racial prejudice, their attempt to thrive as entrepreneurs in this industry has faced significant barriers. Their experiences are part of a long history of African–American struggle to fit into America’s capitalist society—a history of exclusion that has given birth to many movements of social, political, and economic resistance; and to civil rights leaders that demanded race-conscious remedies for deeply entrenched race-conscious bias.

In 1965, President Lyndon Johnson gave a speech on the campus of Howard University, publicly recognizing that “freedom is the right to share . . . fully and equally in American society—to hold a job, to enter a public place, [and] to go to school.”² In that speech, President Johnson echoed the sentiment of civil rights advocates, that in order to ensure the capability of American citizens to walk through the “gates of opportunity,” there needed to be specific, affirmative, race-conscious remedies to the racial discrimination that so pervaded American society. Without “affirmative action,” it was recognized that the playing field of opportunity would never be fair. To enforce fair and equal access to opportunity, the federal government initiated programs to implement race- and gender-conscious remedies that target and support people who have been excluded from equal access to opportunities as a result of structural racism and discrimination.

California’s transportation construction industry is the source of over \$950 million in public contracts from the federal portion of awards alone. As the state’s primary contracting agency for transportation construction, the California Department of Transportation (Caltrans) has strong potential to affect wealth and employment among the racially and ethnically diverse population in California. For approximately two decades, Caltrans administered a federal race-conscious “Disadvantaged Business Enterprise” program designed to increase the participation of businesses considered to be “disadvantaged” in all federal and state contracting activities. Included in the DBE program were Minority Business Enterprises (MBEs), which are firms owned and operated by people of color, Women Business Enterprises, and Disabled Veteran Business Enterprises. These programs increased access for African–American–owned business enterprises—along with businesses



Real dollar amounts of Caltrans FHWA awards to MBEs, by Fiscal Year.

Source: *Discrimination Research Center, 2006.*



“Deal Bulldozer” 2006 © Patrick Hennessy.

owned by other people of color—to opportunities in public contracting. Despite several legal challenges to affirmative action programs, state agencies still set goals for awarding contracts to businesses owned by people of color. In California, these outreach programs largely contributed to a growth in the number and percentage of contracts awarded to MBEs and to the overall economic development of communities of color. Unfortunately, these successes also contributed to a growing resentment among those who claimed that affirmative action was “reverse discrimination.”³

In 1996, Proposition 209—called the California Civil Rights Initiative—eliminated race- and gender-conscious goals and affirmative action programs in public education, employment, and contracting. The implementation of Proposition 209 and subsequent legal battles ended Caltrans’ affirmative action programs for all but the federal portion of awards.

Proposition 209: A Distortion of the Dream

In Martin Luther King, Jr.’s “I Have A Dream” speech, he spoke of a colorblind society in which people would be judged by the “contents of their character” as opposed to the color of their skin. In this vision of a colorblind nation, the full desegregation of American society would result in a balanced scale of opportunity, where each person would live free of racial stigma. In real life, however, there was no grand erasure of the racialized lives led by people of color. African Americans in particular have continued to face substantial obstacles to full participation in society, and have remained vulnerable to the lingering presence of negative racial stereotypes that impede equal opportunity for their business enterprises. For example, interviews with white males in the San Diego business community revealed stereotypical and harmful attitudes regarding the ability of people of color to own and manage a business.⁴ Historical discrimination—resulting in lower incomes, fewer assets, fewer personal contacts who are able to finance firms, and discriminatory bank and commercial loan practices—poses significant

challenges for businesses owned by people of color.⁵ These and other barriers impede the opportunities for African Americans and render them powerless to fully develop as entrepreneurs.

Foes of affirmative action have staked claims to the powerful language of Dr. King and removed strategies to enforce a broad distribution of wealth and resources by challenging the key terms of “racial discrimination” and by treating affirmative action as a racial preference program, rather than as a corrective strategy to address entrenched social biases. Even though research has suggested that the transportation construction industry is rife with collusion and other exclusive practices to reserve public contracts for white males,⁶ anti-affirmative action laws strip the state of its ability to respond to this fundamental imbalance in the playing field of opportunity. As a result, there have been significant changes in the landscape of opportunity following the end of affirmative action in California—in business survival, awards and contracts, quality and usefulness of equal opportunity programming, and in overall commitment to racial equality in access to opportunity.

