

Affirmative Action Policies in the US: An Introductory Overview

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Start with a Basic Definition of Affirmative Action:

AA = {cognizance of 'social identity'} + {concern for 'inequality'}
+ {need to ration access to elite positions}

Affirmative Action policies presuppose four things:

- (1) Hierarchy of more/less desired positions,
- (2) Significant racial/ethnic (gender) diversity of identities
- (3) Substantial social disparity between these groups (due perhaps to a history of social exclusion/discrimination)
- (4) Demand (political/economic) for more equal group representation

In many societies and for a variety of reasons, policy makers may seek to increase the marginalized group's representation in scarce, high status positions.

AA policies may thus be seen as departures from purely 'meritocratic' selection in the interest of achieving greater 'diversity'. (Ironically?) Affirmative Action policies presuppose elitism. That is, they seek to promote the racial integration of elite cadres.

Goals of AA Policy

Let me begin by listing some of the goals that proponents of this policy aim to achieve:

(1) To open previously foreclosed opportunities to women and minorities through advertising, outreach, training, et cetera.

(2) To insure non-discriminatory hiring practices by those doing business with the federal government through goals, timetables and compliance reviews.

(3) To correct for the effects of past discrimination through, for example, court-order hiring targets, given a finding of past discrimination.

(4) To reduce the significant inequality between the races which continues to exist in American society through legislature's use, for example, minority business set-asides.

(5) To secure "inclusion" greater dignity and respect, for "out" groups. This list, while not exhaustive, captures the major goals of the policy.

(I simply note that these are very different and sometimes conflicting goals, especially the last one...)

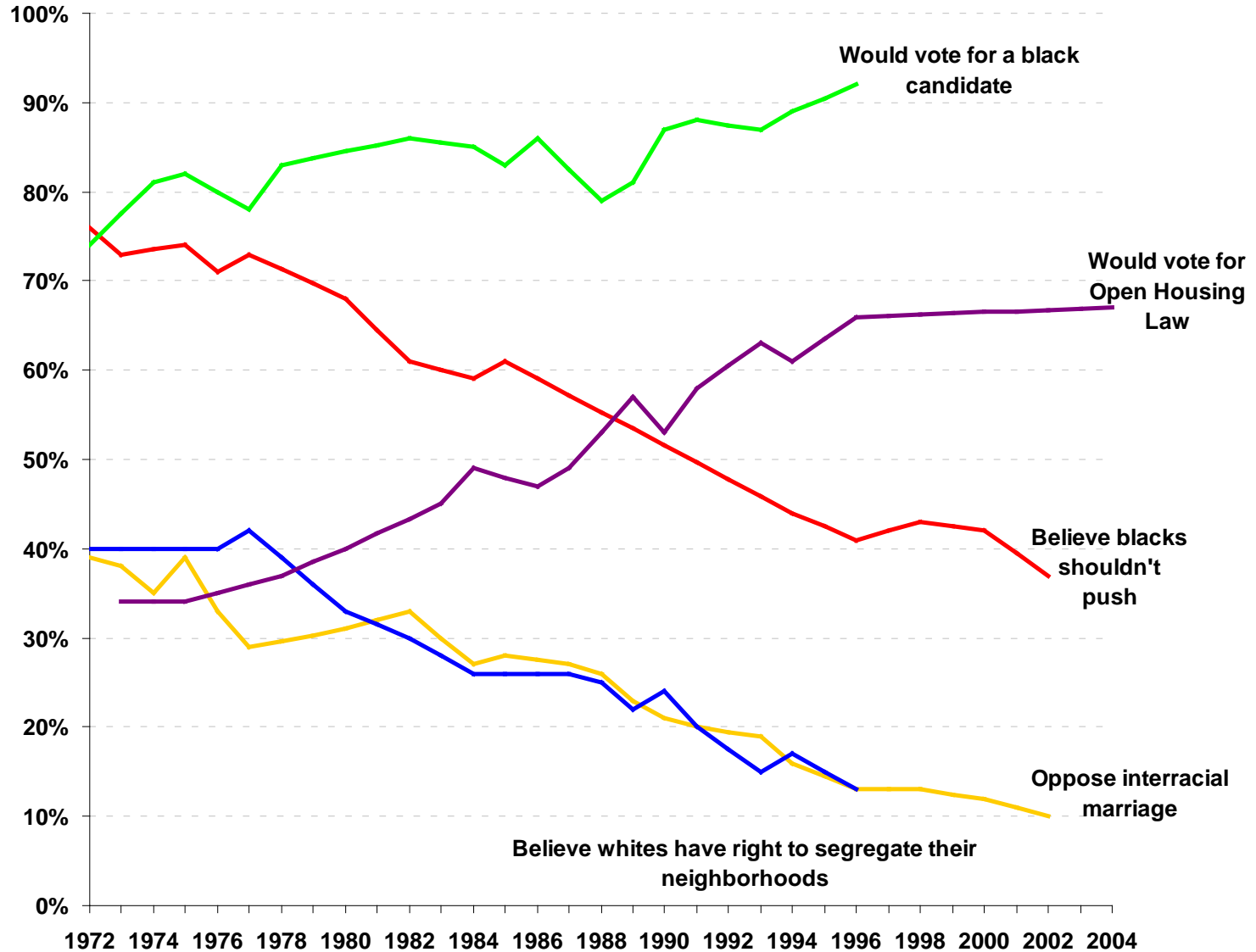
Some elemental questions raised in the AA debate in US:

- Deep Philosophical Q: Why Care about Group Inequality, Per Se?
(Answer: Individual opportunities often determined by group status)
- Deep Political Q: Should We Formulate Policy in Explicit Group Terms?
("Group-Blindness" could be a rule even if not "Group-indifferent")
- Related Q: When to collect social statistics in explicit group terms?
(crime statistics, e.g.)
- What accounts for appeal in US of Color-Blind/Post-Racial Narratives?
- Blacks vs. Immigrants – Allies or Competitors? Conflicting Narratives?

Racial Attitudes of National Samples of Whites

(Source: General Social Survey, 1972 to 2004)

But Aren't We Living In A Post-Racial Era In the US?



Further (Technical) Questions about AA Policy (to be addressed in some of the papers to come...)

- What is impact of affirmative action policy on group stereotypes? (Coate/Loury, AER 1993)
- When will AA policies undercut incentives to acquire skills in beneficiary groups? (Fryer/Loury, JPE 2013)
- Is AA best employed early or late in the process of skill development? [a difficult/important Q; Fryer/Loury]
- In a complex multiethnic society which groups should be favored by AA policies? (Asian Americans v. Harvard)
- Should AA policies be temporary and, if so, how long should they continue?

Some of My Papers on Affirmative Action

- Coate-Loury [Stephen Coate, Economics, Cornell]
 - *AER* 1993: Show how AA can worsen racial stereotypes
 - *AER Proceedings* 1994: Show how overly ambitious AA goal can lead to the undercutting of skill acquisition incentives
- Loury
 - Bowen and Bok's *The Shape of the River* (1998) [Forward]
 - Unpublished essay on reparations (argues for an “interpretative” not a “compensatory” approach)
- Fryer-Loury [Roland Fryer, Economics, Harvard]
 - *JEcIneq* 2005: Study optimal handicapping of tournaments
 - *JEP* 2005: Dispels some popular “myths” surrounding AA
 - *JLEO* 2008: Estimate cost of color-blindness in US higher ed)
 - *JPE* 2013: Study the design of affirmative action policy as an optimal-taxation/mechanism-design problem

Principled Argument against Aff. Action in US

- “Color-Blindness” is the ultimate non-discriminatory ideal.
- Affirmative action relies on policy maker s NOT being CB:
 - AA forces policy makers to take note of individuals’ racial identities
 - AA encourages and induces people to see selves mainly in racial terms
 - AA stigmatizes (in racial terms) its beneficiaries
 - AA fosters backlash and resentment from non-beneficiaries
 - AA undercuts (in racial terms) incentives of beneficiaries to get skills
- Thus, despite any short-term benefits, AA ensures that the ultimate ideal of a CB society may never be achieved over the longer run.

Arguments in Favor of Affirmative Action

- “Color-Blindness” is the wrong goal:
 - Non-discrimination important, but enforcing this rule requires color-sightedness, even in the absence of formal AA policies.
 - “Blindness constraint” typically applied to public not private actors.
 - Legacy of racially unjust past will never be overcome with CB policy.
- AA is a temporary policy used to promote transition to full equality
 - Can actually enhance, not retard, incentives for beneficiaries
 - Affects only a few among non-beneficiary groups (the “marginals”)
 - Much of the stigma for beneficiaries actually reflects latent racism
 - Resentment reserved for race-based but not (say) gender-based AA
 - Racial diversity a value in its own right
 - Standards of ‘merit’ highly subjective, yet treated as if they were not (consider, e.g., the case of Cornel West vs. Larry Summers at Harvard)
- Thus, despite some problems, AA has been a proven way for this society to begin to move past its history of racial inequality.

This is my view. (see, e.g., my Foreword to “The Shape of the River,” 1999.) But racial AA policies in US under serious legal/political threat.

Discourse on Affirmative Action in the US is encumbered by a number of false beliefs in my view.

Based on paper with Roland Fryer (JEP, 2005) here are some commonly held but dubious beliefs (“myths”) about affirmative action in the US

Affirmative Action and Its Mythology

(Journal of Economic Perspectives, 2005)

Roland G. Fryer Jr. and Glenn C. Loury

Affirmative action policy regulates the allocation of scarce positions in education, employment or business contracting so as to increase the representation in those positions of persons belonging to certain population subgroups. Such policies are highly controversial. For more than three decades, critics and supporters of affirmative action have fought for the moral high ground—through ballot initiatives and lawsuits, in state legislatures and in varied courts of public opinion. The goal of this paper is to show the clarifying power of economic reasoning, when it is used with a healthy dose of common sense, to dispel some myths and misconceptions in the racial affirmative action debates.

Myth #1: Affirmative Action Can Involve Goals and Timetables while Avoiding Quotas.

(No, It Can't! This is a deep point, and a source of much confusion.)

Yet this distinction between goals and quotas is dubious, because to implement either a goal or quota requires that a regulator credibly commit to some (possibly unspoken) schedule of rewards/penalties for an employer or an education institution, as a function of observable and verifiable outcomes. The results engendered by either policy depend on how firms or educational institutions react to these incentives. If the penalty for certain “bad results” is sufficiently severe, then people will tend to say that a rigid quota had been imposed. If penalties for bad results are minimal, then the people will tend to say that a flexible goal has been adopted. Clearly, this difference is one of *degree*, not of *kind*.

Myth #2: Color-Blind Policies Offer an Efficient Substitute for Color-Sighted Affirmative Action.

(No, at least with respect to US higher education, they don't!)

Group-representation goals can be sought tacitly under color-blindness: selectors can favor a targeted racial group by overemphasizing the nonracial factors that are relatively more likely to be found among members of that group. For example, the states of California, Florida and Texas now guarantee admission to their public university systems for all in-state high school students graduating in the top 4, 20 and 10 percent, respectively, of their senior classes. Since high schools across these states have different racial populations, this policy will tend to cause university admissions to mirror more closely the racial composition of the state. We use the term “color-blind affirmative action” when referring to this kind of implicit racial preference.³

Myth 3: Affirmative Action Undercuts Investment Incentives.

(In principle, the effect can go either way, depending on the details.)