Business Survival

Following the end of affirmative action programs in state contracting, African–American–owned firms experienced the lowest survival rate of all MBEs in California’s transportation construction industry. In 1996, there were 765 certified African–American–owned businesses in California’s transportation construction industry, representing 23 percent of all certified Minority Business Enterprises (MBEs) in the state. In 2006, 1/3 of all MBEs—and only 27 percent of African American business enterprises—in California’s transportation construction industry survived after the elimination of race-conscious goals in state contracting.

There are many obstacles to success for MBEs, and specifically, for African–American business enterprises. For African Americans, securing bonding, financing, and insurance persist as some of the most challenging aspects of owning and operating a business. Because many African–American entrepreneurs are small businesses that subcontract with prime contractors, most of whom are white males, they are also vulnerable to other practices that undermine their ability to compete. Slow payment from awarding agencies and prime contractors, as well as negative stereotypes about African Americans being “under-performers” or “inefficient,” impact the ability of African–American–owned businesses to fully engage in the community of public contractors. People of color who own businesses are challenged by the sentiment that they are “lucky to be here,” and should therefore not complain about disparate treatment. For those Minority Business Enterprises that have relied on race-conscious program measures to provide opportunities for contracts, the effects of anti-affirmative action laws are more pronounced.⁷ Because many white prime contractors interpret the elimination of affirmative action programs as a signal to avoid working with MBEs altogether, a disproportionate number of African–American–owned business have failed to receive timely notifications or to receive genuine offers to participate in public projects. Of course, while not all prime contractors engage in practices to undermine the success of people of color, research continues to suggest that this remains a pervasive problem in the construction industry.

Awards and Contracting

Just as there was a decline in the survival of businesses owned by African Americans in California’s transportation construction industry following the implementation of

Proposition 209, so too were there significant declines in contract awarding. In fact, the rate at which MBEs were awarded contracts experienced a steady decline following the elimination of race-conscious equal opportunity programs. During the nine years before the passage of Proposition 209, the percentage of awards to MBEs was 16 percent, but in the nine years after Proposition 209 passed, that percentage fell by more than half, to 7.9 percent. Between FY 1999–FY2005, the number of contracts awarded from the California Department of Transportation (Caltrans) to MBEs reduced by 52 percent. This trend was especially pronounced among African Americans. African-American-owned MBEs experienced a 61 percent reduction in contracts, the largest reduction in the number of contracts from Caltrans.⁸

Each year, an overwhelming majority of public contracts are awarded to businesses owned by white males. In FY 1985, when MBEs were awarded almost \$124 million, over \$1 billion was awarded to non-Minority Business Enterprises. In 1995, at the height of affirmative action's effectiveness in California's public contracting, 20 percent of Caltrans contracts—almost \$395 million—were awarded to MBEs. In 2005, ten years after the elimination of affirmative action, firms owned by white men were awarded over 90 percent of all contracts in California, leaving just less than \$75 million for distribution among MBEs. The precipitous decline in contracts and awards to businesses owned by people of color is important for several reasons, not only because it demonstrates a weakened commitment to evenly distribute opportunity and wealth in the state of California; but also because this shrinkage signifies a disproportionately small number of contracts and awards—which amount to real dollars to invest in communities of color—becoming even smaller. With the removal of affirmative action programs, awarding trends are not only worse now than they were in 1996, they are worse than they were twenty years ago.

Quality and Usefulness of Equal Opportunity Programming

While eliminating race-conscious equal opportunity programs was touted by former California Governor Peter Wilson, anti-affirmative action champion Ward Connerly, and others as a strategy to institute a more level playing field, what followed the elimination of race-conscious programs was a return to the old order of excluding large segments of people of color from participating in public projects. For African-American-owned firms who survived after Proposition 209, the removal of race-conscious outreach programs often meant that there was little incentive for prime contractors to pick up a phone and inquire about their interest and availability to participate on public projects. Some contractors even reported hearing that prime contractors had written “*No minorities needed*” on state specification documents to discourage people of color from competing for government contracts.⁹

Despite attending more pre-bidding conferences than other people of color, before and after 1996, African-American-owned businesses in California's transportation construction industry still found “good faith” outreach—efforts made by prime contractors to include MBEs—significantly less helpful.¹⁰ Without race-conscious goals and reporting requirements to hold prime contractors accountable for their subcontracting practices, African-American-owned firms found themselves increasingly invisible.