It is useful in this context to think about affirmative action as a form of market regulation that induces a shift in demand for the services of persons at various skill levels in affected groups. For example, in a labor market context, racial preference policies may lead firms to hire or promote minority applicants at a given skill level, even though similar nonminority applicants would be rejected. The consequence of such policy for incentives to acquire skills should thus depend on the relative magnitudes of these demand shifts and on supply elasticities at the various skill levels. If regulation causes firms to bid up the rewards to the highly skilled in the targeted group by more than to the less skilled, then skill-acquisition incentives will be enhanced. Alternatively, given the relative supplies, if the demand for various skill grades within a preferred group were to rise in response to affirmative action policy in such a way that the less skilled gain more than the highly skilled, then skill-acquisition incentives will fall. Thus, economic analysis suggests that the impact on incentives of preferential policies depends (perhaps in a counterintuitive way) on details of the specific environments into which they have been introduced.

Myth #4: Equal Opportunity is Enough to Ensure Racial Equality.

(For the US, we doubt this seriously!)

Given the unlovely racial history of the United States, are equal opportunity laws enough to correct for centuries of institutional discrimination and social isolation? Economists have pondered this question for decades.¹⁰ If there had been equality of opportunity for all racial groups from the very beginning of the United States, then the ongoing enforcement of a nondiscrimination regime might arguably suffice to secure racial equality today. However, given that egregious violations of racial equality of opportunity are an historical fact, and under the plausible assumption that the evolution of interracial income distributions over the long run depends to some significant extent on initial conditions, there is a strong case for the view that achieving racial equality requires something more than the enforcement of nondiscrimination from this point forward.

(See the data on trends in racial inequality to be presented shortly.)

Myth #6: Many Nonminority Citizens are Directly Affected by Affirmative Action (We think this concern in US is overblown.)

Many white Americans hold erroneous perceptions about the costs they incur due to racial preferences favoring blacks and Hispanics. According to our calculations based on data from the 2000 General Social Survey (GSS), 40 percent of whites over the age of 18 believe it likely that they or someone they know were rejected from a college due to an unqualified black applicant being admitted. Yet Kane (1998) has shown that racial preferences in admissions are given only at the most elite 20 percent of colleges and universities and, even at these colleges, the impact of racial preferences on the typical white applicant's admission probability is small. As a back-of-the-envelope calculation, assume that elite colleges and universities accept 20 percent of their applicant pool (the true percentage is probably lower) and that 15 percent of their incoming students are black or Hispanic. If one makes the extreme and clearly incorrect assumption that all admissions of blacks and Hispanics to elite colleges and universities are a result of affirmative action, then 3 percent of all selective college admissions in a given year would be the result of affirmative action. Very few of the 80 percent of those rejected by selective colleges could possibly fit into the 3 percent of admissions

(Wishful thinking in the US context!)

Myth #7: Affirmative Action Always Helps its Beneficiaries

Many supporters of affirmative action policy believe that, irrespective of the cost, affirmative action always helps its beneficiaries. That is, it is better to attend an institution because of preferential treatment than not to attend. Moreover, supporters of affirmative action argue that minorities admitted under affirmative action are likely to benefit from the myriad academic, social and network externalities that exists at selective institutions.

A recent controversial paper by Richard Sander (2005) offers the disturbing possibility that, at least in the context of legal education, affirmative action may actually harm its beneficiaries. The paper reports some useful and troubling facts. Using data on a national cohort of 27,000 law school students gathered from 95 percent of accredited law schools in the United States, Sander finds that the median black student starting law school in 1991 earned first-year grades comparable to those of a white student at the 7th or 8th percentile of the overall grade distribution. Roughly 52 percent of black first-year law students fall in the lowest decile of the overall grade distribution; 83 percent fall in the bottom three deciles.

Why Is Affirmative Action So Controversial? An Empirical Study of AA in US Law Schools in the 1990s

Law schools are among the most hotly contested arenas where racial affirmative action is employed. Excellent data exist on law school admissions practices. These data reveal the extent of AA and permit some assessment of the policy's effects.

Based on:

A SYSTEMIC ANALYSIS OF AFFIRMATIVE ACTION IN AMERICAN LAW SCHOOLS

Richard H. Sander^{*}

STANFORD LAW REVIEW

November 2004

FIGURE 2.8: ADMISSIONS CURVES FOR BLACKS AND WHITES AT UNIVERSITY OF MICHIGAN LAW SCHOOL, 1999

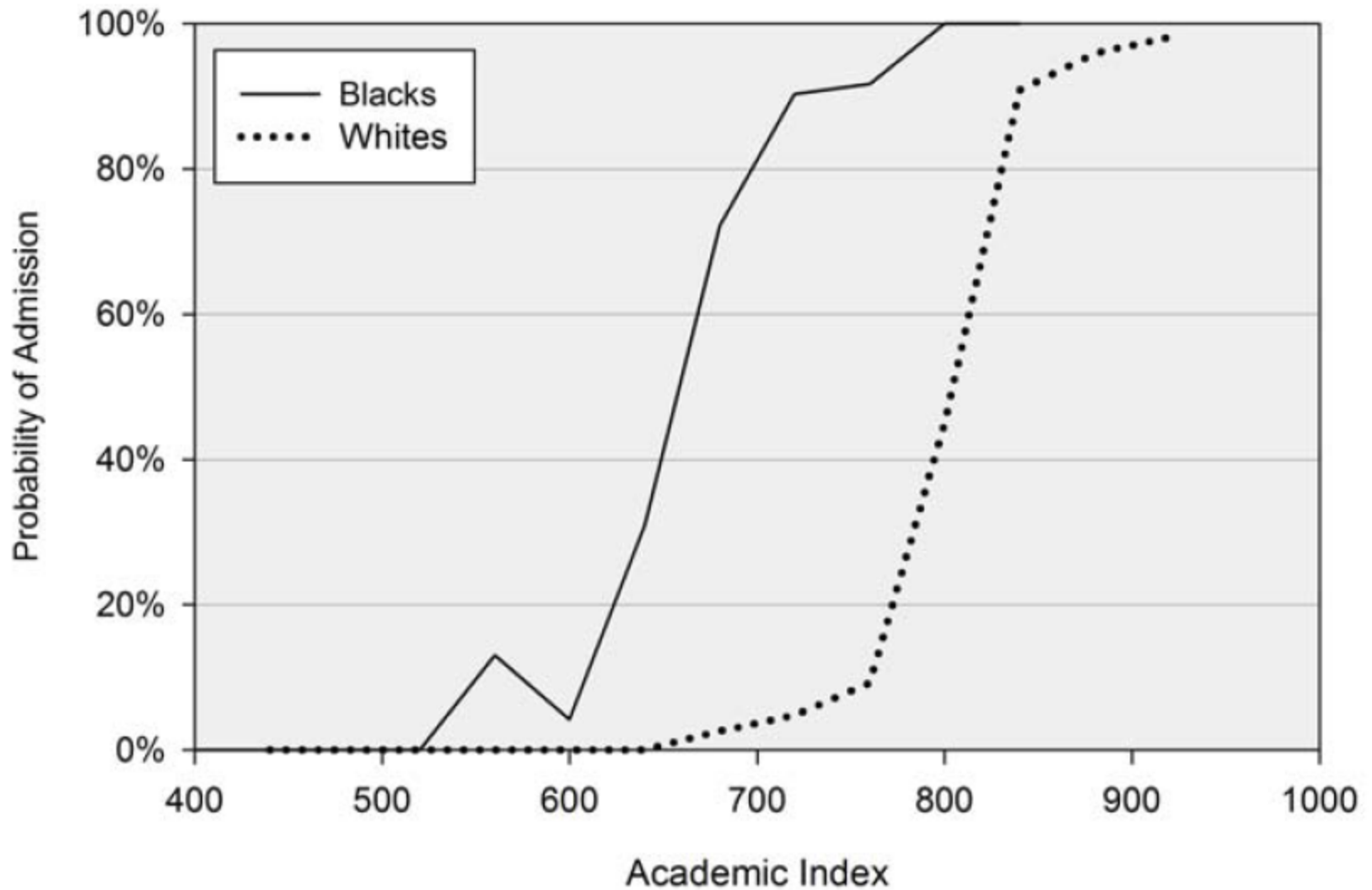


FIGURE 5.1: DISTRIBUTION OF BLACK AND WHITE STUDENTS AT “ELITE” SCHOOLS BY ACADEMIC INDEX, 1991 COHORT¹⁷⁹

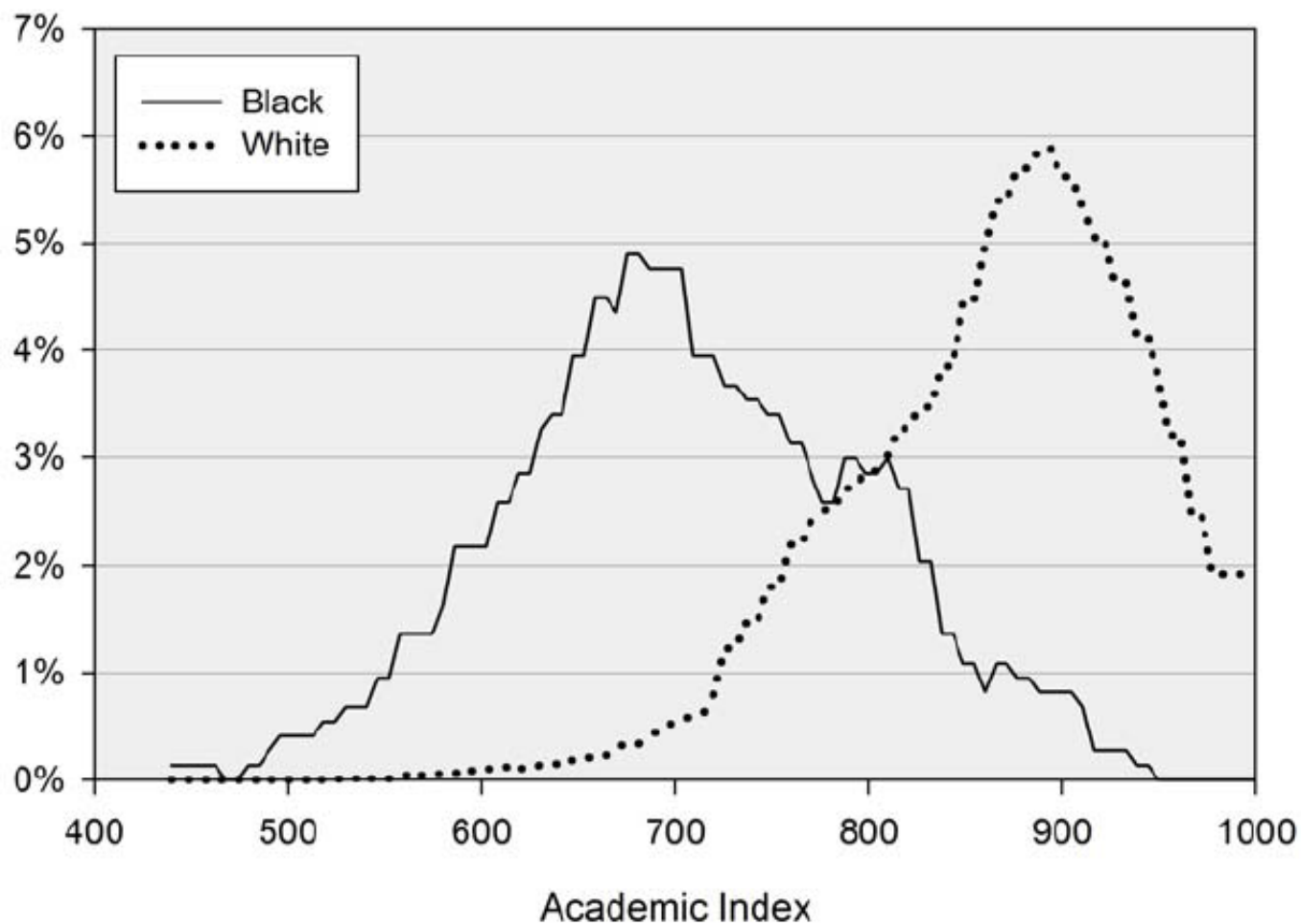


FIGURE 5.2: DISTRIBUTION OF BLACK AND WHITE LAW STUDENTS AT
“ELITE” SCHOOLS BY STANDARDIZED FIRST-YEAR GPA,
1991 COHORT¹⁸⁰