Focus groups and interviews with African-American public contractors confirmed the perception that in California's transportation construction industry—and other industries in American society—there is a virtually indestructible “good old boy” network that values personal relationships. This “good old boy” network, along with collusion, “bid-rigging,” and other practices that undermine equal opportunity, block people of color from access to public contracts. While public contractors of color have noted several criticisms of the

federal equal opportunity program—including its labeling of businesses owned by people of color as “disadvantaged” and its perceived role in keeping MBEs in a “subservient” role to white prime contractors—there remains a collective agreement that affirmative action is a critical tool to ensure that the doors of opportunity are open to everyone.¹¹ Without these programs, the doors of opportunity open to white-owned businesses and remain impenetrable to people of color.

To ensure equal opportunity for MBEs seeking public contracts, four primary areas need specific and immediate attention, including (1) race-conscious equal opportunity programming, (2) capacity-building of businesses owned by people of color, (3) advocacy for the business model of diversity, and (4) continued research on the consequences of anti-affirmative action laws and policies. Public agencies will have to develop new equal opportunity programs that underscore the most useful aspects of affirmative action programs, eliminate stigmatizing nomenclature such as “disadvantaged” and emphasizing strategies that use the business model of diversity to bridge opportunity gaps. Specific policies related to building the capacity of businesses owned by African Americans, most of which are small business enterprises, are critical to overcoming other barriers to equal opportunity. Importantly, there is a need for continued research on the extent to which exclusionary networks and practices correlated with race and gender exist to undermine equal economic opportunity for people of color.

The Crossroads of Opportunity

Proposition 209 claimed that the true measure of success would be the generation of a state climate that reflected a fair and equal chance to compete. The evidence suggests that instead of providing equal opportunity, the removal of race-conscious remedies made many businesses owned by people of color, especially African Americans, invisible. California is now, indeed, colorblind—blind to the color of white male privilege that distinctly presents itself in the awarding of public contracts—contracts, ironically, that are paid for, in part, with billions of dollars in taxes generated by people of color and women of all racial groups.

The removal of affirmative action—including all race-conscious equal opportunity programs—from public contracting has had clear negative repercussions on businesses owned by people of color. The most valuable aspect of affirmative action programs was their ability to provide networking assistance, through outreach and pre-bidding conferences, without which MBEs never would have been able to walk through the gates of opportunity. Even though these programs were not perfect and certainly held a certain stigmatizing effect on the businesses labeled as “disadvantaged,” the principle on which they stood—that race-conscious remedies were essential to challenge race-conscious bias in American society—has begun to crumble.

The prevalence of race-conscious biases is well documented, particularly as they have negatively impacted African Americans. In this racial paradigm, colorblindness was perceived as a way to remove race as a factor that might potentially lead to discrimination. In its original iteration, colorblindness was never intended to support an agenda to *remove* opportunity from communities of color and reinstate systems of white privilege in access to employment, contracting, and education. In its original iteration, a colorblind society was not intended to serve as a veil for racism, collusion, and the exclusive reservation of opportunities for communities that have never suffered from entrenched, multi-generational discrimination. Unfortunately, the nation’s interpretation of a “colorblind society” is changing.

While California was the first to eliminate affirmative action—a feat heralded by Ward Connerly as a harbinger for an overthrow of affirmative action nationwide, other states have followed the lead. In November 2006, all eyes were on the state of Michigan as it considered Proposal 2, another ban on affirmative action. Despite warnings from California leaders on the issue and several national civil rights advocates and celebrity spokespersons on the potential damage that could result from a ban on affirmative action, Michigan voted 58 percent to 42 percent in favor of the ban. Fueled by a misperception that affirmative action could limit opportunities for white communities in the struggling Michigan economy, white men and a large segment of white women voted for the ban. Small, but significant blocks of African-American and Latino voters also helped to carry the ban to its victory, suggesting a need for civil rights advocates, academics, and students to again engage in vigorous debate and action regarding how to level the playing field in a country so riddled with racial bias. Buoyed by the victory in Michigan, Ward Connerly declared that the United States is approaching an “end to affirmative action as we know it”¹² and announced several other states—including Arizona, Missouri, Colorado, and at least two other states—as sites for a 2008 campaign to reverse the course of civil rights and racial justice.