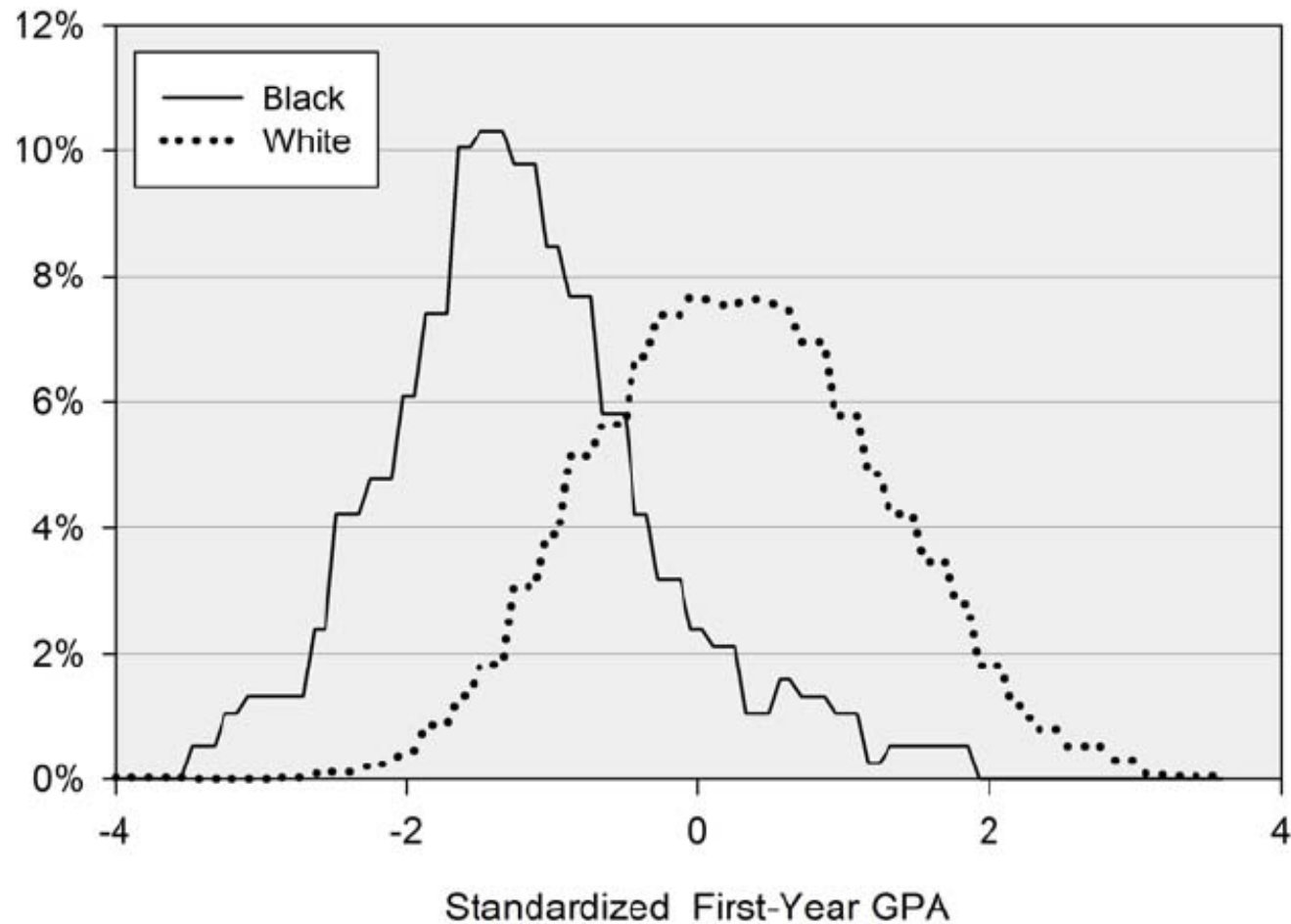


TABLE 5.7: PROPORTION OF WHITE AND BLACK 1991 MATRICULANTS NOT GRADUATING, BY ACADEMIC INDEX LEVEL

Index Range	Proportion of Matriculants Not Graduating Within Five Years		Number of Blacks in LSAC Sample
	Whites	Blacks	
Under 400	N/A*	39.6%	96
400-460	22.2%	33.1%	139
460-520	19.7%	25.6%	320
520-580	16.4%	21.1%	417
580-640	12.1%	15.4%	370
640-700	9.6%	10.7%	280
Over 700	7.1%	7.5%	239

Source: LSAC-BPS Data, *supra* note 133.¹⁹⁹

* There are too few whites at this level to make a meaningful comparison.

TABLE 6.2: BAR PASSAGE RATES IN THE UNITED STATES FOR
WHITES AND BLACKS, 1991-1996

Index Range	Proportion of Bar-Takers Failing on the First Attempt (for the Entire United States)	
	Whites	Blacks
400-460	52%	71%
460-520	34%	55%
520-580	26%	47%
580-640	19%	34%
640-700	13%	26%
700-760	9%	12%
760-820	5%	12%
Bar-Takers in Sample	19,112	1346

Source: LSAC-BPS Data, *supra* note 133.

Sander's CONCLUSION

- 1. Black students as a whole are at a substantial academic disadvantage when they attend schools that used preferences to admit them.²⁹² As a*
- 2. The clustering of black students near the bottom of the grade distribution produces substantially higher attrition rates. Entering black law*
- 3. Generally low grades among blacks have even larger effects on bar performance. Blacks are nearly six times as likely as whites to not pass state*
- 4. When blacks pass the bar and enter the job market, they encounter a generally positive climate. Blacks earn 6% to 9% more early in their careers*
- 5. In 2001, about 86% of all black students who attended accredited American law schools would have been eligible for admission at one or more law schools in the total absence of racial preferences. System-wide, racial*

“When Affirmative Action Was White”

Consider now an historical perspective on “Affirmative Action” in the US, based on the book by Ira Katznelson

Katznelson's basic argument is that the New Deal coalition inscribed racial inequality at the very heart of the American welfare state.

What was that coalition?

- White ethnics (Catholic; unions; urban political machines) in Northeast/Midwest
- Dixiecrats (Southerners seeking to preserve Jim Crow, empowered by seniority)
- Blacks desert Republicans (see Nancy Weiss's *Farwell to the Party of Lincoln*), but a "new deal" for blacks doesn't come until 1960s, three decades later.
- Anti-New-Deal Republicans disingenuously 'play race card,' pushing civil rights
- Note: These fissures in Democratic coalition appear throughout late 20th century
- Liberals compromise, again and again, on basic shape of nascent welfare state:
 - Occupational exemption: farm workers/domestics left out of wage- hours-unemployment insurance coverage.
 - Administration of programs left to state/local authorities
 - Non-discrimination provisions in statutes were excised or not enforced.
 - Labor laws were changed to impede Southern (black) organizing
 - Given segregation in military recruitment, war mobilization and post-War assistance serve to inadvertently foster racial inequality

This is a partial list of New Deal-era policies that, wittingly or not, had racially disparate effects

Katznelson Argues that New Deal was Tacit Affirmative Action for Whites

Here are some other areas of social policy that impact on racial inequality

- Tax policy; income transfers; health care; education; home ownership; subsidized credit to farmers/small businesses; anti-discrimination laws; anti-crime policy; voting rights/rules; census (under) count; fostering decentralization; immigration policy; local patronage/public employment; last/least = racial affirmative action.
- Racial attitudes can distort public discussion of non-racial issues (crime/welfare)
- Some e.g.s of tacit “discrimination” in incidence of benefits from public policies:
 - Elite universities with restrictive admissions financed with public funds?
 - Old age benefits based on age, given a large racial gap in life expectancy
 - Punitive anti-drug-selling law enforcement when sellers are racially concentrated but buyers racially diverse.
 - Felon disenfranchisement given racial disparity in imprisonment.
 - Differential ‘deservingness’ when those in need are deemed ‘like us’

Thus tacit “affirmative action” (for or against Blacks) can occur in non-racial policy areas (with respect to life insurance, e.g.) when either:

- 1. The incidence of a policy’s effects varies in a predictable way by race; or,***
- 2. The legitimacy/“social meaning” of a policy is affected by the race of its beneficiaries***

Katznelson book/article suggest a broadening of AA in three ways:

1. Take long view (goal should be rectification of historic injustice)
2. Focus on jobs not just colleges (only way to affect lives of masses)
3. Put AA on sounder footing using Justice Powell's "strict scrutiny" doctrine: the narrowly tailored pursuit of compelling public interest (as distinct from "diversity.")

A Key Political Question: Does Katznelson's call for a revived effort at affirmative action seem realistic to us in 21st century America?

My answer to this question is a resounding "NO"!

Related work on “social meaning” of racial/ethnic disparities.

Also relevant here is work of UCSD sociologist John David Skrentny. In two path-breaking books he argues for the centrality of what he calls “the black analogy” in shaping racial/ethnic inequality policies:

1. In the US a minority group has “rights” deserving of protection to the extent its experience comes to be seen as analogous to that of blacks. (E.g., Hispanics get AA coverage but not Slavs!)
See ***The Minority Rights Revolution***, Harvard Univ. Press 2002
2. Affirmative Action is de-legitimated to the extent that it is seen as a “black program” (E.g., talk about AA having “undeserving”, “unqualified” beneficiaries is pretty much restricted to blacks!)
See ***The Ironies of Affirmative Action***, Univ. Chicago Press 1996

Finally: “Beyond Civil Rights”:

What’s a Self-Respecting “Black”
Intellectual (Me!) To Do in the Face
of Persistent Racial Inequality in the
United States?

Evidently, Affirmative Action Has
Failed to Achieve Equality for Blacks
In the US Since 1970

Here are the First-Order Social Facts about Racial Inequality in America Today:

(1) African American Social Disadvantage Is a Stubbornly Persistent Reality of 21st Century American Society

(2) Convergence to parity is nowhere in sight (I'll show).