We have entered a new era—an era in which *removing* race-conscious remedies to lingering race-conscious biases is considered a fair and balanced way to implement equal opportunity. With the elimination of affirmative action, government agencies—and the companies they engage in business—are free to avoid working with businesses owned by people of color, to cast a negative shadow on the performance capabilities of these firms, and to systematically exclude them from freely competing for public contracts.

The ramifications of these decisions cannot be ignored. By redefining the construct of a “colorblind society” such that public and private industries can virtually ignore the prevalence of racial discrimination and cripple the ability of people of color to equally access quality public education, contracting and employment, anti-affirmative action laws have facilitated a re-segregation of opportunity.

In 1905, the Niagara Movement—led by W.E.B. Du Bois, Ida B. Wells, and other advocates for civil rights—declared the lack of economic opportunity as one of the greatest abuses of racial justice. They pointed to “iniquitous laws” as an aid to American prejudice that limits opportunity for African Americans. Unfortunately, despite years of mixed progress, America is again trying to traverse this threshold of race—only now, the color line we seek to cross is one we are not even supposed to see.

Perhaps our ancestors in the Civil Rights Movement would not be shaken by this paradox. Maybe they would not be surprised that over 100 years later, African Americans are still fighting against racial prejudice that causes disparity in economic life. Perhaps they would be incensed that over 100 years later, Minority Business Enterprises are now faced with a deceitful agenda—supported by phrases they helped to coin—that is detrimental to any true demonstration of racial equality. Perhaps they would view the effort to end affirmative action, the continuing over-representation of African Americans in the criminal justice system, racial disparities in income, housing, quality of education, and healthcare as a collective cause for significant action.

As affirmative action stands at the crossroads, significantly challenged by a colorblind racism that seriously weakens equal opportunity for African Americans, we are all challenged to consider whether America is realizing her promise of equal opportunity or whether racial and socioeconomic injustices will continue to determine one’s ability to freely compete with all others. As research and experience have confirmed, American wealth and opportunity have yet to fully cross the color line. This truth has been made self-evident. In a nation as richly diverse as the United States, it is imperative for its leadership, corporations, and citizens to recommit to strategies that vigilantly seek to correct

persistent racial biases. To do anything less would mean the Civil Rights struggle was a protest made in vain.

Notes

1. Templeton, J.W. *The Unfinished Dream: The State of Black Business*. Second Annual Edition, 2005, p. 13.
2. President Lyndon B. Johnson Commencement address at Howard University, "To Fulfill These Rights." 4 June 1965.
3. Reverse discrimination is a term used to describe the perception that race-conscious remedies that articulate specific participation, hiring, or admissions goals for people of color adversely affect white applicants.
4. DEGA/TMS. (1995, May). City of San Diego MBE/WBE Predicate Study Report/ V.1. San Diego, CA: City of San Diego.
5. Blanchflower, D.G. and Wainwright, J. (2005, November). *An Analysis of the Impact of Affirmative Action Programs on Self-Employment in the Construction Industry*. Cambridge, MA: National Bureau of Economic Research.
6. Discrimination Research Center (August 2006). Free to Compete? Measuring the Impact of Proposition 209 on Minority Business Enterprises, p. 34.
7. Bates, T. and Williams, D. (May 1996). "Do Preferential Procurement Programs Benefit Minority Business?" *The American Economic Review* 86(2), pp. 294–297.
8. Discrimination Research Center, 2006. pp. 20–25.
9. Discrimination Research Center (August 2006). Free to Compete? Measuring the Impact of Proposition 209 on Minority Business Enterprises, p. 41.
10. Discrimination Research Center, August 2006, pp. 28–29.
11. Discrimination Research Center, August 2006, pp. 34–37.
12. Richard Paddock, "Affirmative Action era is over, longtime foe says." *Los Angeles Times*, 26 November 2006.