(3) Dr. King's 'Dream' of Equality Has Yet To Be Realized

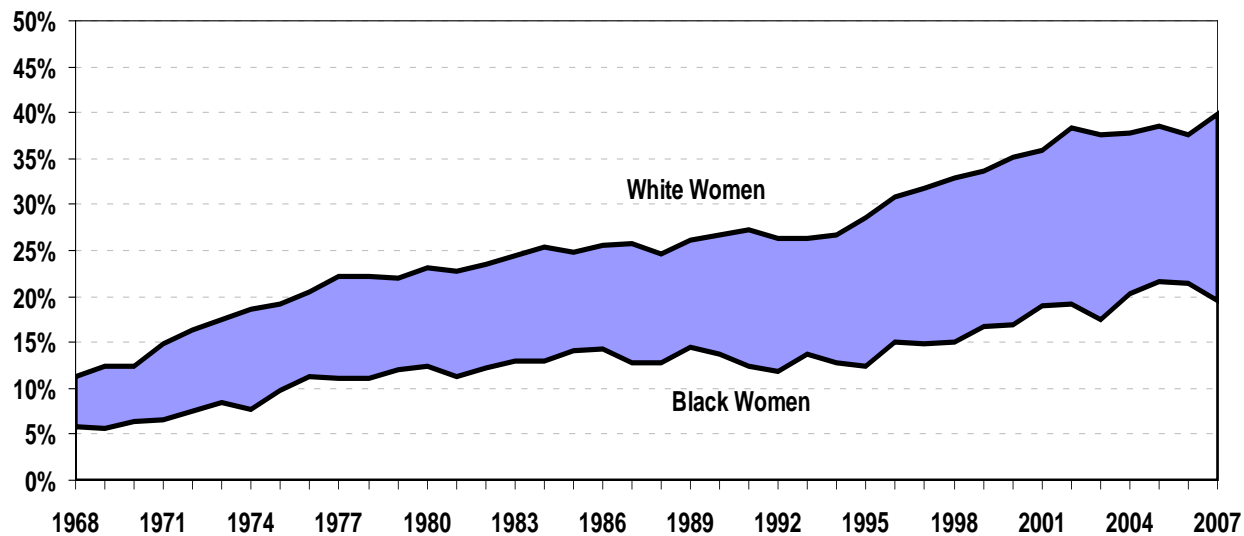
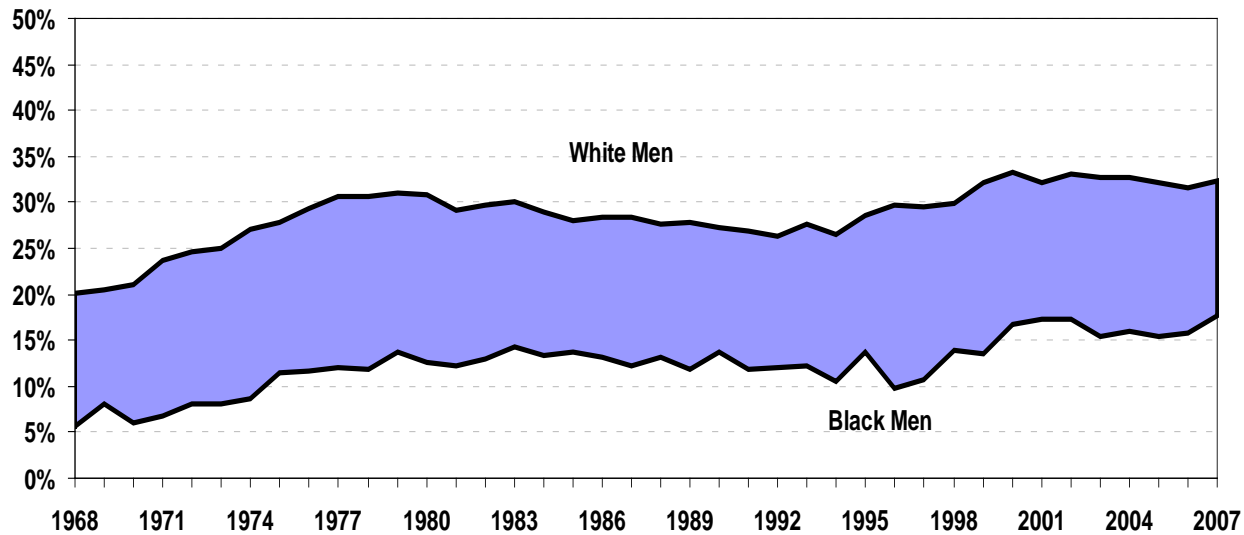
(4) But That's OK Because 'We Got Us a Black President'?

Here Are Some Statistics on Persistent Racial Inequality in the US

Educational Attainment

Persistently Lower Rates of College
Graduation and Enduring Racial
Achievement Gap

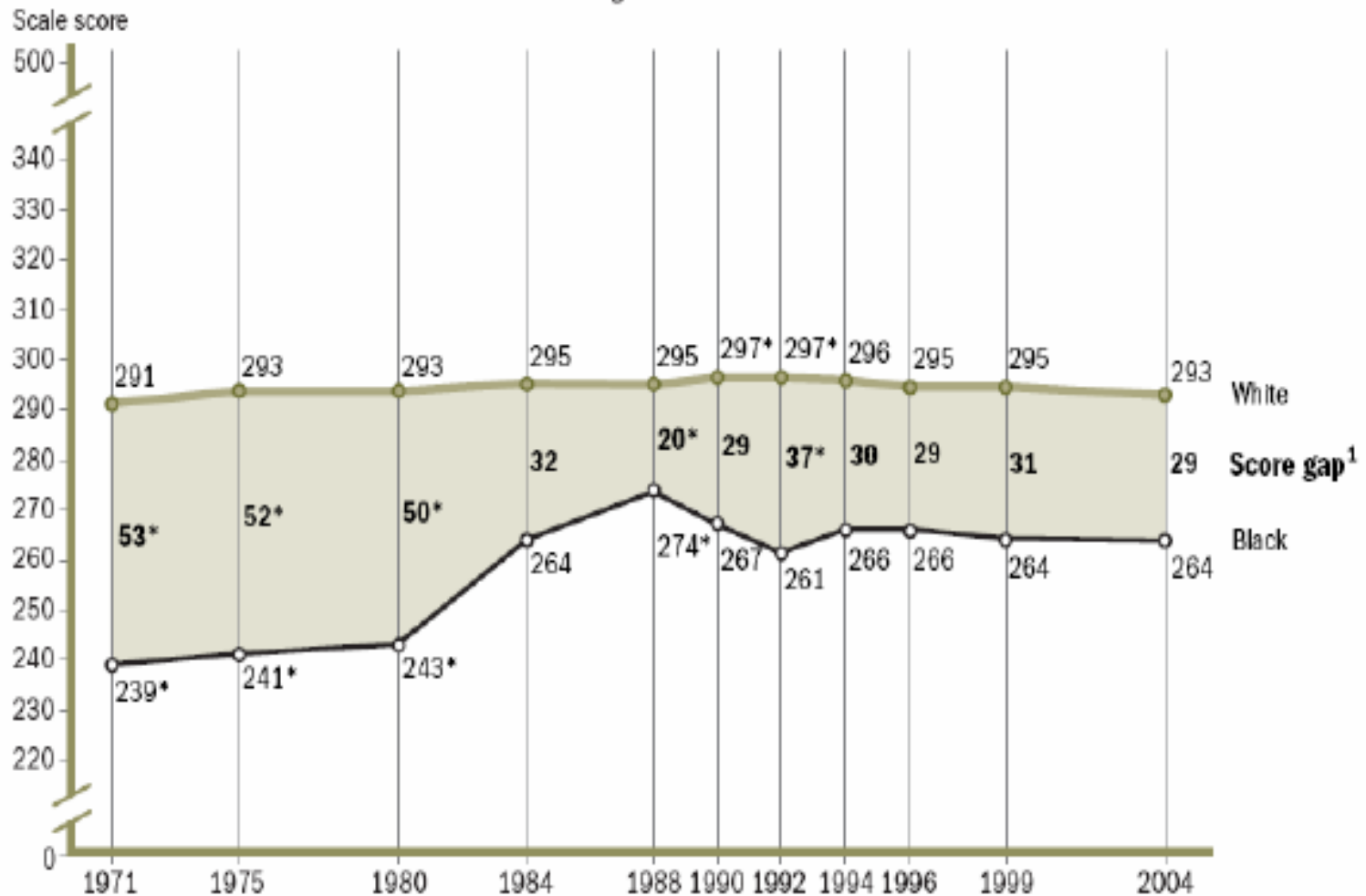
Percent of Native-Born, Non-Hispanic Men and Women Aged 25 to 34 Reporting a Four-Year College Education



Reading Scores (National Assessment of Educational Progress)

Age 17

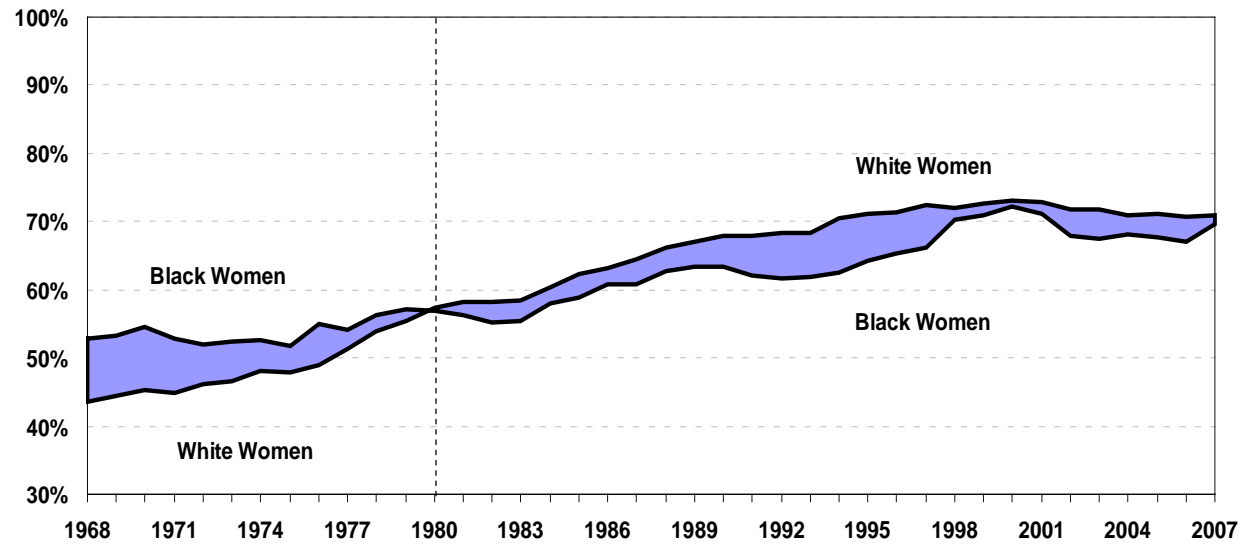
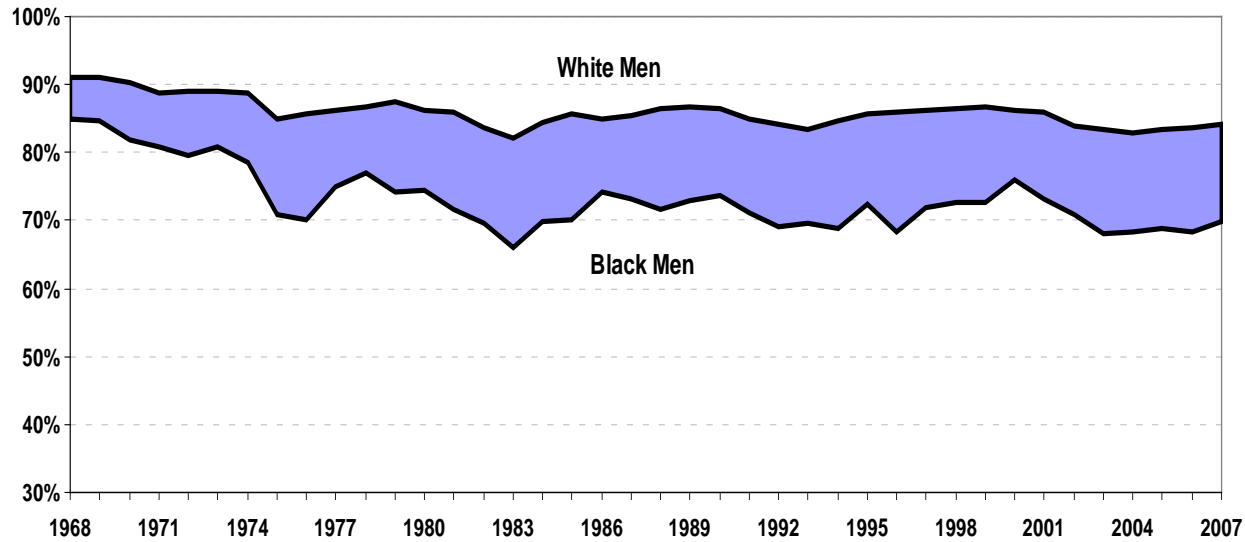
Age 17



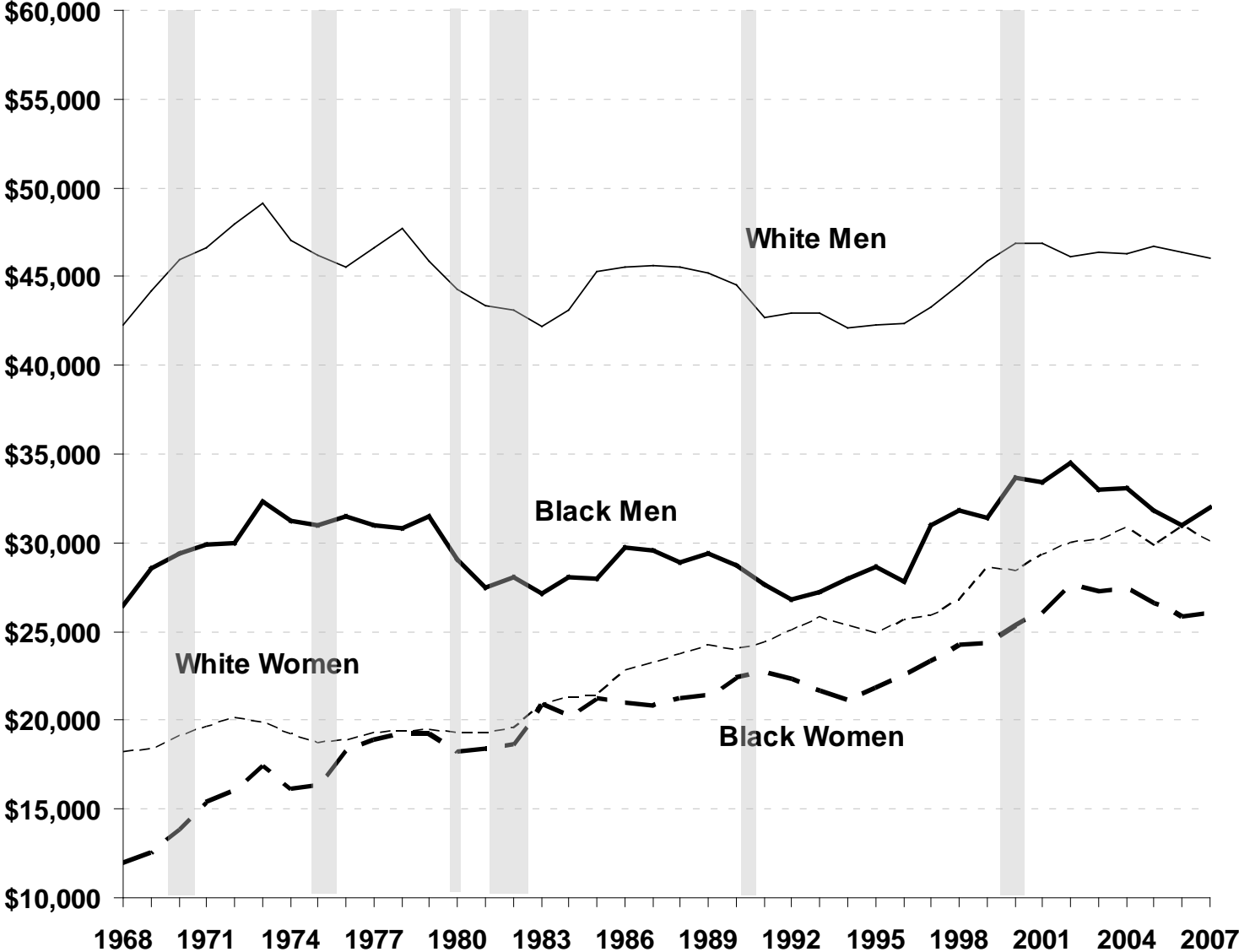
Employment, Earnings and Family incomes

Lower Earnings and Employment for
Men, Hugely Disparate Resources for
Raising Families and Persistent Racial
Poverty Rate Gap

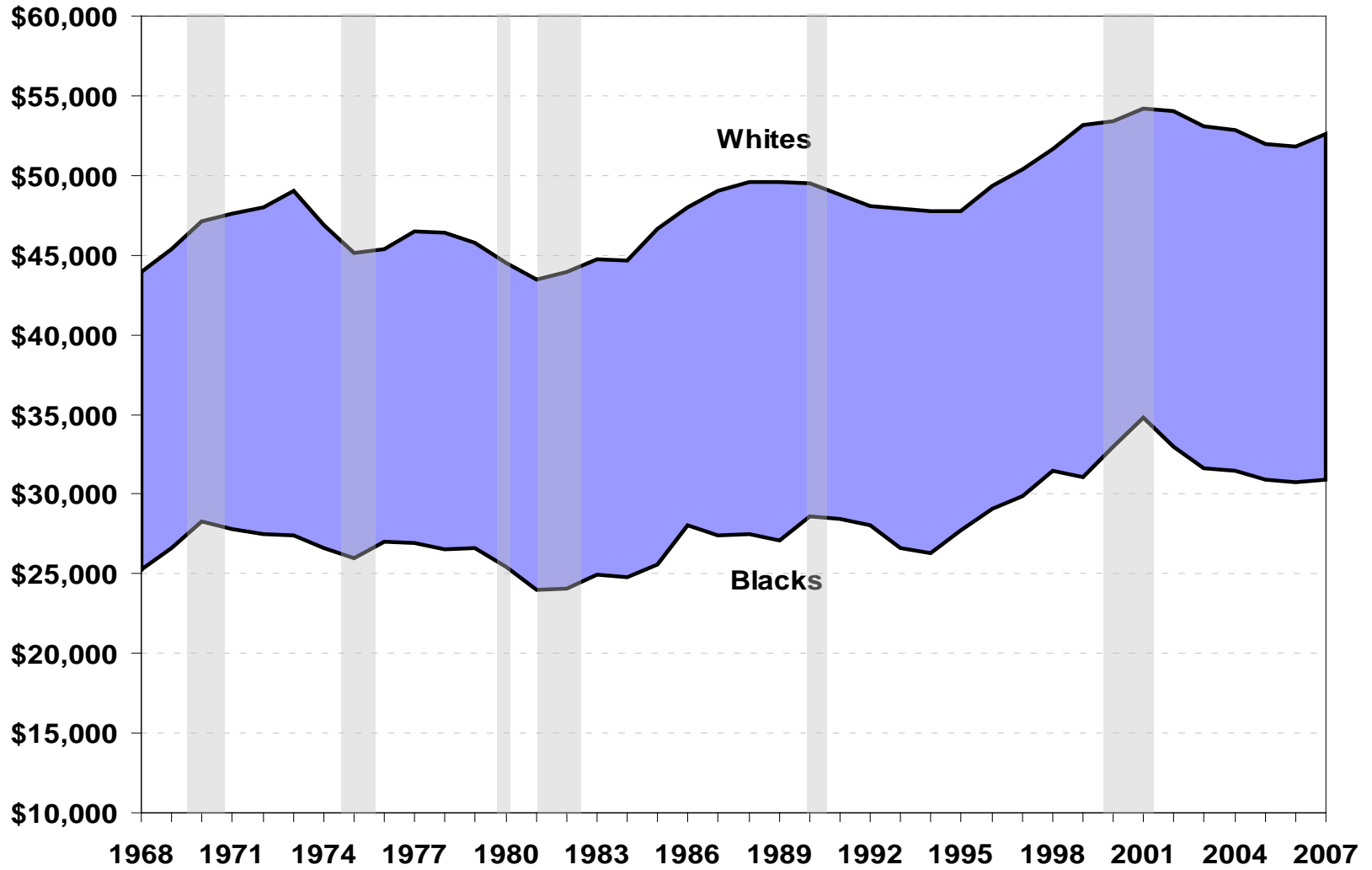
Percent of Native-Born, Non-Hispanic Men and Women Aged 25 to 59 Employed; 1968 to 2007



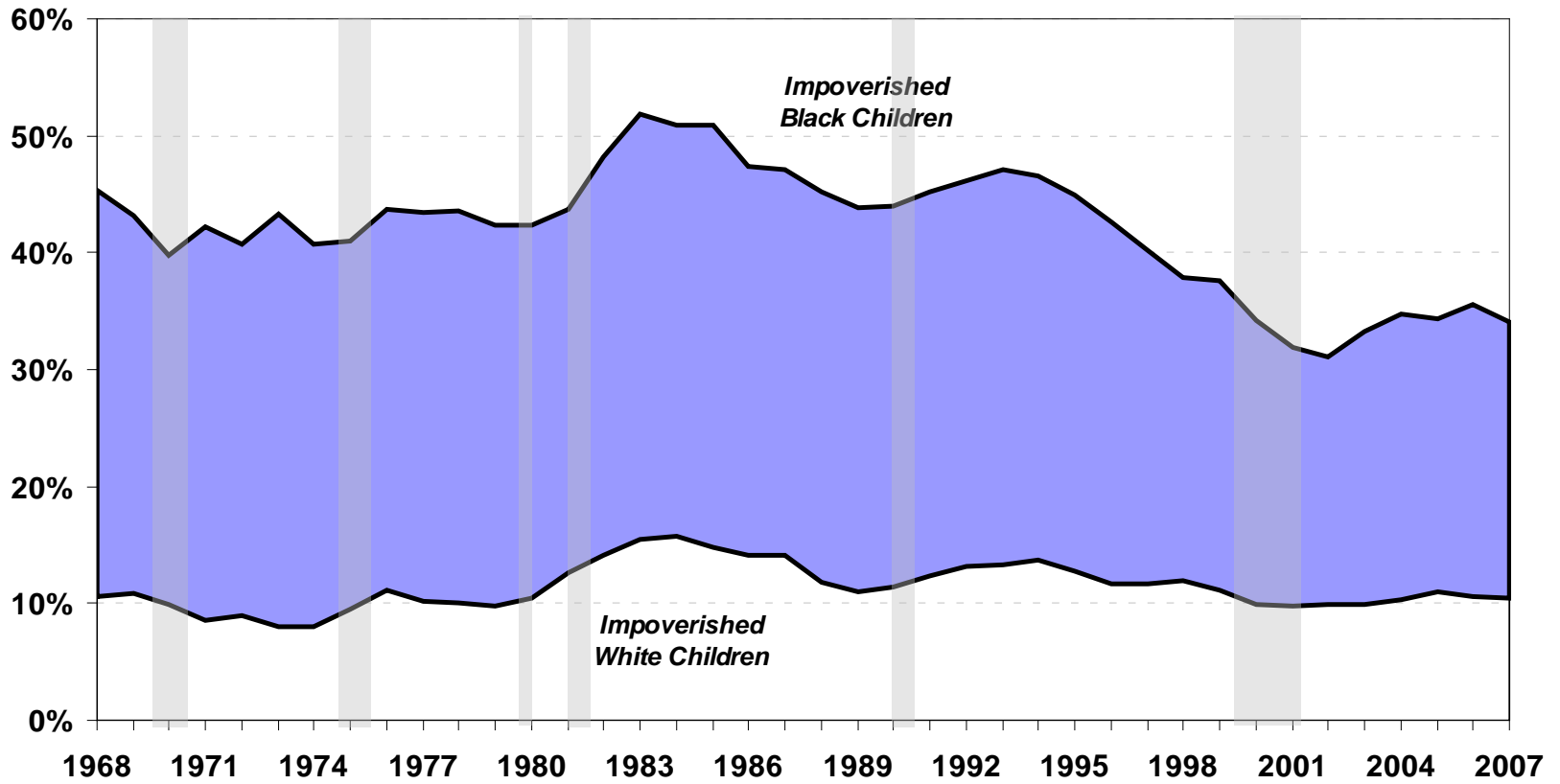
Median Wage and Salary Earnings for Native-Born Non-Hispanics Reporting Earnings



Median Income of Households Headed by Native-Born Non-Hispanics
(shown in constant 2007 Dollars)



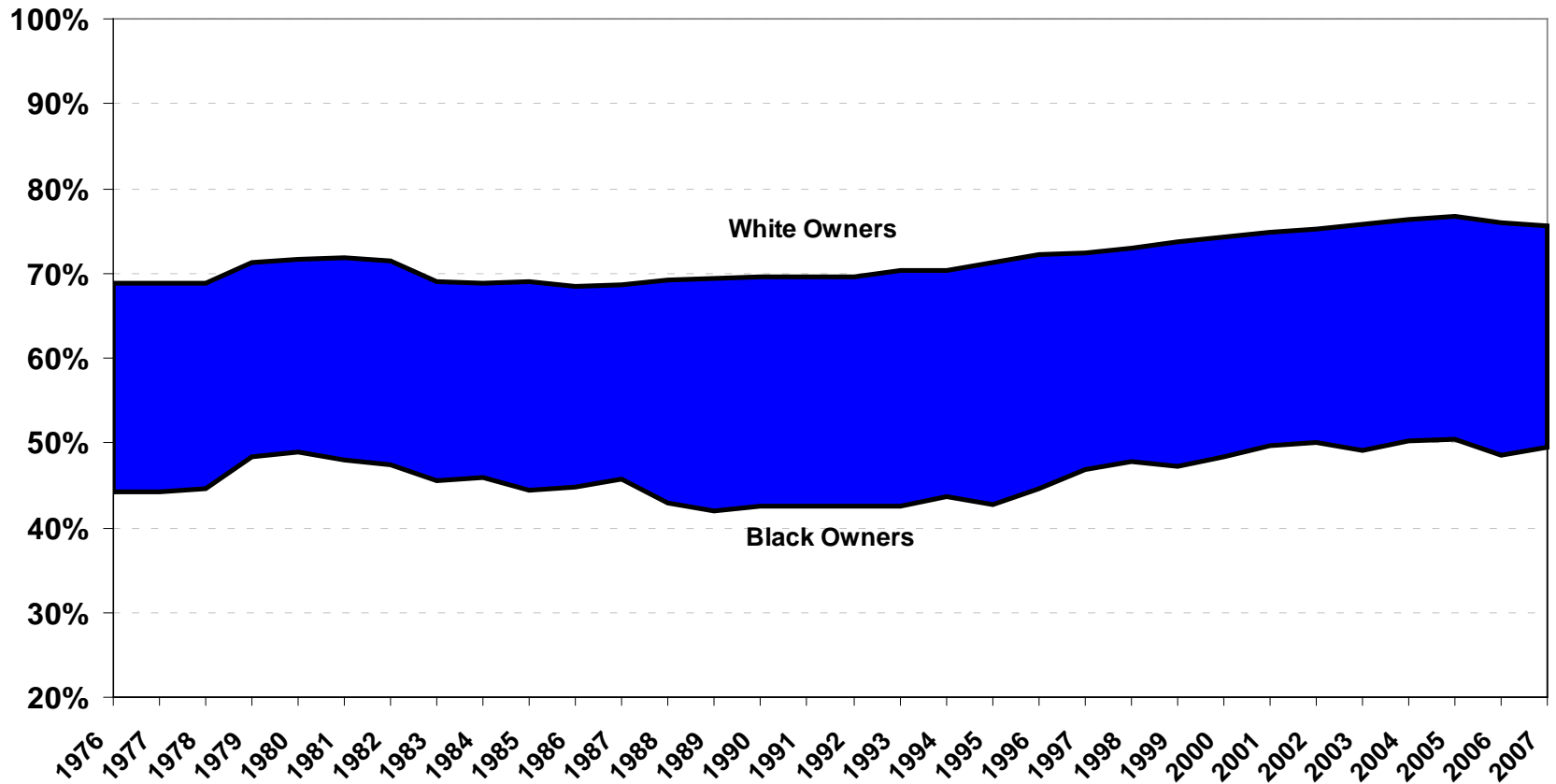
Percent of Native-Born Non-Hispanic Children Under Age 18
Living Below the Poverty Line; 1968 to 2007



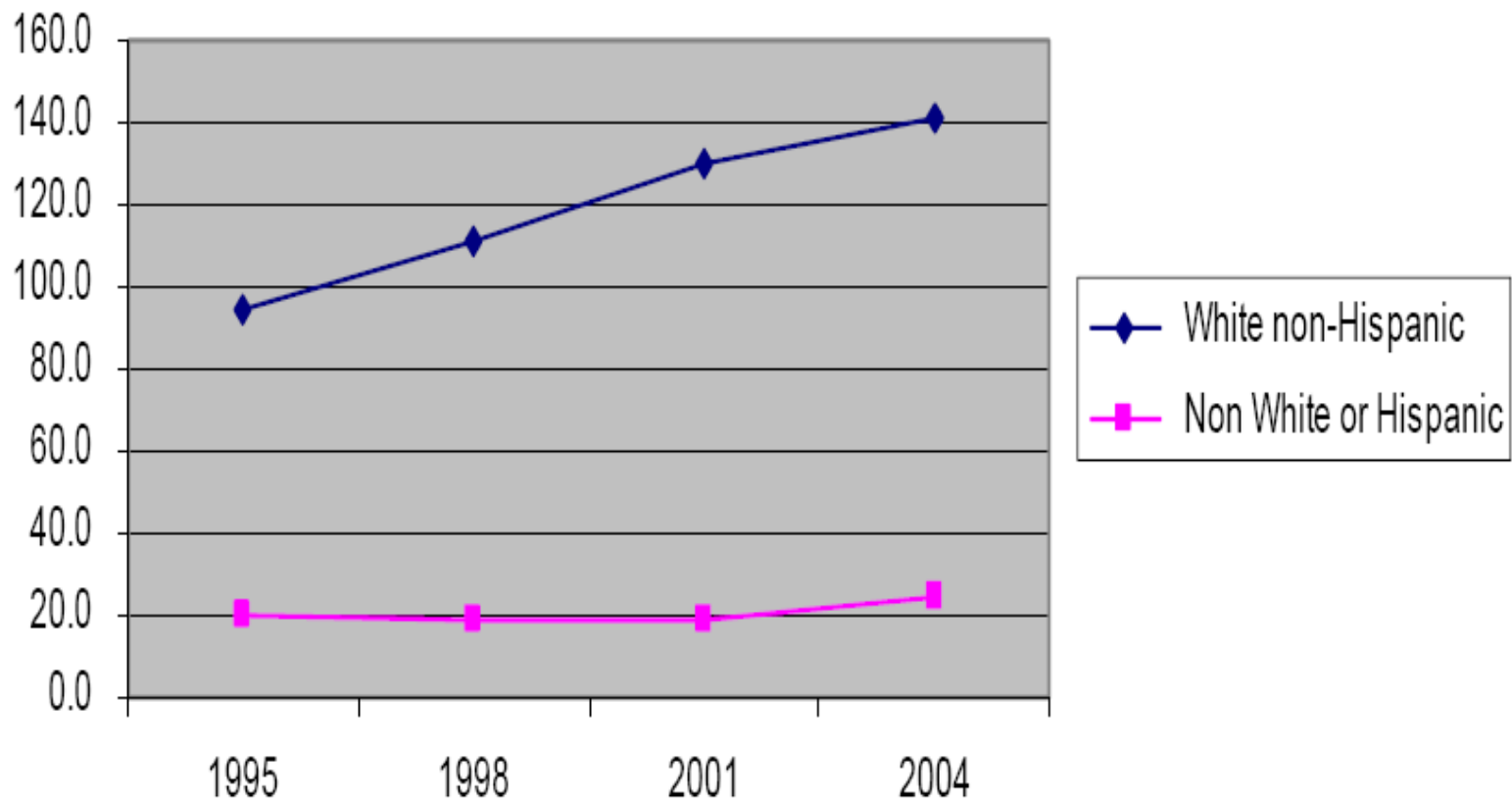
One Other Indicator Of African
American's subordinate social status:
A Huge Racial Assets Gap

HOME OWNERSHIP

Percent of Native-Born Non-Hispanic Households Owning their Residence



Median Net Worth by Race



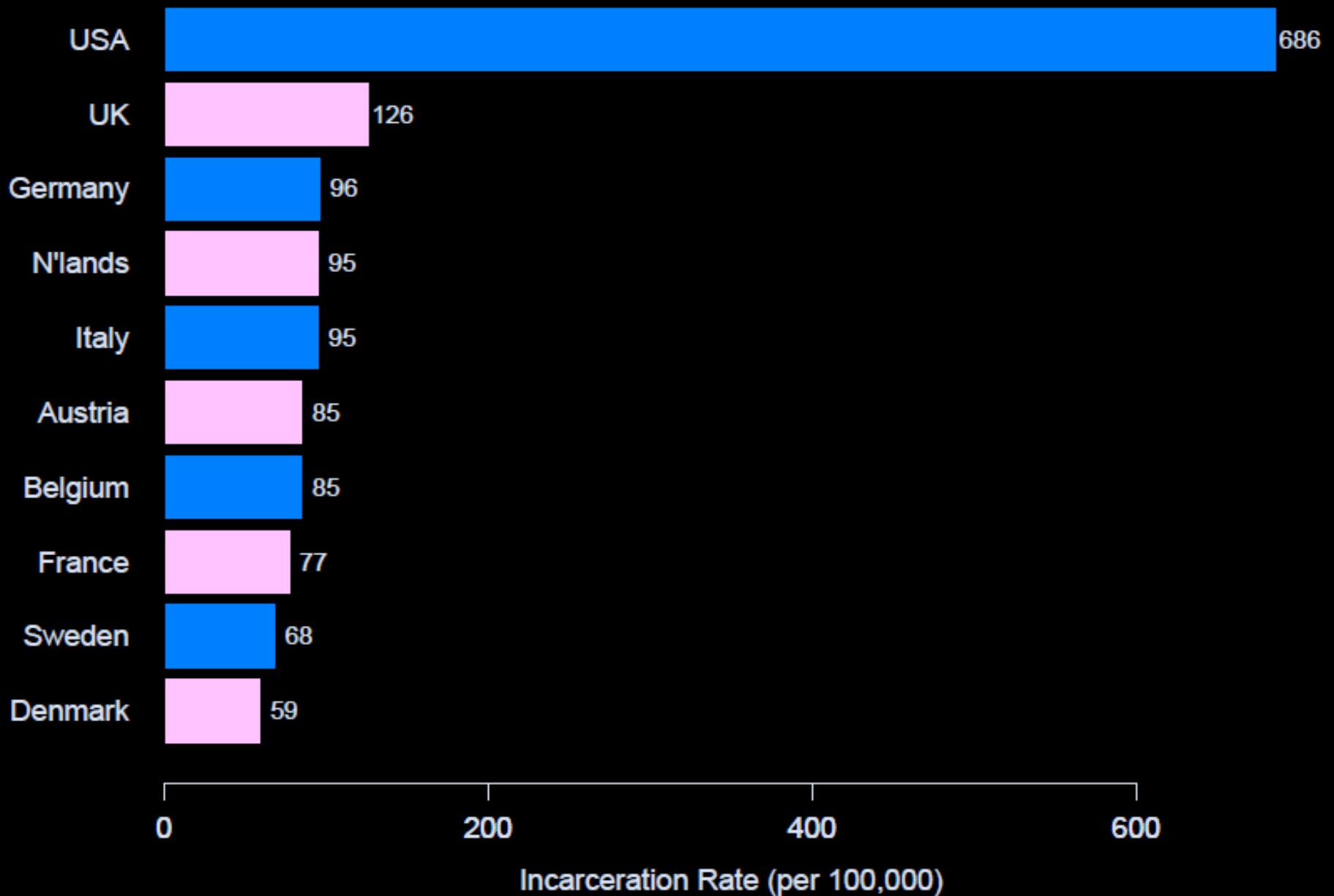
Then There's The Incarceration
Explosion – Both Reflecting and
Locking-in Racial Inequality

Let's Look at the Numbers: US Imprisonment Trends -- 1970-2010

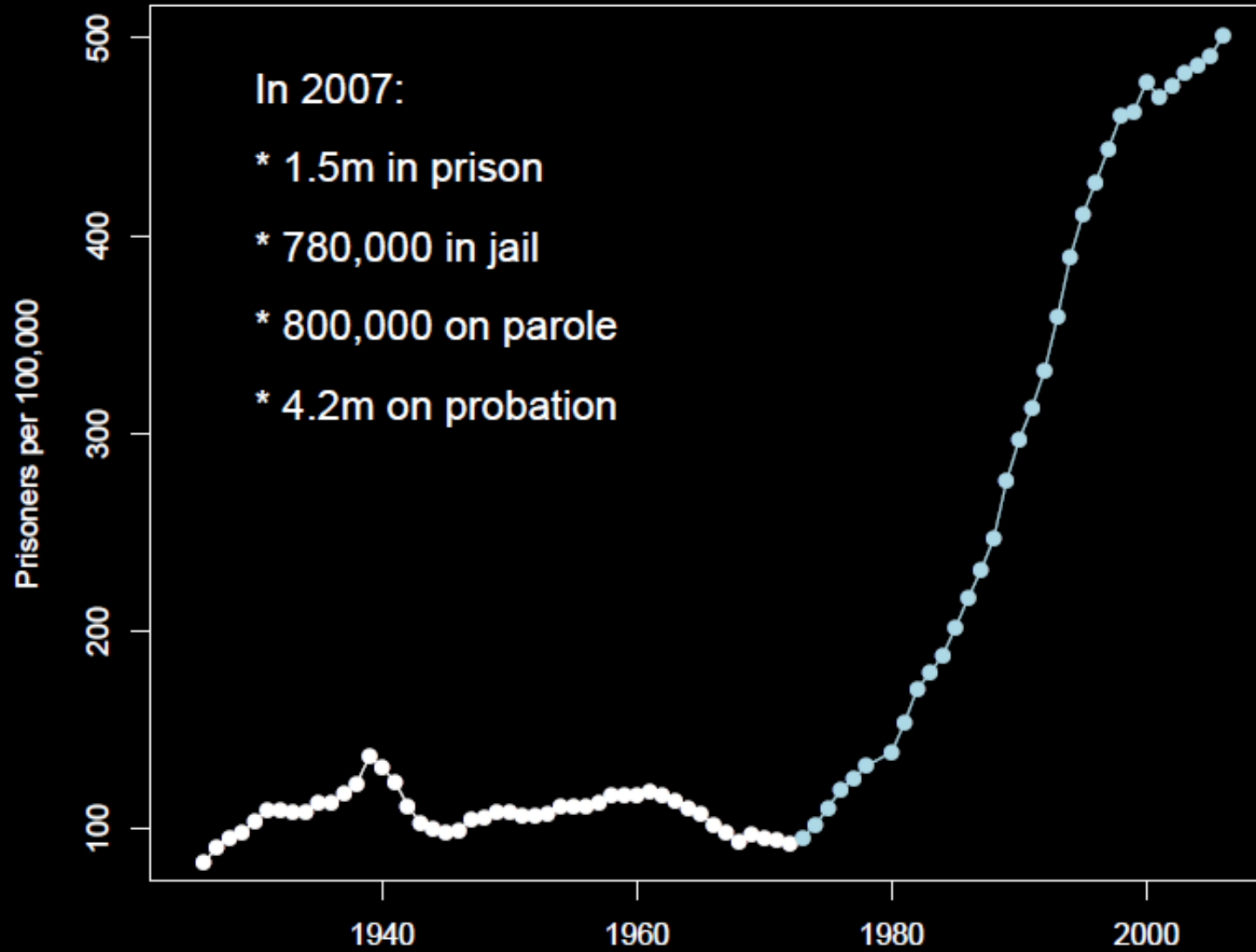
- (1) Dwarfs other Countries in the West
- (2) Unprecedented in US History
- (3) Wildly Disparate by Race and Class

Berkeley Sociologist Loic Wacquant:
“This is not ‘Mass Incarceration’ but
instead, ‘Hyper-Incarceration,’ with a
class/race nexus: the poorly educated
and non-white are at much higher risk of
being locked-up: I.e., imprisonment is
an integral part of our nation’s larger
social policy framework

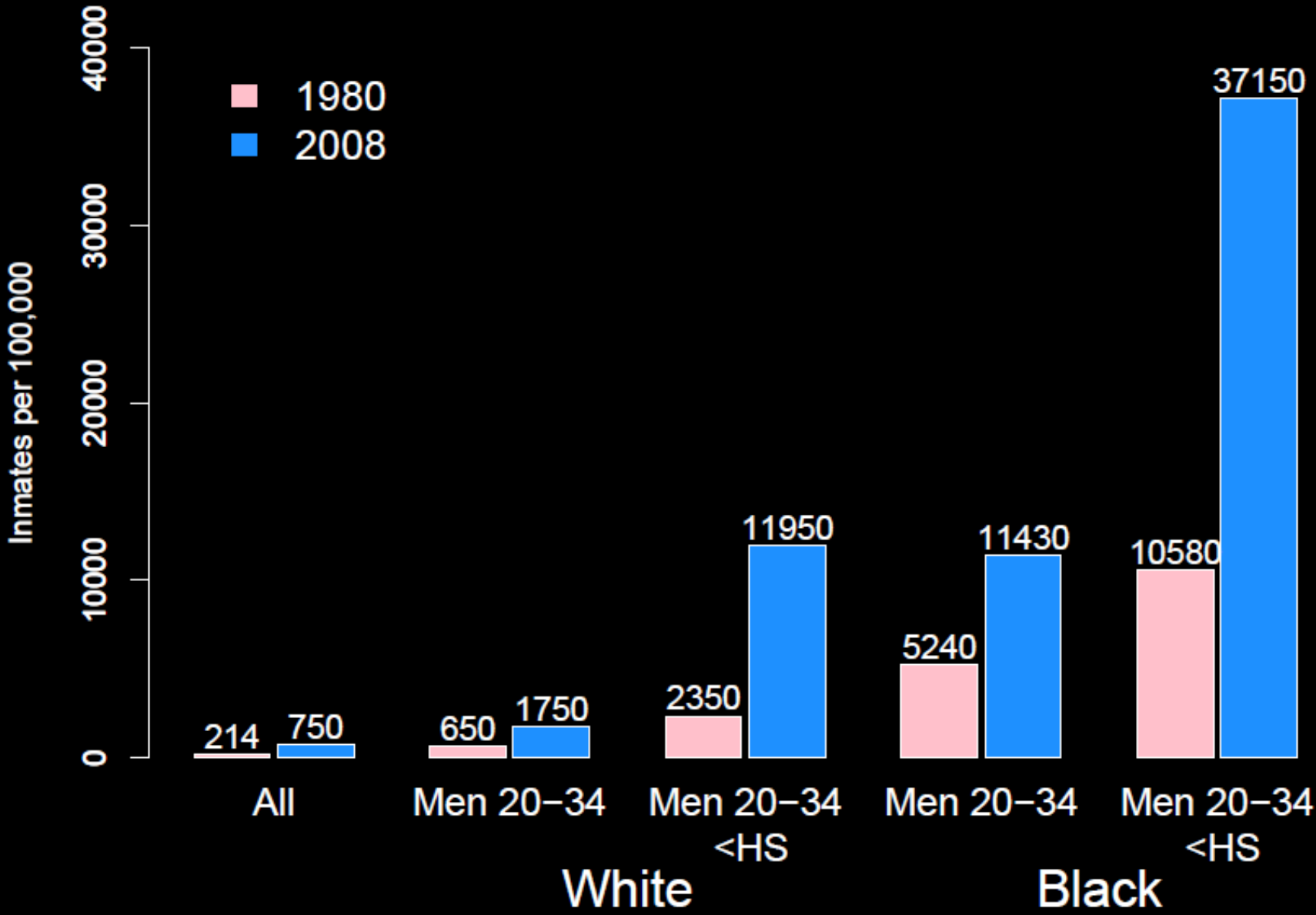
Incarceration in Western Europe and the US, 2001



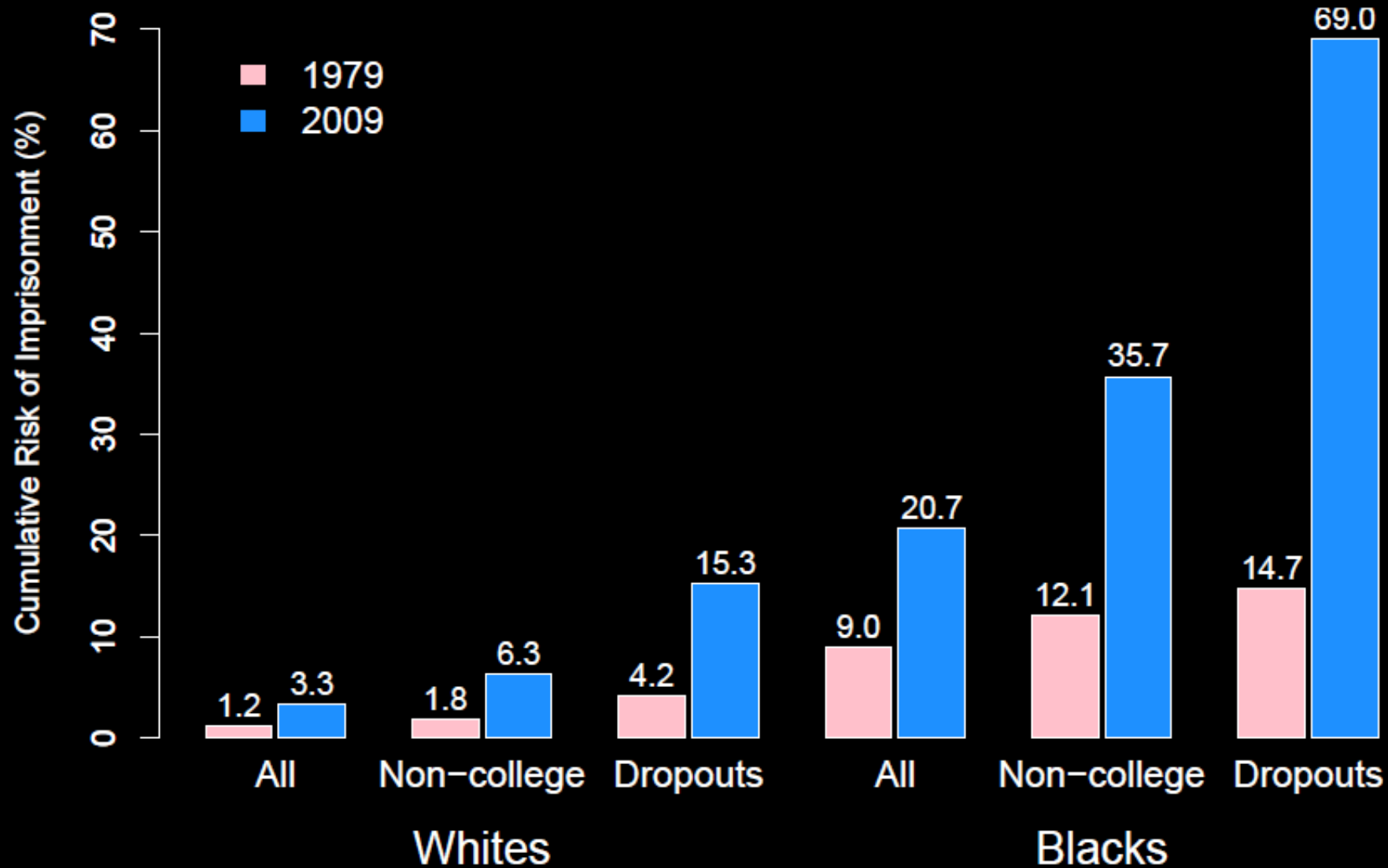
US Imprisonment Rate, 1925-2006



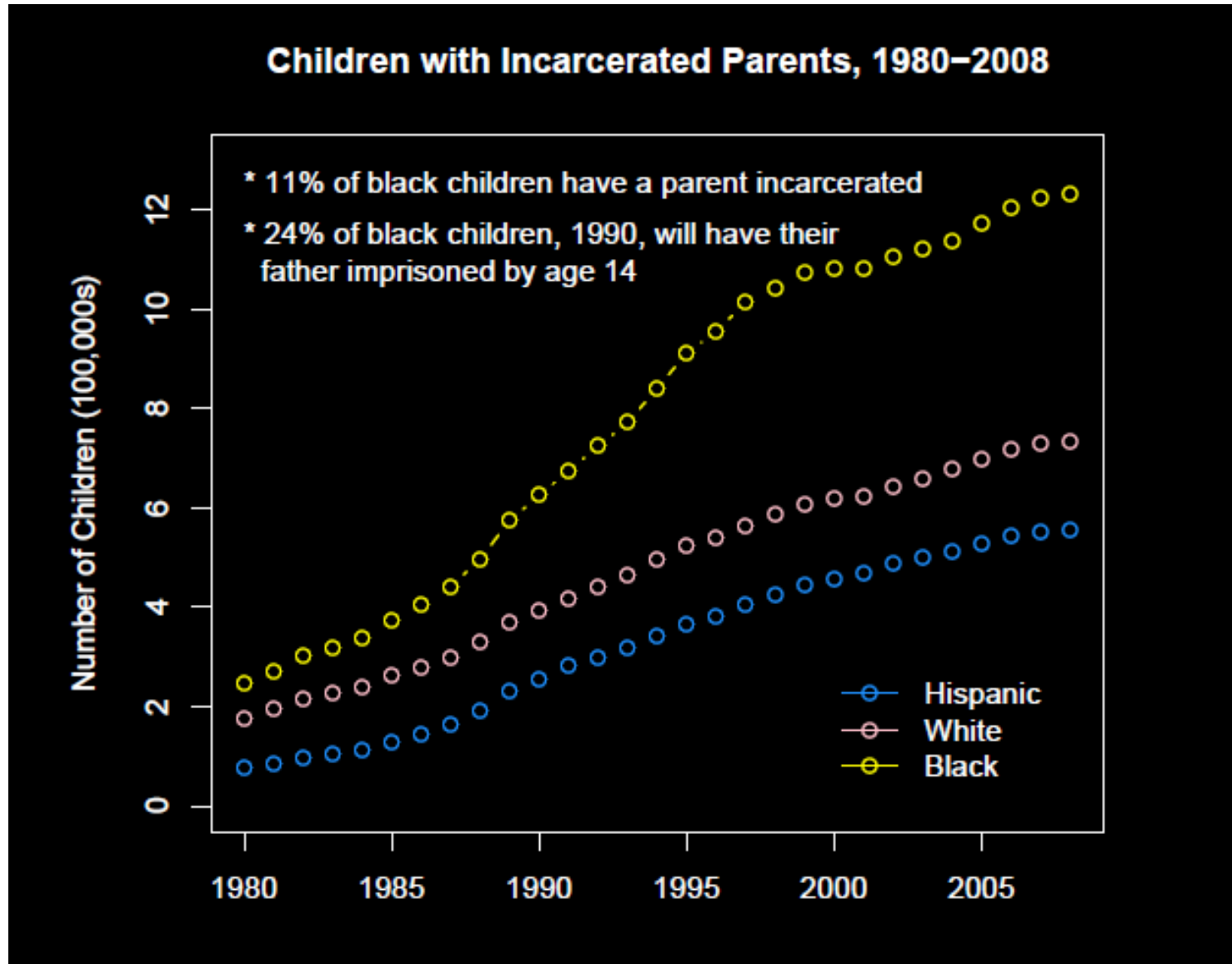
Incarceration by Race and Education



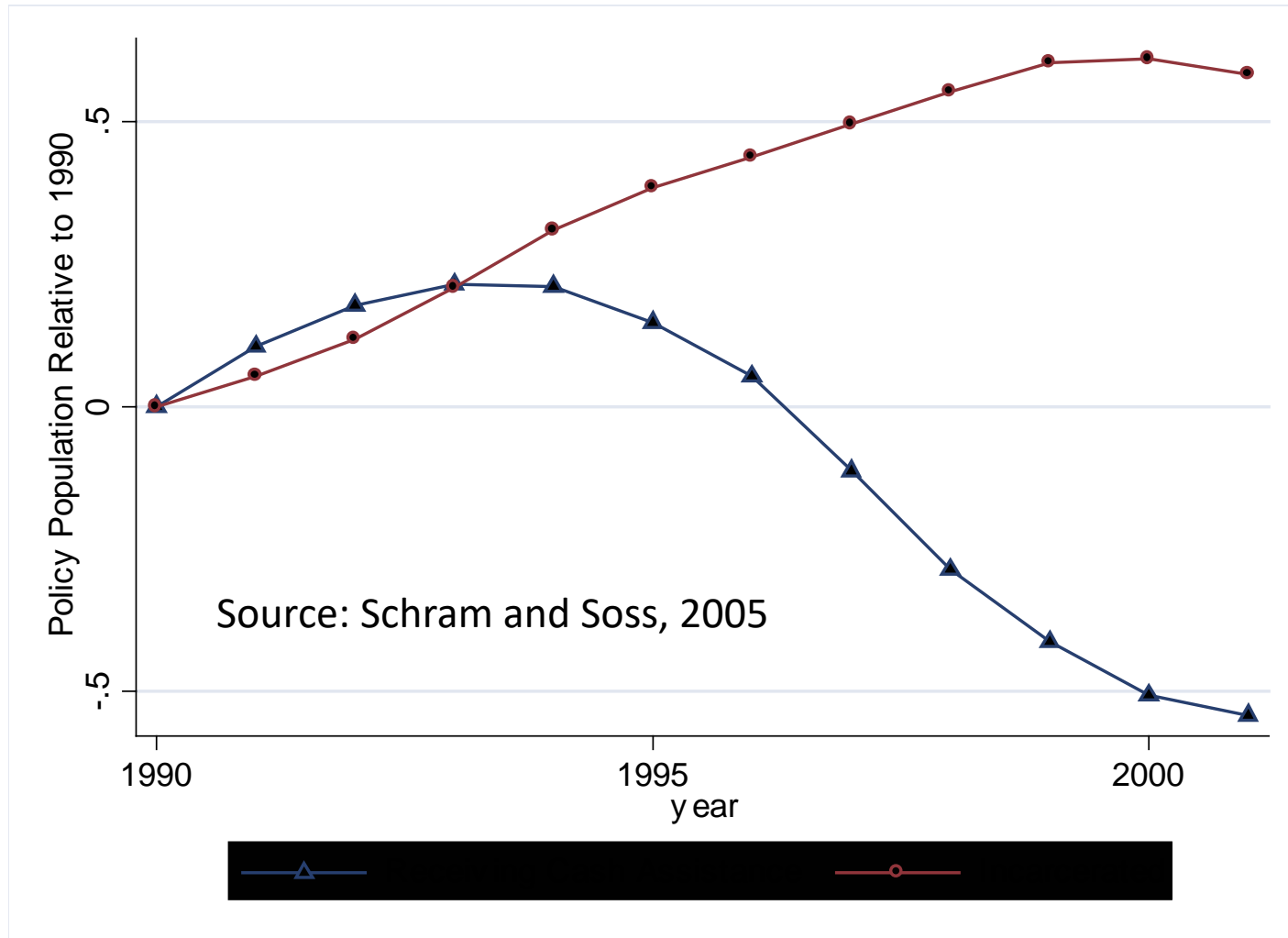
Men's Risk of Imprisonment by 30-34



The Prison Intersects with Families and Communities.
Note Incarceration's Huge Impact of Black Children.



The New Poverty Governance: Change in Numbers Incarcerated and Receiving Cash Aid:1990-2000



What does all this reveal about the true character of American social inequality?

Despite 40 years of AA, prisons are the primary venue for the government's engagement with the lives of African American men in the US today

Prisons more prominent than schools, unions, military or social agencies for poor black men...